



Te Puni Kōkiri
REALISING MĀORI POTENTIAL

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Ko Ngā Tumanako o Ngā Tāngata Whai Whenua Māori

*Owner Aspirations Regarding
the Utilisation of Māori Land*



Me mahi tahi tātou

Let us work as one

Case Study Research and
Implications for Regulatory Review
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REALISING MĀORI POTENTIAL



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The framework above identifies three key enablers that are fundamental to Māori achieving Te Ira Tangata (improved life quality) and realising their potential. All our written information has been organised within these three key enablers or Te Ira Tangata.

1	Mātauranga – Building of knowledge and skills.
2	Whakamana – Strengthening of leadership and decision-making.
3	Rawa – Development and use of resources. This area recognises the importance of ensuring Māori can access the necessary resources at the right time and place in order to meet their basic needs and take advantage of opportunities to use, develop and retain their resources in ways that will improve their quality of life.
4	Te Ira Tangata – The quality of life to realise potential.

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DISCLAIMER

The views quoted in this report are those expressed by those Māori land owners who attended hui across the country. They are based on the recollections of the participants and no attempt has been made by the authors to verify these recollections. The authors have recorded their views as accurately as possible and have drawn on these to inform the conclusions of the report.

Please note the perceptions of owners and the conclusions of the authors are not government policy. The report is intended to be a starting point for further discussion on Māori land aspirations and the actions required to facilitate these.

FOREWORD

Whatungarongaro te tangata, toitū te whenua - As man disappears from sight, the land remains.

Māori identify ourselves by the relationships our tupuna formed with the lands from whence we came. We are the people of this land. We are born of this land and we need to look at what we can do for the land. It is this intimate connection which gives meaning to what it is to be tangata whenua. It is a relationship which transcends arguments of ownership in a commodity sense; a relationship which reinforces a sense of belonging shared between those who have passed on, the living and those yet to be born. It is a sacred connection; represented through the dual meanings of whenua to both nourish the people, and to nurture the growing new life of the unborn child.

With this sense of identity as a foundation, it is important to understand what other aspirations Māori have for their land and how these can best be supported. This report represents a new approach in that it asks the people what they want to achieve. The consensus was that Māori land should be retained and used to enable it to be passed onto future generations. The use of the land should balance commercial and cultural imperatives. The report also outlines a number of case studies where Māori are successfully advancing both of these imperatives for the benefit of their whānau now and in the future.

I look forward to working with Māori land owners to build on these successes in order to assist them to achieve their aspirations for their Māori land.



Hon Dr Pita R Sharples
Minister of Māori Affairs



EXECUTIVE SUMMARY

This report summarises the findings of a number of hui held to provide an understanding of the aspirations of Māori land owners, and the barriers and enablers to their realisation. It also analyses the issues raised in the light of Te Ture Whenua Māori Act 1993 (TTWMA), in order to inform any future review of the regulatory framework. It represents a further step in the consideration of issues associated with Māori land arising from the Māori Land Tenure Review undertaken by Hui Taumata in 2005.

Research Findings

Six hui were held around the country. The hui were structured so as to provide input from owners of large and small blocks, and from those with and without effective management structures. The research revealed a wide range of specific aspirations:

- to retain the land that had been handed down from tipuna thereby maintaining owners' association with it
- to utilise the land within the context of exercising values associated with land as a tāonga tuku iho such as kaitiakitanga and manaakitanga
- to provide the opportunity for owners to directly utilise undeveloped land (e.g. for hunting and fishing, papakāinga, cultural observance)
- to achieve a balance between managing the land as a viable business but still maintaining the owners' cultural connection
- to retain and improve existing long term businesses associated with the land, especially farming, and for owners to use the land directly rather than through lease
- to achieve the maximum financial return for the owners, provide employment for the owners where possible and to build a financial base for coming generations
- to achieve the best economic potential through exploring the possibility of diversification into new commercial opportunities (examples given were often comparatively low capital ventures including bee keeping, development of tracks and huts on undeveloped land for tourism ventures, and offering hunting and fishing tours).

The research has also demonstrated that the following influences have shaped the reported range of aspirations:

- the barriers that exist surrounding the utilisation of land
- current utilisation of the land
- recent decisions to bring a new direction in relation to the utilisation or management of the land
- the remote relevance of land to owners resulting in owners giving little thought to aspirations.

The research also showed that fundamental barriers exist to the formulation of aspirations or the taking of any effective action over the utilisation of land due to:

- an absence of commonality amongst ownership groups
- divergence amongst management entities
- a low level of available information about the land, ownership and management
- the incompatibility of regulation to existing circumstances.

Findings and the Current Regulatory Environment

When the research findings are considered against existing regulatory settings, the following matters are pertinent:

- regulation relies to a large extent on the exercise of discretion
- the varied relationship within TTMMA between its two key objectives of retention and utilisation
- the association between regulation and the enablers and barriers to those owner aspirations that have been identified in relation to land utilisation
- the impacts for regulation of the owner disassociation with land that has developed over decades
- the extent that regulation currently assumes and relies on the ability to identify and locate owners and on the expectation of owner consensus
- the way in which regulation and practice insist on owner participation in governance
- the inherent difficulties in working in a trust structure
- the possibility of an evolved role for whānau trusts
- the limitations of whenua tōpū trusts.

The Need for and Nature of a Review of Regulatory Settings

The breadth of owner aspirations, the range of influences that have shaped them, the fundamental barriers which exist to their achievement and the role played by the regulatory environment essentially forms the case for recommending that a broad review should proceed of regulatory and non-regulatory areas that influence and impact on Māori land and Māori land tenure. The research results also provide guidance on the principles that should shape the review. Any review should:

- recognise and build towards the realisation of owner aspirations
- recognise and take into account the wide variations that exist in the size of the blocks, and in the governance and management structures
- seek to develop a menu of solutions to be applied according to particular circumstances
- ensure that available resources being directed at Māori land are targeted effectively
- remove regulatory barriers for those ownership groups who are already taking action for the utilisation of their land and the achievement of their aspirations
- identify ways to actively assist those owners who are beginning to work towards the utilisation of their land and the achievement of their aspirations



- identify and limit risks of cost or loss for those owners who are unable at this point to utilise their lands or move towards the achievement of their aspirations.

There are several evident areas of review:

- consider the benefits and risks of exempting from certain regulatory oversight any Māori land management entities that have met a set of benchmarks relating to governance, financial management and capacity
- identify and ameliorate clauses which potentially present barriers to Māori land management entities, and other ownership groups, working towards the utilisation of land and achievement of aspirations
- review the wider legislative, regulatory or administrative context to ascertain and ameliorate any existing or latent risks facing those owners who are unable at this point to utilise their lands
- evaluate the effectiveness of the range of resources available and in use that assist owners towards the fulfillment of their aspirations
- consider ways in which the fragmentation of Māori land titles might be addressed
- consider ways in which the fragmentation of Māori ownership might be addressed
- evaluate the concepts behind and the roles of owner representatives.

PART ONE: INTRODUCTION

Purpose

This report has been prepared to improve the evidence base for considering reforms to the regulatory framework, by considering:

- What are Māori aspirations for their Māori land?
- How are these aspirations expressed and communicated to other owners and more widely?
- What are the enablers and barriers to these aspirations?
- Are aspirations being realised, and if so, to what extent?

It arises from the work associated with the Māori Land Tenure Review undertaken by Hui Taumata and draws on a number of case studies to provide rich descriptive data responding to these questions. It also identifies a number of issues that might usefully be considered in any review of the regulatory framework. In identifying these issues, it also draws on analysis of TTWMA and a number of earlier reviews.

Background

There are around 1.4 million hectares (ha) of Māori freehold land¹ plus a very small area of Māori customary land². Over 2 million ownership interests exist in around 26,490 Māori freehold land titles. A relatively large number of owners own relatively small proportions of land with 61% of Māori land titles less than 5 ha. A relatively small number of management entities³ control significant amounts of land – 40 large incorporations account for around one-fifth of all Māori land by area, and 100 large ahu whenua⁴ trusts account for about 30% of all Māori land between them.

The passing of TTWMA in 1993 represented a major milestone in relation to Māori land tenure and a dramatic policy change. The declaration of Māori land as a tāonga tuku iho provided the driving force behind TTWMA's two primary principles of land retention and land utilisation. Whilst the provisions of TTWMA clearly set out a range of structures and processes that ensure, for all intents and purposes, the retention of Māori land, commentators have raised questions about the way that regulation and practice under the legislation has facilitated, contributed to or hindered utilisation. The recent recommendations of the Hui Taumata Māori Land Tenure Review Group⁵ identified a number of areas for the amendment of legislation and change of practice under TTWMA to improve opportunities for Māori land utilisation. The

¹ Māori freehold land is land where ownership has been determined by the Māori Land Court by freehold order

² Māori customary land is land held by Māori in accordance with tikanga Māori

³ Management entities under TTWMA include: ahu whenua trusts, whenua tōpū trusts, whānau trusts, kai tiaki trusts, pūtea trusts and Māori Incorporations

⁴ Ahu Whenua trusts are designed to manage whole blocks of Māori freehold land and are often used for commercial operations

⁵ Hui Taumata Māori Land Tenure Review Group: Discussion paper



Group identified information shortcomings in relation to Māori land utilisation and the practice of the regulatory environment.

In response to these issues, case study research was designed to improve Te Puni Kōkiri's knowledge base about land utilisation and identify areas of improvement in current regulatory regimes so as to promote Māori land utilisation.

Methodology

Te Puni Kōkiri directed that the research be conducted initially as a series of case studies. The aim was to gather data from multiple perspectives to provide descriptive data about:

- the range of aspirations for Māori land owners for their land across a range of contexts
- how these aspirations have been developed by and communicated to the ownership
- the enablers and/or barriers to these aspirations being realised
- management structures – what management structures (formal or informal) are in place to manage the land and facilitate decision making
- occupation and utilisation – how these complement or inhibit aspirations for land
- regulatory regime – how the current regulatory regime contributes to or inhibits the achievement/development of aspirations.

Case study selection

In the literature,⁶ a case study is defined as a method for learning about a particular instance (i.e. the 'case') based on an in-depth understanding of that instance, gathered by extensive exploration and analysis of that instance holistically and within its context.

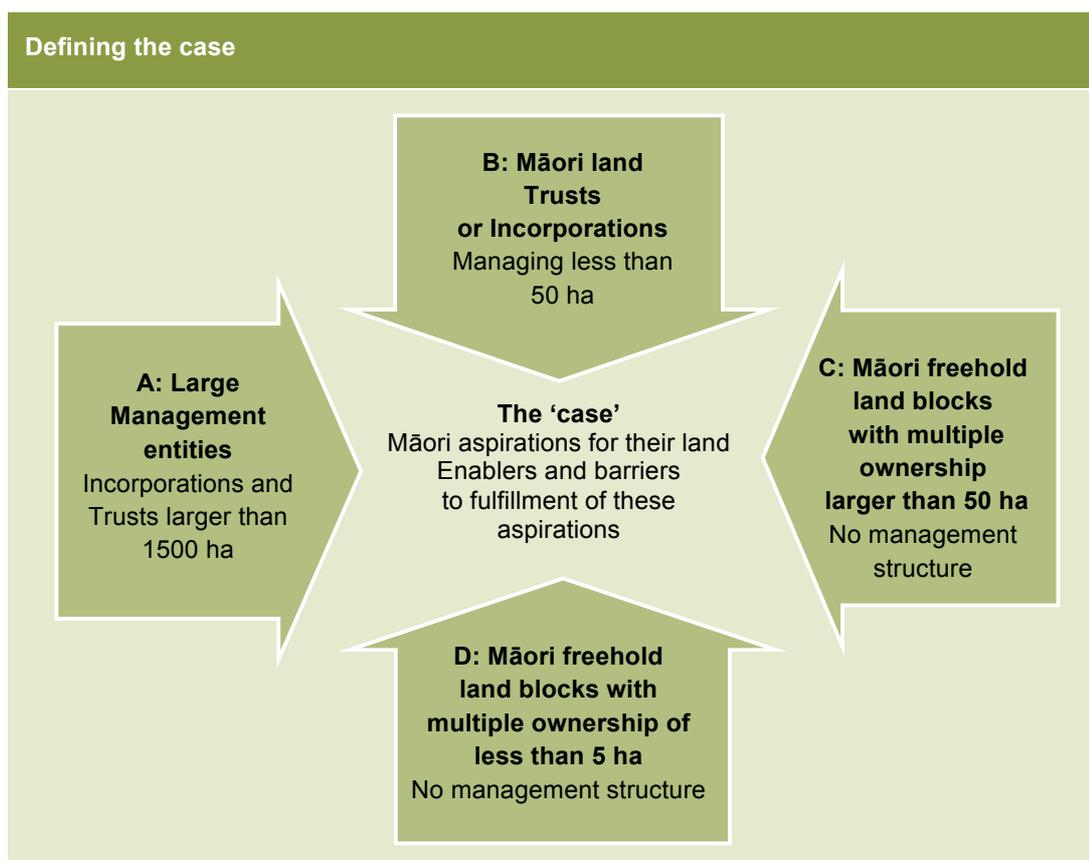
In the context of this research the *instance* or the 'case' of interest is Māori aspirations for their land and the enablers and barriers that impact on realisation of these aspirations. In selecting the 'case' a number of factors were taken into account including management structures; land block size; type of land (coastal, rural, urban) and geographic location. Four groups were identified in consultation with Te Puni Kōkiri and as identified in the terms of reference document by Te Puni Kōkiri. These were:

- large management entities that were managing more than 1,500 ha
- Māori land trusts or incorporations that were managing less than 50 ha
- Māori freehold land blocks larger than 50 ha but not under a management structure
- Māori freehold land blocks of less than 50 ha but not under a management structure.

The following diagram illustrates our view of the linkages across the different groups and how the analysis will be integrated to provide the insights needed about Māori aspirations for their land.

⁶ Case Study Evaluations published by Programme Evaluation and Methodology Division of the General Accounting Office, Washington (1990)

Figure 1: Defining the case



Land Grouping A: Large Management Entities (Incorporations and Trusts larger than 1500 ha): Within this land grouping scenario nationally there are 50 incorporations and 92 trusts in total. These incorporations and trusts, whilst represented to some degree across the country, are particularly concentrated in a small number of Māori Land Court districts. These entities manage a significant amount of Māori land – almost 60% of the total.

Land Grouping B: Māori land Trusts or Incorporations that are managing less than 50 ha with an emphasis on those managing less than 5 ha: There are only 12 Incorporations in this category for the whole country. The trusts in this category manage less than 7% of all lands under ahu whenua trusts. However, the 1,989 trusts managing properties of under 5 ha represent 35% of all trusts and the 2,350 trusts that manage land between 5 and 50 ha in size represent a further 41% of all trusts. Therefore, 76% of all ahu whenua trusts manage lands under 50 ha.

Land Grouping C: Māori freehold land blocks larger than 50 ha that have high multiple ownership but are not under a management structure: There are a limited number of properties in this category – less than 1,000. Although the properties in this category represent only 5.9% of all properties not under a management structure, they account for just under half of the area categorised as non-managed lands (136,042 ha) and almost one tenth of all Māori land.

Land Grouping D: Māori freehold land blocks of less than 5 ha that have high multiple ownership but are not under a management structure. Smaller blocks without management structures (11,137 titles) account for almost 50% of all Māori land titles. These



titles involve 11,313 ha of land. This Land Grouping also places emphasis on land blocks that are under multiple ownership. The research focused on the 26% of blocks with more than 20 owners.

Identifying case study sites

Case study sites were determined by looking for Māori Land Court regions where the prevalence of the identified group was high and the land controlled by that group was large relative to total land controlled by that group nationally. This approach was appropriate as we were looking for issues and themes rather than generalisable findings. This work was designed to help focus the next stage of the work. The second phase did not take place.

The following Māori Land Court regions were chosen:

Land Grouping A: Two districts were selected for this category:

- Waiariki: With 41 trusts or incorporations responsible for each managing more than 1500 ha of land, this district has more than half of the total 142 management entities in this category. It is estimated that approximately 174,000 ha of land are managed by Waiariki's large trusts and incorporations.
- Aotea: There are more than 30 trusts or incorporations in this District within Land Grouping A. These manage approximately 298,000 ha of land. Aotea, therefore, is the district with the most land being managed by the larger trusts or incorporations.

Land Grouping B: Two districts were also selected for this category:

- Waiariki is the district with the highest amount of land in this category (more than 13,000 ha). The 1,151 trusts that come under this category account for 86% of all trusts in the district.
- Tairāwhiti: is the district with the third highest number of trusts in this category (715) which collectively manage 8,500 ha of land.

Land Grouping C: Aotea is the second highest district in terms of number of blocks over 50 ha that are not under a land management structure. Within the district there are 194 blocks in this category. These blocks total more than 11,000 hectares in size.

Land Grouping D: Tairāwhiti is the Māori Land Court district with the highest number of blocks of land under 5 hectares in size that are not under a land management structure. In this district there are 2,932 of these blocks. These represent 26.3% of all Māori blocks of this size.

Identifying participants

Within each land grouping 'case' we identified sub-cases to produce manageable sample sizes to interview. Selection of sub-cases was based on the following:

- geographical representation across the country
- ensuring coverage of different types and locations of lands (e.g. city/rural, inland/coastal)
- ensuring there is synergy between each land grouping scenario selected and the Māori Land Court Districts where preliminary analysis indicates a strong numerical presence of land holding attributes or a high proportion of the land holding attributes under consideration

- pragmatic considerations such as the logistics of travel and the time available to complete the case study visits.

Once geographic locations were identified the Māori Land Court provided contact details for the relevant trusts, incorporations and or land block owners in that region. This took a number of months. In some instances original regions selected were excluded as the Māori Land Court was unable to provide contact details in the timeframe.

The Māori Land Court staff used a range of sources including the District Trust Register, the Māori Land Information System (MLIS)⁷ and the most recent trustee orders made by the court to identify accurate contact details for relevant trusts, incorporations and land block owners.

Given the large volume of owners for the blocks with no management structure group not all blocks were included in the sample. A random sampling approach was used. Contact details were requested for owners for the selected blocks from the MLIS, the District Register and any recent court orders. When no contact details were available for the selected block, it was replaced with a similar block (i.e. a block with the same name or one within the same local government district).

Once contact details were obtained, invitations were sent to the block owners to attend a hui held in the region. If more than one owner was listed, the invitation was sent to the first owner listed.

Four weeks notice was given to let people know about the impending hui and participants were provided with an outline of topics for the discussion. In addition, separate interviews were undertaken when particular individuals were identified at a hui as being relevant to the work.

While extensive effort was made to secure the contact details of a sample of land owners in the areas selected, this proved difficult, and a reduced number of case studies and key informant interviews were undertaken as a result. Six hui lasting 2-3 hours were conducted with a range of different types of land block owners as outlined below:

⁷ The Māori Land Information System is a database established by the Māori Land Court which holds title and ownership information.



Table 1: Hui Locations and attendance by Land Grouping

Land grouping category	Hui sites	Approximate number attending
Land Grouping A: Large Management Entities (Incorporations and Trusts larger than 1500 ha)	Taupō Whanganui	12 3
Land Grouping B: Māori Land Trusts or Incorporations that are managing less than 50 ha with an emphasis on those managing less than 5 ha	Rotorua Gisborne	25 11
Land Grouping C: Māori freehold land blocks with high multiple ownership larger than 50 ha but not under a management structure	Whanganui	20
Land Grouping D: Māori freehold land blocks with high multiple ownership of less than 5 ha but not under a management structure	Gisborne	10

The information collected from these hui is presented below. To conveniently identify which Land Group from which area is being referred to, the following abbreviations have been used.

ME1500+ Land Grouping A: Large Management Entities (Incorporations and Trusts larger than 1500 ha).

ME<50 Land Grouping B : Māori Land Trusts or Incorporations that are managing less than 50 ha with an emphasis on those managing less than 5 ha.

NME>50 Land Grouping C: Māori freehold land blocks with high multiple ownership larger than 50 ha but not under a management structure.

NME<5 Land Grouping D: Māori freehold land blocks with high multiple ownership of less than 5 ha but not under a management structure.

Structure of the Report

The remainder of the report is structured as follows:

- Part Two sets out the aspirations of Māori land owners, as discussed at the hui
- Part Three sets out the barriers to achieving aspirations identified at the hui
- Part Four provides examples of enablers that were given at the hui
- Part Five discusses issues with TTWMA, building on the hui, but taking into account the findings of earlier reviews and our own analysis
- Part Six makes suggestions regarding any future review of the regulatory framework.

PART TWO: ASPIRATIONS

This part sets out the feed-back from the hui in relation to aspirations regarding Māori land, firstly looking at the key principles of retention and utilisation; and secondly looking at more specific aspirations grouped by the influences that have shaped them. When participants were asked about aspirations, a common response was to suggest that barriers to utilisation be removed. Those responses are covered in Part Three: Barriers.

1. FIRST PRINCIPLES: RETENTION AND UTILISATION

Across the hui, irrespective of the land grouping, a uniform viewpoint expressed by owners was that land should be retained but also utilised. Whereas commentators often see these aspirations as distinct and separate – and even that they create tension within regulatory environments – it was evident that those who participated at the hui did not distinguish between the two objectives and instead saw them as complementary and linked.

a. To Retain the Land and Maintain and Promote Cultural Connections

The key view expressed by everyone at the hui was the importance of land retention. This importance derived from the fact the land had been handed down from tipuna and as such it formed a part of a person's identity. As noted by an attendee at the **Rotorua ME<50** meeting:

...we want to hold our tipuna's land. That is the main part I look at it. Those lands were given to me by my grandmother and I would not like to just hand it on. It is not like buying and selling house estates or whatever. To a Māori, that land is you. That is you.

The link of retaining lands with maintaining a cultural identity was often made as in the following comment by a **Gisborne ME<50** attendee:

I think that it's something my mother always says, she says it's actually not about the amount of land that you have, it's the connection to it, and I guess whether it's naive for me or whatever, but I keep looking at that word aspirations for the land and I guess I always want it to be there as a kind of an anchor that my kids can connect...

The interdependent link between whenua, whakapapa and tūrangawaewae was often alluded to⁸ with the land standing as a physical marker that enabled you to learn about identity. One person at the **Whanganui NME>50** meeting described that getting involved with the family's land blocks meant finding out more about their own whakapapa: "So, you know, you're really learning about who you are, that's a good experience..."

Within this cultural context, the characteristics of land which might be taken into account if it was being valued from a market perspective (e.g. size, location, soil) do not even rate as a consideration.

⁸ Whanganui ME1500+



*...it mightn't be big land or any [particular] land ...even if it might be only a toenail, it lets you know where were you were living in that hapū or whatever. It gives you some sense of identity. And it does. I know it has for me...*⁹

With the retention of the land came ongoing cultural responsibilities. A number of those attending the hui indicated that their aspirations for the land were fundamentally connected to their role as kaitiaki: "...the values of tāonga tuku iho are the values of kaitiakitanga, manaakitanga and those are the aspirations to me ...then we build off those aspirations."¹⁰

b. Utilisation as a Cultural Responsibility

The role of kaitiaki was explained as not being protection of the land by keeping it in the state in which it was received. Instead, aside from protection, one of the duties placed on owners was to improve the land in some way. At the **Gisborne NME<50** meeting one person spoke of the responsibility of passing on the land in a better state than how you received it:

...my inspiration is to say try and leave this whenua ...in a better state than we received it. To me, this is the aspirations that I would love to have. Something that we got from our grandmother. I'd like to say, well granny, it's still in a beautiful place, even though you've passed on...

The duty to improve the land was not only to fulfil an obligation to those who had gone before, but also to those who were yet to come. Retaining and/or utilising the lands for the benefit of descendants was an issue brought up at the **Rotorua ME<50** hui. Furthermore, an attendee at the **Gisborne ME<50** meeting spoke of the importance of ensuring for his children: "...that my grandchildren's legacy is going to be there for them in years time." Another attendee at that hui noted that it was important to grow the desire in their children to be involved in the land and its use, so that the future would be a "better time for them..."

These comments on duties from the past and to the future also go to the heart of explaining the dual imperative that exists between retention and utilisation.

c. The Personal Domain of Utilisation

At several hui, attendees indicated that Māori owners wanted to increase or retain their individual access to their lands. This access ranged from wanting to live and/or work on the land themselves, to being able to go on to the land in relation to hunting, fishing and attending to wāhi tapu.

One attendee at the **Whanganui ME1500+** hui commented that there were...:

...people wanting to hop back on their land and do their own thing. Some of them were at the stage where they don't want this great big huge invested bla bla bla, they just want to live on it 'cos they can't live in the cities probably. They want to go home, simple as that.

The issue of owners wanting to move back onto their land and develop it themselves was also brought up during the **Whanganui NME>50** meeting:

⁹ Whanganui NME>50

¹⁰ Rotorua ME<50

...it's plain as day for lots of our people, they just want to move back onto their land and develop the land, whether that be gardens or build a house or whichever, there's just simplest way of living...

One attendee spoke of her auntie who wanted to go back and live on her land “and just build a house and survive and plant a garden.”¹¹ It was further noted by another speaker “...we all want to get on and develop and be healthy and live on my nanny's land”.¹² During the **Rotorua ME<50** hui staff from the Māori Trustee pointed out that “...we go to every landowners meeting and that's an item that always comes up, ‘I want to build a house on my land’”.

Land was already being used for whānau housing in some areas. At the **Whanganui ME1500+** hui it was noted that a further whānau housing project was being considered.

The access to lands for hunting and fishing was raised in relation to the future use of **Taupō ME1500+** lands. At the **Whanganui ME1500+ and NME<5** hui there was a considerable amount of feedback regarding hapū members wanting access to lands for hunting.

d. Commercial Utilisation

Having identified the cultural link between retention and utilisation and understood the expectation held by owners of personal utilisation of their land, there was also discussion at the hui in relation to commercial land use and where this stood in relation to cultural imperatives. The discussion showed recognition by the owners that whilst all land utilisation was inherently cultural, it proceeds within the realms of economics.

Owners noted that being kaitiaki meant being good caretakers of the land.¹³ To owners, the use of the land commercially did not engender or require a changed mindset as it was part of the continuum of cultural imperatives. As kaitiaki, the responsibility of receiving the tāonga of land was to utilise and improve it for coming generations. Commercial use was simply a mechanism to achieve that cultural imperative. As one speaker at the **Gisborne ME<50** noted, the motivation for many Māori land owners to carry on farming was that they retained their connection with the land through this type of utilisation.

When addressing the issue of commercially utilising land, many speakers at the various hui spoke of aspiring to utilise their lands in a way that resulted in the best income or economic return.¹⁴ An attendee from the **Gisborne ME<50** hui noted: “...it's how can the land be maximised with the most expedient use of our efforts and time, and economic, so it's not costing the earth and more money isn't going out when it should be going in...” One of the attendees at the **Taupō ME1500+** meeting indicated that they were looking for the best possible development of their properties within the wider context of what was best for their ongoing economic development. An additional aspect of gaining good financial returns was being able to take advantage of investment opportunities and being able to invest in education.¹⁵ At the **Rotorua ME<50** hui, one speaker noted that the use of Māori land to

¹¹ Whanganui NME>50

¹² Whanganui NME>50

¹³ Gisborne ME<50

¹⁴ Taupō ME1500+, Rotorua ME<50, Whanganui ME1500+, Gisborne ME<50

¹⁵ Taupō ME1500+, Whanganui ME1500+



provide employment had always been a key driver for Māori. This had occurred in relation to some Māori land in the past and was an ongoing aspiration.

Other attendees also commented on the importance of working and managing the land as a viable business and gaining better returns but this was often mentioned alongside being a kaitiaki and maintaining the cultural connection. This combination of making money and cultural connection was commented on as follows by a speaker at the **Gisborne ME<50** hui:

...I don't want it to be a it's either money-making or it's either cultural. I want it to be a big bang of both and that both of those, the cultural and the money thing, are both as equally as important and useful to Māori and not just for today, like forever...

It was acknowledged that the commercial use of land inevitably raised the possibility of conflict with the maintenance of some types of cultural connection with land and that in some situations trade-offs would have to occur. The aspiration to retain or rebuild the cultural associations with the land was clearer and simpler when the land was covered in bush but less clear when there was a commercial venture such as a stud merino farm located on the land.¹⁶

The ideal expressed by those attending the hui was to achieve a balance between managing the land as a viable business but still maintaining the owners' cultural connection. This feeling was expressed by the following attendee at the **Gisborne ME<50** hui:

At the end of the day, I think all of us sitting here want us to work with our land and manage it so we are actually running it as a viable business but still holding on to the heart, the cultural connect...

One example of this balance was given where the owners of lands that were now located in a large exotic forestry trust, nevertheless placed as a high priority on the protection of tāonga such as the remaining native virgin bush.¹⁷

2. SPECIFIC ASPIRATIONS AND THE INFLUENCES THAT SHAPED THEM

Aside from recording broad aspirations in relation to their land that were associated with core values, the owners who attended hui also generated a long list of specific aspirations that grew from the circumstances they were dealing with in relation to their land.

These aspirations are grouped under the influences that shaped them (to the extent they have been shaped at all). In a number of cases the specific aspirations can be seen as largely being shaped by and generated from the way the land is currently being utilised. Nevertheless, many owners were thinking beyond barriers and status quo to consider what might they do which was new and innovative in the use of the land to maximise its potential and increase its return for the benefit of interest holders.

a. Situations in which aspirations have not been formed

That said, a fair proportion of owners indicated that they were only beginning to think about their land and its utilisation for the first time and were only on the first steps of beginning to form any aspirations at all.

¹⁶ Whanganui ME1500+

¹⁷ Whanganui ME1500+

Typically these owners have little knowledge of the land in which they hold interests and the land is of little significant relevance to them. Primary reasons for these circumstances include living away or having been born away from the land and having little to do with it or other owners.

During several of the hui, many examples were given of persons not realising they were owners of land until being informed by a relative, learning of it following the passing away of a close relation or having discovered it as a result of some research. In these cases, not surprisingly, the owners had not yet formed any aspirations towards the land as they were still getting used to the idea of being owners/shareholders.

Another sentiment often expressed was in relation to absentee owners, especially those whose families had been away from the land for several generations. In many cases, there may not even be an awareness that land was held, but even if there was, location away from the land meant that it played little role in their lives and was given little thought.

Even where people lived in the vicinity of their land, and were aware that they had some form of landholding, aspirations towards the use of land may not have been given much thought. This situation arises where past use of the land – for example where it has been leased out to Pakeha or farmed by incorporations – has effectively taken the land out of the everyday consciousness of the owner to the point that they have become disassociated from the land.

As one speaker at the **Rotorua ME<50** meeting noted, even in cases where the land might be in passive use, there may be little thought given to wider aspirations.

...we are just walking around, you can't tell them what to do. If they want to go and hunt, they will go hunt. If they want to kill possums, they will kill possums. But there is no vision for beyond, you know, above and beyond being a beneficiary of the land...

This speaker stressed the importance of overcoming this 'mindset' so that the owners themselves became the decision makers in relation to the land.

Sometimes the 'aspiration' is for no development. A circumstance was described by a representative from the Māori Trustee's Office, who was also on four major incorporations and who spoke at the **Gisborne ME<50** meeting in relation to the attitude of some owners towards the land. He described a situation where a local Pakeha farmer had put up a \$40,000 development programme. Out of the 78 owners connected to the block only six turned up and they didn't want the development programme. Their reasons for that were said to be as follows:

...Culturally, they wanted to see their blackberry grow ten feet high and the fences fall over, so what they wanted to do was have that connection to their land. Now, for me ... that goes against, I guess, of what I understand to be a kaitiaki - guardian of that land.

In a number of the hui, when asked about land aspirations, respondents focused on the immediate problems they were facing that were preventing them from using their land or were curtailing their activities. In these situations, it became apparent that the removal of the barriers that existed had become the primary aspiration for the land with owners not being able to think past the obstructions they were currently facing. Barriers that were identified included the difficulty in securing finance, the ongoing issues surrounding land rates, the desire to have free access to the land and issues associated with leasing the land.



b. Aspirations shaped by land utilisation status quo

For many owners, the way that land was currently being utilised, especially in relation to farming or forestry, naturally tends to shape their aspirations. These aspirations either take the form of expansion of the activity or of other ways to improve profitability.

Farming

At the **Gisborne ME<50** it was indicated that although ideas for diversification were being considered, most Māori land owners wanted farming to remain the backbone as this was something which was understood. The situation of these owners' perspectives was explained as follows: "... if we're still farming then we're still doing something with the land, that's how our people see it, and the trustees are very much that way inclined."

Another speaker at **Gisborne ME<50** indicated that in relation to one trust the owners preferred to be involved in farming as that was what they knew and it also retained their connection with the land. In addition to the income generated from farming, a further advantage was indicated to be the use of the farms to provide meat for occasions such as tangihanga.¹⁸

Forestry

Although forestry does not have as long a history as farming in the utilisation of Māori land, in many areas it has been in place for many decades and these owners were used to equating development with forestry.

The use of Māori land for forestry was discussed by attendees in relation to large land blocks at both the **Taupō ME1500+** and the **Whanganui ME1500+** hui. Views were mixed. For some groups, forestry had not been the panacea that had been hoped for. In **Taupō ME1500+** the expense associated with requirements to fence farmland was said to have been one of the factors that contributed to the decision to lease blocks to big forestry operators. There was some reluctance to do this as one speaker commented: "We didn't want to forest because we can't eat wood." At the time the leases were signed up it was believed that forestry would be a more profitable use of the land than highly intensive farming such as growing carrots, corn or other horticultural produce. However, a speaker indicated that the income ultimately received when some of the trees were harvested in 2005 was only about 15% of the income anticipated. The view was also presented that it was the big operators that profited most from the use of this land "...because we were controlled under the stumpage in the hundred year lease."

On the other hand, a representative of a trust within **Whanganui ME1500+** indicated that they had been able to obtain considerable income in relation to one of their large forestry blocks and to some extent this was supporting other activities taking place within the trust. However, issues of concern were raised in relation to the forestry lease having recently been handed over to a company other than that which held the original lease.

Where land was already being used for forestry, Māori owners often considered extending over additional blocks. The utilisation of further Māori land for forestry was brought up at

¹⁸ Whanganui ME1500+

Gisborne ME<50. It was pointed out that forestry was a sensible option for class 6, 7 and 8¹⁹ land blocks up the coast where it would be difficult to farm. Forestry was seen as providing a significant opportunity in relation to blocks of 1,500 ha and larger.

c. Aspirations to take Land Utilisation in New Directions

Despite many owners being preoccupied with barriers and issues that currently face them in the use of their land, there was evidence from the hui of thought being given towards the possibilities of what might be undertaken in the future. Much of this thinking was clearly preliminary in that there had been little further steps taken towards the achievement of such aspirations. Nevertheless, the identification of new kinds of land utilisation reflects the ongoing desire by owners to realise the maximum potential from their land.

Tourism

Potential opportunities in relation to tourism were mentioned by speakers at a number of hui.²⁰ At the **Whanganui ME1500+** hui possible options included building lodges along the river; taking tourists into the bush located on whenua rāhui lands by helicopter for hunting; and using the native forest land for adventure walks or even science projects.

The possibility of some of these schemes being run by the Māori owners was pointed out. At the **Gisborne ME<50** hui, a speaker from one of the trusts spoke of the possibility of reverting some of the land back to nature to enable eco-tourism operations. The tourism potential of a two kilometre beach that could only be accessed through their farm was also noted with one option being to develop a little eco-type resort.

There was also the potential for a walkway. However, it was pointed out: "...we don't want to commercialise it to the extent that we lose our own values." It was also indicated that it was important to consider the effects of any development on the businesses of relations in the area. An attendee at the **Gisborne NME<5** hui spoke of an island that could possibly be used for weddings and other events (although there were some potential difficulties associated with this). The possible use of a blowhole on the side of the island as one of the tourist attractions in the area was also noted.

Other uses

Several other possibilities were also mentioned:

- *Aviation:* An issue raised at the **Taupō ME1500+** meeting was the ownership of the space over the Māori land blocks and whether there was the potential for development in the area of aviation in relation to this.
- *Bee Keeping:* Another idea put forward at the **Taupō ME1500+** meeting was bee-keeping. One of the beneficial aspects of bee-keeping was that natural areas with native trees such as mānuka could be used. Potential markets in China were mentioned. At the **Whanganui ME1500+** meeting bee-keeping was also mentioned as one of the projects that could be encouraged with the use of money they had invested.

¹⁹ The Land Use Capability Survey Handbook (LUC) sets out 8 different land use classes depending on its suitability for use.

²⁰ Taupō ME1500+, Whanganui ME1500+, Gisborne ME<50 and Gisborne NME<5



- *Carbon Emissions Schemes:* The potential use of Māori land in relation to carbon emissions was considered a possible avenue worth investigating by attendees at several hui.²¹

Reverting land to bush: One group within the **Gisborne NME<5** land blocks was looking at reverting some of its land back to bush. It was pointed out that: "...People talk about bush in a different sort of way than we talk about it. Part of our 30 acre block, and hopefully we can talk our neighbours into doing the same thing – we want to revert it back to bush."

- *Selective Native Logging:* The selective logging within native forests was mentioned as a possibility at the **Taupō ME1500+** hui. The possibility of extracting native timber from Māori land for regeneration purposes or in relation to native trees that fell over and were still usable was also raised at the **Whanganui ME1500+** hui.
- *Cultural Tracks:* The **Taupō ME1500+** hui considered several options in relation to developing their lands. One of these was the revitalisation of the old tracks such as the ones that "our people walked back in the good old days when they cut across country to Ngāti Kahungunu, across to Ngāti Maniapoto".
- *Other types of land utilisation:* Other projects that were underway or in development stages included the development of cottage industries and a geothermal scheme.²² A further large trust was indicated to be involved in a joint venture with Meridian Energy.²³ Some multiply owned land was used by the owners for recreational purposes and houses were built on the land for this purpose.

²¹ Taupō ME1500+, Whanganui ME1500+ and Gisborne ME<50

²² Rotorua ME<50

²³ Whanganui ME1500+

PART THREE: BARRIERS TO ACHIEVING ASPIRATIONS

As already indicated, at a number of the hui when asked about land aspirations, respondents focussed on the immediate problems that they faced that prevented them from using their land or that curtailed their activities.

In practice, barriers exist across a spectrum ranging from fundamental issues in developing shared aspirations amongst common owners and in the governance arrangements, through to more practical issues such as finance and regulatory constraints on implementation.

1. ABSENCE OF COMMONALITY AMONGST OWNERS

The hui indicated there is an absence of commonality among owners resulting from the diversity in the characteristics of the ownership within blocks, arising from such things as:

- geographical proximity to the land
- the size of interest in the block
- relevance of the land to the owner's existing lifestyle
- knowledge of the land
- personal socio-economic circumstances
- the extent of their cultural engagement including knowledge of tikanga and te reo.

This absence of commonality works against the formation of unified aspirations and consensus in subsequent decision making.

Absentee ownership

Factors related to the multiple ownership of land and the fact that many of the owners are often no longer living near the land were brought up by speakers at most of the hui.²⁴ Many owners live in cities and towns often a long way from the land. Some live in Australia or even further afield.²⁵ In several cases it was indicated that there were more absentee owners in a piece of land than there were owners living in the area.²⁶ At the **Gisborne ME<50** hui it was noted that owners living outside the area were sometimes found to be out of touch with practical solutions as far as using the land was concerned.

The issue of being located away from the land applies not only to owners but also to their representatives. An issue brought up at the **Gisborne ME<50** hui was that trustees and representatives on incorporation committees were no longer mainly locals. It was noted by

²⁴ Rotorua ME<50, Whanganui ME1500+, Whanganui NME>50, Gisborne ME<50 and Gisborne NME<5

²⁵ Whanganui ME1500+, Gisborne NME<5

²⁶ Gisborne NME<5



one speaker that in the days of the previous generation all management representatives would have lived in the area and now none of the trustees involved with their trust actually lived near the land. Another attendee also noted that a lot of representatives on their incorporation committee were living away from the land.

Multiple ownership

The number of owners involved in many of their blocks is increasing all the time. Examples were given with hundreds or even thousands of owners. It was also noted that many Māori owners had small interests in a number of blocks.²⁷ The issue of multiple ownership in relation to small blocks was brought up by several speakers. Several examples of many owners on small pieces of land were given including one where an area of less than a hectare was indicated to have 217 owners.²⁸

The Effect of Poor Information on Ownership

Incomplete or inaccurate information limits the ability of owners or their representatives to identify the interests held in land. This undermines the owners' ability to form aspirations for the present and future. Owners indicated that this lack of information impacts at all levels.

It can be difficult simply to identify who the owners are. It was noted that some trusts spent a considerable amount of time and energy trying to track their shareholders down. It was pointed out during the **Gisborne ME<50** meeting that the procedures involved in locating owners and calling a meeting were relatively complex and it was often a few individuals that put in a large amount of energy and funding in relation to this.

Conversely, for individual owners it can be difficult to track down their interests. The amount of research needed to find out about shares in land was described in relation to one whānau during the **Gisborne NME<5** meeting. In this example their father's name was noted to have several different ways of being spelt. He also went by a different name at times and it was further commented:

...so while you're doing your research you've got to think of all the different names, your mother's name, maiden name, nicknames, Pakeha name, Māori name, put them all in and see what comes out.... you certainly have to research very deeply to get it all together.

Another speaker at this meeting described difficulties in finding the time to go through this process and find out about their whānau's land interests.

The Constraints on Contacting owners

Even when the owners are known, it can be difficult to make contact and get them to attend meetings. A speaker at the **Whanganui ME1500+** hui commented on the amount of effort needed to get the many owners involved in some blocks to meet in relation to deciding how to proceed with development. At the **Gisborne ME<50** hui it was pointed out that getting people to come to a meeting for the purpose of establishing a trust is frequently a problem. The time-consuming process of trying to contact owners in relation to a meeting for the purpose of developing a block was pointed out during the **Gisborne ME<50** hui. This involves gaining

²⁷ Rotorua ME<50

²⁸ Gisborne ME<50

addresses from the Māori Trustee; searching through the electoral roll (which was not always easy as there were difficulties with names); advertising a meeting; sending out notices; organising the meeting; doing the minutes; and completing an application to the Māori Land Court.

Several examples were given by attendees at **Gisborne ME<50 and NME<5** hui of meetings where either no-one or very few people turned up despite notices being sent out. This was viewed by some as a major problem. In some cases efforts are being made to time meetings so that they coincided with other activities such as shopping on a Friday.²⁹

Various methods were mentioned in relation to communicating with owners including:

- *Advertising of meetings*: However, this is relatively expensive³⁰
- *Emailing owners with meeting notifications and updates*. Emailing was said to be a quick direct way of contacting owners. An important tool related to this was the establishment and maintenance of a database of owners. This process was sometimes difficult and time consuming³¹
- *Website*: It was indicated that this needed to be regularly updated³²
- *AGMs*: These were mentioned by many attendees as the way that owners were updated. However, it was indicated that owner turn-out at these meetings varied considerably
- *Open Days*: It was indicated that quad bikes were used to view the property and these were not only attended by owners but by stock and station agents and other people who were connected with the running of the farms³³
- *Scholarship grants*: Some owner contact was made in relation to the distribution of scholarship grants.³⁴

A representative of one large forest trust indicated that they are trying to make contact with their shareholders so that they can keep them informed in relation to what was available for them under the trust, what they had access to and what was happening in relation to the land. "We've been charged ... we've been vested with it so we have to be sort of careful in keeping that relationship together and not desecrate it..."

As noted, the turn-out for owners' meetings varies considerably according to attendees at the hui. One speaker spoke of up to a hundred people attending; another speaker told of people flying in from Australia to attend,³⁵ while others indicated that very few attended their AGMs. One large trust was pointed to as having considerable owner participation. In this case the meetings were rotated in different areas and it was further commented that the payment of dividends encouraged owners to come to meetings.

²⁹ Gisborne ME<50 and Gisborne NME<5

³⁰ Whanganui ME1500+

³¹ Whanganui ME1500+

³² Whanganui ME1500+

³³ Whanganui NME>50

³⁴ Whanganui ME1500+

³⁵ Whanganui ME1500+



It was indicated that one trust was involved in a major push in terms of engagement with land-owners and it was pointed out that many of the owners outside their rohe were not even aware that they were shareholders.³⁶ However, a further trust indicated that finding and making contact with small shareholders was not an issue that time was spent on, as there was no time to spend on it.³⁷

Difficulties in reaching consensus

Even if the difficulties in making contact and bringing owners together can be overcome, there is often difficulty in getting persons with divergent views and priorities to reach a consensus for action which was a hindrance to the forming of aspirations and to development. As one speaker noted, that despite owners having a common tipuna, there were problems between owners in terms of "...the lack of communication, the lack of vision and, in a way, we're all at different stages for goodness sake so we can't actually come together collectively."

During the **Taupō ME1500+** meeting it was pointed out that if owners wanted a trust changed or a different way of working was desired, they could apply to the Court for an amendment of the trust order. However, it was indicated that this was not always an easy process as it could be difficult to gain a consensus from beneficiaries. This was said to be easier in trusts where there were only immediate whānau engaged in this process but more difficult when there were wider hapū groups sometimes with different aspirations involved.

One example of the impact of differing perspectives was given by a speaker at the **Whanganui ME1500+** meeting who indicated that they were encountering a number of difficulties in relation to a whānau housing project. Part of this was in relation to working out differences between the various owners. One example given was where one person had more shares and thus considered themselves entitled to more houses or bigger rooms. Another example indicated that richer relations in Australia wanted to use their money to build "flash" places. It appeared there were personality clashes between some whānau members.

The issue of conflict among whānau members as an obstacle to development was also mentioned during the **Gisborne ME<50** hui. In this case this issue had been overcome as follows:

...we've overcome all those obstacles within our whānau, we had big scraps, big arguments, personal attacks, but we've overcome a lot of those obstacles.

Others at the meetings, however, noted how family disagreement could be ongoing. This lack of commonality led to some speakers highlighting the need for support in finding a shared vision in relation to the whenua.

³⁶ Whanganui ME1500+

³⁷ Gisborne ME<50

2. DIVERGENCE AMONGST MANAGEMENT ENTITIES

Another feature that has emerged from meeting with owners is the considerable variability in the presence, absence or type of management entities even between land blocks which face similar circumstances. The relevance and representative nature of management entities also vary greatly, reflecting the differing circumstances around their development. Furthermore, despite the range of possible management entities being limited in legislation and their operation being apparently standardised through regulation, there is variability in the relationship of management entities to owners; the perception by the trust or incorporation (or their members) of its duties, obligations and responsibilities; and the capacity, desire or interest of those associated with the management entity to engage with any information, advice or training that is available.

a. Ahu Whenua Trusts

With the vast majority of management entities being in the form of ahu whenua trusts, it is not surprising that most of the evidence given by owners at the hui dealt with questions associated with trusts and trustees.

The Relevancy of Trusts

At the various hui it was described that such trusts had been established at different points in history in response to diverse needs and in varying contexts. This had led to some variation. At the **Whanganui ME1500+** hui information was provided in relation to the establishment of one of the early ahu whenua trusts in this area. This trust was noted to have been founded by the ancestors, the tūpuna of an attendee at the hui in response to a direct threat of the land being taken within the context of the return of vested lands in the late 1950s.

There was a degree of comment against the very concept of trusts. The historical basis for the shareholding system³⁸ was explained and criticised by one attendee at the **Whanganui NME>50** hui:

...I'm talking about the Ture Whenua Act and I'm talking about incorporations and trusts in general. They're all structured on the same kind of system of shareholding. And it was that English system that was put on us to have big shareholders and small shareholders... and now we have some with big shares and some with no shares. So everywhere some people are advantaged, [but] lots of people are disadvantaged by this system of land tenure...

A view was given during the **Taupō ME1500+** hui that Māori trusts differed from other trusts because of the “basic paternalism ... that came out of the early legislation.”³⁹ However, it was noted that this legislation had “freed up to some extent” and there was now a more diverse range of Māori trusts. On the other hand, the use of trusts over multiple pieces of land was supported when compared with alternatives.

At the **Taupō ME1500+** hui a speaker commented on the advantage of trusts compared to amalgamation of land. In the example given there were 60 blocks of land all with their

³⁸ Although the term 'shareholding' is commonly used, strictly speaking there are no shareholders in a trust. In an ahu whenua trust, assets are held on behalf the members in accordance with their beneficial interest and some individual members may have a greater interest than others.

³⁹ Taupō ME1500+



individual ownership working together through a group of trustees. It was commented that through this structure...

...people retain the mana whenua themselves. This is our land even though it's in the trust. If you had to amalgamate it you've lost that, so the trust is good.

Broad Governance Issues

It was indicated that getting the governance right was important in terms of successful land utilisation. An example was given in relation to a **Gisborne ME<50** block where farming was taking place. Changes in the formation of the committee to include younger members and the need to establish processes to enable the committee to be in touch with timely and accurate information were noted to be essential in relation to improving the outcomes from their land. A good relationship between the chairperson of the block committee and the farm manager was seen as critical. It was also important to set up processes so that questions and feedback to the manager came from the chairperson only rather than through other committee members of owners. The need for performance measures and regular reporting procedures to be established was highlighted. In this case a monthly reporting process was established and meetings were held every two to three months as well as an AGM.

The issue of trustees being personally liable was raised at the **Gisborne ME<50** hui and one attendee pointed out that there would be difficulties in motivating people to be trustees if too much personal liability was put on them. It was noted that in some cases millions of dollars were involved. This was particularly a difficulty when trustees were able to have any of their actions challenged:

...The question is if someone else makes a mistake in business in a company, you know, you might get shareholders not liking directors and changing it, but that's about it. But here, Māori expected to come in and take over control and run their land on the basis of ... as if they've had years of experience and with all the things ... and not allowed to make mistakes without someone having a go at it and having it reviewed by the Court or anything else.⁴⁰

Attendees at the various hui raised a number of concerns in relation to some of the trustees that were on the trust boards and to aspects of the role of the trustee. Speakers at a number of hui commented on the high level of expertise that was required of trustees. Examples were presented at several hui of instances where attendees did not consider that the trustees concerned had the knowledge and skills to perform adequately both in relation to making good decisions about land utilisation and in regards to their duties and responsibilities as a trustee.⁴¹ The importance of having competent trustees was emphasised by a speaker at the **Gisborne NME<5** hui and it was pointed out that the trustee was "the kaitiaki on behalf of all the other whenua owners."

It was considered that at times decisions were being made by those who may not have the most knowledge and skill. During the **Rotorua ME<50** hui, the issue of trustees and their roles and responsibilities was further spoken of in the context of the difficulties in reconciling legal responsibilities with their representation of their whānau or whakapapa as follows:

⁴⁰ Taupō ME1500+

⁴¹ Rotorua ME<50, Gisborne ME<50, Gisborne NME<5

It is quite difficult to work with trustees who were put there by traditional means, by customary means. Their representation of that land is a representation of their whānau, toto, whakapapa, which for us is more important than Ture Whenua...

This issue was further raised by a speaker at the **Gisborne NME<5 hui** as one of the barriers to utilisation that people are hesitant to talk about. It was further commented:

Because you're the tuakana or the eldest, everyone is supposed to shut up, and that head of the family could take you ... bankrupt you, and no one ... will take it up, but they don't like to open the mouth because this is part of Māoridom, respect for your elder. But the youngest of the family has got more mātauranga than the old fellow. You see what I mean – this is a new age. So we've got to look at the one that's got the most ability and push him forward...

This speaker considered that it is important to look around and see who had the ability irrespective of whether or not they came off the senior line or were the first born. A similar issue was raised by another speaker in relation to an older trustee passing on his trusteeship to his son.

One son lives in Gisborne here and he's right up with the history, right up with the whenua and his family here has married into other families in the same district. The one the trustee wants to be the trustee lives in Blenheim and has been here once, but he's the oldest...he's got the right..."

During the **Whanganui NME>50 hui** the issue of 'career trustees' was raised although it appears this was in relation to the attendee's experience in regards to big forestry blocks rather than small blocks. This speaker indicated that some people were on a number of trusts and were often nominated into positions without putting forward a portfolio so that their credentials could be checked out. It was indicated that: "Because your cuzzie and you're bro' and you're uncle, you'll get in." It was further noted that this situation is "...an epidemic amongst our people in positions of powers" in some areas.

At the **Gisborne ME<50 hui** the importance of having younger skilled people involved in the governance of land was highlighted in one example. A situation was described where there were initially 13 involved in the block committee and these people were "...family sort of leaders and they went on for the wrong reasons..." It was noted that "...most of the discussion was really around the table about themselves and all the history and all ... you know, their family did this to our family and ... but the land kept on suffering." It was indicated that "a lot of the old ones said oh, time to step off and let new ones come on" and the number went down to five. A further necessary step in relation to this land is to convince one of the older members of the family that a new chair person is necessary to change the perception and allow new ways of doing things to take place. Once these issues have been resolved the committee is able to get on with decisions for improving the performance of their farm. The importance of getting these governance issues right was emphasised.

The importance of involving young people in making decisions about the land was pointed out during the **Gisborne ME<50 meeting** as follows:

...unless you bring those who are going to succeed, by the time they do they don't want to know because they don't know anything about the land unless they've been brought up on it.

Another attendee also mentioned the need to get "the young ones" involved in the business development of the blocks. It was commented that it was "...the young ones who have the expertise and the knowledge and the wherewithal to take it to the next level financially..."

Trustee Specific Issues

One attendee at the **Gisborne ME<50** hui described some of the personal benefits from being a trustee as follows:

“...it’s certainly not because I want all the headache that goes with being a trustee, but what I have got from it since ’92 I’ve been involved, is ... a greater appreciation of self. I’ve learned more about myself, I’ve learned more about whānau, and that’s just got to be good for me and my kids... you can’t put a dollar value on that but it’s hugely flippin’ important. I didn’t know it was going to have that impact on me. I thought I knew all about myself, enough to get on, you know, but I think there are some kind of things that education or just living in this country won’t do for you in terms of enabling me and my children to be the best citizens that they can be, not just for Ngāti Porou but for the nation...”

Despite the personal benefits of being trustees, several at the hui indicated how trustees felt under pressure in their role.⁴² It was pointed out that there were difficulties in understanding lengthy trust orders at times: “...when you’ve got a 20-page or 10-page trust order, to understand every aspect of it is asking a lot.”⁴³ One attendee at **Whanganui NME>50** described being “chucked in as a trustee” and trying to do their best to act on behalf of landowners: “But I can only do so much, I’m just one person, and I’m not God and I can’t change the world.” Others described similar experiences and an attendee at the **Gisborne NME<5** meeting spoke of the pressure put on trustees both in terms of the work and in terms of getting criticism from others. The lack of whānau support for trustees was commented on during the **Gisborne ME<50** hui: “...all my whānau, they run to the hills, just leaving everything over to me.” Many speakers at the various hui commented on the need for trustees to undergo training and receive support.

During the **Whanganui NME>50** meeting one attendee told of her frustrations in dealing with the often complicated issues involved in dealing with their land. She considered that apart from those frequently involved in Māori Land Court processes in some of the larger trusts or incorporations, there are few who understood the complex systems. She indicated that it can be daunting to try and learn about all the terms, structures and processes involved.

Additional comments at the **Rotorua ME<50** hui addressed the issue of negligence or decisions made by trustees that compromised the land. One speaker gave an example where the trustees were said to have made “an incredibly foolish decision” that resulted in a cost to the trust of millions of dollars and deprived the owners of the use of the lands for a minimum of 25 years. In this case the decision had gone to a meeting of shareholders but the speaker considered there were insufficient numbers really to make a decision of that magnitude. The trustees ultimately had to resign from their positions which the attendee considered was reasonable and expected. However, another concern raised was in relation to trustees who had acted negligently and a few years later were appointed to other trusts. It was considered there needed to be more scrutiny in relation to this.

Several officials responded by pointing to all the opportunities for advice and training that exist. There are various avenues available for trustees to access information or receive training. These include a booklet produced by the Māori Land Court on the duties and

⁴² Whanganui NME>50, Gisborne ME<50

⁴³ Taupō ME1500+

responsibilities of trustees. Other training and support opportunities mentioned during the **Rotorua ME<50** hui included courses run by the Waiariki Polytech; occasional training through the Māori Trustee's offices; and courses through 'Trade Enz'. It was indicated that there may be other private organisations running trustee training in the Rotorua area. An attendee at the **Rotorua ME<50** hui who was on a number of trusts also spoke of the use of consultants to give expert advice.

The Māori Trustee office also supports trusts that have difficulties. This is sometimes by helping trustees work through the issues and at other times by acting as 'custodian trustee'. A Rotorua Te Puni Kōkiri official attending the **Rotorua ME<50** hui spoke in relation to governance noting that over the previous three years Te Puni Kōkiri had run a lot of strengthening management and government workshops for trusts and trustees particularly in Te Arawa. They are running approximately three to four workshops a year with trustees from 20-30 different trusts. It was noted that the amount of training to trustees offered by Te Puni Kōkiri varied from region to region as there were different budgets involved. The availability of booklets in terms of trustee's roles and responsibilities through Te Puni Kōkiri either by post or directly was also pointed out. One group of trustees involved with a kiwifruit project also commented on the support received from Te Puni Kōkiri.

Despite the opportunities available for training, hui attendees generally felt that trustees are still not performing in accordance with their requirements. The essence of this appeared to be related to leadership questions which it was doubtful that training and education opportunities could overcome.

A Rotorua Te Puni Kōkiri official attending the **Rotorua ME<50** hui explained that a major issue relating to ensuring trustees had the knowledge and skills was when trustees passed away, or left the country, and had to be replaced. These difficulties were exacerbated when whole trusts were replaced in a short space of time as sometimes occurred. It was noted that budget cuts were among the factors that made it difficult for Te Puni Kōkiri to provide for the needs of these trustees.

b. Incorporations

In comparing trusts and incorporations one of the attendees at the **Taupō ME1500+** hui commented that "...an incorporation has got more strength, less answerable and has got more powers in terms of what it can do." A speaker at the **Whanganui NME>50** hui commented that incorporations in their area were doing very well and were administered admirably. Another attendee at this meeting indicated that in his view the administrators were doing well but the law needed some changes.

Another person from the **Gisborne ME<50** meeting acknowledged that they considered, in terms of shareholding matters, the incorporation structure had some advantages. However, it was noted that they are inclined to continue with a trust because "...the incorporation thing sounds a bit too much to me like it can ... more easily disenfranchise owners from the land, and I think we've been disenfranchised enough." Another attendee at the **Gisborne ME<50** meeting indicated that although generally happy with the incorporation structure he has a problem with the shareholding involved. He pointed out that this was alright in the beginning when everyone had a large amount of shares but over the years these shares had been divided up: "...my own family if I can quote them of 15, imagine dividing up 1,500 shares amongst 15 of us." He also pointed out: "Some never had any uri, so the shares went into the incorporation, and some just had one issue, so that's the imbalance I'm talking about..."



During the **Gisborne ME<50** hui it was commented that incorporation committee members are put there by the shareholders who require them to do what they thought was best for the blocks. However, during the **Whanganui NME>50** hui one speaker gave the view that small owners are disadvantaged by some incorporation committees who presumed ownership:

...too many of our incorporations those seven men that we put onto that committee, plus their secretaries and their accountants and their bankers and their suppliers and their consultants, it seems to me they presume ownership to themselves to the detriment of us small owners.

This issue was further explored during the meeting and a view was put forward that big shareholders, banks and various suppliers and service industries gained benefits from this system rather than small shareholders.

c. Information Constraints on Management Entities

The need for more information to enable good decisions to be made in relation to various types of land utilisation and in regards to the often complicated processes involved was raised by speakers in most of the hui that were held.⁴⁴ One speaker indicated that they did not know where to go to access the information they required.⁴⁵ The importance of collecting and collating accurate information from a number of sources in order to make good decisions and take advantage of the various opportunities for development in the most effective way was raised during the **Gisborne ME<50** hui. It was pointed out that there are various ways of sourcing information. In the example given these include the use of aerial photography to assess the area of land suitable for farming; and the use of community employment funding to bring in an advisor to provide information on fundamentals such as feed, fencing, water and other basic matters.

A further issue raised in relation to land information, however, was that it was often necessary to go through various systems to obtain information and it was considered that this information should all be available through one system.⁴⁶

Information to assist with exploring and assessing new opportunities was also held as being essential. One particular area in which further information was viewed as necessary was in relation to emission trading or carbon credits.⁴⁷ This was both in terms of making the most of any opportunities offered and in regards to ensuring that they were making good decisions in regards to land use which would not have a negative effect on the future of the planet.⁴⁸

Other specific areas mentioned where the speakers wanted access to expertise was in relation to farming practices,⁴⁹ access to finance,⁵⁰ the extraction of native timber for

⁴⁴ Taupō ME1500+, Rotorua ME<50, Whanganui ME1500+, Gisborne ME<50, Gisborne NME<5

⁴⁵ Gisborne NME<5

⁴⁶ Gisborne ME<50

⁴⁷ Taupō ME1500+, Rotorua ME<50, Whanganui ME1500+

⁴⁸ Rotorua ME<50

⁴⁹ Gisborne NME<5

⁵⁰ Rotorua ME<50

regeneration purposes, tourism (particularly eco-tourism)⁵¹ and in regards to marketing their products.⁵²

In some cases, the trustees were left to their own resources to explore opportunities. An example of the need for considerable 'pro bono' work having to be completed in relation to obtaining information to enable a decision with long-term implications was brought up during the **Rotorua ME<50** meeting. This case involved a request to erect a broadband transmitter on marae land. It was pointed out that this was a new and unknown issue. One of the trustees was given the job of completing a feasibility study to consider the impacts and it was noted that there was nowhere to go to get information or support to assist them in making a decision that had implications that would last for many years into the future.

Whilst relying on the unpaid work of trustees to gather important information was recognised as not being the best option, hui attendees were also wary of the reliance of many trusts for external expertise for information and advice. It was noted that to deal with the complex processes faced by trustees, a lot of money was spent on lawyers and accountants. During the **Gisborne ME<50** hui one speaker commented:

... a lot of Māori farms and owners are keeping those businesses ticking over. Why don't we own the damn thing? Why don't we own something like that so that Māori are actually taking care of business?...it's how we can actually start to take the ball into our hands and start to call the shots rather than a bunch of lawyers or accountants...

Another speaker during the **Gisborne ME<50** meeting spoke of the high amount of input by a Pakeha accountant at one meeting and commented in relation to the processes involved in utilising the land that they needed to be: "Hugely streamlined, less bureaucratic, and a bit more of us Māori taking care of business."

d. Whānau Trusts

The process of establishing whānau trust was described by a speaker during the **Gisborne NME<5** meeting. This involved having a whānau meeting and giving the minutes from this meeting to the Māori Land Court. They also had to have trustees in place. Members of the whānau were required to explain to the Judge why they wanted to set up the whānau trust and things proceeded from there. In this case it was indicated that a family member had found out how to go about this process and they had not needed assistance from outside the family.

Another person at this meeting indicated that they had made the decision to form a whānau trust without knowing very much about how to go about it, "...from our point of view we did it stone cold". It was noted that they got in touch with people at Te Puni Kōkiri and the Māori Land Court and this was very helpful.

There were a number of representatives of whānau trusts attended the hui. Reasons for setting up a whānau trust and advantages of doing so that were mentioned during the **Gisborne NME<5** hui included:

- preventing further fragmentation
- keeping track of shares in various blocks

⁵¹ Whanganui ME1500+ and Gisborne NME<5

⁵² Gisborne ME<50



- it was easier to get things done i.e. there was no need to chase each person up for a signature
- the dividend in relation to the shares accumulated to form the trust was bigger
- it facilitated decision-making in the case of absentee owners, as they only needed to be contacted by phone and a decision could be reached and the action could be taken by the person that was located where the whenua was situated
- the whole block can be used by all members of the whānau for recreational purposes instead of dividing it up.

Some of these advantages were also mentioned by speakers at other hui.⁵³ At the **Taupō ME1500+** hui it was indicated that the existence of the whānau trust had facilitated the ability to get things done: “Like, with our whānau, we just make a decision amongst ourselves, go to the Court, the Court knows that there’s one speaker...” An attendee at the **Gisborne NME<5** hui indicated that the establishment of the whānau trust had simplified the administration but pointed out that they continued to all have their say and to discuss any issues.⁵⁴ One attendee at the **Gisborne ME<50** meeting indicated that they were investigating the possibility of some sort of consolidation process in relation to their whānau trust involving smaller shareholders swapping out with other shareholders and trying to consolidate themselves into one major block.

One attendee at the **Whanganui NME>50** hui described how they inherited shares from an uncle and his mother and they had put these shares into a whānau trust. However, it was noted that 10% of the shares in two large entities had been kept out of the whānau trust so that this person could retain their voting rights: “I don’t want my kids voting for me...it’s about my own independence, my own right, my own integrity”. A similar issue was raised by a speaker at the **Gisborne ME<50** hui who noted that some shareholders still wanted to “...see their name in black and white” no matter what size their shareholding was. It was indicated that these owners wanted to keep their speaking rights.

At the **Taupō ME1500+** meeting one speaker indicated that there was a lack of clarity regarding legal aspects of whānau trusts. The rights of those involved in the whānau trust and how this was reflected in voting was noted to be unclear. Further concerns were raised in regards to choosing carefully when it came to the spokesperson for whānau trust as “...only one speaker can speak...”⁵⁵

⁵³ Taupō ME1500+, Whanganui NME>50, Gisborne ME<50

⁵⁴ Gisborne NME<5

⁵⁵ Taupō ME1500+

3. REGULATORY INCOMPATIBILITIES

Considering the evidence that has emerged in relation to the other fundamental barriers in relation to the absence of commonality amongst owners, the variability evident between management entities and the impacts associated with the lack of information available to assist owners use and manage their lands, it is somewhat unsurprising to find that the owners have identified a number of ways that the regulation of Māori land causes problems arising from being out of step in its assumptions and expectations when these are compared with the circumstances that the owners are daily encountering in the use and management of their lands. For a start, one issue raised during the **Whanganui NME>50** hui was the complicated nature of TTWMA and the fact that Māori and Pakeha sometimes had a different perspective or took a different meaning from the words in this legislation.

a. The Māori Land Court

A number of speakers at the various hui brought up issues in relation to the Māori Land Court processes and actions as being an obstacle to development. However, it should be noted that these issues were based on the perceptions and recollections of the participants and have not been verified. Several of these obstacles arose in areas where judges exercised discretion in interpreting the requirements of the TTWMA:

- *Inconsistencies*: At the **Taupō ME1500+** hui it was commented that there are inconsistencies in the treatment of applicants and in the decisions given by the Judges in the Māori Land Court. Differences between Judges were also noted at the **Whanganui ME1500+** hui.
- *The Potential Influence of Minority Shareholders*: During the **Taupō ME1500+** hui, the opportunity for single minority shareholders to raise objections to proposals put forward by ahu whenua trusts was noted. Once this low threshold to initiate scrutiny is passed, the matter moves into the discretion of the Māori Land Court.⁵⁶ The speaker had been on a trust for the previous two to three years and seen four to five cases where ideas were stifled by the Māori Land Court process. A similar issue was raised during the **Gisborne ME<50** hui where a speaker noted that if a few shareholders are opposed to an idea the Māori Land Court is more likely to steer on the side of retention rather than development.
- *Attendance Requirements*: The attendance requirements in relation to meetings were noted to be a barrier to moving forward in regards to the land. It was also claimed that judges used their discretion as to whether the attendance requirements were adhered to. In an example given during the **Taupō ME1500+** meeting it was noted that 100 beneficiaries had attended a meeting, unanimously supported a proposal and that this was recorded in the minutes. However, when the Māori Land Court Judge checked the ownership listing it was noted that there were 2,800 owners and the matter did not go ahead.
- Likewise, a speaker from **Whanganui NME>50** noted that despite two attempts they had not been able to achieve a quorum in relation to a block involving 1,200 owners and this was preventing a decision being made in regards to the lease on the block. On the other hand, a **Gisborne ME<50** hui attendee described an occasion when he was at the Māori Land Court on other business when a case came up considering a proposal for leasing.

⁵⁶ Taupō ME1500+



The Pakeha had tried several times but had not been able to locate owners. On this occasion when the lease application came again before the Māori Land Court, the Judge asked the attendee if he thought the lease was a good idea. When the attendee said he supposed so, the lease was confirmed. The attendee was not even an owner in the block.

- *Limits on the Number of Meetings:* At the **Taupō ME1500+** meeting a speaker commented that the Judge had set limits on the number of times their trust could meet each year and the trustees can be paid meeting fees: "...because he says you shouldn't be spending any more money on meetings. But if you're looking at developing land, you can't do it in the course of a couple of meetings if you're actually developing something else." Trustees had to "go back cap in hand" to request further meeting fees.
- *Trustees sometimes lack power in relation to investment decisions:* One speaker raised a concern that there were restrictions on the investment powers of trustees. It was felt that this came from the historic perspective when the Māori Land Court would look at the Māori trustees and say: "You blokes ... trustees don't know how to run this, we're going to protect your owners." Some trusts are still stuck in relation to this attitude.⁵⁷ An example was given of the Māori Land Court putting restrictions on trustees in terms of investing in a helicopter. "Now, the Court will look at the trust order and say ... 'No, not under that. You're not allowed to carry on business in the air...'"⁵⁸ This speaker maintained that for a lot of Māori land blocks this had meant that instead of being able to do the work themselves, they had to get someone else to do it: "They've either had to grant leases or licences or employ someone else, like me, to do the work that they should be doing themselves".

b. Shareholding and voting systems

Concerns regarding voting processes and the representation of smaller shareholders were raised by a number of speakers. Owners indicated there are a number of different systems in place in relation to voting. An attendee at the **Whanganui ME1500+** meeting indicated that their decisions were at one stage made through poll voting based on the amount of shares. However, this had been done away with mainly because three owners were able to out vote the 100 to 200 owners that turned up at a meeting. The poll voting became a potential source of dissension and was changed as the big owners could see the benefit of the other owners having input into decisions particularly as there was not much cash value in the shares.

The issue of small shareholders being disadvantaged in relation to the system of poll voting used at some AGMs was also raised at the **Whanganui NME>50** hui. One speaker commented: "The small owners, the small shareholders really have no rights in a system like that..."⁵⁹ It was pointed out that this system left many people disgruntled. The lack of power of minority shareholders and the perspective that their minority share was "not going to make a hell of a difference" was said to be leading to some people not attending hui and to them becoming further alienated from their land.

During the **Whanganui NME>50** hui, one case was described where three major shareholders were said to be running the whole incorporation: "They vote on who they want, they vote off who they don't want, that's it." In relation to this it was noted:

⁵⁷ Taupō ME1500+

⁵⁸ Taupō ME1500+

⁵⁹ Whanganui NME>50

And the people who are still living on the land live there under sufferance, because no benefits really come to them except what they make on the little piece that they have for themselves.

On the other hand, the one-person one-vote system was also pointed to at the **Taupō ME1500+** hui as having problems.

...if you go to an AGM and you have your whānau trust and you're the biggest actual shareholder in that block, it doesn't mean a thing. You get one vote. So now what the people are doing, they're taking one share up out of that and they're splitting one share out amongst, say, ten people. That's crazy. But if you've got a show of hands voting instead of poll voting you've got no option.

One attendee at the **Gisborne ME<50** hui also gave an example of an owner who had transferred his shares to his children and nephews and nieces to get a better collective vote as their system was "one man one vote".

On this basis, others supported poll voting for the very reason that it limited the power of smaller shareholders. An example was given at the **Gisborne ME<50** hui where a whānau used their dominance in shareholding to ensure that resolutions went through but that this had led to significant improvements being made in the position of their land.

An attendee at the **Gisborne ME<50** hui described another voting practice in relation to the trust he was involved in.

....you'll find that any person who can whakapapa to that whenua can vote as long as you're 18 years old, it's built in there. It's under the framework of beneficiaries... Well anyway, within our trust any person who can whakapapa can vote. Okay, that was one obstacle we got rid of, which is a fair process then because you're 18, you can vote. I don't hold more power than my younger generation.

It appeared that not all groups represented at the **Gisborne ME<50** hui worked in this way in relation to voting. There was a discussion regarding whether whakapapa should entitle you to have your say and one attendee indicated that at his trust, although non-owners could not vote, they could contribute to the meeting:

At our trust meetings we do let the non-owners or people who have succeeded have their say. We do let them all have their say, but to let the owners as such, who are vested owners, make the final decision, but we do let people speak.⁶⁰

⁶⁰ Gisborne ME<50



4 PRACTICAL IMPLEMENTATION ISSUES

In a number of the hui, when asked about land aspirations, respondents focused on the immediate problems they face preventing them from using their land or were curtailing their activities. In these situations, it became apparent that the removal of the barriers that existed had become the primary aspiration for the land with owners not being able to think past the obstructions they were currently facing. Prominent barriers put forward were the difficulty in securing finance, the ongoing issue of land rates, having free access to the land and issues associated with leasing the land.

a. Difficulties accessing finance

Lack of money or access to finance was indicated to be an obstacle to utilisation by speakers at a number of hui.⁶¹ At the **Taupō ME1500+** hui one speaker indicated that half of their people did not have the money to develop their lands. The issue of being unable to borrow against multiple owned land was raised at several hui. As noted at the **Gisborne ME<50** hui, although there was the possibility of borrowing against their stock, this limited the amount of funds available.

A speaker at the **Taupō ME1500+** hui agreed that once banks knew the land was under TTWMA, with all the clauses geared towards land retention, they were not willing to lend money even if the Māori landowners had considerably more economic wealth tied up in the land than some equivalent European properties. Experience did vary, however, with another speaker at the **Taupō ME1500+** hui indicating that in his experience banks would lend money if you put up a good business plan and demonstrated that you were not a risk.

It was noted at the **Gisborne ME<50** hui that lack of access to finance was resulting in Māori farms developing at a slower rate than other farms on the East Coast. This slower rate of development lessened the ability to take advantage of times when prices were good. It also lessened the ability to service the debt. It was noted that a lot of Māori farms in the Gisborne area were indicated to have “basically gone under” as a result of high debt levels. Some owners had been forced to sell their stock and were having difficulties paying their farm managers. High debt levels were reported to have led to some owners being forced to lease their land out rather than farm it themselves. The high debt in turn limited the opportunity to come up with an effective development plan.⁶² One trust pointed out that even though they had some income in relation to a few stock sales this was “...not enough to, say, pour out more fertiliser on the land or fix this side of the fence.”⁶³ Another speaker also mentioned the lack of finance available for basic farm maintenance.

To add to matters, during the recession of this year, banks were noted to be tightening up on lending criteria and also making requests for overdrafts to be settled within a specific, limited timeframe.⁶⁴

The problem with finance not only applied to commercial objectives as a speaker at the **Taupō ME1500+** hui highlighted: “You go to borrow money to build a house on Māori land, they don’t

⁶¹ Taupō ME1500+, Whanganui ME1500+, Gisborne ME<50, Gisborne NME<5

⁶² Gisborne ME<50

⁶³ Gisborne ME<50

⁶⁴ Gisborne NME<5

want to look at you...” At the **Rotorua ME<50** hui, one speaker indicated that some whānau members were going to the Māori Land Court seeking to transfer their land back to general land so that they could get a loan from the bank to build a house.

b. Rating Issues

At many of the hui, aspirations were simply focused towards development that would address the rates problem. The perennial problem of rates has often been raised by Māori landowners as creating a barrier to land use. Despite the legislation limiting the power of local authorities to take Māori land for the non-payment of rates, the issuing of notices, direct approaches to certain owners to pay and the requirement for owners to continually seek exemptions were all sources of annoyance and frustration for owners. This ongoing presence of rating demands in a situation where payment was not possible tended to have the effect on some of limiting the aspirations held towards land use as the fear was that any income made would all be absorbed in rates or that back rates would be charged. In other cases it shaped the aspirations for land use with owners implementing whatever short term steps were necessary (such as leasing) to enable rates to be paid.

Not surprisingly, therefore, many speakers raised concerns about paying rates on multiple owned, uneconomic lands.⁶⁵ It was pointed out by one speaker that this situation had not been changed despite the recent Commission of Inquiry.⁶⁶ This was considered a major issue and some speakers indicated that they could not afford to pay the rates. It was indicated that the value of some properties within Gisborne was going up and this had led to rates increases.⁶⁷

A speaker at the **Taupō ME1500+** hui noted that local government rates were in relation to land value and therefore the area of land was a significant factor. It was noted that there could be a non-Māori productive farm of 500 hectares paying a fraction of the rates that a Māori landowning group did because they had 5,000 hectares, but the farm was producing an income whereas their land was only capable of producing fees from hunters or something other low income activity. The speaker commented: “So it’s disproportionate. The farmer pays 0.1% of his revenue in rates and we pay anything up to 20% or 30% in rates.” Another issue was raised at the **Whanganui ME1500+** hui where they were grazing part of a block and the local government charged rates over the whole block despite the fact the rest was not utilised.

A further area of concern in relation to rates was that “the moment you start to produce income the rating bill can take a high proportion of it”. It was noted by one of the attendees at the **Taupō ME1500+** hui that they were going to meet with councils in the near future on this very issue. This situation created a deterrent to land development. The issue of rates on Māori land that is leased was raised as the rates eat up so much of the income derived off the land. An example was given at the **Taupō ME1500+** hui where the person leasing the Māori land is paying more to the District Council in rates than they were paying to the Māori owner in lease money. At the **Gisborne ME<50** hui it was pointed out that rates are usually three times as much as the rental. This is becoming a great barrier in getting lessees.

⁶⁵ Taupō ME1500+, Rotorua ME<50, Whanganui ME1500+, Whanganui NME>50

⁶⁶ Rotorua ME<50

⁶⁷ Gisborne ME<50 and D



It was noted that in some cases Māori owners were able to gain remissions on uneconomic land. However, some Māori owners are unhappy with the time and energy spent negotiating with local government on a regular basis to gain a remission.⁶⁸ One attendee at the **Taupō ME1500+** hui noted: “We have to go every year cap in hand to the council begging to say we want a rate remission”. Speakers at other hui made similar statements and also told of battles with councils over land that was ultimately deemed not rateable.⁶⁹ It was also pointed out at the **Rotorua ME<50** hui that remission of rates is on a case by case basis.

The possibility that the local government may change their rules or policies is also a source of anxiety.⁷⁰ A speaker indicated that by and large the councils in the **Taupō ME1500+** area would remit rates as long as the land is in its natural condition and not producing income. However, if a landowning group is generating money from another source not connected with the land, the councils hesitate in giving rates remission. It was pointed out that: “...you shouldn’t just have to be basing it on the goodwill of the council or of an individual in the council to get round that problem.”

c. Land access Issues

Not having access onto their land was raised by many owners. This could mean the lack of a physical means to access the land – i.e. the land being landlocked with no legal access – or it could mean access being denied by lessees of the land or even the very Māori trust or incorporation that was administering the land. In these situations, owners held access as a high priority aspiration.

Attendees at several hui indicated that access issues were a significant barrier to utilisation of some lands.⁷¹ For many this meant formed access. In one instance given, a block is said to be ‘landlocked’ both by Department of Conservation land and District Council land.⁷² Other blocks are also noted to have no roads or access whatsoever.⁷³

A number of speakers at the **Whanganui ME1500+** meeting brought up issues in relation to not being able to hunt or gain meat for tangihanga on land that was leased out or under a management structure. This was noted to be the case in relation to a number of blocks: “You can be the biggest owner, you can be a majority owner. No way you get past the gate, the shepherd won’t let you.”

Access for hunting is an issue in relation to the leased forestry blocks. One speaker, who was the chairman of a forestry company which incorporated 50 blocks, described how those owners who attended the AGM are more concerned about hunting than the revenue made or the state of the forests. During the **Whanganui NME>50** meeting it was indicated that small shareholders are more likely to be affected by issues to do with access to the forestry blocks for hunting as they are more likely to be local and depending on hunting as a food source for their families.

⁶⁸ Taupō ME1500+, Rotorua ME<50

⁶⁹ Taupō ME1500+, Rotorua ME<50, Whanganui NME>50

⁷⁰ Taupō ME1500+

⁷¹ Taupō ME1500+, Rotorua ME<50, Gisborne NME<5

⁷² Rotorua ME<50

⁷³ Gisborne NME<5

During further discussion at the **Whanganui ME1500+** hui regarding access to wāhi tapu and for hunting it was acknowledged that access for Māori owners was easier in the case of forestry as compared to farmland. It was noted that this was because it was difficult to damage a tree but farm blocks were more sensitive and it was further commented that "...if people were walking over farms you'd find your cattle numbers would go down drastically overnight."

Another speaker at the **Whanganui ME1500+** hui raised a broader issue of people wanting to go back and live on their land and being unable to because it is under lease or some other use:

...the common feeling that I gather from these people is that they are wanting their land back and they're wanting to live on it, they are wanting to grow their kai on it, they just want their own space. But it seems to be a problem because it's been invested and it's now got ten trees sittin' on it or something...

d. Leasing Issues

Many groups of owners were in a situation where their land was leased.

One attendee at the **Rotorua ME<50** meeting described how land may become locked into agreements and be kept out of the hands of the Māori owners for long periods with Māori owners only gaining a small income over these years as follows:

"The thing is that when we start off with a bit of land the first thing we do is give it to the Pakehas to work. But at the end of the day the Pakehas make it better so we may be locked in for 20-odd years before we may get that land back, and we're just getting a minimal amount of money."

A variety of specific issues were brought up in regards to leases. Changes in policy in relation to the length of leases were considered a barrier to some types of utilisation by an attendee at the **Taupō ME1500+** meeting. It was pointed out that in the past the Crown had accepted hundred year leases in relation to forestry but now only 21 year leases are allowed. This was seen as a barrier to some development such as riverside villas as it was noted that: "... before Hoppers could even think of even looking at us, they wanted a 120- year lease."

A number of issues were brought up in relation to forestry leases within the **Whanganui ME1500+ and NME<5** hui. Some of these difficulties are in relation to a change of lease-holder. The complex nature of the legislation involved and the need to understand this was raised. In this case it was pointed out that the Māori owners would not have consented to a new company taking over the lease so the lease-holders had transferred their shares in the old company to another business. It was indicated that these matters are complicated and it is hard to keep "up with the play" with these sort of issues. There are also costs involved in trying to sort out the whole leasing matter.

Two attendees at the **Whanganui NME>50** meeting indicated that they considered that the Māori owners without management entities lacked rights when it came to decisions about leases. In one case it was explained that it had taken a good deal of work to prevent a lessee with a poor reputation carrying on with the lease which appeared to have been rolled over without going back to the owners. In a further case the speaker had shares in some land that was being administered by the Māori Trustee on behalf of one of their whānau. It was noted:

...when the lease come up the thing that we got wild with, that we weren't able to be in there saying yay or nay, they made all the decisions and said, "Well, we're going to re-lease to that guy for whatever" without us having a say so.



During this discussion on leasing it was noted that one of the new leases was for only seven years. It was pointed out that some Māori owners want seven years leases and this is now able to be done as farmers had changed their point of view and believed that they could make a living out of a seven year lease.

The issue of perpetual leases was raised during the **Gisborne NME<5** meeting. One attendee commented in relation to township blocks:

To me, the greatest injustice against Māoridom was the perpetual leases... In a township. We are the owners of the township. We own a township, but the person that's got the perpetual lease is the one that's reaping in all the gold.

One of the township leases had been broken in relation to the last occupier breaking the covenants. However it was indicated that there were a number of blocks in the Gisborne area which were under perpetual leases. A further point raised was that the rents were set on land value with a formula which meant that the rent was "pretty low". The township leases were said to have been set up back in the 1930s and the non-township ones at the turn of the century.

PART FOUR: EXAMPLES OF ENABLERS

In response to questions about enablers to the realisation of aspirations, rather than pointing to generic mechanisms, owners related their success stories. As these were given by only a few groups at several of the meetings, they must be viewed as anecdotal. This part of the report describes those success stories. In general they illustrate progress, reflecting one or several of the following features:

- smaller and larger trusts and incorporations were beginning to work collectively on issues such as rates, owner education and investment opportunities
- use of whenua rāhui to protect land whilst partly capitalising on value to raise funds to invest in other lands or projects
- pooling of funds for investment in business or properties based on general land titles to provide freedom of action outside of TTWMA and avoid risk of loss of Māori land
- working with Māori Trustee or Māori Land Court officials who provide localised brokerage services to establish joint ventures and overcome barriers.

1. THE MĀORI TRUSTEE AS BROKER: AN OPŌTIKI KIWIFRUIT ENTERPRISE

Information was provided by the Māori Trustee in relation to the utilisation of Māori land for the production of kiwifruit. In terms of size it was indicated that the blocks that became involved in this kiwifruit enterprise are not big blocks with the largest one being about 5 hectares. During the initial stages of this project, trustees from a large number of blocks were approached and this resulted in the attendance of trustees from twenty blocks at a meeting to hear about the proposal.

Out of the 20 trusts, five decided to go ahead and explore the option further and a business plan was developed in relation to these blocks. In addition, the initial stages of this project involved a meeting with all the owners and it was indicated that once the business plan was put in front of them and they could see how it was going to work “the owners basically gave a sign off”. It was pointed out that prior to the kiwifruit enterprise these blocks were not producing any revenue for the owners. It was noted that: “the main grower was growing his maize and paying the money directly to the council [for rates], so the landowners were getting zero.”

...So they saw it as an opportunity, not only to get a return but work for the community. I guess that's where we talk about and we say some of our values, tāonga tuku iho, when you talk about that. And it's about holding on to our whenua, I hear that over here and putting together our agreement with the investors that was at the forefront of the owners going forward and our office going forward with it. We weren't going to put the land at risk at any stage...



The five trusts all decided to become part of the partnership. There were two partners one being the investors and the other being the landowners represented by the five trusts. Each of those five trusts set up a board meeting with the investors and a 50/50 partnership was formed:

...the landowners put their land in that was their 50 percent, although the valuation didn't equate to the development cost of the orchard so the landowners then had to put some cash in to make the 50 percent partnership. And so the landowners, every quarter we sit around the table, the Māori landowners have equal say to the investors at meetings as to how the orchards progressed.

In regards to Board of Management meetings it was indicated that two trustees from each of the five blocks would attend and in relation to big decisions these trustees would take the information back to a meeting of their full trustees. There were noted to be some complicated features to deal with in establishing this structure such as heads of agreements, lease documents and other matters. It was indicated that it had been important to take care and get advice through this process:

...you've got to be really careful once you set these up to make sure you have advisors there, you have a legal teams there to cover all the clauses of those agreements because even now we find that there are the odd things that we didn't – we weren't aware of at that time that are starting to slip in, so make 'real sure'.

It was also pointed out that this group had used the knowledge gained through their experience to pass on advice to other owners that were going into agreements in relation to kiwifruit production.

This land remained Māori land which was one of the reasons that the decision was made to go with this enterprise. It was also noted that this did not have to go through the Māori Land Court because within the trust orders involved with each of those trusts was the ability to lease the land out and so the land was leased to the partnership.

It was noted that this land was now doing extremely well and returning between \$80,000 and \$130,000 a hectare. The trustees in the blocks went from having no money to dealing with hundreds of thousands of dollars. There was a difficulty in regards to how they would manage this. This problem was resolved through employing Te Puni Kōkiri to look at the issue. This resulted in all the trustees being involved in governance training and in up-skilling in investment development.

2. NGĀ WHENUA RĀHUI

An attendee described how they had put part of the land under their trust into ngā whenua rāhui.⁷⁴ One advantage was that they no longer had to pay rates on this land. In this case they decided to capitalise the money that was received for this land being under ngā whenua rāhui. This meant that they did not receive the full amount that they would have got if they chose to just take a small amount each year. This money formed the financial basis of their trust and they were able to use this money to invest in a dairy farm. In regards to the land under ngā whenua rāhui it was pointed out:

⁷⁴ Ngā Whenua Rāhui is a contestable Ministerial fund established in 1991 to provide funding for the protection of indigenous ecosystems on Māori land. Its scope covers the full range of natural diversity originally present in the landscape.

We still own the land. We can still go in and get all those Māori things you want. We can still go in there and we still have a say and we can go in there. But that's one of the things you can do with land if you're not using it.

The use of ngā whenua rāhui money to invest in further purchase of land was also described by another attendee. In this case a number of blocks were collected under two main trusts. Some of this land was put under ngā whenua rāhui and the money obtained through this was used to purchase 4,000 acres of land that included some farmland and further bush land. This bush in the purchased land was also put under ngā whenua rāhui and this money was invested to provide ongoing income. The other part of the purchased land was used for grazing. It was indicated that rates were paid in relation to the whole of the grazed block. Of the original land, some of the owners want to revert it all to bush. However, one advantage of having the farm was that there was meat available for tangi and other occasions. It was indicated that the Māori owners received no income in relation to the farm.

In regards to the trusts involved with this venture, information provided indicated that one of these trusts was established in 1998 and the other in 2008. Prior to this the land had not been under a structure. The formulation of the trusts was associated with a decision to take some action in relation to the land. The process of establishing the trusts and moving forward with putting the land under ngā whenua rāhui was said to cost about \$25,000 and involved going to the Māori Land Court, getting a court order made, appointing trustees and getting a trust order.

In this case the process also involved flying owners over from Australia so they could see for themselves the land involved and realise that although beautiful there were difficulties in relation to access and therefore the land was not practical for many types of utilisation. The desire to protect the trees was also a factor in the decision to put the land under ngā whenua rāhui. The process of establishing these trusts was not seen as difficult but it was pointed out that somebody had to take responsibility for seeing through the process.

The trust deeds associated with these two more recent trusts were described as being quite different than older ahu whenua trust deeds. It was said that they were deliberately written in a way that gave the trustees wider scope for action.

...we're talking about not only land as such. We're talking about ... and we use the phrase papatūpuna, and that's ... really where you have river beds, beach beds and that where there's growth underneath, that's still part of what we term papatūpuna because it's giving life from those that's underneath. And if there's minerals underneath, if there's gas underneath, and so ... well, this is what we're talking about, it isn't just about land on the top and you grow some grass or something like that. I know it might not meet what the government terms as their definition of land, but it's our definition.

It was noted that over a number of years the experience of the trustees with their river claim to the Waitangi Tribunal had led them to define "the holistic Māori view of the atmosphere" which covered aspects such as their association with the air and clouds above their land. It appeared that there had been no difficulties with the Māori Land Court in relation to putting in place a trust order of this nature.

It was indicated that there were about 3,001 owners associated with one of the trusts and that they were in contact with about 10%. Although the Māori Land Court's benchmarks were higher than that, this had not caused difficulties and the Judges were said to have been very



good in association with this. However, it was pointed out that the Māori Land Court process had been very slow.

Although it was noted that it was not hard to get the owners on board in relation to this venture, there were concerns raised in relation to putting the land under ngā whenua rāhui:

There were concerns, but it was what alternative do you have? ...Oh, someone would say, "Here we go again", you know you're giving it over to government, you're doing that sort of thing...

However, it was pointed out that the Māori owners were positive in relation to being able purchase further farmland. It was indicated that they had received about \$500,000 for the initial area of approximately 3,000 hectares put into ngā whenua rāhui and that they received about \$400,000 for the further land put under ngā whenua rāhui. This land was put under for a period of 25 years. The majority of the land was in virgin bush with some being in re-growth. It was also explained that the purchased land was originally ancestral land to the owners but that it had been acquired in the past and put under general land designation. The land was chosen as part of a general objective of the owners to acquire back, even by purchase, their original ancestral holdings.

In relation to the purchased land, the owners transferred it back to being Māori land:

...we found it was a protection, a better protection for the owners. Otherwise you could just sell it or hock it off like that, and it's that retention idea. And because it was land taken in the first place, it was getting land back.

As to the land that was under ngā whenua rāhui it was noted that the owners remained as trustees over the land but that now there was a covenant over it. It was further indicated that there was still the potential for some activities to proceed on the land such as tourism - as long as the flora and fauna were protected. Some of the money obtained through ngā whenua rāhui was used for building huts on the land that could be used by members of their hapū that were employed in regards to pest or weed eradication. These cabins were also able to be utilised by hapū members that were hunting in the area. In addition, money was being used to do the tracks up and it was pointed out that this had the potential to assist in possible future tourism operations.

In relation to the money from the ngā whenua rāhui that was invested it was explained that this was invested to get the best return but also in safe ventures. It was indicated that they did not want to invest this in anything that posed a risk. Other uses being considered for the money were educational scholarships and projects such as bee-keeping. It was indicated that there were not going to be any dividend pay-outs. As the land had not been utilised in a commercial way before there had not been much expectation of dividends from the owners.

3. COLLECTIVE DAIRYING VENTURE

Information was provided in regards to a partnership of trusts established in relation to dairying. The land was originally Māori land sold some time ago as an estate. When the Pakeha owner decided to sell it, three trusts got together to buy it. The land was not covered by the Māori Land Court. So the trusts bought the land, formed a trust, put it under the Māori Trustee who subsequently gave the land back.

In relation to communicating with the various shareholders in regards to the establishment the following process was described:

Well, how we set it up was each trust have their own trustees and they go to their AGM and then they speak to the shareholders, and the shareholders give the trustees the right to do whatever, you know, we tell them what we are going to do. So we have a minute in the AGM and that is how it started and they agreed to it.

It was indicated that this process did not take long.

Some of the benefits gained through this venture were described during the hui. The initial blocks involved in this partnership were surrounded by a lot of Māori owned land that was under different trusts and belonged to various whānau. The size of some of these blocks meant that they were not economic. However, these lands were able to be leased to the trust running the dairying business. It was noted that the whānau involved in leasing their lands aspired to “build a financial base for the benefit of their mokopuna.”

It was noted that there were some difficulties. However, it was all for the benefit of holding their tipuna’s land. The importance of not letting trustees have the full authority to go ahead and ensuring that they came back to the shareholders with big decisions was emphasised in relation to this venture.

It was also pointed out that one of the difficulties in relation to the venture at present was that it had gone from a farm to be more like a business venture and one of the trusts had possibly wanted to sell their shares but there was a lack of flexibility to make changes in the structure. There were also concerns that the trust may sell out its interest to a non- Māori partnership.

4. A REINVIGORATED FARM TRUST

Information was provided in relation to the use of a 1,500 ha block for farming. Records prior to 2000 indicated that this farm had been previously under-stocked with only 2,500 stock units. It was indicated that in the past the farm manager who had shares in the block had come from a position as head shepherd. He had been given incentives such as a free house and stock to grow for himself. However, there was not enough money to pay him and he had remained on a benefit.

The speaker indicated that around 2000 a meeting was held in relation to improving the land. It was noted that at that time there were 13 trustees involved in managing the land:

...it was all these family sort of leaders and they went on there for the wrong reasons. ... so most of the discussion was really around the table about themselves and all the history and all ... you know, their family did this to our family and ... but the land kept on suffering.

To break the cycle, some of those sitting on the committee decided to step down and let new people come on. In addition, the number sitting on the committee decreased to five. These changes in governance enabled steps to be taken to improve the land. The need to base decisions on accurate information was pointed out. In relation to this in this case study the following steps were taken:

- **Funding through Community Employment for an advisor.** Advice was provided in relation to the fundamental steps that needed to be taken in regards to matters such as feed, fencing and water. It was noted that they did not have the expertise themselves nor did they have the money to pay for an advisor without accessing the funding.
- **An aerial photograph of the property.** This enabled them to see that there was only 225 hectares of effective land within the 1,500 hectares. This information led them to a decision to put 770 hectares into a ngā whenua rāhui. This gave them about \$70,000 to \$80,000 that



they could then use to complete drainage on the property as this was one of the factors pointed out in the report from the outside advisor.

- **A regular reporting system** involving the farm manager and the accountant was put in place.
- **Trustee meetings** were held every two to three months with an annual AGM.

The relationship between the farm manager and the chairperson was considered crucial and it was indicated that communication and questions from the other trustees needed to go through the chairperson. There also needed to be performance measures in place in relation to the farm manager although in this case it was pointed out: “We couldn’t be too harsh, because we didn’t have much to offer ...”

There were noted to be over 700 shareholders and in relation to communication it was commented: “How do you communicate with those 700 people? Do you really want them to come all to the AGM?” Trying to find owners was not an area that the Trust spent time on as they had no time to spend on it. Within this trust one family were noted to be the dominant shareholders and in regards to voting it was noted:

...There’s a clause in our trust order which says that you can do it by shares, and I said well that’s all we’ve got to do – you’ve just to get our whānau to turn up and block the meeting that way and get our resolutions through.

Over the nine years since the changes had been put in place, there was steady governance with the same five trustees remaining: “...every year there’s retirements by rotation, seeking re-election, [but] no one else puts their name forward.”

Overall, the trust had taken a conservative approach and had grown slowly. They had an overdraft facility and the banks had approached them in relation to lending them more money but they had refused because of the risks involved in getting into a position of not being able to keep up with interest payments. Their debt was noted to be at a manageable level. In regards to the type of farming they were engaged in it was also indicated that they had gone back to “tried and true” basic breeds.

Despite the fact that conditions were marginal and a lot of farmers had gone under, the speaker pointed out that they had managed to retain the land and that there had been improvements. These included an increase in stock units from 2,000 to over 5,000; the application of fertiliser; the completion of development work and the fact that the farm manager was also now being paid. In addition, the trust was also leasing a block of land in another area. Dividends were not paid out despite some requests from the shareholders.

Now that improvements had been put in place in relation to the farm, the trustees are considering other possibilities such as tourism and forestry. The amount of unpaid work involved in accessing information and completing feasibility studies in relation to exploring development options was pointed out.

5. COLLECTIVE ACTIONS BY TRUSTS

It was described how a number of the large trusts in an area were creating a forum to meet together to consider various issues facing them. These included the various designations being put in place in the Taupō area in relation to nitrates and other issues. This process had been going on for a number of years and had intensified over the last five years in relation to

the development of the district plan. These regulations had a potentially significant effect on the ways that the land could be utilised in future and the costs involved.

Aside from addressing future issues, at the time of the hui, the trusts' forum were beginning to consider a number of development options.

...the thing is that we've got a collection here, we've got all the different trusts, so what we're looking at was looking at the possibility of working together to strive - I suppose looking at the unity of our trusts to take us into the future. That's probably what we're doing now with our things, and we've identified areas that we would concentrate on. One was that we could look collectively at rates to deal with the situation. Secondly, we're looking at some of the things that we thought would be good for us to work together on, and those were out there, the education and investment.



PART FIVE: RESEARCH FINDINGS AND THE CURRENT REGULATORY ENVIRONMENT

Having completed a series of case studies with Māori landowners to discuss their aspirations, and reported on the barriers and enablers the owners have identified in relation to these aspirations, this part of this report will consider the implications of the information within the context of existing regulation. The information collected from owners has implications in several areas:

- The extent that regulation relies on the exercise of discretion
- The relationship between TTWMA's two key objectives of retention and utilisation
- The association between regulation and the enablers and barriers to those owner aspirations that have been identified in relation to land utilisation
- The impacts for regulation of the owner disassociation with land that has developed over decades
- The extent that regulation currently assumes and relies on the ability to identify and locate owners and on the expectation of owner consensus
- The way in which regulation and practice insist on owner participation in governance
- The inherent difficulties in working with the trust structure
- The possibility of an evolved role for whānau trusts⁷⁵
- The limitations of whenua tōpū trusts.⁷⁶

Collectively, as the discussion in this Part of the report will demonstrate, these implications are of such a fundamental and far-reaching nature that it will be necessary for any review of the regulatory framework to undertake a first principles approach to ascertain an appropriate future direction for the retention and utilisation of Māori land.'

1. THE ACT AND THE ROLE OF DISCRETIONARY POWERS

TTWMA provides a broad ambit for the exercise of a large number of discretions that TTWMA requires for the exercise of decisions under its provisions. In general, the owners have reported back that this level of discretion maintains a level of uncertainty for them in the development of aspirations and the implementation of actions to achieve those aspirations.

⁷⁵ A whānau trust is a trust designed to hold and manage beneficial interests or shares in Māori land or general land owned by Māori.

⁷⁶ A whenua tōpū trust is a trust designed to manage land belonging to an iwi or hapū.

In excess of 200 of the operative provisions of TTWMA (of a total of 362 sections) create discretionary decision-making situations. These range from exercising the same powers as the High Court in granting relief against forfeiture⁷⁷, the discretion to appoint a receiver to enforce charges against land⁷⁸ as well as the more well known discretions in relation to trusts and incorporations set out below.

TTWMA attempts to address the breadth of the discretionary powers and the unique character of the subject matter are by providing a framework of guidelines for the exercise of discretions conferred by it. The guidelines start with broad expressions of principle and become more specific with particular areas of the jurisdiction.

The Preamble sets the direction with the explicit recognition of Māori land as tāonga tuku iho of special significance and for that reason the need to promote the retention of that land in the hands of its owners and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whānau and their hapū. In the exercise of powers under TTWMA there is a further explicit guideline given in the statement

*It is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the principles set out in the Preamble to this Act.*⁷⁹

The same provision goes on to require

*Without limiting the generality of subsection (1), it is the intention of Parliament that powers, duties, and discretions conferred by this Act shall be exercised, as far as possible, in a manner that facilitates and promotes the retention, use, development, and control of Māori land as tāonga tuku iho by Māori owners, their whānau, their hapū, and their descendants, and that protects wāhi tapu.*⁸⁰

The Māori Land Court, as main decision maker under TTWMA, is provided with guidelines as follows:⁸¹

1. In exercising its jurisdiction and powers under this Act, the primary objective of the Court shall be to promote and assist in –
 - a. *The retention of Māori land and General land owned by Māori in the hands of the owners; and*
 - b. *The effective use, management, and development, by or on behalf of the owners, of Māori land and General land owned by Māori. (Emphasis added).*

⁷⁷ s. 21

⁷⁸ s. 83

⁷⁹ s. 2(1) TTWMA 1993

⁸⁰ s. 2(2)

⁸¹ s. 17(1)



Further objectives for the Māori Land Court are also provided⁸²

2. In applying subsection (1) of this section, the Court shall seek to achieve the following further objectives:

- a. *To ascertain and give effect to the wishes of the owners of any land to which the proceedings relate:*
- b. *To provide a means whereby the owners may be kept informed of any proposals relating to any land, and a forum in which the owners might discuss any such proposal:*
- c. *To determine or facilitate the settlement of disputes and other matters among the owners of any land:*
- d. *To protect minority interests in any land against an oppressive majority, and to protect majority interests in the land against an unreasonable minority:*
- e. *To ensure fairness in dealings with the owners of any land in multiple ownership:*
- f. *To promote practical solutions to problems arising in the use or management of any land.*

In its conduct of proceedings generally the Māori Land Court is empowered to have recourse to *marae kawa*⁸³ and enjoined to conduct the proceedings so as to avoid unnecessary formality⁸⁴.

The large number of discretionary powers is not surprising given the nature and extent of the Māori Land Court jurisdiction over Māori land. However, the sheer volume does indicate the need to be careful in determining how those powers are exercised so that a consistent guide can be given to the owners of the land and their advisers.

A notable absence in TTWMA is the attention to criteria for decisions, for pre-qualifying applications that meet certain conditions and for promulgation of decisions to serve as benchmarks for owners and their advisers. In addition, aside from having regard to the circumstances of the application, there are no distinctions made for the number of owners or the size of the land.

⁸² s. 17(2)

⁸³ s. 66(1)(a)

⁸⁴ s. 66(2)

2. THE DIFFERING TREATMENT IN THE ACT OF RETENTION AND UTILISATION

TTWMA specifically records the dual underlying objectives of the retention and utilisation of Māori land. Given the comments from the research amongst owners – that in cultural terms, utilisation is the corollary of retention – this dual feature within TTWMA is not surprising and it is most appropriate. Despite this starting point, however, the legislation thereafter treats the two objectives quite differently and not in the holistic manner in which owners might view matters.

Notwithstanding the dual statement of principle in the Preamble and subsequent provisions, the legislation is more attentive to the alienation provisions than those for the establishment and oversight of the management entities for utilisation of the collectively owned land. The clauses of TTWMA essentially are proscriptive in relation to retention with clear boundaries placed around possible owner actions. In relation to utilisation, there is no such proscription

It is apparent that the provisions relating to alienation have been the subject of a clear focus to remove ambiguity on their application⁸⁵. Any general discretionary provisions⁸⁶ were repealed in 2002. To achieve the clarity required the Act now makes the required Māori Land Court confirmation of alienations that fall within the prescribed criteria a given. Thus alienations by trusts⁸⁷, Māori incorporations⁸⁸ or by the owners in common⁸⁹ will be confirmed if they achieve the thresholds prescribed in those sections⁹⁰.

By contrast the provisions associated with the utilisation of land do not have the same certainty and instead allow for wide Māori Land Court discretion. Within the legislation there are processes at the beginning of the utilisation process which establish the governance environment under which utilisation might occur – i.e. for establishing a management entity, forming a trust deed, electing representatives, etc. TTWMA also has clauses which deal with the end of the utilisation process which essentially take the form of safeguards put in place allowing for Māori Land Court scrutiny to evaluate any proposal for utilisation; intervention mechanisms if the utilisation development process has not been undertaken properly; and further mechanisms to intervene should the utilisation proposal go awry and bring risk to the retention of the land.

For example, provisions for the establishment of a trust require that the Māori Land Court shall not make such an order unless satisfied there has been sufficient notice and sufficient opportunity to discuss the proposal and that there is no meritorious objection to the application from among the owners⁹¹. There is no statutory guidance on the length of time or quantum of

⁸⁵ NB the provisions relating to change of status (Part 6 ss 129 – 144), through which certain alienations may be effected that would or could otherwise been achieved, have not had the same attention up to now.

⁸⁶ ss 153, 154

⁸⁷ s. 150A

⁸⁸ s. 150B

⁸⁹ s. 150C

⁹⁰ Note the discussion on the achievability of such thresholds e.g. 50% of the total ownership for a long term lease which make the achievement of such propositions beyond reach irrespective of their merit.

⁹¹ s. 215



owner support that is regarded as sufficient for these purposes⁹². This introduces a large element of uncertainty for owners wishing to take utilisation proposals forward through a trust entity.

A Māori incorporation may be established by somewhat less subjective procedures i.e. following a resolution passed at a meeting of owners⁹³ and with the concurrence of 15% of the ownership. Nevertheless, the Māori Land Court discretion is couched in similar terms to that applying to trusts so that the Māori Land Court shall not make the order unless those conditions apply. The provisions relating to a meeting of assembled owners also apply⁹⁴

There is another way in which TTWMA reacts to the two key objectives differently. Regarding retention, the legislation recognises and reacts against the risk posed by exogenous factors that might place an individual owner or group of owners in a situation where a decision is made to permanently alienate their interests despite their overriding preference being to retain the land. These factors might include socio-economic circumstances, relevance of land to the owners' domestic economy, their residence at some distance away from the land. In the interest of ensuring retention, and overcoming any motivation, TTWMA sets out a series of parameters that strongly encourage retention. Whilst not impossible to sell land out of Māori ownership, the threshold is so high and options to retain within a Māori landholding group are so numerous that effectively the alienation of Māori land outside of TTWMA has ceased.

Whilst TTWMA recognises exogenous factors that might encourage alienation and therefore constrains action to achieve the legislation's retention objective, it does little to recognise and take action in relation to the range of exogenous factors that influence land utilisation. (These are the same as those influencing alienation, but would also include numbers of owners, size of land and lack of commonality within an ownership group). Instead, as noted above, the structures through which land utilisation must proceed are set in place and mechanisms to provide safeguards to owner interests also feature. When compared with retention, however, TTWMA does little to ensure the utilisation objective is achieved. It might be said that this situation has come into place in order to give owners the freedom to pursue any or all of their utilisation objectives without the Māori Land Court directing the form of that utilisation. Whilst an admirable motivation – the fact nevertheless stands that the two key objectives of TTWMA are dealt with differently. For retention, there is a measure of prescription accompanied by a menu of options for landowners not wanting to retain land to consider. For utilisation, the game rules are set, but otherwise TTWMA is open ended.

To some extent, it is this difference which is at the heart of the dichotomy that has emerged with TTWMA being successful in achieving its objective of retention; whilst land utilisation has lagged behind and has struck difficulties. With retention it was assumed that regulatory intervention was desired; with utilisation it was assumed that it was not. With retention, intervention was justified by acknowledging exogenous factors; for utilisation, the role of factors working against the objective was ignored.

In the following sections, the role of exogenous factors is discussed further. For now, the different treatment by TTWMA of its two objectives is raised to highlight the need to embody

⁹² The Māori Land Court rules on notice of a meeting of assembled owners (r. 118) require public 2 notices at least 7 days apart which will give a minimum of 10 days notice in practice.

⁹³ s. 247

⁹⁴ Pt 9 TTWMA; Pt XI Māori Land Court Rules 1994.

within TTWMA provisions that signal the equal importance of utilisation and the need to approach review with an eye to recognising exogenous factors by providing flexibility and a range of options.

3. ENABLERS, BARRIERS AND REGULATORY REVIEW

The research with Māori landowners revealed a range of enablers that were being brought into place as landowners sought ways to fulfill their aspirations using innovative practices such as:

- ngā whenua rāhui to raise capital and acquire investment property
- the pooling together of resources to bring operational efficiencies, to maximise potential or to purchase existing land businesses (in general land title) which there was greater freedom of action
- the use of pro-bono agencies such as the Māori Trustee or Māori Land Court to bring expertise to broker a deal for a new joint venture with Pakeha business partners.

All of these practices occurred outside of regulation. Whereas, in the case studies provided, the experience of the owners was that the regulatory environment did not hinder the processes being undertaken neither was there evidence that the regulation furthered the objectives of the parties involved. Both of these points are salient and should be taken into account when regulatory review is being considered.

Despite the successful examples identified through owner consultation, it is evident that a greater number of ownership groups would not be in a position to create or take advantage of any of those enablers that might advance their land utilisation aspirations. The existence of fundamental barriers arising from the absence of commonality among owners, the variability of land held by Māori, the divergence in management entities and constraints arising from poor information availability all create externalities that most ownership groups can not overcome and with which the legislation at the moment does not assist. In the broadest analysis, it can be argued that the nature of the regulatory environment in existence caused these externalities to come into place over a number of decades. Aside from this, the existing regulatory environment exacerbates the impacts of the externalities in acting against owners forming and fulfilling their aspirations over the utilisation of their land.

For those owners who are involved in some form of action over the utilisation of their land, the regulatory environment is only noticed when it generates further barriers. The feedback from owners is that a number of these barriers exist both in meeting the requirements of the regulation and in the way in which that regulation is interpreted and applied by the Māori Land Court. Specific barriers have been identified around:

- requirements for owner notification and owner participation
- the need to provide opportunities to all owners to participate in decision making
- the way in which owners vote
- the role of the Māori Land Court in having final sign off on developments proposals
- the Māori Land Court's powers of review and intervention.

All of these factors have been identified as placing limits at various times on the aspirations that ownership groups can form and on the actions they can take to fulfill these aspirations.



The existing regulatory requirements and practices are not, on their face, inherently restrictive and were probably not so when they first came to feature in Māori land law at any time between 1909 and 1953. However, since that time the externalities noted above have built to a point where regulatory requirements can and do cause barriers in relation to land utilisation.

4. THE IMPACTS ON UTILISATION OF OWNERSHIP EXTERNALITIES

When it comes to the matter of land utilisation, TTWMA seeks to manage risk of loss by requiring owner participation in decision making at a number of levels or by allowing for owner complaint to be raised leading to review. In the former case, relatively high thresholds are set to minimise risk and in the latter case just a single owner is potentially sufficient to cause investigation.

A number of ownership externalities have been identified from the research. These externalities have been noted as increasingly undermining the commonalities that used to exist between and within ownership groups. The research also seems to indicate that the regulatory requirements associated with ownership participation in decision making over the utilisation of land are increasingly out of step with the situation being faced by owners.

a. Identifiable and Locatable Owners?

The assumption that owners are generally identifiable and locatable underlies TTWMA and the practice derived under it. Requirements exist, formally and informally, for a certain proportion of owners to be contacted so that they might participate in a number of decisions regarding the land such as the formation of a trust and in other areas previously mentioned in this report. The setting of high thresholds for required owner participation or agreement presumably occurs in the belief that these devices manage risk whilst not setting too great an obstacle to land utilisation.

Although TTWMA obviously accepts that some owners will not be contactable or available (otherwise there would not be any threshold set) the changing of externalities among the ownership group raises the question of whether these thresholds are out of date with the changed circumstances. Matters have greatly changed over the last few decades. At one time, even as late as the 1950s, a smaller community of owners was probably located either close to the land or were in frequent contact with each other. Now there are more owners most of whom live some distances from the land.

In addition, the fact that the legislation had long provided for a succession process and the existence of the Māori Land Court as a Court of record, probably created an assumption that all owners were identifiable and locatable. This is no longer so. Successions do not now happen as a matter of course and owners, three generations of whom had migrated away from their tūrangawaewae, can not be located so easily.

As noted in Part 1, the research among owners has identified the barriers to land utilisation caused by the requirements of owner notification and the obtaining of sufficient owner support. Much energy and resource is put into locating and contacting owners and efforts are only relatively successful. Whilst to some extent, many management entities are committed to locating and communicating effectively with their ownership base, to a large extent the high priority given to this task results from the need to meet regulatory requirements if land utilisation plans and owner aspirations are to be advanced.

There is a need now to review whether existing thresholds remain in regulation and, if so, what would be the suitable level. If the regulatory environment continues to place the onus on ownership groups to identify and locate owners in order to meet regulatory requirements or practice, then, considering the great difficulty of this job and the fact that it is beyond the resources of most owners, an argument could be made with justice that funding must be provided as good regulation should never place cost burdens on stakeholders beyond that which they can reasonably meet. The other option is simply that the burden of locating owners to the extent that is now required by legislation be removed or lowered.

b. The Myth of Consensus?

There appears to be an underlying assumption of TTWMA that consensus among the owners is possible and even likely and that any dissension will be dealt with by a majority vote which would satisfy considerations of equity or natural justice. It does not appear, however, that the changing externalities that have developed amongst ownerships groups are taken into account. Instead, ownership experience has shown that efforts to contact a wider group of owners raises the risk of lessening the level of agreement due to the varied priorities of those contacted or it brings in a majority view that is contrary to that of those people who live on or near the land and perform ahi kaa and kaitiaki responsibilities.

Whilst consensus will always be a challenge for any multiple ownership group, in the past there were several mechanisms which aided consensus within Māori landholding communities:

- the ownership group was smaller
- a greater proportion of owners were located on the land or lived locally to it
- the land (its cultural significance, its contours, its capabilities) was known by more people
- as the community of owners was physically closer to the land and to each other, it was easier to form aspirations and communicate these
- there was clear and understood community leadership.

Whilst today a proportion of owners would still live close to the land, know about the land and its associated community and recognise a community leadership in relation to the land, it is likely that for many land blocks, especially where the ownership is large, that the large majority of owners in a block does not have the same knowledge and understanding. It is likely that the greater majority of owners live some distance from the land and are not part of the local community. For many whānau, this separation from the land and the local community still residing around the land has been in place for up to three generations. Whilst there will always be some who, despite being away, will still hold close knowledge and associations with the land and its local community, these people will be a small minority especially in a situation where there are dozens to hundreds of owners. Not only will the aspirations of those owners living away from the land differ from a local community, but they will differ between each other and will be based on their widely varying personal circumstances. This has been the message reported from the research with owners and the situation works against forming a consensus over aspirations or a plan of land utilisation and development.



c. A Disproportional Placing of Governance on Owners?

The difficulties associated with identifying and locating owners as well as the challenges which face ownership consensus raise a question about the ongoing role that Māori owners have in the governance of their land. As noted above, there are a number of occasions when majority ownership support is required before a land utilisation proposal or action will be accepted by the Māori Land Court. A number of the requirements in regulation for Māori ownership support are in areas which would normally be the purveyance of elected governance entities. The level of Māori owner participation is high compared with other situations, such as beneficiaries in a trust or shareholders in a company. In these other forums, important decisions are saved until AGMs whilst the trustees or board, having made other decisions during the years, will find out through the ballot box as to whether these decisions were acceptable.

At this point it might be useful to compare the situation of a company shareholder with that of a Māori land shareholder. There are several key differences when it comes to the gaining and disposal of shares. These were traversed in the June 1999 report Māori Land Investment Group Recommendations:

- in the process for establishment; a company has zero judicial intervention
- in a company there is a clear separation of ownership and management
- default powers; a company's powers are very broad
- default constraints on powers in respect of major transactions i.e. risk or the nature of the enterprise for companies
- clear rules on conflicts of interest
- generally there is liquidity in company shares.

Māori shareholders, however, face:

- protections afforded to minorities
- the process by which owners' rights are pursued
- the beneficial tenancy in common ownership of Māori land owners
- less liquidity in shareholding (thus the impediments to dealing with or quitting Māori land interests may mean that it is easier to retain the shares than dispose of them).

When the role of a company shareholder in governance is considered, a company shareholder has five main areas where they can express their views, participate in decision-making, make complaint or take action.

- can keep or sell shares. Consent shown by continuance, dissent shown by discontinuance
- can participate in elections. Consent shown by voting status quo, dissent shown by voting for new candidates or trying to be a candidate
- if share is too small to be influential, only choice is to buy more shares or work to build a voting block amongst other shareholders. Both require use of significant resources by shareholder
- can communicate directly with management or the Board to congratulate, complain or make new suggestions. There is no compulsion by management or Board to take views on board

- if believing there has been malfeasance or criminal activity, can make a complaint to watchdog agencies. The threshold to achieve an investigation is very high and requires resources from complainant and investigating agency.

These avenues largely exist outside of regulation and rely primarily on the actions of the shareholder. On the other hand, Māori shareholders are given many opportunities in regulation to exercise their control over proposals from the governance body and in addition, have avenues of complaint if the result is not acceptable. These regulatory mechanisms can be brought to bear easily and with little cost to shareholder.

In summary, the essential difference between company shareholders and Māori landholder are:

- for a company shareholder it is easy to opt in or out of the company but difficult to influence company direction unless the shareholder can wield large existing interests or is prepared to utilise substantial resources to gain and then wield broad support
- for a Māori shareholder, it is difficult to opt in or out of being a shareholder but comparatively easy to influence Management Entity direction either by having large interests (although regulation allows for these to be negated) or, if only having small interests, through the use of regulatory mechanisms which can be brought to bear easily and with little cost to shareholder.

5. AHU WHENUA TRUSTS

Overall the previous sections have examined questions to do with owners and how they are dealt with in regulation. The attention turns now to management entities. The research has demonstrated that a number of issues surround ahu whenua trusts and that these have been long standing. One key factor revolves around the high level of responsibility associated with the position of trustee compared with the low level of expertise of a number of trustees. Whilst advice and training is available, these are either not taken up or not adhered to. With continual turnover of trustees the efficacy of spending such resources was also questioned.

Currently, TWMA and Māori Land Court rules, knowing the responsibilities that will face trustees, require owners to choose representatives who understand and will fulfill these responsibilities as follows.⁹⁵

The Court, in deciding whether to appoint any individual or body to be a trustee of a trust constituted under this Part of this Act -

- shall have regard to the ability, experience, and knowledge of the individual or body; and*
- shall not appoint an individual or body unless it is satisfied that the appointment of that individual or body would be broadly acceptable to the beneficiaries.*

The evidence collected from owners, however, suggests that trustees are not elected by owners because of their knowledge of their responsibilities. Rather, trustees are often being elected because of their standing within the ownership community whether this is as part of an established recognised leadership or due to the belief that they might bring change. There is no requirement to show that they understand or accept or can handle all the responsibilities of being a trustee. It is likely, however, that rather than this being an externality of recent

⁹⁵ s. 222(2)



developments, the preparedness of trustees for their position has been a perennial difficulty. What has possibly changed in recent years is the range of regulatory responsibilities that trustees have to face outside of TTWMA and the range of options for achieving aspirations as well as catering for a more diverse ownership base.

There are a number of matters in relation to trusts that are incongruent:

- Trustees often represent a political choice made by owners whereas the law treats them as having a level of competence to discharge trustee responsibilities. In most other situations trustees are often appointed due to their capabilities rather than voted for.
- The role of trustee can appear deceptively straight forward to those seeking or being asked to take up the position. In most cases land is already under some form of utilisation and it appears that there is only a need to maintain status quo. It is when unexpected challenges emerge (e.g. change in external regulations) or the trust seeks to develop new business that risk eventuates without the trustees being well placed to analyse the nature of the risk.
- Although with larger trusts there is usually a management structure that is separate from and reports to the governance body of trustees, for many trusts, for example those operating leases, there is no separation between management and governance. Trustees are required to make land management decisions based on their own knowledge and experience. In past times, when a great many trustees would have, at some time, had experience with rural work, this may not have presented too much of a difficulty. This situation has changed.
- Trusts have everyday legal and financial obligations to perform as part of their operation and yet few would have in house capacity or the required expertise among the trustees. Outside professionals are hired producing a comparatively significant cost on the finances of the trust to perform comparatively straightforward legal and financial tasks. Questions also have been raised as to whether these services are being provided ethically.
- If a trust seeks to develop new areas of land utilisation they are faced with the need for planning or development expertise which must be engaged with no guarantee that the anticipated project will go ahead. For some this halts development, for others large sums of money are spent, for other development occurs without seeking the expertise. All of these situation work against land utilisation and the achievement of aspirations.

These fundamental difficulties need to be closely examined in any future review.

6. THE ROLE OF WHĀNAU TRUSTS

Whānau trusts are not, of course, management entities but are vehicles to mitigate the onus placed on owners to maintain and update their interests in land through obviating the need to participate in succession processes. Whānau trusts are comparatively easy to establish and, as a result, thousands have come into existence and feature in most blocks.

Consultation with the owners, however, reveal that the whānau trusts are providing more than a vehicle to manage the succession process. It is evident that the trusts are organically becoming a nexus for owners at the whānau level to collect together and discuss the land in which their shares are placed. The process of having established the trust tends to engender discussion about the land and an environment in which aspirations in relation to that land are formed. Furthermore, as whānau trusts are of comparatively recent formation, the contact details provided to the Māori Land Court tend to be more accurate and up to date and as a

result this improves the success rate of notifications from the Māori Land Court when anything is being done with the land.

With the owners in whānau trusts being kept aware of developments within the lands in which they have interests, it is possible that they are providing a forum for families to develop a consensus of opinion with regards to any planned action in relation to the land. Within this context, the whānau trusts could be becoming cells for decision making at the family level. Furthermore, during the process of forming the trust there usually emerges within the whānau a person or core group of persons who undertook the necessary work or organised the family together. It appears that once the trust is up and running, these same people maintain these roles. The question of whether whānau trusts therefore do potentially grow leadership on family matters which is utilised when other matters associated with the land are discussed is an area that bears further confirming research.

The implications of all of these developments and whether they represent risk or opportunity for Māori land administration is something which should be considered in regulatory review.

7. WHENUA TŌPŪ TRUSTS

The research and analysis of how the regulatory regime is enabling or frustrating Māori land owner aspirations was required to inquire specifically into the adoption and use of whenua tōpū trusts (WTT). Data on adoption of the whenua tōpū trust structure has been obtained from the Māori Land Court and used for the analysis below. It is also placed in the context of the research interviews with Māori land owners and the discussions with the Māori Land Court.

The WTT is one of the forms of trust that can be formed under Part 12 of TTWMA in respect of interests in Māori land.

Section 216 provides:

1. The Court may, in accordance with this section, constitute a whenua tōpū trust in respect of any Māori land or General land owned by Māori.
2. A whenua tōpū trust may be constituted where the Court is satisfied that the constitution of the trust would promote and facilitate the use and administration of the land in the interests of the iwi or hapūhapū.
3. An application for the constitution of a whenua tōpū trust under this section--
 - a. *shall be made in respect of all the beneficial interests in 1 block or in 2 or more blocks of land; and*
 - b. *may be made by or on behalf of any of the owners or the Registrar of the Court.*
4. The Court shall not grant an application made under this section unless it is satisfied -
 - a. *that the owners of the land to which the application relates have had sufficient notice of the application and sufficient opportunity to discuss and consider it; and*
 - b. *that there is no meritorious objection to the application among the owners, having regard to the nature and importance of the matter.*
5. The land, money, and other assets of a whenua tōpū trust shall be held for Māori community purposes, or for such Māori community purposes as the Court may specify either on the constitution of the trust or on application at any time thereafter, and shall be



applied by the trustees in accordance with section 218 of this Act or as otherwise ordered by the Court for the general benefit of the members of the iwi or hapū named in the order.

6. Except as provided in subsection (7) of this section, while a whenua tōpū trust constituted under this section remains in existence, no person shall be entitled to succeed to any interests vested in the trustees for the purposes of the trust.
7. Notwithstanding anything in subsection (5), but subject to subsection (8), of this section, the Court may, either on the constitution of a whenua tōpū trust or on application at any time thereafter, order in respect of any specified interests vested in the trustees for the purposes of the trust that the interests shall be deemed to be held for the persons named or described in the order, and the income arising from those interests shall thereafter be paid to those persons and their successors accordingly.
8. The Court shall not make an order under subsection (7) of this section unless it is satisfied that the order is necessary to protect the interests of any owner of a large interest in the land vested or to be vested in the trustees for the purposes of the trust.

There are 53 WTT orders. They are distributed as set out in the table below:

Māori Land Court District	Number of whenua tōpū trusts
Te Tai Tokerau	14
Waikato	7
Wairariki	9
Tairāwhiti	6
Aotea	11
Tākitimu	2
Te Waipounamu	2
Total	51

An examination of the orders made reveals a number of striking aspects as follows:

- the low number of times the whenua tōpū trust structure has been used
- the size and area of the land blocks involved i.e.

Area/size	Number of blocks	Total area (ha)
> 100 ha	5	1706
50 < < 100	2	151
1 < < 50	22	180
< 1 ha	23	7
Unspecified	1	NA

Note that in the class greater than 100 ha one block is 719 ha and another is 464.

- the use of the same WTT for different blocks of land is quite high; in Waikato Maniapoto 5 of the 7 WTT orders relate to the same WTT and in the Waiariki 3 of 9 are in respect of the same WTT
- Te Tai Tokerau 14 WTT are all vested in the same trust are in respect of Māori reservations or similar land tenures i.e. the order under s.216 does not appear on the memorials for the block
- the purpose or kaupapa of the trust is not always evident on the face of the memorials. There are also explicit references in some cases to named tipuna e.g. The Paiaka Lands Trust.

On its face, the WTT offers a solution to the tension between burgeoning ownership lists and the dictates of cost efficient use and administration of the land.

With the primary aspiration referred to in the research process being retention of the land and the affiliation links to the land it is perhaps not surprising that the WTT's severance of the actual beneficial interest in the land is proving a deterrent to adoption.

This is borne out not just in the low uptake nationally but also in the nature of the lands that are being put into WTT. With a number of notable exceptions, it appears that lands are small, have a long history of diffuse ownership ties and are not in a position to generate an economic surplus.



PART SIX: THE NEED FOR AND NATURE OF REVIEW

In Parts 1-4 of this report, the results of research among Māori owners have been summarised in relation to their land utilisation aspirations and the influences that form these. In addition, the nature of barriers against the achievement of aspirations has been identified as having non-regulatory enablers that have assisted some groups towards the achievement of aspirations. Part 5 considered the results of research and identified a series of implications that arise when these results are compared with the existing regulatory environment.

a. Implication of Research Findings for Regulatory Review

The research results and their comparison with the existing regulatory environment raise a number of implications which should be the subject of review:

- TTWMA is currently structured and heavily reliant on the exercise of discretion across all of its clauses. The question arises as to whether this is ideal or whether any alternate approach is better suited. Where discretion needs to be retained, the question arises as to whether further criteria should be included in the legislation around discretionary powers in the interest of promoting more transparent and even decision making
- TTWMA currently deals differently with its two key principles of retention and utilisation using clear, prescriptive language to achieve the former whilst discretionary provisions, where the outcome is less certain, tend to apply to the latter. When compared with retention, however, TTWMA does little to ensure the utilisation objective is achieved. The question arises as to whether TTWMA should contain specific provisions or use new wording which promotes land utilisation.
- research suggests that enablers to land utilisation currently exist outside regulation. TTWMA, and the practices which emerge from it, either have a neutral influence or offer potential barriers. The question arises as to whether a range of externalities that have emerged within ownership groups (see below) require a close audit of existing provisions to assess the extent that they undermine or frustrate the forming of or carrying out of land utilisation aspirations.
- a further question that arises is the extent that emergent externalities which lessen the commonality amongst ownership groups (due to the numbers involved, their location away from the land, their increasingly varying priorities), come to undermine the ability to easily identify and locate owners or the ability of owners to reach consensus (assumptions on which TTWMA proceeds) and whether owners, as individuals, are given a potentially disproportionate role in governance
- the range of inherent and long standing difficulties in working with the trust structure raises the need for a thorough consideration as to the viability of ahu whenua trusts or whether a wide ranging variation of management entities is needed to support owner land utilisation aspirations

- the way in which whānau trusts have proliferated and the informal roles which they have come to play in collectivising whānau opinion and decision making raises the question of whether they represent risk or opportunity for Māori land administration
- the very limited uptake of whenua tōpū trusts raises the question of whether the collectivisation of title is a suitable objective for regulation and, if so, whether other regulatory vehicles can be identified to achieve this objective.

b. Need for Review and Guiding Principles

The breadth of owner aspirations, the range of influences that have shaped them, the fundamental barriers which exist to their achievement and the role played by the regulatory environment essentially forms the case for recommending that a broad review should proceed of the regulatory framework and other regulatory and non-regulatory areas that influence and impact on Māori land and Māori land tenure. The factors arising from the research also provide guidance on the principles that should shape the review. Therefore, any review should:

- recognise and build towards the realisation of owner aspirations
- recognise and take into account the wide variations that exist in relation to owners, land and management entities
- seek to develop a menu of solutions to be applied in varied circumstances
- ensure that available resources being directed at Māori land are targeted effectively
- remove regulatory barriers for those ownership groups who are already taking action for the utilisation of their land and the achievement of their aspirations
- identify ways to actively assist those owners who are beginning to work towards the utilisation of their land and the achievement of their aspirations
- identify and limit risks of cost or loss for those owners who are unable at this point to utilise their lands or move towards the achievement of their aspirations.

c. The Structure of Review

Considering the above principles, and acknowledging the research results obtained on owner aspirations, there are several evident areas of review:

- ***consider the benefits and risks of exempting from certain regulatory oversight any Māori land management entities that have met a set of benchmarks relating to governance, financial management and capacity:*** A small group of Māori land management entities already have sufficient internal capacity and infrastructure and are already actively utilising land and addressing ownership aspirations. For these entities, the requirements of TTWMA provide little advantage and, if anything, needlessly increase the cost and timeframes of doing business.
- ***identify and ameliorate clauses which potentially present barriers to Māori land management entities, and other ownership groups, working towards the utilisation of land and achievement of aspirations:*** Whilst many clauses within the TTWMA are protective and aimed at ensuring land retention, the uniformity of these clauses does not allow for the varying and changing circumstances facing Māori ownership groups. Where such groups are working towards the utilisation of their land and the achievement of their



aspirations, such protective clauses can present as barriers that inhibit development. Once identified, such clauses can be reworked in such a way that they maintain protection, when required, but can be eased or temporarily suspended in certain circumstances where development planning is being worked through.

- **review the wider legislative, regulatory or administrative context to ascertain and ameliorate any existing or latent risks facing those owners who are unable at this point to utilise their lands:** The research of owners' aspirations has identified that there are a large range of circumstances that effectively combine to prevent land utilisation or the fulfillment (or even formation) of ownership aspirations. Whilst other aspects of the review will consider how this situation can be addressed, an analysis of the risks associated with lands that are not yet being utilised is important to ensure that the land and ownership group are not put to costs or loss associated with inaction and to allay ownership fears which may currently act as a driver towards unplanned or ill-advised development.
- **evaluate the effectiveness of the range of resources available and in use that assist owners towards the fulfillment of their aspirations:** Currently, state sector agencies, at national, district and local levels are either undertaking or planning a range of initiatives in relation to the utilisation of Māori land by providing improved information, achieving title improvements, providing advice and capability building at the governance level and working locally with owners to identify new commercial opportunities. Considering the wide range of owner aspirations identified by research, as well as the barriers that exist to the taking of effective action, it will be important to assess the suitability and effectiveness of the initiatives that are in use or being adopted.
- **consider ways in which the fragmentation of Māori land titles might be addressed:** Although TTWMA and the requirements surrounding partitions have dramatically slowed title fragmentation over the last two decades, the residual impacts of fragmented titles are increasingly being felt in a modern land use context which is orientated towards larger land units to ensure economic viability. Whilst any review should not seek to change existing entitlements of owners or the nature of existing titles, options to address the fragmentation both within and outside of the regulatory environment should be explored.
- **consider ways in which the fragmentation of Māori ownership might be addressed:** The ongoing fragmentation of ownership occurring creates impacts such as prohibitive costs for any management entity seeking to inform or work with the wider ownership group and the potential dilution of aspirations as the ownership group increases. The collective title opportunities offered in TTWMA through the use of Whenua Tōpū trusts have not really been taken up by owners. The desirability and viability of collectivising titles needs to be closely looked into during the review.
- **evaluate the concepts behind and the roles of owner representatives:** The assessment of barriers to owner aspirations often identified problems associated with owner representatives: trustees with insufficient powers to act although with wide responsibilities to acknowledge; claims of disinterested trustees whilst other trustees desperately sought assistance on how to take action; claims about the limitations of trustee training whilst others expressed the need for more. The variation of response is not surprising when the fundamental barriers to effective action are considered. The review needs to examine concepts and roles associated with owner representatives.





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