# Whanganui Leased Vested Lands
# c. 1951-2000

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**Report Commissioned by the Crown Forestry Rental Trust**

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# Introduction

## i. The Authors

Heather Bassett holds a Bachelor of Arts Honours degree, majoring in history, from Waikato University. From 1993 to 1995 she worked as a researcher for the Crown Forestry Rental Trust, during which time she co-authored the *Maori Land Legislation Manual*. Heather was a staff member at the Waitangi Tribunal from June 1995 to October 1996. Since then she has been working as a contract historian and is based in Auckland.

Richard Kay holds a Bachelor of Arts degree, majoring in history, from Otago University and a Master of Arts Honours degree, majoring in history, from Waikato University. He has a Diploma of Teaching (secondary) from the Auckland College of Education. He is based in Auckland and works as a contract historian. Together, Heather Bassett and Richard Kay have written over twenty reports for various Waitangi Tribunal inquiries.

## ii. Project Brief

This report has been written as part of the Crown Forestry Rental Trust's research programme for the Whanganui Inquiry District. In March 2002 Bassett Kay Research was contracted to write a scoping report examining the lands which were vested in the Aotea District Maori Land Board. The scoping report recommended that research should be carried out on the history of the leased vested lands since 1951.[1]

In December 2002 Bassett Kay Research was contracted by the Crown Forestry Rental Trust to write this report on the leased vested lands 1951-2000. The project brief required research covering the following issues:

1. Introductory section backgrounding important developments in the history of the Whanganui vested lands from 1900 up until 1950.
2. The 1951 Royal Commission into Vested Lands and the subsequent passing of the Maori Vested Lands Administration Act 1954.

[1] Heather Bassett and Richard Kay, 'Whanganui Reserves and Vested Lands Scoping Report', Crown Forestry Rental Trust, August 2002.

3. The effectiveness of the Maori Trustee's administration of these lands, the extent to which the owners were involved in or consulted about the administration of these lands and the benefits they may have received from them.
4. The transfer of these lands to the control of the incorporated owners, and aspects of the subsequent history of the incorporation.[2]

## iii. Statement of Claim

The Wai 759 statement of claim relates specifically to the administration of the Whanganui Vested Lands. The statement of claim was lodged by Meterei Tinirau on behalf of the shareholders of the Atihau-Whanganui Maori Land Incorporation.[3] The claim lists a number of specific grievances about the legislation governing the vested lands, failures in administration, and the failure of the Crown to adequately redress the problems faced by the owners. The statement of claim makes it clear that Maori agreed to vest their land in the Aotea District Maori Land Council, 'for the purposes of leasing and settlement and in order to better provide for themselves and their descendants'.[4] This was done on the expectation that 'in due course, the bulk of the vested lands would be occupied and farmed by the beneficial owners'.[5]

The specific Treaty of Waitangi breaches listed in the statement of claim include:

- changes in legislation;
- the method of assessing valuations and rentals;
- failure to protect the owners' rights to receive the value of timber on the blocks;
- failure to provide finance to assist the owners to resume the leased lands;
- inadequacies of the 1951 inquiry;
- inadequacies of the 1954 settlement in failing to assist the owners to regain control of the leased lands.

The authors would like to thank the Atihau-Whanganui Incorporation for providing access to some of its records, and to the Maori Trustee files which are held by the incorporation.

[2] Whanganui Vested Lands 1951-2000 Project Brief, Crown Forestry Rental Trust, 11 November 2002.
[3] Wai 759 Statement of Claim, 8 May 1998.
[4] ibid.
[5] ibid.

Heather Bassett appreciated the way that incorporation staff willingly provided her with assistance and information.

## iv. Structure and Issues

The 'Whanganui Reserves and Vested Lands Scoping Report' explained how the vast acreage of Whanganui Maori land vested in the Aotea District Maori Land Council was eventually administered in three ways:

1. Blocks which were leased for Pakeha settlement.
2. Blocks which were farmed by the board as the Morikau Farm/Station.
3. Morikau Farm blocks which were revested in the owners and became the Ranana Development Scheme.[6]

The Whanganui district overview report, written by Tony Walzl has detailed coverage of many aspects of the vested lands before 1950.[7] The Walzl overview report covers the history of the blocks leased for Pakeha settlement until the establishment of the Royal Commission; the history of the Morikau Farm until its return to the owners in 1954; and the history of the Ranana Development Scheme until it was wound up in the early 1970s. The scoping report identified that further research was required into what happened after 1950 to the vested blocks leased for Pakeha settlement. This is the sole focus of this report, and readers wanting information about other aspects of the vested lands' history should consult the Walzl report.

**Part One** of this report provides an introductory overview to the history of the Whanganui lands vested in the Aotea District Maori Land Board for the period 1900 to 1950. This section is intended to provide the reader with a brief introduction to the history of the vested lands which were leased, with a particular emphasis on the terms under which Whanganui Maori agreed to vest land in the board, and how those terms and conditions were changed. Part One discusses the relevant legislation and administration by the Aotea District Maori Land Council and Board. Issues relating to valuations and compensation for improvements are examined in the context of pressure from the lessees for perpetual leases or the right to purchase, and resistance from the owners. Maori requests for assistance to resolve the

[6] Heather Bassett and Richard Kay, 'Whanganui Reserves and Vested Lands Scoping Report', Crown Forestry Rental Trust, August 2002, pp. 27-31.
[7] Tony Walzl, 'Whanganui Land 1900-1970', Crown Forestry Rental Trust, February 2004.

problems relating to compensation for improvements led to the establishment of a Royal Commission.

**Part Two** explains the report and recommendations of the Royal Commission into Vested Lands. It discusses the commission's criticisms of the method used to value the land and improvements, and other aspects of the administration by the Maori Land Board. The commission made detailed recommendations for legislation to govern the future leasing of the land by the Maori Trustee and resumption of leases for Maori farming. The response to these recommendations by the Maori Affairs Department, the lessees and the owners is explained. The Crown put forward alternative settlement proposals, but these were rejected by both the owners and the lessees. As a result, the two parties with opposing interests had to negotiate their own compromise settlement.

**Part Three** focuses on the administration of the leased vested lands by the Maori Trustee under the provisions of the Maori Vested Lands Administration Act 1954. There were two main aspects to the role of the trustee. It was responsible for administering over 240 leases, and issues relating to valuations continued to cause problems. The Maori Trustee also accepted it had a responsibility to assist the owners to resume an area of land as a farm for Maori benefit. The decision was made to resume 4,000 acres as the Ohorea Farm Station which was to be run by the Maori Trustee until finance advanced for the resumption had been repaid. Despite the Royal Commission and subsequent legislation, the resolving of how much compensation should be paid for improvements still required legal action.

**Part Four** explains the decisions to amalgamate all the Whanganui vested blocks into the Atihau-Whanganui block in 1967, and the revesting of control in an incorporation of the owners in 1969. The amalgamation affected over 100,000 acres of land, and more than 5,000 owners. The technical difficulties of the large scale amalgamation required special legislation, and revealed inadequacies in official title records of the various blocks. An over-riding factor in the representatives of the owners' decision to amalgamate was a concern to prevent any of the vested lands being sold, or small 'uneconomic' shares being acquired by the Crown and removed from local Maori ownership. The Maori Affairs Amendment Act 1967 provided for uneconomic and individual interests to be acquired by the Maori Trustee so that they could be sold to lessees. This was strongly opposed by the owners, and the

decision was made to revest the amalgamated block in the owners. Before this could be done, an ownership structure had to be selected. The owners preferred the creation of a statutory trust board, but when this was rejected by the Minister, the Atihau-Whanganui Incorporation was formed.

**Part Five** examines aspects of the history of the Atihau-Whanganui Incorporation. The focus is on the situation faced by the incorporation in regard to lease administration and land resumptions. Despite the recommendations of the Royal Commission and the settlement supposedly reached by the Maori Vested Lands Administration Act 1954, the history shows that problems relating to the valuation of land and improvements are still to be resolved. Four major legal cases were required to finalise the amount of compensation to be paid for improvements for the incorporation's 1975 land resumptions. In 2003, 55,000 acres of land remained to be resumed.

# Part One: Whanganui Vested Lands 1900 - 1950

Part One of this report provides an introductory overview to the history of the Whanganui lands vested in the Aotea District Maori Land Board for the period 1900 to 1950. The vested lands formed a large proportion of the land that was still in Maori ownership in the Whanganui district by 1900, and as such, their history has already been covered in another report prepared for the Whanganui Inquiry District. Tony Walzl's 'Whanganui Land 1900-1970' covers the legislation under which the lands were vested in the board and subsequent important legislative changes; the terms under which the lands were leased; pressure from the lessees for perpetual leases or the right to buy the freehold; and the Morikau Farm Scheme and the Ranana Development Scheme.[8] More general information about the legislation governing the Aotea District Maori Land Council/Board and its operation can be found in other research.[9] This section is intended to provide the reader with a brief introduction to the history of the vested lands which were leased, with a particular emphasis on the terms under which Whanganui Maori agreed to vest land in the board, and how those terms and conditions were changed.

## 1.1 Vested Lands 1900 - 1905

### 1.1.1 Maori Lands Administration Act 1900

The Maori Lands Administration Act 1900 was passed after years of Maori requests for a system of tribal management of Maori lands and more autonomy over Maori socio-economic matters. One of the stated aims of the Act was the retention of the remaining Maori land in Maori ownership. However, the Act also aimed to make land available for Pakeha settlement through leases:

> Whereas the chiefs and other leading Maoris of New Zealand, by petition to Her Majesty and to the Parliament of New Zealand, urged that the residue (about five million acres) of the Maori land now remaining in possession of the Maori owners should be reserved for their use and benefit in such wise as to protect them for the risk of being left landless, and whereas it is expedient, in the interests of both the Maoris and Europeans of the colony, that provision should be made for the better settlement and utilization of large areas of Maori land at present lying unoccupied and unproductive...[10]

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[8] ibid.

[9] D.M. Loveridge, 'Maori Land Councils and Maori Land Boards: a historical overview 1900-1952', Waitangi Tribunal Rangahaua Whanui Series, December 1996, and Selwyn Katene, 'The Administration of Maori Land in the Aotea District 1900-1927', MA thesis, Victoria University of Wellington, 1990.

[10] Preamble, Maori Lands Administration Act 1900.

The Act provided for the formation of district Maori Land Councils in which Maori lands could be vested through deeds of trust by their owners. Each council had at least five members and had strong Maori representation, with not less than two and not more than three Maori to be elected, and at least one other Maori member was to be appointed by the Governor.[11] One of the councils roles was to lease and manage the vested lands upon terms agreed in writing between the owners and the council. Regulations could be issued under the Act specifying the form, terms and conditions of the leases. The first regulations contained no provision for the payment of compensation for improvements made by the lessees.[12]

The constitution of the Aotea District Maori Land Council was gazetted on 19 December 1901. The council first met in February 1902. The Crown appointed President was Native Land Court Judge W.J. Butler, who had been the Land Purchase Officer mainly responsible for the Crown's purchase of the Waimarino block and allocation of reserves. The other Pakeha appointee was T.W. Fisher. The three Maori members, elected by Maori in the Aotea district, were Takarangi Mete Kingi, Te Aohau Nikitini and Waata Wiremu Hipango. The two Crown appointed Maori members were Ru Reweti and Taraua Marumaru.[13]

### 1.1.2 Vesting Land in the Aotea District Maori Land Council

In March 1902 a meeting of Whanganui Maori was held at Jerusalem to discuss vesting land in the council. Maori were presented with standard vesting forms showing the terms of trust under which land could be vested, and told that they could strike out any terms which they did not wish to apply.[14] Patrick Sheridan, the Under Secretary for Native Affairs later wrote that the proposal had strong support:

> The decision they [Whanganui Maori] there came to was to place the whole of their lands in the hands of the Minister, meaning the Council, unconditionally. The conditions set out in the attached printed slip which were fully explained by two licensed interpreters to every Native who signed the deeds, were announced by the Minister and no objection that I know of was raised to them.[15]

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[11] Section 6, Maori Lands Administration Act 1900.
[12] AJHR, 1951, G-5, p. 15. [Document Bank (DB), pp. 1-46]
[13] Cathy Marr, 'Whanganui Land Claims: Historical Overview', Office of Treaty Settlements, 1995, Wai 167 E1, p. 50.
[14] Walzl, p. 63.
[15] Sheridan to Chairman Native Affairs Committee, 6 October 1904, MA 13./56, ANZ, cited in Walzl, p. 62.

The blocks proposed at the meeting to be vested were Morikau 2, Whitianga 2, Waharangi 1, 2, 4, 5, Whakaihuwaka 1, 2, 3, Ohotu 1, 2, 3, 8, Ngarakauwhakarara, Puketotara, Poutahi, Urewera, and Ngapakihi.[16] Following this initial agreement, an extended process began to obtain the signatures of the majority of owners of each block. Delays and difficulties meant that some of the blocks in listed above were later abandoned from the vesting proposals. Walzl's research has not located any detailed record of the discussions which took place with the owners before they signed the transfers. Nevertheless, Walzl has commented that: 'In Whanganui, empirical evidence reflects that the development of land by Maori and for Maori was uppermost in the minds of the local owners when they vested their lands in trust to the Councils.'[17]

In late 1902 the Ohotu blocks (62,444 acres) were formally vested in the council. Walzl notes that when the owners signed the transfer, they did not strike out any of the standard conditions on the transfer form, and thus did not restrict the powers of the council over the land.[18] In 1903 the Paetawa block (3,374 acres) was vested in the council. By July 1902 the council had obtained the signatures of the majority of owners of Raetihi 2B, 3B, 4B and 5B blocks.[19] In August 1903 the council President informed the Under Secretary that the Raetihi blocks 'had already been transferred to the Council'.[20] However, Raetihi, and other blocks which were under negotiation from 1902, were not officially vested until 1907. In 1907 Otiranui 2 and 3 (1,296 acres), Waharangi 1 to 5 (10,146 acres), Morikau 2 (14, 066 acres), Raetihi 3B (1,943 acres) and Raetihi 4B (3,257 acres) were all vested.[21]

Between 1902 and 1904 approximately 106,353 acres of Maori land was vested in the Aotea District Maori Land Council.[22] Cathy Marr has suggested that one reason for Whanganui Maori participating in the new system so enthusiastically may have been related to the previous restrictions placed on their land under the Native Land Alienation Restriction Act 1884.[23] This Act had prevented Maori from selling their land privately, in order to allow the

[16] 'List of blocks agreed upon to be transferred to the Maori Council of Aotea', March 1902, MA-MLA 1 1902/67, ANZ, cited in Walzl, p. 62-63.
[17] Walzl, p. 142-143.
[18] ibid., p. 63.
[19] Progress Report of Signatures, 31 July 1902, MA-MLA 1 1902/67, ANZ, cited in Walzl, p. 64.
[20] Butler to Sheridan, 11 August 1903, MA-MLA 1 1903/153, ANZ, cited in Walzl, p. 70.
[21] Walzl, pp. 250.
[22] Walzl, p. 143.
[23] Marr, p. 50.

Crown to purchase the proposed route of the main trunk railway line. The result was that by the beginning of the nineteenth century, Whanganui Maori were anxious to take advantage of a system which could provide a rental return for their land, while still retaining ownership. This motivation was acknowledged by the Stout-Ngata commission:

> Be it remembered that prior to 'The Maori Land Administration Act 1900' most of the large Maori blocks in the Whanganui District…could not be leased or dealt with in any way by private persons. The owners could only sell to the Crown; they had already taken that course, and sold over a million acres. The opportunity afforded by the Act of 1900 of leasing through the Council instead of selling to the Crown was eagerly seized upon…[24]

As well as the land voluntarily vested in the council, subdivisions of the Tauakira 2 block were vested in the council as a result of outstanding survey charges. In 1903 the surveyor who was owed money gave notice that he intended to sell the lands over which he held survey liens. The President of the council recommended that the Crown should act to prevent the owners' land being sold. The eventual solution was for the Crown to pay the surveyor, and take over the survey lien. This was done on the condition that the blocks would then be vested in the council for leasing until the debt to the Crown was repaid. The Maori Land Claims Adjustment and Laws Amendment Act 1904 enabled this to be done, and the Tauakira 2E-2M, 2R-2Z, and 2AA-2FF blocks (a total area of 9,117 acres) were transferred to the control of the council.[25]

### 1.1.3 Council Administration

The transfer deeds by which the owners had vested their lands in the Aotea District Maori Land Council were all signed without any conditions being struck out. This meant that the council had complete control and decision-making power in respect to the land. Because the council contained a significant Maori majority membership, the owners may have felt that their interests would have been sufficiently protected.

The Aotea District Maori Land Council arranged for the survey and subdivision of the Ohotu blocks and other vested lands. During this time there was discussion amongst officials as to the length of time that the land could be leased. The regulations which had been issued did not allow for the land to be on perpetual leases, but Butler (the chairman) thought that the

[24] AJHR, 1907, G-1A, p. 11.
[25] Walzl, pp. 100-102.

council had the right to give a 'recurrent right of renewal', which would effectively create a perpetual lease situation.[26]

The first invitations to settlers to take up leases of the Ohotu blocks were made in 1903. There was little public interest in the offers and only a few blocks were leased. The leases being offered were for a term of 21 years, with a right of renewal for a further 21 years. At that time a combination of factors contributed to the difficulty in finding tenants for the Ohotu blocks, particularly the lack of roading access. The Aotea council considered that one way of making the leases more attractive to Pakeha farmers would be to change the terms of the proposed leases. Provision was made for the lessee to receive a payment from the owners for the value of improvements they made to the land.[27]

In July 1903 Native Department official R.C. Sim, reported on the proposal to offer a 21 year lease with the right of renewal for a further 21 years. Sim's comments indicated that he felt the land would actually be leased for a longer period:

> It is wrong to assume that at the end of the second term there will be no incoming tenant. The land will still remain vested in the council and it will be the duty of that body to again offer the land for lease by tender as in the first instance. The land will not revert to the Maoris…[28]

A regulation was drafted to provide for the lessee to be paid compensation for any improvements made on the land. The draft regulation was sent to Butler for comment. Butler supported the regulation, but did not share Sim's long term view. Butler recommended that 'power should be given to the Council to retransfer the land to the owners at the expiration of the second term if they are in a position to pay value of improvements.'[29]

In August 1903 the regulations under the Maori Lands Administration Act 1900 were amended. The insertion of regulation 78A provided for compensation to lessees for permanent improvements when the lease was renewed for a second term.[30] The validity of regulation 78A was later questioned. However, in 1920 legislation was passed validating the regulation, and leases issued under it.[31]

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[26] Butler to Sheridan, 14 July 1903, MA 13/56, ANZ, cited in Walzl, p. 76.
[27] AJHR, 1951, G-5, p. 20. [DB, pp. 1-46]
[28] Sim Memorandum, 18 July 1903, MA 13/56, ANZ, cited in Walzl, p. 76.
[29] Various Minutes, MLA 1903/128, MA 13/56, cited in Walzl, p. 76.
[30] AJHR, 1951, G-5, p. 21. [DB, pp. 1-46]
[31] Section 19, Maori Land Amendment and Maori Land Claims Adjustment Act 1920.

Despite the new provision allowing for compensation for improvements, the Pakeha members of the council tried to get the Maori members' agreement to offering leases with perpetual rights of renewal. The Maori members, who made up the majority of the council, were opposed to the land being leased with perpetual renewals. At a council meeting in July 1904 Takarangi Mete Kingi proposed that the term of lease should be for no more than 42 years. The Pakeha members expressed the view that the leases being offered would not be taken up without a perpetual right of renewal.[32] The President reminded the Maori members that the council had already agreed to lease the lands for 21 years 'renewable every 21 years', which was, in effect, a perpetual lease. However, Te Aohau Nikitini said that he had not understood that this was what was being agreed to, and: 'That was not what the people had agreed to when they signed the deed'. Nikitini and other Maori members continued to state that Whanganui Maori would not accept their land being offered on perpetual lease, 'as the lands wld [sic] never revert to them or their descendants'.[33]

After learning of the disagreement, Sheridan strongly urged the Crown appointees to push for leases with perpetual renewals. Fisher informed him that even if they could not get agreement to a perpetual lease, two terms of 21 years, combined with the right to compensation for improvements under regulation 78A, meant that the land was not going to revert to Maori: 'in fact I consider it a perpetual lease as it is beyond a doubt that Natives will not at end of 42 years be able to pay over £240,000 which would be value of improvements at that period.'[underlining as per original][34] The Crown appointed Pakeha members, with the support of the Native Department, were therefore acting in a way that was directly contrary to the stated wishes of the Maori members of the council.

In September 1904, 98 owners of the vested lands petitioned Parliament about the proposed perpetual leases. The petition made it clear that they had not intended to agree to the land being leased for longer than 42 years:

> Firstly…We protest against the words 'ninety nine years and on for ever' contained in the deeds by which we handed over our lands...to the Aotea Maori Land Council.
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> Secondly...the only term to which we agreed at the meeting at Hiruharama was forty two

[32] Extract from ADMLB Minute Book, 4 July 1904, MA 13/56, ANZ, cited in Walzl, pp. 88-89.
[33] ibid.
[34] Fisher to Sheridan, 6 July 1904, MA 13/56, ANZ, cited in Walzl, p. 91.

> years.
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> Thirdly:- We have heard that a piece of paper has been fastened upon that part of the deed, ie. to that part provided for the writing in of our desires as to the provisions under which our lands would be leased by the Aotea Council.
>
> Now there was no word whatever about ninety nine years, or further, on for ever, contained within the said deeds at the time that we signed our names to them. This is an absolute hoodwinking of us.
>
> Therefore we pray to your Hon. House to strike out the said words to which we object, but that the said deed be sent back amongst us to arrange provisions in regard to the said lands.[35]

In response, Sheridan informed the Native Affairs Committee that when the owners had agreed to vest the lands at the meeting at Jerusalem in 1902, they had not objected to the lease conditions which they had been shown. However, Sheridan acknowledged that the terms of trust regarding the powers to lease, although containing reference to perpetual leases, did not explicitly state the words '99 years' or 'for ever'.[36]

When the Ohotu blocks were again offered for settlement in December 1904, the lease term was on the basis of 21 years with a right of renewal for a further 21 years, and compensation for improvements.[37] While the proposal for perpetual leases had been abandoned at this time, the next forty years were to continue to see pressure from lessees and officials for the vested lands to be leased in perpetuity.

## 1.2 Legislative Changes 1905 - 1909

### 1.2.1 Maori Land Settlement Act 1905

In 1904 the Maori representatives on the Aotea District Maori Land Council had successfully stopped the Crown from leasing the vested lands with a perpetual right of renewal. After the Maori members of the council refused to support perpetual leases, Sheridan recommended to James Carroll, the Native Minister, that the Aotea District Maori Land Council should be disbanded.[38]

Maori resistance to changing the terms of the lease and the fact that only slow progress was being made in settling Pakeha on to the land led to a major law change. The Maori Land

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[35] Raihania Takapa and 97 Others to Speaker House of Representatives, 1 September 1904, MA 13/56, ANZ, cited in Walzl, p. 96-98.
[36] Sheridan to Chairman Native Affairs Committee, 6 October 1904, MA 13/56, ANZ, cited in Walzl, p. 97.
[37] Walzl, p. 103.

Settlement Act 1905 reconstituted the Maori Land Councils as Maori Land Boards. The Maori Land Boards comprised of three Crown appointed members, only one of whom was required to be Maori. The Act was to form part of, and be read with, the Maori Land Administration Act 1900. Together these Acts and their amendments formed a single body of legislation governing the administration of Maori freehold land from 1900 until the Native Land Act 1909 came into force.

The Maori Land Settlement Act 1905 empowered the board to set aside areas of land vested in it as inalienable for the occupation and support of the Maori owners. The remaining land was to be leased for any term 'not exceeding in the whole fifty years'.[39] At the end of fifty years, after all encumbrances on the land had been met, the board, if requested by the owners, could revest the land in the owners.[40]

The Aotea District Maori Land Board was constituted on 6 March 1906. The first board members were T.W. Fisher, Takarangi Mete Kingi, and H. Lundius, a Crown Lands ranger.[41] The newly constituted board and legislation meant that the control of the vested lands was now very different from the system under which Maori had agreed to vest over 100,000 acres only three years previously. The changes have been summarised by Marr:

> Conditions had radically changed from those under which the land was vested. The gesture towards self management had been withdrawn. Maori members of the old Council had been criticised when they sought to prevent perpetually renewable leases of their lands. The Council had then been replaced by a European controlled Board which far from heeding Maori wishes offered leases with unwritten conditions that made them almost as good as sales.[42]

The Maori Land Settlement Amendment Act 1906 authorised the compulsory vesting of land in a Maori Land Board where the land had not been properly cleared of noxious weeds, or where it was not properly occupied by the Maori owners but was suitable for Maori settlement. These provisions had their greatest use in the Aotea Maori Land District. In late 1906 the Native Department decided to vest the Morikau 1 block (7,200 acres) in the board for the purposes of Maori occupation.[43] Later, in 1907, after the recommendations of the

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[38] ibid., p. 92.
[39] Section 8, Maori Land Settlement Act 1905.
[40] Section 14, Maori Land Settlement Act 1905.
[41] Marr, p. 51.
[42] ibid., pp. 51-52.
[43] Walzl, p. 286.

Stout-Ngata commission (see 1.2.2 below) the adjoining Ranana (3,100 acres) and Ngarakauwhakarara (5,795 acres) blocks were vested in the Aotea District Maori Land Board for Maori occupation.[44] A full account of the subsequent history of the administration of these blocks can be found in Walzl's report. They were subject to Department of Maori Affairs control as development schemes and farm stations for many years. Today, these blocks make up land vested in the Morikaunui Incorporation.

### 1.2.2 The Stout-Ngata Royal Commission and the Native Land Settlement Act 1907

In 1907 the Royal Commission on Native Lands and Native Land Tenure (the Stout-Ngata commission) was established to examine the condition of all Maori lands in the North Island to identify lands which were 'idle', and to specify how they could best be put to profitable use. The report on the Whanganui district included comments on the administration of the lands vested in the Aotea District Maori Land Board. Whanganui Maori had expressed dissatisfaction to the commission about the perceived low rents being achieved. Furthermore, the costs of surveying, subdividing, roading and administration meant that rents had yet been distributed to the owners:

> They [Whanganui Maori] did not favour any system of leasing which divested them of the fee-simple of their lands: the system inaugurated by the Act of 1900 was expensive, and though good rentals might be obtained, the deductions for costs of surveying, roading and administration would more than counterbalance any advantage that leasing by tender through the Board might have over leasing by direct negotiation with the lessees…Generally speaking, they alleged against the system delay, expense and loss of freedom of dealing.[45]

The Stout-Ngata Report highlighted some of the expenses incurred by the board. The survey and roading work on Morikau 2 had cost £4,000, while between £8,000 and £10,000 had be spent on preparing Ohotu for leasing. As the board was unsure of the final costs, and how much was to be charged on the land, no rent distributions had yet been made to the owners of Ohotu, even though the board held £3,000.[46]

The enactment of the Native Land Settlement Act 1907 followed the release of the report of the Stout-Ngata commission. The Act provided that the Governor could, by Order-in-Council, place under Part I of the Act Maori lands identified by the Stout-Ngata commission as being not required for occupation by the Maori owners and available for sale or leasing.

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[44] Walzl, p. 287.
[45] AJHR, 1907, G-1A, p. 11.

Lands dealt with under Part I became vested in trust in the local Maori Land Board. However, the terms of the land boards' trusteeship were quite different from those exercised in respect of lands vested in the councils/boards under the Maori Lands Administration Act 1900 and the Maori Land Settlement Act 1905. The 1907 Act required the boards to divide the lands into two approximately equal portions, one for sale and one for leasing.[47]

For the land which was to be leased, the Native Land Settlement Act 1907 provided that those leases were to be in a prescribed form and that every lease and every renewal of a lease should terminate within 50 years after the Act came into effect on 25 November 1907.[48] Section 29 of the Act provided that, in respect of any lease for ten years or more, the lessee was to be compensated for all permanent improvements of a substantial character.[49] The land board was to set aside some of the rental revenue for the purposes of creating a sinking fund which would be available to pay the value of the improvements when the lease expired.[50] Despite this provision, no sinking fund was created for the leased vested lands.

Except for the Rakautaua block, which was vested in 1909, and the Retaruke block, vested in 1912, the vesting of all Whanganui lands had taken place by the end of 1907. All the lands vested before 31 March 1910 (being the commencement date of the Native Land Act 1909) were leased pursuant to the Maori Lands Administration Act 1900 and its amendments. Under the Maori Land Settlement Act 1905 (Section 8) vested land could not be leased for more than 50 years. Under the Native Land Settlement Act 1907, all leases had to expire before November 1957. These combined provisions clearly indicate an expectation that the land could be returned to the control and/or occupation of the Maori owners after no more than 50 years. The Royal Commission into Vested Lands 1951 reached the same conclusion:

> It thus appears to have been the intention of the Legislature and of the Maoris at the time when in the first decade of the present century the vested lands with which we now have to deal were vested in the Maori Land Councils (or their successors, the Maori Land Boards), that the period of vesting should be limited, and that the lands should return to the Maori beneficial owners in due course. It was made clear to us that, generally speaking the Maori beneficial owners of to-day want this intention carried out and the lands returned to them or used for their own occupation.[51]

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[46] ibid. pp. 11-12.
[47] Section 11, Native Land Settlement Act 1907.
[48] Section 28, Native Land Settlement Act 1907.
[49] AJHR, 1951, G-5, p. 16. [DB, pp. 1-46]
[50] Section 29, Native Land Settlement Act 1907.
[51] AJHR, 1951, G-5, p. 17. [DB, pp. 1-46]

### 1.2.3 Native Land Act 1909

The Native Land Act 1909 consolidated the law relating to Maori land. Part XV of the Act governed lands that had been vested (voluntarily or compulsorily) under the Maori Lands Administration Act 1900 and its amendments from 1901 to 1906. The 1909 Act essentially continued the same provisions as the previous legislation. Section 262 of the Act provided that leases were to be in a prescribed form and that every lease and every renewal of a lease should terminate by 25 November 1957. Section 263 of the Act provided that, in respect of any lease for ten years or more, the lessee was to be compensated for all permanent improvements of a substantial character. To pay for that compensation, boards could set aside a portion ('such sum as the Native Minister from time to time directs'), of rents from each lease in a sinking fund. Such a sinking fund was never established by the board.

## 1.3 Pressure to Change the Terms of the Leases 1911 - 1948

### 1.3.1 Select Committee Hearing 1911

In 1911 a group of Ohotu lessees petitioned Parliament to be allowed to purchase the freehold of the vested land. In response, 139 Maori owners sent Parliament a petition asking that the lessees be refused because the owners were 'not willing that Ohotu Block should be sold lest we be left, and our descendants, without land'.[52] A Parliamentary select committee sat to hear the petitions. T.W. Fisher, the President of the Aotea District Maori Land Board, promoted the view that the leases were in perpetuity. This was based on an interpretation of conditions of the lease which indicated that Maori would not be able to resume the land when the lease expired. Fisher told the select committee hearing that: 'The position is clear: the block was leased on a perpetual right of renewal except that at the end of the second term (forty-two years from the date of the original lease) the Native owners have the option of paying up the value of the improvements in the whole block, when it would be reconveyed to them'.[53] The 1951 Royal Commission concluded that Fisher's statements about the leases were not in line with the actual legal position:

> Mr Fisher's view…was not based on a legal interpretation of the documents, but was based on the expectation that at the end of the period of forty-two years the Maori beneficial owners of

[52] Maehe Ranginui et al to James Carroll, 10 August 1911, MA 1 W2459 5/2/4 pt 1, ANZ, cited in Walzl, p. 266.
[53] AJHR, 1911, I-3B, p. 10.

> the land would be unable to find the money required to meet the value of the improvements for the whole block and that accordingly the lessees would have to be given further leases. We consider that the submission of counsel for the Maori beneficial owners that the first-term leases were for a period of twenty one years with only one right of renewal is correct.[54]

Pakeha lessees continued to exert pressure to have their tenure converted to perpetual rights of renewal. Walzl's report details the many attempts made to have the government change the legislation and grant the lessees permanent occupation.

### 1.3.2 Native Land Amendment Act 1913

The Native Land Amendment Act 1913 reconstituted Maori Land Boards to consist of two members: the Judge and Registrar of the Native Land Court district that coincided with the district of the Maori Land Board. This eliminated any specific Maori representation on the Maori Land Boards. The 1951 Royal Commission commented that this was 'a departure from one of the conditions which existed at the time of the voluntary vesting of the lands by the Maoris of the Aotea Maori Land District, and in the case of that district was a matter critically commented upon.'[55] Not only did the 1913 Act do away with any semblance of Maori control over the vested lands, but as Marr has also pointed out this Act essentially returned the control of the vested lands to the Native Land Court: 'Effectively this appears to have concentrated power in the judge as given their relative positions, registrars were generally deferential to judges. For Whanganui Maori the wheel had come full circle. The attempt to establish an alternative to the Native Land Court had effectively been eliminated.'[56]

### 1.3.3 Renewing the Leases After the First 21 Years

The terms of the leases granted in the early 1900s expired in the early 1920s. They were renewed for a further term of 21 years, but they were expressed in the form of new leases.[57] When the leases were due for renewal, valuations had to be made to assess the new rental rate. Valuations were to be made by two valuers one appointed by the board and the other by the lessee.[58] The rent was to be set at five percent of the capital value of the land, after the value of the improvements had been deducted. The rent was therefore based on the assessed

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[54] AJHR, 1951, G-5, p. 22. [DB, pp. 1-46]
[55] ibid., p. 19.
[56] Marr, p. 54.
[57] AJHR, 1951, G-5, p. 23. [DB, pp. 1-46]
[58] ibid., p. 24.

'residue value' of the land, rather than simply assessing the unimproved value.[59] The valuations took the total current value of the land and improvements as a starting point, rather than assessing the value of the land itself in its own right. The residue method can be expressed as follows:

**Capital Value - Improvements = Owners' Land Value**

In normal circumstances, the value of the unimproved land would have been expected to rise over a 21 year period. However, as the improvements were often given quite a high value, the result was that the assessed value of the land alone decreased substantially between the first and second terms of the leases. The 1951 Royal Commission pointed out that land such as Ohotu, where roading and public services had been provided to the district should have increased in value. However, when the leases were renewed the assessed residue value was decreased so that rentals decreased from £4,131 to £3,450.[60] The overall rentals for the vested lands in the Whanganui district decreased by 46 percent between the first and second terms.[61] The main reason for this was the method by which the improvements were valued at the expiry of the first term. The lessee was entitled to have the value of the improvements assessed at their value at the time of assessment. Dramatic increases in the costs of materials and labour between the time the improvements had been made, early in the lease term, and the expiry of the lease meant that the value of the improvements was assessed as far higher than the original cost to the lessee.[62] These values could be out of line with the overall capital value of the property which meant, under the residue method, that the value of the land alone was decreased below the normal unimproved value. This problem was exacerbated for the owners by the common practise of lessees farming a wider area than the vested block, so that improvements situated on one vested block (such as sheds) actually benefited other additional lands.

The method of valuing the improvements on the vested lands was different from that adopted by the Crown in the Valuation of Land Amendment Act 1912, and the Valuation of Land Act 1925.[63] The high weighting given to the value of the improvements not only increased the

[59] ibid.
[60] ibid., p. 25.
[61] ibid.
[62] A more detailed discussion of this problem can be found in AJHR, 1951, G-5, pp. 24-29. [DB, pp. 1-46]
[63] AJHR, 1951, G-5, p. 26. [DB, pp. 1-46]

amount that the owners had to pay to compensate the lessee, but the residue method also decreased the rent available to contribute to compensation. This meant that the owners faced an increasing debt burden on their land at the same time as the income generated was reduced. The cumulative effect was that by the time the second term of the leases was due to expire, it appeared virtually impossible for the owners to obtain sufficient funds to pay the compensation for improvements and resume the land. This outcome was recognised by officials when the new valuations were made in 1926. Gordon Coates the Native Minister was informed that under the reduced rentals the 'rent for the whole term of the new leases will be insufficient to cover the value of the Lessees improvements'.[64]

### 1.3.4 Events During the 1930s and 1940s

The Native Land Act 1931 set up a procedure to be followed in the event that the owners had insufficient funds on hand to pay the compensation for improvements when the lease expired. Section 327 said that if the owners could not pay the compensation when the lease expired, the compensation would become a charge upon the land. The charge was to be enforced by the appointment of a receiver who was empowered to make any necessary arrangements to lease the land and generate funds to repay the compensation charge.[65] The receiver would be able to lease the land with the rental based on the full capital value of the property, rather than the unimproved value only. This would generate a greatly increased rental return. Until the improvements were paid off, the owners would receive none of the rental payments. Walzl has suggested that this option provided some possible benefit to the Maori owners:

> The evidence suggests that this option was chosen over another possible solution which would have involved the creation of a sinking fund during the second term of the lease to pay for the improvements. The Native Department later justified the decision of not opting for a sinking fund by stating that the proportion of rents that would have been necessary to set aside would have been too great to make the proposition an acceptable one to the owners. However, as the owners later complained in the late 1940's, they were never consulted and were never presented with any options in the use and management of their land. Considering the small amount of rental being received by the numerous owners, (estimated by the 1920's as being £1 per person per annum), it is quite possible that the owners would have chosen to forego such a meagre rent to pay off improvements in order to have their land returned at the end of the second leasing term.[66]

During the 1930s the lessees of the Whanganui vested lands again attempted to obtain the right to perpetual renewals. Draft legislation was prepared and deputations made to the

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[64] Under Secretary to Native Minister, 7 December 1926, MA 1 W2459 5/2/4 pt 2, ANZ, cited in Walzl, p. 376.
[65] Section 327, Native Land Act 1931.
[66] Walzl, p. 534.

Minister. However, the Maori owners strongly resisted the proposals put forward by the lessees. In October 1935 a Maori deputation stated their concerns to the Prime Minister.[67] They reminded him that the current requests from the lessees were not in accordance with the original circumstances under which the land was vested. The owners explained how the current situation had been created:

> Much has been said in the matter of no sinking fund being created to meet this charge. In the majority of cases, the beneficial owners, during the first term of the leases have had to pay out of rents, the costs of survey and of putting the lands on the market and, to a certain degree, the cost of roading. If deductions had also been made to meet compensation, the beneficial owners would have received very little in the way of rent. It was considered that it might have been possible to make the deductions during the second part, but the unimproved value, the only source of revenue to meet the compensation charges, was so reduced, and the value of the improvements was so high and so much out of proportion with the former…that the accumulation of a fund to meet the compensation charges was absolutely impossible.[68]

In conclusion the owners requested that the government fully investigate the situation and allow the beneficial owners time to present their case.

In October 1936 a meeting was called by the Aotea District Maori Land Board to discuss the draft legislation put forward by the lessees. The meeting was attended by representatives of the lessees, and about 150 Maori owners.[69] Hoeroa Marumaru spoke for the owners:

> The position is that our people have decided against the proposal. We are not opposing the present contract at all. We are quite prepared to let it run on for 12 years, but something must be done to suit both the lessee and the lessors. I believe that the time is coming when the Maoris themselves will be able to farm their own lands. I am looking forward to the time when we are able to work these lands ourselves. Morikau Farm and the Ranana Development Scheme have been successful and we are hoping to be able to work them ourselves in a few year's time.[70]

After one of the lessees addressed the meeting to explain the problems they faced, Marumaru pointed out that the difficulties created by the legislation and leases were the fault of the Crown: 'We had no say in the making of the regulations governing the leases…I do wish to stress this, that when those conditions were inserted we had no say at all'.[71] Marumaru concluded the meeting by urging those owners present to be ready to protest against any further legislation which might be proposed to change the terms of the leases. He moved the following resolution which was carried by the meeting:

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[67] Wereta et al to Native Minister, 15 October 1935, MA 1 W2459 5/2/4 pt 3, ANZ, cited in Walzl, pp. 384.
[68] ibid.
[69] Meeting of Owners, 7 October 1936, MA 1 W2459 5/2/4 pt 3, ANZ, cited in Walzl, pp. 387-390.
[70] ibid.
[71] ibid.

> That this representative meeting of the beneficial owners of the Blocks set out in the notice issued by the Aotea District Maori Land Board views with consternation and alarm the proposals set out in the draft legislation placed before the meeting for consideration and rejects such proposals in toto: and, further desires that the terms and conditions of the existing leases be strictly adhered to.[72]

The owners were supported by Judge Browne of the Aotea District Maori Land Board. In August 1937 Browne wrote:

> the sole question affecting [these leases] is whether the terms of the contract entered into in solemn form should or should not be adhered to. The Native owners are prepared to carry out their part of the contract in its entirety, but the lessees are not. They want concessions which, in the opinion of the Native owners and of the Board, are, to say the least about them, unfair to the owners.
>
> …It was certainly not contemplated that, at the end of the 42 years specified in the Deed of Cession, that the land should be so encumbered with liabilities that there would not be the slightest possibility of the owners getting it back for years after, it they ever got it back at all.
>
> As to the question of establishing out of the rent a fund for the purpose of paying the compensation, I would like to reiterate what I have already stated, viz. that if the whole of the rent for the 42 years were set aside for the payment of compensation it would not be nearly sufficient to meet the claims that will be made.[73]

By the 1940s the leases that had been renewed in the 1920s had started to expire. In May 1948 the owners of the vested blocks petitioned Peter Fraser the Minister of Maori Affairs.[74] The petition summarised the history of the lands. It emphasised that the decision to lease with the provision for compensation for improvements was not part of the terms by which the land was originally vested. The owners also emphasised that throughout the history of the vested lands, the important decisions which had created the current problem were made without any consultation with the beneficial owners, who now had to bear the cost:

> It is stated that it was necessary to grant compensation to the lessees, for improvements affected by them to get the land settled. That may be so, but we maintain that we should have been consulted and that the terms entered into by the administration on our behalf does not reveal much foresight or any grounds for enthusiasm and confidence in what they have planned for us. [75]

The petitioners asked that a Royal Commission be established to investigate:

> 1. The owners legal rights.
>
> 2. Each lease.
>
> 3. The administration.

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[72] ibid.
[73] Judge Browne to Under Secretary, 9 August 1937, MA 1 W2459 5/2/4, pt 3, ANZ, cited in Walzl, pp. 394-395.
[74] Rihari et al to Native Minister, 15 May 1948, MA 1 W2459 5/2/4, pt 4, ANZ, cited in Walzl, pp. 405-407.
[75] ibid.

4. The method of valuation.
5. Compensation for the improvements affected by the Lessees. [76]

A further petition was submitted in July 1948 requesting that a Royal Commission be established.[77] In late 1948 the government started to take steps to set up the Royal Commission be defining the terms of reference and appointing members. The Royal Commission into Vested Lands is the subject of the next part of this report.

In the meantime, as the leases were expiring, legislation was passed to extend their terms until the commission had held hearings and reported its findings. The Maori Purposes Acts of 1948, 1950, 1951, 1952 and 1953 allowed the lessees to continue their tenure until a more permanent solution was found to the problems caused by their expiry.

## 1.4 Summary

The Maori Lands Administration Act 1900 was passed with the intention of creating a system which would protect Maori land ownership while facilitating Pakeha settlement through leasehold. A key component of the Act was the establishment of Maori Land Councils, with significant Maori representation. Land could be vested in the councils, which could then arrange for the land to be leased.

In 1902 Whanganui Maori agreed to vest a significant proportion of their land in the Aotea District Maori Land Council. Between 1902 and 1904 over 100,000 acres of land in the Whanganui district was vested in the council. Prior to the 1900 Act, Whanganui Maori land had been restricted from private sale or lease, which meant that, by the turn of the century, Whanganui Maori were enthusiastic for the council system which promised a rental income while retaining Maori ownership. Leasing the land to Pakeha would also allow the land to be developed into farms which would be returned to Maori control and/or occupation at the expiry of the lease.

In 1903 the Aotea council arranged to lease the Ohotu block, but it had difficulty attracting tenants. The Pakeha members of the council and Native Department officials urged that the

[76] ibid.

21 year leases, with a right of renewal for a further 21 years, should contain provision for the lessee to be paid compensation for the improvements made on the land. This resulted in regulation 78A. Official correspondence indicates that the Crown was aware that the result was likely to be that the Maori landowners would be unable to pay the compensation and resume the land at the end of the 42 year lease period. Furthermore, officials pushed for perpetual leases. However, in 1904 the Maori members of the council opposed perpetual leases and stated that Whanganui Maori had not agreed to a perpetual lease when they had agreed to vest the land 'as the lands would never revert to them or their descendants'.[78]

In 1905 major changes were made to the law governing the vested lands. The Maori dominated Maori Land Councils were replaced by Maori Land Boards with only one Maori member, who was appointed by the Crown. The boards were empowered to lease the vested land for up 50 years. In 1907 the Stout-Ngata commission reported on Maori dissatisfaction at the way that the Aotea council/board had administered their land. The costs of surveying, subdividing, roading and administration had meant that Maori had not yet received any rental from their land. The Native Land Settlement Act 1907 provided that all the land vested in the boards could be leased until no later than November 1957. Despite the understanding of officials that Maori would not be able to resume their land at the end of the leases, because they would not be able to pay for the improvements, the legislation clearly showed that the intention of Parliament was that the leases would end no later than 1957.

Throughout the terms of the leases, the lessees lobbied to be allowed to purchase the freehold of the land, or to be able to obtain a perpetual right of renewal. These attempts were resisted by the owners, and rejected by the Native Department. However, it was recognised that the owners were going to be unable to pay for the improvements on the leased lands. When the leases were renewed after the expiry of the first 21 year term, the valuation method resulted in a high weighting being given to the value of the improvements, and a significant reduction in the assessed value of the land itself. The result was that the rental return was reduced, thus decreasing the already remote possibility that the establishment of a sinking fund might be sufficient to pay for the improvements.

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[77] Petitioners to Native Minister, 28 July 1948, MA 1 W2459, 5/2/4, pt 4, ANZ, cited in Walzl, p. 408.
[78] Extract from Aotea District Maori Land Council MB, 4 July 1904, MA 13/56, ANZ, cited in Walzl, pp. 88-89

During the 1930s and 1940s the Maori owners continued to resist the requests of the lessees to change the terms of the lease. The owners stressed that the decisions which had resulted in the situation faced by both the lessees and owners had been made by officials. In response to petitions from the owners, the Crown agreed to establish a Royal Commission to investigate the matter and report on the best solution.

# Part Two: Royal Commission into Vested Lands and Subsequent Negotiations 1950 - 1954

Maori land had been vested in Maori Land Boards so that they could be made available for leasing for a limited term. This term was to come to an end in 1957 when the lands were to be revested in the Maori owners. The leases were generally for a term of 21 years with a right of renewal for a further 21 years, and they contained clauses that entitled the lessee to obtain compensation for improvements on the land. The compensation for these improvements was to be assessed by arbitration, and if no funds were available to pay the compensation, it was to become a charge on the land that was recovered by a receiver. By the 1950s the Whanganui vested land leases were beginning to expire. As there were insufficient funds to meet the compensation for improvements, the owners were unable to resume possession of their land and the lessees faced little chance of receiving payment.

Although legislative provision had existed for the establishment of a sinking fund to pay compensation, such a fund had never been created. Subsequent rent reduction on lease renewals after the first 21 years meant that such a fund would have been unable to adequately meet compensation charges. This meant that by 1950:

- the extent of the compensation rights of the lessees were unclear;
- no lessee could recover their compensation as a debt;
- no fund was available to pay compensation;
- the only way to pay compensation was by the appointment of a receiver;
- the appointment of a receiver meant that no rents would be distributed to the owners, and compensation would only be paid in instalments;
- the owners were no closer to resuming their land.

In order to resolve this situation a Royal Commission was appointed. This part of the report examines the vested lands Royal Commission of 1951 and its recommendations. It then discusses how those recommendations were received by the owners, lessees and the Crown, and the extended negotiations which followed. After pressure from the Crown to reach a settlement, the owners and the lessees finally reached a compromise settlement in 1954 which became the basis for new legislation governing the leased vested lands.

## 2.1 Report of the Royal Commission into Vested Lands 1951

In 1950 the Crown appointed a Royal Commission of Inquiry to investigate leases of Maori-owned lands vested in Maori Land Boards. The commissioners were Chairman D.J. Dalglish, a Deputy-Judge of the Court of Arbitration, businessman H.M. Christie, and farmer R. Ormsby.[79] The commission was required to report on whether the law, or the terms of the leases, needed to be changed regarding: the type of improvements for which the lessees were entitled to compensation; the method of valuation by which these improvements were assessed; the way in which liability for this compensation should be discharged; and whether the Maori Land Boards needed further powers.[80]

The Royal Commission examined approximately 161,000 acres of vested lands in the Aotea, Tokerau, Ikaroa, Waikato-Maniapoto, Waiariki and Tairawhiti Maori Land Districts and produced a detailed and complex picture of the issues that the owners and lessees faced. The bulk of this land was in the Aotea District. The commission outlined the issues that witnesses and their counsel presented in evidence at each of the hearings in the various districts, and then examined them in detail, before their recommendations to address these issues. The commission said it was guided in its recommendations by four principle considerations:

1. Existing contracts should be carried out if possible.
2. All the legislation dealing with the vested lands intended that the 'lands should ultimately be returned to the Maori beneficial owners'.[81]
3. Ideally, when the board resumed vested lands they should be made available for Maori settlement and farming.
4. No action should be taken that would lead to a deterioration in condition and productivity of the vested lands.[82]

In May 1950 the Royal Commission commenced hearing submissions in Wanganui for the Aotea Maori Land District. The Maori Land Board was represented by N. Izard. A. Johnstone and J. Rumbold represented the majority of owners.[83] Generally, the lessors and lessees found themselves in fundamentally opposed positions. Izard, for the Aotea Maori Land Board

[79] AJHR, 1951, G-5, pp. 4-5. [DB, pp. 1-46]
[80] ibid., p. 2.
[81] ibid., p. 52.
[82] ibid., p. 53.
[83] ibid., p. 19.

said that neither the board nor owners had ever contemplated that 'through changed economic circumstances, the unimproved value of the Maori owners would be eaten up by the improvements'.[84] It was noted that the total value of the improvements in the first lease term was greater than the total rents received in both the first and second terms.[85] On behalf of the Maori owners, Hoera Marumaru said that the 'present-day Maori owners wanted the land back' and they were willing to pay compensation.[86] Duigan, for the lessees, stressed that the past contractual situation should be honoured. He noted that T.W. Fisher, the former chair of the board had promised that the land would be available to the lessees in perpetuity. The lessees' main concern was to secure ongoing occupation.[87]

The Royal Commission reported that the Aotea Maori Land Board had leased 115,209 acres to various lessees under 230 separate leases.[88] A further 11,806 acres was farmed by the board on behalf of the owners as the Morikau Farm. The following table shows the vested lands which were leased in the Aotea district. It also demonstrates how the rent had reduced between the first and second terms, and the assessed value of both the improvements and the owners' interest (unimproved value) at the time the leases had been renewed:[89]

| Block | Area | First Term Rental | Second Term Rental | Value of Improvements | Owners Interest |
|---|---|---|---|---|---|
| Ohotu 1,2,3,8 | 62,444a 1r 00.8p | £4,131:7:2 | £2,807:18:1 | £321,842:0:0 | £68,847:5:11 |
| Morikau 2 | 14,330a 3r 34.0p | £1,177:5:6 | £165:8:3 | £43,528:0:0 | £3,983:0:0 |
| Waharangi 1-5 | 10,146a 2r 34.5p | £904:3:10 | £262:9:8 | £18,650:0:0 | £2,491:0:0 |
| Paetawa | 3,226a 0r 00.0p | £167:15:0 | £48:0:0 | £8,217:5:0 | £3,645:16:0 |
| Otiranui 2,3 | 1,296a 3r 28.0p | £134:5:2 | £23:6:0 | £3,320:0:0 | £466:0:0 |
| Rakautaua 2B[90] | 50a 0r 00.0p | £152:10:0 | £82:10:0 | ------- | £1,650:0:0 |
| Raetihi 3B2, 4B | 4,377a 0r 23.7p | £1,318:8:5 | £256:4:7 | £31,710:1:6 | £3,176:11:0 |
| Retaruke 1,2,4B | 1,164a 3r 10.0p | £68:1:3 | £42:17:0 | £3,225:0:0 | £857:0:3 |
| Retaruke 4C | 1,387a 2r 22.7p | £57:16:8 | £29:10:0 | £2,163:0:0 | £240:0:0 |
| Tauakira | 9,117a 0r 2p | £468:3:8 | £262:17:7 | £27,148:0:0 | £5,136:0:0 |
| Wharetoto[91] | 7,668a 0r 0p | £87:10:0 | £20:5:0 | £555:0:0 | £405:0:0 |

[84] *Wanganui Herald*, 16 May 1950, MA W2490 54/23 vol 3, ANZ.
[85] ibid., 17 May 1950.
[86] ibid., 19 May 1950.
[87] ibid., 22 May 1950.
[88] AJHR, 1951, G-5, pp. 19-20. [DB, pp. 1-46]
[89] ibid., p. 20.
[90] The Rakautaua 2B block lies south of the Whangaehu River and is outside the boundaries of the Whanganui Inquiry District. As such its subsequent history has not been examined for this report.

| Block | Area | First Term Rental | Second Term Rental | Value of Improvements | Owners Interest |
|---|---|---|---|---|---|
| **Total** | **115,209a 1r 35.7p** | **£8,667:6:8** | **£4,001:14:2** | **£460,358:6:6** | **£90,897:13:2** |

The Royal Commission focused on the problems caused by the method used to value the improvements made by the lessees. The commission noted that, in the 'case of the leases in the Wanganui district the changed economic conditions have been such that even at the end of the first term of the leases the increases in the costs of improvements have been such as to reduce very seriously the residue value of the land.'[92] Witnesses informed the commission that a 'substantial reason for the apparent decrease in the value attributed to the land was that the values attributed to improvements had increased above the cost of the improvements.'[93] The increasing value of the improvements in turn required the land value to decrease, to ensure that the capital value of the block was in line with the market value. The commission felt that this had meant that there were 'substantial grounds for fear on the part of the Maori beneficial owners that the methods used in arriving at the value of improvements will achieve results which will make it most difficult for them to find the money to pay the value of improvements to the lessees'.[94]

The Royal Commission demonstrated the problem with the example of the Ohotu block. Ohotu 3, 4, 5, and block 9 of Ohotu 8 were all originally leased separately for a 21 year term from June 1903 at rentals totalling £189:18:2 per annum. In August 1924 a valuation was made for the renewal of the leases and the capital value of Ohotu 8 was assessed at £17,000, the value of improvements as £13,460, and the owners' land interest as £3,540. On the expiry of the three leases they were renewed as one lease and the rental for the second 21 year term from June 1924 was £177 per annum, being 5 percent of the unimproved land value. On the expiry of the second term lease in 1945, the capital value was assessed at £31,472, the value of the improvements were £29,016, and the unimproved value £2,456.[95] These changes are laid out in the following table:

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[91] The Wharetoto block lies to the west of Lake Taupo and is outside the boundaries of the Whanganui Inquiry District. As such its subsequent history has not been examined for this report.
[92] AJHR, 1951, G-5, p. 25. [DB, pp. 1-46]
[93] ibid.
[94] ibid.
[95] ibid., p. 27.

| **Ohotu 8** | **1924** | **1945** |
|---|---|---|
| Capital Value | £17,000 | £31,472 |
| Value of Improvements | £13,460 | £29,016 |
| Unimproved Land Value | £3,540 | £2,456 |

Therefore, the effect of the valuation system was a reduction in the value of the owners' land interest by £1,084 between 1924 and 1945. As noted above, this took place so that the overall value of the property would reflect the market value of surrounding non-vested land. The commission noted that, in this case, 'very substantial improvements' had been carried out that were in 'excess' of the requirements of farming Ohutu 8. The block also included buildings and equipment which were used for milling timber on other blocks.[96]

The Royal Commission noted that the 'residue method' of arriving at a valuation for vested lands was different from that normally used under the Valuation of Land Act 1951, and would in the future further detrimentally affect the owners' interest:

> Under the residue method of valuation the value of the improvements is deducted from the capital value of the land, and if substantial improvements have been erected on the land beyond those necessary to obtain the best use of the land then the improved value of the land is automatically depressed below the proper figure. Looking at the respective values of land and improvements according to the valuations for the purposes of the renewals of the leases, the position at that time was that improvements represented over 83 per cent. of the capital values and it can, we think, be assumed that in most cases that percentages would be higher at the present time if the same method of valuation as was then used is used again.[97]

The Royal Commission found that in the Aotea district a number of lessees were farming various vested lands as one unit, which they held under more than one lease or in conjunction with freehold land. It found that, in some cases, substantial improvements had been placed on vested lands which, if valued separately for each lease meant that there was 'every possibility that the improvements so erected on one piece of land and used for the farming of two or more pieces of land would be regarded as being more than is required for the most satisfactory farming of the one piece of land.'[98] The commission felt that from an owner's perspective the consolidation of two or more leases under one lease was detrimental because it appeared as if there were too many buildings for farming the one unit.[99]

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[96] ibid.
[97] ibid., p. 28.
[98] ibid., pp. 28-29.
[99] ibid., p. 31.

The Royal Commission noted that the lease terms stated that the compensation for improvements was not a debt, but would become a charge on the land and all revenues would be received after the expiry of the lease. This charge was to be dealt with by a receiver, who was to offer the land for tender, and who had the power to lease the land for 21 years and use the rental to pay the lessee. During this period the landowners would receive no financial benefit from their land.[100] The commission felt that there was a risk of land being allowed to deteriorate:

> From the point of view of the beneficial owners and also from the national point of view there is every possibility that towards the end of such a lease the tenant, having no interest in the improvements and having no right to a renewal, would fail adequately to carry out his covenants of good husbandry and that the property would go back and lose productivity.[101]

Johnstone, counsel for the owners, argued that the vested lands should be resumed by the owners, and that reasonable compensation be paid at the end of the current term. He maintained that compensation should be awarded by a tribunal, which should assess each lease separately. Johnstone said that consideration should also be given to providing mortgage funds to pay the compensation.[102] Hoeroa Marumaru, on behalf of the owners, and L.J. Brooker for the Aotea Maori Land Board said that a trust should be established to administer the vested lands.[103]

The Royal Commission prefaced its 20 recommendations and clauses with the suggestion that interested parties could find their own solutions to their problems by negotiation outside the framework suggested by the commission.[104] The commission emphasised that the Maori Land Boards 'should endeavour…to seek a settlement agreeable to [both] the parties'. This was in effect the commission's own approach towards the lessees and owners.[105] The commission recommended that before 1957 the board should assess the lessees' improvements and consider the future use of the land for Maori settlement. It felt that the

[100] ibid., pp. 29-30.
[101] ibid., p. 30.
[102] ibid., pp. 30-31.
[103] ibid., p. 31.
[104] ibid., p. 81.
[105] ibid., p. 73.

board should address the financial consideration of how compensation and settlement were to be achieved and call a meeting of owners to find out their wishes in respect to the land.[106]

The Royal Commission recommended the implementation of legislation which would provide for the possibility of the owners taking possession of the land on the termination of the lease. This would require the board to give the lessee notice of its intention to resume control of the land, and identify the amount of compensation it was prepared to pay for improvements. If the lessee was unhappy with the compensation offered, he could submit the figure to the Land Valuation Court for determination. Possession of the land and payment of the compensation was to take place on the date of the expiry of the lease.[107]

In recognition that the money to pay for improvements was not available, the Royal Commission recommended that legislation should be enacted which allowed the owners to have possession of their land on the payment in cash of two-thirds of the value of improvements. If the board was satisfied that there would be sufficient cash on hand to pay this amount, the lessee was to be offered the option of surrendering the land for an immediate payment of two-thirds compensation, or a lease for a further 15 years with payment at the end of that period of two-thirds of the value. The annual rental for the 15 year lease was to be 5 percent of the unimproved value. The commission noted that provision should be made for the establishment of a sinking fund to pay the compensation for improvements. Towards the end of the 15 years, the board was to confer with the owners to see if they wished to resume possession.[108]

If the owners did not want to resume possession of the land, or if the board felt there was insufficient money to pay the compensation, the commission recommended that the board should offer the lessee a further lease for a period of 21 years. This would confer a perpetual right of renewal for further terms of twenty-one years. However, the board was to have the right to resume possession at the end of each 21 year term upon payment in cash of 100

[106] ibid., p. 82.
[107] ibid.
[108] ibid., p. 83.

percent of the value of the lessees' improvements. The annual rent was to be 4.5 percent of the unimproved value.[109]

The Royal Commission recommended that legislation disputes about the amount of compensation should be referred to the Land Valuation Court.[110] It recommended that the definition of 'improvements' should include all work done which increased the value of the land, but should take into account the gradually diminishing value of the original clearance as an improvement. The commission recommended in cases where the lessee was farming vested lands under different leases but as one farm, then the board was required to take steps to resume all the land, and the improvements were to be 'valued as if the lands were all held under the one lease'.[111]. The commission recommended that the board be able to resume land which was neglected by the lessee, or likely to become neglected.[112]

The Royal Commission proposed specific legal definitions for 'improvements', 'value of improvements', 'unimproved value' and 'capital value'. These definitions were designed to bring the method of valuation in line with that used under the Valuation of Land Act 1951. They hoped that this would avoid the negative effect of the residue method of valuation. The commission defined 'improvements' as work done or material used 'for the benefit of the land' in so far as the effect had been 'to increase the value of the land, and the benefit thereof is unexhausted at the time of valuation'.[113] Furthermore, they decided that when assessing rentals or compensation for renewed leases with a perpetual right of renewal, the clearing of land should cease to be valued as an improvement after 50 years.

The Royal Commission also made what it called 'miscellaneous' recommendations. Those relevant to this report are summarised as follows:

1. The authority for an owner to dispose of their interest through sale or gift to their children, descendant or to any other beneficial owner.
2. Two or more leases could be surrendered for a new lease not exceeding the term of the surrendered leases.

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[109] ibid., p. 84.
[110] ibid., p. 85.
[111] ibid., p. 86.
[112] ibid., pp. 86-87.
[113] ibid., p. 85.

3. Existing leases should be extended until June 1953, or until a date fixed by the Maori Land Board.
4. In the situation where timber had been removed since the lease expired, and possession of the lease was resumed by the board, royalties would be paid to the board if the lessee had not completed the work of grassing the cleared area.
5. The establishment of a sinking fund to help meet the payment of compensation for improvements.
6. The periodic collection and keeping of a full record of the improvements.
7. Regular inspections and reports on leased lands.
8. The establishment of consultative committees.[114]

Between the completion of the Royal Commission's report and the passing of legislation to implement its recommendations, there was an interim period when it was necessary to give the leases a statutory extension. Section 13 of the Maori Purposes Act 1948 and Section 9 of the Maori Purposes Act 1953. provided for the lessees to remain in occupation until the questions about compensation had been decided and legislation had been passed.[115]

## 2.2 Legislation Proposed by the Crown

After the Royal Commission had submitted its report, the Under Secretary of Maori Affairs, T.T. Ropiha, wrote a summary of its contents and recommendations for the Minister of Maori Affairs. In addition, Ropiha presented his own suggestions for alternatives to the commission's proposals. He outlined the main components of the commission's proposals as:

1. Maori Land Boards should assess the improvements using the principles of the Valuation of Land Act 1951 and consider how the land can be made available and financed for Maori.
2. If owners could raise full compensation and resume lands they should do so.
3. If owners could raise only two-thirds compensation the lessee should be offered the option of (i) accepting this as settlement; or (ii) accepting a 15 year lease at 5 percent of the unimproved value in the land, with the right to receive two-thirds value at the end of the term.
4. If insufficient funds were available for compensation, the lessee should be offered a 'perpetually renewable' lease at 4.5 percent of the unimproved value with a right of resumption every 21 years.

[114] ibid., pp. 87-88.

5. In the case of perpetually renewable leases, the lessee was to have the right to 100 percent compensation for improvements, subject to the value of clearing the land being excluded from the value of improvements 50 years after the land was cleared.[116]

Under Secretary Ropiha highlighted some of the complications caused by the Royal Commission's recommendations. For example, the method by which the value of clearing bush could be written down after 50 years for the perpetually renewable leases. He also pointed out that while the commission recommended that the lessees should be given the option of receiving two-thirds compensation, or electing a further 15 year lease with the right to two-thirds compensation, that in almost all cases the lessees would elect the 15 year lease. As a result, Ropiha felt that the requirement to consult with the owners about the future of the lands would be 'going through the motions to very little purpose'.[117] This was because it was well known that the owners wanted the lands to be resumed, but the problem was finding the money to pay compensation. Ropiha pointed out that, in these cases, 'the only sources of finance that could be looked to are the moneys available to the Board of Maori Affairs for Maori settlement, and the accumulated profits of the Maori Land Boards and Maori Trustee.' He was aware that Whanganui Maori were going to require financial assistance from the Crown in order to resume leased land.[118]

Instead of the system of renewed leases for different terms, Ropiha proposed an alternative system. Instead of the owners making resumption decisions, he proposed that the department should assess which lands would be suitable for farming by individual Maori settlers. In the case of suitable lands, 'if the compensation can be properly found from State or Maori sources', the lessee should be paid 100 percent of the value of improvements. If land was judged to be not suitable for Maori settlement, or if finance could not be obtained, Ropiha suggested that the lessees be given the option of a renewed 21 year lease, at a rental of 5 percent of the unimproved value, with the right to receive 75 percent of the value of improvements. If the lessee did not want to renew the lease, it should be put out to tender, on

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[115] Extension of Vested Land Leases, 26 October 1950, MA W2490 box 264 54/23 vol 3, ANZ.
[116] Under Secretary to Minister of Maori Affairs, no date, MA W2490 box 265 54/23 vol 5, ANZ. [DB pp. 187-190]
[117] ibid.
[118] ibid.

the condition that the successful tender pay the compensation to the outgoing lessee. The Under Secretary stated that a portion of the rent should be retained as a sinking fund.[119]

Many features of Under Secretary Ropiha's proposals were in line with the recent system for leasing Maori land established by the Maori Purposes Act 1950. This had set the level of compensation for improvements at 75 percent. The Under Secretary acknowledged that because the current problems had been thoroughly examined by the Royal Commission, the Minister might prefer to draw up legislation based on the commission's recommendations.[120]

Ernest Corbett the Minister of Maori Affairs agreed with the Under Secretary that the Royal Commission's recommendations should be modified. In August 1952 the Minister told Cabinet that the commission's proposals 'were unlikely to satisfy the parties concerned'. Cabinet agreed that draft legislation in line with the Maori Purposes Act 1950 should be drawn up for consideration.[121]

A 'Rough Draft of Contemplated Legislation' was then drawn up, accompanied by an explanatory note and summary. These documents were circulated to the representatives of the lessees, owners, and Crown officials for comment. It was stated that the proposed legislation generally followed the recommendations of the Royal Commission, with a few changes 'brought about by considerations of policy or practical concerns'.[122] The legislation was presented by its drafters as a compromise. It was acknowledged that it was 'not possible to give the Maori owners or to the lessees everything they would like'. This because the interests of the two parties were 'really opposed, and there is a third element which enters…and that is the public interest'. The Crown said it could 'not stand by mumchance if the conflicting interests of the parties were to result in a loss of production from the lands'. Therefore it was argued that any 'legislation that is devised must try to take account of all these interests, which means a compromise - a compromise of a lot of doubts and difficulties.'[123]

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[119] ibid.
[120] ibid.
[121] Secretary of the Cabinet to Corbett, 4 August 1950, MA W2490 box 265 54/23 vol 5, ANZ.
[122] Maori Vested Lands, no date, MA W2490 box 265 54/23 vol 5, ANZ. [DB pp. 191-199]
[123] ibid.

The draft legislation stated that the amount of compensation the lessees were entitled to receive was 75 percent of the valuation of improvements. This differed from the commission's recommended 66.6 percent, but was justified as being in line with the Maori Purposes Act 1950. The proposed legislation provided for half of the rental received to be set aside as a sinking fund to pay the compensation for improvements. It also recognised that further financial assistance might have to be provided by the Crown. The summary of the proposals referred to the Maori Trustee finding the funds to pay compensation. Section 55(3) of the draft legislation said that if the sinking fund was insufficient to pay compensation, 'the Maori Trustee shall make up the deficiency by an advance out of other moneys in his Common Fund'.[124] Any advances made by the Maori Trustee were to be a charge on the resumed land.

The other differences from the Royal Commission's recommendations were that the proposed legislation excluded the 15 year optional lease, because it was seen as a 'needless complexity'. The Crown also preferred that the renewed leases should not be perpetually renewable:

> it is contrary to the Government's policy going to the preservation to the Maoris of the freehold of their land that they should be divorced from the use of the land through the medium of leases renewable in perpetuity, notwithstanding any right of resumption conferred by the leases.[125]

The proposed legislation made no allowance to write down the cost of clearing the land as an improvement. It was noted that determining a figure 'would be a matter of real difficulty' and 75 percent compensation for all improvements was seen as being preferable.[126]

The Wanganui District Officer, L.J. Brooker reviewed the draft legislation.[127] After viewing the proposals Brooker warned that the sinking fund proposals were not going to be sufficient. He said that 'no money set aside as a sinking fund can keep pace with the increasing value of improvements'. This was because the value of improvements would rise more quickly than the value of the sinking fund:

> Improvements effected at a cost of £2 per acre may be valued at £5 per acre or more at the

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[124] Maori Vested Lands, Rough Draft of Contemplated Legislation, no date, MA W2490 box 265 54/23 vol 5, ANZ. [DB pp. 200-215]
[125] Maori Vested Lands, no date, MA W2490 box 265 54/23 vol 5, ANZ. [DB pp. 191-199]
[126] ibid.
[127] The Maori Affairs District Officer also held the position of Registrar of the Maori Land Court. Under the Native Land Amendment Act 1913 the Registrar was a member of the District Maori Land Board.

> end of 21 years while £1 invested at the same time will hardly have doubled in the same period. Furthermore the administrative work and cost involved in providing sinking funds in the manner contemplated is out of all proportion to the advantages accruing.[128]

Similarly, the Maori Affairs District Solicitor for Gisborne provided the following example of the result of leasing at 5 percent of the unimproved value with rights to compensation of 75 percent:

| | | |
|---|---|---|
| Capital Value say | | £100 |
| Improvements | | £50 |
| Unimproved | | £50 |
| Rent [5% of £50] | £2:10:0 | |
| Less Commission | 2:6 | 2:7:6 |
| Owners get | £1:3:9 | |
| Sinking Fund | £1:3:9 | |

If the sinking fund increased by £1:3:9 per annum (plus three percent interest), it would take more than 30 years to accumulate the £37:10:0 needed to pay 75 percent of the valuation of improvements.[129] The example used by the District Solicitor was based on the unimproved value and the value of improvements being equal, but he recognised that in the majority of cases the improvements were worth much more than the unimproved value. He warned that in those cases it was very unlikely there would be sufficient funds to resume the land after 42 years.[130]

A summary of the comments received by the Maori Affairs Department noted the concerns about the sinking fund, but pointed out that the 'Commission was at pains to emphasize that a sinking fund is to assist in meeting the compensation. The point is it helps to ease the difficulties, not completely obviate them.'[131] It would seem the department recognised that further financial assistance would be needed to resume land.

In 1952 a number of meetings were held between the owners, Maori Affairs, Maori Land Board, and the lessees. In August 1952 a 'Meeting of Owners of Ohotu Blocks' was held at Putiki in Wanganui. The meeting was attended by L.J. Brooker and A. Awatere of the Aotea

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[128] District Officer to Under Secretary, 3 September 1952, MA W2490 box 265 54/23 vol 5, ANZ. [DB pp. 216-217]
[129] District Solicitor Memorandum, 4 September 1952, MA W2490 box 265 54/23 vol 5, ANZ. [DB pp. 218-220]
[130] ibid.
[131] Maori Vested Lands Administration Bill Summary of Comments, MA W2490 box 265 54/23 vol 5, ANZ.

District Maori Land Board.[132] Rumbold, acting for the owners, noted that the legislation required the owners to pay 75 percent, rather than 66.6 percent, of the value of the improvements. He noted that the lessees rejected 75 percent, and wanted full compensation for their improvements.[133] In this support of this contention owner W. Bennett said that he did not agree with the payment of 75 percent proposed by the Bill. He maintained that the owners 'should stand by what the Royal Commission has found, recorded and recommended in its report' and 'make no mistake in expressing our view that we prefer to pay 66.2/3% rather than the 75%'. However, he believed that because 75 percent was cited in the draft Bill that 'in the long run the 75% stated in the draft bill is bound to become law.'[134]

Ngene Takarangi asked how the compensation was to be paid and whether funds could be raised through a mortgage or from the government claiming that: 'We Maoris have no funds'. Brooker said that it was 'not easy to answer at this stage' how compensation issues would be addressed because the land would first have to be valued. Brooker said the legislation provided that if the owners did not have the funds then the land would be leased again. According to Bennett, the Minister had said: 'If the moneys are exceeded then the Maori Trustee will pay, the land shall be charged with the payment of the amount so charged'.[135] Bennett noted that the Bill ignored the commission's findings that the cost of clearing land should eventually not be considered an improvement after fifty years.[136] Brooker informed the owners that the Minister wanted a committee of owners to meet a committee of lessees, to 'see if any understanding can be arrived at'. The owners appointed a vested lands committee to represent their interest to the lessees and Crown.[137]

The owners committee outlined their position in a statement to the Minister. The committee wanted a number of the commission's recommendations included in the legislation. They stated that their sole aim was to maintain possession of their land. However, their right of resumption 'would be useless if the amount of compensation payable was more than their finance would allow'. The owners said that they would be able to pay two-thirds of the value

[132] The Maori Affairs District Officer also held the position of Registrar of the Maori Land Court. Under the Native Land Amendment Act 1913 the Registrar was a member of the District Maori Land Board.
[133] Owners Meeting, 29 August 1952, MA W2490 box 265 54/23 vol 5, ANZ. [DB pp. 221-232]
[134] ibid.
[135] ibid.
[136] ibid.
[137] ibid.

of improvements. They contended that if no legislation was passed all the lessees would be entitled to was payment from rents from a receiver which would exclude interest or the advantage of an immediate cash payment. They claimed that the proposed legislation only slightly rectified the situation and argued that the previous residue method of valuation for rentals had been 'disastrous' for the Maori owners. They also maintained that the lessees had taken the best out of the land over the years and noted that:

> The proposed legislation retains bush felling as an improvement for which compensation will be payable although very strong arguments can and have been advanced against it. It is not proposed here to recapitulate these arguments. Suffice it to say that if bush-felling is to be included at all the injustice to the Owners should be in some manner reflected in the amount of compensation they are called upon to pay.[138]

The owners committee reiterated that if all these factors were taken into account, the owners should not be asked to pay more than two-thirds of the value of the improvements. Furthermore they contended that the owners should be able to resume the land at the expiry of any seven year period. They wanted the rentals for any new lease to be five percent of the unimproved value, plus five percent of one-third of the value of the improvements.[139] This final request recognised that if the lessee was only entitled to compensation for two-thirds of the improvements, then the remaining one-third would become the property of the owners, and should be assessed as part of the owners' interests for rental purposes.

In September 1952 the committee of owners met with the Department of Maori Affairs to discuss the Bill and the commission's recommendations. The committee consisted of R. Wilson, H. Marumaru, K. Blackburn, B. Tapa, W.R. Bennett, R. Mete Kingi, W. Pohe. The departmental officials were the Under Secretary, Ropiha, accompanied by L.J. Brooker and R.J. Blane.[140]

According to Brooker the findings of the commission had confirmed the position that the board had taken for years towards the situation of the lessors and lessees:

> The Commission has established two points which confirms the argument of the Board over the years (1) That the lessees were not entitled to a perpetual renewable lease and (2) not entitled to any interest on the value of the amount of improvements to which they were entitled under their leases. That being the case then there is a definite common ground to

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[138] Statement by Committee of Owners, no date, MA W2490 box 265 54/23 vol 5, ANZ. [DB pp. 233-235]
[139] ibid.
[140] Vested Lands Committee Meeting, 8 September 1952, MA W2490 box 265 54/23 vol 5, ANZ. [DB pp. 236-245]

go to the lessees.[141]

Blane noted that the Bill differed from the commission's recommendations in that the lessee was not entitled to a lease in perpetuity every 21 years. Instead, if the land was not resumed after 21 years, the lessee was to 'have the right to elect to take one further term of 21 years with a right in the Maori Trustee to resume at any time during that second period of 21 years on payment of 75 percent compensation.'[142] Ropiha noted that the compensation figure in the proposed legislation was in line with the Maori Purposes Act 1950 because it set compensation for improvements at 75 percent. He said that the Minister felt that it was important to maintain this 'principle' in the Bill. Despite the position being in line with government policy, Ropiha acknowledged that the owners preferred the commission's recommendation of 66.6 percent. Ropiha acknowledged that it was 'safe to say…that the Maori owners are not in a position to contribute anything towards compensation'. Marumaru argued that the 66.6 percent compensation figure should be the owners' 'bedrock' although he acknowledged that 75 percent might be their final figure.[143]

On 23 September 1952 four meetings were held between the lessors, lessees and their representatives. The first meeting was between the Department of Maori Affairs, (represented by Ropiha, Blane and Brooker) and the lessees association (represented by Carter and Duigan). A further meeting followed with the committee of owners. This was then followed by a less formal meeting between some lessees and the committee. This was followed by a meeting between the committee of owners and the department.

During the first meeting between the Department of Maori Affairs and lessees association, Ropiha said that the intention was to bridge the gap between the needs of the owners and the lessees. The points for discussion were the definition and valuation of improvements. The lessees association found the draft Bill unacceptable and 'condemned its provisions out of hand'. It emphasised that the past contractual arrangements should be honoured, or if legislation was to be passed, it should not be in line with the current proposals.[144] Duigan outlined the lessees' position, and emphasised the struggle that they had breaking the land in

[141] ibid.
[142] ibid.
[143] ibid.

for farming. He said that they had the interests of their farming sons and grandsons in mind, and asked that the 'contract we entered into be observed'. Carter concurred with Duigan that the lessees had improved the land and had entered into contract '40 years ago' and 'we have observed those contracts' which were now 'just brushed aside.' He said that unless full compensation was paid by the owners, all the lessees should be entitled to a further 21 year term.[145]

That meeting was followed by a meeting between the committee of owners and the representatives of the lessees, also attended by Ropiha and Brooker. Carter and Duigan reiterated the lessees' concerns. Carter contended that the proposed legislation took away all the lessees' rights and gave nothing in return. He argued that if the owners wanted the land back it should be on the basis of the existing contracts. If they were unwilling to do so, the lessees should be given further 21 year leases because they had been on the land for 40 years and had 'developed the land and made it what it is today.'[146]

Marumaru said that the owners were prepared to stand by the contracts if the lessees wanted to take that course of action. However, he noted that under the contracts 'it will take years to repay the monies due…and we know that our people will have to go without their rent for some 18 to 20 years'. He noted that an 'umpire' in the form of the commission had been involved and said that the owners were not prepared to 'overlook the Umpire's suggestions'. The owners thought two-thirds compensation was fair.[147] Following this meeting, an informal meeting was held between the committee of owners and some of the lessees. The minutes of this meeting do not appear to have been recorded, although the contents of the meeting were discussed at a further meeting between the owners and the department in the afternoon of 23 September 1952. Marumaru said that he believed that the lessees were most interested in maintaining their ongoing occupation of the land. Bennett agreed that the lessees' position was now clearer to the owners, and noted that the lessees wanted full compensation. He said that the owners 'put it to them that when legislation is brought down it is not likely they will

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[144] Under Secretary to Minister of Maori Affairs, 26 September 1952, MA W2490 box 265 54/23 vol 5, ANZ. [DB pp. 249-250]
[145] Lessees Meeting with Department of Maori Affairs, 23 September 1952, MA W2490 box 265 54/23 vol 5, ANZ. [DB pp. 246-248]
[146] Lessees and Lessors Representatives Meeting, 23 September 1952, MA W2490 box 265 54/23 vol 5, ANZ.
[147] ibid.

get 100% and that the Government will decide on a figure somewhere between. I think we all came to that conclusion'.[148]

After these meetings the Under Secretary reported to the Minister that it was now unlikely that either party would accept the proposed legislation. He said that while the owners found the proposals generally acceptable, they wanted the compensation for improvements to be 66.6 percent. On the other side, the lessees were insistent on being paid 100 percent compensation. The Under Secretary said that his impression was that the owners were willing to negotiate, but the lessees association would not make any concessions.[149] Accordingly, the Minister of Maori Affairs advised Cabinet that it would not be possible to proceed with the proposed legislation in the current session as the proposals had been found to be 'altogether unacceptable'.[150] He hoped that negotiations would continue so that legislation could be passed in the new year.

The Minister of Maori Affairs wrote to the committee of owners to thank them for their efforts. He said that it was a 'pity that something like agreement could not be reached on the terms of the legislation' but he acknowledged that this was 'not' due to 'any unwillingness on the part of your committee to seek a compromise with the lessees'[151]

## 2.3 Settlement Negotiated by the Owners and Lessees

In the meantime, the government had passed legislation changing the statutory body charged with administering the vested lands. The Maori Land Amendment Act 1952 abolished the Maori Land Boards and transferred their powers and duties to the Maori Trustee.[152] The negotiations regarding the future of the vested lands proceeded with senior officials from the Maori Trustee guiding the meetings. In practice, officials representing the Maori Trustee were also staff of the Department of Maori Affairs. The position of Maori Trustee was held by the Under Secretary of Maori Affairs (T.T. Ropiha), and under Section 3 of the Maori

[148] Lessors Meeting, 23 September 1952, MA W2490 box 265 54/23 vol 5, ANZ.
[149] Under Secretary to Minister, 26 September 1952, MA W2490 box 265 54/23 vol 5, ANZ. [DB pp. 249-250]
[150] Memorandum for Cabinet, no date, [September 1952], MA W2490 box 265 54/23 vol 5, ANZ.
[151] Minister of Maori Affairs to Marumaru, 29 September 1952, MA W2490 box 265 54/23 vol 5, ANZ.
[152] Sections 2-7, Maori Land Amendment Act 1952.

Trustee Act 1953 all officers of the Department of Maori Affairs were automatically appointed as officers of the Maori Trust Office.

By February 1953 the Minister of Maori Affairs was well aware that any proposed legislation would 'cut across existing rights', so he asked the owners and the lessees to renegotiate the terms of the legislation.[153] The Minister warned the parties that if they were unable to arrive at a satisfactory compromise, the government would implement the recommendations made by the commission, or 'leave the parties to whatever rights they now might have.'[154] The owners and the lessees were asked to determine what level of compensation was fair.

During these negotiations the owners were represented by Bennett, Mete Kingi, Tapa and Pohe and the lessees by Duigan, Carter and Wright. Cleary acted as counsel for the Maori Trustee, and Ropiha, Blane and Brooker represented the Msaori Trustee. The minutes of the discussions between the owners and lessees often noted the positive atmosphere, and the desire from both parties for an 'amicable' solution to the situation, despite their apparently diametrically opposed interests. However, departmental correspondence later noted the fundamental difficulty in reconciling the owners' wish to resume their land and the lessees' wish to remain in possession or receive full compensation if dispossessed:

> The important thing, so far as the Maori owners of the land were concerned, has always been that, with respect to the areas which were to be leased, the land should revert to them after 50 years. That principle has appeared as the golden thread in virtually all the legislation. On the other hand, the lessees have, in addition to a natural enough desire to remain in possession, always been concerned with rights to compensation.[155]

The committee of owners initially took the position that their wish to resume possession of their lands would be best served if a receiver was appointed.[156] The committee met departmental officers in March 1953 and 'voiced their views…that it might be more advantageous for them to submit to receivership' and 'stressed the provisions in the report of the Royal Commission recommending payments in certain cases for improvements at the rate of 66-2/3 per cent.' The owners were informed that the appointment of a receiver for a term of 18 to 20 years would mean no rental would be paid to the owners. They were also told that

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[153] Minister of Maori Affairs to Smith, 6 October 1953, MA W2490 box 265 54/23 vol 6, ANZ.
[154] Under Secretary to Harris Tansey and Ritchie, 10 February 1953, MA W2490 box 265 54/23 vol 6, ANZ. [DB p. 252]
[155] Maori Vested Lands Administration Bill Historical Note, MA W2490 box 265 54/23 vol 7, ANZ. [DB pp. 292-295]

there was the possibility that the land would be returned in a deteriorated state, which 'would be a national aspect of the matter through a large tract of the country being placed under receivership.'[157]

Representatives of the owners of the Ohotu block met with the Minister of Maori Affairs in October 1953. Bennett told the Minister that the 'one thing uppermost in the minds of the owners was the resumption of their land' and in 'their desire for an amicable settlement they were prepared to go as far as allowing the lessees 75% of their improvements.' Mete Kingi said that the owners 'felt that under a receivership they would get their land back in 18 years.' The Minister said that if 'it came to a real stalemate that procedure might have to be adopted.'[158]

In October 1953 the lessors' and lessees' representatives met with the Minister of Maori Affairs. The Minister again warned that if 'this final attempt fails, Cabinet will be asked to consider the alternatives'. Duigan, said that the lessees, were 'prepared to accept 75% [for the improvements] provided we were granted 21 years lease'. Brooker noted that, although the lessees were 'prepared to concede 25% of the value of improvements', this 'gives the Maori owners no immediate benefit - it will take place in 21 years' time'. Carter, for the lessees, said that if the owners wanted immediate resumption of their land on the expiry of the leases 'anything less than full compensation would be opposed by the lessees.' This was because the lessees felt that 66.6 percent, or even 75 percent, of the compensation would not give them enough capital to establish themselves on another property. Bennett, stated that the owners did not consider 100 percent compensation for land resumed immediately, or 75 percent compensation for land resumed after 21 years, was 'any concession at all'. The meeting adjourned.[159]

In late October 1953 a further meeting was held between the parties and representatives from the Maori Trustee. Bennett reiterated that the owners favoured receivership because 'if the

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[156] File Note, 8 July 1953, MA W2490 box 265 54/23 vol 6, ANZ.
[157] Notes of Conference in Wanganui on Vested Lands, 2 March 1953, MA W2490 box 265 54/23 vol 6, ANZ. [DB pp. 253-256]
[158] Representations made to the Minister of Maori Affairs, 8 October 1953, MA W2490 box 265 54/23 vol 6, ANZ. [DB pp. 257-259]
[159] Notes of Lessees' and Lessors' Meeting, 21 October 1953, MA W2490 box 265 54/23 vol 6, ANZ. [DB pp. 260-269]

owners received nothing at all for 15 to 18 years they would be quite happy so long as they got the land back free and unencumbered', but he stressed that 'an amicable settlement' was wanted. He said that if legislation was passed in the way envisaged by the commission the lessees would not receive 100 percent compensation for the improvements. Furthermore he argued that if a receiver was appointed they would still not get total compensation. He contended that it was in the lessees' interest to renegotiate their position. Carter maintained that any lessee who wanted to continue farming once the lease had been resumed would be unable to do so unless they had 100 percent compensation to start again on a new farm. Bennett said that the owners were prepared to pay 75 percent of the improvements on immediate resumption, and if the lessees were unwilling to accept this sum, then the alternative was receivership. In response, Carter said: 'I think the Minister would take the view as I do that Receivership is not in the National interest of lands themselves or the owners. With the best will in the world those lands will deteriorate under Receivership.' Brooker, disagreed and said that the Maori Land Court and Maori Trustee would ensure that adequate covenants were contained in the leases to ensure the land was properly maintained, and inspections of the land would be carried out while under receivership. He concluded that the 'Maoris say from their part [they] would rather have receivership than legislation.' Carter said that he would ask his lessee association to decide whether they would accept a government valuation of their leases. Bennett said that the owners were willing to enter into shorter periods for leased lands but Carter argued that this left the lessees in an uncertain position which discouraged development of the land.[160]

The parties were still unable to reach a mutually acceptable agreement. At the end of the month Ropiha and Cleary again met with the representatives, at which time 'it was made clear that the sands were running out and that the time for the selling of horses was over-past'. Ropiha reported that it appeared that the lessees had agreed to consider a proposal to double the current rentals, while the owners would consider paying 100 percent compensation for land to be resumed immediately, and that further leases would be granted for 21 years with 75 percent compensation.[161] However, there may have been some

[160] Notes of Lessees' and Lessors' Meeting, 30 October 1953, MA W2490 box 265 54/23 vol 6, ANZ. [DB pp. 270-288]
[161] Secretary to Minister of Maori Affairs, 5 November 1953, MA W2490 box 265 54/23 vol 6, ANZ.

misunderstanding as the owners said that they did not agree to those terms. A further meeting of owners was scheduled for 7 November to discuss the proposals.[162]

This proposal was considered by a meeting of the Maori owners at the beginning of November 1953. Another meeting was held between the parties on 12 November, at which time an agreement was reached. We have not yet located any record of that meeting. The points which were agreed to are summarised as follows:

1. The owners had the right to immediately resume lands that they wanted.
2. The compensation on immediate resumption would be 100 percent of the valuation of improvements.
3. A valuation would be made under the provisions of the Valuation Act 1951.
4. The cost of valuation to be shared equally by owners and lessees.
5. Land that was not immediately resumed would be leased for a further 21 year term.
6. Reduction in rental where uncontrollable deterioration had occurred.
7. At the end of 21 years, one-third value of the improvements was to revert to the owners so that: (a) on resumption they would pay two-thirds of the value of the improvements; (b) subsequent rentals assessed on percentage of unimproved value plus one-third of the valuation of improvements.
8. Land not resumed after 21 years would be leased for a further 21 years with owners having right of resumption at the end of 15 years.
9. The parties were able to enter into private negotiations for resumption.
10. The total payment of rentals to the owners to be no less than £9,000 per annum.
11. Revised rentals were to date from the commencement of the new leases.
12. All timbers rights were to be reserved to the owners from 31 December 1953.
13. Leases farmed as one unit to be consolidated.
14. Sections 3, 4, 5, Block IX Karioi S.D [parts of Ohotu 8] to be brought within scope of proposed legislation and award cancelled.
15. Any lessee wanting to transfer unexpired portion of lease would first offer the land to the owners. This provision did not apply to family bequests.
16. If legislation was not enacted during the 1953 Parliamentary session all leases were to be extended for a further twelve months.
17. Except in case of land immediately resumed, lessees would be entitled to 12 months notice of owners' intention to resume.[163]

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[162] ibid.

The agreement represented the following concessions made by the Maori owners:

1. Full compensation (100 percent) was to be paid for land to be resumed immediately.
2. Once the leases were renewed, the owners would not have the opportunity to resume land until the expiry of the next 21 year term.
3. Thereafter, resumptions could be made after a further 15 years or at the end of the renewed 21 year term.

In previous negotiations the owners had asked for more frequent resumption opportunities. The reasons for the owners accepting the above conditions may have been the concessions they gained from the lessees on the following points:

1. Renewed leases were liable for 66.6 percent compensation for improvements.
2. The rent payable was to be doubled.
3. The second term of the renewed leases contained the 15 year resumption option.

District Officer Brooker reported that under this agreement the owners had accorded 'very generous terms of renewal to the lessees'. He noted that the 'agreement will not enable the owners to implement their expressed ambition to resume at present a worthwhile farming area' and 'it is doubtful whether at the end of the 21 years the position will be improved'. He argued that it would have been possible to achieve a gradual resumption of the land if the leases had been for ten year periods. Because this approach had not been adopted, Brooker suggested that an alternative could be for the government to advance development funds for the owners to take over an economic unit.[164] This suggestion may have already been put to the owners before the agreement was reached. Blane, the Controller of Trusts Titles and Claims for the Maori Trustee, later wrote that an advance to assist in resuming land was one of the reasons that Whanganui Maori agreed to the above terms:

> It was of the essence to their agreement to the scheme that some land should be resumed, with the idea of creating a fund which would eventually enable the vested land to be restored to the use and occupation of the Maori owners as was originally contemplated. It was agreed by the Maori Trustee that he would make money available.[165]

It may be that the owners conceded on the payment of 100 percent compensation for immediate resumption on the understanding that finance would be made available from the Maori Trustee to assist with resumption.

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[163] Terms of Agreements between Owners Representatives and Lessee's Representatives, 16 November 1953, MA W2490 box 265 54/23 vol 6, ANZ. [DB pp. 289-290]
[164] District Officer to Maori Trustee, 17 November 1953, MA W2490 box 265 54/23 vol 6, ANZ.

The points laid out in the agreement were then drafted into the Maori Vested Lands Administration Bill, which was circulated to affected parties for comment. An explanatory note on the history of the vested lands was drawn up to accompany the Bill. This noted that the eventual return of the land to the owners had, in the past, been the 'golden thread in virtually all the legislation'. However, the Bill was a departure from this position because this legislation involved owners and lessees who had 'totally opposed interests'. It was noted that:

> On the one hand, there is the desire of the Maori owners to see fulfilled what, in some way, amounts to an undertaking that the land would revert to them after having been made available for European settlement for fifty years. On the other hand, there is the desire of the lessees to remain in occupation or, that failing, to receive the compensation to which they are entitled.[166]

It was argued that the requirement under existing legislation for appointment of receivers was unsatisfactory because the owners would receive no rent, the lessee would only get piecemeal compensation payments, and the large area of land might deteriorate. To avoid this situation, and 'meet the wishes of both parties', the principle that resumption would take place in 50 years, had to be altered to accommodate the lessees' wish to maintain their occupation.[167]

The main features of the Bill were explained as:

1. The lessees' right to compensation under existing leases was put beyond doubt and where any doubt existed it was to be referred to the Land Valuation Court.
2. Special valuations were to be made on the expiry of the lease which would allow resumption of the land by the Maori Trustee provided full compensation was paid.
3. If the Maori Trustee did not resume possession, the lessee could accept a new lease or have the lease put up for competition.
4. New leases were renewable for 21 years with successive 21 year terms but were subject to the right of the Maori Trustee to resume at the end of the first 15 year term on payment of two-thirds compensation.
5. Rents were to be fixed at five percent of the unimproved value with provision for reduction if uncontrollable deterioration.
6. Valuations were to be made on the basis of the Valuation of Land Act 1951.[168]

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[165] Blane to Secretary Department of Maori Affairs, 11 April 1961, MA 1 2 1/1/14, ANZ. [DB pp. 177-181]
[166] Maori Vested Lands Administration Bill Historical Note, MA W2490 box 265 54/23 vol 7, ANZ. [DB pp. 292-295]
[167] ibid.

In May 1954 the Minister of Maori Affairs submitted a memorandum on the proposed Bill to Cabinet. He said that because the Royal Commission's report 'left something to be desired' the 'whole matter was put to the representatives of the owners and lessees' and that the result of these negotiations had provided the basis for the Bill. He proposed that the Bill be released to these representatives for comment.[169]

After reading the Bill, the District Solicitor for Gisborne noted that clauses of the Bill which provided for the resuming possession by the Maori Trustee made 'little provision for reference to the beneficial owners'. He queried whether the Maori Trustee had 'an obligation to ascertain their wishes' and whether the owners had the finance to pay the compensation. He noted that in several cases in the Gisborne district the owners had been able to negotiate finance with trading banks and stated that:

> It can only be inferred that the Maori Trustee will be in a position to serve notice of his intention to resume possession of the land where the owners themselves are financially able to pay the compensation or perhaps where improvements have so depreciated in value that there is a sufficient sum available in the Sinking Fund to do so. In this district the majority of Maori owners have a definite desire to resume possession and farm their lands as soon as possible.[170]

The District Solicitor was also pessimistic about the potential of a sinking fund to assist the owners to resume land. He said that it had been shown that 'no type of sinking fund can keep pace with the increase in value of the improvements:

> A £ invested would barely double itself during the period of a lease but experience has shown that most types of improvements are now valued at and up to four times their initial cost.
>
> Sinking funds serve their purpose in providing for the repayment of previously ascertained liabilities such as the Loan Liabilities of Local Authorities. In these cases the lender may only have half the purchasing capacity when his loan is repaid. On the other hand the Maori owner will be confronted with a similar purchasing capacity for his £ but with an appreciated liability to meet.[171]

The Bill was submitted to Parliament, and passed as the Maori Vested Lands Administration Act 1954. This Act was to govern the Maori Trustee's administration of the vested lands for the next 15 years, and is explained in the next part of this report.

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[168] ibid.
[169] Cabinet Memorandum Regarding Maori Vested Lands Administration Bill, 18 May 1954, MA W2490 box 265 54/23 vol 7, ANZ.
[170] District Solicitor to District Officer, 16 July 1954, MA W2490 box 265 54/23 vol 7, ANZ. [DB pp. 296-298]
[171] District Officer to Secretary, 21 July 1954, MA W2490 box 265 54/23 vol 7, ANZ.

## 2.4 Summary

In 1951 the Royal Commission into Vested Lands issued its report on the history of the land and its recommendations for future administration. The recommendations were based around four guiding principles. First, that existing contracts should be carried out if possible. Second, all the legislation dealing with the vested lands intended that the lands should be returned to the Maori owners. Third, when the board resumed vested lands they should ideally be made available for Maori settlement and farming. Fourth, no action should be taken that would lead to a deterioration in condition and productivity of the vested lands. The final recommendation was made in the 'national interest', rather than out of concern for the position of the lessees or owners.

The commission's report demonstrated how the owners' equity and rental return had been decreased over time. It was especially critical of the valuation methods which had been used, and the way that improvements were defined and assessed. The report recognised that under the existing system, the owners were faced with a situation whereby they might never be able to afford to resume their land. This was against the stated intention, both when the lands were vested and in subsequent legislation, that the leasing would end by 1957.

The commission recommended that the owners should be able to resume their land on the payment of two-thirds of the value of improvements. If they wished to do so, the lessee was to be offered the choice of immediately surrendering his lease for the two-thirds payment, or taking a lease for a further 15 years at the expiry of which two-thirds of the value of improvements would be paid. If the owners did not wish to resume the land, or the board felt there would be insufficient funds, the lessees were to be offered further 21 year leases. These leases would contain a perpetual right of renewal for 21 year terms, however the board could resume the land at the end of each term upon paying 100 percent of the value of improvements. The commission also made other recommendations about the valuation of improvements, and improving record keeping, administration, and consultation with the owners.

After receiving the report of the commission, the Maori Affairs Department proposed a slightly different solution. Draft legislation was drawn up for comment, which entitled the

lessees to 75 percent of the value of improvements, in line with government policy regarding other Maori leased land. In response, the owners insisted that the 66.6 percent compensation recommended by the commission should be implemented, while the lessees argued they were entitled to 100 percent of the value of improvements. The department's proposals also decided against implementing the commission's recommendation that the cost of clearing the land should cease to be treated as an improvement once 50 years had passed from the time the work was done. The department rejected the commission's option of a 15 year lease, proposing a 21 year lease with a right to only one further renewal of 21 years. Departmental correspondence recognised that the provision to set aside half the rental into a sinking fund would be insufficient to fund the resumption of renewed leases in 21, or even 42 years. It was proposed that the Maori Trustee should advance finance for land resumptions. Both the lessees and the owners disagreed with the department's proposals, and the legislation was dropped while negotiations continued.

By the end of 1953 the Minister and officials were losing patience with the ongoing negotiations and threatened that if a compromise agreement could not be reached, that the status quo would continue, or the commission's recommendations would be implemented. Meetings between owners' and lessees' representatives showed that although both sides wanted to arrange a solution, they had incompatible interests. While the owners felt that the receivership system might provide the best outcome for them, officials were concerned that the terms of leasing under a receiver could result in the land not being maintained properly.

The owners were against paying 100 percent of the value of improvements for immediate resumption, but the lessees were concerned with receiving enough cash to be able to establish themselves on other farming properties. In addition, the owners were against the lands being leased for a further 21 years, with entitlement to 75 percent compensation. Eventually the owners conceded, and agreed to paying 100 percent compensation on lands that could be immediately resumed. Furthermore, they agreed to further 21 year leases with 66.6 percent compensation payments, and the possibility of resuming the land 15 years into the second 21 year term. These concessions were made in return for the lessees agreeing to pay double the rent and accepting 66.6 percent compensation on renewed leases. This was seen as a benefit to the owners because it was hoped that paying half the rental into a sinking fund would assist in resuming land in the future. It appears that the Maori Trustee indicated to the owners

that it would make loan finance available to assist with the 100 compensation payment to resume an area of land immediately.

Departmental officials recognised that the owners had made generous concessions for this agreement, and at least two officials warned the department that the owners might still find it difficult to resume land at the end of the renewed leases. The agreement was embodied in the draft Maori Vested Lands Administration Bill. An official explanation of the Bill recognised that it went against all the previous legislation, which had promised an end to leasing in 1957. This was justified on the grounds that the owners could not currently afford the compensation payments, and the Crown wished to avoid the complications of the receivership system, including possible land deterioration.

# Part Three: Maori Trustee Administration 1954 - 1969

This part of the report examines how the negotiated settlement embodied in the Maori Vested Lands Administration Act 1954 operated in practice. From 1954, until control was handed over to the Atihau-Whanganui Incorporation in 1969, the Maori Trustee was responsible for administering over 240 leases, arranging land resumptions, and carrying out farming operations on the resumed land. It will be shown that, in line with the history of the vested blocks over the previous 50 years, issues relating to land valuation methodology and negotiations continued to feature. Before examining how the Maori Trustee carried out its duties, the provisions of the Act which governed the Maori Trustee's administration are explained.

## 3.1 Maori Vested Lands Administration Act 1954

On 3 September 1954 Ernest Corbett, the Minister of Maori Affairs presented the Maori Vested Lands Administration Bill to Parliament for its first reading. The Minister explained that for a number of years the leases had been expiring, and the Bill was the product of 'protracted discussions' between the 'two parties concerned, the lessor and the lessees'. According to the Minister the 'most debatable' point was the compensation, which had been settled by the two parties as had the terms of resumption, leasing and valuation.[172]

On 27 September 1954 the Minister of Maori Affairs again presented the Bill to the House and indicated sympathy for the position that lessee and lessor found themselves on expiry of the fifty year leases. He said that the legislation was designed to 'try and solve a very complex problem' that had been created by the introduction of such long leases:

> Those leases were for up to fifty years, and after a man had lived on the land for that long period it was inevitable that there should be conflict between him and the owner of the land. After taking an undeveloped area and farming it for so long, the lessee inevitably comes to think of the land, and of the amenities and improvements he has created, as part of his very life. Further, it has to be remembered that the owners themselves, who had succeeded the original owners, had the feeling that the land is theirs and should be returned to them.[173]

The Minister of Maori Affairs said that it 'fell to the lot of the present Administration to solve the problem' facing the parties and to ensure that the 'land itself was kept in good order

[172] *New Zealand Parliamentary Debates* [NZPD], 3 September 1954, pp. 1549-1550.
[173] NZPD, 27 September 1954, p. 1969.

and effectively farmed'. According to Corbett, the Bill was intended to avoid litigation and 'violent argument' over the value of the improvements. He noted that towards the end of the nineteenth century there had been 'considerable agitation' to make the land available for Pakeha settlement, but the owners were invariably against selling their lands, so legislation leasing the land was passed which ensured that the land would eventually be returned to its Maori owners. Corbett described the Bill as 'a reasonable compromise to a very difficult and vast problem' which offered the 'best solution that we feel we can offer for the future use of this land.'[174]

Debate on the Bill was brief and generally limited to praising the efforts of the Minister and, in some instances, patronising the Maori owners. Henry Mason, the Member for Waitakere, offered the opinion that Maori 'attachment' to the land, although 'undeniably praiseworthy, really stood in the way of an arrangement that would protect the lessees - an arrangement that was in the interests of the Maori people themselves'. He did not elaborate but the inference is that alienation or perpetual leases would have been preferable. The Minister of Education, Ronald Algie, said 'one is dealing with a great number of people who cannot appreciate the niceties of legal draftsmanship, and one has to explain to them what one is seeking to do and to convince them what is being done is for their benefit.'[175] Walter Nash, the leader of the opposition, said that most of the 'difficulties are largely due to the method of making the valuation' for improvements. He said that the advantage of the Bill was that there 'is agreement between the parties' and he hoped that the Maori owners received the 'same treatment and the same justice as would be given to pakehas placed in a similar situation.'[176] Eruera Tirikatene, for Southern Maori, criticised the role of the Maori Trustee and said that it was 'a pity that consideration was not given to the special proviso that a portion of the rent should be set aside, and it appears the troubles originated from that oversight.' He noted that the Bill gave the Maori owners no right of appeal against the actions of the Maori Trustee because the 'Maori Trustee becomes absolute legal owner on behalf of the beneficiaries.' Tirikatene wanted to know 'what right of appeal the beneficiaries will have against the Maori Trustee'.[177]

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[174] ibid., p. 1970.
[175] ibid., pp. 1972-1973.
[176] ibid., p. 1974.

The Minister of Maori Affairs said that Tirikatene's question concerning the Maori Trustee was 'uncalled for' and the 'Member for Southern Maori District and other Maoris are too frequently charging, by inference, the Maori Trustee with failing to carry out the Trust.' He informed Nash that his government was fair and the 'greatest care is taken to see that a full measure of justice is done to both sides'.[178]

The main provisions of the Act in as passed were as follows. Section 2 of the Act provided definitions for capital value, improvements, the value of improvements and unimproved value. It will be seen that the precise meaning and effect of these definitions was to become the subject of important legal cases (see Parts 3.2 and 5.2). Therefore, the definitions are quoted in full:

> 'Capital value' of land means the sum which the owner's estate or interest therein, if unencumbered by any mortgage or other charge thereon, might be expected to realise at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might be expected to require.
>
> 'Improvements' on land means, subject to the provisions of subsection 2 of this section, all work done or material used at any time on or for the benefit of the land by the expenditure of capital or labour by any owner or lessee thereof in so far as the effect of the work done or material used is to increase the value of the land, and the benefit thereof is unexhausted at the time of valuation; but does not include work done or material used on or for the benefit of the land by the Crown or by any statutory public body, except so far as the work done or material used has been paid for by the owner or lessee by way of direct contribution.
>
> 'Improvements effected by the lessee' means improvements effected by a lessee during the currency of a subsisting lease or during the currency of any former lease; and includes improvements paid for, purchased, or otherwise acquired by a lessee whether from a former lessee or otherwise.
>
> 'Unimproved value' of any land means the sum, exclusive of the value of any indigenous timber trees, which the owner's estate or interest in the land, if unencumbered by any mortgage or other charge thereon, might be expected to realise at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might be expected to impose, and if no improvements (as hereinbefore defined) had been made on the said land.
>
> 'Value of improvements' means the added value which at the date of valuation the improvements give to the land.[179]

These definitions were important because they brought the way that the vested lands were to be valued into line with the method used under the Valuation of Land Act 1951. Under the 'residue method' which had previously applied the capital (or market) value of the land was

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[177] ibid., p. 1975.
[178] ibid., p. 1976.
[179] Section (1), Maori Vested Lands Administration Act 1954.

assessed, and all the improvements on the land were valued. The value of improvements was then deducted from the capital value, and the residue was found to be the unimproved value. The problems associated with this system have been discussed in full in part 2.1 of this report.

Under the Maori Vested Lands Administration Act the residue method was abolished. Instead, the 'value of improvements' was defined as the 'added value' which the improvements gave to the land. In order to assess what value had been added a comparison had to be made between the value of the land before the improvements (unimproved value) and its current market value. This meant that instead of individually assessing the cost of each improvement, the valuers were required to consider the overall effect of the improvements on the value of the land. Mathematically, the two methods can be compared as follows:

| | |
|---|---|
| **Residue Method:** | **Capital Value - Improvements = X (Unimproved Value)** |
| **1954 Act:** | **Capital Value - Unimproved Value = X (Value of Improvements)** |

These definitions were reinforced by Section 13 of the Act which required that the sum of the unimproved value and the value of improvements should always equal the capital value.

Section 8 of the Act empowered the Maori Trustee to make agreements with the lessee outside the provisions of the Act. It also provided that any negotiations in progress to sell any of the vested lands could be continued and completed.

Section 9 of the Act specified the procedure if the lessee or the Maori Trustee wished to notify that the lessee's rights would be determined in accordance with the terms of the existing lease. In this case, an application had to be made to the Maori Land Court for an order charging the amount of unpaid compensation on the land and appointing a receiver. Before the Maori Trustee could agree to any arrangement under Section 8, or the existing rights under Section 9, the trustee was required 'so far as is practicable, to ascertain the wishes of the beneficial owners', and to 'act in accordance with those wishes'.[180]

[180] Section 9(9), Maori Vested Lands Administration Act 1954.

Sections 11 to 14 of the Act laid out the procedure for obtaining a special valuation of the land at the expiry of the lease. The valuation was to be made by the Valuer-General in accordance with the Valuation of Land Act 1951.[181]

A key component of the Act was laid out in Section 15. This Section gave the Maori Trustee the power to either inform the lessee that it intended to take possession of the land, and pay the full amount of compensation for improvements, or require the lessee to choose whether to take a new lease under the terms of the Act or submit the new lease for public tender.

The new leases gave the Maori Trustee more opportunity to resume possession of the land if the compensation for improvements could be paid. Under Section 21 of the Act the new leases were to be for 21 years, with a perpetual right of renewal for further terms of 21 years. However, these renewals were subject to the right of the Maori Trustee to give one year's notice that it intended to resume possession of the land either at the end of the first 21 year term, at the end of the fifteenth year of any subsequent term, or at the end of each successive 21 year term.

Section 22 of the Act provided for the increase in rentals agreed between the owners and lessees. The Section specified the 'minimum annual rent', which was to be 'double the amount of the rent reserved at the commencement of the term of a subsisting lease'. However, if the rent under the subsisting lease was equal to or more than the rent under the previous lease (from which it was renewed), the minimum annual rent was to be that of the subsisting lease.

Section 24 of the Act laid out how the rent was to be assessed, and included protection against it being reduced in the future. For the first ten years the rent was to be five percent of the unimproved value, or the minimum annual rent, whichever was the highest. At the end of the first ten years, a special valuation was to be made, and the rent would be five percent of that value, provided that it was no less than the rent during the first ten years. The same provisions were to apply for renewals of the new leases, provided always that newly assessed rent was to be no less than the rent during the preceding term.

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[181] Section 13(1), Maori Vested Lands Administration Act 1954.

Under the conditions of the new leases, when the Maori Trustee notified that it wished to resume possession of the land, the lessee was entitled to receive compensation for the improvements made on the land. However, under Section 17 of the Act the amount of compensation which had to be paid, was to be two-thirds the value of the improvements. Therefore, although the lessees could obtain an extended tenure, they were to lose one-third the value of the improvements they had made.

Under Section 29 of the Act the Maori Trustee was empowered to reserve the right to timber trees growing on the land. In such cases, although the lessee was permitted to use 'severed' timber for the purposes of fencing, the lessee was not permitted to 'sever' timber from the land without an express provision in the lease. The Act also protected the timber on blocks still operating under existing leases, and on those blocks where the term of the lease had been extended by legislation. Section 75 of the Act provided that in such cases the lessee was not permitted to cut or remove any timber on the land, or to authorise others to remove timber.

Section 32 of the Act laid out the procedure if the lessee chose not to accept the renewed leases. In this case the lease was to be offered for public tender. The successful tender would then have to pay the outgoing lessee the amount of the value of improvements. If no purchaser could be found for the lease, Section 33 of the Act authorised the Maori Trustee to re-advertise the lease for tender at a reduced level of rent or compensation for improvements.

Section 55 of the Act provided that all rent was to be paid to the Maori Trustee, who was to distribute half of the proceeds to the beneficial owners. The other half was to be invested in the Maori Trustee's Common fund. The invested money was to be used to pay the compensation for improvements. Section 56 also provided that if the sinking fund was insufficient to cover the compensation, the Maori Trustee could advance money as a charge on the land, or raise money as a mortgage.

Section 61 of the Act permitted the Maori Trustee to sell any vested lands. Such sales required the consent in writing of the majority in value of the owners, or a resolution of the assembled owners.

The procedure for revesting the land in the owners was provided by Section 70 of the Act. The Maori Trustee, or the owners, could apply to the Maori Land Court to have the land revested in the beneficial owners. Under this Section the Maori Land Court had the option of ordering that the Maori Trustee should continue to exercise the powers of the lessor.

Two leases of vested lands were excluded from the new leasing system. Section 73 of the Act declared that Parts I and II were not to apply to the leases of Otiranui 2 and 3. These blocks were excluded because the terms of the leases issued for the blocks in 1910 had specifically contained a perpetual right of renewal.[182]

## 3.2 Lease Administration by the Maori Trustee

Under the Maori Vested Lands Administration Act 1954 the Maori Trustee was responsible for administering 246 different leases. Separate files were kept for each lease. It is beyond the scope of this report, and the time available, to detail the transactions relating to each leasehold. Examples are given below to illustrate how the Maori Trustee operated in regard to lease renewals, valuations, and revesting land in the owners.

### 3.2.1 Issuing Renewed Leases and Rent Revisions

After the 1954 Act was passed, the Maori Trustee had to arrange to renew the existing leases under the terms prescribed by the Act. This could be a lengthy process, and in practise most lease renewals had to be backdated to the expiry date. The most important matter to be resolved before a renewed lease could be issued, was the new rent level.

Section 24 of the Maori Vested Lands Administration Act 1954 had specified that the rent was to be five percent of the unimproved value, or the minimum annual rent, whichever was the highest. Under Section 22 of the Act, the minimum annual rent was to be double the previous rental. The staff of the Maori Trustee in Wanganui required valuation information to assess whether the rent should be set at five percent of the unimproved value, or whether the

[182] The perpetual lease for Otiranui 2 and 3 had been issued in error in 1910. When the lease was renewed in the 1930s the Maori Land Board had made the renewed lease in the same form as that for other vested blocks, but the lessee took the Board to court. The court found that the perpetual terms of the original lease meant that the lessee had an indefeasible title to the perpetual lease. As these events occurred before the period under research for this project, we have not carried out research on the case, but full information can be found in 9/14/0/1 vol 1, Atihau-Whanganui Incorporation, [AW Inc].

previous rental should simply be doubled. In order to avoid further delays while special valuations were made, the District Officer asked the District Valuer to supply him with the roll figures for the unimproved values of the leased blocks.[183] If the unimproved value was not likely to be greatly increased, then the Maori Trustee could assume that the doubling of the previous rent would result in a higher rental than five percent of the unimproved value. In such cases, the delays and expense of a special valuation could be avoided by implementing the minimum annual rent provision.

The Maori Trustee sent out standard offer letters to the lessees. For example, in February 1956 a letter was sent to A. Malpas, who was leasing sections 7 and 8 block XVI Makotuku SD.[184] The lease had expired on 30 June 1954. The letter began by stating 'As lessee of the abovementioned lease you are no doubt aware of the conditions under which the Maori Trustee may grant a new tenancy of the land referred to'. The Maori Trustee said that, because the 1954 Act set the minimum rental at twice the previous rental, there would be no need to go to the expense of seeking a special valuation. The Maori Trustee was therefore assuming that twice the previous rental would be greater than five percent of the unimproved value.

The offer letter went on to say that the Maori Trustee was prepared to grant a new 21 year lease at twice the previous rental, under the provisions of the Act. The letter pointed out that the new lease would reserve all timber rights to the lessors, but did not specifically mention that at the expiry of the lease the lessee would be entitled to only two-thirds the value of his improvements. The agreement signed by the lessee said that he accepted the lease under the provisions of the Maori Vested Lands Administration Act 1954.[185]

The Maori Vested Lands Administration Act said that half the rent was to be paid into the sinking fund, and half distributed to the owners. However, before the rent allocation could be determined, deductions for commission and tax had to be made. The example of the Morikau 2 blocks shows how this meant that the amount distributed to the owners and the amount transferred to the sinking fund were less than 50 percent and not always equal.

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[183] Registrar and District Officer to District Valuer, 30 June 1955, 9/11/0, AW Inc.
[184] District Officer to A.F. Malpas, 13 February 1956, MA W2459 24 5/2/4 vol 5, ANZ.

The large Morikau 2 block was subject to 23 different leases. These were renewed for 21 years from 1954.[186] The total rents received in 1959 for the 27 leases totalled £2,428 6s 5d.[187] From the total amount of rent received, the Maori Trustee deducted its standard six percent commission. Social Security tax was then deducted, and the remaining figure divided in two for the amount to be distributed to the owners. The amount to be allocated to the sinking fund was subject to a further deduction for income tax. The overall result was:

| | |
|---|---|
| Distribution [to owners] | £1,041 10s 5d |
| S.S. Inc tax | £171 4s 0d |
| Commission | £145 14s 0d |
| Inc. tax | £155 2s 6d |
| Sinking Fund | £914 15s 6d |
| **Total** | **£2,428 6s 5d**[188] |

In 1958 meetings of owners were called to consider resolutions to sell parts of Morikau 2 and Waharangi 4. The lessees of 1,258 acres of Morikau offered to pay £2,585, and the lessee of 1,461 acres of Waharangi 4 offered to pay £1,200 plus the valuation of any millable trees on the block.[189] The meeting of owners for Waharangi 4 voted against the sale.[190] The owners present at the Morikau 2 meeting voted against the sale. However, after the proposal had been declared lost, and many owners had left, a check of the proxy votes revealed that the shares voted in favour of the sale exceeded those votes against the sale.[191] There were also some doubts about the validity of some proxies. Some owners complained to Walter Nash the Minister of Maori Affairs that the sale was going to be confirmed by the Maori Land Court even though the meeting had voted against it. However, the Maori Trustee informed the court about the situation, and told the Minister that it was unlikely that the court would confirm the sale as those owners opposed had not had the opportunity to sign memorials of dissent.[192] In the end the proposed purchaser decided not to proceed with the application for confirmation:

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[185] Acceptance, A.F. Malpas, 17 May 1956, on District Officer to A.F. Malpas, 13 February 1956, MA W2459 24 5/2/4 vol 5, ANZ.
[186] Index of Leases, 9/12/0, AW Inc.
[187] List of Leases and Rents, no date, 9/12/0, AW Inc.
[188] Calculation of Sinking Fund, no date, 9/12/0 AW Inc.
[189] Notice to Summon Meetings of Owners, 16 June 1958, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[190] Secretary to Minister of Maori Affairs, 25 July 1958, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[191] ibid.
[192] ibid.

'He has been influenced in this decision by the fact that the majority in favour of selling was so small and as the great majority in numbers was averse to a sale'.[193]

Several valuation objections were settled by compromise between the lessees and the Maori Trustee. For example, seven leases were held by Perham Larsan and Company. The unimproved value for these properties was £1,910 according to the special valuation, but the Maori Affairs Field Supervisor estimated that the unimproved value at £2,200. The Maori Trustee lodged an objection to the special valuation, and a compromise was reached with the lessee, whereby he agreed to increase the rent by £6 per annum which was equivalent to a £120 increase in the unimproved value.[194] Similarly the Maori Trustee had objected to the value placed on the improvements on the land belonging to the owners. The 1954 Act required the lessee to purchase any improvements on the land belonging to the owners. The special valuation was £1,100, but the Field Supervisor's estimate was £1,375. Again, a compromise was reached of £1,200.[195] In December 1958 the Maori Trustee directed the Wanganui office not to agree to any compromise which was less than the special valuation without first seeking Head Office approval.[196]

The requirement under Section 20 of the Maori Vested Lands Administration Act 1954 for the lessee to buy any improvements on the land belonging to the owners sometimes made it difficult for the Maori Trustee to negotiate a lease renewal or find new lessees for blocks. In the case of a lease of part of Waharangi 4 (554 acres), the improvements belonging to the owners were valued at £625 by the special valuation in 1956.[197] The lessee objected to this figure, and a compromise of £550 was reached. The lessee was unable to pay for the improvements in a lump sum, and the District Officer arranged for the improvements to be paid in instalments, although Head Office approval of this action had to be given. The District Officer advised that unless the lessee could pay by instalments, he would not agree to renewing the lease, because the land was 'most difficult to manage and any spare cash is needed for development'.[198] The lessee was judged to a conscientious farmer who would meet his obligations. In January 1959 the Maori Trustee instructed the Wanganui office on

[193] Secretary to Minister of Maori Affairs, 11 September 1958, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[194] District Officer to Secretary, 31 October 1958, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[195] ibid.
[196] Maori Trustee to District Officer, 3 December 1958, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[197] District Officer to Secretary, 22 October 1958, AAMK 869/1211b 54/23/6 vol 3, ANZ.

the policy to be adopted regarding instalment payments: 'As a general rule the sale of improvements would be on a cash basis. Where, however, lump sum payment would be a hardship to the lessee, sale upon terms will be agreed to.'[199]

The District Officer later reported that in most cases the negotiations over the value of owners' improvements had resulted in approximately a 20 percent increase.[200] In the case of Wickham's lease of Part Tauakira 2M6 and Matahiwi Town Sections, the special valuations for the owners' improvements were £550 and £1,800 respectively. Wickham was extremely reluctant to pay any more, but the Maori Trustee eventually got him to accept an approximate 20 percent increase. The final figure agreed upon was £3,010 for both blocks. The District Officer explained why he recommended that this figure should be approved, and that Wickham should be allowed to pay by instalments because consideration needed to taken concerning the 'nature and topography of the areas' and the 'lack of interest taken in this type of country by most prospective purchasers'.[201] Therefore the fact that this type of land would be difficult to finance also had a bearing on the recommendation.[202]

In February 1959 the Wanganui office reported on the progress of issuing renewed leases.[203] Out of a total of 243 leases, six had been resumed. A further four had been sold in accordance with resolutions of the assembled owners. Of the remaining 233, renewed leases had been issued for 190. This left 43 leases still in the process of negotiation. In some cases delays concerned Maori lessees who wanted the lease transferred to their children, however this required Maori Land Court orders to be finalised. In other cases, the Maori Trustee would not issue a renewed lease until overdue rates had been paid by the lessee. In the remaining cases, compromises on the valuation of owners' improvements were still in progress, but Head Office was assured that no compromise which was less than the special valuation would be accepted.[204]

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[198] District Officer to Secretary, 18 November 1958, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[199] Maori Trustee to District Officer, 28 January 1959, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[200] District Officer to Secretary, 17 April 1959, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[201] ibid.
[202] ibid.
[203] District Officer to Head Office, 9 February 1959, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[204] ibid.

In July 1960 the District Officer updated the report on lease renewals. As some previously unoccupied areas had been offered for lease, the total number of leases was now 246. Of these, seven leases had been resumed, seven had been revested in the owners, and five had been sold. Of the remaining 227 leases, 19 had not yet been renewed. [205]

While the Maori Trustee was negotiating for the sale of timber on the Ohotu 1C2 blocks which had been resumed for Ohorea Station (see below), the District Officer was instructed to consider what should be done about possible millable timber on the leased blocks. The 1954 Act had reserved the ownership of timber on the leased blocks to the owners, which meant that the Maori Trustee could arrange for timber felling contracts. The Maori trustee wanted to know whether any investigation had been made into the extent and value of the timber on all the vested lands. If no investigation had been carried out, his opinion was sought on whether an investigation was necessary. While interested in the possibility of arranging timber contracts, the Maori Trustee noted that 'there is not necessarily any great hurry to sell any of the timber stands, if there are any in the selling category.'[206] The District Officer reported that apart from the resumed properties, timber rights had been sold on Ohotu 1C2 and Wharetoto 5B, and £25 and £893 respectively were being held in the block accounts.[207] Because a system of regular five yearly lease inspections was now in place he did not think that it was necessary to carry out a special survey of the timber on all the vested blocks. The inspection reports would include a reference to the millable timber on the block.[208]

In 1962 the Waimarino County Council carried out its five yearly valuation review for the district. This included vested lands in the Ohotu, Waharangi, Morikau 2, Otiraunui and Raetihi blocks. The average increase in unimproved value across the County was 18 percent.[209] While in most cases the unimproved value of the vested blocks had increased or remained the same, in four cases the unimproved value had decreased. The Maori Trustee lodged objections to the decreases, but after discussion with the District Valuer agreed that the assessments in three cases were correct. In the fourth case, the valuer agreed that the

[205] District Officer to Secretary, 29 July 1960, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[206] Maori Trustee to District Officer, 23 January 1959, 9/11/92 vol 1, AW Inc. [DB p. 361]
[207] District Officer to Secretary, 8 April 1959, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[208] ibid.
[209] District Officer to Secretary, 19 October 1962, AAMK 869/1211c 54/23/6 vol 4, ANZ.

unimproved value should remain the same.[210] In the three cases of decreased value the reasons given were, that in one case recent sales had occurred for less than the previous valuations, and in the other cases the use of aerial photographs had revealed that the land was steeper than previously assessed.[211]

The Maori Vested Lands Administration Act 1954 required that a special valuation should be made after the first ten years of the renewed lease.[212] The purpose of the valuation was for a rent review. The rent was to be five percent of the unimproved value, so if the unimproved value had risen over the previous ten years, the rent would be increased. As many of the vested leases had been renewed from 1 July 1954, they fell due for revaluation on 1 July 1964. This applied to 110 vested leases covering approximately 100,000 acres.[213]

The District Valuer advised the Maori Trustee that the cost of assessing the capital values for these leases would be £1,200 to £1,300.[214] Under the 1954 Act the valuation cost was to be divided equally between the owners and the lessee. The District Valuer advised the Maori Trustee that in the majority of cases a revaluation was unlikely to result in an increase in the unimproved value.[215] It was estimated that about 16 percent of the leases would have their rents increased, and the total increase would be approximately £50 per annum. Over the 11 years that the leases had to run, this would amount to an additional £550 income, which was less than the Maori Trustee's share of the valuation costs.[216]

At first, the District Officer and District Valuer suggested that the expense could be saved if only the unimproved value was assessed. However, it was thought that this position would be difficult to defend if any case should be challenged in the Land Valuation Court because of the requirement under the Act that the unimproved value and the improvements had to equal the capital value.[217] The Deputy Valuer General directed that no special valuation needed to be made of the leases where there was 'a reasonable probability that there will be no increase

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[210] ibid.
[211] ibid.
[212] Section 24, Maori Vested Lands Administration Act 1954.
[213] District Officer to Secretary, 29 January 1964, ABOG 869 W5004 50 54/23/7 pt 5, ANZ.
[214] ibid.
[215] Trust Officer, Note for File, 14 February 1966, 9/13/0, AW Inc.
[216] District Officer to Secretary, 29 January 1964, ABOG 869 W5004 50 54/23/7 pt 5, ANZ.
[217] Maori Trustee to District Officer, 11 February 1964, ABOG 869 W5004 50 54/23/7 pt 5, ANZ.

in the unimproved' value.[218] A list of all the blocks due for revaluation was prepared, and the list was inspected by the District Valuer, who identified those blocks which might result in an increase. Out of 110 leases, special valuations were carried out for 30 leases.[219]

A further round of rent review valuations was carried out in 1967. The Maori Trustee lodged objections to the unimproved value of ten leaseholds. In all but one case, the special valuation had resulted in the unimproved value being the same as in 1962.[220] In the remaining case, (affecting part Ohotu 3), the 1967 unimproved value had been assessed as less than the 1962 value. The Trust Officer asked the Field Supervisor to report on the affected blocks to consider whether the unimproved value should have been increased.[221]

The Field Supervisor consulted with the District Valuer, and agreed with the special valuation assessments for seven of the blocks. His reasons were usually along the lines that the previous assessment in 1962 had been a large increase from the 1957 value, and that no further increase was warranted. In many of the cases, lack of access, small or unusual size meant that the blocks were only viable leasehold propositions as part of larger farming units. The following are examples of his comments:

> Sec 10. Blk XVI. Makotuku S.D.
> Area 419 acres
> 1962 .U.V. £339 1967 U.V. $670 - No increase
>
> Had been increased from £300 (1957-62) - Rental increase from 1 July 1964. This is a back section, without any formed access - can only be worked with other Duigan land - approx. 1/3 cleared - High clearing costs today of balance and lack of access would be the main factors for consideration, and an increase cannot be recommended.

and:

> Lot 3 D.P. 4518 Pt. Raetihi 3A, 3B, 2B & 4B Blk XXX & XV Makotuku S.D.
> Area 158 acres 0r 14p
> 1962 U.V. £660 1967 U.V. $1320 - No increase in U.V.
>
> Increased by £100 1957-62 from £560 - Increase at that time out of proportion and over calculated - Rental increased to $66 per annum from 1.7.67 - No objection lodged for this rental revision valuation as at 1.7.67 - Present U.V. for this property adequate.[222]

In respect to the decrease in unimproved value for Part Ohotu 3, the Field Supervisor reported that the District Valuer had made a calculation error, and the unimproved value

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[218] Maori Trustee to District Officer, 5 March 1964, ABOG 869 W5004 50 54/23/7 pt 5, ANZ.
[219] Trust Officer, Note for File, 14 February 1966, 9/13/0, AW Inc.
[220] Dark to Saywell and Nyman, 24 October 1967, 9/14/0/1 vol 1, AW Inc.
[221] ibid.

would be restored to the 1962 level. While the section had road access, it could not be used 'because of deep gorge between the road and the main area of the property.' The Field Supervisor did not think any further increase in unimproved value could be warranted because: 'High development costs for this class of country would tend to depress unimproved value'.[223] After receiving these recommendations, the Maori Trustee withdrew its objections to the valuations.[224]

The lessees of Part Raetihi 3A had objected that the unimproved value assessed in 1967 was too high. The 1967 special valuation was $16,000. The lessees argued that the appropriate level was $11,000. The Field Supervisor reported on the matter. He pointed out that the unimproved value in 1962 was £5,435 ($10,870), and the 1967 assessment represented a 52.6 percent increase for the period 1962 to 1967. Moreover, the overall increase in unimproved value from 1957 was 99 percent. The supervisor could see no 'substantiating evidence' to support the high percentage increase in unimproved value, as there were no sales of comparable land in the district. He described the property as: 'A good property; well farmed; relatively easy contour; not a typical sized holding, and for that reason would have only limited demand on the market'.[225] The supervisor indicated that a compromise figure of $15,000, suggested by the District Valuer, might be acceptable to the Valuation Court. Before taking the matter to the Valuation Court, the District Valuer sought the opinion of the Maori Trustee on whether the $15,000 unimproved value figure would be acceptable. This would result in the rent being increased from $417 to $750 per annum.[226] The Maori Trustee and the lessees agreed to the unimproved value being set at $15,000.[227]

This report has focused on vested land leases which gave the lessee the right of compensation for improvements. However, a small minority of the lessees did not contain any provision for compensation for improvements. In the case of the Raetihi 4B block, there had been five leases issued for various sections of the block, which did not contain a right of renewal or compensation for improvements. These leases were due to expire between 1956 and 1957.

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[222] Field Supervisor to Trust Officer, 11 December 1967, 9/14/0/1 vol 2, AW Inc.
[223] ibid.
[224] Maori Trustee to District Valuer, 14 December 1967, 9/14/0/1 vol 2, AW Inc.
[225] Field Supervisor to Trust Officer, 11 December 1967, 9/14/0/1 vol 2, AW Inc.
[226] Cater to Head Office, 14 December 1967, 9/9/1, AW Inc.
[227] Maori Trustee to Senior Clerk Valuation Department, 6 March 1968, 9/9/1, AW Inc.

While the renewal of the vested land leases were being arranged, the current lessees of the Raetihi 4B blocks were continuing in occupation.[228]

In February 1957 the District Officer asked Head Office whether a decision had been made on the policy regarding the leases without compensation for improvements.[229] As the Maori Vested Lands Administration Act 1954 had essentially been designed to address the problems caused by the need to finance the compensation for improvements, it was logical that where no compensation for improvements had to be paid, that the blocks should no longer be subject to the Act and could be revested in the owners.

Head Office instructed that while revesting was the preferred option, considerations about future use of the land were also a factor:

> The important thing is that the land should not be revested unless it appears clear that proper use will be made of it. Consultation with the owners will probably be necessary to decide this point.[230]

Plans were then made to call a meeting of owners.[231] Before the blocks were revested, the Maori Trustee arranged to renew the leases (except for three small areas) for a further term of 21 years.[232] An application to revest Raetihi 4B in the owners was made to the Maori Land Court. The block was revested in the beneficial owners, but the Maori Trustee remained responsible for administering the leases.[233]

In another case the Wanganui trust staff decided against offering a section of land to be revested in the owners. The 136 acre block was section 1 block XV Makotuku SD being part of the large Ohotu 1C2 block. It had not been subject to an existing lease in 1954, and the Maori Trustee offered the timber rights on the block for tender.[234] It also advertised the lease of the block for tender, and received one offer. When the District Officer sought approval to accept the tender, the Maori Trustee pointed out that because the block had not been subject to an existing lease, Section 60 of the Maori Vested Lands Administration Act required the

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[228] Mainwaring to Brooker, 20 November 1956, 9/9/0, AW Inc.
[229] District Officer to Head Office, 24 February 1967, 9/9/0, AW Inc.
[230] Head Office to District Officer, 4 March 1957, 9/9/0, AW Inc.
[231] Annotations on Head Office to District Officer, 4 March 1957, 9/9/0, AW Inc.
[232] District Officer to Ruru and Company, 29 February 1960, 9/9/0, AW Inc.
[233] Under Section 8, Maori Purposes Act 1966 Raetihi 4B was revested in the Maori Trustee to become part of the Atihau-Whanganui amalgamated block (see sections 4.1.1 and 4.1.2).
[234] District Officer to Secretary, 9 December 1959, AAMK 869/1211b 54/23/6 vol 3, ANZ.

Maori Trustee to lease the blocks according to Part XXV of the Maori Affairs Act 1953. This meant that the Maori owners should have been given first opportunity to lease the land. Furthermore, the District Officer was instructed that the 'policy is for land to be re-vested in the Maori owners when it is not subject to a lease'.[235] In response, the District Officer explained that the decision had been made not to revest the block for two reasons. First, in the past timber on the block had been sold illegally by part-owners, and there had also been illegal occupation, which meant: 'To protect the owners it was considered that a formal lease should be granted, and that the remaining timber should be sold.'[236] In addition, Ohotu 1C2 had over 1,000 owners, and it was considered that this section by itself would not be 'of any great interest to the owners'.[237]

Paetawa A, B and C, which contained 3,550 acres were situated on the western banks of the Whanganui River, about 19 miles from Wanganui.[238] Paetawa A and B had been leased to the Wright family under a renewed lease from 1 July 1954. However, Paetawa C, containing 124 acres, had been reserved for Maori occupation by the Aotea District Maori Land Council in 1905.[239] It remained vested in the Maori Land Board and the Maori Trustee, but had not been leased. Paetawa C included an urupa site. When the Whanganui vested lands were amalgamated in 1967, the Paetawa C block was included in the amalgamation into the Atihau-Whanganui block, and the reservation for Maori occupation was revoked (see sections 4.1.1 and 4.1.2).[240] The Maori Trustee now had the power to make alienation arrangements for the block. At first, one official suggested that the block might be unsuitable for leasing, in which case the Maori Trustee could sell it.[241] However, he was soon instructed by his office superior that arrangements should proceed on a leasehold basis, as it was not 'ever the intention of the MT [Maori Trustee] or the beneficial owners to sell'.[242]

After investigating the situation, it was recommended that the best course of action would be to offer Paetawa C to the Wrights who were leasing the adjoining Paetawa A and B blocks.[243]

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[235] Maori Trustee to District Officer, 14 January 1960, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[236] Assistant District Officer to Secretary, 26 January 1960, AAMK 869/1211b 54/23/6 vol 3, ANZ.
[237] ibid.
[238] Note for File, 8 March 1970, 9/7/3, AW Inc.
[239] Note for File, 12 May 1967, 9/7/3, AW Inc.
[240] Section 8, Maori Purposes Act 1966.
[241] N. Prichard to J. Dark, 19 April 1967, 9/7/3, AW Inc.
[242] J. Dark to N. Prichard, 20 April 1967, 9/7/3, AW Inc.
[243] N. Prichard to District Officer, 12 May 1967, 9/7/3, AW Inc.

The inspection of the block had suggested that the adjacent farmers would probably be the only people interested in leasing Paetawa C. As the Wrights' leases of Paetawa A and B were due to expire in 1975, it was suggested that the best course of action would be to offer them a shorter term lease which would also expire in 1975. The alternative was to advertise the lease for tender for 21 years.[244]

In the meantime, the Maori Trustee received a letter indicating that two Maori might be interested in leasing Paetawa C when it was available for tender.[245] As a result, the trust staff reconsidered their recommendation to offer the lease to the Wrights, and advertised the lease for tender. The lease was offered for 21 years, but without the right of compensation for improvements, as trust staff said that proposed changes to the Maori Affairs Amendment Act aimed 'at getting away from compensation wherever possible'.[246] Under Section 60 of the Maori Vested Lands Administration Act, lands which had not been leased before 1954 could be leased by the Maori Trustee on terms in accordance with Part XXV of the Maori Affairs Act 1953, rather than being bound to follow the prescribed form of renewed leases under the 1954 Act.

However, by August 1968 no tenders had been received to lease Paetawa C.[247] It may have been that the failure to offer compensation for improvements was a factor. Therefore, the Maori Trustee reverted to the original suggestion to offer the block to the neighbouring farmer, with a lease expiring in 1975.[248] Although the Wrights were initially not very interested in leasing the block, in May 1969 they agreed to take the block as a grazing lease, for $43 per annum, which was 5 percent of the unimproved value.[249]

### 3.2.2 Refusal of Prescribed Leases - Tauakira Blocks

The Maori Vested Lands Administration Act 1954 gave the lessees the option of accepting lease renewals under the prescribed terms. These included double the rent, two thirds compensation and rights of resumption. If the lessee refused to take the new lease, the lease was to be offered for public tender, at the same rental as that offered to the subsisting lessee,

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[244] ibid.
[245] Christie Craigmyle Tizard and Dickson to Maori Trustee, 12 June 1967, 9/7/3, AW Inc.
[246] Cater to Trust Officer, 30 June 1967, 9/7/3, AW Inc.
[247] Schedule of Tenders, 5 August 1968, 9/7/3, AW Inc.
[248] Mainwaring to Valley, 5 February 1969, 9/7/3, AW Inc.

and subject to the successful tender paying the outgoing lessee the amount of the value of improvements.[250] If no purchaser could be found for the lease, Section 33 of the Act authorised the Maori Trustee to re-advertise the lease for tender at a reduced level of rent or compensation for improvements. This section of the report gives an example of how Section 32 and 33 operated in practice, when the existing lessee refused the offer of a renewal upon the terms prescribed by the Maori Vested Lands Administration Act 1954.

The Marshall brothers had been farming two neighbouring leasehold areas under 21 year leases which expired in 1954 and 1957. The two areas totalled over 5,000 acres:[251]

| | | |
|---|---|---|
| (a) | Tauakira 2K2L, pts 2GG and 2H | 2,387 acres |
| (b) | Subdivisions 8 and 9 of Section 3A Blk XI Tauakira SD (Ohotu 1C2) and Tauakira 2EE, 2X, 2FF, 2W, 2V and pt 2GG | 3,101 acres. |

The Marshalls were offered renewed leases in 1956. The assessed rental for lease (a) was £89 10s per annum, and £102 for lease (b). The valuations for the two areas were as follows:[252]

| | | | |
|---|---|---|---|
| (a) | Capital Value | | £2,000 |
| | Unimproved Value | | £260 |
| | Improvements (Lessees) | £1,740 | |
| (b) | Capital Value | | £2,000 |
| | Unimproved Value | | £300 |
| | Improvements (Owners) | | £1,200 |
| | Improvements (Lessee) | | £500 |

Under Section 20 of the Maori Vested Lands Administration Act 1954 the lessee was required to purchase the improvements on the block belonging to the owners. The high value of the owners' improvements on lease (b) was one reason why the Marshalls decided not to renew their lease.[253] They were considering buying the freehold of the land instead. Most of the separate divisions in both blocks were without access, except through other land being farmed by the Marshalls.[254]

In November 1956 D. Marshall informed the Maori Trustee that he did not want to accept the offer of the renewed lease. This was because the (a) portion of the land had no access, and the

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[249] Valley to Maori Trustee, 6 May 1969, 9/7/3, AW Inc.
[250] Section 32, Maori Vested Lands Administration Act 1954.
[251] Senior Estates Clerk to Connop, 5 March 1959, 9/10/2 vol 1, AW Inc.
[252] ibid.
[253] Note for File, 22 August 1958, 9/10/2 vol 1, AW Inc.

rent had been doubled.[255] Before offering the lease for public tender, the Maori Trustee sought a report on the condition of the property. It was assumed that the Marshalls would remain in occupation until a new lease was arranged.[256] In the meantime, rent funds held for the accounts of the various blocks were not distributed until a new lease had been arranged. This was in case the funds were required to pay compensation.[257] Even though the lease had expired, the Marshalls were required to keep paying rent until a new lease was arranged. Periodically, the Maori Trustee had to write to the lessees to request payment of rent arrears.[258]

In August 1958 the Marshalls confirmed that they did not want to continue leasing both areas. They were, however, considering trying to purchase the freehold of the block. The difficulty was that separate meetings of owners would have to be called for each subdivision included in the lease, and while the owners of some subdivisions might agree to sell, the Marshalls did not want to purchase unless they could be certain of obtaining all the areas in the lease.[259] The District Officer advised that while the lessees could call meetings of owners, the Maori Trustee still had a statutory obligation to advertise the leases for tender. By October 1958, only one area had been advertised, and no tenders had been received.[260]

Only one person had expressed any interest in taking over the properties. Negotiations regarding how he could finance paying for the improvements continued during late 1958 and early 1959, but by April 1959 the prospective lessee advised that he was no longer interested.[261]

The Maori Trustee was then obliged under Section 33 of the Maori Vested Lands Administration Act 1954 to advertise the lease for tender again under different terms. This meant that the trustee could decide to reduce the rental, or to reduce the amount that the tender would be required to pay to the outgoing lessee for the value of improvements.[262] The

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[254] Byres to Mainwaring, 13 October 1958, 9/10/2 vol 1, AW Inc.
[255] Marshall to Registrar, 13 November 1956, 9/10/2 vol 1, AW Inc.
[256] Estates Clerk to Mete Kingi, 19 November 1956, 9/10/2 vol 1, AW Inc.
[257] Mainwaring to Broddell, File Note, 7 January 1958, 9/10/2 vol 1, AW Inc.
[258] District Officer to Marshall, 8 September 1958, 9/10/2 vol 1, AW Inc.
[259] Byres to Mainwaring, 13 October 1958, 9/10/2 vol 1, AW Inc.
[260] File Note, Mainwaring, 15 October 1958, 9/10/2 vol 1, AW Inc.
[261] File Note, Connop, 3 April 1959, 9/10/2 vol 1, AW Inc.
[262] Mainwaring to Marshall, 4 August 1959, 9/10/2 vol 1, AW Inc.

lessees were warned that this might result in them receiving much less for their improvements than the government valuation. The Maori Trustee suggested that the Marshalls would be in a better position if they accepted a renewed lease.[263]

In October 1959 the Marshalls were again requested to pay their rent arrears, which was £36 16s for the 1959 year.[264] While the Marshalls continued in occupation without a renewed lease, they continued to be liable to pay the rent required under the expired lease. By refusing to accept a new lease, the Marshalls had effectively been able to continue leasing the land without paying the appropriate doubled rental.

In May 1961, when the Maori Trustee was preparing to re-advertise the leases, a field inspection was made of the blocks. The Field Supervisor generally concluded that the blocks were not suitable for leasing on their own, and were only of any use to neighbouring farmers:

> These areas are difficult to farm and maintain and are further handicapped as leasing propositions because of the lack of suitable formed access to them.
>
> The country is poor, subject to erosion and reverts to scrub and fern and cannot be suitably stocked or fenced because of the broken nature of the country formed by deep gorges and creeks.
>
> There is no evidence of any improvement to the properties and any increase in value would be due to the trend of rising values rather than additional improvement to those existing when the lessees took over the properties.
>
> There has not been much maintenance done on either of the properties, and they have been farmed as one block of country without subdivision and with natural barriers presented by creeks and bush lines serving as subdivisions.
>
> In general the two properties present a most unattractive and forbidding appearance from a farming and leasing viewpoint.
>
> I consider it highly unlikely that any tenant other than those already in occupation would be interested in leasing and farming these two blocks. As the present tenants farm practically all the farmable land adjoining, despite their indifferent handling of these blocks, it seems that the most satisfactory course would be to re-lease the blocks to them, provided they covenanted to effect repairs to the existing fence during the currency of the renewed lease.[265]

Before advertising the properties for lease again, the Maori Trustee sought a special valuation for both properties to endeavour to see if the amount an incoming lessee would be required to pay for improvements could be reduced. The only change was a reduction in the value of improvements in lease (a) to £1,650.[266] At this stage Wanganui officials decided that the

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[263] Mainwaring to Currie, Jack and Davis, 21 January 1960, 9/10/2 vol 1, AW Inc.
[264] Mainwaring to Marshall, 6 October 1959, 9/10/2 vol 1, AW Inc.
[265] Field Supervisor to Mainwaring, 9 May 1961, 9/10/2 vol 2, AW Inc.
[266] District Officer to Secretary, 19 May 1961, 9/10/2 vol 1, AW Inc.

properties should be advertised again for tender, and that if no offers were made, the Marshalls should be allowed to continue in occupation at the old rental rate, which was 'far in excess of 5% of the Unimproved Value'.[267] No tenders were received, and the Marshalls were advised that they were to continue occupation at their present rental.[268]

However, the Maori Trustee did not favour allowing the Marshalls to continue under their old lease. It was recognised that there was 'no point' in advertising the properties for lease under altered terms because 'it seems pretty clear that no one other than the existing occupiers would be interested in taking tenure of these blocks'. Instead, the Wanganui office was instructed to negotiate with the lessees to arrange a further lease. [269]

However, the lessees preferred to purchase the land rather than accept a new lease. Because of the lack of access, the Marshalls first sought to purchase adjoining vested blocks which they were farming under a renewed lease. This block assured the access to the two other portions.[270]

The application for a meeting of owners included an area of 1,644 acres out of part of the Ohotu 1C2 block. This area was made up of section 3 Block XI Tauakira SD (1,410 acres) which was already under a renewed lease to the Marshalls, and sections 8 and 9 Block XI Tauakira SD, which were part of one of the expired leases. The application noted that the Marshalls were the 'only ones that can logically farm these pieces'. The purchase price being offered was £1,500 for the owners' unimproved interests in the blocks.[271]

At this time there were 2,014 owners in the full Ohotu 1C2 block of 46,329 acres with total shares of 20012.7680.[272] The meeting of owners of Ohotu 1C2 was held in November 1962, after a meeting of the owners of Ohorea Station. In total 82 owners were present, or represented by proxy, at the meeting.[273] Mainwaring, from the Maori Trustee, explained the current situation regarding the leases of the blocks, and that the improvements on the land

[267] Mainwaring to Assistant District Officer, 1 February 1961, 9/10/2 vol 1, AW Inc.
[268] Mainwaring to Marshall, 14 March 1961, 9/10/2 vol 1, AW Inc.
[269] Maori Trustee to Wanganui, 15 June 1961, 9/10/2 vol 1, AW Inc.
[270] Note for File, 26 October 1961, 9/10/2 vol 1, AW Inc.
[271] Particulars of Title, 11 December 1961, 3/5092, MLC Wanganui.
[272] ibid.
[273] Statement of Proceedings of Meeting of Assembled Owners, 28 November 1962, 3/5092, MLC Wanganui.

belonged to the lessee. George Hipango, who acted as a Maori land agent, explained the proposal on behalf of the lessees:

> Mr Hipango spoke for nearly a quarter of an hour and produced an aerial photograph which was pinned to the wall to show how only a small portion of the land was grassed and he enlarged on the fact that the Marshalls knew the country, had in fact grown up in the area and that Rollo Marshall had married a Maori. He stated that if anyone could efficiently farm this country it was the Marshalls. He added that the land was only third class and if there was a fourth class this country would definitely be in that category. It was stated that only 20% of the land was capable of being cleared and that because of the deep gorges there were no subdivisional fences at all, the only divisions between various portions being provided by the gorges.[274]

The record of the meeting stated that a long discussion took place, but does not record the statements of any of the owners. The chairman of the meeting noted that there was a 'strong feeling' among those present that the land should not be sold. However, when the proxies were included in the vote, the outcome was that the resolution to sell was passed:[275]

| | **For** | **Against** |
|---|---|---|
| Owners Present | 760.0054 | 807.5410 |
| By Proxy | 834.5611 | 30.7509 |
| | 1594.5665 | 838.2919 |

It must be remembered that the total number of shares in Ohotu 1C2 was over 20,000. Therefore the shares of those who voted in favour of the sale represented only approximately seven percent of the ownership of the block.

The resolution of the owners then had to be confirmed by the Maori Land Court. In early February 1963 the court heard the application.[276] Mainwaring described the land as: 'Third class country. Forbidding appearance'. He said that the Maori Trustee's policy was that if the owners of vested lands wanted to sell the trustee would complete the transaction. The court was most concerned with ensuring that the price was adequate, in comparison to the government valuation. No mention was made of the small percentage of owners who had voted in favour of the sale. One reason may have been that the court considered the very large number of owners made it impractical to deal with the land. Judge Davis commented: 'Seems that the land will never be any use to owners who are numerous'.[277]

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[274] ibid.
[275] ibid.
[276] Extract from Whanganui Alienation MB 4, 4-7 February 1963, pp. 268, 271, 274-275, 3/5092, MLC Wanganui.
[277] Extract from Whanganui Alienation MB 4, 4 February 1963, p. 271, 3/5092, MLC Wanganui.

The Maori Land Court was aware that the Marshalls intended to try and purchase the freehold of other blocks once they had secured these sections for access. The Judge wanted more definite information about the value of the owners' interests in the lands, in order to confirm that £1,500 was adequate.[278] The case returned to court three days later, at which time Hipango presented evidence that the unimproved value of section 3 was £385 and the unimproved value of sections 8 and 9 was £150. In addition, the Marshalls were paying £850 for the owners' improvements on sections 8 and 9, plus a margin of £150 above the government valuation.[279] After discussing the valuations, the Judge stated that £1,500 was 'satisfactory'. However, he refused to confirm the sale because that confirming the sale of sections 3, 8 and 9 at that time might prejudice the price the owners of the back sections might be able to negotiate. The Judge said that he would confirm the sale of sections 3, 8 and 9 after the Marshalls had obtained agreements for the back sections, or if it became clear that the owners of the back sections were not willing to sell for a reasonable price.[280]

The process of trying to purchase the sections which were subject to the expired leases involved 14 separate blocks. Hipango, acting for the Marshalls, advised that separate meetings of owners would have to be called, and it was likely to take some time.[281] It appears that no further steps were taken by the Marshalls to endeavour to purchase the freehold.[282] In the meantime, plans by the vested landowners and the Maori Trustee to amalgamate all the Whanganui vested blocks were proceeding (see Part Four), including the Tauakira and Ohotu 1C2 blocks. In August 1967 the Maori Land Court was told that the application to confirm the sale to the Marshalls could not now proceed as all the blocks had been amalgamated.[283] At that time the Marshalls were still continuing their unofficial lease occupation of the blocks, as they had been since as early as 1954.

## 3.3 Ohorea Station

It was shown in Part 2.2 of the report that during the negotiations leading up to the Maori Vested Lands Administration Act 1954, Crown officials recognised that the owners would

[278] ibid.
[279] Extract from Whanganui Alienation MB 4, 7 February 1963, pp. 274-275, 3/5092, MLC Wanganui.
[280] ibid.
[281] Hipango to Maori Trustee, 29 August 1963, 9/10/2 vol 2, AW Inc.
[282] Saywell to Dark, 18 January 1967, 9/10/2 vol 2, AW Inc.
[283] Extract from Whanganui Alienation MB 6, 1 August 1967, p. 186, 3/5092, MLC Wanganui.

require financial assistance if any land was to be resumed. The owners expected the Maori Trustee to advance funds to allow an area of land to be resumed as a farm for the owners.

In November 1955 District Officer Brooker asked the Maori Trustee for 'positive direction' on 'whether any area is to be resumed on behalf of the beneficial owners' and noted that although proposals had been suggested, no action had been taken. He said that it had been 'suggested' that £100,000 might be made available out of the General Purposes Fund to pay compensation for improvements.[284] Brooker asked for 'some determination of policy' and identified that the 'only lands in which the Maori owners have a worthwhile interest are Ohotu Nos. 1-8'. There were at this time insufficient funds to acquire these lands. Brooker recommended that the Maori Trustee give 'serious consideration' to the 'acquisition of the improvements in the Forsyth-Wright leases'.[285]

These two properties were part of one of the largest vested blocks, Ohotu 1C2. The Ohotu 1C2 block contained approximately 44,000 acres between the Whanganui River and Karioi in the east, and it was intersected by the Parapara Road. The decision to resume land in this block which had over 2,000 owners, meant that the largest number of vested landowners would benefit from the Maori Trustee advancing finance.[286] It was also noted that the Forsyth property contained approximately 700 acres in timber which might be sold to assist in financing the resumption.

### 3.3.1 Wright and Forsyth Lease Resumptions

The Maori Trustee decided to resume the Wright and Forsyth leases of parts of Ohotu 1C2 block under Section 9 of the Maori Vested Lands Administration Act 1954. The objective was to establish a farm station for the benefit of the Maori owners of the vested lands. The Maori Trustee proposed to farm the land itself and eventually hand it over to an incorporation of owners.[287] The lands identified for resumption were leased by P.A. Wright and the J.F. Forsyth Estate (which was administered by the New Zealand Insurance Company). The total area was 3,946 acres, which consisted of approximately 2,685 acres in grassland, 845 acres of

[284] District Officer to Maori Trustee, 10 November 1955, 33/0/10, Maori Trust [MT] Office Wanganui. [DB pp. 624-626]
[285] ibid.
[286] ibid.
[287] Submission to the Board of Maori Affairs, no date [1957], 9/11/91, AW Inc. [DB pp. 351-353]

native bush and 420 acres of secondary growth and cliff areas. The sections to be resumed were:[288]

| Lessee | Section | Block | Survey District | Area |
|---|---|---|---|---|
| Wright | 1 | XIV | Makotuku | 775a 0r 00p |
| Wright | 4A | XV | Makotuku | 79a 1r 23p |
| Wright | 4B | XV | Makotoku | 171a 1r 26p |
| Forsyth | 2 | XIV | Makotoku | 1,380a 0r 00p |
| Forsyth | 3 | XIV | Makotoku | 1,328a 0r 00p |
| Forsyth | 4 | I | Ngamatea | 195a 2r 03p |
| Forsyth | Pt township reserve | I | Ngamatea | 17a 2r 00p |
| **Total** | | | | **3,946a 3r 12p** |

In 1956 the District Officer informed P.A. Wright that the Maori Trustee wished to resume control of three blocks that he leased. Wright was told that he would be entitled, in line with the legislation, to full compensation for the improvements as valued by a Special Government Valuation.[289] Wright indicated that he was prepared to surrender the blocks, but wanted them treated as one unit for the purposes of the valuation rather than three separate valuations. Some doubts were raised by the Maori Trustee about the legality of this, and whose interests would be served if the Wright leases were treated as one farming unit. It was noted by the District Officer that valuing the three blocks as one might make the valuation of the improvements greater.[290] He was of the opinion that the only time in which several leases should be treated as one unit was when all the land obtained in the separate leases was to be farmed as one unit.[291] The District Solicitor advised that the trustee was legally able to treat the leases as one unit. The Maori Trustee agreed that the land could be valued as one property and noted that objections to the Valuation Court would be argued on the basis that one property was involved.[292] The Maori Trustee informed the Valuation Department it would treat properties as if they were one unit pursuant to Section 59 of the Maori Vested Lands Administration Act 1954.[293]

The Maori Trustee proposed to resume Wright's land on 1 February 1958 and the Forsyth land on 31 January 1959.[294] The Forsyth land contained timber which the Maori Trustee

[288] ibid.
[289] District Officer to P.A. Wright, 6 February 1956, 9/11/91, AW Inc.
[290] District Officer to Maori Trustee, 4 May 1956, 9/11/91, AW Inc.
[291] District Officer to Maori Trustee, 24 September 1956, 9/11/92 vol 1, AW Inc.
[292] Registrar to McBeth Withers and Young, 20 December 1956, 9/11/91, AW Inc.
[293] Noel Izard to Maori Trustee, 18 April 1958, 9/11/92 vol 1, AW Inc.
[294] District Officer to New Zealand Insurance Company, 28 November 1957, 9/11/92 vol 1, AW Inc.

wanted to place on the market. With this objective in mind the trustee asked the administrator of the estate for permission to begin proceedings for the disposal of the timber prior to resumption.[295] The trustee intended to assess the quantity and quality of the timber before asking for tenders to remove it from the land.[296] It wanted to use the proceeds from the sale of the timber to help finance the farming of the land: 'Realisation of this asset will provide repayment of something approaching a half of the capital funds needed for resumption, and reduce considerably the time that the Maori Trustee would otherwise need to retain control of the land'.[297] However, the Forsyth Estate was reluctant to agree to the Maori Trustee entering the land while the estate was still in possession.

In February 1956 the Maori Trustee made an application to the Valuation Department for a Special Government Valuation under Section 11 of the Maori Vested Lands Administration Act 1954 in respect to the Wright and Forsyth leased lands.[298] The special valuation set Wright's improvements at £20,030, with an unimproved value of £2,410. Forsyth's improvements were valued at £25,780, with an unimproved value of £4,475.[299]

The Maori Trustee made its own valuation of the Wright and Forsyth land to 'get some check on the Government Valuation'.[300] Wright's 1,029 acres was valued by the trustee as follows:[301]

| | |
|---|---|
| **Buildings** | |
| Dwelling | £3,000 |
| Cottage | £320 |
| Woolshed yards and dip | £850 |
| Electric plant shed | £75 |
| Garage | £120 |
| Implement shed | £60 |
| Cow shed | £25 |
| Hay shed | £70 |
| **Total** | **£4,520** |
| **Other Improvements** | |
| Clearing, grassing, some ploughing 874 acres @ £12 overall | £10,488 |
| Fencing 900 ch. @ £3/10/- per ch. | £3,150 |
| Suspension bridge | £800 |

[295] District Officer to New Zealand Insurance Company, 16 August 1957, 9/11/92 vol 1, AW Inc.
[296] Maori Trustee to District Officer, 8 October 1957, 9/11/91, AW Inc.
[297] Submission to the Board of Maori Affairs, no date [1957], 9/11/91, AW Inc. [DB pp. 351-353]
[298] Registrar to New Zealand Insurance Company, 6 February 1956, 9/11/92 vol 1, AW Inc.
[299] Submission to Board of Maori Affairs, 4 November 1957, 9/11/91, AW Inc. [DB pp. 351-353]
[300] Maori Trustee to District Officer, 29 August 1956, 9/11/91, AW Inc.
[301] Field Supervisors to Maori Trustee, 30 July 1957, 9/11/91, AW Inc. [DB pp. 354-357]

| | |
|---|---|
| Tracking 70 ch. @ £3 | £120 |
| Drains 30 ch. @ £2 | £60 |
| Plantation shelter value only | £150 |
| **Total** | **£14,858** |
| **All Improvements** | **£19,378** |
| **Unimproved Value** | **£2,572** |
| **Capital Value** | **£21,950** |

The Maori Trustee valued Forsyth's 2,921 acres as follows:[302]

| | |
|---|---|
| **Buildings** | |
| Dwelling section 2 | £400 |
| Cowshed section 2 | £50 |
| Cottage and outbuildings section 4 | £400 |
| Woolshed and yards section 4 | £1,000 |
| Old shed section 2 | £20 |
| Yards section 2 and 4 | £150 |
| **Other Improvements** | |
| Clearing, grassing, some ploughing 1,800 acres @ £10/10/- overall | £18,900 |
| Fencing 1,080 ch. @ 2/15/- | £2,970 |
| Bridge (poor) | £150 |
| Tracking | £200 |
| **Total** | **£22,220** |
| **All Improvements** | **£24,240** |
| **Unimproved Value** | **£5,380** |
| **Capital Value** | **£29,620** |

The difference between the Special Government Valuation and the Maori Trustee's valuations were:

| **Wright's** | **Special Valuation** | **Maori Trustee Valuation** | **Difference** |
|---|---|---|---|
| Improvements | £20,030 | £19,378 | £652 |
| Unimproved | £2,410 | £2,572 | £162 |
| Capital | £22,440 | £21,950 | £490 |
| **Forsyth's** | | | |
| Improvements | £25,780 | £24,240 | £1,540 |
| Unimproved | £4,475 | £5,380 | £905 |
| Capital | £30,255 | £29,620 | £635 |

The Maori Trustee felt that the difference between the two valuations was insufficient to warrant an objection and the Field Supervisors recommended that the trustee accept the special valuation.[303]

In September 1956 Wright objected that the special valuation was too low.[304] Although the Maori Trustee was willing to negotiate with Wright on the value of the improvements, it was

[302] ibid.
[303] ibid.

noted that if the negotiations were unsuccessful the question should go before the Land Valuation Court, which would require employing legal counsel and valuers.[305] In an effort to reach a negotiated settlement the Maori Trustee met with Wright's solicitors. Following the meeting it decided that no settlement could be reached 'unless the Maori Trustee was prepared to commit himself to a figure which is considerably in excess of the existing Government Valuation'.[306] The Maori Trustee felt that the chances of negotiating a settlement of the improvements with the trustees of the Forsyth estate were 'even more remote'. It noted that if negotiations failed, the case should be promptly brought before the Land Valuation Court because it was likely that the administrator would insist on its one-year notice, thus delaying the farming plans.[307]

Wright's objection was referred, in the first instance, to the Land Valuation Committee, which was an arm of the Land Valuation Court. In September 1958 the Land Valuation Committee heard Wright's appeal against the Special Government Valuation of his leased land. S. Preston and W. Mathews of the committee heard the appeal, which was made by Wright's solicitor, R. Withers. The Maori Trustee was represented by A. Tompkins and W. Willis. In support of the special valuation, valuers C. Whitton and E. Long provided valuations. Whitton valued the capital value at £22,621 with an unimproved value of £2,947, and the improvements at £19,674. Long gave a capital value of £23,768 and an unimproved value of £2,541, and the improvements at £21,227. Wright's valuers W. Berry and C. Lynch gave a capital value of £36,000 and an improved value of £2,300, and improvements at £33,700. This was more than £13,000 higher than the special valuation.

The committee decided that the total value of all the improvements on the land should be increased from £20,030 to £30,190 and the unimproved value increased from £2,410 to £2,562. The capital value of the land was increased from £22,440 to £32,752.[308] Tompkins offered the opinion that the committee arrived at its figures by taking the 'highest valuation

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[304] Notice of Objection, 18 September 1956, 9/11/91, AW Inc.
[305] Maori Trustee to District Officer, 8 November 1957, 9/11/91 vol 1, AW Inc.
[306] District Officer to Maori Trustee, 27 November 1957, 9/11/91 vol 1, AW Inc.
[307] Maori Trustee to District Officer, 8 November 1957, 9/11/91 vol 1, AW Inc.
[308] *Wanganui Chronicle*, 4 September 1958, 6/45/0, AW Inc.

for each item' which was 'slightly discounted to reach the final figure'.[309] The Maori Trustee decided to object to the committee's decision.

The Land Valuation Court heard *Re Wright's Objection* in March 1959. Judge Archer found in general that the principles to be applied to valuations under the Maori Vested Lands Administration Act 1954 were the same as those applicable to a valuation under the Valuation of Lands Act 1951.[310] The questions relating to the valuation revolved around the definitions contained in Section 2 of the Maori Vested Lands Administration Act 1954 (see section 3.1).

Judge Archer pointed out that the definitions of unimproved value and capital value assumed that those values could be ascertained by reference to the current market value of the land. However, the definition of improvements made no reference to the market value of the improvements themselves, and instead referred only to the value that the improvements had added to the land.[311] He pointed out that the valuation of improvements by themselves was difficult, as they had no value without the land they were attached to: 'Visible improvements such as buildings and fencing may be valued with some confidence, but we know of no satisfactory method of assessing the values of improvements such as clearing, stumping and cultivation, which have no visible or objective existence'.[312] Therefore, the value of improvements was to be determined as the difference between the unimproved value and the capital value, as this represented the value that the improvements had added to the land.

Six valuers gave evidence to the Land Valuation Court regarding the Wright property. Judge Archer reported that while the valuers had been in general agreement on the value of 'visible improvements', such as buildings and fences, there were wide differences in the values placed on 'invisible improvements'. The values given to clearing, stumping and cultivation varied from $8,620 to $18,933, but Judge Archer said that the valuers were 'unable to give a logical explanation of the methods by which they achieved their results'.[313] The Judge therefore found he was unable to make a decision on the separate values of the 'invisible

[309] Tomkins to Maori Trustee, 19 September 1958, 9/11/91, AW Inc. [DB pp. 358-359]
[310] *In Re Wright's Objection*, [1959] NZLR 922.
[311] ibid.
[312] ibid.
[313] ibid., p. 924.

improvements', but he also did not consider that this should be necessary as 'all we are required to do is to fix the total value of the improvements. On the evidence before us we can do so only by holding that the difference between the unimproved and capital value is the value of the improvements.'[314] Judge Archer was concerned that where valuers had drawn up schedules allocating separate values to each improvement, that the valuers could be 'tempted to deduct the amount of that valuation of the improvements from the capital value in order to find the unimproved value'. This practise would be 'contrary to the directions of the highest Courts.'[315] This practise had also been heavily criticised by the Royal Commission into Vested Lands (see section 2.1), and was one of the problems which the Maori Vested Lands Administration Act 1954 had been designed to prevent.

In regard to the assessment of unimproved value, Judge Archer recognised that this was a difficult task. One reason for the difficulty was that it required some knowledge about the state of the land at the commencement of the lease. Furthermore, the assessment of the market value of the unimproved value at the end of the lease would require reference to comparable sales, of which there were very few. Judge Archer suggested that valuers had to rely on the rating roll valuations made by the Valuation Department, which were guided by maintaining a comparable level of unimproved values within defined districts. However, he pointed out that there was a danger in relying too heavily on Valuation Department information, because that was normally compiled for rating purposes. This meant that it was usually subject to appeals seeking to reduce the unimproved value, with the result that 'the Department's valuations are usually found to be on the conservative side'.[316]

Judge Archer commented on the role that the Land Valuation Court had under the Maori Vested Lands Administration Act. He laid out that the court was only concerned with the special valuations made by the Valuer-General and had no power to consider whether the compensation to be paid to the lessee was adequate.[317] This finding was in line with his clearly expressed opinion that the value of improvements was a mathematical figure found by subtracting the unimproved value from the capital value, rather than an assessment of the individual cost of work done by the lessee.

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[314] ibid., p. 923.
[315] ibid., p. 924.
[316] ibid., p. 925.

Having discussed the principles involved in making the valuations, Judge Archer then considered the specifics of the Wright case before the court. He commented that all the valuers had assumed (without the presentation of evidence) that the property had originally been covered in heavy 'bush', and that the parties had agreed that the proper method of assessing unimproved value 'was to envisage a sale of the land in its unimproved state and in bush, as at June 30 1957.'[318] However, none of the valuers were able to refer to any comparable sale of unimproved land. Judge Archer then referred to the government valuations of the property during the period of the lease:[319]

| Year | Unimproved Value | Value of Improvements | Capital Value |
|---|---|---|---|
| 1908 | £1,458 | £62 | £1,520 |
| 1913 | £2,456 | £1,534 | £3,990 |
| 1921 | £3,561 | £4,127 | £7,688 |
| 1929 | £1,650 | £6,926 | £8,576 |
| 1937 | £1,293 | £5,317 | £6,610 |
| 1948 | £1,370 | £8,115 | £9,458 |
| 1953 | £1,345 | £11,575 | £12,950 |
| 1957 | £2,410 | £20,030 | £22,440 |

The above table demonstrates the point discussed in Part 2.1 of this report, that the valuation method had resulted in the unimproved value of the land decreasing as a percentage of the capital value after the 1920s. The special valuation made in 1958 had found the unimproved value to be less than that of 1913. Judge Archer found this outcome to be highly unlikely for two reasons:

> (1) We find it difficult to believe that land which in its natural state would have realized £2,456 in 1913 when it was an isolated 'back-blocks' farm would not be worth more today when served by a main highway and with the advantage of modern amenities. (2) If the capital value of the land has increased from £3,990 in 1913 to £22,444 or more in 1957 we find it difficult to believe that this increase in value is to be attributed solely to an increase in the value of the improvements.[320]

After comparing all the evidence and arguments submitted by the valuers, the court concluded that the three valuers called by the Maori Trustee were preferable, and that the

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[317] ibid., p. 922.
[318] ibid., p. 925.
[319] ibid., p. 926.
[320] ibid.

valuation approach taken by MacFarlane for the Maori Trustee was 'to be preferred'.[321] The court then made the following valuations: [322]

| | |
|---|---|
| Total Value of Improvements | £23,095 |
| Unimproved Value | £4,205 |
| Capital Value | £27,300 |

This was a reduction of £7,095 from the value of improvements awarded by the Land Valuation Committee. The decision meant the Maori Trustee had to pay Wright £23,095 compensation.

Following the decision of the Land Valuation Committee in the Wright case, the Maori Trustee had asked for a new valuation of the Forsyth lands by the Valuation Department and the trustee's own staff. The 1958 Special Government Valuation of 2,921 acres of the Forsyth Estate assessed the capital value at £30,300, the improvements at £25,820, and the unimproved value at £4,480.[323] The Maori Trustee was anxious to be able to add the Forsyth property to that of Wright, so that it could proceed with plans for a farm station. Initially, the Maori Trustee preferred that the Forsyth valuation went before the Land Valuation Court.[324] This was to ensure that it had acted properly:

> In dealing with the questions of the compensation to be paid the outgoing lessees in Wright's and Forsyth's area, the Maori Trustee has always felt that he should seek determination of the Land Valuation Court as to the amounts. In Wright's case, which was the first property to be acquired, the Maori Trustee had this course followed. There was a finding by the Land Valuation Committee from which the Maori Trustee appealed. As a result of this the amount fixed by the Committee was reduced and the final figure was one that we considered reasonable.
>
> It has been suggested in Wright's case that there be private negotiation and settlement without going to the Committee. The Maori Trustee decided that, as Trustee, he should have a determination by a judicial body. He would get sound expert advice as to values and the best legal representation at the hearing. In this way he would have done his duty fully and the decision would be obtained from a judicial body. This was done.[325]

In the case of the Forsyth lease, the Maori Trustee had been intending to follow the same course of action, because the estate was arguing that the improvements were worth £49,000. However, the Maori Trustee recognised that if a settlement could be negotiated earlier, it could resume the land sooner and farm it in conjunction with Wright's, which would make both properties more viable. The trustee also noted that while the Forsyth Estate retained

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[321] ibid., p. 928.
[322] ibid.
[323] Valuation of Lessee Mrs Justina Falkland Forsyth's Land, no date, 9//11/92 vol 2, AW Inc.
[324] Maori Trustee to District Officer, 8 September 1959, 9/11/92 vol 2, AW Inc.

possession of the land the trustee could not dispose of the timber asset which was necessary to fund the compensation finance. After the *Re Wright's Objection* decision, the trustee expected that the Forsyth Estate could be convinced to reduce it's claim.[326]

The Forsyth Estate entered into further negotiations with the Maori Trustee in 1959 and said that it would settle for £34,000 but the trustee was not prepared to pay more than £33,000.[327] However, the Maori Trustee then noted that if the case went before a judicial body, 'there was a certainty that any Committee or Court would arrive at a compromise somewhere between the two sets of figures'. The financial benefits of a negotiated settlement were to the advantage of the owners, because the 'earlier we settle, the earlier we will get some money from the timber to reduce the debt and to reduce the interest bill'.[328] While the Forsyth Estate held the leases the Maori Trustee found itself unable to have the timber assessed and valued.[329] After 'weighing all the considerations' the Maori Trustee 'agreed on settlement at £34,500, possession to be given on 15 February, 1960'.[330]

### 3.3.2 Ohorea Station Operation

The Maori Trustee had intended to pay for the costs of resumption of the Wright and Forsyth leases and initiate farming the land as a station from the General Purposes Fund. In 1955, when the resumption had initially been raised, the District Officer had suggested that: 'If necessary any gap [in finance] could be bridged by the sale of or on the security represented by the timber in the 700 acres of bush on the Forsyth leases'.[331] Although it had previously indicated that £100,000 could be made available, in August 1957 the General Purposes Fund had been depleted due to many 'unlooked for calls' on the fund. This meant that the Maori Trustee was investigating other ways of financing the resumption, including the possible sale of the timber on the Forsyth lease, estimated to be worth £50,000.[332] However, by October 1957 the Maori Trustee indicated that recent calculations meant that it would be possible to finance the resumption for the General Purposes Fund.[333]

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[325] Secretary to District Officer, 5 November 1959, 9/11/92 vol 2, AW Inc. [DB pp. 363-365]
[326] ibid.
[327] Maori Trustee to District Officer, 27 October 1959, 9/11/92 vol 2, AW Inc. [DB p. 366]
[328] Secretary to District Officer, 5 November 1959, 9/11/92 vol 2, AW Inc. [DB pp. 363-365]
[329] District Officer to Marshall Izard and Wilson, 4 February 1958, 9/11/92 vol 1, AW Inc.
[330] Secretary to District Officer, 5 November 1959, 9/11/92 vol 2, AW Inc. [DB pp. 363-365]
[331] District Officer to Maori Trustee, 10 November 1955, 33/0/10, MT Office Wanganui. [DB pp. 624-626]
[332] Maori Trustee to District Officer, 22 August 1957, 9/11/91, AW Inc.
[333] Maori Trustee to District Officer, 2 October 1957, 9/11/91, AW Inc.

An application was then made to the Board of Maori Affairs to approve the advance by the Maori Trustee. The application was for £115,000 to pay the compensation for improvements and the cost of stocking and equipping the blocks as a farm.[334] The application briefly explained the history of the vested lands, and the Maori Vested Lands Administration Act 1954. It commented that the arrangements had been made on the basis that the owners would be given assistance to resume some land: 'Arising from this, the owners have been looking forward to the resumption of some part of the area with the idea of providing a fund to resume other leaseholds in the future. The Maori Trustee is in a position where he feels obliged to meet the wishes of the owners'.[335] The submission explained that the Maori Trustee intended to farm the resumed lands, with the aim of handing them to an incorporation of owners in the future. After the Maori Trustee's advance had been repaid, it was anticipated that the profits from the farm station could finance future resumptions.[336] In November 1957 the Board of Maori Affairs approved the £115,000 advance.[337]

Once the exact amount of compensation to be paid had been settled, and the Maori Trustee had gained possession of the properties, the areas were inspected by the Field Supervisors in December 1959. They confirmed that the Forsyth land should be run in conjunction with the land resumed from Wright. This made a total unit of approximately 3,946 acres with 3,100 in grass, to which additional blocks could be added in subsequent years. The station was given the name Ohorea which was a local place name, which Wright had already been using in some of his farming operations.[338] It appears that the Maori Trustee decided to retain the name Ohorea, rather than it having any significance to the owners. This was done because Ohorea was the current name of the station and a wool brand widely known for its quality. The station also had a good reputation with stock, mercantile and transport firms.

After the inspection, the Maori Trustee decided that a further '£17,626 would be required to spend on further capital work on buildings, livestock and plant.[339] In February 1960 the Board of Maori Affairs approved a further advance of £21,000 from the Maori Trustee's

[334] Board of Maori Affairs Submission, no date [1957], 9/11/91, AW Inc.
[335] ibid.
[336] ibid.
[337] Board's Decision, 4 November 1957, 9/11/91, AW Inc.
[338] Action Sheet, Ohorea Station, no date, 6/45/0 pt 3, AW Inc.

General Purposes Fund for the development of the farm station. This brought the total advance of funds to £136,000.[340] This debt was to be a charge on Ohorea Station to be repaid from farm profits and timber royalties.

After the Maori Trustee had finally secured and established Ohorea Station, potential changes in government policy threatened the status of the vested lands. In 1960, amid government concern at the increasing fragmentation of Maori land ownership, the Acting Secretary for Maori Affairs, J.K. Hunn, produced a report on, among other things, the best way to prevent fragmentation and protect Maori assets. Hunn recommended greatly increasing the power and role of the Maori Trustee to acquire uneconomic and other interests in multiply owned land.[341] The report recommended that the interests acquired could be used to fund the Maori Education Foundation, or consolidated into land holdings for eventual Maori farming. Hunn strongly favoured using the funds and lands acquired as a national endowment, rather than working on a regional or iwi basis.[342]

Blane, from the Maori Trustee's office wrote to the Secretary of Maori Affairs urging that Hunn's recommendations could not be applied to the vested lands, particularly Ohorea Station. Blane explained that the vested lands had been leased with the expectation that they would be returned to the Maori owners after 50 years. However, this had been altered by the Maori Vested Lands Administration Act 1954. According to Blane, a condition of the Maori owners agreeing to the terms of the 1954 Act was that the Maori Trustee would advance funds to resume a block of land, which became the Ohorea Station.[343] The trust under which the trustee held the station was that after the advance had been repaid, the revenue from the station would be used to resume more land: 'the idea is to give effect to the original plan that the land should go back to the use and occupation of the representatives of the owners as soon as that can be brought about'.[344]

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[339] Assistant Controller of Maori Land Settlement to Maori Trustee, 7 December 1959, 9/11/92 vol 2, AW Inc.
[340] File Note, Trust Section, 1 March 1960, 9/11/92 vol 2, AW Inc.
[341] Extract from Report on Department of Maori Affairs, 24 August 1960 by J.K. Hunn, conclusions, MA 1 2 1/1/14, ANZ.
[342] ibid.
[343] Blane to Secretary Maori Affairs, 11 April 1961, MA 1 2 1/1/14, ANZ. [DB pp. 177-181]
[344] ibid.

Therefore, Blane felt that the specific nature of the trust by which the Maori Trustee administered Ohorea Station and the vested other lands was such that any attempt to divert interests or funds into a national pool would be strongly resisted:

> your idea of applying the conversion principle cannot be gainsaid. Commitments have been made in the cases cited to the effect that whatever benefits would accrue from what was being done would enure primarily for the benefit of the owners. To turn around now and say that the owners in the particular lands would be deprived of their interests without compensation on the basis that the benefit would go to a much wider class would, I imagine, be to invite trouble.[345]

No legislation was passed at that time to implement the recommendations made by Hunn regarding the vested lands.

In 1959 the Maori Trustee had stressed that the sale of timber on Forsyth's land would 'help financial arrangements'.[346] The Maori Trustee saw the disposal of timber on the vested lands blocks as a means of toping up the sinking fund, which it maintained could be used to clear the station debt:

> As to the disposal of the moneys arising from the sale of any timber it seems clear enough that the money should be retained, in every appropriate case, as part of the sinking fund to pay for the improvements. Any proceeds of the sale of timber on the Ohotu 1C2 Block should be applied in reduction of the amount advanced by the Maori Trustee. Under section 64 (3) of the Maori Vested Land Administration Act, 1954, all expenses and liabilities incurred by the Maori Trustee in the conduct of the farming operations are a charge upon the revenues received from the land. There is no express provision authorising the Maori Trustee to retain the timber royalties in other cases, but it is proper to use the royalties for sinking-fund purposes.[347]

In 1961 the Maori Trustee granted timber cutting rights over part of Ohorea Station to the Levin Logging Company for a seven year term from 1 April 1961. It sold the cutting right for '£62,124 plus small royalty for post splitting and windfalls'.[348] A condition of the grant was that the grantee was required to construct a road from the Papapara Highway across the station for the extraction of the timber.[349] This road was also seen as improving access for farming activities.

The royalties from the Ohorea timber, as well as being used to reduce the debt, were used to purchase adjoining blocks so that access could be improved to the southern portion of the

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[345] ibid.
[346] Maori Trustee to Department of Maori Affairs, 8 September 1959, 9/11/92 vol 2, AW Inc.
[347] Maori Trustee to District Officer, 23 January 1959, 9/11/92 vol 1, AW Inc. [DB p. 361]
[348] File Note, Timber Ohotu Station, no date, 6/45/3/1, AW Inc.
[349] Assistant District Officer to Board of Maori Affairs, January 1962, 9/11/92 vol 2, AW Inc.

station.[350] The southern portion of the station was cut off from the Parapara Highway by the Mangawhero River and two sections of Maori freehold land, Ohotu 1A2B and Part 1B. The acquisition of Ohotu Part 1B and 1A2B would create a single area with the southern part of the farm. The purchase of Ohotu 1A2B would also provide a suitable area for an air strip for topdressing. The total cost of purchasing both blocks was estimated at £1,070. It was also argued that the purchase of these blocks would make the building of a new bridge more economic.[351] The Maori Trustee applied to the Board of Maori Affairs to negotiate for the purchase of Ohotu Part 1B and 1A2B for inclusion in Ohorea Station.[352]

In May 1962 the Maori Trustee called meetings of owners for Ohotu 1A2B and Part 1B.[353] In August 1962 the assembled owners of Ohotu 1A2B voted to sell the block to the Maori Trustee for £770. Four owners were present at the meeting. A Maori Trustee representative explained that the Maori Trustee wanted to acquire the block to provide easy access to Ohorea Station. It was pointed out that the owners of 1A2B were also owners of Ohotu 1C2, and as such would share in the future benefits from Ohorea. Wainuiarua Hiriti, who owned the largest single interest of 12 shares (out of a total of 48 shares), opposed the sale. The other three owners, who held 6.5 shares each, voted in favour of the sale and the resolution was passed by 19.5 shares to 12 shares. Hiriti signed a memorial of dissent against the motion.[354]

When the sale came before the Maori Land Court for confirmation, the court decided that it was 'not practical to cut out 12 acres' for partition. Judge Davis noted that it was: 'Not [an] easy matter for Court to decide' and it 'sympathises with owner who does not wish her last piece of freehold to be sold'. However, the Judge said there had been 'quite a good attendance at Meeting of owners and majority decided to sell' and 'Some even changed their views as expressed before Meeting of Owners'. The court concluded that the 'Maori Affairs

[350] File Note, Timber Ohotu Station, no date, 6/45/3/1, AW Inc.
[351] Trust Section to District Officer, 23 March 1961, 9/11/92 vol 2, AW Inc. [DB pp. 367-368]
[352] Assistant District Officer to Board of Maori Affairs, 1 January 1962, 9/11/92 vol 2, AW Inc.
[353] Application to Summon Meeting of Owners, 14 May 1962, 9/11/92 vol 2, AW Inc.
[354] Statement of Proceedings of Meeting of Assembled Owners, 24 August 1962, 3/6416, MLC Wanganui. [DB pp. 618-619]

Act provides for decisions by a majority of owners which is only practical way of dealing with some lands and is according to democratic way of life under which we live'.[355]

After the Maori Land Court confirmed the sale, Wainuiarua Hiriti appealed to Ralph Hanan, the Minister of Maori Affairs, asking for her interest to be protected:

> I write to you Sir, as a broken hearted member of the people you represent. My cousins have sold their shares, in the above block. I have 12 acres in the above block where I was brought up. As you know Sir, I opposed the sale of my shares. Surely the Maori Trustee, who is supposed to look after us, and all our affairs, but the law is pointed out everytime, and soon we shall be deprived of our rights, liberties and privileges, in respect of our lands and forests. The continued difficulties, we are at the hands of the learned and the business kind of people. Regulations are too much for us to accept, therefore Sir, I plead to you to save me, and many others under the same sufferings. Surely the Maori Trustee can fence me off my 12 acres, without putting the pressure on me. My 12 acres is worth more than £25. I cannot sell Sir, and I have read of your addresses in the newspaper, defending the Maori people and race, pointing to the world of our finer points. We respect you for being proud of us. Our pride of race, lies in our heritage, and land, where the Ahi Ka of our departed parents and ancestors were lit.[356]

The response from Hanan pointed out that the owners were to receive a fair price for the land, which was ten percent more that the special valuation. Assuming that Wainuiarua Hiriti was under the impression that she would only receive £25 for her interest, it was pointed out that her share would be approximately £180. However, it is possible that Hiriti's reference to her share being worth more than £25 referred to the Maori Trustee's power to compulsorily acquire uneconomic shares worth less than £25. She may have been pointing out that the Maori Trustee did not have the power to compulsorily purchase her land. Overall, the Minister said that the resolution of the owners had to stand:

> The Court gave due consideration to your objections to the sale; but the majority of the owners decided to sell, and in all the circumstances, the Court decided to confirm the resolution.
>
> I understand your sentimental attachment to the land, and how deeply you feel about it; but, by itself, the block was not capable of being farmed economically.[357]

The meeting of owners of Ohotu 1B was held in November 1962. The meeting was attended by five owners who owned 110 shares out of 114 shares in the block. The resolution to sell to

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[355] Extract from Wanganui Alienation MB 4/193, 195-198, 10 October 1962, 3/6416, MLC Wanganui. [DB pp. 620-622]

[356] Wainuiarua Hiriti to Minister of Maori Affairs, 5 December 1962, AAMK 869/1211c 54/23/6 vol 4, ANZ. [DB p. 48]

[357] Minister of Maori Affairs to Davis [Hiriti], 18 December 1962, AAMK 869/1211c 54/23/6 vol 4, ANZ. [DB p. 49]

the Maori Trustee for £1,342 was carried unanimously after 'prolonged discussion'.[358] The sale was confirmed by the Maori Land Court.

In November 1962 a meeting of owners of the Ohorea Station was told by Assistant District Officer McKellar that the scheme consisted of 3,946 acres, of which 3,100 acres was in grass and a further 750 acres was in bush which was suitable for development. The cutting rights over the bush area had been sold to the Levin Logging Company for £62,000. McKellar said that there had been considerable development work, including new stock and the purchase of Ohotu 1A2B and Part 1B. He explained that the purchases would improve access and, because the majority of those selling were already owners in the station, they were 'in effect, not losing the land but losing the size of their share own previously'.[359]

In 1962 the Ohorea Station debt was £94,857.[360] The Maori Trustee continued to investigate ways of reducing the station's debt. It was noted that if 'it were not for the timber royalties, it would be a poor look out for the Maori Trustee's debt'.[361] Morrison of the Trust Section said that consideration should be given to using £16,000 from the wider Ohotu 1C2 sinking fund account towards reducing the station debt.[362] The sinking fund was the accumulated half of the rents from areas of Ohotu 1C2 being leased, and was intended to be used to pay compensation when those leases expired. The District Officer pointed out that if the sinking fund account was used to pay the station debt, a saving in interest on the debt would be made. The station was paying 5.5 percent interest on its debt and the interest earned by the sinking fund was 4.25 percent. He also noted that using the sinking fund account would make the General Purposes Fund available for other purposes.[363]

The Officer Solicitor offered the opinion that further legislation would be required to enable the trustee to use the sinking fund to reduce the station debt. The Maori Trustee also calculated, by projecting the figures over a period, that the short term gains from juggling the various accounts might result in a loss in the long term:

> The effect of this is that…there will, assuming that the interests rates remain constant, be an

[358] Statement of Proceedings of Meeting of Assembled Owners, 14 November 1962, 3/6415, MLC Wanganui.
[359] Meeting of Owners of Ohorea Station, 28 November 1962, 6/45/3/1, AW Inc. [DB pp. 302-308]
[360] District Officer to Secretary Maori Affairs, 27 August 1962, 9/11/0, AW Inc. [DB p. 348]
[361] Maori Trustee to Wanganui Maori Affairs, 28 August 1962, 9/11/0 vol 2, AW Inc. [DB p. 346]
[362] Morrison to Mainwaring, 9 July 1962, 9/11/0 vol 2, AW Inc. [DB p. 347]
[363] District Officer to Secretary Maori Affairs, 27 August 1962, 9/11/0 vol 2, AW Inc. [DB p. 348]

> over-all loss to the owners by using the sinking fund in reduction of the Station debt.
>
> Putting aside arithmetic, the proposition really emerges in this way: will the investment of the sinking fund in the Station produce a greater return than 4 ¼%? The answer to this probably is that it ought to, but we don't know for certain that that will necessarily be the result.[364]

The Maori Trustee recommended delaying any decision until future annual accounts were available.[365]

In December 1963 owners of the Ohorea Station met with Department of Maori Affairs officers to discuss the station's progress. The owners were informed by District Officer Stephenson that the scheme 'profit this year was £5,704 against last year's profit of £2,569' which was due to better wool returns and livestock trade. Rangi Mete Kingi asked Stephenson how much timber milling royalties the station could earn. He was informed they could expect 'another £38,000 in royalty money'.[366] By March 1963, 2,152,000 feet of timber had been extracted out of an appraised total timber figure of 5,403,900 feet. This left 3,251,700 feet of timber remaining. The District Officer said that this amounted to the removal of two-fifths of the timber and the remainder would be removed by about mid 1965.[367]

Hikaia Amohia said that he believed that the bush area of the block should be cleared and grassed once the timber had been removed because the regeneration of undergrowth made the land more expensive to develop. He was told that the department had 'nothing in our programme for the development of the bush area before 1966' and its 'policy now is to concentrate on greater production from the present area.' The District Officer added that it was 'not the Maori Trustee's job to completely develop the place'. He outlined the Maori Trustee's overall objectives for the station:

> It is the intention to develop and run the farm as a station until the debt to the Maori Trustee has been reduced to a stage which would enable the property to be taken over by an Incorporation and then Maori Trustee could provide finance for the Incorporation if necessary. There is no suggestion that we should spend large sums of money on development. The object is to get the debt down as quickly as possible and to incorporate.[368]

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[364] Maori Trustee to Wanganui Maori Affairs, 14 September 1962, 9/11/0 vol 2, AW Inc. [DB p. 349]
[365] ibid.
[366] Meeting of Owners of Ohorea Station, 11 December 1963, 6/45/3/1, AW Inc. [DB pp. 309-318]
[367] District Officer to Secretary, 26 June 1963, 6/45/0, AW Inc. [DB p. 300]
[368] Meeting of Owners of Ohorea Station, 11 December 1963, 6/45/3/1, AW Inc. [DB pp. 309-318]

In 1964 the station owners and the Department of Maori Affairs discussed the return of the station to the owners control. Rangi Mete Kingi cited the case of Morikaunui, which had been returned debt free and with substantial cash reserves. He asked if the same position would be possible for Ohorea. McKellar said he was unable to give a definite answer at this stage. Mete Kingi proposed a motion that the owners wished the land returned when it was debt free, which was seconded by Bailey. Mete Kingi envisaged that the owners could take the station back within five years but noted that: 'Reserves [financial] were important and these must be held as safeguard against fluctuations in prices'.[369] In 1964 the Maori Trustee increased its administration commission for Ohorea Station from £633 to a minimum fee of £1,000 per annum.[370]

The 1965 meeting of Ohorea Station owners was told that £61,000 had been received from timber royalties and that this figure could increase by £2,000 from unmarked trees. Bennett noted that the farm had steadily improved over the past few years to the point where the 'bulk of the debt has been repaid from the royalties'. He asked when the station would be returned to the owners. Cater replied that it was 'very difficult to set a period' because there was 'more work to be done in improving the property'. Hikaia Amohia wanted the immediate return of the station to the owners. Other speakers urged caution and maintained that the debt should be repaid before the station was returned to the owners' control.[371]

The 1966 meeting of Ohorea Station owners told that, although there had been a profit of £9,990 that financial year, in the future they would have to 'face up to substantial tax payments'. Mete Kingi said that the debt had been reduced substantially due to timber royalty payments, and he suggested that sinking funds could be used to further reduce the debt. McKellar said that he would pass these comments on to the Maori Trustee.[372]

In May 1966 the original advance of £136,000 that had been made in September 1960, had been reduced to £61,880. The annual accounts since May 1964 had shown yearly profits of £11,365, £9,048 and £9,990.[373]

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[369] Meeting of Owners of Ohorea Station, 14 November 1964, 6/45/3/1, AW Inc. [DB pp. 319-325]
[370] Maori Trustee to Department of Maori Affairs, 24 June 1964, 6/45/0, AW Inc.
[371] Meeting of Owners of Ohorea Station, 20 November 1965, 6/45/3/1, AW Inc. [DB pp. 326-331]
[372] Meeting of Owners of Ohorea Station, 17 December 1966, 4/45/3/1, AW Inc. [DB pp. 332-333]
[373] District Officer to Department of Maori Affairs, 18 January 1967, 6/45/0, AW Inc.

In 1968 the Ohorea Station owners were told that there had been a profit of £7,252 which was nearly £2,000 less than the previous financial year because of a decrease in the price of wool and an increases in expenses. The owners were told that the debt had remained static for the past three years because the trustee had spent £30,000 on capital improvements. This work had been undertaken with the agreement of the advisory committee of owners.[374]

By 1968 plans were under way to revest all the Whanganui vested lands in the owners (see section 4.3). In July 1968 the Ohorea Station advisory committee met with Maori Trustee officials and were informed that, although the administration of the station might change, the debt to the Maori Trustee of $111,000 would still have to be repaid. Cater said to 'achieve any surplus for the owners or for resumption purposes was very difficult' and 'expenditure must be kept to our absolute minimum'. Amohia asked if the repayment of the debt was essential before return of control to the owners and Cater said that the Maori Trustee 'would most probably insist upon repayment'.[375]

However, in March 1969, when an application for revesting in the incorporation was before the Maori Land Court, the owners of the Ohorea Station were told by Mete Kingi that 'the debt to the Maori Trustee should not be repaid but should remain on mortgage' and the 'resumption fund held by the Maori Trustee should be left intact for resumption purposes and for working capital'. He suggested that Ohorea should be run in a similar way to Morikaunui.[376]

In October 1969 the Ohorea Station advisory committee met with the Maori Trustee for what they were informed would probably be one of the last meetings run by the Maori Trustee for the station. The District Officer stressed that, in view of the intended take-over, the committee should seriously consider what capital expenditure work should be undertaken. Hori Kingi Hipango and Mete Kingi expressed support for this cautious position. Mete Kingi concluded the meeting by stating that he was sure that an atmosphere of cooperation would

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[374] Meeting of Owners of Ohorea Station, 9 March 1968, 6/45/3/1, AW Inc. [DB pp. 334-336]
[375] Meeting of Advisory Committee of Ohorea Station, 22 July 1968, 6/45/3/1, AW Inc. [DB pp. 337-341]
[376] Meeting of Owners of Ohorea Station, 1 March 1969, 6/45/3/1, AW Inc [DB pp. 342-343]; Morikaunui was the Morikau 1 block which had formerly been vested for Maori occupation but had been returned to an incorporation of owners.

continue between the owners and the Maori Trustee once the owners had taken over control.[377]

## 3.4 Summary

The Maori Vested Lands Administration Act 1954 governed the Maori Trustee's administration of the Whanganui Vested Lands. Section 2 of the Act provided definitions for capital value, improvements, the value of improvements and unimproved value. The precise meaning and effect of these definitions on how land should be valued was to become the subject of important legal cases. These definitions brought the way that the vested lands were to be valued into line with the method used under the Valuation of Land Act 1951. The residue method of determining unimproved value was abolished. Instead, the 'value of improvements' was defined as the 'added value' which the improvements gave to the land. This required a comparison between the value of the land before the improvements (unimproved value) and its current market value. Instead of individually assessing the cost of each improvement, the valuers were required to consider the overall effect of the improvements on the value of the land. These definitions were reinforced by Section 13 of the Act which required that the sum of the unimproved value and the value of improvements should always equal the capital value.

Maori Trustee administered 246 separate vested land leases. Negotiations regarding the offer and acceptance of renewed leases under the terms of the 1954 Act were often protracted. The Act created a minimum annual rent, which was to be twice the previous rent. Rent was to be set at the minimum annual rent, or five percent of the unimproved value if that was higher. In the majority of cases the Maori Trustee, acting under advice from the District Valuer, assumed that the unimproved value had not greatly increased, and automatically implemented the minimum annual rent. In those cases where special valuations were made to determine unimproved value, the result often led to negotiations between the Maori Trustee and the lessee to reach a compromise rental. When the leases became due for revaluation for rent review purposes after ten years, the Maori Trustee and Valuation Department decided that special valuations should only be carried out for leases where it was likely that the

[377] Meeting of Advisory Committee of Ohorea Station with Maori Trustee, 20 October 1969, 6/45/3/1, AW Inc. [DB p. 344]

unimproved value had increased. In 1964 the District Valuer decided only to value 30 out of 110 leases due for review at that time.

The 1954 Act required that if the land contained improvements which belonged to the owners, the lessee had to purchase those improvements at the price of the special valuation. When such improvements were valued, the Maori Trustee usually objected that the valuation was too low, and entered into negotiations with the lessee. The Wanganui staff were instructed not to accept a figure lower than the special valuation, and later reported that they had generally achieved a 20 percent increase on the valuation.

Inspections and valuation reports often referred to the poor nature of the country, lack of access, and problems caused by definition of leasehold areas. In reality, many lessees were farming more than one leasehold unit in order to create a viable farm. This meant that individually the sections, particularly those without access, were unattractive to anyone but the adjoining farmers. This situation meant that the Maori Trustee often had to accept compromise rentals or payments of owner's improvements as there was little prospect of successfully advertising the lease for tender.

The example of the Tauakira blocks leased by the Marshall brothers illustrates the situation when the lessees refused to accept a new lease under the terms of the 1954 Act. Because the lessees did not want to pay double the previous rent, and the cost of the owners improvements, they refused the offer of a renewed lease. The blocks involved had no access except through other lands being farmed by the Marshalls. Under the 1954 Act the Maori Trustee was required to advertise the lease for public tender, but no offers were received. In the meantime, the Marshalls were able to continue occupying the land without a lease extension while paying the rent required under the previous lease. Because no new lease could be arranged, this meant the lessees had the use of the land between 1954 and 1969 paying only half the rent they would have been liable for under a renewed lease.

The Maori Vested Lands Administration Act 1954 had been negotiated by the representatives of the owners on the expectation that the Maori Trustee would make funds available to finance land resumptions. The Maori Trustee indicated that £100,000 could be made available. Instead of dividing this amount proportionately among the vested blocks, it was

decided to use the full funds available to resume two leases in the Ohotu 1C2 block. This was the largest vested block, with over 2,000 owners, and was seen as a way of providing benefit to the largest possible proportion of vested landowners. Financing the Ohotu resumptions was expected to be assisted by the sale of timber. The two leases chosen were held by Wright and Forsyth and contained a total area of nearly 4,000 acres.

Special Government Valuations were made for the resumptions to determine the amount of compensation to be paid for improvements. Under Section 9 of the 1954 Act the lessees were entitled to 100 percent compensation. The Maori Trustee decided not to appeal the special valuation of the Wright leasehold, but Wright appealed against the value of improvements. The Land Valuation Committee increased the amount of compensation from £20,030 to £30,190. The Maori Trustee appealed this decision to the land Valuation Court. Judge Archer decided that improvements were not to be valued individually, but had to be assessed as part of the comparison between the capital value and the unimproved value to determine the value added to the land by improvements. Judge Archer reduced the compensation payable to £23,095. After this decision the Maori Trustee negotiated with the Forsyth Estate. In the interest of avoiding further delays, so that the timber could be sold, the Maori Trustee accepted a compromise figure of £34,500.

In 1957 the Board of Maori Affairs approved the Maori Trustee advancing £115,000 to resume the Wright and Forsyth leases and establish a farm station. The application acknowledged that the Maori Trustee was obliged, as a result of the previous negotiations, to assist the owners to resume land. After the compensation had been increased, the Board of Maori Affairs approved a further £21,000 advance, making a total of £136,000 to be charged against Ohorea Station. The Maori Trustee planned to repay the advance from farm profits and timber royalties. The aim was to return the station to the control of the owners and to establish a fund to finance future resumptions. The timber on the Forsyth area was sold for £62,000 in 1961.

As well as the resumed land, the Maori Trustee decided to purchase two areas of Maori freehold land to improve access to part of Ohorea Station. The owners of these sections were also 1C2 owners. The owners of Part Ohotu 1B voted unanimously for sale, but the largest shareholder in Ohotu 1A2B was strongly opposed to selling. She was outvoted, and despite

her protests, the Maori Land Court and the Minister of Maori Affairs said that the majority decision must hold, and that it would be impractical to partition out her 12 acres.

In 1962 the Maori Trustee stated that its role in running the Ohorea Station was to repay the debt rather than develop the land to its full capacity. Meetings of owners discussed the possibility of using the sinking fund for the other Ohotu 1C2 leases for the repayment of the Ohorea debt. These proposals led eventually to the amalgamation, incorporation and revesting of all the Whanganui Vested Lands described in the next section.

# Part Four: Amalgamation, Incorporation and Revesting 1962 - 1969

During the 1960s, representatives of the owners and the Maori Trustee discussed ways of improving the administration of the vested blocks, and protecting against shares being sold. The decision was made to amalgamate all the leased blocks into one unit, for the benefit of all the owners of the various blocks. Legislative changes in 1967 created provisions which would facilitate the sale of individual interests to allow the lessees to purchase parts of the vested lands. Legislation also threatened the ownership of small or 'uneconomic' interests in the amalgamated block. In response, the representatives of the owners sought a management structure which would prevent private alienation while retaining uneconomic interests and unclaimed dividends for the benefit of the owners of the amalgamated block.

These decisions were made in light of the example of the Morikaunui Incorporation. This incorporation had been formed to administer the Morikau station block. Morikau 1 and Ngarakauwhara blocks had been vested in the Aotea Maori Land Board for occupation by the owners, and had been run by the board and Maori Trustee as a farm station. When the decision was made to revest Morikau Station in the owners, the Morikaunui Incorporation had been formed.[378] The Morikaunui Incorporation created the Whanganui Trust to provide funds for local Maori educational and cultural purposes. The possibility of retaining the unclaimed dividends and uneconomic interests in the Atihau-Whanganui block for the benefit of local Maori through the Whanganui Trust also influenced prominent vested landowners.

## 4.1 Amalgamation of Titles into Atihau-Whanganui Block

The following section details the background to the creation of the amalgamated Atihau-Whanganui block. Under Section 435 of the Maori Affairs Act 1953 the Maori Land Court could amalgamate the title to two or more separate pieces of Maori land into one new block. The court had to be satisfied that the areas to be amalgamated 'could be more conveniently or

[378] Detailed information on the history of Morikau 1 and the formation of the Morikaunui Incorporation can be found in Tony Walzl, 'Whanganui Land 1900-1970', Crown Forestry Rental Trust, February 2004; and Esther Tinirau, 'Morikau Farm to Morikaunui Incorporation', 1993, Report to Waitangi Tribunal, Wai 157, A76.

economically worked or dealt with if it were held in common ownership under one title'.[379] The relative interests of each owner in the amalgamated block was to be calculated by the respective values of each individual's share in the separate blocks. The effect of an amalgamation order was to sever hapu or whanau ties with particular blocks of land. Instead, the owners of each separate block now became owners of the entire amalgamated area, with no differentiation of interests or ties to particular locations. Amalgamations usually involved adjoining blocks, or land within a close geographical area. However, the vested lands amalgamation was to include blocks scattered over a wide district, involving different Maori communities throughout the Whanganui region. The reasons for the decision to amalgamate the separate vested blocks into one unit are explained below.

### 4.1.1 Planning Towards Amalgamation

The potential for amalgamating the Whanganui vested lands had been discussed by officials since the mid 1950s as a means of improving the title situation. In January 1955 District Officer Brooker suggested that a meeting of owners should be held to discuss what had been happening to their land over the past decade. According to Brooker the 'general body of beneficiaries are entirely uninformed either as to the effect of the negotiations conducted by their representatives or the legislation relating' to these negotiations. He argued that any future use of the vested land which 'aimed at preserving individual ownership, in the ultimate, touches phantasy [sic] rather than reality'. This was because the administrative costs of 'maintaining individual ownership is out of all proportion to its intrinsic or sentimental value'. He argued that the increasing numbers of owners with increasingly smaller share interests meant that fragmentation would get worse. Therefore, the District Officer felt that the future use and objectives for the vested land had to be decided with a 'common rather than the individual benefit' being paramount. Despite favouring consolidating the vested lands, he concluded that the work and expense of valuing the timber on the blocks for consolidation could not be justified at that time.[380] The potential difficulties and extensive work involved with an amalgamation meant that, although the idea was mooted, it was not acted upon at that time.

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[379] Section 435, Maori Affairs Act 1953.
[380] District Officer to Secretary, 10 January 1955, 33/0/10, MT Office Wanganui. [DB pp. 627-628]

In February 1962 the Maori Trustee prepared a preliminary feasibility report on amalgamating the Whanganui vested lands. Little further action was taken at that time while the office concentrated on amalgamating the West Coast Settlement Reserves, but the possibility of amalgamating the Whanganui vested lands remained under investigation.[381] It was envisaged that the intended amalgamation of the Whanganui vested lands would follow the same lines as the West Coast Settlement Reserves in Taranaki. The objective of the amalgamation was to amalgamate all the existing vested land titles into one title. The main advantages were that there would be a simplification of the management and administration by creating one title with one rent account and fewer ownership interests.

In October 1962 Title Improvement Officer McInteer investigated in more detail the feasibility of amalgamating the Whanganui vested lands using the West Coast Settlement Reserves as the model. McInteer focused on the vested lands referred to as the 'Ohotu' vested lands, which formed a triangle between Wanganui, Taumaranui, and Ruapehu. He identified that all the vested blocks in this area contained a total of 10,069 owners. Amalgamation of ownership would reduce the number of owners to 5,503, by eliminating duplication of owners in the ownership lists of both Ohotu 1C2 and other blocks. He noted that the ownership number could be further reduced when owners who were not in the Ohotu 1C2 block, but who had interests in more than one other block were taken into account. McInteer had investigated five blocks and found 295 name duplications, which would further reduce the figure of 5,503 to 5,208 owners. He concluded that there 'does not seem to be any doubt that amalgamation would reduce the ownership to less than half the present total for the individual blocks'.[382]

McInteer noted that the Maori Trustee's information on the amount of timber that the vested land blocks contained was incomplete and 'vague'. From the information available he felt that there was no quantity of economically millable timber on blocks other than Ohotu 1C2, 3 and 8. He identified that certain Ohotu areas were already being milled, and that these operations should not be disturbed. However, he recommended that other unmilled areas should not be milled until the amalgamation of titles had been completed:

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[381] Whanganui MB 131B, 8 February 1967, p. 6. [DB pp. 470-504]
[382] McInteer Vested Lands Amalgamation of Titles, 2 October 1962, 33/0/10, MT Office Wanganui. [DB pp. 629-640]

> The valuations of the particular blocks concerned could then be weighted with the value of timber for the purpose of effecting the amalgamation. If something on these lines is not done it would seem that the question of amalgamation would have to be postponed indefinitely till all the millable timber has been disposed of.[383]

McInteer found that various lease records showed that there had been discrepancies in the records as to the size of some of the blocks. These discrepancies had to be rectified before the amalgamation could proceed. As an example McInteer cited Waharangi 4 where the 'discrepancy is 1114 acs 1rd 18 pches. If this 977 acres is accounted for by the fact that this area has been re-vested in the owners….This, however, still leaves a difference of 137 acs 1 rd 18 pches for which I have so far not been able to account.'[384]

McInteer said that, before the amalgamation could proceed, at least three areas which had been revested in the owners would have to be partitioned out of the amalgamation. In his opinion partitioning out these revested areas would 'partially defeat the object of amalgamation because it would leave areas smaller than the parent block but still containing the original number of owners.' As an example McInteer cited Waharangi 3, which had '2 acres odd - 100 or so owners; Waharangi 4- 977 acres - 600 owners; Raetihi 4B -15 acres 154 owners'. He said that in the case of Waharangi 3 the situation could be addressed by making it a 'reservation as originally intended & trustee appointed to it' but this could not be done for Waharangi 4 and Raetihi 4B. He felt that these blocks would either have to be partitioned out of the amalgamation, or the Maori Trustee needed to obtain legislation which would again vest the blocks under its control.[385] McInteer said that the exclusion of Ohorea Station from the amalgamation would also 'defeat the object of amalgamation' because:

> In the case of Ohorea we would still be left with a title containing the present 2000 or so owners of Ohotu 1C2. Eventually a paylist would be required so that distribution of dividends from farm profits could be effected & we would therefore, be no further forward in regard to this block. The same position would arise with other blocks if resumption is contemplated for any of them.[386]

McInteer said that the resumed areas should be included in the amalgamation. He proposed that the 'Ohotu 1C2 owners could receive credit in their valuation for amalgamation purposes, for the Ohorea assets…less the debt on the area'.[387] This policy would not be

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[383] ibid.
[384] ibid.
[385] ibid.
[386] ibid.
[387] ibid.

applied to areas resumed after amalgamation because these resumptions would be on behalf of all the owners who formed the trust, and the farming profits of all the resumed areas would be for the benefit of all the owners. By distributing profits among all the owners equally, McInteer envisaged that the resumption programme could resume the best blocks, instead of resuming areas in all the blocks so that all the owners had access to profits.[388]

McInteer identified Paetawa C as vested land that had been reserved for the owners' own use. He recommended that its reservation status be removed, in which case it could be included in the amalgamation, or that it be revested in the owners. He also suggested that Otiranui 2 and 3, which had perpetually renewable leases, should not be included in the amalgamation scheme unless the leases were surrendered in the future.[389]

The main differences that McInteer identified between the proposed Whanganui vested lands amalgamation and its model, the West Coast Settlement Reserves, were that the vested leases were not 'strictly perpetually renewable', because of the resumption options. He said that this did not create any real difficulties, but reiterated that it was more advantageous to include as many properties as possible in the amalgamation. The other difference between the two amalgamation programmes was that the vested lands could be sold under Section 61 of the Maori Vested Lands Administration Act 1954. McInteer said that the Maori Trustee could have no idea whether any sales would take place, but he suggested that partitioning be a condition of sales, which would keep the amalgamation title clear, and ensure that ownership was confined solely to Maori owners.[390]

McInteer concluded that before the amalgamation could proceed any further, the following issues had to be resolved:

1. The amount of timber that could be milled was assessed.
2. The differences between the acreage on the title documents and leases be clarified.
3. The disposal of areas revested in the owners.
4. The treatment of areas already resumed or to be resumed.
5. The disposal of Paetawa C and any similar areas.
6. Whether Otiranui 2 and 3 should be included in the amalgamation.

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[388] ibid.
[389] ibid.
[390] ibid.

7. The treatment of areas which might be sold at a later date.
8. Consideration of succession fees and land tax.[391]

In November 1962, at a meeting of owners of the Ohorea Station, Rangi Mete Kingi proposed that a resolution be passed that the advisory committee of owners investigate the possibility of amalgamating the Ohotu block. Assistant District Officer McKellar blocked the motion because a meeting of owners would need to be called specifically for such an important resolution. McKellar said that, if a meeting of owners decided that amalgamation should proceed, then the Maori Land Court would make staff available, although he said that any amalgamation would take time because the department was at present amalgamating the West Coast Settlement Reserves. Bailey stated that the 'members of Ohotu 1C2 were in favour of an amalgamation'. The issue proceeded no further at this meeting.[392]

In October 1963 McInteer decided that the 'ultimate reconciliation of the [various figures] of the areas of the vested blocks is a hopeless task' and he felt that the Maori Trustee should reach figures by:

> (a) working from the alleged original area & deducting & adding areas taken & added by Proclamation &
>
> (b) working from lease records, plans & files as to existing areas - as being allowances for losses on re-survey & for the areas of original roads.[393]

McInteer gave a number of examples of how he calculated the size of various blocks. In the case of Morikanui 2 he gave the following analysis of how he addressed a difference of 220 acres between the areas shown on the title (14,560 acres) and the area of the original sections (14,340 acres):

| | |
|---|---|
| Original area in Title | 14,560:0:00 |
| Less areas in new C/Ts | 14,478:0:06 |
| Area disappeared on re-survey | 81:3:34 |
| Area in new C/Ts | 14,478:0:06 |
| Less original area of sections | 14,340:0:00 |
| Areas of original roads | 138:0:06.[394] |

[391] ibid.
[392] Meeting of Owners of Ohorea Station, 28 November 1962, 6/45/3/1, AW Inc. [DB pp. 302-308]
[393] McInteer Reconciliation of Area of Vested Blocks, 10 January 1963, 33/0/10, MT Office Wanganui. [DB pp. 641-646]
[394] ibid.

In December 1963 a meeting of owners of Ohorea Station discussed amalgamating the land. District Officer Stephenson said that it was departmental policy to amalgamate whenever possible, but the 'initiative in amalgamation must come from the people'. He said that the department had began investigating the possibility, but the owners would need to meet and discuss amalgamation before it could go any further. Rangi Mete Kingi said that the owners wanted to amalgamate to 'stop outside influences from nibbling at the boundaries of the land', but they were concerned that the station was not yet debt free. The meeting resolved that a meeting of owners should be called to consider amalgamating the Ohotu blocks. The Ohorea advisory committee were empowered to work with the Maori Trustee on the proposal.[395]

In March 1964 the advisory committee met with the Maori Land Court Registrar and Deputy Registrar. The record of the meeting notes that the committee discussed whether Ohorea Station should be included in the proposed amalgamation. Hikaia Amohia argued that the owners of Ohorea, who had been repaying the loan from the Maori Trustee, should have the opportunity of enjoying a debt free farm when it had been paid off. However, others at the meeting convinced him that because any of the vested lands could have been resumed at the time Ohorea (Ohotu 1C2) was chosen, 'there was no sound reason why the owners of the latter should benefit at the expense of all the owners in the remaining vested lands.' It was also noted that a large proportion of the owners of Ohotu 1C2 were also owners in the remaining blocks. The meeting resolved that it agreed in principle with the Whanganui Vested Land Amalgamation proposal.[396] The blocks included in the proposal were the vested lands within the 'Wanganui-Ohakune-Pipiriki' triangle. This included 37 separate blocks.[397]

In April 1964, 38 'prominent owners', who represented all the blocks, met to discuss the proposed amalgamation. The Deputy Registrar, Byres, while explaining the proposal, argued that the individualisation and fragmentation of Maori land ownership was the antithesis of Maori land tenure. He felt that amalgamating the land would result in 'ownership by the tribe or hapu'. Byres suggested that a united ownership would be in a better position to resist land sales. He explained how the department had carried out the recent amalgamation of the West

[395] Meeting of Owners of Ohorea Station, 11 December 1963, 6/45/3/1, AW Inc. [DB pp. 309-318]
[396] Meeting Held in Court Room, 23 March 1964, Appendix A, Whanganui MB 131B, pp. 99-100. [DB pp. 550-551]

Coast Settlement Reserves, and would use a similar procedure for the vested lands. Byres suggested that if the total rental of the vested blocks (about £8,000 per annum) was applied to the reduction of the debt on Ohorea, then that station would be debt free in four or five years time. This would create a strong asset base for the owners, and assist in the resumption of further lands.[398]

Byres also discussed the issue of the number of small and 'uneconomic' interests in the vested blocks. Ohotu 1C2 had 2,500 owners, over half of whom received less than five shillings rent per half year. Twenty percent received less than one shilling per half year. He asked the meeting to consider what should be done with the interests in the vested lands which would be worth less that £25 or £10 after the amalgamation. He suggested that they could be pooled into an educational trust fund, possibly in conjunction with the fund being established by the Morikaunui Incorporation. Byres was supported by Mete Kingi and Hikaia Amohia, who also referred to the history of the Whanganui iwi who were united by Hinengakau, who 'plaited the rope of peace' along the river by uniting the hapu. The meeting resolved that the Ohorea Advisory Committee should be empowered as the Whanganui Vested Lands Advisory Committee, with the power to add further members to represent other blocks.[399]

The Whanganui Vested Lands Advisory Committee met with the Registrar and Deputy Registrar in June 1964, to decide on the details of the amalgamation which was to be presented to a meeting of owners. It was decided that the meeting should discuss amalgamating the vested portions of the following blocks:

Retaruke
Raetihi
Tauakira
Ohotu 1C2, 2, 3, and 8
Morikau 2
Waharangi 1, 2, 3, 4 and 5
Otiranui.

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[397] Whanganui MB 131B, 8 February 1967, p. 7. [DB pp. 470-504]
[398] Meeting, Proposed Amalgamation, 28 April 1964, Appendix B, Whanganui MB 131B, pp. 101-103. [DB pp. 552-554]
[399] ibid.

This list excluded the vested blocks in the Taumaranui area, 'in which there appears to be little affinity of ownership with the Whanganui Vested Lands.'[400]

The committee resolved that the proposed amalgamation should be based on the unimproved value of the blocks at the commencement of the current leases, adjusted to 1 April 1955. The proposal did not take into account the value of timber on the blocks when processing the amalgamation. Instead, the timber on individual blocks should become the property of all the owners in the amalgamation. The committee also resolved that uneconomic interests should be vested in the Morikaunui Trust.[401]

A meeting of owners was held in Ohakune in July 1964. Notices of the meeting were sent to 2,300 owners and advertised in local and national newspapers.[402] The meeting was attended by over 400 owners. The proposal was explained to those present by Rangi Mete Kingi, who stressed the importance of ensuring that the vested land remained in Maori ownership and could be returned to Maori control at the expiry of the leases. Mete Kingi mentioned recent attempts by lessees to buy the freehold, and government proposals for the compulsory acquisition of uneconomic interests. Part of the proposal put to the meeting was that the uneconomic interests in the amalgamated lands would be diverted to a trust fund, which would ensure that the benefits of the fund remained with the owners, rather than being contributed to the nationwide Maori Education Foundation.[403]

The record of the meeting indicated wide support from the speakers for the amalgamation proposal. Some discussion is recorded as owners sought more details on the uneconomic interests and how timber on the blocks would be dealt with. The meeting of owners passed the following resolutions:

1. That all the vested blocks be amalgamated.
2. That the date of valuation be 1958.
3. That the value of the uneconomic interests be left over to be decided at a later date.

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[400] Meeting of Whanganui Vested Lands Advisory Committee, 5 June 1964, Appendix C, Whanganui MB 131B, p. 106. [DB pp. 555-558]
[401] ibid., pp. 104-107.
[402] Notice of Proposed Amalgamation of Whanganui Vested Lands, Whanganui MB 131B, Appendix D, p. 108. [DB p. 559]
[403] Meeting Held at Maungarongo Pa, Ohakune, 11 July 1964, Whanganui MB 131B, Appendix E, pp. 109-118.

4. That the committee discuss with the Morikaunui Committee the possibilities of amalgamating these two trusts for uneconomic interests and unclaimed moneys.[404]

The meeting also decided that any resolutions regarding the timber should wait until the department gathered more information about the location and value of any timber stands.

The advisory committee met later in July 1964 to discuss which value level should be set as 'uneconomic' shares, and whether to include the value of timber in the amalgamation. The committee was concerned that the level set to define an uneconomic interest should not be such that it actually defined most of the interests as uneconomic. As there were over 2,000 owners, it was possible that defining an uneconomic interest as one worth less than £10 would result in a large percentage of owners being affected. The matter was also complicated by the question of what valuation date to use for defining the uneconomic value, and how that could be reassessed over time. The committee decided that departmental staff should be given time to consult with the Valuation Department and report back. Similarly, it was decided that no decisions could be made about whether to include the value of timber until the committee had more information about its location and value.[405]

In mid August 1964 the advisory committee met to discuss the information the Maori Trustee had obtained about the amount and value of timber on the various blocks. Byres had worked with the Valuation Department to identify possible timber stands from valuation reports. The main timber stands identified were on Ohotu 1C2 and Morikau 2. Some of the Ohotu timber was already being milled as part of the funding arrangement to repay the advance from the Maori Trustee for the Ohorea Station. The Maori Trustee had also approved the sale of some timber on Ohotu 3 and 8, valued at about £1,400. The timber of Morikau 2 was also in the process of being sold, at an estimated price of £23,000.[406]

Departmental staff argued that if the value of the timber was to be taken into account in assessing the relative value of the owner's interests, it would require proper State Forest Service assessments of the amount of the timber, which would delay the amalgamation

[404] ibid. [DB pp. 560-569]
[405] Notes of Meeting of Whanganui Vested Lands Advisory Committee, 17 July 1964, Whanganui MB 131B, Appendix F, pp. 119-124. [DB pp. 570-575]

process. However, if the value of the timber on other blocks was ignored, then when any timber was sold after the amalgamation, the proceeds could be used to repay the Ohorea debt. It was decided that as the proceeds of timber sales could be used for resuming any land for the benefit of all the amalgamated owners, that the value of the timber should not be taken into account in the amalgamation.[407]

The next day a second meeting attended by 200 owners was held at Putiki Marae at Wanganui. Mete Kingi explained the proposal, and said that the current situation was that nearly one million pounds would be required to pay compensation for improvements. At present £4,300 was distributed as annual rent, while £4,300 was retained in the sinking fund to pay the compensation. Byres informed the meeting about the decisions made by the committee to date, and his recent discussions with the Maori Land Court judge about the best ways to proceed. Speeches recorded at the meeting supported the proposal. Toby Bennett outlined the history of the resumption of the Ohorea Station, and 'then appealed to those owners who felt that they had lost the land forever'. He emphasised that 'every acre would come back to them, and that the lands were a good investment'.[408]

Byres then explained the options regarding the valuation date to be used. At the previous meeting it had been suggested that 1958 values should be used, because it was assumed that all the blocks were valued at the same time which would provide a fair basis. However, this option was complicated by the differing circumstances of some leases, whereby in a few cases the owners owned the improvements as well. This meant that the calculation of individual shares based on the unimproved value would disadvantage those who also owned the improvements on their block. Alternatively, using the current value would mean that all the owners owned a proportion of the improvements. The Maori Land Court had also suggested going back to the original values when the lands were first vested. Byres suggested that, rather than coming to a decision now, the meeting should authorise the committee and

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[406] Meeting of Whanganui Vested Lands Advisory Committee, 14 August 1964, Whanganui MB 131B, Appendix G, pp. 125-130. [DB pp. 576-582]
[407] ibid.
[408] Meeting Held at Putiki Marae, 15 August 1964, Whanganui MB 131B, Appendix H, pp. 131-143. [DB pp. 583-595]

department to investigate the implications and feasibility of each option. The meeting agreed.[409]

The meeting considered the use of uneconomic interests and unclaimed funds held by the Maori Trustee. Mete Kingi explained that if nothing was done, these interests would automatically go to the Maori Education Foundation or the Maori Purposes Fund. Toby Bennett told the meeting that he favoured the establishment of a special fund, 'for the benefit of the district alone and not the whole of New Zealand'. The meeting voted unanimously for a special trust to be established.[410]

Byres explained that the timber on Ohotu 1C2 had been sold for £62,000, of which £41,000 had already been paid to reduce the loan to the Maori Trustee. The remaining £21,000 would also go to repay the debt. He said that smaller patches of timber on Ohotu 3 and 8, and Waharangi 4 were doubtful propositions for economic milling, while timber worth £1,400 on Ohotu 3 and 8 was still to be cut. Morikau 2 contained timber worth £23,000 which the Maori Trustee proposed to sell. Byres explained that if this was done with a five year timber cutting grant, the proceeds would be split into five payments of £4,600. This sum would be shared among the 1,300 owners in the block in only small amounts. Alternatively, if the amalgamation proceeded, the whole £23,000 could be applied to repaying the Ohorea debt, or used to resume further land.

The meeting of owners passed the following resolutions regarding the timber:

1. That no timber contracts be made until the amalgamation of all titles has been completed, and that the valuation of the timber be ignored for the purpose of amalgamation.
2. That after the amalgamation, proceeds from all timber royalties and the sale thereof be applied in reduction of the present debt on Ohorea.
3. That no timber be disposed of by the Maori Trustee without prior consultation with the owners or their representatives.
4. That the Maori Trustee look into the matter of using the sinking funds for all blocks in the reduction of the debt on Ohorea.[411]

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[409] ibid.
[410] ibid.
[411] Resolutions Passed at the Vested Lands Meeting, 15 August 1964, Whanganui MB 131B, Appendix H, p. 144. [DB p. 596]

At the 1964 Ohorea Station owners meeting Mete Kingi updated those owners present on the progress of the amalgamation plans. He said that the plan had originally been to amalgamate the Ohotu blocks but had been widened to include Waharangi, Raetihi and Tauakiri blocks. He also explained that a motion had been carried that following the amalgamation, the amount now held in the sinking funds for all the vested blocks should be used to repay the debt on Ohorea Station. Mete Kingi said that this would allow Ohorea to be debt free much more quickly than anticipated.[412]

The committee and the Maori Trustee staff then spent some time investigating the various possibilities of using different valuation dates as the basis for the amalgamation of shares. The results were considered at a meeting of the committee in September 1965. The Maori Land Court's suggestion to use the original values of the land at the time of vesting was found to be impractical, because those blocks had been valued at different dates. In addition, the fact that the blocks were in different local body boundaries, meant that periodic revaluations took place at different years for different blocks. The committee therefore concluded that the most promising date for a common valuation was in 1958, when the renewed leases under the 1954 Act were reissued. It was also hoped that using the renewal valuations would have a minimal impact on the rentals being received by each owner.[413] However, while the committee had assumed that the lease renewals between 1954 and 1958 had been based on special valuations, further research revealed several inconsistencies. For example, some of the renewed leases had been made at the minimum rentals set out in the 1954 Act which were higher than five percent of the valuation, and in many of these cases no special valuation had been made.[414] Furthermore, in at least one case, the rent was less than five percent of the special valuation, and in some cases rentals were based on the capital value of the block.

Maori Trustee staff prepared a paper for the committee outlining the issues which required a decision. As there could be no equitable common valuation date, the Maori Trustee decided it was necessary to have special legislation passed, 'providing for a basis which would be both

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[412] Meeting of Owners of Ohorea Station, 14 November 1964, 6/45/3/1, AW Inc. [DB pp. 319-325]
[413] Whanganui Vested Lands Committee Meeting, 20 September 1965, Whanganui MB 131B, Appendix I, pp. 145-146. [DB pp. 597-598]
[414] Whanganui MB 131B, 8 February 1967, p. 11. [DB pp. 470-504]

reasonably equitable and acceptable to the owners'.[415] It was decided to use the most recent valuations as a starting point. These were made in 1962 for blocks in two counties, and in 1965 for the blocks in the third county. As two-thirds of the land was in the first group, it was decided to use the 1962 valuations as a basis, and have the 1965 valuations adjusted in line with the Valuer-General's 1962 valuation.[416]

The Maori Trustee pointed out that using the unimproved value of Ohorea Station would not take into account the value of the improvements and stock on the station, which were also owned by the Ohotu 1C2 owners. This would mean that the Ohotu 1C2 owners were contributing those assets to amalgamation as a whole without financial compensation from other owners. However, the Maori Trustee argued that this was justified, as the Ohorea owners had already benefited by the opportunity to resume the lands, which was given at the expense of the opportunity of resuming other lands:

> There is evidence that in 1955 when it was being considered what areas should be resumed there was an intention to spread the finance to be made available by the Maori Trustee over all the blocks so as to enable each group of owners to resume some part of their land. In the event this was found to be impractical and only land in Ohotu 1C2 was resumed and all the loan finance allocated to that block. In a sense then Ohorea is something fortuitous as far as the Ohotu 1C2 owners are concerned and the suggestion now made is that they should regard it as a starting point for the resumption not merely of their own block, but of all the blocks.…That the money advanced for the establishment of Ohorea was for the ultimate benefit of all the blocks and not merely Ohotu 1C2.[417]

The Maori Trustee also pointed out that three areas of land had been revested in the owners, which should perhaps be included in the amalgamation. These were an area of Waharangi 3 (2 acres) which was to be declared a reservation; part of the Waharangi 4 block (977 acres) which had been revested and was proposed to be included in the Pipiriki Incorporation; and part of Raetihi 4B (15 acres). In addition Paetawa C had been gazetted as a reservation for the use of the owners, and would require legislation to be included in the amalgamation.[418]

In January 1966 the District Officer informed the Department of Maori Affairs that all the basic research and information for the amalgamation had been completed, and negotiations with the owners representatives had reached a 'stage where final proposals can be formulated

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[415] ibid., p. 12.
[416] Whanganui Vested Lands, Notes for Meeting of Advisory Committee, 11 March 1966, Whanganui MB 131B, Appendix J, pp. 150-155. [DB pp. 599-607]
[417] ibid.
[418] ibid.

in the near future'. The District Officer noted that the 'savings resulting from the amalgamation, especially in the accounting and distribution field, will be as great as those resulting from the W.C.S.R. [West Coast Settlement Reserves] amalgamation'.[419]

In March 1966 the advisory committee met to finalise the details and discuss the proposed legislation. The committee resolved that:

1. The 1962 unimproved values should be used.
2. The improvements belonging to owners should be purchased by all owners from timber royalties or sinking funds.
3. The Ohorea Station improvements and assets should be regarded as assets of all the owners.
4. Waharangi 4 should be included in the amalgamation.
5. The owners of Paetawa C, Waharangi 3 and Raetihi 4B should be consulted about whether they wished to be amalgamated.
6. Uneconomic interests should be transferred to a trust.
7. Ohotu 1A2B and 1B (purchased by the Maori Trustee for Ohorea Station) should be amalgamated but their values ignored.[420]

Notices were sent to the owners of Paetawa C, Waharangi 3 and Raetihi 4B seeking their opinion on inclusion in the amalgamation. Meanwhile steps were under way for Waharangi 4 to be included in the Pipiriki Township Incorporation, which was to mean that Waharangi 4 was not included in the amalgamation.

The advisory committee met again in May 1966. At this time the inclusion of Paetawa C, Waharangi 3 and Raetihi 4B was confirmed. Waharangi 2 had 112 owners, with a total of 31.0000 shares. Notices had been sent to 32 owners. Twelve owners responded, of whom two voted against inclusion in the amalgamation and ten voted in favour of amalgamation. Those in favour of amalgamation held a total of 4.5418 shares. Raetihi 4B had 176 owners, with 40.0000 shares. Notices had been sent to 77 owners. Twelve owners sent in a response, of which 11 owners, with 4.0724 shares, were in favour of amalgamation. Paetawa C had 52 owners with 1654.0000 shares. Notices were sent to 21 owners, of whom 10 replied. Nine

[419] District Officer to Department of Maori Affairs, 31 January 1966, 33/0/10, MT Office Wanganui. [DB p. 647]
[420] Meeting of Advisory Committee, 11 March 1966, Whanganui MB 131B, Appendix J, pp. 147-149. [DB pp. 599-601]

owners were in favour of the amalgamation, representing 187.2388 shares.[421] On the basis of a majority in favour of amalgamation among those who had returned the forms, the committee agreed that the blocks should be included.

The advisory committee members decided that they would prefer that the amalgamation be achieved by a Maori Land Court order, rather than an administrative act of the Maori Trustee. The committee also decided that, because of the difficulty of deciding the value for uneconomic interests, any decisions about uneconomic interests could be made after the amalgamation order had been made.[422]

In August 1966, as the District Officers were drawing up the legislation with Maori Trustee Head Office staff, the decision was made 'after consultation with Mr Mete Kingi', to name the amalgamated block 'Atihau-Whanganui Vested Land'.[423]

### 4.1.2 Maori Purposes Act 1966

The special legislation necessary to enable the amalgamation to proceed was passed as Part II of the Maori Purposes Act 1966. Ralph Hanan, the Minister of Maori Affairs, told Parliament that the 'provisions of Part II of this Bill follow closely the provisions which were made for the West Coast settlement reserves.' The Minister said that they were the result of 'lengthy discussions with the representatives of the owners' and as 'far as I know, everyone concerned is in agreement.'[424]

Sir Eruera Tirikatene for Southern Maori stressed the importance of a sinking fund to 'enable the Maori owners to buy the improvements' from the lessee. Sir Basil Arthur said that Clause 9 of the Bill dealing with amalgamation would be of 'great assistance' because at 'present the Maori Trustee holds a separate sinking fund in respect of each of the blocks which will be the subject of an amalgamation order.' He said that there were 35 sinking funds which held about £60,000 which would be used for the following purposes:

> With the underlying titles disappearing as a result of amalgamation it has been agreed with the representatives of the owners that there is no need to retain separate sinking funds, so with the

[421] Meeting of Advisory Committee, 27 May 1966, Whanganui MB 131B, Appendix N, pp. 162-164. [DB pp. 611-613]
[422] ibid.
[423] Whanganui MB 131B, 8 February 1967, p. 15. [DB pp. 470-504]
[424] NZPD, 7 October 1966, p. 3195.

> amalgamation of these titles, one sinking fund will be operating. The moneys held in the sinking fund will, as agreed between the Maori Trustee and the owners' representatives, be applied in payment of compensation to lessees, in the reduction of the mortgage on the Ohorea Station, which is indebted to the Maori Trustee for £50,000, and in paying the owners for a few blocks at present leased on the capital. The lessees of these few blocks that are on a capital value system will have to be bought out, this fund will be used to pay compensation for improvements, and then the whole block will come in on the unimproved value system. [425]

Section 8 of the Maori Purposes Act 1966 confirmed the authority of the Maori Trustee over certain blocks:

1. Part of Waharangi 3 and part of Raetihi 4B were declared to be vested in the Maori Trustee in trust for the owners.
2. Reservations which had been set aside by the Aotea District Maori Land Council in Paetawa C were declared to be cancelled and the land held by the Maori Trustee as if no such reservation had been made.
3. Two blocks which had been purchased by the Maori Trustee, (Ohotu 1A2B and 1B), were declared to be subject to the Maori Vested Lands Administration Act 1954 and held by the Maori Trustee in trust for the owners of Ohotu 1C2 block.

Section 9 of the Act directed the Maori Land Court to make an amalgamation order for the lands described in Section 8, as well as the land vested in the Maori Trustee in the following blocks:

| | | |
|---|---|---|
| Morikau 2 | Retaruke 2 | Tauakira 2Z |
| Ohotu 1C2 | Retaruke 4C | Tauakira 2AA |
| Ohotu 2 | Tauakira 2F | Tauakira 2BB |
| Ohotu 3 | Tauakira 2H | Tauakira 2CC |
| Ohotu 8 | Tauakira 2J | Tauakira 2DD |
| Otiranui 2 | Tauakira 2K | Tauakira 2EE |
| Otiranui 3 | Tauakira 2L | Tauakira 2FF |
| Paetawa A | Tauakira 2M6 | Tauakira 2GG |
| Paetawa B | Tauakira 2V | Waharangi 1 |
| Raetihi 3B2B | Tauakira 2W | Waharangi 2 |
| Raetihi 4B and 3A | Tauakira 2X | Waharangi 3 |
| Retaruke 1 | Tauakira 2Y | Waharangi 5 |

Section 9 of the Act specified that the amalgamated land was to be known as the 'Atihau-Whanganui Vested Land'. The amalgamation order was to set forth the relative interests of the owners based on the relative values of their interests in the individual blocks as per the unimproved value as at 1 October 1962.

[425] ibid., p. 3201.

Section 10 of the Act specified that on the date on which the order amalgamating the land took effect the money held by the Maori Trustee for each block would be merged into one fund. This fund was to be used as under the 1954 Act, but in addition the Maori Trustee could pay any mortgage or charge on the land, or, in the case of blocks which were not leased on the unimproved value, pay the owners for their interest in the improvements.

### 4.1.3 Maori Land Court Hearing and Amalgamation Order

The application for amalgamation came before the Maori Land Court at the beginning of February 1967. Before the hearing, press statements and advertisements were issued, and 2,300 copies of a pamphlet on the amalgamation were sent to the owners.[426] The minutes of this hearing noted that the 'average attendance throughout the day of Maori people' was over 110.[427] The application was heard by Judge Davis, and the case was presented by Byres representing the Maori Trustee.

Byres commenced by presenting the Maori Land Court with a summary of the history of the creation of the vested lands, their administration, and the meetings leading up to the amalgamation application. His reasons for providing this history recognised the importance of the application for Whanganui Maori:

> In setting out the case in full we also aim to leave in the Court records for the benefit of our successors both in office and in title a complete outline of proceedings and negotiations and to reveal in the latter the role of the Maori Trustee whose objective was to ascertain the wishes of the people and to translate them into a workable and beneficial proposition.[428]

The full record of the amalgamation hearing can be found in special minute books, Whanganui MB131A and 131B, at the Maori Land Court office in Wanganui.

Byres summarised the meetings and decisions of the advisory committee which led to the principles embodied in the Maori Purposes Act 1966. Byres emphasised that circumstances had meant that the amalgamation had to proceed along lines not strictly in accordance with the differing values and circumstances of each block. He explained that this was necessary to achieve the overall goal of amalgamation and the best outcome for all the owners:

> 1. The use of 1962 Unimproved Values is admittedly a compromise but due to the many complications arising from valuations and status of different areas some form of

[426] Whanganui MB 131B, 8 February 1967, p. 23. [DB pp. 470-504]
[427] ibid., p. 1.
[428] ibid., p. 3.

compromise was inevitable.

2. Apart from the meetings with the Committee itself, the office was in constant touch with the Committee's representative, Mr Mete Kingi, both up to this stage and later.
3. The Committee's decisions were freely made as is evidenced by the fact that, at this March meeting, the resolutions passed are in some cases contrary to the suggestions in the notes.
4. Amalgamation on a reasonable, fair and equitable basis remained the primary objective, and there must be appreciation of the principal of give and take.[429]

Once the committee and Maori Trustee had decided on the best way to proceed, the trustee and court staff worked to compile the necessary lists of land, owners, shares and values. Byres told the court that they had been greatly assisted by Treasury, which had performed the necessary calculations.

The Maori Land Court then heard evidence from Title Improvement Officer McInteer, who oversaw the amalgamation work. McInteer explained the steps and processes used by his staff to identify the relevant land, check that ownership lists were up to date, and compile the necessary valuations. The information was then sent to Treasury for computation of the relative interests of the owners. The list was then checked again by court and departmental staff. Judge Davis asked McInteer for more information about how the various lists were compiled and checked for accuracy.

Rangi Mete Kingi, who had been chair of the vested lands advisory committee, then gave his evidence to the court.[430] He explained how he viewed the kaupapa of the amalgamation:

> It is not my idea but an idea that was transmitted through several generations of thinking people of my tribe. It is my job along with other members of my clan to put these ideas into operation. They stem from early history when the clans of the river felt that they should be more closely united in all they did in those days and it was the influence of a woman in those days, Hinengakau, that cemented the unity of our clan from the source to the mouth of our river. Those were pre- Pakeha times but those sentiments have persisted through the many generations of Maori living to this day and we, the descendants of that noted land, are merely reiterating what she said in her time.[431]

Mete Kingi gave his own outline of the history of the vested lands, and emphasised that the owners had always resisted pressure to sell their lands because: 'We have always understood that one day we will get our land back'.[432] He explained that the owners realised their

[429] ibid., p. 13.
[430] ibid., pp. 24-28.
[431] ibid., p. 26.
[432] ibid.

obligations to pay the compensation for improvements and did not intend to bring pressure on the lessees. However, they did see the amalgamation was the first step towards 'the ultimate resumption of this land by the real owners'.[433]

Mete Kingi explained how the proposal to amalgamate had arisen from the desire to benefit all the owners of all the vested blocks, rather than only the Ohotu K2 owners who had an interest in Ohorea Station:

> In the past the clan at large has been dominated by the owners in the Ohotu Block which, of course, is by far the largest block involved. When the negotiations were made on our behalf by the Maori Trustee for resuming what is known as Ohorea Station, it was suddenly realised that all of us were not in Ohorea. During the last Royal Commission held on vested lands we as a tribe formed a Committee and engaged counsel to represent us at the Commission. We thought of all our lands as a whole. There was no thought of 37 divisions of title, it was just 'our lands' and in that spirit we approached the Commission and evidence was given by our elders not for the 37 divisions but for the whole. When the resumption of Ohorea was in fact, I consulted Mr Whatarangi Pohe, who was then active in affairs of the tribe, and the late Robert Tanginoa Tapa and we decided that the resumption, while it was desirable, did not cover the spirit of our submissions to the Commission. We saw that instead of the people benefiting only one section benefit. We had no means of communication at the time and so we chose to broach the subject at the Annual Meeting of the Ohorea Station. From time to time I contacted prominent owners and the general policy laid down by our forebears many generations ago was adhered to, that is we would cleave to the saying that we were the descendants of the lady known as Hinengakau who 'plaited the river together'. The Ohorea meeting agreed in principle to amalgamation but the extent of such amalgamation was not settled. It was felt that the owners of Ohorea could only talk about their land - that is the Ohotu blocks. They could not talk about neighbouring blocks. After discussions with representatives of the Maori Trustee it was decided to go back to Hinengakau's policy and that there was only one way to do it - to get all the blocks involved into one title, to present a united front in man power and in land.[434]

Mete Kingi's evidence and sentiments were supported by other speeches from Hori Kingi Hipango, Haare Taiwhati, and Titi Tihu. Rumatiki Wright and K. Puohotaua asked whether other lands could be included in the amalgamation to protect the Maori ownership. Anihera Henry asked for clarification of what would happen with the timber values and the uneconomic interests. Byres explained that the timber on individual blocks would belong to all the amalgamated owners, and that this would mainly apply to the Morikau 2 block. Hikia Amohia expressed the opinion that the timber on the Waharangi blocks should be used to benefit the Pipiriki Incorporation.[435]

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[433] ibid., p. 28.
[434] ibid., p. 27.
[435] ibid., pp. 29-33.

Before issuing his decision, Judge Davis explained the role and duties of the Maori Land Court under the provisions of Part II of the Maori Purposes Act 1966. Section 9 of the Act said that the court '*shall* make an order' amalgamating the blocks. This meant that the court had no option but to agree to the application. However, the Judge was not content to rubber stamp the application, and insisted on being satisfied that all the proper procedures had been followed:

> The Court's duty is to ensure that a correct Order is made - that the relative interests of the owners are correctly calculated and shown in the Order, that the correct lands are included, that the Order is stated to take effect on a date to be specified by the Court and that in other respects the provisions of Section 9 are complied with.[436]

At the end of the day's hearing Judge Davis told those assembled that the court was not satisfied by the evidence presented that all the requirements for the amalgamation had been met. There were two points on which the Judge required the Maori Trustee to present further evidence.[437] Firstly, the Judge wanted the description of the lands to be amalgamated completed. The Maori Purposes Act 1966 had specified that those portions of the blocks listed in the schedule which were vested in the Maori Trustee should be included in the amalgamation. However, the Act did not specify exactly which portions and areas of the blocks were to be included. The court wanted more information about those blocks where only part of the block was vested in the Maori Trustee to ensure that the descriptions of the land to be amalgamated were correct. Secondly, the compilation of the lists of owners also needed to be completed. The court was concerned with whether sufficient safeguards had been used when compiling the lists of owners to ensure that there were no mistakes. The court wished to hear evidence from the officers involved about the processes used in compiling and checking the lists.

While these questions were being addressed the Maori Land Court adjourned the application for a week. When the case resumed in mid February, Byres submitted that the court was not required under the legislation to insist on a schedule specifying the lands vested in the Maori Trustee.[438] Judge Davis insisted, however, that the court had a right to go beyond the legislation in ensuring that the wishes of the owners had been met. In accordance with the standard practice of the court, the Judge said that it was 'essential' that the order should have

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[436] ibid., p. 29.
[437] ibid., pp. 34-35.
[438] Whanganui MB 131B, 15 February 1967, pp. 37-38. [DB pp. 505-539]

a list attached showing which lands were affected.[439] Eventually the Judge and Byres agreed that a Maori Land Court title search for each block, showing the original area and any deductions for roads, reserves, and the area remaining vested in the Maori Trustee could be presented.[440]

Byres then proceeded to demonstrate how the ownership lists were compiled and checked by staff from the Maori Affairs Department, Maori Trustee and Maori Land Court. He called as witnesses a number of the staff who had carried out the work. The court questioned these witnesses as to the number and nature of any errors they had identified when checking the list after it returned from Treasury. The witnesses responded that any errors they had found were of a minor nature, relating mostly to spelling of names and aliases.

Although satisfied with the procedure for compiling the list of owners, the court requested further information on the land involved. The case was adjourned so that the Maori Trustee could draw up a schedule showing the areas involved according to the Maori Trustee's records, the Valuation Department's assessments and the legal titles.[441]

The Maori Land Court's insistence on the compilation of a further schedule for the land was proved to be justified. After working with the Department of Lands and Survey, it was discovered by the Maori Trustee's District Officer that the records of the Chief Surveyor, District Land Registrar, Maori Trustee and Maori Land Court relating to the vested lands were all different. None of the four agencies had an accurate total of either the land originally vested, or that remaining vested in the Maori Trustee. There were separate and duplicate Certificates of Title for the Maori blocks and for the leasehold interests, and uncertainty about the status of closed roads. Some Certificates of Title were found to be inaccurate.[442]

The amalgamation application before the Maori Land Court resumed at the beginning of May 1967. At this late stage in the proceedings a representative of the Pipiriki Incorporation asked that the amalgamation application be adjourned. The incorporation wished to have the opportunity of calling a meeting of owners of the Morikau 2 block to consider inclusion in

[439] ibid., p. 40.
[440] ibid., p. 41.
[441] ibid., pp. 69-70.

the Pipiriki Incorporation rather than the amalgamation.[443] The court decided that the owners of Morikau 2 had had 'ample opportunity' to object to the amalgamation, both during the court hearing and at the meetings of owners leading up to the application. The court said there was 'no merit in the application', and dismissed their request for an adjournment.[444]

The Maori Land Court then heard evidence from Crocker of the Department of Lands and Survey. He explained that there had been difficulty in comparing the Maori titles with those held by the Lands and Survey Department. This was because, between 1902 and 1910, the department had surveyed Ohotu and other blocks into units for leasing, which were given a different appellation than the usual Maori Land Court block names. Now the Lands and Survey Department had decided that the surveyed appellations should 'disappear' and Crocker had prepared new plans.[445] He also submitted a certificate from the Chief Surveyor confirming descriptions and appellations and explaining any discrepancies.[446]

In June 1967 Judge Davis issued his decision on the amalgamation. He repeated the point that the court was required to be satisfied on exactly what land was to be included in the order, and that the Lands and Survey Department had inquired into the matter. The Judge commented that 'the result has been illuminating' as it disclosed a great deal of confusion between the records held by the Maori Trustee, Maori Land Court, Lands and Survey Department and the Valuation Department. Now that the Surveyor General had completed a combined schedule of the areas included, showing all the detail required by the court, the court was satisfied that the amalgamation order could be made. [447]

The Maori Land Court directed that an order should be issued, to take effect on 1 July 1967, declaring all of the lands in the application to be held in common ownership under one equitable title by all the owners of the lands. The order said that the name of the amalgamated block was to be the Atihau Whanganui Vested Land. It should be noted that the amalgamation order only affected the equitable ownership of the block, and that the legal title remained vested in the Maori Trustee. This meant that while the owners' interest in the land

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[442] District Officer to Maori Trustee, 17 March 1967, MA 1/581 29/6/2, ANZ. [DB pp. 183-184]
[443] Whanganui MB 131B, 2 May 1967, pp. 71-72. [DB pp. 540-542]
[444] Whanganui MB 131B, 8 May 1967, p. 74. [DB p. 543]
[445] Whanganui MB 131B, 2 May 1967, p. 72. [DB pp. 540-542]
[446] Chief Surveyor, 1 May 1967, in Whanganui MB 131B, pp. 78-80. [DB pp. 547-549]

had been amalgamated, there was no affect on the Maori Trustee's legal authority over the land.[448]

Maori Trustee staff often compared the Atihau-Whanganui amalgamation to the West Coast Settlement Reserves amalgamation which they had previously implemented in Taranaki. The Waitangi Tribunal has been critical of the impact of the Taranaki amalgamation, especially regarding the destruction of traditional iwi and hapu land tenure:

> No doubt the amalgamation was administratively convenient owing to the many owners and their dispersal, but it had nothing to do with the customary preference of Maori. Every person in every hapu who had inherited land no longer held that interest in their home area but had an interest instead in every reserve throughout Taranaki, irrespective of their hapu affiliations. It underlined that in effect the owners' interests were no longer interests in land; they amounted to no more than a right to share in rents according to the vagaries of share devolutions.[449]

However, there are some differences between the Taranaki and Whanganui amalgamations. The Taranaki amalgamation involved different iwi groups and a widespread area of land from North to South Taranaki. While the Whanganui amalgamation included over 100,000 acres of land, it was mostly within the same inland Whanganui River district. There are also indications that the Maori Trustee and the vested lands committee considered that there was a large degree of common ownership between the various vested blocks. Whanganui Maori may wish to inform the Tribunal on the extent to which the amalgamation interfered with traditional mana whenua patterns.

The Maori Land Court's requirement for satisfaction on the accuracy of the areas of land to be amalgamated had led to the Chief Surveyor initiating a complete review of the titles to all the vested blocks. The aim was to eliminate the duplicate system of titles for the Maori blocks and the units being leased. Officials then decided that the best course would be to combine the legal title of the vested blocks into one unit in the same way that the owners' equitable interest was to be amalgamated.[450] The Chief Surveyor directed staff to compile one plan for the area, with lot numbers to define the surveyed units. As with the amalgamation of the owners' interest, this would require special legislation to 'clarify the

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[447] Whanganui MB 131B, 8 June 1967, pp. 75-76. [DB pp. 544-546]
[448] ibid.
[449] Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, subheading 9.3.6.
[450] District Officer to Maori Trustee, 17 March 1967, MA 1/581 29/6/2, ANZ. [DB pp. 183-184]

status of lands, to account for areas, to regularize the roading position, and, above all, to adjust and correct errors and omissions'.[451]

The necessary legislation was passed as Section 9 of the Maori Purposes Act 1967. Section 9 of the Act said that the legal description of the amalgamated block was to be the 'Atihau-Whanganui Block', comprising the land shown on survey plan ML 5126L. This Section of the Act validated the inclusion of any closed roads in the amalgamated block, and declared that should the block be partitioned in the future by the Maori Land Court, that the names given to the new blocks would be prescribed by the Chief Surveyor.

## 4.2 Maori Affairs Amendment Act 1967

Shortly after the Whanganui vested lands had been amalgamated, the legislation governing the status and alienation of the vested lands was greatly changed by the Maori Affairs Amendment Act 1967. The Hunn Report, released in 1961, had highlighted the increasing urbanisation of Maori and argued for an 'assimilationist' approach which assisted Maori to establish themselves in areas away from their home marae. Since then, government policy had been grappling with questions relating to fragmented multiple ownership, 'uneconomic' shares in land, and facilitating the development of 'idle' Maori land.[452]

In November 1964 a committee of inquiry was set up to examine the laws affecting Maori land and the powers of the Maori Land Court. Former Chief Judge Ivor Prichard and Maori Affairs Officer, H. T. Waetford carried out the inquiry. Their report, released in December 1965, echoed many of the findings of the Hunn Report.[453] The Prichard Waetford Report focused heavily on problems which they perceived were caused by the subdivision and the fragmentation of ownership of Maori land: 'Fragmentation and unsatisfactory partitions are evils which hinder or prevent absolutely the proper use of Maori lands. Fragmentation will become progressively worse unless urgent remedial action is undertaken.'[454]

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[451] ibid.
[452] G. V. Butterworth and H. R. Young, *Maori Affairs*, Wellington, Iwi Transition Agency, 1990, pp. 100-106.
[453] ibid., p. 105.
[454] Prichard, Ivor and Hemi Tono Waetford, 'Report to Hon JR Hanan, Minister of Maori Affairs, of Committee of Inquiry into the Laws Affecting Maori Land and the Jurisdiction and Powers of the Maori Land Court', 15 December 1965, p. 6.

The 'remedial action' they proposed included encouraging Maori to divest themselves of small or 'uneconomic' shares in Maori land, so that those who moved away from traditional areas would have finance to re-establish themselves. One such recommendation was the compulsory acquisition by the Maori Trustee of all shares worth less than £100.[455] Once the number of owners had been reduced, by removing those who were seen as no longer requiring land in the traditional rohe, then blocks could be grouped together to facilitate programmes to develop the land or to facilitate income generating leases. The concern to turn 'uneconomic' blocks into income generating units was not motivated purely by the desire to provide income for Maori. It was also seen as being in the national interest that 'idle' land should be brought into production.[456]

Following these recommendations, in 1967 the government passed an extensive amendment to the Maori Affairs Act 1953 which introduced new measures to implement the recommendations of the Hunn Report and the Prichard Waetford Report. The Maori Affairs Amendment Act 1967 included legislative measures which were aimed at reducing the number of Maori owning small shares spread across many blocks.

As well as reflecting the general concerns about the fragmentation of Maori land nationally, the 1967 Act contained specific provision for the Whanganui vested lands. The fragmentation of ownership of the vested land had been drawn to the attention of Ralph Hanan the Minister of Maori Affairs just before the amalgamation hearing. In January 1967 the Secretary of Maori Affairs wrote to the Minister about the vested lands. He pointed out that after the blocks had been amalgamated there would be a total of 3,858 owners. When the annual rent distribution of £4,000 was made, 227 owners would receive no payment, 198 owners would receive one penny, and 592 owners would get between 2 pennies and sixpence.[457] The Whanganui Vested Lands Advisory Committee had also been concerned about these small interests in the amalgamated block. The committee's solution, backed by meetings of owners, was that uneconomic interests should be vested in a special trust for the benefit of all the owners. However, the proposed legislation was designed to 'clean out all these tiddly-winking interests in one swoop, and dispose of them, along with any other interests acquired,

[455] ibid, pp. 6, 8, 41-43.
[456] Eileen Barrett-Whitehead, 'The Rotoiti 15 Trust', Waitangi Tribunal, October 2001, Wai 550 A6, p. 9.
[457] Secretary of Maori Affairs to Minister, 27 January 1967, MA 1/581 29/6/2, ANZ. [DB p. 185]

by way of the transfer of the freehold to the lessees'.[458] While the committee sought to redistribute the uneconomic shares among the owners, the departmental solution was that these shares should be taken from Maori and used to allow the lessees to purchase land. This cut across the owners' decades long resistance to selling the vested lands.

The Maori Affairs Amendment Act 1967 established a special fund to allow the Maori Trustee to purchase individual interests in reserved and vested land. The trustee could not only acquire shares by agreement to purchase, but could also automatically acquire uneconomic interests in a block. Section 128 of the 1967 Act empowered the Maori Trustee to sign and seal a certificate that an interest worth less that £50 was vested in the trustee.[459] These interests could then be sold by the Maori Trustee to 'any Maori', or in the case of vested land, to a lessee who wished to purchase the freehold.

Under the Maori Vested Lands Administration Act 1954 sales of vested blocks could only be made with the consent of the majority in value of the owners, or a resolution of assembled owners. Sections 150 to 152 of the Maori Affairs Amendment Act 1967 were designed to facilitate the sale or mortgage of individual shares in the vested lands.

Section 150 of the Maori Affairs Amendment Act 1967 inserted a new Section 4A in the 1954 Act. This provided that an owner had the following powers regarding his or her interest in a vested block:

a) dispose by will;
b) sell to the Maori Trustee for the purposes of the Reserved and Vested Land Purchase Fund;
c) sell to the Maori Trustee in accordance with Section 152;
d) vest the interest in another owner or family member;
e) assign the interest as security;
f) vote on a proposal at a meeting of owners.

Section 151 of the Maori Affairs Amendment Act 1967 established the procedure for the interest to be assigned as security by the Maori Land Court.

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[458] ibid.
[459] Section 41D, Maori Trustee Act 1953, as inserted by Section 128, Maori Affairs Amendment Act 1967.

Section 152 of the Act created a new Section 61A in the 1954 Act. This created a special procedure to allow the lessee to apply to purchase the freehold of the vested land. The lessee could apply to the Maori Trustee to purchase the freehold of the land comprised in his lease. The application was to specify the price that the lessee was willing to pay. The price had to be at least the capital value (determined by a special valuation), less two-thirds the value of improvements on the land. The Maori Trustee could then purchase from the beneficial owners the number of shares 'appropriate to such land, calculated in accordance with the provisions of subsection (7) of this section'. Subsection 7 set out the formula to be used to calculate how many shares had to be purchased to make up the area of land under offer. This was calculated as the proportion of the value the area being purchased had in relation to the overall value of the block. Provisions were made for variations where the terms of the lease did not confer any right of compensation for improvements, or where timber or minerals on the land should be taken into account.

There was widespread concern among Maori about most aspects of the Maori Affairs Amendment Act 1967. The Morikaunui Incorporation made a submission on the Bill which emphasised the special history of the vested lands and the desire of the owners to retain them in Maori ownership:

> it will be strongly contended that the granting of any rights of alienation to a lessee except with the express prior approval and authority of the beneficial owners is not only unwarranted and discriminatory against the Maori owners, but is in breach of the trusts under which the lands are originally vested.[460]

All the Maori Members of Parliament spoke against the Bill. Two specific comments were made about the impact on the vested lands. On 7 November 1967 Tirikatene Sullivan for Southern Maori stressed that the 'overwhelming weight of Maori informed opinion is such that they cannot agree with the Minister that there are good benefits' and she asked that the Bill be held over until he had convinced Maori owners of these benefits at a 'grassroots level'.[461] Sullivan concluded that:

> I do not have time at this point to go into other aspects of this Bill to which Maori owners have objected, but I would stress to the Minister the importance of the concept of trust as far as Maori vested and reserve lands are concerned. I quote from the submissions made by the Wanganui people: "By various deeds of trust we have voluntarily vested 100,000 acres of Maori land which has been held as a vested block for the benefit of the Maori people as a

[460] 'Wanganui Vested Lands: Morikaunui Submissions on the Bill', *Te Kaunihera Maori: New Zealand Maori Council Journal*, Vol 1, No 6, December 1967.
[461] NZPD, 7 November 1967, p. 4024.

> whole and for their beneficiaries." This Bill represents an illegitimate use of legislation as it provides for the lessees to buy this reserve and vested Maori land cheaply. It is trust-breaking to propose such alienations against the wishes of the beneficial owners.[462]

On 21 November 1967 the Bill had its third reading and Tirikatene Sullivan informed Parliament that:

> the concept of the preservation of the land, not only for the benefit of the present generation but of future generations….I wish to refer to the vested lands in Wanganui. Sixty-five years ago over 120,000 acres of tribally owned land was vested in trust by the owners for their benefit and their successor's benefit. Today the whole of the land is still intact in the hands of either the owners themselves or of the Maori Trustee. Surely this is a worth-while principle well worthy of recognition. It could be equated with long-term investment. Inasmuch as the Bill denies this right and denies the satisfaction of the desires of self-determination to the Maori land-owners, there could be no better reason for not proceeding with it. Even the submissions of the Law Society spoke of the compulsory deprivation of the rights of the Maori landowner to his own land.[463]

Despite these objections the Maori Affairs Amendment Bill 1967 was passed.

## 4.3 Returning Control to the Owners

The provisions of the Maori Affairs Amendment Act 1967 which allowed for the possibility of the vested land being sold to the lessees spurred the amalgamated owners to once again take steps to protect Maori ownership of the vested lands. Mete Kingi later told the Maori Land Court that the owners had been dissatisfied with the Maori Affairs Amendment Act, which they felt 'left it far too open for portions of the Vested Lands to pass out of the hands of the owners' which was 'completely contrary to wishes of the owners'. The owners had for more than 60 years consistently shown that they were against sales of vested land to the lessees. They made submissions opposed to the provisions which authorised sales of vested lands to lessees, and the Minister had informed them that he would consider revesting the lands in the owners under the control of an incorporation.[464]

This section details the decision to form an incorporation to manage the Atihau-Whanganui block when it was revested in the owners. Throughout the 1967 to 1969 period, while this was being arranged, the Maori Trustee did not purchase any shares in the vested lands despite the legislative authority provided by the 1967 Amendment Act. Although we have yet to

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[462] ibid., p. 4025.
[463] NZPD, 21 November 1967, p. 4374.
[464] Maori Land Court Minutes, 9 September 1969, ABRP 6844 W4598, Box 255 2/429 vol 1, ANZ. [DB pp. 51-99]

locate any written record of this policy decision, it seems the Maori Trustee recognised the expressed wishes of the owners that the Whanganui vested lands should not be sold.

### 4.3.1 Legal Options

When seeking to have control of the vested land returned, the owners had to decide on a management structure for the Atihau-Whanganui block. There were three main options to consider: a statutory Trust Board, an incorporation, or a Section 438 trust. The main features of each option are briefly outlined below, especially concerning the implications for the status of the land, management structure, and options for preventing land sales and protecting uneconomic interests.

The creation of a trust board to manage the Atihau-Whanganui land would have required special legislation. While the legislation could make specific provision for defining the beneficiaries and functions of the board, the Maori Trust Boards Act 1955 laid down general provisions for trust boards. Maori Trust Boards had the status of bodies corporate.[465] Under a trust board, the owners of lands vested in the board would become beneficiaries of the board, and lose all ownership status: 'No beneficiary shall acquire or be deemed ever to have acquired any interest, whether vested or contingent, or legal or equitable, in the assets of the Board of which he is a beneficiary'.[466] Beneficiaries were to elect members of the board, who were then to be appointed by the Governor-General. Board members did not hold any personal liability for the actions of the board. Trust boards were to administer their assets for the benefit of the defined beneficiaries. The boards had broad powers concerning the application of their revenue which included the 'benefit or advancement in life of any specific beneficiary, or any class or classes of beneficiaries'.[467]

One of the common forms of administration for multiply-owned land was a trust formed under Section 438 of the Maori Affairs Act 1953. The 1967 Amendment Act had repealed and replaced Section 438. The Maori Land Court was empowered to vest land in trustees 'upon being satisfied that the owners of the land have, as far as practicable, been given reasonable opportunity to express their opinion as to the person or persons to be appointed a

[465] Section 13, Maori Trust Boards Act 1955.
[466] Section 35, Maori Trust Boards Act 1955.
[467] Section 24, Maori Trust Boards Act 1955.

trustee'.[468] The land became legally vested in the trustees, who were to administer the land for the benefit of the beneficial owners. Unlike a trust board situation, the owners retained an equitable ownership interest in the land, rather than simply being classed as beneficiaries of the trust. The court was to specify the terms of trust, which laid out the powers of the trustees. These powers could include the ability to lease, mortgage, subdivide or sell the land.

Maori land incorporations had first been established in the early twentieth century as a form of managing large areas of multiply owned land. Part IV of the Maori Affairs Amendment Act 1967 laid out the procedure for establishing and managing an incorporation. The Maori Land Court could issue an order incorporating the owners of Maori land in accordance with a resolution of assembled owners, or if the court was satisfied that the owners of at least half the interests in the land were in favour of incorporation.[469] The incorporation became the legal and beneficial owner of the land, and the former owners became shareholders in the body corporate, with no direct interest in a particular block of land.[470] Each owner was to receive the number of shares equal to the value of their previous interest in the land.[471] The incorporation was to be run by a Committee of Management appointed by the Maori Land Court. While the shareholders could elect or nominate committee members, the court was not bound to follow their decisions.[472] Incorporations were given the power to sell land, but any sale required a resolution of a general meeting of shareholders.[473] The quorum for a shareholder meeting was twenty shareholders or the number could be fixed by the court.[474]

The Maori Affairs Amendment Act 1967 gave an incorporation the power to set limits on how shares in the incorporation could be alienated, and to resume control of uneconomic shares or unclaimed dividends. A general meeting of shareholders could pass a resolution to set a minimum share unit for the incorporation. The incorporation could then resume those shares which were below the minimum level. The holders of the uneconomic shares would be paid for the value of their shares.[475] A general meeting of shareholders could also pass a resolution to restrict the sale of shares to only other shareholders, the incorporation, the

[468] Section 142, Maori Affairs Amendment Act 1967.
[469] Section 29, Maori Affairs Amendment Act 1967.
[470] Section 31, Maori Affairs Amendment Act 1967.
[471] Section 32, Maori Affairs Amendment Act 1967.
[472] Section 52, Maori Affairs Amendment Act 1967.
[473] Section 48, Maori Affairs Amendment Act 1967.
[474] Section 63, Maori Affairs Amendment Act 1967.

Maori Trustee or State Loan Department, or to close family members.[476] In the case of unclaimed dividends, incorporations were required to compile a list of unclaimed dividends which was to be advertised by the Maori Trustee. The shareholders could pass a resolution that all dividends unclaimed after twelve months of being advertised should be paid to the incorporation.[477]

In its discussion of the amalgamation and incorporation of the West Coast Settlement Reserves in Taranaki, the Waitangi Tribunal referred to the 1975 Royal Commission on Reserved Lands (the Sheehan commission) which supported incorporating the reserves:

> The Sheehan commission outlined the advantages and disadvantages of incorporation: it may cause owners to lose some identification with their lands, (although in this case, that had already happened as a result of the amalgamation); succession to incorporation shares was determined by legislation, not Maori custom (although Maori custom had become largely meaningless in Maori land law in any event); and the lands would still be subject to the statutory leases whether or not an incorporation were formed. On the other hand, an incorporation would mean that the owners could now manage the leases themselves; it would dispense with the need for expensive meetings of owners, which might not reach the necessary quorum; it could more easily purchase the interests of anxious sellers for the benefit of Maori, not lessees; it could readily speak for the owners as a whole; and an incorporation could address the problem of share fractionation through more effective management of uneconomic interests.[478]

The advantages and disadvantages laid out for the Taranaki leased lands also applied to the situation of the Atihau-Whanganui owners.

The Royal Commission on the Maori Land Court in 1980 noted a rapid rise in the formation of both trusts and incorporations after the late 1960s. In general, the commission commented favourably on the outcome of this development in terms of land management:

> The trust type of organisation is well suited for land management on a tribal or hapu basis, and there have been moves to form more tribal trusts. The successful establishment of incorporations and trusts has shown that, contrary to a view widely held in the early 1960s, multiple ownership is not necessarily a bar to the economic use of land. Success, however, will come only with the will to co-operate, access to technical advice and to capital for development, together with managerial skills of a high order in the trustees and boards of management.[479]

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[475] Sections 33-36, Maori Affairs Amendment Act 1967.
[476] Sections 40-41, Maori Affairs Amendment Act 1967.
[477] Section 47, Maori Affairs Amendment Act 1967.
[478] Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, subheading 9.3.6.
[479] 'The Maori Land Courts: Report of the Royal Commission of Inquiry', AJHR, 1980, H-3, p. 27.

### 4.3.2 Deciding on an Ownership Structure

In 1967 the vested lands committee indicated to the government that they were prepared to take control of the vested lands once the necessary legislative and administrative requirements had been addressed. The advisory committee favoured the establishment of a special statutory Trust Board. The owners solicitor, Horsley, informed the Minister of Maori Affairs that, although a statutory trust designed specially for the Whanganui vested lands would require its own legislation, this would be consistent with past legislation that dealt with the Whanganui vested lands. The owners also wanted to resume the bulk of the vested lands immediately, and not just a portion at a time.[480]

Horsley maintained that a statutory trust board offered a number of advantages over other organisational structures. His arguments in favour of a statutory trust board stressed its advantages when compared to an incorporation or a Section 438 trust. He argued an incorporation of such a large area of land, with so many owners, would become 'top heavy' and would not easily be able to delegate control over the different areas. It was envisaged that, initially, the two main purposes of a controlling organisation in respect to the vested lands would be supervision and administration of leases and the farming of resumed areas. Horsley advised that the management of the leased areas would best be controlled by a trust board, and the farming operations should be administered by an advisory committee appointed from the trust board. It was argued that an incorporation was designed to act 'more as a purely commercial enterprise'.[481] However, a trust board could recognise various tribal and education needs and set aside funds and support structures for these aspects of its activities, as well as its commercial operation.[482] It was argued that the a statutory trust board structure avoided the possibility of a few members taking control and determining policy, because trustees would be appointed for a period of years with provision for retirement and rotation and election. The name of the proposed statutory trust board was to be the Ati Hau Whanganui Trust. It would have seven members, of whom five would be elected by the owners and two of whom would be appointed by the Minister. It was suggested that 50 percent of the rental and net profit be distributed to the owners, with 45 percent being paid

[480] Horsley Brown and Lowe to District Officer, 6 November 1967, ABRP 6844 W4598 Box 255 2/429 vol 3, ANZ. [DB p. 130-133]
[481] ibid.
[482] ibid.

into a sinking fund for land resumption, and the remaining five percent used for cultural, educational and welfare needs.[483]

The District Officer, Cater, supported the establishment of a statutory trust board after being involved in a number of discussions with owners. He reported that the 'idea of an Incorporation was not well received' because the 'existence of the two Incorporations [Morikaunui and vested lands] side by side with probably the same directorate but different…shareholdings would lead to difficulties.'[484] Ralph Hanan the Minister of Maori Affairs did not take this position. The Minister was reluctant to introduce special legislation to establish a statutory trust board for the Whanganui vested lands. He noted that large incorporations, such as Mangatu on the East Coast, existed and were successful. The Minister was of the view that a statutory trust board would be 'exchanging one special statutory system for another' and he was 'opposed to the statutory creation of special trusts of any sort' because he was 'opposed to inflating the statute book with special and extended provisions.'[485]

In July 1968 the vested lands committee met to discuss the Minister's dismissal of their preferred statutory trust board option. Cater presented the options of incorporation or a Section 438 trust as alternatives, and Horsley elaborated on their advantages and disadvantages. He said that the Minister had agreed that they could make further written submissions on why they preferred a statutory trust board over these alternatives.[486] Horsley submitted to the Minister that because the vested lands comprised of amalgamated lands and areas outside the amalgamation and involved a diverse farming operation the 'total project is too large a one to be vested in a single incorporation'. Therefore a trust was 'considered the only method which will preserve the "trust" concept relating to these which was the guiding principle behind the original'.[487] The Minister rejected the submission for a statutory trust

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[483] ibid.
[484] District Officer to Department of Maori Affairs, 9 November 1967, ABRP 6844 W4598 Box 255 2/429 vol 3, ANZ. [DB pp. 134-135]
[485] Minister of Maori Affairs to Horsley Brown and Lowe, 15 March 1968, ABRP 6844 W4598 Box 255 2/429 vol 3, ANZ. [DB p. 136-137]
[486] Meeting of Atihau Whanganui Vested Lands Committee, 22 July 1968, ABRP 6844 W4598 Box 255 2/429 vol 3, ANZ. [DB pp. 138-159]
[487] Horsley Brown and Lowe to Minister of Maori Affairs, no date, ABRP 6844 W4598 Box 255 2/429 vol 3, ANZ. [DB p. 162-168]

board.[488] The committee following the Minister's decision proceeded to discuss with the Department of Maori Affairs the work involved in establishing an incorporation.

In November 1968 the vested lands committee discussed the establishment of an incorporation to control the vested lands. Horsley told the committee that an up-to-date list of owners and schedules of the blocks and leases and unoccupied lands would have to be compiled by the Maori Land Court before an application for an incorporation could proceed. The committee discussed purchasing the shares of owners who did not wish to be part of an incorporation. They wanted to ensure that the shares could not be sold privately, and were retained within the existing ownership group. Cater suggested that:

> at the time of the Incorporation meeting some provision should be made for a closed shop i.e. owners would not be allowed to sell except to other owners or member of their family. Mr Cater pointed out that we already had had a large number of people interested in selling their interests. Mr Cater then went over the steps that he considered should be taken:-
>
> (a) Lodge an application for a meeting of owners to discuss the question of incorporation and the nomination of a Committee of Management.
>
> (b) Organise the transfer of administration.
>
> (c) The question of individual titles.
>
> (d) Finance.[489]

In May 1969 Horsley explained to a meeting of the vested lands committee that a meeting of owners would need to be called to discuss the proposal. He explained that before the Maori Land Court could consider the matter the owner would have to pass a resolution for the revesting and incorporation of their lands. The court would hear the applications to revest the land and incorporate the ownership as part of the same hearing. He pointed out that the incorporation, on its establishment, would need finance for working capital, land resumption, and buying out the ownership interests of those wanting to sell.[490] Horsley informed the Maori Trustee that the advisory committee wanted the trustee to keep funds available to purchase the interests of owners wanting to sell, for land resumption purposes and for the operations of the Ohorea Station. The committee wanted to resume land near the station and,

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[488] Horsley Brown and Lowe to Minister of Maori Affairs, 8 November 1968, ABRP 6844 W4598 Box 255 2/429 vol 3, ANZ.
[489] Meeting of Atihau Whanganui Vested Lands Committee, 28 November 1968, ABRP 6844 W4598 Box 255 2/429 vol 3, ANZ. [DB pp. 169-171]
[490] Meeting of Atihau Whanganui Vested Lands Committee, 17 May 1969, ABRP 6844 W4598, Box 255 2/429 vol 1, ANZ. [DB pp. 100-104]

to do so, it wished to be able to borrow from the trustee. They preferred to have a mortgage debt with the Maori Trustee rather than a private lending institution.[491]

In July 1969 a meeting of owners was held in Whanganui which attracted 700 owners and resulted in the resolution to incorporate being 'unanimously' passed. Those attending the meeting were also asked to express their views on the appointment of accountants; the fixing of a minimum $1 share value; the committee joining in the revesting application and appointing executive officers; and the Maori Trustee acquiring uneconomic interests for the Whanganui Trust.[492]

### 4.3.3 Maori Land Court Incorporation and Revesting Hearings

In September 1969 Judge Davis of the Maori Land Court rejected the proposed incorporation. Three applications were presented: confirmation of the resolution passed by the meeting of owners; revesting of the vested lands in the owners; and an order of incorporation. Horsley appeared for Mete Kingi and the vested lands committee, and Hyslop for the Maori Trustee. Horsley explained to the court that the owners had found a number of features of the Maori Affairs Amendment Act 'objectionable'. Mete Kingi confirmed for the court that the owners had been dissatisfied with the Maori Affairs Amendment Act, which they felt 'left it far too open for portions of the Vested Lands to pass out of the hands of the owners' which was 'completely contrary to wishes of the owners'. Horsley said that, in particular, they opposed the 'provisions authorising a sale of vested lands to lessees' and had made submissions on this point to the Minister. The Minister had responded them that he would reconsider revesting the lands in the owners under the control of an incorporation. Horsley alluded to the failure of the preferred option of a statutory trust board, and the subsequent adoption of the current incorporation proposal. He said that initially it would be the incorporation's intention to 'continue the status quo' and that the Maori Trustee's control would be 'phased [out] over a period'. Mete Kingi confirmed that the owners 'recognised that the whole transfer of control cannot be effected immediately and it is intended that this will be phased out over a period.' Mete Kingi said that it was 'intended as soon as possible to hold full meetings with

[491] Horsley Brown and Lowe to Maori Trustee, 7 July 1969, ABRP 6844 W4598, Box 255 2/429 vol 1, ANZ. [DB p. 105-106]
[492] Maori Land Court Minutes, 9 September 1969, ABRP 6844 W4598, Box 255 2/429 vol 1, ANZ. [DB pp. 51-99]

representatives of the lessees with a view to negotiating fresh terms of leases which will put the rents on a more realistic footing'. [493]

Judge Davis questioned the Maori Trustee about whether the trustee or the owners would control the sinking fund if the land was vested in the owners. Cater said that once the land had been vested in the owners and incorporated, then the Maori Vested Lands Administration Act no longer applied and therefore the Maori Trustee no longer controlled the sinking fund.[494]

Judge Davis suggested to Mete Kingi that the idea for an incorporation had been the Minister's, and the court was not bound to make this order. Instead, the Judge suggested that a Section 438 trust might be a preferable organisational structure. Mete Kingi said that the 'owners would not like it', and cited the fact that they had 'experienced in Morikaunui the fruits of Incorporation and they see no reason why this new one should not be as successful.'[495]

Judge Davis noted that if the land was incorporated it would cease to have the status of Maori land. He warned that if there were 'any regrets later it can never again be Maori land'.[496] The Judge expressed some concern at what he regarded as the haste in which the proposed incorporation intended to act, particularly in regard to renegotiating fresh leases before consideration was given to the 'whole position of the vested lands'. Davis noted that there was time before the expiry of most of these leases to consider a 'policy for the future'. Judge Davis said that the suggestion of immediately negotiating new leases indicated that the 'incorporation is proposing to run before it can walk'. As an alternative to an incorporation, he suggested a Section 438 trust would allow the owners the opportunity to prove their ability to administer the vested lands. The applicants were instructed to make further inquiries into the possibilities for a trust or an incorporation and return to court with their submissions later in the year.[497]

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[493] ibid.
[494] ibid.
[495] ibid.
[496] Section 77 of the Maori Affairs Amendment Act 1974 later changed the status of incorporated land back to Maori freehold land.
[497] Maori Land Court Minutes, 9 September 1969, ABRP 6844 W4598, box 255 2/429 vol 1, ANZ. [DB pp. 51-99]

In November 1969 the Maori Land Court heard the submissions for an incorporation. Mete Kingi said that since the previous hearing, discussions had been held with financial institutions and the Maori Trustee. They had indicated that, if there was any change in the proposal for an incorporation, the committee would have to resubmit its applications for finance. Horsley concurred, and stated that the Maori Trustee was 'clearly opposed to the principle of a Section 438 Trust' because it did not think it was suitable for the purpose intended. He said that the owners had fully examined the fact that the land would no longer have the protective status of 'Maori land', and accepted this situation and voted unanimously for incorporation. The Judge suggested that no alternative to an incorporation had been seriously put to the owners.[498]

Horsley also submitted that, because the owners were thinking ahead about what would happen with the leases, this should 'not be used to penalise the owners'. He presented a number of reasons why an incorporation was favoured before a trust. He said that a Section 438 trust was 'more designed for single purpose operation' and the vested lands, with their size and varied purposes, were more suitable for an incorporation where those overseeing its operation would not be personally liable, as they would in the trust situation. In conclusion, Horsley claimed that the history of the vested land 'to date has shown that there has been a progressive breaking down of or interference with the ownership rights of the Maori owners and a gradual intrusion into the initial purpose for which the lands were handed over'. Therefore, if the lands were incorporated 'further inroads into the rights of the owners would be effectively blocked'.[499] This argument suggested that the owners would be better served by losing the Maori land status, as the Crown would no longer be able to pass legislation interfering with their ownership rights.

In his judgment Judge Davis said that he had suggested a Section 438 trust at the previous hearing because he wanted to ensure that the 'whole matter received full consideration'. The Judge noted that the meeting of owners had been well organised, but he stressed that its sole aim was to get a resolution to incorporate passed without presenting any alterative

[498] Maori Land Court Minutes, 11 November 1969, ABRP 6844 W4598, box 255 2/429 vol 2, ANZ. [DB pp. 108-125]
[499] ibid.

organisational structures. The Judge reiterated that the idea to incorporate had been the Minister's, and said that the court was not bound to endorse this suggestion. He accepted that the owners understood that the land would lose its protective status as 'Maori land'.[500]

Therefore the court accepted the submissions and made orders revesting the land and incorporating it for the owners. The Atihau Whanganui block was revested in the beneficial owners Under Section 70 of the Maori Vested Lands Administration Act 1954. Under Section 319 of the Maori Affairs Act 1953 the court confirmed the resolution of the meeting of owners. An order of incorporation was made constituting the owners of the Atihau Whanganui block as a Maori Incorporation. An order was made appointing W.R. Mete Kingi, H.K. Hipango, N. Bates, H. Amohia, M. Gray, R. Peehi, H. Marumaru as the first Committee of Management.[501]

Additional decisions were made by Judge Davis regarding the distribution of the share interests under Section 32 of the 1967 Amendment Act. The total number of shares in the list of owners was 125,647.3. The net value of the assets was $1,558,349.75 which Judge Davis thought was a conservative figure. In the Judges opinion the 'convenient figure for the total number of shares would be 1,256,473 which will give an owner of .1 of share in the land and other assets one share in the incorporation.' Judge Davis noted that it was 'suggested that one share in the land and other assets was probably worth some $10 but it may, in fact, be worth some $15, but the number of shares fixed is most convenient.'[502] In May 1970 Cater informed the court that there had been an error in the previous share calculation, which the court amended. The total number of shares in the list of owners was changed from 125,647.3 to 125,652.898. The total number of shares in the incorporation was changed from 1,256,473 to 1,256,529.[503]

The history of the administration of the leases and land resumptions by the Atihau-Whanganui Incorporation is discussed in the next part of this report.

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[500] ibid.
[501] ibid.
[502] Additional Decision, 19 November 1969, ABRP 6844 W4598, box 255 2/429 vol 2, ANZ.
[503] Wanganui MB 134, 15 May 1970, p. 247.

## 4.4 Summary

The Maori Trustee and Maori Land Court staff discussed the desirability of consolidating or amalgamating the ownership of the Whanganui vested lands during the 1950s. The main advantage, from their perspective, was the simplification of administration through only having one title and one list of owners. In 1962 it was estimated that amalgamation would reduce the numbers on lists of owners by half. There was also an assumption among officials that the individual blocks would be of little economic use to the separate groups of owners.

Before amalgamation could proceed, certain complications relating to how the value of timber and the assets and liabilities of Ohorea Station should be dealt with in assessing the relative values of the owners' interests had to be resolved. Furthermore, three areas which had been revested in the owners had to be revested in the Maori Trustee. Investigations into the feasibility of the amalgamation also revealed title discrepancies relating to the sizes of some blocks.

The owners of Ohorea Station formed a Vested Lands Advisory Committee which negotiated with the Maori Trustee on how the amalgamation should proceed. This committee decided that Ohorea should be included in the amalgamation for the benefit of all the vested land owners, rather than just the Ohotu 1C2 owners. The committee gave a great deal of consideration to whether the value of timber on individual blocks should be accounted for when assessing the relative interests of the amalgamated owners. In the end, it was decided that the value of timber should be ignored for amalgamation purposes. This decision was made to avoid further delays, and out of the belief that all the vested owners could benefit from timber cutting royalties which would finance future land resumptions.

One of the factors guiding the advisory committee was their intention to retain uneconomic interests within the community of owners. Most of the committee meetings proceeded with the assumption that the amalgamation should set a value level for uneconomic shares, which could then be vested in the Whanganui Trust for educational, cultural and welfare purposes for the owners. The committee was concerned that if steps were not taken to protect the uneconomic interests, then they might be acquired by the Maori Trustee for the national Maori Education Foundation. The committee preferred that the uneconomic interests should

be retained for the use of the Whanganui Maori community. Despite much discussion, time constraints meant that no formal decision was made regarding the uneconomic interests before the blocks were amalgamated.

The proposals put forward by the advisory committee and Maori Trustee were explained to two large meetings of owners in 1964. The meetings endorsed the amalgamation plans. The committee and Maori Trustee then proceeded to finalise the details. A major problem emerged in regard to finding a common valuation date for the blocks which could be used as a basis for compiling the relative interests of the owners. Because no common valuation date existed, special legislation was required authorising the Maori Trustee to adopt the 1962 valuation date. Sections 8 and 9 of the Maori Purposes Act 1966 directed the Maori Land Court to amalgamate the vested lands on the basis of the 1962 valuation, and gave the Maori Trustee the necessary authority over Waharangi 3, Raetihi 4B and Paetawa C.

The Maori Land Court heard the amalgamation application in February 1967. While satisfied that the amalgamation was the wish of the owners and should proceed, the court refused to issue an order at that time because it felt that insufficient information had been produced by the Maori Trustee to ensure that the amalgamation had been calculated correctly. The court insisted that a schedule should be produced specifying exactly which portion of each block was to be included, and that evidence should be given on how the ownership lists were calculated.

The Maori Land Court's insistence on the compilation of a further schedule for the land was proved to be justified. After working with Lands and Survey, it was discovered that the records of the Chief Surveyor, District Land Registrar, Maori Trustee and Maori Land Court relating to the vested lands were all different. None of the four agencies had an accurate total of either the land originally vested, or that remaining vested in the Maori Trustee. There were separate and duplicate Certificates of Title for the Maori blocks and for the leasehold interests, and uncertainty about the status of closed roads. Some Certificates of Title were found to be inaccurate.

Once a proper schedule had been compiled, the Maori Land Court issued its amalgamation order in May 1967. The amalgamated block was called the Atihau-Whanganui block. The

effect of an amalgamation order was to sever hapu or whanau ties with particular blocks of land. Instead, the owners of each separate block now became owners of the entire amalgamated area, with no differentiation of interests or ties to particular locations.

Shortly after the Whanganui vested lands had been amalgamated, the legislation governing the status and alienation of the vested lands was greatly changed by the Maori Affairs Amendment Act 1967. This Act established a fund to allow the Maori Trustee to purchase individual interests in the vested lands. If sufficient interest were obtained then they could be sold by the Maori Trustee to any lessee who wished to purchase his property. The Maori Trustee could also automatically acquire vested land interests worth less than £50. These too could be sold by the Maori Trustee to lessees who wished to purchase. The vested lands committee representing the owners had been concerned about the fate of uneconomic interests, but had wanted to ensure that they should be redistributed among the owners. The committee was strongly opposed to the uneconomic interests being taken from Maori and used to allow lessees to purchase land.

Steps were then taken to return the control of the vested lands to the owners, who had to decide upon the best management structure. The owners preferred the option of a statutory trust board, but this was rejected by the Minister of Maori Affairs. The owners then proceeded to plan for an incorporation. One advantage of an incorporation was that uneconomic interests and the shares of any owners wishing to sell could be purchased by the incorporation. This would ensure that the overall ownership of the vested lands remained within the same group. The disadvantages included that the owners became ‘shareholders’ in the incorporation rather than retaining a direct ownership link, and that the status of the land was changed from Maori freehold land to general land. In November 1969 the Maori Land Court vested the Atihau-Whanganui block in the Atihau-Whanganui Incorporation.

# Part Five: Atihau-Whanganui Incorporation - Land Resumption and Lease Administration 1970 - c2000

The Whanganui lands which were vested in the Aotea Maori Land Board, and leased to non-Maori by the board and the Maori Trustee, have been owned and administered by the Atihau-Whanganui Incorporation for more than 30 years. This history of the leased vested lands concludes with a discussion of aspects of the incorporation's administration. The focus of this chapter is on the way that the Maori Vested Lands Administration Act 1954, and the leases issued under that Act, have impacted on the incorporation's ability to resume land. As income-generation is a key factor in the incorporation's ability to pay the two-thirds compensation for improvements, the issue of rent levels and rental reviews is also discussed.

This part of the report should not be read as a full history of the incorporation. Instead it is focused on the relationship with Crown agencies, and the legal situation surrounding land valuation. Despite the intention of the 1954 Act to resolve the valuation difficulties and land resumption hurdles clearly identified by the Royal Commission, complex land valuation issues have continued to hinder the incorporation in its efforts to resume land and achieve an equitable return for the Maori shareholders it represents.

Therefore the history of only some aspects of the Atihau-Whanganui Incorporation are discussed in this report. The sources used include Maori Trustee records regarding loans and advances to the incorporation. Further information was provided by the Atihau-Whanganui Incorporation Managing Committee who agreed to allow the authors access to the minutes of the Annual General Meetings of shareholders and the incorporation's annual reports. In addition, useful discussions were held with incorporation staff, and the Secretary who discussed some of the issues relating to land valuations. While the incorporation was willing to grant access to its more public records, we have not had access to the committee minutes or any of the incorporation's own files relating to the costs of land resumptions and rent reviews. As a claimant in this matter the incorporation will be able to provide its own submissions to the Waitangi Tribunal hearing process which could supply any further detail required.

## 5.1 Establishing the Incorporation and Planning for Resumptions 1970 - 1975

In December 1969 the Atihau Whanganui Incorporation Committee of Management appointed a chairman, solicitor, accountant and banker. The committee also discussed the appointment of the Maori Trustee as interim agent of the incorporation. To provide continuity, the Maori Trustee was to have a limited role for an indeterminate period while its duties were being transferred to the incorporation. It was to collect rents and mortgage payments from lessees, manage Ohorea Station and arrange inspection of the leases. The committee was also brought up to date by trust staff on the administration of Ohorea Station and the status of various leases at that time.[504]

The Committee of Management decided that the Maori Trustee should be requested to advance $85,000 for a period of 25 years.[505] The $85,000 figure represented the balance still owing to the Maori Trustee for the advance on Ohorea Station. An application was made to the Board of Maori Affairs for the requested $85,000 advance, which was to be repaid by assigning the Ohorea farm proceeds.[506] The board approved the application subject to the advance being secured as a registered first mortgage.[507]

In June 1970 the Maori Land Court heard an application from the incorporation to confirm a resolution by the shareholders to restrict the sale of shares.[508] This was referred to as a 'closed shop' resolution, which meant that shares in the incorporation could only be sold or transferred to the incorporation, the Whanganui Trust, other shareholders, or family members.[509] The concern to prevent the sale of interests in the vested lands had been one of the motivating factors for the amalgamation and incorporation of the ownership. A shareholder meeting had been held in February 1970 which was attended by 22 shareholders.

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[504] Meeting of Atihau-Whanganui Incorporation, 2 December 1969, ABRP 6844 W4598, Box 255 2/429 vol 2, ANZ. [DB pp. 126-128]
[505] ibid.
[506] Board of Maori Affairs, Application for an Advance from the Maori Trustee's General Purposes Fund, 10 February 1970, ABOG 869 W5004/69 5/7/763 pt 1, ANZ.
[507] Maori Trustee Head Office to District Office, 18 February 1970, ABOG 869 W5004/69 5/7/763 pt 1, ANZ.
[508] Extract from Whanganui MB 134, 22 June 1970, pp. 282-283, ABRP 6844 W2598 box 255 2/429 vol 4, ANZ. [DB pp. 173-174]
[509] Section 41(3) Maori Affairs Amendment Act 1967.

The meeting had voted unanimously to restrict the sale of shares in the incorporation.[510] Horsley explained to the Maori Land Court that the incorporation would be paying its unclaimed dividends into the Whanganui Trust. The Whanganui Trust had been established by the Morikaunui Incorporation, and 'it is intended that both Incorporations which are closely related in their respective shareholders will channel their various charitable cultural and education activities through the Trust and accordingly keep them separate and distinct from the commercial activities of the Incorporations themselves.'[511] The income from investing the funds would be used by the trust for charitable, cultural and educational purposes. The court confirmed the resolution to restrict the sale of shares.[512]

The incorporation took over full administration on 1 July 1970. This included the running of Ohorea Station, rent collections and administration of approximately 200 leases.[513] It had been anticipated that the hand-over from the Maori Trustee would take a year to achieve, but six months into the incorporation's existence it was ready to terminate the role of the Maori Trustee as agent for the lease administration.[514]

When the incorporation took over control of the vested lands, the leases which had been renewed from 1954 were due to expire in 1975. The Maori Vested Lands Administration Act 1954 required the incorporation to give the lessee one year's notice if it intended to resume the land. This meant that the incorporation had to start considering which areas it might want, (and be able to) resume in 1975. It also had to commence negotiations for renewing the leases of the areas which it did not anticipate resuming in the near future.[515]

At the first Annual General Meeting of shareholders in December 1970 a dividend distribution of .75 cents per share was approved.[516] The incorporation reported that planning was under-way to resume land in the Oruakukuru Valley in 1975, and: 'Our resumption fund which was invested by the Maori Trustee under the Vested Lands Administration Act is

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[510] Minutes of General Meeting of Shareholders, 27 February 1970, Atihau-Whanganui Minute Book, Atihau-Whanganui Incorporation, Wanganui [AW Inc].
[511] Extract from Whanganui MB 134, 22 June 1970, pp. 282-283, ABRP 6844 W2598 box 255 2/429 vol 4, ANZ. [DB pp. 173-174]
[512] ibid.
[513] ibid.
[514] Annual Report, 1970, AW Inc.
[515] Horsley Brown and Lowe to Valuer General, 27 April 1970, ABRP 6844 W2598 box 255 2/429 vol 4, ANZ.
[516] Minutes of Annual General Meeting, 5 December 1970, Atihau-Whanganui Minute Book, AW Inc.

intact and is being added to in accordance with the past policy and augmented by our farming operations at Ohorea Station'.[517] The chairman told the meeting that one family were gifting their shares in the incorporation to the Whanganui Trust. He reminded shareholders that the names of any such donors would be entered into a special register, and that they and their families would remain entitled to the same educational and tribal assistance as previously.[518]

The incorporation completed its first full year of management at the end of May 1971. The annual report, presented by the chairman, Mete Kingi, was positive. The dividend to be paid was .75 cents per share, making a total payout of $9,423.96. As well as overseeing Ohorea Station, the management committee was working on a programme of timber sales, and arranging lease inspections.[519]

In 1972 the Committee of Management reported again on its farming, leasing and timber extracting operations. Due to favourable farming conditions Ohorea Station had recorded a profit of $30,572. A joint Morikau and Atihau-Whanganui group had inspected the timber in the area, and both incorporations had joined together for the purpose of marketing their timber. It had been decided to let small stands of timber fronting the Pipiriki Road to private individuals, and 'the large inland areas' to the Tongariro Timber Company. In anticipation of resuming farmland when the leases first expired in 1975, the incorporation had placed its investments on short-term deposit.[520]

As a result of the successful year the incorporation had decided to increase the dividend payout from .75 cents per share to .85 cents per share. This would raise the total payout from $9,423 to $10,680. Since the incorporation had taken over from the Maori Trustee in 1969, the dividend had increased 55 percent.[521] The Annual General Meeting of shareholders approved the increased dividend, and voted in favour of the incorporation paying five percent of its net profit to the Whanganui Trust for educational and tribal purposes.[522]

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[517] Annual Report, 1970, AW Inc.
[518] Minutes of Annual General Meeting, 5 December 1970, Atihau-Whanganui Minute Book, AW Inc.
[519] Atihau-Whanganui Block - 1971 Annual Report, ABRP 6844 W4598 box 250 2/306/49 vol 2, ANZ.
[520] Chairman's Annual Report - November 1972, ABRP 6844 W4598 box 250 2/306/49 vol 2, ANZ.
[521] ibid.
[522] Minutes of Annual General Meeting, 30 November 1972, Atihau-Whanganui Minute Book, AW Inc.

In May 1973 the Committee of Management met with the lessees of blocks at Raetihi to discuss the renewal of leases for those areas which the incorporation did not plan to resume at that time. It reported to the shareholders that terms of 21, 30 and 42 years were being considered, and the proposals 'were well received by those lessees present'.[523] The incorporation maintained the .85 cents per share dividend distribution, but emphasised to the shareholders that setting aside funds for land resumption remained a priority:

> Our budgeting has been influenced always by the need to make provision for resuming as much land as possible at the termination of leases, and our policy will be influenced greatly by our resumption programme in the future. Our plan for 1975 resumptions covering 8,000 acres is exercising our minds very much since the rise in wool and meat has brought on a steep rise in land values.[524]

In 1973 the incorporation was making arrangements to finance the resumption of land when the first 21 year leases expired in 1975. At the end of 1973 the incorporation still owed $39,000 to the Maori Trustee, which was being paid off from the Ohorea Station profits at a rate of approximately $2,500 per annum.[525] The incorporation planned to resume three leases in 1975, which they had estimated would cost $250,000.[526] However, 'rapidly increasing values' meant that by the end of 1973 the incorporation was estimating that the resumption would cost $350,000.[527] In addition to paying the compensation for improvements, the incorporation also needed to finance the establishment of its own farming operations on the resumed land, including the purchase of livestock. The leases they hoped to resume (Malpas, McGregor and Wilson) gave a total area of 8,000 acres, which the incorporation planned to develop into two farming stations. The cost of resumption, and developing the stations, which included the purchase of stock was estimated to be $880,000.[528]

The incorporation was seeking a further mortgage from the Maori Trustee of $350,000 and expected 'to be able to find the balance of $500,000 odd'.[529] It was proposed that 100 percent of the farm profits from the two stations would be assigned to repaying the loan for the first five years, after which it would be placed on a table mortgage. In January 1974 the Maori Trustee indicated that it would be prepared to grant a loan of $350,000, subject to approval

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[523] Chairman's Annual Report - November 1973, AW Inc.
[524] ibid.
[525] District Officer to Head Office, 14 December 1973, ABRP 6844 W2598 box 255 2/429 vol 4, ANZ. [DB p. 175]
[526] ibid.
[527] ibid.
[528] ibid.

by the Board of Maori Affairs. A valuation was also required to confirm that there was sufficient security for the loan.[530] A formal application for the advance was made to the Board of Maori Affairs in 1974. The incorporation requested a total of $389,400 for the following purposes:[531]

| | |
|---|---|
| Part purchase of lands being resumed | $350,000 |
| Discharge of existing loan | $38,824 |
| Legal fees for discharge | $26 |
| Contingencies | $549 |
| **Total** | **$389,400** |

The incorporation wanted the finance to resume the following leases:

| | |
|---|---|
| Wilson | 5,080 acres |
| McGregor Bros | 2,368 acres |
| Malpas | 971 acres |
| O'Neil Bros | 521 acres |
| **Total** | **8,940 acres** |

The loan was approved in May 1974. It was to be secured as a first mortgage, and repaid in half yearly instalments of $15,860 through the assignment of the farm profits from the resumed blocks, and $2,407 per half year from the Ohorea Station profits.[532]

In mid 1975 rising farmland values meant that the incorporation sought further funds from the Maori Trustee. It applied to increase the advance from $389,400 to $400,000, by borrowing a further $10,600 as a second mortgage, 'in view of the difficulty the Incorporation could have in financing the resumption due to the astronomical increase in valuation'.[533] The total $400,000 advance was approved in June 1975.[534] The incorporation finished repaying the loan from the Maori Trustee in September 1992.[535]

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[529] ibid.
[530] Maori Trustee to Robsons, 24 January 1974, ABOG 869 W5004/69 5/7/763 pt 1, ANZ.
[531] Board of Maori Affairs, Application for an Advance from the Maori Trustee's Common Fund, 25 March 1974, ABOG 869 W5004/69 5/7/763 pt 1, ANZ.
[532] Maori Trustee to Horsely Brown and Lowe, 27 May 1974, ABOG 869 W5004/69 5/7/763 pt 2, ANZ.
[533] District Officer to Head Office, 17 June 1975, ABOG 869 W5004/69 5/7/763 pt 2, ANZ.
[534] Maori Land Board, Application for an Advance from the Maori Trustee's Common Fund, 17 June 1975, ABOG 869 W5005/69 5/7/763 pt 4, ANZ.
[535] Maori Trustee to Sewell and Wilson, 7 September 1993, ABOG 869 W5005/69 5/7/763 pt 3, ANZ.

## 5.2 Valuation Issues 1975 - 1985

The incorporation decided to resume the Malpas, McGregor and Wilson leases when they expired in 1975. In order to determine the amount of compensation for improvements to be paid for these three properties, the Maori Vested Lands Administration Act required that a special valuation be made by the Valuation Department. In addition, the leases which the incorporation were not resuming had to be renewed for a further 21 years, and this required a special valuation of those lands for the purposes of determining the rental. When the valuations were received, the incorporation lodged a number of objections, particularly regarding the assessments of the unimproved value. The disputed valuations, and consequent compensation and rent levels, were not to be resolved for a further 14 years, during which time the objection regarding the resumed lands went through four court proceedings in order determine the principles of how the lands should be valued. The outcome of the test case of the resumed lands was then used as a basis for negotiating the renewed lease rentals.

The Valuer-General gave the following figures for the three properties to be resumed:[536]

| Lessee | Capital Value | Unimproved Value | Improvements |
|---|---|---|---|
| Wilson | $674,000 | $62,500 | $611,500 |
| McGregor | $432,000 | $41,650 | $390,350 |
| Malpas | $199,300 | $18,800 | $180,500 |

These values meant that the incorporation would be required to pay a total of $1,182,350 as compensation for two-thirds of the value of improvements. This figure was more than four times greater than the amount of compensation the incorporation had anticipated in 1973.

The incorporation objected to the special valuations. The matter was first heard by the Land Valuation Committee in April 1976, but the matter was adjourned with the agreement of all parties to the Administrative Division of the Supreme Court. This decision was made as it had emerged that there was a difference of over $200,000 in the unimproved value between the expert witnesses, and because the matter would have a bearing on other valuation objections awaiting hearing.[537]

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[536] Reasons for Judgment of Speight J and Ralph Frizzell Esq, 22 December 1981, p. 31, AW Inc. [DB pp. 370-432]

[537] *Atihau-Wanganui v Malpas,* [1977] 1 NZLR 610.

### 5.2.1 The 'Phantom Trees' Case

Before the matter of the valuations could be heard, it was agreed that a point of law required to be decided first. This was heard in the Administrative Division of the Supreme Court by Chief Justice Wild in October 1976. The matter revolved around the meaning of the words 'exclusive of the value of any indigenous timber trees' in the definition of unimproved value in Section 2 of the Maori Vested Lands Administration Act 1954. Unimproved Value was defined as:

> the sum exclusive of the value of any indigenous timber trees, which the owner's estate or interest in the land, if unencumbered by any mortgage or other charge thereon, might be expected to realise at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might be expected to impose, and if no improvements (as hereinbefore defined) had been made on the said land.[538]

The incorporation argued that the trees to be excluded were only those on the property at the time of the valuation. The lessees argued that the trees to be excluded were those which had been on the property at any time.[539] The question was important because the incorporation argued that the value of timber which had been standing on the land at the beginning of the lease should be included in the assessment of the unimproved value. The high value of native timber at that time meant that including the value of the timber which had been felled would result in a significant increase in the unimproved value of the land. An increase in the unimproved value would have the effect of raising the potential rents, (set as a percentage of unimproved value), and decreasing the value of improvements and the compensation to be paid.

The case, as decided by Chief Justice Wild, was a matter of limited legislative interpretation of the phrase 'exclusive of the value of any indigenous timber trees', rather than any wider examination of the intention of the legislation or the particulars of the valuations under dispute. Chief Justice Wild felt that the question presented 'no difficulty', as the language of the definition implied the present tense:

> The fact that from the sum so related to the time of valuation the value of any indigenous trees is to be excluded, imports that the reference is to any such trees on the land at that time. So to read the definition does not, in my view, require the addition of any words. But by contrast if the phrase 'any indigenous timber trees' were intended to mean any such trees on the land at any time I would have expected the draftsman to say so. I think it is very difficult to read the

[538] Section 2(1), Maori Vested Lands Administration Act 1954.
[539] *Atihau-Wanganui v Malpas,* [1977] 1 NZLR 610.

> definition so widely without adding such words which is not, of course, permissible.[540]

Chief Justice Wild then related the exclusion of timber trees from the unimproved value to other provisions of the 1954 Act which reserved the ownership of timber on the land to the owners. Accordingly, he surmised that the reason why the value of the timber was to be excluded was related to the way that unimproved value was used as a basis for the 5 percent rental. If standing timber had been included in the unimproved value, the lessee would have been required to pay rent for an asset to which he had no rights. Logically, this only applied to trees which were still standing on the land. As a result, Chief Justice Wild made a clear statement that the unimproved value was to include felled timber which had been standing on the land at the commencement of the lease:

> I think it follows from the words 'and if no improvements (as hereinbefore defined) had been made on the said land' which conclude the definition of 'unimproved value' that in assessing that value the valuer must imagine the land in its virgin or primeval state but with the roads, railways and other services referred to as extrinsic circumstances by the Full Court in Cox v. Public Trustee (1918) NZLR 95, 99. *The 'unimproved value' must therefore include an assessment of the value of any timber trees that stood on the land in its virgin state and no account may be taken of any 'improvement' effected by its being cleared of bush*. [Emphasis added.] [541]

As the Supreme Court decision was likely to greatly reduce the value of improvements, and therefore the compensation the lessees would receive, they appealed the decision to the Court of Appeal. The appeal was heard in May 1979, and the court's decision was issued in December 1979. Two written judgments were issued, a joint judgment by Justices Cooke and McMullin, and another by Justice Richardson.[542] The Court of Appeal upheld the judgment of Chief Justice Wild. In addition, both judgments commented on the way that the lower court should proceed when assessing the unimproved value, value of improvements and the capital value. The High Court later decided that these recommendations had been made without the benefit of evidence later produced before the High Court regarding the value of the timber on the blocks.[543]

Justices Cooke and McMullin agreed with Chief Justice Wild that the definition of unimproved value referred to the value at the time of valuation, which would 'more naturally'

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[540] ibid., p. 611.
[541] ibid., pp. 611-612.
[542] *The Proprietors of Atihau-Wanganui Incorporation v Malpas*, [1979] 2 NZLR 545-559.
[543] Reasons for Judgment of Speight J and Ralph Frizzell Esq, 22 December 1981, p. 33, AW Inc. [DB pp. 370-432]

refer to existing trees on the land.[544] In addition they specified that, although not clearly stated, the definition of capital value had to exclude the timber standing on the land at the time of valuation. As Section 13 of the 1954 Act required that the unimproved value plus the value of improvements had to equal the capital value, the value of timber standing at the time of valuation mathematically had to be excluded from the capital value if it was excluded from the unimproved value.[545]

Having discussed the points of legislative interpretation, Justices Cooke and McMullin then posed the further questions of 'how, *apart from those words*, the Act requires the valuer to approach the subject of past removal of trees.'[546] Before discussing this issue, they pointed out that no evidence on the specifics of the blocks had been presented, and that their comments were general observations only.[547]

Justices Cooke and McMullin referred to the statement by Chief Justice Wild that the unimproved value was related to its 'virgin or primeval state'. However they noted that in *Cox v Public Trustee,* to which Chief Justice Wild had referred, the term used was 'Land in a natural state'.[548] They also cited with approval the decision of Judge Archer in *In Re Wright's Objection* (see section 3.3) which clearly stated that the value of improvements was to be assessed as the capital value less the unimproved value, rather than valuing the improvements themselves.[549] The definition of the 'value of improvements' under the 1954 Act was 'the added value which at the date of valuation the improvements give to the land'.[550]

Justices Cooke and McMullin then discussed how the unimproved value should be assessed. This was to be essentially the market value of the land if none of the improvements had been carried out. This meant that the 'market value of the land, cleared and sown as it is, will have to be compared with the market value it would have had if still in bush'.[551] Justices Cooke and McMullin assumed that in 'all or most cases' the land would be more valuable as pasture than in bush. However, they recognised that if the land would have been more valuable in

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[544] *The Proprietors of Atihau-Wanganui Incorporation v Malpas*, [1979] 2 NZLR 547.
[545] ibid., pp. 548-549.
[546] ibid., p. 549.
[547] ibid.
[548] ibid.
[549] ibid., p. 551.
[550] Section 2(1), Maori Vested Lands Administration Act 1954.

timber at the time of valuation, then there would be no value for improvements, because the work of felling and clearing the land had not increased the value of the land. They stated that: 'If a valuable natural asset has been destroyed in the process, that factor should not be left out of account in deciding whether there has been in truth an improvement and, if so, the amount of compensation payable'.[552]

Justice Richardson agreed that the definition of unimproved value excluded only those trees standing on the land at the time of valuation, and that such timber trees were also excluded from the capital value.[553] He also distinguished between the 'primeval state' of the land and the unimproved value: 'The comparison is not with the land in what was its natural state at an earlier time but with what its state would now be had no improvements been made to it'.[554] Therefore, the question of whether the felling of the timber was an improvement or not was the key to deciding whether felled timber should be included in the unimproved value.

Justice Richardson specified that 'the underlying concept' of improvements was the expenditure of money and effort to improve the land, rather than commercial exploitation.[555] He compared timber milling with coal mining, which would not be considered an improvement. Richardson found that, in such cases, it was the activity carried out after the mining or milling operations which would be considered improvements.[556] Justice Richardson stated:

> If the work involved in felling the phantom trees adds to the value of the land at the time of valuation, then it ranks for consideration as an improvement. Thus, if the bush would now be of no commercial value, then all the work involved from felling to grassing qualifies as improvements to the extent that it adds value to the land. However, if the notional timber would be commercially millable, any work associated with the milling of the timber is not an improvement for it does not add value to the land.[557]

It should be noted that Justice Richardson also said that 'it is not suggested that any of the indigenous timber trees on the land comprised in these lease had been milled commercially', and that at the time the land was leased the bush was regarded as a hindrance which had to be

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[551] *The Proprietors of Atihau-Wanganui Incorporation v Malpas,* [1979] 2 NZLR 552.
[552] ibid.
[553] ibid., p. 555.
[554] ibid., p. 556.
[555] ibid., p. 557.
[556] ibid.
[557] ibid., pp. 558-559.

removed for farming development.[558] Justice Richardson's use of the term 'phantom trees' to describe timber which had been felled since the commencement of the lease, but which should be included in the unimproved value at the expiry of the lease, led to the case being referred to as the 'Phantom Trees' case.

The valuers employed by the incorporation, following the direction of the Court of Appeal, submitted new valuations which gave a nil value to improvements. By including the 1975 value of the 'phantom trees' in the unimproved value, they argued that the land would have been more valuable in 1975 for timber purposes than it was as pasture land.[559] Therefore, the conversion of the land to pasture could not be considered an improvement as it had not added value to the land.

The Court of Appeal decision and the prospect of receiving no compensation for improvements caused the lessees to protest their situation to the government. Accountants acting for some of the lessees wrote to their Member of Parliament, Jim Bolger:

> great feelings of insecurity felt by the current lessees in the unresolved legal issues are causing considerable hardship. Atihau land is now virtually unsaleable and with the ensuing uncertainty little investment is being put into further development.[560]

Jim Bolger followed up their concerns with Ben Couch the Minister of Maori Affairs by requesting information about whether the current leases were likely to be renewed by the owners, and the differing interpretations of unimproved value.[561] Although the lessees and Bolger referred to 'uncertainty' surrounding the position of the lessees, the Minister's reply clearly laid out the terms as specified under the 1954 Act and the prescribed leases. He advised Bolger to contact the incorporation to ascertain the likely attitude of the owners regarding renewing the leases.[562]

### 5.2.2 High Court Decision on Valuation Objections

After the Court of Appeal had determined the point of legislative interpretation, the hearing of the objections to the three special valuations could proceed. The hearing took place in the

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[558] ibid., p. 558.
[559] Reasons for Judgment of Speight J and Ralph Frizzell Esq, 22 December 1981, p. 34, AW Inc. [DB pp. 370-432]
[560] Cornwall to Bolger, 1 April 1980, ABRP 6844 W2498 247 2/437/50, ANZ.
[561] Bolger to Minister of Maori Affairs, 8 April 1980, ABRP 6844 W2498 247 2/437/50, ANZ.

Administrative Division of the High Court during November 1981. The case was heard by Justice Speight and Ralph Frizzell esquire, who issued their decision on 22 December 1981.

The case in the Administrative Division of the High Court was an objection to the valuations made by the Valuer-General. Although the case specifically concerned the three properties for resumption, the court was aware that the decision would be relevant to approximately 150 other leases administered by the incorporation.

The High Court referred to the previous judgments in *The Proprietors of Atihau-Wanganui Incorporation v Malpas* (see 5.2.1 above), but decided that those had been made without sufficient evidence having been presented:

> The Court of Appeal, however, made a number of other helpful observations on the procedure and principles which might be adopted in the Administrative Division in solving some of the problems which would arise, but made it clear that it was proceeding on certain factual premises advanced to the Court (some of which have subsequently emerged as being at variance with evidence received).[563]

As a result of the Court of Appeal decision, the incorporation argued that the 1975 value of commercially millable trees which had been extracted during the leases should be included in the unimproved value. The value of the millable timber which had been extracted was estimated at $3,000,000, which would have resulted in the unimproved value being higher than the capital value, thus leaving a nil value for improvements.[564] Speight and Frizzell therefore felt that they had to consider what was the proper interpretation to be applied to the previous judgment of the Court of Appeal.

Justice Speight and Frizzell esquire referred to in *In Re Wright's Objections*, which had 'particular relevance' as it had concerned another one of the Whanganui vested blocks, which they felt was 'very similar' to the properties involved in this case (see section 3.3).[565] In that case, in 1959 Judge Archer's decision had set a valuation method which had been subsequently followed, and approved by the Court of Appeal in *Atihau-Wanganui Incorporation v Malpas*. According to Speight and Frizzell, *In Re Wright's Objections* had

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[562] Draft Minister of Maori Affairs to Bolger, 14 May 1980, ABRP 6844 W2498 247 2/437/50, ANZ.
[563] Reasons for Judgment of Speight J and Ralph Frizzell Esq, 22 December 1981, p. 34, AW Inc. [DB pp. 370-432]
[564] ibid., p. 35.
[565] *Re Wright's Objection* [1959] NZLR 921.

laid down the principle that 'estimation of the value of improvements is a mathematical calculation consequent upon the ascertainment of capital and unimproved values'.[566]

In regard to *Re Wright's Objection*, Justice Speight and Frizzell esquire noted that Judge Archer had acted on the assumption that the property had originally been covered in heavy bush. However, Speight and Frizzell pointed out that the word 'bush' did not necessarily mean millable timber with a commercial value, and that in the Wright's case the question of the presence of commercially millable timber was not considered.[567] This was to become an important distinction in the current case, which justified the High Court departing from the previous Court of Appeal decision.

Before addressing the timber issue, Justice Speight and Frizzell esquire considered another aspect of the case. This revolved around the date from which improvements should be assessed. Counsel for the incorporation argued that the leases issued under the 1954 Act were new leases, and therefore only improvements made since 1954 should be assessed for compensation. However, the lessees argued that the leases issued under the 1954 Act were renewals of existing leases. Speight and Frizzell found that under Section 27 of the 1954 Act, the word 'lessee' also included the successors, executors, administrators and assigns of a lessee', so that 'the entitlement of a lessee under Section 27 includes the entitlement held by his predecessor'.[568] They agreed that it was the intention of Parliament that compensation rights should 'carry through'.[569] Therefore, the current lessees were found to be entitled to two-thirds compensation for the improvements to the land since 1906.[570]

The High Court then returned to the question of how the value of improvements should be calculated. It laid out the approach set in *In Re Wright's Objection* as:

> The Valuer must first satisfy himself as to the unimproved state of the land, a problem which may involve difficult questions of law and fact and one likely to be complicated by a dearth of evidence as to the condition of the land in its original state.[571]

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[566] Reasons for Judgment of Speight J and Ralph Frizzell Esq, 22 December 1981, p. 38, AW Inc. [DB pp. 370-432]
[567] ibid., p. 37.
[568] ibid., p. 44.
[569] ibid., p. 45.
[570] ibid., p. 47.
[571] *Re Wright's Objection* [1959] NZLR 924.

The Court of Appeal had stated that the assessment of the unimproved value was to exclude the indigenous timber growing on the land as at 1975: 'In this context Richardson, used the colourful phrase that the land had to be taken as if the phantom trees which had been removed were still upon the property in 1975.'[572] The required exercise for the High Court now was to assess the value of the land at the commencement of the lease, including its standing timber, which was then to be compared with its value at the termination of the lease in 1975. The difference between the original value and the 1975 capital value would be the extent to which the work done by the lessees had increased the value of the land. This was the defined value of the improvements.

Justice Speight and Frizzell esquire felt that the phrase 'phantom trees', had led counsel for the incorporation 'into error', in that the incorporation argued that:

> the exercise requires that all the bush and forest, of whatsoever nature, which was growing upon the property at the commencement of the lease, was in imagination still there in 1975 for the purpose of ascertaining the unimproved value - but not for capital value. The effect of this, though the matter was not disclosed to the Court of Appeal, would be to produce a very odd and in our view unfair an unintended consequence against the background of the history of these and similar leases and the problems which the 1954 Act was designed to overcome.[573]

The High Court heard evidence during the case which showed that there had been many large trees of millable quantity on the properties under consideration at the beginning of the twentieth century. This was particularly true of the land leased by Wilson, where the most commercial milling had occurred. The court agreed that if the original forest had still been on the land in 1975 the timber might have been worth over $3,000,000.[574] Therefore, regardless of the extent of fencing, building construction, and grassing carried out by the lessees, the value of the lost timber would have wiped out any value of improvements. Justice Speight and Frizzell esquire examined the previous judgment of the Court of Appeal to ascertain whether this had been the intended consequence. They found that the Court of Appeal had not intended to define unimproved value in that way:

> We are persuaded that this is not so. Indeed to the contrary. In our view when properly read and understood the judgments show the true meaning of the definition of improvements, namely, it is work done on or for the benefit of the land in so far as the effect is to increase the value and is as yet unexhausted.[575]

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[572] Reasons for Judgment of Speight J and Ralph Frizzell Esq, 22 December 1981, p. 50, AW Inc. [DB pp. 370-432]
[573] ibid.
[574] ibid., p. 52
[575] ibid., p. 53.

One of the reasons for this conclusion was the distinction between work done to improve the value of the land, and 'work done which extracts valuable material from it but does not result in benefit, indeed may result in detriment'.[576] Justice Speight and Frizzell esquire interpreted the previous judgments as based upon the (wrongful) assumptions that there had been no millable timber on the blocks, and that no work had been carried out which had not increased the value of the land.[577]

In respect to Chief Justice Wild's statement that the unimproved value should include an assessment of the land in its 'virgin state', Speight and Frizzell found that term to be incorrect. They stated that the 'unimproved value' was not the same as the 'virgin state' of the land, but 'its state with improvements (which are defined) removed'.[578] Thus, the unimproved value was merely what the land was worth at 1975 if the work done to improve the value of the land (the definition of improvement) was removed.

Justice Speight and Frizzell esquire pointed out that the terms of the leases and the legislation had made special provision for timber to be removed. Clause 74 of the 1900 regulations required the lessee to clear certain amounts of land. Clause 9 of the 1927 leases permitted timber removal and provided for the proceeds to be divided between the lessee and the owners. Section 29 of the 1954 Act prohibited timber removal by the lessees, and reserved the timber rights to the owners.[579]

Justice Speight and Frizzell esquire examined statements in Cooke's judgment which argued that the process of felling and clearing timber was but one part of the overall act of clearing and developing the land, and could not be separated from the development process.[580] They also said that the evidence presented showed that the process of clear felling the land, stumping and burning was 'an agricultural operation for the production of pasture', which was separate from the extraction of a timber asset:[581]

> Evidence was given in abundance that millable timber was taken out if and when it appeared

[576] ibid.
[577] ibid., p. 54.
[578] ibid., p. 55.
[579] ibid., p. 58.
[580] ibid., p. 57.
[581] ibid., p. 59.

> profitable to the owners (and before 1954 shared with the lessee), but the land was not improved thereby. If anything it was diminished. The land remained covered with scrub - the so-called 'cut-over' state. As a separate operation, often many years later, and at considerable expense, the lessee, as and when he could afford it, cut down the remaining growth - often as high as 80% cover - stacked the fallen material, burned, stumped and cleared. Sometimes this was twenty years' later. It was expensive. Mr Wilson waited from 1927 to 1953 before he could afford to spend $60,000 to clear 1,000 acres of bush from which valuable trees (about 7 to 9 to the acre) had previously been extracted on the special royalty sharing basis provided in the lease.[582]

Justice Speight and Frizzell esquire therefore rejected both of the incorporation's arguments that only the improvements made since 1954 should be compensated, and that the unimproved value should include the value of timber standing on the land at the commencement of the lease. As a result, they then moved on to examine the various valuation evidence presented to decide the following questions:

> (a)'What was the capital value at 1975?'
>
> (b)'What was the unimproved value of the land disregarding improvements, defined as the Act requires - i.e. on the present facts, the land in 'cut-over' state?'[583]

Overall, the High Court was critical of the way that the valuation evidence had been presented:

> We are concerned with the method whereby much of the evidence was presented by valuers in this case. A considerable amount of important evidence was given orally which meant that the written reports were only a partial presentation of the necessary facts concerning the properties relevant to the cases. We refer particularly to the apparent reluctance of some of the valuers who, having adopted a particular approach to arrive at their final valuations, appeared to consider it unnecessary to record the essential factors and quantitative measurements used in arriving at their final conclusions. We are not assisted either by schedules of allegedly comparable sales presented which did not record the manner in which major features of these properties differ from the subject properties. Indeed not only are many of these differences ignored but where they are recorded the positive versus negative aspects of these differences are not even distinguished.[584]

The fact that there was an 'almost complete absence' of sales of unimproved land for comparison purposes meant that there were very wide differences in the values presented. The valuers for the lessees relied on one sale of a cut-over block, which the court felt was not strictly comparable, and the valuer for the incorporation submitted comparable sales of forestry blocks. However the court was not convinced that a strong market for such forestry lands had existed in 1975. The High Court also pointed out that the increases in the capital value since 1957 had been disproportionately attributed to an increase in the value of

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[582] ibid., pp. 60-61.
[583] ibid., p. 63.

improvements rather than the value of the land itself. This was demonstrated by the Valuer-General's figures:[585]

| Property | Increase in Capital Value | Increase in Improvements | Increase in Unimproved Value |
|---|---|---|---|
| Wilson | $560,040 | $508,120 | $51,920 |
| McGregor | $449,320 | $317,730 | $31,590 |
| Malpas | $184,770 | $167,330 | $17,740 |

Justice Speight and Frizzell esquire instead adopted a mathematical formula to be applied consistently over the three properties. The High Court valuations were based on an annual increase since 1957 in the capital value of 14.5 percent, in the unimproved value of 20.5 percent, and the value of improvements of 14 percent.[586] This formula resulted in the following valuation determinations:[587]

| Property | Capital Value | Unimproved Value | Value of Improvements |
|---|---|---|---|
| Wilson | $675,000 | $120,000 | $555,000 |
| McGregor | $384,000 | $91,000 | $293,000 |
| Malpas | $185,500 | $42,750 | $142,750 |

The High Court was not required to determine the compensation for improvements to be paid to the lessees, which was set by the legislation at two-thirds of the value of improvements. However, the judgment did point out how its valuations affected the compensation the incorporation would have to pay compared that previously required by the Valuer-General's assessment:[588]

| Property | Valuer-General | High Court | Compensation Reduction |
|---|---|---|---|
| Wilson | $407,667 | $366,667 | $41,000 |
| McGregor | $260,233 | $188,667 | $71,566 |
| Malpas | $120,333 | $95,166 | $25,167 |
| **Total** | **$788, 233** | **$650,500** | **$137,733** |

Therefore, although the incorporation had lost the major points of argument involved in the case, the result was still a significant reduction in the amount of compensation to be paid to resume the three properties. As the incorporation had already paid the leases $550,000 towards the compensation, the outstanding payment to be made was $110,500, plus interest for the period 1975 to 1982 of $69,106.70.[589]

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[584] ibid., p. 68.
[585] ibid., pp. 80-81.
[586] ibid., p. 81.
[587] ibid., pp. 81-82.
[588] ibid., p. 83.
[589] Horsley Brown and Company to Secretary Atihau-Whanganui Incorporation, 22 December 1981, held with *Proprietors of Atihau-Whanganui Incorporation v Malpas* [Court of Appeal, CA], AW Inc.

The High Court's findings relating to the unimproved value of the resumed properties would also have implications for the other objections the incorporation had lodged against the special valuations made for the leases renewed in 1975. The High Court's decision had amounted to an increase from the 1954 to 1975 unimproved values of the following percentages:[590]

| | |
|---|---|
| Wilson | 92.00 % |
| McGregor | 118.49 % |
| Malpas | 127.39 % |

The solicitors acting for the incorporation advised that the High Court decision could now be used as a guide for the rent review negotiations, and should result in doubling the previous rental income.[591]

### 5.2.3 Court of Appeal Consideration of Valuation Objections

However, before the negotiations could be resolved, the incorporation decided to appeal against the decision of the High Court. The Court of Appeal (Justices Cooke, Richardson, and McMullin) heard the case in October 1984, but judgment was not delivered until almost a year later in September 1985. After the hearing, but before the judgment was issued, the solicitors reported to the incorporation on the case. They stated their two main arguments as follows:

> (a) Whether a valuer, when assessing unimproved value and the value of improvements, should start from the 'cut-over' state of land (in the case of land which was originally covered with forest) or take into account the fact that millable trees were originally on the land.
>
> (b) Whether compensation rights under Leases issued under the Maori Vested Lands Administration Act 1954 extend back to improvements effected prior to 1954.[592]

It would appear that the solicitors and the incorporation had appealed the High Court decision in order to seek a final definition of how the land valuations should be made. The solicitor was not confident of a finding in their favour regarding issue (b):

> You will be aware that the Incorporation has always proceeded on the basis that all improvements were entitled to be taken into account for compensation purposes. We argued this issue only because it was raised during the course of the hearing in the High Court, it has

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[590] ibid.
[591] ibid.
[592] Horsely Brown and Company to Secretary Atihau-Whanganui Incorporation, 8 November 1984, held with *Proprietors of Atihau-Whanganui Incorporation v Malpas* [CA], AW Inc.

> been raised also by the Valuation Department in the Hamilton District in respect of other parcels of land and it is desirable that the issue be decided so that it does not complicate future compensation cases.[593]

The solicitor advised the incorporation that should it be successful regarding the 'phantom trees', then it would have far reaching consequences for the land resumptions and rent review process. He suggested that Crown intervention, such as another Royal Commission, could be necessary to re-establish the basis of the leases. Overall, he assured the incorporation that even if the appeal was unsuccessful, it had been appropriate to seek the opinion of the Court of Appeal: 'Whatever the outcome, it can only be of assistance to the Incorporation in the future in dealing with rental valuations and the question of compensation when lands are resumed'.[594]

The judgment of the Court of Appeal, delivered by Justice McMullin, rejected both of the arguments put forward by the incorporation, and confirmed the valuations set by the High Court. The judgment paid a great deal of attention to the history of the blocks and developments regarding all the vested lands, emphasising the process of converting bush country to pastoral farm land. McMullin, said that the appeal involved 'a consideration of the state of the land at the beginning and end of this period of development'.[595]

The Court of Appeal placed particular emphasis on the original reasons for leasing the land and requirements placed on the lessees. Regulation 74, issued in 1900 under the Maori Lands Administration Act 1900, required the lessee to bring into cultivation at least one-fifth of the land within four years, and to put substantial improvements of a permanent character on the land within six years. Therefore, the Court of Appeal stated that:

> The leases effectively required the settlers to carve farms out of country which in all likelihood was in much the same condition as it was when New Zealand first became a Crown Colony and possibly when the Maoris first arrived in New Zealand. There was, however, another factor which influenced the settlers to clear the land as quickly as possible. Rapid steps had to be taken toward the clearing and grassing of the land if the lessees were to be able to earn a living from it and meet the rentals payable under the leases. And so, carrying out the terms of the leases and putting the land to the use that both the settlers and the Maori owners intended for it, it was necessary for the former to clear the land of the bush which stood in the way.[596]

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[593] ibid.
[594] ibid.
[595] Judgment of the Court Delivered by McMullin J, 18 September 1985, p. 3, AW Inc. [DB pp. 434-468]
[596] ibid., p. 10.

Regarding the expectation of the Maori owners at the time of leasing at the beginning of the twentieth century, the Court of Appeal stated that the 'whole purpose' was that the Maori owners would be able to resume the land as pastoral land at the expiry of the lease.[597]

As with the High Court decision, the Court of Appeal distinguished between general timber clearing and commercial timber milling:

> It seems that no trees were ever milled on the Malpas block, only a small area was milled on the McGregor block, but some timber was extracted from the Wilson block between 1924 and 1931 and 80 acres milled there in 1954. However, a number of trees which can now be identified from their stumps as one-time millable timber trees of a certain species, were cut down and fired in the general clearing operations of all the lessees over the years.[598]

The Court of Appeal explained that the burning of timber in the early part of the century was part of the process of converting the land to pasture, as grass seed was sown in the fertile ashes. The Court of Appeal saw this process as part of the history of the development of New Zealand:

> The cutting and burning of the forests, possibly viewed now as wasteful by many who are rightly concerned to preserve the ancient forests and to save the last stands of indigenous timber from destruction, must be judged against the times in which they occurred. At the beginning of this century forests grew over much of New Zealand; pasture did not. The early settlers could survive and make their way only by clearing the land of the then seemingly useless bush and converting it to pastoral uses.[599]

The Court of Appeal reviewed how regulations and legislation had provided for the lessees to be compensated for the improvements they made to the land. Curiously, the Court of Appeal made a factual error by stating that the Royal Commission recommended that the lessees should receive 75 percent of the value of improvements, and that this recommendation was adopted in the Maori Vested Lands Administration Act 1954.[600] In fact, the Royal Commission recommended compensation should be two-thirds of the value of improvements, and Section 27 of the 1954 Act set the level of compensation as two-thirds of the value of improvements.

The Court of Appeal repeated the distinction made in the High Court regarding the Court of Appeal's 1979 decision in *Atihau-Whanganui v Malpas*. The Court of Appeal pointed out that in 1979 the Court of Appeal had followed in *In Re Wright's Objection*, and proceeded on

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[597] ibid., p. 26.
[598] ibid., p. 12.
[599] ibid., p. 13.
[600] ibid., p. 14.

the basis that there had never been commercial milling on the land under question. Now that evidence had been presented on the milling on the blocks, and the possible value of the timber which had been cleared, the Court of Appeal considered it was now faced with a 'factual setting very different from that previously assumed'.[601]

The Court of Appeal affirmed the decision of the Administrative Division of the High Court that the unimproved value at the end of the lease should not include the value of millable timber which had been cleared during the lease.[602] One of its reasons that it was not the courts' function to determine any claim for 'alleged waste' against the lessees. Regarding the issue of whether the work of felling, burning, stumping and clearing the bush should be regarded as an improvement, which improved the value of the land, the Court of Appeal said: 'We prefer the view that the question should be - was it for the benefit of the land at the time it was done?'.[603] If so, the potential 1975 value of the millable trees which were removed should not be deducted from the value of the improvements made when the trees were felled: 'The removal of the trees was a necessary step in the process of effecting what was clearly regarded as an improvement at the time that the work was done.'[604]

The second aspect of the incorporation's appeal related to the date from which improvements should be assessed. The incorporation presented evidence about various clauses of the 1906 and 1927 leases, arguing that the relevant provisions did not entitle the lessee to enforce payment of compensation by the owners. However the Court of Appeal rejected this argument:

> But when the compensation provisions are viewed as a whole it becomes apparent that, whatever defects there may have been with regard to the setting up of complete machinery provisions for the payment of compensation, the clear purpose of the 1900 Regulations, the 1906 leases, and the 1927 renewals was that the lessees were to be paid full compensation for permanent improvements effected to the land from 1906 onwards.[605]

At the end of 1985 the incorporation reported that although it had lost the Court of Appeal case, that the finding of the High Court in 1981 which reduced the compensation to be paid still stood. This meant that $136,000, which included interest, was now due to finalise the

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[601] ibid., p. 17.
[602] ibid., p. 20.
[603] ibid., p. 21.
[604] ibid.
[605] ibid., p. 30.

compensation payments for the land resumed in 1975.[606] The payments, plus 11 year's interest, to Malpas, McGregor and Wilson were made in 1986.[607] Furthermore, the special valuations made for rent review purposes in 1975 would need to be reassessed in light of the court decisions. This meant that a substantial amount of rental arrears would be due for the ten year period since 1975.

## 5.3 Ongoing Resumptions and Rent Reviews

While the *Proprietors of Atihau-Whanganui v Malpas* cases continued through the courts for over ten years, the incorporation had also to proceed with other resumptions and rent reviews. The decision had to be made at a time when there was still uncertainty about how the valuations should be made. This meant that the incorporation did not know how much would be needed to finance resumptions or its likely rental income. Even after the decision of the Court of Appeal in 1985, the process of valuing land for rent review purposes has still resulted in negotiations being drawn out for many years. Although special valuations had been made, if the incorporation and/or the lessees objected to the valuations, the process used was to negotiate an agreed rent level rather than pursue more cases through the Land Valuation Court.

The incorporation reported in 1978 that two areas formerly leased by O'Neil had been resumed, along with another property leased by Coleman. These were to be added to the Ohorea Station farming operation.[608]

In 1982 the incorporation approached the Maori Trustee about providing financial assistance for a further round of lease resumptions in 1990. It was estimated that approximately $1,000,000 might be required.[609] Partly due to reluctance its to commit to a loan eight years in advance, the Maori Trustee decided to reply with a 'tentative no'. The incorporation was also told that this decision had been made because the Maori Trustee had 'already helped the Incorporation to a fair degree'.[610]

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[606] Chairman's Annual Report, November 1985, AW Inc.
[607] Chairman's Annual Report, November 1986, AW Inc.
[608] Chairman's Annual Report, November 1978, AW Inc.
[609] District Officer to Head Office, 22 October 1982, ABOG 869 W5005/69 5/7/763 pt 3, ANZ.
[610] District Officer to Atihau-Whanganui Incorporation, ABOG 869 W5005/69 5/7/763 pt 3, ANZ.

The balance of the sinking fund held by the incorporation in 1985 was $1,662,642. This figure was very close to the amount that the incorporation estimated would be required to pay compensation for improvements and restock one 4,000 to 5,000 acre property.[611]

Neither the 1985 nor 1975 rent review negotiations had been completed by 1987. The incorporation warned its shareholders that the large arrears, combined with the difficult economic climate, meant that the incorporation would have to accept that the lessees would not be able to pay the arrears in a lump sum.[612] At the same time, the financial difficulties facing farmers at that time meant that some lessees had offered their property for resumption to the incorporation before their leases expired.[613]

The 1989 financial year saw the incorporation achieve a record profit, but this included $200,000 worth of rent arrears for the 1975 to 1988 periods. The new rent levels had finally been agreed upon during the year, which had resulted in the lessees owing a total of $800,000 since 1975.[614] The incorporation and lessees had agreed to spread the payment of the arrears over future years. During that year, the incorporation had also resumed the Coleman lease, and the property was now leased to the Morikaunui Incorporation.

In 1989 the incorporation planned to resume several properties totalling 8,000 acres in 1990.[615] In 1990 the incorporation resumed 'the Duigan, Sommerville and part of the Bristol and Lilhurn properties', although the amount of compensation for improvements was still under negotiation.[616] The 1990 resumption programme was financed by a $1,000,000 loan from a private lending institution.[617]

The chairman in his annual report for 1991 summarised the achievements of the incorporation during the previous 21 years. He noted that during that time the incorporation had paid out $392,035 in dividends, and made tribal purposes grants of $171,657. It had

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[611] Chairman's Annual Report, November 1985, AW Inc.
[612] Chairman's Annual Report, November 1987, AW Inc.
[613] ibid.
[614] Chairman's Annual Report, November 1989, AW Inc.
[615] ibid.
[616] Chairman's Annual Report, November 1990, AW Inc.
[617] Horsely Christie to Maori Trustee, 13 July 1990, ABOG 869 W5005/69 5/7/763 pt 4, ANZ.

resumed, (or was in the process of resuming), 22,500 acres of land, for a total cost of $4,327,279. That cost included the compensation for improvements, and the cost of stock and equipment for the stations.[618] By 1992 the incorporation was farming five sheep and cattle stations:

| Station | Area | Cost of Improvements [619] |
|---|---|---|
| Ohorea | 5,825 acres | $522,345 |
| Omerei | 4,345 acres | $425,500 |
| Tawanui | 5,080 acres | $370,000 |
| Pah Hill | 5,717 acres | $907,000 |
| Ngapuke | 2,636 acres | $381,000 |

The chairman stated that the Committee of Management saw its kaupapa as the resumption of the remaining 70,000 acres over the next 20 to 30 years.[620]

In 1994 the 'Baddeley property' was resumed for a cost of $500,000. The land was then leased to the Morikaunui Incorporation.[621] During the financial year for 1994 to 1995 the rent received increased from $91,657 to $447,328. This was largely due to rental increases and arrears received from Winstone forestry lease.[622]

The leases which had been renewed in 1975 were due to expire in 1996, at which time the incorporation had the option of resumption. The incorporation planned to resume an area of 4,200 acres at this time, for an estimated cost of $2,000,000. The incorporation had funds available worth $2,100,000 which could be used.[623] As with previous resumptions, the amount of compensation for improvements to be paid took years to resolve. During 1997 a mediation process was entered into in the hope of avoiding court action, but the mediation failed to reach an agreement.[624] In 1998 the incorporation was estimating that the resumption of the 4,200 acres might cost $3,000,000. This sum did not including the cost of purchasing livestock for the properties. While the incorporation had taken possession of three properties,

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[618] Chairman's Annual Report, November 1991, AW Inc.
[619] 'Cost of Improvements' was the term used in the annual report. It is not clear whether this refers to the amount the incorporation had to pay to resume the land, or the value of the improvements on the block as at 1992.
[620] Chairman's Annual Report, 1992, AW Inc.
[621] Chairman's Annual Report, 1995, AW Inc.
[622] ibid.
[623] Chairman's Report, 1994, AW Inc.

an agreement had yet to be reached with the Ohotu Grazing Company. The inability to gain possession of this land was having an adverse affect on the newly established Ohotu Station, as it could not make full use of the property.[625] In 1999 the incorporation reported to its shareholders that the 1996 resumption programme had been completed at a total cost of $2,970,000.[626] This meant that all the resumption funds that the incorporation had accumulated had now been paid out, and further funds would have to be set aside for any proposed resumptions in 2005. The incorporation was, however, in the process of resuming 2,130 acres on Tohunga Road, for a cost of $1,900,000.[627]

On exhausted the funds set aside for resumptions the incorporation recognised that it would be necessary in the future to continue to borrow funds for further resumptions.[628] The Strategic Plan for 2000 to 2001 laid out how the incorporation planned to finance future resumptions. The plan specified that instead of setting aside resumption funds, loans would be raised to finance the future resumption of blocks, which would then be repaid out of future profits.[629]

A further round of valuations was required in 1995 to set new rental levels. These rent reviews were under negotiation in 2003 and it was suggested that they might go before the Valuation Court in order to seek a resolution.[630] One of the ongoing difficulties is the assessment of the unimproved value. Valuers usually base their valuations on comparable sales, however there are now very few sales of unimproved land in New Zealand to use as a guide for assessing the market value of unimproved land. In addition, any sale of unimproved land would have to be comparable in both terms of size and condition. Both the incorporation and the lessees have engaged their own valuers who have produced widely divergent unimproved values.[631]

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[624] Chairman's Report, 1997, AW Inc.
[625] Chairman's Report, 1998, AW Inc.
[626] Resumption Report, 26 November 1999, Atihau-Whanganui Minute Book, AW Inc.
[627] Chairman's Report, 1999, AW Inc.
[628] ibid.
[629] Strategic Plan, 2000/2001, Atihau-Whanganui Minute Book, p. 113, AW Inc.
[630] Personal Communication, Lex Moody, Secretary Atihau-Whanganui Incorporation, 5 March 2003.
[631] ibid.

The Atihau-Whanganui Incorporation has submitted a background paper to the Office of Treaty Settlements regarding the Whanganui Vested Lands Claim. This submission explains the current status of the resumption programme and its cost to the incorporation:

> To date, 55,000 acres is still to be resumed.
>
> Of the balance, the Maori Trustee had resumed 4,094 acres before incorporation in 1969; the Atihau-Whanganui Incorporation has resumed 34,058 acres at a cost of $8.466 million; and the remaining land has been surrendered to the Incorporation for rent arrears etc.
>
> The next resumption date is 2005, when 7,664 acres become available for resumption at an estimated cost of $2.2 million. Notice to lessees of the Incorporation's intention to resume any of these lands must be given by 1 July 2004.
>
> In 2020, approximately 13,000 acres become available for resumption at an estimated cost of $3.72 million.
>
> After 2020, approximately 33,000 acres will still be leased. The estimated cost of resuming that land is $7 million.
>
> Based on these estimates, the cost to Atihau-Whanganui Incorporation to achieve the resumption of all its land will be $21 million.
>
> Over the last ten years, the Atihau-Whanganui Incorporation total annual dividend has averaged at $50,261. In the same ten year period, the Incorporation has paid $289,920 to the Whanganui Trust for education grants etc. This means that a total of $79,253 per annum has been paid for the benefit of shareholders for the last ten years.
>
> This compares with an average of $535,788 that the Incorporation has transferred each year to its resumption fund. The difference between these figures represents a significant lost opportunity for the Incorporation.[632]

In 2003 the possibility of making a financial settlement with the Office of Treaty Settlements was a matter of some urgency for the incorporation.[633] The next date at which land is available for resumption is in 2005, but the leases require one year's notice if the incorporation intends to resume the land. This means that the incorporation has to decide within the next twelve months on how much land it might be able to afford to resume.

## 5.4 Summary

The focus of this part of the report is on the way that the Maori Vested Lands Administration Act 1954, and the leases issued under that Act, have impacted on the incorporation's ability

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[632] 'Wai 759: the Whanganui Vested Lands Claim, Background Paper for the Office of Treaty Settlements', supplied to the authors by Tom Bennion.
[633] Personal Communication, Tom Bennion, 3 March 2003.

to resume land. Despite the intention of the 1954 Act to resolve the valuation difficulties and land resumption hurdles clearly identified by the Royal Commission, complex land valuation issues have continued to hinder the incorporation in its efforts to resume land and achieve an equitable return for the Maori shareholders it represents.

One of the first important decisions made by the incorporation was to seek shareholder approval to restrict the sale of shares in the incorporation. A resolution passed at a shareholder meeting in early 1970 decided that the shares in the incorporation can only be sold or transferred to other shareholders or family members, the incorporation, or the Whanganui Trust. The concern to prevent the outside sale of interests in the vested lands had been one of the motivating factors for amalgamating and incorporating the ownership.

In 1973 the incorporation was making arrangements to finance the resumption of land when the first 21 year leases expired in 1975. The incorporation planned to resume 8,000 acres, held by three lessees, for an estimated cost of $250,000. However, rapidly rising land values during the mid 1970s meant that by the end of 1973 the incorporation was estimating the resumption cost at $350,000. In addition to paying the compensation for improvements, the incorporation also needed to finance the establishment of its own farming operations on the resumed land, including the purchase of livestock. The cost of resumption, plus developing the stations, including the purchase of stock was estimated to be $880,000. The Board of Maori Affairs approved a mortgage of $400,000 for the incorporation.

In order to determine the amount of compensation for improvements to be paid for the three resumed properties, the Maori Vested Lands Administration Act required that a special valuation be made by the Valuation Department. In addition, the leases which the incorporation were not resuming had to be renewed for a further 21 years, and this required a special valuation of those lands for the purposes of determining the rental. When the valuations were received, the incorporation lodged a number of objections, particularly regarding the assessments of the unimproved value. The disputed valuations, and consequent compensation and rent levels, were not to be resolved for a further 14 years. During this time the objection regarding the resumed lands went through four court proceedings in order to determine the principles of how the lands should be valued. The outcome of the test case of the resumed lands was then used as a basis for negotiating the renewed lease rentals.

The special valuations of the resumed properties meant that the incorporation would be required to pay a total $1,182,350 as compensation for two-thirds of the value of improvements. This figure was more than four times greater than the amount of compensation the incorporation had anticipated in 1973. The incorporation objected to the special valuations. Before the objection could be heard in the Administrative Division of the Supreme Court, a point of law required to be decided first. This was heard by Chief Justice Wild in October 1976. The matter revolved around the meaning of the words 'exclusive of the value of any indigenous timber trees' in the definition of unimproved value.

The incorporation argued that the trees to be excluded were only those on the property at the time of the valuation. The lessees argued that the trees to be excluded were those which had been on the property at any time. The question was important because the incorporation argued that the value of timber which had been standing on the land at the beginning of the lease should be included in the assessment of the unimproved value. Given the high value of native timber at that time, the inclusion of the felled timber would have significantly increased the unimproved value of the land. An increase in the unimproved value would have the effect of raising the potential rents (set as a percentage of unimproved value) and decreasing the value of improvements and the compensation to be paid.

Chief Justice Wild found in favour of the incorporation and stated that: 'The "unimproved value" must therefore include an assessment of the value of any timber trees that stood on the land in its virgin state and no account may be taken of any "improvement" effected by its being cleared of bush.'[634] The lessees appealed this decision to the Court of Appeal, which upheld Chief Justice Wild's decision. In addition, both judgments commented on the way that the lower court should proceed when assessing the unimproved value, value of improvements and the capital value. Justice Richardson referred to the timber which had been felled during the duration of the lease as the 'phantom trees', and said that if felling the 'phantom trees' would have been commercial at the expiry of the lease, then the work associated with clearing the timber should not be treated as an improvement.

[634] *Atihau-Wanganui v Malpas,* [1977] 1 NZLR 611-612.

After the Court of Appeal had determined the point of legal interpretation, the hearing of the objections to the three special valuations could proceed. The hearing took place in the Administrative Division of the High Court during November 1981. The court found that the lessees were entitled to compensation for improvements done since the land was first leased in 1906, rather than from the date leases were issued under the 1954 Act. Regarding the 'phantom trees', the High Court departed from the findings and recommendations made by the Court of Appeal, on the grounds that the Court of Appeal had not been presented with the evidence relating to the commercial value of the trees which had been cleared during the term of the leases. The High Court decided that the unimproved value of the land should be assessed as the land, without improvements, in its 'cut-over' state.

Having decided the principles of how the property should be valued, the High Court then considered the valuation evidence for the three blocks. The lack of comparable sales of unimproved land meant that the court was not convinced by the arguments of the valuers. Instead, it approached the question by analysing the way that the capital value had increased since 1957, and deciding how that increase should be allocated between the value of improvements and the unimproved value. As a result, the High Court set values for improvements which meant that the incorporation had to pay $650,500 as the two-thirds compensation. This result was a reduction of $137,733 from the compensation required by the previous special valuation.

Although the incorporation had succeeded in achieving a reduction in the compensation, it decided to appeal the High Court decisions that the 'phantom trees' should not be included in the unimproved value, and that the lessees were entitled to compensation for the improvements made since 1906. The decision to appeal appears to have been made in order to seek a final legal determination of the issues involved. The Court of Appeal upheld the decision of the High Court, and in doing so, emphasised that the intention when the blocks were first leased was that the bush covered land would be cleared and converted to pasture. Felling and clearing timber were specifically required under the terms of the lease, and were considered an improvement at the time the work was done.

The High Court's findings relating to the unimproved value of the resumed properties also had implications for the other objections the incorporation had lodged against the special

valuations made for the leases renewed in 1975. As the High Court had approximately doubled the unimproved value from that of 1957, the incorporation could use that as a guide for rent review negotiations, with the prospect of doubling the rental. The 1975 rent review (along with the 1985 rent review) negotiations were not completed until 1988, by which time the incorporation was owed over $800,000 in rental arrears. The incorporation had to agree to the arrears being paid in instalments. The 1995 rent review is still the subject of negotiations between the incorporation and the lessees in 2003.

Further areas of land have been resumed since 1975. The 1996 resumption of 4,200 acres cost the incorporation $2,970,000. Planning for future resumptions is based around borrowing to pay the compensation for improvements and using the income generated by the incorporation. Throughout the history of the incorporation, the shareholders have had to sacrifice receiving full shares of the profit of the incorporation in order to meet the long term goal of paying for the resumption of more land in the future. Currently 55,000 acres of land remains to be resumed, at an estimated cost of $21 million. However, experience has shown that fluctuations in farm profitability and land values, combined with the vagaries of valuations, mean that the final cost could be much higher. Over 100 years since the land was vested in the Aotea District Maori Land Council, more than half the vested lands remain under leasehold tenure.

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