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Kei mua i Te Rōpu Whakamana i Te Tiriti o Waitangi
Taihape: Rangitīkei ki Rangipō Inquiry

Wai 2180
Wai 37
Wai 933

I te take o Te Tiriti o Waitangi Act 1975

Ā

I te take o The Taihape: Rangitīkei ki Rangipō Inquiry

Ā

I te take o Claims by Te Manuao (Terrill) Campbell, Margaret Poinga, Terrence Poinga, David Turanga, Melvin Turanga and Whakatere Whakatihi (Wai 37 and 933) on behalf of Ngāti Hikairo and Ngāti Tuope

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Closing Submissions on Landlocked Lands Issues for Ngāti Tuope

Dated Friday the 31st of January 2020

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MAY IT PLEASE THE TRIBUNAL

1. These are the closing submissions for Ngāti Tuope concerning the issue of landlocked lands.

Introduction

2. Ngāti Tuope, all those that whakapapa to this hapū, and the wider iwi of Ngāti Tamakopiri, have been greatly impacted by a lack of access to their hapū estate and those Māori land blocks that remain in their ownership. Much of this estate is located in the whenua recognised as Motukawa 2B, but extends into Māori land blocks in Rangipo Waiu, Awarua, Owhaoko and Oruamatua Kaimanawa.

3. These submissions will show that a significant amount of land, retained in ownership by members of Ngāti Tuope, is not able to be accessed in such a way as to enable the owners to visit, use, develop and benefit from that land. That lack of legal access has been the case for generations and was the case when these Māori land blocks were first partitioned out at the beginning of the 20th century.

4. These submissions will set out that Ngāti Tuope, like the other hapū of Ngāti Tamakopiri, and all Māori in this Inquiry district, were entitled to access to their land, as it would be that access that would enable them to visit, use, develop and benefit from that land.

5. The lack of access is a breach of Te Tiriti o Waitangi.

6. The loss of opportunity to access, use and develop their whenua tupuna for cultural and commercial purposes is the prejudice.

7. Attempting to identify the full extent of the prejudice to these claimants, let alone for this Inquiry may be a futile exercise, as the cost would need to be estimated in monetary figures, but also in heartbreak and tears.

8. The evidence detailing the landlocked land issues that relate to Motukawa 2B land blocks will be detailed, and also the interests in a number of other Māori land blocks in this Inquiry district.

The Statement of Issues – Issue 11

9. The statement of issues frames this key Inquiry issue in four questions;

    (1) What legislative frameworks resulted in the creation, or enablement, of landlocked titles and who administered those titles?

    To what extent was the Crown aware of such effects prior

to, and following the determination of title?

(2) Do the Crown and its delegated local authorities have an obligation to Taihape Māori to provide legal access to landlocked lands in the Taihape inquiry district?

(3) What attempts, if any, have been made by the Crown and local authorities to provide access to landlocked land? Have such provisions been made equally for both Taihape Māori and non-Māori landlocked land? If not, why not?

(4) To what extent did restricted access to landlocked land:

(a) Limit the potential economic development of Taihape Māori?

(b) Cause the loss of rental value?

(c) Impede the ability of Taihape Māori to access wahi tapu sites?

(d) Cause further expense to Taihape Māori in order to retain those landlocked lands?[1]

Crown Position

10. The Crown position does not provide any concessions or recognition that landlocked land could be a prima facie breach of Te Tiriti.[2]

11. The Crown suggests the need for a "case-by-case" assessment of each landlocked land claim to see if "this resulted from any act or omission of the Crown."[3]

12. The Crown has made a concession regarding the Native Land Laws.[4]

13. During the opening of hearing week 11, the Crown re-iterated that concession noting that the title issued by the Native Land Court prior to 1894 was not "an effective form of title to enable Māori to control or administer their land and resources collectively."[5]

14. On its face, this statement could be read as an acknowledgement that part of the ineffective title is the lack of access. Access is after all an aspect of the title. It will be for the Crown to clarify firstly if this statement is an acknowledgement that access is an aspect of the ineffective title the Native Land Court issued. It will also be for the Crown to explain

[1] Wai 2180, #1.4.3 *Statement of Issues, Issue 11(1)-(4),* 36.
[2] Wai 2180, #1.3.2 *Crown Statement of Position and Concessions*, (56).
[3] Wai 2180, #1.3.2 *Crown Statement of Position and Concessions*, (56).
[4] Wai 2180, #1.3.2 *Crown Statement of Position and Concessions*, (2).
[5] Wai 2180, #3.3.31 *Crown Submissions Hearing Week 11*, (50).

what, if anything, changed to the legislation and Native Land Court processes after 1894 which remedied all those issues with the title that were issued.

15. A strong thematic chorus of evidence is before this Tribunal and that a case-by-case analysis is not necessary. However, the evidence, both technical and tangata whenua is often of such detail and precision, that there may in effect be a case-by-case analysis for the vast majority of the recognised Māori owned landlocked blocks. If that is not the case though, the overwhelming evidence provided at least sets out a case for recognising a prima facie case of breach and prejudice for those Māori land blocks where there is less detail.

Generic Submissions

16. The generic submissions are adopted by Ngāti Tuope and these claimants, except insofar as there may not be alignment between the submissions, in which case these submissions are to be preferred.

17. Due to the filing deadlines and timing of preparation of these submissions, those distinct views, if there are any, cannot be identified in these written submissions.[6]

Motukawa 2B

18. Motukawa 2B was awarded to the descendants of Tuope, the hapū of Ngāti Tuope in 1896.[7] This was just 124 years ago, relatively late in the piece for Native Land Court decisions.

19. At that time, Mr Biddle's tupuna Pura Rora and Tutunui, were alive. They were his great great grandparents. For Mr Whakatihi, it is just two generations ago, his tupuna and great-grandparents were alive, Pura Rora and Tutunui, as were his grandparents Whakatihi Tutunui Rora and Heeni Jane Chase.[8]

20. This is not a long time for this hapū, for these claimants, and certainly not a long time in the context of the history of the connection with this land.

21. That the name of Tuope was invoked at the time the whenua was awarded to his descendants, is significant, as this tupuna had come some 5 or 6 generations before those named as owners in 1896.[9] It

[6] The opportunity to clarify this issue will be taken during the presentation of these submissions.
[7] Wai 2180, A006(f), *Bundle of Documents for Cross Examination*, 4, Decision of the Native Land Court on Motukawa 2, Whanganui Herald 21 February 1896.
[8] Wai 2180, #J11(a) *Documents in support of the Briefs of Evidence of Mr Biddle and Mr Whakatihi*, 2-3.
[9] Wai 2180, #J11(a) *Documents in support of the Briefs of Evidence of Mr Biddle and Mr Whakatihi*, 2-3.

confirms that status of the tupuna, and the status of the hapū.

22. These submissions also address the status of Motukawa 2F2, the only block of land that remains of the Motukawa 2F block, which was set aside for the "Take Kores", the non-sellers of the time.[10] Despite that status the Crown acquired the other half of the block Motukawa 2F1.[11]

Claimant Evidence

23. The claimant evidence was presented by Mr Whakatihi[12] and Mr Biddle[13].

24. This evidence addressed the landlocked land status of a number of Māori land blocks;

    a. Motukawa 2B3D;[14]

    b. Motukawa 2F2 and a number of other Motukawa blocks;[15]

    c. Owhaoko D6 Section 1;[16]

    d. Rangipo Waiu B1;

    e. Rangipo Waiu B6B1; and

    f. Rangipo Waiu B6B2.[17]

25. Mr Whakatihi is a beneficial owner in Owhaoko D6 Section 1, and a trustee of the Ahu Whenua trust that holds interests for the Whakatihi whānau, and actively involved in the operations of that land. Mr Whakatihi is also a closely related to the Downs whānau that have interests in Rangipo Waiu B1 and B6B1.

26. Mr Biddle is a beneficial owner and now also trustee in Rangipo Waiu B6B2 on the Ahu Whenua Trust which has been established, he is involved in the management of the block.[18]

Technical Evidence

27. The evidence of Ms Woodley was the first comprehensive evidential

[10] Wai 2180, A006(f), *Bundle of Documents for Cross Examination*, 4, Decision of the Native Land Court on Motukawa 2, Whanganui Herald 21 February 1896.
[11] Wai 2180, #A8, Subasic and Stirling, 44,46.
[12] Wai 2180, #J11, *Signed Brief of Evidence of Whakatere (Terrence) Whakatihi*. They also provided their support documents jointly; Wai 2180, #J11(a) *Documents in support of the Briefs of Evidence of Mr Biddle and Mr Whakatihi*.
[13] Wai 2180, #J12 *Signed Brief of Evidence of Hemi Biddle* and Wai 2180, #N8 *Second Signed Brief of Evidence of Hemi Biddle*, with support documents Wai 2180, #N8(a).
[14] Wai 2180, #N8 *Second Signed Brief of Evidence of Hemi Biddle*, with support documents Wai 2180, #N8(a).
[15] Wai 2180, #J11, (84, 85-88), Wai 2180, #J11(a), 64-66
[16] Wai 2180, #J11, (76-82), Wai 2180, #J11(a)
[17] Wai 2180, #J12, (19-30), Wai 2180, #J11(a), 7-9, Rangipo Waiu B6B1 and B6B2, 13-14, 23-24 Rangipo Waiu 2B1.
[18] Wai 2180, #N8 *Second Signed Brief of Evidence of Hemi Biddle*, (45-51).

statement on the issue of landlocked lands in this rohe.[19]

28. Ms Woodley confirmed that the following blocks of Māori land are landlocked;

    a. Motukawa 2F2;

    b. Owhaoko D6 section 1;

    c. Rangipo Waiu B1;

    d. Rangipo Waiu B6B1; and

    e. Rangipo Waiu B6B2.[20]

29. Regarding Owhaoko D6 Section 1, Ms Woodley did not include this block in her list of landlocked lands, and the reasoning for this is not clear, especially when she recorded that "owners of Owhaoko D6 Section 1 and owners of the northern blocks have also approached Ngamatea Station in recent years for access and were also advised that they could not use the station road to access their lands."[21]

30. Ms Woodley also confirmed that Motukawa 2B3D was landlocked and required a land swap to gain access.[22]

31. The Central and Northern Sub-District Block studies set out how those blocks were partitioned from their parent blocks.[23]

32. The other, and more recent, comprehensive evidential statement on the issue of landlocked lands came from Messrs Neal Gwyn and Alexander,[24] which was tested at hearing week 12.

33. The issue of Owhaoko D6 Section 1, is resolved by the alignment of tangata whenua evidence and this more recent report, which notes that there is no legal access, although physical access could be gained.[25] On this assessment, where an arrangement is not gained through Ngamatea Station, a road of 63 kilometres length would need to be formed.[26] This same road would be needed for access to Owhaoko C2, C4, D6 Section 3 and Pt Owhaoko D7B (the northern part).[27]

34. The technical evidence, combined with the evidence from Ngāti Tuope

[19] Wai 2180, #A37, Suzanne Woodley, *Māori Land Rating and Landlocked Lands Report 1870-2015*, and Wai 2180, A55, *Inquiry Hearings Overview Mapbook*, especially Plates 81-90
[20] Wai 2180, #A37, Woodley, 515, While Owhaoko D6 Section 1 is not included in this list, Woodley confirmed it was landlocked on partitioning at 397-398 and that the owners have confirmed it is landlocked at 417.
[21] Wai 2180, #A37, Woodley, 417.
[22] Wai 2180, #A37, Woodley, 272.
[23] Wai 2180, #A8, Subasic and Stirling, *Sub-District Block Study: Central Aspect*, and Wai 2180, #A6, Fisher and Stirling, *Sub-District Block Study: Northern Aspect*,
[24] Wai 2180, #N1, Neals, Gwyn and Alexander, *Māori Landlocked Lands*.
[25] Wai 2180, #N1, 39.
[26] Wai 2180, #N1, 80.
[27] Wai 2180, #N1, 80.

confirms that these blocks of Māori land are landlocked:

a. Motukawa 2B7A

b. Motukawa 2F2;

c. Motukawa 2B16B2B;

d. Owhaoko D6 Section 1;

e. Rangipo Waiu B1;

f. Rangipo Waiu B6B1; and

g. Rangipo Waiu B6B2.[28]

35. Of these blocks Messrs Neal, Gwyn and Alexander stated that obtaining practical physical access is achievable for all but one of the blocks; Motukawa 2F2, for which they said access is possible "maybe".[29]

Māori Landlocked Land – Block Histories

36. These submissions address the status of these specific blocks of Māori landlocked land;

a. Motukawa 2F2;[30]

b. Motukawa 2B3D;[31]

c. Motukawa 2B7A;[32]

d. Motukawa 2B16B2B;[33]

e. Owhaoko D6 Section 1;[34]

f. Rangipo Waiu B1;

g. Rangipo Waiu B6B1; and

h. Rangipo Waiu B6B2.[35]

37. The evidence for each of these blocks shows that they were landlocked as soon as they were partitioned, or shortly after, and that this had an immediate impact on the owners, and their ability to access, use or develop those lands.

[28] Wai 2180, #N1, 22-25.
[29] Wai 2180, #N1, 23.
[30] Wai 2180, #J11, (85-88), Wai 2180, #J11(a), 64-66
[31] Wai 2180, #N8 *Second Signed Brief of Evidence of Hemi Biddle*, with support documents Wai 2180, #N8(a).
[32] Wai 2180, #N1, Neals, Gwyn and Alexander, *Māori Landlocked Lands*, 23.
[33] Wai 2180, #N1, Neals, Gwyn and Alexander, *Māori Landlocked Lands*, 23.
[34] Wai 2180, #J11, (76-82), Wai 2180, #J11(a).
[35] Wai 2180, #J12, (19-30), Wai 2180, #J11(a), 7-9, Rangipo Waiu B6B1 and B6B2, 13-14, 23-24 Rangipo Waiu 2B1.

Motukawa 2F2

38. Motukawa 2F was partitioned from Motukawa 2 in 1896.[36] Motukawa 2F2, a block of 88 acres, was partitioned out in 1899 as a result of the Crown acquisition of parts of Motukawa 2A, 2B, 2D, 2E and 2F, and all of Motukawa 2C.[37]

39. There were no road orders for any of the partitioned blocks of Māori land created as a result of this Crown acquisition.[38]

40. The evidence shows Motukawa 2F2 was initially leased to a returned serviceman, who had also acquired the land on either side, Motukawa 2E2 by purchase, and Rangipo Waiu B1 by lease.[39]

41. The block did not have legal access when it was partitioned, and does not have legal access now.[40]

Motukawa 2B3D

42. Motukawa 2B3D was a block of 175 acres created in 1905.[41]

43. Mr Biddle produced evidence regarding this block, how it was landlocked, and then finally alienated.[42]

44. This evidence is supported by the account of Ms Woodley who showed that this block had been landlocked when it was created and partitioned.[43]

45. The exchange to create access to the block happened in 1962,[44] and was alienated by sale in 1973.[45]

Motukawa 2B7A

46. Motukawa 2B7A is a block of 942 acres that was partitioned in 1913.[46] All of the block sits to the west of the State Highway. The block is in two parts, with a the two parts of the block split by the NIMT and another block of land which looks to be scenic reserve. There are paper roads which connect to this block, but are not formed.[47]

47. Current access is informal and across Motukawa 2B7B and Motukawa

[36] Wai 2180, #A8, Subasic and Stirling, *Sub-District Block Study: Central Aspect*, 44.
[37] Wai 2180, #A8, Subasic and Stirling, 44,46.
[38] Wai 2180, #A37, Suzanne Woodley, *Māori Land Rating and Landlocked Lands Report 1870-2015,* 378.
[39] Wai 2180, #A37, Suzanne Woodley, 378, 381-382.
[40] Wai 2180, #N1, Neals, Gwyn and Alexander, *Māori Landlocked Lands*, 23.
[41] Wai 2180, #A8, Subasic and Stirling, 53.
[42] Wai 2180, #N8 *Second Signed Brief of Evidence of Hemi Biddle*, with support documents Wai 2180, #N8(a).
[43] Wai 2180, #A37, Suzanne Woodley, 272.
[44] Wai 2180, #A37, Suzanne Woodley, 275.
[45] Wai 2180, #N8 *Second Signed Brief of Evidence of Hemi Biddle*, (31). The block was later changed from Māori freehold title to general land in 1995 (43).
[46] Wai 2180, #A8, Subasic and Stirling, 61, however the Māori Land Court records suggest 1904.
[47] Wai 2180, #N1(a) Maps to the Māori Landlocked Lands Report, Plate 10-14.

2B7C. Legal access is achievable to this block but would require a long road and multiple NIMT track crossings.[48]

48. Ms Woodley's report did not recognise that this block was landlocked.

Motukawa 2B16B2B

49. This Motukawa block is just 0.1 hectare is size but was partitioned in 1906 from Motukawa 2B16B2 which was split into three parts.[49] It sits amongst a larger Māori land block Motukawa 2B16B4.[50]

50. Ms Woodley's report did not identify this block as landlocked but it correctly was identified as landlocked in the more recent assessment.[51]

Ōwhāoko D6 Section 1

51. Ōwhāoko D6 was partitioned into three blocks in 1899, creating the 5,724 acre Ōwhāoko D6 Section 1.[52]

52. While Ms Woodley did not state clearly that the block was landlocked, this is shown by evidence from Mr Whakatihi, and the Landlocked Land report.

Issues with the Ōwhāoko Block

53. About the Ōwhāoko block, and the Crown approach to purchasing and selling it, Ms Woodley said that "It would appear then that access was only a priority even to Crown land, if the land was considered suitable for settlement and able to be sold on to Europeans to farm."[53]

54. The issue of access was recognised very early and Ms Woodley recorded evidence of an Inspector to the Ōwhāoko blocks stating that Ōwhāoko D5 Section 1 was " 'the key to the whole of Ōwhāoko.' He said that it was in the interests of the several Native Owners [that] there should be no partition of the block, but that the whole should be leased so that no part should be deprived of access or left without tenant through sub-division. The response of the Department of Lands to the report made to the Commissioner of Crown Lands did not include any mention of access so the advice was essentially ignored."[54]

55. Regardless of this Ōwhāoko D5 Section 1 had already been sold out of Māori ownership, directly to private ownership, in 1901.[55]

[48] Wai 2180, #N1, Neals, Gwyn and Alexander, *Māori Landlocked Lands*, 23.
[49] Wai 2180, #A8, Subasic and Stirling, 55.
[50] Wai 2180, #N1(a), Plate 15. Māori Land Court records suggest it was partitioned in 1920.
[51] Wai 2180, #N1, Neals, Gwyn and Alexander, *Māori Landlocked Lands*, 23.
[52] Wai 2180, #A6, Fisher and Stirling, *Sub-District Block Study – Northern Aspect*, 67-68
[53] Wai 2180, #A37, Suzanne Woodley, 401.
[54] Wai 2180, #A37, Suzanne Woodley, 401.
[55] Wai 2180, #A6, Fisher and Stirling, 110

56. The expert evidence on this block said that access could be obtained to many of the Ōwhāoko blocks, but not all,[56] and stated optimistically that there would be "no issues"[57] with forming the 63 kilometre road. In the context of that report and the reality of the solution, this can only be taken to mean that there are no issues, except for the cost of building a 63 kilometre road and paying compensation for the easement or roadway to the current owner or owners.

Rangipo Waiu B1

57. Rangipo Waiu B was partitioned into B1-B13 in 1905.[58] This was the land that remained of the "great Rangipo-Waiu block cut off for the benefit of non-lessees", which numbered just 30, among them the prominent tupuna of Ngāti Tuope, Ngāti Tamakopiri and these claimants, Heperi Pikirangi and Te Hau Paimarire.[59] Those tupuna took issue with the divisions and appealed, and there were some subsequent minor changes to the partitions and divisions, but there was "nothing regarding roads mentioned at this stage"[60]

58. Rangipo Waiu B1 is a block of 663 acres.[61]

59. Rangipo Waiu B1 was not provided access at this time and remains landlocked now.

Rangipo Waiu B6B1 and B6B2

60. Rangipo B6 was partitioned into three and created B6A, B6B and B6C in 1909.[62] From Rangipo B6B there was a partition into B6B1 and B6B2 in 1925 at the application of Morehu Downs.[63]

61. Rangipo Waiu B6B1 and Rangipo Waiu B6B2 both are 534 acres in size.[64] There was no provision for access or roadways.[65] The following year an application for access was filed by Mr Downs' solicitor, however the application was not received by the Court, and was instead returned to the solicitor for failure to pay the application filing fee of 10 shillings.[66]

62. Rangipo Waiu B6B1 and B6B2 were landlocked at partitioning and were never provided access, that remains the situation today.

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[56] Wai 2180, #N1, 23 Table showing that of the 15 landlocked Ōwhāoko blocks, there is no practical physical access to 3 of those blocks, and only "maybe" access to another 6 blocks.
[57] Wai 2180, #N1, 23, 80-81.
[58] Wai 2180, #A37, Suzanne Woodley, 334.
[59] Wai 2180, #A37, Suzanne Woodley, 334-335.
[60] Wai 2180, #A37, Suzanne Woodley, 335.
[61] Wai 2180, #A37, Suzanne Woodley, 329.
[62] Wai 2180, #A37, Suzanne Woodley, 338
[63] Wai 2180, #A37, Suzanne Woodley, 363
[64] Wai 2180, #A37, Suzanne Woodley, 363
[65] Wai 2180, #A37, Suzanne Woodley, 363
[66] Wai 2180, #A37, Suzanne Woodley, 363

63. Ms Woodley rightly notes that current access to both these blocks are from Burridges Road then through Mounganui Station.[67]

64. However, the other Landlocked Land Report authors acknowledged a paper road to the west of the Rangipo Waiu blocks and that this was already a public and legal right of way, albeit not one marked or formed for vehicles.[68] This paper road seems to align with some kind of formed road on the ground which connects with Burridges Road, but this was not assessed by those authors.[69]

65. Those authors also confirmed that but for the access through Rangipo Waiu B6B2, the owners of the Mounganui Station, had no access from their eastern section to the western blocks, demonstrating again how landlocked Māori land ends up being exploited by the general landowners neighbouring them.[70]

Issues with the Rangipo Waiu Blocks

66. In 1907 Presiding Judge Gilfedder addressed the B6-B13 blocks, and his order included the provision of a roadway for Rangipo B6.[71]

67. The Judge also ordered a roadway for Rangipo Waiu B7 and B8, saying "A roadway half a chain wide to run from the point C aforesaid South to meet the southern boundary of the block at point E at the crossing of Moawhangoiti."[72]

68. The County Clerk when writing to the Court Registrar about the lack access to these blocks of Māori land commented that "It seems strange that the subdivision of Rangipo Waiu should not have made some provision for access to this subdivision."[73]

69. As these blocks went through the Court, a Valuer instructed by Native Land Agents for the owners expressed concern about the need for road frontage for Rangipo Waiu B6 and B7, and the Judge appears to have taken this into account.[74]

70. However, when the case emerged from the Appellate Court, and the partitions were finalised, the only access confirmed was to the southernmost part of the block, no access was ordered through to the

[67] Wai 2180, #A37, Suzanne Woodley, 329.
[68] Wai 2180, #N1(a), Plate 36, and Wai 2180, #4.1.20 *Hearing Week 12 Transcript*, 88.
[69] Wai 2180, #4.1.20 *Hearing Week 12 Transcript*, 88.
[70] Wai 2180, #4.1.20 *Hearing Week 12 Transcript*, 90.
[71] Wai 2180, #A37, Suzanne Woodley, 335.
[72] Wai 2180, #A37, Suzanne Woodley, 336. See plan in Document Woodley Document Bank Vol 7, pp214-217.
[73] Wai 2180, #A37, Suzanne Woodley, 354
[74] Wai 2180, #A37, Suzanne Woodley, 337-338.

different partitions.[75]

71. The roadways ordered for Rangipo Waiu B6 or B7 were not formed.

72. Rangipo Waiu B6 was furthered partitioned in 1909 into three parts, as Ms Woodley notes this was a "critical moment in terms of ensuring access through B6A into B6B and B6C and facilitating access to B1, B2, B3, B4 and B5. Nothing, however, was done"[76]

73. Ms Woodley records multiple attempts by the Māori landowners to gain access to Rangipo Waiu B lands, and the subsequent partitioned out blocks.

74. The attempt by the Public Trustee on behalf of the estate of Erueti Arani in 1909 to get access to Rangipo Waiu B7B were thwarted by the leaseholder, and owner of the neighbouring land, and multiple appeals and hearing lead to this attempt terminating in 1912.[77] Ultimately the case turned on the timing of the application and the filing of plan, which meant it was subject to the Native Land Act 1909, and that partition had to be made at the same time as the order, which did not occur.[78]

75. The leaseholder of Rangipo Waiu B2 and B3, with the leaseholder of Rangipo Waiu B7E applied to the Native Land Court to have road-lines laid off to access these blocks and Rangipo Waiu B7B in 1914.[79] This Application was joined with another application for access to Rangipo Waiu B7A and B7B.[80] The Judge supported a general roading scheme and "made an interlocutory order that a road-line be laid off and that the matter be re-opened when the surveyor had reported.[81]

76. That order was made in September 1914, and in February of that same year Rangipo Waiu B7A was changed to general land and sold to the lessee Mr Pearson.[82] It appears that this was enough to sink the plan for the road-line and by 1929 all the Rangipo B7 blocks had been sold.[83]

77. Rangipo Waiu B6C suffered similar difficulties when Mr Kingi Topia attempted to gain access in 1923. Mr Topia had complained to the Commissioner of Crown Lands that a road to the Rangipo Waiu block had been cancelled in 1920. This lead to the fresh application for a road to be laid off. Mr Topia went through numerous obstacles and

[75] Wai 2180, #A37, Suzanne Woodley, 338.
[76] Wai 2180, #A37, Suzanne Woodley, 338.
[77] Wai 2180, #A37, Suzanne Woodley, 339-344.
[78] Wai 2180, #A37, Suzanne Woodley, 339-344.
[79] Wai 2180, #A37, Suzanne Woodley, 345.
[80] Wai 2180, #A37, Suzanne Woodley, 345.
[81] Wai 2180, #A37, Suzanne Woodley, 346.
[82] Wai 2180, #A37, Suzanne Woodley, 346.
[83] Wai 2180, #A37, Suzanne Woodley, 346.

eventually an engineer reported that "The local body should legalise the road as I am informed the County receive rates from the respective properties."[84]

78. The Public Works department wanted nothing to do with it and there was also an objection lodged by the owner of B6A Mr Burridge, a complaint Ms Woodley notes was invalid due to the timing of the partition.[85]

79. Ms Woodley sums up the terminal mess of this application and these attempts to get access[86] this way;

> "What is clear from the correspondence between the various parties, however, is that no process was in place to ensure that access was provided following the 'oversight' of the Native Land Court in 1909. Also that no agency was prepared to take responsibility and take the matter further."[87]

80. Those agencies included the registrar of the Native Land Court, the County Council, surveyors, County engineers, the Public Works Department and the Commissioner of Crown Lands.

81. When Mr Topia continued to attempt to get access to this land, which was now partitioned in 1929, the district valuer noted that his block was "the hills were 'so easy that by picking a route amongst them a car could be driven to the place"[88] and that the land was currently grazed as part of the Maunganui(sic) Station."[89]

82. Subsequent to this Guardian Trust, acting for the Burridge Estate, applied to the Native Land Court to authorise the acquisition of Rangipo Waiu B6C1.[90]

83. The application tried to rationalise the acquisition as justified for a number of reasons, but "did not mention that it was SV Burridge who had objected to the block being provided with road access in the 1920s nor the comment by the District Valuer that the contour of the land was such that a road could be easily formed."[91]

84. The owners of Rangipo B6B1 and B6B2 attempted to gain access to

[84] Wai 2180, #A37, Suzanne Woodley, 352.
[85] Wai 2180, #A37, Suzanne Woodley, 356.
[86] Wai 2180, #A37, Suzanne Woodley, 348-356.
[87] Wai 2180, #A37, Suzanne Woodley, 356.
[88] Wai 2180, #A37, Suzanne Woodley, 359.
[89] Wai 2180, #A37, Suzanne Woodley, 360.
[90] Wai 2180, #A37, Suzanne Woodley, 360. The reasons provided in this letter of opposition are worth noting in detail, showing how the poor standing of landlocked Māori land further enabled their alienation, and was exploited by those looking to purchase those lands.
[91] Wai 2180, #A37, Suzanne Woodley, 361.

their land through the Waiouru Military Camp, specifically for the purpose of harvesting the timber on their land, access through Burridge estate and the Fernies land not being permitted.[92] This attempt was ultimately unsuccessful.

85. There were subsequent attempts to find access to both these blocks in the second half of the 20th century, including through the Council and the Māori Land Court, but none were successful.[93]

Evidential Themes

86. Ms Woodley sets out in detail the evolution of the Native Land Court's legislation and how it continued to fail to require access to be a feature of the titles awarded.[94]

87. One amendment which shows the changes to the legislation were going in the wrong direction was came in 1909. Under the 1886 and 1894 Native Land Court Acts, access could be applied for and ordered within five years of the date of partition, in 1909 the new Native Land Act required provision for roadways at the same time of partition.[95]

88. The 1913 Native Land Amendment Act added an additional, largely insurmountable difficulty, in that it required the consent of neighbouring landowner, be it general or Māori land.[96]

89. In favour of Māori landowners, ostensibly, was the amendment by s54 of that Act to s118 of the 1909 Act that required where any Māori freehold land was to be subdivided the Court "shall have regard in as far as practicable, to water-supply, road access, aspect, and fencing boundaries…and generally shall have regard to the configuration of the country, the best system of roading, and facilities for settlement."[97]

90. When Māori land was partitioned and owners were identified, the dominant attitude to access to the land was one of informality. The Court, local councils, Crown agents, with some minor exceptions that prove the rule, did not show concern that these awards of title should be fully functional, and enable the owners to use it in the same manner as their settler neighbours.

91. Ms Woodley noted the significance of "the indifference demonstrated by the Crown, local authorities and the Court itself to Māori land having

[92] Wai 2180, #A37, Suzanne Woodley, 364.
[93] Wai 2180, #A37, Suzanne Woodley, 364-366.
[94] Wai 2180, #A37, Suzanne Woodley, 239-266.
[95] Wai 2180, #A37, Suzanne Woodley, 244, 344.
[96] Wai 2180, #A37, Suzanne Woodley, 246, referring to Section 52
[97] Wai 2180, #A37, Suzanne Woodley, 247.

no legal access and an unwillingness to do anything about it."[98]

92. The indifference of the Aotea Māori Land Board is also noted, such as when a valuer informed them that a lease of Ōwhāoko D5 Section 3 would cut off access to those blocks to the north. The lease went ahead and the result was as predicted by the valuer.[99]

93. The result of this indifference by those participants and the "informality" of the titles that were issued through the Native Land Court process was a myopic state of affairs. We only need to reflect on the evidence of Mr Carpenter, whose arguments included the suggestion that Māori wanted to have and own and use land like the settlers, they wanted a flexible legal arrangement that they could fully utilise in Te Ao Hou.

94. If the Crown is suggesting that is what was being offered in the Native Land Court process, then it makes no sense commercially at all to verify customary ownership through the Native Land Court without ensuring that new title is fit for purpose.

95. The comments from various agents and participants on the ground show that even in that time there was an awareness that a very obvious step was being left off the tail end of these title awards.

Crown Evidence

96. The Crown evidence focussed on landlocked land issues was presented at hearing week 11 and comprised of evidence from Rahera Ohia and Michelle Hippolite on behalf of Te Puni Kōkiri.[100]

97. This evidence was all future focussed, considering the Crown's current and potential programs to assist Māori landowners develop their land. Much of the evidence was not fit for purpose, focussing on development of Māori land, rather than remedying longstanding issues of access, although there were assurances that the programs could be used for that purpose.

98. This evidence also failed to suggest that the issue of landlocked land was *not* predominantly Māori land issue.

99. The Crown did not bring forward any evidence that general landowners, like owners of Māori land, have an issue with access, and have had to pursue access through the courts or direct engagement either in the

[98] Wai 2180, #A37, Suzanne Woodley, 523.
[99] Wai 2180, #A37, Suzanne Woodley, 523.
[100] Wai 2180, #M27 and Wai 2180, #M28 respectively.

contemporary period or during the 20th century.[101]

The Panel's Preliminary View

100. This panel has issued a preliminary view on the issue of landlocked lands.[102]

101. That preliminary view noted the current legal definition of landlocked land[103] from Te Ture Whenua Māori Act 1993, and stated that this Panel considered as "landlocked lands those Māori lands that have no legal or formed road or easement granting access to them" and that "effectively, the Māori land owners of the affected lands have no reasonable or, often, legal means of access to utilise their property in accordance with their preferences."[104]

102. The Panel noted that "As further partitions and subdivisions, and alienation of certain sections continued, the difficulties with access became more entrenched. Adjoining owners were then effectively able to use some of the landlocked Ōwhāoko blocks without obtaining formal leases or permission."[105]

103. This is precisely what happened with Rangipo Waiu B6B2. Mr Biddle states that the forest which partially covered the block, part of the forest of Te Rei, was cut down without owner permission or knowledge, and from that time on was used by the neighbouring land owners for their own farming purposes and for access to parts of their land which they could not otherwise access.[106] This block effectively became a de facto part of the Mounganui Station. These witnesses were concerned that their neighbours and whanaunga in the Rangipo Waiu B6B1 block next door suffered the same experience.

104. When considering Te Ture Whenua Māori Act 1993 and its legislative predecessors, the preliminary finding was that "the legislation under which Māori land has been administered for the last 130 or so years, and the remedies provided, have failed to protect Māori in the Taihape inquiry district with reasonable access to a large proportion of the land

[101] This is not reference to those cases cited by Ms Woodley where private purchasers of Māori land went through the Native Land Court to gain access to that land acquired, such in the case of Ngāmatea Station, see Woodley, 399, and 423, where the Aotea Māori Land Board enabled the purchase of shares in Ōwhāoko D5 section 3 and 4 which enabled Ngāmatea Station access to their station. Rather, those examples show the Native Land Court assisting access to the new owners of alienated Māori land.
[102] Wai 2180, #2.6.65 Memorandum-Directions Concerning Landlocked Māori Land in the Taihape Inquiry District, the "Preliminary View".
[103] Wai 2180, #2.6.65, (3).
[104] Wai 2180, #2.6.65, (4).
[105] Wai 2180, #2.6.65, (13).
[106] Wai 2180, #J12 *Signed Brief of Evidence of Hemi Biddle,* (19-30).

they have chosen to retain in Māori land title."[107]

Recent Precedent

105. The preliminary view of this Panel has already recorded and noted the earlier findings of multiple reports from the Waitangi Tribunal, including Mohaka ki Ahuriri, Wairarapa ki Tararua and Whanganui.[108]

106. Each of these reports places the responsibility of access to Māori land through the Native Land Court with the Crown.

107. The most recent report on an historical district Inquiry is the report on Te Rohe Potae "Te Mana Whatu Āhuru," of which the first four sections have now been issued.

108. This Tribunal has similarly found that the Crown has a duty to act with equity;

> "A further condition of the Treaty relationship is the Crown's duty to act with fairness and justice to all citizens. Article 3 of the Treaty confirms that Māori have all the rights and privileges of British subjects. The Tribunal has found in several reports that this article gives rise to the principle of equity. It is through article 3 that Māori, along with all other citizens, are placed under the protection of the Crown and are therefore assured equitable treatment from the Crown to ensure fairness and justice with other citizens.
>
> *As we have already said the Crown could not favour settlers over Māori at an individual level, and nor could it favour settler interests over the interests of Māori communities.*
>
> *In our view, the Crown has failed to ensure that local authorities established a relationship with Māori that was consistent with the Treaty of Waitangi and ensured Māori interests were incorporated and protected. Instead, local authorities were permitted to focus on Pākehā settlement and revenue-gathering endeavours. Consequently, Pākehā interests were served at the expense of Te Rohe Potae Māori. The evidence presented to us clearly demonstrated that the system of local government that*

[107] Wai 2180, #2.6.65, (19).
[108] Wai 2180, #2.6.65, (20-23).

> *took hold in the district from the early twentieth century existed primarily to advance Pākehā settlement.* We find the unequal demonstration of benefits from local government to breach equity rights enshrined by article 3 of the Treaty, as well as the principle of participation."[109]

109. It is important to note that these reports on Te Rohe Potae have a strong emphasis on local government's role in delivering access to land, and failure to deliver on that duty, which it inherited from the Crown.

110. This is seen in the report by Ms Woodley, which brings together the issues of rating and landlocked land and shows that they are connected.[110] There is a similar dynamic in this rohe.

111. For this rohe the blame falls more heavily on the Native Land Courts' approach to partitioning without providing access, as most landlocked land has been in that state from partitioning on. Unlike the Rohe Potae there has not been a steady increase in roading throughout the rohe in the 20th century.

112. The similarities between the rohe are related to the timing of the arrival of the Native Land Court, both of which were relatively late. For Taihape this was due to the remoteness of the area and for the Rohe Potae due to the Aukati and Ōhākī Tapu, but with similar outcomes.

113. This report recorded that Rohe Potae suffered the "consequences of the deficiencies of native land title" and that partitioning in particular "could also have a negative effect on development if blocks became…landlocked."[111]

114. These are the initial statements of the most recent historical district inquiry and report, and provide initial statements on the issue of landlocked Māori land. The full statement of that Tribunal on this issue is yet to be released in a subsequent section of the report.[112]

115. In that Inquiry the Crown "accepted that, over time, Native Land Court titles had other detrimental impacts including fragmentation and the creation of uneconomic and landlocked blocks."[113]

116. In that Inquiry the Crown submitted that "what is known as the 5 per

[109] Waitangi Tribunal, *Te Mana Whatu Ahuru Part IV*, 127. Emphasis added.
[110] Wai 2180, #A37, Suzanne Woodley, 528, Frequently in Woodley's report the Court will be seen requiring potential purchasers of Māori land to also take on the overdue rates owing to the Council for that block as part of that purchase price, but often also reducing the payment to the owners for the sale.
[111] Waitangi Tribunal, *Te Mana Whatu Ahuru Part II*, 1248.
[112] Waitangi Tribunal, *Te Mana Whatu Ahuru Part II*, 1241.
[113] Waitangi Tribunal, *Te Mana Whatu Ahuru Part II*, 1176, quoting Crown submissions #3.34.305, pp79-82.

cent rule was a 'reasonable means of providing for future legal access to and across the land.'"[114] In that Inquiry, as in this one, the five per cent rule supplied access to the land the Crown acquired and sold, it did not ensure access to the land to which Māori retained ownership, to even more dramatic effect in this rohe.

117. The Crown ensured land acquired through the Native Land Court had access before selling to settlers.[115] This would have been to some extent, in step with local govt activity, as the actual formation of paper roads and maintenance was immediately a local govt role.

118. In this rohe though there is little evidence showing that general landowners, like owners of Māori land, have had and continue to have an issue with access or having to pursue access through the courts or direct engagement.

119. Were this not an issue almost exclusively for Māori, that material would be available and would have been presented to this Tribunal, instead the Crown presented evidence of how their current and future programs might possibly be able to assist Māori landowners access to their land, but does not offer to carry all or even the bulk of the financial burden that comes with it.

Summary: Revisiting the Statement of Issues

120. Having established the evidence before this Tribunal, and the duties on the Crown to delivery access to Māori land in this rohe we can do a summary assessment of the issues.

Issue One

What legislative frameworks resulted in the creation, or enablement, of landlocked titles and who administered those titles?

To what extent was the Crown aware of such effects prior to, and following the determination of title?

121. Each permutation of the Native Land Acts and Māori Land Acts failed to ensure access for Māori to their land.

122. The Crown was aware of the effects, and aware of the system that was in place. At the same time that the Crown acquired land for settlement, and ensured there was legal access, the legislation which partitioned and individualised Māori land title did not require access to be provided. The 1894 provisions that allowed access to be issued within five years

[114] Waitangi Tribunal, *Te Mana Whatu Ahuru Part IV*, 158.
[115] Wai 2180, #A37, Suzanne Woodley, 401, Crown Land Ranger referring to sale of Owhaoko lands.

of partitioning were removed in 1909, making the actions of the Court at the time of partitioning even more significant.[116]

Issue Two

Do the Crown and its delegated local authorities have an obligation to Taihape Māori to provide legal access to landlocked lands in the Taihape inquiry district?

123. Several Tribunals have made findings, each building on the previous, that the Crown, and local authorities, have a duty to provide legal access to landlocked Māori land. Those findings establish a precedent which holds in this rohe also.

124. For the Crown the duty existed to ensure the Native Land Courts process provided meaning title that allowed full engagement in the new era of settlement. Access has to be seen a vital component of this. Each successive version of the Native Land Act failed to deliver this requirement.

Issue Three

What attempts, if any, have been made by the Crown and local authorities to provide access to landlocked land? Have such provisions been made equally for both Taihape Māori and non-Māori landlocked land? If not, why not?

125. The evidence of Ms Woodley shows, thematically and almost without exception, that the Crown, and local authorities have not taken opportunities to provide access when they have come to their attention.

126. It is not clear to what extent general landowners have struggled with landlocked land issues, or how many have had to pursue remedies through the Courts or negotiation.

127. What is clear is that the development of the roading network by local authorities in the 20th century did not provide access to those landlocked Māori land blocks identified by Ms Woodley and Messrs Neal, Gwyn and Alexander. These authors do not identify any Māori land blocks which ceased to be landlocked as a result of the development of the local roading network.

Issue Four

To what extent did restricted access to landlocked land:

[116] Wai 2180, #A37, Suzanne Woodley, 344.

(a) *Limit the potential economic development of Taihape Māori?*

(b) *Cause the loss of rental value?*

(c) *Impede the ability of Taihape Māori to access wahi tapu sites?*

(d) *Cause further expense to Taihape Māori in order to retain those landlocked lands?*[117]

128. Access is vital to almost any kind of potential economic development.

129. Access is also vital to generating the most basic of income through renting or leasing. Landlocked land instantly suffers a penalty as there is rarely anyone able to lease the land other than the immediate neighbours.

130. The evidence of these claimants shows that for the Rangipo Waiu blocks still in Māori ownership, they have only one option, to lease to the neighbouring landowner.[118] That neighbouring owner is a large and financially viable station. This experience is common to many of the landlocked Māori land blocks. Failure to arrange a rental at rates attractive to that neighbour may result in being fully separated from the land as that neighbour may decide against allowing permit formal or informal access across their land.

131. Access to wahi tapu is similarly impeded, such as one of the urupa near Opaea Marae; Awarua 3D3 17B, which is landlocked.[119] While access is currently guaranteed by their whanaunga that own the Māori and general land around it, this is another kind of informal arrangement that is not appropriate for a significant site like this and requires correction. It against speaks to the very unsatisfactory informality of the titles issued by the Native Land Court.

132. The native forest known as Te Rei, to the north end of Rangipo Waiu B6B2 is another significant area which cannot be accessed except through permission of the neighbouring station, or by the Defence Force, as it borders the Waiouru Military base.[120] Not only can the owners not access Te Rei themselves, they have almost no ability to protect it and act as kaitiaki. They can do nothing to prevent Te Rei being accessed by military personnel or neighbouring landowners who

[117] Wai 2180, #1.4.3 *Statement of Issues, Issue 11(1)-(4),* 36.
[118] Wai 2180, #J12 *Signed Brief of Evidence of Hemi Biddle,* (19-30), and Wai 2180, #N8 *Second Signed Brief of Evidence of Hemi Biddle*, (49-51).
[119] Wai 2180, #J11, *Signed Brief of Evidence of Whakatere (Terrence) Whakatihi*, (36-44) Wai 2180, #J11(a) *Documents in support of the Briefs of Evidence of Mr Biddle and Mr Whakatihi* (29-30). See also Wai 2180, #N1(a), Plate 23
[120] Wai 2180, #J12 *Signed Brief of Evidence of Hemi Biddle,* (19-30), and Wai 2180, #N8 *Second Signed Brief of Evidence of Hemi Biddle*, (49-51).

access the area for hunting.

Remedies and Recommendations

133. The burden that Ngāti Tuope carry, like all Taihape Māori, is an immense one. Using all of the current mechanisms available, and even if all those proposed by the Crown are as good as hypothesized, getting meaningful legal access to their land will take an immense amount of time and effort and money to draft feasibility plans, engage civil engineers and surveyors, and either negotiate from a position of weakness or pursue cases through either the Māori Land Court or High Court.

134. These land owners need remedies that work for them, and that enable them to go this process without having to bear most if not all of that burden.

135. Importantly, rangatiratanga must be at the forefront of this solution and the process it involves, so that the solutions are designed with the full input and consideration of Taihape Māori views and preferences, remove that burden and prioritise the solutions that work best for them.

136. Ngāti Tuope seek the following remedies and recommendations;

    a. The establishment of a contestable Crown fund to cover the costs of acquiring access, as proposed in the preliminary view;[121]

    b. This fund must include supporting trusts and trustees getting the views of the owners, and where there are multiple Māori land blocks, and the solution is likely to impact on all of them, that fund needs to enable all those trustees and owners to discuss joint solutions and approaches to resolution;

    c. Where neighbouring blocks are Crown owned, be it Defence or Conservation property or other, and access options exist through that land that are preferred or the most effective, then the Crown needs to consider those options and make those solutions available;

    d. That local authorities be active participants with Taihape Maori in the process of assessing and setting in place access solutions, and the establishment of statutory duties to ensure their participation;

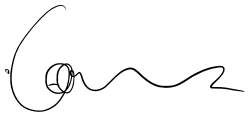
    e. The legal definition of “reasonable access to Māori land” needs

[121] Wai 2180, #2.6.65 Memorandum-Directions Concerning Landlocked Māori Land in the Taihape Inquiry District, the “Preliminary View”, (35(a)).

to be re-assessed and re-defined, so that it does not automatically exclude land where there is not yet commercial or cultural activity, and where access would provide the ability for those activities; and

f. Any other recommendations the Tribunals finds appropriate.

Dated at Tāmaki Makaurau this Friday the 31st of January 2020



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