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 C(7): Land Boards and the Native/Māori Trustee
Dated Monday 21 September 2020

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Contents

May it please the Tribunal

1. These are the generic closing submissions for Issue C(7): Land Boards and the Native/Māori Trustee (Māori Trustee).[1]

2. These closing submissions follow the guidelines of the directions given on 30th May 2010,[2] beginning with overview and outline of the issues that the Tribunal has identified for this Inquiry. The position and concessions of the Crown are then considered and an analysis of Crown duties is provided, followed by a synopsis of the evidence presented for the claimants.

3. This introductory section is followed a Level One section providing a direct response to the Tribunal Statement of Issues (SOI), where the evidence presented and tested will then be outlined and set against the precedents and decisions of previous Tribunals on the issue of District Māori Land Boards (land boards) and the Māori Trustee.

4. Following this is a Level Two overview of the overall themes concerning land boards and the Māori Trustee .

5. The presentation summary of these submissions will be filed as a separate document.[3]

Introduction

6. The landscape of Māori land administration went through a number of changes throughout the twentieth century. All of these changes had a direct and significant impact on Taihape Māori and Māori-owned land.

7. In the early twentieth century, land boards replaced Māori Land Councils.[4] The Native Trustee, followed by the Māori Trustee (from 1947), was appointed to assist with the administration of Māori reserve lands, and the estates and funds of Māori where necessary.[5]

8. Many issues experienced by Taihape Māori were a direct consequence of the influence of these Crown entities over Māori land during this period.[6]

9. In this period, the Crown passed various forms of legislation which provided mechanisms for the Crown to facilitate the administration of Māori land, including the power to sell and lease Māori land, much of this without needing to consult with, or gain the consent of, the owners.

10. This backdrop of Crown actions must be considered alongside the unique aspects of the Treaty relationship between the Crown and the tangata whenua

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[1] Throughout these submissions, the term "Māori Trustee" includes the Native Trustee during the period that the Native Trustee was active.
[2] Wai 2180, #2.6.79, Memorandum of Directions of the Presiding Officer, dated 19 May 2019, (26).
[3] Wai 2180, #2.6.79, Memorandum of Directions of the Presiding Officer, dated 19 May 2019, (26), Level Three of the submissions.
[4] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 28.
[5] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 28.
[6] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 28.

of Mōkai Pātea (Taihape Māori)[7] in relation to their early assertions of tino rangatiratanga over the management of their landholdings and economic development.[8]

11. During the early 1890s, Mōkai Pātea Rangatira presented the Crown with an economic development plan that required the Crown's intervention and assistance for it to be implemented. The development plan proposed by Rangatira featured:[9]

    a. secure land titles;

    b. consolidation of titles;

    c. a mechanism to establish a land management entity (committee of owners); and

    d. access to State finance for land development purposes.

12. Those requests of the Rangatira were ignored, and in no way acted on, and still to this day their economic aspirations have not been fulfilled.[10]

The Evidence

13. The material addressed in these closing submissions deal primarily with the following technical reports:

    a. Martin Fisher and Bruce Stirling, 'Northern block history', #A6;

    b. Terry Hearn, 'Southern block history', #A7;

    c. Evald Subasic and Bruce Stirling, 'Central block history', #A8;

    d. Suzanne Woodley, 'Māori land rating and landlocked blocks, 1870-2015', #A37;

    e. Tony Walzl, 'Twentieth century overview', #A46; and

    f. Philip Cleaver, 'Māori and economic development, 1860-2013', #A48.

14. Each of these reports deals with occasions where the land boards and the Māori Trustee are involved in discrete events, but unfortunately we do not have a thematic assessment as part of the evidence of this inquiry. However, across the evidence that is available, there is thematic consistency which indicates how these Crown entities were active in the Inquiry and provides a clear picture that, collectively, these Crown entities were served to enable

[7] Throughout these submissions, the terminology "Taihape Māori and "Mokai Patea Māori" will be used interchangeably. Technical research tends to use the terminology of "Mokai Patea Māori" however the majority of claimant submissions and interlocutory documentation tends to use the terminology "Taihape Māori".
[8] Wai 2180, #A046, T Walzl, *Twentieth Century Overview,* 610.
[9] Wai 2180, #A046, T Walzl, *Twentieth Century Overview,* 611.
[10] Wai 2180, #A046, T Walzl, *Twentieth Century Overview,* 610.

alienation of Māori land, and did so without a mandate from Taihape Māori to hold or administer Māori land.

15. The technical reports and claimant evidence produced in this Inquiry have shown that the Crown breached long-established duties under Te Tiriti through the policies and practices of land boards and the Māori Trustee.

16. The cumulative effect of the Crown's twentieth century legislation was that Taihape Māori suffered prejudice both in the loss of control and the actual loss of their lands, from which they have not been able to recover.

Issues for Inquiry

17. The scope of issues for inquiry concerning land boards and the Māori Trustee can be framed as follows:

    i. The role of Māori Trustee and the District Māori Land Board.

    ii. Māori Trustees' enforcement of survey fees and rates.

    iii. The extent of land interests held by the Māori Trustee, and the intent or effect of decisions made by the Māori Trustee to advance Crown interests to the detriment of Māori.

    iv. Consultation with Taihape Māori when land was vested in the Māori Trustee.

    v. Decision-making and implementation of Consolidation and Development Schemes.

    vi. How the actions taken by the Māori Trustee affected Taihape Māori, and the extent of relief provided by the Crown.

    vii. The Māori Trustee acting on behalf of minors, the prejudice arising from this, and the Crown's responsibility to protect from this potential prejudice.

    viii. The extent of Māori control when land was vested in District Māori Land Board trusts.

18. These closing submissions should be read alongside the generic closing submissions on the *Native Land Court*,[11] *Crown Purchasing*,[12] *Local Government and Rating*,[13] *Twentieth Century Land Alienation*[14] and *Public Works Takings*,[15] with particular regard to the engagement of the Māori Trustee and land boards in these processes.

[11] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue B(3) Native Land Court.
[12] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue B(4) Crown Purchasing.
[13] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue C(10) Local Government and Rating.
[14] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue C(12) Twentieth Century Land Alienation.
[15] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue D(13) Public Works Takings General.

19. The issue of Native Townships, specifically Pōtaka Māori Township, are not covered in these submissions but will be dealt with directly in claimant closing submissions.

Crown Evidence and Position

20. The Crown did not commission its own evidence concerning land boards, and the Māori Trustee.

21. The Crown maintains its position in relation to native land laws that was taken in the Te Rohe Pōtae inquiry. Close consideration was given by the Crown to findings of the Whanganui Report, and to the developments in the form of acknowledgement made within the context of Treaty settlements,[16] although the Crown stipulates that this must be understood within "*the context of the time, the Treaty obligations owed must have been reasonably capable of being met at the time of the events in question and, in fact, have been reasonably within the contemplation of Crown actors at the time."*[17]

22. *"The ability to alienate land was seen as key to the colony's economic development and as a benefit to Māori – indeed it was seen as vital to their prosperity."*[18]

23. The Crown has acknowledged that the Crown was "*under a duty in terms of Article II of the Treaty to take such steps as were reasonable in the context of the time to protect Māori land and resources in their possession, for so long as Māori wished to retain those lands and resources."*

24. This duty, in the Crown's view, is tempered by the proviso "*which was consistent with Article III rights…that the Treaty contemplated transactions in land occurring and did not envisage any absolute restriction on alienation of Māori lands. Assessments of responsibility for the alienation of Taihape lands must also take into account Māori agency in the sale process."*[19]

25. The Crown acknowledges that this duty "*in some cases, require[s] the Crown to take active steps to provide added protections for Māori in relation to their lands so as to ensure that Māori retained sufficient lands for their present and future needs and has acknowledged an associated duty to monitor and assess the level of land holdings of Māori.*[20]

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[16] Wai 2180, #1.3.2, *Memorandum of Counsel for the Crown contributing to the preparation of a draft statement of issues*, (59).
[17] Wai 2180, #1.3.2, *Memorandum of Counsel for the Crown contributing to the preparation of a draft statement of issues*, (38).
[18] Wai 2180, #1.3.2, *Memorandum of Counsel for the Crown contributing to the preparation of a draft statement of issues*, (38).
[19] Wai 2180, #1.3.2, *Memorandum of Counsel for the Crown contributing to the preparation of a draft statement of issues*, (57)
[20] Wai 2180, #1.3.2, *Memorandum of Counsel for the Crown contributing to the preparation of a draft statement of issues*, (58)

Crown evidence summary

26. The Crown has summarised land administration activity in the Inquiry district as follows:[21]

> *(124) Most activity, especially in the period 1900-1930 was private purchasing and leasing. The Land Boards were involved with approving land dealings, and with native township administration and Crown entities also lent capital to some Māori land owners.*
>
> *(125) Several of the land administration mechanisms created by legislation throughout the twentieth century to enable the balancing of collective interests and autonomy were not utilised extensively in the inquiry district:*
>
> *(125.1) Incorporations were not created after the passage of the 1894 legislation notwithstanding Ūtiku Pōtaka's 1892 request for such a mechanism.*
>
> *(125.2) Minimal land was vested in Māori Land Boards or their predecessors, the Māori Land Councils, other than the native township lands.*
>
> *(125.3) No development schemes appear to have been created.*
>
> *(125.4) The Māori Trustee undertook some roles and actions in the inquiry district, but relatively few when compared with some other regions and, apparently, largely benignly.*

27. The Crown considers the function of the Stout-Ngata Commission in undertaking a systematic inventory and appraisal of the status of Māori lands as being beneficial to Māori, as it was tasked with "identifying lands that were required for Māori needs for the foreseeable future and what lands were surplus to their needs and were not being "used" at that time. The "surplus lands were to be vested in the Māori Land Boards for leasing or sale at the earliest opportunity. Māori owners would receive the income from those leases and sales."[22]

28. However, the Crown has also stated that "the Commission did not visit Taihape but identified several Taihape land blocks that could be earmarked for vesting or sale "as they were supposedly already leased or under negotiation for leases" but such vesting did not eventuate."

Māori Councils, Land Boards and Trustees

29. The Crown argues that although the Crown created, and is responsible, for the underlying statutory framework that created the Māori Councils, land boards and the Māori Trustee, it is not responsible for how these entities

[21] Wai 2180, #3.3.1, *Opening Comments and Submissions of the Crown, (124-125).*
[22] Wai 2180, #3.3.1, *Opening Comments and Submissions of the Crown,* 45.

exercised their powers. The Crown submits that the Tribunal has previously found that the Māori Trustee and Public Trustee are not Crown bodies.[23]

30. Further to this, the Crown submits: "*Māori Land Boards held a similar role to the Māori Trustee. The same reasoning can be applied to Māori Land Boards, which were statutorily required to act in the interests of the Māori owners. The Māori Land Boards were not under the control of the Crown*."[24]

Māori Councils, Land Boards and Trustees

31. The Crown argues that although the Crown created, and is responsible, for the underlying statutory framework that created the Māori Councils, land boards and the Māori Trustee, it is not responsible for how these entities exercised their powers. The Crown submits that the Tribunal has previously found that the Māori Trustee and Public Trustee are not Crown bodies.[25]

Vesting of Lands

32. The Crown has acknowledged in Te Rohe Pōtae that: "*It would have breached the Treaty of Waitangi and its principles if any Māori land in the Te Rohe Pōtae inquiry district was vested in a District Māori Land Board without the consent of its owners*."[26]

Local Authorities and Rating

33. The Crown's position with regard to rating of Māori land is *"[c]onsistent with its position in other inquiries... local authorities are not the Crown, nor do they act on behalf of the Crown for the purposes of the Treaty of Waitangi Act 1975. The Crown considers that the Crown's responsibility in a Treaty context lies with the statutory framework within which local authorities operate, and, in the context of rating, with ensuring that the legislative regime is consistent with the principles of the Treaty*".[27]

The Crown's duties generally

34. From findings of previous Tribunal inquiries, we are able to identify the duties that the Crown had to Taihape Māori in respect of the actions of the land boards and the Māori Trustee.

35. 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 actions of the land boards and the Māori Trustee.

36. As a result of analysing the findings of previous Tribunal inquiries, a test can be developed to establish key considerations on whether the Crown has sufficiently upheld its duties under Te Tiriti.

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[23] Wai 2180, #3.3.1, *Opening Comments and Submissions of the Crown,* 45.
[24] Wai 2180, #3.3.1, *Opening Comments and Submissions of the Crown,* 45.
[25] Wai 2180, #3.3.1, *Opening Comments and Submissions of the Crown,* 45.
[26] Wai 2180, #3.3.1, *Opening Comments and Submissions of the Crown,* 45.
[27] Wai 2180, #1.3.2, *Memorandum of Counsel for the Crown contributing to the preparation of a draft statement of issues,* (88)

37. In applying the test based on previous Tribunal findings, did the Crown:

    a. Establish a land administration legislative scheme that enabled Taihape Māori to effectively control and manage their lands and resources?[28]

    b. Adequately support Native/Māori District Councils to support Māori aspirations?[29]

    c. Effectively consult with Māori on:

        i. Changes to the land administration system?[30]

        ii. Land was vested in the Māori Trustee and District Māori Land Boards?[31]

    d. Did the operation of the Māori Trustee and District Māori Land Boards ensure that Taihape Māori retained a sufficient land base for their needs?[32]

38. This framework will be used throughout the submissions to establish whether the Crown has breached its duties under Te Tiriti.

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[28] Waitangi Tribunal, *Te Urewera, Volume II* (2017), 999-1001 ; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume II* (2008), 203, 681-682, 692; ; Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report, Volume II* (2013), 557.
[29] Waitangi Tribunal, *Te Mana Whatu Ahuru, Volume III* (2018), 26.
[30] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume II* (2008), 681-682, 692; Waitangi Tribunal, *Te Mana Whatu Ahuru, Volume III* (2018), 51.
[31] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume III* (2008), 1038; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume II* (2008), 484.
[32] Waitangi Tribunal, *Report of the Waitangi Tribunal on the Ōrākei Claim* (1996), 235; Waitangi Tribunal, *Te Mana Whatu Ahuru, Volume III* (2018), 367.

Level One: Specific responses to the Tribunal Statement of Issues

Issue One: The Role of the Māori Trustee, and District Māori Land Boards

39. The Tribunal SOI asks:[33]

> *What was the role of the* Māori Trustee *and Crown-operated District Māori Land Boards in the inquiry district? To what extent, if at all, did they provide effective oversight and protection of Taihape Māori land?*

40. The Māori Trustee and Crown-operated District Māori Land Boards played numerous roles within the Taihape inquiry district. The evidence will demonstrate that these entities failed to provide effective oversight and protection of Taihape Māori land on a number of occasions.[34]

The Māori Lands Administration Act 1900

41. In 1899, in response to calls from Māori, the government decided to halt purchasing of Māori land,[35] and enacted the Māori Lands Administration Act 1900 (1909 Act) to introduce a new Māori land management system that would allow land development to proceed under Māori ownership.[36]

42. Among Māori there was consensus that there should be no further land sales and, the government had resolved to stop purchasing and restrictions against private alienation remained in force.[37]

43. The 1900 Act was intended to address the following issues with Māori land: [38]

    a. the decline in the amount of land in Māori ownership;

    b. that much of the remaining Māori land was unoccupied and unproductive;

    c. that Māori were not encouraged to use their land; and

    d. that Māori land was not administered well.

44. Māori Land Councils were established under the 1900 Act with a maximum of seven members consisting of both government appointments (including the

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[33] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 29.
[34] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 29.
[35] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 183.
[36] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 183.
[37] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 183.
[38] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 183.

council president) and Māori-elected members, ensuring that at least half of the membership was Māori. [39]

45. The function of the Councils were to 'with all convenient speed', identify the land that each Māori man, woman, and child required for their maintenance and support and then issue a certificate that made such land *inalienable*. The Council also acted for owners in the administration of lands that Māori voluntarily vested in or placed under the authority of councils.[40] The Act prevented alienation by way of lease, sale or mortgage without evidence that owners had sufficient land left for occupation and support.[41]

46. There were a number of mechanisms in place under the 1900 Act to ensure protection of Māori land, including:

    a. No alienations of any nature were to occur until papakainga areas had been investigated by the Māori Council and each Māori owner was to be provided by the Māori Council with a 'papakainga certificate' guaranteeing them a minimum area of 'absolutely inalienable' land for 'maintenance and support and to grow food upon'.[42] Leases required approval of the Māori Council.[43]

    b. Sales required approval of the Governor-in-Council.[44] Land could be voluntarily placed in trust with Māori Councils to lease.[45]

    c. Owners could also incorporate and the committee of management, with a vote by majority of owners, put the land in trust with the Māori Council.[46]

    d. Owners could vote by majority to have the Council manage the land for possible sale, interests of dissenters were to be partitioned off, but still managed by the Māori Council.[47]

47. Māori owners were concerned about permanently losing control of their lands so were reluctant to vest land in the councils.[48]

48. According to Walzl, no land in the Taihape inquiry district was vested in the Māori Council under the 1900 Act. [49] Nor it seems did Taihape Māori ask for this kind of paternalistic "protection" or intervention by the Crown in their rohe.

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[39] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 183.
[40] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 183.
[41] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 184.
[42] Section 21, 23 Māori Lands Administration Act 1900.
[43] Section 22, Māori Lands Administration Act 1900.
[44] Section 22, Māori Lands Administration Act 1900.
[45] Section 30, Māori Lands Administration Act 1900.
[46] Section 28, Māori Lands Administration Act 1900.
[47] Section 31, Māori Lands Administration Act 1900.
[48] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 184.
[49] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 184 referencing Wai 2180, #A046, T Walzl, *Twentieth Century Overview*, 169.

49. The role and capacity of the Māori Councils demonstrated a paternalism and commitment to the broader economic needs of the country, rather than a commitment to the Crown's Treaty duties or protection of all the whenua/taonga still held by Taihape Māori.

The Māori Land Settlement Act 1905

50. Māori Councils were disestablished under the Māori Land Settlement Act 1905 (1905 Act), and replaced by land boards.[50]

51. There were seven District Māori Land Boards proclaimed during 1906:[51]

a.	Aotea	Proclaimed 6 March 1906
b.	Maniapoto-Tuwharetoa	Proclaimed 6 March 1906
c.	Tokerau	Proclaimed 6 March 1906
d.	Ikaroa	Proclaimed 5 July 1906
e.	Tai-Rawhiti	Proclaimed 10 August 1906
f.	Waiariki	Proclaimed 11 August 1906
g.	Waikato	Proclaimed 20 September 1906

52. The evidence shows that the Aotea and Maniapoto-Tuwharetoa Māori Land Boards operated within the rohe of this Inquiry district.

53. Land boards were appointed by the Governor and were constituted of two appointed members, one of whom had to be Māori,[52] and a President. Only one member, with the President, had to be present for the signing of orders and other instruments made by the land boards.[53]

54. All elected membership was eliminated, which meant that Māori lost any form of control or influence over the composition of the land boards.[54] Of even greater consequence was that "[*r]epresentativeness disappeared. Decisions regarding the development and use of any land already vested in the Councils or to be vested under the Board would be made by officials."*[55]

55. The 1905 Act also enabled a greater degree of compulsory vestment of land in land boards, although this was not practiced in this Inquiry district.[56]

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[50] Section 2, Māori Land Settlement Act 1905.
[51] New Zealand Gazette, 1906, vol 1, P 745; New Zealand Gazette, vol 2, 1903, 2180, 2523.
[52] Section 2, Māori Land Settlement Act 1905.
[53] Section 5, Māori Land Settlement Act 1905.
[54] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 184.
[55] Donald M. Loveridge, *Māori Land Councils and Māori Land Boards: a historical overview 1900 to 1952*, vii, 6.
[56] Donald M. Loveridge, *Māori Land Councils and Māori Land Boards: a historical overview 1900 to 1952*, 61-2

The Operation of District Māori Land Boards

56. Subasic acknowledged that: "the Māori Land Board's processes, and the wider context for the individual alienations detailed in this report, are issues that would benefit from further research." This research was not undertaken.[57]

57. Walzl summarised the role of land boards as being: "*the conduit through which private leases and sales were given approval. In addition, the 1905 and 1909 Acts respectively identified the land board's role in respect of leases and sales*:[58]

1905 Act re leases:

- that the rent was adequate - not less than 5% of the capital value;
- that the lessor retained land sufficient for their maintenance;
- that the lease did not exceed 50 years; and
- that the lease generally operated for the benefit of the lessor

1909 Act re sales:

- the instrument of alienation had to be properly executed;
- the alienations could not be "contrary to equity or good faith or to the
- interests of the Natives alienating";
- no Native could be made landless by the alienation - ie having
- insufficient interests in land which were insufficient for adequate
- maintenance;
- the payment had to be adequate;
- in the case of a sale the purchase money had to have been either paid
- or sufficiently secured;
- the person obtaining the interest had to be able to do so under part
- XII of the Act which related to limitations on area
- the alienation could not result in any breach of any trust
- the alienation could not otherwise be prohibited by law"

58. The 1905 Act increased the powers to administer Māori land and the land available for settlement.

59. Under the 1905 Act, the Native Minister could apply under to the Native Land Court to investigate title and ascertain owners of a block,[59] and then if the Native Minister then deemed that Māori Land to be not required or not suitable for occupation by the Māori owners, the land could be vested (by the Governor by Order in Council) in the land board,[60] to be held and administered for the benefit of the Māori owners.[61]

60. The remaining surplus land was then able to be classified, surveyed and then subdivided into allotments, and then ultimately disposed of by the land board

[57] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect,* 199.
[58] Wai 2180, #A046, T Walzl, *Twentieth Century Overview,* 174.
[59] Section 8, Māori Land Settlement Act 1905.
[60] Section 8(a), Māori Land Settlement Act 1905.
[61] Sections 8-9, Māori Land Settlement Act 1905.

by way of lease for any term or terms not exceeding 50 years and could offer them for public auction or tender.[62]

Crown agency

61. Under cross examination, Fisher and Stirling were questioned by Leo Watson about if they saw the Māori Land Board as effectively acting as an agent of the Crown in these circumstances?". In response, Fisher and Stirling agreed, as 'it certainly seemed that way' as 'essentially another arm of the Crown trying to facilitate alienations'.[63]

62. This was also confirmed by Heather Bassett, when she was cross examined by Leo Watson:[64]

> *Q. [In] other contexts there has been a suggestion by Crown and Crown officials that the Māori Trustee and the Māori Land Boards are quite separate from the Crown, and indeed you'll be familiar with the argument that the Māori Land Court or the Native Land Court was separate from the Crown?*
>
> *A. Mhm.*
>
> *Q. When you consider the way in which the Māori Trustee and the Aotea Māori Land Board operated in this context, the sort of, microcosm of Crown Māori relations. Would you agree with me that it was clear that those two agencies were acting not just under legislative authority but with the desire to implement Crown policy as opposed to acting in the best interests of the Māori landowners?*
>
> *A. Yes, I think that's very clear, not just in this case, through my whole experience with Māori Land Board and Māori Trustee files.*
>
> *Q. Yes.*
>
> *A. They – their prime concern is the, what is Crown policy that we implement? That will always be their first response. If the owners have a query or the owners are seeking something, if that's contrary to Crown policy, the Crown policy was given preference.*
>
> *Q. I would suggest to you that in a – if we were going to use a legal phrase, they would be the agents of the Crown?*
>
> *A. Yes, I mean it's my strong opinion that they were acting as the Crown.*

63. The Registrar, whenever requested by the Native Minister to do so, was empowered and directed to do all things necessary in order to call in

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[62] Sections 8-9, Māori Land Settlement Act 1905.
[63] Wai 2180, #4.1.10, *Hearing Week Transcript*, 393-394.
[64] Hearing Week Five Transcript (4.1.12) at p 404 - 405.

outstanding instruments of titles, issue new instruments of titles, and duly record the titles of the land board. [65]

64. Land boards could set aside any number of allotments for use, in the first instance, by the Māori owners of the land, which were to be included in a schedule showing the area, locality, and quality of each block, and these were to be laid before Parliament.[66]

65. Land boards could raise mortgage finance on security of the land (with consent of the Native Minister) to deal with existing incumbrances, charges, liens on the land or title improvement issues designed to prepare the land for leasing.[67]

66. The Colonial Treasurer could, with the consent of the Native Minister at his discretion, authorise advances to be made to the land boards out of moneys to be appropriated by Parliament out of the Public Works Fund.[68]

67. In both cases, repayments, interest, and administration fees were to be paid out of income from the land.[69]

68. Walzl provides evidence on the difficulties faced by whanau dealing with the land board in relation to monies from land sales held back by land boards, and demonstrates the preparedness of land board officials to heavily criticise any 'difficult' landowner who insisted on claiming to be paid out their money from the land board, through the narrative of Tutunui Roroa and her whanau.[70]

69. All restrictions relating to the disposition and administration of any land vested in the Māori Land Court be removed so as to carry into effect the purposes of the legislation.[71]

70. For Māori land retained by Māori for their own use, the Minister of Lands could authorise loans by way of mortgage to the owners up to one third of the value of the land for the purpose of stocking, improving, or farming it, provided that all restrictions affecting the land were removed.[72]

71. In respect of any moneys advanced, the Minister could make such conditions as he deemed necessary to secure the proper expenditure for the purposes the mortgages were given.[73]

72. It appears that Māori had some degree of control over the decision whether to raise finance and accepted the risks associated with it, but this was a process that was ultimately controlled by the Minister, and Māori input was not necessarily needed as part of the process.

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[65] Sections 8-9, Māori Land Settlement Act 1905.
[66] Section 8, Māori Land Settlement Act 1905.
[67] Section 10, Māori Land Settlement Act 1905.
[68] Section 11, Māori Land Settlement Act 1905.
[69] Sections 11-13, Māori Land Settlement Act 1905.
[70] Wai 2180, #A046, T Walzl, *Twentieth Century Overview*, 491.
[71] Section 15, Māori Land Settlement Act 1905.
[72] Section 18, Māori Land Settlement Act 1905.
[73] Section 19, Māori Land Settlement Act 1905.

73. The Act required land boards to revest any lands in the original Māori owners upon the expiry of 50 years and upon discharge of all incumbrances affecting the land.[74]

74. Upon revesting, the land board was required, upon request in writing by the Māori owners possessing a majority of the interests in the lands vested in them, to have the title to the land board annulled, which was executed by the Governor by Order in Council.[75]

75. Upon the issue of such an Order in Council, the land was revested in the Māori owners.[76]

76. The 1905 Act reactivated Crown purchase, empowering the Governor to acquire lands from Māori. Before purchasing any Māori land, sufficient land was to be reserved for the owners' use.

77. The 1905 Act also enabled Māori land to be leased, removing all existing titular and statutory restrictions against alienation by lease. In this rohe the land board acted to confirm leases.[77]

78. When Māori lands were sold under 1905 Act, the land board had to ensure, before confirming any sale, that the purchase money was not less than the capital value of the land as assessed under the Government Valuation of Land Act 1896.[78]

79. According to Loveridge, this legislation arose largely from pressure that the government faced from Pākehā who were impatient and frustrated by the system's failure to provide land for settlement purposes.[79] By all accounts, given the amount of land already alienated from Māori, it does not appear that there was a real no need for this, but the demand from settlers that the Crown force Māori land to be more productive remained and the Crown bowed to that pressure.

80. The 1905 Act enabled regulated leasing of Māori land by private interests. The land board was able to confirm such leases providing that a number of requirements had been satisfied, including that the proposed rent was adequate and not less than five percent of the government valuation of the land.[80]

81. Mōkai Pātea Māori entered into a number of new leases as a method of land utilisation. According to Cleaver, these arrangements appear to show a

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[74] Section 14, Māori Land Settlement Act 1905.
[75] Section 14, Māori Land Settlement Act 1905.
[76] Section 14, Māori Land Settlement Act 1905.
[77] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 185.
[78] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 206.
[79] Donald M. Loveridge, *Māori Land Councils and Māori Land Boards: a historical overview 1900 to 1952*, 8-19.
[80] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 206.

growing preference of Māori for leasing land rather than Māori attempting to utilise it themselves in the face of substantial obstacles.[81]

82. Throughout his report, Walzl provides detail of Taihape Māori establishing lease agreements themselves, which were subsequently confirmed by the land boards.

Crown responsibility for land boards and the Māori Trustee

83. The Crown has denied responsibility for how land boards and the Māori Trustee exercised their powers. The Crown submits that the Tribunal has previously found that the Māori Trustee and Public Trustee are not Crown bodies,[82] and that as "Māori Land Boards held a similar role to the Māori Trustee…[t]he same reasoning can be applied to Māori Land Boards, which were statutorily required to act in the interests of the Māori owners. The Māori Land Boards were not under the control of the Crown."[83]

84. While cross examined by Dr Soutar about the separation between the judiciary and parliament, Stirling stated that the line was blurred as often the roles of head of the Native Department, Chief Judge and Māori Trustee were the very same person. He responds:[84]

> *No, I know it's been accepted as a general legal principle, that the Court is part of the judiciary in the same way I think it's accepted by the Tribunal that the Māori Trustee is not part of the Crown. The Courts are not part of the Crown. But that's not really how things work in practise, so it's a legal fiction. It's not a historical reality particularly in the 19th and early 20th Century. I think it was pointed out yesterday that the head of the Native Department was the Chief Judge and the Native Trustee, more than once right up to the 1940's. Shepherd filled all three roles simultaneously, so the Court is very much seen as part of the administrative arm of the Government. I think you see that in the report of the 1886 Committee on Ōwhāoko where they say, "Well you can't really expect judicial standards from something like the Land Court," we don't expect that. It wasn't really seen as part of the true judiciary or a properly independent Court."*

Extensive private purchasing post-1900

85. The evidence shows that there was extensive private purchasing of Ōruamatua–Kaimanawa in the decades following the amendment of the functions of land boards in 1905, beginning the streamlining of the purchase process that saw so much Māori land alienated after 1905 and especially after 1909.[85]

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[81] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 207.
[82] Wai 2180, #3.3.1, *Opening Comments and Submissions of the Crown,* 45.
[83] Wai 2180, #3.3.1, *Opening Comments and Submissions of the Crown,* 45.
[84] Hearing Week Transcript (#4.1.10) at p 497.
[85] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect,* 159.

86. The processes of the land board assisted in the facilitation of private purchasing, so much so that most private purchases occurred once the Māori land Board could facilitate this process, and increased in pace under the Native Land Act 1909. Most of the Ōruamatua–Kaimanawa block (788,447 acres) was lost to private purchasing by 1920.[86]

Alienation of Mangaohane 1F

87. The land board called meetings of owners to bring together land owners to make decisions on whether to agree to sell land blocks.

88. At the meeting of owners considering Mangaohane 1F (1,966 acres) only about a quarter of the 44 owners were in attendance, and all except one agreed to sell the land block. [87]

89. This calls to question the notification practices employed by the land board to advise owners of meetings. Also as the majority of the owners were not in attendance at the meeting, although those at the meeting did agree this still not did represent the view of a majority of owners of the block.

90. The Crown had a duty to consult Māori, and this was not adhered to in this particular purchase, inevitably leading to the alienation of Taihape Māori land.[88]

Alienation of Motukawa 2A4

91. Motukawa 2A4 was leased to Matthew Morrison for 21 years in 1906. Patience Tait, sister-in-law of Matthew Morrison, applied to purchase the block at government valuation. [89]

92. The Aotea Māori Land Board was reluctant to confirm the sale fearing that she was simply acting as a proxy for Morrison to get around the restrictions on land aggregation. However the Aotea Māori Land Board thought that the price offered was very advantageous to the Māori owners, so the Aotea Māori Land Board consented to the sale on 7 May 1912.[90]

93. In this case, the Aotea Māori Land Board decided to consent to a sale of Māori-owned land without consulting with the Māori owners at all.

Māori Land Settlement Amendment Act 1906

94. In 1906, the Māori Land Settlement Act Amendment Act 1906 provided for the compulsory vesting of any Māori land infested with noxious weeds, or 'not properly occupied by the Māori owners' but 'suitable for Māori settlement', which was in addition to compulsory vesting provisions introduced which only applied to Māori land with unpaid rates, mortgage, or survey debt.[91]

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[86] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect,* 159.
[87] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect,* 236.
[88] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect,* 236.
[89] Wai 2180, #A008, E Subasic/B Stirling, *The Sub-district Block Study - Central Aspect,* 54.
[90] Wai 2180, #A008, E Subasic/B Stirling, *The Sub-district Block Study - Central Aspect,* 49.
[91] Richard Boast, *Buying the Land, Selling the Land : Governments and Māori Land in the North Island, 1865–1921* (Wellington : Victoria University Press, 2009), 225.

95. In 1906, the Native Department took over responsibility for administering both land boards and the Native Land Court, and provided a uniform set of guidelines for dealing with applications for approval of leases and various other procedures. [92]

Native Land Settlement Act 1907

96. The Crown was provided authority (under sections 4 and 5 of the Native Land Settlement Act 1907 (1907 Act) to vest lands in land boards 'for a legal estate in fee-simple in possession,' if the lands were determined by the Native Land Commission to "not [be] required for occupation by the Māori owners, and is available for sale or leasing." Māori land owners did not have any power of disposition in this process.[93]

97. Under the 1907 Act, land boards were to divide vested lands into two approximately equal portions, one for sale and the other for leasing.[94] Lands set apart for sale and lease were to be disposed of by public auction or public tender and to the highest bidder or highest tender. The term of any lease could be set by the land board, with or without any renewal, but was not to exceed 50 years. Lessees with more than a ten year term were entitled at the end of the term to compensation for "all substantial improvements of a permanent character … out upon the land during the continuance of the lease and unexhausted on the termination thereof." The source of the compensation would be the revenues derived from the land concerned.[95]

98. Part II of the Act empowered – but did not require - the Crown to reserve land for occupation by Māori in accordance with the recommendations of the Native Land Commission.

99. There was no formal mechanism in the legislation to appeal the decisions of the Native Land Commission.

100. The 1907 Act and determinations of the commission removed 'autonomy' over Taihape Māori lands, which was a significant breach of Te Tiriti.

Stout-Ngata Commission

101. In 1907 the government established the Stout-Ngata Commission to take an inventory of Māori lands to assist the government's objective of ensuring that any Māori land suitable for Pakeha settlement and not being utilised by Māori was made available.

102. The Commission was empowered to categorise Māori land into two types for administrative purposes:[96]

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[92] Richard Boast, *Buying the Land, Selling the Land : Governments and Māori Land in the North Island, 1865–1921* (Wellington : Victoria University Press, 2009), 225.
[93] Sections 11-12, Native Land Settlement Act 1907 Act.
[94] Section 11, Native Land Settlement Act 1907 Act.
[95] Sections 11-12, Native Land Settlement Act 1907 Act.
[96] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 185.

a. Land not required for the occupation of its owners and therefore available for sale or lease (such land to be vested in the district land board for disposal); and

b. Land required for the use and occupation of Māori (such land to be inalienable except by lease to other Māori).

103. Walzl notes that the commission provided little in the way of general comment on the history of the Mōkai Pātea lands, the aspirations of owners, and land use potential in the district. He suggests this reflected the approach that the commission took in grouping lands for analysis within county boundaries.[97] The Mōkai Pātea lands were split between several counties, though predominantly in Rangitikei County, where they comprised only a small component of Māori lands within the county.[98]

104. Two of the Commission's reports provided coverage of Mōkai Pātea lands:[99]

a. An interim report produced in March 1908, which dealt with lands in the Wanganui, Waimarino, Rangitikei, and Waitotara counties. The Rangitikei data included details relating lands being leased or under negotiation for lease inclusive of Otamakapua 1 and 2, Otairi and Taraketi blocks, and also lands recommended for reservation for Māori occupation including Otamakapua 1G (a one-acre urupa), Taraketi 3 (an urupa), and Taraketi 4 (a church reserve), 2A (a 216-acre 'farm and kainga'), 2D (a 54-acre 'farm and kainga'), 2F (a 595-acre 'farm'), and 5 (a 101-acre 'kainga').

b. A second report from December 1908 dealt with part of the Ōwhāoko blocks (an area amounting to 81,294 acres).

105. The Commission found that Ōwhāoko and its subdivisions were of "poor quality" and the "leases were surrendered".[100]

106. In the county schedules to the report, listed land under each of the two categories. [101]

107. In Hawkes Bay County, a number of blocks were stated to be under lease or negotiation for lease,[102] but some were not included in the report due to land constraints, including the remaining Ōwhāoko subdivisions (81,294 acres). The Commission noted that these lands were only suitable for grazing in large

[97] Wai 2180, #A046, T Walzl, *Twentieth Century Overview,* 57-62.
[98] Wai 2180, #A046, T Walzl, *Twentieth Century Overview,* 60-61.
[99] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 186.
[100] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 186.
[101] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 187.
[102] Owhaoko C6, 7, D5, D6, and D7 as well as subdivisions of the Timahanga and Mangaohane blocks.

areas. To achieve this, it recommended that these lands be vested under the administration of the land board. [103]

108. In Rangitikei County, dozens of Awarua, Motukawa, and Ōruamatua-Kaimanawa subdivisions (amounting to 151,195 acres) were recorded by the Commission as being leased or under negotiation for lease.[104]

109. However, after conducting a comparison of the land block holdings recorded by the Commission and with his own research in conduducting whanau case studies for his Twentieth Century Alienation report, Walzl found "as the whanau case studies were being compiled, and detailed data of dozens of blocks was being accessed, it was found that the Commission's records of leases were inaccurate." [105]

110. Walzl posits that based on his research, "there are strong reasons to believe that the Commission's report was speculative and, therefore, inaccurate…[as the]Commission did not visit Taihape and that hearings in neighbouring towns such as Wanganui, Napier, Taupo or Wellington also did not contain any reference to blocks within the Inquiry District. The Commission's record, it appears, is one of supposition. The Commission's findings…can not be relied on."[106]

111. In the category of lands that had not been dealt with by the Commission, the Rangitikei county data listed dozens of Awarua and Motukawa sections (totalling around 13,841 acres) as well as Rangipo Waiu subdivisions (amounting to about 17,746 acres). While some were noted to be occupied by owners or noted to be township areas or reserves, the position of the other subdivisions was not provided and there was no recommendation as to whether the land should be sold or vested in the land board.[107]

112. Incomplete and marked by inaccuracies, the Commission's reporting on the lands of the Taihape inquiry district did not provide a strong basis for assessment of the remaining Mōkai Pātea Māori land base and the needs of owners. Though uncertain as to why the Commission's findings in respect of Taihape lands were so inaccurate, Walzl points out that the commission did not visit the district. [108]

113. It is possible that the shortcomings of the commission's investigation of Mōkai Pātea lands may have limited immediate pressure to vest or sell these lands.[109]

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[103] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 187.
[104] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 187.
[105] Wai 2180, #A046, T Walzl, *Twentieth Century Overview*, 995.
[106] Wai 2180, #A046, T Walzl, *Twentieth Century Overview*, 995.
[107] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 187.
[108] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 187.
[109] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 187.

114. Walzl notes that the commission identified most lands as being leased or occupied, and that almost all of the remaining lands were simply passed over without recommendations being made. As for the Ōwhāoko blocks recommended for vesting in the land board, he states there is no evidence that this was picked up on and any attempt made to achieve such a vesting.[110] Given the evidence of how those institutions operated in this rohe, this may have been a minor blessing, leaving Māori land safely where it was, without the pressure of the Crown or Crown agents demanding productivity and those risks that come with it.

Māori Land Claims Adjustment and Laws Amendment Act 1907

115. Land boards also played a role in administering timber leases on Māori land.

116. Sawmillers who were party to informal timber agreements were required to apply to the local land board to have the agreements validated. Applications under the Act were required only in cases where cutting under existing agreements had yet to be completed. [111]

117. Only two applications appear to have been made in respect of agreements that related to areas of Māori-owned forest in the Taihape inquiry district. [112]

The Māori Land Board administering sawmilling leases

118. Part of the role of the land board was to grant and monitor sawmillers leases in accordance with section 26 of the Māori Land Claims Adjustment and Laws Amendment Act 1907. Under the 1907 Act, informal leases needed to be confirmed by the land board.

119. Cleaver recorded the experience of the land board granting and monitoring leases, whereby two applications appear to have been made in respect of agreements that related to areas of Māori-owned forest in the Taihape inquiry district which were monitored by the land board.[113]

Native Land Act 1909

120. The role of land boards changed under the Native Land Act 1909 as they were not required to facilitate the alienation of 'unused' Māori land.[114]

121. This further enabled private purchasing by the lifting of restrictions that otherwise enable the private sale of land. However the 1909 Act continued to enable land to be vested in land boards.[115]

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[110] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 187.
[111] Section 26, Māori Land Claims Adjustment and Laws Amendment Act 1907.
[112] Section 26, Māori Land Claims Adjustment and Laws Amendment Act 1907.
[113] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 146.
[114] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 187.
[115] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 187.

122. According to the 1909 Act, all private alienations needed to be confirmed by the land board, yet alienations to the Crown required confirmation only in cases where a resolution had been passed by a meeting of assembled owners. [116]

123. Prior to confirming an alienation, the land board was required to consider the following criteria:[117]

    a. the instrument of alienation had to be properly executed;

    b. an alienation could not be contrary to equity or good faith or to the

    c. interests of the Natives alienating';

    d. no Native could be made landless by the alienation;

    e. the payment had to be adequate; and

    f. in the case of a sale the purchase money had to have been either paid or sufficiently secured.

Examples of the Māori Land Board's operation in the District

Awarua

124. After ceasing Crown purchasing shortly before 1900, rather than protecting the remnants of Awarua that it had left in Māori ownership, the Aotea Māori Land Board actively operated through its 'streamlined, bureaucratic processes" to open up the land to private purchasing.[118]

125. "In the period from 1900 to 1930, almost half of the Awarua land remaining was alienated through private purchases. A much smaller amount was sold thereafter, with the result that today over 26,000 acres – more than half of the land remaining after Crown purchasing – was lost to private purchases. [119]

Awarua 2C

126. The Aotea Māori Land Board played a key role in facilitating the alienation of the Awarua 2C block under provisions instituted by the 1909 Act. Subasic and Stirling explains that: "*The bulk of Awarua 2C was alienated through private purchases, most of which took place under the Māori Land Board regime instituted under the Native Land Act 1909, which streamlined the alienation of Māori land. In many instances, land was initially leased before subsequently being purchased outright."*

127. Few of the Awarua 2C partitions remain in Māori ownership, with most alienated by purchase. Many were mortgaged, made subject to leases,

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[116] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape* Inquiry District, 221.
[117] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 221 referring to Section 220, Native Land Act 1909.
[118] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect*, 166.
[119] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect*, 166.

interests of minors were purchased while vested in the Public Trustee and sold or vested due to survey liens or non-payment of rates.[120]

Motukawa 2

128. Title fragmentation through Native Land Court processes and extensive private leasing and purchasing through the auspices of the Aotea Māori Land Board rapidly broke up the residue of Motukawa 2 in the early to mid-twentieth century.

129. As a result, almost 7,000 acres of Motukawa 2 was privately purchased, which together with Crown purchasing prior to 1900 means that today only about half of Motukawa remains in Māori ownership (18,157 acres). [121]

Leasing and alienation of Motukawa 2B15B2

130. In the case of Motukawa 2B15B2, the Maniapoto-Tuwharetoa Māori Land Board acted in various roles throughout the transaction history of the block.

131. In 1906 the Maniapoto-Tuwharetoa Māori Land Board confirmed the lease of the block to Peter Arcus from Hori Wi Maihi. When both Arcus and Wi Maihi sought to cancel the lease to enable a sale to Arcus, the Maniapoto-Tuwharetoa Māori Land Board refused to cancel the lease and approve the sale. Arcus abandoned his lease. [122]

132. Subsequently Percival Gardiner applied to the land board to purchase the block. It appears that Gardner was leasing the block at the time of his application, however it is unclear whether this lease was authorised by Wi Maihi or the Māori Land Board. The land board provisionally confirmed the transaction.[123]

133. However, the certificate of title was held by George Hutchison, who claimed a survey lien over the block, which Maihi denied, and Maihi objected to having the survey lien claim paid out of the consideration for purchase. Maihi agreed to pay the claim under protest. [124]

134. Wi Maihi had given evidence to the Maniapoto-Tuwharetoa Māori Land Board in January 1919 that he did not owe any money to Hutchison, and that he suspected that it was his brother who handed the Certificate of Title to Hutchison, as he owed money to his brother. He failed to appear before the Supreme Court though to present this evidence against the lien, so the Supreme Court ruled against him. [125]

135. In 1921 Wi Maihi alleged that he did not receive stock as part of the purchase price, and this was inquired into by the Maniapoto-Tuwharetoa Māori Land Board held an inquiry over this issue where it found that Wi Maihi had not been

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[120] Wai 2180, #A008, E Subasic and B Stirling, *The Sub-district Block Study - Central Aspect,* 117-127.
[121] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect,* 67-68.
[122] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect,* 50-52.
[123] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect,* 52.
[124] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect,* 53.
[125] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect,* 53.

adequately paid, but that Gardiner should be provided an "allowance" for Gardner paying costs for Maihi's case against Hutchison. Gardiner had to pay the outstanding amount of £328 (less the 'allowances'), and in 1919 Motukawa 2B15B2 was sold to Percival Gardner in 1919.[126]

Ōruamatua–Kaimanawa

136. The Aotea Māori Land Board also facilitated rapid private purchasing of extensive areas of the Ōruamatua-Kaimanawa Block. [127]

137. Numerous unsold subdivisions were leased for a time, but in the 1960s and 1970s, almost all of the remainder of the Oruamatua–Kaimanawa block that had been retained in Maori ownership was compulsorily acquired by the Crown for defence purposes. [128]

Ōruamatua–Kaimanawa 1T

138. The evidence also shows that the Aotea Māori Land Board sold lands to the Crown while limiting involvement of the Māori owners in the process, or not including those owners at all.

139. For instance the Ōruamatua–Kaimanawa 1T block (3,583 acres), while vested in the land board, while being leased to Birch, was offered for public auction in the early 1910s, but it did not sell. In 1914 the Aotea Maori Land Board offered the block to the Crown for purchase in, and the Native Land Purchase Board approved the offer. The owners had little involvement or say in this straightforward process. Accordingly, Oruamatua–Kaimanawa 1T (3,583 acres) was purchased from Hakopa Te Ahunga and others (through the Aotea Land Board) by the Crown in February 1915 for £2,239 7s. 6d.[129]

140. In the 1960s and 1970s almost all of the Ōruamatua Kaimanawa blocks remaining in Māori ownership were taken by the Crown for defence purposes.[130]

Ōwhāoko

141. The Aotea Māori Land Board again used its streamlined processes to facilitate private purchasing in the Ōwhāoko block.

142. More concerning though, according to Fisher, is the conduct of the officials, in the early 1970s who fraudulently amended documents to approve the sales of some of the land blocks.

Ōwhāoko C5

143. The Aotea Māori Land Board played a significant role in facilitating the alienation of the Ōwhāoko C5 block.

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[126] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect*, 53.
[127] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 171.
[128] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 171.
[129] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 171.
[130] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 260.

144. In 1916 Arthur Boyd applied to purchase Ōwhāoko C5. At a meeting of owners the decision was split with 8 owners agreeing to sell but 7 oppposing, despite the narrow margin the motion was carried. The Aotea Māori Land Board however was told that the valuation was too low, as it excluded an area of bush thought to be of considerable value.[131]

145. By July 1917 all those wishing to retain the land relented and agreed to the purchase. In October 1918 another meeting of owners was called and the resolution was passed for the sale of the block. The Aotea Māori Land Board confirmed the purchase on 18 November 1918. On 4 November 1921, Boyd's lawyers responded to the Māori Land Board that there was no way Boyd would complete the purchase, and he never did. It seems that Boyd had simply squatted on the land, and remained there for some years.[132]

146. Fortunately, despite the land board's attempt to alienate this land block, Ōwhāoko C5 still remains as Māori land today.[133]

147. In summary, the Native Land Act 1909 meant that land boards continued a conflicting dual purpose role; on the one hand, they were required to act as trustee for land which Māori wanted to retain and use themselves; on the other, they had pivotal roles in activities related to transferring land out of Māori control and even ownership for settlement. That these two roles were not always aligned is obvious, that the Crown preferred outcome of alienation of Māori land more often prevailed is the experience of Taihape Māori.

Ōwhāoko D61

148. The need of Taihape Māori to access funds for living expenses by selling their land blocks is demonstrated through the attempted sale of Ōwhāoko D61.

149. The owners were in dire need of the purchase money as the Aotea Māori Land Board was restricting their access to the purchase price paid for other lands they had sold; money that was needed to pay for improvements to their farm at Te Reureu and to cover Tutunui Rora's medical bills.[134]

150. This block was offered for sale in February 1926.

151. Clearly Taihape Māori should not have had to sell their remaining land to cover medical bills in this way.

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[131] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect,* 109.
[132] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect,* 110-111.
[133] Acccording to Māori Land Online, this land is still in Māori ownership (Accessed online: https://www.maorilandonline.govt.nz/gis/title/18762.htm?feedback_URL=https%3A%2F%2Fconsultations.justice.govt.nz%2Foperations-service-delivery%2Fmlc-customer-survey&helpDoc_URL=https%3A%2F%2Fmaorilandcourt.govt.nz%2Fabout-mlc%2Fpublications%2F%23other-guides&mlc_URL=https%3A%2F%2Fwww.maorilandcourt.govt.nz&moj_URL=https%3A%2F%2Fwww.justice.govt.nz&nzGovt_URL=http%3A%2F%2Fnewzealand.govt.nz&contactUs_URL=http%3A%2F%2Fwww.maorilandcourt.govt.nz%2Fcontact-us)
[134] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect,* 98.

152. The Crown did not purchase this block as they were no longer interested in the land. Two further offers for purchase were made in 1927 and 1936 but were rejected by the Crown. [135]

Taraketi Block

153. The Native Land Commission investigated the Taraketi block.[136]

154. It did not recommend the vesting of any land in the Aotea Māori Land Board for sale or lease, but it did recommend that 1,270 acres should be reserved for occupation by Māori. The Commission's recommendations relating to blocks in Taraketi were not acted upon, at least in the sense of formal setting apart. Formal setting apart would not, in any case, have protected the land concerned against possible Crown purchase.[137]

Timahanga

155. The Aotea Māori Land Board's streamlined processes facilitated the alienation of a number of Timahanga blocks with the loss of 5 of the 6 subdivisions being acquired by the Crown in the short period from 1911 to 1915.[138]

156. Although the Aotea Māori Land Board called a meeting of owners to consider the Crown offer to purchase of Timahanga 2 and Timahanga 6, and those present indicating their approval, there is no evidence that records how many, if any at all, were notified and attended the meeting, or the detailed outcome of the decision to sell.[139]

Native Trustee and land board lending: Mortgages and advances

Native Trustee Act 1920

157. Prior to the Native Trustee Act 1920, Taihape Māori accessed mortgage lending from a number of sources. The mortgages that Mokai Patea Maori secured between 1910 and 1930 were from sources including the state's Advances to Settlers scheme, the Public Trustee, and a relatively small number of private mortgages.[140]

158. In the early 1920s, two new forms of lending aimed specifically at Maori had also become available. First, the Native Trustee Act 1920 empowered the Native Trustee to lend to Maori. Secondly, from 1922 Land Boards were able to advance money on Maori land with the consent of the Native Minister. However, existing research undertaken by Cleaver provides evidence of only two loans secured by Mokai Patea Maori from these sources up to 1930 – both mortgages with the Aotea District Maori Land Board.

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[135] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 99.
[136] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 190-193.
[137] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 190-193.
[138] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 256.
[139] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 252-253.
[140] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 221 referencing Walzl, 'Twentieth Century Overview', pp548-551; Armstrong, Environmental Change in the Taihape District, pp32-37.

159. In respect of the Native Trustee's ability to lend at this time, the CNI Tribunal has stated that 'it seems that the Native Trustee was not practically able to offer significant loans during the 1920s'.[141] Cleaver states that the lack of evidence of Native Trustee lending to Mokai Patea Maori up to 1930 is consistent with this assessment.

160. Walzl's evidence shows that despite being land-rich, Taihape Māori struggled to gain the kind of finance needed to develop land and farms, which many Taihape were attempting or progressing during this period.

Mortgages generally

161. Mōkai Pātea Māori mortgaged their properties to service debt and to cover living costs, as it was a requirement for Māori lenders to possess income from leased land to service the mortgage.

162. Cleaver in his evidence provides an overview of the facility of mortgage loans available through the Māori Trustee, specifically noting the difficulty that claimants had faced in obtaining loans from the Māori Trustee during the post-war period.[142]

163. The office of Māori Trustee had been able to loan money to Māori upon its establishment in 1920 and from the early 1920s land boards were also able to offer loans. In 1952, the land boards were abolished and the Māori Trustee took over the land board's lending responsibilities.[143]

164. The evidence shows that between 1910 and 1930, Mōkai Pātea Māori raised mortgages against 41 areas of land.[144]

165. Examples of mortgages for living costs include:

    a. Awarua 2C11 (675 acres), being farmed by the owners, was first mortgaged in 1908 and re-mortgaged in 1912, 1917, 1923, and 1928. After ceasing farming the land board started to distribute the loan as a living allowance to surviving owner Kewa Pine.[145]

    b. Awarua 2C16C3 (182 acres) was first mortgaged in 1926, a year after it was leased to a Pakeha for a period of 42 years, and subsequently re-mortgaged every five years through to 1957.

166. The evidence shows that Mōkai Pātea Māori continued to raise mortgages against their remaining lands after 1930. A number of mortgages were entered into between 1931 and 1980 over 17 areas of land in Mōkai Pātea ownership.

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[141] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume III* (2008), 988.
[142] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 262.
[143] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 262.
[144] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 261.
[145] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 258.

and there is no evidence of mortgages raised after this time.[146] For these mortgages, several cases the mortgaged lands comprised more than a single block, and in three instances more than one mortgage was raised against the land during the period.[147]

167. Between 1931 and 1950, lending sources were the Public Trustee, Māori Trustee, land boards, and private sources. Between 1950 and 1980, Table 22 records loans secured against about 11 areas, almost all of which were with the Māori Trustee.[148]

168. During this time, farmers were able to access funds from the government focussed on assisting the establishment of new farms and developing areas – Walzl – worth mentioning – Māori didn't get a look in when the land was multiply owned.

169. The decline in the number of areas subject to new mortgages after 1930 would seem to at least partly reflect the diminishing Māori land base – Māori owned less land to secure mortgages against.[149]

Māori Trustee Act 1953

170. The Māori Trustee could, using any funds in the Consolidated Fund allocated for the purpose, advance moneys to individual Māori on the security of a mortgage over any freehold or leasehold interest in land or on the security of any chattels or other property.[150]

171. The evidence of Cleaver shows that in at least one case, the burden of existing mortgage debt appears to have contributed to the alienation of Mōkai Pātea Māori land, resulting in the sales of the Awarua 2C9 (945 acres) and Awarua 2C10A (1,597 acres) blocks.[151]

172. These blocks were leased from the early 1900s and in 1920 a mortgage of £5,000 was also raised against the block, but the cost of rental payments did not cover the mortgage payment owing, resulting in a debt of almost £5,000 owing on the mortgage with £1,000 of interest payment arrears, influencing the owners to sell the land in 1970 to the Pākehā lessee.[152]

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[146] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District*, 261.
[147] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 261.
[148] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 262.
[149] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 261.
[150] Section 32(1)(a) Māori Trustee Act 1953; Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District*, 261.
[151] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 263.
[152] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 263.

National Expenditure Commission 1932

173. In July 1932 the Crown appointed a five-member National Expenditure Commission to carry out a wide-ranging review of national expenditure. The commissioners had several concerns about land boards. It was concerned that the administrative machinery was defective and detected shortcomings at all levels in terms of property management.[153]

174. The report expressed their concern that although the structure of land boards had not changed since 1913: "*the functions of Boards have undergone considerable change since their inauguration, and the President has a heavy responsibility devolving upon him. (Originally the main duty of the Boards was to protect Natives from exploitation, but the trend of recent legislation is to provide ways and means of assisting in their social and economic welfare. Their financial operations are of some magnitude).*[154]

175. The power imbalance held by the land boards over Taihape Māori was raised in the report:

> *The feature of the Board's [sic] constitution is that the President has sole jurisdiction, and when sitting in company with the Registrar has a casting-vote in addition to his ordinary vote. The Boards may therefore be deemed to be 'one man' Boards. The fact that the President has jurisdiction over alienations, and that he is also the Judge of the corresponding Native Land Court district, indicates that the line of demarcation between Boards and Courts has in some respects disappeared.*

176. Loveridge draws attention to the Commission's suggestion to abolish land boards with their 'judicial' functions being transferred to the Native Land Court and their other duties being assumed by a re-structured Native Department which also incorporated the Native Trustee.[155]

Native Land Act 1931

177. Under the Native Land Act 1931 land boards maintained significant influence as they were provided with wide discretion to deal with money received and hand it to the Native Trustee, invest it, or use it to buy or lease land.[156]

Native Land Amendment Act 1932

178. Land boards lost their power to confirm alienations under the Native Land Amendment Act 1932 which divulged this power to the Native Land Court, as well as establishing the Native Land Settlement Board which became responsible for overseeing the management of development schemes.

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[153] Donald M. Loveridge, *Māori Land Councils and Māori Land Boards: a historical overview 1900 to 1952*, 142.
[154] Donald M. Loveridge, *Māori Land Councils and Māori Land Boards: a historical overview 1900 to 1952*, 142.
[155] Donald M. Loveridge, *Māori Land Councils and Māori Land Boards: a historical overview 1900 to 1952*, 142.
[156] Section 97-213, Native Land Act 1935.

179. The extent of control of Māori Land by the land boards was further lessened as powers were granted to the Board of Native Affairs under the Native Land Amendment Act 1936 to confirm leases.[157] Despite powers only being granted in 1936 the Board of Māori Affairs admitted to issuing leases up to 20 years prior to the Act.

Land Board failure to recover lease payments

180. The Aotea Māori Land Board was responsible for managing the Oruamatua-Kaimanawa 1 and 2 blocks on behalf of the owners, yet inadequately managed a lease on the property which ultimately led to the lands being sold to recover costs.

181. This block was leased to Andrew Anderson for a 45 year term, however Anderson, was unable to pay rent on the block in 1937 so sought a remittance of 2 years rent from the Aotea Māori Land Board.[158]

182. The Aotea Māori Land Board facilitated a meeting of of owners, where some of the owners agreed to forgive his debt, provided that the land be remitted from paying rates as there was no rental income.[159]

183. The land board cautioned against the remittance, and recommended consulting the owners before providing any charge against the titles. [160]

184. Anderson abandoned the lease and after about seven years the worthless and inoperative leases were finally cancelled by the inept land board, with £1,946 17s. 6d. owing by Anderson. The lease paid back a token payment of only £43 6s. 8d while the land continued to accumulate rates arrears which were now the responsibility of the land owners to pay.[161]

185. The land board's actions resulted in the confirming of a lease that restricted Taihape Māori from effectively utilising their land, rendering them without a property during the period that it was leased. The owners did not receive any funds from the lease, so were left out of profit as a result of this transaction.

The Abolition of Māori Land Boards

186. A further Royal Commission was established in November 1949, again led by Sir Robert Stout and Apirana Ngata, to develop "*a systematic inventory and appraisal of the status of Māori lands*."[162]

187. Ngata expressed concern about the situation of land boards, telling Parliament that: "*Members of those Boards are feeling that they are being relegated to a very inferior place in the economy of the Native Department*."[163]

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[157] Section 16(3), 24(3), Native Land Amendment Act 1936.
[158] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 155-159.
[159] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 155-159.
[160] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 158.
[161] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 155-159.
[162] Wai 2180, #A046, T Walzl, *Twentieth Century Overview*, 59.
[163] Bennion, The Māori Land Court and Land Boards, 63.

188. The Under-Secretary of Māori Affairs suggested in response that land boards should be disbanded altogether, as except for managing the vested lands, their functions had now disappeared. He also again criticised a regime where one person held the dual roles of Judge of the Land Court and President of the land board, and highlighted the different skill sets involved in each role : *"it is altogether wrong that those concerned to see to the application of the law should be involved in matters which are purely administrative*". [164]

189. The Under-Secretary of Māori Affairs again called for the abolition of land boards in 1951, arguing that *"[t]hough the Boards are instruments of Government, they are not answerable to any authority save in the last resort through the sanction that members may be removed from office."*[165]

190. Following this, the Minister of Māori Affairs planned to abolish land boards, and legislation was introduced in 1952 to dissolve land boards and abolish Māori land districts, and transfer their rights and duties to the Māori Trustee.[166]

191. At this point in time, land boards collectively held a total of £1,305,500, belonging to their beneficiaries.

192. This is the equivalent of almost $80 million dollars today.[167]

Māori Trustee managing natural resources

193. The Māori Trustee acted on behalf of Māori land owners to negotiate royalty payments for stone extraction from Māori land.

194. Cleaver noted one instance in this rohe where the Māori Trustee acted on behalf of the owners of Awarua 4C12A2 to successfully negotiate payment of royalties for the stone extraction.[168]

195. In July 1982, a settlement was reached that provided for payment of $40,816.63.[169]

Tribunal Findings

Māori Councils and the Māori Lands Administration Act 1900

196. The findings of Tribunals are given to provide a context for evaluating the Crown's actions for Treaty compliance in this Inquiry.

197. The Te Urewera Report stressed the importance of Māori having suitable institutions through which they could exercise local self-government, which

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[164] Bennion, The Māori Land Court and Land Boards, 70.
[165] Bennion, The Māori Land Court and Land Boards, 70.
[166] Māori Land Amendment Act 1952.
[167] According to the Reserve Bank of New Zealand inflation calculator, the equivalent in today's value is $79,608,955.87 (refer: https://www.rbnz.govt.nz/monetary-policy/inflation-calculator).
[168] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 268.
[169] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 268.

included “the ability to fully manage and control their own resources as a community”.[170]

198. The Central North Island Tribunal found that such institutions were not provided, despite the Crown’s initial promises of delivering meaningful self-government. Instead, the Crown’s Māori land policy and legislation in the first half of the twentieth century diminished the ability of Māori to play an active role in managing their lands and provided opportunities for forced alienations.

199. The Central North Island Tribunal found that the Crown did not give the system of land administration it introduced in 1900 a fair trial. It was also found that the Crown failed to provide the new Māori land councils with sufficient support and resourcing, nor did it ‘do enough to engender Māori confidence in the land councils’. The report concludes that ‘the Crown’s failure to give full support to the land councils was in breach of the duties of partnership and active protection’.[171]

200. Most recently, the Te Rohe Potae Tribunal made findings with regard to the Māori Lands Administrative Act 1900 that:[172]

> *The legislative framework and the evidence from this inquiry district indicates that the Māori Lands Administration Act 1900 and its amendments were not consistent with the guarantee of tino rangatiratanga under article 2 of the Treaty of Waitangi.*
>
> *However, Te Rohe Pōtae Māori were prepared to adjust their desire for complete control over their lands and instead express their mana whakahaere through the land councils.*
>
> *The legislative scheme had the potential to be a system consistent with the Treaty principles of partnership, reciprocity, and mutual benefit. What the land councils needed to fulfil their potential were some key adjustments to the legislation and targeted funding and resourcing, as Te Rohe Pōtae Māori themselves identified. The potential benefits of such improvements were also identified by the Central North Island Tribunal.*
>
> *We find that in failing to give full support to the delivery of mana whakahaere to Te Rohe Pōtae Māori through the land councils, the Crown acted in a manner inconsistent with the principles of partnership, reciprocity, and mutual benefit derived from article 2 of the Treaty of Waitangi.*

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[170] Waitangi Tribunal, *Te Urewera, Volume II* (2017), 999-1001 ; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume I* (2008), 203.
[171] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume II* (2008), 681-682.
[172] Waitangi Tribunal, *Te Mana Whatu Ahuru, Volume III* (2018), 26.

201. The Te Rohe Potae Tribunal also made a number of comprehensive findings on land boards:[173]

> *We find that in substituting the land councils with the land boards (with their alternate membership), and in curtailing the management by the councils, and for failing to intervene to stop the practice of granting perpetual leases, the Crown acted in a manner inconsistent with the Treaty principles of partnership, reciprocity, and mutual benefit.*
>
> *It also failed in its article 2 guarantee of tino rangatiratanga and its duty of active protection over the tino rangatiratanga of Te Rohe Pōtae Māori and of the land itself. Furthermore, in bowing to lessee pressure to acquire the freehold of their leased lands, and at times actively intervening to assist lessees to purchase their sections, the Crown breached the duty of active protection of the land, and it acted in a manner inconsistent with the article 3 principle of equity.*

Māori Land Settlement Act 1905

202. The Central North Island Tribunal found that when the Crown later changed this system, it carried out only limited consultation with Māori and did not secure Māori consent to the changes it introduced.[174]

203. Further, it found that when land boards replaced the councils in 1905, the Crown neglected to provide for elected Māori representatives on those bodies, meaning that there was no longer any possibility of Māori being 'the predominant voice in decision-making about their own lands'.[175]

204. It found that the "demise of the councils resulted in Māori being deprived of the potential benefits of what had been a major new land administration initiative – including less immediately obvious benefits such as the opportunity to acquire management experience."[176]

205. The 1905 legislation was also found by the National Park Inquiry Tribunal to reduce the degree of Māori control over the disposal and management of their lands.[177]

206. The Rohe Potae Tribunal built on these previous findings, to establish that in terms of the land administration system from 1905 to 1908, the Crown: [178]

> *[F]ailed to actively consult and engage with Te Rohe Pōtae Māori in good faith on the content of its legislation over this period, and we find*

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[173] Waitangi Tribunal, *Te Mana Whatu Ahuru, Volume III* (2018), 367.
[174] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume II* (2008), 681-682, 692.
[175] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume II* (2008), 681-682, 692.
[176] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume II* (2008), 681-682, 692.
[177] Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report, Volume II* (2013), 557.
[178] Waitangi Tribunal, *Te Mana Whatu Ahuru, Volume III* (2018), 51.

that the Crown's policies and legislation were inconsistent with the principles of partnership, reciprocity and mutual benefit as a result.

Its actions were also inconsistent with the Crown's duty to act honourably and in good faith.

The Crown's actions were not consistent with the agreements that comprised Te Ōhākī Tapu, nor with the compromises that Te Rohe Pōtae leaders were prepared to make in terms of their land administration.

For failing to have due regard to these matters, the Crown acted inconsistently with article 2 of the Treaty and the guarantee of Te Rohe Pōtae Māori tino rangatiratanga over their lands, and failed in its duty of active protection.

Owner consent and the Native Land Act 1909

207. Both the Tauranga Moana and Ōrākei Tribunal found that the potential for Treaty-compliant consent through collective decision-making at meetings of owners was undermined by the small quorum required by the Native Land Act 1909.[179] The Hauraki Tribunal further criticised the quorum provision as being a 'manipulative' device, by which "minorities of owners in a block could alienate the land without the consent or even the knowledge of other owners".[180]

208. The fact that the stipulated quorum under the Native Land Act 1909 was "unrelated to the number of owners in a block, or the size of their interest in it", tended to suggest that "ease of transfer was considered more important than the protection of owners' rights", according to the Central North Island Tribunal.[181]

209. In effect, an alienation could occur even when only a handful of owners had given consent.

210. The Central North Island Tribunal noted that it was not necessarily the case that all owners would have received notification of the meetings.[182]

211. The Ōrākei Tribunal stated that "[t]his unwilling and involuntary disposition of shareholders' interests in their land is clearly inconsistent with the protection afforded by Article 2 of the Treaty".[183]

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[179] Waitangi Tribunal, *Tauranga Moana, 1886–2006 : Report on the Post-Raupatu Claims, Volume I* (2010), 145-146.
[180] Waitangi Tribunal, *The Hauraki Report, Volume II* (2006), 897.
[181] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume II* (2008), 688.
[182] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume II* (2008), 688.
[183] Waitangi Tribunal, *Report of the Waitangi Tribunal on the Ōrākei Claim* (1996), 235.

212. The Tauranga Moana Tribunal found that under the 1909 Act, court orders and confirmations of alienation could not be declared invalid even where there were irregularities.[184]

213. The Te Rohe Potae Tribunal agreed with the previous findings of the Central North Island Tribunal, finding that: *"[T]he 1909 legislation failed to provide adequate safeguards both for individual owners and for communities to ensure the retention of a land base for present and future generations."*[185]

214. Further: *"[W]e find the Crown's actions and policies leading to the enactment of the 1909 legislation, alongside the Crown's conduct and omissions after the statute came into effect, including its failure to rectify the problems with the legislation, inconsistent with the principles of partnership and mutual benefit derived from articles 1 and 2 of the Treaty of Waitangi. The Crown also failed to honour its guarantee of tino rangatiratanga over Māori lands. It failed to have due regard to the positive suggestions Te Rohe Pōtae Māori made to Carroll to improve the land administration system. Rather, the Crown pursued a policy that elevated the demands of Pākehā settlers for more land over its Treaty of Waitangi obligations. In doing so, the Crown adopted policies inconsistent with the principle of equity derived from article 3 of the Treaty of Waitangi. The Crown also failed to fulfil its duties to act honourably and in good faith, and to actively protect Māori land."*[186]

The Māori Land Board Regime 1913–53

215. Through expanding the Crown's power to buy Māori Land through the Native Land Amendment Act 1913, the Crown no longer had to obtain land board confirmation for purchases of land with more than 10 owners. Land boards now consisted of only a Native Land Court judge and registrar, meaning that the local land court and land board comprised the same officials.[187] This "*effectively merged the land boards and the court, taking control of land transactions further away from owners and 'into the hands of what was now practically a State agency'*".[188]

216. The Tauranga Moana Tribunal found it "*difficult to see how this Crown policy provided for rangatiratanga or gave effect to the principle of partnership*".[189]

217. Treaty jurisprudence has established that while the Crown may legitimately delegate powers and responsibilities to purpose-specific councils, land boards, and other entities, "[*it] may not avoid its Treaty obligations by unilaterally deciding that Crown functions will be carried out by others*".[190]

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[184] Waitangi Tribunal, *Tauranga Moana, 1886–2006 : Report on the Post-Raupatu Claims, Volume I* (2010), 133, 145.
[185] Waitangi Tribunal, *Te Mana Whatu Ahuru, Volume III* (2018), 26.
[186] Waitangi Tribunal, *Te Mana Whatu Ahuru, Volume III* (2018), 26.
[187] Waitangi Tribunal, *The Wairarapa ki Tararua Report, Volume II* (2010), 607-608.
[188] Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report, Volume II* (2013), 559.
[189] Waitangi Tribunal, *Tauranga Moana, 1886–2006 : Report on the Post-Raupatu Claims, Volume I* (2010), 146.
[190] Waitangi Tribunal, *The Wairarapa ki Tararua Report, Volume III* (2010), 1062.

218. Te Rohe Pōtae Report states the Tribunal's current position on the actions of the Crown during the period of 1913 and 1953. The Tribunal found that the Crown acted in "manner consistent with the Treaty of Waitangi" in a number of ways, including: [191]

    a. *"[C]ontinu[ing] to act in a manner contrary to article 2, which guaranteed to Māori the full, exclusive, and undisturbed possession of their lands, estates, and resources for as long as they wished to retain them. In other words, its actions, policies, legislation and land administration scheme under the land boards during this period were not consistent with the guarantee of tino rangatiratanga, Te Ōhākī Tapu agreements, and the various compromises over the years that Te Rohe Pōtae Māori were prepared to settle for."*

    b. By "*creat[ing] a regime that failed to observe the basic requirements of good governance. Therefore, we find that the Crown acted in a manner inconsistent with good governance and the principles of partnership and mutual benefit, and it failed in its duty to act honourably and in good faith."*

    c. *"[T]he Crown's actions were discriminatory and went against the plain meaning of article 3, in which the Crown promised Māori all the rights and privileges of British subjects. As Seddon had acknowledged in 1900, there was no way that Pākehā landowners would be expected to accept a system that was going to deprive them of the right to administer the leasehold or freehold of their land without them having a say in the matter. Yet, that was the regime which the Crown imposed on Māori: they could do nothing with their land (other than use it for their own basic subsistence) without their property rights being significantly limited by the system. Not only that, but when their land was alienated, the beneficial owners sometimes did not receive any of the proceeds from that alienation. Some of the money from the alienations may well have gone to projects that benefited Māori in general, but it had not been taken with the consent of those to whom it was rightfully due, nor did they have any say in how it was spent. Again, no such land administration regime was imposed on the Crown's Pākehā subjects. Thus, we find that the Crown also acted in a manner inconsistent with the principle of equity by failing to address this inconsistent and unfair treatment experienced by Māori landowners of Te Rohe Pōtae unfortunate enough to have land vested in their local land board*."

Submissions

219. Counsel submits that the findings and recommendations of the Te Rohe Pōtae inquiry are applicable to this Inquiry also.

220. In a similar to the experience to that of Te Rohe Potae Māori, the Crown failed to have due regard to the positive suggestions made by Taihape Māori to

[191] Waitangi Tribunal, *Te Mana Whatu Ahuru, Volume III* (2018), 82.

establish an effective land administration system that they desired and would be able to control/influence.

221. Rather, the Crown pursued a policy that elevated the demands of Pākehā settlers for more land over its Treaty obligations, and in doing so, the Crown adopted policies inconsistent with the principle of equity derived from Article 3 of Te Tiriti and failed to fulfil its duties to act honourably and in good faith, and to actively protect Māori land.

222. The Māori Trustee and land boards played an operative role in the Taihape inquiry district to get Māori land owners on side and effectively facilitate the alienation of Māori land through leasing, private purchases and Crown purchases.

223. The land boards and Māori Trustee were charged with protective oversight over Māori land according to the legislation.

224. However while being cross examined by claimant counsel about the extent of effective oversight and protection offered by the Crown of Taihape Māori land" Walzl indicated that the function of the Māori Trustee was limited to a 'low level' of administrative protection, in terms of ensuring that paperwork was not fraudulent, however he expressed doubt that this level of protective oversight was enough to fulfil the Crown's obligations of Article Two of Te Tiriti with regards to their duties to act equitably, in good faith and in the interests of owners.[192]

225. The evidence above shows that due to the conflicting statutory duties of the Māori Trustee and land boards, these entities did not operate effectively to uphold the Crown's duties of equity and active protect to provide effective oversight and protection of Taihape Māori land.

226. As the land boards held a dual role of both confirming leases and then acting as an agent in controlling and managing Māori Land this has adversely impacted Taihape Māori.

227. The evidence shows that land boards both held and retained profits from the land and acted as a gatekeeper of any profits being made of the land. The land boards made decisions on the operation of leases including the distribution of rental profits to pay survey liens, rates and improvements and withheld finances from Māori owners when they came to the land board seeking money at their most vulnerable times, when they needed a living allowance or funds for medical expenses.

228. Māori had to look elsewhere to obtain mortgages and loans from other funding sources due to land boards not distributing profits upon request. This compounded the situation for Taihape Māori who often could not keep up with loan payments, and often this lead to the land being brought before the Māori Land Court where charging orders were issued upon the certificate of title. When these were unable to be paid, the evidence shows that many land

[192] Wai 2180, #4.1.15, *Hearing Week Transcript,* 271.

blocks were then sold, often to leaseholders, to pay for all monies owing first, with little to no funds being distributed to the original Māori land owners.

229. Land boards and the Māori Trustee, entities had no fiduciary obligation to Taihape Māori land owners to uphold their best interests when managing Māori land.

230. The primary aim of these entities was to develop settlement and industry in the region, and although this may have a minor benefit on Māori land owners when looked at holistically the actions taken by these entities resulted in large-scale landlessness and poverty in the area.

231. By their very definition as detailed in the purpose of the legislation, these entities were positioned as government and industry facing entities, appointed by the Crown to carry out their objectives, and therefore the interests that were best served by these entities was the Crown to the detriment of Taihape Māori.

232. There is a lack of regard for adequate processes and consultation with Māori land owners, and no decision-making authority is afforded to them.

233. The Crown has acted inconsistently with their duties under Te Tiriti as a result Taihape Māori suffered prejudice in the form of:

    a. Not being consulted or engaged with about land transactions by the land boards and Māori Trustee;

    b. Removing their ability to make decisions over their lands, substituted by Crown agents such as the land boards and the Māori Trustee who did not operate in the best interests of Taihape Māori;

    c. Not being able to develop their lands or access funds realised earned through both leasing and by alienation of their lands, and

    d. Ultimately losing control of their lands by not being able to utilise them due to leasing, or even more devastatingly, through sale.

Issue 2: Māori Trustee Enforcement of Survey Fees and Rates

234. The Tribunal SOI asks:[193]

> *How did Trustees enforce survey fees and rates on the lands in the inquiry district? How did these survey fees and rates affect Taihape Māori?*

235. Although the evidence does not provide a comprehensive review of the enforcement of survey fees and rates on the lands in this inquiry district, and the effect on Taihape Māori, the evidence at hand provides an indication of how the Māori Trustee operated.

[193] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 29.

Rating Amendment Act 1910 and 1913 Amendment and the recovery of rates

236. Land boards and the Public Trustee played a key role in enforcing the recovery of survey fees and rates of Māori land in the Taihape District. Again this is a dual role – serving the local government authority rather than Māori.

237. Land boards or the Public Trustee were delegated authority under the Rating Amendment Act 1910 (1910 Act), to sell or lease Māori land for the recovery of rates. Ministerial approval was not required.[194]

238. Under the 1910 Act nominated Māori owners could be sued by the land board for the recovery of unpaid rates, and this judgement was '*deemed to be a judgement against all the owners or occupiers'*.[195]

239. Luiten explained the responsibilities of the Valuer General, Native Land Court, the land boards and the Public/Native Trustee on the maintenance of the valuation rolls: [196]

> *Although the Valuer-General was still primarily responsible for the compilation of such lists, additions and alterations requested in writing by the president of the Māori Land Board or the judge of the Native Land Court could be acted on without further inquiry. Rates demands were to be sent to the nominated owners or occupiers 'or any one of them', who could also be sued on behalf of all the owners (s.8). If judgements were not satisfied within a month, the debt could be charged against the land, to be registered with the District Land Registrar on the title (s.14).*
>
> *Local bodies could then apply to the Native Land Court to have the charge enforced: either by the appointment of the Māori Land Board or Public Trustee or any other person as a receiver of the rents and profits of subject land; or by vesting the affected land in the Māori Land Board or Public Trustee in trust to sell.*

240. The Aotea Māori Land Board administered consideration received as a result of outstanding rates, and rental costs. Any sums owing to the Native Trustee were paid on to the Native Trustee.

Taraketi 1F

241. The evidence demonstrates the operation of the Aotea Maori Land Board in distributing the proceeds from the sale of Māori land to pay for survey rates and liens on land blocks. The Native Trustee was a recipient of these funds, as were a number of other debtors.

242. For example, Taraketi 1F pt (70 acres) was sold to May Vater Marshall in 1927 for £1,236, but Hoeroa Marumaru did not receive any funds at all for the sale.

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[194] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 31.
[195] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 31 referring to Section 8(2) of the Rating Amendment Act 1910.
[196] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 31.

243. Instead, the consideration of £653 was paid 1,236 was paid in full to the Aotea Māori Land Board[197], with £653 of this paid to the Native Trustee of which £500 was for the reduction of a mortgage, and the balance being paid for interest to the 15th August 1927; £250-300 was paid to the Rangitikei County Council for rates; £150 was paid to Matene Limited for cash advanced to meet rents; and £100 for rents due in respect of Takahangapounamu 4D, 4G, and 4B[198]

Motukawa 2B116A

244. While administering land, the Aotea Māori Land Board sold and leased land without consultation with the owners who were struggling to pay rates on the block, as is shown in the example of Motukawa 2B116A (63 acres).[199]

245. This demonstrates the difficulties Taihape Māori faced to keep up with rates when leasing arrangements were changed and, particularly in the depression years, finding a lessee that would stay on the land.

246. It also demonstrates how apart from selling the land, leasing was often the only option available to stop rates from accumulating to overwhelming levels and that rates were still expected to be paid despite this.

247. It also shows the significance of the rating of Māori land and its impact on Māori land ownership and management, often forcing Māori land owners to turn to alienation in order to alleviate the rates debt.

Rating Act 1925

Section 104

248. Section 104 of the Rating Act 1925 provided that the Governor-General by Order in Council could exempt owners from paying rates on Māori land.

249. However there was no examples of this provision being used in the Inquiry District.

250. Nor were the land boards or Native Trustee active in seeking any exemptions in this rohe.

251. It appears to have been completely unutilised or relied on and shows that these organisations failed to act in the interests of the Māori land owners and protect Māori land ownership.

252. Instead, the land boards and Native Trustee was present to serve the lessees, the local authorities and interests of the government of ensuring Māori land was productive, no matter the cost to Taihape Māori.

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[197] Section 92, Native Land Amendment Act 1913.
[198] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 190-193.
[199] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 31.

Section 105

253. Section 105 of the Rating Act 1925 empowered the land boards and the Native Trustee to pay rates levied on Māori land vested in it out of the revenue of land held by him.[200]

254. The respective land board and Native Trustee was only liable for rates to the extent of net revenues actually received (with the remainder assuming to be paid by the original owners).[201] The land board/Native Trustee was able to apply revenue received to pay for rates levied in previous years,[202] however they were not bound to pay any rates on land which were more than four years in arrears.[203]

255. This shows that the land boards and Native Trustee had complete control over the rating process, and Māori had no input into this process. Māori were under increasing pressure to pay outstanding rates as the Native Trustee was not obliged to pay for outstanding rates over four years old, so Māori were compelled to find the outstanding rates amount from alternative income sources, or risk that their land be sold for unpaid rates.

Appointment of receivers

256. If rates due on Māori land vested in land boards or the Māori Trustee were not paid within 9 months, these became a debt due on the land block,[204] which enabled the claim for rates to be lodged as an application for a charging order through the Court. It was the land board or public entity that the land was vested in that appeared for the application in court, acting as agent for the Māori owners.[205]

257. If no objections were received, a charge was placed over the land in favour of the local authority for the cost of rates and recovery fee. [206]

258. Again, the control of this process is outside of the control of the owners as the Native Land Court is responsible for the administration of the land.

259. The charge against the land was able to be enforced by the appointment of a Receiver, being the land board or the Public Trustee.[207]

260. If the land had a charge on it, the owners were not allowed to have any dealings with the land without the permission of the court or the relevant local authority. [208]

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[200] Section 105(a), Rating Act 1925.
[201] Section 105(b), Rating Act 1925.
[202] Section 105(c), Rating Act 1925.
[203] Section 105(d), Rating Act 1925.
[204] Section 108(1), Rating Act 1925.
[205] Section 108(2), (3), Rating Act 1925.
[206] Section 108(5), Rating Act 1925.
[207] Section 109(1), Rating Act 1925; see also Section 31(3) of the Native Land Act 1909 states "(3.) A Māori Land Board or the Public Trustee may be appointed as a receiver under this section."
[208] Section 108(8), Rating Act 1925.

261. The land board held excessive control over the management of Māori lands by being charged with the statutory power to both administer land vested in it, and also act as the receiver of the property should rates be unable to be paid.

262. The land board had the power when acting as receiver to sell the "*whole or any part of the land so vested in him either by private contract or by public auction, and either in one or more lots, and subject to such terms and conditions as he shall think fit, including the condition that part of the consideration be left upon mortgage secured upon the said land; or the Native Trustee may, if he thinks it expedient, instead of selling the said land, raise money by way of mortgage upon it for the purpose of liquidating the charg*e."[209]

263. Any payment leftover from the sale was to be paid to the land board who had the power to decide who was entitled who the residual money was paid out to. [210]

264. This period saw the diminishing role of the land board, as the requirement for lands being vested in a local authority in lieu of rates to be confirmed by the land boards was eliminated.[211]

265. If the charges on land remained unpaid for one year after the appointment of the land board/Public/Native Trustee as receiver, the lands could then be vested in the Māori Trustee for the purposes of sale for the payment of that charge.[212]

Native Trustee as Receiver

266. The Native Trustee was appointed receiver under sections 108 and 109 of the 1925 Act for Taraketi 1G2, 1G3, 1G4, 1G5, and 1G6 in February 1947.[213]

267. The Māori Trustee was not discharged as receiver until 21st August 1970. Three of the five blocks remain in Māori ownership, the remaining two having been declared to be general land (although they may still remain in Māori ownership).[214]

Māori Land Board as Receiver

Ōwhāoko D5 No. 3

268. The Aotea Māori Land Board was appointed as receiver under the Rating Act 1925 for Ōwhāoko D5 No. 3 to receive rents to discharge rates debt owing on these blocks. Fisher explains:[215]

> *"Payment of long-standing rates arrears was often linked to an alienation of the land, which raised funds that enabled the debt to be paid. In other cases, the funds were taken until the rates debt was*

[209] Section 109(2), Rating Act 1925.
[210] Section 109(3), Rating Act 1925.
[211] Section 113(2), Rating Act 1925.
[212] Section 108 and 109(1), Rating Act 1925.
[213] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 194.
[214] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 194.
[215] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 81.

cleared so the owners received nothing until the rates arrears, and current rates, were cleared. In the case of Ōwhāoko D5 No. 3, owing £28.2.11, the owners could not pay so when their land was leased, the Aotea Māori Land Board was appointed as receiver under the Rating Act 1925 to receive their rents to discharge the rates debt."

Motukawa 1B

269. The Aotea Māori Land Board was appointed the receiver of Motukawa 1B on 26 October 1945 upon application of the Rangitikei County Council to recover outstanding rates charges as the block was encumbered with a survey lien, to the amount of £30 10s.[216]

Native Land Act 1931

Māori Land Board enforcing rates collection as receiver

270. Woodley states that the Aotea Māori Land Board actively assisted the Māori Land Court to receive rent under section 281 of the Native Land Act 1931 at the same time as the Court confirmed a lease, so that the land board could pay any outstanding rates or other 'encumbrances' from the initial rental monies.[217]

271. This is illustrated in numerous examples where the Court confirmed the lease and at the same time also ordered that the rent not be paid directly to the owners but straight to the land board.

272. It is clear that that the Native Land Court actively assisted with the collection of rates by ordering that the Aotea Māori Land Board receive the rent under section 281 of the Native Land Act 1931 at the same time as the Court confirmed a lease. This was so that the land board could pay any outstanding rates or other 'encumbrances' from the initial rental monies.[218]

273. Practically, this meant that funds were withheld from owners as they were prioritised for rates. For example, all of the first years rent for Awarua 4C15F1G and most of the second years rent for Awarua 4C15F1A2B went to the Rangitikei County Council (RCC) for rates. It was therefore apparent that rates and survey liens were considered first priority for any revenue produced from the land.[219]

274. This interplay between Crown agencies ensured that the repayment of rates and survey liens were prioritised over the return of funds to Māori landowners, taking away their ability to administer their own land. There seems to be no evidence in this Inquiry of those Crown agencies seeking rates remissions,

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[216] Wai 2180, #A008, E Subasic/B Stirling, *The Sub-district Block Study - Central Aspect,* 48;
[217] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 161.
[218] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 161.
[219] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 161.

more lenient rating standards, or rating waivers on behalf of Taihape Māori landowners.

Māori Land Board and Māori Trustee administering charging orders as receiver

275. The land boards and Māori Trustee continued to play a role in acting as Court-appointed receiver to administer charging orders made on Māori land for unpaid rates. This facilitated the alienation of land by way of lease or sale to leases, when the land boards and Māori Trustee used their powers to act on behalf of the Māori owners of the land.

276. Between 1926 and 1945, Woodley records that 353 charging orders were made in respect to around 115 blocks in the inquiry district, making up a total of 170,792 acres (a considerable area of this which was made up of the Owhaoko D7A and D7B blocks comprising over 42,000 acres).[220]

277. The first instance of the application for a Receivership Order was made in 1945 by the Rangitikei County Council, for rates recovery.[221] When these charging orders went unpaid, applications were made to the Māori Land Court for Receivership Orders, where either the Māori Trustee or land boards were appointed as receiver.[222]

278. The process of lodging receivership orders over the property provided an effective mechanism for non-owners to further extend the extent of property rights held over Mōkai Pātea Māori land. This aligned with the stated aim of the Rangitikei County Council to provide for a formal lease or sale over Māori land. [223]

279. For example, by the 'use' (or trespass) over all three larger blocks by neighbouring farmers with no formal leases; the subsequent lease and/or sale to these neighbouring farmers and these neighbouring farmers having to pay the outstanding rates prior to the formalisation of the lease and/or sale.[224]

280. In the first tranche of Receivership Order applications, in the period of 1945 to 1947, the Aotea Māori Land Board was appointed receiver in respect to 13 blocks.[225]

281. Owners of small, 'uneconomic' blocks were expected to pay rates and to have their land utilised in a way acceptable to the Rangitikei County Council, and

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[220] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 146. These blocks include: including Awarua 213J7; Awarua 2C13L; Awarua 4A3C4A1A; Motukawa 1B; Ōwhāoko D5, 2; Ōwhāoko D5, 3; Ōwhāoko D5, 3; Taraketi 1F part; Taraketi 1G1; Taraketi 1G2; Taraketi 1G3; and Taraketi 1G5.
[221] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 137
[222] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 137.
[223] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 232.
[224] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 146.
[225] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 146; 234. These blocks include: including Awarua 213J7; Awarua 2C13L; Awarua 4A3C4A1A; Motukawa 1B; Ōwhāoko D5, 2; Ōwhāoko D5, 3; Ōwhāoko D5, 3; Taraketi 1F part; Taraketi 1G1; Taraketi 1G2; Taraketi 1G3; and Taraketi 1G5.

where they were not, the land was assigned to the Māori Trustee to administer in a way where leases could be implemented.[226]

282. For example, the Māori Trustee was appointed to as receiver for the small Taraketi 1G blocks in 1957 after the owners found it difficult to lease the land and pay for rates. [227]

283. In 1957 and 1959, the Māori Trustee arranged for the lease of Taraketi 1G1, 1G2, 1G3, 1G4, 1G5 and 1G6 for ten years to JG Meads. [228]

284. In 1969, Taraketi 1G1, 1G3, 1G4, 1G6 together with Taraketi X were leased to James Bull until 1977 again with the intention of being farmed together. [229]

285. At the hearing where this later lease was confirmed, the Court noted that the six blocks by themselves were uneconomic units and the acceptance of the lease was conditional upon similar leases being granted in respect of 1G2 and 1G5. Receivership orders resulted in the land being leased by the Māori Trustee.[230]

Māori Purposes Act 1950

286. The Māori Purposes Act 1950 provided that the Māori Trustee could be appointed agent of unoccupied Māori land, which owed rates, or which contained noxious weeds to lease or sell the block in order to pay rates.

287. The Māori Land Court appointed the Māori Trustee as an agent with Ministerial consent under s 387 of the Māori Affairs Act 1953.[231]

288. There is no evidence that the 1950 Act was enforced in this Inquiry rohe.

Receivership orders - late 1950s and late 1960s

Taraketi 1G

289. The Aotea Māori Land Board was appointed receiver for Taraketi 1G by order of the Māori Land Court in 1948 to recuperate rates arrears, however rates arrears continued as leasing arrangements fell through.[232]

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[226] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 147.
[227] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 147.
[228] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 147.
[229] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 147.
[230] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 147.
[231] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 170.
[232] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 165.

290. Receivership Orders were made over these lands and the Māori Trustee was then appointed receiver in respect of Taraketi 1G in 1957, and this land was leased by the Māori Trustee in 1857 and 1959.[233]

291. The Māori Trustee was appointed as receiver under section 33 for the purpose of enforcing a charge against Awarua 2C13C2A and Awarua 2C13C2B. [234] An application was also made for Awarua 2C13D. There was a house on this land, and it was obvious that the owners were still resident there.

292. The Judge commented that: "*It would seem that a local body should not allow rate charging orders to mount up until the amount thereof becomes a substantial proportion of value of the land. Receivership in such cases could be a means of dispossessing and evicting the resident owners who are on the land. The Court will stand down this case to consider the position.*" [235]

293. Interestingly although 14 receivership orders were made in the late 1950s, no receivership orders and few charging orders were recorded in the Whanganui Minute Book again until 1968. [236]

294. The evidence suggests that this is because the Council was told 1958 that "*the Māori Trustee would not accept receivership orders unless all avenues regarding ownership and occupation had been explored and where there appears to be no other authority who would be in a better position than the Māori Trustee to obtain revenue from the land".* [237]

295. The Māori Trustee did not wish to have the role of 'rate collector' back in 1955. District Officers of the Department of Māori Affairs were advised that the Māori Trustee would no longer accept receivership to enforce rates charging orders.[238]

Awarua

296. On 8 February 1968 charging orders were made for a number of Awarua blocks[239] between 1 April 1966 to 31 March 1967.

297. By the August, the RCC had applied for receivership orders for all of the blocks. [240]

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[233] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 165.
[234] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 166.
[235] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 167.
[236] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 167.
[237] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 167.
[238] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 167.
[239] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 167. Refers to Awarua 3B2C1 Pt, Awarua 3B2C3B, Awarua 4C8A1, Awarua 4C8A2, Awarua 4C8B.
[240] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 167.

298. The minutes of the hearing, however, seem to indicate that a receivership was ordered for Awarua 4C8A1 only as the Māori Trustee already acted for the owners of the other blocks and it was said that he might be able to 'protect' the council for the charges.[241]

299. In respect to Awarua 4C8A1, 214 acres 3 roods 34 perches out of 429 acres 3 roods 28 perches had been leased to Ngahina Edmonstone Haddon and Mick Reupena Haddon for 21 years from 3 August 1958 at £131.5.0 per annum and 5% of CV after 10 years. The block was, however, declared European land in June 1968, just months after the charging orders and prior to the appointment of the Māori Trustee as receiver in respect to the block. It was a similar situation for Awarua 4C8B (429 acres 3 roods 27 perches) which had also been leased to Ngahina Edmonstone for 10 years from February 1958 and declared European land in June 1968. [242]

300. As both Awarua 4C8A1 and 4C8B were 'Europeanised' in June 1968 it is unclear what the impact the charging orders or involvement of the Māori Trustee had and whether or not another lessee was found and/or the blocks sold. [243]

301. In respect to Awarua 4C8A2 (85 acres 3 roods 38 perches), the memorial schedule for the block shows that the block had also been leased to Ngahina Edmonstone Haddon and Mick Reupena Haddon for 21 years from 22 March 1948 for £30 per annum. Several months after the August hearing, the lease was 're-entered' by the Māori Trustee. The block was then leased to GB McLeod for 21 years from 11 April 1969 at $100 per annum.

302. Ten years later, in 1979, the land was sold to the lessee GB McLeod pursuant to a right of purchase clause in the lease in 1979 for $6950.38. It would seem then that even in the later part of the nineteenth century, the pattern of a sale following a lease preceded by a charging order for rates continued to occur.[244]

Submissions

303. 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 actions of land boards and the Māori Trustee as addressed earlier in this submission.[245]

304. A key role of the Māori Trustee was to operate as a receiver and enforcer of survey fees and rates that were imposed by the Native/Māori Land Court on Taihape Māori land.

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[241] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 167.
[242] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 167.
[243] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 167.
[244] Wai 2180, #A037, S Woodley, Māori Land Rating and Landlocked Blocks Report 1870-2015, 169.
[245] Refer to (36).

305. The evidence shows the detailed operations of the interplay between the Native/Māori Land Court, the Māori Trustee and local authorities to place various charges, such as survey liens and rates, on Māori land that were difficult for Taihape Māori to repay, and then act as an enforcer once charging orders had been imposed by the Māori Land Court to sell land block and use the consideration to pay back any monies owing, and sometimes not even returning the residual consideration to Māori land owners.

306. The land board and Māori Trustee did not serve to protect Taihape Māori interests or protect their remaining interests in Māori land, but to the contrary, this system operated to the detriment of Taihape Māori by placing land owners placed in a compromised position by the Crown, as it was the Crown process that required land to be surveyed and burdened with liens and rates automatically, which ultimately led to alienation once these debts were unable to be repaid.

307. When these actions are reviewed in light of the previous Tribunal findings in other inquiries, the evidence shows that the Crown has failed Taihape Māori by establishing a land administration system that instead of enabling Taihape Māori to effectively control and manage their lands and resources, took away their ability for decision-making and control over the management of their lands and resources.

Issue 3: The extent of land interests held by the Māori/Native Trustee, and the intent or effect of decisions made by the Māori/Native Trustee to advance Crown interests to the detriment of Māori

308. The Tribunal SOI asks:[246]

> *What interests, if any, did the Trustees have in the lands in the inquiry district? Did the decisions made by the Māori Trustee have the intent or effect of advancing Crown interests over, and to the detriment of, Taihape Māori interests in the inquiry district?*

309. The evidence shows that the Māori Trustee held interests in land blocks in the Inquiry district. These interests were acquired once land blocks were vested into the Māori Trustee. Subsequent decisions made by the Māori Trustee had both the intent and effect of advancing Crown interests, and that these were to the detriment of Taihape Māori interests.

Otamakapua 1H3

310. In 1911 the owner of Otamakapua 1H3 (494 acres) approached the Aotea Māori Land Board to sell this block to two Māori, however the land board declined to confirm the alienation on the grounds that it was not in the interests of the owner, said to be of 'weak ' intellect and unable to manage his affairs. And yet Otamakapua 1H3 was acquired by the Crown, just over 12 months later, in March 1912 for its October 1911 government capital valuation of

[246] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 29.

£2,655, the owners receiving £2,293 and the lessee (Ewen McGregor) the balance. The block was proclaimed Crown land in March 1915.[247]

Otamakapua 1J2

311. The Aotea Māori Land Board confirmed the alienation of the Otamakapua 1J2 block (848) to the Crown in 1912. This block was valued at £5,174, of which £4,606 was attributed to the owners and the balance to the lessee, Ewen McGregor. Interestingly an application for a survey of the 1J partitions was made in error and liens imposed because the Crown had in fact set out to acquire the whole of Otamakapua 1J and had arranged purchase on the basis that surveys would be unnecessary. In this instance the liens were removed and not, as was the usual practice, deducted from the purchase price.[248]

Otamakapua 1K

312. The owners of Otamakapua 1K, with an eye to purchasing 1,100 acres at Brandon Hall offered the block to the lessee, W.S. Marshall in a form of exchange.

313. In April 1907 the three owners concluded an agreement under which Part Otamakapua 1K of 309 acres was sold to Kathleen Miles subject to the removal of restrictions on alienability. On the same day the three owners concluded an agreement with J.H. Miles for the sale and purchase of Part Otamakapua 1K of 600 acres. The entire 909-acre block had a December 1906 government capital valuation of £5,052, all of which was allocated to the owners although the block was leased to and occupied by W.S. Marshall.

314. The matter came before the Aotea Māori Land Board in May 1907. The owners of Otamakapua 1K had entered into a contract to purchase 760 acres of the Brandon Hall Estate (near Bulls) for £4,200. The land board was inclined not to recommend the removal of restrictions, citing an inadequate price and its belief that the proposed transactions 'do not appear to be in the interests of the Natives.' The land board decided to issue a recommendation for a sale of the block, and that the proceeds be used to purchase the Brandon Hall Estate, and that the estate may be mortgaged "*for a sum not exceeding £1,200 to be obtained from a government lending department and that the interest payments be met by assignment of lessors' interests in Taraketi block. Any surplus of rentals from latter block in event of advance being got from G[overnment] A[dvances to] S[ettlers] to be paid to beneficiaries, but if obtained from Pub[lic] Trustee on short dated mortgage then surplus rents to be used in reduction of mortgage principal*"[249]

315. Any lease or mortgage of the land still required the approval of the Aotea Māori Land Board. In 1910 the three executed a Deed of Revocation of Trust, the Brandon Hall property was returned to their control, and they purchased for £4,025 a 386-acre section of the 6,500-acre Raumai Estate (owned by the Keiller brothers).

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[247] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 123.
[248] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 123.
[249] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 131-134.

Ohingaiti 6

316. As the role of land boards consisted of confirming leases, an example of this operating in the Inquiry district through the Aotea Māori Land Board. At times the Aotea Māori Land Board took a long time to confirm leases, to the frustration of the Māori owners, as was the case with Ohingaiti 6 which was informally leased in 1919 to James Coleman, and then finally confirmed as a lease by the Aotea Māori Land Board in July 1921.[250]

Pouwhakarua 1E

317. The Aotea Māori Land Board was involved in facilitating sale of Pouwhakarua 1E to the Crown, at least to the extent of actively encouraging owners to sell their interests. By August 1917 the Crown had acquired one quarter of the block. [251]

318. The provision of compensation for public works takings will be addressed in the *Generic Submissions on Public Works*. However it is important to draw reference to the role that the Aotea Māori Land Board played in this process.

319. If no compensation was paid for a public works taking, the owners were entitled to bring the matter before the Native Land Court. If it was determined that the owners were eligible for compensation, the land boards played a role in collecting compensation and distributing this to the owners.

320. In the case of the taking of a portion of Pouwhakarua 1E to provide access to the Mangaweka Rifle Range, no compensation was paid, so this was brought before the Native Land Court. The land was valued in November 1923 at £35 and the Court awarded compensation of £25. That sum was paid to the Aotea Māori Land Board for distribution to the owners, including £6 5s to the Crown as the owner of one of the four shares.

Taraketi 1E

321. Taraketi 1E was partitioned in 1907. The 145-acre Taraketi 1E1 was leased to J.W. Marshall for 30 years from 1st January 1907. In August 1918 Warena Hunia gifted the land to Warena Hunia, Rawea Mete Kingi, and Maihi Rangipo Mete Kingi, a gift confirmed by the Aotea Māori Land Board on the 3rd September 1918.[252]

322. The block was partitioned in May 1929 into 1E1A (25 acres) and 1E1B (120 acres). 1E1B was sold and the monies were provided to the Aotea Māori Land Board for distribution. After deductions had been made for the balance of the mortgage owing and for succession duties totalling almost £93 and survey liens of £25, the net sum paid for the land was just over £1,476.[253]

323. The Aotea Māori Land Board suggested that it should retain the remainder of the purchase monies with a view to acquiring another farm to be worked by

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[250] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 173.
[251] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 178.
[252] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 190-193.
[253] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 190-193.

members of the owner's family. One owner rejected this, making it clear that she was only prepared to sell her interest provided the land board retained her net share under section 92 of the Native Land Amendment Act 1913.[254]

Ōwhāoko D2[255]

324. The questionable purchase of Ōwhāoko D2 provides an insight on how the Māori Trustee actively facilitated the alienation of Māori land in favour of a Crown purchase.

325. Although the full detail of this alienation is provided in the *Generic Submissions on Twentieth Century Land Alienation*, it is important to highlight the role that the Māori Trustee played in this transaction.

326. Having first been appointed as Trustee because Robert Karaitiana was deemed to be "improvident" by the Māori Land Court, when in fact the Māori Trustee knew that Karaitiana was serving a prison sentence and was not due for release until 1973, the Māori Trustee facilitated the Crown's purchase of Robert's interests in Ōwhāoko D2, by suggesting to the Commissioner of Crown Lands that it contact the Māori Trustee whenever it decided it wanted to purchase his shares,[256] despite clear indications that Karaitiana preferred that the lands were leased rather than sold to the Crown.

327. Unfortunately Karaitiana passed away before the alienation was completed, so the Crown then approached Karaitiana's wife, of whom he was in the process of divorcing at the time of his passing, to purchase the shares, disregarding any possibility that there may have been whanaunga or descendants of Robert Karaitiana who wanted to succeed to his interests, or descendants.[257]

328. As stated by Stirling and Fisher: "It is certainly open to question whether this was an appropriate outcome in Treaty terms, much less whether the Crown's actions in the matter are morally defensible."[258]

329. It is interesting to note that an official from Lands & Survey who was dealing with the Ōwhāoko blocks, E Astwood, wrote that Māori Affairs District Officer K. Morrill was well aware of the Commissioner's interest, and actively – if not improperly, in light of government policy – fostered this interest in purchasing the land, without regard for the interests of Robert Karaitiana or his descendants.[259]

330. Although the Māori Trustee ceased acting on behalf of Karaitiana upon his death, this set the fate of the Ōwhāoko D2 block, which was eventually was sold to the Crown in November 1973.[260]

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[254] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 190-193.
[255] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 101-103.
[256] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 101-103.
[257] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 101-103.
[258] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 103.
[259] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 101-103.
[260] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 101-103.

331. The Aotea Māori Land Board also played a key role in this transaction. The Director-General of Lands required the approval of the land board to have the purchase of individual interests completed, as this practice was allowed accordance with section 257 of the Māori Affairs Act 1953.[261]

332. However the section was due to be repealed in by the Māori Purposes 1973,[262] so in order to proceed with the sale it had to be done under urgency.

333. The Commissioner actively fostered the falsification of the government's purchase documents by backdating them so that the agreement date was prior to the enactment of the Māori Purposes Act 1973, and the Aotea Māori Land Board confirmed the purchase. [263]

334. As a result, the final purchase deed falsely stated that the agreement had been signed on 8 October 1973, when it had in fact been signed after the Māori Purposes (No. 2) Act 1973 had become law in November 1973. The Commissioner openly lied when he wrote to the Māori Land Court Registrar in May 1974 to finalise the acquisition.[264]

Ōwhāoko C7

335. In 1968 Mana Paratene Te Koro offered to sell Ōwhāoko C7 to the Crown, and based on the assumption that she was the only owner, the Commissioner of Crown Lands made an application to vest the block in the Māori Trustee so that the entire block could be sold to the Crown for $1,500. However at the Māori Land Court hearing it became apparent that there were other owners in the block, and that those other owners opposed the alienation. This demonstrates the role that the Māori Trustee played in actively assisting the Crown to alienate Māori land without consent of the owners.[265]

336. At a subsequent Māori Land Court hearing where the Crown presented its case for purchasing Ōwhāoko C7, Judge Cull formally rejected the attempt by Forest Service and Lands & Survey as it was evident that a large group of owners and trustees wanted to keep the land in Māori ownership, and made some pertinent points on the safeguards available for Māori Land, and the Māori Trustee's involvement in land transactions:[266]

> *What is the use of introducing safeguards under Part XXIII [of the Māori Affairs Act 1953] fixing statutory quorums for meetings of owners to ensure at least a minimum representation, if at the same time it is competent for any person at all, in no way connected with the land, to apply to the Court as in the instant application, and have an order of the Court made authorising the Trustee to sell a block of land specifically to a particular person – in this case, the Crown. Not only does it result in giving such person a pre-emptive right, but it could well result in the*

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[261] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 101-103.
[262] Specifically referring to Māori Purposes (No. 2) Act 1973, section 7.
[263] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 101-103.
[264] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 106.
[265] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 108.
[266] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 109, citing Napier NLC MB No. 106: 104-109.

land being alienated without a majority of the owners, or their representatives, knowing anything about it. To say there are deficiencies in the nature of Māori land title is one thing, but to provide a machinery so simple for Māori land to be alienated without the owners being fully aware of what is being done to their lands, is certainly another. It is difficult to apply the word "trusteeship" to such situation. The Court, therefore, is drawn conclusively to the view that the owners have not as far as practicable been given a reasonable opportunity to express an opinion as to the person or persons to be appointed trustees.

Role of the Māori Trustee in land alienation

337. The Māori Trustee played a role in executing the transfer of lands upon sale. However in some instances, it can be shown that the Māori Trustee failed to actively protect Māori land by conducting land transfer when the circumstances of the transfer were questionable.

338. For example, in 1971 a meeting of owners considered a resolution to sell Ōruamatua Kaimanawa 1X block to Nicholas Koreneff. The meeting was attended by Koreneff and other owners. Koroneff's group outvoted the other owners and a resolution was passed to sell the land to Koroneff. The other owners opposed the sale, signing a memorial of dissent.

339. Nevertheless, the Chief Judge confirmed the resolution, and the Māori Trustee executed the transfer. However the evidence shows that there were Māori Trustee did not question the evidence provided in support of a transfer, which assisted in alienating land despite owners' wishes, as had occurred in the transfer of the Ōruamatua-Kaimanawa 1X block. [267]

Submissions

340. From findings from previous Tribunal inquiries, we are able to identify the duties that the Crown had to Taihape Māori in respect of the actions land boards and the Māori Trustee.

341. 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 actions of land boards and the Māori Trustee.

342. In response, the evidence shows that the Māori Trustee had numerous land blocks vested in it on behalf of the owners. The decisions that were made by the Māori Trustee had the effect of advancing Crown interests over Taihape Māori land by effectively rendering Taihape Māori landless during the period that lands were vested, and did not provide Taihape Māori with economic opportunities that were promised under the Act.

343. Even more disturbing is the conduct undertaken by the Māori Trustee during te period that lands were vested in it, not consulting Taihape Māori on decisions relating to the land, and acting in a way that was thought to be not in the best interests of the original landowners, but the Crown. These

[267] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 169.

decisions made by the Māori Trustee inevitably had the effect advancing Crown interests over, and to the detriment of, Taihape Māori interests in the inquiry district by encouraging the vesting of land in the Crown, and alienating Taihape Māori from their lands.

344. These are breaches the Crown's duty to establish a land administration scheme that enabled Taihape Māori to control and manage their lands.

345. Taihape Māori were not effectively consulted with during this process of land administration, and the decisions made did not ensure consideration of protecting the land base of Taihape Māori.

Issue 4: Consultation with Taihape Māori when land was vested in the Native Trustee/Māori Trustee

346. The Tribunal SOI asks: [268]

> *What forms of consultation, if any, did the Crown undertake when vesting Taihape Māori land interests in the Māori Trustee? If there was consultation, was it adequate?*

347. The Tribunal has been tasked to inquire into the forms of consultation, if any, that the Crown undertook when vesting Taihape Māori land interests in the Māori Trustee, and whether that consultation was inadequate.[269]

348. The evidence shows that there has not been effective consultation in transactions undertaken by the Māori Trustee. The legislative powers that enable the vesting of land are void of any statutory power to compel the Native/Māori to consult with owners on the vesting of land.

No consultation

Vesting of Otumore Block

349. Although the technical evidence does not expand upon the circumstances of every vesting of land in the Māori Trustee, the example of the vesting of Otumore Block is an example that demonstrates that Māori land owners were not consistently consulted by when lands were vested in the Māori Trustee.

350. Otumore Block is located on the summit of the Ruahine Ranges and contains the upper watersheds of the Oroua and Pohangina Rivers. From an early stage, the Crown had identified this block as "land of no use to the owners," [270] however the evidence shows how the Māori Land Court actively pursued the purchase of this block for the purpose of selling this to the Forest Service.

The owners of Otumore Block were not consulted or even advised before the Māori Land Court vested the land in the Māori Trustee for sale to the Forest Service in 1962.

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[268] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 29.
[269] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 29.
[270] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 234.

351. The Māori Trustee was empowered to:[271]

a. negotiate with and sell the land to the Forest Service at the highest price that could be agreed upon;

b. discharge all the expenses and charges incurred by the Māori Trustee;

c. negotiate a settlement with the Department of Lands and Survey in respect of all survey charges;

d. pay any balance of the purchase price to the Māori Education Foundation.

352. The Director-General of Forests that recommended that the Crown purchase Otumore in 1962 provided the price were "cheap," ie, not exceeding £750. The land, he suggested, "can be of no possible use to the owners." The amount of £750 was the amount of the original survey lien and interest charged on the block when was that valuation??.[272]

353. It was then claimed that a price of £750 (the amount of the survey lien and interest) would impart to the land 'a false value' in an area where the Forest Service was contemplating making other purchases. [273]

354. After negotiating a price with the Māori Trustee, Wellington's Commissioner of Crown Lands proposed that the Crown should offer £425 for the block and that half of the total survey lien should be written off, noting that it was 'not unusual to write off the whole of survey liens as an incentive for the owners to sell in Crown/Māori dealings.' A new valuation for the purpose of section 260 of the Māori Affairs Act 1953 was not sought, rather the 1959 government capital valuation of £395 was taken as the basis for estimating the price.[274]

355. In October 1962 the Department of Lands and Survey approached the Department of Māori Affairs with a view to purchasing Otumore, and it was sold to the Crown for £425 while of the total lien £354 was remitted. The balance of £71 was credited to the Māori Education Foundation. In May 1963 Otumore was declared to be Crown land and was set apart as permanent state forest. [275]

356. Although the Māori Land Court did investigate the block's ownership it does not appear that owners, certainly all owners, were consulted before the order vesting the block in the Māori Trustee was issued. [276]

357. In about 1973 the Ahuriri Tribal Executive, many of whom were owners in the block, began investigations into possibly selling the block. However in the

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[271] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 240.
[272] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 240.
[273] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 241.
[274] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 241.
[275] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 241.
[276] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 241.

process of doing so, they found out that it had already been vested in the Māori Trustee[277] without their knowledge.

358. The Ahuriri Tribal Executive pressed this issue of the vesting of land in the Māori Trustee without consultation with the owners with the Department of Māori Affairs, urging the Minister to ensure that the Trustee make "far more thorough efforts to find owners or succeeding owners of land that may become subject to vesting orders."

359. The Executive was informed that the order for Otumore had been made under section 438 of the Māori Affairs Act 1953, but that that section had been amended by the Māori Affairs Amendment Act 1967.

360. As a result, 'there is now a somewhat more specific requirement as to the type of notification to be given to the owners concerning any proposal to vest land in a trustee under the provisions of this section.' The Department of Māori Affairs disclaimed any knowledge of any discussions involving the sale of the block during 1961 or 1962 as the Executive had claimed.[278]

Submissions

361. It is clear from the evidence available that although the Crown ocassionally made some attempts to identify and contact the owners of land blocks, it did not proactively consult with those owners about the vesting of their lands in the Māori Trustee.

362. In the example provided, the Otumore block was vested in the Māori Trustee without the knowledge of the Māori owners, so much so that upon hearing of the vesting, the owners collectively raised this as an issue with the Department of Māori Affairs.

363. The evidence shows that the owners of the block were not consulted or even advised by the Crown throughout the process of this transaction.

364. By not engaging with all Taihape owners of Māori land in dealings with the Māori Land Board and Māori Trustee as shown in the evidence, despite an obligation to do so under Te Tiriti, is a gross breach of the Crown's duty of consultation enshrined in Article 2 of Te Tiriti and reflected in the findings of previous Tribunals.

[277] As per an amendment to section 438, Māori Affairs Act 1953.
[278] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 241.

Issue 5: How Consolidation and Development Schemes were decided upon and implemented – their objectives, success, opportunity for Māori to raise concerns and management of Māori land interests vested in the Trustee

365. The Tribunal SOI asks: [279]

> *How were consolidation and development schemes decided upon and implemented in the Taihape inquiry district? For those schemes that were created:*
>
> *a. What were their objectives?*
>
> *b. How successful were they?*
>
> *c. To what extent, if any, was there opportunity for Taihape Māori to raise concerns about potential consolidation and development schemes, and the management of their interests vested in the Māori Trustee?*

366. The Tribunal has been tasked with inquiring into how consolidation and development schemes were decided upon and implemented in the Taihape inquiry district, including looking at their objectives, how successful they were, and to what extent, if any, was there opportunity for Taihape Māori to raise concerns about potential consolidation and development schemes, and the management of their interests vested in the Māori Trustee.[280]

No Consolidation Schemes

367. Fisher notes that a feature of the Taihape inquiry district was that there were no title consolidation schemes instigated from the 1920s onwards.[281]

368. After reviewing the available evidence, Subasic and Stirling stated that there was "no significant title activity in terms of incorporations, consolidations, and aggregations or amalgamations of titles of the sort familiar from other inquiry districts." [282]

369. Also, that "t*here is very little indication of the Māori land development schemes that emerged in many parts of the country in the 1930s. No multi-unit development scheme seems to have been instituted in the district at all, and, to date, just one instance of land being placed under the land development provisions of the Māori Affairs Act 1953 (Part XXIV) has been located. Rather than a development scheme as such, this was simply a single farmer being financially assisted as an individual development unit, being on a part of Awarua and Motukawa blocks from 1959 …That is, rather than being a 'development scheme' in the usual sense, this was simply a loan to develop an individual farm, which entailed placing the land under development provisions."* [283]

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[279] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 29.
[280] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 29.
[281] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 8.
[282] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect*, 10.
[283] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect*, 10.

370. The evidence shows from the titles to the main Māori lands remaining by the 1930s – notably Motukawa 2 and Awarua – that titles were, to a very large extent, subdivided down to individual owners, or very small groups of owners. As such, there was little scope for title 'improvement'. [284]

Overview

371. During the twentieth century, the most significant state effort to encourage Māori farming was the large-scale land development schemes that were established from around 1930. Promoted by Native Minister Apirana Ngata, the Native Land Amendment and Native Land Claims Adjustment Act 1929 initially provided for the creation of these schemes.[285]

372. No evidence has been located to indicate that Ngata visited the district for the purpose of encouraging Mōkai Pātea Māori to put forward lands for inclusion in a development scheme as was the case in some other districts.[286]

The Taihape Development Scheme

373. Cleaver provides evidence that although there we no large-scale schemes in the district, land development funds were advanced for the small-scale 'Taihape Development Scheme. [287]

374. The funds that were loaned as part of this scheme are as follows: [288]

    a. Otamakapua 1F2A (211 acres) - loan from the Board of Native Affairs of £1,000 in May 1938 paid to Tihoni Kereopa, repaid by 1953[289]

    b. Awarua 4C8A1 (430 acres) – included in the scheme April 1947 and released by May 1952 - loan from Board of Native Affairs to owners Ngahina Edmonstone Haddon and Mick Reupene Haddon.[290]

    c. Motukawa 2B17A (775 acres) – included in the scheme from 1959 and released by 1984 – notably when the land was included within the scheme, the Department of Māori Affairs' land development assistance was administered under Part XXIV of the Māori Affairs Act 1953. It was solely owned by Hira Wharawhara Bennett when it became part of the scheme loan approved of £15,600 for land development purposes.

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[284] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect*, 10.
[285] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 254.
[286] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 255.
[287] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 256.
[288] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District*, 256.
[289] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 255.
[290] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 256.

375. The Department of Māori Affairs declined to assist the owners of Taraketi 2J and 2L2 with a loan for development support. At the end of 1951, Haddon was informed that the Department did not consider the property an economically viable proposition. The land therefore was not brought under the Department's control and supervision for development purposes. In 1958, Taraketi 2J and 2L2 were leased to Taami Potaka.[291]

376. The important consideration is that the owners applied for funding and were not compelled to do so by the Māori Trustee.

Title developments and statutory management entities

377. Despite the petitions of Mōkai Pātea Rangatira to retain consolidated ownership of their Māori land holdings in the late 19th century, the evidence shows that by the beginning of the twentieth century land blocks particularly in the centre and south of the inquiry district were either solely owned or held by a small group of whanau owners.[292] As multiple ownership increased due to succession, by the mid-twentieth century, some owners looked to address the difficulties arising from multiple ownership through transferring and consolidating their land interests.[293]

378. Cleaver provides the following example:

> *[F]ollowing the death in 1946 of Tauiti Potaka, who solely owned Awarua 1A West A (654 acres) and Taraketi 2G, 2K, 2L4, and 2O (a total area of about 311 acres). In respect of the Taraketi subdivisions…Tauiti Potaka's sons Reneti Tapa Potaka and Tenga Potaka succeeded equally to the land. However, the brothers appear to have subsequently taken steps to consolidate their interests. As a result, Reneti Tapa Potaka became the sole owner of Taraketi 2G and 2H (which were formed into one title), while Tenga Potaka became the sole owners of Taraketi 2K, 2L4 and 2M (which were also formed into one title).*

379. A further example of the operation of land administration in respect of Motukawa 2B16A (673-acres) saw the succession of Ngahuia Hiha's sole interest to nieces Riini Henare, Rangi Tutunui, and Hira Wharawhara. Subsequently:

> *In the early 1950s, Rangi Tutunui sold her one-third share to Hira Wharawhara, who organised a mortgage with the Māori Trustee to raise the capital. In about 1960, Hira Wharawhara transferred her two-third share to Riini Henare and was required to repay the mortgage.948 However, by this time, through purchasing the shares of other owners, Hira Wharawhara had secured sole ownership of Motukawa 2B17A*

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[291] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 256.
[292] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 263.
[293] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 263.

(775 acres), which was included within the Taihape Development Scheme in 1959.[294]

Tribunal Findings

380. The findings of Tribunals are given to provide a context for evaluating the Crown's actions for Treaty compliance in this Inquiry.

381. The Urewera Tribunal found that the Crown, as part of its obligations under the Treaty, should create systems that ensure that both "Māori and settlers would both benefit and prosper". [295] When applied the Māori Trustee and Māori Land Boards in twentieth century land development, these entities should operate in a way that would ensure that Māori were offered the opportunity to create successful land developments to ensure their economic prosperity.

Submissions

382. The evidence demonstrates that there were no consolidation and development schemes were implemented in the Taihape Region.

383. The evidence shows that there was no opportunity for Taihape Māori to raise concerns about potential consolidation and development schemes.

384. In the matter of raising concerns about the management of their interests vested in the Māori Trustee, the previous example of the Ahuriri Tribal Authority demonstrates that there was no opportunity to raise concerns directly with the Native Trustee on issues of concern about the management of their interests vested in the Māori Trustee, however there was the avenue of laying a complaint to the Minister of the Māori Affairs Department. In this instance however, the complaint did not lead to the return of their lands, however it enabled the modification of the notification process so that there was more of an onus on the Native Trustee to notify owners of any vesting.

385. Those same findings of the Te Rohe Pōtae report can also be applied in this Inquiry to establish that the Crown has breached its obligations under Te Tiriti to ensure the economic prosperity of Taihape Māori through effective management and resourcing Taihape Māori to exercise their right to development.

[294] Wai 2180, #A048, P Cleaver, *Māori and Economic Development in the Taihape Inquiry District,* 264.
[295] Waitangi Tribunal, *Te Urewera, Volume II* (2017), 986.

Issue 6: How the actions taken by the Māori Trustee affected Taihape Māori, and the extent of relief provided by the Crown

386. The Tribunal SOI asks: [296]

> *How were Taihape Māori affected by the actions of the Māori Trustee, such as in land sales or perpetual leases or other actions that formally, or effectively, alienated land from Taihape Māori without their consent or consultation? In such instances, did the Crown provide any relief? If so, was it sufficient?*

The impact of leasing

387. The actions taken by the Māori Trustee affected Taihape Māori to a great extent as their land blocks were effectively alienated firstly by lease, private purchasing, Crown purchasing in the time that they were entrusted in the Māori Trustee.

388. The Crown, through the Māori Trustee, did not provide adequate relief for the taking of lands from Taihape Māori.

389. Walzl provides evidence about how leasing under the 1905 Act impacted Mōkai Pātea Māori. He writes:

> *Leasing was the predominant form of land use by Mokai Patea Māori. It was favourable because it enabled an immediate source of income and enabled access to mortgage funds. However rentals were low and often locked in for decades despite land values rising rapidly. Rental income was uneven because of varying interests in land and did not provide a living income for most. While the land was developed by another, it was the lessee who gained any benefits from the post-1900 boom era operating in Taihape district. If large, consolidated and managed estates with guaranteed access to development funding from government were in operation, the farming of the estates would generate their own significant income. Although leasing may still have been opted for in some leasing would not be resorted to as a first option especially as owners in the 1890s were expressing the wish to farm their own land.*[297]

390. The granting of perpetual leases effectively alienated Maori land that was vested in land boards on behalf of the Māori owners. When questioned by Dr Monty Soutar, Heather Bassett explains:[298]

> *Q: And your sort of overview of this, would I be right, in that you would go as far as to say that the perpetual leases are a form of confiscation by the pen?*
>
> *A. I do think that if we're looking at rangatiratanga or just – that it has, was completely confiscated that for the owners. I mean once it's*

[296] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 29.
[297] Wai 2180, #A046, T Walzl, *Twentieth Century Overview*, 622.
[298] Hearing Week Five Transcript (4.1.12) at p 381.

perpetually leased, it's effectively gone, really. To execute the transfers, rather than having to have deeds signed for each of the – I think it was about 90 sections.

But the township was vested in the Aotea District Māori Land Board for sale and there were two sale options held which were not terribly successful. About 5 over half the township was sold. The remaining land was then kind of left for about 20 years, there is no record that the Māori Land Board did anything with it actually. And then leased – and eventually that lessee, when his leased expired, was able to purchase almost all the remaining land through a meeting of owners."

The impact of selling

391. In his report Walzl observes the impact of the 1909 Act on the alienation of Mōkai Pātea land:

> *Under the 1909 Act, Mōkai Pātea owners sold a quarter of their remaining land much of which was better quality.*
>
> *Available evidence indicates that motivations to sell were to meet living costs, to address debt and credit advances, to acquired domestic assets (house, furniture), to acquire business assets (houses for rent) or to raise farming development funds.*
>
> *A consolidated and managed estate with guaranteed access to development funding, would not have to sell land as the only way to access capital to improve the land. As for the domestic needs of owners, some, such as houses, could be met by the incorporation under the heading of land improvements as they would add assets to the land. Other domestic requirements, such as living costs or acquiring assets off the land, would be the concern and responsibility of the individual owner shareholder. Whatever occurred in that respect, it would not impact on the overarching estate. It would be hoped, however, that commercially viable managed and financed estates of thousands of acres, operating during the post-1900 boom time, would provide enough dividends to shareholders to have met their immediate domestic requirements.* [299]

392. Under cross examination, Leo Watson questioned Fisher and Stirling on whether they had "seen any indication that the Crown being aware of the impact that the Māori Land Boards was having on facilitating alienation of land took any steps to remedy that, to strengthen Māori Land Boards in terms of their powers to have first and foremost the interests of Māori land owners at heart," and whether there was "any evidence of a consideration by the Crown of how to improve that system." [300]

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[299] Wai 2180, #A046, T Walzl, *Twentieth Century Overview*, 622.
[300] Wai 2180, #4.1.10, *Hearing Week Transcript*, 393-394.

393. Fisher and Stirling replied that they had not:

> *"I did not, no is the short answer. I mean actually quite the opposite. Just to add to that, the legislation under which the Stout-Ngata Inquiry was set up provided for some land to be set aside for alienation, whether it be by lease or sale and some of it had to be by sale that was a statutory requirement, but it also enabled them to set aside land under a Part I of the 1907 Native Land… Settlement Act to be inalienable sort of reserves; papa kāinga style reserves or land for Māori occupation. So, that is why the Stout-Ngata recommended land to be set aside under that. But then of course the 1909 Act swept all that aside and removed all restrictions and that's when the Land Board streamlined alienation processes really kicked in because there was no longer any protection for Māori land, beyond a few weak statutory tests around landlessness and ford in the transaction."*[301]

Limited consultation by Māori Trustee – Awarua o Hinemanu

394. At the time of the 1992 title award of Awarua o Hinemanu, the Māori Trustee was trustee for the land, but the awarding of title provided the owners with "an opportunity to decide among themselves as to whether he should continue or alternative trustees should be appointed and *on any other matters which might affect the land* (emphasis added) including the choice of name."[302]

Despite this statement by the Court in June 1992, as early as August 1992 the Māori Trustee entered into a one-year lease with the Crown (the Department of Conservation) under which the owners would receive $4,000 per annum (including GST and the Trustee's commission), without consulting the owners, and in February 1994, the Māori Trustee confirmed a renewal of the lease on the same terms.[303]

395. This means that for almost a century, from 1894 until 1987, the Crown had assumed ownership of Awarua o Hinemanu and made use of the land – most recently as part of the Ruahine Forest Park – but the $4,000 per annum paid since 1992 is the only payment it has made to the land's owners for this use of their land.[304]

Appointment of the Native Trustee despite owner opposition - Motukawa 2B16B3 and 2B16B2C

396. In August 1932, the Native Trustee Walter Rawson applied to the Native Land Court to be appointed as an agent, in his name, for and on behalf of the owners of Motukawa 2B16B3 and 2B16B2C on the grounds that the land was "unleased and unoccupied and was consequently not receiving proper care and attention and its general condition was noticeably deteriorating", that "rating liens, amounting to approximately £112 were registered against the land and that it was desirable that provisions should be made for the satisfaction of the outstanding charges and any future assessments levied on

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[301] Wai 2180, #4.1.10, *Hearing Week Transcript*, 393-394.
[302] Wai 2180, #A008, E Subasic/B Stirling, *The Sub-district Block Study - Central Aspect,* 195.
[303] Wai 2180, #A008, E Subasic/B Stirling, *The Sub-district Block Study - Central Aspect,* 195.
[304] Wai 2180, #A008, E Subasic/B Stirling, *The Sub-district Block Study - Central Aspect,* 195.

the land.", that the of a number of owners were not known and that they could not readily be ascertained, and that "it was in the interests of the owners that the land be made revenue producing and the possibility of liability for non-compliance with the "Noxious Weeds Act 1928" be averted".[305]

397. However despite this, some of the Māori owners showed opposition, because they were in fact living on the land and did not want their tenancy disturbed. [306]

398. In response, the Native Trustee office proposed that these owners could remain in occupation of a certain area of the block, while the application would cover the balance of the land which was unoccupied, and by 1934, the Native Trustee's application was granted. [307]

Submissions

399. Taihape Māori were adversely affected by the actions of the Māori Trustee. It has been demonstrated in the evidence that land sales, perpetual leases and various other methods employed by the Māori Trustee acted to effectively and formally alienate land from Taihape Māori without consent or consultation.

400. No relief was provided to Māori by the Crown when lands were alienated without consent or consultation, in breach of the Crown's obligation to ensure that

Issue 7: The Māori Trustee acting on behalf of minors, the prejudice arising from this, and the Crown's responsibility to protect from this potential prejudice

401. The Tribunal SOI asks: [308]

> *To what extent did the Māori Trustee act on behalf of Taihape Māori minors?*
>
> *a. Did this prejudice Taihape Māori overall? If so, what responsibility, if any, did the Crown have, through the mechanisms of the Māori Trustee, to protect Taihape Māori from potential prejudice in such cases?*

Native Land Act 1909 provisions

402. The Native Land Court was authorised to appoint the Māori Trustee to act on behalf of minors in relation to the administration of their lands.[309]

403. These provisions in the 1909 Act were also mirrored in the Native Land Act 1931.

404. Specifically, the court was able to appoint either the "Public Trustee or any other person or persons to be the trustee or trustees of the person so under

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[305] Wai 2180, #A008, E Subasic/B Stirling, *The Sub-district Block Study - Central Aspect*, 60.
[306] Wai 2180, #A008, E Subasic/B Stirling, *The Sub-district Block Study - Central Aspect*, 60.
[307] Wai 2180, #A008, E Subasic/B Stirling, *The Sub-district Block Study - Central Aspect*, 60.
[308] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 29.
[309] Section 172(1) Native Land Act 1909.

disability in respect of the property or any part thereof to which he is so entitled".[310]

405. In order to appoint a person other than the Public Trustee, the Court could only do so if it was advisable to be in the interests of the person under disability.

406. There were no protection mechanisms provided in the 1909 to ensure that the appointed Trustee acted in the best interests of Taihape Māori minors.

Operation of Trustees in the Inquiry district

407. The Māori Trustee does not appear to have acted on behalf of Taihape Māori minors, however the evidence of Walzl shows that the Māori Trustee was appointed as agent on behalf of minors who held interests in Māori land.

408. The evidence shows a number of instances when shares in Māori land held by minors were vested in the Public Trustee, or managed by the Native Trustee. While vested in the Public and Native Trustee, these land blocks were leased or sold without consent of the shareholders.

409. Although the evidence on this is not comprehensive, Subasic and Stirling have provided an overview of those that took place in the Awarua 2C block, which is detailed in the following table:[311]

Block	**Type**	**Size (a)**	**Date**	**Action**
2C12D	Vesting	9	n/a	Vested in Public Trustee (to administer for minor); no further details.
2C13C	Vesting & Lease	10	1905	Interest of H. Hakopa (minor) in Public Trustee to enable lease. Note total rates charging orders of £146 10s. by 1952
2C13H	Purchase	0.5	1929	Purchased by Native Trustee from Tukino Hakopa for £70, on behalf of minor Paora Hekenui, as an investment for Paora (on whose behalf Native Trustee held £900)
2C14	Purchase	1,404	1909	Purchased by Matthew Morrison from Public Trustee, acting for minors Kathleen Hirani Blake and Ralph Wellwood (in 1904 and 1909, restrictions on alienation removed for lease to Morrison at £298 per annum)
2C15C	Purchase	181	1921	Interests of 7 owners (141 acres) purchased by Shepherd 1921 for £2,512, and interests of 2 remaining owners (minors) (40 acres) leased at 14s./acre until purchased in 1927 for £600

[310] Section 172(2) Native Land Act 1909.
[311] Wai 2180, #A008, E Subasic/B Stirling, *The Sub-district Block Study - Central Aspect*, 117-127.

410. This agency relationship is even more jarring because of how the Public Trustee made decisions on behalf of vulnerable minors with no Māori input, that consequently cannot be deeded to be in their best interests as the land was alienated.

Submissions

411. The Te Urewera Report stressed the importance of Māori having suitable institutions through which they could exercise local self-government, which included "the ability to fully manage and control their own resources as a community".[312]

412. The Central North Island Tribunal found that such institutions were not provided, despite the Crown's initial promises of delivering meaningful self-government. Instead, the Crown's Māori land policy and legislation in the first half of the twentieth century diminished the ability of Māori to play an active role in managing their lands and provided opportunities for forced alienations.[313]

413. Although the Māori Trustee did not act on behalf of Taihape Māori minors, this authority was given to the Public Trustee. The Crown, through the mechanisms of the Public Trustee, had a responsibility to protect Taihape Māori from potential prejudice, but instead, the decisions made by the Public Trustee have prejudiced Taihape Māori.

Issue 8: The extent of Māori control when land was vested in the Māori Land Board trusts

414. The Tribunal SOI asks: [314]

> *What steps, if any, were taken by the Crown to ensure Taihape Māori retained control over their land when it was vested in Māori Land Board trusts?*

Lands Vested in the Māori Land Board from 1900 to 1909

415. The Whanganui Land Tribunal found that while initially well-intentioned in the context of that district, where it seems the lands were voluntarily vested, the Crown's scheme 'could have been better thought out and executed' in a number of ways.[315]

416. In terms of leasing the land, the Tribunal noted that the 'Achilles heel' of the scheme was how it compensated lessees for improvements and, as a result, how the land being returned to Māori was jeopardised. It also identified that

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[312] Waitangi Tribunal, *Te Urewera, Volume II* (2017), 999-1001; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume I* (2008), 203.
[313] Waitangi Tribunal, He Maunga Rongo, vol 2, 681–682.
[314] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 29.
[315] Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report, Volume II* (2015), 960. vol 2, p 960.

where it proved difficult to lease the land, the Government promoted perpetual leases so that the leases would be more attractive to prospective lessees.[316]

Consultation when land was vested in the Māori Land Board trusts

417. The Te Urewera Report stressed the importance of Māori having suitable institutions through which they could exercise local self-government, which included "the ability to fully manage and control their own resources as a community".[317]

418. The Central North Island Tribunal found that such institutions were not provided, despite the Crown's initial promises of delivering meaningful self-government. Instead, the Crown's Māori land policy and legislation in the first half of the twentieth century diminished the ability of Māori to play an active role in managing their lands and provided opportunities for forced alienations.

419. The most recent comprehensive statement on lands vested in land boards is found in the Te Rohe Pōtae Report. The Tribunal found: [318]

> *The Tribunal has established that the Crown 'cannot divest itself of its Treaty obligations by conferring an inconsistent jurisdiction on others'. Thus, where the Crown delegated power to the land boards, it had to do so in terms which ensured that its duty to actively protect Māori lands was fulfilled. Even where Māori land boards were not acting as part of the Crown or as its agent, the Crown had to ensure that the laws and policies they operated under, and their administration of those laws and policies, were in all ways consistent with the Crown's Treaty obligations.*
>
> *Under the Native Land Settlement Act 1907, and continued under the 1909 Native Land Act, land was compulsorily vested without owners' consent, for purposes that served settler interests, in accordance with a Crown policy that unilaterally required settlement and farming of Māori land, unfairly blamed Māori landowners where settlement was not occurring, and took rights from small Māori landowners that were not being taken from small Pākehā landowners.*
>
> *The Crown was not only responsible for the relevant legislation, policies, practices, acts, and omissions (including, for example, board staffing and resourcing) and the actions of the Native Minister, but it was also responsible for actively monitoring board activities and taking remedial action where necessary and where such activities clearly were contrary to Te Rohe Pōtae Māori rights under the Treaty. Thus, where the land boards in the administration of their lands were acting independently from the Crown, the latter still remained responsible for monitoring their performance to ensure that its Treaty obligations were being fulfilled. It was therefore responsible not only for adverse*

[316] Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report, Volume II* (2015), 960. vol 2, p 960.
[317] Waitangi Tribunal, *Te Urewera, Volume II* (2017), 999-1001; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, Volume I* (2008), 203.
[318] Waitangi Tribunal, *Te Mana Whatu Ahuru, Volume III* (2018), 174-175.

outcomes arising from its own actions, but also from the actions of the land boards.

Under these circumstances, it is difficult to see how the Crown can claim that it had only 'limited . . . responsibility' for the administration of vested lands, and that it cannot be held responsible for any outcomes or consequences it did not explicitly intend or foresee.

420. On this issue, the Te Rohe Pōtae Tribunal found that:[319]

We find that by failing to establish the vested lands scheme in a manner that was workable and compatible with owners' interests, and by failing to adequately oversee the board's administration of vested lands and address any such failings, the Crown acted in a manner inconsistent with the principles of the Treaty of Waitangi, namely the principles of partnership, reciprocity, and mutual benefit, the guarantee of Te Rohe Pōtae Māori tino rangatiratanga over their lands, and the Crown's duty of active protection of that authority over those lands – all derived from article 2 of the Treaty of Waitangi.

We also find that the Crown acted inconsistently with its duty of active protection by failing to adequately oversee the board's administration of vested lands and, in particular, by failing to take reasonable steps to ensure that the board subdivided vested lands in accordance with legal titles; that the board offered all vested land for settlement (either by sale or lease) without undue delay; that the board collected income and distributed payments in a timely manner ; that the board set aside sufficient funds to pay for improvements to vested lands; that the board set aside a sinking fund for improvements ; that the board invested owners' funds prudently; and that the board did not sell land without the owners' consent.

Furthermore, by failing to make statutory provision for re-vesting as of right when owners wanted it, and by ignoring or refusing requests for re-vesting, the Crown acted inconsistently with the principle of good governance derived from article 1, the guarantee of tino rangatiratanga in article 2, and the principle of equity in article 3.

421. Counsel submits that those same findings of the Rohe Potae Inquiry can be applied in this Inquiry. The extent of control that remained for Māori over their lands is visible through an analysis of Māori land legislation. In reference to the above statements of the role and functions of the Māori Trustee and land boards, these actions limited the extent of control for Māori over their lands.

422. In the Ōwhāoko D6 No. 1 block, Tutunui Rora had to beg the Aotea Māori Land Board for money for basic living expenses, and often these requests were not granted. This shows the ultimate control and inordinate power held by land boards in this era, with little sympathy shown by those agencies.

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[319] Waitangi Tribunal, *Te Mana Whatu Ahuru, Volume III* (2018), 178.

423. Despite subsequent legislation being revised and updated, these issues continued to occur and the Crown had no remedy or response to change.

424. The Crown acknowledged in the Te Rohe Pōtae Inquiry that: "*it would have breached the Treaty of Waitangi and its principles if any Māori land in the Te Rohe Pōtae inquiry district was vested in a District Māori Land Board without the consent of its owners.*"[320]

425. The evidence shows that the Crown did not take active steps to ensure that Taihape Māori retained control over their land when it was vested in land board trusts.

426. By enabling the vesting of land, the Crown deprived Taihape Māori land owners from the full experience of enjoying and managing their lands.

[320] Waitangi Tribunal, *Te Mana Whatu Ahuru, Volume III* (2018), 87.

LEVEL TWO

Thematic Overview

427. Taihape Māori in the 19th century apsired to maintain control and dominion over their broad land base, that had already been subject to large-scale alienations due to the operation of the Native Land Court regime earlier that century. This gave Taihape Māori an inpetus to petition the Crown to implement a land management regime to consolidate their land interests and most importantly create mechanisms that would enable Rangatira to maintain control of the whenua in their rohe.

428. Instead of upholding the principles of partnership under Te Tiriti to work with Taihape Māori to establish a framework which would continue to enable them to exercise tino rangatiratanga, the Crown instead brought in subsequent legislative framework and practices in the early twentieth century that essentially enabled the Crown and the private economy to usurp control over Taihape Lands under the guise of land improvements, land utilisation and settlement, and in the process burdened Taihape Māori with excessive liens, loans and mortgages over their land which were in some instances not possible to service, which eventually led to further loss of lands within their rohe.

429. These land administration mechanisms created by legislation included:

    a. The creation of land boards to control and administer Māori land; and

    b. The establishment of the Māori Trustee to Lands act on behalf of Taihape Māori, often without the knowledge of those who owned the land.

430. The actions taken by these statutory entities during the course of the twentieth century had a significant effect in the rohe, leading to a 40% reduction of remaining land holdings between 1910 and 1930, most significantly through private purchases enabled under the 1909 Act (27 per cent), through thegifting of lands for soldier settlement post-World War I (7.5 per cent) and through Crown purchasing (5.9 per cent).[321]

431. The evidence shows numerous instances when the actions of the Māori Trustee and land boards were from Treaty-compliant acting to the detriment of Taihape Māori. Transactions were undertaken without consultation with, or against the wishes of, the Māori land owners. The land board did not play an effective enforcement function in collecting of lease income, leaving Māori responsible for payment of rates which became a burden on the land. The Crown in one instance can be seen falsifying documentation in order to enable land sales. [322] The land boards acted as both the confirmer of land alienations and also the reciever in the instance that funds needed to be claimed back

[321] Wai 2180, #A046, T Walzl, *Twentieth Century Overview,* 75.
[322] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect,* 101-103.

from Māori landowners. The Māori Trustee acted on behalf of land owners but was also appointed as receiver over lands.

Northern blocks

432. The entirety of the northern sub-district of the inquiry was caught up in the colonial project of land alienation through the twentieth century land administration procedures that were put in place by the Crown. These blocks include Rangipo Waiu, Ōruamatua-Kaimanawa, Mangaohane, Timahanga, Kaweka, Ranga a Tawhao and Ōwhāoko.

433. Fisher and Stirling conclude on the Northern Aspect blocks that:

> *[W]ithin a short time of coming into contact with the mechanisms of the colonial project, all of the land in the district was caught up in the land-alienating processes of colonialism, and today little land in the district is left in Māori ownership.*
>
> *The protracted resolution of the title to Ōwhāoko prevented permanent alienation of the land for a time, and the early lease was maintained until the death of the lessee Studholme early twentieth century. Partitioning from the 1890s onwards soon led to title fragmentation, followed by numerous Crown and private purchases of Ōwhāoko subdivisions. The Crown's final purchase – of Ōwhāoko D2 in 1973 – was a questionable transaction in which Crown officials subverted the law in pursuit of purchase. However, the most significant single transaction involving Ōwhāoko was the gifting of more than 35,000 acres to the Crown during World War I…The land was belatedly returned to its Māori donors in the 1970s, only after years of lobbying and what was, for them, a fortuitous change of government in 1972.*
>
> *Leasing continued in some Ōruamatua–Kaimanawa subdivisions after the title was finally awarded in 1894. Subsequently, in the early twentieth century, much of the block was partitioned and then privately purchased, section by section, under the auspices of the local Māori Land Board.* [323]
>
> *Informal leasing existed on the Timahanga block before its belated title investigation in 1894, and continued formally until the Crown purchased five out of six subdivisions from 1911–1915.* [324]
>
> *Ōwhāoko is the block least affected by permanent alienations. Only one small subdivision was privately purchased in 1901, and two small Crown purchases took place in the 1910s. Some of the land was eventually leased by the Crown to private interests. Other alienations of Ōwhāoko occurred in the 1960s and early 1970s, when a number of private purchases were made. In addition, in 1973 a Crown purchase was finalised under very questionable circumstances.* [325]

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[323] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 5.
[324] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 5.
[325] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 5.

Moving into the twentieth century, the local Māori Land Board used its streamlined processes to facilitate private purchasing. [326]

Central blocks

434. The land blocks in the central sub-region include Motukawa, Te Kapua, Awarua, Te Koau and Awarua o Hinemanu.

435. The evidence demonstrates that the streamlined bureaucratic procedures of land boards enabled rapid transfer of almost half of the remaining Māori land in the central blocks of Motukawa 2 and Awarua, during which almost 40,000 acres was purchased under the Māori Trustee and Māori Land Board's oversight. The Crown offered no protection from further alienation, the statutory boards served to carry out the Crown's underlying policy and intentions.[327]

Southern blocks

436. Lands in the southern sub-region of the inquiry include Waitapu, Mangoira, Otamakapua, Otairi, Ohaumoko, Taraketi, Rangatira and Waitapu.

437. During the early twentieth century, the Hearn concludes that:

> *[T]he Crown was primarily responsible for the transfer of land out of Māori and into settler ownership. In effecting that transfer, the Crown employed a wide range of tactics intended establish and maintain its position as the chief purchaser and to allow it to control the pace, timing, and, as far as possible, the cost of purchase. Once the basis for subsistence and identity, and memory and attachment, land was rendered a transferable commodity and a source of production.*[328]
>
> *While the evidence presented in the block narratives indicates that with respect to Paraekaretu, Otamakapua, and Otairi the owners, or more accurately, some of them, offered the lands to the Crown, nevertheless the Crown employed methods – notably pre-title advances, selective payments, and notifications – to draw all owners into the sale and purchase process and to exercise a large measure of control over the prices which the original owners received.*[329]

438. In summary, the legislation worked as an effective mechanism in combination with the practices and procedures of the land boards and Māori Trustee to reduce Mōkai Pātea land base, in breach of the Treaty duties of active protection, partnership and consultation.

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[326] Wai 2180, #A006, M Fisher/B Stirling, *The Sub-district Block Study - Northern Aspect*, 5.
[327] Wai 2180, #A8, E Subasic and B Stirling, *The Sub-district Block Study – Central Aspect*, 199.
[328] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 282.
[329] Wai 2180, #A007, TJ Hearn, *The Sub-district Block Study – Southern Aspect*, 1 Nov 12, 282.

Findings and Recommendations

439. Tribunal findings on this issue should include both the breach of Article 2 guarantees by the Crown in failing to allow Māori to retain their land, under their control, unless and until they wished to dispose of it, and breach of Article 3 guarantees in consistently treating Māori property rights as subservient to those of Pakeha settlers.

440. We submit that the evidence that has been produced shows that the Tribunal is able to make findings that the Crown was in breach of Te Tiriti by:

    a. Moving from a system of elected councils to government appointed land boards in 1905.

    b. Setting terms of reference or the Native Land Commission without any consultation with Māori, and that treated Māori property rights as subservient to those of Pakeha settlers.

    c. Passing the Native Land Settlement Act 1907 without any meaningful consultation (and actually avoiding discussion when leaders sought it).

    d. Including compulsory elements in that legislation that effectively nationalised lands which came within Part I (later Part XIV Native Land Act 1909).

    e. Relating that compulsion to the retrospective recommendations of the Native Land Commission, when Māori had participated without understanding that the recommendations would be binding and there was no method of appeal. Relating that compulsion to the prospective recommendations of the Native Land Commission, again without any method of appeal.

    f. Continuing discussions with Taihape Māori about lands for sale and lease under the shadow of compulsion of the 1907 Act.

    g. Promising Taihape Māori would be assisted by the Crown to farm and develop lands which they identified for retention, then entirely failing to provide that assistance, and actively preferring Pakeha settlers on Māori land even to the extent of ousting existing Māori farming enterprises.

    h. Loading lands identified by the Native Land Commission for sale with development costs, as provided in the 1907 Act.

    i. Rejecting efforts by owners to have lands revested in them to deal with them in their own terms.

    j. Utilising sale proceeds to fund Pakeha settlers, without lawful authority and without security.

    k. Utilising the pressure tactic of individual sales to purchase most of the vested lands ultimately alienated to the Crown.

    l. Leasing lands on terms unfavourable to owners, failing to enforce breaches of covenants and rent arrears.

m. Failing to fund land boards to properly manage the vested lands.

n. Compulsorily vesting land in Māori Land Councils and land boards whether owners wished to do so or not, and so depriving owners of all the usual rights of management of their own property.

o. Compulsorily vesting land in land boards for the purpose of sale under s 11 of the Native Lands Administration Act 1907, essentially confiscating Māori land.

p. Discriminating against Māori as land owned by non-Māori was not compulsorily vested in statutory boards in this manner.

q. Failing to consult adequately with Māori with respect to the formation of vested lands policy or with respect to particular vestings.

r. Failing to provide fair and satisfactory mechanisms for returning vested lands to owners.

s. Failing to adequately resource land boards or provide them skilled staff who were able to manage lands properly in the interests of owners.

t. Applying unfair and discriminatory policies with respect to vesting of lands by vesting land almost entirely under Part XIV of the Native Lands Act 1909 (Part XIV land being available for sale).

u. By purchasing large areas of land from the land boards outside the usual purchasing requirements of the Native Lands Act 1909 and its amendments.

v. By the land boards failing to act in the utmost good faith as a trustee for owners, and instead giving a priority to the interests of the lessees.

w. By enacting legislation which allowed land boards to reduce rents owed by lessees, and reducing rents, failing to collect rents, and failing to payor delaying the payment of rent to owners.

x. Through the land boards advancing loan money to lessees on mortgage, this being a failure of the duties owed by it to the Māori owners and which led also to increasing indebtedness while land was vested in the land boards.

y. By the inaction of land boards failing to create a sinking fund which could be used to pay compensation for improvements when leases expired.

z. By enacting legislation which retreated from the position that leases were to be only for 50 years, and which entitled lessees to further leases in the event of the Māori Trustee not paying compensation for improvement, thus breaching earlier guarantees and promises made to owners when the land was originally vested.

aa. By the Māori Trustee providing inadequate finance for compensation for improvements which resulted in leased vested blocks being sold to lessees.

bb. By prejudicially delaying the return of unleased vested blocks to owners.

441. On the basis of this evidence and these findings, we seek the following recommendations :

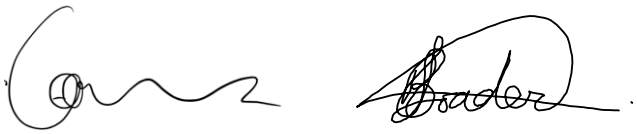
a. That the Crown undertake, in consultation with claimants and Taihape Maori, a full assessment of the current status of Māori land holdings under the control of the Māori Trustee;

b. The Tribunal adopts the recommendations of the Rohe Pōtae Tribunal to establish a possible legislative mechanism that will enable Taihape iwi and hapū to administer their lands, either alongside the Māori Land Court and Te Tumu Paeroa (the Māori Trustee) or as separate entities, with full consultation with Taihape Māori claimants;

c. That the Crown urgently take responsibility for healing relationships between the Crown and Taihape Māori as a result of the actions of its historic Crown entities to alleviate the ongoing impact and grievances held by those communities, inclusive of a full acknowledgment that the Crown has breached its obligations under Te Tiriti which has resulted in aforementioned prejudice; and

d. That the Crown consider the full extent of the prejudice suffered when determining financial compensation or redress to be offered to Taihape Māori claimants.

Dated at Auckland this 21st day of September 2020



Cameron Hockly, Brooke Loader