

Barriers to the Development of Maori Freehold Land

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Introduction

This paper identifies key barriers to the development of land that have been referenced in research. This paper supports policy being developed for addressing potential limitations and constraints on Maori land in the Waikato as a result of the Healthy Rivers/Waiora Plan Change.

The research documents identified in this paper can be seen as reflecting two elements, one, the historic treatment of Maori and their land as part of the colonisation and assimilation process of the nineteenth and twentieth centuries. This includes systematic alienation of Maori land and policies and procedures that discouraged or actively prevented land from being developed. The second is the legacy of marginalisation and the contemporary challenges and constraints of governance and land management.

Research

A significant body of research work on legislation, government policy and procedures that affected Maori land during the nineteenth and first half of the twentieth centuries has been commissioned by the Waitangi Tribunal. Two series of works are notable for this subject, these being the Rangahaua Whanui National Theme reports and Rangahaua Whanui District reports. A number of these reports have been identified as relevant historic background to the barriers to development of Maori land. These have been relied on particularly in this paper as providing an appropriate overview. There are certainly many more research reports, theses, newspaper articles and if time and resource allowed primary research into very detailed aspects of historic barriers to Maori land development in the Waikato. Needless to say Waikato lands are well-known to have been a significant part of early New Zealand settlement aspirations and subsequent confiscation and government administration.

Over the last half of the twentieth century and during the 16 years there continue to be a number of reviews, schemes, programmes and projects to increase the productivity of Maori land in Northland, Bay of Plenty, Waikato and other places. Some recent pieces of work in Maori forestry, agri-business and housing are of relevance to the subject of this paper and are included in the references. Notwithstanding the historic legacy of land legislation and the policies and procedures of early governments, a number of barriers still exist in the utilisation, development of Maori land. These include and are not limited to:

- A majority of titles do not have a management structure
- The ownership structure and its administration (with increasing number of shareholders)
- Limited access to investment capital and finance
- Imposition of Emissions Trading Scheme
- Ongoing issues with rating of Maori land
- Compliance and statutory process costs
- Attracting highly skilled governors and managers
- Lack of young and well-trained workforce
- Lack of access to national innovation networks
- Lack of access to international supply chains
- Limited interaction with national and international capital markets
- Limited use of existing regional and national infrastructure
- Financial literacy

Research Reports and Documents

This section identifies research reports and a short synopsis of each. Where relevant excerpts have been taken from the report to emphasise the subject of this paper.

HISTORICAL

The Crown's Engagement with Customary Tenure in the Nineteenth Century, H Riseborough and J Hutton. 1997

This report is a historical report on the Crown's treatment of customary tenure. The report effectively broken into two parts looks at the Crown's response to customary tenure 1839-1894 and then the interpretation of customary Maori land tenure in the Native (Maori) Land Court. The following quotes summarise the sentiments and details of the report.

'At the time the Treaty was signed there was an expectation in Britain that the Crown would be the beneficiary of the 'waste' lands in New Zealand, that Maori could not lay claim to lands they did not occupy and cultivate. When it was finally admitted that Maori ownership of all the land in the country was guaranteed by the Treaty of Waitangi, the Crown set out to create a royal demesne, extinguishing customary native title at first by purchase, and over the years by a variety of other means. It is clear that the Crown's ultimate aim was to extinguish customary title to all the land in New Zealand – first cultivable land, then pastoral land, and finally land for small family farms.'

'Within 50 years of the signing of the Treaty of Waitangi, almost the only land remaining to Maori – and not all of that on native title – was marginal, largely remote, and mountainous. Clearly Maori were in no position to create competition for struggling white farmers. Extinguishing native title and facilitating alienation may have satisfied settler demand; but the grievances stacked up through forced purchases, disputed sales, and 'voluntary' cessions; and the operations of courts and land commissions were the subject of appeals and petitions and commissions of inquiry for years. To this day most of them remain to be requited.' (Riseborough & Hutton: 1997:109-110)

'...the court sought to destroy what was considered to be the 'communitistic' nature of Maori social organisation by transforming complex use– rights into freehold title. In practice, though, the majority of title investigations created a quasi-individualism in which a number of owners were placed on a single certificate of title or memorial of ownership. Nonetheless, it appears that the imperative of destroying 'communalistic' tenure necessitated, in the court's mind at least, the simplification of a complex and communally-administered set of rights in the process of investigating and awarding title.

Furthermore, in practice, the court appears to have varied its approach to the question of tenure depending on the level to which the land was disputed. The court did not appear to be overly concerned with the nature of evidence on non-disputed land. This is perhaps understandable: the court could do little else if nobody challenged the evidence presented. But when disputes arose, the court tended to stress rights based on occupation and conquest, or make some entirely arbitrary ruling on other criteria. Moreover, such disputes often involved groups who held rights at different levels, and lesser right-holders often appear to have objected not to the rights held by the other group, but to their own rights being extinguished by the court. In some cases the court acknowledged the problem and insisted that the land was subdivided. In other cases, the court simply awarded disputed land to a single group. Likewise, the court actively encouraged (and even directed) the settlement of differences outside of the court environment. Thus the court would

typically collapse the ongoing history of any particular area of land into a once-off arrangement by which title was frozen in a legally-binding form.' (Riseborough & Hutton: 1997:200)

Public Works Takings of Māori Land, 1840-1981, C Marr. 1997

This report was commissioned to provide an overview of Crown legal and administrative policy in compulsorily taking Maori land for public works purposes from 1840 to 1981. The intention was to provide background information, in order to assist in the development of Crown policy in settling Treaty claims arising from public works takings.

The report provides a chronology of at least 20 major pieces of public works legislation passed in New Zealand that contained discriminatory provisions towards Maori and their land, and the policies and procedures that implemented the legislation.

Māori and Rating Law, T Bennion. 1997

This report provides a chronological account of the application of rating laws and policies that have applied to Maori land from 1840 to 1997. The report provides a synopsis of successive legislation, central and local government responses to the 'problem of rating Maori land' and the draconian measures to enforce productivity on Maori land.

Māori Land Councils and Maori Land Boards, D Loveridge. 1996

This report describes the establishment, roles and function of Maori Land Councils and Boards intended to develop 'unused' and unproductive Maori land from 1900-1955. However, they were utilised as a mechanism for the alienation of large tracts of unused Maori land, and facilitated poor farm management and unprofitable going concerns.

The Māori Land Court and Maori Land Boards, Tom Bennion. 1997

This report looks at aspects of Native and Maori Land legislation, and the respective operations of the Maori land Court and the district Maori Land Boards 1909-1952.

The Trust Administration of Māori Reserves, 1840-1913, R Johnson. 1997

This report is a historical overview of legislation and the general practice of the trust administration of Maori Reserves 1840-1913.

Succession to Māori Land, 1900-52, T Bennion & J Boyd. 1997

This report describes Maori traditional concepts of land succession (pre 1900) and in particular the 'ohaaki' and the subsequent establishment of the Native Land Court that introduced individual and 'equal' land interests and the dismissal of traditional land tenure systems. The report provides some examples of succession that illustrate the paralysis of development that was intended to be avoided.

The Alienation of Maori Land in the Rohe Potae, C Marr. 1996

This is an overview report of nineteenth-century alienations of Maori land in the north and western part of the King Country or Rohe Potae, known as the Aotea block. It is intended to provide a guide to the major types of land alienation and to what appear to be the major issues arising from these. It is recognised that the overall legislative and political framework of the time, including the operations of the Native Land Court, were crucial to Maori land alienations.

As an example the Government Land Purchasing Policy in the 1890s involved land purchase officers identifying and discriminating between good and bad farmland. *'The Government had assured Ngati*

Maniapoto chiefs that it was only interested in buying their 'surplus land'. However, the Government was never really clear about who would decide what was surplus or how this might be determined. Initially, the Government appears to have been most interested in land close to the railway line that was also suitable for European farming. This was generally land in the Waipa valley, although there was interest in land right along the railway route.'

'For example, they contain indications of the quality of land for settlement and its proximity to the railway line. There is some indication also that Maori land was regarded as 'surplus', if it was 'free' of Maori settlements, cultivations, or tapu areas. This was a very euro-centric view of Maori land needs. It conveniently, but unrealistically, limited Maori to 'needing' only very defined areas of land while overlooking the actual pattern of traditional Maori resource use. This view also left little room for Maori to use land for new economic opportunities. For example, it took little account of possible Maori land needs for engaging in large scale leasing of land or for new economic ventures such as tourism. (Marr: 1996:77)

In summary some of the techniques used to alienate Maori land included:

- Secret purchasing of individual interests in land
- Selection of land to be purchased (good farmland)
- Manipulation of Maori Land Court processes
- Encouraging debt and costs to force sale
- Reserves policy for sellers
- Keeping purchasing prices low by refusing to invest in Maori land development.

The Alienation of Maori Land in the Rohe Potae (pt II). C Marr

This report provides an overview of Maori land alienation during the period 1900-1960. This included the removal of all alienation restrictions, compulsory land acquisitions establishment of administrative bodies that promoted alienation and actively discouraged Maori developing farms.

The Volcanic Plateau, B Bargh. 1995

This report examines the way in which land and other resources were alienated from Maori ownership.

Waikato Deed of Settlement

The Deed of Settlement sets out the apology from the Crown, acknowledgement of the grievance, the redress from the Crown and detail of the settlement. The settlement involves the confiscation of more than 485,000 hectares.

Waikato have pursued compensation on the basis of the principle of "land for land" - "i riro whenua atu, me hoki whenua mai" (as land was taken land must be returned), and "ko te moni hei utu mo te hara" (the money is the acknowledgement by the Crown of their crime).

CONTEMPORARY

Growing the Productive Base of Māori Freehold Land. Prepared for Ministry for Primary Industries by PricewaterhouseCoopers. February 2013.

PwC was engaged by the Ministry for Primary Industries (MPI) to assist its Māori Primary Sector Partnerships Branch to develop measures of economic performance for the agriculture sector (Diary, sheep and beef) that would enable the potential impact of increasing the performance of Māori agribusinesses to be assessed. The analysis developed and described in this report was the result of a short assignment to test whether it was possible to measure in economic terms, the impact of policies to facilitate the introduction of freehold Māori land into the agriculture sector.

The report identifies key governance and management techniques to maximise efficiency of Māori land. These were new ownership structures, correct scale of governance structures, remuneration of trustees/directors and management to ensure the right calibre of applicants, strategic planning and plans, access to key skills without interference, clear distinction between governance and management, framework to assess organisation performance, resource auditing, stakeholder management, diversification to reduce risk, utilisation of networks, merger of smaller scale operations. Whilst the report does not focus on forestry it does make the following observations.

- Forestry requires long-term commitments (25-32 years);
- There are reductions in short-term GDP;
- There are short-term employment cycles.

MĀORI AGRIBUSINESS IN NEW ZEALAND: A STUDY OF THE MĀORI FREEHOLD LAND RESOURCE. MARCH 2011

This report – *Māori Agribusiness in New Zealand: A Study of the Māori Freehold Land Resource* – is the first step in identifying areas for focusing future efforts. The report reviews the governance and organisational structures of collectively owned Māori land holdings, to identify opportunities and barriers to lifting the productivity of Māori land and agribusiness. The report identifies that delivering on the productive potential of Māori freehold land will require a partnership involving a range of agencies and entities, both within government and within Māoridom.

The study's findings were consistent with existing published literature in identifying the following key themes affecting Māori freehold land.

- Governance – there is widespread consensus that appropriate and effective governance enables the delivery of the owners' aspirations (including realising productive capacity); lack of appropriate and effective governance accentuates management challenges.
- Skills, development and training – there is a need for upskilling across the range of roles in Māori agribusiness. There needs to be greater investment by Māori organisations in the continual upskilling of their governors and their staff, from farm managers to junior shepherds.
- Legislation – the administration and compliance costs associated with the Te Ture Whenua Act and the processes of the Māori Land Court impact throughout the framework description as a whole.
- Collective action – a wide range of collective and collaborative development activities will deliver greater productive capacity into the future.

- Social construct and competing objectives – the performance of Māori agribusiness is not determined by just the balance of the organisations’ decisions financially but also socially, environmentally, culturally and spiritually.

Due to succession and fragmentation, many areas have little value and provide little return to their owners (also supported by McClean, 2002). Historical confiscation of Māori land focused on better quality land. It is estimated that 80 percent of land held in Māori title is of non-arable class and 30 percent is landlocked. It also includes areas of unproductive land that is locked up under conservation estate through the Department of Conservation. (MAF: 2011:2)

Kingi (Kingi, 2000, 2004, 2008, 2009a, 2009b) has provided extensive descriptions of the characteristics of, and challenges in, management of Māori land. Key conclusions can be summarised as follows.

Māori freehold land is characterised by ownership that is generally diverse and dispersed – with succession and title fractionation, large numbers of owners hold a small interest in individual titles or amalgamated entities (ahu whenua trusts and incorporations). The majority of owners do not live on the land and do not derive their livelihood from it – for the most part owners are absentee owners maintaining a sense of identity through connection to the land with succession of ownership passing from one generation to the next.

The Te Ture Whenua Act provides joint objectives for the management of Māori land – the retention of customary Māori land in Māori ownership and the development of that land for the benefit of the owners.

Kingi asserts that there is a tension between these objectives – retention for cultural reasons constrains economic use. This tension results in a generally conservative approach, where owners are unwilling to accept actions that place the land at risk.

- Decision-making is typically two tiered with a committee of land owners’ representatives providing governance, and employed staff and advisers providing implementation.
- Committees of management often reflect the political influence of families rather than the best available skills to oversee large, often complex agricultural businesses.
- The costs of administration associated with large numbers of owners carry a significant compliance cost impost on the business.
- Multiple ownership, restricted alienation clauses of the governing legislation, asset location and quality, and subdued appetite for risk constrains access to loan capital, external sources of equity and seasonal finance.
- A wide range of aspirations and expectations in respect of the land, and its management, is typical. (MAF:2011:5)

White (1997) provides particular insights into the challenge for trustees and committee members to balance socio-cultural, economic and environmental objectives. Values of land as the source of identity and centre of cultural pride are juggled with economic and financial objectives. White’s research found that landowners had high expectations that incorporations and trusts would actively support tribal development by providing community grants and generating employment opportunities. The ability to meet social and cultural objectives was seen as having as much importance as maintaining commercial viability.

The particular land management constraints and challenges facing the owners of under-utilised land holdings are discussed in Kingi (2009b), Reid (2009) and Reid (2009). Lack of effective management structures, limited skill levels (governance and agriculture and land management), access to

appropriate specialist advice, limited number of economic use options, farming by committee, managing for conflict avoidance in decision making are identified as factors constraining the utilisation of these lands. (MAF: 2011:6)

Development of Housing on Multiply-owned Maori Land in the Western Bay of Plenty. SmartGrowth. Prepared by the Western Bay of Plenty Maori Forum. 2005

This report prepared by the Western Bay of Plenty Maori Forum brought together findings of several research reports and papers, surveys and addressed complaints of Maori wanting to build on Maori freehold land. Whilst the report focuses on housing many of the challenges to developing Maori land are generic. The report summarises an earlier piece of work conducted by Te Puni Kokiri in 1999, *Building on Multiply-owned Maori Land* where the key challenges were:

- Access to relevant information;
- Access to appropriate expertise (Maori land administration and planning compliance);
- Compliance costs; and
- Unfriendliness of local government services.

A further reference is to a paper *Constraints and Opportunities on Multiply-owned Maori Land* in Western Bay of Plenty Sub-region prepared by the SmartGrowth Combined Tangata Whenua Forum in March 2004. This paper identifies performance standards, statutory processes and costs as key impediments to development.

Maori Land Court News [<http://www.justice.govt.nz/courts/maori-land-court/news-events/maori-land-court-news>. 18 June 2012]

This issue has two articles. One highlights the impact of rates on developing Maori land and the other, the impact of the Emission Trading Scheme (ETS) on owners of forests planted on Māori freehold land. Specifically, owners of exotic forests planted before 1 January 1990. This type of forest is referred to as Pre-1990 forests and governed by a set of ETS rules requiring the owners to maintain the land in forest indefinitely.

Rating of Māori land is a long standing problem for both the owners of Māori land and local authorities resulting in Māori land incurring higher rate arrears than that of General land. Many impacts have been noted as being associated with the current rating system and in particular how it applies to Māori land. These include but are not limited to:

- Attempts to develop the land may be discouraged because of an existing rating liability;
- Some see rates as unfair as they are based on valuations not wholly reflective of land use, the nature of occupation or the restrictions on alienation because of the law governing Māori land;
- Unproductive Māori land is disproportionately represented in rating arrears and can stigmatise owners of Māori land especially in some smaller rural communities;
- Continual rating demands generate stress and emotional burdens as some owners feel obligated to pay rates disproportionate to their interests in the land.

Impacts of New Zealand Emission Trading Scheme on Crown Forest Licensed Land. Buddle Finlay for Crown Forest Rental Trust. March 2010.

This reports sets out the impacts of New Zealand Emissions Trading Scheme on the potential and future value of Crown Forest Licensed land. With the return of Crown Forest licensed land to iwi in July 2009, some 440,000 hectares of exotic forestland will be owned by Maori. Ownership is likely to increase to 700,000 hectares in years to come. Some of these impacts include:

- NZ ETS liabilities apply to pre-1990 forests if the land is deforested, that is, conversion to a non-forestry land-use
- Compliance requirements
- Restrictions from development as a result of buying and selling carbon units
- Tax requirements
- Regulatory uncertainty
- International uncertainty
- Domestic uncertainty.