

13 IMPACT OF RATES ON LAND COVERED BY TE TURE WHENUA MAORI ACT

The terms of reference asked the Rates Inquiry to consider the impact of rates on land covered by Te Ture Whenua Maori Act 1993. The land itself and its history, the validity of its valuation and rates levied on the basis of that valuation, and the land's ownership and productivity all contribute to a complex problem of which rates are one component and for which there is no easy answer. This chapter examines the special features of Māori land and concludes that a new and different approach to rating and valuation is needed.

SUMMARY OF KEY POINTS

13.1 Serious problems arise from the current rating of Māori land. Although raised often in the past, the problems have never been dealt with successfully. The Panel believes that a different approach is needed and that resolution of the problems should be an urgent priority for central and local government and for Māori.

13.2 A substantial amount of Māori land is productively used, well managed, and is providing landowners with income and the ability to pay rates, which are paid on most Māori land. However, a lot of Māori land is unusable, landlocked, bush-covered, isolated, and not in production. Even when the land is potentially productive, constraints on borrowing, ownership issues, the burden of unpaid rates, and other matters create barriers to the use and development of the land.

13.3 Māori land is different from general land – historically, legally, and culturally. Māori regard themselves as custodians or kaitiaki of the land across generations and consider that the land is part of them. Land is not viewed primarily as a commodity. This cultural context is explicitly recognised in the preamble to Te Ture Whenua Maori Act 1993, which provides the legal framework for the administration of most Māori land.

13.4 Government leadership is essential in addressing the complex and entrenched problems with the rating of Māori land. The Panel concludes that a national programme of work with a clear timetable and implementation strategy is needed.

13.5 A key issue raised at hui was that rates on Māori land should be considered within the context of the Treaty of Waitangi. Participants questioned whether the Treaty, in entitling Māori to “full and exclusive undisturbed possession of their lands”, ever ceded the right to the Crown to levy rates. The relationship between the Treaty of Waitangi and rating law should be addressed by the Government and form part of the work programme on rating and Māori land proposed by the Panel.

13.6 The current system of valuing Māori land for rating purposes is inappropriate and wrong. After a court challenge in 1997, the Court of Appeal held that Te Ture Whenua Maori Act constrained the alienation of Māori freehold land, and thus the willing buyer-willing seller

premise at the heart of valuation of land legislation was inappropriate. As a result of this decision, the Valuer-General established guidelines for rating valuations that discount the valuation of Māori land on a case-by-case basis.

13.7 The Panel considers that these guidelines do not recognise the full range of issues involved with the valuation of Māori land. More fundamentally, the Panel believes that the valuation of Māori land for rating purposes should have its own distinct system. This system should reflect the historical, cultural, legal, and physical characteristics of Māori land and the inappropriateness of a valuation for rating purposes premised on “market value”.

13.8 Māori freehold land is still over-represented in the rates arrears and accumulated penalties of some councils. This remains a source of contention and affects relationships between these councils and landowners. This is partly a reflection of inappropriate valuation of Māori land, but it also reflects a need to improve rates remission policies. There is a need to build capacity within councils to work directly with landowners to resolve rating issues. An important element of the joint work would be to remove the disincentive rates arrears present to the development of potentially productive land. This would help Māori develop their land and enable the payment of future rates to be sustained.

13.9 Some submitters suggested that the Government should pick up the cost of unpaid Māori rates. The Panel does not support this proposal. Part of the problem lies in the way Māori land is valued; part is in the application of remission and postponement policies; and part of the problem is that some local authorities have not adequately engaged with Māori landowners. In any event there is no justification for the Government being made responsible for the payment of rate arrears. There is, however, good reason for the Government being a party to the solution of the problem.

13.10 The Local Government Act 2002 requires local authorities to adopt a policy on the remission of rates on Māori freehold land. It also provides an extensive schedule of matters that must be considered in the development of this policy. Central government also needs to participate in the development of a consistent and coordinated approach to rates remission and postponement policies on Māori land.

13.11 Māori freehold land is still over-represented in the rates arrears and accumulated penalties of some councils. This remains a source of contention and affects relationships between these councils and landowners. This is partly a reflection of inappropriate valuation of Māori land, but it also reflects a need to improve rates remission policies. There is a need to build capacity within councils to work directly with landowners to resolve rating issues. An important element of the joint work would be to remove the disincentive rates arrears present to the development of potentially productive land. This would help Māori develop their land and enable the payment of future rates to be sustained.

13.11 An issue requiring further consideration is the Māori land that was made general land through the Maori Affairs Amendment Act 1967. Under that Act any block of Māori land with less than four owners had its status changed from Māori land to general land title. In most cases the owners were never notified of the status change. The Panel considers that Māori freehold land that was made general land in the 1967 amendment to the Maori Affairs Act and is still in Māori ownership should be permitted to revert to Māori freehold land enjoying the same rates remissions policies as for existing Māori freehold land. Further, there should be no restriction on changing the status of this land back into Maori freehold land.

13.12 The impact of rates on Māori land is intimately entwined with a range of other issues that affect the use and development of Māori land. These include multiple ownership and legal

constraints to decision making, improving governance structures, updating ownership records, and the surveying and registration of land titles.

13.13 Work on these and other issues is currently being pursued through a whole-of-government strategy for Māori land development led by Te Puni Kōkiri. The issue of rating of Māori land is integral to the use and development of Māori land, and the resolution of rating issues will make a positive contribution to the broader objectives of Māori land development.

The Panel's task and its approach

13.14 The task given to the Panel was to consider the impact of rates on land covered by Te Ture Whenua Maori Act 1993. This was not a simple task because it required understanding issues that have been a bone of contention for Māori for over 130 years and a challenging area for local government for almost the same length of time. As one submission [S581] said,

None of the issues discussed in this paper is more complex, nor more subject to popular misconception, than the rating of Maori land. Maori land sits at the heart of a tangled skein of Treaty, cultural, constitutional and equity issues.¹⁸⁰

13.15 To help address this issue, the Panel published a separate paper backgrounding Māori land issues,¹⁸¹ attended 12 hui from Whangarei to Invercargill, and sought both oral and written submissions. The Panel also sought assistance from Whaimutu Dewes and Tony Walzl, two experienced consultants well versed in Māori land issues.¹⁸² A report prepared by these consultants provides important background information about the issues discussed in this chapter and the reasons for the views reached by the Panel.¹⁸³

The cultural context of Māori land

Whatu ngarongaro te tangata, toitu te whenua; People pass away but the land remains.¹⁸⁴

13.16 This proverb is well known. It is used throughout the country to describe the perpetual nature of the relationship that Māori have with their land. Implicit in it is the concept that the whānau (family) and hapū members (extended family) have an intergenerational obligation of stewardship in respect to their land that is central to their whānau and hapū identity and survival.

13.17 Land is a taonga tuku iho (a treasure of special significance), and Māori have a relationship with their land as kaitiaki and tangata whenua that is fundamental to their culture. This relationship

180 Submission from Local Government New Zealand/Society of Local Government Managers [S581], "Getting Real: Funding the True Cost of Local Communities", p. 45.

181 *Hei Whakapuaki i te Koreo, Background paper for consultation on the impact of rates on Māori land*, Local Government Rates Inquiry, 2007 (available at <http://www.ratesinquiry.govt.nz>).

182 Whaimutu Dewes has extensive experience in the business, legal, and government sectors, and has served on the boards of a wide range of companies including Chatham Processing Ltd and Ngati Porou Whanui Forests Ltd, and as a Director of Television New Zealand. Tony Walzl is a consultant policy analyst and historian with 20 years' experience researching and working on Treaty of Waitangi claims.

183 Dewes, Whaimutu and Tony Walzl, *Issues Paper on the Impact of Rates on Māori Land*, A report prepared for the Local Government Rates Inquiry, June 2007 (available at <http://www.ratesinquiry.govt.nz>; referenced subsequently in this chapter as the "Dewes and Walzl report").

184 Rolleston, Hemi and Jolene Patuawa, *A Submission Report on the Rating of Māori Land in Tauranga*, commissioned by Tauranga Moana Tangata Whenua Collective, 2003.

between Māori and their land is recognised in the preamble to Te Ture Whenua Maori Act and its comprehensive provisions for the use and retention of the land.

13.18 Among the owners of Māori freehold land, there is a generally recognised and strong desire to retain land and there is an equally strong desire to be able to occupy, use, and develop land for the benefit of current and future owners.

Distinctive features of Māori land

13.19 There are distinctive features of Māori land that provide important context for the issues covered in this report. These may be summarised as follows:

- ✦ There are 1.5 million hectares of Māori freehold land (6% of New Zealand's land mass).
- ✦ An estimated 80% of Māori freehold land is classed as non-arable.
- ✦ Around 33% is landlocked.
- ✦ The land is covered by 26,480 titles.
- ✦ The average size of title is 59 hectares.
- ✦ The average number of owners per title is 73.
- ✦ An estimated 57% (15,278) of the titles are unsurveyed.
- ✦ Only 29% (7,634) of the titles are under a management structure.

13.20 Up to one-third of the owners recorded on titles are deceased, and their interests have not been succeeded to.¹⁸⁵ The current distribution and nature of Māori land, much of it unproductive and isolated, reflects the long history of acquisition by the Crown, including acquisition under the Public Works Act 1981 and (before 1988) land lost for non-payment of rates. The status of titles and surveys are an additional impediment to use and development.

13.21 Schedule 1 of the Local Government (Rating) Act 2002 identifies some categories of Māori land as non-rateable. These include Māori burial grounds less than 2 hectares, Māori customary land, Māori reservations, freehold land not exceeding 2 hectares used for marae and meeting places, and land that has been made non-rateable through Order in Council. The Panel considers these categories of land in Chapter 14, where it recommends they remain non-rateable but that provision for this exemption be transferred to Te Ture Whenua Maori Act. They are not discussed further in this chapter.

Unproductive land and rates as a barrier to production

13.22 Some unproductive land is under indigenous vegetation, which may be the most suitable use of the land. However, a substantial amount of Māori land has potential for production and for providing a financial return to owners. The submissions reveal a number of reasons for land remaining unproductive, including

- ✦ difficulty of locating owners
- ✦ family members living in different places and difficulty in involving them in decision making
- ✦ problems obtaining resource consents
- ✦ fragmentation of titles.

¹⁸⁵ *Hei Whakapuaki i te Koreo, Background paper for consultation on the impact of rates on Māori land*, Local Government Rates Inquiry, 2007, p. 5.

13.23 The lack of economic return contributes to the non-payment of rates. This, in turn, reduces the incentive to develop the land, given that once there is an economic return, rates and any rate arrears need to be paid.¹⁸⁶

Landlocked land

13.24 Landlocked land is another significant issue for Māori landowners. Rates are assessed and are accumulating on lands to which owners have no road access or other services and which are not used by the owners. In some instances this land is simply used informally by the adjoining landowner. Around one-third of all Māori land falls within this category. Landowners are assessed for general rates but not for water, sewage, and waste disposal (which are covered by targeted rates) where these are not provided.

Land made general by the 1967 amendment

13.25 The Maori Affairs Amendment Act 1967 converted to general land any Māori land that had four or less owners. As a consequence Te Ture Whenua Maori Act does not cover this land, and the land can be sold for the non-payment of rates – and it appears some of it has been.

13.26 Thus from a rating viewpoint, this land is particularly vulnerable to alienation. In many cases, to all intents and purposes, this land is still viewed by its owners as Māori land with the same cultural associations and values. As noted below in the comments on papakāinga housing, the land is often located within a papakāinga community. Because it is general land, however, there is no protection from the land being sold if rates arrears exist.

13.27 The 1967 amendment to the Maori Affairs Act is clearly still having significant consequences. The Panel considers that these consequences need to be addressed through the programme of work it recommends on the rating of Māori land and that this category of land, still in Māori ownership, should be permitted to revert to Māori freehold enjoying the same rates remission policies as for existing Māori freehold land. Furthermore there should be no restrictions on changing this land back to Māori freehold land

Legal position of Māori land and the application of rating powers

13.28 There is a long and fraught history to the rating of Māori land, which is discussed in more detail in the issues paper prepared for the Panel on the impacts of rates on Māori land.¹⁸⁷ A national basis for rating Māori land was first established through the Highway Boards Empowering Act 1871. There has been a procession of legislation since, including the Rating Act 1882 and the Crown and Native Lands Rating Act 1882; the Rating Amendment Act 1910; the Rating Powers Act 1988; and the current legislation, the Local Government (Rating) Act 2002.

13.29 During this long history of rating Māori land there have been several recurring themes, namely,

- significant difficulties for landowners paying rates and the accumulation of rate arrears
- objections to the payment of rates and the basis for rates
- exemptions from rates for some categories of Māori land

¹⁸⁶ Several examples of this situation were provided in submissions and at hui. One situation, described to the Panel at the Nelson hui on 12 March 2007, involved the White Bridges reserve. This reserve was established to provide jointly for all those interested in the Wairau: Ngāti Rārua, Ngāti Toa, and Rangitāne. The reserve was covered in gorse. As soon as the local people cleaned up the reserve they began to receive rating notices.

¹⁸⁷ Dewes and Walzl report, pp. 8–11.

- concern about land being sold to pay for rates and the actual loss of land.

13.30 These issues remain relevant today, although since 1988, the power to have Māori land sold to pay for rates arrears has been removed.

13.31 The legislation that now impacts upon the rating of Māori land includes

- Local Government (Rating) Act 2002
- Local Government Act 2002
- Rating Valuations Act 1998
- Te Ture Whenua Maori Act 1993.

13.32 Part 4 of the Local Government (Rating) Act provides for the rating of Māori freehold land, which, except where the Act provides, is liable for rates in the same manner as if it were general land. Within Part 4 are sections dealing with matters distinctive to the rating of Māori land, its characteristic of multiple ownership, and its administration through the Māori Land Court. These matters include the recording of names on district valuation rolls, the limitation of trustee liability, the appointment of the person to receive notices, charging orders, and the principles that guide policies on the remission and postponement of rates on Māori land (which each council is required to develop).

13.33 Charging orders are a mechanism that can be used by local authorities to recover unpaid rates and any penalties. Applications for charging orders can be made to the Māori Land Court. Although land cannot be sold to recover unpaid rates, charging orders remain on the title and prevent further dealings in the land until the rates arrears are paid and are attached to any revenue generated from the land.

13.34 The important provisions in the Local Government Act 2002 affecting Māori land are the requirement for remission and postponement policies covering Māori land and the matters to be taken into account when developing such policies set out in Schedule 11 of the Act relating to rates relief on Māori freehold land. The role of remission and postponement policies is discussed further below.

13.35 The Rating Valuations Act 1998, which replaced the Valuation of Land Act 1951, provides the legislative foundations for the valuation of land for rating purposes and also spells out the role of the Valuer-General. This statute has no provisions that specifically relate to Māori land, an issue discussed later. The earlier legislation had provisions for “special valuation”. The removal of these provisions reduced the ability of the legislation to address the special issues involving the valuation of Māori land.¹⁸⁸

13.36 Te Ture Whenua Maori Act 1993 is also known as the Maori Land Act 1993. The preamble to this Act describes its intent and purpose:

Whereas the Treaty of Waitangi established the special relationship between the Maori people and the Crown: And whereas it is desirable that the spirit of exchange of kawanatanga for the protection of rangatiratanga embodied in the Treaty of Waitangi be reaffirmed: And whereas it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of land in the hands of its owners, their whanau, and their hapu, and to protect wahi tapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapu: And whereas it is desirable to maintain a Court and to establish mechanisms to assist the Maori people to achieve the implementation of these principles:

¹⁸⁸ Dewes and Walzl report, p. 8.

13.37 This legislation is thus strongly founded on the Treaty of Waitangi, the distinctive cultural connection between Māori and their land, and the aspirations of Māori for the future of their land.

Treaty of Waitangi

13.38 The relationship between Māori communities and local government, and the role of the Treaty of Waitangi in that relationship, is still largely unsettled. There are still matters in front of the Waitangi Tribunal, including claims affecting rating.

13.39 A strongly held view that was expressed at hui and in submissions, including one submission from Te Rūnanga o Ngāti Awa [S634], is that under Article II of The Treaty of Waitangi, Māori people are entitled to “full and exclusive undisturbed possession” of their lands and that the imposition of rates is a disturbance to that possession. This raises the issue of whether Māori had ever ceded a right to the Crown entitling it to make laws that rate Māori land. From this perspective, Te Ture Whenua Maori Act is seen as a breach of the Treaty of Waitangi and Article II, in particular, with its guarantee of tino rangatiratanga.¹⁸⁹

13.40 The New Zealand Māori Council [S993] argued that Māori land has been confiscated in the name of “public good” and that there is no recognition in the rating system of this contribution. This was a Treaty-based perspective expressed at several hui and in some submissions.¹⁹⁰ It was claimed that Māori had already contributed to their districts and towns through land loss arising from raupatu (confiscation), the purchasing of too much land by the Crown, the taking of land for rates, and under the Public Works Act. These past policies had meant Māori had been left with a marginal, residual estate. At several hui it was noted that what has not been taken into account has been the contribution that Māori land has made to building the infrastructure in many districts, with roads, hydroelectric installations, water supply facilities, and recreational facilities having been built on Māori land taken under the Public Works Act.

13.41 The Panel is very aware that rates and their impact are part of a much bigger set of issues around Māori land and the Treaty of Waitangi that need to be addressed. Claims made to the Waitangi Tribunal about rating provide a process for these issues to be carefully researched and considered.¹⁹¹

13.42 The Panel argues below that the Government should exercise strong leadership in working with local government and Māori to address specific problems with the rating of Māori land. This work should be done within the context of the Treaty of Waitangi. This context is spelled out clearly in the preamble to Te Ture Whenua Maori Act.

189 Several submissions supported this position, including those from the Taitokerau Iwi/Council Chief Executives Forum [S905], Te Nahu Law [S547], and the New Zealand Māori Council [S933].

190 Submissions supporting this position included those from the Federation of Maori Authorities [S767] and Ngāti Rārua Ātiawa Trust and Wakatu Incorporation [S428].

191 The Panel was advised that there are several claims still to be considered by the Waitangi Tribunal involving rates issues including Wai 284, which challenges the rating of a block of land on the Karikari Peninsula. The most substantive comment to date has been in the Hauraki Report which stated, amongst other things that, “The Crown has acknowledged that the burden of local body rates might not always have been applied equitably in Hauraki. Our report discusses particular cases. We also note that the titles created under the Native Land Acts, and the partitioning of land into uneconomic parcels, made it difficult for Maori to meet rating obligations. Provided that the Crown acknowledges this, and the considerable contributions in land which Maori have made, both voluntarily and compulsorily, for local and national infrastructure, we see no problem in Treaty terms with the concept of rating Maori land. We note that, although current legislation allows for negotiation and adjustment of the rating burden, earlier generations lost land to compulsory charging orders and find that the Crown should take this into account in negotiating the quantum of settlement for Hauraki claims.”

13.43 The Panel recommends that the relationship between the Treaty of Waitangi and rating law should be addressed by the Government and form part of the work programme on rating and Māori land proposed below.

The impact of valuations on Māori land

13.44 One of the most contentious and important issues is the basis of valuing Māori land for rating purposes, and the extent to which these valuations take account of the physical, legal, and cultural constraints on the use and sale of Māori land.

13.45 Valuations for rating purposes are premised on a hypothetical sale between a willing buyer and a willing seller.¹⁹² It is clear that, for many Māori, the idea of basing the rating of Māori land on a hypothetical market value is alien and difficult to accept. It is only rarely that Māori land can be sold and then only after a long process and with the agreement of the Māori Land Court.

13.46 The courts have already considered the extent to which the legal constraints on alienation of land covered by Te Ture Whenua Maori Act affect the valuation of Māori land. In September 1997, the Court of Appeal heard an appeal by the Valuer-General against Mangatu Incorporation and others challenging an earlier High Court decision. The High Court had found that the limitation on ability to alienate impact of Te Ture Whenua Maori Act had to be taken into account by valuers in fixing land values under the Valuation of Land Act.¹⁹³ The Court of Appeal decision¹⁹⁴ is commonly referred to in submissions as the “Mangatu decision”.

13.47 In dismissing the appeal by the Valuer-General, the Appeal Court made the following findings, amongst others:

- Te Ture Whenua Maori Act imposes a significant barrier to alienation.
- The determination of land value must recognise the legal constraints on alienability.
- The assessment of land value must be made on a case-by-case basis.
- The restrictions on alienability are affected by several factors, and in the absence of further guidance in the legislation, valuers will have to weigh the consideration of factors in a sensible and practical way to arrive at what may well be a robust and imprecise judgment.

13.48 The Court also said that its decision did not mean that the land in question must bear a particular burden of rates: “It is always open for a rating authority to exercise the various choices as to rating systems ... to arrive at what is in its judgement is the appropriate relative incidence of rates to properties within its district”.

13.49 Subsequent to this decision, the Valuer-General, in consultation with representatives of the Mangatu Incorporation, the Federation of Maori Authorities, and Te Puni Kōkiri, developed guidelines for valuation of Māori land. In developing these guidelines, the Valuer-General was acting on his mandate to promote a nationally consistent approach to land valuation. The guidelines provide for a discount of between 5% and 15% in the valuation, depending upon a range of circumstances.

13.50 The major criticism of the Valuer-General’s guidelines is that they do not take sufficient account of the wide range of circumstances faced in the valuation of Māori land and there is inconsistency in valuations. The submission from the Māori Trustee [S771] provides a number of case studies illustrating the difficulties and inconsistencies in the valuation of Māori land blocks. The Māori Trustee considers the discount range in the Valuer-General’s guidelines is too narrow and

¹⁹² The actual definitions are contained in the Rating Valuations Act 1998.

¹⁹³ The Valuation of Land Act 1951 was replaced by the Rating Valuations Act 1998.

¹⁹⁴ *Valuer-General v Mangatu Inc* [1997] 3 NZLR 641 (CA).

does not fully take into account the difficulties in alienating Māori land, either by sale or long-term lease. He considers a level of around 50% more applicable. This view is supported by the Federation of Maori Authorities [S767], which argues for a review of the discount.

13.51 Several local authority submissions also support a review of the guidelines, with some arguing that there should be different formulas for valuing land held in different types of ownership.¹⁹⁵

13.52 The Panel received some proposals on how to fix the valuation problem with Māori land, and almost all of these focused on changes to the Valuer-General's guidelines.

13.53 Reviewing the discount is one option, but it would not get to the heart of the matter and address the gap between the premises in the Rating Valuations Act and the distinctive nature of Māori land. The Panel's conclusion is that a much more fundamental approach is needed, and this is outlined in more detail later in the chapter.

Impact of rates on papakāinga housing

13.54 Papakāinga housing is aimed at enabling Māori to establish homes and communities on Māori land under multiple ownership and is encouraged through the Resource Management Act 1991. These areas are often the traditional homeland of whānau or hapū. They may be on Māori freehold land or Māori land that was converted to general land under the Maori Affairs Amendment Act 1967. From a rating perspective papakāinga areas are considered no different from any other land titles.

13.55 The Panel was told that there are difficulties with papakāinga housing. Some of these matters, such as the perceived reluctance of councils to authorise the establishment of papakāinga areas, are not related to rates. However, there are a number of rating issues, including the rise in rates caused by a sharp increase in land values adjacent to the papakāinga area, the level and affordability of these rates, and the limited services being provided. There was also a concern about the use of capital value rating, impact of uniform annual general charges being applied to papakāinga housing, and the inability to access the rates rebate scheme because of multiple ownership. There was also considerable anxiety about the ability to pay rates, and questioning of whether the level of rates was appropriate for Māori land in multiple ownership. These issues were seen by some as a threat to the sustainability of some papakāinga housing communities.

13.56 The Panel considers that affordability issues can be addressed through measures advocated in Chapter 12, such as the application of rates rebates to householders in papakāinga areas or through local authority rating tools and rates remission policies. These issues should be further considered in the ongoing programme of work recommended by the Panel. However, there remains the question of whether the land is appropriately valued for rating purposes.

Rates and the level of services

13.57 An issue raised by several submitters was the high level of rates in relation to the limited services provided by local authorities. It was generally accepted that Māori land is largely rurally based and isolated. Hence Māori landowners do not enjoy services such as sealed roads, rubbish collection, and connection to council sewerage systems. Some submissions, including those from the Federation of Maori Authorities [S757] and Pipiriki Incorporation [S902] felt that there was a significant inequity in the system when local government claims that rates were in payment for services yet landowners do not receive these services.

¹⁹⁵ Tauranga City Council [S578], however, had a different view and thought that applying valuation reductions beyond the guidelines "would be difficult to justify, and even begins to question whether the guidelines remain appropriate."

13.58 This argument is similar to that made by other ratepayers living in rural and isolated areas. And, as with other owners, if services such as rubbish collection and drinking water are not provided, landowners are not levied the targeted rates for these services. However, as previously noted, a lot of Māori land is not even serviced by a road and is both unproductive and unoccupied. The situation of Māori land is therefore often very different from rural general land. The Panel's proposals on land valuation and rates remission policies are designed to help address this issue.

Relationships between Māori and local authorities

13.59 It is clear to the Panel from comment at hui and in some written submissions that overall the relationship between Māori and local authorities needs significant improvement. There are concerns about the level of consultation with Māori, the knowledge and understanding of council staff dealing with Māori land and rating issues, inconsistency in the treatment of issues, and impressions that rates demands were being sent to any known person with an ownership interest in a block of land. As stated in the submission from the Tuwharetoa Maori Trust Board [S913],

There is a deep distrust by Maori owners of local authority office[r]s who enquire about the status of a block of land. The distrust is based on a long history of unpaid rates, or 'nominated occupiers' receiving bills they could not pay and the sale of land to pay unpaid rates.

13.60 There was also a view expressed that a lack of Māori representation in local government was a contributing factor. On the other hand, it is clear to the Panel that some councils are putting considerable effort into working with Māori on rating issues, including the appointment of Māori liaison and rating officers.

13.61 All parties have a role to play in improving the current relationships. One specific need is for the Society of Local Government Managers (SOLGM), Local Government New Zealand (LGNZ), and Te Puni Kōkiri to collaborate in a training and development programme that will improve the capability of local government officers working on Māori land and rating issues.

Rates arrears

13.62 Rates are paid on most Māori land and paid as a matter of course on productive land such as that managed by members of the Federation of Maori Authorities. There is, however, a significant amount of rate arrears, including accumulated penalties on Māori land in a number of councils. This is a particular problem for those local authorities with large areas of Māori land and is despite the fact that these councils have active policies for the remission and postponement of rates on Māori freehold land.

13.63 There are number of reasons why rates may not be paid on Māori land. Some of these have been discussed above, and include the following:

- The land has poor soils, is isolated, landlocked, or has other characteristics that make it inherently unproductive and it therefore generates no income to pay rates.
- The land is potentially productive but there are barriers to realising its productive potential, including ownership issues and constraints on borrowing, with the result that it generates no income to pay rates.
- The land is in multiple ownership and has no governance structure; it is unclear who is liable for rates, and individual owners have no means and no financial incentive to contribute towards rates.

- The land is receiving no obvious services from councils, and owners may consider they should not pay rates because of this; or, where land is receiving services, owners may consider rates should be limited to the cost of these services.
- Land under native vegetation is seen as similar to Department of Conservation land, which pays no rates, and owners may consider it is unreasonable for them to pay rates.
- Some submissions have argued that Māori should not pay rates because rating is in breach of The Treaty of Waitangi. It is possible that some landowners do not pay rates on the basis of this principle.
- Landowners may have a limited understanding of the rating system and the requirements to pay rates.
- There is a history of poor relationships between Māori and councils, a distrust of councils, and memories of land being taken to pay for rates.
- Escalating property values, particularly for Māori land on the coast, with sharp increases in rates, create an affordability and fairness issue.
- Māori land cannot be sold for non-payment of rates, and charging orders for the recovery of rates attach only to revenue actually generated from the land.
- Council policies for the writing-off of rates after a certain period create a limit to rates liability and a disincentive to pay, particularly once a property has accumulated several years of rates arrears.

13.64 Rates arrears form between 0.5% and 7% of the total annual rates bill for local authorities. For many local authorities rates arrears on Māori land are not an issue. However, in some parts of the country, rates arrears on Māori land account for a disproportionate amount of rates arrears – sometimes as much as 70% of a council's total rates arrears. This tends to occur in areas that have a high Māori population and/or large areas of Māori land: Northland, the central North Island, eastern Bay of Plenty, and the East Coast.¹⁹⁶

13.65 For councils, unpaid rates raise the issue of enforcement with its associated administrative costs and relationship issues. Comparatively little specific comment was received in submissions about the enforcement of rates. Submitters commenting on enforcement did mention that the provisions of Te Ture Whenua Maori Act effectively removed enforcement options. Opotiki District Council [S648], for instance, agreed that there were no real teeth under existing legislation to collect rates but the council also considered it was inappropriate to collect rates in many instances from Māori land (for example, unproductive multiple land of high conservation value).

13.66 Although rates are paid on most Māori land, the Panel recognises that, in some areas, rates arrears are a particular problem for both landowners and local authorities. The problem arises from the combination of factors described above. The consequences go beyond the amount of rates unpaid, detrimentally affecting relationships, creating anxiety for those who cannot pay, adding to council administrative costs, and frustrating the development of land. It is a situation that should not continue.

13.67 Some submitters suggested that the Government should pick up the cost of unpaid Māori rates. The Panel does not support this proposal. Part of the problem lies in the way Māori land is valued; part is in the application of remission and postponement policies; and part of the problem is that some local authorities have not adequately engaged with Māori land owners. In any event there is no justification for the Government being made responsible for the payment of rate arrears.

¹⁹⁶ Dewes and Walzl report, p. 26.

There is good reason for the Government being a party to the solution of the problem, a matter that is addressed below.

Other relevant work on Māori land being undertaken by central government

13.68 Many of the factors that more broadly impact on the development and use of Māori land also affect the ability and willingness of Māori to pay rates. These factors include

- multiple ownership and legal constraints to decision making
- poor governance structures
- out of date ownership records
- lack of surveying and registration of land titles.

13.69 Work on these and other issues is being pursued through a whole-of-government strategy for Māori land development led by Te Puni Kōkiri. This work will also contribute positively to the resolution of rating issues on Māori land.

Addressing the issues

13.70 The Panel realises that issues associated with the rating of Māori land are difficult, and sustainable solutions will take time to find. It is, however, clear that the solutions offered to date have not been successful. The Panel sees no point in a system that does not fit well with the nature of Māori land and frustrates its development. A very different and more inclusive approach is needed. The Panel outlines its proposals and recommendations below.

A different and more active role for central government

13.71 The role of councils in the development and implementation of policies on Māori land is clear and included in legislation. Less clear, beyond the establishment of this legislation, is the role of Government or, as Māori argue, the role of the Crown.

13.72 Several submissions consider that the Government should play a much more active role. Te Hunga Roia Māori o Aotearoa (Māori Law Society), argued in its submission [S402],

the Government cannot distance themselves from the rating situation. If the local authorities are not carrying out their rating responsibilities in a Treaty compliant manner, the onus is on the Government to see that the rating legislation forces them to do so.

13.73 The Panel agrees with those submissions that advocate a more direct role for central government in addressing the impacts of rating on Māori land. Clear Government leadership is essential. This should be exercised in partnership with local government and landowners. The work should include consideration of the implications of the Treaty of Waitangi for rating policy and legislation, the proposed new approach to the valuation of Māori land, and the work on remission and postponement policies discussed below. It should also recognise the important connection between rating and the development of Māori land and the disincentive that rates arrears can create to improving the economic potential of the land.

13.74 The Panel recommends that the Government establish a specific programme of work aimed at addressing the entrenched problems of rating on Māori land, this work should be done under clear direction from Government, be led by Te Puni Kōkiri, and be undertaken in partnership with local government and Māori landowners.

A different approach to the valuation of Māori freehold land

13.75 Parliament has recognised, through Te Ture Whenua Maori Act, that Māori freehold land is fundamentally different from general land in both cultural and legal terms. Parliament has also recognised through the Local Government Act 2002 and the Local Government (Rating) Act that the rating of Māori freehold needs to be separately considered. There is no recognition, however, in the Rating Valuations Act of the distinctive difference of Māori freehold land. It is treated the same as other land even though its ownership and associated cultural values are quite different.

13.76 The courts, working within the different statutes, have recognised that Māori freehold land is different. As discussed, the consequence has been an informal system of discounting the value of Māori freehold land that is based on a premise of market value that is alien to many Māori landowners and does not recognise the full range of cultural and other characteristics associated with land covered by Te Ture Whenua Maori Act.

13.77 The Panel has considered whether the issues could be addressed through a reconsideration of the current valuation discounting formula. This could offer a short-term palliative but would not address the fundamental issues and would merely continue the current informal arrangements. As discussed in Chapter 14, the Panel acknowledges that rates remission policies offer considerable potential to address a range of issues. They do not, however, address the fundamental issue relating to valuation.

13.78 For this reason the Panel considers that the valuation of Māori freehold land for rating purposes should have its own system and this should fully reflect the distinctive cultural, legal, and other characteristics of Māori freehold land. The Panel considers that a different approach to valuation and rating also has the potential to reduce administrative costs and reduce the disincentive rates arrears create to the development of land and the ability of owners to pay rates.

13.79 The analysis undertaken for the Panel by Dewes and Walzl discusses an approach that would have, as its starting point, the premise that Māori land should not be rateable for general rates, although land that receives services and is occupied should be subject to any relevant targeted rates or uniform annual general charges. This approach would be backed up by a “national policy on rateability reflected in legislation”:

The proposal is tantamount to ascribing a rating value of zero to Māori land ... and reflects that the lack of transaction value in the land itself is a fundamental obstacle to the proper working of the regime envisaged by the current rating legislation.¹⁹⁷

13.80 Dewes and Walzl go on to say,

The basis of valuation for the land for setting a rate that is productively used and/or occupied would be made on the productive capacity of the land and in the case of occupation, if necessary, a deemed value for the area occupied in accordance with the attributes associated with the land or its occupation. The use of productive capacity would require abandoning the one-size fits all approach currently employed and although more work is not as problematic as may be seen at first glance. Productive capacity values will also, in the long run, equate to the market value methodology that is presently used.¹⁹⁸

13.81 The Panel considers that such an approach would place the valuation of Māori land for rating purposes on a more appropriate basis. In practice, the valuation for rating purposes would be zero on some land, such as unproductive landlocked land, but much closer to the value of general

197 Dewes and Wazl report, p. 58.

198 Dewes and Walzl report, p. 58.

land on other properties in productive use and whose characteristics (such as number of owners and absence of cultural sites) more closely reflected those of general land.

13.82 The Panel recommends that a new basis for valuing Māori land for rating purposes be provided that explicitly recognises the cultural context of Māori land, the objectives of Te Ture Whenua Maori Act, and the inappropriateness of valuations for rating purposes being premised on the “market value” of Māori land. Consideration should be given to a new system for the valuation of Māori land being located within Te Ture Whenua Maori Act rather than the Rating Valuations Act. This would form part of the programme of work, led by Te Puni Kōkiri, discussed above.

A different approach to local authorities’ remission policies for Māori land

13.83 Section 102(4)(f) of the Local Government Act 2002 requires a local authority to adopt a policy on the remission and postponement of rates on Māori freehold land. Schedule 11 to the Act contains a list of matters that must be considered by local authorities in the development of their rates remission and postponement policies. Clearly, Parliament has seen council policies on the remission and postponement of rates on Māori freehold land as an important mechanism for addressing any need for rates relief that flow from the unique characteristics of Māori land. The Panel notes that it is an option for councils whether they develop rates remission and postponement policies for other land.

13.84 The Panel has been impressed by the efforts that some councils have put into the development and implementation of policies, although it is concerned about the lack of consistency in approaches adopted and the apparent limited success of these policies in encouraging the development of Māori land.

13.85 The development and implementation of effective rates remission and postponement policies for Māori land is a challenge for both councils and Māori landowners. The rating system is not generally well understood by landowners, and poor relationships between councils and Māori landowners can create a barrier to constructive action.

13.86 The Panel proposes that the joint programme discussed above should include work needed on rates remission policies. This should draw on the collective experience of councils and help develop effective policies and build capacity in councils to work directly with landowners. The work would be guided by a clear policy direction developed by central government in partnership with local government and landowners.

13.87 A consistent approach to rates remission policies on Māori land would include

- use of a register or remission list
- opportunity to remit up to 100% of rates
- full recognition of the factors/criteria to be used
 - unoccupied and unutilised
 - landlocked
 - fragmented ownership
 - conservation value
 - unsecured legal title
 - isolated and marginal land capability
 - a lack of management structures
 - services provided (or not provided)

- a proactive approach rather than councils receiving applications from landowners
- use of liaison officers to work with Māori landowners
- the inclusion of land that was Māori land but transferred to general land through the 1967 amendment
- a proactive approach linking land development and rates remission
- regular inspections to ensure land complies with the policy
- specific reference to the matters listed in Schedule 11 of the Local Government Act 2002.

13.88 The Panel considers that the Government should work to develop a coordinated and consistent approach to rates remission and postponement policies as part of the joint work programme with local government and Māori and that this be linked to programmes assisting the productive development of the land.

13.89 The development of rates remission policies should also take account of the contribution that Nga Whenua Rahui can make to the long-term conservation of land and the safeguarding of cultural values.¹⁹⁹

13.90 This area of council activity has not been a focus of training by SOLGM or the subject of one of the “Know How” guides produced by SOLGM and LGNZ. The Panel considers there is much that councils can learn from each other in better managing of their responsibilities in this important area and that there is a role for SOLGM and LGNZ in facilitating a process of capacity building. Māori communities also need to be directly involved in the development of this joint initiative.

13.91 The Panel considers that the Society of Local Government Managers, in consultation with Local Government New Zealand, central government, and landowners, should develop a programme of training and development that can assist councils in addressing rating issues on Māori land.

13.92 The Panel believes that the implementation of these proposals will assist both Māori landowners and local authorities to better manage the issues arising from the rating of Māori freehold land. Together, with the broader Government work programme on Māori land, they should help realise the productive potential for much Māori land and add to, rather than reduce, the amount of rates collected.

Recommendations

- 58 That the relationship between the Treaty of Waitangi and rating law be addressed by the Government and form part of the work programme on rating and Māori land.**
- 59 That a new basis for valuing Māori land for rating purposes be established that explicitly recognises the cultural context of Māori land, the objectives of Te Ture Whenua Maori Act 1993, and the inappropriateness of valuations for rating purposes being based on the “market value” of Māori land.**
- 60 That the Government establish an explicit programme of work aimed at addressing the entrenched problems of rating on Māori land and that this be undertaken in partnership with local government and Māori.**

¹⁹⁹ Nga Whenua Rahui is a contestable fund to assist the protection of biodiversity values on Māori land. It is administered through the Department of Conservation.

- 61 That, as part of this programme of work, the Government collaborate in a joint exercise with local government and Māori in developing a coordinated and consistent approach to rates remission policies for Māori land.
- 62 That Māori freehold land that was made general land in the 1967 amendment to the Maori Affairs Act and is still in Māori ownership should be permitted to revert to Māori freehold land enjoying the same rates remissions policies as existing Māori freehold land. Further, there should be no restriction on changing the status of this land back into Māori freehold land.
- 63 That the work programme proposed in recommendation 60 should be linked to programmes assisting the productive development of the land.
- 64 That the Society of Local Government Managers, in consultation with Local Government New Zealand, central government, and Māori, develop a programme of training and development that can build capacity and knowledge within local government to effectively address rating and other related issues on Māori land.