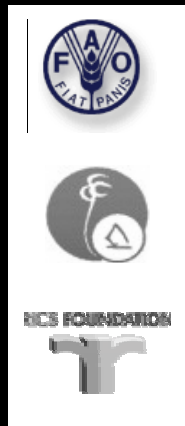


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**Individualisation of Maori
Customary Tenure and Maori
Agricultural Development**

Author:

Tanira Kingi

Contact details:

**Institute of Natural Resources,
Massey University**

Phone:

(+64) 6 356 9099 ext 4178

Fax:

(+64) 6 356 9099 ext 5680

Email:

T.Kingi@massey.ac.nz

Website: <http://www.usp.ac.fj/landmgmt/SYMPOSIUM/>

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INDIVIDUALISATION OF CUSTOMARY TENURE AND MAORI AGRICULTURAL DEVELOPMENT

Tanira Kingi
Institute of Natural Resources
Massey University
NEW ZEALAND

The “individualisation” of traditional Maori land tenure 140 years ago not only helped to expedite the sale and confiscation of large areas of Maori land, but also laid the foundation for the demise of Maori agriculture. Before the introduction of the Native Land Act in 1862 and the establishment of the Native Land Court in 1865, Maori had shown remarkable adaptation to temperate agriculture under “traditional” land tenure systems. Farm produce was grown cooperatively and communally and the adoption of new technologies introduced by the colonial settlers enabled Maori to produce the majority of food crops consumed domestically and exported to Australia.

The current situation is bleak in comparison. Maori currently own less than 6% of New Zealand’s land area under the status of “multiply-owned Maori land”, with a large proportion of this land administered under “corporate”-styled ownership structures that are costly to run and sluggish to operate. The majority of these organisations’ owners do not live on their ancestral lands and have limited involvement in the day-to-day farming operations. Although these organisations collectively make a significant contribution to New Zealand’s economy, for many Maori their involvement in the agricultural industry has been reduced to the status of “absentee landowner”.

This paper explores the land tenure problems facing the owners of multiple-owned Maori land today and the limitations of the current land tenure system and ownership structures to meet the cultural, social and economic needs of the owners. The paper also describes the key factors of the traditional Maori land tenure system that enabled Maori in the 18th century to move from subsistence growing to commercial agricultural production with relative ease and tracks the subsequent breakdown of Maori land ownership and economic activity since the introduction of the 1862 legislation.

INTRODUCTION

The apparent ease with which the New Zealand Maori in the early 1800s shifted from subsistence crop growing to commercial agriculture was remarkable. While a combination of several factors contributed to this, three are prominent. First, Maori had acquired a thorough knowledge of crop husbandry over many generations of growing subtropical crops in a harsh temperate climate. Second, the traditional social structures encouraged entire family groups to farm communally. Third, the flexibility of the

traditional land tenure system allowed individuals to negotiate suitable areas of land from the tribal owners for commercial agriculture. New technologies introduced by traders and settlers allowed Maori to grow food and fibre products throughout the country and to expand into food processing and eventually exporting to Australia.

By the 1860s, however, just over 40 years since the first plough was bought to New Zealand, Maori agriculture was in trouble. Expectations of land ownership by settlers placed pressure on the fledgling New Zealand Government to accelerate land alienation. Within 20 years of the signing of the Treaty of Waitangi, legislation was passed that would dramatically affect Maori social and economic development.

Today, the remaining area of Maori land (or multiple-owned Maori land) is around 1.5m hectares and is governed under absentee owner structures such as the Trust or Incorporation (also referred to as Maori Authorities). Representatives are elected to committees of management or appointed as trustees to administer the land on behalf of owners, who can number in the thousands. While the family-owned farm is still the predominant ownership structure in New Zealand's agricultural industry, Maori landowners in contrast have little choice but to use structures that have proven ill-suited to the vagaries of a bio-physical industry.

Large numbers of Maori Authorities function at a level well below their non-Maori counterparts. Decision-making for committees and trustees can be ponderous, reflecting the insufficient level of expertise on boards, and the costs of administering these organisations are disproportionately high. Maori are underrepresented in all aspects of the industry, with the exception of landowners and unskilled labourers, even though the aggregated contribution from Maori land in some industry sectors is considerable.

Land is central to the identity of Maori and the expectations of landowners who are no longer able to live or work on their ancestral lands are immense. Traditional values still exist among landowners. Added to the economic objectives of managing a commercial farm, the elected representatives of these organisations face the daunting task of attempting to meet the complex and often conflicting goals of their owners. Employment difficulties and the cost of surviving in urban cities has forced many families to consider moving back to their rural areas in the hope of finding work. This 'rural drift' is further complicated by the rise in the number of Maori making lifestyle choices to return to their *turangawaewae* (ancestral lands).

This paper gives a description of both the historical context of Maori land development and the current situation. The section on Maori agriculture, while brief, provides a fairly concise picture of Maori economic activity in the fledgling New Zealand colony. Traditional land tenure and property rights systems are described in detail in the following section. The precision involved in identifying and delineating 'private' property under the traditional system ironically laid the foundation for its displacement under the Western registration system introduced in 1862. An overview of the main legislation affecting Maori land is presented in the next section, and the final section describes the current situation, providing statistics on land area and structures as well as an outline of the social and cultural issues facing the owners.

THE ORIGINS OF MAORI AGRICULTURE

Pre-European Maori grew several subtropical crops, brought with them to New Zealand, including the sweet potato or *kumara* (*Ipomea batatas*), yam (*Dioscorea alata*), taro (*Colocasia antiquorum*) and the gourd (*Lagenaria vulgaris*) (Best, 1925). The main crop was the *kumara*, but it was not suited to all areas of New Zealand and growing was restricted to the northern most regions of the two main islands.

The difficulty of growing *kumara* in a harsh environment developed in Maori crop husbandry skills that would prove useful when European crops were introduced in the 1770s. Over the centuries the number of varieties of *kumara* increased to over 80, and each of these required intense planning and crop management to harvest a crop. The growing of *kumara* was surrounded by elaborate ritual (*tapu*), and to produce these crops required meticulous planning along with the concerted effort of the whole tribe.

Potatoes and the pig were first introduced into Doubtful Sound (South Island) by James Cook, in 1773. Widespread adoption of the potato as a substitute for *kumara* was quickly established throughout the country. As the spread of the introduced crops and livestock increased, so too did the adoption of iron tools replacing traditional cultivation tools such as the *ko* and *timo* (grubbing sticks). The apparent ease by which Maori in the early 1800s adopted new methods of farming has been attributed to the skill and determination developed over many hundreds of years to grow crops ill-suited to New Zealand's harsh environment, such as the *kumara* (Alley and Hall, 1941).

Two events were responsible for the 'Westernisation' of Maori agriculture. Establishment of the first mission in 1814 at Rangihoua, Bay of Islands, by Samuel Marsden was one, and the second event was the conversion of the Nga Puhī chief Ruatara to Christianity. Ruatara, who became Marsden's ardent supporter, visited Marsden's farm in Parramatta, NSW, Australia and travelled widely on European vessels (Hargreaves, 1966)). Ruatara's passion for his new found interests in farming and Christianity affirmed the pervasive belief among missionaries that the true value of agriculture was as a "civilising agency". Marsden introduced cattle, horses and sheep to New Zealand in the 1820s, and the first plough was introduced by John Butler, an Anglican missionary in Kerikeri in the same year. Butler and Thomas Kendall, a fellow missionary, were signatories to the first land sale in New Zealand when the Anglican Church missionary paid 48 axes for 13,000 acres of land at Kerikeri from another Nga Puhī chief, Hongi Hika, on 4 November 1819 (Sinclair, 1988).

Comment: 19 because you need to find year?

The rapid expansion of Maori agriculture and trade kept pace with the growth of the fledgling New Zealand colony. By 1830 there were an estimated 1,000 Europeans in New Zealand, and by 1838 this had increased to 7,000 (Sinclair, 1988). The whaling industry had allowed many Maori to travel to Sydney and other countries as whalers and seaman, and they returned with a greater knowledge of the wider world. Many chiefs like Hongi Hika established valuable trade links as a result of invitations to England.

In other parts of the New Zealand, expansion into agriculture by Maori continued at an unabated rate between 1830 and the mid-1850s. Most of the coastal shipping in the North Island was under Maori ownership as was a large proportion of the food sold

locally and exported to Australia. By the late 1840s wheat growing had become a major agricultural activity in most areas of Maori settlement throughout New Zealand and the construction of dam-operated flour mills was prolific during this period. Between 1846 and 1860 37 mills were built for Maori owners in the Auckland province (Hargreaves, 1961) and 20 mills were built in the Southern North Island (Hargreaves, 1962). Much of this development was encouraged and funded under Governor Grey's 'sugar-and-flour' policy which also included the appointment of an Inspector of Native Mills in the early 1850's (Hargreaves, 1961).

As early as 1842, Bishop Selwyn claimed that the English people at Nelson were almost entirely dependent upon native supplies and was surprised at ... "*the enthusiasm of the native for the commodities, ideas and economic methods of the pakeha*" (Firth, 1959:449). Ten years later the Surveyor-General reported to the Government that "*the natives were 'improving' in respect to the acquisition of property and that they seem to have started with an energy quite surprising in the pursuit of gain...*" (Holmes, 1909 cited in Firth, 1959: 450).

William Swainson (1859), gives an often-quoted account of Maori activity in the Bay of Plenty during the 1850s:

In 1857, The Bay of Plenty, Taupo and Rotorua natives [Te Arawa and Tuwharetoa tribes] of around 8,000 people had upwards of 3,000 acres of land in wheat, 3,000 acres in potatoes, nearly 2,000 acres of maize, and upwards of 1,000 acres of kumara. They owned nearly 1,000 horses, 200 head of cattle, 5,000 pigs, 4 water-powered mills, and 96 ploughs, as well as 43 coasting vessels averaging nearly 20 tons each, and upwards of 900 canoes. In the course of the same year the Ngati Porou from East Cape to Turanga supplied 46,000 bushels of wheat to the English traders, at a value of 13,000 pounds (Swainson, 1859: 65).

Comment: Ploughs?

According to Captain Gilbert Mair, who had a long association with the Te Arawa people in Rotorua, about 20 of the 43 vessels mentioned above belonged to Te Arawa. This level of activity was not confined to the North Island, and in 1860 according to the official statistical return, a sub-tribe of the Ngai Tahu of Canterbury in the South Island numbering approximately 480 owned 205 horses, 214 head of cattle and 197 pigs, and had 51 acres of wheat and 56 acres of potatoes under cultivation (Firth, 1959: 449).

Success of the Maori farmer

Maori involvement in the development of New Zealand's farming industry illustrates the relative ease by which they adapted from subsistence agriculture to commercial farming. Any suggestion that the Maori were by nature incapable of the effort needed for successful farming conflicted with the overwhelming evidence to the contrary. Communal farming was the natural and preferred system, and it proved highly successful. Increasing pressures of colonialism to individualise property and to replace the values of tribal reciprocity and community with independency and self-sufficiency were temporarily delayed by the tribal unity imposed by the communal farming effort.

The foundation for Maori agricultural accomplishments were laid in the period prior to 1840 where much of the contact between Maori and European focused on the trader and

the missionary. While the cumulative acquisition of new technologies and cultural accessories produced changes in the structure of Maori society, the organisation of economic activity was still based on traditional tribal structures. The signing of the Treaty of Waitangi in 1840 provided the first major impact on Maori society as this period represents the beginning of the colonisation of New Zealand and the start of a deliberate, systematic movement to settle the country. The settler differed markedly to the trader and missionary in that the settler brought with them the arrogant tenacity to subdue the country for their own individual gain. As colonialism gained momentum and more land was alienated for settlement, the days of the successful Maori farmer were numbered.

Acknowledgement of this success was more prevalent over 100 years ago than in recent times as demonstrated by *The New Zealander* in 1856 which referred appreciatively to the Maori as "*landholders, farmers, graziers, seamen, shipowners, labourers and artisans*" (Alley and Hall, 1941: 22). The economic success of Maori in the early development of New Zealand secured their place in the new society along side that of the European trader and settler. Conventional history, however, has perpetuated the misconception that Maori lacked industrial endeavour and that land was at risk of being left idle or farmed for subsistence and therefore taking control was to the advantage of New Zealand. Gordon McGlaughlin, the former editor of the New Zealand Journal of Agriculture says:

Depressed prices and then the land wars brought to an abrupt end the Maori adaptation to temperate farming in the context of a market economy – an adaptation which was an extraordinary feat measured against the performance of other New World races facing the onslaught of European discovery and expansion. The confident pride with which the Maori had farmed in Northland, Waikato, Bay of Plenty, and the King Country in the 1840s and 50s and fed the pakeha settlers has never been hailed enough historically among pakeha (McLaughlin, 1981: 71).

CUSTOMARY MAORI LAND TENURE

Maori land, prior to the introduction of a system of deed title and registration in 1862 with the Native Land Court, was owned collectively by *iwi* (tribe), *hapu* (sub-tribe) and *whanau* (extended family). These tribal structures still exist today, and the largest communal unit in Maori society is the *iwi*: a political grouping that comprises several *hapu*, each recognising descent from an eponymous ancestor(s). The *hapu* is a sub-tribe that shares social, political and geographic ties and operates as a cohesive unit. A *hapu* is in turn made up of several *whanau*, the smallest and basic unit of Maori society.

Establishing claims to land ownership by the early Maori settlers was done by the custom of *taunaha whenua* (bespeaking the land). The right of discovery (*whenua kite hou*) was subsequently confirmed by settlement and occupation and transformed into *take tipuna* (ancestral right). Other rights to land included right of conquest (*take raupatu*) and right of gift (*take tuku*) (Sinclair, 1975; Kawharu, 1977).

Contrary to popular belief, Maori land was not owned communally in the sense that every member of the community had an equal right to use, occupy or dispose of land. Title to the land was supported by occupation known as *ahi ka* (lighted fire). The

occupancy and use of any resource was the *prima facie* evidence of ownership by Maori and also the foundation for individual and group property rights. Land was held in common and neither groups nor individuals had exclusive rights to possession apart from a claim of temporary use. The rights of the individual to an equal share of the community's resources was recognised by allocating access or occupation rights to those resources. These rights were sanctioned by the community and could not be taken away without the authority of the community that assigned them. These individual rights were, however, subordinate to the interests of the community and could be revoked at any time.

The influence of the tribe as a whole prevailed over any portion of land held by individual members. No action of any member affecting that land was valid unless ratified by tribal opinion. No matter what rights a person had to a particular area of land, they could not dispose of them to others unless this was in accordance with tribal policy. The tribal chiefs, or *rangatira*, was not only regarded as the spokesperson, but also the trustee, guardian and protector of their interests. The status of chief did not grant a superior right to the land, to sell or claim as his own over others of his tribe, unless the authority to do so had been conferred on him by his tribe. *Rangatira* would normally have individual rights in particular areas of land derived from ancestors, and could also possess claims in land held in common with other tribal members. However, as the *rangatira* their influence over tribal decisions in relation to land was significant.

With Maori land there was an individual right of occupation, but only a communal right of alienation. Shortland explains:

The holdings of individual cultivators are their own as against other individuals of the community. No other individual – not even the chief – can lawfully occupy or use any part of such holding without the permission of the owner (Shortland, 1882: 90).

Exchange and enforcement of property rights

Exchange in the pre-European Maori society was primarily 'gift exchange', with the expectation of eventual reciprocity. Gifts of land were given for many reasons including appreciation of assistance in war.

Neighbouring tribes agreed to use land in common for food production. In many cases a *rahui* (mark to warn against trespass and protected by *tapu*) would be erected to indicate their temporary rights. Temporary use of land was commonly given to visiting tribes, who in exchange would donate surplus food produced. Land was also temporarily allocated where the visiting tribe contributed to the fighting strength of the host tribe.

Memorising minute details of the land, because of the lack of documentation, was the Maori method of certifying title to land. Tribal elders and *tohunga* (expert) knew every prominent natural feature and relationship of these features within the land area. This intimate knowledge was important, particularly where outside tribal groups held title to land within the boundaries of the tribe. Every block of land was named and carefully delineated by natural boundaries and topographical features.

Stone or wooden markers (*pou rahui*) were used and protected by strict *tapu*.

Rahui were warning signs indicating private property. Sub-tribal and family boundaries had to be more clearly defined. Thus flat stones were laid edge to edge around a family plot in the plantation. The same purpose was served by a path cut between holdings, a series of carved posts dividing a plantation or a tract of bush. Family homes were ringed with small wooden fences or paths. Fishing grounds were subdivided by natural or artificial features of cross bearing. Most youths from senior families were given a thorough instruction in boundary lore as a major part of their education. They began with the details of the interests held by their immediate kin and progressed to a general knowledge of tribal interests. Instruction included tours of the land, and as with all lessons it had to be perfectly memorised (Best, 1924).

Every natural feature of land bore names that spanned centuries of occupation. Customary title to land involved the right of descent and occupation. Therefore 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.

Individual titles to resources were carefully defined. Although at the tribal level ownership included expansive areas, property rights at the individual level could be for an allotment of part of an asset. An individual, for example, could share title to a tree with a number of others, i.e. one subject to bird snaring another title to the fruit. Titles were commonly allocated to the head of a family, who extended the rights to other members. The responsibility of trusteeship of the title, however, remained with the family head. Rights of individuals varied within a tribe based on their specialty. A *tohunga whakairo* (expert carver), for example, would hold considerable title to resources within the village, but insignificant rights to agricultural or fishing resources. Food would be bought to him in exchange for the services of carving.

INDIVIDUALISATION OF TENURE: MAORI LAND LEGISLATION

Legislation effecting Maori land exceeds 270 separate Acts of Parliament. The primary focus of the early pieces of legislation from the signing of the Treaty of Waitangi in 1840 to the turn of the 20th century was on the individualisation of communal ownership into a form recognisable under English common law. One of the most influential pieces of legislation that impacted on Maori society was the introduction of the **1862 Native Land Act**, which was subsequently replaced three years later. The two objectives of the **1865 Native Land Act** were to determine and record the titles of Maori customary land and to lay the foundation for the establishment of the Native Land Court.¹ The Act's preamble, authored by Chief Judge Darton Fenton, stated that its objective was "*to encourage the extinction of (native) proprietary customs*". While the 1862 Act referred to tribes and communities as well as the Treaty, the 1865 Act's emphasis was on the individualisation of title.

¹ 'Native' was changed to 'Maori' Land Court in the **Maori Purposes Act, 1947**

The focus on the individualisation of Maori title was symbolised in the '10 owner rule' of Section 23 of the 1865 Act, which stated that a Certificate of Title could be issued to no more than ten owners. Communal Maori title was incompatible with this arbitrary rule, but the consequences were even more disastrous as the Act allowed land purchasers to speed the process of alienation once they had acquired ten names. As the Court system was ill-equipped to confer the authenticity of the names, the system was open to abuse. In many cases the legitimacy of those named on the title to their right of ownership was rarely brought into question by dishonest agents. Thousands of hectares of land were unscrupulously purchased from Maori under this system (Mackay, 1888; Gilling, 1994).

In cases where the actual owners were consulted, Section 23 gave authority for any 'owner' to bring tribal land before the court to establish a collective title. The tribal understanding in these cases may have been that the nominated owners were *kaitiaki* (guardians); in legal terms, however, they were the absolute owners and were free to dispose of the land however they wished. Section 23 also opened the way for tribal rivalry, as it was not uncommon for land with a history of neighbouring tribal disputes to be registered and sold by one or two individuals before another claimant could object to its alienation (Asher and Naulls, 1987). In a society where tribal knowledge was stored and passed between generations orally, the foundation to hold title to land was in the memorising of minute details. This traditional 'recording system' was undermined by the introduction of the 1862 Act and encouraged rash selling by Maori intent on exhibiting to neighbouring *iwi* their 'right' to land by selling it.

The consequences of the '10 owner rule' can still be seen today where members of an *iwi* who believe their family has a legitimate interest in a block of land do not appear on the list of owners of an Incorporation or Trust. In response to objections by Maori to the '10 owner rule', the **Native Land Act, 1867** required the names of all other owners (in addition to the ten owners on the title) to be registered in court and endorsed on the back of the Certificates of Title, and the **1873 Native Land Act** introduced a Memorial of Ownership to replace the Certificate of Title.

While the change in the 1867 Act was instrumental in preventing the disposal of large areas of land without the consent of the tribe, it was not implemented by Chief Judge Fenton, who believed that the policy of the Native Land Court should be to eliminate communal ownership. The 1873 Act created further inequities by all members of a block being granted proportional shares with the right to dispose of them as they wished.

Although the period from 1865 to the early 1900s saw a number of amendments to the governing legislation, the intention of the legislation did not change significantly from that expressed by Dart Fenton in the 1870s. By the time the **1953 Maori Affairs Act** was introduced, the emphasis of the law had moved toward the retention of Maori land. The 1953 Act contained major provisions to simplify land titles and facilitate the use of Maori land that had been found to be uneconomic. An 'uneconomic interest' was defined as having a value of less than £25, and consequently the court was given wide-ranging powers to vest uneconomic interests in the **Maori Trustee** (also established in 1953), who could purchase the interests from the owners without their consent. Not surprisingly this action was strongly resented by Maori, as the only restriction on selling their

interests was that they could only be sold to another Maori but this provision was overturned in the succeeding 1967 legislation.

The controversial **Maori Affairs Amendment Act, 1967** was derived from the Pritchard and Waetford Report of 1965. It made several recommendations for the 'better use' of Maori land in an attempt to curb the problems associated with the increasing fragmentation of title. Land with less than four owners was automatically (and compulsorily) declared European land. Compulsory acquisition by the Maori Trustee of uneconomic interests was expanded to include purchasing land with a valuation of £50 or less. Owner interests in an incorporation under this Act were converted to shares, effectively severing a family's traditional links to specific sites of land. Incorporation lands were given the technical status of general land in an attempt to make them 'more businesslike'.

The most damaging components of the Act were contained in Sections 152 and 155, which allowed the Maori Trustee to sell land to the lessees, who in the majority of cases were *pakeha*. Justification for this recommendation was that Maori owners would never be able to resume ownership of such lands as the compensation payable for improvements would always be too expensive (Pritchard and Waetford, 1965)

By the time the **Ture Whenua Maori Act** (also referred to as the **Maori Land Act**) was introduced in **1993**, Maori land had been reduced to close to its current area of around 1.6 million hectares. In addition to this Act emphasising the retention of Maori land, it also promoted the occupation, development and utilisation of that land for the benefit of its owners and their descendants. New forms of management structures were created to allow *whanau* and *hapu* to manage their land interests more communally, and provisions were put in place to encourage *papakāinga* housing (residential homes on Maori land) and the occupation of multiple-owned blocks of land without the necessity for partition orders.

Shares in a Maori Incorporations are now declared to be 'interests in land', thus reversing the Maori Affairs Amendment Act of 1967 that severed the link between Incorporation shares and *turangawaewae* (ancestral land), and restrictions on the activities of the Incorporation have been reduced to allow land purchased by the Incorporation to be categorised into General Land (land held in the Land Transfer Office) or Maori Freehold, which is not bound by the regulations of the Ture Whenua Act.

Maori Land Court

The Maori Land Court (originally the Native Land Court) has played a pivotal role in the shaping of the country and remains one of the central institutions in New Zealand's race relations. There has been a great deal of criticism of the conduct of the Court, particularly its role in facilitating the Crown purchase and confiscation of Maori land in the 1860s (Gilling, 1994). It was also criticised for its part in orchestrating the complex land tenurial system by which Maori held on to an ever-diminishing amount of land. Professor Hugh Kawharu referred to the Court as '*a veritable engine of destruction for any tribe's tenure of land, anywhere*' (Kawharu, 1977: 15).

While the Maori Land Court is referred to as a 'court', it is technically a specialist tribunal with limited jurisdiction. It has no authority to determine whether there are Maori rights to land and/or whether the land in question is Maori land. Difficulties have arisen from the failure of the Court to determine and identify the rightful owners or to even record the basis for any selection or settlement. Incidences where individuals at the time of determining ownership submitted more than one name under various aliases is not uncommon. This seemingly innocuous act has been the sole cause of immeasurable frustration for the administrators of Trusts and Incorporations, who spend many thousands of dollars annually in effort to track down shareholders/owners who may have never existed.

History of the Maori Authority (Trusts and Incorporations)

The Maori Incorporation dates back to the early 1930s with legislation introduced by Sir Apirana Ngata, Minister of Maori Affairs in the Liberal government. Ngata introduced the Maori Land Development Scheme in response to the enormous social and economic problems facing the Maori in the early 1900s. Population census statistics in 1926 showed that in less than 70 years since the peak of Maori agriculture, the majority of Maori were employed as farm labourers and the number of Maori actually farming their land was very low (Ishida, 1966: 16). The MLD Scheme provided government assistance to Maori landowners to amalgamate land titles into a single administrative structure.

Sir Apirana Ngata saw the organisational structure as a way to overcome the limitations of multiple titles by providing as a mechanism to organise community-owned land resources and facilitating the selection of the most capable members of the Maori community to manage the farming business (Ngata, 1946). As mechanisms to develop Maori land, the MLD Scheme and the Maori Incorporation were successful: Maori land development increased from approximately 60,000 acres in 1930 to over 400,000 acres by 1959 (Hunn, 1960:144).

Additionally, the Maori Incorporation was introduced to overcome what retired Maori Land Court Judge Norman Smith describes as the complex deficiencies of multiple ownership (Smith, 1941). The 'incorporation' of several blocks of land into a single legal entity under the control of a 'committee of management' elected by the owners allowed the Incorporation to act in a similar manner as the joint stockholder company. The benefits of the incorporated body of land, which included improved management and the capacity to access debt capital, outweighed the tendency for extreme fragmentation of shares through succession—or so some believed.

The problems of an increasing number of landowners with decreasing interests in the land are indeed complex. Decision-making among a large number of landowners is difficult, especially when there could be several thousand owners for a 2-3,000 hectare property. Traditional systems of Maori ownership where rights of occupation and use were allocated to individuals are quite distinct from multiple ownership. The most insidious consequence of the latter system is fragmentation of title, where individual interests to land are divided among succeeding generations of owners.

While the Maori Incorporation or Trust has managed to introduce a system of governance that allows land to be developed, managed and alienated, the complex deficiencies of multiple ownership still persist today.

CURRENT SITUATION WITH MAORI LAND AND MAORI AGRICULTURE

The current estimate of the area of multiple-owned Maori land is approximately 1.515 million hectares, or 5.5% of the total New Zealand land area of 26.9 million hectares. Table 1 shows the distribution according to Maori Land Court Districts (see Appendix 1 for map showing districts). The largest concentrations of Maori Trusts or Incorporations are on the East Coast of the North Island (Tairāwhiti) and the Bay of Plenty and Central Plateau (Waiariki) districts.

Table 1: Area of Maori land by Maori Land Court District (hectares)

Maori Land Court District	Total Land Area	Total Maori Land	% of Total Land	% of Maori Land
Tokerau	1,732,192	139,873	8.07	9.23
Waikato-Maniapoto	2,156,583	143,388	6.65	9.46
Waiariki	1,936,270	426,595	22.03	28.16
Tairāwhiti	1,169,091	310,631	26.51	20.50
Takitimu	1,936,492	88,608	4.58	5.85
Aotea	1,284,284	334,207	26.02	22.06
Te Waipounamu	16,715,185	71,769	0.43	4.74
TOTAL	26,930,097	1,515,071		

Source: Te Puni Kokiri, *Maori Land Information Database (1996)*.

The vast majority is administered under one of the four trust structures (not including the Maori Trust Board), with an approximate area of 860,000 hectares or 58% of the total area. The Maori Incorporation has 13.7% of the total area (207,156ha) and almost 19.4% (293,886ha) has no formal organisational structure (Table 2). The remaining area is either not surveyed or is administered under other structures.

Table 2: Area of land by ownership structures in Maori Land Court District (hectares)

Maori Land Court District	Ahu Whenua Trust	Incorporation	Other ¹	Total Maori Land
Tokerau	60,523	6,417	72,932	139,873
Waikato-Maniapoto	69,430	16,000	57,957	143,388
Waiariki	205,391	42,629	178,575	426,595
Tairāwhiti	139,802	119,754	51,074	310,631
Takitimu	51,719	22,353	14,537	88,608
Aotea	176,193	3	156,588 ²	334,207
Te Waipounamu	47,129	0	24,641 ³	71,769
TOTAL	750,187	207,156	556,304	1,515,071

Source: Te Puni Kokiri, *Maori Land Information Database (1996)*.

¹ This category includes land without a formal structure (293,886ha or 19.4% of total Maori land); Whanau Trusts (87,840 or 5.8%); Maori Trust Boards (66,347 or 4.4%); land not surveyed or under customary ownership (83,986 or 5.5%); other trusts (25,669 or 1.8%).

² A large proportion of this area (61,455) is under Maori Trust Boards in this region.

³ The area, under the control of the Ngai Tahu Trust Board, has increased since the date of these statistics.

Identifying the utilisation of Maori land on aggregate is difficult because the records from the Maori Land Court are incomplete. The best estimate to date is from a 1997 Business and Economic Research Limited (BERL) report to the Ministry of Maori Development. Table 3 shows land use taken from data collected by the Federation of Maori Authorities from a survey of 633 Maori Incorporations and Trusts, plus data from blocks administered by the Maori Trustee.

Table 3: Maori land utilisation (hectares)

MLC District	Agriculture	Forestry	Urban	Total Maori Land
Tai Tokerau	124,120	11,830	127	136,077
Maniapoto	99,129	5,588	930	105,646
Waiariki	187,155	151,568	1,790	340,513
Tairāwhiti	167,180	61,778	956	229,914
Takitimu	32,191	7,412	10,856	50,459
Aotea	95,640	5,902	219	101,761
Te Waipūnamu	12,859	11,107	4,024	27,989
TOTAL	718,273	255,185	18,902	992,359

Source: Rose et al. (1997).

In addition to the 992,359 hectares in Table 3, the remaining Maori Authorities not included in FoMA's survey had agriculture (136,448ha), forestry (12,520ha) and urban (9,509ha). Blocks with no administration had an additional 352,176 hectares in agriculture. The area in agriculture (including horticulture) 1,206,896ha, forestry 267,705ha and urban assets 28,400ha give a total area of 1,503,011² hectares.

PROBLEMS OF MULTIPLE OWNERSHIP

The absentee owner

Traditionally, the right to land carried with it a reciprocal obligation in the community to recognise that right. The 1865 legislation, however, saw that those individuals with legally defined rights in the land no longer found themselves with the obligations from which these rights were derived. The right to sell an interest in land, once proof of descent from the original owners, was established in the Maori Land Court usurped traditional obligations. Owners no longer needed to occupy the land, consult with other owners or be responsible members of the tribe to exchange an inherited interest for individual gain. Community membership and responsibility were superseded by proof of descent as the single most important element in determining the right of ownership.

² This figure is not consistent with the total land area in Tables 1 and 2 owing to the difference in data sources.

The vast majority of Maori landowners will never occupy the land nor derive a livelihood from it, with the exception of the few who lease land for their own use or those landowners who are also employees. Although landowners are likely to receive cash dividends and grants, for many owners the benefits of the organisation's activities are general and communal. The sense of identity derived from genealogical descent, which is the criterion for membership, is all-encompassing as is the overriding objective of land retention by the present generation in order to hand it on to their heirs and successors intact.

Absentee owner organisations

Recent research commissioned by the Ministry of Agriculture and Forestry has identified several key problems associated with Maori farming under the Trust or Incorporation structure. A survey of farm consultants found that the restrictions of the land tenure system associated with multiple ownership and the 'committee system', necessary under the Trust and Incorporation structures, are a major impediment to the performance of these organisations (Kingi *et al.*, 2001).

Owners elect representatives democratically, and as such the final makeup of the committee often reflects the political interests of large families wishing to maintain control of the organisation as much as the appointment of individuals with the best mix of skills to oversee large complex organisations. One of the main factors contributing to these organisations' poor performance is related to the lack of skill of the average committee member/trustee to juggle their responsibilities as the director of a farming business on the one hand and their *whanau* interests on the other.

Recent comparisons between Maori and non-Maori farms on the East Coast of the North Island have identified dramatic differences in productivity levels, financial performance and land use efficiency (Hayes, 2000). In several key areas, Maori farmers were significantly under performing. The comparisons were made between farms in the same region, although the Maori farms were much larger in size (average Maori 2,200ha cf. 640ha non-Maori), and all of non-Maori farms were owner-operators or family businesses.

Comparisons of this nature have several shortcomings, given the differences in ownership and organisational structures, the relevance of single enterprise measures of productivity and profitability, and the limitations of standard farm performance measurements that overlook cultural/social factors. Nevertheless, the findings of this research are consistent with previous studies (Ward, 1958; Ishida, 1966; and Thorpe, 1976) on the performance of Maori farming organisations which indicates an underlying weakness in the viability and sustainability of these structures. In terms of the overriding purpose of the structures, i.e. amalgamation of uneconomic interests or retention in Maori ownership, they have been successful. However, 70 years later these organisations are facing immense pressures to meet multiple and often conflicting objectives (Kingi and Maughan, 1998).

The focus of landowners

Research carried out with Maori farming groups and shareholders of Maori Authorities has identified a range of factors that landowners use to judge the success of these organisations. White (1997) found that landowner expectations were very high for an Incorporation to play an active role in supporting tribal development by providing community grants, supporting *marae* (meeting houses), generating employment opportunities by investing into local businesses, employing Maori, and so on. Additionally, the ability of an organisation to meet its social and cultural objectives was based on several factors that included retention and guardianship of the land as well as unimpeded owner access to the land.

The cultural values intrinsic to Maori society have a significant influence on the make-up of Maori landowners. Maori farming groups in several regions of the North Island found that although farm management issues were the focus of regular meetings, kinship (*whanaungatanga*) between members is one of the key elements that binds the group and that a focus on production or financial objectives, while important, does not override the significance of retaining other values (Kingi, 2000 and Kingi, 2000b). The strong connection to their ancestral lands brings with it the responsibility of care and guardianship (*kaitiakitanga*) and the importance of maintaining the family's (*whanau*) connection by encouraging participation in a wide range of activities and helps create an environment that strengthens identity (*mana whenua*). Two overriding values have been identified: enhancement (*whakapiki tangata*) and self-determination (*mana Maori*). These outcomes are underpinned by the following principles or values: unity (*whakakotahitanga*), commercial viability (*mahi haere ahuwahenua*), stewardship (*kaitiakitanga*), kinship (*whanaungatanga*) and control (*mana whenua*). These principles and values are not specific to Maori land and are consistent with those identified in Maori health research (Kingi, 2000).

The constraints of multiple ownership

Initiatives by Maori landowners to overcome the constraints of multiple ownership and the limitations of absentee ownership structures have started to increase in number in recent years. Many of these initiatives have focused on bringing together or amalgamating existing organisations into alternative structures to reduce administration costs and to capture scale benefits (Te Roopu Waka Hou, 1996) and to improve their ability to provide wider benefits to shareholders and beneficiaries (Waimarama Maori Committee, 2001).

The Waimarama aggregation project, which is currently in progress, aims to bring together 3,500 hectares with over 2,360 owners. Most of the land blocks are leased (many due to expire) to *pakeha* farmers or are under an Incorporation structure. The owners recognise that the land is under-utilised in its current fragmented state, but there is tremendous potential to contribute to the economic, social and cultural needs of the *hapu* if a 'collective' approach is adopted. A key point in this project is the emphasis not only on the amalgamation of land titles and structures, but also on 'cultural aggregation'.

It is because we are Maori that we have any traditional rights at all and that includes land interests. We have a unique heritage that brings with it certain cultural rights and obligations.....Returning these lands to the protection of our cultural estate is an affirmation of our cultural heritage. (Waimarama Maori Committee, 2001: 6).

The establishment of a structure that incorporates Maori values is critical to capturing and retaining the support of the landowners. Other initiatives have been less successful due in part to the perception of the landowners of a loss of *mana whenua* (control over land) as a result of land titles being removed from the 5 or 6 original structures and incorporated into a single over-arching organisation (Te Roopu Waka Hou, 1996). In this case, the benefits of scale and leverage, did not sway the owners to change. Nevertheless, the desire for improvement, for many landowners is unremitting. The essence of these initiatives and many others like them is on developing structures that not only improve economic benefits but also allows the owners to re-establish their relationship with their ancestral lands.

This emphasis differs markedly from the Land Development Schemes of the 1930s that saw land amalgamated to limit the debilitating consequences of title fragmentation and alienation by making the land available for farming. In contrast the landowners of these organisations or blocks of land that are already used for agriculture, expect much more than just a financial return in the form of share dividends or education grants. While most appreciate that only a small proportion of owners may live or work on their farms, there is a concerted effort to regenerate the sense of community lost many years ago.

In summary, the events of the last 140 years since the 1862 legislation have produced a curious situation in New Zealand. Maori are significant landowners, in some regions of the country, yet the majority don't live on their lands. Collectively, their land resources make a significant contribution to the agricultural sector, yet Maori are underrepresented in almost all sectors of the industry beyond the farmer or farm worker. Prior to 1862 Maori showed that they had the mettle and resources to be successful. But more significantly history shows that many of the factors necessary for economic advancement were present in traditional Maori land tenure and social structures. Ironically, the precision and exactness of the pre-European system of landownership accommodated the Western registration system too well. Perfect recall of physical boundaries and historical facts surrounding a piece of land provided sufficient information on which titles were allocated and fixed for eternity. Communal farming was central to the success of Maori farming in the first part of the 19th century. The steady decline in Maori agriculture since the 1865 legislation has been matched by a corresponding exponential increase in title fragmentation. In spite of the limitations of the current ownership structures, many Maori are determined to restore the lost sense of community that was once built on their *turangawaewae*.

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Appendix 1: MAORI LAND COURT DISTRICTS

