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In the Waitangi Tribunal **Wai 2180**

Under the Treaty of Waitangi Act 1975

in the matter of the Taihape: Rangītikei ki Rangipō District Inquiry (Wai 2180)

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CLAIMANT CLOSING GENERIC SUBMISSIONS
LOCAL GOVERNMENT AND RATING:
PART 1, LOCAL GOVERNMENT

Dated 6 October 2020

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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

1. The issues of Local Government and Rating have been addressed in other inquiries.[1] There are no Crown concessions on rating or local government in this Inquiry District.

2. The central issue is whether the Crown has managed, in introducing and maintaining local government and rating in the district, to ensure that the systems of governance preferred by Taihape Maori were catered for in the rapidly changing post-Treaty economic, social and cultural landscape and also to ensure that Taihape Māori have been and are fairly treated.

3. These closing submissions traverse the key legal and factual matters to be considered.

4. The submissions are written not only with the claimants, Tribunal, and Crown in mind. There has been some engagement by the Rangitīkei District Council with this Inquiry.. Tribunal conclusions on these matters may be a practical, useful reference for people working within local (and regional) government.

Evidence

5. Evidence on these issues has been provided by technical and tangata whenua witnesses. The Crown did not contribute evidence on local government or rating.

Tangata whenua evidence

6. Witnesses who raised issues relating to local government and/or rating were:

[1] For local government issues, see *Te Mana Whatu Ahuru* vol IV and *He Maunga Rongo* vol I. For rating issues, see *Te Mana Whatu Ahuru* vol IV, *The Hauraki Report* vol III, and *Tauranga Moana 1886-2006* Vol I.

a. Patricia Cross (Wai 2180, #F3) raised issues of lack of engagement over the placement of the Taihape Sewage Treatment Plant;

b. Ngahapeaparatuae Lomax (Wai 2180, #F4) raised issues of lack of monitoring of farming practices;

c. Jordan Winiata-Haines (Wai 2180, #F5) raised issues of lack of engagement with mana whenua in respect of monitoring environmental issues arising from the Taihape Sewage Treatment Plant;

d. Hare Arapere and Puruhe Smith (Wai 2180, #F6) discussed the effect of Catchment Board works on shellfish beds;

e. Turoa Karatea (2180, F7) raised issues of Catchment Board decisions resulting in losing land to the river, of resourcing for mana whenua to engage with governance issues, and difficulties in communication with Rangitikei District Council;

f. David Steedman (Wai 2180, #I3) raised issues of lack of focussed engagement with mana whenua over water development schemes.

g. Hari Benevides (Wai 2180, #H1) raised issues of little or no Māori representation on local authorities; lack of consultation with Taihape Māori regarding rating; no consideration of the circumstances of Taihape Māori or the ability of the land to support rates; rating of landlocked land;

h. Mariana Waitai (Wai 2180, #H2) raised issues of lack of consideration of the circumstances of Taihape Māori or the ability of the land to support rates;

i. Peter Steedman (Wai 2180, #H21, #H21(a), and #I3) raised issues of rating and remissions policies;

j. Edward Penetito (Wai 2180, #L1) raised issues of the lack of engagement by local authorities with mana whenua;

k. Puti Wilson (Wai 2180, #L7) discusses local governance issues and opportunities in respect of ngā awa;

l. Utiku Potaka (Wai 2180, #L9) discusses the requirement for formal recognition of traditional governance structures.

TRIBUNAL STATEMENT OF ISSUES

Tino rangatiratanga

7. Question 1: To what extent does the Crown have a duty to ensure that local government bodies observe and give effect to the Treaty? To what extent has legislation governing local bodies acknowledged the Crown's obligations under the Treaty?

    a. Tribunal statements and case law are clear that the duty exists and should be given full expression.

    b. To only a very limited extent. Opportunities have not been taken, for example it has taken 18 years for the first Māori ward to be agreed to be established.[2]

8. Question 2: To what extent did the Crown consult and engage with Taihape Māori about the establishment of local bodies? Were there sufficient opportunities for Taihape Māori to raise concerns about those bodies?

    a. There is no evidence the Crown consulted with Taihape Māori about the establishment of local bodies. There was some consultation with the Kotahitanga movement, of which Taihape Māori were a part, on legislation in the late 19th Century, however the legislation as enacted did not match what the Kotahitanga had agreed to, and in any case it was quickly modified further.

[2] In New Plymouth on 21 July 2020. Gisborne followed suit shortly afterwards.

b. Bassett and Kay and Walzl note Taihape Māori as being ‘invisible’ on the record except with regard to rates. Taihape Māori did raise issues with visiting Ministers of the Crown, however these were either dismissed, used as pressure to encourage land sales, or ignored.

9. Question 3. What provisions, if any, have been made for encouraging Māori participation and representation on local government bodies?

    a. For Taihape Māori, none.

10. Question 4. Does the Crown have a responsibility, under the Treaty, to legislate for the entrenchment of Māori positions within the governance of local bodies?

    a. Yes, in accordance with the partnership responsibility. How this is done is a matter in each case for mana whenua. The Crown must not impose something on Taihape Māori without their express consent, and what it does implement needs to be developed with Taihape Māori, and be flexible enough to evolve as the partnership understandings grow.

TECHNICAL EVIDENCE

11. Key reports on these issues were:

    a. Bassett Kay research, 'Local government, rating and Native Townships (scoping)', #A5

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

    c. Bruce Stirling, 'Nineteenth century overview', #A43

    d. Phillip Cleaver, ‘Economic Development’. #A48

12. Other reports which included issues were:

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

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

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

d. David Alexander, 'Rangitīkei River and its tributaries historical report', #A40

e. Paul Christoffel ‘Education, Health, and Housing in the Taihape Inquiry District, 1880-2013’ #A41

f. Robert Joseph and Paul Meredith, 'Ko Rangitīkei te awa: the Rangitīkei River and its tributaries cultural perspectives report', #A44

g. David Armstrong, 'The impact of environmental change in the Taihape district, 1840-c1970', #A45

h. Tony Walzl, 'Twentieth century overview', #A46

CROWN POSITION

13. The Crown opening submissions on local government say:[3]

> The Crown’s position is that local authorities are not the Crown, nor do they act on behalf of the Crown for the purposes of the Treaty of Waitangi Act 1975. As acknowledged in advice to potential claimants on the Tribunal’s website, “the ‘Crown’ is the central Government. The Tribunal can only inquire into actions of the Crown/central Government. The Crown is not local government (district or regional councils) and it is not the Courts.”
>
> The Crown’s Treaty responsibility lies with the statutory framework within which local government operates and in ensuring that that framework is consistent with the Treaty and its principles. Any assessment of the extent to which legislation or Crown actions, omissions, policies or practices may have adversely affected Taihape Māori in relation to local

[3] Wai 2180 #3.3.1 at [182]-[185].

> government and rating must be considered on a case-by-case basis and with regard to the prevailing circumstances.
>
> Claims relating to specific exercises of decision-making, such as for example claims relating to the exercise of powers under Resource Management Act 1991 by local authorities are not claims against the Crown within section 6 of the Treaty of Waitangi Act 1975.

14. And: [4]

> It is alleged the Crown has failed to ensure that the statutory delegation of its powers to local authorities is consistent with the Treaty. As a general proposition, consistent with the Crown's position in other inquiries, the development of a system of local government, undertaken in good faith and applying to all New Zealand citizens is consistent with the principles of the Treaty. The Crown does not accept that legislation authorising delegation to local authorities per se is a Treaty breach.

15. This means that central issues are the way in which the system fo lcoal government was developed in the district and whether and how far systems of governance preferred by Taihape Maori were catered for in the rapidly changing post-Treaty economic, social and cultural landscape and whether the delegations were and are appropriate in light of the Crown's Treaty obligations.

16. The Crown statement on rating is:[5]

> The power to set and levy rates is a particular statutory function of local government. Up until to the 1940s, Māori land was generally considered rateable, with some exceptions. It is alleged the Crown empowered the local authorities to levy rates which caused an unfair burden on Taihape Māori.
>
> Consistent with the position it has adopted in other inquiries, the Crown's position is that the provision for the levying of rates is a reasonable exercise of the Crown's right to govern under Article I of the Treaty and an aspect of the sovereign

[4] Wai 2180 #3.3.1 at [186].
[5] Wai 2180 #3.3.1 at [186].

> right to impose reasonable taxation. The principle of rating Māori land is not inconsistent with the Treaty.

TREATY OBLIGATIONS IN RESPECT OF LOCAL GOVERNMENT AND RATING

17. There are differing views on whether local government is 'the Crown', however we consider it is not necessary to engage with these for the purposes of assessing Treaty breach. As noted above at paragraph 10, the Crown accepts responsibility for the statutory framework for local government. This must logically include accepting responsibility for failings of local government that have their origins in, or are contributed to, by legislation. The Crown submissions appear to accept this point.

18. The Tribunal said as far back as 1993 that the Crown cannot divest itself of Treaty obligations when it delegates functions:[6]

> The Crown obligation under article 2 to protect Maori rangatira is a continuing one. It cannot be avoided or modified by the Crown delegating its powers or Treaty obligations to the discretion of local and regional authorities. If the Crown chooses to so delegate, it must do so in terms which ensure that its Treaty duty of protection is fulfilled.

19. The Tūranga Tribunal agreed with this view, as did the Tau Ihu and Wairarapa Tribunals.[7] And in Wai 262, the Tribunal rejected the Crown approach, saying:[8]

> The Crown argued that, given this devolution [of statutory powers to local government under the Resource Management Act 1991], its only remaining concern was to ensure that the framework for administration was Treaty compliant – which, the Crown submitted, it is. But this argument has been repeatedly rejected by the Tribunal and the courts.

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[6] Waitangi Tribunal *Ngawha Geothermal Resource Report* (Wai 304, 1992) at 7.7.9.
[7] Waitangi Tribunal *Turanga Tangata, Turanga Whenua: Report on the Turanganui a Kiwa Claims* (Wai 814, 2004) vol 2, p 627 at 12.1: *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims* (Wellington: Legislation Direct 2008), vol 3, p 1432; *The Wairarapa ki Tararua Report* (Wellington: Legislation Direct 2010) vol 3, p 1062 at 15.11.1.
[8] Waitangi Tribunal *Ko Aotearoa Tēnei, Te Taumata Tuarua* (Wai 262, 2011) at 269-270, quoting *Ngati Maru Ki Hauraki v Kruithof* [2005] NZRMA 1 at 14.

[…]

The High Court endorsed this view in 2005, stating that:

> it is the responsibility of successors to the Crown, which in the context of local government includes the council, to accept responsibility for delivering on the second article promise. Nowadays the Crown is a metaphor for the Government of New Zealand, here delegated by Parliament to the council, which is answerable to the whole community for giving effect to the treaty vision in the manner expressed in the RMA. The due application of that statute will assist to "avert the evil consequences which must result from the absence of the necessary Laws and Institutions" needed to secure justice to all new Zealanders.

20. The Rohe Potae Tribunal found that the Crown must ensure that local authorities are acting consistently with the principles of the Treaty, and must ensure that ensure that local authorities establish a relationship with Māori that is both consistent with the Treaty of Waitangi and ensures Māori interests are incorporated and protected.[9]

> In our view, the Crown must also ensure that local authorities are acting consistently with the principles of the Treaty. Failure to do so is a breach of the duty of active protection. The Crown's policies, legislation, and action failed to delegate to local authorities a requirement to give effect to these matters through arrangements worked through in a mutually beneficial manner […].

Partnership

21. Partnership is the central element of the Treaty relationship which includes within it mutual benefit, the duty to act reasonably, honourably, and in good faith, and the duty to make informed decisions.[10] Understanding it is key to understanding the requirements

[9] Waitangi Tribunal *Te Mana Whatu Ahuru: Report on te Rohe Potae Claims Part I & II* (Wai 898, Waitangi Tribunal, 2018) at 127.

[10] The Court of Appeal has referred to a duty "akin to a partnership", and the term "Treaty partnership" is also used. See Te Puni Kōkiri, *He Tirohanga ō Kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal* (Te Puni

on territorial and local authorities, and on the Crown in respect of those authorities.

22. Te Whanau o Waipareira Inquiry concluded that:[11]

> […] Partnership thus serves to describe a relationship where one party is not subordinate to the other but where each must respect the other's status and authority in all walks of life.
>
> In this situation neither rights of autonomy nor rights of governance are absolute but each must be conditioned by the other's needs and the duties of mutual respect. If a power imbalance lies heavily in favour of the Crown, it should be offset by the weight of the Crown's duty to protect Maori rangatiratanga. But most of all, the concept of partnership serves to answer questions about the extent to which the Crown should provide for Maori autonomy in the management of Maori affairs, and more particularly how Maori and the Crown should relate to each other that such issues might be resolved.

23. Partnership is a deeply serious joint venture for a purpose. For example, the Rohe Pōtae Tribunal said of the negotiations and that led to allowing the North Island Main Trunk Railway through the King Country and lifting the aukati:[12]

> The 1883–85 negotiations, and the agreements that emerged from them, have come to be known by claimants as 'Te Ōhākī Tapu'. The term Te Ōhākī Tapu is derived from 'Te Kī Tapu', or 'the sacred word', a phrase used by Ngāti Maniapoto leaders in the 1880s to describe the utmost importance of their negotiations with the Crown. Claimants told us that the word 'ōhākī' carries a meaning of a last request or testament that survives long after death on this basis, we understand Te Ōhākī Tapu to mean a sacred word or utterance – one that is

Kōkiri: Wellington, 2002) at 77-92
https://waitangitribunal.govt.nz/assets/Documents/Publications/WT-Principles-of-the-Treaty-of-Waitangi-as-expressed-by-the-Courts-and-the-Waitangi-Tribunal.pdf

[11] Waitangi Tribunal *Te Whanau o Waiparera Report* (Wai 414, 1998) at 26.

[12] Waitangi Tribunal *Te Mana Whatu Ahuru Report on Te Rohe Pōtae Claims, Parts I and II* (Wai 898, 2018) at 783.

> imbued with tapu, and therefore must be honoured and put into effect.

As our nation's founding document, the Treaty is the most solemn of compacts into which our two peoples could have entered.

24. Each party to a partnership necessarily brings strengths and weaknesses to the venture; it is the profound responsibility of a partner to use their strengths for the benefit of the whole and the protection of the partner(s) whose strengths lie elsewhere.

25. This, then, is the crux of the Treaty relationship. Each party brings its own strength and value to the partnership. Decisions are made together, for the benefit of the entirety. Adversity is faced together. The whole has the potential to be greater and achieve more than the sum of its parts. A relatively recent example in this vein is the Preamble to the Marine and Coastal Area (Takutai Moana) Act 2011, which records that recognition of Māori interests strengthens the overall enterprise:[13]

> This Act takes account of the intrinsic, inherited rights of iwi, hapū, and whānau, derived in accordance with tikanga and based on their connection with the foreshore and seabed and on the principle of manaakitanga. It translates those inherited rights into legal rights and interests that are inalienable, enduring, and able to be exercised so as to sustain all the people of New Zealand and the coastal marine environment for future generations. (underlining added)

Duty to consult

26. The Central North Island Tribunal said:[14]

> In our view, the obligations of partnership included the duty to consult Maori on matters of importance to them, and to obtain their full, free, prior, and informed consent to anything which altered their possession of the land, resources, and taonga guaranteed to them in article 2. The Treaty partners were required to show mutual respect and to enter into dialogue to

[13] Preamble at (4).
[14] Waitangi Tribunal *He Maunga Rongo, Report on Central North Island Claims, Stage 1* (Wai 1200, 2008) vol 1 at 173.

> resolve issues where their respective authorities overlapped or affected each other.

27. The Ngawha Geothermal Resources Tribunal characterised the obligation to consult as a fundamental element of the active protection of rangatiratanga, and said:[15]

> Before any decisions are made by the Crown, or those exercising statutory authority on matters which may impinge upon the rangatiratanga of a tribe or hapu over their taonga, it is essential that full discussion take place with Maori. The Crown obligation actively to protect Maori Treaty rights cannot be fulfilled in the absence of a full appreciation of the nature of the taonga including its spiritual and cultural dimensions. This can only be gained from those having rangatiratanga over the taonga.

28. There is case law on consultation and duties, in particular the Lands case. The Court of Appeal in the Lands Case did not go so far as to say that full, free, prior, and informed consent is required, but it was not discussing proposals to alter the possession of, or rangatiratanga over resources (as occurred when the Crown became interested in opening up the Taihape District for Pakeha settlement in the 1880s). It was discussing the ability to retain the potential for the return of land already in the possession of the Crown to Maori. Even then, the consultation requirements were significant.

29. The Crown appears to take the approach that it is the decision-maker and seeks and considers the views of Māori when it considers it to be appropriate (or where the law says it must). This is a contemporary approach, when direct possession and rangatiratanga over resources no longer retained by Maori, and is not the appropriate approach to 19th century Taihape.

30. In the 20th century, in situations where possession and rangatiratanga over particular resources had already been lost, where the Crown has acted without consultation and made decisions affecting Taihape Maori interests, any decision taken without consultation must have as its

[15] Waitangi Tribunal *Ngawha Geothermal Resource Report* (Wai 304, 1992) at 5.1.6.

prerequisite an excellent understanding by each partner of each others' views, stance, or position in respect of the subject under decision, and the decision cannot undermine the partnership or the partners.

31. In joint ventures and other commercial arrangements, it is common that a foundation document is drawn up, which records the shared understandings and the shared goals and, broadly, how the parties intend to achieve them together.[16] Should a situation arise that is not directly anticipated by the document, either the document will provide some guidance as to how the parties should approach resolution of the situation, or the parties to the agreement decide together what their approach will be. This provides an example of the close way in which the parties operate together.

Active protection

32. Hayward notes that it is accepted that the transfer of kawanatanga from the Queen, as Treaty partner, to the responsible settler government in 1856 carried with it the transfer of Treaty responsibilities.[17] Likewise, any transfer of kawantanga to local government carries the same transfer of Treaty responsibilities.

33. The Wairarapa ki Tararua Tribunal found in 2010 that:[18]

> Delegation of Crown functions is of course in accordance with the Treaty if the Crown's Treaty obligations go with the delegation. However, we have seen in all spheres of local government activity that the Treaty provisions in the relevant legislation are not sufficiently prescriptive to oblige local bodies to conduct themselves in a manner that is consistently Treaty-compliant. In this, the Crown fails in its duty of active protection.

[16] See, for example, the Transmission Gully Public Private Partnership project contract and schedules at https://www.nzta.govt.nz/projects/wellington-northern-corridor/transmission-gully-motorway/ppp-project-development/ppp-contract-development/.
[17] Janine Hayward *The Treaty Challenge: Local Government and Māori* (CFRT, Wellington, 2002) at 5.
[18] Waitangi Tribunal *The Wairarapa ki Tararua Report* (Wai 863, 2010) vol 3, p 1062 at 15.11.1.

34. The Ngawha Geothermal Resources Tribunal found that the duty of active protection requires the Crown to ensure: [19]

> that Maori are not unnecessarily inhibited by legislative or administrative constraints from using their resources according to their cultural preferences;
>
> that Maori are protected from the actions of others which impinge upon their rangatiratanga by adversely affecting the continued use or enjoyment of their resources whether in spiritual or physical terms;
>
> that the degree of protection to be given to Maori resources will depend upon the nature and value of the resource. In the case of a very highly valued rare and irreplaceable taonga of great spiritual and physical importance to Maori, the Crown is under an obligation to ensure its protection (save in very exceptional circumstances) for so long as Maori wish it to be so protected. […] The value attached to such a taonga is essentially a matter for Maori to determine.

Tino rangatiratanga

35. The Ngawha Geothermal Resources Tribunal found protection of rangatiratanga included the tribal right of self-regulation.[20] Self-regulation naturally extends to local government. We will discuss this further in the sections on local government in customary law and its evolution in response to Pākehā settlement.

36. The Ngawha Tribunal also quoted the Muriwhenua Fishing Rights Tribunal, which said:[21]

> In any event on reading the Maori text in the light of contemporary statements we are satisfied that sovereignty was ceded. Tino rangatiratanga therefore refers not to a separate sovereignty but to tribal self-management on lines similar to what we understand by local government.

[19] Waitangi Tribunal *Ngawha Geothermal Resource Report* (Wai 304, 1992) at 5.1.3.
[20] Waitangi Tribunal *Ngawha Geothermal Resource Report* (Wai 304, 1992) at 5.1.2.
[21] Waitangi Tribunal *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (Wai 22, 1988) at 187.

37. The Tribunal's view on cession of sovereignty has evolved somewhat over the intervening years in response to new evidence,[22] however the Muriwhenua statement confirms that, where sovereignty was transferred to the Crown, the Treaty recognises and protects local government by Māori for Māori. The Rekohu and Central North Island Tribunals found that the Treaty guarantees apply to all Māori, regardless of whether they have ceded or retained sovereignty.[23]

38. The Ngai Tahu Sea Fisheries Tribunal described the Treaty confirmation of rangatiratanga as a guarantee that "necessarily qualifies or limits the authority of the Crown to govern."[24]

39. The Taranaki Tribunal said:[25]

> On the colonisation of inhabited countries, sovereignty, in the sense of absolute power, cannot be vested in only one of the parties. In terms of the Treaty of Waitangi, in our view, from the day it was proclaimed sovereignty was constrained in New Zealand by the need to respect Maori authority (or 'tino rangatiratanga', to use the Treaty's term).

40. The Central North Island Tribunal expanded on Taranaki, saying:[26]

> The Crown's sovereignty was constrained in New Zealand by the need to respect Maori authority. Under the Treaty, the Crown had to respect and provide for the inherent right of Maori in their Central North Island territories to exercise their own autonomy or self-government. That right carried with it the right to manage their own policy, resources, and affairs within the minimum parameters necessary for the proper operation of the State. It also carried the right to enjoy

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[22] The Northland Tribunal found that "... the rangatira who signed te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories. Rather, they agreed to share power and authority with the Governor. They agreed to a relationship: one in which they and Hobson were to be equal – equal while having different roles and different spheres of influence." Waitangi Tribunal *He Whakaputanga me te Tiriti The Declaration and the Treaty - The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wai 1040, 2014) at xxii.

[23] Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), pp 30–31; Waitangi Tribunal *He Maunga Rongo, Report on Central North Island Claims, Stage 1* (Wai 1200, 2008) vol 1 at 196.

[24] Waitangi Tribunal *The Ngai Tahu Sea Fisheries Report* (Wai 27, 1992) at 269.

[25] Waitangi Tribunal *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 20.

[26] Waitangi Tribunal *He Maunga Rongo, Report on Central North Island Claims, Stage 1* (Wai 1200, 2008) vol 1 at 173.

> cooperation and dialogue with the Government. As noted above, the Treaty of Waitangi envisaged one system where two spheres of authority (the Crown and Maori) would inevitably overlap. The interface between these two authorities required negotiation and compromise on both sides, and was governed by the Treaty principles of partnership and reciprocity.

and:[27]

> [Articles 1 and 2 of the Treaty were] a guarantee of Maori authority which limited and circumscribed the Crown's right to govern. It also created a partnership between the two authorities, in which they had to act towards each other with the utmost good faith and cooperation. Maori authority was to be autonomous in terms of the full range of their affairs. Overlaps between the two authorities would be resolved by negotiation and agreement. At the same time, Maori had to recognise and obey the Crown's authority, within the minimum parameters necessary for the effective operation of the State. In addition, article 3 gave Maori the rights of British subjects, which included both the right to self-government by appropriate representative institutions, and the principle that government must be by the consent of the governed.

and:[28]

> We find that there were many known and practicable alternatives to the Crown's actions and policies regarding Maori autonomy and self-government in the nineteenth century, and that they were deliberately rejected by the Crown in violation of Treaty standards [...].

Treaty obligations in respect of rating

41. The Hauraki Tribunal found that there is no inherent breach of Treaty principles in rating Maori land where this forms part of a common sharing of the burden of maintenance and development of resources in

[27] Waitangi Tribunal *He Maunga Rongo, Report on Central North Island Claims, Stage 1* (Wai 1200, 2008) vol 1 at 191.
[28] Waitangi Tribunal *He Maunga Rongo, Report on Central North Island Claims, Stage 1* (Wai 1200, 2008) vol 1 at 192.

a region.[29] Breaches occur if this burden is not commonly shared, and rating becomes an intolerable burden on Maori landowners with no effective means of reducing it.

42. The Rohe Pōtae Tribunal provided an excellent summary of a selection of previous Tribunal findings on rating, which we think is worth setting out here in full:[30]

> In terms of the policy of imposing rates, the Hauraki Tribunal found that the Crown should have 'taken into account the considerable, often uncompensated, contribution of land for public works and national and local infrastructure made by Māori, both willingly and compulsorily.' Had this been acknowledged and active assistance provided for the development of Māori land, the Tribunal stated that 'we can see no problem in Treaty terms with the concept of rating of Māori land.' The Turanga Tribunal found that 'Māori land should bear a fair share of the district's rates burden', but did not state what a 'fair share' might be.
>
> The Hauraki Tribunal commented that rates were a further pressure on Māori and that 'it would always prove difficult for the owners to manage small parcels of land efficiently and produce revenue for rates when the ownership of blocks was highly fractionated.' The Tribunal went on to state that the problems associated with the rating of Māori land are a symptom of the issues caused by Native and Māori land legislation. The Crown should have taken these issues into account and provided assistance to Māori to develop their land and avoid the problems of fragmented title that led to the loss of land through a number of mechanisms including the burden of rates. The Tauranga Tribunal found, in the circumstances of that district, the introduction of virtually full rating for Māori land by the end of the nineteenth century was a breach of the Treaty principles of partnership and equality. This was partly because most low-income Māori were still land owners and had little money to pay rates, while low-income Pākehā did not own land and were, therefore, exempt

[29] The Hauraki Report at 1018.
[30] Wai 898 #1.4.3 Tribunal Statement of Issues at 107-108.

> from paying rates, and partly because Māori land laws prevented Māori landowners from using their land as effectively as was possible for Pākehā landowners. The effects of raupatu should also have been taken into account. The Tauranga Tribunal also found valuation legislation which rates were based on failed to take into account aspects of land that were valuable to Māori. This was considered a failure by the Crown to uphold the Treaty principles of partnership and active protection. The Tauranga Tribunal explored the Court of Appeal's decision in Valuer-General v Mangatu Incorporation and others. The Tribunal found that found that the Rating Valuation Act 1998 and the Local Government (Rating) Act 2002 failed to recognise the special character of Māori land. The Valuer-General has no clear direction from the Crown to act in a manner consistent with the Treaty or consider the special relationship Māori have with their lands, water and wāhi tapu. Nor was there a commitment from the Crown to ensure that the office of the Valuer-General had staff with an understanding of tikanga Māori, Māori values relating to land, or the complexities of Māori land under multiple ownership. For these reasons, the Tribunal found that the Crown had 'not yet fulfilled its duty of active protection'. The Tauranga Tribunal found that by enacting the Maori Purposes Act 1950, which permitted receivership sales for non-payment of rates, the Crown 'was in direct breach of the Treaty.' In addition, the Crown's failure to mitigate pressure on Māori to sell land to pay rates was a breach of the Crown's duty of active protection. (references removed)

43. The Rohe Potae Tribunal itself found that:[31]

> the Crown could not favour settlers over Māori at an individual level, and nor could it favour settler interests over the interests of Māori communities.
>
> […]
>
> … [the Crown failed to] ensure that local authorities established a relationship with Māori that was consistent with the Treaty of Waitangi and ensured Māori interests were

[31] Te Mana Whatu Ahuru p 127.

> incorporated and protected. Instead, local authorities were permitted to focus on Pākehā settlement and revenue-gathering endeavours. Consequently, Pākehā interests were served at the expense of Te Rohe Pōtae Māori.

LOCAL GOVERNMENT IN THE TAIHAPE INQUIRY DISTRICT

44. Bassett and Kay and Walzl note the absence of Taihape Māori involvement in the records of local government in the Inquiry District, however this is not reflective of a lack of interest on the part of mana whenua.[32] Armstrong said of this phenomenon:[33]

> There is an almost complete absence of a Māori voice in the written historical sources consulted during the preparation of this report. This does not mean that Mōkai Pātea Māori were unconcerned about the nature and scale of environmental transformation within their district. The discharge of sewage and other contaminants into waterways, for example, is particular offensive to Māori cultural and spiritual values.
>
> […]
>
> In my view, the absence of a Mōkai Pātea voice from the written record can be attributed to two main factors. Firstly, Crown agencies and the plethora of local bodies which administered the Taihape district focused entirely on developing land for pastoral purposes, or sought to protect acclimatised species, and paid no heed to the impact of environmental change on Māori. Secondly, Mōkai Pātea Māori suffered a significant erosion of rangatiratanga caused by land title individualisation, title fragmentation and land loss. Within a relatively short period they were transformed from collective tribal entities exercising rangatiratanga and kaitiakitanga over their natural world into a crowd of individuals often possessing no more than fragments of land or uneconomic shares in remote land blocks. In other words, they no longer formed a polity; they were pushed into the social, political and economic margins. Had they been

[32] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 9; Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 19;
[33] Wai 2180, #A45(a) David Armstrong *The Impact of Environmental Change in the Taihape District 1840-c1970* (2016) at 2.

> permitted to retain substantial land under a form of collective ownership or control, such as incorporation involving a substantial part of the Awarua block, things may have turned out differently.

45. Added to this, Maori population in the 19th century numbered a few hundred people in a heavily forested district. This meant that, on numbers and physical presence alone, their voice in the rapid development of the area, in particular through operation of the native land laws, could be quickly undermined and, once undermined, hard to reinstate and repair. Arsmtrong's quote above in part reflects this when he refers to the relatively short period of tribal transformation.

46. Taihape Māori claimants say that they were and are interested in taking a leading role in local government and from the 1880s have provided specific, well-thought-out proposals. The Crown has failed enable their involvement and their plans, and in parts has disabled these.

Governance in Customary Law

47. The concept and system of local government introduced by the Crown into the district was alien to Taihape Maori They did not delineate as English did, between a national and local system of governance. It is nevertheless useful to consider key general features of the Maori system of governance pre-settlement to better understand how the introduction of English local government would have affected that system.

Prior to the Treaty

48. While this section addresses Māori local government custom prior to the Treaty, the values and principles of that custom are still in force and exercised today. Both past and present tenses are therefore used within this section.

49. Māori system of governance was 'local'. It was and is applied through a series of values-based, flexible and responsive approaches to matters 'on the ground'. For example rāhui might be placed – and enforced -

over defined areas as an environmental, physical, or spiritual management tool. Another contemporary example of Māori 'local' government is responses to COVID-19 in the form of roadblocks aimed at protecting the health and wellbeing of people within the area of authority of the relevant iwi or hapū.

50. Generally speaking, the lens through which Māori "local government" prior to the Treaty was developed and enacted was a set of core values, broadly indicated (with acceptance of variation and debate) by His Honour Justice Joe Williams as:[34]

    a. whanaungatanga or the source of the rights and obligations of kinship;

    b. mana or the source of rights and obligations of leadership;

    c. tapu as both a social control on behaviour and evidence of the indivisibility of divine and profane;

    d. utu or the obligation to give and the right (and sometimes obligation) to receive constant reciprocity; and

    e. kaitiakitanga or the obligation to care for one's own.

51. Isaac Hunter articulated the concepts in his evidence as:[35]

    a. mana (status, either inherited or acquired);

    b. tapu (sacred prohibition);

    c. rahui (a form of tapu restricting access to certain food sources);

    d. utu (repayment for another's actions, whether hostile or friendly);

[34] Williams, Joseph "Lex Aotearoa: An Heroic Attempt to Map the Maori Dimension in Modern New Zealand Law" [2013] WkoLawRw 2 at 3.
[35] Wai 2180, #J1, Evidence of Isaac Ihaakara Hunter at 39-40.

e. muru (a form of utu, usually a ritual seizure of personal property as compensation for an offence), with “rigorous discussion known as a whakawā” preceding it.

52. These elements are expressed as tikanga, which is: [36]

> as much concerned with peace and consensus as it is with the level of certainty one would expect of normative directives that are more familiar in a complex non-kin-based community. In a tikanga context, it is the values that matter more than the surface directives. Kin group leaders must carry the village with them in all significant exercises of legal authority. A decision that is unjust according to tikanga values risks being rejected by the community even if it is consistent with a tikanga-based directive.

53. Rights in respect of resources come with balancing obligations, forming a relationship:[37]

> No right in resources can be sustained without the right holder maintaining an ongoing relationship with the resource. No relationship; no right. The term that describes the legal obligation is kaitiakitanga. This is the idea that any right over a human or resource carries with it a reciprocal obligation to care for his, her or its physical and spiritual welfare.

54. This relationship is located in the wider context of whanaungatanga:[38]

> […] wrongs were not seen as individual wrongs. They were seen as the responsibility of the perpetrator’s wider kin group. And the more serious the wrong, the wider the kin net that became hooked into the compensation equation. Equally the victim was not just the individual involved but his or her kin group, the parameter for which was set by the status of the victim and the seriousness of the wrong. So muru was not a

[36] Williams, Joseph "Lex Aotearoa: An Heroic Attempt to Map the Maori Dimension in Modern New Zealand Law" [2013] WkoLawRw 2 at 4.
[37] Williams, Joseph "Lex Aotearoa: An Heroic Attempt to Map the Maori Dimension in Modern New Zealand Law" [2013] WkoLawRw 2 at 3.
[38] Williams, Joseph "Lex Aotearoa: An Heroic Attempt to Map the Maori Dimension in Modern New Zealand Law" [2013] WkoLawRw 2 at 5.

> system of individual to individual compensation or correction as in tort, or even individual to community as in crime.

55. The general principle is summarised as:

> [T]he first law in Aotearoa is an old system built around kinship that was adapted to the new circumstance of this place. It was internally coherent and clear. But, being primarily value-based rather than prescriptive, it was flexible: law for small communities in which making peace was as important as making principle. In modern corporate parlance, the first law of Aotearoa was fit for purpose.

56. The Muriwhenua Tribunal emphasised that Māori law remained in force after settlers arrived.[39] Common law provided for Māori custom. In this Inquiry District, before locally-applicable English derived local government legislation was enacted from the 1870s, the law in force on the whenua both practically and legally, was largely te ture me te tikanga ō Taihape Māori.

57. A relatively early example of local governance by Taihape Māori in respect of settler / Crown matters in the Inquiry District is the Kokako hui of 1860. This hui, near Hautapu, was held a week after the attack by the Crown on Te Kohia pa at Waitara, starting the Taranaki war, and was attended by at least 500 Māori from a large expanse of land encompassing Mokai Patea, Rangitikei, Manawatu, Ahuriri, Heretaunga, Taupo, and Whanganui.[40]

58. The focus was the closely related questions of political affilliation (to the Crown, to the Kingitanga, or to neither), land boundaries, and sales; that is, matters of tino rangatiratanga. Those arguing for the Kingitanga espoused the King movement as being the best way to retain rangatiratanga over lands, while those arguing against both the Kingitanga and the Crown wished equally to retain their tino rangatiratanga.[41] In both parties' eyes the question was not whether

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[39] Waitangi Tribunal *Muriwhenua Land Report* (Wai 45: GP Publications, 1997) at 12-13.
[40] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 16, 18.
[41] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 18-19.

they should retain their rangatiratanga and their lands, but what was the best means of doing so. One outcome of the Kokako hui was the definition of the limits of land boundaries of Kahungunu, Tuwharetoa, and others, as they intersected with Mokai Patea lands, with kaitiaki given charge of the boundary; Stirling calls this a political act, in light of the recent Crown actions at Waitara.[42]

How it evolved with Pākehā settlement

59. The section above describes the environment into which settler government arrived. When combined with the Treaty guarantee of tino rangatiratanga it provides context for the actions and decisions of Taihape Māori in respect of self-government. These actions and decisions were predicated on a legal system of personal connectedness fuelling group autonomy, following the arrival of settler forms of local government, which, by contrast, was based on a legal system of personal autonomy fuelling group welfare.

60. Self-government was, from the time of the Treaty, a "fundamental right for British subjects."[43] Given that Article III provides that Maori were to have "all the Rights and Privileges of British Subjects", and the rights for Maori communities under Article II, the question is to whether the Crown upheld the right of Maori to self-government and whether non-Maori systems dealt with Maori fairly?

61. The options available from at least 1852 have been extensively discussed elsewhere, most recently in the Rohe Pōtae and Central North Island reports. We will therefore simply provide a brief overview of them, and will discuss the opportunities for their implementation in the Inquiry District.

[42] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 16-17.
[43] Waitangi Tribunal *He Maunga Rongo, Report on Central North Island Claims, Stage 1* (Wai 1200, 2008) vol 1 at 179.

What opportunities were there for Māori involvement in governance?

62. The Tauranga Moana Tribunal report records:[44]

> Local authorities as we know them – that is, democratically elected by the local population – are a comparatively recent idea, having their origins in 1830s Britain. The Municipal Corporations Act, passed by the British parliament in 1835, established local authorities with elected councils to oversee local affairs. That was doubtless the model in Lord John Russell's mind five years later when, as Colonial Secretary, he wrote to the New Zealand Governor, William Hobson, instructing him to 'promote as far as possible the establishment of municipal and district governments for the conduct of all local affairs, such as drainages, bye-roads, police, the erecting and repair of local prisons, court-houses, and the like'.

63. A system so new and not yet entrenched is necessarily open to amendment and improvement for local circumstances.

64. Legal pluralism is the existence of multiple legal systems within one population or geographic area.[45] It was familiar to, and accepted by, the British as a viable, indeed, a preferable, governance option for the new colony. Te Ara records:[46]

> James Stephen, the Colonial Office advisor who drafted Lord Normanby's instructions, believed that British authority in New Zealand should be exercised through 'native laws and customs', and in 1842 Britain's secretary of state for the colonies, Lord Stanley, advocated a justice system that included Māori customs such as tapu.

65. Twelve years after signing the Treaty, the Parliament of the United Kingdom enacted the New Zealand Constitution Act 1852. The Act provided for the establishment of the Provinces and their ability to make laws (with certain matters reserved to central government), for

[44] Waitangi Tribunal *Tauranga Moana 1886-2006 Report on Post-Raupatu Claims* (Wai 215, 2010) vol 1 at 311.
[45] https://en.wikipedia.org/wiki/Legal_pluralism
[46] https://teara.govt.nz/en/te-ture-maori-and-legislation/page-1

local government in the form of municipal corporations, and, in section 71, for Māori districts, where where Māori law and custom would be preserved.

66. The section reads:

> **Her Majesty may cause Laws of Aboriginal Native Inhabitants to be maintained.**
>
> LXXI. And whereas it may be expedient that the laws, customs, and usages of the aboriginal or native inhabitants of New Zealand, so far as they are not repugnant to the general principles of humanity, should for the present be maintained for the government of themselves, in all their relations to and dealings with each other, and that particular districts should be set apart within which such laws, customs, or usages should be so observed:
>
> It shall be lawful for her Majesty, by any Letters Patent to be issued under the Great Seal of the United Kingdom, from time to time to make provision for the purposes aforesaid, any repugnancy of any such native laws, customs, or usages to the law of England, or to any law, statute, or usage in force in New Zealand, or in any part thereof, in anywise notwithstanding.

67. The settler government was not enthusiastic about the prospect of legal pluralism with Māori tikanga.[47] When former Chief Justice Sir William Martin proposed that the Waikato be constituted as a Māori district, Native Minister Donald McLean thought the idea "very pernicious".[48]

68. The Colonial Office and the Secretary of State urged the new Governor of New Zealand, Sir George Grey, who was sent to New Zealand with a "mandate to seek a modus vivendi with the Kingitanga and avoid war" to use s 71 to constitute a Waikato district.[49] In the context of

[47] In this they appeared to be representing the views of at least some of their constituents; for evidence of settler attitudes see Vincent O'Malley *English Law and the Māori Response: A Case Study from the Rūnanga System in Northland, 1861-1865.*

[48] McLean note on Martin memorandum, 21 February 1870 (Alan Ward, A Show of Justice : Racial Amalgamation' in Nineteenth Century New Zealand (Auckland : Auckland University Press, 1973), at 232–233).

[49] Ward, 'A "Savage War of Peace"?', at 94.

attempts to resolve the relationship between the Kingitanga and the Crown, the Duke of Newcastle similarly encouraged the New Zealand settler government to give the King a role in assenting to laws passed by his rūnanga, saying:[50]

> Such an assent is in itself no more inconsistent with the sovereignty of Her Majesty than the assent of the Superintendent of a Province to Laws passed by the Provincial Council.

69. These were clear statements by the British Crown that a plural legal system could operate; not only were Māori law and authority able to operate, but provincial governments were expected to make laws, with no concern arising in the Parliament of the United Kingdom. Indeed, our current system of local government is still recogniseable as a close descendant of the provincial system. Section 71 of the New Zealand Constitution Act was not used in the Inquiry District, or anywhere else in the country, however it remained in force until it was repealed by the Constitution Act 1986.

70. In 1858 the Native Districts Regulation Act was passed by the Parliament of New Zealand. Like s 71 of the New Zealand Constitution Act 1852, it provided for districts in which tikanga would run, although it was limited to those areas still held in native title. While it was rather more infantilising of Māori than the 1852 Act, sections I and II provided that the Governor-in-Council might "appoint" districts and make regulations, including at s II.7:

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

Parliament declined to fund any implementation, and the legislation was not used.

[50] Wai 898 #A23, at 398 (Newcastle to Grey, 16 March 1862).

71. The Kohimarama conference was another opportunity to implement partnership in governance. Held by Governor Gore Browne in 1860 in an attempt to prevent the spread of fighting from Taranaki and attended by more than 100 chiefs, was aimed at forming a "sort of Māori parliament" and was intended to be an annual event.[51] The parliament was expected to result in a measure of influence and power at central government level. It was not held again after the first event.

72. On the 6th of February 1885, in a speech to Kingitanga representatives, Native Minister John Ballance said: [52]

> Tawhiao has also referred to self-government for the Maori race. He says, 'Why not give the people the right to manage their own affairs?' To a large extent I agree with that. We are now extending self-government to the Native race under the Parliament and Government and institutions of the Colony . . . The Treaty does not give the right to set up two Governments in New Zealand. The chiefs there bound themselves to accept the laws of the Queen, in exchange for which she guaranteed to them their lives, their liberty, and their property. We are prepared, under that Treaty, as I have said – under the laws which the Queen has given to the Colony, and under the Constitution of the colony – to give the Natives large powers of self-government. That is the meaning of the Treaty [...].

73. Later that year, the Rt. Hon the Earl of Derby, Secretary of State for the Colonies writing to Governor William Jervois said:[53]

> Although, therefore, Her Majesty's Government cannot undertake to give you specific instructions as to the applicability at the present time of any particular stipulations of a Treaty which it no longer rests with them to carry into effect, they are confident, as I request that you will intimate to your Ministers, that the Government of New Zealand will not fail to

[51] Waitangi Tribunal *Te Mana Whatu Ahuru Report on Te Rohe Pōtae Claims, Parts I and II* (Wai 898, 2018) at 431, quoting Browne to Denison, 27 June 1860, in Wai 903 #A143 Donald Loveridge, 'The Development and Introduction of Institutions for the Governance of Maori' at 94.
[52] 'Notes of Native Meetings', AJHR, 1885, G-1, p 27. Ballance was Native Minister from 1884-1887. The Central North Island Tribunal said "His speeches and promises during that time are important to interpreting Treaty standards in the nineteenth century." Waitangi Tribunal *He Maunga Rongo, Report on Central North Island Claims, Stage 1* (Wai 1200, 2008) vol 1 at 184.
[53] The Rt. Hon the Earl of Derby to Governor William Jervois, 23 June 1885, BPP, vol 17, p 179.

> protect and to promote the welfare of the Natives by just administration of the law and by a generous consideration of all their reasonable representations. I cannot doubt that means will be found of maintaining to a sufficient extent the rights and institutions of the Maoris, without injury to those other great interests which have grown up in the land, and of securing to them a fair share of that prosperity which has of necessity affected in many ways the conditions of their existence.

74. In short, there were many opportunities to implement the Article II and Article III guarantees, and the Crown understood some of the practical measures it could take to do so.

How did Māori adapt to the new paradigm?

75. Responses by Māori to enforced governance changes may have been externally induced, but they were very much Māori-orchestrated in service to Māori needs. Many of the post-Treaty governance structures Māori adopted were distinctly bicultural vehicles for "identifiably Māori aspirations."[54] Attempts by the Crown to impose sanctioned bodies enhancing the settler assimilation agenda were met with reappropriation by Māori in order to implement their own governance kaupapa. O'Malley considers this adaptation, resilience, and adoption of new technology, ideas, and resources to be evidence of a successful civilisation.[55]

Governor Grey's Rūnanga System

76. In 1861 Governor George Grey proposed a system of Māori self-government called the Rūnanga System, similar to the provincial system, with Districts and District Rūnanga, to be presided over by an

[54] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>
[55] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>

English Commissioner.[56] Grey's primary motivation for the scheme was to undermine the Kingitanga, which had its own highly effective rūnanga.[57]

77. The Rohe Pōtae Tribunal described it as:[58]

> …a form of state-sanctioned self-government to Māori communities at the local level. In brief, he intended to divide the North Island into 20 districts, each supervised by a Pākehā civil commissioner working with a district rūnanga. The district rūnanga would be elected by smaller community-level rūnanga, and would have the power to make bylaws for the governor's assent, build hospitals and schools, and control land sales. The authority of the commissioner, magistrates, and rūnanga would be supported by a Māori police force, recruited and paid by the Crown.

78. The scheme was unpopular with Māori who wanted genuine self-governance and were against further land alienation, and unpopular with settlers who were disliked the idea that they might be subject to Māori law.[59] It was dismantled in 1865 following the wars, when it was considered to be no longer required for colonial purposes.[60] The failure of Grey's proposal did not mean that Taihape Māori were averse to a rūnanga system that worked for them; in 1867 in the Inquiry District:[61]

> "te Rūnanga katoa o Ngati Tama raua ko Ngati Whiti" was referred to in [two] letter[s] about land issues sent […] on behalf of the rūnanga to MHR for Napier Donald McLean.

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[56] Basil Keane, 'Ngā rōpū – Māori organisations - 19th-century Māori organisations', Te Ara - the Encyclopedia of New Zealand, http://www.TeAra.govt.nz/en/nga-ropu-maori-organisations/page-1 (accessed 24 June 2020).
[57] Wai 2180 #4.1.10 Answer of Bruce Stirling to Judge Harvey at 516.
[58] Waitangi Tribunal *Te Mana Whatu Ahuru Report on Te Rohe Pōtae Claims, Parts I and II* (Wai 898, 2018) at 432.
[59] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>
[60] Wai 2180 #4.1.10 Answer of Bruce Stirling to Judge Harvey at 516-517.
[61] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 27.

79. While flawed, this was an opportunity to implement the Article II and Article III guarantees. Some evolution might be anticipated, to ensure such a system worked for both Treaty partners.

Komiti

80. The Kokako hui of 1860 (see above at [53]) which has been described by the Whanganui Tribunal as "groundbreaking" due to its size and significance, was followed by similar hui on issues of tino rangatiratanga at Poutu in 1867, Turangarere in 1871, and Parekino also in 1871. As a result of the Poutu hui, the Komiti of Mokai Patea and two other parties wrote separately to Donald McLean setting out clear land boundaries in the northern and central area and discussing the events around the hui.[62] Komiti Māori also had a role at the Turangarere hui, giving judgment on a boundary dispute in an effort to prevent fighting.[63] As the Komiti (which included Renata Kawepo and members from Whanganui as well as Mokai Patea) had no legal authority, the 'losers' of the dispute were free to ignore the decision and go to court, which they did.[64] This is an early example of the repeating pattern Taihape Māori experienced in the following decades, in their attempts to have their ability and desire for self-government recognised.

81. The Mokai Patea Komiti pre-dated the officially-constituted komiti provided for in the Native Committees Act 1883, and komiti of that era lasted through the period of the Act as there was no reasonable alternative, despite repeated support from officials for putting some regulatory powers in the hands of mana whenua.[65]

82. In early 1884, 12 Native Districts were proclaimed under the Native Committees Act 1883. The Inquiry District was divided between the

[62] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 25-27.
[63] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 31.
[64] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 31.
[65] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 317 quoting Marton Resident Magistrate Ward to Native Department, 27 May 1879. AJHR, 1879, G-1, pp.12-13; and at 236 quoting Locke to Native Minister, 4 July 1872. AJHR, 1872, F-3A, pp.31-33.

Whanganui and Hawke's Bay Committee Districts; this made it difficult for Taihape Māori to participate in the committees, and in March 1885 Utiku Potaka and Winiata Te Whaaro explained the issue to Native Minister Ballance.[66] Ballance replied that a Manawatu-Rangitikei district might be set up, however, this never eventuated, and Taihape Māori carried on with their unofficial komiti.[67]

83. A particular theme of komiti in the Inquiry District is the desire of mana whenua to contribute meaningfully to, or, more preferably, take on, in a tikanga-compliant system, the duties of the Native Land Court and its processes. In an attempt at a consensus solution and to reduce costs and raruraru, komiti agreed the boundaries of Rangatira and Awarua (including Motukawa) prior to applications being made in the Native Land Court.[68] Stirling records that "Minutes were kept of the komiti's discussion and decisions, and lists were prepared, and a judgment of 4 March 1886 was written out "at length" and presented to the Court.[69] Despite the work of the Komiti being discussed by witnesses,[70] it was not taken account of by the Court; the reasons for this are unknown as the Minute Book does not make reference to any decision to use or not use the information, nor was there any reference to it in the judgment.[71] Stirling notes there was no reason preventing the Court from taking the information into consideration.[72]

84. In O'Malley's view, the word 'komiti' was "more than a transliteration: "though of bicultural lineage, it had become a distinct Maori institution in its own right."[73] Rūnanga and komiti continued to be popular with Māori, fed by rumours of a possible grant by the Crown to Māori

[66] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 318.
[67] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 318.
[68] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 318. Stirling agreed in cross-examination that it was likely the Motukawa block was included in these deliberations, as the blocks were initially heard together; Wai 2180 #4.1.10 at 590.
[69] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 319.
[70] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 318-319.
[71] Wai 2180 #4.1.10 Transcript of hearing week 3, Questions of Moana Sinclair to Bruce Stirling at 590.
[72] Wai 2180 #4.1.10 Transcript of hearing week 3, Questions of Moana Sinclair to Bruce Stirling at 590-591.
[73] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>

councils or committees.[74] O'Malley describes these organisations as coming to be "more or less ubiquitous in the Māori world."[75] Stirling similarly records 'Committee' as being:[76]

> a term that became increasingly used in subsequent years to refer to representative tribal bodies from the district who were seeking to engage with the government.

85. Komiti are an example of the consistent resolve by Taihape Māori to manage their own affairs. Support by some Crown officials for this vehicle of tino rangatiratanga did not translate into meaningful enablement by the Crown of the Article II and Article III guarantees.

Ngāti Hokohe

86. In the early 1870s the Ngāti Hokohe movement emerged, known to Pākehā land speculators as the Repudiation movement. It is described by Bruce Stirling as "a pan-iwi movement that lobbied for changes to the Native Land Acts, fairer Maori political representation, and an appropriate role for rangatira in the administration of Maori matters."[77] These objectives were endorsed by Taihape Māori following a hikoi through the District (and beyond) by Karaitiana Takamoana. [78]

87. Following Takamoana's hikoi, Retimana Te Rango and Ngāti Tama sent a petition through Locke to the government asserting their opposition to having the Native Land Court and roads in their rohe.[79] The following year, three Hokohe petitions, including one from Rēnata

[74] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>
[75] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>
[76] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 26.
[77] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 236.
[78] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 237. In response to questions from Dr Ballara, Mr Stirling agreed that this hikoi may have been slightly prior to Ngāti Hokohe formally setting up, but considered that this was at the very least part of the build-up to formation; #Wai 2180 #4.1.10 at 477-478.
[79] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 237. In response to questions from Dr Ballara, Mr Stirling agreed that this hikoi may have been slightly prior to Ngāti Hokohe formally setting up, but considered that this was at the very least part of the build-up to formation; #Wai 2180 #4.1.10 at 477-478.

Kawepō signed by 553 supporters, went to the government to oppose the land court and protest Crown failure to address their concerns.[80] Stirling thinks it highly likely that Mokai Patea Māori signed these petitions, and he considers it certain that they signed "huge" petitions in 1876 and 1877 after resolutions of Ngāti Hokohe were put at pan-tribal hui at Pakowhai and Omahu.[81]

88. Issues of establishment of district rūnanga and an inquiry into land dealings,[82] temperance and the abolition of the sale of liquor, "the position of the Natives in this Island," and "the grievances under which they now labour", abolition of the Native Land Court, the halting of sales and mortgages, taking of land for public works, the need to increase Parliamentary representation, and collective ownership of collective resources in opposition to the government's individualisation agenda were particular concerns that Ngāti Hokohe attempted, unsuccessfully, to address with the government.[83] One Hokohe hui explicitly referenced the Kohimarama "grand hui" in its aspirations.[84] Members of the opposition, including Russell, Whitaker, and Grey's Native Affairs spokesperson John Sheehan, a supporter of Ngāti Hokohe, attended Hokohe hui.[85]

89. Stirling thought the intent in respect of the Native Land Court was to "adapt[…] tikanga to the situation rather than having a completely foreign custom imposed on them by the Court."[86] Stirling also notes the resolutions of the hui were "…little more than what even Pakeha judicial authorities had previously recommended to the government…".

90. In January 1875, the 'Komiti o Patea', represented by leading figures Paramena Te Naonao, Hiraka Te Raro, Ihakara Te Kowhiti, and

[80] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 237.
[81] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 237, 240.
[82] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 237.
[83] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 240-241.
[84] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 246.
[85] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 242-243.
[86] Wai 2180 #4.1.10 Transcript of hearing week 3, questions of Mr Lambert to Mr Stirling at 575-576.

Hakopa Te Ahunga, "wrote to Te Wananga (the Ngāti Hokohe paper) to explain something of the traditional history of Mokai Patea".[87] In 1876 it wrote again, on the topic of an outbreak of foot-rot in sheep in the District, and measures for controlling it; i.e. precisely the sort of thing a responsible governance entity does in its rohe.[88] And in 1877, Wineti Te Tau and Mokokore Te Arawhaiti for Ngati Waewae, and Te Marangataua, Kingi Topia, Te Oti Rikirau, Rihimona Te Rango, Ihakara Te Raro, Horima Te Ahunga, Pirimona Te Urukahika, and Paramena Te Naonao for Ngati Tama, Ngati Whiti, and Ngati Hauiti wrote to raise problems with land interests asserted by other tribes in the Mokai Patea area, referring to what had been decided at Kokako on 22 March 1860.[89]

91. After 1878 the movement waned "because of inadequate funds and a lack of success against the government's inflexibility"[90] and was largely superseded by tribal komiti.[91] Stirling did not find evidence indicating the continued existence or otherwise of the Komiti o Patea, but noted that Mokai Patea Māori, including Paurini Karamu as an organiser, were involved in the Taupo "Central Committee".[92] Komiti carried their aspirations in the same vein as had Ngāti Hokohe, unfortunately with similar effectiveness. Stirling comments:[93]

> Such efforts by tribal committees were, unfortunately, largely for naught. The Native Land Court undermined any responsibilities the committee might assume for itself as a body with a meaningful role in the investigation or administration of Maori lands. They were legally powerless and remained so, being marginalised by a government that

[87] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 239
[88] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 239. Just as, for example, in the 21st century, the Rangitīkei District Council issued a pānui of its own, the Rangitikei Line https://www.rangitikei.govt.nz/council/publications/rangitikei-line-newsletter.
[89] See aboe at [53].
[90] 'Hēnare Matua', URL: https://nzhistory.govt.nz/people/henare-matua, (Ministry for Culture and Heritage), updated 8-Nov-2017
[91] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 258-259.
[92] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 258-259.
[93] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 260.

> failed to see the potential good that could be achieved by active engagement with such Maori initiatives. This official neglect was an insurmountable obstacle to the efficacy of any Maori committee, rūnanga, or pan-iwi movement that remained features of Maori efforts to manage their lands and lives for the rest of the century.

92. This was picked up by Sir Douglas Kidd in questions to Mr Stirling on another report:

> **Sir Douglas**
>
> […]. So, you've got a wider context of Crown knowledge and awareness of these effects, and I'd suggest within Taihape itself, within Mōkai Pātea rohe you have the rangatira putting the Crown on notice don't you, about their knowledge of the potential impacts and their desire to implement systems to ameliorate those impacts. So, you are aware of those attempts to bring the Crown to notice about their own aspirations for land development, land consolidation, for the establishment of rūnanga and committee to manage their own affairs?
>
> **Mr Stirling**
>
> […] yes, quite earlier [sic] on they set up komiti, they join the repudiation movement and support its efforts to have the land laws fundamentally amended, and then you know moving right through to the Awarua ērā in the late 1880 and early 1890s. They very clearly set out aspirations and goals, and methods that will meet the needs of the Crown and the owners, and settlers in a fairly reasonable generous fashion, but those efforts are ignored by the Crown.

93. The aims of Ngāti Hokohe and the Komiti are quite clearly indications of a strong desire to govern and be governed in a manner appropriate for those being governed.[94] While Ngāti Hokohe Māori had held great hope that the Grey government would act on their encouragement to Hokohe, in fact, quite the opposite eventuated. Stirling considers it

[94] See also Wai 2180 #4.1.10 Questions of Dr Gilling to Mr Stirling at 523.

probable that "political obligations to their small settler supporters proved more compelling".[95]

94. Notwithstanding the demise of Ngāti Hokohe, the popularity of komiti and rūnanga was such that in 1883 a "deeply reluctant" government passed the Native Committees Act.[96] Its architect, Native Minister John Bryce, later stated that it was not intended to provide Māori with self-governance powers of any significance.[97] O'Malley records critics at the time arguing that unofficial committees "stood just as much chance of having their decisions ratified in the Native Land Court, without the added impediment of being answerable to the Crown."[98]

95. Although Māori were initially enthusiastic about their prospects under the Act, the reality of the large size of the administration areas (six or seven for the entire North Island), the lack of resourcing, and the now-familiar lack of authority, meant that interest rapidly fell away.[99] This was another missed opportunity to implement the fundamental right of the Crown's Māori subjects to self-government. This is particularly unfortunate because proposals by Māori were likely to make it very easy for the Crown to fulfil its Treaty duties in this respect.

Kotahitanga movement

96. The Kotahitanga movement, which arose in the early 1890s as a successor to Ngāti Hokohe and called for equality of Māori and Pākehā

[95] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 255.
[96] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>
[97] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>
[98] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>
[99] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>

under the Queen,[100] had goals closely aligned with those of Taihape Māori, including:[101]

a. replacement of the Native Land Court by komiti Maori

b. self-management of Maori lands by block and district committees

c. local self-government through komiti Maori

97. In 1898 the movement "claimed 37,000 adherents, which was a significant majority of the Maori population who met the Kotahitanga qualifying age of 15 years-old".[102] It was somewhat more effective than previous similar movements, perhaps partly because of its size, and it was consulted in the late 1890s on what became the Maori Land Councils Act 1900 and the Maori Land Administration Act 1900.[103]

98. Its first formal hui was held in Northland, in 1892, the same year that the Native Department was talking in the colony's Official Handbook of the 'taming' of "the so-called King" and its hopes that this would mean the end of the Kingitanga and its calls for Māori self-government.[104]

99. Seddon and Carroll visited Moawhango in March or April 1894 to encourage Taihape Māori to make more land available for settlers:[105]

> In response, Hiraka Te Rango – on behalf of the people of Mokai Patea – sought the empowerment of a komiti Maori "to deal with the lands and negotiate with the government on the tribe's behalf."

In cross-examination on this point, Stirling said:

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[100] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 603.
[101] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 595.
[102] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 606.
[103] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 595.
[104] Richard S Hill *State Authority, Indigenous Autonomy: Crown-Maori Relations in New Zealand/Aotearoa 1900-1950* (VUP, Wellington, 2004) at 37.
[105] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 604.

> …it is quite striking that they would have these ideas and put them to him and he just does not have anything to offer-back [sic] and goes away and sends up another land purchase officer to acquire interest [sic] without any sort of planning or foresight or strategy.

100. Later in 1894, the Member for Northern Māori and Kotahitanga "rising star", Hone Heke, introduced to Parliament a Native Rights Bill which "embodied the aspirations of the Kotahitanga movement".[106] In the debate on the Bill: [107]

> Carroll … replied to Heke that it would be a "kindness" for the House to free Maori from the "delusion" that Parliament would even grant them such a separate constitution. He also asked what Heke proposed to replace the Native Land Court with, saying quite disingenuously that the experiment of Native Committees had already been tried and found wanting and that the idea that committees could do the work of the Native Land Court "was an absurdity."

101. Stirling notes that "Carroll seems to have forgotten that he had just two years before condemned the Native Committees Act as a hollow shell that mocked Maori with "a semblance of authority."[108]

102. In addition to the Paremata's national-level advocacy, local Kotahitanga Committees would also advocate for their constituents' rights. In the 1890s the owners of Tapapa 3 were underwater with survey liens and the compounding factor of unpaid rent. The owners approached their local Kotahitanga Committee, which:[109]

> demand[ed] further payment and in 1897 ordered [John Grace, the lessee] to remove his sheep from the land. Grace tried to bring the Native Land Court into the matter, but the Kotahitanga Committee was having none of that. They sought additional rent of £50 from him, and demanded to know what

[106] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 603.
[107] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 604.
[108] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 604.
[109] Wai 2180 #A6 Martin Fisher and Bruce Stirling *Sub-district Block Study – Northern* Aspect (Crown Forestry Rental Trust, Wellington, 2012) at 19.

he had done with the rental money, which was intended to pay off the survey lien.

103. As with the Hokohe proposals, Kotahitanga proposals could have been a 'win' for the Crown in respect of its Article II and Article III duties.

Mokai Patea Licencing Committee

104. The Outlying Districts Sale of Spirits Act 1870 provided for the regulation of alcohol sales in proclaimed districts (outside towns and cities) in areas with at least 2/3 Māori inhabitants.[110] Native Assessors could be appointed, with the exclusive power to issue licences for the sale of "spiritous or fermented liquors" (the Governor could proclaim a certain alcohol banned in the District), and it was an offence to give or sell alcohol to "any person of the Native race" without such a licence.[111] Nowhere in the Inquiry District was so proclaimed until 1889, by which time the Licensing Act 1881 had incorporated and continued the features of the earlier Act, with the additional feature of Licencing Committees that needed the agreement of the Native Assessor to issue licenses in a Native District.[112]

105. The Inland Patea Native Licensing District was proclaimed at the request of Resident Magistrate Preece following concerns from both Māori and "respectable Europeans". It extended inland from the edges of the East Taupo, Whanganui, and Rangitikei counties in the north, west, and south respectively, and was bordered by the Ruahine and Kaweka ranges in the east.[113]

106. Hiraka Te Rango was elected unopposed to the sole role of Native Assessor available for the District; a year later he exercised his power of veto over a license for premises at Moawhango granted by the District Committee.[114]

[110] Sections 2, 3, 4.
[111] Sections 5, 6, 7, 8, 9.
[112] Sections 13, 15, 19, 20, 22(3).
[113] See Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 467 and maps at 468-469.
[114] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 470-471.

107. The following year there was another election, held while many rangatira were away on business or at the Native Land Court.[115] Some of those wrote to the Hawke's Bay Herald, saying they wished to have a say in the matter as they saw a causative link between lack of authority over their rohe and land loss:[116]

> The pakeha has not yet acquired a single acre of land in our district, and, that being so, we think he should not attempt to establish within our boundaries such an abomination as a house licensed to deal out death and destruction to us.

108. When a licence was granted at Moawhango with the assent of the new assessor, mana whenua objected strongly, to the extent of attempting to pull down the building.[117] Several people were arrested; when they appeared in court at Napier their lawyer, Vogel, gave a statement again linking tino rangatiratanga to land retention, and notifying that they intended to petition Parliament on the matter.[118] When they did so, it was confirmed by local officials that an option poll had been taken at Moawhango (in which only 20 or so Europeans apparently lived[119]) and the result was "against issue of any description of license."[120]

109. Moawhango Māori petitioned Parliament to cancel the license; the Solicitor-General advised the Minister of Justice there was no power to do so. This appears to be correct: sections 57, 58, and 61 and 62 provided for objections to the grant of license, but only by natural persons resident in the licensing district. The Committee could also "of their own motion take notice of any matter or thing which in their

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[115] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 471.
[116] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 471-472 quoting Waikari Karaitiana and others to the Editor, 25 February 1891, Hawke's Bay Herald, 26 February 1891 at 2.
[117] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 473.
[118] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 473.
[119] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 471.
[120] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 475 quoting Clerk of Court, Napier, to Justice Department, 8 September 1892. R24562095. J 1/490/w/1892/871. ANZ. Docs, pp.111-135.

opinion would be an objection to the granting of a license…".[121] There was, however, a costs award available to the successful party.[122]

110. It is not clear, given that land at Moawhango had only just been through the Land Court in the days before the Napier hearing, who owned the land in respect of which the license had been issued.[123] There was a provision that might have helped, prior to the issue of the license, if the land in question was still Native land. Section 25 provided that:

> The Governor, on application of the owners of any Block or area of Native land on which no publican's license has been hitherto granted, may, by Proclamation in the *Gazette*, declare that no license shall be granted within such block or area, and it shall not be lawful for the Licensing Committee to issue any license to take effect within any block or area so proclaimed.

111. Birch and Studholme (both Justices of the Peace) opposed the license on the grounds that the Licensing Committee lived in Hastings and were not familiar with matters at Moawhango. They proposed that the area be converted to a Special Licensing District (which would mean a Native Assessor was not provided for) and offered themselves and four other Europeans as Licencing Committee members.[124] No Māori members were proposed. The Justice Department noted that part of the boundaries proposed fell into the Upper Whanganui block, still Native land, which had been proclaimed under section 25.[125] The Departmental Officers did not appear to recognise that section 25 would provide a solution for the Inland Patea Native Licensing District that met the wishes of the Māori majority residents. Stirling considers that, having largely got what they wanted in the the area, the Crown had no reason to place Māori concerns above European wishes.[126]

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[121] Section 63.
[122] Section 64.
[123] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 473.
[124] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 476.
[125] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 476.
[126] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 477.

112. Moawhango Māori had also continued their action in the courts, appealing to the Supreme Court to have the licence issued by the old Committee cancelled.[127] They were successful on the grounds that the option poll vetoed licensing in the Inland Patea Native Licensing District, which meant that the grant by Licensing Committee was ultra vires.[128]

113. The question of forming a Special Licensing District was to go to Cabinet for consideration in December 1892 but was deferred until March 1893, at which time the Minister of Justice noted that the Supreme Court had quashed the license and marked the matter "to be filed".[129] Following up on their legal victory, Moawhango Māori successfully instigated prosecutions of European sly-grog sellers in 1893 and 1894.[130] Stirling records that "at some point" in the 1890s the Rangitikei Licensing District took over responsibility for the area, voiding the role of Native Assessor.[131] The new Committee issued a license for Taihape, but declined to renew it, possibly partly due to Māori complaints about the issues its proximity to Moawhango had caused.[132] Other applications in the area were also declined.[133]

114. In the hopes of getting some coercive force to back up their views on alcohol in the area, Moawhango Māori asked Minister of Lands McKenzie, Native Minister Carroll, and Prime Minister Seddon for a police presence at Moawhango.[134] The concern again was sly-grogging; there were no police officers to enforce the liquor laws, and there was evidently a problem. Seddon agreed on the basis that mana

[127] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 477.
[128] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 477.
[129] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 477-478.
[130] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 478-479.
[131] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 479.
[132] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 480.
[133] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 480.
[134] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 481.

whenua would provide land for a police station.[135] Stirling records this as "the failure of the authorities to adequately police the liquor licensing law at Moawhango led to the controversial loss of 5 acres 2 roods 20 perches of Motukawa 2 block for a short-lived police station (and a more enduring cricket club)."[136]

115. Engagement by mana whenua with the mechanism offered by liquor licensing legislation is further evidence of their consistent commitment to the self-government promised by the Crown. Unfortunately it fell short of their needs, and when they raised these issues the Crown failed to address them.

Māori Councils Act 1900 and the Māori Lands Administration Act 1900

116. The generic Land Board closing submissions comprehensively address the Māori Lands Administration Act, so we provide only a very brief overview and comment here. The Act divided the North Island into six administrative districts, each with a Māori Land Council made up of five to seven members, of which the Governor would appoint a president and two or three members (one of whom had to be Māori), with the other two to three members being elected by Māori of the district.[137] The Councils had roles in respect of ownership, administration, and alienation of Māori land vested in them or otherwise placed under their authority.[138] No land in the Taihape inquiry district was vested in the Māori Council under the 1900 Act.[139] In 1905 the Māori Land Settlement Act 1905 replaced the six Councils with seven Boards comprised of a president and two appointed members, one of whom had to be Māori, thus eliminating the elected membership of the Councils.[140] In this way, Taihape Māori lost any chance at control of the administrative and decision-making function, which cannot have

[135] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 481.
[136] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 481.
[137] Sections 5 and 6.
[138] Part III. See Wai 2180, #A46, Walzl *20th Century Overview* at 52 for a summary of these roles and powers.
[139] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 169.
[140] Section 2.

encouraged them to place their lands under the authority of the Land Board.

117. The Māori Councils Act 1900 provided for limited self-government by Māori Councils. The only mandatory powers the Councils had were in respect of suppression of noxious weeds and paternal financial support of illegitimate children.[141] The Councils could also make by-laws; section 16 set out the available areas of regulation over Māori in Māori districts, which related to:

    a. Health and sanitation;
    b. Nuisances;
    c. Sly-grog selling and drunkenness;
    d. Regulation of tohunga;[142]
    e. Protection of marae buildings;
    f. Dog registration;
    g. Branding and brand registry for cattle;
    h. Protection and management of eel weirs;
    i. Control and regulation of shellfish beds and fishing grounds;
    j. Protection of urupa;
    k. Control of recreation grounds and regulation of “manly sports”;
    l. Regulating sales within kainga by hawkers, especially if they were Indian or Assyrian;
    m. Preventing children smoking;
    n. Prevention of gambling and regulating billiards-rooms;
    o. Maintenance and control of water supplies;
    p. Laying-off and construction of drains;
    q. Acting as agent for the Agricutural Department in matters relating to stock;

[141] Sections 23 and 22.
[142] Fines for trading on credulity in disease treatment also applied to Europeans.

r. Fixing and exacting fines for breach of the above by Māori.

118. Komiti Marae ("Village Committees") could be appointed under section 17 and be delegated limited powers in respect of nuisances, rubbish removal, and sanitation of whare. Additional powers could be provided to the Council under the Public Health Act 1900, in which case the Council would also be a Health Committee under that Act.[143] Councils could also, with the approval of the Governor, impose a "tenement tax" on:[144]

> houses, whares, or Native lands within the boundaries of any Maori kainga, village, or pa, and may collect the same: Provided that any Maori paying such tenement-tax as aforesaid shall be exempt from paying any local rates.

119. All these activities seem to have been anticipated to be funded out of rates and fines collected by the Councils. Apart from a pound-for-pound appropriation for sanitation works there is no discernable source of government funding in the legislation, though there were founding grants of £25 per Council, and, later, small and fluctuating appropriations.[145]

120. The Inquiry District was in the Kurahaupo, Tongariro, and Tamatea Council districts. This administrative split did not reflect how Taihape Māori identified administrative areas; in 1911 changes were made to the boundaries, but these still did not accurately reflect Taihape Māori affiliations.[146]

121. The Kurahaupo Māori Council's first action was to advertise that it would be registering dogs and collecting taxes from Māori dog owners.[147] Christoffel notes that this was the primary source of income for the Council, so most effort was expended here.[148] A Health

[143] Section 18.
[144] Section 24.
[145] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 176; Waitangi Tribunal *Te Mana Whatu Ahuru Report on Te Rohe Pōtae Claims* Pt IV (Wai 898, 2019) at 27-29.
[146] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 176.
[147] See, for example, Wanganui Herald, 13 December 1901, p 3.
[148] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 177.

Inspector, Ererua Te Kahu, was appointed by the Health Department to work with the Kurahaupo council; Christoffel could find no information in English about Te Kahu's activities, other than that he became chair of the Council from 1912, when his Health Officer job was disestablished, until his death in 1916.[149]

122. The Council did not adopt the Te Aute Students' Association model by-laws that other councils did, however in 1904 it passed a by-law regulating and licencing the activities of tohunga. This was possibly in response to a situation the Horouta Māori Council was dealing with, as there were no recorded tohunga activities in the Kurahaupo district, and in fact the Council did not ever take action against any tohunga.[150] The penalties for breach of the by-law were financial.[151]

123. Apart from the dog registration tax, income appears to have been derived from fines for breaches of the liquor laws. In one instance, the Council conducted its own hearing of recidivist offences; the man was convicted and fined.[152] The Council also took a keen interest in registering births and deaths, though actual records of registration have not survived.[153]

124. There were concerns about the level of engagement of some Council members in 1909. In 1910 and 1911 the chair was ill, and the Council met only once in that period.[154] Given the lack of funding it may be that an inability to resource the required work contributed to this hiatus and lack of engagement. In 1912 the Council was receiving sanitation reports indicating that wooden houses were being built and toilets installed in Whangaehu, Raketepauma, and Hihitahi, to the north-west of the Inquiry District,[155] but the disestablishment in 1912 of the Māori

[149] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 178.
[150] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 178-179.
[151] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 178.
[152] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 179.
[153] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 179.
[154] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 181.
[155] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 181.

Health Officer roles was a further blow to the functioning of the Council, as so many of their sanitation duties had been carried out by Ererua Te Kahu who was funded separately for his job.[156] Meetings between 1913 and 1917 ranged from regular to sporadic, and the minutes cease after that.[157] Christoffel notes the Kurahaupo Māori Council's work was generally enthusiastically received, but could not confirm the extent to which it was effective within it's rohe.[158] The overall impression is that the Council did a reasonable job with the limited resources available to it. As with other Māori attempts at self-government, lack of funding and resources was a significant limiting issue.

125. The Health Act 1920 amended the role of the Māori Councils. Christoffel summarises this change:[159]

> Councils were specifically charged with dealing with Maori health and placed under Health Department rather than Native Department administration. The new councils had seven members each, rather than 12 as previously. The village committees, of which there were commonly a dozen or so in each council region, continued to have three to five members as before.

126. The Crown continued to inhibit the proper functioning of the Councils via a lack of funding. Councils were required to keep accounts and submit them to the Native Minister, so the Crown was certainly on notice about this issue.[160] Christoffel notes the Kurahaupo Māori Council remained underfunded, and, as dog tax had been transferred to County Councils, they had lost their primary source of income.[161] This may have been the reason for the low level of activity by the

[156] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 181.
[157] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 181-182. This appears to be a common situation with Māori Councils at this time, see Christoffel #A41 at 200.
[158] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 182.
[159] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 200.
[160] Section 28.
[161] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 200.

Council during the early and mid-1920s.[162] Council members after the Health Act changes seem to have been appointed, rather than elected, and it is not clear how the appointment process worked in the district or to what extent the appointees reflected mana whenua wishes.[163] New appointments were made in 1926 in the hope of delivering a high-functioning Council.[164]

127. In January 1927 the Council's new Crown-suggested by-laws were gazetted, largely aimed at increasing their sources of revenue and controlling peoples' behaviour, and regulating the activities of the Ratana movement, which was opposed to Māori Councils.[165] Movie-show proprietors were to be licensed (for a fee), bad language attracted a fine, and large hui could be prohibited and the organisers fined.[166] The by-laws passed so far apparently omitted to address drainage, as the Council found when it wanted to take action against someone.[167] Requests to the Native Minister to have this rectified, but nothing happened. [168] This is curious; sanitation and health were primary matters for Council attention. It is difficult to see how it could carry out its primary functions when Crown inaction was standing in the way of it doing so.

128. The new by-laws did not seem to be effective at revenue-gathering, as the Council was described as "very moribund" and efforts to revive it by appointment of new members in 1933, 1936, and 1937 failed.[169] It appears the Crown failed to recognise that issues of enablement such as funding and gazetting of by-laws were the principal cause. The

[162] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 205-206.
[163] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 205.
[164] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 206.
[165] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 207.
[166] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 207.
[167] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 207.
[168] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 207-208.
[169] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 208.

Council was briefly revived in 1940 to establish a Komiti Marae at Ratana Pa; this appears to be its last notable action.[170]

129. Despite Taihape Māori hopes that this legislation would deliver a meaningful amount of the self-government they and others of the Kotahitanga movement had repeatedly advised the Crown was a need, it was a compromise accepting state supervision (and, ultimately, control). It did not provide the genuine concessions for self-government the movement had sought. O'Malley considers its assimilationist agenda was successful enough that Kotahitanga leaders were persuaded to abandon annual meetings of the Maori parliament in 1902.[171]

The Māori Social and Economic Advancement Act 1945

130. The "last remnants" of the Māori Councils were abolished by the Māori Social and Economic Advancement Act 1945.[172] This Act provided that the Minister might declare an area to be a tribal district, and areas within that district to be Tribal Committee areas.[173] An area would have as a Tribal Committee between five and eleven people, plus a Welfare Officer appointed by the Minister.[174] Tribal Committees could bring into being a 'Maori village', being "a kainga, village, or pa the boundaries of which have been defined by a Tribal Committee and which has been declared to be a Maori village for the purposes of this Act".[175] Tribal Committees would nominate two members each, who, again with a Welfare Officer appointed by the Minister, collectively made up a Tribal Executive Committee (referred to as a Tribal Executive) to direct the Committee and act as a liaison with central government.[176] The functions of Tribal Committees included matters of health and

[170] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 209.
[171] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html.
[172] Richard S. Hill *Maori and the State, Crown–Maori Relations in New Zealand/Aotearoa, 1950–2000* (Victoria University Press, Wellington, 2009) at 16. Section 45.
[173] Sections 6, 14. Tribal Committees had the same functions as Tribal Executives, unless the work could only be carried out by an Executive.
[174] Section 15.
[175] Section 2.
[176] Sections 7-8.

sanitation, as well as a measure of local government and Ministerial advisory:[177]

> (a) To promote, encourage, guide, and assist members of the Maori race,-
>
> […]
>
> (iv) To apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings;
>
> […]
>
> (h) Subject to the powers of the Minister, to control, advise, and direct the activities and functions of the Tribal Committees within its district, to receive reports and recommendations from the Tribal Committees within its district, and to make such recommendations to the Minister in connection therewith as it shall deem fit.

131. The Executives and Committees suffered from the same, or possibly worse, lack of funding as Māori Councils. Christoffel suggests donations were intended to provide the necessary funding, though the Crown could, at it's discretion match donations through Parliamentary appropriations and the Executives could collect licence fees and impose penalties of up to £20.[178]

132. An Executive could "establish, install, carry out, and administer any scheme of works having for its object the supply of water or the provision of sanitation for Maoris, and, if the Tribal Executive thinks fit, for such other persons as can be conveniently supplied or provided for", and could apply to the Native Land Court to create easements for a scheme.[179] Consent of the owner of European land was necessary, unless the owner/s were Māori "or Maoris and others". No consent was required in the case of Māori freehold land.[180]

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[177] Section 12.
[178] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 219.
[179] Section 32(1) and (2).
[180] Section 32(2).

133. A Tribal Executive could make bylaws similar purposes to those in the Māori Councils Act 1900. It also provided for Māori Wardens and their powers in relation to alcohol.[181] Armstrong notes that the Committees:[182]

> had no power to address sewage discharge from neighbouring urban centres, industrial effluent, farm run-off or a range of poisons used for noxious animal control.

134. Control of functions under the Act was vested in the Native Minister (and thus the Native Affairs Department), and Executives and Committees had to follow European administration procedures, however the Act did provide some limited, opportunities for self-government and these were taken up by Taihape Māori to the extent possible given the funding limitations. In the Inquiry District:[183]

> The Kurahaupo North and Kurahaupo South Tribal Districts were formed in 1948 under the terms of the 1945 Act. These districts were part of a wider area known as 'Zone 19'. Tribal Committee areas within the Kurahaupo North District consisted of 'Whiti-Tama' (involving Ngati Whiti and Ngati Tama), 'Rangituhia' (Ngati Tama) and 'Otaihape-Utiku' (Ngati Hinemanu). The Kurahaupo South Tribal District included the Kauangaroa, Rata, Wangaehu, Turakina, Marton, Bulls and Parewanui Tribal Committee areas. The Rata Committee was mainly associated with Ngati Hauiti.
>
> The history of these Tribal Committees was somewhat chequered, and only the Whiti-Tama Committee appears to have had a relatively unbroken existence [until the 1970s[184]]. All of the Tribal Committees in the Mokai Patea district appear to have focused on marae upkeep, and the extent to which they were able to monitor protect urupa on remaining Maori land is somewhat doubtful. In addition, it seems that these districts lacked functioning tribal Executives for considerable

[181] Sections 39-40, 45.
[182] Wai 2180 #A45 David Armstrong *The Impact of Environmental Change in the Taihape District, 1840-C1970* (2016) at 328.
[183] Wai 2180 #A45 David Armstrong *The Impact of Environmental Change in the Taihape District, 1840-C1970* (2016) at 359.
[184] Renamed, by then, the Moawhango Committee. Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 220.

periods, with the result that Executives were unlikely to have assumed responsibilities under s34(1) of the 1945 Act.

The Tuwharetoa Tribal Committee also operated to some extent within the Inquiry District, and a "Taihape Native Tribal Committee" was advised of a noxious weeds problem on one of the Awarua blocks.[185]

135. Tribal Committees and Executives are not much mentioned in the technical evidence. The Whiti-Tama Committee, later renamed as the Moawhango Committee is mentioned in relation to health matters and marae upkeep; the Tuwharetoa Tribal Committee was able to get membership in the Advisory Committee for the Kaimanawa Forest Park, gazetted in 1969; [186] "Local Maori owners and members of the Tribal Committee" were included in the list of organisations supporting a Preservation Committee set up by R. Batley to preserve forest on Awarua ADB2 and Aorangi Awarua, though Armstrong thinks their involvement was probably "marginal, at best";[187]

136. This seems likely to again be a matter of limited activity caused by inadequate funding. The Crown does not seem to have recognised that the solutions to the failure of Māori Councils ought to start with adequate funding and move through expansion of powers, rather than amending and enacting further legislation.

137. The Māori Social and Economic Advancement Act 1945 was repealed by what is now called the Maori Community Development Act 1962. This Act does not provide for local governance functions, other, perhaps, than the role of Māori Wardens.[188]

Current efforts

138. Taihape Māori continue to maintain that traditional structures are the most appropriate vehicles for them to carry out governance functions. Utiku Potaka gave evidence of efforts to get government recognition of

[185] Wai 2180 #A37 Susanne Woodley *Māori Land Rating and Landlocked Blocks Report* (CFRT, Wellington 2015) at 142-143.
[186] Wai 2180 #A45 David Armstrong *The Impact of Environmental Change in the Taihape District, 1840-C1970* (2016) at 127.
[187] Wai 2180 #A45 David Armstrong *The Impact of Environmental Change in the Taihape District, 1840-C1970* (2016) at 176-177.
[188] Section 18, section 7.

traditional structures as platforms for iwi and hapū to express their tino rangatiratanga, saying:

> … We believe [rūnanga] are the best vehicles to represent our people and to address our needs and aspirations.
>
> Therefore we seek recommendations that ensures [sic] the Crown accepts our Rūnanga structure representative of hapū and iwi of Mōkai Patea Nui Tonu in a contemporary setting.

139. Additionally, they have of their own initiative formed advisory groups to work with local and territorial authorities. These roopu are discussed later in the submissions.

Establishment of local government

140. The 1842 Municipal Corporations Ordinance set up local bodies to ensure "the good order health and convenience of the inhabitants of towns and their neighbourhoods".[189] The preamble explicitly recognised the value in peoples' participation in local matters, and that local people could best make decisions about local matters. Several other pieces of legislation followed with limited effect, which was probably due to the sparseness of the settler population.[190] Special purpose boards for roads, hospitals, drainage, and nuisances such as rabbits followed, and the Counties Act 1876 replaced the provincial system with 63 county councils.

141. Primary functions of local authorities are provision of services and land use control. Core services have stayed relatively similar since the introduction of local government to the Inquiry District. The Counties Act 1876 was in force at the time, and the core functions of county councils included:

    a. Part X

[189] Preamble.

[190] Waitangi Tribunal *Tauranga Moana 1886-2006 Report on Post-Raupatu Claims* (Wai 215, 2010) vol 1 at 311-312. I.e. the Municipal Corporations Ordinance 1844, the Public Roads and Works Ordinance 1845, and the Constitution Act 1846 (UK). Additionally, section 70 of the New Zealand Constitution Act 1852 (UK) provided that Her Majesty could, by Letters Patent, establish Municipal Corporations for towns or boroughs. Such Corporations had the power to make by-laws ("Bye-Laws") which were subordinate to any Ordinance or Act of the relevant Provincial Council.

i. (3.) Public Works [including roads];

ii. (5.) Public Libraries &c;

iii. (6.) Reserves and Places of Public Recreation;

iv. (7.) Markets, &c;

v. (8.) Pedlars and Hawkers;

vi. (9.) Slaughter-houses;

vii. (10.) Pounds.

142. Similarities can be seen in some the functions of Māori Councils and Tribal Committees in the sections above. Council functions under the Local Government Act 2002 likewise continue in a noticeably similar vein. The former section 11A provided that ‘Core services to be considered in performing role’, a local authority must have particular regard to the contribution that the following core services make to its communities;--

a. network infrastructure [defined in section 197 as the provision of roads and other transport, water, waste water and storm water collection and management];

b. public transport services;

c. solid waste collection and disposal;

d. avoidance or mitigation of natural hazards;

e. libraries, museums, reserves et cetera.

143. Section 11A was repealed in May 2019 by the Local Government (Community Well-being) Amendment Act 2019, which emphasises, community well-being and "provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural

well-being of their communities, taking a sustainable development approach".[191] Nevertheless, those core services remain central.

144. Over decades since the 1940s, land use controls have been gradually added to local government responsibilities through the Soil Conservation and Rivers Control Act 1941 (which brought the Catchment Boards into being), Town Planning Acts of 1953 and 1977, the Soil and Water Conservation Act 1967, and now the Resource Management Act 1991.

Settler Government in the Inquiry District

145. Bassett and Kay summarised the implementation and evolution of local government in the Inquiry District:[192]

> Local government in the Taihape region started with the Rangitikei Highways Board in 1872. However, at this time, while the Taihape district was largely still in Maori ownership, it had little impact in the district. In 1877 Rangitikei County Council was established, but it was not until the large scale purchasing of the Taihape inquiry blocks in the 1890s that council authority really extended beyond Hunterville. There were many boundary adjustments over the years, but by 1977 Rangitikei County took in land between the Rangitikei River and up the coast to Turakina, and extended inland to north of Waiouru. In 1989 the county council became the Rangitikei District Council. Other local authorities which operated within the Rangitikei County include the Hunterville Town Board which was formed 1905. In 1975 it became a Community Council Town under the Rangitikei County Council. The Taihape Borough Council was formed in 1906.
>
> While Rangitikei County Council included most of the Taihape Inquiry District, the Rangitikei River up to near Mangaweka was the eastern boundary of Rangitikei County (and District). On the eastern side of the river was the Kiwitea County Council. It was established in 1894 from the Kiwitea County Road Board and part of Oroua County Council. In 1989 it was

[191] Local Government Act 2002, rew section 3(d).
[192] Wai 2180 #A5 Local Government, Rating and Native Township Scoping Report (CFRT, Wellington, 2012) at 7-8.

amalgamated with Manawatu District Council. The Taihape District Maori Land Court blocks which lay within Kiwitea County were Otamakapua, Mangoira, parts of Awarua 1, and the Waitapu block. […].

As well as local councils, there were other special purpose local agencies operating within the district including:

Hunterville Rabbit Board 1925

Rangitikei Catchment Board 1944

Ruahine Rabbit Board, subsequently the Ruahine Pest Destruction Board

In 1990 these and other agencies were amalgamated into the Manawatu-Wanganui Regional Council, which is now known as Horizons Regional Council.

Since the restructuring of local government in 1989, the following local authorities have jurisdiction within the Taihape Inquiry District:

Rangitikei District Council

Ruapehu District Council

Hastings District Council

Manawatu District Council

Manawatu-Wanganui Regional Council (Horizons Regional Council)

Hawke's Bay Regional Council

[...]

…the majority of the inquiry district is part of the Rangitikei District Council [...].

[…]

At the regional level the majority of the Taihape Inquiry District falls within the Horizons Regional Council. The Te Koau and Kaweka blocks, and parts of Owhaoko, come under the jurisdiction of the Hawke's Bay Regional Council.

146. Additionally, the Moawhango, Pukeokoha-Taoroa, Hunterville, Cheltenham, Kiwitea, Hautapu, Maungakaretu and Ruahine Rabbit

Boards operated in the District (several of which merged in the 1960s into the Taihape Rabbit Board),[193] as did the Kiwitea Road Board.

Catchment Boards

147. Catchment boards were set up to manage river control and soil conservation at a local level.[194] The Soil Conservation and Rivers Control Act 1948, under which boards are constituted, is still partly in force. No mention is made of mana whenua membership in either the legislation or the boards operating in the Inquiry District.[195] Since 1991, some Treaty duties are imported by section 10A, which provides that nothing in the Act may derogate from the Resource Management Act 1991.

148. The Catchment Boards were bodies corporate, comprised of eight to fifteen elected members (or a combination of elected and non-elected members), being representatives of the constituent districts that made up a catchment district and elected by electors of the districts.[196] Non-elected members would be appointed by the Governor-General for a three-year term; this seems to be a stop-gap where an insufficient number of people had been elected to a board.[197]

149. Other provisions constituted a national Soil Conservation and Rivers Council, comprised of the Engineer-in-Chief of the Public Works Department, the Under-Secretary for Lands, and an officer of the Public Works Department, two people representing local authorities, River Boards, Land Drainage Boards, and Catchment Boards, and one person representing agricultural and pastoral interests, all appointed by the Governor-General on the recommendation of the Minister.[198] The functions of the Council included matters of soil erosion, soil conservation and reclamation, flood control, and "The co-ordination, having regard to the objects for which the Council is established, of the

[193] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 222.
[194] Wai 2180 #A48 Phillip Cleaver *Maori and Economic Development in the Taihape Inquiry District 1860-2013* (2016) at 229.
[195] Section 41.
[196] Sections 40-41, 45.
[197] Sections 44, 51.
[198] Section 3.

policies and activities of Government Depart- ments, local authorities, and other public bodies in relation to any of the foregoing matters and in regard to the alienation, utilization, and occupation of lands administered, owned, or occupied by Government Departments, local authorities, or other public bodies".[199] Section 7 allowed the Minister to sit in on meetings of the Council. This suggests a significant level of Crown control.

150. The objects of the Act are promotion of soil conservation, prevention and mitigation of soil erosion, prevention of damage by floods, and utilisation of lands in such a manner as will tend towards the attainment of the the objects.[200]

151. The powers of boards extend to acquiring land under Public Works Acts,[201] disposing of land or licensing cutting and logging,[202] controlling reserves,[203] and prosecuting offences in relation to reserves, watercourses and works, and obstruction.[204] Repealed powers include the power to make by-laws for the protection of watercourses, for defence against water, and for land utilisation,[205] and wide powers of rating that included administrative, general, separate, special works, maintenance, and special rates in respect of loans.[206]

152. In 1972 the Hawke's Bay Catchment Board identified Te Koau A as land for acquisition to end grazing and manage it in a way that prevented erosion from causing negative effects downstream.[207] Issues with access, and a change in political direction, ended the acquisition process.

153. The actions of Rangitikei-Wanganui Catchment Board affected the Awarua 1DB2 Trust's governance decisions, significantly diminishing owners' ability to derive revenue from their land. It was the express

[199] Section 11.
[200] Section 10.
[201] Section 19.
[202] Section 20.
[203] Section 16.
[204] Sections 17, 153-154.
[205] Sections 149-150.
[206] Part 5.
[207] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 692.

wish of the owners[208] to log the podocarp forest on the block, and in 1974 a proposal from a Marton sawmilling firm was put to the Catchment Board.[209] The "emotive" language of the Forest Service on the proposal attracted the attention of conservation groups, and in November "a public meeting was held as to the best use of the land from a conservation and recreation perspective."[210] Walzl does not say who called the meeting, but he does record that the owners of the block appeared to have largely been left out of prior discussions.[211] Discussions about the future of the block dragged on, and in 1980 the Board took unspecified "legal measures to restict land use on the blocks."[212] Walzl does not say whether these measures were supported by the owners (presumably not, under the circumstances) or whether their views were even sought. Regardless this is a heavy-handed attitude and on its face unfair approach to private property rights, as well as lacking any appreciation that the land was a remnant of former tribally owned and controlled forest.

154. In 1982 another logging proposal was put forward to the Board by Reeves Contractors, which the Catchment Board discouraged in its interim decision that advised further information was required.[213] The owners eventually signed a logging contract with Reeves, and in 1987 the Catchment Board declined the proposal. Reeves appealed, supported by the owners, and the appeal authority granted the proposal with amended conditions.[214] The Catchment Board in turn appealed to the High Court, and also filed for judicial review. When Reeves applied to the County Council for consent, the Catchment Board lodged an objection.[215] The High Court dismissed both the Catchment Board's appeal and its application for judicial review,[216] however the Council declined the consent application and advised

[208] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 723.
[209] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 718.
[210] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 718.
[211] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 719.
[212] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 721.
[213] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 721-722.
[214] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 724.
[215] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 725. It is worth noting here that the Department of Conservation also objected on grounds of cultural and historial value, and the diminshment of spiritual and traditional values. It should be noted that some present and former trustees also objected, however the Trust had consented. Walzl at 725.
[216] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 725.

Reeves further consents would in any case be required.[217] The matter seems to have lapsed from this point. This incident demonstrates the practical power of local government legislation to frustrate the desires of Maori owners on their remaining land.

155. Catchment Board decisions have also caused material losses to mana whenua. When the Rangitikei Catchment Board in the 1950s and 1960s changed the course of the Rangitikei river without consulting mana whenua, pipi and cockle beds were destroyed.[218] When it diverted the Waituna Stream, the lands behind Poupatate Marae began to flood regularly.[219] And when it undertook flood protection works on one side of the river and not the other, mana whenua lost land to erosion on the side of the river not addressed.[220]

156. At no point did in the legislation or its implementation did the Crown consider the Treaty guarantee of Māori participation in this form of governance.

Road boards

157. The Rangitikei Highways Board, with the Rangitikei County Council, undertook construction of roads in the district until 1883, when it ceased to function.[221] Other road boards appear only incidentally in the record of inquiry as concerns local government issues There was no evidence of consideration of mana whenua participation or membership in the relevant boards. Nevertheless, the reputations of road boards evidently preceded them; in 1872, Retimana Te Rango and Ngāti Tama petitioned the government opposing road boards (and roads) in Mokai Patea.[222]

[217] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 725.
[218] Wai 2180, F6 Joint statement of evidence of Hare Arapere and Puruhe Smith at 55-56.
[219] Wai 2180, F6 Joint statement of evidence of Hare Arapere and Puruhe Smith at 57.
[220] Wai 2180, F7 Statement of evidence of Turoa Karatea at 36.
[221] Wai 2180 #A9 Phillip Cleaver *Taking of Māori Land for Public Works in the Taihape Inquiry District* (Waitangi Tribunal, 2012) at 178.
[222] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 237.

Drainage boards

158. The Land Drainage Act 1893 (An Act to provide for the Drainage of Agricultural and Pastoral Lands) constituted the first Drainage Boards.[223] The Act explicitly applied to Native lands, making them rateable for the purposes of the Act, and providing that takings of Native lands for the purposes of the Act would be carried out under the Public Works Act 1882 as amended by the 1887 and 1889 Amendment Acts.[224] The Act provided:[225]

> Every Board of Trustees constituted under this Act shall be deemed to be a local authority or a local body within the meaning of the Acts incorporated herewith.

159. Boards were elected by local ratepayers according to the valuation rolls.[226] As noted above, Māori did not enjoy the full franchise until 1944, which limited their ability to vote in drainage board elections. Should not enough persons be elected, the Governor could appoint Trustees.[227]

160. The boards and their agents (including surveyors) had powers to cleanse, repair, maintain, improve, and create watercourses, outfalls, drains, and their banks.[228] They could take land, and could take materials from and form roads over adjacent lands for their purposes.[229] They could also construct, evidently without consent, drains over lands they did not own (and could then charge the owners for the cost of the works in proportion to the benefit each piece of land derived).[230] Compensation was payable to landowners whose lands had been taken or used by the boards, with compensation for Native lands being determined by the Native Land Court. The Act and its 1904 replacement and various amendments did not consider Māori membership of the boards.

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[223] Section 9.
[224] Section 4.
[225] Section 8.
[226] Sections 10-12.
[227] Section 13.
[228] Section 19.
[229] Section 19(5) and (6).
[230] Section 22.

161. The Rangitikei Drainage Board undertook significant works in the Inquiry District, however it did not include mana whenua in its decision-making processes.[231] David Alexander's comment on the first Rangitikei River Scheme, started in 1947 and carried into effect from 1952 notes some of the issues experienced by Taihape Māori, not only in respect of that scheme, but from the time of the constitution of the catchment boards in the 1890s up until their amalgamation into district and regional councils in 1990:[232]

> Throughout the whole process of Catchment Board preparation and Crown approval, there had not been a single reference to the relationship of Rangitikei River Maori with their tupuna awa, to Maori ownership of riverbank land, to consultation with Maori, or to the effect of the scheme on tangata whenua once it went ahead. The scheme was considered only in terms of river engineering technicalities, and in financial terms.

Rabbit boards

162. Rabbits were introduced to the country by settlers and quickly got out of hand. The first Rabbit Nuisance Act was passed in 1867. Under the 1876 Act, rabbit boards could direct landowners to destroy rabbits, and if no action was taken the boards could step in and take measures at the owners' expense.[233] Boards were elected by "landowners within the district and could levy rates."[234] The 1881 Act established a system of rabbit inspectors, and the 1882 Act increased powers to declare Rabbit Districts and to require rabbit-proof fencing to be erected. Inspectors came under the authority of the Department of Agriculture after it was set up in 1892. Rabbit control was one of the department's major functions, accounting for a quarter of its budget in 1895.[235]

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[231] See, for example, Wai 2180, #L1 Evidence of Edward Penetito at 33-34; #L4 Amended Brief of Evidence of Rodney Graham at 84.
[232] Wai 2180 #A40 David Alexander *Rangitikei River and its Tributories Historical Report* (CFRT, 2015) at 395.
[233] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 216.
[234] Sections 7, 9.
[235] Robert Peden, 'Rabbits - The role of government', Te Ara - the Encyclopedia of New Zealand, http://www.TeAra.govt.nz/en/rabbits/page-7 (accessed 1 October 2020).

163. The Rabbit Nuisance Amendment Act 1947 changed the focus to a 'kill at all costs' system, funded from rates paid to the rabbit boards which were matched by the government. This system was successful in the period of the 1950s to the 1970s, but in 1980 the government changed its funding from dollar-for-dollar to lump sum. From 1984 the government adopted a 'user pays' policy, and progressively withdrew funding. In 1989 Regional Councils took over responsibility for rabbit issues.[236] There is no provision for mana whenua membership or control in any of the legislative responses to the issue up to that date, and no mana whenua membership has been discovered in the course of research.[237]

164. Crown rabbit destruction entities were active in the Inquiry District. There is little information on their activities other than rating[238] (which is addressed in the Rating closing submissions), however it is known that rabbits were sufficient a pest on the Owhaoko blocks for the Department of Agriculture to spend £400 per year in the 1920s on their control.[239] Thousands more pounds were spent over the course of the 1920s on rabbit control on Māori land in the Inquiry District.[240] Stirling attributes this to concern for neighbouring properties, rather than concern for Owhaoko itself.[241] It appears that the Crown itself carried out such work; that is, it was very directly involved. It did not pass funding on to owners to carry out the work.[242]

165. In response to a request from an Owhaoko lessee for assistance with the rabbit problem, the Native Department recommended he 'take

[236] Robert Peden, 'Rabbits - The role of government', Te Ara - the Encyclopedia of New Zealand, http://www.TeAra.govt.nz/en/rabbits/page-7 (accessed 1 October 2020).
[237] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 223.
[238] Belgrave et al note that files on the topic "detail operations of the board, the hiring of inspectors and the raising of revenue but says little about the methods used to control rabbits." Wai 2180 #A10 Michael Belgrave, David Belgrave, Chris Anderson, Jonathan Procter, Erana Hokopaura Watkins, Grant Young, and Sharon Togher *Environmental Impacts, Resource Management and Wahi Tapu and Portable Taonga* (2012) at 251.
[239] Wai 2180 #A6 Martin Fisher and Bruce Stirling *Sub-district Block Study – Northern* Aspect (Crown Forestry Rental Trust, Wellington, 2012) at 125.
[240] See tables in Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 227-230.
[241] Wai 2180 #A6 Martin Fisher and Bruce Stirling *Sub-district Block Study – Northern* Aspect (Crown Forestry Rental Trust, Wellington, 2012) at 125.
[242] Wai 2180, #A37 Suzanne Woodley *Māori land rating and landlocked blocks, 1870-2015* (CFRT, 2015) at 494 and Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 8.

advantage of part 1V, Rabbit Nuisance Act, 1908, which would allow a Board, with as few members as three, to be set up to deal with the issue and lay down the procedure."[243] It is not known whether the lessee did so, but the letter and the procedures it recommended included no provision for mana whenua leadership.

166. Where the rabbit boards dropped poison, they did it in such amounts that the land itself was poisoned; this was known as 'rabbit-sick land' actually reducing its use for future grazing[244] In 1921, in response to Ngamatea Station concerns about adjacent unoccupied Crown and Māori lands being untreated for rabbit issues, the Minister of Agriculture ordered the local Rabbit Inspector to poison the blocks.[245] In the following two years he arranged for 20 tons of poison to be dropped on the lands, all of which had to be brought in by pack horses, as the lands were some distance from the nearest roads.[246] There is no mention of consultation with the block owners. This exercise was repeated in 1935 on the northern side of the Moawhango Rabbit Board's boundary; again there is no record of consultation with the Māori owners.[247]

167. The Agriculture Department initially funded its rabbit control activities in the District, but from late 1921 it sought to recover funds expended on Māori lands in pursuit of rabbit extermination from the Native Department.[248] Native Department officials disavowed responsibility for these costs, but offered to provide information to help track down the owners.[249] When the Agriculture Department persisted and sent accounts over, the Native Department insisted the accounts had to reflect the individual land blocks on which the activities had been

[243] Wai 2180, #A37 Suzanne Woodley *Māori land rating and landlocked blocks, 1870-2015* (CFRT, 2015) at 388.
[244] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 8 and 215-216..
[245] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 220.
[246] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 220.
[247] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 224.
[248] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 226-227.
[249] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 227.

carried out.[250] The accounts did not do so, and the Native Department provided this as part of the reason it did not recover costs from the owners when it paid the accounts rendered.[251] In fact, it had no power to do so; that lay with the local Rabbit Inspector.[252] The inference is that they would have done so had they been able to identify who was liable for what. Some of the costs incurred by the Agriculture Department were offset by sales of rabbit pelts; whether the offsets were passed on in the accounts is not clear.[253] The Native Department also came under pressure several times over the decades from the Agriculture Department asking it to lease or sell the Māori lands within the Inquiry District on which it was killing rabbits.[254] The Native Department replied each time that it did not have any jurisdiction over privately held Māori lands.[255]

168. This saga shows that there were numerous missed opportunities to engage with the owners of the Māori lands affected by rabbits. Given that the sole reason the Crown sought to do so was to make them pay the costs it is difficult to see this failure as altogether a bad thing, however that misses the point that the Crown ought to have taken measures to protect Māori land within the Inquiry District from the rabbit invasion, most practically by means of a rabbit-proof fence,[256] and ought to have controlled any rabbits inside the boundaries. This was, after all, recommended by the Lands Department for Crown lands in the district.[257] Taihape Māori were not responsible for introducing rabbits to the country or to the Inquiry District, but the Crown failed to make this distinction when addressing the issue.

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[250] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 230.
[251] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 230.
[252] Rabbit Nuisance Act 1882, s 13.
[253] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 231.
[254] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 232, 233, 234.
[255] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 232, 233, 234.
[256] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 216.
[257] Idem. "The Lands Department recommended tighter control and further regulation, and suggested that the Government put its own house in order by clearing Crown lands of this pest."

Noxious weeds

169. The Noxious Weeds Act 1900 provided that the Governor could appoint inspectors, however it was local government that had power to declare plants noxious weeds.[258] In practice, local government and inspectors seem to have worked fairly closely together, and until 1950, when inspectors could be appointed by local government,[259] it can be difficult to say to what extent an action is a Crown action or a local government action.[260]

170. Pest plants were an issue from at least 1910-1911 for both Māori and Pākehā, with considerable ire in the District against settlers who were not clearing them off their lands.[261] Noxious weeds had been recorded as an issue when the then Land Board President strongly suggested that the owners of the Owhaoko blocks, since they were proving recalcitrant in the matter of handing over their lands to the Crown, ought to have their noxious weed clearance obligations rigorously enforced.[262] The Prime Minister was on record in 1913 saying he could give no guarantee that the Noxious Weeds Act would be enforced, and that the matter was one best left to the officials to manage.[263]

171. In 1938 and 1939 legal action was taken by the Noxious Weeds Inspector against 12 owners of the Owhaoko C3B block (including one Pākeha who had succeeded to his wife's interests), following a request from the County Engineer for assistance as to how to proceed.[264]

172. Noxious weed issues were raised in the Land Court in the 1940s, when the Rangitikei County Council sought receivership orders in respect of outstanding rates (discussed further in the Rating section of these submissions). [265]

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[258] Sections 25, 4.
[259] Section 17(b).
[260] See, for example, Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 135; Wai 2180, #A45 Armstrong *Environmental Change 1840-c1970* (2016) at 104.
[261] #A046, Walzl, *Twentieth Century Overview* at 239-240.
[262] #A046, Walzl, *Twentieth Century Overview* at 340.
[263] #A046, Walzl, *Twentieth Century Overview* at 240.
[264] Wai 2180, #A45(a) David Armstrong *The Impact of Environmental Change in the Taihape District 1840-c1970* (2016) at 104.
[265] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 137, 142, 172.

Present day participation

173. From 1967 to 2007, numerous attempts were made to reform rating, planning and local government. The Fourth Labour Government in 1989 reformed local government entirely, introducing regional government, abolition of separate ad-hoc and special purpose boards and the merging of smaller authorities into district and regional councils. Despite such significant widespread change, there remained a lack of meaningful change regarding Maori interests in rating and planning regimes.

174. In 1989, Hirini Matunga's report Local Government: A Māori Perspective, written for the Māori Consultative Group on Local Government Reform, made the case that local government needs clear statutory guidelines that outline their Treaty obligations and tell them how to meet them in decision-making, particularly in respect of resources and land.[266] He considered a legislative imperative was essential to ensuring local government meets its Treaty responsibilities. Eighteen years later, in the midst of consultation on the local government review, Jeanette Fitzsimons, then a sitting MP, wrote in the Hauraki Herald that the discussion document on the review contained no analysis or proposals on the local government relationship with the Treaty.[267]

175. Shortly after the Matunga report, the Waitangi Tribunal started to look at Treaty obligations around local government. As noted above, from 1993 it has repeatedly stated that the Crown has responsibility for ensuring local government meets its Treaty obligations.

176. Matunga's recommendation was not implemented, and over two decades later Bassett and Kay were able to write that Māori are "virtually invisible" in the record of local government in the Inquiry District.[268] They noted that in the two decades before their 2012 scoping report on local government issues, only two Māori were

[266] Hirini Matunga *Local Government: A Maori Perspective* Report for Māori Consultative Group on Local Government Reform (Wellington, 1989) at 6.
[267] Jeanette Fitzsimons "Which way Local Government? Have your say" *Hauraki Herald* (New Zealand, 20 July 2001).
[268] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 9.

elected to council, and none before that.[269] They also recorded that Māori voting rates in the Inquiry District are low.[270] Claimant witnesses gave evidence that matters in the Inquiry District have not meaningfully moved forward since the 2012 Bassett and Kay scoping report.[271]

Treaty elements in local government legislation

Local Government Act 2002

177. Section 4 of the Local Government Act 2002 provides:

> **Treaty of Waitangi**
>
> In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Maori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Maori in local authority decision-making processes.

178. The Local Government Act 2002 requires local authorities to:[272]

a. establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority;

b. consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority; and

c. provide relevant information to Māori for the purposes of paragraphs (a) and (b).

In other words, the 2002 Act sets out that the Crown has Treaty responsibilities and that local government must fulfil some of these because of its governance

[269] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 9.
[270] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 9.
[271] See, for example, Wai 2180, #L7, Evidence of Puti Wilson.
[272] Section 81(1).

role, but it fails to provide any recognition of the commitment to the constitutional relationship, nor specific guidance for local government.[273] The Act in practice has not had meaningful outcomes for Māori in general, and Taihape Māori have given evidence that it has not done so in the Inquiry District either.

179. The role of Māori in some aspects of local government was changed by the Resource Management Act 1991, which requires local authorities to:

    a. recognize and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga (section 6(e));

    b. have particular regard to kaitiakitanga (section 7(a)); and

    c. take into account the principles of the Treaty of Waitangi (section 8).

180. Other provisions in the Resource Management Act involvement of iwi and hapu in resource management at practical and governance levels include sections 33, 35A, 39, 61, 62, 66, 74 and clause 3(1)(d) of the First Schedule. These are discussed in the generic Environment closing submissions. The sections generally recognise iwi authorities as the appropriate engagement bodies for local and regional government. For example, section 33 provides that "A local authority may transfer any 1 or more of its functions, powers, or duties under this Act, […], to another public authority in accordance with this section." 'Another public authority' includes an iwi authority. One issue is that there is no provision for tikanga-based structures such as rūnanga, which are the expressed preference of some claimants.[274] The bigger issue is that, within the Inquiry District, no local authority power has been transferred to any iwi authority.

[273] Section 4.
[274] Wai 2180, #L9, Evidence of Utiku Potaka at 12.

Taihape Māori experiences

181. A particular concern of claimants was that whenever new councillors were elected, "the committee had to start again with 'educating' them about Maori interests and concerns."[275] There was no mention of structure or formality around this education process or any funding for it. Nor is there mention of Crown guidance and support for incoming councillors to understand the Treaty obligations their roles entail.

182. There have been two consultative bodies set up with in the region. Te Roopu Ahi Kaa (for the Rangitikei District Council) and Ngā Pae o Rangitikei (for the Horizons Regional Council). Evidence from some claimant groups suggests that these are seen as less of a vehicle for mana whenua to fulfil their kaitiakitanga responsibilities than a mechanism for the engagement the Council is compelled to undertake.[276] The issue remains that these are merely voices for decision-makers to take into account when making decisions – the end process of which excludes mana whenua.

183. Te Roopu Ahi Kaa is a standing committee for the Rangitikei District Council which represents Ngāti Parewahawaha, Ngāti Apa, Ngāti Hauiti, Ngāti Hinemanu – Ngāti Paki, Ngāti Tamakopiri, Ngāti Whitikaupeka, Otaihape Māori Komiti, Ngāti Rangi, and the Ratana Community Board. Under a Memorandum of Understanding signed in 1998, the functions of Te Roopu Ahi Kaa include:[277]

    a. To review the relevant processes of Council and make recommendations on steps to be taken to assist Council in carrying out its functions and responsibilities in a bicultural manner taking into account the principles of the Treaty of Waitangi.

    b. To develop draft proposals which recognise the tangata whenua of the Rangitikei District's kaitiakitanga and

[275] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 12.
[276] Wai 2180, #L7, Evidence of Puti Wilson at 6-7.
[277] https://www.rangitikei.govt.nz/council/policies-bylaws/policies/agreed-terms-of-reference-te-roopu-ahi-kaa. The MoU is easy to find on the Rangitīkei District Council website.

rangatiratanga in a manner consistent with the provisions of the Resource Management Act 1991.

c. To provide advice and assistance with the Councils' Policies, Bylaws, Rating and Funding, Strategic Plan, Annual Plan and other activity plans (ie. recreation, library, transport, etc). Te Roopu Ahi Kaa will support and assist the Council to discharge its obligations to the Tangata Whenua in relation to procedures and issues that arise under the Resource Management Act 1991.

d. To respond on appropriate issues including, but not limited to, notified resource consent applications where the Council is required to determine issues relating to the management, use, development and protection of the District's physical resources.

e. To ensure appropriate persons are consulted or available to provide such information as may be required from time to time on items of interests to Te Roopu Ahi Kaa and/or the Rangitikei District Council.

In other words, this is an advisory committee. Advisory functions fall far short of the higher level engagement at the centre of the Council functions the Treaty requires.

184. Claimants also gave evidence that this entity does not necessarily represent significant mana whenua groups in the Inquiry District. Bassett and Kay noted that "One problem was the requirement for tangata whenua groups to form legal entities, such as rūnanga, to achieve recognition to consultative purposes."[278] Ngati Hinemanu – Ngati Paki felt that those with ahi kaa were not necessarily recognised.[279]

185. The Rangitīkei District Council appears to be willing to support greater involvement in decision-making for Taihape Māori. The Statement on

[278] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 5.
[279] Wai 2180, #F5, Evidence of Jordan Winiata-Haines at 64.

Development of Māori Capacity to Contribute to Council Decision-making was adopted into the Long Term Plan in 2018.[280] The Introduction states:

> Council is committed to working with Maori and Tangata Whenua to build internal capacity and capability, not least to support the requirements given effect to by the Treaty Settlements. While required to have this policy under the Local Government Act, Council is committed to having working relationships with Maori which go above and beyond what is required under the legislative framework.

186. Despite this very promising start, the document is rather light on how that might occur or what steps Council might next take. Clear guidance, support, and funding from central government would be immensely helpful to facilitate the mapping and implementation of these good intentions, and for all the local and regional councils in the Inquiry District, to fast-track their journey to Treaty compliance.

187. Ngā Pae o Rangitīkei is a body formed at the initiative of local iwi.[281] It focusses on Regional Council-level issues relating to waterways, and in particular the Rangitīkei River. Horizons Regional Council has been found by the courts in recent times to be deliberately "manipulat[ing] and pervert[ing]" the implementation of its own regional plan with respect to accepting farm pollution of waterways.[282] The Court additionally said:

> [183] Many of the Council's submissions were based on the themes that the Council now recognised that its earlier decision-making was not lawful (or good practice); that action was being taken to rectify past approaches; that many of the declarations sought were no more than obvious restatements of (an obligation to comply with) the terms of the RMA and relevant planning documents; or were trite and self-evident, and would fetter the Council's discretions. In some senses,

[280] https://www.rangitikei.govt.nz/files/general/Policies/Statement-on-Development-of-Maori-Capacity-to-Contribute-to-Council-Decision-making-2017.pdf This statement was easy to find on the Council website.
[281] Wai 2180, #F5, Evidence of Jordan Winiata-Haines at 64-65.
[282] *Wellington Fish and Game Council* v *Manawatu-Wanganui Regional Council* [2017] NZEnvC 37 at [182].

> the point that the issues should be self-evident may be right, but we cannot ignore the fact that, for instance, the Resolution earlier discussed was in place for more than three and a half years. During that time, the applicants attempted to work with the Council to correct many of the issues involved in the declarations. Bringing the action in Court was perhaps borne partly out of frustration with the lack of responsiveness of the Council. A public and unequivocal statement from the Court that such an attitude on the part of a law-making and law-administering body is not acceptable is more than justified.

188. The public response from the Council chair defended farmers and said that the Council accepted they (the Council) "may not have got it completely right" and "no-one has said we're not on the right path when it comes to water quality improvement."[283] This is something of a mischaracterisation. Expert witness Puti Wilson gave evidence that, "Māori are less likely or capable to continue engaging with Councils when past experience has been ineffective." [284] The paragraph of the court judgment quoted above does not inspire confidence that Horizons is committed to engaging with outside groups to rectify issues, which include issues for Taihape Māori of lack of fulfilment of its Treaty duties.

189. In response to questioning from the Panel, Puti Wilson gave evidence that it was not clear whether Horizons had engaged with all mana whenua, or to what extent; she gave the example of the engagement audit being carried out by Auckland Council as a way this engagement can be quantified.[285]

190. Ms Wilson also gave evidence that Mana Whakahono a Rohe agreements tend to limit the effectiveness of hapū and iwi by failing to capture their individual nuances.[286] She discussed decision-making in partnership, i.e. co-governance, as a meaningful model that:[287]

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[283] https://www.stuff.co.nz/environment/91179278/horizons-regional-council-loses-court-case-over-farm-runoff-enforcement
[284] Wai 2180, #L7, Evidence of Puti Wilson at 3.
[285] Wai 2180, #4.1.16 at 425.
[286] Wai 2180, #L7, Evidence of Puti Wilson at 8.
[287] Wai 2180, #L7, Evidence of Puti Wilson at 8. See also #4.1.16 at 427.

> serves the interest of all of its members and is mostly influenced by the relationships established amongst its members. The strength of co-governance is therefore in the on-going and dynamic partnership to resolve issues of common interest. This relationship requires a willingness to participate and persevere through difficulties.

191. In questioning she also emphasised the differences in effectiveness between joint management agreements enabled by legislation, and those which are simply reflected in memoranda of understanding which she saw as being more limited.[288] We think part of the reason statutory agreements are more desirable is that they empower the Māori partners to enforce the agreements, whereas less formal agreements rely in practice on the Crown taking the enforcement role on their behalf.

192. Additionally, she helpfully attached to her evidence an appendix outlining the eight known co-governance arrangements in Aotearoa, and discussed the elements that make such arrangements successful.[289]

Conclusions

193. This is a story of missed opportunities. As noted above, local government as we recognise it today was developed in Britain in the 1830s. That is to say, the entire system was brand new; it could easily have been set up from the outset to treat Taihape Māori and the Crown as partners, and the Crown was cognisant of its obligations and opportunities to do so. It is a story in which we can see that the Crown knew what was right but deliberately followed a different path. Crown statements on implementing legal pluralism demonstrate a clear understanding of some of the ways in which the governance agreement in the Treaty could be honoured, however the settler government consistently put settler interests above those of its Treaty partner. At intervals it gave the appearance of doing the right thing, but in fact it did the minimum necessary to quiet Taihape Māori while

[288] Wai 2180, #4.1.16 at 427-428.
[289] Wai 2180, #L7, Evidence of Puti Wilson at 9 and Appendix A.

retaining the confidence of the colonists. The Rohe Pōtae Tribunal has described this behaviour as the Crown knowing what it:

> could and *should* have done. To have reached such a compromise would have been consistent with the Treaty partnership and the principle of autonomy, but the Crown failed to do so […]. This was a deliberate omission on the part of the Crown and was thus a breach of the partnership and autonomy principles. (Emphasis in original)

194. In summary, although it knew and articulated its Treaty responsibilities, the Crown enabled settlers to exercise their right of self-government but did not do the same for Māori. This situation is still fully in force today; Pākehā governance institutions are recognised and empowered, and Māori governance institutions are not.

195. Missed opportunities also came in the form of proposals from Taihape Māori, which the Crown did not take up. These included the rūnanga movement, the native council and native committee movements and Bills, the various Maori parliament initiatives from Kohimarama in the 1860s to Kotahitanga in the 1890s, and many more. From the earliest days of Crown involvement in the Inquiry District, Taihape Māori have been seeking the partnership and continuation of tino rangatiratanga set down in the solemn compact of the Treaty. Several technical witnesses have noted the unusual ability and exceptional leadership of rangatira in the Inquiry District. In just two of many examples, responding to questions from Dr Ballara on committees, and Dr Soutar on information sharing, Walzl said:[290]

> They had that idea of that coming into existence really. It's very, very – the 1892 and '95 letters are so sophisticated compared to what I've seen it's amazing. So these certainly are men and women of knowledge and great business understanding and I think they would know of the 1894 Act. I'd be very surprised if they didn't. but as I said there is no example where they applied for it and my belief is without the consolidated estate and access to finance … it's pointless to have an incorporation.

[290] Wai 2180, #4.1.15 at 165 and 185. See also further examples at pp 233-234, 251-252, and 298.

and

> You know the whole 1890s is when Māori are thinking about how can we utilise our land in a modern economy and so it was very much the question of the day. As I said these people have come out with what I regard as quite a sophisticated arrangement.

196. Stirling also noted this sophistication:[291]

> But yes, quite earlier on they set up komiti, they join the repudiation movement and support its efforts to have the land laws fundamentally amended, and then you know moving right through to the Awarua ērā in the late 1880 and early 1890s. They very clearly set out aspirations and goals, and methods that will meet the needs of the Crown and the owners, and settlers in a fairly reasonable generous fashion, but those efforts are ignored by the Crown.

197. Stirling also noted that Māori were actively acting as partners, providing solutions to the issues they experienced as a result of Crown action and inaction:[292]

> Gilling: And these things that you have just been talking about, you carry that forward through over the next few pages, examples their initiatives and so on and you describe them as forward thinking and again I – reading this and listening to you I still am struggling with why the Crown is not engaging. Most of it is about economic development which surely is high on their agenda. I'd have thought the liberals would've been keen on a lot of this, but you say there is just no evidence one way or the other. It's just a big void.
>
> Stirling: Yes, yes that's what's so baffling about it, that they're almost like some kind of model Māori. If you're the Crown these are the sort of people you want to deal with. They are really rational, practical business like, organised. You think that's what they would want to engage with and work with, but it's just business as

[291] Wai 2180, #4.1.10 at 390.
[292] Wai 2180, #4.1.10 at 529.

> usual. Just buy it up and we'll sort it out later if there's anything left for you, yes, yes.

198. Their abilities were also recognised in their own time by the settler press:[293]

> Twelve members were elected to the Kurahaupo Maori Council in March 1901, including Pene Pirere of Rata. The council had its first meeting at Parawanui on 27 July 1901. According to the Wanganui Herald, council members 'proved themselves men of more than ordinary ability, and quite able to hold their own in any matter of debate or criticism'.

199. Despite this clear ability on the part of its Treaty partners in the Inquiry District, it is notable that Māori are absent from the record of interactions with local government. That is to say, the partnership and sharing of power went off-track from a very early stage. This is not to say the issue was not recognised at central government level; Woodley records the concern of the Member for Rangitikei who "criticised the legislation for its limited provision of Maori representation on local bodies."[294]

200. Settler local government was imposed on the Inquiry District without reference to the Treaty. It was a Crown innovation for settlers and settlement; no regard was had to the impact on customary tenure and desire for self-management. When Taihape Māori attempted to engage with the Crown on these matters, there was, at times, complete silence in response.[295] Where the Crown did respond to Māori self-governance aspirations, O'Malley has described the responses as co-option and intentional indirect rule, rather than as good faith facilitation of self-government.[296] Hill agrees with this position, describing situations where the Crown had established "control institutions" as emphatically not "designed to be or operated as concessionary organs of self-

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[293] *1880-2013* (Waitangi Tribunal, Wellington 2016) at 177.
[294] Wai 2180, #A37, Suzanne Woodley Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015 at 58, 26.
[295] See, for example, Wai 2180, #4.1.10 at 528, questions of Bryan Gilling to Bruce Stirling.
[296] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>

determination."[297] The Crown does not give effect to the Treaty when it co-opts, waters down, and coerces Maori self-governing institutions.

201. The issue does not seem to be about concern in relation to legal pluralism. Provincial and local government themselves are obvious forms of legal pluralism. A particular example of the delegation of central government authority is criminal prosecution, which is generally reserved to the state but in respect of breaches of parts of the Resource Management Act 1991 is delegated to local authorities.[298] The Crown also delegates powers to entities such as the Fish and Game Councils.[299] Additionally, central government has reserved to itself some functions often carried out by local authorities, for example acquisition, ownership, administration, and disposal of reserves under the Reserves Act 1977 and many of the Reserves and Other Lands Disposals Acts.

202. The issue with powersharing instead seems to be with the idea of Māori as governance partners. This remains an issue today; there are no power-sharing arrangements outside specific and limited environment management agreements.

203. Matthew Palmer QC, prior to his elevation to the judiciary, considered the issue of the rightful place of the Treaty.[300] He wrote that:[301]

> The Treaty of Waitangi, and its principles, should be interpreted broadly, generously and practically, in new and changing circumstances as they arise;
>
> As an agreement upholding the Crown's legitimacy, in governing New Zealand for the benefit of all New Zealanders, in exchange for the Crown's active protection of the rangatiratanga, or authority of hapu, iwi and Maori generally to use and control their own interests, especially

[297] Richard S Hill *State Authority, Indigenous Autonomy: Crown-Maori Relations in New Zealand/Aotearoa 1900-1950* (VUP, Wellington, 2004) at 34.
[298] See Part 12.
[299] Constituted under section 26B Conservation Act 1987.
[300] See https://works.bepress.com/matthew_palmer/.
[301] Matthew S. R. Palmer, QC, 'The Treaty of Waitangi in New Zealand's Law and Constitution in 2015' 3 February 2015, at 7. From selected works of The Hon Justice Matthew Palmer at https://works.bepress.com/matthew_palmer/.

> in relation to land, fisheries and te reo Maori and their other tangible and intangible taonga or valued possessions.
>
> The Crown must also ensure that Maori enjoy the rights and privileges of Pakeha New Zealanders.
>
> Since this agreement involves a continuing relationship akin to partnership between the Crown and Maori, the parties should act reasonably and in good faith towards each other,
>
> consulting with each other,
>
> compromising where appropriate,
>
> and reasonably redressing past breaches of the Treaty.

204. He considered this would be best achieved by enshrining it in law:[302]

> The Treaty is already often in our law – but for some purposes and not others, in relation to some matters and not others. Its current place is incoherent. In my view, putting the Treaty properly into law so that its interpreted by our courts would stabilise its place in our constitution.

205. In the recent discussion in the *Ellis* case on the place of tikanga in New Zealand law, an exchange between Chief Justice Winkelmann, Justice Williams, and Ms Coates for Te Hunga Roia Māori o Aotearoa as intervenor identified a potential weakness in that approach.[303] The concern expressed was the interpretation of tikanga by judges unfamiliar with te ao Māori. This suggests care would be needed to ensure that judges who have little experience of te ao Māori are educated to the level necessary to correctly interpret law relating to the Treaty. Judges with better knowledge and understanding of te ao Māori would enhance our legal system as a whole.

206. Under Palmer's theory, statutes would need to in some manner explain how Treaty interests would remain upheld and protected in the local government context. Precise tests might be required, against which to measure each local authority. Under this theory, the Crown's failure to

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[302] Matthew S. R. Palmer, QC, 'The Treaty of Waitangi in New Zealand's Law and Constitution in 2015' 3 February 2015, at 9. From selected works of The Hon Justice Matthew Palmer at https://works.bepress.com/matthew_palmer/.
[303] *Peter Hugh McGregor Ellis* v *The Queen* [2020] NZSC Trans 19 at 18-19.

legislate accordingly is an entirely remediable breach of some 148 years standing.[304]

Findings and remedies sought

207. Utiku Potaka in his evidence on environment topics sought the following recommendations:[305]

    i. The inclusion of iwi as decision makers in the environmental space rather than consulted parties, enabling Mōkai Pātea Nui Tonu to discharge our responsibilities as Kaitiaki. This requires legislative and policy amendment.

    ii. The provision of resources and capacity that enable Mōkai Pātea Nui Tonu to take affirmative action in the care and protection of the natural environmental [sic] and in particular with the restoration of rivers, lakes, land fauna and flora

    iii. The formation of a Rangitīkei River Catchment Group, led by Iwi as kaitiaki, and inclusive of all the River stakeholders, responsible for the development, implementation, and monitoring of a whole-of-river strategy designed to improve the health and well-being of the Rangitīkei River and its tributaries.

    We suggest these could sensibly be extrapolated to all areas of local government, not just environment issues.

208. Funding for partnership roles should not come out of Treaty settlements, which are intended to enable the settled group to return itself to a state of capacity.

209. Remedies must be developed in partnership with Taihape Māori, and must recognise both hapū and iwi soveregnty. The Crown's preference

[304] I.e. from at least the time of the New Zealand Constitution Act 1852.
[305] Wai 2180, #L9 at 5.

for dealing with large natural groupings needs to be carefully applied because, from a local government perspective, both the issues and the hapu can be exceedingly localised

210. This may mean statutory accords with mana whenua and embedding mana whenua representatives in both the operational and executive arms of local and territorial authorities and ensuring their voices are accorded the status of partner. It may mean a vote boost or special seats to remedy the earlier 'mistake' of large scale land alienation and limited franchise having a local government consequence when it should not have. But whatever it means locally must be determined with reference to the Crown obligation not to allow breaches of the Treaty by local government, and by what mana whenua consider appropriate within their rohe.

211. We adopt the statements from the Wairarapa Tribunal which said the Local Government Act 2002 and the Resource Management Act 1991 both require "more compelling Treaty provisions… regular audits and sanctions for non-compliance".[306]

212. We adopt (with appropriate modifications) the remedies recommended from Te Mana Whata Ahuru part IV as follows:[307]

    a. The Crown urgently take responsibility for healing relationships between central and local government and Taihape Māori.

    b. The rangatiratanga of Taihape Māori (or the settling group or groups in question) be enacted in legislation in a manner which recognises and affirms their rights of autonomy and self-determination within their rohe, and imposes a positive obligation on the Crown and all agencies acting under Crown statutory authority to give effect to those rights.

    c. Co-management regimes could be chosen from the existing suite of options under the Resource Management

[306] *The Wairarapa Ki Tararua Report* (Wai 863, Legislation Direct, 2010) at 1062.
[307] Introduction pp xix-xx.

> Act 1991 or through the enactment of legislation for a different form of co-management. [...] These co-management bodies, and the relationship they reflect, should be established on the basis that the environment is a taonga of Taihape Maori.

The Crown, as part of this recognition and the development of these co-management regimes, should proactively look to restore taonga sites where practicable These sites should be identified in conjunction with Taihape Māori and may include wetlands, forests, wāhi tapu, or any other sites of environmental or heritage value

213. We also suggest that some guidance from the Tribunal on how the Crown could conceptualise the partnership to avoid Treaty breaches right from the start could be useful.

Dated at Nelson this 6th day of October 2020

Tom Bennion / Lisa Black