Te Hunga Roia Maori o Aotearoa
(Maori Law Society Inc.)

SUBMISSION: THE LOCAL GOVERNMENT RATES INQUIRY

19 APRIL 2007

Te Hunga Roia Maori o Aotearoa, Submission regarding The Local Government Rates Inquiry

1 Te Hunga Roia Maori o Aotearoa

1.1 This submission is made for and on behalf of Te Hunga Roia Maori o Aotearoa (THRMOA).

1.2 The THRMOA has a membership totalling more than 350 members of Maori lawyers. In addition to these members THRMOA also incorporates students who are studying towards a Bachelor of Laws (LLB).

1.3 THRMOA ensures the effective networking of members, holds a mandate to make submissions on a range of policies and proposed legislation, ensures representation of its membership on selected committees and organises regular national hui which provides an annual opportunity for Maori lawyers to discuss and debate issues relevant to Maori.

2 The Local Government Rates Inquiry

2.1 These submissions are prepared to provide a specific submission regarding the rating of Maori Land (As covered in Part 3 - "Major Issues" 7. *"The impact of rates on land covered by Te Ture Whenua Maori Act 1993"*)

3 Introduction

3.1 For as long as Maori have had local and regional authorities governing their lands, so too have they battled with the monetary demands placed upon them for county, then town, then city development needs.

3.2 Rating has been a huge issue for Maori nationally since the late 1800's. Since that time there has been no satisfactory or fair answer provided to Maori in terms of how Maori land should be rated. This situation continues today.

3.3 The Maori land rating issue has been a controversial issue in Tauranga since the creation of the County Council in 1876.[1] The arguments advanced in those days, and the pressures to rate Maori land, have not changed substantially since then. La Rooij discussed the ongoing problems local authorities have faced:

> Along with being compelled by statute to rate Maori land, local government in Tauranga has also faced significant pressure from its Pakeha ratepayers who believed Maori were not paying their share of the rate burden. On the other hand, Maori increasingly viewed local body rates with a deep sense of apprehension. Maori have found rating to be a difficult concept in cultural terms. Maori do not see land as a mere commodity that can be bought, sold and rated. Land is generally seen as an inheritance from past generations and a gift to the next, an expression of identity, rather than a commercial unit. Because of the emotional context of land ownership and rating, relations between local government and Maori have long suffered.[2]

3.4 Despite the fact that rating has been subjected to an inordinate number of legislative changes and much reform, the issues for Maori remain and can be summarised as follows:

a. Rating policy and legislation do not accommodate the unique properties of Maori land, in that it is:

i. Not an economic commodity but rather a taonga tuku iho;

ii. Often owned by a large number of owners who may own a mere fraction of the land (giving rise to the issue of disincentive to pay proportionate rates, difficulties in co-ordinating payment of rates, difficulties in locating owners, difficulties in ensuring successions have occurred for proper ownership lists to be established and other problems);

iii. Land that often includes tapu sites;

iv. Difficult to alienate, even if the owners were willing; and

v. Not necessarily developable.

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[1] Marinus La Rooij "That Most Difficult and Thorny Question" 4 April 2002, (Waitangi Tribunal Tauranga Moana Inquiry Stage 2 Document P14), 6.
[2] La Rooij, 7.

b. Many Maori have already contributed much of their tribal estate both compulsorily and by gift for the development of their regions.

c. Maori land cannot be valued in the same way as general land (for the reasons as outlined in (a)).

d. Maori landowners on the whole are not receiving adequate services for their rate demand.

e. The impacts of rating have been extraordinary in terms of further alienations and development constraints.

3.5 These issues have also been exacerbated by other provisions including zoning issues, which have had major impacts on rating valuations and have resulted in further rating alienations.

4 Crown Responsibility and Treaty Requirements

4.1 The Crown's duty to Maori in respect of the rating issue arises via its duty of 'active protection'. This duty has been judicially well acknowledged through both the Tribunal and the civil courts. The Court of Appeal in the *Lands* case aptly described that duty as follows:

> the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable. There are passages in the Waitangi Tribunal's Te Atiawa, Manukau and Te Reo Maori reports that support that proposition and are undoubtedly well founded.[3]

4.2 It also applies through the duty of partnership, which provides for a requirement to act in good faith, fairly, reasonably and honourably. Cooke P discussed this finding of the *Lands* case thus:

> It was held unanimously by a Court of five judges, each delivering a separate judgment, that the Treaty created an enduring relationship of a fiduciary nature akin to a partnership, each party accepting a positive duty to act in good faith, fairly, reasonably and honourably towards the other. The words of the reasons for the judgment of the five

[3] *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641.

judges differed only slightly; the foregoing is a summary of their collective tenor.[4]

4.3 The Crown has been made aware of these issues for Maori from the inception of rating. Since this time, governments and local governments have battled with the appropriate method of rating of Maori lands. Many arguments have been raised, both for rating and against. Many of these arguments are still relevant today. The arguments do tend to highlight the unique nature of Maori Land and the need to develop policies which are fair and just and which take into account the unique nature of the land.

4.4 Throughout the late 1800's through to the early 1900's the rating of Maori land proved to be a highly contentious issue. In 1882, via the Crown and Native Lands Rating Act, Maori lands within 5 miles of a highway became liable for local body rates, to a significant degree for the first time. Hot debate on the issue continued from that time.

4.5 La Rooij reports the general positions of the relevant players as follows:

a. Those for the rating of Native lands raised arguments similar to the following:

i. That Maori should pay something to the State for the benefit they receive from State expenditure;

ii. That Europeans would bear a high rate on their lands yet Maori holding land in the same localities escape without payment; and

iii. That European owners of lands often had to pay rates out of proportion to their share because the natives did not pay.

b. Maori and other sympathetic ministers raised the following objections:

i. The natives are an impoverished people and are not able to pay the rates on the land or the property tax;

[4] Cooke P, speaking of the *Lands* case 1987, in *Te Runanga o Wharekauri Rekohu v Attorney-General* 1993.

ii. A number of Maori land blocks do not have access to a road and were "landlocked" and accordingly did not receive any benefit from their rate payment;

iii. There was no Maori representative on a Road Board or County Council so that Maori had no voice as to the expenditure of rates;

iv. Maori hold their lands in a different manner to European title, they cannot sell, they cannot lease (except under difficult restrictions), they cannot effectively occupy their own lands because they are in common, or because they have little or no money to carry out the necessary improvements to make their lands productive;

v. Rating charging orders created further obstacles to Maori land development as owners were reluctant to make applications to the Court to lease, occupy, partition or succeed to blocks in fear that they would have to clear the rate charging order out of their own pockets;

vi. That rates had already been paid in advance by Maori through the low prices the Crown had paid for the land; and

vii. Finally, because of the irony of local bodies charging Maori landowners for the control of noxious pests and weeds, asking "who was it who brought the blackberries and rabbits to New Zealand".[5]

4.6 Other objections were raised and were recorded by Sir Apirana Ngata:

the Government:

a. Had not provided a penny of State money towards assisting Maori farmers – who had only their own money administered by the native trustee in the Maori Land Board to assist them;

[5] Rolleston J and Patuawa J "A submission report on the rating of Maori Land (Appended to Rolleston J, Brief of Evidence, Waitangi Tribunal Tauranga Moana Inquiry Stage 2, Document Q1)

b. Had failed with the native land court on boards as at present administered to modernise native land titles in alignment with the needs of today;

c. Its education system as applied to Maori was out of date;

d. The local bodies were asking for their pound of flesh on the theoretical basis of racial equality, whereas in practice the Maori was not regarded or treated as an equal and in the road services for which the unpaid rates were demanded large areas of native lands were shamefully treated. Charging orders had been obtained against poor lands quite unfit for settlement, because the pakeha had picked the eyes out of the country, leaving much of the rubbish, which should be in the hands of the Crown and therefore not rateable, in Maori hands; and

e. Many Maori could not see why land that they had held for centuries, that had been passed to them by their ancestors, should suddenly become subject to taxes, often when they saw no benefit from them.[6]

4.7 Other examples include dissatisfaction generally expressed by Maori through the Native Land Court, resulting in some Judges having to be quite creative in their application of the law:

> I am afraid that I do not always comply with the law under the Rating Act but rather do what is best to make the land occupied and developed and prevent charging orders clogging the title.[7]

4.8 More contemporary examples can be seen with *Faulkner v Tauranga District Council* [1996] 1 NZLR 357, whereby a challenge was made as to the rating valuation on Maori land in Tauranga, and furthermore with various submissions and issues raised with the local authorities as to the fairness of rating.

4.9 The issues have not changed over time. The issues for Maori remain the same, the situation of rating of Maori land remains unsatisfactory.

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[6] Ngata to Peter Buck, 9 February 1928, reproduced in M P K Sorrenson, *Na to hoa aroha – from your dear friend; the correspondence between Sir Apirana Ngata and Sir Peter Buck*, Auckland, 1987 v1, p.66. (As included in Rolleston and Patuawa, Q1)

[7] La Rooij, 43.

Historical Rating Legislation and Issues

5 Historical Summary

5.1 In order to understand the contemporary rating issues for Maori landowners it is important to understand that there has been a significant past and that rating has had a tremendous impact on the alienation of the remaining tribal estate of Maori. Of major note that the Inquiry panel should have regard to is the fact that *the issues raised in the past remain the same issues which surface today*. The point to be made from this analysis is that there has been *no answer* provided by the government to date to the question of *appropriate rating of Maori Freehold Land.*

5.2 The Rating Act 1876, was the first Act to really impact upon a number of Maori landowners. This Act, in its strict interpretation, excluded Maori land, however in practise rates were levied against those who had received lands via Crown grant.[8]

5.3 The 1882 Rating Act and Crown and Native Lands Rating Act further applied rating to Maori lands within 5 miles of a highway (as set out at para 8). Bennion discussed the impact of this:

> 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. 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.[9]

5.4 Rating valuations began to be problematic. Bennion noted the continuing problems with the valuations of Maori land:

> 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

[8] Bennion, T, Maori and Rating Law, Waitangi Tribunal Rangahaua Whanui Report (I) pg 13
[9] Bennion, 20.

> legally liable under the 1852 act, continued to be exempted. Nevertheless, Maori lands were charged with some £10,000 of rates by 1890.[10]

5.5 Tempers continued to boil as the settler pressure mounted on Government to rate Maori land, culminating in the Rating Act 1908 and the Rating Amendment Act 1910. Although there was a great deal of criticism levied at Maori, acknowledgements were made in respect of the difficulties faced by Maori landowners. La Rooij noted some of this acknowledgment given by the *Bay of Plenty Times* in 1909:

> The Native land policy has been continuous in its efforts for twenty years and has distinctly prevented progress in the districts affected: none more so than Tauranga county. The conditions under which the Maoris hold their lands are utterly unsatisfactory because they cannot sell, they cannot lease (except under difficult restrictions), and cannot effectively occupy their own lands because they are in common or because they have little or no money to carry out the necessary improvements to make their lands productive.[11]

5.6 The Native Land Rating Act was introduced in 1924. This Act made all Maori land rateable on the same basis as general land, as consolidated by the Rating Act 1925. These enactments saw tremendous changes to Maori and the way in which they utilised their lands.

5.7 Under the new legislation the Native Land Court was given jurisdiction over enforcing the collection of rates on Maori land. New rates charging orders were introduced and powers were given to the Courts to vest land in the hands of the Native Trustee for sale.[12]

5.8 The issue of land utilisation and lack of development was mooted widely as confronting Maori land and hampering the ability of owners to pay their rates. Ngata believed that the rating problem was symptomatic of the wider problem of Maori land management. For Ngata, the root cause of both the arrested development of Maori land and the inability of Maori to pay rates was that Maori lacked capital, coupled with the system of multiple ownership.[13]

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[10] Bennion, 20.
[11] La Rooij, 28.
[12] La Rooij, 36.
[13] La Rooij, 39.

5.9 Whilst La Rooij acknowledged that the government had no intention of allowing the 1924-5 reforms to be used to allow the wholesale alienation of Maori land for recovery of rate arrears,[14] there was a huge impact on the ability and willingness of Maori to utilise land subject to rates arrears:

> The glut of charging orders attached to land titles also, ironically, had the effect of creating a new obstacle to Maori land development. Many owners were reluctant to make applications to the court to lease, occupy, partition or succeed to blocks in fear that they would have to clear the rate charging order out of their own pockets.[15]
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> The problem of rate charging orders 'clogging up' land titles was so great that Maori Land Court judges became quite creative in handling the problem. Judge Prichard, who dealt with a multitude of applications for rate charging orders from Tauranga County Council, viewed the topic as an extremely serious one as "rate charging orders are not a trivial matter but a serious title clog".[16]

5.10 Charging of rates on multiply owned land also soon turned into a costly administrative nightmare. Locating owners was near impossible due to the number of owners in a block. Non-succession was also a major problem. These issues continue to be problems today.

5.11 Rating charging orders sat on huge numbers of titles, and the Maori owners were simply unable to pay. This raised great concern in the 1930's from non-Maori who were in the middle of an economic slump.

5.12 In 1950 the Maori Purposes Act was passed. This combined charging orders with receivership leases and empowered the Maori Land Court to vest Maori land in the Maori Trustee for lease or sale if most or all of the following factors were applicable:

a. The land is unoccupied;

b. The land is covered in noxious weeds;

c. Rates are owed on the land and a charge has been made;

d. The land is neglected and not used in the best interests of the owners or the public interest; and

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[14] La Rooij, 39.

e. The owner of the land cannot be found.

5.13 The 1950 Act, and its 1953 and 1967 successors, were the Acts which caused huge problems for Maori nationally. These Acts saw the swift alienation of a great deal of the remaining Maori tribal estate.

5.14 La Rooij described the effect of the Acts on owners in the Tauranga area, and on the Maori Trustee:

> By the end of the 1950s, Tauranga County Council had made hundreds of applications for rate charging orders on Maori land and dozens of applications for receivership leases. The *Bay of Plenty Times* reported in 1960 that a combined area of almost 7000 acres of Maori land had either been leased out by a court-appointed receiver or to a nominated occupier. Despite his misgivings, the Maori Trustee was now involved in the administration of dozens of receivership leases in the Tauranga district. Despite the increase in workload, the Maori Trustee struggled with the limited resources available to it. While the use of receivership leases significantly reduced the county's rating problem, the Maori Trustee ended up carrying most of the administrative burden as well as increased hostility from Maori landowners and lessees.[17]

6 Rating Alienations

6.1 Rating alienations primarily arose out of the legislation of the 1950's and 1960's.

6.2 Receivership leases became widely used and were touted as a way of overcoming many of the problems associated with non-payment of rates.

6.3 In his 1963 annual report, the County Chairman identified what he saw as the main barrier to Maori land utilisation:

> There appears to be ample evidence that the great majority of the Maori people are prepared to accept rating responsibility to the same extent as the European fellow citizens, but experience the frustration associated with the fragmentation of title and the lack of positive assurance of ownership. These two conditions are largely responsible for large tracts of land lying idle, undeveloped and unproductive, a breeding ground for vermin and noxious

[15] La Rooij, 43.
[16] La Rooij, 43.
[17] La Rooij, 81.

> weeds; non-revenue producing, at once a burden and a deteriorating asset for the owners themselves. This means a great deal of Maori land is valued and rated beyond its potential.[18]

6.4 It is submitted that in that regard he was and is still correct. The rating constraints and other issues as set out in his statement continue to act as a development constraint, and Maori feel extremely frustrated in their inability to utilise Maori land that sits idle.

6.5 Receivership leases encountered fierce opposition from Maori landowners, they were viewed as simply another confiscation. It is submitted that this concern reflected the reality.

a. The leases had the effect of alienating ancestral lands from descendants as an effective "bond" could not be established with the land, and the Maori principle of ahi kaa roa could not be maintained. In that respect in some instances land was on-sold to lessees following the conclusion of the lease.

b. Difficulties arose in finding suitable tenants. On a number of blocks placed into receivership, County and Maori Trustee staff found that the blocks could not be leased out because a willing tenant could not found, often because the land involved was remote, un-cleared, expensive to farm or unproductive. Ironically the high rating charges was often off-putting to prospective farmers.

c. The Maori Trustee was often remiss in ensuring that tenants were paying appropriate and regular rent. There were occasions where the leases were allowed to carry on for many years despite rental arrears mounting, and the land block going into a state of disarray.

6.6 As a result of the process, a number of Maori land blocks were subsequently alienated from their owners.

6.7 This report also provides a background to the introduction of the Rating Act 1967, which did not reform rating law greatly, except to give an increased role to local bodies in terms of determining the future use of Maori land and

[18] La Rooij, 86.

future payment of rates. Concerns were raised by many Maori and voiced by Matiu Rata:

> What concerns the Opposition is that, even when Maori landowners have met their rating obligations, the court still has power to issue a vesting order for alienation either by sale or lease if the owners or the persons concerned cannot satisfy the court regarding the future payment of rates or the future use of the of the land. This provision is undesirable, unnecessary and totally unfair.[19]

6.8 Increasing land valuations also placed pressure on Maori landowners, including those who were landholders of general land to alienate land. The issue continues, it is submitted, to reach boiling point in terms of the pressures on Maori to alienate.

Contemporary Rating Issues

7 The rating issues of contemporary times are largely the same as those time honoured arguments already advanced in these submissions.

8 **Unique Properties of Maori Land**

8.1 Maori land has unique properties which set it apart, even today, from General land.

Multiply owned

8.2 Typically Maori land is multiply owned. For example, the average number of Maori landowners on Maori land in the Tauranga City Council area is 60 owners.[20]

8.3 Often the result is that the owners cannot utilise the land in an effective manner to produce revenue to develop the land further or even to clear outstanding rates on the land. As the rates mount up, the motivation to develop is likely to lessen even further.

8.4 Many people have such small landholdings in blocks that they may not even realise they hold interests in a particular block, thus successions often do not occur and consent to carry out an activity on that block can be difficult to achieve.

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[19] La Rooij, 108.
[20] Brief of Evidence of James Rolleston, 19 May 2006 (Q1).

8.5 Where successions are not carried out the ability to clear rating arrears also becomes even more difficult.

Development and Utilisation issues

8.6 The utilisation of Maori land is a major problem and has an effect on the land use value that an owner may place on their interest in the land.

8.7 Many owners are reluctant to utilise multiply owned Maori land because of a wide number of matters:

a. It is difficult to obtain consent from all owners to carry out an activity.

b. Land holdings or ownership shares are so small that it is economically inefficient for any one person to carry out an activity.

c. There is a concern that the fruits of a use may be realised by all owners despite a lack of participation in the activity.

d. The fees and charges applied by Council.

e. The rating burden that the development of the land will produce upon the owners.

Legislation constraints on alienation

8.8 Te Ture Whenua Maori Act 1993 provides express restrictions on the alienation of Maori land. Because of these difficulties arguments are raised that the valuation of Maori land for rating purposes cannot be examined as if there is a "willing buyer/willing seller" in the context of an open market. This presumption is examined by Rikys, who stated:

> This presumption, which is at the root, in relation to many pieces of Maori land, becomes an artificial and unsustainable constrict.
>
> The basis that all land is likely to be used for its best economic use and will be available for general sale is in relation to Maori land, less of a statutory fiction and more akin to a fairy tale.
>
> Apart from the difficulties already touched on which are implicit in the reality of attempting to sell Maori freehold

> land in multiple ownership, the reality can look something like this. We take a given piece of Maori freehold land, held in multiple ownership, without rights to alienate, with unique cultural and spiritual values specific to a known defined (whakapapa) group of people whose values do not prioritise its best economic use, which also has a title with a range of significant use and developments, restrictions and encumbrances and whose "owners" believe that they are guardians of that land for future generations and do not have the right (or the desire) to sell.
>
> Then the willing seller fiction which is the basis of our present valuation approach becomes a probable nonsense.[21]

8.9 Even if a willing seller situation did exist, because of the preferred class of alienees Maori landowners have a limited market to market the land for sale. Accordingly demand will not reflect the open market. This affects valuation of land.

Maori Land as a Taonga

8.10 The value system of Maori in respect of land was defined well by Justice Durie:

> According to tikanga Maori, relationships between land and people are regarded in an entirely different way from any concept of land as being a disposable commodity. In this world view Maori were the land. It was part of them by direct consent of the earth mother. Land or whenua is represented in the whenua or placenta of woman. Maori are born out of the whenua. The right to land in an area is accordingly based on that understanding.[22]

8.11 Rikys set out the cultural aspects of land and their influence on rating valuation. These "cultural aspects" are summarised as follows:

a. Maori see themselves as custodians of the land, and the land as part of them – rather than viewing land primarily as a commodity;

b. Maori ownership contains a perpetual element (often expressed in the idea that it is not for sale);

c. Land is available to multiple people, and across generations;

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[21] James Rolleston and Jolene Patuawa, as appended in Rolleston (Q1).
[22] The Valuation Tribunal quoting Durie J in *Houpoto Te Pua Forest* v *Valuer General and Houpoto Trustees* LVP, 27/96, 31 May 1999. As set out in Rolleston and Patuawa.

d. Land provides spiritual sustenance, has sacred values and ancestral values;

e. Land is not always seen as developable – non-utilisation of some land is acceptable and desirable;

f. Maori owners value differing aspects of use of the land, eg coastal blocks valued for providing access to kaimoana versus the Pakeha valuation based on coastal views; and

g. There are specific Treaty guarantees in relation to the land.[23]

9 Contributions made by Maori

9.1 A major issue advanced by Maori, are the contributions they have already made to the development of their County, Borough, Town, District, City and/or Region.

9.2 These contributions have been by way of compulsory acquisition through raupatu, rating arrears and public works takings. The contribution also takes into account that much of this land which has been compulsorily acquired has been utilised for settlement and has ultimately driven up the value of Maori land which because of the alienation restrictions, does not benefit.

9.3 Contributions have also come through voluntary provision, by way of gifts and by the openness to hapu reserves, sports-grounds, urupa, kohanga, Marae and other various hapu assets which are in many instances available as a community resource.

10 Lack of Services

10.1 Another issue advanced by Maori is that often their land is in an area which is not serviced by the Council to the full extent, despite the landowners being charged the full complement of rates. This is largely due to the fact that a lot of Maori land is rural and isolated.

[23] Rolleston and Patuawa.

10.2 In this regard, the historical refusal to supply services in areas where Maori land rates were in arrears has also played a major role in the fact that these areas are not serviced today.

11 Rating types

11.1 A major issue for Maori is the way in which their lands are rated. The manner in which the local authorities choose to rate Maori land can have huge implications for the amount of rates Maori will pay on their lands.

11.2 The decision (for example) by the Tauranga City Council to switch from a land value rating policy to a capital value rating policy, while resulting in a benefit for Maori landowners of undeveloped land, was hugely damaging for those living on papakainga, or other housed blocks. For example, for the residents of the Matapihi papakainga area, the change to a capital value rating policy resulted in an 670% increase in their rates.[24]

11.3 The overall effect on Maori landowners was compounded by the reality that those owning undeveloped lands (and therefore theoretically benefiting from the change) were highly likely to be in a state of rates arrears anyway, and would continue to be so despite the changes, due to the immense difficulties in collecting rates on these blocks, as discussed elsewhere in this submission.

11.4 The basis of capital rating is that the value incorporates any development on the land. It therefore goes without saying that an undeveloped block will attract a reduction. For the large part, undeveloped land sits undeveloped due to fragmented ownership and development cost restraints. These blocks are the blocks that have incurred massive rates arrears. It is further submitted that the reduction in rates felt by these blocks will not in turn mean that they will begin paying, as the major reason for non-payment is not necessarily the amount of rate levied, rather the fragmented ownership is the major reason.

11.5 The application of a Uniform Annual General Charge ("UAGC") and the impacts of that application on Maori land is tremendous. A UAGC is a rate which is worked out on a standard amount and applies to every dwelling across the council area, as a set amount, regardless of affluence, services

received, or any other factors which are often picked up in valuation-based rates.

11.6 Local authorities are beginning to utilise the opportunity to charge a UAGC throughout the country.

11.7 The manner in which this rate has affected papakainga housing is a major concern to Maori, has caused considerable hardship to the trusts administering current papakainga housing and will serve as a major development constraint on future papakainga housing developments.

11.8 Given the state of development on Maori land at the current time, this should be of major concern. Having regard to the poverty and negative socio-economic indicators attributable to Maori, efforts to provide this type of housing should be encouraged, not penalised. More importantly these type of housing projects should not be rated in the same way as high rise apartment or retirement complexes.

12 Suggestions of Rating Types for Maori Land

12.1 It is submitted that the panel should consider a rating regime which allows for a discount to Maori land (by way of a negative differential or alternatively a general land targeted rate).

12.2 It is also recommended that the UAGC rate should not be applicable to papakäinga housing.

12.3 It is submitted that the impact of these types of recommendations would be extremely low to the general land ratepayer. In Tauranga it was established that this rating system would attract a rate burden of approximately $2.00 extra to the general ratepayer in order for this regime to be implemented.

12.4 This rating system was suggested to the Tauranga City Council in 2004 during their rates review, they in turn rejected this submission outright, which was acknowledged in cross examination by Stephen Town, Chief Executive Officer for Tauranga City Council, at the Tauranga Waitangi Tribunal Hearings in 2006, to be regrettable.

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[24] Statement of Evidence of Carlo Ellis, Appendix A, Waitangi Tribunal Tauranga Moana Inquiry Stage 2 Document .

13 Rating Valuation Policy

13.1 The issues confronting Maori landowners in terms of valuation are as follows:

a. Willing buyer/willing seller presumption

As set out more fully elsewhere in these submissions, the willing buyer/willing seller presumption cannot apply to Maori land due to its unique qualities.

b. The unique qualities of Maori land, are that land is largely:

i. multiply owned,

ii. undeveloped,

iii. a taonga tuku iho,

iv. not available on the open market, and

v. subject to legislative constraint.

These qualities mean that it is unfair that Maori land be subject to the same valuations as general land, as the pressures affecting the value of the land are not the same.

c. Zoning

The implications of rezoning on Maori land valuations is a major concern and has been a concern in the past. The perceived failure by Councils to recognise the use requirements of Maori landowners, and the impact on valuations that zoning has, despite these zonings often not reflecting the reality of landowners uses, has continues to affect owners of Maori land.

13.2 The *Mangatu* Decision

a. The failure of the Crown to properly implement the findings of the Court of Appeal in the *Mangatu* decision in terms of the Valuer-General's guidelines is a major concern.

b. Maori Land has been valued until recently (2001) as general land for rating purposes, as per the Rating Valuations Act 1998.

c. The *Mangatu* case has provided key case law to indicate that the determination of land value on Maori land must recognise the constraints on alienability under Te Ture Whenua Act 1993.

d. The Court of Appeal found that the assessment of land value must be determined on a case by case basis, taking into account the following:

    a. Nature and size of the property;

    b. Historical connection of the owners with the land;

    c. Membership of the preferred class of alienees;

    d. Resources available to fund the purchase; and

    e. Prospect of obtaining confirmation of an outside sale from the Court.

e. After much deliberation, and more than 3 years after the Court of Appeal decision, the Office of the Valuer General issued guidelines to Valuers for use when valuing Maori Land. These guidelines are now being applied by Council Valuers throughout the country for the purposes of rating valuations.

f. It is important to highlight the last paragraph of the Valuer General's correspondence "it is important to note that to comply with the Court's decision our agreement on these considerations is for guidance only and each case should be taken on its own merits. Please be aware that there may be other elements that affect a particular property that may need to be considered when assessing the value".

g. The guidelines provide for a reduction based on the number of owners to a maximum of 10% and additional adjustments for sites of special significance to a maximum of 5% thus providing a maximum of 15% reduction on Maori land.

h. The reduction is inadequate and in no way compensates for the issues raised by the owners of Maori lands. The reduction is also not in the spirit of the *Mangatu* decision. This presents as a major issue for Maori particularly when they have spent the time and resources to get a favourable decision from the Court of Appeal. The decision has no blanket application or benefit to Maori because of the inadequacy of the Government reaction.

13.3 Changes to the Rating Valuations Act 1998

a. Another issue is the changes to the Rating Valuations Act 1998 which also provided Postponement and Special Values on Maori Land via sections 22-31. These values provided a mechanism to reduce the rating burden by recognising the use of the land for rating purposes rather than the market potential of the land. These have been repealed by the enactment of the Rating Act.

b. Postponement and Special Values were deemed an appropriate tool as they provided a mechanism to place two values on a block. One valuation to recognise the market value and another value to recognise its use. This would be particularly appropriate when Maori land was affected by zoning changes and the increase in value would mean an increase in rates.

c. The removal of special values has had a significant effect on Maori land valuations and removed a key tool to reduce the impact of significant rises in valuation and rates due to zoning changes.[25]

13.4 It is clear that the Crown needs to provide some firmer direction on making allowances for Maori land in determining rates payable. It is submitted that the Valuer-General's guidelines are inadequate. Recommendations are sought for more appropriate deductions.

14 Zoning

14.1 It is clear that the issues confronting Maori landowners today remain the same as past concerns. Still the impact of residential growth continues to place high valuations on Maori land and continues the pressure of alienation.

14.2 Maori have been majorly affected by the various legislative, policy and planning reforms that have affected the zone, use and value of their lands. This also had major implications for the rating demand placed on Maori land and the flow on pressures to alienate, as lands began to become uneconomic.

14.3 La Rooij, in his summary, stated:

> The economic development of the Western Bay of Plenty region during the 1970s served to revive the problems of land utilisation and unpaid rates that had prevailed thirty years earlier. As a result, the rating issue today is far from resolved in Tauranga. While many owners formed trusts to administer their lands, and those few with access to capital have undertaken development, a large portion of Maori land in Tauranga today lies idle, still attracting the attention of the rate collector. While the rating law has developed and changed over one hundred years, Maori land in contrast is stuck in a state of near paralysis by the system of multiple ownership, a lack of capital to develop their lands and a shortage of technical knowledge to work and manage their landholdings. Until these issues are addressed, the rating regime will remain incompatible with Maori land tenure.[26]

15 Ongoing Concerns regarding Rating Legislation and Policy

15.1 The ongoing concern in regard to rating policy is that it does not go far enough to protect Maori Land owners, and even where the ability to utilise the policy in favour of Maori presents itself it is not utilised. Although we would like the Policy to go even further than it currently does, in terms of assisting Maori to utilise their lands, there is sufficient opportunity under the policy with respect to policy objectives and principles to address a number of the concerns that Tauranga Maori have in terms of rating.

15.2 There is ongoing concern that the issues continually being raised by Tangata Whenua are not being addressed.

15.3 It is submitted that these concerns are major and need to be addressed. Although the legislation allows the Councils to act in a Treaty compliant

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[25] Brief of Evidence of James Rolleston, 19.
[26] La Rooij, 149.

manner, it is clear that when given a discretion, the Councils will act with the interests of the general ratepayer as their primary concern.

15.4 It is submitted that in these circumstances the Crown has no choice but to act. The Crown must tighten their legislation to ensure that the rating of Maori land is fair, just and appropriate in the circumstances. Failure to do so is an active breach of the Treaty of Waitangi.

16 Conclusion

16.1 The issue of rating is a major grievance which has existed historically and pervades today.

16.2 Historical pressures of rating has resulted in major alienations of key landholdings.

16.3 Services have been withheld to Maori communities.

16.4 Rating charges have historically been unfair in terms of services received, the unique qualities of Maori land and the vast contributions made by Maori to the region.

16.5 Rating charges continue to be levied at an unfair rate.

16.6 The Government rely on the local authorities themselves to show how they are complying with the Treaty in their rating policies.

16.7 It is submitted that the Government cannot distance themselves from the rating situation. If the local authorities are not carrying out their rating responsibilities in a Treaty compliant manner, the onus is on the Government to ensure that the rating legislation forces them to do so.

16.8 The fact that the current legislation *allows* local authorities to rate in a Treaty compliant manner is not enough. There should be no discretion available. This is even more important given that Maori are proportionately hugely underrepresented in local authority Councils.

16.9 Legislative changes are needed as follows

a. More acknowledgement of the need for Local Authorities to provide for Treaty Compliance in rating.

b. Set rating discounts on Maori Land as suggested, possibly on a scale having regard to actual (not potential) development on that land.

c. A more appropriate valuation deduction scale in line with the *Mangatu* decision for the valuation of Maori Land for rating purposes.

17 Contact Regarding this Submission

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