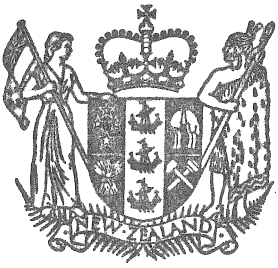

REPORT

OF THE

Royal Commission To Inquire Into

THE FUTURE USE OF RANGATIRA B AND C BLOCKS

Presented to the House of Representatives by Command of His Excellency the Governor-General

OCTOBER 1974

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THE ROYAL COMMISSION ON THE FUTURE USE OF RANGATIRA B AND RANGATIRA C BLOCKS

Chairman

The Hon. Sir TREVOR ERNEST HENRY, K.B.

Secretary

Mr F. W. T. ROOKE

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WARRANT

Royal Commission to Inquire Into and Report Upon the Future Use of Rangatira B and Rangatira C Blocks

ELIZABETH THE SECOND, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To Our Trusty and Well-beloved the HONOURABLE SIR TREVOR ERNEST HENRY, of Auckland, a Judge of the Supreme Court:

GREETING:

WHEREAS in December 1955 the Maori Land Court by means of partition orders divided certain Maori freehold land on the northern shores of Lake Taupo, being various subdivisions of the Rangatira block, into numerous parcels, whereof (*inter alia*) one group of parcels was designated as Rangatira B1 to B612 and another group of parcels was designated as Rangatira C1 to C953:

And whereas for various reasons the two groups of parcels above referred to were never effectively designated on the ground or used:

And whereas there has been in respect of each group of parcels numerous proceedings before various tribunals and at the present time the land referred to above as Rangatira B1 to B612 (hereinafter in these presents referred to as Rangatira B) is held under titles designating it as Rangatira B1 to B623 and the legal title is vested in certain trustees upon certain trusts for the effective roading and survey of the parcels but (for various reasons) the trustees have been unable to carry out the trusts and the land remains idle:

And whereas the land referred to above as Rangatira C1 to C953 (hereinafter in these presents referred to as Rangatira C) is now held under titles designating it as Rangatira C1 and C2 and (for various reasons) the trustees have been unable to carry out the trusts and the land remains idle:

And whereas the beneficial owners of Rangatira B and Rangatira C are at present unable to use and occupy or otherwise deal with their interests and the land remains substantially idle and produces no benefit to the owners and it is desirable that some action be taken in the interest of the beneficial owners and in the public interest to put the land in a position where it can be effectively used and dealt with:

NOW, KNOW YE, that We, reposing trust and confidence in your impartiality, knowledge, and ability, hereby nominate, constitute, and appoint you the said the HONOURABLE SIR TREVOR ERNEST

HENRY to be a Commission to inquire and report generally on the action (if any) which should be taken, whether by or pursuant to legislation or otherwise, to enable the land known as Rangatira B and Rangatira C to be used effectively or otherwise dealt with by the owners thereof or for their benefit in such a way as will be to their best advantage and in the public interest:

And, in particular, but not so as to limit the scope of the last preceding paragraph:

(a) To inquire, and report whether, having regard to all the circumstances, the present ownership and title position of Rangatira B, including the trusts existing in respect thereof, is fair and equitable as among the persons beneficially interested therein, in the light of the ownership position as it existed immediately before the making of the partition orders of 1955, and whether the existing division of the land into parcels and the provision for roads, reserves, and other normal requirements is adequate in terms of the recognised principles of subdivisional planning, and whether the whole arrangement is capable of being put into practical and economic effect:

(b) If it be reported that the current ownership and title position of Rangatira B is not fair and equitable as among the persons beneficially interested or that the arrangement is not capable of being put into practical and economic effect, then to recommend what ownership and title position would best do justice among the owners and enable the practical and economic use of the land in conformity with modern subdivisional requirements, whether this might involve a return to any earlier ownership and title position (but not earlier than that existing immediately before the making of the partition orders of 1955) or a modification of the existing ownership and title position or a completely new ownership and title position:

(c) To inquire and report whether, having regard to all the circumstances, the present ownership and title position of Rangatira C is fair and equitable as among the persons beneficially interested therein, in the light of the ownership and title position as it existed immediately before the making of the partition orders of 1955, and whether the present ownership and title position, including the trusts existing in respect thereof, would conduce to the effective use of the land in the best interest of the beneficial owners and in the public interest:

(d) If it be reported that the current ownership and title position of Rangatira C is not fair and equitable as among the persons beneficially interested or that it is not conducive to the effective use of the land as aforesaid, then to recommend what ownership and title position would best do justice among the owners and enable the practical and economic use of the land in conformity with modern subdivisional requirements, whether this might involve a return to any earlier ownership and title position (but not earlier than that existing immediately before the making of the partition orders of 1955) or a modification of the existing ownership and title position or a completely new ownership and title position:

(e) If any change in the ownership and title position of any land is recommended, to propose any legislative provisions or other action necessary to effect the change or permit it to be effected:

(f) To inquire into and report on such other matters, if any, as in your opinion are relevant to the general question of the future use of the land concerned:

And in your inquiry and recommendations you shall be at full liberty to disregard or differ from any finding, whether of fact, or otherwise, conclusion, opinion, or recommendation of any former tribunal in respect of any matters or question of similar character or import to those confided to you by these presents, and to ignore any uncompleted proceedings commenced or pending before any tribunal relating in any way to those matters or questions or to any aspect of the land to which these presents relate:

And for the better enabling you to carry these presents into effect you are hereby authorised and empowered to make and conduct any inquiry under these presents in such manner and at such time and place as you think expedient, with power to adjourn from time to time and place to place as you think fit, and so that these presents shall continue in force and any such inquiry may at any time and place be resumed although not regularly adjourned from time to time or from place to place:

And you are hereby strictly charged and directed that you shall not at any time publish or otherwise disclose, save to His Excellency the Governor-General, in pursuance of these presents or by His Excellency's direction, the contents of any report so made or to be made by you, or any evidence or information obtained by you in the exercise of the powers hereby conferred on you, except such evidence or information as is received in the course of a sitting open to the public:

And We do further ordain that you have liberty to report your proceedings and findings under this Our Commission from time to time if you shall judge it expedient so to do:

And, using all due diligence, you are required to report to His Excellency the Governor-General in writing under your hand, not later than the 31st day of August 1974, your findings and opinions on the matters aforesaid, together with such recommendations as you think fit to make in respect thereof:

And, lastly, it is hereby declared that these presents are issued under the authority of the Letters Patent of His Late Majesty King George the Fifth, dated the 11th day of May 1917, and under the authority of and subject to the provisions of the Commissions of Inquiry Act 1908, and with the advice and consent of the Executive Council of New Zealand.

In witness whereof We have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this 25th day of February 1974.

Witness Our Right Trusty and Well-beloved Cousin, Sir Edward Denis Blundell, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of Our Royal Victorian Order, Knight Commander of Our Most Excellent Order of the British Empire, Governor-General and Commander-in-Chief in and over New Zealand.

DENIS BLUNDELL, Governor-General

By His Excellency's Command—

MATIU RATA, Minister of Maori Affairs.

Approved in Council—

P. G. MILLEN, Clerk of the Executive Council.

WARRANT

Extending the Time Within Which the Royal Commission to Inquire Into and Report Upon the Future Use of Rangatira B and Rangatira C Blocks May Report

ELIZABETH THE SECOND, by the Grace of God, Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To Our Trusty and Well-beloved the HONOURABLE SIR TREVOR ERNEST HENRY, of Auckland, a retired Judge of the Supreme Court:

GREETING:

WHEREAS by Our Warrant dated the 25th day of February 1974 We nominated, constituted, and appointed you, the said the HONOURABLE SIR TREVOR ERNEST HENRY, to be a Commission to inquire and report generally on the action (if any) which should be taken, whether by or pursuant to legislation or otherwise, to enable the land known as Rangatira B and Rangatira C to be used effectively or otherwise dealt with by the owners thereof or for their benefit in such a way as will be to their best advantage and in the public interest:

And whereas by Our said Warrant you were required to report to His Excellency the Governor-General, not later than the 31st day of August 1974, your findings and opinions on the matters aforesaid, together with such recommendations as you might think fit to make in respect thereof:

And whereas it is expedient that the time for so reporting should be extended as hereinafter provided:

Now, therefore, We do hereby extend until the 30th day of November 1974, the time within which you are so required to report, without prejudice to the liberty conferred on you by Our said Warrant to report your proceedings and findings from time to time if you should judge it expedient so to do:

And We do hereby confirm Our said Warrant and the Commission thereby constituted save as modified by these presents:

And, lastly, it is hereby declared that these presents are issued under the authority of the Letters Patent of His Late Majesty King George the Fifth, dated the 11th day of May 1917, and under the authority of and subject to the provisions of the Commissions of Inquiry Act 1908, and with the advice and consent of the Executive Council of New Zealand.

In witness whereof We have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this 12th day of August 1974.

Witness Our Right Trusty and Well-beloved Cousin, Sir Edward Denis Blundell, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of Our Royal Victorian Order, Knight Commander of Our Most Excellent Order of the British Empire, Governor-General and Commander-in-Chief in and over New Zealand.

DENIS BLUNDELL, Governor-General

By his Deputy, RICHARD WILD.

By His Excellency's Command—

MATIU RATA, Minister of Maori Affairs.

Approved in Council—

P. G. MILLEN, Clerk of the Executive Council.

Letter of Transmittal

To His Excellency the Governor-General of New Zealand,
Government House,
Wellington.

YOUR EXCELLENCY,

I have the honour to report my findings under the Royal Commission to Inquire into and Report upon the Future Use of Rangatira B and Rangatira C Blocks. These findings are enclosed herewith and signed under my hand the 18th day of September 1974.

I remain your obedient servant,
T. E. HENRY, Chairman.

REPORT OF THE ROYAL COMMISSION TO INQUIRE INTO THE FUTURE USE OF RANGATIRA B AND C BLOCKS

INTRODUCTION

This commission has been constituted for the following purposes, namely:

(1) To inquire and report generally on the action (if any) which should be taken, whether by or pursuant to legislation or otherwise, to enable the land known as Rangatira B and Rangatira C to be used effectively or otherwise dealt with by the owners thereof or for their benefit in such a way as will be to their best advantage and in the public interest; and (2) in particular, but not so as to limit the scope of the above general inquiry:

(a) To inquire and report whether, having regard to all the circumstances, the present ownership and title position of Rangatira B, including the trusts existing in respect thereof, is fair and equitable as among the persons beneficially interested therein, in the light of the ownership position as it existed immediately before the making of the partition orders of 1955, and whether the existing division of the land into parcels and the provision for roads, reserves, and other normal requirements is adequate in terms of the recognised principles of subdivisional planning, and whether the whole arrangement is capable of being put into practical and economic effect:

(b) If it be reported that the current ownership and title position of Rangatira B is not fair and equitable as among the persons beneficially interested or that the arrangement is not capable of being put into practical and economic effect, then to recommend what ownership and title position would best do justice among the owners and enable the practical and economic use of the land in conformity with modern subdivisional requirements, whether this might involve a return to any earlier ownership and title position (but not earlier than that existing immediately before the making of the

partition orders of 1955) or a modification of the existing ownership and title position or a completely new ownership and title position:

(c) To inquire and report whether, having regard to all the circumstances, the present ownership and title position of Rangatira C is fair and equitable as among the persons beneficially interested therein, in the light of the ownership and title position as it existed immediately before the making of the partition orders of 1955, and whether the present ownership and title position, including the trusts existing in respect thereof, would conduce to the effective use of the land in the best interest of the beneficial owners and in the public interest:

(d) If it be reported that the current ownership and title position of Rangatira C is not fair and equitable as among the persons beneficially interested or that it is not conducive to the effective use of the land as aforesaid, then to recommend what ownership and title position would best do justice among the owners and enable the practical and economic use of the land in conformity with modern subdivisional requirements, whether this might involve a return to any earlier ownership and title position (but not earlier than that existing immediately before the making of the partition orders of 1955) or a modification of the existing ownership and title position or a completely new ownership and title position:

(e) If any change in the ownership and title position of any land is recommended, to propose any legislative provisions or other action necessary to effect the change or permit it to be effected:

(f) To inquire into and report on such other matters, if any, as in the opinion of the commission are relevant to the general question of the future use of the land concerned.

The terms Rangatira B and Rangatira C were used to refer to partition orders made in December 1955, whereby the Maori Land Court divided certain Maori freehold land on the northern shores of Lake Taupo, being various subdivisions of the Rangatira block, into numerous parcels, whereof (*inter alia*) one group of parcels was designated as Rangatira B1 to B612 and another group of parcels was designated as Rangatira C1 to C953. Apart from general comment on both blocks, the commission will deal with Rangatira B and Rangatira C separately. They are not contiguous pieces of land but are in the same locality. There is substantial identity of ownership and problems.

RELEVANT HISTORY OF RANGATIRA B

The area under review contains approximately 168 acres. It is wholly situated between a public road known as "Acacia Bay Road" and the foreshore of Lake Taupo. On the landward side of Acacia Bay Road there is a large area of land now known as Rangatira E, but which was formerly known as Rangatira B (residue). Rangatira B and Rangatira E have substantially (but not entirely) the same owners. Rangatira E is now being farmed but a considerable area immediately across Acacia Bay Road has a present subdivisional potential capable of being developed either alone or in conjunction with development of Rangatira B. Reference to this will later be made.

Although the terms of reference recite that orders were made by Judge Harvey in December 1955, the orders were, in fact, made on 14 November 1955. These orders related to portions (and in four instances the whole) of lands contained in the following partition orders, namely:

Block	Area A.	R.	P.	Date of Partition Order
Rangatira 8A8	100	0	00	11/4/06
Rangatira 8A9	207	0	26	11/4/06
Rangatira 8A10B1A	0	3	28	18/3/47
Rangatira 8A10B1B	0	1	00	18/3/47
Rangatira 8A10B1C	2	2	27	18/3/47
Rangatira 8A10B2	2	1	09	15/1/41
Rangatira 8A10C1	8	0	00	25/9/46
Rangatira 8A10C2	88	0	24	25/9/46
Rangatira 8A10D	51	3	07	17/6/30
Rangatira 8A10E	25	3	23	17/6/30
Rangatira 8A10F	43	2	22	17/6/30
Rangatira 8A10G	77	2	30	17/6/30
Rangatira 8A11A	6	0	38	23/3/32
Rangatira 8A11B	27	3	35	23/3/32
Rangatira 8A11C	16	2	20	23/3/32
Rangatira 8A11D	208	0	20	23/3/32
Rangatira 8A12A1	27	3	00	10/2/31
Rangatira 8A12A2A	43	0	36	26/2/32
Rangatira 8A12A2B	84	1	03	26/2/32
Rangatira 8A14A	156	1	33	13/6/30
Rangatira 8A14B1	23	2	33	17/12/36
Rangatira 8A14B2	23	2	33	17/12/36
Rangatira 8A14B3	23	2	33	17/12/36
Rangatira 8A14B4	50	3	09	17/12/36
Rangatira 8A14B5A	0	1	16	21/9/49
Rangatira 8A14B5B	36	3	26	21/9/49
Rangatira 8A14B6	145	0	00	17/12/30

The relevant areas of the above blocks are the parts lying between Acacia Bay Road and Lake Taupo. These were consolidated into one title and then subdivided into 612 residential sections of approximately one-quarter of an acre. Also, areas were set aside for roads, picnic grounds, lake front reserves, and other reserves. Some sections were held in sole ownership, other sections were held by more than one owner (usually in unequal shares). In general, the allocation of sections was made on a "family basis". The general idea was to implement the scheme by the sale of suitable selected sections and to use the proceeds to finance roading and other outgoings and leave the remaining sections clear of encumbrance in the hands of the several owners. At this time existing town and country planning legislation did not apply to Maori land. Taupo County was then administered by a commissioner who stated that he had no objection to the proposed plan of subdivision, but it is not clear whether this continued to be the official attitude to the scheme of subdivision. This scheme of subdivision will be referred to as the "Harvey Plan"—a term frequently adopted at the hearing.

By early 1961 no progress had been made in implementing the Harvey Plan. On 8 March 1961, Judge Prichard, after having earlier found that the Harvey Plan should be abandoned, cancelled all existing orders. After again consolidating all titles, he made a series of new partition orders whereby a modified scheme of subdivision came into effect. At this time town planning legislation still did not bind the partitioning of Maori land but some general directions (which need not be stated) were given by the Legislature. The orders made by Judge Prichard were unsuccessfully challenged in the Supreme Court in three separate actions. The unsuccessful parties appealed to the Court of Appeal on a number of points of law. The case is reported as *Hereaka and Ors.* v. *Prichard and Ors.* (1967) N.Z.L.R. 18. At the hearing the Court of Appeal was asked to determine only one point. All other questions were adjourned by consent. The Court of Appeal has conveniently summarised the orders made by Judge Prichard in the following passage in the judgment of the president, Sir Alfred North, namely:

> "First, in pursuance of the power contained in s. 184 of the Maori Affairs Act 1953, the partition made by Judge Harvey was cancelled and a new scheme of partition adopted in its place which made provision for the dividing of the area into some 600 sections of

varying dimensions. Secondly, the scheme plan made provision for the closing of certain existing subsidiary public roads and the laying down of new subsidiary roads to serve the area, and orders to this effect were also made. Thirdly, orders were made in purported exercise of s. 438 of the Maori Affairs Act 1953, vesting a number of sections in three trustees, one of whom was the respondent Roger Kusabs, upon certain trusts: (a) to transfer an area totalling approximately 23 acres to the Taupo County Council as Recreation Reserves; (b) to transfer to the Taupo County Council as segregation strips certain pieces of land one link wide running along Acacia Bay Road; (c) to transfer a section to the Taupo County Council as a community centre; (d) to transfer another section to the Taupo County Council as a drainage reserve. In respect of these four orders it was provided that:

> 'In each case suitable deeds of trust may be required from the County Council.'

(e) As to certain remaining sections upon trust to sell or lease them by public offering or private treaty and to hold the net proceeds thereof and the contribution monies payable under the next mentioned order in a fund to be called 'The Rangatira Sections Trust Fund'. From such fund the Trustees were required to pay the cost of roading and survey and to pay the balance to the beneficiaries of the Trust Fund. Finally, a further order under s. 438 vesting in the three trustees a number of sections allotted to individual owners upon trust to sell such sections by public offering or private treaty and to pay part of the net proceeds into the trust fund created by the earlier order and, subject to any order that may be made under s. 231, to pay the net balance to the equitable owners of such sections provided, however, that no section was to be sold unless the beneficial owner failed to pay his stipulated contribution to the trust fund."

The sole point decided by the Court of Appeal was that the order in favour of the Taupo County Council establishing recreation reserves was made in excess of jurisdiction. The remaining questions still stand adjourned. The Court of Appeal gave its decision on 3 October 1966, since when no progress has been made in either determining the validity of the other orders made by Judge Prichard or otherwise settling the legal questions raised. If the orders of Judge Prichard are, indeed, not severable, then, probably all are invalid. If so, ownership would revert to the partition orders made by Judge Harvey on 14 November 1955. The subdivision effected by the orders made by Judge Prichard were, and will hereafter be, referred to as "the Prichard orders".

RELEVANT HISTORY OF RANGATIRA C

Prior to 13 December 1955, the following lands existed as separate partition orders, namely:

Block	Area A.	R.	P.	Lakeside Only	Lakeside and Residue	Date of Order
Rangatira 1A1A1 ..	4	0	00	X		11/2/31
Rangatira 1A1A2 ..	2	0	00	X		11/2/31
Rangatira 1A1B1 ..	2	2	26	X		11/2/31
Rangatira 1A1B2C..	0	0	34	X		17/3/55
Rangatira 1A1B2F..				X		17/3/55
Rangatira 1A2 ..	4	1	39	X		14/1/16
Rangatira 1A3A ..	2	0	00	X		27/8/35
Rangatira 1A3B ..	4	2	01	X		27/8/35
Rangatira 1B ..	25	0	00	X		10/3/14
Rangatira 1C1 ..	4	0	00	X		10/3/14
Rangatira 1C2 ..	21	0	00	X		10/3/14
Rangatira 1D1 ..	1	0	00	X		2/2/39
Rangatira 1D2 ..	24	0	00	X		2/2/39
Rangatira 8B2A1 ..	9	0	00		X	20/6/40
Rangatira 8B2A2 ..	14	1	16		X	20/6/40
Rangatira 8B2A3 ..	14	1	16		X	20/6/40
Rangatira 8B2A4 ..	22	2	08		X	20/6/40
Rangatira 8B2A5 ..	14	1	16	X		20/6/40
Rangatira 8B2B1 ..	126	0	05		X	4/8/37
Rangatira 8B2B2 ..	20	1	20		X	4/8/37
Rangatira 8B2C ..	62	0	21		X	25/1/19
Rangatira 8B2D ..	92	2	24		X	25/1/19
Rangatira 8B2E ..	80	2	21		X	25/1/19
Rangatira 8B2F ..	60	1	24		X	25/1/19
Rangatira 8B2G1 ..	86	1	00		X	27/2/32
Rangatira 8B2G2 ..	130	0	37		X	27/2/32
Rangatira 8B2H ..	34	3	08		X	25/1/19
Rangatira 8B2I ..	57	1	24		X	25/1/19
Rangatira 8B2J ..	131	0	32		X	25/1/19
Rangatira 8B2K ..	86	0	16		X	25/1/19

The above notations of "Lakeside only" and "Lakeside and Residue" and respectively marked x are given to show that all sections had lake frontages but only some contributed to the residue left after the scheme of subdivision had taken all the land then considered to be suitable for residential development. The extent of lake frontage varied.

Judge Harvey, after consolidating the titles, proceeded to define such areas as were considered suitable for subdivision. These areas were subdivided into either 953 or 954 building sections of approximately one quarter of an acre each. Areas were set aside for roads and reserves. In short, the scheme employed for Rangatira B was, at about the same time, put into effect for Rangatira C. A large area at the back was left as a residue. It is still completely undeveloped.

This scheme will be referred to as the "Harvey Plan". Difficulties were also encountered in putting this scheme into operation. The matter again came before the Maori Land Court in 1961. There were hearings before Judge Prichard who, on 3 November 1961, recast the scheme of the Harvey Plan. By this time Rangatira 1A1A1 and sections C6, C927, C929, and C930 had become European land so no longer had relevance. This subdivision has become known as "the Prichard Plan". The Prichard Plan was taken to appeal. On 15 June 1962 the Maori Appellate Court cancelled all existing titles and substituted one title for the land "to be held by the several owners . . . calculated by reference to the relative values of the interests to which they were entitled under the . . . cancelled orders". Such interests were later fixed. The said lands were called Rangatira C in a consolidated new title. On 18 April 1967, Judge Gillanders-Scott made a partition order whereby an area of 1 acre and 4 perches was cut off. This piece of land, which became European land, was called "Rangatira C1". The residue, with which alone the commission is dealing, became Rangatira C2. Rangatira C1 is not identical with, and has no relation to, block C1 on the Harvey or Prichard Plans.

Originally the Harvey Plan appears to have provided for 953 building sections. At some stage section 954 was delineated on the plan as adjoining section 1. The origin of this addition is not clear, but it is now part of Rangatira C2 and part of the land relevant to this commission although the instrument refers only to sections 1 to 953. That description in any event is inaccurate by reason of the subsequent partitions which excluded Rangatira C1 and sections C6, C927, C929, and C930 of the Harvey Plan.

A number of dealings are set out in Schedule A at the end of this report. The impact of these on the jurisdiction of the Maori Land Court is not clear, but it is important that they should be included if any scheme recommended by the commission is adopted. The existence of these dealings has raised legal questions. In the opinion of two Queen's Counsel grounds exist whereby the orders made by the Prichard Plan and consequently the orders made on appeal by the Maori Appellate Court may be attacked for lack of jurisdiction or on the ground of breach of the rules of natural justice. The commission passes no judgment on the validity of such opinions, but they must be given proper weight. To avoid further litigation on this head remedial steps are recommended.

On 4 June 1969, Rangatira C2 was vested in the New Zealand Insurance Co. Ltd. as trustees for the owners pursuant to the provisions of section 438 of the Maori Affairs Act 1953, as substituted by section 142 of the Maori Affairs Amendment Act 1967.

The New Zealand Insurance Co. Ltd. has since administered Rangatira C2 but, despite diligence in its administration, has not been able to make any worth-while progress towards realisation of any part of the said land. Before any subdivisional scheme could be put into effect for Rangatira C2, Maori lands in counties became subject to town and country planning legislation. In the course of the preparation of the scheme for the Taupo City Council, a portion of Rangatira C2 of approximately 80 acres was zoned "Residential B" whilst the balance was zoned "Rural". This zoning of 80 acres was subsequently altered to rural—a zoning which was ultimately upheld on appeal before a special town and country planning appeal board which gave its decision on 18 June 1971. In December 1971 the New Zealand Insurance Co. Ltd. brought an action in the Supreme Court at Auckland in an endeavour to restore the zoning of the said 80 acres to Residential B. This action is still pending. Until litigation is completed the actual zoning of this area will not be known. At present development is legally impossible.

GENERAL COMMENT ON RANGATIRA B AND RANGATIRA C2

The commission stresses the need for an immediate and orderly approach to the development of these lands on a basis that will best serve the interests of the Maori people in general and the Maori owners in particular, whilst still being mindful that any development means the establishment of a mixed community in which, probably, large sums of money will be derived from European purchasers. Moreover, through the passage of time, all communities are now in an era when town planning principles play a vital and necessary role in land use. It is improvident and not in the interests of the owners as a whole nor in the public interest to turn the clock back and to revert to the state of the titles which existed prior to the Harvey Plan or to the Harvey Plan which is now out of date and which proved to be unworkable. The use of the natural features of the terrain, the size and siting of sections and the requirements for reserves, for amenities and the like must now be considered in a modern setting and with a due sense of the future. Especial reference to Maori culture and to the Mana and Turangawaewae of the people concerned are matters of importance. Maraes are now a feature of our life and a most desirable development in the common weal. The communities which may be involved in the future of these lands will be large communities so provision ought to be made for such communities. Moreover, any development is

a logical extension of a greater Taupo City and of Taupo Bay generally and must be looked at in that perspective. Sections may now be smaller than the areas previously allotted. This should increase the value of the lands.

The commission, in its task, has the delicate problem of ensuring that a Maori is not parted from his lands if he (or she) wishes to retain them. Yet at the same time there is a strong desire to develop and utilise these lands in the modern manner and to take advantage, at least to a very considerable extent, of the prospect of obtaining high prices for desirable building sites with unexcelled views of, and access to, Lake Taupo. Some owners have established themselves in other districts. There is no real prospect of any large settlement by and amongst the Maori owners themselves. Nevertheless, they wish to retain some form of individual control over their lands so that these varying, and sometimes conflicting, desires may be discussed and settled amongst themselves as development proceeds or according to their own special family interest or concern.

Any result which would simply return the land to the owners according to earlier partitions is a retrograde step and would be fruitful of further delays, frustrations, litigation, and probable ill feeling. This can be considered only as a last resort. The Maori owners ought, in the opinion of the commission, be placed in such a position that there is central control by a body or bodies which can, subject to the wishes of the owners, effectively deal with modern complex conditions which surround the development of this class of land and yet at the same time allow them to preserve or develop those qualities which have particular reference or importance to Maoridom. Existing litigation and uncertainty of title must be resolved now. Some of the land has been ready for immediate development for some time past, some will be in the very near future and some as a long time measure. The last-mentioned land will require suitable utilisation in the meantime. The question of the extent and type of reserves is important. Subdivision must no longer be a matter of flattening land and cutting it into sections. Unless the natural features are retained and properly used the area will deteriorate into another flat and featureless suburban subdivision. Proper utilisation will enhance values, but in the process some portions of the land may have to be sacrificed for the common good. Sacrifice is not always equal. Areas not immediately fronting Lake Taupo but on high ground overlooking the lake with remarkable views tend now to have values that hitherto attached only to lakeside sections. Streets and reserves may cut into one portion of land more than another. Far too much importance has been placed on claims to individual

locality rights to specified sections which have been recognised by the Harvey Plan. No section exists as a separate unit. This is fundamental when considering development of a large area. A particular section can have identity only if roads, reserves, and other amenities are provided from the rest of the land. No longer is it possible to cut out a choice building site and say "This is my land". Each section is the result of creating a community of an area from which all amenities must flow to make the section a severable entity. The commission cannot too strongly emphasise this.

Rangatira B and Rangatira C2 are both important in the general control and preservation of Lake Taupo and its environs. The district planning officer of the Ministry of Works and Development, Hamilton, said:

> "In broad outline, the interests affecting the use of the Rangatira B and C Blocks can be divided into three parts:
>
> (a) National interests stemming from the matters defined in section 2B of the Town and Country Planning Act.
>
> (b) Local interests concerning the use of Rangatira B and C Blocks for future urban growth of Taupo Borough.
>
> (c) Owner's interests in obtaining a desirable and agreeable use of the lands."

Section 2B reads:

> "2B. The following matters are declared to be of national importance and shall be recognised and provided for in the preparation, implementation, and administration of regional and district schemes:
>
> (a) The preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development:
>
> (b) The avoidance of encroachment of urban development on, and the protection of, land having a high actual or potential value for the production of food:
>
> (c) The prevention of sporadic urban subdivision and development in rural areas."

The officer stressed that he was not attempting to rank these interests in order of importance. The above must be so read. The various headlands, bays, and gully systems are natural features which have vital importance in any development. Particularly in Rangatira C2 matters of great importance also arise concerning the preservation of the habit and feeding of trout. This applies to a lesser extent to Rangatira B. Every reasonable step ought to be taken to preserve the lake from contamination resulting from close settlement, so questions of reserves and of sewerage disposal will loom largely and importantly in any

development. It is imperative that, however desirable the preservation of natural beauty and of lake purity and its fishing resources may be, the Maori owners ought not to be called upon to make undue or disproportionate sacrifices in the national interests or in the interests of the general area of Taupo Lake or of Taupo Bay. They must, of course, bear the burden of normal developmental requirements of such an area. This they appear to have willingly accepted.

RANGATIRA B

No support for the Prichard Plan was forthcoming. Strong representations were made for a return to the Harvey Plan. It would appear that the allocation of sections to a particular owner or owners in the Harvey Plan meets with the approval of a large number of the owners and was strongly pressed before the commission. It was contended that, if modifications are necessary, these could be resolved. In the light of past experience this may well be open to doubt. Moreover, no new plan was put forward. The land is now subject to an operative town planning scheme. Merely to restore the Harvey Plan would not meet the position unless, at the same time, legislation is passed exempting the subdivision of the area from the terms of the existing town planning scheme. After the most careful consideration of all material before it the commission is not prepared to recommend such legislation. It is of opinion that it is in the interests of the owners and of the public that the land be developed on modern principles and in accordance with town planning legislation as it applies or may hereafter apply to the said land. Moreover, experts called by the Taupo County Council and the Taupo Borough Council have pointed out serious objections to the Harvey Plan. With this evidence the commission is in general agreement. The Taupo Borough Council is vitally interested because the area will shortly either be included in the borough or a single controlling authority may operate in respect of the whole region.

The commission is satisfied that effective and advantageous use of the land can be obtained only by producing a modern plan of subdivision in accordance with town planning principles. The Harvey Plan, whilst it defined titles to single sections to the general satisfaction of the owners, does nothing to promote the present interests either of the owners or of the public. It would be hazardous in the extreme to find now that the Harvey Plan,

which had failed to bring any results from 1955 to 1961 (when the Maori Land Court found it insufficient), was a solution to the present problem. The commission does feel, however, that weight should be given to the allocation of sections in the Harvey Plan. This seems to be basic to the thinking and desire of a large number of the owners. Administration by means of trustees and by the establishment of trust funds is not a method which appears to the commission to be either expedient or satisfactory to handle the many problems involved in development envisaged by the owners.

Findings of Commission on Rangatira B

(1) The validity of the orders constituting the Prichard Plan is in serious doubt, and at least one such order has been found by the Court of Appeal to be invalid.

(2) The Harvey Plan at present stands effectively cancelled by the orders made by the Prichard Plan and cannot be resurrected unless further litigation declares all orders made in the Prichard Plan to be invalid.

(3) Steps ought to be taken now to determine a new basis for ownership and title so litigation will end.

(4) The Prichard Plan has not been supported by any of the owners present or represented as being in their interests.

(5) For these reasons and for the reasons earlier given the commission is of opinion that the apparent present existing ownership and title position under the Prichard Plan is not fair and equitable among the present beneficial owners and is not capable of being put into practical and economic effect.

(6) That, at the present time, the Harvey Plan cannot be brought into effect unless validating legislation is passed and the Prichard Plan cancelled.

(7) Any such legislation would require the inclusion of a provision to the effect that subdivision in accordance with the Harvey Plan be exempted from the town planning scheme of the Taupo County Council.

(8) That the commission is of opinion that such legislation would not be for the benefit or best advantage of the owners or in the public interest. The commission is not prepared to recommend that such legislation be passed.

(9) That a new scheme based on ownership prior to 1955 which will enable practical and "economic" use of the land in conformity with modern subdivisional requirements, ought to be formulated.

(10) That the owners who desire to return to the Harvey Plan (or some not clearly defined modification) have not given any concrete evidence to show that what they propose is adequate in terms of recognised town planning requirements.

(11) That regard should be had, as far as is possible, in any modern scheme, to the wishes of the majority of the owners to give effect to the "family" considerations which weighed with Judge Harvey in the allocation of areas to individuals or groups of individuals.

Recommendations of Commission on Rangatira B

(1) That legislation be passed to provide:

(a) That all orders made by Judge Prichard be cancelled and that all orders made by Judge Harvey be deemed to be cancelled and that the said several pieces of land revert to the ownership of those persons who would now be the owners if none of the said orders had been made.

(b) That the said several pieces of land be constituted a Maori incorporation in the same manner and to the same effect as if an order in that behalf had been made by the Maori Land Court under Part IV of the Maori Affairs Act 1953 and its amendments.

(c) That the shareholders shall be the persons to whom ownership would revert under paragraph (1) (a) above. Their shareholding shall be fixed in accordance with section 32 of the Maori Affairs Amendment Act 1967.

(d) That if any shareholder complains that such a determination of his or her shareholding is unjust, unfair, or inequitable, the Maori Land Court shall be empowered upon application to amend such shareholding if it be just and equitable to do so, and thereupon the shareholding shall be adjusted accordingly. That such a right to apply shall be exercised within 6 months after incorporation when all such applications shall be heard together at a time and place fixed in accordance with the Rules of the Maori Land Court. Any shareholder shall be entitled to be heard on any application.

(e) That provision be included in the terms of incorporation whereby the committee of management is empowered to permit members to exchange shares for subdivided sections. The committee of management should, as far as it is practicable so to do in its opinion, grant such rights of acquisition with reference to the scheme, spirit, and concept of "family"

as recognised by the Harvey Plan. A fair value shall be fixed for shares and land. Any deficiency may be paid in cash or secured to the satisfaction of the committee of management. Shares so exchanged shall be deemed to be acquired by the corporation and shall be dealt with under section 41 of the Maori Affairs Amendment Act 1967. If not agreed fair values should be determined in the manner provided for in section 60 of the said Act or in some similar manner.

(2) This scheme may require further elaboration as to detail but properly applied it will enable the intention of the Harvey Plan to be implemented in a substantial manner in a modern subdivision whilst still providing a representative body of management with plenary power to administer development. It is, in essence, a scheme to enable shareholders to exchange equity in shares for a comparable equity in subdivided land, such exchange being governed by the "family" concept of the Harvey Plan.

(3) Whilst it is not a matter for the commission, it is strongly recommended that the owners of Rangatira B and Rangatira E should give careful consideration to amalgamating both blocks. The parties have not been heard so the matter cannot be taken further by the commission, but it is a desirable extension of the scheme set out above.

RANGATIRA C2

General Comment and Findings

Rangatira C2 was conveniently described by Mr A. R. Warbrick as falling into three separate groups. They may be described as follows:

Group 1: That area extending from Rangatira Point to Kohetungawha (immediately south of Ponui Point) consisting of 8B2A1, 8B2A2, 8B2A3, 8B2A4, 8B2A5, 8B2BI, 8B2B2, and 8B2C.

Group 2: That area between Ponui Point and Maunu consisting of 8B2D, 8B2E, 8B2F, 8B2G1, 8B2G2, 8B2H, 8B2I, 8B2J, and 8B2K.

Group 3: That area formerly known as Hiruharama which contains the remainder of the titles. It is bounded on the east and south by 8B2K Block; on the west by Crown land and on the north by Lake Taupo (Jerusalem and Acacia Bay).

Groups 2 and 3 can (and ought to) be dealt with as one block. If this is not acceptable in terms of what the commission recommends, then they can be administered as separate units. As before stated an area of 80 acres is ready for immediate development subject only to an undetermined question of zoning. The commission believes that this area lies wholly within group 2, but it is not certain that this is so. The area is, however, adjacent to present European settlement and is a logical extension of it. It raises questions of sewerage until a system can be linked with the present Taupo Borough Council's sewerage disposal system. Its amenities, as residential sites, will be those which are now available to residents already settled in the locality.

The Prichard Plan was rejected by the Maori Appellate Court and one title now covers groups 1, 2, and 3. No submission was made in favour of reverting to the Prichard Plan. The owners do not want it. Nor do they want the present consolidated title which they contend, and the commission agrees, is not a just and equitable method of recognising "family blocks" and relative values of the various blocks. The commission agrees that the Prichard Plan should not be resurrected. So be it. However, very strong and well supported submissions were made for the implementation of the Harvey Plan, although it was conceded that it might require modification or "updating". Since the commission does not recommend that the subdivisional requirements of any existing town planning scheme be dispensed with by the passing of appropriate legislation, this means that any future subdivision must comply or permission must be got for any departure. For such permission there is statutory power and procedure available. The Harvey Plan was clearly shown to be defective on present town planning principles. The suggested modification or "updating" is not a matter upon which the commission should pass an opinion so, in the judgment of the commission, the Harvey Plan should not be reinstated either wholly or modified.

The commission sees no real difficulty in administering and developing Rangatira C2 as an entity, but feeling is so strong (but not quite unanimous) that the "family blocks" must be given recognition, that no recommendation is made for such development unless a substantial majority of the owners agree that development as one block on the lines of Rangatira B will meet their wishes. This has not been put before them in any detail. So the commission is faced with the difficult task of considering how development can now be achieved. It is the problem of the marriage of ancient and traditional attachment to areas of land and the adoption of modern methods to the development of a large area of land which varies

in its attributes and the time and manner of its development. It may well be that the only solution is to return to the original family blocks and allow matters to develop from there. This is a defeatist attitude but it was a course of action put forward if the individual ownership of sections recognised by the Harvey Plan could not be achieved by acceptable means. It has already been stated that the existing consolidated title and its allocation of shares are unjust and are not desired by any of the owners present or represented at the hearings. The commission agrees with this attitude of the owners. Thus the task of the commission is to proceed on the basis that the present consolidated order and its consequent fixing of shares should be set aside. But, in the view of the commission, two matters are clear, namely, first, the Prichard Plan is not acceptable to the Maori owners, and, secondly, the Harvey Plan is not now an acceptable means of subdivision—this for the reason that it fails to take into account modern town planning principles and also provides for development of areas not at present ready for development. It has other defects. The commission agrees substantially with the criticism which has been levelled against the Harvey Plan. Suggested improvements or alterations should be properly propounded and submitted to the local authority in due course. The commission is not in a position to pass judgment on any new or modified plan. Moreover, zoning, except possibly for the said area of 80 acres, now stands in the way of subdivision unless legislation exempts the area (or part of it) from the existing town planning scheme. Such legislation is not recommended. So the commission is thrown back to the partitions prior to 1955 and faces the task of recommending an acceptable scheme which will give substantial effect to the "family blocks" yet at the same time will provide for effective administration and development under modern conditions.

The commission returns to group 1. This is zoned rural. There appears to be little chance of a change of zoning at an early, or even at a reasonable foreseeable, time. A large area ought in the national interest to be retained as a reserve. This would leave an area distant from the lake. The owners may wish to treat with the Government for the sale of whole or part of the block or for an exchange of suitable other Crown land of comparable value. The latter should, if possible, be the course taken. However, the owners may wish to bear with existing or future restrictions on its use and to exploit it as best they can until conditions change and permit other types of use. Afforestation was one idea which came forward. These are all matters for the owners according to the time when such steps are ripe for consideration. The commission is concerned about the question of compensation if the land (or a substantial

portion) is to become a lake or similar reserve in the national (and local) interest. A "willing seller and willing buyer" basis may not be proper compensation in view of the national and local importance of the area, of which importance there was abundant evidence before the commission. The Maori owners should not be asked to make an undue contribution to the national and local amenity provided by the preservation of Lake Taupo and its environs. It is recommended that, if compensation cannot be agreed on in the event of the said land becoming (or substantially becoming) a reserve, then a special tribunal be set up consisting of a Judge of the Supreme Court (or other suitable person of present or past judicial standing) as chairman and two members—one to be appointed by the Crown and the other by the owners. Such a body should not be trammelled by such concepts as "willing seller, willing buyer", but should fix a fair and just compensation for what is a very important national and natural asset retained for the preservation of a highly desirable feature of a unique part of New Zealand. It should be recorded that an unqualified assurance was given that the Government did not intend to resort to compulsory acquisition.

Groups 2 and 3 present problems of development which can only be effectively dealt with by a central body with plenary powers to act. Development will be both short term and long term. Areas at the back may never be required for subdivision. Planned utilisation is essential. Forestry is one suggestion, farming is another. In any development for residential purposes shop sites, school sites, recreation and other reserves are matters requiring careful consideration and planning. Maraes have been mentioned. Utilisation of parts on a leasehold basis is something which has been alluded to and ought to be carefully explored. The defining of the Urupa and the class into which that or any reserve ought to be put must be considered. There are so many matters which may arise on future development that single ownership of small sections is out of the question at this stage. It is too early to recommend any particular form of development or to recommend any specific allocation of sections of land to a "family" or members of a "family".

Findings on Rangatira C2

(1) That the present title is open to challenge in the Supreme Court.

(2) That the present zoning as rural of part of the land is similarly open to challenge and is the subject of litigation.

(3) Taking all factors into account the commission agrees with the submissions made that the present title is not fair and equitable.

(4) That neither the Prichard Plan nor the Harvey Plan can now be used effectively to deal with the said land for the benefit of the owners in such a way as will be to their best advantage or in the public interest. Neither of the said plans is adequate in terms of recognised principles of subdivisional planning and neither is capable of being put into practical and economic effect at the present time.

(5) The commission does not find any ground upon which to recommend legislation exempting the said land in whole or in part from town planning requirements.

(6) That the titles and ownership recognised by the Harvey Plan ought to be taken into account as the basis for future development and that the allocation of individual sections should, where practicable, follow the scheme recommended for Rangatira B.

(7) That if the owners reject any such scheme, then the only course left is to restore title and ownership as if neither the Harvey Plan orders nor the Prichard Plan orders had been made. The owners could then, as many have submitted, start their own plans for utilisation of what have been called "family lands". The commission repeats that this is highly undesirable and should be treated as a last resort by reason of failure to set up a new scheme on the lines about to be recommended.

Recommendations

(1) That legislation be passed cancelling the existing title to Rangatira C2 and that by such legislation all orders made by Judge Harvey and Judge Prichard be deemed to be cancelled.

(2) That legislation be passed constituting Maori incorporations under Part IV of the Maori Affairs Act 1967 and its amendments, as follows:

(a) in respect of the lands in group 1, and

(b) in respect of the lands in groups 2 and 3

or, alternatively, separate incorporations for each of groups 1, 2, and 3. It is not clear where the Urupa is situated but this is an area which will require to be covered in any such scheme.

(3) That, if there be doubt about the power to include "alienees" (referred to in Schedule A) in any such incorporation they should be included by a special provision to that effect.

(4) That such incorporations should contain provisions similar to those recommended for Rangatira B.

(5) That the order appointing the New Zealand Insurance Co. Ltd. as trustee be rescinded and that its proper costs be paid by the Government and charged as a debt proportionately against each incorporation.

SUPPLEMENTARY MATTERS CONCERNING RANGATIRA B AND RANGATIRA C2

(1) Rates need no special mention in respect of Rangatira B. The commission is satisfied that, in view of the statements of intention made by the Taupo County Council in respect of Rangatira C2, no recommendation in that behalf is necessary.

(2) It is recommended that the Taupo County Council give sympathetic consideration to any request made for rezoning the said area of 80 acres in Rangatira C2. Whilst any aggravation of amenity problems in the general area is to be deprecated, yet the commission feels that time has acted unfairly against the Maori owners when their position is compared with that of the neighbouring European community which has been allowed to use land as residential.

(3) The Government ought to give favourable consideration to granting to each incorporation a reasonable sum of money to enable debts to be paid and administration to be set up. The whole problem, which has been costly and time consuming, has resulted from the inadequacy of the statutory powers of the Maori Land Court to do justice to the Maori owners in meeting with the requirements of development of land of this type.

Dated at Auckland this 18th day of September 1974.

T. E. HENRY, Royal Commissioner.

(4) That neither the Prichard Plan nor the Harvey Plan can now be used effectively to deal with the said land for the benefit of the owners in such a way as will be to their best advantage or in the public interest. Neither of the said plans is adequate in terms of recognised principles of subdivisional planning and neither is capable of being put into practical and economic effect at the present time.

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(3) That, if there be doubt about the power to include "alienees" (referred to in Schedule A) in any such incorporation they should be included by a special provision to that effect.

(4) That such incorporations should contain provisions similar to those recommended for Rangatira B.

SCHEDULE A

1. *Rore Rutene – Rangatira 8B2A4*

Sections allocated to him under "Harvey" Orders

Rangatira C599, 600, 601, 602, 647, 648, 645, 646, 649, 650, 651, 652, 653, 655, 656, 657, 658, 659, 670, 671, 672, 707, 708, 810, 811, 812, 813, 814, 706, 821, 822, 823, 824, 825, 827, 828, 818, 819, 820, 829 (40 sections). Other sections (11) referred to in Mr Warbrick's evidence were allocated to either Rangikawhina Rutene or Tuihana Rore. These three owners owned the 59 sections plus road reservation for allocation in Rangatira 8B2A4 block and by vesting orders made 13 December 1955, the 8 children also mentioned in Mr Warbrick's evidence were given the road reserve and the 51 sections shown with Rore Rutene retaining sections C595, 664, 667, 673, 711, 807, 828, 829 (8 sections).

2. *Rangatira 8B2B1—Allocation of sections*

Arama (Robert) Warbrick
Rangatira C561, 566, 744, 745, 777, 855, 954

Manuka Tuaangaanga Wiremu
Rangatira C736, 219, 785, 867

Ruth Winiata
Rangatira C747, 859, 863, ¼ of 229

Ngawiki Tatana
Rangatira C748, 860, 864, ¼ of 229

Hine Bell
Rangatira C749, 861, 865, ¼ of 229

Rangi Kapiki Matene Winiata
Rangatira C750, 862, ¼ of 229, 866

Shirley Warbrick
Rangatira C778

Arthur H. Warbrick
Rangatira C738, ½ of 780, ⅓ of 220

Alfred Warbrick
Rangatira C737, ½ of 780, ⅓ of 220

David P. Warbrick
Rangatira C735, 786, $\frac{1}{3}$ of 220

The above locations made in terms of interests held in the original Rangatira 8B2B1 title.

3. *Rangitopeora Davies—Rangatira 1C1 and 1C2*
Sections allocated—Rangatira C45, 46, 47, 48, 108, 136, 176, 177, 178, 265, 266, 267, 268, 269, 270, 271.

4. *Order made 20 March 1956* re *Rangatira C869*
Application for succession to Rihi Tiohuka deceased who owned solely Rangatira A107, Rangatira A93, and had a $\frac{1}{4}$ share in Rangatira C869.
Rangatira A107 and A93 were vested in the Maori Trustee under section 438/53 to sell for benefit of 20 successors and by agreement the Rangatira C869 interest vested under section 136/53 in Miriama Rihi as sole successor for the $\frac{1}{4}$ interest valued then at approximately $100 or so.

5. *Order made 23 March 1956* re *Rangatira C1*
Vesting Order made under section 213/53 vesting the Rangatira C1 section owned by Arihia Pua in Kori Rameka solely.

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