Kei mua i Te Rōpu Whakamana i Te Tiriti o Waitangi **Wai 2180**
Taihape: Rangitīkei ki Rangipō Inquiry

I te take o Te Ture o Te Tiriti o Waitangi 1975

Ā

I te take o the Taihape: Rangitīkei ki Rangipō Inquiry

Generic Closing Submissions on Issue D Public Works Takings:
Waiōuru Defence Lands (Section 15)
Dated Monday the 21st of September 2020

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May it please the Tribunal

1. These are the generic closing submissions for Issue D: Public Works Takings and deal with the Waiōuru Defence Takings (Issue D,15).[1]

Introduction

2. The public works takings that took place in this rohe are unique, both in the purpose; the establishment of the Waiōuru Army Training Area (the Waiōuru ATA) and in the scale, the sheer size of the blocks and acres of both Māori and general land that were taken.

3. The takings began at a time when the Defence Force was considering establishing a large and versatile area for training, and a relatively permanent one, up until this time they had relied on leases and licenses of various kinds.

4. The takings also came at a time when the Crown, falsely assumed that much or all of the Māori land taken, were a kind of terra nullius, an area not desired by those Māori landowners. This assumption was present despite the numerous complications Taihape Māori had faced a couple of decades prior when their customary interests in the Ōwhāoko, Rangipo Waiu, Ōruamatua Kaimanawa and Awarua blocks went through Native Land Court derived title.

5. While the Māori land taken for the Waiōuru ATA constitutes approximately one third of the total area, the area which was taken forms the heart of the estate.

6. The presumption amongst Crown officials and Defence personnel leading the acquisition was that Māori land was more suitable and more easy to acquire because the taking of Māori land posed less challenges, and would require a lower rate of compensation.

7. Because of the approach taken to engaging with Māori landowners and valuations, this turned out to be the case for Taihape Māori as their land was taken to establish the vast Waiōuru ATA.

8. The taking of Māori land began shortly after the gift to the government war cause and WWI soldiers of 35,582 acres from the Owhaoko blocks[2] by rangatira of Ngāti Tuwharetoa.[3]

9. This context is significant, approximately the same amount of Māori land was taken compulsorily for the formation of the Waiōuru ATA, as Dr Soutar observed; “it was ironic that the very people who in 1916 make the largest gift of Māori land for the repatriation of soldiers, by far despite the quality of the land, by far the largest gift on record 20 years later they end up subsidising the Defence training for this country and that even more land, more than the 35,000 acres that was gifted ends up being taken.”[4]

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[1] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15).
[2] Wai 2180, #A6, Fisher and Stirling, *Sub-district Block Study – Northern Aspect*, 123 those blocks being Owhaoko A East, A1B, B East, D1 Part, Part of D7B.
[3] Wai 2180, #A6, Fisher and Stirling, *Sub-district Block Study – Northern Aspect*, 116, 123, those blocks being Owhaoko A East, A1B, B East, D1 Part, Part of D7B.
[4] Wai 2180, #4.1.14, *Hearing Week Six,* 223.

10. As the record shows, not only did that gift fall into the hands of a government that showed no recognition of the generosity of that gesture, but this gift and sacrifice to the nation's war effort was not recognised when the Crown began to plan the acquisition of 43,438[5]acres of Māori land in the unique hinterlands of this rohe.

11. The takings were effected in a way that showed little or no concern for the deep and ongoing interest that Taihape Māori had in these lands and did not officially consider, at any stage, anything other than full alienation out of Māori ownership.

12. There was a similar lack of concern about ensuring that the land acquired was needed, immediately or even in the near future for the purpose of the Waiōuru ATA.

13. The expert evidence and opening submissions on public works takings were heard during hearing week six[6] and Crown evidence was presented on this issue as part of both of the Crown hearing weeks, held in weeks nine[7]and eleven.[8]

14. These submissions begin by acknowledging the concessions and position of the Crown. This is followed by the test which Tribunals have now established against which public works takings are to be assessed for compliance with Te Tiriti.

15. The evidence of the three periods of takings is next detailed, providing an assessment against the questions set out in the Tribunal Statement of Issues.

16. These submissions then provide a refreshed standard for assessment of the Crown's duties based on the findings of numerous historical Waitangi Tribunal inquiries, and most recently the findings of the Rohe Pōtae Inquiry provided in the report Te Mana Whatu Āhuru.[9]

17. The submissions conclude with findings and recommendations sought on this issue.

Tribunal Statement of Issues

18. The Tribunal Statement of Issues provides the scope of issues to be inquired into as part of an assessment of public works taking issues for defence purposes in this rohe.[10]

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[5] Wai 2180, #A9, Phillip Cleaver, *Taking of Māori Land for Public Works in the Taihape District Inquiry,* 231, 43,437 acres, and then also in Wai 2180, #A9(b) *Presentation Summary*, 1; 43,438 acres.
[6] Wai 2180, #4.1.14, *Hearing Week Six at Moawhango Marae*, Moawhango.
[7] Wai 2180, #4.1.18, *Hearing Week Nine at Rongomaraeroa o Ngā Hau e Wha Marae*, Waiōuru.
[8] Wai 2180, #4.1.19, *Hearing Week Eleven at Rongomaraeroa o Ngā Hau e Wha Marae*, Waiōuru.
[9] Waitangi Tribunal, *Te Mana Whatu Āhuru*, the report on Te Rohe Pōtae Wai 898 Inquiry
[10] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15).

19. The themes can be broadly described as;

    a. What was the Crowns approach to consultation with Taihape Māori land and the acquisition of Taihape Māori land?
    b. What was the impact on Taihape Māori taonga of these takings?
    c. What are the environmental impacts of the Waiōuru ATA?
    d. How has surplus land been disposed of, and has it been offered to Taihape Māori?

The Crown

Crown Concessions

20. The Crown "acknowledges that lands were acquired under public works legislation which allowed for the compulsory taking of land [in] the inquiry district, and that the Crown's takings of lands for public works is a significant issue for the iwi and hapū of the Taihape: Rangitīkei ki Rangipo inquiry district - particularly in relation to takings for Defence lands."[11]

21. There is one Crown concession concerning the Māori land blocks of Ōruamatua Kaimanawa 2C2, 2C3, 2C4 and 4 taken for the Waiōuru ATA in 1973;

> "*the Crown acknowledges that it took nearly 8000 acres of Māori land for the Waiōuru Military Training Area in 1973. The Crown, in breach of the Treaty of Waitangi and its principles, failed to consult with or adequately notify all of the Māori owners of the Ōruamatua Kaimanawa 2C2, 2C3, 2C4 and Ōruamatua Kaimanawa 4 before these lands were compulsorily taken under the Public Works Act 1928."*[12]

22. That concession is accompanied by what the Crown considers to be relevant statements "by way of context and submission";

> *"24.1 the taking was influenced by the impact of the Tongariro Power Development scheme which restricted the pre-existing Army live firing and manoeuvring activity. The analysis and reasoning for the expansion of the training ground was justified for military purposes;*
>
> *24.2 there is no evidence that either the acquisition authority (the Ministry of Works) nor the NZDF consulted directly with all the Māori shareholders/landowners of Ōruamatua Kaimanawa 2C2, 2C3, 2C4 and Ōruamatua Kaimanawa 4 prior to their lands being compulsorily taken under the Public Works Act 1928;*

[11] Wai 2180, #1.3.2 *Memorandum of Counsel for the Crown re a draft statement of Issues*, (76).
[12] Wai 2180, #3.3.30 *Memorandum of Counsel filing Crown opening submissions for Crown evidence*, 4 March 2019, 4 (23).

24.3 the Crown engaged primarily with a non-Māori individual who held significant shares in the land and exercised a degree of influence over a majority of the shareholding interests in the Ōruamatua Kaimanawa 2C blocks at the time;

24.4 the Crown will, in closing submissions and based on Mr Cleaver's research, suggest that a possible explanation for the Crown's failure to consult with landowners directly (including those who were not in agreement with the individual above) may be partly attributable to the extent of that individual's control over a majority of the shareholdings and his expressed intention of expending capital on improvements."[13]

Crown Position

23. The Crown's position on public works takings is consistent with the position taken in other district inquiries over the last 10-20 years. In this inquiry they say "that New Zealand public works legislation reflects the judgment that private property rights can be compulsorily acquired for the wider benefit of the community as a whole provided certain processes are followed."[14]

24. This same position has been taken in successive historical inquiries by the Waitangi Tribunal and was the starting point in this Inquiry also.

25. This can be seen by going back some way to earlier Inquiries where the same position is shown by the Crown.

The Crown's Test

26. The Crown suggests that "circumstances of each case against(sic) need to be weighed against the background of competing Treaty principles; the guarantee to Māori of rangatiratanga; and the Crown's right of kāwanatanga."[15]

27. The Crown refers to a "threshold" for assessing takings of Māori land, which doesn't seem to benefit from further articulation, the Crown also states that this balancing of the competing principles are the "appropriate test and the extent to which the Crown balanced the national interest against the obligation to protect Māori land are proper matters for this inquiry."[16]

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[13] Wai 2180, #3.3.30 *Memorandum of Counsel filing Crown opening submissions for Crown evidence*, 4 March 2019 (24.1-24.4).
[14] Wai 2180, #1.3.2 *Memorandum of Counsel for the Crown re draft statement of Issues,* (77).
[15] Wai 2180, #1.3.2 *Memorandum of Counsel for the Crown re a draft statement of Issues*, (76). The Crown position references "rangatiratanga" rather than "tino rangatiratanga" which the text of Te Tiriti affirmed.
[16] Wai 2180, #1.3.2 *Memorandum of Counsel for the Crown re a draft statement of Issues*, (79). Again, the Crown records only the obligation to "protect Māori land" in relation to public works takings, but the duties which would appear to seriously inhibit the Crown from taking Māori land are much broader and more than just that one obligation the Crown acknowledges here.

28. The Crown then suggests the following five considerations are of central importance for assessing public works takings in this Inquiry;

    a. "Whether there was consultation and a proper process;
    b. Whether compensation was payable and whether it was paid;
    c. How particular land was selected;
    d. Whether alternatives to acquisition were considered; and
    e. Whether Māori were left with sufficient lands following public works takings for their present and reasonably foreseeable future needs."[17]

Crown Evidence

29. The Crown did produce evidence that related to the takings of land the Defence lands and its current status.

30. Major Hibbs[18] focused on the need of the Defence force for all of the land it acquired, suggesting it was needed then and remains needed in its entirety now.

31. Colonel Kaio[19] spoke to evidence of the Defence Force's current and future needs and what the force will look like and what training will look like.

32. The evidence of Mr Pennefather, a defence historian, addressed the issue of the Waiōuru Defence takings.[20]

33. Mr Pennefather's evidence "acknowledges that the exchange exacerbated difficulties for owners of Ōruamatua Kaimanawa Blocks 1V and 1U and discusses the negotiations that followed in response to those concerns."[21]

34. The historical account provided by these Crown witnesses is assessed alongside the technical witnesses that dealt with public works.

Tribunal Findings on Public Works Takings

35. The Rohe Pōtae Inquiry summed it up by saying that "Māori land can only be taken for public works in exceptional circumstances, as a last resort in the national interest."[22]

36. That Tribunal went on to set down the test in this way:

> "*What is in the national interest will depend on the circumstances of the time and is for the Treaty partners to jointly decide, but the work for which the land is required will at least need to be of substantial and compelling importance.*[23]

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[17] Wai 2180, #1.3.2 *Memorandum of Counsel for the Crown re a draft statement of Issues*, (80.1-80.5).
[18] Wai 2180, #M2, *Brief of Evidence of Major Hibbs*, dated 18 February 2019 (8-26).
[19] Wai 2180, #M1, *Brief of Evidence of Colonel Kaio*, dated 14 February 2019.
[20] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020.
[21] Wai 2180, #3.3.30 *Memorandum of Counsel filing Crown opening submissions for Crown evidence*, 4 March 2019, 5 (26).
[22] Waitangi Tribunal, *Te Mana Whatu Āhuru, Volume IV*, Chapter 20, 152-153.
[23] Waitangi Tribunal, *Te Mana Whatu Āhuru, Volume IV*, Chapter 20, 152-153.

37. "Where Māori land is taken for a public work, *no more Māori land should be included in the compulsory taking than is essential for the work*. Even if only a small amount of Māori land must be taken, the same principles and protections must apply as for any compulsory taking of Māori land."[24]

38. Any decision over compulsory taking of Māori land for a public work must include careful consideration of all feasible alternatives to compulsory taking of Māori land title, including possible alternative sites for locating the work and alternatives to taking the title outright, such as easements, licences, leases, covenants, or joint partnership arrangements.[25]

39. The question of whether these takings were in the national interest and were takings under exceptional circumstances will be significant in the assessment of these takings and possibly the most vexed.

40. What is clear though is that across these takings;

    a. Taihape Māori were not fully and meaningfully consulted with;
    b. Alternatives to full alienation were not considered;
    c. Compensation for Māori land taken was lower than compensation paid for general land;
    d. More Māori land was taken than was needed; and
    e. Surplus lands were not returned to the Taihape Māori owners or their whānau.

41. As a result, even if the need for Defence land is found to be exceptional and in the national interest, the entirety of the process of alienation of the land from Taihape Māori were not compliant, form a breach of Te Tiriti and resulted in significant prejudice.

42. Following the takings the interest of Māori in that land continues and this needs to be provided for, as stated by the Te Rohe Pōtae Tribunal: "The Crown must provide for recognition of the continuing interest of Māori in their ancestral land even after it has been taken for a public work, and even though compensation might have been paid. The Crown must provide mechanisms where possible, and in consultation with the Māori owners, that recognise the continuing interest of the former owners and their whakapapa connections with the land, such as by affording rights of membership on a board of management for a scenery or recreation reserve, or a partnership arrangement in a work.[26]

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[24] Waitangi Tribunal, *Te Mana Whatu Āhuru, Volume IV*, Chapter 20, 153.
[25] Waitangi Tribunal, *Te Mana Whatu Āhuru, Volume IV*, Chapter 20, 153-154.
[26] Waitangi Tribunal, *Te Mana Whatu Āhuru Te Rohe Pōtae Report Volume IV,* (Wai 898) 154, Waitangi Tribunal, He Maunga Rongo, Volume 2, p 845 ; Waitangi Tribunal, The Wairarapa ki Tararua Report, Volume 2, p 800.

The Established Waitangi Tribunal Test for Public Works Takings:

43. The test is now well established;
    a. Māori land can only be taken for public works in exceptional circumstances, as a last resort in the national interest. What is in the national interest will depend on the circumstances of the time and is for the Treaty partners to jointly decide, but the work for which the land is required will at least need to be of substantial and compelling importance;[27]
    b. Māori must be fully and genuinely consulted with on the proposed taking;[28]
    c. No more Māori land should be included in the compulsory taking than is essential for the work;[29]
    d. Feasible alternatives to the compulsory taking of Māori land title must be considered, including possible alternative sites for locating the work and alternatives to taking the title outright, such as easements, licences, leases, covenants, or joint partnership arrangements;[30]
    e. There must be recognition of the continuing interest of Māori in their ancestral land even after it has been taken for a public work, and even though compensation might have been paid. The Crown must provide mechanisms where possible, and in consultation with the Māori owners, that recognise the continuing interest of the former owners and their whakapapa connections with the land;[31] and
    f. The Crown must return Māori land that has been compulsorily taken or gifted for a public work to the original Māori landowners or their descendants, or, in consultation, with the whānau community with ancestral links to the land, as soon as is practicable after the land is no longer required for the work for which it was originally taken, or in some cases required to be gifted, and at the least cost and inconvenience to Māori.[32]

The Crown's Duties to Taihape Māori

44. This Tribunal is asked to address the question of whether the Crown has satisfied each and all of those duties to Taihape Māori in relation to the public works takings for Defence in this rohe.

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[27] Waitangi Tribunal, The Ngāti Rangiteaorere Claim Report, p 47 ; Waitangi Tribunal, The Ngai Tahu Ancillary Claims Report, p 11 ; Waitangi Tribunal, Turangi Township Report, pp 300–302 ; Waitangi Tribunal, He Maunga Rongo, Volume 2, pp 819, 839, 867–872 ; Waitangi Tribunal, Tauranga Moana 1886–2006, Volume 1, pp 273, 282–283, 286–292 ; Waitangi Tribunal, The Wairarapa ki Tararua Report, Volume 2, pp 781, 793, 801–802 ; Waitangi Tribunal, Te Kāhui Maunga, Volume 2, pp 742–743

[28] Waitangi Tribunal, *Te Mana Whatu Āhuru, Volume IV*, Chapter 20, 153.

[29] Waitangi Tribunal, *Te Mana Whatu Āhuru, Volume IV*, Chapter 20, 153.

[30] Waitangi Tribunal, Tauranga Moana 1886–2006, Volume 1, pp 279–280 ; Waitangi Tribunal, Ngawha Geothermal Resource Report (Wellington : Brooker and Friend Ltd, 1993), p 138 ; Waitangi Tribunal, Te Kāhui Maunga, Volume 2, p 743 ; Waitangi Tribunal, The Wairarapa ki Tararua Report, Volume 2, p 796.

[31] Waitangi Tribunal, *Te Mana Whatu Āhuru Te Rohe Pōtae Report Volume IV,* (Wai 898) 154.

[32] Waitangi Tribunal, He Maunga Rongo, Volume 2, p 845 ; Waitangi Tribunal, The Wairarapa ki Tararua Report, Volume 2, p 800.

45. Did the Crown:
    a. Afford the same protections to Māori land as to European, general or Crown lands;[33]
    b. Minimise the amount of Taihape Māori land taken for public works;[34]
    c. Consider alternatives to the taking of Taihape Māori land and to the acquisition of freehold title of Taihape Māori land;[35]
    d. Engage with Taihape Māori and meaningfully consult with the Māori landowners about the land which the Crown proposes to take for public works;[36]
    e. Properly compensate Taihape Māori for the land which the Crown acquired for public works;[37]
    f. Ensure that Taihape Māori had sufficient remaining lands, for the current and future generations;[38]
    g. Return lands no longer required for the purpose for which they had been taken.[39]

Public Works Takings – The Evidence

Public Works Purpose	**Area (acres)**
Defence	43,438[40]
Roads for access to Defence areas, Pouwhakarua 1E, 1917	1a 1p[41]

Issue D: 15 Defence Takings

46. The Tribunal stated the key issues for this Inquiry in relation to the Waiōuru Army Training Area (the Waiōuru ATA) in the Statement of Issues (SOI).[42]

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[33] Waitangi Tribunal, *He Maunga Rongo*, Volume 2, 819, 839, 848, and 853. Waitangi Tribunal, *Wairarapa ki Tararua*, Volume 2, p759. Waitangi Tribunal, *Te Kahui Maunga*, Volume 2, p747, referring to the Waitangi Tribunal, *He Maunga Rongo*, Volume 2, 846-853 esp 853. It is under this duty that the five percent rule is considered, and given the clearly discriminatory provisions, found to be wanting.

[34] Waitangi Tribunal, *The Turangi Township Report* 1995 (Wellington Brooker's Ltd, 1995), p285 as quoted in Waitangi Tribunal, *He Maunga Rongo*, Volume 2, p836. The interaction here is between the Crown duty as identified, and the Tribunal principle that takings "should only be in exceptional circumstances and as a last resort in the national interest."

[35] Waitangi Tribunal, *Te Kahui Maunga*, Volume 2, 743 and 751, and Waitangi Tribunal, *Tauranga Moana*, Volume 1, p297.

[36] Waitangi Tribunal, *The Turangi Township Report* 1995 (Wellington Brooker's Ltd, 1995), p285 as quoted in Waitangi Tribunal, *He Maunga Rongo*, Volume 2, p836.

[37] Waitangi Tribunal, *He Maunga Rongo*, Volume 2, 840, Waitangi Tribunal, *Te Kahui Maunga*, Volume 2, 743 and 751, Waitangi Tribunal, *The Hauraki Report*, Volume 3, p1055.

[38] Waitangi Tribunal, *Te Kahui Maunga*, Volume 2, p748.

[39] Waitangi Tribunal, *Turangi Township Report*, p 305 ; Waitangi Tribunal, *Te Maunga Railways Land Report*, pp 69–71, 88 ; Waitangi Tribunal, *Tauranga Moana 1886–2006*, Volume 1, p 301 ; Waitangi Tribunal, *Te Kāhui Maunga*, Volume 2, p 754.

[40] Wai 2180, #A9, Phillip Cleaver, 231 – 43,437 acres, A9(b) Summary, 1; 43,438 acres.

[41] Wai 2180, #A9, Phillip Cleaver, 184.

[42] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 45-46, Issue 15 Waiōuru Defence Lands.

47. The SOI set out ten questions which consider the key themes for assessment relating to the taking of land by the Crown for the Defence Lands, those key issues can be grouped into;

    a. Consultation with Taihape Māori and the acquisition of Taihape Māori land;[43]
    b. The impact on taonga;[44]
    c. The environmental effects of operations on the Waiōuru Defence Lands;[45] and
    d. The disposal of surplus lands back to Taihape Māori.[46]

48. Cleaver's evidence details in full the acquisition of land from Māori for the creation of the Waiōuru Defence lands which first began in 1939. In total, 43,438 acres of Māori land was taken out of Māori ownership and made a part of the Defence Lands.[47]

49. Takings of Taihape Māori land for the Waiōuru ATA took place in three stages, beginning in 1939, a second tranche of takings in 1961, the third and final in 1973.

50. It seems clear, based on the licenses and leases which allowed parts of the ATA to be grazed or utilised by private landholders in the area, and the exchanges of land willingly enter by the Defence Force, that more land was taken than was needed.

51. Following the takings and establishment of the Defence Lands there were two exchanges, where the Defence Force relinquished some of the land which it had acquired. The first exchange was between Defence and NZ Forestry in the late 1970s, the second exchange was with private land owner Ohinewairua Station in the late 1980s.

52. No land taken for the Waiōuru ATA has ever been returned to Māori ownership and former Māori landowners were not even offered the opportunity of purchasing tupuna land where Defence relinquished the ownership of parts of the Defence estate.

53. An assessment of those exchanges, where Waiōuru ATA were relinquished in exchange for other lands, shows that much of the land used in these exchanges and considered no longer needed by Defence, had been Māori land and should have been offered back to the former Māori owners.

54. Cleaver produced a map showing the extent of the takings of Māori land for the Defence Lands which is reproduced below.[48] Innes also produced maps

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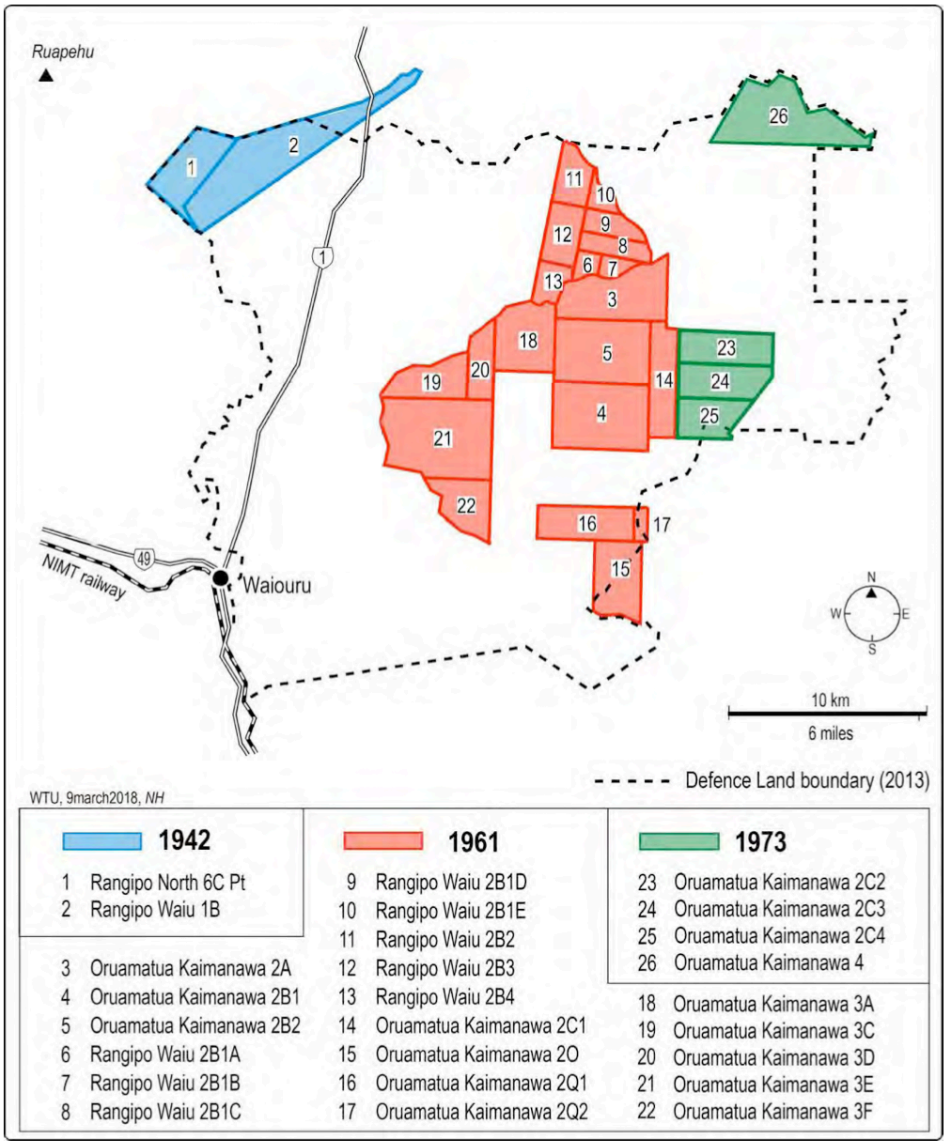
[43] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 45-46, Issue 15, Questions 1-4.
[44] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 45-46, Issue 15, Questions 5-8.
[45] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 46, Issue 15, Question 9.
[46] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 46, Issue 15, Question 10.
[47] Wai 2180, #A9(b) Phillip Cleaver, *Report Summary*, 1.
[48] Wai 2180, #A9(b) Phillip Cleaver, *Report Summary*, 6. This Map brings together Figure 1, 6 and 8 produced in the main report Wai 2180, #A9 at 26, 58 and 88.

setting out the takings showing the extent of the impact over time on the remaining Māori land holdings.[49]

Map 1: Māori lands taken for Waiōuru Army Training Ground, 1942, 1961 & 1973



55. This map and table shows the visual extent of takings of Māori land for the Defence lands.[50]

56. Cleaver produced other maps which illustrate the overall growth of the Defence Lands area over time and how the Māori land acquisitions were a significant part of this, and these are referenced in these submissions and will be included as part of the summary presentation documents.

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[49] Wai 2180, #A15, Craig Innes, *Māori Land Retention and Alienation within Taihape Inquiry District, 1840-2013*, 117, Map 11.
[50] Wai 2180, #A9c, Philip Cleaver, *Report Summary Takings of Māori Land for Public Works in the Taihape Inquiry District*, 6.

57. Innes also produced a table which listed all the acquisitions for the Defence Estate.[51]

58. What these maps and table cannot show is the distinctly different experience general landowners (and lease holders) had when compared to the experiences of the Maori landowners.

Consultation and Acquisition

59. The TSOI asks:

> *"Did the Crown adequately notify and consult with Taihape Māori landowners regarding proposed land takings for the Waiōuru Army Training Area? If so, through what means/channels?"*[52]
>
> *"In acquiring land owned by Taihape Māori for Waiōuru Army Training Area, did the Crown:*
>
> a. *Undertake an adequate valuation of the land that was taken?*
> b. *Consider alternatives such as different routes or locations, leasing arrangements, or land exchanges?*
> c. *Provide fair compensation, if any, and in a timely manner, to Taihape Māori?*
> d. *Ensure that Taihape Māori possessed sufficient remaining land to sustain themselves?*
> e. *Acquire more than that was required for the purposes of the acquisition?"*[53]

60. What follows is an analysis of each of the three rounds of takings of Taihape Māori land for the Waiōuru ATA in turn, in which these key questions relating to consultation and acquisition are assessed.

The First Round of Takings 1930s and 1942

61. In the 1930s the first takings for the Defence Lands were completed, with the acquisition of three general land blocks; Runs 1, 2 and 3, an area of 67,450 acres, and were no longer, by that time, in Māori ownership.[54]

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[51] Wai 2180, #A15, Innes, Table N, 115.
[52] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 1.
[53] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 2.
[54] Wai 2180, #A9, Phillip Cleaver, 26 Figure 1, 28, and Wai 2180 #A23 Nicholas Bayley, Murimotu and Rangipo Waiu 1860-2000, Map 8, 11, and Rangipo-Waiu Alienations 207-226.

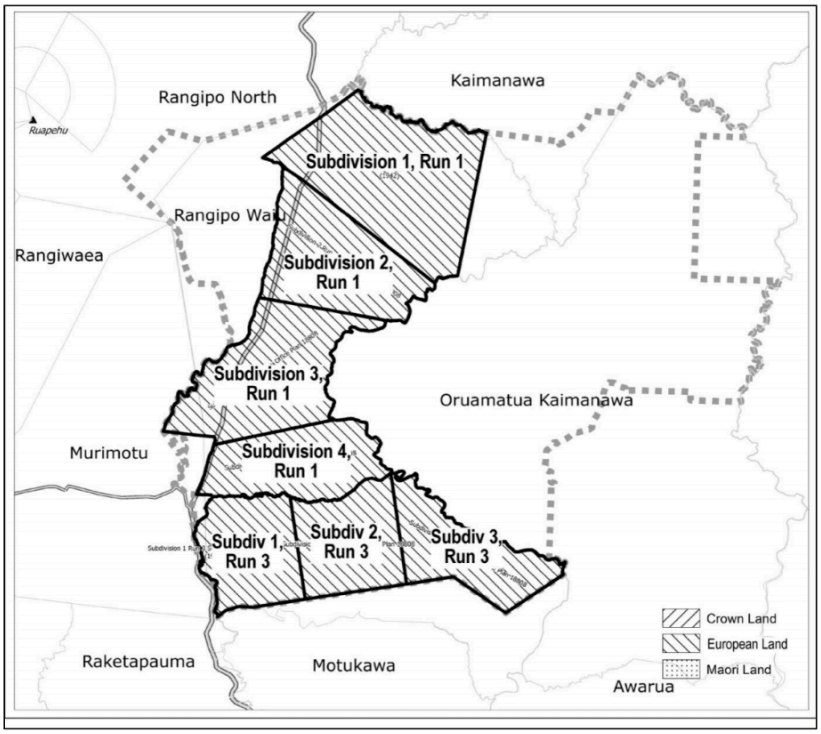

Figure 1: Lands taken in November 1939 and June 1942[60]

62. These takings were made using the Public Works legislation available at the time and carried out in 1939, with the rationale and justification being assisted by the break out of World War II.[55]

63. Run 1 and Run 3 were taken first, and the owner Mr Schollum said that the economic capacity of Subdivision 1 of Run 1, an area of 15,850 acres was limited by the takings of Subdivisions 2 and 3 of Run 1 and as a result offered that land to Defence following the initial acquisition in 1939.[56]

64. The first two blocks of Māori land were taken to add to the Defence Lands in 1942; Pt Rangipo North 6C (1,850 acres) and Rangipo Waiu 1B (4,470 acres).[57]

[55] Wai 2180, #A9, Phillip Cleaver, 33.
[56] Wai 2180, #A9, Phillip Cleaver, 26-27.
[57] Wai 2180, #A9, Phillip Cleaver, 39 and 40 Figure 1 as shown below.

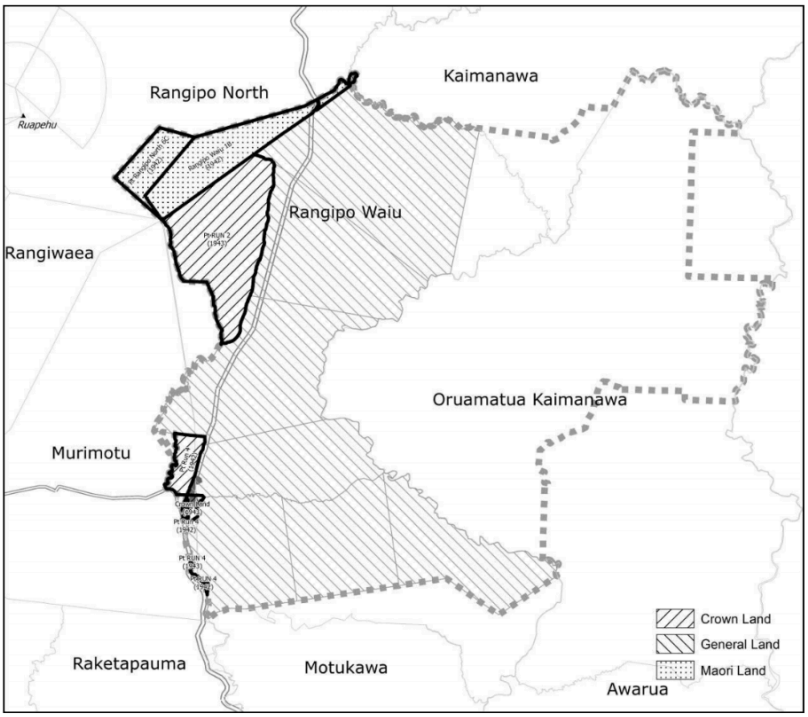

Figure 2: Lands taken in July 1942 and Crown lands included in Waiouru training ground in March 1943[129]

65. Cleaver notes that "Defence Headquarters made no attempt to communicate directly with any of the Māori or European landowners"[58] instead using compulsory acquisition because the Māori land was "urgently required as a permanent part of the Waiōuru training ground and believed that proclamation under the Public Works Act provided the 'quickest means'."[59]

66. When compensation was assessed, the hearing was heard in the Māori Land Court in Wanganui and no Māori landowners were present.[60]

67. The general land owned by Schollum taken just three years before, and while it was approximately three times the size of the Māori land taken, amounting to 15,850 acres, the taking resulted in the significant payment of compensation of £2000.

68. Despite the size of the Māori land blocks being taken and the means used the Public Works Land Purchase Officer suggested that the land had no commercial value and deemed both blocks to be worth just £5.

69. Rather than receiving a comparable third of that level of compensation, the Court considered £250 to be acceptable to compensate the Māori landowners, reflecting just 1/8th of the amount Schollum received.

70. The Court initially indicated that £155 of this would be removed for survey liens, leaving compensation of just £95, but this suggestion was later

[58] Wai 2180, #A9, Phillip Cleaver, 42.
[59] Wai 2180, #A9, Phillip Cleaver, 42-43.
[60] Wai 2180, #A9, Phillip Cleaver, 45.

cancelled on the grounds it would have been too detrimental effect on the Māori landowners.[61]

71. Regarding the initial taking in 1939 of 755 acres from Mr Schollum. Mr Pennefather seems to take issue with Mr Cleaver's suggestion that it "apparently had little value for training purposes."[62]

72. However, concerning the suitability of this area for taking and military needs Mr Pennefather's own evidence shows that it "was viewed by the Camp Commandant at the time as having little value for training purposes. This area was part of the E.A. Peters grazing area on the southern side of the Hautapu Stream."[63]

73. Mr Pennefather's explanation is that it appears that Mr Schollum was not interested in retaining this land, "this area by itself would have been an uneconomic unit" and referred to indications from Mr Schollum's solicitors that with "the loss of the deferred Payment License there would be no point in him holding on to Sub 1 of Run 1 (15,850) as it was of no economic use on its own."[64]

74. Mr Pennefather then asserted that this area, the 755 acres, "has value for Defence *today* as it forms part of the overall calculation of a buffer area from the legal boundary when applying safety templates for live firing activities."[65]

75. However, it is not apparent when that "value" became apparent or when that area began to provide those benefits to Defence. Mr Pennefather's own evidence establishes that it was not an area of value to Defence at the time of acquisition nor in the initial decades following acquisition. This is enough to see that the public works test for acquiring the land for Defence purposes had not been met.

76. The 1939 taking was carried out without any consultation with the limited company controlled by Mr Schollum despite repeated attempts to communicate with him about the taking.[66] The 1942 taking was of land that had by that stage been offered to the Army by Mr Schollum, who by this time was not utilising the land and was in arrears on the deferred license payments, and Mr Cleaver states that he wanted to sell the land anyway.[67]

77. Compensation for these lands were awarded at £55,700, of which a "considerable sum was deducted to cover payment arrears relating to the company's deferred payment licence."[68] The compensation was assessed by the Compensation Court.[69]

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[61] Wai 2180, #A9, Phillip Cleaver, 46.
[62] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 2. And referring to Cleaver #A9, 38.
[63] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 3, (11).
[64] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 3, (11).
[65] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 3, (12). *Emphasis added*.
[66] Wai 2180, #A9, Phillip Cleaver, 38.
[67] Wai 2180, #A9, Phillip Cleaver, 38.
[68] Wai 2180, #A9, Phillip Cleaver, 26.
[69] Wai 2180, #A9, Phillip Cleaver, 26.

78. There is much to be said about this sequence of events;

a. Mr Schollum was not interested in retaining the remainder of his land, Subdivision 1 of Run 1, although it was some 15,850 acres;[70]
b. Mr Schollum appears to have suggested the land be acquired as part of the land taken for the Defence Lands;[71]
c. Given the land was acknowledged as not being needed immediately clearly could have formed land for exchange as repeatedly requested by Māori landowners at the time Māori land began to be acquired for the Defence estate;
d. Contrasts dramatically with the lack of engagement with Māori landowners, and their primary concern to retain land, or at the very least exchange for other land in the area.

What was the Defence Force's need at this time?

79. Mr Pennefather sets out an illuminating history of other lands, in the South Island, which were used by Defence for the same purpose as Waiōuru Defence lands around the same time and after those initial takings here.

80. There is the question of what land was needed by Defence at this time, how much and where, but also, what kind of title was needed. These are all an aspect of the assessment of the need that the Crown said justified the taking of Māori land, and must pass the threshold tests set out by earlier Tribunals outlined already.

81. Mr Pennefather provided evidence, or at least a view, on the Defence's need for "permanent rights" to the land that it was acquiring or seeking to acquire.[72]

82. In Mr Pennefather's view, the form of leasehold right that the Defence would need to do what they wanted or needed to do, would make it "tantamount to holding a freehold title"[73]and "the lessor would also have to be very amenable to allowing military use in its widest application."[74]

83. Mr Pennefather acknowledges that "the Army has traditionally fired on both Crown and other lands" suggesting that at the time of the initial taking at least and even the second taking that the safety concern was not prominent as it is now.[75]

84. He records that "The Army had secured manoeuvre rights within six large pastoral runs, Mt Hay, Balmoral, Braemar, Glenmore, Mt John, Irishman Creek Station in the early 1950s through a memorandum of variation to the lease documents. The total area subject to manoeuvre rights in the MacKenzie District encompassed approximately 50,000 hectare."[76]

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[70] Wai 2180, #A9, Phillip Cleaver, 29-30.
[71] Wai 2180, #A9, Phillip Cleaver, 38.
[72] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 2-5
[73] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 4(15).
[74] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 4(15).
[75] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 4(14).
[76] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, (16).

85. These variations to the leases permitted a wide range of activities, and the Army was able to "establish temporary camps, operate mechanised vehicles, construct and maintain landing strips, disturb the surface of the land, and conduct live shell and rocket practice from the land to impact into a danger area held by the Crown for Defence Purposes under the Public Works Act 1928."[77]

86. What this shows us is that the Crown was able to work within the restraints of leases over general land in the middle of the 20th century, these lease variations were completed using the Land Act 1948, showing that around the same time that the Crown was beginning to establish the Defence Lands at Waiōuru, and then to expand it, they were actively relying on leases.[78]

87. Mr Pennefather points out that this arrangement worked for both leaseholder and the Crown until the mid 1980s, when the leases came up for renewal, when the manoeuvre rights were removed from the new agreements:[79]

> "This proved to be formative for the New Zealand Defence Force in that it reiterated the importance of acquiring land under the Public Works Act in order to provide secure tenure, especially where live firing impact is occurring."[80]

88. However, the key taking periods for the Waiōuru Defence Lands were 1941, 1963 and 1973, and it was during this time that the Crown acquired, by negotiation all those general lands, and by Public Works takings, all the Māori land.

89. The difference of experience is marked. If the general landowners in Waiōuru had resisted, would the Crown have considered and proceeded with a public works taking? This hypothetical can't be answered, but the distinction is significant, in the South Island, the Crown was not dealing with owners of general land willing to sell, but here in Taihape they were.

90. In Mr Pennefather's evidence there is no reference to public works takings being used or considered for those lands used for Defence in the South Island, except in relation to the discrete "danger area" into which live shell and rocket practice was undertaken.[81]

Leasing (or Licensing) of Defence Lands

91. Shortly after these lands were taken, Defence Headquarters set about granting leases for the farming of the land, with the first lease of 4,300 acres being established as early as 1944.[82]

92. In 1949 more leases were confirmed, for a vast area; three leases were entered into following a tendering process, leasing 755 acres for 10 years for

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[77] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, (17).
[78] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, (16-19).
[79] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, (18).
[80] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, (19).
[81] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, (15-19).
[82] Wai 2180, #A9, Phillip Cleaver, 52-53.

annual rent of £20, 1017 acres for 10 years for annual rent of £157 and 61,890 acres for 10 years for annual rent of £475.[83]

93. These leases became an "entrenched feature of the Army's management of Waiōuru training ground.[84]

94. Throughout Mr Cleaver evidence he refers to all of these agreements with private operators to utilise the Defence lands as "leases."

95. This was a detail which Mr Pennefather was at pains to correct and pointed out in his evidence that these agreements were not "licenses" and not "leases."[85]

Pennefather's evidence: Defence issued Licenses, not Leases

96. Mr Pennefather suggests that Mr Cleaver's use of the term "leases" when describing rights issued by the Defence Force to farmers to use some of the Defence Lands at Waiōuru as wrong, and that they were in fact "licenses."[86]

97. The significance of this distinction, according to Crown submissions and statements is that a licence, unlike a lease, contained very limited rights and permitted the Defence Force to cancel the agreement and end the use with minimal notice.[87]

98. It appears that Mr Cleaver was not the only one to consider the distinction of less importance, as the officials dealing with these license or lease arrangements at the time used the terms interchangeably.[88]

99. For Mr Pennefather a "lease provides exclusive possession and effectively an interest in land. A license does not and can be terminated at short notice."[89]

100. Mr Pennefather was confident in stating that the "Waiōuru Military Training Area has never been 'leased' to third parties post acquisition of the land under the Public Works Act 1928."[90]

101. Mr Pennefather stated that: "I have been through a lot of different Lands and Survey files, Ministerial works, old Army and they all used the terms interchangeably."[91]

102. This suggests that the distinction is legally significant but not as important as Mr Pennefather suggests. It is a label, the rights to use Defence land were being issued in exchange for payment and the lessee was taking the risk of

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[83] Wai 2180, #A9, Phillip Cleaver, 53.
[84] Wai 2180, #A9, Phillip Cleaver, 55.
[85] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 5-7 (20-29).
[86] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, (20-29).
[87] Wai 2180, #3.3.30 *Crown Submissions,* dated 4 March 2019, (25).
[88] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, (21).
[89] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 5-6 (21).
[90] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 6 (22).
[91] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 132.

using the land and accessing it. This was confirmed during cross-examination.[92]

103. The full scope of the licensing areas was confirmed by Pennefather in his own evidence and provided in map form.[93]

104. Mr Pennefather agreed that these lands "immediately after much of those lands were acquired they immediately went into licensed use by farmers."[94]

105. Mr Pennefather, when describing the map of "currently licensed defence lands" confirmed that "probably most of those areas have been licenced from day one" and "certainly those two pink areas it would be correct to say they've been licenced from day one."[95] Those lands are being grazed, and have been grazed since acquisition, but Mr Pennefather insisted that "[t]hey are required for Defence purposes , they're grazed to maintain, to keep vegetation down and to assist with a bit of fire risk control."[96]

106. The suggestion Mr Pennefather makes, which these submissions find untenable, is that Māori could not have kept ownership and control of their land and arranged leases to Defence which would achieve the same end.

Summary of the First Round of Takings

107. The Crown did not notify Taihape Māori about the initial acquisitions, nor did the Crown consult with them.[97]

108. When it came to compensation, Taihape Māori were not notified of, or present for, the hearing relating to the valuation. [98]

109. There is no evidence that the Crown considered alternatives to full acquisition, or considered whether the alienations left Taihape Māori with or without sufficient remaining land.

110. Immediately following the acquisitions much of the land, both general and Māori land, was leased (or licensed) for farming. Three 10 year leases were established by the Defence force over 63,662 acres for a total of £652 in annual rent from those leases.[99] Clearly the land was not immediately needed by the Defence Force for defence purposes.[100]

111. Given the immediate leasing of the land, Taihape Māori did lose economic opportunities. They could have retained their land and leased it out

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[92] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 144.
[93] Wai 2180, #M3(a) *Appendices to the Evidence of G Pennefather*, 47-48.
[94] Wai 2180, #M3(a) *Appendices to the Evidence of G Pennefather*, 144-145.
[95] Wai 2180, #M3(a) *Appendices to the Evidence of G Pennefather*, 145.
[96] Wai 2180, #M3(a) *Appendices to the Evidence of G Pennefather*, 145.
[97] Wai 2180, #A9, Phillip Cleaver, 42-43, and Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 1, 45.
[98] Wai 2180, #A9, Cleaver, 45 and Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 1, 45.
[99] Wai 2180, #A9, Phillip Cleaver, 53.
[100] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 3, 45.

themselves, they could have leased it to Defence and retained the underlying ownership.

Second Round of Takings: 1961 Ōruamatua Kaimanawa, Rangipo Waiu

112. In 1961 37,196 acres were taken to extend the Waiōuru Training Ground, only 8,029 acres of this was general land, and the remainder of those lands; 29,167 acres, was Māori land, and included parts or all of 20 blocks of Māori land with over 250 owners.[101] An additional block, Kaimanawa 3B1 had been awarded to the Crown for survey costs in 1910 by the Native Land Court and was converted to the Defence's purposes and became part of the Waiōuru ATA.[102]

113. As the map by Cleaver shows, this forms the core and central territory of the Waiōuru ATA. [103]

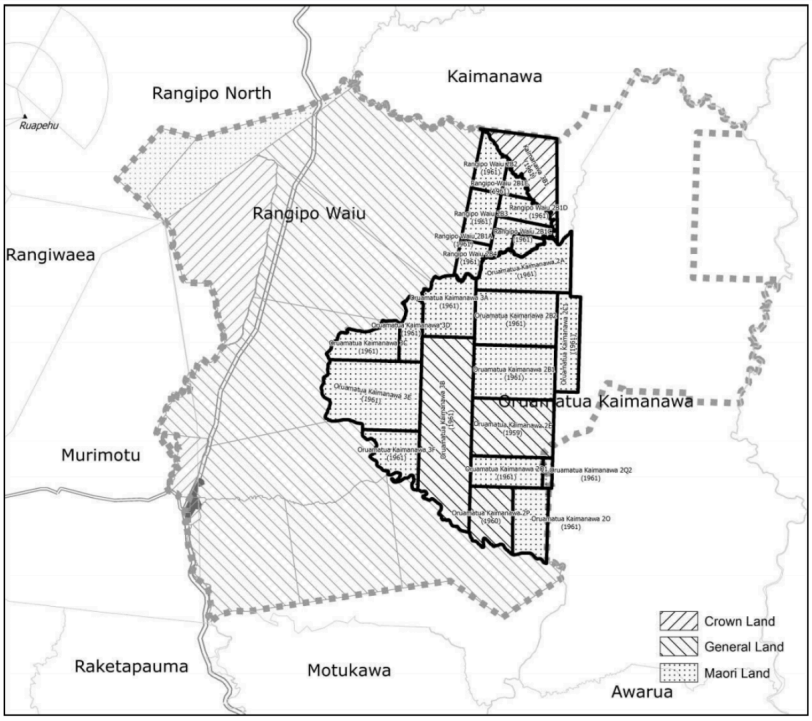

Figure 6: Lands taken in May 1959 and February 1961[211]

114. Cleaver notes that there were negotiations and an agreement reached with the Marshalls; the European owners for the taking of Ōruamatua Kaimanawa 2E.[104]

115. Ultimately, the taking of all of these blocks of Māori land were taken by compulsory acquisition. There was no statutory requirement for notice to be

[101] Wai 2180, #A9, Phillip Cleaver, 57 and Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 1, 45
[102] Wai 2180, #A9, Phillip Cleaver, 61.
[103] Wai 2180, #A9c, Philip Cleaver, *Report Summary Takings of Māori Land for Public Works in the Taihape Inquiry District*, 6, and Wai 2180, #A9, Phillip Cleaver, 58, Figure 6
[104] Wai 2180, #A9, Phillip Cleaver, 57-58, 77-78.

given, but a notice was made in mid 1960, and the taking was completed in February 1961.[105]

Engagement, Consultation and Negotiations with Māori landowners

116. Officials planned for and considered options for negotiating the taking of these Māori lands started as early as 1950.[106] Officials thought considerable time would be required to find land suitable for exchange.[107] The evidence shows that officials exaggerated the extent to which there had been negotiations when this effort was abandoned by the Military.[108]

117. The evidence shows a marked distinction between the nature of negotiations with Māori landowners as opposed to general landowners.

118. The European owned blocks of Ōruamatua Kaimanawa 2P and 3B, 1,695 acres and 6,334 acres respectively were taken by negotiated agreement in 1962.[109] Compensation was agreed at £3,800 based on a government valuation and with a lease being awarded to the Station which owned these blocks for over 10,000 acres which had been acquired in 1959 and 1961.[110]

119. This agreement was deliberately delayed until the acquisition of the Māori land had been concluded, it seems clear that this was done in order to have the leasing options of that former Māori land on the table for the negotiations.[111]

Justification

120. This second round of takings focused on land to the east of the already established Waiōuru ATA, and the Army Secretary stated that the land was needed to "overcome certain limitations of the existing training ground, which related partly to the increasing velocity and range of modern weapons."[112]

121. The shape of the estate prior to these takings was narrow on a north-south axis, and the Waiōuru-Tokaanu Road ran through it, expansion to broaden the east-west extent was said to be necessary to better enable the shooting of heavy weapons and manoeuvre large bodies of men.[113]

122. At the same time notes recognised that this taking was being planned for "peace time training" and acknowledged there were not current large deployments oversees.[114]

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[105] Wai 2180, #A9, Phillip Cleaver, 57.
[106] Wai 2180, #A9, Phillip Cleaver, 63.
[107] Wai 2180, #A9, Phillip Cleaver, 64.
[108] Wai 2180, #A9, Phillip Cleaver, 65.
[109] Wai 2180, #A9, Phillip Cleaver, 58.
[110] Wai 2180, #A9, Phillip Cleaver, 58.
[111] Wai 2180, #A9, Phillip Cleaver, 79-80.
[112] Wai 2180, #A9, Phillip Cleaver, 59.
[113] Wai 2180, #A9, Phillip Cleaver, 59.
[114] Wai 2180, #A9, Phillip Cleaver, 59.

123. The Commissioner of Works was asked to negotiate the taking with the Māori landowners in 1949.[115] The Commissioner immediately drew on the Minister of Māori Affairs and the Registrar of the Māori Land Court in Whanganui to identify the Māori land blocks and owners.[116]

124. The Army Secretary evaluated the Māori land as being "mostly barren tussock country supporting only deer, wild horses and pigs and in general is not much used by the various Māori owners" and requested approval to acquire the land for £10,713.[117]

125. This evaluation ignored the fact that at least two of the Māori land blocks were currently being leased; Ōruamatua Kaimanawa 2B1 and O and were obviously a source of financial benefit to those owners.[118]

126. The approach to the taking by Defence is summed up well by the Army Secretary's own memorandum: "…it may not be practicable to deal with this matter by negotiation with the Māori owners in view of the number of blocks and the many owners affected. I think myself that the best procedure would be to take action to acquire the land under the Public Works Act 1928, and leave the assessment of compensation to the Māori Land Court. The Māori owners could, if necessary, be advised of the proposals through the Department of Māori Affairs."[119]

127. The Minister agreed that there should be an attempt to negotiate an agreement with the Māori landowners but the attitude towards this initial step is telling; "…before taking any action under the Public Works Act, the proposals should be discussed with the Māori owners. It may very well bet that such a meeting as I have suggested would not result in agreement but it is felt that less dissatisfaction would be caused if negotiations was at least attempted before compulsory taking was resorted to."[120]

128. The Under Secretary noted that the Minister of Māori Affairs agreed with this view.[121]

129. The Commissioner of Public Works also stated that "I did not propose to proceed with action under the Public Works Act without consulting the Māori owners. However, it is apparent that it would be difficult, or impossible to reach agreement because of the number of owners interested, and ultimately action would have to be taken under the Public Works Act, and the amount payable would have to be determined through the medium of the Māori Land Court. My suggestion therefore, was… that the necessary authority for this action be obtained initially from Cabinet."[122]

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[115] Wai 2180, #A9, Phillip Cleaver, 60.
[116] Wai 2180, #A9, Phillip Cleaver, 60.
[117] Wai 2180, #A9, Phillip Cleaver, 61.
[118] Wai 2180, #A9, Phillip Cleaver, 61.
[119] Wai 2180, #A9, Phillip Cleaver, 61.
[120] Wai 2180, #A9, Phillip Cleaver, 62.
[121] Wai 2180, #A9, Phillip Cleaver, 62.
[122] Wai 2180, #A9, Phillip Cleaver, 63.

130. Approval was received for the £10,713 fund and the Commissioner directed the District Engineer to meet with the "principle owners" as the result of a request from the Māori Affairs Department.[123]

Negotiations/Engagement with the Māori owners

131. An initial meeting between the District Engineer and those he called the "principle owners" took place at Tokaanu on September the 29th of 1950.[124] This was a private meeting, not a publicly notified one.

132. At this meeting the District Engineer was left with the clear message that acquisition by proclamation was strongly opposed and that the owners (at least those present or those knowingly represented by them) sought an exchange of lands.[125] Those owners had in mind the Crown land and prison reserves of Hautu and the Rangipo Development Farms.[126]

133. The District Engineer was informed by the Commissioner of Crown Lands and the Controller General of Prisons that none of this land was available, and that almost all other Crown owned land in that northern area was required for water conservation purposes.[127]

134. At this same time, March 1951, the Army Secretary agreed to allow three leases to E.A Peters and W.R. Harding over 60,000 acres of land, from the Rangipo North and Rangipo Waiu blocks which had been acquired during the first round of takings.[128]

135. Following this one meeting, the Registrar of the Māori Land Court wrote to the Public Works Department, responding to the Land Purchase Officer's inquiry of whether the Māori Land Board would be agreeable to the compulsory acquisition, and the Registrar identified with clarity the underlying concerns of those owners that had been engaged with: "The Maoris of the Tuwharetoa tribe are particularly land conscious at the present time, and any arbitrary dispossession of their rights of ownership would be likely to have immediate political repercussions."[129]

136. At this point the Army Secretary wrote a memorandum to the Ministry of Defence stating that: "*Considerable negotiations* have taken place with the *Māori owners* of the major portion of the area but it has been found impossible to acquire this land from them by negotiation nor will they agree to the land being acquired under the provisions of the Public Works Act 1928, leaving the matter of compensation to be assessed by the Māori Land Court."[130]

137. The possibility and perceived difficulties in obtaining a license to periodically shoot over the land, rather than fully acquire the title, was dismissed in a

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[123] Wai 2180, #A9, Phillip Cleaver, 63.
[124] Wai 2180, #A9, Phillip Cleaver, 64.
[125] Wai 2180, #A9, Phillip Cleaver, 64.
[126] Wai 2180, #A9, Phillip Cleaver, 64.
[127] Wai 2180, #A9, Phillip Cleaver, 64.
[128] Wai 2180, #A9, Phillip Cleaver, 53.
[129] Wai 2180, #A9, Phillip Cleaver, 64-65.
[130] Wai 2180, #A9, Phillip Cleaver, 65, emphasis added.

memorandum between the Under Secretary and Minister of Māori Affairs.[131] That was the full extent of alternate options considered prior to this taking.

138. The Under Secretary suggested one more formal offer to the owners on behalf of the Crown.[132]

139. It was at this stage of the taking process that J.A. Asher wrote to the Minister of Māori Affairs on behalf of the Māori owners and suggested a further meeting between the owner's representatives and relevant government departments.[133]

140. The Minister did promise Mr Asher that no proclamation would take place without negotiation and asked him to suggest suitable lands for exchange, obviously this was wrong way for this information to be obtained and Mr Asher duly asked for an indication of what land-holdings the Crown had in the area.[134]

141. These exchanges took the process through 1951 and late into 1952, and again the Under Secretary stated that "numerous efforts" had been made to attempt to resolve the matter directly with the owners in a letter to the Commissioner of Works dated 15 September 1962, there had still only been one private meeting with those "principle owners."[135]

142. The Crown owned lands were identified by Director-General of Lands, but with a clear indication from the outset that none of them were available for exchange;

    a. Parts Hauhungaroa 3 (2403 acres);
    b. Opawa Rangitoto 1 (3011 acres);
    c. Hautu 2 & 4 (area of Crown interest not specified);
    d. Rangipo North (area of Crown interest not specified, neither were the leases awarded to private farmers); and
    e. Tihoi.[136]

143. It is notable that none of those Rangipo Waiu lands acquired and leased were listed. [137]

144. At this stage, following these exchanges and only one meeting the Director-General advised that it would be necessary to attempt to acquire the additional defence lands by purchase.[138]There had still be no public notice or attempt to contact the listed Māori landowners.

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[131] Wai 2180, #A9, Phillip Cleaver, 65.
[132] Wai 2180, #A9, Phillip Cleaver, 66.
[133] Wai 2180, #A9, Phillip Cleaver, 66.
[134] Wai 2180, #A9, Phillip Cleaver, 67.
[135] Wai 2180, #A9, Phillip Cleaver, 68.
[136] Wai 2180, #A9, Phillip Cleaver, 69.
[137] Wai 2180, #A9, Phillip Cleaver, 53.
[138] Wai 2180, #A9, Phillip Cleaver, 69.

145. The fund set aside for the acquisition of all the land, Māori, general and Crown, was £14,040 based on an increase in value of the land concerned from five shillings an acre to seven shillings an acre in the period from 1950 to 1953.[139] This contrasts dramatically with the final compensation awarded in 1962, some nine years later and will be addressed later in these submissions.

146. At the same time, in early 1953, the Army had secured permission from "certain Māori landowners" to carry out artillery training on some of the Māori land it was seeking to acquire.[140] While Cleaver is certain that there was some form of agreement based on the documents seen, the detail is not shown in the evidence, however, this casts an interesting shadow over the rest of the engagement with the owners of these Māori lands.

147. There were attempts between 1953 and 1957 to acquire the land by an agreement to purchase[141]. Complications include the Ōruamatua Kaimanawa 2B1 and 2Q1 blocks which had been vested in Pākehā trustees using the Māori Land Laws Amendment Act 1897 and which had to be re-vested in the owners to complete the acquisition.[142]

148. There still had been no further meetings, although this was again recommended by the Secretary of Māori Affairs.[143]

149. In November 1957 the Assistant District Officer (working for the Ministry of Works) suggested that quorums could be obtained for all but the Rangipo Waiu 2B1A, 2B1B and 2B1C blocks, and that even if specific resolutions could not be obtained that it would at least be possible to "get some idea as to what would be acceptable to the general body of the Māori owners."[144]

150. The true ministerial and departmental attitude to these genuine attempts is shown by the Assistant District Officer here:

> "…on the other hand the opinion was expressed that *the expenses involved in attending meetings could be out of all proportion to the value at stake* and for that reason some favoured lands being taken by Proclamation leaving it to the Court to protect the interests of the owners on assessment of compensation. It is probable that the owners as a whole would in such a case instruct Counsel to act of their behalf. *If, however, notice of intention to take was gazetted it would be an easy matter for extracts to be sent to those with known addresses.* It may be that few objections would be received but in any case objections would give some indications as to what was in the minds of the owners."[145]

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[139] Wai 2180, #A9, Phillip Cleaver, 69.
[140] Wai 2180, #A9, Phillip Cleaver, 70.
[141] Wai 2180, #A9, Phillip Cleaver, 70.
[142] Wai 2180, #A9, Phillip Cleaver, 60, 70.
[143] Wai 2180, #A9, Phillip Cleaver, 71.
[144] Wai 2180, #A9, Phillip Cleaver, 71.
[145] Wai 2180, #A9, Phillip Cleaver, 71, emphasis added.

151. This approach to the need for meetings misses an important point, it was the Crown's desire to acquire this land, and the obligations under Te Tiriti are on them to take those steps necessary to meaningfully engage with the Māori landowners, the costs of those steps are not a justification for setting them aside, when set against the permanent alienation of whenua tupuna which they faced. That is not how the Crown saw it.

152. The Commissioner of Works officially called an end to any attempt to engage the owners on the 3rd of December 1957 in a letter to the Army Secretary where he stated: "[I]t is quite evident that there is no hope of securing this land by negotiation and…the only method by which the Crown can secure it is to take the land under the provisions of the Public Works Act 1928."[146]

153. A further letter came from Mr Asher requesting a resumption of the meetings and negotiations but to no avail.[147]

Negotiations with the Marshalls; Ōruamatua Kaimanawa 2E.

154. The Crown's first attempt at acquiring the Ōruamatua Kaimanawa 2E block began in 1956.

155. The Marshall's officially responded through their lawyers in 1958 and offered to sell the land, 3,282 acres, at the government valuation of £1,600.

156. This was agreed by Defence Headquarters in 1959, and officially taken in May of that year.[148]

Negotiations with the Forest Land Company and Tussock Land Company: Ōruamatua Kaimanawa 2P and 3B

157. The approach to the acquisition of Ōruamatua Kaimanawa 2P owned by the Forest Land Company and Ōruamatua Kaimanawa 3B owned by the Tussock Land Company stand in stark contrast to the approach by the Crown to Māori land acquisition.

158. Following the initial indication of interest in purchasing the land from the Land Purchase Officer in 1950 the companies' solicitor responded saying that they would accept 25 shillings per acre but would also need compensation for injurious affection to their remaining lands.[149]

159. The Station owners were wanting £15,000 for the land and £5,000 for injurious affection.[150]

160. There was frustration by these parties with the lack of response to their letter for some time, which ultimately resulted in the Commissioner indicating that lengthy negotiations with the owners of Ohinewairua Station should not be

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[146] Wai 2180, #A9, Phillip Cleaver, 72.
[147] Wai 2180, #A9, Phillip Cleaver, 72.
[148] Wai 2180, #A9, Phillip Cleaver, 78.
[149] Wai 2180, #A9, Phillip Cleaver, 75.
[150] Wai 2180, #A9, Phillip Cleaver, 76.

entered into unless clear progress is being made with the acquisition of the Māori lands, in the meantime the Station should continue farming the land normally.[151]

161. There is no explanation given as to why this approach was necessary, but in hindsight and the final resolution shown in the evidence, it seems transparent.

162. With the Māori land acquired by the Crown, at the suppressed price which Māori land was valued at, the Crown was in a position to negotiate other details which would be satisfactory to both parties, and avoid the kind of compensation general landowners could otherwise be entitled to. The Commissioner acknowledged this saying that "…it may be advisable to defer any further negotiations with them (Forest Land Company and Tussock Land Company) until the result of the offers to the Māori owners is known, having regard to the fact that these companies are claiming a very much higher price than the special Government valuation of the land on which the offers to the Māoris are based."[152]

163. Cleaver's reading of the evidence is precisely that it "seemed that the Commissioner believed that a settlement with the owners of Ohinewairua Stations might undermine efforts to secure the Māori lands at a price equal to the special Government valuation.[153]

Objections to the Takings by Rini Williams: Ōruamatua Kaimanawa 3F

164. There was a formal objection to the proposed taking from Rini Williams (aka Rini Henare Whale) who owned half the interests in Ōruamatua Kaimanawa 3F.

165. This objection was dismissed almost out of hand by the Minister of Works as "not well grounded in terms of the Public Works Act 1928" and that compensation would be paid to all owners.[154]

166. When responding to a complaint lodged by solicitor for the Ohinewairua Station companies a similar message was sent but with the note that the Minister hoped that grazing licenses would be available to them following the acquisition.[155]

Compensation paid to the Māori Landowners

167. Compensation for the 37,195 acres of Māori land taken was awarded at just £9,195.[156]

168. This compensation was awarded to all of the Māori land blocks in accordance with the evidence of the District Valuer, providing a special government

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[151] Wai 2180, #A9, Phillip Cleaver, 75-76.
[152] Wai 2180, #A9, Phillip Cleaver, 77.
[153] Wai 2180, #A9, Phillip Cleaver, 77.
[154] Wai 2180, #A9, Phillip Cleaver, 79.
[155] Wai 2180, #A9, Phillip Cleaver, 77
[156] Wai 2180, #A9, Phillip Cleaver, 58, 81-82.

valuation of 2s 6d per acre, with slightly more for those lands that had previously been grazed.[157]

169. As noted above, this is far below the valuation received in 1953. [158]

170. The European-owned land was one-fifth of the area taken from Māori, but the compensation paid for that land was equivalent to half the sum Māori landowners received.[159] The disparity between the government valuations of Māori owned land as opposed to general land is stark, and given the underlying circumstances is not justified. In the circumstances of a taking like this, the different legal status of the land (and the Māori ownership) has an excessive suppressive force on the valuations, despite the reality of the taking being a forced alienation in which the underlying title status should have no bearing.

171. Compensation was paid for the general land blocks of Ōruamatua Kaimanawa 2P and 3B (1,695 acres and 6,334 acres respectively) of £3,800 plus interest from the date of Proclamation. This compensation was in accordance with a special Government valuation which valued the land at close to 10 shillings per acre, rather than the 2 shilling 6 pence rate for Māori land.[160]

172. Three owners of land were present for the hearing into the valuations, Te Harawira Downs, Hukutioterangi Whakatihi and Henry Hartley, but as they had no evidence of land value and acknowledged much of the land was unleased and had little experience with the land, had no impact on the decision of the Court.[161]

173. The Māori Trustee was made responsible for the distribution of the compensation to the owners.[162]

174. Cleaver shows that Ōruamatua Kaimanawa 2O and 2Q1 were both leased prior to the takings, and these lands were, following the acquisitions, then leased to Ohinewairua Station as part of the negotiations of the takings.[163]

175. In a letter in April 1961 the Defence Headquarters asking the Department of Lands and Survey to assist with arranging grazing licenses, as the Army wished to arrange grazing licenses over as much of the taken land as possible.[164]

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[157] Wai 2180, #A9, Phillip Cleaver, 81.
[158] Wai 2180, #A9, Phillip Cleaver, 69.
[159] Wai 2180, #A9, Phillip Cleaver, 58.
[160] Wai 2180, #A9, Phillip Cleaver, 84.
[161] Wai 2180, #A9, Phillip Cleaver, 81.
[162] Wai 2180, #A9, Phillip Cleaver, 82.
[163] Wai 2180, #A9, Phillip Cleaver, 83, 86.
[164] Wai 2180, #A9, Phillip Cleaver, 83.

176. 10,000 acres, being Ōruamatua Kaimanawa 2O and 2Q1, were immediately leased in 1961 to Ohinewairua Station, renewed in 1971 and expired in 1981.[165]

Summary of the Second Round of Takings

177. Despite the claims by officials, the Crown did not fully notify and consult with Taihape Māori landowners about these proposed acquisitions, or about the possibility of negotiations, nor did they attempt to conduct full notification or consultation. There was only one meeting with a select gathering of owners or representatives in Tokaanu, and sporadic correspondence with Mr Asher of the Tuwharetoa Māori Trust Board.[166]

178. When it came to compensation, only three owners of the land Taihape Māori were present for the hearing relating to the valuation. It for this court hearing on the compensation assessment that notice had been sent out to all the owners for which details were known.[167]

179. It appears that this was the first occasion on which notice was sent to all those owners about the proposed taking as potential meetings of owners, frequently discussed by officials, never did not go ahead.

180. There is no evidence that the Crown meaningfully considered alternatives to full acquisition, although an exchange was sought by some Māori landowners an option raised in the one meeting that took place, but this was dismissed because the Crown wished to retain all their land in the wider area and did not want to make it available.[168]

181. There is no evidence showing the Crown considered the impact of the takings on Taihape Māori and whether they left Taihape Māori with sufficient land.[169]

182. By all accounts it appears that excessive land was taken, far more than was needed, as shown by the leases which were immediately offered and entered into following the acquisition of the Māori land. Ohinewairua Station obtained a grazing license for a 10,000 acre area including a significant amount of Māori land.[170]

183. Given the immediate leasing of the land, Taihape Māori did lose economic opportunities. They could have retained their land and leased it out themselves, they could have leased it to Defence and retained the underlying ownership.[171] There was no compensation for this lost opportunity.

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[165] Wai 2180, #A9, Phillip Cleaver, 55, 84.
[166] *Statement of Issues*, Issue D (15), Question 1, 45.
[167] Wai 2180, #A9, Cleaver, 81 and Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 1, 2(a),2(c), 45.
[168] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 2(b), 45.
[169] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 2(d), 45.
[170] Wai 2180, #A9, Phillip Cleaver, 83, Figure 7 and Table 11.
[171] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 2(4), 45.

The Third Round of Takings 1973: Ōruamatua Kaimanawa

184. In 1973 took more Māori land for the Waiōuru ATA acquiring 7,947 acres in the form of four Māori land blocks; Ōruamatua Kaimanawa 2C2, 2C3, 2C4 and 4 and the block of Māori land acquired by Mr Koroneff in the years immediately prior to the takings Ōruamatua Kaimanawa 1X.[172]

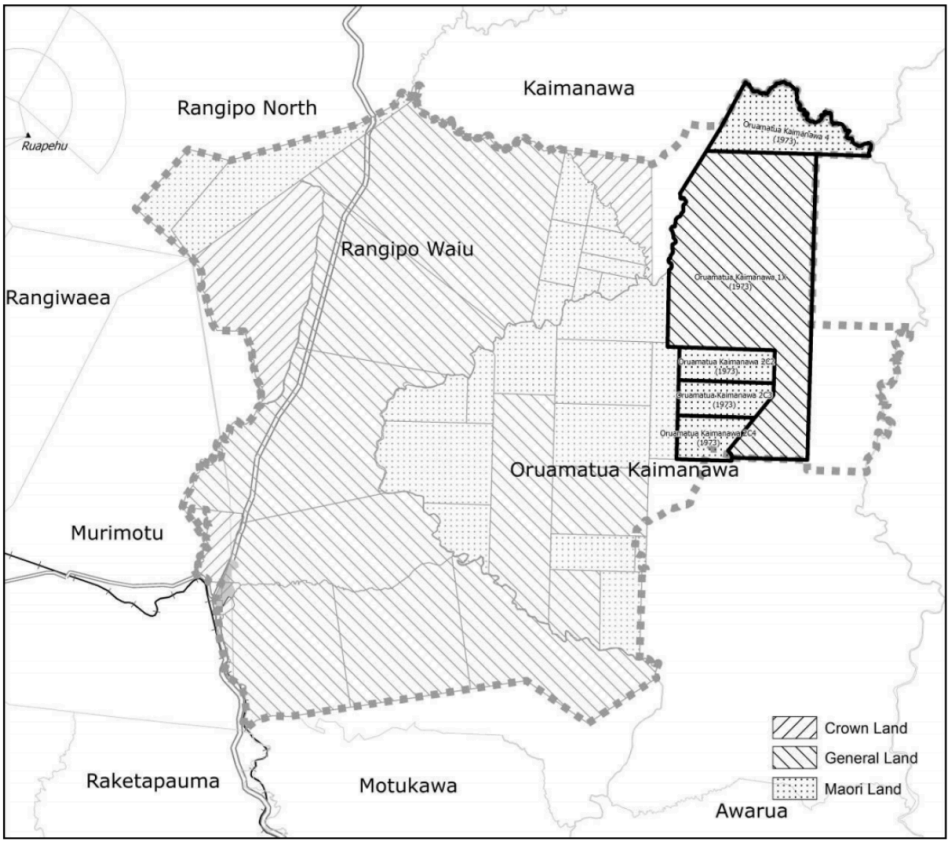

Figure 8: Lands taken in November 1973[368]

185. These takings are marked by the involvement of Koroneff, who was an owner of general land in the area who had been actively trying to acquire Māori interests in these blocks at the same time.[173]

186. These takings are the subject of the Crown concession set out earlier.

187. Cleaver outlines the plan, started in 1971, to add to the Defence Lands by acquiring more land, both general and Māori.[174]

188. Prior to this, with the initiation of the Tongariro Power Scheme, and around 1965-1966 the Army sought only temporary use rights over certain lands in

[172] Wai 2180, #A9, Phillip Cleaver, 87, and Figure 8, 88 as shown.
[173] Wai 2180, #A9, Phillip Cleaver, 95.
[174] Wai 2180, #A9, Phillip Cleaver, 92-96.

this area.[175] The Army had obtained a ten year grant for firing rights over an area belonging to Ohinewairua Station.[176]

189. Similar rights were sought from the Māori land in this area, being some of the Rangipo North and Kaimanawa blocks. The army was able to obtain personal permission from two of the owners; Pateriki Hura and Wharehau Mateparae in 1965, but no others and there was no meeting of owners about the proposal.[177] But based on these two individual consents the Army carried out training exercises on this land for many years.[178]

190. The Army worried became concerned about lack of consent to access the land, that it would need to trespass to get to land and also of the shells which would be left on the land.[179]

191. The Army had also secured a ten year lease from Ohinewairua Station in 1966, as part of that deal the Army granted right to purchase Ohinewairua Kaimanawa 1T which it had been leasing.[180]

192. By 1971 the Army was seeking full acquisition of these land blocks.[181]

193. While the Vietnam war had been significant for the New Zealand Army and New Zealanders in the 1960s, by 1971 New Zealand involvement had diminished almost to a complete withdrawal. The peak of troops sent over to Vietnam was 548 personnel in 1968, by 1971 all combat troops had been withdrawn.[182] All that remained were training teams, and these were withdrawn by 1972, before these proposed takings had been completed.[183]

Ōruamatua Kaimanawa Taking Proclaimed on the 13th of November 1973

194. The Proclamation effecting the taking of all five of these blocks of land was signed by the Governor-General on the 13th of November 1973.[184]

195. Formal notification of the taking was not given, and there was no notice in the Gazette.

196. The Secretary of Defence stated that 'adequate notice was given of the intention to alienate [the] Māori land.'[185]

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[175] Wai 2180, #A9, Phillip Cleaver, 87.
[176] Wai 2180, #A9, Phillip Cleaver, 87.
[177] Wai 2180, #A9, Phillip Cleaver, 91.
[178] Wai 2180, #A9, Phillip Cleaver, 87.
[179] Wai 2180, #A9, Phillip Cleaver, 91.
[180] Wai 2180, #A9, Phillip Cleaver, 92.
[181] Wai 2180, #A9, Phillip Cleaver, 87.
[182] https://nzhistory.govt.nz/war/vietnam-war dated 11 September 2020. This website accounts the source of this information as Roberto Rabel's entry in '*The Oxford companion to New Zealand military history*', and was revised in 2014 by Gareth Phipps.
[183] https://nzhistory.govt.nz/war/vietnam-war dated 11 September 2020. These details are also recorded by Cleaver at 88-89.
[184] Wai 2180, #A9, Phillip Cleaver, 102.
[185] Wai 2180, #A9, Phillip Cleaver, 102. Cleaver notes only that "it is possible that the owners may have received informal notification."

The Acquisition of Ōruamatua Kaimanawa 2C2, 2C3 and 2C4.

197. Mr Pennefather records that he does not "dispute Mr Cleaver's narrative of events" relating to the extension and taking of the Ōruamatua Kaimanawa 4 Māori land block.[186]

198. Mr Koroneff was active in acquiring the Ōruamatua Kaimanawa 1X block (the IX block). This lead to his purchase of the block in 1971-1972.[187]

199. Mr Pennefather added considerable material to the record relating to the 1973 extension and added his own observations from his assessment of that material.[188]

200. Mr Pennefather recognised that Mr Koroneff had a dominating presence in his acquisition of Ōruamatua Kaimanawa 1X (the 1X Block) and that this "resulted in the Crown focusing its efforts on Mr Koroneff to the detriment of those Māori shareholders in Blocks 1X, 2C3, and 2C4 who opposed his plans. They were in effect marginalised in the process."[189]

The Acquisition of Ōruamatua Kaimanawa 1X

201. The events that lead to the transfer of ownership in Ōruamatua Kaimanawa 1X are significant, and while they do not relate to the issue of public works but the 20th century laws relating to Māori land, they provide important context.

202. As Mr Pennefather acknowledged the events that lead to the acquisition by Nicholas Koroneff of all the interests in Ōruamatua Kaimanawa 1X and significant interests in Ōruamatua Kaimanawa 2C3 and 2C4 (44% and 67% respectively) and also a 3% interest in Ōruamatua Kaimanawa 4.

203. Mr Koroneff was actively acquiring individual shares in Ōruamatua Kaimanawa 1X and those other Ōruamatua Kaimanawa blocks identified for acquisition by the Army in the years up to 1970.[190] Mr Koroneff applied to have those purchases recognised in 1970 in the Māori Land Court, which was successful.[191]

204. The Māori Purposes Act 1970 prevented Mr Koroneff from continuing to acquire shares in the land in this way.[192] The legislation then permitted Mrs Koroneff to transfer it to Mr Koroneff as he was her husband.[193]

205. Mr Cleaver notes that Mr Koroneff's wife claimed to be Māori and took up the role of acquiring interests as he previously had with five percent of Ōruamatua Kaimanawa acquired in this way.[194]

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[186] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2019, (32), Mr Pennefather is referring in particular to Cleaver's report at 112-113.
[187] Wai 2180, #A9, Phillip Cleaver, 94-96.
[188] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 8-9 (32-39).
[189] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 8 (34).
[190] Wai 2180, #A9, Phillip Cleaver, 94-95.
[191] Wai 2180, #A9, Phillip Cleaver, 95.
[192] Wai 2180, #A9, Phillip Cleaver, 95.
[193] Wai 2180, #A9, Phillip Cleaver, 95.
[194] Wai 2180, #A9, Phillip Cleaver, 95.

206. In 1971 a meeting of owners was called, initiated by the Koroneffs, to consider the resolution that Ōruamatua Kaimanawa 1X be sold to Mr Koroneff. Nicholas and Frances Koroneff both attended, two Māori owners were represented by a proxy and there were 11 other Māori landowners present.[195] The Koroneffs were able to outvote the Māori owners represented, all the legislation required was a majority of the owners present to vote in favour to confirm the alienation.[196]

207. Mr Koroneff also intended to acquire significant rights in the other Ōruamatua Kaimanawa blocks being identified for acquisition and was ultimately able to acquire 44% of the 2C3 block, 47% of the 2C4 block an 3% of block 4.

208. This process and these sales resulted in protest at Parliament in December 1972.

209. It was as a result of the attempts by Mr Koroneff that the owners of Oruamataua Kaimanawa, at a meeting of owners in 1971, rejected the attempt he made to acquire the block, instead deciding to vest the block in trustees.[197]The trustees; Julie Morton, Te Awhina Wikaira and John Rerekure Waetford were formally appointed in February 1973, and by November 1973 they had entered an agreement with an aviation company and were receiving revenue.[198]

The Acquisition of Ōruamatua Kaimanawa 4.

210. Ōruamatua Kaimanawa 4 had been held and managed by trustees, despite this they were not notified and became aware of the taking after the fact, after which they wrote to Minister Matiu Rata on the 23rd of November 1973.[199]

211. This sparked correspondence in reply from Minister Rata and between that Minister and Defence about the possibilities.[200]

212. Minister Rata was trying to find exchange options for the owners of Ōruamatua Kaimanawa 4 and considering land in the Kaingaroa Forest.[201] The Minister of Defence wrote to Minister Rata and stated that he support the proposal of an exchange and that part of the block could be excluded from the training ground as a consequence.[202]

213. Mr Pennefather acknowledged that the documentation shows that Defence officials, with Ministerial endorsement, made a decision to acquire all of Ōruamatua Kaimanawa 4.[203]

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[195] Wai 2180, #A9, Phillip Cleaver, 95.
[196] Wai 2180, #A9, Phillip Cleaver, 95.
[197] Wai 2180, #A9, Phillip Cleaver, 96.
[198] Wai 2180, #A9, Phillip Cleaver, 96.
[199] Wai 2180, #A9, Phillip Cleaver, 103.
[200] Wai 2180, #A9, Phillip Cleaver, 103.
[201] Wai 2180, #A9, Phillip Cleaver, 103.
[202] Wai 2180, #A9, Phillip Cleaver, 103.
[203] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 8 (35).

214. Despite that decision, the Minister of Defence wrote to the Minister of Māori Affairs, and this Crown position was then relayed to a trustee of the Ōruamatua Kaimanawa 4 block.[204]

215. Misleadingly that letter said that;

> "*Some substantial adjustments between Defence and the Forest Park land will be made to achieve more logical physical boundaries. While this action may take some time to bring to finality, the Ōruamatua Kaimanawa 4 Block will be included in any rationalisation plans and the Minister of Defence advises that it may be possible to come to some arrangements in respect of such land which meets the interests of the Trustees in this area*."[205]

216. This reassurance directly contradicted the decision that had already been made by Defence officials and the Minister.

217. After this, at a meeting held on the 21st of December 1973 at Waipahihi Marae the Minister of Māori Affairs said that the "Army only needed 100 acres as a buffer zone for artillery and that the Ministry of Defence did not propose to initiate any action but would await all negotiations with the Forest Service for exchange."[206]

218. Again, the owners and trustees were being told that there was no intention to take all of the Ōruamatua Kaimanawa 4 block.

219. At a conference in Wellington the next year, on the 15th of July 1974, the Secretary of Defence and Chief of General Staff said that "the northern slopes of OK 4 were not really required and that the 2500 m safety zone could be achieved with a Defence boundary along the ridge line."[207]

220. This indicated that 845 acres of the 3412 acre block was considered necessary at that time.

221. The Māori owners suggested an exchange, but this was once again refused, and the taking was completed by compulsory acquisition.[208]

222. According to Mr Pennefather the summary effect of these statements and actions by the Crown was that;

> "*the Trustees would have had a genuine expectation that part of the OK 4 Block would not be required for military purposes once*

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[204] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 8 (36).
[205] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 8 (36), taken from Appendix GMP19
[206] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 8 (37).
[207] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 8 (38), see GMP21 and Wai 2180, #A9, Phillip Cleaver, p104, Figure 10, which illustrates the location of the ridge line on the block. This map is included in the presentation documents.
[208] Wai 2180, #A9, Phillip Cleaver, 103.

boundary adjustment discussions had occurred with other Crown agencies;
Ministers/officials were inconsistent in their messages and actions between themselves and Māori in relation to the Block;
The Ministry of Defence and NZ Forest Service had complicated the issue with their different land acquisition agendas and were to some extent in competitions with one another; and
The military justification for the entirety of the OK 4 Block was not adequately tested at the time."[209]

Compensation for the 1973 takings

Block	***Size (Acres)***[210]	***Compensation($)***	***Settlement via***	***Year***
Ōruamatua Kaimanawa 1X	16,277	$92,174	Supreme Court[211]	1977
Ōruamatua Kaimanawa 2C2	1,570	-	Supreme Court[212]	-
Ōruamatua Kaimanawa 2C3	1,571	$9,500 (plus interest of $3,796)	Agreement[213]	1979
Ōruamatua Kaimanawa 2C4	1,353			
Ōruamatua Kaimanawa 4	3,452	$25,000 (plus $58,950 compounding interest and costs of $2,253)	Land Valuation Court[214]	1982

223. The Māori Trustee was involved in the compensation process for the owners of all four of these Ōruamatua Kaimanawa blocks taken.[215]

224. In the case of Ōruamatua Kaimanawa 4 the owners also received in the Court decision in 1982 compounding interest of 10%, costs and an assessment of value of $25,000, including $5,000 for the air strip.[216]

225. Mr Cleaver suggested that there was doubt a settlement was reached regarding the Ōruamatua Kaimanawa 2C2 block and that compensation was paid.[217]

226. The response from Mr Pennefather is that there is evidence on the file that this block of Māori land was acquired by Mr Koroneff's sister in law, then

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[209] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 9 (39).
[210] Wai 2180, #A9, Phillip Cleaver, 94.
[211] Wai 2180, #A9, Phillip Cleaver, 107-109.
[212] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 9 (40-41),
[213] Wai 2180, #A9, Phillip Cleaver, 111.
[214] Wai 2180, #A9, Phillip Cleaver, 110-111.
[215] Wai 2180, #A9, Phillip Cleaver, 21, 109, This was the case in the compensation assessment for the 1973 takings for the Waiōuru ATA.
[216] Wai 2180, #A9, Phillip Cleaver, 110.
[217] Wai 2180, #A9, Phillip Cleaver, 111. Mr Pennefather corrects Mr Cleaver's reference to Ōruamatua Kaimanawa 2C4, a block of 1,353 acres held by a single, deceased owner, saying that this was in fact Ōruamatua Kaimanawa 2C2.

transferred to the Whenuarangi Land Company in 1972 and would have been part of the Supreme Court determination regarding payment of compensation, issued in April 1977.[218]

Summary of the Third Round of Takings

Consultation and Acquisition

227. The TSOI asks:

> ""*Did the Crown adequately notify and consult with Taihape Māori landowners regarding proposed land takings for the Waiōuru Army Training Area? If so, through what means/channels*?"[219]

228. Cleaver records that there was no formal notification of the intention to take the land, nor was a gazette published. Despite this the Commission of Works claimed, somehow that "adequate notice was given of the intention to alienate [the] Māori land."[220]

229. The proclamation was signed on the 13th of November 1973.[221]

230. In the case of Ōruamatua Kaimanawa 4, the trustees were only able to raise the possibility of an exchange when they heard about that the proclamation had been signed. Despite the existence of a trust over the land there had not been formal engagement with them to this point.[222]

231. The TSOI asks;

> *"In acquiring land owned by Taihape Māori for Waiōuru Army Training Area, did the Crown:*
>
> a. *Undertake an adequate valuation of the land that was taken?*
> b. *Consider alternatives such as different routes or locations, leasing arrangements, or land exchanges?*
> c. *Provide fair compensation, if any, and in a timely manner, to Taihape Māori?*
> d. *Ensure that Taihape Māori possessed sufficient remaining land to sustain themselves?*
> e. *Acquire more than that was required for the purposes of the acquisition?"*[223]

232. No alternative options were explored in the course of these takings.

233. The possibility of an exchange was only belatedly raised by Minister Rata once the compulsory taking had been finalised and in response to the furious

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[218] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 9 (40-41),
[219] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 1.
[220] Wai 2180, #A9, Phillip Cleaver, 102.
[221] Wai 2180, #A9, Phillip Cleaver, 102.
[222] Wai 2180, #A9, Phillip Cleaver, 103.
[223] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 2.

inquiries by the trustees for Ōruamatua Kaimanawa 4.[224] It was not a factor at all in the other three blocks of Māori land taken.

234. In the case of Ōruamatua Kaimanawa 2C4, the taking was from a single deceased owner and the interests of their descendants were not addressed in the compensation assessed, Cleaver remains unsure if any compensation was paid for this taking.[225]

235. There was no consideration, in the course of these takings, about whether Taihape Māori had sufficient lands remaining in their possession, or if more land was being acquired than was needed, the Army said that they needed it and that was as far as any assessment of that aspect went.

236. The TSOI asks;

> "*Did the Crown use land acquired from Taihape Māori for the purposes for which it was originally intended?"*[226]

237. All those Māori lands, taken in the third round of takings, remain a part of the Waiōuru ATA.

238. The TSOI asks;

> "*Were potential economic opportunities for Taihape Māori lost through the defence takings (such as forestry, sheep farming, tourist ventures) and if so, were Taihape Māori compensated for these lost opportunities?"*[227]

239. The Ōruamatua Kaimanawa 4 block included an airstrip used to bring in and remove hikers and hunters to the area, and while this was a part of the compensation of the taking as part of the valuation, which in this rare case included interest and costs, it is not apparent that there was compensation for loss of future earnings and economic opportunities.[228]

Exchange of Lands in 1979-1981

240. Extensions to the Waiōuru Training Grounds were again made through Public Works takings in 1981 and 1990. However, the 1981 acquisitions were from the State Forest Service, who were able to secure an exchange of lands, with Defence providing some of the Training Grounds.[229]

241. Importantly, much of these exchanged lands were of course originally Māori land taken for defence purposes using public works taking power and included parts of Rangipo Waiu 2B2 and 1B,[230] the other land involved was

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[224] Wai 2180, #A9, Phillip Cleaver, 103.
[225] Wai 2180, #A9, Phillip Cleaver, 113.
[226] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 3.
[227] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 4.
[228] Wai 2180, #A9, Phillip Cleaver, 87-88,
[229] Wai 2180, #A9, Phillip Cleaver, 114-115.
[230] Wai 2180, #A9, Phillip Cleaver, 117.

Kaimanawa 3A and Part Kaimanawa 3B1 and Part Subdivision 1 Run 1, which was also Rangipo Waiu land.

242. There was no kind of offer or engagement with the descendants of the former Māori landowners and showed a complete lack of recognition of the importance of the ancestral connection of Taihape Māori with their whenua.[231]

243. This exchange shows the extent to which the history of the acquisition of the land from Māori of these blocks but for so much of the Waiōuru ATA was no factor in the consideration of how the land should be treated in the event that it is no longer needed, which are precisely the circumstances that lead to this exchange.[232]

The Exchange between Ohinewairua Station & NZDF in 1989/90

244. In 1989 and 1990 an exchange agreement was reached between Defence and Ohinewairua Station. This exchange agreement reached was the result of many years of back and forth between Defence officials and the Station that started in 1979.[233]

245. The initial proposal was made by the Station and stated that they wanted to secure the area they called the Moawhango flats, which was approximately 600 acres of a larger 10,000 acre area which at that time they were using in reliance on a license agreement with the Defence Force.[234]

246. At this same time Cleaver records that an "internal memorandum prepared in December 1980 noted that the Army, as a matter of policy, wanted to increase the size of the Waiōuru training area."[235]

247. Mr Pennefather was questioned about this policy, and agreed that it was a policy of the Army, but not necessarily a written policy; "it was just a desire by the Army to expand"[236]and "a command line, policy line that was taken in relation to the training lands."[237] Mr Pennefather could not indicate when that policy may have come to an end.[238]

248. At this time Defence wanted to obtain the title to land between the Stowman Range and the Rangitikei River, which would require the acquisition of two blocks; Ōruamatua Kaimanawa 1S and 1T, both of which were owned by Ohinewairua Station.

249. The discussions between Defence and the Station tail off in 1981 and at this same time the lease over the Moawhango Flats expired.[239]

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[231] Wai 2180, #A9, Phillip Cleaver, 114-118
[232] Wai 2180, #A9, Phillip Cleaver, 118
[233] Wai 2180, #A9, Phillip Cleaver, 119.
[234] Wai 2180, #A9, Phillip Cleaver, 120. That agreement was referred to in Cleaver's report as a lease, which is how it is referred to in the documentation between the parties.
[235] Wai 2180, #A9, Phillip Cleaver, 120.
[236] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 155.
[237] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 155.
[238] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 155.
[239] Wai 2180, #A9, Phillip Cleaver, 120-121.

250. Pennefather noted that discussions resumed between Ohinewairua, Army and Defence HQ representatives at a meeting in 1984, and the discussion focussed on a boundary fence that followed the practical natural features of the land.[240]

251. Those discussions continued in September 1986 and by November of the same year they had reached a "broad agreement"[241] of a straight swap; Defence would exchange two areas of Defence land for the Ōruamatua Kaimanawa 1S and 1T blocks and the leasehold of Ōruamatua Kaimanawa 1U.[242]

252. Pennefather characterises this exchange as one of mutual benefit; Defence would extend their interests to the eastern boundary of the Rangitikei River and Ohinewairua Station would give up land that had "poor stock carrying capacity" for "two sheltered areas which had the capacity to support stock in the winter."[243]

253. The exchange was finalised in 1990; the Defence Force added to the Defence lands estate by acquiring 2,800 hectares from the Ohinewairua Station and in exchange the Defence Force provided the Station with 580 hectares which had been a part of the Defence lands.[244]

254. As part of this exchange, the Defence Force also acquired a lease which Ohinewairua Station had held over Māori owned land; Ōruamatua Kaimanawa 1U as well as firing rights over other parts of the Stations lands.[245] This leasehold interest had "become unworkable for Ohinewairua as the Station no longer had access to the land."

255. For the Māori landowners of Ōruamatua Kaimanawa IU, this exchange resulted in Defence arranging a meeting with the owners and offering a surrender of the lease, which Pennefather states the owners accepted.[246] Mr Pennefather provided no evidence of any compensation or payment for the surrender of the Lease.

256. Mr Pennefather's evidence "acknowledges that the exchange exacerbated difficulties for owners of Ōruamatua Kaimanawa Blocks 1V and 1U and discusses the negotiations that followed in response to those concerns."[247]

257. During cross-examination Mr Pennefather confirmed that "the Māori owners of Ōruamatua-Kaimanawa 1U, they lost a lease, they lost income and their

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[240] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 9 (43).
[241] Wai 2180, #A9, Phillip Cleaver, 120-121, and Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, (44).
[242] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 9 (44).
[243] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 9 (45).
[244] Wai 2180, #A9, Phillip Cleaver, 119.
[245] Wai 2180, #A9, Phillip Cleaver, 119.
[246] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 10 (47). The date that the lease was surrendered and accepted is not clear from Pennefather's evidence.
[247] Wai 2180, #3.3.30 *Memorandum of Counsel filing Crown opening submissions for Crown evidence*, dated 4 March 2019, 5 (26).

access was compromised as a result"[248] and when asked if they gained anything from the exchange or surrender of the Lease the Mr Pennefather said "probably not."[249]

258. This outcome and evidence needs to be read alongside tangata whenua evidence of Tama Wipaki which supports the suggestion that the owners of Ōruamatua Kaimanawa 1U lost access to their land and the income from their lease of that land, as the direct result of the actions of the Crown through Defence.[250]

259. The exchange was carried out under the Public Works Act 1981 which included offer back provisions and should have provided means for the former owners to (at least) buy back the land that was lost.[251]

260. This exchange had a direct impact on the former Māori landowners of the Defence Lands which were provided to the Station as part of the exchange. Those former Māori land blocks impacted were;

    a. Ōruamatua Kaimanawa 2C4 (44 hectares of the block) which had been compulsorily taken from the Māori owners in 1973;
    b. Ōruamatua Kaimanawa 2E (25 hectares of the block) which had been purchased by the Station from the European owners Christie and Marshall in 1961;[252]
    c. Ōruamatua Kaimanawa 2Q2 (51 hectares of the block) which had been compulsorily taken from the Māori owners in 1961; and
    d. Ōruamatua Kaimanawa 2O and 2P, 434 hectares and 24 hectares of those blocks respectively. The Ōruamatua Kaimanawa 2O had been compulsorily taken the Māori owners in 1961. Ōruamatua Kaimanawa 2P had been compulsorily taken from the Ohinewairua Station (then known as the Forest Land Trust Company) in 1961.[253]

261. Defence acquired the following lands from Ohinewairua Station;

    a. All of Ōruamatua Kaimanawa 1S;
    b. All of Ōruamatua Kaimanawa 1T; and
    c. Parts of Ōruamatua Kaimanawa 2F, 2D, 2G and 2N.[254]

262. This exchange had a direct impact on the former Māori landowners of those Defence Lands provided to the Station as part of the exchange as none of

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[248] Wai 2180, #M3(a) *Appendices to the Evidence of G Pennefather*, 148.
[249] Wai 2180, #M3(a) *Appendices to the Evidence of G Pennefather*, 148.
[250] Wai 2180, #G1 *Brief of Evidence of Tama Wipaki*.
[251] Wai 2180, #A9, Phillip Cleaver, 119.
[252] Wai 2180, #A6, Fisher and Stirling, *Sub-District Block Study-Northern Aspect*, 157, 161. This block of Māori land had been leased for 50 years in 1906, and then sold in 1921.
[253] Wai 2180, #A9, Phillip Cleaver, 121-122. Wai 2180, #A6, Fisher and Stirling, *Sub-District Block Study-Northern Aspect*, 161. This block of Māori land had been sold in 1911. Plates 53, 75(Northern District Overview), 86(Woodley) and 176 of Wai 2180, #A55 *Hearing Overview Mapbook* shows this best.
[254] Wai 2180, #A9, Phillip Cleaver, 121. I have used the Māori land block names for the blocks that Defence acquired, even though by this stage they had become general land.

those neighbouring Māori landowners or former Māori landowners were consulted about the exchange.[255]

How Offer Back Obligations were dealt with

263. The consideration of the offer back obligations and disposal of surplus and during this exchange deserve our attention as this issue is identified in the TSOI this way:

> *"Where the Crown determined that all or some of the land acquired from Taihape Māori was no longer required for the Waiōuru Army Training Area, was the land offered back to the original owners or their descendants? If not, why not? What other purpose was the land used for?*[256]

264. The decision was made by the officials in this case to not offer the land back to the Māori owners or their descendants despite the legislation, and there was not even an initial engagement with them about the possibility.

265. Defence Headquarters realised in 1987, the year after "broad agreement" was reached but three years before its finalisation, that the offer back provisions in the Public Works Act 1981 needed to be taken into consideration.[257]

266. As listed above, and as shown in Cleaver's report at Tables 20 and 21 all of the land offered for the exchange by Defence had been acquired using compulsory acquisition powers.[258] 530 hectares of the land offered to the Station had been taken from Māori landowners, 49 hectares had been taken from the Forest Land Company (one of the three companies that comprised Ohinewairua Station) and would see it returned to its former owner.[259]

267. The request for advice on the obligation to return land was sent in June 1987 to Ministry of Works and Development, but the Ministry was restructured in 1988 and this moved public works issues to the Department of Lands. A response was finally provided to Defence from the Department of Lands through the Works Consultancy in August 1989.

268. The Department of Lands advised that that "the Defence land did not have to be offered back to the former owners because an exemption existed under subsection 40(2) of the 1981 Act.[260]

269. This section of the Act states that land does not have to be offered back if it considered that it would be "impracticable, unreasonable, or unfair to do so."

270. Importantly the law only required the land to be offered back to the former owners to allow them the right to *repurchase* the land, the legislation did not (and still does not) require the land to be returned to those former

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[255] Wai 2180, #A9, Phillip Cleaver, 119.
[256] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 10.
[257] Wai 2180, #A9, Phillip Cleaver, 122.
[258] Wai 2180, #A9, Phillip Cleaver, 122.
[259] Wai 2180, #A9, Phillip Cleaver, 122.
[260] Wai 2180, #A9, Phillip Cleaver, 123.

owners.[261]So making the offer was not the equivalent, under that law, to Defence relinquishing the ownership of the land, it was a step that recognised that the land was compulsorily taken and should not move out of Defence ownership without engaging the consideration of those former owners.

271. Cleaver's report about this process and how the decision made is unfortunately inconclusive, he states:

> "Unfortunately, the Department of Lands' file that concerns the transfer of the defence lands has not been located, so it has not been possible to establish the reasoning behind the decision. Offer back may have been seen to be 'impracticable' because the various lands appear to have lacked access. The relatively small size of some of the subdivided areas that were to be transferred also may have been a factor. Marr has observed that the offer back exemptions are open to interpretation and that there has been some uncertainty as to how they should be applied.
>
> In respect of land area, the decision to not offer the land back primarily affected the former Māori owners of Ōruamatua Kaimanawa 2O. As detailed in Table 21, most of the Defence land that would be transferred to the Station (some 530 hectares) had lain within this block, which had been taken in 1961."[262]

272. That exchange with Mr Cleaver speaks to the internal assessment by the Army or Ministry of Works, deciding that the land is not suitable for return. This was not an offer made to the former owners or their descendants, but a cursory review of the land, and seizing on to the provisions in the Public Works Act 1981 which allows offer back to not go ahead if the land is "not suitable."

273. Offer back or land was "I forget what the wording in the, yeah, impracticable 15 something in the legislation. [263]

274. Section 40 of the Public Works Act 1981 sets out the current process for disposal to former owners of land not required for public work.

275. This section requires the land to be offered, by sale, at the current market value, back to the former owners.[264]

276. That offer does not need to happen if the chief executive of the department

> "(a)…considers it would be impracticable, unreasonable, or unfair to do so; or

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[261] Wai 2180, #A9, Phillip Cleaver, 121.
[262] Wai 2180, #A9, Phillip Cleaver, 123.
[263] Wai 2180, #4.1.14, *Hearing Week Six,* 222.
[264] Section 2(c) of the Public Works Act 1981. Section 2(d) allows the chief executive of the department may offer the land at "any lesser price" if they "consider it reasonable to do so".

(b) there has been a significant change in the character of the land for the purpose of, or in connection with, the public work for which it was acquired or is held"[265]

277. This "impracticability test" appears to be the reason why the land was not even offered back by sale to the former owners, and this issue was taken up with Mr Cleaver during cross-examination.[266]

278. During cross-examination Mr Cleaver was asked why the offer back was not carried out and his thoughts on how this was justified, in response to questions from Dr Soutar he suggested that "there are plenty of opportunity for those provisions, they were often – excuses found or reasons put forward where it was deemed not applicable." [267]

279. When the same exemption was considered by Mr Pennefather during testing of the evidence, he accepted that "it's actually got to be the offer back that's impractical. There's nothing about offering the land back to the former owners, that's actually impractical".

280. This land had been acquired in 1961, but decision not to offer the land back, made in 1989, came following the passing of the 1981 Act. The decision that Cleaver details is simply that "the Department of Works advised Works Consultancy that the defence land did not have to be offered back to the former owners because an exemption existed under subsection 40(2) of the Public Works Act 1981."[268]

281. As noted above Cleaver was not able to identify from the historic material which exemption was being relied on, but the circumstances of the land suggest possible rationales. It may have been that the land was landlocked, or that it was a relatively small block, [269] but as the map shows, this block was on the border of the Waiōuru ATA so its eastern border was with general land rather than defence land.[270] Regardless, this decision was made without any attempted consultation or input from those former Māori landowners.[271]

282. As a result the 530 acres of Ōruamatua Kaimanawa 2O block was transferred to the Ohinewairua Station.[272]

Landlocking as a result of the Exchange

283. The exchange not only impacted on the former Māori landowners and further sealed off the chances for them to once again own their ancestral land, it also

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[265] Section 2(a)-(b) of the Public Works Act 1981.
[266] Wai 2180, #4.1.14, *Hearing Week Six,* 223.
[267] Wai 2180, #4.1.14, *Hearing Week Six,* 223.
[268] Wai 2180, #4.1.14, *Hearing Week Six,* 282.
[269] Wai 2180, #A9, Phillip Cleaver, 123.
[270] Wai 2180, #A9, Phillip Cleaver, 58, Figure 6.
[271] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 137. Questions of Harvey J to Cleaver.
[272] Wai 2180, #A9, Phillip Cleaver, 123.

had an impact on two blocks of land had continued to be held in Māori ownership; Ōruamatua Kaimanawa 1U and 1V.[273]

284. Ōruamatua 1U and 1V lie immediately to the north of Ōruamatua Kaimanawa 1T and 1S, and there were the key blocks that went in the exchange. Neither of those blocks have ever had legal access.

285. Prior to the exchange there was some access to their land across Ōruamatua Kaimanawa 1S and 1T along a customary route from the Napier-Taihape Road. Following the exchange Ōruamatua Kaimanawa 1T became Defence lands and the Army has not allowed access through that area.[274]

286. During cross-examination Mr Pennefather initially disagreed with the suggestion that the "Defence knew that this swap was going to compromise their access" referring to the access the Māori landowners of Ōruamatua Kaimanawa 1U and 1V had across Ōruamatua Kaimanawa 1S and 1T.[275] In the course of cross-examination Mr Pennefather would acknowledge that Defence are "aware of where those blocks are, they are aware of who owns them and they're also considering how much utility would be gained from acquiring them" and that "being the owners of the neighbouring lands and in arranging a land swap with the blocks on the other side they would clearly be aware that the land swap is going to compromise their access."[276]

287. Mr Pennefather was taken to maps showing the location of the blocks[277] and asked:

> "in dealing with all the maps its – there's no way they could have misunderstood the situation of those landowners and the access that they need?"
>
> *Mr Pennefather* "No, you would have thought so, yes."
>
> "You'd agree that that would be a failing of the Crown to not consider the impact of the land swap on them"
>
> *Mr Pennefather* "Yes I would agree with that."[278]

Notice and Consultation issues – Ōruamatua Kaimanawa 1U and 1V

288. Mr Pennefather was taken to one of his letters from 2003 where he recorded that:

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[273] Wai 2180, #A55 *Hearing Overview Mapbook,* plate 53.
[274] Wai 2180, #A9, Phillip Cleaver, 124.
[275] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 152.
[276] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 152.
[277] Wai 2180 #M13, Bundle of Documents for Cross-Examination, 49-50. Also on the ROI as Wai 2180, #A055, *CFRT Overview Mapbook*, 119. That map is also in the presentation documents which accompany these submissions.
[278] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 152. During my cross-examination of Mr Pennefather. The 22nd line of the transcript is recorded as "impact of the land swap on there", this misrecording by the transcriptors is replaced by our exchange correctly above as "impact of the land swap on *them*".

> "It has long been our understanding that the owners and trustees of Ōruamatua-Kaimanawa 1U and 1V are closely related and that informally the Ōruamatua-Kaimanawa 1V trustees also represent the interest of the owners of Ōruamatua-Kaimanawa 1U."[279]

289. When asked if that informal understanding was a legal arrangement Mr Pennefather confirmed that it was not; "not to my knowledge"[280]

290. Mr Pennefather confirmed that there was engagement with one owner, Mr Gardiner in 2003, but no additional attempts to contact the rest of the owners or trustees of the Oruamatua Kaimanawa 1U block, no pānui, no notice in the papers.[281]

291. Questions from Judge Harvey on this point suggest that this standard would not have been acceptable for general landowners, to have a neighbour speak for other landowners, and Mr Pennefather admitted that the approach was "a failing on our part"[282] and "we were fundamentally lacking some sensitivities and skillsets in this area."[283]

292. Cleaver recorded the evidence from claimants provided to him for his report, in particular the input of Graeme Gummer.[284] The tangata whenua evidence of Tama Wipaki also addressed this issue.[285]

293. While this evidence starts to address the issue of landlocked lands, it remains an aspect of the issues of public works taking for Defence because the landlocking and access issues arise as a result of the takings and the actions of Defence in relation to the management of the lands that were acquired by takings for the Defence lands at Waiōuru.

294. Mr Pennefather records that he was an official involved in this transaction, and his final comment on this history of the Defence lands dealings is that: "I acknowledge that Defence focused on the benefits to the Army and did not take into account the interests of adjacent Māori landowners."[286]

Crown evidence regarding the Defence Force's Current Needs

295. Colonel Kaio[287] spoke to evidence of the Defence Force's current and future needs and what the force will look like and what training will look like. This issue also connects with the surplus land aspect of the TSOI.

296. The focus of this evidence appeared to further focus on and provide a retrospective justification in the form of the current the need of the Defence Force for all of the defence territory at Waiōuru. This did contrast somewhat

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[279] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 153.
[280] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 153.
[281] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 153.
[282] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 154.
[283] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 155.
[284] Wai 2180, #A9, Phillip Cleaver, 124.
[285] Wai 2180, #G1, *Brief of Evidence of Tama Wipaki*.
[286] Wai 2180, #M3, *Gary Pennefather*, dated 18 February 2020, 13 (58).
[287] Wai 2180, #M1, *Colonel Kaio*, dated 14 February 2019.

with his acknowledgement in the evidence that the New Zealand Army would "remain a small army"[288] and that the forms of engagement would become increasingly complex with more "autonomous systems"[289] and "augmented reality"[290] featuring in the military system and training.

297. During cross-examination the Colonel re-asserted that every part of the base was used and accessed by army vehicles now, whereas when he was in training there was a lot of the base that they didn't use and didn't think then would ever be used, although he noted that it was technology that might allow access to the north-eastern part of the estate, suggesting it was only rarely or occasionally used, and only when seasonal conditions allow it.[291]

298. Both Colonel Kaio and Major Hibbs made similar statements, pointing to the additional and un-needed land in earlier times. These statements indicate that from the outset, a greater amount of land had been taken than was needed, at that time, this is sufficient to mark a failure in the original takings, to only take what is needed, even if the justification is based on the national interest. That test does not permit takings of land for future need that may arise but are not currently known.

299. The Colonel would agree during cross-examination that there was the possibility of "dialogue around use by tangata whenua "in the Ōruamatua Kaimanawa 4 Block, based on the technology available to understand what areas are and are not used.[292]

Major Hibbs

300. Major Hibbs[293] focused on the need of the Defence force for all of the land it acquired, suggesting it was needed then and remains needed in its entirety now.[294]

301. Major Hibbs pointed out that Defence Lands had been used as early as 1913 for the firing of artillery by the Territorials[295] and more recently the increasing non-military use by other government departments, NZ Police, USAR and the Youth Development Unit.[296]

302. Major Hibbs did confirm in evidence that relationships with Taihape Māori is not yet as developed as it is with Ngāti Rangi or Ngāti Tuwharetoa, and continues to need work.[297]

303. The Major's evidence confirmed that the Defence Lands were accessible for helicopter companies, hunters and people going fishing, once they had

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[288] Wai 2180, #M1, *Brief of Evidence of Colonel Kaio*, (31).
[289] Wai 2180, #M1, *Brief of Evidence of Colonel Kaio*, (26).
[290] Wai 2180, #M1, *Brief of Evidence of Colonel Kaio*, (37).
[291] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 321.
[292] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 335, confirmed again at 348.
[293] Wai 2180, #M2, *Brief of Evidence of Major Hibbs*, dated 18 February 2019.
[294] Wai 2180, #M2, *Brief of Evidence of Major Hibbs*, (8-24).
[295] Wai 2180, #M2, *Brief of Evidence of Major Hibbs,* 2.
[296] Wai 2180, #M2, *Brief of Evidence of Major Hibbs,* 3.
[297] Wai 2180, #M2, *Brief of Evidence of Major Hibbs,* 9-10, 12.

undertaken the necessary training.[298] The hunters who access the Defence Lands for this purpose are either employees or contractors of the NZ Defence Force.[299] That area used in this way is the Ōruamatua Kaimanawa 4 block.[300]

304. There is increasing and now well-established use by the Off-Limits Trust, for a range of racing activities. This is a private charitable trust, which runs races open to all members of the public across a vast stretch of the Defence Lands for all forms of off-road motor racing, which raises funds for its own purposes.[301]

305. The Major also confirmed that there continue to be grazing licenses in a number of areas, including near the main camp, satellite camps and airfield.[302]

306. Major Hibbs admitted that the relationship with Taihape Māori was still very much a work in progress, and that "there's plenty more room to develop a more deeply integrated relationship" but did not detail the extent of access, if any, that Taihape Māori had to their significant areas, nor how frequently or easily they are able to access those sites.

307. This is problematic, because in addition to Auahitotara and Waiu Pa, the two most prominent and frequently identified significant sites acknowledged by Taihape Māori there are numerous other sites which they record as significant and desire access to. Counsel also raised issues with lack of access to Westlawn Hut and other sites.[303]

308. The visit to the Waiu Pa during that hearing week was the first time Isaac Hunter and others had seen it with the newly erected fence, which had been constructed the year before, in 2018.[304] Both Pa sites are now fenced off to protect them.

309. The access an organisation like the Off-Roads Trust to the Defence Lands shows the extent to which the Army can accommodate private use and in fact invite large numbers of the public to use. This discrepancy was raised by a number of claimant counsel during cross-examination.

310. During cross-examination the Major confirmed that through this agreement with the Trust, up to 1,500 members of the public visit and use defence lands on multiple weekends every year, making a significant amount of money, approximately $70,000 per event for the Trust.[305] This access includes not just off road motor racing but horse treks into the Kaimanawa range.

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[298] Wai 2180, #M2, *Brief of Evidence of Major Hibbs,* 13, 14
[299] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 50. Major Hibbs confirmed that contractors means service providers at the base, "five companies that provide logistical support, they are part of our community here in Waiōuru and providing they fulfil the requirement of entering the training area and the training" at 79.
[300] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 78.
[301] Wai 2180, #M2, *Brief of Evidence of Major Hibbs,* 13.
[302] Wai 2180, #M2, *Brief of Evidence of Major Hibbs,* 15.
[303] Wai 2180, #M2, *Brief of Evidence of Major Hibbs,* 96.
[304] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 51.
[305] Wai 2180, #M2, *Brief of Evidence of Major Hibbs,* 104.

311. Access for beehives was an issue raised with Major Hibbs and brought to an end as a result of decisions by his superiors. The Major said that the decision to end the use of the Defence land in this way was because of two elements, they were "making money from Crown or Defence land" and the second was the environmental issue, the bees would increase propagation of pests.[306] The Major also indicated that this was not something on the table now where Taihape Māori could make arrangements to establish.[307]

312. The use of Defence Lands for beehives by Taihape Māori had been raised earlier, in 2015, at that time there had been a request to utilise parts of Waiōuru ATA for beehives which they would manage, but this had been declined, at the same time the same arrangement was being permited with a private contractor.[308]

Alternatives Approaches to Compulsory Acquisition

313. There are alternatives to compulsory acquisition.

314. There are two aspects to these alternatives, the first is the alternative process, which is where the acquisition is by negotiation, by agreement between the parties. As the evidence shows, the acquisition of Māori land for the Waiōuru ATA was not completed in this way. Negotiated outcomes allow the parties to explore possibilities and provide an opportunity for an initial demonstration of respect by the Crown for the Treaty partner that stands to lose some or all of their legal interests in their land. It provides opportunity for exchange options to be explored, for the value which Taihape Māori placed on the land to be articulated.

315. The second aspect is the possibility of alternative title being acquired by the Crown for the purposes they have identified. Again, this option, despite being present elsewhere in the country for defence activity, was ruled out of the processes for Waiōuru, and despite the extensive issuing of grazing licenses by Defence to allow third party private use of the Waiōuru ATA, which also brought in an income from the land that had been acquired.

316. Dr Ballara explored the approach the Crown took with Mr Cleaver asking:

> "On page 30 (you) mentioned the possibility of securing permanent rights over Schollum's land but not purchasing it and occupying the land temporarily and paying compensation to the owners for minor damages to fences. On page 38 you mentioned long term leasing arrangements and then you mention on page 66 John Asher's suggestion of an exchange with Crown lands for the Māori lands the Army wanted. Were these or any other arrangements ever considered or offered to Māori in 1942 or later?"

317. Mr Cleaver responded saying:

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[306] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 59, 77.
[307] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 94.
[308] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 71.

> "No. There was never any real consideration by 1942 of options other than the acquisition of full title for the defence lands. You know there was never ever any suggestion for example that the Army might lease the lands off the owners and you know potentially such a lease could include provisions that provided the Army with you know extensive rights but that was just never really considered." [309]

318. When assessing their current and future needs, it remains unclear what the Defence's need is in this area, both in terms of the scale and size of the ATA but also the underlying title that is needed.

319. Pennefather referred to the number of reviews and reports generated about the future of the Defence estate and "when asked if any of those reviews or reports or inquiries looked at alternative land holdings that would still serve the purpose of the Defence Force." Pennefather admitted he could not recall any.[310] This fundamental aspect of the Defence Force presence at Waiōuru is an established assumption, but has never been closely assessed, and certainly not independently assessed.

320. This particular issue was taken up by claimant counsel and Mr Pennefather was asked if there had ever been a reassessment of Defence needs in order to identify any surplus lands, and when the last time such an assessment had taken place; Mr Pennefather was unsure.[311]

Leasing as an alternative

321. Mr Pennefather was asked about the viability of leasing of the land rather than ownership and said that no they were not suitable.

322. When asked about the pastoral leases which had been relied on in the South Island, Pennefather point out that Defence had "manoeuvre rights written into these 33 Land Act pastoral leases"[312]but agreed that these rights were even weaker than lease rights, that "manoeuvring rights would be even a lower tier again than a lease."[313]

323. Finally, Mr Pennefather agreed that the 99 or 100 year leases seen historically could "potentially" provide the kind of continuity and reliability that the Defence Force needs for future planning if those options were explored.[314]

324. During questions from Dr Ballara, Mr Cleaver agreed that the two clear alternatives which could and should have been considered during this process and likely would have avoided the situation Taihape Māori are in now, were land exchanges or leasing with developing conditions. [315]

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[309] Wai 2180, #4.1.14, *Hearing Week Six*, 217.
[310] Wai 2180, #M3(a) *Appendices to the Evidence of G Pennefather*, 146.
[311] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 168-169. Cross examination of Pennefather by Leo Watson.
[312] Wai 2180, #M3(a) *Appendices to the Evidence of G Pennefather*, 146.
[313] Wai 2180, #M3(a) *Appendices to the Evidence of G Pennefather*, 146.
[314] Wai 2180, #M3(a) *Appendices to the Evidence of G Pennefather*, 146.
[315] Wai 2180, #4.1.14, *Hearing Week Six*, 217.

Impact on Taonga

325. The TSOI asks: *"To what extent, if at all, did the Crown provide continued access to, and protection of, kainga, customary resources (including mahinga kai and waterways), wāhi tapu (including Auahitōtara, Waipuna, and Te Rei), and other taonga located within the Waiōuru Army Training Area?*[316]

"Did the acquisition of Taihape Māori land for the Waiōuru Army Training Area, and any associated lack of continued to access to taonga, result in a loss of mātauranga Māori?"[317]

"To what extent have wāhi tapu located within the Waiōuru Army Training Area been damaged by activities undertaken by military personnel?"[318]

"Was the Crown aware of any damage caused to wāhi tapu? If so, did the Crown attempt to avoid or mitigate such damage? To what extent, if at all, have Taihape Māori been consulted in this process?"[319]

326. In response to questions from Dr Soutar Mr Pennefather confirmed that this policy was written 15 years ago: "this policy was written for a very particular purpose and it was not written with the Treaty partner in mind. It was written to manage the plethora of activities, third party activities we have got occurring across all our sights(sic), you know, whether they be clubs, individuals or incorporated societies. So in that respect I wouldn't try to put the Treaty partner into this because it simply wasn't written for that purpose."[320]

327. Mr Pennefather said that this policy was "being reviewed,"[321] but also confirmed that the policy had been periodically updated up until the 10th of November 2016, which was the date of the policy he supplied with his evidence.[322]

328. While the statement of issues refers more broadly to taonga, which includes wahi tapu, customary resources and other taonga within the Defence area,[323] Pennefather took us to a heritage management policy for historically significant sites, which includes just two sites, the Waiu Pa and Auahitotara, also known as the Palisade Pa.[324]

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[316] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 5.
[317] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 6.
[318] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 7.
[319] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 8.
[320] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 132.
[321] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 139.
[322] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 143.
[323] Wai 2180, #1.4.3 *Statement of Issues*, Issue 15(5-8).
[324] Wai 2180, #M3, *Gary Pennefather*, dated 18 February 2020, 13 (59). The sites referred to are the "Gunfighters (Waiu) Pa and Palisade Pa."

329. Auahitotara is not on this list, but "is to be recognised and protected through the Range Standing Orders" as a part of the Ngāti Rangi settlement.[325]

330. During cross-examination Mr Pennefather confirmed that the Waiu Pa had only just been fenced properly a year before the site visit which took place during hearing week nine, and before that there had only been "rudimentary fencing"[326] which Cleaver had described as barbed wire fencing.[327] The policy to protect these two listed sites was only generated in 2009.[328]

331. Mr Pennefather did not give any evidence suggesting there was any consultation with Taihape on the development and ongoing status of those policies relating to these significant wahi tapu and taonga of Taihape Māori.

332. The Auahitotara site remains unlisted with Pouhere Taonga Heritage NZ, and without a policy by Defence to protect it or any form of fencing or protection or signage that might effect that protection.[329]

Third party use of the Waiōuru ATA

333. The policy of the New Zealand Defence Force for third party use is sourced from Defence Force Orders for Facilities and Property Management (DFO 32)[330] and was provided as part of Mr Pennefather's evidence:[331]

> "The policy provides for use of the NZDF Estate where the following is demonstrated:
>
> a. Direct and indirect support to NZDF outputs;
> b. Reputational enhancement;
> c. Good neighbour relations;
> d. More efficient asset utilisation;
> e. All of government support; and
> f. Public interest.

334. There is no reference to the Treaty partner, tangata whenua, Taihape Māori or the Treaty of Waitangi in the policy at all.[332]

335. It was noted during cross-examination that there was no separate policy or arrangement to allow for tangata whenua access or use, no separate policy established to recognise the Crown's treaty partner and their ongoing interests in area. Mr Pennefather agreed, when it was put to him, that "tangata whenua priorities around land use and their aspirations have not been taken into account in terms of that particular assessment."[333]

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[325] Wai 2180, #M3, *Gary Pennefather*, dated 18 February 2020, 13 (59).
[326] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 156.
[327] Wai 2180, #A9, Phillip Cleaver, 124.
[328] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 156.
[329] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 156.
[330] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 7 (30-31).
[331] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 7 (30), Appendix GMP16 to the Brief supplied.
[332] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 7 (30-31).
[333] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 168.

336. Mr Pennefather further acknowledged and agreed that the third-party use policy neither incentivises nor promotes third party use saying, "[n]o it's not a purpose of the policy as I understand it."[334]

337. Instead, Taihape Māori and access they might seek for whatever purpose, is lumped in with all forms of third-party use and show that their intentions and activities meet those purposes and outcomes required by the policy.[335]

Environmental Impact of Defence Activity

338. The TSOI asks: "*Was the Crown aware of any environmental damage or degradation caused by the activities of Waiōuru Army Training Area personnel, such as tank exercises, munitions exercises, unexploded ordinances, and the introduction of animal pests? If so, did the Crown attempt to avoid or mitigate such damage? To what extent if at all, have Taihape Māori been consulted in this process?*[336]

339. Mr Pennefather's evidence acknowledges that "military activity does cause environmental damage to land, vegetation and disturbance to wildlife."[337] This damage includes;
    a. Cratering from live firing of various weapon systems;
    b. Ground disturbance resulting from hilltop fortification activity;
    c. Excavation for construction of facilities (ranges and roads);
    d. Military vehicle movement which leaves tracks across the tussock landscape; and
    e. Metal contamination of soil e.g. lead is also a result of weapon firing of various calibres.[338]

340. The mechanisms which the Defence Force employs to deal with this damage are;
    a. Range standing orders;
    b. A Sustainable Land Management Strategy; and
    c. Pest control programmes.

341. Pennefather confirmed during questions from Dr Soutar that there had been air-to-ground munitions from aeroplanes up until the 1980s, but not since.[339]

342. Mr Pennefather detailed no consultation with Taihape Māori on how these policies were established or carried out.

343. There are two discrete references to consultation with Taihape Māori in Mr Pennefather's evidence.

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[334] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 185.
[335] Wai 2180, #M3, *Brief of Gary Pennefather*, dated 18 February 2020, 7 (30-31).
[336] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 9.
[337] Wai 2180, #M3, *Gary Pennefather*, dated 18 February 2020, 14 (62).
[338] Wai 2180, #M3, *Gary Pennefather*, dated 18 February 2020, 14 (62).
[339] Wai 2180, #4.1.18, *Transcript of Hearing Week 9*, 131.

344. The first related to the "upgrade of the military camp wastewater treatment plant" to reduce the contamination of the Waitangi stream.[340] This came as a result of consultation with Ngāti Rangi and Ngāti Tamakōpiri.[341]

345. The second related to the development of the Moving Target Range, an area for training commanders and crew of new light armoured vehicles and would result in land and vegetation disturbance.[342] As a result of that consultation an archaeological assessment of the appropriate area was completed as part of the consenting process.[343]

Surplus Disposal

346. The TSOI asks: *"Where the Crown determined that all or some of the land acquired from Taihape Māori was no longer required for the Waiōuru Army Training Area, was the land offered back to the original owners or their descendants? If not, why not? What other purpose was the land used for?"*[344]

347. As detailed above in full, the Crown and Defence personnel, have at various times identified that land held was no longer needed, and available during negotiations and ultimately for exchange with private companies and the government's Forestry department.

348. It is self-evident that in identifying that land was available for negotiated exchanges that this land was not needed, it was not vital to the Army's needs, the primary test for takings, that the land was needed by the Army under exceptional circumstances in the national interest, was no longer satisfied.

349. Each case of exchange presents as an opportunity for Defence to return land to Māori as the former owners, or as those with an ongoing historical and ancestral connection to the land, even if the land had been, immediately prior to the acquisition, general land owned by Pākehā.

350. Each of these cases show a demonstrable failure by the Crown to recognise the importance of the land to Taihape Māori, and respect the status of Taihape Māori as their partner in this rohe.

351. In each case an offer back process should have been triggered with full consultation with Taihape Māori and the descendants of the former Māori owners. Only in the event that there was no interest in having the land returned to them, could the Army have justified using the land as a disposable asset that could be placed on the negotiating table.

352. Instead that land was transferred to the Forest Service, to Lands and Survey, and to Ohinewairua Station.[345]

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[340] Wai 2180, #M3, *Gary Pennefather*, dated 18 February 2020, 16 (63.7).
[341] Wai 2180, #M3, *Gary Pennefather*, dated 18 February 2020, 16 (63.7).
[342] Wai 2180, #M3, *Gary Pennefather*, dated 18 February 2020, 16-17 (63.8).
[343] Wai 2180, #M3, *Gary Pennefather*, dated 18 February 2020, 16-17 (63.8). The consultation Pennefather records was with Ngāti Whitikaupeka and Ngāti Tamakōpiri.
[344] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D (15), Question 10.
[345] Wai 2180, #A9, Phillip Cleaver, 114 and 121-122.

353. Some of these transfers also further entrenched the landlocked and inaccessible status of Ōruamatua Kaimanawa 1V and 1U Māori land blocks, this was done by Defence with the full knowledge that this would be the impact of the exchange on those landowners.

Findings and Recommendations Sought

354. Based on the evidence of the experience of Taihape Māori in relation to the takings of Māori land for the formation of Waiōuru ATA in this rohe we seek findings that Taihape Māori suffered prejudice as a result of the Crown's failure to:

a. Consult with Taihape Māori on proposed takings;[346]
b. Minimise the amount of Taihape Māori land taken to that land needed for the immediate needs of Defence and Waiōuru ATA;[347]
c. Consider alternatives to the taking of Taihape Māori land and to the acquisition of freehold title of Taihape Māori land;[348]
d. Engage with Taihape Māori and meaningfully consult with the Māori landowners about the land which the Crown proposed to take;[349]
e. Properly and fairly compensate Taihape Māori for the land which the Crown acquired for public works;[350]
f. Ensure that Taihape Māori had sufficient remaining lands, for the current and future generations;[351]and
g. Return lands no longer required for Waiōuru ATA which were transferred to other Crown entities or private ownership, for purposes other than those for which they were taken.[352]

355. Based on the evidence of the experience of Taihape Māori in this rohe which support those findings sought we also seek recommendations that:

a. The Crown urgently take responsibility for healing relationships between with Taihape Māori as a result of compulsory takings and the ongoing impact and grievances resulting from the taking of Māori land for the Waiōuru ATA;

b. The Crown review the compensation and takings processes used and provide full compensation for the considerable financial impact of the

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[346] Waitangi Tribunal, *The Hauraki Report*, Volume 3, 1055; Waitangi Tribunal, *Ngāti Rangiteaorere Report*, Wellington, 1990, 46-48; Waitangi Tribunal, *Te Kahui Maunga*, Volume 2, 753; Waitangi Tribunal, *He Maunga Rongo*, Volume 2, 860 and 843.

[347] Waitangi Tribunal, *The Turangi Township Report*, 285 as quoted in Waitangi Tribunal, *He Maunga Rongo*, Volume 2, 836. The interaction here is between the Crown duty as identified, and the Tribunal principle that takings "should only be in exceptional circumstances and as a last resort in the national interest."

[348] Waitangi Tribunal, *Te Kahui Maunga*, Volume 2, 743 and 751, and Waitangi Tribunal, *Tauranga Moana*, Volume 1, 297.

[349] Waitangi Tribunal, *The Turangi Township Report*, 285, as quoted in Waitangi Tribunal, *He Maunga Rongo*, Volume 2, 836.

[350] Waitangi Tribunal, *He Maunga Rongo*, Volume 2, 840; Waitangi Tribunal, *Te Kahui Maunga*, Volume 2, 743 and 751; Waitangi Tribunal, *The Hauraki Report*, Volume 3, 1055.

[351] Waitangi Tribunal, *Te Kahui Maunga*, Volume 2, 748.

[352] Waitangi Tribunal, *Turangi Township Report*, 305; Waitangi Tribunal, *Te Maunga Railways Land Report*, 69–71, 88; Waitangi Tribunal, *Tauranga Moana 1886–2006*, Volume 1, 30; Waitangi Tribunal, *Te Kāhui Maunga*, Volume 2, 754.

public works takings for any redress and financial compensation package offered to Māori claimants;

c. The Crown, in consultation with claimants, urgently work towards establishing a co-governance arrangement for Māori land now held as the Waiōuru ATA and establish a Treaty compliant policy for engagement with Taihape Māori with their whenua tupuna, wahi tapu and taonga located there;

d. The Crown instruct Defence to commence an urgent process, in consultation with claimants, to review all the land held by the Crown and identify any surplus lands in order to return taken Māori lands in Crown ownership as quickly as possible to the former owners or their whānau at the least cost and inconvenience for them, and to consider where-ever possible an alternative land ownership system that better and fully recognises that this is ancestral land in which Taihape Māori continue to have an interest; and

e. The Crown embark on a process of publicly confirming and recognising, in a way that makes the public aware of, the contribution of Taihape Māori to the Defence estate, including the nature of the acquisition, the breaches of Te Tiriti, the discriminatory approach taken when compared to general land takings that are the history of Taihape Māori land and the creation of the Waiōuru Army Training Area.[353]

Dated at Tāmaki Makaurau this Monday the 21st of September 2020

Cameron Hockly, Brooke Loader

[353] Waitangi Tribunal, *Te Mana Whatu Āhuru Volume IV,* 313, and citing the Waitangi Tribunal in Waitangi Tribunal, *Wairarapa ki Tararua*, Volume 2.