BEFORE THE WAITANGI TRIBUNAL

WAI 2180
WAI 662
WAI 1835
WAI 1868

IN THE MATTER OF the Treaty of Waitangi Act 1975
AND
IN THE MATTER OF the Taihape Rangitīkei ki Rangipō District Inquiry

AND
IN THE MATTER OF a claim by **Peter Steedman, Herbert Steedman** and **Jordan Winiata-Haines** on behalf of themselves and the descendants of Winiata Te Whaaro and hapū of Ngāti Paki **(WAI 662)**

AND
IN THE MATTER OF a claim by **Lewis Winiata**, **Ngahapeaparatuae Roy Lomax**, **Herbert Steedman**, **Patricia Anne Te Kiriwai Cross** and **Christine Teariki** on behalf of themselves and the descendants of Ngāti Paki me Ngāti Hinemanu **(WAI 1835)**

AND
IN THE MATTER OF a claim brought by **Waina Raumaewa Hoet**, **Grace Hoet, Elizabeth Cox, Piaterihi Beatrice Munroe, Terira Vini, Rangimarie Harris** and **Frederick Hoet** on behalf of themselves, their whānau and all descendants of Raumaewa Te Rango, Whatu and Pango Raumaewa **(WAI 1868)**

CLOSING SUBMISSIONS
Dated this 28th day of October 2020

ANNETTE SYKES & Co.
barristers & solicitors
8 – Unit 1 Marguerita Street
Rotorua, 3010
Phone: 07-460-0433
Fax: 07-460-0434
Counsel Acting: Annette Sykes / Camille Dougherty Ware / Kalei Delamere-Ririnui / Tumanako Silveira
Email: asykes@annettesykes.com / camille@annettesykes.com / kalei@annettesykes.com / tumanako@annettesykes.com

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MAY IT PLEASE THE TRIBUNAL

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INTRODUCTION

Tua te Kahukura, tūtu te Heihei
Tua te Kahukura, tūtu te roki
Te Kahukura-a-uta, te Kahukura-a-tai
Kā pu kā rea kai waho
Kai to ariki, kai to mana
Kai a huka, huka-nui, huka toa
Tipare kaukau e takoto atu e ____e!
Hi ____e ____e! Maranga mai ____e ____e, hi ____e ____e!

Ka inu aku wai awa na te matapuna o waimarie me rangimarie
Ka titiro atu ki aku pae maunga ki Ruahine
Ka pukanakana ana ki Whakarara, kia tau ki Heretaunga!
Ka tikei aku waewae ki te pou o Omahu ki Kahukuranui, ki Hinemanu tipuna whare
Ka whai atu nga tapuwai ki aku pou whenua ki Awarua Te Riu o Puanga
Ka tu ki runga o Aorangi, Aorangi te maunga tapu
Tu mai te mauri o Pohokura
Tu mai te mauri o Takitimu a Tamatea Pokaiwhenua!
Mōkai mana Mokai tangata!
Whaia ra ki te ko awa o Mangaone ki Hautapu awa
Ka tau ki Winiata ki te whare tipuna o Tautahi
Te turangawaewae o Ngāti Hinemanu me Ngāti Paki
Ka korowhaitia nga parirau manu huia e ngā rangatira o Mokai Patea
He iwi motuhake, he uri papatipu
Tihei Mauri Ora!

1. These closing submissions are filed for and on behalf of the following claimant groups who have worked together during the hearings process under the auspices of Ngāti Hinemanu me Ngāti Paki:

    a) Wai 662; a claim brought by Peter Steedman, Jordan Winiata Haines and Herbert Winiata Steedman on behalf of themselves and the descendants of Winiata Te Whaaro and hapū of Ngāti Paki;

    b) Wai 1835; a claim brought by Lewis Winiata, Ngahapeaparatuae Roy Lomax, Herbert Winiata Steedman, Patricia Anne Te Kiriwai Cross,

Christine Teariki on behalf of themselves and the descendants of Ngāti Paki me Ngāti Hinemanu; and

c) Wai 1868; a claim brought by Waina Raumaewa Hoet, Grace Hoet, Elizabeth Cox, Piaterihi Beatrice Munroe, Terira Vini, Rangimarie Harris and Fredrick Hoet on behalf of themselves, their whānau and all descendants of Raumaewa Te Rango, Whatu and Pango Raumaewa.

("Claimants")

2. The Claimants acknowledge that they have whakapapa connections to other hapū in the Taihape region and beyond the boundaries that were established for this Inquiry District. However, they wish to make clear at the outset that notwithstanding the richness of their whakapapa connections to those other hapū, Ngāti Hinemanu me Ngāti Paki stands as a polity in their own right and should not be subsumed by any other iwi or collective seeking a mandate for Treaty settlement negotiations.

3. Ngāti Hinemanu me Ngāti Paki have provided evidence of how the early Crown purchasing and Native Land Court processes undermined and degraded their tipuna, Winiata Te Whaaro, and the authority structures that were in place. Sadly, the same attitudes continue today in the way that the Crown fails to engage in any meaningful way with Ngāti Hinemanu me Ngāti Paki as a separate and autonomous entity, and continues to design and pursue processes of Treaty Settlement which either invisibilise those that assert their separate identity or seek to assimilate those identities within the rubric of others.

4. The Claimants have been left feeling that others including the Crown have been enriched at their expense and the failure to compensate for their loss has caused deep division among Māori and between and among Māori and the Crown.

5. The Claimants wish to draw the Tribunal's attention to the difficulty for iwi groups of conceptualising their land in terms of blocks and Inquiry districts. It is this process of dividing up the claimants' land which makes one group a

"major" player in an inquiry and another group a "minor" player, or as they find in this inquiry a small collective being forced into alliances with another small collective largely for the administrative convenience of the Crown rather than for any respect for whakapapa and Tikanga Māori that underpins it.

6. The Tribunal process often forces claimant groups to participate in more than one inquiry in order to preserve their interests there. This no different in this Inquiry as the extant claims to the Crown forest lands at Gwava and Kaweka illustrate. Although the matters have been able to be explored in part as part of a preliminary assessment of whether customary interests will enable a more substantive examination of the claims made is the conceptual difficulties remain. Their traditional territories are being dealt with in an incremental fashion which offends the way that traditionally Ngāti Hinemanu and Ngāti Paki have maintained their connections with their whenua and other taonga.

7. Ngāti Hinemanu and Ngāti Paki conceptualise its relationship with its lands in a holistic manner and make no distinction between its lands and interests in the Hawkes Bay area , with those in the Crown forests, or with its interests and relationships to the interior territories that they were effectively forced to live upon after the events at Pokopoko.

8. Ngāti Hinemanu and Ngāti Paki have also found the division of its rohe difficult in terms of having to present evidence more than once (the preparation of which can be costly in terms of time, money and people) and in recent times the bi-furcation of some of their contemporary evidence on important matters into the Kaupapa Inquiries like the Military Veterans claims and Health Services and Outcomes Inquiry which overlap with issues being explored as part of this Inquiry.

9. The key point is that Ngāti Hinemanu and Ngāti Paki consider that the totality of its grievances will in fact never be considered (given its rohe is split

between three Inquiry districts[1] and two Kaupapa Inquiry) if the Tribunal only considers the actions that took place within each district and within the rubric of the Statement of Issues being explored there without regard to analysis of the Treaty of Waitangi settlements that have been effected with He Toa Takitini and other entities contemporaneously as this process has continued and the prejudice that remains given the lapse of time since grievances were made and finally considered.

The Late Filing of Generics

10. Counsel would like the Tribunal to note that the late filing of significant generics to be relied upon by the claimants is not without its difficulties for the claimants.

11. Counsel has been working diligently with a number of other groups to meet the very flexible approach by this Tribunal largely occasioned by the supervening Covid 19 event and the necessary delays occasioned by the effective delay of any abilities for judicial forums like the Waitangi Tribunal to convene or to be available to assess issues in any other presentation process. This of course also had implications of how counsel could meet with their claimant communities and take instructions on matters.

12. It is extremely disappointing that despite the best endeavours of the majority of counsel the failure of a few to even meet this flexible approach has not been able to be achieved or planned for.

13. The consequences to claimant counsel have been many particular in the context of finalisation of these specific submissions as so many of the allegations of breach made rely on findings from how the Native Land Court and other 19th Century matters were impacted upon or created unjust consequences for the claimants.

[1] Taihape Inquiry; Porirua ki Manawatu Inquiry and the Mohaka ki Ahuriri Inquiry which as was noted by the claimants in the openings had been completed prior to the Taihape Inquiry even being engaged with.

14. In the circumstances we seek leave, if required, to amend these submissions if at a future time when those generic submissions are available that any matters emerge requiring further analysis or submission.

EVIDENCE

15. The Statement of Issues sets out the significant evidence that was commissioned and then presented for each of the specific issues which were explored as part of the matrix of this Inquiry.

16. We however wish to augment that technical evidence with the recognition that there was also a significant body of tangata whenua evidence presented.

17. Counsel is indebted to the many hours of work that Crown Forest Rental Trust researchers and administrative staff assisted our tangata whenua witnesses to grapple with the several matters that we will address as part of these closing submissions.

18. We also wish to acknowledge each and every claimant; witness and support members of their whanau who have brought us to this point in the hearings process. Our eldest claimant Mrs Waina Hoet will shortly be 100 and she Aunty Hineaka Winiata as the oldest surviving grandchildren of Winiata Te Whaaro must be acknowledged for their strength and wisdom and mere presence that has guided this claim. We must also make a special mention of Mr Herbert Steedman whose evidence formed the basis from which many of the early scoping reports were founded upon. These three esteemed elders of Ngāti Hinemanu and Ngāti Paki have given of their time and energy unselfishly and we thank them for it.

TANGATA WHENUA EVIDENCE

19. In addition the Tribunal heard from several witnesses who have provided evidence in support of Ngāti Hinemanu me Ngāti Paki. We set out at **Appendix "A"** a comprehensive list of all of the Ngāti Hinemanu me Ngāti Paki evidence that has been presented since the commencement of these Tribunal proceedings.

20. The process has been a long and sometimes arduous journey and we wish to formally acknowledge all those who have passed on. Their spirit will always be remembered as the spirit of their tupuna as we walk to the final stages of this process of resolution and reconciliation.

21. Tangi tonu ana te ngākau, hotuhotu ana te whatu manawa, mo rātau mā, kua tae atu ki te rangatatiratanga o te mate.

GENERIC SUBMISSIONS

22. These submissions rely on the following generic closing submissions:

#	ROI	Document title	Dated
1	#3.3.42	Wāhi Tapu generic closing submissions; and	6 May 2020
	#3.3.42(a)	Appendix A: Table of evidence to accompany the generic closing submissions.	
2	#3.3.43	Generic closing submissions for issue 20 Te Reo Rangatira me ona Tikanga;	20 May 2020
	#3.3.43(a)	Appendix A: Treaty Principles and Duties; and	
	#3.3.43(b)	Appendix B: Wai 2180 generic closing submissions regarding Te Reo Rangatira – evidence.	
3	#3.3.45	Generic Closing submissions on Issue D Public Works Takings: General Takings (Section 13); and	21 September 2020
	#3.3.45(a)		

		Appendix A: Table of takings of Māori land for roads.	
4	#3.3.46	Generic claimant closing submissions regarding education, health and other social services	21 September 2020
5	#3.3.47 #3.3.47(a)	Generic Closing submissions on Issue D Public Works Takings: Waiōuru Defence Lands; and Appendix A: Takings of Māori and general land for the Waiōuru Army Training Area.	22 September 2020
6	#3.3.48	Generic Closing Submissions on Issue C(7): Land Boards and the Native/Māori Trustee.	22 September 2020
7	#3.3.49	Generic Closing Submissions on Crown purchasing	30 September 2020
8	#3.3.50	Generic claimant closing submissions regarding economic development and capability.	30 September 2020
9	#3.3.51	Generic closing submissions on local government.	06 October 2020
10	#3.3.52	Generic Closing Submissions 20th Century Land Alienation.	08 October 2020

11	#3.3.52	Generic Closing Submissions on Twentieth century land alienation	8 October 2020
12	#3.3.53	Generic Closing Submissions on North Island main trunk railway	9 October 2020
13	#3.3.54	Generic Closing Submissions on Constitutional Change	12 October 20
14	#3.3.55	Generic Closing Submissions on Cultural taonga	13 October 2020

TE TIRITI O WAITANGI

23. In the Opening Submissions dated 8 March 2017,[2] counsel set out in detail the Treaty principles relevant to the claims advanced by Ngāti Hinemanu me Ngāti Paki which will be referred to throughout these submissions. We now set out the general framework against which all Treaty claims stand to be measured.

24. Ngāti Hinemanu me Ngāti Paki assert that the Crown must deal with them in an honourable and good faith way and should ensure their protection and prosperity including their economic, physical, spiritual and cultural wellbeing. They understand the Crown's fiduciary obligations extend to:

    a) active protection to the fullest extent practicable in possession and control of their:[3]

[2] Wai 2180, #3.3.3, 8 March 2017.
[3] Waitangi Tribunal Report of the Waitangi Tribunal on the Manukau Claim (Wai 8, 1985); Cooke P, Māori Council v Attorney General (1987) 1 NZLR at 641.

i) property and taonga[4] and their rights to develop and expand such property and taonga using modern technologies;[5]

ii) ongoing distinctive existence as a people albeit adapting as time passes and the combined society they develop;[6] and

iii) economic position and their ability to sustain their existence and their ways of life.[7]

b) ensuring the benefit from good government exhibited by the Crown ensuring the protection and promotion of:

i) entitlements to peace, law and order;[8]

ii) the absence of discrimination in the eyes of the law and law makers;[9]

iii) the determination of matters effecting Māori land by Māori in accordance with their own methods of reaching agreements;[10]

iv) conditions that both assured Māori and their advance;[11]

v) an inability to avoid the Crown's obligation by any delegation of the Crown's duties under the Treaty.[12]

25. The principle of redress is another fundamental principle of the Treaty. We assert that the Crown has a duty to provide the claimants with appropriate cultural redress which correctly recognises the losses suffered by Ngāti Hinemanu and Ngāti Paki as a consequence of the Crown's breaches of the Treaty.

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[4] New Zealand Māori Council v Attorney-General [1994] 1 NZLR 513, PC, 517
[5] Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim,* (Wai 22, 1988), at 220 at 253–254.
[6] *Taiaroa v Minister of Justice* (unreported HC Wgn CP 99/94, decision McGechan J, 29 August 1994) at 69
[7] Waitangi Tribunal *Orakei Report* (Wai 9, 1987) at 147.
[8] *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 CA at 715 per Bisson J.
[9] Note the Labour Government Statement of 1989 – Principle (C).
[10] Waitangi Tribunal, *The Taranaki Report Kaupapa Tuatahi,* (Wai 143, 1996) at 281–282.
[11] Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim,* (Wai 22, 1988), at 194.
[12] Waitangi Tribunal *Report of the Waitangi Tribunal on the Manukau Claim* (Wai 8, 1985) at 69.

26. The Crown has a duty to expeditiously remedy past Treaty breaches.

27. As a consequence of the Crown's duties, the Crown was and is generally required to:

    a) ensure the retention of rangatiratanga over tūrangawaewae, taonga, social structures, property and resources in accordance with their own laws, cultural preferences and customs;

    b) actively protect the spiritual and physical resources as they were traditionally managed;

    c) ensure that any change to traditional social structures are instigated and promoted from within rather than imposed from without;

    d) recognise and protect the laws, customs, cultural and spiritual heritage of Ngāti Hinemanu me Ngāti Paki;

    e) avoid policies and practices which would impact detrimentally on the spiritual expressions which have been traditionally enjoyed; and

    f) ensure that the impact of government and regulation upon Ngāti Hinemanu me Ngāti Paki is consistent with the Treaty and its principles to actively protect Māori rangatiratanga, customs, laws and properties.

28. We now turn the submissions to the claimants to provide an understanding of the relationships that Ngāti Hinemanu and Ngāti Paki maintain with its peoples and to show an understanding of how their customary relationships with their lands; their forests; their oceans; their waterways; and other tāonga arise.

WHO ARE THE CLAIMANTS?

29. Ngāti Hinemanu me Ngāti Paki Heritage Trust represents the Iwi of Ngāti Hinemanu and its many hapū with a specific requirement to service the research; presentation and negotiation of the WAI Claimants of Ngāti Hinemanu, Ngāti Paki and Ngāti Pouwharekura whose descendants can be identified having unique whakapapa connections to other hapū within the Inland Pātea (Mōkai Pātea) area.

30. The Heritage Trust is clear that notwithstanding the richness of their whakapapa connections to other hapū, Ngāti Hinemanu, Ngāti Paki and Ngāti Pouwharekura stand as a polity in our own right and should not be subsumed within the rubic of created or newly developed organisations whose existence has largely emerged as a response to Crown developed large natural group policies and funding practices to expedite settlement processes. Ngāti Hinemanu is an iwi with a network of hapū and marae and is deserving of specific findings for those claims that they now seek to bring closure. Ngati Paki is an independent polity that by virtue of the relationships that have been cemented over time work with those groups to maintain the mana and tino rangatiratanga obligations they jointly possess to their whenua; their awa; their hau; their maunga ; their wai; me nga taonga katoa.

Kahukuranui and Hinemanu Wharenui
(Wharenui at Omahu Marae)

Tautahi (Winiata Marae)

Kahukuranui (Omahu Marae)

31. He uri a Ngāti Hinemanu no tuawhakarere ara no Papatuanuku raua ko Ranginui. I ngā ra o mua i noho tahi te hunga Patupaiarehe, nga uri o Te Tini o Ha, o Ngāti Mahu, o Ngāti Hotu, o Ngāti Whatumamoa – ko enei ngā iwi Papatipu.[13]

32. Nō hea mai te mana ki aua whenua? No Rangi no Papa, no Tangaroa o te kore. Ko Whatumamoa te tangata, he rangatira nō te iwi Papatipu.[14]

33. Patupaiarehe are an intrinsic part of us.[15]

[13] Wai 2180, #E6 at 3.
[14] Wai 2180, #G17(b) at 2.
[15] Wai 2180, #A052 at 40.

Ngāti Mahu:

34. Mahu Tapuanui was before Kahungunu's time. He had a kāinga at sea and he was brought ashore by other ancestors. He arrived on shore at Whakakī where he had a raupō patch. At Wairoa he had shark and pipi places called 'Pipi a Mahu' and 'Maunga a Mahu'. He then proceeded to Ōmāhu in Heretaunga hence the name Ōmāhu. On becoming accustomed to being on land he went inland to investigate and reached Rotomuhaha the Waiau river. 'Kiekie a Mahu' is there. 'Kini a Mahu' is also known there.[16]

Ngāti Hotu:

35. There are many stories and versions of where Ngāti Hotu originated from. Ngāti Hinemanu are very clear that Ngāti Hotu are Papatipu and associated with pre-waka people. They did not come in a canoe.[17]

36. The following whakapapa depicts the original people of the land down to the time of Whatumamoa.

Tangaroa
|
Tapuatinitini
|
Tapuamanomano
|
Hapori
|
Hawhekeri
|
Pānui
|
Haroa
|
Hamaitawhiti
|
Te Orotu
|
Whatumamoa [18]

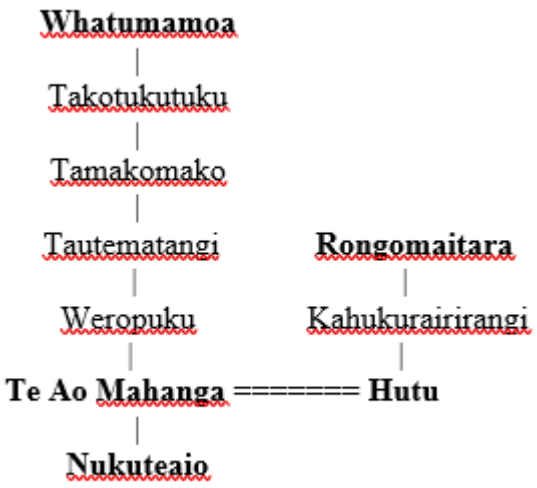
[16] Ibid, at 48.
[17] Wai 2180, #A52 at 43-44.
[18] Wai 2180, #C05 at 5.

Whatumamoa:

37. The whole of the country from Heretaunga to Pātea once belonged to Whatumamoa. Te Whatumamoa are also descended from Tangaroa o Te Kore. Te Orotu and Whatumamoa also descend from Mahu Tapoanui the tīpuna for whom both Ōmāhu and the hapū Ngāti Mahu are named.[19]

38. Kā heke, kā heke mai Whatumamoa ki **Te Ao Mahanga**, nāna ko **Nukuteaio**.[20] Ko **Te Ao Mahanga** kā moe a **Hutu** te mokopuna a **Rongomaitara** no te waka o Takitimu.

39. The whakapapa of Nukuteaio links her to the original people of the whenua through her mother Te Aomahanga as well as the Takitimu waka through her great grandmother Rongomaitara and her father Hutu.[21] Hutu and his siblings lived in and around the Kaweka and Ruahine areas.[22]



Te Waka o Takitimu:

40. Ko Takitimu te Waka Tipua

Ko Ruamano Te Taniwha

[19] Wai 2180, #A052 at 40.
[20] Wai 2180, #A052 at 40.
[21] Wai 2180, #P9 at 8.
[22] Wai 2180, #C3 at 5.

Ko Ruawharo Te Tohunganui

Ko Tamatea Te Arikinui

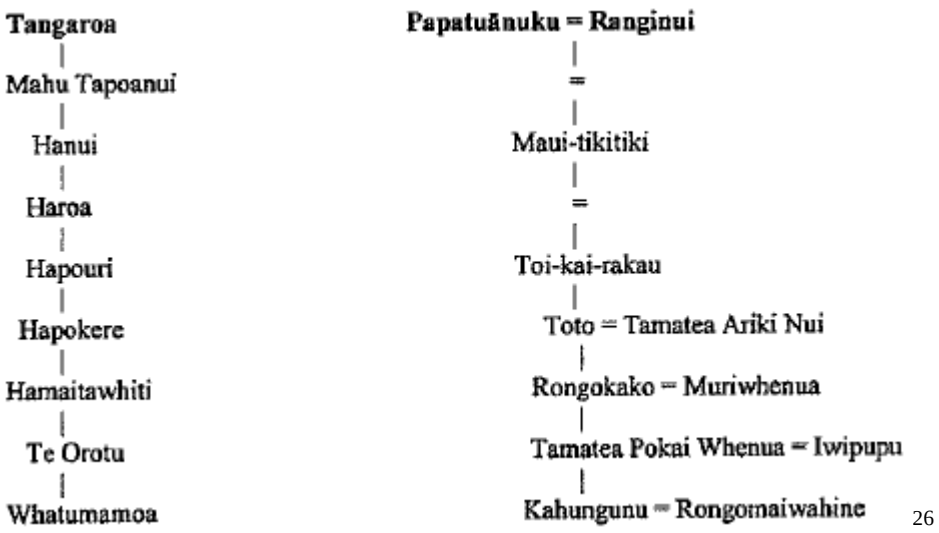
41. Ngāti Hinemanu also trace their descent from the ariki line of the Takitimu waka.

42. The Takitimu waka under the command of Tamatea Ariki Nui arrived in Aotearoa. The Takitimu was a very sacred waka, not only by reason of the many and varied ceremonies performed over her, but by the Tohunga to render her seaworthy and proof against the waves and tempests of the great ocean of Kiwa. The chiefs and priests were the repositories of the most ancient lore of their race and it was they who brought much of the old Hawaiki knowledge taught in the whare-wānanga to the new land of Aotearoa.[23]

43. With the arrival of the waka Takitimu strategic relationships were formed between the original people of the land to the newcomers. A union between Te Aomahanga of Whatumamoa the original people of Mōkai Pātea and Hutu who has whakapapa to both the original people and the people of the Takitimu waka strengthened the relationships between the original people and the people of the Takitimu waka dynasty.[24]

44. Tamatea Ariki Nui married Toto. From this marriage came Rongokako who married Muriwhenua and they had Tamatea Pokai Whenua who married Iwipupu and they had Kahungunu.[25]

[23] Wai 2180, #A52 at 53.
[24] Wai 2180, #C5 at 5.
[25] Ibid at 5.



[26]

45. The relationship of Ngāti Hinemanu to the rivers are demonstrated through one of the most famous stories of our ancestor Tamatea Pokai Whenua and his son Kahungunu who travelled into this region. It tells about the **Ngaruroro River, Waitutaki Stream, Taruarau River, Ikawetea River, Reporoa. Moawhango River, Hautapu River, Mangaone Stream, and the Rangitikei River** which shows the significant relationship that our ancestors had with the Rivers.[27]

46. Tamatea Pokai Whenua met up with his son Kahungunu at the Waitutaki Stream. During their journey into Mōkai Pātea they left mōkai and named places as they went.[28]

47. Where the Ikawetea stream falls into the Taruarau River there is a large rock where Kahungunu sat watching Upokororo. Kahungunu said "I tiaki ana i te aria upokororo" and so the rock was named Te Upokororo o Kahungunu. It is here that Pohokura, one of the mokai of Tamatea Pokai Whenua escaped. While here Tamatea released some fish into the stream and he named the stream Ikawetea.[29]

[26] Wai 2180, #C5 at 5.
[27] Wai 2180, #F5 at 5.
[28] Ibid.
[29] Wai 2180, #A52 at 58.

Image 4: Ikawetea and Taruarau [30]

Aorangi Maunga Tapu

48. Kahungunu and his father travelled on and came to a mountain. Tamatea said "**He Ao no te Rangi**". The name of the mountain today is Aorangi.[31] Eventually Aorangi Maunga became the lair of Pohokura where he remains as the kaitiaki or spiritual guardian.[32]

49. In August 1912 Ngāti Hinemanu were the people who were identified as owners being the same group who were also defined as owners in the Te Koau and Awarua No 1 lands.[33]

[30] Wai 2180, #A44 at 52.
[31] Wai 2180, #F5 at 5.
[32] Wai 2180, #A52 at 58.
[33] Wai 2180, #A8 at 184.

Te Papa a Tarinuku

50. Travelling down the Rangitikei River they came to a place where they met Tarinuku.

51. Tarinuku, a Ngāti Hotu chief was the first person from Mōkai Pātea to meet Tamatea Pokai Whenua and his son Kahungunu. **Te Papa o Tarinuku** commonly known today as 'The Narrows' is the place where Tarinuku gave Tamatea Pokai Whenua a calabash of birds.[34] Kahungunu became angry at the gift made to his father alone so he returned to Heretaunga.[35]

52. This was the first relationship between people of the Takitimu waka and Ngāti Hotu the original people of **Awarua Riu o Puanga** (Mōkai Pātea).[36]

 [37]

Image 7: Te Papa a Tarinuku

[34] Wai 2180, #F5 at 6.
[35] Wai 2180, #A52 at 71.
[36] Wai 2180, #E6(a) at 2.
[37] Wai 2180, #A44 at 54.

Moawhango River

53. From here Tamatea Pokai Whenua resumes his travels on his own. He reaches the Moawhangao River where he leaves the unburnt ends of his firebrands resulting in the following whakatauki. *'Ngā Motumotu a te ahiahi a Tamatea'.* He carries on his way downstream to where the Moawhango falls into the Rangitikei River. He then travels a short way to where the Hautapu River falls into the Rangitikei River.

Hautapu River

54. He travels up the Hautapu River until he comes to the Mangaone āStream. He travels up the Mangaone Stream to a ridge where he leaves another mokai the kuri that he named 'Tahunatara'. The name of the ridge is ***'Te Whakauae a Tamatea Pokai Whenua'***.[38]

Hine-te-rangi:

55. Kahungunu and Rongomaiwahine has a son Kahukuranui who married Ruatapuwahine who had **Rongomaitara** and her brother **Rakeihikuroa,** the father of Taraia 1st. From **Rongomaitara** down through others we come to Hine-te-rangi who married Rongomaipuku.[39]

56. When Hine-te-rangi married **Rongomaipuku** this union caused Ngāti Hotu and the people of Whatumamoa to become angry as they held mana whenua on the east side of the Ruahine and Kaweka ranges right the way into Inland Pātea (Mōkai Pātea). Ngāti Hotu then killed Rongomaitane the brother of Hine-te-rangi.[40]

57. This caused the tribes to assemble and make war on Ngāti Hotu and Whatumamoa, Ngāti Hotu were defeated by Mokotuaiwa the father of Hine-te-rangi and Tuwhakaperei her grandfather at Puke-nikau and Kai-Whanawhana a place where the Ngaruroro River enters the plains from the Ruahine mountains.[41]

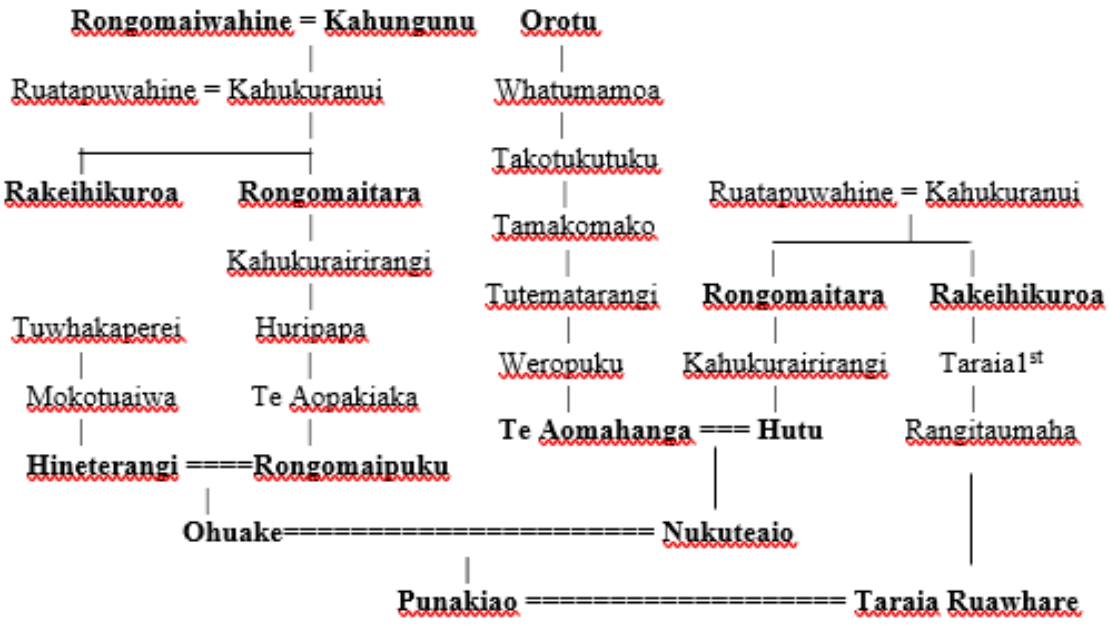
[38] Wai 2180, #F5 at 6.
[39] Wai 2180, #P9 at 9.
[40] Ibid, at 10.
[41] Ibid.

Te Hika o Rongomaitara

58. Hine-te-rangi and Rongomaipuku had a son Te Ohuake who came into Mōkai Pātea from Petane (near Napier) and married **Nukuteaio** the daughter of Hutu and Te Aomahanga. When Ohuake arrived Nukuteaio was already living on the land with her people of Ngāti Whatumamoa. At the time of the marriage of Nukuteaio to Ohuake the name of Whatumamoa was abandoned and the people then called themselves **Te Hika o Rongomaitara.**[42]

[42] Ibid at 9-10.

59. The whakapapa below shows that both Nukuteaio and Ohuake were descendants of Te Hika o Rongomaitara.[43]



60. **Te Hika o Rongomaitara** became the large tribal name down to the time of Tutemohuta his brother Rangiwhakamatuku and others through to the time of Haumoetahanga and her sister Punakiao.[44]

Ngāti Hinemanu

61. As previously mentioned Ngāti Hinemanu trace their descent from the pre-waka, earliest occupants of the Mōkai Pātea region then to the people of Whatumamoa who eventually married into descendants of the Takitimu Waka through to Nukuteaio who married Ohuake.

62. Nukuteaio and Ohuake had two children, Tutemohuta and Rangiwhakamatuku.[45]

63. Kā moe a Tutemohuta ki a Hinemoehau. E rere ana ko Punakiao. Kā moe a Punakiao ki a Taraia Ruawhare i Okawa, Heretaunga. E rere mai rātou ko

[43] Wai 2180, #P9, L Winiata, Power Point Presentation dated 18 February 2020.
[44] Ibid at 9-10.
[45] Ibid at 9-10.

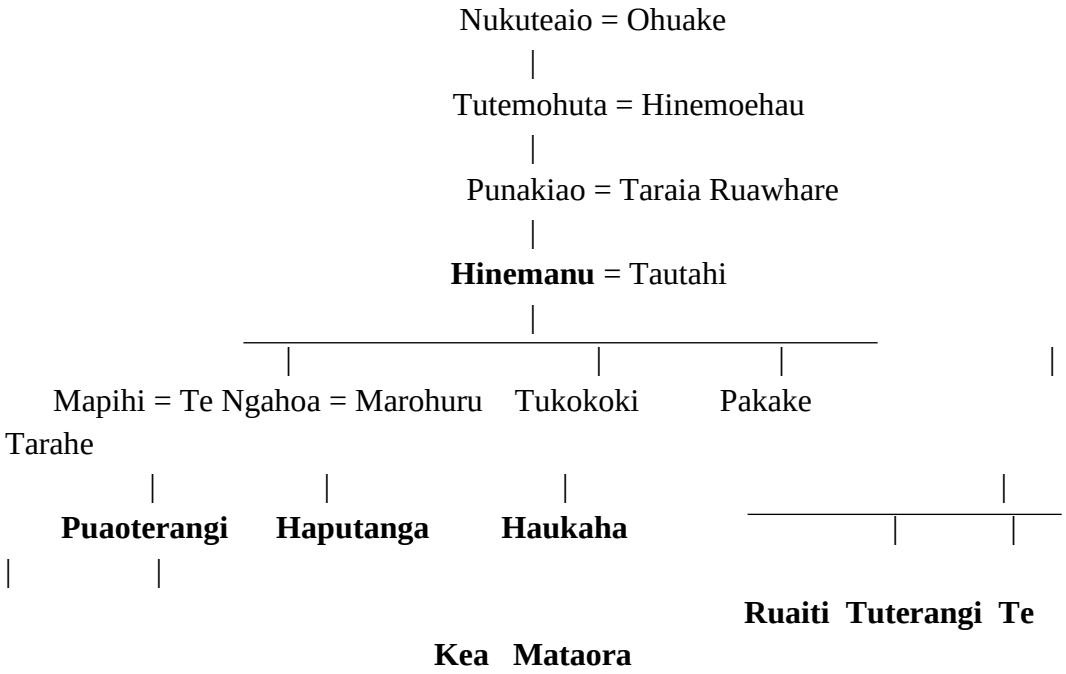
Hinemanu, ko Hineteao, ko Koahauiti, ko Honomokai, ko Tamakapua, ko Mahuika, ko Hineteao. Kā moe a Hinemanu ki a Tautahi i Te Awahaehae, Mōkai Patea. Ko Te Kauenga te ingoa a rāua whare. Ko Te Ngahoa rātou, ko Pakake, ko Tukokoki, ko Tarahe a rāua tamariki.[46]

64. Hinemanu descendants trace their origins to these four children of Hinemanu and Tautahi. Winiata Te Whaaro of Ngāti Hinemanu stated in the NLC that the name Ngāti Hinemanu first applied to the people of Pātea being the descendants of Te Ngahoa and Tūkokoki who lived at Pātea. Te Puaoterangi and Haputanga sons of Te Ngahoa and Haukaha a son of Tukokoki were the chiefs of Pātea to whom the name 'Ngāti Hinemanu' was first adopted.[47]

65. Another branch of Ngāti Hinemanu based at Omahu marae Heretaunga are the descendants of Tarahe the youngest son of Hinemanu who was sent back by his mother Punakiao to keep the whānau fires warm east of the Ruahine ranges. The children of Tarahe are Ruaiti, Tuterangi, Te Kia and Mataora.[48]

[46] Wai 2180, #E6 at 4.
[47] Wai 2180, #A052 at 90.
[48] Ibid.

66. The following whakapapa shows the whakapapa of Ngāti Hinemanu from the marriage of Nukuteaio and Ohuake down through Punakiao and her husband Taraia Ruawhare to Hinemanu then to the children of Hinemanu and descendants of those children who make up the hapū groupings of Ngāti Hinemanu today.



67. Through all the turmoil over the years one of the unique things about Ngāti Hinemanu that no other hapū can say is, they are the only hapū today that still have a Ngāti Hinemanu marae and Ngāti Hinemanu hapū and whānau based on both sides of the Ruahine and Kaweka ranges. When these matters are taken together Ngāti Hinemanu emerges as a large iwi of their own who continue to maintain whanaungatanga links at a whānau, hapū and iwi level not only through hui and wānanga but also through ongoing marriages[49] that have helped forge significant political alliances over the centuries.

68. The following photo depicts from left to right top and bottom the following marae of Ngāti Hinemanu today:

    a) Kahukuranui at Omahu Marae – at Heretaunga

[49] Wai 2180, #P8 at 8.

b) Tautahi at Winiata Marae – Taihape

c) Awhina Marae – Heretaunga

d) Rūnanga Marae - Heretaunga

Ngāti Paki

69. The emergence of Ngāti Paki.

70. Like Ngāti Hinemanu the origins of Ngāti Paki begin with the original people of the land and the waka Takitimu.

71. Their whakapapa comes down to Te Ao Pakiaka then to Ohuake of the Takitimu waka who married Nukuteaio of Whatumamoa and then to Rangiwhakamatuku the brother of Tutemohuta of te Hika o Rongomaitara as previously mentioned.

72. From Rangiwhakamatuku coming down through Te Matauahiwawe to Ihunguru who was a matekite of Ngāti Paki. Ihunguru had a dream that the Whanganui people were coming to attack the people of Pātea. At the time most of the people had left the area. Ngāti Tama were at Rotoaira and Ngāti

Whiti at Heretaunga. As a result those who were left on the land including Ngāti Paki and Ngāti Hinemanu built Potaka Pā and prepared themselves for defence. Ngāti Hinemanu sent a message to their Ngāti Hinemanu whanaunga in Heretaunga asking for assistance. They arrived and the enemy were defeated. [50] His dream is lamented in the Moteatea 'Taku Whenua'.[51]

Taku whenua e ra	Oh my lands alas
Taku whenua takoto noa i te ao	My land lying defenceless to all
Taku kainga ra	Oh my home alas
Taku kainga ko au anake	My home where I am alone
I rere, i hea te tini o te tangata	Where are many of our people
I rere ki uta ki tai eeeeee	Alas they are away to all parts

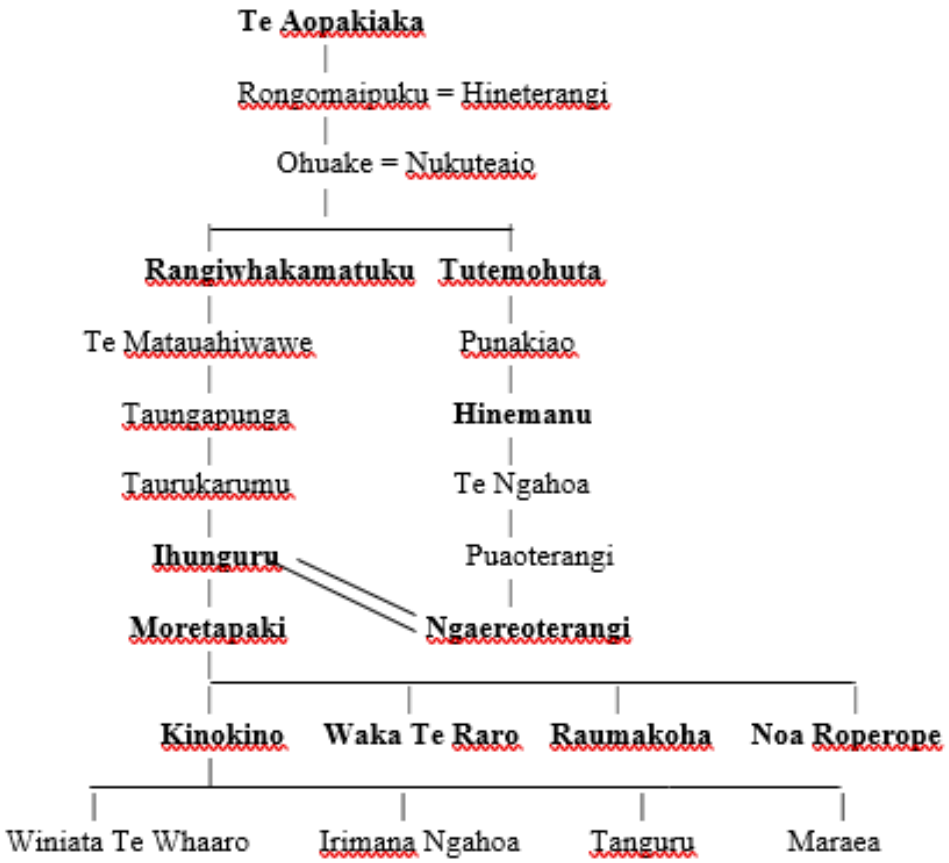
73. Ihunguru married Ngaereoterangi the granddaughter of Te Ngahoa and great granddaughter of Hinemanu. They had a son Moretapaki the grandfather of Winiata Te Whaaro and others.[52]

74. During the time of the Native Land Court in the Awarua No 1 Partition Winiata Te Whaaro forwarded his list of 25 Ngāti Paki people who were all descendants of Moretapaki. It is the same Ngāti Paki list of people that Winiata provided in some of the other Mōkai Pātea lands being Te Koau and, Aorangi whenua which was awarded to Ngāti Hinemanu.[53]

75. Ngāti Paki are a hapū of Ngāti Hinemanu through the marriage of Ngaereoterangi and Ihunguru and have their own distinctness.

[50] Wai 2180, #C5 at 9-10.
[51] Wai 2180, #B1(b) at 2.
[52] Wai 2180, #P9 at 13.
[53] Wai 2180, #P9 at 13.

76. The following whakapapa shows Ngāti Paki hapū from Te Aopakiaka and their relationship to Ngāti Hinemanu. Coming down through others from Rangiwhakamatuku to Ihunguru who married Ngaereoterangi of Ngāti Hinemanu and a descendant of Tutemohuta the brother of Rangiwhakamatuku:[54]



Ngāti Pouwharekura

77. When we talk of Pouwharekura our whakapapa records show two Pouwharekura. Pouwharekura 1st and Pouwharekura 2nd. Pouwharekura the 1st was captured at Kaiwhakareiareia Pā. During that time Kahukuranui and Wekanui were both competing for her and so Kahungunu married her in his old age.[55] They had a daughter named Ruatapui.

[54] Taken from the whakapapa power point presentation, slide 6, of Lewis Winiata at Omahu Marae 18.02.2020. Also the children of Moretapaki and Kinokino as depicted in the whakapapa of Lewis Winiata Brief of Evidence, Wai 2180, #C5 at 9.
[55] Wai 2180, #H9 at 22.

78. Coming down around 4 generations, Pouwharekura the 2nd was born who married Te Uhi the great grandchild of Taraia 1st and Hinemoa. It is from this whakapapa that Turitakoto the father of Winiata Te Whaaro and others of Ngāti Pouwharekura hail from.[56]

79. Two sisters of Mumuhu married men from Rakautatahi near Takapau. This provided Ngāi Te Upokoiri, Ngāti Hinemanu and Ngāti Pouwharekura with a corridor extending along the foothills of the Ruahine Range from their pā sites at Ngarururoro to Rakautatahi. This allowed them to avoid the Ruataniwha plains and follow their preferred routes through the forests to the west and into Inland Pātea.[57]

80. One of the most important events that affected Ngāti Pouwharekura was the full and final early purchase of the interests of Ngāti Pouwharekura in the Ruataniwha North Block in August 1859. They were mentioned as being one of the original owners of the Ruataniwha-Ruahine blocks. Through this early purchase not only were Ngāti Pouwharekura left landless they also became swamped by other hapū through intermarriages and linked to Ngāti Upokoiri, Whatuiapiti, Ngāti Hinemanu and others who they aligned themselves to consolidate movements without a quarrel in times of trouble.[58]

81. Two heke came into the Inland Pātea area after the battle of Mangatoetoe. The first heke was led by Hoeroa and Hianga and the second heke was led by Te Wanikau, Tuhaoterangi and Whiuwhiu. According to Winiata te Whaaro his father Turitakoto came into the Inland Pātea area from Heretaunga with the first heke. They first came to Katiapake and then went to Te Awarua Tuturu.[59]

82. Around 5 years later the people of Te Awarua heard that a war party of Whatanui and Raukawa were coming into the Inland Pātea area. The people assembled at Te Awarua. They were the people of Hoeroa, Ngāti Upokiri, Ngāti Hinemanu and Pouwharekura including Hianga. Another battle at

[56] Wai 2180, #H9(a) at 8.
[57] Ibid at 24.
[58] Wai 2180, #H9(b) at 10.
[59] Wai 2180, #H9 at 25.

Mangatoetoe was fought and it was here where Hoeroa and Hianga was killed.[60]

83. Wi Wheko stated in the Māori Land Court that the Kuraarangatai pa on Awarua No 1 was built by the descendants of Hinemanu, Ngāti Ruaiti as well as the descendants of Kea and Mataora. It belonged to these people and to Ngāti Pouwharekura the hapū of Winiata Te Whaaro.[61]

84. Turitakoto married Kinokino the mother of Winiata Te Whaaro and he lived amongst her people on the west side of the Ruahine ranges.[62]

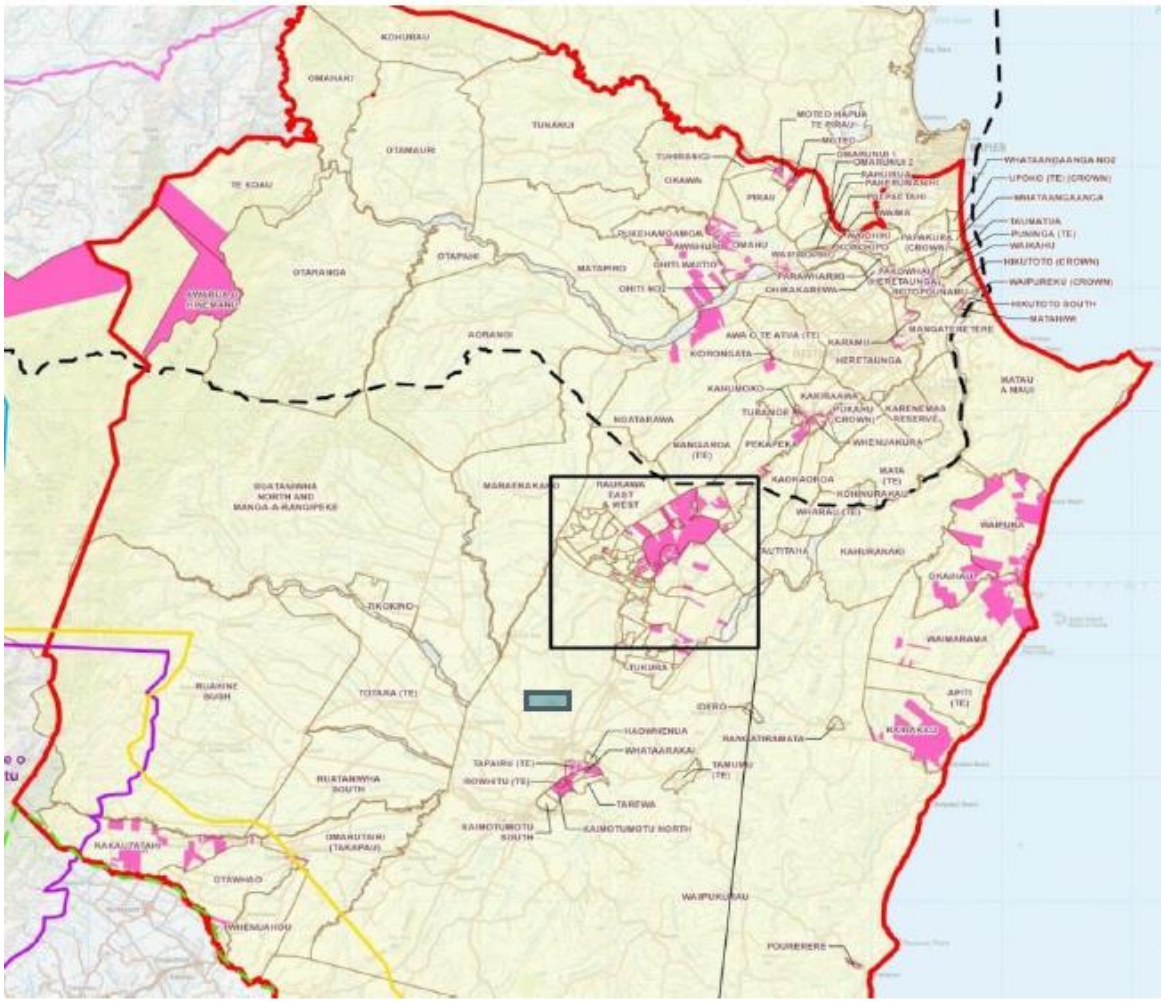
85. Turitakoto and Kinokino taught Winiata Te Whaaro about the lands of Turitakoto on the eastern side of the Ruahine Ranges where they hunted together. Kinokino also had rights to these lands through Te Ngahoa. Winiata said he first went there as a child collecting mutton birds and while making subsequent visits they imparted knowledge of places to him. He says that he has been to Heretaunga by way of the ancestral track called Te Atua o Mahuru. He says he knows the point called Maroparea (Maropea) it is on the eastern side ofthe Ruahine Range where the track crosses over the hill to Makororo.[63]

[60] Ibid, at 25-26.
[61] Wai 2180, #H9 at 27.
[62] Wai 2180, #A52 at 139-140.
[63] Wai 2180, #H9 at 26-27.

86. Whakapapa of Pouwharekura 1st and Pouwharekura 2nd.

87. As you can see from the whakapapa, Turitakoto the father of Winiata Te Whaaro has a direct lineage from Pouwharekura 1st and Pouwharekura 2nd.

88. The map below shows where the Otaranga and Ruataniwha North blocks are in relation to the Awarua o Hinemanu whenua (Lands of Ngāti Hinemanu).[64]



[64] Wai 2180, #P8 at 6.

89. The whānau of Ngohengohe (Miki) Winiata Te Whaaro, the son of Winiata Te Whaaro commemorated Ngāti Pouwharekura on his gravestone in the urupa at Winiata.[65]

90. Having provided this rich context to the Tribunal McBurney summarised the claimants in this way:

> *Ngāti Hinemanu and Ngāti Paki have maintained unbroken ahi kaa in Mōkai Pātea since time immemorial. They are the descendants of Winiata Te Whaaro, who was born at Te Koutu on the Rangitīkei River in the mid-*

[65] Ibid.

to-late 1830s.[66]*Winiata Te Whaaro's descent lines embody ancient whakapapa ties to the earliest 'Papatipu' tangata whenua of the region, through female ancestors including Punakiao, Te Ao-Pakiaka (Ngāti Paki), Nukuteaio and Te Aomāhanga. They in turn descend from Orotū and Whatumāmoa, chiefly descendants of Toi-kai-rākau and Tangaroa. As Ngāhape Lomax put it: "Those [ancient] ancestors are part and parcel of our autochthonous right."*[67]

91. Having set the scene as to who the claimants are, these submissions will now explore the following below listed matters. We wish to note where no specific discussion arises that is because matters have largely been included in the comprehensive generic submissions that are before the Tribunal as part of the totality of matters that remain outstanding to which the claimants along with many others seek positive findings for and counsel is keen where possible to avoid duplication and repetition.

[66] NHNP O & T Report, p. 161; citing evidence of Winiata Te Whaaro, Te Kōau title investigation, 1900, Napier MB 43, pp. 108-109. Document Bank: CFRT 1508, Vol. 4, pp. 480-481. Winiata told the Native Land Court that he was born at the time of Haowhenua, the battle fought near Ōtaki in c.1834. He later corrected himself and said he was born at the time of the battle of Te Kuititanga, which was fought near Waikanae in 1839.

[67] NHNP O&T: 43-45; citing: Ngāhapeaparatūae Lomax, Interview One – 'Early Traditions', Winiata Marae, 16 June 2013, NHNP Oral History Project (transcribed by Te Ingo Ngaia); and: Ngāhapeaparatūae Lomax, Whakapapa Wānanga, Winiata Marae, 26 April 2013, NHNP Oral History Project (transcribed by Te Ingo Ngāia). 'Papatipu' is a compound word deriving from 'papa' (the earth) and 'tipu' (to grow, begin, spring up, bud, shoot etc).

A. CONSTITUTIONAL AND POLITICAL ENGAGEMENT ISSUES

92. More than a century and a half of manipulation and reinterpretation of the founding documents of this nation (He Whakaputanga o Ngā Rangatira o Ngā Hapū o Niu Tireni me Te Tiriti o Waitangi) ,purported to be founded on ideals of peace and good faith, have created the stark mistrust and trepidation towards the Crown and its processes by Ngāti Hinemanu and Ngāti Paki.

93. This has been exacerbated further in recent years, the Claimants say, where the Crown seems to have deprioritised any effort to effect a speedy and just resolution for the peoples of Ngati Hinemanu and Ngati Paki with respect to any surplus state assets in their lands or to recognise their extant relationships to Crown Forest Assets to th8e Kaweka and Gwavas forest lands to which they have claims.

94. As alluded to in the introduction to these submissions during the time that the claimants have been fully engaged in this process the Crown has developed Treaty Settlement process that is seeing the reallocation of their traditional taonga while they are not even at the negotiating table which have resulted in significant applications for urgency with the consequent stress on the claimants as they refocus energy to fight those matters largely to ensure their fires of ahi kaa are not extinguished unilaterally by the application of Crown process and practice without their full; free and informed consent.

95. The political engagement and constitutional generic submissions grapple with this phenomena but also a range of other significant matters which the claimants support as being significant issues for this Tribunal to assess with respect to the allegations of breach that have been made specifically by Ngāti Hinemanu and Ngāti Paki.

96. The claimants agree with the conclusions of those generic submissions that constitutional change is the base line from which the peoples of Ngāti Hinemanu and Ngāti Paki assert will enable the processes of reconstruction to begin for the future relationships between the colonisers and the peoples of the territories of Ngāti Hinemanu and Ngāti Paki.

No Cession of Sovereignty

97. What is clear is too throughout this Inquiry process is that all claimants have insisted they retain "absolute sovereignty" notwithstanding the Crown narrative on this record of inquiry that has consistently denied and worked to deliberately undermine these assertions of mana and power by them and their tipuna. They cannot help but do so in the face of the historical memory that is stamped into each and every descendant of Winiata Te Whaaro that is before you. The injustices meted out on their tīpuna must never be repeated and thus they come to this Tribunal seeking solutions on how that may be achieved.

98. Most concerning we say for this Tribunal is that a theme emerges in the generic submissions which is that to fulfil its desires, the Crown regularly allowed illusions of autonomy to sprout within indigenous communities, then worked diligently to destroy them by failing to recognise them. In the process the Crown belittling the authority of Māori by the application of western legal concepts. This belittled not only the traditional esteemed institutions of tangata whenua, but also those new relationships and coalitions of power that were initiated by their forebears like the movements for a separate Māori Parliament and the Kōtahitanga efforts which as have emerged in the evidence here were clear attempts to adapt to the massive change that was being brought to bear on their societies by the arrival of settlers and their forms of administration while maintaining the flame of independence embedded in the founding constitutional documents in the principles of mana and tino rangatiratanga that were enshrined there.

99. It also undermined Māori in attempts to maintain and protect their mana over their esteemed institutions and tribal territories. In this way the Crown sought to assert its supremacy and its institutions at the expense of Māori social and political institutions like whānau and hapū.

100. This process was directly challenged by our claimants. Thus the evidence of esteemed Māori Jurist Moana Jackson which was the primary brief for Ngāti Hinemanu and Ngāti Paki on these issues asserted:[68]

> *"As their predecessors had done when contemplating whether or not to sign Te Tiriti in 1840 the rangatira saw themselves as representing the Iwi and Hapu as distinct, independent polities and the Crown as just another polity."*

101. Furthermore:[69]

> *Analogies are often blunt comparative instruments but Article One in Te Tiriti may be likened to the terms of engagement on the marae. The kawa or tikanga regulating the relationship between the host people and the manuhiri are set by the hau kāinga. They allow a space within which the visitors are made welcome and acknowledgement is given to their integrity and authority. However, that welcome and acknowledgement in no way diminishes or supersedes the mana and tino rangatiratanga of the hau kāinga. Welcoming the manuhiri and granting them a place is not a cession of authority but an exercise of it.*
>
> *So in Te Tiriti the Crown are granted a place but the kawa and authority stays with Iwi and Hapū. And the nature of that ongoing authority is particularized, but not delimited in Article Two of Te Tiriti – "ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o rātou wenua,o rātou kāinga, o rātou taonga katoa".*

102. Yet what occurred was the antithesis of this expectation. Dr Jackson's very full brief sets out the process of colonisation meticulously and the power dynamics which shape the motivations of the Crown but this observation below is apposite to the matters raised by directly Ngāti Hinemanu and Ngāti Paki in their Statement of Claim:[70]

> *The actual effects of Pākehā intrusion of course varied in different Iwi according to the degree of contact. Thus, for the people of Te Paparahi o te Raki who had to deal with the greatest number of early colonisers the costs were often more direct and extreme than they were in say*

[68] Wai 2180, #H7 Brief of Moana Jackson.
[69] Wai 2180, #H7 at [154] and [155].
[70] Wai 2180, #H7 at [175] and [178].

inland areas of Tūhoe or the rohe of Ngāti Hinemanu and Ngāti Paki where for a number of years there was only intermittent contact.

But costs there were and they only increased over time, whether in Iwi that eventually challenged the presumptions of the Crown on the battlefield, or those like Ngāti Hinemanu and Ngāti Paki who were seen as threats to the economic hegemony of the colonisers. The circumstances which led to those pressures were shaped by the clash between the presumptions of dispossession and the Iwi unwillingness to accept them, and in the case of Winiata Te Whaaro by the colonisers' insatiable belief that they were entitled to most if not all of the land coupled with presumption that he had to abide by their law.

That clash was of course driven too by the political, social and cultural demands of colonisation. It was particularly framed within the demands of capitalism and the need to profit from the dispossession of Iwi and Hapū. To the colonisers colonisation was always a market opportunity, and as Normanby's Instructions to Hobson make clear the Crown was "not insensible to the importance of new Zealand to the interests of Great Britain…nor unaware of the great natural resources by which that country is distinguished…there is probably no part of the earth in which colonization could be effected with a greater or surer prospect of national advantage".

Undermining Māori Leadership Structures

103. Nowhere is the Crowns attempt to undermine Māori Leadership and Tino Rangatiratanga more evident than in the relentless pursuit and persecution of Winiata Te Whaaro in this Inquiry, and those connected to him without just cause.

104. The period of incarceration enforced on Winiata Te Whaaro and the subsequent trial lucidly revealed the Crown's desire to conclusively impose its authority over all of those with power and influence and to further the Crown's settlement strategy in breach of the guarantees of mana and tino rangatiratanga in Article II to impose authority over Winiata Te Whaaro and his followers and to create strategies designed to batter the will of the Māori, teaching dependency and as such, and to place them at the Crown's whim.

105. These strategies also exposed the Crown's intentions regarding the promises outlined in Te Tiriti o Waitangi. The relentless efforts to subjugate Winiata Te Whaaro to the writs of Crown prerogative and his forced removal from

his papakainga at Pokopoko diminishes any premise that promises to protect Tino Rangatiratanga would be honoured. Such strategies resonate resoundingly in complete disharmony with previous Crown promises and legislation that held out notions of autonomy, graphically showing the hollowness of Crown words.

106. The Crown we say did not merely fail to recognise or provide for the tino rangatiratanga and autonomy of Ngāti Hinemanu and Ngāti Paki, but actively sought to crush it, in serious breach of the Treaty of Waitangi.

107. We move to look at the matrix of issues that have been raised in the evidence to emphasise the point.

1860 Kōkako Hui

108. The Kōkahu hui of 1860 was organised by members of Ngāti Whiti and Ngāti Tama, such as Ihakara Te Raro and Te Oti Pohe (Sr.), but which also involved members of Ngāti Tuwharetoa, Ngāti Upokoiri, Ngāti Hinemanu, and Whanganui tribes.[71]

109. The grand hui was concerned with adherence (or otherwise) to the Kingitanga Movement (discussed below) and also prevention of land sales, including the important question of where the various hapū maintained mana whenua based on ancestral rights.[72]

110. During the subsequent Owhāoko, Ōruamātua-Kaimanawa, Tīmahanga, and Mangaohane title investigations, the 1860 Kokako hui was repeatedly referred to as a turning point in efforts by groups in the Mōkai Pātea region who were trying to retain their lands.[73]

111. One of the outcomes of the hui, was the erection of two pou to prevent the selling of more lands. One pou was erected at Kuripāpango and the other at Whanawhana. The setting up of these pou have been credited to many hapū

[71] Wai 2180, #A6, p. 14.
[72] Wai 2180, #A52 Peter McBurney, *Confidential Report: Ngati Hinemanu and Ngati Paki Oral and Traditional Report*, (Commissioned by Crown Forestry Rental Trust, November 2015), p. 196.
[73] Wai 2180, #A52 Peter McBurney, *Confidential Report: Ngati Hinemanu and Ngati Paki Oral and Traditional Report*, (Commissioned by Crown Forestry Rental Trust, November 2015), p. 196.

and Ngāti Hinemanu is one of those hapū, one of whom being Irimana, brother of Winiata Te Whaaro.[74]

Komiti ō Pātea

112. The impact of the Native Land Court and the transactions that arose out of it in the period from 1865 onwards generated a substantial amount of political action against Māori throughout New Zealand from the late 1860s onwards.[75]

113. The impact of the 10-owner rule on ownership, the failure of the Court's findings to reflect customary ownership, the costs of the Court process, debts, mortgages, and dealings with individual grantees without regard for owners excluded from titles soon created land loss amongst those iwi suffering the greatest early exposure to the Court.[76]

114. In response to the 1870s dealings in Hawkes Bay, the Ngāti Hokohe Movement (referred to as the Repudiation Movement by Pākehā) grew up among Māori – initially Ngāti Kahungunu in Wairarapa and then Hawke's Bay.[77]

115. Mōkai Pātea Māori endorsed the Repudiation Movement and its calls to halt or fundamentally reform the Native Land Court and the dubious transactions associated with it and attended the first pan-iwi hui at Pakowhai in July 1872.[78]

116. The failure of the government to fully inquire into the grievances of the Repudiation Movement led to substantial 1873 petitions signed from 300 Māori of the east coast, and Taupō disricts, and another from Rēnata Kawepō and 553other supporters of the Movement.[79]

[74] Wai 2180, #A52 Peter McBurney, *Confidential Report: Ngati Hinemanu and Ngati Paki Oral and Traditional Report*, (Commissioned by Crown Forestry Rental Trust, November 2015), p. 196.
[75] Wai 2180, #C5, paragraph 34.
[76] Wai 2180, #A43, p. 235.
[77] Wai 2180, #A43, p. 235.
[78] Wai 2180, #A43, p. 236.
[79] Wai 2180, #A43, p. 236.

117. The petitions opposed the work of the Native Land Court and criticised the failure of the government to look into the Movement's complaints.[80]

118. The petitions sought a fuller inquiry into Native Land Court transactions. The result was nought.[81]

119. Further pan-tribal hui were held at Pakowhai and Ōmahū in 1876 and 1877 which generated huge petitions signed by hundreds of Māori from several tribal districts which certainly included Mōkai Pātea.[82]

Kotahitanga Movement

120. The Kotahitanga Movement emerged in the 1890s and in 1892, it formed a Māori Paremata that met annually at Māori centres from 1892 into the early twentieth century. Many iwi sent representatives to the Paremata to debate and endorse its resolutions, including the people of Mōkai Pātea.[83]

121. The first formal hui of the national Kotahitanga movement opened at Waitangi on 14 April 1892 in the whare 'Te Tiriti o Waitangi' of which at least one of Mōkai Pātea representatives attended.[84]

122. Much of the business was again formalising the structures and offices of the Paremata, and also the Paremata's draft Bill opposing the Native Land Court.[85]

123. However, James Carroll, for the government, advised them not to rush their new Bill but to ask the Pākehā Parliament to adjourn its current Bill on the Native Land Court.[86]

124. Further, he rejected the use of Māori committee to investigate titles.[87]

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[80] Wai 2180, #A43, p. 237.
[81] Wai 2180, #A43, p. 238.
[82] Wai 2180, #A43, p. 240.
[83] Wai 2180, #A43, p. 595.
[84] Wai 2180, #A43, p. 597.
[85] Wai 2180, #A43, p. 598.
[86] Wai 2180, #A43, p. 598.
[87] Wai 2180, #A43, p. 599.

125. The second full Kotahitanga Paremata was held at Waipatu in April 1893. The key business of the Paremata included a petition from Kotahitanga to the Pākehā Parliament calling for an act to authorise the assembly of the Kotahitanga.[88]

126. The petitioned outlined concerns regarding the 10-owner rule and ascribed the blame to the government for not ensuring that the 10 owners were classed as trustees for their people.[89]

127. After the passage of the 1873 Native Land Act, the petition continued due to the law authorising "one person to create trouble on the tribe's land" something that had, "never been seen amongst the Māori because the land had belonged to the whole tribe or sub-tribe".[90]

128. The petition was later printed by the Pākehā parliament, but no action was taken.[91]

129. Not only was the Bill proposed and the petition not passed, it was not introduced or debated.[92]

130. The next hui was held at Pakirikiri in 1894. The principal business of the Paremata was a protest against recent land purchase legislation, and the Native Land Court system and the establishment of komiti Māori, and also the Native Rights Bill which sought jurisdiction over Māori to be vested in an elected Paremata Māori, intended to make Māori and Pākehā equal in status under the Queen.[93]

131. The Bill was spurned by the Pākehā Parliament, which refused to even debate it in September 1894.[94]

132. The fourth Paremata hui held at Rotorua in March 1895. By this stage, the electoral district for Mōkai Pātea had changed to "Taupōnuiatia me Pātea"

[88] Wai 2180, #A43, p. 601.
[89] Wai 2180, #A43, p. 600.
[90] Wai 2180, #A43, p. 602.
[91] Wai 2180, #A43, p. 602.
[92] Wai 2180, #A43, p. 602.
[93] Wai 2180, #A43, p. 603.
[94] Wai 2180, #A43, p. 603.

now including Owhāoko block, Awarua block, Otamakapua, and Otairi, and back to Te Kapua and Motukawa.[95]

133. The 1896 Paremata hui was held at Tokaanu, which would have ensured a strong attendance by Mōkai Pātea Māori. One new outcome was a petition to be sent direct to the Queen in 1897: "the Treaty of Waitangi is the basis of the grievances," more specifically, the failure of the Pākehā Parliament to form laws "according to the provisions" of the Treaty.[96]

134. The 1897 Paremata hui was held at Papawai. Amongst the many Māori present was "Te Retimana" which may be Retimana Te Rango of Mōkai Pātea.[97]

135. Hoani Paraone Tunuiarangi of Ngāti Kahungunu accompanied the government delegation to London and took the Kotahitanga petition calling on the Crown to preserve the last five million acres of land in Māori ownership.[98]

136. The petition was subsequently presented to the Secretary of State for the Colonies and published in the London Press.[99]

137. Richard Seddon was obliged to respond and it is thought that the embarrassment this caused contributed to Seddon's 1898 Native Lands Settlement and Administration Bill, passed into law in 1900 as the Māori Lands Administration Act, with other measures included in the Māori Councils Act.[100]

138. It is clear from the tangata whenua evidence that this struggle to maintain Māori independence has continued into the 20th century with perhaps the most cogent evidence of this on the record for Ngāti Hinemanu and Ngāti Paki their efforts to support the Māori Land March; their part in the protests and representations to protect the Kaimanawa Horses; the yearly pilgrimage

[95] Wai 2180, #A43, p. 605.
[96] Wai 2180, #A43, p. 606.
[97] Wai 2180, #A43, p. 607.
[98] Wai 2180, #A43, p. 607.
[99] Wai 2180, #A43, p. 607.
[100] Wai 2180, #A43, p. 607.

by claimant Hape Lomax to Waitangi Commemorations at Waitangi itself and their ongoing advocacy for the establishment of Te Kohanga Reo; Kura Kaupapa; Whare Kura and Wananga.

MILITARY ENGAGEMENT

Generics

139. To the extent the Generic Issues on Political Engagement have covered some of these matters off now highlighted in these submissions those are adopted as a starting point for the observations now made for and on behalf of Ngāti Hinemanu and Ngāti Paki.

140. The principal allegation arising from the active participation of descendants of Ngāti Hinemanu and Ngāti Paki in the New Zealand Wars period is set out below.

Allegations

141. The Crown, in breach of Article 2 of Te Tiriti o Waitangi and the duty of active protection, failed to protect the interests, mana and sovereign authority of Ngāti Hinemanu me Ngāti Paki during and after their involvement in wars fought on behalf of the Crown.[101]

142. While many of these issues are presently being heard in the Wai 2500, Miliatry Veterans inquiry , it is imperative that they are contextualised in this present Inquiry as part of the Issue One and Two matters in the Statement of Issues which relate to Political Engagement and Constitutional matters.

143. The task for the Tribunal is made a little more difficult because while the technical evidence on these matters is not corroborative of matters claimed by many of the tangata whenua witnesses it is clear that during the period of Military engagement Ngāti Hinemanu and Ngāti Paki Rangatira chose to participate with both those loyalists supporting the Crown purposes and those groups in Tūwharetoa defending the positions of those like Te Kooti and Pikikotuku. These ostensible conflicting positions are understood by looking

[101] Wai 2180, #1.2.17 Ngāti Hinemanu me Ngāti Paki Heritage Trust Amended Statement of Claim, p 64.

at the whakapapa relationships outlined on the Record of Inquiry and the need for support to be rendered to both sides of the political divide during the early engagement period.

144. The elaborate relationships that arose from those political decisions had consequences right through to the twentieth century as the following discussion elicited from the various reports confirms. What is clear is that during this period little regard was given once altercations occurred to honour promises made to soldiers that had offered up their lives to facilitate Crown military strategies with consequences for that failure impacting severely on relationships between those supporting Renata Te Kawepo and Winiata Te Whaaro in a number of contexts.

Background

145. Winiata Te Whaaro and his brothers were part of the Tuwharetoa contingent that fought at the battle Orakau, the final battle of the Waikato war.[102]

146. Winiata Te Whaaro and his brother were followers of Renata Kawepo who was an ally of the Crown who fought against so-called rebels at Omaranui, Te Wairoa, and against Te Kooti at Te Porere Pā near Lake Rotoaira.[103]

147. Although the Crown promised payment for their services, Winiata Te Whaaro and Rēnata Kawepō received little or nothing in return.[104]

148. According to the Dictionary of New Zealand Biography, the supplying and feeding of his troops was a likely factors in Renata Kawepo becoming indebted, which he endeavoured to strave off by selling land to Pakeha farmers to finance his part in these campaigns.[105]

[102] Wai 2180, #A052, Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report, Peter McBurney, 10 December 2014, p. 201.
[103] Wai 2500, brief of evidence of Jordan Winiata-Haines, #A52, 6 October 2015, paragraph 6.
[104] Wai 2500, #A52, at paragraph 7.
[105] Wai 2180, #A052, Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report, Peter McBurney, 10 December 2014, p. 202.

149. Subsequently, this had serious implications for Winiata Te Whaaro, inasmuch as some of the Mōkai Pātea landsold by Rēnata in the 1880s was occupied and farmed by Winiata at the time.[106]

150. Ngāti Hinemanu me Ngāti Paki followers of Renata Kawepo are commemorated on a memorial stone next to the St John Church at Omahu during the Hauhau rebellion in 1862-1872 for the Queen and Country. These included Winiata Te Whaaro and his brothers Irimana Ngahoa and Hori Tanguru. Oral evidence provided within the whānau says that Winiata Te Whaaro was with Tūwharetoa at Ōrākau and he was injured there.[107]

151. It is here in October 1869 at the taking of Te Porere pā that Renata Kawepo was clubbed by the widow of Paurini who was killed during the attack on the pā. In revenge for her husbands death she gouged out the right eye of Kawepo. Kawepo considered she had acted correctly and later he married her. Although he was awarded a pension of £100 as compensation for his injury and in recognition of his services to the Crown his part in the military action cost him dearly and he was forced to sell land to cover the cost of the campaign. No payment was made by the government, even for the rations his men consumed. He was forced to sell land to the Pākehā to pay for the expenses of protecting them.[108]

152. The fact that Renata was forced to sell land to repay debts incurred in the service of the Crown subsequently had serious implications for Winiata Te Whaaro and his community farming at Pokopoko which was sold by Renata in the 1880's. Inasmuch as Renata Kawepo had not been compensated neither had Winiata Te Whaaro or any of his other followers.[109]

153. After fighting as an ally of the Crown, Winiata Te Whaaro and his people were evicted from their ancestral lands at Pokopoko on the Mangaohane

[106] Wai 2180, #A052, Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report, Peter McBurney, 10 December 2014, p202.
[107] Wai 2180, #A052, Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report, Peter McBurney, 10 December 2014, p201-202.
[108] Wai 2180, #A052, Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report, Peter McBurney, 10 December 2014, p. 202.
[109] Wai 2180, #A052, Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report, Peter McBurney, 10 December 2014, p. 204.

block. Along with losing their land they suffered the destruction of their houses and possessions as well as the confiscation of their sheep that were used as a primary source of income.[110]

154. Some years later Te Heuheu included Winiata Te Whaaro in the Mangahouhou block as "a gift of gratitude from Te Heuheu to those people who assisted him in the wars".[111]

155. Five large Ōwhaoko subdivisions (totalling more than 35,000 acres) were gifted (by Ngāti Tūwharetoa, Ngāti Whiti and Ngāti Tama) to the Crown for settling Māori soldiers returning from World War 1 but the lands proved unsuitable for that purpose and some of the land was eventually leased by the Crown to private interests.[112]

156. Amongst the subdivisions was Owhaoko D4B of 1,326 acres[113] (awarded to Winiata Te Whaaro and his party).

157. Fisher & Stirling found no evidence to indicate that any funds were generated by the government from the land therefore it appears that no assistance was ever given to Māori returned soldiers as a result of this gift.[114]

158. In 1974, the Owhaoko blocks except Owhaoko C 7, were vested in the Tuwharetoa Trust Board along with six advisory trustees to administrate.[115] Owhaoko C7 was vested in its own Trust for the people of Ngāti Hinemanu and Ngāti Upokoiri.[116]

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[110] Wai 2180, #1.2.17 Ngāti Hinemanu me Ngāti Paki Heritage Trust Amended Statement of Claim, p. 65.
[111] Wai 2180, #A052, Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report, Peter McBurney, 10 December 2014, p. 204.
[112] Wai 2180, #A06, Sub-district block study – Northern aspect, Martin Fisher & Bruce Stirling, September 2012, p.5.
[113] Wai 2180, #A046, Twentieth Century Overview, Tony Walzl, May 2016, p290.
[114] Wai 2180, #A046, Twentieth Century Overview, Tony Walzl, May 2016, p297.
Wai 2180, #A06, Sub-district block study – Northern aspect, Martin Fisher & Bruce Stirling, September 2012, p133.
[116] Wai 2180, #A06, Sub-district block study – Northern aspect, Martin Fisher & Bruce Stirling, September 2012, p132.

159. It was not until 1996 that the Owhaoko B & D Trust was formed to represent the Ngāti Tamakopiri, Ngāti Whitikaupeka and Ngāti Whititama owners.[117]

New Zealand Wars

160. The narrative concerning the involvement of Winiata Te Whaaro in the New Zealand Wars has two threads. The first, which is well-documented, records Winiata's involvement as the personal assistant or adjutant to Rēnata Kawepō, who raised a militia from among his wider kin group to fight on the side of the Crown against Māori whom the Crown deemed to be 'in rebellion'. The second thread derives from Tūwharetoa oral tradition, which asserts that Winiata Te Whaaro accompanied a contingent of Tūwharetoa to the Waikato, where he saw action and was wounded fighting against the Crown at the battle of Ōrākau. The two narratives appear to be incompatible, but Ngāti Hinemanu Ngāti Paki remain convinced that their tupuna fought against the Crown at Ōrākau in 1864, and then joined his elder relative Rēnata Kawepō to fight for the Crown at Ōmarunui against Ngāti Hineuru, at Wairoa and later against Te Kooti at the battle of Te Pōrere Pā.[118]

161. In 1929, the New Zealand Government erected a memorial stone at Ōmāhu Marae commemorating the actions of Rēnata Kawepō and his faithful followers who helped suppress the Hauhau rebellion in 1862-1872. Lewis Winiata reports that there are many Ngāti Hinemanu Ngāti Paki names on this memorial including: "Hiraka, Rameka, Anaru Te Wanikau, Arapata Hakiwai, Irimana Ngahoa, Winiata Te Whaaro, Hori Tanguru, Wirihana Toatoa and Tiopira Hoeroa." Lewis states: "They may not be all of Ngāti Hinemanu and Ngāti Paki, though Irimana Ngāhoa and Hori Tanguru were brothers of Winiata Te Whaaro."[119]

162. The key point to consider here is Winiata's relationship to Rēnata Kawepō, who was universally regarded as a great Māori leader. At the time, Renata

[117] Wai 2180, #A06, Sub-district block study – Northern aspect, Martin Fisher & Bruce Stirling, September 2012, p134.
[118] Wai 2180, #A52(b) Summary of Evidence of Peter James McBurney dated 3 February 2020 pp 32-33.
[119] Wai 2180, #A52(b) Summary of Evidence of Peter James McBurney dated 3 February 2020 pp 32-33.

was actively opposed to land sales, despite his military support for the Crown. The evidence suggests that Rēnata became indebted, as did so many of his contemporaries. A storekeeper named Maney is identified as one who held debts against him; Ngāti Hinemanu Ngāti Paki believe he incurred debts to the Crown because he had to supply and provision the men under his command. The fact that Rēnata was forced to sell land to repay debts incurred in the service of the Crown subsequently had serious implications for Winiata Te Whaaro, inasmuch as some of the Mōkai Pātea land sold by Rēnata in the 1880s was occupied and farmed by Winiata at the time. [120]

163. The claimants concur with the generic submissions conclusions and further assert that:

162.1 The Crown breached the principles of good faith and partnership when it failed to engage with Māori to address issues over tino rangatiratanga guaranteed by Te Tiriti;

162.2 The Crown breached the principles of active protection when it actively applied a divide and conquer policy during the War by offering Rangatira material support to actively encourage Māori to take sides. This exacerbated internal conflicts between and amongst Māori; and

162.3 The Treaty guarantee to Māori of their lands and estates for as long as they wished to keep them was an unequivocal undertaking, with which the decisions with respect to the allocation of lands following the decisions to engage in war were in direct conflict.

162.4 Finally, by reason of the facts and matters outlined herein and the breaches of Te Tiriti/ Treaty of Waitangi discussed the peoples of Ngāti Hinemanu and Ngāti Paki have been prejudicially affected in all or any of the following respects:

[120] Wai 2180, #A52(b) Summary of Evidence of Peter James McBurney dated 3 February 2020 pp 32- 33.

162.4.1 Loss of their lands, mountains, forests, rivers, swamps and lakes.

162.4.2 Loss of Te Tino Rangatiratanga.

162.4.3 Loss of the mana of hapū and Iwi.

162.4.4 Loss of leaders.

162.4.5 Loss of sources of food and building materials

162.4.6 Loss of economic independence and prosperity.

162.4.7 Loss of water rights, mineral rights and geothermal rights.

162.4.8 Damage and destruction of the social structure and organisation of whānau, hapū and Iwi.

162.4.9 Destruction of the traditional system of ownership (customary title) and possession of land and resources.

162.4.10 The forced dislocation of hapū and the scattering of the peoples of Ngāti Hinemanu.

162.4.11 Wrongful arrest and incarceration of Winiata Te Whaaro.

162.4.12 Loss of the mana of leaders through their loss of control of the lands, loss of authority and denial of Te Tino Rangatiratanga and as a consequence the breakdown of the leadership systems of Ngāti Hinemanu and Ngāti Paki

162.4.13 Loss of political influence.

162.4.14 A feeling of shame and spiritual deprivation.

162.4.15 The arousal of division, dissension and conflict between hapū leading to a breakdown of the alliance within the peoples and various hapū of the Taihape region.

162.4.16 Denial of their right of Self Government and the right to develop and enforce their own laws in accordance with Ngā Tikanga o Ngā Hapū o Taihape.

B. NINETEENTH CENTURY LAND USE, MANAGEMENT AND ALIENATION

NATIVE LAND COURT

164. These submissions address issue 3 of the Tribunal Statement of Issues.

165. At the outset, counsel reiterate that at the heart of the Claimants' case in relation to the Native Land Court, is that in breach of the principles of the Treaty of Waitangi, the Crown established the Native Land Court with the purpose of:

a) facilitating the alienation of Māori land in order to expand European settlement;

b) commuting Māori customary title and rights into an individualised Pākehā fee simple title;

c) promoting and facilitating the de-tribalisation of Māori; and

d) promoting and facilitating the assimilation of Māori into Pākehā customs and practices.

166. The Crown concessions which we set in full below do not adequately concede on the primary points of concern. This is disturbing because as the analysis of jurisprudence in the many Tribunal reports that have now issued on these matters all have been very clear on the many breaches of the guarantees of Te Tiriti that have been occasioned by Crown introduction of the Native Land Court and its various amendments.[121]

[121] Wai 2180 # 1.4.3: Statement of Issues p. 18.

167. It is submitted that the evidence on the record, clearly demonstrates that the Crown's principal purposes in establishing the Native Land Court were twofold:

a) The Court was to facilitate the alienation of Māori land for the purpose of settlement; and,

b) The Court was to bring about the assimilation of Māori into British-based property tenure.

168. Professor Williams reminds in He Kooti Tango Whenua that the key aim of the Native Land Court was to "[…] assimilate Māori into a system of individualised ownership of private property". Other Crown witnesses like the late Dr Loveridge has also conceded in a number of other Tribunals that an aim of the Court was to bring about "the advancement and civilization of the Natives". [122]

169. We reject any contention on the Crowns part that the "system was not designed to separate Māori from their lands" in breach of the active protection guarantee in Article II which of course is at the heart of many of the complaints of the claimants.

170. The Crown's argument from its principal witnesses in this inquiry appears to be that while the rapid alienation of Māori land may have been a practical outcome of the Native Land legislation, it was not a result that was intended by the legislation.

171. In contrast, the evidence of much of the technical evidence for the claimants was that the Native Land legislation fitted neatly into Crown policy that sought to provide settlers with "superfluous" Māori land and which sought to assimilate Māori into a system of individualised ownership of private property.

[122] Waitangi Tribunal, *The Hauraki Report* (Wai 686, 2006).

Previous Tribunal findings

172. We remind this Tribunal that these basic propositions have been considered in a number of other inquiries. For example , under cross-examination during the Hauraki Inquiry Dr Loveridge the principal Crown witness there accepted that it was likely that if the Native Land Court system had not been successful in opening up more land for settlement then the Crown would have created a system that did. The Turanga Tribunal has also agreed with this proposition.

173. The Turanga Tribunal has also dealt with the same Crown argument but found that "it is clear that the purpose of the system was to ensure that the bulk of the Māori land base passed out of Māori ownership".[123] That Tribunal also found that an "objectionable effect of the Act [(the Native Land Act 1873)] was […] that Māori could participate in the new British prosperity only by selling or leasing their land".[124] In this regard, the system provided that Māori would be separated from their lands if they wished to participate in the new economic order.[125] This is a further reason why the legislation was in fact designed to separate Māori from their lands.

174. The findings of the Pouakani Tribunal are a useful starting point as to how the Native Land Court impacted upon Ngāti Hinemanu me Ngāti Paki:[126]

> *All these factors contributed to mounting debts. There is plenty of evidence that the tribal leaders wanted to avoid the worst problems created by land dealing by keeping the Native Land Court out of the Rohe Potae and administering their own lands. There is also plenty of evidence that the government intentions were that Crown sovereignty would be imposed, government institutions extended into region and the lands of the Rohe Potae "opened up" for Pākehā settlement. Parliament also sought to protect its investment in the construction of the main trunk line by imposing a Crown right of pre-emption in the hope of paying off its substantial debts by profits from the sale of land.*
>
> *We conclude that Māori paid a disproportionate cost for Pakeha settlement, but little provision was made for Māori participation in the suggested benefits of the introduction of capital and settlers.*

[123] Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, (Wai 814,2004), p526.
[124] Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, (Wai 814,2004), p 444.
[125] Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, (Wai 814,2004), p 444.
[126] Waitangi Tribunal, *The Pouakani Inquiry Report 1993*, (Wai 33, 1993), at section 18.5.

175. The Turanga, Hauraki, Central North Island, and Wairarapa ki Tararua Tribunals found that the Crown through the Native Land Court 'expropriated' or 'usurped' from Māori their right to make decisions about the allocation and ownership of their land and resources in accordance with their own traditions and tikanga. This was despite the fact that tribal leaders wished to inquire into the own titles, as was noted by the CNI Tribunal:[127]

> *Tribal leaderships of the Central North Island had made it clear to the Crown that they wished to inquire into their own titles, rather than that the Native Land Court adjudicate on them.*

176. Various Tribunal Inquiries have also noted the considerable burden that engagement with the Court processes placed upon Māori communities. The Pouakani Tribunal noted that all these factors contributed to mounting debts:[128]

> *The 1891 Commission on Native Land Laws identified the problems of confusion in law and practice in the Native Land Court, the high costs in fees and other expenses to attend court sittings in distant towns, the excessive costs of surveys and costs of litigation in the Supreme Court or rehearing in the Native Land Court.*

177. The Wairarapa ki Tararua Tribunal reported that "the combination of fees, surveys, costs of attendance, and the toll that absence took on normal activities is likely to have contributed significantly to the hardships faced by Wairarapa ki Tamaki-nui-a-Rua Māori in the late nineteenth century.[129]

Crown concessions

178. The Crown has made the following concession in regard to the impact of the Native Land Laws:[130]

> The Crown concedes that the individualisation of Māori land tenure provided for by the native land laws made the lands of iwi and hapū in the Taihape: Rangitīkei ki Rangipō inquiry district more susceptible to

[127] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims,* (Wai 1200, 2008), at 480.
[128] Waitangi Tribunal, *The Pouakani Inquiry Report* 1993, (Wai 33, 1993), at section 18.5.
[129] Waitangi Tribunal, *Wairarapa ki Tararua Report*, (Wai 863, 2010), at 537.
[130] Wai 2180, #1.3.1, Crown Memorandum on early concessions – Native Land Court, at [2].

> fragmentation, alienation and partition, and this contributed to the undermining of tribal structures in the district.

179. The Crown accepts it did not take adequate or timely steps to protect traditional tribal structures, for example through legal provision for communal governance mechanisms.[131] In relation to the lack of provision for collective administration of land under Native Land Laws Until 1894:

> The Crown concedes that it failed to include in the native land laws prior to 1894 an effective form of title that enabled Taihape Māori to control or administer their land and resources collectively. This has been acknowledged previously as a breach of the Treaty of Waitangi and is again acknowledged as such for the Taihape inquiry district.

180. The Crown's concessions in relation to this issue are insufficient. Contrary to the Crown's assertion, the 1894 measures were not an effective form of title for the collective management by Ngāti Hinemanu me Ngāti Paki of their lands and resources. The incorporation provisions in the Native Land Act 1894 (ss121-129) were undermined by the prior imposition of Crown pre-emption over most of their lands, leaving any incorporation with only the power to sell to the Crown. For the few parts of their lands not affected by pre-emption, it was not until 1895 that complex regulations were proclaimed to allow Ngāti Hinemanu me Ngāti Paki to form an incorporation able to mortgage or lease their lands but this was, as the Stout-Ngata Commission reported, a difficult and complicated process that involved "many disputed and doubtful points."[132] As the Central North Island Waitangi Tribunal has concluded: "It does not seem that the Government intended incorporations to be widely taken up."[133] The 1894 Act was not utilised at all in the Taihape district.[134] Title to the lands of Ngāti Hinemanu me Ngāti Paki was rapidly fragmented and individualised in the 1890s and early 1900s. The result of the

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131 Wai 2180, #3.3.1, Opening Comments and Submissions of the Crown, 2 March 2017, at [27].

132 Wai 2180, #A43(d), Bruce Stirling, *Nineteenth Century Overview Report - Response to Statement of Issues*, at 12.

133 Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, (Wai 1200, 2008), at 777.

134 Wai 2180, #A43(d), Bruce Stirling, *Nineteenth Century Overview Report - Response to Statement of Issues*,at 12.

Crown's failure to provide an effective form of collective land management in a timely fashion was that by 1900 was then no point in incorporating the titles remaining to Ngāti Hinemanu me Ngāti Paki.[135]

181. The Crown's concessions are framed with reference to the very laws and concepts which are inconsistent with the tino rangatiratanga of the claimants that Te Tiriti sought to protect. They are also silent as to the impact of these laws and concepts on essential components of rangatiratanga, such as kawa and tikanga. They promote a mirage of Te Tiriti-compliant conduct, when such structures and descriptors are framed within Western law, and not by reference to kawa and tikanga. Even if the Crown had provided for the matters described in its concessions, such structures would still have been wanting with respect to tino rangatiratanga.

The Claimants position

182. The following table lists the blocks as making up the core interest of Ngāti Hinemanu me Ngāti Paki:[136]

Northern Blocks	Central Blocks	Southern Blocks	Heretaunga Crown purchases
Ōruamātua-Kaimanawa	Aorangi Awarua	Mangoira	Kaweka
Ōwhāoko	Awarua	Ōtāiri	Ngaruroro
Mangaohāne	Awarua o Hinemanu	Otamakāpua	Ngaurukehu
Rangipō Waiau	Te Kōau	Otumore	Ōtāranga
Timahanga	Motukawa	Rangitira	

183. Counsel commend the efforts of a number of claimant witnesses who presented evidence on number of these land blocks and the impacts these processes had upon the mana and rangatiratanga of Winiata Te Whaaro and Ngāti Hinemanu me Ngāti Paki. We refer to that evidence throughout these submissions and where appropriate draw from research on the Record of Inquiry and the generic submissions to support the general conclusions we seek from the Tribunal.

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[135] Wai 2180, #A46, Tony Walzl, *Twentieth Century Overview Report*, at 614.

[136] Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 223.

184. What is clear from the evidence is that the role of the Native Land Court in undermining the interests of Winiata Te Whaaro and Ngāti Hinemanu me Ngāti Paki cannot be overemphasised. However, it is the sheer dogged determination of the Crown to acquire the lands which is a matter of significance that emerges from the evidence. Peter McBurney observations are the most apt for the claimants as his report[137] engaged with their particular experiences with the Native Land Court tenurial system in significant ways:

> *The primary objective of the Native Land Court was the determination of customary ownership of Māori land and the awarding of Crown titles in order to facilitate land sales and European settlement.*

185. The evidence also confirms that Ngāti Hinemanu and Ngāti Paki have a particular history of strongly opposing the Native Land Court through their participation in the Repudiation Movement of the 1870s and the Kotahitanga Movement of the 1890s.

186. The evidence clearly illustrates that Ngāti Hinemanu me Ngāti Paki and other hapū within the region did not want the Native Land Court, but despite their protestations to the contrary it was forcibly imposed on them anyway. The Native Land Court was very far from being an independent tribunal set up to determine intersecting and disputed claims to Māori customary land as far as Ngāti Hinemanu me Ngāti Paki were concerned. It was instead a mechanism that failed to take account of tikanga Māori and breached the principles of good faith and active protection under Te Tiriti.

187. What is also clear to the claimants is that the Native Land Court had the further consequence of pitting hapū against each other in an adversarial environment where there were only losers. Even in the contemporary context the hangovers of these objectives still come into play in the disputes that arise between and amongst hapū over lands at Te Kōau and other significant territories that form the corpus of their tribal estate.

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[137] Evidence of Native Department Under-Secretary T. W. Lewis to the 1891 Commission of Inquiry into the Native Land Laws ('the Rees-Carroll Commission'), AJHR, 1891, G-1, p.145; cited in Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report,* at 221.

The Legislative Framework

188. The Crown legislation framework we say was no more than a façade created by the Crown to give the impression that they intended to fulfil the promises which it had given under te Tiriti but actually designed for a quite different outcome. The Acts were so inadequate in promoting Tikanga informed systems of resolution that their application is suffice to demonstrate the Crown's true intent – to employ legislation in order to pacify Māori while carrying out the colonisation of their lands.

189. An analysis of the evidence of Mr Bruce Stirling who was the primary witness for the claimants on these matters reveals some significant and disappointing trends.

190. All but one of the titles investigated prior to 1900 was awarded under the Native Lands Act 1873 or subsequent amendments.[138]

191. Titles issued under the Native Lands Act 1873 and its amendments were required to include every customary owner, unless the Court was satisfied that the owners had entered into a voluntary arrangement for title to issue a smaller representative group of owners (as might be the case if the land was intended for purchase when title was complete).[139]The inclusion of every owner in a title meant that hundreds of owners held undivided individual interests. This made for chaotic, unmanageable titles and transformed Māori land into an illusory asset that could only be realised through sale.[140]

192. The Court did not always abide by the requirements to identify every owner and include them in a title, nor ensure that the exclusion of owners was by any sort of voluntary agreement. This resulted in titles that were more akin to

[138] The exception is the Paraekaretu block, awarded title in 1872 under the Native Lands Act 1865.
[139] Wai 2180, #A43(d), Bruce Stirling, *Nineteenth Century Overview Report - Response to Statement of Issues*,at 14.
[140] Wai 2180, #A43(d), Bruce Stirling, *Nineteenth Century Overview Report - Response to Statement of Issues*, at 14.

those issued under the ten-owner rule and which excluded a huge number of owners.[141]

193. This process is evidence in the farcical titles finalised for the Owhāoko and Oruamatua-Kaimanawa blocks, as well as in less controversial southern blocks, such as Ōtamakapua 1 and Taraketi, awarded to very few owners.[142]

194. In counsel's submission, the application of the legislative framework fell short of Māori expectations set out in Te Tiriti and did little to protect and solidify Māori tino rangatiratanga over their lands and communities as Māori had been promised.

195. A significant body of evidence was given by technical witnesses and tangata whenua witnesses to highlight the point. We have elicited some case studies in this part of our submission to show how insidious the whole process of dispossession was for Ngāti Hinemanu and Ngāti Paki despite even their most determined efforts to participate in processes that were stacked against them.

Case Studies – Native Land Court

Owhāoko and Oruamatua-Kaimanawa

196. The surveying and informal leasing of the Oruamatua-Kaimanawa and Owhāoko blocks soon led to the Native Land Court title investigations in 1875 and 1876.[143] The lessee or Oruamatua-Kaimanawa, Azim Birch, made a title investigation a condition of his 1867 lease and was not obliged to pay any rent until the title was investigated.[144]

197. The notices for the 1875 title investigations were gazetted on 7 September 1875 and the Court sat only nine days later.[145] As Messrs Fisher and Stirling note, this was insufficient time or any other persons interested to receive

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[141] Wai 2180, #A43(d), Bruce Stirling, *Nineteenth Century Overview Report - Response to Statement of Issues*, at 14.
[142] Wai 2180, #A43(d), Bruce Stirling, *Nineteenth Century Overview Report - Response to Statement of Issues*,at 14.
[143] Wai 2180, #G17, Brief of Evidence of Jordan Winiata-Haines, at [37], and Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 266-268.
[144] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 262.
[145] Wai 2180, #E3(a), Index and Appendices to the Affidavit of Herbert Winiata Steedman, at 13.

notice of the sitting, let alone prepare their cases and arrange to attend the Court at a location some distance from the land itself.[146]

198. After a cursory investigation the names of Rēnata Kawepō and a handful of others were put in the titles.[147] The Court was told there were many other owners, including people living on the land, who were not present at the title investigation but the Court made no effort to identify these owners and include them in the title.[148]

199. The 1876 Owhāoko title investigation and ordering of the Owhāoko titles in 1877 was confused and later found to be of no legal validity, in addition to being as cursory and inadequate as the 1875 title investigations.[149]

200. Soon after the initial hearings, letters and petition began to flow requesting a rehearing of the block because many customary owners had not received the hearing notices in time to reach the Court and because of the withdrawal of an application for rehearing.[150] The application for a rehearing of Owhāoko was rejected in error by the Chief Judge while that for Oruamatua-Kaimanawa was wrongly rejected by Native Minister Donald McLean without proper inquiry.[151]

201. The Chief Judge later defended his actions on the basis that his involvement in the Owhāoko and Ōruamātua-Kaimanawa titles was not as Judge but in the fulfilment of his administrative function in which he acted "as head of the executive department" of the Court. It was in this capacity that he had yielded to the "orders" of Native Minister McLean to deny the first applications for rehearing.[152]

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146 Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 35.
147 Wai 2180, #A52(b), *Summary of the Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report*, at [38].
148 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 265.
149 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 267-271.
150 Wai 2180, #E3(a), Index and Appendices to the Affidavit of Herbert Winiata Steedman, at 14.
151 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 266-267.
152 AJHR, 1886, I-8, at 3-4, cited in Wai 2180 #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 289-290.

202. The Crown failed to establish an appeal court for the Native Land Court until 1894, when the Native Appellate Court was established. This was too late for Owhāoko, Oruamatua-Kaimanawa, Mangaohāne (see below) and nearly all of the lands of Ngāti Hinemanu me Ngāti Paki.[153]

203. From the outcome of the inadequate and invalid hearings came the Stout Report and the 1886 Owhāoko and Oruamatua-Kaimanawa Inquiry.[154]

204. The 1886 inquiry into the Owhāoko and Oruamatua-Kaimanawa titles revealed a great deal about the legal chicanery and corrupt practice surrounding Native Land Court transactions, and the extent to which the court itself colluded in these dubious dealings without regard for the interests of the land's customary owners.[155]

205. McBurney went on to further note that, the Owhāoko rehearing exposed an extraordinary litany of malpractice at all levels of the Court, the objective of which appeared to be to confirm Rēnata Kawepō's ownership of the land, in order to ensure the existing leases would continue undisturbed.[156]

206. As a result of the 1886 Royal Commission of Inquiry, the Owhāoko and Oruamatua-Kaimanawa Re-investigation of Title Act 1886 was enacted, which ordered that the Native Land Court re-investigate title to the block.[157] The Act protected the interests of the lessees of the two blocks - Studholme and Birch respectively - with the result that any new owners obtained nothing more than the right to a share of the inadequate rents being paid for the land.[158]

207. The Native Land Court did so in July 1887 and title was awarded to Ngāti Whiti and Ngāti Tama. The claim of Renata Kawepō through his iwi Ngāti

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153 Wai 2180, #A43(d), Bruce Stirling, *Nineteenth Century Overview Report - Response to Statement of Issues,* at 26.

154 Wai 2180, #G14, Brief of Evidence of Lewis Winiata, 19 September 2017, at [17].

155 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 287-288

156 Wai 2180, #A52(b), *Summary of the Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report*, at 17.

157 Wai 2180, #E3(a), Index and Appendices to the Affidavit of Herbert Winiata Steedman, 22 February 2017, at 14.

158 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 294. On the rental paid, see Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*,at 271-273.

Te Upokoiri from the original hearing was not upheld.[159] Winiata Te Whaaro had set up a claim but the Court ordered him to combine this with the Ngāti Whiti case even though it differed in significant ways from the Ngāti Whiti case.[160] When the list of Ngāti Whiti names was then argued in Court, Winiata Te Whaaro sought to be included with them, giving a whakapapa that showed his rights on Owhāoko as Ngāti Whiti. Ngāti Whiti objected as they saw Winiata Te Whaaro as a Ngāti Hinemanu who they claimed had no rights on Owhāoko. Winiata objected, saying he had more than one line of descent. The Court ruled against Winiata's inclusion but Ngāti Whiti then agreed to include him and four of his party. This was not sufficient recognition for Winiata Te Whaaro of his rights, prompting him to seek a rehearing.[161]

208. In 1888, Owhāoko was reheard, following separate applications from Winiata Te Whaaro, Renata Kawepō, and others. Renata Kawepō claimed as Ngai Te Upokoiri and his main witness, Paramena Naonao, supported the claim of Winiata Te Whaaro and his 11 children.[162] The Court awarded Owhāoko C to Ngai Te Upokoiri and Ngāti Hinemanu.[163] Despite the endorsement of the rights of Winiata Te Whaaro as Ngāti Hinemanu and the hapū inclusion in the title, neither Winiata Te Whaaro nor his immediate whānau were included in the ownership list. Their exclusion was the result of the opposition of the block's lessee, Studholme, to Winiata, which in turn relates to Winiata's defence of the rights of Ngāti Hinemanu me Ngāti Paki on Mangaohāne block (see below). This happened as a result of the co-operation and agreements between the Studholmes and Donnelly with the leasing of the Owhaoko C block to the Studholmes.[164]

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[159] Wai 2180, #E3(a), Index and Appendices to the Affidavit of Herbert Winiata Steedman, 22 February 2017, at 14.

[160] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 298 and Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 285 and 290.

[161] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 298 and Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 55.

[162] Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 59.

[163] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 299.

[164] Wai 2180, #A06: Martin Fisher & Bruce Stirling: *Northern Block History*, September 2012, p. 79.

209. McBurney notes that, the Owhāoko scandal, as it became known, is important as context to Winiata Te Whaaro's later Native Land Court claims to Mangaohāne and Te Awarua. Among Stout's criticisms of the Owhāoko investigation was that title was awarded without all owners having an opportunity to present claims. This, and such issues as Court minutes being recorded without an actual hearing having taken place, rendered the titles invalid according to the Attorney General.[165]

210. The fresh investigation of the equally invalid title of Oruamatua-Kaimanawa was scheduled to take place in 1887, immediately after the Owhāoko hearing, but was delayed until 1894.[166] Winiata Te Whaaro attempted to set up a case for Ngāti Hinemanu me Ngāti Paki at the 1894 hearing but when he was advised by the Court that it was to apply the precedents set in the Awarua case against his hapū (see below), he was compelled to withdraw.[167]

211. Lewis Haines notes that in the Ōruamātua-Kaimanawa 1894 title rehearing the :[168]

> *Winiata Te Whaaro realised that former Judgements made by the Native Land Court in the Awarua cases couldn't be removed and he referred to them as being, 'like clouds on a mountain '. Meaning that, 'He couldn't see his way clear to go on with his case in the 1894 Oruamatua-Kaimanawa Block hearings.*

Mangaohāne

212. The survey, title investigation, partition, and alienation of Mangaohāne illustrates many of the serious defects in Native Land Court processes, and it also illustrates the malign influence of the Crown and influential runholders on those processes. The outcome for Ngāti Hinemanu me Ngāti Paki was the disastrous and improper loss of all that they held at Mangaohāne; their papakāinga, farm, lands, and even their urupā. The resulting eviction of

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165 Wai 2180, #A52(b), *Summary of the Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report*, at [40].
166 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 302.
167 Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 145.
168 Wai 2180, #G14, Brief of Evidence of Lewis Winiata, 19 September 2017, at [34].

Winiata Te Whaaro and his people from Pokopoko is discussed later in these submissions.

213. In 1884, Rēnata Kawepō applied to have the title of the Mangaohāne block investigated, claiming under Honomōkai. He did not include Winiata Te Whaaro or Ngāti Hinemanu me Ngāti Paki as co-claimants.[169] Winiata responded to their exclusion by setting up a counter-claim for the Ngāti Hinemanu hapū Ngāti Paki, Ngai Te Ngāhoa, and Ngai Te Ngaruru, based on ahi kaa from the time of their tipuna Te Ohuake.[170] Their claim related only to the portion of the unsurveyed block south of the Mangaone Stream, which formed the boundary laid down by Te Ohuake between the interests of his two sons; Tūtemohuta (north of the stream) and Rangiwhakamatuku (south of the stream). Winiata could trace descent from both sons, he claimed only the lands of Rangiwhakamatuku as it was this land on which he and Ngāti Paki had maintained ahi kaa.[171]

214. When the case was heard, shortcomings in Rēnata Kawepō's knowledge of the land under investigation were evident, as had been the case at the Owhāoko and Ōruamātua-Kaimanawa hearings in the previous decade. By contrast, Winiata Te Whaaro's evidence was detailed in terms of the boundaries, locations and customary sites he was able to identify within the block, and the oral traditions concerning relatively recent events, such as the Pikarikaimoko dispute.[172]

215. Despite Winiata's detailed evidence and the fact he was occupying the land under investigation, the Court found in favour of Rēnata Kawepō, ruling that he held the principal rights to Mangaohāne No. 1 (the northern portion), shared with Ngāti Tama and Ngāti Whiti. The Court further determined that Renata and his co-claimants, who included his niece Airini Donnelly, held

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[169] Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 262.

[170] Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 262. The NLC minutes sometimes recorded Ngai Te Ngahoa as 'Te Ngawha'.

[171] Wai 2180, #A52(b), *Summary of the Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report*, at [45].

[172] Wai 2180, #A52(b), *Summary of the Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report*, at [44] and Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 264-268.

sole rights to Mangaohāne (later Mangaohāne No. 2), the portion of the block situated south of the Mangaone Stream.[173]

216. Winiata Te Whaaro applied for a rehearing in 1885 because he, Ngāti Hinemanu and Ngāti Paki were left out of the award to the southern portion of the block claimed and occupied by his people. His application, and several others made by other rangatira, were improperly rejected by the NLC in May 1885.[174] The NLC did not give Winiata or the other applicants a hearing, and the appeals were rejected on the bases provided by the two judges whose decision was being appealed.[175]

217. Two other parties - Noa Te Hianga and Te Rina Mete Kingi - also sought a rehearing of the 1885 award, and in 1886 each petitioned Parliament to this end.[176] The petition of Noa Te Hianga endorsed the ancestral and occupation rights of Winiata Te Whaaro and his Ngāti Hinemanu group.[177] Parliament's Native Affairs Committee referred the petitions to the Government for a "minute inquiry" in the nature of a commission on inquiry, but no Government inquiry was conducted.[178] In 1886 Noa Te Hianga asked the Government to include Mangaohāne in the pending inquiry into Owhāoko and Oruamatua-Kaimanawa, as it involved the same parties and similar issues, but Mangaohāne was not included in the terms of reference.[179]

218. One of the three grounds of Winiata's application for a rehearing was that the NLC had failed to inquire into all of Mangaohāne. The NLC report on his

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[173] Wai 2180, #A52(b), *Summary of the Ngāti Hinemanu me Ngāti Paki Oral and Traditional Report*, at [46].

[174] Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, and Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 29-33.

[175] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 34-42.

[176] Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 192 and Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 58-59, 61-62, and 73.

[177] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 61-62.

[178] Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 192 and Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 73-74.

[179] Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 334 and Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 67.

application noted that a poorly defined area in the southern part of the block had not been adjudicated on and was left for a future investigation. The NLC acknowledged in its report that the evidence indicated that Ngāti Hinemanu me Ngāti Paki did have interests in the portion of Mangaohāne south of Te Papa a Tarinuku and Pokopoko. However, the report, and an accompanying sketch of the block, revealed that the NLC had a very poor understanding of what parts of the block had and had not been adjudicated on and where key locations such as Pokopoko (the papakāinga of Winiata Te Whaaro and Ngāti Hinemanu me Ngāti Paki) and Te Papa a Tarinuku were, as they had not been marked on the incomplete sketch plan before the Court.[180]

219. The extent of the Court's ignorance of the land at issue, and of the key boundary marker Te Papa a Tarinuku, is evident from the sketches of Mangaohāne accompanying its reports, which place Te Papa a Tarinuku west of Pokopoko.[181] Te Papa a Tarinuku is instead close to the Rangitikei River at the south-west corner of Mangaohāne, a considerable distance south of Pokopoko. The location of Te Papa a Tarinuku (dubbed 'The Narrows' by Pakeha) has eluded some witnesses at this inquiry but is clearly marked on the survey of Awarua (it also marks the westernmost point of the boundary between the Mangaohāne and Aorangi blocks).[182] This ignorance of the location of key sites of occupation resulted in the NLC determining that when Winiata and his hapū moved from Waiokaha to Pokopoko, they had moved off the Mangaohāne block under investigation. This is grossly incorrect.[183]

220. One reason for the Mangaohāne blocks not having been surveyed before the title investigation was Māori opposition to an attempted survey.[184] The two titles ordered by the Court in 1885 could not be completed and nor could the

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[180] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 34-35 and #A39(c) at [1]-[2].

[181] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 34, and 70-71.

[182] Wai 2180, #A39(d), Craig Innes, *Mangaohāne Legal History and the Destruction of Pokopoko – Answers to Questions of Clarification*, at [17] and #A6(d) at 6. See also Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, Map 9 at 332.

[183] Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 337.

[184] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 51.

land be purchased or partitioned until the two blocks were surveyed.[185] Renewed attempts to survey the titles later in 1885 were opposed by Ngāti Whiti and Ngāti Te Ohuake on the grounds that they were appealing against the title awards and the intended purchase of the land from many of those awarded title.[186] Charges against Māori for obstructing the survey were dismissed in 1886 as the surveyor had not been employed by the Surveyor-General, but was instead working for the benefit of the intending purchaser of the land, the politically influential large runholder, John Studholme.[187]

221. The Government was aware of the opposition to the survey but it authorised Studholme's surveyor to undertake a fresh survey in March 1886.[188] It then imposed a survey lien of £1,108 on Mangaohāne (of which £462 related to Mangaohāne No. 1 and £648 related to Mangaohāne (No. 2)).[189] The survey did not result in the titles being promptly completed. In 1888 the Chief Surveyor was advised that the use of the surveys for the title plans required the consent of Studholme (as the funder of the surveys), but this was not given until 1890.[190]

222. In 1890, Winiata Te Whaaro turned to Parliament, petitioning it for a fresh title investigation of Mangaohāne. The Native Affairs Committee reported there were sufficient grounds to enact special legislation to enable a new title investigation. During debate of the Committee's report in September 1890, Sir George Grey, MP (and former Governor and Prime Minister) told the House of Representatives that "the judges themselves were not satisfied with the justice of their decision." It was known that a private purchase of the block was underway but Grey's motion to have Mangaohāne rendered inalienable

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185 Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 50, 54, and 66.
186 Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 52-53.
187 Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 55 and 67.
188 Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 57-58.
189 Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 59-60 and 77.
190 Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 78 and 82.

until the next session of Parliament was defeated.[191] Studholme's purchase of a large part of Mangaohāne from Ngāti Honomōkai had begun in 1885, following the 1885 Native Land Court title investigation, and was largely complete in 1886.[192]

223. In May 1890, a partition of Mangaohāne No. 1 and Mangaohāne (No. 2) was ordered by the Native Land Court. The partition was necessary to enable Studholme to advance his purchasing. After encountering NLC delays with partition, he successfully lobbied the Native Minister to instruct the Court to hold the partition hearing for Mangaohāne as soon as possible.[193] In addition to ongoing delays with the surveys, the partition could not proceed until the titles awarded in 1885 had been issued. The titles, which still contained errors, were hastily completed in May 1890, after the partition proceedings had begun but before they were completed.[194]

224. Having been excluded from the 1885 awards, Winiata Te Whaaro and Ngāti Hinemanu me Ngāti Paki could not argue their claim to Mangaohāne (No. 2) at the partition hearing. They instead gave evidence as part of the Ngāti Whiti claim, during which Winiata Te Whaaro produced extensive evidence of the occupation and use of the land by Ngāti Hinemanu me Ngāti Paki. The NLC largely rejected the Ngāti Whiti claims, awarding them only 6,800 acres compared to the 48,000 acres awarded to Ngāti Honomōkai in Mangaohāne No. 1 and Mangaohāne (No. 2).[195]

225. The Mangaohāne blocks then became enmeshed in a series of higher Court cases. Studholme sought to have the portions of the Mangaohāne blocks he had purchased awarded directly to him by a declaration that he was to hold the land in freehold tenure. In July 1890 the NLC had the legal points his

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[191] Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 202.
[192] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 49, 63-64 and 88-89.
[193] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 78-81.
[194] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 85-86.
[195] Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 197-200.

request raised referred to the Supreme Court.[196] In November 1890 it decided that the NLC could not make such a declaration.[197]

226. Having undertaken purchasing of undivided individual interests in breach of the law and completed his purchases before he was legally allowed to do so, Studholme applied to the Government in October 1890 to have his invalid dealings validated under the Native Land Court Acts Amendment Act 1889 (s20). This application was overtaken by events and was not heard but, as noted later, it was not the last opportunity provided by the Crown for invalid Māori land dealings such as Studholme's to be retrospectively validated.[198]

227. In late 1890, a solicitor acting for Winiata Te Whaaro and two others (Te Rina Mete and Ema Retimana) identified several defects in the Mangaohāne titles and applied to the Supreme Court for a writ of certiorari which, if successful, would quash the 1885 title orders and any consequent action of the NLC (notably the 1890 partition orders).[199] The solicitor's efforts had earlier been obstructed by the Crown, which refused to make available to him the departmental files relating to the Mangaohāne title, survey, and purchase issues. Such papers were only to be supplied to counsel acting for the Crown.[200]

228. The case was heard first by the Supreme Court and then by the Court of Appeal, which in May 1891 identified several technical defects in the NLC's titling and rehearing processes and granted the writ of certiorari. Winiata Te Whaaro did not benefit from this decision, as (other than survey issues) it related specifically to two applications for rehearing that the Court of Appeal

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196 Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 88.

197 Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 96.

198 Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 94.

199 Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 96 and Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 340 to 341.

200 Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 89-91.

found not to have been improperly dismissed, whereas Winiata's application for rehearing was found to have been heard and dismissed.[201]

229. Undeterred, Winiata Te Whaaro joined others in applying in 1891 for an investigation of title to Mangaohāne No. 1 and Mangaohāne (No. 2).[202] This application was not heard and the NLC instead sat in February 1892 to hear only the applications for rehearing identified by the Court of Appeal as not having previously been heard; those of Te Rina Mete and Rena Maikuku (successor to Ema Retimana). Rena's claim to the land south of the Mangaone stream was based on descent from Ohuake and occupation, especially in the vicinity of Pokopoko.[203] The Court accepted she and others with similar rights of descent and occupation were entitled to a "partial rehearing" to determine their rights in Mangaohāne (No. 2) from the Mangaone Stream to Te Papa a Tarinuku. This decision was one that Winiata Te Whaaro and his group hoped to benefit from.[204]

230. In relation to the lack of a survey at the time of the 1885 title investigation, and the resulting confusion about the location of Pokopoko and how much of the land south of the Mangaone Stream was excluded from the 1885 finding, the Court in 1892 observed that such an error was now beyond its powers to rectify under the Native Land Court Act 1880 (ss28-31).[205] However, the Court later observed it was possible that upon rehearing the southern boundary between Mangaohāne (No. 2) and the area excluded from the 1885 order to the south of that boundary would need to be adjusted.[206] When the title was reheard in 1892-1893, one of the Judges of the 1885 title

[201] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 102-104.
[202] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 105.
[203] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 105.
[204] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 107-109.
[205] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 109.
[206] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 110.

investigation gave evidence that the Court's intention had been to exclude the lands of Ngāti Hinemanu from the 1885 title award.[207]

231. The rehearing of Mangaohāne (No. 2) began in December 1892 was very narrowly framed by the NLC to focus on claims made on the same ancestral and occupational basis as Rena Maikuku. She had claimed for the descendants of Te Ohuake who occupied the land, specifically referring to the hapū Ngāti Paki, Ngāti Hau, and Ngāti Haukaha. The Court decided her claim was to be confined to only one branch of the descendants of Te Ohuake, namely those who were, like Rena, descended from Tamakorako. It found this group numbered only 30 people, who were awarded a total of six shares in Mangaohāne No. 2.[208]

232. In November 1894, Winiata Te Whaaro took a case in the Supreme Court against the NLC's narrow interpretation of the rehearing but it found against him. At the same time, the Supreme Court noted that another basis on which his claims could have been admitted to the rehearing was the error made in 1885 about the southern boundary in relation to Pokopoko. It observed that it was "unfortunate that Winiata and his party should suffer through this mistake," but as this had not been "effectually brought to the notice" of the Chief Judge when he dealt with the rehearing application in 1892, there was now no further avenue of appeal "and the error, if such it were, cannot be corrected either by this Court or by the Chief Judge of the Native Land Court."[209] It was an error the Crown could have corrected through special legislation, but it failed to do so.

233. Winiata turned to the Court of Appeal but failed to reverse the finding of the Supreme Court.[210] His last effort at overturning the exclusion of his people from Mangaohāne No. 2 was an application in 1894 to the Native Land Court

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[207] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 130.

[208] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*,at 130-137.

[209] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*,at 145-146.

[210] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*,at 152-153.

under the Native Land Court Acts Amendment Act 1889 (s13), which provided for errors to be reversed. The error to which he referred in his application related to the failure of the survey to exclude the lands of Ngāti Hinemanu me Ngāti Paki as ordered by the Court in 1885.[211]

234. The Court heard the 1889 Act application in July 1894 and reported to the Chief Judge that the evidence given in 1885 did not support a claim of error, either in the survey or in the exclusion of Ngāti Hinemanu me Ngāti Paki. However, the Court reported that the evidence given at the 1890 partition hearing was "stronger in support" of their Mangaohāne interests than the evidence given in 1885. Had the 1890 evidence been brought out in 1885, the Court might then have given a judgement in their favour, but it was now too late for that evidence to be considered.[212]

235. The Chief Judge made the final decision on the application, based on the Judge's report and on hearing from the parties. He did not adopt the Judge's report and instead found that the inclusion of Pokopoko in Mangaohāne No. 2 was the result of the Court's earlier "mis-apprehension" as to its location, as a result of which it had failed to exclude it from the title as part of the area of Ngāti Hinemanu interests that was to be subject to a separate title investigation. Winiata Te Whaaro and his hapū had continued to occupy 'his' land for many years, a situation that the Chief Judge found analogous to that of a claim of adverse possession of land held under the Land Transfer Act 1885 (s67), adding "I see no reason why an order of the Native Land Court should be deemed more sacred than a Land Transfer Certificate of Title would be under similar circumstances." He ordered that Winiata Te Whaaro and those who claimed with him in 1885 be added to the list of owners in Mangaohāne No. 2 with a view to defining their relative interests and partitioning them out.[213]

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[211] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*,at 158-159.

[212] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*,at 166-167.

[213] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*,at 168-169.

236. After nearly a decade of costly litigation, Winiata Te Whaaro and his hapū had at last secured a place on the title to their land. Further legal proceedings soon saw this painful achievement reversed. With a view to completing his purchasing in Mangaohāne No. 2, Studholme sought to avoid the delay of further litigation by negotiating a compromise with Winiata Te Whaaro, by agreeing to he and his hapū securing land on which they could maintain their papakāinga and sheep farm. However, Airini Donnelly, one of the leading owners with whom Studholme had been dealing, wanted to go to the Supreme Court to challenge the Chief Judge's decision, an action in which Studholme was joined.[214]

237. In April 1895, the Supreme Court heard Donnelly's motion for a writ of prohibition against the Chief Judge's 1894 inclusion of Winiata Te Whaaro and his hapū in the title to Mangaohāne No. 2. The Court found the Chief Judge had exceeded his authority under the 1889 Act, as that authority was limited to correcting errors capable of correction by amending the original order, rather than by overturning that order. The Court agreed the Native Land Court had made an error in relation to the location and exclusion of Pokopoko and unknown other lands but, due to the lack of a proper survey plan in 1885, the nature and extent of the error was unknown and could not now be known.[215]

238. Winiata Te Whaaro appealed the decision to the Court of Appeal, which heard the case in April 1895 and upheld the finding of the Supreme Court. He and his hapū were once again excluded from the title to their land.[216] The Courts had proved incapable of rectifying the profound defects in the Mangaohāne No. 2 title.

239. What the Courts could do, and what the law provided for, was to rectify the defects in Studholme's illegal purchasing. The Court of Appeal's decision

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[214] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*,at 170-172.
[215] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*,at 182-184.
[216] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*,at 184-187.

cleared the way for Studholme to complete his purchase of Mangaohāne No. 2, obtaining title under the Native Land (Validation of Titles) Act 1892 and the Native Land Court Certificates Confirmation Act 1893 (the schedule to which included the Mangaohāne titles). These Acts enabled the validation of his invalid purchases.[217]

240. One of Studholme's lawyers, W. L. Rees, had enormous expertise in the chaotic legal environment of Native Land laws, including his role in the 1891 Native Land Laws Commission with the leading Liberal politician James Carroll. Rees strongly advocated Studholme's use of the Validation Court to put an end to "this long protracted litigation" in his favour. Rees observed that the Validation Court was "of so strange a character and so utterly subversive of all ordinary legal principles and procedure that the orthodox mind regards it with suspicion and disfavour." For him, this was the law's strength when it came to validating Studholme's invalid dealings.[218]

241. During a decade of costly litigation, a succession of Judges found in favour of Winiata Te Whaaro, with the Supreme Court even finding his lands at Pokopoko were originally meant to be excluded from the Mangaohāne block, but his final appeals were defeated as there was no legal remedy for this injustice.[219]

242. To add insult to injury, while rejecting Te Whaaro at every turn, the Crown provided a legislative process for John Studholme to validate illegal purchases of land in Mangaohāne through the Validation Court and the Native Land Court Certification Confirmation Act 1893.[220]

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[217] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*,at 190-191 and Figure 10 at 189.

[218] Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*,at 181.

[219] Wai 2180, #A6(c), Martin Fisher and Bruce Stirling, *Summary of Sub-district Block Study - Northern Aspect*, at [30].

[220] Wai 2180, #A6(c), Martin Fisher and Bruce Stirling, *Summary of Sub-district Block Study - Northern Aspect* at [31] and Wai 2180, #A39, Grant Young, *Mangaohane Legal History and the Destruction of Pokopoko Report*, at 142-143

Awarua

243. Messrs Subasic and Stirling provide an account of the history of the Awarua block highlighting that it endured a protracted and turbulent history in the Native Land Court.[221]

244. At the time the Awarua block title was being investigated, Winiata Te Whaaro was fighting for his rights in the Mangaohāne case.

245. On 22 September 1886, the Court awarded the title to 437 descendants of Ohuake, Hinemanu, Hauiti, Whitikaupeka and Tamakopiri who could prove occupation.[222] During the hearing the Mōkai Pātea Committee Māori agreed that five hapū being Ngāti Whiti, Ngāti Tama, Ngāti Ohuake, Ngāti Hauiti and Ngāti Hinemanu as well as another hapū Ngāti Tutakaroa were identified as owners in the Awarua lands.[223] Over a twelve-month period in 1890-1891, a partition hearing was held to identify the nature and extent of the various tribal interests and to locate these in subdivisions.[224]

246. For the purposes of the partition hearing, Awarua was initially divided by the owners into four main subdivisions relating to areas of occupation rather than ancestral boundaries.[225] Winiata Te Whaaro claimed from Te Ohuake, Whiti, and Hauiti in the four subdivisions for himself and his hapū, who included Ngāti Te Ohuake, Ngāti Whiti, Ngāti Hauiti, Ngāti Hinemanu, Ngāti Paki, Ngai Te Ngāhoa, Ngāti Kautere, Ngāti Te Ngaruru, and Ngāti Rangi.[226] He provided the Court with abundant detail of the customary occupation of Awarua by he, his hapū, and his ancestors.[227] In the 1884 Mangaohāne title

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[221] Wai 2180, #A8(b), Evald Subasic and Bruce Stirling, *Summary of Subdistrict Block Study - Central Aspect Report*.

[222] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 71.

[223] Wai 2180, A043, 19th Century Overview, Bruce Stirling, May 2016, p321

[224] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 71-72.

[225] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 386 and 389 and Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 84.

[226] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 83 and Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 284.

[227] Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 284-288.

hearing, Winiata used his ancestor Te Ohuake as his 'take tīpuna'. By the time the Awarua case got underway, Te Ohuake was then known as Ngāti Te Ohuake or Ngāi Te Ohuake with Ngāti Hinemanu, Ngāti Paki and others becoming known as hapū of Ohuake hapū/iwi group. This is an example of how the Court process divided and affected the whakapapa of the people. In the Mangaohāne case, during cross examination, Winiata was asked whether or not Te Ohuake was a hapū or an ancestor. Winiata became confused as he did not know what they were talking about. He later began calling Te Ohuake, Ngāti Ohuake.

247. The Court identified numerous hapū as holding customary rights in Awarua from Te Ohuake, including Ngāti Hinemanu, Ngāti Paki, and Ngai Te Ngāhoa. The Court partitioned Awarua into nine subdivisions.[228] Winiata Te Whaaro and Ngāti Paki were included in the largest title Awarua No. 1 (about 119,000 acres). He and his party were also included in the Ngāti Hauiti awards in Rangitauria (Awarua No. 3B of 7,390 acres) and Whakaue (Awarua No. 4 of 32,500 acres).[229] The Court went on to say they were included in Awarua No. 3B and No. 4 only at the insistence of Utiku Potaka of Ngāti Hauiti, as the Court held that Winiata Te Whaaro had not proved any connection with the ancestors of Ngāti Hauiti and Ngāti Whiti except through Te Ngāhoa, but the Court said that tipuna and his descendants had no rights west of the Rangitīkei River.[230] Despite Winiata Te Whaaro not being included, Ngāti Mataora, a hapū of Ngāti Hinemanu were included in the Ngatarua gift block Awarua 2A.

248. In light of the Court's finding, the inclusion of Winiata Te Whaaro and his party in Awarua No. 3B and No. 4 was seen by some as an act of 'aroha' by Utiku Potaka.[231] This is not correct; they were included by Utiku as he knew

[228] Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report* at 294-295.
[229] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 393 and Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report,* at 296-297.
[230] Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 297.
[231] Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 145.

the validity of their ancestral claims from Tauke and Puanau, claims the Court had rejected.[232] Mr Winiata in his evidence notes that the term 'aroha' went against Winiata Te Whaaro's understanding of the basis of the customary rights he asserted as well as the Judgement in Awarua No 2.[233]

249. The Crown had commissioned and paid for a survey of the Awarua block. The result was a £3,100 lien put over the block. This survey was incomplete as it did not properly define the eastern boundary of the block. The surveying of the partitions was to cost an additional £3,000, the high cost being partly due to the ill-defined boundary and the Court was unable to precisely define the portions.[234]

250. The focus of the 1892 Awarua rehearing was on relative interests. The appeals relating to Awarua No.'s 3A, 3B and 4 were agreed out of Court. This left five Awarua No. 1 appellants (representing 89 owners) who sought a total of 387 more shares, including Winiata Te Whaaro and two others who sought 100 more shares (he and Ngāti Paki having been awarded 150 of the 800 shares in 1891). The appeal of Winiata Te Whaaro was the only one that did not succeed and he and 24 others of Ngāti Paki were among those who had shares taken from them for allocation to appellants who obtained larger shares. A total of 44 additional shares were taken from the existing owners and awarded to 77 individuals. Winiata Te Whaaro and Ngāti Paki were the biggest sufferers of the Court's idea of a more balanced distribution of interests, losing 13 ½ of the shares awarded to them in 1891 (or ten percent of their shareholding). Noa Te Hianga and Wi Wheko and others of Ngāti Hinemanu also suffered losses.[235]

Ōtamakapua 1

[232] Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 299-300.
[233] Wai 2180, G14: Brief of evidence of L Winiata, at [33].
[234] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 88 and Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 372-374.
[235] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 405-407.

251. Ōtamakapua 1 comprised of around 9,000 acres and was first brought before the Native Land Court by Utiku Potaka and his father Arapata Tapui Potaka in June 1870 at Bulls, who claimed the land from their ancestor Hauiti. The land lay within the much larger Ōtamakapua 2 block and was brought before the Court to exclude it from the intended purchase of that block. The land was then issued an interlocutory order and became known as Ōtamakapua No 1. The Court awarded the land to seven grantees.[236]

252. The time allowed for the completion of the interlocutory title later expired and the block came back before the Court in 1880 where after a 10 year delay it was awarded to 13 owners of Ngāti Hauiti, Ngāti Haukaha, Ngāti Hinemanu and Ngāti Whitikaupeka.[237] The Court was aware a larger group of owners had interests in the land but did not identify them and include them in the title, as required by the Native Land Act 1873 (s47).[238]

253. In 1894, Ōtamakapua 1 came before the Native Land Court for partition and the allocation of shares among the owners, whose numbers had increased through succession to 26.[239] Ōtamakapua was partitioned into 8 titles held by a total of 26 owners (Ōtamakapua 1A to 1H).[240] Following a rehearing in 1895, the interests were rearranged a little and the block was partitioned into 13 titles held by a total of 32 owners (Ōtamakapua 1A to 1N).[241]

Ōtamakapua 2

254. During the 1870's the Crown negotiated for the purchase of Ōtamakapua 2 (104,521 acres) before title had been determined. It subsequently refused to pay advances to other rights-holders, and had their rents from private lessees withheld, until the title was determined by the Native Land Court.[242]

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[236] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 39 and 128.
[237] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 40 and 42.
[238] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 128 and Wai 2180, #A7, Terry Hearn, *The Sub-district Block Study – Southern Aspect Report*, at 113.
[239] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 128.
[240] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 129.
[241] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 130-131.
[242] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 53-54.

255. Utiku Potaka, Kawana Hunia, and others with customary interests responded to the Crown's dealings with Renata Kawepō by expressing their own interests in the land. An inter-tribal hui at Whangaehu in September 1875 resolved to have Ōtamakapua 2 investigated by the Native Land Court.[243] In 1876 Renata applied for a title investigation at Te Riuopuanga (Moawhango) and named 104 claimants to the land but when it was called at Whanganui the claim was, on the application of Renata, adjourned against the wishes of Utiku Potaka and other rights-holders.[244]

256. Ōtamakapua was not again scheduled for hearing by the Court until January 1879 when it was again adjourned on Renata's application, despite other claimants eagerly awaiting the title investigation.[245] When Renata finally agreed to the claim proceeding in June 1879, he asked that it be held in Napier, near his home but far from the land and its Māori occupants. With a view to securing its purchase the Crown hired the lawyer Walter Buller to act for Renata and defend the Napier venue. Those resident owners, including Utiku Potaka, and other claimants opposed the Napier hearing on the grounds of lack of notice, its distance from their homes and from Ōtamakapua itself, the expense of travelling and staying there in winter.[246]

257. The Ōtamakapua 2 title investigation set down at Napier in August 1879 was adjourned on short notice after Native Minister Sheehan instructed the Chief Judge to move the hearing to September, even though this was contrary the Chief Judge's "universal promise to Natives to have no courts in September or October planting season." Many of the resident owners and other claimants from the district had already reached Napier or were en route, and had to spend an additional costly month there, away from their homes and employment. The Crown advanced some money to some claimants in Napier to assist them, but charged these against Ōtamakapua 2 as purchase advances.[247]

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[243] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 46-48.
[244] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 49-50.
[245] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 78.
[246] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 79-82.
[247] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 83-84.

258. At the hearing in September and October 1879, Ōtamakapua 2 was claimed by Utiku Potaka for Ngāti Hauiti, Ngāti Hinemanu, Ngāti Whiti, Ngāti Tama, and Ngāti Tumokai. He admitted Ngai Te Upokoiri (the tribal group led by Renata Kawepō) as claimants.[248] The main counter-claim was from Aperahama Tipae for Ngāti Apa.[249] At the close of the case, the claimants agreed to admit Aperahama alone, but no others of Ngāti Apa.[250] The Court found in favour of the claimants and title was awarded to 94 owners from the six tribal groups they represented.[251]

259. The interests of each of the six groups included in the title were subsequently debated in order to divide up the Crown's purchase price amongst them. The balance of the payment was not paid for several years, despite the owners going to great expense to assemble at Omāhu for four months in 1880 to receive what was owed to them before going home empty handed.[252] In 1881 the NLC sitting at Whanganui heard an application for a definition of relative interests in order to determine shares of the purchase price but had to adjourn without hearing the case. The matter was before the Court at Upokongaro in 1882 before being adjourned to Marton but remained incomplete.[253] The matter was not completed until May 1884 when the following division of interests and purchase money was arrived at (subject to allocations to individuals within each group):[254]

[248] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 87-88.
[249] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 88.
[250] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 93.
[251] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 94-95.
[252] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 102 and 106-108.
[253] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 109-110.
[254] Wai 2180, #A7, Terry Hearn, *The Sub-district Block Study – Southern Aspect Report*, at 104.

Hapū	Acres	Share of Purchase money (£)
Ngāti Hauiti	20,000	10,000
Ngāti Whiti	7,000	3,500
Ngāti Tama	7,000	3,500
Ngāti Pokoiri	18,000	9,000
Ngāti Hinemanu	38,000	19,000
Ngāti Mokai	12,000	6,000
Aperahama Tipae	2,000	1,000
Totals	**104,000**	**52,000**

260. The Crown set aside no occupation reserves for the sellers of the enormous Ōtamakapua 2 block. The only reserve made was for the Matuahu urupā, excluded from the Crown purchase as Ōtamakapua 2C (10 acres). It was charged by the Crown with an unreasonably large survey lien of £6. Two other small areas were excluded from the Crown's purchase to represent unsold interests, comprising Ōtamakapua 2A (250 acres) and Ōtamakapua 2B (1,200 acres), which were charged with survey liens of £6 ad £25 respectively.[255] Ōtamakapua 2A was privately purchased in a mortgagee sale in 1910 while under lease. Ōtamakapua 2B was privately purchased by G. P. Donnelly in 1904. Matuahu urupā remains Māori land.[256]

Te Kōau

261. The alienation of Te Kōau stretches back to the late 1870's when the land was wrongly on sold by the Crown after it incorrectly asserted ownership on the basis of poorly-defined and unsurveyed Crown purchases in Hawke's Bay. Ngāti Hinemanu me Ngāti Paki owners were not consulted about these transactions affecting their lands.[257]

262. On 29 November 1877 it was announced in the New Zealand Gazette that 5,600 acres was reserved under the Hawkes Bay Waste Lands Regulations

[255] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 118 and 120. See also Map 8 at 119.
[256] Wai 2180, #A7, Terry Hearn, *The Sub-district Block Study – Southern Aspect Report*, at 111-112.
[257] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 7-8 and Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 9-10 and 20-23.

Amendment Act 1874 and The Waste Lands Administration Act 1876. The 5,600 acres was leased by A Harding and was due to expire 21 May 1900. Another 1,500 acres was freehold land, purchased from the Crown by a settler in 1864 and later occupied by A Harding.[258]

263. Sustained challenges by Winiata Te Whaaro and others of Mōkai Patea led to the Otaranga deed investigation by a Commission of Inquiry in 1890 where it was employed to enquire and ascertain the boundaries of the Otaranga, Ruataniwha North and Te Kōau blocks and how these boundaries affected any other lands such as the Awarua lands within that locality.[259] Winiata's detailed knowledge of the land and its history was critical in what was a successful outcome from the Commission for the land's customary owners. The Commission found the Crown had wrongly claimed a total of 44,500 acres in the mountains in the vicinity of Te Kōau and the eastern boundary of Awarua.[260]

264. The Commission found that the large area of Te Kōau (17,340 acres) had not been included in the Otaranga deed. However, as noted above, the Commission found that 7,100 acres of Te Kōau land was incorrectly assumed to be Crown land and had been wrongly alienated by the Crown as a result of poorly arranged and poorly surveyed early Crown deeds in the area (notably the Otaranga deed).[261]

265. The Title investigation for the balance of the Te Kōau block (10,240 acres) was held in 1900. The block was claimed by several different groups of Ngāti Hinemanu as well as other tribal groups, including Ngāti Honomōkai, Ngāti Hinepare, and Ngāti Whiti. Winiata Te Whaaro led one of the Ngāti Hinemanu groups, claiming Te Kōau from Te Ohuake and by occupation and

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[258] Wai 2180, #A8(h), Evald Subasic and Bruce Stirling, *The Sub-district Block Study - Central Aspect - Responses to post-hearing questions*, at 4; and Wai 2180, #A6(a), Martin Fisher and Bruce Stirling, The *Sub-district Block Study - Northern Aspect Report* - Supporting Documents, at 275.

[259] Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 20-22.

[260] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 368-370 and Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 9 and 11.

[261] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 17.

mahinga kai.[262] The Court awarded title to Ngāti Hinemanu, naming 25 owners as recipients for the compensation to be paid for the 7,100 acres wrongly alienated by the Crown and 59 owners for the balance of Te Kōau. The Court assessed the compensation at two shillings six pence per acre, or £887 10s. in total.[263] Winiata and his sister-in-law Hana Hinemanu were among the few recipients of the compensation to receive more than a single share.[264]

266. Several appeals against the Court's award were heard by the Appellate Court in 1905-1906, which upheld the substance of the 1900 award in finding that Hinemanu was the ancestor for Te Kōau. At issue was who among Ngāti Hinemanu was to be included; the Appellate Court found that Te Kōau was effectively part of the Awarua block and that those of Ngāti Hinemanu included in Awarua 1 were entitled to be admitted to Te Kōau. On this basis the Appellate Court increased the number of recipients of the compensation for the 7,100 acres from 25 to 44, and increased the number of owners in the balance of Te Kōau from 59 to 90.[265]

267. Further research has revealed that there is an area of 580 acres of Te Kōau land wrongly claimed by the Crown that was never returned to the owners of Te Kōau or included in the area for which they should have received compensation.[266] This land still does not have a valid or equitable title.[267] Today it is administered by DOC.

268. In 1921, Te Kōau was partitioned to Te Kōau A (3,451 acres) and Te Kōau B (6,879 acres). It appears that Te Kōau B was sold in 1922 for £1,375 (at the rate of 4s an acre) to enable long-standing survey liens to be cleared by

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[262] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 11-14 and Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 316-318.

[263] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 13-14 and #6 at 246.

[264] Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 321-322.

[265] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 13-14.

[266] Wai 2180, #A8(h), Evald Subasic and Bruce Stirling, *The Sub-district Block Study - Central Aspect - Responses to post-hearing questions*, at 3.

[267] Wai 2180, #A8(h), Evald Subasic and Bruce Stirling, *The Sub-district Block Study - Central Aspect - Responses to post-hearing questions*, at 5.

the purchasers so as the title could be issued to them. The excessive and onerous survey lien of £475 represents more than one-third of the price paid for the land.[268]

269. There also appeared to be inconsistencies in the 1921 partition surveyed boundaries, acreage, Court minutes as well as maps that go to those minutes. The maps show there have been changes in acreage and boundary lines. Today the owners of Te Kōau A still believe that the boundary line between Te Kōau A and Te Kōau B is not in the correct place.[269]

270. From the original 17,340 acres only 3,451 acres being Te Kōau A remain in Ngāti Hinemanu ownership and today it is administered by the Te Kōau A Trust.

Tīmahanga

271. The Tīmahanga block (21,388 acres) went before the Native Land Court for title in 1894. It was the last block in the northern part of the inquiry district to have its title investigated. One reason for the delay in having title determined was that the Crown had long assumed that the Tīmahanga land had been included in the Crown deeds of the 1850s, and it was not until repeated Māori protests – and the work of the 1890 Awarua Commission – that the Crown accepted it had no valid claim to Tīmahanga.[270]

272. Title to Tīmahanga was contested by 11 groups, most of whom were based at Heretaunga rather than in Mokai Patea. Several groups claimed from the ancestor Honomōkai. Ngāti Hinemanu were one of the counter claimants. Title was awarded to eight of the 11 groups claiming, with most interests awarded to Ngāti Honomōkai.[271] Winiata Te Whaaro did not make a claim to

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[268] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 15. Please note that the purchase price of £375 given in #A8 at 15 is a typographical error; the correct figure is given in the source cited in footnote 18 of #A8 at 15.

[269] Wai 2180, #I2, Brief of Evidence of Lewis Winiata, at 5-8.

[270] Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 237.

[271] Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 238-246.

Tīmahanga.[272] The Court favoured those people from the pā on the eastern side of the Ngaruroro who they say were closer to the block. Ngāti Hinemanu's case was rejected by the Court who based its judgment on the evidence of Noa Huke who said that he disclaimed any right of Hinemanu east of the Taruarau stream.[273]

273. On 16 March 1895, Tīmahanga was partitioned into six blocks numbered 1-6. In the 1910s, five of the six blocks were acquired by the Crown:[274]

a) February 1912 – the Crown purchased Tīmahanga No 2 comprising 7,700 acres which was valued at £2,580 and occupied by the estate of John Boyd;

b) November 1913 – the Crown purchased Tīmahanga No 3 comprising 5,060 acres which was valued at £3,744 and occupied by the estate of John Boyd;

c) November 1913 – the Crown purchased Tīmahanga No 4 comprising 880 acres which was valued at £71 and occupied by the estate of John Boyd; and

d) 20 August 1915 – the Crown purchased Tīmahanga No 5 comprising 1,760 acres which was valued at £375 and occupied by the estate of John Boyd.

e) February 1912 – the Crown purchased Tīmahanga No 6 comprising 3,900 acres which was valued at £975 and occupied by the estate of John Boyd.

274. Today, Tīmahanga No 1 remains the only Māori land in the Tīmahanga block.

Aorangi Awarua

275. Aorangi Awarua (967 acres) is essentially a part of the adjacent Awarua 1 block, but was somehow omitted from Awarua as a result of a series of

[272] Wai 2180, #A52, Peter McBurney, *Ngāti Hinemanu and Ngāti Paki - Oral and Traditional Report*, at 313.
[273] Wai 2180, I2 Brief of Evidence of Lewis Winiata, at 5-8.
[274] Wai 2180, I2 Brief of Evidence of Lewis Winiata, at 5-8.

surveying and title errors by the Government and Native Land Court in the 1890s.[275]

276. Aorangi Awarua was investigated by the Native Land Court in 1910 at Hastings; a costly and inconvenient venue that was repeatedly opposed by Ngāti Hinemanu me Ngāti Paki and others of Mokai Patea, who preferred that their land be investigated at Taihape. Title was awarded in August 1912.[276]

277. J. M. Fraser, on behalf of his client, Hera Te Upokoiri, said at the start of the hearing that these lands, like the adjoining Awarua 1 and Mangaohāne blocks, belonged to Ngāti Hinemanu and both agreed that they would have the list of owners ready by that afternoon. The case was adjourned however and did not return until later that month.[277]

278. Winiata Te Whaaro and others set up counter-claims, not because they opposed the Ngāti Hinemanu claim itself, but because they had their own claims that they wanted to have recognised. Winiata Te Whaaro's claim was initially joined with the claim of Wiki Te Uamairangi, but Te Whaaro decided that he did not wish to be represented by Scannell. The basis of Te Whaaro's claim was ancestral through Te Ohuake and Te Rangiwhakamatuku.[278] Winiata may have been ill at the time and had difficulty presenting his case, which was not completed before the Court adjourned. He died before the case resumed in 1911. What was evident from his evidence before the adjournment was that he claimed the land from Te Ngāhoa.[279] This was a Ngāti Paki claim but it was not one that was antagonistic to the claims to Aorangi Awarua from Hinemanu, as Te Ngāhoa is a child of Hinemanu. Te

[275] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 180.
[276] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 180.
[277] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 181.
[278] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 11.
[279] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 181-182.

Ngahoa's mokopuna Ngaereoterangi married Te Ihunguru, a descendant of Rangiwhakamatuku (from Te Ohuake).

279. Other claimants agreed that some of them had been included in Awarua through Te Ngāhoa, who was an ancestor for Aorangi Awarua, but without Winiata Te Whaaro to continue to advocate this the Ngāti Paki claim was not sustained.[280]

280. It was not until 1912 that title to Aorangi was determined by the Native Land Court following a stop-start title investigation that began in 1910. The Court sat at Hastings, despite the long-standing and continued preference of the land's customary owners for the Court to sit in the district in which they lived and where their land was located. Aorangi, like Te Kōau, was considered to have the same ownership as the adjoining Awarua 1 block, and was thus awarded to the 90 Ngāti Hinemanu grantees in Awarua 1 and Te Kōau. Winiata Te Whaaro was listed among these Ngāti Hinemanu owners, but it was his successors who were placed on the final title, which remains Māori land.[281]

Awarua o Hinemanu

281. Awarua o Hinemanu, like Aorangi and Te Kōau, is essentially part of Awarua 1, but due to Crown survey and title errors in the Ruahine Ranges, it was omitted from all of the adjacent titles.[282]

282. When Awarua 1 was partitioned in 1894 – on the Crown's application for its interests to be defined – an incorrect plan was relied on for the title orders. This resulted in the area subsequently dubbed Awarua o Hinemanu being left out of the adjoining titles. In 1987, Māori applied to the Māori Land Court

[280] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 182.
[281] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 184.
[282] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 188-189.

for the boundary line to be moved but ultimately the land was deemed to be customary Māori land and its title had to be investigated anew.[283]

283. The Crown assumed ownership and had long administered the block as part of the Ruahine Forest Park. It was only in 1992 that title to Awarua o Hinemanu was awarded.[284]

284. In the case of Te Kōau, the Court in 1905 relied on the Ngāti Hinemanu lists from Awarua No. 1 as the basis for the ownership list for Te Kōau A, on the basis that it was part of Awarua and belonged to Ngāti Hinemanu. Similarly, those Ngāti Hinemanu lists were drawn on when finalising the ownership lists for Aorangi Awarua. Based on these precedents, and the acceptance by the parties that Ngāti Hinemanu were the customary owners, the Court awarded title to "the same persons as the owners of Aorangi Awarua," but updated by reference to successions. Two lists of about 600 names were drawn up, although the current ownership comprises 762 people. The land was then administered by the Māori Trustee, who immediately leased it to the Department of Conservation. The owners subsequently formed a trust to administer the title, which is currently under a Ngā Whenua Rāhui Kawenata includes several other Māori land titles in the vicinity and which is due to end in 2031.[285]

Impact of the Native Land Court on Ngāti Hinemanu me Ngāti Paki

285. The Native Land Court was a vehicle of Crown policy that was, by its very nature, in breach of Te Tiriti. It was established without the consent of Ngāti Hinemanu me Ngāti Paki and the legislative framework was wholly inconsistent with and contrary to the guarantee of tino rangatiratanga.

286. It was simply not an objective of the Native Land Court to respect or uphold any form of rangatiratanga, or kawa and tikanga. Instead, the overriding

[283] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 189.
[284] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 190-191.
[285] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 190-191.

interest was to promote the individualisation of land, without reference back to hapū with the consequent devaluing of tikanga Māori in the process.

287. All these factors were designed to supress rangatiratanga and resulted in fragmentation and loss of Ngāti Hinemanu me Ngāti Paki hapū interests, and the alienation of land.

288. This Tribunal heard Messrs Winiata-Haines and Winiata give evidence on how Ngāti Hinemanu me Ngāti Paki have been affected by Crown breaches of Te Tiriti o Waitangi.

289. Mr Winiata-Haines summed up the impact of the Native Land Court in this way:[286]

a) the land was taken so fast it was virtually ripped out from under us through a variety of mechanisms to the point that it crippled our people;

b) it becomes very clear that the policies and procedures of the Crown were so burdensome that our people suffered debt through a number of ways to the extent that they were forced to sell their lands to cover that debt;

c) with the alienation from our land went our economic base, our history and whakapapa;

d) our whakapapa became divided when the land was divided; and

e) we are no longer the kaitiaki over our lands, others are making decisions on how those lands should be managed.

290. And Mr Lewis Winiata supported this with his further observations that:[287]

[286] Wai 2180, #J16, Brief of Evidence of Jordan Haines-Winiata, 23 March 2018, at 12-14.
[287] Wai 2180, #G14, Brief of Evidence of Lewis Winiata, 17 September 2017, at 3-4 and 17.

a) the Crown set the Native Land Court up to individualise title without recognising the many lines of descent that our tipuna could claim through;

b) the role of the Native Land Court was not to recognise the sacredness or tapu of whakapapa, but it was to individualise title for settlers to lease and purchase;

c) if that meant destroying one's whakapapa, then that's what they did;

d) the shame of what happened to him (Winiata Te Whaaro) in the Native Land Court is carried by us all;

e) the denial of our key ancestral tūrangawaewae is like leaving us suspended in our territories with nowhere to find a place for our feet to stand upon; and

f) we lost our language just as fast as we lost our land.

CROWN PURCHASING

291. The largest loss of the Claimants' whenua followed the imposition of the Native Land Court. Crown purchasing tactics formed a considerable part of the Crown's arsenal to acquire extensive amounts of the Claimants lands. These processes were designed to suppress rangatiratanga, kawa and tikanga and demonstrate the Crown's failure to adequately protect Ngāti Hinemanu me Ngāti Paki land and resources.

292. Counsel adopt the generic closing submissions on this issue and make the following submissions. The Claimants say that the Crown has failed to adequately protect their interests and has prejudiced them in the following ways:

a) the imposition of Crown pre-emption such that a full Crown purchase monopoly was created with low Crown purchase prices and a lack of market competition;

b) the Claimants were paid between one-third and half of the land's value and were not adequately consulted;

c) the Crown failed to act in good faith by failing to meaningfully address the concerns and complaints of Ngāti Hinemanu me Ngāti Paki regarding the ill effects of Native land legislation and the Native Land Court, and their heavy costs, on their ability to retain sufficient lands for their needs;

Crown concessions

293. The Crown's concession on this issue is as follows:[288]

> Where the Crown held monopoly purchasing powers, it had an enhanced duty to exercise those powers in good faith and to actively protect the interests of Māori in lands they wished to retain.

Previous Tribunal Findings

294. Te Tiriti o Waitangi offers powerful guarantees of Māori communities' land rights. It required the Crown to actively protect Māori possession of, authority over, and exercise of traditional relationships with land. Among other things, this meant it could not take steps to interfere with Māori land rights or to separate communities from their land except with their full, free, informed consent.[289]

295. Earlier Tribunal jurisprudence have also described eight conditions that must be met for Crown purchases of Māori land to be Treaty compliant:[290]

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[288] Wai 2180, #1.3.2, Tribunal Statement of Issues, at [51].

[289] For example, see Waitangi Tribunal, *Report on the Orakei Claim*, (Wai-9, 1987), at 147-148 ; Waitangi Tribunal, *The Ngai Tahu Report*, (1991), Volume 3, at [233] ; Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, (Wai 143, 1996), at 20–21 ; Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims*, (Wai 215, 2004), at 19; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, (Wai 1200, 2008), Volume 1, at 173, 190–191, 200, Volume 2, at 423, Volume 4, at 1238, 1241; Waitangi Tribunal, *Tauranga Moana 1886–2006 : Report on the Post-Raupatu Claims*, (Wai 215, 2010), Volume 1, at 18, 20, Volume 2, at 601.

[290] Waitangi Tribunal, *The Wairarapa ki Tararua Report*, (Wai 863, 2010), Volume 1, at 104; Waitangi Tribunal, The Mohaka ki Ahuriri Report (Wai 201, 2004), Volume 1, at 120; Waitangi Tribunal, *He Maunga Rongo*, (Wai 1200, 2008), at 617, 625. Also see Waitangi Tribunal, *Report on the Orakei Claim* (Wai-9, 1987), at 206; Waitangi Tribunal, The Ngai Tahu Report, (1991), at [831]; Waitangi Tribunal, *Turanga Tangata Turanga Whenua: Report on the Turanganui-a-Kiwa Claims*, (Wai 814, 2004), Volume 2, at 456.

a) the rightful owners must be identified, and their relative interests known;

b) all disputes over mana or ownership must be resolved before the Crown enters negotiations;

c) the whole community must be involved in the decision, not just individuals;

d) the area of land must be clearly defined;

e) the nature of the transaction must be clearly explained and understood;

f) the price must be fair;

g) the transaction must not cause harm to the community of owners, for example by leaving them without sufficient land for their present and future needs;

h) the owners must give their free and informed consent.

296. Previous Tribunals have also recognised that the Crown has an obligation pursuant to the principles of Te Tiriti to actively protect Māori land interests and that extends to a duty to a duty to protect the land bases:[291]

> *We find that Article 2, read as a whole, imposed on the Crown certain duties and responsibilities, the first to ensure that Māori people in fact wished to sell; the second to ensure that they were left with sufficient land for their maintenance and support or livelihood or, as Chief Judge Durie puts it in the Waiheke Report […] that each tribe maintained a sufficient endowment for its foreseen needs.*

297. In Te Urewera the Tribunal has found the Crown in breach of the Treaty principle of active protection when it bypassed community leaders to purchase from individuals.[292] Tribunals have also found that the Crown's

[291] Waitangi Tribunal, *Report of the Waitangi Tribunal on the Ōrakei Claim* (Wai 9, 1987) at p206.
[292] Waitangi Tribunal, Te Urewera, (Wai 894, 2017), Volume 3, at 1185–1186; Waitangi Tribunal, The Hauraki Report, (Wai 686, 2006), Volume 2, at 784–785; Waitangi Tribunal, He Maunga Rongo, (Wai 1200, 2008), Volume 2, at 617.

obligation to protect Māori interests was heightened whenever it granted itself exclusive purchasing rights.[293]

298. The analysis that follows builds on these kinds of observations to assist this Tribunal to form a view of the kinds of approaches that were utilised in the Taihape Region to effect the further dispossession of the peoples of Ngāti Hinemanu and Ngāti Paki.

The Big Picture

299. The evidence is clear that the Claimants losses by dint of the Crown purchasing system in the blocks to which they had interests were significant. Mr Innes in his Report provided the following table summarising alienation data across the district which records that a total of 53.95 per cent (630,815 acres) of the district was alienated through Crown purchase.[294] The vast bulk of Crown purchasing occurred before 1900, comprising three-quarters (479,950 acres) of the total area it acquired.[295]

TABLE H: Māori land alienation/retention, Taihape District 1840-2013

	ACRES	NO	%
District Area	1,169,226.07		
Government Alienation	634,749.78	82	54.29%
Defence Public Works	43,437.30	0	3.72%
Private alienation	247,332.55	89	21.15%
Current MLC title private land	137,546.79	0	11.76%
Unknown Alienation	106,159.66		9.08%

300. The Claimants want to emphasise that the Crown failed in its duties to act in good faith and acquired a significant amount of land that was actually needed, without consideration for the impact on the communities and Māori landowners. Many of the transactions following the Native Land Court processes must be seen through that lens and cannot be said to be Treaty

[293] Waitangi Tribunal, *The Pouakani Report 1993,* (Wai 33, 1993), at 240–242; Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, (Wai 1130, 2013), Volume 2, at 386–388, 418.

[294] Wai 2180, #A15(m), Craig Innes, *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013 Revised Report*, at 113. Counsel note that the percentage of Government Alienation (54.29%) noted in this table does not match the percentage of Government Alienation noted in #A15 (53.95%).

[295] Wai 2180, #A15, Craig Innes, *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013 Report,* at 110.

compliant but more importantly failed to ensure adequate lands were available for the needs of those that were impacted upon most by these processes.

301. While Ngāti Hinemanu me Ngāti Paki were active in opposing and resisting the Crown's imposition of native land laws and its purchasing agenda the colonising objectives rolled on with severe impacts on the claimants. The mere fact that the Crown was aware of this opposition, and still continued with its agendas, aggravated the egregious outcome that have resulted and we say is an absolute breach of the Crown's obligations under Te Tiriti.

302. We now set out for the Tribunal some of the specific examples of these patterns of crown purchasing to emphasise the point.

Some Specific Case Studies – Crown Purchasing

Ōtamakapua 2

303. The earliest negotiations for Ōtamakapua 2 (104,521 acres) were in November 1872, when the Wellington Province engaged the Rangitikei 'native agent' Alexander McDonald to acquire the block. Karaitiana Takamoana and Renata Kawepō of Hawke's Bay also reportedly offered to sell the land to the Crown in 1872. McDonald met first with Utiku Potaka but the Wellington Superintendent refused to advance money on the block until the title was complete.[296]

304. This refusal included Utiku Potaka's claim for £52 of expenses related to the purchase. In 1875 and again in 1876 Walter Buller, a solicitor employed by the Crown to promote the purchase of Ōtamakapua, tried to get central government, through Native Minister McLean, to refund this money to Utiku who had, wrote Buller, done his best to get Ōtamakapua put through the court but an inadequate survey had prevented this.[297]

305. No progress was made and fresh negotiations for Ōtamakapua were instigated by the government in April 1874, when Whanganui Native Land

[296] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 44.
[297] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 44.

Purchase Officer Booth instructed the Rangitikei man John Stevens (who referred to himself as a 'government agent') to negotiate the purchase with Renata Kawepō and Utiku Potaka, who had had the block surveyed.[298]

306. In April 1875 competition from private purchases forced McLean to almost double the Crown's offer to 10 shillings per acre. This was far more than it had wanted to pay but was still only a fraction of the value of the land, which was estimated in 1880 to be worth from two to six times as much as was being paid for it.[299] In June 1875 the Crown proclaimed Ōtamakapua as under negotiation, preventing any private dealings.[300]

307. The Crown did not consult with the land's owners nor obtain their consent to imposing these monopolising powers, in breach of Te Tiriti o Waitangi.[301] The Crown was under a Treaty obligation to ensure its monopoly powers were not misused to the detriment of Māori by driving the purchase price below fair value. It failed to do so and was determined to purchase, not fairly, but as cheaply as possible. This was a breach of the Crown's Treaty obligation of active protection, and the Treaty principles of partnership and autonomy.[302]

308. Pressure from private purchasers also induced the Crown to pay large pre-title advances to Renata Kawepō in 1875. He was paid £5,200 (about 10 percent of the total price), of which £2,000 was not for the purchase but for his "services" in the purchase (£1,000), survey costs (£600) and "incidental expenses" (£400).[303] (It is not known what survey costs are referred to as Ōtamakapua 2 was not surveyed until 1878.) The Crown barred private purchasers from such conduct, making such dealings void under the Native Lands Act 1865 and the Native Land Act 1873.[304]

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[298] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 44.
[299] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 45 and 102.
[300] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 46.
[301] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims,* (Wai 1200, 2008), at 580.
[302] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims,* (Wai 1200, 2008), at 586.
[303] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 45-46.
[304] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims,* (Wai 1200, 2008), at 590.

309. Having imposed its power as a monopoly purchaser on the owners, the Crown then declined to pay advances to other owners, other than small sums given to vendors in 1879 to help them meet the huge costs of attending the Native Land Court sitting convened, at the Crown's insistence, at the costly and inconvenient venue of Napier. These payments in 1879 were treated as purchase advances, whereas payments to its favoured vendor, Renata Kawepō, for expenses were treated as 'incidentals' and not charged against the owners.[305] Later in 1879 the Crown formally abandoned pre-title advances.[306] Despite this, its prior misuse and abuse of advances continued to negatively impact on those Māori already affected by it who were caught up in incomplete purchases (such as Ōtamakapua).[307]

310. The CNI Tribunal has found that payment of pre-title advances was used by the Crown as the basis for such proclamations in order to prevent owners dealing with private parties.[308] The CNI Tribunal further found that pre-title advances were used to keep purchase prices down and, when extended over long periods (as the Ōtamakapua purchase was), prevented the owners from obtaining the benefit of rising land prices.[309] These pre-title advances were abused by the Crown to lock the communities of owners into a purchase and to undermine tribal authority and promote division among owners.[310] Utiku Potaka opposed the large advances paid to Renata as the Crown's favoured vendor and complained to McLean at the time that this caused "raruraru" among the owners, as did the Crown's payments of advances to those without interests in the land (such as Kawana Hunia).[311]

311. Through 1876 there were other efforts to resolve or assert claims in Ōtamakapua, as well as ongoing requests from other groups for the court to

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[305] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 50-51 and 84-85.
[306] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, (Wai 1200, 2008), at 608.
[307] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, (Wai 1200, 2008), at 610.
[308] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, (Wai 1200, 2008), at 573 and 590.
[309] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, (Wai 1200, 2008), at 582 and 586.
[310] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, (Wai 1200, 2008), at 592, 594, and 596.
[311] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 46-47, 50-51, and 54.

resolve the title before the purchase proceeded.[312] No progress was made during 1877, at which point the land had yet to be even surveyed when a survey was a prerequisite for a title investigation.[313]

312. In 1878, the leases arranged by Utiku Potaka and his people since 1869 came under threat, with the result that the lessee and the Crown arranged for the rents to be paid to and retained by the Marton Resident Magistrate. This action wrongfully deprived Utiku Potaka and his people of their rental income, which were not refunded to them even after the Crown's purchase was finally completed in 1884.[314]

313. By 8 October 1879 the outcome of the Ōtamakapua 2 title investigation was sufficiently clear for land purchase officer Booth to advise the government that judgment would likely be in favour of the claimants, who included the leading vendors with whom it had been dealing.[315] Having gathered from a great distance in Napier at great expense, the owners wanted the deed completed immediately but the Crown would not make a further payment until the three-month window for appeals against the title had expired.[316] Once the owners were scattered to their distant homes it took the Crown some time to track each one down to sign the purchase deed, before distribution of the payment could be arranged.[317] The owners had to wait for not just three months but for four years before the Crown paid over the purchase money.[318]

314. In 1880, the Crown refused the request of Utiku Potaka and his people for two occupation reserves of 2,000 acres each, even when they offered to pay for the survey of the reserves and buy this area back from the Crown at the same price it paid them. The Crown repeatedly refused to make any occupation reserves within the enormous Ōtamakapua 2 block.[319] In doing

[312] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 52.
[313] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 51 and 53.
[314] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 53-54.
[315] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 96.
[316] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 96.
[317] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 97.
[318] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 118.
[319] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 98 and 101.

so, it failed to consider the present or future needs of the owners and occupiers of Ōtamakapua, in breach of its obligations under Te Tiriti o Waitangi.

315. During the long delay in completing the deed and the payment, owners who preferred not to sell complained of being "intimidated" by the Crown with threats that, if they did not sell, their land would remain under pre-emption restrictions for 20 years. Those with debts to Pakeha merchants were threatened that the Crown would acquire those debts and then pursue the debtors.[320]

316. Much of the delay in completed the purchase of Ōtamakapua 2 was due to uncertainty over how the purchase payment should be divided up amongst those on the title and the wider tribal groups they represented.[321] To this end, Native Land Court hearings were convened at further great cost to the owners in order to determine relative interests from 1880 to 1884, but these were constantly delayed and deferred, including through the machinations of the private solicitor the Crown had retained for Ōtamakapua 2.[322] Efforts by the rangatira of the tribal groups concerned to reach a consensus were undermined by a few individual owners.[323] One result of the individualistic nature of the Crown-granted land title was that such individuals were no longer obliged to heed the traditional, collective consensus-based approach to conflict resolution.

317. The main matter outstanding at the conclusion of the 1884 hearing about the division of the Ōtamakapua 2 purchase payment was a formal declaration of the Crown's interest in the block; as a few owners had not signed the deed, there was a need to define and cut out their interests with the balance to be awarded to the Crown. The Crown's application to this end was heard by the court on 11 June 1884 and the order made under the Native Land Act 1877 (s.6).[324]

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320 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 104.
321 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 108-110.
322 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 108 to 111.
323 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, 112-113.
324 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 118.

318. It dealt initially with Utiku Potaka for the land but soon switched focus to deal principally with Renata Kawepō for some years, who in 1875 agreed a price of 10 shillings per acre with Native Minister Donald McLean.[325] In addition to negotiating for the land before title was determined, McLean also paid advances before title was determined, contrary to Crown policy. Renata was paid advances of £5,200 in 1875, comprising: £3,200 as a purchase advance; £1,000 for his "services" in the purchase; £600 for the survey he had paid for, and; £400 for his "other incidental expenses."[326]

319. This left the Crown with an award of 103,062 acres.[327]

Awarua

320. Crown interest in purchasing the Awarua block emerged in the 1880s when the building of the North Island Main Trunk Railway and the acquisition and development of land along its route became a Crown policy priority. As part of privileging its policy position, the Native Land Alienation Restriction Act 1884 imposed Crown pre-emption over a vast area of the Central North Island, including about one-third of the Awarua block (being that portion west of the Moawhango River).[328]

321. The Crown did not consult with Ngāti Hinemanu me Ngāti Paki nor with other Mokai Patea tribal groups about the 1884 Act nor gain their consent to it or to the construction or route of the Railway. Nor did the Crown consult or obtain consent for the Crown's land purchase and settlement policies for the district covered by the 1884 Act.[329]

322. Funds for purchasing land within this area were provided by the North Island Main Trunk Railway Loan Application Act 1886.[330] In 1888, the Crown secured £1,000 of its survey lien against the Awarua title under the 1886 Act,

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[325] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 44-45.
[326] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 46.
[327] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 118.
[328] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 72.
[329] Wai 2180, #A9, Phillip Cleaver, *Taking of Maori Land for Public Works in the Taihape Inquiry District Report*, at 140-141.
[330] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 337.

with the rest of the lien secured in the usual way.[331] In 1888, the Crown also proposed extending the area of pre-emption in the 1884 Act to take in more of Awarua, to prevent private dealings in a broad zone around the proposed route of the railway. Instead, in March 1889 the Crown imposed pre-emption over all of Awarua through a proclamation under the Government Native Land Purchases Act 1877 which stated the block was under negotiation. There is no evidence to support the proclamation and the Crown had previously told the owners it declined to enter into negotiations.[332]

323. In 1889, the Napier Resident Magistrate urged the Crown to "secure every inch of land in the Awarua and Motukawa blocks that it is possible to buy," adding that it was said to contain "valuable deposits of coal beds and copper."[333] The Crown had long been interested in purchasing the land but had decided not to open negotiations until the Awarua title was partitioned. It noted its position was protected through its recent imposition of pre-emption.[334]

324. The Crown's position was further protected by the North Island Main Trunk Railway Loan Application Act Amendment Act 1889, which extended the area of pre-emption defined in the 1884 Act to include all of the Awarua block.[335]

325. Commentators put the Crown on notice that the Awarua owners were already making good productive use of their lands so it would be "nothing short of a national disgrace to us should we attempt to acquire these lands for the public of New Zealand without very large consideration being shown to the people of this remote region." Should the owners be dealt with "generously and

[331] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 337.
[332] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 337-338.
[333] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 73.
[334] Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 73.
[335] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 338-339, and Map 27 at 339.

wisely" the owner were "ready and willing to meet the public requirements in a similar broad and generous spirit."[336]

326. Hoani Taipua, the MP for Western Māori who had been the Court's Assessor at the 1886 title investigation, informed the Crown the owners welcomed the Railway and were prepared to deal with it for some of their lands. He advised against the purchase of undefined individual shares as had occurred in an adjoining district, resulting in the land becoming "a source of trouble." He urged the Crown that the Awarua owners be treated "in a clear, straightforward, and honourable manner."[337] This was no more than was required by the Treaty. The Crown ignored this advice and intended to proceed with its usual Māori land purchase strategies, including the targeting of any undivided and undefined individual shares.[338]

327. During the protracted 1890–1891 Awarua subdivision hearing, one hapū asked for a purchase advance of £1,000 to go towards the heavy costs of the hearing. Another group offered to transfer 5,000 acres to the Crown to meet the thousands of pounds the hearing had cost them.[339] The Napier Resident Magistrate reported on 1891 on the large debts the owners had incurred at the hearing and urged the Crown to promptly take advantage of their plight through cheap and extensive purchasing of "every inch of his block that they can without injuring the interests of the Natives." The owners wished to retain the open grasslands they were then farming but were prepared to sell their timber lands.[340]

328. The Crown declined to purchase any land or pay any advances until the subdivision was complete, at which point it intended to acquire "as much of the land as possible."[341] Under Crown pre-emption, the owners were barred from obtaining funds against their land from anyone else. The Crown's

[336] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 341.
[337] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 341-342.
[338] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 341.
[339] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 395.
[340] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 402 and 407.
[341] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 395-396.

purchase plans were further slowed by the need for a rehearing of Awarua 1 in 1892.[342]

329. In August 1892, immediately after the titles of Awarua and Motukawa were finally completed – six years after they had first gone to the court at Marton – a group of owners proposed to the Crown that it and the owners meet to identify portions of the block to be purchased, and areas of occupation to be excluded from purchase. This would facilitate the "rapid acquisition" of large areas. This was preferable to the Crown's policy of acquiring undivided individual shares and then applying to the Native Land Court to identify and partition out its purchased interests. The owners complained that their land was "so fettered by legal restrictions" - including the pre-emption imposed by the 1884 Act - that they were unable to exercise their rights of ownership. As a quid pro quo for assisting the Crown's purchase of their land, the owners asked, "in these days of advancement," that their land be freed from these restrictions.[343]

330. The Crown had no response to the rational and reasonable proposals of the Awarua owners, beyond acquiring whatever undivided individual shares could be obtained in the normal course of Crown purchasing. It opposed buying anything less than the "entire interest" of each owner; an approach that was entirely incompatible with the ambitions of the Awarua owners for their land and their future on it.[344]

331. In line with their view on the need for a "conference" with the government on these issues, Utiku Potaka and others travelled to Wellington to meet the Native Minister on 7 September 1892 to discuss their proposal. The government sought 100,000 acres of Awarua and Motukawa land and it was not prepared to advance the railway line beyond its current extent just north of Marton until it had got this land. It wanted to buy it cheaply now, rather than build the railway and pay more for it later. The owners had little choice

[342] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 402.
[343] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 408-409.
[344] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 410.

but to accept this ultimatum and two days later communicated the result of their meeting with the Native Minister.[345]

332. In return for agreeing to sell the full area the government wanted – which was about one-third of the total area awarded to the owners in the Awarua and Motukawa blocks – the Mokai Patea people sought a number of protections and policies for the retention and development of their remaining lands. These included: restriction against sale or lease of the lands remaining outside of the 100,000 acres; the allocation without delay of the lands to groups of whānau; legislation to allow collective management of these lands and how they are utilised and alienated, and; making government finance available to the collectives for development on terms similar to those granted to Pakeha settlers.[346]

333. In 1892, a Napier man married into the Mokai Patea people wrote to the Native Minister on behalf of a group of owners wishing the restrictions on alienation be amended to enable the owners to exchange or consolidate shares within or between various subdivisions. In this way they could define an area of whānau land sufficient for the farming so many of them were already engaged in, and would also be able to fence that area to separate their flock from that of their neighbours as well as raise finance on it to accelerate the economic development they were so eager to initiate.[347]

334. The government however rejected everything the Awarua owners had proposed and in November 1892 it instead began nothing more than the standard, disruptive and uncontrolled Crown purchase practice of acquiring as many undefined and undivided individual shares as it could for as little as possible before having the court define these in a way that was as favourable to it as it could get away with.[348]

335. The low prices paid to the Awarua owners by the Crown, as a monopolistic purchaser, would have been even lower had the Native Minister not

[345] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 411.
[346] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 412-413.
[347] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 414.
[348] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 415 and 422.

inadvertently revealed to the owners at a meeting a schedule his officials had prepared setting out the higher prices the Crown was prepared to pay. Even those higher prices were well below the market value of the land.[349]

336. After many years of delay the owners desperately needed to better define their interests in order to instigate economic development of their remaining lands, but the government had no interest whatsoever in considering their interests and thought only of its own and its Pākehā constituency, observing in 1893:[350]

> There is no intention to complete the partition orders or to change the nature of the title until the Native title has been extinguished altogether, by the sale to the Crown.

337. It instead resumed the purchasing of undivided individual interests in what was left of Awarua. By 1894 it had purchased interests equal to 142,585 acres, which it applied to the Native Land Court to partition out.[351] The land purchase officer involved in the purchasing was promoted to the bench of the Native Land Court in 1893 but continued to be involved in Awarua purchasing until 1894, even as he presided over a sitting at Moawhango.[352] The Crown's acquisitions comprised more than half the entire Awarua block and far more than the 100,000 acres the owners had generously offered to sell in a controlled and rational manner.[353] The Crown ensured that it snared the most valuable and best lands in its awards, further disadvantaging the remaining owners.[354] Crown purchasing soon resumed and continued until 1896, during which time it acquired a further 52,060 acres, which it then had partitioned out.[355]

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349 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 417-419.
350 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 415.
351 Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 99, 101, and Map 13 at 100. See also Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 493 and Map 35 at 494.
352 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 43 and 488-489.
353 Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, at 99 and 101, and Map 13 at 100.
354 Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 495.
355 Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study – Central Aspect Report*, (b), at 14 and Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 506-508, 514 and 519.

338. Continued purchasing meant continued Crown pre-emption, further hindering the ambitions of the remaining owners for the economic development of their lands and people. After a visit from Premier Richard Seddon to Moawhango in April 1895,[356] they responded to his very limited vision for their future by once again setting out their own vision. Once again, they set out their proposals for title improvement and consolidation of interests to create economic whānau titles, ready for economic development.[357]

339. The Awarua owners noted, in some detail, how the protracted title processes of the Native Land Court and prolonged Crown purchasing had hindered their efforts at development since 1886: "we have been caused, and continue to suffer, a great deal of trouble, pain, and unhappiness… quite preventing us making improvements to the land and fixing permanent homes for ourselves."[358] As a result, in the space of three years their sheep flocks had been nearly halved from 107,000 sheep to just 57,000 (and falling).[359]

340. By August 1896, the Crown had purchased 194,495 acres of Awarua, around three-quarters of the original block. When an agent ostensibly acting for some owners of Awarua 3A2D offered their interests for sale to the Crown in November 1896, the head of the Native Land Purchase Department, P. Sheridan, observed the 'Government has now acquired the greater portion of the block… I think we are about done with it'.[360] This casual aside marked the end of Crown purchasing.

341. Despite the advice of the Napier Resident Magistrate in 1891, the Crown never considered at what point its purchases would harm the owners of Awarua.[361] Nor did the Crown pay any heed to the advice of that Magistrate in 1890 that, as the owners had large sheep farms, "reserves would need to be made for them to ensure they could continue in this enterprise." No other

[356] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 444-448.
[357] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 508-512.
[358] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 508-509.
[359] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 414 and 510-512.
[360] Wai 2180, #A8(b), Evald Subasic and Bruce Stirling, *Summary of Subdistrict Block Study - Central Aspect Report*, at 14.
[361] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 407.

Crown official ever referred to the need to reserve any land from Crown purchases.[362]

342. The Awarua and Motukawa owners had offered to sell 100,000 acres of their land to meet the Crown's expectations for settlement along the route of the North Island Main Trunk Railway line. This would have left the owners with about 200,000 acres for their present and future needs, which they wanted to hold in rational, whānau-based titles under a form of collective management to help them realise the potential for economic development they had already begun to demonstrate. Instead, by 1896 they retained only half the area they had envisioned.[363]

343. Far from their remaining lands being held under any rational tenure, the Awarua owners were, by 1900, left with 160 fragmented titles held by hundreds of individuals in undivided interests. They had not one acre they could profitably use; their titles remained unsurveyed and absolutely inalienable, other than to a Crown no longer interested in what was left of their land.[364]

344. The Awarua No 1 block of 112,356 acres was awarded to Ngāti Hinemanu and other related interests. By 1900 just over 89% of the block had been acquired. Following a number of partitions, the Crown cut out its interests and the only subdivision that remained was Awarua 1DB. The block was partitioned again after the Crown acquired another 354 acres leaving Awarua 1DB2 of 11,740 acres of rugged back country.[365] Today the land is administered by the Aorangi (Awarua) Trust.

345. Awarua 2A of 2,350 acres was awarded to Ngāti Mangaora (Mataora) of Ngāti Hinemanu. The title to Awarua 2A was inalienable. The restrictions were to prevent it being alienated to private purchasers however such

[362] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 340 and 421.
[363] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 524 and 528.
[364] Wai 2180, #A43, Bruce Stirling, *Nineteenth Century Overview Report*, at 527-528.
[365] Wai 2180, #A46, Tony Walzl, *Twentieth Century Overview Report*, at 94.

restrictions did not hinder the Crown who proceeded to purchase 236 acres barely one-third of what was being paid for the adjacent Awarua 2 block.[366]

Owhāoko

346. The Studholme's had a 21-year lease ordered in 1893 of the Owhāoko D blocks. Winiata Te Whaaro and his party were owners in Owhāoko D4. The leases were less than thruppence an acre and terminated before the term was up.[367]

347. In 1906 various sections of the Owhāoko block were vested in the Surveyor-General as payment for outstanding survey liens, plus interest charges. This included ninety-two acres, 2 roods of Owhāoko D4 (Owhāoko D4A) on which survey liens of £9.5.0 was owed. Winiata Te Whaaro and his party were then allocated Owhāoko D4B (1,326 acres). From this the owners then incurred another survey lien from the lands that were awarded to the Crown. Owhāoko D4B had a charging order of £3.1.4 for the survey of the subdivision. This amount was still owing in 1931.[368]

348. Eventually Owhāoko D4B (1,326 acres) became a part of the gift to the Crown to support the war effort.

349. Today Owhāoko D4B is administered by the Owhāoko Land Trust.

Ōtamakapua 1

350. As mentioned above, Ōtamakapua went through a number of Court hearings.

351. Over the period from 1911 to 1915, the Crown completed a number of purchases in Ōtamakapua 1. Apart from the Ngapapa urupā (Ōtamakapua 1G of one acre) all of the block was subsequently leased.[369] About 1,500 acres were privately purchased between 1897 and 1910, and about 2,900 acres of

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366 Wai 2180, #A8, Evald Subasic and Bruce Stirling, *The Sub-district Block Study - Central Aspect Report*, at 128.
367 Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 80-82.
368 Wai 2180, #A6, Martin Fisher and Bruce Stirling, *The Sub-district Block Study - Northern Aspect Report*, at 72-75.
369 Wai 2180, #A7, Terry Hearn, *The Sub-district Block Study – Southern Aspect Report*, at 116.

the blocks were purchased by the Crown from 1911 to 1915.[370] By 1929, only Ōtamakapua 1A, 1B, 1C, 1D, 1E, 1F1B, 1F2A, 1F2B2, 1G, and 1L remained in Māori ownership. Those blocks totalled around 4,420 acres.[371] Today, a total of 1,728 acres of Ōtamakapua 1 across six titles remains in Māori ownership:[372]

Otamakapua	Acres	New Zealand Gazette
1H3	494	1915, p.951
1H5	107	1915, p.370
1J1D	141	1911, p.3746
1J1C	141	1911, p.3746
1H2	165	1911, p.3746
1H6	179	1911, p.3746
1H3	494	1915, p.951
1J1B	141	1913, p.3577
1N1 & 3	66	1912, p.3294
1J2	848	1913, p.3573
1H4	143	1913, p.3574
1J1A	141	1914, p.3707
1H1	373	1915, p.731

ECONOMIC DEVELOPMENT AND CAPABILITY

352. We endorse and adopt the generic submissions on the questions of how the economic development and capacity and capability of Taihape Māori were impacted upon in breach of Te Tiriti. We ask our observations here to be seen in the context of the issues of breach of Te Tiriti that is also discussed in the 20th Century submissions that are addressed also in the body of these specific concerns highlighted by the claimants.

353. We seek findings and recommendations of a kind with respect to the allegations pleaded on behalf of the claimants as the CNI Tribunal found when it observed:[373]

[370] Wai 2180, #A7, Terry Hearn, *The Sub-district Block Study – Southern Aspect Report*, at 116 and 123.
[371] Wai 2180, #A7, Terry Hearn, *The Sub-district Block Study – Southern Aspect Report*, at 125 (note that Table 2.7 at 125 shows a total in Ōtamakapua 1 of over 5,100 acres but has mistakenly included Ōtamakapua 1M and 1N which had already been purchased, as shown at 117 and 124).
[372] Wai 2180, #A7, Terry Hearn, *The Sub-district Block Study – Southern Aspect Report*, at 134; 118.
[373] Waitangi Tribunal, *He Maunga rongo Report on Central North Island Claim*, (Wai 1200, 2008).

> *CNI Māori were often marginalised from economic development, especially up until the mid-twentieth century. The Tribunal did consider that the Crown may have done somewhat better in its Treaty obligations over Māori economic development in the exotic forestry sector, and did not find Treaty breach in that instance – although noted that its finding was preliminary as the evidence had not gone into detail. It also noted that CNI Māori economic development in that sector had come at a high price in terms of their cultural, environmental, and social interests.*

354. As at 1840, Ngāti Hinemanu and Ngāti Paki exercised and maintained tino rangatiratanga over their whenua and resources in accordance with tikanga and were well-equipped to provide for their present and future generations.

355. It is clear from the forgoing analysis of issues arising from the implementation of Native Land Court processes and Crown purchasing tactics by the Crown that the Ngāti Hinemanu and Ngāti Paki experience in relation to their economic development and capability has been characterised by economic marginalisation, missed opportunities and inequity.

356. Furthermore that the failure by the Crown to actively protect Ngāti Hinemanu and Ngāti Paki relationships with their lands and to ensure that they retained sufficient adequate land, resources and the capability to effectively participate in the economy are key issues in this inquiry.

357. However, through the acts and omissions of the Crown, including the newly introduced Native Land Court system and aggressive Crown purchasing, the rules had changed. The ability of Taihape Māori to sustain their people in the ways previously done were no longer feasible.

358. In short, it was a case of adapt or face the consequences.

359. Taihape Māori sought to adapt. They sought to engage in the new settler economy, and identified to the Crown the various difficulties that they were facing and proposed solutions to address these.

360. However, in the face of a largely unwilling and uncooperative Te Tiriti partner, they were left out in the cold.

361. The ability of Taihape Māori to exercise their tino rangatiratanga has been fettered substantially by the manner of the Crown's exercise of kāwanatanga, leaving Taihape Māori little to no opportunity to chart their own paths or to provide meaningful input into matters affecting their economic development and capability.

362. Today, very little land is retained as Māori land. By far the majority of this is landlocked and more likely to be of a lower land use capability than European land. Taihape Māori have higher rates of unemployment and significantly lower mean incomes compared to their non-Māori counterparts.

363. Much of the responsibility for this position Taihape Māori find themselves in lies directly with the Crown, whose acts and omissions in the Taihape–Rangitīkei ki Rangipō inquiry district ("inquiry district') have contributed substantially to the issues faced.

ARREST AND EVICTION OF WINIATA TE WHAARO AND DESTRUCTION OF POKOPOKO

Introduction

364. One of the most significant grievances for Ngāti Hinemanu me Ngāti Paki is the unlawful arrest and eviction of Winiata Te Whaaro and his people from Pokopoko. While the details of his wrongful removal from his homelands are referred to at paragraph 152, the Claimants wish to remind that the Crown's attempt to diminish the mana and rangatiratanga of Winiata Te Whaaro is not just evident in these wrongful actions but in the systematic way the Native Land Court operated to exclude him and his people from their ancestral homelands in a number of contexts discussed earlier in this submissions.

365. In the 1870s, wealthy pastoralist John Studholme of Canterbury leased large parts of the vast high country of Mōkai Pātea that would become the Ōwhāoko and Ōruamātua-Kaimanawa blocks from Rēnata Kawepō in an arrangement that suited both men. Rēnata duly applied to have the titles investigated by the Native Land Court. Disputes over surveys prevented adequate plans being produced, so that what exactly was being investigated was largely unknown. The hearings, held at Napier, were mired in

disreputable practices from the start; inadequate notification was given of the hearings, preventing many of those with legitimate claims from attending; and the presiding Judge, John Rogan was prepared to award title to Rēnata Kawepō and the few others he put forward having heard the flimsiest of evidence as to their entitlement. The myriad problems with the 1875 Ōwhāoko and Ōruamātua-Kaimanawa investigations were eventually the subject of a Parliamentary Inquiry, but in many ways the damage had been done. In subsequent hearings, the Native Land Court, its judges, officials and the lawyers and agents associated with it, became wedded to the idea that Rēnata Kawepō and other chiefs from east of the Ruahine Ranges held customary rights in Mōkai Pātea, a position that directly impacted Winiata Te Whaaro and one that he found almost impossible to overcome.[374]

366. Winiata Te Whaaro struggled to have his customary rights acknowledged by the Native Land Court in spite of his demonstrable expertise in tribal history and whakapapa and knowledge of the lands of Mōkai Pātea. It is clear from the evidence given by Winiata Te Whaaro in various Native Land Court cases that he was very familiar with his personal whakapapa; he was able to claim through multiple lineages to a range of tipuna who were in his understanding the pūtake, or root of ancestral rights in particular parts of his rohe. To Winiata, Ngāti Paki were heirs to the rights of Rangiwhakamatuku in those lands south of the Mangaone Stream, which included all the land between the Rangitīkei River and the tops of the Ruahine Range, irrespective of how the Native Land Court carved up the boundaries. Elsewhere in Mōkai Pātea he claimed under other tipuna, though he was often thwarted by his opponents who refused to acknowledge key tipuna who provided the vital links between their respective whakapapa lines.[375]

367. Today, Ngāti Hinemanu Ngāti Paki are in no doubt that the Court's rejection, or minimising of their tipuna's land rights was a direct result of Winiata's determination to stand up to the powerful settler elite. By 1890 when the Awarua title was investigated, Winiata and his brothers were running some

[374] Wai 2180, #A52(b) Summary of Peter McBurney dated 13th of February 2017.
[375] Wai 2180, #A52(b) Summary of Peter McBurney dated 13th of February 2017.

11,000 sheep, on some of the best sheep farming land in the district. In that year he gave evidence in the Awarua Commission, set up to inquire into the disputed Ruahine boundary on the eastern border of Te Awarua block. Winiata was acknowledged by the Commissioners and other witnesses for the reliability of his evidence – it was he who pointed out the boundary lines to the surveyor, yet in contemporary Native Land Court cases he was vilified as a fabricator of of evidence. His Ngāti Paki whakapapa was not recognised, nor were the tipuna he identified as key links to his whanaunga.[376]

Allegations

368. The claimants contend that in breach of Te Tiriti o Waitangi:[377]

> *The Crown denied Ngāti Hinemanu/Ngāti Paki independence and autonomy and usurped their rangatiratanga and right to self-management. In particular, the Crown sanctioned the illegal arrest of Winiata Te Whaaro, the assault of his whānau, and the theft and looting of their property, the consequences of which were their forced dislocation and the denigration of Winiata Te Whaaro's mana*

369. Pokopoko is etched in the memories of the claimants as more than the last stand by a Rangatira who was being overwhelmed by the forces of Crown policy and the threat of their enforcement agencies to impose that policy against the consent of the native communities but as a stand for tino rangatiratanga. Te Whaaro they say was a freedom fighter and an entrepreneur extraordinaire holding on to the vestiges of what was his and his hapū to protect for future generations. The events that unfolded on that woeful day and the weeks that followed showed how determined he was to maintain his free will and his fundamental freedoms guaranteed to all citizens under Te Tiriti o Waitangi. Like many freedom fighters of this period Rua Kenana he was incarcerated for his stand and eventually faced financial ruin with far reaching impacts on those who relied on him for their livelihoods.

[376] Wai 2180, #A52(b) Summary of Peter McBurney dated 13th of February 2017.
[377] Wai 2180, #1.2.17, paras 278-325.

370. McBurney's summary of the situation is apposite before we address in more detail the specific issues for consideration before this Tribunal. He notes:[378]

> *In 1895, Winiata Te Whaaro's quest to have his rights in Mangaohāne recognised ended in failure when John Studholme had his title confirmed by the Courts. Along with his brothers, Winiata was now regarded as a trespasser on his ancestral land. When the bailiffs arrived, in May 1897, he stood firm, vowing not to leave without spilling blood for his whenua. The posse of off-duty policemen paid for by Studholme, dragged him away, though they were attacked by the women of Ngāti Paki. He was taken to Wellington and kept in a police cell for two days, according to the oral traditions without food. His property had been destroyed, although some portable items were carted over to Waiokaha to where his nephew Waikari lived along with his small hapū. His sheep were driven away, some to form a wild flock in country known still as "Wild Sheep Spur", with others no doubt absorbed into the flocks of neighbouring stations. In the face of this ruination Winiata was threatened with having to pay the costs of his arrest. This only ever seems to have been a threat used to cow him; the lawyers working for Studholme knew he had no money. In a letter to John Studholme, his lawyer H. D. Bell recommended that the threat of the costs be used as "a weapon of terrorism" over Winiata, to stop him re-occupying his land.*
>
> *Winiata Te Whaaro sought to take advantage of commercial opportunities and adapt to new economic systems; as an entrepreneur, he ran a successful sheep farm and was always cooperative in his dealings with Pākehā and with the settler government. Even so, when the Native land Court rejected his claims to Mangaohāne and denied his customary rights in the land on which he was residing, he found himself the victim of eviction, humiliation and imprisonment.*
>
> *In due course, Winiata brought his people to the land south of Taihape that today bears his name; there, Winiata Marae was built, with Tautahi, the Tipuna Whare. The people of Winiata Marae today are the descendants of Winiata Te Whaaro, his wife, Peti Mokopuna Hamilton and their eleven children: Iramutu, Keepa, Warumomo, Wirihana, Hauiti, Waimātao, Ngāhoa, Matehaere, Ngohenohe, Pāpara and Whakawai.*

371. There will be no justice, the claimants say until the truth of these events are exposed and recognised by the Crown.

[378] Wai 2180, #A52(b) Summary of Peter McBurney dated 13 February 2017 at pp25 and 26.

372. There are a number of technical reports [379]that were commissioned to assist the Tribunal in understanding these events. The last technical report presented to the Tribunal by Jane Luiten, 'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community' [380] is perhaps the most comprehensive and is relied upon to recall the salient facts surrounding these allegations.

Background

373. Winiata Te Whaaro and his whānau began farming on Mangaōhane land in 1877 and established the Pokopoko papakainga which comprised at least 25 people.[381]

374. By 1892 the Te Whaaro whānau were farming a flock of 8,000 sheep on Mangaōhane, and by 1894 they were farming 10,000 sheep. This put them among the largest Māori sheep farmers in the district.[382]

375. In 1881, the wealthy and influential run-holder John Studholme extended his Ōwhaoko sheep farm onto Mangaōhane, at Otupae. His occupation of the land and his pre-title payments to Renata Kawepo for this occupation were unlawful, as was his 1883 agreement to purchase all of Mangaohane from Kawepo and pay pre-title advances on the purchase. [383] Between 1880 and 1884, Winiata Te Whaaro and others opposed Studholme's efforts to acquire Mangaōhane from others.[384]

376. Title to Mangaōhane was investigated in 1884-1885, when Winiata Te Whaaro and his people were excluded from the titles awarded for

[379] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'*, Wai 2180, #A039, Grant Young, *Mangaohane Legal History* and Wai 2180, #A52.
[380] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'*.
[381] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 11-12.
[382] Wai 2180, #A56 Jane Luiten, '*The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 12.
[383] Wai 2180, #A56 Jane Luiten, '*The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 17.
[384] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 17.

Mangaōhane 1 and Mangaōhane 2.[385]The Pokopoko land on which they lived and farmed was excluded from the Court's judgement on the southern block, Mangaohane 2 for a future inquiry. Instead, a later survey extended Mangaohane 2 to take in Pokopoko, thereby excluding Winiata Te Whaaro and his people from title to their land.[386]

377. From 1885 to 1895 Winiata Te Whaaro sought to have the customary interests of he and his whanau at Mangaōhane recognised by the Native Land Court. In 1894 these efforts finally met with some success when the Chief Judge included he and his people in the title to Mangaōhane 2. This decision was overturned by the Supreme Court.[387] The Chief Judge and the Chief Justice acknowledged Winiata had suffered loss through Native Land Court errors but neither that Court nor the Supreme Court could correct that error. The Crown did not intervene with special legislation, despite being prepared to do so to assist Studholme's unlawful purchasing.[388]

378. Beginning in 1885, Studholme acted to complete his acquisition of Mangaōhane 1 and 2. He leased and purchased undefined individual interests before final titles issued and rehearing's were dealt with, which was unlawful. Other interests were purchased prior to partition, which was unlawful. The heavy legal expenses of £2,000 incurred to obtain title for his vendor, Kawepo, were charged against the purchase of the land.[389]

379. Studholme's unlawful purchasing was validated by the Validation Court in 1893. The Court was established by the Native Land (Validation of Titles) Act 1892, a measure that was successfully and explicitly promoted by Studholme's lawyers and political allies in Parliament in order to validate his unlawful Mangaōhane dealings.[390]

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[385] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 17.
[386] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 14.
[387] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 14.
[388] Wai 2180, #A56(b) at 3.
[389] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 8.
[390] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 21.

380. Following a decade of legal wrangling, John Studholme Jr obtained title to Mangaōhane A (12,402 acres) and Mangaōhane G (6,817 acres) in January 1896. Pokopoko lay within Mangaōhane A.[391] The arrest and eviction of Winiata Te Whaaro and his community from Pokopoko in 1897 was the result of civil action taken by John Studholme Jr to gain possession of his land.[392]

381. In February 1897, a writ of summons and statement of claim were filed in by Studholme's solicitors in the Supreme Court in Napier, alleging that Winiata Te Whaaro and others had unlawfully occupied and possessed the land. The writ of summons was served on Winiata Te Whaaro at Taihape on 8 February and on his whānaunga Irimana Te Ngahou at Ngatarawa (Hawke's Bay) on 13 February. The defendants had ten days to file a statement of defence. When no defence was offered, judgement by default was obtained against Irimana Te Ngahou on 25 February and against Winiata on 2 March 1897. By 13 March 1897 writs of sale and possession against both men were obtained to give effect to the judgement.[393]

382. As the Mangaōhane land lay outside the Hawke's Bay District, the writs of sale and possession were sent to solicitors in Whanganui for execution, with instructions to consult the Whanganui Sherriff. On 19 March 1897, the Whanganui Sherriff wrote to the Under-Secretary of Justice to request the assistance of local police from Raetihi, Ohingaiti, and Mōawhango to execute the writs.[394]

383. In the absence of the employment of bailiffs in outlying districts such as this, police had assumed the duty of serving writs, but responsibility for executing writs remained with the sheriff and his appointed bailiffs. Defence Minister John Bryce, responsible for the police, had in 1884 considered it was

[391] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 60-61.
[392] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 59.
[393] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 62-63.
[394] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 63-64.

impractical and degrading to police to be employed as sheriff's officers to execute such writs.[395]

384. In the case of police involvement in the execution of writs against Māori in outlying districts, there was an additional restriction. In 1884 the Bryce had instructed Police executing warrants in "Native Districts" to use "discretion in cases where the peace of the country is at all likely to be disturbed. He also directed them not to execute civil writs of ejectment against Māori without ministerial consent.[396]

385. The Under-Secretary of Justice forwarded the Sherriff's request of March 1897 for police assistance to the Commissioner of Police, advising him to be "cautious in granting police assistance in this case." The Commissioner consulted the District Inspector of Police in New Plymouth who advised "it would be unwise" to provide police assistance to execute the writs, and it was against the policy established in 1884 which he hoped "will long remain in force." On 1 April 1897, the Commissioner refused the Sheriff's request for police assistance and reminded him of the 1884 policy.[397]

386. On 6 April 1897, the Sheriff proceeded to Mangaōhane with an interpreter to meet with Winiata Te Whaaro. The three men then travelled to Pokopoko meet Studholme's farm manager on 8 April. Over the next two days the Sheriff had three meetings with Winiata to explain (through the interpreter) the proceedings and induce him to give up possession of the land.[398]

387. Winiata contended with the Sheriff that the Supreme Court had made a mistake in fixing the boundary line between what he saw as his land and the main Mangaōhane block. He pointed to the boundary fixed by the Native Land Court which, he argued, was "the highest Court for Natives." The Sheriff responded that if any mistake had been made Winiata must "appeal

[395] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 44 and 64.
[396] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 51.
[397] A Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 64-65.
[398] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 65-67.

to Govt" later but until then he had to obey the law and remove himself, his community, and all their property from Mangaōhane.[399]

388. Winiata "replied by placing a Bible on the ground with a gun beside it and also two £1 notes, saying 'They were all the Queen's things, the Bible had brought peace and done away with bloodshed but that he would not go, that the money would buy things for the gun and the gun would make the blood flow'."[400]

389. He followed up these comments with a letter of 10 April 1897 to the Sheriff, enclosing £2 and - according to the Sheriff's typed copy of the letter - writing:[401]

> *I hoatu e au tenei paipera me aku moni ara ko te paipera a te Kuini. Na te Kuini tenei paipera i homai ki waenganui i a matou kia whakamutua nga mahi kino, a kia whae tonu tatou i te aroha. I te tau [18]40 i mahia tenei mahi. Koia nei te take i hoatu ai e au te Pauna. Na mo te taha ki te pu[.] [K]oia nei te mea e eke ai nga toto, i runga hoki o te ahi a te Kuini. Koia nei te take i whakatakoto ai e au te pu, me te Pauna, kia whakamutua nga tautohetanga i waenganui ia taua[.] [K]o to korero kia haere ahau, ko taku kia noho tonu, ara ka eke rawa aku toto mo tenei Poraka.*
>
> *[contemporary translation: I gave you my bible and my money. That is the bible of the Queen. The Queen gave the bible between us all to finish all evil deeds so that we may all live in love. This was done in the year [18]40. This indeed is the reason I gave you the money. Now as regard the gun and this indeed is the thing that will make the blood flow according to the command of the Queen. This indeed is the reason that I laid down the gun and the notes to finish the discussion between us both. You say I must go I say I will stay until my blood is shed on this block.]*

390. A second letter was sent later that day to the Sheriff, written in English at Winiata's instruction, which clarified his intent:[402]

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[399] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 67.
[400] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 67.
[401] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 68.
[402] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 69.

> *the money I placed on the bible and the gun of the Queen. All those I placed in front of you. I also intend to place before the Government. So the Government and Supreme Court can see for themselves what I intend doing. That is why I placed the money down as a sign. What I say is this I shall bleed for my country.*

391. The Sheriff responded to the continued refusal of Winiata and his people to leave the land by telling them they "were enemies to the Queen and that they would get into very serious trouble," which could result in imprisonment.[403]

392. Winiata Te Whaaro sent a copy of his first letter of 10 April 1897 to the Premier, Native Minister, the Members of Parliament, and the Māori Members of Parliament. Richard Seddon was both Prime Minister and Native Minister. He forwarded the letter to the Justice Department.[404]

393. The Native Department was disestablished in 1893. The position of Native Minister remained. Responsibility for 'native affairs' was assumed by the Justice Department.[405] The Under-Secretary of Justice noted of Winiata: "Tell him he should obey the law."[406]

394. In communicating the results of his meetings with Winiata to the Under-Secretary of Justice, the Sheriff characterised Winiata's statements as demonstrating he "will not listen to reason and says he will die before he leaves the land." He urged that he would require "force" to execute the writ and again asked to use local police to do so.[407] The Under-Secretary again declined to provide police assistance.[408]

395. The Sheriff had on 15 April 1897 informed Studholme's solicitors of his failure to execute the writ and advised them to obtain a writ of attachment against Winiata for contempt in refusing to give up possession. Papers for a

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[403] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 69.
[404] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 70.
[405] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 55-56.
[406] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 70.
[407] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 71.
[408] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 73.

writ of attachment were filed on 24 April, and notice of this was served on Winiata at "Awarua, near Taihape" by police on 1 May.[409]

396. In response to being served on 1 May 1897, Winiata wrote to the Under-Secretary of Justice to traverse the history of the case, explain his conduct and his words when he met the Sheriff, and above all to assure the Government of his peaceful intent:[410]

> *for I have not done anything wrong that I should now be judged as one who has shed blood but it is the Premier who should judge me under the Queen's mana. May God have us both under His safe keeping, under the "mana" of our Lord Jesus Christ and under the "mana" too of the Queen forever and ever, amen.*

397. In response, Winiata was warned: "obey the law which is above all, lest evil come upon you."[411]

398. The motion for a writ of attachment was head by the Supreme Court in Wellington on 11 May 1897.[412] It was removed from Napier at the request of Studholme's solicitors.[413] A writ of attachment was the remedy in cases of contempt. It could be applied in a case of civil contempt where a breach of peace had occurred but, in this case, no such breach had occurred. The papers presented to the Supreme Court selectively cited and misrepresented Winiata's correspondence with the Sheriff in an effort to emphasise a potential for violence that Winiata did not pose. This potential was an important factor in obtaining the writ for attachment against him.[414]

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[409] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 70 and 75.
[410] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 76-78.
[411] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 79.
[412] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 71.
[413] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 79.
[414] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 71.

399. Winiata was not present at Court on 11 May 1897 when the writ of attachment was ordered.[415] In a significant departure from normal practice, the writ was issued to the police rather than to the Sheriff.[416]

400. Winiata Te Whaaro was surprised by police who arrested him at Pokopoko on the evening of 18 May 1897. He resisted and was supported by several wahine in his resistance before being taken away in handcuffs to Wellington, arriving there the following day.[417]

401. Winiata appeared in Court on Friday, 21 May 1897 when he sought an adjournment until 25 May to obtain counsel. The Crown opposed this but did agree to adjourn for a few hours, during which time Winiata was kept in custody. Sir Robert Stout met with Winiata and Crown counsel during the adjournment to reach a settlement. Stout was a Member of Parliament, a former Premier and Attorney-General, and had represented Winiata in a Mangaōhane matter in 1894-1895. It was agreed that Winiata would be released in exchange for ceasing to interfere with Studholme's possession of Mangaōhane, and that Studholme would ensure the urupā at Pokopoko was fenced off and protected. Winiata was then discharged.[418]

402. Winiata was ordered to pay the costs of the writ of attachment.[419] These costs, which subsequently included costs relating to his arrest, came to £58 17s. 5d. Additional 'Costs Subsequent to Judgement' of £120 5s. 4d. were charged to Winiata for the eviction but this included costs related to the earlier efforts to enforce the writ of sale and possession.[420] The costs claimed were taxed by the Court. As a result the costs of arrest (£58 17s. 5d.) were allowed at £28

[415] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 79.
[416] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 80, 100 and 101.
[417] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 82-83.
[418] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 84.
[419] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 85.
[420] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 93.

18s. and the costs subsequent to judgement (£120 5s. 4d.) were allowed at £59 5s.; a total of £88 3s.[421]

403. In October 1897, Stout asked Studholme's solicitors to not insist upon the payment of costs. He explained that Winiata "has no means whatever, the Sheep and other property he has is mortgaged and he has nothing wherewith to pay anything." He added: "When it is considered that Winiata has lost everything, and that even those who were against him in the land fight believe he was entitled to some portion of the land - Mr Carroll for instance" it would be right for Studholme to forgo costs. Studholme instead agreed that "so long as Winiata gives no trouble" the costs would not be sought, "but that if he gives any trouble we shall be down upon him at once… we hold a kind of weapon in terrorum over him which we can seize some of his personal property if he annoys us."[422]

404. Immediately after Winiata's removal from Pokopoko by police, his people were escorted off the land and the kainga there was demolished by Studholme's men. Nearly all movable property inside the buildings at Pokopoko was removed by his men to Mōawhango after which five houses were burned down and three kauta were demolished. Hune Rapana (son-in-law to Winiata) protested that some property was burned in the fires lit by Studholme's men.[423]

405. The buildings destroyed included a wharepuni. Upon learning of the destruction at Pokopoko, Winiata was angered and wished to cancel the agreement relating to the urupā there; saying: "I will bring away my dead from there because the decision arrived at by us together with the legal gentlemen, and the Chief Judge [has] also become bad." Accordingly, the kōiwi in the urupā were disinterred and removed.[424]

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[421] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 94.
[422] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 97-98.
[423] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 86-88.
[424] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 88-89.

406. The large flock of sheep Winiata Te Whaaro and his whanau were running on Pokopoko were driven off the land by Studholme's men. Without sufficient other land to sustain them, Winiata could not maintain the flock which was soon reduced to zero.[425] He and his whanau lost their home, their livelihood, and their economic base.[426] By 1900, the Te Whaaro whanau were virtually landless.[427]

Tangata Whenua Evidence

407. Significant tangata whenua evidence was brought in support of the allegations before this tribunal on these matters. We have only taken excerpts to highlight the significant points that we seek to make however commend the evidence in its totality to ensure all insights are gained from the same.

408. Dr Moana Jackson who gave evidence for the Ngati Hinemanu and Ngati Paki claimants set the events in the context of wider issues of subjugation and denial of Māori law when he observed: [428]

> *Indeed, his [Winiata Te Whaaro's] removal may be set against the trajectory of the Crown's need to promote the "civilization" of Māori on the one hand and the concomitant need to ensure that the degree of civilization achieved by Māori did not threaten the wealth and power which the Crown needed to ensure its hegemony. The colonisers' law was fundamental to that hegemony and its application against Winiata Te Whaaro was a denial not only of the just reason professed in its jurisprudence but the good faith which the Crown maintained as the base of its commitment to Te Tiriti o Waitangi*

409. Furthermore when the Tribunal examines the special events surround the unlawful removal of Winiata Te Whaaro and his whanau from their papakainga in Te Tiriti terms Dr Jackson reminded:[429]

> *.... any claims about the impartiality of the colonisers' law, and even any adherence to Te Tiriti were necessarily illusory because they were*

[425] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 91-92.
[426] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 140.
[427] Wai 2180, #A56 Jane Luiten, *'The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community'* at 148.
[428] Wai 2180, #H7 at para 24.
[429] Wai 2180, #H7 at para 30.

made, and the actions taken by the Crown against Winiata Te Whaaro were played out in, the context of colonisation where impartiality was always subject to the interests of the colonisers. The supposed reason of their law was always the template for the unreason of Māori dispossession.

410. Other witnesses recalled their understandings of the events that had been passed down from generation to generation in this way:[430]

> *5. Winiata Te Whaaro is my Great Grandfather.*
>
> *6. My Mum, his granddaughter, took us to Pokopoko. The photos in my presentation were taken the day she took us out there about 43 years ago. She showed us where she thought the buildings were, and the fence posts that had been around the urupā and wāhi tapu.*
>
> *7. The kōrero was deep and Mum was sad remembering and talking about her grandfather. She told us what she knew about the way he was treated by the Pākehā – meaning the Crown.*
>
> *8. The buildings at Pokopoko each had a particular purpose:*
>
> *a. One for hui;*
> *b. One for sleeping manuhiri;*
> *c. One for sharing knowledge;*
> *d. A wharenui for sleeping tangata whenua;*
> *e. Some pataka for storing kai;*
> *f. Areas with wharekai for cooking;*
> *g. An area for births;*
> *h. An area for deaths; and*
> *i. Whare puia for bathing.*
>
> *9. Following Winiata Te Whaaro's arrest and eviction they lost all of that. They lost their livelihood. The seriousness of this loss cannot be overstated.*
>
> *10. Winiata Te Whaaro and Ngāti Paki were evicted from a working farm which provided their livelihood. Humiliated by the arrest and eviction itself, the rangatira of Mokai Patea was also rendered virtually landless in his homeland as a result.*
>
> *11. The woolsheds were destroyed along with their possessions. The destruction of their taonga such as korowai, kete, piupiu, hieke, whariki, carvings and others must have been devastating.*

[430] Wai 2180, #H5 Brief of Evidence of Mrs Patricial Cross para 6- 13.

12. *Hune Rapana stated that five houses were burnt and three cooking houses broken down. In addition, one tub, 50 bags of wool, two boxes of soap for washing wool and two tins of paint were lost in the fire.*

13. *This is what I can remember Mum saying to us. There was a sacred feeling in the air that day.*

411. Mrs Hineaka Winiata recalled to this Tribunal in 2017:[431]

31. *During my research I came across an article about the 'Troopers'. It mentions the arrest, eviction and destroying of the property and the following paragraphs 32-36 is what it reads.*
32. *My friend went to back to the homestead and told his boss the whole story, the manager sent the messages through to Whanganui where a party of 12 troopers with a superintendent rode across to Otupae to take position of the land which the English Court had judged as belonging to the Studholme family.*
33. *My friend suggested that if they wanted to surprise the Māori, he could guide the superintendent around the brow of the creek bed and behind the pa and so be ready to rush in when the superintendent blew his whistle.*
34. *This plan was carried out and as the superintendent and young shepherd ran around the hill at the back of the pā, the Māori dog barked a warning. Out from his whare stepped the old chief, Winiata Te Whaaro, with a blanket wrapped around him and a bible in his hand. The shepherd told Winiata Te Whaaro they had come for a korero but Winiata said the time for talking had passed.*
35. *The Pākehā had told him to read the good book and while the Māori were doing so, the Pākehā took their land. He pulled out one pound note from his pocket and said they had plenty more to buy rifles and ammunition. The superintendent slipped a pair of handcuffs and blew his whistle. The superintendent jumped out of the gully and from the varieties of whare, the young Māori jumped out confused and surrounded by the armed troops.*
36. *That was the beginning and ending of the Aorangi block dispute. Winiata was taken to Whanganui with some of his followers and sentenced to 2 years detention. The others shifted their own horses, cows and household belongings to J Kelly's Property at Moawhango.*
37. *The Ōwhāoko Musterers' cleaned out everything. The whare were burned down and Aorangi Pā disappeared.*
38. *Upon my analysis of the research, the whānau of Winiata Te Whaaro would have taken themselves to the bridge where the water is, down to the Rangitīkei River to the Shangrila and then continued on to the Kelly block.*

[431] Wai 2180, #H3 Brief of Evidence of Mrs Hineaka Winiata para 31- 39.

39. The article also talks about the Aorangi block and also the burning down of the whare and the Aorangi Pā disappearing. I don't know anything about that Pā though. It could have been Pokopoko they were talking about.

412. Kuini Beatty reminds:[432]

> *I have tried to imagine what it was like for our kuia and koroua having to move from their home at Pokopoko, the only place some of them ever knew. I can only say it would have been a very stressful time and they must have suffered emotionally and mentally knowing that some of their whare and possessions were destroyed by fire.*
> *Destruction of their kainga and belongings by fire was so final. There was nothing to go back to. Our Tupuna Winiata Te Whaaro said in reply to James Carroll who wrote telling him that 'all is well', "Is it the destruction by fire that is well"? He pointed out to Carroll that the work of the Sheriff was bad with the burning of some of their houses and the destroying of his children's property by fire. It is hard for us today to really grasp the psychological damage done to our people when they knew that they could never return to their homes. What I do know is, there is a deep mamae that is still with us today. It all happened one hundred and twenty-one years ago to this month May 1897.*
> *After Pokopoko not all our tupuna moved here to Mangaone, Winiata. Some went to Wairoa, Hastings and Raetihi. Places where their spouses came from. Our whanau became split.*

The Tribunals Issues: Issue 6

413. We now turn to consider the Tribunal's issues that have been included for consideration as part of the raft of matters in Issue 6 arising from the allegations of Treaty breach made by the claimants.

What was the nature of the Crown's involvement in the arrest of Winiata Te Whaaro and the razing and/or removal of property from the Pokopoko settlement?

414. The arrest of Winiata Te Whaaro and the removal of the Pokopoko settlement was the result of civil action taken by John Studholme Jnr to gain possession.[433] The arrest and removal was undertaken under the authority of Supreme Court writs.

[432] Wai 2180, #K2 at p. 3.
[433] Wai 2180 #A056, Jane Luiten: T*he Arrest of Winiata te Whaaro and the Eviction of the Pokopoko Community* at p. 59.

415. A key document in the reconstruction of the events that followed relates to the Writ of Sale and Possession that was issues. The evidence suggests that the Writ of sale and Possession against Winiata Te Whaaro – for his unlawful possession and occupation of Studholmes land was obtained in March 1897 by way of default. [434]

416. The illegal action began with a single writ of sale and possession obtained by Studholme from the Supreme Court, and issued to the Sheriff of Whanganui, Andrew Thomson. By law, Sheriff Thomson was responsible for executing the original writ of sale and possession.[435] A key issue in the matrix of material is why the Sherrifs office from Whanganui got involved in the first place.

417. One of the other technical report writers Grant Young makes significant observations around this process and notes:[436]

> *…that it appears Thomson initially met with Winiata Te Whaaro at Mangaone, Taihape on the 6th April 1897 to execute the writ of sale and possession as he reported that he stayed the night there with him.*

418. He then meets with Winiata on 8th, 9th and 10th April 1897 and then finally on 13 April 1897 to enforce the writs.

419. Based upon the letter written by Winiata addressed at Aorangi, Luiten says, Thomson and Winiata must have gone from Mangaone to Mangaohāne to meet with Richard Warren Studholmes farm manager and this is where the two-day negotiations recorded by Thomson took place.[437]

420. During their discussions Winiata insisted that the Supreme Court which is the highest Court for natives, had made a mistake in fixing the boundary line between Mangaohāne Block and Aorangi Block and had altered the decision of the Native Land Court. [438]

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[434] Wai 2180, #4.1.11, Hearing Week 4 Transcript, p. 222.
[435] Wai 2180, #A056, Jane Luiten: *The Arrest of Winiata te Whaaro and the Eviction of the Pokopoko Community* at p. 170.
[436] Wai 2180, #A039, Grant Young, *Mangaohane Legal History*, p. 194-195
[437] Wai 2180, #A056, Jane Luiten: *The Arrest of Winiata te Whaaro and the Eviction of the Pokopoko Community*, p. 66-67.
[438] Wai 2180, #A039, Grant Young, *Mangaohane Legal History*, p. 195.

421. The Sheriffs account goes on to say that Winiata placed a bible on the ground with a gun beside it and also two £1 notes saying they were all the Queens things and that the bible had brought peace and done away with bloodshed but that he would not go. The money would buy things for the gun and the gun would make the blood flow. Before walking away, he asked for the production of the writ. When he found it wasn't in Māori then he would have nothing more to do with it.

Exchange of Letters: Talking Past Each Other

422. An exchange of letters followed.[439] The first letter was from Winiata to Thomson returning the two £1 notes.

423. Luiten explains the letters on the court file are typed copies not the originals. Thomsen had the letter from Winiata interpreted by Yeates. There are discrepancies in both the Māori and English translation affecting the tone of the letter. Thomsen takes the interpretation in the letter of Winiata, 'te ahi a te Kuini', to mean 'the fire of the Queen'. In the version Winiata sent to the Premier Winiata wrote of 'te oahi a te Kuini'. When 'oahi' is restored into the sentence referring to the gun, 'Koia nei te mea e eke ai nga toto, i runga hoki o te oahi a te Kuini', in the context of the paragraph it means, 'this indeed is the thing that will make the blood flow according to the command of the Queen', which is somewhat different from the connotation of the translation.[440]

424. This interpretation is markedly different from how Sheriff Thomson interpreted the letter to read, 'You say you will not leave till the fire of the Queen makes your blood flow.' Winiata then wrote a second letter explaining again when he meant when he laid down the bible, gun and money. He then said, "I shall bleed for my country."[441]

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[439] Wai 2180, #A056, Jane Luiten: *The Arrest of Winiata te Whaaro and the Eviction of the Pokopoko Community*, p68.
[440] Wai 2180, #A056, Jane Luiten: T*he Arrest of Winiata te Whaaro and the Eviction of the Pokopoko Community*, p68-69.
[441] Wai 2180 A056, Jane Luiten: *The Arrest of Winiata te Whaaro and the Eviction of the Pokopoko Community*, p68-69

425. With this thought Thomson then went to talk to Winiata and his people again telling them if they do not leave their actions show they are enemies to the Queen. He reminded them of what Te Whiti had done and how he was imprisoned for it and they would be treated the same way. Then they left. Thomson reports his visit was unsuccessful. [442]

Broader Position

426. The primary issue involved in these matters is the subjection of Māori to civil ejectment proceedings and the failure of the colonial office to provide a process or provision in any particular statute to take such matters into account in the context of competing claims to customary lands particularly in contexts where Native Land Court adjudication was at the heart of contested claims.

427. Within the disputed landscape of the colonial frontier the Crown's insistence that civil ejectment proceedings be treated in isolation effectively armed Pākeha settlers with their introduced doctrines of law. The disadvantage to Māori was compounded by their unfamiliarity with the Pākeha legal process, and factors such as expense, distance, and access to legal counsel, but the fundamental unfairness the application of civil procedure posed, was the underlying statutory bias supporting Pākeha settlement.

428. As Luttien's report highlights the Crown, moreover, was well aware of this. It was the reason why Native Minister Bryce in 1884 issued his directive to curb police involvement in the execution of ejectment writs against Māori as a matter of course. The Ministerial check effectively suspended the law being applied to Māori for the next 15 years, a crucial time of post-war Pākeha expansion, although the same cautious approach did not seem to apply to Crown evictions undertaken in this period. Inspector McGovern's view of Circular 4/1884, as one 'which all Police Officers residing in Native Districts appreciate and I trust it will long remain in force', suggests the policy was an important factor in frontier relations.

429. Luttien posits if this can be regarded as Crown protection? She observes:

[442] Wai 2180, #A039, Grant Young, *Mangaohane Legal History*, p194-195.

> *It is possible to see the reluctance of Police Commissioner Hume and Under-Secretary Waldegrave to give in to Sheriff Thomson's repeated requests for police assistance as a protectionary measure for Maori. This is lessened somewhat by the impression that neither of them really understood why it had been invoked in the first place, and dispelled altogether by the evidence of official indifference to the subsequent hardships faced by the family. The Head of the Native Land Purchase Department could find time to attend court in Whanganui to upset partition arrangements in order to extract another Crown purchase from the family's land of Awarua 4C15. But he showed no similar initiative or interest in implementing the Native Affairs Committee's recommendation for three consecutive years to put right the court's 1896 partition which had resulted in further loss to the family at Mangaone in the wake of their eviction.*
>
> *The events at Pokopoko, together with the other eviction case studies considered in this report, also tend to cast Bryce's injunction, not as an active protection for Maori, but rather a means of ensuring that Pakeha expansion in this period did not breach the prevailing peace. Again, the kainga of Pokopoko and Winiata Te Whaaro's farming enterprise predated Crown title. Real protection might have ensured that civil proceedings could not be invoked where title was an issue of ongoing dispute, or threatened peaceable Maori settlement at all. Rather than devise a code of civil procedure to take such factors into account, however, the Crown's approach seems to have been to suspend the enforcement of the existing code until such time as Pakeha settlement in any district forced the issue. For Winiata Te Whaaro and his people at Pokopoko, this time was the autumn of 1897.*

430. We say it cannot.

To what extent, if at all, did the destruction of Pokopoko undermine the tino rangatiratanga of Winiata Te Whaaro and his people?

431. The answer is set out in a number of pieces of evidence but the most poignant reminder of the way the events impacted on Winiata Te Whaaro and his people is recalled in the testimony of Hineaka Winiata. In her brief of evidence she says:[443]

> *that she is a grandchild of Winiata Te Whaaro and Peti Mokopuna Hamutana. Her father Whakawai Winiata Te Whaaro was their youngest son. Her father and some of his older brothers and sisters were alive at the time of the arrest and they would have recalled what happened at Pokopoko. Her father was about 9 years old when they were evicted from their ancestral lands. She says that her father never*

[443] Wai 2180 #H3 Brief of Evidence of Mrs Hineaka Winiata.

spoke to them about what happened at Pokopoko and she believes it was because they didn't want them to get hurt. She says she was raised as English-speaking Māori but that te reo Māori was her father, aunties and uncles first language and they may have spoken about what happened amongst themselves. She knows it was traumatic. She goes on to say that their connection to the land is still felt strongly so many years after the persecution of Winiata Te Whaaro. To have Mangaohane taken away is a hurting thing and the removal still lives on in us. That is why we always grieve.

432. Dr Moana Jackson is more explicit:[444]

It is my considered view that the actions of the Crown in the removal of Winiata Te Whaaro from the lands of his people constitute fundamental breaches of Te Tiriti o Waitangi. Their actions and the legislation and Court processes upon which they were based constitute an assault on his mana and by necessary extension the mana of his people. In a very real sense they were a denial of the good faith professed by the Crown and besmirch its honour.

433. Later he goes on to add:[445]

…the arguments that mana and tino rangatiratanga could not and would not be ceded have been consistently maintained by Iwi and Hapū since 1840 – often in the language of a non-cession of sovereignty. It was therefore especially heartening that the argument was acknowledged by the Tribunal in the First Report of the Paparahi o te Raki claim.

195. In that Report the Tribunal stated "In February 1840 the rangatira who signed Te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories". It therefore seems to logically follow that they also did not cede any constituent parts of that sovereignty, including those which relate to the land and the uses of the land.

196. Indeed, because mana could not be ceded in tikanga or Māori legal terms it is in fact axiomatic that the responsibility and authority of Iwi and Hapū to protect and exercise authority in relation to the land could also not be given away in any treaty. The whenua was simply too fundamental to the very notion of mana itself – to cede authority in relation to land was to give up the obligation to care for it, and to give up that responsibility was to be in breach of tikanga. In very real terms it was to cease to be tangata whenua.

[444] Wai 2180, #H7 at para 190.
[445] Wai 2180, #H7 at para 194-201.

197. *It is also my considered view that logically the guarantee of tino rangatiratanga in Article Two of Te Tiriti and the English text of the Treaty reaffirms both the tikanga and mana of Iwi and Hapū in relation to land. Each of the respective Articles refer to whenua or lands and in Te Tiriti quite categorically link the land to the continued exercise of tino rangatiratanga - "ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o rātou wenua,o rātou kāinga, o rātou taonga katoa".*

198. *Similarly, I submit that land is also reserved to Iwi and Hapū because of the specific reference to taonga also in Article Two. Its innate "preciousness" clearly places it within the protective mechanisms of tino rangatiratanga guaranteed in Te Tiriti. Land is clearly within the sphere of influence retained by Iwi and Hapū.*

199. *It therefore seems logical (and just) to assume that any actions in relation to land that were pursued by the Crown outside the sphere of influence reserved to Iwi and Hapū through the authority of tino rangatiratanga constitute very real treaty breaches. That is clearly the case in the removal of Winiata Te Whaaro from his lands.*

200. *They were therefore not an "eviction" in terms of the Crown exercising a legitimate authority granted to it as part of kawanatanga under the Treaty. Rather it was a "removal" with no legitimacy in treaty terms. And an illegitimate and forced removal amounts to a raupatu than in itself is a treaty breach.*

201. *Such a conclusion seems both logical if sovereignty was not ceded by the Crown, and just if simply seen in terms of the harm done to the people of Ngāti Hinemanu and Ngāti Paki. Its very logicality also in my view compels a reconsideration of presumption of "Treaty Principles".*

434. The most obvious consequence of enforcing Studholme's title over that of Winiata Te Whaaro was the loss of the family's home, livelihood and economic base. In time the Donnellys acquired the whole of Mangaohāne: 48,000 acres of freehold and 20,000 acres of leasehold.538 As councillor for the Erewhon Riding of the Hawkes Bay County from 1905 to 1917, George Donnelly was behind the county council decision in 1907 to form Mangaohāne Road, giving crucial road access to his property.539 By 1914 the property carried 40,000 Romney-Merino sheep, and cattle and horses. Described as a small village, Mangaohāne Station employed four permanent shepherds, two seasonal shepherds, a fencer, wagoner, cook, rouseabouts, a

ploughman, blacksmith, cowman-gardener, a rabbiting gang, and two or three cadets. At shearing time there were up to 75 people on hand.540 It is precisely such enterprise, albeit on a smaller scale, that Winiata Te Whaaro's family was deprived of as a result of the eviction.[446]

435. The loss of Mangaohāne was not merely economic. The high tussock country was a special place, and Pokopoko had been home to a generation of Te Whaaro and Tanguru children. Claimant Ngahape Lomax, brought up by Wirihana Te Whaaro, tells how his koroua's eyes would mist when he spoke of Pokopoko. Mr Lomax explains that the eviction diminished Winiata's mana as a rangatira among his people: 'In Māori culture when you lose, you're shamed. And you're shamed even more when you lose unjustly.'[447] He maintains that the stigma attached to the unjust eviction fell heavily on the shoulders of Winiata's children, and is felt still as a deep wound within the family. He also shared that the treatment of Winiata Te Whaaro which ultimately led to the family's removal instilled a lasting hatred for the Crown, an authority Winiata and his brothers had fought for, but which left them with an abiding sense of betrayal.[448]

436. The arrest and eviction was a humiliating end to a fifteen-year conflict over tenure on Mangaohāne 2 Block, bringing to an end, too, Ngāti Paki's livelihood. Evidence suggests that the long battle over title to Mangaone adversely impacted on Winiata Te Whaaro's title to other Mōkai Pātea lands. In addition he had sold his interests and those of some of his children in Awarua to fund the litigation over the family farm on Mangaohāne. The eviction, therefore, rendered the Te Whaaro family virtually landless. The remaining land of six Te Whaaro siblings at Winiata amounted to 514 acres. The lack of turangawaewae for the elder siblings within Mokai Patea led to some of them leaving the district: in the long term it continues to be a source of friction and hurt among the family.[449]

[446] Wai 2180, #A56 p 140.
[447] Wai 2180, #A56 p 141.
[448] Wai 2180, #A56 p 141.
[449] Wai 2180, #A56 p 169.

437. One of the most insidious aspects of Winiata Te Whaaro's battle over Mangaohāne is the way in which it impacted on his entitlement to the wider Mōkai Pātea district (In the partition of Awarua (1890-91), and again in the rehearing and partition of Owhaoko (1887; 1888; 1893), his ancestral take were challenged, his interests were reduced to those of 'aroha', and the resulting awards in terms of acres but a fraction of those awarded to his kin. In determining title to the vast 'rohe pōtae' of Awarua, estimated at around 256,000 acres, Winiata and his family emerged from the court process in 1891 with small shares in Awarua 1, 3B and 4.[450]

Moreover, how, if at all, did this undermine the tikanga of Taihape Māori?

438. In many respects the answers to the second part of these issues is also relevant to this question. In this respect we repeat especially the observations of Dr Jackson above. What is clear is that Māori Law was ignored as having any relevance in the resolution of the dispute which after all arose from a relationship that would normally have been dealt with under civil procedures of the time.

439. The buildings destroyed included a wharepuni which as a matter of Māori Law is an egregious act. In conceptual terms the razing of this wharepuni to the ground was as impactful as any spoils of war in armed conflict and would have been recognised as so by those undertaking Donnely's work Unsurprisingly upon learning of the destruction at Pokopoko, Winiata was angered and wished to cancel the agreement relating to the urupā there; saying: "I will bring away my dead from there because the decision arrived at by us together with the legal gentlemen, and the Chief Judge [has] also become bad." Accordingly, the kōiwi in the urupā were disinterred and removed to ensure no further harm could befall his hapū. The consequences of this displacement and destruction cannot be over emphasised for the breaches of Tikanga that followed the removal of the hapū from the lands.

440. After the eviction in May 1897 the family moved to their kainga at Mangaohāne, where the wharepuni Tautahi had been built by Winiata Te

[450] Wai 2180, #A56 pp 147 -148.

Whaaro the previous year. The loss of the family's economic base at Mangaohāne rendered them vulnerable to short-term adversity. Nine months after the eviction, for example, cold frosts in February 1898 ruined the potato and corn harvest throughout the district. In November 1898 a John Clouston of Mangaohāne appealed on the family's behalf to Premier Seddon for potatoes: 'I can assure you some of the Natives in this district are badly off for food at the present time.'His letter was accompanied by a list of 25 signatures from the Mangaohāne kainga, all of whom Constable Black later reported were 'related to Winiata Te Whaaro'.[451]

441. The Te Whaaro family's kainga at Winiata remained a significant Māori presence in the Taihape district. However their circumstances were much reduced from their position at Mangaohāne as productive farmers on customary lands. The land at Winiata has been further partitioned on individual lines, burdened with survey and rates liens, and various sections over time leased, 'Europeanised', and sold.[452]

What other parties, key tūpuna, hapū and/or whānau were involved in the eviction at Pokopoko? To what extent were the interests of other parties, hapū and/or whānau affected by the eviction of Winiata Te Whaaro and his people from Pokopoko?

442. The Joint brief of evidence of Jordan Winiata and Grace Hoet [453] sets out very clearly the key players that were involved in some way with the eviction.

443. The arrest of Winiata Te Whaaro and the eviction of his Pokopoko community was the closing act of a long-running title dispute to the Mangaohāne Block, the background and course of which has already been set out fully in historical studies commissioned for this inquiry and woven through a number of the issues in this submission.

444. The events cannot be decontextualised from the operation of the Native Land Court. The Court awarded the lands north of the Mangaone stream to Renata Kawepo and his co-claimants, to Airini Tonore and her co-claimants the

[451] Wai 2180, #A56 pp 142 – 143.
[452] Wai 2180, #A56 p 169.
[453] Wai 2180, #H19.

descendants of Te Honomokai and to Retimana Te Rango and his co-claimants (Ngāti Whiti & Ngāti Tama) with the two just named descended of these ancestors, as shall be found entitled by occupation.

445. The Court then moved to deal with a section of the southern part of the Mangaone stream. Along with Renata Kawepo, Airini Donnelly and others, Ngāti Hinemanu and Winiata te Whaaro were claiming land south of the Mangaohāne stream.

446. The land south of the Mangaone stream was awarded by the Court to Renata Kawepo, Airini Donnelly and the descendants of Te Honomokai, (though the Court was unclear on the nature of his interest in the land). These figures clearly benefitted from the courts decisions and thus the processes of eviction and removal that followed.

447. In its judgement the Court also referred to its leniency regarding the 1840 rule in relation to the inclusion of Renata Kawepo and the Pukehamoamoa judgement citing the invaluable service that Renata had provided to the Crown and Ngāti Upokoiri since his return from the Bay of Islands in the mid-1840's.

448. The claim of Winiata Te Whaaro and those of the descendants of Tuterangi (Ngāti Hinemanu) were 'disallowed'. The Court gave no reasons for their decision. This against a backdrop where Winiata Te Whaaro with his Ngāti Hinemanu and Ngāti Paki community including his two brothers, Irimana Ngahoa and Hori Tanguru were farming sheep on Mangaohane since the late 1870's.

449. On the evidence it is clearly established that Winiata Te Whaaro's two brothers Irimana Te Ngahou and Hori Tanguru were part of this farming enterprise. Irimana had one daughter, in Hawkes Bay.[454]

450. Hori Tanguru and his wife Merehira Te Taipu had at least seven children. Other residents of Pokopoko over the years included Pirimona Te Urukahika, Kararaina, Hana Hinemanu, Rapana Hahu and Hone Kaweka.

[454] Wai 2180, #A56 p. 11.

451. Te Raita Makarini, a close relation who was named in Studholme's legal action in 1897, was registered as a sheep owner there with a flock of 500 in April 1896 although she had died in 1893.

452. At the time of eviction, at least four of Winiata and Peeti's children were married, and the youngest, Whakawai, nine years old. Winiata and Peeti themselves, with their youngest children, may have lived between Pokopoko and their new kainga at Mangaone. Son-in-law Hune Rapana managed affairs at Pokopoko, while annual sheep returns suggest that their eldest son Te Keepa Winiata was already utilising his wife's land at Maraekakaho. In all, the community evicted from Pokopoko included at least 25 people.[455]

453. The discussion by Luitten highlights both those immediately impacted upon but also sets out how a further chain of events added further severe trauma to the descendants of Winiata a few years later when the family was once again evicted from the lands they initially relocated to at Mangaohāne.

454. The Winiata kainga at Mangaohāne was located on Awarua 4C. Winiata Te Whaaro's adult offspring had begun to clear and fence land at Mangaohāne for farming as early as 1894, at a time when their interests in the 15,632-acre block were undefined. Two years later, and two months after Tautahi was opened, in August 1896 Awarua 4C was partitioned in Hastings by Judge Mair. Application for partition had been made by the Minister of Lands to have the Crown's purchased interests defined, and by Utiku Potaka to have the owners' balance partitioned. According to Winiata Te Whaaro, only five of perhaps 50 affected owners were present at the partition hearing. He was not one of them. The whole arrangement was facilitated by JM Fraser out of court, the court simply recording the partitions as presented on a plan and satisfying itself, by the testimony of key individuals such as Utiku Potaka and Hakopa Te Ahunga that the resulting divisions were 'fair', and that there were no objections. As a result of this partition, six Te Whaaro off-spring and ten of their Tanguru cousins were among the 29 owners of Awarua 4C15, some

[455] Wai 2180, #A56 p. 12.

2,057 acres at the northern end of the block which encompassed Winiata Marae.[456]

455. Winiata Te Whaaro later claimed that he had been unaware of the hearing in Hastings, that neither he nor his children received gazette notices about the partition. Alerted by some of his children 'who happened to be over in Hawkes Bay', he attempted to intervene:

> *My son arrived [at Winiata] at ten o'clock at night, and on the morning of the next day, Friday, I went to Ohingaiti and sent two telegrams. I sent one to the Judge, asking him to withhold his decision, and that I would go down on the Saturday. I sent the other telegram to Mr. Fraser to the same effect.*
>
> …
>
> *I went to the Court on the Monday morning and I found that the case was over and that the people had gone away.*[457]

456. Most of the partition business was in fact complete by Saturday, 15 August 1896. The court minutes record that on 24 August JM Fraser communicated Winiata Te Whaaro's request for an alteration in the boundary of the adjacent Awarua 4C13 to the court. Judge Mair advised him to consult with the affected parties and adjourned the matter for five days. Winiata Te Whaaro later explained that he had been unable to get Hakopa (who fronted the partition in court) to agree to move Awarua 4C13 to the end of the block. He claimed to have objected once more to the court, to no avail. Judge Mair maintained that no one appeared in court on the Saturday, and that he never heard any more about the matter.[458]

457. The issue of concern was the improvements the Te Whaaro family had made at Mangaohāne, the two clearings of 50 acres and 26 acres valued at £141.565 Winiata's objection at the point of partition in August 1896 indicates he was aware of the potential risk to these improvements, but it was not until surveyors arrived three years later, in March 1899, that the family found out all their hard work was located on land that had been awarded to others.[459]

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[456] Wai 2180, #A56 pp.144-148.
[457] Wai 2180, #A56 pp144-148.
[458] Wai 2180, #A56 pp144-148.
[459] Wai 2180, #A56 pp144-148.

458. Ostensiby Hakopa and others benefitted from the failure on the part of the court to ensure adherence to due process.

What were the Crown's perceptions of Winiata Te Whaaro prior to the entrance of the police expedition onto the site of Pokopoko, and how, if at all, did this impact upon the dynamic of its dealings with Te Whaaro during hearing proceedings and following his eviction and arrest?

459. A significant feature of Winiata Te Whaaro's eviction was the Justice Department's refusal to agree to Sheriff Thomson's repeated requests for police assistance. In the same breath, Under-Secretary of Justice Frank Waldegrave insisted that Winiata Te Whaaro obey the law and remove from the land.

460. The Tribunal is confronted ostensibly with two differing perceptions at play at a critical time of prior to the forced removal of Te Whaaro and his followers.

461. To Winiata Te Whaaro, Mokai Patea was home. He was born and raised on Awarua, having ancestral connections through his mother's side, and was related to virtually everyone who lived there. With his brothers he had served with Renata Kawepo for the Crown in the campaign against Te Kooti. It was while he was away that he met his wife Peeti Mokopuna Hamutana, returning with her to Mokai Patea to raise their family.

462. From small beginnings, over 20 years the Te Whaaro family had built a considerable business. In 1892 the three brothers were among 26 Māori sheep farmers listed as occupying the Awarua and Motukawa blocks, Winiata Te Whaaro's flock of 8,000 sheep ranking him third in terms of flock size.23 In January 1894 when Studholme was considering an out of court settlement, Owhaoko farm manager Richard Warren considered that Winiata Te Whaaro would 'ask at least for half the block'. Later that year, in correspondence with his lawyer, Studholme estimated Winiata's flock at 10,000 sheep, occupying some 10,000 acres south of Pokopoko Stream. The seven grown sons at Pokopoko were no doubt a large part of this success. In 1894 the family had expanded their enterprise to Mangaohāne, on the Awarua block. At this time

title to Awarua had been determined, but the numerous interests had yet to be located. Winiata Te Whaaro described the improvements his children had madeat Mangaohāne since 1894 to the Native Affairs Committee in August 1899. Two areas, one of 50 acres and the other of 26 acres had been cleared and fenced at this time, Winiata's offspring paying Pakeha for both the felling of the bush and the fencing of these areas, which were then cultivated.

Was the decision to send a police expedition to Pokopoko to apprehend Te Whaaro and his people a reasonable and fair one? To what extent can this be considered the direct responsibility of the Crown?

463. The arrest and eviction was undertaken under the authority of Supreme Court writs. The claim about these events raises fundamental issues about the application of New Zealand law to Māori:

- To what extent was it incumbent on the Crown to ensure that Supreme Court civil ejectment procedures were appropriate for New Zealand circumstances, particularly where title to land was in dispute and the effect of the proceedings would be the dispossession of communities of long-standing.

- In subjecting Māori to such civil proceedings as Pakeha settlement expanded, to what extent was it incumbent on the Crown to ensure that Māori were not disadvantaged by their unfamiliarity with the novel and complex legal process, but rather had equitable access to justice?

- What role did the Wanganui sheriff, runholders and/or their agents, and members of the police force play in the eviction of the Pokopoko Māori community, including any destruction or relocation of houses and property, or loss or destruction of stock, and on what authority?

464. Runholder John Studholme was ultimately responsible for bringing the civil action against Winiata Te Whaaro to gain possession, and for pursuing the writ of attachment against the rangatira when he refused to remove. The

Studholme family land holdings amounted to almost one million acres in different properties throughout New Zealand.

465. By law, Sheriff Thomson was responsible for executing the original writ of sale and possession. He spent two days at Pokopoko in April 1897 attempting to persuade Winiata Te Whaaro to give up possession, without success. The writ of attachment seems to have been his idea, obtained on the strength of his allegations of Winiata Te Whaaro's violence. The Sheriff utilised district constables to assist him with the execution of the writ of sale and possession and the service of the writ of attachment. However, police became directly involved at the point that Chief Justice Prendergast issued the writ of attachment to Sergeant Cullen and other constables, commanding them to arrest Winiata Te Whaaro and bring him to Wellington to answer his contempt. Issuing the writ of attachment to the police was a departure from usual court practice. In addition to assisting with the arrest, the three other constables present seem to have then escorted the community to Waiokaha.

466. Given the confusion around the circumstances of the interchange between Sheriff Thomson and Winiata Te Whaaro we say the process was neither fair nor reasonable. This needs to be measured against the obvious reluctance of the court to issue a writ of attachment in the absence of some clear evidence of intention to ignore the rule of law.

467. Although responsible for the execution of the writ of sale and possession, Sheriff Thomson did not remain at Pokopoko to see this carried out to completion. On his instructions, movable property inside was taken outside before the houses were destroyed. The destruction of the kainga and the transportation of the community's property was undertaken by Studholme's station manager, Richard Warren and his workers.

468. Luitten's conclusions are important in any response to this question. She observes:[460]

> *Those on the ground confronted by the realities of frontier life had markedly different views about the Crown's role. Sheriff Thomson's repeated pleas for police assistance in order to execute the civil writ*

[460] Wai 2180, #A56 p. 169.

bordered on the insubordinate. Charged to enforce the Queen's writ over communities only recently exposed to Supreme Court decrees, Thomson was well aware that compliance could not be taken for granted. Even before Winiata Te Whaaro confirmed it, Thomson recognised that the eviction of the established kainga presented a tipping point in the power dynamics of what had been an entirely Maori rohe, for which the visible authority of the state was required. Thomson was not troubled by Winiata's claims of injustice, it was not his job to be so. What he did know was that when it came to the point, he needed constables at his side to show the Pokopoko community that the law meant business and could not be ignored.

The bible, the gun, the pound notes. It is difficult to say for certain what Winiata Te Whaaro meant with his symbolic gestures. Was he pointing to his own allegiance to the 'Queen's things': his Christian faith, his military service on behalf of the Crown, his engagement in the new market economy, his recourse to the courts of the land? Or were the pound notes he proffered to Sheriff Thomson representative of how the rangatira perceived he had been defeated by Studholme in the contest for title? What is clear is that Winiata Te Whaaro understood the Crown's role in his dispossession.

Fundamentally, he did not accept the state's premise that the civil proceeding against him could be detached from the underlying dispute over title. His starting point for refusing to leave his farm was that Studholme's title was wrong, a miscarriage of justice obtained by his opponents through the weapon of litigation which exploited competing court jurisdictions. Winiata Te Whaaro viewed his arrest and eviction as evidence of Crown support for Studholme's title on the basis of unlawful purchases at the expense of his own take to his kainga and farm. Send the bill, he told Chief Justice Prendergast, to the government. Winiata Te Whaaro did not see his resistance, framed in terms of contempt, as a threat to peace nor as a breach of law: 'I roto ahau i tena Ture e haere ana i enei Tau ka mahue ake nei …' / I have been keeping within that law during these years past …' As an ex-serviceman and successful farmer in his own right, he could scarcely be labelled as anti-establishment. His vow to die rather than to leave expressed his conviction in the righteousness of his cause. Finally, as legal processes for the eviction pressed close, in setting out at length his long legal battle for entitlement Winiata Te Whaaro expressed confidence in a Crown that would intervene to prevent his dispossession.

469. Hill writes that in New Zealand an overtly coercive policing strategy was employed by the State against Māori from 1840 to crush resistance to Pakeha authority. In the wake of the sovereignty wars of the 1860s, the Armed Constabulary was established to consolidate Pakeha control of conquered

areas through continued surveillance and the development of communication infrastructure. Having imposed 'law and order' by force of arms, the focus of the new constabulary became that of maintaining pacification. As Hill observes, Donald McLean's dual roles of Minister for Colonial Defence and Native Minister was a conspicuous acknowledgement of just how closely entwined these portfolios were at the time.[461]

470. Over the following decade the Armed Constabulary was rushed to hotspots of resistance – at Pukearuhe in Taranaki, for example, or to hold the Napier-Taupo defensive line against Te Kooti. Within otherwise 'tranquil' Māori districts, the weight of substantive Crown sovereignty was ushered in by other means – namely the Native Land Court and the land sales that inevitably followed – and felt only as and when Pakeha settlement reached such outlying districts. Even if the reach of civil law had yet to catch up, by the mid-1870s government officials were gratified that sufficient control had been established over 'Māori' districts that police were able to execute warrants for the arrest of Māori offenders (with the exception of Te Rohe Pōtae, Te Urewera, and some parts of Taranaki). Much of this Hill says can be credited to the mediatory role that Native Constables played at this time under the Resident Magistrate regime but the larger reality was that unless Māori presented a direct threat to state authority they were left alone. Pakeha Constables generally policed Pakeha, a truism reflected by Constable Roberts' report of the Taupo district in 1871: 'Owing to the scarcity of European population ... the Force in the district has not been often required to act in a civil capacity.'[462]

471. Sergeant John Cullen, primarily responsible for attaching Winiata Te Whaaro for contempt, had a notable career, rising through police ranks to become Police Commissioner in 1912. Cullen was an Irish immigrant with a policing background who joined the New Zealand Armed Constabulary on his arrival to New Zealand, in 1876. He spent the next decade of his police career at different posts in the South Island. In 1891 he was put in charge of the Napier

[461] Richard S Hill, The Colonial Frontier Tamed: New Zealand Policing in Transition, 1867-1886, (GP Books, Internal Affairs, 1989), p.x. p 41.
[462] Cited by Hill, Colonial Frontier Tamed, p. 69.

sub-district, taking up his Whanganui post in 1894. Months after his arrest of Winiata Te Whaaro, Cullen was promoted to Inspector. Hill attributes this promotion to Cullen's undercover work against sly-groggers in the King Country which resulted in numerous convictions, and the fact that a vacancy had opened with the death of Inspector Pratt.

472. According to Hill, at the time of his first North Island posting, Defence Minister Seddon had instructed Cullen to deal with Māori by 'Firmness and decision'. The reputation he earned gives credence to claimant stories about a stealthy and forceful arrest at Pokopoko .Cullen personified the 'Iron Hand' of the state's police force, Hill concluding that under Cullen's reign as Police Commissioner from 1912 to 1916, the benign policing strategy developed since the 1870s – the state's 'velvet glove' – was halted or reversed.224 In this time of industrial strife and international war, Cullen was the man for the job. On his retirement in December 1916, Cullen received two British Empire awards, the Imperial Service Order and the King's Police Medal.

473. As Hill observes, Cullen's willingness to crack down on the perceived 'enemies of order', with little regard for legal principles, made him one of the most controversial police leaders in New Zealand history.

474. We say the mere fact of Cullen's involvement must provide corroborative evidence to the traditional oral record that the incursion by the police was an overreach on their part and unjustified in all of the circumstances.

What, if any, were the legal justifications for the authorisation of entrance by a police expedition into Pokopoko, the arrest of Winiata Te Whaaro, and the eviction of his whānau and their property?

475. If we are to believe Under-Secretary of Justice Frank Waldegrave, the story of Pokopoko is a straightforward one about the process of law, involving a civil suit against Winiata Te Whaaro that had nothing whatsoever to do with the Crown. Indeed, the Crown official had to spell it out five times to the Court officer on the ground that the state would not enter the fray unless there was a breach of the peace. As it happened, the government's policy of studied non-intervention came undone when Chief Justice Prendergast issued a writ

of attachment for Winiata Te Whaaro's arrest to the police constables of New Zealand.

476. Thus a key assessment before this Tribunal is how Sheriff Thomson interpreted the letter to read, 'You say you will not leave till the fire of the Queen makes your blood flow' and then failed to contextulalise the second letter written by Te Whaaro explaining again when he meant when he laid down the bible, gun and money. He then said, "I shall bleed for my country." We say the actions of Winiata Te Whaaro when contextualised against the second letter do not establish a primary facie case to effect a breach of the peace as was the precondition required. He was not doing any more than what the Te Tiriti promised affirming his rights to ancestral lands and reminding the Crown that he had fought as an ally for them during the New Zealand Wars and his rights needed to be respected.

477. Winiata Te Whaaro believed in the law. He had spent five years in litigation and sold his childrens' inheritance to pursue his title to his farm through the courts. The issues arising from that battle are not the subject of this report, although as indicated above, they cannot be ignored. The civil ejectment proceedings inherited from England protected property owners where the underlying title was not in dispute. The process itself had little room to consider such issues: the New Zealand experience shows the Supreme Court took matters on face value, particularly where Māori defendants did not appear to defend the action. Indeed, the overwhelming response to Winiata Te Whaaro – by Sheriff Thomson, Chief Justice Prendergast, and Crown officials like Waldegrave alike – indicates that there was no room at all within civil ejectment proceedings to consider the justice or otherwise of underlying title issues.

478. In the face of Winiata Te Whaaro's intransigence over the writ of possession for Mangaohāne in April 1897, Sheriff Thomson announced that Winiata and his people 'by their action had shewn they were enemies to the Queen'. To illustrate the 'very serious trouble' that would result, the sheriff drew a parallel with Te Whiti's resistance and imprisonment, leaving the Pokopoko community with the threat that they would be treated in the same way. We

say when the facts set out earlier in our submission are assessed this was an overreaction and needs to be seen in the context of other evictions that were occurring in the same period if we are to have a clearer picture for the arrest process that followed and the policy decisions that were at play.

479. A helpful discussion with some case studies is included in the Luitten Report relied upon. She notes for example that when the first ploughmen from Parihaka began digging up lawn near Hawera in June 1879, Native Minister Sheehan condoned their mass arrest, instructing the armed constabulary officers throughout the district not to worry about the law: 'you take the men and the government will find the law.' And find the law it did.

480. From 1879 to 1883 parliament enacted at least six separate Acts to legitimate the suppression of the Parihaka resistance. [463]Among other things this legislation enabled arrest without warrant, detention without trial, and outlawed gatherings greater than 50 people. Tohu Kakahi and Te Whiti o Rongomai and hundreds of ploughmen, fencers and cultivators were imprisoned without trial in this period. The actual destruction of Parihaka and eviction of the community there took place in November 1881 under the personal supervision of Native Minister Bryce.

481. Similar examples are highlighted.

Was the destruction of Pokopoko lawful and appropriate in the circumstances and did those actions, in turn, breach the Crown's obligations to Taihape Māori under the Treaty?

482. We contend that a dispassionate assessment of the facts shows that there was no justification for the events that transpired at Pakeha law and thus it follows that as a matter of simple Te Tiriti o Waitangi interpretation no justification to deny the Article 3 expectation that all were equal before the law and entitled to the full protections of the law.

[463]Maori Prisoners Trials Act 1879, Maori Prisoners Act 1880, Maori Prisoners Detention Act 1880, West Coast Settlement (North Island) Act 1880, West Coast Peace Preservation Act 1882, West Coast Peace Preservation Continuance Act 1883, all discussed in Riseborough, Days of Darkness, chapters 5-6.

483. The Article Two breach alleged by the claimants arises from the fact that there was no room at all within civil ejectment proceedings to consider the justice or otherwise of underlying title issues.

484. The primary issue involved with the subjection of Māori to civil ejectment proceedings, therefore, arose from the lack of any provision to take such matters into account. Within the disputed landscape of the colonial frontier the Crown's insistence that civil ejectment proceedings be treated in isolation effectively armed Pakeha settlers with the law. The disadvantage to Māori was compounded by their unfamiliarity with the process, and factors such as expense, distance, and access to legal counsel, but the fundamental unfairness the application of civil procedure posed, was the underlying statutory bias supporting Pakeha settlement while at the same time denying the operation of Māori Law and Customary Rights.

485. This attitude must be seen as part of the broader policy of land acquisition of the period. In his recent comprehensive study of nineteenth-century government policy towards Māori land, Richard Boast sums it up as both crude and effective: 'to acquire as much Māori freehold land as possible as cheaply as it could'.[464] He attributes this policy to the 'sacred mantra' in the New Zealand political mind of providing land for close settlement, rather than any intentional ill-will towards Māori. [465]

486. Given that the end result for Māori was so damaging, one has to wonder how much importance to place on the issue of intention. Does the absence of any malice towards Winiata Te Whaaro in the Studholme papers make the eviction any less unjust? Boast criticises the government for failing to include Māori within its objective of close settlement, for squandering money on land purchase rather than investing it in Māori development through capital assistance and training. Government policy over a period of fifty years, he concludes, was 'unimaginative, thoughtless, mediocre, governed by untested

[464] Boast, Buying the Land Selling the Land, p. 450.
[465] Boast, Buying the Land Selling the Land, p. 450.

assumptions and mean-spirited', even if it was not actively hostile to Māori.[466]

487. The claimants ask this tribunal to consider whether to continue with a policy of dispossession for such a sustained period, in the face of persistent appeals from the dispossessed, seems by definition hostility or in the Māori metaphor " Whakairi Patu" . Any veiled attempt to facilitate the impostion of law while the Sword of Damocles is dangled above any self-respecting individual fighting to maintain their customary rights must certainly be contextualised in the round. It sets the foundations for the more obvious approach that was being effected where Te Whaaro was to be made an example as part of the Crown's effort to impose Pakeha law and to subjugate Māori to it as part of the broader colonial objective.

488. Luitten's conclusions are apposite in the findings we seek when she observed:[467]

> *The events at Pokopoko, together with the other eviction case studies considered in this report, also tend to cast Bryce's injunction, not as an active protection for Maori, but rather a means of ensuring that Pakeha expansion in this period did not breach the prevailing peace. Again, the kainga of Pokopoko and Winiata Te Whaaro's farming enterprise predated Crown title. Real protection might have ensured that civil proceedings could not be invoked where title was an issue of ongoing dispute, or threatened peaceable Maori settlement at all. Rather than devise a code of civil procedure to take such factors into account, however, the Crown's approach seems to have been to suspend the enforcement of the existing code until such time as Pakeha settlement in any district forced the issue. For Winiata Te Whaaro and his people at Pokopoko, this time was the autumn of 1897.*
>
> *'Obey the law which is above all, lest evil come upon you'. It is not known whether Winiata Te Whaaro ever received this scarcely veiled threat posing as a pearl of biblical wisdom from the Justice Department. In any event, it was no more than Sheriff Thomson had communicated to the community when he first visited in April. This claim, to be sure, is about law but it is not straightforward. Just as Winiata Te Whaaro's metaphors were misunderstood and manipulated to become the pretext for his arrest, this eviction story is about the use of civil ejectment law as a weapon of dispossession when the guns had been laid down, bolstered by the might of the state. Placed in its context, it is about the way New Zealand law has effected the transfer of land – and corresponding wealth – out of Maori hands into private Pakeha*

[466] Boast, Buying the Land Selling the Land, p. 450.
[467] Wai 2180, #A56.

ones, and the extent to which the Crown, as the architect and enforcer of this law, stood by and let it happen.

489. In his affidavit claimant Herbert Winiata Steedman asks some searching questions which we ask the Tribunal to consider carefully: Why was Winiata Te Whaaro treated so highhandedly? Why was the law unable to protect his lands? Why were his family homes and possessions destroyed? when assessing Crown's motivations here.[468]

490. On the face of it, Winiata Te Whaaro was living the Liberal dream: a productive smallholder, making an independent livelihood for his family from the land and contributing, too, to the wealth of the nation. Pokopoko was a hard-working, law-abiding, peaceable settlement. In a nation which was already beginning to pride itself on its race relations, in the early 1890s Winiata Te Whaaro was a poster-child of Māori success in the new colonial order. Why did the Crown stand by and allow his demise?

491. The answer to this derives from an understanding of some key factors. The key policy frameworks of the time; the involvement of some pretty notorious individuals employed to bring the iron fist of the Pakeha law as opposed to the velvet glove alluded to as part of an effort to entrench the motives of expansion and entrench the position of the privileged elite of the time.

492. The Studholme family feature throughout our evidence and others before this Tribunal alongside the influential people and organisations that assisted them to gain the Mangaohāne, Pokopoko lands. The Studholmes were determined to gain the more sheltered lands of the Mangaohāne Block for lambing. John Studholme Snr involved other influential people to assist them in making it happen. We commend the discussion of the interrelationships of the key players in the Joint Brief of Evidence of Jordan Haines Winiata and Grace Hoet to illustrate our sense that whatever the justices or merits of the position for Winiata Te Whaaro he did not stand a chance.

493. HD Bell was a legal representative who the Studholme's engaged in their legal fight for Mangaohāne. He was also a Member of Parliament for

[468] Wai 2180, #E3(a), Affidavit of Herbert Winiata Steedman, p. 11.

Wellington between 1893-1896. Bell also acted for the stock agent and lending firm Murray Roberts & Co and his relationship with the Studholmes cooled throughout 1894 as a result of the dispute over credit. One of the implications was Murray Roberts & Co refused to continue to allow legal costs for Mangaohāne to be charged against the Mangaohāne Account so the Studholme's felt that they could no longer afford to employ Bell. That is when they turned to William Rees.

494. William Rees was a legal representative of Studholme and a member of the Native Law Commission. He also chaired the Native Law Commission that addressed Studholme's 1890 petition requesting for legislation to protect their rights. The Committee recommended that Studholmes case be unaffected by the 1892 partial rehearing ordered by the Chief Judge.

495. In 1893, Rees sent a memorandum to the Native Minister and the Government informing them of the serious and alarming state of all titles resulting from the Native Land Court including Mangaohāne and recommended remedial legislation to avoid extensive litigation. This caused huge debate over the Native Land Court (Validation of Titles) Bill.

496. Morrison, circulated a document amongst all the politicians sitting in Parliament that was highly critical of Rees. Morrison accused Rees of representing Studholme while he chaired the Native Affairs Committee hearing on his petition and that he unfairly prevented Morrison from speaking on behalf of the grievance of Winiata Te Whaaro. He also accused Rees of supporting a Bill that was denying Winiata Te Whaaro his rights while at the same time promoting his client's rights.[469]

497. There is no evidence to suggest that the judiciary was overtly partisan to upholding Studholme's interests, but in at least one case – that of Judge Butler – the close ties evident in the Studholme papers raises serious issues about judicial impartiality. William James Butler had been in the job for a year when he confirmed Warren's purchases. Prior to that he had been working as a government land purchase officer in the district – involved in the purchase

[469] Wai 2180, #A56 at p 22.

of interests in Te Kapua and Awarua blocks as late as 1892 – making him an extraordinary choice as the arbiter of Mangaohāne matters.99 Warren was in the habit of discussing Mangaohāne with Butler before his judicial appointment.100 This support seems to have continued in his new role: in March 1895 Judge Butler accompanied Rees to Otaki where they 'spent the evening' talking over Mangaohāne matters with the Chief Judge, in particular whether the Validation Court had jurisdiction to hear Studholme's case.101 J Studholme Snr was encouraged enough by the response from the Chief Judge, and Judges Barton and Butler that he urged his son to proceed with the litigation.102 HD Bell's efforts in January 1895 to have Judge Butler in particular authorised to validate the Mangaohāne certificates he had earlier granted caused Chief Judge Davy to explain to the Under-Secretary of Justice that the only reason behind Bell's request was to avoid delay: 'I do not believe that there is any other reason.'[470]

498. Appointed in June 1893, Butler's very first case as Native Land Court Judge (with Judge Mackay) may have been the rehearing of Owhaoko D, in which Winiata Te Whaaro was vitally interested. The judgement, issued in July 1893, did not uphold Winiata's appeal, rationalising instead his patent local familiarity with the land as 'possibly attributable to a knowledge gained of the localities while travelling over the country of late years or to evidence given in the Native Land Court, and to information gleaned from elderly persons acquainted with the district.'104 It was Judge Butler, too, who in July 1894 found against Winiata Te Whaaro's appeal under Section 13 of the Native Land Court Act Amendment Act 1889, with another pronouncement that the original Mangaohāne judgement may have been different had the whole of the evidence been available to the court, but that this was the fault of the parties themselves.[471]

499. Throughout the decade of strife over Mangaohāne, the Studholmes maintained that the land had been honestly acquired, the long delay over title to 'their' land occasioned by the 'mistake of a judge'.106 Based on the

[470] Wai 2180, #A56 pp 28-29.
[471] Wai 2180, #A56 pp 28-29.

partition arrangement in 1890, the Studholmes claimed 19,000 acres of Mangaohāne 2 – some two thirds of the block – which was nonetheless occupied by others, namely the Donnelly-Richardson partnership and Winiata Te Whaaro.

500. From his arrival in 1893, John Studholme Jnr had done his utmost to 'get rid of Winiata'. In addition to opposing his neighbour's appeals for title in court, in March 1894 Studholme attempted to persuade Winiata Te Whaaro's relations at Moawhango to sue him for trespass. [472]

501. Given their intersecting interests, Studholme was also undoubtedly behind Murray Roberts & Co's prosecution for Winiata's debt in May 1894 (see p. 48). According to claimant Ngahape Lomax, the Studholmes also pressured local woolbuyers to boycott Winiata's wool, forcing him to raft his produce downriver, where it was sold to Wellington merchants.At the point of Chief Judge Davy's decision in August 1894 to admit Winiata Te Whaaro into the title, the Studholmes were prepared to 'give up' as much as 5,000 acres to accommodate Winiata's claim. The proffered settlement was an indication of just how desperate John Studholme Jnr was to obtain title for farming operations 'as speedily as possible'. In the event, the Donnellys picked up the litigation baton at this point with their successful action against Chief Judge Davy in the Supreme Court.[473]

502. For the Studholmes Mangaohane was, ultimately, a matter of business. John Studholme Jnr was not present at the eviction because he had left to get married. He returned with his new bride in June 1897 to the family estate of Coldstream, not Owhaoko. Within seven years of the eviction, following their father's death in 1903, the brothers sold their Mangaohane titles to the Donnellys.[474]

503. The outcome in for Winiata Te Whaaro as the claimants emphasise was Māori dispossession and disconnection to their ancestral homelands.

[472] Wai 2180, #A56 pp 28-29.
[473] Wai 2180, #A56 pp 28-29.
[474] Wai 2180, #A56 pp 29-30.

To what extent did the eviction and the destruction of Pokopoko result in the damage or loss of wāhi tapu, taonga and property (including sheep stock)?

504. After Cullen took Winiata away the Sheriff gave orders for the stock to be mustered and driven over the boundary and the houses and whare of the family to be burnt and destroyed to stop them from ever coming back.

505. Sergeant Cullen took Winiata to Wellington the following day.

506. Winiata/s son-in-law, Hune Rapana, reported to the authorities that five houses had been burnt down along with their belongings and three cooking houses were chopped down.[475]

507. For the year ending 30 April 1897, just weeks before the eviction, Winiata Te Whaaro of 'Waiokaha, Moawhango' was registered as an owner of 3,624 sheep.[476] The number of stock at Pokopoko may have been augmented by flocks belonging to other family members, although attempting to establish this from the annual sheep returns is a fraught exercise.[477]

508. The idea that the flock was either scattered or sold by Studholme at the time of the ejectment remains a matter of conjecture among Winiata's descendants, with varying opinions. According to the sole newspaper report about the ejectment, once Winiata Te Whaaro had been taken away Sheriff Thomson ordered the removal of his stock, whereupon 'Some 6000 sheep were mustered and driven over the boundary...'

509. In his Oral and Traditional Report prepared for Ngāti Hinemanu and Ngāti Paki, McBurney relates Peter Steedman's claim that Winiata's flock was driven over the southern boundary of Mangaohane into the Makirikiri Valley, referring to the place there known still as 'Wild Sheep's Spur'.[478]

Was the process of trial for Te Whaaro fair and proper?

[475] Wai 2180, #B06(d), Speaking notes of Patricia Cross concerning Pokopoko and Winiata Te Whaaro, p. 4.
[476] Wai 2180# A 56 p 22.
[477] Wanganui Herald, 26 May 1897. Noted in Wai 2180 A 56 p 91.
[478] Wai 2180, #A52, McBurney, p. 378. McBurney concludes that the sheep were indeed scattered, 'driven across the southern boundary to go wild on the Awarua block', p. 381.

510. Based on traditions that, within the realm, all persons ought to be obedient to the King's law and within his peace, from the earliest times courts have wielded a common law jurisdiction to punish any behaviour that interferes with the administration of justice as contempt. To refuse to obey an order of a court amounted to 'a grievous insult to the sovereign, the fountain of justice, who had an intangible, but nonetheless substantial, position in every court where his will was done.

511. The issue ultimately before the court was whether there had been a Contempt of court – or simply 'contempt', the offence of being disobedient or disrespectful towards a court of law and its officers; one example of which is wilfully failing to obey a court order.

512. Winiata Te Whaaro could not separate the Supreme Court action against him from the underlying dispute over title. The Crown's insistence that he comply with the law rested on the opposite premise that the two issues were distinct and separate.

513. The issues highlight a conflict of laws that was at play; the rights of Māori to maintain Tikanga Māori as guaranteed by Te Tiriti o Waitangi and the Common Law presumption that unless expressly extinguished custom was retained by those that possessed it at the date of imperium. These matters have been discussed in the Generic Submissions on Constitutional Matters and are not repeated here. The Māori Custom Regime of course needed to be assessed having regard to the introduction of Statute but in the absence of the full free and informed consent of those to whom the law was being imposed there is at least a prima facie argument available on this basis.

514. The procedural rules of the Supreme Court of New Zealand, designed for local circumstances, were first set out in legislation in 1844.[479] Forty years later these rules were revised and included as a schedule to the Supreme Court Act 1882.[480] The 1882 Code of Civil Procedure – heralded as a

[479] Supreme Court Rules Act 1844.
[480] Second Schedule, Code of Civil Procedure in the Supreme Court, Supreme Court Act 1882.

'simplification' – ran to 570 Rules, a reflection of the growing role and ambit of the Court, and indeed the colony, in the intervening period.[481]

What prejudice, if any, did Winiata Te Whaaro and Taihape Māori suffer as a result of the treatment of Te Whaaro, including the loss of sheep stock?

515. On 13 May 1987, a draft letter from Studholme to Donnelly's solicitor, written from Whanganui indicated that writs of attachment had been issued by the chief justice and delivered to Sergeant Cullen.[482]

516. On 19 May 1987, the Sheriff along with Sergeant Cullen and Constables Shearman and Black went out to Mangaohane and arrested Winiata Te Whaaro and his settlement was destroyed.[483]

517. On 21 May 1897, Bell Solicitors (Studholme's lawyer) sent a letter to letter to P. S. McLean of Carlile and McLean, solicitors saying that Thursday was a holiday and so they were looking for a registrar so they could deal with the case as Winiata had eaten nothing since he was arrested and they were frightened he might die on them.[484] The fact of this letter raises again the spectre of whether there had been fair treatment to this Rangatira while in custody.

518. On the eve of Crown purchasing within Mokai Patea in 1890, Winiata Te Whaaro (with kinsman Retimana Te Rango) presented himself as the rangatira advising Native Minister Mitchelson that all Crown purchase negotiations of hapū lands were to be conducted through them.

519. The fall in the fortunes of this rangatira in the space of less than a decade is staggering. Winiata Te Whaaro's stand at Mangaohane cost him in three ways. In a bid to undermine his claim to Mangaohane, his adversaries seem to have done their utmost to discredit the rangatira within the Native Land Court's business of determining relative interests within the wider district.

[481] The 1882 Code was the result of an 1880 government commission comprised of magistrates and representatives from the Crown Law Office and legal profession, Spiller, Finn and Boast, p. 194.
[482]
[483] Wai 2180, #A39, p. 200.
[484] Wai 2180, #A39, p. 200.

What little land Winiata and his children were granted from this skewed process was then sacrificed to fund the costs of gaining legal title to Mangaohāne. When the battle for Mangaohāne was lost, the Te Whaaro family had little left. Their fallback position at Mangaohāne amounted to 514 acres in the name of six family members. From producing a livelihood from their customary land as a cohesive social unit in the new capitalist order, the family were dispersed, the individual members reduced to wage-labourers. Two years after the eviction from Pokopoko, the family experienced a second displacement as a result of poor Native Land Court process, their petition to government defeated by familiar government inertia and lack of concern. Winiata Te Whaaro died in April 1911, aged 86, one month after his wife. They both lie buried at Winiata.[485]

What happened to the Sheep?

520. There are varying opinions on what happened to the sheep and when – were they scattered or sold? We ask the Tribunal to carefully sift through the various pieces of evidence but concur with these general observations from Mrs Patricia Cross in her testimony:[486]

> *44. McBurney concludes that the sheep were indeed scattered, 'driven across the southern boundary to go wild on the Awarua block'.*
>
> *45. Were the sheep herded over the boundary on the Sheriff's orders?*
>
> *46. My brother Peter Steedman says that Winiata Te Whaaro's flock was driven over the southern boundary of Mangaohane into the Makirikiri Valley, to the place there known still as 'Wild Sheep's Spur'.*
>
> *47. Did Studholme take the sheep across the Rangitīkei?*
>
> *48. It is unclear exactly when the sheep were scattered or stolen, but we know that Winiata Te Whaaro was fined for failing to dip his sheep nine months after the eviction in February 1898.*
>
> *49. We also know that Winiata Te Whaaro would have raised the missing sheep matter in his complaint to Carroll, but he did not.*

[485] Wai 2180, #A56 p 159.
[486] Wai 2180, #H5 Brief of Evidence of Mrs Patricia Cross at para 44 -54.

50. Even with the uncertainty of what happened to the sheep and when the fact remains that Winiata Te Whaaro lost his farm and his means of farming sheep.

51. It is well-known oral history that came down from our tīpuna that after Winiata Te Whaaro was removed from Pokopoko, the Te Whaaro whānau Ngāti Paki, went to look for their sheep. They could not find them as they had been stolen. It is common knowledge amongst our whānau that those sheep were stolen by Studholme.

52. After all, Studholme, though his corrupt dealings with the Crown, took everything else that Winiata Te Whaaro owned, which left him landless, homeless and close to being bankrupt, it makes sense that he would also take his sheep.

Conclusion

53. The success and growth of the farm on the land is proof of what could have been for us, Winiata Te Whaaro's descendants. Instead, Crown actions and policies have left us deprived of this opportunity.

54. Our loss is not just an economic one. Pokopoko was a special place for our people and was evidence of the community spirit in action.

521. What is clear is that a small number of sheep were provided by Rēnata Te Kawepō and built into a substantial block over many years. The sheep at Pokopoko were run on natural grass lands and clearings, and Winiata bred a flock of 11,000 sheep.[487]

522. This is corroborated in further testimony before the Native Land Court. In 1884, at the re-hearing of Mangaohāne No 2, he claimed that when the land went through the court, about 4,000 sheep were at Pokopoko and at the time of the re-hearing he had 11,000 sheep[488]

523. What is clear is that there were at least 3264 sheep owned by Te Whaaro with tallies of sheep from 6000 to 11 000 being managed under his supervision which remain unaccounted for. We agree with the inference that Mrs Cross seeks this court to make that there must be compensation for

[487] Wai 2180, #A39, p. 11.
[488] Wai 2180, #A39, p. 11.

these matters as part of any outcome if the injustices are ever to be properly recognised.

C. TWENTIETH CENTURY LAND USE, MANAGEMENT AND ALIENATION

LAND BOARDS AND THE NATIVE/MĀORI TRUSTEE

524. Issue 7 of the Tribunal Statement of Issues ("TSOI") concerns 20th Century Alienation, Retention, Titling and Administration of Māori Land which includes in its purview the requirement for an assessment of the Māori Trustee's operation in Mōkai Pātea.

525. These submissions focus on the acts and omissions of the Crown concerning the operation of the Māori Trustee and the Department of Maori Affairs with respect to the specific case studies raised by the claimants. They are important context for the concerns raised by the Hoet whanau with respect to the alientations that occurred of their ancestral lands at Oruamatua Kaimanawa.

526. The generic submissions regarding the effects of the Māori Trustee and Department of Maori Affairs working in concert has had on the claimants their whānau and hapū is important to gaining an understanding of their present dislocation from their homelands and the graveman of their complaints to this Tribunal.

527. The Claimants' position, which will be explored more fully below, is that the Crown failed to actively protect their turangawaewae and family homestead from permanent alienation.

528. In this regard the prejudice that followed for the claimants can be traced to:

a) The Crown's deficient legislation that allowed the Claimants' lands to be vested in the Māori Trustee to "deal" with rate arrears;

b) The Crown having developed an instituted a system that enabled the Māori Trustee to alienate the Claimants' land without ensuring it consulted with all whānau members effected; and

c) The Crown's failure to ensure that the Māori Trustee acted in the best interests of the Claimants.

529. Counsel commend findings from the Tauranga Moana Tribunal which found that the Māori Trustee was a "key agent" in the administration and alienation of Māori land.[489] While the Tauranga Moana Tribunal also stated that it had concerns regarding the Māori Trustee being placed in a situation where there was a potential for a conflict of interest by virtue of the legislative framework the claimants assert the legislative scheme was permissive of this conduct in breach of the Te Tiriti o Waitangi guarantee of active protection.

530. The evidence in this Inquiry supports the notion that the Māori Trustee facilitated land sales on the Crown's behalf and that the particular evidence with respect to the Oruamatua Kaimanawa exposes the Crown's failure to properly separate the Māori Trustee from the Crown and to ensure that the Māori Trustee acted for the benefit of Māori. The Crown should have ensured that the Māori Trustee was an independent entity that was not partial to Crown interests.

531. The Crown's omission in ensuring some measure of accountable of an entity of this nature was a failure to observe the basic requirements of good governance. It was also a breach of its duty to act as a partner with the Claimants. The best interests of the Claimants were subjected and side-lined by Crown ideologies and decisions. On that basis, we submit that the Crown did not act reasonably or in good faith and therefore breached te Tiriti

Right to Development denied

532. In respect of obligations with respect to the guarantee of tino rangatiratanga and the right to development a number of Tribunals have commented.

533. The Wairarapa Tribunal found that:

[489] Waitangi Tribunal *Tauranga Moana Report* (Wai 215, 2010), p 721.

a) Māori required human capital, land and resources and new assets including knowledge, technologies, and skills to economically succeed.[490]

b) The Crown should have taken reasonable steps to ensure that the barriers to Māori utilising their lands were removed.

534. The Tauranga Tribunal found that:

a) Māori have the right to develop their properties. Further, Māori have the right to a sufficient land and resource base to develop,and the right to decide when and how to do so.[491]

b) The Crown has a positive duty to assist Māori in the development of their lands.[492]

c) Where the Crown has imposed unfair barriers to development participation, Māori have a right to assistance from the Crown.[493]

535. The Central North Island Tribunal found that:

a) The Crown has an obligation to actively protect Māori in utilising their properties for development opportunities, including farming. This Treaty development right includes not only a right to be able to utilise land in development opportunities, but also a right to retain reasonable control over how the land is utilised and for what objectives.[494]

b) The right to development is comprised of a number of rights including the right to retain a sufficient land and resource base as well as the right to share in the mutual benefits envisaged by te Tiriti and promised by the Crown.[495]

[490] Waitangi Tribunal, *Wairarapa ki Tararua Report*, p 559.
[491] Waitangi Tribunal, *Tauranga Moana Report* (Wai 215, 2010) at p 217.
[492] Waitangi Tribunal, *Tauranga Moana Report* (Wai 215, 2010) at p 217.
[493] Waitangi Tribunal, *Tauranga Moana Report* (Wai 215, 2010) at p 217.
[494] Waitangi Tribunal, *He Maunga Rongo*, p 1010.
[495] Waitangi Tribunal, *He Maunga Rongo*, p 912.

c) The right of development extends to both intangible and tangible taonga and other resources in which Māori hold a proprietary interest.[496]

d) We have found that the Crown's Treaty obligation of active protection does not extend to ensuring economic success in every venture. What it requires, rather, is active protection of opportunities to participate in economic ventures, and reasonable steps, in the circumstances of the time, to achieve this.[497]

Oruamatua Kaimanawa

536. A significant issue for the Hoet Claim is the way the Māori Trustee operated to effectively assist in the alienation of their lands at Oruamatua Kaimanawa.

537. As the generic submissions highlight the case studies involving the transfer of those lands out of Māori Control are a severe breach of Te Tiriti.

538. The evidence highlights the intermittent connection to those blocks by virtue of their grandmother, Mrs Waina Hoet.

539. One of our Wai 1868 claimants Ms Grace Hoet provided evidence in relation to these lands. She says that in 1961, the Crown took these lands along with other Oruamatua Kaimanawa blocks for defence purposes under the Public Works Act.[498] Ms Hoet is a direct descendant of Raumaewa Te Rango, Whatu and Pango Raumaewa who were awarded interests in these lands.[499] She is the mokopuna of Waina Hoet who is also a Wai 1868 claimant and is almost 100 years old, the oldest kuia kaumatua in the Mōkai Pātea rohe.

540. Ms Hoet says the land is a taonga to the Raumaewa whanau. As kaitiaki to this land it brings sadness and frustration that their whanau are prohibited from the land and can't practice kaitiakitanga whilst others (third parties) are able to manage and even make a profit from the land today.[500]

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[496] Waitangi Tribunal, *He Maunga Rongo*, p 912.
[497] Waitangi Tribunal *He Maunga Rongo*, p 1012.
[498] Wai 2180, #E7 Brief of Evidence G Hoet, 20 September 2017, p. 7.
[499] Wai 2180, #E7 Brief of Evidence G Hoet, 20 September 2017, p. 2.
[500] Wai 2180, #E7 Brief of Evidence G Hoet, 20 September 2017, p. 8.

541. Ms Hoet says that the land is no longer used for defence purposes. The Historic Places Trust and the Department of Conservation have now become the defacto managers of the land. Off Limits Trust NZ make a profit by running trail and quad bike tours, Horse Treks and Mountain Bike rides on these lands.[501]

Māori Trustee and the Otumore Lands:

542. A Proclamation on 12 July 1963, confirms that the Otumore block was sold by the Māori Trustee to the Crown and under the Forests Act 1949 the then Governor General set the land aside as permanent State Forest land.

543. The block was sold to the Crown by the Māori Trustee for £850. The Government valuation was £790 after paying the survey charges the balance of £133.32 was paid to the Māori Education Foundation as directed by the Court order.[502]

544. There were 181 owners to the block when it was sold, and they included the children of Winiata Te Whaaro.[503]

545. One of our claimants Lewis Winiata provided evidence in respect of the Otumore Land.[504] He says that Winiata Te Whaaro and his children along with others were awarded shares in the land and in 1961 some 50 years after the death of Winiata Te Whaaro the land was put in the hands of the Māori Trustee and eventually sold. He goes on to say that his mother Waipai Te Ngahoa Winiata didn't know of the sale until her cousin Rangitaamo Takarangi visited one day and told her all about it. By then it was too late the land had gone. He says that he doubts whether any of her other cousins knew that the land had been sold by the Māori Trustee.[505]

546. All this occurred without the knowledge of the owners.[506] Although the Māori Land Court did investigate the block's ownership it does not appear that

[501] Wai 2180, #E7 Brief of Evidence G Hoet, 20 September 2017, p. 8.
[502] Wai 2180, Wai 662, Wai 1835, Wai 1868: Amended Statement of Claim, August 2016 p. 53.
[503] Wai 2180, Wai 662, Wai 1835, Wai 1868: Amended Statement of Claim, August 2016 p. 54.
[504] Wai 2180, #C04, 14 June 2016, para 4 p. 2.
[505] Wai 2180, #C04, 14 June 2016, para 4 p. 18-19.
[506] Wai 2180, #A046: Taihape Twentieth Century Overview, Tony Walzl, May 2016, p. 656.

owners, certainly all owners, were consulted before the order vesting the block in the Māori Trustee was issued.[507]

NATIVE TOWNSHIPS

Generic Submissions

547. We adopt the Generics Submissions regarding Native Townships that have been submitted for Issue 8 for Ngāti Hinemanu me Ngāti Paki however, we make the following additional comments as part of the matters raised in our Amended Statement of Claim with respect to these issues.

Te Tiriti Breach

548. The claimants maintain that in breach of its duties, the Crown, through legislation, prioritized its own economic objectives which focused primarily on establishing settlements for Pākeha businesses and residents on Māori land.

549. In particular, once a Township was proclaimed under the Native Townships Act 1895, full legal control was vested in the Crown.[508] The owners were reduced to the state of beneficial owners and there was no requirement under the 1895 Act and subsequent legislation for the owners to be consulted.[509]

550. We say while this was the minimum responsibility of the Crown any proper process would have required the full, free and informed consent of the peoples of Ngāti Hinemanu and Ngāti Paki and other hapū of the District if it was to be a Te Tiriti compliant outcome.

551. Furthermore, as public amenities became available for offer back or use for Māori community purposes too often Māori were not even included in the processes initiated by the Ministry of Education and the Ministry of Health who over time had come to take principal responsibility for many of those assets to offer back those facilities.

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[507] Wai 2180, #A046: Taihape Twentieth Century Overview, Tony Walzl, May 2016, p. 653.
[508] Wai 2180, #A47, p. 209.
[509] Wai 2180, #A47, p.209

Taihape Township

552. A case in point pleaded in the originating Statement of Claim relates to the Township of Taihape. The claim and the evidence shown confirm the general observation that the Native Land Court together with the framework of legislation discussed in the generics was fundamental in the facilitation of the takings of lands for what has become known as the Township of Taihape.

553. The first settlers arrived from the South Island in 1894 [three years after the Awarua block had been partitioned by the Native Land Court] and called themselves the Collinsville Cooperative Settlement Association.

554. The Crown took the land for the Township of Taihape under the Village Settlement Scheme. Part of the Awarua No 4 Block south of the Otaihape Stream was taken as part of the Taihape Village/Town Settlement. Section 88 Block X1V of the Taihape Village Settlement.[510]

555. On the 13 June 1960 Section 88 Block X1V & Section 90 Block X1V was taken by Proclamation under the Public Works Act 1928 for a secondary school.

556. A significant further complaint arising from this Public Works Taking which is separate to the question of Townships but related to it is that Section 88 Block X1V is no longer being used for a secondary school.

557. Mr Hape Lomax and other witnesses have said that the ongoing process of colonisation often decontextualises the fact of takings of lands for townships in the 19th Century from the 21st closures of key infrastructures like schools and hospitals that were then built to support those schemes as part of the privatisation processes of the Crown. These matters are discussed at length in Mr Wazl's 20th Century report but are important to keep in mind when assessing the evidence here.

[510] Wai 2180, #A8, p. 166.

Utiku (Potaka) Township

558. The Potaka Native Township was proclaimed under the Native Townships Act in July 1899. The town has long been known as Utiku.[511]

559. Potaka Native Township was located on six subdivisions of Awarua 4C9 that were partitioned by the Native Land Court in January 1899.[512]

560. The Township land was further subdivided into small township sections, ranging from a quarter-acre to six acres. The survey costs amounted to £76.5, which consumed almost all of the first year's rental income of £88.[513]

561. The total land area enclosed by the Township was 138 acres. 24 acres was taken from the Township for roads and the NIMTL. No compensation was paid for the land taken which amounted to 17% of the land set aside for a township.[514]

562. 12 acres affecting ten titles were set aside for Public Purposes such as Recreation, schools, Public buildings and a cemetery.[515]

563. Again in the process of building a town we ask the Tribunal to be cognisant that often as part of the colonizing objectives to meet the needs of new settlers quite often these processes displaced the existing ways of life that had been in place for many hundreds of years earlier and Native Taihape Māori were forced onto Native Reserves. The Utiku example is one such situation in the Inquiry district.

Native Reserves

564. 12 acres within the Township were designated as Native Reserves.[516]

[511] Wai 2180, #A8, p. 163.
[512] Wai 2180, #A8, p.163.
[513] Wai 2180, #A8, p. 164
[514] Wai 2180, #A8, p. 164.
[515] Wai 2180, #A8, p. 166.
[516] Wai 2180, #A8, p.167.

GIFTING OF LAND FOR SOLDIER SETTLEMENT

565. This is a significant issue which we understand is being explored for the Tribunal by Counsel for Tūwharetoa.

566. We would like the opportunity to respond to those submissions at a future time when we have had an opportunity to consider the same.

LOCAL GOVERNMENT AND RATING

567. Counsel adopt the generic closing submissions in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki. The Ngāti Paki and Ngāti Hinemanu claimants wish to expand on the following issues for Ngāti Hinemanu and Ngāti Paki:

    a) That rates charges have been used by the Council as threats against owners in order to influence local government initiatives;

    b) The extent of Māori participation in local government has been low;

    c) The Crown's establishment of local government bodies and other special purpose agencies operating at a district level facilitated the loss of hapū and iwi authority to the Crown; and

    d) Legislation providing for the consideration of Māori concerns is limited to the Resource Management Act 1991 and the Local Government Act 2002.

568. The Māori land blocks that are of particular relevance and interest to the claimants and which lay within the Kiwitea County Council district are:

    (a) Otamakapua;

    (b) Mangoira; and

    (c) Parts of Awarua 1.

569. The Hawkes Bay Regional Council regulates:

    (a) Te Koau; and

(b) Kaweka Blocks.

Māori Participation in Local Government

570. Māori were not elected to local authorities until after 1989.[517] Over the last two decades, two Māori have been elected to council, but Māori voting rates continue to be low. There is no dedicated tangata whenua seat on the local government bodies. Historical non-participation of Māori in local government to a large extent still continues today.[518]

571. In addition to this, legislation provides for only limited consideration of Māori concerns in relation to local government decision making. Under the Resource Management Act 1991 local authorities are required to:

(a) Recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga.[519]

(b) Have particular regard to kaitiakitanga.[520]

(c) Take into account the principles of the Treaty of Waitangi.[521]

572. The Local Government Act 2002 requires local authorities to:

(a) Establish and maintain process to provide opportunities for Māori to contribute to the decision-making processes of the local authority.

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

(c) Provide relevant information to Māori for those purposes.

[517] Wai 2180, #A5, p. 9.
[518] Wai 2180, #A5, p. 9.
[519] The Resource Management Act 1991, s 6(e).
[520] The Resource Management Act 1991, s 7(a).
[521] The Resource Management Act 1991, s 8.

573. From 1991, two key consultative bodies were established within the region in an attempt to facilitate consultation with tangata whenua groups:

(a) Te Roopu Ahi Kaa (for the Rangitikei District Council); and

(b) Ngā Pae o Rangitikei (for the Horizons Regional Council).

574. Te Roopu Ahi Kaa is a standing committee which purports to represent Ngāti Parewahawaha, Ngāti Apa, Ngāti Hauiti, Ngāti Hinemanu me Ngāti Paki, Ngāti Tamakōpiri, Ngāti Whitikaupeka, Ngāti Rangi and the Ratana Community Board.

575. The claimants feel that Te Roopu Ahi Kaa fails to adequately represent the people of Ngāti Hinemanu me Ngāti Paki and has usurped the mana of the ahikaa to participate in local government decision making, effectively leaving the Ngāti Hinemanu me Ngāti Paki without a voice.[522]

576. Ngā Pae o Rangitikei was the inception of local iwi and was established to consider and consult on issues relating to the Rangitikei River and other waterways within the rohe.[523]

Rates

577. The rating regime has afforded little to no benefit to Māori land and land owners such as those of Ngāti Hinemanu and Ngāti Paki descent. There have been various mechanisms imposed by local government to enforce the imperatives of such a regime including:

a) Rates charges being used by Councils as threats against Māori land owners in order to drive initiatives such as leasing and resource applications;

[522] Wai 2180, #A5, p. 12
[523] Wai 2180, #A5, p. 12

b) Overdue rates charges being raised during the negotiations for water rights and easements pertaining to the Erewhon Water Scheme;[524]

c) When leases were granted over Māori lands payments being sought by the Council for overdue rates either from the Māori Land Board or the owners directly.[525]

d) The methods being used by the Council to recover overdue rates included suing for payment and registering liens under the Rating Act 1913.[526]

578. As well as local councils, there were other special purpose local agencies operating within the district who also influenced local government initiatives including the:

(a) Hunterville Rabbit Board 1925;

(b) Rangitikei Catchment Board 1944;

(c) Ruahine Rabbit Board; and

(d) Ruahine Destruction Board.

Rabbit Board Rates

579. Rabbit Board rates were just as, if not more, oppressive to Māori landowners than County/District Council rates.[527]

580. In September 1910, the Minister of Agriculture suggested that the cost of rabbiting on the Owhaoko blocks be made 'a first charge' on the land.[528] These rabbit rates were used as a threat to coerce owners to sell the Owhaoko Blocks at lower prices.[529]The 'piling up' of taxes and rates, the landlocked nature of the lands and an inability to negotiate a settlement with Crown

[524] Wai 2180, #A5, p. 17
[525] Wai 2180, #A5, p. 18
[526] Wai 2180, #A5, p. 18
[527] Wai 2180, #A5, p. 22.
[528] Wai 2180, #A45, p. 226.
[529] Wai 2180, #A5, p. 22.

agencies coerced the land owners' into making decisions which held little benefit to the themselves such as:[530]

(a) the decision to gift large blocks to the Crown for Māori returned soldiers in 1917; and

(b) the decision to allow neighbouring owners to graze the landlocked blocks without paying rent, but in return for paying the rabbit rates.

Aorangi Awarua Trust (Awarua 1DB2)

581. One example of local government initiatives that have influenced the rating system is the Erewhon Water Scheme situated on the Aorangi Awarua Lands owned by Ngāti Hinemanu. Overdue rates charges were raised during the negotiations for water rights and easements pertaining to Erewhon Water Scheme.[531]

582. During the 1970's and 1980's the Aorangi Awarua Trust sought to mill native timber to clear the considerable amount of outstanding rates of Awarua 1DB2 piling up against the title including half the costs for a boundary fence that Mangaohane Station had successfully sued the Trust for under the Fencing Act.[532]

583. Until 1920 9,372 acres of Awarua 1DB2 (11,740 acres) was rated by the Hawkes Bay County Council and the remainder of 2,368 acres was rated by the Rangitikei County Council (RCC). Then the rates for the 9,372 acres were transferred to the RDC. Up until 1915 it is recorded that George Donnelly occupied these lands. [533]

584. At this time the Crown owned portion of Awarua 1DB, Awarua 1C and Awarua 1DA were all exempted from rates.[534]

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[530] Wai 2180, #A5, p. 22.
[531] Wai 2180, A005, Local Government Rating and Native Township Scoping Report, Bassett Kay Research, February 2012, p17
[532] Wai 2180, #13, Brief of Evidence, David Steedman, February 2018, p8.
[533] Wai 2180, #A037, Māori Land Rating & Landlocked Blocks, Suzanne Woodley, 1870-2015, p290.
[534] Ibid, p292.

585. For a number of years Otupae Station occupied 9,372 acres of Awarua 1DB2 land. As the Awarua 1DB2 rates file is missing it is not known what action was taken to recover rates charged for the years 1939 – 1947 however the records show that further charging orders were dismissed in 1950 as rates being paid.[535] Between 1950 and 1955 the value of the Aorangi block was considerably reduced and an order in council recorded that the land was non-rateable.[536]

586. According to RCC records rates were paid on the block up until 1973 by a 'family member'. For the next 10 years no rates were paid so by 31 March 1983 they totalled $3,758.07.[537]

587. Mr David Steedman attached a number of Aorangi Awarua Trust rate demands as appendices to his brief from the years 1969/70 to 1986/87 totalling S7,999.98 of outstanding rates.[538]

588. The outstanding rates was well known among Crown officials with the District Ranger of the NZ Forest Service commenting in early 1983 that the clearance of rates is one of the objectives to be achieved by the sale of timber. At the same time the Trustees applied for a rates remission arguing that the Trust had little income and they were not in a position to pay them.[539]

589. Eventually, the Trust were prevented from milling the timber and by June 1999 the matter of unpaid rates was still unresolved. The Trust had now entered into a Ngā Whenua Rahui conservation covenant over the block. This still hadn't addressed the issue of outstanding rate demands.[540]

590. Around this time Richard Steedman a trustee on the block suggested that the Rangitikei District Council (RDC) develop a policy regarding the rating of Māori land. The RDC then set out to investigate whether or not the Trust was liable to pay rates from the sum paid for the Covenant. Amongst other matters

[535] Ibid, p293.
[536] Ibid, p291.
[537] Wai 2180 A037, Māori Land Rating & Landlocked Blocks, Suzanne Woodley, 1870-2015, p294.
[538] Wai 2180, #13b, Brief of Evidence Appendices, David Steedman, February 2018.
[539] Ibid, p295.
[540] Wai 2180, #A008, Central Block History, Evald Subasic & Bruce Stirling, October 2012, p186

it was found that the Covenant was 'silent as to what the amount of money could be used for' and that the Covenant imposed many restrictions. Also, that the Minister and the Aorangi Awarua Trust were committed to work together to use best efforts to procure a "zero" rates for the land for rating purposes. If that status was not obtained, then the Minister could give reasonable assistance to the Trust to pay rates on the land.[541]

591. On the 16th July 2002 the Aorangi Awarua Trust held a meeting with the Rangitikei District Council to try and solve the rating issues between the Trust and the Council. It is clear that all the Council was interested in was the payment for outstanding rates. Even though one of their members had no understanding of why the land became non-rateable he believed that was for future rates and not outstanding rates.[542] The Rangitikei District Council developed and adopted a Rates Remission Policy in 2004.0[543]

592. With the outstanding rating issue still not resolved Ngāti Hinemanu owners believed that unless Aorangi Awarua Trust granted the Council a water easement over their land the Council would continue to rate their land as it had since the 1930's. Eventually the Trust gave in to the Council and a water easement was registered against the title in 2006.[544]

593. In 2006 the Aorangi Awarua Trust again tried to resolve their rating issue and applied for a rates remission on Awarua 1DB2 under the councils new rates remission policy. They also argued that the land was landlocked. By this time the rates owing were $88,680.36. The Trust argued that the Ngā Whenua Rahui covenant over the land gave the land a non-rateable status.[545] However, DOC was careful to point out that rating remains a matter between the landowners and the local body.[546]

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[541] Wai 2180 #A037, Māori Land Rating & Landlocked Blocks, Suzanne Woodley, 1870-2015, p299.
[542] Wai 2180, #13b, Brief of Evidence Appendices, David Steedman, February 2018,
[543] Wai 2180, #A037, Māori Land Rating & Landlocked Blocks, Suzanne Woodley, 1870-2015, p. 300.
[544] Wai 2180, #A008, Central Block History, Evald Subasic & Bruce Stirling, October 2012, p186.
[545] Wai 2180, #A037, Māori Land Rating & Landlocked Blocks, Suzanne Woodley, 1870-2015, p300.
[546] Wai 2180, #A008, Central Block History, Evald Subasic & Bruce Stirling, October 2012, p186.

594. As the council had also reached an agreement with the Trust regarding the Erewhon Water Scheme where it pays a royalty payment to the Trust of $4,000.00 annually the new Financial Controller for RDC recommended that the rates on the block be remitted and that the remission lasts six years when the Trust must then apply again in 2012. This whole process took 34 years to come to this arrangement.[547]

595. While the rates had been remitted for six years it still doesn't mean that the block is completely exempted from rates. As we can see the rates in 2006 were $88,680.36c and it seems that every six years the Trust is required to apply for a rates remission.

596. It appears though whilst there are words in the covenant that provides for the land to be given a non-rateable status the rating issue remains between the land owners and the RDC. Even though the Trust signed the water easement over their land the Council continue to rate their land as it had since the 1930's. Still the rating issue is not resolved to the satisfaction of Ngāti Hinemanu owners.

597. Ngāti Hinemanu are left wondering if the Minister can intervene and assist the Aorangi Awarua Trust to to procure a "zero" rates. If he can the next question would be is how would that affect the Erewhon Water Scheme Deed of Settlement arrangement.

Te Koau Block

598. In 1913, Taranaki Te Ua, who owned lands in the northern part of the inquiry district, headed a deputation of Maori to meet with Native Minister W H Herries where he complained about the rating of undeveloped lands such as Owhaoko and Te Koau blocks both within the Hawke's Bay county. He said that Maori were as 'potter's clay in the Minister's hands and it was for him to say how their lands should be dealt with'. Taranaki te Ua 'pointed out that Owhaoko and Koau blocks were in the hands of the Government for sale or

[547] Wai 2180, #A037, Māori Land Rating & Landlocked Blocks, Suzanne Woodley, 1870-2015, p300.

lease, and the Natives could not deal with the land in any way, yet they were rated for them'.[548]

599. As noted in the rating legislation chapter the Rating Act and the Crown and Native Lands 1882 'widened the categories of rateable Maori land' but exempted Maori land from rates situated more than five miles from a public road. This should have excluded Te Koau from being rated, the nearest public road being the Napier-Taihape road located at least 11 miles away. The Rating Acts Amendment Act 1893 and Rating Act 1894 contained this same provision and also provided that only land that had been through the Native Land Court could be rated unless it was leased. This meant that Te Koau should have remained exempted apart from any area said to be leased by a Mr Harding, until 1906 when title was investigated.[549]

600. The rating of the block is complicated as the block was in two ridings (Erewhon and Maraekakaho) both originally within the boundaries of the HBCC. Part of the Erewhon Riding was transferred to the RCC in 1904 and the remainder in 1920. Prior to the sale of Te Koau B, 6,800 acres of Te Koau was within the Maraekakaho Riding and 3,100 acres in the Erewhon Riding.[550]

601. Once Te Koau B was sold the portion of Te Koau A within the Maraekakaho riding, which remained within the boundaries of the HBCC, now Hastings District Council (HDC) was 1,779 acres. The portion of Te Koau in the Erewhon Riding within the RCC, now Rangitikei District Council (RDC), was 1,672 acres.[551]

602. When Te Koau B was sold in 1922 the rates levied and owed to the Hawkes Bay County Council of £11.17s.5d were also deducted from the purchase money. A proportion of this, based on the area of the block sold, was paid to the RCC. In addition, the HBCC received from the purchase money £5.1.5

[548] Ibid, p47.
[549] Ibid, p461.
[550] Ibid, p462.
[551] Ibid.

for rates owed on that part of Te Koau still within its boundaries and the Napier Harbour Board received £3.16.8.13.[552]

603. It is unclear why Te Koau was liable for rates levied by the Napier Harbour Board. There also remains questions as to why the owners of Te Koau were forced to sell part of their lands for rates. If the land was leased why wasn't the person/people leasing the land liable for the rates? There are many unanswered questions. What is clear the owners lost some of their Te Koau land to rates.

604. After the Erewhon riding was transferred to the RCC, just part of Te Koau A remained rated by the HBCC. In short it does not appear that the HBCC pursued the rates on this block after an initial charging order was issued in September 1929 for 19/6 plus 2/6 costs. The HBCC applied for two further rates charging orders in 1939 and 1949 but on both occasions the applications were dismissed. In 1969, the HBCC advised the Ikaroa Maori Land Court that rates had not been paid on the block for 'many years'. It was, however, never formally exempted from rates.[553]

605. This happened when an application for a number of blocks adjoining the Hawkes Bay Province that they be exempted from rates and the name of Te Koau A was crossed out on all documents assumed to be because the hearing was held in the Aptea District Māori Land Court when Te Koau A was within the Ikaroa District.[554]

606. Over many years the Rangitikei District Council sent out rating demands to many people trying to recover rates from the part of Te Koau A that sat within their boundaries. It wasn't until the local authority boundaries were revised in 1987 that Te Koau A was no longer under the jurisdiction of the Rangitikei District Council. Records have not been located as to what happened with regard the collection of outstanding rates.[555]

[552] Ibid, p69.
[553] Ibid, p72.
[554] Ibid, p469.
[555] Ibid, p 471-472.

607. In 1992 the Te Koau A Trust owed $2,500 in rates.[556] By 2006 the Trust had entered into a Whenua Rahui Kawenata. The Trust had been seeking to have the RDC exempt the block from rates and eventually they agreed to exempt the landlocked block from rates.[557]

608. It is obvious from these last two Māori Land Trusts examples that they entered into a Whenua Rahui Kawenata where they thought that part of the arrangement would exempt them from paying rates however rating of land remains within the law of the District Councils and only one of these blocks have been exempted from paying rates and the other block has had their rates remitted.

609. Not to mention that the owners of Te Koau were forced to sell part of their land to pay outstanding rates.

610. Mr Peter Steedman pointed out in his brief of evidence that the Horizons Regional Council's rate exemption is practically the same as the Rangitikei District Councils.

611. Both of the policies, District and Regional Councils, include a rates arrears write off clause for landlocked lands as well as the ability for either the CEO (Horizons) or the Māori Land Rates Remission Committee to generate an application for remission where the owners have not applied for the remission.

612. Both policies state that if "there is no significant financial income, a rates remission will be considered". Despite this though, in my experience, having sat on the Māori Land Rates Review Committee for many years, the process has been that when the six-year remission period has expired and a new application is made, the rates were always remitted for a further six years even if the financial situation had changed from revenue gathering.[558]

[556] Ibid, p448.
[557] Ibid, p449.
[558] Wai 2180, H21, Brief of Evidence of Peter Wairehu Steedman, 31 January 2018, p3-4

613. The Crown has failed to recognise the mana (absolute sovereignty, control, and authority) of Ngati Hinemanu me Ngati Paki as guaranteed in the Treaty.

TWENTIETH CENTURY LAND ALIENATION

614. In breach of its duties, the Crown facilitated Crown purchasing and practices to the detriment of Ngāti Hinemanu me Ngāti Paki.[559]

615. Within a short time of coming into contact with the mechanisms of the colonial project, all of the land in the district was caught up in the land-alienating processes of colonialism, and today little land in the district is left in Māori ownership.[560]

616. By 1900 the following blocks in the district had been completely sold.[561]

Block	Original Acreage
Kaweka	36,085
Te Kapua	21,878
Mangoira Ruahine	35,660
Ohaumoko	12,126
Otairi 2	8,078
Otairi 3	3,772
Otairi 4	500
Paraekaretu	46,976
Rangatira (Hapopo)	12,000
Rangatira	7,500
Waitapu	29,484
Total	214,059

617. A critical issue for economic development is retention by Ngāti Hinemanu and Ngāti Paki of sufficient agricultural land in a suitable form of title to meet the present needs of the hapū and to provide for their future development. We adopt the generic submissions that sets the context of Te Tiriti principle and breach that we have alleged but make the following further comments and

[559] Wai 2180, #1.2.17 at p. 21.
[560] Wai 2180, #A06 Sub-district block study – Northern Aspect: Martin Fisher & Bruce Stirling, September 2012, p. 253.
[561] Wai 2180, #A046: Taihape Twentieth Century Overview, Tony Walzl, May 2016, p. 36.

draw to the Tribunal's attention some specific case studies to illustrate how difficult the 20th Century has been for Ngāti Hinemanu and Ngāti Paki.

618. There was little prospect of economic development when the hapū of Winiata Te Whaaro were "virtually landless by 1900.[562]They and their whanaunga in the Tanguru whanau had been awarded individual interests by the Native Land Court in a range of blocks comprising 13,247 acres.

619. Much of this land was of very little economic utility.[563] he holdings of the two whānau in the more productive blocks that were the key to future Māori economic development were more modest, comprising just 3,441 acres.[564]Yet by 1900 nearly all of this land had been lost to them.[565]

620. Their rapid and extensive land loss not only hindered their economic development; it led directly to their economic under-development. Their successful sheep farm at Pokopoko on the Mangaohāne block was ended when they were wrongfully excluded from the title in 1895 and then driven off the land in 1897.

621. Hapū efforts to establish another sheep farm on land they had developed at Mangaohāne within Awarua 4C were ended by their eviction from this land in 1899. This was the result of the boundaries of Awarua 4C15 (in which the hapū were awarded interests) being incorrectly defined so as to exclude Mangaohāne when Awarua 4C was partitioned by the Native Land Court in 1896 in the absence of Winiata Te Whaaro.[566]

622. Winiata Te Whaaro petitioned Parliament in 1899 to have the survey error at Mangaohāne corrected. The Native Affairs Committee agreed with him that the exclusion of Mangaohāne from Awarua 4C15 was the result of an error in the map relied upon by the Court. The petition was referred to the Government for inquiry but it declined to act. In 1900 the Committee recommended that the partition either be reheard or that Winiata and his

[562] Wai 2180, #A46 at 386. See also map #A46 at p. 389.
[563] Wai 2180 #A46 at p. 346 and p 631).
[564] Wai 2180 #A46 at p. 631.
[565] Wai 2180 #A46 at p. 601.
[566] Wai 2180 #A56 at pp 144-145.

people be compensated for the improvements lost to them when Mangaohāne was incorrectly excluded from Awarua 4C15. The Crown took no action. In 1901, the Committee again recommended the petition to the Government for its consideration. The Crown declined to act.[567]

623. Another title retained by the hapū was Owhaoko D4 (1,419 acres). The block's 32 owners comprised members of the Tanguru and Te Whaaro whanau. [568]This poor land was burdened with survey liens for which Owhaoko D4A (92 acres) was compulsorily acquired by the Crown in 1906 in order to discharge the liens.[569] The remaining land, Owhaoko D4B, was not an economic unit and the owners had little option but to lease it to adjoining runholders. These disadvantages are reflected in the poor annual rental of £15 in the early 1900s, each owner receiving only a few shillings each year.[570] The title is today land-locked and is almost surrounded by conservation estate (the Kaweka Forest Park).

624. Ngāti Hinemanu, Ngāti Paki and Winiata Te Whaaro were affected by the eastern part of the districts ill-defined boundaries and particularly the sale of the Kaweka Block.

Kaweka Lands

625. The Kaweka Lands (56,273 acres) were included in several Crown Deeds (being Kaweka, Ahuriri, Otaranga and Ruataniwha North from 1851 – 1862. The transactions of the Crown impacted on other land blocks within the north-eastern part of the Taihape Inquiry District and resulted in poorly defined and overlapping boundaries that created a number of gaps, errors and omissions. There was no title investigation into the Kaweka Block prior to these transactions.[571]

626. The following table depicts other blocks that had been affected by private or Crown purchasing to various degrees by 1900.[572]

[567] Wai 2180 #A56 at pp 145-147.
[568] Wai 2180 #A6 at 81-82. See also Map 9 at p 124.
[569] Wai 2180 #A6 at p 72. See also Map 9 at p 124.
[570] Wai 2180 #A6 at p 80.
[571] Wai 2180, #1.2.17 at p. 23.
[572] Wai 2180, #A046: Taihape Twentieth Century Overview, Tony Walzl, May 2016, p. 37.

Block	Original Acreage	Land Remaining as at 1900	% of Original Acreage Remaining as at 1900
Aorangi [13]	967	967	100
Awarua 1	112,356	12,094	11
Awarua 1A	33,072	14,164	43
Awarua 2	49,629	24,539	49
Awarua 2A	2,350	1,545	66
Awarua 3	8,179	4,735	58
Awarua 3A	20,936	7,944	38
Awarua 3B	6,234	1,967	32
Awarua 4	42,110	8,472	20
Awarua 4A	7,660	2,806	37
Oruamatua Kaimanawa 1	61,018	61,018	100
Oruamatua Kaimanawa 2	35,326	35,326	100
Oruamatua Kaimanawa 3	16,692	16,692	100
Oruamatua Kaimanawa 4	3,452	3,452	100
Awarua o Hinemanu [14]	6,330	6,330	100
Te Koau	17,400	10,330	59
Mangaohane 1	22,084	13,563	61
Mangaohane (2)	31,110	8,026	26
Motukawa 1	2,000	367	18
Motukawa 2	29,560	22,068	75
Otairi 1	46,555	1,709	4
Otamakapua 1	8,952	7,405	83
Otamakapua 2	104,522	1,460	1
Otumore [15]	5,152	5,152	100
Owhaoko A	18,880	18,880	100
Owhaoko B	7,261	7,261	100
Owhaoko C	35,069	35,069	100
Owhaoko D	101,654	101,654	100
Rangipo Waiau	43,036	9,193	21
Rangipo Waiau 2	27,550	5,070	18
Taraketi	3,075	2,677	87
Timahanga 1	2,577	2,577	100
Timahanga 2	7,499	7,499	100
Timahanga 3	4,956	4,956	100
Timahanga 4	862	862	100
Timahanga 5	1,722	1,722	100
Timahanga 6	3,772	3,772	100
Completely Purchased Blocks (noted above)	*214,059*		
TOTALS	1,145,618	473,323	41

Mangaohane Lands:

627. The Mangaohane block title (54,342 acres) began in November 1884/85. Ngāti Hinemanu, Winiata te Whaaro, Ngāti Paki and Ngāti Ngawha (Ngahoa) were amongst those asserting interests in Mangaohane.[573]

[573] Wai 2180, #A06 Sub-district block study – Northern Aspect: Martin Fisher & Bruce Stirling, September 2012, p. 174.

628. The Mangaohāne Title investigation began on 11 November 1884 and closed on 11 March 1885.[574]

629. In its Judgement the Court rejected the claim of Ngāti Hinemanu and Winiata te Whaaro without an explanation and awarded the lands to Ngāti Upokoiri (Renata Kawepo, Airini Donnelly and others) and to other descendants of Honomokai that were found to be in occupation.

630. Renata Kawepo and Airini Donnelly, and those associated with them, were the main beneficiaries of the Court's title orders, but they seemed to lack a close connection to the land and proved amenable to purchase offers from their sometime business partner, Studholme, even before title was investigated.

631. In the 30 years following the title investigation of Mangaohāne in 1885 it was almost completely alienated to private purchasers.

632. Winiata Te Whaaro and his family were the only people living permanently on the land, but despite widespread acceptance of their customary rights to Mangaohāne – by many observers, including the Native Land Court – they were consistently excluded and alienated from the title to their land.[575]

633. The most obvious consequence of enforcing Studholme's title over that of Winiata Te Whaaro was the loss of the family's home, livelihood and economic base.

Owhaoko Lands:

634. The Studholmes had a 21-year lease ordered in 1893 of the Owhaoko D blocks. Winiata Te Whaaro and his party were owners in Owhaoko D4. The leases were less than thruppence an acre and terminated before the term was up.[576]

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[574] Ngāti Hinemanu me Ngāti Paki Heritage Trust Amended Statement of Claim (ASOC), Annette Sykes & Co, 30 August 2016, p28

[575] Wai 2180 A06, Martin Fisher & Bruce Stirling: Northern Block History, September 2012, p235-236

[576] Wai 2180, A006 , Martin Fisher & Bruce Stirling: Northern Block History, September 2012, p80-82

635. In 1906 various sections of the Owhaoko block were vested in the Surveyor-General as payment for outstanding survey liens, plus interest charges. This included ninety-two acres, 2 roods of Owhaoko D4 (Owhaoko D4A) on which survey liens of £9.5.0 was owed. Winiata Te Whaaro and his party were then allocated Owhaoko D4B (1,326 acres). From this the owners then incurred another survey lien from the lands that were awarded to the Crown. Owhaoko D4B had a charging order of £3.1.4 for the survey of the subdivision. This amount was still owing in 1931.[577]

636. Eventually Owhaoko D4B (1,326 acres) became a part of the gift to the Crown to support the war effort.

637. Today Owhaoko D4B is administered by the Owhaoko Land Trust.

Te Koau Lands:

638. The alienation of the Te Koau lands reaches back to the late 1870's where the land was alienated under legislation then wrongly on sold by the Crown. On 29 November 1877 it was announced in the New Zealand Gazette that 5,600 acres was reserved under the Hawkes Bay Waste Lands Regulations Amendment Act 1874 and The Waste Lands Administration Act 1876. The 5,600 acres was leased by A Harding and was due to expire 21 May 1900. Another 1,500 acres was freehold land, leased by A Harding and due to expire on the 28th February 1907.[578]

639. Sustained challenges by Winiata te Whaaro and others of Mōkai Patea led to the Otaranga deed investigation by a Commission of Inquiry in 1890 where it was employed to enquire and ascertain the boundaries of the Otaranga, Ruataniwha North and Te Koau blocks and how these boundaries affect the any other lands such as the Awarua lands within that locality.[579]

640. It was found that the large area of Te Koau land had not been included in the Otaranga deed. However, it was found that 7,100 acres of Te Koau land was

[577] Ibid, p72 – 75.
[578] Wai 2180 – responses to post-hearing questions for #A8: Evald Subasic and Bruce Stirling, April 2018, para 11,p. 3.
[579] Wai 2180, #1.2.17 p 23-24.

assumed to be Crown land and wrongly alienated by the Crown as a result of poorly arranged and poorly surveyed early Crown deeds in the area (notably the Otaranga deed).[580]

641. The Title investigation for the balance of the Te Koau block was held in 1900.[581] The block was claimed by Ngāti Hinemanu and others and awarded to those of Ngāti Hinemanu.[582]

642. Further research has revealed that there is an area of 580 acres of Te Koau land wrongly claimed by the Crown that was never returned to the owners of Te Koau or included in the area for which they should have received compensated.[583] This land still does not have a valid or equitable title.[584] Today it is administered by DOC.

643. The Te Koau lands were partitioned in 1921 to Te Koau A and Te Koau B. It appears that Te Koau B of 6,879 acres was sold in 1922 at the rate of 4s an acre to enable long-standing survey liens to be cleared by the purchasers so as the title could be issued to them.[585]

644. There also appeared to be inconsistencies in the 1921 partition surveyed boundaries, acreage, Court minutes as well as maps that go to those minutes. The maps show there have been changes in acreage and boundary lines. Today the owners of Te Koau A still believe that the boundary line between Te Koau A and Te Koau B is not in the correct place.[586]

645. From the original 17,340 acres only 3,451 acres being Te Koau A remain in Ngāti Hinemanu ownership and today it is administered by the Te Koau A Trust.

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[580] Wai 2180, #A08 Sub-district block study – Central Aspect: Evald Subasic & Bruce Stirling, October 2012, p. 17.
[581] Wai 2180, #1.2.17 at p.27.
[582] Wai 2180, #A08 Sub-district block study – Central Aspect: Evald Subasic & Bruce Stirling, October 2012, p11 to 13.
[583] Wai 2180 – responses to post-hearing questions for #A8: Evald Subasic and Bruce Stirling, April 2018, para 11, p. 3.
[584] Wai 2180 – responses to post-hearing questions for #A8: Evald Subasic and Bruce Stirling, April 2018, para 11, p. 5.
[585] Wai 2180, #A08 Sub-district block study – Central Aspect: Evald Subasic & Bruce Stirling, October 2012, p. 15.
[586] Wai 2180, #I2 Brief of Evidence, Lewis Winiata, p. 5-8.

Awarua Lands:

646. The Awarua lands made up some 256,000 acres and was the largest block in the Taihape Inquiry District.[587] The title investigation took place in Marton in 1886 with the Partition Hearings taking place in 1890/91.

647. Ngāti Hinemanu and others claimed on ancestral and occupational rights. The Court found that the owners of Awarua were those 437 descendants of Hinemanu, Whitikaupeka, Hauiti, Ohuake and Tamakopiri.[588]

648. The Native Land Alienation Restriction Act 1884 placed restrictions on alienation over parts of the Awarua block which were deemed necessary for the completion of the North Island Main Trunk line. Under the North Island Main Trunk Railway Loan Application Act Amendment Act 1889 almost the whole of the Awarua block was included in the alienation restriction area.[589] This enabled the Crown to commence purchasing activities in the Awarua lands once the title was settled.[590]

649. However, as the letter of March 1889 from the Resident Magistrate in Hawkes Bay to the Under Secretary of the Native Department reveals. The Railway line wasn't the only reason Government officials were interested in acquiring Awarua. The Crown were interested in acquiring every inch of land in the Awarua and Motukawa blocks for settlement as well as for coal and copper mining purposes.[591]

650. The Crowns purchasing of part of the Awarua block began at Moawhango in 1894. Seddon orchestrated the setup which included telling the Court which Judge would preside. The full extent of the government's interference with the court is revealed in a series of instructions from the peripatetic Seddon to the Justice Department, and from the Justice Department to the equally peripatetic Chief Judge Seth Smith. Seddon instructed the Court to exclude

[587] Ibid, p. 69.
[588] Ibid p. 71.
[589] Wai 2180, #A09: Taking of Māori Land for Public Works in the Taihape Inquiry District, p 142.
[590] Wai 2180, #A08: Central Block History, Evald Subasic & Bruce Stirling, October 2012, p. 68.
[591] Wai 2180, #A08: Central Block History, Evald Subasic & Bruce Stirling, October 2012, p.

Awarua 1, 1A and 2A from the pānui, leaving Awarua 2, 3, 3A, 3B, 4 and 4A to be heard.[592]

651. By the time the court resumed the Crown case on 2 April 1894, the partitions had been agreed out of court, so the orders sought were not contested, and were signed by Judge Edger, sitting at Moawhango (as was Butler). Edger made the Crown awards in Awarua 2, 3, 3A, 3B, 4, and 4A. The orders for Awarua 1, 1A, and 2A were subsequently made by Mair at Hastings on 9 and 11 May 1894.[593]

As of May 1894, the 131,000 acres of land remaining to the Awarua owners (based on final surveys) was comprised in 10 land titles:

Original Title	Area (acres)	Maori Award 1894	Balance Area	Final Area
Awarua 1	118,898	Awarua 1D	42,592	34,250
Awarua 1A	24,000	Awarua 1A2	4,225	4,060
		Awarua 1A3	923	10,160
Awarua 2	47,548	Awarua 2C	33,819	35,900
Awarua 2A	2,912	Awarua 2A2	2,177	1,615
Awarua 3	7,800	Awarua 3D	6,975	6,975
Awarua 3A	20,000	Awarua 3A2	12,538	13,559
Awarua 3B	7,390	Awarua 3B2	3,994	2,859
Awarua 4	32,500	Awarua 4C	13,139	15,632
Awarua 4A	7,500	Awarua 4A3	5,960	5,854
Total	**268,548**	**Total**	**126,342**	**130,864**

652. The Native Land Court process was so drawn out that once the full costs of that process became apparent to the claimants they also identified as much as 100,000 acres of the Awarua block needed to be sold to the Crown to satisfy the Crowns demands as well as to clear their own debts.[594]

Awarua Partition Hearing 1890-1891:

653. The main claims included Paramena Te Naonao, Winiata te Whaaro, Noa Huke and Anaru Te Wanikau of Ngāti Hinemanu and Winiata te Whaaro of Ngāti Paki. The Court identified Ngati Tamakopiri, Ngati Hauiti, Ngati Whitikaupeka, Ngati Hinemanu, Ngai Te Upokoiri, Ngati Haukaha, Ngai Te

[592] Wai 2180, #A043: Taihape District 19th Century Overview, Bruce Stirling, May 2016 p. 488-490.
[593] Wai 2180, #A043: Taihape District 19th Century Overview, Bruce Stirling, May 2016 p. 492.
[594] Wai 2180, #A043: Taihape District 19th Century Overview, Bruce Stirling, May 2016 p. 193.

Ngahoa, Ngati Tukokoiri, and many other hapu as general inhabitants of the block. All of those mentioned except the first two derived their rights from Te Ohuake.[595]

654. The Awarua No 1 block of 112,356 acres was awarded to Ngāti Hinemanu, Ngāti Paki and Winiata te Whaaro and other related interests.[596] The great majority (78,106 acres Awarua 1B & 1C) of Awarua 1 was alienated to the Crown within three years of that partition hearing leaving 34,250 acres being Awarua 1D.[597] By 1903, the Crown managed to acquire as further 354 acres. When this was cut out, the remaining Māori owners held 11,740 acres as Awarua 1DB2. Awarua 1DB2 is the only remaining land in Awarua 1 being rugged land adjacent to Aorangi maunga.[598] Today it is administered by the Aorangi Awarua Trust.

655. Awarua 2A: Awarua No 2A of 2,350 acres was awarded to Mataora a hapū of Ngāti Hinemanu. The title to Awarua 2A was inalienable. This was to prevent private purchasers. By 1900 just over a third (2350 acres) of the block had been purchased by the Crown.[599] The block was referred to as 'Ngatarua'.[600]

656. It is interesting to note that when Wiki Te Ua and others who resided in the Hawkes bay applied to the Native Minister for the removal of restrictions from Awarua 2A2B to enable them to sell to Messrs R T Batley and son that the Board classified the land as 'second class' and described as 'unfit for native occupation' on account of its rough character and high altitude. The adjourning land had previously been sold to the Crown and at that time was occupied by Messrs Batley and Son with the right of purchase at 15/- per acre. J M Fraser a Native Agent forwarded a list of lands to the Native Minister that these same owners had interests in.[601] This is a prime example of the

[595] Wai 2180, #A043: Taihape District 19th Century Overview, Bruce Stirling, May 2016 p. 81-83.
[596] Wai 2180, #A043: Taihape District 19th Century Overview, Bruce Stirling, May 2016 p. 85.
[597] Wai 2180, #A043: Taihape District 19th Century Overview, Bruce Stirling, May 2016 p. 106.
[598] Wai 2180, #A046: Taihape Twentieth Century Overview, Tony Walzl, May 2016, p. 94.
[599] Wai 2180, #A046: Taihape Twentieth Century Overview, Tony Walzl, May 2016, p. 94.
[600] Wai 2180, #A08: Central Block History, Evald Subasic & Bruce Stirling, October 2012, Phillip Cleaver, Nov 2012, p 128.
[601] Wai 2180, #A046, Twentieth Century Overview, Tony Walzl, May 2016, p 94-97.

Crown purchasing inalienable Māori Land, leasing it and then on selling it to settlers.

657. Today there is no Māori land remaining in Awarua 2A.

Awarua 3B Lands:

658. Winiata Te Whaaro and his hapū retained small interests in Awarua 3B which were partitioned out as Awarua 3B2J (445 acres with 18 owners). The title was shared with the Tanguru whanau, who in 1905 partitioned out their interests in Awarua 3B2J2, leaving Winiata Te Whaaro and his people with Awarua 3B2J1 (174 acres with six owners). [602]This land was leased out in 1907 before being sold through the District Māori Land Board in 1920 while under lease. [603]

659. The Awarua 3B block consisted of 6,234 acres. These were awarded to Ngāti Hauiti. Winiata te Whaaro and his party of Ngāti Paki were admitted interests through aroha by Utiku Potaka. In 1894 the Crown partitioned the block and purchased Awarua 3B1 of 3,375 acres.[604] By 1900 68% of the block had been sold and the remainder of the block had been partitioned into 8 subdivisions.

660. By 1894 land titles were being individualised to whānau groups. Awarua 3B1 of 3,396 acres was acquired by the Crown in the alienation restriction area between 1890 and 1900.[605] Members of Ngāti Paki, the Tanguru, Whareherehere and Te Whaaro whānau ended up in 3B2J which was later partitioned into 3B2J1 (174 acres), 3B2J2 and 3B2J3 (71 acres). These two blocks were sold. The only block left in this partition is 3B2J2 (around 201 acres).

Awarua 4 Lands:

[602] Wai 2180 #A46 at 148 and 902, and #A8 at p 132 and p 137. See also map in #A46 at p 389.
[603] Wai 2180 # A46 at pp 148-149.
[604] Wai 2180 # A46 at p 131.
[605] Wai 2180 A09, Taking of Māori Land for Public Works in the Taihape Inquiry District, p 145.

661. Awarua 4 lands (42,110 acres) were also awarded to Ngāti Hauiti. Winiata te Whaaro and his party of Ngāti Paki along with Ngāti Haukaha were admitted interests by Utiku Potaka through aroha.

662. The Awarua 4 Block was partitioned into Awarua 4, Awarua 4A, 4B and 4C.

663. In 1894 the Crown entered into an agreement with Raumaewa Te Rango on behalf of his son Whatu Raumaewa to purchase back 66 acres of Awarua 4B (32,500 acres) land known as 'Three Log Whare' later referred to as Raumaewa Reserve. The Crown took so long to honour its arrangement that eventually Raumaewa was facing bankruptcy. At the same time the Crown purchased 19,000 acres for the North Island Main Trunk Line. The Crown ultimately purchased the land before the title was prepared.[606]

664. Awarua 4C (42,110 acres) awarded to the non-sellers.[607]

665. Awarua 4C was partitioned into 15 sub-divisions in 1904. Te Whaaro and Tanguru whānau of Ngāti Paki (29 owners) ended up in Awarua 4C15 block (2030 acres).[608] In 1904 Awarua 4C15 was partitioned and Awarua 4C15A (221 acres) was purchased by the Crown. Ngāti Paki (16 owners) were awarded shares in Awarua 4C15F (1,200 acres). In 1904 Awarua 4C15F was further partitioned and 6 children of the Winiata te Whaaro whanau were awarded shares in Awarua 4C15F1 (514 acres).[609]

666. As of 1900, (from 250,000 acres) just over 50,000 acres of Awarua lands remained in Māori ownership in a large number of heavily subdivided titles.[610]

667. By 1900 the only economically productive and economically viable title retained by Winiata Te Whaaro and his hapū was a modest interest in Awarua 4C15 (2,030 acres). The title then had 29 owners from several whanau but

[606] Wai 2180, #J16: Brief of Evidence of Jordan Winiata-Haines, 29 March 2018, p10-11
[607] Wai 2180, #A08: Central Block History, Evald Subasic & Bruce Stirling, October 2012, Phillip Cleaver, Nov 2012, p144
[608] Wai 2180, #A08: Central Block History, Evald Subasic & Bruce Stirling, October 2012, Phillip Cleaver, Nov 2012, p149
[609] Wai 2180, #A046: Taihape Twentieth Century Overview, Tony Walzl, May 2016, p372
[610] Wai 2180, #A08: Central Block History, Evald Subasic & Bruce Stirling, October 2012, p161

the community that depended on the land was considerably larger. For instance, the ownership of Awarua 4C15 did not include Whakawai, the youngest son of Winiata Te Whaaro, who was born after the 1886 Awarua title investigation. As a result neither he nor his 17 children were on the title but they were among those of the hapū who relied on this land.[611]

668. The owners of the title to Awarua 4C15 included the Pirere, Tanguru, and Te Whaaro whanau.[612] The Crown continued its earlier purchasing of undivided individual interests in Awarua titles, including Awarua 4C15. Winiata Te Whaaro and his hapū were not among the sellers. In 1903, the Crown applied to the Court to partition out the interests it had acquired and was awarded Awarua 4C15A (221 acres). At the time of this partition, the interests of the Tanguru and Te Whaaro whanau were allocated in Awarua 4C15F (1,200 acres).[613] In 1904, the Tanguru whanau partitioned out their interests in the title, leaving Winiata Te Whaaro and his whanau with Awarua 4C15F1 (514 acres with six owners).[614]

669. The following text traces the history of Awarua 4C15F1 before returning to two economic development issues.

Awarua 4C15F1

670. Over time the title to Awarua 4C15F1 became increasingly fragmented through Native Land Court processes. In 1921 it was partitioned into eight titles, comprising a papakainga block held by all six owners (Awarua 4C15F1A of 60 acres), six small titles each held by one of the parent block's owners (Awarua 4C15F1B to G of 23 acres each), and the inland balance of the parent title (Awarua 4C15F1H of 314 acres). [615]

Awarua 4C15F1A

[611] Wai 2180 #A56 at p 149.
[612] Wai 2180 #A56 at p 152.
[613] Wai 2180 #A56 at pp 153-154.
[614] Wai 2180 #A56 at pp 154-155.
[615] Wai 2180, #A46 at p 1018.

671. In order to secure a housing loan, one owner in Awarua 4C15F1A had to partition out a housing site of one acre held in his name alone which was done in 1924 (Awarua 4C15F1A1).[616]

672. In 1927, the balance of the title (Awarua 4C15F1A2 of 59 acres) was partitioned into seven titles (Awarua 4C15F1A2A to G). (#A46 at 1020) In 1939, Awarua 4C15F1A2A (three acres) was set aside as a Māori reserve for the use of Ngāti Hinemanu and Ngāti Paki as a meeting place, church site, and urupā.[617]

673. The titles to Awarua 4C15F1A2B (nine acres) and 4C15F1A2G (nine acres) were Europeanised after 1967 under the Māori Affairs Act 1967. Awarua 4C15F1A2C, D, E, and F remain Māori land.[618]

Awarua 4C15F1B to G

674. Awarua 4C15F1B (23 acres) remained in the ownership of Papara Te Whaaro and his successors from 1921 until 1976, when it was privately purchased. [619]

675. The research for this inquiry does not reveal the fate of Awarua 4C15F1C (23 acres) but it is no longer Māori land.

676. The research for this inquiry does not reveal any information about Awarua 4C15F1D (23 acres) but it remains Māori land.

677. Awarua 4C15F1E (23 acres) was leased out on behalf of its owner, Hauiti Te Whaaro, and in 1927 the title was used as security for a mortgage of £225 he took out with the District Land Board to build a house on Awarua 4C15F1A1 (one acre). The annual rent of £26 from Awarua 4C15F1E was assigned to the Board to repay the mortgage.[620] The title remains Māori land.

678. Awarua 4C15F1G (23 acres) was leased to a Pakeha in 1947 for 21 years. Title was Europeanised in 1973 under the Māori Affairs Act 1967.[621]

[616] Wai 2180, #A46 at p 1020.
[617] Wai 2180, #A46 at p 1021.
[618] Wai 2180, #A46 at pp 154-155.
[619] Wai 2180, #A46 at p 1025.
[620] Wai 2180, #A46 at p 1025.
[621] Wai 2180, #A46 at p 1026.

Awarua 4C15F1H

679. Awarua 4C15F1H (314 acres) was leased out in 1923 by the District Māori Land Board. The lessee fell into arrears in 1924 and paid very little rent for the next 10 years. The Board failed to enforce the lease and most of the hundreds of pounds of rental arrears were never recovered. This had a severe impact on Hauiti Te Whaaro, whose share of the rent was assigned to the Board to discharge a mortgage he had taken out with it. [622]

680. In 1944 the title was partitioned into Awarua 4C15F1H1 (161.5 acres) and 4C15F1H2 (152.5 acres). In 1968 the title to Awarua 4C151H1 was Europeanised under the Māori Affairs Act 1967. [623](In 2002 the Māori Land Court changed the status of the land to Māori freehold land under Te Ture Whenua Māori 1993 (s.133). The fate of Awarua 4C15F1H2 is not revealed in the research for this inquiry but it is no longer Māori land.

681. Being effectively landless made it almost impossible for the hapū of Winiata Te Whaaro to participate in the economic development of the district. The primary industries of forestry and farming required land, which they lacked. Despite this handicap, Winiata was one of just two Māori in the inquiry district who held interests in the short-lived timber mills established in the district during the clearance of bush. In 1898, he was reported to be establishing a mill on the Awarua 4C15F block, which was later operated by a Pakeha on the land who by 1905 had ceased to operate due to financial difficulties.[624] The right to fell timber on several subdivisions of Awarua 4C15F was then leased by the land's owners to another Pakeha saw miller.[625]

682. The economic development of the effectively landless hapū was further hindered by the lack of access to the land development finance and advice made widely available to Pakeha landowners and which could have assisted in the development of what little land they retained. During the period 1898 to about 1930 the research undertaken for this inquiry has identified 33 loans

[622] Wai 2180, #A46 at pp 884-894 and pp 1026-1041.
[623] Wai 2180, #A46 at p 1041.
[624] Wai 2180, #A48 at p. 139 and p 141.
[625] Wai 2180, #A46 at pp. 263-264.

to Māori owners of land within the inquiry district. This is at the rate of about one loan to a Māori owner each year. Many of these loans were not directly related to land development but were instead to clear existing debts or to pay for housing.[626]

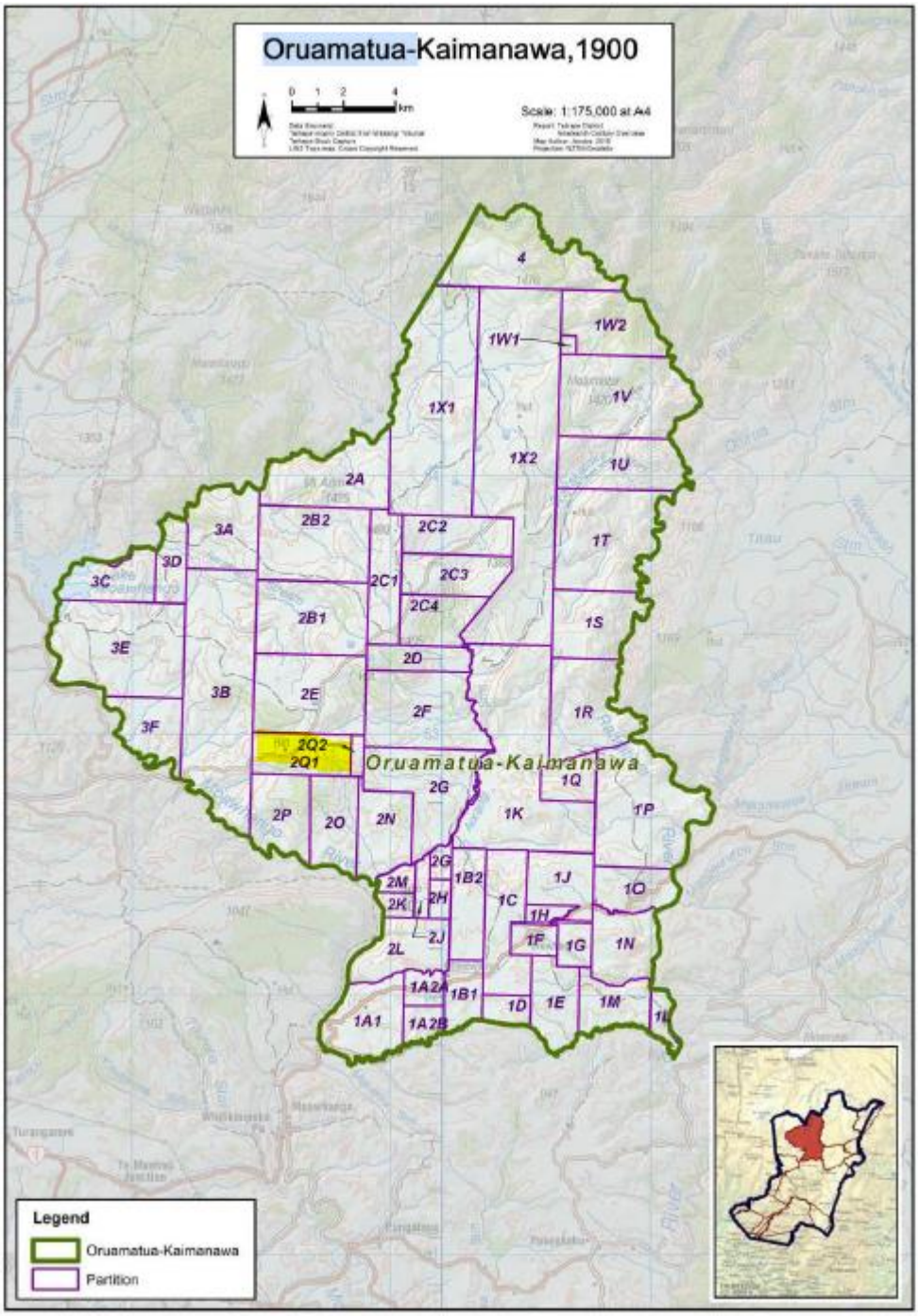
683. Of the 33 loans prior to 1930 identified in the research, only one relates to the hapū of Winiata Te Whaaro, being the loan of £225 to Hauiti Te Whaaro in 1927 to build a house on Awarua 4C15F1A1 (1 acre).[627]

684. Of the even smaller number of loans identified in the period 1931 to 1980, only one relates to the hapū of Winiata Te Whaaro, being a housing mortgage in 1958 against the title to Awarua 4C15F1A2G (9 acres). [628] The title was later Europeanised under the Māori Affairs Act 1967. [629]

Oruamatua Kaimanawa lands:

685. For our Wai 1868 Raumaewa whānau claimants the acquisition of Oruamatua Kaimanawa 2Q1 and 2Q2 is of great concern.

[626] Wai 2180, #A49 at pp. 82-91, #A48 at pp 193-195 and 254-262, and #A46 at pp 563-566.
[627] Wai 2180, #A49 at 87.
[628] Wai 2180, #A48 at 254-261 and #A46 at pp 897-899.
[629] Wai 2180, #A46 at p 154.



686. There were two series of acquisitions of land for defence purposes which are of importance in relation to the Taihape Inquiry District. The first series began in 1951 and 1961 and the second series occurred in 1973. By 1961 following a lengthy process involved the acquisition of lands for the Waiouru training ground extension came to an end. Finally, a proclamation under the 1928 Public Works Act was signed by the Governor General on 7 February

1961 to compulsorily acquire Oruamatua Kaimanawa 2Q1 of 1,516a and 2Q2 of 200a along with other Oruamatua Kaimanawa lands.[630]

687. As stated above, the Wai 1868 claimants Ms Grace Hoet and Mr Fred Hoet provided evidence in relation to these lands.

688. The historical 'Westlawn Hut' built around 1900 for musterers working Ohinewairua Station is also situated on these lands. The hut was used recreationally by soldiers until a new one was built across the road.[631]

689. The settlement involved Ohinewairua Station being provided with a lease of 10,000 acres of the training ground land that had been acquired in 1959 and 1961 which included 2Q2, and other lands. The Oruamatua Kaimanawa 2Q2 lands are still leased to Ohinewairua Station and although there are a number of special conditions and restrictions the Station's use is limited by the Army's utilisation of the area for training purposes.[632]

Otamakapua Lands:

690. The right to ownership of the block and the right to sell were matters keenly contested over a period of 15 years.[633]

691. Although the alienation of this block occurred well before the 20th Century I want to mention it for the mere fact that it highlights the amount of land that was alienated through Crown purchasing not only in the inquiry district but also from Ngāti Hinemanu and other hapu.

692. Otamakapua was eventually partitioned into two land blocks. The title of Otamakapua No 1 of 8,952 acres was awarded in October 1879 to four grantees representing Ngāti Hinemanu, Ngāti Hauiti, Ngāti Haukaha and Ngāti Whitikaupeka.

[630] Wai 2180, #A046: Taihape Twentieth Century Overview, Tony Walzl, May 2016, p. 614.
[631] Wai 2180, #E7 Brief of Evidence G Hoet, 20 September 2017, p. 8.
[632] Wai 2180, #A046: Taihape Twentieth Century Overview, Tony Walzl, May 2016, p. 637.
[633] Wai2180, #A07: Southern block History p. 42.

693. The title to Otamakapua 2 of 103,061 acres was awarded to 6 grantees representing Ngāti Hinemanu, Ngāti Hauiti, Ngāi Te Upokoiri, Ngāti Tamakopiri, Ngāti Whitikaupeka and Ngati Tumokai in June 1880 .

694. By 1884 the Crown had purchased 107,274 acres of the whole block.

Crown purchases: 107,274 acres

Purchase price paid by Crown: £50,143 for 103,061 acres

Private purchases: 5,071 acres

Area 'Europeanised:' 1,203 acres

Area declared Maori land: -

Area still in Maori ownership: 1,728 acres

Summary of Māori Land at 1900:

695. The following is a summary of land alienation through purchases by the Crown and private persons in the northern part of the district. What the following tables don't show is lands alienated by the Crown through survey and rating liens.

Block	Area	Crown Purchase	Private Purchase	Maori Land at 1900
Te Kaweka (part)	36,085	36,085	0	0
Owhaoko	163,432	0	0	163,432
Oruamatua-Kaimanawa	115,420	0	1,250	114,170
Rangipo Waiu	42,000	35,215	0	6,785
Rangipo Waiu 2	30,000	22,586	0	7,414
Te Koau	17,340	7,100	0	10,240
Mangaohane	54,342	0	27,039	27,303
Totals	**458,619**	**100,986**	**28,289**	**329,344**

[634]

696. The following is a summary of land alienation through purchases by the Crown and private persons in the central part of the district.

[634] Wai 2180, #A043, Taihape 19th Century Overview, May 2016, Bruce Stirling, p. 591.

Block	Area	Crown Purchase	Private Purchase	Maori Land at 1900
Awarua	268,548	194,645	50	73,853
Motukawa	32,935	10,278	0	22,657
Te Kapua	21,878	21,878	0	0
Total	**323,361**	**226,801**	**50**	**96,560**

635

697. The following is a summary of land alienation across the entire Taihape District. Only 4% of lands in the southern part of the district were in Māori ownership at 1900.

Block	Area	Crown Purchase	Private Purchase	Maori Land at 1900
Awarua, Motukawa, and Te Kapua blocks	323,361	226,801	50	96,560
Southern blocks	318,913	223,663	72,201	13,049
Northern blocks	458,619	100,986	28,289	323,344
Totals	**1,100,893**	**561,450**	**100,540**	**432,953**

636

698. The majority of lands in the district were alienated through Crown Purchase, leased and on sold by the Crown..

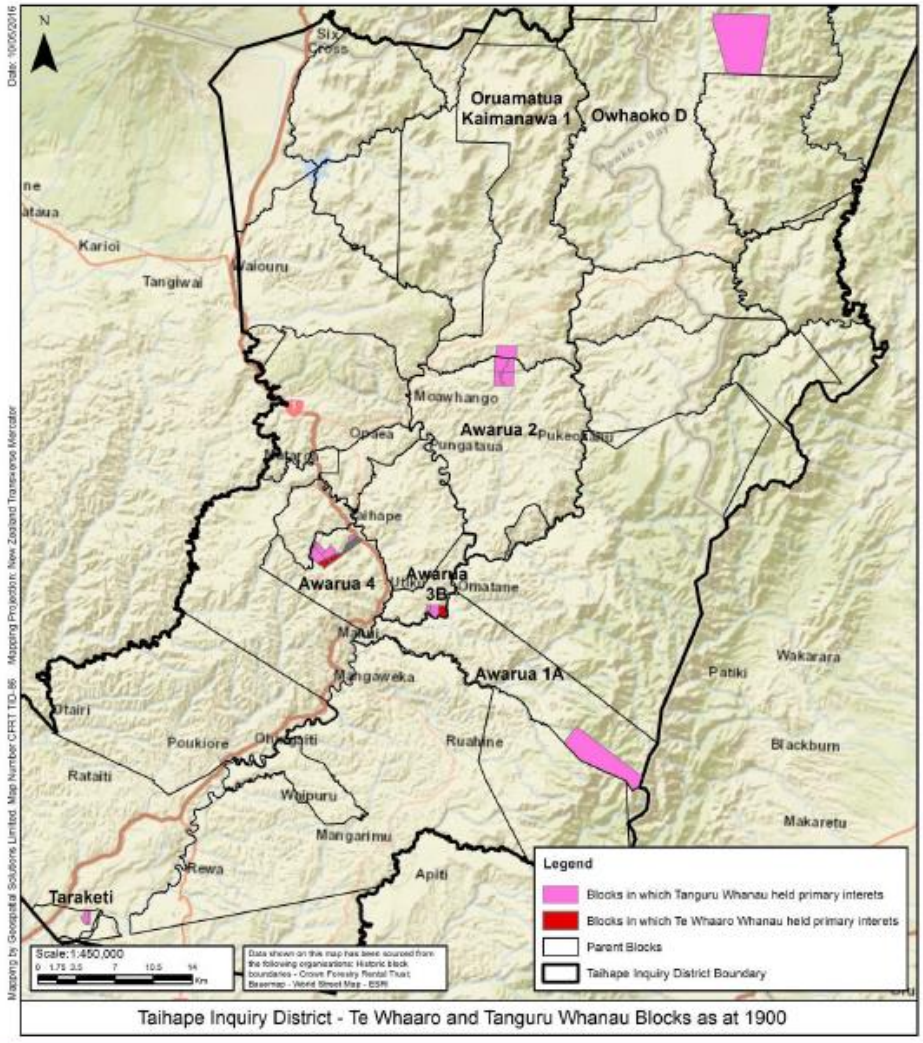
Winiata Te Whaaro and Ngāti Paki:

699. The Te Whaaro whānau of Ngāti Paki were both virtually landless by 1900 through a number of methods that alienated them from their land. Almost all the land directly occupied by them had been taken out of their hands by the findings of the Land Court.[637]

700. By the early 1900's the Tanguru whanau (brother of Winiata te Whaaro) had a total of 686 acres within the Awarua 4C15F subdivision as well as 1,104 acres in 2C7.[638]

[635] Wai 2180, #A043, Taihape 19th Century Overview, May 2016, Bruce Stirling, p. 591.
[636] Wai 2180, #A043, Taihape 19th Century Overview, May 2016, Bruce Stirling, p. 593.
[637] Wai 2180, #A046: Taihape Twentieth Century Overview, Tony Walzl, May 2016, p. 372.
[638] Wai 2180, #A046: Taihape Twentieth Century Overview, Tony Walzl, May 2016, p. 374.

Map 53: Tanguru & Te Whaaro Whanau Land as at 1900



D. PUBLIC WORKS GENERAL TAKINGS (ROADS, SCENERY RESERVATION AND OTHER PURPOSES)

NORTH ISLAND MAIN TRUNK RAILWAY

701. Mr Cleaver's Report on public works takings in the Taihape region provides a useful analysis of North Island Main Trunk Railway ("NIMT") which is commended by Ngāti Hinemanu me Ngāti Paki. In particular, the matters relating the railway and roads associated in the vicinity of Winiata Marae, based on the discussions Mr Cleaver held with Ngāti Hinemanu me Ngāti Paki.[639]

[639] Wai 2180, #A9 Cleaver, Philip, "*Taking of Maori Land for Public Works in the Taihape Inquiry District", Waitangi Tribunal* at pp. 153, 177.

702. Mr McBurney in his Report provides detail on the Crown's acquisition of Te Awarua block for the NIMT.[640]

703. One of the effects of the Native Land Court's persistent denial or down-playing of Winiata Te Whaaro's ownership rights in Mōkai Pātea is that it has allowed the Crown to ignore Ngāti Hinemanu/Ngāti Paki when dealing with Mōkai Pātea Māori over land required for public works purposes in the district.

704. As far as the land required for the North Island Main Trunk Railway in Mōkai Pātea was concerned, the Crown decided on purchase as the means of acquisition, rather than resorting to compulsory taking. To facilitate this, the Crown passed a number of laws, including legislation restoring its right of pre-emption across vast areas of the central North Island. Messrs and Stirling state:

> *In 1882 the Government passed twin legislation – the North Island [Main] Trunk Railway Loan Act and the New Zealand Loan Act – which authorised the borrowing of £4 million for the construction of the line, but not land purchase. The final route of the main trunk had not been yet finalised at this stage, but it was widely recognised that whichever route was to be followed depended on 'settling the native difficulty'. Further legislation to facilitate the construction of the railway was introduced in 1884, when the Native Land Alienation Restriction Act re-imposed Crown pre-emption over a large area of land, and in the same year the Railway Authorisation Act defined the route which the line would eventually take, connecting Marton and Te Awamutu via Murimotu, Taumarunui and the Ongarue River Valley. The settling of the route going through the central North Island as the best of the three considered options (western and eastern routes were also considered) placed the Awarua block high on the agenda for acquiring the land for the railway line. Indeed, the Native Land Alienation Restriction Act from 1884 placed restrictions on alienation over parts of the Awarua block which were deemed necessary for the completion of the North Island Main Trunk line.*

705. Messrs Subasic and Stirling describe attempts by some of those deemed by the Native Land Court to be the principal owners in Te Awarua to minimise the extent of Crown purchasing following a hui with Crown officials and the Native Minister held in September 1892. Immediately following the hui,

[640] Wai 2180, #A52, at 7.2.

Utiku Pōtaka and four others wrote to the Minister asking that the Crown limit itself to acquiring 100,000 acres, some 40% of the total area of the block.

706. The Crown ignored these entreaties, so that within a few years a total of 205,429 acres of Te Awarua had been alienated as a result of Crown purchasing activities. The purchasing campaign was so effective that a mere 415 acres of Te Awarua was subject to compulsory takings under the Public Works Act.812 In fact, according to Philip Cleaver, a total of just 594 acres of Māori land in the whole Taihape inquiry district was taken under public works legislation for the construction of the NIMT.

707. The claimants adopt the further generic submissions that contextualise these takings.

708. We refer the Tribunal to the tangata whenua brief of evidence of Ms Patricia Cross to show how the impacts of the NIMT had significant outcomes on the ability of Ngāti Hinemanu and Ngāti Paki to maintain their way of life rights and obligations to their whenua as a consequence of the route eventually agreed upon.

709. The NIMT and the public roads that were then constructed years later separated the peoples of Ngāti Hinemanu and Ngāti Paki from their relationships to their Awa. The separation had significant consequences on their ability to sustain their customary practices like fishing; taking harakeke; exercise of their spiritual rituals during times of birth and illness. The failure to consult is a key matter raised in the generics and Ngāti Hinemanu and Ngāti Paki confirm that they like many others were simply ignored.

WAIŌURU DEFENCE LANDS

Generic Submissions

710. We adopt the Generics Submissions regarding Public Works takings.that have been submitted for Issue 15. Ngāti Hinemanu me Ngāti Paki however we make the following additional comments as part of the matters raised in our Amended Statement of Claim with respect to these issues.

711. We specifically wish to make comment on the Waiōuru Army Training ground and surrounds largely because a specific claim of the Hoet Whanau which is part of those claims amalgamated into the Final Amended Statement of Claim for Ngāti Hinemanu and Ngāti Paki is very linked to how the Waiōuru Army Training Grounds were managed and lands provided to meet the needs of what the Crown's claim were national interest obligations.

712. A key are of dispute is that when those lands became no longer necessary for use by the Ministry of Defence decisions were made to grant concessions via the Department of Conservations processes that too often privileged the general public over the private Māori Interests that were affected by the original takings.

713. We set out the background of the takings of the land concerned and make some further comments in addition to the general observations and recommendations of the generic submissions as follows.

Waiouru Army Training Ground

714. By November 1939, the Crown had acquired 51,600 acres of general land[641] in order to establish a military training ground at Waiouru, the Waiouru Training Ground ("**WTG**"). By June 1942, the Crown acquired a further 15,850 acres of land adjoining the WTG.[642]

715. In July 1942, 6,324 acres of Māori Land was taken to add to the WTG. No compensation was paid for these takings.[643]

716. In March 1943, 9,256 acres of General Land was added to the WTG. There is clear evidence that compensation for these taking were paid.[644]

717. Rangipō Waiu 1B (4,474 acres) and Rangipō North 6C (1,850 acres) blocks lay on the western side of the Waiouru-Tokaanu Road. In 1941 the Crown decided to compulsorily acquire these blocks for WTG. No notice of this

[641] Wai 2180, #A9, *Taking of Maori Land for Public Works in the Taihape inquiry District,* Philip Cleaver, 2012 p. 34.
[642] Wai 2180, #A9, p. 34.
[643] Wai 2180, #A9, p. 39.
[644] Wai 2180, #A9, p. 39.

decision was given to the Māori owners. On 13 July 1942 the land was taken under the Public Works Act 1928.[645]

718. On 9 June 1943 the NLC heard an application by the Minister of Works for a determination of the amount of compensation payable in respect of the taken Māori Land.[646] The owners were not represented and no attendance or submissions by the owners is recorded in the Court minutes.[647]

719. On 16 February 1944, the NLC accepted that £250 compensation should be paid to the Māori owners. No compensation was paid for these takings.[648]

720. There is clear evidence that compensation for simultaneous takings of General Land was paid.[649]

721. In 1949, the Army proposed to further expand the WTG by acquiring 20 blocks of Māori Land. The blocks were subdivisions of the Oruamatua Kaimanawa and Rangipō Waiu parent blocks[650] and amounted to 29,167 acres.

722. The Minister of Māori Affairs required that the proposed takings be discussed with the Māori owners. On 29 September 1950, a meeting of the Principle Māori owners"[651] was held at Tokaanu. The owners were averse to the land being taken by proclamation but indicated a willingness to exchange their land for Crown Land of equal value.[652]

723. Despite owning large tracts of land, the Crown refused the requested exchange. In February 1961, the Crown compulsorily acquired the land.

724. In October 1961, the NLC assessed the compensation payable for the land at £9,195. The compensation was forwarded to the NLC at Whanganui.[653]

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[645] Wai 2180, #A9, p.39.
[646] Wai 2180, #A9, p. 45.
[647] Wai 2180, #A9, p. 45.
[648] Wai 2180, #A9, p. 47.
[649] Wai 2180, #A9, p. 48.
[650] Wai 2180, #A9, A table of the blocks appears at pp. 81-82.
[651] Wai 2180, #A9, Cleaver p. 64.
[652] Wai 2180, #A9, p. 64.
[653] Wai 2180, #A9, p. 82.

725. In the mid-1960s, the Army's use of a substantial portion of the WTG was disturbed by the construction of the Tongariro Power Scheme.[654] In order to minimise this disruption the Army sought to acquire shooting rights over land that lay to the east and north of the existing WTG. This included some Māori land blocks.

726. In 1970, the Army decided that acquiring shooting rights over multiply owned land was too complex. However, the Army began using Kaimanawa 3B2A and 3B2B without the consent of the owners.[655] This unauthorised used continued until at least 1980.[656]

727. By 1971, the Army began examine the need to acquire further land.[657] On 21 February 1971 a report prepared by the Army recommended that land on the north-eastern boundary of the WTG be acquired.[658]

728. The amount of Māori land affected amounted to 24,224 acres over 5 blocks, Oruamatua Kaimanawa 1X, Oruamatua Kaimanawa 2C2, Oruamatua Kaimanawa 2C3, Oruamatua Kaimanawa 2C4 and Kaimanawa 4.[659]

729. A European, Mr Koreneff, had acquired an approximately 37% of the shares on Oruamatua Kaimanawa 1X containing 16,277 acres. On 5 April 1971, a resolution was passed by the owners to sell the remainder of the shares to Koreneff.[660]

730. By May 1972, Koreneff had acquired 44% of the shares in Oruamatua Kaimanawa 2C3, 67% of Oruamatua Kaimanawa 2C4 and 3% of Oruamatua Kaimanawa 4.[661]

[654] Wai 2180, #A9, p.89.
[655] Wai 2180, #A9, p. 92.
[656] Wai 2180, #A9, p. 92.
[657] Wai 2180, #A9, p. 92.
[658] Wai 2180, #A9, p. 93.
[659] Wai 2180, #A9, p. 94.
[660] Wai 2180, #A9, p. 95.
[661] Wai 2180, #A9, p. 96.

731. On 13 November 1973, the five blocks were compulsorily acquired. No attempt was made by the Crown to communicate with the Māori owners prior to the taking.[662] The total amount of Māori land taken was 7,946 acres.[663]

732. On 8 May 1981, 327 acres of land taken from Māori in 1942 and 1961 was transferred into the Kaimanawa Forest Park and the Tongariro National Park.[664]

733. On 7 December 1990, the Army vested 579 acres of land it had compulsorily acquired from Māori in 1973, 1958 and 1961 in Ohinewairua Station ("**1990 vesting**"). This was done without offering the land back to the original owners as required by law.[665]

734. In exchange for the 1990 vesting the Army received Oruamatua Kaimanawa 1S and 1T. These blocks had been used by Māori to access their Oruamatua Kaimanawa 1U and 1V blocks with the consent of Ohinewairua Station. Once the access blocks were vested in the Army access to Ōruamatua Kaimanawa 1U and 1V has been severely restricted by the Army. The blocks are landlocked.[666]

735. The owners of Oruamatua Kaimanawa 1U and1V were not consulted about the vesting of Oruamatua Kaimanawa 1S and 1T in the Army notwithstanding that the Army knew that its ownership would affect access to Oruamatua Kaimanawa 1U and 1V.[667]

736. In September 1978, Rangipō Waiu 1B (24.234 hectares) which had been taken from Māori in 1942 was set aside for a road.[668]

Offer Backs

737. As the Generic Submissions trace after these takings were effected over time various offer back arrangements were negotiated by the Crown as lands

[662] Wai 2180, #A9, p. 97.
[663] Wai 2180, #A9, p. 102.
[664] Wai 2180, #A9, p. 117.
[665] Wai 2180, #A9, p. 123.
[666] Wai 2180, #A9, p. 124.
[667] Wai 2180, #A9, p. 125.
[668] Wai 2180, #A9, p. 128.

became surplus to requirements. Each of these cases show a demonstrable failure by the Crown to recognise the importance of the land to Taihape Māori, and respect the status of Taihape Māori as their partner in this rohe.

738. In each case an offer back process should have been triggered with full consultation with Taihape Māori and the descendants of the former Māori owners. Only in the event that there was no interest in having the land returned to them, could the Army have justified using the land as a disposable asset that could be placed on the negotiating table. Instead that land was transferred to the Forest Service, to Lands and Survey, and to Ohinewairua Station.[669]

Oruamatua Kaimanawa 2Q1 and 2Q2

739. The Crown's acquisition of Oruamatua-Kaimanawa is most significant for the Wai 1868 claimants of Ngāti Hinemanu me Ngāti Paki.

740. There were two series of acquisitions of land which are of importance in relation to the Taihape Inquiry District. The first series began in 1951 and 1961 and the second series occurred in 1973. By 1961 following a lengthy process involved the acquisition of lands for the Waiouru training ground extension came to an end. Finally, a proclamation under the 1928 Public Works Act was signed by the Governor General on 7 February 1961 to compulsorily acquire Oruamatua Kaimanawa 2Q1 of 1,516a and 2Q2 of 200a along with other Oruamatua Kaimanawa lands.[670]

741. The settlement involved Ohinewairua Station being provided with a lease of 10,000 acres of the training ground land that had been acquired in 1959 and 1961 which included 2Q2, and other lands. The Oruamatua Kaimanawa 2Q2 lands are still leased to Ohinewairua Station and although there are a number of special conditions and restrictions the Station's use is limited by the Army's utilisation of the area for training purposes.[671]

[669] Wai 2180, #A9, Phillip Cleaver, 114 and 121-122.
[670] Wai 2180 A046: Taihape Twentieth Century Overview, Tony Walzl, May 2016, p 614.
[671] Wai 2180 #A46, Tony Walzl, Taihape Twentieth Century Overview, Tony Walzl, May 2016, at 637.

742. Ms Grace Hoet spent some significant time alerting the Tribunal to the prejudicial way that concessions to access those lands that preferred lifestylers and recreational users to the family who maintain whanau relationships with the various blocks.

743. She recalled to the Tribunal the history to the lands in her brief of evidence which we set out below to see the totality of impacts that decisions around this area have had and continue to have for her whanau and others of the hapū.

E. ENVIRONMENT

MANAGEMENT OF LAND, WATER AND OTHER RESOURCES

744. As mana whenua, the Claimants have exercised mana, rangatiratanga and kaitiakitanga over land-based environmental resources and waterways within the Taihape region. That mana and rangatiratanga exercised was akin to ownership.

745. Subsequent to the signing of Te Tiriti, the Crown unilaterally imposed its own environmental management systems which did not reflect traditional values and undermined the Claimants' ability to exercise mana, rangatiratanga and kaitiakitanga over their environmental resources. Property constructs were introduced which emphasised exclusivity and alienability. These types of titles, and the values underpinning them, were foreign to the traditional environmental management and impeded the Claimants ability to exercise rangatiratanga and kaitiakitanga collectively.

746. The introduction of the Native Land Court and Crown purchasing regime also resulted in much of the land being passed into the hands of the Crown and European settlers by the 19th century.

747. Once the land had been alienated, the ability for Māori to exercise rangatiratanga and meet their associated kaitiaki responsibilities, diminished significantly.

748. The Crown's use of natural resources was not fettered by Māori values and was largely utilitarian in nature. These differing concepts of environmental management were repugnant to each other.

749. A further significant concern for the claimants is the resource management framework which has been hugely criticised prior to and post the Resource Management Act 1991 because it fails to recognise nor adequately provide for the Claimants' special relationship with their taonga nor their status as Treaty partners with authority in the development, maintenance and revitalisation of their taonga for future generations.

750. There is significant evidence on this record highlighting how Ngāti Hinemanu me Ngāti Paki and others within this rohe have been prevented in any practical and meaningful relationship in the management and decision making of their environmental resources.

751. Even with the recent reforms, the same issues remain whereby the claimants are marginalised and placed in a subordinate position to the statutory authority of regional and district councils. The claimants evidence highlights that where limited relationship agreements are initiated between hapū and local or regional councils, the success and quality of these agreements largely depend on hapū having sufficient resources.[672]

752. The Crown's stewardship of land-based environmental resources and has led to significant environmental degradation. Both tangata whenua and technical evidence have shown that:

    a) Waterways have been polluted;

    b) Traditional food resources such as tuna are endangered; and

    c) Ngāti Hinemanu me Ngāti Paki health and well-being has suffered as a result.

753. By permitting the relationships envisaged when Te Tiriti was signed,

754. The claimants we represent wish to restore the mauri of their waterways subjected to pollution and to stop practices that have compromised the relationship they maintain with these taonga.

[672] Wai 2358, #L7, Brief of Evidence of Puti Wilson, August 2018.

Crown acknowledgements

755. The Crown has not provided a specific position in respect of the river, however it has set out the following acknowledgements:[673]

> The Crown acknowledges the degradation of the environment arising from extensive deforestation, siltation, drainage schemes, introduced weeds and pests, the taking of gravel, farm run-off and other pollution, including the disposing of wastewater into the waterways of the inquiry district, are issues raised by the claimants.
>
> The Crown acknowledges that the environmental management regimes prior to the Resource Management Act 1991 did not generally recognise or take into account Māori values or interests in a manner now regarded as important and necessary.

Previous Tribunal findings

756. In respect of the inadequacy of hapū engagement, the recent findings of the Tribunal in the Freshwater and Geothermal Inquiry are most relevant:[674]

a) In terms of the principles and purposes of the Resource Management Act, the Tribunal found that Part 2 creates a hierarchy of matters for decision makers to consider. The Treaty section (section 8) is weak and the result is that Māori interests have too often been balanced out altogether in freshwater decision-making.

b) The Resource Management Act does not provide adequately for the tino rangatiratanga and the kaitiakitanga of iwi and hapū over their freshwater taonga.

c) the Resource Management Act was also in breach of Treaty principles because the Crown refused to recognise Māori proprietary rights during the development of the Act and the result is that the RMA does not provide for Māori proprietary rights in their freshwater taonga.

673 Wai 2180, #1.3.2, at 72-73.
674

d) in terms of the active protection of freshwater taonga, the Tribunal found that the Resource Management Act has allowed a serious degradation of water quality to occur in many ancestral water bodies, which are now in a highly vulnerable state.

e) Mana Whakahono provisions and the strengthening of Te Mana o Te Wai, have not made the Resource Management Act and its freshwater management regime Treaty compliant.

f) Each iteration of the NPS-FM (2011, 2014 and 2017) has failed to meet the Treaty standard of active protection of freshwater taonga. The Crown has progressively improved the NPS-FM but its water quality standards still lack crucial attributes (such as sediment).

Submissions

Traditional boundaries

757. The Claimants assert mana over the following rivers and their tributaries:

a) Rangitīkei;

b) Kawhatau;

c) Hautapu;

d) Moawhango;

e) Taruarau;

f) Ngaruroro;

g) Oroua; and

h) Kiwitea.

758. Mr Winiata-Haines provides a description of the rohe of Ngāti Hinemanu me Ngāti Paki in relation to the waterways:

> *Our interests in the Taihape Inquiry District extend in the north from the headwaters of the Hautapu River east of Waiouru, then in a*

> *northeast direction to the headwaters of the Moawhango River, then in an easterly direction to the headwaters of the Rangitīkei River, carrying on in an easterly direction to the headwaters of the Ngaruroro River south to the Waitutaki Stream, hence to the Ruahine Range then following in a southerly direction to the Maharahara, then in a westerly direction to where the Waitapu Stream falls into the Rangitīkei River then in a northerly direction to Otairi and on to Te Whakaue o Tamatea Pōkai Whenua ridge to the headwaters of the Mangaone Stream, continuing in a northerly direction to the headwaters of the Hautapu River.*

Spiritual and ancestral relationship to the wai

759. The whakapapa and ancestral relationships of Ngāti Hinemanu and Ngāti Paki is significant and highlights the strong bonds that the people share with the waterways and how these pathways maintain significant connections of the peoples of Ngāti Hinemanu and Ngāti Paki to their ancestors' domains. The evidence of Mr Jordan Winiata-Haines[675] is apposite in establishing the importance of these relationships for the Tribunal. He explains:

> *Life-giving dew is the first manifestation of the relationship between the water, land and sky, representing all waterways. Rivers are living beings. They have a life force (mauri) that weaves its way connecting the people to the water. The rivers are our life-line. They nurture and sustain us. Any damage done to the river harms the mauri of the river consequently harming the people. Ngāti Hinemanu and Ngāti Paki whakapapa is a fundamental concept that links the gods, ancestors, people, rivers, places and ideas.*

Pollution

760. The Crown's failure to recognise the Claimant's authority and the importance of their relationships has led to the environmental damage throughout the rohe of Taihape. This Tribunal has heard the concerns of the Claimants about the progressive degradation of the Rivers, and the associated loss of resources, uses and values it has traditionally provided.

761. Mrs Cross' describes how the Hautapu River was a pristine river which provided freshwater. However, since the establishment of the Taihape

[675] Wai 2358, #D48(b)(i), 29 June 2017.

Sewage Treatment Plant, the mauri of the river has changed significantly and adversely affected by pollution.[676]

762. Mr Lomax in his evidence speaks of the abundance of tuna, inanga, koura and kākahi as a child. However, with the removal of the ngāhere, the banks of the rivers which are the habitats of tuna, have since been damaged and it is impossible today for their children and mokopuna to fish for tuna like they once did.[677]

Inadequate hapū engagement

763. These submissions and the evidence on the record remind that the legislative history of the environmental management framework has always been structured on the flawed presumption that the Crown has exclusive authority to sustainably manage the natural resources of waterways. This exclusive authority assumed by the Crown is delegated to regional and district councils and iwi and hapū have had little opportunity to influence decisions beyond those opportunities available to the public generally.

764. Dr Alexander in his Report is critical of the Crown creating a situation where there is no provision for it to have a direct relationship with hapū with respect to environmental management. Dr Alexander also aptly criticises the way in which the Resource Management Act makes only limited provision for hapū to act as decision making organisations however these functions have hardly even been used in New Zealand:[678]

> *... the practical reality is that while hapū have to deal with RMA processes and with regional and district councils if they are to achieve the protections for the natural environment that they seek, the Crown itself is largely absent from this day-to-day activity. The Crown has created a situation where there is no provision for it to have a direct relationship with hapū with respect to environmental management, at the very time in the country's history that greater attention than ever is being given to the development of Treaty relationships.*
>
> …

[676] Wai 2180, #F3, Brief of Evidence of Patricia Cross, 17 May 2017.
[677] Wai 2180, #F4, Brief of Evidence of Ngahapeaparatuae Lomax, 17 May 2017.
[678] Wai 2180, #A40(b) David Alexander, *Rangitīkei River and its Tributaries Historical Report - Report Summary*, May 2017, at 16.

> *While the Act does make limited provision for hapū to act as decision-making organisations, this is at the discretion of existing regulatory authorities (regional and district councils), and the power to delegate functions to a hapū or iwi organisation has hardly ever been used anywhere in New Zealand. Neither full delegation nor a sharing of decision-making functions has been used for Rangitīkei River matters.*

765. Dr Joseph and Mr Meredith in their report[679] refer to a number of efforts over the last several decades by Rangitīkei Māori to engage with local government over management of the river. Dr Alexander also discusses the efforts at length in Chapter 12 of his Report.

766. Two efforts involved standing committees of the district council. However, both appear to have struggled to gain traction in terms of significant involvement in decisions affecting the river. Meredith has recorded comments about how these efforts struggle when ahi ka is not legislatively enshrined.[680]

767. A third body, Ngā Pae o Rangitikei (NPOR) in association with the Horizons Regional Council appears to have had more success, having operated for 15 years. But Dr Alexander suggests an overall diminishment in effect and role as the One Plan has been developed.[681]

768. This has all occurred under the RMA, which has since 1991 included provisions for management of parts or all of a resource such as they river to be handed to an iwi authority (s33), or managed under a heritage protection order (ss187-198), as Ngāti Pikiao attempted with the Kaituna river in 1999. In addition, since 2005 there has been the possibility of a joint management agreement by an "iwi authority, and group that represents hapū" over parts of the river with the reginal council.

769. It is the position of the claimants that any restoration of a Treaty relationship to overcome what the claimants see as a fundamental and ongoing breach of

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[679] Wai 2180, #A44, P Meredith, R Joseph, L Gifford, *Ko Rangitikei Te Awa: The Rangitikei River and its Tributaries Cultural Perspectives Report*, May 2016, 26 Sep 16.
[680] Wai 2180, #A44(b) *Ko Rangitikei Te Awa: The Rangitikei River and its Tributaries Cultural Perspectives Report - Response to the Taihape: Rangitikei ki Rangipō Tribunal Statement of Issues,* at [12].
[681] Wai 2180, #A40, David Alexander, *Rangitīkei River and its Tributaries Historical Report*), November 2015, Chapter 12.

tino rangatiratanga must affect real power sharing. The claimants have come before this Tribunal in the sincere hope that this process will recommend fundamental change in this regard.

770. The evidence of Mrs Wilson is important in this context context that even where limited relationship agreements have been affected there is a significant limitation to their effectiveness.[682]

771. The success and quality of any kind of partnership largely depend on iwi and hapū having sufficient resources.

Section 33 – Transfer of Powers

772. Section 33 states that a local authority may transfer a power "to another authority". Eligible authorities include government departments, other local authorities, statutory authorities, local boards, iwi authorities and joint committees set up under s 80 (to prepare combined plans).

773. However there has been no willingness on the part of the Crown through its delegated authority for the use of the statutory powers to happen, and no incentives offered by the Crown.

774. Crown guidance for local authorities has been minimal and the authority still remains in the hands of the local authority, as all of these mechanisms represent a delegation of a power which that is itself a delegation of a Crown power.

Joint Management Agreement – s36B

775. In order for a joint management to be established under s 36B of the RMA, council must be satisfied on all of the following grounds:[683]

    a) That each public authority, iwi authority, and group that represents hapū for the purposes of this Act that, in each case, is a party to the joint management agreement—

[682] Wai 2180, #L7, Brief of Evidence of Puti Wilson, 27 August 2018.
[683] Resource Management Act 1991, s36B(b).

I. Represents the relevant community of interest; and

II. Has the technical or special capability or expertise to perform or exercise the function, power, or duty jointly with the local authority; and

b) That a joint management agreement is an efficient method of performing or exercising the function, power or duty.

776. The requirement that such agreements must be efficient has been hugely criticised as it suggests that the iwi will have to contribute both human and financial resources to the collaborative management process[684] which is a significant barrier for not only our claimants but a majority of hapū and iwi today.

777. Ngāti Hinemanu and Ngāti Paki has been critical of the joint management agreements and argue that co-management agreements created under the Treaty settlements process are more akin to the exercise of rangatiratanga and provide mana whenua with equal decision-making powers. The claimants believe that a co-governance model also allows hapū, local authorities and key stakeholders opportunities to work together to ensure joint stewardship of the resource. This will result in the enabling of a collective that will actively promote the restoration of the awa while allowing for its sustainable long-term use rather than unilateral decision making within Crown frameworks.

Mana Whakahono ā Rohe: Iwi Participation Arrangements

778. Section 58M states the purpose of a Mana Whakahono a Rohe:
The purpose of a Mana Whakahono ā Rohe is—

a) to provide a mechanism for iwi authorities and local authorities to discuss, agree, and record ways in which tangata whenua may, through

[684] Natalie Coates, *Joint-Management Agreements In New Zealand: Simply Empty Promises?*, (2009) 13(1) JSPL at 32.

their iwi authorities, participate in resource management and decision-making processes under this Act; and

b) to assist local authorities to comply with their statutory duties under this Act, including through the implementation of sections 6(e), 7(a), and 8.

779. Section 58M(a) refers to iwi participating in decision making processes, rather than necessarily in decision making itself. Section 58M(b) refers to iwi assisting local authorities in the exercise by the local authorities of their functions and powers.

780. Mana Whakahono ā Rohe agreements are but another relationship agreement that depends upon trust and co-operation. When one side of the relationship is well resourced financially, and have access to people with capability and experience, and the other partner is under resourced with limited capability, it is inevitable that that partner will not be able to effectively contribute, nor gain as much from the partnership. Even more so, when iwi and hapū are required to work with other iwi and hapū in ways that serve a common interest (i.e. as kaitiakitanga), MWAR agreements do not allow for the individual differences and nuances associated with individual iwi and hapū to be captured in an agreement. This is particularly important for our Ngāti Hinemanu and Ngāti Paki claimants as they have shared interests in the Rangitīkei River namely, Ngāti Whitikaupeka, Ngāti Tamakōpiri, Ngāti Hauiti. Mana Whakahono ā Rohe agreements predominantly serve individual iwi and hapū as they reflect the historical background of those iwi and hapū.

781. In counsel's view, the mechanisms whereby iwi or hapū can participate have not changed. All that has happened is that there is now a requirement for iwi to initiate discussions under Mana Whakahono ā Rohe agreement (ss 58L to 58U) which is unlikely to assist the claimants to meet the continuing financial and time demands placed on them to effectively contribute and participate in the resource management system.

POWER DEVELOPMENT SCHEMES

782. The Tribunal has previously recorded its views on the Tongariro Power Development Scheme in the National Park Report. In that Report, the Tribunal said:[685]

> *The claimants described the impacts of the same works. Colin Richards, for instance, told us how fishing is no longer possible in the Moawhango River because of the reduced waterflow there since the building of the dam. Puruhi Smith's Ngāti Waewae ancestors had also used the Moawhango for fishing, but changes caused to both the Moawhango and Rangitīkei by the TPD meant that in more recent years 'kai became harder and harder to get'. Tame Taite likewise attributed the lack of patiki (flounders) in the Rangitīkei River to lower water levels and swifter currents.*

783. The Tribunal went on to conclude:[686]

> *The Environment Court, in its 2004 judgement, found that the diversion of waters for the TPD was, and is, having 'effects on the cultural and spiritual values' of Māori that are both 'deleterious' and 'considerable'. It reported that the most damaging effect of both diversions is on the wairua and spirituality of the people:*
>
> *To take away part of the river (like the water or the river shingle) is to take away part of the iwi. To desecrate the water is to desecrate the iwi. To pollute the water is to pollute the people.*
>
> *To take away part of the river (like the water or the river shingle) is to take away part of the iwi. To desecrate the water is to desecrate the iwi. To pollute the water is to pollute the people.*
>
> We agree with that conclusion.

Tongariro Power Development Scheme

784. The Tongariro Power Development (TPD) scheme has a huge impact on the Rangitīkei River catchment.[687]

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[685] Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report,* (Wai 1130, 2013), at 1136.
[686] Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report,* (Wai 1130, 2013), at 1138.
[687] Wai 2180, #A4, p. 84.

785. The TPD takes waters from the Whanganui, Whangaehu, Moawhango and Tongariro Rivers, and passes them through Lake Rotoaira and the Tokaanu power station to discharge into Lake Taupo.

786. Cabinet approval the TPD scheme in September 1964 under section 311 Public Works Act 1928.[688]

787. The subsequent Order in Council of 1958 provided all the legal authority necessary for the Crown to divert water from the Whangaehu catchment into the Moawhango catchment, then from the Moawhango catchment into the Lake Taupo and Waikato catchment, and to decide how much water it was prepared to release down the Moawhango River from the dam in the headwaters.[689]

788. The 1958 Order in Council retained full legal force and effect through to 2001 surviving the Water and Soil Conservation Act 1967, and it successor the Resource Management Act 1991.[690]

789. Crown Consultation with tangata whenua most affected by the TPD scheme, Ngāti Tuwharetoa, was minimal and was nonexistent with other affected iwi.[691]

790. The dam has caused a reduction in mean flow by 62% at Moawhango Bridge, and by 13% at Mangaweka after the Moawhango had joined the Rangitīkei River.[692]

791. The effects on the Moawhango River were even greater during times of lowerthan-mean flow, with analysis of low-flow records showing an 80% reduction at Moawhango, though a lesser difference in effect in the Rangitīkei River with a 14% reduction at Mangaweka, and 12% reduction at Kakariki.[693]

[688] Wai 2180, #A4, p. 85.
[689] Wai 2180, #A4, p. 85.
[690] Wai 2180, #A4, p. 85.
[691] Wai 2180, #A4, p. 86.
[692] Wai 2180, #A4, p. 86.
[693] Wai 2180, #A4, p. 87.

792. This flow reduction affects fish life and reduces the dilution effect in the river on any pollution entering the river.[694]

793. Water levels in Lake Moawhango can vary by as much as 15 meters. The wetting and drying of the exposed lakeshore increases its risk of erosion and the possibility of dust storms.[695]

794. The TPD scheme impacts environmentally on the Moawhango and Rangitīkei through:[696]

a) changes of flow;

b) impact of sedimentation;

c) impact on water quality;

d) impact on river fauna;

e) impact on riparian lands; and

f) impact on the landscape.

795. The evidence is very clear that since the mid-1970s, the Claimants and other hapū within Taihape have had controls placed on their lands for river control purposes. This activity by the various arms of the kāwanatanga agencies charged with these matters resulted in around 25% of the river flow is taken for the TPD Scheme through the Moawhango Dam.[697] Dr Alexander notes in his report that the actual taking has been much more, about 75% through the 1980s and 1990s.[698]

796. In 1964, when the consents were first granted, very little was known about the effect in the river.[699] The evidence of Dr Alexander records, the

[694] Wai 2180, #A4, p. 88.
[695] Wai 2180, #A4, p. 88.
[696] Wai 2180, #A4, p. 88.
[697] Wai 2180, #A40(a) Supporting Papers, at 7446.
[698] Wai 2180, #A40, David Alexander, Rangitīkei River and its Tributaries Historical Report, November 2015, at 339.
[699] Wai 2180, #A40, David Alexander, Rangitīkei River and its Tributaries Historical Report, November 2015, at 336.

Rangitīkei is a fundamentally different river after the TPD came into effect, particularly in its upper reaches. Such a proposal would not be possible today without a full assessment of all impacts before any decision was made, and it is safe to say that it would have a very difficult time gaining consent under the RMA.

Crown concessions

797. The Crown's position on this issue:

> The Crown acknowledges that the diversion of the headwaters of the Moawhango River for the Tongariro Power Development scheme is considered by iwi and hapū of the Taihape: Rangitīkei ki Rangipō inquiry district to be inconsistent with their tikanga.

F. MATAURANGA MĀORI

EDUCATION AND SOCIAL SERVICES

798. This section relates to Issue 18.

799. These submissions provide an overview of various social services and education issues that have been covered in evidence by and on behalf of the claimant group.

800. The Crown became involved with the provision of various education and health services in the Taihape inquiry district from the end of the nineteenth century, including primary/secondary schooling, Moawhango Native School, the Kurahaupō Māori Council, Taihape Hospital, and various medical and dental services. The extent to which these services reflected the traditional knowledge of Taihape Māori, in particular te reo, is the subject of several claims in this inquiry.

Social Services

801. Counsel adopt the generic closing submissions in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki. The Ngāti Paki and Ngāti Hinemanu claimants wish to

emphasise in these submissions the demise of the taonga of moko kauae specific to them.

Key Evidence relied on

802. The evidence that is predominantly relied on in this section is by the following:

a) Wai 2180, #K7Brief of Evidence of Raewyn Iosia-Sipeli;

b) Wai 2180, #K4 Brief of Evidence of Waiharakeke Winiata;

c) Wai 2180, #K6 Brief of Evidence of Maurini Haines-Winiata;

d) Wai 2180, #K8 Brief of Evidence of Lulu Simi; and

e) Wai 2180, #K5 Brief of Evidence of Peter Steedman.

803. Ms Raewyn Iosia-Sipeli discusses her experiences training to be a nurse, her experience as a registered nurse, and the recent and unfortunate experiences of her whanaunga owing to the current gaps in the health care system which have invisibilised Ngāti Hinemanu and Ngāti Paki.

804. The evidence of Ms Waiharakeke Winiata highlights her experiences as a nursing student and the racism she encountered, the frustration she feels at the poor health services available in Taihape, the barriers she sees in the health system and the issues of pay disparity for nurses and the flow on effects that it has on Māori health generally

805. Ms Maurini Winiata Haines provides an overview of her background in the health services area and Ngāti Hinemanu and Ngāti Paki involvement with social and Māori health service initiatives. Despite being in some great programmes, Ngāti Hinemanu and Ngāti Paki were effectively pushed out of the systems when an iwi representatives was appointed to the District Health Board and Whanganui Regional Network Board. The Crown's preference for integrated purposes has created yet more barriers for Ngāti Hinemanu and Ngāti Paki. The Crown disregarded all the positive inroads N Ngāti

Hinemanu and Ngāti Paki had been making when they were actively involved in the various initiatives in the rohe.

806. Ms Lulu Simi details her experiences and ongoing disappointment with the mental health system and the barriers her people face by dint of their locations and the general stigmatisation of mental health which is further encouraged by the Crown's failure to provide adequate resourcing and support in this region.

807. The evidence by Mr Peter Steedman describes the bustling community and the thriving employment opportunities available to him and his whānau. He describes the decline and opportunities available to him in Taihape and their visions for the use of their land. Mr Steedman discusses the development made at the marae which starkly contrast the unfortunate decline in other parts of the community.

808. The evidence establishes that the Claimants have and continue to be disadvantaged in terms of their health outcomes.

Education

809. The generic closing submissions largely covered the Treaty principles relating to this issue. However, the claimants wish to expand further.

810. The Tribunal has expressed the following relevant principles in its various judgments:

811. The Central North Island Inquiry, the Tribunal also noted:[700]

> *"…The Crown, in exchange for kawanatanga (Governors) and the right to make laws for New Zealand, solemnly promised that Māori rights,*
> *including the right to exercise tino rangatiratanga (autonomy or self-governance) over their whenua (lands), their kainga (estates), and their remaining taonga (including but not limited to forest and fisheries), would be protected".*

[700] Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, (Wai 167, 1999), at 1237.

812. Historically, the Crown has tried to claim that there is no legal Te Tiriti or Treaty duty to provide education. However, as per a stream of jurisprudence similar to the above Tribunal finding, the Crown has diminished the ability of Ngāti Hinemanu and Ngāti Paki to exercise their self-autonomy in the preservation of their taonga and the Crown has more and more encroached on their authority to do so. This has been effected in a number of ways but most significantly when the Crown itself solely assumed the role of developing monocultural policies and practices, as part of its governance responsibility, which ignored Mātauranga Māori and Te Reo Rangatira o Ngāti Hinemanu and Ngāti Paki and its duties to protect the taonga of Māori.

813. Under Article II of Te Tiriti and the Treaty, it is counsel's submission that the Crown has breached its duties and obligations to Ngāti Hinemanu and Ngāti Paki, by imposing a Westernised education system on the peoples of Ngāti Hinemanu and Ngāti Paki. This Westernised system compromised and devalued the knowledge, language and cultural values of Ngāti Hinemanu and Ngāti Paki, and inhibited their ability to ensure hapū survival.

814. The detrimental impacts of the process of colonisation coupled with state policies which promoted assimilation significantly eroded the status of te reo Māori. Moreover, the New Zealand Government has consistently passed legislation that has been unfavourable and damaging to te reo Māori, and accelerated the Government's agenda of cultural assimilation and language domination.

815. A finding that the Crown breached their duty under Article II of Te Tiriti and the Treaty, in the way that it exercised its governmental powers to establish the education system in this country, must be made. Recommendations to restore the loss, value, and mana of te reo and cultural knowledge of Ngāti Hinemanu and Ngāti Paki must also follow. A recognition that initiatives like a kura kaupapa and wharekura developed within the territories of Ngāti Hinemanu and Ngāti Paki and operating within the pedagogy of Ngāti Hinemanu and Ngāti Paki is fundamental the claimants say to ensuring the active protection of their way of life.

816. The following closing submissions reflect why reconciliation of these injustices must result for Ngāti Hinemanu and Ngāti Paki as a matter of priority with regard to their Te Tiriti and Treaty claims.

Ngāti Hinemanu and Ngāti Paki

817. Prior to the signing of Te Tiriti and the Treaty, Ngāti Hinemanu and Ngāti Paki contends:

a) the te reo o Ngāti Hinemanu and Ngāti Paki was their first language, and was therefore the only means of communication, and the transmission of knowledge from one generation to the next;[701]

b) Ngāti Hinemanu and Ngāti Paki were educationally independent and self-governing;[702]

c) Ngāti Hinemanu and Ngāti Paki asserted tino rangatiratanga over the learning and education of their members;[703]

d) all Ngāti Hinemanu and Ngāti Paki members were educationally successful; and

e) that "educational success" enabled each member of Ngāti Hinemanu and Ngāti Paki to contribute to the economic, social, political and cultural way of life that ensured Ngāti Hinemanu and Ngāti Paki were secure and prosperous.

818. Consequently, each individual member of Ngāti Hinemanu and Ngāti Paki was responsible for the success of its members who in turn were part of a continuum of responsibility to ensure the survival and wellbeing of its cultural properties.

Failures of Education system

[701] Wai 2180, #C6 and Wai 2180, #H3.
[702] Wai 2180, #C6.
[703] Wai 2180, #C6.

819. The failures of the education system for Ngāti Hinemanu and Ngāti Paki are a product of a wide range of factors, not to be viewed in isolation.

820. The tangata whenua evidence from the claimant group has played a key role in illustrating not only the negative impacts of the Crown's social services and education system for Ngāti Hinemanu and Ngāti Paki, but also the ongoing impacts that this has on whānau including up to the present day.

821. The evidence is clear very shortly after the signing of Te Tiriti and the Treaty, the Crown made concentrated efforts to assimilate Māori populations within the rubric of western culture. This saw initially the amalgamation and then denial of te reo Māori, tikanga Māori, and mātauranga Māori through the implementation of foreign, colonial law and policy education.

822. Taihape Māori Inquiry District in particular, was significantly affected by the implementation of Crown education policies as has been fully discussed in the generic submissions on the point.

823. In 1847, upon the introduction of the Education Ordinance, native schools throughout New Zealand were required to teach English, as part of their curriculum, in order to benefit from State subsidies.[396] The Native Schools Act 1858 that followed that ordinance mirrored this requirement and further set out to abolish all things Māori from the curriculum. In other words, the traditional Ngāti Hinemanu and Ngāti Paki knowledge was then intentionally excluded from the curriculum.

824. This policy process lasted for generations with the result being a huge loss of tikanga, whakapapa and mātauranga. [397] Unsurprisingly, te reo o Ngāti Hinemanu and Ngāti Paki and the Tikanga which gives force and vitality to it has also been severely diminished.

825. Furthermore, the evidence presented illustrates that school was often a negative experience for the people of Ngāti Hinemanu and Ngāti Paki, something which official records do not show the full picture of. Neither do such records reflect the reality and ongoing impacts of this experience for many Taihape Māori.

826. Not to be forgotten are factors such as poverty, ill health and the operation of the Native Land Court, which have also inhibited the educational achievement of Ngāti Hinemanu and Ngāti Paki. These wider social and economic issues are inherently connected with, and symptomatic of the educational underachievement of many Taihape Māori.

827. Māori have had to struggle and often continue to have to struggle for an education that caters appropriately to their needs. The disparity between the educational achievement of Taihape Māori and non-Māori is a direct result of Crown failings in the provision of education.

828. Ngāti Hinemanu and Ngāti Paki assert that the education system as implemented by the Crown taught irrelevant, prejudicial and even detrimental content which undermined the very foundations of the hapū of Ngāti Hinemanu and Ngāti Paki, namely through the devaluing of Ngāti Hinemanu and Ngāti Paki reo and tikanga.

829. Various claimant evidence highlights that traditional knowledge and language of Ngāti Hinemanu and Ngāti Paki was excluded from the curriculum for decades with the result being devastating loss of language, tikanga, whakapapa, knowledge of traditional practices, and the basic elements for the survival of Ngāti Hinemanu and Ngāti Paki.

830. Crown policy is the leading cause of the demise of the reo and mātauranga of Ngāti Hinemanu and Ngāti Paki, and current Crown policy is failing to adequately revitalise the reo as it should. The evidence is overwhelming.

Summary

831. As previously mentioned, Ngāti Hinemanu and Ngāti Paki have no hesitation in affirming that the grave status of te reo o Ngāti Hinemanu and Ngāti Paki today is a direct consequence of actions of the Crown.

832. Throughout the period following the signing of Te Tiriti and the Treaty, Ngāti Hinemanu and Ngāti Paki active resisted the ever-growing Crown forces, in an attempt to assert and maintain their rangatiratanga, their tikanga and their reo, to ensure the survival of their hapū.

833. The Crown, however, without consent or consultation from Ngāti Hinemanu and Ngāti Paki, have assumed authority and responsibility for the education of its members, and have acted to suppress the tino rangatiratanga of Ngāti Hinemanu and Ngāti Paki, including their ability to influence the means of education, te reo, tikanga and mātauranga for present and future generations by developing legislation and policy that does not support these efforts as of right.

834. These actions have caused significant prejudice and distress to the people of Ngāti Hinemanu and Ngāti Paki over multiple generations. The socio-economic position of Ngāti Hinemanu and Ngāti Paki themselves is another barrier that has contributed to this demise so any solution must have a goal to improve the social and economic wellbeing of Ngāti Hinemanu and Ngāti Paki as an integral aspect of any language revitalisation approach. In part, this status has been contributed to by the Crown and their colonial laws and policies with regard to the education system and employment initiatives that have been designed and implemented. The statistics are very clear on this point.

835. Counsel assert that the Crown has fundamentally failed to discharge its duty to provide appropriate and meaning education services to Ngāti Hinemanu and Ngāti Paki. Furthermore, that the Crown was wrong to assume responsibility and authority over the education of Ngāti Hinemanu and Ngāti Paki.

836. In this respect, the Crown has also not respected the rangatiratanga it guaranteed to Ngāti Hinemanu and Ngāti Paki, and has acted in breach of Te Tiriti and the Treaty of Waitangi.

CULTURAL TAONGA

Me aro ki te hā o Hineahuone

Pay heed to the mana of Women

837. Counsel adopt the generic closing submissions in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu

me Ngāti Paki. The Ngāti Paki and Ngāti Hinemanu claimants wish to emphasise in these submissions the demise of the taonga of moko kauae specific to them.

Key Evidence Relied On

838. The evidence that is predominantly relied on in this section was expressed during Ngā Korero Tuku Iho Hearings At Winiata Marae and is complemented by the following:

a) Wai 2180, #C1 Statement of Evidence of Maurini Haines-Winiata dated 10 June 2016;

b) Wai 2180, #C2 Statement of Evidence of Patricia Cross dated 17 June 2016; and

c) Wai 2180, #K9 Joint Brief of Evidence of Jordan Winiata-Haines, Awhina Twomey and Kiriana Winiata dated 4 May 2018.

Moko Kauae – He Taonga

839. The Tribunal has heard evidence during Ngā Kōrero Tuku Iho Hearings which provided an insight into the diminishment of the status of moko kauae and the significant cultural loss that has arisen for the peoples of Ngāti Hinemanu me Ngāti Paki and the contingent social and cultural disconnection thatfollowed.

840. The evidence presented from Ngā Korero Tuku Iho named a few prominent Ngāti Hinemanu and Ngāti Paki wāhine who wore moko kauae and were displayed in the wharetīpuna Tuatahi at Winiata Marae which included:

a) Peti Mokopuna Hamutana (the wife of Winiata Te Whaaro);

b) Hana Hinemanu (the wife of Irimana Te Ngahoa);

c) Ema Te Rango (also known as Ema Te Ngaihe);

d) Te Rira (Ema Te Rango’s daughter in law);

e) Raiha (Peti Mokopuna Hamutana's mokopuna's sister);

f) Iramutu (the daughter of Winiata Te Whaaro and Peti Mokopuna Hamutana); and

g) Waimatao (the daughter of Winiata Te Whaaro and Peti Mokopuna Hamutana).

841. Ms Maurini Haines-Winiata in her evidence says that moko kauae depicted the mana (status) of the wahine in her whānau and hapū often established through her whakapapa and her position for example skilled in a particular area. A wahine may be a tohunga in her own right in anyone of the skills and expertise attributed to wahine. Birthing is one example; weaving is another and some hapū had wahine who carried out ta moko. Of course, there are many other areas than just mentioned.[704] The status and role of those wahine according to Ngāti Hinemanu and Ngāti Paki are best described by Ms Patricia Cross in her evidence:[705]

> *Wāhine were enabled to retain mother and Kuia roles which cemented firmly into the spiritual consciousness fo all their descendants. Ngāti Hinemanu and Ngāti Paki women were seen as the beginning and the end of life in this world they were the bearers of all our children and nurturers of our whānau and hapū. Tapu attached to our women because of the obligations to ensure the ability of Ngāti Hinemanu and Ngāti Paki to maintain their tangata whenua status and responsibilities. This obligation is described by the ritual reference to women as Te Whare Tangata the housing of the human species.*

842. The status of Ngāti Hinemanu and Ngāti Paki women was affected by colonisation through different mechanisms including the destruction of wāhi tapu such as papakāinga. That saw the destruction of taonga being stripped away from Ngāti Hinemanu and Ngāti Paki women such as the art of weaving, birthing practices and the loss of natural indigenous within the environment used for moko kauae.

843. The skill and knowledge of Wai Ngārehu (Pigmentation) of moko kauae was mostly undertaken by tohunga who worked with healing and rongoā. The

[704] Wai 2180, #C01, p. 6.
[705] Wai 2180, #C02, p. 2.

process was sophisticated with the use of karakia and a variety of plants and trees from the ngahere (bush) to produce the ngārehu (charcoal) from resinous trees such as the Kahikatea and Rimu.[706] The intricate and involved process to prepare the necessary mixtures and oils utilising the resources of the taiao (environment) was illustrated in the evidence of Ms Maurini Haines-Winiata.[707]

844. These recounts highlight the art form and cultural taonga of moko kauae as it relates to Ngā Atua, korero pūrakau, Papatūānuku and her environment. It is from within these elements that the physical environment of the Taihape District Inquiry comes to life. This also depicting the importance of maintaining and preserving the cultural practice of moko kauae as a form of knowledge upheld by the mana of Ngāti Hinemanu and Ngāti Paki wahine.

The demise of Moko Kauae

845. Ms Maurini Haines-Winiata and Ms Patricia Cross argue that the effects of colonisation, the damage to the environment, the Tohunga Suppression Act 1907, and Christianity has impacted on the mana of Ngati Hinemanu me Ngati Paki wahine and moko kauae which has led to the loss of those taonga.[708]

846. The particular impact of colonisation on the taonga of moko kauae was that the practice was seen as 'barbarous' and should be abolished among New Zealanders and that be implemented through the work of Missionaries. This led to the actions and attitudes of the Missionaries who actively passed judgment and condemned the practice as being a work of the devil. Tohunga were held to be of a dangerous cult or even practitioners of witchcraft and moko kauae were looked upon as being hideous or wrongly identified as being for beauty purposes.[709] There are still people today who see moko kauae as the work of the devil.[710]

[706] Wai 2180, #C01, p 3.
[707] Wai 2180, #C01, p 3.
[708] Wai 2180, #C01 and #C02.
[709] Wai 2180, #C01, p. 6.
[710] Wai 2180, #C01, p. 6

847. The progression of colonisation and the impact of the Tohunga Suppression Act was described by Ms Maurini Haines-Winiata in that people began to take up Christianity and leave their cultural practices behind. Therefore, tohunga who practiced moko kauae did not pass on their skill knowledge and wisdom in this field. Most devastatingly, when those tohunga passed away, so too did the mātauranga Māori about the practice as well as the visual depictions of those moko kauae on wahine of Ngāti Paki and Ngāti Hinemanu.

848. An example of this was in Ms Maurini Haines-Winiata's evidence where she stated that the skill of moko kauae began to decline in the generation of her mother-in-law Waipai Te Ngahoa Winiata who was the granddaughter of Peti and Winiata. The stories that lie within the history of those who carry moko kauae were not passed on through whakapapa as they should have been.

849. The impact of such today is that there are still preconceived ideas of the role in society that those have who choose to wear moko kauae. Moko kauae wearer's today such as Ms Maurini Haines-Winiata say that moko kauae becomes a part of yourself as a wahine, so much so you cannot differentiate it from any other part of your body and that is unique. The wearing of these today, in most cases, is about continuity, affirmation identity and commitment.[711]

Conclusion

850. Moko kauae, skill and knowledge are taonga and therefore require the protection of Article II of Tr Tiriti. The claimants say that in this way, the Crown has failed to protect the cultural taonga specifically the practice of moko kauae for wahine of Ngāti Paki and Ngāti Hinemanu by implementing regimes and legislation that set out to diminish and abolish the cultural practices of those held by tohunga.

851. The demise of the practice of ta moko and moko kauae has recently been revitalised by the Ngāti Hinemanu and Ngāti Paki descendants with a whole

[711] Wai 2180, #C01, p 7.

raft of issues arising from access to traditional dyes; the maintenance of practices of ta moko all of which are issues to be explored as part of the hearings. With that being said, moko kauae has "its own life force its own integrity and supremacy beyond the face".[712]

TE REO RANGATIRA

"Ko Te Reo te Mauri o te Mana Māori"

"The Māori Language is the life force of Māori autonomy"

- Taa Hemi Henare

852. This section of the closing submissions relates to Issue 20 of the Tribunal's Statement of Issues.

853. Counsel adopt the generic closing submissions in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki. There are distinctive perspectives of the Ngāti Paki and Ngāti Hinemanu claimants that we draw focus to in these submissions.

854. Ngāti Hinemanu and Ngāti Paki believe the submissions there highlight the ongoing concerns by Taihape Māori as to the state of te Reo Māori as evidenced in claims before the Tribunal consistently over the last forty years are important matters to be addressed in findings of this Tribunal.

Te Tiriti/ The Treaty Principles

855. In regards to the relevant Te Tiriti and Treaty principles for the Tribunal to consider, the Generic Closing submissions for Issue 20, largely cover these matters.

Claims by Ngāti Hinemanu and Ngāti Paki

856. The claims made on behalf of Ngāti Hinemanu and Ngāti Paki are that the Crown, through the introduction of various policies and legislations, has:

712 Wai 2180, #C01 at p 7.

a) failed in their duty of good faith to actively protect te reo Māori and the unique reo o Ngāti Hinemanu and Ngāti Paki;[713]

b) enforced laws, policies and practices of assimilation resulting in the near extinction of te reo o Ngāti Hinemanu and Ngāti Paki;[714]

c) failed to provide for the distinctive educational needs of Ngāti Hinemanu and Ngāti Paki as a whole with particular consequences for the younger Ngāti Hinemanu and Ngāti Paki generation;[715] and

d) prohibited the use of te reo Māori in schools, thereby risking the survival of te reo o Ngāti Hinemanu and Ngāti Paki, and the tribunal distinctiveness of Ngāti Hinemanu and Ngāti Paki. This has hindered the capacity for Ngāti Hinemanu and Ngāti Paki to maintain and develop their language, culture and custom;[716]

e) failed to allow for the exercise of mana and tino rangatiratanga with respect to the establishment of appropriate institutions of learning including Kōhanga Reo; Kura Kaupapa; Wharekura and Whare Wānanga;[717]

f) failed to provide and implement current policies in education to adequately ensure the survival of Te Reo Māori and Te Reo o Ngāti Hinemanu and Ngāti Paki.[718]

857. The following closing submissions reflect why reconciliation of these injustices must result for Ngāti Hinemanu and Ngāti Paki as a matter of priority with regard to their Te Tiriti and Treaty claims.

Key Evidence and Material Relied upon

858. The evidence that will be primarily relied upon for this section of the closing submissions is as follows:

[713] Wai 2180, #C6.
[714] Wai 2180, #C6 and Wai 2180, #K11.
[715] Wai 2180, #K12 and Wai 2180, #C6.
[716] Wai 2180, #H3 and Wai 2180, #E7.
[717] Wai 2180, #K12 at [41]-[43] and Wai 2180, #4.4.15 at 710.
[718] Wai 2180, #C6 and Wai 2180, #K11.

a) Wai 2180, #K11 Brief of Evidence of Jordan Winiata-Haines, Āwhina Twomey, Kiriana Winiata dated 4 May 2018;

b) Wai 2180, #C6 Brief of Evidence of Jordan Winiata Haines and Āwhina Twomey dated 21 June 2016;

c) Wai 2180, #K12 Brief of Evidence of Tanya Beatty dated 4 May 2018;

d) Wai 2180, #E7 Brief of Evidence of Grace Hoet; and

e) Wai 2180, #H3 Brief of Evidence of Hineaka Winiata dated 27 November 2017.

859. In addition to these particular commissioned pieces of research undertaken for Ngāti Hinemanu and Ngāti Paki the Tribunal was assisted in analysis on these issues by important evidence from Mr Peter McBurney.[719]

Te Reo o Ngāti Hinemanu me Ngāti Paki

"E noho ana au ki te tihi o toku māunga o Aorangi, e whakarongorua aku taringa ki te reo o nga manu, koia ra ko te reo o tātou o Ngāti Hinemanu me Ngāti Paki"

860. This is a proverb of the people of Ngāti Hinemanu and Ngāti Paki that gives description for the nature and sound of their language. Te Reo Māori is the mother tongue and the native language of the Māori people of Aotearoa. Furthermore, Te Reo Māori has been recognised as such by the Government of New Zealand through the Te Ture mo Te Reo Māori 2016 or Māori Language Act 2016.

861. However, this current form of Te Reo Māori is merely the evolution of the language of a people that travelled here from Hawaiki many years ago, what is not always mentioned is the path in which the language has taken to become what it is today.

[719] Wai 2180, #A52.

862. The detrimental impacts of the process of colonisation coupled with state policies which promoted assimilation significantly eroded the status of te reo Māori. Moreover, the New Zealand Government has consistently passed legislation that has been unfavourable and damaging to te reo Māori, and accelerated the Government's agenda of cultural assimilation and language domination.

863. These impacts were significant for Ngāti Hinemanu and Ngāti Paki. There are very few members of Ngāti Hinemanu and Ngāti Paki today who have a strong language and cultural grounding. Many have committed themselves to reviving their language and culture. Yet as the evidence emphasises, the obstacles to obtaining appropriate resources to facilitate this makes this admirable goal almost unattainable.

864. While there have been many initiatives to assist the wider Māori population to facilitate the survival of te reo Māori, the shift of the fundamental Westernised education system, which favours the imposition of monocultural policies and curriculums, within Ngāti Hinemanu and Ngāti Paki, to achieve this is a monumental task to say the least.

865. Nevertheless, the settlement of Ngāti Hinemanu and Ngāti Paki's historical grievances concerning te reo Māori and the need for kaupapa Māori education initiatives steeped in Te Reo o Ngāti Hinemanu and Ngāti Paki and sourced from the font of mātauranga which dwells within the matrix of Ngāti Hinemanu and Ngāti Paki is an essential part for any efforts at revitalisation. This must be accompanied by a reconciliation process that facilitates the decolonisation strategy we advocate as the basis for engendering constitutional change in other sections of this submission.

866. A finding that the Crown breached their duty under Article II of Te Tiriti and the Treaty, in the way that it exercised its governmental powers to establish the education system in this country, must be made. Recommendations to restore the loss, value, and mana of te reo and cultural knowledge of Ngāti Hinemanu and Ngāti Paki must also follow. A recognition that initiatives like a kura kaupapa and wharekura developed within the territories of Ngāti

Hinemanu and Ngāti Paki and operating within the pedagogy of Ngāti Hinemanu and Ngāti Paki is fundamental the claimants say to ensuring the active protection of their way of life.

Conclusion

867. The loss of culture and identity is a reaction and result of the actions of the Crown, the Crowns' failure to protect and fulfil its obligations as a Treaty partner to ensure the endurance of the Māori culture for future generations to come.

868. What we have seen is not only a lack of action to protect the language, but actions of oppression and illegalising the practise of being Māori through legislation, policies and practices which evidently has taken a toll on the people and resulted in a culture that is beaten and lost.

869. It is Counsel's submission that the current Crown policies towards the survival of Te reo Māori is inadequate in schools within the Taihape inquiry district. The Crown has failed to ensure that Ngāti Hinemanu and Ngāti Paki have the ability to improve and revitalise Te Reo Māori in their rohe and in doing so, has failed to actively protect Te Reo Māori within Taihape.

WĀHI TAPU

870. This section relates to issue 21.

871. Counsel adopt the generic closing submissions in so far that those submissions complement the specific claims advanced by Ngāti Hinemanu me Ngāti Paki. There are distinctive perspectives of the Ngāti Paki and Ngāti Hinemanu claimants that we draw focus to in these submissions.

872. Counsel submit that the Crown failed to uphold its duties and obligations under Te Tiriti o Waitangi, to the detriment and prejudice of Taihape Māori. In counsels' submission, there were many different avenues by way of policies, legislation, practices and omissions relating to land alienation, land management and use, resource management and environmental degradation, and riparian rights, policies and practices which caused prejudice to the

claimants and as a result, the claimants have experience devastating effects including the denigration of kaitiakitanga over their own wāhi tapu and the continual desecration of wāhi tapu.

873. As this Tribunal will be well aware, the claimants of Wai 662, 1835 and 1868 have worked together to progress their claims under the auspices of Ngāti Hinemanu me Ngāti Paki. The Tribunal have heard evidence from the claimants concerning their experiences with Crown in relation to Wāhi tapu.

874. It is also clear though that many of the witnesses have drawn on their extensive experience as Kaitiaki; Trustees; Managers; Shearers; and sports and recreational users of this region to highlight how their rights to protect their wāhi tapu have been unreasonably restricted in contravention of Te Tiriti obligations. The evidence points to significant complaints around the tension between kāwanatanaga practices that impact on the guarantee of tino rangatiranga and the recognition of the need for active protection of wāhi tapu.

875. The claimants further argue that the Crown has failed to adequately consult with them on decisions regarding their wāhi tapu,and taken into account any concerns raised by them.

876. Prior to the introduction of colonisation, the claimants protected their wāhi tapu both physically and spiritually and exercised their rights of kaitiakitanga and tino rangatiratanga. The processes of protection and consultation which operated according to Tikanga Māori, were a normal part of life for the claimants.

Definitions: Wāhi Tapu

877. These submissions adopt the definitions as set out in the generic claimant submissions.

Protection

878. In breach of the principles of Te Tiriti, the Crown has failed in its duty of good faith to actively protect wāhi tapu and other sites of cultural significance within the rohe of Otaihape.

879. The Crown has accepted in a previous inquiry that the protections accorded Māori under Article II of the Treaty, with respect to the question of sufficiency, extend to the retention of mahinga kai and non-agrarian resources, wāhi tapu and sites of cultural importance.[720]

880. There are various wāhi tapu within Taihape that are sacred and hold cultural and spiritual significance to Ngāti Hinemanu and Ngāti Paki.

881. The Crown has enacted legislation that has restricted Ngāti Hinemanu and Ngāti Paki from protecting wāhi tapu including the:

a) Public Works Act 1864 (and amendments);

b) Criminal Code 1893;

c) Native Land Act 1909 & 1931;

d) Historic Places Act 1954;

e) Town and Country Planning Act 1977;

f) Conservation Act 1987; and

g) Resource Management Act 1991.

882. The Crown also delegated all powers of management over land and resources, including wāhi tapu to local Government and environmental authorities including the Department of Conservation. These authorities have never provided sufficient recognition to, or respect of wāhi tapu within Taihape.

883. Ngā wāhi tapu o Ngāti Hinemanu and Ngāti Paki have suffered desecration due to the failure of the Crown enacted legislation and policy.

884. Protections for land were initially Eurocentric. Only ‘civilised’ uses such as gardens, orchards, and ornamental grounds were protected. Sites of traditional importance to Māori, such as wāhi tapu sites and traditional

[720] Wai 2180, #1.4.3 Taihape: Rangitīkei Ki Rangipō District Inquiry, Tribunal Statement of Issues, December 2016 at 58.

snaring and hunting areas were not included.[721] The claimants assumed that their sacred sites would remain undisturbed regardless of the legal status of the land; however, the Crown exhibited no real regard to the protection of wāhi tapu during the period of extensive Crown land acquisition in the Mōkai Pātea district.[722]

885. The discharge of virtually untreated human waste into waterways - which particularly offends against Māori cultural and spiritual values - and a range of other industrial effluents, including abattoir wastes and dairy factory effluent, was standard practice throughout the Taihape district during the entire period covered in this report. Sewage, subject to minimal and ineffective treatment using ageing septic tanks, was discharged directly into the Hautapu and Rangitikei Rivers and the Pourewa and Waitangi streams by the Taihape Borough Council, the Mangaweka and Hunterville Town Boards and the Waiouru Army.[723]

886. Wāhi Tapu and urupā are located in every part of the district. They are particularly concentrated near kainga and more heavily settled areas. When selling land, Māori vendors may have assumed that their sacred sites would remain undisturbed regardless of the legal status of the land. This was not a foolish or naive assumption with regard to urupā. The claimants were well aware of the religious ceremony and solemnity surrounding European burials and the sanctity of European cemeteries. In other words, the claimants would have understood that they and Europeans shared important cultural attitudes towards the interment of human remains. They may also not have anticipated the impact on their wāhi tapu of massive forest clearance, close settlement of the land and the development of intensive pastoralism. The Crown did not exhibit any particular regard to the protection of wāhi tapu when purchasing extensive tracts of Mōkai Pātea Māori land. The reservation or protection of wāhi tapu would also no doubt have impeded close European settlement and efficient pastoral farming.

721 Wai 2180, #1.2.17 at 94.
722 Wai 2180, #1.2.17 at 118.
723 Wai 2180, #A45(a): D A Armstrong: The Impact of Environmental Change in Taihape District, 1840 – c1970, Summary & Responses to Tribunal at 8.

887. Māori Councils and other 'official' organisations, set up under a variety of legislative enactments after 1900, were provided with some authority to protect urupā and wāhi tapu on Māori land, but it has been generally accepted that their effectiveness was limited, principally because they were chronically underfunded. Further legislative provisions dating from the 1930s provided the potential for protection, but Māori were required to disclose the location of sites and information about them, which many remained extremely reluctant to do within the context of ongoing fossicking.[724]

Consultation

888. The generic claimant submissions on Issue 21(2) largely covers these matters. The claimants say that Ngāti Hinemanu and Ngāti Paki have the right to be consulted with in relation to their wāhi tapu to ensure they effective protection over their wāhi tapu. Despite this, they have continuously been invisibilised by Crown processes through the enactment of legislation and policies and have suffered significant prejudice as a result. While some consultation with Māori may have been provided for, the Crown have overall failed to consult with Ngāti Hinemanu and Ngāti Paki on decisions regarding wāhi tapu and take into account any of their concerns.

Impacts of Crown legislation policies and practices on wāhi tapu

889. The Crown legislation relating to land alienation, land management and use, resource management and environmental degradation, and riparian rights, policies and practices has had significant impacts for the wāhi tapu of Ngāti Hinemanu and Ngāti Paki. The Crown has failed to recognise the claimant's mana and ownership of the whenua as guaranteed in Article 2 of Te Tiriti o Waitangi. In doing so, the impacts have been devastating for the claimants.

890. It is submitted that the Crown, by failing to enact appropriate legislation and implement policies which respect the customary practices of Ngāti Hinemanu and Ngāti Paki as binding over their taonga, the Crown is in breach of its

[724] Wai 2180, #A45(a): D A Armstrong: The Impact of Environmental Change in Taihape District, 1840 – c1970, Summary & Responses to Tribunal at 13.

Treaty obligations. These matters have been fully considered in the generic submissions on these points which are adopted in full.

Ngāti Hinemanu and Ngāti Paki evidence

891. Briefs of evidence detail each significant site where the Crown failed to protect the Wāhi Tapu of Ngāti Hinemanu and Ngāti Paki filed in the Wai 2180 Taihape Inquiry District Ngā Kōrero Tuku Iho hearings.

Te Awahaehae

892. Te Awahaehae was a significant traditional homestead, cultivation, gathering and burial place which was occupied by the tribes of Ngāti Hinemanu and Ngāti Paki. From the mid 1600's to the mid 1700's Tautahi, Hinemanu and Te Ngāhoa all lived here. Tautahi descends from a chiefly line of the Takitimu canoe. Hinemanu was a chieftainess descending from Papatipu (people of the land). Hinemanu’s marriage to Tautahi at Te Awahaehae, elevated Tautahi to paramount chief. Te Kauenga was the name of their whare (house). lrokino and Tautahi built that whare.

893. A significant number of these Wāhi Tapu sites were no doubt included in land sold to the Crown and third parties. The Māori vendors may have assumed that their sacred sites would remain undisturbed regardless of the legal status of the land. While that may have been a reasonable expectation on the part of Māori vendors, the Crown exhibited no real regard to the protection of Wāhi Tapu during the period of extensive Crown land acquisition in the Mōkai Pātea district between the 1870s and 1900. There is no evidence that Crown officials considered it necessary to ensure that Wāhi Tapu (or even historical urupa) were reserved from sale. The Crown's overarching objective was to acquire as much as it could as quickly as possible, and even ensuring that Māori retained sufficient for their present and future economic needs was not a high priority, if it was considered at all. The reservation of Wāhi Tapu would also no doubt have placed impediments in the way of close Pakeha settlement, and for that reason was deemed inexpedient.

894. During the 1880s and 1890s Mōkai Pātea Māori would probably not have anticipated the massive bush clearance and intense pastoral and agricultural

activity which occurred in the district from the 1880s, resulting in a major transformation of the landscape and a range of adverse effects on Wāhi Tapu. The fate of many Wāhi Tapu sites is perhaps illustrated by events at Te Awarua, once an important kainga on the eastern bank of the Rangitikei River, and Pokopoko. E. C. Hammond established a run in the vicinity of the old Te Awarua pa, and when he began cultivating land on the river flats a significant number of koiwi and artefacts were uncovered. Miriam McGregor, in her history of Mangaohane Station, describes an incident occurring in around 1945 involving the 'Winiata graves', located near the 'old pa' on the Pokopoko creek. This urupa contained the remains of about a dozen people. It was readily identifiable because it was surrounded with a paling fence.

895. According to McGregor 'the day came when a wool-classer from Auckland decided to open the graves in search of greenstone and other valuable Māori artefacts which could possibly be buried there. No doubt he talked too loudly about his plan because in some mysterious way the Māoris in Taihape learnt of his intentions' A 'delegation' of elders duly arrived on the scene 'to make sure this would not happen. They removed and burnt the palings surrounding the burial grounds, and after the sheep had grazed the grass for a short time it was almost impossible to tell the exact location of the graves.

896. Aorangi Maunga, a 1,216m peak situated some 24k east of Taihape, is a prominent landmark in the Upper Rangitikei district. The Mōkai Pātea iwi have strong spiritual and cultural associations with the maunga. A mokai ngarara named Pohokura was placed on its summit by the tupuna Tamatea Pokai Whenua, who visited the district in ancient times with his son Kahungunu. The ngarara later became a taniwha and protector of the maunga, and a symbol of Tamatea's mana over the surrounding whenua. After leaving the ngarara Tamatea and Kahungunu descended the maunga and reached the banks of the Rangitikei River at a point where it narrows to a few metres. Here Tamatea came upon a birding settlement belonging to a chief named Tarinuku of the Ngāti Hotu tribe, said to be the original occupiers of the land.

897. This chief welcomed Tamatea and his son and presented them with a calabash of preserved birds which had been stored in a natural hollow in the rock. Tamatea named this place Te Papa a Tarinuku (The food trough of Tarinuku). Tamatea ate all the birds, which angered Kahungunu. They quarreled and then took separate paths.

898. Aorangi lay on the main route from Mōkai Pātea to Hawke's Bay, and the area was intersected by a number of trails, some of which were used by European explorers, including William Colenso. He described the Aorangi maunga as 'a huge table-topped spur, projecting towards the [north], and uprearing its dark and sharp outline against the sky'. According to Colenso this 'rampart' was named Te Papaki-a-kuuta'. He rendered this in English as 'the barrier of the defender god of the interior', or 'the god defender of the interior'. He finally climbed the maunga in 1850, even though his Māori guides, aware of the tapu associated with the maunga, declined to accompany him.

899. When visiting to Te Papa a Tarinuku in 1950, R. Batley observed signs of early Māori occupation and bird snaring. He also noticed damage caused by wild pigs and possums. Apparently, kiwi had only recently (in around 1940) become extinct in this area, the last few having been killed by dogs or possum traps. Forest Service staff later saw several totara trees from which strips of bark had been removed in former times to make kite for carrying birds. Between 1909 and 1912 several expeditions, organised by the Government and museum authorities, tried without success to locate huia, which although thought to be extinct were reported to have been seen or heard in the area from time to time.

900. The opportunity for Māori to protect Wāhi Tapu was greater on land they retained. But Māori landowners faced serious obstacles. Wāhi Tapu were often located on isolated blocks in the midst of Pakeha or Crown-owned land and may have lacked ready access. Māori communities also often lacked the resources or the ability to monitor and guard sites against desecration or fossicking. The failure of nineteenth century Māori land legislation to recognise the concept of tribal titles further lessened the ability of hapū and

iwi to manage and protect sites. Individualisation of title through the Native Land Court process meant that Wāhi Tapu sites became the responsibility not of the hapū collective but of individuals or whanau, who were often less able, for a variety of reasons, to exercise a demanding and ongoing kaitiaki role, especially if Wāhi Tapu were located on remote or isolated land.Section 16(11) of the Māori Councils Act 1900 assigned responsibility to Māori Councils for the protection and control of burial grounds (other than public cemeteries) and required Councils to fence, regulate and manage urupa.

901. The desecration of urupa was further addressed in the Māori Councils Amendment Act 1903 (s11). This made it an offence for any person to 'knowingly and want only without due and lawful authority trespass on or desecrate or interfere in any manner with any Māori grave, cemetery, burial cave, or place of sepulchre'.

PART II

RECOMMENDATIONS

Relief Sought

902. Claimants seek a finding that this claim is well-founded.

903. Claimants seek return of the land still in the hands of the Crown in the traditional territories of Ngāti Hinemanu and Ngāti Paki including without limitation and without encumbrances or other use restrictions.

904. Claimants seek redress for lands no longer in Crown ownership in sums reflecting the value of the lands.

905. Claimants seek redress for lands no longer in Crown ownership that arise from land lost in conducting its Old Land Claims, pre-emption waivers, and Crown purchasing process, when the Crown failed to identify and protect the claimants' occupation reserves, consisting of kainga, mahinga kai, wāhi tapu, fishing and hunting grounds, and such other lands as are necessary to allow them to maintain their way of life rights.

906. Claimants seek redress for lands no longer in Crown ownership equalling the value of one-tenth of the pre-emption waiver transactions, if any, as required by *Wakatu*.

907. Claimants reserve the right to seek resumption of qualifying Crown land in their rohe.

NGA RONGOA – REMEDIES

> *"It is obvious that, from the point of view of the future of our country, non Māori have to adjust to an understanding that does not come easily to all: reparation has to be made to the Māori people for past and continuing breaches of the Treaty by which they agreed to yield to government. Lip service disclaimers of racial prejudice and token acknowledgements that the Treaty has not been honoured cannot be enough. An obligation has to be seen to be honoured … Unchallenged violations of the principles of the Treaty cannot be ignored. Available means of redress cannot be foreclosed without agreement".* [725]

The Principle of Redress

908. The New Zealand Courts have recognized that a central principle to the Treaty of Waitangi is that of redress for past breaches by the Crown. In a line of authority beginning with the Court of Appeal decision in New Zealand Māori Council v Attorney General [1987] 1 NZLR 641 ('the Lands case') the notion of a remedy for historical transgressions of the Waitangi compact has now become part of New Zealand law. In the case, Justice Somers stated (the Lands case at 693):

> *"The obligations of the parties to the Treaty to comply with its terms is implicit, just as the obligations of parties to a contract to keep their promises. So is the right of redress for a breach which may fairly be described as a principle, and was in my view intended by Parliament to be embraced by the terms used in section 9 [of the State Owned Enterprises Act 1986]. As in the law of partnership a breach by one party of his duty to the other gives rise to a right of redress so I think the breach of the terms of the Treaty by one of its parties gives rise to a right of redress by the other – a fair and reasonable recognition of, and recompense for, the wrong that has occurred. That right is not justifiable in the courts but the claim to it can be submitted to the Waitangi Tribunal."*

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[725] *Tainui Māori Trust Board v Attorney-General* [1989] 2 NZLR 513 per Cooke P at 530.

909. This theme was developed further by the Court of Appeal in the case New Zealand Māori Council v Attorney General [1996] 3 NZLR 140 where the link between the obligations of reasonableness and good faith with redress were underscored by the Court.

910. The principle of redress had previously been outlined by the Waitangi Tribunal itself in the landmark Waiheke Island Report, where the then Chief Judge, E T Durie acknowledged a continuing Crown duty to consider redress for past breaches of the Treaty of Waitangi (pp40-41):

> *"It seems then a reasonable expectation today, and in keeping with the spirit of the Treaty, that the Crown should not resile from any opportunity it may have to provide at least a part of those endowments that it ought to have guaranteed, and to ensure that proper policies to that end are maintained ... Another [approach to redress] is to move beyond guilt and ask what can be done now and in the future to rebuild the tribes and furnish those needing it with the land endowments necessary for their own tribal programme. That approach seems more in keeping with the spirit of the Treaty and with those founding tenets that did not see the loss of Tribal identity as a necessary consequence of European settlement. It releases the Treaty to the modern world, where it begs to be reaffirmed, and unshackles it from the ghosts of an uncertain past". (Emphasis added)*

911. This general approach was further refined by the Tribunal in subsequent reports including Muriwhenua Fishing Claim Report (1988), Ngai Tahu Report (1991) and the Taranaki Report (1996). In commenting on the proposed disposal of "surplus" lands in raupatu districts the Tribunal also found that such a policy would compromise the Crown's ability to make proper recompense:[726]

> *"It is now well established in Treaty law, that compensation should be payable where serious past breaches of the Treaty are proven, that the return of land where practicable, is an important item of any relief package, and that the Crown should not divest itself of properties without a protective scheme for recovery, where claims justifying substantial compensation are likely to be proven".*

[726] Waitangi Tribunal, Memorandum – Disposal of Crown Land in the Eastern Bay of Plenty (Wai 46, Doc #2.88) 5 May 1995 at page 2.

Tribunal Recommendations

912. The Tribunal's report is not the end of the process but one stepping-stone towards the final settlement of their grievances. Even then, once the claims are settled, that is not the end either. It is merely another important stage in the long process of restoring; strengthening and rebuilding all the dimensions of the Ngāti Hinemanu and Ngāti Paki: That process will undoubtedly take time. However, Ngāti Hinemanu and Ngāti Paki eagerly await the Tribunal's report.

Recommending that the Crown Seek to Negotiate

913. Previously the Tribunal has recommended that the Crown and claimants seek to negotiate a settlement before the Tribunal intervenes with proposals for settlement including direct relief through binding recommendations (see for example, Pouakani Report, 1993, Wellington, Brookers and Friend Ltd; Turangi Township Report, 1995, Wellington, Brookers'; The Taranaki Report (1996); Muriwhenua Land Report (1997); The Ngāti Awa Raupatu Report (1999); The Rekohu Report (2001)). A particular example is Te Whanganui-a-Orotu inquiry. There the Tribunal twice recommended that the Claimants and Crown negotiate a settlement of the claims: first, after its main report on the claims (Te Whanganui-a-Orotu Report, 1995, Brookers, Wellington); and then again in its remedies report (Te Whanganui-a-Orotu Report on Remedies, 1988, GP Publications, Wellington). Unfortunately, for those claimants, a negotiated resolution remains outstanding so applications for hearings for binding recommendations are being organised.

The Approach to Relief

914. In rejecting the "full compensation" approach, the Muriwhenua Tribunal found that it was "... not a court required to determine an actionable wrong, quantify a particular loss, or award damages for property losses and injuries on legal lines." (Muriwhenua Land Report (1997) p405).

915. The Ngāti Awa Tribunal adopted a similar stance noting that the concept of "full compensation" was not referred to in the Treaty of Waitangi Act 1975, but rather the Tribunal was required under s6 (3) of that Act to recommend

to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future (Memorandum following 8th hearing, 27 September 1995, Wai 46, doc 2.129, p10). In practical terms, the Tribunal has also questioned how it could in fact calculate "full compensation" given a host of variables for historic claims (The Orakei Claim (1987) p263).

916. The Tribunal has however offered some support to the "full compensation" approach for certain specific recent claims. It has noted that for "ancillary claims within living memory" the most appropriate course may be "restitution or reparation to specific persons along more legal lines" (Memorandum following 8th hearing, 27 September 1995, Wai 46, doc 2.129, p12; see also The Ngāti Awa Raupatu Report (1999) p139). That approach is likely to be more appropriate for particular and discrete whanau or individuals, in certain circumstances.

The Restorative Approach

917. "A restorative approach to remedies is appropriate. This should include facilitating the restoration, to an extent reasonably possible, of the rangatiratanga and hence the mana of Ngāti Turangitukua. While the Crown cannot restore rangatiratanga in the abstract, resources can be restored to the hapū that enable it to exercise rangatiratanga. The return of land is an essential component of the restoration of rangatiratanga. A policy of restoration should attempt to assure the hapū's continued presence on the land, the recovery of its status in the district and the recognition of its tribal authority. Thus, where the place of a hapū has been wrongly diminished, an appropriate response is to ask what is necessary to re-establish it." (Emphasis added) (Waitangi Tribunal Turangi Township Remedies Report 1998, Wellington, GP Publications, pp77-78.

918. In the Muriwhenua inquiry the Tribunal offered its preliminary views on the factors that constitute the restorative approach. It stated these could include (Muriwhenua Report), p406):

a) the seriousness of the case – the extent of property loss and the extent of consideration given to hapū interests;

b) the impact of that loss, having regard to the numbers affected and the land remaining;

c) the socio-economic consequences;

d) the effect on the status and standing of the people;

e) the benefits returned from European settlement;

f) the lands necessary to provide a reasonable economic base for the hapū and to secure livelihoods for the affected people; and

g) the impact of reparation on the rest of the community (so that local and national economic constraints are also relevant).

919. While the above factors were the Muriwhenua Tribunal's preliminary view, they have since been supported in the Turangi Township Remedies Report (1988) pp15 and 33. The Turangi Tribunal however emphasised that the factors would not all necessarily have equal weight. While the Turangi Tribunal considered that the factors were relevant to the claims before them, it was determined that each claim should be settled on its merits and that the Tribunal was bound under s.6(3), to have regard to all the relevant circumstances of the case (Turangi Township Remedies Report (1988) pp34-35). This general proposition had previously been supported by the Muriwhenua Tribunal who agreed that "there is no single answer and the approach to relief depends on the factual and policy consideration unique to each situation" (Determination of Preliminary Issues, 13 May 1998, Wai 45, #2.16, appendix B, p12).

920. Where the Tribunal finds that the Claimants have "well-founded" claims this is, in itself, an important step in healing some of the grievance. Indeed, both the Taranaki and Turangi Tribunals have noted that relief should be focused on removing the sense of grievance related to the claims at hand (Taranaki Report (1996) p135; The Turangi Township Remedies Report (1998) p15).

921. Finally, the Turangi Tribunal, in the context of recommending a total package of relief including binding recommendations, has, quite fully, described the factors that would be relevant to the Tribunal's determination of remedies. Should hearings be convened in the future on remedies, then comprehensive submissions on the relevant factors to be considered will be made at that time. However, some preliminary remarks may be of assistance.

922. The redress that is sought in specific terms is set out very fully in the Amended Statement of Claims filed on behalf of the descendant whanau and hapū of Ngāti Hinemanu and Ngāti Paki. But the questions which pose themselves to the Claimants after participation in a hearing process that has traversed a four year period and seen many of the elders who originally filed these claims pass on, is how does one, how can one, quantify in material terms, Loss of mana? Loss of a way of life? Loss of land and resources? Loss of turangawaewae, a sense of place, a sense of connection? Loss of identity? Loss of opportunity (or in modern terms, loss of economic and personal self-development)? And if that were not impossible enough standing alone, how to quantify these things when there may be more than one meritorious claimant group striving to achieve them?

923. In its 1987 Orakei Report at pp 262-3 and 271, the Tribunal saw itself as free to make recommendations "for full and just compensation untampered by the inconvenience of the result". It said further:

> *The effective settlement of many claims will often depend on the willingness of parties to seek a reasonable compromise, but it follows that the mana to propose a compromise vests not in the Tribunal but the affected claimant tribes….*

924. The Tribunal is not constrained to considering only the particular remedies suggested by claimants, orally or in their form of claim. Our function is to determine whether persons are prejudiced through Crown actions contrary to the Treaty and if so, the action that might be taken to compensate for or remove that prejudice.

925. Of the possible approaches to reparation, the approach which commended itself to the Tribunal was "… to re-establish in modern context an objective

in the Treaty appropriate to the case - in this case, surely, the duty on the Crown to ensure the retention of a proper tribal endowment." Such a policy "must ... Be directed to assuring the tribe's continued presence on the land, the recovery of its status in the district and the recognition of its preferred forms of tribal authority."

926. The Claimants do not quarrel with the general thrust of this approach. However, the following additional points need to be made:

a) No doubt it is relevant to consider what the Claimants have now. But a distinction must be drawn to the extent possible, between tribal assets and resources, and individual assets and resources. The latter are not, or at the very least cannot be assumed to be, available for the purpose of securing tribal restoration. If it can properly be said that the wrong and the damage was done to the tribe, and through the tribe the individuals thereof, then it is to the tribe (and through it the present day individuals thereof) that reparation must be made. This is not only a matter of simple justice and honouring of the Treaty promises. It is also a matter of social imperative, and ultimate benefit to New Zealand society, as is slowly beginning to be demonstrated in those few cases where substantial settlements to iwi or hapū have been set in place.

b) It follows that there is a need for the Tribunal to consider what tribal assets and resources are presently possessed by the particular claimant groups and who have benefited from processes of settlement like the Fisheries Settlement or agency arrangements with Crown entities.

c) To the extent that more than one claimant group is perceived by the Tribunal as having made out a claim in respect of a particular area of land or resource – while there may be some resources which are clearly and predominantly identified with a particular claimant group, it may well be the case that it will be impossible to determine on a precise fractional or percentage basis what a particular claimant group was traditionally, far less now, is entitled to by way of its share. The question will be whether the Tribunal should seek to apportion or

declare respective interests at all, or should simply declare that both successful claimant groups have an overall interest, leaving it to them – indeed, forcing them - to agree to a joint strategy and approach, both for the purposes of negotiating with the Crown and ultimately for the purpose of managing the asset if it is eventually secured by negotiations.

927. It is now well past time for comprehensive relief to be provided by the Crown to Ngāti Hinemanu and Ngāti Paki in terms of the relief sought in the amended statement of claims.

Acknowledgement

928. An acknowledgement which should in particular take note of the consequences of the ravages of an unjust war and series of invasions into the territories of the which was littered with atrocity and resulted in the wrongful confiscation of the whenua and tāonga, and the state of absolute landlessness and disconnection experienced by many Ngāti Hinemanu and Ngāti Paki

Constitutional Redress

929. Aotearoa/New Zealand's constitutional basis was founded on the Treaty of Waitangi which guaranteed the sharing of power between the two peoples in the one nation and the ongoing survival of Māori societal authority structures.

930. Such an approach, while anathema to many, is not (constitutionally) radical. Ngāti Hinemanu and Ngāti Paki maintain a distinctive constitutional position that no other section of the community possess. They seek recommendations from the Tribunal that the Crown explore, discuss and implement proposals for constitutional change at all levels of government which assure Ngāti Hinemanu and Ngāti Paki their sovereignty and ongoing mana and authority within their tribal domains. Such an approach should make provisions for mandatory representation on all boards, committees and related organizations over which the Crown exercises control or some degree of influence.

Land

931. The return of all Crown lands within the Ngāti Hinemanu and Ngāti Paki estate including the Conservation estate and stewardship lands, the return of all Crown Forest Assets lands, all State-Owned Enterprise lands and immediate recognition of traditional resource rights tino rangatiratanga and rights to foreshore and seabed.

Natural Resources

932. The recognition of Ngati Hinemanu and Ngati Paki rights to all minerals (including gold, silver, coal, stone and clay) and geothermal resources within the Ngati Hinemanu and Ngati Paki rohe and rivers, streams and wetlands and all other natural resources and tāonga that lay above and beneath the ground.

Cultural Redress

933. The return of the Mauri and other tāonga of Ngāti Hinemanu and Ngāti Paki held in public collections, the establishment of an appropriate protection and access mechanism for wāhi tapu, appropriate protection of customary gathering rights and protection mechanisms for Ngati Hinemanu and Ngati Paki language and culture.

Cultural Infrastructure

934. Given the real damage effected by the Crown on the integrity of the culture and society of the peoples of Ngāti Hinemanu and Ngāti Paki Crown must (in respect of the entire rohe):

a) provide new marae and associated complexes;

b) enhance existing marae and associated complexes;

c) provide legal access to and protection of wāhi tapu and cultural purposes sites including health and medicinal resources; secure customary gathering and access rights, including non-commercial fishing and all other natural resources;

d) take all such steps as are necessary to procure appropriate recognition of the title and mana of the peoples of Ngāti Hinemanu and Ngāti Paki their sacred maunga, awa, moana and tāonga tuku iho;

e) restore the Māori names for sites, land blocks and other localities in the Inquiry District;

g) procure appropriate broadcasting rights (in all media) to enable Ngāti Hinemanu and Ngāti Paki to ensure the continuing relevance and strength of the distinctive and unique Ngāti Hinemanu and Ngāti Paki language and culture;

h) facilitate the establishment of a Whare Maire for the peoples of Ngāti Hinemanu and Ngāti Paki;

i) permit Ngāti Hinemanu and Ngāti Paki the right to regulate their own dominion in accordance with their cultural preference and Tikanga; and

j) prevent any legislation from being enacted which denies the peoples of Ngāti Hinemanu and Ngāti Paki the right to give practical expression to their own unique forms of spiritual and religious philosophies and ceremonies.

Financial Redress

935. Full compensation and reparations, including appropriate recognition of the opportunity costs suffered by Ngāti Hinemanu and Ngāti Paki for the loss of use of land and resources since the nineteenth century, the giving of effect to the recommendations of the Sim Commission, together with the costs of the claim and the payment to Ngāti Hinemanu and Ngāti Paki of the maximum level of compensation payable by virtue of the provisions of the first schedule of the Crown Forest Assets Act 1989.

INTERIM RELIEF

936. It is well established in Treaty jurisprudence that compensation should be payable where serious past breaches of the Treaty are proven. Ngāti Hinemanu and Ngāti Paki contend that there cannot be any doubt that there

have been fundamental, significant and lasting breaches of the Treaty of Waitangi by the Crown, its agents and instruments of Crown policy and practice to the continuing detriment of the peoples of Ngāti Hinemanu and Ngāti Paki. The Claimants further contend that these assertions are compellingly obvious in the context of this claims process. That being so, it is submitted that pending release of the Tribunal's report and the commencement of formal negotiations leading to an agreed settlement, the Tribunal is urged to recommend that the Crown provide interim relief to the Claimants for and on behalf of Ngāti Hinemanu and Ngāti Paki in a timely fashion.

937. In this context, as a preliminary step, the Tribunal, it is respectfully submitted, should recommend that the Crown agree forthwith to indemnify Ngāti Hinemanu and Ngāti Paki Claimants for all costs arising out of and associated with their preparation and presentation of these claims before the Tribunal. While it is acknowledged that some support has been provided to the Claimants primarily from the Crown Forest Rental Trust, nonetheless all claimants have borne significant financial burdens to mount these claims in the manner that they have. It is submitted, that in the grand scheme, a prompt indemnification of all costs arising out of the claim process to date would be an appropriate and symbolic gesture to signal the start of good faith negotiations for the durable constitutional arrangements based on kupu mana and honour that the Claimants are pursuing in the longer term.

938. In addition, Ngāti Hinemanu and Ngāti Paki seek the Tribunal's recommendation that within the Inquiry District, the Crown promptly disclose, in such spirit of good faith and honour:

a) all land memorialised pursuant to the State Owned Enterprises Act 1986;

b) all land held under Crown forest licenses land pursuant to Crown Forest Assets Act 1989;

c) all 'surplus' Crown land and;

d) all other Crown lands and interests.

939. The Claimants seek a recommendation that the Crown forthwith desist from any sales of any Crown properties within the Inquiry District and establish a Crown Settlement Portfolio ("CSP") in this district.

940. The Claimants seek a recommendation that the Crown provide adequate funding to the Claimants to facilitate the establishment of or retention (as the case may be) of appropriate mandates for the negotiation process.

941. The Claimants seek a recommendation that the Crown should provide funding and other resources for a 12month period to enable a negotiation process to commence at the earliest opportunity.

Mandate and Settlement Structure

942. In connection with relief it is submitted that it is appropriate to update the Tribunal on the progress of mandate and settlement structures and undertaken by Ngāti Hinemanu and Ngāti Paki for and on behalf of the whānau, hapū and iwi of Ngāti Hinemanu and Ngāti Paki that affiliate with them.

DATED at Rotorua this 28th day of October 2020

Annette Sykes

Camille Dougherty Ware

Kalei Delamere-Ririnui

Tumanako Silveira

Counsel for Claimants