KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL **WAI 2180**

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF **THE TAIHAPE: RANGITĪKEI KI RANGIPŌ DISTRICT INQUIRY**

CROWN CLOSING SUBMISSIONS IN RELATION TO ISSUE 10: LOCAL AUTHORITIES AND RATING

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INTRODUCTION

1. For some time now, claimants, the Tribunal and the Crown have been debating the relationship between local authorities and the Crown in respect of the Crown's obligations to Māori under te Tiriti o Waitangi/the Treaty of Waitangi. Some claimants have described the relationship as a delegation of functions and powers but not of the Crown's Tiriti/Treaty responsibilities. Other claimants have acknowledged that local authorities are described as legally separate to the Crown but acting as 'agents' of the Crown to further Crown purposes. These issues are particularly relevant to rating regimes and their impact on Māori, given te Tiriti/the Treaty guarantees relating to the possession and retention of land.

2. The factual history of local authorities and rating generally has been covered in technical research reports. Therefore, the Crown considers there is little utility in repeating or summarising that history here and has instead opted to engage with the issues raised by Taihape Māori specifically in this inquiry.

3. In this inquiry, Taihape Māori have raised general and specific issues relating to local authorities and made submissions about the applicability of te Tiriti o Waitangi/the Treaty of Waitangi to actions and omissions by local authorities. These submissions are therefore divided into general and specific issues raised by Taihape Māori, and the Crown's position in response to those issues follows accordingly.

GENERAL ISSUES

General issues raised by claimants

4. General issues relating to local authorities and rating are raised in a number of Wai claims including:

    4.1 Wai 972 and 1482, which allege inter alia that the Crown delegated its functions and powers for managing waterways to local authorities, which has usurped and undermined the exercise of tino rangatiratanga over the environment and marginalised Māori participation.[1]

[1] Wai 2180, #1.2.1, at [27] (Wai 972) and Wai 2180, #1.2.2, at [10.7]–[10.8] (Wai 1482). Wai 2180, #1.2.17, at [475] (Wai 662/1835/1868), Wai 2180, #1.2.23, at [6.1.1] and [7.1.9] (Wai 385/581/588/647/1705/1888), and Wai 2180, #1.2.24, at [20] (Wai 151), also raises these issues.

4.2 Wai 1260, 1262 and 1619 which allege inter alia that the Crown failed to ensure local authorities established a relationship with Māori that was consistent with te Tiriti/the Treaty and its principles, and that the Crown empowered local authorities to levy rates and place charging orders on lands which caused an unfair burden.[2]

5. In the generic claimant closing submissions, claimant counsel do not engage with the question of whether or not local authorities are part of the Crown.[3] This is because, in their view, "the Crown accepts responsibility for the statutory framework for local Government" and that "[t]his must logically include accepting responsibility for failings of local government that have their origins in, or are contributed to, by legislation".[4] The submission also states that 'the Tribunal has been saying since 1993 that the Crown cannot divest itself of Treaty obligations when it delegates functions'.[5] The claimants focus their submissions on whether the Crown has ensured Taihape Māori preferences for local systems of governance were catered for, and whether Taihape Māori were fairly treated.

6. In respect of local government in this inquiry district, claimant submissions say the Crown knew and articulated its Tiriti/Treaty responsibilities but failed to enable Taihape Māori to exercise their right of self-government.[6] Ultimately, claimant submissions say the Crown failed to legislate for local authorities in a way that is consistent with te Tiriti/the Treaty.[7]

Crown's response to general issues

Establishment of system of local government consistent with the principles of te Tiriti/the Treaty

7. Consistent with its position in other inquiries, the Crown's position is that local authorities are not the Crown, nor do they act on behalf of the Crown for the purposes of the Treaty of Waitangi Act 1975. Local authorities are

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2 Wai 2180, #1.2.4, at [15]–[16] (Wai 1260), Wai 2180, #1.2.5, at [13]–[14] (Wai 1262) and Wai 2180, #1.2.6, at [13]–[14] (Wai 1619). Wai 2180, #1.2.10 at [13] (Wai 378), Wai 2180, #1.2.15 at [59] (Wai 1632) and Wai 2180, #1.2.17, at [499]–[515] (Wai 662/1835/1868) also raise issues about rating, including the history of rating legislation and exemptions.

3 Wai 2180, #3.3.51, at [2], [17].

4 Wai 2180, #3.3.51, at [17].

5 Wai 2180, #3.3.51, at [18].

6 Wai 2180, #3.3.51, at [194].

7 Wai 2180, #3.3.51, at [206].

separate bodies corporate,[8] created by Parliament and vested with particular powers by statute. The Crown's Tiriti/Treaty responsibility lies with the statutory framework within which local government operates and in ensuring that that framework is consistent with te Tiriti/the Treaty and its principles.

8. As a general proposition, consistent with the Crown's position in other inquiries, the development of a system of local government, undertaken in good faith and applying to all New Zealand citizens, is consistent with the principles of te Tiriti/the Treaty. It reflects a philosophy that decisions which affect local communities are most appropriately controlled by those communities,[9] and Parliament's vesting of those local bodies with sufficient powers to make local decisions is a legitimate exercise of the Crown's right of kāwanatanga.

9. The Crown does not exercise control over the decisions made under statute by local authorities or matters of their day-to-day operation. As such, the Crown cannot be responsible for those matters. There are very limited circumstances in which Ministers of the Crown can intervene in a local authority's exercise of its functions, an example being appointing a Commission to take over the local authority's role and responsibilities. Such intervention is intended to be employed only in extreme circumstances and, as with a local authority, the Commission appointed will exercise independent decision-making authority from the Crown. Claims relating to specific exercises of decision-making, such as claims relating to the exercise of powers under the Resource Management Act 1991 (**the RMA**) by local authorities, are not claims against the Crown within s 6 of the Treaty of Waitangi Act 1975. 'Review' functions for such decisions lie with the Courts, not the Crown.

10. This is not to say that the Crown can avoid its obligations under te Tiriti/the Treaty, nor does it seek to do so. Previous Tribunals have found that the Crown cannot avoid or modify its obligations under Article II of te Tiriti/the Treaty by 'delegating away' its powers to local authorities. The Crown accepts this position but submits that it has not delegated its powers

8 Local Government Act 2002, s 12.

9 Local Government Act 2002, s 10.

or duties. The Crown says it has established the legislative regimes in which local authorities operate in a Tiriti/Treaty-consistent manner, and has built safeguards into relevant statutory instruments in order to protect Tiriti/Treaty interests in local decision-making. However, issues raised in respect of local government inevitably raise complex and difficult questions about how the Crown should balance the rangatiratanga rights of Māori, including Taihape Māori, in relation to their taonga against its duty to govern for all New Zealanders. Allegations referring to the introduction of local government need to be assessed on a case by case basis.

11. The Crown acknowledges that local government legislation in the 19th and 20th centuries generally did not contain provisions for specific Māori representation in local government. The Crown does not accept, however, any general claim that the absence of specific provisions for Māori representation on its own caused prejudice to Taihape Māori or prevented them from participating in local government decision-making. The Crown notes, in this regard, that participation is affected by a wide range of factors, including the willingness and desire of Māori to participate, and the views and biases of local government representatives.

12. However, as set out in Crown submissions on Issue 16A: Environment, there have been significant improvements over time that have increased the potential for the views of Māori to be considered in decision-making processes. The RMA, the Local Government Act 2002 and the Conservation Act 1987 now better provide for the views of Taihape Māori to be taken into account, which are expected to be further strengthened by the RMA reform.

13. For example, the Crown notes:

    13.1 The Local Government Act 2002 includes explicit provision that a number of principles in that Act have been incorporated to "recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi."

    13.2 Section 81 of the Local Government Act 2002 requires local authorities to establish and maintain processes to provide opportunities for Māori to contribute to the decision-making

processes of the local authority and consider ways to foster the development of Māori capacity to contribute and provide relevant information to Māori for these purposes.

13.3 Section 82 of the Local Government Act 2002 Act prescribes requirements for adequate consultation with Māori in relation to decision making.

13.4 Section 8 of the RMA requires all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, to take account of the principles of te Tiriti o Waitangi/the Treaty of Waitangi.

13.5 Section 66(1)(a) of the RMA requires regional councils to prepare (or change) any regional plans in accordance with the provisions of Part 2 of that Act, which specifically includes recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands, water, and other sites.

14. Also relevantly, ss 19Z of the Local Electoral Act 2001 enables councils to adopt Māori wards and constituencies. Māori wards may be established for cities and districts; Māori constituencies may be established for regions. Similar to the Māori Parliamentary seats, these Māori wards and constituencies establish areas where only those on the Māori Parliamentary electoral roll vote for the representatives. They sit alongside the general wards and constituencies which also cover the whole city, district or region. Those voting in Māori constituencies receive the same number of votes as other voters.

15. Prior to a recent amendment, Māori wards and constituencies could be established through one of the following processes:

15.1 A council may resolve to establish Māori wards or constituencies. If so, a poll to establish Māori wards or constituencies must be held if five percent of the electors of the city, district or region request it.

15.2 A council may decide to hold a poll on whether or not there should be Māori wards or constituencies.

15.3 A poll on whether there should be Māori wards or constituencies must be held if requested by a petition signed by five percent of the electors of the city, district or region. The result of a poll is binding on the council.

16. Following the commencement of the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021, on 2 March 2021, the provisions enabling five percent of electors to demand a binding poll on the question of whether to establish Māori wards or constituencies has been repealed.

Rating

17. The power to set and levy rates is a particular statutory function of local government. Māori land first became rateable in 1876, and then only if occupied by Europeans, who were liable for the rates.[10] Māori land that was occupied by Māori first became rateable in 1882, and then only in certain circumstances.[11] Between 1882-1888 the Crown paid these rates for Māori and later (in 1927) wrote off much of the rates owing to the Crown. Since 1888, Māori land has been liable for rates, but various exclusions have applied.[12]

18. It is alleged the Crown empowered local authorities to levy rates which caused an unfair burden on Taihape Māori. Consistent with the position it has adopted in other inquiries, the Crown's position is that provision for the levying of rates is a reasonable exercise of the Crown's right to govern under Article I of te Tiriti/the Treaty and an aspect of the sovereign right to impose reasonable taxation. The principle of rating Māori land is not inconsistent with te Tiriti/the Treaty.

19. The Crown has recently passed the Local Government (Rating of Whenua Māori) Amendment Act 2021, which will come into force in July 2021. This Act ameliorates some of the issues concerning rates that have been raised

10 T Bennion, "Māori and Rating Law" (Waitangi Tribunal, Rangahaua Whanui Series, 1997), at 12.

11 T Bennion, "Māori and Rating Law" (Waitangi Tribunal, Rangahaua Whanui Series, 1997), at 16.

12 T Bennion, "Māori and Rating Law" (Waitangi Tribunal, Rangahaua Whanui Series, 1997), at 16.

by the claimants in this inquiry, and in other inquiries, by supporting the development of Māori land and modernising rating legislation affecting Māori land.

20. The Act amends the Local Government (Rating) Act 2002 to:

20.1 provide local authorities with the power to write off rates arrears and a statutory remission process for development;[13]

20.2 make unused Māori land, including land subject to Ngā Whenua Rāhui kawenata, unrateable;[14]

20.3 provide a statutory remission process to promote rates remissions for Māori freehold land under development;[15]

20.4 provide the option for separate rate accounts for multiple homes on Māori land (giving homeowners access to the rates rebate scheme);[16]

20.5 provide the opportunity for local authorities to treat multiple blocks of Māori land as one block for rating purposes;[17] and

20.6 modernise the rating system affecting Māori land, including protecting Māori land arbitrarily reclassified as general land in the late 1960s and early 1970s from 'abandoned land sales',[18] clarifying land trustees' obligations in respect of rates, and updating and clarifying the exemptions that apply to marae and urupā.[19]

21. The Act also amends the Local Government Act 2002 to require certain local authority funding and financing policies to support the principles set

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13 Local Government (Rating of Whenua Māori) Amendment Act, s 41, inserting ss 90A and 90B into the Local Government (Rating) Act 2002.

14 Local Government (Rating of Whenua Māori) Amendment Act, s 52, amending sch 1 of the Local Government (Rating) Act 2002.

15 Local Government (Rating of Whenua Māori) Amendment Act, s 50, inserting s 114A into the Local Government (Rating) Act 2002.

16 Local Government (Rating of Whenua Māori) Amendment Act, s 48, inserting ss 98A and 98F into the Local Government (Rating) Act 2002 and amending the Rates Rebate Act 1973 to allow residential properties on a separate rating area to qualify for the Rates Rebate Scheme.

17 Local Government (Rating of Whenua Māori) Amendment Act, s 11, inserting s 20A into the Local Government (Rating) Act 2002.

18 Local Government (Rating of Whenua Māori) Amendment Act, s 38.

19 Local Government (Rating of Whenua Māori) Amendment Act, s 52, amending sch 1 of the Local Government (Rating) Act 2002.

out in the Preamble to Te Ture Whenua Māori Act 1993. These changes are an example of the Crown's role in ensuring the framework within which local authorities must act is Tiriti/Treaty-consistent.

Conclusion

22. The Crown's view is that the establishment and subsequent evolution of New Zealand's local government arrangements represents a genuine, good faith endeavour to implement a national, uniform, independent and largely self-funding system for the efficient and effective development of the country's various regions. The challenge has been how to establish local government consistently with te Tiriti/the Treaty and its principles so as to provide for and protect the interests of Māori, including Taihape Māori, and facilitate their participation in local government systems and structures and the regional and national economies. In assessing the Crown's response to that challenge, it is important to acknowledge that the circumstances it faced were without precedent: how to establish local government in New Zealand consistently with te Tiriti/the Treaty and its principles was a novel situation.

23. The Crown accepts that the establishment of local government affected the way which some of the activities of Taihape Māori could be undertaken and the decisions they could make, as it did for non-Māori. In assessing the extent to which the establishment of local government affected Taihape Māori, both positively and negatively, consideration will need to be given to the complexity of factors involved, and the need to balance the rangatiratanga of Taihape Māori with the Crown's duty to all New Zealanders.

SPECIFIC ISSUES

24. The generic claimant closing submissions on local government helpfully set out the witnesses who gave evidence about specific issues relating to local government and/or rating in this inquiry.[20] The Crown has also reviewed the final statements of claim to ensure it responds to specific issues raised by Taihape Māori about local authorities.

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20 Wai 2180, #3.3.51, at [6].

25. The specific issues and Crown responses are set out below, in alphabetical order.

Erewhon Rural Water Supply Scheme (Wai 662/1835/1868)

Introduction

26. David Steedman gave evidence about the Rangitīkei County Council's decision to establish the Erewhon Rural Water Supply Scheme (ERWSS), a 16km long linkage pipe-line to provide a new water source to Pungatawa farmers, which opened in November 1980.[21] Mr Steedman says the Rangitīkei County Council failed to give notice to the Aorangi Awarua Trust (**the Trust**), who administers 25% of wetland connected to the ERWSS,[22] and that consultation with the Trust was minimal.[23] Mr Steedman says it was only after 27 years of negotiation that an agreement with the Rangitīkei District Council was reached, which granted an easement to the Council over the Trust's lands in exchange for an annual payment and the right of a Trust member to sit on the ERWSS Committee.

27. This issue has appeared in a number of documents, reports and briefs on the record. Of most concern, the final statement of claim for Wai 662/1835/1868 says Ngāti Hinemanu believes that Rangitīkei District Council proposed to continue to rate their land unless they agreed to grant the Council a water easement over Aorangi, and that the water right was to legitimise the ERWSS more than 20 years after it was constructed.[24]

28. This issue is covered in multiple technical research reports including by David Alexander (#A38), Evald Subasic (#A8), Suzanne Woodley (#A37) and David Armstrong (#A49), which are discussed below. As set out below, the evidence is not completely consistent and the absence of evidence from the Rangitīkei District Council means it is difficult to ascertain a coherent narrative.

David Alexander

29. Mr Alexander says the water scheme required a low dam across the outlet of the stream from a bog which diverts the water into a pipeline. The dam is

21 Wai 2180, #I03, at [28]–[30].

22 Wai 2180, #I03, at [17].

23 Wai 2180, #I03, at [37].

24 Wai 2180, #1.2.17, at [145].

on the Aorangi Awarua block so required permission from the owners. It also required permission from the Rangitīkei-Whanganui Regional Water Board under the Water and Soil Conservation Act 1967 to dam and take the water. The Water Board consent did not require landowner involvement and was granted in June 1977.[25] Verbal consent was obtained from some owners of Aorangi Awarua at a meeting called by the Catchment Board attended by 6-8 owners (including "Steadman snr, jnr and boy") in November 1976.[26]

30. In November 1977 the Council wrote to the owners via the Māori Affairs Department seeking written approval for work to start in early 1978, promising little disturbance of the area. The Department directed the Council to the Trust via Rangi Metekingi. A discussion took place between Mr Metekingi and the County engineer after which a letter was sent seeking approval, with a reminder sent in March 1978 noting work on the pipeline had begun.

31. No entry agreement was signed by the Trust, though there are records indicating verbal consent from Mr Metekingi was forthcoming. In November 1978 the Trust was informed work was now proceeding on the dam and intake weir on Aorangi Awarua. The Trust was asked to inspect the area to ensure its satisfaction with the work and subsequent restoration. In March 1980 the Trust was informed re-grassing would be undertaken next growing season, presumably indicating the works were complete.

32. Alexander concludes that "the County Council operated in an open manner with the Trust, and went ahead with construction, even though no formal entry agreement had been signed, when it thought it had the verbal consent of the Trust". He later sets out that the County Council and its successor (the District Council) relied on the verbal agreements from 1977-1978 for the operation of the scheme.[27] He notes that the Trust was not against the scheme but that by the 1980s concerns were being raised that there was no

25 Wai 2180, #A38, at 532.

26 Wai 2180, #A38, at 533–535.

27 Wai 2180, #A38, at 605.

ongoing arrangement acknowledging the Council's occupation of the land that provided an income.[28]

33. The willingness of the Department of Conservation (**DOC**) to facilitate an agreement between the Council and the Trust lapsed when the Trust opted to negotiate a covenant with the Ngā Whenua Rāhui Fund. That willingness had taken the form of DOC investigating the ERWSS on behalf of the Trust.

34. There was "no sense of urgency on the part of the District Council to reach a formal agreement with the Trust until about 2002" when it was instructed that the oral consent given by the Trust without the consent of the owners or confirmation by the Māori Land Court was ineffective. After meetings between the Council and the Trust and a survey, the parties signed a formal deed of settlement in December 2004 recording that the Trust did not accept the necessary procedures were followed at the inception of the scheme.

35. Under the agreement:

    35.1 the Trust and Council resolved all matters relating to the ERWSS that were in dispute between them and clarified their continuing relationship;

    35.2 the Trust granted an easement and the Council agreed to make a payment of $4,000 a year (adjustable in line with CPI);

    35.3 a trustee would be appointed to sit on the scheme management committee;

    35.4 overflow water from the ERWSS would be made available to Moawhango Marae, though costs of piping were borne by the Trust;

    35.5 the Council was entitled to terminate the agreement after 10 years;

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28 Wai 2180, #A38, at 535–536. The report also notes at 539 that the owner of Mangaohane Station described entering into a commitment to preserve the water supply for the Erewhon Rural Water Supply Scheme.

35.6 the Council would pay the costs of obtaining Māori Land Court consent and registration of the easement. Having been informed the easement regularises an existing situation and fairly and equitably settled a dispute, the Māori Land Court ordered the creation of the easement in March 2006.

Evald Subasic

36. The conclusion reached in this report was that the owners "only reluctantly agreed to grant the council a water right as a result of being threatened with action over the rising rates arrears imposed on a title that should never have been rated".[29] They characterise Ngāti Hinemanu as considering their consent to water use as being "effectively coerced from them".[30]

37. Subasic sets out that by 1983 the Council was seeking $3,000 in unpaid rates and that the charges were continuing to accumulate "not least because the Council and the Ministry of Agriculture and Fisheries was then implementing the Erewhon Water Scheme".[31] The Scheme was ultimately imposed on the Aorangi Awarua and Awarua 1D2B block, with structures erected without consent of the owners and "in their minds, the threat posed by rates was linked by the Council to the withdrawal of opposition to the Erewhon Scheme".[32] This passage is not referenced. The writers note that this is an issue for further research in relation to waterways and local government.

38. The report states that setting aside land as an economically non-productive preserve would qualify it for exemption it from rating, though rating remains an issue for owners and local bodies to deal with. The authors set out that the exemption from rating of Aorangi Awarua is a matter that requires further research but "it is the belief of Ngāti Hinemanu that the Rangitikei District Council proposed to continue to rate their land (as it had since the 1930s) unless they agreed to grant the Council a water easement over Aorangi, and over the adjacent Awarua 1DB2 block … the owners

29 Wai 2180, #A08(b), at 16.

30 Wai 2180, #A08, at 184.

31 Wai 2180, #A08, at 185.

32 Wai 2180, #A08, at 185.

eventually gave in to the Council and the water easement was registered against the title in 2006".[33]

Suzanne Woodley

39. Ms Woodley notes that in 1983 the lawyer for the trustees of Aorangi Awarua asked the Rangitīkei Council whether it would consider a remission of rates because the Trust had little income. The letter noted the owners' concern that no consent was given to the construction of the ERWSS. In its response, the Council replied that "the question of the outstanding rates must be resolved and a trade-off between the 'consent' and the rates may be possible".[34] Legal advice received by the Council did not recommend compensation be given for the scheme.[35]

40. However, it does not appear that this trade-off actually occurred, even though in fact remission was not achieved until after the easement was negotiated. In 2004 the Rangitīkei District Council developed a Māori land rates remission policy. The Aorangi Awarua Trust applied for rates remission over Awarua 1DB2 in 2006. The rates remission sub-committee considered the application, noting the Ngā Whenua Rāhui kawenata and that the ERWSS agreement had been reached, entitling the Trust to royalties. The remission was granted in January 2007.[36] The report is not clear on what the status of rates on Aorangi Awarua is, though in another part of the report Ms Woodley appears to indicate that the 2007 remission was for both Aorangi Awarua and Awarua 1DB2.[37]

David Armstrong

41. Mr Armstrong says the scheme was first raised with the trustees in 1976 at a meeting in Marton with the Forest Service and Mr Bull of the Rangitīkei County Council. There is nothing in the records indicating the trustees' response to this proposal, but Mr Armstrong considers that "given the pressure being exerted by the local body on the question of outstanding

33 Wai 2180, #A08, at 186.
34 Wai 2180, #A37, at 295.
35 Wai 2180, #A37, at 297.
36 Wai 2180, #A37, at 300.
37 Wai 2180, #A37, at 194.

rates … it is safe to assume that trustees would not have enthusiastically embraced Bull's proposals".[38]

42. Mr Armstrong spoke with Richard Steedman, Tama Wipaki and Isaac Hunter, all of whom gave him information to the effect that one or two individuals may have been spoken with informally by the Council but that this was construed as formal consent by the owners as a whole.[39] There was no evidence to show the owners or trustees consented.

43. In 1987 lawyers acting for the Trust asserted the Catchment Board should pay compensation for structures built on their land and make annual payments for water. This was passed on to the County Council with the advice that "there is no legitimate case for such compensation" as water is owned by the Crown. The settlement eventually agreed is described by Isaac Hunter as a pittance for water supplied to over 50 farms, only one of which is Māori.[40]

44. In terms of the interplay between rates and the ERWSS, Mr Armstrong records that the Trust chair Mrs Karaitiana told the *Wanganui Chronical* in 1987 that the remission of rates totalling $9,000 would serve only as compensation for water taken by the Council in connection with Erewhon.[41] The report also refers to the belief by the owners that the Council would rate their land until they agreed to an easement legitimising the ERWSS, but appears to cite Subasic and Stirling in support of that.[42]

Tribunal discussion with witnesses

45. This matter was also explored in the Tribunal's discussion with the witnesses. In particular, Dr Soutar questioned Mr Subasic and Mr Stirling at hearing week five about this issue, asking how they came to the conclusion that the threat posed by rates was linked to the withdrawal of opposition to the ERWSS. The answer was that they thought it was oral communications at the research hui, rather than something documented. They predicted

38 Wai 2180, #A49, at 447. Mr Bull also proposed placing a radio transmitter on the summit of Aorangi.

39 Wai 2180, #A49, at 447–448.

40 Wai 2180, #A49, at 448.

41 Wai 2180, #A49, at 451.

42 Wai 2180, #A49, at 458.

tangata whenua evidence and material dug up by Mr Alexander and Mr Armstrong would make that clearer.[43]

46. Dr Soutar also asked whether Ngāti Hinemanu's theory on what motivated the rates remission discussion is a conspiracy theory. The response was that it is a little more than that – the comments were coming from people who had lived through the period and it "was obviously something that still rankled with them that this water scheme was put in place really without their willing consent and [they] were sort of pressed into it by the local body using … the rates steps as a stick and there wasn't much of a carrot".[44]

47. Dr Soutar asked Mr Steedman what he meant by outstanding rates being used against the Trust.[45] Mr Steedman's answer is not particularly clear, but it appears to be that Mr Brown, the lawyer for the Council, was bringing rates to the attention of the Trust when they were negotiating compensation "even before the scheme opened".[46] Dr Soutar clarified with Mr Steedman that in fact those rates were not paid, being waived in 1994 at the time of the Ngā Whenua Rāhui kawenata, before the ERWSS agreement in 2005. However, that does not align with the evidence in Ms Woodley's report, that the rates were waived in 2007.[47]

48. Sir Doug questioned Te Rina Warren and Ūtiku Pōtaka on this at hearing week two.[48] He said "do I take it that iwi were not consulted let alone engaged?" to which the response was that the standard process of consultation at the time was for someone Māori to be stopped on the street and asked if it was OK, which appeared to be the case with Erewhon.[49] Sir Doug also asked whether this was something that had destroyed the swamp, to which the response was that it didn't appear to be the case.[50]

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43 Wai 2180, #4.1.12, at 249.

44 Wai 2180, #4.1.12, at 251.

45 Wai 2180, #4.1.12, at 489.

46 Wai 2180, #4.1.12, at 490.

47 Wai 2180, #A37, at 300.

48 Wai 2180, #4.1.9, at 522.

49 Wai 2180, #4.1.9, at 523.

50 Wai 2180, #4.1.9, at 523.

Crown's position

49. Taking all of the evidence into account, and without the benefit of material or submissions from the Rangitīkei District Council, the Crown considers that there is insufficient evidence on which to base a finding that the Crown has breached any Tiriti/Treaty duties, as suggested in the opening submissions of Ngāti Hinemanu me Ngāti Paki in hearing week five (#3.3.11).

50. In particular, the evidence about whether the Council threatened rates enforcement is contradictory and does not appear to be supported by contemporary documentation. Further, there does not appear to be any Crown involvement in the transaction except where it appears DOC attempted to facilitate an agreement between the Trust and the Council to resolve matters, and the Māori Affairs Department who correctly identified tangata whenua that the Council needed to engage with on the proposal. There is no suggestion any of the relevant legislation was inadequate to uphold the Crown's Tiriti/Treaty duties and no conclusive evidence that rates were improperly used to leverage a favourable access agreement. Accordingly, the Crown disagrees this transaction amounts to a Tiriti/Treaty breach by the Crown.

Failure to consult on sewerage plant (Wai 662/1835/1868)

51. Patricia Cross gave evidence that the Taihape Sewage Treatment Plant was placed on the bank of the Hautapu River but neither the Crown nor council consulted Ngāti Hinemanu and Ngāti Paki beforehand.[51] Ms Cross says Ngāti Hinemanu and Ngāti Paki are kaitiaki of the inland waterways within the rohe.

52. The lack of evidence of consultation with Taihape Māori in relation to the establishment of sewage discharge systems in the inquiry district is further outlined in the Crown's submissions on Issue 16B. There is evidence and discussion on the record about the environmental effects of the Taihape Sewage Treatment Plant,[52] however, there does not appear to be any evidence of how the site for the plant was selected and the mechanisms by

51 Wai 2180, #F03, at [11].

52 For an example of claimant evidence, see Wai 2180, #F05, at [55]–[70]. This issue is also discussed in the Crown's closing submissions on the environment.

which consultation, if any, was conducted. It is therefore not clear whether or how the Crown was involved in this transaction, nor whether there were any deficiencies in the legislative framework.

Failure to monitor and control 'spray and pray' (Wai 662/1835/1868)

53. Ngahapeapara Tuae Lomax gave evidence that:[53]

    53.1 There is an unmonitored and uncontrolled practice of stripping land of pasture and grazing stock in mobs known as 'spray and pray'. It involves spraying 'round-up' to clear the pasture, sowing it with winter crop and then aerially spraying it with fertiliser. The locals pray for rain which ripens the crop for sheep and cattle to graze on over winter.

    53.2 This practice has caused environmental degradation.

    53.3 The local authority and Crown have nonetheless allowed this practice to continue.

54. The Crown acknowledges claimant concerns about intensive farming practices and their impacts on the environment. This issue is further discussed in relation to specific poisons such as 1080 in the Crown's submissions on Issue 16A at [217]-[222]. There is evidence on the record about the environmental impacts of 'spray and pray' but there does not appear to be evidence on which to base a finding that the Crown or a local authority has allowed the practice to continue. To the contrary, there is evidence of Crown efforts to regulate high risk land management practices such as intensive feedlots, 'spray and pray' and intensive winter grazing on hill slopes.[54]

Lessee paying council rates (Wai 662/1835/1868)

55. Mervyn Steedman gave evidence that he leases land next to the main trunk railway line from KiwiRail to graze stock.[55] He says the land was acquired under public works legislation and that, in addition to the lease payments, he must pay rates to two different councils for what is effectively

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53 Wai 2180, #F04, at [40].

54 See, for example, *Essential Freshwater: Healthy Water, Fairly Allocated,* October 2018, Ministry for the Environment and Ministry for Primary Industries, at 32.

55 See Wai 2180, #I01.

unproductive land. He questioned how that can be right given he is not the owner of the land.[56]

56. It is not clear how the Crown is involved in or responsible for this transaction. Although there is little evidence on this matter, Mr Steedman appears to have entered into a lease with a private company in which he has agreed to pay council rates on behalf of the landowner. To the extent this could be interpreted as an allegation the rating system is unfair because it allows lessees to pay rates, the Crown's general position on the rating system is set out above.

Poor relationships with local authorities (Wai 651, Wai 972)

57. Turoa Karatea gave evidence that Ngā Iwi o te Reureu has a challenging relationship with the Rangitīkei District Council which includes the Council not listening to concerns about the Rangitīkei River and failing to follow up on matters discussed. The health and mauri of the River has suffered as a result.[57]

58. Edward Penetito gave evidence that Te Marae Komiti o Kauwhata Trust had a hui with Horizons Regional Council over the discharge of effluent from farms into the Ōroua and that he was "incensed" with the arrogance and attitude towards him by their insistence that the farms were "very pristine".[58] Mr Penetito also said the ability to protect Kauwhata's waters is not reflected in agreements on shared water management with local bodies, nor through consultation efforts of those organisations.[59]

59. The Crown acknowledges the concerns raised about the engagement by local authorities. As set out above, the Crown's position is that the legislative framework for local authorities requires engagement with Māori at varying levels depending on the nature of the action, decision or proposal. As outlined in the Crown's submissions on Issue 16A, there is evidence of ongoing engagement between Taihape Māori under the RMA framework, including through local government committees such as Ngā Pae o Rangitīkei, Te Roopu Ahi Kaa, Te Roopu Āwhina, and other groups

56 Wai 2180, #I01, at [10].
57 Wai 2180, #F07, at [55].
58 Wai 2180, #L01, at [7].
59 Wai 2180, #L01, at [30].

such as the Environmental Working Party of Ngāti Whitikaupeka and Ngāti Tamakōpiri.[60]

60. However, the Crown cannot dictate or control how those Council-Māori relationships are to be established or maintained. Notwithstanding that legal position, the Crown is open to considering steps it could take to assist in the development, maintenance or otherwise improvement of relationships between Taihape Māori and relevant local authorities.

Specific example of rating practices of councils (Wai 1632)

61. Hari Benevides gave evidence that County Councils adopted blanket rating practices without consideration of the circumstances of owners or the ability of land to support rates.[61] Ms Benevides also said councils used a number of means to collect rates including liens, charging orders and receivership.[62] Ms Benevides records an example of Ropoama Pohe being in attendance at a hearing for charging orders over Motukawa 2B5B, in which Ropoama Pohe and Ngaruroro Tihema asked for more time to pay the rates.[63] A charging order was made (which included additional fees for the application and Court orders) and the rates were later paid following the land being leased for five years.

62. The Woodley report summarises the issues in the following way:[64]

62.1 In the 19th century, Māori were not generally consulted about their rating obligations by local authorities in the region (primarily RCC and HBCC).

62.2 Much of the land rated by the RCC in the 1880s was sold by the early 20th century (although a direct link between rating and sale has not been established).

62.3 Complaints from Taihape Māori about the rating regime are evident, including a Mr Marumaru in the 1930s complaining that

60 See Wai 2180, #F02(a), at 18–19; Wai 2180, #L07, at [18]–[25].

61 Wai 2180, #H01, at [17].

62 Wai 2180, #H01, at [19].

63 Wai 2180, #H01, at [16].

64 Wai 2180, #A37, at 228–230.

unoccupied lands were subject to rates yet there was no funding support for their development.

63. Legal mechanisms to ensure that rates debts were paid included:[65]

63.1 Before the 1913 lien regime, the RCC showed a willingness to take Māori to the Magistrates Court for non-payment of rates and to pursue the bankruptcy of owners as a method of exacting payment.

63.2 The Rating Amendment Act of 1913 enabled liens to be registered against titles for unpaid rates, whether the land was developed or undeveloped.

63.3 The Native Land Rating Act 1924 introduced charging orders, which could be registered on titles through application to the Māori Land Court. The RCC made "copious" applications for charging orders in the period 1926 to the 1950s. The Court seems to have been used as an administrative clearing house for Council rating business, with little evidence of Māori owners being present when Council applications were heard. There was usually "a complete lack of assessment as to whether the land could support rates and the circumstances of the owners".[66]

63.4 In many cases, land was leased after charging orders were imposed – apparently in a bid to ensure payment of rates, but with the result that the owners were unable to deal with the land themselves for long periods.

63.5 Between 1926 and 1945, 353 charging orders were recorded as being made in the Whanganui minute books in respect to around 115 blocks in the inquiry district. These 115 blocks comprised around 170,000 acres. Of these 115 blocks, 37 (comprising about 44,901 acres) were leased in the late 1920s, 1930s and 1940s.[67] Around 12,000 acres was sold and, though receivers were

65 Wai 2180, #A37, at 230–234.

66 Wai 2180, #A37, at 232.

67 Wai 2180, #A37, at 232; and see Appendix 1, at 234–236 – details of these 37 blocks, comprising 44,902 acres.

appointed in some cases, those sales do not appear to have been instigated by the receiver (and which would have required the Native Minister's consent).[68] Approximately 695 acres was leased and then sold.[69] The bulk of the 115 blocks (or 110,501 acres) were undeveloped and/or landlocked land that was not immediately leased or sold, although a number were later taken for defence purposes or under public works legislation in the early 1960s.[70] Approximately 23 blocks (totalling 1,102 acres) were subject to charging orders between 1926 and 1945 where the land was occupied and retained by Māori.[71]

63.6 Charging orders prevented registration of a lease or sale, meaning that rates were often paid out of purchase or rental monies under supervision of the Māori Land Court.

64. Another mechanism to ensure payment of rates was receiverships in which the Aotea District Māori Land Board or the Māori Trustee was appointed receiver. Woodley states:[72]

64.1 The Aotea Board was appointed receiver with respect to 13 blocks in the period 1945-47.

64.2 In some cases, receiverships led to a formal lease or sale of the land, facilitating transfer of Māori land to neighbouring European farms.

64.3 In other cases, receiverships by the Board or Māori Trustee resulted in payment of rating debt, discharge of the receivership, and the land remaining in Māori ownership. For example, the Aotea Māori Land Board became receiver of the Taraketi blocks and Ōwhāoko D5 no. 3 – most of these rates were subsequently paid and the land remains in Māori ownership, including some that

68 See Wai 2180, #A37, at 537, Appendix 2.

69 See Wai 2180, #A37, at 538, Appendix 3.

70 Wai 2180, #A37, at 233; and see Appendix 4, at 539–541.

71 See Wai 2180, #A37, at 542–544, Appendix 5.

72 Wai 2180, #A37, at 234–235. See also the Crown submissions on Land Boards and the Native/Māori Trustee in Issue 7.

has been Europeanised.[73] In the period 1957-68, receivership orders were made over 14 blocks, but all were discharged within several years.[74] (The major exception to this was Awarua 2C15B2, the narrative of which is addressed in Crown closing submissions on Issue 7.)

65. The Crown acknowledges that some of the rating decisions and practices utilised by local authorities caused hardship to Māori. As set out above, the Crown's position is that it is responsible for the legislative system in which rating is carried out and must take steps to ensure that system is Tiriti/Treaty consistent. Given the safeguards and mechanisms built into the rating legislation (such as exemptions and rating remissions), the Crown's position is that the system was Tiriti/Treaty consistent as it represented pragmatic solutions to a difficult issue (ie providing for the recovery of rates owing when landowner(s) had not paid them).

66. Notwithstanding this, the Crown acknowledges the ratings regime may have contributed to a relatively large amount of land loss (as compared with other district inquiries[75]). The Crown submits these matters are not straightforward and would require close analysis of the various alienations to reach any conclusions about whether the Crown should have intervened in the circumstances. The Crown recognises that the summary of evidence above suggests significant impacts for Taihape Māori, and notes that there is scope for these matters to be investigated through settlement discussions with Taihape Māori.

CONCLUSION

67. For the reasons set out above, the Crown's position is that there is an insufficient basis in evidence or law for a finding that the Crown breached its Tiriti/Treaty duties by virtue of acts or omissions by local authorities in this inquiry district. As noted above, the Crown does not consider it

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73 Wai 2180, #A06, at 76, 194.

74 Wai 2180, #A37, at 235.

75 For example, the Crown submitted in the Te Rohe Pōtae District Inquiry that there is a "strong possibility" that around 2,400 acres was sold as a result of rating enforcement, which amounted to a very small proportion of the 402,253 acres possessed by Rohe Pōtae Māori at the time (Wai 898, #3.4.306, at [155]–[171]). In the Te Paparahi o Te Raki (Northland) Inquiry, the Crown submitted that approximately 307 acres of the 2,123,148 acres in the inquiry district was permanently alienated as a result of rates enforcement (Wai 1040, #3.3.413, at [174]–[187]).

delegated its functions or powers or responsibilities to local authorities but rather exercised its Article I kāwanatanga right to pass legislation to create a New Zealand wide system whereby local decisions would be made at the local level.

68. The Crown concludes by acknowledging the time, mahi and resources that Taihape Māori have contributed to this inquiry, in order to bring issues relating to local authorities to light.

7 May 2021

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TO: The Registrar, Waitangi Tribunal
AND TO: Claimant Counsel