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

BEFORE THE WAITANGI TRIBUNAL

WAI 2180

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

**THE TAIHAPE: RANGITĪKEI KI
RANGIPŌ DISTRICT INQUIRY**

**CROWN CLOSING SUBMISSIONS IN RELATION TO
ISSUE 19: CULTURAL TAONGA**

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TABLE OF CONTENTS

INTRODUCTION	2
CROWN APPROACH TO THESE SUBMISSIONS.....	2
ISSUES	3
TAONGA.....	3
Issue 1: In general, has the Crown introduced its own institutions into the inquiry district contrary to the wishes of Taihape Māori? If Taihape Māori expressed their opposition, how did the Crown respond? Did the Crown breach any Treaty duties by introducing such institutions?	3
Issue 2: Are the following taonga of Taihape Māori, in terms of the Treaty?	5
Issue 3: In respect of any of the above that are taonga:.....	6
Issue 4: What is the Crown’s duty with respect to tikanga Māori under the Treaty? Has tikanga been given effect or otherwise acknowledged by the Crown in Taihape?	8
Issue 5: To what extent, if any, did legislation enacted by the Crown interfere with the retention and development of tikanga for Taihape Māori?.....	10
Issue 6: To what extent and in what ways, if any, have Crown legislation, policy and practice affected the tikanga of traditional Taihape Māori leadership structures?.....	11
Issue 7: What was the impact of land alienation on the tikanga of Taihape Māori? Did the Crown consider the effect of the impact of land alienation on the tikanga of Taihape Māori, and if so, what conclusions did it draw?	12
Issue 8: Is the knowledge held by Taihape Māori of traditional methods of sustainable harvesting and utilisation of flora and fauna a form of tikanga? If so, what duty does the Crown have to ensure that such aspects of the tikanga of Taihape Māori are maintained by providing for the continuation of these practices?	13
Issue 9: What is the Crown’s role with respect to the tikanga of Taihape Māori today?.....	13
TRIBAL IDENTITY.....	13
Issue 10: What is the Crown’s duty to preserve the tribal identity of Taihape Māori whānau, hapū and iwi?	13
Issue 11: To what extent, if any, did the acts and omissions, legislation, policies and practices of the Crown, interfere with, undermine, redefine or even replace the tribal identities of Taihape Māori?	13
Issue 12: What is the impact on the respective Taihape Māori whānau, hapū and iwi of the loss of their tribal identity since 1840?	13

INTRODUCTION

1. The Tribunal's statement of issues under this topic frame 'cultural taonga' broadly. The issues range across political engagement; Crown institutions coming into the area; the definition and scope of taonga; tikanga; mātauranga concerning customary harvest and use; tribal identity and the impacts of land alienation on these matters. Many of these matters sit at the centre of te ao Māori and are located firmly within the Māori sphere.
2. As such, the Crown's role in relation to such matters is restricted, and is ideally to be defined in partnership with Māori – generally on a case-by-case basis. Proper approaches to taonga, tikanga, mātauranga Māori, and identity are specific not general. For example the Crown acknowledges that it is for the iwi, hapū and whānau of Taihape to determine what their particular tikanga is. There are of course also national or general aspects to these issues and they are addressed in these submissions.
3. The loss and revitalisation of Taihape Māori tribal identities has formed a central thread in the claimants' evidence to this inquiry and is acknowledged in these submissions.
4. The Crown wishes to acknowledge the work currently under way (outside of this inquiry) with Māori to respond to and progress the recommendations made by the Waitangi Tribunal in *Kō Aotearoa Tēnei* (the Wai 262 Report) and its relevance to all of the matters covered in these submissions. That report closely considered many of the matters raised within this topic. Some recommendations in that report have been acted upon (in whole or part). The workstreams currently underway for Te Pae Tawhiti (the Crown's whole-of-government approach to address the issues raised in Wai 262) will contribute to further recommendations being progressed – including those related to taonga.

CROWN APPROACH TO THESE SUBMISSIONS

5. The claimant generic submissions on this topic address these matters in an expansive manner and revisit issues addressed in other submissions through the particular lens as 'cultural taonga'. The Crown's duties with respect to taonga, tikanga and tribal leadership structures and identity are traversed in other submissions given the close intersection of the matters and are thus

not duplicated here. These submissions should accordingly be read with Crown closing submissions for Issues 1, 2, 3, 4, 10, 11, 12, 16, 18, and 21 – constitutional issues, political engagement, native land laws, Crown purchasing, local authorities, landlocking, twentieth century land alienation, environment, education and social services, and wāhi tapu.

6. The Crown does not repeat all of the acknowledgements and concessions made in those submissions but they are nonetheless relevant to these issues. For example, the Crown has acknowledged its failure to protect tribal structures constituted a breach of te Tiriti/the Treaty – this is of direct relevance to the issue of tribal identity.
7. Some of the issues raised in Issue 19 relate to matters of national application, and in that regard the Crown largely adopts its closing submissions made in the Te Rohe Pōtae inquiry. The Crown presented evidence in that inquiry on behalf of the Ministry for Culture and Heritage and Heritage New Zealand Pouhere Taonga.
8. Throughout these submissions the Crown quotes evidence from Mr Neville Lomax on the questions raised by the Tribunal. The Crown acknowledges however that Mr Lomax was far from being the only tangata whenua witness to give such evidence.¹

ISSUES

Taonga

Issue 1: In general, has the Crown introduced its own institutions into the inquiry district contrary to the wishes of Taihape Māori? If Taihape Māori expressed their opposition, how did the Crown respond? Did the Crown breach any Treaty duties by introducing such institutions?

9. Over time the Crown has established a range of institutions in the Taihape inquiry district, as it did in other areas of New Zealand. Those institutions included, but were not limited to, the Native Land Court, various Crown departments and agencies, Māori Land Boards, Māori Land Councils, and legislation that provided for local government structures.
10. These institutions were not introduced contrary to the wishes of Taihape Māori. See submissions on Issues 1 and 2 on the varied political stances

¹ See for example #H10; #C01; #E02; #F05; #G07; #L02; #K09; #K11; #K13; #L02; #I07; #K01.

taken by Taihape Māori prior to the Native Land Court commencing operations in the inquiry district. See submissions on Issues 3 and 4 for an account of how the Native Land Court was introduced into the district. The initial applications to the Court involved purely private transactions. Those submissions also set out concessions of Tiriti/Treaty breach and acknowledgements concerning consultation, Crown conduct under the nineteenth century land laws – including the Crown’s responses to concerns of Taihape Māori about the operation of the Court (both generally and at a case level).

11. The broad purpose of introducing these institutions has been to further the settlement and development of New Zealand, for the mutual benefit of Māori and non-Māori and to enable the Crown to carry out its governance responsibilities effectively and efficiently. The introduction of such institutions *per se* is not inconsistent with the Crown’s kāwanatanga right under Article I; nor is it necessarily inconsistent with Tiriti/Treaty principles.
12. The Crown notes that there was, and continues to be, a range of views among Taihape Māori as to the introduction of these institutions and governance entities. The Crown acknowledges that, in establishing these institutions and entities, it did not consult specifically with Taihape Māori. However, input from Māori politicians and leaders did influence the Crown’s decision-making for some of the institutions.
13. The Crown submits that any assessment of the way in which the Crown introduced particular institutions into the inquiry district, including Māori attitudes expressed at the time and the Crown’s response to any concerns they might have raised, must be considered on a case-by-case basis having regard to the prevailing circumstances of the time. These issues are therefore dealt with in submissions on specific issues, including constitutional and political engagement (Issues 1 and 2); Native land laws (Issue 3), Land Boards and Native/Māori Trustee (Issue 7 – and to a lesser extent Issue 12); and local government (Issue 10).
14. Crown agencies presumably come within the definition of “institutions” for this issue. The Crown has presented evidence from four government

agencies that are active within the inquiry district: Te Puni Kōkiri, New Zealand Defence Force, Department of Conservation, and the Ministry of Education. Of those, the only one to provide evidence as to how it became established in the district was the New Zealand Defence Force. Mr Pennyfather’s evidence addressed in some detail the creation of the Waiōuru Military Area. Submissions on Issues 11 and 15 address these events in some detail – including the benefits to Taihape Māori of the base being located within this district and the benefit to the nation that the base represents. The costs to Taihape Māori for that national benefit are acknowledged in those submissions as are concessions as to Tiriti/Treaty breach where consultation did not occur with land owners prior to public works acquisitions and where more land was taken than had been demonstrated as being needed.

Issue 2: Are the following taonga of Taihape Māori, in terms of the Treaty?

- a. Wāhi tapu, urupā and sites of significance; and**
- b. Rongoā, and its application.**

15. Matters relating to wāhi tapu, urupā and sites of significance are addressed in the Crown’s closing submissions on Issue 21. The Crown has recognised that taonga may include particular wāhi tapu sites (being places of particular spiritual, emotional or historic significance to Māori).
16. The Crown has also acknowledged that rongoā and its application is a taonga in its closing submissions on Issue 16A: Environment (land) – again, the precise assessment will be case specific though (turning on particular relationships, mātauranga, practices).²
17. The Crown otherwise submits that whether a resource, place or thing is a taonga is a matter that can be tested,³ and respectfully refers the Tribunal to the Crown’s closing submissions on Issue 16A at [24]–[34].
18. The Crown also acknowledges the “portable taonga” including those Taihape Māori have shared or otherwise displayed during this inquiry. The significance of those taonga to Taihape Māori is acknowledged – as are the booklets created by claimants to record that treasure.

² At [159].

³ Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011) vol 1 at 269.

Issue 3: In respect of any of the above that are taonga:

- a. **What was the Crown's duty, if any, to protect those taonga?**
- b. **Has the Crown met its duty? If not, what specific examples are there of legislation, policy and practices of the Crown that have failed to protect the taonga?**

19. The claimants say:

19.1 the Crown failed to protect cultural taonga – this failure is predicated on a lack of understanding of the physical, cultural and spiritual connection of Taihape Māori to their taonga;

19.2 the Crown caused them to be estranged from their lands, wāhi tapu, cultural heritage sites;

19.3 taonga of Taihape Māori were lost, destroyed, damaged;

19.4 the Tohunga Suppression Act 1907 affected them in devastating ways (including threats to moko kauae by tohunga – although other factors also affected this practice – Maurini Haines-Winiata discusses in her evidence the impact of Christianity on moko kauae and the perception of various missionaries who misunderstood the practice);⁴

19.5 the transmission of mātauranga Māori, wisdom, and significant cultural taonga has severely diminished over time for Taihape Māori; and

19.6 the Crown has fallen short on its partnership obligations to actively protect taonga and the kaitiaki relationship between Taihape Māori and their taonga and failed to uphold the principle of tino rangatiratanga.

20. The Crown acknowledges that Article II of te Tiriti/the Treaty requires it to take steps that are reasonable in the prevailing circumstances to actively protect the taonga of Taihape Māori. Whether the Crown has fulfilled its Tiriti/Treaty obligations requires a careful assessment of what the taonga of Taihape Māori are and a case-by-case assessment of the situation, having regard to the specific circumstances. The Crown notes, for example:

⁴ Wai 2180, #C01, at [16]–[20].

- 20.1 While the Crown's duty of active protection may extend to the enactment of legislation and policies to prevent the loss, modification or destruction of taonga, such provisions can only go so far to prevent interference with them. There are a variety of factors that have an impact on the taonga of Taihape Māori, and the Crown does not have the ability to control or influence all of those factors.
- 20.2 Whether a taonga has been revealed to, or is known by, the Crown will affect the degree to which protection can be afforded by the Crown.⁵
- 20.3 Most cultural heritage places and taonga in New Zealand are not on lands owned by Māori, which poses difficulties for their protection. The Crown has acknowledged the significant contribution of its own actions to land loss of Taihape Māori and the restricted access resulting from lands being landlocked in submissions on Issues 3, 4, 5, 11 and 12.
- 20.1 The Crown is also required to consider and balance a complex range of other interests, including for example the interests of private land owners, and the community as a whole (subject always to Tiriti/Treaty responsibilities).
21. As to the Crown's duties to protect the particular taonga identified by the Tribunal above (wāhi tapu, sites of significance, urupā, rongoā), the Crown refers the Tribunal to:
- 21.1 The Crown's acknowledgements and concessions in Issues 4 and 11 concerning the Crown's role in Taihape Māori becoming akin to being landless, and in not being able to access over 70% of the land that has been retained (including some wāhi tapu, sites of significance and urupā). The Crown recognises that these matters have contributed significantly to Taihape Māori becoming estranged from their lands, wāhi tapu, and cultural heritage sites.

⁵ As acknowledged in the Hauraki Report and in Wai 262 the Crown cannot be expected to act in relation to taonga it is not aware of. The Crown also acknowledges though that where relationships of trust are built up, creative and constructive solutions can be arrived at through partnerships between Crown and tangata whenua (as demonstrated to some extent with the measures now taken in relation to Waiū Pa).

- 21.2 The Crown’s closing submissions on Issue 16A at [165]–[170] outlining the steps taken by the Crown to support Māori in the use of rongoā practices and acknowledgements in those submissions of the effects of environmental degradation of lands and waterways – these matters also impact the rongoā practices.
- 21.3 The Crown’s closing submissions on Issue 21 in relation to wāhi tapu, urupā and sites of significance: including the specific examples of Waiū Pā, Auahitotara, Te Koutu/Awarua Pā, and Pokopoko.
22. The claimants’ submissions on the Crown’s regulation of tohunga and the suppressive effect that the Tohunga Suppression Act 1907 (**TSA**) had on this practice reflect submissions made in previous inquiries. The Crown’s response is similarly to refer back particularly to the detailed consideration of the TSA as part of the Tribunal’s Wai 262 inquiry into New Zealand law and policy affecting Māori culture and identity.⁶ The Crown respectfully submits (as it did in the Te Rohe Pōtae inquiry), that the Wai 262 findings remain appropriate as the evidence and legal submissions made in this inquiry are not substantially different from that considered closely by the Wai 262 panel, and thus substantially different findings are not warranted.

Issue 4: What is the Crown’s duty with respect to tikanga Māori under the Treaty? Has tikanga been given effect or otherwise acknowledged by the Crown in Taihape?

23. As above, the Crown accepts that aspects of tikanga Māori can be taonga; an assessment which must be undertaken on a case-by-case basis. The Crown’s duties to protect such taonga are addressed above.
24. The Crown considers that Māori are primarily responsible for the development, regulation, control and use of their tikanga and Mātauranga Māori. That may be self-evident, but it is critical to acknowledge.
25. Likewise, it is, in the first instance, for Taihape Māori to advise what Tikanga Taihape means today. The broad question and application of Crown responsibility to protect particular Māori interests or customs cannot

⁶ Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011) vol 2.

meaningfully be answered in the abstract. The Crown nevertheless accepts that its awareness of, and responses to, these matters has differed over time.

26. In light of this and the relationship between tikanga and all aspects of Māori life, much of the Crown's response to issues relating to tikanga, and examples of the Crown giving effect to tikanga in Taihape, are to be found in other parts of the Crown's closing submissions. The Tribunal is referred, for example, to the Crown's closing submissions on Issue 16A: Environment (land) at [36], [70], [74], [129], [168] and Issue 18: Education and Social Services at [20].
27. The Crown acknowledges that issues associated with tikanga have been a constant theme in the evidence of tangata whenua throughout this inquiry. The Crown recognises that tikanga is an important aspect of Māori culture and influences many facets of Māori life, including health, environmental management practices, tribal organisation and land tenure. Prior to European settlement, Taihape Māori had a range of tikanga practices that regulated all aspects of their lives, and that tikanga is still practised today.
28. Although tangata whenua evidence clearly establishes that tikanga remains an important aspect of life for Taihape Māori, the Crown recognises that elements of that tikanga may have changed over time. Indeed, the effects of changes in tikanga, and the loss of some tikanga, were recurring grievances expressed in tangata whenua evidence.⁷
29. That elements of tikanga may have changed over time is not surprising – as claimant counsel, and Dr Jackson have stated, tikanga is not static. Rather, tikanga is dynamic, and adapts to new circumstances, technologies, and knowledge. Sir Hirini Mead has highlighted the dynamism of tikanga, noting:⁸

Several tikanga, including the tangihanga ... have endured through time ... There are others such as the muru which have gone out of favour and are no longer practised. Then there are new situations where tikanga Māori has been applied quite successfully such that a new protocol is established. Examples are the launching of books written by Māori authors, opening art exhibitions, introducing the tapu of learning into tertiary institutions, opening overseas buildings,

⁷ See for example #H10; #C01; #E02; #F05; #G07; #L02; #K09; #K11; #K13; #L02; #I07; #K01.

⁸ Mead, H M, *Tikanga Maori: Living by Maori Values* (Huia, Wellington, 2003), at 356.

setting up facilities for whanau support groups at hospitals and so on. There are many of them.

30. In responding to issues relating to tikanga, the Crown does not wish to challenge the tikanga of Taihape Māori, nor does it seek to define what that tikanga is. The Crown acknowledges that it is for the iwi, hapū and whānau of Taihape to determine what their particular tikanga is.
31. As such, issues must be assessed on a case-by-case basis and in light of the available evidence. The Crown says that attempts to generalise elements of tikanga as taonga in the abstract are not useful and run the risk of undermining the importance of taonga and/or of specific tikanga. Specific analysis is required. The Crown recognises that alongside the longstanding efforts of Māori and the Tribunal, recent developments in the courts – in partnership with Māori leaders, legal practitioners, litigants and the Crown – are developing models to better reflect tikanga in specific jurisdictions and to inform administrative law principles. For example, one model involves Pukenga Tikanga being convened to determine the applicable tikanga on particular facts.⁹ This is an evolving space.

Issue 5: To what extent, if any, did legislation enacted by the Crown interfere with the retention and development of tikanga for Taihape Māori?

32. As referred to above, tikanga is deeply embedded in so many aspects of Māori life. A correspondingly wide range of legislation is likely to have impacted its development and regulation. Further, as emphasised already, tikanga is inherently adaptive to new circumstances.
33. Attributing any particular change or development to Crown actions or omissions is therefore difficult.
34. The Crown notes, for example, Neville Lomax’s evidence that Ngāti Hauiti tikanga was lost on Rātā Marae from roughly the late 1920s to about 1994.¹⁰ The extent to which this is attributable to Crown actions is not clear (but is addressed further below also). The Crown notes Ngāti Hauiti tikanga and

⁹ For example *Ellis* Supreme Court proceedings and *Edwards* Whakatohea MACA High Court process and decision.

¹⁰ Wai 2180, #I05, at [14]–[25].

kawa has been re-established at Rātā Marae, and tribal leadership reclaimed.¹¹

Issue 6: To what extent and in what ways, if any, have Crown legislation, policy and practice affected the tikanga of traditional Taihape Māori leadership structures?

35. Traditional tribal leadership structures form part of tribal structures more generally. The Crown's submissions on Issues 3, 4 and 6 discuss the ways in which the rapid transformation that took place between 1870 and 1900 in Taihape (in terms of tenure, political realities, land holdings and utilisation, residential patterns) impacted on Taihape Māori.

36. The Crown has made the following concession:

The overall operation of the Native land laws, in particular the awarding of land to individuals, undermined tribal Taihape Māori decision making and made their land more susceptible to partition, fragmentation, and alienation. The Crown's failure to protect tribal structures was a breach of the Treaty of Waitangi.

37. This acknowledgement is further contextualised in the Crown's closing submissions on the Native Land Court.

38. The Crown acknowledges that there will inevitably be other legislation or policy that has impacted upon traditional leadership structures, which may have had a consequent effect on the tikanga relating to such structures, but care is required in assessing these matters. Several examples are put forward by the claimants and technical reports.¹² As noted above, it cannot be said that all change was caused by the Crown; tikanga is dynamic and responds to new situations. These matters cannot be considered in the abstract.

39. Consideration must also be given to striking the correct balance between protection of tribal leadership and the individual rights guaranteed by Article III of te Tiriti/the Treaty. This reinforces the need for fact specific analysis. For example, it cannot be said that the introduction of new native land laws was the only contributing factor to changes in Māori leadership

¹¹ Wai 2180, #I05, at [24]–[25].

¹² For example, #G14 at [101] and [115] where it is stated that the systematic operation of English Law and sexism meant that Wāhine Rangatira were downgraded to a status below their male equals and treated like chattels; #A44 at 280 which describes the historic non-participation of Māori in local government and states this appears to have been the norm where they have been excluded from political influence at a local government level; #A43 at 26 which describes komiti and rūnanga being established, of which the claimants say the role of the Native Land Court wholly undermined their authority and effectiveness.

structures. Indeed, the Crown submits that leadership structures have evolved over time due to a range of factors, some of which predated the introduction of the Native Land Court into the inquiry district. Such factors would have included the interaction of Māori with early settlers, the influence of the Church and missionaries, and new economic influences. A degree of individual action or capacity and desire to act individually existed prior to the introduction of native land legislation. The Crown recognises, however, as it has in the acknowledgements and submissions made in relation to the native land laws in Issue 3 and Crown purchasing in Issue 4, that individualisation of land tenure undermined tribal decision making; the ability of individuals to access the court and to sell interests in land without reference to the collective are critical issues.

Issue 7: What was the impact of land alienation on the tikanga of Taihape Māori? Did the Crown consider the effect of the impact of land alienation on the tikanga of Taihape Māori, and if so, what conclusions did it draw?

40. Neville Lomax described the impact of loss of land on Ngāti Hauiti as follows:¹³

The alienation of Ngāti Hauiti lands, from all the land blocks within its rohe, meant that the remaining whenua was fragmented and could not be developed as a resource for the sustainability of the people as a tribal unit, under the direction of the tribal leadership.

Individual land titles issued to all living members of the iwi, rather than to rangatira on behalf of the iwi, meant that individual owners could be approached to sell their land to the Crown agents, or to existing pākehā landowners or leaseholders.

This meant that the leadership and structure of the tribe crumbled as many of the remaining whānau were unable to continue their traditional food gathering practices, on the lands of their ancestors. They were therefore forced to move to wherever work was available to sustain their families. Those whānau who remained on the land that had been individually allocated to them, found that they were often separated from the farms allocated to other iwi members, meaning that they were forced to rely on their own nuclear whānau efforts to survive, rather than the efforts of the collective iwi.

41. Other evidence also speaks to this experience. There is little evidence of the Crown considering the impact of land alienation on the tikanga of Taihape Māori specifically. Matters relating to land alienation are addressed in detail in other Crown closing submissions, including on Issues 3, 4 and 6.

¹³ Wai 2180, #I05.

Issue 8: Is the knowledge held by Taihape Māori of traditional methods of sustainable harvesting and utilisation of flora and fauna a form of tikanga? If so, what duty does the Crown have to ensure that such aspects of the tikanga of Taihape Māori are maintained by providing for the continuation of these practices?

42. As noted above, the Crown says that it is for Taihape Māori to determine their tikanga and recognises that traditional methods of sustainable harvesting and utilisation of flora and fauna may constitute a form of tikanga. The Crown refers to its submissions on Issue 16A: Environment (land) at [159]–[170] which outline the impact of the changing environmental landscape on traditional activities such as food harvesting, and the Crown’s efforts to protect such traditional activities.

Issue 9: What is the Crown’s role with respect to the tikanga of Taihape Māori today?

43. This is addressed in the Crown’s response to Issue 4 above.

Tribal identity

Issue 10: What is the Crown’s duty to preserve the tribal identity of Taihape Māori whānau, hapū and iwi?

Issue 11: To what extent, if any, did the acts and omissions, legislation, policies and practices of the Crown, interfere with, undermine, redefine or even replace the tribal identities of Taihape Māori?

Issue 12: What is the impact on the respective Taihape Māori whānau, hapū and iwi of the loss of their tribal identity since 1840?

44. The questions immediately above on tribal structures, leadership and decision making are relevant to this question also.

45. The Crown acknowledges the loss of tribal identity the claimants describe at [325] to [333] of their generic closing submissions. Claimants have given evidence as to the importance of identity to their being and their well-being.¹⁴ Claimant generic submissions highlight the:

45.1 loss of relationship and knowledge base regarding hapū connections to the land;

45.2 loss of te reo, loss of tikanga of inter and intra hapū relationships, loss of tikanga associated with marae and whanau;

45.3 loss of traditional ways of living;

¹⁴ For example, Mr Neville Lomax evidence quoted above.

- 45.4 loss of mana, rangatiratanga, culture and identity;
- 45.5 disempowerment and loss of mātauranga in relation to kaitiakitanga; and
- 45.6 loss of wairua of Taihape Māori.
46. The Crown has conceded its failure to actively protect te reo Māori had longstanding and ongoing detrimental effects on the acquisition and use of te reo, including for those within the Taihape Inquiry District. Claimants have given evidence of there being insufficient speakers of Taihape reo Māori for the pae at several marae in the district in the mid-late 20th century and the impact of this on their communities, their well-being and their identity.
47. Neville Lomax describes the impact of loss of tikanga and kawa of Ngāti Hauiti – that neighbouring iwi members with close whakapapa ties and marriages with Ngāti Hauiti members ended up being the speakers on their marae because there was an absence of male speakers from Ngāti Hauiti with the expertise to do so.¹⁵
48. The Crown recognises the relevance of these matters to issues of identity and refers the Tribunal to its submissions and concessions on Issue 20: Te Reo Rangatira.
49. The Crown accepts that it has a duty to protect the tribal structures of Taihape Māori and that and this generally requires the Crown to respect, and not undermine, these structures. In this regard, the Crown again repeats the following concession:
- 49.1 The Crown accepts that the individualisation of Māori land tenure provided for by the native land laws made the lands of Taihape iwi and hapū more susceptible to fragmentation, alienation and partition, and that this contributed to the undermining of tribal structures in the inquiry district. The Crown concedes that its failure to protect these tribal structures was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

¹⁵ Wai 2180, #I15, at [10]–[13].

50. The Crown recognises that the preservation of tribal identity is not a matter within the Crown's control or direct responsibility. Iwi identity is a matter for iwi, hapū, and whānau to determine. These are matters that are internal to the relevant group. As the Tribunal has found previously:¹⁶

How and why Māori choose to affiliate is no business of the Crown: at least in the sense that it is no part of the Crown's role to seek to influence that choice.

51. In making that observation, the Crown recognises (as above) that its actions may have contributed to the loss of Taihape iwi identities. The Crown also accepts that loss of land has harmed the mauri of Taihape Māori and their identity through the loss or compromise of traditional ways of living, culture and identity, kaitiaki roles, access to natural resources and mahinga kai areas.
52. The Crown recognises that Taihape tribal identities have been affected in different ways. Mr Richard Steedman sets out (as was also the evidence of witnesses for the Heritage Trust at the Ōmahu hearing) that Te Ohuake was (one of several) active tribal identities of Taihape Māori. Winiata Te Whaaro made his claim to Mangaohane lands under that identity. When it became apparent that claims under that line were not succeeding in the Native Land Court, Taihape Māori (including Winiata) stopped claiming under Te Ohuake. Mr Richard Steedman states, and the Crown accepts, that this has resulted in that tribal identity largely disappearing until revived in the 1980s.¹⁷
53. The other form of identity loss set out in these submissions is that by the middle of the 20th century, Taihape Māori tribal identities were no longer being recognised as distinct from (albeit related to) adjoining larger iwi.
54. Mr Lomax stated:

The loss of leadership and structure within Ngāti Hauiti started when the Crown refused the request by the rangatira of Mōkai Pātea to set-up tribal collectives within the Awarua and other land blocks, to allow tribal owners to develop their lands and take advantage of the new agricultural economy

¹⁶ Waitangi Tribunal "The Wairarapa ki Tararua Report, Vol 3" (2010), Wai 863, at [14.4].

¹⁷ Wai 2180, #H18.

Refusal of the Crown in the late 1890s to allow Utiku Potaka and his whanau to retain their settlement at Potaka (now Utiku Township)

From that point, Ngāti Hauiti leadership and structures began to breakdown as rangatira realised that the tribes rangatiratanga of their lands and estates were now completely at the whim of the Crown and its agencies.

55. Whilst the Crown may differ on some detail within Mr Lomax's views, the essence of the effect he is describing is not disputed by the Crown. In the particular circumstances of Taihape, the loss of land, and political and economic power experienced by Taihape Māori between 1870 and 1920 appears to have had a direct impact on tribal identities. Evidence (technical, tangata whenua and Crown) showed that in the period between 1920 and 1980 Taihape Māori increasingly identified with their whanaunga through non-Taihape whakapapa lines. This was to the point whereby several claimants gave evidence that they grew up identifying wholly through other iwi and without the knowledge of their identity as distinct Mōkai Pātea peoples.
56. Of course it is also important to acknowledge that Māori tribal identities are not static and were not fixed in 1840 for all time. Rather, Māori tribal identities change and evolve over time due to a wide range of factors, including:
- 56.1 inter-marriage;
 - 56.2 movement and migration of populations;
 - 56.3 individuals' personal preferences and choices; and
 - 56.4 political expediency.
57. There are many examples in the Taihape customary landscape where such matters have led to identity changes.
58. The extent to which any Crown actions or omissions have affected Taihape tribal identity or the recognition of such identity is complicated by the range of non-Crown factors which may have also played a role, such as urbanisation and the way in which Taihape Māori chose to assert their tribal identities.

59. Nonetheless, the evidence is clear that Taihape Māori changes in tribal affiliations identified above, at the very least, correlate with the period in which Taihape Māori landholdings were significantly reduced. Further, as discussed above, their political and economic influence had waned (factors often very directly interrelated).
60. The Tribunal is referred further to the Crown's submissions on Issue 3 and Issue 18¹⁸ which addresses relevant matters. In summary, the Crown accepts that it has duties to protect matters central to identity – te reo Māori, and the tribal structures of Taihape Māori, and this generally requires the Crown to respect, and not undermine, these structures. The Crown has conceded it did not do this, and that that breached te Tiriti o Waitangi/the Treaty of Waitangi.

21 May 2021



R E Ennor / MGA Madden
Counsel for the Crown

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

¹⁸ At [119]–[128].