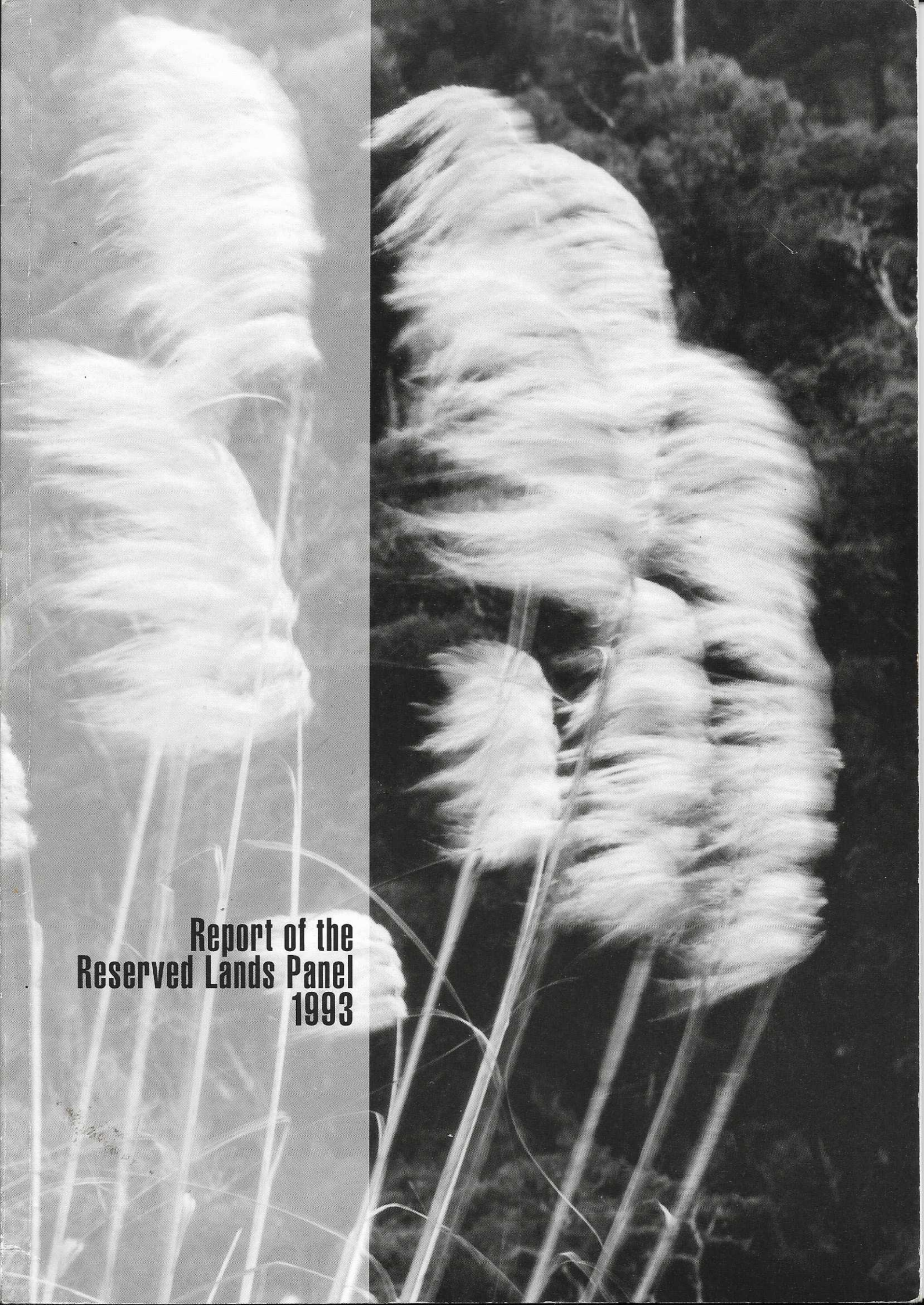

Report of the Reserved Lands Panel 1993

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Toi te Kupu

Toi te Mana

Toitū te Whenua

Nā reira

Kia tau te Rangimārie

I runga i ngā mea Tika

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HE WHAKAARO – SOME GENERAL REFLECTIONS

Our experience as the Māori Reserved Lands Panel has reflected the experience of Charles Dickens:

It was the best of times; it was the worst of times;
it was a time of mirth and a time of sorrow;
there were cries for justice; there were appeals for mercy;
but above all else, there was a common plea for finality.

In our case the plea for finality was in order to bring certainty to a situation where uncertainty has been wreaking havoc in the lives of so many for so long. But finality cannot be achieved until the Government acts and proactively sets about rectifying injustice and promoting the common good of all citizens. Furthermore, finality will be achieved only if both owners and tenants are empowered and encouraged to negotiate their own solutions to their problems; solutions which they can regard as fair and just, and encompassing all their particular or unique circumstances.

A civilised nation is one whose government protects the personal rights and liberties of its citizens while at the some time promoting the common good, so that all people are able to live with each other in a just and peaceful social environment. This is a primary responsibility of a nation's government.

The facts overwhelmingly call for immediate action to dismantle and abolish the system of perpetually renewable leases of Māori reserved land. Further delay cannot be justified, for the system involves not only the Government, owners and tenants but also the thousands of New Zealand citizens who are families of tenants and beneficial owners; ultimately it impacts upon all New Zealanders. The issues are not so much legal, commercial and economic; they are vitally personal and go to the very heart of human relationships in this country.

Undoubtedly there are financial costs to be borne if the liberties and rights of Māori land owners are to be restored. But Māori land owners are in a special position in this country. They are unique partners with the Crown in a sacred Treaty. The redemption of their rights is a matter of urgency if justice and peace are to prevail. All citizens must participate in supporting the Government in playing its role.

We have been honoured to participate in this process and present this report as a part of our contribution to the cause of ensuring that peace reigns in our nation.

EXECUTIVE SUMMARY

1. The legislatively imposed system of perpetually renewable leases of Māori reserved land is generally accepted to be inequitable and unjust and should be terminated.

2. The fairest and the most effective way of rectifying the situation is for owners and tenants themselves to negotiate their own arrangements to terminate these leases in a way that brings about the least possible disadvantage or injury.

3. The Crown should play an active role in this process by empowering and resourcing owners and tenants to negotiate their own solutions.

4. The Crown should facilitate these negotiations and alleviate any hardship which may otherwise follow by:

   a. providing independent and appropriately skilled services to facilitate mutually acceptable settlements between owners and tenants

   b. providing appropriate financial assistance to perfect and implement these settlements if for any reason normal commercial facilities are not readily available

   c. investigating the possibility of either buying reserved land subject to residential leases or exchanging it for surplus land

   d. enacting legislation as soon as possible to provide a statutory framework for the termination of leases where owners and tenants are unable or unwilling to reach mutually acceptable solutions.

5. After having considered submissions from owners and tenants over a 4 month period the Panel considers that the statutory framework should follow the proposals set out in the Government's *A Framework for Negotiation – Toitū te Whenua*[1] with the following modifications:

   a. *Termination of Leases*
   There should be no third right of renewal such as has been proposed. All leases should terminate after two further 21-year periods of renewal.

   b. *Rent Reviews*
   Rent for all leases should be reviewed to market levels in 3 years time, rather than the 14 years proposed. That rent should then be reviewed every 3 years and fixed by agreement between the parties or failing agreement by arbitration so that it reflects the current market rent from time to time.

   c. *Rights for Owners to Purchase Tenants' Interests*
   Throughout the remaining term of the lease (including the two periods of renewal) owners should have the first right to purchase tenants' interests at market value, to be fixed by agreement between the parties or failing agreement to be fixed by arbitration.

1. Published by Te Puni Kokiri in 1993.

d. *Sale of Owners' Interests*
Owners should be empowered to sell their interest in these leases on a voluntary basis at market value to be fixed by agreement between the parties or failing agreement to be fixed by arbitration.

e. *Assessment of Market Rent*
As a means of assisting in the equitable and economic assessment of the market rental of the owners' interests, Valuation New Zealand should fix a series of benchmarks to establish the ratio which the Unimproved Value of the land bears to the Land Value given that no free market in unimproved land currently exists.

6. There is in many cases dissatisfaction with the Māori Trustee's administration of perpetually renewable leases particularly where residential properties are concerned. The time has come for the Māori Trustee to phase itself out of the administration of Māori reserved land. In most cases positive action should be taken immediately to return Mana Whenua[2] to the owners of this land and for owners to be assisted in this process.

2. Effective control over land.

1. INTRODUCTION

Historical Background

Perpetually renewable leases of what are now called Māori reserved lands were instituted by law under a variety of circumstances and at various times in New Zealand's history. The system bears strong similarities to Glasgow leases which arose from a strategy used by the Borough of Glasgow to encourage commercial development in that city[3]. But in New Zealand the system has resulted in the owners of these Maori lands:

a. losing their rights to make decisions about their own property

b. failing to receive true market rentals

c. having unclaimed rents diverted to "general Māori purposes" without the owner's consent or involvement

d. suffering a loss of financial interest in the value of the land. A goodwill factor has been created for the tenants rather than the owners. This has enabled tenants to sell at prices close to freehold value with no benefit to the owners.

In 1955 some 40 separate pieces of legislation relating to Māori reserves were consolidated into the Māori Reserved Land Act. It now provides the current law relating to the administration of the leases of all of these reserves.

Grievances relating to these leases have given rise to many reviews. Some of these are:

- The Report on Native Reserves on the West Coast, Middle Island in 1878 by the Young Commission.
- The Royal Commission appointed under the Confiscated Land Inquiry and Māori Prisoners Trials Act in 1879 by the Fox-Bell Commission.
- The Review by the Kendrick Commission of the Native Reserves at Arahura, Greymouth, Nelson and Motueka in 1886.
- The Report of the Rees, Carroll and MacKay Commission appointed to inquire into the subject of Native Land Laws in 1891.
- The Seth-Smith Commission on the West Coast Settlement Reserves (North Island) in 1906.
- The McArthur, Kerr Commission on the West Coast Settlement Reserves (North Island) Commission 1912.
- The Sim Commission on Confiscated Native Lands and other Grievances in 1928.
- The Myers Commission on Rental under Leases of West Coast Settlement Reserves in 1948.

Then in 1975 the Commission of Inquiry chaired by Bartholomew Sheehan reported on the administration of Māori reserved land, the acceptability of statutory powers for dealing with these lands, the alienation provisions and

3. An alternative explanation for the origin of the term is that it is derived from Lord Glasgow, Governor-General of New Zealand in the 1890s when many of these early forms of lease were introduced. Lord Glasgow was known for leasing out his racehorses but always retaining ownership (R.L. Jefferies NZVJ December 1989:19).

the methods and frequency of rent reviews. The Commission found that Maori owners had been treated unfairly from the outset. Sixty six recommendations were made in a comprehensive report. Some recommendations concerning the administration of the leases and continued alienation of lands were implemented but the recommended changes to rental provisions were not made.

Since 1978 a number of committees have considered the issues, but nothing has been done. Then, in 1991, a Review Team was appointed to revisit the principles set out in the report of the 1975 Commission of Inquiry and in the Waitangi Tribunal's Ngai Tahu Report, with the purpose of recommending methods for removing the inequities facing the Māori owners of reserved land. That team made further comprehensive recommendations but these were unacceptable to the Crown.

Background to this Report

In 1993 the Crown acted; publishing its proposals for resolution of Māori reserved land issues in *A Framework for Negotiation – Toitū te Whenua* ("the Proposals"). These Proposals were designed to end perpetual leases of Māori reserved land and to convert these leases to a commercial basis through a legislated framework.

The Proposals provided for:

a. termination of leases at the end of the existing term plus two further periods of 21 years allowing existing tenants tenure of between 42 and 63 years

b. Māori owners to either purchase the tenants' improvements at valuation during the time of this tenure, or to grant an additional 21 year lease at the end of that time and to own the improvements at the end of that third extension

c. rent reviews to market levels for all leases in 14 years time, with the existing rental rate (subject to the normal review at the commencement of each 21 year term), remaining in the meantime

d. rent reviews every 7 years thereafter

e. the tenants of urban residential leases and their surviving spouses to occupy the properties for their lifetime (with the lease expiring 3 months after the death of the tenant or his/her spouse), or for two further periods of 21 years, whichever was the longest

f. no compensation to be payable by the Crown to the tenants

g. owners to be granted the first right of refusal to purchase the tenants' interests if they were offered for sale

h. tenants to be granted the first right of refusal to purchase the land if it was offered for sale and landowners to be empowered to sell their interest in the land on a voluntary basis.

The Proposals were all subject to the overriding principle that owners and tenants could come to different arrangements at any time by mutual agreement.

The Appointment of the Panel

When the then Minister of Māori Affairs released the Proposals he sought public involvement in the process leading up to a new Māori Reserved Land Act. He asked for consideration of the issues and of the Crowns' proposals and announced that he would appoint a Reserved Lands Panel to consult on the Proposals through public meetings throughout the country. We were appointed for that purpose.

We had no formal written terms of reference. Our primary role, stated in a short letter of appointment to each Panel member, was to hold public meetings to take submissions on the Proposals[4] and to report back to Government with the opinions and reactions of affected owners and tenants.

Our second role, stated in a press statement released by the Minister on 6 August 1993 was to act in a facilitative role to advance the resolution of this long-standing and complex issue.

This report reflects the Panel's double brief. We first report on and discuss submissions we received on the Proposals, and we recommend changes to those Proposals. We then set out our recommendations for facilitating negotiation and change.

The Process Followed

The Panel travelled to the areas where reserved land leases are situated during August, September, October and November 1993.

Visits were made to:

Nelson and Motueka	(August 23-24 and October 7-8)
Taranaki	(September 22-24 and November 24-26)
Rotorua	(September 29)
Te Araroa	(September 30)
Tokomaru Bay	(October 1)
Wellington	(October 4)
Palmerston North	(October 5)
Taumarunui	(October 6)
Christchurch	(October 11)
Greymouth	(November 10-12)
Te Kuiti	(November 18)
Hamilton	(November 19).

The Panel received and considered 125 written submissions. We were present at 12 meetings of owners attended by approximately 450 people and met with 352 tenants. In the Appendix to this report we detail the people from whom submissions were received.

In most areas the Panel met tenants and owners at different times – either in groups or individually. In those areas where owners were incorporations or trusts we met with their representatives, but we also attempted to meet with and talk to beneficial owners themselves in order to achieve the widest consultation possible. To all of those people, owners and tenants, we express our deepest gratitude for the way in which the discussions were carried out. In most cases people were able to move from the rhetoric to practical issues. We were impressed by the quality of the consultation and by the overall desire to seek a practical solution which would accommodate the opposing views and desires of both owners and tenants.

4. There was initially some confusion about which leases were affected by the Proposals, particularly in the Nelson and Motueka areas. The Panel notes that the Government's intention is that all leases which are or which have been subject to the Māori Reserved Land Act 1955 would be affected by the proposed reforms. Submissions were therefore taken on all reserved land leases, whether prescribed or arbitrated.

2. A STATEMENT OF PRINCIPLES

In our view the task of abolishing the present system of perpetually renewable leases of Māori reserved land is a response to remedy an injustice. Principles of justice rather than of law should therefore dominate. It is not enough simply to amend some statutory provisions and deal with the niceties and refinements of legal principles; in considering what response is to be made the following general principles ought to be paramount.

1. *The Injustice of the Present System*

It must first be recognised that the present system has interfered with the natural and inherent rights of Māori land owners by:

a. removing Te Tino Rangatiratanga, their right to make their own decisions in respect of their land; the system has treated them like children or people under a disability incapable of making their own decisions simply because they were Māori

b. depriving them of a true market return for the use of their land.

If the rationale for the original system of imposed Glasgow type leases was to expedite the development of New Zealand that objective has now been fulfilled and the time has come to return full control to the rightful owners.

The system achieved its results by means of "contracts" which, although legally sanctioned, have totally lacked the consent or approval of the owners. These contracts are morally wrong and unjust. The system therefore must be terminated and any past injustices must be redressed. The process of reform must rectify the injustice and provide an appropriate system to remedy the consequences of that injustice.

2. *The Need for Negotiation*

In considering how the injustices of the present system might be redressed care must be taken to ensure that injustices are not repeated or created in the process. Imposed solutions should therefore be a last resort. Instead people should be empowered to find their own solutions to the problems which have been created and in which they are now personally and uniquely involved. The best means of ensuring that the objectives of this reform are realised with minimum disruption is for owners and tenants to negotiate directly to bring about a solution which is acceptable to them and their circumstances.

3. *The Crown's Role in Alleviating Hardship and Minimising Disruption*

The Crown has an important role to play in this process. It was the perpetrator of the original injustice and it has allowed that unjust situation to continue over many decades by its inattention to the calls for action made by successive inquiries and commissions. In addition it has an overall responsibility to ensure that proper provision is made for all of its citizens. If entering into new arrangements to achieve a solution will cause hardship to

a tenant or to an owner the Crown must seek to alleviate that hardship. It must attempt to minimise the disruption that may be caused by the new arrangements and be seen to accept and actively pursue its role of rectifying an unjust system sanctioned by its own inaction.

4. *Responsibilities to the Taxpayer*

No present tax payer should be expected to "compensate" any present tenants for the termination of any perceived right to a commercial advantage which they have enjoyed over their commercial competitors especially when that advantage has been gained by means of an injustice set up by a previous government. There is however a collective responsibility for New Zealanders as a whole to participate in redressing the wrongs of the past and in ensuring that the victims of those injustices receive compensation.

3. GENERAL COMMENTS ON THE PROPOSALS

Regardless of where the Panel went and no matter who made the submissions, whether they were owners or tenants, all who came to us were initially of one mind. They rejected the Proposals. Most of their submissions were in highly emotive language, but the universal rejection they expressed came from the diametrically opposed viewpoints of owners on the one hand, and tenants on the other.

Tenants all expressed a disbelief that they might be asked to give away their statutory "contractual rights" without receiving any compensation. Many emphatically emphasised the sanctity of their statutory contract and while most did not deny that injustices may have occurred in the past they did not accept that anyone other than the Crown should have to confront and acknowledge these injustices.

Land owners on the other hand could not agree that they should have to wait 14 years before they received a just return by way of realistic commercial rents. They totally rejected the suggestion that they should wait up to 63 years before they were able to regain control of their own land. But they went further. They were aggrieved at the Proposals, not only for themselves but also for their tenants. A letter received from one Māori incorporation typified the view of most of the owners:

> *... let me reconfirm that the Incorporation sees the Government's proposals as they currently stand as being unacceptable on several counts.*
>
> *Firstly in that they do not consider the issues of compensation either for Māori or for the lessees. From an Incorporation point of view, we would see our issues of compensation being addressed to the Waitangi Tribunal. We are however seriously concerned that lessees have the ability to have this matter addressed.*

It became clear to us that this universal rejection of the Proposals was based upon a misunderstanding of their primary and essential intent. That is, that owners and tenants should negotiate and determine their own affairs rather than having their futures determined by the Crown. The Proposals in the form they were presented gave insufficient emphasis to this principle.

The various parties considered the Proposals were to amend the terms of the legislation and that these were the **only** options available. They did not see the proposed legislative framework as a backstop position from which they might negotiate their own solutions. The prominence given to the issues involved from the respective viewpoints of owners and tenants on pages 4 and 5 of the booklet served to confirm the respective prejudices and personal bias of both owners and tenants.

The desirability of the parties negotiating their own solution is seen by the Panel as of primary importance. It must be projected and promoted as being at the very forefront of the solutions proposed. It must be elevated and highlighted so that it is seen as the Crown's response to the Māori owner's complaint that successive governments have prevented them from exercising Mana Whenua and Te Tino Rangatiratanga[5]. It must also be seen as the Crown's way of enabling tenants to play their part in remedying injustices of the past and freeing themselves from a regulated and prescribed

5. Full supremacy.

environment but without unduly disadvantaging them as innocent parties. The encouragement to negotiate must also be seen as the Crown's recognition that people's own individual and unique circumstances must be foremost in the management and regulation of their business affairs.

Furthermore negotiated contracts are far more likely to be upheld and implemented than those that are seen to have been imposed by a bureaucracy which has no knowledge of the personal and private details of the parties' living, working and economic environment.

All of the other proposals must be seen to be the fall-back or default position which come into play only if owner and tenant are unable or unwilling to come to their own solutions.

4. PARTICULAR RECOMMENDATIONS

1) The Transition Period for Termination of Leases

In the Proposals it is suggested that:

> *Leases should terminate at the end of their existing term, plus two further periods of 21 years (this will provide existing tenants with between 42 and 63 years further tenure under the leases depending on the date on which leases were last renewed).*

Provided that rentals are restored to a market basis very soon we agree with this proposal. There is a need to balance the restoration of the owners' Mana Whenua against the provision of a sufficient period of adjustment for tenants to facilitate the rearrangement of their business and family affairs. There is also a need to allow the Māori owners sufficient time to accumulate a pool of funds from the market rental for re-investment or for the purchase of tenants' interests.

We are of the view that this balance is achieved by the Proposals. We would anticipate that the majority of the transactions we subsequently discuss would be concluded within the first renewal period of 21 years. We nevertheless consider that in some instances a further right of renewal may be necessary in order to allow Māori owners sufficient time to put themselves in a position, financially and administratively, to effectively purchase tenants' interests at market values. It will enable the owners to achieve these objectives without being forced to sell part of the land which they might otherwise wish to retain. It will at the same time give tenants an equitable period in which to adjust without unnecessary hardship or disruption and to make other business arrangements. This may be particularly so for those leases currently administered by the Māori Trustee where owners have not yet had the opportunities which have been afforded to other owners through the establishment and operation of incorporations and trusts.

Furthermore there is a need to ensure that there is a managed purchase of tenants' interests in order to maintain market equilibrium. This may be particularly so in Taranaki and in Motueka where a large number of former tenants could potentially compete against each other to buy new properties. In a small market this could lead to an escalation in property market values which could seriously erode the interests of those tenants seeking an alternative to their original investment in leased land.

2) Third Extension or Period of Renewal

In the Proposals it is suggested that:

> *Upon expiry of the lease, owners could then pay tenants for the value of the improvements, or they might extend the lease for a further 21 years and then own the improvements at the end of that time.*

This proposal was seen by tenants as a total violation of their property rights and a complete disincentive to maintaining improvements to the land or continued development of properties. In the case of rural lands, improvements such as fencing, drainage and general fertility of the land

would be allowed to run down as the expiry of that final 21 year extension (with no compensation) approached. This could result in a significant reduction of New Zealand's productivity. The exact extent of such a loss is difficult to determine but we note that in 1988 the total value of tenants' improvements under the Māori Reserved Land Act 1955 was estimated to be $180 million.

Consequently we see no reason why this proposal should be retained. It is superfluous, creates a wrong impression and adds to the air of distrust of the whole scheme.

The Panel recommends that this suggestion be deleted from the Proposals.

3) Rent Reviews

In the Proposals it is suggested that:

> *Rent for all leases to be reviewed in 14 years time to market rent. In the meantime the existing rental rate, subject to the normal review at the commencement of each 21 year term, should remain as currently set. Rent reviews thereafter would occur at the end of year 7, and year 14, of each lease term, and at renewal (that is, 7 year review periods).*

There was little argument with the proposition that rent for commercial properties should be adjusted to market levels.

Some tenants noted that near-freehold prices had been paid for their leases, but it seems that this added value has been received by the wrong people. What should have been a premium or an added value for owners has been taken by a vendor tenant because of the value which has been placed on the capitalised rent saving and the favourable economic opportunity that the lease terms have conferred upon the tenants' business operations.

Owners were concerned that the 14 year delay was too long and that reviewing all rentals on the same day would be administratively difficult. We see no point in reviewing all rentals on the same day and agree that it would impose a number of unnecessary administrative difficulties. Although problems could possibly be foreseen in some instances in raising rents immediately to a commercial level, the imposition of a 14 year delay can only be seen as prolonging and acquiescing in the present injustice.

In our view Māori owners are entitled as a matter of justice to receive a fair economic return on the capital value of their land immediately. We see no reason why the transition to market rents should not be made within 3 years. Like the removal of subsidies in the wider economy, this would ensure that tenants exercised normal prudent commercial management; but it would also enable the Māori owners to make an immediate start on establishing a sinking fund for the purchase of tenants' interests.

While we make particular recommendations for urban leases we nevertheless recommend that all rents be reviewed every 3 years rather than every 7 years to ensure that they are maintained at current levels. This would be in line with modern commercial practice and would have the effect of levelling and cushioning the extent of any increase or decrease. With more frequent reviews we expect that rent reviews could be concluded on a consensus basis

more readily than at present with a consequent reduction in the cost of these transactions.

The Panel recommends that all rents be reviewed to market levels in 3 years, and thereafter be reviewed every 3 years.

4) Lifetime Occupancy for Residential Tenants of Rural Land

In the Proposals it is suggested that:

Existing tenants, living in residential properties (in townships) which are on Maori reserved land, be granted lifetime tenancy rights.

This proposal is restricted to urban properties but many submissions stressed that rural properties were often also residential in character and identity, at least in so far as a homestead (often of substantial proportions and long-standing) was involved. Family occupation has been maintained, often for generations, and many of the tenants regard themselves as having a real personal attachment to the land. In such cases all of the personal emotional complications of residential leases arise.

One tenant from Taranaki told the Panel that:

The lessee in today's terms has a stronger right to the land in that we farm the land, we provide the human factor from which the whole community benefits through the production we generate. The land must be cared for and we are the people who keep the land for the next generation, our skills contribute greatly to that which our land is today. As a result we feel very strong links with the land we occupy.

We recommend that existing residential tenants of rural leases and their surviving spouses be granted the same lifetime occupational rights (with leases expiring 3 months after the death of the tenants or his/her spouse which ever is the latest) as are proposed for the residential tenants of urban leases but that these rights should only accrue to existing tenants where the household or homestead is the tenant's principal place of residence.

5) Assessment of Market Rental

Although the Proposals specify that rentals should be raised to market levels they do not specify or suggest how a market rent for the owners' interest in a particular piece of land is to be determined.

The inflationary experiences of the last 30 or 40 years have led to general discontent with reviews of rental after 21 years. From the tenant's perspective any review usually results in rents which are too high in relation to the rent paid over the previous 21 years. Conversely owners consider the reviewed rent as both too low as an income or as a return on their investment asset. This has the inevitable result of one or both parties turning to litigation in an attempt to obtain a more advantageous level of rent.

Assessing Unimproved Value poses a major difficulty for valuers who have to value or justify a valuation of the unimproved element of land where there

are now no unimproved land sales. Without comparable sales or other transactions from which reliable comparisons may be made, arriving at a value for the unimproved element of any piece of land with any degree of certainty or acceptability is impossible.

This has led to the current situation in Taranaki where attempts to assess 1989 rentals have involved a massive exercise in logistics both in the collection of data concerning the physical aspects of each property and in the analysis of limited sales evidence utilised to justify or support valuations. Imagination and inventiveness have run riot among the legal and valuation professions as they attempt to ascertain the value of what is now a non-existent element of the land.

The need to fix the value of unimproved land has been described by one of the valuers involved as "anachronistic, expensive and likely to be totally impossible to implement at the next review date". The process in Taranaki has gone through assessment, negotiation, a Valuation Appeal Committee, and is now destined for the Court of Appeal.

All of this confirms the perception conveyed to us from many quarters that the process of fixing Unimproved Values has been high-jacked by the legal fraternity as they have endeavoured to control or impose upon the valuing process. A massive cost to owners and tenants has resulted. Much of this is regarded as unnecessary. It is certainly undesirable. But more importantly neither owner nor tenant know what rent is to be paid after nearly 5 years.

All of the valuers involved are concerned at the criticism directed at their profession. They are placed in a professionally untenable position as the subjective nature of assessing Unimproved Value provokes both parties to exploit the opportunity to maximise their gain through expensive litigation. While it is appreciated that the practice of valuation is an inexact science the fundamental cause of these disputes and the subsequent costs involved is the impossibility of proving or even confidently assessing an Unimproved Value.

We were assisted in our task by various valuers offering definite opinions as to what should replace the present requirement to assess Unimproved Value as a means of determining rental. All shared the view that there were huge difficulties involved in assessing Unimproved Value while the process of assessing Capital Value and Land Value was relatively simple; but there was no unanimity in how market rental should be assessed.

Some valuers felt that Land Value as defined in the 1970 amendment to the Valuation of Land Act 1951 presents an attractive base. It is a universally accepted concept and can be ascertained with more certainty and much less cost than the Unimproved Value. This would involve the transfer of at least some of the tenants' improvements to the owners. The difference between the Unimproved Value and Land Value would need to be determined but this could efficiently be fixed on a "one-off" basis by a team of valuers appointed by tenants and owners. As this figure may be relatively low it may be easy to establish on a negotiated basis. The cost could be amortised over the balance of the period of the lease (and the rental reduced accordingly) so that at termination the tenant would be compensated for the buildings and structural improvements above the ground only. But all this would have the effect of reducing the cash flow to current owners against their will and would involve a purchase by already impoverished owners and transaction costs all of which seem rather unnecessary and distortive of the actual position.

We are convinced that a new approach is called for to overcome the present difficulties. Many valuers expressed the view that there was in any case a real need to identify and value the actual interests of tenants and owners in each particular piece of land and to fix the proportionate value of those interests in the Land Value at a given "benchmark" date.

In looking to achieve that goal we have had considerable assistance from Valuation New Zealand who have advised that such a task is feasible and relatively simple using the comprehensive record base of that organisation. We are assured that it has already been established that the ratio of Unimproved Value to Capital Value has been found to be reasonably constant for similar classes of land – ex-bush, ex-fern, ex-swamp – and that these ratios could be refined and used as benchmarks or guides from which individual variations from property to property and from district to district could be established and agreed upon in a relatively short time.

The task of fixing ratios could be undertaken by the Valuer-General who would be perceived to be independent because of his impartial statutory function. He could be commissioned to assess the proportionate ratio of Unimproved Value to Capital Value for all Māori reserved land leases as at any required date. These could then be discussed and agreed upon between owner and tenant with any disputes being referred to a Land Valuation Tribunal or a Valuation Appeal Committee for final resolution so that the established ratio would then form the basis on which future values of respective interests could be assessed for any purpose. We suggest that such an appeal body ought to be empowered to have the final jurisdiction to determine these ratios to avoid pedantic legal argument and expensive legislation.

There is in most areas a known acceptable rental of any particular type of land based on Land Value. Market rent for the Land Value of reserved land leases could therefore be simply assessed on the basis of recent transactions in Land Value and apportioned to unimproved value and improvements by using the agreed established ratios. Any dispute could be referred to arbitration.

If a benchmark date was chosen to coincide with normal revaluation dates for a particular district the cost of the process would be relatively minimal and could well be borne by the Crown on a one-off basis as part of its contribution to finding a solution to the overall problem.

Any land improvement effected by the tenant after the benchmark date would receive appropriate credit.

In our view it is important to realise that this exercise would have relevance only for a transitional period until a level of comparable market rentals for the Unimproved Value of the land was established. Once that level is achieved there would be little need to refer back and reviews would be concluded on the basis of comparable rentals.

The Panel recommends that Valuation New Zealand establish the ratio which the Unimproved Value bears to the Capital Value of each leasehold property at a given date to establish benchmarks to assist in the equitable fixing of the market rent of the owner's interest where no free market currently exists.

6) Right of First Refusal

In the Proposals it is suggested that:

> *Owners should be granted the first right of refusal to purchase leasehold interests if offered for sale.*
>
> *In addition, tenants would be granted the first right of refusal to purchase the land if offered for sale.*

We noted that there is real desire among owners to purchase tenants' interests and more importantly that this should be effected on a just basis at market values which would give a fair return to the tenants for their interest in the land. Furthermore owners expressed the view that this ability or right of the owner to purchase at market prices should remain throughout the whole period of the lease right up to termination. Owners consistently expressed the view that they knew what it was like to be treated unjustly and they had no desire to pass that experience on to their tenants.

Although it may be said that market forces and the expressed intention of owners will ensure that owners are the first people to be offered the right to purchase a tenant's interest, it may be preferable to ensure that this is incorporated into the terms of the present leases during the transition period. This will ensure that owners are in fact notified of a tenant's intention to sell and will ensure that there are no misunderstandings such as have been the cause of recent disputes in other areas. The parties will then be able to effectively negotiate their own terms to implement their respective intentions but on bases which are acceptable to them both.

7) Sale of Interest by Owners

The Proposals suggest that:

> *Landowners would be empowered to sell their interest in land on a voluntary basis.*

We are aware that considerable consultation was undertaken before Te Ture Whenua Māori Act 1993 (Māori Land Act 1993) was enacted. That Act seeks to place its foundations in the Treaty of Waitangi and highlights the need to retain Māori land, so as to be able to preserve it and pass it on to future generations. At the same time it makes provision to facilitate the occupation, development and utilisation of that land by its owners and descendants.

Many beneficial owners told us that they do not approve of any Māori land being sold; that no further alienation should take place and that all land should be retained for future generations. But on the other hand beneficial owners have also expressed the desire to have the same powers as all other landowners; to be involved in the effective and decisive management of their lands, including the ability to sell or exchange it for other land. The way in which control of their land (Mana Whenua) is exercised is determined by Māori cultural systems which are as vivid in the hearts and minds of present Māori people as they were in their predecessors and ancestors. Māori owners want to make their own decisions as landowners according to their own customs and beliefs.

Currently incorporations and trusts are concerned about the requirement in Te Ture Whenua Māori Act 1993 that land sales must be consented to by shareholders holding not less than 75% of shares (section 254(1)(b)).

Most incorporations are not able to contact many of their shareholders. Incorporations are however making use of some of the mechanisms in the Act to enable the sale of land with the approval of the Māori Land Court. For example the Proprietors of Wakatu successfully applied to change the status of some of its land from Māori freehold to investment and general land.

On balance the Panel agrees that beneficial owners should be empowered to sell their land interests. To do otherwise would be to restrict the Mana Whenua of Māori owners essentially because they are Māori. That would extend the very basis of the injustice which is at the heart of Māori owners' complaints about the system of perpetually renewable leases, and would be contrary to the principles of the Treaty of Waitangi. Whether or not beneficial owners exercise their rights to sell is essentially a matter for them but they should not be restricted from doing so if that is their desire. It is reasonable to assume that as direct and personal Māori involvement in the land grows and is accompanied by economic benefits the likelihood of land sales for survival purposes will be minimised.

The Panel recommends that owners are empowered to sell their interest in these lands on a voluntary basis at market value to be fixed by agreement or in default of agreement by arbitration.

8) Compensation

In the Proposals it is said:

> *In view of the extra transition period, no compensation be payable by the Crown to the tenants.*

It is generally accepted that the remedying of past wrongs to Māori owners should appropriately be dealt with by and through the process of the Waitangi Tribunal and that the New Zealand taxpayer should collectively shoulder the responsibility for any compensation which may become payable. Any liability for compensation to owners ought not to be imposed on present tenants.

Tenants, almost without exception, have emotionally expressed their abhorrence at the suggestion that the Crown can even consider a confiscation of property rights without allowing compensation. There is a total rejection of the proposition on Page 8 of *A Framework for Negotiation – Toitū te Whenua* that "in economic terms, a lease of 42 to 63 years is as good as a lease which lasts forever". Tenants say that it is simply self-evident that a lease of 42-63 years with 7 year market rent reviews is totally different in value from a perpetually renewable lease with 21 year rent reviews fixed on the basis of 5% of the Unimproved Value; and that two further 21 year renewals, even without more frequent rent reviews, cannot possibly equate to a right to an indefinite number of 21 year renewals. There is a universal concern that the Proposals would effectively amount to confiscation of an interest in land without compensation. It is consistently said that the removal of perpetual rights of renewal and the alteration of other rights conferred on tenants by statute must be the subject of compensation and that is the responsibility of the Crown as the perpetrator of the initial injustice.

Many submissions have said that the principle of compensation for the removal of a right is so deeply ingrained into our system that it just cannot be

avoided; and that the Crown must protect all of its citizens, not only Māori, and must participate in the solution to the problem it created so long ago. One submission puts it this way:

> *The fundamental position of the lessees is that the Government should make no changes adverse to their interests unless it is prepared to compensate them. There is no reason why their interests should be expropriated by the Crown with a view to satisfying an obligation which the Crown regards itself as being under to other parties.*

As we see it the Proposals are a pragmatic attempt to take a snap shot of history; to focus on today's situation and to progress forward to a long term solution to righting an injustice which has remained unattended for too long. It proposes that this be done by affording primacy to the principles of negotiated settlement between the parties to produce a solution tailored by them to suit their particular circumstances, facilitated if necessary by Government participation and assistance. We see this process as converting something significantly unjust and evil into something which is both correct in principle and of economic benefit. But it is essential that systematic consideration be given to preserving and enhancing the value of the current developed resource. To do otherwise would be to "throw the baby out with the bath water".

Through the system of perpetually renewable leases successive tenants have had the benefit of the use of extra capital similar to that which would be available by way of a second mortgage but at significantly discounted rates. They have had the opportunity of investing that capital into increasing the productivity of their unit. Most have done so to their advantage. In the cases of commercial, industrial and rural leases tenants have for many years been able to achieve a commercial advantage over their competitors through the advantageous terms of the leases. Present tax-payers cannot be expected to consider compensating present leaseholders for the termination of what those leaseholders consider to be a right to a commercial advantage which they have been enjoying over their competitors, when that advantage has been achieved by an injustice imposed on a third party by some previous Government or administration. Rather it seems that those leaseholders who have been able to obtain an economic advantage in the past should now, quite properly, be expected to surrender that advantage in order to rectify that wrong. In so doing they will be brought to the same or similar trading basis as their commercial competitors.

This is not correcting one injustice by creating another. Compensation cannot be said to be owing to tenants who have in the past received or enjoyed an advantage through an unjust contract. Indeed it could be said that current tenants whether original or subsequent are in justice bound to surrender their means of obtaining an unjust advantage and to enter into more acceptable arrangements.

Furthermore it is difficult to talk of compensating people who claim to have acted in good faith for the loss of a right or rights unless from the time they realised or knew of the injustice they themselves tried to resolve or correct it. The injustice which is the very basis of this "right" was at least in general terms, obvious before and certainly after the findings of the 1975 Commission of Inquiry into Māori Reserved Land.

However where the entering into new arrangements will cause hardship to a tenant the Crown must seek to alleviate that hardship. This is not a call to

pay compensation or make restitution. It is a response which is necessarily called for to facilitate the remedying of an injustice to owners. There will have been no injustice to tenants if Māori owners purchase tenants' interests at market values throughout the whole period of the leases right up to termination (see page 33).

At law there is a clear obligation on anyone who seeks compensation to mitigate the loss or damage that flows from any harm they may sustain. It seems to us that, over the course of the time set out in the Proposals and taking into account all of the opportunities which will be available to mitigate losses, if there is still a residual actual loss then the Crown would be bound to assist by alleviating the hardship by grant or other financial assistance. But it is the Panel's contention that if tenants avail themselves conscientiously of the opportunities to effectively negotiate an acceptable or reasonable solution, with the Crown playing an active role in the process by empowering and resourcing owners and tenants to perfect their solution, any actual loss will be minor.

The Panel agrees that no compensation should be payable to tenants but asserts that the Crown does have a role in facilitating negotiations and alleviating any hardship which may be experienced.

5. FACILITATING THE SOLUTION

In responding to that part of our brief which required us to act in a facilitative role to advance the resolution of this long-standing and complex issue we have seen a number of ways in which the Crown can and ought to participate and be seen to be participating in resolving the problem.

1) Facilitating the Negotiation

The primary need is for an independent and appropriately skilled service to facilitate discussions and consultations between owners and tenants to assist them to come to that mutually acceptable settlement which is at the heart of the Proposals. It is essential that this service provide personnel with knowledge of the background of the situation and who are seen to be independent and to have the skills appropriate to the task. The members of this Panel are available for this task or to instruct and educate mediators in the skills required but we emphasise that it is not a task for the unskilled or inept.

2) Ensuring that Owners have the Ability to Purchase Tenants' Interests

Māori owners have shown a marked determination to be independent and look to their own resources in their attempts to retain control of their own land. There were no calls for handouts and very few demands to gain control at all cost. Their desire to ensure that tenants be fairly treated was particularly evident. They expressed the very clear desire and intention to re-acquire effective control of all the lands which they own, but to do so in an equitable way and with as little disruption as possible by paying market prices for what they do not own.

At the same time they were realistic. They acknowledged that in order to acquire some properties, particularly the more desirable ones, they may be forced to sell their rights in other property. They were clear that those sales should also be at market rates. They confirmed that they were willing buyers of those interests in their own lands which were not currently theirs and that if that required them to sell other assets, including land, they were willing sellers on the same market basis.

They recognised that this plan cannot be effected immediately. Time must be taken to plan, to budget and to consult. They recognised that consultation with tenants in particular was vital if their intentions were to be effected with a minimum of disruption.

If this plan is implemented it will provide a ready buyer, or a consequential ready seller, for most of the lands involved. In turn this would usually preserve the equity or interest of the tenant and encourage the maintenance of the property and its production right up to the termination of the lease, so that there would in most cases be no loss for which compensation could be claimed.

But it is clear that in attempting to achieve these purposes Māori owners are currently disadvantaged.

The restrictions in Te Ture Whenua Māori Act 1993 (Māori Land Act 1993) on the sale of Māori freehold land mean that Māori owners cannot deal with their land as other owners do. Incorporations for example are required to have the consent of shareholders holding not less than 75% of the total number of shares before they can sell land. Most incorporations are not able to contact this number of shareholders let alone get their consent. Some incorporations and trusts may also need to consider their constitutions or trust deeds to determine whether these plans are possible and desirable.

Several incorporations expressed concerns about difficulties they have in securing development finance. We have seen correspondence which clearly indicates a reluctance by lending institutions to finance purchases by Māori incorporations. These restrictions must be removed. Government assistance through guarantees or commercial persuasion might need to be provided.

If the plans or intentions of Māori owners are to be effective owners will need to be empowered to exercise true Mana Whenua, and they will need to be put in the same position as other non-Māori landowners.

Furthermore owners may in exceptional circumstances need some direct assistance to purchase tenants' interests. This is particularly so if extraordinary circumstances bring an opportunity for them to redeem the land but on an unplanned or un-budgeted basis, and where the exercise of that right may otherwise prejudice owners' borrowing plans. The Crown should in these circumstances make available a line of credit or guarantee for owners in order to facilitate a solution to the problem.

The Crown must recognise that the imposition of fixed rental returns well below market level has denied Māori owners the ability to put aside funds from income for reinvestment or to redeem the interests of tenants in their land. While the introduction of incorporations with an ability to trade relatively freely has alleviated much of that problem, it still exists particularly where control has remained with the Māori Trustee or with trusts which do not have the desire or ability to trade in land. Special consideration should be given to those situations.

The Panel recommends that if for any reason normal commercial facilities are not available to owners the Crown should encourage negotiated redemption of leasehold land by providing appropriate financial assistance to perfect and implement settlements. In particular the Crown should make available a line of credit or guarantee for owners to access in exceptional circumstances when an unplanned purchase of a tenant's interest becomes possible.

3) Alleviating Hardship for Tenants in Special Circumstances

It is anticipated that the willingness of owners to purchase tenants' interests at market value over time will in most cases provide an equitable solution leaving tenants in a no loss situation. They will be able to withdraw their full equity and purchase a comparable property or business. There are however a few situations where tenants have utilised the capital released by the leasing system to maximum advantage by increasing their production to levels which they would have been unable to achieve, if they had been required to use that capital in the purchase of freehold land rather than as working capital. This is more so in cases where tenants have consistently maintained debt at the highest feasible or sustainable level. Highly productive dairy

farmers in Taranaki are examples of this situation. In these few cases additional financial assistance may be needed to ensure that tenants who have to replace their productive leasehold units with comparably priced freehold land are not unduly or significantly disadvantaged by having to drop their production and level of income.

In these cases tenants who sell their interest in leased land to owners at market value within say 21 years should have access to a Government facilitated fund from which an amount equal to the owner's interest in the lease could be borrowed by the outgoing tenant. Interest on such a loan should initially be equivalent to the rental previously being paid but could move to market rates at a pre-set trigger point. This facility should be available only if tenants are unable to purchase equivalent freehold properties with the proceeds of selling their interest in the leasehold property.

It is extremely difficult to anticipate the cost of such a scheme but it is envisaged that a sum $3,000,000 per year may be required if all the Taranaki leasehold lands were sold and purchased at the commencement of such a scheme. Spread over 21 years the cost would be reduced considerably by repayments. But it is suggested that the establishment and administration of such a fund could be put out for tender at competitive rates. Full details of the proposal are available.

The Panel recommends that the Crown should actively facilitate the process of negotiation and alleviate hardship by providing appropriate financial assistance where necessary to perfect and implement settlements.

4) Residential Leases

Māori incorporations and trusts which own land subject to residential leases are united in their desire to be freed of the administration of this type of lease. These organisations have conscientiously endeavoured to work through the problems associated with residential leases and have generally come to the conclusion that they are structurally and culturally unsuited to the task.

For one of these incorporations this decision has been taken after years of intense discussion, debate and consultation with shareholders and beneficial owners. The decision has culminated in the incorporation seeking and obtaining an order from the Māori Land Court under s137 of Te Ture Whenua Māori Act 1993 changing the status of all of its residential leased land from Māori freehold to general land. That change in status takes the land outside the restrictions on alienation imposed by Te Ture Whenua Māori Act 1993 and allows the incorporation to freehold its residential leases without obtaining the consent of its shareholders on each occasion.

For the Wellington Tenths Trust and the Palmerston North Māori Reserve Trust who have no ancestral or cultural affiliation to the specific land which they now own, the decision has been much easier. Their land, they say, was allocated to them with the stroke of a pen. Different land could be given to them by the same process.

Each of the incorporations have now expressed a preference to sell their residential land as a block rather than persisting in the business of dealing

with individual tenants and their homes. They believe the Crown should either buy the land subject to those urban leases to allow the owners purchase other land or exchange the land for surplus Crown land which has been agreed to be suitable and which is of comparable value. The Wellington Tenths Trust has viewed the Defence land at Fort Dorset as particularly suitable for a negotiated exchange.

This proposal has many attractive features. First it seems to us that the Crown is far better equipped to deal with individual residential tenants and to present them with more options for ownership or purchase than are available to the Māori owners. If the proposal was effected tenants could either continue to lease as outlined in the Proposals or freehold the property for cash or on some deferred payment system and thus provide an immediate cash flow and income on the acquisition.

In our view tenants of residential land ought to have the right to freehold regardless of whether personally they can afford to take that step, or whether that option is subsequently taken by a surviving spouse, by the tenant's estate or by a subsequent purchaser. The provision of this option as a term of an urban lease would alleviate much fear and distress for tenants.

If the Crown takes over land subject to residential leases and deals with the tenants on an individual basis, it would be seen to be participating actively in a solution to a problem created by its predecessors.

A sale or exchange *in toto* would enable the corpus of Māori land to be retained. As long as the sale or exchange was effected with the consent of the existing owners there would be no breach of the Treaty of Waitangi or its principles.

In some areas (Palmerston North and Wellington in particular) municipalities are actively involved in the business of urban housing. The Panel has had informal discussions with the Mayor of Wellington whose personal view is that it would be potentially very beneficial for the Council, the Crown and Māori interests to consider these matters and in particular how the problems relating to Athletic Park and Fort Dorset could be resolved. The Crown could play a part in facilitating the purchase of leased land by those municipalities who are interested in being involved, to enable them to provide more direct control and the ability to negotiate with and provide for tenants at a local level.

Alternatively the Crown may be able to sell the leased land to a developer or to an investor to relieve the financial liability of its commitment.

> The Panel recommends that the Crown actively participate in the purchase of residential Māori reserved land or in exchanging it for surplus Crown land.

5) Leases held by Crown Agencies

There are ten Crown agencies which are known to lease Māori reserved land. Their land is used for a variety of purposes including schools, horticultural research developments, a police station, and offices. Many landowners have suggested that the Crown must move its own leases to a commercial basis immediately, to be seen to be taking a lead in remedying current injustices and to act in accordance with its own stated convictions. We have

endeavoured to meet with representatives from or correspond with all Crown agencies leasing reserved land and our discussions indicate that most of them have begun to negotiate new forms of lease. This is commendable but the process must continue and must encompass all Crown agencies. The Crown must be seen to be implementing its own policy and should direct the various agencies to negotiate.

There are however other situations where leases have been acquired by the state or by local Government for recreational and community purposes particularly within well developed urban communities. It may be that some of these community and public services ought not be relocated; that the disadvantages of relocation would outweigh the service to the community in having them remain where they are. But this would make it unlikely that this land would ever be available to Māori owners for normal economic use and for the advancement of their own private interests. It is suggested that in these cases the Crown should facilitate a solution by purchasing the freehold interest in these properties at full market value on condition that the use of the proceeds be determined jointly by the Māori owners and the Crown.

6) Leases Administered by the Māori Trustee

In those cases where the Māori Trustee is nominated as the owner or administrator of leased Māori reserved land there is among beneficial owners a regrettably noticeable and widespread ignorance of the terms upon which their land has been leased. In most cases beneficial owners have received little or no financial return from the land and they have very little knowledge of what is happening.

Generally speaking (apart from Māori townships) the reserves which are subject to perpetual leases currently administered by the Māori Trustee are small areas of modest value for which there are extensive lists of owners. Various hapu have made passionate requests to us for the return of their land although the Māori Trustee advises that he is unaware of any approach by beneficial owners to regain control of their assets. Hapu have been advised to make contact with the Māori Trustee but we consider that the Māori Trustee should take active steps to encourage these owners to re-establish Mana Whenua and to administer their own land rather than wait for an approach from them. The officers of Te Puni Kokiri are aware of the hapu involved. Active steps should be taken to co-ordinate meetings and to ensure that control is returned to the beneficial owners especially where for any reason administration by the Māori Trustee is uneconomic for beneficial owners. The remnants of the Māori townships in Kawhia (Karewa), Otorohanga, Te Kuiti, Taumarunui, Tokaanu, Hokio, Potaka (Utiku) and Turangarere and the Ellesmere, Taumutu, Waipopo, Port Chalmers and Hokonui blocks come within this category.

The Panel strongly suggests the time has come for the Maori Trustee to phase itself out of the administration of Māori reserved land except in exceptional circumstances. Government should call for a management plan which sets short time frames for this move.

7) Māori Townships

The balance of the land administered by the Māori Trustee is located in the original Māori townships of Te Araroa, Waipiro Bay and Tuatini. We believe that these areas where descendants of the original owners make up substantial proportions of the population should be returned to local Māori control. There are many management options available under Te Ture Whenua Māori Act 1993 to provide for appropriate implementation of this proposal.

The return of control is an explicit obligation of the Treaty of Waitangi and is implicit in the principle of Mana Whenua. It would remove the paradoxical situation, common in the townships mentioned above and possibly in other places too, where the practice of ahi kaa[6] has led to a considerable number of beneficial owners being simultaneously cast in the roles of owner and tenant. They quite rightly consider this to be farcical and treat the "legal" obligations of the Pakeha leases with contempt. Their disregard for the terms of the Māori Reserved Land Act 1955 is not merely an act of defiance but is more particularly an attempt to restore to themselves the equilibrium which would provide them with the same rights and duties accorded all other land owners.

Culturally and socially the local control and administration of leased lands within these townships would have wide-ranging benefits for the local communities. The restoration of Mana Whenua to owners would be a fulfilment of a Treaty obligation by the Crown. The nature and form of such Māori administrations are matters for Māori owners.

As in the case of other land currently administered by the Māori Trustee the owners will need to be encouraged to take appropriate steps and to be assisted in the research and organisation necessary to lodge and pursue applications to the Māori Land Court. But we believe that this effort is totally appropriate and that the present situation cannot and ought not be allowed to continue. Currently in the East Coast (North Island) townships there are some 132 leases with a total annual rental of $33,450 (56 tenants are in arrears with rent payments totalling $14,500), involving 85 separate titles with a total of 5,265 separate beneficial interests. The area involved is some 154 hectares the majority of which is leased. The collection of rent returns a commission of $2,500 to the Māori Trustee. Clearly additional resources will need to be made available in order to achieve local control but the Panel considers that these resources ought to be made available by the Crown in order to achieve the objective of returning Mana Whenua to Māori owners.

We firmly believe beneficial owners should be empowered and assisted by every means possible to form their own administrations according to their own decision-making processes, and that administration by the Māori Trustee should be methodically terminated.

6. Maintaining, by occupation, ancestral rights over the land.

6. CONCLUSION

The proposals contained in *A Framework for Negotiation – Toitū te Whenua* were intended to provide a backstop solution to the issues which needed to be addressed so that the actual solutions would emerge from individual negotiations between owners and tenants. Although this point was not made sufficiently clear in the Proposals the Panel nevertheless endorses and re-emphasises the importance of that approach. Through our actions that process has already commenced. Tenants and owners have on the whole shown an encouraging desire to discuss and negotiate. In some cases the process is well under way. But it must be assisted. The changes to the proposed legislative framework for negotiation which we have recommended are intended to facilitate that process of negotiation and to ensure a fair and acceptable result.

It is essential that confidence and certainty develop where currently there is total uncertainty and lack of confidence. This can only be achieved if the Crown encourages openness and trust between owners and tenants especially in the process of their becoming buyers and sellers.

All landowning Māori incorporations and trusts have affirmed that they are willing buyers of tenants' interests at market rates. This assurance has done much to dispel the air of uncertainty and distrust which hangs over the land involved. The Crown must ensure that these assurances are acted upon and that all difficulties involved in concluding negotiated settlements are removed.

Absolute fairness must be the hallmark of all dealings between owners and tenants. A conciliatory, non adversarial approach to the negotiations must be taken by all parties, and there must be no attempt by owners to recoup any element of compensation for past grievances from tenants. We are confident that fair and willing attitudes will apply. Many owners and incorporations have expressed a desire to ensure that their experiences as victims of unfairness and injustice over an extended period are not now passed on to their own tenants.

Close attention and care will need to be given to the progressing of negotiated settlements. Skills of diplomacy and mediation will be needed so that peaceful and conciliatory settlements result.

APPENDIX – SUBMISSIONS RECEIVED

This appendix details the people who presented submissions to the Reserved Lands Panel.

EAST COAST SOUTH ISLAND RESERVES: ELLESMERE RESERVE, TAUMUTU COMMONAGE, WAIPOPO RESERVE, KOPUTAI RESERVE, HOKONUI ENDOWMENT

The Panel attended a meeting in Christchurch on 11 October 1993 with approximately 30 owners.

Written submissions were received from the following owners:
Eleanor Murphy, Executive Officer Te Rūnanga Otakou
Aroha Reriti-Crofts
Alfred M. Russell and Naina Kihau Russell
Robert Whaitiri, Chairman Hokonui Endowment Trust
Richard Whitau, Chairman Te Rūnanga O Moeraki

MĀORI TOWNSHIPS: TE ARAROA, TUATINI AND WAIPIRO BAY TOWNSHIPS

The Panel attended two meetings with owners and tenants. Approximately 30 people attended a meeting at Hinerupe Marae in Te Araroa on 30 September 1993 and approximately the same number attended a meeting at Pakirikiri Marae in Tokomaru Bay on 1 October 1993.

Written submissions were received from:
Te Araroa landowners & tenants
Tuatini township owners

MĀORI TOWNSHIPS: TAUMARUNUI & TOKAANU TOWNSHIPS, UTIKU BLOCK

The Panel attended a meeting with 32 owners at Ngapuwaiwaha Marae in Taumarunui on 6 October 1993.

A written submission was received from the following owner:
J.T. Asher on behalf of the beneficiaries of the Estate of Paekitawhiti Asher

MĀORI TOWNSHIPS: KAWHIA, OTOROHANGA & TE KUITI

The Panel attended two meetings with owners. Approximately 50 people attended a meeting in Te Kuiti on 18 November 1993 and about 25 people attended a meeting in Hamilton on 19 November 1993.

The Panel met with the following tenants:
Mrs Deidre Ansellin
Nanny Baker
Don and Louise Blair
N. Brown
Jan Draper
Michael Greggains
Carol Hart
John Hickey
Brendon La Franachie
Mr and Mrs Mathieson
Allan Murtagh
Don Murtagh
Graham Osbourne
Mr Powell

Written submissions were received from the following owners:
Piko Davis
Les Koroheke

Written submissions were received from the following tenants:
Megan Godfrey
Mr Powell
Louise Towers

NELSON AND MOTUEKA RESERVES

The Panel met with the Proprietors of Wakatu Committee of Management

The Panel met with the following tenants:
Approximately 30 commercial & industrial tenants
Approximately 80 residential tenants
Approximately 40 rural tenants
Approximately 60 mixed tenants
Nelson City Council
Tasman District Council

Other:
Nick Smith MP

Workshops were held for beneficial owners at:
Omaka Marae – approximately 10 attended
Waikawa Marae – approximately 35 attended
Whakatu Marae – approximately 35 attended

Written submissions were received from the following tenants:
Bruce Adam and family
G. Adam
M. Adam
Ann Armstrong
Armstrong Nurseries
L.J. Askew
R. Askew
Judith Child
Chris Lucas
S. and D. McBride
K.H. and E.A. Martin
R.B. Muollo for C. Gibbons Holdings Ltd
L.A. Neumann
Jane Newman
Nigel Pratt
T.W. and C.R. Smith
Donald Vass
Jill Williams for Bloomfield Family Syndicate

Written submissions were received from:
The Proprietors of Wakatu

PALMERSTON NORTH MĀORI RESERVE

The Panel met with approximately 15 owners at Tanenuiarangi House in Palmerston North on 5 October 1993.

The Panel met with the following tenants:
Group of approximately 20 tenants
Peter O'Driscoll

Written submissions were received from the following tenants:
Palmerston North Māori Reserve Leaseholders' Working Party
B.T. Grimmer
Joan and Kevin Caldwell
Graeme Kirkland for Broadway Motels Partnership
R.M. Watson

A written submission was received from the following owner:
Dr Ngātata Love

ROTORUA RESERVE

The Panel met with the Pukeroa Oruawhata Trustees and approximately 30 beneficial owners at Ohinemutu Marae in Rotorua on 29 September 1993.

The Panel met with the following tenants:
Dave Adams
Kevin Beamish
Richard and Joan Cooper (H.H. Dimond)
Dave Crossley for the IHC
Lincoln Laidlaw
Rex Merrick
John and Carol Viles
Clive Wickham

Written submissions were received from the following tenants:
Kevin Beamish on behalf of himself and Mr and Mrs C. A. Beamish
R.J.P. and J.M. Cooper
C. Wickham and W. Johnson

A written submission was received from:
Pukeroa Oruawhata Trust.

TARANAKI (WEST COAST SETTLEMENT RESERVES)

The Panel met with the following owners:
The Proprietors of Parininihi ki Waitotara Block Committee of Management
Meeting at Taiporohenui Marae attended by approximately 60 people
Meeting at Te Niho o te Atiawa Marae attended by approximately 30 people
Approximately 15 representatives of Nga Ruahine Tribal Trust
Russell Hohaia
Joe Niwa

The Panel met with the following tenants:
West Coast Settlement Reserves Lessees Association
Adam and Priscilla Adamski
Grant and Rex Annabell
Alan Barrett
Jim and Melva Barrett
Rex Brodgen
Ross and Cathryn Buttimore
Graham Chatterton
Lynette Diack
Howard and Frances Emeny
Grant Evans
Lyn Foreman
Arnold Hickey
Russell Hohaia and Sharon Nuku

Helen Johnston
Brendon Kavanagh
Graham Kelly
Alan Kerrisk and John Brown
John Larmer for the Lessees Association
Terry Leahy
Steve MacDonald
Robyn and Robert McGregor
Bill McKensie
Jim MacKenzie
Gordon and Audrey Moffat
Sharon Moore
Eric and Audrey Meuli
Therese Muggeridge
Mike O'Shea
Caroline Quinell
Clive and Joan Robinson
Kevin Thomas
Bill and Helen Thomas
Neville Wallace
Lindsay and Ivan Willis
Catherine Young
W.G.G.A. Young, Q.C. for the Lessees Association

The Panel received written submissions from the following owners:
Proprietors of Parininihi ki Waitotara Block Committee of Management
Ngati Tama and Ngati Mutunga
Russell Hohaia
Horitamakiterangi Manuirirangi and others
J.T.P.R. Niwa
Roy Robinson

The Panel received written submissions from the following tenants:
West Coast Settlement Reserves Lessees Association
M.J. Adamski
G.K. Annabell
J.S. Barrett
Gary and Helen Baylis
Rex Brodgen
Lynette Diack
M.N. Dimock for Dimock Holdings Ltd
H.W. and F.M. Emeny
Grant Evans
J.A. Evans
C.G. Gwynn
K. Hanover
Russell Hohaia
Helen Johnston
G.C. and B.L. Kelly
Kerrisk Farms Ltd
J. Larmer for the Lessees Association
Robert McGregor
Robyn McGregor
J.A. and M.D. MacKenzie
E.N. and A.J. Meuli
G.J. and A.G. Moffitt
Ian and Sharon Moore
M.J. and P.E. Muggeridge
T.M. Muggeridge
Michael O'Shea
A.R. Poole
J.A. Poole
R. and C.A. Quinnell
M.N. Sole
B.P. Tavant
R.P. Taylor
Neville and Shona Wallace
Lyn Williams
Ivan Willis
Lindsay Willis
Catherine Young
W.G.G.A. Young, Q.C. for the Lessees Association

Other written submission received:
Joint submission from the West Coast Settlement Reserves Lessees Association and the Proprietors of Parininihi ki Waitotara Block

WELLINGTON TENTHS

The Panel met with the following owners:
Wellington Tenth Trustees
Hui at Waiwhetu Marae attended by approximately 30 owners

The Panel met with the following tenants:
Wellington Tenths Tenants Working Party
Meeting of approximately 20 tenants
George Boraman for Fiona Rakaraka
Mr and Mrs Hermon
Wallace Lake

Others:
Fran Wilde, Mayor

Written submissions were received from the following owners:
Grant Knuckey
Morris Te Whiti Love
Dr Ngātata Love
Sam Raumati
Peter White

Written submissions were received from the following tenants:
Wellington Tenths Trust Leaseholders' Working Party
Antonia Brown
Judith Claridge
Mr and Mrs P. Ford
Ruth Gilbert
I.A. Greig
B.T. Grimmer

Tim Julian
Wallace R.A. Lake
Alastair Mansell
R.J. Nisbet

WEST COAST SOUTH ISLAND RESERVES

The Panel met with the following owners:
Proprietors of Mawhera Committee of Management
Meeting of owners attended by 5 people
Sonya and Jim Greening
I. Sinclair
T. Sinclair

The Panel met with the following tenants:
Grey District Council
Representatives of the Greymouth Business and Promotions Association
Representatives of the Greymouth Child Care Centre
Mr C. Cotton and Mr R. Janison on behalf of the Greymouth Masonic Lodge
C.A. van Beek and members of the West Coast Province Federated Farmers
West Coast South Island Māori Leaseholders Association
Mr M. Arndt
Mrs E. Buerton
Mr A. Campbell
D. Carruthers
Margaret and Murray Curtis
Mr N. Ellery Bruce Stewart
Mr and Mrs Foreman
Sonya and Jim Greening
Mr P. McNamara
Ian and Daphne Marshall
Walter and Tom Neil
Mrs Noble
Mr E. Rennie
J. O'Donnell
Mr T. Sullivan
Wayne and Diane Yeats
D.G. Webb

Written submissions were received from the following tenants:
Michael Arndt
Grey District Council
D.A. O'Connor for the Greymouth Child Care Centre
C.A. van Beek for West Coast Province Federated Farmers
West Coast South Island Māori Leaseholders Association (Benson Thorn, Chairman)
W.E. and A.M. Blythe
David Carruthers
A. Ellery & Sons Ltd
C. Grey
Pat McNamara and Joanna Love
B.J. Menzies
Monsignor G. O'Connor
E.B. Rennie
C. Simpson
Mrs E. Squier
B. Stewart

Written submissions were received from the following owners:
The Proprietors of Mawhera
H. Armstrong

A written submission was also received from the:
West Coast Business Development Board

OTHER SUBMISSIONS

The Panel met with or corresponded with the following Crown agencies:
Department of Justice
Department of Survey and Land Information
Government Property Services
Horticulture & Food Research Institute
Housing New Zealand
Ministry of Education
Nelson Marlborough Health Services
New Zealand Police
Transit New Zealand

The following technical submissions were received:
B.J. Blackman
Leslie Brown (Lecturer in Commercial Law and Taxation)
Ross Calderwood (Valuation New Zealand)
J.W. Charters
Ranald Gordon
R.N. Goudie
Graham Halstead
Mr Kelso
Alexander Laing
John Larmer on behalf of West Coast Settlement Reserves Lessees Association
John Larmer (President New Zealand Institute of Valuers)
Peter Tierney

The Panel also corresponded with:
Organisation of Māori Authorities
The Māori Trust Office
P.J. Cullinane, Bishop of Palmerston North
Paul Frater (Economist, Business & Economic Research Limited)
Rob McLeod (Tax Consultant, Arthur Anderson)
J. Stone