

# MAORI LAND COMMITTEE REPORT

MAORI ISSUES WORKING GROUP

NEW ZEALAND INSTITUTE  
OF SURVEYORS  
Te Rōpū Kairūri o Aotearoa



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July 2009

The subject of Maori Land has regularly featured in the Journal of the New Zealand Institute of Surveyors, and at annual conferences over many years. This subject received further attention at the Annual Surveyors Conference in 2001 which recognised there were opportunities for the Institute to contribute to contemporary New Zealand society in this respect. The Conference resolved to initiate an in-depth consideration of Maori land issues and the surveyors' role in this tenure. This report to the Council of the Institute presents the findings of the research and investigations by the Working Group convened for this purpose.

# NZIS MAORI LAND COMMITTEE REPORT

Maori Issues Working Group

## **EXECUTIVE SUMMARY**

### **Maori Land Issues**

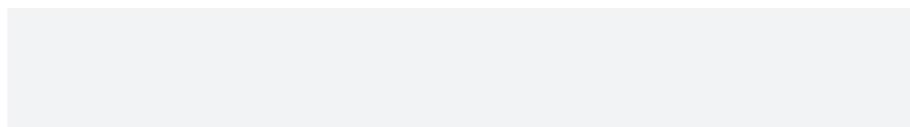
The Institute's Maori Issues Working Group has analysed the many and varied issues relating to the use and enjoyment of Maori land in the context of well established cadastral principles which apply to a functional land tenure. Maori land as a formal land tenure was officially neglected until it was defined in the Te Ture Whenua Maori Act 1993. This was exacerbated by an absence of overall philosophy of the place and use of Maori land in New Zealand until that date. The result of ad hoc administration and legislation has been the systematic abrogation of official responsibility for investment in the cadastral infrastructure required for the proper functioning of a contemporary Maori Freehold Land tenure system. We believe it is in the broad interest of the Nation that there is leadership from government and the investment in the infrastructure required to support Maori Freehold Land to ensure that it is brought up to parity with the use and enjoyment of general freehold land in the land transfer system.

### **Maori Land Ownership**

Maori Land was identified as a holding by the Native Land Act 1862, and treated as a transitional tenure by this and successive legislation. The objective of a large volume of successive legislation was to process Maori Land through Crown Land status to enable individualised freehold ownership, with over 94% of New Zealand eventually converted to general freehold tenure under the land transfer system. The marked lack of recognition of Maori land as a permanent tenure over the last two centuries has meant that the absence of tenure infrastructure facilities for Maori land has often impeded both Maori communal and individual enterprise.

The historical consequences of this legacy are extensive and have been well documented, with major problems for Maori land owners today. The enduring characteristic of Maori land tenure legislation has been, and still is a marked lack of infrastructure for Maori Freehold Land as a distinct tenure, and its historic treatment as a transitional holding. Consequently the administration of Maori land has not received the necessary resources, techniques and computerisation that have been applied to general freehold tenure, and accordingly its use and enjoyment by its beneficial owners has been and is significantly disadvantaged.

The Maori Land Court has had to administer Maori land within these institutional and legislative constraints, until the passing of the Te Ture Whenua Maori Act 1993. As a statutory body it has carried out a mixed judicial and administrative role,



determining ownership and management structures, individualisation of title, and transition to general freehold land, among other matters. It has faithfully served its statutory functions and responsibilities as best it could in the absence of any formal cadastral infrastructure facilities. However, the functioning of the Court now needs to adjust to meet the objectives & principles of Te Ture Whenua Maori Act 1993 and a formally defined Maori Freehold tenure.

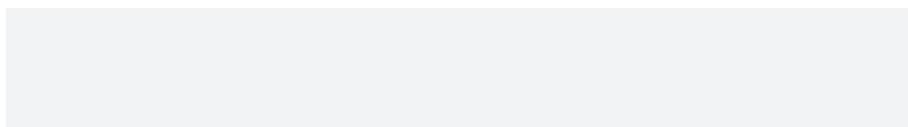
### **Maori Freehold Land Tenure – The Te Ture Whenua Maori Act 1993**

In the history of land administration in New Zealand the significance of the passing of the Te Ture Whenua Maori Act 1993 cannot be underestimated. It has been seminal in resolving the criticism of the [Judge Alexander] MacKay Royal Commission of 1891 which found an absence of overall philosophy of the place and use of Maori Land in New Zealand. This legislation is also a significant watershed in providing (for the first time) legislative recognition of Maori Freehold Land as a permanent, unique and viable class of tenure in its own right, requiring that effective management and occupation by Maori owners of their land is to be given the utmost encouragement. Significantly, the Act contains in its objectives the confirmation that Maori land is to be retained by its owners and that development and occupation by its owners is to be encouraged. This highly significant legislative recognition of Maori Freehold Land as a permanently established and important land tenure in New Zealand carries with it the concomitant need for, and expectation that Maori land enjoy the level of cadastral infrastructure similar to that of general freehold land.

It is now clear that the circumstances of Maori land are completely different to those assumed throughout much of New Zealand's development. However, irrespective of the principles and objectives of the current legislation, the persistent characteristic of Maori land tenure is that it is still marked by a lack of infrastructure supporting a distinct tenure, and its historic legacy of treatment as a transitional holding. Unresolved Maori Freehold Land tenure issues make it the 'second best' tenure it still is today. An efficient Maori land tenure framework is critical if it is to accommodate social and cultural objectives including features of multiple ownership, successions, trusts, the custodial (and fiducial) nature of tenure, dispersal of the owners, the metaphysical value of the land, and other values. Land is fundamental to the retention of customary values and culture and an effective tenure system is needed to meet this role.

### **Maori [Beneficial Owners] Perspective**

The Institute respectfully recognises and reaffirms the need for the development of Maori Freehold Land tenure to be directed by the aspirations and objectives of the Maori owners, their whanau, hapu, and iwi. In this regard it has placed strong emphasis on the provisions of the Te Ture Whenua Maori Act 1993 which for the first time incorporated a distinct Maori view through the initial input from a Maori consultative group set up in 1984. For this report, the role of Maori Land as now seen by Maori is taken from the Maori Land Tenure Review 2006 report (MLTR) (a significant working paper for advancing the kaupapa of Hui Taumata 2005) which



was released in 2008. This report provides a sound basis for identifying the role Maori seek for their land and as such provides a robust direction and framework to provide assistance, support and expert advice in respect of Maori Freehold Land tenure.

The Maori Land Tenure Review 2006 report is a forward looking working paper which identifies that the main requirement for the more effective use of Maori land is “improved and more flexible and autonomous management structures”. While there are many successful examples of Maori land development in the owner’s interests, these have been in spite of rather than because of the rather ad hoc tenure support. The Te Ture Whenua Maori Act 1993 provides the foundation and direction for a positive response to contemporary needs.

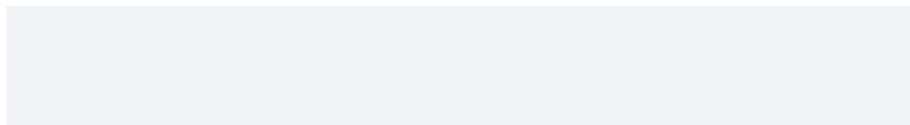
Maori Freehold Land is primarily a social tenure as compared to the economic nature of the Torrens System. Although land is seen by Maori owners as not only a commercially negotiable asset they do need the capability for it to be a source of capital. The Institute’s collective understanding of ‘development’ in the Maori context is not confined to conventional economic development, and includes a wider context of social, cultural and environmental opportunities. Related to this is the opportunity for some Maori land in remote and difficult terrain, to remain in (or return to) native bush and thus contribute to, for example, carbon sequestration or improved catchment and water quality, all of which warrant greater economic recognition.

### **Review of the Te Ture Whenua Maori Act 1993**

The Act has now been in operation for 16 years but the full implementation of its principles is not apparent and Maori land administration remains a reflection of past practice. In 1998, Cabinet approved a review of the Te Ture Whenua Maori Act 1993 with terms of reference which included:

- Assess how successful the Act has been in promoting the principles set out in the preamble to the Act.
- Consider the remedies that would allow the principles of development/ utilisation and retention to co-exist in a complementary fashion.
- Review the role of the Maori Land Court in assisting the implementation of the above principles.
- Make recommendations for legislative and other changes considered necessary or desirable, in particular to enhance the effectiveness of the Act in terms of its capacity to facilitate the occupation, development and utilisation of Maori land.

After extensive Hui around New Zealand and subsequent analysis and proposals, the result of this review was the passing of the Te Ture Whenua Maori Amendment Act 2002 which only contained minor technical changes and did not progress the serious issues identified in the terms of reference. Unfortunately an important opportunity for



more effective implementation of the current legislation has been left un-actioned.

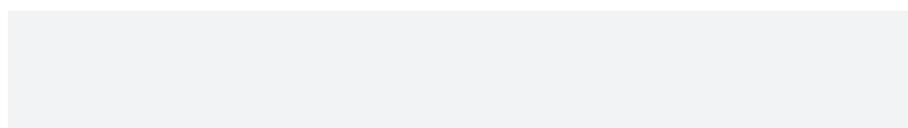
The opportunities forgone are extensive nationally and critical to Maori owners, and include;

- The potential for Maori land to contribute to sustainable rural development will be stymied unless Maori land is underpinned with an efficient land tenure infrastructure.
- The current capability of Maori land tenure is an obstacle to national development as evolving frameworks and policies for sustainability, climate change, carbon trading or taxes and associated land use practices demand increasing land ownership responsiveness. An efficient tenure infrastructure will also underpin the tools required to support intergenerational (land) asset management.
- The administration of general freehold land tenure in New Zealand is internationally recognised as leading practice and it thus provides an appropriate benchmark for Maori land so that it can serve its users and clients to the same high degree of efficiency which is taken for granted in regard to general freehold land. Utility such as ease of identification of ownership and rights, timely maintenance of the data base, and accessibility to enquirers of full and accurate locational, area, ownership and interest information, is as essential for Maori land as it is for general freehold land.
- The need to provide a tenure efficiency that will ensure Maori land is positioned to fully contribute to new levels of sustainable rural development in New Zealand. The Maori Land Registration (MLR) project is a step forward but the incomplete survey definition only allows provisional registration of title in the Land Transfer system.

## Capability of the New Zealand Institute of Surveyors

There is a wealth of experience in the contribution to the administration and development of Maori land by New Zealand surveyors over many years and this offers the opportunity for considerable guidance for further activity. The very small number of Maori land surveys currently undertaken limits the opportunity for more surveyors to gain expertise in this tenure, but there is a small group of practitioners who are well experienced in the provision of land surveying, resource management and land use services to Maori land owners. There is also a small number with extensive experience in the policy, legislative and administrative settings for Maori land.

The education of surveyors (via the Bachelor of Surveying degree offered at the University of Otago) provides an appreciation of Maori land tenure and customs relating to land. With the growing complexity of land use and rights there is the need and opportunity to ensure that a surveyor's education covers various forms of tenure systems, and the historical aspects that are often relevant to current land uses and administration. The situation of Maori land as a custom-based tenure provides

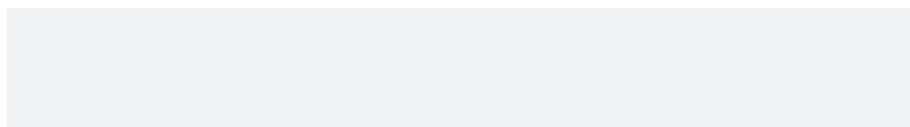


an ideal framework with which to introduce these other concepts of tenure. We note that the development of the marine resources of New Zealand will provide the opportunity for innovative forms of tenure or use rights to enable the multiple uses of these resources.

There is also the need for the Institute to extend its liaison and relationship with Maori agencies, both at a national level and at Branch level with local Runanga and Iwi and local authority Maori advisory groups.

## Conclusions

It is now clear that the circumstances relating to Maori land are completely different to those assumed throughout much of New Zealand's development. The Te Ture Whenua Maori Act 1993 confirms that Maori land is to be retained by its owners and that development and occupation by its owners is to be encouraged. This is a highly significant legislative recognition of Maori Freehold Land as a permanently established and important land tenure in New Zealand. The challenging roles set out in the Te Ture Whenua Maori Act 1993 require major new initiatives by the Government, Te Puni Kokiri and the Maori Land Court, in advancing Maori land tenure and development. These are primarily, an efficient tenure infrastructure to support Maori Freehold Land, and a Maori Land Court having functions relevant to contemporary Maori land owners needs. The Institute has the opportunity and capacity to offer technical and professional assistance in advancing these matters.



# NZIS MAORI LAND COMMITTEE REPORT

Maori Issues Working Group

## ■ MAIN REPORT

### 1. PREAMBLE

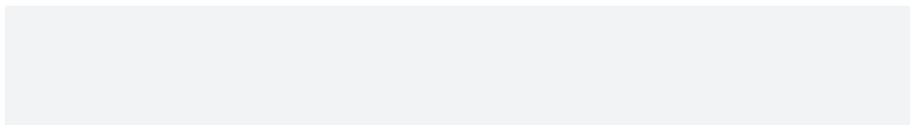
The subject of Maori Land has regularly featured in papers to the New Zealand Institute of Surveyors' (NZIS) Journal and annual conferences over many years. This subject received further attention at the Annual Surveyors Conference in 2001. To initiate an in-depth consideration of Maori land issues and the surveyors' role in this tenure, Conference passed the following resolution.

*In recognition of the opportunities to contribute to contemporary New Zealand society, this conference recommends to Council that an investigation be undertaken to:*

- *establish the internal available resource of NZIS members in the field of Maori Land Issues:*
- *identify institutions and organisations with which relationships can be productively be developed to identify problems and implement solutions to Maori land issues:*
- *consider weaknesses and opportunities in Surveyor education with respect to Maori perspective, consultation, legal issues and relationship with surveying and surveyors.*

Subsequently a Maori Issues Working Group (see Annex1) was established by the NZIS Council to undertake a full investigation and report back on how to effectively meet the requirements of the 2001 Conference resolution. During the regular deliberations of this Group a range of activity has been undertaken to examine the current situation of this tenure, and the Maori perspective and user requirements. The implications underlying the Conference Resolution required a thorough, non partisan and expert professional consideration and assessment of contemporary Maori Land issues, taking into account the historical context.

The Terms of Reference above particularly indicated the need for a spread and depth of consideration of Maori land issues if the Committee was to provide effective long term guidance on underlying issues raised in them. Thus, our investigation has considered a wide range of initiatives already underway and has taken a progressive approach, and long term perspective to determine how best to advance the Conference resolution and the NZIS role in relation to the current and emerging role of Maori land in the Maori community and wider national economy. We believe that thorough and patient deliberation was essential to ensure credibility of NZIS initiatives in both the Maori and professional community.



From the outset the Working Group reaffirmed the need for the role and development of Maori land tenure to be directed by the aspirations and objectives of the Maori owners, their whanau, hapu, and iwi. In this regard it has placed strong emphasis on the provisions of the Te Ture Whenua Maori Act 1993 which it sees as a watershed in Maori land legislation in that the Act incorporated a distinct Maori view through the initial input from a Maori consultative group set up in 1984. This Act is seminal in that it fully and finally rebuts the criticism extending back to 1891 when the [Judge Alexander] MacKay Royal Commission then found an absence of overall philosophy of the place and use of Maori Land in NZ.

Our Group was handicapped by a lack of a current Maori view on the workings of the Act and the role of Maori land as now seen by Maori. This gap was, however, filled last year with the release of the Maori Land Tenure Review 2006 report. This report provides a sound basis in identifying the role Maori seek for their land and as such provides a robust direction and framework for the Institute's overall strategy for determining its policy in respect of Maori land.

We also affirm our collective understanding that “development” in the Maori context is not confined to conventional economic development and includes a wider context of social, cultural and environmental opportunities. Related to this is the opportunity for some Maori land, in remote and difficult terrain, to remain in (or return to) native bush and thus contribute to carbon sequestration, improved catchment and water quality, all of which warrant greater economic recognition in the national economy.

Initially we examined the many problem areas and looked to get a better understanding of these to provide a wide base for taking the study forward. The Group has met at least once each year to review progress and determine further matters for research and follow up and has reported in NZIS Annual Reports. Our Group has also assisted the NZIS on matters relating to Maori land arising from time to time. These included:

A report to the Surveyor-General in 2004, by Gerry Turner on Maori Land Surveying and Utilisation Issues.<sup>1</sup> This paper contains an extensive list of references and bibliography.

Preparation of 'Briefing Notes on Cadastral Systems and User Requirements, and Maori Land Tenure Information System Requirements'. (Turner, G A, August 2005; See Annex III ).

In 2004 an initial letter was sent to the Minister from the Institute, and subsequently a productive meeting was held between the NZIS and the Minister, where Maori land issues were explored.

The consideration and preparation of a draft submission on the Surveyor-General's Interim Standard 1000 for Computed Cadastral Datasets for Maori Freehold Land. This submission identified the opportunity to formalise a longstanding need for standards to avoid duplication of appellations, and a more relevant declaration and comment on the process of validation.

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<sup>1</sup> Turner, G A, “Report to the Surveyor-General on Maori land Utilisation - Issues and Opportunities”, April 2004.

The continued liaison with the Maori Land Court Maori Land Registration Project and input into the review of this project.

A meeting with Deputy Chief Judge Wilson Isaacs of the Maori Land Court.

The presentation by Ross Miller of a paper to the 2004 Trans-Tasman Surveyors conference in Auckland<sup>2</sup>.

A background paper relating to Maori land prepared by Bill Robertson for the Hui Taumata in 2005<sup>3</sup>. This paper was well received by the Hui convenor Sir Paul Reeves and the Steering Committee.

The attendance of Bill Robertson at Hui Taumata representing NZIS where the utilisation and productivity of Maori Land emerged as an area of challenge. It was noted that those wishing to improve the utilisation of their lands face a variety of obstacles and unique challenges.

The Group continued liaison with the Hui Taumata Maori Land Tenure Review Group, but were delayed in their considerations awaiting the public distribution of that report (MLTR 2006)<sup>4</sup> which finally became available in May 2008.

Participation in the review of surveyor education in Maori land.

## 2. BACKGROUND

A considerable amount has been written about Maori Land and the wide range of history, features and problems associated with this tenure since European settlement. A number of references are listed in the reports referenced here which provide useful information on various topics and a good overview of the background and evolution of the role of Maori land from the Treaty of Waitangi up until the Te Ture Whenua Maori Act 1993. Maori land and resource issues have always been of critical importance to the stability and development of New Zealand but the administration and enjoyment of Maori land by its owners has consistently been inhibited by institutional and legislative constraints.

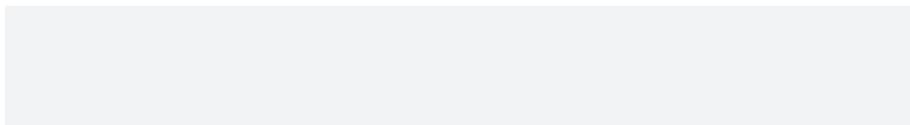
The systemic lack of infrastructure support and capability for the full use and enjoyment of Maori Freehold Land is an issue that has bedevilled this tenure since it was first instituted in 1865 in the implementation of the 1862 Native Land Act. At that time most of New Zealand was in Maori ownership and the objective of a large number of successive acts and amendments was to process Maori land through Crown land status to enable individualised European ownership. The legislators of yesteryear struggled to meet their objective of rapidly freeing up land for colonial settlement. As a result Maori Freehold Land tenure was completely unsatisfactory

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<sup>2</sup> Robertson W. "Maori Land Tenure – Issues and Opportunities" Trans-Tasman Surveyors Conference Auckland 2004.

<sup>3</sup> Robertson W. "Effective Land Tenure Essential for Developing Maori Land Assets", Hui Taumata 2005.

<sup>4</sup> "Maori Land Tenure Review 2006", Hui Taumata Action Taskforce, [contact@huitaumata.maori.nz](mailto:contact@huitaumata.maori.nz)



from both perspectives. In several instances the process set up under the Treaty of Waitangi was abrogated.

The result of 130 years of legislative and administrative ad-hocery has been a crude incremental process which has seen the wholesale conversion of 94% of New Zealand from customary Maori land to general freehold land.

The reduction of Maori customary land in New Zealand has been drastic and only some 1,514,168 ha (6%), remains<sup>5</sup>. However this remaining, predominantly rural, land is highly valued by its many owners. It has characteristics which are markedly different from general freehold land transfer land. These include; that the land has multiple ownership, is precluded from alienation, has intergenerational ownership, and is subject to revision from the Maori Land Court.

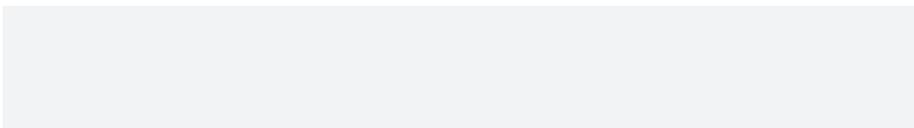
Whereas title under the Land Transfer or Torrens system is individualised and indefeasible, Maori Freehold Land title is based on custom and practice including oral submissions made to the Court. The degree of proof of rights to land holdings and associated aspects of lineage is reliant upon the correctness of these submissions. The Court has wide ranging powers to take into consideration contrary evidence submitted and proven subsequent to the issue of Maori Freehold Land title and the Chief Judge, after assessing all of the evidence, has the authority to make amendments to any order, record or document held by the Court. This process does not fit well with the concept of indefeasibility which is central to the Torrens system.

The strongly expressed views from past governments that the solution to Maori land problems is to remove collective ownership, and more latterly to require compulsory registration in the Land Transfer System, has been an ineffective response to the serious issues facing Maori Freehold Land tenure making it the “second best” tenure it is today.

However, it is now clear that the circumstances relating to Maori land are completely different to those assumed throughout much of New Zealand’s development. The Te Ture Whenua Maori Act 1993 contains in its objectives the confirmation that Maori land is to be retained by its owners and that development and occupation by its owners is to be encouraged. This is highly significant legislative recognition of Maori Freehold Land as a permanently established and important land tenure in New Zealand.

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<sup>5</sup> Ibid



### 3. CURRENT ISSUES AND INITIATIVES

#### 3.1 A Historic Legacy

The marked lack of recognition of Maori Land as a permanent tenure over the last two centuries has meant that the consequent lack of Maori land tenure infrastructure often impedes both Maori communal, and individual enterprise. The administrative impact of bi-lineal succession (the continual creation of additional owners) has obstructed the effective use and management of Maori Freehold land. Un-surveyed and irrational partition boundaries often make viable land use difficult. Fragmentation of land has created small and often uneconomic shareholdings and units, often leading to abandonment.

Maori Land when vested in any person for freehold estate comes under the Land Transfer (LT) system. However the LT system does not fully satisfy the tenure needs for multiple owned Maori Freehold Land, with particular examples being the inability of the LT system to record Maori land trusts as registered proprietors, and the historical and arbitrary restriction to recording in titles only the first ten owners as the registered proprietors.

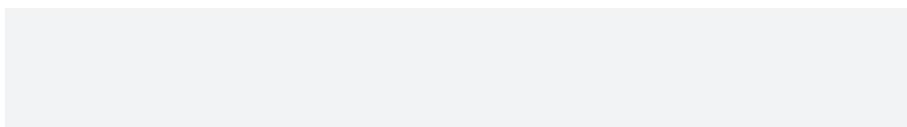
Much Maori land is currently locked out of development although it can be adjacent to highly productive land and located in a market driven economic environment. The problems which hinder efficient use of Maori land and exclude it from the regular institutional mechanisms are considerable, and are covered in the references provided in Annex II. The increasing fragmentation of Maori land has (more recently) been accompanied by a sustained interest by Maori seeking to reclaim and retain their cultural heritage.

The past lack of recognition and thus, resourcing of the infrastructure for Maori Freehold land as a distinct tenure is a major problem for Maori land owners today. This is in contrast to the massive investment in the surveying, recording, transacting, infrastructure and computerisation of the general freehold land system.

It is clear that the current circumstances of Maori land are now completely different to those assumed throughout much of New Zealand's development. While impediments to the use and enjoyment of general freehold land are steadily resolved, Maori land remains officially neglected and quarantined from full use and enjoyment by the owners. The characteristic of Maori land tenure legislation has been a marked lack of infrastructure for a distinct tenure, and its historic treatment as a transitional holding.

#### 3.2 Maori Land Registration (MLR) project

The provisional registration of identifiable Maori Freehold land parcels will, in most cases, provide some additional spatial certainty as to extent and location of these lands and enable provisional registration of interests. This then provides Maori Land with access to the spatial and registration infrastructure of general freehold land and links to Landonline. It will also enable better identification of the land and help remove or resolve the many duplicated parcel appellations and allow the land to be



linked to other relevant land resource and economic information. This information should also facilitate the identification of landlocked Maori Land and options for providing access.

One of the underlying principles of the Computed Diagram process (which enables provisional registration), is that in some cases the owners do not have any need for a full title (i.e. supported by survey to cadastral standards), and that this would be an acceptable holding position until there was a need or opportunity for more investment or commercial development which required full title. Provisional Registration is useful also as a step to enable the identification and location of land for further investigation and action, such as consolidation or repartitioning into more useable blocks, without incurring the unnecessary cost of surveying partitions whose shape does not make any sense from a land use or investment perspective.

The MLR project has limitations in that it does not provide a complete survey infrastructure and only allows provisional registration of LT title. Nor does it include all Maori land. It is also apparent that there are discrepancies in records, and that some complex underlying partitions are left unresolved by this process. This has the potential for increased risk to the integrity of the cadastre by continuing an acceptance of substandard spatial definition for Maori Land tenure. The progress made through the MLR project now needs to be completed by bringing all blocks up to full survey standards; that is, measurement and monumentation (pegging) of boundaries. "Investment by Government in this further initiative is warranted to rectify the persistent lack of past investment in an efficient spatial infrastructure for Maori land."<sup>6</sup>

### **3.3 Te Ture Whenua Maori Act 1993**

In 1984 the Minister of Maori Affairs established a Committee to report on Maori land and legislative requirements. This was to be a far reaching consideration which attempted to reconcile the concept of turangawaewae and the need for development and economic return. As a result the Minister identified two basic principles to form the foundation of new legislation. These were:

- That Maori land is to be retained in the hands of its owners.
- That effective management and occupation by Maori owners of their land is to be given the utmost encouragement.

Subsequently these two principles were incorporated into the preamble to Te Ture Whenua Maori Act 1993 and in the objectives of the Maori Land Court set out in S17 (1) of this Act. This at last recognises that Maori Land has characteristics which are markedly different from general freehold land and has provided a philosophy for the administration and management of Maori Land. This legislation is a significant watershed in providing legislative recognition of Maori Freehold Land as a permanently established and viable class of tenure in New Zealand.

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<sup>6</sup> Grant, J A, "Maori Land Development: Survey and Title", Te Tari Kooti, 2000.

The Act has now been in operation for 16 years but the full implementation of its principles is not apparent and Maori land administration remains a reflection of historic past practice. In 1998 Cabinet approved a review of the Te Ture Whenua Maori Act 1993 with terms of reference which included:

- Assess how successful the Act has been in promoting the principles set out in the preamble to the Act.
- Consider the remedies that would allow the principles of development/ utilisation and retention to co-exist in a complementary fashion.
- Review the role of the Maori Land Court in assisting the implementation of the above principles.
- Make recommendations for legislative and other changes considered necessary or desirable, in particular to enhance the effectiveness of the Act in terms of its capacity to facilitate the occupation, development and utilisation of Maori land.

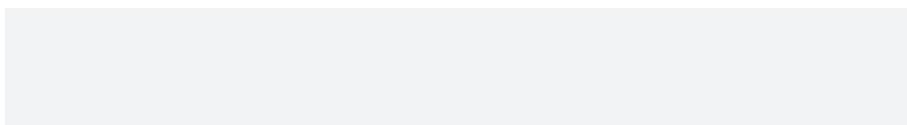
Despite an extensive series of Hui around New Zealand and subsequent analysis and proposals the result of this review was the passing of the Te Ture Whenua Maori Amendment Act 2002 which contained only minor technical changes and did not progress the serious issues identified in the terms of reference. Unfortunately an important opportunity for more effective implementation of the current legislation has been left un-actioned.

### ***3.4 Maori Land Tenure Review 2006 (MLTR) Report***

This forward looking report identifies the main requirement for the more effective use of Maori land as being improved, more flexible and autonomous management structures. It identifies the need for Maori land owners to have improved ability to access information about their land and to deal effectively with their land. It focuses on the best use and enjoyment of Maori land by its owners and whanau. It also questions the role of the Maori Land Court in determining and overseeing management structures.

The importance of this report is that it emphasises Maori perspectives and aspirations in relation to Maori land and puts these into an overall strategic concept and identification of the way forward. In the context of Hui Taumata 2005 which was a National hui focused on accelerating Maori Economic Development, we endorse the contention that the main issue for Maori land is improved and more flexible management options.

The report also recognises the importance of good survey and title and their associated records, better access to information and expertise, and better realization of the potential of the land. It indicates the strong interest of Maori Land owners in the improved management of their land resources, and identifies a clear need for a better administrative infrastructure for Maori Land to enable full efficiency of the tenure system. This report reflects well the position and requirements of Maori land in the current social, financial and free market situation.



### **3.5 Maori Land Development Achievements**

Our research of Maori land issues has been balanced by the many examples of successful Maori land development. We would like to acknowledge these and some examples are;

- The Mangatu Incorporation, Gisborne, which manages large areas of Maori land for farming, forests, and vineyards, and is a successful large business. Success factors include employing professional accounting, management and development staff, hiring expert advice when needed (farm and business development professionals, lawyers, etc), and running the whole enterprise on sound business principles. It also provides educational assistance.
- All of the finalists for the Ahuwhenua Trophy awarded for business (farming) excellence. See Te Pouwhenua Issue 46 for the three awards in 2008.
- Ngai Tahu Holdings Corporation Limited, the investment company of Te Runanga o Ngai Tahu manages a diversified portfolio of investments across four subsidiary companies that deal in capital, property, seafood and tourism.

And there are many other such examples.

A useful initiative would be a study of these developments and activities to identify and analyse the key factors that contributed to their success.

### **3.6 The Maori Land Court (MLC)**

The Maori Land Court has a mixed judicial and administrative role, which tends to consider most cases on their particular merits, leading to some inconsistencies of practice when considered in terms of cadastral systems. The main issue identified in the MLTR report is whether a body with a judicial role, designed to determine ownership and interests, is the most suitable for determining management structures. The MLC has a section called Advisory Services, which aims to improve the quality of information provided to Maori landowners, whanau, hapu and iwi. Their teams are set up to help with a range of general Maori land enquiries and provide advice on Court practices and processes. (See Te Pouwhenua<sup>7</sup>). The teams liaise with owners, incorporations, trusts and other interested people, and provide advice.

We consider that these teams are a step in the right direction in fulfilling the role of the MLC set out in the TeTure Whenua Maori 1993 Act. However the challenging role set out in the Act requires major initiatives by the MLC in advancing Maori land tenure and development.

It is perhaps indicative of the difficulties of managing land for commercial objectives under the jurisdiction of the MLC, that much of the surplus public land transferred to Maori in the Treaty claim settlement process has been retained by those Maori/

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<sup>7</sup> "Te Pouwhenua". A two monthly publication by the Maori Land Court (Te Kooti Whenua Maori)

Iwi in general title rather than revesting it through the MLC. However there are also examples where Treaty settlement lands that have been identified for cultural, social or community use have been revested through the Court to reinstate the traditional status of the land.

#### 4. A FUNDAMENTAL WEAKNESS

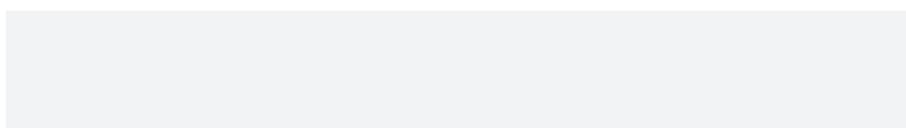
As already mentioned the past treatment of Maori Land has been as a transitional tenure most of which will eventually be converted to general freehold tenure. Consequently the administration of Maori Land has not received the necessary resources, techniques and computerisation that has been applied to general freehold tenure. Surveying costs of Maori Land for example are usually much higher than for general land. This is despite the standards, technologies and procedures being exactly the same for both tenures, and has come to be a significant handicap to the fuller use of Maori Land. These disadvantages have left Maori land owners seriously handicapped in managing and using their land to best meet their various objectives.

The lack of a suitable cadastral infrastructure for Maori Land is unacceptable in a developed economy and society. Not only are many Maori owners obstructed in using their land but in aggregate, strategic assets of economic, social or environmental significance are quarantined from their proper use and enjoyment by their owners and citizens. Currently international agreements on trade, environmental issues and sustainable development are imposing serious obligations on all signatories which require efficient land use and land records. Thus it is in the national as well as community interest, that an efficient land tenure infrastructure be established for Maori land.

#### 5. MAORI LAND AS A SUSTAINABLE TENURE

Maori Land is primarily a social tenure as compared to the economic nature of the Torrens system. Internationally, the infrastructures for economic land tenures are highly developed and efficient while infrastructures for social tenures are inefficient and poorly resourced. Nevertheless an efficient Maori Land tenure framework is critically important if it is to accommodate social and cultural objectives including features of multiple ownership, successions, trusts, the custodial (and fiducial) nature of tenure, distribution of the owners and the metaphysical value of the land, etc. Land is fundamental to the retention of customary values and culture, and an effective tenure system is needed to meet this role. Although land is not generally seen by Maori owners as solely a negotiable asset they do need the capability for it to be a source of capital.

The current capability of Maori Land tenure is an obstacle to national development as evolving frameworks and policies for sustainability, climate change, carbon trading or taxes and associated land use practices demand increasing land ownership responsiveness. Potential opportunities for Maori Land to contribute to sustainable rural development will be stymied unless it is underpinned with an efficient land tenure infrastructure.



The administration of freehold land tenure in New Zealand is internationally recognised as leading practice and it thus provides an appropriate benchmark for Maori Land. Maori Land tenure must serve its users and clients to the same high degree of efficiency which is taken for granted in regard to general freehold land. Utility such as ease of identification of ownership and rights, timely maintenance of the data base, accessibility to enquirers in terms of full and accurate locational, area, ownership and interest information is as essential for Maori Land as it is for freehold land. The essential need is to provide a tenure efficiency that will ensure Maori Land is positioned to fully contribute to new levels of sustainable rural development in New Zealand.

## 6. FINDINGS

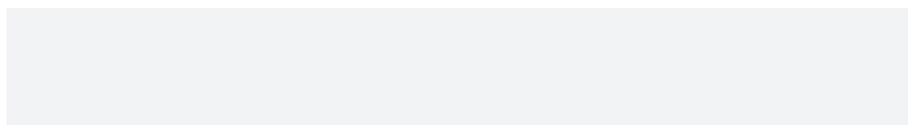
The Te Ture Whenua Maori Act 1993, the Terms of Reference for the 1998 review of that Act and the Maori Land Tenure Review 2006 report provide a clear statement of Maori aspirations for their land and the legislative and policy support required for an effective Maori Land tenure infrastructure. The identified requirement for tenure infrastructure and capability to support the full use and enjoyment of Maori Freehold Land provides a robust basis for the NZIS to implement the 2001 Conference Resolution. As goals and policies are now being formulated (e.g. the recently issued RFP by Te Puni Kokiri for the development and implementation of a methodology to assess Maori aspirations for Maori Land) there is a good opportunity for the NZIS to provide professional and technical leadership in the development of efficient Maori Land Tenure infrastructure.

Our findings in relation to the three elements of the Conference Resolution follow in the subsections below.

### 6.1 Available NZIS Resources

There is a wealth of experience in the contribution to the administration and development of Maori Land by New Zealand surveyors over many years and this offers considerable guidance for further activity. However, surveyor involvement with Maori Land is geographically dispersed and is related to a few individual surveyors who have developed experience and knowledge over the years. The reality is that because Maori Land surveys constitute only a very small percentage of all land surveys the vast majority of consulting surveyors are busy with the survey and development of general land.

The membership of the NZIS is highly proficient in survey, resource management, land development and land use related to freehold land. Similar skills are required to develop Maori land resources through specific communication, insight and understanding, and site planning skills, and these need to be related to their particular community and cultural context. In its initial stages, our Working Group established that there were members in most Branches knowledgeable about Maori Land or interested in it. However, as the current interests of surveyors and Branches concentrate on surveying and development issues relating to freehold land there is a need to develop a greater depth of members versed in Maori Land issues. We do



note that the recent involvement of a number of practitioners in the Maori Land Registration project would have increased the knowledge and understanding of Maori Land Court records and procedures.

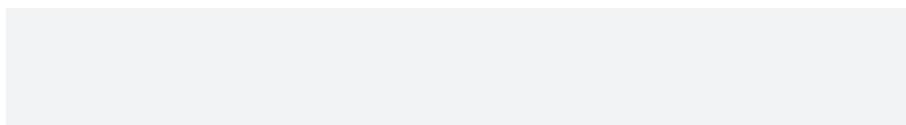
## **6.2 Organisational Relationships**

At the national level relationships have already been developed through the investigation of this Working Group with the Maori Land Court, Te Puni Kokiri, a previous Minister of Lands, the Hui Taumata 2005 and its Steering Group, and the Maori Land Tenure Review 2006 group. In addition, relationships with the Maori groups in territorial local authorities will be important in understanding the local authority administrative context of Maori Land. We recommend that these relationships as well as those with iwi, hapu, and whanau be further developed by the NZIS.

Internationally, there is considerable interest in customary land tenure. This is led by initiatives of the Land Tenure Group of UN HABITAT in Nairobi and FIG, and provides useful resource material in relation to Maori Land issues. In this regard the FIG Congress 2010 day session on Millennium Development Goals (MDG) for Small Island Developing States (SIDS) provides an opportunity for the Institute and its members to make connections with other countries working on similar land tenure issues.

We are aware that the Institute has for many years been active in promoting careers in land surveying to secondary students, and that it has particularly wished to see more young Maori people take up surveying. The development of organisational relationships proposed in this report provides an opportunity to work with these agencies to better promote surveying to young Maori, either through technician qualification at Unitec or professional qualification via the University of Otago. This promotion could note the following benefits to young Maori:

- Surveying provides the opportunity to develop a close relationship with the land and appreciation of land capabilities.
- The opportunity to gain a number of skills relating to land, such as surveying, law, planning, resource management, engineering and land development.
- The opportunity to utilise and develop IT skills and the use of GIS.
- The opportunity to develop skills in analysis, report writing, consultation and professional business practice.
- The opportunity to apply these skills to the benefit of their own whenua and whanau, and to influence and inform political and administrative decisions on land use policies.



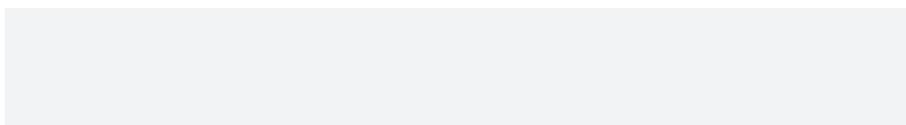
### **6.3. Education**

The early need identified for Maori Land is surveying and titling. However, if this is not done in context with the land use and development objectives of Maori owners, ad hoc land surveying and titling can institutionalise further an already unsatisfactory situation. We wish to stress that the surveyor's role is not only in the spatial sciences, but also in land management and development, resource management and land use economics. We are confident that surveyors have a good opportunity to advise and assist Maori with the effective development of their land and resources. We believe there is an opportunity for the NZIS to encourage the development of surveyors to provide survey and spatial advice to the MLC, noting that LINZ is no longer in the position to provide the advice and services that its predecessor departments did.

There is a need for surveyors to have a good theoretical knowledge of the role of land tenure in general, and the array of land and resource ownerships that can enable a wide range of market and user applications to land and resource use as well as customary rights and arrangements. In addition to land tenures dedicated to economic use, there needs to be an understanding of how land tenures can effectively provide for social uses and cultural values and in particular for collective ownership and customary and intergenerational needs. The Working Group considers that surveyor education should provide a good understanding of various tenure systems, particularly customary land tenure, and associated issues including appropriate land leasing systems.

The land tenure studies already provided and planned at the Department of Surveying, Otago University are an important educational element to surveying and merit full Institute support. The proposal for CPD seminars on Maori land being initiated by the Institute is a valuable step towards regular professional development on this subject.

Education and professional development on the role of tenures and associated rights and first principles will provide a basis for the extension of surveying skills to other ownership rights systems in areas such as maritime, land use and vegetation rights, water, carbon trading and carbon tax. We see Continuing Professional Development initially focused on Maori land as having a critical role in developing and motivating surveyors across a range of land tenure related opportunities and Institute-wide capability in Maori land survey and development skills. Adapted land consolidation and co-management techniques offer a policy approach which will provide good possibilities for the advancement of self directed management of Maori Land, and education on these techniques would be a valuable addition to surveyor's initial or continuing education.



## 7. RECOMMENDATIONS

The elements of the conference resolution are interconnected and overlapping. The development of the Maori Land tenure infrastructure is now at a formative stage and there are a range of issues and actions needed at Maori land block level. We see the best way to make progress is through an initial development programme of activity by the Institute. This programme would require an initial investigation and development of relationships, and the identification of actions to assist Maori land owners to achieve full capability to use and enjoy their land.

### *7.1. Maori Land Tenure*

It is recommended that the Institute recommend to Government the completion of the Maori Land Registration Project to ensure all Maori Freehold Land is fully surveyed and defined to provide the essential cornerstone of an efficient Maori Land tenure system.

### *7.2. Development Programme*

It is recommended that the Institute establish a 2-year programme to develop relationships and knowledge on current Maori Land issues and tenure requirements. Components of this programme to include:

- Establishment of Maori Land committees at Council and Branch level. Relationship building with Minister of Lands, Maori Land Court, etc.
- Develop a relationship with Te Puni Kokiri in regard to their current Maori Land initiative and offer assistance including this report if appropriate.
- Follow up liaison with the Hui Taumata Steering Committee and Maori Land Tenure Group, including initiatives to encourage young Maori into surveying careers.
- Relationship building by Branches with appropriate Iwi and Hapu.
- Initiating a project aimed at resolving the current problem of Maori Land being invariably more expensive to survey than General Land.
- Support for the University of Otago School of Surveying degree courses and short professional development courses on comparative land tenure systems (including customary land), and their role in land use, conservation and development outcomes.
- Support for School of Surveying coverage of current Maori Land legislative provisions and understanding of MLC processes, associated protocols and tikanga.
- Institute encouragement of regular Professional Development courses in land tenure systems for members using a diversity of relevant resources.

# NZIS MAORI LAND COMMITTEE REPORT

Maori Issues Working Group

## ■ ANNEXES

### ANNEX I

#### *Membership of the Maori Issues Working Group*

This Group was convened in 2002 by Ross Miller (NZIS Vice President) and it brought together a small group of members from throughout the country who had knowledge and experience in dealing with Maori Land issues. The members of this Group were Graeme Crocker, Alan Radcliffe, Bill Robertson and Gerry Turner. In 2004 Ross Miller stepped down from the NZIS Council and from this Group and he was succeeded by Tony Bevin as Convenor.

### ANNEX II

#### *Specific Issues Adversely Affecting Maori Land*

- It is often marginal in quality and productive value.
- Much of it is remote rural land which is difficult to access, and much is removed from major markets.
- Much of it is held in small isolated parcels, sometimes landlocked. (Recent estimates have been that nearly 30% of Maori land is inaccessible because it is surrounded by private land).
- It is often un-surveyed.
- It is subject to multiple ownership and successions.
- It is often held by a large number of absentee owners.
- Individuals may have small shares in many scattered parcels.
- Difficulty of obtaining finance for development.
- Lack of accuracy and completeness of the register for Maori Land.
- Administration by local authorities in planning and related functions is often not related to the circumstances of Maori land.
- Lack of involvement by Maori owners.

## ANNEX III

### Briefing Notes for NZIS Maori Land Committee – G A Turner, Aug 2005

#### User Requirements & ML Tenure Information System Requirements

##### 1. Authority for Cadastral Systems.

“Since its inception the United Nations has been actively promoting cadastral programs... and this commitment is continued in Agenda 21 (Rio, 1992) and Habitat II... which recognise that efficient and effective cadastral systems are essential for economic development, environmental management and social stability in both developed and developing countries.”<sup>9</sup> “The [*cadastral*] infrastructure can support a vast array of legal, technical, administrative and institutional options... and such flexibility allows cadastres to record a continuum of land tenure arrangements from private and individual land rights through to communal land rights, as well as having the ability to accommodate traditional or customary land rights.”<sup>10</sup>

##### 2. User Requirements.

“In order to cope with the great diversity of needs, the Bogor Declaration states that cadastral systems should; <sup>11</sup>

- Be simple and effective;
- Be adaptable to rates and patterns of population;
- Provide access to land, security of tenure & trading of land rights;
- Provide a vast array of options;
- Include all state and private lands;
- Be part of a national spatial data infrastructure.”

To meet ‘user needs’ for a unique Maori Land tenure as conceived by the Te Ture Whenua Maori Act 1993 (S2 & S17), requires a paradigm from that perspective. Fundamentally, this is not an arrangement for a best fit with the system of General freehold (or any other) land tenure.

Users (those having an interest in Maori Freehold Land) require a cadastral system having the principal features of most tenures; i.e.

- based on uniquely identified parcels of land;

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<sup>9</sup>Bogor Declaration. Report from the United Nations Interregional Meeting of Experts on the Cadastre; United Nations, 1996. P1, 1.4.

<sup>10</sup>Ibid. p6, 4.5.

<sup>11</sup>Cadastre 2014. A Vision for a Future Cadastral System; FIG, 1998.

- is legally supported and provides secure ownership;
- is efficient, being easily understood, reliable, and providing cheap and fast services;
- is comprehensive and contains a record of all rights and interests (including easements and constraints) pertaining to a land parcel;
- provides for a repository and infrastructure for political (national interest) decisions;
- allows for computerised data and indexes to support efficient access to information; and has access to other land information systems (resource mapping, etc) via spatial integration. I.e., it is a 'multi-purpose cadastre' and an integral part of a National Spatial Data Infrastructure.

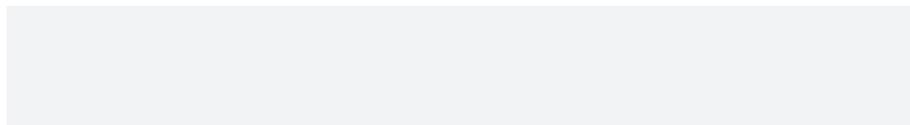
In addition to these 'user needs' which are expected of all tenures, is the requirement that the cadastral system underpinning Maori Freehold Land tenure is;

- Relevant to traditional nomenclature and rights;
- Supports collective ownership, collaborative development, and customary usage and management;
- Supports intergenerational transfer of rights and utilisation (*take tupuna*);
- Supports the functions of the MLC and the accurate and timely recording (registration of adjudicated rights attached to land parcels);
- Facilitates accurate and efficient land use and development decisions;
- Supports the dealing in rights by and among land owners;
- Reinforces the functioning and reliability of Maori Freehold Land use, development and enjoyment within the national land market and economy.

### **3. Maori Land Tenure Information System Requirements.**

Data elements and specifications necessary for a functioning cadastral system to support a fully functioning Maori Freehold Land tenure system will include;

- A defined land parcel. This provides for the attachment of all rights and interests which pertain to it: Authoritatively created, having customary and unique appellation, and unequivocal description and spatial dimension (for tenure mapping), and ground marking (survey) as appropriate.
- Secure ownership. Authoritative determination, and accurate and up to date record of ownership of property rights (including easements) pertaining to the parcel.
- Record system. A system having integrity through recording quality data and



timely maintenance; and easy to use and retrieve data and information through appropriate indexes and computerisation.

- Support infrastructure. Institutions (MLC, *Landonline*), systems, processes and administration which are legally based (authoritative), simple to understand, efficient, and (nationally) consistent in their administration and data management.
- Cadastral mapping. Spatial cadastral records, recorded to a national standard and capable of integration with other land tenure mapping (neighbours), resource mapping and land information systems. Also, linkage to other records of public, individual and communal rights.
- Relationship to General (freehold) Land. Cleansing of the LT system with respect to records pertaining to 'Maori Land' (in accordance with the principles of indefeasible title), and establishing compliant (and user friendly) rules and procedures for the interaction of Maori Land with General (freehold) land.

That is; a system which can easily and cheaply provide for the adjudication and recording of property rights, and provide comprehensive information on the property rights, responsibilities and obligations; environmental requirements and constraints; and land use opportunities and limitations for use, development and enjoyment. Above all, a cadastral system based on the principles and criteria outlined above to support Maori Freehold Land Tenure as conceived by the Te Ture Whenua Maori Act 1993, would support social justice.

#### ***4. Cadastral Systems – Form and Function***

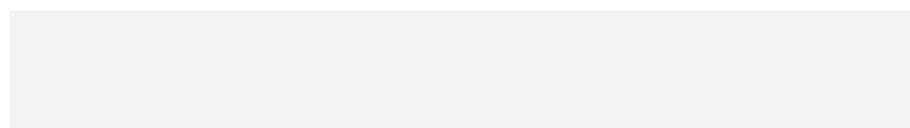
The Bogor Declaration, P8; 6.8 – 6.10 includes a useful definition of the function of a cadastral system;

“Cadastral systems are not ends in themselves. They support effective land markets, increased agricultural productivity, sustainable economic development, environmental management, political stability and social justice.

Cadastral reform or improvement should focus on the functions of the cadastre and in particular the key processes that are associated with adjudicating, transferring and sub-dividing land rights.

The success of a cadastral system is not dependent on its legal or technical sophistication, but whether it protects land rights adequately and permits those rights to be traded (where appropriate) efficiently, simply, quickly, securely and at low cost.”

The form of a proposed cadastral system could be expected to utilise existing facilities. For example, Land Information New Zealand and the *Landonline* system would provide a useful engine in support of certain requirements of a re-engineered cadastral system supporting a Maori Freehold Land tenure; e.g. a digital cadastral mapping layer.



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