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)

CLAIMANT CLOSING GENERIC SUBMISSIONS
LOCAL GOVERNMENT AND RATING:
PART 2, RATING

Dated 13 October 2020

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MAY IT PLEASE THE TRIBUNAL

1. These closing submissions form part 2 of the local government and rating closing submissions, and should be read in conjunction with part 1.

RATING IN THE TAIHAPE INQUIRY DISTRICT

2. In generic submissions on local government issues, we noted the missed opportunities for a partnership in local governance in the district.

3. These submissions deal with an aspect of that missed opportunity, the impostion of rates. Rates were introduced without consultation with Taihape Maori.

4. The Tribunal has 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 a region.[1] Putting aside the fact that rates were introduced without consultation, once rating is introduced, breaches occur if this burden is not commonly shared, and rating becomes an intolerable burden on Maori landowners, with no effective means of reducing them.[2] The issue is whether the Crown has managed, in the Inquiry District, to ensure that Maori have been fairly treated when rates are introduced.

5. Rating remains a local government matter despite some national statutory settings, with latitude for local authorities to develop their own policy. This means that a piecemeal and local, rather than national, approach has been adopted. Rates remission is more generous in the Inquiry District than in previous decades. The Local Government Rates Inquiry in 2007 proposed changes at a national level. None have been implemented, although there is a Rating of Whenua Māori Bill currently under consideration.

[1] See, for example, *The Hauraki Report* at 1018, and *Turanga Tangata Turanga Whenua* at 653.
[2] See, for example *The Hauraki Report* at 1017-1018, and *Tauranga Moana 1886-2006* at 380-381, 389-391, 395, 396, 482-483.

6. Rating is the primary contact point between local government and Taihape Māori. Walzl comments that "...the only link that local bodies within the Inquiry District had with Maori land and landholders in the first half of the twentieth century was through the mechanism of the rating of land...".[3] These closing submissions will set out the particular issues raised by the evidence as it relates to this Inquiry District.

Tribunal Statement of Issues

Rating

7. Question 5. What was the nature of the rating regime imposed on Taihape Māori? Did the Crown consult with Taihape Māori before introducing land rating in the district?

    a. From the start the rating regime employed an exemption-based approach, rather than the inquiry-based approach required by Article II. This is still in force.

    b. No.

8. Question 6. Were there appropriate avenues and opportunities for Taihape Māori to voice their concerns or engage in the decision-making process and design of the Taihape land rating regime?

    a. No. Taihape Māori did raise concerns with Ministers, however these were ignored.

9. Question 7. To what extent did the Crown consult with Taihape Māori about the design, implementation and funding of Rabbit Boards in the district?

    a. Not at all.

10. Question 8. What, if any, negative impact was experienced by Taihape Māori from the burden of Rabbit Board rates? If there

[3] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 18-19.

were any negative impacts, was the Crown obliged to provide support and protections against them? If so, how?

a. Rates generally were a burden on Māori lands within the Inquiry District. Rabbit Board rates were an unwarranted extension of this burden, intensified by the fact that Māori were not responsible for the introduction of rabbits and could sometimes not easily access their lands to control them.

11. Question 9. What impacts were felt by Taihape Māori from land rating regimes in the district?

a. Rating regimes were clearly a burden on Taihape Māori, as there were many examples of rating liens, charging orders, and transfers of administration to the Māori Trustee and the Māori Land Board. Some land is known to have been sold for rates arrears.

12. Question 10. In what ways, if any, did the rating burden affect the ability of Taihape Māori to develop and/or retain land in the twentieth century?

a. Even profitable Māori farming enterprises could have difficulties raising funds for rates. Charges and liens were used on Māori land, and some was placed in receivership; all these placed additional restrictions on the ability of Taihape Māori to develop and/or retain land, by removing funds that might have gone to development, and in some cases removing lands from their administration. One block was taken and sold by the Rangitikei County Council for rates arrears.

13. Question 11. For those Taihape Māori unable to pay outstanding rates, what were the consequences for failure to pay? Were these consequences fair and reasonable considering Crown obligations under the Treaty?

a. Charging orders, liens, receivership, and sale were the external consequences imposed.

b. No. Article II guarantees retention of lands unless otherwise desired.

14. Question 12. Did the Crown seek to collect rates owing by placing charging orders on land? If so, was such a measure justified?

a. Yes.

b. Given that Taihape Māori were not consulted over the imposition of rates, that rating was not always fair due to the inability of the land to support rates , and that exemptions were difficult to come by until at least 2004, charging orders were not justified.

15. Question 13. To what extent have rates valuations and associated costs contributed to the inability of Taihape Māori to generate income from certain parcels of land?

a. Much of the land left to Taihape Māori is marginal in economic terms and in any case economic capacity is not the primary lens through which they view their land. Imposing a rating burden based on a market valuation is not appropriate generally, and is particularly inappropriate when considering the marginal economic capability of lands retained by Taihape Māori, for which any additional financial burden can only be a negative input.

16. Question 14. Were the rates set for Māori-owned landlocked parcels, and unoccupied and undeveloped land, fair and reasonable? If not, how, and with what justification, were they set by local bodies?

a. With regard to landlocked land it is difficult to see how any rating could have been fair and reasonable. Unoccupied and undeveloped Māori land should not be rated.

b. The justification appears to have been that all land had to contribute rates. Woodley noted that “The county clerk from the 1890s to the 1940s, who was familiar with the land that was being rated and its ability (or otherwise) to produce revenue, explained in 1933 that one of the reasons for this near blanket rating policy was to help fund road building and the hospital levy.” It is not clear from the evidence how this decision was taken or what the process was for setting rates for Māori land.

17. Question 15. What impact did the actions taken by local authorities in the district under the receivership provisions of the Rating Act 1925 and the Māori Affairs Act 1953 have on Taihape Māori?

a. Lands were sold, sometimes to the European / Pākehā lessee who had failed to pay the rates and were thus the cause of the receivership in the first place.

Issues in this Inquiry

18. Issues raised in this Inquiry are:

a. Taxation without representation;

b. Taxation without services;

c. Taxation of unproductive lands;

d. Land loss due to rates charges;

e. Taxation without regard to the circumstances of the owners;

f. Lack of consultation at the local level;

g. Rabbit rates;

h. Noxious weeds rates;

i. Rating of landlocked lands;

j. Crown exemptions from rates.

19. As noted in the Kotahitanga section in the local government closing submissions, Mokai Patea Māori signed a petition that included a rejection of rating Māori land:

> that the Government now sitting at Wellington should not pass any laws for the imposition of rates and taxes on Native Land or any other legislation interfering there with.

20. The Crown reiterated several times over several decades that land not in use should not be rated. Ballance made statements in to Rohe Pōtae Māori in 1885:[4]

> He assured the meeting that he objected to the Rating Act as much as Ormsby or anyone. He thought it was unfair to rate land that was not being used. He pointed out that it was over to the Government to proclaim Maori land subject to rating and it could refrain from doing so. […]. When it was leased, sold, or under cultivation, then it could be rated."

21. He also described rating of unleased lands and those "not in actual cultivation", or the sale of land for overdue rates, as "unfair".[5] Thirty-three years later, in 1918, Herries as Native Minister gave criteria for rating Māori land as:[6]

a. Land being used/cultivated

b. Land being leased

c. Land sold.

22. He also said:[7]

> It would be contrary to the universal policy of all New Zealand Governments to allow native land to be sold for

[4] '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.
[55] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 43.
[6] See Wai 2180, #A37(f) letter from Native Minister Herries at 187-188.
[7] Wai 2180, #A37(f) letter from Native Minister Herries at 187-188.

> non-payment of rates or to be so charged with liens as to destroy the equity of redemption and thus render a native landless without giving him a chance of occupying the land and getting enough out of it to pay the rates

23. Twenty-one years after the Herries statement, in 1939, Chair of the Board of Māori Affairs, Michael Joseph Savage reported that:[8]

> Believing that it is neither equitable nor just to the Māori race but it's birth right should be whittled away through non-payment of rates on areas which in the past have lain idle. The Government is reluctant to agree to the enforcement of rating charges by sale until such time as the particular native has had a reasonable chance of obtaining from his land the necessary to meet living expenses, farm maintenance and interest and rates, or in other words, until he has had the opportunity of using his land to good advantage through the provision of financial assistance and expert farming guidance.

24. Woodley in cross-examination agreed that these criteria consistently articulated over a period of 54 years formed a test, and she further stated that she considered "revenue-producing" to be a necessary element of that test.[9] Inherent in these Crown statements is protection of the ability of owners to manage their lands on their terms.

25. Nonetheless, exemptions and remissions for Māori land were not consistently laid out along these lines. In the inquiry district the government exempted very few areas from rates. Many undeveloped areas were rated, the Crown did not retain control over which areas were rated or not, and legislation applying in the district continued to rate based on distance to roads, whether it was used or not.

26. In 1882 the Hawke's Bay County Council successfully protested the exclusion of Māori land in Crown grant from the operation of

[8] Extract from General Report of the Chairman Appendices to the Journals of the House of Representatives 1939, volume 2, G-10, p 6, in Wai 2180, #A37(n) at 3.
[9] Wai 2180, #4.1.11 at 380.

the Crown and Native Lands Rating Act 1882. After a complaint from the County Council in 1883 that the promised gazettal had not taken place, the government in 1884 proclaimed all lands within five miles of a road were rateable, and included Hawke's Bay in the schedule of districts to which the Act applied.[10] The Chair of the County Council, Frederick Sutton (also a Member of Parliament) complained vociferously about the decision to exclude customary land from the the Native Rating District proclamation.[11]

27. At this time, if the owners failed to pay the rates due, payment was made by the Colonial Treasurer who clawed back any payments by way of a flat rate stamp duty at the time of sale, that bore no relation to the amount of rates paid on the owners' behalves.[12] This suggests a financial interest in rates collection on the part of the County Council. The councillors for the Patea riding at that time were notable early runholders William and Azim Birch. Councils did have a financial interest in not exempting Māori land; there was a hospital levy on the rating valuation of the county, regardless of whether rates were collected.[13] Other financial pressures included the decision by the newly formed Rangitikei Borough Council to take out a £6000 loan to construct streets. Walzl notes “This was a big debt for the recently developed town to incur particularly as it already had a £5000 debt left by the Rangitikei Council.”[14]

28. Back rates could still be, and were, pursued even when exemptions applied. Sir Apirana Ngata successfully legislated to give write-off powers in those circumstances (Section 34 of the Native Land Amendment and Native Land Claims Adjustment Act 1926 amended section 104 of the Rating Act 1925). Despite

[10] Wai 2180, #A37, Suzanne Woodley *Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015* at 58-60.
[11] Wai 2180, #A37, Suzanne Woodley *Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015* at 60-61.
[12] Wai 2180, #A37, Woodley *Rating and Landlocked Blocks Report* at 26.
[13] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 136.
[14] Wai 2180, #A46 Walzl *Twentieth Century* at 212-213.

Kiwitea Council's application to exempt three Awarua blocks, Woodley stated the legislation was "never used".[15]

29. The Rating Act 1882 exempted Māori land unless there was a non-Māori occupier on it.[16] Rates payable by the occupier remained a feature of rating legislation for some time. The Crown and Native Lands Act 1882 overrode that and made all “Native lands which are situate [less] than five miles from any public road or highway open for horse traffic” rateable.[17] As noted above, in 1884 the government proclaimed lands, including lands in the Inquiry District, within five miles of a road were rateable.[18] East Taupo County, which edged into the north-east of the Inquiry District, was exempt from this proclamation. Notice to Taihape Māori land owners of their rates liability was by way of publication in the Gazette a year after the fact.[19]

30. The Crown and Native Lands Rating Act was repealed in 1888; La Rooij attributes this to the cost to the Crown of paying rates on Māori land with patchy rates of recovery.[20] For a time Māori land in the District was largely exempt from rating, except where it was occupied by Europeans (per the Rating Act 1882).

31. In 1893 the Rating Acts Amendment Act, “An Act […] to declare all Native Land to be Rateable Property” exempted customary land not occupied by a European, and Māori land more than five miles from a road.[21] The Governor could also declare lands not rateable.[22]

32. The Native Land Rating Act 1904 maximised the land subject to rating. It provided that to be exempt from full rates Māori land had to:[23]

[15] #Wai 2180, #4.1.11 at 386-387; Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 36.
[16] Section 2 “Rateable property” (6).
[17] Section 6(15).
[18] Per section 4.
[19] See Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 25 and #4.1.11 at 392-393.
[20] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 28.
[21] Section 18.
[22] Section 18.
[23] Section 2.

a. Be customary land on which there was no European occupier;

b. Be further than 10 miles from a borough or town district;

c. Be further than 5 miles from a public road;

d. Not have been acquired from anybody else for valuable consideration;

e. Not ever have been liable for full rates in the past;

f. Not have been incorporated.

33. All other Māori land was subject to half rates unless it was customary land, however if the Minister was of the opinion that the owners were delaying putting the land through the Land Court to avoid rates it would be made subject to half rates anyway.

34. The Rating Amendment Act 1910 made all Māori land except customary land liable to be fully rated.[24] The earlier provisions for half rates were not included.

35. The Native Land Rating Act 1924 provided exemptions for customary land, and for land not exceeding five acres occupied by a burial ground or church or meeting house.[25] For the first time, a local authority could decide to remit rates on Māori land.[26]

36. Under the Rating Act 1967, customary land, Māori freehold land not exceeding five acres and used as a burial ground or on which was a meeting house was exempted.[27] There was no remission specifically for Māori land, however the general remissions provisions for extreme financial hardship could be applied.[28] Postponement of rates by a council for reasons of extreme

[24] Section 3.
[25] Section 4.
[26] Section 14.
[27] Sections 17, 14, 16.
[28] Section 144.

financial hardship was prohibited where the owner of freehold Māori land was the occupier.[29]

37. The Rating Powers Act 1988 again provided for customary land, and Māori freehold land not exceeding 2.03 hectares, in the new currency, and used as a burial ground or on which was a meeting house to be exempted.[30]

38. Currently the law provides that, as defined in Section 91 of the Local Government (Rating) Act 2002, Maori freehold land is liable for rates in the same manner as if it were general land. The exemptions under the Local Government (Rating) Act 2002 are:

> 10 Land that does not exceed 2 hectares and that is used as—
>
> (a) […]
>
> (b) a Māori burial ground.
>
> 11 Māori customary land.
>
> 12 Land that is set apart under section 338 of Te Ture Whenua Maori Act 1993 or any corresponding former provision of that Act and—
>
> (a) that is used for the purposes of a marae or meeting place and that does not exceed 2 hectares; or
>
> (b) that is a Māori reservation under section 340 of that Act.
>
> 13 Māori freehold land that does not exceed 2 hectares and on which a Māori meeting house is erected.
>
> 14 Māori freehold land that is, for the time being, non-rateable by virtue of an Order in Council made under section 116 of this Act, to the extent specified in the order.

[29] Section 145(4).
[30] Schedule I, Part II, clauses 15, 11, 14.

39. These exemptions are similar to those contained in previous legislation, although 0.03 of a hectare has been lost from the exemptions since the 1988 legislation.[31] Woodley agreed that these and previous exemptions have traditionally reflected settler views of what is important, and the legislation has not taken account of what values Māori might hold in relation to their land.[32]

Taxation without representation

40. Woodley records that some Maori freehold land in the district first become liable for rates in 1882 under the Treasury payments scheme of reimbursement for unpaid rates going directly to local authorities (ie not being required directly from the owners), with individual owners becoming liable from 1904, and fully liable for rates in the district in 1910, which follows the national trend of gradually increasing liability accompanying the extension of European settlement.

41. In summary, there was an underlying inequality in the extension of rating to Māori land from the outset. Rates were chargeable on Māori land (excluding customary land) in the District in the periods of 1882 to 1888, and 1893 to 2004 or 2009, the last date of the latter period depending on when in the early 2000s the relevant Council had implemented their rates exemption policy under the Local Government Act 2002.[33] The franchise, however, was largely non-existent, or was far more the exception than the rule by some considerable margin, until 1944.[34] The naming of owners on valuation rolls determined whether Maori owners could vote in the region. Because central government neglected to provide management or financial resources to maintain the rolls, they remained quite inaccurate until around 1944. Hence Māori had limited or no ability to vote either in local body of national elections.

[31] For example, the Native Land Rating Act 1924.
[32] Wai 2180, #4.1.11 at 385.
[33] 4.1.11 Transcript of Hearing Week 4 at 392.
[34]

42. The Counties of Rangitikei and Hawke's Bay were constituted in 1884, and covered much of the Inquiry District.[35] These constitutions brought the non-customary Māori land within their boundaries under the aegis of the Rating Act 1882 and the Crown and Native Lands Rating Act 1882, and subsequent legislation. The Rating Act 1882 exempted the lands of East Taupo, which in this Inquiry District covered. Woodley notes that it is difficult to tell when rating - and the limited franchise - began in the Inquiry District due to the absence of "rates books or valuation rolls prior to 1906", however she does record the concern of the Member for Rangitikei who "criticised the legislation for its limited provision of Maori representation on local bodies."[36]

43. Up until 1944, the ability of Māori land owners to vote in local and national elections was limited.[37] The Crown and Native Lands Rating Act 1882 provided that Maori owners who paid rates could have the name of “one of their number” enrolled on the ratepayers roll; that named person could vote in local body elections.[38]

44. The Native Lands Rating Act 1904 Act was the first to require Māori land owners be recorded in the valuation rolls, which made them eligible to vote in local body elections. Where interests in a block remained undefined, however, only "nominated Native occupiers", no more than one for every 25 owners, would be entered on the roll and eligible to vote.[39] That nominated owner would also be solely liable for paying the rates "as if they were the sole occupiers",[40] however judgment could be enforced against all the owners and against the land. Where land was incorporated, only the name of the Chairman of the incorporation would be named on the valuation roll. The Act is silent as to the collection of rates on incorporated land, however it presumably operated in the same way as for land with undefined interests; the named

[35] Wai 2180, #A37, Suzanne Woodley *Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015* at 24.
[36] Wai 2180, #A37, Suzanne Woodley Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015 at 58; 26 citing Bennion at 18.
[37] Local Elections and Polls Amendment Act 1944, s 3(1). See below for discussion.
[38] Sectioon 17.
[39] Sections 4, 7.
[40] Section 7(2).

owner would be pursued for the rates. Default on such rates owing could mean the land was vested in the District Māori Council for administration, with full administrative powers to lease or sell or cut up in accordance with the Maori Land Administration Act 1900.[41]

45. Despite the apparent advance on the situation whereby Māori land owners were required to be recorded in the valuation rolls, Woodley notes that from 1909 there were complaints from the Rangitikei County Council to the Premier that the Valuation Department was not accurately recording ownership.[42] The County Clerk's complaint related to the ability to collect rates, rather than any concern about Māori civic rights or participation. The issue of the adequacy of the valuation rolls and possible remedies remained on foot until at least 1924.[43]

46. The Rating Act 1910 provided that two owners could be entered on the valuation roll with the onus for records placed on the Native Land Court which was to inform the Valuer-General of any changes.[44] Liability for rates judgments continued to fall on all the block owners.

47. The Native Land Rating Act 1924 continued the limited franchise approach of its predecessors, with some further limitations. It provided that, in all circumstances of ownership sole, trust, incorporation, or in common, one person per land block could vote. Again, all owners and beneficial owners were liable for rates, this time without judgment being required in order to cast the net to all. Woodley agreed in cross-examination that:[45]

> the feature of requiring the owners to nominate a single individual to pay the rates was not compatible with the complex pattern of communal land interests in the District.

[41] Section 9.
[42] Wai 2180, #A37, Suzanne Woodley Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015 at 94.
[43] Wai 2180, #A37, Suzanne Woodley Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015 at 95-96.
[44] Section 7.
[45] Wai 2180, #4.1.11 at 418.

48. That is where matters lay until the Fraser government's Local Elections and Polls Amendment Act 1944 decoupled the franchise from land ownership and replaced it with a minimum three month residency in the "riding, road district, or subdivision". Farmers protests were recorded in the Evening Post.[46]

49. Bassett and Kay record that up until 2012, only two Māori had been elected in the Inquiry District.[47] There was no update on this information provided in the evidence.

50. It is difficult to see how Taihape Māori could be guaranteed of being rated appropriately when they had no franchise and no partnership seats at the table.

Taxation without services

51. Rates are a land tax collected and used by local authorities, and from their inception have been conceptualised as an exchange of funds for infrastructure and services within a locally-administered area. Until the Local Government (Rating) Act 2002, which required each Council consider developing and implementing an remission policy,[48] landlocked Maori land was generally rated with nothing guaranteed in return.

52. As noted in the local government section, core services generally provided by councils are:

    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;

[46] https://paperspast.natlib.govt.nz/newspapers/EP19440418.2.31.2
[47] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 9.
[48] Section 85.

e. libraries, museums, reserves et cetera.

53. Similar matters have always been the preserve of local authorities in New Zealand, though there has been considerable expansion into regulatory areas, and rates are still collected and used for such purposes. Additionally, section 9 of the Local government (Rating) Act 2002 provides:

> **Non-rateable land liable for certain rates**
>
> Land to which section 8 applies is rateable for the purpose of setting a targeted rate if—
>
> (a) the rate is set solely for water supply, sewage disposal, or refuse collection; and
>
> (b) the service referred to in paragraph (a) is provided in relation to the land.

54. The Crown and Native Lands Rating Act Repeal Act 1888 required that rates collected from Māori land were to be spent only on roads to that land:[49]

> Rates derivable from Native lands under the said Act shall be spent only on roads for the benefit of such lands. Before any rates shall be paid to the local body, a scheme of the proposed expenditure approved by the country council or Road Board shall be submitted to, and approved by, the Surveyor-General

55. Woodley saw no evidence of this occurring. Nor did she see evidence of council maps that would indicate that Councils were assessing whether land was more than five miles from a public road and therefore unrateable under the Crown and Native Lands Rating Act 1882 Act. This provision was repealed by the 1888 Repeal Act, but reinstated by the Rating Acts Amendment Act 1893 and continued in the Rating Act 1894. The 1893 Act also brought East Taupo into the ambit of rateable land.

[49] Section 7.

56. Regardless, the five-mile exemption disappeared when the Rating Amendment Act 1910 brought Māori land (other than customary land) into the rating regime wholesale, with any exemptions having to be issued by the Governor as Orders in Council.[50] Exemptions under this Act could not be made retrospective; any rates outstanding remained so, and nor could special rates such as the hospital rate mentioned above be exempted.[51]

57. Woodley agreed that from 1882-1888 and 1893-2004/2009 (depending when a given council developed and implemented its remission policy), councils in the Inquiry District could - and did - levy rates without providing services to the Māori land from which the rates were levied.[52] Further, the Crown could decide whether its own land with productive capacity was rated or not, and between 1950 and 1955 it did so in respect of several pastoral runs in the Inquiry District.

58. Early rating records for Hawke's Bay County Council are sparse and patchy, and Woodley had to look to newspaper reports for the early 1900s rates collection amounts on Māori land. It seems likely that a maximum of £1670 was received for the entire period 1908-1912, rising to £693.13.11 for the year 1915, and £1578.12.10 for 1917.[53] In 1919, prior to its transfer from the HBCC to Rangitīkei County Council, rates collected from Māori land in the Erewhon riding came to £51.1.2.[54] Woodley notes that "that much of the Maori land in the Erewhon riding was unoccupied and undeveloped and therefore non-revenue producing."[55] Despite this, it was still rated. Within the riding there was "25 miles of main road (presumably the eastern end of the Napier-Taihape Road), partially metalled, and 3 miles of branch road (it was not stated where)." [56]

[50] Sections 2, 5.
[51] Sections 5(2), 5(5).
[52] Wai 2180, #4.1.11 at 392.
[53] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 64-65.
[54] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 68.
[55] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 67.
[56] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 68.

59. Woodley had to draw from a variety of sources to compile rates information for the period 1882 and 1924 for the areas covered by the Council.[57] Several of the ridings in which rates were collected were outside the Inquiry District, and it is difficult to say how much was collected from Taihape Māori.[58] Nevertheless, there are rating valuations for some blocks within the Inquiry District, so it can be assumed that some of the rates contribution came from those lands.[59] For the years 1882-1884, £627.3.7 was received for rates on Māori land. In 1886, the amount was £512.10.8.[60] For 1897 we can only be certain that £16.1.9 was collected from lands within the Inquiry District, though the record of rates received from Māori land is much higher.[61] Woodley does not give figures for later years, though she does note that rates were collected. She correlates the extent to which owners were named (as opposed to "Natives" being entered in the owners' column) with likelihood of rates being collected, with Utiku Potaka being particularly noteable as a regular payer. The Rangitīkei District Council was also successful in the early part of the 20th century to the extent of some hundreds of pounds via collections made through liens and the courts from 1901 (the earliest year records can be located).[62]

60. Given that for some of that time the rates were only to be spent on roads to Māori lands, and there had been rating on the land since 1 April 1892,[63] the absence of roads to large areas of them is a particularly egregious failure.

Taxation of unproductive lands

61. Woodley made particular mention of this issue within the Inquiry District, saying:

> One of the main features of rating in the inquiry district at this time was that with few exceptions, all Maori land was

[57] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 77.
[58] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 82.
[59] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 79-81.
[60] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 83.
[61] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 85.
[62] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 88.
[63] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 86.

> considered rateable. There was a mindset by the Native and Maori Affairs Departments and the local authorities within the district that all Maori land should be rated with no differentiation made between types of land and their ability to support rates. There was certainly no process whereby land was assessed as capable of paying rates.

62. This mindset, which continued until the 2002 Act, contrasts with statements of Crown ministers and proposals of Taihape Māori. The thinking of the Native Affairs Department appeared to have some flexibility where "worthless" land was concerned, if the occupier was European.[64] The Minister's Private Secretary, in a meeting with the occupier regarding Owhaoko D6 1 and 2, suggested that the land could be exempted under the 1926 Amendment Act and past rates remitted.[65] In the event, the Minister declined to take these actions, pointing out that the occupying farmer could not be said to be indigent (as was required by the Act) and the provision was for relief for owners so that they might avoid charging orders.[66]

63. In 1895, Ballance visited Ohingaiti and Moawhango, where he said that Māori land could "not be allowed to lie unproductive… and every day longer this state of things was allowed to continue the worse it would be for the Natives."[67] Later in the tour when asked about rating, he said Māori needed to open their land up for settlement, so then "the rates bills would not seem so onerous".[68]

64. In 1913, Utiku Potaka wrote to Native Minister Herries asking for understanding about the ability of Taihape Māori to pay rates.[69] Woodley appears to link this to the ability of the lands to support rating and the ability of the owners to utilise the land. Also in 1913 Taranaki Te Ua raised with Native Minister Herries the issue of rates, noting that Owhaoko and Te Koau blocks were under

[64] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 117.
[65] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 117.
[66] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 121.
[67] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 44.
[68] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 44.
[69] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 47.

Crown control[70] and the Māori owners had no options for use because of this but were still being rated.[71] Although he responded to the other matters Te Ua raised, Herries was silent on the rating aspect.

65. In 1923, Mare Mare Reupena wrote to Dr Pomare about a rates demand by the Rangitikei District Council for land that was a meeting place. The response was that "No Native Land except customary land is exempt from payment of rates."[72]

66. In late 1927 a hui attended by Mokai Patea Māori was held in Foxton. The resolutions passed showed a sophisticated understanding of rating matters, and included:[73]

67. Introduction of a land classification system to see whether the land could support rates.

68. Legislation exempting all unproductive lands, with a requirement that the Land Court be satisfied that land could be profitably utilised before making charging orders over it;

69. Land under preemption should be excluded from rating.

70. There seems to be little justification for not considering a land-use classification system within the Inquiry District at that stage. It would not have been an onerous exercise; commentary on the potential of blocks was recorded from early times, including by Crown officials when considering purchasing lands. Woodley notes that the inspection by Rangitikei County Council officials and councillors in 1945 is the first mention of this sort of activity being undertaken.

71. Again in 1930, and yet again in 1957, Māori proposed a land classification system to assess land to see if it could support rates. The response from the Minister of Maori Affairs to the 1950

[70] Some partitions were acquired by the Crown, and some were in the receivership of the Land Board (and later sold into private ownership). See, for example, Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 401, 404.
[71] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 46-47.
[72] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 48.
[73] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 50.

proposal was that "he could not agree that unoccupied or non-revenue producing Maori land should be exempted from rating". [74] The justification was that roads and other services were provided by the county, and none should be exempt from contributing to this. While the Jones/Minister correspondence related specifically to Taupō, Woodley considered it was "directly relevant" to the Inquiry District.

72. The Rangitīkei District Council did recognise land quality issues on parts of the Owhaoko, Oruamatua-Kaimanawa, and Motukawa blocks, and on the entirety of the Te Koau and Aorangi blocks. In 1947 these were exempted from rates on the grounds of lack of access and/or lack of occupation of scrub country, however Bassett and Kay note that, at the same time, the Council was investigating occupation orders for Owhaoko and Oruamatua Kaimanawa blocks.[75]

73. Awarua 1DB2, landlocked and described in in 1911 by a valuer as “high, rough and broken” and “purely pastoral country” and again 1947 when it was exempted from rates as “rough” country with no access, had had charging orders against it for much of the 1940s.[76] At some point the 1947 exemption was revoked, because after 1973 (after a period of being paid by an owner), rates arrears began to accumulate against the block, the owners having been stymied in their efforts to make the land economically productive by logging it.[77] In the early 1980s it was pointed out to the Rangitikei County Council, in a letter requesting a rating exemption, that the Council had constructed a weir and put infrastructure for the Erewhon Water Scheme on the land without the consent of the owners.[78] In response the Council said that a trade-off between the rates and the consent might be possible.[79] In 1985 the Council threatened the owners with “action” to recover

[74] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 52.
[75] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 19.
[76] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 290, 293.
[77] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 294.
[78] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 295. See also #A45 Walzl *Twentieth Century* at 722.
[79] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 295.

the outstanding rates.[80] In 1987 the owners again made a formal request for an exemption; no action was taken.[81] The Council's lawyers also recommended no compensation be paid for the water scheme infrastructure and works on the land.[82] In 1999 the rates and consent issues were still unresolved, however the owners had by then agreed to a Ngā Whenua Rāhui covenant.[83] The Council sought the advice of the Minister as to whether the sum settled on the block for the covenant might be used to pay the outstanding rates, and described the issue of the Water Scheme and the owners' suggestion that the Council adopt a rating exemption policy as "smoke screens".[84] In 2001 the owners asked for a rates remission, and again in 2006.[85] The remission was granted for a six year period.[86]

74. Although there was sometimes provision for exemptions neither the considerations in the Ballance / Herries / Savage test, nor the classification proposals put forward by Māori, appeared in rating legislation until the 2002 Act was passed.[87]

Taxation without regard to the circumstances of the owners

75. Where owners did not pay the required rates, not only could they not vote but the Colonial Treasurer would pay in their stead and recover the expenditure through a stamp duty on sale of the land. The stamp duty was set at a flat 10%, that is, it bore no relation to the amount owed for the rates payment. [88] It was not until 1904 that the stamp duty for Māori land was made the same as that for general land.[89] Section 3 of the Native Land Rating Act 1904

[80] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 296.
[81] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 296-297.
[82] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 296-297.
[83] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 299.
[84] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 299.
[85] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 300.
[86] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 300.
[87] Local Government (Rating) Act 2002, Schedules 1, 12.
[88] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 26 citing Bennion at 17.
[89] Waitangi Tribunal, *Tauranga Moana 1886-2006: Report on the Post-Raupatu Claims* (Wellington, 2010) at 378.

provided that the Governor could exempt land from part or all rates for the indigency of the owners or any other special reason.

76. After the passage of the Native Land Rating Act 1924, rates arrears increased against Maori land where Pakeha lessees had walked off. Woodley records that in 1927 a committee was formed by Māori in conjunction with the Hawke's Bay County Council to examine rating cases, including at least one in which the owner refused to pay rates until roads had been made to her land (the Council had deemed this unjustified).[90] In 1929, the Council representative attending a Land Court hearing said the committee had not assessed the cases before the Court and said the committee was not doing its job.[91] He blamed Māori for not coming to court to demonstrate a need for remittance.[92] In 1933 Paraire Tomoana explained to the Court that the Council refused to fund the committee and did not accept its findings that Māori owners' sources of income had been lean in recent times and they could not pay the rates.[93] She found no further mention of the Committee.

77. Several of the Oruamatua-Kaimanawa blocks were leased during the 1930s, but neither the rent nor the rates were consistently paid.[94] Owners sought exemptions several times, in the end the land was sent to the Māori Land Board to administer.[95] In 1939 the Board advised the owners they would not receive any rent as it was all being held for rates, and if the owners wanted a rates remission it was up to them to negotiate for it, though it did support them when they did so.[96] The Council agreed to a 50% remission in exchange for a cash settlement.[97] Eventually, in 1941, the Board, at the Council's request, reluctantly agreed to

[90] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 48-49.
[91] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 49.
[92] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 49.
[93] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 49.
[94] Wai 2180, #A5, Bassett Kay *Rating Scoping Report* at 21.
[95] Wai 2180, #A5, Bassett Kay *Rating Scoping Report* at 21.
[96] Wai 2180, #A5, Bassett Kay *Rating Scoping Report* at 21.
[97] Wai 2180, #A5, Bassett Kay *Rating Scoping Report* at 21.

terminate the lease so the land could be exempted as unrateable.[98]

Lack of consultation at the local level

78. Woodley notes that Taihape Māori were not consulted by the Rangitikei County Council or the Hawke's Bay County Council regarding rating of their lands.[99] As noted above, Hawke's Bay Māori did set up a committee to consider rates cases, but the Council did not provide funding or support its findings.

79. Taihape Māori were not consulted about rating legislation generally, including the Native Land Rating Act 1924, which provided for land to be compulsorily leased and even sold for arrears.

Rabbit rates

80. The rabbit menace, as noted in the local government section, was at plague proportions in the Inquiry District. Rabbit Boards were constituted to deal with the problem, given powers of rating to fund their activities, could levy fines, could undertake control work and sue for reimbursement and ultimately, take and sell land for failure to pay, and were active in the Inquiry District.[100]

81. In 1905 rabbits were enough of a problem in the Erewhon riding for a councillor to the newspaper about the spread on the Owhaoko block recently abandoned by the Studholmes.[101] Councillor Donnelly thought assistance to settlers was required, otherwise they would have to abandon leased Māori land and "the natives will be unable to pay rates and taxes on it, and the expense of destroying the rabbits will then fall on the State".[102] Councillor Donnelly's statement reads as though he considered

[98] Wai 2180, #A5, Bassett Kay *Rating Scoping Report* at 21.
[99] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 228.
[100] The Act in force at the time rabbits are first mentioned in the available records was the 1882 Act, as modified by the 1886 Amendment Act, the 1890 Act (which merely amended the principal Act), and the 1891 Amendment Act.
[101] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 70.
[102] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 70.

state assistance to settlers for an issue caused by settlers was preferable to state assistance to Māori.

82. Initially, the cost of rabbit control on Māori land was paid by the Agriculture Department, but in 1909 it started to record this expenditure "with a view to recovery as early as possible."[103] Woodley was unable to locate information on the extent to which rabbit rates and associated costs were an issue for Taihape Māori, with one exception. She did, however, agree that rabbit rates were "an encumbrance and a constraint in addition to … other rates… for Māori owners.[104] We think this must be correct, as rates, particularly for non-producing Māori land, were onerous, and any addition to that, particularly to solve a settler-induced issue, would necessarily be an additional burden. In 1925, Whakatihi Rora "of Taihape" was prosecuted, convicted, and fined £50 – over $5,000 in today's money - for failing to clear 2,500 acres (Armstrong does not give the block name) of rabbits.[105] Additionally, Armstrong records that the Forest Service "freely admitted" rabbit rates in the Inquiry District to be onerous.[106] This was in the context of a Pākehā landowner wishing in 1966 to gift 2,050 acres for a reserve, on which he was paying £60 per annum in rabbit rates – described by the Forest Service as "this rather iniquitous rabbit rate".[107] Woodley did not see evidence of Crown consideration of fairness in introducing rabbit rates.[108]

83. At some point in the 1920s, rabbit charges were imposed on the owner of Awarua 2C3B.[109] The charges of £275 related to construction of a rabbit-proof fence by the local rabbit board on the northern boundary under the 1908 legislation.[110] We were not able to locate a copy of the 1908 legislation, so are unable to comment on its provisions. Fisher and Stirling calculated that for

[103] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 225.
[104] Wai 2180, #4.1.11 at 423.
[105] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 223. Reserve Bank inflation calculator https://www.rbnz.govt.nz/monetary-policy/inflation-calculator.
[106] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 222.
[107] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 222.
[108] Wai 2180, #4.1.11 at 42.
[109] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 100.
[110] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 101.

3160 acres that the block comprises, £275 works out at a rate of 1s. 9d. per acre.[111]

84. It is not clear what led to the Board constructing the fence, rather than the 2C3B and adjoining owners, however it may simply be that they did not have the funds. Woodley records that in the decade leading up to the charges, the owner was in debt to the Council for both ordinary rates and rabbit rates.[112] She considers this evidence that even revenue-producing lands could have difficulties meeting rates demands.[113] In 1926, three years before the mortgage was imposed, the owner of this block paid £413 for rates, recording that she had deducted £100 for land taken for a road. £513 in 1926 money is equivalent to more than $51,500 in 2020 dollars.[114]

85. In 1929 the Board gained Native Minister Ngāta's consent[115] to register the charges as a mortgage against the title, which Woodley notes would enable the land to be sold if the charges weren't paid.[116] The mortgage attracted interest of 5% and repayments were to be over a 20 year period.[117] According to the Reserve Bank inflation calculator for general (CPI) inflation, £275 in 1929 is equivalent to almost $28,000 today.[118] Unfortunately there is no farmland inflation calculator, and the housing calculator starts in the 1960s, so a more accurate figure is not available.

86. Despite the responsibility the boards had, they did not always carry out their duties in a manner that might be anticipated by those who had paid their "rather iniquitous" rates. In 1951 the Maungakaretu Board was gazetted, and by 1958 it was levying 8d. per acre, giving it income of £6,186/11/4 – around $307,500 in

[111] Wai 2180 #A6 Martin Fisher and Bruce Stirling *Sub-district Block Study – Northern* Aspect (Wellington, 2012) at 125.
[112] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 101.
[113] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 102.
[114] Reserve Bank inflation calculator https://www.rbnz.govt.nz/monetary-policy/inflation-calculator.
[115] Under section 230 of the Native Land Act 1909.
[116] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 100-101.
[117] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 101.
[118] Reserve Bank inflation calculator https://www.rbnz.govt.nz/monetary-policy/inflation-calculator.

2020 dollars.[119] Despite this, an inspection by the Ministry of Agriculture found that a third of the area for which it was responsible was infested with rabbits, and the Livestock Superintendent concluded the Board was not effective.[120]

87. Armstrong has set out known expenditure by the Agriculture Department on controlling rabbits on Owhaoko blocks and the Kaimanawa Ranges ("Native Area") from 1923 to 1927. The charges are mostly quarterly, and are mostly over £200.[121] By our calculations, the sums expended on the blocks come to approximately £9,552 for the four year period. This translates to almost $970,000 in 2020 dollars.

88. Given the sums involved it is not surprising that rabbit boards were enthusiastic in their pursuit of Māori owners for rates and charges, howver we cannot see any moment in the evidence when they or the Crown gave thought to whether it was appropriate that Māori bear the costs of a problem brought about by settlers. Nor does consideration appear to have been given as to the appropriateness of fines for Taihape Māori – even with recognition in the 1950s by the Māori Affairs Department that attempts to recover funds remitted to the Agriculture Department for anti-rabbit activities would damage relationships with Māori.[122] Given the effectiveness in the boards' estimation of rabbit-proof fences, and the almost million-dollar equivalent of rates from the Owhaoko and Kaimanawa blocks in the late 1920s it is perhaps surprising that more fences are not found in the evidence. Presumably the recent experience with the Spanish influenza would have meant the Crown was alive to border control as a measure for containing pestilence.

89. We think that, although the information on rabbit rates is limited, there is enough evidence to conclude that the rates and costs were onerous for Taihape Māori across a number of decades,

[119] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 224-225. https://www.rbnz.govt.nz/monetary-policy/inflation-calculator.
[120] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 225.
[121] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 227-230.
[122] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 235.

and that recovery of rates, fines, and charges against Taihape Māori was pursued by rabbit boards with vigour.

Land loss due to rates charges

90. On the whole, councils in the Inquiry District preferred to use liens and charging orders rather than receivership provisions available to them, however the Rangitikei County Council had a change of heart following the retirement of a key official.[123] In 1945, Motukawa 1B and Awarua 4A3C4A1A were handed over to the Aotea Māori Land Board as receiver. Woodley notes that the Council's investigations in respect of these two blocks were less than thorough, as both were leased and the lessee was liable for the outstanding rates. In other words, there was a party that could have been pursued for outstanding rates, but the Council did not do this.[124] Woodley also records that in respect of some non-Inquiry District lands the Council gave reasons such as the land being landlocked and unoccupied, or occupied by a lessee who wasn't paying, as to why the Māori Land Board should be appointed receiver.[125]

91. In 1946 Owhaoko D5 section 2 and Owhaoko D5 section 3, along with seven Taraketi sections, were sent into receivership, despite no explanation of the position of the owners being provided.[126] Section 2 turned out to be occupied by a former lessee, an neighbouring landowner, who had not paid the rates since the formal lease had expired, thus causing it to be placed in receivership.[127] The lessee purchased the land (conditions of sale included payment of back rates) which gave him security of access to his other blocks.[128] Woodley notes that this was a crucial moment in the access loss to Māori land north of Owhaoko D5.[129]

[123] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 132.
[124] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 138.
[125] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 138.
[126] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 139, 141-142.
[127] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 140.
[128] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 140.
[129] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 141.

92. Woodley sees this as part of a pattern of informal occupation by neighbouring landowners who failed to pay rates then bought the blocks after they were sent into receivership.[130] This is curious, as during that same period the Council applied for several exemptions over Owhaoko and Oruamatua-Kaimanawa lands for reasons of being uneconomic. This strongly suggests the Council was facilitating alienations to Pākehā farmers.[131] Woodley notes that:[132]

> In these cases the receivership order was certainly an effective way of providing for a formal lease or sale over the land which was the stated aim of the RCC.

93. Woodley also saw a pattern of smaller blocks being leased on condition that adjoining blocks formed part of the same lease. Where blocks were too small to attract leases on their own, as in the case of the Taraketi 1G blocks, the Māori Trustee as receiver might offer several of the blocks together, with the lease of one being conditional on taking the lease of the others.[133] Woodley considered this to be an example of the landowners having to pay rates and meet the Council's definition of acceptable use of their lands.[134]

94. Ten years after the first round of receiverships, the Council sought another series. This time the Māori Trustee was appointed, as many of the rating issues related to lands sent to the Aotea Māori Land Board which had not instituted measures resulting in full payment of rates.[135] It seems that the receiverships were to enforce payment of overdue rates, as current rates were being paid; all were paid off and discharged.[136]

[130] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 146.
[131] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 148.
[132] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 146.
[133] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 146-147.
[134] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 147.
[135] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 165.
[136] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 166.

Awarua 2C15B2

95. This three-acre block was sold by the Rangitikei County Council for rates arrears. It had had periodic issues with rates, resulting in liens and charges, from 1918 onwards, though equally there were plenty of periods in which it did not have rates issues.[137] One of the issues was lessees not paying rates.[138] Another was noxious weeds charges, for which the owner's son was prosecuted and fined.[139] In 1963 the noxious weeds charges were £80.16.3; in 1966 the adjoining block, 2C15B1, which was the same size as 2C15B2, was sold for £125.0.0, so the charges were clearly significant compared to the value of the land.[140] As Woodley notes, there was provision in the Noxious Weeds Act 1950 for the Rangitikei County Council to recover noxious weeds charges against Māori land from the Crown, however the Council instead continued to pursue the owners for the funds.[141]

96. In 1965 the Council inquired of the Māori Land Court whether it held funds that could be remitted to the Council for rates arrears.[142] It said small amounts were held but could not be released without the consent of the Māori Trustee.[143] Woodley records:[144]

> The Department [sic] also noted that the RCC could apply to the Court for an order to secure the charge and if still unable to obtain payment that the RCC could apply for itself to be appointed as receiver 'for the purpose of leasing the land and getting revenue therefrom to pay off the charge'.

97. In 1967 the Council received legal advice that it was too late to place charges on the land for the outstanding rates and noxious weeds charges, that having to be done within two years of falling

[137] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 173-174.
[138] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 174.
[139] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 178.
[140] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 172, 178.
[141] Section 14. The Crown could then recover the funds via a charging order; section 15.
[142] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 181.
[143] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 181.
[144] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 181.

due, however the Council could recover the funds by applying to the Māori Land Court to be made receiver of the land, and could then lease or sell it.[145] The advice recommended:[146]

> 1. The Council should forward forthwith to the Registrar of the Maori Land Court a claim for rates levied in the past two years.
>
> 2. The Council should sue forthwith the occupier (if any) for the rates and the noxious weeds account incurred during the period of occupation.
>
> 3. If the Council is prepared to risk (or write off) the moneys owing then an application should be made to have the land declared "unproductive" and the Court should be asked to appoint the Maori Trustee agent for the owners so that the property can be sold.
>
> 4. If the Council would prefer to collect the moneys owing from rents received for the property then an application should be made for either the Council or the Maori Trustee to be appointed receiver.

98. The rates outstanding at this point totalled £7.8.4.[147] The noxious weeds charges remained at £80.16.3. No mention was made of the option of recovering the noxious weeds funds from the Crown. The Council selected option 3.[148] This suggests a degree of vindictiveness; the Council was prepared to forgo the money owing provided the land was sold.

99. Application was duly made to the Māori Land Court under section 387 of the Māori Affairs Act 1953, and the order was granted; Woodley notes there is no record of the owners being in attendance at the hearing.[149] A relatively lengthy process of assessment was then followed, which culminated in advice from the Whanganui office of the Department of Māori Affairs that the

[145] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 182.
[146] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 183.
[147] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 182. The Reserve Bank calculator gives this figure in 2020 dollars as approximately $310 for general CPI increases, or approximately $1,725 for housing increases. We presume the correct figure falls somewhere between the two.
[148] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 183.
[149] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 183-184.

Minister should decline the order "In view of the difficulties of implementing the provisions of this section".[150] The Secretary for the Department of Māori Affairs agreed, and recommended to the Minister that the land be vested in the Māori Trustee under s 438 instead, so that it could be sold; the Minister agreed.[151]

100. Nowhere in Woodley's evidence is there consideration by the Court or the Department or the Minister of whether these were the appropriate steps to take in light of the small amount of the rates debt and the fact that the Council had not taken the option of recovering noxious weed control expenditure from the Crown. Woodley did not see evidence of the owners being consulted, nor was it clear to her from the available documentation why s 438 was preferable, though she hypothesised that the Māori Trustee considered that neither the owners nor local Māori were suitable purchasers and/or s 438 was preferable to s 387 because it allowed the land to be offered to the adjoining farmer.[152]

101. The Registrar of the Māori Land Court recommended the Council pursue a rates charging order as a "safeguard".[153] The Council did this, and also pursued the s 438 order.[154] The Court approved the Council's draft order, and vested the land in the Council for sale.[155] The Council was allowed to keep the costs of the application and sale, and of "putting the title in order".[156] Again, there is no record of the owners attending this hearing.[157] In 1970 the Council sold the land to the adjoining owner who had earlier offered £30 for it,[158] for $60 in the new currency.[159] This was a loss of $225.61 to the Council after the expenses of the process and a rates arrears write-off of $21.54 (so as to give the

[150] See Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 183-186.
[151] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 186.
[152] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 187.
[153] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 187-188.
[154] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 188.
[155] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 188.
[156] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 188.
[157] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 188.
[158] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 184.
[159] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 189.

purchaser an unencumbered title).[160] The owners received nothing.[161]

102. Woodley states that:[162]

> No other instance of land being vested in the Rangitikei County Council for sale due to rating and/or noxious weeds issues was located during the course of the research for this report.

This, while accurate, does not quite paint the whole picture; as noted above, there was a pattern of European farmers occupying Māori lands in the Inquiry District, failing to pay rates, and then buying the land when it was put up for sale for rates arrears.

Rating of landlocked lands

103. Only Aorangi Awarua, and Owhaoko D2 and D3 were exempted from rates in 1947. Other landlocked blocks had rates charged against them until the exemption policies were implemented in 2004 and 2009. Given the lack of access, it is difficult to see any justification for such rating.

Noxious weeds

104. The owners' best interests in complying with the Noxious Weeds Act 1928 was cited by the Native Trustee in late 1933 as one of the reasons he should be appointed agent over Motukawa blocks, which had overdue rates owing against it.[163] The extent to which he had owners' interests at heart is questionable; another reason he gave included that the block was unoccupied which was hotly contested by the owners who were in fact living on their lands and did not wish to lease them.[164] Additionally, when he was

[160] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 189.
[161] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 189.
[162] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 20.
[163] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 111-112.
[164] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 112.

appointed agent he did not seek a rating exemption for the meeting house on the land.[165]

105. Woodley notes section 14 of the Noxious Weeds Act 1950 provided for a local authority, with the consent of the Minister, to enter Māori or Crown land and take measures and do such work as might be necessary to clear the land of noxious weeds and to trim hedges or live fences comprised of certain plants such as gorse or barberry.[9166] Parliament would meet the costs of such work and, under section 15, could recover these costs from the owners.[167] Unlike rates, where local authorities set rates and enforced them, under the 1950 Act, while local authorities might initate applications, the overall control and enforcement in each case was with the Crown.

106. Additionally, section 34 of the Māori Purposes Act 1950 provided:

> (1) Where, with respect to any land to which this Part of this Act applies, the Court is satisfied-
>
> (a) That the land is unoccupied; or
>
> (b) That the land is not kept properly cleared of weeds which are noxious weeds within the meaning of the Noxious Weeds Act, 1950; or
>
> (c) That any rates payable in respect of the land, or any moneys recoverable in the same manner as rates are recoverable, have not been paid, and that the amount of the said rates or moneys has been charged upon the land; or
>
> (d) That the owners of the land have neglected to farm or manage the land diligently and that the land is not being used to its best advantage in the interests of the owners and in the public interest; or
>
> (e) That any beneficial owner cannot be found,- the Court may make an order appointing the Maori Trustee

[165] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 111-113.
[166] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 38.
[167] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 38.

> to execute in his own name, as agent for or on 'behalf of any owner or owners of the land, an instrument of alienation in respect of the land, or any part thereof, or any interest therein, in accordance with the provisions of this Part of this Act.
>
> (2) On making an order granting a charge under Part II of the Rating Act, 1925, for rates or other moneys due in respect of Maori freehold land, the Court may, without any application being made to it in that behalf, make an order appointing the Maori Trustee as agent to execute, in manner provided by subsection one of this section, an instrument of alienation of the land under this Part of this Act.
>
> (3) On the hearing of any application for the appointment of a Receiver for the' purpose of enforcing any charge granted under Part II of the Rating Act, 1925, for rates or other moneys due in respect of Maori freehold land, the Court, may, instead of making an order appointing a Receiver, make an order appointing the Maori Trustee to execute, in manner provided by subsection one of this section, an instrument of alienation of the land, under this Part of this Act.

107. This was a significant change from the former section 540 of the Native Purposes Act 1931, in which each of items (a) to (e) had to be satisfied before an order was made. Land could now be placed in the hands of the Maori Trustee where any one of these matters was satisfied.

108. Tests (a) ‘unoccupied’, (c) ‘existing charging order for rates’ and (e) ‘no beneficial owners found’ seemed the most strictly factual. Test (b) ‘properly cleared of noxious weeds’ provided a wide jurisdiction. To 'clear' was defined in the Noxious Weeds Act 1950 as "any act that destroys [a noxious] plant." But 'properly' broadened the requirements of even that Act and what it might mean was left to the court to determine.

109. Test (d) ‘neglect, lack of diligence’, is the test containing the most discretion. It appears to be a two part test, requiring a finding of

neglecting to farm at all, or not managing the land ‘diligently’, which are both partly subjective tests, and also a finding that the land was ‘not being used to its best advantage’ which is more objective. That last test is curious, requiring a finding that both owners and public interest be satisfied. Test (d) may have been aimed at a situation where both owners and ‘the nation’ were frustrated by multiple ownership. If that were the case, one might expect to see some discussion in court of options for use under multiple ownership.

110. Test (b) ‘noxious weeds’ and (c) ‘rates’ – at least where it involved compulsory sale, and (d) ‘neglect, lack of diligence’ clearly breach Treaty principles, as all provide for the compulsory assumption of control over Maori land under wide discretions and in circumstances where less than compulsion would suffice – for example entering land and clearing it of weeds at the cost to the Maori owner rather than alienation. The provisions provided astonishingly wide grounds and discretion so that it would be hard to imagine a block in the Inquiry District where they might not be applied.

111. All orders had to be specifically approved by the Minister of Maori Affairs before they had any force or effect, so that, in effect, the court order was a recommendation to the Minister for approval. There were no specific provisions guiding the approval by the Minister, and neither the 1950 Act, nor the 1931 Native Land Act (which section 34/1950 was deemed to be part), gave any particular or general guidance as to how the Minister might exercise their discretion. It was a possible moment for a Minister to consider matters such as the Treaty, particularly hardship to owners, if an order were made and issues such as the special significance of particular land to a Maori community.

112. As at 1945, the Rangitkei County Council employed a Noxious Weeds Inspector, a Mr Robinson, who remained employed there until at least 1967 and was involved in the issues experienced by

Awarua 2C15B2.[168] In 1962 he wrote to one of the owners enclosing a notice:[169]

> which, Mr Robinson said, if not complied with the Council would have 'no other option' but to take proceedings against Mr Pine and 'apply to the Maori Land Court for a trustee to be appointed to administer the section'.

113. Woodley does not state the sections invoked in the charging orders over that land, but it is presumed section 34 is the provision utilised.

Crown (and European) exemptions from rates

114. Crown land was exempted from rating within the Inquiry District from a relatively early stage. From 1911 to 1927, Crown lands in the Maraekakaho and Erewhon ridings were exempted, including Te Koau, which was for a time mistakenly thought to be Crown land.[170] Despite the fact that much of it "was in the proximity of rateable Maori land of a similar nature", Crown-owned blocks of Awarua, Oruamatua Kaimanawa, Owhaoko, and Timahanga (this last mistakenly, as it was and is Māori land) were exempted, as were pastoral runs used by the Army.[171]

115. Under the heading 'European and Māori land' Woodley records exemptions:[172]

> At least 30 instances of planting worth between £10 and £300 each (the value of the timber was deducted from the rateable value so rates were reduced)

Unfortunately she does not provide a breakdown of the instances of European and Māori land.

116. Woodley also notes exemptions in the Kiwitea County:[173]

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[168] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 142, 184.
[169] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 181.
[170] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 70.
[171] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 114-115, 159.
[172] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 159.
[173] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 215-216.

> … included owned or occupied Crown lands worth £55,920 (capital value). This included residential premises facing dedicated roads (capital value £7100), administrative, commercial and industrial premises (capital value of £2895), land held for farm settlement (including land under development or full developed but not disposed of) (capital value of £33,960), State forests (capital value £2410) and unoccupied Crown lands and Crown reserves (capital value £9,555).

117. Woodley agreed in cross-examination that it appeared the Crown could decide whether or not to utilise revenue-producing lands for revenue-producing activities, and if it did not choose to use the lands to produce revenue the lands would be exempted from rating. In fact, as the Kiwitea examples show, even when the lands were utilised for revenue production they were still not rated.

Current rates remission policies in the Inquiry District

118. Sections 102 and 109 of the Local Government Act 2002 provide that Councils must have a rates remission policy for Māori freehold land. While such a policy is compulsory, the actual remission of rates is not; the legislation provides scope for councils to refuse to provide an exemption .[174] There is no national oversight for fairness, Treaty compliance, or quality control. None of the factors set out in the 11th Schedule of the Local Government Act explicitly requires consideration of historic inequities.

119. The Hastings District Council policy for rates remission on Māori land is not easy to locate on its website. Its ‘Rates Remission & Postponement Policies’ document is silent on the topic of Māori freehold land, and the document with the heading 'Policy on Remission and Postponement of Rates on Māori Freehold Land' is, somewhat curiously, titled and filed under 'Maori-Freehold Land-Policy', despite the Council’s general rates remission policy

[174] Section 108(3).

document being titled and filed under 'Rates Remission and Postponement Policies'.[175] Woodley noted that at the time of writing her report the policy was under review. This appears to have been completed, as the footer on the document states that it forms part of the Long Term Plan 2018-2028, and there is no reference to the document being under review. The Awarua o Hinemanu and Te Koau blocks fall in their entirety into the Hastings District.

120. Section A2(b) of the policy extends the categories of exempt land by defining as eligible for remission:

> a. Land used as a Māori burial ground, Māori freehold land on which a Māori meeting house is erected, or land set apart under Section 338 of the Te Ture Whenua Māori Act 1993 or any corresponding former provision of that Act and that is used for the purposes of a marae or meeting place; irrespective of land area. (Includes land adjoining Marae used for this purpose.);
>
> b. Māori Freehold land to which the following circumstances may apply:
>
> i. The land is land locked where it does not have legal access, or physical access through a paper road to Council or the national roading network; and
>
> ii. Where an application for remission does not meet the above criteria Council has the discretion to consider the application the policy on a case by case basis.

121. Rather curiously, the Hastings DC policy defines Māori Customary land as "Land that is vested in the crown [sic] and held by Māori in accordance with tikanga Māori".[176] This is at odds with section 129(2) Te Ture Whenua Māori Act 1993.

[175] https://www.hastingsdc.govt.nz/assets/Document-Library/Policies/Maori-Freeholdland-Policy/Maori-Freehold-Land-Policy.pdf and https://www.hastingsdc.govt.nz/documents-and-forms/policies/.
[176] Section B, clause 2 Land Definitions

122. The Rangitīkei District Council policy was updated in 2018 and is largely the same as that filed by Peter Steedman and entered on the record of inquiry as #H21(a), except that:[177]

a. clause 1.3 has been added to list the exemptions provided by the Local Government (Rating) Act 2002;

b. the land is no longer required to be in multiple ownership (clause 3.2);

c. papakainga development replaces considerations of kaumatua housing; and

d. a new clause 4 sets out exclusions to the policy.

123. Land owners still need to apply for exemptions, and must do so every six years.[178] In the Rangitīkei District there is also provision for the Committee charged with assessing exemptions to exempt land where an application has not been made.[179] We think landlocked land could be granted a standing exemption until such time as it becomes unlocked, as the Council will necessarily be involved in consenting processes for any access road to the land and will therefore be notified if unlocking occurs.

Local Government (Rating of Whenua Māori) Amendment Bill

The Shand Report

124. In August 2007 a report on rates was issued: *Funding Local Government, Report of the Local Government Rates Inquiry Pakirehua mō ngā Reiti Kaunihera ā-Rohe*.[180] That report contains the most recent thorough examination of rating law currently affecting Māori land. The terms of reference included

[177] https://www.rangitikei.govt.nz/files/general/Policies/Rates-Remission-for-Maori-Freehold-Land-Policy-May-2018.PDF
[178] See, for example, Wai 2180, #H21(a) at 5.3.
[179] Wai 2180, #H21(a) at 6.
[180] See http://www.dia.govt.nz/Decommissioned-websites---Rates-Inquiry

"Examine the impact of rates on land covered by the Te Ture Whenua Maori Act 1993". In particular the Panel found:

> 13.3 Māori land is different from general land – historically, legally, and culturally. Māori regard themselves as custodians or kaitiaki of the land across generations and consider that the land is part of them. Land is not viewed primarily as a commodity. This cultural context is explicitly recognised in the preamble to Te Ture Whenua Maori Act 1993, which provides the legal framework for the administration of most Māori land.
>
> 13.4 Government leadership is essential in addressing the complex and entrenched problems with the rating of Māori land. The Panel concludes that a national programme of work with a clear timetable and implementation strategy is needed.

125. The inquiry made seven recommendations in relation to land covered by Te Ture Whenua Māori Act 1993:

> 58 That the relationship between the Treaty of Waitangi and rating law be addressed by the Government and form part of the work programme on rating and Māori land.
>
> 59 That a new basis for valuing Māori land for rating purposes be established that explicitly recognises the cultural context of Māori land, the objectives of Te Ture Whenua Maori Act 1993, and the inappropriateness of valuations for rating purposes being based on the "market value" of Māori land.
>
> 60 That the Government establish an explicit programme of work aimed at addressing the entrenched problems of rating on Māori land and that this be undertaken in partnership with local government and Māori.
>
> 61 That, as part of this programme of work, the Government collaborate in a joint exercise with local government and Māori in developing a coordinated and consistent approach to rates remission policies for Māori land.

> 62 That Māori freehold land that was made general land in the 1967 amendment to the Maori Affairs Act and is still in Māori ownership should be permitted to revert to Māori freehold land enjoying the same rates remissions policies as existing Māori freehold land. Further, there should be no restriction on changing the status of this land back into Māori freehold land.
>
> 63 That the work programme proposed in recommendation 60 should be linked to programmes assisting the productive development of the land.
>
> 64 That the Society of Local Government Managers, in consultation with Local Government New Zealand, central government, and Māori, develop a programme of training and development that can build capacity and knowledge within local government to effectively address rating and other related issues on Māori land.

126. The Panel did not consider a broad approach of removing unproductive Maori land from rates liability, despite recognising that remaining Maori land is poorly located and hard to finance – matters directly attributable to past Crown policies and practices.

The Local Government (Rating of Whenua Māori) Amendment Bill

127. A government Bill to address Māori land rating by amending the Local Government (Rating) Act 2002 and other legislation is, at the time of writing, in its Second Reading. As the Bill is in progress, section 6(6) of the Treaty of Waitangi Act removes the Bill from the Tribunal's jurisdiction until such time as it either passes into law or is defeated. We therefore do not seek findings specifically related to the Bill, but we have provided a summary of its key provisions as background information.

128. The Introduction to the Bill states:[181]

> The Local Government (Rating of Whenua Māori) Amendment Bill seeks to broadly support owners of Māori

[181] Local Government (Rating of Whenua Māori) Amendment Bill, Introduction, English text at 1.

freehold land to engage with, use, develop and live on their land. It also modernises some aspects of the Local Government (Rating) Act 2002 that are inconsistent with today's expectations of Māori–Crown relationships.

129. The Minister's introduction of the Bill to the House included the following statements:[182]

> […] A key objective of Te Ture Whenua Maori Act 1993 is to facilitate the occupation, development, and utilisation of Māori land for the benefit of its owners. Rating law and practice has long been recognised as an impediment to achieving that objective. This bill implements measures to remove rates as an impediment to the use and development of Māori land by its owners.
>
> In developing proposals for this bill, it became apparent that in previous reviews of rating legislation, issues around rating Māori land had been put in the too-hard basket. The result is that much of our present law about rating Māori land dates back to 1924 and what was then known as the Native Lands Rating Act. This bill makes some changes to bring rating law into line with the current expectations for Māori-Crown relationships and, importantly, the unique land tenure system applying to whenua Māori.
>
> […]
>
> […] By far the biggest problem for owners of Māori land engaging with local authorities about development is the problem of rates arrears. Under current law, the accumulation of rates arrears creates a negative cycle. The ability of owners to pay rates and the inability of whānau to develop their land has prevented them from being able to pay those rates. Existing rates arrears inhibit owners from engaging with local authorities to promote the development of the land. We need to break this cycle. We actually need to change up the conversation, because if

[182] Hon. Nanaia Mahuta https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20200312_20200312_24

whenua Māori is developed, there are local and regional benefits from growth opportunities.

This bill [sic] does this in two ways. First, land blocks that are entirely unused will be made non-rateable and existing rates arrears on those blocks will be written off. At the same time, land which has been set aside under Ngā Whenua Rāhui kawenata will also be made non-rateable. Second, local authority chief executives will be given discretion to write off rates arrears on any land where they consider the rates cannot be recovered. In addition, they will be able to write off rates where a person has inherited a beneficial interest in a block of Māori land and finds that they have also inherited rates arrears. The bill's third initiative is to create a statutory remissions process for rates on Māori land under development.

Some councils already grant rates remissions for developments they see as economically beneficial for their district. Currently, each council develops its own remissions policy, so there is no national consistency in approach to development remissions, but there needs to be. This bill will provide a consistent set of criteria and considerations that each council must take into account when dealing with an application for rates remissions for the development of Māori land. Owners of Māori land have particular difficulties accessing capital for development, as the nature of their land titles creates difficulties in securing mortgages. Granting rates remissions or postponements during the development stage recognises this issue and is an investment for a council in obtaining future rating streams from productive utilisation of whenua Māori.

The bill's fourth initiative addresses the problem of fragmentation of Māori land titles. Many Māori land blocks are quite small, and individually they may not be economic to develop. If owners can agree to manage the blocks as one, development is possible. However, the combined rates charges for these blocks can be very high because of the application of uniform charges under the local authority rating schemes. The bill provides that where multiple units of Māori land are used as a single economic unit, if they

were part of the same original block of Māori land they can be rated as if they were one rating unit. The Far North District Council, for example, did this for the Ōkahu blocks in its district, reducing annual rates from $18,000 to $8,000 per annum. This bill will make this universally available for many Māori land owners.

The bill's fifth initiative addresses the rating treatment of homes on Māori land. Where there are multiple homes on a block of Māori land or a home is incidental to other uses of the land, the title arrangement means the homeowner is unable to access the rates rebate scheme. In 2018, this Parliament passed legislation granting access to rates rebates to occupants of retirement villages. It is clear that where there are multiple homes on Māori land, there is an equally compelling case that low-income homeowners in those homes should also be able to access the rates rebates. This bill will enable that to occur.

The bill proposes a number of other changes to the rating legislation. One is particularly important and I know it will have a positive impact in many regions. In 1967, the Government of the day amended the Maori Affairs Act to direct that certain Māori land be changed to general land. This was done without consultation or notification to the owners. The effect of that change was to expose that land to alienation through abandoned land and rating sales under the rating Act. I am aware of cases where such land has recently been offered for sale under those provisions. This bill will stop future sales of that classification of land.

130. Other comments from Members of Parliament in the first reading included:

> The regions and the territorial authorities have proven incapable without a clear instruction from central government.[183]

[183] Hon. Shane Jones https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20200312_20200312_24

The Bill with the Māori Affairs Committee's recommended changes

131. The Māori Affairs Committee reported:[184]

> The committee is unable to agree to recommend that it be passed. However, we recommend unanimously that the House adopt the amendments set out below if it decides that the bill should proceed.

132. Clause 4 of the Bill would replace section 3 of the principal Act as follows:

> The purpose of this Act is to—
>
> (a) […]
>
> (b) facilitate the administration of rates in a manner that supports the principles set out in the Preamble to Te Ture Whenua Maori Act 1993.

133. Clause 8 provides that an additional class of ratepayers will exist, in relation to separate rating areas (essentially an additional dwelling used separately from the other rating area(s)),[185] and clause 9 provides that they will become liable for the rates for separate rating areas.

134. Clause 11 provides that a person using two or more blocks derived from the same parent block may apply for the blocks to be treated as a single rating unit.

135. Clause 33 provides that a person actually using general land that ceased to be Māori land under Part 1 of the Māori Affairs Amendment Act 1967, and which has (according to specific criteria) been abandoned, is liable for the rates on that land from the time they started using it. Recovery of the rates can be reduced by the court if it considers it reasonable to do so, the person has not used the rating unit for the entire year, and the rates owed are disproportionate to reasonable rental or payment for use.

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[184] Local Government (Rating of Whenua Māori) Amendment Bill, Introduction, English text at 1.
[185] See clause 46.

136. Clause 36 modifies the enforcement of judgment provisions so that land that was formally Māori land under Part 1 of the Māori Affairs Amendment Act 1967 may not be sold, but may still be leased. No maximum lease term is specified, nor are there maximum numbers of rights of renewal.

137. Clause 39 has been amended by the Committee so that chief executives of local authorities (or their delegatees) must (rather than 'may' in the original Bill) write off any outstanding rates that may not reasonably be recovered. The standard of reasonableness is not specified. The write-off may occur on the application of a ratepayer or on the chief executive's own initiative. Written reasons for the decision to write-off or not write-off must be provided within 30 days of receiving the application. This clause provides a degree of guidance to local authorities about the Crown's expectations of their behaviour.

138. Clause 45 separates out liability for separate rating areas, ensuring that the ratepayer for the underlying land is not liable for rates on separate rating areas, nor can charging orders be applied across the whole.

139. As noted above, clause 46 defines separate rating areas, and the operation of the rating mechanism and liability in relation to them.

140. Clause 48 would insert provision for remitting rates on Māori freehold land under development. Again the local authority would have to consider an application if one is made to it. The criteria for consideration are benefits to the district of any or all of:

a. benefits to the district by creating new employment opportunities:

b. benefits to the district by creating new homes:

c. benefits to the council by increasing the council's rating base in the long term:

d. benefits to Māori in the district by providing support for marae in the district:

e. benefits to the owners by facilitating the occupation, development, and utilisation of the land.

The local authority retains flexibility around the proportion of rates to be remitted, with criteria such as duration of development, development for a commercial purpose, development for residential purposes.

141. Clause 50 amends Schedule 1 (Land fully non-rateable) as follows:

a. land placed under Ngā Whenua Rāhui kawenata will not be rateable.

b. The two-hectare provision in clause 10 is deleted.

c. Clauses 12 and 13 replaced with:

i. 12 Land that is used for the purposes of a marae, excluding any land used—

1. (a) primarily for commercial or agricultural activity; or

2. (b) as residential accommodation.

ii. 13 Land that is set apart under section 338 of Te Ture Whenua Maori Act 1993 or any corresponding former provision of that Act and used for the purposes of a meeting place, excluding any land used—

1. (a) primarily for commercial or agricultural activity; or

2. (b) as residential accommodation.

iii. 13A Māori freehold land on which a meeting house is erected, excluding any land used—

1. (a) primarily for commercial or agricultural activity; or

2. (b) as residential accommodation.

iv. 13B Land that is a Māori reservation held for the common use and benefit of the people of New Zealand under section 340 of Te Ture Whenua Maori Act.

d. A new clause 14A provides:

i. (a) a rating unit is unused if—

1. (i) there is no person actually using any part of the rating unit; or

2. (ii) the entire rating unit is used in a similar manner to a reserve or conservation area and no part of the rating unit is—

a. (A) leased by any person; or

b. (B) used as residential accommodation; or

c. (C) used for any activity (whether commercial or agricultural) other than for personal visits to the land or personal collections of kai or cultural or medicinal material from the land; and

ii. (b) a rating unit must not be treated as being used solely because a person is a participant under the Climate Change Response Act 2002 in respect of an activity relating to the rating unit.

142. Te Puni Kōkiri in its description of the Bill states that it will:[186]

[186] tpk.govt.nz/en/whakamahia/whenua-maori/proposed-changes-to-the-rating-of-maori-land

> enable individual houses on Māori land to be rated as if they were one rating unit. This will enable low income homeowners on blocks with more than one home to access rates rebates.

We cannot see that it does this. Proposed section 98A, which is the most obvious candidate for this intention, refers to "dwelling" singular, not "dwellings" plural. It enables division but not, as far as we can see, amalgamation.

The Departmental Report

143. The Departmental Report of the Department of Internal Affairs cites the Hauraki Report finding that:[187]

> the principle of rating Māori land is not inconsistent with Treaty principles. The Crown's responsibility in the Treaty context lies with the statutory framework within which local authorities operate and, in the context of local government rating, with ensuring that the legislative regime applicable to local government rating is consistent with the principles of the Treaty.

144. There is no analysis of that Tribunal finding, no interrogation of its second sentence, no consideration of other Tribunal statements and findings on rating, and no further consideration of Treaty principles within the document. The Report states that the Department "considers that the Bill helps to improve the alignment of the Rating Act with the principles of the Treaty" but does not say how the Bill does so.[188]

145. The Report notes that the Bill does not address three issues of particular importance to "a large number of submitters":[189]

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[187] Local Government (Rating of Whenua Māori) Amendment Bill - Te Tari Taiwhenua (Departmental report) https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/52SCMA_ADV_94968_MA3708/te-tari-taiwhenua-departmental-report at 4.
[188] Local Government (Rating of Whenua Māori) Amendment Bill - Te Tari Taiwhenua (Departmental report) https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/52SCMA_ADV_94968_MA3708/te-tari-taiwhenua-departmental-report at 9.
[189] Local Government (Rating of Whenua Māori) Amendment Bill - Te Tari Taiwhenua (Departmental report) https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/52SCMA_ADV_94968_MA3708/te-tari-taiwhenua-departmental-report at 11.

a. perceived inequity of the rating valuation system to Māori landowners;

b. inequity associated with local authorities seeking payment of rates from one beneficial owner of a block, even though that person may have only a small proportion of the ownership interest; and

c. lack of services provided to Māori land by local authorities and the lack of proportionality between rates charged and services received.

These are all matters recorded in the technical evidence in this Inquiry.

146. In respect of the valuation system, the Report records:[190]

> The Department acknowledges the comment of the Land Valuation Tribunal "the injustice of imposing a rates burden on an entirely hypothetical basis which bears no relation to the known reality must be remarked upon."

147. The authors say that submitters did not propose any alternative, and nor did the 2007 Shand Inquiry. This is not quite correct. As noted above, the Shand Report recommended:

> 59 That a new basis for valuing Māori land for rating purposes be established that explicitly recognises the cultural context of Māori land, the objectives of Te Ture Whenua Maori Act 1993, and the inappropriateness of valuations for rating purposes being based on the "market value" of Māori land.

148. The authors also comment that "There would be significant investigation and policy work to develop appropriate legislative change in this area."[191] We suggest that this matter should not be

[190] Local Government (Rating of Whenua Māori) Amendment Bill - Te Tari Taiwhenua (Departmental report) https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/52SCMA_ADV_94968_MA3708/te-tari-taiwhenua-departmental-report at 12 citing Houpoto Te Pua Forest v Valuer-General and Houpoto Te Pua Trustees (LVP27/96).
[191] Local Government (Rating of Whenua Māori) Amendment Bill - Te Tari Taiwhenua (Departmental report) https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/52SCMA_ADV_94968_MA3708/te-tari-taiwhenua-departmental-report at 272.

left in abeyance. A good place to start would be for the Treaty partners to sit down and work together.

149. In respect of the burden of payment falling on one owner, the report states:[192]

> Within a western world view, ownership of land and the derivation of economic benefits from the land largely go hand in hand. This is not automatically the case in the Māori world. The Department considers that further work on whether liability for rates on Māori land should rest with occupiers, rather than owners, would be a logical next step on this matter.

150. We agree with this statement however we note the issues with collection from occupiers and the liability falling back on owners experienced by Taihape Māori and referenced in earlier sections. Any developments in this area should address this issue specifically.

151. In respect of rates charged compared to services provided, the authors consider this is not solely a Māori land issue and "the Department would expect that issue to be resolved through the local democratic process."[193] The Report does go on to say that further work may be warranted in respect of the application of uniform charges to Māori land.[194] We think some consideration of the long history of this issue and the financial pressures it has caused Māori would be appropriate.

152. The document as a whole does not analyse the Bill or the submissions from the perspective of the inquiry-based approach that the Article II guarantee of retention of lands requires, nor from the perspective of the Shand Report. Nor does it question

[192] Local Government (Rating of Whenua Māori) Amendment Bill - Te Tari Taiwhenua (Departmental report) https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/52SCMA_ADV_94968_MA3708/te-tari-taiwhenua-departmental-report at 14.
[193] Local Government (Rating of Whenua Māori) Amendment Bill - Te Tari Taiwhenua (Departmental report) https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/52SCMA_ADV_94968_MA3708/te-tari-taiwhenua-departmental-report at 15.
[194] Local Government (Rating of Whenua Māori) Amendment Bill - Te Tari Taiwhenua (Departmental report) https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/52SCMA_ADV_94968_MA3708/te-tari-taiwhenua-departmental-report at 17.

whether an exemption-based approach is appropriate. We suggest that a philosophical basis for future rating issue considerations should be developed by, and agreed between, the Treaty partners. Overall it is difficult to see partnership in the Departmental report.

Conclusions

153. Taihape Maori were never consulted about local government in the district. The Crown knew of their preferences for governance of their own affairs. The Crown provided limited finance to Maori landowners compared to non-Maori. This made the default approach that all land was rateable particularly iniquitous. A more appropriate approach would have been that land be rated once production was not only possible but actual.

154. To understand how thoroughly unfair rating Taihape Māori land was, imagine if Ballance's 1885 statements had instead read:

a. You will often be prevented from dealing with anyone except the Crown.

b. You will have no recourse to any development finance except through sale;

c. The low price at which you sell will not be recompensed in any form by government works in the area. In fact, roads will not be built near or through your land until you sell it;

d. You will subsequently be rated, whether your remaining land is productive or not.

e. Rates debts will be used to force you from your lands. Sometimes those rates debts will come about because the lessee has not paid the rates for which they were liable. In some of those cases, the land will be sold to those lessees who were responsible for the rates debt that led to the receivership.

155. Based on statements from the Crown from 1885, at a minimum one would expect to see rating laws that provided at least:

a. A Crown ability to control whether Maori land was rated or not;

b. Whether land was near a road (or a railway) would not on its own be a sufficient reason for rates to be applied;

c. Rating to be applied only if land was near a road and it was actually in use, for example by way of lease or cultivation within an open market for land.

Findings and Remedies sought

156. Rates paid on non-economically viable and landlocked land should be returned, with interest. A generous, good-faith approach should be adopted by the Crown and councils, given the loss of rating records relating to the Inquiry District.

157. The Crown ought to retain control over whether Māori land is rated, until such time as local government fully understands its part in the Treaty relationship.

158. The recommendations in the Shand Report ought to be discussed with Taihape Māori and implemented in the Inquiry District as appropriate.

159. Statutory and non-statutory guidance should be developed for councils to provide guidance and help them understand and carry out their part in the Treaty relationship.

Dated at Nelson this 13th day of October 2020

Tom Bennion / Lisa Black
Counsel for the claimants