Tax Working Group
Te Awheawhe Tāke

Tax Working Group Public Submissions Information Release

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Ngai Tuahuriri: Submission on Taxation

Introduction

My name is Rawiri Te Maire Tau.

I am the Upoko of the Ngai Tuahuriri hapu which was the first Runanga established in New Zealand.

Our hapu is located on the Tuahiwi Marae on Kaiapoi Maori Reserve 873.

The Ngai Tuahuriri Runanga has led the Ngai Tahu Claim since 1848 and my father H.R. Tau was the claimant to the Ngai Tahu Claim filed to the Waitangi Tribunal in 1986.

I am also the Director of the Ngai Tahu Research Centre, University of Canterbury. Our focus in this Centre is on tribal economics and environmental law.

I hold a PhD is History from the University of Canterbury.

This submission is on behalf of the Ngai Tuahuriri Runanga.

Kaupapa

This submission is divided into three sections.

(i) Historical Outline of our Runanga Position: 19th Century Imperial Economic Policy

The first section of this submission will be a historical outline of the principles for taxation which we believe stem from the Treaty of Waitangi, early Crown legislation and the promises made by the Crown that were assumed into legislation. To be clear we believe that,

- The Crown's right to revenue by way of taxation was assumed by way of article (i) of the Treaty of Waitangi where the Crown holds the right to govern (kawanatanga) and sovereignty.

- Article ii of the Treaty also allowed Maori the right to raise taxation upon their lands and villages and this is evident in early legislation such as the *1858 Native District Regulations Act* and the original policies of early Governors, Browne and Grey.

(ii) Post War II Economic Policy:

Part II explains how the Crown passed legislation that effectively reduced Maori land to 'Dead Capital'. The legislation that created this was also the reason for today's present housing crisis, the urban migration of the post war generation and the Dead Capital crises that we have within Maori communities which has been driven by the Maori Land Court and the western ideology that underpins it.

(iii) Proposals to Convert Dead Maori Capital to an Economic Asset through Tax Policy

This section will provide possible solutions to resolve the problems of Maori land as 'Dead Capital'. These solutions have arisen after extensive consultation undertaken by Ngai Tahu with the First Nations peoples of British Colombia and our relationship with Chief C.T. (Manny) Jules, Chief Commissioner, First Nations Tax Commission.

SECTION I: HISTORICAL OUTLINE OF OUR RUNANGA, TAXATION AND ECONOMIC DEVELOPMENT

The Crown assumed ownership of the lands within Canterbury in 1848 following the Canterbury Deed of Purchase that year. Following the signing of the Deed in June, the Crown surveyed the Kaiapoi Maori Reservation as Maori Reserve 873 – and set it aside in August of the following month.

The transfer of Ngai Tahu ownership to Crown Title was therefore complete. However, the actual process of assigning title to individual members did not occur until 1862 under a special Act of Parliament called the 1862 Crown Grants Act (no. 2). This Act was unique to the Kaiapoi Ngai Tahu as Governor Grey had wanted the land to fall under the 1858 Native Districts Regulations Act which essentially confirmed Kaiapoi land owners as the first Runanga in New Zealand.

The 1862 Crown Grants Act (No. 2) confirmed the agreements reached between the Kaiapoi Ngai Tahu and the Crown Agents who negotiated the sub-division of the land and the individual property rights that had been established by the Runanga when it first met in 1859. These negotiations occurred within the gambit of the 1858 *Native District Regulations Act* and the promises made within the 1848 Canterbury Deed of Purchase.

The 1858 *Native District Regulations Act* was important because it gave the Runanga the right to regulate their lands with the same powers as the Provincial Council. Regulation V declared that regulations from the Runanga:

> . . . shall control and supersede, or preclude, the operation of all Laws or Ordinances in anywise repugnant thereto, or inconsistent therewith, which, before or after the date thereof, may have been or may be made or ordained by any Legislative Body within the Colony, other than the General Assembly, or by any Superintendent and Provincial Council.[1]

The extent of these regulations are impressive enough, but perhaps the most important was regulation II (7) which allowed the Runanga, the right:

> For ascertaining, prescribing, and providing for the observance and enforcement of the rights, duties, and liabilities, amongst themselves, of Tribes, Communities, or Individuals of the Native Race, in relation to the use, occupation, and receipt of the Profits of Lands and Hereditaments.[2]

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[1] Native Districts Regulations Act 1858, section V.

[2] Native Districts Regulations Act 1858, regulation II (7).

In short, this clause gave the Runanga the capacity to regulate, manage and administer the lands within its district through taxation, duties and other activities on their lands. The idea of Maori regulating their financial activity through land taxation or rates needs to be understood within the context of the time.

In short, this clause gave the Runanga the capacity to regulate, manage and administer the lands within its District through taxation, duties and other activities on their lands.

Governor Gore-Browne estimated that in 1856 Maori brought in £51,000 in customs revenue as opposed to the settler economy which contributed £36,000.3 On Grey's return in 1861, the overall valuation in land for the Canterbury Purchase had also raised the value of Maori land. Grey showed that the

[3] Alan Ward, "A Report on the Historial Evidence: The Ngai Tahu Claim Wai 27", *Commissioned by the Waitangi Tribunal* (1989): T1, 404. Hazel Petrie also refers this calculation, but also outlined the Colonial Treasurer, C. W. Richmond's view that this ratio was over-estimated. Nonetheless, the Native Secretary, Donald Mclean, supported Gore-Browne's estimate. (Hazel Petrie "Colonisation and the Involution of the Maori Economy", *A paper for Session 24, XIII World Congress of Economic History, Buenos Aires* (2002): 17.

Canterbury Reserves were valued at £67,000 while the Kaiapoi Reserve itself was valued at £45,500.4

When George Grey returned as Governor in 1860 he made an interesting observation on the Kaiapoi Ngai Tahu:

> The Natives are not really a poor people. They can only be said to be so whilst their lands are of no value. If, under the proposed regulations, law and order are introduced throughout the whole country, Europeans flock into the Native districts, and a considerable value is given to the lands of the Natives, they will soon be a people quite able to bear local taxation, and willing to impose it, to give a still increased value to their property.[5]

Today we may look upon Grey's statement that Maori were not 'really poor' with a degree of horror. Nevertheless, he had a point. Grey was quite aware of how much Maori contributed to the colony's economy. In 1860, poverty for Maori was

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[4] Alexander Mackay, "Supplementary report from W. Buller, Esq., to the Native Secretary Christchurch 17th, October 1861", in A Compendium of Official Documents Relative to Native Affairs in the South Island, Volume Two (Nelson: Luckie and Collins, 1872), 113.

[5] "Minute by His Excellency, Governor, Sir George Grey", *AJHR* (1862), E-2, p18.

not upon the immediate horizon and in fact nationally, trade was strongly weighted towards Maori.

> *the Natives, they will soon be a people quite able to bear local taxation, and willing to impose it, to give a still increased value to their property.*[6]

Grey had imagined that if the runanga or tribal councils were empowered as civil institutions to regulate and enforce the law, tax and determine property rights, Maori could become active participants in the New Zealand economy. Grey challenges our more usual explanation for Maori poverty that followed which blamed the lack of land allocated to Maori as the reason for the poverty that followed among Maori after the 1860s. This reasoning fails to take into account that no matter how much land Maori would have retained, it would eventually

[6] "Minute by His Excellency, Governor, Sir George Grey", *AJHR* (1862), E-2, p18.

have counted for little if they did not have an equal measure of local governance over their land.[7]

However, because of the New Zealand civil wars that followed, the Runanga system fell apart and as we know, the economic spiral of Maori communities commenced. The principal factor in the cause of Maori economic downturn was that the Native Land Court was given jurisdiction over Maori land. This really was a great shame because the Ngai Tahu economy was in a boom cycle. However, the Native Land Court ignored the 1862 Crown Grants Act (No. 2) which allowed individual Maori ownership of land as long as it remained in tribal title. The Maori Land Court essentially imposed communal title which was not a Ngai Tahu custom.

Communal title has never worked as an economic asset and Elinor Ostrom has argued, it has only ever led to a tragedy. There is also very good evidence that shows private property rights was in fact a norm in tribal societies and that communal title is a relatively new phenomenon.

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[7] Stuart Banner, "Conquest by Contract: Wealth Transfer and Land Market Structure in Colonial New Zealand," *Law & Society Review*, Vol. 34, No. 1 (2000), pp.47-96.

The economic spiral that Maori suffered from the late 1860s onwards was caused by:

- The removal of Runanga as an institutional authority on our Reserve
- The removal of individual tribal title which was replaced by a Crown communal title governed by the Native Land Court
- No legislative authority upon Maori Reserved lands – to regulate land use and occupation
- An absence of fiscal authority amongst our Runanga – is no capacity to levy taxes or duties.

Christchurch members of Parliament had always been worried with the consequences of the Native Land Court. In 1862 James Fitzgerald, the Member of Parliament for Ellesmere, made the following observation when speaking to support the Runanga over the proposed Native Land Court:

> He hoped that the Government would have extended their runanga system. The Native Lands might then bear the same relation to the runangas as the waste lands of the Crown did to the Provincial Government – that was, if they wanted to sell or lease the land, it would be for the runanga of the district to make regulations for it. The district runanga had been told that it should have the disposal of the lands; what,

> then, was the use of bringing down a Bill saying that this Court should have the power?[8]

Fitzgerald was essentially saying that a Native land Court was not needed in the South Island because it had been agreed by way of the 1858 *Native District Regulations Act* that Runanga would manage and regulate their lands with the same powers of the Provincial Government. Nonetheless, the wider political issue of land ownership was raging in the North Island and Ngai Tahu was to pay for this matter.

Part I: Section Summary

This section of the submission suggests the Ngai Tahu economy performed strongly during the 1840s-early 1860s because:

- Ngai Tahu property was held in a tribal title that recognized individual ownership.
- Ngai Tahu were able to regulate economic activity on their lands through their political institution, the Runanga.
- The Runanga held the same powers as the Provincial Government.

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[8] James Edward Fitzgerald, "Native Lands Bill", *New Zealand Parliamentary Debates* (1862): 628.

- The Runanga could levy a tax

THE CONCLUSIONS WE DRAW FROM THIS ARE THAT ECONOMIC DEVELOPMENT AND THE ABILITY TO RAISE REVENUE BY TAX DEPENDS UPON:

- **TRIBAL INSTITUTIONS VESTED WITH LOCAL GOVERNMENT POWERS TO REGULATE TRIBAL LANDS AND RESOURCES.**
- **TRIBAL INSTITUTIONS VESTED WITH THE POWERS TO HOLD FISCAL AUTHORITY WHICH INCLUDES RAISING REVENUE THROUGH TAXATION.**
- **TRIBAL INSTITUTIONS VESTED WITH THE POWERS TO HOLD LAND WITHIN AN IWI TITLE (RATHER THAN CROWN TITLE) TO DEFINE LAND TENURE, HOLDINGS AND POSSESSION AND OWNERSHIP.**

Section II: Post War Economic Policy:

Between the 1870s-1945 Ngai Tahu lived in relative poverty upon their reserves. The economic plight our people suffered has been well documents in Royal Commissions throughout the 1870s and 1880s. The Waitangi Tribunal was to report on this in its 1991 Ngai Tahu Report.

However, in our recent history the poverty that affects Maori today has stemmed from three Acts of Parliament that were passed between the 1950s-60s. Those Acts were:

- 1953 Town and Country Planning Act
- 1967 Maori Affairs Amendment Act
- 1967 Ratings Act

These three Acts had a devastating impact upon Maori land and Maori communities. The Acts directly relate to the legacy of Maori land which essentially exists as 'Dead Capital'.[9] These Acts are also the reason for the Maori housing crises and the urban poverty that we now have.

[9] . The idea of 'Dead Capital' is explained by the Peruviuan economist Hernando de Soto in his publication, 'The Mystery of Capital' (2003).

The three Acts essentially acted in a coordinated way wherein the 1953 *Town and Country Planning Act* brought all Maori Land under local government. Local Councils right throughout New Zealand such as the Rangiora County Council in our hapu region, immediately rezoned all Maori land as rural allowing only one house per ten acres. The problem is that most Maori land allocations were 14 acres, which essentially meant no other houses could be built. This meant that tribal members raised on marae and in Maori Pa and Reserves which were set aside in the 19th century for Maori to reside, were made landless overnight. The reason for this was that the new zoning regulations did not recognize Maori Pah as residential areas which the original survey maps and Deeds meant them to be. Overnight Maori land had been re-designated and also devalued.

Maori parents could no longer sub-divide their land for family members to build upon. In the Tuahiwi Pah that I was raised, out of the 12 brothers and sisters in my fathers family, none were allowed to build on their parents land. In a series of unethical arrangements between the Rangiora County Council Clerk and others, my father was given the option of purchasing neighboring family land that had been sold by another family that were prohibited from building. My mother, also from the same village, and from a family of 10 was among the sole two members allowed to build in Tuahiwi. The point here is that of the 22 uncles and aunts only 3 were able to build – despite the fact that they were all able to build as their parents actually owned enough land to allocate to them on quarter acre blocks that all other Kiwi's celebrated.

I make this point because once the land was rezoned, it lost its economic value. The outcome was that in my childhood, Tuahiwi was mostly a village of elders whose children were forced to rent houses in Christchurch or the smaller townships of Kaiapoi and Rangiora.

Those who remained in the traditional Pah now had to deal with small land holdings ranging from 1 -14 acres but of no real value because housing was not permitted and the land itself was too small for farming purposes. Many elders were forced to sell their lands in the late 1980-90s because they needed to live with their families in urbans settings in their old age.

The final indignity was that the sole persons able to purchase land were rural farmers – who were the established power structure that occupied the local County Councils. The simple truth was that post war local governments in New Zealand rezoned Maori land to ensure its devaluation so as to see its transfer to rural Pakeha New Zealand. There was only one group in New Zealand who would purchase uneconomic rural land during the 1960s-70s and that group sat on the local County Councils.

By the 1970s, Maori land was of no value because the zoning regulations had ensured no economic activity could occur upon it other than small rural farming. The land had no residential value and to make the humiliation complete, land with unpaid rates passed to the local council to be sold under the 1967 *Ratings Act*.

There are a number of lessons to be leant from this situation. What is important though is that it is simply unreasonable to apply a property tax to Maori land owners whose title exists in Maori Freehold Title and Crown Title. What tends to be forgotten is that the 1967 *Maori Affairs Amendment Act* ensured that Maori land with less than 3 owners had their title passed into Crown title so that it could be easily on-sold to local farmers. However, the same zoning restrictions applied because Maori land was allocated in Reserves or reservations such as Tuahiwi whose legal designation is the Kaiapoi Maori Reserve 873.

This submission asks that any Maori land (Freehold Maori or General Crown Title) that sits within Maori reservations or Maori reserved lands needs to be exempted from any capital gains tax.

Part II: Section Summary

This section of the submission makes the point that since the WWII Maori land was regulated by local councils and as a consequence rezoned to a situation where:

- The state of Maori Land as Dead Capital was created by legislation post WWII – specifically the 1953 Town and Country Planning Act, the 1967 Ratings Act and the 1967 Maori Affairs Amendment Act.

- Maori land lost its value because of local government regulations which prohibited residential occupation and any commercial activity other than rural farming.

THE CONCLUSIONS WE DRAW FROM THIS ARE THAT ECONOMIC DEVELOPMENT AND THE ABILITY TO RAISE REVENUE TO TAX DEPENDS UPON:

- **THE CAPACITY OF TRIBAL INSTITUTIONS POSSESSING LOCAL GOVERNMENT POWERS TO ZONE THEIR LAND IN A MANNER THAT STIMULATES ECONOMIC ACTIVITY AND REVENUE.**
- **THAT MAORI LAND NEEDS TO BE EXEMPT FROM ANY NOTIONS OF CAPITAL GAINS TAX AND,**
- **AN ECONOMIC PACKAGE IS REQUIRED TO STIMULATE ECONOMIC DEVELOPMENT UPON TRIBAL LANDS WHICH IN TURN GENERATES REVENUE FOR TRIBAL INSTITUTIONS TO ALLOW DEVELOP BASIC INFRASTRUCTURE ON MAORI LANDS AND RESERVES.**

Section III: Proposals to Convert Dead Maori Capital to an Economic Asset through Tax Policy

Despite the problems with Maori land and Maori Reserves and Pah, the settlements that are occurring allows some discussion to occur on how to resolve the basic problem of Maori land as an economic asset.

The Ngai Tahu Claims Settlement Act occurred in 1998. Today the Ngai Tahu Holdings Shareholder equity is $1.27b with a $49.6m distribution to tribal members. The challenge is to align the economic strength of our corporations with the reserved lands we have.

Tribal corporation essentially generates wealth which flows into the regional and national economy. Nonetheless, as we shall show, that wealth does not flow into a Ngai Tahu economy.

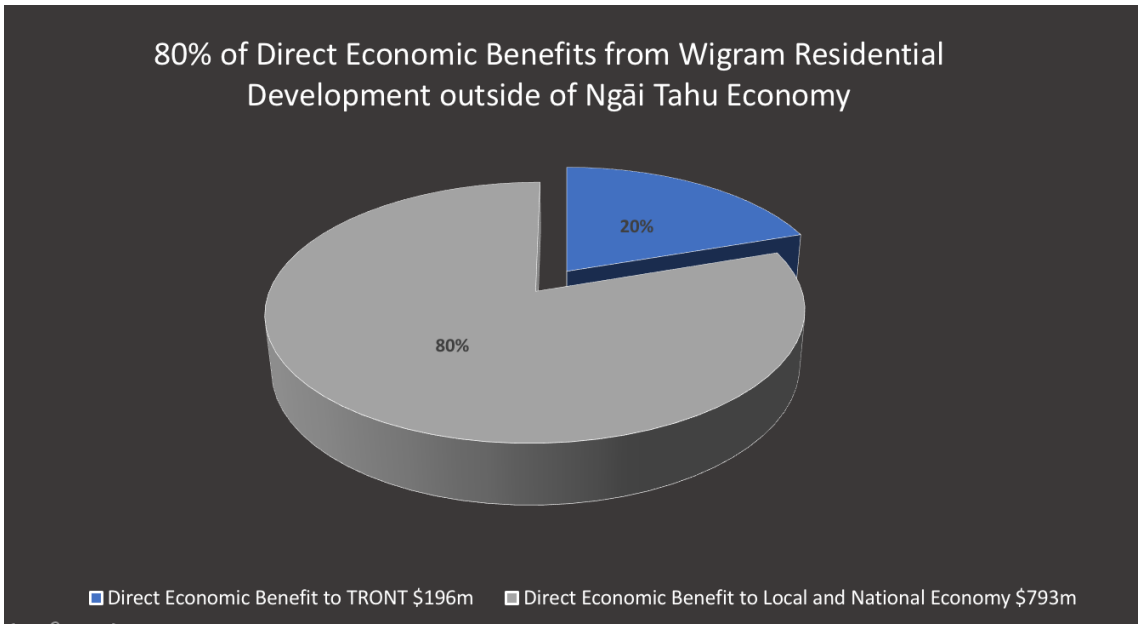
In a recent study conducted by the Ngai Tahu Research Centre, we undertook an examination of the multiplying role of the Ngai Tahu dollar within the local Christchurch economy. This report is attached as an appendix and remains in draft form until it is published.

Our study was focused on the Wigram Residential Development. Our study was concerned with where the Ngai Tahu investment goes when it leaks out.

In this report we compare the Wigram Residential development with a First Nation example on the Muskeg Lake Cree Lake Urban Reserve.

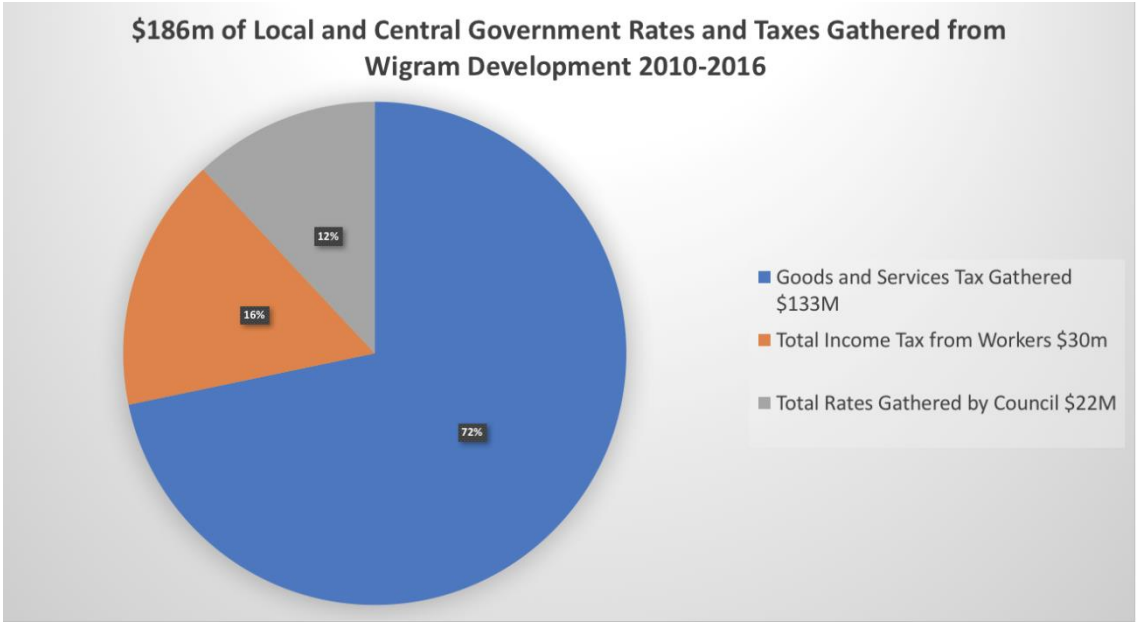
We found that while the Wigram Skies development generated a significant economic income to Ngāi Tahu it did not gain as much economic benefit as the Cree approach both because it only focused on one element of the development value chain and because of the institutional restrictions only generated a limited duration income.

Our research shows that Ngāi Tahu obtained roughly 20% of the total economic benefits from the Wigram Skies residential development but did not see the same 'wraparound' income that the MLCN development has been able to realize.



The diagram below shows where the Ngai Tahu dollar went once it leaked out to the wider conomy. Most of the expenditure is on Building Materials ($288m), manufactures and Retailers with Construction firms taking $169m in Labour costs.

However it is the issue of the land tax or the ratings base that gains our interest. As the illustration below indicates $186m was taken by Local and Central Government Rates and Taxes between 2010-2016. The Christchurch City Council took in $22m in rates. While this is a relatively small rates base this report does not look at the other commercial properties and ventures within Christchurch whether it be our commercial, industrial or residential properties and the revenue generated therein.



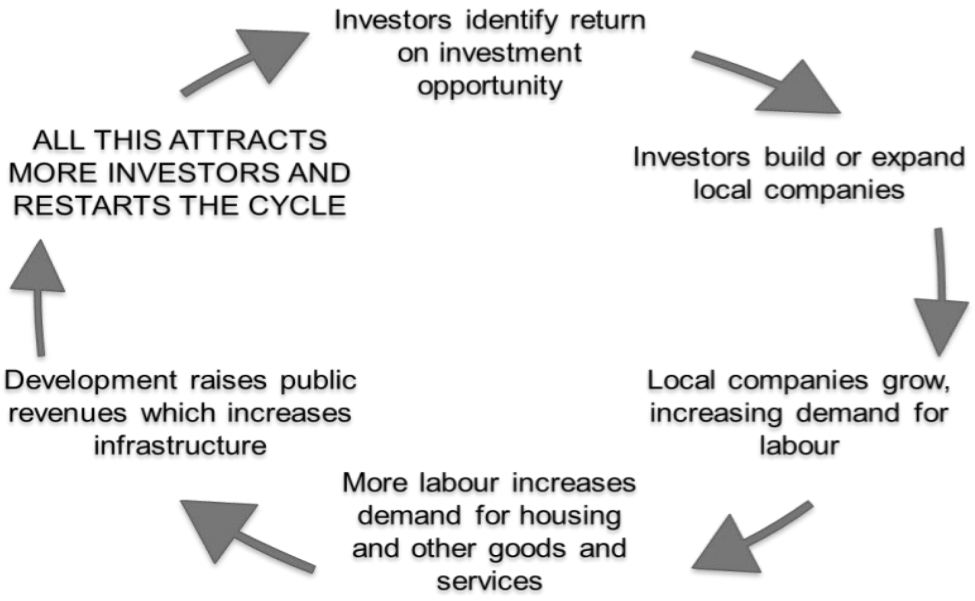
What is important to note is that none of these rates or land taxes are directed to our reserved lands. Our reserved lands where our people live still lack basic infrastructure such as water and sanitation. How is it that we contribute so much in local taxation yet receive so little in return.

Our people are now prohibited from building on our land because we do not have water /sewerage in our reserves. Yet these lands are the primary places where tribal members actually own land.

This brings us back to the basic points of what build an economy. This submission argues that an economy depends on a 'Virtuous Cycle' wherein businesses and communities flourish. Much of this exists in New Zealand except for Maori land. Economic development occurs when investors and tribal members are secure in property rights so that they can build and create businesses. Businesses need to be located where communities exist and where

basic infrastructure is present whether it be roads, water, sewerage, lights and community facilities.

The diagram below is a virtuous cycle. Maori lands and communities have none of these facilities experts for perhaps a marae, church and urupa. Housing no longer exists, which leads to a lack of investment and revenue and a state of infra-structural neglect.



However, tribal corporations do in fact generate revenue for local government. This submission suggests that local rates gained by local government from tribal corporations needs to be directed to Maori reserved land and communities so that basic infra-structure is provided.

Rates should be directed to local Runanga and tribal institutions to manage. There are basic infra-structural needs that Maori communities are aware of. Water is a need for many communities, followed by sewerage and roading.

However to receive a rating base, Runanga need to be empowered to hold local authority powers over their lands wherein they area accountable to tribal land-owners.

Local Runanga need to have regulatory power and jurisdiction over their lands. What we know from section II of this report is that when the local county councils gained regulatory powers, the land quickly transferred to local rural farmers who controlled the county council.

We also note that the Crown gained $133m in GST. It is not unreasonable to ask the question of whether Maori Reserved lands and the businesses we might potentially generate should operate with a tax inventive and also receive the GST?

Finally, Maori land title needs to be amended wherein a new tribal title is created wherein tribal members can opt for a new customary title that exists outside of the Maori Land Court which is regulated by Runanga or tribal institutions.

Part III: Section Summary

This section of the submission makes the point that it is possible to generate revenue from Maori Reserved land if the revenue generated from new tribal developments are re-directed to tribal projects. It is suggested that:

- Local Runanga should receive the revenue generated from land taxes that tribal corporations create from development projects or at the minimum local councils and Runanga should negotiate on what services are provided from the tax revenue generated from land.
- Local Runanga should replace the Maori Land Court as the controlling authority for Maori Land Owners
- capital gains tax provides no incentive for Maori housing and land-owners because their land has been 'dead capital' due to past legislation.
- tax incentives need to be provided to encourage Maori housing on Maori reserved lands
- Tax incentives need to be provided to stimulate Maori businesses on Maori lands.

APPENDIX ONE

In Support of Ngai Tahu Tribal Economies Strategy – Some Possible Lessons from the First Nation Experience

DRAFT

November 10, 2017

Prepared by the Ngai Tahu Research Centre and the Tulo Centre of Indigenous Economics