IN THE WAITANGI TRIBUNAL **WAI 2180**

WAI 1196

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER the Taihape: Rangitikei ki Rangipo Inquiry (Wai 2180)

AND

IN THE MATTER the claim of **Merle Ormsby, Daniel Ormsby, Tiaho Pillot** and **Manu Patena** on behalf of themselves, their whānau, **Ngati Tamakopiri** hapū and **Ngāti Hikairo** iwi.

CLAIMANT SPECIFIC CLOSING SUBMISSIONS FOR WAI 1196

Dated: 23 October 2020

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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

1. This claim is brought by Merle Ormsby, Daniel Ormsby, Tiaho Pillot and Manu Patena on behalf of themselves, their whānau, Ngati Tamakopiri hapū and Ngāti Hikairo iwi (the "Claimants"). The Claimants have previously provided evidence in the:

    a. He Maunga Rongo: Central North Island inquiry;

    b. Te Kāhui Maunga: National Park inquiry;

    c. He Whiritaunoka: Whanganui inquiry; and,

    d. Te Rohe Pōtae inquiry.

2. The claim was initially filed with the Waitangi Tribunal in 2004[1], which was followed by amendments in 2005[2] and 2006[3] in the National Park Inquiry. The claim was amended again in 2008[4] and 2011[5], in the Te Rohe Potae Inquiry, and finally in 2016 in the Taihape: Rangitikei ki Rangipo Inquiry. The initial statements of claim concerned claims in the surrounding inquiry districts, and demonstrates the difficulties the Claimants have had in protecting their land across several inquiry boundaries.

3. In relation to the Taihape Inquiry district the Claimants whakapapa to Ngati Tamakopiri traces their lineage to Toikairakau and Te Kura-i-monoa.

Toikairakau

(Tamarauteheketangaarangi)

|

Te Awanuiarangi

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[1] Wai 1196, #1.1.1
[2] Wai 1196, #1.1.1(a) and (b)
[3] Wai 1196, #1.1.1(c)
[4] Wai 1196, #1.1.1(d)
[5] Wai 898, #1.2.128

Kauri

|

Tamatea-arikinui

|

Rongokako

|

Tamatea-pokaiwhenua

|

Tamakopiri

4. The Claimants have a strong physical and spiritual relationship with the Owhaoko and Motukawa land blocks which form part of the inquiry district. The Claimants relationship to these blocks derives from their great grandmother Kui Maata Kanohi Te Wherowhero Piwhara ("Kui Maata"). Kui Maata succeeded to land interests in both blocks when she was a young girl, her whakapapa is as follows:

Whanganui Piwhara = Kataraina Pohoiti

|

Piwhara Wiremu = Mere Te Iwa Iwa

|

Maata Kanohi Te Wherowhero Piwhara = Te Ngoi Patena Mariu

|

Te Taawhi Patena Mariu = Rauaiterangi (nee Te Ahuru) 4

|

Merle Ormsby and Siblings

5. The Claimants rely on and adopt the following generic closing submissions regarding the following issues identified in the Tribunal Statement of Issues ("TSOI"):[6]

   a. Issue One: Tino Rangatiratanga

   b. Issue Four: Crown Purchasing

   c. Issue Five: Economic Development and Capability

   d. Issue Seven: Land Boards and the Māori Trustee

   e. Issue Eleven: Landlocked Land

   f. Issue Eighteen: Education and Social Services

   g. Issue Twenty-One: Wāhi Tapu

TRIBUNAL STATEMENT OF ISSUES – ISSUE 3 – NATIVE LAND COURT

6. The Claimants have claim interests concerning the Native Land Court. As at the date of filing these closing submissions, the Native Land Court Generic Closing Submissions were not available. In light of these circumstances, the Claimants seek the leave of the Waitangi Tribunal to file Native Land Court-related closing submissions at a later date following receipt of the Native Land Court Generic Closing Submissions.

TRIBUNAL STATEMENT OF ISSUES – ISSUE 9 – GIFTING LAND FOR SOLDIER SETTLEMENT

Introduction

7. Taihape Māori were generous when it came to the gifting of lands. Taihape Māori gifted lands for school sites, for the North Island Main Trunk, for public works and for the settlement of returned Māori soldiers. Ultimately the gift was generally for a positive benefit such as education, transport or access.

[6] Waitangi Tribunal, *Tribunal Statement of Issues*, Wai 2180, #1.4.3, page 2 and 3

Others will discuss the gifting for schools, railway and public works. In these submissions, we focus on the lands gifted for returned Māori soldiers.

8. These closing submissions address Issue 9 of the TSOI: Gifting of land for soldier settlement.[7] To support the war effort, Taihape Māori and Ngāti Tūwharetoa gifted 35,000 acres of land in the Ōwhāoko block to the Crown for the settlement of returning Māori soldiers.[8] The land was never used for the purpose for which it was given, but the Crown was very tardy in returning the unused land to its Māori owners.[9] The land was not returned until 1996 and only after the donors overcame protracted efforts by government agencies to have the land set aside for water and soil conservation purposes rather than returned to Māori.[10] Delays were also caused by the Crown's legislative regime allowing for the gifted lands to be placed under the administration of the Tuwharetoa Māori Trust Board between 1974 and 1996.

9. When the Crown made the decision to return the lands to Taihape Māori, it failed to recognise all of the donors of the land, dealing instead with Tuwharetoa Māori only. The gifted lands were returned to Māori in 1974 but placed under the control and administration of the Tuwharetoa Māori Trust Board, and eventually to Taihape Māori in 1996. At no time did Taihape Māori benefit during the period in which the Crown held the lands.

Background

10. The circumstances that led to the initial gifting of the land are unclear given that the lands gifted were from both Taihape Māori and Tuwharetoa. The initial offer to the Crown of about 25,000 acres of Ōwhāoko came from Ngāti Tuwharetoa in 1916. The gift was for the settlement of returned Māori soldiers irrespective of the tribe or tribes to which they belonged.[11] Native Minister Herries expressed his gratitude for the gift conveying 'the hearty thanks' of the government for Ngati Tuwharetoa's "splendid action".[12] The press were also informed and immediately published news of the gift. Ngāti

[7] Waitangi Tribunal, *Tribunal Statement of Issues*, Wai 2180, #1.4.3, page 33.
[8] Stirling, Fisher, *Northern Aspect Report*, Wai 2180, #A6, p 116.
[9] Stirling, Fisher, *Northern Aspect Report*, Wai 2180, #A6, p 116.
[10] Stirling, Fisher, *Northern Aspect Report*, Wai 2180, #A6, p 116.
[11] Stirling, Fisher, *Northern Aspect Report*, Wai 2180, #A6, p 116.
[12] Stirling, Fisher, *Northern Aspect Report*, Wai 2180, #A6, p 116.

Tuwharetoa responded stating that they had been duly rewarded for their insignificant gift by the words of praise and pleasure. A few days later, other Ōwhāoko owners made similar offers. Ngati Tama and Ngati Whiti met at Taihape and agreed to a gift of another 20,000 acres.[13] The press coverage conflated the two distinct gifts into a single large gift.[14]

11. On 9 November 1916, a Ngati Tuwharetoa deputation met with Herries, Minister of Lands Bell and Pomare in Wellington to formalise the gift. Speaking on behalf of Tūwharetoa, Te Heuheu Tukino told the ministers that the gift was free and made without any conditions. Herries congratulated Ngati Tuwharetoa for their gift and confirmed to them that the Governor had passed word of it on to the King. To validate the gift, the Crown had to enact special legislation, the Native Land Amendment and Native Land Claims Adjustment Act 1917. Section 4 provided for meetings of assembled owners to have the power to gift land to the Crown for the settlement of discharged soldiers.[15]

12. By April 1917, little progress had been made regarding the gifting so a deputation of Ngāti Tuwharetoa rangatira returned along with Pomare to visit Herries. 10 more blocks totalling 40,000 acres were to be included in the gift, being Ōwhāoko B East, Ōwhāoko B1B (the Claimants block), Ōwhāoko D3, Ōwhāoko D5, Ōwhāoko D6 No. 1, Ōwhāoko D6 No. 3 and Ōwhāoko D7 No. 1. A meeting of owners was requested to affect the gift. Meetings of owners could only be called for blocks with sufficient owners to form the quorum required by law, and as Ōwhāoko B1B and B East had too few owners there was neither the need nor the facility to call a meeting of the one or two owners involved. By May 1917, the meetings of assembled owners were convened and the necessary consent was secured for some of the blocks.

13. Following this, the Māori Land Board completed the transaction over the lands that were to be gifted. It was not until several months later in January 1918 that the gifting was completed.[16]

[13] Stirling, Fisher, *Northern Aspect Report*, Wai 2180, #A6, p 117.
[14] Stirling, Fisher, *Northern Aspect Report*, Wai 2180, #A6, p 118.
[1515] Stirling, Fisher, *Northern Aspect Report*, Wai 2180, #A6, p 120.
[16] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 304.

Overview of position regarding gifting

14. By way of overview, the Claimants position in relation to gifting is that:

a. It was the intention of the Claimants that when gifting the lands for returned soldier settlement, a mutual relationship would be formed with the Crown.

b. The Crown failed to honour that relationship by not using the land for its intended purpose and then failing to return the land in an expeditious manner.

c. When the Crown made the decision to return the land, for a period, it diminished the mana of Taihape Māori by dealing only with Tuwharetoa.

d. When the Crown eventually recognised that Taihape Māori were owners of some of the gifted lands, it concocted a process to return the lands to an entity that was not comprised of the descendants of those who gifted the lands.

e. While the Crown held on to the property, the Claimants lost the opportunity to earn an income from the land blocks.

f. While the Tuwharetoa Māori Trust Board administered the gifted lands, Taihape Māori were unable to make decisions that benefited Taihape Māori.

g. The Crown failed to compensate Taihape Māori for their lost economic opportunities. A claim in this regard is valid in circumstances where the Crown did not use the land for its gifted purpose and in circumstances where the Crown held needlessly on to the land for an extended period of time.

Crown Position

15. In the opening comments and submissions of the Crown, the Crown made the following observations:[17]

> Taihape Māori gifted five blocks of Ōwhāoko lands to the Crown during World War I for the settlement of returning Māori soldiers. The gifting by Ngāti Whiti and Ngāti Tama complemented, and was encompassed within, a part of the Crown to honour not only the spirit of the gifting, but also the terms of it.
>
> While the land was not developed by the Crown between 1917 and 1970, a decision had been made that given the low quality of the land, any improvements would cost more than they would be worth. The Crown expended money on rabbit control (£400 per annum) while the owners were relieved of the costs of rates and of pest control. Closer assessment is required concerning income generation and distribution from the lands, and the decision making undertaken between 1930 and 1970.
>
> In 1973 it was decided that all of the gifted land would be returned. The Māori Purposes (No. 2) Act 1973 provided that the Ōwhāoko gifted land blocks could be returned, including to a representative trustee or trustees. The land now remains in Māori ownership.
>
> While the land was returned nearly 60 years after it was gifted, material prejudice is difficult to identify. The circumstances of the return of these lands including the relative recognition of Ngāti Tama and Ngāti Whitikaupeka and Tūwharetoa will be the subject of further submissions after the evidence has been tested.

16. The Crown do not make any concessions. Rather, it noted that the following matters need to be tested:

    a. An assessment concerning income generation and distribution from the lands, and the decision-making undertaken between 1930 and 1970;

    b. What material prejudice was suffered by the Claimants, and

[17] Wai 2180, #3.3.1, page 59, 60

c. The circumstances of the return of the lands including the relative recognition of Ngāti Tama, Ngāti Whitikaupeka and Tūwharetoa.

17. The evidence will show that the Crown allowed third parties to utilise the gifted lands for commercial interests without payment. The failure of the Crown to generate revenue from these uses was in breach of the Crown's fiduciary obligation that arose from the Native Land Amendment and Native Land Claims Adjustment Act 1930 to act in the best interests of the gifting, which was to provide for Māori veterans.[18]

18. The material prejudice suffered by the Claimants was as follows. The Crown:

a. did not use the land for its intended purpose;

b. failed to consult with Taihape Māori regarding how it would deal with the gifted lands;

c. allowed third parties to benefit from the lands without payment, compromising its ability to provide funds to Māori veterans, who were the ultimate reason for the gifting;

d. failed to consult with Taihape Māori when it enacted legislation to change the status of the gifted land to Crown land;

e. failed to recognise Taihape Māori as donors of the land; and

f. failed to recognise the tino rangatiratanga of Taihape Māori when seeking to return the lands to the owners.

19. Also, when the gifted lands were finally returned the Crown's legislative regime saw the lands being controlled and administered by the Tuwharetoa Māori Trust Board, primarily for the benefit of Tuwharetoa Māori from 1974 to 1996. For a further period of 22 years, Taihape Māori had no control over their lands as the Crown had placed control in the hands of a neighbouring iwi.

[18] Martin Fisher Bruce Stirling, *Block study – Northern Aspect*, Wai 2180, #A6 at 126.

Tribunal Statement of Issues

20. The Tribunal has identified the following issues with regard to the gifting:[19]

a. What understandings and expectations did Taihape Māori have when they agreed to gift their land to the Crown?

b. Was the land gifted by Taihape Māori to the Crown for soldier settlement used for their intended purpose?

i. If it was not used for soldier settlement, what was it used for? Had the Crown derived any income from the use of the land, and if so, how much?

ii. Were those lands returned by the Crown and how long did it take for this to occur?

iii. Were Taihape Māori prejudiced in any way by the length of time it took for the Crown to return the gifted lands? If so how?

iv. Was there any compensation for the long period of alienation?

c. Where the Crown did not use gifted land for its intended purpose, what kind of consultation, if any, did it engage in with donors about other potential uses for the land?

d. How did the Crown determine that the land gifted for soldier settlement should be returned? Was it the result of pressure from Taihape Māori?

e. What process did the Crown follow to determine who the land should be returned to? Was the land returned to the correct owners or their descendants? If not, what measures were taken to rectify the situation and compensate the correct owners?

[19] Wai 2180, #1.4.3, Issue 9, page 33.

f. What was the state of the gifted land when it was returned to Taihape Māori?

Tribunal Jurisprudence

21. The Tribunal has expressed the following relevant principles in its various reports concerning gifting:

a. The Muriwhenua Land Tribunal noted the link between the concepts of tuku and manaakitanga. In that inquiry, the Tribunal said:[20]

> …the underlying purpose of gift exchange, as we see it was not to obtain goods but to secure lasting relationships with other hapū. This was consistent with Maori views of reciprocity…
>
> The more one gave, the greater one's mana, and an unequal response meant loss of mana.

22. The Te Rohe Potae Tribunal described this relationship further in its Te Mana Whatu Ahuru Report:[21]

> Such gifts were typically for limited periods – often for a life or a more limited timeframe, but the timeframe could be indefinite so long as the relationship continued to be mutually beneficial and involve reciprocal obligations.

23. Hirini Moko Mead described the tikanga of gift giving:[22]

> An important point to make about gift giving is that there is a tradition behind it, there are tikanga involved in the exchange and there are many precedents as models of proper ways of behaving. While much has changed since contact with another culture, some of the more traditional forms of gift giving are still being practiced and the same customary practices apply.
>
> Another point is that gift giving is part of an exchange of gifts. A return gift is expected some-time in the future. In some cases the return gift may be made fairly soon after the initial gift transaction. But often the recipient looks for an opportune occasion to make a return presentation and this may be years later. Sometimes the object given as a gift is

[20] Waitangi Tribunal, *Muriwhenua Land Report* (Wai 45, 1997), page 28.
[21] Waitangi Tribunal, *Te Mana Whatu Ahuru Report* (Wai 898, 2018), Vol 1, page 74.
[22] Mead, Sidney Moko*, Tikanga Maori Living by Maori Values*, 2003, page 181-182

> returned to the donor having fulfilled its purpose of cementing relationships or honouring a particular important guest. These are many instances of prized objects such as cloaks being returned years later to the family of the donor.

24. During the presentation of his evidence, Richard Steedman noted:[23]

> There is extensive research that has been carried out on the gift blocks given by our people for returned soldiers, and the very land upon which the Waiōuru Army training grounds are situated, are our lands...
>
> What we strive for first, therefore is recognition and visibility at every step...
>
> And why is the Army, Department of Conservation any Crown department, why would they be worried considering we gifted our own lands to the Army Effort, considering we sent many of our own people to assist in the Army Effort and the wars, why would they not see us as being partners?

25. It is clear that the tikanga of gifting is associated with an expectation of mutual benefit to both the party gifting and the party receiving. Gifting cemented relationships with the expectation that the parties would become allies and would treat each other equally.

What understandings and expectations did Taihape Māori have when they agreed to gift their land to the Crown?

26. On 3 October 1916, 25,000 acres of Ōwhāoko land was gifted for the purpose of settlement by returned Māori soldiers and it was specified that this was "irrespective of the tribe or tribes to which they may belong."[24] The gift was made at a time when service to the Crown was controversial for many Māori.[25] The Kīngitanga continued to object to military service and Maungapohatu had been invaded that year by the New Zealand Police to effect the arrest of Rua Kenana. A leading rangatira from Ngāti Maniapoto sought clarification on why the land was being gifted. Kingi Topia responded:[26]

[23] Waitangi Tribunal, *Hearing week 3 transcript*, Taihape Area School, Wai 2180 #4.1.10 at 29.
[24] Martin Fisher Bruce Stirling, *Block study – Northern Aspect*, Wai 2180, #A6 at 116.
[25] Martin Fisher Bruce Stirling, *Block study – Northern Aspect*, Wai 2180, #A6 at 116.
[26] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 122.

> Kingi Topia explained that many wounded Māori soldiers would come back to them who had no land. Those who wanted land and could work it should have it and pay a rent which should go to a fund to be divided among the wounded who could not work. For the land they were giving, a syndicate had offered £1 per acre; now he could see that Māori would lose nothing by giving the land, because three or four other syndicates were offering 30s. for the other land, but the Māori would not sell at that price.

27. On behalf of the Crown, Pomare explained that the government would prepare the land by making roads, a bridge over the Rangitikei and getting fencing materials and houses on the land before the sections were balloted for war veterans.[27] The rangatira from Ngāti Maniapoto:[28]

> ...rose brandishing his mere and spoke of how their words had "...rescued him from his misunderstanding, like the karakia of the Te Arawa chief had saved the canoe from being swallowed up in the whirlpool." He expressed his pleasure in giving his land alongside other Māori so that "...their wounded brothers would have something."

28. At hearing week 3, Dr Monty Soutar raised a further view as to what motivated the gifting. Dr Soutar advanced that Tureiti Te Heuheu prompted the gift and that his motivation may have stemmed from the guilt he was carrying having sent soldiers to war.[29] Further, that the gifting came at the end of the Battle of the Somme where many Māori soldiers were killed means that this particular conflict may have led to the gifting as well.

29. During hearing week 7, Walzl expanded on the Crown's response as it was expressed through Sir James Carroll:[30]

> You know we will do these things, we will build roads, we'll build homes et cetera et cetera.

30. Walzl stated that there was an understanding that there would be a concerted development effort of the land.[31] On this understanding, the Aotea District Māori Land Board completed the gift transaction.

[27] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 122.
[28] Tony Walzl, *Twentieth Century Overview*, Wai 2180 #A46 at 302
[29] Waitangi Tribunal, *Hearing week 3 transcript*, Wai 2180 #4.1.10 at 315.
[30] Waitangi Tribunal, *Hearing week 7 transcript*, Taihape Area School, Wai 2180 #4.1.15 at 195.
[31] Waitangi Tribunal, *Hearing week 7 transcript*, Taihape Area School, Wai 2180 #4.1.15 at 195.

31. Mōkai Pātea claimants point to other motivations for the actions of their forebears:[32]

a. Pressure was being brought to bear on Ōwhāoko owners by the local county council and the local rabbit board. They imposed charges on Ōwhāoko owners to pay for their activities, regardless of the extent to which the owners benefited from county services or the extent to which they were responsible for the introduction of rabbits to the district;

b. Rates arrears would have been accumulating on Ōwhāoko titles as soon as those titles were received. Rates arrears were a significant burden, particularly in relation to the low rents being paid to the owners;

c. The best of the land was under lease or it was being purchased privately; and

d. The remaining Ōwhāoko land was likely to cost the owners more to retain than the income it could generate.

32. Earlier the Aotea District Māori Land Board had been confident that following their rejection of the Crown's purchase offers for many of their titles, the Ōwhāoko owners would come to their senses particularly when the burden of rabbit board charges and local body rates began to bite. The extent of these costs may well have pushed the owners towards the gifting of Ōwhāoko.[33]

33. By gifting the land, the owners expected the Crown would expend some level of capital in improving the land and it would benefit a Māori cause they had identified as important. Instead, there was no development. The Crown did not discuss matters further with those who donated the land and it broke the terms of the trust under which the land had been given.[34]

[32] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 123.
[33] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 125.
[34] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 344.

Was the land gifted by Taihape Māori to the Crown for soldier settlement used for their intended purpose?

34. By 1918, the government was aware soon enough that the gifted land was not exactly fit for purpose. Not long after the land had been gifted, the Commissioner of Lands inspected Ōwhāoko and reported on its limited utility for the settlement of returning Māori soldiers. [35]

35. During the whole time that the Crown held title to the gifted lands, there was no movement to affect the intended purpose.

36. The land was not used for its intended purpose.

If it was not used for soldier settlement, what was it used for? Had the Crown derived any income from the use of the land, and if so, how much?

37. As a result of the Commissioner of Lands inspection, the gifted lands were ignored following the war. In August 1925, a war veteran inquired about settling the land. He was informed of its poor quality and that it was unsuitable for farming. Large sections of the block lay unused and infested with rabbits throughout the 1920s. The Department of Agriculture was spending £400 per year in an effort to control rabbits on Ōwhāoko so that adjoining private land were not affected by the pests.[36]

38. In August 1928, an private offer was made to take over some of the land but the offer was less than attractive. The terms of the gifting did not permit such a lease and officials struggled to develop a mechanism to allow them to utilise the land in this way. In 1930, the Native Land Amendment and Native Land Claims Adjustment Act was enacted. Section 25 of that Act stated that if the land was for the most part of such poor quality that it could not be occupied within the limitations under the Land Act 1924, the Act "freed and discharged the land from any trust" to settle discharged soldiers on it, and provided for the land to be held and disposed of as ordinary Crown land. Any income from the land would first go to reasonable expenses of administration with any surplus to be paid to such fund as the Native Minister shall from

[35] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 125.
[36] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 125.

time to time direct, to be applied for some purpose having for its object the assistance of Natives being discharged soldiers. There is no evidence: [37]

a. to indicate that any such funds were ever generated by the government from the land or used for the purposes provided for in the 1930 Act;

b. that those who gifted the lands were informed of the change of status; and

c. that those who gifted the lands were advised that the lands would not be used for the purpose for which it was given.

The lands were administered as ordinary Crown land but remained largely unused.

39. In 1939, the government set aside 6,833 acres of the gifted land as permanent State forest for soil and water conservation purposes in the watershed of the Ngaruroro River. This land generated no income towards the purpose of the gift.[38]

40. In 1957, the donors sought the return of land. The government rejected the request for return and explored other options for the land. Prior to this in 1956, there was a proposal from the New Zealand Forest Service to include the gifted land in the Ngaruroro Catchment Scheme. Also, there was a private offer by Ngamatea Station to purchase part of the gifted land. The government contacted the Tuwharetoa Māori Trust Board advising that it had set aside 6,833 acres for soil and water conservation purposes and that it intended to set aside an additional 20,575 acres for the same purpose. Recognising that the proposal went against the purpose of the gift, the government offered to pay the former owners of the land 2s 6d. per acre for the 20,575 acres. No payment was offered for the 6,833 acres. [39] The government noted that the last of the gifted land, Ōwhāoko D7 Part (8,574 acres) was not wanted for conservancy purposes, but that Ngamatea Station wished to buy it at a price of 4s 6d. per acre with the funds to go to the

[37] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 126.
[38] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 127.
[39] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 128.

owners.[40] This was not realised. Up until the gifted lands were transferred back to the owners, the gifted lands did not earn an income.

41. There is no evidence to indicate that any funds were generated by the government from the land and thus it appears that no assistance was ever given to Māori returned soldiers as a result of the gift.[41]

42. Reports produced in the 1980s demonstrate that land within the gift blocks over the years had been utilised by several private interests, including farming, hunting and tourism concerns, without payment, sometimes for a number of years.[42] We submit that failure by the Crown to generate income from these ventures was a breach of their fiduciary obligations to returned Māori servicemen pursuant to the Native Land Amendment and Native Land Claims Adjustment Act 1930, and in breach of the Crown's duty to act in good faith towards the donors of the land.[43]

43. During the cross examination of Martin Fisher and Bruce Stirling at hearing week 3, the matter of compensation was raised by Ms Feint on whether the Crown generated any income between 1917 and when the lands were returned. It was confirmed that no income was earned on the gifted lands between 1917 and 1930,[44] and no income was earned between 1930 and when the lands were returned.[45]

Were those lands returned by the Crown and how long did it take for this to occur?

44. The lands were gifted in 1916, with the title transferring to the Crown in 1918. The land was returned to its Maori donors in the 1970s only after years of lobbying and what was, for them, a fortuitous change of government in 1972.[46] For a period of approximately 60 years, the Crown held on to the gifted lands without deriving any income from it.

[40] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 128.
[41] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 306.
[42] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 748.
[43] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 126.
[44] Waitangi Tribunal, *Hearing week 3 transcript*, Taihape Area School, Wai 2180 #4.1.10 at 407.
[45] Waitangi Tribunal, *Hearing week 3 transcript*, Taihape Area School, Wai 2180 #4.1.10 at 407.
[46] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 135.

45. Although the lands were returned to Māori in the 1970s, it was initially vested in the Tuwharetoa Māori Trust Board who controlled and administered the lands, not necessarily for the benefit of Taihape Māori. For example, the Tuwharetoa Maori Trust Board were willing to use the Ōwhāoko lands primarily to benefit Ngāti Tuwharetoa's commercial interests.[47] This stance would not have benefited Taihape Māori.

46. The reason behind the return delay was explored in the cross examination of Martin Fisher and Bruce Stirling during hearing week 3 at Taihape Area School:[48]

> I mean certainly the irony of them [the Crown] wanting to individualise as much as they can and then only deal with you know one large grouping is certainly there. Certainly, looking more specifically at the specific blocks that were gifted might reveal some more behind that but as to whether all of the owners of those specific blocks were fully in support of this gifting or were caught up in this sort of patriotic fervour that we have previously described. And I should say, not surprisingly the Crown just made up another Act to facilitate this gifting.

Fisher went on to state:[49]

> So, it is that tension between wanting to deal with a collective or a rangatira like Te Heuheu and Kingi Tōpia and some of the others and Hīraka that tension between that chiefly kind of right and the actual legal rights of each individual owners which supposedly is what the system is there to define. You can see the problem with the Land Court, it is sort of summed up in that one transaction really, like the tribe is trying to do something or several tribes but that's not how the system works. It's not a tribal action anymore.

47. The Crown's disinterest in who gifted the land blocks resulted in a position where it was unaware of who the land blocks should be returned to. By enacting legislation to facilitate the gifting, the Crown obviated individual

[47] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 711.
[48] Waitangi Tribunal, *Hearing week 3 transcript*, Taihape Area School, Wai 2180 #4.1.10 at 396.
[49] Waitangi Tribunal, *Hearing week 3 transcript*, Taihape Area School, Wai 2180 #4.1.10 at 397.

interests to ensure that it would gain title to the gifted land blocks. Judge Harvey concurred with the utility of the legislation:[50]

> . . . because of the mechanics of the Native Land Laws were so dense and convoluted, even when they came down to calling a meeting of owners and all of those processes that they could be tied up for years literally in that jungle of the Native Land Laws, so instead they simply decided, oh god, pass the law, to achieve that.

48. It was not until 1996 that Ngāti Tamakopiri, Ngāti Whitikaupeka, and Ngāti Whititama were able to separate their lands from the Ngāti Tuwharetoa dominated trust and from the Ōwhāoko B & D Trust. At the same time, Ōwhāoko A East and A1B were constituted as a separate trust comprising the Ngāti Tuwharetoa interests.[51] In the end, the gifted land remained out of the control of Taihape Māori owners for approximately 80 years.

Were Taihape Māori prejudiced in any way by the length of time it took for the Crown to return gifted lands? If so, how?

49. The Crown returned the lands to Māori in 1974. Unfortunately, the gifted lands were placed under the administration of the Tūwharetoa Māori Trust Board. The decisions made by the Tuwharetoa Māori Trust Board were for the benefit of the trust's Tūwharetoa beneficiaries, and not for Taihape Māori. Therefore, between 1974 and 1996 when the lands finally came back to the owners, Taihape Māori were prejudicially affected in the following ways:

a. They were unable to derive an income from the lands;[52]

b. There was a loss of interest on any income that could have been derived from the gifted lands;

c. A diminution of tino rangatiratanga over whenua containing their turangawaewae for the period that it was administered by the Tūwharetoa Māori Trust Board; and

[50] Waitangi Tribunal, *Hearing week 3 transcript*, Taihape Area School, Wai 2180 #4.1.10 at 399.
[51] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 713.
[52] Evidence of Ngahaeapareatuae Lomax at Hearing week 3, *Hearing week 3 transcript*, Wai 2180, #4.1.10 at 702.

d. Diminution of their tino rangatiratanga over the Ōwhāoko blocks.

Was there any compensation for the long period of alienation?

50. Ōwhāoko owners were subject to charges imposed by the local county council and the local rabbit board. Both agencies imposed charges on Ōwhāoko owners to pay for their activities regardless of the extent to which the owners benefited from county services or the extent to which they could be held responsible for the introduction of rabbits to the district.[53]

51. Rates arrears would have been accumulating on the Ōwhāoko blocks from the time that titles were awarded.[54] Rates arrears were a significant burden, particularly when the low rents being paid to the owners are taken into account.[55] The Ōwhāoko land was likely to cost the owners more to retain than the income it could generate.[56]

52. In the 60 years that the Crown had the land in its possession, it relieved the owners of the costs of rates and pest control. Therefore the owners were spared such costs and the land was maintained.[57] The Department of Agriculture was spending £400 per year in an effort to control rabbits on Ōwhāoko, however, we submit that the Crown did this to ensure that the interests of adjoining private land were not affected.[58] The decision to spend money on rabbit control was not for the benefit of Taihape Māori.

53. Although the Crown may argue that Taihape Māori benefited from the relief they got from incurring the cost of rates and pest control, it is difficult to see any real income benefit given that:

a. the rates charged would have exceeded the revenue that could have been generated from the land blocks even though the owners received very little utility from the local body services;

[53] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 123.
[54] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 125.
[55] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 125.
[56] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 125.
[57] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 344.
[58] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 125.

b. there is little evidence to indicate that Taihape Māori were either partly or jointly responsible for the rabbit problem. They were being charged to deal with a Crown instigated problem; and

c. the Crown spent money on rabbit eradication to appease adjoining private landowners.

Where the Crown did not use gifted land for its intended purpose, what kind of consultation, if any, did it engage in with donors about other potential uses for the land?

54. When the Crown acted, it did so unilaterally. Having reached a view that none of the land could be used as settlement lots for discharged soldiers, legislation was passed relieving the Crown of any duty to achieve this objective.[59] In 1930, the Crown freed and discharged the gifted land from any trust to settle discharged soldiers on it and provided for the land to be held and disposed of as ordinary Crown land.[60] There is no evidence that the donors were informed of this change of status, or told that the land would not be used for the purpose for which it was given.[61]

55. In 1939, the government set aside 6,833 acres of the gifted land as permanent State forest for soil and water conservation purposes in the watershed of the Ngaruroro River (being Ōwhāoko A1B of 583 acres and Ōwhāoko A East of 6,250acres). There was no consultation with the donors about this development.

56. The possibility of afforestation of Ōwhāoko had been discussed from time to time before the gifting when the Crown attempted to purchase the lands. Afforestation could have been explored as an option once the land was found not to be suitable for close settlement. This required consultation, something the Crown never did with the former owners in the 75 year period in which it held the land.[62]

[59] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 342.
[60] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 126.
[61] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 126.
[62] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 344.

How did the Crown determine that the land gifted for solder settlement should be returned? Was it the result of pressure from Taihape Māori?

57. In 1957, the donors began to seek the return of the land.[63] The government rejected the request and explored other options for the land. Prior to this there had been proposals from the New Zealand Forest Service to include the land in the Ngaruroro Catchment Service, as well as a private offer by Ngamatea Station to purchase part of the gifted land.

58. Rather than return the unused land, the government contacted the Tuwharetoa Maori Trust Board to explain it had set aside 6,833 acres of the gifted land for conservancy purposes and wanted to set aside another 20,575 acres for the same purpose.[64] The government offered to pay the former owners of the land 2s. 6d. per acre for the 20,575 acres. No payment was offered for the 6,833 acres it had set aside previously. The government suggested that since the original gift was regarded as a tribal matter and the owners comprised a substantial part of the tribe, the Tuwharetoa Māori Trust Board as recognised tribal leaders could make the decision on behalf of all the owners.[65] This attempt to circumvent donors was a political ploy and it was based on a misrepresentation. The relatively small number of owners involved in the Ōwhāoko gift in no way constituted "a substantial part of the tribe" of Ngāti Tuwharetoa. Besides, Ōwhāoko B, C and D blocks had nothing to do with Tuwharetoa.

59. In 1971, Lands and Survey proposed transferring the land to the New Zealand Forest Service ("NZFS") without consulting any of the original owners. The Department of Māori Affairs obtained a legal opinion on the proposal and was advised that whatever was done, it should be in the interests of those who were represented by the trust established by the 1930 Act.[66] Māori Affairs Secretary Jock McEwen noted that there was no trace of consultation with the former owners in the legislation of 1930 and that indicated their acceptance of the leases of the gifted land referred to in the Acts, much less the sale of the land. As the land was no longer being used for its original purpose, he endorsed the view of the donors that it should be

[63] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 127.
[64] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 127-8.
[65] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 128.
[66] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 129.

returned to them. Māori Affairs advised that the donors should be consulted first and that the land be returned. In 1972, the government decided to meet with Tuwharetoa who opposed the sale of the land but were willing to lease the land to the New Zealand Forest Service for soil and water conservation purposes.[67]

60. In 1973, under the Labour Government's policy of returning to Māori any land not being used for the purpose for which it was gifted, the Ōwhāoko blocks were returned to the owners. Section 23 of the Māori Purposes Act 1973 was enacted to revest the gifted land to those Māori found by the Māori Land Court to be entitled to receive it, or for the Court to vest the land in trust for those Māori found to be owners.[68] There is no evidence that consultation occurred with Taihape Māori during this process.

What process did the Crown follow to determine who the land should be returned to? Was the land returned to the correct owners or their descendants? If not, what measures were taken to rectify the situation and compensate the correct owners?

61. The NZFS had a long held ambition to take over the larger portion of the Ōwhāoko gift blocks while they were in Crown ownership to create a series of State Forest Parks in this area.[69] NZFS was shocked when the Māori Affairs Department announced it would return the gifted lands to Māori ownership. The Director General of NZFS initially proposed acquiring the lands. Over the next 18 months, NZFS officials mounted a "fierce rear-guard action to prevent the return" of the gift blocks.[70]

62. Initially the 6,833 acres of Ōwhāoko that was within the Forest Park was under NZFS administration. It was not until 1975 that NZFS acknowledged that the effect of the Maori Purposes (No. 2) Act 1973 was to revest all of the gifted land back to the owners. At the Māori Land Court sitting to effect the transfer, there did not appear to be a representative from Ngāti Whitikaupeka or Ngati Tamakopiri.[71] The Native Land Court's view that Ngāti Tuwharetoa had paramountcy over the gifted lands seems to have coloured

[67] Martin Fisher Bruce Stirling, *Block Study – Northern Aspect*, Wai 2180 #A6 at 129.
[68] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 706.
[69] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 706.
[70] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 706.
[71] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 708-9.

proceedings as the Tuwharetoa Māori Trust Board was appointed responsible trustee. An informal objection was raised and a representative from Ngāti Whititama was added as a trustee.[72]

63. In October 1975, NZFS met with the Tuwharetoa Māori Trust Board and offered to exchange land in the Waimihia Forest for all of the Ōwhāoko block administered by the Tuwharetoa Māori Trust Board. The Tuwharetoa Māori Trust Board indicated its support for an exchange of land.[73] In October 1976, the Tuwharetoa Māori Trust Board commenced a 2-year lease involving the Ōwhāoko lands to T J Edmonds Ltd. There were several other ventures that the Tuwharetoa Māori Trust Board tried to implement, however these failed to come to fruition.[74]

64. It was not until 1996 that Ngāti Tamakopiri, Ngāti Whitikaupeka, and Ngāti Whititama were finally able to separate their lands from the Ngāti Tuwharetoa dominated trust and form the Ōwhāoko B & D Trust. For some time, the returned lands were placed under administration and management regimes that essentially were non-representative of the ownership interests associated with the land.[75] The Crown failed to implement a process to assist Taihape Māori to quickly regain control and title to the gifted lands when it was returned. Taihape Māori did not receive any compensation for the Crown's failure to utilise the land for its intended purpose or, in the least, to return the land when it became apparent that the lands were not going to be as intended.

What was the state of the gifted land when it was returned to Taihape Maori?

65. Reports produced in the 1980s demonstrate that land within the gift blocks over the years had been utilised by several private interests, including farming, hunting and tourism concerns, without payment, sometimes for a number of years. In the case of farming, use had actually deteriorated the quality of the land.[76]

[72] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 709.
[73] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 709.
[74] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 712-3.
[75] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 748.
[76] Tony Walzl, *Twentieth Century Overview*, Wai 2180, #A46 at 748.

66. The Crown did nothing to develop the lands. There is evidence that other users have utilised the gifted lands for farming, hunting and tourism. We can only surmise that the Crown returned the lands in a worse state from when the lands were gifted based on the deterioration of the quality of the lands through use, and no attempts by the Crown to develop or ameliorate any of the deterioration.

TRIBUNAL STATEMENT OF ISSUES – ISSUE 13 – GENERAL TAKINGS (ROADS, SCENARY PRESERVATION AND OTHER PURPOSES)

Introduction

67. This claim concerns public works takings by the Crown of the Claimants' ancestral lands through iterations of the public works legislative regime ("public works regime").

68. The following submissions set out the Claimants' specific submissions on public works takings and are intended to compliment the Generic Closing Submissions on Issue D Public Works Takings: General Takings (Section 13) ("Public Works Closing Submissions").[77]

Overview

69. The Waitangi Tribunal jurisprudence on the public works regime forms the basis against which all land takings are assessed.

70. The Waitangi Tribunal in its *Wairarapa ki Tararua Report* stated:[78]

> The whole public works regime was, and remains, mono-cultural. The Crown failed to apprehend, and take account of, the special circumstances of land to Māori. In particular, it had no regard to the fact that, by the twentieth century, the land remaining in Maori hands was usually important or strategic for both cultural and economic reasons. Continuing to facilitate the land's easy purchase by (mainly) local authorities was a woeful failure to protect Maori from unnecessary cultural, spiritual, and financial loss.

[77] Hockly Legal, Generic Closing Submissions on Issue D Public Works Takings: General Takings (Section 13), Wai 2180, #3.3.45.
[78] Waitangi Tribunal, *Wairarapa ki Tararua Report* (Wai, 863, 2010) Volume II, at 799.

71. That Tribunal concluded:[79]

> In sum, the various Tribunals that have considered these matters agree that the compulsory acquisition of Māori land for public works can be justified in Treaty terms *only in exceptional circumstances, where the national interest is at stake and there is no other option*. This is now the test that every compulsory acquisition must meet in order to be legitimate in Treaty terms. In all other cases, taking land for public works where either consent or compensation is absent breaches article 2 of the Treaty. Tribunals have also found that article 3 of the Treaty is breached where Māori land is taken in preference to general land, because this is a failure to treat Māori like other citizens.[80] (emphasis added)

That the Crown can only compulsorily acquire Māori land in exceptional circumstances, as a last resort and only in the national interest, has been endorsed by subsequent Tribunal panels as te Tiriti ō Waitangi standard for public works takings ("public interest test").[81] Accordingly, we adopt this test in these submissions to the extent it provides a minimum standard that the Crown must adhere to in order to be compliant with te Tiriti ō Waitangi.

72. Further to Public Works Closing Submissions on the Crown Opening Comments and Submissions,[82] the Crown's positions and concessions on the Public Works Regime relevant to these submissions include that:

a. A key issue for consideration is the appropriate threshold to be applied to the public works regime in the context of te Tiriti ō Waitangi;[83]

[79] Waitangi Tribunal, *Wairarapa ki Tararua Report* (Wai, 863, 2010) Volume II, at 743.
[80] Waitangi Tribunal, Wairarapa ki Tararua Report (Wai 863, 2010), Volume II, at 743.
[81] For example, Waitangi Tribunal, *Te Kahua Maunga, The National Park District Inquiry Report* (Wai 1130, 2013) Volume II, Chapter 10; Waitangi Tribunal , *He Whiritaunoka: The Whanganui Land Report* (Wai 903, 2015), Volume III, Chapter 16; Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, (Wai 898, 2018), at [9.2.2]; Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report*, (Wai 27, 1995) at 11 and 21; Waitangi Tribunal, *Turangi Township Report*, (Wai 84, 1995), at 285 - 286; Waitangi Tribunal, *He Maunga Rongo*, (Wai 1200, 2008), Volume II, at 819, 867 - 872; Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, (Wai 215, 2010), Volume I, at 295.
[82] Hockly Legal, Generic Closing Submissions on Issue D Public Works Takings: General Takings (Section 13), Wai 2180, #3.3.45, at [22] – [33].
[83] Crown Law, Memorandum Contributing to the Preparation of a Draft Statement of Issues dated 2 September 2020, Wai 2180, #1.3.2 at [78] – [79]; see also, Crown Law, Opening Comments and Submissions of the Crown dated 2 March 2017, Wai 2180, #3.3.1 at [233].

b. Compulsory acquisition without compensation is not inherently inconsistent with, or prohibited by, te Tiriti ō Waitangi;[84]

c. Public works takings legislation reflects the judgment that private property rights can be compulsorily acquired for the wider benefit of the community.[85]

73. The Claimants' position in these Claimant Closing Submissions ("Claimant Closing Submissions") is that:

a. the public interest test set out by the Tribunal in the Wairarapa ki Tararua Report and endorsed by subsequent Tribunals is the accepted threshold to be applied to takings in te Tiriti ō Waitangi context; and

b. the Crown's duty to adhere to the Public Interest Test for public works takings is higher in light of the finding of Te Paparahi ō Te Raki Tribunal that northern signatory rangatira did not cede their sovereignty in February 1840 ("Stage One finding").[86]

74. It is on this basis we assert the Crown breached the principles of te Tiriti ō Waitangi by operating its public works regime in circumstances where:

a. no compensation was paid;[87]

b. if compensation was paid, it was less than the true value of the land taken;[88]

[84] Crown Law, Memorandum Contributing to the Preparation of a Draft Statement of Issues dated 2 September 2020, Wai 2180, #1.3.2 at [79]; see also, Crown Law, Opening Comments and Submissions of the Crown dated 2 March 2017, Wai 2180, #3.3.1 at [233] which states "A key point of difference relates to the Tribunal's finding that compulsory acquisitions since 1840 can only be justified in Treaty terms in exceptional cases. This imposes a substantially higher threshold than the Crown has been (and is) prepared to accept."; and Crown Law, Opening Comments and Submissions of the Crown dated 2 March 2017, Wai 2180, #3.3.1 at [231(a)] which states, "The following factors are particularly relevant to assessing the conduct of the Crown: (a) the Crown's compliance with the relevant legislation (and, in particular, any legislative requirements to give notice and pay compensation)."

[85] Crown Law, Memorandum Contributing to the Preparation of a Draft Statement of Issues dated 2 September 2020, Wai 2180, #1.3.2 at [77]; Crown Law, Opening Comments and Submissions of the Crown dated 2 March 2017, Wai 2180, #3.3.1 at [228].

[86] C Hockly, *Generic Submissions in Reply on Issue 8: Public Works Takings* dated 15 May 2018, Wai 1040, at [16] – [17].

[87] P Cleaver, *Public Works Takings for Defence and other purposes,* Wai 2180, #A9, at 188 and 184

[88] P Cleaver, *Public Works Takings for Defence and other purposes,* Wai 2180, #A9, at 185 – 186 and 188.

c. inadequate or no notice was given prior to the taking of lands for public works;[89]

d. no Crown public works takings of the Claimants' lands satisfied the Tribunal accepted public interest test;

e. the legislative provisions and practices of taking agencies denied the Claimants a reasonable opportunity to raise objections to the takings;[90]

f. the amount of land taken was at times excessive;[91]

g. lands taken in excess of need were not offered back to the Claimants;[92] and

h. the taking of land was inappropriately delegated to local authorities and other agencies.[93]

75. These closing submissions address public works takings in Ōwhāoko and Motukawa blocks where the Claimants' have interests through their ties to Ngāti Tamakopiri, Ngāti Hikairo and Ngāti Hotu (the "takings" or the "Claimants' lands").[94] The Claimants' customary interests in all Ōwhāoko and Motukawa give them claim interests in the public works takings herein discussed:

> The Owhaoko land block and Motukawa land block is a particular part of the region of the rohe inquiry, not unlike the rest, that has a strong spiritual and physical relationship that we the people of the land also have.[95]

[89] Tamaki Legal, Amended Statement of Claim for Wai 1196 dated 19 August 2016, Wai 2180, #1.2.9, at [160]-[161] citing P Cleaver, *Public Works Takings for Defence and other purposes,* Wai 2180, #A9 at 188 - 189.
[90] See P Cleaver, *Public Works Takings for Defence and other purposes,* Wai 2180, #A9 at 23, 175 and 193.
[91] P Cleaver, *Public Works Takings for Defence and other purposes,* Wai 2180, #A9 at 152 and 175.
[92] See generally, P Cleaver, *Public Works Takings for Defence and other purposes,* Wai 2180, #A9, at 194, on lack of offer back provisions for Ōwhāoko and excess land takings in Motukawa in P Cleaver, *Public Works Takings for Defence and other purposes,* Wai 2180, #A9, at 149 to 152.
[93] S Woodley, *Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report, 1870-2015* dated 20 July 2015, Wai 2180, #A37, at 241 citing Rangitikei County Council Minutes, 26 May 1883, RDC 00009: 1: 1, Council meetings minute book, Rangitikei County Council, 1877 – 1886, Archives Central, Feilding. SW Document Bank, volume 4, at 209 – 213; P McBurney, *Northland: Public Works & Other Takings: c.1871-1993* dated July 2007, Wai 1040 #A13, at 53 – 54; Public Works Act 1876, ss 21 – 32.
[94] Tamaki Legal, Amended Statement of Claim for Wai 1196 dated 19 August 2016, Wai 2180, #1.2.9, at [144] – [169].
[95] Tamaki Legal, Amended Joint Brief of Evidence of Maata Merle Ormsby, Daniel Ormsby and Ti Aho Pillot dated 29 September 2017, Wai 2180, #G18 at [13].

…

> Our ties to the Owhaoko and Motukawa lands in the Taihape inquiry come through Kui Maata Kanohi Te Wherowhero Piwhara. Kui Maata succeeded to land interests in the Motukawa and Owhaoko land blocks when she was a young girl.[96]
>
> …
>
> Our hononga to the Owhaoko Block is derived from our great grandfather's line, Te Ngoi. He inherited those interests from his mother, Maata Kanohi Te Wherowhero Piwhara Mataparae, who was otherwise known as Kui Maata of Ngati Tamakopiri and Ngati Hotu.[97]

In Ōwhāoko the Claimants attended to the many puna to maintain them and their relationship with them.[98]

76. The Crown states the appropriate threshold to be applied to public works takings is a key issue for consideration.[99] The Crown submits that the public interest test:[100]

> … imposes a substantially higher threshold than the Crown has been (and is) prepared to accept. At a fundamental level, the difference in approach represents a philosophical difference on the key issue of balancing kāwanatanga and rangatiratanga.

77. It is inappropriate for the Crown to assert a right of kāwanatanga to take land, while abstaining from its duty to meaningfully engage with Māori landowners during the takings process.

78. As outlined in paragraph 73.b above, it is also apposite to note that the Crown's duty regarding the public interest test ought to be assessed in light of the Stage One finding and against the evidence in this inquiry. In its Stage One finding, the Tribunal:

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[96] Tamaki Legal, Amended Joint Brief of Evidence of Maata Merle Ormsby, Daniel Ormsby and Ti Aho Pillot dated 29 September 2017, Wai 2180, #G18 at [6].
[97] Tamaki Legal, Amended Joint Brief of Evidence of Maata Merle Ormsby, Daniel Ormsby and Ti Aho Pillot dated 29 September 2017, Wai 2180, #G18 at 45.
[98] Tamaki Legal, Amended Joint Brief of Evidence of Maata Merle Ormsby, Daniel Ormsby and Ti Aho Pillot dated 29 September 2017, Wai 2180, #G18, at [25], [27], [37], [46], and [52].
[99] Crown Law, Crown Memorandum Contributing to the Preparation of a Draft Statement of Issues dated 2 September 2016, Wai 2180, #1.3.2 at [78] to [79]
[100] Crown Law, Opening Comments and Submissions of the Crown dated 2 March 2017, Wai 2180, #3.3.1, at [233]

a. found that the meaning and effect of te Tiriti ō Waitangi can only be found in what the Crown representatives clearly explained to the rangatira and that the rangatira then assented to;[101]

b. endorsed the position taken in the Ōrākei Tribunal, that "in the case of any ambiguity between the two texts [of The Treaty of Waitangi and te Tiriti ō Waitangi], it would place 'considerable weight' on the Māori text";[102] and

c. noted that rangatira "were not willing to accept such an arrangement without first seeking a guarantee that they would retain their independence and authority (their rangatiratanga)".[103]

79. The Tribunal then concluded that northern rangatira:[104]

a. who signed te Tiriti ō Waitangi in February 1840 did not cede their sovereignty (authority to make and enforce law over their people or their territories) to Britain;

b. agreed to share power and authority with Britain, or the Governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests;

c. consented to te Tiriti ō Waitangi on the basis that they and the Governor were to be equals, with different roles and spheres of influence. Details such as with intermingled populations remained to be negotiated over time on a case-by-case basis;

d. agreed to enter land transactions with the Crown, and the Crown promised to investigate pre-treaty land transactions and to return any land that had not been properly acquired from Māori; and

[101] Waitangi Tribunal, *He Whakaputanga me Te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry* (Wai 1040, 2014), at 528.
[102] Waitangi Tribunal, *He Whakaputanga me Te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry* (Wai 1040, 2014), at 522.
[103] Waitangi Tribunal, *He Whakaputanga me Te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry* (Wai 1040, 2014), at 520.
[104] Waitangi Tribunal, *He Whakaputanga me Te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry* (Wai 1040, 2014), at 529.

e. appear to have agreed to Crown protection from foreign threats and represent them in international affairs, where necessary.

80. These findings are relevant to this inquiry. As set out in the Generic Constitutional Closing Submissions ("Generic Constitutional Closing Submissions"):[105]

a. many Taihape rangatira did not sign te Tiriti ō Waitangi and none of the Claimants' rangatira did;[106] and

b. for Taihape rangatira signatories, they signed understanding they would retain their independence and authority (their tino rangatiratanga).[107]

81. Furthermore, the public interest test applies in this inquiry because Māori in the Taihape district were subject to the same national public works legislation and Crown policies. Given the relevant Tribunal jurisprudence, the Stage One finding and the available evidence, we submit, contrary to the Crown's position that compulsory acquisition without compensation is not inherently inconsistent with, or prohibited by te Tiriti ō Waitangi, compulsory acquisition must be treated as inconsistent with the Claimants' tino rangatiratanga as it cuts across the Claimants' core ability to retain authority over their lands. Therefore, in the absence of:

a. 'exceptional circumstances',

b. a national interest justification and

c. a lack of other options,

there *must* be valid consent, adequate compensation and the land must not be taken in preference to general lands.

[105] Tamaki Legal and Annette Sykes & Co, Generic Constitutional Issue Closing Submissions dated 12 October 2020, Wai 2180, #3.3.54.
[106] See generally, Tamaki Legal and Annette Sykes & Co, Generic Constitutional Issue Closing Submissions dated 12 October 2020, Wai 2180, #3.3.54, at [93] and [87] to [91].
[107] See generally, Tamaki Legal and Annette Sykes & Co, Generic Constitutional Issue Closing Submissions 12 October 2020, Wai 2180, #3.3.54, at [93] and [145] to [148].

Kāwanatanga and Tino Rangatiratanga

82. We have noted above at paragraph 72, the Crown's position that public works takings legislation reflected the judgment that private property rights can be compulsorily acquired for the wider benefit of the community.[108] We now turn to the lens through which this Tribunal should assess the public interest test in this regard.

83. The Crown has made several submissions on the purported scope of its kāwanatanga function in relation to public works takings:

    a. the correct 'balancing' between rangatiratanga and kāwanatanga is that public works takings should not only be justifiable in 'exceptional cases';[109]

    b. the right to compulsorily acquire Māori land for public works is a necessary function of responsible government and a legitimate exercise of kāwanatanga;[110]

    c. the Crown's 'right of kāwanatanga' means it may compulsorily acquire Māori land for public purposes as long as there is a 'balancing exercise' including that the Crown pay 'fair market compensation' and provide adequate consultation.[111]

84. We submit that the Crown has erred by equating the 'right of kāwanatanga' to a sovereign right.

Crown has onus of proving public interest

85. We submit the Crown has not established it acquired sovereignty by way of:

    a. te Tiriti ō Waitangi;

    b. Hobson's Proclamations or their subsequent gazettal; or

[108] Crown Law, Opening Comments and Submissions of the Crown dated 2 March 2017, Wai 2180, #3.3.1, at [228].
[109] Crown Law, Opening Comments and Submissions of the Crown dated 2 March 2017, Wai 2180, #3.3.1, at [233].
[110] Crown Law, Opening Comments and Submissions of the Crown dated 2 March 2017, Wai 2180, #3.3.1, at [115], [233] and [249].
[111] Crown Law, Opening Comments and Submissions of the Crown dated 2 March 2017, Wai 2180, #3.3.1, at [115].

c. Settlement.

86. The free, prior and informed consent of Taihape Māori was not sought let alone provided.[112] The Crown, "manipulated its way to power on false pretences and then having proclaimed itself as the new rangatira, the people it was supposed to be leading were promptly forsaken".[113] As a result, "the Crown cannot reasonably claim to be a legal revolutionary government and so it is without de jure sovereignty."[114] We adopt those submissions.

87. The Crown's alleged right to compulsorily acquire Māori land is based on its kāwanatanga. This places the onus on Māori landowners to establish that their property rights have been breached. The true constitutional relationship between Taihape Māori and the Crown means, we submit, that it is for the Crown to establish that its takings are consistent with te Tiriti ō Waitangi. There is a shifting of the onus of proof in counsel's submission.

88. Where the Crown chooses to use its legislated powers to compulsorily acquire Māori property, this onus shift means the Crown must establish that its actions were compliant with te Tiriti ō Waitangi irrespective of the legislation. The onus is not on the Claimants' to prove that simply because public works legislation existed, such takings were permissible until proven otherwise. The Crown must prove in each circumstance that it delt equitably with Māori consistent with their position as holders of tino rangatiratanga. This is fundamental in light of the sovereignty findings above that te Tiriti ō Waitangi was the constitutional foundation upon which the Crown could operate any kāwanatanga function in Aotearoa.

89. Further, the Crown must prove and justify how each step of the public interest test has been followed to be compliant with te Tiriti ō Waitangi. This duty ought to be strict regarding each step and include that all Maori with customary interests in the whenua in question were adequately identified and consented to the takings in question. This evidentiary duty means it is also not enough to view an absence of evidence as evidence of absence of

[112] Tamaki Legal and Annette Sykes & Co, Generic Constitutional Issue Closing Submissions dated 12 October 2020, Wai 2180, #3.3.54, at [194] to [197].
[113] Tamaki Legal and Annette Sykes & Co, Generic Constitutional Issue Closing Submissions dated 12 October 2020, Wai 2180, #3.3.54, at [423].
[114] Tamaki Legal and Annette Sykes & Co, Generic Constitutional Issue Closing Submissions dated 12 October 2020, Wai 2180, #3.3.54, at [428].

breach. It is for the Crown to prove each taking was compliant with te Tiriti ō Waitangi.

Claimants not opposed to public works takings in all instances

90. On the basis that the onus is on the Crown to prove te Tiriti ō Waitangi has been adhered to given the Claimants' maintained tino rangatiratanga, it follows that the Claimants are not averse to public works takings in principle. All that is and was required was that the process for acquiring lands for public works purposes accords with the principles of te Tiriti ō Waitangi.

91. We therefore submit the Crown's 'right of kāwanatanga' is fettered by and subject to the article 2 guarantee of the tino rangatiratanga of iwi and hapū. In Taihape, where many Maori did not sign te Tiriti ō Waitangi including the Claimants tīpuna, a modified test is required. First, the Crown may only take whenua from Taihape Maori where consent can be evidenced by the Crown. Second, in all other circumstances the Crown must bear the onus of proving that it has *de jure* and *de facto* sovereignty. Otherwise there can be no justification for compulsorily taking whenua from Taihape Maori as a sovereign people. Third, as a minimum evidentiary standard, given the contested nature of the Crown's sovereignty, the Crown should bare the strict burden of proving:

a. exceptional circumstances,

b. a last resort and

c. a national interest,

for all compulsory takings of Taihape Maori lands where the express consent of and / or consultation with any non-signatory Māori with customary interests in the land was absent.

Crown Policy, Consultation and Notification Standards

92. We now turn to address the Crown's public works regime policy,[115] its duty to consult with Māori landowners before compulsorily acquiring their lands and its notification policies. The Crown has stated:[116]

a. relevant legislation and underlying policy has been, "thoroughly traversed in previous inquiries";

b. the "appropriate focus should be on whether the Crown exercised its powers in relation to each compulsory acquisition of Māori land reasonably and in good faith"; and

c. the Crown's actions in relation to public works should be assessed against the standards of the time, rather than today's standards and expectations, which may be considerably different to those of the past.

93. The Crown offers a list of factors to assess its conduct.[117] However, the Crown's position is nevertheless inconsistent with the well-established public interest test, which as noted, is the standard against which the Crown's legislative provisions and processes ought to be measured against.

94. As stated by the Waitangi Tribunal it its *Wairarapa ki Tararua Report*,[118] "[i]n all other cases [other than exceptional circumstances] taking land for public works where either consent or compensation is absent breaches article 2 of the Treaty."

95. The Crown's claim that it was exercising a legitimate function of responsible government disregards that the Claimants have retained their sovereignty over their whenua. It also ignores the Crown's obligation to actively protect and support the Claimants with the retention of their whenua until they freely consent to its alienation.

[115] Waitangi Tribunal, Statement of Issues, Wai 2180, #1.4.3, Issue D Public Works Takings, at [13(2) – (4)].
[116] Crown Law, Opening Comments and Submissions of the Crown dated 2 March 2017, Wai 2180, #3.3.1, at [229] – [230].
[117] Crown Law, Opening Comments and Submissions of the Crown dated 2 March 2017, Wai 2180, #3.3.1, at [231] – [232].
[118] Waitangi Tribunal, *Wairarapa ki Tararua Report* (Wai, 863, 2010) Volume II, at 743.

96. The Waitangi Tribunal in its *Whanganui Whenua Report* rejected the Crown's position that the public interest test sets the bar too high.[119] The Tribunal found that the Crown must give due regard to the economic interests of owners and that this required consultation, and the provision of reasons for takings, including at least attempts to gain informed consent and willing cooperation.[120] The Tribunal also found that the Crown should have also exercised a preference for taking other land. [121] Cleaver states:[122]

> No evidence has been located to suggest that taking authorities sought to avoid taking Maori land and actively explored the possibility of acquiring others lands. Rather, it seems that taking authorities sometimes considered that it was more acceptable to take Maori land than European land.

The evidence shows the Crown did not apply its legislation consistent with the public interests test 'exceptional circumstances' standard. The Waitangi Tribunal in its *Whanganui Whenua Report* further noted that breaking fundamental treaty guarantees, "should be limited to very, very few situations…[however, even in circumstances of exigency and emergency]…only where other alternatives have been identified, explored, and found unworkable".[123] The Crown must also show, "…minimum possible interference with the Treaty partner's rangatiratanga."[124] The Crown has failed to undertake the required balancing exercise and has therefore failed to act as a responsible government. These standards, we submit, must now also be examined in light of the Stage One finding outlined above.

97. Cleaver states that public works were viewed as offering a means of stimulating the economy, development, the expansion of infrastructure and increased immigration as an alternative to further conflict with Māori. [125] There is no evidence to suggest that the Crown considered the needs of

[119] Waitangi Tribunal *Whanganui Whenua Report* (Wai 903, 2015), at 787; Waitangi Tribunal *Whanganui Whenua Report* (Wai 903, 2015), at 787; see also Waitangi Tribunal *Whanganui Lands Report* (Wai 1130, 2015), at 804 in section 16.6.5 that the Crown must consider if Māori can spare land and sections 16.1.2 and 16.4.1 of the *Whanganui Whenua Report* containing a summary of the key principles of the Tribunal's jurisprudence.
[120] Waitangi Tribunal *Kahui Maunga Report* (Wai 1130, 2013), at 643.
[121] Waitangi Tribunal *Whanganui Whenua Report* (Wai 903, 2015), at 803.
[122] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 234
[123] Waitangi Tribunal *Whanganui Whenua Report* (Wai 903, 2015), at 787 emphasis in the original, see also at 1044.
[124] Waitangi Tribunal *Whanganui Whenua Report* (Wai 903, 2015), at 787.
[125] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 134.

Māori nor its duty to protect the Claimants' diminished Māori land-holdings. Counsel submit that Cleaver's conclusion that public works legislation furthered the Crown's agenda and was designed to facilitate colonisation and economic development for the benefit of Europeans, highlights the 'national interest' it concerned itself with.

Crown Assessment and Consultation

98. The Waitangi Tribunal in its *Ngāti Rangiteaorere Report* held that consultation is one of the principal Treaty obligations,[126] and that the Crown owes a duty to consult with Māori landowners before compulsorily acquiring their lands in breach of the Article 2 promise of exclusive tribal possession.[127]

99. Further, the Tribunal in its *Central North Island Report* found:

> [The] Public Works Act and relevant parts of the native land laws could have been, at the very least, the subject of consultation in the way that the Native Minister, John Balance, consulted over the Native Lands Administration Act in the 1880s, with local, regional and national hui. [128]

100. The Crown enacted public works regime in Taihape was in breach of the principles of te Tiriti ō Waitangi by the Crown failing to consult with the Claimants about its legislation.

101. Although Cleaver did not specifically address Crown consultation with Taihape Maori on the introduction of the public works regime, he states "[o]n the whole, little consultation has been undertaken with owners before Maori lands have been taken for public works in the Taihape inquiry district."[129] We submit that public works takings without adequate evidence of consultation ought to be treated as takings for which there was inadequate consultation in breach of te Tiriti ō Waitangi.

102. Cleaver also opined, in regard to the Crown's rail construction through the North Island of the North Island main trunk ("NIMT"), that the Crown was prepared to rely on its statutory powers, "to push the railway through the

[126] Waitangi Tribunal, *Ngāti Rangiteaorere Report*, (1990), at 46-48.
[127] Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, volume 2, at 648. Emphasis in the original.
[128] Waitangi Tribunal, *He Maunga Rongo*, (Wai 1200, 2008), volume 2, at 860.
[129] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 234.

Taihape inquiry district without negotiation because the Maori population was not seen to present an obstacle or a potential threat to the peace."[130] We submit this is evidence of inadequate consultation by the Crown.

Crown Acquisition and Notification

103. According to historian Cathy Marr, the legal norms for public works takings were developed in England over several centuries, affording the Crown a right to take privately-owned land for public works purposes.[131] The principle of active protection is a Crown duty applying to all Māori interests, including the right of Māori to retain tino rangatiratanga over their whenua, encompassing the assurance that Māori rights would be actively protected with the utmost good faith[132] and to the fullest practicable extent.[133] The Central North Island Tribunal also found that any taking of Māori land without consent is a flagrant breach of the plain meaning of Article 2 of te Tiriti ō Waitangi.[134]

104. It is the Claimants' submissions that meeting with Māori landowners kanohi ki te kanohi would have constituted adequate notification in accordance with tikanga. It was in circumstances where the Crown's legislation did not require notification, that there is no evidence that the Crown provided any notification to the Māori landowners other than by way of gazette. There is also no evidence that the Crown provided any other form of notification to the Māori landowners kanohi ki te kanohi. The public interest test requirement of adequate notification and consultation was therefore not met in breach of the duty of active protection. Given the Crown's wider agenda of colonisation, we submit the test ought to be strict. The Crown must demonstrate that any notification with Māori at the time was adequate.

[130] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 174.
[131] C Marr, *Public Works Takings of Maori Land: 1840-1981*, Waitangi Tribunal Rangahaua Whanui series (working paper: first release), May 1997 at 15 to 20.
[132] New Zealand Maori Council v Attorney General [1987] 1 NZLR at 715.
[133] Waitangi Tribunal, Turanga Tangata Turanga Whenua, Volume 1 (Wai 814, 2004), at 120.
[134] Hockly Legal, Generic Closing Submissions - Issue 8: Public Works Takings Level Two Submissions dated 17 March 2017, Wai 1040, #3.3.211(a), at [416].

Claimant Interests

105. We now address the Claimants' claim interests in the sacred places of Ōwhāoko and Motukawa.[135]

Ōwhāoko

106. The Claimants maintain a portion of their original interests in Ōwhāoko through the land block Ōwhāoko B1B. This land block is managed by the Ōwhāoko B & D Trust.[136] As outlined in the Claimants' evidence, Ōwhāoko B1B is only a fraction of the original Ōwhāoko rohe of Ngāti Tamakopiri and Ngāti Hotu.[137] Relevant to this these submissions for context, are the Claimants' Landlocked Land Closing Submissions ("Landlocked Land Closing Submissions") regarding the partition of Ōwhāoko and the impact of denied access to the Claimants' remaining Ōwhāoko B1B interests.[138]

107. The issues of public works takings and land locked lands in Taihape are interrelated. As submitted in the Landlocked Land Closing Submissions, the public works legislation, which effectively allowed Crown takings of Māori land without compensation, and the Native land legislation, which expressly authorised Crown takings of Māori land without compensation, were part of a concerted effort by the Crown to override the interests of Māori landowners so that they became amenable to sale.[139] From 1840 to 1900, numerous public works statutes provided for the formation of roads that improved European land access, but made access to Māori land interests an issue.[140]

108. Cleaver notes that in or around 1890, 76 acres, 1 rood and 32 perches were taken without compensation from the Ōwhāoko block for the Napier-Patea Road ("Ōwhāoko taking").[141] It is telling that it was only two years earlier, in 1888, that the Ōwhāoko block was partitioned into A, B, C and D.[142] Given

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[135] Tamaki Legal, Amended Joint Brief of Evidence of Maata Merle Ormsby, Daniel Ormsby and Ti Aho Pillot dated 29 September 2017, Wai 2180, #G18, at [46].
[136] Fisher, Block Study, Northern Aspect, Taihape Northern aspect), Wai 2180, #A6, at 134.
[137] Tamaki Legal, Amended Joint Brief of Evidence of Maata Merle Ormsby, Daniel Ormsby and Ti Aho Pillot dated 29 September 2017, Wai 2180, #G18 at [53] – [56].
[138] Tamaki Legal, Landlocked Land Closing Submissions dated 10 February 2020, Wai 2180, #3.3.38 at [88] – [91].
[139] Tamaki Legal, Landlocked Land Closing Submissions dated 10 February 2020, Wai 2180, #3.3.38 at [16] – [20] citing Native Land Court Act 1886, ss 91 – 93.
[140] See Tamaki Legal, Landlocked Land Closing Submissions dated 10 February 2020, Wai 2180, #3.3.38 at [46] – [62] regarding Crown utilisation and purpose of Public Works Regime.
[141] P Cleaver, *Public Works Takings for Defence and other purposes,* Wai 2180, #A9, at 182.
[142] S Woodley, *Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report, 1870-2015* dated 20 July 2015, Wai 2180, #A37, at 398.

the Claimants' customary interests in the wider Ōwhāoko parent block, the entire Napier-Patea Road taking in the Ōwhāoko parent block is relevant to the Claimants' interests.

109. Cleaver states that "…development of roading in the Taihape inquiry district was closely aligned with European settlement activity…" and that the Napier-Patea road came from a desire to improve access between Napier and inland Patea.[143] This desire stemmed from efforts to "provide access to the large area of Maori land that was being leased by Europeans in the northern part of the Taihape inquiry district."[144] As noted by Woodley in reference to the relevant legislative provisions enabling existing roads to be vested in the Crown, local authorities were encouraged to use this legislation:[145]

> At a meeting of the RCC [Rangitikei County Council] on 26 May 1883, it was recorded that the Council had received a letter from the District Survey Office who suggested that the council should proceed to lay off roads under the Native Lands Act 'so as to avoid compensation claims'.

110. Counsel submit these were not exceptional circumstances justifying the taking of Māori land. They were also not in the national interest and the evidence above indicates, in a climate where Māori lands were taken as a preference in the region, they were not taken as a last resort. This was not for the betterment of Māori. This was for the betterment of European settlers.

Absence of free and informed consent following adequate consultation

111. The Public Works Act 1876 declared that all roads in public use were to be vested in the Crown without compensation.[146] This was continued in section 79 of the Public Works Act 1882 and in sections 100 and 101 of the Public Works Act 1894.

112. Cleaver notes that the Napier-Patea Road was acquired under these legislative provisions as an existing road vested in the Crown.".[147] Cleaver

[143] P Cleaver, *Public Works Takings for Defence and other purposes,* Wai 2180, #A9, at 178.
[144] P Cleaver, *Public Works Takings for Defence and other purposes,* Wai 2180, #A9, at 179.
[145] S Woodley, *Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report, 1870-2015* dated 20 July 2015, Wai 2180, #A37, at 241 citing Rangitikei County Council Minutes, 26 May 1883, RDC 00009: 1: 1, Council meetings minute book, Rangitikei County Council, 1877 – 1886, Archives Central, Feilding. SW Document Bank, volume 4, at 209 – 213.
[146] Public Works Act 1876, s 80.
[147] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 182.

states that "[n]otice of the taking does not appear to have been published in the New Zealand Gazette, such notice not being required."[148] Although Cleaver noted it was "unclear whether any efforts were made to inform the owners," the Chief Surveyor stated that "the native owners seemed favorably [*sic*] disposed to have road put through their land."[149]

113. The Ōwhāoko takings were acquired under provisions allowing for the taking of 'existing' roads. Cleaver suggests the Napier-Patea Road may have its origins as a traditional Māori track.[150] At the time, the Crown vesting of roads for public use had been in place under the original Public Works Act 1876. With no formal notice requirements, the fact that the "native owners seemed" favourable to a road through their land is not evidence that the "native owners" consented to the compulsory taking of their lands.

114. As noted by historian Peter McBurney in the Te Paparahi ō Te Raki inquiry, around the 1870s Māori had almost no engagement with the machinery of the local settler administration.[151] In this context, the above evidence is at best only indicative that there was support for a road by an unknown number of Māori in the area at the time. Notice was not required for the taking of Māori lands for existing roads. Consultation was not required. There is also no evidence that compensation was paid.

115. The legislative provisions placed insufficient restrictions on local authorities in respect of public works takings. Under the Public Works Act 1876, local authorities were given legislative authority to take all types of Māori land for public works purposes.[152] As discussed above in paragraph 113, the road may have originally been an old Māori track. As noted by the Waitangi Tribunal in its *Wairarapa ki Tararua Report*, these provisions may have unintentionally had a greater impact on Māori since "many traditional roads that Maori had allowed settlers to use now automatically became Crown roads and Crown land without compensation."[153] Finally, as noted above in paragraph 109, there is evidence that local councils were encouraged to use

[148] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 189.
[149] Hawke's Bay Herald, 21 March 1882 at 3.
[150] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 188.
[151] P McBurney, *Northland: Public Works & Other Takings: c.1871-1993* dated July 2007, Wai 1040, #A13, at 54.
[152] P McBurney, *Northland: Public Works & Other Takings: c.1871-1993* dated July 2007, Wai 1040 #A13, at 53 – 54; Public Works Act 1876, ss 21 – 32.
[153] Waitangi Tribunal, *Wairarapa ki Tararua Report* (Wai, 863, 2010) Volume II, at 748.

these legislative provisions to take Maori land in preference to European lands.

116. On this basis, the procedure for vesting roads in the Crown was woefully inadequate. The Crown should have ensured through legislation that local authorities adequately consulted with Māori over any acquisitions made under the legislative regime. The Crown's failure to do so violated its obligation to ensure that local authorities adequately consulted with Māori. The result was an absence of evidence from a legislative regime that was, on its face, not te Tiriti ō Waitangi compliant and did not meet the requirements of the public interest test.

Motukawa

117. As noted above, it is the Claimants' evidence that Motukawa is a sacred place.[154] Cleaver states that the following land in Motukawa lands were taken under the five percent rule, general taking provisions, railway provisions or under scenery preservation provisions:

a. on 20 March 1900, a 5 percent taking under sections 92 and 94 of Public Works act 1894[155] and on 24 September 1901, a 5 percent taking under section 92 of Public Works act 1894;[156]

b. on 3 August 1905, takings under section 167 of the Public Works Act 1894 and section 11 of the Public Works Act 1903 for the NIMT;[157]

c. in 1911, a taking for scenery preservation by proclamation issued under the Scenery Preservation Act 1908, the Scenery Preservation Amendment Act 1910 and the Public Works Act 1908;[158]

[154] Tamaki Legal, Amended Joint Brief of Evidence of Maata Merle Ormsby, Daniel Ormsby and Ti Aho Pillot dated 29 September 2017, Wai 2180, #G18, at [46].
[155] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 184, taking at Motukawa 2A.
[156] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 184, at Motukawa 2A2.
[157] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 148, at Motukawa 2B8 and 2B12.
[158] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 198, at Motukawa 2B7A.

d. on 9 August 1949, takings for railway purposes under the Public Works Act 1928.[159]

e. on 29 December 1949, takings under general taking provisions of the Public Works Act 1928;[160] and

f. on 25 November 1950, 20 July 1951 and 20 September 1954, takings for railway purposes under the Public Works Act 1928.[161]

118. The Motukawa lands were subject to the same national legislation as the Ōwhāoko takings and the same backdrop of increased land alienation.[162] As with the Ōwhāoko takings, the issue in relation to the takings in the Claimants rohe, was that they were not te Tiriti ō Waitangi compliant because they did not meet the requirements of the public interest test.

Five Percent Takings

119. Regarding first the 1900 and 1901 Motukawa takings under the five percent rule, it is evident that the circumstances for these takings were not exceptional, in the national interest nor taken as a last resort.

120. The public works regime was largely in place to serve a colonial agenda. Historians Cathy Marr and Peter McBurney have noted how the five percent rule arose to meet the settlement requirements of the new colony.[163] McBurney further noted the temporary intention behind the five percent rule.[164] It was intended that the need for the rule would diminish as the country was settled. This was not a rule to benefit Taihape Maori. The rule operated to serve the needs of settlers and not the national interests. There is also no evidence that these takings constituted exceptional circumstances

[159] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 185 – 186, at Motukawa Blocks 2B4A, 2B4B, 2B4C1, 2B4C2, 2B5A, 2B5B1, 2B5B2, 2B8, 2B9A, 2B9B, 2B10B, 2B12, 2B13A, 2B13B, 2B15A, 2B15C, 2B15B1, 2B15B2, 2B17A and 2B20.
[160] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 186, at Motukawa Blocks 2B11A and 2B11B.
[161] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 186, at Motukawa blocks 2B11A, 2B11B, 2B4C2, 2B20, 2B15B1, 2B16B2, 2B17A and 2B20.
[162] P Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District*, Wai 2180, #A9, at 14.
[163] C Marr, *Public Works Takings of Maori Land: 1840-1981*, Waitangi Tribunal Rangahaua Whanui series (working paper: first release), May 1997 at 15 to 20; P McBurney, *Northland: Public Works & Other Takings: c.1871-1993* dated July 2007, Wai 1040, #A13, at 45.
[164] P McBurney, *Northland: Public Works & Other Takings: c.1871-1993* dated July 2007, Wai 1040, #A13, at 45.

justifying the taking of Māori land. The takings were not in the national interest but in the settler interests.

Absence of free and informed consent following adequate consultation

121. The legislation that provided for the 1900 and 1901 Motukawa takings under the five percent rule was section 92 of the Public Works Act 1894. The Public Works Act 1894 required notice by way of Gazette. However, Māori had almost no engagement with the local government administration.[165] The placement of a gazetted notice was therefore woefully inadequate. The Crown should have ensured that local authorities adequately consulted with Māori over any acquisitions made under the legislative regime. The Crown's failure to do so violated its obligation to ensure that local authorities adequately consulted with Māori.

122. As with the Ōwhāoko takings under existing road provisions, the lack of compensation requirements under the five percent rule meant that no compensation was provided. Under the public interest test, in *all* cases, the taking of Māori land for public works where compensation or consent is absent breaches article 2 of the te Tiriti ō Waitangi, unless there are exceptional circumstances or the takings are in the national interest or it was a last resort. Therefore, these takings were contrary to the Public Interest Test and in breach of te Tiriti ō Waitangi.

North Island Main Trunk

123. The 1905 Motukawa takings took place for the NIMT under section 167 Public Works Act 1894 and section 11 Public Works Act 1903. We submit that this taking was done in circumstances that were not exceptional, in the national interest or as a last resort. We adopt the generic submissions on the NIMT Issue 14 insofar as they are relevant to these public works takings ("Generic NIMTR Submissions").[166] As set out by the Rohe Potae Tribunal, what is in the national interest will depend on:[167]

[165] P McBurney, *Northland: Public Works & Other Takings: c.1871-1993* dated July 2007, Wai 1040, #A13, at 54.
[166] Mark McGhie, Generic Closing Submissions on North Island Main Trunk Railway dated 2 October 2020, Wai 2180, #3.3.53.
[167] Waitangi Tribunal, Te Mana Whatu Āhuru, Volume IV, Chapter 20, at 152, at [152] to [153].

a. the circumstances of the time;

b. what is decided jointly by the te Tiriti ō Waitangi partners; and

c. Whether such a decision would need to be of substantial and compelling importance.

124. At the time that these takings occurred, Māori were politically marginalised.[168] Beginning with the New Zealand Constitution Act 1952, the settler government disenfranchised Māori involvement.[169] The Maori Representation Act 1867 provided that four members of the House of Representatives be Māori.[170] This was tokenistic rather than allowing for genuine Māori engagement. Cleaver noted the Crown's intention was to see the NIMT result in large scale land purchases along the railway route to facilitate settlement and help pay for the cost.[171] As a result, the Crown's discussions with Taihape Māori were characterised by a lack of interest, a failure to follow up on any opposition and a general indifference when it came to the views of Taihape Māori despite the NIMT running directly through their whenua.[172]

125. As outlined above, later takings under different railway provisions also took place in Motukawa on 9 August 1949,[173] November 1950, 20 July 1951 and 20 September 1954.[174] They were all for deviations of State Highway 1. The evidence does not indicate that the takings in Motukawa were by consent. Cleaver noted, "[r]esearch examined the settlement of compensation only in respect of the lands taken in August 1949." There, compensation was decided upon without the owners being represented in court.[175] This included the Claimants' interests in Motukawa 2B9A for which the Government valuation was only £2.[176] Cleaver noted at Hearing Week 5, in relation to these valuers that these valuers, "…were Crown officials, they

[168] P McBurney, *Northland: Public Works & Other Takings: c.1871-1993* dated July 2007, Wai 1040, #A13, at 54.
[169] O'Mailey, Te Rohe Potae Political Engagement Report 1840-1863, Wai 898, #A23, at 139 to 142.
[170] C Marr, *Te Rohe Potae Political Engagement Report 1864, 1886*, Wai 898, #A78, at 294.
[171] Waitangi Tribunal Transcript Hearing Week 6, Wai 2180, 4.1.13 at 207.
[172] Mark McGhie, Generic Closing Submissions on North Island Main Trunk Railway dated 2 October 2020, Wai 2180, #3.3.53 at [111] – [113] and [126]
[173] P Cleaver, *Public Works Takings for Defence and other purposes,* Wai 2180, #A9, at 185 - 186.
[174] P Cleaver, *Public Works Takings for Defence and other purposes*, Wai 2180, #A9, at 185 - 186.
[175] P Cleaver, *Public Works Takings for Defence and other purposes*, Wai 2180, #A9, at 192 - 193.
[176] Waitangi Tribunal Hearing Week 5 Transcript, Wai 2180, #4.1.14, at 317, lines 13 to 24.

weren't independent".[177] Cleaver went on to agree that the legislation was flawed due to the failure to ensure fair valuation and appropriate compensation:[178]

> …it wasn't set up well for owners to be represented and to obtain their own independent valuations that could be put up against the Government valuation and in the cases that I see we do have those two valuations, there's usually a meeting in the middle, the Government valuation will be lower, the owner's valuation will be higher and then there's a, you know … a balancing.

126. We submit that this is evidence that even where compensation was paid, the system was set up such that the Claimants received less than the true value of the land taken.

127. In setting out the Public interest test, the Te Rohe Potae Tribunal stated, "where Māori land is taken for a public work, no more Māori land should be included in the compulsory taking than is essential for the work. Even if only a small amount of Māori land must be taken, the same principles and protections must apply as for any compulsory taking of Māori land."[179]

128. Yet, the Cleaver evidence indicates that in fact, the amount of land taken was at times excessive to what was needed in order to, in part, "limit survey work".[180] This demonstrates an unnecessary and blatant disregard for Māori whenua rights and in light of the takings, a failure to adhere to the public interest test.

129. Furthermore, work on deviation and reconstruction taking place in Motukawa was deemed as non-compliant with the legislation. This is on the basis that the work commenced in 1940, which is before the proclamation was issued and competed in 1941.[181] Cleaver initially confirmed at Hearing Week 5 that the work on deviation and reconstruction commenced in 1940, [182] and he

[177] Waitangi Tribunal Hearing Week 5 Transcript, Wai 2180, #4.1.14, at 319, line 7.
[178] Waitangi Tribunal Hearing Week 5 Transcript, Wai 2180, #4.1.14, at 320, lines 15 to 22.
[179] Waitangi Tribunal, Te Mana Whatu Āhuru, Volume IV, Chapter 20, at 152, at [152] to [153].
[180] P Cleaver, *Public Works Takings for Defence and other purposes*, Wai 2180, #A9, at 175.
[181] Waitangi Tribunal Hearing Week 5 Transcript, Wai 2180, #4.1.14, at 317, lines 12 to 20.
[182] Waitangi Tribunal Hearing Week 5 Transcript, Wai 2180, #4.1.14, at 317, line 19.

then later went on to confirm the non-compliance of this work when he agreed that: [183]

> …If (the work) indeed did commence in 1940, yes, I would say that was non-compliant.

Scenery Preservation

130. The 1911 scenery preservation takings in Motukawa were by proclamation under the Scenery Preservation Act 1908, the Scenery Preservation Amendment Act 1910 and the Public Works Act 1908.[184] We submit that:

a. Māori land was a target, as the Scenery Preservation Board was reluctant to take land from settlers as opposed to Māori,[185] and that

b. the Crown's scenery preservation legislative regime was in breach of te Tiriti ō Waitangi principles of partnership, autonomy and active protection for how lands were acquired under these provisions.

131. The scenery preservation takings also failed to satisfy the public interest test because there was a preference for the taking of the Claimants lands over European lands.

General takings

132. With regard to the 29 December 1949 Motukawa takings pursuant to the general taking provisions under the Public Works Act 1928, the provision of consent does not necessarily demonstrate that the Crown undertook a "higher or more compliant process", since even consented takings only involved contact with single landowners as a simply monetary exchange rather than considering communal ownership.[186] There is also no evidence of exceptional circumstances, a national interest at stake, nor an analysis of other viable options than the taking of tangata whenua lands. We submit,

[183] Waitangi Tribunal Hearing Week 5 Transcript, Wai 2180, #4.1.14, at 317, lines 22 to 23.
[184] P Cleaver, *Public Works Takings for Defence and other purposes*, Wai 2180, #A9, at 198.
[185] Hockly Legal, Generic Closing Submissions on Issue D Public Works Takings: General Takings (Section 13), Wai 2180, #3.3.45, at [157] – [161].
[186] Hockly Legal, Generic Closing Submissions on Issue D Public Works Takings: General Takings (Section 13), Wai 2180, #3.3.45, at [142].

this is indicative of the compulsory acquisition of Māori lands for public works purposes, which was not justified in te Tiriti ō Waitangi terms.

TRIBUNAL STATEMENT OF ISSUES – ISSUE 16 – MANAGEMENT OF LAND, WATER AND OTHER RESOURCES

133. The Claimants have interests in the following waterways, the:

a. Mangmaire River;

b. Rangitikei River; and

c. Moawhango River.

134. Counsel rely on and adopt the submissions made in the Wai 237 Claimant Specific Closing Submissions in relation to Issue Sixteen identified in the TSOI.

PREJUDICE

135. As a result of the Crown's actions and or omissions, the Claimants have suffered the following prejudice:

Tribunal Statement of Issues – Issue 9 – Gifting Land for Soldier Settlement

a. The Claimants have been prejudiced by the Crown's public works regime and takings in Taihape given that the Crown failed to pay adequate compensation to the Claimants for public works takings within their rohe. This was in light of the fact that these lands were taken without the Claimants' free, prior and informed consent. This prejudice was exacerbated by the failure of the Crown to provide adequate notice prior to the takings of the Claimants' lands. Through the taking of these lands, the Claimants lost the economic opportunity that would have arisen if the Claimants were in possession of these lands.

b. Further to the prejudice mentioned above, the Claimants also suffered through the Crown denying Claimants the reasonable opportunity to raise any objections to the taking of their lands. It is

also contended that the Crown took an excessive amount of the Claimants' lands when compared with the Crown's requirements, and despite this, the Crown failed to offer the lands taken in excess back to the Claimants. The taking of this land was done because of the Crown inappropriately delegating powers to local authorities for the purposes of taking these lands.

Tribunal Statement of Issues – Issue 13 – General Takings (Roads, Scenery Preservation and Other Purposes)

c. A diminution of mana arising from the Crown's failure to recognise the Claimants as owners in the Ōwhāoko gifted lands.

d. A diminution of mana when the Crown negotiated with Tuwharetoa for the return of the gifted lands.

e. A diminution of mana when the Crown held on to the lands without using it for its intended purpose.

f. The undermining of the Claimants tino rangatiratanga when the Crown failed to recognise Taihape Maori as a gifting party.

g. The undermining of the Claimants tino rangatiratanga when the Crown did not use the gifted lands for its intended purpose.

h. The undermining of the Claimants tino rangatiratanga while the Crown continued to hold on to the lands when it found it was not suitable for its intended purpose.

RELIEF

136. The Claimants seek the following relief in relation to the prejudice caused by the Crown's breaches of te Tiriti:

a. A finding that the claims submitted on above are well-founded;

b. A finding that the Crown breached the following principles of te Tiriti:

i. The principles of partnership and reciprocity

ii. The principle of active protection; and especially the active protection of tino rangatiratanga which includes management of resources and other taonga according to Māori cultural preferences; and

iii. The right to develop economically and politically; and,

c. A recommendation that the Crown makes a full, public and unreserved apology for those actions an omissions that are found to be in breach of te Tiriti.

Tribunal Statement of Issues – Issue 9 – Gifting Land for Soldier Settlement

137. As a result of the Crown's breaches of the Claimants' Treaty rights, the Claimants seek the following relief:

a. A finding that the claim is well founded.

b. A finding that the Crown breached its fiduciary obligations, under the Native Land Amendment and Native Land Claims Adjustment Act 1930, when it failed to derive an income from third party use of the gifted lands.

c. A finding that the Crown diminished the mana of Taihape Māori when it:

i. did not use the land for its intended purpose;

ii. failed to consult with Taihape Māori regarding how it would deal with the gifted lands;

iii. allowed third parties to benefit from the lands without payment, compromising its ability to provide funds to Māori veterans, the ultimate reason for the gifting;

iv. failed to consult with Taihape Māori when it enacted legislation to change the status of the gifted land to ordinary Crown land;

v. failed to recognise Taihape Māori as donors of land; and

vi. failed to recognise the tino rangatiranga of Taihape Māori when seeking to return the lands to the owners.

d. A finding that the Crown failed to acknowledge the tino rangatiratanga of Taihape Māori when the land was gifted and when the lands were re-vested back to Māori.

e. A finding that the Crown diminished the mana of Taihape Māori when it failed to return the gifted lands when Taihape Māori made requests in the 1950s.

f. A finding that the Crown failed to consult with Taihape Māori when it changed the use of the gifted lands in 1930.

g. A finding that the Crown failed to consult with Taihape Māori when it sought to return the gifted lands.

h. A finding that the Crown undermined the tino rangatiratanga and the mana of Taihape Māori when it failed to acknowledge Taihape Māori for some 80 years after the lands were gifted by:

i. Failing to consult with Taihape Māori;

ii. Failing to acknowledge Taihape Māori as donors of the gifted lands;

iii. Failing to manage the gifted lands for the purpose for which it was intended; and

iv. Failing to compensate Taihape Māori for the use of the lands by third parties without payment;

i. A recommendation that the Crown undertake a close analysis of its files to determine the extent of revenue lost as a result of third-party use of the gifted lands without payment.

j. A recommendation that the Crown compensate Taihape Māori for the revenue lost as a result of third-party use of the gifted lands without payment.

k. A recommendation that the Crown assist the Claimants with the establishment of a harvestable forest on the gifted lands.

l. A recommendation that the Crown assist Ōwhāoko block owners to assess the economic capacity of the gifted lands.

m. A recommendation that the Crown restore the mana and tino rangatiratanga of Taihape Māori in relation to the gifting by:

i. full acknowledgement of the gift;

ii. an apology for failing to administer the gifted lands in accordance with its purpose;

iii. failing to consult with Taihape Māori when it sought to change the use of the gifted lands; and

iv. failing to compensate Taihape Māori for the 22 years that the lands were administer by the Tuwharetoa Māori Trust Board not necessarily for the benefit of Taihape Māori.

Tribunal Statement of Issues – Issue 13 – General Takings (Roads, Scenery Preservation and Other Purposes)

138. The Claimants seek the following relief from the Waitangi Tribunal:

a. That the Crown's public works regime and any takings in Taihape be assessed against the public interest test;

b. A finding that the Crown was in breach of te Tiriti ō Waitangi for any instances where the Crown cannot prove that the public interest test was followed;

c. A finding that the Crown was in breach of te Tiriti ō Waitangi by not paying adequate compensation to the Claimants for public works takings in their rohe;

d. A finding that the Crown was in breach of te Tiriti ō Waitangi by providing inadequate notice prior to the taking of the Claimants traditional lands;

e. A finding that the Crown was in breach of te Tiriti ō Waitangi by formulating legislative provisions and practices that denied the Claimants a reasonable opportunity to raise objections to takings of their lands;

f. A finding that the Crown was in breach of te Tiriti ō Waitangi for any instance that it took an excessive amount of land;

g. A finding that the Crown was in breach of te Tiriti ō Waitangi by not offering back lands taken in excess of the Crown's requirements;

h. A finding that the Crown was in breach of te Tiriti ō Waitangi by inappropriately delegating powers to local authorities and other agencies for the taking of lands for public works purposes;

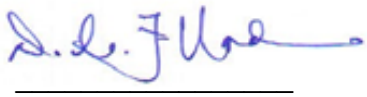
i. A recommendation that the Crown formally apologise to the Claimants for taking their lands without their free, prior and informed consent or adequate compensation;

j. A recommendation that the Crown compensate the Claimants for the lost economic opportunity as a result of the Crown taking their lands in breach of te Tiriti ō Waitangi;

k. A recommendation that the Crown compensate the Claimants for taking their lands to further colonial settlement rather than for the benefit of Māori in the Taihape region;

139. The Claimants seek any other relief that the Tribunal deems appropriate.

Dated at **Auckland** this **23rd** day **October 2020**



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