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 12: TWENTIETH CENTURY LAND ALIENATION

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INTRODUCTION

1. The Crown recognises the enormous and rapid transformations in Taihape in the last quarter of the 19th century and the contribution of the Crown's actions within that transformation (see submissions on Issues 3 and 4). The 25 years between 1872 and 1897 involved fundamental transformation of: land tenure, control, and ownership; land use (pastoralism becoming established); and the relationship between the Crown and Taihape Māori.

2. The next 15 years (1897-1912) saw fundamental transformation on the land itself and the human landscapes within it. Major infrastructure was constructed (within the district (roading) and connecting the district to the nation more generally (rail)), settler occupation increased significantly, new townships were created (both "Native" and settler townships), the land was extensively developed (large scale pastoralism on higher lands and close settlement of lower altitude lands), and significant flows of cash and capital occurred, including the timber industry boom and bust (and the associated extractive deforestation).

3. Despite the bulk of Taihape Māori land alienation occurring in the second half of the 19th century, cases of land alienation continued into the 20th century across the Taihape inquiry district. In 1900, Taihape Māori land holdings were significantly reduced, yet remained capable of forming viable economic units. By 1990, 60% of the lands that were retained as at 1900 were no longer owned by Taihape Māori.

4. These submissions address the Crown's role in those matters, with a focus on Crown purchasing and land administration mechanisms.

5. The Crown undertook relatively few direct actions in the inquiry district during the 20th century (ie it did not have an active purchase programme and no consolidation schemes were undertaken). However, several of the few direct actions it did take were large in effect and are, therefore, addressed separately in discrete submissions (including Ōwhāoko gift lands, public works acquisitions and landlocked lands).

6. At the less direct (or general) level, Crown policy and legislation throughout this period shows an increasing trajectory towards more tailored provisions

for the effective administration and use of communally owned land – with strong leadership and innovation from the Young Māori Party in the first quarter of the century increasing support available for developing Māori lands. Collective land mechanisms were available throughout the 20th century (access to finance for them was available from 1903).

7. There is an overarching theme of land being out of the direct control or use by Taihape Māori in the first half of the century – primarily through a significant amount of their retained lands being leased. Leases raised considerable income for owners.

8. The supervisory role of the Māori Land Board and Native/Māori Trustee is addressed in separate submissions (see Issue 7). The functions of those institutions arguably contributed to some Taihape lands being retained, but were also administratively burdensome for owners and decreased their ability to make decisions directly for their lands.

9. Crown opening submissions in March 2017 emphasised that the Crown's obligation to protect the land and resources of Taihape Māori was always balanced with the fundamental rights of ownership and self-determination exercised by Māori themselves, including the right to alienate land of their choosing.[1] It is clear, however, that the range of options available to be chosen from was not unrestricted. Crown actions and policies in the 19th and 20th centuries form critical context to the options available, and to the choices made.

Overview of 20th century alienation data

10. Of the approximately 1.1 million acres in the inquiry district, around 472,000 acres remained in Māori ownership at 1900. By 2010, that figure had reduced to around 175,000 acres (with almost all alienation occurring before 1990).[2]

11. The basic statistics for land alienation in the 20th century, occurring between 1900 and 1990, are:[3]

1 Wai 2180, #3.3.1, at [221]–[203].

2 Wai 2180, #A46, at 66.

3 Wai 2180, #A46, at 83–84.

Category	Acreage sold	Percentage of land held at 1900
Sold to the Crown	52,579 acres	11.1%
Acquired for Defence	37,147 acres	7.9%
Sold to Private Purchasers	193,084 acres	40.8%

12. In addition, around 12,000 acres (or 2.5% of the 1900 figure) had title converted into Europeanised title under the Māori Affairs Amendment Act 1967. Much of this land appears to have been retained (or was at least initially retained) in Māori ownership. Europeanisation is considered at issue 9, below.

Approach to these submissions

13. This issue intersects significantly with other issues set out in the Tribunal's statement of issues. The 19th century matters addressed in submissions on Issues 3 and 4 provide critical context. Through the concessions made in those submissions, the Crown acknowledged that its actions contributed to profound changes in the structure and economic viability of Taihape communities.

14. These submissions intersect closely with the Crown's closing submissions in Issue 5: Economic development and Issue 7: Land Board Native/Māori Trustee.

15. As mentioned above, key 20th century land events are also addressed in separate submissions (Ōwhāoko gift lands, public works issues, landlocked lands and rating).[4]

Implications of limited evidence authored by Taihape Māori in 20th century

16. Due to the relatively (compared with other inquiry districts) small population within Taihape district, Mr Walzl has been able to track, and draw conclusions on, the experience of whānau throughout the 20th century at level of

[4] Other significant 20th century land matters are addressed through submissions on:
Issue 9: The gifting of Ōwhāoko lands for the benefit of Māori soldiers, and the return of those lands.
Issue 10: Local government and rating.
Issue 11: Landlocked lands issues.
Issues 13-15: Public works issues (general, rail, defence).

granularity that has not (to Counsel's knowledge) been undertaken previously in evidence to the Tribunal.

17. However, there is a marked lack of documentation on the record of dialogue between Taihape Māori and the Crown in the 20th century. Mr Walzl's 20th century report is premised on transactional documentation. Furthermore, each of the southern, central and northern reports include substantive correspondence, petitions and submissions to select committees etc from the 19th century but very little material authored by Taihape Māori in the 20th century. Mr Stirling and Mr Subasic note:[5]

> The Government records dealing with Maori affairs tend to become much more mundane and bureaucratic in nature from the early 20th century … The great majority of the alienation files, for example, are simply collections of bureaucratic forms and declarations which provide no context or details of the transactions themselves.

18. They consider this reflects:

> … the decreasing importance that the successive Governments placed on handling issues of importance to Maori.

19. The Crown does not agree. The period 1900-1930 saw significant leadership by, and government action in alliance with, the 'Young Māori Party'. T W Rātana's alliance with Labour from the 1930s was also highly influential (and continues to be).

20. The technical witnesses (Mr Walzl in particular) have undertaken a forensic assessment of the transactional documentation that provides a strong evidence base for **what** happened in the 20th century in Taihape in terms of land management, administration and alienation patterns in the 20th century.

21. However, in the absence of Taihape Māori voices related to those events (given the transactional documentation does not provide those), it is difficult to draw conclusions as to **why** those things happened. The aspirations, issues or concerns of Taihape Māori after 1900 on matters such as incorporation, consolidation, development schemes, financing, mobility and nature of work and income streams etc are not known. In the absence of those voices,

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5 Wai 2180, #A08, at 105 about Awarua, however the same statement is replicated in each block narrative within that report. Likewise, Mr Walzl's 20th century report does not appear to locate or include much material authored by Taihape Māori.

inferences are made based on what occurred, supported by generalised assertions largely premised on experiences outside Taihape.

22. Mr Walzl premises a large part of his report on his views as to the impacts of Crown purchasing in the Awarua and Motukawa blocks in 1892 – 1896 and the 1892 letter from Taihape rangatira seeking (Mr Walzl's summary) finalisation of title, consolidation of interests, creation of a management entity and access to development finance. Again, in the absence of Taihape Māori voices in the 20th century, the technical evidence tends to repeatedly reach back to the 19th century as the ongoing description of the aspirations of Taihape Māori and as the explanation for all that followed.

23. Three points are to be highlighted in response to that analytical narrative.

23.1 Firstly, the Crown acknowledges that the events of the 19th century are of critical import. The Crown reiterates the concessions and acknowledgements made in submissions for Issues 3 and 4 relating to the impacts of native land laws (including the lack of effective mechanisms for the collective management of land), Crown purchasing, and the sufficiency of land ultimately retained by Taihape Māori.

23.2 Secondly, the events of the 19th century had ongoing and significant impacts for Taihape Māori in the 20th century, however it is the conduct of the Crown in the 20th century that is the subject of these submissions. The impacts of previous actions (to the extent they are attributable to the Crown) rightly inform the analysis of prejudice arising from the concessions made by the Crown for its actions in the 19th century, but do not constitute further actions of the Crown.

23.3 Thirdly, several of the matters Mr Walzl advocates for as being critical for the retention, use and development of Māori land were available in 20th century:

23.3.1 Taihape Māori held clear and certain titles;

23.3.2 those titles were arranged by Taihape Māori (in whānau units for the more productive lands, hapū units for the

larger areas of less-productive land) in a manner which "set up the owners within the Inquiry District to utilise their lands in accordance with 20th century European farming parameters";[6]

23.3.3 consolidation was available;[7]

23.3.4 incorporation was available (as were increasing trust mechanisms); and

23.3.5 access to finance was improved.

The Crown restates its recognition of the ongoing impacts of the 19th century events on these matters – but the question for the 20th century analysis must focus on the relative efficacy of these measures for Taihape Māori against Tiriti/Treaty standards.

24. The technical evidence, and some claimant submissions, accord significant weight to counter-factual scenarios of what might have been. In the Crown's view, there is limited utility in focussing the analysis of Crown policies, actions and omissions in the 20th century on counter-factual speculation. Whilst counterfactuals can be a useful analytical tool, the value of any counterfactual rests on the similarity in the circumstances being compared; the likelihood of the possible alternative events; and the probability of the alleged outcome (which are to be treated increasingly sceptically the more certainly they are phrased).[8] Assertions that any particular outcome would definitely have resulted for Taihape Māori which are premised on exceptional and selective comparators is of limited utility. Like should be compared with like and, where comparators are drawn on, there should be fair

6 Wai 2180, #A46, at 27.

7 Wai 2180, #A46, at 1009. Mr Walzl discusses the use of these provisions on the East Coast: "The relative success of these East Coast Maori farming endeavours over this time is not surprising as the era in which the communal farms had begun was one of prosperity nationally and locally. From the mid-1890s, through to 1920, New Zealand had a prosperous economy and the East Coast Maori in contrast to those in the Taihape area were able to share in this. The total population of the East Coast counties grew as did the population of Gisborne town. Farming progressed with the sheep flock doubling over these years. Much of the progress was focused in Waiapu County where the rate of increase for sheep saw a trebling of numbers between 1895 and 1920."

8 Arguments suggesting that a particular counterfactual antecedent will lead to a particular consequent with a high degree of certainty are quite suspect. It would be problematic to invoke a counterfactual to demonstrate that history did not have to happen the way it did, only to predict a counterfactual consequent that deterministically flowed from the antecedent, since that would be supporting a statement of contingency with an argument based on determinism.

acknowledgment of their limitations, and of their representativeness, for example:

24.1 whilst there are successful large pastoral farms in the inquiry district, others have not succeeded (due to global financial issues and due to climate and topography). The Studholmes extracted themselves from the district having experienced significant financial difficulty;[9] and several farmers abandoned leases in the northern lands due to climatic, geographic and pest control issues;[10]

24.2 the premise of consolidation is an attractive one (for all the reasons put forward by Mr Walzl), but is not without its own problems. The Tribunal's Tūranga report criticised the consolidation scheme undertaken in that district (which was not initiated until 1953) and concluded that consolidation could not address issues of sufficiency of lands retained or collective management;[11] and

24.3 Māori land incorporations have had their own difficult evolution and were not guaranteed success either:[12]

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9 Wai 2180, #A43, at 588: the Studholmes had £280,000 debt ($57 million in 2021 dollars) on their Taihape farms through the long depression and only saved the lands through leverage against their South Island Waimate operations; they abandoned their leases in 1904 on the death of John Studholme.

10 Including those farming on lands on or around Waiōuru in the mid-20th century.

11 Waitangi Tribunal *Turanga Tangata Turanga Whenua* (Wai 814, 2004) vol 2 at 502. The Tribunal recognised the objective of consolidation but also recognised the distress of owners in being legally severed from their lands (in order to consolidate their interest across the district into an economic unit). "In the end they suffered from the same conceptual flaw that beset the consolidation experiment. After all the pain and suffering created by reconstructing titles and restructuring communities, the problem returned once the next generation of successions had been processed. There simply was not enough land and there were too many people. No matter how the cake was cut, there was not going to be enough to go around."

12 See Waitangi Tribunal *Turanga Tangata Turanga Whenua* (Wai 814, 2004) vol 2 at 486–493 and 505–507 which traces the decades of evolution to what, in 1893, became the Mangatu Incorporation and its subsequent administration. From 1873 Rees Pere Trusts; *Pouawa* litigation; 1881 New Zealand Native Land Settlement Company; 1881 Mangatu title granted with community management; 1892 Carrol Pere Trust and East Coast Native Trusts Land Board; Mangatu Incorporation 1894; trust 1899; East Coast Commissioner 1917-1947 – which saw the (remaining) land taken out of Māori control for some decades. The Tribunal concludes (at 492): "Thus, the experiments with trusts and settler joint ventures, and the attempts to develop statutory management systems, all failed for one or more of four reasons: the economic downturn of the 1880s, under-capitalisation, legislation which enabled the erosion of titles through individual sales and the lack of political will to support community land management mechanisms. That is, all experiments failed but one."

24.3.1 The Mangatū Incorporation resulted from some decades of experimentation (which involved significant losses as well as ultimate gains).[13]

24.3.2 There was no guarantee that incorporations, once formed, would succeed – of 48 incorporations established in Tūranga in the 20th century, only three were not subject to sale or lease.[14] Some of the factors contributing to success or otherwise were in the control of the Crown, others were not.[15]

25. This caution against exceptionalism is also relevant to the examples of Taihape Māori successes. Mr Kerry Whale and others gave evidence of successful farming endeavours by Taihape Māori whānau (discussed further below).[16] These examples demonstrate that success was possible within the 20th century policy and legal context for Taihape Māori (in terms of land retention, development, economic viability over time, and being able to remain whānau-based). However, the Crown recognises that these examples of whānau success are the (welcome) exception but are not the norm. The Crown recognises and accepts Mr Whale's evidence on the limitations his father and whānau overcame to achieve their success.

26. The Crown continues to encourage the Tribunal to assess the responsibility it ascribes to the Crown to only those matters that were within the Crown's

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13 Waitangi Tribunal *Turanga Tangata Turanga Whenua* (Wai 814, 2004) vol 2 at 494: "Even though the Mangatu statutory incorporation was introduced on a one-off basis, in hindsight, it represented a sea change in Maori land administration. While Mangatu was relatively young at the end of this period, it exhibited none of the problems faced by other collective alienation and retention strategies. Nor was the cohesion of the collective being undermined by piecemeal purchase from outside. Unlike memorial of ownership interests in land, individual shares in the incorporation could not be sold."

14 Waitangi Tribunal *Turanga Tangata Turanga Whenua* (Wai 814, 2004) vol 2 at 504. See, also, at 508: "The experience of Mangatu thus provides an important and welcome contrast to the experience both of multiply owned land without formal management structures and of the Rees Pere trusts. Mangatu had the advantage of both collective management from the outset and size. Together, these two factors allowed the land owning hapu to plan for the long term and to tough out the lean times when smaller or unmanaged blocks were lost to sale. Even so, Mangatu had to overcome significant difficulties – divided hapu and a lack of commercial management skill – in the early days that led to the land being effectively in receivership for 30 years." That receivership was government imposed and administered.

15 A handful of small incorporations were able to develop their lands, once they were able to access finance during the first half of the century. Many were wound up because they were not viable farming units, or because the owners lacked the commercial skills for their success.

16 Wai 2180, #J06 – Mr Whale emphasised the leadership of his father in turning the tide of fragmentation. One of the farms of his whānau was included in the Taihape Development Scheme (at 8). See, also, below.

control and matters that reasonable and practical steps could be taken in regard to (the Tiriti/Treaty standard is reasonableness, not perfection).

27. The submissions now turn to address the issues defined by the Tribunal.

GENERAL ISSUES

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

28. The extent to which debts carried over from the 19th century affected Taihape Māori ability to retain land is difficult to trace with certainty, and general conclusions are hard to make. It is apparent that debt was a factor in land sale in some cases but not in others. It is also apparent that debt was a factor in restricting capital that might otherwise have been available for development.

29. Transaction costs in the Native Land Court could be (and were) high, especially when hearings were prolonged and at distant venues. These matters are addressed in submissions on Issue 3: Nineteenth Century Native Land Laws (and Court).[17]

30. On the other hand, costs of survey and land taken in lieu of survey costs have not generally been proven to be excessively high in Taihape, relative to the value and/or size of blocks (an exception is addressed below). The Crown reiterates submissions in previous inquiries. Survey costs were part of securing a title to land that increased security and certainty of land ownership and the options for land use or sale – and thus it was reasonable to expect those benefitting from acquiring these rights to pay (at least a portion of) the procedural and incidental costs.[18] The Crown submitted in Whanganui that "the evidence generally is that the costs of survey were being factored into sale prices" and, for the most part, we see no reason to depart from that conclusion in Taihape.[19]

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17 See Submissions on Issue 3: Nineteenth Century Native Land Laws (and Court).

18 As set out in Issue 3 submissions, the Crown considers the example Mr Stirling gives of £25,000 for Awarua surveying (which is also presented by Mr Walzl as being demonstrative of survey costs generally) as inaccurate – or at least, not representative.

19 See Wai 903, #3.3.130, at 25–26.

31. Much of the land and farm development undertaken by Taihape Māori in the 1870s-1900 was financed by credit (as is apparent in Hīraka Te Rango's 1895 letter). Mr Walzl acknowledges that the impact of the credit basis of their start up industry was significant.

32. As per previous submissions, noted above, Mr Walzl has shown how several principal Taihape whānau were engaged in significant levels of economic activity on their more agriculturally productive lands, even if that activity was leasing to third parties.[20] Some of these figures are detailed below.

    32.1 Analysis reveals that amounts for which Taihape Māori were sued in civil court over the period 1900-1920 (about £4,200) were insignificant (less than 5%) when compared to sale receipts over a similar period (about £83,000 between 1910-1930).[21]

    32.2 Mr Walzl argues that claims in civil court against Taihape Māori for debts was high when compared with the total adult population of Taihape: he identified 113 Taihape Māori names in civil court debt papers for the period 1900-1920, which was perhaps half the adult population – which the Crown accepts is a large proportion (and recognises that debt recovery proceedings in civil court presents only a partial picture of total debt). On the other hand, 65% of those individuals registered debts of less than £20. A small number of individuals (four) had high debts (greater than £200), with a further thirteen having moderate debt (between £71 - £200).[22] Mr Walzl identifies that the 17 people who had high or moderate debt were sizeable landholders – as such, it is unclear to what extent the debt being carried was "good" debt or "bad" debt (that is, money owed for things that can help build wealth or increase income over time, compared with debt accrued through spending).

33. It is readily acknowledged that there are cases of Taihape rangatira falling into significant levels of debt in the 19th century such that they were adjudicated bankrupt. Debt levels to the extent resulting in bankruptcy do not, however,

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20 Wai 2180, #A46.

21 Wai 2180, #A46, at 482, 591.

22 Wai 2180, #A46, at 593.

appear to have been a widespread phenomenon.[23] High debt levels associated with agricultural operations in this period were not uncommon given the context of the economic downturn (or "Long Depression"") of the 1880s-90s period. Wool prices dropped from 11½ pence per pound of wool in 1882 to only 7 5/8 pence per pound by 1895.[24] James Belich points to figures showing that of the 122 companies formed in Auckland between 1881-84, only five still existed in 1904.[25] The Studholmes were in significant debt from their Taihape operations at this time, too (£280,000 –$570 million in today's dollars).[26] They were able to leverage against their more profitable South Island farms (which speaks partly to the scale of the relative options but also to the difficulties in farming Taihape lands due to climate and topography).

34. Māori indebtedness – and pressures to alienate land as a result – must partly be explained by these general economic pressures. Commercial relationships souring did not assist matters. Hīraka te Rango himself acknowledged his debt levels involved matters that were not within the control of the Crown (global finances and the state of the wool market):[27]

> … mass of debts, some – or, I may say, most – of long standing (some being balances), the constant depression of the times and the falling off of business.

35. Alienation of land by way of leasing and sale should also have regard to the legislative environment (rather than to debt pressures *per se*). Mr Walzl highlights the way in which leasing in "core blocks" or more productive central Taihape lands increased significantly after legislative changes in 1905 allowed leasing.[28] In 1900, around 23,500 acres of these "core blocks" were leased; by 1910, this figure had almost doubled to almost 42,000 leased acres.[29]

36. Mr Walzl also highlights the way that sales of land to private interests (in particular) dominated the decade 1910-20; this followed legislative changes in 1909 that again allowed a free market in land (with certain procedural

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23 Wai 2180, #A46, at 197–203.

24 See *AJHR* 1892, sess. 1, H-39; *AJHR* 1896, sess. 1, H-12.

25 James Belich, *Paradise Reforged*, at 36.

26 Reserve Bank of New Zealand inflation calculator, accessed 15 April 2021.

27 Wai 2180, #A46, at 200.

28 Maori Land Settlement Act 1905, s 16; Wai 2180, #A46, at 56.

29 Wai 2180, #A46, at 535–536.

requirements for alienation).[30] In this decade, 22,870 acres were sold. By comparison, only 4,000 acres were sold in 1900-1910, and only 3,000 acres in the decade 1920-1930.[31]

37. In conclusion, the precise levels of debt and how particular debt was incurred (and for what), has not been identified in the evidence. A large proportion of Taihape Māori began the 20th century with a level of debt sufficient to warrant recovery being sought through civil proceedings. A smaller number of people carried moderate to high debt, which - given they were sizeable land holders - is perhaps more likely to have been incurred through titling and through development expenditure (on credit). It is likely that debt arose from some combination of: undertaking land development on credit (in the absence of securing full development finance); transaction costs in gaining title; and day to day living.

Issues 2-4: Financing, Development and Alienation of Māori Land

Issue 2: Was there a disparity in the way that the Crown facilitated Pākehā and Māori access to the following? If so, why was this the case and what effects were felt by Taihape Māori?

a. Finance?

b. Land development?

c. Aggregation of landholdings in excess of what was permitted under regulation?

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

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

Government legislative and regulatory settings

Legislation

38. A brief chronology of the legislative environment in the late 19th and early 20th centuries could be outlined as follows:

1894:	Advances to Settlers legislation provides state funds for land development.
1894:	Native Land Act provides for native land incorporations run by management committees (but incorporations not empowered to raise finance).

30 Native Land Act 1909, ss 207–210, 217.

31 Wai 2180, #A46, at 543–544.

1899: Government halts purchases of Māori land.[32]

1900: Maori Land Administration Act provides for local Māori committees to investigate title matters and recommend to Councils with majority Māori membership.

1903: Native Land Laws Amendment Act enabled Māori (including incorporations) to borrow against livestock, chattels and land.

1905: Leasing restrictions end; state finance could be made available for Māori land development, under Board control or individual Māori or incorporation ownership, and were protected from foreclosure.[33]

Crown purchasing allowed again.

1907-09: Stout-Ngata Commission investigates utilisation potential of remaining Māori land holdings.

1909: Native Land Act

Sale restrictions end for land owned individually (but land with more than ten owners inalienable, except by leave of Māori Land Board).[34]

Consolidation on application of owners (ss 131,132) Land vested in Maori Land Boards could be leased or mortgaged and developed.

Native Land Claims Adjustment and Laws Amendment Act, s 11 enables trust estates to borrow directly to farm the land.

39. Mr Walzl gives a more detailed account of Māori land administration from the 1900 legislation onwards.[35] In 1900, the Māori Council system was established, allowing Māori to voluntarily vest land in councils comprising Government appointees and Māori members elected by region. Vested lands could be leased or mortgaged to raise finance for development, but they could not be sold. However, there was little take-up in Taihape (they were taken up largely on the East Coast due to the specific circumstances of trust lands there; and in Whanganui following Te Keepa's Trust efforts).

40. By 1905, legislation replaced Councils with Boards consisting of only one Māori representative who was appointed rather than elected. The 1905 legislation removed restrictions on the leasing of Māori land. It also

32 Wai 2180, #A48, at 183.

33 Maori Land Settlement Act 1905, ss 11, 16, 18.

34 Native Land Act 1909, ss 207, 209.

35 Wai 2180, #A46, at 50–64.

empowered the Crown to loan funds to the Land Boards for Māori land development. Hone Heke MP welcomed this provision with enthusiasm in 1905.[36]

41. In 1907, Native Minister James Carroll established a Royal Commission (the "Stout-Ngata Commission") to compile "a systematic inventory and appraisal of the status of Māori lands", in part to determine land that could become available for development. The Maori Land Settlement Act 1907 provided for the Commission's recommendations to be implemented by (i) vesting land available for sale and lease in Land Boards, in equal amounts; and (ii) reserving land for the use and occupation of Māori.[37]

42. Mr Walzl writes that the Commission's findings in relation to Taihape lands are difficult to identify or assemble because of these lands being spread between various districts the Commission considered. The Commission did not visit Taihape. The Commission identified several Taihape land blocks that could be earmarked for vesting or sale "as they were supposedly leased or were in occupation". Land not in this category was largely passed over.[38] There is no evidence that Taihape lands were vested in the Land Board without consent.

43. The Native Land Act 1909 was a full consolidation of Māori land law and provided a system for implementing the Stout-Ngata findings.

44. As noted above, Mr Walzl points out that the 1905 legislation authorised leasing of Māori land and this allowed considerable leasing activity in Taihape. Similarly, the 1909 legislation allowed unrestricted private alienation on closely-held blocks and this led to permanent alienation in Taihape. Blocks of more than ten owners remained subject to Land Board supervision as to alienation.

45. At a high-level, the Crown reiterates the submissions made in the Te Raki (Northland) stage two inquiry that "the Land Council and Land Board system was an attempt to address long-standing problems with the development of Māori land, to obtain income streams from it, and secure financing for it"

36 Wai 2180, #A46, at 57.

37 Wai 2180, #A46, at 59.

38 Wai 2180, #A46, at 61.

whilst also protecting the lands from being alienated through foreclosure.[39] The Board system of vesting, including compulsory vesting from 1905 (initially only in Northland and Tai Rāwhiti), was later replaced by the consolidation and development schemes of the 1930s era.

46. The application of the Board (and the Native and Māori Trustee in Taihape) is addressed in the Crown's closing submissions on Issue 7. In short, no Taihape land was vested without consent in the Board or Trustee. Significant leasing oversight was undertaken – with mixed success.[40] There is evidence of the Trustee authorising alienation but there is also evidence of the Trustee refusing to do so – the claim that the Trustee operated to facilitate the sale of Māori land to Pākehā is not substantiated on the evidence.

Apirana Ngata on Māori land development, 1931

47. The Crown draws on Sir Apirana Ngata's 1931 detailed summation of Māori land development (including financing) in the early 20th century before turning to their application within Taihape. Ngata's analysis sets out both the operation and the effect of key provisions.[41]

48. Ngata started by identifying the difficulties that had plagued the successful development or "effective utilisation" of communal land. He commented that if land was held collectively in "a British community", it was usually "held in trust or disposed of", or it was partitioned out. However, this last device in the case of native land had often resulted in "over-subdivision" and "chaos" (although it has to be said that succession/fragmentation issues were well known in British lands as well). The trust option had been tried through vesting "large areas" in the Public Trustee or special boards such as the East Coast Trust, or more recently in the Māori Land Boards or the Native Trustee. "In none of these", commented Ngata, "was the settlement of the Māori upon land a feature of the schemes, and they were not supported by the good will of the communities interested".[42]

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39 Wai 1040, #3.3.414, at [84].

40 Wai 2180, #AJ06; and #J06(a) – Mr Whale states the Trustee has been constructive in their dealings for most of their lands but that is not the case for all lands (and specifies two small Motukawa sections in his answer to a follow up question from the Tribunal);

41 "Native Land Development: Statement by the Hon Sir Apirana T Ngata, Native Minister", *AJHR* 1931, G-10.

42 *AJHR* 1931, G-10, at (i)-(ii).

49. Ngata then summarised what he considered had been the main devices to "overcome difficulties of the communal title", all of which had first been experimented with on the East Coast. These were:

49.1 **Incorporation of owners**: the owners of contiguous areas were incorporated with majority consent and the incorporation was managed by a committee of management, "having [from 1903] complete power to raise funds on the security of the land and to carry out farming operations". Incorporation assured "finance and the good will of the community". Ngata commented further that "this system will be retained in most districts where a family carries on farming and is not willing to dispose of the land to any one member of it".[43]

49.2 **Consolidation of interests**: the aim of consolidation was to gather into one location the interests of individuals or families scattered through various blocks "by virtue of their genealogical relationships". The intent was to create holdings with modern roading and fencing, etc, that could be practically farmed. This solution had to "overcome considerable conservatism in the ranks of the Native Land Court as well as among the tribes whose lands have been subjected to it", but it was very deserving of Parliament's encouragement and assistance. Ngata further observed:[44]

> While the incorporation of owners was deemed to be the readiest means of organizing a communal title for purposes of finance and effective farm-management, it does not satisfy the demand instilled into the individual Māori or family by close contact with the highly individualistic system of the pakeha. Consolidation is the most comprehensive method of approximating the goal of individual or, at least, compact family ownership.

49.3 **Vesting in statutory bodies to administer as farms**: these statutory bodies (as per those named above) were empowered to manage land or farming operations for Māori beneficiaries. Some leasing back to Māori owners occurred, with limited success.

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43 *AJHR* 1931, G-10, at (ii).

44 *AJHR* 1931, G-10, at (ii).

50. Ngata also outlined the various measures to provide financial assistance for Māori farming. He observed that the procedural safeguards for approval of mortgages to Māori also imposed significant costs. He listed legislative amendments that had provided over time various sources of funding:[45]

50.1 The Advances to Settlers legislation did not prohibit Māori obtaining assistance but there was a "prejudice against the Native title" that limited the numbers able to obtain such finance. The Crown accepts this assessment of that legislation.

50.2 In 1903, management committees of incorporated blocks could raise funds by way of mortgage over stock and chattels, and in 1906 this power was extended to mortgages over land – but only from a Government lending department. In 1912, incorporations were empowered to borrow from private financiers.

50.3 In 1909, the Native Land Act extended the powers introduced in 1906 enabling the Native Minister to vest land in Māori Land Boards to be managed for the benefit of owners. The Boards could lease to Māori, preference being given to owners.

50.4 In 1920, the Native Trustee was established by legislation (Native Trustee Act 1920) and took over certain statutory responsibilities relating to reserves and lands vested in the Public Trustee, together with the accumulated funds held by the Trustee (which, from various sources, comprised funds and securities worth £844,345).

50.5 In 1922, legislation empowered Māori Land Boards to advance monies upon mortgage; gradually such advances were confined to "individual Māori farmers" or management committees of incorporated blocks.

50.6 In 1926, s 8 of the Native Land Act expanded the authorisation to Māori Land Boards to lend for Māori land development, including for "any agricultural or pastoral business", "for the payment of any debts or liabilities of any body corporate", "for the discharge of any

45 *AJHR* 1931, G-10, at (iii)-(vii).

charge, encumbrance, rates, or taxes affecting any Native freehold land", and "for the farming, improvement, or settlement of any Native freehold land". Such advances became a charge upon the land and carried interest. By March 1931, Māori Land Boards had lent to Māori farmers the total sum of £182,299.

50.7 By 1931, the Native Trustee had lent to "Natives, Native institutions, corporate bodies, and individual farmers", on security, the total sum of £546,241, which funds were in law "the property of and are held in trust for Native beneficiaries".

50.8 Legislation of 1929 and 1930 authorised state lending to approved Māori land development schemes under the authority of the Native Minister. It is worthy of note that this paralleled 1929 enactments providing for the development of unoccupied Crown lands prior to selection. In the case of the Māori land development schemes, the funds were provided by the Minister of Finance through the Native Land Settlement Account. Ngata observed:

> The difficulties as to title were literally stepped over, and the development and settlement of the lands made the prime consideration. The Minister was armed with the most comprehensive powers, which he could exercise directly through the Native Department or delegate to any Maori Land Board or to the Native Trustee.

50.9 Ngata further explained that amendments in 1930 empowered the Minister to direct a Land Board or the Native Trustee to use its funds for development. Crown lands could also be developed as part of a Native-land development scheme.

51. Ngata also reviewed the policy of Māori land settlement and development recommended by the Stout-Ngata Native Land Commission of 1907-1909. He noted how the Commission(ers) had observed attempts by Māori communities at "industrial and farming pursuits" but that "for want of organization and support many of these had became half-hearted or had failed": "The general settlement of the country gained, but the problem of dealing effectively with the future of the Māori population by absorbing it

into the industrial and economic life of the country was continually postponed".[46]

52. Ngata's analysis provides a first-hand analysis of the policy environment and issues relating to Māori land development in the early decades of the 20th century. These were important decades for Taihape and a brief analysis of key data from this period follows. Mr Walzl observes:[47]

> The 1920s was the decade of greatest achievements for Ngata's policies: consolidation became official policy, state finance for Māori development was accessible, a rating compromise was achieved and definite movements were proceeding towards state assisted Māori land development.

53. That was, of course, interrupted in the 1930s by the Great Depression, along with further changes in policies.

Advances to Settlers Act 1894 in Taihape district

54. The Government Advances to Settlers Act 1894 offered finance "at reasonable rates of interest" to those seeking to acquire and develop land.[48] The Government introduced the scheme after a banking crisis in Australia led to a tightening in private lending.[49]

55. Cleaver states that the Government advances system impacted the private lending market by, in effect, lowering the cost of credit.[50] This would have benefitted Māori indirectly, even if they did not access state loans.

56. Although there is a general assumption that Māori did not much benefit from this early state advances scheme, the detail of mortgaging data for the period c. 1898-1930 shows that numbers of Taihape Māori did access the Advances to Settlers fund (summarised in the section below). There was also lending from the Public Trustee and Māori Trustee (that in many cases probably involved funds derived from Māori land originally, as Ngata's analysis above indicates).

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46 *AJHR* 1931, G-10, at (vi).

47 Wai 2180, #A46, at 1016.

48 58 Vict. No. 38.

49 Cleaver, Wai 2180, #A48, at 154; citing Hawke, Making of New Zealand.

50 Wai 2180, #A48, at 154; citing James Belich, *Paradise Reforged*, at 59.

57. An analysis of the Government scheme indicates that it was focussed on small holders, as the loans were for not more than £2,500 and priority was given to applications for loans not exceeding £500.[51] This reflects the general policies of the Liberal government to advance the smaller family holding. Loans of this limited magnitude would not have sufficed for the larger pastoralists (nor for establishing large operations). Cleaver cites figures that the Studholme partnership paid £25,000 to acquire the leaseholds over Mangaohane and Ōwhāoko in the 1870s, quite apart from the costs of stock and other improvements.[52]

58. Interest was set by the legislation at 5% p.a.[53] This compares closely to the stock loans obtained by Taihape Māori in the 1890s at around 6%, which suggests that mortgage lending carried potentially only slightly less of an interest burden to chattel or stock lending. These figures should feed into the assessment of the extent to which Māori were disadvantaged by not always having titles in a form that could readily access the Government fund: that is, fee-simple titles with limited numbers of owners.

59. Such technical or title-related issues are sometimes stated as reasons why Māori landowners could not access the Government fund. However, the relevant legislative framework appears rather to have removed barriers to such lending for blocks with fewer than ten owners by "deeming" Māori freehold land to be held as a Land Transfer Act title, as follows:

    59.1 Section 25 of the Government Advances to Settlers Act stipulated that the first class of land over which mortgages could be obtained was "freehold land held in fee-simple under 'The Land Transfer Act, 1885'".

    59.2 The Native Land Court Act 1894, which consolidated native land legislation, provided in s 73 that "all land which is customary land … shall thenceforth be and become subject to the provisions of the Land Transfer Act [1885], and every Native owner of such land shall, subject to equities [etc]… be deemed to be the proprietor

51 Government Advances to Settlers Act 1894, s 40.

52 Wai 2180, #A48, at 63.

53 Government Advances to Settlers Act 1894, s 42.

thereof under the said Act for an estate of inheritance in fee-simple in possession".[54]

59.3 Moreover, by virtue of the same s 73, every Native owner of such an estate was automatically entitled to the issue of a certificate of title under the said Land Transfer Act 1885, except where the relevant ownership exceeded ten owners.

60. In effect, therefore, all closely held Māori land (ie less than ten owners) automatically qualified for the issue of a certificate of title in fee-simple under the relevant Land Transfer legislation. Hence, the technical or title-related barriers to obtaining lending from the Government Advances to Settlers scheme for such lands were reduced. The evidence of Dr Donald Loveridge in Te Rohe Pōtae stated that, "There was nothing in the legislation itself to prevent Māori from applying for or receiving Advances to Settlers loans, and some did".[55] It is accepted, however, that the national data indicates Māori received barely 1% of the lending advanced under the scheme – and that although some Taihape Māori did, they were relatively few in number.[56]

61. This may be attributable, at least in part, to the additional barrier through s 117 of the Native Land Act 1894, which imposed a blanket prohibition on private dealings with Native land, including leasing or mortgaging. Amending legislation the following year (Native Land Laws Amendment Act 1895) provided a mechanism to apply for removal of restrictions.[57] A standard form application was provided by regulation and promulgated in the *NZ Gazette* in March 1895.[58] In its *Turanga* report, the Tribunal attributed the low uptake of the Advances scheme by Māori to this requirement for alienation restrictions to be removed from titles and to burdensome administrative processes (due to Land Board supervisory functions).[59]

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54 It can be added for completeness that "customary land" was the phrase that encompassed all land owned by Māori for which the Native Land Court had determined ownership, whereas "native land" was land where the ownership had *not* been ascertained by the Court: see s 2 "Interpretation", Native Land Act 1894.

55 Wai 898, #A93(a), at 16–17.

56 Wai 898, #A93(a), at 16–17.

57 For more on the legislation and its context, see Richard Boast, *The Native Land Court Volume 2, 1888-1909* (Wellington: Thomson Reuters, 2015), at 33-35.

58 "Rules and Regulations of the Native Land Court", *NZ Gazette*, 7 Mar 1895, no 18, at 442–456.

59 Waitangi Tribunal *Turanga Tangata Turanga Whenua* (Wai 814, 2004) vol 2 at 503.

62. Nationally, by mid-1904, 446 applications to release restrictions had been approved, covering 423,184 acres, while 111 applications had been rejected, covering 87,720 acres.

63. Taihape Māori utilised these provisions, albeit on a relatively limited scale. The national schedule of applications approved included at least 11,700 acres of Awarua block partitions, as follows:[60]

Awarua 2C/13E, 50 acres (interest in), on 8 Mar 1897 (Horima Pairau);
Awarua 1A/2, 2,653 acres, on 22 Apr 1898 (Ūtiku Pōtaka);
Awarua 2C/9, 948 acres, on 5 Jun 1899 (Puru Rora);
Awarua 2C/10, 3,595 acres, on 5 Jun 1899 (Puru Rora);
Awarua 2C/3A, 118 acres, on 20 May 1899 (Public Trustee for Paora Tamakorako);
Awarua 2C/15, 1,953 acres, on 28 Oct 1899 (Hiraani te Hei);
Awarua 2A/2B, 1,531 acres, on 6 Nov 1900 (Wiki te Ua and others); and
Awarua 2C/20, 892 acres, on 31 Jan 1902 (Erueti Arani).

Taihape Development Scheme

64. The technical evidence in some places states no development schemes were undertaken in Taihape. However, other evidence confirms at least one scheme operated – the Taihape Development Scheme with lands placed within it in 1938, 1947 and 1959. It appears the earlier sections were small and did not continue in the scheme for long. The 1959 blocks were, however, larger and stayed in the scheme until 1984 and appear to have benefitted those lands significantly.

65. Mr Walzl says "there were only a few units in the scheme"[61] but does not explain why that was so, or what alternative he would have expected to see based on comparative lands or districts. He states:[62]

> Despite the broad appellation of Taihape Development Scheme, it appears to have proceeded on a unit basis and even then on a very small scale. One unit of 211 acres was gazetted under the scheme in May 1938. The identity of this unit has not yet been confirmed by research conducted to date. [AJHR 1941 G10] The only other reference to a unit being included in the scheme relates to Hira Wharawhara's Motukawa 2B17A block. There are two files created for

60 See *AJHR* 1905, G-4; see, also, Wai 2180, #M29, at 88–89; Wai 2180, #A43, at 536–558.

61 Wai 2180, #A46, at 974.

62 Wai 2180, #A46, at 772–773.

> this unit, [AAMK 869 w3074 15/5/100] but restrictions have meant that they have not yet been accessed for research.

66. On 10 April 1947, Awarua 4C8A1 was declared as being brought under the Taihape Development Scheme, but by 19 May 1952 it was released.[63]

67. Mr Stirling and Mr Subasic acknowledge some Awarua lands were included in a development scheme between 1959 and 1984:[64]

> It appears that there may have been a land development scheme operating on a part of Awarua from 1959 (including two successive farming operations: that of Hira Wharawhara Bennet from 1959 to 1963, and then N. A. and J. C. Duncan from 1963 to 1984).

68. Mr Walzl records Motukawa 2B17A being included in the "Taihape Development Scheme" from 1959 over the same period until 1984 (after the previous lease was surrendered) and £15,600 being advanced on it as development funds. He records the block remains in Māori ownership (under an Ahu Whenua Trust created in 1981).[65]

69. Mr Whale, the current farmer of those lands (as kaitiaki for his whānau), gave evidence that:[66]

> Unlike the development of the Awarua block, where my parents used all their savings on development, they were able to be part of a scheme called the Rural Reticulation Scheme which focused on increasing productivity on farms and increasing the total number of sheep in the country. The reticulation loan assisted with much of the development work.

70. Mr Whale's evidence (like Mr Walzl's) does not address the reason some whānau lands were supported with loans through the development scheme while others were not.

Other relevant Crown activity re economic development

71. The Crown was also involved in promoting economic development during the 1890s-1930s in Taihape through the following ways:

    71.1 Construction of the NIMTR: this involved extensive Government borrowing, with the income from land sales intended to help service

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63 Wai 2180, #A46, at 814.

64 Wai 2180, #A08, at 105.

65 Wai 2180, #A46, at 772–773.

66 Wai 2180, #J06, at [32]; #J06(a).

and repay the borrowing (which it did only to 10-15% of the cost of construction).[67]

71.2 Roading infrastructure: roading linked areas to towns and the railway, although most of this was carried out by local councils who largely had European settlers as their priority (access issues for Taihape Māori are discussed in submissions for Issue 11).[68]

71.3 Breakup of the "great estates" or policies against aggregation (although none of the stations established on the Napier Taihape road were reduced in size through the Liberal party policy).

71.4 Timber industry: the NIMTR was critical in the development of a timber and sawmilling industry as it enabled sawn timber to be transported to distant markets.[69] In the Taihape region, the sawmills themselves were exclusively owned by private interests. State finance was not available for sawmilling.[70] Ūtiku Pōtaka and Winiata Te Whaaro both ran (or leased) sawmilling plants for a period of years but appear to have then sold them to Pākehā.[71] By 1907, the proportion of total timber production from sawmills supplied from Māori land was 53% of the Taihape region.[72] Information about income from these timber leases is sparse; in some cases, however, lease monies or timber royalties were sizeable.[73] The industry was significant but relatively short-lived, with much of the forest removed within thirty years (Walzl describes it as boom and bust).

71.5 Agricultural policy and refrigerated shipping: the Government established the Department of Agriculture in 1892, which offered advice to farmers, introduced a quality control system for exports, and invested in research. Refrigerated shipping created an export

67 Wai 2180, #A48, at 121–133.

68 Wai 2180, #A48, at 153.

69 Wai 2180, #A48, at 135.

70 Wai 2180, #A48, at 136.

71 Wai 2180, #A48, at 139–142.

72 Wai 2180, #A48, at 145.

73 Wai 2180, #A48, at 147. Hori Maihi and Kirihoro Maihi each received royalties of £652/19/4.

trade in sheep meat and dairy products, which allowed for more intensive uses of land than pastoral farming.[74]

71.6 Dairy industry: this was also partly enabled by refrigeration and made possible farming of smaller areas. Dairying increased in Taihape to modest levels in the 1900-1910 period when several butter/dairy factories were established by private financiers and/or farmer cooperatives. Limited areas were also committed to growing crops such as oats.[75]

72. These different aspects of economic development are covered in detail in Phillip Cleaver's economic development report for Taihape.

Taihape land use and alienation analysis

Analysis of size and ownership of blocks at 1900

73. Mr Walzl records the amount of land remaining in Taihape Māori ownership in 1900 as being 472,990 acres (41% of the land in the inquiry district).[76] 11% of those lands (49,579 acres) were within LUC 1-4 (highly or reasonably productive land); 29% (131,936 acres) is LUC 6 (unsuitable for arable use but fine for pastoral or forestry); the remaining 60% was land with significant limitations for productive use.

74. Mr Cleaver notes that sheep farming continued to spread in the district in the period 1890-1910, and that the sheep returns indicated that "mid-sized farming operations – involving flocks of between 1,000 and 5,000 sheep – were becoming increasingly significant". Extensive pastoralism on the larger northern block holdings continued to dominate the figures, but their proportion of overall sheep numbers declined in this period.[77] Mr Walzl remarks that, by 1915, the land area considered necessary to run a viable (and profitable) sheep farming business was anywhere between 1,000 and 3,000 acres.[78]

74 Wai 2180, #A48, at 150–151.

75 Wai 2180, #A48, at 158–159. Map 2 at 38 shows location of retained lands.

76 Wai 2180, #A46, at 37, 40 and 45.

77 Wai 2180, #A48, at 156.

78 Wai 2180, #A46, at 634.

75. Mr Cleaver also comments on the emergence of the family farm, promoted by the Liberal government's policies on closer settlement: [79]

> [T]he family farm became the dominant economic unit throughout New Zealand. The new class of small-medium farmers mostly had holdings within the range of 100 to 1000 acres, averaging from 300 to 400 acres in the period between 1898 and 1911.

76. The southern and central aspects of the inquiry district were mostly well suited for close settlement (the productive lands in the northern blocks being better suited to large scale pastoralism (with the high-altitude northern lands being largely unproductive)). The analysis below shows a total of 60 Māori-owned blocks in the inquiry district that were 1,000 acres or more and closely held (five owners or less) as at 1900.

Block	**Parcels of 1,000 acres or more; 5 owners or less**	**Parcel description**	**Whānau name(s)**
Ōwhāoko D[80]	9	D2 (9448 acres) D3 (5724 acres) D5/1 (4764 acres) D5/2 (1375 acres) D5/3 (1375 acres) D5/4 (5500 acres) D6/1 (5725 acres) D6/2 (1375 acres) D6/3 (1375 acres)	
Mangaohane 1[81]	4	1J (1072 acres) 1L (6000 acres) 1O (3125 acres) 1R (1275 acres)	
Mangaohane 2[82]	3	2B, 2D, 2E	
Ōruamatua-Kaimanawa 1[83]	14	1A1, 1C, 1E, 1J, 1K, 1M, 1N, 1O, 1P, 1R, 1S, 1U, 1W, 1X (ranging in size from 1250a up to 16,277a.)	Te Raro, Te Ahunga, Arani.
Ōruamatua-Kaimanawa 2[84]	14	2B, 2C1, 2C2, 2C3, 2C4, 2D, 2E, 2F, 2G, 2L, 2N, 2O, 2P, 2Q1	Wiki Takinga, Pohe, Waikari, Retimana
Ōruamatua 3F[85]	1	3F	Akatarewa

79 Wai 2180, #A48, at 152.

80 Wai 2180, #A46, at 90.

81 Wai 2180, #A46, at 92.

82 Wai 2180, #A46, at 92.

83 Wai 2180, #A46, at 98. (see map at 101)

84 Wai 2180, #A46, at 99. (see map at 101)

85 Wai 2180, #A46, at 100. (see map at 101)

Block	Parcels of 1,000 acres or more; 5 owners or less	Parcel description	Whānau name(s)
Motukawa 2[86]	2[87]	2B7 (2935 acres) 2B19 (2101 acres)	Akatarewa, Waikari
Awarua 2C (25, 107a)[88]	8	2C2 (3185 acres) 2C3 (3276 acres) 2C9 (945 acres) 2C10 (3587 acres) 2C12A (1140 acres) 2C14 (1404 acres) 2C15 (1948 acres 2C18 (1486 acres)	Waikari, Akatarewa, Te Ahunga, Arani
Awarua 3A2[89]	3	3A2C (1030 acres) 3A2D (1036 acres) 3A2E (1158 acres)	Waikari, Pohe, Arani/Te Ahunga/Hōhepa
Ōtamakapua[90]	2	1A (1725 acres) 2B (1200 acres)	Pōtaka, Retimana
	Total: 60 blocks		

77. In addition, there were a number of other blocks of reasonable size with few owners, and some larger blocks with more than five owners, including:

77.1 Awarua 3D3 and 4A3C had a number of parcels of several hundred acres, with 13 owners or less;

77.2 Awarua 1A2 had 3 blocks of 2,500 acres or over: 2,587 acres (Pōtaka whānau, 12 owners); 3,420 acres (Tanguru whānau, 11 owners); 6,386 acres (Pōtaka whānau, numbers of owners not shown);

77.3 Awarua 3B2 had 3 blocks of several hundred acres: 530 acres (Pōtaka whānau, 6 owners); 458 acres (Pōtaka whānau, 6 owners); 446 acres (Tanuru/Te Whaaro whānau);

77.4 Awarua 4C had about 9 blocks of several hundred acres, including block 4C15 of 2,030 acres (29 owners of Te Whaaro/Tanguru whānau); and

77.5 several Ōtamakapua subdivisions of several hundred acres with less than five owners.

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86 Wai 2180, #A46, at 111. (see map at 112)

87 Note, many other parcels of several hundred acres, including 9 over 500 acres.

88 Wai 2180, #A46, at 121–122. (see map at 123)

89 Wai 2180, #A46, at 130.

90 Wai 2180, #A46, at 159.

78. This analysis reveals potential for development. Whilst the above analysis is somewhat blunt, it appears that lands were held in sufficient quality and quantity in 1900, and by sufficiently few people, to form the basis of viable units for close farming. Mr Walzl's maps suggest that whānau or hapū ownership of some high-quality lands had been achieved in the Awarua and Motukawa blocks as at 1900 (albeit those whānau lands were contiguous rather than amalgamated).[91]

79. Mr Walzl observes:[92]

> Preliminary title analysis revealed that, (with some exceptions), this partitioning [as at 1900] was aimed at creating comparatively large subdivisions of a few or several hundred acres, held by individuals or small (usually whānau) groups of up to just five owners. **This ownership pattern, on the face of it, set up the owners within the Inquiry District to utilise their lands in accordance with 20th century European farming parameters of the holding of land by individuals or as small partnerships**. [Emphasis added]

Mortgaging of land in early 20th century

80. In addition to these whānau blocks, a large number of sections were partitioned down to sole or two-owner blocks. Mortgages (both private and through the State Advances office or the Public Trustee) were raised on these blocks (ranging between 84 – 653 acres).[93] Mr Walzl notes that "the comparatively large number of sole or two-owner properties in Taihape meant that there was a greater possibility for these owners to secure mortgages over their land to raise capital".[94]

81. An overview of lending on Māori land blocks is provided by David Armstrong. He counts 33 Māori individuals in Taihape district who successfully obtained loans under the 1894 Advances to Settlers legislation and subsequent iterations of it, between 1898-1930.[95] He identifies 17 loans against Awarua blocks in the period 1903-1930, totalling £11,530 (as also set out in the section above). He counts a further 16 loans against other Taihape blocks between 1898-1928, totalling £15,540.

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91 Wai 2180, #A46, "whānau holding" maps at 101 (Ōruamatua Kaimanawa), 107 (Rangipō Waiū), 112 (Motukawa), Maps 21, 24, 27 for Awarua; 156 (Otairi and Ōtamakapua), and 163 (Taraketi).

92 Wai 2180, #A46, at 27.

93 Wai 2180, #A46, at 563–564.

94 Wai 2180, #A46, at 563.

95 Wai 2180, #A45, at 30–38 (David Armstrong, 'Environmental Change in Taihape').

82. In 2020 dollars, the total value of these loans, taking the mid-point value at 1915, equates to over $4.2m on the CPI measure; the value of these loans in terms of the inflation-adjusted figure for housing or real property would be considerably greater. The block area over which loans were obtained was more than 5,250 acres for Awarua partitions and over 35,000 acres for other blocks, making a total mortgaged area of over 40,000 acres.[96] This was a not insubstantial portion of Māori land retained at 1900 and a very high proportion of the retained land that was of higher production quality (49,579 acres LUC 1-4).

83. The purpose of these loans was mostly for improvements and/or development and/or house construction. In about one-third of cases, the purpose was debt repayment. In quite a few cases, the purpose was purchase of stock or farm machinery.

84. Some whānau-related mortgages are now described in brief. It should be noted that many of those recorded by Mr Walzl are additional to those included by David Armstrong (meaning that Armstrong's figures, and possibly Mr Walzl's, are not complete by themselves for the period 1890-1930).[97]

Whānau	**Mortgage narrative**
Te Rango	Whatu Raumaewa took out a mortgage over her sole-owned block, Awarua 1A2 East 3B (of 141 acres), in 1908. The mortgage secured a loan from the Government Advances to Settlers Office. The loan was repaid when block sold in 1916.[98] Armstrong's table details other loans to Te Rango whānau members, including Hīraka Te Rango and Te Rina Pine for £3000, and Raumaewa Te Rango for £300.[99]
Te Akatarewa	Rora Hiha raised a loan over his Awarua block in 1899 from the Government Advances to Settlers Office. Whakatihi Rora mortaged his Awarua section with the State Advances Office in 1911. Ngahuia Hiha mortgaged her Awarua block with the Public Trustee in 1911. Tutunui Rora mortaged her Awarua section also in 1911 with the Public Trustee. In 1913,

96 Wai 2180, #A45, at 33–38.

97 Compare Armstrong's tables in #A45, at 33–38 with Walzl's summary in #A46, at 563–566: the majority of the mortgages identified in Walzl's list are not included in Armstrong's tables.

98 Wai 2180, #A46, at 563. This loan is not included in Armstrong's list.

99 Wai 2180, #A45, at 36–37.

Whānau	Mortgage narrative
	she also arranged four separate mortgages in relation to her Motukawa block with a private lender.[100]
Pōtaka	Between 1910 and 1919, at least five mortgages/lending arrangements were arranged with private lenders, while one mortgage/loan was arranged through the Native Trustee.[101]
Te Raro	A range of different mortgages/lending arranged, including with the Government Advances to Settlers Office (from 1899 onwards, various),[102] the Public Trustee (five between 1911 and 1917, three between 1923 and 1929),[103] private lenders or stock agents, and other private parties.[104]

85. This short summary suggests a reasonable level of lending activity from a range of private and state lenders in the first decades of the 20th century. In addition to these figures, that mostly concern mortgage lending against land, there were loans secured against stock and other chattels.

Leasing of land

86. As noted above, once the 1905 legislation allowed leasing in the inquiry district, many blocks were leased to third parties: by 1910, around 42,000 acres of the more productive Taihape lands were leased by five of the whānau traced by Mr Walzl – up from a total of 23,500 in 1900.[105] An analysis of narratives and data presented in the Walzl report has produced rough calculations of various leasing in the Taihape district in the period 1900-1930 and is shown in the table below.[106] The main caveat on this picture is that some leased blocks were sold within a few years of being leased; however, leasing levels remained relatively stable for some whānau in the period 1900-1930.[107]

87. This analysis shows that income derived from leasing was not inconsiderable in many cases and/or in certain periods.

100 Wai 2180, #A46, at 563–564.

101 Wai 2180, #A46, at 564, 1167.

102 Wai 2180, #A46, at 1122–1123, 1126.

103 Wai 2180, #A46, at 1136, 1141.

104 See, also, summary in Wai 2180, #A46, at 564–565.

105 Wai 2180, #A46, at 535–536.

106 Based on Wai 2180, #A46, at 83–169.

107 See, for example, Te Raro whānau: #A46, at 573, and as illustrated in the table to follow.

Block	Lease income per annum	Income inflation adjusted[108]	Number of parcels/ owners
Taraketi	£610 approx (by 1914)	$96,000	10 parcels, 9 of which had one owner
Ōtamakapua 1A	£482 (from 1906)	$80,000	1 block, 1 owner
Otairi 1D/6	£562 (from 1919)	$57,600	1 block, 1 owner
Awarua 4C	£420 approx (at say 1910)	$70,500	16 parcels, many with less than 5 owners
Awarua 3B	£253 (at 1908)	$42,000	6 parcels, with between 1 and 6 owners
Awarua 1A2	£790 (at say 1910)	$132,000	13 parcels, 9 with 1 owner, 3 with 2 owners, 1 with 8 owners
Awarua 4A3C	£193 (at 1907)	$31,800	7 parcels, most with few owners
Awarua 3D3	£202 (at 1911)	$33,600	11 parcels, most with few owners
Awarua 3A2	£1,638 (at 1927)	$157,700	10 parcels, all with few owners
Awarua 2C	£4,100 (at 1927)	$395,000	26 parcels, most few owners
Motukawa 2	£4,500 (at 1928)	$436,000	23 parcels
Ōruamatua	£890 (at 1917)	$113,000	11 parcels, most with one or 2 owners
		$1,645,200 (total/annum)	
Note 1: this does not represent all blocks leased, just blocks for which info is stated in #A46, and sometimes taking a selection of leases to certain dates (and taking a median annual lease figure in a range). **Note 2:** some blocks such as Mangaohane and Ōwhāoko not included in table.			

88. The leasing and sales data can also be analysed in terms of Walzl whānau case studies.

Whānau (membership numbers at 1900)	Land held 1900 (core blocks)	Land leased at:			Land sold 1900-1930 (sale figure £)
		1900 (acres/ £ pa)	**1910** (acres/ £ pa)	**1930** (acres/ £ pa)	
Akatarewa[109] (18 members)	18,497 acres	5,365acres/ £231pa[110]	10416acres/ £855pa[111]	7,507acres/ £2547pa[112]	4,545 acres total/ 3,953

108 RBNZ calc, 2017 $$.

109 Following based on Wai 2180, #A46, at 1054–1103.

110 Wai 2180, #A46, at 1074.

111 Wai 2180, #A46, at 1083–1086. Note: no sales in decade 1900-1909: at 1909 the whānau had 10,416 acres under lease, annual rental of £855.

112 Wai 2180, #A46, at 1095–1096, 1100: Awarua 2C9 (945a); Awarua 2C10A (1597a); Awarua 2C10C(832a); Awarua 3D3 16B (127a); Awarua 4A3C8A (87a); Awarua 4A3C8B (199a); Motukawa 2B7A (942 a); Motukawa 2B17A (775a); Awarua 3D3 17C2 (390a); Motukawa 2B7C (654a); Motukawa 2B7D (593a); Motukawa 2B16A (673a).

Whānau (membership numbers at 1900)	Land held 1900 (core blocks)	Land leased at:			Land sold 1900-1930 (sale figure £)
		1900 (acres/ £ pa)	1910 (acres/ £ pa)	1930 (acres/ £ pa)	
	(11,985 acres)				acres core blocks. (£23,141)[113] [Note: £22,661 (by 1920)[114]]
Ihakara Te Raro[115] (18 members)	48,000 acres (13,359 acres)[116]	21,146 acres/ £176[117]	3,651 acres/ £683 pa[118]	3,845 acres/ pa[119]	9,000 acres total / mostly core blocks (£ 44,402)[120]
Tapuhi Pōtaka [121] (15 members)	17,451 acres (16,851) [122]	524 acres/ £95+pa [123]	11,572 acres/ £992pa[124]	13,493 acres/ £2300 pa.[125]	2,408 acres [126] (£13,382 +)
Te Oti Pohe[127] (16 members)	10,791 acres	5,221 acres/ pa[128]	1,622 acres/ £309pa [129]	1,546 acres/ £873pa [130]	5,076 acres[131] (£ [132]
Retimana Te Rango[133] (16 members)	17,239 acres	11,505 acres/pa [134]	11,472 acres/£450 pa [135]	3,544 acres/ £216pa [136]	8,565 acres[137] (£14,000 [138])

113 Wai 2180, #A46, at 1096.

114 Wai 2180, #A46, at 1090.

115 This whānau chronology in Wai 2180, #A46, at 1104–1148.

116 Wai 2180, #A46, at 1109.

117 Wai 2180, #A46, at 1121–1122. Note: this rental figure from Ōwhāoko blocks only; other northern blocks leased, but data not available, including for Mangaohane and Ōruamatua-Kaimanawa.

118 Wai 2180, #A46, at 1125. Note: this is the figure for new leases negotiated between 1905-1909; does not include the northern block lands leased at 1900, most of which were still leased.

119 Wai 2180, #A46, at 1143. Note: mostly core block land.

120 Wai 2180, #A46, at 1134, 1139. Note: this is figure for sales between 1909-1930 of whānau owned blocks; a few other blocks were sold with multiple whānau ownership, including a few prior to 1909.

121 This whānau chronology at Wai 2180, #A46, at 1149–1174.

122 Wai 2180, #A46, at 1152: only the 600-acre interest in Ōwhāoko is not a core block; rest are Awarua, Taraketi, Ōtamakapua and Otairi.

123 Wai 2180, #A46, at 1157.

124 Wai 2180, #A46, at 1165.

125 Wai 2180, #A46, at 1171–1173: that is, the 13,940 leased at 1920, less the three blocks sold of 447 acres in total.

126 Wai 2180, #A46, at 1161, 1169, 1173.

127 This whānau chronology in Wai 2180, #A46, at 1175–1198.

128 Wai 2180, #A46, at 1183.

129 Wai 2180, #A46, at 1186. Note: these are the new acres leased 1900-1909 period; older leaseholds in northern blocks are additional.

130 Wai 2180, #A46, at 1192–1193.

131 Wai 2180, #A46, at 1194.

132 See Wai 2180, #A46, at 1190. Most of the land alienated was the Ōwhāoko gifting.

133 This whānau chronology in Wai 2180, #A46, at 1199.

134 Wai 2180, #A46, at 210–212.

135 Wai 2180, #A46, at 1214. Figures almost identical at 1920: #A46, at 1218–1219.

136 Wai 2180, #A46, at 1222.

137 Wai 2180, #A46, at 1220–1222.

138 Does not include smaller shares in multiply-owned blocks sold, including the Mangaohane blocks.

89. Whilst the amounts recorded above are not insubstantial, neither are they very substantial – particularly if divided down to an individual basis. Analysis has not been conducted as to the comparisons of amounts required to maintain or develop lands, or average living costs etc and thus to provide an assessment of the contribution these income streams could reasonably have been expected to make to the development objectives of whānau as compared to amounts required for living.

Occupation of land (by whānau in Walzl case studies)

90. Mr Walzl sets out that only around 20 blocks were directly occupied in the early period of the 20th century. Te Rango and Pōtaka whānau each occupy five "comparatively small" (relative to their total landholdings) sections.[139] The Te Raro whānau are said to have occupied "around a dozen" blocks around Moawhango (most smaller than 50 acres).

91. In most cases, except for the Te Raro whānau, the occupied land was held in sole ownership and the improvements include a dwelling. No cases were identified outside of the Te Raro whānau where an owner was living on one section and farming other land. [140]

92. There does not appear to be a direct link between occupation and retention –some occupied lands are retained; some occupied and improved land is sold (without Mr Walzl being able to identify the reasons for sale); and some of the unoccupied lands are nonetheless retained. [141] Mr Walzl traces a link between decreasing occupation occurring with increasing levels of leased land.

Overall picture of land use, development and occupation to 1930

93. Mr Walzl's case studies of five prominent land-owning whānau in the inquiry district reveals a mixed patchwork of land leasing, retention and occupation. Overall, there are limited examples of whānau farming their own land on an

139 Wai 2180, #A46, at 571–572.

140 Wai 2180, #A46, at 571–572.

141 Wai 2180, #A46, at 571–572. Although both Kerry Whale and Hari Benevides gave evidence separately of their whānau both doing so.

income-generating basis beyond 1930 (with notable exceptions as set out below).[142] There is more evidence of whānau occupation of land *per se*.[143]

94. Mr Walzl's high-level summary of these whānau case studies (Te Akatarewa, Te Raro, Pōtaka, Pohe and Te Rango) is that these whānau "experience a number of difficulties in their holding, utilisation and retention of land with the result that already by 1930 a comparatively large amount of land was sold and that which remained provided little support for the majority of owners".[144]

95. The detail, however, suggests a more complex picture. The table above attempts to capture roughly the evidence of lease and sales income being generated in the period 1900-1930, and the land retained and still leased at 1930. Some further observations can be made as follows:[145]

95.1 There was little partitioning between 1900-1930, and what there was often resulted in sole owner titles. This would, according to general lending principles, have made land use and development easier, as Mr Walzl notes elsewhere – including in this section regarding blocks over which mortgages were granted.

95.2 Throughout the period to 1930, individuals held "several hundreds" and often "several thousand" acres. Mr Walzl caveats this observation by stating that these totals often comprised dispersed blocks. (It can also be observed, however, that individuals often held their interests alongside other whānau in the same area, as Mr Walzl's analysis also makes clear.)[146]

95.3 Legislative amendments in 1905 result in leasing of a large proportion of whānau estates. By 1930, between 70% to 98% of core block land remaining is leased. Tangata whenua evidence has been heard of their experience of disconnection from leased lands

142 See Wai 2180, #J06.

143 Wai 2180, #A46, at 609.

144 Wai 2180, #A46, at 603.

145 Wai 2180, #A46, at 603–609 (especially 606–609).

146 See, for example, Ōruamatua-Kaimanawa block (#A46, map, at 101), Motukawa 2 (table and map, at 111–112), Awarua 2 & 3A (map, at 123).

(and, in some cases, the poor state in which leased lands were returned).

95.4 Mortgaging of land was usually only limited to having leases in place (as per Land Board requirements of the time, and which ensured an income stream from one block to service mortgage repayments on another, for example).

95.5 After legislative change in 1909 allowing selling to the private market, about one third of all land held at 1900 was sold by 1930 (much of this having been leased prior), which represents about half of all core block land.

95.6 Land was sold or mortgaged to provide capital to develop other lands, to improve housing, or to repay debt associated with acquisition of other property and goods, including living expenses.

95.7 Debt was sometimes associated with unsecured advances for living costs (ie goods provided on credit).

95.8 There are only a few examples of direct occupation of land, including at Moawhango, Opaea and Rata – apparently connected with small papakāinga areas.

96. It should also be acknowledged that Mr Walzl's analysis of the experience of the Te Whaaro and Tanguru whānau shows two whānau who were considerably worse off than the other five whānau focussed on in his other case studies.[147] In 1904, the Te Whaaro whānau of six members held 514 acres in a single block. The Tangaru whānau of ten members held a total of 1,826 acres spread across five blocks.[148]

Commentary and Submissions

97. As a general observation, once many of the central and southern blocks in the inquiry district are held in whānau parcels in 1900, there is considerable activity in leasing, some levels of mortgaging, and sales figures that are

147 Wai 2180, #A46, at 601–602.

148 Wai 2180, #A46, at 601–602; Mr Walzl has a detailed narrative of the subsequent title histories of the Te Whaaro and Tangaru blocks, #A46, at 1017–1041 and 1042–1053, respectively. Although smaller areas relative to totals owned by other whānau, there were substantial amounts of partitioning and some leasing and house and property development on these lands.

reasonably consequential (although it cannot be pitched higher than that) in terms of producing capital for development and servicing debt.

98. One high-level point that could be made is that Māori freehold land and the history of its tenure was different from the tenure systems applying to non-Māori private parties. European tenure in this period was usually either leasehold or freehold and held by individuals.[149] Māori tenure under the native land legal system recognised the collective to varying extents, while providing for individualisation – but the form of title being a hybrid did not provide collectively held Māori land with the same access to mortgages etc that freehold land titles had (until 1903).

99. Given these differences, there should not be a presumption that Crown policies providing economic support for development should have catered to both sets of land tenure systems in (exactly) the same way. It has been observed in other Tribunal inquiries and reports that lending against collectively held land was seen to carry more risk than lending against an individual freehold. It was possible under the Native land laws for Māori freehold title to be converted to the equivalent of a general title or Crown Grant, thus putting it on the same playing field as far as accessing Crown and third-party finance for development.[150]

100. However, in doing so, owners would also assume the same risks that attached to that category of land – there is a direct correlation between the security a lender can have over the land they extend credit to, and the amount and terms by which that credit can be extended. This is true for private financing. It is also true of the markets in which the government itself secures finance. Technical witnesses have suggested that the same level of financing should have been made available by the State as a development initiative. To some extent that is what was in put in place through the efforts of Ngata. However, it is a long bow to draw to suggest the 19th century government could have secured the further credit that would have been required to finance such a

149 The major exception being the New Zealand Company and its offshoots and, to a limited extent, the later land investment companies – although they were still individual personalities at law and mostly operated in the private commercial market.

150 See, for example, the Native Land Act 1873; see, also, Carpenter, "The Native Land Laws", at 72–73, 77.

scheme earlier – as Mr Cleaver has set out, the government itself suffered from financial difficulties in the 1880s and 1890s.

101. In summary, any differences of treatment as to financing and other policies for development of Māori land must take adequate account of the differences of tenure and the challenges of that tenure – as insightfully discussed by Sir Apirana Ngata. The differences between the different land-holding "communities", and their aims and objectives should also not be forgotten.

Crown purchasing in 20th century

102. During the 20th century, the Crown purchased 52,579 acres (or 11.1%) of the land retained by Taihape Māori as at 1900.[151]

102.1 Approximately half of that was purchased between 1910 and 1930 (28,000 acres). The majority of this (24,000 acres) was low quality land in the Timahanga and Ōwhāoko blocks. The remainder was largely in the high value Otairi 1 and Ōtamakapua blocks.

102.2 Approximately 24,500 acres were purchased between 1960 and 1990[152] also in the northern and eastern "backblocks" of the district. This land was acquired largely for forestry or conservation purposes.

103. Mr Walzl describes the purchasing that did take place as "essentially opportunistic rather than the result of a strong Crown acquisition policy".[153] He concludes that land was accepted if it was offered at the right price rather than actively pursued. The Crown agrees with this characterisation.

104. The prices the Crown was willing to accept were arrived at after valuations being conducted (ie they were objectively and reasonably arrived at).

105. The majority of the purchasing was in Timahanga block (18,811 acres) and Ōwhāoko (12,849).

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151 Wai 2180, #A46 at 86, 72. Note: #A06 northern report includes Kaweka block in its calculations of Crown purchasing (at 257). Kaweka, however, is not within the inquiry district and is thus not included in Mr Walzl's figures (which are the figures the Crown accepts).

152 Wai 2180, #A46, at 84.

153 Wai 2180, #A46, at 270. Mr Walzl draws the evidence from the three district aspect reports together and draws conclusions based on that evidence.

105.1 No issues are raised in the Timihanga evidence about the fairness of prices being offered, survey costs, or the process undertaken.[154] The Crown initiated these purchases, hui of all owners were called by the Native Trustee, the Crown's proposal (based on formal valuation) was presented and accepted. One hui was rescheduled after a quorum was not achieved at the first hui.

105.2 The predominant story of Crown purchasing in Ōwhāoko is, in fact, that of it choosing not to purchase. Repeated offers of land were made to the Crown for sections in Ōwhāoko. The Crown had valuations undertaken and, most of the time, the gap between what the sellers wanted and the Crown valuation was wider than the Crown was willing to bridge.

106. The purchase of Ōwhāoko D2 (9,448 acres) is addressed in separate submissions.

107. No substantive issues result from the evidence concerning 20th century Crown purchasing activity.

Examples of success (in particular circumstances and the limitations on that)

108. Before turning to discrete block issues, the Crown wishes to draw attention to the insightful evidence filed by Mr Whale which sets out the circumstances through which his whānau, and others within Ngāti Tamakōpiri, have come to be farming ancestral lands successfully.[155] His reflections on the common elements involved in those whānau successes include:[156]

> All have been able to minimise fragmentation and to combine and manage single large areas of land so that economies of scale has prevailed. In our case with our Nanny Kuia, tragic circumstances led to her being a sole beneficiary of land which was a contributing factor to the lessening of fragmentation in our whānau;
>
> They have all been able to retain sustainable areas or blocks of land that can realistically support families; [ie necessary scale and quality of land]

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154 Wai 2180, #A06, at 248–249. The only issue raised in the evidence on Crown purchasing in Timihanga relates to the 1,772 acres Timihanga 5 block. One of the three owners died. Her interests were succeeded by four people, including her adopted Pākehā child. All owners agreed to sell. It took two years to work through the legalities as to whether the child could succeed to interests in Māori land at that time.

155 Wai 2180, #J06, at [53]–[56]. Mr Whale acknowledges the Williams and Wipaki whānau along with his own whānau.

156 Wai 2180, #J06, at [53]–[56].

> All have created profitable farming enterprises by developing and fully utilising their whānau lands;
>
> In each case a strong figure has emerged within the family to carve out a way forward and try to convince others not to sell their lands and farms to those outside the whānau;
>
> That person has had to be innovative and hard working to be successful, and also put in place some kind of farming succession plan so that the next generation is ready to take on the legacy of those before.

109. Mr Whale is also at pains to present a realistic and balanced picture. He considered his whānau farming efforts had advantages over other whānau in terms of the quality of the land and that (through family tragedy) it was retained in single ownership. He considers they nonetheless started on the backfoot compared to non-Māori in the district because of: the fragmentation that had already occurred; access and financing issues; and the run-down quality of the land. Mr Whale sets out that his whānau strategy to avoid fragmentation came at a cost (placing retention of whenua ahead of individual succession) and repeatedly queries how different things might have been if more land was retained initially.

110. He acknowledges the disconnection from the land experienced by many of his wider whānau and whanaunga. He states:[157]

> In outlining the kōrero above I have focused on many of the positive aspects that have occurred and fortunately allowed us to retain and farm our family land. However, there has been grief amongst many of our whānau. Although our situation is a little different, urban drift to the cities to find work has impacted on many. What this has created is a disassociation with the whenua and, more importantly, the loss of knowledge and skills required to run a farm. The chance of any of our cousins realistically coming in and pursuing a farming career are pretty minimal. This reality means that the succession planning mentioned above has to be a huge factor in the future.

111. Similar themes were echoed in the evidence of Mr Neville Lomax as to the success of some Ngāti Hauiti whānau in retaining land.[158] He spoke of the pain and limitations arising from the initial land loss, the commitment of his whānau that no further land should be sold (and the sacrifices involved to achieve that), and the mixed pride and pain in (re)purchasing ancestral lands

157 Wai 2180, #J06, at [58].

158 Wai 2180, #4.1.12, at 65–66.

to reconstitute the tribal estate over time and being able to now provide land for whānau wishing to return to the district.

112. The Crown considers this evidence is relevant to what was possible within the 20th century historical, legislative and policy context but is not (as stated at the opening section of these submissions) inferring that all lands held by Taihape Māori as at 1900 should have (or could have) resulted in the same success. The Crown recognises that the examples of success identified by Mr Whale point to the multiplicity of factors involved and turn on particular circumstances.

DISCRETE BLOCK ISSUES

Issue 5: Ōtūmore block

Under the Treaty, what were the Crown's responsibilities to the Māori land owners of Ōtūmore block in terms of protections and checks against alienation of their land? In particular:

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

b. **Could the alienation of Ōtūmore from Māori ownership been plausibly avoided?**

113. The Crown opening submissions outlined the Ōtūmore matter, stating the Crown would give close attention to whether the circumstances of Ōtūmore being vested in the Māori Trustee (on application of the Chief Surveyor) for on-sale to the Crown *without consultation with or notification to owners,* if demonstrated on the evidence, would appear to be a breach of Tiriti/Treaty principles.[159]

114. The submissions outlined other aspects of this narrative requiring further consideration:

114.1 the circumstances in which partition and survey of a relatively remote block was undertaken (and survey costs accrued);

114.2 whether the provisions of the Maori Affairs Act 1953 that enabled the Māori Trustee to deal in lands in certain circumstances without notification to the owners and the subsequent amendment of these provisions [under the 1967 Amendment Act] was compliant with Tiriti/Treaty principles; and

159 Wai 2180, #3.3.1, at [91.2] and [137]–[141].

114.3 the extent of prejudice actually suffered by the owners (if any) given the block was unoccupied, the price that was paid based on Government valuation, and the apparent intention of (former) owners a decade later to sell the block in any event.

Narrative

115. In 1877, title to the block was investigated by the Native Land Court, partitioned into Ōtūmore 1 of 4,000 acres and Ōtūmore 2 of 3,000 acres, and awarded to Ūtiku Pōtaka and 12 others of Ngāti Hauiti. (At this point, the block was thought to contain 7,000 acres but was later found on survey to contain closer to 5,000 acres.)[160]

116. In 1898, a Māori owner (Piripiri Maki) offered to sell their interest to the Crown, but the offer was declined.[161]

117. A new title investigation of 1906 saw three different tribal groups claiming interests: Ngāti Hauiti. Ngāti Tūmōkai and Rangitāne. After a contested hearing, the Court affirmed its original decision in favour of Ngāti Hauiti. The Court rejected a proposal by Ūtiku Pōtaka that he should be named as a representative owner to facilitate sale of the block. The compilation of lists of owners was contested, with 12 separate lists submitted to the Court (containing in total 88 names). The Court ultimately accepted lists of 45 names for each of Ōtūmore blocks 1 and 2.[162]

118. Four appeals were lodged against the decision. In June 1906, the Native Appellate Court dismissed these and reaffirmed the decision of the lower court.[163]

119. In 1907, Ōtūmore 2 was partitioned into 5 blocks.[164]

120. The parent block was not surveyed until 1923 (ie, after partitioning) and was found to contain only 5,152 acres rather than 7,000 acres. The original title was cancelled and a new one issued.[165]

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160 Wai 2180, #A07, at 233.

161 Wai 2180, #A07, at 233.

162 Wai 2180, #A07, at 233–235.

163 Wai 2180, #A07, at 235.

164 Wai 2180, #A07, at 237.

165 Wai 2180, #A07, at 237.

121. Around 40 years later, in April 1961, the Chief Surveyor applied to the Māori Land Court for a charging order to secure 1923 survey fees of £566 17 3 (with interest for five years being £141 14 1).[166] Those fees related to survey of the periphery of the parent title, notwithstanding partitions having been made earlier. The partitions themselves had never been surveyed; this necessitated the Chief Surveyor to suggest to the Court that it might apportion the survey costs between the different partitions.[167]

122. The Judge concluded that the legislation did not provide for a charge to be made against partitioned blocks for a survey of the parent title that had been undertaken after the partitioning (as once a partition order had been made the "land as a whole [ie the parent title] ceased to exist"). The Judge was not prepared to proceed with a charging order in circumstances where the views of all owners about the 1923 survey having been conducted were not known, and where the relative benefit to each partition from the 1923 survey having been conducted was likewise unknown.[168]

123. The original application for a charging order was, therefore, withdrawn by the Chief Surveyor.[169] But dialogue both within the Crown, and with the Court, continued. The Chief Surveyor explained that steps required to be taken in 1923 (definition of partitions on the surveyed plan) were not undertaken "for reasons, at this date [1961], not apparent from my records".[170] The Chief Surveyor acknowledged that to justify a charging order the partitions were required to be shown but "[t]his cannot now be done on the original plans" and thus the charging order had to be withdrawn.[171] The Chief Surveyor suggested the partitioning be done again. The Court instead

166 See application, 'Otumore Block', and Memorandum to Registrar prepared by Judge G J Jeune, in Hearn, Supporting Documents, #A07(d), at 308–310; the Hearn narrative is slightly different in details, Wai 2180, #A07, at 238. Application made under Māori Affairs Act 1953, s 408.

167 See 'Memorandum in Reply for His Honour the Judge' prepared for Chief Surveyor, c. June 1961, in Hearn, Supporting Documents, #A07(d), at 311–312; see, also, Wai 2180, #A07, at 238. The application for charging order was made under s 408 of the Māori Affairs Act 1953, which allowed the Court to apportion the survey costs between different portions of the block.

168 Wai 2180, #A07(d), at 309.

169 See 'Memorandum in Reply for His Honor the Judge' prepared for Chief Surveyor, c. June 1961, in Hearn, Supporting Documents, #A07(d), at 312.

170 Wai 2180, #A07(d), at 311.

171 Wai 2180, #A07(d), at 312.

took a quite different approach, as now outlined (the Court was able to proceed on application or on its own motion).[172]

124. After the initial application was filed, the Court made its own inquiries of the location and nature of the block. It identified that nearly all of the adjoining land was state forest land and its eastern boundary was the ridge of the Ruahine range. It adopted a preliminary view (recorded in the final minutes of decision) that: [173]

> … the owners who were located in the various subdivisions would be all dead with many successors and the area would not warrant further survey or other expense.

125. The Court notified its intention (to vest the lands in Trustees under s 438 of the Māori Affairs Act) "in a pānui for a Levin sitting". In due course, a sitting was held at Levin. There is no record of any owners having been present. The Court "delivered the substance" of the order at Wellington on 26 January 1962.[174] The Court order cancelled all existing (un-surveyed other than the parent block boundary) partitions (under s 435) and vested the land in the Māori trustee "for disposal to the Crown for Forest Service purposes" (under s 438).

126. Section 435 provided for the Court to amalgamate titles of adjoining lands where doing so would allow the lands to be "more conveniently or economically worked with if it were held in common ownership under one title".

127. On 15 May 1962, the Māori Land Court made revised trust orders (under s 438 of the 1953 Act) that Ōtūmore be vested in the Māori Trustee, on certain trusts or conditions "for the benefit of Māoris or the descendants of Māoris".[175] The trusts/conditions were that the Māori Trustee was to negotiate a sale with the Forest Service at the highest possible price, negotiate a settlement of the survey charges with the Lands Department, and, after

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172 Wai 2180, #A07(d), at 347. Māori Affairs Act 1953, s 438(1).

173 Extract from Ōtaki Minute Book, 69/284-5, 15 May 1962, in Hearn, Supporting Documents, Wai 2180, #A07(d), at 347.

174 Extract from Ōtaki Minute Book, 69/284-5, 15 May 1962, in Hearn, Supporting Documents, Wai 2180, #A07(d), at 347.

175 Section 438 of the Maori Affairs Act 1953 allowed the Court, on an application made to it or on its own motion, to make a trust order vesting customary or Māori freehold land in any trustee/s; beneficial owners were able to object to such a vesting order. In this instance, it seems as if the Court made this decision to vest on its own motion.

deducting its expenses, pay any balance to the Māori Education Foundation.[176]

128. The Chief Surveyor was advised of this decision by letter of 28 May 1962 from the Deputy Registrar of the Court. The letter advised that the Court's decision on the charging order application was to annul the previous partitions (creating one title again) and vest the block in the Māori Trustee on certain trusts (as set out above).[177] (This documentation suggests, therefore, that the application was dealt with on the papers for the most part, although there was an earlier Levin hearing of a sort.)[178]

129. Section 438(4) of the Maori Affairs Act 1953 says that "No vesting order under this section shall have any force or effect unless and until it has been approved by the Minister [of Māori Affairs]". That approval has not been located but is for the purposes of these submissions assumed to have been secured.

130. Inter-departmental discussions then occurred between the Lands Department, Forest Service and Māori Affairs. The paper trail on these discussions may not be complete. It is unclear, but seems possible, that the proposal for the Forest Service to acquire the land *post-dated* the Court's May 1962 decision (being suggested or, indeed, directed by the Court's own order).[179]

131. In June 1962, the Forest Service correspondence stated:[180]

> This Block lying as it does in the midst of a large area of State Forest would be a desirable addition from the State Forest point of view only for the purpose of control [as the country is erodible and acquisition would protect lands down valley from flood damage]. If it can be acquired cheaply – say for £750 – the Forest Service would be prepared

176 Extract from Ōtaki Minute Book, 69/284-5, 15 May 1962, in Hearn, Supporting Documents, Wai 2180, #A07(d), at 348; and see Wai 2180, #A07, at 239 (in which Hearn does not elaborate on this procedural history).

177 Dep. Registrar, Māori Land Court, to the Chief Surveyor, Dept of Lands & Survey, 28 May 1962, in Hearn, Supporting Documents, Wai 2180, #A07(d), at 313. (Note the Hearn narrative does not refer specifically to this letter.)

178 A check of Ōtaki Minute Book vol. 68 and 69 did not (appear to) reveal any hearing for Ōtūmore at Levin or Wellington around January 1862 – when the initial decision to vest in trustees was made by the Court.

179 See, for example, Acting Dir-Gen. Forest Service to Dir-Gen. Lands & Survey, 22 June 1962, communicating the view that land of no use to owners, and FS would acquire it only if "cheaply", otherwise leave it as is. Generally, the FS seems to have been lukewarm on the proposal, and whether owned by them or not, was treated much the same in any event.

180 Wai 2180, #A07(d), at 307.

> to purchase it but if there is any difficulty over buying it at an extremely modest figure the land could well be left as it is.

132. In late 1962, an agreement was reached whereby the Crown (Forest Service) would acquire the land for £425 based on the Government capital valuation of three years previously (of £395), while the survey lien was reduced (remitted) by half its value (£354). This left a balance of £71 that was credited to the Māori Education Foundation. The reduction in the survey lien had been agreed to by the Crown "as an incentive to the owners to sell to the Crown" although it is unclear from the record what other interest – if any - there may have been in the land.[181]

133. In January 1963, the Board of Māori Affairs approved the sale to the Forest Service citing the Court's vesting order of May 1962, referring to the 186 Māori owners on the (now amalgamated) title, and stating that because of "its remote location and contour the land could not be of any possible use to the owners".[182]

134. In March 1963, the District Land Registrar expressed some doubt as to whether he should accept the Court orders for registration of the land given that there "are certain trusts mentioned in the section 435 [amalgamation] Order." The Secretary of Lands went on to observe legislative amendment had been required following a similar case in the previous year.[183] The Act prevented amalgamation orders being made where the land was subject to any encumbrance (s 435 (6)). It is uncertain whether the official was acting with a (potentially misplaced) abundance of caution or whether they had misread the reference to "trust" in the order as constituting an encumbrance on the title itself (rather than a requirement the vesting was contingent on as required to be imposed under s 438).

135. In May 1963, Ōtūmore was declared to be Crown land and was set aside as permanent state forest.[184] Section 438(4) requires approval from the Minister to be given before the order will come into force or effect. That approval is

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181 Wai 2180, #A07(d), at 302.

182 Board of Māori Affairs, January 1963, in Hearn, Supporting Documents, Wai 2180, #A07(d), at 363.

183 Wai 2180, #A07(d), at 361.

184 Wai 2180, #A07, at 239–240.

not on the record but is assumed for the purposes of this submission to have been secured at the time.

136. In 1967, the Māori Affairs Act was amended so that there was "now a somewhat more specific requirement as to the type of notification to be given to the owners concerning any proposal to vest land in a trustee under" s 438.[185] See the Maori Affairs Amendment Act 1967, s 142:

> ... the Court, upon being satisfied that the owners of the land have, as far as practicable, been given reasonable opportunity to express their opinion as to the persons or persons to be appointed a trustee or trustees, may, in respect of that land, constitute a trust...

137. In 1974, some of the previous owners raised concerns with these dealings (noting, in particular, the 1967 amendment). The Minister of Māori Affairs requested officials "Discuss with me the power of the Court to alienate land on its own motion."[186] The Act did provide for the Court to act on its own motion; however, for the Court order to have effect, it also required Ministerial approval (as above, the paper trail for that is not on the record). Regardless, the 1963 hearing had been notified, but owners were not informed in the same way that the 1967 amendment would require.

Submissions

138. Some key features of this narrative can be highlighted:

138.1 a number of hapū interests straddling the ranges contested the award of title in 1906 and this perhaps partly explains why a large number of names (for such an isolated block) went into the two Ōtūmore titles at the initial hearing and partition, and also why subsequent subdivisions were applied for – ie it was a boundary block with overlapping interests;

138.2 the Crown received some sale offers in the 10-15 years following the 1907 partition orders, and originally Ūtiku Pōtaka indicated that sale was in the owners' minds – this may suggest, given the isolated

185 Wai 2180, #A07(d), at 349, 354.

186 Wai 2180, #A07(d), at 346. Māori Affairs Act 1953, s 438 (1) provides power to the Court to "on application made to it" or "of its own motion during the course of any proceedings before it" make orders to vest "any customary land or Maori freehold land or land owned by Maoris in any trustee or trustees, to be held upon and subject to such trusts as the Court may declare for the benefit of Maoris or the descendants of Maoris or for any specified class or group of Maoris or their descendants".

nature of the block, that partitions were sought in 1907 to enable subsequent sales;

138.3 the parent title had not been surveyed. The partitions were not either. When surveying was initiated by owners of one partition in 1923, the views of other partition holders were not sought. The survey began with surveying the parent block circumference but did not continue to survey the partitions out, because the block was found to be significantly smaller than thought on titling (and costs of surveying partition would thus become disproportionately expensive). The record does not disclose any further steps being taken at that time (eg contacting partition owners to discuss how to proceed);

138.4 the survey charges had been outstanding for some 40 years (since 1923). They related to survey of the parent title after the fact of the partitions having been made (the partitions appear not to have been surveyed at any point);

138.5 in 1961, the relevant Crown agent (the Chief Surveyor) applied for a *charging order* or lien to secure the survey costs, but there was no legal authority for such a charge to be made (given the parent title for which the survey had been incurred no longer existed and the partitions had not consented to survey fees being incurred on their behalf)[187] and so another course was taken by the Court (under its own motion);

138.6 the subsequent events flowed from the Crown having applied for a charging order. The Māori Land Court made a *vesting order* under s 438 of the Maori Affairs Act 1953 considering that to be a pragmatic solution in the circumstances;[188]

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187 Applying for the charging order was not in itself problematic. The reason for there being no legal pathway for that order to be pursued is highly fact specific and legally technical. The Surveyor-General was not acting unreasonably in having considered it appropriate to lodge a charging order. And, likewise, took the appropriate course of withdrawing it once the Judge advised of the legal difficulty.

188 See wording of Court's order of 15 May 1962, tending to support the interpretation that it made the trust order of its own motion: in Hearn, Supporting Documents, #A07(d), at 365.

138.7 the price agreed upon between the Māori Trustee and the Forest Service was above Government valuation of three years earlier;

138.8 around half the survey charges were remitted and a balance of £71 was credited to Māori Education Foundation; and

138.9 the purpose of the Crown acquiring the land was for permanent state forest (rather than for commercial on-sale).

139. It is not clear whether any owners were notified or consulted prior to the Chief Surveyor making the application for a charging order or the Māori Land Court making the May 1962 vesting order.[189] There was no specific duty on the Chief Surveyor to do so – notification requirements under the Act sat with the Court.

140. The Court's decision refers (as above) to notification being given in a Court pānui of the Court's intention to make such a trust order at a Levin sitting. Judge Jeune's initial memorandum on the application, prepared 13 April 1961, also indicates that one (or some) owners were made aware of the application in the Court itself.[190] This most probably occurred the day before; the Ōtūmore partitions were, in fact, subject to an application for consolidation orders (under s 445 of the 1953 Act, on whose behalf is not clear), heard in the Court at a Levin sitting on 12 April, the day before the Judge prepared his memorandum on the Crown's application.[191]

141. Dr Hearn notes the reference on file to the 1967 Amendment Act, which revised the consultation requirements to owners prior to trust orders being made. Although owners could object to a trustee vesting order under the 1953 Act, there was no formal notice requirement; the 1967 Amendment, by contrast, stipulated that the Court must be satisfied that owners had had the opportunity to "express their opinion" on the proposed trustee (although the right to object to the vesting in the first place appears to have been removed).[192] The 1967 amendment post-dated the Court's 1963 actions. The

189 Wai 2180, #A7, at 240.

190 Memorandum to Registrar prepared by Judge G J Jeune, in Hearn, Supporting Documents, #A07(d), at 309.

191 Ōtaki Minute Book, 8/ 319, 12 April 1961 (at Levin).

192 Wai 2180, #A07, at 240–241; see the Maori Affairs Amendment Act 1967, s 142: '... the Court, upon being satisfied that the owners of the land have, as far as practicable, been given reasonable opportunity to express

decision of the Māori Land Court to vest the land in the Māori Trustee for on-sale was outside the immediate input or control of the Executive Government/Crown. (The actions of the Court are not actions of the Crown.)

142. It did, however, flow from the Crown seeking to recover survey fees and was complicated by the Crown's actions in 1923. The most material Crown action is undertaking a survey in 1923 of the parent block boundary at a time when that block no longer existed as a legal entity, and then seeking to pursue that survey fee as a charge against all partitions. That survey appears to have proceeded due to a request from owners of one partition. Undertaking the survey of boundaries beyond those of that partition, without having involved the owners of the other partitions meant that, as Judge Jeaune noted, there was no ability to charge the other partitions for any portion of that belated survey of the (then no longer extant in law) parent title against the partitions. These actions are administrative errors. They fall short of a standard of perfection, but do not constitute poor faith or unreasonableness.

143. The Crown has previously made breach concessions about the compulsory acquisition of uneconomic interests under the 1953 Act, but the present case differs, ie the land was acquired following a survey charge application (but pursuant to a trustee order), not in pursuance of a Crown policy concerning uneconomic interests.[193] Although the Court's vesting decision is analogous to decisions concerning uneconomic interests, the actions of the Crown were not informed at all by uneconomic interest issues.

144. The Tribunal SOI asks whether the alienation of Ōtūmore from Māori ownership could have been *plausibly avoided.* This question is almost impossible to answer given the multiplicity of factors involved, but the Crown does recognise that, had it not sought to recover the survey fee, the process would not have been triggered. At the same time, in this instance, the block concerned was quite small, isolated, unoccupied, and had little prospect of

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their opinion as to the persons or persons to be appointed a trustee or trustees, may, in respect of that land, constitute a trust...'

193 In fact, another contextual feature of this narrative (not covered by Dr Hearn) is that the Māori Trustee had refused to acquire uneconomic interests in Ōtūmore block – recorded by the Ōtaki MB on 12 April 1961 – again, just before the Judge considered the Crown's application for charging order: see Ōtaki MB, 68/ 319; see, also, Ōtaki MB 69/ 29, where the Māori Trustee's decision to decline acquisition of uneconomic interests is recorded again.

economic development given topography and altitude. There was also a history of at least one sale offer on the block. As such, it is not possible to know what the owners may have decided over time.

145. The lack of a notice provision in the s 438 vesting provisions of the 1953 Act was remedied in 1967.

Issue 6: Awarua 2C15B block

What responsibility did the Crown have in avoiding, to the extent practicable, the alienation of Māori land in relation to the sale of Awarua 2C15B Block and the Ōwhāoko D6 No 3 block?[194] Considering rates owing on the property and the actions taken under the Māori Affairs Act 1953, where the Rangitīkei County Council appointed itself as Trustee, were the circumstances of sale fair and reasonable?

a. **Did the Māori Affairs Act 1953 prejudice Taihape Māori by enabling the sale of a jointly owned block by a minority of owners?**
b. **Were the small quorums allowed by legislation in meetings of assembled owners Treaty-compliant management techniques?**

Narrative – Awarua 2C15B

146. Awarua 2C, of 35,000 acres, was partitioned in 1896. One of these partitions was Awarua 2C15, of 1,948 acres, owned by a single owner.[195] Awarua 2C15B was a partition of 6 acres, created by partition order in May 1912.[196] In 1948, this partition was further subdivided into two blocks of 3 acres each, with each having a single owner.[197]

147. As the Woodley report details, there was a history of occupation or use of this block. In the 1920s-1930s, the owner/occupier was identified in Council valuation rolls as Hera Te Huiarei Pine and Wire Hiraka Pine; in the early 1950s, the block was leased to a Frank Watson, while the owner/occupier of the adjacent Awarua 2C15B1 block was listed as Kataraina Halbert.[198] It seems that, in fact, a house had been built on this neighbouring block, while Mr Watson had a sawmill on Awarua 2C15B2.[199]

194 Note: the reference to Ōwhāoko D6 section 3 in the SOI question above seems misplaced, as this was the block put on sale in recent times, apparently due to lack of access arrangements with Ngamatea Station and is thus not dealt with here.

195 Wai 2180, #A08, at 114–115; the detailed narrative for this block is in Wai 2180, #A37, at 172–191.

196 Māori Land Court Records Document Bank, vol 3, Wai 2180, #A18(3), at 43, 60.

197 Wai 2180, #A08, at 117.

198 Wai 2180, #A37, at 173.

199 Wai 2180, #A37, at 174.

148. By 1967, Awarua 2C15B2 had ten owners but was no longer occupied (and had not been for some time).[200]

149. In brief, the block was vested by the Māori Land Court in the Māori Trustee, which then vested the block in the Rangitīkei County Council in lieu of a rates debt. The Council in turn sold this section to a private party (Batley) in August 1869. The Government valuation in 1967 was £100.[201] The sale price was set at only $60.[202] Ms Woodley also covers these events which are now summarised below in more detail.

150. The Council made its original application in 1967 under s 387 of the Māori Affairs Act 1953, which empowered the Court to appoint the Māori Trustee to dispose of unproductive land.[203] The evidence of Council's agent on the original application to Court, on 18 July 1967, presented the block as unoccupied for 15 years, with remnants of a mill operation, including sawdust; it was further stated that the block could only be used for a holding paddock, although it was also stated that the block could be manured and grassed and "made of use" as "part farm"; one farmer had offered to buy for £30.[204]

151. The Court granted this application, stating it was satisfied the criteria in s 387 were met – the land was unoccupied, was not properly clear of noxious weeds, and rates were owing on the block.[205]

152. Following the Court's order of 18 July 1967, an inspection report of 7 November 1967 by a R J Holder (apparently a local Māori Affairs officer from Whanganui) described the block as having road access, as one mile from Moawhango school and ten miles from Taihape with its saleyards and rail; it was "easy sloping from road to Moawhango River", with medium loam soil and "aspect open"; in addition, most of the block was soundly fenced on three sides, with the fourth side being the river; the pastures were given as "only fair with rough growth and broom", and there was "some gorse on

200 Wai 2180, #A08(a)(2), at 573; note: the main report states erroneously one owner: #A08, at 117.

201 Wai 2180, #A08, at 124; see, also, Memorial Schedule with Court orders at Wai 2180, #A18(3), at 42.

202 Wai 2180, #A37, at 189, where $60 is described in Council records as "proceeds from sale".

203 Wai 2180, #A08(a)(2), at 571.

204 Wai 2180, #A08(a)(2), at 571.

205 Wai 2180, #A08(a)(2), at 570.

fenced paddocks but has been sprayed with good results"; and the section would be suitable for holding paddocks for "a neighbouring farmer" but also for "building sites".[206]

153. The Minister's approval was required under the Act before the Court order could take effect. In considering whether to give his approval, officials:

153.1 advised the Minister that, "None of the owners or any Māoris in the locality is capable of developing the land and it could best be utilised by sale to some adjoining farmer."[207] The Crown has not located supporting evidence or explanation for this view;

153.2 recommended that it would be difficult to apply the process set out under s 389 and following, (viz., Part 25 of the Act), that is, that the land first be offered to the owners, then to Māori in general, and then to the public at upset rentals; and

153.3 suggested that the process under s 438 of the Act may be more efficient and appropriate in the circumstances.

154. The Minister accepted that advice. He declined to approve the s 389 order and instead recommended to the Court that the land be vested in the Māori Trustee upon trust under s 438 of the Act – to sell on behalf of the owners.[208]

155. On 28 August 1968, the Court made the s 438 vesting order, vesting the land directly in the Rangitīkei County Council on trust to sell and to disburse any balance funds to the ten owners entitled after deducting its costs and expenses of "putting title in order and sale", which was presumed to include recovering rates arrears and noxious weed charges.[209]

156. The rates outstanding on the block were $21.54 by the time proceedings were concluded, representing only a small proportion of the block's value. The response of compulsory vesting and sale seems disproportionate to the rates

206 Wai 2180, #A08(a)(2) at 574.

207 Wai 2180, #A08(a)(2), at 567

208 Wai 2180, #A08(a)(2), at 566–567.

209 Wai 2180, #A08(a)(2), at 564; see, also, Memorial Schedule with Court orders at Wai 2180, #A18(3), at 42; Wai 2180, #A37, at 188.

amounts outstanding.[210] The two largest costs by far in the Council's prosecution of the case was $161.62 spent on clearing "noxious weeds", and legal expenses and disbursements of $102.45.[211] The Māori owners received nothing for their land, because Council's costs exceeded the sale figure by a considerable margin.[212]

157. The Tribunal SOI question referring (in effect) to this narrative of Awarua 2C15B2 used the words "Council appointing itself" as trustee, however it was the Court that appointed Council a trustee upon certain trusts. There is no evidence on file that the ten owners were communicated with at any point in this 1967-68 period or given formal notice of Council's intentions with respect to their land. It seems to have been the case that there was no substantive communication with owners, and it is probable that most if not all of them were unaware that their land was being taken and sold.[213]

Analysis and Submissions

158. Woodley noted that she did not find any other instances of land being vested in the Rangitīkei County Council for sale to recover rates and/or noxious weed charges as part of her research.[214]

159. The legislative regime provided for rates recovery. (See submissions on Issue 10 for that issue.)

160. The only direct action of the Crown in these events is the Minister's decision not to approve the s 389 order, and to instead recommend the land be dealt with under the more straightforward provisions of s 438. The Crown was not responsible for initiating the application, nor for the land assessments

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210 For example, outstanding rates were paid and liens discharged as at 1954; rates payments were made in November 1961, and October 1963: see Wai 2180, #A37, at 175–177.

211 Figures in the Woodley report, see Wai 2180, #A37, at 189; other files indicate the outstanding rates when Council began proceedings were around £6, see Wai 2180, #A08(a)(2), at 571–573. New Zealand shifted to NZ dollars and decimal currency on 10 July 1967.

212 Woodley also notes Council's inability to locate and serve the correct owners at times, or obtain an actual charging order for either the rates or the noxious weeds component (the lack of which did not prevent Council legally from effectively deducting these expenses from proceeds of sale – an academic exercise, ultimately, because of the minimal sale price), see Wai 2180, #A37, at 183 (application adjourned), 188 (application adjourned), 189.

213 Susan Woodley's report appears to confirm this point, see Wai 2180, #A37, at 190; she notes that she was not able to access the Māori Trustee files for this block – however, the Māori Affairs file at Archives NZ was available, and this reveals no communications (or any reference to communications) with owners, see a copy of this file at #A08(a)(2), at 564–574.

214 Wai 2180, #A37, at 20.

undertaken, nor for the vesting of the land in the Council (or the subsequent sale).

161. The Crown considers the advice to the Minister on the appropriate course of action contained elements of self-serving logic. The primary source refers to "the probable difficulties" in implementing the process, but does not provide any depth of consideration of the pros and cons involved.[215] It appears to have promoted a s 438 process as being preferable as it was considerably more streamlined (ie less onerous) than the s 387 process under Part 25 of the 1953 Act, which stipulated that owners be first offered leases of the land before it was put to public tender. That recommendation, although perhaps pragmatic when considering the costs involved in undertaking a broader process and the relative value of the land (particularly once Council expenses incurred were taken out), had the effect of avoiding processes intended to provide owners with an opportunity to consider or act on various options before the permanent alienation of their land.[216]

162. Whether this advice, and the subsequent decision, was warranted when viewed through a Tiriti/Treaty lens is a real question on the available evidence – the Crown welcomes the Tribunal's guidance on this matter. It is arguable that the loss of land may have been difficult to avoid given the rates debt (regardless of the procedural route ultimately taken). However, as above, the level of debt $21.48 seems small to warrant such significant action being taken (the rating debt in this instance is relatively low, however the Council had spent a large amount of money on controlling noxious weeds, and the owners did have an obligation to control the weeds). The reasons why (and the process through which) the Minister was advised that "Māori in the area were not capable of utilising the land" are not clear. A decision premised on that advice would warrant close scrutiny in terms of Tiriti/Treaty standards.

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215 Wai 2180, #A08(a)(2), at 566–567.

216 Susan Woodley reached a view that the use of s 438 seemed to favour the Council's interests rather than the owners and it seems likely that "they did not want to use section 387 because it would not allow them to just offer the land to the adjoining farmer", see Wai 2180, #A37, at 191; she also points to the sale price to the farmer Batley ($60) being much lower than the land valuation, a strange decision considering the amount Council had spent on legal proceedings – overall, Council suffered a net loss of $225.61, see Wai 2180, #A37, at 189; and note that Batley had acquired the neighbouring block (Awarua 2C15B1) also of 3 acres in 1966 for £125, twice what he paid Council for B2, see Wai 2180, #A37, at 178.

Issue 7: Ōwhāoko C3B block and Taihape rating data

What role and obligation did the Māori Land Court have to the owners of Ōwhāoko C3B to advise them of their legal rights regarding sale and/or development of those lands?

a. **Was the price set by Crown in exchange for the land fair and reasonable?**

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

163. Previous submissions underlined that it was not the role of the Māori Land Court to advise owners of their legal rights to sell or develop their lands. They also referred to the limited quantity of arable land in the Ōwhāoko block – in relation to any issues as to fairness of price paid for Ōwhāoko C3B.[217]

164. These submissions address the narrative whereby Ōwhāoko C3B became encumbered with rates debt and liens and was sold to a private purchaser. Relevant questions are:

164.1 Were there legal pressures in play or pressures applied by Crown agencies to sell the land?

164.2 Was the Crown involved in setting the sale price – given this was a private sale?

164.3 What were the policy and legal (and institutional) settings to assist Māori with rates and other debt, to develop land and release it from debt?

Narrative

165. In 1889, Ihakara Te Raro and others petitioned the Government about the survey costs of Ōwhāoko and asked for relief. In August 1899, the survey liens on Ōwhāoko for the initial survey of 1877 were reduced from £1,683/2/6 to £1,080, a substantial reduction of £603/2/6.[218]

166. Further subdivisions resulted in more surveying costs. In 1894, Ōwhāoko C was partitioned into seven divisions, C1-C7, at a survey cost of £906/4/6.[219]

217 Wai 2180, #3.3.1, at [218]–[219].

218 Wai 2180, #A06, at 71–72.

219 Wai 2180, #A06, at 72, 74.

167. In 1906, around 1,366 acres known as Ōwhāoko C (Part) was taken in lieu of survey liens of £372/7/7 applying to Ōwhāoko C (being the allocation for the original 1877 survey).[220]

168. In 1920, survey costs of around £697 were paid in relation to Ōwhāoko C, but a portion remained unpaid (apparently of the £906/4/6 cost of partition surveys in 1894).[221]

169. In 1935, Ōwhāoko C3 was partitioned into C3A of around 1,483 acres, and C3B of around 8,897 acres.[222]

170. In 1947, Ōwhāoko C3B was exempted from rates, along with adjacent blocks C3A, C7, D2 (part) and D3 (part).[223] This did not clear rates arrears accrued before 1947.[224]

171. In 1968, Ōwhāoko C3B had outstanding rates of £612/13/7.[225] This related to rates owing for the period 1922-1936.[226]

172. In 1968, the land was sold to Wirihana Terry Apatu and Margaret C Apatu for $3,600.[227] The outstanding debts for rates, survey liens and court fees totalling $920.93 were paid and the liens discharged.[228] (This figure consisted of survey liens of $447.23 plus $111.81 interest, $222.09 for rates, and $139.80 for Māori Land Court fees.[229]) An agreement or compromise reduced the rates payable from $1,225.36 to $418.00 – a reduction of two thirds.[230]

173. In 1970, the title of Ōwhāoko C3B was Europeanised by the new owners.[231]

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220 Wai 2180, #A06, at 71, 72, 75.

221 Wai 2180, #A06, at 72.

222 Wai 2180, #A06, at 69.

223 Wai 2180, #A37, at 394.

224 Wai 2180, #A06, at 76.

225 Wai 2180, #A06, at 75, 77.

226 Wai 2180, #A18(5), at 93; Woodley has slightly different figures at Wai 2180, #A37, at 541 (table).

227 Wai 2180, #A18(5), at 91. (Note that Stirling report does not cite this MLC correspondence file document bank.)

228 Wai 2180, #A06, at 113.

229 Or £223/12/4 for survey liens, as stated in Wai 2180, #A06, at 113; see, also, Wai 2180, #A18(5), at 91, which shows £221/15/4; it can be surmised that most of the survey liens were for partition into two lots of the parent block some 30 years before in 1935.

230 Wai 2180, #A18(5), at 93.

231 Wai 2180, #A06, at 114.

Submissions

174. The SOI suggests that Crown agencies were involved in facilitating or arranging a sale to the Apatu purchasers. There is no evidence of such involvement and neither do Crown agencies appear to have been exerting pressure on the owners to sell (as the SOI perhaps also implies).

175. The role of Council – with respect to rates arrears and charging orders – is not covered in the Woodley report.[232] However, it seems there was an agreement with Council to reduce the rates payable by about two thirds (as detailed above), which left additional sale funds in the hands of the sellers.

176. With respect to survey charges, the Crown has conducted an analysis of the total survey charges carried by this block (Ōwhāoko C3B) in relation to the size of the Ōwhāoko C block. At 8,897 acres, Ōwhāoko C3B represents 24.6% of the land area of Ōwhāoko C, at 36,125 acres. This means that:

176.1 Of the approximately £1,069 survey charges paid up to 1920 on Ōwhāoko C, the portion relevant to this block was £263 (or $526 taking decimalisation into account).

176.2 On private sale, survey charges outstanding were £223/12/4 (or $447.23), plus interest (of $111.81).[233]

176.3 Therefore, the total amount of survey charges carried by Ōwhāoko C3B was approximately £486 (or $972), not accounting for interest.

176.4 This amounts to 27% of the $3,600 sale figure, which is an excessively high rate of survey charges.

177. To the extent that figures are available, a comparison with other partitioned blocks within Ōwhāoko and other Taihape blocks indicates that this level of survey charges is higher than charges incurred for other blocks.[234] In this particular case, this level of survey costs probably did constitute a burden on

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232 A file of Rangitīkei District Council is listed in the Woodley report and at Archives Central, Fielding, which appears to deal with this rating matter (but is not included in Woodley document banks): RDC 00072i: 4: O/9B Maori Land-13290 037 Ōwhāoko C3B, Apatu WT & MC,Claim 71, 1938-69, Archives Central, Fielding.

233 See narrative above and Wai 2180, #A06, at 113.

234 For example, the sibling block, Ōwhāoko 3CA, also sold to Apatu in 1963, was sold for £1,100 and survey liens of only £46/12/2 were paid and discharged at that time: see AAMA 619 W3150, Box 22, 20/194/4, Archives NZ.

the owners of the block that significantly impacted upon the ability of the owners to develop the land and free the block from this debt. Without knowing more about the particular circumstances of the sale, however, it is difficult to be definitive.

Legal Mechanisms to Enforce Payment of Rates

178. The Tribunal SOI asks about the policy and legal (and institutional) settings to assist Māori with rates and other debt, to develop land and release it from debt.

179. The 1924 Act allowed for exemption of Māori land from rates. Almost 58,000 acres of Māori land was exempted from rates in 1947, although the motivations appear to have been in part to relieve the Rangitīkei County Council's obligation to pay hospital board levies. In most cases, rates charges accrued prior to 1947 were not written off.[235]

180. In 2004 and 2009 respectively, the Rangitīkei District Council and Hastings District Council introduced rates remission policies with respect to Māori land, enabling individual assessments of rates capability; provisions for writing off rates areas, particularly of landlocked land, were also introduced.[236]

181. See, also, submissions on Issue 10: Local government and rating.

Issue 8: Ōwhāoko D2

Under what circumstances did the Crown purchase Ōwhāoko D2? Was the transaction fair, transparent and reasonable?

182. The Crown's submissions on this matter are being filed separately.

Issue 9: Europeanisation

In what ways, and to what extent, were Taihape Māori affected by the Europeanisation of Māori land under the Māori Affairs Amendment Act 1967 (such as on the Ōtamakapua block)?

183. Mr Walzl estimates that around 12,000 acres of Māori freehold land was Europeanised under the 1967 legislation. Previous Crown submissions considered that there was insufficient evidence on the record of inquiry about what happened to this land after the tenure change.[237]

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235 Wai 2180, #A37, at 237. The rationale for not exempting a further 9 blocks, mostly undeveloped, is not apparent.

236 Wai 2180, #A37, at 238.

237 Wai 2180, #3.3.1, at [224]–[225].

184. Mr Walzl states, in summary:[238]

> Europeanisation of title has affected a comparatively high number of blocks that remained in Māori ownership by the late 1960s. Where information is known, some blocks are subsequently sold while others continued to be occupied and used by whānau.

185. Mr Walzl identified all blocks (or part-blocks) Europeanised in his block summaries; he did not trace whether those titles have remained in Māori ownership today. He also looked at the impacts of Europeanisation in his Part III whānau case studies, summarised as:[239]

185.1 Te Akatarawa whānau: titles of 6 blocks, totalling 2,377 acres, were Europeanised by regulation in the late 1960s, this area representing 17% of the whānau estate as at 1930;

185.2 Te Raro whānau: the whānau directly occupied some blocks that were Europeanised, including papakāinga blocks at Moawhango, and some of these blocks, at least, are still held by the whānau;

185.3 Pōtaka whānau: a total of 59% of the land area held at 1930 (6,764 acres) were Europeanised, with 792 acres remaining as Māori freehold land. Mr Parker conducted an analysis of the Taraketi blocks that showed that many of the blocks Europeanised in the late 1960s are still owned by the original owners or whānau members (perhaps successors in many cases).[240] (The Crown has undertaken some efforts to assess which of these blocks remain in Māori ownership today. That was not able to be completed prior to finalising these submissions.)

185.4 Pohe whānau: one title of 293 acres was Europeanised, out of a total 1930 land base of 9,025 acres;

185.5 Te Rango whānau: one title in the Taraketi block was Europeanised;

185.6 Te Whaaro whānau: some titles Europeanised, from a small land base at 1930; and

238 Wai 2180, #A46, at 975.

239 Wai 2180, #A46, at 751–752.

240 Wai 2180, #A15(k).

185.7 Tanguru whānau: does not appear there were any titles Europeanised.

CONCLUSION

186. The central premise of claimants (and of the supporting technical evidence) is that decisions made (or not made) by the government in 1892 formed a pivot point from which continuing alienation and decline of a viable land-based economy and life for Taihape Māori became inevitable. Mr Walzl's is the lead evidence on the 20th century.

187. That central premise is in some tension with Mr Walzl's evidence that:

187.1 as of 1900, Taihape Māori retained lands of a quantity and quality to form viable economic units (albeit in a significantly reduced total landholding overall);

187.2 significant lands were held (at 1900) in whānau holdings; and

187.3 collective land management mechanisms were available in the period he assesses.

188. The Crown recognises that Taihape Māori did not enter the 20th century with a blank slate. The impacts of the rapid tenurial transformation in the prior decades continued to be felt. Mr Whale described it as "starting on the back-foot".

189. Crown actions in relations to public works takings, and soldier gifted lands, and purchasing activity for conservation purposes are addressed in separate submissions. The Crown otherwise took limited direct action concerning land alienations in the district in the 20th century – it was not a large purchaser of lands in the district in this era (other than the large acquisitions that are addressed in separate submissions). Substantive Tiriti/Treaty issues do not arise from those actions.

190. The Crown also undertook less direct actions by putting in place policy and law that affected the retention, development or alienation of Māori owned lands. Other than legislative amendments in 1967 (which are addressed in submissions on Ōwhāoko D2), an ongoing trajectory towards better meeting the complex interface between communal land ownership and administration

and legal and fiscal mechanisms can be observed. There are not simple solutions for these complex issues – which remain the subject of intense debate today (as demonstrated around the 2015 proposed reforms to the Te Ture Whenua Māori Act).

7 May 2021

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