

# Issues Paper on the impact of rates on Māori Land

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Rates Inquiry

Pakirehua mō ngā Reiti Kaunihera ā Rohe

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## **Disclaimer and Acknowledgement**

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## Executive Summary

The Minister for Local Government announced an independent inquiry into the funding of local government on 1<sup>st</sup> November 2006. The Inquiry has, as one of its specific terms of reference, an assessment of the impact of rating on land covered by the Te Ture Whenua Māori Act 1993. Eleven hui were held around the country on Māori land and rating issues. As a result, a total of 56 submissions were received from Māori individuals and groups. (See Appendix I) In addition, most local government submissions and a handful of individual submissions also provided comment on Māori land rating issues.

### 1. Summary of Impacts

The impacts identified by submitters and commentators that the rating system has on Māori land range from the severe impact on core Māori cultural values to the effect of rating on specific land types. A summary of existing issues follows:

**Cultural Values:** Commentary received from Māori who attended hui and presented submissions has highlighted the fact that cultural values associated with Māori land are in conflict with rating responsibilities imposed by the current system. The placing of a tax on land based on “market value” is culturally at odds with concepts held by New Zealand’s tangata whenua of being from and of the land, of being linked to the past and present of land through whakapapa and of having kaitiaki responsibilities to protect and nurture the land.

**Treaty of Waitangi:** The importance of the Treaty of Waitangi was also stressed, not as a historical agreement, but as a living document that requires acknowledgement and ongoing implementation. Commentators felt that the rating system caused a continuous erosion of the rights and interests confirmed and guaranteed in the Treaty of Waitangi. Using the Treaty as a lens to examine the rating issue, hui attendants and submitters have pointed to:

- the imposition of rates (with the consequential sanctions that then emanate) as a disturbance of Article II rights guaranteeing rangatiratanga over land;
- that rates were brought into effect over Māori land without true consultation, negotiation or agreement;
- that the taking of the land to pay rates in the past has been a breach of the Treaty of Waitangi;
- that the accumulation of other alleged Treaty breaches (raupatu, Crown purchasing, Land Court title system, public works takings) has meant that Māori have been left with a marginal, residual estate with which it is difficult to engage in the payment of rates; and
- that Māori land, through public works takings, has already significantly, and disproportionately, contributed to local and national infrastructures and that this should be acknowledged and reflected within rating policies and practice

**History of Rating Māori Land:** Over the 120 years since rates were first brought into effect there has been a wide variation in rating policy and its application. History shows that rates were not automatically imposed on Māori land when first introduced in New Zealand. In fact legislation, policy and practices, reflecting the prevailing circumstances, made allowances for Māori land. Wide exceptions have been included in past rating legislation based on a number of criteria such as:

- the location of land
- its title status
- the degree of services received
- the amount of land held by owners

Furthermore, government agencies have been prepared in the past to acknowledge the situation in which Māori land and landowners were placed and have introduced compromises in the payments of rates such as:

- the central government payment of rates for Māori land (with various claw back mechanisms)
- local government activity in finding ways to raise income for rate payments
- local government flexibility in striking proportional rating payments
- local government preparedness to support Māori land development as a vehicle of guaranteeing a continuous rates income stream

Whilst these measures were not always equitable, and often led to unforeseen consequences, the importance of past action for this current rating inquiry is to note that historically there have always been compromises over the rating of Māori land adopted by central and local government agencies to reflect prevailing conditions.

History has also shown that Māori have viewed the imposition of rates as a breach of their guaranteed ownership rights under the Treaty of Waitangi. Over time, however, Māori have also shown a preparedness to negotiate in the face of the imposition of rates accepting that rates can be paid if services are received or if the land is productive. This historical position has parallels in the feedback received from Māori commentators during the current inquiry process.

**Māori as Ratepayers:** It is important to reiterate that most Māori landowners pay their rates. At hui and in submissions, the responsibility of paying rates was viewed by most Māori commentators as a serious responsibility. The grave concern being expressed, however, was that the payment of rates should proceed on a reasoned and equitable basis. At the moment this is not occurring and the reasons for this are noted below. Māori landowners who currently are paying rates, are doing so based on a number of inequitable principles and practices. During the inquiry, Māori commentators demonstrated an acute awareness of the inequities which exist. Considering this, the payment of rates to date by Māori landowners does not represent acquiescence or support of the rating system but instead reflects the acceptance by Māori of their responsibilities as citizens. There remains, however, a high expectation from Māori landowners that this Inquiry will identify and deal with the inequities which they face.

It is the presence of the numerous, wide-ranging and unequal impacts of rating on Māori land that has also led to a comparatively significant proportion of Māori land owners not being able to pay their rates. In several districts Māori land is disproportionately represented among properties that have rate arrears. Available facts associated with demonstrate the situation which exist.

- In general, rates arrears form between 0.5% and 2% of the total rates bill for local authorities.
- In a small number of places the rates struck for Māori land rates appears to make up 10-12% of the total rates bill but in most parts of the country that proportion is considerably less than 5%.
- In several places, however, Māori land often accounts for 20-35% of the rates arrears and sometimes as much as 70%.
- Rates arrears owed by Māori often largely comprise of penalties incurred as the result of non payment.
- Despite the high proportion of Māori land featuring amongst the rates arrears, the amounts involved are a small fraction of the total rates being struck in most districts.

**Valuation Problems:** One of the major areas of inequity for Māori land has been in relation to valuation. Māori commentators have identified a range of problems:

- There are different value systems associated with land that the currently used valuation system does not recognise or reflect.
- The non-tradability of Māori land is not sufficiently being recognised and discounted for by current valuation practice
- Valuations of Māori land blocks do not reflect their practical usage but instead their market potential. As such, the rates being struck based on the valuations are posing a significant threat to the viability of Māori land-based businesses by creating additional costs that the non-tradability of land prohibits Māori landowners from dealing with.
- The link between valuation and planning designations or the way in which district development is allowed also significantly impacts on the occupation and use of Māori land.
- The inability of the valuation system to distinguish between varying land use within Māori titles causes inequities.

Local authorities who made comment also knew of the situation that existed where the increase of valuation and rates undermined the viability of much of the Māori land in their district from being used productively.

**Responsibility:** Despite the fact that in usual circumstances Māori land can not be sold for rates and that rating write-offs occur periodically, several Māori commentators have recorded the great stress and anguish experienced by those owners of multiply-owned land who are sent rates demands or who are targeted by local authorities or their agents (including debt-collecting agencies) over rate charges. Unable to pay and unable to act to bring the wider ownership together, these owners are in a hopeless situation. Whilst it could be said that these owners have little to be concerned over (as their land can not be sold), the fact is they take their responsibilities towards the land seriously and they really feel pressure from the receipt of notices and demands.

**Exemptions and Remissions:** Both independent analysis and feedback from Māori commentators have recorded a wide variation in rating policies between local authorities when it comes to exemptions and remissions. In addition, many Māori landowners do not know how to go about seeking remissions and for those who do the process can be frustrating and the result ad hoc.

**Specific Land Types:** There has been a consistency of comment around New Zealand by Māori commentators that Māori land blocks across the country have different characteristics which derive from their origins, their history, the impact of Crown policies, the impact of Pakeha settlement and economic imperatives. Commentators have felt that these differing attributes need to be taken into account when rating issues are concerned. In making this point, it is evident that the viewpoint of Māori is in line with the Court of Appeal's viewpoint that the circumstances of each land block needs to be considered before a valuation can be ascertained.

In addition, feedback and comment have identified how specific types of Māori land are impacted by rating:

- **Papakainga:** This issue partly relates to difficulties associated with papakainga housing which is viewed as an important objective by many Māori communities but which local authorities are said to have difficulty in supporting in part because of the unclear rating designations which result. More importantly, there is the wider view of Māori that papakainga are places where Māori land is located that have long been seen as sites of occupation and as such are very special places to whanau and hapu. In many areas where there has been heavy land loss, these remaining papakainga represent the last vestiges of landholdings for whanau or hapu. The issue which exists is the disjunction between the cultural and social roles of papakainga which are not reflected or recognised by the rating system. As such no protection is afforded to papakainga land and, in the current environment of rapidly rising land values and rates, community vitality is undermined and even community viability is threatened.
- **Waahi Tapu:** Despite a general assumption that the current rating legislation and practices protect waahi tapu, this depends on identification, description and registration requirements that are not supported by many of those who are kaitiaki of waahi tapu sites.
- **Unproductive Land:** A number of the existing attributes of Māori land present great difficulties in the way of developing the land. In this situation, the generally expressed view by Māori commentators was that unproductive and unoccupied Māori land should not be rated.
- **Landlocked Land:** Whilst some local authorities exempt or remit rates on landlocked land, this is not universally applied and rates arrears are being accumulated against landlocked land that has very limited opportunity to be productive.
- **Land with Changed Status:** A major problem was observed in relation to land that had been formerly occupied or used, experiencing a change in use status. During the initial time of use or occupation, rates were paid by lessees or from other revenue. With the changing of use status, however, where income is no longer derived from the block, the rates burden has

remained but has now shifted onto owners who do not have the capacity to pay

- **Land made General by 1967 Amendment:** A significant problem is believed to exist in relation to Māori land where the title was compulsorily changed without agreement or notification up to 40 years ago. These pieces of land are often still owned by Māori but are now held as General Land. As such, the titles are vulnerable to alienation if rates arrears accumulate.

**Specific Rating Issues:** A series of specific issues associated with the rating of Māori land have also been raised:

- **Rates and Services:** Māori submitters have emphasized that the burden of rates often far outweighs the value of services provided by local authorities. Numerous examples were given of rates being charged for services that were not received. In fact, Māori landowners were often supplying their own services and facilities to their community and even the wider community. It was therefore suggested that where this occurred, landowners should either be paid something for this by local authorities or have wider rates remissions.
- **Rates as a Barrier to Development:** Comment has been received that the imposition of rates acts as a deterrent against development as any efforts towards development attracted demands from local authorities for the payment of back rates. As a result, rather than attempting to pursue development objectives, owners have changed the status or management of land to avoid large ratings charges. These changes, however, often mean loss of access, management or control over the land.
- **Relationships between Māori and local authorities:** Whilst some examples of good working relationships were given, the general view was that relationships were not good. This stemmed from a number of causes including unwillingness of local authorities to engage on rating or any Māori land issues; the past actions committed by local authorities and the lack of effective Māori representation at the level of local government.

## 2. Consultation Proposals

Aside from the identification of impacts, a number of proposed solutions have been put forward during the inquiry process. Broadly speaking, there was a general consensus between the Māori and local government that a problem exists, that something needs to be done and that the solutions lay in centrally designed remedies involving central government. However, the solutions being proposed were very different between Māori and local authorities:

- **Māori individuals, groups and organisations:** As might be expected, it was Māori land owners, as the group directly affected, who provided the most comment on the impacts associated with rating. When it came to considering solutions to the impacts, in a few cases owners supported the status quo as rates were not being paid and yet land could not be taken. Otherwise, there was a strong body of opinion that change was required. The proposed starting point for

change was to consider the nature of Māori land and the role of the Treaty of Waitangi. As a result, it was felt that a conceptual change was required from the assumption that all Māori land is rateable. Instead, it was proposed that a zero-based approach be adopted with consideration being given to the situations and circumstances when Māori should pay rates. Having noted this, however, only a handful of commentators suggested that no rates should be paid on any Māori land. Instead, owners were strong in their willingness to pay rates where fair, where services were received or if the land was occupied and produced income.

One area especially commented on by Māori submitters was valuation. There was some support for the full implementation of the Mangatu decision meaning that if Māori land was to be valued it needed to include cultural, ancestral, and spiritual values and should be completed on a case-by-case basis to reflect the history and use of the block. On the other hand, other Māori commentators accepted a blanket discounted rate. Where this has occurred, commentators have suggested that Government should use legislation to secure a discount of up to 50% or higher. In addition, several submissions have noted that as Māori land can not be sold without restrictions valuations need to reflect the “economic value” or “value in use” rather than a “market value”.

- **Local Authorities:** Most local authorities included some comment on Māori land rating issues. With some exceptions, the nature of this comment did not focus on the impacts of rating on Māori landowners. Where comment was made, this primarily focused on the valuation of Māori land. Comparatively little commentary was received from local authorities on their own policies and practices or on the way in which local authorities worked with Māori landowners. Instead, the existence of a problem on the collectability of rates was widely identified as was the lack of a mechanism to act where rates were not paid. Not surprisingly, the primary solution proposed by local authorities was that if the legislation on the alienation of land was not to be changed, then the responsibility on local authorities to collect rates on Māori land should be removed and placed on central government.

### 3. Analysis and Recommendations

There are two broad alternative approaches to addressing the issues identified in the Inquiry's process of hearings and research.

- The first is to look at the present system and address those areas where issues have been identified. This approach proceeds on the premise that the parameters of the current system are sound and only require adjustments to eliminate the problems and retain the strengths.
- The second approach is to take a completely different approach to the problems identified by adopting as a basic operating assumption that the issues are too many, complex and large (or a combination of all three) to be cured by the more incremental first approach.

i. **Addressing the Issues within the existing Framework:** Using the broad themes identified in the proposals and applying the evidence gathered in the course of

the inquiry, what soon becomes apparent is the difficulty of achieving a sustainable result whilst working within the present system. Several possible solutions were proposed within the present system, all of which had serious difficulties.

- **Central Government Payment of Rates:** The primary focus of local authority submissions was to propose that if the protection that Māori land currently has against the sale of land could not be over-ridden, then the payment of rates be borne by the taxpayer and paid for by the Central Government. This possibility is untenable. Firstly, it would create inequity for those owners of multiply-owned and unproductive land who have struggled on to pay rates. It would soon encourage a rates revolt among Māori in response to the unequal treatment being condoned. Thirdly, it would create incentives against land development.
- **Greater uniformity of remissions and postponement policies:** Whether implemented by policy changes or through legislation, this proposal was not sought by local authorities and could be widely viewed as central Government interference. To effectively implement this proposal would require expensive central government policing or the development of a complaint/appeal process which also would be expensive and encouraging of litigation. Furthermore, increased uniformity of policies would not address perspectives and concerns raised by Māori commentators as local authorities would still be given the power to make decisions over Māori land.
- **Extend Exemptions:** Feedback from a number of Māori commentators have also sought change to improve the exemptions provision by extending the type/nature of land to be made exempt to include lands with certain cultural characteristics and lands which are not easily made productive. This would be an administratively difficult process to implement; it would not automatically result in uniformity between local authorities and would therefore require strong and expensive policing of the system and allowance for a complaints process.
- **Valuation:** Another area of the current framework is in relation to addressing valuation issues. Each of the options that exist has significant difficulties. There would be great difficulty in identifying a higher discount rate that would satisfy all perspectives. Furthermore, this is not in keeping with the Court of Appeal guidelines. However adopting a case-by-case approach as recommended in the Mangatu decision would lead to greater expense and there would be likely variations between valuers that would entail high costs to oversee and ensure consistency.

ii. **The Need for a different Frame of Reference:** The historical survey, as well as the received submissions and proposals from all parties, make it abundantly clear that rating and Māori land combine to create an area of conflict that will require significant change to address. The conflict occurs in the interface of the notions that Māori land should be taxed on a market valuation to fund the public good functions of a local authority while also accepting that Māori land tenure is inconsistent with the levying of such a tax. As discussed in the following sections of this report, there are a number of impacts of rates on Māori land that cause difficult, expensive and perverse results. Taking the proposals made or blending them into reforms that retain the current paradigms will not adequately address the issues that have been identified.

Aside from the breadth of impacts, the difficulty of implementing solutions within the current framework and the past absence of success, there are several further reasons to recommend the use of a different approach to provide the solutions required. These reasons demonstrate that the adoption of a different framework is required as the basic tenets of the current framework can be demonstrated as incompatible and unworkable with the existing situation associated with Māori land. These reasons, based on the fundamental differences of Māori land, are as follows:

- That Māori land does not proportionately receive or benefit from the public good functions of local authorities
- The contribution of funding to local government activity based on the marketability of land does not apply to Māori land
- Māori land is already treated as an exception in rating legislation
- The unique status of Māori land is acknowledged constitutionally and historically
- Māori land is distinguished by a complex and statutorily prescribed ownership system

**iii. Using a different start point: Māori land as nonrateable:** The impacts, issues and fundamental differences that have been identified combine to create a situation where the current systems for the rating of Māori land are not working but are not capable of incremental or piecemeal repair. A new start point is required:

- Begin with the premise that Māori land is not rateable for general rates
- Where the subject land receives and accesses services, (through occupation or use of the land), targeted or specific purpose rates would apply.
- Where the subject land is used and/or occupied, then general rates would apply. The extent of rates paid would depend on the extent of fulfilment of identified criteria associated with the nature of the land or the nature of use.

These proposed qualifications would be supported by a national policy on the rateability of Māori land reflected in legislation. The legislation would stipulate that the policy required remission of the general rates for Māori land unless and until that land was serviced and/or utilised. The onus would lie on the local authority, (having the incentive and resources to act), to demonstrate the extent that the land concerned satisfied the conditions needed for various rates charges.

The proposal is tantamount to ascribing a rating value of zero to Māori land – for the reasons advanced above – and it reflects the fact 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.

Within the proposed system of assuming the non-rateability of Māori land and building a rating case, the basis of valuation of land that is productively used and/or occupied would be made on the productive capacity of the land and the way in which it was fulfilling that capacity. The use of productive capacity would require abandoning the

one-size fits all approach currently employed. Productive capacity values will also, in the long run, equate to the market value methodology that is presently used.

The benefits of a system of assuming the non-rateability of Māori land and building a rating case is that it reaches through history to find the strengths of the rating system, it acknowledges the willingness of the Māori populace to shoulder their fair share of the rates burden and replaces the current incommodious system with one that promises a long term solution. The proposed system:

- Builds on differences recognised by the Courts and within current policy;
- Reflects the perspective of Māori land owners who place emphasis on cultural values and Treaty rights;
- Relieves local authorities of costs associated with attempts to collect rates of Māori land;
- Does not materially reduce revenue streams;
- Potentially increases revenue streams by removing disincentives to bring land into productive use;
- Provides incentives for local authorities to work with Māori land owners to move unproductive land into a category of development.

**iv. Addendum: Māori land converted to General title:** Māori land converted to General land under the Māori Affairs Amendment Act 1967 is a specific category of Māori-owned land that has borne a disproportionately heavy impact of rating powers. This is land that would be Māori land but for the legislative intervention that wrought a radical change without the owners' participation let alone consent. As the cases documented to the Inquiry reflect, that land is still regarded and treated by the owners as their ancestral land in exactly the same way that other land within the whanau and hapu is treated. Therefore, there should be a specific recommendation that such lands are treated in the same way as Māori land for the purposes of rating in all respects including the assumption of liability, the levying of rates the application of local authority policies and the enforcement of sanctions.

## A. Māori Land: Conceptual Overview

On 1<sup>st</sup> November 2006, the Minister for Local Government announced an independent inquiry into the funding of local government. The Inquiry has, as one of its specific terms of reference, an assessment of the impact on land covered by the Te Ture Whenua Māori Act 1993. Questions for which the Inquiry have sought answers in relation to Māori land include:

- What are the major issues involving the rating of land covered by the Te Ture Whenua Māori Act 1993 and how can these best be managed?
- Is the existing basis of the valuation of Māori land appropriate? If not, what alternative approaches could be considered?
- Do policies aimed at improving the affordability of rates fully recognise affordability issues facing Māori landowners?
- Are there grounds for providing rates exemptions for categories of Māori land other than those in Schedule 1 of the Local Government (Rating) Act 2002?

Before considering how Māori land is rated and how rating has impacted on Māori land and owners, it is necessary to identify two fundamental concepts that need to be taken into account in any consideration of rating issues.

### 1. Cultural Values Associated with Māori Land

"Toitu te whenua, Whatungarongaro te tangata"  
*Land will endure always, People perish*

This proverb is well known. It is used throughout the country to describe the perpetual nature of the relationship that people have with land. It also reflects an implicit cultural value that the whanau (family) and hapu (extended family) have an inter-generational obligation of stewardship in respect of land that is central to their identity and survival.

Submitters and hui attendants emphasised that land is priceless and that the value of it came from whakapapa. Land provides a sense of identity, belonging and continuity. Land, as turangawaewae, links people with their iwi and establishes them as tangata whenua. [907, 909, 943] Associated with this belief were responsibilities of kaitiakitanga. [602] It was pointed out that tikanga Māori determined that Māori people are merely kaitiaki and in fact are themselves owned by the land. [653, 912, 921, 931] During hui, the whakatauaki was recalled 'I am of the land, I am the land.' Tangata whenua come from the land and will go back to it. Another strongly held view expressed by Māori commentators is of the land as their mother or Papatuanuku nurturing and nourishing them as her children. In turn, tangata whenua have a collective role as kaitiaki protecting this taonga so future generations may enjoy her benefits. [736] The firm belief in kaitiakitanga is strongly expressed by both hui attendants and submitters who emphasised that they only hold the land for their lifetime before handing the responsibility on to the next generation. [556, 683, 705, 911] To fulfil the role of kaitiaki, the keeping of the land and the maintenance of ahi ka on the land is of key importance. Submitters contended that places such as urupa, marae, papakainga, lakes and river

beds were all of significant cultural importance. Waahi tapu is a concept much broader than is generally supposed. Compared with these values, the imposition of a tax on land is seen as culturally inappropriate and several speakers at hui referred to this, one commentator at the **Auckland hui** (18 April 2007) describing rates as “a tax on the placenta of my tupunas.” [See also 590]

The expressed views towards land recorded in submissions and at hui are reflected in Te Ture Whenua Māori Act 1993 where Māori land is recognised as a prized inheritance of special significance to Māori people and it is on this basis that a comprehensive set of provisions for how Māori land is dealt with are set out in law to ensure the retention of the land. Whilst among the owners of Māori freehold land, there is a generally recognised and strong desire to retain land, there is an equally strong desire to be able to occupy, use and develop land for the benefit of current and future owners.

## 2. Treaty of Waitangi

Submitters and hui attendants constantly reminded the Panel that the question of rates on Māori land should only be dealt with in the context of the Treaty of Waitangi. The Treaty needed to be the starting point for the consideration of all aspects associated with rates.

The relationship between Māori communities and local government and the role of the Treaty of Waitangi in that relationship is still largely unsettled.

The Waitangi Tribunal has considered a large number of claims that involve the actions of local authorities under various empowering statutes<sup>1</sup>. Although the orthodox view is that local authorities are not part of or agents of the Crown, the Waitangi Tribunal states the position in this way:

“..[t]he Crown obligation under Article 2 to protect Māori rangatiratanga is a continuing one. It cannot be avoided or modified by the Crown delegating its powers or Treaty obligations to the discretion of local or regional authorities. If the Crown chooses to delegate it must do so in terms which ensure that its Treaty duty of protection is fulfilled”<sup>2</sup>

In what appears to be an attempt to address this obligation the Local Government Act 2002 includes provisions relating to the participation of Māori communities in local government decision processes. Section 4 of that Act states:

“In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes.”<sup>3</sup>

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<sup>1</sup> See Hayward J. (ed.) *Local Government and the Treaty of Waitangi* 2003

<sup>2</sup> Ngawha Geothermal Resources Report 1993 (Wai 304), 153-154, cited in Hayward (supra) p. 64

<sup>3</sup> Part 2 Purpose of local government, and role and powers of local authorities; Part 6 Planning, decision-making, and accountability

A strongly held view that was recorded at hui and in submissions 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. [602, 634, 737, 773, 905, 910, 918, 941] At the **Gisborne hui** (17 April 2007) one speaker spoke strongly of Te Tiriti o Waitangi. The speaker noted that the First Article in the Māori version gave rights to the Queen – kawanatanga. A fuller explanation for the kawanatanga was that it was kaitiakitanga to look after the Pakeha. Under Te Tiriti Māori did not cede anything else to the Crown. Māori kept rangatiratanga. The Crown is just a partner. It was noted that the Second Article of the Treaty required that the Queen had to negotiate with the people. It was then noted that there was no consultation before the legislation was passed for rating the land and that initially, and for a long period after 1840, there was no rating of the land. This speaker felt the Treaty has been ignored completely as there needed to be consultation before legislation.

Speakers at several hui noted that the rating system originated as a system for Pakeha and reflected their land use and management and governance systems. Had there been consultation Māori would not have accepted the imposition of such a culturally foreign land tax. (**Napier hui** 8 March 2007; **Rotorua hui** 16 April 2007; **Gisborne hui** 17 April 2007) In addition, past legislation which allowed Local Government to apply to the Native Land Court for charging orders on unpaid rates as debt accumulated has been criticised as has the ability in the past of local authorities to apply to lease or eventually sell land to recover arrears. [767] Several speakers at hui proposed that the past takings of land for rates was a breach of the Treaty. The Inquiry Panel was informed that in forthcoming inquiries before the Waitangi Tribunal for Northland and the East Coast there is research being specifically conducted into the impact of rates. In the East Coast inquiry a specific rates claim is being lodged with the Waitangi Tribunal.

A further expressed view associated with a Treaty-based perspective on rating was that Māori had already contributed to their districts and towns through land loss arising from raupatu, the purchasing of too much land by the Crown, the taking of land for rates and the taking of land under the Public Works Act. These past policies had meant Māori had been left with a marginal, residual estate. [767, 428, 933] At several hui it was noted that the contribution that Māori land has made to building the infrastructure in many districts has not been taken into account. Roads, hydro electric installations, state housing, water supply requirements and recreational facilities across the country have all been built on Māori land taken under the Public Works Act. This comment was also recorded in submissions. [402, 590, 602, 906, 918, 931, 933, 934] At the **Hamilton hui** (17 May 2007) a speaker from Tauranga especially noted how Māori land around the harbour had been progressively taken for the airport, stadium, highways and water mains as the city increased its size.

A final matter raised in relation to the requirement under the Treaty to consult was in relation to the Panel's inquiry. At most of the hui, questions were asked about the process of consultation the panel was carrying out and the expertise of the panel to assess impacts of rating systems on Māori land. At several hui concern was expressed that the Ministerial Review could worsen matters and have negative results where rates were increased or enforcement was strengthened. Some groups who were in the fortunate position of having rating remissions for their land were concerned that this situation might be altered.

## B. Legal Position: Past and Present

The review process associated with the Local Government Rates Inquiry has brought forward a range of complaints about the rating of Māori land. Before these complaints are examined, the past and existing legislation, policies and practices associated with the rating of Māori land will be presented to provide contextual information of the background to the inquiry as well as to identify issues which have arisen over previous years.

### 1. Background History of Māori and Rating

The history of Māori land and rating shows that although the assumption often held today is that all Māori land is rateable in the same way as other land, this was not always the case and that legislation, policy and practices all made allowances for Māori land reflecting the prevailing circumstances of the day.

There has long been protest by Māori over the rating of land. An ancient haka revived with topical adaptations in 1888 expresses the sentiments surrounding rating<sup>4</sup>. An excerpt is set out below:

|                                       |   |
|---------------------------------------|---|
| Ponga ra ponga ra                     | <i>The shadows fall, the shadows fall</i>         |
| Ka tataki mai te whare o nga ture     | <i>The house which makes laws is chattering</i>   |
| Ka whiria te Māori ka whiria          | <i>And the Māori will be plaited as the rope</i>  |
| Ngau nei ona reiti ngau nei ona taake | <i>Its rates and its taxes are biting</i>         |
| Te taea te ueue                       | <i>Its teeth cannot be withdrawn</i>              |
| Patua i te whenua                     | <i>The land will be destroyed</i>                 |
| Whakataua i nga ture                  | <i>The laws are spread eagled over it</i>         |
| Na nga mema te kohuru                 | <i>The members have done this black deed</i>      |
| Na te Kawana te koheriheri            | <i>And the rulers have conspired in the evil</i>  |
| Ka raruraru nga ture                  | <i>The laws of the land are confused</i>          |
| Ka raparapa ki te pua torori          | <i>For even the tobacco leaf is singled out</i>   |
| Kaore hoki te mate o te whenua e      | <i>Never does the loss of our landed heritage</i> |
| Te makere atu ki raro ra              | <i>Cease to burden our minds</i>                  |

Māori land was generally exempted from rating under the initial town and country bodies set up in the 1840s and early 1850s. However, as development began to expand and road or highway boards were established to collect funds for the construction of roads outside towns there was increasing pressure on Māori to contribute. By 1871, when the Highways Boards Empowering Act was introduced, there was considerable debate in the House of Representatives regarding whether and how Māori should pay rates. Fears were expressed by Māori representatives that land might be taken for rates. Taiaroa, the member for Southern Māori, pointed out that the Treaty of Waitangi had preserved all matters regarding land to Māori.<sup>5</sup> The final result within the 1871 Highways Boards

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<sup>4</sup> Te Kiringutu composed by Tuta Nihoniho; translation by Sir A. T. Ngata; cited in Dewes Te Kapunga, (ed.) *He Haka Taparahi* 1972, 12-14

<sup>5</sup> New Zealand Parliamentary Debates 1871, vol 10, p358; cited in Tom Bennion, 1997, 'Māori and Rating Law', Waitangi Tribunal, Rangahaua Whanui Series, p7.

Empowering Act was that owners and occupiers of Māori land would be liable to rates only where a Native Land Court certificate of title had been issued.<sup>6</sup>

Over the 1870s, although very few Māori paid rates, it became a significant issue in some parts of the country. In 1877 A.T. Patene and others at Waikato petitioned Parliament asking for an exemption from Road Board laws as Māori in their district were not able to pay their rates and consequently they would "...have to sell their lands, and impoverish their descendants."<sup>7</sup> Many speakers at the 1879 Orakei Parliament raised issues related to rates and road board levies. Some speakers noted that sales of lands for rate arrears were being threatened and one noted that Māori had been put in jail over the non-payment of Road Board taxes.<sup>8</sup>

In 1882, the Rating Act and the Crown and Native Lands Rating Act came into force. Māori land was exempted from provisions of the first Act but rated under the second companion Act. Under this Act there continued to be some exemptions relating to Māori land in some counties or land that was more than five miles from a public road. Rate demands relating to Māori land were published in the New Zealand Government Gazette and if not paid within three months were paid by the Colonial Treasurer, This Government expenditure was recovered with the stamp duty which had to be paid whenever Māori land was leased to a non-Māori or when it was sold or exchanged for the first time.

When this legislation was passing through Parliament, Māori members expressed opposition to the Bill. Wiremu Te Wheoro, the member for Western Māori feared that where Māori land was not sold or leased the rates would accumulate until a further law was brought in to confiscate the lands altogether as payment for the outstanding rates.<sup>9</sup> Other Māori also viewed the Bill as another way of taking the remaining land they had left. Wi Taki Ngatata in the Legislative Council compared the provisions of the Bill to a sea monster which would swallow the whole of the native people and their lands.<sup>10</sup> There were also a number of petitions from Māori at that time in regards to rating, including one by Hemi Warena and 35 others: "Petitioners state that through the Treaty of Waitangi they thought they had entire control of their own lands, and object to certain restrictions, and payments of rates."<sup>11</sup>

The 1882 Crown and Native Lands Rating Act was applied to 3.5 million acres out of 13 million acres of Māori land.<sup>12</sup> The rates levied on Māori land under the 1882 Act were mainly in the North Island. Over the next 40 years the rates charged totalled £67,369 which, in accordance with the Act, was paid by the Crown. By 1924, £38,235 had been recovered. Crown purchases on some other affected lands reduced the amount owing to approximately £15,000 and several years after 1924 this amount appears to have been written off by the Government.<sup>13</sup> In 1888 the Crown and Native Lands Rating Act Repeal Act was passed. Under this Act the scheme of Treasury reimbursement to councils was ended and the liability for rates of Māori land was governed solely by the Rating Act 1882.<sup>14</sup>

Further legislation over the 1890s provided for wider inclusion of Māori land but it appears that rating was not enforced to any great extent. Over the early 1900s the extent of Māori

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<sup>6</sup> Cited in Bennion, *op cit*, p9.

<sup>7</sup> Appendices to the Journal of the House of Representatives, 1877, I-3, p21; cited in Bennion, p11.

<sup>8</sup> Appendices to the Journal of the House of Representatives, 1879, G-8; cited in Bennion, p13.

<sup>9</sup> 30 August 1882, New Zealand Parliamentary Debates, vol43, p712; cited in Bennion, p19.

<sup>10</sup> *Ibid*, p868; cited in *ibid*.

<sup>11</sup> Appendices to the Journal of the House of Representatives, 1885, p37; cited in Bennion, p23.

<sup>12</sup> 26 October 1886, Lewis Memo, MA 4/37; cited in Bennion p20.

<sup>13</sup> New Zealand Parliamentary Debates, 1927, vol216, p544; cited in Bennion, p25.

<sup>14</sup> New Zealand Parliamentary Debates, 1888, vol62, p361; cited in Bennion, p24.

lands subject to rates and the amounts paid increased, although, the almost landless situation of Māori in the South Island led to them being required to pay only half of any rates due. Significant compulsory powers were introduced to either ensure properties became rateable or to recover rates including the authorisation of the Native Minister to place land under the administration of the district land council; or to pay the rates and place a caveat against dealing with the land. Under a further provision, if the Minister was of the opinion that Māori owners were keeping customary land out of court to avoid paying rates, he could apply to the Land Court to ascertain title.<sup>15</sup>

In 1910 most Māori land was brought within the general rating regime by the Rating Amendment Act which made all Māori freehold land, unless otherwise provided, subject to rates in the same manner as Pakeha land. Customary land remained exempt. Land held by Māori Land Boards or the Public Trustee was liable only to the extent that the land produced revenue. Under this Act the South Island reserves lost their half-rated status.<sup>16</sup> The Governor in Council retained discretionary powers to exempt Māori land in isolated areas. Relevant land boards or the Public Trustee were able to lease or sell land in relation to recovering rates.<sup>17</sup> There continued to be difficulties in collecting rates as the registration of liens for unpaid rates was to be against registered titles and much Māori land did not have a registered title. A theme of Māori response to rating over these years was the apparent lack of consultation at a local level before rates were imposed and brought into effect. Responses of the time showed that Māori were willing to pay for some facilities but they also wanted some opportunity for separate development and therefore unimproved lands to be exempt.

Over first decades of the twentieth century councils tried various means of getting rate charges paid such as Māori working for rates; the subtraction of money for rates from wages of Māori employed by councils on public works schemes; and deductions from revenue such as milk or cream cheques.<sup>18</sup> Over the 1920s customary land continued to be exempted from rates as was land on which urupa, meeting houses or churches were situated. Legislation also provided that a receiver could be appointed with power to lease the land to recover the rates<sup>19</sup> and if after one year the rate remained unpaid, the land could be vested in the Native Trustee for sale, subject to the consent of the Native Minister.<sup>20</sup>

By the 1920s, the title of Māori land after decades of Land Court action was such that Government policy was developed to begin processes whereby the titles could be reviewed and the interests of owners consolidated. In the late 1920s under the provisions of various legislation parliamentarian Apirana Ngata made agreements with a number of local authorities in relation to the consolidation schemes whereby outstanding rates and future rates were remitted in exchange for a part payment which covered some of the debt. This compromise payment was achieved through the sale to the Crown of land within the consolidation scheme. Substantial areas of land were affected by these compromises.

During the 1920s a number of Māori groups raised issues regarding the payment of rates. In Taranaki, Māori were complaining about rates being paid on pa.<sup>21</sup> Speakers at a rating conference in 1927 suggested that Māori had already paid their rates, having sold their land for a price much lower than their present worth. A legal representative for some Māori

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<sup>15</sup> Cited in Bennion, p34.

<sup>16</sup> Ibid, pp36-37.

<sup>17</sup> Ibid, p37.

<sup>18</sup> Ibid, p61.

<sup>19</sup> Native Land Rating Act 1924, Section 9; cited in Bennion, pp48-49.

<sup>20</sup> Ibid, Section 10; cited in Bennion, p49. [Later became section 109 of the Rating Act 1925.]

<sup>21</sup> March 1925; cited in Bennion, p49.

groups pointed out that “The word ‘Dominion’ in the Treaty of Waitangi ... gave the Māori absolute dominion over his own lands and no suggestion of confiscation would be tolerable.”<sup>22</sup>

By 1933 both Māori and Pakeha were defaulting on rates because of the Depression and by the late 1930s in some areas the debt regarding rate arrears on Māori land was only slightly less than the value of the land. Some local authorities came to agreements with Māori involving the writing off of some outstanding debt in return for part payments or the payment of current rate demands.

Over the 1950s the National Government passed legislation which provided that the Land Court could appoint the Māori Trustee as agent for the owners to affect alienations, in situations where rates had not been paid.<sup>23</sup> Rating legislation in 1967 also provided that under certain conditions the Land Court could vest the land in trustees to lease, sell or otherwise alienate in relation to rate repayment.<sup>24</sup> Prior to the Bill being passed, Reweti for Eastern Māori stated that “Selling up Māori land or even leasing it is not the answer. The solution lies in positive policies of regional development pursued with purpose.”<sup>25</sup>

A further Rating Powers Act in 1988 did not alter the overall scheme in relation to the rating of Māori lands. However, important changes in the Act included that rates could be adjusted on Māori land for reasons of hardship; that the limitation of two years on charging orders for rates arrears was extended to six years; and that the Act incorporated provisions for a receiver to be appointed for land in rate arrears.<sup>26</sup> Significantly, the power to have Māori land sold for rates was removed. In Parliament it was argued that selling Māori land for rates was contrary to the principles of the Treaty of Waitangi.<sup>27</sup> During the legislative passage, Professor Kenneth Palmer expressed the view in submissions that

“It is respectfully submitted that the continued provision for rating sales to enforce collection of the debts against Māori land is *patently contrary* to the principles and spirit of the Treaty.”

and

“that the Waitangi Tribunal would almost certainly come to the same conclusion upon referral to it of this issue.”<sup>28</sup>

The Local Government (Rating) Act 2002 replaced the Rating Powers Act. The regime for rating Māori freehold land is largely unchanged by the later Act. Its companion, the Local Government Act of the same year did lay down a mandatory requirement for each local authority to have policy dealing with remissions and postponements of rates on Māori freehold land.

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<sup>22</sup> 29 August 1927, Gabriel Elliot quoted in *NZ Herald*; cited in Bennion, p50.

<sup>23</sup> Section 34 (c), Māori Purposes Act 1950; repeated as section 387 of the Māori Affairs Act 1953; cited in Bennion, p70.

<sup>24</sup> Section 155, Rating Act, 1960; cited in Bennion, p72.

<sup>25</sup> NZPD 1967, vol353, p3085; cited in Bennion, p71.

<sup>26</sup> Cited in Bennion, p73.

<sup>27</sup> NZPD, 1987, vol489, p4165; cited in Bennion, p73.

<sup>28</sup> Submission to the Internal Affairs and Local Government Committee on the Rating Powers Bill 1987; cited in Palmer, Kenneth A, “Rating Powers Act 1988 and Māori Land” *Recent Law* September 1988, 287

## 2. Valuation

Valuation of Māori land for rating purposes is an issue that has exercised the Courts, the Valuer General and Māori land owners for some time.

The statutory definition of value has remained generally unchanged for decades, it is<sup>29</sup>

“**capital value** of land means, subject to sections 20 and 21, the sum that the owner's estate or interest in the land, if unencumbered by any mortgage or other charge, 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:

**land value**, in relation to any land, and subject to sections 20 and 21, means the sum that the owner's estate or interest in the land, if unencumbered by any mortgage or other charge, 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
- No improvements had been made on the land:”

These definitions indicate that theoretical sale value is the nub of the issue as far as valuation is concerned. This creates an essential difficulty in relation to Māori land where the sale market potential has been significantly altered by legislative change. This has occurred within the context of the passing of the Te Ture Whenua Māori Act 1993 which has brought into effect a number of alienation restrictions on Māori land. Firstly, the Act records one of its primary purposes as being the retention of Māori land. In addition, a preferred class of alienees is identified within the various wider ownership or relationship groups of Māori associated with the land. The effect of the legislation, added to the practical difficulties in gaining consent from large numbers of multiple owners, has been to significantly limit the opportunities of acquiring Māori land and converting it to general title.

The provisions of the Te Ture Whenua Māori Act 1993 have major implications for the valuation of Māori land which were first understood as a result of the 1997 decision of the Court of Appeal in the Mangatu case<sup>30</sup>. There the Court of Appeal<sup>31</sup> recognised that the determination of land value must recognise the legal constraints on alienability of Māori land.

“The value is what a willing but not anxious seller would sell for and what a willing but not anxious buyer would be prepared to pay for the property. As in other valuation matters it must be assumed that the

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<sup>29</sup> Rating Valuations Act 1998. This definition is largely a carry over of its predecessor the Valuation of Land Act 1951

<sup>30</sup> Valuer-General v Mangatu Incorporation [1997] 3 NZLR 641 Note although the proceedings were brought under the now repealed Valuation of Land Act 1951 the decision is still regarded as authoritative.

<sup>31</sup> The Court of Appeal upheld the decision of the High Court that had overruled the finding of the Land Valuation Court.

hypothetical purchaser is a person of reasonable prudence, properly informed as to all the relevant facts.”<sup>32</sup>

Up until that time the rules that were applied to valuing Māori land were the same as those for general land: that is, the definition and quantification of “value” being the market or transaction realisation that a sale of the land brings. On this matter the Court in the Mangatu case went on to state

“The valuer’s task is to determine what the hypothetical purchaser would pay to obtain the owner’s estate or interest in the land”<sup>33</sup>.

Of further note in the decision of the Court of Appeal is the finding that the facts of the case and the evidence adduced were insufficient for the Court to determine an appropriate level of discount or formula for the valuation of Māori land given the restrictions that existed. Instead, as noted by the Court, each case should be decided on its merits.

Following the decision, the identification of an agreed discount of 15% was devised. This occurred through the Valuer General issuing an open letter as a guide to valuers which stipulated that

- each case should be considered on its merits and other factors than those listed should also be considered
- the land should be valued as general land with the following adjustments
  - o number of owners (maximum 10%)
  - o sites of special significance and ecological or similar values (maximum 5%).<sup>34</sup>

The letter is to guide the valuation of properties for which an objection is lodged against the rating valuation issued. One of the questions that was left unanswered was whether the guidance provided by the Valuer General is suitable to recognise the differences associated with Māori land.

Māori land is different to General Land for a number of reasons. These were noted by the Court of Appeal as including:

- The cultural and historical connections of the owners to the land
- The restrictions on sale contained within the Te Ture Whenua Māori Act 1993
- The difficulties in achieving alienation within large multiple ownership groups
- The role of the Māori Land Court in any alienation of land.

In the past, mechanisms existed which allowed valuations to be completed for Māori land that did not focus on theoretical sale value:

- the Valuation of Land Act had provisions allowing for the identification of special rateable values. This Act, however, was repealed and replaced by the Rating Valuations Act 1998<sup>35</sup> which removed special rateable values provisions<sup>36</sup>

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<sup>32</sup> Ibid, 650.

<sup>33</sup> Ibid 651

<sup>34</sup> Cited as Appendix G in Rolleston H, Patuawa J. *A Submission Report on the Rating of Māori Land in Tauranga* 2004

- Prior to the repeal of the Valuation of Land Act, valuations not related to rating were issued by the Valuer General and were available to be used in the Māori Land Court for the purpose of valuing interests in Māori land.<sup>37</sup> The stated purpose of the 1998 Act, however, was to narrow the focus to being on valuations for rating purposes.

From the removal of special provisions and practices that addressed the fundamentally different attributes associated with Māori land and the sole focus of value being placed on the theoretical sale value, major impacts have resulted in relation to the rating of Māori land. These were identified by those who contributed to the Panel's review process and will be considered in the following Section.

### 3. Responsibility for Rates

The Local Government (Rating) Act 2002 has an extensive section dealing with rating of Māori land<sup>38</sup>.

The operating assumption is that Māori land is liable for rates<sup>39</sup>, unless otherwise stated in [Pt 4] the Act, in the same manner as if it is general land<sup>40</sup>.

For Māori land owned by one or two owners the same rules governing regarding liability and the naming of the ratepayer in the rating information database apply as for general land. More than two owners is defined as multiple ownership and in that case one of the following will be liable (in descending order, as the case may be):

- a lessee of the entire rating unit, unless the lease provides that they are not liable;
- a person with an occupation order under s 328 of Te Ture Whenua Māori Act 1993, unless the order provides for the owners or trustees are liable for rates;
- the trustee or trustees (although liability is limited to the income derived from the land and received from the beneficial owners);
- a person actually using the land:
- the owners.

In the first three situations, the person liable for the rates is also the person named as ratepayer in the rating information database.

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<sup>35</sup> The long title to the Rating Valuation Act 1998 states “...[An Act to] (c) Repeal the Valuation of Land Act 1951 and generally restate the law relating to the valuation of land for rating purposes”

<sup>36</sup> Sections 22-30 were repealed by the Local Government Rating Act 2002

<sup>37</sup> Section 152 Te Ture Whenua Act 1993 “...(d) that having regard to the relationship (if any) of the parties and to any other special circumstances of the case, the consideration (if any) is adequate;...

<sup>38</sup> Local Government (Rating) Act 2002 Pt 4 ss 91 – 117.

<sup>39</sup> s.7

<sup>40</sup> s.91

In the case of a person actually using the land, the person is liable regardless of the entry of the owners as ratepayers in the rating information database and can be sued for unpaid rates. However, the rates assessment and rates invoice must be delivered to the person actually using the land. The person actually using part of the land is treated as having used the whole of the land for the whole of the financial year unless they establish otherwise.

In the case of the owners, only the description "the owners" is entered in the rating information database. The local authority may apply for the Māori Land Court for one of the owners or an agent of the owners to receive the rates assessments and rates invoices. Following appointment, the owner or agent is then recorded in the rating information database as ratepayer, with the additional description "Court appointee". Their appointment for the purpose of receiving the rates assessments and invoices and does not make them liable for rates (except to the extent that they would otherwise be liable) or confer them with an estate or interest in the land.

#### **4. Non rateable Māori land**

According to the Local Government (Rating) Act all land is rateable unless otherwise stated to be non rateable by the Act or any other Act.

By virtue of the Act<sup>41</sup> there are several categories of Māori land that are not rateable<sup>42</sup>;

- a Māori burial ground that is less than 2 hectares
- Māori customary land.
- reservations under section 338 of Te Ture Whenua Māori Act 1993 or any corresponding former provision of that Act and--
  - (a) that is used for the purposes of a marae or meeting place and that does not exceed 2 hectares; or
  - (b) that is a Māori reservation under section 340 of that Act.
- Māori freehold land that does not exceed 2 hectares and on which a Māori meeting house is erected.
- Māori freehold land that is, for the time being, non-rateable by virtue of an Order in Council made under section 116 of the Act, to the extent specified in the order. This provision has a long pedigree but is not used much.<sup>43</sup>

#### **5. Remissions and postponement**

The Local Government (Rating) Act<sup>44</sup> allows the remission or postponement of all or of part the rates otherwise payable where the local authority has adopted a rates remission

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<sup>41</sup> s. 8, Schedule 1

<sup>42</sup> clauses 10 -14

<sup>43</sup> Reference to 1995 Ruapehu Gazette

<sup>44</sup> ss. 85, 87

policy under section 109 of the Local Government Act 2002 and the local authority is satisfied that the conditions and criteria in the policy are met.

The Local Government Act 2002 sets out a number of factors that must be taken into account when a rates remission policy is set. Those factors include a number of objectives including:

- supporting the use of the land by owners for traditional purposes;
- recognising and supporting the relationship of Māori with their ancestral lands;
- avoiding further alienation of the land;
- facilitating the development of the land for economic use;
- recognising and taking account of the presence of waahi tapu that may affect use;
- recognising the levels of community services provided by the land and its occupiers;
- recognising matters relating to the physical accessibility of land (i.e. 'land-locked' blocks).

Furthermore, the policy adopted must reflect express consideration of the impact on those objectives if rates are not remitted or postponed.

To ensure that rating policies are comprehensive and well understood, there is a requirement for consultation to be undertaken by local authorities during the development of rating policy.

## **6. Unpaid rates & penalties**

Unpaid rates and penalties are often grouped together under the expression "arrears". Rates invoices issued in accordance with the Act stipulate amounts and times for payment<sup>45</sup>.

Penalties may be applied<sup>46</sup> to the unpaid rates and to previously imposed penalties. Proceedings to recover unpaid rates<sup>47</sup> may not be commenced 6 years after they became due<sup>48</sup>.

## **7. Enforcement**

Despite a past history where a significant degree of Māori land was sold for rates arrears, the legislative situation in existence today means that Māori land can not be sold for the non-payment of rates. However, the Māori Land Court can be applied to for a charging order which can be registered against the title to land and prevent further dealings with it until the rate arrears are met<sup>49</sup>. Whilst the land cannot be sold if the charging order remains unsatisfied<sup>50</sup> the local authority may apply to the Māori Land

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<sup>45</sup> ss. 46 – 48

<sup>46</sup> ss. 56 - 58

<sup>47</sup> rates includes any penalties added to unpaid rates, see definition of "rates"

<sup>48</sup> s. 65

<sup>49</sup> s. 99

<sup>50</sup> s. 108 ; six months is the minimum time before an enforcement order may be sought

Court to have a receiver appointed<sup>51</sup> or a trust formed to manage the land, for example by lease, to generate income to satisfy the debt.

Whilst the general rule and clear intention of the Local Government (Rating) Act and Te Ture Whenua Māori Act are that Māori freehold land cannot be sold to recover unpaid rates there are anomalies.

For example, the barriers to sale of Māori freehold land do not apply to land that has had its status changed to general land without any input by its owners who still regard their holdings as Māori freehold land. This is a category of land that continues to see what appear to be gross injustices being perpetrated. The Panel was informed of numerous cases, especially in the far north of the country, where ancestral land that had its status changed involuntarily is now being sold or the owners put under intolerable pressure.

Apparently, another exception to the protection from sale occurs when the land is transferred to Official Assignee after owner(s) are bankrupted following which it can be sold albeit subject to the same restrictions on potential buyers as applied to the former owners.<sup>52</sup> There must remain some doubt whether that avenue is lawful as the instance recorded of this occurring was settled before enforcement was needed.

That enforcement of rate demands, arrears and penalties are problematic is clear from the high levels of dissatisfaction felt by local authority staff and members and by Māori land owners.

Even local authorities that have progressive policies on remission, postponement and engaging with local Iwi have found themselves litigating over rate arrears.<sup>53</sup>

The wide fluctuations over the history of rates and Māori land since the late 19<sup>th</sup> century can be seen as both cause and effect of the difficulties.

Presently there are a set of countervailing tensions that have no real mechanism for release.

The only mechanism that is utilised to deal with the tension is the application of the local authorities' policies on remission and postponement of rates.

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<sup>51</sup> s. 83 Te Ture Whenua Māori Act 1993

<sup>52</sup> *Opotiki District Council v Bryan* (unrep.)BC20066345, High Court Tauranga Registry Doogue J November 2006

<sup>53</sup> e.g. *Whakatane District Council v Keepa* [2002] BCL 174 ; *Te Whata v Western Bay of Plenty District Council* [1999] BCL 1104 ; *Gisborne District Council v McClutchie* [DCR] 853

## C. The Rating of Māori Land in Practice

Having presented information on the past and present context associated with the rating of Māori land, the submissions and opinion presented during the Inquiry process dealing with the resulting impacts will be considered.

### 1. Collection and Arrears

Although available data indicate that most Māori landowners pay their rates, a perception persists that arrears of rates from Māori land is a problem. The submissions from local authorities, and subsequent follow up inquiries, support the view that a problem does exist where Māori land is disproportionately represented in arrears figures. This same feedback and information, however, also provides a sense of perspective on the nature and extent of the problem that is important to take into account when considering ways of addressing the problem.

Following the submission process, and in the face of little specific information on Māori land and rating having been presented, the Inquiry Secretariat directly approached local authorities for additional information. More than a third of local authorities replied with data that reveals a number of interesting and pertinent facts.

A number of local authorities have provided the following data about the Māori land in their district:

| Local Authority           | Size of Māori Land in District (ha) | % of Māori Land in District | Land Value Māori Land | Capital Value Māori Land | No. of Māori Units |
|---------------------------|-------------------------------------|-----------------------------|-----------------------|--------------------------|--------------------|
| Far North DC              | -                                   | 14.00                       | \$399,000,000         | -                        | 3,700              |
| Whangarei DC              | -                                   | -                           | \$92,412,825          | \$128,701,385            | 710                |
| Rodney DC                 | 0.08                                | 0.00                        | \$17,306,000          | \$19,843,000             | 62                 |
| Hauraki DC                | 9,126.11                            | 7.70                        | \$14,540,000          | \$18,673,800             | 175                |
| Waitomo DC                | 44,941.92                           | 13.00                       | \$178,732,600         | \$216,112,900            | 540                |
| Western Bay of Plenty DC  | 28,731.96                           | -                           | \$362,159,000         | \$433,994,900            | 779                |
| Tauranga City Council     | 1,868.00                            | 17.30                       | \$324,080,500         | \$371,096,000            | 296                |
| Whakatane DC              | 62,428.34                           | 0.18                        | \$227,985,850         | \$282,744,050            | 1,361              |
| Gisborne DC <sup>54</sup> | 22,980.00                           | -                           | \$56,282,600          | \$66,414,900             | 787                |
| Rotorua DC                | 48,531.00                           | -                           | \$339,018,170         | \$450,176,970            | 1,295              |
| Taupo DC                  | 176,594.00                          | -                           | \$516,556,100         | \$668,013,650            | 953                |
| Tararua DC                | 16,542.34                           | 4.00                        | \$38,856,000          | \$47,934,900             | 44                 |
| Wanganui DC               | 18,041.65                           | -                           | \$10,188,300          | \$13,253,000             | 79                 |
| South Wairarapa DC        | 2,774.86                            | 2.00                        | \$16,149,100          | \$18,068,500             | 116                |
| Marlborough DC            | 5,833.00                            | -                           | \$36,111,000          | \$36,464,300             | 235                |
| Kaikoura DC               | 1,099.30                            | 0.54                        | \$6,334,920           | \$9,744,350              | 8                  |
| Waimakariri DC            | 635.43                              | -                           | \$17,094,500          | \$20,404,500             | 128                |
| Westland DC               | 2,515.00                            | 1.80                        | \$8,944,500           | \$10,036,500             | 83                 |
| Otago Regional Council    | 1,403.26                            | 0.05                        | \$1,089,000           | \$1,209,500              | 14                 |

<sup>54</sup> These figures have been advised to be minimum figures only.

Information is also available about the total rates struck in several districts and the proportion of Māori land rates involved;

| <b>Local Authority</b>   | <b>Total Rates Struck</b> | <b>Māori Land Rates Struck</b> | <b>% of Rates Struck</b> |
|--------------------------|---------------------------|--------------------------------|--------------------------|
| Whangarei DC             | \$52,943,600              | \$641,682                      | 1.21%                    |
| Rodney DC                | \$87,350,000              | \$92,811                       | 0.11%                    |
| Hauraki DC               | \$14,578,682              | \$100,580                      | 0.69%                    |
| Waitomo DC               | \$10,411,067              | \$507,786                      | 4.88%                    |
| Western Bay of Plenty DC | \$34,700,000              | \$1,096,944                    | 3.16%                    |
| Tauranga City Council    | \$75,292,902              | \$333,455                      | 0.44%                    |
| Whakatane DC             | \$25,809,850              | \$1,267,147                    | 4.91%                    |
| Opotiki                  | \$6,500,000               | \$880,000                      | 13.54%                   |
| Rotorua DC               | \$55,081,108              | \$2,748,143                    | 4.99%                    |
| Taupo DC                 | \$37,364,862              | \$2,131,774                    | 5.71%                    |
| Tararua DC               | \$15,361,867              | \$91,651                       | 0.60%                    |
| Wanganui DC              | \$35,293,861              | \$73,261                       | 0.21%                    |
| South Wairarapa DC       | \$9,764,536               | \$58,191                       | 0.60%                    |
| Marlborough DC           | \$44,058,809              | \$177,798                      | 0.40%                    |
| Kaikoura DC              | \$4,855,202               | \$98,536                       | 2.03%                    |
| Waimakariri DC           | \$33,116,349              | \$69,570                       | 0.21%                    |
| Westland DC              | \$5,903,478               | \$30,186                       | 0.51%                    |
| Otago Regional Council   | \$10,202,882              | \$312                          | 0.00%                    |

Compared to the total rates struck within each district, the rates struck for Māori land, for the local authorities that responded to our inquiries, ranged from miniscule to small. The proportion (%) of rates struck from Māori land to the total from .003% for the Otago Regional Council to 5.71% for the Taupo District Council. In absolute terms the range is \$312 to \$2.1m.

Several local authorities have also supplied information in relation to arrears. (See Table below) The figures reveal that the arrears on Māori land are out of proportion to those for general land. Arrears in respect of Māori land range from 0.27% in the Otago Regional Council to an enormous 62% in the Western Bay of Plenty, 70% in the Far North District and an even more worrying 73% in the Waimakariri District Council.

In most of the districts the arrears in respect of Māori land at any one time equate to nearly 100% more than the amount payable on an annual basis. More information and analysis is needed to establish whether that is a function of the impact of the addition of penalties or some other cause.

From a different perspective, however, the proportion that arrears for Māori land bears to the total rates payable ranges from 0.01% for the Otago Regional Council to 3.5% for the Tauranga City Council. The Western Bay of Plenty is well above the trend line at 11.85% and looks to merit some special examination as to cause and effect.

| Local Authority           | Total Rates    | Māori Land    | % of Arrears: |
|---------------------------|----------------|---------------|---------------|
|                           | Arrears        | Rates Arrears | Māori land    |
| Far North DC              | \$1,357,142.00 | \$9,500,000   | 70.00%        |
| Whangarei DC              | \$758,090      | \$345,249     | 45.54%        |
| Rodney DC                 | \$2,260,284    | \$766,074     | 33.89%        |
| Hauraki DC                | \$1,742,562    | \$451,810     | 25.93%        |
| Waitomo DC                | \$756,228      | \$291,405     | 38.53%        |
| Western Bay of Plenty DC  | \$6,447,754    | \$3,972,376   | 61.61%        |
| Tauranga City Council     | \$2,450,000    | \$539,000     | 22.00%        |
| Whakatane DC              | \$1,486,208    | \$917,468     | 61.73%        |
| Opotiki <sup>55</sup>     | -              | \$150,000     | -             |
| Gisborne DC <sup>56</sup> | \$2,597,834    | \$1,044,583   | 40.21%        |
| Rotorua DC <sup>57</sup>  | \$2,171,713    | NA            | 0.00%         |
| Taupo DC                  | \$874,256      | \$595,821     | 68.15%        |
| Taranaki DC               | \$143,929      | \$0           | 0.00%         |
| Wanganui DC               | -              | \$629,558     | -             |
| South Wairarapa DC        | \$316,475      | \$153,977     | 48.65%        |
| Marlborough DC            | \$30,486       | \$0           | 0.00%         |
| Kaikoura DC               | \$53,991       | \$30,173      | 55.89%        |
| Waimakariri DC            | \$833,142      | \$606,347     | 72.78%        |
| Westland DC               | \$789,820      | \$35,696      | 4.52%         |
| Otago Regional Council    | \$332,000      | \$910         | 0.27%         |
| Dunedin City Council      | \$54,000       | \$5,000       | 9.26%         |

In addition, some of the local authority submitters sent specific data on the financial position in relation to rates on Māori land within their areas.

- **Far North District:** Māori land accounts for 14% of the area of this district, 7% of the land value (\$399m), 6% of the capital value and 11% (3,700) of rating units. Approximately 70% of the total rate arrears relates to Māori freehold land. In the 2006/2007 rating year so far, Council has remitted in excess of \$1.4 million of rates on Māori freehold land. [546]
- **Thames Coromandel District Council:** note that although they levy a rate on multiply-owned Māori land, they then find themselves in a position where they have to write off significant portions that were not able to be collected. [543]

Several local authorities specifically noted that the rating of Māori land was not a problem of significance. **Kawerau District Council** reported to have only 0.75 ha of Māori land in the District the rates for which would be 0.1% of the total rates take. This land is not productive and receives full rates remission. **Selwyn District Council** submitted that there was minimal Māori land within its district and, therefore, it did not have a great familiarity with issues relating to Māori land. [662] **Southland District Council** also noted that rating of Māori land was not an issue as the South Island

<sup>55</sup> The figure of \$150,000 listed is not the current rates arrears for Māori land. Instead it is the estimate of annual uncollected rating revenue.

<sup>56</sup> These figures have been advised to be minimum figures only.

<sup>57</sup> As noted below most Māori land in the District not under lease means uncollectible revenue. To cover this, the general community is levied an additional 1.25% on their general rate.

Landless Natives Act (SILNA) land in the District was not rateable. [925] **The Dunedin City Council** submitted that as there was only a “tiny” portion of Māori land within Dunedin, the rating of Māori land did not present a problem. [755] The **Nelson City Council** recorded its perception that there was no land in Nelson City covered by the Te Ture Whenua Māori Act 1993. [421] (In fact the Nelson Tenth, managed by Wakatu Incorporation, are regulated under the Te Ture Whenua Māori Act.) The **Waimate District Council** recorded an acknowledgement of the problems faced in some parts of the country with rating as it is applied to land held by Māori, but noted that it was not an identified problem in the District. [429] The **Christchurch City Council** also recorded its limited experience of managing Māori Freehold land rating units and recorded that it was therefore unable to suggest improvements to the Local Government (Rating) Act in this area. [514]

**Rotorua District Council** reported that the large Māori trusts that hold a majority of the Māori land in the District are well-managed, good corporate citizens of the local community. Their land is leased, developed and levied rates can easily be collected by the Council. The significant issue lies in smaller rateable properties, which have multiple ownership and can not be developed. To fund this source of uncollectible revenue, the general community is levied an additional 1.25% on their general rate. This arrangement is said to have resulted from agreements between central government and Māori although further details on this are not recorded. [636]

## 2. Valuation

As indicated in the previous Section of this report, valuation issues associated with Māori land have been under considerable scrutiny for the past decade.

### *i. Māori Comment*

The high and increasing valuation of Māori land was a source of complaint from a number of Māori commentators. [487, 629, 938] Aside from general comments, there were wide ranging reasons for complaint. The Māori Trustee has identified that properties under his management have experienced increases of values for 2006 of between 240-454%. These increases occurred despite the fact that no land development had taken place on the land nor were there any increases in income. Inquiries to Quotable Value noted that the increased valuation occurred on neighbouring properties. In instances where the Trustee has obtained independent valuations specific to the properties concerned, values of half that of Quotable Value have been received. The Trustee has also noted that obtaining contestable valuations is an expensive process. [771]

A number of hui attendants and submitters have considered the tensions between the concept of ‘value’ as it is expressed in different cultural systems. The different value systems associated with land between Māori and non-Māori culture has been pointed to as a basis for why the current valuation basis being used is not acceptable. [602, 683, 771, 909, 932, 944] Rather than the market value, it is the holding of the land – the turangawaewae – which is the source of value for Māori. [934] At the **Rotorua hui** (16 April 2007) one speaker expressed anger that valuers ‘have a cheek’ to put value on taonga tuku iho based on capitalist thinking. At the **Gisborne hui** (17 April 2007) ‘value’

was expressed in tikanga Māori cultural terms as the value to the great-grandchildren of landowners through the link between the land and their identity.

Several submitters pointed to the absence of willing buyer/seller to suggest that an alternative basis of valuation be used that is fairer by reflecting all the circumstances affecting and applicable to Māori land. One speaker at the **Wanganui hui** (12 April 2007) noted that if the current approach to rating value was kept, he was willing to pay rates but only in accordance with the postage stamp value of his individual share. The current practice of valuing and rating Māori freehold land on the value and rating affordability of adjoining properties was widely rejected. [402, 428, 604, 617, 631, 634, 653, 681, 683, 722, 737, 761, 767, 895, 912, 913, 918, 920, 923, 931 935, 943, 944] It has been noted that as market value reflects the collective perceptions and actions of a market, the evidence of market value for Māori land is too little due to the low level of sales to be able to ascertain a market value as a basis for rating. [944]

Aside from selling, it has been noted also that the status of Māori land titles means that Māori owners are often unable to access benefits derived from increased valuations and they are unable to utilise the notional equity increase as the basis of financial investment. [605, 911] In addition, it is suggested that the existence of a number of planning and zoning restrictions which effectively limit how land can be used need to be taken into account with the valuation of Māori land. [402, 935, 941]

There are a number of other incongruities relating from the current valuation system being applied to Māori land. The Māori Trustee has submitted that he is finding that properties under his administration are being valued (and therefore rated) for uses that do not reflect their practical usage. In the Māori Trustee's opinion, the problem does not lie with the local authorities so much as with the valuers and the valuation principles and practices that they follow. [771] This situation appears to arise for two reasons:

- firstly, the valuer does not inspect all properties but extrapolates values for application to a range of properties from a sampling of a small cross section of properties, and,
- secondly, it ignores the impracticality of the kinds of usage that form the basis for revaluation. It therefore becomes difficult to lease properties at rentals that provide sufficient income to consider redevelopment or that are likely to attract good quality lessees.

An example was provided for a small rural block (1.0851ha) that has been valued based on its lifestyle potential. This block, however, had 45 owners. As land sale or very long term leases were not an option, "lifestyle" was not considered a potential use. The lessee of many years who owns adjoining land decided not to renew his lease of this block because of the following rates increases over the last 3 years:

- Rates for 2004/2005 year were \$344.82.
- These Increased to \$741.82 for 2005/2006 year.
- Rates for current year are now \$907.49.

The section is not an economic unit and would have to be developed with other adjoining land to release its full potential for higher land uses such as grapes. The submitter has had difficulty finding another lessee. Potential lessees have had to have other land available to complement their plans for this section.

Other examples identified by the Māori Trustee of valuation not matching land use were of coastal lands rated on the current demand for coastal properties which is not realistic for Māori freehold land as sale is not an option.

Further examples of this problem were given at hui. At the **Auckland hui** (18 April 2007), one speaker informed the panel of the situation of the last remaining pieces of Ngati Manuhiri land at Pakiri which consist of a half-hectare section and block of 189 hectares running along the beach. For these pieces of land there were more than 2,000 beneficiaries. None were able to return to live off the land but they wished the land kept as a taonga to retain Ngati Manuhiri's identity. All around this land, however, houses were being built in the \$8-11 million range and the Auckland Regional Council, being in need of funds, was also selling off some land in the area. The market values of the Māori land at Pakiri, therefore, were out of keeping with how Ngati Manuhiri viewed the land.

The rating of Māori land for its potential is another problem. Another manager of Māori land assets, NZ Forest Managers Ltd, has noted that land is being valued at its highest and best use. It is submitted, however, that the difficulties surrounding the use of Māori freehold land are not being taken into account when determining land value. [615] At the **Napier hui** the Panel was told of land held in the Ruahine Ranges that was landlocked and forest covered. Owners formed a trust in the mid-1980s to manage the land. When trustees made enquiries from the Regional Council they were told it was rated as farm land as this was the potential for the area.

At the **Wanganui hui** (12 April 2007) the Panel was informed that in the South Island, Hawkes Bay and Wanganui, the prevailing valuation system meant that the rates being charged for land on city boundaries are often higher than the rentals that can be obtained. An example was given of rates on a Māori land property at Raetihi being \$2,300 per year whilst rental was only \$500 a year. As the lessee pays rates this makes Māori land difficult to lease.

The increase in valuation and therefore rates can have a serious impact on Māori land-based business. In several areas, land is leased and a relationship with the lessee has been developed over a long term. Over the years rents have been operating at certain levels to encourage occupation of the land and in accordance with the primary land use of an area. When land valuations increase, costs go up, rates go up and rents go up. In some areas, this has been noted as having an effect on land-based operations for Māori. For example, at the **Nelson hui** (12 March 2007) it was noted that Wakatu Incorporation (which has leasehold land around the centres of Nelson and Motueka) have recently had the experience of lessees walking off land as the cost structure has changed. Within the prevailing land use, land often does not get quickly reoccupied and the Incorporation has to then directly bear the rating cost. If this trend continues, a significant threat to viability can develop. Unlike other businesses; Incorporations like Wakatu can not divest themselves of unprofitable landholdings.

One point raised at the **Wellington hui** (7 May 2007) was that the rating of land created issues for incorporations, trusts and other land management entities by not making it attractive for beneficial owners to keep hold of the land. With rising valuations and land that is not producing income, the membership of land management entities sometimes wonder whether it is worthwhile to keep land. Whilst these owners realise that release of the land would result in their dislocation from the past, the stresses of ownership of which rates are a big part places difficult pressures on them. The concern was raised that a future generation of owners may give up and say: 'let the land go'. As the

Wellington speaker noted, most of the issues that exist with Māori land were not created by Māori.

Māori commentators have identified that there is a detrimental link between valuations and the planning designations adopted and implemented by local authorities. It was noted at the **Napier hui** (8 March 2007) that development spreading out from Hawkes Bay towns and cities was also spreading around Māori land. This was having an impact on planning designations and therefore on valuations and rates. For example, in the hills around Wharerangi Reserve north of Napier, high cost housing development was taking place and a push was being made to change the rural designation of the area to residential zoning.

In some cases, it is the way in which development was being undertaken that greatly increased valuation. At the **Napier hui** (8 March 2007) it was noted that along the Ngaruroro River valley vineyards and small lifestyle blocks were being established. The land along the river was being subdivided with each section being given distinct water rights. This greatly increased the value of each section. With large numbers of small sections of 10 acres or so the water rights were being over allocated. The increased value and assess to water impacted on local Māori land.

Another area of complaint was that there is no allowance in the valuation system to distinguish between land uses within titles. One example from the **Napier hui** (8 March 2007) was of a large farm block which stretched along 14 kilometres of coastline from Akitio to Castlepoint. The land is hilly with 38% of the block not productive and unlikely to ever be so. However, all of the land is valued as farm land. At the **Nelson hui**, (12 March 2007), it was noted that Wakatu Incorporation, (which took over administration of the Nelson Tenth from Government agencies), administers culturally important land including urupa, waahi tapu and reserves as well as leasehold land but because Wakatu operates as a business, all land under the Incorporation is rated. It was felt that a distinction should be made and some of it should not be rated.

## ***ii. Local Authority Comment***

Within the submissions received from local authorities on the valuation of Māori land, the focus of attention has been on the discounting of valuation. On this subject there has been some wide degree of variation in the comments received.

The **Manawatu District Council** emphasised there should be no valuation distinctions between land owned by Māori and other land or land owners. [418] The **Christchurch City Council** agreed noting that conventional valuation methods take into account all factors including sale restrictions such as with schools. [514]

The **Tauranga City Council** has submitted that its contracted valuers make valuation assessments on a case-by-case basis following the guidelines of the Mangatu decision. An example was noted of a Māori land sale in the District from October 2003 where the price of the land was \$19m. It was noted that the rating valuation was also \$19m. This example has led the Council to believe that sales of multiply-owned Māori land do occur and that when they do they reflect market prices. Considering this, the Council questioned whether the guidelines in the Mangatu decision remain appropriate. [427]

In contrast, other local authorities (including the **Western Bay of Plenty District Council** [491] and the **Whakatane District Council** [608]) supported valuation distinctions for different types of ownership. The **Local Authorities & Stakeholder**

**Consortium** also accepted that different approaches would be required for Māori land which is not used for productive or residential purposes. [541] **Environment Waikato** noted that the need to protect Lake Taupo water quality has resulted in large parts of Māori land not able to be used for economic benefit in the short term due to the cap that Environment Waikato has put on the use of nitrogen. In this scenario, Environment Waikato is of the view that this restriction should be reflected in valuations. The **Kaipara District Council**, believed that the issues associated with the valuation of Māori land remained contentious and felt that a special valuation process was required. [492] **Local Government New Zealand** contended that the approach outlined in the Mangatu decision was a more workable one than any likely alternative although there was no comment on whether the decision has been applied properly by the Valuer General. [581]

The **Waikato District Council** expressed the view that current legislation and case law in relation to valuing Māori land was not working and that as a result both local Māori and Council were expending a large amount of resource and capital to reach agreement over revaluations. The Council believes that the Mangatu decision should be better applied than through the blanket discount. [945] The **Whangarei District Council** acknowledged that there are problems for Māori land with the ever-increasing value of surrounding land in General title. The Council also noted that with valuation, there were problems with the benefits accruing to the person who develops the increased value when only part of a property is occupied and generating commercial return. [657]

The **Opotiki District Council** contended that valuation rules derived from the Mangatu decision were not applicable to all Māori land, particularly land located in coastal areas. The maximum discount available to Māori land from applying such rules was seen as insignificant in relation to the total value of such blocks as being driven by neighbouring general land sales. The majority of the 160kms of the Opotiki coastline is Māori freehold land. General land, particularly in coastal locations, is in high demand and therefore attracts a premium. This reflects in the valuation of the neighbouring Māori freehold land much of which is in reasonably small blocks. This high value then reflects in rating and lease costs which invariably means a block becomes unproductive. In the last district revaluation coastal property valuations doubled from the previous valuation, and in some cases increased by 300%. [648]

The **Waimakariri District Council** has submitted that discounts on rating valuations recognise the restrictions on the development and sale of Māori Freehold Land. The Council believes that discounts on the rating valuation of Māori Freehold land should continue to be based on the number of owners. The Council has also pointed to a conflict which results over discounted rating valuations when land is leased. The Council has noted that owners seek higher values when the rent is based on the rating valuation, and are frustrated when the high rates payable result in lower lease tender prices. [469]

### ***iii. Individual, Community Group & Business***

One individual submitter alleged that if cultural/spiritual attachments were factored into valuation methodology with Māori freehold land, then the economic valuation system would become irrational. [104]

**Rural Women New Zealand** acknowledged the problem faced by Māori landowners in dealing with property valuations for land that can not be sold and was not able to generate income at a level that reflects the estimated market value of that land. It was suggested, however, that this was a problem similar to that faced by a number of rural

landowners. The group concluded that unrealised estimated property value is not an appropriate way to fund councils. Just because land could be used for a higher valued purpose does not mean that the current owner is able to access the capital needed to deliver that higher valued use. Nor is that higher value use necessarily going to deliver greater profit if it requires borrowing high levels of capital. Rural Women New Zealand is concerned that any attempt to address Māori owned land risks introducing further inequities to the funding of local government. [475]

### 3. Responsibility for Rates

Several commentators addressed the issue on which parties were being made responsible for rates in the situation of multiply-owned Māori land.

Surprisingly, few local authorities commented on this. Only **Christchurch City Council** submitted that an inadequate ownership databases for Māori land proved to be a barrier for all concerned. [514] **Waimakariri District Council** felt that Councils should have access to address information held by the Māori Land Court and the Office of the Māori Trustee for the purpose of administering the Local Government (Rating) Act 2002. [469]

Several Māori commentators recorded their experience that only certain owners or targeted owner groups were being made responsible for rates [908, 909, 913, 932, 934] The difficulties associated with getting in contact with other owners over rating issues on multiply owned land were also noted [629, 911] The Māori Trustee recorded examples for the blocks he administers and noted that in some cases the way that approaches are made by local authorities are insensitive and intimidating. In addition, it was noted that the Māori Trust Office receives rating demands simply addressed to “the Māori Owners” for blocks that the Trustee does not administer with local authorities trying this as an easy option to pursue rates arrears. [771] One submitter claimed a local authority was sending rates arrears demands to Baycorp, to obtain the correct details of owners of multiply owned Māori land. Baycorp are managing to locate some of the owners and subsequently sending them the whole rates debt. [617] Another submitter gave specific details of his unsuccessful attempts to keep up to date with rates demands. He had spent the past 10 years struggling to pay his rates demands. Eventually, his rates arrears were placed with a debt collection agency. He found the situation depressing and unfair. [705]

The subject of responsibility for rates was raised at a number of hui:

- At the **Auckland hui** (18 April 2007) one speaker noted that it is the mark of a rangatira to accept responsibility for the payment of rates. At the same hui another added that the payment of rates had a mana value. This same speaker, however, also noted that for multiply owned land it was not possible to pay the rates and yet he felt responsibility for the sugarbag full of rating demands that he had at home.
- At the **Wellington hui** (7 May 2007) one speaker noted that although the local Council was prepared to wipe rating debts “you can only take so much before you feel you should pay rates.” This speaker gave an example of a block held by 300 to 400 owners where his brother had taken the responsibility himself to pay the rates.

- A point raised at the **Napier hui** (8 March 2007) was that due to that fact that ownership lists had not been maintained many deceased persons were still recorded as having to pay rates.
- At the **Nelson hui**, (12 March 2007), it was noted that rating accounts were often sent to only certain of the old people who in the past bore responsibility for paying rates. It was feared that when the next generation inherited the land they would not know about rates and will have no money to pay them. This situation will be a source of stress and could result in the younger generation walking away from responsibilities associated with the land.
- At the **Wanganui hui** (12 April 2007) one speaker noted that it had historically been her whanau that received rates notices and had organised the payment. However, with today's increased ownership numbers her whanau did not have the resources to bring up to 800 people together to discuss rates. This speaker noted that she feels sick when she receives the rates notices as she feels that she has been made responsible. Another member of the family noted that with the previous generation who were paying the rates on behalf of all of the landowners, up to seven months of their wages each year went in paying rates to keep the whanau homestead and property.

#### 4. Exemptions

Comparatively little comment has been received on the matter of exemptions. The **Marlborough District Council** questioned whether Māori land should be exempt but did not provide greater detail as to the reasoning behind the query. [482]

A speaker from the Māori Trust Office at the **Wellington hui** (7 May 2007) noted that it was the experience of the Māori Trustee that there is little consistency among local authorities as to rating arrears and exemption policies. Despite the legal requirement for exemption policies, in practice local authorities did not like to differentiate regarding Māori land. This was also often reflected in the way in which local authorities consulted over Māori land. [905]

Speakers at the **Auckland Hui** (18 April 2007) drew attention to the limitations of the exemptions and their focus. Whilst acknowledging the exemption for marae, the limitations of the exemption meant that land and buildings which were considered to be intergral to the marae were not exempt. The limitations of exemptions as proscribed in legislation was also recorded in a submission. [912]

#### 5. Remissions and postponement

Work recently carried out by Karen Johnston for the Rates Inquiry considered publicly available information on the remissions and postponement policies and practice of local authorities. A variation of approach was found with the following features being observed:

- a number of councils stated that they did not have remission and postponement policies specific to Māori Freehold land but only remission and postponement policies that applied to all land.

- Some Councils did not have a policy as they did not have any Māori Freehold Land.
- Several Councils had a policy for rates remission but not for postponement.

The following table below shows the number and percentage of Councils having a Māori Freehold rates remission and/or postponement policy.

***Percentage of Councils with Particular Māori Freehold Rates Remission and/or Postponement Policies***

|            | <b>A Rates Remission and/or Postponement Policy</b> | <b>No Rates Remission and/or Postponement Policy</b> | <b>No Maori Freehold Land</b> |
|------------|---|--|-------------------------------|
| Number     | 54  | 17   | 10                            |
| Percentage | 64%   | 20%  | 12%                           |

Further analysis showed that the Provincial sector has the greatest proportion of Councils offering a rates remission and/or postponement policy (82%). This is followed by the Regional sector with 69% then the Rural sector with 65% and the Metro sector has under half with 40%. (This is due in part to 20% of the sector stating that they do not have Māori Freehold land within their city.) Geographically the Waikato and Bay of Plenty zone has by far the greatest proportion of Councils with a Māori Freehold rates remission and/or postponement policy. The smallest proportion is the Northland and Auckland zone and the Councils in the South Island where only half of Councils have policies.

As to the nature of the rates remission policies, there was a wide variety between the policies and the information on the policies that was publicly available. Some Councils had extensive explanations and policies around Māori Freehold land. On the other hand it was very common that the basis of the remission or postponement policy was not detailed in the information available. Policies varied with remission or postponement being only at the council's discretion, or automatically granted in whole or granted in part at any level between 50-100%. For only a few cases were clear guidelines provided on how a decision would be made on the extent of the remission or postponement. A remission for penalties on rates was the most common form of rates remission with every Council except one having this policy. Remissions were often for the general rate component but there were a significant number of policies for UAGCs and targeted rates.

Rates postponement policies were less numerous than remission policies although there was less variation within the policies. Most Councils postponed rates for Extreme Financial Circumstances (65%). The Optional Rates Postponement policy was offered by 16 Councils (19%). This policy offered mainly elderly ratepayers the option of postponing their rate payments until their death or until they sold their house provided they had enough equity in their home. Only 2 Metro Councils offer this policy.

Several Māori commentators have picked up on the variability apparent in local authority policies. [705, 908, 934, 936] Commentators have noted that councils have too much

discretion in how they exercise their powers in terms of rating Māori land. As a result there was a lack of consistency of approach. [617] One submitter suggested that the marginal uptake of the rates remission and postponement policies by local authorities was in part because of a lack of political will coupled with a lack of understanding by local authorities of the challenges facing Māori land owners of multiply owned land. [932] The lack of consistency between local authorities was observed not only in relation to their rates practices but even with other policies, practices and rules. Large iwi or hapu groupings which operated and managed land over several districts or localities have to face different procedures within different authorities. This increases transaction costs. In other cases, owners may have interests in blocks that are so large or uniquely positioned as to cover several local authority districts and they too have to deal with varying policies. [683, 934] An example was given at the **Napier hui**, (8 March 2007) of a farm land block in the Wairarapa which stretched along 14 kilometres of coastline from Akitio to Castlepoint. As a result, landowners had to deal with two District and two Regional Councils: Tararua District, Masterton District, Manawatu/Wanganui Regional and Wellington Regional. The variation of rating and other policies not only affected large iwi/hapu groups or owners in large blocks. At several hui, speakers noted that as individual landowners, their whakapapa connections resulted in them having interests in a number of blocks dispersed around the country. As a result, if they played a role in the management of their land or dealt with any rating requirements in relation to that land, then they often were dealing a number of different local authorities with a number of different rating policies. It was suggested that there needed to be proper implementation by councils of those provisions that favoured Māori. [604] In order that treatment should be consistent throughout the country, it was recommended that a legislative framework be implemented that did not allow too much scope for local interpretation by the various councils. [419, 634]

Aside from a general comment often raised at hui on the variation of rating policies, there were several additional points raised by hui attendants in relation to the remission of rates. Some commentators have noted how difficult it is to work within the remission and postponement policies of local authorities. [913] It was noted at the **Napier hui**, (8 March 2007), that gaining a rates remission can be a battle unless a landowner was a big Trust or an Incorporation with accountants, funds and the appropriate resources. It was also noted that there are thousands of owners of little blocks who have no idea how to apply for remissions. It was suggested that a bureau should be set up to deal with this issue. One submitter also noted that many owners do not even know that rating exemptions are available. [912] Also at the **Napier hui**, (8 March 2007), one speaker who was involved in the management of Māori land noted that in October 2006 his group contacted the Hastings District Council enquiring about rates remission but did not receive a response for some time. On making further enquiries the owners were told that the Council was waiting until it received a number of remission requests so they could write them all off in one batch. At the **Gisborne hui** (17 April 2007) a resident from Mahia noted how difficult it was to get a remission of rates. Every year she put in an appeal to rates demands as do other local Māori landowners. This commentator noted that she is the only one who is successful due to the registration of a waahi tapu on her property.

The resource and transaction costs of having to reapply for exemptions in a number of cases has been noted. [629] One Far North submitter noted how she was thwarted in even discussing postponement policies with her local authority who refused to supply her with information about her land as she was not recognised as the actual occupier of the land. [939]

Local authority commentators did not pick up on these observations. Instead **Waimakariri District Council** emphasised that remissions and exemptions reduced the local rating base, transferring rates liability to the rest of the community by requiring them to pay more to fund the rates shortfall. It was suggested that in a small community the effect of this on other ratepayers could be harsh. The Council expressed its belief that remissions were being used to avoid the issue of non-collection. The Council believed the impact of a reduced rating base will become more of an issue as the pressure to install services increases. The Waimakariri District Council has a remission policy on application that will remit 100% of the rates on qualifying properties. The Council claimed, however, that there is a lack of interest by Māori owners in claiming remissions. Therefore, Council staff were being forced to take the initiative to process remissions to reduce the amount of rates arrears accumulating [469]

**Whangarei District Council** expressed the view that even if they got the valuation of Māori freehold land reasonably right and fair, there would still rates collection problems. They felt arrears were administratively expensive to collect and no amount of policy development on remission or postponement would be effective in altering the arrears issue. [657]

The **Tauranga City Council** submitted that its rating policy provided for general rates remission for those Māori lands that fulfilled various criteria including:

- Where no economic or financial benefit is obtained from the land;
- Land that is not occupied;
- Land that is not utilised;
- Land where waahi tapu exist;
- Where land is physically inaccessible.

Through the use of these criteria, remission in Tauranga could range up to 100%. It was also noted that for those properties that received a 100% remission on general rates, the potential existed for the owners to pay no rates at all as often unoccupied land would not be receiving services either. The Council did not record how many properties had nil rates although one example was given. It was also noted that rather than act only on receipt of an application for remission, and charging full rates in the meantime, the Council was proactive and reviewed all land that might qualify for rates remission on an annual basis. Remissions were therefore now automatically given [427]

**Gisborne District Council** noted that it had a very large percentage of Māori Freehold land in its District. This land is technically all rateable, but in practice is often not accountable for paying rates when there are a very large number of owners who each have a very small share. The Council has a remission policy called Whenua Rahui. This policy recognised that some Māori Land is unproductive. If such land had multiple owners, and if no single owner was willing to pay the rates, then the rates were viewed as being effectively uncollectable and under the Whenua Rahui Policy were written off for three years at which time the situation with the property was reviewed. [619/633]

## 6. Enforcement

Comparatively little comment was received specifically on enforcement although this was probably due to the fact that it is known that Te Ture Whenua Māori Act effectively limits enforcement options.

**Rangitikei District Council** claimed they were experiencing significant problems with the collection and enforcement of rates on Māori land. They said that Government policy that Māori land should remain in Māori ownership effectively removed Māori land from the rate collection provisions of the Rating Act. They felt that this then meant there was no effective means of enforcing payment of unpaid rates. As far as they were concerned occupiers of Māori land form part of the community and consume services provided by local government. [621]

**Opotiki District Council** agreed that there was no real teeth under existing legislation to collect rates but they also did not feel it was appropriate to collect rates in many instances of Māori land (e.g. unproductive multiple land of high conservation value). [648]

It was the opinion of the **Hastings District Council** that current provisions made it virtually impossible to recover rates on multiply-owned Māori land and that this needed to be addressed. They claimed the area of Māori was very hard to administrate and created unnecessary cost for other ratepayers. They alleged that at times, some of the beneficiaries of Māori land were effectively able to squat on land without paying rates. [637]

Few examples were given of attempt by local authorities to force land sales due to rates. One was given at the **Rotorua hui** (16 Apr 2007), however, where it was said that an 80 year old kuia from Opotiki was under pressure of being made bankrupt over rates. A summons had been served but eventually a Judge struck out the bankruptcy application.

## 7. Write Offs

Little comment was received on the writing off of rates for Māori land. One submitter recalled a time prior to the 1970s where local authorities remitted rates on non productive Māori lands. Their rates records showed pages of rates arrears struck out at approximately six year intervals. They believed this was a legacy of a time where the Māori Affairs Department managed a large number of Māori owned farms which often were uneconomic and ran at a loss. As a result of inter agency collaboration these rates were able to be reduced or written off. [590]

## D. Specific Issues

### 1. Māori Land Background

In all hui attended by the Panel, attendants were at pains to note that Māori land blocks across the country have different characteristics which derive from their origins, their history, the impact of Crown policies, the impact of Pakeha settlement and economic imperatives. It is these different characteristics which impact on and will determine how landowners are placed in relation to dealing with issues such as rating, but also other issues as to how the land can be used and managed. A brief overview of different types of Māori land will illustrate the variation that exists:

- In places such as Wellington, Nelson and New Plymouth, urban, suburban and rural land is held today under Māori title as the result of a policy set up in the 1840s. This policy provided for a tenth of the Māori land over which title was extinguished to be set aside as reserve land by the New Zealand Company to be administered by various officials as an endowment to raise funds for Māori purposes by leasing the land to Pakeha. After more than a century the land was returned to Māori incorporations to administer on behalf of their several hundred beneficiaries.
- During the 1840s and 1850s, in the South Island, the native title of huge areas of land that came to be included in the Provinces of Nelson, Marlborough, Canterbury, Otago and Southland was extinguished by purchase by the Crown. In return, small reserves were Crown granted not to iwi, but to resident individuals on the basis of 10-15 acres per person. Ongoing entitlement to those reserves that have survived the passing of time has been through membership of the whanau of the original title holders with the result that these small reserves today have several hundred interested owners.
- In the North Island, the Crown during the 1850s and 1860s continued with the purchasing of large blocks of lands that together made up whole districts. Small pockets of land of a few hundred acres at most were either made reserves or held back from acquisition by resident owners and cluster at points across the landscape at traditionally significant sites of occupation. This scenario applies to the Wairarapa, much of the Hawkes Bay and lands in the Kaipara, Whangarei and Muriwhenua Districts.
- For those iwi involved in armed conflict with the Crown during the 1860s and 1870s, the experience of confiscation occurred which was followed by the return of small or marginal pieces of land to those selected by Government inquiry. Through this process many iwi or hapu members were made landless. The lands that were returned to individual grantees fulfilled the role of providing the last vestiges of land formerly held by iwi or hapu. This situation applies in places such as Taranaki, Waikato, Tauranga and Western Bay of Plenty.
- In some areas, small land bases and/or large populations has meant that when title to land was awarded by the Land Court during the 19<sup>th</sup> century, comparatively small blocks of land were created to represent the detailed

ownership patterns that had traditionally applied. This occurred in the Hokianga, Bay of Islands, Chatham Islands and in significant areas of traditional occupation such as the Waiapu valley on the East Coast. In addition, small coastal settlements representing significant population centres are dotted all around the New Zealand coastline on places such as the East and Northland Coasts or along or around major waterways such as the Whanganui River, Lake Taupo or the Rotorua Lakes. Over time, the small blocks that have remained in Māori ownership have developed comparatively huge ownership numbers.

- In other inland areas, usually as a result of terrain or isolation from major centres of kainga, large blocks were awarded title with many hundreds of owners from the beginning representing the several hapu interests usually identified in each block. The very isolation of these blocks often meant they escaped alienation, but today the large blocks have many hundreds of owners and are being operated as forestry or farming concerns by incorporations for their numerous beneficiaries. This scenarios applies on the East Coast, in the Ureweras, around Rotorua and Taupo, in inland Whangai and in the central North Island as well as the King Country and Maniapoto Districts.
- In some areas particularly, the way land was surveyed when it was individualised through the Land Court has increased the difficulty of utilisation. Often this occurred for land that had frontage to the coast or waterways or roadways. Whilst this gave owners physical access to the land or continued access to treasured resources, long thin strips of land were surveyed as a result which were expensive to fence and difficult to utilise. One particular example raised at the **Napier hui** (8 March 2007) was with Ngati Tumapuhia land on the Wairarapa coast.
- The origins of titles of other lands and how they have been held, managed or restricted have been shaped by numerous Crown policies over the years. These include Native Townships of Wanganui and the East Coast, the Rotorua lands restricted under the tourism-orientated Fenton Agreement, (The **Rotorua hui** (16 Apr 2007) noted that as part of that agreement of 24 November 1880 no rates were to be paid by local Māori.) the creation of the Greymouth Reserve during the goldrush, foreshore titles awarded in Hauraki also within the context of goldmining and the South Island Landless Natives Act (SILNA) grants in Murihiku and Rakiura given as compensation for land loss.<sup>58</sup>

Interacting with the history of various land, is the history of the people as well which also has been determined by the impact of Crown policies and Pakeha settlement and the resulting change in economic priorities. This was noted at all hui with speakers referring to past Government policies such as title consolidation or state-sponsored land development and how this altered the way in which land was used. A theme noted at several hui, but especially the **Auckland** (18 April 2007) and **Hamilton hui** (17 May

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<sup>58</sup> At both the **Wellington** and **Christchurch hui**, speakers explained the situation with the reserves granted under SILNA. The remote location of these lands meant that they were never settled by those to whom they were granted as compensation for land loss, these lands have therefore remained covered in forest. In recent years the timber on the land has acquired a market value but the land has also acquired a conservation value as containing important beech forests. Recent policy has led to an agreement between owners and government that the timber will not be milled. Although the future of these lands is uncertain, the past policy provides an example of the rising pressures on Māori land with high conservation value to not be commercially developed.

2007), was the impact of the post-War urban migration which many regard as a policy of social engineering to get Māori off the land and into the cities as labour for the rising factories. This policy changed the way that the land left behind was used and this also ultimately had an impact on rating.

## 2. Specific Land Types

Aside from Māori lands in different parts of the country reflecting their origins, their history, the impact of Crown policies, the impact of Pakeha settlement and economic imperatives, there exist today a number of specific land types which are particularly affected by existing rating policies and practice.

### *i. Papakainga*

It appears that several local authorities view the establishment of papakainga housing as a problem. At several hui, groups reported the battle they have with the establishment of papakainga housing. For many hapu, the establishment of papakainga housing is the perfect solution to address the difficulty of encouraging their people to return home whilst getting over the high cost of land for residences. It was reported to the Rates Inquiry Panel that local authorities do little to assist and often actively impede papakainga housing going ahead. This point was specifically raised at the **Nelson hui** (12 March 2007) and the **Rotorua hui** (16 April 2007) Submitters would like local authorities to work with Māori to achieve more papakainga housing going ahead. [934]

There were no specific submissions from local authorities on papakainga housing. The **Waimakariri District Council** commented on occupation orders, however. The Council stated that it should be a condition of any occupation order that the land covered by the order is physically fenced off from the remainder of the property, or else the holder of the order becomes responsible for the payment of rates on the entire property. [469] Aside from this, from a rates perspective, the problem of papakainga housing relates to the fact that occupiers have no more than a licence to occupy their dwelling and the dwelling remains on land that was multiply owned. While receiving various services from local authorities, the councils may not receive full rates from the dwellings because they are given special low valuation which takes into account the limited legal rights of the licence holder. It appears, however, that some local authorities are finding ways to respond against this situation. At the **Gisborne hui** (17 April 2007) a speaker from Mahia noted that originally with papakainga housing in the district the rating was on the land only but that recently the rating was shifted to be based on the individual houses. [402]

There are other difficulties for papakainga housing arising from valuation approaches. At the **Whangarei hui** (19 April 2007), one speaker provided an example from Kaipara of a 21-hectare block where the Land Court identified that only 3 acres were suitable for housing with the remainder of the land being turned into Māori reservation. The difficulty now is that the papakainga area is being valued at a much higher rate than the rest of the land and the rates are high.

At some hui, development through papakainga housing was viewed as a way to move forward and address rating issues by the organised establishment and closer settlement of people on the land who eventually would individually be able to contribute to rates despite the occupation being on multiple land. It appears, however, that there is little interest from local authorities in this avenue of development being explored with Māori

communities. At the **Napier hui**, (8 March 2007) one speaker noted that there were 653 Māori land blocks on the Heretaunga Plains which the owners want to develop. Essentially these are holdings around marae settlements but these are increasingly under threat as the urban and suburban spread around Napier and Hastings continues. Communities have wanted to explore partnership opportunities with local authorities in Hawkes Bay. Ideally the communities want to establish townships or suburbs along the same lines as Pakeha developers. The experience of various groups has been, however, that before this occurs, Council want to see iwi management plans and asset management plans. It was reported that the communities do not have funds to put plans together and there is no assistance available.

Aside from the definition of papakainga as the placement of housing on multiply-owned land, there is the wider view of Māori that papakainga are places that have long been seen as sites of occupation and as such are very special places to whanau and hapu. In many areas where there has been heavy land loss, these remaining papakainga represent the last vestiges of landholdings for whanau or hapu. Often, these papakainga are in rural districts and in some cases they have long been considered as isolated. In other cases, they are on the verge of towns and suburbs. From a title perspective, the Māori Land Court system has usually cut these papakainga areas into a number of smaller titles that have reflected the occupation and settlement patterns that have developed over the years. In some cases this will mean small sections laid out as streets as with any small village. In other cases they will be a collection of slightly larger titles of a hectare or so with a dwelling located on them.

From a rating perspective, these papakainga areas are deemed as being no different than any land titles situated in any area. Each block has a certain size and are located in areas that have certain valuation features. Although in some cases the land is multiply owned to such an extent that rate collection is difficult, in a number of cases the ongoing subdivision of the blocks over the years to reflect occupation patterns has meant that often there are single owners or a handful of whanau owners who are sent rating notices. Within these areas, there will be some places that attract automatic rating exemptions (maraes, churches, reserves) whilst in other cases owners can seek remissions if certain situations apply such as waahi tapu being present on land.

Whilst at first sight, there is no problem here from a rating perspective, feedback from hui and submitters indicate that it is these papakainga areas that are feeling significant impact from rating. Firstly, despite these papakainga being made up of a collection of legal titles, these places are viewed by iwi or hapu members as one physical and conceptual entity – the traditional homeland site. A range of use and occupation rights apply on the land and in the surrounding countryside and waterways that are not reflected in the legal titles of the land. Therefore, the papakainga area, whilst occupied by certain people, represent the identity of a much larger grouping. The continuing occupation of these areas by whanau is not simply viewed as them having a place to live, but as them fulfilling the cultural imperatives of ahi kaa and kaitiakitanga.

With the exception of those rating exemption sites and areas that can gain a remission, these papakainga areas have no special status from a rating perspective and usual charges apply. Many commentators, however, have expressed a view that such papakainga should not be rated. This comment arises partly from the special significance of the papakainga. It is also partly a response to a situation where the rating of these lands is undermining community development and threatening community viability. This is occurring in a number of ways. The origin of difficulties is in the increasing value of the land. In some cases, papakainga that were on the verge of towns have been caught by urban and suburban spread and have therefore attracted the

corresponding values of being located within built up areas. In other cases, increasing values of rural land in general have raised rates. Finally, the greatly increased value of coastal, lakeside or other areas that are being identified as having 'lifestyle' potential has impacted on papakainga a great many of which are located in these places that were formally viewed as isolated or 'backward' areas.

The increasing land values and rates have multiple effects. The resulting increased rates are being directed at people who have occupied the papakainga areas based on a certain envisaged cost structure associated with their occupation and who now face skyrocketing costs to continue living there. For those who are not able to pay rates, there is at the moment no fear of land loss. (An exception to this is Māori land where the title has been compulsorily europeanised under the provisions of the Māori Affairs Amendment Act 1967. For issues associated with this land see below). However, as noted above the rates demands for large sums of money cause great anxiety. Another impact that has developed, is a general disenfranchisement for services or access to infrastructural development. Papakainga areas are long identified as areas that receive few services from local authorities. If a community does not pay rates en masse, from a local authority perspective it will have little call on any infrastructural development being considered or undertaken. For those who live in papakainga and who do pay rates from a sense of responsibility as landowners and community members - and the majority do so pay - the increased costs seriously undermine their own living standards and the potential for them to contribute to community development. Over time, it may also undermine their resolve to continue occupation. Increasingly, therefore, rating issues are a source of threat to the vitality and even the continuing viability of papakainga communities. The difficulties of persons remaining on papakainga land was noted at several hui. At the **Auckland hui** (18 April 2007), one speaker noted that at Mahurangi, where land values had soared and where there were only a few last vestiges of Ngati Manuhiri land, the wider ownership were dipping into their pockets to assist families maintain their occupation of the land.

## *ii. Waahi Tapu*

Another category of land that is increasingly impacted by rates is waahi tapu. Once again, this is a category of land for which it is probably perceived that there is sufficient protection under rating law and practices. Any area that is declared, listed or reserved as a waahi tapu currently receives rating relief. Either they are automatically exempt or they will receive remissions on application.

The difficulty which exists, however, is for waahi tapu to receive rates relief or any protection from local authorities or central government agencies, they have to be identified, described and registered. For many whanau who are kaitiaki of waahi tapu, the very concept of identification and registration is from a cultural viewpoint an anathema. In other cases, the processes associated with waahi tapu are viewed as burdensome and the 'protection' as limited. Therefore, many waahi tapu are not recorded or identified and, as such, do not receive rating relief.

## *iii. Unproductive Land*

As noted previously, Māori land loss has arisen from a number of historical developments including raupatu, the purchasing of too much land by the Crown, the taking of land for rates, and the Public Works Act. As such, some commentators stated that Māori had been left with a marginal, residual estate. [767, 428] Historic legislative

frameworks, dynamics of population growth and economic changes over the years has produced a number of characteristics in relation to Māori land:

- There are 1.5million hectares of Māori freehold land (6% of NZ's land mass);
- the land is made up of 26,480 titles;
- the average size of titles is 59 hectares;
- the average number of owners per block is 73;
- an estimated 57% (15,278) of the titles are unsurveyed;
- only 29% (7,634) of the titles are under a management structure;
- up to 33% is land locked;
- an estimated 80% of Māori freehold land is in non-arable class of land use; and
- up to 33% of the owners recorded on titles are deceased and their interests have not been succeeded to.

Almost every submission from Māori commentators recorded the difficulties under which Māori land labours and how these features limited the possibilities for making Māori land productive. Submitters claimed utilisation of Māori land was difficult due to a number of factors, including the locating of owners, gaining consent as required under legislation and the fact that blocks were fragmented to a degree that economic viability is not a reality. [767] It was noted that the search for employment takes many family members away from their birthplaces and these family members were not able to participate in decision-making. These issues compounded as they passed from one generation to the next, with the assumption that someone, somewhere and some how was keeping things in order. [631] Many Māori land owners lacked understanding about land management and decision-making. Iwi authorities were often being overlooked as a means of assisting Māori land owners to get organised in the administration and management of their lands. [634] Very limited assistance is available to help Māori land owners make informed decisions and actively manage land to generate sufficient income to meet the needs of the land, owners and fair rate demands. [634] District rules and plans also encumbered Māori development and did not reflect the landowner aspirations. [604] The perception that existed as a result is one of a lack of confidence and an underestimation of the potential of Māori land and Māori ownership with the result that Māori land remained under-utilised.

Acknowledging these barriers to development, a generally held view expressed by Māori commentators before the Panel was that unproductive and unoccupied Māori land should not be rated.

#### ***iv. Landlocked Land***

As a specific category of unproductive land, landlocked land is another significant issue for Māori land owners. Rates are accumulating on lands that the owners have no access to. In most instances this land is simply used informally by the adjoining land owner. A case in point covered in one submission was of a 48-hectare block of Māori land situated at the northern extremity of the Whangarei District. To the east of the block is Department of Conservation land, which has an easement to the Motatau Forest, both of which are also landlocked. To the south, west and north is a single neighbour. For many years the neighbour, who used the property for "rough grazing", paid the rates. When it became apparent that the owners of the land were not interested in selling, the neighbour chose not to use the land any more, nor to pay the rates resulting in an accumulation of unpaid rates. This is a typical example of unoccupied Māori land with no access or utilities, which is unable to derive any income stream from their "asset", yet

where the onus of having to pay rates remains. Submitters emphasized that rates on landlocked land is an unfair burden and should not be imposed on landowners. [631]

The point was also raised at the **Wellington hui** (7 May 2007) as to the difference between land that was actually landlocked and land that was only technically landlocked. This point referred to land for which legal access might have been granted, but for which it was beyond the financial resources of block owners to actually create the access that had been legally allowed for. Effectively, the lack of access remained.

**v. Land with Changed Usage**

Sometimes land could change its status or use and this has led to difficulties with rates.

One example given at the **Wellington hui** (7 May 2007) was a piece of land that in the past had been used for quarrying. In fact, the income from the quarrying activity had been fully utilised to pay rates. When the quarry was closed, however, there was no further income but the rates continued to be charged because of past payment.

Another example given came from the **Wanganui hui** (12 April 2007) was of a piece of land that used to be a Marae site. This land is landlocked with no access. Years ago the land was leased out by Māori Trustee. The last lessee was a local councillor. The Council stripped topsoil off the land and sold it. The land was then being used as a race track. During this time the lessee paid rates. It has since been returned to owners and now is continuing to be liable for rates. It was felt that this land should not be rated because of its history, it has no access and no services. However the land value was going up all the time because of lifestyle blocks situated around it.

Other hui attendants spoke of lands which had once been in production but had now gone out of use due to changes in communities and socio-economic imperatives. One speaker at the **Napier hui** (8 March 2007), for instance, noted that at Ruatahuna and Waikaremoana there were thousands of acres of formerly farmed land that was going back into bush. Such a scenario would apply to Māori land around the country.

**vi. Land Made General by 1967 Amendment**

Past changes in legislation are presenting problems for Māori land owners. One significant example is the status change of Māori title that occurred under the provisions of the Māori Affairs Amendment Act 1967. This particular change required that any block of Māori land with less than four owners had the status of their land changed from Māori to General Land title. In most cases the owners were never notified of the status change. This policy affected land all round New Zealand but particularly impacted in certain regions such as Northland. A submission received from a forum of Taitokerau Iwi Chief Executives have identified this policy as a breach of the Treaty of Waitangi.[905]

From a rating viewpoint, this land is particularly vulnerable to land loss. In many cases, for all intents and purposes, this land is still viewed by its owners as Māori land with the same cultural associations and values. As noted above in the comments on papakainga, the land would more often than not be located within a papakainga community. As general land, however, there is little protection from the land being sold if rates arrears apply. [556, 932] Although there is no quantitative research to draw on to assess the extent that Māori land with Europeanised titles have been sold for rating arrears since

the passing of Te Ture Whenua Māori Act, several commentators gave examples of the threat which exists:

- In one instance, the owners of such land were unaware that there had been a title status change and for the past 40 years had thought their land was still in Māori title. The situation was suddenly brought to the attention of the current owners when the local council publicly notified that the land was to be sold off to cover the accumulated arrears. A young descendant immediately took out a substantial mortgage in order to stop the sale proceeding. [631]
- One speaker at the **Wellington hui** (7 May 2007) gave an example of coastal land at Tokomaru Bay on the East Coast where the title had been Europeanised under the 1967 Act. The owner passed away and the location of his heir was not known. The land then accrued rates from the mid 1980's for 20 years. Two years ago the Gisborne District Council took out a High Court application to sell the land. The wider whanau had to come together to pay the \$20,000 of rates arrears and only managed to do so at the last minute and save the land from alienation. This speaker knew of a number of examples such as this on the East Coast
- At the **Nelson hui**, (12 March 2007), it was noted that many titles in the Marlborough Sounds had been Europeanised and that many of these had not been succeeded to as whanau could not afford the costs of operating within the Pakeha Court system.
- At the **Napier hui**, (8 March 2007) one speaker drew attention to the fact that a lot of Ngati Kahungunu land, whilst still owned by Māori whanau, was held as General land due to the compulsory Europeanisation of title. Yet, it was pointed out, the owners still have kaitiaki responsibilities and land is still held under multiple ownership.
- At the **Whangarei hui** (19 April 2007) it was also noted that there was a lot of land affected by the 1967 Amendment. One example was given of a block of 10 ha made General land under the 1967 Amendment. Over the years the land attracted high rating arrears but also had a lot of owners none of whom were in occupation. When rates arrears rose to \$58,000 efforts were made to save the land from an impending sale. These efforts included an action before the Māori Land Court to return the title to being Māori land. However, the local authority went to Court and successfully opposed title change. So the owners had to get together the rating money to save the land from sale. Several other examples were recorded of attempts at forced land sales with some of the owners having to come up with the rates to save the land.
- One local authority that commented on this issue was the **Waimakariri District Council** which felt that prior to the status of any general land being changed to Māori Freehold land, agreement needed to be reached with the local authority concerned regarding the payment of rates arrears and the payment of ongoing rates. [469]

Wherever there has been comment on lands where titles were affected by the 1967 Amendment, there has been complaint of the unfairness of the situation. At the **Whangarei hui** (19 April 2007) one speaker particularly noted that it was government

legislation that created this problem and therefore the government should be responsible for legislation returning the land to Māori title.

### 3. Specific Rating Issues

Aside from identifying a range of rating issues that arise from the different types of Māori land, submitters and hui attendants also identified a range of specific issues that have arisen over the years associated with the rating of Māori land.

#### *i. Rates compared with Services*

Māori Submitters emphasized that the burden of rates far outweighed the value of services provided by local authorities. [908] It was generally accepted that Māori land is largely rurally based and isolated; hence the reason Māori land owners did not enjoy services such as sealed roads, rubbish collection, connection to council sewage systems etc. Submitters felt that it was a significant flaw in the system when Local Governments claimed rates were in payment for services yet land owners did not receive or could not access these services. [402, 631, 653, 767, 902, 909, 918, 920, 935, 941] Similarly, the charging of the Universal Annual General Charge (UAGC) was opposed. Commentators have noted that UAGCs are used to cover the costs of facilities that are primarily located in urban areas (libraries, parks, civic centres, swimming pools) which tangata whenua living in small isolated communities may never use. For owners of uninhabited rural land, there is no benefit from these facilities as they are not located in the vicinity of land. For those owners of rural multiply-held land who are living in town, it has been noted that they are already paying for these facilities through their occupation of general title land. [913, 938, 941]

One submitter, a Māori Incorporation, outlined their concerns regarding their land holdings which were part of a small rural community. The Incorporation pays an annual rates bill of \$4803.47 for its four one-bedroom kaumatua flats and \$1459.03 for a historic building they owned as well as rates on a residential section. It would seem that these rating cost to the Incorporation and residents is extraordinarily high when looked at in relation to the limited local body services that are accessed. The submitter posed the following questions: What services are actually provided? Are they urban or rural based and is the charge realistic? What rates should be charged on unoccupied land or to residents whose ability to pay such rates is limited by the physical location of the value they have? Whilst the Incorporation effectively has the responsibility of 'administering' a township through being the main landholder there, they have no apparent legal right to decide what services can or should be provided to its residents. [902]

At all hui, a large number of speakers pointed to a disjunction between the rates levied and the receipt of services for their communities.

- An example was given at the **Nelson hui**, (12 March 2007) of Rangitoto (D-Urville Island) on which no dwellings were located and for which no services were received. Yet this land had been rated and rates paid for years and that recently the rates had gone up.
- One speaker at the **Napier hui** (8 March 2007) noted that there were no services at either Waikaremoana or Ruatahuna. Although they had a rubbish service at Waikaremoana this closed down recently due to cost.

- Also at the **Napier hui**, (8 March 2007), one speaker, when discussing services to Māori land, noted that along Ocean Beach the road goes to metal where Māori land is located.
- At the **Rotorua hui** (16 Apr 2007) it was alleged that whereas the Council pulls out lake weed around places such as in front of the yacht club, it did nothing around Ohinemutu.
- In areas of high development, (such as **Rotorua** 16 April 2007) it was noted that often services had not existed in the past. These are then put in within the context of property developments being established. In some cases the Māori owners still do not gain automatic access to the new services. Overall, however, rates relating to service provision were going up.
- At the **Wanganui hui** (12 April 2007) the size of a local authority was identified as an important factor due to the fact that for small local authorities with declining populations, the remaining residents have to pay disproportionately for service rates.
- Regional rates were also criticised at the **Wanganui hui** (12 April 2007) from the perspective of charging for services that were not received. An example given was the poor performance recently in the district for flood protection.
- At the **Wanganui hui** (12 April 2007) the issue of Pipiriki Māori township was raised where rates were \$1,800 a year for town sections. This was because residents were paying for a new sewerage system that had been installed and yet 75% of system was used by the Department of Conservation who do not pay rates.
- At the **Whangarei hui** (19 April 2007) a speaker noted that it was a well-understood thing in the Far North that services stopped where Māori land began. This not only applied to local authorities for roading but also to utility companies for electricity.

A number of submitters or hui attendants pointed out that they were supplying services to their community and even the wider community through their own facilities for which they were responsible for maintenance and upkeep. These commentators suggested that they should either be paid something for this by the local authorities or have wider rates remissions. One speaker at the **Napier hui** (8 March 2007) noted that local Māori pay rates in town but often do not use town facilities. They have their marae, urupa and meeting houses in their own communities out of town. They pay rates in town for services not used such as community halls, cemeteries or sports fields. It was felt that councils need to be prepared to part with some of their rating income to allow it to be used for the upkeep for those facilities that Māori use such as marae, urupa and even sports grounds. At the **Nelson hui**, (12 March 2007) Wakatu marae located within the city was identified as a public amenity. In another, quite different example mentioned at the **Napier hui** (8 March 2007), land held in the Ruahine Ranges had been used by hunters and trappers since the 1950s and yet no fees could be collected or the land managed as it was landlocked. At the **Rotorua hui** (16 April 2007) it was noted that the ngawha at Ohinemutu are also rateable. Thousands of tourists come to look at these thermal attractions but no income is received and no funding from the Council. Yet local

people have responsibility for looking out for tourists. Tourists have been injured and killed at Ohinemutu but Council won't even pay for warning signs. At the **Invercargill hui** (14 May 2007) SILNA landowners noted their land as having high conservation values and a degree of public usage. Similarly, a Trust Board submitter from Taupo noted that much of their lands around the Lake have long provided benefits to the local community. [913] More specifically, a forest trust Board from Taupo recorded that the protection of Lake Taupo and Lake Rotoaira as taonga was one of the reasons for establishing exotic forestry on Māori lands around those lakes. Yet, these same lands are actually charged rates for lake protection. [629]

## *ii. Rates as a Barrier to Development*

The difficulties surrounding the making of Māori land productive have been noted above. Comment has been received that the imposition of rates adds as a deterrent against development. [402, 590, 713, 908, 918] Sometimes rates can directly create a barrier to development as disputes within ownership over rating responsibilities, amounts or payments can cause sufficient disharmony which militates against the owners working together on other projects. [922] In other cases, there has been the experience where contacting the local authority to discuss development proposals has only resulted in rating notices being sent to those who contacted the Council. [932]

One submitter contended that increasing the use of remaining Māori freehold land is imperative to the economic, social and cultural wellbeing of Māori and a stable New Zealand society. It has been noted, however, that current rating practices are a burden when trying to establish an economically viable development. [767] Several commentators noted that any efforts towards development attracted demands for the payment of back rates from local authorities. Sometimes any use of land by owners can attract rating. An example was given at the **Nelson hui**, (12 March 2007) of the White Bridges reserve which was provided jointly for all those interested in the Wairau: Ngati Rarua, Ngati Toa and Rangitane. This reserve was covered in gorse and recently, as soon as the local people cleaned up the reserve they began to receive rating notices.

At the **Rotorua hui** (16 April 2007) it was asked what Councils were doing to contribute to the development of Māori land. When Trusts are formed over land by the Māori Trustee for example, owners often faced four to five years of back penalties. In some cases Councils have been applied to for exemptions from rating for five years until a common way forward is found in relation to development but it was noted that this had been found to be difficult to achieve. At the **Invercargill hui** (14 May 2007) several speakers identified how local authorities not only did not assist with the development of Māori land, but actively interfered in some cases in stopping development if it was not in accordance with other Council policies. It was felt that rather than local authorities single-mindedly pursuing rates collection, better integration between government agencies is required to achieve development objectives [604] and that local authorities should be proactive in assisting with development. [908] The Māori Land Court and the Office of the Māori Trustee needed to improve their services to actively assist Māori Land owners to retain, occupy and use their lands wisely. [634] Another submitter noted these agencies as being neither equipped nor adept at providing useful land management services to Māori land owners. [631] Overall, submitters felt there needed to be a better working relationship between these agencies and local authorities.

Examples have been given where owners, rather than attempting to pursue development objectives because of the barriers that exist, have changed the status or management of land to avoid large ratings charges. Whilst this solution addresses the

rates problem, owners lose access or control over the land. At the **Nelson hui**, (12 March 2007) a landowner stated that when their land valuation recently increased from \$32,000 to \$114,000, the owners, to ensure that land did not attract rates, sought to have the block declared as recreational reserve. At the **Napier hui**, (8 March 2007), one speaker wondered whether unused land could be dedicated as non-rated green tourist blocks instead. At the **Wanganui hui** (12 April 2007) it was pointed out that as some people are scared about rates and losing their land they are turning it over into Nga Whenua Rahui trusts and thereby losing land to the Department of Conservation for twenty years and receiving nothing in return. At the **Auckland hui** (18 April 2007), several speakers noted that they had put landlocked land into a Queen Elizabeth Trust for protection.

### *iii. Relationships between Māori and local authorities*

A number of Māori commentators provided material on their relationships with local authorities. Examples were given where Māori landholding groups had worked with councils to achieve a favourable result over rating. One speaker noted at the **Wellington hui** (7 May 2007) that in the mid-1990s some groups of Wellington Māori landowners met with the Council who showed a willingness to wipe off rate debts. It was viewed that this position arose from having a working relationship with the Council and Council officers adopting a common sense approach to an existing problem. In Kaipara, a Trust has been able to conclude a blanket Memorandum of Understanding with the local authority for the remission and postponement of rates. [683] In the Western Bay of Plenty, a District Council Māori Forum made up of iwi/hapu representatives from Maketu, Te Puke, Tauranga, Katikati and Waihi Beach has worked with Council staff to investigate the reasons for unpaid rates and develop a pro-active rates remission policy on multiply-owned Māori land. [923]

Such examples, however, were in the minority when compared with other comment noting how attempts to deal with local authorities over rating issues was an unpleasant experience with few positive results. The difficulty of working in the foreign processes and systems surrounding rates has been noted. [922] At several of the hui, speakers expressed the view that Māori liaison officers were not effective. As noted by speakers at the **Auckland hui** (18 April 2007), Māori advisors did their best but it was hard to work in organisations where tikanga regarding land was not recognised. [Also 629] At the **Gisborne hui** (17 April 2007) one speaker noted that he knew of people having contacted the local Council to try and create a dialogue about Māori land and rating issues. These people had simply been told that there is no difference between Māori and Pakeha land for the purposes of rating. This speaker felt that there should be a central government watchdog monitoring the relationship between Māori and local authorities.

Received comment from Māori made it clear, that the lack of progress with local authorities in relation to rates issues occurred within a wider context of generally poor relationships between Māori and local authorities. One submitter noted that Local Authority practices & policies were confusing to iwi [489] Furthermore, it was felt that there was a lack of understanding by local authorities about Māori land tenure and its significance to Māori. [634] One submitter noted that "Councils currently relegated 'Māori land issues' to the 'too hard basket' and thus missed opportunities to assist Māori communities to address issues of under-utilisation of Māori land. [634] Ultimately Submitters appeared to be demanding engagement by local authorities with Māori when striking rates and setting rates policy. [604] There was also a warning against the practice of some local authorities of merely working with runanga or other district-wide

Māori bodies when setting rating policies instead of making any real efforts to deal with individual owners. [941]

Often the relationships with the local authorities had been tainted by past actions which have not been forgotten by tangata whenua. In addition to the obvious issue of land being taken for rates, other examples were noted at hui. At the **Nelson hui**, (12 March 2007), owners of leased land recall that during the 1940s when lessees were agitating to have the rents of the Nelson Tenth lowered using Court action, it was later learnt that the Council was funding the lessees in their action. At several hui, it was noted that in the past it was the local councillors who were leasing Māori land and who often did not have to pay rates on it.

Sometimes, it was recent actions that had been a source of aggravation. As noted at the **Nelson hui**, (12 March 2007) the Nelson City Council and Tasman District Council had, over the years acquired a number of Nelson Tenth sections as endowment land. This land had originally been taken through the Public Works Act. Recently, however, a number of cases exist where this land is being sold off by Council whereas tangata whenua believe it should be returned. Furthermore, it was noted at several hui that in addition to Māori properties facing huge rates hikes, other policies of local authorities were severely interfering with how Māori landowners could utilise their land. An example was given at the **Hamilton hui** (17 May 2007) in relation to the area around Raglan where the council's coastal land use policy was impacting heavily on Māori landowners. The effect that was arising was that lifestyle blocks were spreading across landscapes where the land use had formerly been related to farming or other rural lifestyles. Increasingly the local authority policies were there to support the use of land associated with the lifestyle blocks,

At many of the hui, a link was made between relationship and representation. At the **Nelson hui**, (12 March 2007) it was noted that two local Māori incorporations (Wakatu and Ngati Rarua Atiawa Iwi Trust) were the managers of large numbers of property yet they had not avenue of representation in the Council. Whakatu had over 600 properties and paid \$75,000 in rates per quarter. John Charleton noted that NRAIT had 80 properties. Similarly, an example was given at the **Whangarei hui** (19 April 2007) of a 9,000-acre property in Kaipara which is the largest land block in the area but the responsible Trust gets only one vote for council. The block had 1,000 owners and the speaker raising this issue noted that it would be more equitable if each had a vote in local authority elections. At the **Gisborne hui** (17 April 2007) the low level of representation of Māori in local government was also noted. Participation in dialogue about rates is said to be an important consideration but that Māori can not participate without representation. At the **Napier hui**, (8 March 2007) speakers recorded that representation had worsened. Hastings Council once had an advisory Māori committee with representatives from 25 marae committees, but recently they had reduced this to an advisory board made up of 6 Councillors and 6 Māori appointed by Council. Representation was therefore seen as taking a step back. It was felt that the emphasis should be put back onto the Marae.

## E. Addressing Impacts

The previous Section has shown that commentary, primarily from Māori hui attendants and submitters, has identified a number of problematic impacts associated with the current rating of Māori land. In addition, however, suggestions also have been received on how to deal with these impacts. In this section the proposals that have been put forward are summarised and considered. Recommendations on how to address the impacts are then made.

### 1. Consultation Proposals

#### *i. General Overview*

Broadly speaking, there was a general consensus between Māori and local government submissions that a problem exists, that something needs to be done and that the solutions lay in centrally designed remedies involving central government:

- ***Māori individuals, groups and organisations:*** Eleven hui were held around the country on Māori land issues. In addition, a total of 56 submissions were received from Māori (See Appendix I) As might be expected, it was Māori, as the landowning group affected, who provided the most comment on the impacts associated with rating. When it came to considering solutions to the impacts, in a few cases owners supported the status quo as rates were not being paid and yet land could not be taken. Otherwise,, there was a strong body of opinion that change was required. The starting point for change was to consider the nature of Māori land and the role of the Treaty of Waitangi. As a result, it was felt that a conceptual change was required from the assumption that all Māori land is rateable. Instead, it was proposed that a zero-based approach be adopted with consideration being given to the situations and circumstances of the land when assessing whether Māori owners should pay rates. Having noted this, however, only a handful of commentators suggested that no rates should be paid on any Māori land. Instead, owners were strong in their willingness to pay rates where fair, where services were received or if the land was occupied and produced income.
- ***Local Authorities:*** Most local authorities included some comment on Māori land rating issues. With some exceptions, the nature of this comment did not focus on the impacts of rating on Māori landowners. Where comment was made, this primarily focused on the valuation of Māori land. Comparatively little commentary was received from local authorities on their own policies and practices or on the way in which local authorities worked with Māori landowners. Instead, the existence of a problem on the collectability of rates was widely identified as was the lack of a mechanism to act where rates were not paid. Not surprisingly, the primary solution proposed by local authorities was that if the legislation on the alienation of land was not to be changed, then the responsibility on local authorities to collect rates on Māori land should be removed and placed on Central government. The viewpoints associated with this concept are considered below.
- ***Others (including individuals, businesses and community groups):*** Of the handful of submissions received from this large grouping of submitters that

commented on Māori land issues there was a strong message of rating equality with no distinction amongst groups. Many of these Submitters were of the opinion that issues of affordability were not peculiar to Māori or any other single sector of our society. Claims were made that Māori are not the only group to have a special relationship with the land and that exceptions for any section of the community should be minimised or ideally avoided. [93, 323, 688]. One submitter asserted that Te Ture Whenua Māori Act 1993 was racist and there should be no distinction between races. Authorities were cautioned against an “us and them division” in relation to the rating of land. [555, 643, 725] Others attempted to suggest solutions that may assist in providing a way forward and recognised the obstacles faced by Māori land owners brought about by multiple ownership, out of date ownership records and the inability to establish management structures. Some suggestions were to consider rates arrears on a case by case basis; also to define categories of Māori land when contemplating rates exemption. Other propositions were around the issue of affordability. [87, 323, 564]

## *ii. Broad Themes in the Proposals*

The proposals received fall within one or more of the broad categories of:

- Responsibility of Central Government
- Exemption by Land Type or Use
- Valuation

### *a. Māori Rating Payment as the Responsibility of Central Government*

A fairly consistent response from local authorities was that the problems associated with Māori land rating were a matter to be addressed by central government.

The majority of local authorities who made submissions considered the Crown had a major responsibility as far the rating of Māori freehold land was concerned.

- **Waimakariri District Council** contended that if Central Government continued to restrict all practical means for Councils to collect rates on Māori Freehold Land, then it should compensate communities for the lost income. It was also proposed that If the rating legislation was not changed to allow Councils to use the same collection processes on Māori Freehold Land as they do on general land then rates remissions should be funded by Central Government. Waimakariri pondered that the existing legislation seemed to have been designed to remove the Government from the hot bed of non payment of rates on Māori land.[469]
- **Kapiti District Council's** take on the situation was that as a Crown objective consistent with its obligations under the Treaty of Waitangi, the rating issue should be taxpayer funded.[554]
- **Horizons Regional Council**, having noted the difficulty of collecting rates on Māori land, propose that legislation should be used to appoint accountability for rates payment although who should be made accountable was not noted. [553]
- Similarly **Thames Coromandel District Council** suggested that in recognition of its obligations under the Treaty of Waitangi, it may be appropriate for the Crown

to fund the rates that local authorities are not able to collect on Māori land. In this way responsibility for the cost is recognised by the party that has the obligation (i.e. the taxpayer) rather than the ratepayer. [543]

- **Rangitikei District Council** also requested the inquiry to look at a mechanism whereby the rates levied on Māori land are made collectable or to provide central government funding in lieu of rates on Māori Land in recognition of central government's Treaty obligations.[ 621]
- **Taupo District Council** was of the opinion that there did not appear to be any difference in the level of service provided to Māori freehold land compared to other land of a similar type and location and therefore considered that rates should be paid on Māori freehold land with the Crown to fund any remission of rates on Māori land. [473]
- **Rodney District District Council:** Suggested that as the Government is currently addressing past grievances concerning Māori land and if it is felt by Government that such land is deserving of special treatment, then Government should provide funding to meet the payment of rates [474]
- **Christchurch City Council** thought that central government could address the restrictions place on local authorities by funding any rates shortfall. [514]
- **Rotorua District Council** suggested that central government should act as the ratepayer until such time as an appropriate understanding has been achieved acknowledging Māori are part of local communities, receiving benefits provided by the local community. [636]

Overwhelmingly the following local authorities also all agreed in one form or another of the responsibility of the Crown as a Treaty partner and that the issue of any shortfall in the payment of rates on Māori land should be taxpayer funded:

- Porirua Steering Group [225]
- Hastings District Council [637]
- Local Government NZ [581]
- The Local Authorities & Stakeholder Consortium [541]
- Gisborne District Council [619]
- Waitaki District Council [672]
- Wellington City Council [717]
- Whakatane District Council [608]
- Whangarei District Council [657]
- Far North District Council [546],

The Crown's responsibilities were also raised by several individual, business and community group submitters and it was acknowledged that the responsibility of protecting Māori land against alienation lay with the Crown under its Treaty obligations. Suggestions included Central Government reimbursing local authorities for annual financial losses. Also that the Crown could make an annual grant in lieu of rates arrears on Māori freehold land. [544, 596, 729]

Māori commentators also generally looked to the Crown to make changes through legislation although these were usually in the form of rating Māori land according to its type or use. This is discussed below. Submissions also called for the need for central

Government to develop an overarching Treaty framework as it applied to all local government issues. [402, 767] In addition, however, a forum of Taitokerau Iwi Chief Executives also supported the idea that any shortfall in terms of rating sums should be paid for by the Crown as a Treaty obligation for land that was owned by Māori that had been made General Land under the 1967 Amendment. This was seen as particularly necessary as any proposal to revert this land back to Māori title was usually opposed by local authorities because of the rates owed on the land. The Forum rationalises that as this problem was caused by the Crown, the Crown should remove the debt by payment so that the title of the land can be reverted back to Māori title. [905]

**b. Exemption by Land Type or Use**

As noted above, whilst a small number of Māori commentators support the status quo the vast majority sought change.

Among the reasons identified as being against keeping the status quo is the stigma attached to Māori landowners that arises from the perception that they are not rate payers and are free-riding on the system. At the **Napier hui**, (8 March 2007), one speaker noted that when local authority councillors raise the issue at meetings or mention how much Māori land is affected by accumulated rates, these statements are always reported to the public by media covering the meetings. This perpetuates a negative view held by the public towards Māori as landowners. Another speaker added that the writing off of thousands of dollars of Māori rating debt resulted in a negative backlash of public opinion against Māori landowners.

Overall a wide range of solutions were put forward by submitters although they all primarily focused on rating being linked to land types or to the use which was being made of the land. At the hui and in several submissions, commentators advocated that as a starting point no rates should be paid on unused Māori land due to past development or current difficulties with Māori land titles. [489]

At the **Gisborne hui** (17 April 2007) however, one speaker proposed the local authorities should be funded through increases in GST where income was directly related to services. This would mean that GST would go higher but rates would be lower. The GST would be collected centrally by Government and councils funded from it. Other submitters also suggested that there was a need for a revision of rates funding suggesting that GST and/or fuel tax be considered to offset local authority rates and universal charges. [910, 933, 943] A general recommendation was made by a forum of Taitokerau Iwi Chief Executives to explore the identification of public good taxes for local government. The forum also encouraged other ways to be looked into through which central government could subsidise local government activities. [905] Other submitters agreed. [428, 590, 683]

A further innovation suggested at the **Hamilton hui** (17 May 2007) and in submissions [906, 935, 943] was that a rating level be set only when a property was purchased which could be linked to the purchase price and possibly the rate of inflation thereafter. This would mean that long term residents or tangata whenua, who were not selling their land, would not be over-rated by escalating property values or extra demands of new developments in a district.

In relation to rating being linked to land use, one submitter suggested two categories for Māori freehold land; Commercial and Non Commercial. The former would generally be held in the name of a Māori Incorporation or Trust set up under the Act with proper

governance structures in place for undertaking commercial activity while the latter would be held by multiple owners. [419] Another submitter suggested a categorisation system for Māori land with different criteria to show the use, nature or attributes associated with the land. Using this criteria, local authorities could work with owners to reach an agreement of categorisation and then base rating on this. [909]

Others thought that some incentive to form Ahu Whenua Trusts (Management structures set up under jurisdiction of Te Ture Whenua Māori Act 1993) should be encouraged. These trusts would have a nominated person to deal with rating and other issues as well as being a point of contact for all correspondence. [596, 681] In these instances councils could be encouraged to have a remission policy of say 20% where these trusts are formed. In some cases, it may be agreed that the land be left in an undeveloped state. This would be the position in respect to such lands as Fishing Easements and Landing Reserves etc, where customary use rights exist but no law allows regional Councils the ability to make the land exempt from rates. [681]

As noted above, one view that was frequently expressed was that if land was not used then rates should not be paid or that there should be a nominal payment only until the land is developed. (**Napier** 8 March 2007) At several hui, support was expressed to consider zero-based rating of Māori land and some submissions supported this stance. [910] At the **Auckland hui** (18 April 2007) these views were formalised into a motion that was passed by all at the hui with one exception only: "that the view of this meeting is that Māori land should not be liable for local government rates." Submissions also suggested that rates on Māori land should only be paid if the land was producing income. [419, 556, 911, 912, 932, 934, 941] Where land was being leased, and the rates paid by the owner, it was suggested that this should be kept to an equitable proportion of the lease revenue (eg 10%) to avoid the situation that exists where the rates payable by the owners exceeded the rent. [419] One specific proposal suggested a 25-year moratorium of those lands that opt into a programme of development where central Government agencies work with local authorities to establish economic units of Māori land. [936] Another suggested that for land deemed capable of being developed rates should be placed on annual remission until the land is developed. The automatic remission would begin when owners met with the local authority and presented a development plan. [923]

It was also proposed that landlocked Māori land, undeveloped Māori land and Māori tribal lands that are not lived on should be non-rateable. Where there is actual occupation the occupiers should be rated only on the services they receive. It was further proposed that there be an offset against rate liabilities where Māori land is an asset to the economy or community and that rating models be customised to reflect the contribution that is made. A continuation of the specific category of exemption was sought for Māori customary and reserve land with the addition of land with native forest cover. [634, 617, 631, 654, 713, 767, 908, 918, 934]

In addition, for kaumatua and papakainga housing and lands of historic or cultural significance, it was suggested that all outstanding rates should be remitted and special ratings afforded. [604, 634] Several speakers at the **Auckland hui** (18 April 2007) did not think that any Māori land occupied as residences should be rated.

### **c. *Proposals on Valuation***

The complexity of the issue of valuation is apparent in the fact that, despite valuation being almost universally identified as a key area of conflict and impact, comparatively few proposals were made on how to address this area.

There was some support for the full implementation of the Mangatu decision. It was suggested that if Māori land was to be valued, then the valuation needed to include cultural, ancestral, and spiritual values and should be completed on a case-by-case basis as indicated in the Mangatu decision. [767, 912, 918] The Western Bay of Plenty District Council, in collaboration with the local Māori Forum, undertook an exercise to enlist an independent valuer to assess the value of Māori land based on historical constraints identified in meetings held with tangata whenua over several years. This exercise resulted in much lower valuations being identified as compared to those done by Valuation New Zealand. [923]

Those who accepted a blanket discounted rate should apply have suggested that Government should use legislation to secure a discount of 20% - 50%. [605, 771, 907, 932, 943] Some hui attendants have suggested the discount rate should be higher, one Wellington speaker proposing as high as 85%. Another submitter has noted that if land can not be sold it must have a zero value. [935]

Several submissions have noted that as Māori land can not be sold without restrictions that valuations need to reflect the “economic value” or “value in use” rather than a “market value”. Economic value will be determined by reference to the income being produced. It has been suggested that this principle for valuing Māori land needs to be enshrined in legislation. [419, 905, 910]

One submitter, with experience in the management of forestry land, has suggested that the productive value of the land (that which determines income) should be the primary consideration and not consumptive or speculative values as these are generally difficult for the Māori landowners to realise. It has been noted that the issues relating to Māori land are unique to the Māori landowners. Furthermore, although it was suggested that the ability of individual Māori landowners to pay rates on multiple owned land is not immediately relevant, the affordability largely relates to the productive value or income being derived from the land use. [615]

One submission specifically noted that the origin of Māori land titles should be clearly identified and its intended purpose taken into account in the rating valuation. As this was a South Island submission, examples given were:

- SILNA 1906 – economic purposes
- Māori Reservation between 1856-1874 – Residential and occupational purposes
- Half Caste Grants between 1856 – 1874 – Residential purposes
- Māori Reserve – Customary purposes (Fishing easements, landing reserves etc)

It was suggested that those persons establishing rating valuations should have a much clearer appreciation for the type of land and what it is able to be used for, if anything. [681]

## **2. Proposal and Issues Analysis**

There are two broad alternative approaches to addressing the issues identified in the Inquiry's process of hearings and research.

- The first is to look at the present system and address those areas where issues have been identified. This approach proceeds on the premise that the parameters of the current system are sound and only require adjustments to eliminate the problems and retain the strengths.
- The second approach is to take a completely different approach to the problems identified by adopting as a basic operating assumption that the issues are too many, complex and large (or a combination of all three) to be cured by the more incremental first approach.

Both approaches will be discussed with a recommendation that the second is most likely to secure effective and durable solutions.

### ***i. Addressing Issues within the existing Framework***

The foundations of the existing rating framework are found within the following pieces of legislation:

- Rating Valuation Act 1998 – which defines capital and land value as the medium of exchange between bona fide and willing sellers and buyers; but which is silent on Māori land;
- Local Government (Rating) Act 2002 – which specifies that Māori land is rateable, has provisions dealing specifically with Māori land (Part 4 and Schedule of non-rateable land), stipulates that Māori land may not be sold to recover rates and identifies the factors that are to be considered when applying a remissions and postponement policy;
- Local Government Act 2002 – identifies certain functions that are exercisable in cognisance of the Treaty of Waitangi and requires a remissions and postponement policy for Māori land (although a policy of no remissions or postponements is sufficient compliance);
- Te Ture Whenua Māori Act 1993 – provides a code for all dealings with Māori land and the ownership interests in it, including governance, transfers and enforcement of debts against Māori land.

Using the broad themes identified in the proposals received and applying the evidence gathered in the course of the inquiry it is quickly apparent it is difficult to achieve a sustainable result whilst working within the present system.

### ***a. Central Government Solutions***

The primary focus of local authority submissions was to propose that if the protection that Māori land currently has against the sale of land could not be over-ridden, then the payment of rates be borne by the taxpayer and paid for by the Central Government.

The possibility of central government action, of paying for Māori land blocks that are in rates arrears, is untenable even in the unlikely situation of the Government agreeing to this. Firstly, it would create inequity for those owners of multiply-owned and unproductive land who have struggled on to pay rates due to their acceptance of citizenship responsibilities or due to their belief that to not do so could lead to their lands being sold or taken from them in some way. Secondly, it would soon encourage a rates revolt among Māori in response to the unequal treatment being condoned. Thirdly, it would create incentives against land development as people opted for the certain retention of land through the payment of rates by the Government rather than the potentially riskier development of land which would shift the rates burden onto themselves.

Implicit in the position taken by the local authorities of requesting central government action, is the possibility of another centrally designed solution that rates on Māori land be made enforceable in the same way as it is for other land in which case the central government would not have to pay the rating shortfall. This solutions would mean the development of provisions through which Māori land could be sold if rates were not paid. This proposal, if ever made, would also be untenable. To create a situation where Māori land would be held available for sale by local authorities in situations of rating arrears would engender a huge response within Māoridom of active intervention. Furthermore, it is already a possibility that the past powers given to local authorities to take Māori land for the payment of rates would be seen by the Waitangi Tribunal as a breach of the Treaty of Waitangi, such a breach having been primarily mitigated only by the passing of the legislation that ended this option. To reintroduce such legislation would be inconsistent with all other attributes of the Te Ture Whenua Māori Act 1993, would be contrary to all the consultation feedback received from Māori commentators during the inquiry and would occur in the face of the strongest opposition from Māori. As such, reintroduction of the power to sell land for rates would almost certainly receive a strong response from the Waitangi Tribunal as well. This would especially be the case in anticipation of that fact that all of the current problems that have been identified that act against the payment of rates for many blocks of multiply-owned and unproductive land would inevitably result in these blocks being alienated if there was a law change allowing this.

There are other, less drastic areas of central government action which could be taken within the existing framework which could be argued as having the potential to address existing rating inequities for Māori land. These would centre around efforts to ensure that current provisions within legislation in relation to remissions and postponement policies were applied with more uniformity and effect across the country than is currently the case.

To achieve this, one set of options that could be adopted at the level of central government would be to change existing policy settings without legislative change. One possible non-legislative measure applicable in this type of situation would be to devise a statement of national importance. There are difficulties with this. Even if an appropriate statement could be drafted, it could take a long while to reach active implementation, would require burdensome and expensive reporting and policing requirements and it would not address matters such as the arrears overhang and the valuation problems being faced by Māori landowners.

To give the option more teeth, the existing legislation could be altered to introduce a more uniform and mandatory process for local authorities to bring into effect their discretionary powers. While this could achieve better consistency of policy, several problems remain:

- the intervention, not sought by local authorities, could be widely viewed by such authorities as central government interference with local government business and rights. Therefore, for the legislative change to be effective would require expensive central government policing or the development of a complaint/appeal process which would be expensive and encouraging of litigation;
- the intervention would not address perspectives and concerns raised by Māori commentators as local authorities still given power to make decisions over Māori land.

**b. *Extend Exemptions***

Feedback from a number of Māori commentators have also sought change within the current system by widening the automatic exemptions from rating of Māori land based on its type or extent that the land is used.

The current exemptions within legislation are narrow and apply to specific, identified categories of land (e.g. urupa, marae on land 2 ha or less). One option is to improve the exemptions provision by extending the type/nature of land to be made exempt to include lands with certain cultural characteristics or which are not easily made productive.

However, using the current exemptions provision as the basis to address problems would create a raft of difficulties as this solution:

- would be an administratively difficult and risk laden process to define when land is of cultural significance and when it is not. For this reason local authorities may not want the responsibility especially in light of the submissions they have made pointing to central government responsibility
- would not automatically result in uniformity between local authorities and would therefore require strong and expensive policing of the system and allowance for a complaints process
- in light of general Māori complaint over their existing relationships with local authorities, decisions made by local authorities could create allegations that they did not have the ability or capacity to make assessments in relation to the cultural significance of land
- could provide incentives to misrepresent the cultural nature of land
- could undermine development if all land made culturally significant or chosen to be left undeveloped.

**c. *Valuation***

Another area of the current framework in which there is possibly the opportunity for action as the major response to the problem of rating Māori land is in relation to addressing valuation issues. There are four potential options of response to address existing valuation issues:

- keep the status quo
- identify a higher blanket discount rate
- adopt the Court of Appeal's suggestion of a case-by-case approach to the valuation of Māori land blocks
- identify a more sensitive blanket rate: e.g. to types of lands, districts, nature of lands, etc

Each of these options has significant difficulties:

- status quo: the major anomalies noted in submissions and at hui remain;
- higher discount rate: there would be great difficulty in identifying a rate that would satisfy all perspectives; any set rate would create anomalies over some pieces of land; it is not in keeping with the Court of Appeal guidelines and is possible able to be challenged through Court action. Also, it would not meet Māori perspectives re land;
- case-by-case approach: would lead to greater expense; there would be the risk of variations between valuers that would entail high costs to oversee and ensure consistency;
- more sensitive blanket rate: administratively difficult to identify components and weight them for the purposes of valuation.

## ***ii. The Need for a different Frame of Reference***

Over the 120 or so years that have passed since rating was first introduced Māori land has been the subject of exceptions, compromise and variation. The most recent local government reforms are less than 5 years old but the major issues for Māori land of arrears, costly yet ineffectual enforcement processes and uneven and inequitable application still persist.

The historical survey, as well as the received submissions and proposals from all parties, make it abundantly clear that rating<sup>59</sup> and Māori land combine to create an area of conflict that will require significant change to address<sup>60</sup>.

The conflict occurs in the interface of the notions that Māori land should be taxed on a market valuation to fund the public good functions of the local authority while also accepting that Māori land tenure is inconsistent with the levying of such a tax.

As discussed in the foregoing sections of this report, there are a number of impacts of rates on Māori land that cause, difficult, expensive and perverse results. The current regime, despite a number of discretions and exemptions:

- does not fit with the cultural values associated with Māori land
- is potentially in breach of the Treaty of Waitangi, something which will be tested as several claims will soon be argued before the Waitangi Tribunal

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<sup>59</sup> i.e. the application of general rates

<sup>60</sup> NB Where the rates are struck for specified services (targeted rates) there is not the same conflict.

- does not deal with the underlying nature of existing Māori land tenure such as multiple ownership, unsurveyed lands, the absence of management structures, etc
- does not recognise the land locked character that affects a high proportion of Māori land
- does not recognise the contribution of the land owners' and their wider kin group to public good in the local authority area
- uses a calculation basis that is irreconcilable with non-tradeable aspects of Māori land tenure
- is wildly inconsistent in its application of values due to it being driven by market valuations
- perpetuates a system that stigmatises Māori communities whilst not representing good value for services provided
- creates anomalous (inequitable) differences between Māori land and general land
- creates inequities among those who pay rates, whether this is as a residence or a business, as high rates bills based on valuations not reflective of land use or nature result in payments being made by owners who do not have (nor want to have) the option of adjusting their circumstances through the alienation of land or relocation.
- discourages attempts to develop the land lest existing arrears be demanded from the group of owners trying to get something going
- generates stress and emotional burdens upon a group within the community. In some cases inequity results when targeted owners are pressured into paying rates disproportional to their interests in the land
- enables the alienation of a class of land that, but for legislative slight of hand 40 years ago (under 1967 legislation) and completely uncalled for by the Māori land owners, should still be Māori land and inalienable through rate sales
- generates costly accounting and fruitless enforcement obligations for local authorities which serve no end as neither the rates are paid nor the land held accountable; and
- has permitted and encouraged a bewildering range of discretionary policies and actions throughout local authorities leading to inequitable results between Māori landowners in different but often neighbouring districts.

Having considered the magnitude of these impacts, it is clear that the acceptance of proposals made or the blending of them into reforms that retain the current paradigm, will not adequately address the issues that have been identified.

**a. The Fundamental Differences of Māori Land**

Aside from the breadth of impacts, the difficulty of implementing solutions within the current framework and the past absence of success, there are several further reasons to recommend the use of a different approach to provide the solutions required. These reasons demonstrate that the adoption of a different framework is required as the basic tenets of the current framework can be demonstrated as incompatible and unworkable with the existing situation associated with Māori land. These reasons, based on the fundamental differences of Māori land, are as follows:

- That Māori land does not proportionately receive or benefit from the public good functions of local authorities
- The contribution of funding to local government activity based on the marketability of land does not apply to Māori land
- Māori land is already treated as an exception in rating legislation
- The unique status of Māori land is acknowledged constitutionally and historically
- Māori land is distinguished by a complex and statutorily prescribed ownership system

***Māori land does not proportionately receive or benefit from the public good functions of local authorities:*** It is a fundamental implicit assumption associated with rating that the owners or occupiers of land are consumers of the public goods funded by the rates struck and therefore should share in the responsibility for that funding.<sup>61</sup>

If it is valid to assume that the basic function of local government is to provide for the necessities of life (i.e. roads, bridges, by-laws) to the residents of the area served, the bald proposition that Māori land is all rateable unless exempted can be questioned given the:

- nature of the tenure (owners absent from the area)
- facts surrounding the location and utilisation of land
- disregard given to contributions (current and past) by the owners of the land to the public good
- non-recognition of the rates payments made by individual land owners in respect of their business or dwelling on other non-Māori titles (which effectively creates a double impost)
- the fact that past inability to pay rates over a long period has resulted in a lower level of provided services or representation of viewpoint.

***Contribution of funding based on the marketability of land does not apply to Māori land:*** One of the most fundamental tenets of the Rating Valuations Act 1998 is

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<sup>61</sup> E.g. Wanganui Chronicle article 11 May 2007

that the share of contribution to funding is based on the marketability of land. The Act, however, is conspicuously silent on the relationship of Māori land and rating valuations or assessments. The basis for the application is the value of the land in financial terms expressed as the value recoverable on sale. As noted, this is not applicable to Māori land.

The inherent tradeability of the land units assumed for rating valuations is antithetical to Māori land tenure. This is a function of the well known cultural value attaching to Māori land that creates obligations of stewardship and which includes the retention of the land as the cornerstone of the whanau or hapu's identity.

With the inconsistencies and inequities inherent in the basis for striking general rates it is surprising that the basic mismatch has not been clearly acknowledged earlier especially given the chequered history of rates and Māori land set out in previous sections. The Mangatu decision contains the Court of Appeal's confirmation that the cultural values expressed in specific caveats on the freedom to sell or trade Māori land represent a significant discount to that value. In declining to provide guidance on the extent of the discount the Court of Appeal seemed to acknowledge that any discounted value between 0 and 100% would be lawful if the circumstances warranted. The test for value requires the determination of the owner's interest in the land, that it must be assumed that the hypothetical purchaser is a person of reasonable prudence properly informed of all the relevant facts which include the restraints on sale that apply to the purchaser<sup>62</sup>. That is, there is an explicit requirement to apply a discount that recognises the cultural values inherent in the statutory processes and constraints on sale of Māori land.

The Valuer General's response has added to the uncertainty rather than remove it. A bland formula and the formulaic application of it is not what is required by the Court of Appeal's direction that each individual circumstance is different. Further, while the agreement with the appellants may well have been good value for the parties the application to other lands is difficult and at times inappropriate.

It is argued in support of the Valuer General's approach (of treating Māori land the same as general land) that Māori land does sell and when it does it sells for full market price. This argument, though convenient, overlooks two very basic facts. The first is the Court of Appeal in the Mangatu case has said that the valuer must take account of the constraints on sale. The second is that when Māori land is sold the vendors have negotiated the various constraints, obtained the necessary consents and thereby removed the characteristics that distinguish that land from a parcel of general land.

***Māori land is already treated as an exception in rating legislation:*** There is ample and clear evidence that Parliament has identified that the application of the full panoply of rating law to Māori land should not occur by removing Māori land from the enforcement of rates by sale and limiting recovery of income options.

The Local Government Act's requirement of a remissions and postponement policy is a further example of the recognition of a special situation.

One predictable effect of the policies on remission and postponement exemption is an inexorable but glacial reduction in Māori land being rated.

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<sup>62</sup> Mangatu (supra)

The combination of the limitation period for enforcement of debts the local government administrative dictates on accounting for arrears (6 year write off) and the proscription on sale to enforce the arrears has effectively resulted in the payment of rates by Māori land owners being a voluntary expression of their willingness to share the funding burden of the region.

In the meantime the accountability of Māori land owners will continue to cause them stress and financial hardship. The accountability of rating authorities is also undermined if they cannot certify the accuracy of their collection of rates.

***The unique status of Māori land is acknowledged constitutionally and historically:*** Several facts bring this group of issues to bear on the approach to address the impacts of rating law on Māori land.

First, as already mentioned each owner in Māori land will be a rate payer in their own right in respect of business or dwelling premises. This relates to their constitutional obligation to meet the price of their citizenship. In addition, there is an unequivocal acceptance of targeted rates for specific services.

Second, the Crown has a positive obligation to see that Māori land is retained and available for the fulfilment of cultural values<sup>63</sup>.

Third, an argument before the Waitangi Tribunal states that the rating power is an abrogation of the Crown's undertakings and the Māori land owners' prerogatives confirmed and guaranteed in the Treaty of Waitangi.

Further, despite these obligations and guarantees, rating laws (among others) have been used to prejudice the capabilities of the land owning groups to function as equal parties in the local government processes.

The absence of meaningful consultation prior to the imposition of laws with such portentous impacts on Māori land and its owners is, arguably, itself a breach of those obligations.

***Māori land is distinguished by a complex and statutorily prescribed ownership system:*** The multiplicity of owners retaining their cultural (and beneficial ownership) ties to their land has placed an unmet demand on the administrative services available to keep an accurate record of that ownership. Addressing the communication costs involved in ensuring a system of accountability for decisions affecting the land, Parliament has established a comprehensive framework for dealing with the land and the interests within it. That is the Māori Land Court, no longer *parens patriae* but closely resembling a statutory manager, and other intermediaries can make decisions within strictly defined parameters. Not only is this different to General land, it contains dynamic factors that alter the way that a demand for rates from those owners in respect of that land should be viewed.

- The ties are principally non-financial and bear little or no relationship to the roads, libraries or functions of the local authority.

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<sup>63</sup> See e.g. note 2 above

- The owners are, quite often resident great distances from the land and in the vast majority of cases not resident on it.
- In more cases than not an individual owner's beneficial interests are small and insufficient of themselves to force a result desired by that owner.

The gross under resourcing of the ownership record system has been a major contributor to the nature and extent of this issue. Although considerable effort is now being applied, it will be some time before the system is adequate to meet the communication demands of the burgeoning and increasingly mobile Māori land owning population.

The other dominant characteristics of Māori land also place in serious doubt the capacity of the land to meet the rates burden that is being asked to be borne.

***b. Using a different start point: Māori land as nonrateable***

The impacts, issues and fundamental differences that have been identified combine to create a situation where the current systems for the rating of Māori land are not working but are not capable of incremental or piecemeal repair. A new start point is required:

- Begin with the premise that Māori land is not rateable for general rates
- Where the subject land receives and accesses services, (through occupation or use of the land), targeted or specific purpose rates would apply.
- Where the subject land is used and/or occupied, then general rates would apply. The extent of rates paid would depend on the extent of fulfilment of identified criteria associated with the nature of the land or the nature of use.

These proposed qualifications would be supported by a national policy on the rateability of Māori land reflected in legislation. The legislation would stipulate that the policy required remission of the general rates for Māori land unless and until that land was serviced and/or utilised. The onus would lie on the local authority, (having the incentive and resources to act), to demonstrate the extent that the land concerned satisfied the conditions needed for various rates charges.

The proposal is tantamount to ascribing a rating value of zero to Māori land – for the reasons advanced above – and it reflects the fact 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. This does not only apply to unoccupied and unimproved land but creates inequities with occupied and productive land. For example, in the case of two dairy farms that are identical in all respects aside from the fact that one is Māori land a difference arises as to how they respond to prevailing economic imperatives. The owners of the non-Māori land farm can sell and buy elsewhere if the permitted uses change, if cost increases in components such as rates become too high or if they decide that they can obtain a better return on their capital elsewhere. The Māori land managers or owners do not have that option. Therefore, even in the case of productive land, the market value analogy is not applicable. It is similar when comparing general residential land and Māori land used as a residence even by a small number of identifiable owners. In the former case of the general land, the owner can benefit from the higher valuation through a realisation of assets or can

adapt to a higher rates burden by relocating. Neither options are available to the Māori owners who, due to cultural imperatives and the nature of their occupation and landholding, will probably pay general rates but will be doing so on the basis of inequitable principles.

Within the proposed system of assuming the non-rateability of Māori land and building a rating case, the basis of valuation of land that is productively used and/or occupied would be made on the productive capacity of the land and the way in which it was fulfilling that capacity. The use of productive capacity would require abandoning the one-size fits all approach currently employed. Productive capacity values will also, in the long run, equate to the market value methodology that is presently used.

This approach would meet the call made by local authorities in submissions that central government should take a leadership role and execute its responsibilities. It would leave a clearer definition of the local authorities' role. The benefits of a system of assuming the non-rateability of Māori land and building a rating case is that it reaches through history to find the strengths of the rating system, it acknowledges the willingness of the Māori populace to shoulder their fair share of the rates burden and replaces the current incommodious system with one that promises a long term solution. The proposed system:

- Builds on differences recognised by the Courts and within current policy;
- Reflects the perspective of Māori land owners who place emphasis on cultural values and Treaty rights;
- Relieves local authorities of costs associated with attempts to collect rates of Māori land;
- Does not materially reduce revenue streams;
- Potentially increases revenue streams by removing disincentives to bring land into productive use;
- Provides incentives for local authorities to work with Māori land owners to move unproductive land into a category of development.

There is a risk that the system proposed could be viewed by non-Māori as selective treatment especially if the wider public do not see much benefit from other review proposals. It is also possible that Māori land is seen as a lesser class of land. Many of these issues arise from perception rather than the reality of the situation and could be addressed with proper explanatory information. The reality of the situation is that rates are charged at an uncollectible level from land owners that can not and will not pay. These proposals offer the method to improve this situation. They also offer a portal for the application of collateral policies such as title improvement and land development that will address some of the key barriers to development on Māori lands.

**c. *Addendum: Māori land converted to General title***

Māori land converted to General land under the Māori Affairs Amendment Act 1967 is a specific category of land that has borne a disproportionately heavy impact of rating powers – it comprises the lands that underwent a change of status as the result of the

amendments made 40 years ago to the Māori land legislation. It is discussed at section 4 ii (f) above.

This is land that would be Māori land but for the legislative intervention that wrought a radical change without the owners' participation let alone consent. As the cases documented to the Inquiry evidence, that land is still regarded and treated by the owners as their ancestral land in exactly the same way that other land within the whanau and hapu is treated.

However, by virtue of that interference with the property rights of the owners they now suffer the prospect of loss of land through rating sales. The Western Bay of Plenty District Council is to be commended for adopting a remission policy that this category of land treated in the same way as Māori land. It is clear that reliance on the perspicacity of the local authorities is insufficient to afford a coherent and comprehensive response to this vexed issue.

Therefore, it should be a specific recommendation that such lands are treated in the same way as Māori land for the purposes of rating and in all respects of the assumption of liability, levying, management and enforcement of sanctions.

The Māori Land Court will need to be brought in to assist with identification of such lands.

## APPENDIX I: Record of Consultation and Submissions:

### a. Consultation Hui

- 8 March Napier
- 12 March Nelson
- 22 March Christchurch
- 12 April Wanganui
- 16 April Rotorua
- 17 April Gisborne
- 18 April Auckland
- 19 April Whangarei
- 7 May Wellington
- 14 May Invercargill
- 17 May Hamilton

### b. List of Māori Submitters by Submission Number:

| File number | Date Received | Individual/Organisation name                          |
|-------------|---------------|---|
| 120         | 27/03/2007    | Chambers, E. Ngati Awa Trust                          |
| 402         | 24/04/2007    | Māori Law Society                                     |
| 419         | 24/04/2007    | Morikaunui Incorporation                              |
| 428         | 30/04/2007    | Ngati Rarua Atiawa Iwi Trust and Wakatu Incorporation |
| 487         | 26/04/2007    | Rawiria Kena Kena                                     |
| 489         | 26/04/2007    | Bradbrook, Horiwia                                    |
| 556         | 30/04/2007    | Te Taiwhenua o Heretaunga                             |
| 590         | 30/04/2007    | Chadwick, A.D.G                                       |
| 602         | 30/04/2007    | Naera, Hera & Joseph Tahana                           |
| 604         | 30/04/2007    | Ngaiterangi Iwi                                       |
| 605         | 30/04/2007    | Tiroa E & Te Hape B Trusts                            |
| 617         | 30/04/2007    | Te Iwi o Rakaipaaka Inc                               |
| 629         | 30/04/2007    | Lake Taupo Forest Trust                               |
| 631         | 30/04/2007    | Ngati Whenua Rahui Committee                          |
| 634         | 30/04/2007    | Ngati Awa Runanga                                     |
| 653         | 30/04/2007    | Ngati Kuta Hapu Ki Te Rawhiti                         |
| 654         | 30/04/2007    | Willowby, R & Clendon, M                              |
| 681         | 2/05/2007     | Manning, Richard C                                    |
| 683         | 3/05/2007     | Ngati Whenua Nga Rima o Kaipara                       |
| 705         | 28/04/2007    | Greening, W.E.  |
| 709         | 30/04/2007    | Brown, Pehimana Haapu                                 |
| 713         | 30/04/2007    | Ahu Whenua Trust                                      |
| 714         | 30/04/2007    | Olsen, BA   |
| 722         | 4/05/2007     | Mariu, TP   |
| 737         | 29/04/2007    | Te Nahu, R  |
| 756         | 7/05/2007     | Hato Paora Co-operative Co.Ltd                        |
| 761         | 8/05/2007     | Patuharakeke Te Iwi Trust Board                       |
| 767         | 10/05/2007    | Federation of Māori Authorities                       |
| 771         | 11/05/2007    | Māori Trustee   |
| 773         | 14/05/2007    | Heaslip, Peter  |
| 895         | 14/05/2007    | Grey, Pani  |
| 902         | 16/05/2007    | Pipiriki Inc  |
| 905         | 21/05/2007    | Taitokerau Iwi/Chief Executives Form                  |

|     |            |   |
|-----|------------|---|
| 906 | 17/05/2007 | Te Kanawa, Dan  |
| 907 | 17/05/2007 | Dickson, Matiu  |
| 908 | 17/05/2007 | Bidois, Rawiri  |
| 909 | 17/05/2007 | Te Moananui, Peter  |
| 910 | 22/05/2007 | Wairoa DC Māori Standing Cmmttee  |
| 911 | 22/05/2007 | Bramley, MoyraTeAriki   |
| 912 | 22/05/2007 | Ngai Tahu Māori Law Centre  |
| 913 | 29/05/2007 | Tuwharetoa Māori Trust Board  |
| 918 | 28/05/2007 | Te Kupenga o Ngati Hako Inc   |
| 920 | 29/05/2007 | Willoughby,R  |
| 921 | 29/05/2007 | Te Runanga-a-lwi-o Ngati Kahu   |
| 922 | 29/05/2007 | Warbrick,N  |
| 923 | 29/05/2007 | Western Bayof Plenty DC Māori Forum   |
| 931 | 1/06/2007  | Wilcox, Haana   |
| 932 | 1/06/2007  | Hauraki Māori Trust Board   |
| 933 | 1/06/2007  | New Zealand Māori Council   |
| 934 | 1/06/2007  | Hauraki Māori District Council and New Zealand Māori Council                      |
| 935 | 1/06/2007  | Te Kanawa, Marleina   |
| 936 | 1/06/2007  | Kee, Joe  |
| 938 | 1/06/2007  | Kaati, John   |
| 939 | 1/06/2007  | Kee, Harriet  |
| 941 | 6/06/2007  | Palmer, Edward James  |
| 942 | 7/06/2007  | Nga tai o kawhia regional management committee of the maniapoto Māori trust board |
| 943 | 8/06/2007  | Maniapoto Trust Board   |
| 944 | 11/06/2007 | Winiata, Vance M  |

c. Alphabetical List of Māori Submitters:

| Individual/Organisation name                                 | File number | Date Received |
|--|-------------|---------------|
| Ahu Whenua Trust   | 713         | 30/04/2007    |
| Bidois, Rawiri   | 908         | 17/05/2007    |
| Bradbrook, Horiwia   | 489         | 26/04/2007    |
| Bramley, MoyraTeAriki  | 911         | 22/05/2007    |
| Brown, Pehimana Haapu  | 709         | 30/04/2007    |
| Chadwick, A.D.G  | 590         | 27/03/2007    |
| Chambers, E. Ngati Awa Trust                                 | 120         | 27/03/2007    |
| Dickson, Matiu   | 907         | 17/05/2007    |
| Federation of Māori Authorities                              | 767         | 10/05/2007    |
| Greening, W.E.   | 705         | 28/04/2007    |
| Grey, Pani   | 895         | 14/05/2007    |
| Hato Paora Co-operative Co.Ltd                               | 756         | 7/05/2007     |
| Hauraki Māori District Council and New Zealand Māori Council | 934         | 1/06/2007     |
| Hauraki Māori Trust Board                                    | 932         | 1/06/2007     |
| Heaslip, Peter   | 773         | 14/05/2007    |
| Kaati, John  | 938         | 1/06/2007     |
| Kee, Harriet   | 939         | 1/06/2007     |
| Kee, Joe   | 936         | 1/06/2007     |
| Lake Taupo Forest Trust                                      | 629         | 30/04/2007    |
| Maniapoto Trust Board  | 943         | 8/06/2007     |
| Manning, Richard C   | 681         | 2/05/2007     |
| Māori Law Society  | 402         | 11/05/2007    |
| Māori Trustee  | 771         | 11/05/2007    |

|   |     |            |
|---|-----|------------|
| Mariu, TP   | 722 | 4/05/2007  |
| Morikaunui Incorporation  | 419 | 24/04/2007 |
| Naera, Hera & Joseph Tahana   | 602 | 30/04/2007 |
| New Zealand Māori Council   | 933 | 1/06/2007  |
| Nga tai o kawhia regional management committee of the Maniapoto Māori trust board | 942 | 7/06/2007  |
| Ngai Tahu Māori Law Centre  | 912 | 22/05/2007 |
| Ngaiterangi Iwi   | 604 | 30/04/2007 |
| Ngati Awa Runanga   | 634 | 30/04/2007 |
| Ngati Kuta Hapu Ki Te Rawhiti   | 653 | 30/04/2007 |
| Ngati Rarua Atiawa Iwi Trust and Wakatu Incorporation                             | 428 | 30/04/2007 |
| Ngati Whenua Nga Rima o Kaipara   | 683 | 3/05/2007  |
| Ngati Whenua Rahui Committee  | 631 | 30/04/2007 |
| Olsen, BA   | 714 | 30/04/2007 |
| Palmer, Edward James  | 941 | 6/06/2007  |
| Patuharakeke Te Iwi Trust Board   | 761 | 8/05/2007  |
| Pipiriki Inc  | 902 | 16/05/2007 |
| Rawiria Kena Kena   | 487 | 26/04/2007 |
| Taitokerau Iwi/Chief Executives Form  | 905 | 21/05/2007 |
| Te Iwi o Rakaipaaka Inc   | 617 | 30/04/2007 |
| Te Kanawa, Dan  | 906 | 17/05/2007 |
| Te Kanawa, Marleina   | 935 | 1/06/2007  |
| Te Kupenga o Ngati Hako Inc   | 918 | 28/05/2007 |
| Te Moananui, Peter  | 909 | 17/05/2007 |
| Te Nahu, R  | 737 | 29/04/2007 |
| Te Runanga-a-Iwi-o Ngati Kahu   | 921 | 29/05/2007 |
| Te Taiwhenua o Heretaunga   | 556 | 30/04/2007 |
| Tiroa E & Te Hape B Trusts  | 605 | 30/04/2007 |
| Tuwharetoa Māori Trust Board  | 913 | 29/05/2007 |
| Wairoa DC Māori Standing Cmmttee  | 910 | 22/05/2007 |
| Warbrick,N  | 922 | 29/05/2007 |
| Western Bayof Plenty DC Māori Forum   | 923 | 29/05/2007 |
| Wilcox, Haana   | 931 | 1/06/2007  |
| Willoughby,R  | 920 | 29/05/2007 |
| Willowby, R & Clendon, M  | 654 | 30/04/2007 |
| Winiata, Vance M  | 944 | 11/06/2007 |