Kei mua i Te Rōpu Whakamana i Te Tiriti o Waitangi **Wai 2180**
Taihape: Rangitīkei ki Rangipō Inquiry

Kei raro i te mana o	Te Tiriti o Waitangi Act 1975
Ā	
I te take o	The Taihape: Rangitīkei ki Rangipō Inquiry
Ā	
I te take o	Claims by Te Manuao (Terrill) Campbell, Margaret Poinga, Terrence Poinga, David Turanga, Melvin Turanga and Whakatere Whakatihi (Wai 37 and 933) on behalf of Ngāti Hikairo and Ngāti Tuope

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Generic Claimant Closing Submissions
Native Land Court, Chapter 2 Part 2
Dated Thursday the 21st of January 2021

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May it please the Tribunal

1. These are the generic closing submissions for Issue B-3 Native Land Court, Chapter Two; the Native Land Court Process.[1]

Introduction

2. The generic submissions on the Native Land Court (the NLC) have been structured into four parts;
   a. Constitutional;
   b. Process;
   c. Aspirations versus Decisions; and
   d. Broad Impacts.

3. These submissions address the process of the Native Land Court, and covers the issues faced by Taihape Maori inherent to any form of engagement with the Native Land Court.

4. Those issues include the approach the Court took to holding hearings outside the rohe, giving notice, disregarding many out of Court agreements between parties, as well as the Crown pre-purchasing activity which lead to so many applications being lodged.

5. The process came with numerous costs, the Court's own costs, but more significantly, the cost of travelling to and living in remote areas for months as those cases continued. The flaws of the Court process and subsequent prejudice to Taihape Māori is evidenced by the sheer number of petitions, re-hearings, appeals and years between any initial application and final award of title.

6. Because of the complexity and volume of the evidential data available, and the desire to present these details in an effective way, these submissions are accompanied by;

   a. The Native Land Court Block by Block Analysis tables;[2]

[1] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue B-3 the Native Land Court, Questions 7-13.
[2] Native Land Court Generic Submissions, Chapter 2, Part 1: Block by Block Analysis, filed by this office on 23 December 2020, now replaced with an amended version filed with these submissions.

b. The Native Land Court Hearings Table which is filed with these submissions as Appendix A;[3] and

c. A Chronology.[4]

The Tribunal Statement of Issues

7. These submissions address the "Process" aspect of issues related to the Native Land Court and encapsulate questions seven to thirteen of the statement of issues which come under the heading, "Cost and timing of the Native Land Court process*".*[5]

Question 7

When and where did the Native Land Court sit regarding the land constrained in the Taihape inquiry district? Did Taihape Māori have any input into the timing and location of court proceedings?

Question 8

What justifications, if any, were used for the timing and location of Native Land Court proceedings, and what was the impact on Taihape Māori?

Question 9

Were title determination hearings notified early enough and sufficiently? How were sales and changes of ownership advised to Taihape Māori and was this sufficient?

Question 10

Were Native Land Court proceedings ever conducted simultaneously for multiple land blocks in which Taihape Māori claimed interests? If so, what was the impact of Taihape Māori?

Question 11

What was the impact of participation in the Native Land Court process on Māori, including court fees, liens, survey costs, attendance costs, medical costs, loss of income and roading deductions? Did the impact vary from whānau to whānau?

[3] This Table was generated relying mostly on the data from Wai 2180, #A43 Bruce Stirling, *Taihape District Nineteenth Century Overview*, 619, with some cross-referencing with the sub-district block studies.
[4] At the time of filing, this chronology was still being finalised.
[5] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, 19.

Question 12

In what ways, if at all, did the Crown seek to mitigate these costs?

Question 13

To what extent were these costs fair and reasonable?[6]

The Hearings

8. Questions 7 asks: "*When and where did the Native Land Court sit regarding the land contained in the Taihape inquiry district? Did Taihape Māori have any input into the timing and location of court proceedings?"*

9. The first of these questions is addressed in the Block by Block Analysis Tables[7] and the Hearings Table (Appendix A). Both of those tables confirm the evidence shows that all but two hearings were held outside of the rohe and far from the land.

10. The Hearings Table is arranged with the blocks listed from northern most to southern most locations and shows at a glance that the majority of hearings were held either in Whanganui or Hastings, with other hearings being held as far away as Gisborne in the case of one of the initial Ōwhāoko hearings.

11. There were two exceptions to the Court sitting outside the rohe and remote to the land concerned. These were the rehearing of Ōruamatua Kaimanawa for 81 days from January to April 1894, and one day of the Awarua partition.[8] Hearings for both of those blocks resumed in Hastings after which there were no more hearings within the rohe.[9]

12. The Hearings Table shows a significant number of the northern blocks which were investigated far to the south in Whanganui, while the "rohe potae" blocks in the central area were heard far to the east in Hastings, or to the south in Whanganui. The Court was, for 24 years, set in its position to avoid holding any hearings within the rohe. The brief visit of the Court to the rohe in 1894, showed that this was an aberration and an exception, rather than a change to the approach of the Court to hearings for this rohe.

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[6] Wai 2180, #1.4.3, *Tribunal Statement of Issues*, Issue B-3 the Native Land Court, Questions 7-13, 22-24, and aspects of Questions 22-24.
[7] Table of NLC Block by Block Analysis filed by this office on the 23rd of December 2020, and the amended version filed with these submissions.
[8] Wai 2180, #A43 Bruce Stirling, *Taihape District Nineteenth Century Overview*, 41.
[9] Wai 2180, #A43 Bruce Stirling, 41.

13. The Hearings Table also show that in the case of at least 9 of the 22 block investigations (but the vast majority of the land by way of area) there were either re-hearings (as a result of petitions) or appeals. As other submissions have identified, there was no means to appeal a decision of the NLC until 1894, and this explains the shift from re-hearings to appeals in the Table.

14. The hearings also took an incredibly long time to complete. The investigations into Ōwhāoko, Ōruamatua-Kaimanawa, Mangaohane, Awarua, Motukawa, Otumore and Taraketi all took many years from initial investigation, through petitions, appeals and rehearings to the point of partition. The worst of these spanned 24 years for Ōwhāoko, 33 years for Otumore, Ōruamatua Kaimanawa took 23 years, Otamakapua 1 took 15 years, 14 years for Motukawa and 8 years for Awarua.

15. The Court process and timing of hearings was not independently controlled by the Court itself though. Stirling points out that the Court was instructed in relation to Paraekaretu, Awarua and other hearings, to delay matters when the government advised the Court that it needed to move to other areas to address matters that were of "great importance" to it.[10]

16. The table also shows the length of the hearings themselves which Taihape Māori had to endure.

17. The Ōwhāoko hearings took 251 days, Ōruamatua-Kaimanawa hearings 133 days, Mangaohane hearings 215 days, Motukawa hearings 143 days, and Awarua hearings 338 days.

18. The time commitment that these hearings demanded of Taihape Māori was deeply oppressive. When it is factored in that all of this time (barring those noted already for Ōruamatua-Kaimanawa and Awarua) was remote to the rohe and the land, it becomes self-evident that the demands of the Court's process were unreasonable and excessive. The evidence demonstrates that the Court was in breach of Te Tiriti and resulted in substantial and long-term prejudice, causing harm that those rangatira, whānau, hapū and iwi could not easily recover from. This is detailed

[10] Wai 2180, #A43 Bruce Stirling, 143.

further below in the evidence of the debt and bankruptcies that Taihape Māori and rangatira suffered following the NLC hearings process.

19. Even if the Court had successfully replicated customary ownership, which it did not and could not, and correctly awarded the land to the right owners, the process amounts to a breach of Te Tiriti and is so onerous and expensive as to demonstrate extensive prejudice to all those involved, most significantly to those who prior to the Court's arrival held the land in accordance with tikanga.

20. It is most notable that those blocks of Awarua and Motukawa both saw fresh out of court engagement by Taihape Māori in order to present a united settlement, and demonstrates the extent to which the Court's process was avoidable and unnecessary.

21. The Rohe Potae Tribunal addressed the possibilities of the Court, and the requests of Māori for a particular form of process and said the following:

> *"We consider that in this district the Native Land Court system and title provided to Māori by the Crown was not the solution, nor was the tenure conversion necessary. Rather, some modification was all that was needed for those lands that Māori wished to use in the new economy. As the Hauraki Tribunal found, there were 'many possible options for giving greater clarity and definition to land rights without full-scale tenure conversion and abrogation of the customary land base'."*[11]
>
> *"We consider that, as in other districts, while the Crown had multiple motivations for converting Māori customary title into individual tradeable shares, its primary motivation was to facilitate the large-scale alienation of Te Rohe Pōtae Māori-owned land and its settlement by Europeans."*[12]
>
> *"It Is significant that, while the Crown made some changes to the court's processes during the 1880s (at least partly in response to the concerns expressed by Te Rohe Pōtae Māori), it made no effort to put in place a form of title that reflected Te Rohe Pōtae leaders' demands. Indeed, as the Crown acknowledged in this inquiry, '[t]here is no evidence that the Crown considered any land tenure options for Rohe Pōtae Māori other than that which existed in the Native land legislation that applied at the time'.*[13] *Instead, Te Rohe Pōtae Māori were left with*

[11] Waitangi Tribunal, *Te Mana Whatu Āhuru: Report on Te Rohe Potae Claims,* Vol 2, 1187 citing Waitangi Tribunal, *The Hauraki Report,* vol 2, 777.
[12] Waitangi Tribunal, *Te Mana Whatu Āhuru: Report on Te Rohe Potae Claims,* Vol 2, 1187 citing Waitangi Tribunal, *The Hauraki Report*, vol 2, 778; Waitangi Tribunal, *Turanga Tangata Turanga Whenua,* vol 2, 531.
[13] Wai 898, Crown Submissions, #3.4.305, 22.

no choice but to engage with a court that was charged with converting communally held customary title into individual interests."[14]

Hearing Locations and Requests

22. Taihape Māori repeatedly, and from the very earliest investigation, requested that the hearings of the Native Land Court take place in their rohe, and close to the land concerned.

23. Evidence of these requests are a feature of most if not all of the hearings, and these requests only increased in number and in the expression of the concerns of the impact of remote hearings, as the hearing continued as more blocks came before the Court.

24. During the 1877 investigation into Ōwhāoko, Ngāti Tuwharetoa raised the issue of the distance and cost, having had to travel to Hastings at great cost with the commitment of four "heavily laden coaches, besides buggies and horsemen" to get them to the hearing.[15] Those Taupo based participants complained at the hearing about the hearing "taking place so far away from the land."[16]

25. Prior to the first hearing of Awarua, which took place in 1886, there were requests for the investigation to take place in Moawhango, but was sent to Whanganui instead.[17]

26. The sole official justification of the Court for this approach seems to have been the need for a telegraph connection. However, it appears that the Court (along with the ''flotsam and jetsam of the frontier) preferred a higher standard of accommodation than was available at Moawhango.[18] In lieu of Moawhango as the location for the Awarua and Motukawa hearings, the applicant community preferred Marton, but the Court still chose Whanganui for many of those hearing days, preferring its own convenience over avoiding exorbitant costs to the many participants.[19]

27. Winiata Te Whaaro and Erueti Arani expressed their concerns in a telegram in 1890 to the Chief Judge of the Native Land Court. In that telegram they again put

[14] Waitangi Tribunal, *Te Mana Whatu Āhuru: Report on Te Rohe Potae Claims,* Vol 2, 1188.
[15] Wai 2180, #A43 Bruce Stirling, 295.
[16] Wai 2180, #A43 Bruce Stirling, 295.
[17] Wai 2180, #A43 Bruce Stirling, 319.
[18] Wai 2180, #A43 Bruce Stirling, 319.
[19] Wai 2180, #A43 Bruce Stirling, 319.

forward the case for holding the Awarua hearings at Moawhango. The language and case for holding hearings close to home striking;

> *"It is quite impossible for our elderly sick to travel the long road to Marton at this time (mid-winter). (Already) one of us has died whilst living in that Pākehā town amongst the drinking establishments and appalling conditions. Marton is an exceedingly muddy, wet place in the winter time.*
>
> *We will die, just like those of us who died at the first Court hearing on Awarua, held at Whanganui in the winter. We were living in tents, without money as payment for food, or for accommodation in Pākehā houses. Some of us were stricken with sickness, so that seven people ultimately expired during those three months.*
>
> *O Judge, think kindly towards us. Our people are weeping for the corpses of their beloved who have departed to distant horizons on the burden of this Court work. They weep also for their elders who have gone to that distant place Marton, not knowing whether or not they will perhaps return to their home village."*[20]

28. Hearn records that Renata Kawepo made one particular hearing location request that was accommodated. However, in this case he was successful in preventing the hearing of Otamakapua 2 taking place at Bulls or Marton, relatively close to the land, and had it instead moved "many miles distant from the land itself" to Renata's own schoolhouse at Ōmahu.[21]

29. Some 100 claimants made the journey from Rangitīkei and while the Wanganui Chronicle reported that their travel costs were to be covered by the Crown, Hearn points out there is no evidence of such a payment and that "in any case, the amount would have been deducted from the purchase price."[22] Showing again, that the process of identifying ownership through the NLC system, bound those participants to great expense and to the sale of at least significant parts of that land.

[20] Wai 2180, 1.1.15, The Wai 647 Claim, lodged by Maria Muir and Herbert Steedman on the 29th of October 1996, attaching the telegram of Winiata Te Whaaro and Eruiti Arani, dated the 28th of June 1890, sourced from the Auckland Public Library, GNZ, MA, 754.
[21] Wai 2180, #A7, Terry Hearn, *Sub-district block study – southern aspect*, 45, 63.
[22] Wai 2180, #A7, Terry Hearn, *Sub-district block study – southern aspect*, 62.

30. In the case of the Aorangi investigation of 1910, which was ultimately held in Hastings, counsel for one of the Ngāti Hinemanu group filed a request for a £50 deposit for costs in the event that the hearing was held in Taihape arguing that the true owners lived in Hastings and Taihape was inconvenient to them.[23]

Justifications for Remote Hearings

31. Question 8 asks "*What justifications, if any, were used for the timing and location of Native Land Court proceedings, and what was the impact on Taihape Māori?"*

32. Stirling notes several reasons why the Native Land Court had refused to sit at Taihape or Moawhango up until 1894. The key concerns and objections seem to have been the lack of accommodation and telegraph services. Neither of these issues continued to be legitimate, apparently, and the re-hearing of the Ōruamatua-Kaimanawa block and Awarua partition hearing both took place there in 1894.

33. Stirling observes that the opposition to the hearing of applications in Moawhango seemed to defer to the lawyers and agents who found hearings in Napier and Hastings more convenient.[24] Judge Butler, when setting down the hearing, pointed out that the opposition based on lack of accommodation was an issue that "would equally apply to sittings in various other remote localities."[25] Stirling concluded that "(A)ll this confirms that there is nothing preventing the court having sat at Moawhango in 1886, or 1890-1891."[26]

Simultaneous Hearings

34. Question 10 asks: "*Were Native Land Court proceedings ever conducted simultaneously for multiple land blocks in which Taihape Māori claimed interests? If so, what was the impact of Taihape Māori?"*

35. It does not appear that there were clashes of hearing days, however the scheduling of the Court shows how busy Taihape Māori were with hearings in these decades, and that frequently a long hearing would finish one month and the very next month another long hearing, would begin. This was the case for the Te

[23] Wai 2180, #A8, 183-184.
[24] Wai 2180, #A43 Bruce Stirling, 438.
[25] Wai 2180, #A43 Bruce Stirling, 438.
[26] Wai 2180, #A43 Bruce Stirling, 438.

Kapua hearing which took place over 64 days in Whanganui, finishing in October 1884, with a 63 hearing into Mangaohane beginning in November in Hastings.[27] Ngāti Whiti and Ngāti Tama members took part in both of these hearings.

Engagement

36. Stirling suggests that "the resident owners within the southern part of the district did not instigate the purchases or the title investigations that led to the alienation of their land. Initially they were content with the informal leasing of their land to resident Pākehā, as opposed to the speculative dealings of absentee runholders or the Crown's desire to expand northwards into their district. In every case they were obliged to participate in the Crown's processes for alienation and title investigation after claimants living outside the district had committed their lands to these processes with a view to the land being purchased."[28]

37. This statement brings together a number of different factors. And adds clarification to those Block Tables which would suggest that the Applicants, which were successful, were not forced to the Court to resolve a situation that had emerged as a result of Crown purchase activities such as early payments, and offers from those with more peripheral interests, the case of Otamakapua 1 and 2 being examples of this.

The example of Otamakapua

38. Taihape Māori first engaged directly with the Native Land Court in 1870 with the investigation of Otamakapua 1. While neither the largest nor most fraught block of land, it shows and encapsulates the prolonged and unacceptable process that characterised the NLC in this rohe.

Otamakapua 1: Hearing in 1870

39. The first hearing day was in Bulls in June 1870. The case was lodged by Arapata Potaka and six others and lead by Utiku Potaka, with the case being based on the take of descent from Hauiti.[29] There were no other parties to the application, and the decision was made in favour of those applicants.[30]

[27] Wai 2180, #A43 Bruce Stirling, 41.
[28] Wai 2180, #A43 Bruce Stirling, 2.
[29] Wai 2180, #A7, Terry Hearn, *Sub-district block study – southern aspect*, 43.
[30] Wai 2180, #A7, Terry Hearn, 43.

40. There had been an application for a re-hearing by Renata Kawepo, but this was withdrawn after a hearing had been set down to allow Ngāti Hauiti and Ngāi Te Upokoiri to claim the larger Otamakapua 2, which included Otamakapua 1.

41. However, because the rehearing did not take place, the title could not be issued in 1878 when requested, as it had been an interlocutory order that had expired, and required a fresh hearing.[31]

Otamakapua 1: Re-hearing in 1880

42. There was a short re-hearing in May 1880 held at Marton, with two titles being issued as a result, to the two blocks within it known as Takapurau and to Mangamoko.

Otamakapua 2: Hearing in 1879

43. By contrast, the Otamakapua 2 hearings took place at Ōmahu, Napier, in September 1879. This hearing took 37 days. Utiku Potaka and Retimana Raita brought the application for Ngāti Hauiti, Ngāti Tama and Ngāti Whiti and were successful in full. They had the representation of Buller, who also appeared for the Crown.[32]

44. Ngāti Apa were also parties to this application through representative Kawana Hunia, but were wholly unsuccessful.[33] They protested the hearing and requested a rehearing, but this was denied that same year by Native Minister Bryce.

45. In the decade prior to the hearing, Renata Kawepo had received a "small advance", following his offer to the Crown of the Otamakapua block in 1872-1873. The first offer the Crown made was of £2,000, and this was rejected. Renata Kawepo asked for £2,000 for negotiating the sale of Oroua to the Crown, and £4,200 as an advance on the purchase of Otamakapua.[34]

46. Renata Kawepo was given £3,200, as first payment for Otamakapua (being the 147,325 acre block), but also paid £1,000 for services in negotiating the sale of Oroua and a further £1,000 for the survey of the block and other expenses.[35]

[31] Wai 2180, #A7, Terry Hearn, 40.
[32] Wai 2180, #A7, Terry Hearn, 45.
[33] Wai 2180, #A7, Terry Hearn, 63, 68-70.
[34] Wai 2180, #A7, Terry Hearn, 48.
[35] Wai 2180, #A7, Terry Hearn, 48.

47. The decade between 1870 and 1880 was marked with competing engagement with the Crown from Renata Kawepo, Kawana Hunia and Utiku Potaka.

48. Kawana Hunia called a hui at Whangaehu in September 1875 for a discussion about Otamakapua, it appears that those present decided to take the entire Otamakapua block to the Court, and to instruct Buller to act for Ngāti Apa in relation to the block.[36]

49. Utiku Potaka attended that same hui and said that nothing had transpired at the meeting.[37]

50. Utiku Potaka had to write to McLean in April 1876 to point out that the Court was the place where one could establish a lawful claim to Otamakapua, and asking "Is it right that you should pay money to them for land which has not passed through the Court?."[38]

51. While Buller was acting for Utiku Potaka and Ngāti Hauiti, it is also clear that he was acting for the Crown to secure purchase of the land, and was paid £1,008 by the Crown for that work alone.[39] The total amount paid by Utiku Potaka and Renata Kawepo to Buller for his legal services is not clear.

52. Ultimately Ngāti Apa were not successful in getting any recognition from the Court for the interests that they claimed in the block.[40]

Notice of hearings, sales, changes of ownership

The Monstrous Injustice: Ōwhāoko and Ōruamatua Kaimanawa

53. Question 9 asks "*Were title determination hearings notified early enough and sufficiently? How were sales and changes of ownership advised to Taihape Māori and was this sufficient?"*

[36] Wai 2180, #A7, Terry Hearn, 50.
[37] Wai 2180, #A7, Terry Hearn, 50.
[38] Wai 2180, #A7, Terry Hearn, 52.
[39] Wai 2180, #A7, Terry Hearn, 72.
[40] Wai 2180, #A7, Terry Hearn, 66.

54. Ōwhāoko[41] and Ōruamatua Kaimanawa,[42] were two of the first block investigations in this rohe, and began in 1875 in Napier, taking place over several brief days of hearings. Both of these investigations were found to have been heard with insufficient notice.

55. The hearing for both these blocks began following just nine days' notice of the first hearings in Napier, and while the notice was clearly inadequate, the Native Land Act 1873 required notice but did not specific a minimum period of notice, and as a result the notice was legal.[43]

56. Renata Kawepo introduced the claim to Ōruamatua Kaimanawa for himself and several others. Noa Huke was the only other witness and as there was no one else present to participate, the Court indicated the order would be made as soon as the plan arrived, which was currently en-route from Auckland.[44]

57. Ōwhāoko was also dealt with in a similar fashion, on the very same day, again with evidence solely from Renata Kawepo and Noa Huke, and the Court assured those few present that the order would be made as requested.[45]

58. Heperi Pikirangi, Te Hau Paimarire, Rawiri Pikirangi and 23 others wrote to the Court notifying it that they had heard of the hearing on the 13th of September (the hearing began on the 16th), and rode day and night to get to the hearing in time.[46] It was these same rangatira who had been receiving rents from the lease which Captain Birch held, but this did not prevent McLean asserting that the complainants had not claimed rents from Birch and was his justification for declining the request for a re-hearing.[47]

59. Both blocks were subject to reinvestigation and rehearing following initial refusal to re-investigate by the Judges, and only as a result of repeated appeals and petitions to Native Minister McLean and Chief Judge Fenton.

[41] Wai 2180, #A6, Subasic and Stiring, 140.
[42] Wai 2180, #A6, Subasic and Stiring, 35.
[43] Wai 2180, #A43 Bruce Stirling, 265.
[44] Wai 2180, #A43 Bruce Stirling, 265.
[45] Wai 2180, #A43 Bruce Stirling, 266.
[46] Wai 2180, #A43 Bruce Stirling, 266.
[47] Wai 2180, #A43 Bruce Stirling, 266-267.

60. Judge Rogan considered the application for a re-hearing of Ōruamatua-Kaimanawa, and declined the request on the basis that the complainants had been given ample notice of the hearing.[48]

61. Following years of protests, appeals, petitions and correspondence Ōwhāoko was reinvestigated in 1887, then reheard in 1888.[49]

62. Despite indications that Ōruamatua Kaimanawa would be reinvestigated in 1887 also, there was no progress until 1894.[50]

63. Stirling points out that it was at the Turangarere hui, held in 1871, that the Native School endowment block was established, being taken from the Ōwhāoko block and showed it was Ngāti Tama and Ngāti Whiti had interests in that land.[51] The informal leasing arrangements over Ōwhāoko were also agreed at that hui.[52]

64. Despite this, the government was advised in 1875 that Renata Kawepo was the chief of those interested in the endowment lands, and the Court took no notice of these previous events, agreements, and powerful indications of ownership when the investigation began.[53]

The Costs of the NLC

65. The Block Analysis Tables detail, where it was recorded in the research, the Court's hearing fees and the Survey costs.[54]

66. There were two forms of costs, the hearing costs, which fell on all participants and then survey costs, which are the costs that fell on the successful party or parties. The hearing costs were unavoidable and included Court fees, lawyer fees, travel, food and accommodation costs.

67. Stirling provided considerable detail about the costs related to the Awarua proceedings and in this way provides something of a case study of the burden which were the costs of the hearing process.[55]

[48] Wai 2180, #A43 Bruce Stirling, 266.
[49] Wai 2180, #A43 Bruce Stirling, 294, 298.
[50] Wai 2180, #A43 Bruce Stirling, 302.
[51] Wai 2180, #A43 Bruce Stirling, 263-264.
[52] Wai 2180, #A43 Bruce Stirling, 264.
[53] Wai 2180, #A43 Bruce Stirling, 264.
[54] The Survey costs detailed show the initial "parent block" survey costs, but with each further partition, further surveys and survey costs accrued.
[55] Wai 2180, #A43 Bruce Stirling, 395-402.

68. In 1891 Hiraka Te Rango asked for an advance of £1,000 to cover the costs of Ngāti Whiti in relation to the Marton hearings of Awarua, and offered land in exchange for the advance requested.[56]

69. Stirling records that the newspapers were reporting that the Awarua proceedings in Marton had already cost Taihape Māori £25,000.[57] Native Agents in the area challenged these figures suggesting it was closer to £10,000 or £5,000 but Stirling points out that "these men had an interest in downplaying the costs to cast themselves in a better light."[58]

70. One agent went down the middle suggesting the costs were probably £7,000 and that this was a reasonable sum. Based on that £7,000 estimate Stirling provided a detailed breakdown of the kind of total costs Taihape Māori faced;

> *"this works out at about one shilling four pence per owner per day for eight months; this was supposed to suffice to pay the agent, pay living, food, and accommodation costs far from their homes, and pay for travel as well as court costs. This seems a rather inadequate sum to support an owner when labourers earned six to ten shillings per day and require most of this simply to survive at home, much less away from it. Fraser would scarcely expect to survive on such expenditure, and would have been charging at least £1 per day for his services. What he also failed to consider was eight months of lost income for the owners; not only did they have to pay and pay, but they had no income while they sat and sat at the courts convenience. All this was on top of the costs of the 1886 title investigation, running into many more thousands of pounds, and which appears to have been included in the total cited in the press. Thus, the figure of £25,000 ($4.7m in 2016 terms) seems anything but exaggerated, and as such it was a terrible burden to bear for so little return. This sum was incurred before the owners had to return to Marton in the winter of 1891 to complete the farcical subdivision, and incur further costs."*[59]

[56] Wai 2180, #A43 Bruce Stirling, 396. According to the Reserve Bank Calculator, £1,000 in 1891 using the General category is equivalent to $210,114.
[57] Wai 2180, #A43 Bruce Stirling, 396.
[58] Wai 2180, #A43 Bruce Stirling, 396.
[59] Wai 2180, #A43 Bruce Stirling, 396-397.

71. This assessment of the costs, casts the requests for hearings at Moawhango, the impact of those costs on Taihape Māori (both financial and wellbeing) in a stark light, and also show what was being avoided when rangatira set down the agreement about Awarua at Te Houhou. Almost the entire cost of the second round of hearings could have been avoided if that agreement had been recognised by the Court.

72. Across the 1,535 hearing days that Stirling summed, he estimated that the grand total of the cost of attending the hearings (and not including survey costs) was" £107,500, or $20m in 2016 terms."[60]

Survey Liens

73. The existence of survey liens were a significant encumbrance on the newly acquired title, giving the holder of the lien a power similar to that of a mortgage holder, and they were entitled to compulsorily sell the land to realise their debt. Auckland lawyers Campbell and Russell acquired some of these liens, Stirling suggests from the surveyors themselves, over 10 of the Ōruamatua Kaimanawa 2 subdivisions, and using their rights threatened to exercise the power of sale they held in 1900. While those liens amounted to £211, the entire 14,000 acres of those ten block was at stake, the threat made first to the government was simply ignored, and appears to have been dealt with in other ways.[61] The vulnerability of the land as a result of these survey liens is significant, and shows a certain callousness as to the title which Taihape Māori were getting.

Question 12: "In what ways, if at all, did the Crown seek to mitigate these costs?"

74. As noted elsewhere, there was reporting that the Crown were covering the costs of applicants travelling to and attending hearings, but that this is not accurate, any costs borne by applicants and participants were for them to bear and address, either in their own capacity or to be taken out of what would be the imminent sale of the very same land.[62]

[60] Wai 2180, #A43 Bruce Stirling, 397.
[61] Wai 2180, #A43 Bruce Stirling, 273-274.
[62] Wai 2180, #A7, Terry Hearn, 62.

75. There is no evidence which suggests that the Crown sought to, attempted to, or effectively mitigated any of the costs associated with the Court process and hearings.

76. Where there were payments made prior to hearings, for survey or other costs, these were all accounted for in the larger land purchase scheme which the Crown planned in great and meticulous detail.

Question 13 "To what extent were these costs fair and reasonable?"

77. The costs of the hearing process were demonstrably unreasonable, unfair and excessive.

78. Some of these costs could have been avoided or reduced, namely those costs associated with travel and accommodation in remote areas, this is one aspect which renders the experience of Taihape Māori so very unreasonable.

79. However, even setting aside the avoidable travel related costs, engagement with the Court process would still have been a considerable cost, due to the cost of counsel and survey costs, and the length of the hearings to which the Court committed Taihape Māori.

Native Land Court and Debt

80. The debt and impact of debt on some Taihape Māori members related to NLC proceedings is recorded in painful detail by Stirling.

81. Otene Toatoa owed £362 following the awards for Otamakapua 2, and there was an attempt to prevent payment to him of his interests in the block in the Supreme Court.[63] He was later declared bankrupt.[64]

82. The same occurred with Paramena Te Naonao relating to his interests in Otamakapua 2 and a private debt of £302.[65]

[63] Wai 2180, #A43 Bruce Stirling, 559.
[64] Wai 2180, #A43 Bruce Stirling, 561.
[65] Wai 2180, #A43 Bruce Stirling, 559.

83. The Supreme Court decided in 1893 that the Official Assignee could not sell undivided shares of owners of Māori land, but that legal position later changed.[66]

84. Hiraka Te Rango and Ihakara Te Raro were also pursued for debt, and their undivided interests in Māori land were targeted by the debtors as a way to recoup the money owed.[67]

85. Stirling suggests that the first sing of troubles for Hiraka Te Rango was evident with the termination of the business partnership with George Donnelly in February 1885.[68]

86. In 1887 a sign of the trouble Hiraka was in was shown by the Court proceedings, taken successfully against him to collect a debt of £62m plus court costs and legal costs of £2 each.[69] A month after this, the bankruptcy of Hiraka Te Rango was publicly notified.

87. At the first meeting with the creditors Hiraka did not list his land interests as they were undivided interests and were not available. Through a series of developments and several years later, in 1893, the Native Land Purchase Department became involved at the request of the creditors. The debts and land interests of Ihakara Te Raro, his son Hiraka Te Rango were considered and the debts of Otene Toatoa were also revived and addressed, focussing on those undivided interests in Awarua that they each had.[70]

88. The matter was discussed with the Development Under-Secretary and following up in a letter advising Native Minister Cadman that the Official Assignee claimed ownership of Ihakara Te Raro's shares in Awarua and was prepared to sell these interests to the Crown.[71]

89. The government established that in fact the Official Assignee had not yet applied to the Trust Commissioner for approval of the acquisition, and a certificate from the Trust Commissioner was required before the alienation could be completed, let alone the interests be acquired by the Crown.[72]

[66] Wai 2180, #A43 Bruce Stirling, 560.
[67] Wai 2180, #A43 Bruce Stirling, 512.
[68] Wai 2180, #A43 Bruce Stirling, 561.
[69] Wai 2180, #A43 Bruce Stirling, 561.
[70] Wai 2180, #A43 Bruce Stirling, 565.
[71] Wai 2180, #A43 Bruce Stirling, 565.
[72] Wai 2180, #A43 Bruce Stirling, 565-566.

90. This was done, and lead to a case in the Supreme Court where Prendergast CJ found that the adjudication was not a transaction that needed inquiry by the Trust Commissioner, and that the Trust Commissioner could simply by bypassed by the Assignee's taking over of Ihakara Te Raro's interests.[73]

91. Stirling goes on to record the experience of Raumaewa Te Rango and Ani Paki, who were sentenced to imprisonment due to the failure to pay their debts.[74]

Summary

92. Other submissions have already referred to the referring to the Crown's statement and concession on this issue and specifically to the suggesting that "the relationship between the Native Land Court's adjudication of title function and land alienation was not one of cause and effect: the fact the Court determined title to a parcel of land did not lead inevitably to the alienation of that land."[75]

93. The submission made here, following a consideration of the Court process itself is that there was a cause and effect, *any* investigation by the Court lead to an alienation of at least some of the title land. There are only two blocks which emerged from the Court process without some of the land alienated from the ownership of Taihape Māori.

94. The only exceptions to this are the treasured maunga tupuna block of Aorangi[76] and Awarua o Hinemanu,[77] both of which avoided investigation during the 19th century.

95. But the other point is that Māori Customary land was not able to be alienated, in the way that Court issued freehold title was able to be alienated and so long as it remained in that state, any dealings would have instead been in accordance with tikanga, and been founded on relational dealings overseen by the rangatira.

96. Allowing use, even long term use of land would not have been an alienation in the sense which a Crown issued title would require.

[73] Wai 2180, #A43 Bruce Stirling, 569.
[74] Wai 2180, #A43 Bruce Stirling, 572-577.
[75] Wai 2180, #1.3.2 *Crown Statement of Position and Concessions*, (37). and referenced by claimant counsel in Wai 2180, #3.3.76 Native Land Court Generic Closing Submissions on the Native Land Court, Chapter 1, (8).
[76] Wai 2180, #A8, 179-186.
[77] Wai 2180, #A8, 187-186.

97. Again, this is a matter Stirling considered in his research, and his view is quoted above, suggesting that every investigation was a response to attempts to sell the land and engagement by those "willing sellers" with the Crown.

98. It is noted that Hearn suggests something slightly different, namely that the blocks were brought before the Court by those claiming ownership.[78]

99. These two statements are not in fact contradictory. The evidence shows it was usually the successful (or most successful party) which initiated an application for an investigation of land in the Court, as Hearn records. However, Stirling is correct in suggesting that the circumstances that lead to the applications were activities on the land itself, offers to the Crown and attempts to sell, there was effectively, pressure on the title, and those applicants found their hand forced. It was the need to defend interests in that land, and the then informal leasing arrangements, that forced the hand of rangatira in placing the land before the Court.

100. This brings into question the ability of the NLC system to preserve ownership and serve those that wished to retain their land.

101. The ability to sell land, following the issue of title was presumed, and provided the individual was a part of the ownership group or list defined they were entitled to sell. The Native Land laws provided no mechanism whereby that proposed sale of shares required support from rangatira/the hapū, or meetings to that effect, it was enough to show presence on the ownership list and a share of the title, and that the "sale" was agreed to.

102. The Crown designed the NLC legislation to feature the individualisation of ownership and ease of alienation. The Crown was aware of the cost of the process. Finally, the Crown refused, despite repeated requests, to put purchasing on hold.

103. The system was complete. The Court was not a system to replace customary title with Crown issued grants, but a complete system designed to enable the removal of land from Māori ownership and control, and certainly to eliminate collective ownership and decision making.

[78] Wai 2180, #A7, Terry Hearn, *Sub-District Block Study – Southern Aspect*, 258, referenced by claimant counsel in Wai 2180, #3.3.76 Native Land Court Generic Closing Submissions on the Native Land Court, Chapter 1, (25-25).

104. This is seen in sharp relief when looking at the detail of the comprehensive agreements, amongst the rangatira, the hapū and iwi relating to the land, its use and ownership.

105. Most importantly, those agreements show that there was no need for any kind of "investigation".

106. If anything was needed, it could have been achieved with further detailed and focussed hui, to deal with specific areas, leases or plans. Making land available for Crown purchase or settlement could have been dealt with in this way.

107. The Rohe Potae Tribunal found this to be a major failing of the Court in that rohe:

> "We concur with the Turanga Tribunal that 'the Crown had to ensure that there was a proper and accessible system of checks' for out-of-court arrangements. Such a system was not in place in Te Rohe Pōtae."[79]
>
> "Right from the start of the Otorohanga court's operations, there was a gap between what Te Rohe Pōtae Māori expected of the court process and what was required by law. The legislative regime created a court that could ultimately usurp Māori control over their lands, and undermine their desire to control their title determination process. As the Taranaki Tribunal noted, the court could 'decide for Māori that which Māori should and could have decided for themselves'.[80] This was a point of concern for Te Rohe Pōtae Māori, and they raised this concern numerous times in the years before the court's entry into their rohe, to no avail."[81]
>
> "In failing to empower the committees as promised, the Crown breached its duty of good faith. In asking to determine title themselves, Te Rohe Pōtae Māori had been requesting no more than what the Treaty guaranteed them. The Crown's failure to provide for Te Rohe Pōtae Māori to manage land titling as they wished breached its obligation to act in accordance with their tino rangatiratanga, and breached the principle of autonomy."[82]

[79] Waitangi Tribunal, *Turanga Tangata Turanga Whenua,* vol 2, 451.
[80] Waitangi Tribunal, *The Taranaki Report,* 282.
[81] Waitangi Tribunal, *Te Mana Whatu Āhuru: Report on Te Rohe Potae Claims,* Vol 2, 225.
[82] Waitangi Tribunal, *Te Mana Whatu Āhuru: Report on Te Rohe Potae Claims,* Vol 2, 1225.

108. As the 19th century report shows, there was immense cost, debt and indebtedness resulting from the Court process itself. Any sale of Māori land in order to cover those costs are a demonstration of the two-fold curse of the NLC system; any form of engagement, (especially to the extent needed to fully represent the interests concerned) came at a cost which, assuming that the participant/s are not immensely wealthy, will result in the need to sell some of that taonga, the defence and retention of which, was the very purpose of the whole endeavour.

Dated at Waihi this 21st day of January 2021

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Cameron Hockly
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