

**IN THE WAITANGI TRIBUNAL
TAIHAPE – RANGITĪKEI KI RANGIPŌ DISTRICT INQUIRY****WAI 2180****IN THE MATTER** of the Treaty of Waitangi Act 1975**AND****IN THE MATTER** of the Taihape: Rangitīkei ki Rangipō inquiry (Wai 2180)

**GENERIC CLAIMANT CLOSING SUBMISSIONS ON ECONOMIC
DEVELOPMENT AND CAPABILITY****Dated: this 30th day of September 2020**

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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

- 1.1 The experience of Taihape Māori in relation to their economic development and capability has been characterised by economic marginalisation, missed opportunities and inequity.
- 1.2 The failure by the Crown to actively protect Taihape Māori and to ensure that they retained sufficient adequate land, resources and the capability to effectively participate in the economy are key issues in this inquiry.
- 1.3 As at 1840, Taihape Māori exercised and maintained tino rangatiratanga over their whenua and resources in accordance with tikanga and were well-equipped to provide for their present and future generations.
- 1.4 However, through the acts and omissions of the Crown, including the newly introduced Native Land Court system and aggressive Crown purchasing, the rules had changed. The ability of Taihape Māori to sustain their people in the ways previously done were no longer feasible.
- 1.5 In short, it was a case of adapt or face the consequences.
- 1.6 Taihape Māori sought to adapt. They sought to engage in the new settler economy, and identified to the Crown the various difficulties that they were facing and proposed solutions to address these.
- 1.7 However, in the face of a largely unwilling and uncooperative Te Tiriti partner, they were left out in the cold.
- 1.8 The ability of Taihape Māori to exercise their tino rangatiratanga has been fettered substantially by the manner of the Crown's exercise of kāwanatanga, leaving Taihape Māori little to no opportunity to chart their own paths or to provide meaningful input into matters affecting their economic development and capability.
- 1.9 Today, very little land is retained as Māori land. By far the majority of this is landlocked and more likely to be of a lower land use capability than European land. Taihape Māori have higher rates of unemployment and

significantly lower mean incomes compared to their non-Māori counterparts.

- 1.10 Much of the responsibility for this position Taihape Māori find themselves in lies directly with the Crown, whose acts and omissions in the Taihape–Rangitīkei ki Rangipō inquiry district (“**inquiry district**”) have contributed substantially to the issues faced.

PRELIMINARY MATTERS

- 1.11 These generic closing submissions regarding Taihape Māori economic development and capability are filed for the benefit of all claimants within the inquiry district (“**closing submissions**”). For the avoidance of doubt, this does not prevent claimants from taking their own positions in respect of any of these issues.
- 1.12 Following the outline of Crown duties under the Treaty of Waitangi / Te Tiriti o Waitangi (referred to hereafter as “**Te Tiriti**”), the relevant Crown position and evidence, and technical evidence, these closing submissions are structured in the levels set out in directions of his honour Judge L R Harvey.¹
- 1.13 The three levels are as follows:
- (a) detailed answers to the Tribunal Statement of Issues on Taihape Māori economic development and capability (“**TSOI**”);²
 - (b) an overview of particular themes or issues in this inquiry regarding Taihape Māori economic development and capability; and
 - (c) a presentation summary. The presentation summary will be filed as a separate document in due course.

¹ Memorandum-Directions of Judge L R Harvey, dated 1 November 2019 (Wai 2180, #2.6.85) at [15(e)].

² Taihape: Rangitīkei ki Rangipō (Wai 2180) District Inquiry Tribunal Statement of Issues, dated December 2016 (Wai 2180, #1.4.3).

CROWN DUTIES

2. Tino rangatiratanga and kāwanatanga

- 2.1 The overarching interplay between tino rangatiratanga and kāwanatanga pervades all aspects of Crown-Taihape Māori engagement. This includes the nature and extent of the Crown's role and responsibilities when it comes to Taihape Māori economic development and capability.
- 2.2 Counsel refer to the generic claimant closing submissions regarding tino rangatiratanga and constitutional claims for detailed submissions in this regard.
- 2.3 For the purpose of these closing submissions, counsel highlight the Tribunal's conclusions in *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims*:³

Kāwanatanga was an authority to govern and make laws for the explicit purpose of controlling settlers and preventing the harm that might otherwise arise to Māori from uncontrolled settlement or foreign intervention. The guarantee of tino rangatiratanga was for the existing autonomy and authority of Māori communities in relation to their lands, resources, and all other valued things to continue, whilst Māori also enjoyed the same rights as British subjects. ...

To summarise, the Treaty recognised two distinct spheres of authority, each with distinct functions. While each party had a duty to acknowledge the other's sphere of interest, and while the Treaty granted the Crown kāwanatanga powers, it also specifically provided for Māori to retain their tino rangatiratanga, and therefore their rights of autonomy and self-determination. As the Central North Island Tribunal put it, the Treaty provided for 'two authorities, two systems of law, and two overlapping spheres of population and interest'. From this are derived the principles of kāwanatanga and rangatiratanga, including Māori autonomy or self-government

(Emphasis added)

- 2.4 The interplay of tino rangatiratanga and kāwanatanga envisaged in Te Tiriti must, among other things, provide for the ability of Māori to:
- (a) Exercise decision-making power over their affairs.⁴

³ Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* (Wai 898, 2018) at 181-182.

⁴ Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 30-33: "the Treaty guarantee of tino rangatiratanga affords Māori, through their iwi, hapū or other organisations of their choice, the right to decision-making power over their affairs".

- (b) Choose how to organise themselves, and how or through what organisations they express their tino rangatiratanga. This means the Crown needs to be willing to work through the structures Māori prefer, whether through iwi, hapū and whānau, or any other organisation.⁵

2.5 It is the Crown's responsibility to maintain the equilibrium in the Te Tiriti partnership through its protection of rangatiratanga, because the power imbalance between Te Tiriti partners lies in the Crown's favour.⁶

2.6 Counsel now turn to more specific application of Te Tiriti principles relevant to Taihape Māori economic development and capability.

3. Taihape Māori economic development and capability

3.1 The Crown's Te Tiriti duties in relation to Taihape Māori economic development and capability include the following:

- (a) A duty to actively protect Taihape Māori to ensure that they retained sufficient lands and resources to benefit from settlement. This included:

- (i) ensuring that Māori retain sufficient lands and a resource base for their economic development and to take advantage of future economic opportunities;⁷
- (ii) facilitating or assisting Taihape Māori to participate in those opportunities and to overcome barriers that the Crown had created;⁸ and
- (iii) providing Taihape Māori with active assistance to development opportunities to deliver on the Te Tiriti bargain of mutual prosperity from settlement.⁹

- (b) A duty to protect and ensure the right of Taihape Māori to develop their properties and other taonga (both tangible and

⁵ Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 27-30, Waitangi Tribunal *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wai 2336, 2013) at 64-65.

⁶ Waitangi Tribunal *Tū Mai te Rangī: Report on the Crown and Disproportionate Reoffending Rates* (Wai 2540, 2017) at 22.

⁷ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 891 and 914.

⁸ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 894 and 914.

⁹ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 896 and 914.

intangible), including things such as water which could not necessarily be owned under British law, but not restricted to customary uses or technology known at 1840.¹⁰

Active protection and retention of land and resources

3.2 The Crown has a duty to actively protect Taihape Māori. This includes a duty *“to protect Māori property interests to the fullest extent reasonably practicable”*¹¹ and to ensure that Māori retain sufficient lands to participate in economic development.¹²

3.3 Under Te Tiriti, the Crown had a role *“in ensuring that Māori did not divest themselves of the land that belonged to them, their tribe, and indeed their descendants”*.¹³ As observed by the Tribunal in *He Whiritaunoka: The Whanganui Land Report*.¹⁴

We find that the Crown breached its duty of active protection whenever it engaged in conduct that was unfair or exploitative, or which resulted in Māori selling land that they could ill afford – culturally or economically – to lose.

3.4 The Tribunal in that report is clear that the Crown has a duty *“to monitor how much land remained in Māori ownership, so that it could properly address the question of how much land they would need to keep so as to participate in the economic activities that were anticipated.”*¹⁵

3.5 Furthermore, the Tribunal states that *“the ongoing assessments would respond to the location of the land, available opportunities, and population figures. They would also depend on the quality of the land.”*¹⁶

3.6 The Tribunal emphasised the importance of this duty stating that:¹⁷

Because land transfers were permanent and could not be undone if assessments were wrong, the Crown needed to err on the side

¹⁰ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008), vol. 3, at 896-899 and 914.

¹¹ Waitangi Tribunal *The Mohaka River Report 1992* (Wai 119, 1992) at 75 and 77.

¹² Waitangi Tribunal *He Whiritaunoka: The Whanganui Land Report* (Wai 903, 2015), vol 3, at 1465.

¹³ Waitangi Tribunal *He Whiritaunoka: The Whanganui Land Report* (Wai 903, 2015), vol 1, at 367.

¹⁴ Waitangi Tribunal *He Whiritaunoka: The Whanganui Land Report* (Wai 903, 2015), vol 1, at 368.

¹⁵ Waitangi Tribunal *He Whiritaunoka: The Whanganui Land Report* (Wai 903, 2015), vol 1, at 369.

¹⁶ Waitangi Tribunal *He Whiritaunoka: The Whanganui Land Report* (Wai 903, 2015), vol 1, at 369.

¹⁷ Waitangi Tribunal *He Whiritaunoka: The Whanganui Land Report* (Wai 903, 2015), vol 1, at 369.

of caution, making sure that Māori continued to own more rather than less land.

(Emphasis added)

Right of development

3.7 The right of development has been addressed by the Tribunal on a number of occasions.¹⁸

3.8 The Tribunal in *He Maunga Rongo: Report on Central North Island Claims* found that the right of development is inherent in the property rights guaranteed to Māori under Article 2 of Te Tiriti.¹⁹ This is a right to:²⁰

- (a) Develop their properties and taonga which were guaranteed to them by Te Tiriti should they choose to do so and under their tino rangatiratanga;
- (b) Retain a sufficient land and resource base to develop in the western economy, in accordance with their preferences, and to be actively protected in the retention of such a base;
- (c) Share in the mutual benefits envisaged by Te Tiriti;
- (d) Develop as a people in terms of their culture, language, and socio-economic advancement;
- (e) Equal access to development opportunities on a level playing field with other citizens;
- (f) Positive assistance from the Crown where appropriate in the circumstances, which may include assistance to overcome unfair barriers to development, some of them of the Crown's making;
- (g) The opportunity for Māori to participate in the development of Crown-owned (formerly Māori) or Crown-controlled property,

¹⁸ Waitangi Tribunal *Te Kāhui Maunga: The National Park District Inquiry Report* (Wai 1130, 2013), vol.1 at 17 and 18; Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008), vol. 3, at 1010; Waitangi Tribunal *Tauranga Moana 1886-2006: Report on the Post-Raupata Claims* (Wai 215, 2010) at 24.

¹⁹ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 1010.

²⁰ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 912.

resources, or industries in their rohe, and to participate at all levels; and

- (h) Utilise land for development opportunities and retain reasonable control over the use of the land and the objectives of that use.²¹

3.9 With respect to the right of development, the Crown has a positive duty to assist Māori in the development of their lands.²² The Crown is required to take all reasonable steps to implement policies and processes which encourage development and simultaneously protect the development rights of owners and their communities.²³

3.10 The Tribunal in *He Maunga Rongo: Report on Central North Island Claims* has stated that the right of development includes:²⁴

“[T]he right to positive assistance, where appropriate to the circumstances, including assistance to overcome unfair barriers to participation in development (especially barriers created by the Crown)”

3.11 The Tribunal has also previously found that training and advice was part of a right of development under Article Three of the Te Tiriti.²⁵

Māori economic capability

3.12 The Tribunal has previously stated that Te Tiriti recognised that Māori would not necessarily be able to participate fully in the economic life of the new colony as a matter of course.²⁶

3.13 Therefore, the Crown has a duty to ensure that they provided assistance to help Māori make the transition into economic life in the new colony.²⁷

3.14 Especially where there is a need by the Crown to redress past breaches, active development assistance from the Crown may form part of an appropriate remedy.²⁸

²¹ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 1010.

²² Waitangi Tribunal *Tauranga Moana 1886-2006: Report on the Post-Raupatu Claims* (Wai 215, 2010) at 217.

²³ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 1012.

²⁴ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 894.

²⁵ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 1000.

²⁶ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 993.

²⁷ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 993.

- 3.15 It was part of the Crown's obligation to protect Māori from the potential devastation of colonisation by assisting Māori to acquire new assets to help them succeed in a fast-changing world. For example, new knowledge, technologies, skills, and ways of organising themselves and their properties.²⁹

Partnership and consultation with Māori

- 3.16 The Crown has a duty not only to consult but, under the principle of partnership, also had a duty to ensure Māori could decide the nature and pace of their economic development in partnership with the Crown.³⁰
- 3.17 Indeed, Tribunal in *He Maunga Rongo* has stated:³¹

“However, especially where property rights are concerned, more than a simple balancing is required. Property rights and the development interests inherent in them need to be taken proper account of. The national interest, for example, does not give the Crown an unfettered right to exercise its kawanatanga powers. Policies or actions that will have a major impact on resources and properties, and on the development rights attached to them, require consultation and agreement.”

(Emphasis added)

- 3.18 Furthermore, the Tribunal in *He Maunga Rongo* observed that Māori have the right to determine, in partnership with the Crown, the nature and pace of their development.³²

Equity

- 3.19 Several Tribunals have found that the principle of equity requires that the Crown treat Māori equitably as compared with non-Māori.³³
- 3.20 As the Tribunal stated in the *Report on Northern South Island Claims*:³⁴

²⁸ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 910.

²⁹ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 993 and 1185.

³⁰ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 913.

³¹ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 888.

³² Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 3, at 912-913.

³³ Waitangi Tribunal *Te Kāhui Maunga: The National Park District Inquiry Report* (Wai 1130, 2013) vol. 1, at 17; Waitangi Tribunal *The Napier Hospital and Health Services Report* (Wai 692, 2001) at 61–64; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims* (Wai 785, 2008) vol. 1, at 5. With respect to the concept of equity as compared with equality, see Waitangi Tribunal *Te Urewera Report* (Wai 894, 2017) vol. 8, at 3774-3777, 3783.

³⁴ *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims* (Wai 785, 2008) vol. 1, at 5.

The obligations arising from kawanatanga, partnership, reciprocity, and active protection required the Crown to act fairly to both settlers and Māori – the interests of settlers could not be prioritised to the disadvantage of Māori. Where Māori have been disadvantaged, the principle of equity – in conjunction with the principles of active protection and redress – requires that active measures be taken to restore the balance.

- 3.21 This statement is echoed in National District Park Inquiry Report, *Te Kahui Maunga*:³⁵

The Principle of Equity, in accordance with the obligations arising under kawanatanga, partnership and reciprocity, and active protection, required the Crown to act fairly to both settlers and Māori and to ensure that settlers' interests were not prioritised to the disadvantage of Māori. Where disadvantage did occur, the principle of equity, along with those of active protection and redress, required that there be active intervention to restore the balance.

(Emphasis added)

CROWN EVIDENCE AND POSITION

- 3.22 The Crown has chosen not to lead evidence in respect of economic development and capability.
- 3.23 However, the Crown has made some concessions or acknowledgements in relation to the impact of the native land laws and failure to protect tribal structures that are relevant to this issue stating:³⁶

“The Crown concedes that the individualisation of Māori land tenure provided for by the Native Land Laws made the lands of iwi and hapū in the Taihape: Rangitikei ki Rangipo inquiry district more susceptible to fragmentation, alienation and partition and this contributed to the undermining of tribal structures in the district.”

- 3.24 The Crown accepts that the mechanisms provided for in the 1863 and 1865 Native Land Acts “were not effective in enabling Māori to deal collectively in the modern economy”.³⁷
- 3.25 The Crown goes on to make the key acknowledgement that:³⁸

“By the time an effective form of collective title was provided for in the native land legislation, the bulk of Taihape Māori Land

³⁵ Waitangi Tribunal *Te Kāhui Maunga: The National Park District Inquiry Report* (Wai 1130, 2013) vol. 1, at 17.

³⁶ Crown memorandum on early concessions – Native Land Court, dated 27 July 2015 (Wai 2180, #1.3.1) at [2].

³⁷ Opening comments and submissions of the Crown, dated 2 March 2017 (Wai 2180, # 3.3.1) at [58].

³⁸ Opening comments and submissions of the Crown, dated 2 March 2017 (Wai 2180, # 3.3.1) at [62].

holdings had already had title granted and a significant portion had already been alienated. Innes's states that Māori owned 70 per cent of the land in the inquiry district as at 1890 and by 1900 owned 48 per cent (excluding general title in Māori ownership)."

3.26 The Crown also acknowledges that:³⁹

"Taihape Māori did not have access to an effective, legally-enforceable, form of collective ownership during the era when title was granted to most of their lands and when a significant portion of their lands were sold to the Crown".

3.27 Further, it states that:⁴⁰

The Crown has conceded that it failed to include in the Native Land Laws, prior to 1894, an effective form of title to enable Māori to control or administer their land and resources collectively. This has been acknowledged previously as a breach of the Treaty of Waitangi and is again acknowledged as such for the Taihape Inquiry district. This concession speaks to the difficult process of merging differing political, economic and cultural worlds and providing effectively for the needs of groups within that.

3.28 The Crown has also made earlier submissions of relevance in a memorandum filed regarding the TSOI, which include:

- (a) The Crown recognises economic development is a key factor in delivering prosperity to Māori in the district.⁴¹
- (b) The Crown acknowledges that it has a role in creating and developing economic opportunities for society as a whole, including Māori.⁴²
- (c) The Crown considers that health, education and socio-economic issues are interrelated, and so it is difficult to consider each in isolation.⁴³
- (d) The Crown's overriding objective throughout the period key to this inquiry (1870s-1900) was to expedite economic development including settlement throughout the colony.⁴⁴

³⁹ Opening comments and submissions of the Crown, dated 2 March 2017 (Wai 2180, # 3.3.1) at [62].

⁴⁰ Crown opening submissions for Crown evidence (Part 2) Hearing Week 11, dated 23 October 2019 (Wai 2180, #3.3.31) at [50].

⁴¹ Crown Memorandum contributing to the preparation of a draft Statement of Issues, dated 2 September 2016 (Wai 2180, #1.3.2) at [90].

⁴² Crown Memorandum contributing to the preparation of a draft Statement of Issues, dated 2 September 2016 (Wai 2180, #1.3.2) at [91].

⁴³ Crown Memorandum contributing to the preparation of a draft Statement of Issues, dated 2 September 2016 (Wai 2180, #1.3.2) at [89].

- (e) The Crown failed to include in the native land laws prior to 1894 a form of title that enabled Māori to control or administer their land and resources collectively.⁴⁵
- (f) Approximately 60 per cent of all Māori land within the district alienated to the Crown was acquired between 1880 and 1900 (approximately 437,000).⁴⁶
- (g) The lands retained by Taihape Māori as at 2013 constitute approximately 14.62 per cent of the total within the district.⁴⁷
- (h) At a general level the Crown accepts Innes' data that the lands retained are generally of relatively low economic value and of low productive potential.⁴⁸
- (i) The Crown has acknowledged in previous inquiries that while some steps were taken from 1870 to provide some degree of monitoring, there was no effective system to monitor or audit ongoing land sales and the impact of those on Māori landholdings.⁴⁹
- (j) The Crown has acknowledged in previous inquiries that its 19th century understanding of sufficiency related to Māori having sufficient land and resources to meet their primary needs (a place of residence and a plot to cultivate) rather than of land retention being the only mechanism through which to provide for all economic aspirations then and in the future.⁵⁰

3.29 The Crown's position and the evidence it relies on will be addressed in more detail where necessary in the submissions that follow.

⁴⁴ Crown Memorandum contributing to the preparation of a draft Statement of Issues, dated 2 September 2016 (Wai 2180, #1.3.2) at [41].

⁴⁵ Crown Memorandum contributing to the preparation of a draft Statement of Issues, dated 2 September 2016 (Wai 2180, #1.3.2) at [43.3].

⁴⁶ Crown Memorandum contributing to the preparation of a draft Statement of Issues, dated 2 September 2016 (Wai 2180, #1.3.2) at [54.2].

⁴⁷ Crown Memorandum contributing to the preparation of a draft Statement of Issues, dated 2 September 2016 (Wai 2180, #1.3.2) at [54.5].

⁴⁸ Crown Memorandum contributing to the preparation of a draft Statement of Issues, dated 2 September 2016 (Wai 2180, #1.3.2) at [54.5].

⁴⁹ Crown Memorandum contributing to the preparation of a draft Statement of Issues, dated 2 September 2016 (Wai 2180, #1.3.2) at [59].

⁵⁰ Crown Memorandum contributing to the preparation of a draft Statement of Issues, dated 2 September 2016 (Wai 2180, #1.3.2) at [60].

TECHNICAL AND TĀNGATA WHENUA EVIDENCE

3.30 The technical reports of particular relevance to these closing submissions include:

- (a) Philip Cleaver *Maori and Economic Development in the Taihape Inquiry District 1860 – 2013* (Wai 2180, #A48);
- (b) Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46);
- (c) Craig Innes *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013* (Wai 2180, #A15);
- (d) Bruce Stirling *Taihape District Nineteenth Century Overview* (Wai 2180, #A43);
- (e) David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40);
- (f) Suzanne Woodley *Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015* (Wai 2180, #A37); and
- (g) David A. Armstrong *Mokai Patea Land, People and Politics* (Wai 2180, #A49).

3.31 Evidence regarding the economic marginalisation of Taihape Māori has been provided by tāngata whenua witnesses and represent important evidence on the experiences faced by Taihape Māori.

3.32 As the Crown has chosen not to lead evidence in respect of economic development and capability, the evidence of tāngata whenua and of technical witnesses assumes further significance for the Tribunal in assessing the economic development and capability of Taihape Māori within the inquiry district.

LEVEL ONE – RESPONSE TO TRIBUNAL STATEMENT OF ISSUES

3.33 The TSOI questions addressed in this section are taken from Question Five “Economic Development and Capability”, Issues One to Eight.

3.34 Counsel now address each of the relevant TSOI questions in detail. There are a number of TSOI questions that contain a degree of overlap and to assist, counsel have grouped these together, where appropriate.

4. Economic participation and opportunities

4.1 This section addresses the following TSOI questions:

- (a) To what extent did the Crown facilitate the economic development of Taihape Māori through legislation, policies and practices? (Issue One)
- (b) To what extent did the Crown attempt to mitigate barriers to Māori participation in the economy? (Issue One)
- (c) What Crown-led initiatives assisted Taihape Māori in effectively participating in economic opportunities? (Issue Two)
- (d) What other economic opportunities did the Crown make available to Taihape Māori, for example, in the sectors of farming, forestry, fishing, tourism, aquaculture or mineral extraction? (Issue Four)
- (e) How do these compare with opportunities available to non-Māori and Māori elsewhere? (Issue Four)

Introduction and summary of submissions

4.2 The evidence indicates that little was done by the Crown to facilitate the economic development and capability of Taihape Māori. Instead, Crown legislation, policies and practices often served to directly undermine the efforts of Taihape Māori to effectively participate in economic activities.

4.3 Taihape Māori leaders had informed the Crown of their desire to retain and utilise their remaining lands early on, and they also provided a considered development plan to enable this.

- 4.4 In particular, several letters were sent from Taihape Māori to the Crown which are referred to extensively throughout these submissions. These included:
- (a) Letter of 9 September 1892, sent to the Native Minister, signed by Utiku Potaka, Wiremu Paratene, Raumaewa Te Rango, Hiraka Te Rango, and Wirihana Hunia on behalf of themselves and Ngati Whiti, Ngati Hauiti, Ngati Hinemanu, and Ngati Tama.⁵¹
 - (b) Letter of 17 September 1892, sent to the Native Minister, from the agent for Utiku Potaka, W. Parker of Napier.⁵² This letter followed up on matters raised of the 9 September 1892 letter.
 - (c) Letter of 18 April 1895, sent to the Minister of Lands, written by Hiraka Te Rango on behalf of Ngāti Whiti living at Moawhango.⁵³
- 4.5 The Crown ignored these appeals and instead focused its energy on purchasing extensive tracts of land within the inquiry district, leaving Taihape Māori with largely landlocked and/ or low land-use capability lands.
- 4.6 The available evidence indicates that measures ultimately undertaken by the Crown to assist Taihape Māori were limited. The evidence indicates that:
- (a) The Crown was aware of the barriers faced by Taihape Māori in using their lands and resources. These were clearly communicated to the Crown by Taihape Māori in 1892 and 1895.
 - (b) Notwithstanding this knowledge, the Crown failed to adequately mitigate the significant barriers to economic development that Taihape Māori faced, which prevented them from effectively utilising their land and resources.

⁵¹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 169.

⁵² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 172.

⁵³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 173.

- (c) To the extent that Crown-led initiatives were introduced, these were generally ineffective at enabling Taihape Māori to participate in economic opportunities.
- (d) Instead of attempting to mitigate barriers to Taihape Māori participation in the economy, the Crown took steps that directly undermined the efforts of Taihape Māori to effectively participate in economic activities, including by purchasing significant Taihape Māori land interests.
- (e) The Crown did not make economic opportunities available for Taihape Māori per se. Rather, the acts and omissions of the Crown worked to remove many economic opportunities and left Taihape Māori with increasingly limited options at all. The main option left was in the agricultural sector, although, as these submissions will show, the ability of Māori to participate in this was also quickly eroded by the Crown.

4.7 In the words of Tony Walzl:⁵⁴

To turn away from the reverie of what might have been to the actual result of what has occurred within the Inquiry District is rather disheartening. The Crown ignored the requests and the landowners paid the price.

4.8 The evidence indicates that Taihape Māori were not afforded equitable opportunities when it came to economic development as compared with non-Māori. Neither were Taihape Māori provided with certain mechanisms that would have assisted in economic development that were made available to Māori in other parts of Aotearoa.

4.9 First, this section of the closing submissions will describe the difficulties faced by Taihape Māori in taking advantage of the economic opportunities in this inquiry district and the responses by the Crown to these difficulties. The difficulties included:

- (a) Land alienation, landlocked land and low land use capability;
- (b) Effects of the native land laws and Native Land Court;

⁵⁴ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 635.

- (c) Lack of defined land titles;
- (d) Multiple, small and scattered interests;
- (e) Inability to collectively manage land; and
- (f) Lack of a secure, reliable and equitable source of finance.

4.10 These submissions will then set out case studies that demonstrate the effects of the acts and omissions of the Crown on the economic development of Taihape Māori. These include: the agricultural economy and pastoral sheep farming, the North Island Main Trunk (“**NIMT**”) Railway, sawmilling, supply of resources for development of transport infrastructure, leasing and some non-land based activities.

Land alienation, landlocked land and low land use capability

4.11 Given the nature of available economic opportunities in this district, it was imperative that Taihape Māori retained a sufficient land and resource base to take advantage of those opportunities.

4.12 Instead of retaining a sufficient land and resource base to take advantage of those opportunities, the evidence shows that Taihape Māori experienced significant land loss. Furthermore, the land retained was mostly either landlocked or of marginal economic quality. To illustrate:

- (a) Most of the land in the district was acquired through Crown purchasing.⁵⁵ A total of 53.95 percent of the total land in the district was alienated to the Crown through purchase.⁵⁶ Another 3.72 percent was taken for defence purposes under public works legislation.⁵⁷ Therefore a total of 57.67 percent of the land was alienated to the Crown.⁵⁸

⁵⁵ Craig Innes *Māori Land Retention and Alienation within the Taihape Inquiry District summary* (Wai 2180, #A15(h)), at [13] and [14]; Craig Innes *Māori Land Retention and Alienation within the Taihape Inquiry District* (Wai 2180, #A15) at [6.6.1].

⁵⁶ Craig Innes *Māori Land Retention and Alienation within the Taihape Inquiry District summary* (Wai 2180, #A15(h)), at [13] and [14]; Craig Innes *Māori Land Retention and Alienation within the Taihape Inquiry District* (Wai 2180, #A15) at 71.

⁵⁷ Craig Innes *Māori Land Retention and Alienation within the Taihape Inquiry District summary* (Wai 2180, #A15(h)), at [13] and [14]; Craig Innes *Māori Land Retention and Alienation within the Taihape Inquiry District* (Wai 2180, #A15) at 71.

⁵⁸ Craig Innes *Māori Land Retention and Alienation within the Taihape Inquiry District summary* (Wai 2180, #A15(h)), at [13] and [14]; Craig Innes *Māori Land Retention and Alienation within the Taihape Inquiry District* (Wai 2180, #A15) at 71.

- (b) A large portion of this alienation occurred early on, with over 123,000 acres being acquired by the Crown prior to 1880.⁵⁹
- (c) The most intense period of land alienation was between 1870 and 1910. In 1870, approximately 1,132,782 acres of land was in Māori ownership. By 1910, this had fallen to 474,285 acres. This means that approximately 58 percent of Māori land was alienated between 1870 and 1910. Again, as noted above, most of this land was alienated through government purchase.⁶⁰
- (d) Furthermore, the lands that were retained by Māori were largely categorised among the worst two land use capability (“**LUC**”) categories, being LUC 7 and 8. At 1900, 60 percent of the remaining Māori estate comprised of lands of LUC 7 and 8 (25.31 percent at LUC 7 and 35.12 percent at LUC 8).⁶¹
- (e) LUC 7 land is described as “*non-arable land with severe limitations for use under perennial vegetation such as pasture or forest*” and LUC 8 land is described as “*land with very severe to extreme limitations or hazards that make it unsuitable for cropping, pasture or farming.*”⁶²
- (f) The higher proportion of Māori land within the LUC 7 and 8 categories reflects the fact that the Crown had purchased the vast majority of the most productive land.⁶³
- (g) A significant amount of Māori land is also landlocked. By 2013, 73 percent of Taihape Māori land was landlocked, which has been a major barrier to the use of these lands for economic development. The nature of landlocked lands, including arguments about economic potential of these lands,

⁵⁹ Craig Innes *Māori Land Retention and Alienation within the Taihape Inquiry District* (Wai 2180, #A15) at [6.6.4].

⁶⁰ Craig Innes *Māori Land Retention and Alienation within the Taihape Inquiry District summary* (Wai 2180, #A15(h)) at [9].

⁶¹ Philip Cleaver *Māori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 180.

⁶² Philip Cleaver *Māori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 182.

⁶³ Philip Cleaver *Māori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 180.

have been covered in detail by the Claimant Closing Generic Submissions Landlocked Lands filed on 5 February 2020.⁶⁴

- (h) By 2013, only 14.62 percent of the land in the inquiry district was retained as Māori land. European land was, at 2013, nearly 7 times more likely than Māori land to be of the highest two LUC categories and, further, Māori land was 2.45 times more likely than European private lands to be in the worst two LUC categories. Furthermore, as noted, 73 percent of Taihape Māori land in the district is now landlocked.⁶⁵

4.13 The impacts of the large-scale alienation of Taihape Māori land early on, coupled with the difficulties in utilising remaining land due to its quality and landlocked nature, were multitudinous. These included:

- (a) The early alienation of the majority of Taihape Māori land meant that there was little opportunity for Taihape Māori to develop these lands before they were acquired by the Crown.
- (b) In particular, substantial land alienation (and thus also resource alienation) of the Taihape southern blocks from the mid-1860s limited the ability of Taihape Māori to take advantage of the economic opportunities that were to emerge in that part of the inquiry district.⁶⁶
- (c) Taihape Māori were unable to use the land acquired for economic development. As noted by Cleaver, “[t]he erosion of tribal lands through alienation continued to jeopardise the ability of Mokai Patea Māori to take advantage of existing and future land based opportunities in the [i]nquiry district.”⁶⁷

4.14 The Taihape Māori desire to retain a sufficient land and resource base to take advantage of the economic opportunities was made clear to the

⁶⁴ Claimant closing generic submissions Landlocked Lands, dated 5 February 2020 (Wai 2180, #3.3.34) at [91] – [94].

⁶⁵ Suzanne Woodley *Maori Land Rating and Landlocked Blocks Report 1870-2015: Errata and Additional Information (2)* (Wai 2180, #A37(m)) at 3; Suzanne Woodley *Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015* (Wai 2180, #A37) at 516.

⁶⁶ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 25.

⁶⁷ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 178.

Crown, in particular in the 9 September 1892 letter. In this letter Taihape Māori:

- (a) Set out an offer to sell the government portions of the Awarua and Motukawa blocks that amounted to 100,000 acres.⁶⁸ While they were resigned to selling large pieces of the block due to the pressure from the Crown due to the lands position on the NIMT route and the heavy expenses associated with Court proceedings, they sought to retain land for their own benefit and use.⁶⁹
- (b) Noted that it was the desire of Taihape Māori *“to have [their] interests guarded with more care than has been shown in the past in respect to [their] lands.”*⁷⁰

4.15 The Crown’s response to the Taihape Māori concerns about land alienation, landlocked lands and low land use capability include:

- (a) By 1900, the Crown had purchased just over double the 100,000 acres offered for sale in the 1892 letter. Tony Walzl provides this as an example of the Crown setting aside owner aspirations of Taihape Māori to pursue its own agenda.⁷¹
- (b) While unprepared to engage with Taihape Māori over issues raised in the 1892 and 1895 letters, the Crown determinedly focused upon extensive purchasing of Māori land in the inquiry district. At this time with competition from private purchasers excluded, the Crown especially sought to acquire lands along the NIMT corridor, motivated partly by a plan to use profits from the on-sale of land to help pay for the railway.⁷²
- (c) Failed to address factors that contributed to the sale of Taihape Māori land, which included the costs of the Native Land Court, owners restricted access to lending finance, and

⁶⁸ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 169.

⁶⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 169.

⁷⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 169; Utiku Potaka and others to the Native Minister, 9 September 1892, MA-MLP 1905/94.

⁷¹ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 321.

⁷² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 300.

the other difficulties that owners faced when seeking to utilise their lands. By failing to address these problems, the Crown, inadvertently or advertently helped to ensure the success of its purchase objectives.⁷³

- (d) As noted in [4.12(d)] to [4.12(h)], Crown purchasing left Taihape Māori with land that was significantly more difficult to develop, being either of low land use capability or landlocked, thus seriously hampering their economic development and capability.

Effects of the native land laws and the Native Land Court

- 4.16 The evidence also shows that the native land laws and Native Land Court negatively impacted the ability of Taihape Māori to manage their land and prevented them from taking advantage of the key economic opportunities that existed in the inquiry district.
- 4.17 By 1890, almost all of the Taihape Māori district's blocks had been brought before the Court.⁷⁴
- 4.18 The Native Land Court and land title system facilitated the significant alienation of Taihape Māori lands and, among its other impacts, led in a number of cases to drawn-out and financially debilitating judicial proceedings for Taihape Māori.⁷⁵
- 4.19 In particular, the Court costs and other expenses Taihape Māori faced in proving ownership with the Court were unreasonably and unnecessarily high.⁷⁶ To illustrate:
- (a) Claimants involved in the Court process faced a number of expenses. These included survey costs, Court fees, lawyers' fees, and travel and accommodation costs.⁷⁷

⁷³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 300.

⁷⁴ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 298.

⁷⁵ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 116–118. Regarding the imposition of the Native Land Court, the Tribunal has previously confirmed that the Crown, by the Native Land Court, usurped the right of Māori to make decisions about the allocation and ownership of their land and resources in accordance with their own traditions and tikanga (see for instance the *Wairarapa ki Tararua Report* (Wai 863, 2010) at 531).

⁷⁶ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 99 and 298.

⁷⁷ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 88 and 92.

- (b) Costs were particularly significant where proceedings were drawn out.⁷⁸ Out of the 16 blocks that Taihape Māori brought before the Court prior to 1890, five of those were subject to drawn-out and costly proceedings which resulted from failings in the Court's process.⁷⁹
- (c) However, even when ownership was determined through a single Court hearing, and not drawn-out, costs in many cases would still have been significant because such hearings were often lengthy, often stretching over several weeks.
- (d) While it has been difficult to accurately establish the exact costs of securing title through the Court system, the example of the Rangatira block title referenced by Philip Cleaver in his report,⁸⁰ illustrates the significant costs Taihape Māori faced. For this block, the estimated cost was £5000, which represented more than one-third of the purchase value.⁸¹
- (e) It is likely that Native Land Court costs were related to the bankruptcy of several prominent chiefs.⁸²
- (f) Even where owners were not driven to bankruptcy, land sales appear to have been directly linked to the debts associated with the costs of the Court.⁸³ In some cases, where securing title from the Court was undertaken to sell the land, the high costs meant that there was substantially diminished financial return.
- (g) Counsel highlight the comments made by Sir Douglas Kidd in relation to costs to Tony Walzl:⁸⁴

Acres went to pay Court fees, acres went to pay surveyors, acres went to keep the people while they were at these everlasting Court sessions, acres went to the storekeeper not just at the Court hearings. But what you bring before us is that

⁷⁸ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 98.

⁷⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 92.

⁸⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 100.

⁸¹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 100.

⁸² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 298.

⁸³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 298.

⁸⁴ Hearing week seven transcript (Wai 2180, #4.1.15) at 226.

small advances by storekeepers, solicitors, other traders, shopkeepers, business people, was the way that people lived and that they paid for them with land.

- 4.20 Given that the Native Land Court and its processes was established by the Crown, the Crown was aware or ought to have known of the significant costs associated with the Native Land Court. The Crown failed to address these costs and seemed to give the issue little attention.⁸⁵
- 4.21 The long-term impacts following on from the native land court process was that Taihape Māori lands were increasingly susceptible to fragmentation, alienation and partition, as has been conceded by the Crown.⁸⁶ In turn, this impacted the ability for Taihape Māori to manage their multiply owned land and prevented them from taking advantage of the key economic opportunities that existed in the inquiry district.

Lack of defined land titles

- 4.22 The evidence is clear that, in the new settler economy, having clearly defined title granted by the Native Land Court was essential to enabling Taihape Māori to utilise their land effectively and for economic development.
- 4.23 While the Native Land Court had identified the interests that owners held, the physical location of these interests had not been allocated and defined on the ground.⁸⁷ Having defined land titles were necessary for several reasons, including:
- (a) Having a defined land title enabled owners to decide how they wished to hold their lands, for example to be able to bring interests together to improve utilisation prospects by creating a more economically viable piece of land.⁸⁸
 - (b) A key reason for the need for the definition of land titles was as a result of the Crown purchasing individual interests and

⁸⁵ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 298.

⁸⁶ Crown memorandum on early concessions – Native Land Court, dated 27 July 2015 (Wai 2180, #1.3.1) at [2].

⁸⁷ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 173 and 187.

⁸⁸ Tony Walz *Twentieth Century Overview* (Wai 2180, #A46) at 309-310.

holding undefined land interests.⁸⁹ Where the Crown held these undefined land interests, non-sellers who also held interests in those same blocks could not be confident of the location of the lands that they had retained within the block.⁹⁰

- (c) Only once the interests were located on the land, could:⁹¹
 - (i) the land be assessed and its capabilities and drawbacks ascertained, and decisions made by its owners on future action and use;
 - (ii) real improvements on the land begin. Otherwise, there was a risk of not being awarded the land that had been improved; and
 - (iii) the land be used to attract finance or make arrangements over the land.

4.24 Despite Taihape Māori bringing the difficulty of this situation to the attention of the Crown through the letters of 9 September 1892 and 18 April 1895, the Crown failed to respond and exacerbated this issue through the continuation of their Crown purchasing. The Crown:

- (a) Was unresponsive to the request by Taihape Māori with the Native Minister commenting, in a minute, on the owners' letter of 9 September and Parker's letter of 17 September 1892, suggesting that the titles would be tidied up only after the government purchasing programme had been completed.⁹²
- (b) Exacerbated the problem by continuing to purchase individual undefined interests leaving the titles in a "*state of flux*".⁹³
- (c) Only resolved the lack of defined titles only after the government purchasing had come to an end.⁹⁴

⁸⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 173.

⁹⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 173.

⁹¹ Tony Walz *Twentieth Century Overview* (Wai 2180, #A46) at 310.

⁹² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 188.

⁹³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 172.

⁹⁴ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 188.

Multiple, small and scattered interests

4.25 Using remaining land for economic development purposes, including agricultural purposes, also became increasingly difficult because of the following factors:

- (a) A comparatively large number of owners had interests in most, if not all, subdivisions. This was because subdivisions were awarded on the basis of tūpuna and, therefore, the close cross-hapū whakapapa connections of tāngata whenua resulted in owners finding themselves in a number of subdivisions.⁹⁵
- (b) These subdivisions resulted in a significant number of small and individual blocks, which on their own were too small to use for economic gain.⁹⁶
- (c) The restrictions against alienation that were put on titles had the effect of preventing exchanges to consolidate interests from occurring at an early stage.⁹⁷

4.26 Taihape Māori brought this issue to the attention of the Crown and called for the Crown to take steps to enable owners to consolidate their land interests. Through both the agent of Utiku Potaka follow-up letter of 17 September 1892 and Hiraka Te Rango's letter of 18 April 1895, Taihape Māori:⁹⁸

- (a) Noted that without consolidation the small interests that some owners possessed within individual blocks "*would be unworkable unless consolidated*";⁹⁹
- (b) Called on the Crown to take steps to enable owners to consolidate their land interests; and

⁹⁵ Tony Walz *Twentieth Century Overview* (Wai 2180, #A46) at 310.

⁹⁶ Hearing week seven transcript (Wai 2180, #4.1.15) at 183; Tony Walz *Twentieth Century Overview* (Wai 2180, #A46) at 310 – 312.

⁹⁷ Tony Walz *Twentieth Century Overview* (Wai 2180, #A46) at 310 – 311.

⁹⁸ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 189.

⁹⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 189; Hiraka Te Rango to John McKenzie, 18 April 1895, MA-MLP 1905/93.

- (c) In particular, Parker's letter of 17 September 1892, called on the Native Minister to remove impediments to the exchange of lands and Hiraka Te Rango's letter of 18 April 1895 requested that the Minister of Lands assist to facilitate the exchange and consolidation of owner's land interests.¹⁰⁰

4.27 While being a solution to Crown-created problems, the evidence indicates that consolidation was an important proposal by Taihape Māori. The benefits of consolidation include:

- (a) Consolidation would have allowed for scattered and potentially uneconomic land interests to be brought together.¹⁰¹ This would then enable owners who had kept land to be in a better position to be able to effectively utilise it and making it commercially viable.¹⁰²
- (b) Furthermore, the ability to consolidate land would also likely have reduced the amount of land which was alienated from Taihape Māori.¹⁰³ Owners may have been more reluctant to sell given that they now had a better opportunity to try and make the most of their lands.¹⁰⁴
- (c) As evidenced by the participation by Māori on the East Coast in the expansion of the dairy industry during the 1920s, consolidation of land interests meant that interests were able to be grouped into workable farming units.¹⁰⁵ Consolidation schemes also gave clear titles to East Coast Māori which further enabled them to raise loans for development from banks.¹⁰⁶

4.28 Tony Walzl provides helpful analysis of the significance that consolidation would have had.¹⁰⁷ In undertaking a mock consolidation of

¹⁰⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 189.

¹⁰¹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 189.

¹⁰² Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 311; Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 189.

¹⁰³ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 311.

¹⁰⁴ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 311.

¹⁰⁵ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 316.

¹⁰⁶ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 316.

¹⁰⁷ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 628 – 635.

a number of blocks he notes that “a conservative representation” would have put twelve estates ranging from 4,000 to 11,000 acres with two large estates from 15,000 and 23,000 acres.¹⁰⁸

- 4.29 As he notes “[t]hese all are many times the size of the Pakeha farms that were located in the same localities and which were, by all accounts, doing very well over the first three decades of the twentieth century”.¹⁰⁹
- 4.30 Despite the letters of 17 September 1892 and 18 April 1895, the Crown failed to respond to Taihape Māori requests for consolidation. The Crown demonstrated no interest to facilitate or directly assist with consolidation before it began purchasing.¹¹⁰
- 4.31 Instead of providing mechanisms for consolidation the Crown stated that the tidying up of titles would occur *after* its purchasing programme had run its course. Tony Walzl comments:¹¹¹

Such a response is not surprising. Had owners had their titles awarded and then allowed an opportunity to complete desired exchanges, the Crown's purchasing programme in all likelihood would not have been anywhere near as successful as it was. Instead, owners would have put their titles in place, holding them as they wished, where they wished and in consolidated quantities.

- 4.32 The Crown failed to assist Taihape Māori either by allowing for consolidation at this time, or by addressing the issues it had created through other means, undermining Taihape Māori economic development opportunities, in order to strengthen its own position.
- 4.33 Tony Walzl notes that the greatest difference between the East Coast, where consolidation was supported by the Crown, and the Taihape district was that Taihape “was seen as a district that was going ahead and one in which Pakeha were pouring into with resulting pressures to acquire more land. This was not the scenario on the East Coast.”¹¹²

¹⁰⁸ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 634.

¹⁰⁹ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 634 - 635.

¹¹⁰ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 311.

¹¹¹ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 311.

¹¹² Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 635.

- 4.34 As the analysis by Tony Walzl suggests, the potential sizes of the blocks in the inquiry district had they been consolidated *“give a hint of what might have been had the Treaty partner of Mokai Patea landowners responded positively and effectively to their requests to implement their development plan.”*¹¹³

Inability to collectively manage of land

- 4.35 At a time when Taihape Māori were grappling with a new form of title and aggressive Crown purchasing policies in a new settler economy, they were also faced with the difficulty that there was no provision for the ability to collectively manage their now individually defined interests.¹¹⁴
- 4.36 The effective exercise of tino rangatiranga, including decision making regarding economic opportunities and negotiations with the Crown in this respect, were significantly hampered by the individualisation of land interests.
- 4.37 Indeed as the Crown has conceded that *“the individualisation of Māori land tenure provided for by the Native Land Laws made the lands of iwi and hapū in the Taihape: Rangitikei ki Rangipō inquiry district more susceptible to fragmentation, alienation and partition and this contributed to the undermining of tribal structures in the district”*.¹¹⁵
- 4.38 As noted by Tony Walzl *“[a]lready at this stage [1892], owners understood the need for a management structure to be in place in relation to the occupation and utilisation of land.”*¹¹⁶
- 4.39 Taihape Māori brought the issue of the inability to collectively manage land to the attention of the Crown in the 9 September 1892 letter, where Taihape Māori requested the ability to form *“companies with a committee of management”* from the Crown, later known as ‘incorporations’, to enable them to utilise land to its fullest potential.¹¹⁷
- 4.40 These committees would have included the ability to:

¹¹³ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 635.

¹¹⁴ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 311 and 312.

¹¹⁵ Crown memorandum on early concessions – Native Land Court, dated 27 July 2015 (Wai 2180, #1.3.1) at [2].

¹¹⁶ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 311 and 312.

¹¹⁷ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 311 and 312.

- (a) Control and make decisions on finance.¹¹⁸
- (b) Prevent a sale especially if it was not in the best interests of the owner concerned or the wider body of owners.¹¹⁹ The committee would also, presumably, act as an agent to protect the interests of the selling owner.¹²⁰
- (c) Make decisions on land utilisation. For example, for leasing “*if any single owner or group owning just a part of a block wished to lease, they would first be required to come to an agreement with the committee on the location of their allocation and then fence the land intended to be leased.*”¹²¹

4.41 Despite the request by Taihape Māori alerting the Crown to the inability to manage land collectively, the evidence shows that the Crown failed to appropriately respond in a timely and appropriate manner to the requests for incorporation and enable Taihape Māori to use these management structures to manage and develop the land retained.

4.42 Although the Native Land Court Act 1894 provided for the establishment of owner incorporations, these provisions had various shortcomings.¹²² To illustrate:

- (a) Stout Ngata Commission noted the significant costs of establishment, stating that incorporation “*entail expense in the obtaining of signatures*”.¹²³
- (b) It further noted that the legislation lacked clarity in some provisions.¹²⁴
- (c) As described by Bruce Stirling, the Stout-Ngata Commission found that the Native Land Court Act 1894 was “*complex and pretty much impossible for people to comply with.*”¹²⁵

¹¹⁸ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 312.

¹¹⁹ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 312.

¹²⁰ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 312.

¹²¹ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 312.

¹²² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 300.

¹²³ Hearing week five transcript (Wai 2180, #4.1.012) Cross-examination of Bruce Stirling and Evald Subasic at 342 – 343.

¹²⁴ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 190.

- (d) These provisions were only able to be used by Taihape Māori in 1896, after changes of regulation in 1895 and the lifting of Crown pre-emption in the Awarua block in 1896.¹²⁶
- (e) As Bruce Stirling pointed out in answers to cross-examination from the Crown, by 1896 there had already been significant alienation of land and he states clearly:¹²⁷

"[...] the second round of Crown purchasing they'd left with this shattered mess that's probably beyond trying to save by an incorporating at that point.

[...]

[Y]ou can't do anything about an incorporation when there's nothing left worth to incorporate. So, here's the Crown, 'Here's a load of rubbish back for you, do what you can with it.'

- (f) Much of the damage, in respect of the economic development and capability, had already been done through the substantial alienation of land programme undertaken by the Crown.

4.43 An example of the benefits that management committees have can be seen in the East Coast comparative case study. To illustrate:

- (a) On the East Coast, from around the 1890's Māori were able to elect committees of owners to surmount governance issues, associated with commercial utilisation of multiply-owned lands.¹²⁸
- (b) These committee of managements made initial decisions on what land might be used for and what farming would proceed. As noted by Tony Walzl:¹²⁹

This solution meant that Maori pastoralism was now in a position to partake in the economic development that was occurring on the East Coast.

¹²⁵ Hearing week five transcript (Wai 2180, #4.1.012) Cross-examination of Bruce Stirling and Evald Subasic at 342 – 343.

¹²⁶ Hearing week five transcript (Wai 2180, #4.1.012) Cross-examination of Bruce Stirling and Evald Subasic at 342 – 343.

¹²⁷ Hearing week five transcript (Wai 2180, #4.1.012) Cross-examination of Bruce Stirling and Evald Subasic at 342 – 343.

¹²⁸ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 315 - 316.

¹²⁹ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 999.

- (c) The option to manage land communally was made available to East Coast Māori due to the absence of Crown purchasing pressures and the ability to consolidate their defined interests into the hands of a selected few, who were generally elders of the tribe.¹³⁰
- (d) The East Coast model, which was significantly similar to the model that Taihape Māori were asking for, demonstrates the potential economic development that Taihape Māori could have had if the Crown had responded to their requests for collective management of land in a timely and appropriate manner.

4.44 It is submitted that had the Crown provided for the collective management of land and the suite of carefully thought out measures requested by Taihape Māori in 1892, prior to the “*two rounds of purchasing*” that occurred within four years,¹³¹ Taihape Māori would have had the tools to utilise their lands and resources more effectively to enhance their economic development.

Lack of a secure, reliable and equitable source of finance

4.45 The lack of a secure, reliable and equitable source of finance was another significant barrier to Taihape Māori economic development, and resulted in high levels of indebtedness.

4.46 Several obstacles prevented Taihape Māori from using their land as security to raise finance. These included:¹³²

- (a) Lands being subject to the Native Land Alienation Restriction Act 1884 prohibition against private alienations, which is likely to have acted as a disincentive for private lending agencies;
- (b) Lands that had been made inalienable through an order of the Native Land Court also would not have been able to be used as security for lending purposes;

¹³⁰ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 315 – 316 and 999.

¹³¹ Hearing week five transcript (Wai 2180, #4.1.012) Cross-examination of Bruce Stirling and Evald Subasic at 342 – 343.

¹³² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 191.

- (c) The incomplete state of titles was a further obstacle for owners of some lands; and
- (d) Multiple ownership posed another complication because lenders would have been reluctant to offer mortgage finance unless all owners were party to the agreement.

4.47 As a consequence of the inability of Taihape Māori to raise lending finance against their land was that they had to take out loans leveraged against their flocks and annual wool production.¹³³ To illustrate:

- (a) Mortgages were held by storekeepers and Mercantile Loan Companies who charged higher interest rates for these loans because lenders perceived that the loans carried a greater level of risk.¹³⁴
- (b) The debt position of Taihape Māori deteriorated significantly during the 1890s, to the point that many of the mortgages were equivalent to the full value of the sheep and wool.¹³⁵

4.48 Taihape Māori, through the letters of 9 September 1892 and 18 April 1895, identified the difficulties faced by Taihape Māori in obtaining secure, reliable and equitable finance and proposed a model of finance to be provided by the Government with a range of safeguards aimed at ensuring that this was strictly controlled and managed by the owner representatives.¹³⁶

4.49 In these letters, Taihape Māori set out several restrictions to ensure the borrowed finance was strictly controlled and would not put the land at risk. These included:¹³⁷

- (a) That it would be provided only on the application of the committee;
- (b) The finance would be provided to the committee;

¹³³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 191.

¹³⁴ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 175.

¹³⁵ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 192.

¹³⁶ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 315- 316.

¹³⁷ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 313.

- (c) Any finance provided could never be greater than half the value of the land to protect it from having interests repayments absorbing all the earnings from the land; and
- (d) The finance could only be advanced to improve and stock the land.

4.50 The Crown failed to provide appropriate access to finance for Taihape Māori. In particular:

- (a) While the Crown was aware of difficulties faced by Taihape Māori in securing suitable finance, it failed to provide the lending mechanism requested by Taihape Māori or any other option which would alleviate the difficulties identified.
- (b) While the Crown provided low-interest state loans to settlers under the Government Advances to Settlers Act 1894, the lending criteria did not correspond with the nature of Māori land tenure under the Native Land Court system.¹³⁸ Therefore, while Māori were not specifically excluded from receiving advances under the Advances to Settlers Act 1894, there were significant barriers to the obtaining advances under the Act.
- (c) Barriers to securing mortgages over land from private lenders became more deeply entrenched with the passage of the Native Land Courts Act 1894, which prohibited private dealings in Māori land, including through mortgages.¹³⁹

Case Studies/Examples

4.51 This section set out several examples that assist in demonstrating the effects of the acts and omissions of the Crown on the economic development of Taihape Māori. These include:

- (a) The agricultural economy and pastoral sheep farming;

¹³⁸ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 193.

¹³⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 193.

- (b) The NIMT Railway;
- (c) Sawmilling;
- (d) Supply of resources for development of transport infrastructure;
- (e) The transition into leasing;
- (f) Native township; and
- (g) Some non-land based activities.

Agricultural economy and pastoral sheep farming

- 4.52 From 1840 to 1910, Taihape Māori endeavoured to participate in the district's developing agricultural economy and pastoral sheep farming.¹⁴⁰ They became directly involved in farming and entered leasing arrangements with Pākehā pastoralists.¹⁴¹
- 4.53 At 1890, Taihape Māori owned 86,000 sheep.¹⁴² By 1895, they owned 146,000 sheep.¹⁴³ However, by 1910, Taihape Māori sheep ownership had dramatically dropped to about 23,000 sheep.¹⁴⁴
- 4.54 There were a variety of reasons why sheep ownership, and overall ability to participate in economic development in the Taihape region, had dramatically dropped by 1910. As noted above, Taihape Māori faced significant barriers to being able to utilise and develop their land, including a lack of:
- (a) sufficient and productive land;
 - (b) defined land titles,
 - (c) ability to consolidate land interests;

¹⁴⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 113–114; Philip Cleaver *Māori and economic development in the Taihape Inquiry District: 1860 – 2013 Report Summary* (Wai 2180, #A48(c)) at [13].

¹⁴¹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 297.

¹⁴² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 297.

¹⁴³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 300.

¹⁴⁴ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 297–300. Approximately three-quarters of the 23,000 sheep at 1910 were held by a single Māori-Pakeha partnership.

- (d) governance structures available to Taihape Māori to manage their multiply-owned land; and
- (e) access to finance opportunities to develop land further, and develop income from that land.

- 4.55 In particular relation to sheep farming, Taihape Māori faced difficulties in accessing lending finance, which was important for being able to develop farms.¹⁴⁵ Early loan arrangements that Taihape Māori entered into were leveraged against their sheep flocks. However, these loans likely carried higher interest rates, as they did not offer the same level of lending security as land.¹⁴⁶ These higher interest rates affected the profitability of Māori sheep farming operations.¹⁴⁷
- 4.56 A clear example of this was given by Stirling. Waikari Karaitiana was, at 1885, largely debt free and owned 10,000 sheep.¹⁴⁸ By 1900 he had spent about £2,000 to obtain title to the lands he was attempting to farm and was forced to sell off sheep along the way to meet these costs.¹⁴⁹ By the end of the century, he had clear title and was able to fence his farm but as a result of the costs, he owned fewer sheep, owed several thousand pounds and was “*almost made bankrupt*.”¹⁵⁰
- 4.57 In respect of consolidation, as noted above at [4.28], the significant estates that could have been achieved by the consolidation of land interests would have overcome significant difficulties Taihape Māori faced in terms of agriculture.
- 4.58 Furthermore, this was a period of the most intensive Crown purchasing of Taihape land. As noted above, the period between 1870 and 1910 marked the most intense period of land alienation was between 1870 and 1910.¹⁵¹ This alienation resulted in the loss of productive land that Taihape Māori could ill afford to lose and was a further significant barrier to the ability for Māori to utilise and develop their land.

¹⁴⁵ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 73.

¹⁴⁶ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 73-74.

¹⁴⁷ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 74.

¹⁴⁸ Bruce Stirling *Taihape District Nineteenth Century Overview* (Wai 2180, #A43) at 589.

¹⁴⁹ Bruce Stirling *Taihape District Nineteenth Century Overview* (Wai 2180, #A43) at 589.

¹⁵⁰ Bruce Stirling *Taihape District Nineteenth Century Overview* (Wai 2180, #A43) at 589.

¹⁵¹ Craig Innes *Māori Land Retention and Alienation within the Taihape Inquiry District summary* (Wai 2180, #A15(h)) at [9].

NIMT Railway

- 4.59 Around the time the issues were raised in the 1892 and 1895 letters, with competition from private purchasers excluded, the government especially sought to acquire lands along the NIMT corridor, motivated partly by a plan to use profits from the on-sale of land to help pay for the railway.¹⁵²
- 4.60 The construction of the NIMT which began in 1885 was significant for economic development in the Taihape region.¹⁵³ It was closely connected to development of the sawmilling and agricultural sectors.¹⁵⁴
- 4.61 Additionally, there were opportunities associated directly with the building of the line, particularly employment for construction workers.¹⁵⁵ However, the Crown failed to engage or partner with Taihape Māori about these potential development opportunities, or provide any policies or initiatives to facilitate Taihape Māori involvement in the NIMT.¹⁵⁶
- 4.62 In relation to this, Philip Cleaver commented that:¹⁵⁷

It is notable that the government began building the NIMT without consulting with Mokai Patea Māori. Though Māori retained ownership of much of the land in the inquiry district through which the railway would pass, the government made no attempt to discuss the underlying objectives of the railway or associated land purchase proposals. Nor were Mokai Patea Māori consulted about the route of the railway, how construction would be undertaken, and the acquisition of their lands for the track. The government did not seek to establish whether Taihape Māori wished to engage in any development opportunities that would arise in connection with the railway and how any such goals might be achieved

Sawmilling

- 4.63 Sawmilling emerged as an important economic activity in the Taihape region as construction of the NIMT progressed and allowed sawn timber to be transported wider than the local market.¹⁵⁸ Access into the

¹⁵² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 300.

¹⁵³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 121.

¹⁵⁴ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 121.

¹⁵⁵ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 121.

¹⁵⁶ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 125.

¹⁵⁷ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 125.

¹⁵⁸ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 135.

sawmilling ventures usually required having finance to meet capital development costs, the technical expertise and business skills necessary for running a commercial operation, as well as access to milling timber.¹⁵⁹

- 4.64 Evidence shows that apart from two Taihape Māori milling ventures (out of over twenty sawmills in the inquiry district), Taihape Māori had limited involvement in the ownership of sawmills that operated in the district.¹⁶⁰ These two Māori milling ventures show that at least some Taihape Māori sought to become involved in sawmill ownership because of its economic opportunity.¹⁶¹
- 4.65 Sawmilling did provide some economic benefit for Māori through the sale of timber cutting rights, which was the main way they participated in this industry.¹⁶²
- 4.66 Milling commenced in the south of the district in the mid-1880s. By this time, as a result of widespread land alienation, Māori retained ownership of only a small proportion of the timber resources in the southern part of the district.¹⁶³
- 4.67 However, for a time, during the first decade of the twentieth century, a substantial proportion of the district's sawn timber was cut from Māori-owned land. Cleaver comments in terms of the income from sawmilling that:¹⁶⁴

Limited evidence has been located concerning the income that Taihape Māori received. However, the royalty rates they were paid appear to have increased during the decade.

- 4.68 Philip Cleaver noted that *“for Māori, the establishment of sawmill ventures would seem to have presented the greatest opportunity for those who retained forest land alongside or close to the NIMT route and*

¹⁵⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 136.

¹⁶⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 139.

¹⁶¹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 142.

¹⁶² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 144.

¹⁶³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 144.

¹⁶⁴ Philip Cleaver *Māori and economic development in the Taihape Inquiry District: 1860 – 2013 Report Summary* (Wai 2180, #A48(c)) at [25].

*who would therefore have been able to utilise a resource they already owned.*¹⁶⁵

- 4.69 Cleaver further notes that any profits from sawmilling could have been applied toward developing the land further for agricultural purposes.¹⁶⁶ He goes further to note that the continued alienation of Māori land negatively impacted their ability to benefit from the sawmilling industry, stating:

*The Crown's ongoing purchase of Māori land can therefore be seen as having negatively influenced the ability of Mokai Patea Māori to become involved in sawmill ownership. No evidence has been located to suggest that the Crown, after construction of the railway commenced, sought to preserve Māori ownership of forest areas in order to protect their ability to participate in future sawmilling opportunities. As explained in the previous section, the Crown was instead determinedly focused on purchasing Māori land along the railway after construction commenced.*¹⁶⁷

- 4.70 As already noted, access into the sawmilling ventures usually required having finance to meet capital development costs, the technical expertise and business skills necessary for running a commercial operation, as well as access to milling timber.¹⁶⁸ The Crown failed to mitigate barriers to Taihape Māori entering into the sawmilling sector, or to protect their ability to participate in future sawmilling opportunities through Taihape Māori retention of forest land alongside the NIMT route. Instead, the Crown:

- (a) Failed to provide financial assistance or state sources of lending to assist Taihape Māori in the ownership of sawmills, meaning that Taihape Māori were reliant on private sources of finance.¹⁶⁹ As the Tribunal in *He Maunga Rongo* observed, private lenders were generally averse to loaning money to Māori for development purposes.¹⁷⁰

¹⁶⁵ Phillip Cleaver, *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 142 – 143.

¹⁶⁶ Phillip Cleaver, *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 142 – 143.

¹⁶⁷ Phillip Cleaver, *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 142 – 143.

¹⁶⁸ Phillip Cleaver, *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 136.

¹⁶⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 143.

¹⁷⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 143.

- (b) Prevented Māori from accessing private sources of lending.¹⁷¹ As well as prohibiting private purchasing of Māori land, the Native Land Court Act 1894 limited new lending on Māori land to state lending agencies, which did not extend to the provision of finance for sawmilling ventures.¹⁷²
- (c) Negatively influenced the ability of Taihape Māori to become involved in sawmill ownership through its ongoing purchasing of Māori land alongside the NIMT route, both before and after the construction commenced.¹⁷³ Cleaver noted that the establishment of sawmill ventures would have presented the greatest opportunity for those Taihape Māori who retained forest land alongside or close to the NIMT route and who could therefore have been able to utilise a resource they already owned.¹⁷⁴

Supply of resources for development of transport infrastructure

- 4.71 The use of timber and stone resources for construction of the NIMT and the district's roading network presented another potential opportunity for Māori who owned these resources and were able to receive payment for their use.¹⁷⁵
- 4.72 Some of the timber used in the district was sourced locally, and there is some evidence of Māori timber owners indirectly receiving income from the supply of timber for construction purposes.¹⁷⁶
- 4.73 No evidence has been found to suggest that Taihape Māori received income from the use of stone resources. Philip Cleaver noted: ¹⁷⁷

In his report on the Rangitikei River and its tributaries, David Alexander notes that in 1888 land was taken compulsorily from Māori owners of the Piaka block for a quarry that was established for railway purposes. This quarry, located outside the southern

¹⁷¹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 143.

¹⁷² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 143.

¹⁷³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 142 – 143.

¹⁷⁴ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 142 – 143.

¹⁷⁵ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 200.

¹⁷⁶ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 200.

¹⁷⁷ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 201.

boundary of the inquiry district, is likely to have provided at least some of the stone required for construction of the NIMT.

Leasing

- 4.74 From 1905, due to the difficulties faced by Māori in the agriculture sector, Taihape Māori began turning to long-term leasing arrangements.¹⁷⁸ As Cleaver states:¹⁷⁹

Māori do not appear to have deliberately ended successful farming operations in order to free up land for leasing. By 1910, as stated earlier, the opportunity for Mōkai Pātea Māori to secure a significant and lasting footing in the agricultural sector had narrowed. Their direct involvement in farming had declined to a very low level and the long-term leases they entered into saw much of their remaining productive land tied up until the mid-twentieth century.

- 4.75 Cleaver points to the Native Land Act 1909 as a cause for this, stating that *“it opened the way for renewed and extensive purchasing of Māori land, further diminishing the potential for Māori to establish a substantial role in the agricultural economy.”*¹⁸⁰ This further resulted in further erosion of the Māori land base in the inquiry district.¹⁸¹
- 4.76 Due to the Crown’s failure to respond to the letters from Taihape Māori and mitigate any of the barriers they faced in using their land, or provide any other assistance for agricultural involvement more generally, by 1910, the opportunity for Taihape Māori to secure a strong footing in the agricultural sector had largely closed.¹⁸² Therefore, Taihape Māori had begun to turn to long-term leasing arrangements as they were unable to profitably farm their lands.¹⁸³
- 4.77 As noted by Tony Walzl during cross-examination, *“lease rentals were very low”*.¹⁸⁴ Many of the leases were locked in at 1905 and did not have rent reviews. Therefore, Taihape Māori were not able to benefit off the

¹⁷⁸ Philip Cleaver *Maori and economic development in the Taihape Inquiry District: 1860 – 2013 Report Summary* (Wai 2180, #A48(c)) at [26].

¹⁷⁹ Philip Cleaver *Māori and economic development in the Taihape Inquiry District: 1860 – 2013 Report Summary* (Wai 2180, #A48(c)) at [26].

¹⁸⁰ Philip Cleaver *Māori and economic development in the Taihape Inquiry District: 1860 – 2013 Report Summary* (Wai 2180, #A48(c)) at [26].

¹⁸¹ Philip Cleaver *Māori and economic development in the Taihape Inquiry District: 1860 – 2013 Report Summary* (Wai 2180, #A48(c)) at [26].

¹⁸² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 301.

¹⁸³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 301.

¹⁸⁴ Hearing week seven transcript (Wai 2180, #4.1.15) at 192.

“boom that was happening in Taihape at the time” through the leasing of land.¹⁸⁵

Native townships

4.78 Philip Cleaver provided evidence that Taihape Māori sought to benefit from the creation and growth of settlements.¹⁸⁶ The earliest case is that of Raumaewa Te Rango, who saw an opportunity for development of the Mangaweka land to improve his financial situation.¹⁸⁷

4.79 However, he was unable to realise a profit due to the Crown’s failure to promptly issue title. Philip Cleaver noted:¹⁸⁸

The government’s failure to honour its undertakings to Raumaewa in respect of the Mangaweka land would clearly have contributed to his financial difficulties and the serious problems he was facing with creditors. While the government paid an almost unparalleled £10 an acre for the land (a price that recognised the surveying work that Raumaewa had undertaken), this was considerably less than the price the government asked for after the land was cut up and offered for sale. In 1900, the quarter-acre sections at Mangaweka were put up for sale at from £6 to £15 each, equal to £24 to £60 per acre.

4.80 Another example is in relation to Utiku Potaka’s efforts to establish a township at Utiku. The Government intervened in 1899, and with the establishment of the native township in the area, “Māori control over the settlement was substantially removed and the potential benefit remaining to Māori would largely have to be derived from leasing of township sections”.¹⁸⁹

4.81 Counsel submits that in respect of native townships, Māori land owners had expected to benefit financially from the township, not just through rental but also that the underlying value of Māori land would improve.¹⁹⁰ However, as noted by Bassett and Kay in relation to the Potaka township:¹⁹¹

¹⁸⁵ Hearing week seven transcript (Wai 2180, #4.1.15) at 192.

¹⁸⁶ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 201.

¹⁸⁷ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 201.

¹⁸⁸ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 202.

¹⁸⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 202-203.

¹⁹⁰ Bassett Kay Research *Taihape Native Townships: Potaka [Utiku] and Turangarere* (Wai 2180, #A47) at 207.

¹⁹¹ Bassett Kay Research *Taihape Native Townships: Potaka [Utiku] and Turangarere* (Wai 2180, #A47) at 207.

In reality the unimproved value of the Potaka township sections did not markedly increase throughout most of the twentieth century, and in some instances declined.

Non-land based activities

- 4.82 While the vast majority of economic opportunities in this district are land-based economic opportunities, this section sets out several examples of non-land based opportunities that the Crown failed to support Taihape Māori in developing.
- 4.83 In respect of customary fishing and the development of commercial freshwater fisheries, it is submitted:
- (a) For Taihape Māori, the inquiry district's waterways were of significant value and were used to gather mahinga kai.¹⁹² In respect of fishing, indigenous fish and invertebrates were important food sources for Taihape Māori. This included tuna, whitebait, smelt, patiki (black flounder), koura (freshwater crayfish) and kakahi (freshwater mussels).¹⁹³
 - (b) Crown involvement in the Rangitīkei River and its tributaries resulted in brown and rainbow trout being introduced, for Crown and Pākehā settler commercial gains¹⁹⁴, with an "*almost complete absence of Crown consideration for the customary fishing rights of Rangitikei River Māori.*"¹⁹⁵
 - (c) There is no evidence of any support or protection for Māori customary fishing by the Crown. This is notwithstanding that customary fishing stocks are under pressure at a local level such as in the Rangitīkei catchment.¹⁹⁶ David Alexander commented that:¹⁹⁷

The Crown has not successfully established mechanisms that reconcile its national biodiversity obligations with its obligations to actively protect the

¹⁹² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 43.

¹⁹³ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 163-164.

¹⁹⁴ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 182.

¹⁹⁵ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 182.

¹⁹⁶ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 182.

¹⁹⁷ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 182.

fisheries of individual hapu, or of hapu acting collectively at a catchment level.

- (d) The Crown has neglected protection of freshwater fish important to Taihape Māori, thus impacting their ability to use these species in any way for their economic development and to sustain their present and future generations.¹⁹⁸

4.84 In respect of gravel extraction, it is submitted:

- (a) Gravel was valuable for railways and roads and large quantities of gravel were extracted from river beds within the inquiry district, in particular from the Rangitīkei River.¹⁹⁹
- (b) Gravel extraction was an activity dominated exclusively by the Crown and local authorities, both in the regulation of the operations and in the extraction itself.²⁰⁰
- (c) Gravel was utilised extensively for the building of the NIMT and evidence shows use of gravel continued more generally until at least 1971.²⁰¹ There is some evidence of yearly compensation being paid to the riparian landowners at Utiku from 1975.²⁰² However, counsel have not located any analysis of whether this was a fair compensation for the gravel extracted.
- (d) The Crown was aware of the extensive resources for gravel and ballast in the district, and utilised these resources through establishing substantial permanent operations each taking *“large volumes of gravel out of the riverbed to supply a regional market”*.²⁰³ As these operations were largely for public

¹⁹⁸ David Alexander *Rangitīkei River and its Tributaries Historical Report* (Wai 2180, #A40) at 145.

¹⁹⁹ David Alexander *Rangitīkei River and its Tributaries Historical Report* (Wai 2180, #A40) at 442; Philip Cleaver *Maori and Economic Development in the Taihape Inquiry District* (Wai 2180, #A48) at 42.

²⁰⁰ David Alexander *Rangitīkei River and its Tributaries Historical Report* (Wai 2180, #A40) at 442.

²⁰¹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 43 (in 1971 a Ministry of Works survey showed Rangitīkei River and its Moawhango and Kawhatau tributaries provided high quality roading aggregates).

²⁰² David Alexander *Rangitīkei River and its Tributaries Historical Report* (Wai 2180, #A40) at 492 – 493.

²⁰³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 201 and David Alexander *Rangitīkei River and its Tributaries Historical Report* (Wai 2180, #A40) at 526.

infrastructure projects, there were “limits to the willingness of Crown and local authorities to regulate gravel extraction”.²⁰⁴

- (e) Regulators were conflicted by the need for gravel supplies, and their duties to manage the impact on the river, as well as river control. Taihape Māori “played virtually no part in management of gravel extraction”.²⁰⁵ They were not consulted, and were ignored when they sought involvement. David Alexander comments that:²⁰⁶

They have seen damage done to the mauri of the river and to their interests in the river, yet they have been unable to exercise an ability to be kaitiaki. The Crown’s authority has been exercised in an exclusive fashion. The Crown has not monitored the actions of its delegated agents towards tangata whenua.

- (f) The rejection of Ngāti Waewae’s application for gravel extraction in 2008²⁰⁷ is a contemporary example of the Crown being unwilling to work flexibly with Māori to assist with their economic development.²⁰⁸

4.85 In respect of ferry operations and river transport, it is submitted:

- (a) Throughout the nineteenth century Māori tino rangatiratanga over waterborne transport activities on the Rangitikei River continued unhindered by Crown actions.²⁰⁹
- (b) Taihape Māori from 1840 to 1897 used waka to transport European settlers on the Rangitikei River. Māori had whakapapa connections on the river to negotiate safe passage and expertise in knowing where to forage and hunt on the land and on the river.²¹⁰ Waka use of the Rangitikei River ended suddenly after the major flood of 1897, although it

²⁰⁴ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 526.

²⁰⁵ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 527.

²⁰⁶ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 527.

²⁰⁷ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 521-526.

²⁰⁸ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 527.

²⁰⁹ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 74.

²¹⁰ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 57.

may have been in decline before then as land-based transport routes were developed.²¹¹

- (c) However, towards the end of the nineteenth century, Europeans were in the majority in the district and Māori had become “*confined to their reserves*”.²¹² The Rangitīkei County Council set up a ferry service, which European settlers benefitted from. No evidence was located of the council engaging with tāngata whenua about use of the river for this purpose, or of the council obtaining their approval.²¹³
- (d) In respect of water transport in the 20th century, when jetboating, kayaking and rafting were developing on the Rangitīkei River, this occurred at a time where the Crown had established its general authority over the Rangitīkei River.²¹⁴ David Alexander comments that:

*By this time, the Crown had developed its own nationwide regime of authority over river use. This regime had no provision for Maori involvement, so there was no consultation with Rangitikei River Maori, and no action taken by the Crown to actively protect Maori interests in the river.*²¹⁵

- (e) Waterborne transport activities were an example of an economic opportunity that Māori historically had involvement in. However, through the acts and omissions of the Crown, this industry was made inaccessible to Taihape Māori, due to the Crown’s exercise of what it had defined as its kāwanatanga.

4.86 In respect of hydroelectric power, it is submitted:

- (a) There was a significant economic opportunity in hydroelectric power generation in the inquiry district.

²¹¹ David Alexander *Rangitīkei River and its Tributaries Historical Report* (Wai 2180, #A40) at 51.

²¹² David Alexander *Rangitīkei River and its Tributaries Historical Report* (Wai 2180, #A40) at 74.

²¹³ David Alexander *Rangitīkei River and its Tributaries Historical Report* (Wai 2180, #A40) at 74.

²¹⁴ David Alexander *Rangitīkei River and its Tributaries Historical Report* (Wai 2180, #A40) at 74.

²¹⁵ David Alexander *Rangitīkei River and its Tributaries Historical Report* (Wai 2180, #A40) at 51.

- (b) The Crown did not protect Māori rights or ownership to rivers in the district, and evidence shows that the Crown consistently did not assess whether Māori rights to waters existed.²¹⁶
- (c) Furthermore, the Crown failed to consult with Taihape Māori who had tino rangatiratanga over particular waterways in the district.²¹⁷
- (d) In particular, there was no consultation with tāngata whenua on:²¹⁸
 - (i) The Hautapu River, relating to the Taihape power scheme;
 - (ii) The Mangawharariki River, relating to the Mangaweka power scheme; and
 - (iii) The Moawhango River, relating to the Tongariro Power Development scheme.
- (e) David Alexander notes that *“even the consultation with Ngati Tuwharetoa, the iwi more affected than any other by the Tongariro scheme, and whose rights “lawfully held” to Lake Rotoaira had been recognised by the Crown, was flawed”*.²¹⁹
- (f) Taihape Māori were prevented from participating in any economic opportunities with regard to hydroelectric power schemes, because the Crown did not consider their legal rights or consult with them before or while operating the schemes.²²⁰
- (g) Further, hydroelectric power schemes have had significant detrimental environmental effects on rivers in the inquiry district, which have prevented Taihape Māori from exercising

²¹⁶ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 360.

²¹⁷ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 361.

²¹⁸ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 361.

²¹⁹ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 361.

²²⁰ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 361 – 362.

kaitiakitanga over the rivers affected, and resulted in negative consequences for successive generations of Taihape Māori.²²¹

5. Native Land Court and Crown purchasing

5.1 This section addresses the TSOI Question Five, Issue Eight: “To what extent, if at all, did the Crown purchase of land and the activities of the Native Land Court obstruct, disadvantage or negatively affect the economic development of Māori?”

Submissions

5.2 It is overwhelmingly clear that Crown purchasing and the activities of the Native Land Court had a devastating effect on the ability of Taihape Māori to participate in economic development.

5.3 The effects of Crown purchasing and the activities of the Native Land Court have been covered in the above section, in particular at [4.11] – [4.15] and [4.16] – [4.21], respectively. We also refer to the generic submissions relating to the Native Land Court and Crown Purchasing for more detail in respect of these issues.

5.4 Crown purchasing served to divest Taihape Māori of substantial parts of their most economically valuable lands. The effects of this are covered above in detail at [4.12] – [4.14] of these submissions. In summary:

- (a) Crown land purchasing obstructed, seriously disadvantaged, and negatively affected Taihape Māori economic development.
- (b) Due to the nature of the economic opportunities in the inquiry district, land was essential for Māori to successfully participate in economic development opportunities.
- (c) However, the evidence shows that the extensive Crown purchasing of land in the Taihape region substantially disadvantaged the economic development of Taihape Māori.

²²¹ David Alexander *Rangitikei River and its Tributaries Historical Report* (Wai 2180, #A40) at 362 – 363 (see example of Ngāti Tuwharetoa in 2000).

- (d) The Crown's failure to respond to the appeals by Taihape Māori to cease land purchasing is an aggravating factor in the overall impact and prejudice suffered by Taihape Māori due to the Crown's land purchasing. The Crown was fully aware of the disadvantages Taihape Māori were experiencing, as expressly set out to it by Taihape Māori in the 1892 and 1895 letters. Instead of actively protecting of Taihape Māori interests, the Crown responded by actively undermining these.
- (e) Renewed land purchasing in the early twentieth century further eroded the Taihape Māori land base, with the land alienated including the most productive and higher-value farm lands remaining to Taihape Māori at that time.
- (f) By 2013, only 14.62 percent of the land in the inquiry district was retained as Māori land. This land was more likely than non-Māori private land to be categorised among the worst two land use capability categories,²²² and significantly around 73 percent of it is landlocked.²²³

5.5 The Native Land Court system also negatively impacted the ability for Taihape Māori to manage their land and prevented them from taking advantage of the key economic opportunities that existed in the inquiry district. The effects of this are covered above in detail at [4.19] – [4.21] of these submissions. In summary:

- (a) The Native Land Court system imposed significant costs (both financial and non-financial) on Taihape Māori to obtain title to their land.
- (b) These costs led to significant debt and further need for Taihape Māori to sell land.

²²² Craig Innes *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013* (Wai 2180, #A15) at 28, 30, and 31.

²²³ Suzanne Woodley *Taihape Rangitikei ki Rangipo Inquiry: Māori Land Rating and Landlocked Blocks Report 1870-2015* (Wai 2180, #A37) at 514-516, 533.

- (c) Crown-introduced native land laws resulted in the fragmentation and land-locking of Taihape Māori land, and increased the ease with which land could be alienated.
- (d) Faced with limited, fragmented and often land-locked lands remaining, Taihape Māori found themselves in a position in which they were unable to effectively utilise their remaining land base to fully participate in economic development.

6. Crown acts, policies and omissions

6.1 This section addresses the TSOI Question Five, Issue Six: “To what extent have Taihape Māori been disadvantaged by Crown acts, policies and omissions relating to economic development (such as the Advances to Settlers Act 1894)?”

Submissions

- 6.2 The evidence shows that Taihape Māori have been substantially disadvantaged by Crown acts, policies and omissions relating to economic development, including in relation to the Advances to Settlers Act 1894.
- 6.3 The Crown acts, policies and omissions that disadvantaged Taihape Māori are set out in detail at [4.2] – [4.50] of these submissions. These include:
- (a) Crown purchasing leading to land alienation and leaving Taihape Māori with land that is either landlocked and/or of low land use capability;
 - (b) The Crown imposed native land laws, Native Land Court and land title system that facilitated further substantial alienation of Taihape Māori lands;
 - (c) The Crown’s failure to respond to requests from Taihape Māori for incorporations;
 - (d) The Crown’s failure to respond to requests from Taihape Māori to provide defined land titles;

- (e) The Crown's failure to respond to requests from Taihape Māori to consolidate land interests;
- (f) The Crown's failure to respond to requests from Taihape Māori for equitable financing assistance. The particular issue of the Advances to Settlers Act 1894 is dealt with separately in more detail below;
- (g) The Crown's failure to ensure that lands retained by Taihape Māori had suitable legal access; and
- (h) The Crown's failure to ensure that Taihape Māori retained sufficient productive lands.

6.4 As a result of these policies, acts and omissions, the evidence shows that Taihape Māori:

- (a) Have faced significant obstacles in utilising lands which are landlocked and/or of marginal land use capability.
- (b) Have a higher rate of unemployment and significantly lower mean annual income as compared with non-Māori in the inquiry district.²²⁴
- (c) Are primarily employed in jobs involving manual labour, with over one in five Taihape Māori classified as labourers, which is twice the national average.²²⁵ Meanwhile, in contrast, non-Māori are at least twice as likely as Māori in the inquiry district, for example, to be managers.²²⁶

6.5 As Phillip Cleaver suggests:²²⁷

... that [Taihape] Māori generally occupy a lower socio-economic position, reflecting that they have not equally been able to take advantage of the key economic opportunities that have existed in the inquiry district.

²²⁴ Philip Cleaver, *Maori and Economic Development in the Taihape Inquiry District* (Wai 2180, #A48) at 295 and 302.

²²⁵ Paul Christoffel *Education, Health and Housing in the Taihape Inquiry District, 1880-2013* (Wai 2180, #A41) at 140.

²²⁶ Paul Christoffel *Education, Health and Housing in the Taihape Inquiry District, 1880-2013* (Wai 2180, #A41) at 140.

²²⁷ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 302.

6.6 Further, Philip Cleaver commented under cross-examination:²²⁸

Q: The question here is, to what extent did the Crown facilitate the economic development of Taihape Māori through the legislation policies and practices? How would you respond to that proposition?

A: Well, again, this district is unusual in how stark the lack of support has been. You are talking about the great majority of land remaining to Māori is poor in terms of economic capability and without legal access, so the amount of facilitation for Māori land within this area looks fairly marginal.

Advances to Settlers Act 1894

6.7 Turning to the Advances to Settlers Act 1894 in particular, this Act provides an example of how Taihape Māori were significantly disadvantaged compared to Pākehā, in respect of economic development.

6.8 The Advances to Settlers Act 1894 was provided as a measure to encourage closer land settlement and offered state financial support to individuals who sought to secure and develop land. The Act's title noted that it aimed to provide mortgages to settlers at reasonable rates of interest.²²⁹

6.9 While Māori land owners were not specifically excluded from receiving advances under the scheme, the lending criteria did not correspond easily with the nature of Māori land tenure. To illustrate:

- (a) Multiple ownership of land by Māori meant that the state-assisted funding available to Europeans through the Advances to Settlers Act 1894 was not accessible to Māori. As Tony Walzl notes:²³⁰

The cost of individualising titles and the comparatively small blocks that this might result in meant that Māori were reluctant to follow this path.

²²⁸ Hearing week five transcript (Wai 2180, #4.1.14) at 437.

²²⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 193.

²³⁰ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 999.

- (b) In the *Hauraki Report*, the Tribunal also addresses this, stating that “Māori generally did not qualify for loans from the *Advances to Settlers Office* because of the complexity of *Māori titles*.”²³¹
- (c) Furthermore, in order to apply for an advance, the consent and signatures of all the owners needed to be obtained, which would have posed a difficulty when there was a large number of owners.²³²
- (d) A further barrier for prospective Māori borrowers was the insistence by officials that rental income from leases be available for repayment of mortgages.²³³

6.10 It is clear from the technical evidence that the *Advances to Settlers Act 1894* advantaged Pākehā settlers over Māori.

6.11 As set out above, the Crown was aware of difficulties faced by Taihape Māori in securing suitable finance and yet it failed to provide a lending mechanism that would alleviate the difficulties identified.

7. Partnership approach

7.1 This section addresses the TSOI Question Five, Issue Three: “Did the Crown take a partnership approach to the development of economic sectors in the Taihape district with Taihape Māori?”

Submissions

7.2 The available evidence shows that Taihape Māori expected to participate fully in the Taihape economic sector from the 1840s to the present day. This included Taihape Māori having the capability to exercise tino rangatiratanga and effectively utilise their lands and resources for economic gain and in order to sustain their present and future generations. The blueprint for economic success in the emerging settler economy was clearly set out by Taihape Māori to the Crown as early as 1892.

²³¹ Waitangi Tribunal *The Hauraki Report* (Wai 686, 2006), vol. 2, at 768.

²³² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 193.

²³³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 193.

7.3 Despite this, the evidence indicates the Crown failed to take a partnership approach to the development of economic sectors in the Taihape district with Taihape Māori. Instead, the Crown:

- (a) Largely ignored the concerns and preferences of Taihape Māori when it came to the development and utilisation of their lands and resources;
- (b) Failed to meaningfully engage with Taihape Māori about the development of economic sectors in the Taihape district; and
- (c) Focused on economic development opportunities for Pākehā settlers.

7.4 In the late nineteenth century, the Crown failed to respond to Taihape Māori when advised of the significant barriers faced by Taihape Māori in both retaining and utilising their lands and resources. That correspondence:²³⁴

- (a) drew attention to serious problems arising from delays in the Native Land Court process and allocation of land interests;
- (b) called for the introduction of ownership structures that would enable them to manage multiply owned land;
- (c) called for ownership entities to be vested with powers that would provide for some control over alienation;
- (d) drew attention to the issue of scattered and uneconomic interests and a means by which they could exchange and consolidate their holdings; and
- (e) called for access to state lending at the same interest rates as Pākehā.

7.5 These letters specifically concerned the Awarua and Motukawa blocks, which by the early 1890s had become a key focus of the development aspirations of Taihape Māori. These blocks included a significant

²³⁴ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 299.

proportion of land that had most potential for economic development.²³⁵ The correspondence shows that Taihape Māori wanted to be able to farm these key lands effectively and take advantage of the available opportunities within the important agricultural sector.²³⁶

- 7.6 Tony Walzl describes the approach of Taihape Māori seeking assistance from the Crown in these letters:²³⁷

The letters represent an approach made by these landholders to their Treaty partner seeking assistance in setting up a land utilisation framework that would support them through into the twentieth century and would provide a basis for land retention and effective land utilisation. The letters mention incorporation, development finance and title consolidation as key bedrock fundamentals require to protect and support landholders. With all of these fundamentals, the owners required the assistance of the Crown to introduce legislative and policy interventions in order for the innovations to come into effect.

- 7.7 There are a number of attributes identified by Taihape Māori land owners as being key to their effective retention and utilisation of land; namely title, consolidation, management and finance.²³⁸ Tony Walzl comments that:²³⁹

Each of these things could not be achieved by the owners through their own means and they required the active assistance of their Treaty partner.

- 7.8 The letters represented a clear plan and yet the Crown ignored these letters and failed to provide any assistance to Taihape Māori in terms of any of their proposed solutions to the difficulties they faced to retain and utilise their lands and resources.
- 7.9 It is submitted that these letters demonstrate that Taihape Māori were ready, willing and able to partner with the Crown in the design of economic policies that would best aid Taihape Māori and their desire to participate fully in the economy. This was not met with equal commitment by the Crown, as is evident from the submissions above in responses to TSOI Question Five, Issues One, Two and Four.

²³⁵ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 160.

²³⁶ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 160.

²³⁷ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 309.

²³⁸ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 309.

²³⁹ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 309.

8. Equal Access

8.1 This section addresses the TSOI Question Five, Issue Five: “To what extent was the Crown obliged to ensure that Taihape Māori had equal access to economic opportunities as compared to their non-Māori counterparts?”

Introduction and summary of submissions

8.2 Under Te Tiriti, the Crown was obliged to ensure that Taihape Māori had equitable access to economic opportunities as compared to their non-Māori counterparts.

8.3 The evidence shows that the Crown failed to fulfil its duty to not prioritise settlers’ interests over those of Māori. Taihape Māori faced significant difficulties to their participation in the agricultural economy (and the economy generally), and a lack of Crown support to mitigate these difficulties. This contrasted sharply with the assistance that was received by Pākehā settlers who took up Crown lands in the district.²⁴⁰

Submissions

8.4 Several Tribunals have found that the Principle of Equity requires that the Crown treat Māori equitably as compared with non-Māori.²⁴¹

8.5 As the Tribunal stated in the *Report on Northern South Island Claims*:²⁴²

The obligations arising from kawanatanga, partnership, reciprocity, and active protection required the Crown to act fairly to both settlers and Māori – the interests of settlers could not be prioritised to the disadvantage of Māori. Where Māori have been disadvantaged, the principle of equity – in conjunction with the principles of active protection and redress – requires that active measures be taken to restore the balance.

8.6 The Tribunal in *He Maunga Rongo: Report on Central North Island Claims* has stated that the right of development includes:²⁴³

²⁴⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 299.

²⁴¹ Waitangi Tribunal *Te Kāhui Maunga: The National Park District Inquiry Report* (Wai 1130, 2013) vol. 1, at 17; Waitangi Tribunal *The Napier Hospital and Health Services Report* (Wai 692, 2001) at 61–64; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims* (Wai 785, 2008) vol. 1, at 5. With respect to the concept of equity as compared with equality, see Waitangi Tribunal *Te Urewera Report* (Wai 894, 2017) vol. 8, at 3774–3777, 3783.

²⁴² *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims* (Wai 785, 2008) vol. 1, at 5.

²⁴³ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 4, at 894.

“[T]he right to positive assistance, where appropriate to the circumstances, including assistance to overcome unfair barriers to participation in development (especially barriers created by the Crown)”

- 8.7 This statement is echoed in National District Park Inquiry Report, *Te Kahui Maunga*:²⁴⁴

The Principle of Equity, in accordance with the obligations arising under kawanatanga, partnership and reciprocity, and active protection, required the Crown to act fairly to both settlers and Māori and to ensure that settlers’ interests were not prioritised to the disadvantage of Māori. Where disadvantage did occur, the principle of equity, along with those of active protection and redress, required that there be active intervention to restore the balance.

(Emphasis added)

- 8.8 In discussing whether the Crown has been obliged to provide positive assistance to Māori to ensure equal access to these opportunities, the Tribunal in Central North Island Claims Report, *He Maunga Rongo*, stated that:²⁴⁵

...the ability to participate fully in economic development opportunities requires more than just the possession of properties and taonga. In particular, appropriate experience, skills, and knowledge, the ability to accumulate funds or access loan finance, and suitable recognised forms of management and title for property have been identified as important factors. Historians have noted that on occasions Māori, like other indigenous peoples, faced considerable challenges in participating equally in development opportunities. This meant that the Crown’s duty of active protection extended not just to ensuring that Māori retained sufficient properties and taonga to participate in opportunities, but also to ensuring that Māori were facilitated or assisted to do so.

- 8.9 Counsel submit that these duties applied to the Crown in Taihape district and, to answer the TSOI question, the Crown had a duty to ensure that Taihape Māori had equitable access to economic opportunities as compared to their non-Māori counterparts.

²⁴⁴ Waitangi Tribunal *Te Kāhui Maunga: The National Park District Inquiry Report* (Wai 1130, 2013) vol. 1, at 17.

²⁴⁵ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 4, at 894.

8.10 The evidence shows that the Crown failed to assist Taihape Māori economic development, and instead focused on providing opportunities to settlers, rather than Taihape Māori, including through:

- (a) Construction of the NIMT, the objectives and plans for which focused on opening up land for settlement and to ensure the majority of potential benefits from that passed to Pākehā settlers.²⁴⁶ The Crown also began construction on the NIMT without consulting Taihape Māori.²⁴⁷
- (b) Failing to offer support to Taihape Māori, including to overcome the barriers to development made known to the Crown in the 1892 and 1895 correspondence from Taihape Māori, who sought to utilise their lands and take advantage of developing economic opportunities in the district.²⁴⁸
- (c) Ensuring that settlers were afforded conditions which gave them a reasonable chance of developing their landholdings, including clear title to surveyed sections, equitable access to finance, and infrastructure access including roading.²⁴⁹

8.11 The Crown also assisted Pākehā settlers who took up Crown lands in the district. In the 1890s the Liberal government introduced measures intended to promote closer land settlement. These included that settlers:²⁵⁰

- (a) Were able to take up land under several different tenure options, which provided flexibility that helped to ensure they had sufficient capital for land development.
- (b) Could access state loans which carried low interest rates under the Advances to Settlers Act 1894.

²⁴⁶ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 207.

²⁴⁷ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 125.

²⁴⁸ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 208.

²⁴⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 209.

²⁵⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 297.

- (c) Were given preference for work within the cooperative labour system that was introduced in 1894. Much of the NIMT and road construction was carried out under this system.

8.12 The Crown also prioritised settlers' desire for Māori land to be made available to them, over Taihape Māori being able to retain their land. In the first decade of the twentieth century, settlers appear to have placed considerable pressure upon the government to open further lands for settlement within the inquiry district.²⁵¹ As Cleaver comments:

As well as pressuring the government to make Crown land available for settlement, settlers also lobbied for more land to be purchased from Māori. In making these calls, settlers sometimes stated that Māori land was not being properly utilised and pointed to risks concerning the spread of noxious weeds.²⁵²

8.13 In relation to the 1892 and 1895 letters, during Tribunal questioning Tony Walzl commented on the comparative treatment of Pākehā landowners in relation to finance, stating:

As for finance, well again you know the Advances to Settlers Act started in 1894 and there was a thing before that as well. So they [Pākehā landowners] had a source of financing as well as private as well. It's not difficulty to finance when you're a sole owner or a tenant in common on a piece of land. The interesting thing is that in their case the expectation was that the mortgage would be – the interest and the repayment would be met by earnings. Whereas as we found later on in this area, and David Armstrong found it as well, it seemed to be that mortgages were only given if there was examples that Māoris were leasing land and were bringing in an income from somewhere that would meet at least the repayments. So no I don't think there was that sort of same need in the Pākehā community to have that same assistance.

[Emphasis added]

8.14 Despite the fact that the Crown was fully aware of the disadvantages experienced by Taihape Māori, it failed to take active steps to restore the balance. Instead, the Crown ignored the requests for assistance and continued to prefer Pākehā settlers including through its implementation of its purchasing policy.

²⁵¹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 155.

²⁵² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 155.

8.15 In short, the Crown failed to fulfil its duty to not prioritise settlers' interests over those of Taihape Māori, and to treat Taihape Māori equitably as compared with non-Māori when it came to economic development.

9. Crown control and management over their commercial lands

9.1 This section addresses the TSOI Question Five, Issue Seven: "What responsibility did the Crown have to ensure that Taihape Māori were able to exercise adequate control and management over their commercial interests, including effective management of their lands, fisheries, forests and other economic resources?"

Introduction and summary of submissions

9.2 The Crown's Te Tiriti obligations include ensuring that Taihape Māori were able to exercise tino rangatiratanga over their commercial interests in accordance with their cultural preferences or tikanga. This included effective management of their lands, fisheries, forests and other economic resources.

9.3 The ability to exercise adequate control and management over commercial interests is an essential part of the right to development. The right of development has been discussed extensively in previous Tribunal reports and relates to the Te Tiriti right to participate in development opportunities, and share in the benefits, that were expected to result from British colonisation.²⁵³ The Tribunal in *He Maunga Rongo* concluded that Māori have a Te Tiriti right of development, including:²⁵⁴

- (a) the right as property owners to develop their properties in accordance with new technology and uses, and to equal access to opportunities to develop them;
- (b) the right to develop or profit from resources in which they have (and retain) a proprietary interest under Māori custom, even

²⁵³ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 4, at 891.

²⁵⁴ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 4, at 914.

where the nature of that property right is not necessarily recognised, or has no equivalent, in British law;

- (c) the right to positive assistance, where appropriate to the circumstances, including assistance to overcome unfair barriers to participation in development (especially barriers created by the Crown);
- (d) the right of Māori to retain a sufficient land and resource base to develop in the new economy, and of their communities to decide how and when that base would be developed; and
- (e) the right of Māori to develop as a people, in cultural, social, economic, and political senses.

9.4 The Tribunal in that report further held that the Crown was required to take reasonable steps in the circumstances of the times to meet these obligations. It stated:²⁵⁵

In doing so, it was obliged actively to protect Māori in their property and their development rights. This was more than an aspiration; it was part of the full property rights guaranteed by the Treaty and was fundamental to the expectation that Māori would use their properties to participate in the new opportunities, and share in the benefits, that were brought by the Treaty and by settlement. Further, this was a tribal right, as the Muriwhenua Fishing Tribunal found, and subject to the guarantee of Māori autonomy (tino rangatiratanga). It was for the tribes to decide the nature and pace of their development, in partnership with the Crown. The ability of Māori to participate in development opportunities as they chose, and to meet the objectives they chose, was an important part of the Treaty development right.

9.5 There is general acceptance by the Tribunal and the Courts that a right of development is based on the strong emphasis on guarantees for the properties and taonga retained by Māori in the wording of both texts of the Te Tiriti.²⁵⁶ Part of enjoying full property rights is the right that owners have to manage and develop their properties as they choose.²⁵⁷ This applies to commercial interests of Taihape Māori, such as their lands, fisheries, forests and other economic resources.

²⁵⁵ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 4, at 912.

²⁵⁶ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 4, at 891.

²⁵⁷ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 4, at 891.

- 9.6 As observed by the Tribunal in *He Maunga Rongo*, the right of development includes the right of Māori to “*retain a sufficient land and resource base to develop in the new economy.*”²⁵⁸
- 9.7 Notwithstanding its obligations, in this inquiry district, the Crown prevented and significantly fettered the ability of Taihape Māori to exercise tino rangatiratanga over their commercial interests, including effective management of their lands, fisheries, forests and other economic resources. Instead, as set out in previous sections including [4.2] – [4.50], the Crown’s interventions across the inquiry district failed to support Māori in sustaining their present and future generations and to the contrary, have generally acted to directly undermine Taihape Māori in their efforts.
- 9.8 With the loss of significant portions of their land (and resources), Taihape Māori also lost the ability to exercise adequate control and management of their commercial interests.

LEVEL TWO – PARTICULAR THEMES / ISSUES IN THIS INQUIRY

10. Introduction

- 10.1 Four key themes arise in relation to economic development in this inquiry district, namely:
- (a) The district was a promising area for economic development, particularly in land-based economic opportunity. As at 1840 Taihape Māori were successfully participating in land-based economic activities;
 - (b) Taihape Māori were ready and willing to participate in the new settler based economy and had expressed this to the Crown;
 - (c) The Crown failed through their acts and omissions to actively protect and facilitate Taihape Māori economic development and capability; and

²⁵⁸ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 4, at 914.

- (d) This failure by the Crown has had significant and long-lasting effects on Taihape Māori.

10.2 Where there is overlap between themes or issues and the responses to TSOI questions set out above, counsel have sought to summarise the issue in this section, rather than to reproduce the response in its entirety.

11. Theme 1: The district was a promising area for economic development, particularly in land-based economic opportunity. As at 1840 Taihape Māori were successfully participating in land based activities

Customary Economy

- 11.1 Taihape Māori had a customary economy that operated prior to the establishment of settlers in the district, which was based on utilisation of the district's land and resources.²⁵⁹ This mainly relied on primary industries connected with utilisation of the land (largely through extensive agricultural activities).²⁶⁰
- 11.2 Taihape Māori, despite a comparatively small population, accessed 'the broadest of landscape'²⁶¹ to collect or grow the right resource at the most suitable time. Use of resources was subject to seasonal variations as well as the implementation of resource management practices such as rāhui. The distribution of traditional resource-use sites, the activities practiced at them, and the variety of resources collected reflects both the nature of the traditional economy and demonstrates the detailed knowledge that tāngata whenua had of their lands.²⁶²
- 11.3 Resources of the forest were traditionally of much importance to Taihape Māori. Among the forest resources utilised, birds and kiore were hunted and fern-root was gathered.²⁶³ In the mid-nineteenth century, a significant proportion of the inquiry district was covered in forest.²⁶⁴ The

²⁵⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 20.

²⁶⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 20.

²⁶¹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 34.

²⁶² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 34.

²⁶³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 34.

²⁶⁴ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 34 and 35.

indigenous forest of the inquiry district began to be removed around 1880.²⁶⁵

- 11.4 Through the acts and omissions of the Crown the lay of the land significantly changed and within a relatively short period of time the ability of Taihape Māori to sustain their people in the ways previously done were no longer feasible.

Land-based economy

- 11.5 Land-based activities have provided the main economic opportunities in this district, reflecting the district's physical environment and natural resources.²⁶⁶ Agricultural activities and, to a lesser degree, resource extraction, have dominated the district's economy.²⁶⁷ The most important economic opportunity has been non-intensive agriculture, and sheep farming in particular, which has dominated economic activity.²⁶⁸
- 11.6 In around 1860, real interest in running sheep in the inquiry district began. As noted by Cleaver:²⁶⁹

When travelling through the area in March 1860, Taylor, after crossing to the eastern side of the Moawhango River, noted that the land would be 'beautiful for sheep'. As detailed above, Crawford had also reported on the potential of the interior grasslands for sheep farming, though was somewhat uncertain about the climatic conditions. Unlike the forested lands that covered much of the southern half of the inquiry district, which would require clearing and pasturing before sheep could be introduced, no such work was necessary in the north, where native grasses were available for immediate grazing.

- 11.7 He also further notes that by the mid-1860's the grasslands of Mokai Patea and Murimotu districts "*began to receive serious attention from prospective Pākehā run-holders and speculators. This partly reflected growing knowledge of the potential of these lands.*"²⁷⁰
- 11.8 It is clear that the potential for economic development in the inquiry district, in particular for sheep farming, was recognised relatively early.

²⁶⁵ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 36.

²⁶⁶ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 296.

²⁶⁷ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 44.

²⁶⁸ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 296.

²⁶⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 56.

²⁷⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 56-57.

Natural resources

11.9 Philip Cleaver also notes that:²⁷¹

During the nineteenth century and into the twentieth century, economic development was closely tied to the transformation of natural resources – land, forests, minerals, and waters – into sources of outputs. This was certainly the case in the Taihape inquiry district, where agriculture and, to a lesser extent, forestry, have been perceived and undertaken as the main economic opportunities throughout the period examined in this report.

11.10 Without a coastal port or easily navigable river and with relatively little land available for intensive agriculture or horticulture, the district has not been closely settled or the focus of significant urban development, which has limited opportunities for the emergence of secondary and tertiary industries.²⁷²

11.11 As noted above at [4.64], evidence shows that apart from two Taihape Māori milling ventures (out of over twenty sawmills in the Inquiry District), Taihape Māori had limited involvement in the ownership of sawmills that operated in the district.²⁷³

Conclusion

11.12 Given the nature of available economic opportunities in this district it was imperative that Taihape Māori retained a sufficient land and resource base to take advantage of those opportunities. As at 1840, Taihape Māori were successfully participating in land based activities.

12. Theme 2: Taihape Māori were ready and willing to participate in the new settler based economy and had expressed this to the Crown

12.1 Taihape Māori were ready and willing to participate in the new settler based economy. They had an existing customary economy and had shown that they were willing to adapt and participate in the opportunities that arose in the settler economy.

²⁷¹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 13.

²⁷² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 20.

²⁷³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 139.

- 12.2 To this end, Taihape Māori formed a detailed blueprint or plan and brought it before the Crown. The plan or blueprint expressed their willingness to participate in the local economy and how this could be best achieved in accordance with their cultural preferences or tikanga.
- 12.3 As Hiraka Te Rango concluded in his 1895 letter to the Minister of Lands:

*We beg and pray you will do your best to assist us in the matters now laid before you and help us to become good and useful settlers on our own lands instead of living as we are now doing - comparatively a life of enforced idleness.*²⁷⁴

- 12.4 However, this blueprint was ignored by the Crown and instead Taihape Māori efforts to fully participate in economy were curtailed by Crown acts and omissions.

Participation in the settler economy

- 12.5 The attempts by Taihape Māori to participate in the local economy can be seen through the example of pastoral sheep farming. Other examples of Māori attempts to participate such as in sawmilling ([4.63] - [4.70]) and leasing ([4.74] – [4.77]) can be found in the sections above.
- 12.6 From an early stage, Taihape Māori endeavoured to participate in the agricultural economy. In the 1860s they first participated indirectly in the pastoral economy in the north of the district through leasing arrangements with Pākehā pastoralists.²⁷⁵ By 1870 Taihape Māori were directly involved in farming, in some cases working in partnership with Pākehā.²⁷⁶
- 12.7 By 1890 Taihape Māori owned 86,000 sheep. By 1895 that number had increased to 146,000 sheep.²⁷⁷ That early involvement was not sustained and by 1910 Taihape Māori sheep ownership had dropped to

²⁷⁴ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 314.

²⁷⁵ Philip Cleaver, *Maori and Economic Development in the Taihape Inquiry District* (Wai 2180, #A48) at 297.

²⁷⁶ Philip Cleaver, *Maori and Economic Development in the Taihape Inquiry District* (Wai 2180, #A48) at 297.

²⁷⁷ Philip Cleaver, *Maori and Economic Development in the Taihape Inquiry District* (Wai 2180, #A48) at 300.

about 23,000 sheep (approximately three-quarters being held by a single Māori-Pākehā partnership).²⁷⁸

Letters to the Crown

12.8 Importantly, in the late nineteenth century Taihape Māori had put the Crown on notice, on more than one occasion, namely in 1892 and 1895, regarding the severe difficulties they faced in using their lands and resources.

12.9 These letters were carefully thought out and well planned. For example, as seen at [4.49] of these submissions, the letters provide clear measures to ensure that borrowed finance was strictly controlled and would not put the land at risk. This included how the finance would be organised and prudent levels of borrowing.

12.10 As Tony Walzl notes, all four measures had to be implemented for the plan to work:

*The owner representatives of the 1890s were trying to bring in a system of retention and land utilisation that would guard against the vicissitudes of life and provide a more enduring long term option.*²⁷⁹

12.11 It is submitted that these letters, which provided carefully thought out solutions, demonstrate that Taihape Māori wanted to participate fully in the economic development of the region and country. They also show Taihape Māori wanted to retain and manage their lands and resources in accordance with their cultural preferences or tikanga. In effect, the letters provided a blueprint or plan whereby Taihape Māori could exercise tino rangatiratanga (whānau, hapū and iwi) over their lands and resources in the settler economy.

12.12 The plan or blueprint proposed solutions to serious difficulties that had been identified relating to Taihape Māori economic development and capability.

²⁷⁸ Philip Cleaver, *Maori and Economic Development in the Taihape Inquiry District* (Wai 2180, #A48) at 300.

²⁷⁹ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 314.

13. Theme 3: The Crown failed through their acts and omissions to actively protect and facilitate Taihape Māori economic development and capability

13.1 Failures of the Crown are covered in detail at [4.2] to [4.50] of these submissions and counsel refer to these sections.

13.2 The Crown failed through their acts and omissions to actively protect and facilitate Taihape Māori economic capability and their ability to sustain present and future generations.

13.3 Counsel submit that the Crown's lack of response to the 1892 and 1895 letters provides a prime example of the Crown's attitude towards Taihape Māori and its Te Tiriti obligations. By ignoring the pleas of Taihape Māori and instead continuing to act in its own self-interest and the interests of settlers, the Crown displayed a lack of respect towards its Te Tiriti partner and an unwillingness to partner with Taihape Māori or to actively protect Taihape Māori interests.

13.4 Counsel highlight tāngata whenua evidence about impact of the Crown's inaction in response to the 1892 letter:²⁸⁰

I can only imagine the helplessness that our Rangatira felt when the Crown failed them and ignored their plea. There would be no help in consolidating, retaining or developing the tribal lands. It must have been doubly painful given the military support given to the Crown during the land wars in the 1860's and their oath of allegiance to the Queen.

14. Theme 4: This failure by the Crown has had significant effects and long-lasting impact on Taihape Māori

14.1 The failure by the Crown to comply with its Te Tiriti obligations has had devastating effects on Taihape Māori, which continue to the present day.

14.2 It must be emphasised that the effects arising from the failures of the Crown are not simply limited to that of economic development.

14.3 The evidence shows that:

²⁸⁰ Statement of evidence of Utiku Keepa Potaka, dated 12 February 2018 (Wai 2180, #14) at [31].

- (a) In the late nineteenth and early twentieth centuries, Taihape Māori involvement in available land-based industries, including sheep farming and sawmilling, declined as the Crown failed to support and address barriers to their economic development.²⁸¹
- (b) Renewed land purchasing in the early twentieth century further eroded the Taihape Māori land base and saw the acquisition of higher-value farm lands.²⁸²
- (c) By 2013, only 14.62 percent of the land in the inquiry district was retained as Māori land. This land was more likely than non-Māori private land to be categorised among the worst two land use capability categories,²⁸³ and around 73 percent of it is landlocked.²⁸⁴
- (d) As a result of not being able to take advantage of the primary economic, land-based, opportunities in the district, Taihape Māori participated in wage work as their main involvement in the district's economy.²⁸⁵
- (e) By 2013 Taihape Māori had a higher rate of unemployment and significantly lower mean income suggesting that they have not been able to take advantage of the key economic opportunities that have existed in the inquiry district.²⁸⁶

14.4 The impacts on the ability of Taihape Māori to participate in economic development has had significant flow-on effects on their ability to sustain present and future generations and their overall socioeconomic wellbeing.

14.5 In this regard, counsel highlight the recent findings of the Tribunal in the Te Rohe Pōtae report *Te Mana Whatu Ahuru*, which dealt with the

²⁸¹ Philip Cleaver, *Maori and Economic Development in the Taihape Inquiry District* (Wai 2180, #A48) at 209.

²⁸² Philip Cleaver, *Maori and Economic Development in the Taihape Inquiry District* (Wai 2180, #A48) at 292 and 293.

²⁸³ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 180.

²⁸⁴ Suzanne Woodley *Maori Land Rating and Landlocked Blocks Report 1870-2015: Errata and Additional Information (2)* (Wai 2180, #A37(m)) at 3; Suzanne Woodley *Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015* (Wai 2180, #A37) at 516.

²⁸⁵ Philip Cleaver, *Maori and Economic Development in the Taihape Inquiry District* (Wai 2180, #A48) at 294.

²⁸⁶ Philip Cleaver, *Maori and Economic Development in the Taihape Inquiry District* (Wai 2180, #A48) at 295 and 302.

interconnection between various aspects of social, cultural, and economic wellbeing:²⁸⁷

It is impossible to calculate the longer-term damage to Māori health, well-being, and economic success that arose from this rapid loss of land and opportunity, but it is certain to have been substantial. We find that, through these actions, the Crown failed in its duty of active protection through failing to protect Te Rohe Pōtae Māori from the adverse effects of settlement. ...

Previous Tribunals to engage with these issues have drawn clear links between land loss, poverty, and the poor performance of Māori across a range of social indicators, including educational attainment.

- 14.6 Counsel submit that this conclusion applies equally to Taihape Māori and Taihape Māori land alienation and socio-economic deprivation and refer to the generic claimant closing submissions regarding education, health and other social services for further detail in this regard.
- 14.7 The specific effects of the failures of the Crown on whānau, hapū and iwi are best dealt with in claimant specific closing submissions.
- 14.8 However, tāngata whenua evidence is clear about the harmful effects arising from Crown acts and omissions in respect of economic capability and development of Taihape Māori. To conclude this section, counsel highlight the following examples.
- 14.9 In the statement of evidence of Peter James Fraser, he stated:²⁸⁸

By the 1960s the destruction of Ngāti Hauiti as a political, economic and cultural entity was comprehensive. It took less than 100 years. My whanaunga will outline the plethora of social and cultural ills that are the direct result of this asset stripping process and the inability to pursue collective economic development opportunities (and thereby fulfil the role of manaakitanga to the people). Much of this korero is deeply distressing. All is intensely personal.

- 14.10 In the statement of evidence of Peter Wairehu Steedman, he states:²⁸⁹

²⁸⁷ Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* (Wai 898, 2020) vol. 5, at 60, 133.

²⁸⁸ Statement of Evidence of Peter James Fraser, dated 12 February 2018 (Wai 2180, #16) at [9].

²⁸⁹ Statement of Evidence of Peter Wairehu Steedman, dated 30 April 2018 (Wai 2180, #K5) at [1].

I hope to show the Tribunal that Taihape was a thriving community with boundless employment opportunities and a great sense of community. With the advent of sCrown policies that resulted in the closure of the railways and an exodus of our younger people from Taihape in pursuit of work this has changed.

14.11 Finally, in the statement of evidence of Utiku Keepa Potaka it was stated:²⁹⁰

However, how can we fully express ourselves and achieve our aspirations when our tribal economic base, cultural identity and social organisation has been taken away? No longer do we have the means to sustain ourselves as a people, no longer do we have the ability to express ourselves the way we want and no longer do we have the authority over resources.

[...]

We want the ability and means to restore our economic base so that we can sustain and enhance our cultural, social and spiritual well being.

PREJUDICE

15. Prejudice

15.1 Claimant-specific closing submissions will deal with the prejudice suffered by Taihape Māori as a consequence of the Crown's acts and omissions in relation to economic development and capability in more detail. However, this prejudice includes:

- (a) A loss of the Taihape Māori economic base.
- (b) A significant reduction in the ability of Taihape Māori to provide for their present and future generations.
- (c) The undermining of mana and tino rangatiratanga of Taihape Māori.

²⁹⁰ Statement of Evidence of Utiku Keepa Potaka, dated 30 August 2018 (Wai 2180, #L9) at [17] and [19].

REMEDIES

16. Remedies

16.1 Claimant-specific closing submissions will deal with the relief sought from the Tribunal by Taihape Māori in more detail. However, any relief should include:

- (a) A finding that the claims in respect economic development and capability are well-founded.
- (b) A finding that acts and omissions of the Crown have played a substantial role in disadvantaging Taihape Māori when it comes to economic development and capability, in turn reducing their ability to provide for their present and future generations and contributing to their overrepresentation in negative socioeconomic statistics.
- (c) A finding that acts and omissions of the Crown have undermined the mana and tino rangatiratanga of Taihape Māori.
- (d) Recommendations that the Crown:
 - (i) Urgently engage with Taihape Māori to develop solutions and policies to adequately promote, protect and improve their economic development and capability.
 - (ii) That the Crown provide Taihape Māori with sufficient resources to adequately promote, protect and improve their economic development capabilities and socioeconomic wellbeing.

Dated this 30th day of September 2020


P Johnston / E Martinez / D Chong / R Scoular-Sutton