
**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 2: POLITICAL ENGAGEMENT**

21 May 2021



CROWN LAW

TE TARI TURE O TE KARAUNA

Pouaka Poutāpeta PO Box 2858
TE WHANGANUI-Ā-TARA WELLINGTON 6140
Waea Tel: 04 472 1719
Waea Whakaahua Fax: 04 473 3482

Whakapā mai: Contact:

Michael Madden
Michael.Madden@crownlaw.govt.nz

Barrister instructed:

Rachael Ennor

TABLE OF CONTENTS

INTRODUCTION	2
CROWN ACKNOWLEDGEMENTS AND CONCESSIONS	3
EVIDENCE.....	4
ISSUES	4
ISSUE 1: TO WHAT EXTENT DID THE LEGISLATIVE, JUDICIAL AND ADMINISTRATIVE ARMS OF GOVERNMENT AFFECT THE ABILITY OF TAIHAPE MĀORI TO EXERCISE THEIR TINO RANGATIRATANGA?.....	5
ISSUE 2: IN WHAT WAYS DID TAIHAPE MĀORI SPECIFICALLY DEMONSTRATE THEIR TINO RANGATIRATANGA, AND/OR THE IMPACTS OF CROWN POLICIES ON THEIR ABILITY TO EXERCISE TINO RANGATIRATANGA? WERE THESE DEMONSTRATIONS CONSISTENT WITH THE TINO RANGATIRATANGA PRESERVED TO TAIHAPE MĀORI UNDER THE TREATY? FOR EXAMPLE:.....	6
ISSUE 3: HOW DID THE CROWN RESPOND TO THESE DEMONSTRATIONS OF TINO RANGATIRATANGA BY TAIHAPE MĀORI?.....	7
CROWN AND MĀORI POLITICAL ENGAGEMENT POST-1860.....	7
NGĀTI PIKIAHU AND NGĀTI WAEWAE MIGRATION.....	8
EARLY CROWN PURCHASES AND BOUNDARIES WITH MŌKAI PĀTEA.....	8
THE KŌKAKO AND TŪRANGARERE HUI.....	10
KOHIMARAMA CONFERENCE	13
THE RŪNANGA AND KĪNGITANGA MOVEMENTS.....	14
THE REPUDIATION MOVEMENT, INCLUDING TE KOMITI O PĀTEA	15
THE KOTAHTANGA PARLIAMENT	18
OTHER ENGAGEMENT OF TAIHAPE MĀORI RANGATIRA WITH THE CROWN	19
ISSUE 4: DID TAIHAPE MĀORI AT ANY POINT IN THE NINETEENTH CENTURY ENVISAGE, OR ATTEMPT TO CONSTRUCT, AN AUTONOMOUS DISTRICT WITHIN THE REGION WHOSE AUTHORITY DID NOT DERIVE FROM THE CROWN?.....	21

INTRODUCTION

1. The Tribunal's Statement of Issues records that engagement between Taihape Māori and the Crown began in the district in the 1860s. More active engagement was from the 1870s. This is relatively late compared to the history of political engagement recorded between Māori and Crown in other parts of the country.
2. However, as set out in Issue 1 submissions, some Taihape Māori engaged with the Crown through their relationships and activities outside of the district. Some actively participated in critical historical events that occurred out of the district (including Tiriti/Treaty signing, warfare). Taihape Māori were highly mobile and actively participated in significant hui at Ōmahu, Whangaehu and elsewhere. They also hosted some significant political events within their rohe that were widely attended.
3. As set out in the Crown's closing submissions on Issue 1, Taihape Māori generally recognised the authority of the Queen – but that was not absolute, nor unconditional, nor fixed for all time. As further explored in these submissions, Taihape Māori showed a concern to exercise their authority, which often and increasingly manifested as a desire to assert boundaries or to retain some form of control of the engagement with colonialism. This took particular focus at the Kōkako hui – which was the first real occasion that groups of this district began engaging with these types of issues in this way. That hui, and other actions, are an exercise of rangatiratanga either as a response to or in anticipation of engagement with the Crown. To some extent, the rangatiratanga that Taihape Māori exercised during the 1870s expanded from one that had previously reflected the customary exercise of authority and, importantly, autonomy; to one that increasingly also manifested as attempts to *preserve* customary interests and authority in the face of systems and pressures set up by the Crown.
4. Taihape Māori held a range of positions in relation to most of the political engagements discussed in these submissions (as with any group of people, they did not always share the same opinions or approaches as each other). As set out in the Crown's opening submissions – these positions were at times diametrically opposed (and even on opposite sides of military engagements).

For example, whilst some rangatira called for the reform or abolition of the Native Land Court as part of the Repudiation Movement, others did not. There is also a real sense of dynamism with allegiances shifting rapidly (both to political movements, but also amongst people). Again, to take the example of the Repudiation Movement, Rēnata Kawepō hosted a Repudiation Movement hui but within a very short time had distanced himself from that Movement. As such, it is difficult to record positions of “Taihape Māori” generally, rather than individuals or allegiances within them at particular points in time.

5. However, a real point of political cohesion appeared amongst Taihape Māori in 1892, in response to the Crown’s proposed rail development. Whereas significant differences among hapū of Taihape had been apparent only a few years before (visible, for example, during the Awarua title investigation of 1886), Taihape rangatira developed and communicated to the Crown a much more unified position about the rail proposal in 1892. However, as discussed in Crown submissions on Issue 4: Crown purchasing, the Crown did little to recognise the collective position of Taihape Māori, and subsequently failed to limit its purchasing to the amount of land contemplated by Taihape Māori (and indeed the Crown) in 1892.

Crown acknowledgements and concessions

6. The Crown considers by way of summary that:
 - 6.1 a wide range of actions were taken by Taihape Māori in response to actual or anticipated Crown engagement over time, which increased in terms of calls for particular kinds of institutionalised Māori self-government, though these never amounted to an attempt to create a self-governing district;
 - 6.2 while Taihape Māori did engage with the Native Land Court, and with Crown institutions generally, this was a necessary reaction to the circumstances as they evolved;
 - 6.3 the Crown did not take active steps to recognise or act in accordance with the agreement reached collectively with Taihape Māori in 1892 concerning the amount of land to be purchased.

7. The Crown has recognised through its acknowledgements and concessions on Issue 3 and 4 that its failure to provide effective mechanisms to collectively administer lands, and its failure to protect tribal structures (that were being undermined including by the process of individualising land tenure) were in breach of te Tiriti o Waitangi/the Treaty of Waitangi. The Crown has also acknowledged its misuse of monopoly powers to purchase more lands than it had indicated it needed for the railway and associated settlements was a breach of te Tiriti/the Treaty. These are matters of inherent political import for Taihape Māori – and motivated some Taihape Māori to engage with various political movements.

Evidence

8. The three reports on this inquiry record most relevant to these issues are:
- 8.1 Bruce Stirling, Nineteenth Century Overview report, #A43;
 - 8.2 Tony Walzl, Tribal Landscape Overview, #A12; and
 - 8.3 Terry Hearn, Southern Blocks report, #A07.

ISSUES

9. The various political matters addressed in these submissions are of direct relevance to the constitutional relationship between the Crown and Taihape Māori – ie Issue 1 (as are subsequent events set out in submissions on Issues 3 and 4 in particular). These submissions should accordingly be read together with those submissions.
10. The Tribunal's questions concerning political engagement are directed to three interrelated matters:
- 10.1 How was rangatiratanga exercised from 1840, particularly in anticipation of or in response to the exercise of Crown authority?
 - 10.2 How was Crown authority exercised in response to the exercise of rangatiratanga?
 - 10.3 What was the effect of the exercise Crown authority on rangatiratanga?

11. The way in which the Tiriti/Treaty relationship was expressed by the Rohe Pōtae Tribunal is a helpful framing of wider political engagement between Crown and Māori as it existed at 1840 but with a view also to how matters might develop:

Kāwanatanga was an authority to govern and make laws for the explicit purpose of controlling settlers and preventing the harm that might otherwise arise to Māori from uncontrolled settlement or foreign intervention. The guarantee of tino rangatiratanga was for the existing autonomy and authority of Māori communities in relation to their lands, resources, and all other valued things to continue, whilst Māori also enjoyed the same rights as British subjects. The question inevitably arises: how were kāwanatanga and tino rangatiratanga to co-exist, particularly as the colony developed and circumstances changed?¹

12. These submissions explore that balancing in the Taihape district. These matters collectively (along with submissions on multiple other issues) set out the narrative of how Taihape Māori demonstrated their tino rangatiratanga in terms of political engagement. Further they show where the Crown's actions, exercising its kāwanatanga, sat in relation to that.
13. Although these submissions address the Tribunal's questions in order, it should be noted that the narrative provided under Issue 2.2 below is of relevance to each of the questions.

Issue 1: To what extent did the legislative, judicial and administrative arms of government affect the ability of Taihape Māori to exercise their tino rangatiratanga?

- a. If those arms of government were exercised, could the manner of that use be called an imposition on Taihape Māori?**
b. Moreover, did it compromise the agency of Taihape Māori?

14. The historical record shows that the Crown did not impose itself into the landscape of Taihape – its activities in more populous, accessible areas were earlier and stronger. The Crown became active in the area in the 1870s (which is not to say Crown actions outside of the inquiry district did not impact on Taihape Māori – they most certainly did).
15. In terms of political engagement, Taihape Māori actively engaged in political events outside of the inquiry district pre-1870 and interacted with the Crown through those.

¹ *Te Mana Whatu Ahuru*, at 181.

16. To some extent, the rangatiratanga that Taihape Māori exercised during the 1870s expanded from one that had previously reflected the customary exercise of authority and, importantly, autonomy, in a region with little direct Crown activity occurring (and minimal settler activity); to one that increasingly also manifested as attempts to *preserve* customary interests and authority in the face of systems and pressures set up by the Crown. As the Crown increasingly exercised kāwanatanga powers within the district, the Crown accepts that adversely affected the exercise of tino rangatiratanga by Taihape Māori.
17. In terms of the exercise of kāwanatanga powers within the inquiry district and the direct focus of this question – the “legislative, judicial and administrative arms of the government” – the first direct exercise is through Taihape Māori making applications to the Native Land Court (for ‘Greater Paraekaretu’ and then for Paraekaretu). The Court was not ‘imposed’ directly on Taihape Māori (at least in that the Crown did not encourage the particular application that first put Taihape land before the Native Land Court) but it was available for Taihape Māori use upon their application. The Crown accepts at the more systemic level that it (as set out in its concessions and acknowledgements on Issue 3) the Native Lands Acts imposed a new tenure system – including on Taihape Māori and that Taihape Māori had no choice but to participate in this system in order to protect their lands from the claims of others.

Issue 2: In what ways did Taihape Māori specifically demonstrate their tino rangatiratanga, and/or the impacts of Crown policies on their ability to exercise tino rangatiratanga? Were these demonstrations consistent with the tino rangatiratanga preserved to Taihape Māori under the Treaty? For example:

- a. The Kōkako and Tūranganare hui;
- b. The Rūnanga of the 1860s;
- c. The Repudiation Movement, including Te Komiti o Pātea;
- d. The Kotahitanga Parliament;
- e. The Kīngitanga;
- f. Engagement of Taihape Māori rangatira with the Crown, including:
 - i. The 1890 telegrams concerning the Awarua hearings;
 - ii. The evidence presented to the Rees-Carroll Commission in 1891;
 - iii. The 1892 and 1895 letters relating to land use; and
 - iv. The hui with Premier Seddon at Moawhango in 1894.
- g. The Rātana Church.

Issue 3: How did the Crown respond to these demonstrations of tino rangatiratanga by Taihape Māori?

Crown and Māori political engagement post-1860

18. What follows is a narrative of key moments of political interaction between Taihape Māori and the Crown outside of those already set out in submissions on Issue 1 and outside of the narratives of the land court *per se* (addressed in submissions on Issues 3 and 4).
19. The events set out in this section are relevant to understanding the ways in which the exercise of Crown kāwanatanga powers adversely affected the exercise of tino rangatiratanga by Taihape Māori. Matters such as inter-tribal disputes about purchase boundaries, or strategic occupation of particular sites, in this era must be seen as being either in anticipation of, or response to, the exercise of Crown authority or kāwanatanga. They are relevant to assessing Crown actions in dealing with particular rangatira or groups (in terms of mandate or authority or representivity).
20. The events are of course also demonstrations of Taihape Māori exercising their rangatiratanga – that is exercising their authority, even if in the necessity to defend themselves against anticipated or increasing risks to that authority and autonomy.
21. The Crown acknowledges there is also a dimension of intra or intertribal positioning within these events. That is not, however, the focus of these submissions (nor the business of the Crown beyond the extent to which Crown actions, omissions or policies affected them). The Crown understands such matters will be addressed in the Tribunal’s customary landscape chapter and does not make any submissions concerning such matters.
22. By way of overview, the Crown acknowledges (as it did in its opening submissions) that the evidence shows a very wide range of political views and allegiances within the relatively small population of Taihape – with, for example, people for and against the King; for and against the Queen, for and against Pai Marire or Te Kooti Arikirangi.

23. Before addressing the Tribunal's list, a further expression of tino rangatiratanga not listed that was undertaken by Taihape Māori is the participation in military engagements with, alongside, or for, the Crown (these are addressed elsewhere in Crown submission).

Ngāti Pīkiahū and Ngāti Waewae migration

24. In the early 1840s, Te Heuheu sent Tūwharetoa groups into Mōkai Pātea to preserve tribal lands from further purchase by the Crown or settler (including New Zealand Company) speculators. These groups became known as Ngāti Pīkiahū and Ngāti Waewae and they settled at Otara or Otairi with the agreement of Ngāti Hauiti.²
25. Rēnata Kawepō of Ngāi Te Ūpokoiri interpreted this migratory settlement as encroachment into Ngāi Te Ūpokoiri tribal domains and a hui in around 1848 saw Te Heuheu withdraw and return to the Taupō area. From subsequent events, however, it appears that the Taupō hapū remained in the area.³ Different interpretations of Kawepō's particular role in these events (compared with that of Ngāti Tamakōpiri and Ngāti Whitikaupeka rangatira) were given in later Native Land Court evidence (see Ōwhāoko block Issue 3 submissions).

Early Crown purchases and boundaries with Mōkai Pātea

26. The Crown negotiated the Rangitikei-Turakina purchase in 1849-50 with various interested hapū and iwi. These matters are set out in Crown submissions on Waitapu in Issue 4.
27. The inland boundary of this purchase between the Rangitikei and Whangaehu rivers, negotiated by Donald McLean in 1849 with Ngāti Apa, became the subject of dispute. There are two versions of this issue: the account of McLean at the time; and the account of Mōkai Pātea witnesses later in the Native Land Court.⁴
28. McLean reported that he thought the Ngāti Apa lands extended to Otara, or present day Ohingaiti (middle of the Otairi block). He thought the land was

² Wai 2180, #A12, at 306–310.

³ Wai 2180, #A12, at 316–322.

⁴ Wai 2180, #A12, at 325.

inhabited by ‘a migrative band of Taupo natives’, and made no reference to Ngāti Hauiti. McLean thought Te Oti Pohe and others had no claim to the Pourewa area.⁵ Historians Anderson and Pickens thought there was evidence of McLean mobilising the coastal peoples against the claims of the interior peoples regarding the inland boundary.⁶ In September 1850, McLean recorded that he had fixed the inland boundary at Whauwhau (or Te Houhou). A document was signed by Ngāti Apa, Ngāti Raukawa and Taupō interests confirming the inland boundary; but other groups still disputed this area through 1850-51.⁷

29. The Taihape accounts record the role of Taihape Māori in getting the boundary shifted to the south of Otara. Witnesses in later land court hearings recounted that they put a post at Pourewa, where the stream meets the Rangitīkei river; this post became known as ‘Pou Manuka’.⁸ It was removed by disputing groups, but a second post was installed called ‘Pou Totara’ with the support of Te Oti Pohe.⁹ A combined force was sent south to support these actions, including Ngāti Hinemanu (and those with Te Ūpokoiri affiliation). A third post was put up. A meeting in September 1850 with McLean and rangatira of Whanganui and Raukawa (mentioned above) determined that Te Houhou would be the ‘Queen’s boundary’, citing the evidence of Winiata Te Whaaro.¹⁰ Of note is that Ngāti Pīkiahū and Ngāti Waewae were involved in these contests and aligned with the Taihape groups (they then took up residence at Te Reureu and there are various accounts of why this happened).¹¹
30. Tony Walzl says that ‘all Mokai Patea groups’ took a ‘strong stand’ to halt the boundary of the Rangitīkei-Turakina purchase at Taraketi, a protest that was ‘overwhelmingly successful’.¹² These events sit at the interface of rangatiratanga and kāwanatanga. A postscript to these events is that McLean

⁵ Wai 2180, #A12, at 326–327.

⁶ Wai 2180, #A12, at 329.

⁷ Wai 2180, #A12, at 330–331.

⁸ Wai 2180, #A12, at 332.

⁹ Wai 2180, #A12, at 333.

¹⁰ Wai 2180, #A12, at 333–334.

¹¹ Wai 2180, #A12, at 335–338.

¹² Wai 2180, #A12, at 407.

later negotiated with Ngāti Apa and Ngāti Hauiti for the creation of the Waitapu block (addressed in Issue 4 submissions).

The Kōkako and Tūrangarere hui

31. The Kōkako hui was a large intertribal gathering at Ngāti Rangituhia kainga in the Murimotu district, near Hautapu, in March 1860 (near Waiōuru).¹³ It occurred only a week after the first armed conflict over the Waitara block in Taranaki, and a few months before the Kohimarama conference. The Crown's view of this hui is that it addressed matters internal to the participants (relative boundaries, relative views on land sales etc) that were necessitated to proactively formulate positions on how these people wished to interact with the various opportunities or risks they observed occurring in adjoining districts or elsewhere.
32. That Crown view is consistent with that of Mr Stirling's account of the Kōkako hui in his 'Nineteenth Century Overview' report, that the hui seems to have been prompted by inter-tribal concerns about appropriate tribal boundaries, the boundaries of earlier Crown purchases (Whanganui 1848 and Rangitikei-Turakina 1849). The Crown considers there was less coherence amongst participants on further matters (questions of allegiance to the Kīngitanga movement; or who called the hui etc).
33. The Kōkako hui continued discussions about and claims concerning appropriate tribal boundaries and renewed efforts to place pou at certain boundary points to delineate tribal interests (or inter-tribal boundaries). Martin Fisher and Bruce Stirling interpret these renewed efforts to reinforce tribal boundary markers as part of the wider discussions over whether to place tribal land under the protection of the Kīngitanga to prevent its sale. They write:

A focus of the 1860 hui at Kokako was securing support for the Kingitanga, and for those iwi who gave support to the movement to place their land within the Kingitanga's protective rohe potae (thereby preventing purchase by the Crown), rather than to assert tribal claims to particular lands. The pou whenua may have been intended to mark the pan-tribal Kingitanga rohe potae, rather than the claims of

¹³ Wai 2180, #A43, at 16.

particular tribal groups, as Renata [Kawepo]’s witnesses suggested [in the Mangaohane 1885 hearing].¹⁴

34. However, at least for the Taihape tribes, the Kōkako hui did seem to be about defining their southern (and other) boundaries in relation to other tribes’ assertions of customary interests and earlier Crown purchasing activity (including the 1849 Rangitikei-Turakina purchase) – more than it was about the Kīngitanga. At the 1894 new title investigation and partition for Ōruamatua-Kaimanawa block, Pikirangi of Ngāti Tamatuturu (Ngāti Tama) stated (concerning the Kōkako hui):

Te Oti Pohe was the principal non-landseller in his day. He prevented sales by the N[gati] Apa N[gati] Raukawa N[gati] Kahungunu, and other tribes. He was strongly opposed to land selling. It was owing to his assertions that the Patea lands were not sold by outside tribes. It was he who called a large meeting at Kokako for the purpose of explaining his view as to withholding the land from sale. The tribes who assembled were: the Whanganui, N[gati] Raukawa, Te Arawa, N[gati] Kahungunu, Tuwharetoa and others.¹⁵

35. At the same 1894 hearing, Anaru Te Wanikau of Ngāti Ūpokoiri, Ngāti Kahungunu, Ngāti Whiti and other hapū, stated:

Kokako was held to protest against sales of land by N[gati] Apa, N[gati] Kahungunu, and N[gati] Raukawa, who were for selling the whole of Patea. Kerei Tanguru and Tawhara of N[gati] Kahungunu wished to sell it [as did] Nepia Taratoa of N[gati] Raukawa.¹⁶

36. Te Wanikau referred to a meeting held at Te Reureu with Donald McLean circa 1849-50 when the boundary for Pātea was placed at Te Houhou (or Te Whauwhau). He also referred to a pou at Pourewa placed by Te Oti Pohe and Ihakara Te Raro, around the time of the Kōkako hui. During the 1877 title investigation for the Taraketi block, Ūtiku Pōtaka emphasised the role of Ngāti Hauti and Ngāti Te Ūpokoiri in establishing the Te Houhou boundary mark.¹⁷
37. Later evidence about the Kōkako hui differed over who were the critical players at Kōkako, some referring to Rēnata Kawepō, others to themselves or other rangatira. (See for example the evidence of Ūtiku Pōtaka in the 1885

¹⁴ Wai 2180, #A06, at 180.

¹⁵ Wai 2180, #A06, at 147.

¹⁶ Wai 2180, #A06, at 150.

¹⁷ Wai 2180, #A06, at 150–151.

Mangaohane block hearing.¹⁸) There seem various related but not always consistent narratives: one that emphasised the effort of Whanganui rangatira to retain the mana of their lands and not place them under the tapu or mana of the Kīngitanga, as were many of the Taupō hapū/iwi; another prominent strand emphasised Taihape Māori efforts to prevent land sale by groups to the south and south-west, including defining their tribal boundaries by setting up pou.¹⁹

38. The available evidence suggests participants had various reasons for attending. Some of the principal reasons included defining their political relationship with the Crown and the Kīngitanga, and defining their customary interests or boundaries in relation to those of other tribes and/or in relation to previous Crown purchase transactions with other tribes (such as Ngāti Apa and Ngāti Raukawa). Most of these purposes had little to do with direct Crown action or activity with respect to Taihape lands or people *per se*. The hui was an expression of tribal rangatiratanga concerned largely with matters of intertribal customary interests and authority, with Crown land purchasing and Crown actions in Taranaki as important background issues. Thus the hui was more proactive consideration of issues related to the anticipated functioning of kāwanatanga in the district than direct reaction to specific Crown actions.
39. A subsequent meeting at Tūranganare appears also to have been concerned with fixing tribal boundaries between the Taihape hapū/iwi and the Whanganui hapū and Ngāti Rangi – an issue that was ongoing into the era of Kemp’s Trust (see below).²⁰ Mr Stirling considered that the hui was also significant for the building and opening of the pātaka named Niu Tireni (‘New Zealand’) on 6 February 1871.²¹ Ms Benevides has given evidence of the vast preparations involved in this hui and the ongoing mana it brought to her whānau (although she did not express that in quite those terms herself).

¹⁸ Wai 2180, #A06, at 182.

¹⁹ See also Walzl’s similar account, at #A12, at 382–387; and see also Peter McBurney, Wai 2180, #A52, at 191–200, who emphasises the role of Ngāti Hinemanu, Ngāti Paki and other Mōkai Pātea groups in preparing food for the hui.

²⁰ Wai 2180, #A12, at 386–387.

²¹ Wai 2180, #A43, at 28–32.

Kohimarama Conference

40. The Kohimarama Conference ran from 10 July to 11 August 1860. It is of relevance to understanding the political engagement of Taihape Māori more broadly (Taihape-related rangatira such as Te Hapuku participated). However, as it occurred outside the district, and as it has been traversed before the Tribunal extensively previously, it is only lightly touched on here. The critical points being made by referencing it here is that whilst Te Hāpuku was broadly supportive of kāwanatanga measures that were discussed, Kawepō was highly critical of the conference. It cannot be pointed to as a high point of Crown Māori dialogue (as it can in some other districts).
41. An important article by Claudia Orange in 1980 framed the Kohimarama Conference as a ‘ratification’ of te Tiriti o Waitangi/the Treaty of Waitangi.²² A more recent analysis by Lachy Paterson sees the conference as defined by the leading issues of the Taranaki war, the King Movement, a range of land issues, and the Crown’s attempt to bolster support for British rule (or the Queen’s sovereignty) at a time of political and military stress.²³ Paterson’s analysis of the speeches shows that of the 371 recorded speeches and written papers by rangatira, only 26 mentioned te Tiriti/the Treaty, while *none* of the eight conference resolutions referred to te Tiriti/the Treaty.²⁴ The Tribunal has tended to see this conference and its outcomes as an example of the possibilities of Tiriti/Treaty partnership at the highest levels of government, before the wars intervened.²⁵
42. As foreshadowed above, and to bring a closer Taihape perspective to the matter, a letter of Rēnata Kawepō to Superintendent Fitzgerald labelled the chiefs who had attended at Kohimarama as “lickplates” (“miti-pereti”) of the Governor. They attended, said Kawepō, because they were motivated by financial gain. At the Conference, he said, they had seen the wrong of the

²² Claudia Orange, ‘The Covenant of Kohimarama: a Ratification of the Treaty of Waitangi’, *New Zealand Journal of History* 14/1 (1980): 61–82.

²³ Lachy Paterson, ‘The Kohimārama Conference of 1860: A Contextual Reading’, *Journal of New Zealand Studies* (2011): 29–46.

²⁴ Paterson, ‘The Kohimārama Conference’, at 31.

²⁵ Paterson, ‘The Kohimārama Conference’, at 30–31.

Governor at Taranaki but were not prepared to take this stance in open assembly.²⁶

The Rūnanga and Kīngitanga movements

43. Throughout the 1850s, there was a growing search for new forms of law or community governance as the old forms of dispute resolution (especially taua muru or compensatory plunder) fell into disfavour. The Government, however, provided little means or support for Māori initiatives of self-government. Some Māori began developing these themselves, as Fenton reported from the Waikato in 1857. New rūnanga (councils) or komiti (committees) emerged at the village level, mostly comprising of leading rangatira. Various codes of law (ture) were promulgated by these rūnanga relating *inter alia* to stock trespass, fencing, theft, slander, and adultery. Village courts were held to try and punish offenders. Some of these rūnanga were based upon or emerged from the komiti of the Anglican missions.²⁷
44. Governor Grey's new institutions were a response to this situation. But in many places it was too late to have much impact, certainly of a lasting nature. Ballara considered that in most places the Government-sponsored rūnanga scarcely got off the ground or managed to replace the existing Māori initiatives. In 'upper Whanganui and southern, western and northern Taupō', most hapū turned to the Kīngitanga by the early 1860s.²⁸
45. As for Hawke's Bay, in April 1859, a deputation from the Kīngitanga, which included the 'kingmaker', Wiremu Tāmehana, held a hui at the village known as Pā Whakairo, near the Tutaekuri River in Hawke's Bay. The host, Te Moananui, accepted the position as the Kingi's Kāwana (governor) in the region. Another group led by Rēnata Kawepō, Tareha and Karaitiana Takamoana did not acknowledge the authority of the Kīngitanga; they instead established their own rūnanga. Both groups did agree on not selling additional land to the Government.

²⁶ Renata's *Speech and Letter to the Superintendent of Hawke's Bay*, at 5L, 16L.

²⁷ Wai 1130, #A02, at 403–411.

²⁸ Wai 1130, #A02, at 412–414.

46. The rŭnanga became active in Hawke’s Bay affairs during the late 1850s and early 1860s, and very few sales deeds were signed.²⁹ As noted above, Rēnata Kawepō and other leaders of the rŭnanga did not cooperate in establishing a Government rŭnanga under Grey’s ‘new institutions’.
47. These rangatira (in particular Kawepō) are acknowledged as leaders of Ngāti Hinemanu within the Taihape district also.

The Repudiation Movement, including Te Komiti o Pātea

48. The Pakiaha conflict of the late 1850s (1857-58) had pitted selling chiefs, especially Te Hāpuku, against a prominent non-selling faction that included Rēnata Kawepō, Tareha and Karaitiana Takamoana (and people like Winiata Te Whaaro and Irimana who fought with them).
49. The Repudiation Movement emerged in the Hawke’s Bay due to disquiet on the part of some Māori leaders to land sales in that region. However, gatherings in various locations determined against further land alienation, including at Tūrangarere in 1873. Hawke’s Bay Repudiation leaders were linked with leaders in the interior, including with Keepa Te Rangihiwini (Major Kemp).³⁰
50. Keepa Te Rangihiwini attempted to establish what became known as ‘Kemp’s Trust’, an arrangement in which Keepa would hold territory on behalf of the upper Whanganui tribes. In line with the Repudiation movement, Keepa encouraged his people to withdraw claims from the Native Land Court and refuse to alienate land. Some of the lands involved reach into the inquiry district. This led to a dispute over customary interests with Te Oti Pohe and with Ngāti Whiti and Ngāti Tama in the area around Moawhango, Murimotu and Waiū.³¹
51. The Government made some responses to the concerns and allegations of the Repudiation Movement. The Hawke’s Bay Native Lands Alienation Commission was established in 1873 and the report by commissioners C W Richmond and F E Manning found no cases of outright fraud in the more

²⁹ Wai 2180, #A12, at 380–381.

³⁰ Wai 1130, #A02, at 553.

³¹ Wai 1130, #A02, at 554–556.

than 300 transactions investigated. The two Māori commissioners, however, condemned the acquisition of lands from Māori indebted to Europeans. The Wairarapa Tribunal considered that Commissioner (Judge) Manning had rejected claims on ‘political grounds’ rather than on their merits.³²

52. Repudiation was in some ways connected with the early rūnanga or committees movement. There is some evidence of committees forming in the inquiry district during this period of the 1870s to coordinate responses to key issues and petition the Government for redress, especially regarding the operations of the land court and previous land transactions. A ‘Komiti o Patea’ represented by Paramena te Naonao, Hiraka Te Raro, Ihakara Te Kowhiti and Hakopa Te Ahunga wrote to the Repudiation newspaper *Te Wananga* in 1875 and 1876. (However, on these occasions at least the issues were not land but the traditional history of the inquiry district and agricultural matters.)³³
53. At a meeting at Tapuaeharuru in 1875, Topia Tūroa, a prominent Tūwharetoa leader and grantee in various northern blocks in the inquiry district, opposed Crown dealings and advances to individuals and insisted on refunding a purchase advance.³⁴
54. At a hui in March 1876 at Waiohiki, Rēnata Kawepō called on land claims to be decided by Māori adjudicators in accordance with customary principles; following their decision, he said, ‘let the European law step in and carry on the right of ownership’.³⁵ The Repudiation leader, Henare Matua, spoke just before Kawepō and he stated concerning te Tiriti/the Treaty:

It is through the Treaty of Waitangi that we hold our lands, and it is also by the same Treaty that the Courts of justice have power, also by the same Treaty mortgages have effect. But for the Treaty of Waitangi we should have been treated (by the Europeans) in the same way as have been the people of all the Islands of the world.³⁶

³² See Waitangi Tribunal, *Wairarapa ki Tararua* report, vol 2, at 455.

³³ Wai 2180, #A43, at 239.

³⁴ Wai 2180, #A43, at 240.

³⁵ *Te Wananga*, 8 Apr 1876, at 168–170: Papers Past | Newspapers | Wananga | 15 April 1876 | Page 168 (natlib.govt.nz) – see **Appendix 1**; cited also in Wai 2180, #A43, at 243.

³⁶ *Te Wananga*, 8 Apr 1876, at 169.

55. Among resolutions passed at the hui (which also included Henare Matua, Karaitiana Takamoana, Henare Tomoana, Topia Tūroa and Mātene Te Whiwhi) were that the land court should cease operations, that all sales and mortgaging should cease, and that the railway lines and telegraph lines be allowed to pass over all Māori lands.³⁷
56. Several petitions from the various komiti Māori were sent to Parliament in the mid-1870s period. Most addressed issues with Māori land legislation and representation of Māori at the highest levels in Government; some were concerned more with local issues. *Te Wananga* reported various resolutions in 1877, including:
- This meeting condemns all the Acts framed by the Government in respect to Native Lands, and the and the reason for the tribes condemning these Acts, is, that the Government alone frame such Acts without the knowledge and cooperation of the New Zealand tribes of these islands.³⁸
57. It is, however, apparent from the various accounts of these hui that although rangatira were concerned about, and in many cases directly called for the abolition of, the Native Land Court, there was ongoing recognition by many of those same rangatira of the Queen’s authority, an acceptance of the newer modes of legal adjudication of disputes, and sometimes reference to te Tiriti/the Treaty as a basis for kāwanatanga as well as Māori rights (as seen in the speech of Henare Matua cited above, and in those of Kawepō cited in submission in Issue 1).
58. After a large hui of tribal leaders from the central North Island (including Tūwharetoa at Pātea) and the eastern coast (including Ngāti Kahungunu), a petition was addressed to Parliament about land and political matters in August 1876.³⁹ This reiterated the calls of other similar petitions for repeal of the native land legislation (though not of the Court itself in this instance), for an annual Māori assembly to lay before Parliament matters of concern to “nga iwi Maori”, and representation of Māori and Europeans in Parliament

³⁷ *Te Wananga*, 8 Apr 1876, at 170.

³⁸ Wai 2180, #A43, at 251.

³⁹ *AJHR* 1876, sess I, J-06; this was the hui at Pakowhai of 31 May 1876.

in proportion to the respective populations. The first few items of the petition were framed as follows:

1. That every publicity should be given to the faithfulness of our allegiance to Queen Victoria, and that we should also publicly declare our desire and consent to work out Her laws at all places and at all times.

2. That it is right and good, in our opinion, that the tribes of New Zealand should be united, and that we should assemble to see each other and to look into our grievances; also, to select what subjects are proper to be laid before the great Parliament of the colony, with a view to their being discussed.

3. It is right that a meeting should be held, composed of the chiefs of the North Island, every year, in order to discuss everything affecting or having authority over the Maori people, to look into our grievances, and to consider things affecting us and our land, and lay them before the Parliament of the colony. It will be for the meeting to settle where the next one is to be held.

59. A distinct movement towards a national Māori assembly is discernible. Agenda items for hui included proposals for “he Paremata mo te tangata Maori, hei whakahaere i tona motu” (a Parliament for the Māori people, to organise their country).⁴⁰ The composition of such a desired parliament was indicated by a large hui of a more formal nature convened at Ōmahu in March 1877 that was “confined solely to chiefs of undoubted position and experience”, including Noa Huke (Noa Te Hianga) and Rēnata Kawepō.⁴¹

The Kotahitanga Parliament

60. Ongoing concerns with the Native land legislation and court and a lack of support for Māori institutions of local and central government saw the pan-tribal hui of the 1870s transform into a more formalised Kotahitanga movement, with more ‘national’ Māori parliaments being convened in the 1880s-90s. This exerted pressure on the Liberal Government to make concessions to Māori viewpoints. In 1900, Parliament passed the Māori Councils and Māori Lands Administration legislation to allow for local Māori komiti to make bylaws and investigate land title matters. Within a few years the Māori representation on regional land boards (which administered leases)

⁴⁰ Wai 2180, #A43, at 244.

⁴¹ Wai 2180, #A43, at 251–252.

had been diluted, the non-alienation provisions were amended or repealed, and the Councils suffered from lack of funding and other support.⁴²

61. Rangatira from Taihape were involved in the Kotahitanga parliaments, including Hiraka Te Rango. Much of the Taihape region was included within the Taupō ‘electoral district’ established by the Kotahitanga parliament, though parts also fell within Rangitikei and Hawke’s Bay. The iwi for the Taupō district were listed as Tūwharetoa, Ngāti Whiti and Ngāti Tama.⁴³
62. Hiraka Te Rango ‘and six others of Mōkai Pātea’ appear in a later petition of 1898 in support of the Government’s proposed new native land legislation (about which there were varying petitions from Kotahitanga, Kīngitanga and other Māori groups both supporting and opposing the bill). Select Committee minutes also indicate that Ūtiku Pōtaka was involved in supporting the Government’s bill, as amended by the Kotahitanga parliament.⁴⁴

Other Engagement of Taihape Māori rangatira with the Crown

63. The following matters are addressed in submissions on Issues 3 and 4.
 - (i) the 1890 telegrams concerning the Awarua hearings;
 - (ii) the evidence presented to the Rees-Carroll Commission in 1891;
 - (iii) the 1892 and 1895 letters relating to land use; and
 - (iv) the hui with Premier Seddon at Moawhango in 1894.
64. As set out at the start of these submissions, whilst Taihape Māori took a range of positions at various times in relation to the political movements above, there is a point of real coherence reached amongst Taihape rangatira across all hapū in 1892. That coherence was expressed in the letter to the Crown which sets out:

⁴² Wai 2180, #A43, at 594–595.

⁴³ Wai 2180, #A43, at 597–598.

⁴⁴ Wai 2180, #A43, at 617–618.

- 64.1 the agreement that 100,000 acres of land can be purchased (in response to the Crown's proposal for lands for settlement within the area);
- 64.2 other matters in relation to land titling processes, land management, and land development.
65. Whilst the 100,000 acres was agreed to by the Crown (it had proposed that amount initially), the letter was not responded to by the Crown in a specific or formal sense and the further matters Taihape Māori sought Crown engagement with are not directly addressed.
66. However, as set out in submissions on Issue 4, a phase of intensive engagement with the Crown ensued following that letter. That engagement included multiple meetings with Crown agents, Ministers and two meetings with the Premier. It would be overstating matters to say that those discussions led to the 1894 creation of incorporation provisions within the legislation (that was the result of many strands of input nationally but primarily from the East Coast and – to a lesser extent – Whanganui). However, likewise, it would be understating matters to say that the Crown's sole focus during this phase of engagement was the purchase of land, or to ignore that some of the measures sought by Taihape Māori in their 1892 letter subsequently became available
67. This phase of engagement had a broader development perspective beyond solely transactional purchasing – from both the Crown and the Taihape Māori sides. These matters are expressions of both kāwanatanga in action and also of rangatiratanga. It is not only the railway that is established in this era. Ūtiku Pōtaka initiates the Pōtaka township development with the Crown. Provision is made for some public services sought by Taihape Māori at Moawhango. Roothing is established in the lower altitude parts of the district as settlements and farms develop. Again, the Crown does not wish to overstate the level of direct intervention or support of the Crown for the aspirations of Taihape Māori in this era. The evidence is clear that the Crown's efforts are focussed on doing what is required to open the area up for settlement. Premier Seddon states his commitment to close settlement as the necessary path for the nation's development and that these initiatives are

for the mutual benefit of Māori and non-Māori. There is no reason to think that view was not honestly held.

68. By the introduction of its authority in the Taihape inquiry district, the Crown intended that both Māori and non-Māori would benefit. The Crown recognises, however, that the way it exercised its kāwanatanga functions and powers adversely affected the ability of Taihape Māori to exercise their tino rangatiratanga (the specific ways it did so are addressed throughout the Crown’s closing submissions).
69. With regard to the situation in and after 1892, the evidence is equally clear that the Crown’s actions impacted significantly and adversely on Taihape Māori. The Crown acknowledgements and concessions concerning native land laws and Crown purchasing are of direct response and relevance here. Those acknowledgements include that the Crown purchased approximately twice the amount of land that it had indicated it needed for the railway and associated settlements, and which Taihape leaders had expressed a collective willingness to sell; and that the Crown failed to meet the high standards required of it as a privileged purchaser and failed in its duties to act in good faith and to actively protect the interests of Taihape Māori in lands they wished to retain. This was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
70. These breaches breach the principles of active protection and of partnership. They constitute an imbalance between the Crown undertaking its kāwanatanga function and the tino rangatiratanga preserved to Taihape Māori under te Tiriti/the Treaty.

Issue 4: Did Taihape Māori at any point in the nineteenth century envisage, or attempt to construct, an autonomous district within the region whose authority did not derive from the Crown?

71. There has been no evidence of any attempts by Taihape Māori in the 19th century to construct, or attempt to construct, an autonomous district within the region.
72. Some Taihape rangatira used the term “rohe potae” to describe the central land blocks in the 1880s and 1890s. The Crown understands that to have been used to denote lands for which there were no overlapping interests with

groups outside the inquiry district rather than as a political term or a claim to an autonomous district.

73. Taihape Māori showed a concern to exercise their authority, which often or increasingly manifested as a desire to assert boundaries or to retain some form of control of the engagement with colonialism. This took particular focus with their 1892 letter to the Crown.
74. Taihape Māori, as set out above, engaged with various political movements that sought some degree of autonomy or self-determination for Māori generally. Mr Stirling's evidence is that they structured 'komiti' at times on particular issues but did not establish a formal komiti.
75. A wide range of actions were taken by Taihape Māori in response to actual or anticipated Crown engagement over time, which increased in terms of calls for particular kinds of institutionalised Māori self-government, however, none of these actions amounted to an attempt to create a self-governing district.

21 May 2021



R E Ennor / MGA Madden
Counsel for the Crown

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