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
PRESENTATION SUMMARY

Dated 20 October 2020

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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

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

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

TREATY OBLIGATIONS IN RESPECT OF LOCAL GOVERNMENT AND RATING

3. There are differing views on whether local government is 'the Crown', however we consider it is not necessary to engage with these for the purposes of assessing Treaty breach. The Crown accepts responsibility for the statutory framework for local government. This must logically include accepting responsibility for failings of local government that have their origins in, or are contributed to, by legislation.

4. The Tribunal said as far back as 1993 that the Crown cannot divest itself of Treaty obligations when it delegates functions:[2]

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

[1] For local government issues, see *Te Mana Whatu Ahuru* vol IV and *He Maunga Rongo* vol I. For rating issues, see *Te Mana Whatu Ahuru* vol IV, *The Hauraki Report* vol III, and *Tauranga Moana 1886-2006* Vol I.
[2] Waitangi Tribunal *Ngawha Geothermal Resource Report* (Wai 304, 1992) at 7.7.9.

5. The Tūranga Tribunal agreed with this view, as did the Tau Ihu and Wairarapa Tribunals.[3] And in Wai 262, the Tribunal rejected the Crown approach, saying:[4]

> The Crown argued that, given this devolution [of statutory powers to local government under the Resource Management Act 1991], its only remaining concern was to ensure that the framework for administration was Treaty compliant – which, the Crown submitted, it is. But this argument has been repeatedly rejected by the Tribunal and the courts.
>
> […]
>
> The High Court endorsed this view in 2005, stating that:
>
> > it is the responsibility of successors to the Crown, which in the context of local government includes the council, to accept responsibility for delivering on the second article promise. Nowadays the Crown is a metaphor for the Government of New Zealand, here delegated by Parliament to the council, which is answerable to the whole community for giving effect to the treaty vision in the manner expressed in the RMA. The due application of that statute will assist to "avert the evil consequences which must result from the absence of the necessary Laws and Institutions" needed to secure justice to all New Zealanders.

6. The Rohe Potae Tribunal found that the Crown must ensure that local authorities are acting consistently with the principles of the Treaty, and must ensure that ensure that local authorities establish a relationship with Māori that is both consistent with the Treaty of Waitangi and ensures Māori interests are incorporated and protected:[5]

> In our view, the Crown must also ensure that local authorities are acting consistently with the principles of the Treaty. Failure to do so is a breach of the duty of active protection. The Crown's

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[3] Waitangi Tribunal *Turanga Tangata, Turanga Whenua: Report on the Turanganui a Kiwa Claims* (Wai 814, 2004) vol 2, p 627 at 12.1: *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims* (Wellington: Legislation Direct 2008), vol 3, p 1432; *The Wairarapa ki Tararua Report* (Wellington: Legislation Direct 2010) vol 3, p 1062 at 15.11.1.

[4] Waitangi Tribunal *Ko Aotearoa Tēnei, Te Taumata Tuarua* (Wai 262, 2011) at 269-270, quoting *Ngati Maru Ki Hauraki v Kruithof* [2005] NZRMA 1 at 14.

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

> policies, legislation, and action failed to delegate to local authorities a requirement to give effect to these matters through arrangements worked through in a mutually beneficial manner […].

Partnership

7. Partnership is the central element of the Treaty relationship which includes within it mutual benefit, the duty to act reasonably, honourably, and in good faith, and the duty to make informed decisions.[6] Understanding it is key to understanding the requirements on territorial and local authorities, and on the Crown in respect of those authorities.

8. Te Whanau o Waipareira Inquiry concluded that:[7]

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

9. Partnership is a deeply serious joint venture for a purpose. For example, the Rohe Pōtae Tribunal said of the negotiations and that led

[6] The Court of Appeal has referred to a duty "akin to a partnership", and the term "Treaty partnership" is also used. See Te Puni Kōkiri, *He Tirohanga ō Kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal* (Te Puni Kōkiri: Wellington, 2002) at 77-92 https://waitangitribunal.govt.nz/assets/Documents/Publications/WT-Principles-of-the-Treaty-of-Waitangi-as-expressed-by-the-Courts-and-the-Waitangi-Tribunal.pdf

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

to allowing the North Island Main Trunk Railway through the King Country and lifting the aukati:[8]

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

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

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

11. This, then, is the crux of the Treaty relationship. Each party brings its own strength and value to the partnership. Decisions are made together, for the benefit of the entirety. Adversity is faced together. The whole has the potential to be greater and achieve more than the sum of its parts. A relatively recent example in this vein is the Preamble to the Marine and Coastal Area (Takutai Moana) Act 2011, which records that recognition of Māori interests strengthens the overall enterprise:[9]

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

[8] Waitangi Tribunal *Te Mana Whatu Ahuru Report on Te Rohe Pōtae Claims, Parts I and II* (Wai 898, 2018) at 783.
[9] Preamble at (4).

> Zealand and the coastal marine environment for future generations. (underlining added)

Duty to consult

12. The Central North Island Tribunal said:[10]

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

13. The Ngawha Geothermal Resources Tribunal characterised the obligation to consult as a fundamental element of the active protection of rangatiratanga, and said:[11]

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

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

[10] Waitangi Tribunal *He Maunga Rongo, Report on Central North Island Claims, Stage 1* (Wai 1200, 2008) vol 1 at 173.
[11] Waitangi Tribunal *Ngawha Geothermal Resource Report* (Wai 304, 1992) at 5.1.6.

already in the possession of the Crown to Maori. Even then, the consultation requirements were significant.

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

16. In the 20th and 21st centuries, in situations where possession and rangatiratanga over particular resources has already been lost, where the Crown has acted without consultation and made decisions affecting Taihape Maori interests, any decision taken without consultation must have as its prerequisite an excellent understanding by each partner of each others' views, stance, or position in respect of the subject under decision, and the decision cannot undermine the partnership or the partners.

17. In joint ventures and other commercial arrangements, it is common that a foundation document is drawn up, which records the shared understandings and the shared goals and, broadly, how the parties intend to achieve them together.[12] Should a situation arise that is not directly anticipated by the document, either the document will provide some guidance as to how the parties should approach resolution of the situation, or the parties to the agreement decide together what their approach will be. This provides an example of the close way in which the parties operate together.

Active protection

18. Hayward notes that it is accepted that the transfer of kawanatanga from the Queen, as Treaty partner, to the responsible settler government in 1856 carried with it the transfer of Treaty

[12] See, for example, the Transmission Gully Public Private Partnership project contract and schedules at https://www.nzta.govt.nz/projects/wellington-northern-corridor/transmission-gully-motorway/ppp-project-development/ppp-contract-development/.

responsibilities.[13] Likewise, any transfer of kawantanga to local government carries the same transfer of Treaty responsibilities.

19. The Wairarapa ki Tararua Tribunal found in 2010 that:[14]

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

20. The Ngawha Geothermal Resources Tribunal found that the duty of active protection requires the Crown to ensure: [15]

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

Tino rangatiratanga

21. The Ngawha Geothermal Resources Tribunal found protection of rangatiratanga included the tribal right of self-regulation.[16] Self-

[13] Janine Hayward *The Treaty Challenge: Local Government and Māori* (CFRT, Wellington, 2002) at 5.
[14] Waitangi Tribunal *The Wairarapa ki Tararua Report* (Wai 863, 2010) vol 3, p 1062 at 15.11.1.
[15] Waitangi Tribunal *Ngawha Geothermal Resource Report* (Wai 304, 1992) at 5.1.3.
[16] Waitangi Tribunal *Ngawha Geothermal Resource Report* (Wai 304, 1992) at 5.1.2.

regulation naturally extends to local government. We will discuss this further in the sections on local government in customary law and its evolution in response to Pākehā settlement.

22. The Ngawha Tribunal also quoted the Muriwhenua Fishing Rights Tribunal, which said:[17]

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

23. The Tribunal's view on cession of sovereignty has evolved somewhat over the intervening years in response to new evidence,[18] however the Muriwhenua statement confirms that, where sovereignty was transferred to the Crown, the Treaty recognises and protects local government by Māori for Māori. The Rekohu and Central North Island Tribunals found that the Treaty guarantees apply to all Māori, regardless of whether they have ceded or retained sovereignty.[19]

24. The Ngai Tahu Sea Fisheries Tribunal described the Treaty confirmation of rangatiratanga as a guarantee that "necessarily qualifies or limits the authority of the Crown to govern."[20]

25. The Taranaki Tribunal said:[21]

> On the colonisation of inhabited countries, sovereignty, in the sense of absolute power, cannot be vested in only one of the parties. In terms of the Treaty of Waitangi, in our view, from the day it was proclaimed sovereignty was constrained in New

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[17] Waitangi Tribunal *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (Wai 22, 1988) at 187.

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

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

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

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

Zealand by the need to respect Maori authority (or 'tino rangatiratanga', to use the Treaty's term).

26. The Central North Island Tribunal expanded on Taranaki, saying:[22]

> The Crown's sovereignty was constrained in New Zealand by the need to respect Maori authority. Under the Treaty, the Crown had to respect and provide for the inherent right of Maori in their Central North Island territories to exercise their own autonomy or self-government. That right carried with it the right to manage their own policy, resources, and affairs within the minimum parameters necessary for the proper operation of the State. It also carried the right to enjoy cooperation and dialogue with the Government. As noted above, the Treaty of Waitangi envisaged one system where two spheres of authority (the Crown and Maori) would inevitably overlap. The interface between these two authorities required negotiation and compromise on both sides, and was governed by the Treaty principles of partnership and reciprocity.

and:[23]

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

[22] Waitangi Tribunal *He Maunga Rongo, Report on Central North Island Claims, Stage 1* (Wai 1200, 2008) vol 1 at 173.
[23] Waitangi Tribunal *He Maunga Rongo, Report on Central North Island Claims, Stage 1* (Wai 1200, 2008) vol 1 at 191.

LOCAL GOVERNMENT IN THE TAIHAPE INQUIRY DISTRICT

27. Bassett and Kay and Walzl note the absence of Taihape Māori involvement in the records of local government in the Inquiry District, however this is not reflective of a lack of interest on the part of mana whenua.[24] Armstrong said of this phenomenon:[25]

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

28. Taihape Māori claimants say that they were and are interested in taking a leading role in local government and from the 1880s have

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

provided specific, well-thought-out proposals. The Crown has failed enable their involvement and their plans, and in parts has disabled these.

Governance in Customary Law

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

Prior to the Treaty

30. Māori system of governance was 'local'. It was and is applied through a series of values-based, flexible and responsive approaches to matters 'on the ground'. For example rāhui might be placed – and enforced - over defined areas as an environmental, physical, or spiritual management tool. Another contemporary example of Māori 'local' government is responses to COVID-19 in the form of roadblocks aimed at protecting the health and wellbeing of people within the area of authority of the relevant iwi or hapū.

31. Generally speaking, the lens through which Māori "local government" prior to the Treaty was developed and enacted was a set of core values. The general principle is summarised as:

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

32. The Muriwhenua Tribunal emphasised that Māori law remained in force after settlers arrived.[26] Common law provided for Māori custom. In this Inquiry District, before locally-applicable English derived local government legislation was enacted from the 1870s, the law in force on the whenua both practically and legally, was largely te ture me te tikanga ō Taihape Māori.

33. A relatively early example of local governance by Taihape Māori in respect of settler / Crown matters in the Inquiry District is the Kokako hui of 1860. This hui, near Hautapu, was held a week after the attack by the Crown on Te Kohia pa at Waitara, starting the Taranaki war, and was attended by at least 500 Māori from a large expanse of land encompassing Mokai Patea, Rangitikei, Manawatu, Ahuriri, Heretaunga, Taupo, and Whanganui.[27]

34. The focus was the closely related questions of political affilliation (to the Crown, to the Kingitanga, or to neither), land boundaries, and sales; that is, matters of tino rangatiratanga. One outcome of the Kokako hui was the definition of the limits of land boundaries of Kahungunu, Tuwharetoa, and others, as they intersected with Mokai Patea lands, with kaitiaki given charge of the boundary.[28]

How it evolved with Pākehā settlement

35. Self-government was, from the time of the Treaty, a "fundamental right for British subjects."[29] Given that Article III provides that Maori were to have "all the Rights and Privileges of British Subjects", and the rights for Maori communities under Article II, the question is whether the Crown upheld the right of Maori to self-government and whether non-Maori systems dealt with Maori fairly.

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[26] Waitangi Tribunal *Muriwhenua Land Report* (Wai 45: GP Publications, 1997) at 12-13.
[27] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 16, 18.
[28] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 16-17.
[29] Waitangi Tribunal *He Maunga Rongo, Report on Central North Island Claims, Stage 1* (Wai 1200, 2008) vol 1 at 179.

36. The options available from at least 1852 have been extensively discussed elsewhere, most recently in the Rohe Pōtae and Central North Island reports.

What opportunities were there for Māori involvement in governance?

37. The Tauranga Moana Tribunal report records that "Local authorities as we know them – that is, democratically elected by the local population – are a comparatively recent idea, having their origins in 1830s Britain."[30] A system so new and not yet entrenched is necessarily open to amendment and improvement for local circumstances.

38. Legal pluralism is the existence of multiple legal systems within one population or geographic area.[31] It was accepted by, the British as a viable, indeed, a preferable, governance option for the new colony. Te Ara records:[32]

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

39. In 1852 the Parliament of the United Kingdom enacted the New Zealand Constitution Act. The Act provided for the establishment of the Provinces and their ability to make laws (with certain matters reserved to central government), for local government in the form of municipal corporations, and, in section 71, for Māori districts, where where Māori law and custom would be preserved.

40. The Duke of Newcastle, encouraging the New Zealand settler government to give the Māori King a role in assenting to laws passed by his rūnanga, said:[33]

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[30] Waitangi Tribunal *Tauranga Moana 1886-2006 Report on Post-Raupatu Claims* (Wai 215, 2010) vol 1 at 311.
[31] https://en.wikipedia.org/wiki/Legal_pluralism
[32] https://teara.govt.nz/en/te-ture-maori-and-legislation/page-1
[33] Wai 898 #A23, at 398 (Newcastle to Grey, 16 March 1862).

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

41. These were clear statements by the British Crown that a plural legal system could operate. Our current system of local government is still recognisable as a close descendant of the pluralistic provincial system. Section 71 of the New Zealand Constitution Act was not used in the Inquiry District, or anywhere else in the country, however it remained in force until it was repealed by the Constitution Act 1986.

42. In 1858 the Native Districts Regulation Act was passed by the Parliament of New Zealand. Like s 71 of the New Zealand Constitution Act 1852, it provided for districts in which tikanga would run, although it was limited to those areas still held in native title. Parliament declined to fund any implementation, and the legislation was not used.

43. The Kohimarama conference was held by Governor Gore Browne in 1860 in an attempt to prevent the spread of fighting from Taranaki and attended by more than 100 chiefs, it was aimed at forming a "sort of Māori parliament" and was intended to be an annual event.[34] The parliament was expected to result in a measure of influence and power at central government level. It was not held again after the first event.

44. In 1885, Native Minister John Ballance speaking to Rohe Pōtae Māori, and the Rt. Hon the Earl of Derby, Secretary of State for the Colonies writing to Governor William Jervois both discussed ways in which power could be shared. [35]

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

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[34] Waitangi Tribunal *Te Mana Whatu Ahuru Report on Te Rohe Pōtae Claims, Parts I and II* (Wai 898, 2018) at 431, quoting Browne to Denison, 27 June 1860, in Wai 903 #A143 Donald Loveridge, 'The Development and Introduction of Institutions for the Governance of Maori' at 94.

[35] '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. The Rt. Hon the Earl of Derby to Governor William Jervois, 23 June 1885, BPP, vol 17, p 179.

How did Māori adapt to the new paradigm?

Governor Grey's Rūnanga System

46. In 1861 Governor George Grey proposed a system of Māori self-government called the Rūnanga System, similar to the provincial system, with Districts and District Rūnanga, to be presided over by an English Commissioner.[36] Grey's primary motivation for the scheme was to undermine the Kingitanga, which had its own highly effective rūnanga.[37] The scheme was unpopular with Māori who wanted genuine self-governance and were against further land alienation, and unpopular with settlers who were disliked the idea that they might be subject to Māori law.[38] It was dismantled in 1865 following the wars, when it was considered to be no longer required for colonial purposes.[39] While flawed, this was an opportunity to implement the Article II and Article III guarantees. Some evolution might be anticipated, to ensure such a system worked for both Treaty partners.

Komiti

47. A particular theme of komiti in the Inquiry District is the desire of mana whenua to contribute meaningfully to, or, more preferably, take on, in a tikanga-compliant system, the duties of the Native Land Court and its processes. In an attempt at a consensus solution and to reduce costs and raruraru, komiti agreed the boundaries of Rangatira and Awarua (including Motukawa) prior to applications being made in the Native Land Court.[40] Stirling records that "Minutes were kept of the komiti's discussion and decisions, and lists were prepared, and a judgment of 4 March 1886 was written out "at length" and presented to the Court.[41]

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[36] Basil Keane, 'Ngā rōpū – Māori organisations - 19th-century Māori organisations', Te Ara - the Encyclopedia of New Zealand, http://www.TeAra.govt.nz/en/nga-ropu-maori-organisations/page-1 (accessed 24 June 2020).
[37] Wai 2180 #4.1.10 Answer of Bruce Stirling to Judge Harvey at 516.
[38] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>
[39] Wai 2180 #4.1.10 Answer of Bruce Stirling to Judge Harvey at 516-517.
[40] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 318. Stirling agreed in cross-examination that it was likely the Motukawa block was included in these deliberations, as the blocks were initially heard together; Wai 2180 #4.1.10 at 590.
[41] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 319.

Despite the work of the Komiti being discussed by witnesses,[42] it was not taken account of by the Court; the reasons for this are unknown as the Minute Book does not make reference to any decision to use or not use the information, nor was there any reference to it in the judgment.[43] Support by some Crown officials for this vehicle of tino rangatiratanga did not translate into meaningful enablement by the Crown of the Article II and Article III guarantees.

Ngāti Hokohe

48. In the early 1870s the Ngāti Hokohe movement emerged, known to Pākehā land speculators as the Repudiation movement. It is described by Bruce Stirling as "a pan-iwi movement that lobbied for changes to the Native Land Acts, fairer Maori political representation, and an appropriate role for rangatira in the administration of Maori matters."[44] These objectives were endorsed by Taihape Māori following a hikoi through the District (and beyond) by Karaitiana Takamoana. [45]

49. Stirling also notes the resolutions of Hokohe hui were "…little more than what even Pakeha judicial authorities had previously recommended to the government…". He said "[Taihape Māori] very clearly set out aspirations and goals, and methods that will meet the needs of the Crown and the owners, and settlers in a fairly reasonable generous fashion, but those efforts are ignored by the Crown."

50. The popularity of komiti and rūnanga was such that in 1883 a "deeply reluctant" government passed the Native Committees Act.[46] Its architect, Native Minister John Bryce, later stated that it was not

[42] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 318-319.
[43] Wai 2180 #4.1.10 Transcript of hearing week 3, Questions of Moana Sinclair to Bruce Stirling at 590.
[44] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 236.
[45] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 237. In response to questions from Dr Ballara, Mr Stirling agreed that this hikoi may have been slightly prior to Ngāti Hokohe formally setting up, but considered that this was at the very least part of the build-up to formation; #Wai 2180 #4.1.10 at 477-478.
[46] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>

intended to provide Māori with self-governance powers of any significance.[47]

Kotahitanga movement

51. The Kotahitanga movement, which arose in the early 1890s as a successor to Ngāti Hokohe and called for equality of Māori and Pākehā under the Queen,[48] had goals closely aligned with those of Taihape Māori, including:[49]

    a. replacement of the Native Land Court by komiti Maori

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

    c. local self-government through komiti Maori

52. In 1898 the movement "claimed 37,000 adherents, which was a significant majority of the Maori population who met the Kotahitanga qualifying age of 15 years-old".[50] It was somewhat more effective than previous similar movements, perhaps partly because of its size, and it was consulted in the late 1890s on what became the Maori Land Councils Act 1900 and the Maori Land Administration Act 1900.[51]

53. Seddon and Carroll visited Moawhango in March or April 1894 to encourage Taihape Māori to make more land available for settlers:[52]

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

[47] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>
[48] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 603.
[49] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 595.
[50] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 606.
[51] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 595.
[52] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 604.

In cross-examination on this point, Stirling said:

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

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

Mokai Patea Licencing Committee

55. The Outlying Districts Sale of Spirits Act 1870 provided for the regulation of alcohol sales in proclaimed districts (outside towns and cities) in areas with at least 2/3 Māori inhabitants.[53] Native Assessors could be appointed, with the exclusive power to issue licences for the sale of "spiritous or fermented liquors", and it was an offence to give or sell alcohol to "any person of the Native race" without such a licence.[54] Nowhere in the Inquiry District was so proclaimed until 1889, by which time the Licensing Act 1881 had incorporated and continued the features of the earlier Act, with the additional feature of Licencing Committees that needed the agreement of the Native Assessor to issue licenses in a Native District.[55]

56. The Inland Patea Native Licensing District was proclaimed at the request of Resident Magistrate Preece following concerns from both Māori and "respectable Europeans". Hiraka Te Rango was elected unopposed to the sole role of Native Assessor available for the District; a year later he exercised his power of veto over a license for premises at Moawhango granted by the District Committee.[56]

57. When a licence was granted at Moawhango with the assent of Te Rango's successor, mana whenua objected strongly, to the extent of

[53] Sections 2, 3, 4.
[54] Sections 5, 6, 7, 8, 9.
[55] Sections 13, 15, 19, 20, 22(3).
[56] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 470-471.

attempting to pull down the building.[57] Moawhango Māori appealed to the Supreme Court to have the licence cancelled.[58] They were successful on the grounds that an option poll taken in the district vetoed licensing, which meant that the grant by the Licensing Committee was ultra vires.[59]

58. Following up on their legal victory, Moawhango Māori successfully instigated prosecutions of European sly-grog sellers in 1893 and 1894.[60] Stirling records that "at some point" in the 1890s the Rangitikei Licensing District took over responsibility for the area, voiding the role of Native Assessor.[61] The new Committee issued a license for Taihape, but declined to renew it, possibly partly due to Māori complaints about the issues its proximity to Moawhango had caused.[62] Other applications in the area were also declined.[63]

Māori Councils Act 1900 and the Māori Lands Administration Act 1900

59. The generic Land Board closing submissions comprehensively address the Māori Lands Administration Act, so we provide only a very brief overview and comment here. The Act divided the North Island into six administrative districts, each with a Māori Land Council made up of five to seven members, of which the Governor would appoint a president and two or three members (one of whom had to be Māori), with the other two to three members being elected by Māori of the district.[64] The Councils had roles in respect of ownership, administration, and alienation of Māori land vested in them or otherwise placed under their

[57] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 473.
[58] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 477.
[59] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 477.
[60] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 478-479.
[61] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 479.
[62] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 480.
[63] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 480.
[64] Sections 5 and 6.

authority.[65] No land in the Taihape inquiry district was vested in the Māori Council under the 1900 Act.[66] In 1905 the Māori Land Settlement Act 1905 replaced the six Councils with seven Boards comprised of a president and two appointed members, one of whom had to be Māori, thus eliminating the elected membership of the Councils.[67] In this way, Taihape Māori lost any chance at control of the administrative and decision-making function, which cannot have encouraged them to place their lands under the authority of the Land Board.

60. The Inquiry District was in the Kurahaupo, Tongariro, and Tamatea Council districts. This administrative split did not reflect how Taihape Māori identified administrative areas; in 1911 changes were made to the boundaries, but these still did not accurately reflect Taihape Māori affiliations.[68]

61. The Kurahaupo Māori Council's first action was to advertise that it would be registering dogs and collecting taxes from Māori dog owners.[69] Christoffel notes that this was the primary source of income for the Council, so most effort was expended here.[70] A Health Inspector, Ererua Te Kahu, was appointed by the Health Department to work with the Kurahaupo council; Christoffel could find no information in English about Te Kahu's activities.[71]

62. The Health Act 1920 amended the role of the Māori Councils. Christoffel summarises this change:[72]

> Councils were specifically charged with dealing with Maori health and placed under Health Department rather than Native Department administration. The new councils had seven members each, rather than 12 as previously. The village

[65] Part III. See Wai 2180, #A46, Walzl *20th Century Overview* at 52 for a summary of these roles and powers.
[66] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 169.
[67] Section 2.
[68] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 176.
[69] See, for example, Wanganui Herald, 13 December 1901, p 3.
[70] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 177.
[71] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 178.
[72] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 200.

committees, of which there were commonly a dozen or so in each council region, continued to have three to five members as before.

63. The Crown continued to inhibit the proper functioning of the Councils via a lack of funding. Councils were required to keep accounts and submit them to the Native Minister, so the Crown was certainly on notice about this issue.[73] Christoffel notes the Kurahaupo Māori Council remained underfunded, and, as dog tax had been transferred to County Councils, they had lost their primary source of income.[74] Council members after the Health Act changes seem to have been appointed, rather than elected, and it is not clear how the appointment process worked in the district or to what extent the appointees reflected mana whenua wishes.[75] In January 1927 the Council's new Crown-suggested by-laws were gazetted, largely aimed at increasing their sources of revenue and controlling peoples' behaviour, and regulating the activities of the Ratana movement, which was opposed to Māori Councils.[76] Movie-show proprietors were to be licensed (for a fee), bad language attracted a fine, and large hui could be prohibited and the organisers fined.[77] The by-laws passed so far apparently omitted to address drainage, as the Council found when it wanted to take action against someone.[78] Requests to the Native Minister to have this rectified, but nothing happened.[79] This is curious; sanitation and health were primary matters for Council attention. It is difficult to see how it could carry out its primary functions when Crown inaction was standing in the way of it doing so.

64. The new by-laws did not seem to be effective at revenue-gathering, as the Council was described as "very moribund" and efforts to revive it by

[73] Section 28.
[74] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 200.
[75] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 205.
[76] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 207.
[77] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 207.
[78] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 207.
[79] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 207-208.

appointment of new members in 1933, 1936, and 1937 failed.[80] It appears the Crown failed to recognise that issues of enablement such as funding and gazetting of by-laws were the principal cause. The Council was briefly revived in 1940 to establish a Komiti Marae at Ratana Pa; this appears to be its last notable action.[81]

65. Despite Taihape Māori hopes that this legislation would deliver a meaningful amount of the self-government they and others of the Kotahitanga movement had repeatedly advised the Crown was a need, it was a compromise accepting state supervision (and, ultimately, control). It did not provide the genuine concessions for self-government the movement had sought. O'Malley considers its assimilationist agenda was successful enough that Kotahitanga leaders were persuaded to abandon annual meetings of the Maori parliament in 1902.[82]

The Māori Social and Economic Advancement Act 1945

66. The "last remnants" of the Māori Councils were abolished by the Māori Social and Economic Advancement Act 1945.[83] This Act provided that the Minister might declare an area to be a tribal district, and areas within that district to be Tribal Committee areas.[84] An area would have as a Tribal Committee between five and eleven people, plus a Welfare Officer appointed by the Minister.[85] Tribal Committees could bring into being a 'Maori village', being "a kainga, village, or pa the boundaries of which have been defined by a Tribal Committee and which has been declared to be a Maori village for the purposes of this Act".[86] Tribal Committees would nominate two members each, who, again with a Welfare Officer appointed by the Minister, collectively made up a Tribal

[80] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 208.
[81] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 209.
[82] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html.
[83] Richard S. Hill *Maori and the State, Crown–Maori Relations in New Zealand/Aotearoa, 1950–2000* (Victoria University Press, Wellington, 2009) at 16. Section 45.
[84] Sections 6, 14. Tribal Committees had the same functions as Tribal Executives, unless the work could only be carried out by an Executive.
[85] Section 15.
[86] Section 2.

Executive Committee (referred to as a Tribal Executive) to direct the Committee and act as a liaison with central government.[87] The functions of Tribal Committees included matters of health and sanitation, as well as a measure of local government and Ministerial advisory functions.[88]

67. The Executives and Committees suffered from the same, or possibly worse, lack of funding as Māori Councils. Christoffel suggests donations were intended to provide the necessary funding, though the Crown could, at it's discretion match donations through Parliamentary appropriations and the Executives could collect licence fees and impose penalties of up to £20.[89]

68. Control of functions under the Act was vested in the Native Minister (and thus the Native Affairs Department), and Executives and Committees had to follow European administration procedures, however the Act did provide some limited, opportunities for self-government and these were taken up by Taihape Māori to the extent possible given the funding limitations. In the Inquiry District.[90]

69. The Whiti-Tama Committee, later renamed as the Moawhango Committee is mentioned in technical evidence in relation to health matters and marae upkeep; the Tuwharetoa Tribal Committee was able to get membership in the Advisory Committee for the Kaimanawa Forest Park, gazetted in 1969; [91] "Local Maori owners and members of the Tribal Committee" were included in the list of organisations supporting a Preservation Committee set up by R. Batley to preserve forest on Awarua ADB2 and Aorangi Awarua, though Armstrong thinks their involvement was probably "marginal, at best";[92]

[87] Sections 7-8.
[88] Section 12.
[89] Wai 2180 #A41 Paul Christoffel *Education, Health, and Housing in the Taihape Inquiry District, 1880-2013* (Waitangi Tribunal, Wellington 2016) at 219.
[90] Wai 2180 #A45 David Armstrong *The Impact of Environmental Change in the Taihape District, 1840-C1970* (2016) at 359.
[91] Wai 2180 #A45 David Armstrong *The Impact of Environmental Change in the Taihape District, 1840-C1970* (2016) at 127.
[92] Wai 2180 #A45 David Armstrong *The Impact of Environmental Change in the Taihape District, 1840-C1970* (2016) at 176-177.

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

71. The Māori Social and Economic Advancement Act 1945 was repealed by what is now called the Maori Community Development Act 1962. This Act does not provide for local governance functions, other, perhaps, than the role of Māori Wardens.[93]

Current efforts

72. Taihape Māori continue to maintain that traditional structures are the most appropriate vehicles for them to carry out governance functions. Utiku Potaka gave evidence of efforts to get government recognition of traditional structures as platforms for iwi and hapū to express their tino rangatiratanga, saying:

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

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

Establishment of local government

74. The 1842 Municipal Corporations Ordinance set up local bodies to ensure "the good order health and convenience of the inhabitants of towns and their neighbourhoods".[94] The preamble explicitly recognised the value in peoples' participation in local matters, and that local people could best make decisions about local matters. Special purpose

[93] Section 18, section 7.
[94] Preamble.

boards for roads, hospitals, drainage, and nuisances such as rabbits followed, and the Counties Act 1876 replaced the provincial system with 63 county councils.

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

    a. Part X

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

        ii. (5.) Public Libraries &c;

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

        iv. (7.) Markets, &c;

        v. (8.) Pedlars and Hawkers;

        vi. (9.) Slaughter-houses;

        vii. (10.) Pounds.

76. Council functions under the Local Government Act 2002 continue in a noticeably similar vein. The former section 11A, in force at the time Ms Woodley presented her report on local government in the Inquiry District, provided that 'Core services to be considered in performing role', a local authority must have particular regard to the contribution that the following core services make to its communities;--

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

    b. public transport services;

    c. solid waste collection and disposal;

    d. avoidance or mitigation of natural hazards;

e. libraries, museums, reserves et cetera.

77. Section 11A was repealed in May 2019 by the Local Government (Community Well-being) Amendment Act 2019, which emphasises, community well-being and "provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach".[95] Nevertheless, those core services remain central.

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

Settler Government in the Inquiry District

79. The Rangitikei Highways Board was the first form of local government to be introduced to the region. This was followed by county councils, road boards, hospital boards, rabbit boards, and catchment boards . Since the restructuring of local government in 1989 the majority of the inquiry district is part of the Rangitikei District Council. At the regional level the majority of the Taihape Inquiry District falls within the Horizons Regional Council. The Te Koau and Kaweka blocks, and parts of Owhaoko, come under the jurisdiction of the Hawke's Bay Regional Council.

Catchment Boards

80. Catchment boards were set up to manage river control and soil conservation at a local level.[96] The Soil Conservation and Rivers Control Act 1948, under which boards are constituted, is still partly in force. No mention is made of mana whenua membership in either the legislation or the boards operating in the Inquiry District.[97] Since 1991,

[95] Local Government Act 2002, rew section 3(d).
[96] Wai 2180 #A48 Phillip Cleaver *Maori and Economic Development in the Taihape Inquiry District 1860-2013* (2016) at 229.
[97] Section 41.

some Treaty duties are imported by section 10A, which provides that nothing in the Act may derogate from the Resource Management Act 1991.

81. The Catchment Boards were bodies corporate, comprised of eight to fifteen elected members (or a combination of elected and non-elected members), being representatives of the constituent districts that made up a catchment district and elected by electors of the districts.[98] Non-elected members would be appointed by the Governor-General for a three-year term.[99]

82. The powers of boards extend to acquiring land under Public Works Acts,[100] disposing of land or licensing cutting and logging,[101] controlling reserves,[102] and prosecuting offences in relation to reserves, watercourses and works, and obstruction.[103] Repealed powers include the power to make by-laws for the protection of watercourses, for defence against water, and for land utilisation,[104] and wide powers of rating that included administrative, general, separate, special works, maintenance, and special rates in respect of loans.[105]

83. In 1972 the Hawke's Bay Catchment Board identified Te Koau A as land for acquisition to end grazing and manage it in a way that prevented erosion from causing negative effects downstream.[106] Issues with access, and a change in political direction, ended the acquisition process.

84. The actions of Rangitikei-Wanganui Catchment Board affected the Awarua 1DB2 Trust's governance decisions, significantly diminishing owners' ability to derive revenue from their land. It was the express wish of the owners[107] to log the podocarp forest on the block, and in 1974 a proposal from a Marton sawmilling firm was put to the

[98] Sections 40-41, 45.
[99] Sections 44, 51.
[100] Section 19.
[101] Section 20.
[102] Section 16.
[103] Sections 17, 153-154.
[104] Sections 149-150.
[105] Part 5.
[106] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 692.
[107] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 723.

Catchment Board.[108] The "emotive" language of the Forest Service on the proposal attracted the attention of conservation groups, and in November "a public meeting was held as to the best use of the land from a conservation and recreation perspective."[109] Walzl records that the owners of the block appeared to have largely been left out of prior discussions.[110] In 1980 the Board took unspecified "legal measures to restrict land use on the blocks."[111] This is a heavy-handed attitude and on its face unfair approach to private property rights, as well as lacking any appreciation that the land was a remnant of tribally owned and controlled forest.

85. In 1982 another logging proposal was put forward to the Board by Reeves Contractors.[112] The owners eventually signed a logging contract with Reeves, and in 1987 the Catchment Board declined the proposal. Reeves appealed, supported by the owners, and the appeal authority granted the proposal with amended conditions.[113] The Catchment Board in turn appealed to the High Court, and also filed for judicial review. When Reeves applied to the County Council for consent, the Catchment Board lodged an objection.[114] The High Court dismissed both the Catchment Board's appeal and its application for judicial review,[115] however the Council declined the consent application and advised Reeves further consents would in any case be required.[116] The matter seems to have lapsed from this point. This incident demonstrates the practical power of local government legislation to frustrate the desires of Maori owners on their remaining land.

86. Catchment Board decisions have also caused material losses to mana whenua. When the Rangitikei Catchment Board in the 1950s and 1960s changed the course of the Rangitikei river without consulting

[108] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 718.
[109] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 718.
[110] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 719.
[111] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 721.
[112] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 721-722.
[113] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 724.
[114] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 725. It is worth noting here that the Department of Conservation also objected on grounds of cultural and historial value, and the diminshment of spiritual and traditional values. It should be noted that some present and former trustees also objected, however the Trust had consented. Walzl at 725.
[115] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 725.
[116] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 725.

mana whenua, pipi and cockle beds were destroyed.[117] When it diverted the Waituna Stream, the lands behind Poupatate Marae began to flood regularly.[118] And when it undertook flood protection works on one side of the river and not the other, mana whenua lost land to erosion on the side of the river not addressed.[119]

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

Road boards

88. The Rangitikei Highways Board, with the Rangitikei County Council, undertook construction of roads in the district until 1883, when it ceased to function.[120] Other road boards appear only incidentally in the record of inquiry as concerns local government issues There was no evidence of consideration of mana whenua participation or membership in the relevant boards. Nevertheless, the reputations of road boards evidently preceded them; in 1872, Retimana Te Rango and Ngāti Tama petitioned the government opposing road boards (and roads) in Mokai Patea.[121]

Drainage boards

89. The Land Drainage Act 1893 (An Act to provide for the Drainage of Agricultural and Pastoral Lands) constituted the first Drainage Boards.[122] The Act explicitly applied to Native lands, making them rateable for the purposes of the Act, and providing that takings of Native lands for the purposes of the Act would be carried out under the Public Works Act 1882 as amended by the 1887 and 1889 Amendment Acts.[123]

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[117] Wai 2180, F6 Joint statement of evidence of Hare Arapere and Puruhe Smith at 55-56.
[118] Wai 2180, F6 Joint statement of evidence of Hare Arapere and Puruhe Smith at 57.
[119] Wai 2180, F7 Statement of evidence of Turoa Karatea at 36.
[120] Wai 2180 #A9 Phillip Cleaver *Taking of Māori Land for Public Works in the Taihape Inquiry District* (Waitangi Tribunal, 2012) at 178.
[121] Wai 2180 #A43 Bruce Stirling *Taihape District 19th Century Overview* (Waitangi Tribunal, Wellington, 2016) at 237.
[122] Section 9.
[123] Section 4.

90. Boards were elected by local ratepayers according to the valuation rolls.[124] As noted above, Māori did not enjoy the full franchise until 1944, which limited their ability to vote in drainage board elections. Should not enough persons be elected, the Governor could appoint Trustees.[125]

91. The boards and their agents (including surveyors) had powers to cleanse, repair, maintain, improve, and create watercourses, outfalls, drains, and their banks.[126] They could take land, and could take materials from and form roads over adjacent lands for their purposes.[127] They could also construct, evidently without consent, drains over lands they did not own (and could then charge the owners for the cost of the works in proportion to the benefit each piece of land derived).[128] Compensation was payable to landowners whose lands had been taken or used by the boards, with compensation for Native lands being determined by the Native Land Court. The Act and its 1904 replacement and various amendments did not consider Māori membership of the boards.

92. The Rangitikei Drainage Board undertook significant works in the Inquiry District, however it did not include mana whenua in its decision-making processes.[129] David Alexander's comment on the first Rangitikei River Scheme, started in 1947 and carried into effect from 1952 notes some of the issues experienced by Taihape Māori, not only in respect of that scheme, but from the time of the constitution of the catchment boards in the 1890s up until their amalgamation into district and regional councils in 1990:[130]

> Throughout the whole process of Catchment Board preparation and Crown approval, there had not been a single reference to the relationship of Rangitikei River Maori with their tupuna awa, to Maori ownership of riverbank land, to consultation with Maori, or

[124] Sections 10-12.
[125] Section 13.
[126] Section 19.
[127] Section 19(5) and (6).
[128] Section 22.
[129] See, for example, Wai 2180, #L1 Evidence of Edward Penetito at 33-34; #L4 Amended Brief of Evidence of Rodney Graham at 84.
[130] Wai 2180 #A40 David Alexander *Rangitikei River and its Tributories Historical Report* (CFRT, 2015) at 395.

to the effect of the scheme on tangata whenua once it went ahead. The scheme was considered only in terms of river engineering technicalities, and in financial terms.

Rabbit boards

93. Rabbits were introduced to the country by settlers and quickly got out of hand. The first Rabbit Nuisance Act was passed in 1867. Under the 1876 Act, rabbit boards could direct landowners to destroy rabbits, and if no action was taken the boards could step in and take measures at the owners' expense.[131] Boards were elected by "landowners within the district and could levy rates."[132] The 1881 Act established a system of rabbit inspectors, and the 1882 Act increased powers to declare Rabbit Districts and to require rabbit-proof fencing to be erected. Inspectors came under the authority of the Department of Agriculture after it was set up in 1892. Rabbit control was one of the department's major functions, accounting for a quarter of its budget in 1895.[133]

94. The Rabbit Nuisance Amendment Act 1947 changed the focus to a 'kill at all costs' system, funded from rates paid to the rabbit boards which were matched by the government. This system was successful in the period of the 1950s to the 1970s, but in 1980 the government changed its funding from dollar-for-dollar to lump sum. From 1984 the government adopted a 'user pays' policy, and progressively withdrew funding. In 1989 Regional Councils took over responsibility for rabbit issues.[134] There is no provision for mana whenua membership or control in any of the legislative responses to the issue up to that date, and no mana whenua membership has been discovered in the course of research.[135]

95. Crown rabbit destruction entities were active in the Inquiry District. Rabbits were sufficient a pest on the Owhaoko blocks for the

[131] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 216.
[132] Sections 7, 9.
[133] Robert Peden, 'Rabbits - The role of government', Te Ara - the Encyclopedia of New Zealand, http://www.TeAra.govt.nz/en/rabbits/page-7 (accessed 1 October 2020).
[134] Robert Peden, 'Rabbits - The role of government', Te Ara - the Encyclopedia of New Zealand, http://www.TeAra.govt.nz/en/rabbits/page-7 (accessed 1 October 2020).
[135] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 223.

Department of Agriculture to spend £400 per year in the 1920s on their control.[136] Thousands more pounds were spent over the course of the 1920s on rabbit control on Māori land in the Inquiry District.[137] Stirling attributes this to concern for neighbouring properties, rather than concern for Owhaoko itself.[138]

96. Where the rabbit boards dropped poison, they did it in such amounts that the land itself was poisoned; this was known as 'rabbit-sick land' actually reducing its use for future grazing[139] In 1921, in response to Ngamatea Station concerns about adjacent unoccupied Crown and Māori lands being untreated for rabbit issues, the Minister of Agriculture ordered the local Rabbit Inspector to poison the blocks.[140] In the following two years he arranged for 20 tons of poison to be dropped on the lands.[141] There is no mention of consultation with the block owners. This exercise was repeated in 1935 on the northern side of the Moawhango Rabbit Board's boundary; again there is no record of consultation with the Māori owners.[142]

97. The Agriculture Department initially funded its rabbit control activities in the District, but from late 1921 it sought to recover funds expended on Māori lands in pursuit of rabbit extermination from the Native Department.[143] Native Department officials disavowed responsibility for these costs, but offered to provide information to help track down the owners.[144] The Agriculture Department also tried, unsucessfully, to

[136] Wai 2180 #A6 Martin Fisher and Bruce Stirling *Sub-district Block Study – Northern* Aspect (Crown Forestry Rental Trust, Wellington, 2012) at 125.
[137] See tables in Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 227-230.
[138] Wai 2180 #A6 Martin Fisher and Bruce Stirling *Sub-district Block Study – Northern* Aspect (Crown Forestry Rental Trust, Wellington, 2012) at 125.
[139] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 8 and 215-216..
[140] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 220.
[141] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 220.
[142] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 224.
[143] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 226-227.
[144] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 227.

have the Native Department lease or sell the Māori lands within the Inquiry District on which it was killing rabbits.[145]

98. This saga shows that there were numerous missed opportunities to engage with the owners of the Māori lands affected by rabbits. Given that the sole reason the Crown sought to do so was to make them pay the costs it is difficult to see this failure as altogether a bad thing, however that misses the point that the Crown ought to have taken measures to protect Māori land within the Inquiry District from the rabbit invasion, most practically by means of a rabbit-proof fence,[146] and ought to have controlled any rabbits inside the boundaries. This was, after all, recommended by the Lands Department for Crown lands in the district.[147] Taihape Māori were not responsible for introducing rabbits to the country or to the Inquiry District, but the Crown failed to make this distinction when addressing the issue.

Noxious weeds

99. The Noxious Weeds Act 1900 provided that the Governor could appoint inspectors, however it was local government that had power to declare plants noxious weeds.[148] In practice, local government and inspectors seem to have worked fairly closely together, and until 1950, when inspectors could be appointed by local government,[149] it can be difficult to say to what extent an action is a Crown action or a local government action.[150]

100. Noxious weeds had been recorded as an issue in the Inquiry District since 1911, when the then Land Board President strongly suggested that the owners of the Owhaoko blocks, since they were proving recalcitrant in the matter of handing over their lands to the Crown, ought to have their noxious weed clearance obligations rigorously

[145] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 232, 233, 234.
[146] Wai 2180, #A45(a) David Armstrong The Impact of Environmental Change in the Taihape District, 1840-c1970 (2016) at 216.
[147] Idem. "The Lands Department recommended tighter control and further regulation, and suggested that the Government put its own house in order by clearing Crown lands of this pest."
[148] Sections 25, 4.
[149] Section 17(b).
[150] See, for example, Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 135; Wai 2180, #A45 Armstrong *Environmental Change 1840-c1970* (2016) at 104.

enforced.[151] In 1938 and 1939 legal action was taken by the Noxious Weeds Inspector against 12 owners of the Owhaoko C3B block.[152]

Present day participation

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

102. In 1989, Hirini Matunga's report Local Government: A Māori Perspective, written for the Māori Consultative Group on Local Government Reform, made the case that local government needs clear statutory guidelines that outline their Treaty obligations and tell them how to meet them in decision-making, particularly in respect of resources and land.[153] He considered a legislative imperative was essential to ensuring local government meets its Treaty responsibilities. Eighteen years later, in the midst of consultation on the local government review, Jeanette Fitzsimons, then a sitting MP, wrote in the Hauraki Herald that the discussion document on the review contained no analysis or proposals on the local government relationship with the Treaty.[154]

103. Matunga's recommendation was not implemented, and over two decades later Bassett and Kay were able to write that Māori are "virtually invisible" in the record of local government in the Inquiry District.[155] They noted that in the two decades before their 2012

[151] #A046, Walzl, *Twentieth Century Overview* at 340.
[152] Wai 2180, #A45(a) David Armstrong *The Impact of Environmental Change in the Taihape District 1840-c1970* (2016) at 104.
[153] Hirini Matunga *Local Government: A Maori Perspective* Report for Māori Consultative Group on Local Government Reform (Wellington, 1989) at 6.
[154] Jeanette Fitzsimons "Which way Local Government? Have your say" *Hauraki Herald* (New Zealand, 20 July 2001).
[155] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 9.

scoping report on local government issues, only two Māori were elected to council, and none before that.[156] They also recorded that Māori voting rates in the Inquiry District are low.[157] Claimant witnesses gave evidence that matters in the Inquiry District have not meaningfully moved forward since the 2012 Bassett and Kay scoping report.[158]

Treaty elements in local government legislation

Local Government Act 2002

104. The 2002 Act provides that the Crown has Treaty responsibilities and that local government must fulfil some of these because of its governance role, but it fails to provide any recognition of the commitment to the constitutional relationship, nor specific guidance for local government.[159] The Act in practice has not had meaningful outcomes for Māori in general, and Taihape Māori have given evidence that it has not done so in the Inquiry District either.

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

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

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

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

106. Other provisions in the Resource Management Act involvement of iwi and hapu in resource management at practical and governance levels. The sections generally recognise iwi authorities as the appropriate

[156] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 9.
[157] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 9.
[158] See, for example, Wai 2180, #L7, Evidence of Puti Wilson.
[159] Section 4.

engagement bodies for local and regional government. For example, section 33 provides that "A local authority may transfer any 1 or more of its functions, powers, or duties under this Act, […], to another public authority in accordance with this section." 'Another public authority' includes an iwi authority. One issue is that there is no provision for tikanga-based structures such as rūnanga, which are the expressed preference of some claimants.[160] The bigger issue is that, within the Inquiry District, no local authority power has been transferred to any iwi authority.

Taihape Māori experiences

107. A particular concern of claimants was that whenever new councillors were elected, "the committee had to start again with 'educating' them about Maori interests and concerns."[161] There was no mention of structure or formality around this education process or any funding for it. Nor is there mention of Crown guidance and support for incoming councillors to understand the Treaty obligations their roles entail.

108. There have been two consultative bodies set up with in the region. Te Roopu Ahi Kaa (for the Rangitikei District Council) and Ngā Pae o Rangitikei (for the Horizons Regional Council). Evidence from some claimant groups suggests that these are seen as less of a vehicle for mana whenua to fulfil their kaitiakitanga responsibilities than a mechanism for the engagement the Council is compelled to undertake.[162] Regardless, these are merely voices for decision-makers to take into account when making decisions – the end process of which excludes mana whenua, and Ngati Hinemanu – Ngati Paki felt that those with ahi kaa were not necessarily recognised.[163]

109. The Rangitīkei District Council appears to be willing to support greater involvement in decision-making for Taihape Māori. The Statement on Development of Māori Capacity to Contribute to Council Decision-

[160] Wai 2180, #L9, Evidence of Utiku Potaka at 12.
[161] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 12.
[162] Wai 2180, #L7, Evidence of Puti Wilson at 6-7.
[163] Wai 2180, #F5, Evidence of Jordan Winiata-Haines at 64.

making was adopted into the Long Term Plan in 2018.[164] The Introduction states:

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

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

111. Ngā Pae o Rangitīkei is a body formed at the initiative of local iwi.[165] It focusses on Regional Council-level issues relating to waterways, and in particular the Rangitīkei River. Horizons Regional Council has been found by the courts in recent times to be deliberately "manipulat[ing] and pervert[ing]" the implementation of its own regional plan with respect to accepting farm pollution of waterways.[166] The Court has been extremely critical of the Council's behaviour.[167] The public response from the Council chair defended farmers. Expert witness Puti Wilson gave evidence that, "Māori are less likely or capable to continue engaging with Councils when past experience has been ineffective." [168] The Environment Court comments and the Council's response do not inspire confidence that Horizons is committed to engaging with outside groups to rectify issues, which include issues for Taihape Māori of lack of fulfilment of its Treaty duties.

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[164] https://www.rangitikei.govt.nz/files/general/Policies/Statement-on-Development-of-Maori-Capacity-to-Contribute-to-Council-Decision-making-2017.pdf This statement was easy to find on the Council website.
[165] Wai 2180, #F5, Evidence of Jordan Winiata-Haines at 64-65.
[166] *Wellington Fish and Game Council* v *Manawatu-Wanganui Regional Council* [2017] NZEnvC 37 at [182].
[167] *Wellington Fish and Game Council* v *Manawatu-Wanganui Regional Council* [2017] NZEnvC 37 at [183].
[168] Wai 2180, #L7, Evidence of Puti Wilson at 3.

112. Ms Wilson also gave evidence that Mana Whakahono a Rohe agreements tend to limit the effectiveness of hapū and iwi by failing to capture their individual nuances.[169] She discussed decision-making in partnership, i.e. co-governance, as a meaningful model that:[170]

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

113. In questioning she also emphasised the differences in effectiveness between joint management agreements enabled by legislation, and those which are simply reflected in memoranda of understanding which she saw as being more limited.[171] We think part of the reason statutory agreements are more desirable is that they empower the Māori partners to enforce the agreements, whereas less formal agreements rely in practice on the Crown taking the enforcement role on their behalf.

Conclusions

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

[169] Wai 2180, #L7, Evidence of Puti Wilson at 8.
[170] Wai 2180, #L7, Evidence of Puti Wilson at 8. See also #4.1.16 at 427.
[171] Wai 2180, #4.1.16 at 427-428.

in fact it did the minimum necessary to quiet Taihape Māori while retaining the confidence of the colonists.

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

116. Missed opportunities also came in the form of proposals from Taihape Māori, which the Crown did not take up. These included the rūnanga movement, the native council and native committee movements and Bills, the various Maori parliament initiatives from Kohimarama in the 1860s to Kotahitanga in the 1890s, and many more. From the earliest days of Crown involvement in the Inquiry District, Taihape Māori have been seeking the partnership and continuation of tino rangatiratanga set down in the solemn compact of the Treaty. Several technical witnesses have noted the unusual ability and exceptional leadership of rangatira in the Inquiry District. In just two of many examples, responding to questions from Dr Ballara on committees, and Dr Soutar on information sharing, Walzl said:[172]

> They had that idea of that coming into existence really. It's very, very – the 1892 and '95 letters are so sophisticated compared to what I've seen it's amazing. So these certainly are men and women of knowledge and great business understanding …

and

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

117. Stirling also noted this sophistication:[173]

> But yes, quite earlier on they set up komiti, they join the repudiation movement and support its efforts to have the land laws fundamentally amended, and then you know moving right

[172] Wai 2180, #4.1.15 at 165 and 185. See also further examples at pp 233-234, 251-252, and 298.
[173] Wai 2180, #4.1.10 at 390.

> through to the Awarua ērā in the late 1880 and early 1890s. They very clearly set out aspirations and goals, and methods that will meet the needs of the Crown and the owners, and settlers in a fairly reasonable generous fashion, but those efforts are ignored by the Crown.

118. Stirling also noted that Māori were actively acting as partners, providing solutions to the issues they experienced as a result of Crown action and inaction:[174]

> … that's what's so baffling about it, that they're almost like some kind of model Māori. If you're the Crown these are the sort of people you want to deal with. They are really rational, practical business like, organised. You think that's what they would want to engage with and work with, but it's just business as usual. Just buy it up and we'll sort it out later if there's anything left for you, yes, yes.

119. Their abilities were also recognised in their own time by the settler press:[175]

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

120. Despite this clear ability on the part of its Treaty partners in the Inquiry District, it is notable that Māori are absent from the record of interactions with local government. That is to say, the partnership and sharing of power went off-track from a very early stage.

121. Settler local government was imposed on the Inquiry District without reference to the Treaty. It was a Crown innovation for settlers and settlement; no regard was had to the impact on customary tenure and desire for self-management. When Taihape Māori attempted to engage with the Crown on these matters, there was, at times, complete silence

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[174] Wai 2180, #4.1.10 at 529.
[175] *1880-2013* (Waitangi Tribunal, Wellington 2016) at 177.

in response.[176] Where the Crown did respond to Māori self-governance aspirations, O'Malley has described the responses as co-option and intentional indirect rule, rather than as good faith facilitation of self-government.[177] Hill agrees with this position, describing situations where the Crown had established "control institutions" as emphatically not "designed to be or operated as concessionary organs of self-determination."[178] The Crown does not give effect to the Treaty when it co-opts, waters down, and coerces Maori self-governing institutions.

122. The issue does not seem to be about concern in relation to legal pluralism. Provincial and local government themselves are obvious forms of legal pluralism. A particular example of the delegation of central government authority is criminal prosecution, which is generally reserved to the state but in respect of breaches of parts of the Resource Management Act 1991 is delegated to local authorities.[179] The Crown also delegates powers to entities such as the Fish and Game Councils.[180] Additionally, central government has reserved to itself some functions often carried out by local authorities, for example acquisition, ownership, administration, and disposal of reserves under the Reserves Act 1977 and many of the Reserves and Other Lands Disposals Acts.

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

[176] See, for example, Wai 2180, #4.1.10 at 528, questions of Bryan Gilling to Bruce Stirling.
[177] Vincent O'Malley "Indigenous Agency versus Enforced Assimilation: The Role of Maori Committees in the Nineteenth Century" (20 October 2012) The Meeting Place - A New Zealand History Blog <https://www.meetingplace.nz/2012/10/indigenous-agency-versus-enforced.html>
[178] Richard S Hill *State Authority, Indigenous Autonomy: Crown-Maori Relations in New Zealand/Aotearoa 1900-1950* (VUP, Wellington, 2004) at 34.
[179] See Part 12.
[180] Constituted under section 26B Conservation Act 1987.

124. Matthew Palmer QC, prior to his elevation to the judiciary, considered the issue of the rightful place of the Treaty.[181] He considered this would be best achieved by enshrining it in law:[182]

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

125. In the recent discussion in the *Ellis* case on the place of tikanga in New Zealand law, an exchange between Chief Justice Winkelmann, Justice Williams, and Ms Coates for Te Hunga Roia Māori o Aotearoa as intervenor identified a potential weakness in that approach.[183] The concern expressed was the interpretation of tikanga by judges unfamiliar with te ao Māori. This suggests care would be needed to ensure that judges who have little experience of te ao Māori are educated to the level necessary to correctly interpret law relating to the Treaty. Judges with better knowledge and understanding of te ao Māori would enhance our legal system as a whole.

126. Under Palmer's theory, statutes would need to in some manner explain how Treaty interests would remain upheld and protected in the local government context. Precise tests might be required, against which to measure each local authority. Under this theory, the Crown's failure to legislate and implement accordingly is an entirely remediable breach of some 148 years standing.[184]

Findings and remedies sought

127. Utiku Potaka in his evidence on environment topics sought the following recommendations:[185]

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[181] See https://works.bepress.com/matthew_palmer/.
[182] Matthew S. R. Palmer, QC, 'The Treaty of Waitangi in New Zealand's Law and Constitution in 2015' 3 February 2015, at 9. From selected works of The Hon Justice Matthew Palmer at https://works.bepress.com/matthew_palmer/.
[183] *Peter Hugh McGregor Ellis* v *The Queen* [2020] NZSC Trans 19 at 18-19.
[184] I.e. from at least the time of the New Zealand Constitution Act 1852.
[185] Wai 2180, #L9 at 5.

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

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

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

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

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

129. Remedies must be developed in partnership with Taihape Māori, and must recognise both hapū and iwi soveregnty. The Crown's preference for dealing with large natural groupings needs to be carefully applied because, from a local government perspective, both the issues and the hapu can be exceedingly localised

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

with reference to the Crown obligation not to allow breaches of the Treaty by local government, and by what mana whenua consider appropriate within their rohe.

131. We adopt the statements from the Wairarapa Tribunal which said the Local Government Act 2002 and the Resource Management Act 1991 both require "more compelling Treaty provisions… regular audits and sanctions for non-compliance".[186]

132. We adopt (with appropriate modifications) the remedies recommended from Te Mana Whata Ahuru part IV as follows:[187]

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

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

    c. Co-management regimes could be chosen from the existing suite of options under the Resource Management Act 1991 or through the enactment of legislation for a different form of co-management. [...] These co-management bodies, and the relationship they reflect, should be established on the basis that the environment is a taonga of Taihape Maori.

    The Crown, as part of this recognition and the development of these co-management regimes, should proactively look to restore taonga sites where practicable These sites should be identified in conjunction

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

with Taihape Māori and may include wetlands, forests, wāhi tapu, or any other sites of environmental or heritage value

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

RATING IN THE TAIHAPE INQUIRY DISTRICT

134. 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.[188] 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.[189] The issue is whether the Crown has managed, in the Inquiry District, to ensure that Maori have been fairly treated when rates are introduced.

135. 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.

136. 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...".[190]

[188] See, for example, *The Hauraki Report* at 1018, and *Turanga Tangata Turanga Whenua* at 653.
[189] See, for example *The Hauraki Report* at 1017-1018, and *Tauranga Moana 1886-2006* at 380-381, 389-391, 395, 396, 482-483.
[190] Wai 2180, #A046, Walzl, *Twentieth Century Overview* at 18-19.

Issues in this Inquiry

137. Mokai Patea Māori signed a petition that included a rejection of rating Māori land. 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:[191]

> 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."

138. He also described rating of unleased lands and those "not in actual cultivation", or the sale of land for overdue rates, as "unfair".[192] Thirty-three years later, in 1918, Herries as Native Minister gave criteria for rating Māori land as:[193]

a. Land being used/cultivated

b. Land being leased

c. Land sold.

139. Twenty-one years after the Herries statement, in 1939, Chair of the Board of Māori Affairs, Michael Joseph Savage reported that:[194]

> 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

[191] '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.
[192][192] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 43.
[193] See Wai 2180, #A37(f) letter from Native Minister Herries at 187-188.
[194] 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.

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.

140. Inherent in these Crown statements is protection of the ability of owners to manage their lands on their terms. Nonetheless, exemptions and remissions for Māori land were not consistently laid out along these lines. In the inquiry district very few areas were exempted 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.

141. In 1882 the Hawke's Bay County Council successfully protested the exclusion of Māori land in Crown grant from the operation of the Crown and Native Lands Rating Act 1882. 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.[195] This suggests a financial interest in rates collection on the part of the County Council. 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.[196] 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.”[197]

142. Back rates could still be, and were, pursued even when exemptions applied. Sir Apirana Ngata successfully legislated to

[195] Wai 2180, #A37, Woodley *Rating and Landlocked Blocks Report* at 26.
[196] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 136.
[197] Wai 2180, #A46 Walzl *Twentieth Century* at 212-213.

give write-off powers in those circumstances; Woodley stated the legislation was "never used".[198]

143. The Rating Act 1882 exempted Māori land unless there was a non-Māori occupier on it.[199] Rates payable by the occupier remained a feature of rating legislation for some time. That same year, 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.[200] Notice to Taihape Māori land owners of their rates liability was by way of publication in the Gazette a year after the fact.[201]

144. 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.[202] 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).

145. 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.[203] The Governor could also declare lands not rateable.[204]

146. 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:[205]

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

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

[198] #Wai 2180, #4.1.11 at 386-387; Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 36.
[199] Section 2 “Rateable property” (6).
[200] Section 6(15).
[201] See Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 25 and #4.1.11 at 392-393.
[202] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 28.
[203] Section 18.
[204] Section 18.
[205] Section 2.

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.

147. 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.

148. The Rating Amendment Act 1910 made all Māori land except customary land liable to be fully rated.[206] The earlier provisions for half rates were not included.

149. 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.[207] For the first time, a local authority could decide to remit rates on Māori land.[208]

150. 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.[209] There was no remission specifically for Māori land, however the general remissions provisions for extreme financial hardship could be applied.[210] Postponement of rates by a council for reasons of extreme financial hardship was prohibited where the owner of freehold Māori land was the occupier.[211]

151. The Rating Powers Act 1988 again provided for customary land, and Māori freehold land not exceeding 2.03 hectares, in the new

[206] Section 3.
[207] Section 4.
[208] Section 14.
[209] Sections 17, 14, 16.
[210] Section 144.
[211] Section 145(4).

currency, and used as a burial ground or on which was a meeting house to be exempted.[212]

152. 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.

153. 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.[213] 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.[214]

[212] Schedule I, Part II, clauses 15, 11, 14.
[213] For example, the Native Land Rating Act 1924.
[214] Wai 2180, #4.1.11 at 385.

Taxation without representation

154. 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.[215] The franchise, however, was far more the exception than the rule by some considerable margin, until 1944.[216]

155. 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.[217]

156. 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.[218] That nominated owner would also be solely liable for paying the rates "as if they were the sole occupiers",[219] however judgment could be enforced against all the owners and against the land. 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.[220]

157. 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

[215] 4.1.11 Transcript of Hearing Week 4 at 392.
[216]
[217] Sectioon 17.
[218] Sections 4, 7.
[219] Section 7(2).
[220] Section 9.

Rangitikei County Council to the Premier that the Valuation Department was not accurately recording ownership.[221] 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.[222]

158. 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.[223] Liability for rates judgments continued to fall on all the block owners.

159. 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.

160. 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.[224]

161. Bassett and Kay record that up until 2012, only two Māori had been elected in the Inquiry District.[225] There was no update on this information provided in the evidence.

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[221] Wai 2180, #A37, Suzanne Woodley Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015 at 94.
[222] Wai 2180, #A37, Suzanne Woodley Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015 at 95-96.
[223] Section 7.
[224] https://paperspast.natlib.govt.nz/newspapers/EP19440418.2.31.2
[225] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 9.

162. 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

163. 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,[226] landlocked Maori land was generally rated with nothing guaranteed in return.

164. 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;

e. libraries, museums, reserves et cetera.

165. 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—

[226] Section 85.

(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.

166. 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:[227]

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

167. Woodley saw no evidence of this occurring. 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.

168. 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.[228] Exemptions under this Act could not be made retrospective; any rates outstanding remained so, and nor could special rates such as the hospital rate be exempted.[229]

169. 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.[230] Further, the Crown could decide whether its own land with productive capacity was rated or not, and

[227] Section 7.
[228] Sections 2, 5.
[229] Sections 5(2), 5(5).
[230] Wai 2180, #4.1.11 at 392.

between 1950 and 1955 it did so in respect of several pastoral runs in the Inquiry District.

170. 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. 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.[231] Woodley notes that "that much of the Maori land in the Erewhon riding was unoccupied and undeveloped and therefore non-revenue producing."[232] Despite this, it was still rated. Within the riding there was "25 miles of main road, […] and 3 miles of branch road." [233]

171. 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.[234] 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.[235] 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).[236]

172. 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

[231] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 68.
[232] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 67.
[233] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 68.
[234] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 77.
[235] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 79-81.
[236] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 88.

since 1 April 1892,[237] the absence of roads to large areas of them is a particularly egregious failure.

Taxation of unproductive lands

173. 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 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.

174. Rating of Māori land with no capacity to produce revenue, which continued until the 2002 Act, contrasts with statements of Crown ministers and proposals of Taihape Māori. for relief for owners so that they might avoid charging orders.[238]

175. In 1895, ten years after his statement on rating to Rohe Pōtae Māori, 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."[239] 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".[240]

176. In 1913, Utiku Potaka wrote to Native Minister Herries asking for understanding about the ability of Taihape Māori to pay rates.[241] 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

[237] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 86.
[238] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 121.
[239] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 44.
[240] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 44.
[241] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 47.

issue of rates, noting that Owhaoko and Te Koau blocks were under Crown control[242] and the Māori owners had no options for use because of this but were still being rated.[243] Although he responded to the other matters Te Ua raised, Herries was silent on the rating aspect.

177. 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."[244]

178. 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:[245]

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

    b. 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;

    c. Land under preemption should be excluded from rating.

179. 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. The inspection by Rangitikei County Council officials and councillors in 1945 is the first mention of this sort of activity being undertaken.

180. Again in 1930, and yet again in 1957, Māori proposed a land classification system to assess land to see if it could support

[242] 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.
[243] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 46-47.
[244] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 48.
[245] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 50.

rates. The response from the Minister of Maori Affairs to the 1950 proposal was that "he could not agree that unoccupied or non-revenue producing Maori land should be exempted from rating".[246] The justification was that roads and other services were provided by the county, and none should be exempt from contributing to this. While this correspondence related specifically to Taupō, Woodley considered it was "directly relevant" to the Inquiry District.

181. 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.[247]

182. 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.[248] 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.[249] 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.[250] In response the Council said that a trade-off between the rates and the consent might be possible.[251]

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[246] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 52.
[247] Wai 2180, #A5, Bassett Kay Research *Local Government, Rating and Native Township Scoping Report* (CFRT, 2012) at 19.
[248] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 290, 293.
[249] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 294.
[250] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 295. See also #A45 Walzl *Twentieth Century* at 722.
[251] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 295.

In 1985 the Council threatened the owners with "action" to recover the outstanding rates.[252] In 1987 the owners again made a formal request for an exemption; no action was taken.[253] The Council's lawyers also recommended no compensation be paid for the water scheme infrastructure and works on the land.[254] In 1999 the rates and consent issues were still unresolved, however the owners had by then agreed to a Ngā Whenua Rāhui covenant.[255] 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".[256] In 2001 the owners asked for a rates remission, and again in 2006.[257] The remission was granted for a six year period.[258]

183. 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.[259]

Taxation without regard to the circumstances of the owners

184. 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. [260] It was not until 1904 that the stamp duty for Māori land was made the same as that for general land.[261] Section 3 of the Native Land Rating Act 1904

[252] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 296.
[253] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 296-297.
[254] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 296-297.
[255] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 299.
[256] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 299.
[257] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 300.
[258] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 300.
[259] Local Government (Rating) Act 2002, Schedules 1, 12.
[260] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 26 citing Bennion at 17.
[261] 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.

185. After the passage of the Native Land Rating Act 1924, rates arrears increased against Maori land where Pakeha lessees had walked off. Several of the Oruamatua-Kaimanawa blocks were leased during the 1930s, but neither the rent nor the rates were consistently paid.[262] Owners sought exemptions several times, in the end the land was sent to the Māori Land Board to administer.[263] 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.[264] The Council agreed to a 50% remission in exchange for a cash settlement.[265] Eventually, in 1941, the Board, at the Council's request, reluctantly agreed to terminate the lease so the land could be exempted as unrateable.[266]

Lack of consultation at the local level

186. 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.[267] Hawke's Bay Māori did set up a committee to consider rates cases, but the Council did not provide funding or support its findings. 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

187. The rabbit menace, as noted in the local government section, was at plague proportions in the Inquiry District. Rabbit Boards were

[262] Wai 2180, #A5, Bassett Kay *Rating Scoping Report* at 21.
[263] Wai 2180, #A5, Bassett Kay *Rating Scoping Report* at 21.
[264] Wai 2180, #A5, Bassett Kay *Rating Scoping Report* at 21.
[265] Wai 2180, #A5, Bassett Kay *Rating Scoping Report* at 21.
[266] Wai 2180, #A5, Bassett Kay *Rating Scoping Report* at 21.
[267] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 228.

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.[268]

188. In 1905 rabbits were enough of a problem in the Erewhon riding for a councillor to write to the newspaper about the spread on the Owhaoko block recently abandoned by the Studholmes.[269] 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".[270] Councillor Donnelly's statement reads as though he considered state assistance to settlers for an issue caused by settlers was preferable to state assistance to Māori.

189. Woodley agreed that rabbit rates were "an encumbrance and a constraint in addition to … other rates… for Māori owners.[271] 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.[272] Additionally, Armstrong records that the Forest Service "freely admitted" rabbit rates in the Inquiry District to be onerous.[273] 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".[274] Woodley did not

[268] 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.
[269] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 70.
[270] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 70.
[271] Wai 2180, #4.1.11 at 423.
[272] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 223. Reserve Bank inflation calculator https://www.rbnz.govt.nz/monetary-policy/inflation-calculator.
[273] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 222.
[274] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 222.

see evidence of Crown consideration of fairness in introducing rabbit rates.[275]

190. At some point in the 1920s, rabbit charges were imposed on the owner of Awarua 2C3B.[276] 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.[277] 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.[278] She considers this evidence that even revenue-producing lands could have difficulties meeting rates demands.[279] 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.[280]

191. In 1929 the Board gained Native Minister Ngāta's consent[281] 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.[282] The mortgage attracted interest of 5% and repayments were to be over a 20 year period.[283] According to the Reserve Bank inflation calculator for general (CPI) inflation, £275 in 1929 is equivalent to almost $28,000 today.[284]

192. 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 2020 dollars.[285] Despite this, an inspection by the Ministry of Agriculture found that a third of the area for which it

[275] Wai 2180, #4.1.11 at 42.
[276] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 100.
[277] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 101.
[278] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 101.
[279] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 102.
[280] Reserve Bank inflation calculator https://www.rbnz.govt.nz/monetary-policy/inflation-calculator.
[281] Under section 230 of the Native Land Act 1909.
[282] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 100-101.
[283] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 101.
[284] Reserve Bank inflation calculator https://www.rbnz.govt.nz/monetary-policy/inflation-calculator.
[285] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 224-225.
https://www.rbnz.govt.nz/monetary-policy/inflation-calculator.

was responsible was infested with rabbits; the Livestock Superintendent concluded the Board was not effective.[286]

193. 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.[287] 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.

194. 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.[288] 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.

Land loss due to rates charges

195. 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

[286] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 225.
[287] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 227-230.
[288] Wai 2180, #A45, Armstrong *Environment 1840-C1970* at 235.

heart following the retirement of a key official.[289] 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.[290]

196. 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.[291] 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.[292] The lessee purchased the land (conditions of sale included payment of back rates) which gave him security of access to his other blocks.[293]

197. 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.[294] 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.[295] Woodley notes that:[296]

> 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.

[289] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 132.
[290] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 138.
[291] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 139, 141-142.
[292] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 140.
[293] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 140.
[294] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 146.
[295] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 148.
[296] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 146.

198. 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.[297] 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.[298]

199. 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.[299] It seems that the receiverships were to enforce payment of overdue rates, as current rates were being paid; all were paid off and discharged.[300]

Awarua 2C15B2

200. 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.[301] One of the issues was lessees not paying rates.[302] Another was noxious weeds charges, for which the owner's son was prosecuted and fined.[303] 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.[304] As Woodley notes, there was provision in the Noxious Weeds Act 1950 for the Rangitikei County Council to recover noxious weeds charges

[297] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 146-147.
[298] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 147.
[299] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 165.
[300] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 166.
[301] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 173-174.
[302] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 174.
[303] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 178.
[304] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 172, 178.

against Māori land from the Crown, however the Council instead continued to pursue the owners for the funds.[305]

201. The rates outstanding in 1967 totalled £7.8.4.[306] The noxious weeds charges remained at £80.16.3. Application was 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.[307] 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 Minister should decline the order "In view of the difficulties of implementing the provisions of this section".[308] 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.[309]

202. 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.[310]

203. The Registrar of the Māori Land Court recommended the Council pursue a rates charging order as a "safeguard".[311] The Council did

[305] Section 14. The Crown could then recover the funds via a charging order; section 15.
[306] 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.
[307] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 183-184.
[308] See Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 183-186.
[309] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 186.
[310] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 187.
[311] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 187-188.

this, and also pursued the s 438 order.[312] The Court approved the Council's draft order, and vested the land in the Council for sale.[313] The Council was allowed to keep the costs of the application and sale, and of "putting the title in order".[314] Again, there is no record of the owners attending this hearing.[315] In 1970 the Council sold the land to the adjoining owner who had earlier offered £30 for it,[316] for $60 in the new currency.[317] 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 purchaser an unencumbered title).[318] The owners received nothing.[319]

Rating of landlocked lands

204. 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

205. 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.[320] 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.[321] Additionally, when he was

[312] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 188.
[313] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 188.
[314] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 188.
[315] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 188.
[316] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 184.
[317] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 189.
[318] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 189.
[319] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 189.
[320] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 111-112.
[321] 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.[322]

206. 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.[323] In 1962 he wrote to one of the owners enclosing a notice:[324]

> 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'.

Crown exemptions from rates

207. 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.[325] 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.[326]

208. Woodley also notes exemptions in the Kiwitea County:[327]

> … 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

[322] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 111-113.
[323] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 142, 184.
[324] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 181.
[325] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 70.
[326] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 114-115, 159.
[327] Wai 2180, #A37 Woodley *Rating and Landlocked Blocks* at 215-216.

forests (capital value £2410) and unoccupied Crown lands and Crown reserves (capital value £9,555).

209. 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

210. 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.[328] There is no national oversight for fairness, Treaty compliance, or quality control.

211. 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 document being titled and filed under 'Rates Remission and Postponement Policies'.[329] The Awarua o Hinemanu and Te Koau blocks fall in their entirety into the Hastings District.

212. 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

[328] Section 108(3).
[329] 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/.

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.

213. 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:[330]

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.

214. Land owners still need to apply for exemptions, and must do so every six years.[331] 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.[332] We think landlocked land could be granted a standing exemption until such time as it becomes unlocked, as the Council will necessarily be

[330] https://www.rangitikei.govt.nz/files/general/Policies/Rates-Remission-for-Maori-Freehold-Land-Policy-May-2018.PDF
[331] See, for example, Wai 2180, #H21(a) at 5.3.
[332] Wai 2180, #H21(a) at 6.

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

215. 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*.[333] That report contains the most recent thorough examination of rating law currently affecting Māori land. The terms of reference included "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.

216. 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

[333] See http://www.dia.govt.nz/Decommissioned-websites---Rates-Inquiry

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.

217. 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

218. 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.

219. The Introduction to the Bill states:[334]

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

220. The Minister's introduction of the Bill to the House included the following statements:[335]

> […] 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

[334] Local Government (Rating of Whenua Māori) Amendment Bill, Introduction, English text at 1.
[335] Hon. Nanaia Mahuta https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20200312_20200312_24

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 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.

221. 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.[336]

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

222. Te Puni Kōkiri in its description of the Bill states that it will:[337]

> 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 Māori Affairs Committee's recommendation

223. The Māori Affairs Committee reported:[338]

> 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.

The Departmental Report

224. The Departmental Report of the Department of Internal Affairs cites the Hauraki Report finding that:[339]

> 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.

225. 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

[337] tpk.govt.nz/en/whakamahia/whenua-maori/proposed-changes-to-the-rating-of-maori-land
[338] Local Government (Rating of Whenua Māori) Amendment Bill, Introduction, English text at 1.
[339] 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.

of the Rating Act with the principles of the Treaty" but does not say how the Bill does so.[340]

226. The Report notes that the Bill does not address three issues of particular importance to "a large number of submitters":[341]

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.

227. In respect of the valuation system, the Report records:[342]

> 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."

228. 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

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[340] 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.
[341] 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.
[342] 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).

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.

229. The authors also comment that "There would be significant investigation and policy work to develop appropriate legislative change in this area."[343] We suggest that this matter should not be left in abeyance. A good place to start would be for the Treaty partners to sit down and work together.

230. In respect of the burden of payment falling on one owner, the report states:[344]

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.

231. 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.

232. 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."[345] The Report does go on to say that further work may be warranted in respect of the application of

[343] 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.
[344] 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.
[345] 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.

uniform charges to Māori land.[346] We think some consideration of the long history of this issue and the financial pressures it has caused Māori would be appropriate.

233. 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 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

234. 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.

235. 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;

[346] 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.

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.

236. 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

237. 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.

238. 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.

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

240. 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 20th day of October 2020

Tom Bennion / Lisa Black