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**

CLOSING SUBMISSIONS OF THE CROWN RELATING TO ISSUE 13: PUBLIC WORKS (GENERAL TAKINGS)

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INTRODUCTORY MATTERS

1. The Crown begins these closing submissions by acknowledging the significance of compulsory acquisitions of Māori land in this inquiry district to claimants, whānau, hapū and iwi. The Crown also acknowledges the time, mahi and resources that has gone into bringing and hearing claims relating to public works issues by claimants and witnesses. Crown counsel and officials have carefully considered these claims and evidence.

Crown's approach to public works closing submissions (Issues 13, 14 and 15)

2. The Crown said in opening submissions that it expected to more fully address the philosophical differences between the Waitangi Tribunal and the Crown on the issue of balancing kāwanatanga and rangatiratanga when assessing the Tiriti/Treaty-consistency of compulsory public works acquisitions of Māori land.[1]

3. The Crown is presently in the process of developing a Bill to amend the Public Works Act 1981 in ways which will have positive outcomes for Māori in relation to Māori land while balancing the need for accessing land for public works. The proposals will amend the Public Works Act 1981 and the Te Ture Whenua Māori Act 1993 to:

    3.1 improve the offer back processes so that they better recognise the strong association of Māori to land and facilitate the return of former Māori land more effectively, including improved communication around this process, where it is no longer required for public works;

    3.2 improve the compensation regime so that it is fairer for Māori land owners and reflects the complexity of Māori land; and

    3.3 introduce principles to be considered before acquiring land in order to support the retention of protected Māori land.

4. Counsel is instructed that the proposals are aimed toward, among other things:

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1 Wai 2180, #3.3.1, at [233].

4.1 better facilitating the return of former Māori land to former owners, re-establishing the connection of Māori land owners with their land; and

4.2 supporting the principles of retention of Māori land contained in Te Ture Whenua Māori Act 1993.

5. Counsel is also instructed that proposed amendments to the legislative scheme will offer an opportunity to improve the offer-back regime under the Public Works Act to provide a better chance for whānau, hapū and/or iwi to regain ownership of their whenua. This will improve their ability to realise their cultural and economic aspirations regarding their whenua and will align the regime more towards the principles of Te Ture Whenua Māori Act 1993.

6. The proposed changes are being led by the Minister for Land Information New Zealand, who has responsibility for the Public Works Act 1981, with support from the Minister for Māori Development. They are working in close consultation with the Minister for Crown Māori Relations and other ministers. The Bill is intended to be introduced in 2021.

7. Given this work is ongoing, the Crown is not yet in a position to engage on any potential policy changes. The Crown's position therefore remains as stated in previous Tribunal inquires. That is, acquisition of Māori land for public works may in some cases constitute a breach of te Tiriti/the Treaty, however the Crown says the compulsory acquisition of land under the public works regime is not, in itself, inconsistent with te Tiriti/the Treaty. The Crown's right of kāwanatanga allows it to compulsorily acquire land, including Māori land, for public purposes. The Tiriti/Treaty-consistency (or otherwise) of any public works acquisition is determined by weighing the reasonableness of the Crown's exercise of kāwanatanga under Article I against the right of tino rangatiratanga as protected by Article II. The Crown submits that its kāwanatanga right may be appropriately balanced with the promise to protect rangatiratanga if:

7.1 The Crown is measured in its development and use of compulsory acquisition powers, and payment of fair market compensation; and

7.2 The Crown upholds its duty to Māori under Article II of te Tiriti/the Treaty to consider the implications for Māori of any compulsory acquisition. This requires adequate consultation with Māori and, in some cases, protection of Māori rights and interests in land where the loss of those interests would have major adverse social, cultural or economic impacts.

8. The Crown's position is that the Tribunal's threshold of "exceptional circumstances, as a last resort in the national interest" sets the bar too high and does not strike a reasonable balance between rangatiratanga and kāwanatanga. The interpretation has significant implications for the Crown's ability to meet its obligations to all citizens, particularly in circumstances where there is no or very little Crown or general land available.

9. Accordingly, the Crown says that the requirement of exceptional circumstances, the national interest to be at stake, and a lack of alternative options unreasonably fetters its ability to pursue its chosen policies in exercise of its right of kāwanatanga, and effectively means that virtually all compulsory acquisitions of Māori land for public purposes will be inconsistent with te Tiriti/the Treaty. Such a restraint is itself inconsistent with Tiriti/Treaty principles in that it is an unreasonable restriction on the right of government to follow its chosen policies.

ISSUE 13: GENERAL TAKINGS

Introduction

10. Of the compulsory public works acquisitions not directly included in the North Island Main Trunk Railway (**NIMTR**) or the Waiōuru Defence Lands topics, the technical evidence in this inquiry district focused on the following six takings (in alphabetical order):

10.1 Maungakaretu Scenic Reserve.

10.2 Moawhango Police Station.

10.3 Moawhango Post Office.

10.4 Moawhango Teacher's Residence.

10.5 Napier-Patea Road.

10.6 Orangipongo School.

11. These takings are referred to in several final amended statements of claim including, most prominently, Wai 662, 1196, 1632, 1835, 1868 and 2157. These takings also feature in briefs of evidence and were discussed in various hearing weeks including, for example, hearing week five at Moawhango Marae.

12. Accordingly, the Crown also focuses on these six public works acquisitions.

Maungakaretu Scenic Reserve

Narrative

13. In 1911, 215 acres of Māori land between Taihape and Turangarere was compulsorily acquired for the Maungakaretu Scenic Reserve, one of a number of scenic reserves established along the NIMTR line.[2]

14. One part of that acquisition, approximately 61 acres from Motukawa 2B7A, is within this inquiry district.[3] A further 70 acres was acquired from Raketapauma 2B1C. The Tribunal granted leave for this block to be considered in the inquiry notwithstanding it being located slightly to the north of the inquiry district.[4]

15. Prior to this taking, the statutorily appointed Scenery Preservation Board (as part of its survey of the entire NIMTR route for scenic areas) reported on the environmental features of the land and the reasons why the land should be protected.[5]

> The hundred odd miles of scenery traversed from Makohine [north of Marton] to Manunui [south of Taumarunui] forms a national asset that, in our opinion, should be most jealously conserved and protected. … The varieties of timber, the natural beauty of the forest, its magnificent situation amongst numerous deep ravines and sinuous gorges through which run rapid mountain streams, together with the background of

2 Wai 2180, #A09, at 198. There is more background in Cleaver's report about the scenery preservation movement, including the legislation, the Commission and various reporting. In essence, the general purposes of this movement were said to be protecting the natural environment, promoting tourism and providing "picturesque" scenery for train passengers.

3 Wai 2180, #A09, at 198.

4 Wai 2180, #J13. Note: Ngāti Rangi Claims Settlement Act 2017, s 14 settles Wai 1632 Raketapauma block claim to the extent it is based on Ngāti Rangi ancestors but otherwise exempts it.

5 Wai 2180, #A09, at 202.

> frowning hills and lofty ranges, and in the distance the grand snow-capped peaks of the Ruapehu, Ngauruhoe, and Tongariro Mountains, all unite in proclaiming this portion of New Zealand as one of the principal attractions of the colony.

16. The scenery of the Maungakaretu reserve was such that four other proposed compulsory acquisitions of Māori land in the district were abandoned to ensure sufficient funds were available for this taking upon the recommendation of the Inspector of Scenic Reserves.[6] By the time he completed his inspection in 1909, several of the areas recommended by the Board in 1907 had been deforested. The Inspector stated Maungakaretu was "from the point of view of scenery … now unsurpassed on the whole railway route".[7]

17. The Māori-owned blocks were being leased by European sawmillers who were cutting down timber on the land. The Crown interviewed the lessees about the proposed scenic reserve and took some of their suggestions into account in the shape of the reserve.[8] No evidence has been identified to show that the Crown interviewed the owners of the lands.

18. A notice of intention to take the land for scenery preservation was published in the *Gazette* in 1910. Efforts were made to serve the notice on owners and lessees, however only some owners were notified. The notice was not served on the owners of Raketapauma 2B1C.[9] Objections to the proposed taking were lodged on behalf of some owners and by the leaseholders.

    18.1 In response to objections by European leaseholders, the area to be taken from Motukawa 2B7A was reduced[10] and cutting rights were given over an adjacent area of Crown land.[11]

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6 Wai 2180, #A09, at 207.

7 Wai 2180, #A09, at 207.

8 Wai 2180, #A09, at 207.

9 Wai 2180, #A09, at 208. The notice was not served on the owners of Raketapauma 2B1.

10 Wai 2180, #A09, at 207.

11 Wai 2180, #A09, at 208.

18.2 It appears the Crown did not talk to the Māori objectors before their objections were rejected.[12] The objections were dealt with by the Crown official who had recommended the lands be taken.

19. The scenery preservation officials concluded that the acquisition of the lands should proceed and advised the public works department to proceed accordingly.

20. The public works officials responded that there was no statutory authority to take Māori land – they had identified an error in the Scenery Preservation Amendment Act 1906 Act. Whereas the Scenery Preservation Act 1903, applied to all lands, including Māori land, provision for the acquisition of Māori lands was removed in 1906 (apparently in error),[13] then reinstated in 1910 along with retrospective validation of takings under the Public Works Acts of 1894, 1905 and 1908. The legislation was remedied in 1911, with retrospective effect.

21. A second notice of intention was published after the legislation had been remedied in 1911 and steps were taken to again serve the notice upon owners and lessees.[14] When the new acquisition process started, the Crown failed to notify one of the owners who had objected during the first process.[15] A further objection was made by an owner of Raketapauma 2B1 (that the lands were in grass, not forest), but dismissed on the basis that was a factual error.[16] The owner also noted that part of the block had already been acquired by the Crown for the construction of the railway, but officials did not appear to respond to this concern.[17] Similarly, Crown officials did not respond to the objections that Māori owners made after the first notice of intention had been published. While the Assistant Under Secretary had suggested that these objections should be dealt with after the introduction of the amending legislation, this did not occur.[18]

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12 Wai 2180, #A09, at 210. Wai 1632 Statement of Claim, at [53], says objectors included Ngahuia Harawira (trustee of Rīni Henare Akatarewa, one of the owners of Motukawa 2B7A).

13 Wai 2180, #A09, at 200.

14 Wai 2180, #A09, at 211.

15 Wai 2180, #A09, at 211.

16 Wai 2180, #A09, at 212.

17 Wai 2180, #A09, at 212.

18 Wai 2180, #A09, at 212.

22. In July 1911, the land was compulsorily acquired for the Maungakaretu Scenic Reserve.[19]

23. Compensation for the takings was determined by the Native Land Court in 1912, following a hearing in which the owners and Crown were represented.[20] Some of the compensation for Motukawa 2B7A (£64) was awarded to the European lessees out of the total awarded for the taking that otherwise went to the Māori owners (approximately £385).[21] The scenery preservation legislation contemplated compensation being paid but did not proscribe any particular process.[22] It instead applied the public works legislative process, under which both notification and full compensation was required (to any person with an interest in the land).[23]

24. The reserve was later found to be of high scientific value and the status of the land was changed from scenic to scientific purposes in 1973.[24]

25. The reserve is now known as the Ngaurukehu Scientific Reserve and is administered by the Department of Conservation.[25] The reserve is subject to a deed of recognition, which requires the Director-General of Conservation to "consult the governance entity" and "have regard to its views concerning Ngati Rangi's association with the area" when "undertaking certain activities".

26. In 1955, Mr W Pohe (on being contacted by the Department of Lands and Survey to contribute to fencing the reserve) said the land was virtually stolen from his family and that they never wanted to sell.[26] Mr Pohe declined the invitation to contribute to fencing.

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19 Wai 2180, #A09, at 212.

20 Wai 2180, #A09, at 213.

21 Wai 2180, #A09, at 213–214.

22 Scenery Preservation Act 1910, s 11.

23 Public Works Act 1908, Part III, s 35 – compensation claims to be heard in court. A claim for compensation could be made by any person with any interest in the land (s 39).

24 Wai 2180, #A09, at 215.

25 Wai 1632 Statement of Claim at [49].

26 Wai 2180, #A09, at 215.

27. The Wai 1632 claim relates to the Raketapauma block. Evidence of the named claimant (Hari Benevides) is that:[27]

> … my grandfather was not aware of this sale and our whānau always understood that the land belonged to us. It was upon that understanding that in the 1970's my brother, the late Wilson Ropoama Smith, cut down two trees on the … land. He was taken to Court as a result and defended himself on the basis that the trees were on his land. It was only as a result of this Court case that we discovered that the land was in fact part of the Reserve.
>
> 35. I am aware that the Management of the Ngaurukehu Scientific Reserve is the subject of Ngati Rangi's recently agreed Deed of Settlement with the Crown. Under the Deed, the Reserve will be subject to a management by a joint DOC/Iwi Committee.
>
> 36. As a whanau we deem it only right that we are involved in the governance of the Reserve, after all it was part of the Pohe lands. I have a very good relationship with DOC, granting them access across our land.
>
> 37. I have been advised that Ngati Rangi want the Reserve named after our tupuna Te Oti Pohe as an acknowledgement of him as the Rangatira of this rohe, also his marae Kokako, the hui held there and that he lived and walked these lands. If correct, we fully support it and ask that the reason be recorded.

28. The reserve is the only land taken from Taihape Māori for the purposes of scenery preservation. European lands were taken in 1907 and 1908 for the Makohine Scenic Reserve. The Crown land the Board recommended as reserves appears to have been vested as reserves.[28]

Further submissions and analysis

29. The Maungakaretu lands were identified and recommended for acquisition in the period during which Māori land was not within the scope of the legislation Notification to the owners and lessees, and the responses to their formal objections also took place in this period. Whilst the Scenery Preservation officials undertaking these steps clearly thought Māori lands were within the scope of the legislation (as they had been in 1903), they were wrong. It appears the error was picked up by Public Works officials when they were

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27 Wai 2180, #J13, at [34]–[37]. Note: whilst the Wai 1632 statement of claim at [50] states the claimants seek the return of the Raketapauma block lands taken for scenery preservation and for the railway itself (addressed in Issue 14 submissions) and "appropriate compensation", Ms Benevides clarified this in a brief dated Wai 2180, #J13, at [32] stating (in relation to the land taken for the railway) "Just as our Koro before, we are not asking for all the Raketapauma land taken to be returned. We ask for the 3 acres and 3 roods where our tupuna's whare stood".

28 Wai 2180, #A09, at 204.

instructed to acquire the lands.[29] Further action was suspended until the legislation had been amended. That took nine months (June 1910 to March 1911) – and the acquisition process was repeated once it was in place (ie a second round of notification, objection, recommendations took place).

30. Although the Public Works Act 1908 required every owner to be notified of the intended acquisition,[30] the first round of notifications were not addressed to the owners of Raketapauma 2BI and the second round also failed to notify Ngahuia Henare Harawira, one of the main complainants to the previous notice.[31] Given there was some overlap between the owners of the blocks, some owners of Raketapauma 2B received notification through being notified as owners of the adjoining blocks.

31. There was no statutory requirement for the Crown to consult Māori landowners prior to notification of the intention to take land. However, it is notable that the Crown officials met and corresponded with the European leaseholders of the lands whilst inspecting the lands for possible reservation but do not appear have met with the owners themselves. The Crown accepts that this amounted to unequal treatment – whereas the leaseholders had an opportunity to shape the reserve proposal prior to the formal processes beginning, the Māori owners of the block did not.

32. Objections were lodged in response to both notification processes. As set out above, the objections of the leaseholders of the block appear to have been given more weight than those of the Māori owner of the land who objected. One of the owners of Motukawa 2B7A, Harawira, set out the following reasons for objection: [32]

> the value of the land would be decreased by the water frontage being taken away;
>
> all timber on the block, if it was to be milled, would have to be brought onto the land proposed to be taken for milling;

29 Wai 2180, #A09, at 210.

30 Public Works Act 1908, ss 18(1)(c) – public notification; (e) serve on owners and occupiers.

31 Wai 2180, #A09, at 211.

32 Wai 2180, #A09, at 209.

> there would be no right to stop people going into the proposed reserve and that trespassers with dogs were a source of danger;
>
> there was Californian thistle on the proposed reserve, which the Crown would not cut;
>
> and
>
> the selling and letting value of the other parts of the block would be greatly reduced.

33. The applicable public works provisions required any well-founded objections to a proposed acquisition to be heard in person.[33] The decision maker was unsure whether the objections were of sufficient weight to have them heard.[34] Instead, Ms Harawira's objections were forwarded to the Inspector of Scenic Reserves, the same person who was advocating passionately for the creation of the reserves. His response was dismissive and did not meaningfully engage with the legitimate concerns raised.[35]

34. Compensation was required to be paid and was paid. The level of compensation was required to be, and was, decided in the court.

Crown acknowledgements on Maungakaretu public works taking

35. The Crown acknowledges that:

    35.1 the owners of Motukawa 2B7A and Raketapauma 2B1C suffered unequal treatment when Crown officials provided greater opportunity for the European leaseholders to respond to the proposal to take the land than they afforded the Māori landowners;

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33 Public Works Act 1908, s 18: "… whenever lands (other than Crown lands) are required to be taken for any public work, the Minister in the case of Government works, and the local authority in the case of local works,— (f) Shall, upon receiving any such well-grounded objection as aforesaid, appoint a time and place in New Zealand at which the objector may appear (in the case of Government works) before the Minister or some person appointed by him, and (in the case of local works) before the local authority, and support the objection by such evidence as the objector thinks fit."

34 Wai 2180, #A09, at 210.

35 Wai 2180, #A09, at 210. In respect of Harawira's first point, Phillip Turner observed that the loss of water frontage had also been raised by Williams, a claim that he thought was "absurd". Responding to Harawira's second point, the Inspector of Scenic Reserves stated that a right of way could be granted through the land to be taken. However, he did not believe that this was necessary as a strip had been left to give access to the land that lay between the area that was to be taken and the Hautapu River. Phillip Turner dismissed Harawira's third point as not being a point in consideration. In respect of Harawira's fourth point, Phillip Turner stated that the reserve land was all bush except for a few yards along the railway fence line. He acknowledged that some thistles had got onto this land from the railway, which he noted was covered with the weed. Responding to Harawira's final point, Phillip Turner simply stated he could see no reason for the concern.

35.2 the notification of owners was flawed (with some owners not receiving notice of the intent for their lands to be compulsorily acquired, and one who did object not being notified when the Crown had to re-run the process);

35.3 the process for considering objections was flawed and resulted in some complaints being dismissed without due consideration; and

35.4 together, these failings meant that the Crown's conduct in compulsorily acquiring land for the Maungakaretu scenic reserve was not consistent with its duties to actively protect Māori interests and to afford Māori equality of treatment and this was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Moawhango Police Station

36. In August 1896, five acres of Māori land was acquired under public works legislation for the purposes of establishing a police station in Moawhango.[36] This taking is better characterised as a voluntary arrangement given effect to under public works provisions than as a compulsory taking.

37. The need for a police station was raised by Taihape Māori directly with Premier Seddon during his 1894 visit to Moawhango. The evidence is that local Māori were concerned about some of their own peoples' behaviour around alcohol and "frequenting troublesome Europeans" to their isolated part of the country and petitioned the Crown directly for a police officer at Moawhango.[37] There was strong opposition to a liquor licence granted in 1892 but there was still "sly grog-selling" which local Māori wanted to stop[38] and a failure by public authorities to adequately police the liquor licensing laws.[39]

38. The Premier said land would be needed to build a police station and local Māori agreed that a site would be selected, surveyed and then given to the Crown for this purpose.[40] At the time, there was no Crown land in

36 Wai 2180, #A09, at 220.
37 Wai 2180, #A09, at 220.
38 Wai 2180, #A43, at 485.
39 Wai 2180, #A43, at 481.
40 Wai 2180, #A09, at 220.

Moawhango – the land had been subdivided and the Crown purchasing underway at the time did not involve acquiring interests in land in the Moawhango Valley itself (as Taihape Māori wished to retain those lands).[41]

39. An area of customary land was agreed to be given for this purpose immediately (Hiraka te Rango advised the Premier accordingly).[42] The evidence suggests that public works acquisition powers were used instead of gifting because it was a more simple conveyancing pathway to give effect to the agreement.[43]

40. The evidence is that Erewini Akatarewa, tupuna of Akatarewa, later asked why survey pegs were being put into his customary land for the police station. He strenuously objected to the surveying and pulled the survey pegs out.[44] He was arrested, convicted in 1895, fined £50 and then, because he could not pay the fine, jailed for a month.[45]

41. In August 1896, Section 1 Motukawa 2, an area of 5 acres, was taken for the site of a police station after an Order in Council was issued under the Public Works Act 1894.[46]

42. A police station was then built on the site in 1897.[47] Some of the land acquired was subsequently used as a cricket pitch by the Moawhango Cricket Club (purportedly because they could not acquire any other land due to the Crown's right of pre-emption).[48]

43. The question of compensation was considered by the Native Land Court in 1901 (at which point title to the surrounding land had been determined) and it was agreed between the owners and Crown that £50 compensation would be paid.[49]

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41 See submissions on Issue 4: Crown Purchasing.

42 Wai 2180, #A09, at 220. See, also, AJHR 1895 at 5; Wai 2180, #A43, at 483; and #4.1.010: Evidence of Bruce Stirling, hearing week three, at 571 which asserts that how the site was selected was unknown.

43 Wai 2180, #A09, at 220. At the time, an Order in Council could be issued to acquire customary land.

44 Wai 2180, #4.1.010: Evidence of Bruce Stirling, hearing week three, at 571.

45 Wai 2180, #A43, at 483.

46 Wai 2180, #A09, at 220.

47 Wai 2180, #A09, at 221.

48 Wai 2180, #A43, at 483.

49 Wai 2180, #A09, at 221. The evidence is that compensation was paid to Ani Paki and Raumaewa Te Rango (see #4.1.014, at 164).

44. The police station was closed in 1931 and the land was transferred in 1937 to the Rangitīkei County Council.[50] The evidence suggests the land was not offered back to the original owners at this time and the land was then used for a roadman's residence.[51]

45. The evidence suggests Taihape Māori became aware the Rangitīkei County Council intended to dispose of this land through a newspaper advertisement selling the land. Following a meeting between Taihape Māori and the Council, it was agreed that the land would be offered back to the descendants of the original owners.[52]

46. The land was subdivided, possibly to make the former police station site more affordable to the descendants of the original owners, and approximately 4 of the five acres were transferred to Māori ownership.[53]

Analysis on police station

47. The compulsory acquisition of land for the Moawhango Police Station followed a proposal initiated, and agreed to, by Taihape Māori, and negotiated directly with Premier Seddon in person. It is not clear why compulsory acquisition was necessary given local Māori agreed to gift some land for this purpose, but it may have been that the Crown considered taking the land under public works legislation as the simplest way to give effect to the intentions of the Moawhango people.

48. It is not clear how or why the particular site was selected. There is evidence of one person strongly disputing that location. His dispute suggests he either: was not aware of the previous discussions about the land (which seems unlikely given the importance of the 1894 Premier's visit); or did not know that the specific site would be on that land; or knew about the proposed taking but disagreed with it. There is not sufficient evidence to suggest which of these possibilities is the case. There is no evidence suggesting the Crown was involved directly in selecting the site, and there is no evidence of further discussions between the Crown and Māori about the location, method of

50 Wai 2180, #A09, at 220.

51 Wai 2180, #A09, at 221.

52 Wai 2180, #A09, at 221.

53 Wai 2180, #A09, at 221. The trustee owners are named as Maria Muir, Elizabeth Rihitoria Stretch and Tama Wi Paki.

acquisition and other terms on which the land would be used. Neither is there evidence of Moawhango Māori views on Mr Akatarewa's dispute with the site (or, for that matter, what the nature of his interest in the land was).

49. Compensation was assessed five years after the taking and an amount was agreed to by both parties. There is no evidence that Māori expressed any concerns about the amount of land taken, or about the use of some of the land for other purposes during their discussions about compensation. Given the lack of evidence about how the land was selected, it is not possible to conclude that more land was taken than was necessary.

50. When the land was no longer required for a police station, the Crown transferred it to the Rangitīkei County Council in 1937 without, it appears, notifying, consulting or offering the land back to the former owners (or their descendants). It seems only by chance that Taihape Māori became aware the Council intended to dispose of the land and the evidence is that the land was subdivided and partially returned to the descendants of the former owners. The subdivision appears to have taken place for financial reasons. Prejudice that may otherwise have resulted (permanent alienation of the land through being sold into private hands) was thus avoided.

51. Taking all of the circumstances into account, the compulsory acquisition and subsequent dealings appear better characterised as a voluntary arrangement being given effect to through public works provisions than as a compulsory acquisition against community opposition. In the absence of better evidence of Mr Akatarewa's concerns, it would be speculative to suggest that his protest indicates Moawhango Māori having rescinded their desire for a police station or the agreement made with Seddon that they would provide land for it. On this basis, the Crown submits that its actions in acquiring land for the Moawhango police station were consistent with its obligations under te Tiriti/the Treaty.

Moawhango Post Office

52. In 1916, following the successful negotiation between the Post and Telegraph Department and Hera Te Hinare to acquire land from Awarua 2C13J4 for a

post office site for £30, an area of 20.9 perches was transferred to Crown ownership by way of public works acquisition.[54]

53. The Crown published notification of the intention to acquire the land and the Native Land Court determined £30 compensation was payable in accordance with the agreement above.[55]

54. However, the evidence suggests a post office was not built and the Crown instead leased the land. In the late 1930s, the land was considered for disposal.[56] The land was then tendered for sale and, without being offered back to the original owner, sold for £2 2s to the Moawhango Social Club (who currently owns the land).[57]

55. In substance, the evidence suggests this was a negotiated transfer for consideration from a willing seller and that the public works mechanisms were used only to effect the transfer for reasons of convenience. Therefore, the Crown considers that this transaction does not breach te Tiriti/the Treaty as it applies to public works acquisitions.

Moawhango Teacher's Residence

56. In 1945, almost 50 years after the Moawhango school initially opened, the Crown considered that an adjacent area of land was required for a teacher's residence.[58] An area called Awarua C13L, 2 roods and 17.4 perches in size, was selected and the Crown began the process of identifying owners and notifying them of the intention to compulsorily acquire the land.

57. In November 1945, the Crown contacted the Native Land Court at Whanganui requesting the owners' names, addresses and details of interests and 12 original owners were identified.[59] Notice of intention was published in the *Gazette* and *Taihape Times*, and served on 11 owners and 2 others who were probably successors of deceased owners.[60] The evidence suggests that Crown officials made efforts to establish whether there were burial grounds

54 Wai 2180, #A09, at 225.
55 Wai 2180, #A09, at 225.
56 Wai 2180, #A09, at 225–226.
57 Wai 2180, #A09, at 226.
58 Wai 2180, #A09, at 223.
59 Wai 2180, #A09, at 224.
60 Wai 2180, #A09, at 224.

on the site. No objections to the acquisition were lodged.[61] The land was compulsorily acquired with effect from 25 March 1946.

58. In August 1947, the Māori Land Court assessed compensation at £40 in light of the Government valuation, although the owners were not represented at the hearing.[62] The land is currently held by the Crown for education purposes, although the evidence suggests the land is vacant.[63]

59. The Crown considers this transaction was Tiriti/Treaty-consistent. The Crown met its obligations to notify owners and to pay compensation, and Crown officials took steps to ensure that the land was not culturally significant. The land's owners did not raise any objections. Further, the evidence is that the land has not been disposed (ie remains in Crown ownership and thus remains subject to the provisions of the public works regime).

Napier-Patea Road

60. Road takings account for approximately 1,126 acres of public works takings in the inquiry district prior to 1905, and a further 115 acres later.[64] The most significant single road taking is focussed on for these submission - the Napier-Patea Road.

61. Approximately 305 acres of customary Māori land,[65] which was already being used as a road between Kuripapango and Moawhango, was compulsorily acquired by the Crown under a legislative provision which vested all roads in public use in the Crown (ie the land was not specifically taken for constructing a road, it was more a case of legalising a pre-existing road of wide use and long standing).[66] The vesting occurred in two stages - 1884 (Mangaohane to the east); and 1896 (Mangaohane west to Moawhango).[67]

62. The road traversed Timahanga, Mangaohane 1, Ōwhāoko, Ōruamatua-Kaimanawa 1, and Awarua 2C blocks and had been in use as a track for some

61 Wai 2180, #A09, at 224.
62 Wai 2180, #A09, at 224.
63 Wai 2180, #A09, at 224.
64 Wai 2180, #A09, at 181.
65 See Wai 2180, #4.1.014, at 285.
66 Wai 2180, #A09, at 188.
67 Wai 2180, #A09, at 188.

decades prior to its vesting under the public works provisions. There is little evidence on the record as to what conditions applied to the use of the road prior to it being vested (ie what, if any, rights or conditions were asserted by the owners of those lands to those traversing the roads) but it appears to have been utilised as a public road well before being legally formalised as such.

63. Prior to the railway opening up a north-south route through the Taihape district, transport was largely on an east-west access and the "Napier Road" was described as the main road. There is significant evidence of passage between the inquiry district and the Ahuriri/Heretaunga region being a common and well-traversed route. One such example was stated in 1892:[68]

> That is, whether it is to form a portion of the main trunk route or not? —Yes, that is so. It hits the main road to Napier, and I presume it is a very good road to Napier, because I saw heavy wool wagons which take loads of wool, &c,, to Napier.

64. Mr Cleaver notes:[69]

> The road takings discussed in this chapter were carried out in accordance with an established policy that has deemed that the land upon which a road lies should be held by the Crown. This policy is no doubt based on the view that Crown ownership is necessary to enable construction and maintenance work to be undertaken without complication and to protect work that has been carried out with public funds. Crown ownership also ensures an ongoing right of public access along roadways.

65. The provisions under which this land was taken did not include any requirements to consult with owners, to formally notify the taking or to compensate owners.[70] The legal formalisation of such a road was therefore reasonable and necessary in the context of the developing district.

Orangipongo School

66. In 1934, one acre of land from Ōtamakapua 1A (near Ohingaiti) was compulsorily acquired for Orangipongo School.[71] A notice of intention was

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68 AJHR 1892 I-09 NIMTR Committee at 8 (Mr Lawry).

69 Wai 2180, #A09, at 195.

70 Wai 2180, #A09, at 88. See, also, Wai 662, 1835, 1868, at [394]–[395], and Wai 1196, at [160].

71 Wai 2180, #A09, at 226.

published in 1933 and steps were taken to ascertain whether any sites of significance were located on the land.[72]

67. The evidence suggests the notice of intention was unsatisfactory because it was only identified as "Lot 3 DP 5996" without reference to the district or street address, and it was posted in Whanganui.[73] It is unclear whether the owners were served that notice of intention directly but the evidence suggests it is "evident" there was prior agreement that no compensation would be paid and that those discussions may have occurred prior to the taking being carried out.[74]

68. In the 1960s, Orangipongo School was closed and the evidence suggests that, because the land was not required for any other public purpose, it was sold by public tender[75] to an Ohingaiti farmer.[76] There was no statutory requirement to offer land back to the original owners at the time.[77]

69. Taking into account the Crown's conduct in assessing whether there were particular Māori interests in the land, the steps taken to notify owners, the inference that there was consultation with the owners (because of the prior agreement regarding compensation) and the national interest in having sufficient schools, the Crown considers the compulsory acquisition of Ōtamakapua 1A was Tiriti/Treaty-consistent.

7 May 2021

R E Ennor / MGA Madden
Counsel for the Crown

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

72 Wai 2180, #A09, at 227.
73 See Wai 2180, #4.1.014, at 165.
74 Wai 2180, #A09, at 227. Other evidence suggests it was a gift – see #4.1.014, at 212.
75 Wai 2180, #A09, at 228.
76 Wai 662, 1835, 1868, at [413].
77 Wai 2180, #A09, at 228.