Rangahaua Whanui National Theme i

MAORI AND RATING LAW

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MAORI AND RATING LAW

1 What are Rates?

Rates originated in England in 1601, after the dissolution of monasteries, as a means of raising funds for the welfare of the poor inhabitants of parishes.[1] The occupiers of land had their property assessed by a local authority and rates were paid into a common fund for local poor relief. The use of rates soon expanded beyond this, and by 1840 rating was a basic financial tool of local government, used to fund community goods and services.

Defined broadly, a 'rate' became a tax, based on ownership of property, levied by a local authority and applied to services at a local level. There were three essential components:

(a) Rates were levied by a local authority, not the central government.

(b) Rates were assessed on either 'real' property (such as land or buildings) or 'personal' property (such as movable personal goods). As will be seen, rates in New Zealand have always been set on the value of real property.[2]

(c) The money collected was applied to services for the local community – not towards any national project or service.

Land-based rates were commonly levied in the first instance on the occupier of land, who was made 'primarily liable' to pay, but in default, or where the occupier was on the land under a short-term lease, liability would revert to the owner. This pattern was followed in New Zealand rating laws.

Rates based on property values have their philosophical origins partly in the common law notion of tenure – the legal theory that all land is ultimately held from the Crown. This doctrine was brought to New Zealand by the first English settlers.[3] This raises the question of whether land held by Maori under their customs should have been subject to rates. As will be seen, while Maori land remained unpurchased or outside the land court system, it was largely exempt from rates.

Rating in its nineteenth century form did not have a Maori equivalent, although there were strong traditions of community involvement in the form of projects, for example, construction of whare whakairo, distributions of resources and 'gift' exchanges, and reciprocal feasting.[4] After the introduction of rates in New Zealand, Maori were to refer to rates using the transliteration 'reti'. A ratepayer became a 'kaiutu reti'.[5]

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1. R O'Regan, *Rating in New Zealand,* 1985, p 1; and J A B O'Keefe, *The Law of Rating,* 1975, p 6
2. Unlike England and parts of the United States: O'Regan, 1985, pp 2–3.
3. Hinde, McMorland, and Sim, *Introduction to Land Law,* 1986, p 13
4. And see comments in R Calderwood 'Issues Pertaining to the Valuation of Maori Land', DB, pp 102–103

2 Valuation for Rating

The English system of valuation, tied closely to the doctrine of tenure and the idea of an annual rental of the land to be paid to the person higher in the feudal chain, was not followed in New Zealand. A 'no rent, no rates' system encouraged the speculative holding of unimproved land, as was quickly realised when it was tried in the provincial period. Those who improved their land and thus raised its potential rental value were most heavily assessed, whereas those who did nothing to improve the land paid least. After trialing other methods, the notion of valuing land on the sum it would raise if sold, without considering improvements, was found to be fairest.[6] The change for unimproved land was not immediate. The Rating Act 1876 specified an annual value. The Rating Act 1882 changed from annual to capital value, that is to say, the value of land with improvements. Unimproved land values were not provided for in a broad way until the Rating on Unimproved Value Act 1896.

The Government Valuation of Land Act 1896 also ensured that future valuation work was centralised and made independent of local and central government politics. Formerly, and particularly under the provincial system, valuations were carried out in many different ways and the potential for bias and corruption was considerable. The 1896 Act was the foundation of the modern Valuation Department (now Valuation New Zealand), headed by an independent Valuer-General.

In recent decades, because of intensive settlement, the notion of valuing land as if it had not been improved became increasingly unrealistic. Since 1970, legislation has provided for unimproved value to be gradually replaced by the capital value (called 'land value') system, which values land on its sale value and includes improvements which have become indistinguishable from the land itself (eg, drainage, levelling, etc).[7]

Valuation methods and Acts have not been the subject of close investigation in this report. It appears that the official policy was that Maori land, where it came within the ambit of rating systems, was always valued in the same way as other land, despite pressure to do otherwise from Maori, and from Europeans anxious to buy Maori land. A comment from a district valuer in 1912 makes this point:

> There will always be consternation with purchasers of Native land if a valuer put on a value that does not suit their views or arrangements previously made with natives. I have never excepting in very odd cases put a value on Native land that has

5. H M Ngata, *English–Maori Dictionary,* 1993. Not to be confused with reti (canoe), and other meanings in H W Williams, *A Dictionary of the Maori Language,* reprint 1975 (1st ed 1844). Also spelt 'reiti' in some letters (DB, pp 536, 538) and also 'reeti' (AJHR, 1884, i-2, p 6).
6. The 'unimproved value' method appears to have been first used in a New Plymouth Ordinance of 1855 – O'Regan, p 23. Other methods tried were an acreage basis – tried in Otago – and 'capital value' – tried in Nelson.
7. C Scott, *Local and Regional Government in New Zealand Function and Finance,* 1979, p 41. This change is noted in the Maori Land Court judgment of Spencer J in *Grigg v Mangonui County Council,* pp 15–16, DB, p 229.

> not made an enemy for me and some cases both with Europeans and Natives and solicitors acting for them.[8]

This bears out the allegation in some current claims that valuation policy has never considered that Maori might want to use land for other than European-defined 'productive' purposes.

Valuations of Maori land were sometimes manipulated. In 1883, the Property Tax Department was found to be valuing Maori land well above the market rate.[9] This was at a time when the Government reimbursed local authorities directly for rates owing on Maori land. In another incident, in 1915, it was revealed that lands in the King Country were being valued low so that European settlers would find it easier to buy them. Replying to an argument that a lower value was necessary because of the multiple ownership and the cost of getting good titles, the Valuer-General insisted that all lands should be valued in a standard manner.[10] Further investigation would be required to determine how widespread such incidents were, and the impact on Maori in each case.

Currently there are calls for valuation legislation to be amended to reflect the different cultural values Maori place on land.[11] As will be seen in this report, the differing approaches of Maori and Pakeha to land use and development were a recurring theme underlying rating issues.

3 First Attempts at Local Government and the First Rating Schemes

Accompanying the Royal Charter of 1840 for the establishment of the British colony of New Zealand, Governor Hobson received instructions to:

> promote as far as possible the establishment of municipal and district governments for the conduct of all local affairs, such as drainages, bye-roads, police, the erecting and repair of local prisons, court-houses, and the like.[12]

The instructions made it clear that an important reason for this approach was to reduce the expenditure on the new colony required from England.[13]

As with many things in the new colony, a balance between reform and parsimony had to be struck. Lord John Russell, drafter of the instructions, had championed local body reform in the Commons in 1835 and no doubt had this in mind for the colony.[14] The instructions also meant that '[r]ight from the start then, the colonists themselves were to have to find the wherewithal to construct roads, dig drains and

8. 27/5/12, v 12/228 Waikikino Partitions, NA
9. A Ward, *A Show of Justice,* 1974, p 284 – discussed below
10. v 12/416 Valuation of Native Lands 501, NA
11. See P Rikys, 'Valuation of Maori Land for Rating Purposes: Time for a Change?', *New Zealand Law Journal,* January 1992, p 26, DB, p 68
12. G W A Bush, *Decently and in Order: The Centennial History of the Auckland City Council*, 1971, p 20; and A H McLintock, *Crown Colony Government in New Zealand*, 1958, p 278
13. Bush, 1971, p 20; G Bush, *Local Government and Politics in New Zealand*, 1980, p 11
14. Bush, 1971, p 19

prevent nuisances'.[15] It was difficult, however, in the face of day to day struggles for existence, for the early English settlers to be so civic minded.

Local government consequently had a troubled early existence. Various abortive attempts were made in Wellington and Auckland to establish municipal authorities, but early legislation of the Legislative Council was either disallowed by the Imperial Government, or simply ignored as impracticable.[16]

The Municipal Corporations Ordinance 1842, providing for the creation of boroughs, the levying of a borough rate, and construction of roads and other amenities, was modelled on the English Municipal Corporations Act 1835, which had reformed local government there.[17] Auckland settlers breathed a sigh of relief when it was disallowed.[18] It had provided for rates 'in the nature of a borough rate in England, upon all real property within the limits of the borough'(s 67). This meant a rate based on the annual letting value of land.[19]

The Municipal Corporations Ordinance 1844 provided for the same system. The settlers were busy with other matters however, and no corporations were established under it. It became automatically obsolete when the Constitution Act 1846 came into force, empowering the Queen to establish municipal corporations in New Zealand.[20]

The Public Roads and Works Ordinance 1845 was a simpler measure, relying on a majority of electors to petition for the creation of a board which would levy special rates to create roads as required – an acute necessity in Auckland.[21] The rate in this case was to be levied on the basis of the number of acres owned (s 11).

Roading continued to provide the impetus for subsequent rating laws. The Constitution Act 1846 established the provinces of New Munster and New Ulster. The New Ulster council never operated, but the New Munster council passed the Public Roads and Works Ordinance 1849 (replacing the 1845 measure), providing for a board elected by town electors to levy rates to maintain the town roads. The rate was to be set on the net annual value of houses, lands, and tenements in the town.[22] The Country Roads Ordinance of the same year allowed for a different system of rates, based on the sale value of the land.[23] This was the first use of what was to become the most common form of valuation for rates.

These laws had no effect on Maori land. Maori property was specifically exempted (under section 27) from the operation of the Public Roads and Works Ordinance 1845 and the two New Munster ordinances (s 28 Country Roads Ordinance 1849). However, the earliest local body rating laws, the Municipal Corporations Ordinances of 1842 and 1844, appear not to have exempted Maori

15. Ibid, p 20
16. Bush, 1980, pp 12–14
17. Bush, 1971, p 24
18. Ibid, pp 20, 24
19. O'Keefe, p 7
20. Ibid
21. Bush, 1971, p 27
22. O'Keefe, p 7
23. Ibid, p 8

land. The Native Exemption Ordinance 1844 made it clear that Maori were generally intended to be subject to the operation of new laws unless otherwise stated.[24]

By 1853, the two provinces had been replaced by six, with power to set up town and country local bodies. Each province adopted rating laws. Canterbury, Dunedin, and Auckland laws used the 'annual value' approach, Wellington ordinances of the 1850s tended towards an 'unimproved' and 'capital' (ie, sale) value.[25] This was reflected in some of the rating ordinances passed in New Plymouth, Marlborough, and Nelson.[26] These measures generally excluded Maori from their operation. The Auckland province's Local Improvement Act 1858 (s 6) provided that land in the occupation of aboriginal inhabitants was exempt from rates unless title was included in a Crown grant. The Wellington province District Highways Amendment Act 1862 (s 17) provided for rates for repair of highways to be levied on all lands within the district except lands granted or set apart for aboriginal natives whether unoccupied or in their own occupation. Section 41 of the Nelson Education Acts 1856 and 1863 exempted Maori from rates.

It is doubtful if these provincial statutes could have included Maori land anyway. The Constitution Act 1852 (s 19(10)) provided that provincial councils could not make laws 'Affecting lands of the Crown, or Lands to which the Title of the aboriginal native Owners has never been extinguished'.

One interesting early experiment was an ambitious Charter of Incorporation for Auckland drawn up by Governor Grey in 1851. It envisaged a full male adult franchise which included Maori, and conferred considerable powers to establish hospitals, schools, and the like. Rates could be struck. Endowments and land sales funds were proposed. Grey was apparently seeking to 'dampen disquiet about the slow pace of constitutional advance' by this measure.[27] It never operated in practice however.

4 Road Boards and the Highway Boards Empowering Act 1871

Whatever their legal provisions, these developments did not affect the bulk of Maori lands, because the early European settlements were limited in size and stood on lands already purchased from Maori or on which Maori no longer lived. From the very earliest days though, Maori were employed in the construction of roads around the settlements.[28]

The new constitution of 1852 brought sophistication in local government. The Municipal Corporations Act 1867 provided for the creation of boroughs on the petition of 50 or more people, and their incorporation to run local affairs. Rates

24. Although section 12 provided that they be exempt from the 'more severe penalties' of the civil law, including imprisonment, while they remained 'ignorant of the operation of the law in civil cases'.
25. O'Keefe, p 8
26. Ibid, p 9
27. Bush, 1980, p 15
28. Bush, 1971, p 31; Ward, p 72

could be levied, and electors were to be ratepayers. Defaulters were excluded from voting under section 52. Maori land was not excluded from rating,[29] so that, technically, Maori could also vote in local elections.[30]

This increasing sophistication brought a new development of the 1850s and 1860s directly affecting Maori lands. This was the creation of road or highway boards to collect funds for the construction of roads outside the towns:

> They multiplied at a fearful rate. Otago set the standard – five in 1856, 61 in 1865 and 95 the following year . . . Canterbury lagged behind with only 27 in mandatory operation in 1864. Auckland's highway boards legislation was passed in 1862, although Whangarei evidently boasted one in 1860. Boards of trustees were to be elected . . . and empowered to levy rates of up to threepence an acre. Boundaries and legal status were in a state of flux and a return of 1867 indicated possibly 37 functioning highway boards in the Auckland province. By the late 1860s this form of administration covered the whole of New Zealand, except for Hawkes Bay.[31]

This development was, in part, prompted by the power of provincial governments under the new constitution to raise loans overseas, which created a temporary enthusiasm for public works, until debt levels mounted alarmingly.[32] But by 1869 the provinces were in financial crisis: Nelson had suspended all public works. Taranaki was contemplating limits on its powers, and Wellington had no funds to subsidise schools or roading. Auckland had only just been saved from similar straits by the discovery of gold at Thames.[33] The North Island provinces particularly struggled under the 1852 constitution because they lacked large tracts of land to sell to incoming settlers. Land sales encouraged immigration as well as producing revenue.

The scheme of public works put forward by Vogel in 1870 was seen as necessary to save the system of government, despite reservations about the debt to the whole colony which would be incurred. Vogel proposed spending a massive £400,000 on trunk roads in the North Island, an island 'deficient in both railways and roads, and wants, moreover, the special means for constructing them in the nature of a public estate'.[34] District road boards were to receive £50,000, split in proportion to their population.[35] Other public works expenditure was to be distributed according to the number of European settlers in each province. Auckland, Hawke's Bay, Wellington, and Taranaki received special allowances in consideration of the number of their Maori inhabitants.[36]

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29. Section 202. Unless it was intended to be covered by an exemption for 'land the property of Her Majesty and unoccupied'.
30. In the same year, Maori were assured limited representation in the House of Representatives, and the possibility of representation at provincial level: see the Maori Representation Act 1867.
31. Bush, 1980, p 17
32. W J Gardiner, 'A Colonial Economy', in *Oxford History of New Zealand*, W H Oliver (ed), p 65. The power to raise loans in this way was terminated in 1867.
33. W P Morrell, *The Provincial System in New Zealand 1852–76*, pp 209–210
34. Quoted in Morrell, p 215
35. Morrell, p 221
36. Ibid

In 1871, the Highway Boards Empowering Act was introduced, intended to end any legal doubts about the powers of the boards created under provincial legislation. In particular, 'it was doubtful whether Provincial Legislatures were able to confer on Highway Boards the power to rate property held under the Crown, or Native land'.[37]

The debate in the House of Representatives included much argument about whether and how Maori should pay rates. One view was that, as many now had Crown grants and used the roads, it was self evident that they should now be rated.[38] European settlers were beginning to resent the fact that Maori were exempt.

The member for Mangonui and the Bay of Islands pointed out that the matter might be more complex than it appeared. Maori in his electorate paid £40,000–50,000 annually (about £12 head) in customs duties and got little for this. He wondered if this might be used on roading rather than levying a rate on Maori. It was also pointed out that money collected for roads was invariably spent on European settlers in or near urban areas.

Maori participation in the construction of roads was also noted. If Maori could make up the membership of the road boards they might protect their interests.[39] Another member also thought that Maori representation on boards would help resolve the issue. Also, approaching Maori in a district as a group rather than as individuals, and gaining general consent to working out a level of rates, was suggested.[40]

The Maori members of Parliament entered the debate. The member for Southern Maori, Taiaroa, was anxious that, in his area, a council of Maori should handle such matters:

> if this Act is passed, some European will be sent round to collect from the Maoris road rates, and the Maoris will have a right to say then, 'We have had no voice in assenting to this law, and it has not been agreed to by the council.'[41]

Further, he noted that the Treaty of Waitangi had reserved all matters regarding land to Maori. He suggested that a copy of the Treaty be laid on the table of the House so that all could consider it.[42] Another Maori member thought Maori were too poor to pay, and suggested they should be able to give land for roads instead, when asked for it.[43] For northern Maori it was suggested that:

> The Ngapuhi have a plan among themselves for overcoming this difficulty by doing certain work. They send, for instance, three drays and do three days' work on the roads without payment, and that is their contribution to the road rates.[44]

37. NZPD, 1871, vol 10, p 358. The preamble of the Act which was finally passed made reference to section 19 of the Constitution Act 1852.
38. Ibid, p 359
39. Ibid, p 365, J McLeod
40. Ibid, p 360, T Kelly, Taranaki
41. Ibid, p 358
42. Ibid
43. Ibid, p 359, Parata
44. Ibid, p 362, Katene

The fear was expressed that land might be taken for rates. On this basis it was suggested that the introduction of the Bill should be delayed.[45]

In the Legislative Council, a clause in the Bill was described as 'an innovation' which provided that fenced and cultivated native land should be liable for highway rates, after a certificate to this effect was first obtained from the Governor. The clause was struck out by the Council. The House of Representatives asked in vain for a further consideration. It was said in support that 'at Hawke's Bay, Natives who occupied land that was fenced in and under cultivation were subject to rates, and paid them with regularity'.[46]

In the end, the Act provided that owners and occupiers of Native lands would be liable to rates only if a Native Land Court certificate of title had been issued or, if the Native title remained unextinguished, when the occupier was someone other than a Maori (s 5). This compromise was to appear in subsequent rating measures. Fixed term pastoral leaseholders on Crown lands were exempted to pay only half rates. Recovery of rates in arrears went no further than the forced sale of personal property (s 15).

5 The Native Districts Road Boards Act 1871

The member for Northern Maori, Katene, had meanwhile been considering the issue of rates in a broader context. He put a motion:

> That the Government be requested to send down to this House a measure by which a runanga will be granted to the districts of the Bay of Islands and Mangonui; the object of such Board to be the promotion of public works, education, the carrying out of law and order, &c.

One of its functions was to be the 'formation and repair of roads'. The Government would pay salaries to the board members, half of whom would be Maori and half European.[47] Katene was concerned that the runanga ensure that funds raised in the district, or supplied from the colonial government, were spent there.[48]

For the Government, Donald McLean replied that he had instructed the Attorney-General to draft up a measure allowing Maori to create road boards on the European model. The runanga idea would be, in his words, 'assimilated' as closely as possible to the road boards idea.[49] Later in the year McLean introduced the Native Districts Road Boards Bill, stating that its genesis was in Katene's ideas.[50] Katene replied that he was under the impression that the 'Highway Boards Bill' had

45. Ibid
46. NZPD, 1871, vol 11, p 935
47. NZPD, 1871, vol 11, p 427
48. This was the point McLeod had mentioned: see above. Road boards were funded by way of local rates, and a contribution from a colonial fund paid out under the Payments to Provinces Act 1870. Superintendents of provinces put in their estimates each year: see NZPD, 1871, vol 11, pp 59, 427.
49. NZPD, 1871, vol 11, p 427
50. Ibid, p 604

been disposed of, and that Maori members of Parliament had objected to that, but had been overridden. He agreed, however, that he wanted a Bill whereby Maori could govern the application of highway boards legislation in his own area.[51]

Some parliamentarians were alarmed at the power Maori were to be given, noting that the Bill provided that three-quarters of the board were to be Maori.[52] Others approved, saying that Maori not only had to be taught to submit to laws made by Europeans, but had also to 'qualify themselves to take a part in the work of self-government and the management of their own affairs and institutions'.[53]

The Act provided that, in any area in which the majority of inhabitants were Maori, if a majority of persons in that area petitioned the Governor, the Act could come into force in that area (s 3). The Governor would make regulations governing the establishment by election of a road board, of which three-quarters of the members would be Native inhabitants of the district (s 5), and provincial road ordinances were to cease to apply in the declared districts (s 12).

The Act did not operate extensively in practice, probably because it was entirely voluntary, Maori groups seem to have been resistant to it, and it did not satisfy the broader calls for local self-government from the north. In December 1871, Marsden Clarke reported on a meeting at which Katene addressed chiefs from the Kaitaia, Mangonui, Hokianga, Mangakahia, Whangarei, and Bay of Islands districts, advising them that the Native Road Board Act:

> was not what he wished to establish, but a Native and European runanga, which would be empowered by the Government to settle disputes, and to assist Magistrates in enforcing the law. This was opposed in Parliament, and the Native Road Board substituted, which he had opposed in the House, but that when he heard an honourable member say 'That if the Natives would not pay rates they ought not to be allowed to use the roads but have to walk in ditches,' he had thought it better to acquiesce in something over which they might have control.

Clarke thought that Maori did not understand the Act, although most agreed to it after explanation. Others wished to consult further before deciding to adopt it.[54]

The historian Alan Ward writes that Maori relations with local authorities in this period were 'generally antagonistic' because they did not participate in this level of Government and:

> because of the local authorities' encroachment on Maori land for public works, and partly because the Maori were unwilling or generally unable to pay rates. Maori land was rateable under the Highway Boards Empowering Act, 1871, only if leased to settlers and traversed by roads. A few Ngapuhi chiefs, such as Wi Katene, and resourceful mixed-race people, such as Retreat Tapsell, paid rates and participated on

51. Ibid, p 606
52. Colonel Russell. He was relieved, however, to see the 'safeguard' in the power of the Governor to make regulations for the boards. NZPD, 1871, vol 11, p 749.
53. Sewell. He also thought that the money for roads should not only come from rates but that Maori should be able to pay in kind – by their work on the roads. NZPD, 1871, vol 111, p 750.
54. AJHR, 1872, f-4, p 4

> local County Councils but these men were exceptional in the nineteenth century. Generally, Maori owners were too heavily indebted to pay rates. A wider levy of rates would in fact have amounted to a compulsion to sell land – although settlers, observing heavy spending by Maori people when flush with cash, were unsympathetic.[55]

He also notes that the 1871 measure was not actively taken up and that McLean subsequently 'fell back on urging local European Road boards to include Maori leaders, but generally he regarded the contribution of Maori land and labour for road works, as sufficient for the time being'.[56]

One reason for the failure of the measure might have been the confusion over its application. Maori believed that it applied only to them, and resented the fact. Conversely, European settlers had reason to believe that their lands might be subject to this Maori body.[57]

6 Roading in Maori Districts

As these debates demonstrate, there were ambivalent attitudes to roads and rating among Maori in the period. In the north, there was undoubtedly a need for roads – the changing economy demanded them. The resident magistrate reported in 1880 that the people around Mangonui were subsisting almost entirely on gum digging:

> The small price they obtain for produce from their cultivations, owing to the difficulty of getting such to a market from want of roads (no money having been spent in this district for opening roads through Native land for many years), so disheartens them that they have almost abandoned their cultivations . . .[58]

But Maori were cautious about the rating which road works attracted, as the discussion over the Act of 1871 showed. In 1875, James MacKay wrote to the Native Minister that survey of the road between Hamilton and Thames had not been completed because of resistance by the chiefs Paora te Ahuru and Te Hotene at Te Au o Waikato, Piako:

> The reason the line has not been surveyed over the lands granted to the Natives . . . is that they fear if a road is made through their property that they will render themselves liable to highway rates.
>
> I may mention that this is not a solitary instance of this class of objection; it is not confined to one district, and is constantly urged, as a reason for refusing rights-of-way, that conceding a right of road gives the Government power to rate the owner of the land over which the road passes.[59]

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55. A Ward, *A Show of Justice*, 1974, p 269
56. Ibid
57. See Wiremu Katene to D McLean, 2 April 1872, AJHR, 1872, f-4 p 6, and 'Opinion of Attorney-General', ibid, p 4. The Act was repealed in 1891.
58. AJHR, 1880, g-4, p 1
59. Ibid, 1875, g-10, p 1

The chiefs sought an assurance that they would not be liable before allowing the road. MacKay thought it preferable that Maori not be rated, since the delay in constructing roads was a greater cost to the economy, and he urged that all native lands outside townships, whether held under Crown grant or not, should be exempt. He also noted that Maori were not able to pay rates in some places 'from absolute want of means'.[60] In July, MacKay met with 'Tarapipipi te Kopara and the Ngatipaoa of Piako' who had stopped survey of a reserve consequent upon a block purchase until the rating question was satisfied.[61]

Under-secretary H T Clarke supported the call for an exemption, noting that survey of the Cambridge and Tauranga road had been stopped by 'the Ngatihana Natives' for the same reason. He also noted that this Maori concern was having an impact on land court operations:

> It is, I believe, a well-established fact that in a large majority of cases the Natives will not now submit their claims for adjudicating by that Court, unless they have previously arranged with some European to make some disposition of it. It was not known by the Natives when the Native Land Court first came into operation that, by commuting their Maori tenures for grants from the Crown, they were subjecting themselves to burdens never understood.[62]

Clarke and MacKay seem to have accurately gauged the concern of some Maori. In 1877, A T Patene and others of Waikato petitioned Parliament, asking that:

> Road Board laws shall have no effect in their district, because the Maoris are not able to pay their rates, and the consequence will be that they will have to sell their lands, and impoverish their descendants.[63]

7 The Rating Act 1876

In 1876, a Rating Act was introduced as one of a number of measures designed to improve the system of local government following the abolition of provincial government.[64] It replaced the various provincial rating ordinances then in force and sought to establish a uniform scheme for land valuation and rating assessment. The Act created rating districts, district valuation rolls, and district valuers employed by local authorities. Valuers were responsible for the compilation of valuation rolls recording the rateable value (using the 'annual value' method) of all rateable property within a district. Rates levied by local bodies were set at a percentage of the rateable values appearing in the valuation rolls.[65]

60. Ibid
61. Ibid, p 2
62. Ibid, p 2. He noted that Maori had written to him about this concern from the 'Kaipara districts'.
63. Ibid, 1877, i-3, p 21
64. NZPD, 1876, vol 22, p 26
65. N B Hall in the Legislative Council: the proposed Act provided that the rates in all cases must be a proportion of the annual value. That would bring an end to a system, prevailing in some parts of the colony, of making a rate on the selling value of the property. NZPD, 1876, vol 21, p 27.

Although the Act declared all land 'rateable property', it provided substantial exemptions. Included in the exemptions were, in section 37(4):

> Lands over which the Native title has not been extinguished, and lands in respect of which a certificate of title or memorial of ownership has been issued, if in the occupation of aboriginal natives only.

This reflected the exemption in the Highway Boards Empowering Act 1871, except that it was broader with regard to customary land, that is, land over which the original Maori title had not been extinguished. Under the 1871 measure, customary land was liable if other than Maori were in occupation. Under the 1876 Act, it was totally exempt. The effect of the exemption appeared to be that most Maori paid no rates, although areas of Maori land leased to Europeans were rateable property and the lessees were liable.

The Act provided that rate arrears were a personal debt owed by the liable person, usually the occupier, but in some circumstances the owner. Where a demand for rates remained unpaid after 14 days, a local body could begin judgment proceedings and, if still unpaid after judgment, a local body had the right to sell the property on 12 months' notice. If an occupier failed to pay within three months, the owner became liable under section 53. This would appear to have made Maori owners liable where their European lessees defaulted.

In contrast to the earlier measure, nothing was said by or on behalf of Maori when this Bill was debated. No explanations were advanced for the Maori exemptions, and no Maori member of Parliament spoke. From the local body point of view there was much to dislike in the Maori exemptions. The proper basis for rating, it was said, was that all persons or property which benefited by the construction of roads should contribute to the cost of construction. The exemption of Maori land was part of:

> that separate government of the Natives which they ought to endeavour to destroy. They should take every possible step to place the Natives in exactly the same position before the law as they themselves.[66]

An optimistic member hoped:

> that the Native difficulty had been so far overcome by the efforts of the Native Minister that they need not place the Natives in such an exceptionally favoured position compared with their European fellow-subjects.[67]

The member for Collingwood complained that he knew of:

> large reserves occupied by natives who were in a very progressive state, possessing many teams and taking contracts to carry goods on the roads, thereby assisting greatly in the wear and tear of those roads; and yet . . . their property was not to be rated.[68]

66. NZPD, 1876, vol 22, p 29
67. Ibid, vol 20, p 396
68. Ibid, p 394

He noted that the exception was certainly an old one but questioned whether it should still be retained.

8 The Rating Act 1876 in Practice

There was controversy over the extent of the exemption under section 37 of the Rating Act 1876. In 1882, Major Te Wheoro was told county councils were suing Maori for rates under the section on lands 'which have been Crown-granted'.[69] In 1877, the member for Western Maori, Hoani Nahe, had asked the Attorney-General whether Maori lands held under Crown grant and occupied by Maori were liable for highway or county rates. The Attorney-General thought the issue was whether a Crown grant issued subsequent to the determination of title by the court, and the provision by the court of a certificate of title or memorial of ownership, destroyed this exemption. He thought it did not.[70] This opinion appears not to have satisfied some European settlers in 'Native districts', for the question was raised again in 1878. An opinion from the Crown law officers was promised,[71] but presumably the same answer was given.

It seems partly for want of cash, but also to improve access to their areas and take advantage of new commercial opportunities, Maori were actively involved in many areas in forming roads, usually funded by the central government.[72] For example, between Hikurangi and Kawhia, Tawhiao had his supporters construct a dray track and a large wagon to use on it to bring fish and other goods inland.[73]

But despite enthusiastic support for roading generally,[74] Maori were opposed to local roads when rates were being levied to build them. At the meeting of the Maori Parliament at Orakei in 1879, opened by the reading of a speech from Governor Browne and the recital of the Treaty, rates and road boards were a complaint raised by many speakers.[75] The speeches reveal the extent of the rating regime.

Te Rewete, having received a demand from the Waitemata County Council, asked that road boards not be able to levy taxes on Maori lands.[76] The chiefs Te Otene, Eramiha Paikea, Arama Karaka, Te Hakuene, Henare Reweti, and Kipa Paenga also opposed the boards and rates.[77] Te Hemara Karawai of Kaipara opposed the extension of roads boards from Oruawharo to Makarau and pointed out that Tawhiao was also opposed to them.[78] Tamihana Maehewa complained of a road

69. NZPD, 1882, vol 41, p 373
70. Ibid, 1877, vol 25, p 573
71. Ibid, 1878, vol 29, p 120
72. AJHR, 1880, g-4, pp 6, 7, 9, 10, 13
73. Ibid, 1880, g-4A, p 1
74. Typical is a statement of Pairama Ngutahi who thought that the member of Parliament Katene had done well in getting roads made in the north. He now wanted the Government to build a road from Wairoa to Mangonui: AJHR, 1879, g-8, p 14
75. Ibid
76. Ibid, p 26
77. Ibid, pp 19, 28, 29, 35
78. Ibid, pp 4, 29

board 'cutting through his land at Puatahi for a road, without his permission'.[79] Mata Tukuwa similarly complained of a road taken five miles through his land without permission.[80]

Tiopira Kinaki offered a perceptive analysis:

> I will make some remarks in reference to the Treaty of Waitangi. I say that justice came from it, and that misfortune came from the Crown grants and the County Councils. The work of these Councils is to make carriage roads, and I find fault with them because I have to pay for those roads. I will not find fault with the Government because of these Councils. . . . The only fault I find with the Government is the establishment of these Road Boards – the Road Board on the West Coast, from Wairoa to Hokianga. I was always in the habit of using the road that has been there, but now the Road Board want to make me pay for using that road. I am grieved about that. Perhaps Sir George Grey and Mr Sheehan will remove this wrong, and carry out this road out of the Government funds without asking the Maoris to pay rates.[81]

Te Hemara Tauhia was concerned that, although the Government was aware that little land remained to Maori at Kaipara, road board rates were being levied and sales for rates arrears were threatened.[82] Tautari noted that at an earlier gathering at Otamatea road boards had been agreed to, 'but now they see that these things are wrong'.[83]

Wiremu Paitaki of Ngatipaoa complained for the people at Thames:

> When the inquiry at the Courts is finished then these Crown grants are issued. I thought that a Crown grant was so binding that there will never be any trouble about it again. But the Crown grant enables the Road Boards to levy taxes. We Maoris do not understand the meaning of these Road Boards. Our ignorance of these Road Boards causes us to be put in gaol for taxes we do not pay.[84]

Te Rua Rauroha, also of Ngatipaoa, condemned 'the taking of Maori lands by Road Boards for rates'.[85] The question was put, 'Ma tenei runanga e whakaae e whakahe ranei ko nga Rori Poati takiwa me te Kaunihera me kore ki nga iwi Maori',[86] and it was recorded that 'Te Wirihana Huhu was the only Native person present who voted in favour of Road Boards and Councils. All the others voted against them.'[87] A resolution was carried that 'Road Boards and County Councils should not deal with Maori lands, except in the case of lands leased to Europeans'.[88]

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79. Ibid, pp 5, 33
80. Ibid, p 36. Other complainants were Hori Kingi Te Pua (p 33), Eramiha Makoare (p 5), Wirihana (p 18), Eramiha Paikea (p 34).
81. Ibid, pp 22–23 (also quoted in Waitangi Tribunal, *Te Roroa Report*, p 263)
82. Ibid, p 27
83. Ibid, p 28
84. Ibid, p 32
85. Ibid, p 33. Whether lands were actually being taken for rates arrears at this time is doubtful.
86. Rough translation: 'That this meeting agrees or disagrees that district road boards and councils should not apply to Maori.'
87. AJHR, 1879, g-8, p 35
88. Ibid, p 6

Many road boards had come under the control of the new county councils established since the passage of the Counties Act 1876. Counties had full powers to maintain and construct county roads using the Public Works Act 1876. This latter Act also provided extensive powers to road boards to survey new roads,[89] and take land for roads, with the payment of compensation to those who filed a written application.[90]

Of more use to councils however, was section 76 of the Native Land Act 1865 which allowed the Governor to take from Crown granted land an area for roads (five acres out of every hundred) within 10 years of the Crown grant being issued to the Maori owners. In 1878, this right extended over 795,000 acres and was said to be worth £78,000 to the counties.[91]

In the meantime, Maori property owners still had no voting power at a local level. The Counties Act 1876 gave the vote to persons over 21 years of age listed as owners or occupiers of rateable property on a valuation roll (ss 40 and 41). In practice, most Maori property did not have identified owners or occupiers.

Things were not all one way, however. In Thames, following the complaint noted by MacKay in 1876 (noted above), a remarkable agreement had been reached for a road the county council wished to make 'from Te Totatara to the Matatohi Creek'. It provided that 'sacred ground or burial places' would be fenced off, as would cultivations beside the road. Maori would be paid for land taken for the road, and in addition, would never have to pay rates. Should any future council or government seek to impose rates for roading, the road would be closed to all traffic until the position was reversed.[92] This agreement was still having an impact on rating in the area in 1960.[93] Whether agreements similar to this were achieved in other districts is not known. The prominence this one achieved in Government files and subsequent investigations into Maori land rating suggests it was an exceptional occurrence.

9 The Crown and Native Lands Rating Act 1882

Meanwhile, the Government was attempting to shake its financial responsibility for local public works. In 1878, the Minister of Public Works announced that after that year's expenditure for local works that account would be closed and public works would be confined entirely to railways construction.[94] Apart from the cost, the vote by Parliament of major sums for public works and the creation of a department to administer them had exacerbated the demands from each county and accusations of bias were becoming a constant embarrassment.[95] By 1880, it was noted that 'The

89. Under section 78, the consent of the Minister for Public Works was required before entry onto native land in each case.
90. Sections 33 ff
91. NZPD, 1878, vol 29, p 54. This legislation is discussed by Cathy Marr in her report 'Public Works Takings of Maori Land 1840–1981', December 1994, TOWPU, pp 57–63
92. Alexander Brodie and Te Hoterene Taipari, 19 May 1877, copy in ma 1 20/1/58 NA DB
93. This is mentioned later in this report.

expenditure of the votes for roads in this [North] Island has, for the most part, been entrusted to the various local governing bodies'.[96] This was too sanguine, and considerable Government funding of roads continued.[97] Nevertheless, continued attempts were made to put this policy into effect, which inevitably put pressure on local authorities to find alternative sources of funding for public works.

In 1882, two new rating laws came into force simultaneously: the Rating Act and the Crown and Native Lands Rating Act. The former centralised the valuation process and changed the basis of valuation from annual to capital value. In relation to Maori liability, it exempted land where the original title had not been extinguished and which was unoccupied, and all lands owned by Maori 'of which there is not an owner or occupier other than a Native' (s 2). It also provided that these exemptions would be subject to any other legislation affecting Maori rates.

The Rating Act's companion, the Crown and Native Lands Rating Act, dealt with these two categories of land, which previously had not been extensively rated. Parliament was told the underlying principle of the Act was:

> that the lands of the colony must construct and maintain the roads of the colony. If we admit the correctness of that principle it follows as a matter of course that all lands must contribute their fair share.[98]

The Act was said to be one of several measures which that session introduced to achieve the aim of the Minister of Public Works to provide local government with its own funding base.[99] In relation to Maori land, the Act widened the categories of rateable Maori land and established a scheme for the Crown to guarantee payment of the Maori contribution.

All Maori land within borough boundaries became rateable under section 3. With substantial exceptions all other Maori land was declared rateable property under the Rating Act 1882 (and the exemptions that contained therefore applied). The exceptions were:

- Maori land occupied by Europeans (under section 6(14));[100]
- Maori land within the counties of East Taupo, West Taupo, Kawhia, Sounds, Fiord, Stewart Island (s 6(13)); and

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94. '. . . either the colony should close its bowels of compassion in respect of every application for roads and bridges, however exceptional may be the claim (and they are all exceptional in the opinion of the claimant), or it should distribute its gifts to all upon some equitable basis. As it is, unless we go into the money market, there will be nothing to distribute over and above the subsidies already fixed. There remains, therefore, only the one solution, of every locality relying upon itself.' The expected appropriation was £268,000 in total, £102,000 for the North Island, plus a separate £35,000 spent on roads in the 'Native districts': AJHR, 1878, e-1: pp xi–xii.
95. See R Noonan, *By Design*, pp 15–19
96. AJHR, 1880, e-1, p iv
97. See AJHR, 1881, d-1, pp v–v; xii–xiv, and xvi–xx; AJHR, 1882, d-1, p v; and NZPD, 1882, vol 43, p 874, Pollen: '. . . I see with infinite regret in the schedules to the Loan Bills of this year, that the pernicious system of log-rolling and subsidising the local bodies is proposed to be continued.'
98. NZPD, 1882, vol 43, p 703
99. Ibid, p 868
100. These lands would be dealt with under the Rating Act.

- Maori land more than five miles from any public road open for horse traffic (s 6(15)).

Rates demands were not addressed to Maori owners but to the colonial treasurer, who was required to publish a notice of demand in Maori in the *Gazette*. If the rates were not paid by the Maori owners within three months, the colonial treasurer paid them (ss 9, 15). Maori owners who paid rates were entitled to have the name of 'one of their number' enrolled on the ratepayers roll, who could thereby vote in local body elections (s 17). The Government expenditure was recovered with the stamp duty which had to be paid whenever the land was leased to a non-Maori or when it was sold or exchanged for the first time (s 12). The Governor in Council retained a power under section 5 to proclaim districts where Maori-owned lands could be rated under the ordinary law.

Despite the generous payment system, the passage of this Act prompted a full blast of parochial protest from members of Parliament. Many welcomed the extension of Maori rating liability, but doubted it went far enough and took the opportunity:

> of impressing on gentlemen who represent the native race in this House that, if they come here and claim to be put on the same footing as regards political rights and privileges as their European fellow-subjects, they must also bear the same burdens . . .[101]

The comments of Henry Fish, the member for Dunedin South, were perhaps representative of the majority view:

> As to Native lands I cannot see why they should be exempted from rates. Surely they should pay something to the State for the benefit they receive from State expenditure . . . It has been said that in the course of a few years the accumulated rates will eat up the fee-simple, and the Natives will get nothing when the land is sold. I do not think that is so. If they sold their land now they would perhaps get as much as £1 per acre; but in two or three years time, when their land is improved and opened up by roads and bridges, it will be trebled and quadrupled in value. I do not think the Natives will have any reason to complain. I have no sympathy with these philo-Maoris who express themselves so strongly on behalf of the Maori race. . . . My opinion is that the sooner we make the Maoris understand that they are not to be pampered the better it will be for them and us.[102]

However, some Pakeha members for their own reasons agreed that Maori were being taxed for roads they had never asked to be built and that the measure was 'but another attempt to fleece the Natives'.[103] Maori were paying stamp duty on lands as they were alienated and therefore it was 'altogether a fallacy to suppose that the Natives are paying no taxation'.[104] There was criticism that rates would be levied on

101. NZPD, 1882, vol 43, p 706, Sir John Hall
102. Ibid, 30 August, p 709
103. NZPD, 1882, vol 43, p 709, Turnbull
104. This was reference to a stamp duty mentioned above that was supposed to be paid by purchasers of Maori land, but commonly taken out of the purchase price. See comments in NZPD, 1904, vol 131, p 816.

land where the owners might be widely scattered with no way of knowing about the rates that were accumulating upon their property. They also warned that, with the change from annual to capital valuation, implemented by the Rating Act 1882, the burden on Maori would be:

> very much greater than any yet proposed by the House because the annual value of Native lands particularly is altogether inconsiderable as compared to what it will be when you rate on the fee-simple value.[105]

There was strong criticism of the imposition of rates without provision (or at least a very limited provision) for Maori representation on local bodies.[106] John Stevens, the member of Parliament for Rangatikei, summed up the approach of these members when he told the House that he would support any measure that would extinguish native title over every acre in the North Island and then subject it to taxation, but he nevertheless opposed the Bill as eloquently as any, and with more sensitivity to Maori concerns than most:

> we are building up difficulties that will require a great deal more legislation to overcome the difficulties we are now creating. There could be nothing more unfair than this: that the Native children, who are supposed to inherit the estates of their fathers, should come into possession of them to find that they had been taxed for about ten years. . . . I cannot see the fairness of insisting upon a section of the community being taxed for that which we may consider to be a benefit to them, but which they look upon as a great injury. For example, you make a road through Maori land, and in doing so you cut down a tree in which a chief has been in the habit of catching birds for many years, and which he looks upon as of great value as we should consider an orchard. Another man has had a place where he has caught eels; but you go and drain it for him. Do they look upon those as benefits? By no means; they look upon them as great injuries: and yet we compel them to pay taxation for inflicting that hardship upon them without them having any voice in the matter.[107]

The Bill drew a strong response from Maori members. In part, their opposition was an expression of a general unease that 'all the Bills brought in by the Government with respect to the Natives are pressing on them very severely indeed.'[108] This was yet another way in which Pakeha would interfere with Maori land-owning and eventually take what land was left. They complained that Maori had not asked for the roads that they were now being made to pay for and that the usual rationale for imposing rates – that it would increase land values – had not proved true for many Maori as their land was still bought cheaply. Wiremu Te Wheoro, the member for Western Maori, said that he did not oppose all rating of Maori land but it should be restricted to land where Maori had asked for roads. He

105. NZPD, 1882, vol 43, p 704, De Lautour
106. Ibid, p 717, Moss: 'We shall really be reducing them to serfdom and absolutely confiscating their land if we attempt to tax it without giving them at the same time a share in the election of the body by whom it is taxed'.
107. Ibid, p 710, Stevens
108. Ibid, 30 August, p 703, Tomoana

gloomily predicted that as a result of the Act Maori would not sell or lease their land:

> and the rates . . . will accumulate from year to year till they reach such an amount that a Bill will probably be brought in to confiscate those lands altogether as payment for the rates.[109]

He reminded members who complained about the lack of contribution by Maori that Maori paid a tax by way of a 10 percent duty on the initial sale of their land. The Treaty was invoked by the member of Parliament for Northern Maori, Hone Tawhai, who reminded members that 'the Treaty of Waitangi said the Natives were to have full control of their own lands; but this Bill now proposes to take possession of them'.[110] Wi Tako Ngatata in the Legislative Council compared the provisions of the Bill to a 'sea-monster' which would swallow the whole of the native people and their lands. His concerns were that Maori were not aware of the new law, would not be able to identify individually those who would pay, and would have lands taken for failing to pay.[111]

Again, some Pakeha members in the Council sympathised with these concerns:

> When we were weak we were craven enough – we did nothing to touch the Natives then, but gradually as we have got stronger we have come out of our shells more and more. . . . The Natives have been long exempt from many of the burdens imposed upon Europeans; but lately we have been going in a different direction, until at last, after the affair at Parihaka, we are determined to treat their lands in the same way as those of Europeans. We shall take the oyster by degrees out of the shell – we shall keep an account against the oyster, and, when at last it is opened, the oyster will go into the Treasury.[112]

Another warned that touching Maori lands might 'end in blood' and suggested indirect taxation measures only should apply to Maori.[113] It was suggested that the Bill was just 'a mean way of confiscating Maori land' by the accumulation of rates,[114] and several pointed out that the Government would end up paying more in rates than the land was worth.[115] Yet another made the telling point that this Bill would be a useful scheme for determining how the Government fairly distributed money among local bodies for roads.[116]

As to the rating situation at that time, figures were given for Coromandel and Thames Counties.[117] In Coromandel, 16 percent of the land was Maori owned, and

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109. Ibid, 30 August, p 712
110. Ibid, 30 August, p 718
111. Ibid, p 868
112. Ibid, G S Whitmore
113. Ibid, p 871, Scotland
114. Ibid, p 869, Fraser
115. Ibid, pp 868, 872
116. Ibid, p 871, Williamson
117. Ibid, vol 43, pp 706–707

£3250 had been 'lost' in five years.[118] In Thames, just over 50 percent was Maori owned and the 'loss' was said to be £25,000 in five years.[119]

10 The 1882 Act in Practice

By making all Maori land within five miles of a highway liable for rates, the Act affected 3.5 million acres out of 13 million acres by 1883.[120] By July 1885, over £12,978 had been paid by the treasurer for rates on Maori land.

In 1884, Wi Pere, the member for Eastern Maori, speaking on a motion of confidence in the Government, made the 1882 Act his first complaint. It was not right, he said, that it had been brought into effect over land left to Maori by their ancestors.[121] The same year, He Taroha, Henare Mauhara, Tama Parata, and others petitioned for Ngai Tahu to be exempt from the operation of the Act.[122] They were unsuccessful, but an exemption for the South Island was to be contained in a later measure (see below).

Returns of payments made to local authorities under the Act show that it operated, as had been predicted in the Legislative Council, as a scheme for distributing the roading budget. The returns for 1885 and 1886 show that payments were made almost exclusively in Auckland, Hawke's Bay, Taranaki, and Wellington.[123] Presumably these were areas where the burden of rates on Maori land fell heaviest. For example, in 1885 and 1886, major payments were made as detailed in the table opposite. For the South Island, despite the concern noted above, payments were minimal.[124]

Of this period, Professor Ward writes:

> Lewis discovered in 1883 that the Property Tax Department had been valuing Maori land for rating purposes at up to three times its market value and that, like dog-tax, collection of rates threatened to provoke breaches of the peace. The Native Department thereafter exercised a supervisory control over the rating of Maori land and much of it that was legally liable under the 1882 act, continued to be exempted. Nevertheless, Maori lands were charged with some £10,000 of rates by 1890.[125]

He goes on to argue that matters like rates were added to by dog and sheep taxes and river and harbour control programmes which destroyed ancient food resources.[126] While these works might have been of some benefit to Maori, because

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118. 27 percent Crown
119. 22 percent Crown
120. This figure comes from Lewis memo, 26 October 1886, ma 4/37, quoted in A Ward, *A Show of Justice,* 1974, p 347, footnote 11.
121. NZPD, 1884, vol 48, p 99
122. AJHR, 1884, i-2, p 6
123. AJHR, 1885, b-14; 1886, b-15. This latter return provides a useful breakdown into individual county councils and road boards.
124. The largest payment was £145 to Waikouaiti County Council. Ibid, p 6. Although they may have had a greater impact because of the small amount of Maori land involved.
125. A Ward, *A Show of Justice*, 1974, p 284

County council	Amount £	s	d
Cook	1001	9	10
Taranaki	755	6	0
Hawke's Bay	679	1	4
Waipawa	596	6	7
Manawatu	588	4	8
Thames	540	1	10
Rangitikei	512	10	8
Tauranga	406	13	7

Payments made to local authorities under the Rating Act or the Crown and Native Lands Rating Act in 1885 and 1886. Source: AJHR, 1885, b-14; 1886, b-15.

of their abrupt introduction without adequate explanation, they instead created an enduring sense of grievance.

That rates continued to be an important issue to Maori is demonstrated by the minutes of meetings held in 1885 between Native Minister Ballance and Maori communities in the central and eastern North Island. John Ormsby said at Kihikihi in February 1885:

> It has been stated that, as soon as ever a road is formed, then a Road Board is also formed – that is, the Rating Act is enforced. The Act gives the government power to proclaim within the Rating Act any land, although it may not have passed through the Native Land Court; and our lands, although we might not have used them for twenty years, still the rates would go on accumulating, and, whenever we use them, the accumulation of rates would be demanded from us. Possibly you will reply, and say, 'That is your fault, because you do not put your lands quickly through the Court'. Then I shall say, 'Through which Court are we to pass them?' Because, as I have shown, we are fearful of the action of the Native Land Court, because of the evil acts by which the Native Land Court is worked.[127]

In response, Ballance said he thought it unfair to rate land that was:

> not in the condition of being used . . . when the land has been leased or sold, then the time will have come for putting on rates; and I infer that no Native will object to pay rates when the land has been leased and is being cultivated . . . and therefore there is no danger to be apprehended that the land referred to will be brought under the Rating Act.[128]

At Parawai, Thames, Ballance met with Hauraki Maori. Tamati Paetai asked for 'a distinct assurance that they will not be charged rates'.[129] In an apparent reference

126. The River Boards Act 1884 was amended in 1891 to give these boards the power to levy rates. Generally the Act placed all rivers, streams and watercourses within any river district under the control of the board.
127. AJHR, 1885, g-1, p 14
128. Ibid, p 17

to the 1877 agreement, he said he had made land available for a road on the understanding that the law exempted him from rates, and that Natives should not have to pay rates because they were too poor. Matiu Pono complained that a number of them had given up land for nothing for roads and they did not think they should have to pay rates now that the road existed and passed through their land.[130]

Ballance doubted the legality of the arrangement that had been made with the Thames County Council. He thought the Government should be 'very cautious' about rating communally owned land not yet through the court, and not therefore 'used'. Maori, he argued, had the greatest wealth of all – the land – and he hoped that 'you would turn your land to such account that you may reckon yourselves to be the wealthiest people in the colony'.[131]

At Mokoia, Ballance was asked 'that . . . the road tax shall not be collected in this district'.[132] Ballance's response was firm:

> With regard to the subject of rating we wish the Natives to understand this: That when they get their land in their own name, they should stand in the same position as Europeans and pay rates. The roads can only be maintained by rates being levied, and rates give a value to land. How can you get your produce to market without roads and how are roads to be maintained without rates? . . . .You ask that the two races shall be made one. Why, therefore, refuse the responsibility which the Europeans have to bear?[133]

The first major issue raised by the Tauranga people was rates.[134] Te Mete Raukawa at Whareroa told Ballance that the Ngaiterangi people thought the Rating Act a very unjust Act, because:

> the Natives, being an impoverished people, are not able to pay either the rates on the land, or the property tax. We ask that these laws may be repealed to the extent that they affect Native lands.[135]

Hori Ngatai agreed with the principle of paying rates but said the charges were exorbitant and he complained that he was the only one being made to pay – because his was the only name appearing on a Crown grant.[136] Paihana was in a similar situation, receiving a demand from the road board.[137] Hori Ngatai had received judgment against him in court,[138] and he dramatically asked that he be killed outright rather than by degrees in this way.[139]

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129. Ibid, p 37
130. Ibid, p 38
131. Ibid, pp 39–40
132. Ibid, p 47
133. Ibid, p 48
134. Ibid, p 59
135. Ibid, p 60
136. Ibid, pp 60, 63
137. Ibid, p 63
138. Ibid, p 60
139. Ibid

Wi Peiwhairangi at Whakato near Gisborne asked Ballance not to let the rating law apply to lands which had not passed through the court, or which were not occupied.[140] Ballance's reply was more conciliatory than his remarks at Mokoia:

> With regard to [the Native Lands Rating] Act, I am not personally in favour of it. I do not know whether the Rating Act will be repealed by Parliament, as there is a strong feeling in favour of the Natives paying rates; but my opinion is that Native lands should not pay rates until they can be used, and therefore I am not in favour of the present Rating Act . . . But I think that, when title has been ascertained, and the interests of the Native owners subdivided, the time has come when they should take the same position as Europeans.[141]

The concerns expressed by these chiefs were also present in two petitions that year. Henare Mauhara and 31 others complained 'of the land-tax and the property-tax; also . . . that they are living in poverty on their land'.[142] More telling was the petition of Hemi Warena and 35 others:

> Petitioners state that through the Treaty of Waitangi they thought they had entire control of their own lands ['i whakamana kia ratou nga panga katoa ki o ratou whenua'], and object to certain restrictions, and payment of rates ['reiti'].[143]

In 1886, Whanganui petitioners sought payment for land taken for a road. They asked that any compensation they received should go towards rates owed by them.[144]

Further petitions followed in 1888. Hone Mohi Tawhai and 84 others stated their willingness to give up land for a short piece of road near the Hokianga River.[145] Kainamu Pumipi and others objected to county roading at Whangaroa, or wanted £150 for the land affected.[146] On the East Coast, Paora Rerepu and 327 others asked that the Mohaka and Waihua blocks not be affected by the Native Lands Rating Act 1882.[147] The committee here noted that the repeal of that Act was imminent.

11 The 1888 Arrangement

The depth of feeling developing about taxes on land can be gauged from seven petitions in 1888 objecting to a proposed 'rating clause' to tax all Maori lands in the

140. Ibid, p 67
141. Ibid, p 71
142. AJHR, 1885, i-2, p 27
143. Ibid, p 37. In both cases, the committee said it did not have time to make the necessary inquiries to deal with the petitions.
144. Keepa Tahukumutea and others, AJHR, 1886, i-2, p 35
145. AJHR, 1888, i-3, p 10
146. Ibid, p 9
147. Ibid, p 13

Native Lands Bill 1888. The clause was subsequently removed.[148] In all, over 1500 people were involved in these petitions.[149]

The removal of the clause was a trade-off which saw the continuance of rating under the 1882 legislation, now provided for in the Crown and Native Lands Rating Act Repeal Act 1888.[150] Primarily aimed at reducing expenditure by central government, the Act ended the scheme of Treasury reimbursement to councils, and provided that liability for rates on Maori land was now governed solely by the Rating Act 1882.

Another reason for this compromise was noted in the Legislative Council, where it was said that from 'long experience' it was known that Maori objected to taxation of any form 'very strongly', and that, had the land tax measure been introduced, they might have been discouraged from bringing their lands before the land court.[151]

However, Maori were not the only group to raise concerns about the 1888 legislation. Members of Parliament whose electorates contained large areas of Crown or Maori land were upset because an income tap which their local bodies had relied upon for the preceding six years was about to be turned off. It was said that some councils would find it 'absolutely impossible . . . to carry on the functions of local government'.[152]

The major concern was not, however, that it would be difficult to collect rates from Maori land, but rather that the Act removed large areas of Crown land from rating liability. Indeed, counties having large areas of Maori land were thought to be fortunate.[153]

The repeal provided one safeguard for Maori in that, under section 7, all rates raised on Maori land in a district were to be spent in that district. It was alleged the practice had been to 'include the largest possible number of acres of Native lands, and have them valued at a very high, impossible amount, and to spend the money as far away from those lands as possible.'[154]

In total, the rates levied on Maori land under the 1882 Act were £67,369, which was paid out by the Crown. By 1924, £38,235 had been recovered, and it was estimated that, although an amount of £29,134 had not been recovered, Crown purchases of some of the affected lands on which recovery was not made had

148. The Bill was not passed in that year.

149. AJHR, 1888, i-3, number 439 et al, 362, and 406, pp 23–24. See also number 405, p 27.

150. Atkinson noted the compromise: 'it is proposed in the Native Land Bill to insert a clause for the purpose of taxing Natives on the whole of their land in two years time. Several petitions have been presented to the House to-day from Natives against that; Natives have also interviewed me on the subject; . . . . the Natives strongly urged that this clause should not be inserted in the Bill, and, from discussions I have had with them, I was led to believe that, if the Government would consent to propose, and the House would agree to it, that the proposed taxation in the Native Land Bill be withdrawn the Natives would much prefer the continuance of the present rate for a time, until the matter has been further considered'. (NZPD, 1888, vol 62, p 361)

151. NZPD, 1888, vol 63, p 214–215, Sir F Whitaker

152. Ibid, vol 62, p 380

153. Ibid, pp 372, 377, 382

154. NZPD, 1888, vol 63, p 317, G S Whitmore. This supports Lewis's concern in 1883 about overvaluing of Maori land – see above.

probably reduced the amount to £15,000. Recovery was made by payment of stamp duty when the document containing the first transaction affecting the land was presented for stamping.[155] It seems that several years after 1924, this outstanding amount was written off by the Government.[156]

One outcome of this repeal was that Maori now also became liable for rates struck by local authorities for the maintenance of hospitals. Hospitals had first been established by Grey in major settlements between 1846 and 1862. They were put under the control of the provinces from 1854, before coming back under the central government with the end of the provincial system in 1876. The Hospital and Charitable Institutions Act 1885 was the first Act to establish a national system of hospital districts, and while it provided that local authorities could levy rates to support these institutions, such rates could not be levied on lands rateable under the Crown and Native Lands Rating Act 1882.[157]

12 The Rating Acts Amendment Act 1893

The outcome of this legislative change was mounting pressure from local authorities to extend the categories of Maori land subject to rates. The passing of the Rating Amendment Act in 1893 went some way towards removing obstacles to a wider coverage. The long title to the 1893 Act noted that it was an Act 'to declare all Native Land to be Rateable Property'.

Edward Smith, the member for New Plymouth, perhaps spoke for the majority of local body interests when he welcomed the Bill in Parliament. He said he 'was very much pleased the Government had kept faith with the North Island people' in bringing in the Bill:

> it was quite time these Native owners should be made to pay rates and taxes the same as Europeans . . . They had everything that civilisation and good government could give them; and it was time they should contribute to the taxes of the colony.[158]

Maori members opposed this extension of liability. The member for Northern Maori, Eparaima te Mutu Kapa, said he 'should like to treat this Bill as I would treat a fowl: I should like to wring its neck'.[159] Industrious Maori would be singled out, but the bulk would escape:

> I consider this is another measure for the purpose of degrading the Natives and taking away what shreds of authority they still possess over their land. I consider that it would be better to be born a Chinaman and to come here and cast your lot in this

155. AJHR, 1924, g-8; Valuer-General to Commissioner of Stamp Duties, 14 July 1924, v 6/241 NA, DB
156. In 1927, Ngata announced that the Government would be writing off £13,000 in rates that had been unpaid under this Act: NZPD, 1927, vol 216, p 544.
157. Section 26 of the Hospital and Charitable Institutions Act 1885.
158. NZPD, 1893, vol 82, p 866
159. Ibid, vol 81, p 406

> country than to be born a Maori – an original lord of the soil. I would infinitely prefer to be a Chinaman, because I feel that Chinamen are better treated.[160]

Maori members asked that the measure be delayed until Maori were fully informed of it and had a chance to consider its implications.[161] Two petitions were filed supporting this view.[162] They were not supported in this stance, however, by James Carroll, who said the Bill was a fair and just measure.[163]

The Government in the end agreed to amendments proposed by Seddon: that only land which had been through the land court be rated, that it be rated at a half rate, and that no special rates should be imposed.[164] Therefore, despite its avowed purpose, the Act still retained a significant number of exemptions. After stating that all native land, held customarily or otherwise (s 15), was to be rateable, the Act provided that Maori land occupied by Maori and outside the boundaries of towns or boroughs would be levied at half rates and be exempt from any special rates. Neither full, half, nor special rates were to be levied if the land were:

- situated more than five miles from any public road or highway (s 18(1));
- customary land without a European occupier (s 18(4));
- situated in a borough or town district occupied solely by Maori, and which, 'owing to the indigent circumstance of the occupiers, or for other special reason', the Governor thought should be exempted (s 18(2)); or
- exempted by declaration of the Governor in Council (s 18(3)).

Rate arrears could be recovered as for European land, except that no lien could be registered against the land, nor could it be sold, until the matter had first been inquired into and approved by a Trust Commissioner (s 19).

In 1894, this Act was consolidated with other rating legislation as the Rating Act 1894. As noted above, under the 1893 Act no land could be sold or charged for rates without the consent of the Trust Commissioner. Significantly, as the consolidation measure was being passed, the member Heke moved an amendment so that the law would simply have provided that:

> No Native land whatever shall be sold for non-payment of rates, nor any judgment or lien registered against such land for non-payment of rates.[165]

There is no record of debate on this point, only that the motion was lost with the Maori members voting in favour. Carroll voted against it.[166]

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160. Ibid
161. Ibid, 1893, vol 82, pp 407, 408
162. Taituha Hape and 17 others; Teoti Pitama Karatiti and seven others, protesting against the provisions of the Rating Act Amendment Bill, AJHR, 1893, i-3, p 19
163. NZPD, 1893, vol 82, p 865
164. Ibid, p 864
165. NZPD, 1894, vol 86, p 91. The debates are a little unclear, referring to clause 70, which must be section 68 in the final Act. They also refer to the word 'rates' in the 'second line' of that clause, so it is uncertain whether Heke intended only that land should not be sold, but that it could be otherwise charged.
166. Ibid

13 Further Complaints and the 1896 Act

In 1895, Seddon and Carroll made a tour of Maori areas. As with the Ballance trip of 1885, there were complaints about rates and roads. The party were addressed at Hukanui, near Hamilton, by Tana Tamehana or Taingakawa of Ngatihaua (Premier of the Native Parliament and second son of Wiremu Tamihana), who opened the meeting with a request that all taxes from Maori land be removed.[167] Seddon replied that Maori were subject to half rates and could be exempted in cases of hardship.[168] There was also comment on a major dispute involving Kerei Kaihau's obstruction of a road survey linking Tuakau and Raglan through the Opuatia block.[169] Seddon referred to section 245 of the Counties Act 1886, which, incredibly, made all roads or tracks through native lands that were 'generally used without obstruction as roads', whether they were surveyed or not, and regardless of whether they had been dedicated for this purpose, public roads under the control of councils. These 'roads or tracks' could be up to 66 feet wide. It is unclear whether compensation had to be paid for this 'control' by the councils, or what rights such 'control' gave the councils. It was noted that roadways could also be taken by proclamation through private lands, with the payment of compensation (see ss 23–26 Public Works Act 1882).

At Waimate, the chief Te Waru complained that Maori could not settle on their own lands because of rates and taxes. Maori, it was said, would never be able to pay the rates and it was therefore inevitable that land would be taken to pay them. As for the 'five mile' rule, 'Some people have no roads to their places at all – they simply have a canoe; and why should these people be taxed when they do not use the roads?'.[170] Seddon countered that he had never seen a Maori swim a river when a bridge was provided. Maori should not keep their lands 'locked up', of no use to themselves or others. If they were to open their lands to settlement, the rates bills would not seem so onerous.[171]

The Native Affairs Committee that year dealt with three petitions from 274 Maori alleging that 'the Maoris do not receive proper notices relating to the rating of their land, and that rating values are wrongly assessed. They pray that the Native race may be exempt from taxation.'[172] The committee recommended that the petitions be referred to the Government for an inquiry into the allegations of insufficient notices and wrongful valuations, and that local authorities be instructed to ensure Maori were made fully aware of 'all matters relating to the rating of their properties'.[173]

Maori concerns were at times echoed by important European figures. In 1895, rates were extended to the Taranaki reserves. It was acknowledged that Maori

167. AJHR, 1895, g-1, p 11
168. Ibid, p 12
169. Ibid
170. AJHR, 1895, g-1, p 33
171. Ibid
172. Petitions of Paratene Matenga and 181 others, Taituha Hape and 68 others, H Tare Tikao and 22 others. AJHR, 1895, i-3, p 6
173. Ibid

would be 'surprised' when they discovered what they were liable for, but it was noted that the roads subsequently built would ultimately benefit them.[174] The Public Trustee, as owner of the reserves, had thought the issue of rates should be a private matter between himself and the local council and that it was within his discretion to avoid rates in the interests of the Maori beneficiaries he represented. He warned that rating land which generated a low income would load the land and inhibit future development as well as raise the danger of 'indirect confiscation'.[175] Nevertheless, the Rating Act Amendment Act 1895 provided that all native lands vested in the Public Trustee under the West Coast Settlement Reserves Act 1892 or otherwise should be deemed rateable (s 2(1)). A concession to the trustee was the provision that reserve land occupied by Maori only, or unoccupied, should be rated at half normal rates and that no special rates should apply (s 2(3)).

These protests can be compared with complaints about the dog tax which was being enforced in rural areas and, probably because of the immediate consequences of non-payment (inspectors would appear in villages and shoot dogs),[176] caused much antagonism.[177] In 1891, five Arawa chiefs were arrested for non-payment of this tax. As an example to others, they were forced to work with shovels and wheelbarrows outside the Tauranga jail.[178] Matters came to a head in 1898, when the Hokianga County Council imposed a 10 shilling tax on all dogs, and members of the Te Mahurehure tribe responded by gathering at Waima and sending a message to the county office threatening to shoot anyone who forced them to pay. The Government response was to send ships into the area loaded with soldiers. Hone Heke, the member of Parliament for Northern Maori, talked the tribe out of precipitate action.[179]

Possibly Maori complaints about rates did not result in similar demonstrations because the consequences of non-payment were not so immediately felt, and some benefits were ultimately derived. By contrast, the dog tax must have appeared arbitrary and capricious.

Another reason might have been that rating was not enforced on the ground to the extent that the law suggested. Introducing the Rating Act Amendment Bill 1896, Seddon said that the existing law was practically a 'dead letter' and the Bill was brought in both to make rates more easily collectable by councils and to relieve hardship to some Maori (an apparent contradiction of the first statement) because of a lack of 'necessary machinery' under the present law.[180]

The Act provided, under section 2, for the nomination of an occupier to accept and be responsible for rates demands where the number of owners or occupiers of the land exceeded four. In such a case, the local authority could notify the owners

174. NZPD, 1895, vol 91, p 301, Hall
175. AJHR, 1895, i-5a, p 20
176. NZPD, 1889, vol 64, p 356
177. It was mentioned by speakers at the 1879 Orakei Parliament: AJHR, 1879, g-8.
178. J A Williams, *Politics of the New Zealand Maori*, p 76
179. Michael King, *Maori*, p 51, and Williams, pp 76–77. After 1900 the tax came under the control of Maori councils, who levied it with reasonable success, although in some places lowering it to the point where it became uneconomic to collect: AJHR, 1903, g-1, pp 1–2.

in the *Kahiti* and give them three months to nominate an owner as representative for rating purposes. In default, after three months the local authority could itself nominate an owner, whose name would be entered in the valuation rolls. This owner would receive all demands for rates and could be sued on behalf of all the owners for arrears. However, the nominated owner owed only his or her proportionate share under any judgment. Such judgments could not be enforced without the consent of the Minister (s 2(5)), who could elect to place the land under lease, with or without the consent of the owners (s 3).

Heke stoutly resisted this measure, moving several lengthy amendments to allow Maori to lease without restrictions. He thought that existing restrictions in native land legislation were an impediment to Maori meeting their rating demands. These amendments were all defeated.[181]

Of the 1890s, J A Williams writes:

> The issue of local rates was probably more important as an economic than as a political grievance. Some Maoris objected that they would not have enough cash to pay these taxes. They feared that the measures would be used, not to raise revenue, but to force Maoris into wage labour or to provide an excuse for confiscating land. They also objected that industrious Maoris with visible property would be singled out while the bulk of the owners paid nothing; or, possibly, that some Maoris might be made to pay rates on land they did not even own. Some of these arguments were not reasonable, but the settlers' impatience to make the Maoris pay was even more unreasonable. The Maoris were facing real problems of adjustment, and they did not raise these arguments merely to obstruct. Most of them did not deny their ultimate obligation to pay taxes; in fact they offered to pay half rates on land that was leased or farmed by Maoris. But they insisted that land they were not yet using, and which, because of legal restrictions, they could not lease, sell, or mortgage, should be free from rates. They also asked that their sacred places and villages should be exempt.[182]

14 Rates under Carroll's Maori Land Reforms

In 1904, a Bill dealing specifically with Maori rates was introduced. The Native Minister Carroll explained that:

> the local bodies in the colony are clamouring far and wide against the injustice of having to maintain roads in the back-block districts which are largely used by the Native community.[183]

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180. NZPD, 1896, vol 94, p 331. Heke disputed the view that the law had been a dead letter, pointing out that rates accumulated when not paid (p 332). He appears to have been partly wrong in this. The 1882 Act (s 31) provided that no judgment could be given or signed two years after rates fell due – a point which Seddon made in reply (p 332). This seems more restrictive than the 1876 Act which provided only that 'proceedings' had to be initiated within two years (s 60).
181. NZPD, 1896, vol 95, p 466
182. Williams, pp 75–76
183. NZPD, 1904, vol 128, p 197

Recognising that 'the Natives do not . . . contribute what is considered their full share', the purpose of the new Act was 'to increase the rating burden on the Native owners of land'. In addition to the existing exemptions and reductions, a number of new anomalies, the result of changes in land tenure, had emerged. Land leased to Pakeha under long-term leases, and therefore liable for full rates, was reverting to its Maori owners, thereby becoming liable for half rates only. Similarly, there was a halving of the rates liability in relation to land now being bought by Maori from the Crown or from Pakeha which was formerly been fully rated.

Pressure from European members for reform had been building for several years. Two earlier attempts in 1902 and 1903 by Herries, the member of Parliament for Hawke's Bay, to introduce a private member's Bill to expand rates on Maori land had been unsuccessful. Tame Parata, the member for Southern Maori, greeted the 1904 Bill as 'an old friend'.[184]

The Bill was debated against a background of concern about the Maori Lands Administration Act 1900, which, by 1904, was producing critics among Maori and Pakeha. The 1900 Act, Carroll's flagship land reform legislation, had not altered the rating situation. Section 32 provided that land vested in boards or incorporated owners would not be subject to any higher rate or tax than prior to vesting or incorporation. Under section 29(3) of the 1900 Act and sections 10 to 12 of the Maori Land Settlement Act 1905 (which amended the original scheme and put the councils (now boards) more firmly in Pakeha control), Maori with lands under these schemes were expected to pay, out of any rents received, for roads formed over the lands prior to tendering them for lease. The lands continued to be liable for the county rates.[185]

The largest area affected by this land councils scheme to date, the Ohotu block in the Wanganui district, had proved unattractive as a leasing proposition to Pakeha, and Maori were frustrated that they had to deal through the council and were not getting a return on their lands.[186] As a result, both in the House and Council, the Rating Bill debate was used as an opportunity by both Maori and European members to attack the Government Maori land policy. Some bitter exchanges between Carroll and the Maori members resulted.

Heke wanted two conditions satisfied before the measure passed – the abolition of the stamp duty on land sales, and provision to be made for advances on settlement for Maori, as the Advances to Settlers scheme did not appear to be extending to them.[187] Heke's position reflected a view from earlier debates that if

184. He was to speak strongly against it, saying that it was contrary to the Treaty of Waitangi: NZPD, 1904, vol 128, p 202.

185. Section 32, 1900. Another piece of reform legislation, the Maori Councils Act 1900, provided the possibility that where a locally elected council with by-law making powers imposed a 'tenement-tax' on houses, whares and Native lands within any kainga, any Maori paying such tax would be exempt from paying local rates (s 24). Since the exemption applied to 'tenement taxes' operating in Maori-only villages where the councils existed, the extent of such an exemption was actually quite limited. Its use was discussed in 1911 (AJHR, 1911, g-3, p 3), but it is not known if it was ever applied.

186. A petition had just been presented to the House on the Ohotu block. NZPD, 1904, vol 128, p 352

187. Ibid, p 610

Maori were freed from constraints not faced by Pakeha, they would be able to compete equally as farmers, and in such a situation could pay the necessary rates.

Carroll announced that a Bill would be introduced in the session, dealing with stamp duty.[188] His answer with regard to the Advances to Settlers scheme was less helpful. The Government could not dictate to the department concerned, and there was no reason in law why Maori should not be lent to 'so long as the land offered as security is in a legal position, with the title thereto beyond question, and the value satisfactory'.[189]

Other Maori members reflected the same concern that Maori should be freed from legal and financial constraints. Protest centred around clause 8 of the Bill, which contained a proposal to put land that was carrying rates arrears, at the option of the Minister, under the control of the land councils. In a forthright speech, Kaihau objected to the clause, stating that 'the Maoris should be given the permanent administration of their own lands and their own affairs' and that it was 'inflicting a great injury upon them to treat them in this way.'[190] Kaihau represented the Western Maori electorate, which encompassed Wanganui and Ohotu block. He urged members to ignore comments from the other Maori members, they were not proper rangatira, he said, but 'piebald dogs'.[191]

In the Legislative Council, Mahuta Te Wherowhero picked up these arguments, stating that Maori did not object to being rated:

> but if you are going to rate us we demand that you should give us the power to deal with our lands, in order that we may be able to get some return out of the land with which to pay the rates.[192]

He had had the Native Affairs Committee insert into the Bill an extraordinarily broad clause, providing that all native land rateable under the Act could be dealt with by the owners by way of lease, notwithstanding restrictions against alienation, and with the approval of the relevant Maori Council or land court judge.[193] This was because some clauses in the Bill were 'at variance with some of the provisions of the Treaty of Waitangi' in which it was 'agreed that the Maori people should have the management of their own lands'.[194]

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188. NZPD, 1904, vol 131, p 816
189. NZPD, 1904, vol 128, p 617. An unrealistic statement with regard to much Maori land, as Carroll would have been well aware.
190. NZPD, 1904, vol 131, p 350
191. Ibid. Kaihau linked these concerns with comments about the progress in settling confiscation grievances in the Waikato.
192. NZPD, 1904, vol 131, p 810
193. The Attorney-General opposed the clause. Ibid, p 805
194. Ibid, p 809. He sought an easier system for leasing, but not for outright sale. Taiaroa explained this at ibid, p 814. Kaihau agreed with Mahuta's general approach to loosen up restrictions on alienation – ibid, pp 905–906. Carroll called his talk 'rupahu' [deceiving or insincere], ibid, p 907.

This clause did not survive into the Bill.[195] Mahuta did successfully move to strike out the clause putting land under the land councils,[196] but after a conference with the lower House, and strong words from Carroll, it was agreed to reinsert it.[197]

Among Pakeha members of the opposition there was general support for the expansion of rating coverage and the opportunity was used to attack the land council system. One member thought the Bill was designed simply to 'bring pressure to bear on the Natives to pass their lands over to that abomination the Maori Councils'.[198] The Government, it was said, would not admit its mistake that Maori were not voluntarily putting land under these councils. Consequently, as in earlier debates, these members put forward arguments which on their face supported the Maori view. A L D Fraser, member for Napier, argued that:

> To place the further incubus of rating . . . on the Native race, with their hands and feet tied as they are in dealing with their lands, is ungenerous, and taking advantage of members of the British race that, I feel sure, was never anticipated when we joined hands in treaty with them in 1840.[199]

The abolition of native duty was a 'sop' which some Maori members had accepted. It was a 'travesty' that Maori members were voting on important issues yet 'are held incapable of administering five acres of their own'.[200] Fraser wished to see Maori able to lease lands as they saw fit, while being protected against sales which would denude them entirely of land. He objected strongly to the land council proposal.[201]

Other Opposition members, most notably Herries, supported the basic thrust of the Bill, but were not overly hopeful about it settling the issue, particularly regarding recovery of arrears. Herries thought measures in the Bill to recover rates were a compromise because of the inability of local authorities to recover rates by the sale of Maori land, even after judgment in their favour.[202]

As to coverage, his own earlier Bill simply provided that native lands presently paying half rates should pay full rates.[203] This gave greater coverage than the present Bill. Herries thought that under the present Bill:

> the vast amount of land which is still rateable under the half-rate system belonging to Maori owners is not touched at all. The Bill will be a sort of sop to the local bodies. They will think they get something, but in reality they will get very little at all.[204]

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195. It was lost on a vote in council. Ibid, p 818
196. Ibid, p 817
197. Ibid, p 970
198. NZPD, 1904, vol 128, p 614
199. NZPD, 1904, vol 131, p 352
200. Ibid
201. He referred to a council as the 'incompetent creature of insane legislation'. NZPD, 1904, vol 131, p 353. At another point he referred to 'that bastard Maori Council'. Ibid, p 612
202. NZPD,1904, vol 131, p 348, Herries. Section 8 of the Act provided that judgments could not operate without ministerial consent.
203. NZPD, 1904, vol 128, p 342
204. Ibid, 12 July, p 342

In the Legislative Council, the basic fairness of involuntary vesting for non-payment of arrears was questioned. One member thought:

> It would be precisely the same thing as though with our own lands we were arbitrary enough to pass an enactment to take the lands of any of us and hand them over to the County Councils or Road Boards to administer.[205]

But even this objection seems to have arisen in the context of a concern that recovery through the councils would be less efficient that by Maori leasing themselves. These attitudes presaged the 'hustle' policy for Maori land in subsequent years.

Others injected a note of caution. Trask wanted the introduction of the Bill delayed, arguing:

> the whole of this country did originally belong to the Natives, although it is now occupied by Europeans. This land belonged to them, and now we are going to make them pay rates. I do not believe they will do this. There will be more trouble in bringing the Natives into Court and compelling them to pay these rates than there was in compelling them to pay the dog-tax.[206]

The Attorney-General, who opposed the Mahuta amendments, noted that the Government had been given the right of pre-emption by the Treaty of Waitangi and thus:

> because the Government understand that they are charged with the duty of seeing that these Natives do not become landless that their policy is that the consent of the Government shall be necessary to all alienations of Native lands, whether by way of sale or lease.[207]

This attitude was also reflected in an exemption obtained for the South Island by Parata. He asked that the Act not apply there, since Maori were virtually landless. Early promises of sufficient reserves had not been carried out. The Government should also consider how cheaply the vast majority of land in the South Island had been purchased. His intervention had some effect. Section 17 of the Act provided that 'Native reserves in the Middle Island occupied by Maoris' should not be liable for more than half rates. It seems that the Government was prepared to make concessions where Maori were virtually landless. This was not, however, passed without a fight, with one member objecting that the exemption would be a 'glaring injustice' because of the roads provided in the area.[208] Seddon made an eloquent plea that the clause remain.[209]

The Bill generated concern in the wider Maori community. Three petitions, from 560 Maori, were received objecting to it. One was filed by the wife of a leading 'loyalist' chief, Keepa Te Rangihiwinui.[210] The following year a further three

205. NZPD, 1904, vol 131, p 806, Ormond.
206. NZPD, 1904, vol 131, p 808
207. Ibid, pp 805, 814–815
208. NZPD, 1904, vol 131, pp 346–347, Buddo

petitions, from 380 Maori, asked that the new Act not apply to their lands.[211] Te Wherowhero Tawhiao and 262 others also petitioned, asking that the Act be repealed.[212]

The final Act cast a wider net than the 1894 measure, covering:

- native land of which there is a European occupier (s 2(1)(a));
- native lands situated within five miles of a Government or county road;[213]
- native lands situated within a borough or town district, or within 10 miles thereof (s 2(1)(b));
- lands purchased, leased, and so on, by Maori from the Crown or a European;[214]
- native land previously paying full rates (this was to catch lands leased to Europeans when they reverted to Maori ownership);[215] and
- lands incorporated under the Native Land Court Act 1894.

These were now liable to full rates and special rates. Half rates only had to be paid on all other Native land where a title had been ascertained. Customary or papatupu land remained exempt from rates under section 2(2).

The direct intervention of central government was retained by several features. The Governor in Council could decide by notice in the *Gazette* and *Kahiti* that lands should be fully rateable, or exempt (s 3). This measure was to prevent overzealous councils from extending rating coverage to 'unfair' lengths.[216] Judgments for rates could not be enforced without the express consent of the Native Minister (s 8).

There were now, however, significant compulsory powers to either ensure properties became rateable, or to recover the rates. The Minister could place land under the administration of the district land council (s 9), or he could pay the rates, place a caveat against dealing with the land, and take a portion for the Crown on the next partition (ss 10–12). Also significant was a provision that if the Minister was of the opinion that Maori owners were keeping customary land out of the court to avoid paying rates, he could apply to the court to ascertain the title (s 2(2)). This removed a voluntary element from the land court procedure and forced Maori to deal with their land in a way which they had not agreed to. Looked at logically, the

209. Pointing out that the whole of the Native Affairs Committee had agreed on the matter, that the Native Minister was absent and that any change would amount to a 'breach of faith'. Ibid, p 347. Even Herries, originator of the 'hustle' policy encouraging the sale of Maori land, thought that the compromise achieved on this aspect should not be broken, stating that 'It has been shown time after time, by petitions and evidence that have come before the Committee, that every Government has broken its promises to the South Island Natives. Their lands were bought from them on certain conditions, and a great many of them have never been fulfilled to the present day.' Ibid, p 347

210. Petitions were from Tiemi Hipi and 200 others; Rauangina Mereaina and 123 others; Taituha Hape and 234 others. AJHR, 1904, i-3, p 20

211. Te Hurinui Apanui and 199 others; Paora Te Pakihi and 78 others; Matutaera Hatua and 100 others. AJHR, 1905, i-3, p 7.

212. Ibid, p 15. Since these were matters of 'policy' the committee made no recommendations

213. Section 2(1)(c), 1894 Act: 'more than 5 miles from any public road or highway'.

214. As noted above, under the 1894 measure, Maori purchasing or leasing land made that land exempt from rates where it may have been liable in the past (see Carroll, NZPD, 1904, vol 128, p 341).

215. Ibid

216. NZPD, 1904, vol 128, p 341, Carroll.

provision did not make sense. Since these lands were exempt from rates, how could it be said owners were trying to avoid paying them? It also appears to be in direct contradiction to article 2 of the Treat of Waitangi.

The Act seems to have been the first to direct that Maori owners be noted on valuation rolls, thus ensuring that they would be eligible to vote in local body elections.[217]

In 1965, there was another reform of rating affecting some Maori landowners. The Native Townships Local Government Act 1905 provided for four member councils, with one Maori appointee of the Governor, to be established to run the towns, including power to levy rates. Such rates were not, however, to affect land in the township not leased or occupied, unless the Governor by *Gazette* notice directed otherwise. District Maori Land Councils, as proprietors of the lands, were not to be liable for rates in excess of 'funds in hand' in respect of each section or holding (s 12). This last provision was to be copied in later rating law affecting land vested in land councils.

An amendment in 1908[218] provided that all native townships should come under the Maori land boards,[219] and repealed section 12 of the 1905 Act so that all such lands became liable for rates. The safeguard for 'funds in hand' remained.[220]

15 Rating and the Land Development Schemes

Carroll's land council scheme of 1900, despite subsequent modifications in 1905 and 1907, created a new focus for rating laws and efforts by local bodies to collect rates. Centralised boards which held land for a large group, like the Maori or Public Trustee, were easier to deal with over rates demands and payments. Local bodies also pushed for more lands to be brought into these schemes precisely because of their perceived responsiveness to rates demands.

By way of illustration, the Native Land Settlement Act 1907 provided that Maori freehold lands not already subject to a board or other scheme and judged by a commission to be 'not required' by the owners, were to be vested in the land board in the district. The board would then lease half the land, and sell absolutely the other half. Revenues collected were to go towards payment of outstanding expenses, including any taxes and rates (s 40). Thus, outstanding rates could be recouped as land was put under the scheme and, once under it, its occupiers would be Europeans from whom rates could more easily be extracted. Although in principle a panacea for local body rating problems, the Act failed to work as effectively as planned. According to a 1910 report, 328,187 acres had been vested in the boards by that time, but only 4106 acres had been finally disposed of.[221]

217. Section 7 and see NZPD, 1904, vol 131, p 348, Herries – some Maori would certainly have been eligible to vote under earlier legislation, for example section 2(3) of the Rating Amendment 1896.
218. The Maori Land Laws Amendment Act 1908
219. Some had been under the control of the Commissioner of Crown Lands in the district. NZPD, 1908, vol 145, p 1113–1114
220. Section 3(1) and ibid, p 1114

Surprisingly, the Stout–Ngata Commission report on the land schemes in 1907–08 did not refer directly to rating issues, although rates were mentioned along with other burdens on the land. The Commissioners were clear on the related point however, that Maori farmers required financial assistance if they were to be as successful as European farmers. This was a point to be constantly made by Apirana Ngata in later years that only successful farmers could bear rate demands.

That view was not accepted however for some years. In the meantime, the burdens were adjusted. The Maori Land Laws Amendment Act 1908 provided that money which used to be borrowed by the boards from the public works fund for roads would now come from the local bodies fund under the Local Bodies' Loans Act 1908. Borrowing was allowed up to £30,000, and it was expected that boards would take this cost and 'weight it on the land'.[222]

Maori land law underwent major reform in the Native Land Act 1909,[223] but rating provisions remained essentially the same. Part XIV continued the scheme of the Land Settlement Act 1907, including the provisions for the payment of rates out of revenues from the lease and sale of Maori land. Land vested in a land board under the Rating Act 1908 could not be sold, although it could be leased (s 291).

As for roads, previous law allowing for cheap or free takings of Maori land was continued. Section 117 provided that, upon partition, the court would lay out road lines necessary for 'due settlement and use' on the partitioned blocks. The Governor could proclaim these road lines to be public roads, at which time they vested in the Crown. No compensation was payable. Under Part xx, provisions were retained allowing the Governor, without the consent of any person and without liability to pay compensation, to lay out and proclaim roads over customary land.[224] The Governor was also able to proclaim, again without compensation or consent, roads over Native land within 15 years of the making of a freehold order by the court (s 388), although buildings, gardens, orchards, plantations, villages, and burial grounds [urupa] were exempt such proclamations.[225]

The Rating Amendment Act 1910, in the reforming spirit of the 1909 Act, sought to simplify rating law as it applied to Maori land, and make it as close to Pakeha rating law as was feasible. This was achieved in technical changes to the definition of Maori land, and flowing from that, a simplification of lands subject to and exempt from rates. Customary land remained exempt from all forms of rating (s 3(1)). The coercive power of the Minister to bring customary land into the court was dropped.[226] The major policy change was the provision that, unless otherwise provided, all Maori freehold land was to be subject to rates in the same manner as

221. AJHR, 1910, g-10a
222. NZPD, 1908, vol 145, p 1117
223. The Act consolidated some 72 enactments for the period 1871–1908
224. Section 387. Only 450,000 acres of customary land remained – Carroll, NZPD, 1909, vol 148, p 1100
225. Section 390. Earlier provisions were section 76 of the Native Land Act 1865 (mentioned above), and section 70 of the Native Land Court Act 1893. See Cathy Marr 'Public Works Takings of Maori Land 1840–1981', TOWPU, December 1994, chapter 5
226. Section 2(2), which became section 89(2) under the 1908 consolidation of rating law – this consolidation simply reenacted, without amendment, the provisions of the 1904 Act as sections 89–102 of the Rating Act 1908. The coercive power was section 2(2) 1904, see above.

European land (s 3(2)). The only limitations were on lands held by Maori Land Boards or the Public Trustee, which were to be liable only to the extent that the land produced revenue (s 4). Statutory distinctions between liable and exempt lands and full or half rating were thus abolished, and the South Island reserves lost their half-rated status.[227] The bulk of Maori land had finally been brought within the general rating regime.

The Government still envisaged that some areas of land, which were not serviced by roads and were unproductive, would remain exempt. Ngata referred to the Urewera district:

> with the exception of one road . . . the whole of that extensive area of over six hundred thousand acres is still unroaded, and therefore cannot at the present time be expected to contribute to the funds of the local authority. There are also blocks of land in the Auckland province . . . which are in the same position. They are not at present in the position of being able to pay rates, but in the course of time can be placed on the same footing as other lands.[228]

These lands would be exempted using the discretionary powers of the Governor in Council. Section 5(1) provided that:

> The Governor may from time to time, by Order in Council, exempt any Native land liable to rates from all or any specified part of such rates; and any such Order in Council may apply either to any specified land, on account of the indigent circumstances of the occupiers or for any other special reason, or to any specified class of lands.

This power was not new. The Governor in Council had had the power to exempt land from rates, or make it liable, since the Rating Amendment Act 1893 (s 18(3)). The difference was that virtually all exemptions, and class exemptions, were to be provided for in this discretionary manner. This approach may have been an attempt to deal with the difficulty of making fair distinctions between types or individual blocks of land according to their actual ability to sustain a rates liability, a difficulty which had been observed by Carroll in 1903.[229]

As for the recovery of rates, where the land was not under a land board (whose name could be entered on the rating roll, section 9), the system of using nominated owners was continued (s 8). If the nominated owner paid rates for the other owners he could obtain a charge against the interests of the other owners and have first claim on the profits of the land.[230] Thus, payment of rates could become an alternative method for more prosperous shareholders to consolidate their interests in blocks.[231]

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227. With no explanation given
228. NZPD, 1910, vol 153, p 437
229. '[T]he chief difficulty would be discriminating between the lands so entitled to be rated and those which because of their peculiar circumstances and disabled conditions, should not be called upon to bear the extreme imposition of rates.' NZPD, 1903, vol 124, p 75
230. Section 12. This provision first emerged in section 13 of the 1904 Act.
231. Whether and how often this occurred has not been investigated

The ministerial oversight and direct involvement of the Crown in the recovery of rates by the taking or leasing of land was removed. The requirement for Ministerial approval in writing before a judgment could be enforced (s 8, 1904) was dropped. There was no ministerial veto on the sale of land for rates, which was to be handled by the relevant land board or the Public Trustee.[232]

Ngata said that 'the expected result of this Bill will be to force a large area of land in the North Island into settlement' as Maori would have to lease their lands to pay rates. There would be no legal 'shelter' as there had been under the 1904 legislation.[233]

In 1913, Parliament passed a further amendment tightening up the law and making the collection of rates on Maori land even easier. The Rating Amendment Act 1913 provided that any number of areas of Native freehold land within the district of one local authority which had the same group of beneficial owners could be collectively liable for all rates levied by the local authority (s 9). Charges against land for rates arrears were to prevent registration of any alienation until they had been cleared.[234]

Now that most Maori land fell within the compass of rating law and it was possible to levy rates with relative ease either on a land board or a nominated owner or occupier, local bodies shifted their efforts to the efficient collection of arrears, both from land boards and from shareholders outside the land board system. For the latter, a key problem with the legislation was that it relied on the registration of liens for unpaid rates against registered titles, and much Maori land did not have a registered title.[235]

There were also problems with collection from the land boards. In 1916, the Waitomo County Council complained that it was a 'common practice' for speculators to get a lease or purchase of native land and redispose of it to a 'genuine settler', leaving them to pay back rates. The local Maori Land Board was not providing promptly to the Valuation Department information about new lessees or freeholders so that their name could be put in the rate rolls.[236]

This suggested that the Waitomo council was not receiving rates from its European population. The Valuer-General at the time indicated that the board in question, the Waikato–Maniapoto Board, was unusual in not providing regular returns of lands sold and so on, but noted that Native Land Court registrars, except in the case of one or two counties, were providing 'practically no advices' of partitions etc to the Valuation Department.[237] This problem with registrars continued for many years. During the First World War, some courts argued that the war had produced a labour shortage so that they did not have staff to provide

232. See section 17. It was stated that the ministerial veto was the main difficulty in having judgments enforced – NZPD, 1910, vol 153, p 435, Ngata
233. NZPD, 1910, vol 153, p 436
234. Section 15. See NZPD, 1913, vol 167, pp 557, 562, 571, 576. The Act also provided that Native freehold land held in severalty was to be dealt with entirely as European land: s 17.
235. This is a problem in some areas to the present day – see below
236. Valuer-General to Under-Secretary of Justice, 1 September 1916, DB 495
237. Ibid. This was required under s 11 Rating Amendment Act 1913

detailed information required for valuation and rating rolls.[238] The problem was still evident in 1919.[239]

16 Rates during the First World War

The First World War brought fresh demands that rating on Maori land be tightened up, as a means of providing revenue for local authorities. Money available for public works was reduced during the war.[240] In response to the concern that liens obtained under the 1913 amendment could not be registered against titles, and therefore the Act should be amended, Prime Minister Massey indicated in 1917 that the question of rating native lands was 'highly contentious' and not connected with the war, and would therefore not be considered.[241]

For local authorities, however, the matter was very much connected with the financial demands of wartime. The concerns of the local authorities were set out in a memorandum of the Minister of Internal Affairs to Native Minister Herries in May 1918. The Kawhia and Waitomo County Councils expressed particular concern, and deputations had been received from Tauranga and Rotorua counties. In the latter county, it was said that Maori paid practically no rates.[242] The Kawhia County Council had a particular concern about lands vested in the Maori Land Board, which it said was making no effort to settle these lands, and was not liable to pay rates until lands under it were revenue producing.[243] Hospital boards in the north were said to be short of revenue.[244] The Controller and Auditor-General suggested amending the law to make legal recovery more efficient, and subsidise local authorities for unpaid rates, something which the Minister of Internal Affairs supported. In Parliament, a move had been made to reinstate the 'defaulters list', so that persons owing rates would be disenfranchised. But there had been opposition to this and it was not taken further.[245]

The National Efficiency Board, created for the war effort, swung in on the side of the councils. The board attacked the 'injustice' of non-payment by Maori where they received benefit from roads. This was 'detrimental to the welfare of the districts concerned and the European settlers therein':

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238. DB, p 465
239. Hawke's Bay County Council to Valuer-General, 25 November 1919; and Valuer-General to Under-Secretary of the Native Department, 28 November 1919, DB p 459–460
240. For example, see Opotiki County Council to Valuer-General, 25 July 1918, DB, p 470
241. 17 September 1917, DB, p 494
242. £22 being collected 1917–18, letter 21 May 1918, DB 486–489. Hokianga County Council was facing similar problems, Terere ['Torere'?] block was cited – see DB p 493. Opotiki County Council also protested at this time, see DB p 470
243. Rates could be collected from any occupier however – see DB 480
244. Ibid, p 489
245. See DB, p 440. The defaulters list operated under the Counties Acts of 1886 (ss 62, 71) and 1908 (ss 44, 52), but was removed by the Counties Amendment Act 1915 (s 16, Second Schedule)

> The non-payment of rates by the natives means bad roads; bad roads means loss of that energy and efficiency so essential for the rapid settlement and development of the districts.[246]

The board urged that rates should be recoverable on Maori lands in the same manner as European lands and that, if Maori were to be specially treated, local authorities should not bear the cost of this national policy, the State should subsidise local authorities where rates were not paid, and the Crown to recover this money on partitions or sales by the Maori owners.[247]

In September 1918, the board wrote again to the Prime Minister urging this course, and noted Herries' reluctance to advance the proposals, since he believed it would be impossible to get the principle of unrestricted sale of multiple-owned native lands as payment for rates through the House.[248]

Herries pointed out that, under existing law, Maori who owned land individually were in exactly the same position as Europeans. The wide definition of 'occupier' in existing law meant that anyone on the land could be sued for rates on the whole block, whether their name was in the valuation roll or not. As for the extension of the registration of charges or liens to Maori land under Native Land Court titles, Herries supported only a limited power to register such charges. There would be 'strenuous opposition' from the Maori members and their supporters, and such a proposal would 'infringe the agreement entered into by the two parties at the institution of the National Government'.[249] But apart from this, there was a general policy involved:

> Native land being held in common by the owners, who are in many cases not residing on the land and in some cases not residing in the district, has always been treated by the Legislature in a different way to land held in severalty. The owners have no individual rights in the land until their interests are defined and separated. Hence they cannot individually make use of the land, it has always been considered unfair to treat them as if they were able to get as much enjoyment out of the land as they could if it was held in severalty. It would be unfair by accumulating rates in the shape of liens on land held in common to deprive innocent holders of interests residing in outside places, perhaps remote from the block and entirely ignorant of any such charges, of their interest in such land. It would be contrary to the universal policy of all New Zealand Governments to allow Native land to be sold for non-payment of rates or to be so charged with liens as to destroy the equity of redemption, and thus render a Native landless without giving him a chance of occupying the land and getting enough out of it to pay the rates.[250]

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246. Board to PM, 18 May 1918, DB p 490
247. Ibid
248. September 1918, DB 463
249. Herries to Minister of Internal Affairs, 24 May 1918, DB p 484, and see the same sentiments in Minister of Maori Affairs to Acting Prime Minister, 15 July 1918, DB p 473
250. Herries to Minister of Internal Affairs, 24 May 1918, DB p 484

The remedy for this situation was 'individualisation', which was 'proceeding rapidly throughout the North Island'. He thought councils should therefore make better use of the existing law.

The National Efficiency Board, going further even than some councils at the time, disagreed, commenting that Maori were not 'as a rule' good settlers, 'especially the Native in the Auckland District, and the result of partitions . . . generally is that sooner or later the Native disposes of his partition by sale, and goes to reside with other members of his tribe or family on a section where he holds some interest in common with others.'[251] Land vested in Maori Land Boards was also a problem, since revenues collected were exhausted by survey and other costs of the boards' settlement schemes, and were thus not available for rates. Parengarenga block in the far north was cited as an example.[252] It was also noted that partition applications before the Maori Land Court were often uninformed as to roading requirements, and orders were therefore made which were impracticable.[253]

The conclusion of the board was radical. Since settlement by individual Maori farmers was not constructive, there should be the sale of 'useless and unoccupied' lands to Europeans for settlement. As for any 'landlessness' which might result, it would be better for Maori if they were able to sell unoccupied lands, even if this left no other lands for their support. The rationale for this statement was not explained.[254]

The matter does not seem to have gone beyond this however, the Government being happy to defer the matter. The last communication appears to have been in 1919, by which time the Government must have been hopeful with the end of the war that financial circumstances might now improve. However the financial position for local authorities appears not to have improved after the war, and the pressure to collect rates continued.

17 Post-war Rating

These issues were taken up again at the Counties Association conference in October 1919. Remits seeking changes regarding roading and rating came from Wairoa, Waimarino, Waitomo, Waiapu, Whakatane, and Kawhia County Councils.[255] The conference did not go as far as the Efficiency Board demands in 1918, simply seeking that accumulated rates be registered against land blocks (ie, Native Land Court titles) rather than against certificated titles as the law then required. It was also requested that rates on Maori Land Board lands be allowed to accumulate when the boards were not revenue producing, and that in Crown

251. National Efficiency Board to Acting Prime Minister, 4 July 1918, DB p 476
252. Ibid, p 476
253. Ibid
254. Ibid, pp 476–478
255. DB, pp 454–456

purchases of native lands there should be a deduction of rates owing from the purchase price and a refund of this to councils. Maori land should be 'placed on the same footing as other lands' with regard to taking land for roads. Boards should be compelled to more efficiently plan and construct roads on lands vested in them, in consultation with local authorities.[256]

The Native Land Amendment and Native Land Claims Adjustment Act 1919 incorporated none of these recommendations, but section 10 gave sole discretion to the land court on partition to award additional land to any owner who had paid survey charges, rates or otherwise expended money for the benefit of all owners in a block.[257]

Maori also made their views known, although not as frequently as the local councils. One 'Pouwhare' spoke on behalf of a deputation to the Minister of Lands in February 1920:

> We would like to bring under your notice the fact that we are now being rated for the first time. We are agreeable to pay general rates, but we wish to be exempted from the harbour rate and the hospital rate. The reason we object to the hospital rate is that as a race we are not interested. We have a hospital of our own, the Mission hospital at Whakatane. In regard to the harbour rate, we think that it is rather heavy. We are quite prepared to be rated on the lands we have improved, but not on our unimproved lands, and we ask you to take special note of this. With respect to the hospital and harbour rates we would like the Government to use the power that it possesses under Section 5 of the Rating Act, 1910, to exempt certain native lands from rates by Order in Council.[258]

As with council delegations, several standard themes emerge in the Maori response; an apparent lack of consultation at a local level before rates were imposed, a willingness to pay for facilities but also a desire for some separate development and for unimproved lands to be exempt. This statement also supported the view of councils that in many areas rates were not being applied to Maori even as late as 1920.

In April 1920, the Under-Secretary of Native Affairs sought the views of land court registrars on the major local authority demand – registration of rates charges against land blocks rather than registered titles. The registrars who replied thought this would not be a great difficulty.[259] They could simply follow the practice of survey liens which referred to land court records of title. One suggestion was that owners be informed of applications for a rating charge against the land by way of the panui (presumably rather than requiring notice to every owner). The court order would then be made either in favour of the council seeking the rate, or the nominated owner who elected to pay the amount due.[260] Another registrar pointed out that, at present, councils in his area were careless in their rates demands,

256. Reflecting the comments of the National Efficiency Board, letter of July 1918 (quoted above)
257. Later this became s 148 Native Land Act 1931
258. Office of Minister of Lands, 25 March 1920, DB 458
259. Replies are at DB, pp 442, 448–453
260. Registrar Ikaroa Court to Under-Secretary of the Native Department, 27 April 1920, DB 453

referring to whole areas of country and not specific blocks or titles. He was concerned that, under a charging system, councils should not be able to continue these lax practices and should be required to go after the occupier, not relying simply on a power to impose charges on the owner.[261] The Waiariki registrar thought that although rate charges could be applied in the same way as liens, because they arose every year, they would have to be applied for each year. Therefore it was better if land boards collected rates and had power to dispose of land if they continued unpaid.[262] The Auckland registrar wondered what material benefit liens would serve once registered. He thought they would serve only as 'a more or less inadequate guide to persons searching titles.'[263]

In the House, Ngata was trying another tack, asking Native Minister Herries whether an amending Bill would be introduced to give owners who paid rates priority for grazing rights or leases.[264] By this time, Cabinet was considering whether to introduce further changes to rating law.

Herries received a deputation from the Counties Association in July 1920. In response to their call for powers to charge the land for unpaid rates, he reiterated his earlier position that it was unfair to allow communally owned land to be sold for rates since many did not directly derive benefit or use from it. Individualisation was the answer. The counties noted that the nominated occupier clause was not working in some cases.[265] Complaints continued to be received from local authorities, notably Coromandel,[266] Hokianga,[267] Gisborne,[268] Bay of Islands, Waitomo and Rangitikei.[269]

Some Maori were aware of these complaints and the solutions being proposed. In 1920, Tuwhakaririka Patena and 335 others petitioned Parliament against the power sought by county councils to take lands for rates. As with petitions in 1904–05 the Native Affairs Committee did not take this further as it was a matter of 'policy'.[270] At Manaia, Maori were seeking to offset rates against land which they claimed was owed them from the time of the Fox–Bell commission.[271] The Hawera County Council complained in 1923 of a 'sect which neither received nor paid rates' at Okaiawa.[272] It was also noted in 1923 that 'indigent persons at Parihaka who are too proud to take the old age pension to which they were entitled were nevertheless rated and expected to pay rates'.[273]

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261. Registrar Tairawhiti Court to Under-Secretary of the Native Department, 28 April 1920
262. Registrar Waiariki Court to Under-Secretary of the Native Department, 26 May 1920, DB p 442
263. Registrar Office of the Native Land Court Auckland to Under-Secretary of the Native Department, 4 May 1920, DB p 449
264. 21 July 1920, DB p 439
265. DB p 438 and ma 31/4, DB
266. From 1914 to 1920 only £64 collected of £1061 owed, DB p 452
267. From 1914 to 1920 only £674 collected of £14,483 owed, DB p 457
268. DB 440–441. Where it was alleged in recent elections a 'Native owing a considerable amount in rates was elected.'
269. For these last three see DB, pp 431, 432, 447
270. AJHR, 1920, i-3, p 25; DB p 393
271. 30 May 1923, DB, p 422. Their request does not seem to have been accepted. Under-Secretary to Native Minister, 13 August 1923, p 420
272. 12 October 1923, DB p 419

The *New Zealand Truth* published a 'half-caste' view by Arthur Ormsby of Puketotara, who 'in common with the Maoris, feels strongly on this subject'.[274] Ormsby noted the 1885 comments of Ballance about the imposition of rating law, and argued that Maori had made contributions anyway, in the form of land taken for roads and railways and given for national parks and educational purposes, and in lands taken in the confiscations. The lack of finance for Maori farmers was also referred to. Article 2 of the Treaty had not been respected:

> Successive Governments have passed legislation making some blocks of land inalienable in order to protect the natives from becoming landless, and the average amount of land now in [the] possession of the Maori in the North Island, unoccupied, is estimated at 19 acres per head. This would mean that if the local bodies are to levy the same it is only a matter of a short period when they (the natives) will become landless and paupers. . . . the Maoris had given generously to Church and State, and taking into consideration the fact that the land that has been alienated at a very low value, and also confiscated . . . it would seem reasonable to say that the natives have done more than their share towards contributing to rates and taxes and should in future be exempt from same.[275]

Speaking for Pakeha settlers in the Hokianga, 'JTW' in the *Auckland Star* complained that the popular sentiment in southern cities that 'the Maori has his rights under the treaty whereby British government was confirmed, and that any alteration in the law that would prejudice the Maori would be a breach of faith,' was glib coming from those who had nothing to lose. He opined 'if the Maori is to be accepted as a national burden, in view of his treaty rights, the nation should pay the price and not the unfortunate pioneer who settles in his midst.'[276]

Solutions were proposed from another quarter when, at the conference of the Maori Land Court judges in 1922, it was suggested that a system of charging the land be administered under the judges' direction. The court would have power to apportion the rates among the owners as it saw fit and demand payments in instalments if required.[277]

In May 1923, Waitomo and Te Kuiti local authorities organised a three-day Parliamentary tour of their districts to highlight the problems with rating of native lands. Unoccupied lands which were 'not required by the owners', with dozens and sometimes hundreds of owners, were the heart of the problem. Communal ownership of land must be got rid of as it was an obstruction to closer settlement. As to any 'disabilities' under which Maori might be labouring in developing their lands, if Parliament wished to treat Maori in the same rank as 'infants and lunatics'

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273. Pomare, 11 July 1923, DB p 417
274. *New Zealand Truth*, 25 September 1920
275. Ibid
276. *Auckland Star*, 22 January 1921, ma 31/4 NA, DB
277. Under-Secretary of the Native Department to Native Minister, 10 October 1922, DB p 430. When this same proposition was referred to the Minister in June 1923, an attached paper noted 'See Mr. Balance's [sic] remarks G.1. 1885, p 17, where he practically promised that no land should be rated unless it was sold leased or in actual cultivation.' DB p 429 and Under-Secretary of the Native Department to Native Minister, 7 June 1923, DB p 428

(although they had no right to be in this category), that was not the concern of local authorities. Fifteen members of Parliament attended this meeting.[278]

In August 1923, a local authorities deputation met with Prime Minister Massey.[279] The keynote presentation was made by the Waiapu County representative. Law changes were sought to make Maori lands more susceptible to rating charges and make customary lands liable for rates. The deputation also sought a commission to consider the whole issue.

Coates, then the Native Minister, stressed in reply that:

> Whatever the Government did it had to see that no injustice was done to the Native Race, and if they erred at all he thought it was better to err on the side of generosity.[280]

The Government was 'compelled' to show 'leniency and toleration' with the remaining interest in Maori land.[281] The road to a solution was necessarily slow because 'the Government had to remember the Treaty of Waitangi and the whole history built up since then.'[282] Coates stressed the Government efforts underway to consolidate lands and clothe them with titles, at which point they would become rateable. Efforts were made to assist local councils where there was a lot of Maori land, via distribution of the Public Works Fund.

Ngata was present and outlined at length his ideas for reform. He suggested a small departmental commission be appointed to dispose of problems district by district. Such a commission he thought should be given the power to dispose of the issue on the spot using the powers of the Land Court. He mentioned that Maori were prepared in some districts to hand over land to the Crown in exchange for money to pay rates. Putting this into effect might require legislation, but the idea of small commissions could be started immediately. He also suggested that Maori receive financial assistance by extending the Advances to Settlers scheme. Massey, also present, expressed doubt about this, worried about the 'consequences if the Government were to open the door to the whole of the Native people', but he promised to look into the matter.[283]

Ngata's comments followed a meeting in July between Coates and the Maori MPs and Court officials. There Ngata had put forward the idea that a commission be established to look into the whole rating question. This was thought to be worth pursuing. Later in the year, he was given the legal tools to begin carrying out this scheme with the passage of the Native Land Amendment and Native Land Claims Adjustment Act 1923, which provided for consolidation schemes to be prepared and approved by the Land Court. Apart from extensive powers to consolidate land

278. *Auckland Star*, 4 May 1923, DB
279. Deputation to the Prime Minister 9 August 1923, ma 31/4 NA, DB. Counties represented were Waiapu, Waitomo, Rotorua, Tauranga, Whakatane, Taumarunui, Whangaroa, Clifton, Maunganui, Kawhia, Kiwitea, Waimarino, Ohura, Wanganui, Waipa, Kaitieke, Otorohanga, Waitotara, Matakaoa, Raglan, Wairoa, Cook, Hawera, Eltham, Stratford, Taranaki, Egmont, Inglewood, Waimate, Uawa, Opotiki – p 5
280. Ibid, notes of the meeting p 12
281. Ibid, p 8
282. Ibid, p 9
283. Ibid, p 13

interests, the court could vest land in the Crown to satisfy outstanding rates, and the Crown or a local body could enter compromises for amounts owed (s 6(5)).

18 The 1924 Committee

A committee was established in January 1924 to look at the rating issue as it affected Waiapu and Matakaoa counties. It was headed by Judge Carr, and also consisted of Ngata, representing affected Maori; the member of Parliament for the Bay of Plenty; and two East Coast local body reps.[284] The report[285] outlined in detail the position regarding rating in the Waiapu county (but no similar analysis of Matakaoa county is evident). It mentioned problems Maori faced in the utilisation of land that had not been noted in the many local body petitions. Use by the Crown of its pre-emptive right to purchase land in the district had prevented Maori from gaining finance, and there was weak financing of Maori farming efforts generally. These two factors had been major contributors to rates arrears by disrupting efforts at organised settlement. The report suggested that some rates should be claimed from the Crown for this situation, which was out of the owners' control.

There were other problems. One quarter of the rates demanded in one area (over £3000) were not legal because the land was customary land. The committee mentioned several blocks unsuitable for settlement[286] and noted that they adjoined Crown forest reserves which were exempt from rates.[287]

The committee did note, however, areas incorporated and not disturbed by Government purchasing which were in default. By this stage, consolidations were already well underway. The committee made numerous general recommendations, and, following the comments of the Maori Land Court Judges, included details of a scheme for the land court to take over charging and recovery of rates arrears.[288]

As well as arguing the Crown responsibility to pay some of the rates due (£2150), the Committee suggested writing off some outstanding rates by 'commuting' them in land in consolidation schemes, that is, selling land to the Crown and using the proceeds to pay rates, as the 1923 Act allowed. The first suggestion, payment by the Crown of some rates, was resisted. The Minister of Finance argued that such a precedent could 'bring in a shoal of claims', and in any event, councils gained from the closer settlement and easier collection of rates which Crown purchasing brought to a district.[289] It does not appear that this aspect was followed up, or that it was an argument taken up elsewhere.

What was applied, however, was the latter suggestion to sell lands from the consolidation scheme to the Crown to pay rates. Letters in 1927 show that the proceeds of lands sales totalling around £4000 were to be paid to the Tairawhiti

284. NZPD, 1924, vol 205, p 1050
285. Contained at ma 20/1/52, 23 July 1924
286. Maungawaru, Mangaokura, Ahomatariki and part of the Tangihanga block.
287. Ibid, p 13 of the report
288. The magistrates court had been used up to that time
289. Minister of Finance to Native Minister, 7 September 1925, ma 20/1/52 NA, DB

Maori Land Board, who in turn passed the money on to the Waiapu County Council.[290] The authority was said to be the Native Land Act 1909 and the Rating Act 1925. This model was to be used elsewhere, as will be seen below.

Even before this report was released, the Te Kuiti Council had organised a second ratings conference to consider a detailed petition to be sent to Wellington.[291] The full petition, from 20 local authorities throughout the North Island, was printed and filed in July 1924.[292] It sought a more efficient means to charge and vest land involved in rates arrears into land boards or the Native Trustee for sale, and payments from central government to cover rates owing, with later recovery by the Crown. Special rates for road building were to be dealt with in a similar manner. The petition also dealt with fencing, survey liens and noxious weeds.

19 The Native Land Rating Act 1924

These efforts culminated in a Native Land Rating Bill being introduced into the House later that year. It marked a new departure and followed the suggestions from the 1920s debate and the committee findings. The major recommendations of the 'Waiapu and Matakaoa Native Rates Committee' were read to the House by Carroll,[293] who noted the effect of the Bill was to:

> simply transfer the whole question over to the Native Land Court, and give the Court power to deal with each individual case that comes before it. It may use rents for the purpose of paying rates; it may enter into an arrangement in regard to arrears; and it has power to arrange with the local authority and the Natives as to how much shall be paid.[294]

The report of the committee, while referring to 'the evils of communal ownership'[295] adopted a two-pronged approach, seeing the local court as the agent to determine on a block by block basis the valuation (that is, amount of rates) and who should be paying. Using the stick of rates liabilities to hasten the move to a land court title was endorsed, as also was the system of nominated occupiers. As to exemptions:

> The court is probably the best tribunal for ascertaining and advising the Native Minister what lands, if any, should be exempted from rates. It would have complete information as to the ownership and occupation of kaingas, and the reserves to be set aside for meeting-houses, burial places, and the like. It could also ascertain, and note for exemption and special treatment, the lands unfit for settlement and the lands that the owners should be encouraged to retain in forest for water-conservation and

290. Native Minister to Chairman Waiapu County Council, 31 August 1927, ma 20/1/52 NA, DB
291. *King Country Chronicle*, 12 June 1924, ma 31/4 NA, DB
292. ma 31/4 NA, DB
293. NZPD, 1924, vol 205, pp 1051–1053, DB
294. Ibid, p 1015
295. Ibid, p 1052

> forestry purposes. In regard to lands communally held and partially occupied, it could ascertain with sufficient accuracy for all practical purposes those who are occupying, the extent of their occupation, and apportion their liability for rates.[296]

The key motive for using the land court was, however, to solve the problem of getting liens to 'stick' to the land. Now they would be simple charging orders, easily imposed by the court. In this, according to Ngata, local bodies were achieving in one Parliamentary session something they had been agitating for since 1910.[297] He was also of the view however that, while the legislation might force Maori communities to decide how better to utilise their lands, it would bring councils and central government:

> face to face with the fact – which is not sufficiently recognized – that a large area of so-called Native land in this country is land which should not be liable for any rates at all.[298]

In exchange for this new ability to charge land, the provision of the 1910 legislation for nominated occupiers and owners was to be dropped.[299] Ngata noted that he was aware of cases of nominated occupiers losing personal property through the distress warrant procedure for very small rate liabilities.[300] The member of Parliament for Western Maori, Pomare, responding to comments about Maori failing to 'do their bit' for the community, said it should be realised Maori already contributed much through land tax (the Public Trustee had been paying this tax on Native lands for the last 40 years), stamp duty in earlier years, and through confiscations.[301] The Bill was a 'fair compromise'.

As with the 1910 legislation, the approach was to make all native land rateable, then list exceptions. Customary land continued to be exempt, under section 4(a). There was still a general power to exempt land by Order in Council 'on account of the indigent circumstances of the occupiers or for any other special reason' (s 5). Also exempt was land occupied by a Native burial ground of not over five acres (under section 4(b)), and land on which a church or meeting house was situated, again not over five acres (s 4(c)).

Section 9 was the most significant, providing for the recovery of rates by way of applications for charging orders upon the land.[302] It provided that:

- Authorities seeking to recover rates were to lodge the rating claim with the land court registrar.
- These claims were to be treated as applications for charging orders.
- These applications were to be heard as soon as convenient and any defences considered. Defences were limited to those 'open to an ordinary ratepayer';

296. Ibid, p 1052
297. Ibid, p 1056
298. Ibid, p 1057
299. Contrary to the committee recommendation.
300. Ibid, p 1058
301. Which he thought were illegal and in contravention of the Treaty of Waitangi. Ibid, p 1059–1060.
302. It became section 108 of the Rating Act 1925 (see below)

but there was also provision to remit the whole or part of the rates in 'special circumstances arising from hardship or indigency'(subs (6)).

- If the court was satisfied the rate was payable it could make an order granting a charge over the land. This charge would be noted in the court records, and registered against the title if one existed.
- The charge could then be enforced by appointment of a receiver with power to lease the land to recover the rates.

Section 10 provided that, if after one year the rate remained unpaid, the land could be vested in the Native Trustee for sale, subject to the consent of the Native Minister.[303] This power of sale was the focus of much agitation by local councils in later years, but as will be seen, was rarely used.

20 The Maori Response

An immediate response was a telegram from Ngati Maniapoto people who viewed with 'alarm' the 'far reaching effect' of the new provisions for the recovery of rates.[304] Maori at Otorohanga and Te Kuiti (Pareaute Komanga and 14 others) also objected.[305] But apart from this, there was no flurry of recorded protest as with earlier measures, possibly because the legal change was a technical one affecting recovery, but rating coverage remained the same.

In Taranaki, a different issue had developed. Maori were complaining about rates being laid on pa at Parihaka, Meremere, Mawhitiwhiti, Hokorima, Okiawa (or Te Aroha), Ketemarae, Ngatiki, Ararota, Meremere, Taiporohenui and others. For the Valuation Department, this raised the question of whether, even after confiscation, these lands remained 'customary lands' and were therefore exempt under rating law.[306]

Maori at Whakatane (Te Keepa Tawhio and others) were complaining about a different kind of rating – for the Rangitaiki Drainage Scheme. The lands they occupied were being rated for the scheme, yet:

> They were lands occupied by our ancestors and fathers who cultivated and improved them and who left them to us in a good state long before the drainage scheme for the Rangitaiki Plains was contemplated.

They were paying the highest rate because their land value was high, and were therefore contributing most to the development of lower value land requiring extensive drainage. They were also concerned that the 1924 Act would allow their lands to be taken.[307] It appears that in subsequent years these rates were enforced,

303. Later section 109 of the Rating Act 1925
304. Telegram, Ormsby to Native Minister, 7 November 1924, ma 31/4, DB
305. 23 October 1925, DB
306. March 1925, DB 411. Section 4 of the New Zealand Settlements Act 1863 deemed lands taken for settlement to be Crown lands. Also, in September 1925, there was concern about buildings being rated at Manukorihi in the Waitara Borough. 7 September 1925, DB p 407.
307. Letter to Native Minister, 17 July 1925, DB p 408

and charging orders made, but probably little land was ever sold for rates from individual blocks.[308]

In August 1927, the Te Kuiti local authorities convened a conference on rating attended by local body representatives, Judge MacCormick of the land court and 'representatives of the Maori race'. Several Maori responses to council complaints about Maori rating were recorded. When an aged Maori asked, through an interpreter, the amount of unpaid European rates:

> He was informed when the resulted laughter subsided that the European defaulter was liable to have his land seized and sold to meet his liabilities – a risk not shared by the Maori.[309]

Another Maori present, Peter Barton, argued that Maori had already paid their rates, having sold their lands for a price much lower than their present worth. Maori had not brought the blackberries and rabbits which now made the land difficult to settle. One Gabriel Elliott, apparently a legal representative for some Maori groups:

> said they were willing for the State to take over all their unused lands at a fair valuation, for they objected to paying rates on unoccupied holdings, especially as the Government held large areas of land on which no rates were paid. Further, the Maoris pointed to the refusal of the Government to pay rates due on evacuated soldiers' settlements. The word 'Dominion' in the treaty of Waitangi . . . gave the Maori absolute dominion over his own lands and no suggestion of confiscation would be tolerable.[310]

Further Maori debate was cut short due to lack of time. The conference called for an end to the veto power of the minister and unrestricted powers to sell land for unpaid rates. Judge McCormick, in a later minute, thought the tone of the conference had been 'moderate', the chief object of attack being the ministerial veto power. An accompanying note to this report stated that the veto had been refused only once.[311]

Only days before this conference, leading men of the Rohe Potae had signed a solemn memorial or petition concerning rates. Wehi te Ringitanga, Tuwhakaririka Patena (Barton), Mokena Patupatu and others signed as 'representatives and decendants [sic] of King Tawhiao Wahanui, Rewi Maniapoto', and as 'ambassadors on behalf of the whole of the Native People of the Rohe Potae'. The 'great trouble' of the day was the 'question of Rates on our lands and the treatment of the Treaty of Waitangi as a "joke" by the Pakeha'. The memorialists referred to Lord Stanley's affirmation of the Treaty:

> The second article of that Treaty assured to the Chiefs and People of New Zealand the complete dominion and Chieftainship over their lands. The English version of that

308. See ma 1 20/1/28. In 1926, Ngata in the House (p 291) commented that £360,000 was written off on this scheme.
309. *New Zealand Herald*, 26 August 1927
310. Ibid. The chairman denied that was suggested
311. McCormick to Under-Secretary of the Native Department, 1 September 1927, ma 31/4 NA, DB

> Treaty gives an inadequate idea of its force in the Maori Tongue. In the latter idiom represented what the word 'Kingdom' represented in the Lords Prayer – It signified the most absolute Dominion and power which the Maori language was capable of giving. These Sir were the very words used by the Prime Minister of England and this is the document the Local Bodies of our district treat as a 'joke' and are urging that our lands be taken from us for unpaid rates.[312]

They quoted at length from records of the meeting with Ballance in February 1885 at which he said lands would not be rated until sold or leased, and similar words from Stout in April 1885 when the first sod for the railway line was turned at Punui. The petition was presented to the Prime Minister and Native Minister Coates on 1 September 1927 at a ceremony in Wellington. It was symbolically brought in the wheelbarrow presented by the Government to Wahanui in April 1885 and used to turn the first sod for the railway.[313] The Prime Minister's reply was dissembling and general.[314]

The following year, at a large Maori gathering in Foxton, it was resolved that lands over which the Crown proclaimed pre-emptive rights should be exempt from rating, as also should be lands which could not be made profitable. The land court should carefully determine this before charging orders were levied. This problem was said to be most acute in the Taupo district.[315]

In an echo of much earlier requests, chiefs from the Bay of Islands and Whangarei districts had met in May 1926 at Motatau and sought legislation for a nine member Maori administrative council to govern the area, with control over rating. The council was to have various powers including:

> (1) To levy and collect all rates on lands held or occupied by the Maoris and to have discretionary powers relative thereto.
>
> (2) To sanction or disallow according to its judgment in each case the disposal of any or all native lands.
>
> . . . . .
>
> (8) In all cases Maori workmen to be given preference to Europeans in the execution of road works and at rates of pay to be determined by the Council . . .
>
> (9) To carry out the meanings of Sections 2 and 3 of the Treaty of Waitangi.[316]

Nothing appears to have come out of this.

In October 1927, a delegation representing North Island counties visited the Minister of Native Affairs, Coates. They argued that £42,000 had been lost annually by 45 counties. These counties currently had £180,000 outstanding.[317] The

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312. Memorial to the Honourable J G Coates, 22 August 1927, ma 31/4 NA, DB
313. Minute dated 2 September 1927, ma 31/4 NA, DB
314. Ibid
315. *Manawatu Herald*, 5 January 1928, DB p 398
316. Report of Native Conference, 14 April 1927, ma 31/4 NA, DB
317. At the conference of August 1927 at Te Kuiti, the counties of Waitomo, Raglan, Tauranga, Waimarino, Otorohanga, Rotorua, Taumarunui and the boroughs of Te Kuiti, Otaki and Ohakune alleged a total of £58,833 remained outstanding from the past five years. Waitomo and Raglan had by far the highest amounts outstanding (£17,248 and £12,500 respectively).

counties sought a Government assurance of payment as under earlier legislation. This was not agreed to. In reply to a suggestion that the Native Minister's veto be abolished, Ngata stressed that it had only been used twice (but over which period was not stated) and suggested that the Government was worried at the result if Maori lands were made immediately available to satisfy rates demands.[318]

Ngata, who a year later would be Native Minister, was pushing for legislative changes to extend the implementation of consolidation schemes which he had been promoting on the East Coast for some 10 years. He had already successfully promoted the Native Land Amendment and Native Land Claims Adjustment Act 1926, which added further to the powers of boards with regard to rating,[319] but also secured a valuable concession for East Coast lands which could be applied elsewhere. Under the Rating Act 1925, the Governor-General could exempt Native land from rates, but this could not affect rates already levied (sections 104(1) and (2)). Ngata had the relevant section amended[320] to provide that, firstly, the Governor-General could act on a recommendation of the Native Minister, local authority, Commissioner of Crown Lands or a judge of the Land Court. Further, the Native Minister could issue a warrant for the writing off of part or all of any rate which remained unpaid on the exempted lands, and they were then to be removed permanently from the rating rolls. This was apparently designed to allow an officer of the Native Affairs Department to investigate which lands should not be subject to rates and remove such lands from the rate books.[321] Ngata was anxious for the section to be applied to lands on the East Coast. In the face of opposition to it, he maintained that it merely carried out a recommendation of a recent counties conference.[322]

The Native Land Amendment and Native Land Claims Adjustment Act 1927 put many of Ngata's other ideas into statutory form. It has perhaps been little appreciated that rates were an integral part of the consolidation programmes promoted by Ngata and others. Coates, speaking to the 1927 measure, suggested that the consolidation schemes were driven by the need to rationalise the accumulated rates, to put Maori in a position to pay them, or to dispose of land to those who would.[323] Consolidation could not proceed until earlier debts such as survey charges and rates were dealt with.

The Act was an extension of the 1926 measure which provided for the appointment of an officer to determine lands which should be exempt from rates. This scheme provided for a flexible system whereby a Native Land Court Judge, assisted by officers to be appointed, could deal with each case individually to

318. The *Dominion*, 7 October 1927, DB p 399. In July 1925, a delegation of the Taumarunui and Tauranga county councils, representing 16 councils, had sought a royal commission on Maori rating, and received a similar non-committal response. Possibly councils were especially aggrieved because East Coast councils only had been consulted over the 1924 Act. NZPD, 1924, vol 205, p 1056
319. Section 12 enabled boards to be appointed receivers of lands in rates arrears and over which a charge had been made which were owned by Maori but which were not Maori freehold.
320. By section 34 of the 1926 Act
321. NZPD, 1926, vol 211, p 379
322. NZPD, 1926, vol 211, p 292 DB
323. NZPD, 1927, vol 216, p 536

decide whether the land was worth rating, and if so, what was the best way to arrange payment (that is, through leasing or sale). Ngata said that the Government would be writing off £13,000 in unpaid rates under the Crown and Native Land Rating Act 1882, as well as some survey charges on land unsuitable for settlement. As a way of recovering some rates, section 25 allowed the Crown to be given land in consolidation schemes in payment for rates.

Ngata also pointed out, as he had in earlier rating debates, that much land was unsuitable for settlement and should not be rated. Speaking of King Country land, where local authorities were loud in their demands for rates, he thought that the best land had already been sold by Maori:

> That particular local body has to face the situation that rates have been levied and charging-orders taken upon land which is unsuitable for settlement, which, if it had been in the hands of the Crown, could never have been brought into profitable settlement, and which, if owned by a European company, would have been foisted upon the Forestry Department a long time ago.[324]

In the debates, Coates noted that this law would finally provide that Maori might have compensation for all land taken for roads.[325]

21 The Consolidation Commission

As soon as Ngata became Native Minister in 1928 he pushed ahead with the programme outlined in the 1927 Act, establishing a Native Lands Consolidation Commission to apply consolidation in all suitable areas of the North Island. He sought to extend consolidation schemes to North Auckland and the King Country. The objective at this first stage, as at Waiapu, was to rid native lands in these areas of outstanding rates, and gain a breathing space for land development.[326]

In February 1928, he secured an agreement with the Bay of Islands County Council to remit past rates, and rates until 1930 (by which time the consolidation scheme would be in full operation), in exchange for payment of £1500, to be derived from sale to the Crown of land within the Motatau consolidation scheme.[327] This deal was finalised in the Maori Land Court in the same month, under the authority of section 5 of the 1923 Act and section 25 of the 1927 Act.[328] Agreements in the next two months were concluded with the Whangarei County Council and the Kaikohe Town Board.[329]

The rates compromises arrived at in north Auckland are given in the table below.

The *King Country Chronicle* heralded the arrival of the 'Native Rating Commission' to Te Kuiti in April 1928.[330] The *New Zealand Herald* noted that

324. NZPD, 1927, vol 216, p 543
325. NZPD, 1927, vol 216, p 537. Section 30.
326. *Auckland Star*, 28 January 1928, DB
327. Ngata to Judge Acheson, 3 February 1928, ma 31/4 NA, and the *Sun*, 8 February 1928, DB
328. The *Bay of Islands Luminary*, 21 February 1928
329. *Northern Advocate*, 13 February 1928; 16 March 1928; and 15 March 1928, DB

Local body	Total levied (£)	Paid (£)	Settled to
Mangonui	12194	3986	31 March 1931
Hokianga and Kohukohu Town Board	30396	5816	31 March 1931
Whangaroa	3897	908	31 March 1931
Bay of Islands and Kaikohe Town Board	29359	3314	31 March 1931
Whangarei	9731	2533	31 March 1931
Kaipara			
Otamatea	2668	400	31 March 1932
Rodney	1198	200	31 March 1932
Hobson	4512	600	31 March 1932
Totals	93955	17757	

Rates compromises in north Auckland. Source: AJHR, 1932–33, g-10, p 4

Ngata would have more difficulty settling a rates compromise with Maniapoto than he had in the north, because of the 1885 agreement.

At the first meeting, held at Te Tokanganui-a-Noho meeting house at Te Kuiti, Maniapoto opposed both rates and a consolidation scheme. The meeting appears to have been almost entirely taken up with discussion about rates. It was noted that:

> The local bodies of the King Country district had taken a leading part in the agitation regarding Native rates. Many of them had obtained charging orders and were now pressing for vesting orders.[331]

Maniapoto speakers stressed the promise of Ballance in 1885 and the taking of land for roads and railways without compensation. Government officers, including Ngata and Pomare, stressed that a consolidation scheme was a limited opportunity to deal with a mounting problem. After considering the matter overnight, the 'Maniapoto Committee' proposed that they pay rates, but only half those levied, and only on certain lands, while outstanding rates would be totally remitted. They also made a demand for an annual sum of £1500 to be paid to the tribe as compensation for ending the 1885 agreement. This was said to be similar to the agreement recently reached with Te Arawa and Tuwharetoa groups over their lakes.[332]

This was unacceptable, and Ngata was under pressure. He had arranged meetings with interested local authorities later in the same week to finally settle rates

330. 12 April 1928

331. ma 31/4 NA, DB. See Judge MacCormick to Under-Secretary of the Native Department, 23 January 1928, regarding applications for vesting orders then before the judge. He noted that 'The natives themselves are ignoring the proceedings altogether'.

332. 13 April 1928, ma 31/4, NA DB

compromises. After further argument from him, and an adjournment, the Maniapoto leaders returned and announced that an offer of £13,000 would be made to settle outstanding rates with eight local authorities (the largest single amount being £7000 to the Waitomo County Council).

The Waitomo council approved the settlement the same day, as did the Kawhia and Ohura councils. Other authorities accepted the compromises in the days immediately following. The other Maniapoto demands were not mentioned. Ngata had said the declaration of them was 'valuable . . . to recognise responsibility for local taxation in the future' but no other comment is recorded.

The Native Department report of 1932 and 1933 recorded that:

> Settlements in all cases, . . . were made to the 31st March, 1930. Waitomo and Kawhia Counties, however, on the expiry of the Orders in Council exempting Native lands in those districts from payment of rates, recognizing the difficulties confronting the Native Department in carrying out its task, offered to allow the exemption to extend to the end of March, 1931.

The report provided a summary of the compromises:

Local body	Total levied (£)	Paid (£)	Settled to
Otorohanga	10283	2000	31 March 1930
Taumarunui (part)	1920	1000	31 March 1930
Ohura	576	140	31 March 1930
Te Kuiti Borough	3291	1000	31 March 1930
Taumarunui Borough	3864	1000	31 March 1930
Waipa (part)	632	150	31 March 1930
Waitomo	28829	7000	31 March 1930
Kawhia	13336	3130	31 March 1931
Mangapu Drainage Board	1210	1210	31 March 1932
Total	63941	16630	

Source: AJHR, 1932–33, g-10, p 17.

In a letter in 1929, Ngata outlined the approach to these schemes. He stressed that their primary object was not to allow settlements of outstanding rates, and that this appearance was a consequence of the necessity to work out the interest of each owner before the scheme could be put together and necessary exchanges of land made to effect a consolidation. He also pointed out that officers of the department, before suggesting any compromise, first ascertained that land would be available in the final scheme which the Crown could take to complete the compromise.[333]

It appears to have been a chicken and egg situation. The schemes were not meant to be about rates, but for both Maori and the Pakeha local authorities this was an

333. Ngata to Clinkard, member of Parliament, 3 July 1929, 1933 Comm Pt 6, DB

essential element of many of them.The Native Department reprot of 1932–33 commented bluntly:

> It was obvious that the pressure for the settlement of Natives upon lands in the King-country did not come from the Natives themselves. It was suggested as a solution to many difficulties, including the payment of rates.[334]

Even on the east coast, where Maori development initiatives clearly preceded local authority lobbying about rates, rating issues still determined whether shcemes proceeded or not. In 1929, Ngata described to the Minister of Lands, G W Forbes, a consolidation scheme as follows::

> A scheme for the consolidation of interests in the Native lands between Torere (14 miles NE of Opotiki) and Cape Runaway is in operation and in order that the scheme may go forward it is necessary to settle the Native rates outstanding back to 1927 and forward 2 years to the 31st March 1932. The 2 years forward are taken so as to cover the period of the settlement and issue of new titles. The figures supplied by the Opotiki County Council for the period 1927–1932 show that £10,771 would be the gross liability. To settle this the Natives were prepared to offer 20% or a total of £2,154, provided the Crown would pay that amount in cash and accept land under the Consolidation Scheme. I may say that this course has been taken in regard to rate settlements in the King Country, in the North of Auckland, at Kohaka, in the Matakaoa County and recently in regard to the Northern portion of Waiapu County. The cash payments in these cases were authorised by the Native Land Purchase Board and paid out of the Native Land Settlement Account. The Opotiki County Council I was given to understand is prepared to compromise at the figure £2154.
>
> At the same time the question of survey liens held by the Crown came under review. These amount to a little over £10,000.
>
> . . . . .
>
> It is also imperative to bring into the settlement part of the debt on the Te Kuha Dairy Factory amounting to £11,000 occurred by mortgage on certain lands to the Native Trustee.
>
> . . . . .
>
> The proposal is to hand over to the Crown several inland blocks of the area of 54,000 acres. With the exception of 10,500 acres (Whangaparoa 3? 5? valued at 20/- an acre) the lands are not suitable for settlement, but are of the class already owned by the Crown as State Forest, comprising part of the main watershed between the East Coast and the Bay of Plenty. I would ask you to regard this settlement as essential to the solution of a vexed problem in this district. The good lands are of very limited extent consisting of a very narrow fringe along the Coast, which are absolutely necessary to the maintenance of the Native Community. The lands offered are on the valuation rolls at 1/- an acre, but only a few years back they were valued much higher and for the purpose of the settlement should be taken at 2/6 an acre.[335]

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334. AJHR, 1932–33, G10, p 179

335. 6 December 1929, Ngata to G W Forbes, Minister for Lands. 1933 comm file, Part 6, NA DB

As this shows, considerable areas were affected by these compromises. Further work would be required to determine the amount of land taken in each scheme. The picture is complicated because survey liens were written off in the same manner, and because land was not taken immediately by the Crown.[336] One rating claim before the Tribunal, Wai 78, refers to land taken under a scheme in the Torere block. Another complication is that, from 1931, rather than taking land, the Crown could have the rate debt apportioned among the lands which had benefited from the compromise (section 537(5) of the 1931 Act). This appears to have been done for some of the rating debt from the Waiapu county compromise.[337]

'Washing up' Maori land legislation in these years added to these schemes. Section 16 of the Native Land Amendment and Native Land Claims Adjustment Act 1928 cleared up legal uncertainties about the rates compromises being effected with local authorities. The Act of the same title in 1923 had given a very general power to effect compromises, but had not taken into account provisions of the Rating Act 1925 and the Counties Act 1920 defining the powers of local councils to levy and remit rates. This provision raises questions about the legality of the compromises earlier concluded. Not surprisingly perhaps, it operated retrospectively (s 16(6)).

This Act also contained provisions for recovering Native rates due to the Otaki Borough Council. The Governor-General was empowered to vest land for which rates had not been paid in the Ikaroa District Maori Land Board, where it might be sold, exchanged, or mortgaged, and the returns used to pay rates. The Ikaroa District Maori Land Board was to pay the Otaki Borough Council one-fourth of rates due on land vested in it as full settlement of rates owing (s 32).

This was the result of a complaint in 1927 by the member for Otaki, that Otaki had an outstanding rates problem which, because of the land tenure situation there, was not amenable to a consolidation scheme.[338] This, then, was the 'consolidation scheme' for the Otaki borough.

Section 38 of the Native Land Amendment and Native Land Claims Adjustment Act 1929 authorised the collection of rates on Native land by Waipu County Council over areas where collection had been suspended while the consolidation scheme was being worked out. Otherwise the Act was concerned with implementing the next phase of Ngata's agenda, providing a financial scheme to develop consolidated lands.

The Native Land Amendment and Native Land Claims Adjustment Act 1930 extended the scheme of rating compromises significantly. It authorised the Native Minister to make payments to local authorities in settlement of rates, and take a charge to satisfy the payment, on land that was either outside or inside a consolidation scheme (s 13).[339]

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336. For example, see papers concerning the Pouto lands in the Kaipara consolidation scheme, ma 1 29/68 NA DB. File ma 1 20/1/14 part 5 contains a complete list of the monetary amounts written off in all consolidation schemes, but gives no figures for the acreage affected.
337. ma 1 20/1/52 NA DB
338. NZPD, 1927, vol 216, p 548 DB

As in other debates, the plea from the Maori members, including Ngata, was for finance so that Maori might fairly compete with Europeans and be enabled to meet rates demands. Henare made a plea for financial assistance so that, through rating, Maori did not suffer the 'calamity' of 'landlessness'.[340]

From one member there was the familiar call to make native rating a national burden, not just one borne by rural areas. Hospital rates, it was pointed out, fell hardest in areas of high Maori population, such as Matakaoa (65.5 percent Maori), Waiapu (64.6 percent), Hokianga (57.6 percent), and the Bay of Islands (50.5 percent).[341]

Coates, now Leader of the Opposition, noted the general financial situation counties faced at the time. County councils had incurred loan liabilities, but deflation had lowered land values and this, in association with land not being as productive as was first thought, had made it difficult for both Maori and Pakeha settlers to meet their liabilities. Waitomo, Hokianga, and the Bay of Islands had been particularly affected.[342]

The Native Land Act of the following year confirmed the provisions then in place for the recovery of rates and the appointment of receivers to recover charges (s 42). It also reinforced provisions for boards to administer lands, make payments towards rates from revenue received (s 343), and to administer other lands when rates were in default under section 538. Compromises could still be made with local authorities under section 536, and the Native Minister could compound rates and acquire land in satisfaction thereof (s 537).

22 The 1933 Committee

There was some enthusiasm from local bodies for the consolidation schemes because of their rate collecting potential.[343] However, this enthusiasm was short-lived. In April 1933, the Government appointed a committee to look generally into the rating issue. The economic depression from 1929 had taken away optimism and there was a new concern that the compromises effected by Ngata had removed the ability to enforce payment.[344] Maori, it was argued, had stopped seeing themselves

339. The charge would be satisfied either by appointment of a receiver or vesting of a portion of the land in the Crown. Also see Ngata, NZPD, 1930, vol 225, p 613.

340. Ibid, p 620. There was a gesture in this direction in that section 32 of the Act made Maori agricultural colleges exempt from rates. It is also interesting to note that experiments with fertilisers to overcome soil mineral deficiencies in the central North Island were undertaken as part of the consolidation and development schemes, as Maori farmers tried to make use of the relatively poor areas left to them after initial sales of the best farming lands to Europeans – NZPD, 1930, vol 225, p 617

341. Ibid, p 626, MacMillan

342. Ibid, p 630

343. See comments of member for Waitomo speaking to the Native Land Bill and Native Purposes Bill in October 1931. He thoroughly endorsed the schemes and even looked forward to the day that, given the new aggressive approach to development of lands, derating would be applied to Maori and European lands in the future. NZPD, 1931, vol 230, p 568.

344. Section 23 of the Native Purposes Act 1933, which extended the time of recovery for Native rates for the year 1932–33. See NZPD, 1933, vol 237, pp 1258–1271.

as individually responsible for rates and believed they were a Government responsibility. The committee also travelled to look at lands causing concern and met Maori informally, but there is no record of these meetings.

The committee members were the Honourable A D McLeod, member of Parliament, as chairman, who had often spoken in the House on rating issues; Judge Robert Jones, a judge in the Land Court; and J H Reid. Most representations were from local body clerks and chairmen, sometimes solicitors. In some districts, Maori made submissions.

This committee produced a useful compilation of the issues surrounding rating. The files contain details from the 31 districts which gave evidence,[345] often relating to conditions over many years. For example, evidence was given of the agreement of the Thames County Council in 1877 with local Maori to take land for a road in exchange for a rating exemption. Although the agreement was later argued to have no legal effect, it still affected rating in that county in 1933.[346] The minutes of evidence also contain much valuable information about the economic situation of Maori and Pakeha farmers in the period.

Both Maori and Pakeha were defaulting on rates because of the depression of the time. This meant Maori in some cases were in default because Pakeha lessees of Maori land had been unable to pay rent. In Matakaoa County, it was suggested that rents had been stopped by legislation:

> old people whose only income in money is the rent they receive from the land are practically starving. If they had been pakeha they would have been dead by now. Happily, they can live on kumeras, shell-fish and all that sort of thing.[347]

A lack of finance was referred to by several Maori speakers as an underlying reason for their problems. An eloquent plea was made by M C Burgess of Ongarue, a Pakeha farmer married to a Maori woman of some standing. His efforts to develop her land had foundered on the inability to gain finance and the continual burden of rates:

> the position of the Maori today reminds me of the old story of the Israelite in Egypt: he was told to make bricks without straw. What Maori is able to farm his land without assistance? We have had no policy to assist these people to be useful members of the community. The enthusiasm of the Native over on the East Coast impressed you. The Native, if led in the right way and given adequate assistance and helped and sympathised with, will be found to be one of the finest citizens in this country; but without that, there is a spirit of bitterness being engendered by the unfair treatment which our people are receiving. . . .

345. ma 1 20/1/14, parts 1–6 NA

346. Because of it, some lands remained exempt by order in council. Ibid, part 2, pp 397–398. The agreement was still affecting rates collection in 1960. Acting Secretary to Minister of Maori Affairs, 6 December 1960, ma 1 20/1/58 DB

347. Ibid, part 1, p 155, DB, Reverend Kohere. See also complaint about Pakeha defaulters by Burgess, part 2, p 456.

Can the Pakehas finance their country without the Government Advances to Settlers and all the other facilities that are granted them? I say no. Then how are we to finance these little pieces of land which remain to us?[348]

He suggested taking the largely unworkable land which remained in Maori hands under state control for afforestation purposes, and exempting it from rates until the timber matured, thus securing to tribes by way of timber royalties a tribal asset for future generations.[349]

Maori speakers generally tended not to question the principle of paying rates, but pleaded for exemptions for various reasons. Some made complaints that they were not getting a good level of service from the councils – they were not happy to pay rates when there were no roads or other facilities. Conversely, others thought they should not pay because a lot of rates demands were for services such as roads and drainage which were required only by Europeans. Others noted that they had already given land for roads, and that land should be considered as a rates payment. In some cases, there were objections to the valuations issued for land. Some claimed that they were not getting their rents from land boards to pay the rates. Others said they did not know they had to pay rates, they had never received notices. It was a minority who went further than this and said the Treaty of Waitangi meant that rates did not have to be paid.[350] The committee heard evidence that in the Waikato area Maori had been told by the Maori King not to pay.

The committee was mainly a forum, however, for the views of local bodies. Their submissions focused on non-payment and recovery. Throughout the country the major complaint was that Maori non-payment had become worse since the 1924–25 legislation. Since the compromise payments of the late 1920s, councils claimed that they had received almost no revenue from Maori lands, with Maori apparently believing they were no longer responsible individually and that the Government would pay. Councils decried this attitude, yet the majority wanted, as a solution, further payments by the Government.

The 1924–25 law was held responsible for the Maori attitude to rates in other ways. Councils claimed that once Maori realised their land could not be taken off them with charging orders they did not pay. The preference was for earlier legislation under which nominated Maori could be sued and/or stock taken.[351] The charging orders system was seen as costly, time-consuming, and ineffective.

The repeated demand was for Maori to be treated as Europeans in rating terms. This meant land titles needed to be individualised and land made revenue-producing. The councils wanted work on updating the valuation rolls to be sped up and sought more enforcement powers when faced with non-payment on rateable

348. Ibid, part p 547, NA DB. See a similar comment from Reverend Kohere (ibid, part 1, p 159–160 DB)
349. Ibid, p 548, DB
350. A submission from Timu Te Kerehi and others of Wairoa was blunt, 'We say that we should not pay any rates to the borough or to the county council or to the harbour board for the reason that under the Treaty of Waitangi we are not supposed to pay any rates.' 17 May 1933, ma 1 20/1/14 DB
351. Ibid, part 1, p 194. It was also noted that Maori sometimes resorted to shifting the ownership of stock to relatives to avoid this result.

lands. Generally they did not want Maori to lose their land but rather to be able to lease good land to rate-paying Europeans if Maori were not using it 'productively'.

There was also a concern that legal changes effected by the schemes, in that the land under them was now 'held' by the Crown, was hampering rate recovery efforts. The committee final report noted that 'there was a tendency to treat these development lands as if they were lands owned by the Crown, and thus not liable for payment of rates.'[352]

The evidence showed that councils had tried various means of getting rates payments in the past. Mention was made of work for rates (such as road building), and subtracting rates from wages of Maori employed by Council on public works schemes. Contracts to build roads taken up by Maori could be reduced by the rates due.[353] There was payment in some cases from revenue from the land. In some areas, amounts were being deducted from milk or cream cheques – that is, the money received from local dairy factories when dairy products were delivered.[354] Hawera Council, one of the most vigorous and successful in getting payments, offered a commission to the Maori interpreter at the Land Court for all rates he collected. Opotiki Council had a 'helpful' judge who made it clear in his court that he gave preference to those who had paid their rates when considering land partitions (this was permitted by section 148 of the Native Land Act 1931). In the past, rates defaulters had lost their franchise for local body elections.[355]

There was conflicting evidence before the committee over the sale of land for rates. As will be seen below, it is unlikely that the formal procedure of a sale following Ministerial approval was exercised very often. How far rating played a part in leases given by land boards, or sales made by the boards or individuals, is harder to ascertain.

Underlying all the complaints was a disapproval of the Maori lifestyle and approach to land use. This is admirably summed up in a letter from solicitors acting for the borough council at Ohakune, where Maori were not paying rates on a 220-acre block in the borough:

> The land is being worked in a very haphazard manner, and is not in any degree intensively farmed. There is a considerable number of Maoris living at the local pa, situate [sic] on this land, and this land with the labour available at the pa could quiet [sic] easily be made an improved farm. The land is of excellent quality and almost dead flat, and particularly suited, like a lot of other land in this district, to the growing of potatoes, cabbages and general market gardening; as well as dairy farming. Local gardeners, both European and Chinese, get excellent returns in the Auckland and Wellington markets for locally grown potatoes, cabbages etc. and there is no reason

352. AJHR, 1933, g-11, p 2, DB, p 389. While technically the Crown did not own lands under development schemes, it held such management powers over them, including power to decide where revenues would be spent, that this perception was practically, if not strictly legally, correct. Under the Native Land Amendment Act 1936 the Crown became mortgagee of some scheme lands. That the Crown felt some obligation in this situation is shown by policy noted in file ma 1 20/2/1 NA DB

353. ma 1 20/1/14, part 1, p 266

354. Ibid, part 2, p 558

355. Ibid, part 1, p 284. Te Araroa, Kawakawa

> whatever, why the Maoris, off, say – only 10 acres of the 220 acres they are occupying, should not make enough money to pay the rates each year, if they only showed the necessary initiative and industry.

But they apparently, prefer only to grow enough vegetables and carry enough stock to supply their own needs throughout the year, and with the assistance of the rents some of them receive from other properties throughout the country, they live quiet [sic] comfortably. They have two cars at the pa, and these are daily on the roads, and it is only equitable that they should pay some rates.[356]

The final report of the committee broadly recommended better use of the existing system and some policy changes in the application of the existing law. Their only recommendation for a law change was in the area of collecting rates from land. There was no suggestion that land be taken, but rather that a statutory charge against revenue from the land should be made, rather than any charge affecting the land itself. The Committee was not hopeful of any other solution working, stating '[i]f this suggestion proves impracticable, we can suggest no other likely to be of value.'[357]

Throughout the inquiry, Jones (as one of the initiators of the 1924–25 law) had repeatedly explained the powers of the current law for recovery of rate arrears to the councils. He believed councils did not understand its application and were not using it to the full extent possible. The councils claimed that when they tried to use the Act they had been blocked by the land courts and by the Native Minister. When pressed for examples, however, they responded with mainly hearsay comments to the effect that some other council had said it was no use applying to the Minister. Jones believed the legislation was working well in areas where local bodies understood it. This was partly, in his view, because the emphasis in law was on the land and a charge being laid on it, so that there was less need to target individuals.

Local authorities can hardly have been happy with the committee's approach. But they themselves were not unanimous in a desire to have Maori lands taken for rates. The committee noted that:

> No local authority, however urgently in need of revenue, desires to see Natives dispossessed of their lands, and it is certain that no Government could stand by and watch Native land generally being compulsorily disposed of for rate liabilities.[358]

23 After the 1933 Committee

In view of the uneven and perhaps diffident approach of councils and the committee to solutions, it is perhaps not surprising that no legislation followed the committee report. Rather, the existing law continued to be enforced, probably with gradually greater efficiency as recording systems improved and more land became

356. 20 July 1933, ma 1 20/1/14 DB
357. AJHR, 1933, g-11, p 3, DB p 390
358. Ibid

individualised or incorporated. The land boards appear to have been quite helpful to rates collection.

In spite of this, very little land seems to have actually been taken for rates arrears alone. There were two major reasons for this. The first was that the ministerial veto remained a clear block on this ultimate solution for councils. In a memorandum to the Acting Native Minister in December 1937 concerning a block of just over one acre up for sale for rates, the Under-Secretary of the Native Department clearly indicated that the Minister's policy was generally not to permit such sales. The under-secretary noted, 'You have on several occasions indicated that it is not the policy of the Government to permit Native Lands to be sold for payment of rates'. It was pointed out that this was a special case involving a 'Europeanised Native' who had failed to have a transfer registered which would have made the land general land in any event. Even on these facts, the Acting Minister recorded that 'under these circumstances' the defaulter was to be written to and given a last chance to pay the outstanding rates.[359] Before the 1933 committee, one witness described the ministerial veto as akin to the Great Wall of China.[360]

Figures provided to the committee in 1933 from each land court registry confirm this:[361]

	Ikaroa	Wairiki	Auckland	Aotea
Charging orders				
Applied for	730	1667	1052	1466
Issued	520	1203	969	1127
Receiverships				
Applied for	26	Nil	4	15
Issued	24	Nil	3	12
Blocks leased	8	Nil	1	Nil
Vesting in trustee for sale				
Applied for	16	1	31	3
Issued	7	1	5	2
Minister's consent obtained	Nil	Nil	4	1

The other factor was the difficult nature of land court proceedings, including the ambivalence and sometimes hostility of the land court to coercive use of the Rating Powers Act. In 1937, the Supreme Court found on a test case that, once a charging order was made under section 108, there was no discretion in the land court to refuse to make the orders necessary to enforce the charge; that is, the appointment of a receiver. The case was brought by the Cook County Council after it had made

359. 20 December 1937, ma 1 20/1/20. See also comments in Harper to Under-Secretary of Internal Affairs, 7 May 1936, DB p 501 at p 504 'The policy of successive Native Ministers has . . . consistently been the refusal of . . . consent'.

360. Mokena Patu, ma 1 20/1/14 part 2, p 512

361. ma 1 20/1/14, pt 5. DB

184 applications for enforcement of charging orders before the Land Court, which considered two, rejected them, and adjourned the remainder, commenting that 'it hesitated to associate itself with the appropriation of land in such a wholesale manner.'[362] The response of the land court to the decision was to make 'exhaustive inquiries' whenever charging order applications came before it.[363] Consequently, it does not appear that councils were able to use the Supreme Court judgment to obtain more receivership orders than before.

Court procedures were time-consuming. While councils might get receivers appointed, this provided no certainty that land could be successfully leased, and the council would have to wait 12 months for an order to have the land vested in the trustee for sale. This decision rested on the discretion of the Land Court and the Native Minister. It seems that, rather than become receiver or have someone else appointed receiver for many scattered and poorly performing pieces of land, it was in the interest of local authorities to use the powers under the Act to push owners into payment and compromises if necessary.

Indeed, in 1938 the Cook County Council was still receiving complaints that the 'big stick' of the Treaty of Waitangi (presumably the refusal to allow the taking of Maori land for rates) was preventing an effective solution to the rating problem.[364] Consequently, the efforts of local authorities now concentrated on enforcement provisions of the 1925 Act, short of vesting and sale, coupled with imaginative 'compromises'. Several case examples can be given.

In Whakatane County, a substantial sum in rates arrears had been secured by hundreds of charging orders granted by the court. Maori in the county were also liable for a large annual recurring rate, 'of necessity made larger by the fact that the Natives were not paying their share towards hospital, road, and drainage requirements of the district'.[365] The problem had been building throughout the Waiariki court district for some time. In 1938, it was noted that in some parts of the district it was evident that in a few years the arrears would be more than the value of the land. While some local authorities had expressed a willingness to reach rates compromises, the owners generally had 'neither the means nor the inclination to effect payment'.[366] In 1939, a huge 1148 charging orders had been made and these comprised fully one-half of the work of the court in the year. Most of these orders were over 'unoccupied' lands that had not been brought under any development scheme or received any State assistance to develop them. In the area controlled by the Maori land board, however, some rates compromises had been effected.[367] Thirty-one orders had been made to appoint receivers, and on those properties, 14 leases orders were pending.[368]

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362. DB, p 554. The court did not investigate the history of the section and whether there was an intention to give some discretion to the land court, but satisfied itself that there was no ambiguity in the legislation because the word 'may' in the circumstances meant 'shall'.
363. AJHR, 1939, g-9, p 10
364. *Poverty Bay Herald*, 20 July 1938, DB p 542
365. AJHR, 1940, g-9, p 7
366. AJHR, 1938, g-9, p 8
367. AJHR, 1939, g-9, p 8

Matters were brought to a head by an attempt by the council in 1940 to enforce the charging orders in Whakatane County in a 'wholesale manner' by numerous applications to appoint receivers:

> The Maori point of view was that this was tantamount to a general confiscation and the relationship between the owners and the local body was severely strained.[369]

In fact, it seems that a major rates revolt occurred.[370] The attempt to gain receivership orders 'was rendered more or less abortive through the representations of the Natives that they were being treated harshly'. The court, after looking at individual assessments, found that many could pay but were sheltering under a general amnesty that had been granted in the face of the 'mass protest'. There also appeared to be land that could pay if the right persons were made liable, but there was also other land where rates should be remitted 'on the ground that their enforcement would be a definite hardship to the . . . owners'. The court attended a meeting and the position under the Rating Act was spelled out. It then looked at 19 cases where a receiver had been previously appointed, and for most of these the receiver advised that an arrangement had been reached. In the remaining cases, the receiver was given permission to lease the land. The county council then announced it would remit 50 percent of rates where occupiers could make satisfactory arrangements to pay. 'A considerable number of Natives were agreeable to this arrangement, and quite a substantial amount in cash was received by the local authorities as well as orders on dairy companies and firms against produce and growing crops.' There were some 1400 rate applications set down for hearing, and the court ruled that each case should receive individual consideration. The council therefore further agreed (not surprising) that its aim was to create the habit of paying rates, and proposed to:

- write off one year of arrears for each current year's rates paid;
- allow the court to determine the current year's rates on the basis of what a person on a development scheme was able to pay; and
- treat rates paid by a lessee under a receivership lease as if they were rates paid by the native owners.

This was regarded as a generous gesture from the council. A person was appointed to tour the district to put the plan into effect.[371] In 1941, it was noted that few new applications for rate charging orders had been made in the Waiariki district, and there was consequently a 'marked decrease' in cases notified for hearing (as opposed to orders made, which were about the same as the previous year).[372] The 1941 report throws further light on the compromise:

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368. Ibid
369. ma 1 20/1/28 NA DB
370. AJHR, 1940, g-9, p 7
371. AJHR, 1940, g-9, p 7
372. AJHR, 1941, g-9, p 5

> After a certain amount of preliminary groundwork on the part of the Court and its officers, the Whakatane County Council and the Rangitaiki Drainage Board combined their activities in the appointment of a prominent Maori leader to report upon each individual rate assessment of the district, and to endeavour to arrange for the liquidation of past rates by payment of present and future levies. His operations have had very pleasing results, and out of a total of 1,542 applications for rate-charging orders the Court has been able to fully dispose of 758 applications without making a single order. In the great majority of these cases it is anticipated that no further rate trouble will ensue.
> . . . [and of the remainder] a good many will be withdrawn by the County Council on account of the indigency of the owners and the impracticability of making any productive use of the land.[373]

In Opotiki County, moves were made to follow the Whakatane example and in the same year (1941), it was noted that, of 304 cases before the court, one-third had been dropped by reason of arrangements to pay part rates and write off the remainder. It was admitted, however, that a few intractable cases would still require that charging orders be made and a receiver be appointed.[374]

In 1943, the department noted that continued cooperation with local authorities had resulted in 1100 out of 1500 rates charging applications in the Whakatane district being settled or withdrawn.[375] In 1947, the department commented that the rates compromise in Whakatane and the appointment of a special Maori rate collector (A O Stewart of Whakatane) from 1940 had culminated in a record collection in 1947 of 87 percent of the county council rates and 99 percent of the drainage rates. Further, an estimated 3000 applications for charging orders had been dismissed.[376]

In Hokianga, the story was different. In 1938, a delegation from the county visited the Government concerning the 'embarrassed state' of its finances.[377] This was attributed to four factors, one being unpaid rates on Maori land. One-third of that county was Maori land and approximately 57 percent of the population were Maori. The county had derived some benefit from consolidation scheme compromises of the Ngata era in 1928–29 and 1930–31. However, the schemes were not producing rates as expected. It was noted that, to date, the Crown had not even taken up the lands sold to it under these compromises. Section 108 charging orders had not been pursued because of the 'lack of co-operation' of the Land Court and because the council did not wish to 'embarrass the government' at this stage of its consolidation work. Generally, the council did not seem to have gone to the lengths of the Whakatane county to collect rates from individual owners or occupiers. It had, however, waited long enough, and realised that the only 'untagged' revenue stream for the farmers came from cream cheques. Accordingly, a lump sum assistance from Government was sought, and a portion of the cream

373. Ibid
374. Ibid, p 6
375. AJHR, 1943, g-9, p 3
376. AJHR, 1947, g-9, p 7
377. v6/4 NA, DB

cheques.[378] It appears that the recommendation regarding cream cheques was taken up.

The Taitokerau District land court judge, Judge Acheson, had strong views on the subject of rating. For him, the answer to any rating concerns lay in giving Maori a reasonable chance to farm consolidated lands. He argued that, of the rates collected to date, little had been spent on roading in Maori areas and Maori had not yet been compensated for the thousands of acres of 'surplus lands' secured under Old Land Claims investigations. Also, the capital cost of roading had been loaded onto Maori land, and only in Motatau had it been written off (a reference to the consolidation scheme compromises). He appears to have been hostile to the idea of orders under the rating Acts, and to any suggestion that he unfairly favoured Maori in this matter. He noted that he had few applications for orders before him in any event.[379]

In both counties, it can be seen that leasing or sale of land was avoided and the recommendations of the 1933 commission regarding a 'revenue' option were adopted.

Judge Browne, writing in 1935 of the Aotea court district which covered Wanganui, Waimarino and Taranaki, thought that 'the rating question is not very acute in this District'.[380] Local authorities in the areas where there were concerns did not, he thought, understand the powers available to them or did not consider that charging orders were worthwhile. He went on to suggest, however, that charging orders and some receivership orders were made, particularly with regard to unoccupied lands. 'A very considerable number of Natives in this District do not pay rates on their holdings'. Local authorities seemed to get no further than charging orders in relation to these. The court was reluctant to appoint a receiver where this might result in the eviction of an occupier from their home. The problem was probably therefore less 'acute' because of the more relaxed approach of the authorities. Again, the use of charging orders but rare use of leasing or sales for rates can be noted.

Annual reports of the Department of Native Affairs bear out Judge Browne's comments. In 1939, it was reported that in the Aotea district the rates problem was reducing, with only 109 charging orders being made, all of these in the Wanganui and Taranaki districts. No receivers had been appointed. The report noted that such appointments were in any event 'rare' in the district.[381] But there appears to have been a change in later years. In 1946, it was noted that charging orders took up a large part of the court's time in the district. Of 2253 cases notified, 908 were rates related. The Rangitikei County Council in particular was having problems with a large unoccupied area of Maori land in the vicinity of the Kaimanawa Range. The court has recommended 21 blocks be released from payment of rates.[382]

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378. The county noted incidentally that it was having trouble also collecting rates on 4767 acres under the Government's small farm settlements scheme.
379. Acheson to Under-Secretary of the Native Department, 21 October 1935, DB p 513
380. Browne to Under-Secretary of the Native Department, 18 Oct 1935, DB p 518
381. AJHR, 1939, g-9, p 10
382. AJHR, 1946, g-9, p 11

In the Waikato–Maniapoto district, Judge MacCormick writing in 1935, noted that:

> When applications for Charging Orders come before the Court the natives ignore the proceedings altogether and do not trouble to attend. The Maniapoto people contend that they should not pay rates at all by reason of an alleged agreement of many years ago . . .[383]

Vesting orders were not made without the 'fullest inquiry practicable' being made for each case that the 'native ought to pay'. MacCormick said he had not made more than a dozen vesting orders in the last 10 years: 'They are seldom asked for. And I think in only one case has the vesting order actually taken effect'.[384]

In the Tairawhiti court district, 40 percent of the rates levied were on Maori land.[385] In 1938, it was noted that while applications for rates charging orders had decreased, 971 orders had still been sought in the 1937–38 year. In addition, 292 applications to appoint a receiver had been received. In most cases these affected land from one-half to five acres in closely settled areas. Nevertheless, the Native Office thought it was making progress, because there had been discussions about rates compromises and meetings had been organised to update the valuation roles to reflect the occupier or persons willing to take responsibility for rates on blocks.[386] In 1939, the court issued 2557 charging orders and 300 applications to appoint a receiver were pending. At least 20 such applications in the Wairoa Borough Council affecting 'small unoccupied areas' had resulted in the appointment of a receiver to lease the land to recover the rates. The department was, however, sanguine about progress, noting again that it was cooperating with local authorities and the Valuation Department to correct rolls as required to achieve settlements and compromises and that it had been assisted by 'leading natives' in settlements in this work, and that where Maori were farming successfully they were consistently paying rates.[387]

Consequently, in 1940 the department reported that charging orders were on the decrease, the Maori Land Board was being appointed as receiver where a receiver was required, and there was 'general satisfaction' with the systems for collecting payments.[388] In 1941 charging orders had fallen to 1929, most of which affected lands in Wairoa. In Waiapu a record collection of rates was made – 77 percent or £7,950 was collected out of £10,315 levied. The land affected was valued at £94,072. Only in four cases had the land board been appointed the receiver. In 20 cases the board had been discharged as receiver, sufficient monies having been collected. Leases had been arranged in 11 other cases affecting 342 acres.[389] Charging orders were down again in 1942, which was another record year for rates

383. MacCormick to Under-Secretary of the Native Department, 19 October 1935, DB p 516
384. Ibid, DB p 517
385. AJHR, 1940, g-9, p 9
386. AJHR, 1938, g-9; 1940, g-9, p 8
387. AJHR, 1939, g-9, p 10
388. AJHR, 1940, g-9, p 9
389. AJHR, 1941, g-9, p 6

collection on Maori land in the district. Thirty-three leases were however arranged by a receiver appointed by the court in the Uawa county.[390] In 1944 further progress was reported. The 1491 applications for charging orders of the previous year had fallen to 784. Forty five receivers had been discharged, although a further 22 new receivership orders had been made.[391] The following year, it was noted that in the Uawa and Waiapu counties there had been a record collection of rates, 90.2 percent and 89.98 percent respectively of the rates struck. However, results were not so satisfactory in the Wairoa district, where there had been 93 applications to appoint a receiver and 683 applications for fresh charging orders. But modest success had been achieved even here. Committees had been formed in many settlements to effect compromises and the county council had collected a 'considerable sum' by such means. Of 93 applications for the appointment of a receiver, 47 had been withdrawn, 25 adjourned, and only 21 orders actually made. Of the 683 charging order applications, 383 had been withdrawn.[392]

Such compromises do not appear, however, to have been reached in the Ikaroa and South Island court districts. In 1938, it was recorded that 'numerous' applications were received for charging orders each year, but no compromises were noted, merely that 'the Court in many cases found it expedient, on account of hardship and indigency of the owners, to remit the whole or part of the rates due'.[393] In contrast to the success claimed in other districts, the numbers of applications for charging orders did not drop in subsequent years in these districts.[394]

In 1940, Michael Joseph Savage in 1940, as chairman of the Board of Maori Affairs, summed up the Government attitude to rates demands as follows:

> It is hoped that one important result of facilitating settlement of Native land will be the gradual solution of the vexed problem of local rating. Believing that it is neither equitable nor just to the Maori race that its birthright should be whittled away through non-payment of rates on areas which have in the past lain idle, the Government is reluctant to agree to the enforcement of rating charges by sale until such time as the particular Native has had a reasonable chance of obtaining from his land the necessary revenue to meet living-expenses, farm maintenance, and interest and rates – or, in other words, until he has had the opportunity of using his land to good advantage through the provision of financial assistance and expert farming guidance. In return, the State expects that the Maori should fulfil his obligations as a citizen, and pay his share of all taxation. Time is, of course, an essential element in bringing land into productivity, but it is confidently hoped that the progress being made in this direction will result in a considerable improvement in this matter.[395]

390. AJHR, 1942, g-9
391. AJHR, 1944, g-9, p 5
392. AJHR, 1945, g-9, pp 5–6
393. AJHR, 1938, g-9, p 11
394. See AJHR, 1940, g-9, p 9; 1941, g-9, p 6
395. AJHR, 1940, g-10, p 6

As the compromises outlined above suggest, this attitude was shared by the land court judges as they struggled to balance the demands of councils and Maori ratepayers.

24 Land Development under the National Government

In 1950, local authorities were given a further impetus intheir efforts to collect rates arrears by the National Government policy to utilise 'unproductive Maori land' embodied in the Maori Purposes Act 1950. Sections 31 to 54 dealt with any Maori freehold land not subject to any subsisting valid lease or a valid contract to renew or grant a lease. Section 34 provided that the Land Court could appoint the Maori Trustee as agent for owners to affect alienations, in situations where land:

- was unoccupied and/or;
- not cleared of noxious weeds and/or;
- the rates have not been paid and the amount of rates had been charged against the land.[396]

In the House, it was explained that this policy provided for the use of the land, but retaining the fee-simple to the beneficial owners, as 'alienation' in the Act was intended to be only by lease.[397]

Information from the Waikato–Maniapoto district[398] suggests that the section and its 1953 successor were not often used on the ground of rating alone. Charging orders were a requirement before this ground could be invoked. The Trustee had power to alienate the land by sale or lease. The 1953 provision stated that preference should go to any Maori tenderer where the land was to be leased or sold.[399] By 1961, the Maori Trustee was receiver for 341 blocks for unpaid rates.[400]

In 1965, the Government established a committee to investigate Maori land development.[401] The Pritchard–Waetford report noted several concerns raised by councils. It was said that on some blocks rates were paid by Europeans with an arrangement with the Maori owners while they used the land. This was 'unfair to the non-resident Maoris and improvident from the national viewpoint.'[402] The committee agreed, but pointed out that section 387 was directed against Maori land only, there being no equivalent against European land, so they would make no recommendation on this issue. Counties could also apply under section 387 or section 438 even if rates were paid 'and such application would bring the state of

396. Section 34(c). This was repeated as section 387 of the Maori Affairs Act 1953
397. NZPD, 1950, vol 293, p 4726
398. MLIO report
399. This was not restricted to local hapu members or others with links to the land.
400. G & S Butterworth, *The Maori Trustee*, 1991, p 83
401. *Report of the Committee of Inquiry into Laws Affecting Maori Land and Powers of the Maori Land Court*, 1965
402. Ibid, para 129

the land before the Court'.[403] Councils also wanted receivership leases of undeveloped lands extended (they were then for 21 years):

> The complaint of one County was that from memory no Receivership lease had been granted for more than 10 years, and the case was quoted of a 640 acre scrub covered block owing £604 in rates for which the Court had indicated that the Receivership lease would be for only 10 years.[404]

The committee did not want to interfere in legal contracts however, and thought the problems described applied to limited areas and were not a general concern.[405] This complaint is interesting because it demonstrated again that the attitude of Maori Land Court judges was important.[406]

The committee was of the opinion that in relation to 'developed lands', 'the machinery is in almost all cases working satisfactorily.'[407] The story was different however with 'undeveloped lands'. Figures showed that there were 3,680,565 acres of Maori land in the North Island, and 226,000 in the South. Of this:

Unoccupied but suitable for development	515,026
Unoccupied, suitable for forest	399,844
Unoccupied, probably of no use	271,226[408]

The report was a controversial document, which rejected Maori submissions about retaining links with remaining lands, and recommended sweeping powers be given to the courts, assisted by Maori Affairs officers, to bring fragmented blocks into productive development. The Maori Affairs Amendment Act of 1967 sought to put many of the recommendations of the report into effect. It was fiercely opposed by some Maori groups.[409]

At the same time, a Rating Bill was introduced. As in the past, issues surrounding the rating and recovery of rates on Maori land were part of a wider debate about land development. Speaking to the Bill, Reweti (the member for Eastern Maori) said, 'Selling up Maori land or even leasing it is not the answer. The solution lies in positive policies of regional development pursued with purpose.'[410] The member for Northern Maori, the Honorable Matiu Rata, agreed.[411] The Pritchard–Waetford report had just identified 271,000 acres of land as essentially uneconomic for production purposes to its owners, and he thought this would be a source of continuing problems. He therefore objected to a clause providing that, when

403. Ibid
404. Ibid, para 130
405. Ibid, paras 129–130
406. The cautious approach of the court is illustrated in opinions of the judges given in 1958–59 – ma 1 20/1/1, vol 7, NA DB
407. Ibid, para 131
408. Appendix D. Also see Appendix C, listing blocks with many owners
409. See comments in The Maori Land Courts. Report of the Royal Commission of Inquiry, AJHR, 1980, h-3, pp 13–14
410. NZPD, 1967, vol 353, p 3085
411. Ibid, p 3248

making a charging order, the Land Court should also consider the future use of the land. The Bill provided that if the court felt that alienation of the land would facilitate the payment of future rates and would not be contrary to the interests of the beneficial owners, it could vest the land in trustees to lease, sell or otherwise alienate. No ministerial check was provided.[412] It was intended that the authority levying the rate would express an opinion to the court on the 'best utilisation' of the land.[413] The Minister for Local Government hoped that 'it will enable a good deal more Maori land to be brought into production'.[414]

Rata complained too about the onus of 'production' being placed only on Maori lands, when there was no such requirement for European or Crown lands.[415]

An interesting sidelight was the call to exempt play centres from rates .[416] It was pointed out that many of the newer centres catered predominantly for Maori children. The reationale was that the centres should be supported so that Maori children would more quickly learn English.[417]

In general, the final Act followed earlier legislation, making Maori freehold land liable for rates apart from specific exemptions (s 148). The power to exempt lands by Order in Council was retained under section 149. As to recovery, where any rate had not been paid within six months after the due date, the local authority could apply to the Land Court for an order charging the rate against the land. Parties could object to the rate before the court. A charge had the effect of preventing any dealings by the owners with the land concerned (unless with the consent of the local authority). The charge remained effective even if the land became European land, due to section 153. Where land was owned in common and one owner had paid rates in excess of the amount owed by that person, the court could make an order under section 154, granting a charge over the land in favour of that owner for the amount paid in excess.

Section 155 contained the sweeping power for the land court to consider alienation of the land – the section which had been objected to by Rata. The section followed the general policy of the Maori Affairs Amendment Act 1967 to promote the effective and profitable use and efficient administration of Maori land by appointing Improvement Officers, whose task was to determine the best action for use of the land, including alienation. This part of the Act was the most objected to at the time. It was repealed by section 6 of the Maori Purposes Act 1970, the debate for which records that it had been a dead letter provision, as the Maori Land Court

412. The clause became s 155

413. Ibid, p 3079

414. Ibid, p 3335. It was said that the committee considering the Bill had received considerable assistance from officers of the Department of Maori Affairs, the member for Northern Maori and the Maori Council and the provision was regarded as non-controversial – ibid, p 3083. As a result of this consultation 'considerable alterations' had been made – ibid, p 3089

415. Ibid. This echoed the stance of the Pritchard–Waetford committee on some council submissions – see above. The Bill was not referred to the Maori Affairs committee and Rata was critical of this also – pp 3249 and 3332.

416. Ibid, p 3325

417. Ibid, p 3338

had preferred to use powers under section 438 of the principal Act to vest land owing rates and other costs in trustees for better management.

25 The Rating Powers Act 1988

In 1987, the Government introduced a new rating Bill designed to consolidate and rationalise rating powers of different types of local authorities under the one Act.[418] Consequently, the Act did not alter significantly the existing scheme for the levying and recovery of rates on Maori land.

For example, exemptions of five acres in each case for meeting houses, marae and Maori burial grounds, first present in section 4 of the Native Land Rating Act 1924, were continued, with the legislation carefully converting the five acre measure to its metric equivalent, 2.03 hectares.[419] Customary land also continued to be exempt from rates, although this provision has more symbolic than practical significance today.[420]

Changes of significance were however:

- Rates could be adjusted on Maori land for reasons of hardship (under section 178);
- The limitation of two years on charging orders for rates arrears was extended to six years (s 153(2));
- The Act incorporated, from the Maori Affairs Act 1953, provisions for a receiver to be appointed for land in rate arrears (s 188).

Finally, the power to have Maori land sold for rates was removed as a result of arguments that it was contrary to the principles of the Treaty. The comment was also made that the Waitangi Tribunal would find this to be so if a claim were laid.[421]

26 The Current Procedure for Rating

Under the Valuation of Land Act 1951 (s 8) the Valuer-General prepares a district valuation roll. The local authority provides to the Valuer-General a description of the boundaries of its rating district and a list of rateable properties within that rating district. The Valuer-General then compiles from the district valuation roll a fresh 'valuation roll of all rateable property' in the rating district and supplies this to the local authority (s 28).

Under the Rating Powers Act 1988, the local authority maintains a 'rates record' which shows the occupiers or owners of any property liable for rates, and the

418. NZPD, 1987, vol 489, p 4163
419. First schedule, Part II, cl 11 and 14. These provisions had been present in the 1967 Act first schedule, cl 14 and 16
420. See first schedule, Part II, cl 15, and 1967 first schedule, cl 17
421. NZPD, 1987, vol 489, p 4165; and see Dr K A Palmer, 'Rating Powers Act 1988 and Maori Land', in *Recent Law*, September 1988, p 287, DB p 73a.

amounts owing. The basis of this record, in particular information concerning the occupiers or owners of property, is the valuation roll (s 113(1), (4)).

Maori landowners are required to inform, in writing, the relevant local authority for rates and the Valuer-General whenever they sell an interest in land, or grant or end a lease or licence to occupy for over 12 months (s 106). For Maori freehold land in multiple ownership special provisions apply. If there is an 'occupier' of the land, the occupier's name is to be entered in the occupier column of the valuation roll (s 183(1)). The words 'The Maori owners' must be entered in the owners column of the valuation roll where there is no trustee and also in the occupier's column where there is no occupier or 'court nominee' (s 183(10)).

In some cases, the words 'The Maori owners' are entered on the valuation roll and may become the basis for levying rates. But there is no duty in law for the Maori Land Court to maintain a precise list of the names and addresses of owners for the purpose of levying rates on the owners generally.

As to who may be rated, the Rating Powers Act 1988 provides simply that the occupier of land is 'primarily liable' for rates while his or her name 'appears in the rates records as the occupier of the property'.

A local authority should face no special difficulty in identifying a liable person for Maori freehold land in communal ownership where:

- The land has an occupier and the name of that occupier is entered in the occupier's column of the valuation roll, making the occupier primarily liable for rates (s 183(1)). 'Occupier' is defined as the owner, or anyone with a tenancy of over 12 months (s 2).
- The land has two or fewer owners. In this case, the names of the owners are entered in the owner's column of the valuation roll. If no other person can be found liable in law, it is a simple matter to deliver a rates assessment on these owners.
- The land is vested in a trustee and the name of the trustee is entered in the owner's column of the valuation roll (s 183(9)). The trustee is to pay the rates, but only out of rent or other monies derived from the land (s 184). If the trust has no income, the rates cannot be paid by the trustee. This echoes many earlier provisions relating to land under development schemes.
- If there is no occupier and no trustee of the land, then any person in 'actual occupation' of the land can be liable for the rates while they continue using the land (s 185(1)). The term 'actual occupation' is defined extremely broadly, and covers any person who uses the land in almost any way on a regular basis (including residing, stocking, cultivating, storing, or 'any other' use: section 185(3)).

Problems arise in identifying a liable person where none of the above apply; that is, there is no occupier, no trustee, no person in 'actual occupation', but numerous owners. In such cases, the Maori Land Court, on the application of the local authority, can appoint a 'court nominee' (s 183(3)). The name of the court nominee is entered in the occupier's column of the valuation role (s 183(4)). As under

previous legislation, the nominee is liable only for the rates proportionate to their shareholding.

The Act generally provides that where Maori freehold land has no occupier and no court nominee is appointed, the words 'The Maori owners' are entered on the occupier's column of the valuation roll (s 183(10)). If no person is in 'actual occupation' then presumably the part owners are liable as tenants in common only for that part of the rates commensurate with their shareholding. This would place councils in the same situation as with a court nominee. They can deliver the rates assessment on one person, but cannot hold that person liable (or liable only for a certain part of the rates), and must hope that that person can persuade others to assist in paying the rates.

As a last resort, local authorities are able to apply to the Maori Land Court for rates to be charged against the land concerned (s 186). The local authority is also limited in the relief it can obtain in this way. The land can be compulsorily leased to recover the rates, but, as noted above, cannot now be sold (s 188).

27 Current Issues

As claims before the Tribunal show, rating issues are still a concern to Maori groups, both with respect to historic takings and current issues. Rating matters continue to come before the Maori Land Court and other courts. A recent decision from Tauranga District Court rejected a contention that Maori freehold land could not be rated because it was in effect customary land as defined in Te Ture Whenua Maori Act 1993.[422] At the heart of many contemporary submissions is the old concern that the different cultural approach of Maori to their lands ought to be taken into account, as well as the Treaty promise of undisturbed possession.

Councils with large areas of communally owned Maori land in their districts[423] accept that some of this land, particularly coastal blocks, may never be developed and that periodic writing off is required.[424] For such lands, rates payments and charging orders are generally not actively sought. It is also now appreciated that different groups in the community have different views of 'development', and that councils should look carefully at their ability to remit rates under the very broad discretion in section 189 of the 1988 Act. This power is broader than the 1967 Act.[425] In addition, these lands may have a conservation potential that would be upset if rates demands prompted development. However, it is still the case that political considerations, in particular arguments about 'equal treatment', can make it difficult to proceed publicly to exempt such lands from rates.

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422. *Tauranga District Council v Toa Haere Faulkner & Another*, Plt No 1110/93, 15 August 1994, Thomas J
423. The author carried out a brief telephone survey of some North Island councils in September 1994
424. After six years these rates must be written off in any event under section 186(2)(b).
425. See Dr K A Palmer, 'Rating Powers Act 1988 and Maori Land', in *Recent Law,* September 1988, p 292, DB, p 73e. Words requiring the local authority to be satisfied that remission will lead to better use of the land have been removed.

Other Maori freehold land which is not inaccessible or undevelopable raises fewer and different concerns. There is concern about the inability to enforce payment of rates, particularly in situations where it is said that Maori landowners of fully developed lands receive services from councils, but refuse to pay rates in the knowledge that collection is difficult. In such situations, the inability to threaten owners with the sale of the land as a final resort (something which remains for European landholders), is perceived by some to be a problem. Charging orders are difficult to obtain. The 1988 Act requires that considerable information about the land and owners be obtained before applications for orders are made.[426] The Maori Land Court must be satisfied that, in all the circumstances, normal judgment procedures will not result in payment of the outstanding rates.[427] In addition, the Maori Land Court in Tauranga has held that the 1988 Act does not give the court jurisdiction to make a charging order.[428] Consequently, although councils may still levy rates, currently they may be unable to enforce them. The Government is considering an amendment to restore the pre-1988 situation. It is also noted that there is a potential for Maori owning general land to 'escape' rates payments by applying under section 133 of Te Ture Whenua Maori Act to have the land declared Maori freehold land.[429]

Taupo District Council has adopted a policy which includes exemptions for lakeside lands to encourage their preservation, and the writing off of arrears in particular cases to encourage development on lands capable of production.[430] In an echo of comments earlier in the century noted in this report, one council is considering the argument that, because of the Treaty guarantee that Maori would be left in undisturbed possession of their lands, uncollectible rates on group owned land should be a cost to central government. Reserve lands managed by the Conservation Department are said to be in a similar situation, being set aside as a matter of national interest.

Several councils have problems with papakainga housing. Occupiers of such housing have no more than a licence to occupy their dwelling, and the land on which the dwellings sit remains in multiple ownership. While receiving many services from councils, the councils may not receive full rates from the dwellings, because they are given a special low valuation, which takes into account the limited legal rights of the licence holder.[431] Maori groups in some cases may wish to have the trust which owns and administers the land listed as the ratepayer, but councils

426. Section 186(3)(c). A requirement that the council also provide evidence of the best purpose the land can be put to having regard to the Town and County Planning Act 1977 was deleted by the Eighth Schedule of the Resource Management Act 1991, without explanation.
427. Section 186(5)(b)(ii); and see rules 158–160 of the Maori Land Court Rules 1994, providing for, inter alia, a meeting of owners to consider any charging application.
428. Section 153(6), Rating Act 1967 was omitted from the 1988 Act. The case was *In re Tauranga District Council and Ohuki No 1c Section 2 Block 52*, Tauranga MB 97, 9 August, Judge Carter.
429. This would be an ironic reversal of the situation under section 2(2) of the Rating Act 1904, where the Governor could take land out of customary ownership to make it liable for rates.
430. The full council policy is in the document bank for this report.
431. There are other considerations. See *Valuation of Maori Land for Papakainga Housing*, Valuation New Zealand, 23–24 February 1991, DB p 359.

prefer to levy named individuals. This problem is not seen as insurmountable, however, since at least in this situation the parties and land involved are clearly defined.

Jonathan Salter, a Wellington lawyer who has acted as legal adviser to many local authorities on rating issues, concludes that:

> the general perception amongst local authorities about the rating of Maori land is that it is an issue which lives in the 'too hard' basket. Many local authorities now acknowledge the sensitivity of rating Maori land in the context of the Treaty of Waitangi but find the statutory provisions in Part xiii of the Rating Powers Act extremely difficult to implement in practice. . . . the local authorities which appear to have achieved the greatest degree of success are those which have established sound liaison and goodwill with the Maori in their districts.[432]

432. Personal comment, September 1994

APPENDIX

PRACTICE NOTE

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND Rangahaua Whanui and the claims as a whole

PRACTICE NOTE

This practice note follows extensive Tribunal inquiries into a number of claims in addition to those formally reported on.

It is now clear that the complaints concerning specified lands in many small claims, relate to Crown policy that affected numerous other lands as well, and that the Crown actions complained of in certain tribal claims, likewise affected all or several tribes, (although not necessarily to the same degree).

It further appears the claims as a whole require an historical review of relevant Crown policy and action in which both single issue and major claims can be properly contextualised.

The several, successive and seriatim hearing of claims has not facilitated the efficient despatch of long outstanding grievances and is duplicating the research of common issues. Findings in one case may also affect others still to be heard who may hold competing views and for that and other reasons, the current process may unfairly advantage those cases first dealt with in the long claimant queue.

To alleviate these problems and to further assist the prioritising, grouping, marshalling and hearing of claims, a national review of claims is now proposed.

Pursuant to Second Schedule clause 5A of the Treaty of Waitangi Act 1975 therefore, the Tribunal is commissioning research to advance the inquiry into the claims as a whole, and to provide a national overview of the claims grouped by districts within a broad historical context. For convenience, research commissions in this area are grouped under the name of Rangahaua Whanui.

In the interim, claims in hearing, claims ready to proceed, or urgent claims, will continue to be heard as before.

Rangahaua Whanui research commissions will issue in standard form to provide an even methodology and approach. A Tribunal mentor unit will review the comprehensiveness of the commission terms, the design of the overall programme, monitor progress and prioritise additional tasks. It will comprise Tribunal members with historical, Maori

cultural and legal skills. To avoid research duplication, to maintain liaison with interested groups and to ensure open process:

(a) claimants and Crown will be advised of the research work proposed;
(b) commissioned researchers will liaise with claimant groups, Crown agencies and others involved in treaty research; and
(c) Crown Law Office, Treaty of Waitangi Policy Unit, Crown Forestry Rental Trust and a representative of a national Maori body with iwi and hapu affiliations will be invited to join the mentor unit meetings.

It is hoped that claimants and other agencies will be able to undertake a part of the proposed work.

Basic data will be sought on comparative iwi resource losses, the impact of loss and alleged causes within an historical context and to identify in advance where possible, the wide ranging additional issues and further interest groups that invariably emerge at particular claim hearings.

As required by the Act, the resultant reports, which will represent no more than the opinions of its authors, will be accessible to parties; and the authors will be available for cross-examination if required. The reports are expected to be broad surveys however. More in-depth claimant studies will be needed before specific cases can proceed to hearing; but it is expected the reports will isolate issues and enable claimant, Crown and other parties to advise on the areas they seek to oppose, support or augment.

Claimants are requested to inform the Director of work proposed or in progress in their districts.

The Director is to append a copy hereof to the appropriate research commissions and to give such further notice of it as he considers necessary.

Dated at Wellington this 23rd day of September 1993

Chairperson
WAITANGI TRIBUNAL