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 15: PUBLIC WORKS (DEFENCE)

7 May 2021

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INTRODUCTORY MATTERS

Acknowledgements

1. The Crown begins these closing submissions by acknowledging the significance of compulsory acquisitions of Māori land for defence purposes in this inquiry district to claimants, whānau, hapū and iwi – particularly those of Ngāti Tamakōpiri and Ngāti Whitikaupeka whose customary lands now form a significant portion of the Waiōuru Military Training Area.

2. Through this inquiry, the people of Taihape challenged the New Zealand Defence Force (**NZDF**) to reassess its part in the partnership between the New Zealand Army and those with customary interests in the lands now within the Waiōuru Military Training Area.

3. Many claimants and their whānau have served, and continue to serve, in the Armed Forces or work in civilian roles at Waiōuru Military Camp. Their multiple contributions are acknowledged and honoured by the Crown. 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.

4. These submissions address compulsory takings of Taihape Māori owned land for the purposes of defence.

Background

5. The area commonly known as the Waiōuru Army Training Area – or Military Training Area – and referred to in this inquiry as the Waiōuru Defence Lands, was created as the result of a number of public works acquisitions and Crown land reallocations between 1939 and 1990. As part of this process, land was acquired from Taihape Māori on the Rangipō Waiū, Rangipō North, Ōruamatua-Kaimanawa, and Raketapauma blocks. These blocks are the subject of a number of overlapping customary interests.

6. By way of summary, the Crown's preliminary views as expressed in its opening submissions for this inquiry were:[1]

   6.1 the "vast majority" of public works takings in this district were for defence purposes;[2]

   6.2 the Waiōuru Defence Lands are a matter of national significance. The Crown largely met the legislative standards it was subject to in relation to public works takings (other than where explicitly acknowledged in these submissions);[3]

   6.3 the main issue warranting closer scrutiny during the hearing of evidence was "the process under which lands were taken … to extend the Waiōuru exercise area in 1973";[4]

   6.4 the substantive initial takings for defence purposes were from private land owned by non-Māori, lands were subsequently taken from Taihape Māori in three tranches (1943, 1959/61 and 1973);[5]

   6.5 the lands taken from Taihape Māori were necessary in the national interest and the amount taken was proportionate to the defence needs of the time; the lands remain in use by NZDF today; and they are further necessary in practical terms and for future proofing (to provide sufficient training capability and allow for technological advances);[6] and

   6.6 that departmental evidence would be filed concerning the purposes and uses of the current Defence land holdings (this took place in the 2019 Crown hearing week).[7]

7. Matters have moved on somewhat through the course of the inquiry, with the Crown presenting detailed evidence on these issues and making

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1 *Opening Comments and Submissions of the Crown*, 2 March 2017, Wai 2180, #3.3.1.

2 Wai 2180, #3.3.1, at [228].

3 Wai 2180, #3.3.1, at [227].

4 Wai 2180, #3.3.1, at [227].

5 Wai 2180, #3.3.1, at [249].

6 Wai 2180, #3.3.1, at [250].

7 Wai 2180, #3.3.1, at [251].

concessions concerning Ōruamatua-Kaimanawa 1973 takings (addressed below).

8. Given this inquiry has excluded the 1943 takings relating to the Rangipō Waiū and Rangipō North blocks (the Māori land taken at that time was primarily outside the inquiry district and has been addressed in settlement legislation for Ngāti Rangi),[8] the Crown discusses the 1939-1943 events only as background and has focused the following submissions on the latter tranches of land takings (1961 and 1973), but with particular emphasis and detail on the 1973 takings.

CROWN EVIDENCE

Defence – a matter of critical national importance

9. The importance of the Defence Force to the nation is uncontested. As set out by Colonel J Kaio:[9]

> At its core, the Defence Force's role is to defend the nation's sovereign territory and those areas for which New Zealand is responsible, delivering security including against terrorism and related asymmetric threats. The Defence Force also contributes to collective security initiatives overseas and efforts to strengthen a rules-based international order that serves the nation's wider interests.
>
> The Defence Force is primarily responsible for delivering Defence outputs through military operations and building and maintaining military capability. Capability includes the personnel, equipment, platforms and/or other materiel that affects the capacity to undertake military operations.
>
> It is the Defence Force's goal to maintain armed forces that can react to crisis at short notice. The Defence Force has a responsibility to achieve success on military operations, remain affordable, and prepare for future security challenges, while also providing welfare for military members, their families and preserving the wellbeing of civilian staff.

10. Colonel Kaio explained the centrality of training in order to uphold these responsibilities – both for the core task of combat roles, and for its important non-combat contributions to the overall wellbeing and resilience of the nation:[10]

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8 Wai 2180, #1.4.3, December 2016, at 45.

9 Wai 2180, #M01, at 1–6.

10 Wai 2180, #M01, at 7–14.

> To ensure these combat forces are able to carry out their missions effectively, Defence Force personnel must be appropriately trained and equipped for the likely threats they will face as well as to ensure New Zealand's contributions to multi-national operations are credible and valuable.
>
> Well-trained and operationally prepared soldiers provide effective land combat capabilities that the Government can deploy for a wide range of tasks, either independently or as part of a multinational force. These land force elements are flexible and can be configured to respond to tasks ranging from humanitarian support through to combat …

11. The government expects the Defence Force to be prepared to contribute capabilities to whole-of-government responses to a range of hazards and threats. By way of example, during the two hearings hosted at Rongomaraeroa o Ngā Hau e Wha, Waiōuru, trained personnel contributed directly to the government's security response to the 15 March 2019 mosque shooting and to the national management of New Zealand's COVID management and eradication strategy.

12. The Waiōuru Military Training Area is the central base of all New Zealand Army training – for both tactical and professional development.

13. Colonel Kaio set out the current value of the base for military training needs, and described the more complex future environment and how the key characteristics of that future environment will impact on the use of the Waiōuru Military Training area:[11]

> The future operating environment for our Army looks increasingly complex but we have started to prepare ourselves for it. We see the Waiouru Military Training Area and the freedoms that it allows us, as a vital part of ensuring that our people will be prepared to face tomorrow's threats.

14. Colonel Kaio, and Major P Hibbs, acknowledged that the permanent military population resident at Waiōuru base has decreased since the 1980s. They stressed, however, that the exercise area and the training infrastructure in Waiōuru are more heavily used currently than ever and that they anticipate that continuing to be the case.[12]

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11 Wai 2180, #M01, from [15] onwards.

12 Wai 2180, #M02, at [9]–[11].

15. Major Hibbs set out how the Waiōuru Military Training Area is currently used (confirming that every part of the area is critical to training operations). He described his views on the value of the area as follows:[13]

> As one who has spent approximately 20 years of his life in Waiouru being trained and training others, this place is like no other I am aware of. Other armies have access to larger areas, colder areas, hotter areas and desert however none have all these conditions in the same area. I have had the honour and good fortune to experience all these conditions and often in the same day. The range of terrain and climatic conditions experienced in Waiouru can make a relatively simple task of moving between locations a major leadership task and at times a survival exercise.
>
> Our ability to train all corps and branches in the same location often at the same time provides us with a training area second to none. We are able to use the more benign areas for introductory training, eg driving over the land adjacent to SH1, and then with very little delay face the driver with extreme conditions. Training that once involved digging and occupying ground now is more likely to involve manoeuvre to avoid contact with a superior force until the conditions suit. Waiouru is able to provide all this for us.

16. Of particular relevance to these submissions, Major Hibbs explained the exercise zones and ranges, and the firing trajectories required for effective training – and the relationship between them and the exercise area boundaries.

17. In summary, the purpose for which the land is held is of critical and exceptional national importance. The land is being utilised for the purposes it was taken for and forms a critical role in the increasingly complex future environment.

18. Colonel Kaio, Major Hibbs and Mr Pennefather each acknowledged the need to better recognise the contribution made by Taihape Māori in having provided these lands, and the need to improve NZDF conduct in some regards (including third party use of the land) and the active partnership between NZDF and those with customary interests in the land.

19. These submissions now turn to address the Crown's actions under public works legislation for the Waiōuru Military Exercise Area.

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13 Wai 2180, #M02, at [21]–[22].

BACKGROUND – ESTABLISHMENT OF THE MILITARY AREA

20. The substantive initial takings for defence purposes were made in the context of World War II (**WWII**) and were primarily (92%) from European land held under deferred payment licenses in 1939 and 1942. This is significant. The compulsory acquisition of land from Taihape Māori and the cumulative quantity of land taken has been suggested (particularly within the context of the 1917-1918 gifting of Ōwhāoko lands) to constitute a level of targeting, or at least egregious disregard of, the interests of Taihape Māori in their lands. The Crown recognises that their contribution has indeed been large and significant, however the initial establishment of the Waiōuru Military Exercise Area involved the acquisition of European lands, not the lands of Taihape Māori. The Crown does not accept therefore any general allegation of unequal treatment of Māori having occurred in the 1942 Waiōuru compulsory acquisitions through which the base was established.

21. We now set out the broad historical background by which the Military Area was established.

22. Prior to the Military Area being established, the Crown undertook its defence training and exercises on public and private lands around the country – no permanent base existed. In doing so, they experienced some difficulties (exercises were repeatedly postponed, disrupted or complicated by landowners' needs or concerns). In 1933, the Army tried to conduct some training at Waiōuru but was unable to reach agreement with the owner.[14]

23. Mr Cleaver states:[15]

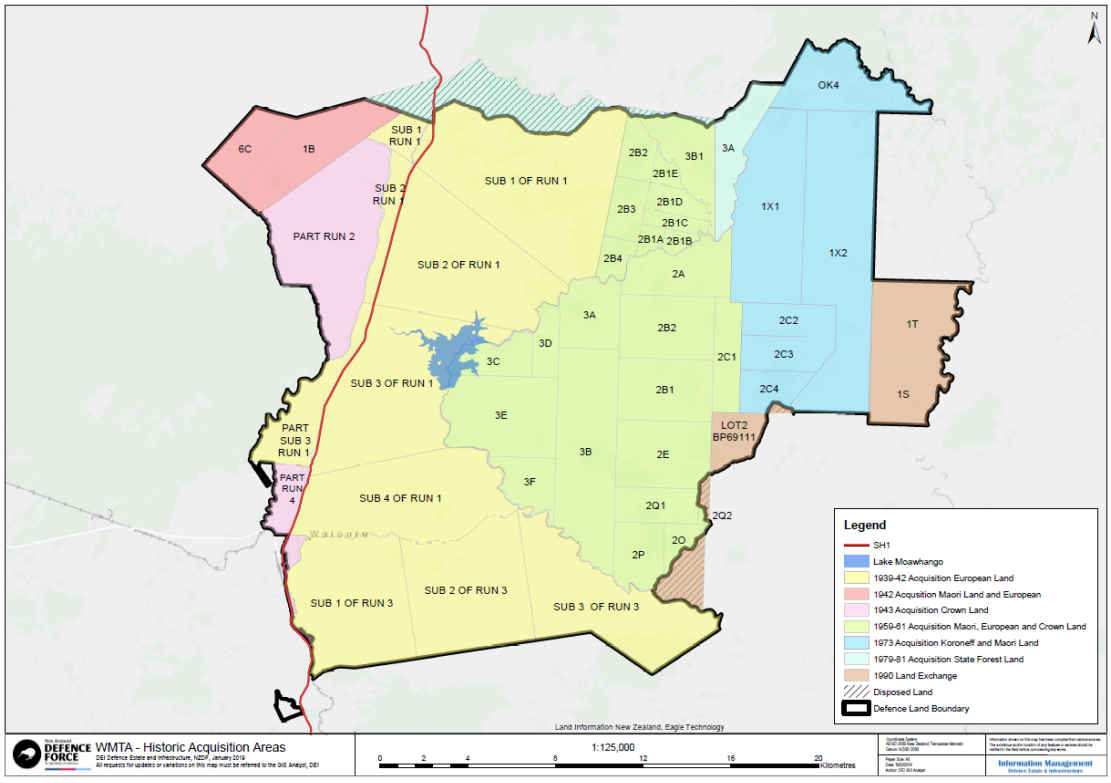
> On 18 September 1939, Cabinet authorised the acquisition of the Waiouru land for a permanent training ground for the military forces. By this time, war had broken out – a development that would have helped to remove any hesitation within the Government regarding the proposal to take [the private land at Waiouru] under the Public Works Act.

14 Wai 2180, #A09, at 28–33.

15 Wai 2180, #A09, at 33.

24. The Crown's view in 1939, and confirmed in 1942, was that full land title needed to be secured for the training ground.[16] That view was arrived at after the Crown actively considered whether the defence purposes could be achieved through legal arrangements that did not vest full and complete control of the land in the Crown. Against the recent history of difficulty planning and conducting critical training exercises on various private lands in the decades prior to 1942, the Crown (not unreasonably given the particular needs of military security and ordinance use) concluded unencumbered freehold title was necessary.

25. Following the establishment in 1939, further lands were taken in 1943, 1959/61, and 1973.[17] These are shown on the Map below.[18] This included lands of Taihape Māori.



16 Wai 2180, #A09, at 26–36. The use of relatively small portions of the land for grazing purposes or licensing other uses of the land does not undermine this central premise. Mr Cleaver also observes (at 56): "It is notable that relatively little land taken from Maori was subsequently leased by the Army. This would appear to reflect the fact that the Maori land was of little agricultural value rather than that it was intensively used by the Army."

17 Wai 2180, #3.3.1, at [249].

18 A more detailed version of this map is on the record at Wai 2180, #M03(c).

26. The acquisitions can be summarised as shown in the Table below.[19]

Year	Land	Owners
1939	51,600 acres	European
1942	15,850 acres[20]	European
1942/43	18 acres	European
	6,324 acres (Rangipō North and Rangipō Waiū 1B)	Māori
	9,256 acres	Crown
1961	8,029 acres	European
	29,167 acres (Ōruamatua-Kaimanawa 2 and Rangipō Waiū 2)	Māori
	2,355 acres	Crown
1973	7,946 acres (Ōruamatua-Kaimanawa 4 sections)	Māori
	16,277 (Koreneff) (Ōruamatua-Kaimanawa 1, 2, and 4 sections)	European
Total land in Waiōuru Military Exercise Area		**146,822 acres**
Total Crown land included		11,611 acres
Total Māori land compulsorily acquired		43,437 acres
Total European land acquired		91,774 acres

27. In summary (with all figures being rounded/approximate):

27.1 all of the land initially acquired (in 1939) to establish the exercise area was European land;

27.2 of the 73,792 acres acquired between 1939-1942 to establish the Waiōuru Military Area, 67,468 (91%) was acquired from Europeans (not including the further 9,256 acres of Crown land also added);

19 Wai 2180, #A09, at 26, 27, 34, 39, 57, 86. Note: slightly different figures for some of these takings are given at different parts of Mr Cleaver's report eg 1942 18 acres at 39 but 16 acres at 48.

20 Note: this taking was by consent under the Public Works Act (by the owner of the land compulsorily acquired in 1939).

27.3 of the total 135,211 acres compulsorily acquired under public works provisions, 32% (43,437 acres) was acquired from Māori; 91,774 (68%) was acquired from Europeans (including Mr Koreneff);

27.4 the 16,277 acres acquired from Mr Koreneff in 1973 constitutes 12% of the total area acquired under the public works provisions (land which had been recently purchased from Taihape Māori); and

27.5 a total of 146,822 acres was incorporated into the Waiōuru Military Exercise Area – approximately 8% of this total was the 11,611 acres of Crown land under lease to Europeans acquired largely in 1943 (with small amounts in 1942 and 1961).[21]

1961 TAKINGS

28. In February 1961, the Crown acquired 37,196 acres to extend the Waiōuru training ground. That comprised of approximately 8,000 acres of general land and 29,000 acres of Māori land.[22] These takings were initiated in 1949 and were undertaken to address issues associated with the size and shape of the training ground, and New Zealand's post-WWII strategy of developing a defence force capable of cooperating with allied nations for mutual benefit.[23]

29. Mr Cleaver notes the difference in the Crown's approach with these takings than with the earlier wartime takings:[24]

> The steps that preceded the acquisition of the lands in 1959 and 1961 indicate a shift in policies concerning how lands required for public works purposes should be secured. Compared with the earlier takings, considerably greater emphasis was placed on acquiring the land by negotiation rather than by simply following the compulsory taking provisions of the Public Works Act. The relative lack of urgency that existed during peace time no doubt made such an approach feasible. The acquisition of the lands was significantly delayed while efforts were made to reach an agreement with the owners.

30. After Cabinet formally approved a proposal to acquire the land by negotiation in March 1953 (after the proposal being initiated in 1949), Crown officials

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21 Wai 2180, #A09, at 34, 39, 57, 80.

22 Wai 2180, #A09, at 57. See also, for example, the evidence of Grace Hoet (#E7(a) and #4.1.4) and Fred Hoet (#J17 and #4.1.14).

23 Wai 2180, #A09, at 59.

24 Wai 2180, #A09, at 85.

attempted to negotiate agreements to purchase the land over a number of years.[25] The Minister of Māori Affairs and the Māori Affairs Department "believed that consultation with the owners was necessary" and the Public Works Department waited while Māori Affairs sought the owners' agreement.[26]

31. Other key officials also believed that obtaining agreement of the principal owners was desirable but considered that a compulsory acquisition, with compensation determined by the Māori Land Court, was practically the only means of acquisition.[27]

32. Māori Affairs promoted an exchange of land over an outright purchase, and the Lands Department/Director General of Lands investigated exchange options.[28] However, the proposed lands were deemed unavailable for exchange principally, it appears, because of proposed future uses for the lands.[29]

33. Māori Affairs' officials considered calling meetings of owners to consider Crown purchase offers for the land, however the difficulty and expense of doing so, with many owners' addresses not known and many living at some distance from the land itself, deterred this approach.[30]

34. Given negotiations for purchase or exchange were ultimately unsuccessful, the Secretary of Māori Affairs "reluctantly" instructed the Works Department in 1957 to acquire the Māori land compulsorily (noting at the same time such an action was "contrary to normal Government policy").[31] It was noted prior to this that complete control of a suitably sized area was necessary because of the nature of activities involving weapons and projectiles.[32]

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25 Wai 2180, #A09, at 57, 85–86.

26 Wai 2180, #A09, at 85.

27 Wai 2180, #A09, at 63; the Commissioner of Works, for example, suggested both informal meetings with the "principal owners" and a formal resolution of assembled owners.

28 Wai 2180, #A09, at 68–69.

29 Wai 2180, #A09, at 69. For example, Mr Cleaver says at 64, "the Commissioner of Crown Lands stated that almost all of the available Crown land in the Waiouru-Tokaanu area was required for exchange with certain Maori lands that were needed for water conservation purposes".

30 Wai 2180, #A09, at 70–72.

31 Wai 2180, #A09, at 72.

32 Wai 2180, #A09, at 69–70.

35. Officials ensured (at the instigation of Māori Affairs) that the notice of intention to take the land received the widest possible publicity, including notices in local papers and copies posted to the 112 owners whose addresses were known (out of a total of approximately 260 owners).[33] This was notwithstanding that notice was not required to be given for defence takings.[34]

36. Only one Māori landowner (who had almost half of the interests in Ōruamatua-Kaimanawa 3F) formally objected on the basis that the land possessed potential for farming.[35] The Minister of Works advised that he had "sympathetically" considered the objection but considered it was not well grounded in public works terms.[36] In response to an objection by the Director of companies who operated Ōhinewairua Station, the Minister emphasised that the Waiōuru training ground is the only place in New Zealand where the Army could fire major weapons and accommodate artillery firing (for which velocity and range were likely to increase in future).[37]

37. After compulsory acquisition, special government valuations were obtained and the Māori Land Court assessed compensation at a hearing in Whanganui in October 1961 in accordance with those valuations.[38] The Māori Land Court described the valuations as "fair valuations of the interests of the owners", particularly given the land had no physical access, was mostly above 3,000 feet and had minimal improvements.[39] Compensation was ordered to be paid to the Māori Trustee for distribution and, following Cabinet approval in February 1962, was paid in March 1962.[40]

38. Shortly after compulsory acquisition, the Crown licensed a small portion of the land (755 acres) to the neighbouring European landowner, Ōhinewairua

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33 Wai 2180, #A09, at 78.

34 Wai 2180, #A09, at 78. The Act provides different processes for limited categories of taking, including defence. In practice, those procedures have not been relied upon in Taihape – Counsel concludes that the prevailing conditions at the time of any particular taking may be relevant to their use (ie urgent need in war time compared with processes to be undertaken otherwise).

35 Wai 2180, #A09, at 79.

36 Wai 2180, #A09, at 79.

37 Wai 2180, #A09, at 79.

38 Wai 2180, #A09, at 81.

39 Wai 2180, #A09, at 80–81.

40 Wai 2180, #A09, at 82.

Station (which had also been subject to the compulsory taking)[41] for purposes which included the control of noxious weeds and pests. The Army, initially at least, seems to have used the licensed area reasonably intensively, effectively restricting Ōhinewairua Station's use of the land and affecting their development plans.[42]

Conclusion on 1961 compulsory taking

39. The Crown submits that:

39.1 The 1961 public works takings were for multiple defence purposes, including ensuring future viability of military training and testing at the only suitable location in New Zealand, and were carried out in the context of the post-war 1940s, compulsory military training, and the Korean War and Malay engagements of the 1950s.

39.2 Alternative sites and alternative methods of achieving those purposes were thoroughly considered (and the Army had already previously experienced the difficulties of leases/licences for weapons training purposes), including trying to negotiate a purchase or land exchange with the owners, and it was with "reluctance" that compulsory acquisition was relied on as a last resort after twelve years of negotiations.

39.3 Inherent in the negotiations and notification processes (and evident by the presence of owners at the compensation hearing) was full and genuine consultation with Māori owners, which included opportunities to object (which were exercised and carefully considered), notwithstanding there was no statutory duty to consult.

39.4 Although there were subsequent licences over a small part of this land for grazing purposes, the land was used immediately and intensively by the Army, there were legitimate reasons for the grazing licences and the land is still being used for the purposes for

41 Also, prior to acquisition, Ōhinewairua Station held unregistered leases over at least two of the Māori land blocks taken (and was, therefore, subsequently partially or wholly re-let by the Crown as the new owner) – see Wai 2180, #A09, at 83.

42 Wai 2180, #A09, at 86.

which it was acquired (indicating, arguably, no more than was reasonably required was taken).

39.5 The Māori Land Court assessed compensation for the takings based on "fair valuations" and it was paid soon after.

40. Taking all of the circumstances above into account, the Crown considers that this compulsory acquisition was Tiriti/Treaty-consistent. The Crown says the 1961 takings were an appropriate balance of kāwanatanga and rangatiratanga in light of all the circumstances, particularly given the emerging and increasing range and velocity of modern weapons (and the necessary safety precautions inherent in training with them).

1973 TAKINGS

Introduction

41. The Crown made submissions about the 1973 takings in its opening submissions and in its landlocked lands (tranche 2) closing submissions. In particular, the Crown conceded that:

41.1 it took nearly 8,000 acres of Māori land for the Waiōuru Military Training Area in 1973. The Crown, in breach of te Tiriti o Waitangi/Treaty of Waitangi and its principles, failed to consult with or adequately notify all of the Māori owners of the Ōruamatua-Kaimanawa 2C2, 2C3, 2C4 and Ōruamatua-Kaimanawa 4 blocks before these lands were compulsorily taken under the Public Works Act 1928.[43]

42. The Crown further conceded that:

42.1 its decision to take all of Ōruamatua-Kaimanawa 4 without first adequately assessing how much land was in fact required for military training purposes meant that it took more of the block than was reasonably necessary.[44]

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43 Crown Opening Submissions (Part 1) (Week 9), Wai 2180, #3.3.30, at [23].

44 Crown Closing Submissions on Landlocked Lands (Tranche 2), Wai 2180, #3.3.44(d), at [60.1].

43. These concessions were made in the context of Crown actions which exacerbated access difficulties for Taihape Māori. The Crown closing submissions on landlocked lands indicated that the public works aspects would be addressed in further submissions. Accordingly, more detail and analysis about the 1973 takings is set out below. In short, the Crown confirms these concessions but does not extend them further.

Facts and evidence

44. In 1971, the Army decided it required more land for training purposes to be able to make better use of its existing lands (with regards to firing ranges, etc) and particularly, it seems, because the Tongariro Power Scheme had disrupted the Army's use of a significant area of the training grounds.[45] A narrow "neck" separating the western and eastern sections of the military training area resulted from the operational restrictions arising from the Moawhango Dam and the creation of Lake Moawhango on land previously available for exercises.[46] The Crown has conceded in submissions for Issue 17: Tongariro Power Development Scheme that the Crown did not meet its Tiriti/Treaty obligations by failing to consult Taihape Māori prior to the establishment of that scheme.

45. Construction of the power scheme began in the mid-1960s. The Army's initial response to the changed situation in the southern area of the training ground was to seek temporary firing rights over land on the northern and eastern boundaries of the training ground. In March 1969, firing rights for a period of ten years were obtained by agreement with Ōhinewairua Station. An attempt was made to obtain firing rights over adjacent Māori land, but this proved impossible due to multiple ownership.[47]

46. By the beginning of the 1970s, the Army had a clearer picture of the impact the power scheme would have on its operations and it sought to acquire

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45 Wai 2180, #A09, at 89.

46 See Crown closing submissions on Issue 17: Power Development Schemes for Crown position on those developments.

47 Wai 2180, #A09, at 90–91. See, also, Ministry of Works to Waiouru Command, 31 March 1969; Ministry of Works to Ministry of Defence, 5 June 1969 in AALJ 7291 W3508 16 203/192/13 part 1, Buildings: Waiouru – Land: Army Requirement to Additional Land, Oruamatua, Kaimanawa Blocks; Negotiations Mr N Koreneff and Others, 1970-1972, ANZ, in Wai 2180, #A09(a)(2), Supporting Documents vol 2, at 335-342 (including, also, correspondence with local office of Department of Māori Affairs and Aotea District Māori Land Court).

several Ōruamatua-Kaimanawa blocks on the northern and eastern side of the training ground.[48] All but one of these blocks was held by Māori at the beginning of 1970. The relevant files suggest that the attempt by a certain Mr Koreneff to acquire significant portions of the adjacent Māori land may have spurred Defence attempts to secure that same land.

47. The initial assessment by Defence of its need for additional land was set out in a report by the Commander of Waiōuru, Colonel Poananga.[49] Colonel Poananga's advice to Home Command explained that the development of Lake Moawhango as part of the Tongariro Power Development Scheme had impacted adversely on the Army's training area. In fact, the encroachments of the scheme had exacerbated already existing issues:[50]

> Even without the limitations imposed by the lake, the training area is not large enough to allow tanks to shoot at maximum range without closing most of the training area to other units. Arrangements have also been necessary to provide for ricochets outside the training area.
>
> …
>
> The formation of the Moawhango Lake has resulted in the loss of an area much larger than the lake itself. The area lost was the most suitable for field firing and fire and movement training because of the nature of the ground and ease of access.

48. Colonel Poananga set out the alternative lands considered for acquisition. That exercise assessed the pros and cons of all the lands adjoining the exercise area as potential land to meet the identified needs. The Colonel explained that no land around the current boundaries of the Defence lands would be a "suitable alternative to the land lost to the Moawhango Lake". The best available was on the north-eastern boundary, but even then roading development would be necessary to enable best use. The Colonel noted that private interests (Koreneff) were also looking to acquire that land and therefore recommended that immediate action be taken to acquire it as any

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48 Wai 2180, #A09, at 93–94.

49 Wai 2180, #A09, at 92–94. Commander, Waiōuru, to Home Command, 19 February 1971, AD-W 6 W2600 11/6 part 3, ANZ, in Wai 2180, #A09(a)(1), Supporting Documents vol 1, at 106–109.

50 Commander, Waiōuru, to Home Command, 19 February 1971, AD-W 6 W2600 11/6 part 3, ANZ, in Wai 2180, #A09(a)(1), Supporting Documents vol 1, at 106 and 108.

"sufficient capital investment" by those private interests might prevent acquisition by Defence.[51]

49. The advice outlined various alternative takings around the Defence land boundaries, but in essence considered that all land apart from that on the north-eastern boundary was considered unsuitable for military training purposes (as a replacement for land lost to the Moawhango Lake/ Tongariro Power Development Scheme).[52] The advice stated that land had been acquired in the past from Ōhinewairua Station, but that the station had resisted more recent efforts to acquire more. Since that station land had been developed for farming, it was also considered "inappropriate" to take additional land.[53]

50. In October 1971, the following blocks were recommended for acquisition:

Ōruamatua-Kaimanawa 1X:	16,277 acres, 2 roods
Ōruamatua-Kaimanawa 2C2:	1,570 acres
Ōruamatua-Kaimanawa 2C3:	1,571 acres
Ōruamatua-Kaimanawa 2C4:	1,353 acres
Ōruamatua-Kaimanawa 4:	3,452 acres
Total takings:	24,224 acres, 2 roods[54]

51. In separate but related developments, the acquisition of large areas of Ōruamatua-Kaimanawa land by a European angered Māori, including Hepi Te Heuheu.[55] Māori groups protested at Parliament about Koreneff's actions and the legislation that had allowed him to acquire a controlling stake.[56]

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51 Commander, Waiōuru, to Home Command, 19 February 1971, AD-W 6 W2600 11/6 part 3, ANZ, in Wai 2180, #A09(a)(1), Supporting Documents vol 1, at 108–109.

52 Wai 2180, #A09, at 93, 107. The one possible exception was land on the "Southern Boundary… if the southern boundary was extended to a west-east line along the 36 Northing, some of the restrictions on the present tank range would be removed".

53 Wai 2180, #A09(a)(1), Supporting Documents vol 1, at 107–108. Commander, Waiōuru, to Home Command, 19 February 1971, AD-W 6 W2600 11/6 part 3, ANZ.

54 Wai 2180, #A09, at 94; citing District Officer to Head Office, 15 October 1971, MA 1 90 5/5/296 part 1, Tongariro Power Development Scheme, Crown Purchase – Defence Training Area (Nicolas Charles Koreneff), 1971-1973, ANZ Wellington.

55 Wai 2180, #A09, at 96. Mr Hepi Te Heuheu is described as the paramount chief of Ngāti Tūwharetoa.

56 Wai 2180, #A09, at 96.

52. Between 1971 and 1973, Defence Headquarters and the Ministry of Works, in dealing with the proposed acquisition (which involved some of the lands Mr Koreneff had purchased or was in negotiations to purchase), appear to have focused their attention primarily on Mr Koreneff (in terms of negotiations and consultation). Koreneff lobbied politicians to fight the acquisition of his land for defence purposes and attracted a great deal of media attention.[57]

53. By October 1971, the Department of Māori Affairs was aware of the proposal to acquire additional land, including Māori land. However, the Department did not request that negotiations take place with the Māori owners of the land involved.

54. The Officials Committee for the Environment reported back to Cabinet in October 1972 on the respective proposed uses of the land by Defence and by Mr Koreneff. The Officials Committee report considered that, on balance, the Defence uses would have less environmental impact than the proposed uses for a hunting and fishing tourism venture (involving, it was supposed, the introduction of deer) by Mr Koreneff. The Committee recorded the reasons for the proposed acquisition by Defence. To substitute for the Moawhango Lake area, the Army needed to acquire other land for "shooting, exercising and manoeuvring", and if this land was not obtained it would severely restrict the use of the Defence lands (and reduce the value of the $30,000,000 investment represented by the Waiōuru training area). The land would be used "for the following essential elements of Army training":

    54.1 An impact and target area for artillery and tank guns.

    54.2 A deployment area for guns firing out of the area and for the establishment of tank firing points.

    54.3 A manoeuvre area for tanks, armoured personnel carriers and armoured reconnaissance vehicles.

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57 Wai 2180, #A09, at 98–99; Brief — Waiōuru land boundaries, Headquarters Army training group Waiōuru, 8 January 1981 at [381].

54.4 A manoeuvre and exercise area for infantry, both on foot and in vehicles.

54.5 An exercise area for arms and services of the Army.

55. The various correspondence between Defence and Māori Affairs shows that Māori Affairs was aware of the takings proposals.[58] For whatever reason, it appears Māori Affairs made no attempt (that is evident from the file record) to contact owners directly; neither did Defence nor the Ministry of Works, whose responsibility it was to conduct the takings process itself. Only after the Proclamation did the Ministry of Works contact owners regarding entry onto lands. Acknowledgements relevant to these Crown actions are set out at paragraph [41] above.

56. On 1 October 1973, Cabinet considered and approved the proposal to compulsorily take the lands required for extension of the Waiōuru training ground.[59] The relevant Cabinet paper from the Ministry of Defence included reference to the Koreneff negotiations, but no mention of communication with the Māori owners. While advising of consultation with various government departments, it made no mention of any report from the Department of Māori Affairs.[60]

57. The Governor General signed the proclamation formally taking the lands for the Crown on 13 November 1973. In total, 24,224 acres was acquired, being 16,277 acres 2 roods of European land (Koreneff) and 7,946 acres 2 roods of Māori land.[61]

58. Neither the owners nor trustees of Ōruamatua-Kaimanawa (**OK**) 4 were consulted or notified of the taking prior to its formal gazetting and, when they did become aware of it, they attempted to retain some of the block

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58 Secretary, Cabinet Committee for Environment to Departments of Forests, Works, Lands, Internal Affairs, Defence, Māori and Island Affairs encl. correspondence between Minister for Environment and Māori and Island Affairs, being dates of 8 May 1972 and 22 May 1972 respectively, in AALJ 7291 W3508 Box 16, 203/192/13, part 1, 1970-72 (Ministry of Defence HQ), ANZ. See Appendix **attached**, at 1.

59 Wai 2180, #A09, at 101–102.

60 Wai 2180, #A09, at 101–102.

61 Wai 2180, #A09, at 102.

and/or get an exchange agreement over their land. Neither of these outcomes eventuated, as Defence retained the total block area.

59. On 21 November 1973, Mrs Julia Morton, a trustee of the OK 4 block, wrote to Minister Rata stating that she was "very disturbed" to discover that the block was "to be zoned Defence under the Public Works Act". She had known about Defence proposals with respect to Koreneff's land but not with respect to OK 4. She referred to the land being used for an airstrip, development of which had cost $8,000 to date. She invited Rata to inspect the land to see its development potential.[62]

60. In December 1973, Minister Rata proposed to the Minister of Forests that the Māori land being taken for Defence, including OK 4, be exchanged for Crown land in Kaingaroa forest – as a way to satisfactorily settle compensation for the takings. The Minister of Defence suggested to Rata on 17 December 1973 that the OK 4 block might be included in the "overall exchange proposals" under discussion between Defence and the Forest Service; he further indicated that part of the OK 4 block might be excluded from the Waiōuru training area.[63]

61. On 15 February 1974, Minister Rata communicated the gist of these inter-departmental discussions to trustee Julia Morton. He confirmed that OK 4 had been taken for defence purposes, and that it might be considered for exchange with other Crown lands as part of "overall exchange proposals" and the rationalising of boundaries between Forest Service and Defence lands. He further indicated the view of the Minister of Defence that an "arrangement" acceptable to the trustees of OK 4 might be possible.[64]

62. On 28 February 1974, the solicitors for the trustees of OK 4 wrote to the Ministry of Works stating that their client trustees had received no prior

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62 Morton to Rata, 21 November 1973 (and attached memorandum with Lakeland Aviation, 6 June 1973), AAQB 889 W3950 104 23/406/1/8 part 1, ANZ Wellington. See Appendix **attached**, at 7.

63 Minister of Māori Affairs to Minister of Forests, undated [December 1973]; Minister of Defence to Minister of Māori Affairs, 17 December 1973, in AAQB 889 W3950 104 23/406/1/8 part 1, ANZ Wellington, in Supporting Documents, Wai 2180, #A09(a)(2), at 685–689; discussed in Wai 2180, #A09, at 103.

64 Minister of Māori Affairs to Morton, 15 February 1974, AAQB W3950 104 23/406/1/8 [part 2], in Supporting Documents, Wai 2180, #A09(a)(3), at 693; outlined in Wai 2180, #A09, at 103–104.

notice of the takings or any communications in the matter from the Ministry. They were instructed to investigate the legality of the taking.[65]

63. State Forest Service officials provided independent evidence supporting this lack of prior knowledge of the taking. The Director-General of Forestry reported that the Director of Lakeland Aviation, which had constructed the airfield on OK 4, learned of the proclamation affecting that block from Forestry Service officials at a meeting on another matter. He then informed one of the trustees of the block: "It was obvious that this news of the taking was genuinely distressing and upsetting to Mrs Julia Morton and her claims that this was the first time she had heard of it appeared to be sincere."[66]

64. Through communications with Minister Rata in December 1973 (including at a meeting in Taupō), it is apparent that the OK 4 trustees had developed an expectation that only part of the block would actually be required for defence purposes (perhaps only 500 acres), and the remainder would be returned.[67]

65. The extant record of official discussions indicates various, somewhat inconsistent, positions or perspectives on whether the entirety of OK 4 was required for defence purposes. These communications include:

65.1 On 15 January 1974, the District Land Purchase Officer expressed concern that the land recently taken might not all be required for defence purposes and, if so, that the Minister of Works should have the opportunity to revoke the proclamation.[68]

65.2 At a meeting between Defence and the Forest Service in July 1974, the Secretary of Defence and the Chief of General Staff acknowledged that the Army "did not really need" the northern

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65 Tripe, Matthews, and Feist to Commissioner of Works, 28 February 1974, AAQB 889 W3950 104 23/406/1/8 part 1, ANZ Wellington, in Supporting Documents, Wai 2180, #A09(a)(2), at 691.

66 Director-General of Forests to Minister of Forests, 15 Jan. 1974, p 2, AAQB W3950 104 23/406/1/8 part 1, Archives New Zealand Wellington.

67 Phillips and Powell to District Commissioner of Works, 15 September 1975, AAQB W3950 104 23/406/1/8 [part 2], ANZ Wellington; [Phillips and Powell to Ministry of Works, March 1976], a copy of this letter has not been located, however its contents are summarised in another letter: Commissioner of Works to Secretary of Defence, 30 April 1976, AAQB W3950 104 23/406/1/8 [part 2], ANZ Wellington, in Supporting Documents, Wai 2180, #A09(a)(3), at 696-97; both cited in Wai 2180, #A09, at 105.

68 Egan to ACLPO, telex, 15 January 1974, AAQB W3950 104 23/406/1/8 part 1, ANZ Wellington, in Supporting Documents, Wai 2180, #A09(a)(2), at 692; cited in Wai 2180, #A09, at 104.

slopes of OK 4, but only needed the block to the ridgeline that ran through OK 4 – meaning that only around 845 acres out of a total of 3,412 acres was actually required. Officials acknowledged at the meeting that it would be "politically unacceptable" for the present to change the status of the block (viz., through an exchange with Forest Service).[69]

65.3 On 30 April 1976, the Commissioner of Works advised the Secretary of Defence of the communication from the solicitors for the OK 4 trustees (to the effect that all but 500 acres of the block would be returned, see above). The Commissioner stated that Minister Rata had no authority to make any undertaking to return Defence land, though he admitted that Rata was probably relying at the time (February 1974, as above) on his communications from the Minister of Defence (of 17 December 1973, as above). He admitted that "Ministerial statements and discussions with other owners by Forest Service staff have given the Maori owners a clear indication that substantial areas are not really required for the purpose for which they were taken", and he warned that Defence might have to justify its stance in legal proceedings. He added that if Defence was to confirm its requirements for the lands, it would not be possible to "release" any parts of them for any other purpose.[70]

65.4 The Secretary of Defence responded to this letter on 7 July 1976, defending the taking of OK 4 and confirming, with supporting reasons, that the land was required for the Waiōuru Military Training Area. He acknowledged the statements that had been made at the Defence and Forest Service meeting in July 1974, but insisted

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69 Record of discussions held at Defence Headquarters on 3 July 1974, AD-W 6 W2600 1 1/6 part 3, ANZ Wellington, in Supporting Documents, Wai 2180, #A09(a)(1), at 111–116; cited in Wai 2180, #A09, at 104–105. It can be noted that much of the area of OK 4 in the maps annexed to these meeting minutes lies to the north of the effective boundary of the Waiōuru MTA being proposed – that is, after adjustments with Forest Service. This is another indication that officials considered OK 4 not really necessary for defence purposes.

70 Commissioner of Works to Secretary of Defence, 30 April 1976, AAQB W3950 104 23/406/1/8 [part 2], ANZ Wellington, in Supporting Documents, Wai 2180, #A09(a)(3), at 696–697; cited in Wai 2180, #A09, at 105. He also stated that Forest Service proposals to obtain this land and other land taken for defence purposes compulsorily (including Ōhinewairua Station land) indicated that it was not all required for defence purposes; however, the Secretary of Defence (in the next letter cited, below) said that Defence had refused any request to utilise or transfer Defence land for any other purposes.

that the Army was now using the block and that no decision to dispose of the land would be made "for a number of years"; it was necessary, furthermore, for the Army to acquire experience of the changed dimensions of the Military Training Area and allow also for future weaponry that had greater range.[71]

66. In late 1976, it appears that the solicitors for the OK 4 trustees were advised that the Army required the whole of the block.[72] In 1977, they began the compensation settlement process. However, they also opposed the designation of OK 4 for defence purposes in the Taupō County Council planning hearings in March 1978. At hearing, the trustees' solicitor referred to the trustees' communications with Minister Rata that indicated only part of the land was required; he warned of a future claim (and grievance) if the land was ever used for non-defence purposes. Council members expressed sympathy for the OK 4 objectors and resolved to inform the Minister of Works of its concern that the owners were not consulted prior to the taking.[73]

67. Mr Pennefather's evidence reviewed some of the contemporary discussions about the intended use of this block and the suggestions that exchanges might occur post-taking between Defence and the Forest Service to rationalise boundaries. Mr Pennefather's conclusions on the "net effect" of this evidence was that:[74]

    67.1 The Trustees of OK 4 block would have had a genuine expectation that part of the OK 4 block would not be required for military purposes once boundary adjustment discussions had occurred with other Crown agencies (namely, the Forest Service).

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71 Secretary of Defence to Commissioner of Works, 7 July 1976, AAQB W3950 104 23/406/1/8 [part 2], ANZ Wellington, in Supporting Documents, Wai 2180, #A09(a)(3), at 698–703; cited in Wai 2180, #A09, at 106. The several references to Forest Service wanting the land to extend their walking track eastward are, however, indications that an exchange was in contemplation at this period – as is the reference to a decision on transfer of OK 4 being 'in abeyance', and the proposed exchange maps annexed to the July 1974 meeting (referred to above).

See also Wai 2180, #A09, at 115 for a colour version of one of these exchange maps.

72 Wai 2180, #A09, at 106–107.

73 Wai 2180, #A09, at 107.

74 Wai 2180, #M03, at [39].

67.2 Ministers/officials were inconsistent in their messages and actions between themselves and to Māori in relation to the block.

67.3 The Ministry of Defence and NZ Forest Service had complicated the issue with their different land acquisition agendas and were to some extent in competition with one another.

67.4 The military justification for the entirety of the OK 4 block was not adequately tested at the time.

68. Acknowledgements relevant to these Crown actions are set out at paragraph [41] above.

69. Compensation was assessed differently for the 1961 takings because the process for determining compensation for Māori land became the same as the process applying to general land. That is, it was settled by negotiation or determined by the Land Valuation Court.[75] Competing valuations were undertaken for OK 2C3 and 2C4 and then a settlement was finalised on the basis of agreed values.[76] Compensation was then paid to the Māori Trustee in July 1979, which included interest and costs.[77] For OK 4, settlement was not reached, meaning the Valuation Court was called on to decide compensation.[78] That compensation (which included compounding interest) was paid in November 1982.[79]

Conclusions on 1973 compulsory takings

70. The Crown submits:

70.1 The evidence supports a conclusion that the analysis and reasoning for the expansion of the training ground in 1973 was in the national interest. As outlined above, Colonel Poananga's initial assessment was followed by a series of internal briefings, memoranda and further assessments of Defence requirements, including the related

75 Wai 2180, #A09, at 108.

76 Wai 2180, #A09, at 110.

77 Wai 2180, #A09, at 110.

78 Wai 2180, #A09, at 110.

79 Wai 2180, #A09, at 110. The reasons for the delay are not clear. The Trustees for OK 4 applied to the Land Valuation Court in October 1978 and the case was not heard until July 1982.

issue of public access to the Moawhango Lake area (and how that would affect adversely Defence use of that area). In the face of the public scrutiny of Defence actions, and the Defence rationale for acquiring the Koreneff/Māori lands, officials and Ministers were arguably more attuned to the need to provide a clear justification for the prospective takings.

70.2 However, as previously conceded, the owners were not informed or consulted about the taking of their land prior to the formal proclamation in November 1973.

70.3 The evidence of internal official and Defence staff correspondence indicates that, at the time of the 1973 taking (and for a period following), leading Defence personnel did not consider that the greater portion of the OK 4 block was in fact required for defence purposes. The evidence from Major Hibbs and Colonel Kaio, however, is that the land has subsequently been used for the purposes for which it was acquired.

70.4 The evidence demonstrates there was careful consideration given to alternatives in terms of alternative sites and tenure, however, because of the unique defence requirements, full title acquisition specifically of this land was considered necessary.

70.5 There is evidence that a land exchange was considered as compensation for the public works takings. Further, the OK 4 trustees were given the impression that other Crown land would be given in exchange for the part of the block that was needed for defence purposes (including through official and ministerial correspondence, including face-to-face meetings with the Minister of Māori Affairs), however that did not eventuate and compensation was pursued through other means. Monetary compensation for each taking was assessed and paid (and included compound interest from the date of the taking – which was larger than the value of the land itself).

71. Taking into account all of the circumstances above, and in light of the previous concessions made on this matter, the Crown considers the 1973 compulsory public works acquisitions and subsequent dealings were not Tiriti/Treaty-consistent in respect of the matters conceded. Concessions regarding this are set out at paragraph [41] above and repeated here.

72. The Crown concedes that:

72.1 it took nearly 8,000 acres of Māori land for the Waiōuru Military Training Area in 1973. The Crown, in breach of te Tiriti o Waitangi/Treaty of Waitangi and its principles, failed to consult with or adequately notify all of the Māori owners of the Ōruamatua-Kaimanawa 2C2, 2C3, 2C4 and Ōruamatua-Kaimanawa 4 blocks before these lands were compulsorily taken under the Public Works Act 1928.

73. The Crown further concedes that:

73.1 its decision to take all of Ōruamatua-Kaimanawa 4 without first adequately assessing how much land was in fact required for military training purposes meant it took more of the block than was reasonably necessary.

74. Having considered the claims and evidence relating to public works acquisitions in this inquiry, in light of the matters discussed in Part One of these submissions above, the Crown considers the compulsory acquisition of lands within the inquiry district for defence purposes otherwise complied with the obligations and standards Crown actions are subject to under te Tiriti o Waitangi/the Treaty of Waitangi.

75. The Crown wishes to acknowledge the impact of the compulsory takings of land on Taihape Māori in 1961 and 1973 – their evidence has clearly set out the impacts on their customary relationships with the land, as well as the effect on their economic development. The contribution of those lands to critical national interests has come at a significant cost to them.

76. In addition, the Crown acknowledges that, when undertaking activities on Waiōuru Defence lands, it must better recognise the history of the land and

its connection to Taihape Māori, as well as the Crown's contemporary partnerships with Taihape Māori in relation to the land.

77. NZDF officers and witnesses made commitments in this regard during the hearing of their evidence. Counsel is instructed that NZDF have subsequently implemented various measures. These relationships and processes are, and will be, ongoing.

7 May 2021

R E Ennor / MGA Madden
Counsel for the Crown

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