

RECONCILING CUSTOMARY
OWNERSHIP AND DEVELOPMENT



7

Maori landownership and
land management in New Zealand

A snapshot

Maori landownership and land management in New Zealand

In the late 1800s and early 1900s Maori people lost control of substantial tracts of land. At the same time customary land was systematically 'individualised' and registered using mechanisms designed to break down group ownership. This process led to considerable problems and its legacy remains. In more recent times efforts have focused on finding effective ways to overcome problems such as absentee ownership and title fragmentation by reverting to collective ownership using incorporations or trusts as vehicles. Institutions that support Maori land have given much attention to improving how these incorporations and trusts function.

The experiences in managing Maori land in New Zealand provide important lessons on:

- » the effects of registering customary land
- » the role of good management, administration and governance when formalising structures to support group ownership
- » the importance of collecting quality information
- » the need for access to development finance.

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Maori people today

Maori people make up about 15 per cent (or almost 565 500) of New Zealand's population of close to 4.2 million (Statistics New Zealand 2007a, 2007b). In 2006, 87 per cent of the Maori population lived on the North Island, with a quarter living in the Auckland region. In the 1950s, nearly 70 per cent of Maori lived in rural areas but by 2006 almost 85 per cent lived in urban areas.

The Maori population is young compared with the total population of New Zealand. Its median age is 22.7 years while the total population's is 33 years. Children less than 15 years old make up 22 per cent of the total population but 35 per cent of the Maori population. In comparison with New Zealand's non-Maori population, Maori in general are more likely to leave school with lower qualifications and be unemployed or employed in low-skilled work. They also are less likely to own their own home and have a greater chance of suffering from physical and mental health disorders (Durie 2005; Te Puni Kokiri 1998).

Maori land today

Maori land has been estimated at about 5.6 per cent of New Zealand's total land area of 26.9 million hectares (Table 1). Its distribution according to Maori Land Court Districts indicates that the largest concentration is in the central and eastern regions of the North Island (Figure 1).

TABLE 1 » DISTRIBUTION OF MAORI LAND BY MAORI LAND COURT DISTRICT

| District | Total land | Maori land | Proportion of total land | Share of Maori land |
|-------------------|-------------------|------------------|--------------------------|---------------------|
| | hectares | hectares | % | % |
| Taitokerau | 1 732 192 | 139 873 | 8.1 | 9.2 |
| Waikato-Maniapoto | 2 156 583 | 143 388 | 6.6 | 9.5 |
| Waiariki | 1 936 270 | 426 595 | 22.0 | 28.2 |
| Tairāwhiti | 1 169 091 | 310 631 | 26.6 | 20.5 |
| Takitimu | 1 936 492 | 88 608 | 4.6 | 5.9 |
| Aotea | 1 284 284 | 334 207 | 26.0 | 22.1 |
| Te Waipounamu | 16 715 185 | 71 769 | 0.4 | 4.7 |
| Total | 26 930 097 | 1 515 071 | 5.6 | 100.0 |

Source: Te Puni Kokiri (1996).

As New Zealand citizens Maori have the right to purchase and own 'general land' (land available on the open land market) while holding interests in their ancestral lands (Maori land). This creates two parallel land tenure systems. Maori land is almost exclusively owned by the descendants of the original owners, handed down through successive generations to the current owners.

FIGURE 1 » DISTRIBUTION OF MAORI LAND IN NEW ZEALAND BY MAORI LAND COURT DISTRICT



Source: Harmsworth (2003).

Today, Maori land is usually of poorer quality than general land in New Zealand, largely because the most fertile and best suited land for agricultural production was sold or confiscated from its Maori owners in the 1800s or early 1900s. Large areas of Maori land are better suited to forestry or conservation. Maori land is also more likely to be 'landlocked'—an estimated 30 per cent. Owners of such land are unable to access the land and have no option but to lease it to neighbours who have access. There is also a significant area of Maori land in fragile natural environments such as wetlands and coastal areas or bordering lakes and rivers. This land is likely to have less productive potential and has greater restrictions imposed on its use by regional or district government authorities (Harmsworth 2003).

Customary systems of landownership

RIGHTS OF ACCESS AND USE

Customary (pre-European) land 'ownership' systems were anchored in Maori cosmological beliefs that humans were produced from a union between earth mother (*papatuanuku*) and sky father (*ranginui*). The Maori term for land, *whenua*, also means placenta and the term for people, *tangata whenua*, means born of the earth's womb. With these beliefs and the understanding that land is permanent and human life is transient, Maori considered their association with land more in terms of 'belonging to' rather than 'owning'. Given this, in the remainder of this section any expression of ownership is used to refer to the capacity of Maori to specify, enforce and allocate rights of access and use to land.

Prior to the introduction of a system of deed title and registration in 1862, Maori land was owned collectively by the tribe (*iwi*), clan (*hapu*) and extended family (*whanau*). These tribal structures still exist. The largest communal unit in Maori society is the tribe, a political grouping that comprises several clans, each recognising descent from an eponymous ancestor(s). A clan shares social, political and geographic ties and operates as a cohesive unit within the tribe. A clan is made up of several extended families.

Early Maori settlers—estimated to have arrived in Aotearoa (New Zealand) between 500 and 900 AD—established landownership through the custom of bespeaking or naming the land during discovery or exploration (*taunaha whenua*). Ownership was confirmed by settlement and occupation or maintaining the lighted fires (*take ahi kaa*) and subsequently transformed into an ancestral right (*take tipuna*). Other rights to land included right of conquest (*take raupatu*) and right of gift (*take tuku*). In most cases the occupancy, use and protection of any resource were sufficient evidence of ownership and the foundation for individual and group property rights (Kawharu 1977).

Land was held by the kinship group and the rights of the individual to a share of the community's resources were recognised by the allocation of access or occupation rights to those resources. Individual rights to land were established by descent. Within each clan, individuals were selected and trained as priests (*tohunga*—*tohu* means 'a sign' or 'to see'), who acted as the intermediaries between the world of light (*te ao marama*) and 'beyond in the world of darkness' (*te tua-uri*). Priests also acted as the community's knowledge repository and one of their skills was to recite the genealogical descent of any individual under their charge back in time to earth mother. Even today there are priests with this ability.

Although descent gave individuals the right of access or entry to land, the right of use depended on residence, participation in the community and observance of its rules and standards. This condition was necessary because most individuals had genealogical links with more than one clan or tribe. The right to use the land required sustained effort over generations of occupation. Those that did not contribute to the community and live by its rules were liable to be plundered and their possessions claimed by the tribe.

TRIBAL BOUNDARIES AND RELATIONSHIPS

Land boundaries between tribes and clans are not distinctive or precise. Under the customary system overlapping boundaries and interests in land between clans were common. Although a clan was autonomous and generally associated with a particular land area, in many cases they were mobile. Over time some clans changed location but would maintain ancestral associations with their former locations.

This is why clans are not defined by land boundaries but by genealogical allegiances. It is also why land boundaries were fluid under the traditional system rather than fixed and exclusive. Rights to use land and resources were governed by relationships rather than physical demarcation lines. These relationships defined access points to a particular resource or resources, which could be shared with groups both near and far. Therefore maintaining the rights to use land and resources relied on maintaining good relationships with others rather than on creating defensible or exclusive boundaries.

ENFORCING PROPERTY RIGHTS

Memorising minute details of the land was the Maori method of enforcing rights to land. Tribal elders and priests knew every prominent natural feature and the relationship of these features within the land area. This intimate knowledge was important, particularly where the relationships with neighbouring clans and tribal groups were complex. Every piece of land was named and carefully delineated by natural boundaries and topographical features. Warning signs (*rahui*) were used to demarcate physical boundaries.

Every natural feature of land bore names that spanned centuries of occupation. The ability to recite the place names, traditional food-gathering places, battle sites, burial sites, the genealogical descent from the original founders, and accounts of internal disputes of ownership were all important in determining the rights of the owners. This knowledge was passed down through the generations as proof of ownership. A consequence of the precise knowledge of land boundaries coupled with an equally exact recall of the occupiers' genealogies was the relative ease with which Maori land was codified and registered during the 19th century.

Individualisation and codification of Maori land

Following the signing of the Treaty of Waitangi on 6 February 1840 between various tribal leaders and the English Crown, royal instructions were issued (in 1846) to the then governor to set up a Land Court to bring Maori land under English common law. This was eventually achieved in 1862 and the Native (now Maori) Land Court Act became fully operational in 1865, its main objective being to 'encourage the extinction of (native) proprietary customs'.

Because of the reluctance of Maori to make land available for sale, the Crown brought in the New Zealand Settlements Act 1863, under which land was confiscated by declaring a district and all land within it Crown land (Box 1).

BOX 1 » LAND CONFISCATION AND ALIENATION

The New Zealand Settlements Act passed in 1863 facilitated the confiscation of 526 000 hectares of Maori land in Taranaki (West Coast of New Zealand's North Island). However, three years before this legislation, military intervention facilitated the sale to the Crown of 600 000 hectares of land in nearby Waitara even though the sale was vetoed by the tribe's chief, Wiremu Kingi. This land sale triggered what was to be known as the 'Maori land wars', which resulted in widespread land confiscations, particularly from owners deemed to be 'rebellious' to the Crown. In 1884 the Crown returned 103 000 hectares as Native Reserves (which in 1892 passed to the West Coast Settlement Reserves). These reserves remained in government control until 1976, by which time their total area had diminished to its current area of around 22 000 hectares.

Source: Kingi (2006).

Other mechanisms used by the Land Court to convert native title to the English system included section 23 of the Native Lands Act and the '10 owner rule' that allowed a certificate of title to be issued to no more than 10 owners. This enabled government land purchase officers and other agents of the Land Court to speed up the land codification process. The consequences of assigning title to a small subset of owners resulted in ownership disputes that continue today.

Although it was possible for a certificate of title to be issued to an entire tribe, there was a proviso that the block must exceed 2000 hectares. To prevent group ownership, large areas of tribal land were often divided into several allotments and each lot awarded to no more than 10 people (often from different clans or tribes). Although this procedure admitted more people to the title, it effectively fragmented title to tribal land, a process accelerated by a clause in the Act that deemed all living children of the owners were entitled to succeed equally to Maori land (not just the first born, as under Maori customary rights). After only a few generations, large areas of Maori land had been divided into small unusable portions.

There are currently 26 480 certificates of titles, with an average size of 59 hectares (but ranging from 88 square metres to 522 hectares) and an average number of owner-interests of 73 per title (but ranging from 1 to 425). Owners can have multiple interests in more than one block of land. This has resulted in owner-interests numbering more than two million and increasing by 185 000 a year with successions (Maori Land Court 2006).

The term 'individualised Maori land' stems from the owners having an individual interest in the land (e.g. a shareholding) that is registered against the land's titles. Maori land is often referred to as 'multiple-owned' because of the multiple owners that have registered individual interests in the land.

The systematic process of confiscation and individualisation led to the current situation where the remaining land held under group or collective ownership constitutes a very small proportion of New Zealand's total land area. The large numbers of owners registered against the land titles have produced a difficult situation that requires expensive and cumbersome management structures to administer the owners' interests.

Individualisation of title has created the need for organisational structures that minimise the problems of fragmented title and absentee ownership. The individual interest that Maori hold in land conflicts with the indigenous relationship with land. Maori social structures were traditionally viewed as the foundations for development. Wealth acquisition, therefore, was acceptable only if the community benefited through cooperative enterprise.

As a result many Maori land structures uphold collective values as a guiding philosophy for culturally centred sustainable economic development. Maintaining cultural identity and traditional values is important in building owner support for development initiatives.

Maori land is governed by the Te Ture Whenua Maori Act 1993. This legislation has three land tenure categories:

- 1 Maori freehold land—with few exceptions, land that has not been out of Maori ownership (accounts for about 98 per cent of all Maori land)
- 2 Maori customary land—land that is held under traditional or customary ownership systems and that has not been registered with a certificate of title and no individual names are registered against the title
- 3 Maori general land—land that had passed out of Maori ownership when a minimum of five owners choose to reclassify it under the administration of the legislation and the Maori Land Court.

The correct term for the majority of Maori land is ‘Maori freehold’ land. This distinguishes it from customary land and Maori general land, which account for less than 2 per cent of the total area.

Under the Te Ture Whenua Maori Act, Maori incorporations and trusts control around 64 per cent of Maori land. There are 129 Maori incorporations and over 20 000 trusts (see Table 2). The rights to this Maori land are dictated by shares in incorporations and beneficial interests in trusts. They vary, depending on the sizes of their ancestors’ landholdings in the original area of land.

Maori land administered by incorporations and trusts is estimated to be worth NZ\$1.5 billion and contributes around NZ\$700 million a year to the New Zealand economy (New Zealand Institute of Economic Research 2003).

TABLE 2 » NUMBERS OF INCORPORATIONS AND TRUSTS BY MAORI LAND COURT DISTRICT

| District | Incorporations | Ahuwhenua trusts | Whanau trusts |
|-------------------|----------------|------------------|---------------|
| Taitokerau | 7 | 436 | 1 741 |
| Waikato-Maniapoto | 15 | 972 | 1 781 |
| Waiariki | 28 | 1 486 | 6 716 |
| Tairāwhiti | 64 | 858 | 2 918 |
| Takitimu | 3 | 343 | 544 |
| Aotea | 2 | 688 | 1 307 |
| Te Waipounamu | 10 | 418 | 666 |
| Total | 129 | 5 201 | 15 673 |

Source: Maori Land Court (2006).

The transfer (sale or gift) of Maori land is restricted to other Maori with affiliations to the titleholder unless 75 per cent of registered owners and the Maori Land Court approve the transfer. Because of these restrictions, most rights of access and use are granted using leases. Few common characteristics apply to leases of Maori land and, as McPhail (Boast et al. 2004) has pointed out, terms and conditions formulated by negotiation between lessee and owners vary, depending on circumstances and whether a lease is rural, urban, commercial or residential.

MAORI INCORPORATIONS

Most Maori incorporations were established prior to the 1960s, the first in 1910. The owners amalgamated (incorporated) individual titles of Maori land into groups under a single administration and management structure (Box 2) and then elected a group of representatives—a committee of management—to be responsible for developing and managing the incorporated lands.

These days landowners rarely choose to incorporate their lands, but they are still able to do so by making an order to the Maori Land Court. If the court is satisfied that the owners agreed to the order by passing a resolution at a meeting, or if the court is satisfied that the owners of not less than 15 per cent of the aggregate shares in each block of land consent to the order, incorporation can take place. Upon incorporation, the landowners become shareholders and their shareholding is based on their share in the value of land or assets of the incorporation.

The committee of management can have no fewer than three and no more than seven members. Depending on the constitution of the incorporation, elections may be by shares (or poll vote weighted by the size of ownership shares), or one vote per person. If the constitution allows, the committee of management may also appoint members—although this practice is not common. The elections are often controversial as family representation is sometimes more important than the governance skills of an individual.

BOX 2 » RECOVERY FROM LAND CONFISCATION—PARININIHI KI WAITOTARA INCORPORATION

Parininihi ki Waitotara Incorporation (PKW) was formed in 1976 to administer the 22 000 hectares of land remaining in the West Coast Settlement Reserves after the government relinquished control. The area consisted of around 300 West Coast leases, the majority to non-indigenous farmers. As the leases expire PKW has first right of refusal and to date the incorporation has acquired 32 leases, most functioning dairy farms. In recent years these farms have been amalgamated into more scale-efficient production units with significant capital to refurbish dairy sheds and staff houses. The incorporation has around 20 dairy farms operating under 50:50 sharemilking contracts that are managed by PKW Farms Ltd., responsible for the incorporation's NZ\$50 million farming interest in Taranaki.

Source: Kingi (2006).

Incorporations must establish and maintain share registers—an official record of shareholders, their shares and contact details. Maintaining a share register is time consuming and expensive, especially for large incorporations with many thousands of shareholders. It is not uncommon for a register to have as much as 50 per cent of its information obsolete and consequently large amounts of unclaimed dividends. This is symptomatic of the considerable fragmentation of shareholdings.

TRUSTS

The trust is the most common ownership structure used by Maori landowners to administer their land interests. The Te Ture Whenua Maori Act has five categories of trust and these are subject to the general law of trusts. Each trust requires:

- » land vested in the trust to be trust property
- » a trustee to have control of the property
- » beneficiaries.

The most common category of trust is the Whanau trust; more than 15 000 have been set up (Table 2). Its main use is to maintain family interests in land by halting further succession and fragmentation of title. Each trust is established with family and extended family members, who are the beneficiaries of the trust. Under the Act a Whanau trust's purpose is to promote the social, cultural and economic welfare of the descendents of original owners named in the trust order.

The category of trust that administers the largest area of Maori land is the Ahuwhenua trust (which translated means 'fruits of the land'). Under an Ahuwhenua trust the land, along with any encumbrances the title carries, is vested in trustees. Many commercial provisions available to incorporations are now available to Ahuwhenua trusts; so there is little to differentiate the commercial activities of the two structures. For example, both structures can establish a subsidiary limited liability company to gain greater commercial freedom and credibility.

The three remaining trust categories—Kaitiaki, Whenua Topu and Putea—control land that forms less than 2.5 per cent of Maori land. Their functions under the Maori Land Act are:

- » Kaitiaki trusts—to administer land interests belonging to individuals unable to manage their affairs
- » Whenua Topu trusts—to administer land for which individual interests have been replaced by group ownership
- » Putea trusts—to administer non-economic interests.

The role of the Maori Land Court

The Maori Land Court is a central institution for Maori land and is the most important repository of Maori land information. It is responsible for maintaining extensive title and transaction records, including records that date back to its establishment as the Native Land Court in 1862. While it performs an important function it has been severely criticised for its role during the late 1800s and early 1900s in registering and alienating Maori land. Difficulties have arisen from the court's failure in its early years to identify rightful owners or record the basis for selection or settlement. At the time of determining ownership it was common for individuals to submit more than one name under various aliases (McHugh 1993). This is frustrating for trust administrators and costly to incorporations in charge of maintaining ownership records.

In recent years the court has been striving to find practical solutions that will advance landowner interests. This is crucial when landowners feel isolated from the decision-making process and are unable to voice their opinion or influence activities.

The court has also been more proactive in facilitating the better use of Maori land by improving the quality of information available to landowners. This work includes the Maori Freehold Land Registration Project, which aims to register all outstanding Maori freehold land titles. Currently, less than 60 per cent of Maori land titles are registered. Registration will enable Maori landowners to obtain a provisional or fully registered title. A provisional title enables landowners to use their land as collateral, which increases development options.

The court has also established Maori Land Online (Ministry of Justice 2005). This gives users access to up-to-date information about blocks of land or incorporations and trusts, including ownership structure, titles, names of trustees or committees of management, and lists of shareholders.

Balancing the rights of different landowners

The vast majority of owners in large incorporations and trusts do not live on their land or derive income from the land apart from dividends or grants. Absentee owners fall into two broad categories: those living close to the block of land and those living out of the district. Those living close are known as *ahi kaa*—those who keep 'home fires burning'. This refers to traditional Maori landownership systems where land was deemed to be 'owned' when it was proven to be occupied, successfully defended over time and recognised by neighbouring clans and tribes. Those living close therefore hold an important position in Maori society. In addition to acting as customary guardians (*kaitiaki*) of land they are usually relied on by landowners to maintain the community houses (*marae*) of the incorporation or trust.

Under Maori land legislation, all beneficiaries of incorporations and trusts must be treated equally. This means that Maori with shares in incorporations and beneficial interests in trusts, regardless of residence, have the same voting rights at annual or special owner meetings. This creates tensions, as resident landowners see themselves as entitled to have more say.

A related issue is the rights of minor shareholders relative to major shareholders. Under the one-vote-per-person decision-making procedure commonly used by Maori trusts and incorporations, high numbers of minority shareholders tend to out-vote small numbers of majority shareholders (Maori Land Tenure Review Group 2006). An inherent bias in governance is therefore created towards the small (or minority) interests. The effect is a conservative, risk-averse attitude toward development proposals.

Under the poll vote system the interests of minority shareholders (incorporations) or beneficial owners (trusts) bear little weight compared with the interests of a small number of major shareholders or beneficial owners. Many larger incorporations and trusts have applied to the Maori Land Court to alter their constitutions and trust orders so that major decisions requiring owner approval are supported by the wishes of major shareholders.

Balancing the objectives of landowners

The interaction of landowners with incorporations and trusts varies markedly, depending on the number of owners and the spread of owners within New Zealand and overseas. Annual meetings are the main vehicle for communicating with owners, although many larger structures produce regular newsletters to inform shareholders of key activities and events.

The challenge for trustees and committee members is to balance sociocultural, economic and environmental objectives. The cultural values of the landowning community usually influence decisions significantly because land is a source of identity and the centre of cultural pride. But land also plays an important role in economic advancement, particularly as a source of capital. Economic objectives are therefore juggled alongside cultural values.

Empirical research of Maori land structures (incorporations and trusts) in Northland in 1997 found landowners had high expectations that such structures would actively support tribal development by providing community grants and generating employment opportunities through investing in local businesses. A structure's ability to meet its social and cultural objectives was seen as having as much importance as maintaining commercial viability (White 1997).

Managing the business of incorporations and trusts

Maori incorporation and trust structures that aspire to succeed commercially face a number of constraints.

THE LACK OF BUSINESS EXPERIENCE

One constraint is the lack of business experience among elected members and trustees. Appointments to committees or trusts are made primarily from within landowning groups, where commercial acumen is generally limited. They also commonly reflect the political interests of families keen to maintain control of the structure.

Appointments of general managers or chief executive officers are becoming more common among structures large enough to justify the cost. Atihau-Whanganui Incorporation (Box 3) recently restructured and appointed a chief executive officer.

This incorporation is one of the largest in New Zealand and makes a major contribution to the local community (Aotea Maori Land Court District). One reason for the restructure was recognition that 97 companies listed on the New Zealand stock exchange were smaller than Atihau-Whanganui Incorporation. Put another way, the incorporation is larger than 60 per cent of listed companies (Atihau-Whanganui Incorporation 2006; Committee of Management, Atihau-Whanganui Incorporation 2007, pers. comm., 30 March; Ministry of Maori Development & Federation of Maori Authorities 2004, pp. 56–9).

BOX 3 » CORPORATE RESTRUCTURING OF MAORI ORGANISATIONS

Atihau-Whanganui Incorporation was formed in 1970 and is located in the Aotea Maori Land Court District. It has a total land area of 40 800 hectares. As of 2007 it controls around 20 000 hectares (the remainder being in leases) and has around 40 employees.

The incorporation's aim is to resume all leased land when the leases expire. The incorporation has approximately 6500 shareholders and its core business activity is sheep and beef farming. It also has around 2000 hectares in commercial forestry.

In 1995 the incorporation produced its first strategic plan and in 2003 it restructured and created three subcommittees—farming, forestry and finance (including general administration). In 2006 the incorporation received a \$3 million regional development grant to buy out the lease of a dairy farm and pay for improvements. In the same year it employed a chief executive officer, who started in May 2007. This officer is a shareholder and has extensive commercial experience in New Zealand and internationally. A key function of the chief executive officer is to develop investment strategies to consolidate the current farming business and investigate alternative investments to diversify the incorporation's activities.

Source: Atihau-Whanganui Incorporation 2007, pers. comm.

LEGAL CAPACITY TO CONDUCT AFFAIRS

Another constraint facing Maori land structures is the uncertainty about their legal capacity to conduct their affairs. Trusts and incorporations are subject to the scrutiny of the Maori Land Court. While not commonly exercised, the court has full powers to remove trustees and committees of management. More important, however, is the effect the Land Court's jurisdiction can have on the perceptions of financial institutions and business partners.

Alternative legal structures such as limited liability companies are being used more by Maori trusts and incorporations to separate landownership from business activity (Box 4). In recent years the Maori Land Court has actively promoted this type of company structure.

BOX 4 » JOINT ARRANGEMENTS BETWEEN MAORI ORGANISATIONS

Waerenga East and West Incorporation was the first incorporation in the Te Arawa region (Tairāwhiti Maori Land Court District). It has a land area of 554 hectares and approximately 800 owners. In 1996 the decision was made to form a dairy production joint venture with a neighbouring incorporation—Pukahukiwi Kaokaoroa Incorporation—with a land area of 214 hectares. As a result, in 1996 Waerenga-Pukahukiwi (Wae-Kiwi) Ltd was formed as a dairy company milking around 1500 cows a year.

While land titles remained with the incorporations, the company's assets included grazing leases, part ownership of the dairy herd and ownership of the milking shed. A board of directors was formed with representatives from both incorporations and an independent director was appointed. A sharemilker was employed to produce milk for Wae-Kiwi. The joint venture was an innovative way to raise capital on securable assets (overcoming the constraints of using Maori land as collateral) and increase the assets and cash flow of both incorporations. Just as importantly the joint venture expressed an important Maori value—tribal connections (*whanaungatanga*)—because it led to the building of relationships with the landowners of the neighbouring block.

Whangara B5 Incorporation is in the Tairāwhiti Maori Land Court District and controls 2960 hectares in sheep and beef production. Its neighbour, Pakarae Incorporation, has just over 2000 hectares. In 2006 a partnership was formed between the two incorporations to form a limited liability company—Pakarae-Whangara B5 Partnership. As in the Waerenga–Pukahukiwi case a board was formed with provision to appoint independent directors. This was a key factor in gaining support for the partnership from shareholders of both organisations. Te Puni Kokiri covered part of the costs of forming the partnership and has promoted the structure of the new company and the process of forming the partnership within the region.

Sources: Waerenga East and West Incorporation 2007, pers. comm.
Ministry of Maori Development & Federation of Maori Authorities 2004, pp. 14–17; Committee of Management, Whangara B5 Incorporation 2007, pers. comm., 13 April.

A company allows commercial objectives to be separated from sociocultural objectives and provides a way for internal performance checks to be carried out. As a result, a company's commercial goals are clearer and its management more transparent. Kingi (2005) provides a description of alternative structures established by incorporations and trusts.

ACCESS TO CREDIT FOR LAND DEVELOPMENT

A major constraint facing Maori land structures stems from their difficulties in accessing credit. Several factors contribute to this, including:

- » multiple owners
- » the sale of land being restricted to other members of the landowning group or to other Maori with affiliations to the titleholder
- » owners and those involved in managing Maori land not having current and comprehensive knowledge of the requirements of financial institutions
- » financial institutions not having full information about the opportunities and possibilities of the Maori land tenure and administration system
- » the perception among financial institutions that lending risks are higher due to restrictions on trading land
- » the costs of loan recovery.

Access to credit has improved. However, changes to legislation and greater political will are still required to achieve, for example:

- » better information and education among owners and land managers about the availability of finance and the requirements of financial institutions
- » more facilitation services to help shape proposals
- » clear definitions of the powers of trusts and incorporations to provide security for debt
- » greater financial cooperation from third parties, such as other Maori authorities, who could assist in co-funding or in developing business cases and lending proposals.

Some Maori incorporations have demonstrated how venture capital can be raised by establishing a limited liability company and management regime that meets the requirements of financial institutions (Box 4). They have also shown how a commercial venture can succeed when decisions are made on a sound commercial basis as well as traditional cultural values.

In recent years there have been instances where larger Maori incorporations and trusts have lent development funds to a smaller structure or become an equity partner. The 'big brother funder' approach is based on the rationale that Maori may be better able to detect default risks than 'mainstream' financial institutions. Also the cultural stigma resulting from defaulting on payments to a Maori lender (loss of *mana*) may have greater disciplinary influence than would a purely commercial debt (New Zealand Institute of Economic Research 2003, p. 88).

Facilitating land development

MINISTRY OF MAORI DEVELOPMENT

The Ministry of Maori Development or Te Puni Kokiri (previously the Ministry of Maori Affairs) is the lead agency for facilitating land development. It works closely with the Maori Land Court and the Maori Trustee to generate policy on Maori land use and development. The ministry has 10 regional offices throughout New Zealand, with many offices employing staff dedicated to land development. In 1997 the ministry introduced the Maori Land Facilitation Service to help Maori increase the commercial use of their land.

Other recent initiatives are focusing on:

- » improving or designing new governance structures
- » improving information on Maori land
- » increasing education and training for Maori to improve governance, management and administration
- » identifying and amending constraints associated with tenure
- » enhancing economic opportunities for Maori land.

THE OFFICE OF THE MAORI TRUSTEE

The role of the Maori Trustee, as outlined in the Maori Trustee Act of 1953, is to act as sole agent for owners of Maori land who do not have an ownership structure. The Maori Trustee is appointed by the Maori Land Court. Under the legislation Ahuwhenua trusts can appoint the Maori Trustee to carry out work for them. This is common where owners are unable to administer their trust affairs.

The Office of the Maori Trust is integral to the institutional framework available to help Maori manage and derive benefit from their lands (Maori Trustee 2005; 2007, pers. comm., 18 May). The office currently administers 135 400 hectares valued at approximately NZ\$180 million (Sanderson & Goodchild 2003). In recent years it has initiated projects to improve access to and use of Maori land by owners. This has included facilitating the process of obtaining landowner approval to establish a joint venture kiwifruit orchard in Te Kaha (Office of the Minister of Maori Affairs 2006, p. 7) and arranging legal access to Maori land in Kawhia and Pukeatua (Maori Trustee 2005, p. 10).

Lessons

ACKNOWLEDGE THE EFFECTS OF LAND REGISTRATION

LESSON 1

A customary land registration system that focuses on individualisation rather than group ownership can give rise to considerable problems.

LESSON 2

Programs of registration that are not well accepted or inaccurately represent true ownership may lead to problems that continue for decades and even centuries.

Maori land registration saw the transfer of the majority of customary land into deeds of title during the registration period in the 1800s and early 1900s, resulting in widespread land loss and alienation. The individualisation of Maori title has caused major problems for landowners and administrators. It has produced fragmented titles, absentee owners and conflicts between major and minor shareholders. It has also resulted in registration records becoming obsolete as people fail to update them. There are now two million owners recorded across 26 500 titles. Individual title and ownership of tribal lands is unacceptable to many Maori, who have explored ways to revert to 'group' or 'collective' ownership.

SUPPORT LANDOWNERSHIP STRUCTURES

LESSON 3

Incorporations or trusts can be effective mechanisms to represent group ownership of customary land.

LESSON 4

Training programs or advisory services are needed for managers of incorporations or trusts, due to their complexity and the specialised skills needed to run them.

Maori landownership structures have evolved, with incorporations and trusts becoming the vehicles for reversion to group ownership. Improvements have been made so that they are being used effectively as mechanisms for group ownership. But these structures have had limitations, a major one being their managers' lack of skills to adequately govern, manage and administer the structures.

IMPROVE LAND INFORMATION

LESSON 5

Weaknesses in the quality of land information have adversely affected policy development and had a negative impact on investors.

For many Maori, quality land information has been difficult and expensive to obtain. For the past two decades commentators have highlighted the importance of accurate and reliable land information for investment and policy development. Recognising this, the New Zealand Government—through agencies such as Te Puni Kokiri and the Maori Land Court—has invested heavily in recent years to improve the accuracy of information on Maori land that is available to the general public and landowners. Even so, there is still debate about the actual area of Maori land. Harmsworth (2003) puts it at 800 000 hectares or 60 per cent of the current estimate of the Maori Land Court.

INCREASE ACCESS TO CREDIT

LESSON 6

Individualised registration does not automatically lead to access to finance.

Despite the individualised registration of Maori land, the trusts and incorporations continue to have considerable difficulty gaining access to credit. This is due, in part, to the highly fragmented ownership of the land and weaknesses in information flows between the landowner organisations and financial institutions. But a key reason is the lack of a market for Maori land as a result of restrictions on its sale.

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