IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND

WAI 2180

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of the Taihape Rangitīkei ki Rangipō District Inquiry (Wai 2180)

GENERIC CLOSING SUBMISSIONS
20th CENTURY LAND ALIENATION

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MAY IT PLEASE THE TRIBUNAL

1.0 INTRODUCTION

1.1 The Crown's priority and focus throughout the 20th Century was European settlement and sustained benefits for the settler community. Throughout this period, Taihape Māori were relegated to the economic and social margins of society where they experienced extensive land loss and successive governments who were apathetic and dismissive of Māori needs and aspirations.

1.2 Despite good faith attempts by Taihape rangatira to meet the Crown halfway on utilisation and development proposals, the Crown placed success and prosperity out of reach for Māori by enacting legislation and implementing policies inconsistent with their tikanga and communal structures of land tenure. Such legislation and policy were major barriers to success that ultimately hamstrung any attempts from rangatira to ensure a prosperous future for their people.

1.3 The beginning of the 20th Century was a crucial period for Taihape Māori. They were poised with the right leadership, agricultural knowledge and experience to ensure the sustained prosperity of their people for generations to come. However, their success necessitated a mutual extension of consistent good faith by their Treaty partner, which did not come.

1.4 By the mid-20th Century, the enactment of legislative provisions, europeanising Māori land tenure and examples of unfair and unlawful Crown land dealings, revealed the existence of Crown entities attempting to provide Māori land with the benefits of general land within an institutionally racist context, and actions which demonstrated an acceptance of marginalising Māori land owners.

1.5 By the end of the 20th Century, Māori land holdings in Taihape were reduced to a mere 20 percent of what it once was as at 1840, which seriously affected the cohesivity of tribal communities and economic viability of Māori land.

1.6 Despite this context, the Crown has not made any statements, acknowledgements or concessions on 20th Century land alienation issues.

1.7 Overall, Crown actions throughout the 20th Century in respect of the following submissions were the cause of significant breaches of the Treaty of Waitangi.

1.8 These submissions will address the following 20th Century land alienation issues:[1]

(a) Debt due to prior Crown policies;

(b) Land Development, Finance and Land Aggregation;

(c) Constraints on Leased Land;

(d) Private purchasing of Māori Land;

(e) Crown responsibilities to Māori owners of Ōtūmore;

(f) Alienation of Awarua 2C15B and Ōwhāoko D6 no 3 block;

(g) Māori Land Court obligations regarding the alienation of Ōwhāoko C3B;

(h) Crown purchase of Ōwhāoko D2; and

(i) Europeanisation of Māori Land.

2.0 EVIDENCE

2.1 These submissions rely on evidence from the technical experts and corresponding cross-examination.

2.2 The Crown produced one brief of evidence by Samuel David Carpenter that is relevant to land alienation on a global scale but fails to consider the New Zealand experience with respect to the Treaty of Waitangi and 20th Century land alienation. This evidence appears to be of little value as the questioning of Mr Carpenter revealed that his evidence: did not provide significant relevance to the Taihape specific historical context, nor did it provide any Treaty analysis and was treated negatively by the Tribunal.[2]

2.3 Issues (f) –(i) noted above are claims specific, where the evidence relied on comes from technical evidence. Submissions on those issues are based on the tangata whenua evidence and have been left for respective claimant closing submissions.

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1 Tribunal Statement of Issues (Wai 2180 #1.4.3, 2016) at 37-38.

2 Hearing Week 2 Palmerston North, 30 May 2017-2 June 2017 (Wai 2180 #4.1.19, 2017).

3.0 DEBT DUE TO PRIOR CROWN POLICIES

3.1 Issue 1: "To what extent, if at all, did Taihape Māori suffer from debt due to prior Crown policies, and how did this impact on their ability to retain their remaining land?" [3]

3.2 The evidence demonstrates that due to prior Crown policies emerging from the end of the 19th Century, Taihape Māori were burdened with significant debts and disparate obstacles to accessing land development assistance from the Government as a means to settle debts. Consequently, Taihape Māori sold their land to repay debt.

3.3 The main policies connected to the indebtedness of Māori include:

(a) Native land policy seeking the conversion of Māori land held in accordance with tikanga Māori; and

(b) Policy providing land development finance that did not accommodate the communal mode of Māori land tenure and that required Māori to meet a more difficult criteria than their European counterparts.

Evidence – Debt

3.4 With consideration of the total amount of land in the Taihape Inquiry District and the amount of land that was lost by 1900 - 2000, it is likely that the total amount of land sold due to debts stemming from Crown policy is greater than what is evidenced.

Time	**Land in acres**
1850	1,169,226 acres in customary Māori ownership. This is 100 percent of land within the Taihape Inquiry District[4]
1900	472,990 acres remaining as Māori land[5]

[3] Tribunal Statement of Issues (Wai 2180 #1.4.3, 2016) at 37.

[4] Craig Innes, *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013* (Wai 2180 #A15(m), 2018) at 153.

[5] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 66.

2000	175,688 acres remaining as Māori land[6]

3.5 This list below evinces the known land blocks that were sold as a consequence of debts that are linked to prior Crown policies from the 19th Century.

Year	Land Block/ Acres Sold	Purchase Price (£)	Reason
1927	Taraketi 1F/ 70 acres	£1236 pounds	To clear debt: £653 to discharge mortgage with Native Trustee, £250-£300 to Rangitikei County Council for rates arrears, £150 to Matene ltd for rates advance and £100 for rent overdraft.[7]
1962	Ōtūmore/ 5152 acres	£425	Sold to discharge outstanding survey fees.[8]
1922	Te Koau B/ 6879 acres	£375	Sold to discharge survey liens.[9]
1945	Motukawa 1B/ 367 acres	Leased	Leased by Aotea Māori Land Board who was appointed as a receiver to discharge rates.[10]
1896	Motukawa 2/ 27885 acres	N/A	Partitioned, new blocks sold to the Crown to discharge unpaid survey costs.[11]
1906	Ōwhāoko A/ 1600 acres	£120 (survey debt)	Vested in the Surveyor General as payment for outstanding survey liens.[12]

6 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 66.
7 T.J Hearn, *Sub-district Block Study- Southern Aspect* (Wai 2180 #A7, 2012) at 194.
8 T.J Hearn, *Sub-district Block Study- Southern Aspect* (Wai 2180 #A7, 2012) at 239-241.
9 E Subasic and B Stirling, *Sub-district Block Study- Central Aspect* (Wai 2180 #A8, 2012) at 15.
10 E Subasic and B Stirling, *Sub-district Block Study- Central Aspect* (Wai 2180 #A8, 2012) at 43.
11 E Subasic and B Stirling, *Sub-district Block Study- Central Aspect* (Wai 2180 #A8, 2012) at 44.
12 M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 #A6, 2012) at 72-73.

1906	Ōwhāoko A1/ 57 acres	£4.5.4 (survey debt)	Vested in the Surveyor General as payment for outstanding survey liens.[13]
1906	Ōwhāoko B/ 410 acres	£31 (survey debt)	Vested in the Surveyor General as payment for outstanding survey liens.[14]
1906	Ōwhāoko C/ 1366 acres	£372.7.7 (survey debt)	Vested in the Surveyor General as payment for outstanding survey liens.[15]
1906	Ōwhāoko D4/ 92 acres	£9.5 (survey debt)	Vested in the Surveyor General as payment for outstanding survey liens.[16]
1906	Ōwhāoko D8/ 326 acres	£32.13.5 (survey debt)	Vested in the Surveyor General as payment for outstanding survey liens.[17]
1906	Ōwhāoko B1/ 65 acres	£5.4.6	Vested in the Surveyor General as payment for outstanding survey liens.[18]

[13] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 #A6, 2012) at 72-73.
[14] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 #A6, 2012) at 72-73.
[15] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 #A6, 2012) at 72-73.
[16] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 #A6, 2012) at 72-73.
[17] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 #A6, 2012) at 72-73.
[18] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 #A6, 2012) at 72-73.

Submission – Debt

3.6 It is a well-founded fact that Native Land Court fees, including the cost of surveys for investigations of title forced Māori into significant debt.[19]

3.7 In the *He Maunga Rongo Report* the Tribunal found that associated Native Land Court costs for Māori owners were unfairly burdensome and in some cases their debts led to the loss of disproportionate amounts of land.[20] This was echoed in *Te Rohe Potae Claims Report* where it was found that: "…the Crown, in failing to lessen the costs associated with the court process, or to institute a fairer and more equal distribution of those costs, breached the Treaty principle of active protection."[21]

3.8 The Tribunal findings from the *Pouakani, Maunga Rongo and Te Rohe Potae Claims Reports* are applicable to the Taihape experience as the table demonstrates that debt stemming from title investigations were a significant and determining factor in Taihape Māori selling land.

3.9 Māori were forced into discharging debt by selling land. Prior to 1900 Māori had no reasonable way to raise capital for developing their land. Therefore, turning a profit from the land in order to pay debts, was not a reasonable option. Loans could be taken out over stock, but because stock were perceived as an unstable asset the interest rates were so high that it was difficult to justify taking such a risk to borrow money.[22] Ihakara Te Rango went bankrupt trying to service a loan taken out against his stock.[23] Banks were not willing to lend on Māori land given the multiple ownership structure.[24] Therefore, Māori were left with no choice but to sell their land in order to clear debt.

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19 Waitangi Tribunal, *The Pouakani Report* (Wai 33, 1993) at 307-308.

20 Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims Stage 1 Volume 2 (Part 3)* (Wai 1200, 2008) at 520.

21 Waitangi Tribunal, *Report on Te Rohe Pōtae Claims Parts I and II* (Wai 898, 2018) at 1270.

22 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 191-193.

23 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 580-591.

24 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 191-193.

3.10 By 1900, 214, 059 acres of Māori land, in the Taihape inquiry, was alienated.[25] 89.2 percent of land remaining in Māori ownership was either unsuitable or had a very low suitability for arable cropping, pastoral grazing or forestry.[26]

3.11 Despite the exorbitant costs associated with surveys and the fact that Māori were forced into selling land in order to clear debt, the Crown did nothing to lessen the burden of these costs.

3.12 Converting customary title into Crown derived title ultimately meant that Māori had to pay to give effect to a Crown version of their Article 2 guarantees of Tino Rangatiratanga over their land. Such situations, according to the Tribunal in the *Te Rohe Pōtae Claims Report* are a plain breach of the active protection principle.[27]

Prejudice – Debt

3.13 The immediate prejudice experienced by Māori landowners who sold land under such circumstances was loss of land that formed an integral part of their economic base and whakapapa Māori.

3.14 The next submissions demonstrate that land was central to the emerging agricultural economy, without land Māori were not able to participate in that economy. This led to outcomes where Taihape Māori were marginalised both economically and socially within the emerging agricultural economy and settler society.

4.0 LAND DEVELOPMENT, FINANCE AND LAND AGGREGATION

4.1 As a general start point the Tribunal said in *Te Mana Whatu Ahuru: Report on Te Rohe Potae Claims,* that Article 3 of the Treaty required Māori to be treated equitably. Meaning that the Crown had a duty to ensure that settlers were not favoured over Māori communities.[28] This is a firmly established finding of the Waitangi Tribunal.[29]

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[25] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 37.
[26] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 40.
[27] Waitangi Tribunal, *Report on Te Rohe Pōtae Claims Parts I and II* (Wai 898, 2018) at 1270.
[28] Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Potae Claims Parts I and II* (Wai 898, 2018) at 185.
[29] Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui : Report on Northern South Island Claims, Volume 1* (Wai 785, 2008) at 5.

4.2 In breach of this Treaty duty, the Crown demonstrated a distinct preference and prioritisation of European settler interests over Taihape Māori as it related to matters of development, financing and aggregation of land.

4.3 By the end of the 19th Century Taihape Māori sought to be active and a contributing part of the new agricultural economy and emerging settler community.[30]

1.1 In order to achieve this, they needed the assistance of the Crown. However, the Crown's plan moving into the 20th Century prioritised and supported European settlement and marginalised Taihape Māori aspirations.

1.2 The Crown's Treaty breaches will be analysed in this submission with reference to the following key components of the emerging agricultural economy:

(a) Land Development;

(b) Finance; and

(c) Land Aggregation.

Evidence – Land Development

4.4 On 9 September 1892, Taihape rangatira, specifically: Wiremu Broughton, Utiku Potaka, Raumaewa Te Rango, Hiraka Te Rango, Wirihana Hunia on behalf of Ngāti Whiti, Ngāti Hauiti, Ngāti Hinemanu and Ngāti Tama, wrote to the Native Minister laying out a plan for their people to contribute to the emerging agricultural economy and settler community. These rangatira understood that for the new emerging economy to include European settlers that they would need to offer up land. As such, their letter began by offering the Crown 100,000 acres spread across various subdivisions as set out in the table below:[31]

Blocks Offered	Total Area (Acres)	Proposed Sale Area (Acres)
Awarua 1	145,428	50,000

[30] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 611.
[31] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 181.

Awarua 1A	33,072	16,000
Awarua 3B	6,234	8,000
Awarua 4	42,110	10,000
Awarua 4A	7,660	5,000
Motukawa 2	30, 935	11,000
Total	**265, 439**	**100,000**

4.5 The land they sought to retain would have supported over 500,000 sheep at the time.[32]

4.6 The letter then went on to lay out their aspirations for the remaining land to be restricted from sale or lease. The letter stated:[33]

> That the lands remaining in the said blocks outside the 100,000 acres above referred to shall be restricted against sale or lease excepting as hereinafter provided.

4.7 The remainder of the letter sought for title to be awarded without delay, for no further surveys to be authorised at owners' expense and for Māori to be empowered to manage their lands:[34]

> That legislation be at once enacted to empower the owners of the said blocks to form themselves into a company or companies with a committee or committees of management. Any such company may comprise a family or a group of families, and any such committee, to consist of not more than ten persons elected from themselves, the members of the company.
>
> That the Government will on the application of any company so formed advance to its committee from the funds of the Government Insurance Department or any other fund at its disposal a sum of money not exceeding half the value of the land owned by the persons for whom the

[32] David Armstrong *Mokai Patea Land, People and Politics* (Wai 2180 #A49, 2016) at 12.
[33] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 181.
[34] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 182.

> said committee may be acting. Such advance to be made at the same rate of interest as is charged by said Department to Europeans and to be made solely for the purpose of improving and stocking the land upon which the said money is borrowed, the expenditure of said money so advanced to be made under such official supervision as the Government may deem necessary.
>
> That should any of the owners in the said blocks wish at any time to sell some portion of their land they may do so only through the particular committee of management having authority over the land desired to be sold – but if there should be no such committee, the owners of the said land shall not be able to dispose of the same until they have formed themselves into a company and elected a committee of management from themselves.
>
> That should any of the owners in the said block wish at any time to lease some portion of their land they may do so only in the same manner of sale except that as regards each such lease the land comprised therein shall first be allocated and divided by fence from users' occupation of other owners, before tenant can enter into possession.
>
> Therefore, it is for these reasons we now approach the Government with the earnest hope that the conditions we ask may be granted and that the Government will introduce such other measures as they may seem fit towards supporting and carrying out our views and so bring about without delay a better state of things for our people and our lands than that which now exists.

4.8 In response, the evidence shows that the Crown appeared to be disinterested and focused on initiating their own purchasing program:[35]

> … the Govt hopes to be able with the ensuing month to begin the purchase of such shares as any of the owners may feel inclined to dispose of and that when all those who desire to sell have had an opportunity of doing [so] the land will be again brought the Court when with the reduced ownership it will probably be possible to get the titles into a more satisfactory position.

[35] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 183.

4.9 This meant that the lands sought to be excluded by Taihape rangatira were to be included in potential Crown purchases.

4.10 On 2 March 1894, a meeting was held in Moawhango between Māori landowners and Premier Richard Seddon. There was no acknowledgement of the letter penned in 1892, instead Seddon focused on Crown acquisition of Māori land. He blatantly asked them whether they would like to hand over their land to the Crown, in return he promised that the Crown would ensure they had ample land for their support.[36] After this the Crown carried on with purchasing individual interests. Crown purchasing between 1880 – 1910 equated to about 935,410 acres of Māori land.[37]

4.11 Furthermore, Seddon said that Māori land currently lying in a state of nature must be brought into production as its retention in Māori hands was *retarding* European settlement. He offered them the ultimatum to either transfer surplus lands to the Crown or else the Crown would compulsorily take it.[38]

4.12 Despite there being a lack of response from the Crown, legal mechanisms were affected to provide for committee style management such as incorporations and Māori Committees. Section 30 of the Māori Lands Administration Act 1900 permitted owners on blocks with 10+ owners to form themselves into body corporates. Section 31 allowed the majority of owners to appoint the Māori Land Council to administer the land on their behalf, but in doing so they lost control of the land.

4.13 Incorporation was available under the Native Land Act 1909 in cases where land was owned by five or more owners. Committees of Management could be elected within incorporations if owners holding half of the shares agreed. These committees had the power to alienate land, manage farming operations and borrow money using the land as security.

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[36] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 182-183.

[37] Craig Innes, *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013* (Wai 2180 #A15(m), 2018) at 154.

[38] David Armstrong, *Mokai Patea Land, People and Politics* (Wai 2180 #A49, 2016) at 78.

4.14 Most Māori land in Taihape was not eligible for incorporation because incorporation was not permitted on blocks where the Crown owned an undivided interest. The Crown owned undivided interests on most of the land at this time.[39]

4.15 A key economic indication for Taihape Māori was the annual sheep returns. The returns report conveyed a sharp decline in Māori owned sheep numbers between 1896 – 1919. In 1896 Māori owned sheep populations were about 150,000. In 1905 that figure had fallen to 12,502 from a total 661,000. By 1919 there were only about five Māori farmers in Taihape running a total of 6,642 sheep.[40]

4.16 In 1870, Julius Vogel advocated for a broad immigration programme, public works and land purchase.[41] He believed railway construction had the potential to address the stagnation of the economy and thatthe construction of a railway would allow European settlement to be extended into new districts. [42]

4.17 Extensive purchasing happened in the south of the inquiry along the North Island Main Trunk Route ("NIMTR") before 1885 when construction started.[43] The Crown planned to purchase land along the NIMTR so that Europeans could benefit from the economic opportunities flowing from construction of the railway.[44]

4.18 The Crown prohibited private purchases and re-enacted pre-emption so that it could buy Māori land cheap and sell it to European immigrants at a profit in order to fund construction.[45] No consultation took place with Māori. Māori weren't informed of the Crown's agenda and the Crown did not turn its mind to how Māori should benefit from the NIMTR.

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39 David Armstrong, *Mokai Patea Land, People and Politics* (Wai 2180 #A49, 2016) at 12.
40 David Armstrong, *Mokai Patea Land, People and Politics* (Wai 2180 #A49, 2016) at 10.
41 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 121.
42 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 121.
43 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 122.
44 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 125.
45 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 125.

4.19 In 1891, Richard Seddon carried on the policy of purchasing Māori land, however this time it was purely for the purpose of European settlement.[46] As stated earlier, Seddon's Moawhango meeting with Taihape Māori was dominated by his statements that more Māori land was needed and that if it wasn't offered to the Crown, it would be taken compulsorily.

4.20 By 1909, European appetites for Māori land had grown exponentially to the point that the Crown relaxed constraints on private land purchases so that European settlers could purchase land directly from Māori.[47]

4.21 By 1910, agriculture dominated by European farmers was well established in New Zealand.[48] In 1926, the agriculture industry received more development assistance from the Crown in the form of the Department of Scientific and Industrial Research ("DSIR").[49] The DSIR involved setting up plant and animal research centres at Massey University and Lincoln University. This brought about improvements in pastures production, grazing management and animal breeding.[50]

4.22 In the 1970's the Crown offered farmers subsidies and production incentives to develop marginal land.[51]

4.23 There were only two examples of Māori farmers who took advantage of the land development schemes within the district. Tihoni Kereopa and another farmer who's archived file is restricted. Kereopa sought a loan from the scheme in the late 1930's and had paid it off by 1950.[52]

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46 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 130.

47 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 75.

48 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 227.

49 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 227.

50 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 228.

51 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 230.

52 Bruce Stirling and Evald Subasic, *Technical Research Scoping Report* (Wai 2180 #A2, 2010) at 110.

Submissions – Land Development

4.24 In the *Report on Central North Island Claims* the Tribunal said that at the turn of the 20th Century, central north island Māori were seeking to participate and utilise their land within the emerging agricultural economy, the evidence in the Taihape Inquiry District, as stated above, indicates that Taihape Māori had the same aspirations. In such circumstances the Treaty right of development placed a duty on the Crown to actively intervene, encourage and assist Māori to participate in land development.[53]

4.25 The right to development is derived from a number of Treaty principles which include active protection, mutual benefit, equity, equality and overall partnership.

4.26 The Crown breached these principles by failing to actively assist Māori in the development of their land.

4.27 At the turn of the century, Taihape Māori were keen to contribute to the emerging agricultural economy, this is demonstrated clearly by the letter sent to the Native Minister by Taihape rangatira. Rangatira made it clear that they wanted to be an integral part of the emerging economy and settler community. The extent of their enthusiasm was demonstrated in the letters and proposals to the Crown about how their world could fit within the emerging society.

4.28 In good faith, their letter began with an offer of 100,000 acres across multiple land blocks for European settlement. Second, as will be raised in submissions on finance, the Government Advance Settlers Act 1894 did not accommodate multiple ownership title, so rangatira proposed a solution to this barrier by seeking Crown assistance to set up Māori land companies so that single entities could apply for finance. Third, they made it clear how alienation was to be managed.

4.29 Despite having a clear plan designed to produce mutual benefits for both Treaty partners, the Crown did not give the plan any acknowledgement. In response Richard Seddon's government made it clear that their interests and focus lay in attaining Māori land for European settlement.

4.30 Seddon told Taihape Māori at Moawhango that the Crown was ready and eager to purchase their lands, and that if they weren't willing to sell unused lands it would

[53] Waitangi Tribunal, *Te Wahanga Tupunga o Te Tiriti Stage 1 Part IV* (Wai 1200, 2008) at 999.

be compulsorily acquired. Māori were very much willing to use their land, but they were paralysed from doing so because of a lack of Crown assistance. For the Crown, not assisting Māori advanced its plan as it meant that more land would be available for European settlement.

Prejudice – Land Development

4.31 The consequent prejudice flowing from the Crown's non-assistance manifested in Taihape Māori becoming marginalized, both economically and socially. Additionally, despite Seddon's assurances that Māori would be left with land for their own provision, Taihape Māori eventually became landless. This overall decline in Māori wellbeing is evidenced by the following statistics throughout the early 20th Century.

4.32 An assessment of annual sheep returns demonstrates that Māori wealth was in serious decline by 1919: [54]

(a) In 1896 Māori owned sheep populations were about 150,000;

(b) In 1905 that figure had fallen to 12,502/ 661,000; and

(c) By 1919 there were only about five Māori farmers in Taihape running a total of 6,642 sheep.

4.33 The evidence also demonstrates that Māori landholdings had decreased dramatically by the 1950's:

(a) By 1900 land remaining in Māori ownership had decreased to 48.06 percent, equating to 561, 953 acres out of 1,169, 226 acres;

(b) By 1950 land remaining in Māori ownership had decreased to 31.5 percent, equating to 368, 518 acres; and

(c) By 1990 land remaining in Māori ownership had decreased to 20.09 percent, equating to 234,910 acres. Predominantly, this land was fragmented and landlocked.

4.34 Conversely, the settler experience throughout the 20th Century only improved both in terms of wealth and government assistance. The submissions on land

[54] David Armstrong, *Mokai Patea Land, People and Politics* (Wai 2180 #A49, 2016) at 10.

aggregation show that European settlers, who were prospering from their farming operation, were buying up and leasing neighbouring properties in the pursuit to increase wealth.

4.35 In 1926, the agriculture industry received more development assistance from the Crown in the form of the Department of Scientific and Industrial Research ("DSIR"). As stated above, this brought about improvements in pasture production, grazing management and animal breeding.

4.36 Additionally, in the 1970s the Crown offered farmers subsidies and production incentives to develop marginal land.

Evidence – Finance

4.37 In the early 20th Century, European settler experience of attaining finance was comparatively straight forward. Mortgages were sought over the one property that they worked and occupied, income from that property was used to repay the mortgage.[55] Most notably, European owners did not have to show that they received a secondary income.[56]

4.38 Comparatively, Māori had a very different experience. Prior to the 1900s, Taihape Māori borrowed against their stock in order to raise funds. Using stock as security meant high interest rates, as stock was perceived as a high-risk security.[57] As evidenced in previous submissions, some Taihape Māori went bankrupt servicing such loans.

4.39 It is likely that private lenders were not willing to secure mortgages against Māori land for the following reasons:[58]

(a) Land subject to the Native Land Alienation Restrictions Act 1884 was prohibited from private alienation. This continued through to 1909.

[55] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 566.
[56] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 566.
[57] Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 191-192.
[58] Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 191.

Restrictions could be lifted, but there were delays and many applications were unsuccessful;

(b) Land made inalienable through order of the Native Land Court would not have been available as security;

(c) Incomplete titles; and

(d) Multiple owners – It may have been difficult to secure agreement from all owners.

4.40 The Government Advance Settlers Act 1894 was a manifestation of the Crown's policy to encourage land settlement. Under this Act the Crown offered finance to settlers seeking to develop and secure land. Mortgages were offered to settlers at reasonable rates.[59] Māori were not excluded from applying for finance under the Act, however the unique nature of Māori land tenure made it difficult for Māori to apply.

4.41 In order for Māori to apply for loans under the Act, they were required to prove the following:[60]

(a) They were the sole owner of the land proposed for mortgaging; and

(b) They were the sole owner of other leased lands which generated enough income to cover repayment of the principal and interest.

4.42 This made loans unavailable for many Taihape Māori who owned small shares in multiple-owned land blocks. The owners of such lands could not band together to apply for loans and develop their lands. Only 33 Māori landowners were successful in the 32-year period that these loans were available.[61]

Submissions – Finance

4.43 In the *Wairarapa ki Tararua Report* the Tribunal found that Treaty Principles required the Crown to ensure that Māori were actively assisted to engage with

[59] Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 193

[60] David Armstrong, *Mokai Patea Land, People and Politics* (Wai 2180 #A49, 2016) at 9.

[61] David Armstrong, *Mokai Patea Land, People and Politics* (Wai 2180 #A49, 2016) at 9.

settlement so that they would be on an equal footing with Europeans, which included equal access to development finance.[62] This finding is consistent with previous Tribunal reports.[63] The evidence demonstrates that the Crown fell far short of meeting this standard. The Crown's failure is a breach of the following principles:

(a) Equality; and

(b) Equity;

Equality

4.44 The principle of equality is derived from the third article of the Treaty which states that the Queen will protect all Māori and give them the same rights as the people of England.

4.45 In direct contravention to this promise, the Crown enacted the Government Advance Settlers Act 1894 which manifested an abandonment of Māori aspirations and a clear preference for European settlement. The Act applied two different standards for Māori and Europeans seeking finance.

4.46 The criteria for Europeans, as stated above, was easily achievable and well suited to the established modes of European land tenure, specifically single ownership title. To attain finance, a European settler needed to demonstrate that they had single ownership title over land and that their land produced income sufficient to repay a mortgage.

4.47 Conversely, the criteria for Māori was different and it did not suit the established mode of Māori land tenure, multiple ownership title. To attain finance Māori had to be the sole owner of their land and have a secondary leasing income capable of servicing the mortgage.

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62 Waitangi Tribunal, *Wairarapa ki Tararua Report Volume 1* (Wai 863, 2016) at 182.

63 Waitangi Tribunal, *Tauranga Moana 1886-2006: Report on Post-Raupatu Claims* (Wai 215, 2010) at 160;
Waitangi Tribunal, *The Mohaka ki Ahuriri Report* (Wai 201, 2004) at 681.

4.48 These discriminatory criteria disqualified many Māori who were owners on multiple owned land and who had shares or blocks that were too small for both farming and leasing.

4.49 Taihape Māori informed the Crown on multiple occasions that they needed practical assistance with development and finance specifically.[64] However, the Crown's inaction, and specifically the implementation of the Vogel plan and Richard Seddon's words in Moawhango made it clear that assisting Māori to attain development finance was not a part of the Crown's plan.

Equity

4.50 The Tribunal has found on multiple occasions that Article 3 requires the Crown to act equitably and specifically without discrimination.[65]

4.51 Counsel submits that *equitable* in this context means that the Crown is required to make every reasonable effort to eliminate discriminatory barriers to the outcome of receiving finance. This definition is consistent with a similar expression in the *Hau ora Report Stage 1,* which stated that equity requires the Crown to make every reasonable effort to eliminate barriers to services that may contribute to inequitable health outcomes.[66]

4.52 The evidence demonstrates that the Crown failed to eliminate any barriers to Māori attaining the outcome of receiving development finance. The Government Advance Settlers Act 1894 imposed criteria based on European ideals of single ownership land tenure that disqualified Māori owners on multiple owned land. The Act required Māori to have a secondary leasing income before finance was approved, in reiteration of the above this was discriminatory as it only applied to Māori.[67]

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64 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 182.

65 Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001) at 48, 62;
Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wai 1071, 2004) at 133;
Waitangi Tribunal, *The Mohaka ki Ahuriri Report* (Wai 201, 2004) at 27;
Waitangi Tribunal, *The Te Arawa Mandate Report* (Wai 1150, 2004) at 94;
Waitangi Tribunal, *The Offender Assessment Policies Report* (Wai 1024, 2005) at 13;
Waitangi Tribunal, *He Maunga Rongo Volume 2* (Wai 1200, 2008) at 428.

66 Waitangi Tribunal, *Hauoura Report Stage 1* (Wai 2575, 2019) at 34-35.

67 David Armstrong, *Mokai Patea Land, People and Politics* (Wai 2180 #A49, 2016) at 9.

4.53 Taihape rangatira wrote a letter to the Native minister setting out recommendations which included ways for Māori to attain finance.[68] This provided the Crown with an opportunity to remove barriers, however it failed to act.

Prejudice – Finance

4.54 The turn of the century was a crucial and a defining moment for Taihape Māori as they had the right Māori leadership, agricultural knowledge and experience in rangatira such as Wiremu Broughton, Utiku Potaka, Raumaewa Te Rango, Hiraka Te Rango, Wirihana Hunia to become successful contributors.

4.55 However, they needed the assistance of their Treaty partner, the Crown, in order to succeed in the emerging agricultural economy and settler community. The *Central North Island Report* identified that, at the turn of the 20th Century, lending finance was widely identified as a critical factor in enabling farmers of limited means entry into modern farming. Finance was necessary for building farming infrastructure such as fences, farm roads, shearing sheds, hay sheds and planting grass seed.[69]

4.56 The Crown was unwilling to provide equal and equitable assistance to Taihape Māori at this defining moment. Consequently, Taihape Māori became excluded and marginalised both economically and socially from the emerging agricultural economy and settler community.

Evidence – Aggregation of Land Holdings

4.57 Māori who owned scattered interests in uneconomical blocks in the district sought to consolidate their interests in order to carry out viable sheep farming. Restrictions on alienation made it difficult to consolidate shareholdings through an exchange in land.[70]

4.58 On 17 September 1892, Māori landowners formally sought a solution by petitioning the Native Minister:[71]

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68 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 181.
69 Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims Stage 1 Volume 3 (Part 4)* (Wai 1200, 2008) at 958.
70 David Armstrong, *Mokai Patea Land, People and Politics* (Wai 2180 #A49, 2016) at 73.
71 David Armstrong, *Mokai Patea Land, People and Politics* (Wai 2180 #A49, 2016) at 73.

> "… of the present fettered position in which they are placed. In many instances a person's share in one subdivision of the block is not sufficient for him to occupy, but consolidation by exchange of interests in one or more subdivisions for those in another would remedy this."

4.59 In response the Crown reiterated its willingness to buy undivided interests instead of assisting Māori with consolidation.[72]

4.60 Again in 1895, Hiraka Te Rango raised this issue with the Crown, he identified that there was a need for consolidation as many shares were unworkable. He proposed that uneconomic interests could be sold to the Crown for an exchange of consolidated Crown granted land.[73] Again, no response was received from the Crown. Hiraka Te Rango wrote to the Native Minister, expressing that:[74]

> Is our wish to have our interests consolidated and located as nearly as possible in one place. Many of us have interests in several of the Awarua subdivisions (some of which are of small area) and would be unworkable unless consolidated. How the consolidating is to be done is the question we submit to your consideration. I and Captain Blake had a conversation with Mr Carroll here on 6th April in respect to this matter as well as the other subject. We suggested that the shares sought to be transferred might be sold to the Crown and in exchange a grant to be made to such sellers for like area in value out of Government land in the block in which they wished to have their land interests consolidated. Mr Carroll remarked that such grant would have to be as a Native Reserve – with which I agreed. He told us you were coming soon to Hastings and advised me to lay what I had to say on these two subjects before you in writing.

4.61 However, the Crown was unresponsive.

4.62 Unsurprisingly, as the evidence demonstrates, the Crown's response failed to acknowledge Māori concerns. However, the Crown did reiterate its willingness to acquire their shares.

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[72] David Armstrong, *Mokai Patea Land, People and Politics* (Wai 2180 #A49, 2016) at 74.
[73] David Armstrong, *Mokai Patea Land, People and Politics* (Wai 2180 #A49, 2016) at 74.
[74] E Subasic and B Stirling, *Sub-district Block Study- Central Aspect* (Wai 2180 A8, 2012) at 102.

4.63 The Native Land Act 1909 provided for consolidation as envisaged by Hiraka Te Rango, however, there is no evidence of this being implemented in Taihape.[75]

4.64 By 1913, Pākehā farmers were seeking to increase the size of their farms by purchasing neighbouring properties, this being known as the land aggregation and in some cases dummyism.

4.65 Dummyism was a practice where people who already held land in the area would use members of their family to acquire more land through leasehold.[76] This practice was condemned by all members of the community within the district.

4.66 In contrast with Māori, European settlers sought to aggregate land holdings in order to increase wealth,[77] whereas Māori were seeking Crown assistance to consolidate shareholdings in order to become economically viable farmers.

4.67 Original allotments of land were around 100 – 200 acres. However, by 1913 newspapers were saying that about 600 acres was needed to make a decent profit.[78]

4.68 There was a significant amount of public and political disdain for the practice of aggregating land blocks in order to increase wealth, as this meant a less robust and diverse community and less support for town businesses. Despite the disdain, nothing was done to stop smaller blocks from becoming uneconomical units.

Submissions – Aggregation of Land Holdings

4.69 In reiteration of earlier submissions, the Crown have an active duty to assist and encourage Māori in developing their lands. As far as consolidation is concerned this means that the Crown should have meaningfully considered and put into effect the requests of Hiraka Te Rango and Māori landowners of small and scattered uneconomical shares in land for consolidation.

4.70 Simultaneously, European farmers were doing so well that they were buying neighbouring properties for the purpose of increasing wealth. Whilst this was brought to the Crown's attention by disapproving members of the public, the Crown

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[75] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 A6, 2012) at 3.
[76] Hearing Week 7 Winiata Marae 21-24 May 2018 (Wai 2180 #4.1.15, 2018) at 150.
[77] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 182-183.
[78] Tony Walzl, *Twentieth Century Overview (*Wai 2180 #A46, 2016) at 233.

did not prevent it, as the original 100-200 acre allocations were becoming uneconomical.

4.71 The Crown's failure to acknowledge Māori concerns and assist in consolidating their fragmented uneconomical shares was a simple breach of Article 2 of the Treaty and the right to development as articulated in submissions on *Land Development*. The Crown failed to provide Māori with the required assistance for them to consolidate land and therefore utilise and practically participate in the agricultural economy.

Prejudice – Aggregation of Land Holdings

4.72 Consequently, another barrier to development was not removed, despite Māori providing the Crown with a clear solution to consolidate fragmented shares.

4.73 In reiteration of earlier submissions on finance and land development, this was another factor that contributed to Taihape Māori becoming economically and socially marginalised.

5.0 MĀORI LEASE LAND

5.1 Issue 3: "How, if at all, were attempts by Taihape Māori to lease land constrained by Crown acts and policy?" [79]

5.2 Constraints to Taihape Māori leasing land were caused in part and to a diminishing extent by the following Acts:

(a) Māori Land Administration Act 1900;

(b) Māori Land Settlement Act 1905; and

(c) Land Act 1909.

5.3 The context giving rise to the legislative mechanisms within these Acts is important in understanding why constraints existed and will be explained in the evidence section to follow.

[79] Tribunal Statement of Issues (Wai 2180 #1.4.3, 2016) at 37.

5.4 The Crown's breaches of the Treaty in relation to leasing, are concerned with the relaxation of these constraints, which at the outset were enacted to protect the retention of Māori land.

Evidence– Māori Lease Land

5.5 In the 19th Century, the Crown policy to maximise land utilisation resulted in permanent Māori land alienation for a significant proportion of the land. By 1900, land remaining in Māori ownership had decreased to 48.06 percent which equates to 561, 953 acres out of 1,169,226 acres.[80]

5.6 Taihape Māori landowners actively sought the discontinuance of permanent land alienation as Māori land ownership was quickly diminishing.[81] However, the concerns of Taihape Māori conflicted with Crown policy, which was to acquire as much land for utilisation and settlement. [82]

5.7 By 1900, a compromise was struck which attempted to give effect to both Māori concerns and Crown aspirations.[83] The policy manifested in Crown pre-emption which prohibited private land purchasing. This was known as the taihoa policy to slow-down land alienation.[84] This is when constraints were placed on leasing.

5.8 Under the Māori Land Administration Act 1900 the preamble addressed four perceived problems existing with Māori land:[85]

(a) The decline in Māori owned land;

(b) The remaining Māori land that was unoccupied and unproductive;

(c) Māori were not encouraged to use land; and

(d) Māori land was not administered well.

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80 Craig Innes, *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013* (Wai 2180 #A15(m), 2018) at 153.

81 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 130-131.

82 Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage 1 Volume 2(Part 3)* (Wai 1200, 2008) at 559.

83 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 59.

84 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 130-131.

85 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 51.

5.9 This was an attempt to ensure Māori were not left landless and had enough land for their own support.[86] However, the Crown did little to ensure this happened as thousands of acres were still alienated post-1900.[87]

5.10 The protective mechanisms in the 1900 Act were superseded by the Māori Land Settlement Act 1905. From 1905, private leasing became less constrained, Taihape Māori entered into more leases. This reflected a decline in Māori taking up sheep farming from the late 1890s and a relaxation of constraints giving effect to Māori concerns about land alienation.[88]

5.11 Simultaneously, the settler community in Taihape was booming, this led to settler pressure for the acquisition of further land in Māori ownership.[89] During 1906, co-operative workers in the Taihape area petitioned the Minister of Lands regarding their desire to settle in the district if suitable land could be secured.[90] They received a response from the Under-Secretary of Lands indicating that the Commissioner of Crown Lands would ascertain what blocks of native land were suitable for settlement.[91]

5.12 On 8 March 1906, there was a meeting held in Taihape for the purpose of forming a scheme to deal with the acquisition of native lands in the vicinity of Taihape.[92] Settlers who attended commented that vast tracts of land between Taihape and Mataroa were lying idle. It was considered important to get Europeans on this land.

5.13 After this meeting another petition was drawn up from a Taihape settler which secured 300 signatures to the Minister of Lands in respect of the purchase of Native Lands for closer settlement.[93]

5.14 Despite Māori attempts to *constrain* alienation, it proliferated throughout the 20th Century and was assisted by the Native Lands Act 1909 which effectively

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86 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 50.
87 Craig Innes, *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013* (Wai 2180 #A015(m), 2018) at 153.
88 Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 207.
89 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 224.
90 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 225.
91 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 225.
92 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 226.
93 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 226.

streamlined procedures for leasing and sale so that blocks with less than 10 owners could deal directly with prospect buyers/ lessees and Land Boards would have the reduced role of confirming sale/ leases. Where there was more than 10 owners, boards could call an assembly of owners where decisions would be made by majority votes.[94]

5.15 By 1913, Land Boards could dispense with the requirement to ensure that sufficient land was retained so long as the seller had a job.[95]

5.16 From the case studies produced in the 20th Century overview, it is said that for many, their leased lands produced small rental income that was often relied on to provide for living costs, to repay debt built up from living costs or to acquire small domestic assets. By the 1930s, leasing remained the predominant form of land utilisation.[96]

5.17 In addition to the proliferation of land loss, the emerging settler society held prejudicially racist views which did not allow for Māori *landlordism*, such views were captured in a *Wanganui Herald* editorial in 1908:[97]

> We are utterly opposed to any system of Māori landlordism enabling the natives to live in wealth and idleness on the earnings of industrious Europeans. The Natives should be permitted-nay, compelled-to retain sufficient lands to prevent them becoming a burden on the State, and to the State alone. And no stronger argument could possibly be adduced in support of such a principle than the position that obtains at Utiku. There is a large area of land-some thousands of acres-is held by natives, most of whom are in a very comfortable position, not a few being wealthy. The land was practically valueless-except for the timber that was upon it-so far as the native owners were concerned until the advent of the railway. The construction of the line through it has immensely increased the value of the land, and the erection of a railway station and other Government and private buildings has still further raised it in value. Why should the natives obtain the whole of the benefit of this unearned increment? Echo answers, why? The State, by the expenditure of a large sum of public

94 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 63.
95 Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage 1 Volume 2(Part 3)* (Wai 1200, 2008) at 691.
96 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 535.
97 Heather Bassett and Richard Kay, *Taihape Native Townships: Potaka [Utiku] and Turangarere* (Wai 2180 A047, 2016) at 58-59.

> money, has placed the value on the land, and to the State rightly belongs any benefits derived from such expenditure. Here is the opportunity for the Government acquiring a magnificent asset that will annually increase in value, and why should it allow it to be held by those who neither toil nor spin, or to pass into the hands of private individuals? It will be a crying shame if Sir Joseph Ward and his colleagues fail to embrace the opportunity now afforded at Utiku of doing something practical and profitable for posterity, and it is to be sincerely hoped that the Minister for Lands will inform the Utiku deputation that, while he is quite prepared to recommend the sale of lands, the sale must be to the Crown.

5.18 This article proposes that Māori should be compelled to give up their lands to the state and that Māori landholders should not benefit from improved land values arising from the building up of infrastructure in the district.[98]

Submissions – Māori Lease Land

5.19 In the *He Maunga Rongo Report on the Central North Island,* the Tribunal stated that the emphasis placed on ensuring that Māori retained sufficient land diminished with remarkable speed in the early 20th Century.[99] The Tribunal found that the Crown had breached its Treaty obligation of active protection by failing to provide adequate safeguards for individual owners and for communities, to ensure the retention of a land base for present and future generations.[100]

5.20 This finding is equally applicable to the Taihape Inquiry where the same promises were made and subsequently eroded leading to a significant proportion of Māori land being lost by the end of the century. The constraints placed on alienation either by way of lease or sale were critical to the retention of Māori land.

5.21 Prior to 1900, Māori voiced their concerns about the speed at which their lands were disappearing out of their ownership. In response, the Government enacted necessary legislation to ensure that Māori retained land for their own maintenance.

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98 Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 229.

99 Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage 1 Volume 2(Part 3)* (Wai 1200, 2008) at 691-692.

100 Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage 1 Volume 2(Part 3*) (Wai 1200, 2008) at 692.

5.22 In the 1900 Act, there was an assumption that everyone, including children, needed land and access to traditional resources. Therefore, there was a concern with providing for the next generation. However, the succeeding Acts attempted to define the minimum amount of land required for subsistence for an individual.[101]

5.23 The evidence demonstrates that the protection mechanisms quickly diminished over 1900-1909, due in part to settler pressure for the acquisition of more Māori owned land. This meant that the constraints safeguarding the retention of Māori land were no longer in place. By 1913, the only barrier to attaining Māori owned land was for the purchaser to satisfy that the seller had employment.

5.24 Further to this, settler attitudes of the time held Māori landlords in low esteem as evidenced by the editorial letter in the *Wanganui Herald*, at the very least this provides an insight into the attitudes of settlers who were seeking from the Government an opportunity to acquire more land.

5.25 The change between 1900-1909 highlight the vulnerability of Māori to changing Crown policy, meaning that the Crown could excuse itself from earlier promises and obligations to ensure that Taihape Māori retained a land base or resources which were of importance to their whole community.

Prejudice – Māori Lease Land

5.26 The prejudice flowing from the relaxation of these constraints contributed to Māori becoming landless. As noted by the Tribunal, this was a prejudicial effect that affected both the current generation and all the future generations to follow.[102]

6.0 PRIVATE ACQUISITION OF MĀORI LAND

6.1 Issue 4: "In what ways, if any, were Crown policies and practices responsible for the private acquisition of Taihape Māori land during the early twentieth century? What impacts did this have on Taihape Māori, and could the Crown have reasonably been expected to mitigate such impacts?" [103]

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[101] *He Maunga Rongo: Report on Central North Island Claims, Stage 1 Volume 2(Part 3*) (Wai 1200, 2008) at 691.

[102] *He Maunga Rongo: Report on Central North Island Claims, Stage 1 Volume 2(Part 3*) (Wai 1200, 2008) at 692.

[103] Tribunal Statement of Issues (Wai 2180 #1.4.3, 2016) at 37.

6.2 In reiteration of earlier submissions, acquiring Māori land for European settlement was the Crown's priority, whilst attempts were made to accommodate Māori concerns to ensure Māori maintained a sufficiency of land, this quickly began to fade by 1905.

6.3 It is submitted that the Crown's facilitation of the proliferation of private alienation of Māori land in the early 20th Century through the Lands Act 1909, entirely disregarded Māori and their desire to retain land.

Evidence – Private Acquisition of Māori Land

6.4 Overall, between 1840 and 2013, private alienations accounted for 21.15 percent of alienations in the Taihape inquiry district or 247, 332.55 acres of land.[104] Walzl states that by 1900, 83 percent of commercially viable land was lost in the central and southern parts of the inquiry district.[105] From 1900, private alienations accounted for 184,008 acres of land, as represented by the table below:[106]

Decade	**Private Alienations (acres)**
1900	31,362
1910	17,678
1920	30,786
1930	15,076
1940	7,325
1950	245
1960	2,631
1970	50,288

[104] Craig Innes, *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013* (Wai 2180 #A15(m), 2018) at 113.
[105] Hearing Week 7 Winiata Marae 21-24 May 2018 (Wai 2180, #4.1.15, 2018) at 159.
[106] Craig Innes, *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013* (Wai 2180 #A15(m), 2018) at 154.

1980	19,720
1990 - 2013	8,897
Total	**184,008**

6.5 As stated in earlier submissions, by 1900 Taihape Māori were calling for restraints on land alienation.

6.6 In response, the Crown enacted the Land Administration Act 1900, which required Crown oversight and consent for the purchasing of Māori land.

6.7 However, the protective elements in the Land Administrative Act 1900 were entirely eroded by 1909.[107]

6.8 By 1905, private leasing was provided for under section 16 the Native Land Settlement Act 1905.[108] Additionally, Māori Land Councils were replaced with seven Māori Land Boards each consisting of a president and two other appointed members, at least one of them Māori. This removed elected membership, so Māori lost any formal control over the composition of their boards.[109]

6.9 By 1909, private sales were provided for under the Native Lands Act 1909.[110] After 1909, a significant proportion of Māori land was alienated by European private purchasing. Many of these private alienations occurred for previously leased lands.[111]

Submissions – Private Acquisition of Māori Land

6.10 Various Waitangi Tribunals have found that from 1905 through to at least the mid-Twentieth Century that the Crown's primary objective was to secure Māori land for European settlement. So, the Crown progressively simplified land laws between

[107] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 50.
[108] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 75.
[109] Tony Walzl, Twentieth Century Overview (Wai 2180 #A46, 2016) at 55.
[110] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 75.
[111] Hearing Week 7 Winiata Marae 21-24 May 2018(Wai 2180 #4.1.15) at 153.

1905 and 1913 to expedite alienation.[112] Those laws did not make effective provision for Māori owners to make collective decisions about land, nor did they ensure that Māori owners could retain sufficient land for their needs.[113]

6.11 Specifically, about the effect of the 1909 Act, the Tribunal said in the *Whanganui Lands Report* that the Crown permitted the private purchase of Māori land without effective safeguards to ensure that Māori did not sell too much land, and that they received a fair price. [114]

6.12 In earlier submissions, it is evidenced that Premier Seddon assured Māori that they would always have a sufficiency of land for their own preservation. However, this sentiment was quickly forgotten by the Crown in the 20th Century. The 1909 Act did not provide any protection against Māori losing their entire land holdings. The 1909 Act achieved the absolute opposite by providing for another avenue of land alienation through private transfer.

6.13 Despite the fact that private land alienation became possible at 1909, the amount of land privately alienated since 1900 and directly proceeding 1909 remained high. In the 1900s, 31,363 acres of land were alienated, in the 1910s 17,678 acres were alienated and in the 1920s, 30,786 acres were alienated.

6.14 In reiteration of earlier submissions, these Crown actions contributed to Māori becoming landless and marginalised both socially and economically.

6.15 This action of failing to ensure Māori maintained a sufficiency of land despite promises is a gross breach of the Crown's fiduciary relationship and principle of active protection enshrined in Article 2 of the Treaty.

Prejudice – Private Acquisition of Māori Land

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[112] Waitangi Tribunal, *The Hauraki Report Volume 2* (Wai 686, 2006) at 857;
Waitangi Tribunal, *Te Kāhui Maunga Volume 2* (Wai 1130, 2013) at 557–559 and 642–643;
Waitangi Tribunal, *Tauranga Moana Volume 1* (Wai 215, 2010) at 145–146;
Waitangi Tribunal, *The Wairarapa ki Tararua Report Volume 2* (Wai 863, 2010) at 604-607;
Waitangi Tribunal, *He Maunga Rongo:Report on Central North Island Claims, Stage One Volume 2* (Wai 1200, 2008) at 682, 685 and 719–720 ;
Waitangi Tribunal, *He Whiritaunoka Volume 2* (Wai 903, 2015) at 729.

[113] Waitangi Tribunal, *The Hauraki Report Volume 2* (Wai 686, 2006) at 895–897 ;
Waitangi Tribunal, *Te Kāhui Maunga Volume 2* (Wai 1130, 2013) at 642–643, 681, 692 ;
Waitangi Tribunal, *He Whiritaunoka Volume 2* (Wai 903, 2015) at 730–731.

[114] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 173.

6.16 The prejudice stemming from the relaxation of protection mechanisms within the 1909 Act contributed to significant amounts of land alienation. By 1940, 94,902 acres of land had been alienated by private purchasing and by the end of the century 184,008 acres were alienated as demonstrated in the table above.

7.0 ŌTŪMORE BLOCK

7.1 Issue 5: "Under the Treaty, what were the Crown's responsibilities to the Māori landowners of Ōtūmore block in terms of protections and checks against alienation of their land?[115] In particular:

(a) Was the decision to recoup outstanding costs through survey charges by the Māori Trustee in 1963 fair and reasonable?

(b) Could the alienation of Ōtūmore from Māori ownership been plausibly avoided?"

7.2 The Crown's main priority should have been the active protection of Ōtūmore from alienation. However, the Crown achieved the absolute opposite aim by actively implementing Ōtūmore's alienation.

7.3 The decision to recoup outstanding costs through survey charges by the Māori Trustee was not fair or reasonable. Counsel submit that fairness and reasonability, with respect to the Crown's active protection duty, would have been facilitated if the survey costs were shared with the Crown from the outset and the owners were provided with a clear means of land utilisation to not only pay debts but realise the block's economic potential.

7.4 There are a variety of ways that the alienation of Ōtūmore could have been plausibly avoided, such as:

(a) As stated above, the Crown could have provided a clear means of land utilisation;

(b) The owners could have paid the charges on the block; or

[115] Tribunal Statement of Issues (Wai 2180 #1.4.3, 2016) at 37.

(c) The Crown could have remitted the entire survey debt under section 410 of the Māori Affairs Act 1953 ("the 1953 Act").

Evidence – Ōtūmore Block

7.5 The material evidence of Ōtūmore's alienation is as follows:

(a) In 1962, Ōtūmore had 186 owners. The Chief-Surveyor applied to the Māori Land Court for a charging order over Ōtūmore to secure outstanding survey fees of £566 plus interest of £141;[116]

(b) Ōtūmore as a block did not technically exist as it had been partitioned into six blocks;[117]

(c) On 15 May 1962 the Māori Land Court issued an order vesting Ōtūmore in the Māori Trustee. The Māori Trustee's powers included:[118]

(i) Negotiating to sell land to the Forest Service at the highest price possible;

(ii) Discharging all expenses and charges incurred by the Māori Trustee;

(iii) Negotiating Settlement with the department of Lands and Surveys; and

(iv) Paying the balance of the purchase price to the Education Foundation;

(d) In June 1962, the Director-General of Forests recommended that the purchase of Ōtūmore, provided that the "price was cheap" and it did not exceed £750. The Director-General said specifically that the land can be of no possible use to the owners;[119]

(e) It was claimed that £750 was a false value when compared with surrounding blocks;[120]

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[116] Terry Hearn, *Sub-District Block Study-Southern Aspect 1 November 2012* (Wai 2180, #A7) at 239.
[117] Terry Hearn, *Sub-District Block Study-Southern Aspect 1 November 2012* (Wai 2180, #A7) at 240.
[118] Terry Hearn, *Sub-District Block Study-Southern Aspect 1 November 2012* (Wai 2180, #A7) at 240.
[119] Terry Hearn, *Sub-District Block Study-Southern Aspect 1 November 2012* (Wai 2180, #A7) at 240.
[120] Terry Hearn, *Sub-District Block Study-Southern Aspect 1 November 2012* (Wai 2180, #A7) at 240.

(f) The Commissioner of Crown Lands proposed that the Crown should offer £425 for the block to cover the liens and that remainder should be written off;[121]

(g) £425 confirmed as the purchase price, the 1959 government valuation ("GV") was used as a basis for estimating the price. The 1959 GV was £395;[122]

(h) In October 1962, the Department of Lands and Surveys approached Māori Affairs with a view to purchasing Ōtūmore;[123]

(i) The block was sold for £425, this covered the reduced liens of £354. The £71 remaining was credited to the Māori Education fund;[124]

(j) The owners were never notified or consulted about the alienation and Māori Affairs denied any knowledge of the 1963 sale.[125]

Submissions – Ōtūmore Block

Survey Charges

7.6 The respective Waitangi Tribunals in the *Te Rohe Potae Claims Reports and the Te Urewera Report* agree that securing Crown derived title had benefits not only for Māori but particularly for the Crown and settlers seeking to alienate the land and receive a clear indefeasible title.[126] Therefore, the burden of surveys should have been shared more equally between Māori and the Crown.[127] Sharing survey fees should have been the starting point from which the Crown placed survey fees on Ōtūmore.

7.7 Second, Ōtūmore did not exist as a block at the time charges were recorded against it, therefore questions arise as to which surveys the outstanding fees applied.[128] Did

[121] Terry Hearn, *Sub-District Block Study-Southern Aspect 1 November 2012* (Wai 2180, #A7) at 240.
[122] Terry Hearn, *Sub-District Block Study-Southern Aspect 1 November 2012* (Wai 2180, #A7) at 241.
[123] Terry Hearn, *Sub-District Block Study-Southern Aspect 1 November 2012* (Wai 2180, #A7) at 241.
[124] Terry Hearn, *Sub-District Block Study-Southern Aspect 1 November 2012* (Wai 2180, #A7) at 241.
[125] Terry Hearn, *Sub-District Block Study-Southern Aspect 1 November 2012* (Wai 2180, #A7) at 242.
[126] Waitangi Tribunal, *Report on Te Rohe Pōtae Claims Parts I and II* (Wai 898, 2018) at 1269; Waitangi Tribunal, *Te Urewera Report Volume 3* (Wai 894, 2017) at 1195.
[127] Waitangi Tribunal, *Report on Te Rohe Pōtae Claims Parts I and II* (Wai 898, 2018) at 1270; Waitangi Tribunal, *Te Urewera Report Volume 3* (Wai 894, 2017) at 1195.
[128] Terry Hearn, *Sub-District Block Study-Southern Aspect* 1 November 2012 (Wai 2180, #A7) at 240.

they apply to the original survey of Ōtūmore or a selection of the partitions? The evidence does not provide specific details on these questions. If the outstanding fees related to only specific partitions then those unilateral charges were manifestly unfair, without a lawful foundation and therefore a gross breach of the Treaty.

7.8 Third, Ōtūmore has a land use capacity of 8 which means it is suitable as a conservation reserve but not for commercial forestry or farming purposes.[129] Given that the land had no commercial prospect, the owners had no way to utilise it for the purpose of paying any debts. Counsel submit that in this context it was extremely unreasonable to apply charges against Ōtūmore.

7.9 Finally, despite Ōtūmore being labelled unsuitable for forestry production, it is not expressly clear whether the Director of Forests recommended its purchase for commercial forestry or conservation purposes. Counsel submit if the land was suitable for forestry then the Crown had a duty to advise Māori that they could utilise the land and pay the debt. Specifically, the Crown could have advised that section 270 of the 1953 Act permitted Māori landowners, on multiple owned blocks, to establish incorporations to enable a body corporate of owners to use their land to engage in operations for the production, utilisation or sale of timber. Such advice would have been consistent with the Crown's *active* duty to protect Māori land. Counsel submit that active in this context means taking an initiative and exhausting all avenues to ensure Māori are given the best opportunities to retain their lands. This interpretation of the duty is consistent with the Court of Appeal's articulation of the duty, that it is *active* and not passive.[130]

7.10 In consideration of the avenues available to the Crown at the time it placed survey charges against the Ōtūmore and the fact that no evidence exists demonstrating they explored those options, it is submitted that the Crown did not perform its duty to actively protect Māori in the retention of Ōtūmore. The consequence of which was the alienation of Ōtūmore from Māori ownership. Therefore, the Tribunal should find that the Crown is in breach of Article two rights reflected in the principle of active protection.

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[129] Craig Innes, *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013* (Wai 2180 #A15(m), 2018) at 75.

[130] *New Zealand Māori Council v A-G* [1987] 1 NZLR 641 (CA) at 643.

Avoidance of Alienation

7.11 Consistently, with the articulation of the active protection duty in the previous section, the Crown has a duty to consider all possible avenues in a concerted conscious effort to avoid alienation of Māori land. The Crown's actions show that it was actively seeking to achieve the opposite goal of encouraging alienation of Māori Land.

7.12 The previous section has already provided a possible means of clearing debt through land utilisation in order to ultimately avoid alienation. In addition, the Crown could have sought direct payment from the owners or remitted the entire survey fee.

7.13 There is no evidence demonstrating that the owners did not possess the means to pay the outstanding survey charges or that the Crown actively sought, as a last resort, to eliminate this as a possibility.

7.14 Finally, the Crown could have remitted the entire survey charge. Section 410 of the 1953 Act provided the Minister of Lands with the authority to direct the remission of any imposed survey charges, in part or full.

7.15 This authority was exercised in lowering the charges to benefit the purchaser who stated that they would purchase Ōtūmore for a "cheap price." However, no consideration was given to the equitable application of this authority to the owners.

7.16 The principle of equity requires the Crown to treat Māori and settlers equitably,[131] Counsel submit that this rule should be extended to include equal treatment between Māori and the Crown.

7.17 Given the cultural significance of land to Māori generally and the diminishing amount of land remaining in Māori ownership at this time, the owners had much more to lose than the Crown had to gain from attempting to convert Ōtūmore into forestry, a use for which it was unsuitable. The Crown's failure to recognise and remediate this comparison is a breach of the principle of equity.

[131] Waitangi Tribunal, *Report on Te Rohe Pōtae Claims Parts I and II* (Wai 898, 2018) at 185.

7.18 Counsel submit that overall, the Crown's actions of encouraging the alienation of Ōtūmore and failure to actively avoid this outcome, via the above means, was a gross breach of the principle of active protection.

Prejudice – Ōtūmore Block

7.19 The entirety of Ōtūmore was alienated as a result of Crown actions and processes. Additionally, the prejudice also includes the potential economic losses from potential forestry and tourism opportunities.

8.0 AWARUA 2C15B BLOCK AND ŌWHĀOKO D6 NO 2 BLOCK

8.1 Issue 6: "What responsibility did the Crown have in avoiding, to the extent practicable, the alienation of Māori land in relation to the sale of Awarua 2C15B Block and the Ōwhāoko D6 No 3 block? Considering rates owing on the property and the actions taken under the Māori Affairs Act 1953, where the Rangitīkei County Council ("RCC") appointed itself as Trustee, were the circumstances of sale fair and reasonable? [132]

(a) Did the Māori Affairs Act 1953 prejudice Taihape Māori by enabling the sale of a jointly owned block by a minority of owners?

(b) Were the small quorums allowed by legislation in meetings of assembled owners Treaty-compliant management techniques?"

8.2 Article 2 of the Treaty requires the Crown to ensure that Māori land is afforded fair protection. The alienation of Awarua 2C15B and Ōwhāoko D6 no 2 are two examples of where the Crown was obligated by its Treaty duty to provide Māori landowners with a fair solution that considered the unique circumstances of either block.

8.3 The Crown's assessment was rigid and manifestly unfair, as such its actions were a plain breach of Article 2 of the Treaty and the principle of active protection.

Evidence – Awarua 2C15B2

8.4 Awarua 2C15B was a 6 acre block partitioned in to two separate 3-acre blocks.

[132] Tribunal Statement of Issues (Wai 2180 #1.4.3, 2016) at 37.

8.5 In 1966, the sole owner of Awarua 2C15B1, Rupani Hukinga Halbert, sold this block to the neighbouring farmer Mr Batley for £125. The RCC advised the Māori Land Court that at the time of the sale, no rates were owed on the block (though there had been some demands several years before).[133]

8.6 The Māori Purposes Act 1950 provided that the Māori Trustee could be appointed as the agent of unoccupied Māori land, which owed rates, or which contained noxious weeds to lease or sell the block in order to pay rates.[134]

8.7 Due to outstanding rates on the Awarua 2C15B2 block, the Māori Land Court appointed the Māori Trustee as an agent under s387 of the Māori Affairs Act 1953. Such appointments required ministerial consent.[135]

8.8 Investigations by the Māori Affairs Department found that the small size and location of the block made it unsuitable for offering to the owners to lease, and that it could only be of use to an adjoining farmer. Ministerial consent was refused. The council was advised that it should apply instead to be appointed trustee under Section 438 with the power to sell the block.[136]

8.9 In 1968, the Māori Land Court vested the three acres in the council, which then sold the block. All of the proceeds of the sale were used to repay existing charges and council costs relating to vesting and sale. The owners did not receive any of the purchase money.[137]

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133 Susan Woodley, *Māori Lands Rating and Landlocked Block Report 1870-2015* (Wai 2180 #A37, 2015) at 178.

134 Heather Bassett and Richard Kay, *Local Government, Rating Native Township Scoping Report* (Wai 2180 #A5, 2012) at 20; Susan Woodley *Māori Lands Rating and Landlocked Block Report 1870-2015* (Wai 2180 #A37, 2015) at 170.

135 Heather Bassett and Richard Kay, *Local Government, Rating Native Township Scoping Report* (Wai 2180 #A5, 2012) at 20;
Susan Woodley, *Māori Lands Rating and Landlocked Block Report 1870-2015* (Wai 2180 #A37, 2015) at 170.

136 Heather Bassett and Richard Kay, *Local Government, Rating Native Township Scoping Report* (Wai 2180 #A5, 2012) at 20;
Susan Woodley, *Māori Lands Rating and Landlocked Block Report 1870-2015* (Wai 2180 #A37, 2015) at 170

137 Heather Bassett and Richard Kay, *Local Government, Rating Native Township Scoping Report* (Wai 2180 #A5, 2012) at 20;
Susan Woodley,u *Māori Lands Rating and Landlocked Block Report 1870-2015* (Wai 2180 #A37, 2015) at 170.

Submissions – Awarua 2C15B2

8.10 The *Te Urewera Report* states that the Crown has a kawanatanga right to allow local authorities to collect rates from Māori land, but that land not capable of development should be exempt from rates. [138]

8.11 This block was an uneconomical 3 acres, located in a rural setting and surrounded by significant farms. It did not have any potential commercial use and therefore did not have any capacity for development. Accordingly, the Crown should have provided a rates exemption for this block.

8.12 Furthermore, the early 20th Century demonstrates that the Crown were not willing to provide Māori with essential assistance to prosper in the emerging economy and settler society, consequently Māori were economically marginalised for decades and generations to come. This must be a relevant consideration when assessing whether any historic charges/liens and outstanding rates over Māori land or General land owned by Māori were Treaty compliant.

8.13 The Crown's failure to provide an exemption in this case is a breach of Article 2 of the Treaty and the principle of active protection.

Prejudice – Awarua 2C15B2

8.14 As stated in the facts above, Awarua 2C15B2 was alienated by sale to repay existing charges without the owners knowing or receiving any form of compensation.

Evidence– Ōwhāoko D6 no 2

8.15 In 1913, Ngamako Retimana sought to sell Ōwhāoko D6 no2 to the Crown for £500.[139]

8.16 The block was valued at £295.[140]

[138] Waitangi Tribunal, *Te Urewera Part VI* (Wai 894, 2015) at 405.
[139] M Fisher and B Stirling, Sub-district, Block Study- Northern Aspect (Wai 2180 A6, 2012) at 99.
[140] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 A6, 2012) at 100.

8.17 Ngamako Retimana revealed to the Crown that she was seeking to receive payment within the next day in order to pay a promissory note of £112 which was about to come due.[141]

8.18 The Crown offered her £200. As the promissory note was due the next day, she had little choice but to accept in order to pay her debt. [142]

Submissions – Ōwhāoko D6 no 2

8.19 The *Te Rohe Potae Report* said that for any Crown purchase of Māori land to be compliant with the Treaty, a fair price must be paid.[143] It is submitted that in this circumstance it was not fair for the Crown to offer Ngamako Retimana a price below the established valuation. A fair price is based on a market valuation. This is consistent with numerous Tribunal findings that express failings to ensure owners could obtain market prices for their land was a breach of the Treaty.[144]

8.20 The *Te Rohe Potae Report* said that valuations during the early 20th Century were often calculated to serve the Crown as oppose to being independent,[145] so it is possible that the valuation was already below what could be considered *fair* for this time period.

8.21 Additionally, the evidence suggests that, in bad faith, the Crown took unfair advantage of Ngamako Retimana by offering her a low price for a quick sale. The Crown knew that Ngamako had a promissory note due and was desperate to raise funds in order to settle that debt.

8.22 In these circumstances the Crown breached its fiduciary Treaty duty inherent to the principles of partnership and active protection.

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[141] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 A6, 2012) at 99.
[142] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 A6, 2012) at 100.
[143] Waitangi Tribunal, *The Report on Te Rohe Potae Claims* (Wai 898, 2018) at 1412.
[144] Waitangi Tribunal, *Te Kāhui Maunga Volume 2* (Wai 1130, 2013) at 642 – 643;
Waitangi Tribunal, *He Maunga Rongo:Report on Central North Island Claims, Stage One Volume 2* (Wai 1200, 2008) at 719 -720;
Waitangi Tribunal, *He Whiritaunoka Volume 2* (Wai 903, 2015) at 729 -730
[145] Waitangi Tribunal, *The Report on Te Rohe Potae Claims* (Wai 898, 2018) at 1413.

Prejudice – Ōwhāoko D6 no 2

8.23 In these circumstances Ngamako Retimana had little choice but to accept a price that was well below the market and Crown valuation.

9.0 ŌWHĀOKO C3B BLOCK

9.1 Issue 7: "What role and obligation did the Māori Land Court have to the owners of Ōwhāoko C3B to advise them of their legal rights regarding sale and/or development of those lands?" [146]

(a) Was the price set by Crown in exchange for the land fair and reasonable?

(b) What policies, laws and/or acts were in effect to facilitate the transition of the land out of a state of debt?

9.2 Whether there was an obligation on the Māori Land Court is not relevant in these circumstances as the obligations regarding price and policies to facilitate the transition of the land out of debt fell squarely on the Māori Affairs Department, an agent of the Crown.

9.3 The price set by the Māori Affairs Valuation Department was unconscionable as it was set at $3,000.00 and did not account for over $120,000.00 worth of millable timber growing on the Ōwhāoko C3B.

9.4 Additionally, Māori Affairs did not inform the original owners that they could have established an incorporation for the purpose of milling and selling timber under section 270 of the 1953 Act and that they could have sought a loan to set up farming under section 460 of the same Act.

Evidence – Ōwhāoko C3B block

9.5 On 21 September 1967, a valuation report was produced by the Valuation department of Māori Affairs. The report stated that Ōwhāoko C3B was unattractive with scrub and birchwood, and specifically no millable timber.[147]

[146] Tribunal Statement of Issues (Wai 2180 #1.4.3, 2016) at 37.
[147] Brian Herlihy & Associates, *Report on Ōwhāoko C3B Block* (Wai 2180 #A57, 1995) at 27.

9.6 On 8 December 1967, a meeting of owners was held to consider a proposal by W.T Apatu and M.C Apatu to purchase Ōwhāoko C3B. Seven owners appear in-person and three appeared by proxy. The Apatu's solicitor described the land as covered in scrub with no millable timber, as such they were willing to offer $3,600.00 to purchase Ōwhāoko C3B, which was 20% above the GV.[148] The negotiations included that the debts outstanding such as $524.00 for survey liens and $1,225.00 for rates, would be paid for by the owners.[149] A resolution was carried by the assembled owners that: [150]

> The land be sold to Wiremu Terrence Apatu and Margaret Apatu, both of Waipukerau, farmer and wife, for the sum of $3600. Owners to pay all outstanding title charges to give clear title to purchasers.

9.7 On 6 February 1968, the Māori Land Court confirmed the resolution of assembled owners.[151]

9.8 On 10 May 1968, H. Tiopira Matthews wrote a letter to the Māori Land Court District Officer. Matthews stated that he was the majority shareholder and that he opposed the resolution of owners to sell. He was also interested in the land's utilisation as forestry and farming and mentioned that the land had been used for free-grazing.[152]

9.9 On 27 May 1968, the District Officer informed H. Tiopira Matthews that the Māori Land Court had considered a resolution of owners to sell the land and that the transfer was being arranged. The Officer made no mention of the possibility of H. Tiopira Matthews making an appeal.[153]

9.10 On 23 April 1980, H. Tiopira Matthews wrote to the Māori Land Court Whanganui seeking to make an application to cancel the Māori Land Court's order confirming the resolution of assembled owners on the following alleged grounds:[154]

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[148] Brian Herlihy & Associates, *Report on Ōwhāoko C3B Block* (Wai 2180 #A57, 1995) at 30.
[149] Brian Herlihy & Associates, *Report on Ōwhāoko C3B Block* (Wai 2180 #A57, 1995) at 30.
[150] Brian Herlihy & Associates, *Report on Ōwhāoko C3B Block* (Wai 2180 #A57, 1995) at 31.
[151] Brian Herlihy & Associates, *Report on Ōwhāoko C3B Block* (Wai 2180 #A57, 1995) at 43.
[152] Brian Herlihy & Associates, *Report on Ōwhāoko C3B Block* (Wai 2180 #A57, 1995) at 36.
[153] Brian Herlihy & Associates, *Report on Ōwhāoko C3B Block* (Wai 2180 #A57, 1995) at 37.
[154] Brian Herlihy & Associates, *Report on Ōwhāoko C3B Block* (Wai 2180 #A57, 1995) at 44.

(a) The requisite quorum to pass the resolution was not present, section 309(6)(b) of the 1953 Act required ¼ of the shares to be represented in order to form a quorum; and

(b) Millable timber was on the land prior to the valuation and that the Commissioner of Crown Lands knew about the millable timber.

9.11 On 5 May 1980, the Deputy Registrar wrote to H Tiopira Matthews confirming that he had heard reports of timber coming off the block and that the owners had been misled. However, he said that the section 309(6)(b) amendment was not enforce at the time of the meeting of assembled owners, therefore only three landowners were required to form a quorum. Lastly, he said to Matthews that he must ensure that he has proper grounds before lodging a section 452 application.[155]

9.12 On 11 August 1981, Durie CJ referred the application to be investigated.[156]

9.13 On 23 September 1985, the investigation report concluded that:[157]

(a) 7.3 shares were represented at the meeting which passed the resolution to sell the land represented by more than 3 owners;

(b) The block neighboured Timahanga owned by J Roberts, who is M.C Apatu's brother, and Timahanga is where they were raised as children;

(c) Complaints were received by the Māori Land Court that milling had taken place;

(d) Ōwhāoko C3B was only accessible from Timahanga;

(e) A site of millable timber was visible from where M.C Apatu and J Roberts were raised;

(f) In or about 1970, 60,000 cubic yards of timber was extracted at $1.00 per cube. This is the equivalent of $993,263.00 today;

[155] Brian Herlihy & Associates, *Report on Ōwhāoko C3B Block* (Wai 2180 #A57, 1995) at 45.
[156] Brian Herlihy & Associates, *Report on Ōwhāoko C3B Block* (Wai 2180 #A57, 1995) at 48.
[157] Brian Herlihy & Associates, *Report on Ōwhāoko C3B Block* (Wai 2180 #A57, 1995) at 52-55.

(g) Section 318(2) of the 1953 Act provides that no resolution to alienate land with millable timber shall be confirmed without the prior consent of the Minister of Forests;

(h) On or about 11 November 1982, Ōwhāoko C3B was transferred to J Roberts;

(i) On or about 13 January 1983, Ōwhāoko C3B was transferred again to P Leslie;

(j) Section 452(8) of the 1953 Act provides that no order of the Chief Judge shall take away or affect any rights or interests acquired for value and in good faith under any instrument of alienation executed before the making of any such order.

9.14 On 21 May 1986, his Honour Durie CJ cancelled the order confirming the sale of Ōwhāoko C3B.

9.15 The original owners are now statute barred from pursuing contractual remedies for misleading conduct, pursuant to the Limitations Act 1950.

Submission – Ōwhāoko C3B block

Price

9.16 In the *Report on Central North Island Claims* the Tribunal said that:

> In our view the Crown was required both to check that Māori were getting a fair price from settlers and to pay a fair price itself, this was the standard set by the Treaty.[158]

9.17 Measuring the Māori Affairs Valuation Department's actions against this standard demonstrates that it fell far short of that standard. The Valuation Department valued Ōwhāoko C3B at $3,000.00 and failed to take into account over $120,000 in millable timber growing on the property. This was inherently unfair, as the existence of millable timber meant that the land was worth exponentially more than the

[158] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage 1, Volume 2 (Part 3)* (Wai 1200, 2008) at 436.

stated valuation. Most importantly, it meant that the Māori landowners were misled by the Crown into believing that their land was worth much less than it was.

9.18 The prejudice flowing from this Crown action is extensive. The Māori landowners were lied to and the Crown denied the landowners the opportunity to make a significant profit and keep their land. The Apatu couple made $60,000.00 in 1970 from selling the timber. Today this is the equivalent of $993, 263.00.

9.19 The misleading valuation was a blatant breach of the Good governance principle where the minimum standard required of the Crown is to, at least, adhere to its own laws. And the overall conduct was an unconscionable breach of the duty to actively protect Māori in the use of their lands.

Debt

9.20 Section 270 of the 1953 Act permitted the establishment of incorporations to enable a body corporate of owners to use their land to engage in; felling and marketing timber, granting licenses to cut and remove timber or other operations for the production, utilisation or sale of timber. Section 460 of the 1953 Act provided that Māori landowners could seek financial assistance from the Board of Māori Affairs to improve or develop their lands.

9.21 These provisions provided opportunities for the landowners to pay the debts on Ōwhāoko C3B by utilising the land and, insofar as felling timber is concerned, to make an extensive profit. Farming was also a potential option as there were reports of free grazing happening on the block, which the Department of Māori Affairs knew about.[159]

9.22 Despite these options being made available through legislation and policy, there is no evidence to demonstrate that the Crown put these options to the landowners as potential alternatives to passing the resolution to sell the land. The obvious prejudice being missed opportunities as detailed in the last section about *Price.*

9.23 The Court of Appeal said that the Crown duty to protect Māori land rights was not merely passive, but an active duty.[160] Counsel submit that this requires the Crown

[159] Brian Herlihy & Associates, *Report on Ōwhāoko C3B Block* (Wai 2180 #A57, 1995) at 33-34.
[160] *New Zealand Māori Council v A-G* [1987] 1 NZLR 641 (CA) at 643.

to take an initiative, in the spirit of its fiduciary duty, to advise Māori land owners of available alternative options to alienation as a means of clearing debt.

9.24 Counsel submit that by failing to advise the Māori landowners of the alternatives to selling Ōwhāoko, the Crown breached its duty of active protection.

Prejudice – Ōwhāoko C3B block

9.25 Due to a misleading valuation report the original Māori owners were misinformed about the true value of the block and ultimately missed out on realising the true value of the block which included $60,000.00 worth of timber in 1970.

10.0 ŌWHĀOKO D2 BLOCK

10.1 Issue 8: Under what circumstances did the Crown purchase Ōwhāoko D2? Was the transaction fair, transparent and reasonable? [161]

10.2 The circumstances of Ōwhāoko D2 demonstrate that the transaction regarding Robert's share of Ōwhāoko D2 fell far short of what is considered *transparent, fair and reasonable.* These circumstances demonstrate a serious breach of the Treaty for the following reasons:

(a) Robert's shares were succeeded to by his long-time estranged wife,[162] of whom he was engaged in divorce proceedings with,[163] and his blood relatives were disregarded as successors;[164] and

(b) The Commissioner's premeditated actions breached the law in a variety of ways including the tort of Misfeasance in a public office and Perjury under section 108 of the Crimes Act 1961.

10.3 For the avoidance of doubt, the Commissioner's authority is stated as being; "exercisable for and on behalf of the Crown in respect of all Crown land within his district.[165]" Therefore, the Commissioner is an agent of the Crown for the purposes of section 6(1)(d) of the Treaty of Waitangi Act 1975, which provides that the

[161] Tribunal Statement of Issues (Wai 2180 #1.4.3, 2016) at 38.
[162] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 #A6, 2012) at 103.
[163] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 #A6, 2012) at 103.
[164] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 #A6, 2012) at 103.
[165] Lands Act 1948, section 24(1).

Tribunal's jurisdiction definitively includes acts done *by or on behalf of the Crown* that prejudicially affect Māori.

Evidence – Ōwhāoko D2 block

10.4 The material evidence under which the Crown purchased Ōwhāoko D2 were as follows:[166]

(a) Prior to the early 1970s, Robert Karaitiana and Waerea Karaitiana owned Ōwhāoko D2, 9448 acres and 3 roods;[167]

(b) On 21 September 1972, the Commissioner of Crown Lands proposed to purchase Ōwhāoko D2 for $4,800.00;[168]

(c) On 21 November 1972, the Commissioner is informed that the Māori Trustee holds Robert's share on trust because he was unable to manage his affairs as he was serving a prison sentence;[169]

(d) On 12 April 1973, the Commissioner is informed that Robert does not want to sell Ōwhāoko D2, but he is open to leasing;[170]

(e) On 16 May 1973, Waerea replied to the Commissioner stating she had accepted the Crown's offer;[171]

(f) On 26 June 1973, the sale and purchase agreement for Waerea's share was completed;[172]

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166 M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 #A6, 2012) at 101-105.

167 M Fisher and B Stirling, *Supporting Documents to Block Study – Northern Aspect Volume 1*(Wai 2180 #A6(a), 2012) at 121.

168 M Fisher and B Stirling, *Supporting Documents to Block Study – Northern Aspect Volume 1*(Wai 2180 #A6(a), 2012) at 121.

169 M Fisher and B Stirling, *Supporting Documents to Block Study – Northern Aspect Volume 1*(Wai 2180 #A6(a), 2012) at 122.

170 M Fisher and B Stirling, *Supporting Documents to Block Study – Northern Aspect Volume 1*(Wai 2180 #A6(a), 2012) at 123.

171 M Fisher and B Stirling, *Supporting Documents to Block Study – Northern Aspect Volume 1* (Wai 2180 #A6(a), 2012) at 124.

172 M Fisher and B Stirling, *Supporting Documents to Block Study – Northern Aspect Volume 1* (Wai 2180 #A6(a), 2012) at 132.

(g) On 20 July 1973, Māori Affairs wrote to the Commissioner stating that it understood that he had received a Ministerial Direction not to initiate sales of Māori land to the Crown;[173]

(h) On 20 July 1973, Māori Affairs informs the Commissioner that Robert has died intestate and advises that Robert's wife (Rosie Ngaromata Karaitiana), who he has issued divorce proceedings against, will inherent his share in Ōwhāoko D2;[174]

(i) On 21 August 1973, Rosie accepted the Crown's offer to buy her share, inherited from Robert, for $4,000.00;[175]

(j) On 12 October 1973, the Māori Purposes Bill (no 2) was before the House of Representatives for consideration. Clause 6 sought to repeal section 257 of the Māori Affairs Act 1953, which empowered the Crown to purchase Māori land;

(k) On 17 October 1973, the Director-General of Lands confirmed by memorandum that the Board of Māori Affairs was not prepared to consider the proposal to buy the remaining shares in Ōwhāoko D2 given that section 257 was about to be repealed;[176]

(l) On 23 November 1973, Māori Purposes Act (no 2) 1973 ("the 1973 Act") commenced;

(m) On 26 November 1973, the Commissioner wrote to Rosie's solicitors requesting that they backdate execution of the agreement for sale and purchase to before 23 November 1973, to which they obliged and backdated the agreement to 8 October 1973;[177] and

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[173] M Fisher and B Stirling, *Supporting Documents to Block Study – Northern Aspect Volume 1* (Wai 2180 #A6(a), 2012) at 134.

[174] M Fisher and B Stirling, *Supporting Documents to Block Study – Northern Aspect Volume 1* (Wai 2180 #A6(a), 2012) at 134.

[175] M Fisher and B Stirling, *Supporting Documents to Block Study – Northern Aspect Volume 1* (Wai 2180 #A6(a), 2012) at 137.

[176] M Fisher and B Stirling, *Supporting Documents to Block Study – Northern Aspect Volume 1* (Wai 2180 #A6(a), 2012) at 141.

[177] M Fisher and B Stirling, *Supporting Documents to Block Study – Northern Aspect Volume 1* (Wai 2180 #A6(a), 2012) at 142-147.

(n) On 30 May 1974, the Commissioner informed the Māori Land Court Registrar that the agreement for sale and purchase of Ōwhāoko D2 was executed before the 1973 Act commenced.[178]

Submissions – Ōwhāoko D2 block

Succession

10.5 The Principle of Partnership includes an obligation on the Crown to consult with Māori to obtain the full, free and informed consent of the correct right holders in a transaction of their lands.[179] Counsel submit that, as it concerned the succession to Robert's land, the correct rights holders were Roberts blood relatives. The evidence makes clear that the Crown gave no acknowledgement to Robert's blood relatives as the correct rights holders or potential successors.

10.6 Succession to Māori land in the early 1970's was governed by Part XI of the 1953 Act. Robert died intestate so section 116(3) of the 1953 Act is the starting point. Section 116(3) states that:

> Except as otherwise provided for in this Act, the persons entitled on the complete or partial intestacy of a Māori or the descendant of a Māori to succeed to his intestate estate so far as it consists of beneficial freehold interests in Māori land, and the shares in which they are so entitled, shall be determined by the Court in accordance with Māori custom.

10.7 Prima facie, with regard to Tikanga Māori, Robert's blood relatives were entitled to succeed to his shares in Ōwhāoko D2. This is important as there is no evidence that the Crown sought out Robert's blood relatives to consult them on this matter.

10.8 An exception to the prima facie position is section 121(1) of the 1953 Act. Section 121(1) states that:

> On the death intestate, whether wholly or partially, of any male Māori leaving a widow, the Court may if it thinks fit, on application made by or on behalf of the widow, at any time within two years after the death of

[178] M Fisher and B Stirling, *Supporting Documents to Block Study – Northern Aspect Volume 1* (Wai 2180 #A6(a), 2012) at 147.

[179] Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on North South Island Claims Volume 1* (Wai 785, 2008) at 2.

> the deceased or within such extended time, may be allowed in accordance with section one hundred and twenty-three hereof, and on proof that she has not sufficient land or other property for her maintenance, appoint to the widow, subject to such conditions or limitations with respect to her remarriage or otherwise as it thinks fit, any such estate or interest in the real or personal estate of the deceased as it could have appointed under section one hundred and nineteen hereof if the husband had died leaving a will.

10.9 For Rosie to succeed under section 119 to Robert's shares she must have met the above criteria. Unfortunately, there is no evidence before this Tribunal revealing how (or even if) the Māori Land Court considered Rosie's application for succession. What is known, is that Robert and Rosie had been separated for a long time, and divorce proceedings were well underway when Robert died as such these would have been important factors for the Judge to consider.[180]

10.10 Despite the uncertainty surrounding the question of whether the succession was lawful, what is certain is that the Commissioner gave absolutely no consideration to the blood relatives of Robert, who had a prima-facie right to the land under tikanga Māori. As such, the Crown breached its obligation to consult with the correct rights holders.

Breach of Law

10.11 An obligation and minimum standard flowing from the principle of active protection is the obligation on the Crown to keep its own laws.[181] The Commissioner ignored this obligation by committing Misfeasance in a public office and Perjury, which are defined as:

(a) Misfeasance in a public office:

> . . . if a public officer does an act which, to his knowledge, amounts to an abuse of his office, and he thereby causes damage to another person,

[180] M Fisher and B Stirling, *Sub-district Block Study- Northern Aspect* (Wai 2180 #A6, 2012) at 103.
[181] Waitangi Tribunal, *Report on Central North Island Claims Stage 1 Volume 2 (Part 3)* (Wai 1200, 2008) at 429.

then an action in tort for misfeasance in a public office will lie against him at the suit of that person.[182]

(b) Perjury:

Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of his or her evidence on oath, whether the evidence is given in open court or by affidavit or otherwise, that assertion being known to the witness to be false and being intended by him or her to mislead the tribunal holding the proceeding.[183]

10.12 The Commissioner's conduct meets the elements of the Tort of Misfeasance in a Public Office as he:

(a) Abused his office by proceeding with the purchase of Robert's shares in Ōwhāoko D2 despite explicit Ministerial direction not to initiate purchases of Māori land and in breach of the 1973 Act and he caused the back dating of the sale and purchase agreement;

(b) The Commissioner's knowledge was inherent in the Ministerial direction and by the enactment of the 1973 Act; and

(c) This intentional action caused severe damage to the Robert's descendants and blood relatives by alienating them from their ancestral lands and all the connected economic and spiritual benefits.

10.13 The Commissioner's conduct meets the elements of Perjury as he:

(a) Filed misleading evidence of a sale and purchase agreement with the Māori Land Court; and

(b) His knowledge of the misleading evidence was inherent as he requested the execution date to be backdated to before 23 November 1973 in order to defeat the 1973 Act.

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[182] *Farrington v Thomson and Bridgeland* [1959] VR 286 at p 293: Cited in *Garrett v Attorney-General* [1993] 3 NZLR 600 (CA) at 603.

[183] Crimes Act 1961, section 108(1).

10.14 Robert Karaitiana's blood-relatives and descendants were alienated from Ōwhāoko D2 as a direct result of the Commissioner's unlawful premeditated actions. Specifically, the prejudice lies in the descendants not having the ability to realise the land-block's inherent economic potential and not having the ability to maintain the same cultural connection. The Commissioner's premeditated actions were illegal, as such the Crown failed in its obligation to keep its own laws.

Prejudice – Ōwhāoko D2 block

10.15 As stated above, the unlawful actions of the Commissioner caused Robert Karaitiana's lands to be alienated which ultimately meant that his blood descendants, who were eligible under the law of the time, were denied the opportunity to succeed to their tūpuna lands.

11.0 EUROPEANISATION OF MĀORI LAND

11.1 Issue 8: "In what ways, and to what extent, were Taihape Māori affected by the Europeanisation of Māori land under the Māori Affairs Amendment Act 1967 (such as on the Otamakapua block)?" [184]

11.2 The Māori Affairs Amendment Act 1967 adversely affected Māori by:

(a) *Coercively* issuing status declarations which Europeanised Māori land; and

(b) Disregarding Māori identity to land.

Evidence – Europeanisation of Māori Land

11.3 Pursuant to Part 1 of the Māori Affairs Amendment Act 1967 ("the 1967 Act"), Māori land owned by not more than four owners was to be compulsorily changed from Māori freehold land to general land:

> Registrar may issue declaration of change of status Where, upon inquiry made under section 4 of this Act, in respect of any block, the Registrar is satisfied- (a) That the block comprises land to which this Part applies; and (b) That there is no reason to believe that any of the owners, as disclosed by the records of the Court, is deceased; and (c) That the land is suitable for effective use and occupation; and (d) That a plan of the land sufficient

[184] Tribunal Statement of Issues (Wai 2180 #1.4.3, 2016) at 38.

> for the purposes of registration of the order constituting the title to the land has been prepared or that a description and diagram thereof has been prepared and duly certified by the Chief Surveyor under subsection (3) of section 5 of this Act,- the Registrar shall issue in respect of the block a declaration that the status of the land to which the declaration relates **shall cease to be that of Māori land**. [185] **[Emphasis added]**

11.4 1,196 acres of Otamakapua was declared European land as a direct result of status declarations pursuant section 6 of the 1967 Act.[186] The table below breaks down this status declarations by land blocks:[187]

BLOCK	ACRES	DATE
1A2A	277	June 1971
1A2B	282	November 1970
1A3,5	105	June 1969
1A3A	102	August 1969
1A3C	219	August 1969
1F2A	211	August 1969

Submissions - Europeanisation of Māori Land

Status Declarations

11.5 The Waitangi Tribunal, in the *Central North Island Claims Report ("CNI Report"),* found that the Europeanisation of Māori land under the 1967 Act was a breach of Article 2 rights and the principle of Active Protection.[188] Those findings were all

[185] Māori Affairs Amendment Act 1967, s6.
[186] Terry Hearn *Sub-District Block Study-Southern Aspect 1 November 2012* (Wai 2180, #A7) at 135.
[187] Terry Hearn *Sub-District Block Study-Southern Aspect 1 November 2012* (Wai 2180, #A7) at 135.
[188] Waitangi Tribunal *Report on Central North Island Claims Stage 1 Volume 2 (Part 3)* (Wai 1200, 2008) at 773.

predicated on the coercive nature of section 6 which forced Māori landowners to accept Europeanised title.

11.6 Section 6 (above) was a mandatory provision. The provision instructed the Registrar to make inquiries about the status of Māori land blocks, if those blocks met the requirements of sub-section 4 and 6, then the Registrar was compulsorily required to issue a status declaration expressly stating that the Māori land block in question would cease to be Māori land.

11.7 The 1967 Act did not require consent from Māori landowners. The removal of a *choice* to consent coercively undermined a Māori landowner's authority over his/her land status preference as he/she were forced to accept the Europeanised status of their land declared by the Registrar. Consequently, Māori landowners were coerced into having the status of their land Europeanised.

Disregarding Māori Identity

11.8 The Crown breached the principle of Autonomy as it diminished the place of Māori governance over land by removing the ability to choose between Māori or European title.

11.9 Europeanisation of Māori land was predicated on the Crown-centric economic perspective of land. The Crown's view of land was solely economic, conversely Māori views include cultural and spiritual connections to the land.[189] The Crown perceived Māori views with condescension, believing that Māori views were merely sentimental, and that Māori had far more to gain from Europeanisation.[190] From the Crown's perspective, those gains included:[191]

(a) Increased efficiency of land alienation;

(b) Efficiencies gained by dealing with land under one land transfer system;

(c) Increasing access for Māori landowners to mortgage their land; and

[189] Waitangi Tribunal, *Report on Central North Island Claims Stage 1 Volume 2 (Part 3)* (Wai 1200, 2008) at 773.
[190] Waitangi Tribunal, *Report on Central North Island Claims Stage 1 Volume 2 (Part 3)* (Wai 1200, 2008) at 743-744.
[191] Waitangi Tribunal, *Report on Central North Island Claims Stage 1 Volume 2 (Part 3)* (Wai 1200, 2008) at 766-767.

(d) Increasing access for Māori landowners seeking development finance.

11.10 The Crown believed that by providing these benefits through Europeanisation that they were assisting Māori in realising the economic potential of their lands.[192] This perspective prioritised economic potential over cultural/whakapapa connections to land.

11.11 The Crown's position is ironic and disingenuous as Taihape Māori did possess strong desires to realise the economic potential of their lands. For example, Ihakara Te Rango was pro-active about seeking Crown assistance in developing his land, so strong was his desire that he devised a plan with Māori and presented this to the Crown, however the Crown were not interested in assisting Ihakara.[193]

Prejudice – Europeanisation of Māori Land

11.12 Ultimately, the Europeanisation of Māori land marginalised the authority of Māori landowners to choose and marginalised the status and identity of Māori land.

12.0 CONCLUSION

12.1 Overall, the Crown's breaches of the Treaty in the 20th Century can be summarised as follows:

(a) Māori selling land to clear debt from the high costs associated with title determinations in the Native Land Court;

(b) The Crown's prioritisation of settler demands for land over Māori concerns for retention of their ancestral lands;

(c) Legislation providing for European settlement and excluding Māori from accessing necessary development assistance;

(d) The Crown's inability to provide for mutual benefits;

(e) Legislative safeguards and protections from increased alienation being removed;

[192] Waitangi Tribunal, *Report on Central North Island Claims Stage 1 Volume 2 (Part 3)* (Wai 1200, 2008) at 766-767.

[193] Tony Walzl, *Twentieth Century Overview* (Wai 2180 #A46, 2016) at 185-186.

(f) The compulsory acquisition of unproductive land laden with rates arrears;

(g) Unfair land purchasing on behalf of the Crown;

(h) The facilitation of illegal land purchases by agents of the Crown; and

(i) The Europeanisation of Māori land without consultation.

12.2 The consequent prejudice flowing from these breaches overall have involved a significant dispossession of land. By the end of the 20th Century Māori had lost 925,519.62 acres of land.[194]

12.3 The effect of that dispossession means that generations of Taihape Māori lived and have been raised without a physical connection to their ancestral lands. Finally, the Crown's failure to respond to Māori economic aspirations led to economic deprivation and marginalisation. Today this is marked by a stark inequality and distribution of wealth.[195]

Dated at Hamilton this 5th day of October 2020

Aidan Warren/ James Lewis

Claimant Counsel

[194] Craig Innes, *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013* (Wai 2180 #A15(m), 2018) at 114.

[195] Philip Cleaver, *Māori and Economic Development in the Taihape Inquiry District 1860-2013* (Wai 2180 #A48, 2016) at 304.