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 4: CROWN PURCHASING

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INTRODUCTION

1. Taihape Māori had clear strategic aspirations for entering purchase negotiations with the Crown. These were developed with the benefit of observing earlier dealings in neighbouring districts, but not having been subject to them due to the relatively late start of any Crown purchasing in the Taihape district. Taihape Māori strategy can be summed up as follows:

    1.1 From 1871, in the south of the inquiry district (where Taihape Māori interests overlapped with those of Ngāti Apa), most of the southern blocks were offered to the Crown for purchase, but the key southern homeland blocks (Taraketi and Ōtamakapua 1) would be retained.

    1.2 The majority of the central blocks would be retained and developed by Taihape Māori (particularly around the Moawhango Valley). The Crown could purchase a substantial portion of other lands to enable the railway being routed through their rohe (and for the establishment of associated settlement). By the late 1880s, this vision was broadly (although not entirely) agreed among Taihape Māori – it became further refined over the next decade.[1]

2. (The Crown did not purchase any land in the Northern blocks in the 19th century (dealings were entirely with private parties)).[2]

3. The Crown purchased land from Taihape Māori in the inquiry district in two broad phases:

    3.1 Southern blocks 1872 - 1884: approximately 241,000 acres or 70% purchased.[3] Disputes in relation to these blocks did not concern

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1 Wai 2180, #A16 document bank, at 12054 and 12096: 1889 proposal to Crown from Ngāti Whiti komiti.

2 Wai 2180, #A06 and #A43 allege early interest of various private parties in leasing the Northern blocks represents a degree of Crown activity. That is not correct. The, ultimately unsuccessful, people involved in attempting to secure leases in the northern blocks in the 1860s did so purely in their private capacity (as acknowledged by Dr Fisher under cross examination and in Wai 2180, #A43, at 274; and in #A43(d) which records the Crown not having any interests in acquiring the northern lands).

Note: The broader systemic issues of titles being available to be traded and regulations of private transacting between Māori and non-Māori do not come within the scope of Issue 4.

See Wai 2180, #A43(d), at 34: Author premises allegation that "the focus of Crown interest in this district was almost exclusively on separating as much of the land within it as possible from its Māori owners and as cheaply as possible, for the benefit of others" on early Crown purchasing in the east of the district from the 1850s. That does not accord with the evidence as demonstrated throughout these submissions.

3 See Table at [142] below.

the fact of sale but who controlled the titling and purchase processes and Crown purchasing conduct (including pre-title advances and aggressive tactics);[4]

3.2 Central blocks: purchasing in two rounds: 48% (142,858 acres) 1892 – 1894; 17% (51,146 acres) 1894 - 1896. A further 3% was purchased in Motukawa shares throughout this period and partitioned in 1899 (9,378 acres). The core concerns with these purchases are:

3.2.1 the inability of Taihape Māori to fully realise their development objectives for these blocks as a result of the Crown's imposition of monopoly powers (related to the North Island Main Trunk Railway) for over twelve years;

3.2.2 substantially more land being purchased by the Crown than the 100,000 acres (or 1/3rd of the central blocks) Taihape Māori had expressed a collective wish to sell (203,382 was purchased - 68% of the central blocks); and

3.2.3 the undermining of tribal structures contributed to by the lack of an effective mechanism to manage land collectively being available for Taihape Māori.

4. By 1900, 54% of the inquiry district was sold to the Crown through purchase, the vast majority of which was purchased between 1877 and 1896.[5]

5. Unlike other regions, there was no Crown purchasing in the inquiry district pre-1872. Pre-1865 purchases did occur in adjoining districts.[6] Although those purchases had later implications within the inquiry district due to uncertainty about their inland boundaries,[7] those purchases themselves are

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4 Wai 2180, #A07, at 151, for example, Hearn referring to Otairi dealings in 1877/1878: "The struggle between Ngāti Hauiti and Ngāti Apa for the control of and the right to alienate that group of neighbouring blocks which included Otairi, Rangatira, Taraketi, and Otamakapua was manifest."

5 Wai 2180, #A15, at 70.

6 Otaranga (1849), Ahuriri (1851) and Te Ahuaturanga (1864) purchases to the east. Rangitīkei-Turakina (1849) and Rangitīkei-Manawatū (1864) to the south.

7 Implications that arose within the inquiry district due to errors in the definition of the inland boundaries of the eastern purchases being subsequently identified (by Commissions or the Native Land Court) are included in the Issue 3 consideration of the creation of further titles through the Native Land Court (Timihanga, Te Koau). These matters are addressed in submissions on Issue 3.

not the focus of these submissions as they are not within the scope of this inquiry, having occurred outside the inquiry boundary (and having been assessed in other Tribunal inquiries).[8] The implications of them on lands within the inquiry district are addressed (see Te Koau, Timihanga and Waitapu sections).

6. These submissions are structured in narrative form rather than direct responses to the Tribunal's statement of issues topics in order to present the material in its full context.

CROWN ACKNOWLEDGEMENTS AND CONCESSIONS

7. Te Tiriti/the Treaty envisaged the Crown as the primary purchaser of Māori land.[9] A significant amount of the Crown purchasing activity in the inquiry district was conducted through fair processes and on reasonable terms and was a legitimate exercise of the Crown's kāwanatanga functions in developing the nation as contemplated by te Tiriti/the Treaty. However, as set out below, the Crown recognises that its purchasing activity in the Taihape district between 1872 and 1900 was not always consistent with its obligations as a Tiriti/Treaty partner. The Tiriti/Treaty-compliance of particular transactions depends on the details of those transactions.

Existing acknowledgements and concessions relating to native land laws also relevant to Crown purchasing in Taihape

8. Concessions made by the Crown in submissions on other issues are also relevant to Crown purchasing. Of particular relevance are those concessions made in relation to the nineteenth century native land laws (see submissions on Issue 3).

9. The Crown recognises that the operations of the native land laws in the awarding of land to individuals rather than iwi or hapū and the enabling of individuals to deal with that land without reference to the iwi or hapū, made

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8 Wai 2180, #1.4.2, at 11 Tribunal Statement of Issues:

Kāweka block

The series of overlapping Crown purchase deeds for the Kāweka region were covered in The Mohaka ki Ahuriri Report as part of its analysis of the 1851 Ahuriri purchase. The Taihape Tribunal will therefore limit the focus of its inquiry to the nature and extent of any customary interests in the Kāweka block (such as hunting or fowling) and any constrictions of customary interests following Crown purchases in and beyond the ranges.

9 Whilst some debate whether a right of first refusal or a full right of pre-emption was intended, both of these alternatives contemplate the Crown as primary purchaser or dominant party in purchasing.

the lands of Taihape Māori more susceptible to fragmentation, partitioning and alienation. These issues are of direct relevance for Crown purchasing. The individualisation of title contributed to the traditional social structures, mana and rangatiratanga of Taihape Māori being eroded. The Crown has conceded it failed to take adequate steps to protect these structures in breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

10. The Crown failed to include in the native land laws prior to 1894 provision for an effective form of title that enabled Taihape Māori to control or administer their land and resources collectively. This has been conceded previously as a breach of te Tiriti o Waitangi/the Treaty of Waitangi.

11. The incorporation provisions provided in the Native Land Court Act 1894 were not available in relation to lands in which the Crown had an interest (which included lands for which purchase negotiations were underway). The Crown did not complete its purchasing of lands in Awarua and Motukawa until 1896 and 1899 respectively. This meant that the owners of those blocks did not have access to an effective form of title that enabled them to control or administer their land and resources collectively until 1896 for Awarua, and 1899 for Motukawa, by which time the Crown had purchased approximately 70% of those lands.

Monitoring

12. The Crown's Tiriti/Treaty duty of active protection required the Crown to take reasonable steps to ensure Taihape Māori retained sufficient lands for their present and future needs. This, however, presents a challenge in monitoring and assessing the amount of land held by Māori and determining "sufficiency" at any particular time.

13. The Crown nonetheless acknowledges that it did not have a system in place to ensure that it did not purchase land that was needed by hapū and iwi of Taihape to maintain themselves. This was a failure of active protection and a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Sufficiency of lands retained

14. The Crown has conceded that:

14.1 Most of the land retained by Taihape Māori is landlocked. The lack of reasonable access to their lands has made it difficult for owners to exercise rights of ownership or maintain obligations as kaitiaki.

14.2 The experience of Taihape Māori has been that their practical, economic and cultural connections to the important lands they have striven for decades to retain and to utilise have been significantly disrupted and, for Taihape Māori, this has been akin to being landless.

14.3 The Crown's failure to ensure Taihape Māori retained sufficient lands with reasonable access for their present and future needs breached te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

15. The Crown recognises that its extensive purchasing in the Awarua and Motukawa blocks was relevant to the sufficiency of lands retained – this is discussed further below.

Acknowledgements and concession concerning Crown purchasing in Taihape southern blocks

16. Between 1871 and 1885, the Crown purchased approximately 241,000 acres, or about 70%, of the southern Taihape blocks.

17. The Crown acknowledges that when purchasing land in the southern Taihape blocks:

17.1 it initiated purchasing in some blocks by making payments before the Native Land Court had determined titles to these lands. Advance payments were sometimes made in a manner that was not transparent and were made despite Crown officials being aware that they were causing severe divisions amongst Māori in the area. The Crown continued to make pre-title advances despite repeated assurances from successive Native Ministers that such payments would cease;

17.2 it sought to recover advance payments it made to people who were subsequently not recognised on the title as owners by placing

charges on the land. This meant that the owners of the land were charged for advances they did not receive; and

17.3 it sometimes used aggressive purchasing tactics, including:

17.3.1 imposing monopoly powers where Māori were already in negotiations with private parties who were offering higher prices than the Crown;

17.3.2 using debt pressure to induce a leading rangatira to complete a sale;

17.3.3 paying owners incentives to induce other owners to sell; and

17.3.4 in at least one circumstance, intimidating or applying inappropriate pressure on owners to sell their interests;

17.4 these actions were not consistent with the Crown's obligations to act in good faith and to actively protect the interests of Taihape Māori and were in breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Acknowledgements and concession concerning Crown purchasing in key Central blocks

North Island Main Trunk Railway Line purchasing

18. Developing the North Island Main Trunk Railway (NIMTR) was an appropriate and important exercise of the Crown's kāwanatanga role in developing nationally critical infrastructure. The benefits of connection and accessibility to markets accrued to all. It was reasonable (through a Tiriti/Treaty lens) that the nation – including Taihape Māori – contributed to the development of the railway. It was also reasonable (through any lens) that the level of burden should not have fallen on any particular group disproportionately.

19. Taihape Māori generally supported the Crown's plan to build the NIMTR through their rohe. In 1892, Taihape Māori expressed a collective willingness to sell 100,000 acres of the approximately 300,000-acre Awarua block to the Crown for the purpose of building the railway and related

settlement. This reflected the Crown's estimate of how much land would be required. Taihape Māori proposed to retain the balance (ie approximately 200,000 acres) of Awarua and sought for it to be administered collectively. The Crown ultimately purchased more than 200,000 acres. Taihape Māori retained closer to 90,000 acres.[10]

20. The Crown used its monopoly powers to carry out all of this purchasing. As a privileged purchaser, the Crown had a heightened Tiriti/Treaty duty to act in good faith and to actively protect Māori interests.

21. The Crown acknowledges that:

21.1 when purchasing lands associated with the North Island Main Trunk Railway in the Taihape Inquiry District it placed much more land under monopoly restrictions than was required for the railway, and kept those restrictions in place for too long;

21.2 its misuse of monopoly powers unreasonably limited the ability of Taihape Māori to develop their lands or raise finance between 1884 and 1896;

21.3 through these tactics, 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

21.4 it 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.

22. The Crown recognises that its extensive purchasing in the Awarua and Motukawa blocks, which was significantly over and above the level of purchasing the Crown had indicated as being necessary and above the level Taihape Māori had expressed a collective intent to sell, contributed to

10 Figures in this paragraph are approximations only. See Table at paragraph [142] below for greater precision.

Taihape Māori retaining insufficient lands of a quality necessary to sustain their current and future needs.

RELEVANT JURISPRUDENCE

23. Te Tiriti/the Treaty contemplates the Crown as purchaser of Māori land should Māori wish to sell (Articles II and III). Purchasing *per se* is not a breach of te Tiriti/the Treaty. The question is whether in conducting purchases the Crown met the standards of reasonableness and good faith expected of the Crown in any particular case. The Tribunal, in its *Te Mana Whata Ahuru* report, summarised its jurisprudence in the following terms which echoes in many respects the Crown's position as outlined:[11]

> The Treaty of Waitangi offers powerful guarantees of Māori communities' land rights. It required the Crown to actively protect Māori possession of, authority over, and exercise of traditional relationships with land. Among other things, this meant it could not take steps to interfere with Māori land rights or to separate communities from their land except with their full, free, informed consent.

24. Te Tiriti/the Treaty obliged the Crown to act fairly, honourably and in good faith, which included keeping its promises and honouring any agreed conditions.[12]

25. In *Te Urewera* and other reports, the Tribunal has found the Crown in breach of the Tiriti/Treaty principle of active protection when it bypassed community leaders to purchase from individuals.[13] Whilst this has some alignment with the Crown concession concerning the undermining of tribal structures, the Crown does not accept that every purchase from an individual constituted a breach of Tiriti/Treaty standards – it would depend on the facts of the situation.

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11 Waitangi Tribunal, Te Mana Whata Ahuru: Te Rohe Pōtae Report, Vol 1, at 1302 (footnotes omitted).

12 At 1303, citing: Waitangi Tribunal, *He Maunga Rongo*, vol 1, at 173–174, 190–191, 208–209, 436; Waitangi Tribunal, *Te Urewera*, 8 vols (Wellington: Legislation Direct, 2018), vol 1, at 134 ; Waitangi Tribunal, *Ko Aotearoa Tēnei*, *A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, *Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), at 24; Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report of Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wellington: Legislation Direct, 2014), at 526–527.

13 Waitangi Tribunal, *Te Urewera*, vol 3, at 1185–1186; Waitangi Tribunal, *The Hauraki Report*, vol 2, at 784–785; Waitangi Tribunal, *He Maunga Rongo*, vol 2, at 617.

26. The Crown's obligation to protect Māori interests and to act with good faith and fair dealing is heightened when it is in the position of being a privileged purchaser (for example when monopoly conditions are imposed).[14]

27. The purchase of lands to enable national and regional infrastructure to be developed, and to enable settlement, was critical to the colonial endeavour and, in itself, was not inconsistent with te Tiriti/the Treaty. It was not unreasonable *per se* for the Crown to negotiate with Māori to sell land. The key questions concern:

    27.1 The principle of good faith – was Crown purchasing conducted in a fair, reasonable, transparent, lawful manner (and consistent with contemporaneous Crown policy)?

    27.2 The principle of active protection – were Taihape Māori pressured into selling more land than they had wished to sell?

    27.3 The principle of equal treatment – were Taihape Māori rights treated equally to those of others?

    27.4 Whether the purchasing contributed to tribal structures being undermined?[15]

28. These matters are assessed against the facts of Taihape in the submissions below.

29. Whilst flaws in particular purchases may be identified that were not consistent with the standards expected of the Crown, the Tiriti/Treaty standard is not perfection and a flawed process may still be Tiriti/Treaty-compliant. The cumulative effect of multiple identified flaws, within the particular fact scenario, may reach a level where the Crown has breached te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The Crown concessions made above are an example of cumulative breach.

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14 *Te Kāhui Maunga: The National Park District Inquiry Report* (Wellington: Legislation Direct, 2013), vol 2, at 386–388, 418.

15 For example, see Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report,* at 532.

CROWN PURCHASING IN THE SOUTHERN BLOCKS

The beginnings of Crown purchasing in the inquiry district

30. The Crown began negotiating to purchase interests in the district's southern land blocks after being approached by the Māori owners in late 1871/1872.

31. Events concerning the Southern blocks prior to 1872 provide relevant context to that approach:

    31.1 Ngāti Apa and Ngāti Hauiti (and related hapū) strongly contested customary interests in these lands for centuries, and had long sought to establish or confirm their interests through customary measures including both conflict and strategic marriages.[16]

    31.2 Informal private leasing to European pastoralists had been in place since the late 1840s. Private pastoralists had informal leases stretching into some of the southern lands from 1849 (Cameron) and increasingly from the late 1850s (Lethbridge, Marshall). Those leasees and other private parties sought to purchase lands in the 1860s.

    31.3 The 1860 Kokako hui was, at least for the peoples of the inquiry district, about defining their boundaries in relation to other tribes' assertions of customary interests in the context of earlier Crown purchasing activity to the south (including the 1849 Rangitīkei-Turakina purchase) and, to a lesser extent, the east. The various later evidence about the Kokako hui differs over who were the critical players at Kokako, some referring to Te Oti Pohe (whose home marae the hui was held at) or other rangatira, others to Rēnata Kawepō.[17]

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16 Wai 2180, #A07, at 18: Hearn notes "The complexity was no less in the Taihape Inquiry District where Ngāti Hauiti, Ngāti Apa, Ngāi te Upokoiri, Whanganui and others jostled and competed for legal ownership of the land" – see Huwyler quote: "Ngati Apa and the people of Mokai Patea, in particular Ngāti Hauiti, endured long periods of conflict stemming from the times of Hauiti and Pukeko."

See also Wai 2180, #A07, at 65: Ōtamakapua ruling "It has been shown by the evidence on both sides that this southern piece was battle ground between the Ngātihauiti tribe & the Ngatiapa for many generations".

17 Wai 2180, #A06, at 147. At the 1894 new title investigation and partition for Oruamatua-Kaimanawa block, Pikirangi of Ngāti Tamatuturu (Ngāti Tama) stated that the rangatira 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

31.4 Ngāti Hauiti evidence was that they, together with Ngāti Apa, developed a plan during the 1860s for the sale of some southern lands and the retention of others, and authorised Ngāti Apa rangatira to implement those decisions.[18] The negotiations with private parties reached the point of a 1869 Native Land Court title determination on 'Upper Turakina Rangitikei Block' (aka 'Greater Paraekaretu') being made, but not finalised after the negotiations failed due to disagreement on price, and due to the 'best land' (Taraketi) being excluded from the sale.[19]

31.5 Political considerations amongst Māori between 1850 and 1865 relevant to these southern lands are addressed in submissions for Issue 2 (and the Tribunal's customary landscapes findings). One practical demonstration of those dealings is that efforts by competing private parties in the mid-1860s to extend leases further north into the district were rejected (at that time) following the intervention of Rēnata Kawepō.[20]

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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."

See, also, at 150–151 and 182 (Ūtiku Pōtaka evidence at Mangaohane on Kokako): For example, at the same 1894 hearing, Anaru Te Wanikau of Ngāi te Upokoiri, Ngāti Kahungunu, Ngāti Whiti and other tribes, 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."

18 Ūtiku Pōtaka evidence in Taraketi and Rangatira NLC hearings. See, for example, #Wai 2180, #A07, at 184–185 and 215. See, also, Wai 2180, #A07, at 50: 1875 six-day hui called by Hunia at Whangaehu on Ōtamakapua with 200 attendees including Ūtiku Pōtaka – although his agreement was not secured on that particular occasion.

19 Wai 2180, #A07, at 139–140; and Cameron evidence in Rangatira Wai 2180, #A07, at 213.

20 Wai 2180, #A43, at 37.

Note, in Wai 2180, #A43, at 2, Mr Stirling states "The resident owners within the southern part of the district did not instigate the purchases or the title investigations that led to the alienation of their land." This forms a theme throughout his report that 'resident owners' were prejudiced by the actions of 'non-resident' owners (and Crown dealings with those non-resident owners). This is not supported on the evidence. In particular, Ūtiku Pōtaka was unquestionably resident, mandated for Ngāti Hauiti as rangatira and actively involved in each southern block dealing (often but not always agreement with Kawepō). Mr Stirling's characterisation of Kawepō as a non-resident outsider without customary legitimacy to act in the Taihape inquiry district is at significant odds with Dr Ballara's repeated statements of the authority Kawepō exercised in the district as a leading rangatira not only of his own Ngāi te Upokoiri and Ngāti Hinemanu but also with whanaunga such as Ngāti Hauiti and with repeated contemporaneous acknowledgements of other Taihape rangatira or tribal groupings as to the authority they placed and recognised in him throughout the 1870s (one small example is Wai 2180, #A43, at 37 where a contemporaneous source acknowledges him as having the "pre-eminence"). The Crown defers to Dr Ballara's assessment of his customary authority (whilst also acknowledging that the matter became more complex in the 1880s).

32. There is strong evidence of Ngāti Hauiti and Ngāti Apa rangatira discussing – and most importantly agreeing on – the early sale and retention decisions:[21]

32.1 prior to the mid-late 1860s dealings with the private parties being initiated (as also demonstrated by Taraketi being excluded from that proposed sale);

32.2 prior to the 1871 dealings with the Crown for Paraekaretu (with Ūtiku Pōtaka still being adamant a decade later that Ngāti Hauiti had authorised Tipae to act on their behalf in those dealings and that their concern was the distribution of proceeds of the sale, not the sale of Paraekaretu itself);

32.3 between Tipae for Ngāti Apa and Kawepō in 1875 regarding Ōtamakapua (whilst there was initial agreement, that agreement became strained by 1879).

33. The Crown did not enter any purchase negotiations in the lands until 1872[22] despite some approaches having been made to the Crown in the 1860s and specific encouragement in July 1870 by Swainson, a European leasee, following the failure of private purchase negotiations.[23]

34. Eighteen months after the private purchase negotiations failed, in November 1871, as Hearn states:[24]

> Kawana Hunia and Ngati Apa offered the Crown a block of 46,985 acres named Paraekaretu [a section of the 1869 'Greater Paraekaretu' block]. The offer was referred to the Wellington Provincial Government which promptly decided that it was 'very desirable that the purchase should be effected.'

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21 Wai 2180, #A07, at 50: "Ballara also referred to a letter signed by Aperahama Tipae and 11 other Ngati Apa chiefs on behalf of 'all the Committee of Ngati Apa' ... in which they advised Kawepo that Hunia was persisting 'in his demand to have control of the lands which the Ngatiapa gave into your charge,' that Ngati Apa did not like what he was doing, did not approve of his curses, and had held an investigation into the matter."

See, also, Wai 2180, #A07, at 61 (also Wai 2180, #A43, at 80) Ahuru (Ngāti Apa) to Sheehan: "Friend, that land was placed by Aperahama Tipae in Rēnata's hands for sale. When I saw the wrongdoing of that man, that he had himself consumed three thousand pounds, and that his offspring had consumed five hundred and thirty seven pounds, that was the reason why I took back to myself the authority over my land. The flesh and the fat had been consumed by him; I have the bone and will pick out the marrow."

22 Neither Stirling nor Hearn locate any evidence of Crown interest in the southern blocks prior to 1871.

23 Wai 2180, #A07, at 140.

24 Wai 2180, #A07, at 141.

35. Once purchasing activity began, the Crown actively pursued purchase of lands in the southern blocks and acquired approximately 70% (ie 241,000 acres) of the 340,000 acres in the southern blocks between 1871 and 1885.[25] Crown purchasing activity waxed and waned over that period and through to the 1890s as government finances, policy and railway progress also fluctuated.[26]

36. The strategy of southern Taihape Māori to retain Taraketi and Ōtamakapua 1 ultimately had mixed success:

    36.1 Taihape Māori did not offer Taraketi for purchase – and the Crown did not attempt or pursue negotiations for it.[27]

    36.2 Ōtamakapua 1 was awarded – uncontested - solely to Ngāti Hauiti in 1880.[28] Notwithstanding Ngāti Hauiti wishing to retain Ōtamakapua 1,[29] the Crown did – unsuccessfully - negotiate for its purchase (along with Ōtamakapua 2). After the Crown relinquished its negotiations for Ōtamakapua 1 in 1890, the block was partitioned amongst its Māori owners.[30] Over the next decades, all of Ōtamakapua 1 was leased; much of it was purchased by the Crown or by a private party (McGregor) and, from 1915, leased to returned soldiers with some lands returning to iwi when leases finally expired, while some were declared general lands in 1967.[31]

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25 NB: All figures approximate or rounded – collated from: Wai 2180, #A07, at 24 Table 1.1 total acreage for blocks listed (excluding Waitapu); and at 38 Table 1.3 Crown purchases.

26 For example, although the land that became Te Kapua had an advance made in 1879 (as part of the Otairi negotiations) and was surveyed in 1884, purchase interest lapsed until the 1890s due to the level of dispute in the community of owners (see Otairi section below). See, also, Boast tracking of purchasing patterns nationally – peak purchasing periods were early 1870s and under the Liberal Government in the 1890s. That national pattern is consistent with the ebbs and flows of purchasing activity in Taihape.

27 Wai 2180, #A07. Summary: Taraketi was leased (with rents to Ūtiku Pōtaka for Ngāti Hauiti and Ngāi te Upokoiri) and also occupied directly by Ūtiku's people. There were some funds advanced to Hunia for his interests in Taraketi in 1896 which were ultimately repaid in full in 1919 and consideration of the Crown taking over survey liens in 1901, however, neither of these matters were pursued and the Crown did not actively seek, nor attain, lands in Taraketi. Some of the Taraketi lands were sold to private parties or otherwise made general lands in the twentieth century.

28 Wai 2180, #A07, at 43, 44.

29 Wai 2180, #A07, at 114.

30 Wai 2180, #A07, at 111–115.

31 Wai 2180, #A07, at 116.

Crown policy for purchasing applicable to the Southern blocks

37. Hearn describes the reasons behind the Crown taking an active role as purchaser in the 1870s, even after pre-emption had been discontinued, as follows:[32]

> That the Crown was the major purchaser was based on certain assumptions, among them, that it was a primary role of the state to shape and promote the development of a new society and economy; that the state should act as an active agent of economic development, investing in roads, ports, and railways; and that a major task was to effect the transfer of land collectively held for 'subsistence' purposes not merely into settler ownership but into small-farmer ownership.

38. Crown purchasing policy evolved during the 1870s in parallel with the evolving titling system (eg from pre 1865 practices, to representative titles, to individualised titles under the 1873 Act and onwards). During this period of extensive purchasing there was ongoing tension between the Crown's pursuit of lands for infrastructure development and settlement and its obligations to deal with land in a way that was fair and transparent.

39. Previous Crown evidence has recorded that in 1875 land purchase officers were:[33]

> ... reminded that all land transactions on behalf of the Government must be conducted as openly as possible and that in all cases the leading chiefs must be consulted, and they are strictly to avoid making payments to individuals who stealthily offer to part with their interests; such a course is decidedly objectionable as leading in some instances to natives receiving money without due inquiry as to their right to dispose of the land, thereby causing much discontent among the real owners and prejudicing the native mind against the action of Government officials.

40. Sheehan (during his brief tenure as Native Minister) in 1877 reminded officers that Crown purchase officers dealing in Māori land in a secretive manner would not be tolerated.

41. The most active Crown land purchase officer in the area was suspended and investigated in 1878 for his conduct in blocks outside the inquiry district,

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32 Wai 2180, #A07, at 258.

33 Native Minister to Land Purchase Officers, in Archives New Zealand MA-MLP 1 3/1, cited in Michael Macky *Whanganui land and politics 1840-1865 (*Wellington, 2006) at.72; Wai 2180, #A07, at 261.

demonstrating some Crown concern and monitoring – however he was not further sanctioned.[34]

42. In November 1879, pre-title advances were discontinued by Native Minister Bryce unless special authority had been gained,[35] partly for policy reasons, partly for fiscal reasons.[36] Taihape southern block purchasing straddled this change and the evidence shows a marked decrease (if not complete discontinuance) of the use of advances in Taihape purchase negotiations after November 1879.[37]

43. During the 1870s, the Crown became increasingly careful to ensure that the proceeds of sale were distributed fairly and accurately to all owners.[38] For example, in Taihape, the Crown refused to release the full purchase funds for Ōtamakapua 2 until it was assured that all named owners had indeed consented to the distribution arrangements.

44. However, in the inquiry district, there was some daylight between the above statements of policy and what occurred on the ground, in particular with the practices of Land Purchase Officer James Booth, authorised by Native Minister Bryce between 1875 and 1882. Examples of this are discussed below.

Pre-Title Advances prior to title determination in southern blocks

45. The use of advance payments and monopoly powers are not inherently unreasonable or a breach of te Tiriti/the Treaty. Monopoly powers were provided for in te Tiriti/the Treaty, while advance payments could be requested by customary owners and/or paid in a manner which did not cause prejudice. However, the Crown accepts that advance payments and monopoly powers should have been used in good faith and in a manner

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34 Wai 2180, #A07, at 56, 209.

35 See Under Secretary, Native Land Purchase Department to Native Minister, 11 November 1879, in Archives New Zealand, Wellington MA-MLP 1 1879/620.

36 The Crown was not translating all of its advances into interests in land and the unsecured credit was seen as being increasingly problematic. See, also, Wai 2180, #A07, at 262–263. Note: claimant generic closings at [108] fail to recognise this change in policy was a national one rather than a singular tactical one – they seem to suggest pre-title advances were still being paid in the time Awarua block negotiations were underway. They were not.

37 See table at [47] below. No pre-title advances have been identified after November 1879, however, there is evidence of them continuing to be advocated for by Booth (though not agreed to) after 1879.

38 Wai 2180, #A07, at 99. This also applies to the Court – see Wai 2180, #A07, at 142. Paraekaretu title was granted under the 1867 version of the ten-owner rule. The Court took the unusual step of insisting A Tipae sign a deed of trust in relation to the other named hapū prior to authorising the title.

consistent with its duty to take reasonable steps to actively protect Māori interests. These submissions assess the extent to which that occurred in Taihape. The use of pre-title advances in certain cases in Taihape is conceded in paragraph [17.1] above as being in breach of te Tiriti/the Treaty.

46. The Crown used advance payments less frequently in Taihape than in other Inquiry districts. The Crown opened negotiations to purchase Paraekaretu, Mangaoira, Ōtairi, and Ōtamakapua 2 (four of the eight southern blocks) by making pre-title advance payments.[39] There is no evidence of pre-title advances being paid for any other blocks (including Awarua and other central district blocks).[40]

47. The table below sets out the timing and amount of pre-title advances made on southern blocks.[41]

Block	Title awarded	Acres	Crown purchase	Pre-title advances	Recipients on title
Paraekaretu	8.12.1871	46975	45695	£400 (1871)[42]	Yes
Taraketi	1.2.1877	3075	-		
Ōtūmore	16.8.1877	5152	5152		
Mangaoira Ruahine	16.8.1877	35660	35660	£1,269[43] (by 1874)	Yes
Ohaumoko	24.2.1879	11598	-		
Ōtamakapua	20.10.1879	134005	107267	£3,200 (1875 to Kawepō)[44]	Yes: Majority No: Hunia was

39 Wai 2180, #A07, at 208–209. Hearn includes Rangatira in this list, however, it is not discussed in detail here as only a small advance was made for Rangatira (£100 to Hunia) and it was rapidly abandoned and did not appear to have a significant effect on dealings relating to Rangatira. Despite Booth recommending more active efforts be made for Crown purchasing in Rangatira, the Native Minister declined given the level of private interest in the block (the Crown did not purchase any interests in Rangatira). There is no evidence of the Crown attempting to recover that advance.

40 Claimant generic closings refer to an advance being paid for Te Kapua (at [39]). The advance referred to was not paid for Te Kapua itself but as part of the advance on Otairi (paid as shown in the table above). Te Kapua was originally within Otairi block. On the creation of the Te Kapua block by survey from Otairi in 1884, it was proposed that £500 of the advance paid for Otairi be charged against Te Kapua. That proposal was rejected by the Te Kapua interest holders and there is no evidence of it being further pursued by the Crown. The eventual purchase documents for Te Kapua in 1891 do not record the advance being charged against the block. See Wai 2180, #A08, at 26, 32.

41 Best endeavours have been exercised to make this account comprehensive (primarily through collation of evidence within #A07 tables 1.1 and 1.3 at 24 and 38; and #A43) but may not incorporate every advance paid.

42 Wai 2180, #A07, at 213 – Kawana Hunia stated during the 1882 Rangatira hearing that, in addition to the £400 paid in 1871, two further payments (of £1500 and £6000) were made to Tipae both of which were distributed by Tipae amongst Ngāti Apa hapū. Those amounts are not recorded by either Hearn or Stirling in their accounts of Paraekaretu as pre-title advances and seem very large given that the private purchase fell over with amounts less than that being proposed as the total sale price and the final purchase price paid by the Crown in 1872 was £9,135 (see #A07, at 142). Hearn at 143 suggests they were post-title payment instalments rather than pre-title advances.

43 Wai 2180, #A43, at 71.

44 Wai 2180, #A07, at 54–57. Between 1875-1879, McLean and Sheehan steadfastly refused to extend further payments stating they would only be made when purchase completed – between them, statements were made in 1873, 1875, and 1876).

Block	Title awarded	Acres	Crown purchase	Pre-title advances	Recipients on title
				£20 (1876 to Pirimona Te Urukahika) £500 (1879 to Wirihana Hunia) £1152 (1879 to assorted)[45]	not on final title; Tipae was but not as Ngāti Apa
Otairi	24.6.1880	59013 total	18466	£50 (1874) £153 (by 1878) £6,916 (1879)[46]	Yes: Majority No: £100 to Hunia
Rangatira	2.8.1882	19500	-	£128 (1878)[47]	
Waitapu	-	29484	29484	**Block history differs** £10 pre-purchase advance to Hunia in 1879[48] Purchase payments were made to parties upon signing deed for purchase.[49]	

48. The pre-title advances paid for Otairi and Ōtamakapua 2 were significant. Various concerns arose from some of them having been, at least initially, paid in less than transparent conditions:

48.1 the first part of the Otairi advance was paid in confidence in 1878. The Land Purchase Officer stated that Tipae: "has taken as per voucher £50-0-0 on account. Aperahama requests that for the present, the fact of his having taken an advance on account be not allowed to transpire as others who are inclined to deal with speculators might give him trouble."[50] It appears the Crown complied with that request.

48.2 The other advances paid were not publicised prior to payment but were publicly notified through declarations (eg Ōtamakapua 2

45 Wai 2180, #A07(c) at 49 and 50 provides most reliable figure - Ōtamakapua final accounts listing all payments on block (including purchases post title award): it states £1,500 to Wirihana Hunia and a further £152 amongst three other Ngāti Apa people who were paid in the financial years 1878/79 and 1879/80. There is some uncertainty about the timing of these payments (the financial year straddles the October 1879 title determination). The accounts record a further £310 was paid in 1881. Wai 2180, #A07, at 71 states £1,962 (the total amount paid in advances less the £3,200 paid to Kawepō in 1875). Wai 2180, #A43, at 84 states £4,000 but the evidence for that figure seems less reliable.

46 Wai 2180, #A07, at 150–152 – constituted of £3,000 each to Tipae (Ngāti Apa – February 1879) and Potaka (Ngāti Hauiti – March 1879), £100 to Hunia (Ngāti Apa) and minor amounts to Hinearo and Tumananunu hapū.

47 Wai 2180, #A07, at 206–207: £100 to Potaka and £23 to Tipae – both in 1878. Despite Booth advocating for the Crown to purchase Rangatira, Native Minister Bryce did not agree given the private interests involved.

48 Wai 2180, #A07, at 250.

49 Wai 2180, #A07, at 251 (payment to Ngāti Hauiti and Ngāi te Upokoiri); at 252 (payment to Ngāti Apa).

50 Wai 2180, #A07(c) Hearn Supporting Documents Vol 3 at 00321 (Booth 6.7.1880).

£3,200 advance to Kawepō) or in annual Crown returns after the fact of payment having been made (see below).[51]

48.3 The pre-title advances (up to £1,652) made to parties other than Kawepō for Ōtamakapua 2 were made with more transparency (largely during dealings at Omahu in August 1879) but were made after explicit and repeated reassurances had been made by successive Native Ministers that further advances would not be paid. The timing of their payment is difficult to ascertain precisely however it appears they were paid close to the matter being taken to court and, if so, appear to have been paid to induce owners to proceed to title determination.

Ōtamakapua 2 pre-title advances

49. With Ōtamakapua 2, as with other southern blocks, the disputes do not primarily concern the land being sold but do concern who was in control of that sale – with pre-title advances being a key issue within that.[52] Likewise, the matter of the land going through the Native Land Court was not disputed but the timing and the location of the title investigation hearing certainly was:

49.1 When McLean paid the £3,200 advance above to Kawepō, he - as at 1875 (although that subsequently shifted) - appeared to have had the mandate to deal with the land from his own people (Ngāi te Upokoiri), Ngāti Apa (although they were not ultimately found to have interests in the land), and his whanaunga Ngāti Hauiti.[53] Complaints by Hunia Te Hakeke of Ngāti Apa about Kawepō's involvement (including the advance) were roundly rejected by other Ngāti Apa rangatira following a six day hui after which they

51 Wai 2180, #A07, at 48.

52 Wai 2180, #A07, at 46. In 1874, Ūtiku Pōtaka, Ngāti Apa and Kawepō are all on record supporting sale of Ōtamakapua 2; and #A43, at 49. Kawepō stated in 1875 that he and Ūtiku's intention to do so was published in 1872 (Wai 2180, #A43, at 48).

53 Wai 2180, #A07, at 50. Hearn's discussion at 263 is somewhat unclear on this point. He states the Crown dealt with Kawepō in Ōtamakapua over objections of others because he was willing to sell lands. However, the objections post-dated the payment of the advance (in some cases by a number of years). The contemporaneous (1875) complaints are primarily from Hunia Te Hakeke who did not appear to have the support of Ngāti Apa in making those complaints. Hearn then also notes the Crown dealt with Ngāti Apa even though they were subsequently found to have no interests in that block, suggesting the Crown did so because Ngāti Apa were willing sellers – however the Crown dealt with Ngāti Apa only in a minor way for Ōtamakapua – and dealt primarily with Upokoiri and Hauiti. The conclusion reached on the evidence for these submissions for the Crown is as above – Kawepō had mandate from relevant interest holders as at 1875 (although that subsequently shifted).

reiterated their earlier agreement "to leave [Ōtamakapua 2] to Rēnata to manage".[54]

49.2 Ūtiku Pōtaka for Ngāti Hauiti had been in partnership with Kawepō in 1872 and 1874 and supported Ōtamakapua 2 being sold (whilst Ōtamakapua 1 was to be retained for his people), however it is not certain from the record whether he was aware of the advance being paid to Kawepō or whether the Crown was aware of him having any concerns prior to him conveying them in 1876. It seems clear that, within a year of the advance being paid, Ūtiku considered Kawepō was not representing the interests of Ūtiku and his people appropriately and did not continue to support Kawepō being paid an advance nor leading the claim (although they later worked together again on post-title determination purchase negotiations). Ūtiku strongly advocated for title determination by the Court from 1876.[55]

49.3 By the 1879 title investigation, the earlier Ngāti Apa mandate for Kawepō, though still extant, may have become somewhat fractured – in part through him not distributing this advance.[56]

49.4 McLean stated in 1875 he did not wish to pay any further, or at least any "heavy", advances prior to title determination by the Court (having paid Kawepō as principal claimant). This position was repeatedly conveyed between 1875 through to title determination in late 1879 (including by Sheehan from 1877) in the context of requests by or about others (including Pōtaka and Hunia).[57]

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54 Wai 2180, #A07, at 48–50; Wai 2180, #A43, at 49. Note, whilst Hearn notes Ballara's assessment of the character and conduct of Hunia Te Hakeke and thus accords his views little weight, Stirling appears to accord them greater weight. At times the technical evidence, and claimant generic submissions, appear to represent Hunia Te Hakake as speaking for all Ngāti Apa – that is not sustainable in the face of the Whangaehu hui discussed above.

55 Wai 2180, #A07, at 51–52; Wai 2180, #A43, at 50.

56 Wai 2180, #A07, at 54, 61; #A43, at 52–53: Ahuru comments in 1877 and at title investigation 1879 – although it is not clear from the evidence what representative authority for Ngāti Apa was held by Wunu Te Ahuru, there is some evidence that he spoke for Tipae in some of these dealings.

57 Wai 2180, #A07, at 50, 53, 56 (August 1876); Wai 2180, #A43, at 52–3 (1877); at 54 (Ūtiku querying Apa in 1878); at 54–55 (1879 – to Te Rina Mete).

49.5 Booth's correspondence on advances during the title hearing (in October 1879) mentions only the £3,200 pre-title advance to Kawepō.[58] However the final accounts show a further £1,962 was paid in pre-title advances as shown in the Table below. [59]

Wirihana Hunia	£500
Ūtiku Pōtaka	£200
"Renata & Utiku" (1881)	£200
Kawana Hunia	£120
Aperahama Tipae	£270
Te Rina Mete	£145
Hamuera Te [illegible]	£100
And approximately 20 other people (ranging from £2-£45)	

49.6 A substantial portion appears likely to have been in the period leading up to the September 1879 hearing – that is, prior to the October 1879 title determination. £1,652 of the £1,962 is recorded as being paid in the financial years 78/79; 79/80. £310 is recorded in "81" – after the title. (Receipts have not been located to clarify timing of payments further.)

49.7 The pre-title advances made for Ōtamakapua 2 between 1878 and the October 1879 title determination were made in direct contradiction of repeated assurances provided by successive Native Ministers from 1876 to 1879 that further advances had not been, and would not be, paid.[60] The payment of them has the appearance of inducements being made at a late date to enable the Court hearing to proceed.

50. A further issue arises from the Ōtamakapua 2 dealings. In addition to the pre-title advance paid to Kawepō in 1875, he was also paid £1,000 "for

58 Wai 2180, #A07, at 65.

59 Wai 2180, #A07(c), at 49–50. Wai 2180, #A07, at 71–72.

60 Wai 2180, #A07, at 50, 53, and 56 (August 1876); Wai 2180, #A43, at 52–53 (1877); at 54 (Ūtiku querying Apa in 1878); at 54–55 (1879 – to Te Rina Mete).

services in negotiating the sale of [Ōtamakapua 2]".[61] This payment appears to have been less well known than the advance payment itself and represents the Crown enrolling Kawepō as an agent to further its objective of purchasing the lands – this gives rise to a perception of conflict of interest, if not a direct conflict. Hearn notes that this practice may well have "seriously compromised" the capacity of the recipient "to act in the interests of his co-owners" and notes previous Crown evidence (Andrew Joel in Whanganui Inquiry on Waimarino) has acknowledged that these payments were intended to encourage the recipients to persuade or induce others to sell.[62] The Crown accepts these concerns but stresses they must be assessed on the facts as to any prejudice arising. Here, Kawepō, at least as at 1875 when the payment was made, was mandated by the interest holders to pursue sale of these lands. That mandate fractured between Kawepō and Pōtaka in 1876 – but there is no sign of the Crown revising its position accordingly. Even after that time, Ngāti Hauiti did not dispute the intent to sell or, indeed, the ultimate terms of that sale (Kawepō's own people – Ngāti Hinemanu – were those who contested the terms of the sale through to 1884 (along with the Donnelly's)). This matter is acknowledged in paragraph [17.3.3] above as an aggressive purchasing tactic.

51. For Ōtamakapua 2, this concern is compounded in that the Crown later sought to recover the £1,000 it paid Kawepō for "services" to act on its behalf in this capacity against the block.[63]

Pre-title advances in Otairi

52. Early advances on Otairi were relatively minor (£50 in 1874, £153 by 1878) and the refund of them was actively considered in 1877 by the recipients. The Crown did not pursue purchase negotiations for Otairi vigorously until 1878 at which point the Crown "notified" the block as being under negotiation and paid significant advances in the clear knowledge of contest of interests between those who might sell to the Crown and those negotiating with private purchasers.[64] In February 1879, £3,000 was paid to Aperahama Tipae (Hauiti/Apa) who "wished to secure the Block for Govt.

61 Wai 2180, #A07, at 48. It is sometimes suggested he was paid £2,000 for "services" but he was paid £1,000 for services and £1,000 for survey expenses.

62 Wai 2180, #A07, at 266.

63 Wai 2180, #A07, at 108–109.

64 Wai 2180, #A07(c), Hearn Supporting Documents Vol 3 at 00321 (Booth 6.7.1880); #A07, at 151.

as against Hunia's negotiations with MacKay".[65] (£100 was later paid to Hunia himself.) Ūtiku Pōtaka was paid £3,000 in March 1879 (Ngāti Hauiti).[66]

53. These advances were recognised in a Deed by Ngāti Hauiti, Ngāti Tumanunu, and Ngāti Hinearo as having been received as an advance towards their "individual and collective" interests.[67]

54. The title was determined in July 1880. Six months later the lawyer Buller, for Ūtiku Pōtaka, sought payment. Ūtiku had been assured that the purchase would be completed within three months after grant of title – purchase was not, however, ultimately completed until the following year.[68]

55. By late 1880/early 1881, when purchase negotiations did not succeed for the Otairi block, the Crown offered to allow parties to pay back the advances. Both Ngāti Hauiti[69] and Ngāti Apa made their intentions to pay back the advances known to the Crown at different points in time, however by late 1881 it was confirmed they were ultimately unable to do so.[70] The Crown applied to the Court to partition out the interests it had acquired (the only southern block in which it did so). Purchase deeds (18,834 acres) were completed in November 1881 and partitioning was completed in March 1882.[71]

Recipients of pre-title advances were owners other than in two cases

56. The Tribunal has previously found that the pre-title payment of advances to an individual could enable communities to be locked into a transaction but noted limits on that as "a Crown title was ultimately dependent on the select few proving to at least be among the correct owners".

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65 Wai 2180, #A07(c), Hearn Supporting Documents Vol 3 at 00366 (Booth 26.1.78); #A07, at 151.

66 Wai 2180, #A07, at 151–152.

67 Wai 2180, #A07, at 152–153.

68 Wai 2180, #A07(c), Hearn Supporting Documents Vol 3 at 00335 (Pōtaka 25.12.1880).

69 Wai 2180, #A07(c), Hearn Supporting Documents Vol 3 at 00320. Wai 2180, #A07, at 160–161.

70 Wai 2180, #A07, at 157 – Hearn considers that Ngāti Apa particularly tried hard to refund the advances that had been made but was unable to secure credit to do so whilst the block remained proclaimed (thus unavailable for private transactions). The ultimate inability for them to do so seems somewhat at odds with Hearn's later statement (at 263) that Otairi demonstrates that Māori could and would refund advances.

71 Wai 2180, #A08, at 162–163.

57. In the inquiry district, all pre-title advances were paid to people who ultimately were found to be rights holders in the relevant lands with the (notable) exceptions of:[72]

57.1 Otairi – Booth was not entirely correct in his claim that "all persons to whom I had made advances are found to be entitled". Of the £6,916 paid in pre-title advances, the £100 advance paid to Kawena Hunia was not.[73] Ngāti Apa were awarded Otairi 3 but Hunia was not included on that title and the Ngāti Apa people who were recognised as owners vigorously opposed the land being charged with advances that had been made to Hunia[74] (there was no evidence that the advance paid to Hunia was distributed to people who did end up on the title of Otairi 3). The Crown nonetheless charged the advance against Otairi 3.[75]

57.2 Pre-title advances paid to Ngāti Apa people on Ōtamakapua 2 in 1879 (of at least £620).[76] Ngāti Apa were not found to have interests in the block (a result which they continued to challenge, however subsequent applications for rehearings and a petition to Parliament were unsuccessful in overturning that).

58. The pre-title advances listed in the table at [47] were made to individuals. They were, however, then treated as an advance against the purchase price, and were thus costs imposed on all those owners with interests in common with the individual who received the advance.

58.1 In Ōtamakapua 2, advances were charged against the portions of the blocks awarded to hapū.[77] Efforts to charge advances to

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72 Note: Kawepō was recognised in the title (Wai 2180, #A07, at 107). Ngāti Hinemanu contributed 1531 acres to Kawepō "to enable him to pay certain debts", so along with his direct interest, he received a total of 5,931 acres in Ōtamakapua 2.

73 Wai 2180, #A07, at 158.

74 Wai 2180, #A07, at 166–167.

75 Wai 2180, #A07, at 167.

76 Wai 2180, #A07(c), at 49–50 – see table of advances paid at [47]. Of the £1,652 paid in the 77/78 and 78/79 financial years, Wirihana and Kawana Hunia were paid £620. Aperahama Tipae was paid £270 but he was put on title through his Hauiti lines rather than his Ngāti Apa lines. Ūtiku Pōtaka (not Ngāti Apa) was paid £200 and a further £200 later in 81 along with Kawepō. Analysis of who amongst the recipients of the remaining £362 was Ngāti Apa has not been undertaken but their names are listed in #A07(c), at 49–50.

77 Wai 2180, #A07, at 106, 109.

Hunia against the whole block were resisted and the amount was charged against the portion of the block awarded to Ngāti Apa.[78]

58.2 With Otairi, however, the hapū collectively signed deeds of agreement to the sell the block that acknowledged the £6,000 as an advance towards their "individual and collective" interests.[79]

59. The Crown acknowledges these matters as being elements of the concession of te Tiriti/the Treaty breach at paragraph [17.2] above.

Fairness of prices and relationship with private competition in the Southern blocks

60. In Taihape, the Crown submits that the degree of competition with private purchasers is overstated by claimants. The Crown only entered into purchase negotiations in the inquiry district after private negotiations for the "Greater Paraekaretu" block (which incorporated the bulk of the southern blocks) failed. Those private negotiations failed in large part due to the owners seeking higher prices than the private parties were willing to meet. The Crown did not always compete or utilise (or, where used, enforce) its declaratory powers against private interests. In the key Rangatira block (and, for different reasons, Ohaumoko, and to a limited extent Otairi) the Crown declined to engage in purchasing - largely due to the level of private interest in those lands.[80]

61. Allegations the prices Taihape Māori secured for the Crown land purchases were unfair and/or were significantly depressed compared to what was available on the private market are also somewhat overstated. There is not sufficient evidence to conclude that the prices the Crown paid for Taihape lands were unreasonable.

62. Hearn is at pains to stress that there simply is not sufficient information to be conclusive on such issues – the Crown agrees. As Hearn notes, the adequacy of the prices that the Crown paid for land acquired from Māori is difficult to assess, not least since land varies greatly in terms of quality,

78 Wai 2180, #A07, at 82.

79 Wai 2180, #A07, at 150–152.

80 Wai 2180, #A07, at 209–210.

location, and accessibility, and since land values are constantly changing in response to changes in the wider economic environment.

63. Several of the examples drawn on for allegations of unfair pricing compare private purchasing offers for the prime lands in a particular block and fail to adequately account for the Crown purchase prices encompassing lands of more variable quality (eg 20 shilling offer for Taraketi). There was an element of competition with private speculators which contributed to the Crown raising its price for Ōtamakapua to 10 s/acre, however the private parties were only interested in purchasing the small, high quality land areas - noted as "picking the eyes" of the land (which limits the accuracy of the comparison).[81]

64. Whilst Hearn draws a comparison between Taihape and the Whanganui Inquiry District data where the "average price paid by private purchasers was just over 20s per acre, that paid by the Crown was just over 4s per acre", [82] that is a difficult comparison to make robustly. The character of the lands in each region differs significantly (with Taihape having a higher proportion of relatively low-quality land). The relative location of the two areas could also have a major influence on prices: ie the Whanganui region is traversed by a major navigable river with a port at the mouth, which would almost certainly make surrounding lands more desirable than land in the much less-accessible Taihape district. And, as above, private purchasers sought smaller titles consisting only of the good quality land, while the Crown accepted a balance of land quality within large areas.

65. In the Taihape Inquiry District over the period from 1873 to 1885, Hearn compares a representative range of prices paid per acre.[83] The 10s per acre for Crown purchases in Waitapu and Ōtamakapua 2 was considered relatively high in the context of the quality of the whole block (and relative to other prices being paid at the time) and together represent approximately 40% of the total southern blocks area (and include a mix of high quality and

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81 Wai 2180, #A07, at 266. Mr Hearn's discussion of this matter is at a regional not district level – ie Whanganui region rather than Taihape district. The lands and purchase patterns in Taihape district do not precisely mirror those of the more coastal Whanganui region generally.

82 Wai 2180, #A07, at 273.

83 Wai 2180, #A07, at 272. Note: Hearn also states "Otairi 6.9s"in his list at page 272 of private purchases – it is unclear which land that is intended to refer to (and is not listed at his record of private purchasing in Otairi at page 169).

lower quality lands). The price per acre paid for smaller, more select quality, land by private purchasers (that did not include lower quality lands – ie Rangatira and Hapopo and sections of Otairi) is not a reasonable comparator.

Price paid per acre and size of blocks **Note: LUC categories not specified**	
Private Purchasers	**Crown**
Rangatira 14.3s (7,500 acres)[84]	Mangaoira-Ruahine 2.55 s (35,660)
Hapopo 14.75s (12,000 acres)[85]	Waitapu 10 s (29,484 acres)
Otairi 1B 6.43s (12,560 acres)[86]	Otairi 1A, 2A 6.75 s (18,466 acres across Otairi)
Otairi 1E 7.2s (9,175 acres)	Ōtamakapua 9.6 s (107,267 acres)[87]
Otairi 2B 10 s (3,938 acres)	Paraekaretu 4 s (46,975 acres)
Otairi 3 9.4 s (3,772 acres)	

66. Property tax valuations do not provide a good comparator to assess market value. Prices paid for lands (undeveloped) by both the Crown and private parties were lower in Taihape than the property tax valuations (consistent with the Whanganui inquiry evidence).[88] In Taihape, Hearn records private sales between 1880 – 1883 showed:[89]

Block	**Acres**	**Price per acre**	**Total Paid**	**Property Tax Valuation**
Otairi 3	3,772	9s 4.75d	£1,774	£2,829.498
Otairi 2B	3,938	7s	£1,361 10s	£2,854
Otairi 1B	12,560	6s 4.75d	£4,012	£9,332
Otairi 1E	9,175	7s 2.5d	£3,300	£3,421.499

84 Wai 2180, #A07, at 224.

85 Wai 2180, #A07, at 224.

86 Wai 2180, #A07, at 169.

87 Wai 2180, #A07, at 135: 5,071 acres private purchase – price not specified.

88 Wai 2180, #A07, at 273.

89 Wai 2180, #A07, at 169.

Distribution of proceeds of purchase

67. There was substantial difficulty reaching agreement amongst the owners recognised on the title concerning allocation of their relative interests within Ōtamakapua 2 block and distribution of the proceeds of sale.

68. Completing Ōtamakapua 2 involved four years of intense discussions, complicated partly by some hapū having named "representative" owners and others naming each owner. Tensions concerning the level of consensus for selling to the Crown also played out. Crown Purchase Officer, Booth, appears to have been very forceful in these dealings where various people declined to sell. He stated he spoke to them "in such a manner before the tribe that [a non-seller] was very glad to sit down and hide out of sight. He did not again venture to repudiate" and "the four obstructionists were driven from their position & they will sign".[90] His efforts were reported with concern to the Native Minister who was informed those declining to sell were being "intimidated by the officers of the government".[91] These matters illustrate differences in view between tribal members; that the arrangements entered into by rangatira with the Crown prior to title determination were not necessarily shared by the polity of that rangatira and/or that Crown purchase conduct was undermining the tribal structures of the communities of owners.

69. This is the example of the Crown, in at least one circumstance, intimidating or applying inappropriate pressure on owners to sell their interests (see concession at paragraph [17.3.4] above).

Aggressive leveraging between blocks

70. Although the Ōtamakapua 2 title was determined in October 1879, the Crown purchase was not completed until June 1884[92] due to difficulties between owners defining specific interests which ultimately required recourse back to the court when agreement could not be reached.[93]

71. In April 1880, negotiations towards completing the Ōtamakapua purchase which the Crown, Ūtiku and Rēnata had initially anticipated being

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90 Wai 2180, #A07, at 82.

91 Wai 2180, #A07, at 83.

92 Wai 2180, #A07, at 108.

93 Wai 2180, #A07, at 75–108.

completed as soon as the three month window for rehearings had elapsed, had become more complex and the Land Purchase Officer assessed matters as having assumed a character of "indefinite postponement" in that resolution of some owners' concerns was not able to be achieved notwithstanding significant efforts of the Crown (and Ūtiku and Rēnata) to bring matters to a conclusion.[94] Around the same time, title hearing for the adjoining Otairi block was underway (stretched from 5 May 1880 with title determined in late June 1880). These two matters became intertwined in the following way:

71.1 During the Otairi hearing, in early June 1880, Kawepō requested a pre-title advance on the Otairi 2 purchase. The land purchase officer observed that Kawepō was "most anxious" for an advance but recommended it be declined.[95] The purchase officer provided different reasons in two separate telegraphs to the Native Minister on the same day for his recommendation.

71.1.1 In the first, he stated concerns about paying advances pre-title and that the Deed and payment should only occur with all Grantees present. This was consistent with Crown policy from 1879 that pre-title advances not be made generally.

71.1.2 In the second, marked as confidential, he presents more concerning reasons.[96] Booth noted Kawepō was "very much in want of money just now & this fact is more likely to induce him to complete the Ōtamakapua sale than if he were in funds."[97] Native Minister Bryce agreed

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94 Wai 2180, #A07, at 75. For example, Ngāti Whiti and Ngāti Tama refused to attend to sign whilst Kemp was in the district due to Murimotu dealings.

95 Wai 2180, #A07, at 77; Wai 2180, #A07(c), Hearn Supporting Documents Vol 3 at 003516.

96 Wai 2180, #A07(c), Hearn Supporting Documents Vol 3 at 00360.

"Confidential Re Renata Kawepō application for an advance on Otairi No 2 I wish to say that I think it would be much better to put him off. He is very much in want of money just now & this fact is more likely to induce him to complete the Otamakapua sale than if he is in funds. I anticipate some trouble in Otamakapua business as he demands that the [?]. I send this nothing less than a reply from yourself will satisfy him. He says he will go to Wellington and urge this matter in person if I do not ask you to make the advance." Minister Bryce responded "I fully concur especially as regards the mode of payment for Otamakapua."

97 Land Purchase Officer, Whanganui to Under Secretary Native Land Purchase Department 4 June 1880, in Archives New Zealand, Wellington MA-MLP 1 1896/80. *Supporting Documents*, Volume 3, pp 00360. The debt pressure on Kawepō continued to intensify – by 1881, he was being threatened with debtors'

with Booth and instructed him not to make any more pre-title advances in respect of Ōtamakapua "til the purchase can be closed".[98] This constituted leveraging the debt pressure Kawepō was under against him as an inducement to complete Ōtamakapua 2 purchasing.

71.2 In August 1880, Kawepō convened the Ōtamakapua 2 owners to enable the completion of that purchase and undertook strenuous efforts to that end.[99]

72. The conduct of Booth and Bryce in leveraging the debt pressure Kawepō was under at that time in order to further the Crown's objectives of completing the purchase of Ōtamakapua in Tiriti/Treaty terms is addressed above as an element within the Crown acknowledgements at paragraph [17.3.2].

Waitapu

73. The land that became the Waitapu block was initially within the boundaries of the Rangitīkei-Manawatū block, including when it was purchased by the Crown in 1866.

74. The block history of Rangitīkei-Manawatū block is being addressed in the Porirua ki Manawatū district inquiry and is commented on here only to the extent necessary to address the creation of the Waitapu block in 1872 (which is within the Taihape District Inquiry).

75. These submissions then address the subsequent Crown purchasing activity in the Waitapu block.

Waitapu block creation

76. The 1866 Rangitīkei-Manawatū purchase was a pre-emptive Crown purchase. The block was exempted from the jurisdiction of the Native Land Court in 1865 but, to address concerns raised in the purchase process, was subsequently taken to the Native Land Court in 1868-69 (to define

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prison Wai 2180, #A07, at 90. However, at the time of his death in 1888, his estate was worth over £100,000 (Boast, the Omahu Affair, (2015) 46 VUWLR 38, at 850.

98 Wai 2180, #A07, at 77–78.

99 Wai 2180, #A07, at 78.

relative interests rather than to create the title itself).[100] The matter had been referred to the Native Land Court for "all questions affecting the title or interests' of all Māori who had not signed the 1866 Deed of Cession" for the land.[101]

77. The portion of the Rangitīkei-Manawatū block that later became Waitapu was included in the 1869 court proceeding[102] but no claims or appearances were made by Taihape Māori.[103]

78. Following the 1869 hearing, the native title was extinguished by proclamation. The proclamation stated that actual possession was contingent upon the boundaries of reserves being defined (for those the Court had found to have interests in the land but who were not signatories to the 1866 Deed of Purchase for the block).[104] The definition of those reserves fell to McLean to sort out through discussions with the owners.[105]

79. This included discussions to settle the inland boundary (which was necessary to give effect to the purchase itself and to the Native Land Court determination (regarding reserves for non-sellers), and for the purpose of entering sales negotiations for adjoining lands – including lands in the Taihape Inquiry District – Ōtamakapua block).[106]

80. McLean conducted negotiations with all interested parties from 1870 (including Taihape Māori even though they were not on the Rangitīkei-Manawatū block title). As well as Ngāti Apa (who were a dominant party in

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100 Wai 2200, #A215, at 216. The combined effect of the two doctrines of Crown pre-emption and native title was that the only way that Māori land could be converted to a Crown- derived title (other than through the Native Land Court) was by means of an alienation to the Crown followed by a grant to a third party.

Wai 2180, #A43, at 55.

101 Wai 2200, #A152, at 460.

102 The boundaries reflected those of the 1866 purchase (including Umutoi being the northern-most point).

103 Wai 2200, #A152, at 461.

104 Wai 2200, #A152, at 472.

105 Wai 2200, #A215, at 263. Professor Boast notes "The Rangitikei Manawatu purchase was a provincial project from the beginning, although it needed to be rescued from the chaos that it caused by McLean and the general government after 1869 (not that Featherston was notably grateful for McLean's efforts)."

106 Wai 2200, #A152, at 534 and 648–649; Wai 2180, #A43, at 56. McLean's statement in #A43, at 58 that the new boundary line would "not to any appreciable extent diminish the area of the purchase" was a response to Fitzherbert's concerns (Wai 2200, #152, at 534) that the adjustment would remove 67,000 acres from the purchased land – Waitapu was only 29,484 acres.

the Deed and the Court process), McLean involved Ngāti Hauiti (Ūtiku Pōtaka), and Ngāi te Upokoiri (Rēnata Kawepō).[107] McLean stated:[108]

> The settlement of the inland boundary of the Rangitikei-Manawatu Block appeared to me to be of such imminent importance to the peaceable occupation of the district that I have spared no exertion or trouble in deciding on a boundary which would protect the interests of the Province [Wellington] **and at the same time satisfy the Native claimants**. **After repeated and lengthy discussions with the Natives, most of whom were not parties to the original sale of the land,** I proposed that a line should be drawn half-way between Umutoi and Pariroa, and thence to the Waitapu, which is the inland boundary of the purchase on the Rangitikei River. [Emphasis added]

81. These discussions resulted, in 1872, in (amongst other things)[109] McLean adjusting the Rangitīkei-Manawatū block boundary further to the south.[110] Doing so created a wedge of land between the original northern boundary and the revised northern boundary which consisted of 29,484 acres - this became the Waitapu block.[111]

82. Mr Hearn describes the Waitapu block as consisting of land as having been "laid off but not paid for in the original purchase price and necessitating the payment of further recompense".[112] This is premised on the suggestion that the boundary adjustment resulted from Hunia "ingeniously discovering" a survey error and discovering lands that had not been paid for earlier – but the Crown's view is that this is unlikely to have been the reason (or at least not the sole reason).

83. The Crown's view is that the land was included in the 1866 purchase and that the 1872 survey was required to enable that to be competed. The

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107 Wai 2180, #A07, at 248 (and Wai 2200, #A54, at 650) sets out Pōtaka's 1877 recollection of those discussions.

108 Wai 2180, #A07, at 246.

109 Wai 2200, #A152, at 540. For completeness, the Rangitīkei-Manawatū Crown Grants Act 1873 empowered the Governor to fulfil and carry into effect the other agreements reached between McLean and Rangitīkei/Manawatū Māori, to issue grants from the Crown of the lands agreed to be granted in fee-simple, and to reserve those lands that it had been agreed should be set apart.

110 Wai 2180, #A43, at 55–56. Wai 2180, #A43, at 57 Map 6 provides the clearest visual of the situation. Instead of Umutoi being the northern most point (as it was in the Deed and the description of the land for the court hearing), the northern point became Parimanuka. The northern boundary of the Rangitikei-Manawatu block in the 1866 Deed of Purchase was described as a "direct line from Waitapu to Te Umutoi on the upper Oroua river". Te Umutoi is the northern boundary point of the Waitapu block – ie the land that became Waitapu was land south of the Rangitikei-Manawatu boundary, that is it came within the 1866 Deed.

See Wai 2200, #A215, Boast at 233; Wai 2200, #A213, Husbands; Wai 2200, #A152, Hearn. Whilst the Crown owned the purchased land from 1866, several steps were required in law to complete that purchase – those steps were taken between 1866 and 1872.

111 Wai 2200, #A152, at 534. Te Umutoi is the northern point of the Waitapu block.

112 Wai 2180, #A07, at 245.

boundary adjustment is more likely to have resulted from McLean's pragmatism in dealing with land at the boundary of various rohe (and to have been informed by his discussions with all relevant parties, including Ūtiku and Rēnata) rather than purely a surveying issue. Such arrangements were not unusual from McLean – even if it did in effect mean that Ngāti Apa were paid twice for the same piece of land.

84. This explanation for the boundary adjustment is consistent with the boundary description for the 1866 Deed and the court proceeding,[113] and was repeatedly expressed by the Crown to be the reason during subsequent dealings in the land. Of importance, the Crown did not accept later assertions of Kawana Hunia that the 1872 boundary clarification had been made because the land belonged to Hunia.[114] In 1879, Bryce reiterated to Hunia the Crown view that the land had been included in the Rangitīkei-Manawatū block (as per the contemporaneous documentation – the 1866 Deed). McLean altered the boundary because the boundaries were not well known and "other points better known should be indicated".[115] That is, the lack of clarity was not due to error but due to remote landscape features having been utilised and as a result of McLean's discussions. [116]

85. At the time of the 1872 survey to define the Rangitīkei-Manawatū block which created the Waitapu block, the Crown was contemplating but had not yet begun purchase negotiations for Ōtamakapua (immediately to the north and west of Waitapu) within the Taihape inquiry district.[117]

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113 Which clearly state Te Umutoi is the boundary point.

114 Wai 2180, #A07, at 253–254; Wai 2180, #A43, at 67–68. Note: Mr Stirling disputes the assertion by Bryce that Hunia "distinctly assured me that that was the kind of inquiry contemplated." The record of the encounter shows Bryce specifically asking whether Hunia thought Bryce a 'competent authority' and Hunia saying "he would give the Native Minister some answers with respect to this" and proceeding to lay out elements of his claim. Bryce appears to have considered Hunia doing so to constitute a positive answer to his question; Stirling says Hunia did not answer in the affirmative and that his subsequent conduct did not demonstrate acquiescence to Bryce's point. Regardless, Mr Stirling appears to acknowledge that Hunia's claim of exclusive interests was tenuous.

115 Wai 2180, #A07, at 253; Summary in Archives New Zealand, Wellington MA-MLP 1 1886/344. Wai 2180, #A07(c), Vol 3, at 160–264.

116 See, for example, Wai 2200, #A152, at 557–558.

117 Wai 2180, #A07, at 45–46; Wai 2180, #A43, at 56–57. Discussions concerning Ōtamakapua (1 and 2) began between the Crown and Kawepō and Pōtaka from 1872 and proceeded throughout the 1870s until its final title determination in 1879, subdivisions confirmed in 1884 and Crown purchasing completed in 1885 (Wai 2180, #A07, at 109). The point at which those discussions can be described as purchase negotiations having commenced is probably closer to the mid-1870s (when negotiations were proclaimed). In 1874, Kawepō and Pōtaka are recorded as advertising Ōtamakapua for sale in the paper and some private purchase discussions were underway.

Crown purchase activity for Waitapu

86. In the 1972 discussions the Crown, Ngāti Apa and Ūtiku and Rēnata appear to have agreed that the Crown would purchase the lands. By 1876, the Crown proceeded with that purchase on the basis interests were split equally between Ngāti Apa and Ngāti Hauiti/Ngāi te Upokoiri.[118] However, in 1877, Ūtiku Pōtaka for Ngāti Hauiti considered Ngāti Apa's interests had already been sold (and paid for) through the earlier Rangitīkei-Manawatū block dealings and they should not receive any further proceeds of sale. In turn, Hunia continued to dispute Ngāti Hauiti having any interests in the land.[119] The Crown continued the purchase negotiations on the equal shares basis, with reference back to what had been agreed in the 1870-1872 discussions (and, as below, with the consent of all parties clearly recorded on the final sale documentation).

87. Mr Stirling criticises the Crown's decision that Ngāti Apa and Ngāti Hauiti/Ngāi te Upokoiri shared equal interests in Waitapu as being inconsistent with the (later) title determination of the Court in the Ōtamakapua block which found solely for Hauiti and which Mr Stirling says "of which Waitapu was basically an extension".[120] However, Waitapu had been located within the Rangitīkei-Manawatū block, and following the 1872 boundary clarification, sat between that block and the Ōtamakapua block. Title for the adjoining Ōtamakapua 2 was not determined until 1879. Ngāti Apa did have interests in the northern part of the Rangitīkei-Manawatū block and the Ōtamakapua 2 1879 decision observed that "Ngati Apa and Ngati Hauiti had fought over the southern portion of Ōtamakapua but that the former had failed to occupy the land permanently". It does not seem unreasonable for the Crown to have considered Waitapu as a nexus of adjoining and overlapping interests.

88. In 1877, Parewanui and Ūtiku Pōtaka requested that the matter be settled. They were advised the grant for Waitapu would not issue "until the whole question has been decided according to law".[121] In 1879, prior to finalising purchase arrangements, the Crown (Booth) considered whether Waitapu

118 Wai 2180, #A07, at 248; Wai 2180, #A43, at 60.

119 Wai 2180, #A07, at 248, 249.

120 Wai 2180, #A43, at 60. See Ōtamakapua title determination at Wai 2180, #A07, at 43, 63-66: Ōtamakapua 1 title was investigated in 1870 and 1880; Ōtamakapua 2 title determination in 1879.

121 Wai 2200, #A154, at 650.

should be considered by the Native Land Court (alongside its Ōtamakapua considerations).[122] Legal advice (from Buller) was that the Court did not have jurisdiction over the land as Native title was "extinguished by proclamation in 1869"; he stated that Waitapu was technically a reserve subject to the Rangitīkei-Manawatū Crown Grants Act 1873; and that any disputes should be addressed by a Royal Commission rather than the Court.[123] Resolving the matter through consent of the "contending parties" would be preferable (with the consent of parties to be recorded explicitly).

89. The accuracy or otherwise of that legal advice is not assessed in these submissions, turning as it does on matters under consideration in the Porirua ki Manawatū inquiry (namely the effect of the 1866 purchase, the 1869 proclamation of extinguishment, and the 1873 Act – and the discussions between McLean, Ngāti Raukawa, Ngāti Apa, Rangitane, and Ngāti Kauwhata that led to that Act).[124]

90. As above, the Crown proceeded to finalise the purchase directly with the parties. The Crown ensured that each party signed the deed of purchase in the presence of others from their interest group. The payments were made upon parties signing deeds of purchase (in late 1879) and the block was declared Crown land in April 1880:[125]

90.1 Ngāti Hauiti/Ngāi te Upokoiri signed and were paid at Omahu in October 1879; and

90.2 Ngāti Apa signed and were paid at Whangaehu three weeks later (following a week of "hard talking").[126] That "hard talking" appears to have addressed the concerns raised earlier by Hunia (and those of Ūtiku Marumaru) as to Hauiti's interests.[127] The Crown took all of its records on Waitapu to the Whangaehu hui, and agreement was reached amongst Ngāti Apa to complete the

122 Wai 2180, #A07, at 249; Wai 2180, #A43, at 62.

123 Wai 2180, #A07, at 250.

124 See, for example, Wai 2200, #A152, at 472, 558.

125 Wai 2180, #A07, at 252.

126 Wai 2180, #A07, at 250–252.

127 Wai 2180, #A07, at 251.

purchase.[128] Purchase monies were not paid until all signatures had been secured on the Deeds.[129]

91. Hunia had argued at Whangaehu that Waitapu had been created due to his intervention with McLean and that he had an exclusive interest in the land. That was not agreed to at Whangaehu but what was agreed amongst Ngāti Apa at Whangaehu was that they would complete the purchase with the Crown and Hunia could continue to attempt to progress his view of matters on his own account after that. He did just that, notwithstanding his view of affairs not apparently being supported by Ngāti Apa more widely.[130] He raised his concerns directly with Minister Bryce in 1879 and through Fox in 1880.[131] In 1886, Native Minister Ballance and Booth pointed to the subsequent Ōtamakapua title determination as support for the position the Crown had taken since McLean's 1872 boundary adjustment – that Hauiti did have interests (and that had been accepted in 1879 at Whangaehu by Ngāti Apa collectively).[132] The Crown's position throughout was consistent – the land had been in the Rangitīkei-Manawatū block.[133]

Conclusions on Waitapu

92. The land that became the Waitapu block was purchased by the Crown in 1866 and customary interests within it were considered by the Native Land Court in 1869 as part of Rangitīkei-Manawatū block.

93. The 1872 boundary adjustment that created the Waitapu block was undertaken to clarify the inland boundary of the larger block. The boundary adjustment resulted from discussions McLean undertook (in part) to meet the interests of Taihape Māori in the lands, and to enable the completion of the Crown purchase. The parties with customary interests took part in those discussions and appeared to have consented to the boundary adjustment being made (although they subsequently presented different views on their roles in those discussions).

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128 Wai 2180, #A07, at 252; Wai 2180, #A43, at 65–67.

129 Hunia signed and was paid at this Whangaehu hui along with the other Ngāti Apa owners. He had also been paid £10 the month prior, in October 1879 – apparently at Omahu (where it seems he was present for the Crown discussions completing its purchase negotiations with Ngāti Hauiti/Ngāi te Upokoiri).

130 Wai 2180, #A07, at 252; Wai 2180, #A43, at 65–67.

131 Wai 2180, #A07, at 250–252.

132 Wai 2180, #A07, at 254–255.

133 Wai 2180, #A07, at 253; Wai 2180, #A43, at 68.

94. Pre-purchase advances were not paid for Waitapu (despite very anxious correspondence from the competing claimants for those interests suggesting they might be).[134]

95. Following the creation of the block in 1872, individual owners pushing for sale in 1875 were told to wait until legal processes were completed. Disputes arose as to the relative interests within the block – but not about the Crown purchase of the land. The Crown considered taking those matters to the Native Land Court but did not do so (in accordance with legal advice it received).

96. Those disputes were addressed through discussions with the interested parties and concluded at widely attended hui (at Omahu and Whangaehu). One person continued to assert that they had exclusive interests in the block. Those claims were not widely supported by other owners, and were investigated by the Crown, but dismissed.

97. The Crown considers its purchasing conduct in this case, as set out above, was Tiriti/Treaty compliant.

98. That position is premised on the land having formed part of the Rangitīkei-Manawatū 1866 purchased lands and may require revision following legal matters outside the scope of this inquiry. Those matters include the Tiriti/Treaty compliance of the 1866 Rangitīkei-Manawatū purchase, the 1869 court proceeding, the 1869 extinguishment of native title by proclamation, and McLean's 1870–1873 efforts to resolve outstanding issues. The Crown expresses no position on those matters in this inquiry.

CROWN PURCHASING IN KEY CENTRAL BLOCKS (AWARUA AND MOTUKAWA)[135]

99. These submissions now turn from Crown purchasing in the southern blocks to Crown purchasing in the central aspect of the inquiry district.

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134 Wai 2180, #A07, at 249–250. The possible exception to this is the £10 paid to Hunia at Omahu as per footnote 129 above.

135 These submissions focus on Awarua and Motukawa as the core central blocks subject to significant Crown purchasing pre-1900. Unless specified otherwise, reference to 'key central blocks' in these submissions refers to them jointly. Te Kapua Crown purchase history is to be read in context of the Otairi block above. Te Koau was not created until 1900.

100. Crown purchasing in the key central blocks (Awarua and Motukawa) was almost entirely related to the development of the North Island Main Trunk Railway line and associated settlement objectives.[136] The Taihape railway story differs markedly from that in Te Rohe Pōtae or Whanganui. Taihape Māori supported the railway traversing their rohe for the infrastructure and development potential it would bring to an area that suffered in its economic development due to its remoteness (including from markets).[137] In Te Rohe Pōtae, all the railway land was taken under public works provisions.[138] In Taihape, almost all the land was purchased.[139]

101. The only land taken under the public works provisions before 1899 was 12 acres from Taraketi;[140] a further 582 acres were taken for public works (largely after 1898) but the vast majority was purchased rather than compulsorily acquired.[141] These takings are addressed in submissions for Issue 14: Public Works Takings (NIMTR).

102. The key points with Crown purchasing in the Awarua and Motukawa blocks are:[142]

    102.1 the Crown restricted Taihape Māori property rights from 1884 for more than twelve years by rolling over monopoly powers – from

136 See, also, submissions on Issue 14 for railway context and public works considerations.

137 See, for example, Wai 2180, #A09(f), at 41–45: Ūtiku Pōtaka 1885 letter concerning railway development; Wai 2180, #A43(d), at 27 where Stirling reaches same conclusion.

For completeness: Retimana Te Rango (for Ngāti Tama) earlier petitioned the government in 1872 stating opposition to the Native Land Court, roads, and other developments in Mōkai Pātea. This seems to have been aligned with the Repudiation hui at Omahu in 1872. By the 1880s, following further hui (eg Turangarere, Houhou, Poutu and others), the broader Taihape views are expressed as cited below. The situation however was very fluid (eg Rēnata Kawepō supported repudiation but only for two years). Karaitiana Te Rango had earlier (in 1869) applied for title to Ōruamatua-Kaimanawa but withdrew the application for want of survey (Wai 2180, #A43, at 262).

138 Wai 898 #3.4.293, Issue 5.7, at 38 - even where the land had been gifted it was taken under public works provisions in order to ensure security of title.

139 Wai 2180, #A09, at 145. Cleaver: "Purchases undertaken prior to and during the construction of the NIMT meant that substantial portions of the railway route were not in Maori ownership when steps were taken to legalise the lands required for the operation of the railway. Some of the required lands were taken from European owners, while areas held by the Crown were simply set aside for railway purposes. The Government's purchase of Maori lands limited the extent to which it was necessary to compulsorily take land from Maori owners for the railway."

140 Wai 2180, #A09, at 148.

141 Wai 2180, #A08, at 132.

142 The payment of pre-title advances was discontinued in 1879 and thus is not a feature of the central block dealings. Whereas the payment of pre-title advances contributed to problems in the southern block dealings, the non-payment of advances in the central blocks contributed to different problems in the central block dealings (the monopoly conditions significantly restricted the owners' abilities to raise capital through land transactions).

1889 these restrictions applied to significantly more land than was required for the railway;

102.2 the Crown sought to purchase 100,000 acres for the railway and associated settlement. Taihape Māori collectively agreed to sell that amount (specifying the lands for sale and those to be retained);

102.3 the Crown purchased substantially more land (203,109 acres) than Taihape Māori had expressed a collective intent to sell (100,000).

103. These Crown actions are acknowledged in paragraph [21] above as having been in breach of te Tiriti/the Treaty. The following submissions address these issues in more detail, along with those matters that constituted a Tiriti/Treaty-compliant exercise of the Crown's kāwanatanga functions.

104. From 1884, the Crown imposed monopoly purchasing conditions over the railway route to protect lands needed for the railway itself from private speculation, and a substantial area of adjoining lands for settlement purposes and to contribute to railway financing (see "Crown purchasing policy related to North Island Main Trunk Railway line" below). Taihape Māori were unable to transact in those lands with anyone other than the Crown. The underlying rationale for imposing monopoly conditions was reasonable in Tiriti/Treaty terms – the submissions below conclude that the scale and duration of their application was not reasonable.

105. Within the above context, Taihape Māori consistently conveyed to the Crown their desire that any Crown purchasing be guided by their collective decisions.

106. In 1892, the Crown specified that it sought to purchase 100,000 acres (approximately 33% of the key central blocks) for the railway and associated settlement.[143] Taihape Māori owners responded by agreeing to sell 100,000 acres in specified blocks of land. Further matters were stipulated by the collective Rangatira, including their commitment to whānau-based land holdings, collective decision making in relation to their lands, and development finance and infrastructure. Subsequent discussions with the Crown did not reach agreement on these further matters.

143 Figures from Wai 2180, #A08, at 192.

107. The Crown proceeded – after subdivision but without individuals' shares being defined within those subdivided sections – to purchase the shares of individuals. By 1896, approximately 74% of the central blocks (214,807 acres) had been purchased by the Crown.

Crown purchasing policy related to North Island Main Trunk Railway line

108. The railway was a necessary and critical component of high national interest. The Crown's policy was to purchase the lands needed and to only resort to compulsory acquisition where necessary. To this end, the Crown would impose monopoly conditions to protect the route of the railway; and to ensure it could control settlement of lands opened up by the railway.

109. This is a legitimate policy objective in the context of the infrastructure being of such critical importance to the nation – it would be inappropriate to have allowed private parties to frustrate national objectives through speculating in, or otherwise tying up, land required for the railway route. The application of that rationale to the railway route itself and to the land required for infrastructure to service the railway is entirely consistent with the Crown's kāwanatanga role (to provide laws and make related decisions for the community as a whole, having regard to the economic and other needs of the day).[144]

110. While the overarching rationale for imposing monopoly powers was in general terms Tiriti/Treaty compliant, particular aspects of the Crown's application of those powers could, in some circumstances, be inconsistent with its duties under te Tiriti/the Treaty. These circumstances included:

110.1 whether monopoly conditions were warranted over the lands surrounding the railway route - or just the route itself (and, if so, on what conditions or for what duration);

110.2 whether the policy settings struck a fair and reasonable balance for the costs and benefits involved for Taihape Māori; and

110.3 the Crown's conduct as a privileged purchaser within monopoly conditions.

144 *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 at 716, per Bisson J.

111. These questions, and others, have been considered closely by the Crown and the Tribunal most recently in the context of its Te Rohe Pōtae inquiry. The Tribunal found in *Te Mana Whata Ahuru* that as of 1884:[145]

> By pressing ahead with preparations for the railway, and for settlement of the district, without first obtaining the consent of Te Rohe Pōtae Māori, and by enacting legislation that restricted the property rights of Te Rohe Pōtae Māori without their consent, the Crown failed to actively protect their rights in land, and breached the Treaty guarantee of tino rangatiratanga and the principle of partnership.

112. The Tribunal notes these matters did not affect Rohe Pōtae Māori directly because (as with the Taihape central blocks in 1884) lands had not yet been titled and thus could not be alienated anyway.

113. Taihape is different. The political contexts differ markedly - there is not anything similar to Te Aukati (Te Rohe Pōtae) nor Kemp's Trust (Whanganui) in place over the majority of the key central lands for Taihape.[146] Taihape Māori supported the railway (even advocating for it to be routed through their rohe).

114. The Tribunal observed in Te Rohe Pōtae that, as at 1884 (when monopoly powers were also imposed over the central-western section of the Taihape inquiry district), the Crown:[147]

> … was determined to press ahead with the railway, and with opening the land for settlement, but had not yet determined how that settlement might occur or who might manage it. [with reference to titling and purchasing objectives and processes, route etc]

115. Awarua and Motukawa lands were largely purchased in the 1890s. From 1891, the Liberal Government's policy to break up the "great estates" (both monopolistic European land holdings, and "unproductive" North Island Māori lands) guided the bulk of the purchasing in the key central blocks. A

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145 Waitangi Tribunal, *Te Mana Whata Ahuru*, at 971.

146 Wai 2180, #A09(f), at 41–45. Whilst Kemp's Trust did cover some of the lands in the Taihape district (but not the bulk of them), Ūtiku Pōtaka wrote to Ballance in 19 January 1885 immediately after the Ranana meeting rejecting Te Keepa having authority over Te Houhou. He states: "I have heard that it was stated at the meeting you had with Meiha Keepa at Ranana that Te Houhou was one of his boundaries, and this is to inform you that I do not acknowledge that Meiha Keepa and his Council or any other institution of his in connection with my lands, for I have control over my property as well as he over his, but you and I will ourselves make all arrangements about the railway through Taraketi, Rangitikei, Ohingaiti, Otairi, Te Whakaue, Hautapu and on to Patea, these are the places I am interested in."

147 Waitangi Tribunal, *Te Mana Whata Ahuru*, at 973; see, also, 985.

key criterion for confirming the railway route was its ability to open lands suitable for close settlement.

On costs, beneficiaries of value increase, and prices

116. Pre-emption was imposed in order to prevent private speculators from buying the land and to prevent private speculators from profiting from the government's investment in building the railway.[148] The Crown often purchased lands from Māori for significantly lower prices than it subsequently sold them for. A number of factors are relevant to these matters, including:

116.1 The Crown investment in constructing the railway far exceeded the finances realised through land sales along the route. The total cost of building the railway was £2,500,000 - funded largely through international loans.[149] 85-90% of the costs of construction were paid for by Crown debt and general taxes. Only 10-15% was met through the sale of lands opened up by the railway.[150]

116.2 Factors that might have also contributed to the increase in price between purchase price and on-sale price might include: the state of the market at the time of disposal; the time elapsed between purchase and sale; inflation; increases in value (including being improved by having the railway built nearby; having been pastured and fenced or otherwise developed; or having been placed in a secure form of tenure); other infrastructure developed; survey and other development costs; and the quality of the land when disposed.[151]

116.3 Profit/increase in value must also take into account the costs incurred in the purchase process itself; costs of improvements (including in this case the construction of the railway); interest paid

148 Wai 2180, #4.4.14, at 374; See Buckley to Legislative Council NZPD 1884, at 431.

149 Wai 2180, #4.4.14, at 374: 1 million was borrowed in 1886 and a further million in 1899/1901. In the decade between 1888 and 1898, £420,000 interest was due on the first of two million pound loans (1886 and 1899/1901). Costs of construction led to three different reviews on the routes. The government did not have the funds to progress construction at points (it only progressed after further international borrowing).

150 Wai 2180, #4.4.14, at 378. Discussion with Mr Cleaver utilising evidence from Te Rohe Pōtae record.

151 Wai 2180, #4.4.14, at 376.

on borrowings; and cost of associated direct or indirect but beneficial infrastructure developed. [152]

117. As is clear from the above analysis, the difference in price between the Crown's purchase price and the price it sold it for does not represent, as has been alleged, the contribution that Māori made to the railway. Nor does it represent a "profit" made by the Crown (at the expense of either Māori or through restricting potential private competition).

118. There is clear evidence of the prices of lands opened up by, and serviced by, the railway continuing to increase in value once the railway was constructed.

On construction

119. The railway construction within the inquiry district was timed as follows:

Timing of NIMTR construction	
1886 – 1888	to Rangatira (19 miles from Marton)
1888 – 1889	to Mangaonoho (22 miles from Marton) (Along with work on the Makohine Viaduct and grading work to Taihape – 44 miles from Marton)
1899 – 1904	to Taihape
1904 – 1908	to Waiōuru (completed route)

120. The final route was not surveyed and confirmed until 1899.

121. Minister Ballance made clear at Ranana (Whanganui)[153] that he was making proposals on which the government had yet to make final decisions and that some Crown purchasing was anticipated.[154]

122. Significant tensions existed between government advocates for a focussed policy (with the restrictive powers being utilised to protect only the railway route itself) and those advocating for comprehensive government control of

152 Wai 2180, #4.4.14, at 376.

153 Wai 2180, #4.4.14, at 370. Mr Cleaver acknowledges Hakaraia Kōrako was present at Ranana (he had interests in Te Kapua) but Cleaver was not certain of any other Taihape Māori attending. He acknowledged Ūtiku Pōtaka wrote to the government within days of the Ranana hui offering to negotiate regarding railway crossing through Ngāti Hauiti lands.

154 *Te Mana Whata Ahuru*, at 1002, 1003.

the lands opened up by the railway (being necessary to recoup the very significant investment in constructing the line).[155]

123. By 1889, the latter view prevailed and the government extended monopoly powers to encompass the entirety of the central Taihape lands to provide some security for the £2,000,000 (approximately $800M inflation adjusted) the government borrowed internationally to finance the railway construction.[156] Whilst this was described as a form of security, it represents extending settlement as the primary motive for the use of monopoly powers (as opposed to Ballance's earlier consideration of taking only the rail corridor and servicing land only). As above, ultimately only 10-15% of the cost of construction was ultimately funded through on-sales of land by the Crown.

124. The government was determined to purchase sufficient lands prior to construction being extended into those lands as:[157]

> If we proceed with the construction of that line to any material extent, it will happen that the further we progress through or approach towards Native Lands the more difficult it will become for the Government to deal with the Natives, and the higher the price we shall have to pay.

125. In 1892, the government accepted the recommendations of the North Island Main Trunk Railway Committee (a select committee) concerning the route, the necessity for surveys prior to finalising the route, and to timing construction after purchase of sufficient lands that would benefit from the railway to warrant the investment:[158]

> 1. That the railway now in progress be extended to a point about twenty-six miles north of Marton so soon as the negotiations shall be completed for the purchase of the 100,000 acres now under offer in the Awarua Block.
>
> […]
>
> 3. That further exploration and survey are necessary before the location of the North Island Trunk Railway can be determined.

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155 *Te Mana Whata Ahuru*, at 1021–1022.

156 Wai 2180, #A09, at 141, 142, 143. £1,000,000 was borrowed in 1886 - £100,000 of which (10%) authorised for purchase of lands in 1886 and a further £100,000 authorised in 1889 on the security of extending the monopoly area. £1,000,000 was further borrowed in 1901. Total cost of construction was £2,500,000 (plus interest on borrowings).

157 AJHR 1892 i-09, at 6.

158 AJHR 1892 i-09, at 2.

> 4. That in the meantime no railway extension (except the eight miles above indicated) should be undertaken either at the northern or southern extremities of the two suggested routes until the land is first of all acquired from the Natives, and so far opened up by exploration and roads that judgment upon this question may be given with such a degree of certainty and force that it will be accepted as final.

126. There was a legitimate rationale to the government attempting to exercise fiscal prudence by controlling the on-sale of lands for settlement and in ensuring that settlement sufficient to warrant the construction of the railway was achieved. It was also prudent to delay construction pending full survey and design of the route being completed.

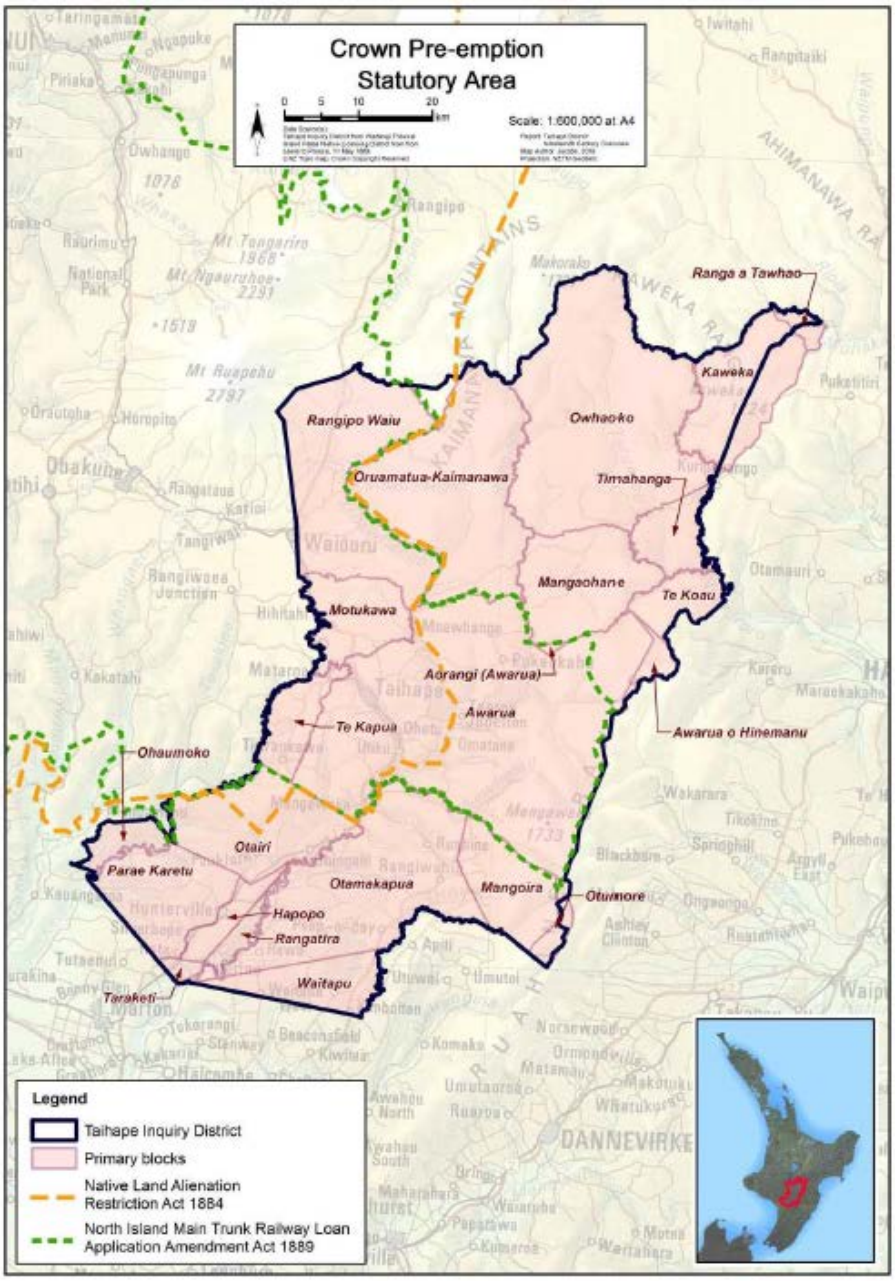
127. However, it is a question of how much land needed to be under monopoly powers, and on what terms. This continues to be explored below.

Impact of monopoly conditions: North Island Main Trunk Railway Line

128. Approximately 3,360 acres were estimated as being necessary for the entire railway route.[159] Land was also required to service the railway (roading, yards, stations, etc). However, in Taihape alone, monopoly powers were declared over 300,000 acres of land (see Map below) and that monopoly was rolled over through to 1896 (and beyond).[160] All the land to the west of the boundary lines shown on the Map below was included in the monopoly area.

159 Wai 2180, #A09, at 140 (Cleaver quoting Ballance in 1884). Map from Wai 2180, #A43, at 337.

160 The Tribunal has inquired into the circumstances of other sections of the railway through other inquiries – most directly and recently in *Te Mana Whata Ahuru*.



Map 27: Statutory Area of Crown Pre-emption, 1884 and 1889

129. The policy rationale for imposing restrictions on lands opened up by the railway, not only on those required to construct and operate the railway, was explained by Native Minister Ballance that, at first, the Government had intended to prohibit alienation to private parties of land in the immediate vicinity of the designated rail route. It later determined to enlarge the scope. His view was that, in order to do justice to both the colony and Māori, all land served and benefitted by the railway should be subject to the same restrictions.[161]

161 *He Whiritaunoka* Vol 1, at 417.

130. The evidence on record is consistent that the Crown was committed to preserving its relationships with iwi along the railway route and was unwilling to use the Public Works regime to compulsorily acquire Māori land for the railway before having negotiated with owners first.[162]

131. Monopoly purchasing conditions were imposed to future-proof purchase options for the railway line as follows (and as shown on the Map above):

131.1 Native Land Alienation Restriction Act 1884:[163] At the time, the government estimated 3,360 acres would be required for the railway itself.[164] Substantially more than that area was declared under the Act – including Motukawa, Te Kapua, and Rangipō Waiū and the west of Awarua block.

131.2 Government Native Land Purchases Act 1877: declaration of negotiations commencing (March 1889) which restricted private dealings in the balance of Awarua (where the Crown had paid survey costs);[165]

131.3 North Island Main Trunk Railway Loan Application Act Amendment Act 1889:[166] extended the boundary of the area declared in 1884 to include the entirety of Awarua and Motukawa.

131.4 Native Land Court Act 1894, s 117: general reimposition of pre-emption purchasing (qualified the next year by land inside town districts or boroughs less than 500 acres being exempted).[167]

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162 Wai 2180, #A08, at 72 referencing Cleaver Whanganui public works report – who in turn focusses these issues on Te Rohe Pōtae sensitivities. See, also, Wai 2180, #A09, at 136–139: "no coercion would be used".

163 Sections 3–5. Dealings with lands in schedule prohibited; Dealings with land by Natives prohibited; Contracts etc in contravention of Act void Moneys paid not recoverable.

164 Wai 2180, #A09, at 140.

165 Wai 2180, #A08, at 93–94; for Gazette, see Wai 2180, #A16(a)(2), at 12052 – speaks of negotiations not payment.

166 Wai 2180, #A09, at 142.

167 Native Land Laws Amendment Act 1895.

132. The 1884 imposition of monopoly purchasing conditions for the key central blocks occurred in the context of land transactions in the southern blocks being largely complete (see section above) and the adjoining northern blocks being titled (through Court processes that occupied the 1880s)[168] and either retained, leased or purchased by private interests.

133. In 1892, representations made by Broughton (of Omahu) on behalf of the owners (although it is not specified which owners) stated:[169]

> It is submitted by the people, too, that their position as owners is so fettered by legal restrictions, and has been for a long time, that they have been and are still unable to acquire a title (such as is ordinarily given to land which has passed the Court) to the smallest portion of this large block and other adjoining lands. In these days of advancement the position is more keenly felt, and when it is taken into consideration that there are people who only own land within the restricted area – the lands defined by the Native Land Alienation Restriction Act 1884 are here alluded to – it must be admitted that they are not being treated in the same manner as those whose territory did not happen to be anywhere within reasonable distance of the proposed Main Trunk of Railway.

134. This entreaty was repeated by representations in person to Premier Seddon and Hiraka Te Rango's 1895 letter (discussed above).

135. The development of national infrastructure (the railway) warranted the imposition of monopoly powers (at least in a targeted manner). The particular ways those powers were applied in Taihape were inconsistent with the Crown's duty to actively protect Māori interests in the lands they wished to retain in that:

135.1 the monopoly restrictions were in place for an unreasonably long period of time (from 1884) throughout which the options through which Taihape could raise finance and develop their lands were restricted (not only in terms of selling lands to raise capital but also in being able to raise mortgages on the titles, etc);

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168 Northern blocks summary:
Ōwhāoko title 1875, partition 1885, rehearings 1887, 1888 and further partitioning 1893;
Ōruamatua-Kaimanawa Title 1875, partition 1885, new title and partition 1894;
Mangaohane titled 1885, partitioned 1890, subject to court review until 1895;
Timahanga titled 1894;
Kāweka – 1890 Awarua Commission.

169 Wai 2180, #A43, at 409.

135.2 the Crown did not actively undertake purchasing in the area for more than ten years after the monopoly conditions were imposed (for various reasons but, nonetheless, the effect on Taihape Māori of being unable to secure certainty of title was the same);

135.3 the scale of the area of land that was subject to the monopoly conditions far exceeded that necessary for the railway route itself;

135.4 the amount of land ultimately purchased by the Crown significantly exceeded the amount it had sought, and that Taihape Māori had collectively agreed to sell.

136. Taihape Māori were not prevented by law from initiating and securing titles to their lands whilst the land was under monopoly powers (restrictions applied to transactions, not to titling processes). However, in practice, putting land through the Native Land Court to secure subdivisions/certainty of title was expensive, and doing so whilst Crown purchasing remained in contemplation (or underway) would be money wasted. Taihape Māori could not, for more than a decade, raise capital off the land, or maximise income streams (due to the monopoly restrictions applying even to leasing or mortgaging, and due to it being unwise to overcapitalise on land without having certainty of title). The only party they could transact with was the Crown. Although the Crown imposed monopoly conditions from 1884, it did not actively purchase lands for a decade – until the land was titled and subdivided (and steadfastly refused to extend any advances prior to purchase – for good reason but this nonetheless meant that Taihape Māori had to fund the expensive titling process without cash flow being available).

137. The evidence is clear that the imposition of monopoly powers on Taihape central lands from 1884 to 1896 impacted significantly upon the ability of Taihape Māori to retain, utilise and develop their lands.

138. The extent of land included in the monopoly area, and the duration those powers were in place, are acknowledged at paragraph [21.1] above as being inconsistent with the Tiriti/Treaty obligations of the Crown. The Crown also acknowledges, at paragraph [21.2] above, that its misuse of monopoly powers which unreasonably limited the ability of Taihape Māori to develop

their lands or raise finance between 1884 and 1896 did not meet the standards required of the Crown.

Crown purchasing in the key central blocks

What happened?

139. The key central blocks were core customary settlement areas for Taihape Māori and represented a large proportion of the area within Taihape capable of mixed agricultural uses, settlement and economic development. The table below summarises the timeline of monopoly conditions being imposed, Crown purchasing occurring, and the railway construction.

Railway land acquisition: Timeline of purchasing under monopoly powers and public works takings[170]		
1884	Monopoly conditions declared over the western part of Awarua and Motukawa (see map below)	
1886	Parent titles granted for Awarua and Motukawa	
1888/1889	12 acres taken from Taraketi and 40 acres from Pouwhakarua under public works	Rail to Rangatira (19 miles from Marton)
1889	Monopoly conditions extended to include all of Awarua, Motukawa (and to the south, Otairi) (again, see map)	
1892	Awarua subdivision completed Sections for groups of owners defined but allocation of lands to individuals within those sections not yet defined. Both Crown and Taihape Māori intend purchase of 100,000 acres	Central rail route reviewed by select committee – considered relocation through Taranaki instead. Construction delayed pending purchasing and confirmation of route[171]
1892 – 1894	Awarua: first round purchasing – 142,585 acres	
1894 – 1896	Awarua: second round purchasing – 51,146 acres. Taihape Māori retain approx. 86,120 acres in central blocks	
1899	Motukawa purchases: 1893–1899 partitioned 9378 acres	Surveys completed for four possible routes. Decision finalised to proceed with central route.[172] Rail to Mangaonoho (22 miles from Marton) Along with work on the Makohine Viaduct and grading work to Taihape (44 miles from Marton)
1899-1903	Approx. 235 acres compulsorily acquired under public works from Awarua 4A and 4C sections[173]	Improving economic conditions – further 1M borrowed.

170 Compilation from Wai 2180, #A09, at 145 (purchasing) and 148 (public works); Wai 2180, #A08; Wai 2180, #A43.

171 Wai 2180, #A09, at 143.

172 Wai 2180, #A09, at 144.

Railway land acquisition: Timeline of purchasing under monopoly powers and public works takings[170]		
1904		Rail to Taihape
1905-1907	Approx. 284 acres taken under public works from Motukawa 2 and Raketapauma 2 sections[174]	
1908		Rail to Waiōuru NIMTR completed

140. Mr Stirling describes the government's purchasing efforts following the subdivision of Awarua in August 1892 (which followed six years after title determination) as "strangely inactive".[175] Cleaver states that the delay in completing the purchases and progressing the construction of the railway throughout the 1890s was attributable to indecision about the precise route (which was only finalised in 1899/1900) but that "it is evident that a lack of funds was the main impediment to construction for much of the 1890s".[176]

1892 proposal by the Crown for 100,000 acres and acceptance by Taihape Māori (on terms)

141. As above, the Crown proposed that 100,000 acres be purchased for settlement of lands that would be opened up by the railway as security before it invested the funds to construct the railway through Taihape. Taihape Māori collectively accepted that proposal. In doing so, they specified the amount they were willing to sell in each subdivision.

142. The Table below shows the amounts of land purchased by the Crown, and the sections it was purchased in, against the amounts and locations that Taihape Māori proposed to sell in 1892.

Table: Crown purchasing in Awarua and Motukawa 1894 and 1896[177]

Title	**Area (acres)**	**Owner 1892 lands proposed for Crown purchase**	**Crown Purchase May 1894**	**Retained Māori May 1894**	**Crown Purchase August 1896**	**Balance Retained Māori 1896**
Awarua 1	118,898	Sell 50,000	57,500 (1B) 18,806 (1C)	34,250 (1D)	22,156 (1DA)	12,094

173 Wai 2180, #A09, at 148.

174 Wai 2180, #A09, at 148.

175 Wai 2180, #A43, at 408.

176 Wai 2180, #A09, at 143.

177 Note: figures all approximate. Sourced from Wai 2810, #A08, Tables at 99 (Crown 1894); (and Wai 1280, #A43, at 505 (lands retained)); and 103 (Crown 1896). Tables simplified in interests of space (ie differences pre/post survey not all provided). All figures in this table should therefore be treated as indicative and approximate only.

Title	Area (acres)	Owner 1892 lands proposed for Crown purchase	Crown Purchase May 1894	Retained Māori May 1894	Crown Purchase August 1896	Balance Retained Māori 1896
Awarua 1A	24,000	Sell 16,000	18,852	4,060 (1A2) 10,160 (1A3)		
Awarua 2	47,548	Retain in full	13,729	35,900 (2C)	10,793 (2C1)	25,107
Awarua 2A	2,912	Retain in full	735	1,615 (2A2)	84 (2A2A)	1,531
Awarua 3	7,800	Retain in full	1,204	6,975 (3D)	560 (3D1) 1492 (3D2)	4,923
Awarua 3A	20,000	Retain in full	7,462	13,559 (3A2)	5,388 (3A2A)	8,171
Awarua 3B	7,390	Sell 8,000	3,396	2,859 (3B2)	865 (3B2A)	1,994
Awarua 4	32,500	Sell 10,000	19,361	15,632 (4C)	782 (4C1) 6,002 (4C2)	8,848
Awarua 4A	7,500	Sell 5,000	770 (4A1) 770 (4A2)	5,854 (4A3)	207 (4A3A) 2,817 (4A3B)	2,830
Motukawa[178]	30,000	Sell 11,000			9,378	20,622
Totals	**298,548**	**100,000**	**142,585**	**130,864**	**51,146 Awarua** **9,378 Motukawa**	**86,060**
Combined Awarua/ Motukawa Totals			**203,109 Crown purchase** **86,060 Taihape Māori retain** (Note: due to rounding and approximations these total figures account for 289,169 of the 298,548 acres of the total area (i.e. 9,379 acres short))[179]			

143. As can be seen above, the Crown did not restrict its purchasing activity to the quantity of land (100,000 acres) that it had sought from Taihape Māori (and agreed to, in specified sections, by Taihape Māori collectively in 1892), but instead acquired more than twice the amount of land that had been contemplated by both parties in 1892. Further, the Crown acquired land from all of the subdivisions – not only those specified by Taihape Māori collectively in 1892. The Crown did not transact purchasing on any collective basis as sought by Taihape Māori in 1892 (and prior), but instead purchased the undefined shares of individuals.

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178 Wai 2180, #A08, at 41–42, 46. Motukawa: For Motukawa, the lists and relative interests of owners was determined in 1886 along with the parent title. In 1892 (after initial partitioning into relative interests), the owners offered the Crown several subdivisions of Awarua and 11,000 acres of Motukawa. Motukawa 1 purchasing took place from 1893 (1,633 purchased of the 2,000 acres). Motukawa 2 (total 30,935 acres) was partitioned into six sections in 1896. The Crown subsequently purchased interests in five of them. Crown interests purchased in both Motukawa 1 and 2 were partitioned out in 1899 (total 9,378 acres).

Crown purchasing was not partitioned in 1894 and 1896 as the Awarua rounds were. Figures from 1899 partitioning Wai 2180, #A08, at 46.

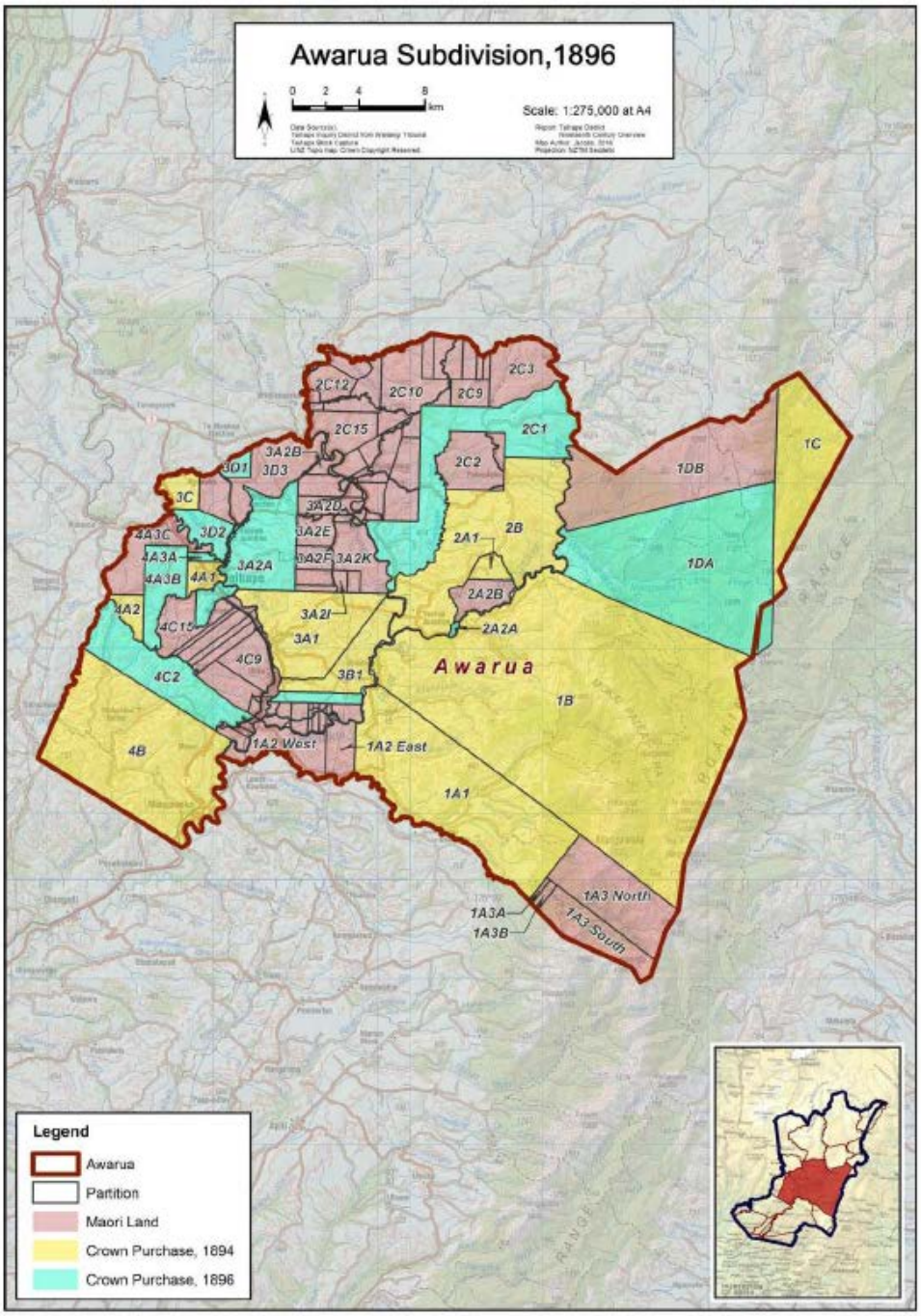
179 As above, all figures are approximate; in the time available to complete these submissions, this was not able to be further clarified/completed.

144. The extent of the Crown's purchasing relative to what was originally contemplated by both parties is acknowledged above at [21.3] as a misuse of the Crown's monopoly powers and as failing to meet the high standards required of the Crown as a privileged purchaser.

145. The lands retained by Māori in Awarua and Motukawa included a fair mix of "good" and variable quality lands.[180] Taihape Māori retained the majority of the lands in the Moawhango Valley as can be seen on the map below.[181] This is significant as retaining the open lands for farming was expressed by Taihape Māori throughout as their primary objective. Whilst Taihape is the central township for the district today, at the time of this purchasing, the Moawhango Valley was.

180 For example, see also Wai 2180, #A43(d), at 26 where Stirling (with some qualifications) concludes that it would be incorrect to describe the lands retained by Taihape Māori in Awarua as "absolutely valueless for settlement".

181 Map from Wai 2180, #A43, at 515: Map 37.



Map 37: Awarua Crown Awards and Subdivisions, 1896

What was sought by Taihape Māori? When? And, what was conveyed to the Crown?

146. The precise nature of the levels of consensus between Taihape Māori at particular points in time is difficult to determine. It is overstating matters to assert that, as at 1886, Taihape Māori shared a collective vision with clear

and certain terms.[182] Taihape Māori did express a consistent intention that Crown purchasing be conducted with reference to their collective decisions concerning the lands but the further matters specified by Taihape rangatira collectively in 1892 had not been defined or conveyed collectively prior to that point. The specific intentions developed between 1886 and 1895, along with the mandate for the various iterations, varied throughout that period.[183]

147. Allegations that detailed proposals premised on broad consensus amongst Taihape Māori were extant and were conveyed to the Crown from 1886, including in 1890, 1892, 1894 and 1895, do not fully accord with the evidence.[184] The timeline is detailed immediately below – as can be seen, some representations were from individuals, some from the more northern hapū (Ngāti Tamakōpiri and Ngāti Whitikaupeka) only. Some – in particular those surrounding the subdivision process in 1892 – are broader with all hapū on the lands being represented. Subsequent correspondence (post 1892) is primarily from one hapū (Ngāti Tama). As can also be seen, the subject matter differs – with only the 1892 and 1895 correspondence promoting broader development and land administration issues (others are more focussed on specific processes or transactions).

148. The representations of Taihape Māori can be summarised as follows.

148.1 In 1886, leading to the Native Land Court title determination for Awarua, a komiti met at Te Houhou for (to the extent discernible on the record) the purpose of fixing the outside boundaries of the

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182 See, for example, Wai 2180, #A43, at 314. In Wai 2180, #A43(d), answers to questions of clarification, the author acknowledges that the terms were "not all fully expressed as early as 1886" but in fact were developed over the following years.

183 It is also incorrect to attribute the contest in the 1886 Awarua title determination as: "Rather, what had sparked the tensions and disputing between the tangata whenua in the wider district were contentious Crown land dealings that were pursued in the 1850s without first seeking consensus over the alienation of tribal interests. These differences were aggravated by wider political tensions beyond the district arising from Crown actions which led to a war against the Kingitanga after 1860." (Wai 2180, #A43, at 324). There were no Crown land dealings in the 1850s in the district – presumably the author is referring to Otaranga block dealings but that is a long bow to draw given they occurred in Hawke's Bay some decades prior, and Taihape peoples were only peripherally involved. The more accurate and relevant context might be the private transacting in northern lands and Native Land Court processes in the region in the 1870s and early 1880s.

184 Wai 2180, #A43(e) response to questions of clarification at 40-41 cites #A43, at 335, 340–343, 349, 408–416, 447–448, 508–513 – the matters at those citations vary from representations by individuals and representatives, but arguably only the 1892 proposal has collective cohesion behind it (and even then is not absolute). In subject matter, also, the cited interactions focus primarily on the process of purchase and titling and touch on survey issues but, again, do not have the breadth or specificity of the 1892 letter.

block and determining interests within the block.[185] It is alleged that an agreement was reached, however the terms of the agreement are neither provided nor referenced in the reports. There is no evidence provided of any agreement that was reached having been communicated to the Crown at that time.

148.2 In November 1886, soon after the title determination, a proposal for proactive subdivision survey was presented by Heperi Pikirangi on behalf of Ngāti Whiti and Ngāti Tama but declined by the Crown as being premature prior to subdivisions being determined through the court process.[186]

148.3 In 1889, the "Ngāti Whiti komiti" (which included Hiraka Te Rango, his son Ihakara Te Raro, Taiuru Te Rango, and Te Oti Pohe) wrote to the Native Minister indicating their willingness to sell land, including for the railway.[187] They stated they wished to retain the open lands near Moawhango where they were running sheep.[188] The Minister agreed with them that purchasing should await completion of subdivision.[189] The Crown was advised of the same by Napier Resident Magistrate Preece who reported that Taihape Māori had also advised him (in person as he undertook a land inspection) that they preferred to retain most of the "open country which they use for sheep runs", however Preece

185 Wai 2180, #A43, at 318–319. The technical evidence does not record which people or hapū were in attendance (other than references from later statements to Ihakara te Raro, Ūtiku Pōtaka and Heperi Pikirangi). At 319 it is claimed that minutes of this hui were presented to the Court during the hearing but the court did not pay heed to it; a source reference for that claim is not provided, however. The Native Land Law at the time provided for voluntary agreements to be given effect to by the Court – had there been consensus on these matters.

186 Wai 2180, #A08, at 73 takes a more reasonable stance (that the application was dismissed as premature pre-partitioning) than that taken in Wai 2180, #A43, at 335 (where the Crown's decline is presented as the Crown somehow not supporting owner initiatives). Note: Heperi's representative status is uncritically accepted in #A43 commentary at this point as acting for the whole of Ngāti Tama and Ngāti Whiti hapū - although he is dismissed later in the #A43 report referring to his 1891 stance as a "sole dissident".

187 Wai 2180, #A43, at 340–341; Wai 2180, #A16(a)(2), at 12053–12055.

188 This repeats the same information given to the Resident Magistrate (via their lawyer, Cuff) and passed on to the Crown by him a couple of months earlier: Wai 2180, #A43, at 339–340.

Note: variations of this phraseology appear to have been made on two separate occasions by Preece – in 1889 and again in 1891 (Wai 2180, #A43, at 340, 407).

189 Wai 2180, #A43, at 341 (subsequently confirmed further as being the wise course of action by Hoani Taipua who had been assessor in 1886 and in September advised the Minister that the interests of the five hapū recognised as owners were not equal).

Note: further misrepresentation of Crown action in Wai 2180, #A43, at 342. The evidence is clear that the Crown declined to purchase shares pre-subdivision. The Crown does say "If any shares are forced on us …" they should be disincentivised by being paid at low rate. Stirling goes on to represent this as the Crown actively pursuing undivided shares at low prices – it is no such thing (as demonstrated by the fact no shares are purchased pre-subdivision).

encouraged the government to "obtain every inch of this block that they can without injuring the interests of the Natives".[190] The Native Minister stated that as soon as the land was titled "let every effort be made to acquire it in the interests of settlement".[191]

148.4 In 1890, northern Taihape rangatira advised the Native Department that a meeting of "all the leading men and elders" was to be called "for the purpose of discussing and settling their respective portions".[192] They pragmatically observe that even if not every section could be agreed out of court, the Court's role would be streamlined by the matters of agreement and dispute having been defined ahead of time. This correspondence is forwarded by the Crown to the Court to continue with the owners.[193]

148.5 A Ministerial visit to Moawhango took place in April 1890. Later that year, Winiata Te Whaaro visited the Minister in Wellington (and petitioned Parliament concerning the location of the subdivision hearing).[194]

148.6 In 1891, Taihape rangatira wrote to the Minister reiterating that purchasing should await subdivision.[195] Again, the Crown reassured them that accorded with the Crown's committed view – which had "no intention of making any such payments until after the division of the block". There is no evidence that Crown actions were responsible for the subdivision hearing not being commenced until 1891 (4-5 years after the parent title was awarded in 1886).

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190 Wai 2180, #A43, at 407; Wai 2180, #A08, at 73. Note: technical witnesses and claimant submissions have abbreviated this quote (eg Wai 2180, #A43, at 338) removing consideration of the need to avoid injury to the owners. The Minister's response to Preece's (a Resident Magistrate) correspondence was balanced in acknowledging both the desirability of the land whilst also respecting the intentions of the owners.

191 Wai 2180, #A43, at 407.

192 Wai 2180, #A43, at 345 - Ihakara Te Raro, Horima Paerau "and 12 others".

193 Wai 2180, #A43, at 346.

194 Wai 2180, #A43, at 348–349. Stirling records the location of the hearing as the only point of discussion in these interactions – further intentions or aspirations of Taihape Māori are not recorded as being discussed.

195 Wai 2180, #A43, at 343–344. Hiraka Te Rango, Te Oti Pohe, Wiremu Paratene [Broughton], Raita Tuterangi, Noa Huke, Paramena Naonao, Anaru Wanikau, and "me te iwi katoa".

148.7 In 1891, it is claimed that there was consensus amongst Taihape Māori as to the character and location of interests but this was undermined by a "sole dissident" [196] – this overstates the degree of consensus that was extant. It relies on diminishing the representative capacity of the person concerned and is at odds with Hiraka Te Rango's acknowledgement that two of the five hapū involved disagreed with the other three. Hiraka described the matter to the 1891 Rees Carroll Commission as:[197]

> We, the hapus that owned that land, applied and endeavoured to obtain permission to settle the inter-hapu boundaries among ourselves. The Court consented to our going outside the Court and settling this business among ourselves. **Three hapus satisfactorily arranged the boundaries between themselves, but the other two hapus, which did not join in the agreement, asked the Court to deal with the subdivisions**. [Emphasis added]

148.8 Following the subdivisions being determined in 1892, representatives of the several hapū as owners[198] sought, and travelled to Wellington for, a meeting with the Native Minister to plan purchasing arrangements.[199] The Crown conveyed its intention to acquire 100,000 acres in the block (to warrant it constructing further sections of the railway).[200] Two days later, the owners' representatives proposed sale of 100,000 acres (amounts and subdivisions specified) and made a number of requests

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196 Wai 2180, #A43, at 315, 335; Wai 2180, #A43(d), at 43–44.

Note: The same person, when making a proposal immediately after the 1886 parent title determination that Awarua subdivisions be proactively surveyed and claiming to be acting on behalf of Ngāti Tama and Ngāti Whiti is described by the author as "the owners" and "the Komiti" (and the Crown is criticised for failing to support "the owners'" proposal).

The party that did not consent to the apparent agreement of the 'komiti' (and thus – as was enabled under the native land laws - triggered the level of contest during the hearing), is alternately described as "only one dissident" who "did not appear to represent anyone other than himself in the Awarua partition hearing" notwithstanding him being accepted by the author in 1889 as a representative of two hapū or the owners more generally, or him stating he appeared in a representative capacity; and notwithstanding him being acknowledged as "a prominent figure within Ngāti Tama and Ngāti Tuwharetoa".

197 Wai 2180, #A43, at 357. Hiraka also acknowledged (consistent with the evidence also given by Judge Ward) that substantial time was given to the parties to reach agreements amongst themselves outside the court but that – whilst recourse to the court remained available – it had proved impossible to reach agreement. Their evidence was also consistent that delays in the subdivision proceeding were caused by the parties seeking adjournments in order to continue attempts to reach their own settlement. (The delay directly attributable to the Crown is limited to that caused by the survey error – ie from March 1891 to June 1891.)

198 Ūtiku Pōtaka, Wiremu Paraotene (Broughton), Raumaewa Te Rango, Hiraka Te Rango, and Wirihana Hunia. These people were recognised as leaders of Ngāti Hauiti, Ngāi te Upokoiri, Ngāti Whitikaupeka, Ngāti Tama (and Hunia primarily Apa but also Hauiti).

199 Wai 2180, #A43, at 409, 411: Meeting proposed by Broughton August 1892 and took place 7 September 1892.

200 Figures from Wai 2180, #A08(c), at 192.

concerning retention, protection, development and collective administration of the remaining lands over that 100,000 identified for sale (the 1892 letter).[201] There is no mention in the evidence which, if any, of these conditions had been discussed at the meeting with the Minister.

149. Contrary to allegations that the 1892 letter was "ignored", a rather intense period of discussions ensued (in the context that between 1892 and 1899 there remained a possibility that the route north of Makohine might be taken through Taranaki rather than the central line):[202]

149.1 A written response (which acknowledged a "more satisfactory" state for the titles might be able to be arrived at on the completion of Crown purchasing of interest).

149.2 A further meeting in person with the Minister and officials and owners at Omahu on 16 November 1892.[203] Negotiations between the Crown and owners took place over at least two days but, in the absence of an official record of the meeting being located, any conclusions as to what was discussed are simply conjecture. The negotiations were said to have "fallen through". It is curious that this meeting would have occurred if, as alleged in #A43, the Crown had determined to proceed without consideration of the matters raised by the owners.

149.3 The owners of Awarua (or at least Ūtiku Pōtaka) met with Premier Seddon in November 1893 at Ohingaiti to discuss partitioning out the Crown's purchased interests.

149.4 Awarua owners also discussed matters with the Minister of Lands in Moawhango in November 1893.

149.5 Premier Seddon visited in March 1894.

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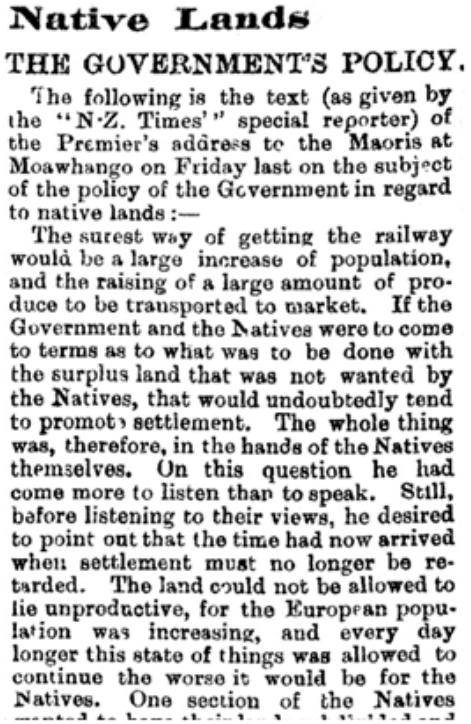
201 Ūtiku Pōtaka, Wiremu Paraotene, Raumaewa Te Rangi, Hiraka Te Rango, and Wirihana Hunia, Wellington, to Native Minister, 9 September 1892. MA-MLP 1/75/h/1905/93. Wai 2180, #A16, Document Bank, at 12271–12277. Set out in full at Wai 2180, #A43, at 411–412.

202 Wai 2180, #A09, at 144.

203 Wai 2180, #A43, at 419.

150. There is no record of specific agreement being reached on any matters other than that the railway was desired and that there would be 100,000 acres sold for settlement. The Crown proceeded to purchase undivided individual shares in the subdivided blocks.[204]

151. Premier Seddon's speech at Moawhango in early March 1894 directly linked securing the railway route through Taihape with increases in population and productive land use – including through increased settlement.[205] For completeness, that portion of the speech not recorded in the AJHR is provided here:[206]



Native Lands

THE GOVERNMENT'S POLICY.

The following is the text (as given by the "N.Z. Times'" special reporter) of the Premier's address to the Maoris at Moawhango on Friday last on the subject of the policy of the Government in regard to native lands:—

The surest way of getting the railway would be a large increase of population, and the raising of a large amount of produce to be transported to market. If the Government and the Natives were to come to terms as to what was to be done with the surplus land that was not wanted by the Natives, that would undoubtedly tend to promote settlement. The whole thing was, therefore, in the hands of the Natives themselves. On this question he had come more to listen than to speak. Still, before listening to their views, he desired to point out that the time had now arrived when settlement must no longer be retarded. The land could not be allowed to lie unproductive, for the European population was increasing, and every day longer this state of things was allowed to continue the worse it would be for the Natives. One section of the Natives

152. The railway is the context within which the discussion on Moawhango land matters, closer settlement policy more generally, and services and

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204 Collective land administration mechanisms are discussed in Issue 3 submissions.

205 This was not referred to in Wai 2180, #A08, Wai 2180, #A09, or Wai 2180, #A43 (at 441–442) all of which relied on the AJHR reporting of this speech. However, it is confirmed by the newspaper excerpt provided.

Wai 2180, #4.4.14, at 372: Mr Cleaver agreed with Counsel for the Crown that, given the timing of the visit and the importance of the railway question at the time, it would have been very strange indeed had the railway not been discussed. As demonstrated here, it was in fact the context within which all of the subsequent dialogue at Moawhango during Seddon's visit concerning settlement took place.

206 AJHR 1895 G-1; Ashburton Guardian 9 March 1894. The AJHR version begins at "The time had now arrived when settlement must no longer be retarded …"

infrastructure development occurred. Further context is that a request for Moawhango to be made a "township" was made by the owners.[207]

153. Seddon's speech reads as if a decision is yet to be made by Taihape Māori on whether they wish to subdivide lands for settlement; or vest in a trustee; or perhaps prefer interest-bearing debentures (equal to an annuity "for themselves and their children for all time").[208] His speech does not make direct reference to the Crown's 1892 proposal that 100,000 acres be sold in the central blocks, or the owners' 1892 agreement to that, nor to the purchasing that had already occurred in the central blocks by March 1894.

154. The implications of litigation on transactional costs and land retention were noted by Seddon, as was his concern that it appeared the funds owners had received in land transactions "were gone": [209]

> Now, a short time ago the Government paid large sums of money to some of the Natives in this district for their lands. He now ascertained that from these Natives both lands and money were gone. That was not good either for the Natives or for the colony.

155. Premier Seddon may be referencing the land dealings in the northern blocks (rather than the more contemporaneous central block purchasing) as he goes on to discuss Liberal Party policy to break up the great estates (both European and Māori) in the furtherance of increased settlement – the northern block private purchasing fits that pattern.[210]

156. Mr Stirling notes that Seddon's "simple" solution was the same as the proposals that had also been made by the owners in 1892:[211]

> First of all they needed to arrange amongst themselves how much land they were prepared to dispose of. Then it would be the duty of

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207 AJHR 1895 G-1, at 3 – it is not specified what is meant by "township" (Native Townships Act not in place until 1895 but perhaps proposal being discussed at this time (1894) or perhaps simply referring to township with police, liquor regulations etc (as discussed specifically)).

208 AJHR 1895 G-1, at 4.

209 AJHR 1895 G-1, at 4, 5.

210 Brooking summarises:

> "Liberal Māori land policy was conceived, then, in terms which were not explicitly racist and which were quite consistent with their liberal aims of promoting closer settlement, revitalising rural communities and sharing property, wealth and power more evenly. Their motivation was, therefore, probably more honourable and certainly more complex than that of businessmen politicians of an earlier era.
>
> But this meant little to Maori because the purchase of so much land, so quickly, for so little money, was catastrophic for the development of sustainable Māori farming. Sheep farming had been developed by Maori from the 1880s […]"

211 Wai 2180, #A43, at 446–447.

> the Government to see, in arriving at the details, that the Natives were provided with ample reserves for their support.

157. What Mr Stirling does not point out is that the multiple attempts that were made to achieve that prior to titling, or prior to subdivision, did not succeed. There was not the requisite level of consensus and (as set out in submissions on Issue 3) it could not be reached notwithstanding multiple adjournments for such discussions to be had. Out of court agreements were subsequently achieved in relation to the hearings to partition out Crown interests – whether due to Seddon's encouragement or otherwise is not clear.[212]

158. Hiraka Te Rango's response to Seddon advocates again for an administrative committee as a collective method to both deal with and negotiate with the Crown on the tribe's behalf (ie transact in) and develop lands (consistent with the 1892 letter). His focus (at least according to this reporting) seems to be on gaining certainty of title (by Crown partitioning out its purchases) and on township issues:[213]

> "Hiraka te Rango (son of Ihakara, and leader of the progressive party among these Natives) asked specially for an administrative committee to deal with the lands, and negotiate with the Government on the tribe's behalf. Between now and next session they would meet and consider whether there was a necessity for bringing any other matters under the notice of the Government. Hiraka then referred to the Motukawa subdivision, the position of which he said was peculiar, as a portion of it had been included in Rangipo-Waiu, a block purchased by the Government. This overlap delayed further partition. He therefore asked that the Government should legislate, if necessary, to rectify this trouble. He also asked if the portion of the Awarua Block acquired by the Government could not be partitioned off.
>
> "Mr Seddon This has been arranged for, and we wish to know where it would be most convenient for the Court to sit.
>
> "Hiraka: Utiku and I have agreed that here will be the most convenient place.
>
> "Mr. Seddon The Judge now sitting here could not act, as he had purchased the shares claimed by the Government, but the case will be taken immediately
>
> "Hiraka No. 2, No. 3, No. 3A, No. 3B, No. 4, and No. 4A might be heard at the same time. We want this Court to take up the work of that partition as soon as Oruamatua is concluded. He then proceeded to say that, with regard to the school, a census of the children had been taken, and three acres had been selected for school-buildings. As to the necessity for a policeman, they lived in an isolated part of the country, which was frequently visited by the scum of European society. They had agreed to give a portion of land for the station.
>
> "Mr Seddon: Put that in writing, and a surveyor will be sent to lay off the site.
>
> "Mr. Carroll It has pleased me that the Premier has come personally to see you. It was my wish he should meet you face to face, and not hear your grievances second-hand. We have heard them, and they will receive our attention. If there are other matters you wish attended to, send your word to us. Do not delay, or be frightened to come forward.

159. In relation to that partitioning, Hiraka te Rango asked for the portion of the Awarua block acquired by the Government to be partitioned off as soon as possible. Hiraka is quoted as saying:[214]

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212 Wai 2180, #A43, at 492.

213 AJHR 1895 G-1, at 5.

214 AJHR 1895 G-1, at 5.

> No.2, No.3, No. 3A, No.4 and No. 4A might be heard at the same time. We want this Court to take up the work of that partition as soon as Oruamatua is concluded.

160. This is critical evidence. The 1892 letter did not offer any land in No. 2, No. 3 or No. 3A, yet Hiraka, prior to partitioning of Crown interests, is aware the Crown had acquired interests in them. This goes against the allegation that purchasing undivided shares of individuals was undertaken with owners having no knowledge of where the interests they were selling were located.[215]

161. After hearing the concerns of owners, Seddon advocated strongly for the Awarua partition hearing to be held as soon as possible. The hearing (which began at Moawhango within a couple of weeks) was completed in Hastings in May 1984.[216] As above, it was uncontested – the Crown and owners had reached agreement out of court as to where the 142,585 acres the Crown had purchased interests should be located.[217]

162. Purchasing recommenced within six weeks of the Crown's interests being cut out, in June 1894 - partly on the urging of some owners, but mainly through the Crown's continuing interest in acquiring further land.

163. Crown purchasing continued against the protest of some Taihape rangatira who sought for their titles to be defined and secured (unrestricted by monopoly provisions) to proceed with their development objectives. In April 1895, Hiraka Te Rango wrote on behalf of Ngāti Whiti, requesting:[218]

> 1. Further subdivision of Awarua Block.
>
> 2. Transfer from one division to another in order to consolidate our interests in the said block.
>
> We are very desirous of getting a further subdivision made of the Awarua block so that each family may have their interest allocated and defined on the ground and be placed in a position to occupy permanently and improve what is their own.
>
> In 1886 the Awarua Block was passed through the Court as a whole and with the one list of names. From that time up to the present we

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215 Wai 2180, #A43, at 423.

216 Wai 2180, #A43, at 490–491.

217 Wai 2180, #A43, at 492.

218 Wai 2180, #A08, at 101–102; Wai 2180, #A16 Document Bank, at 12414–12423: Hiraka Te Rango to John McKenzie, 18 April 1895.

> have been constantly urging upon the Government our wish to have this block properly subdivided and the interests therein allocated.
>
> In 1890-1 a Court sat at Marton for over eight months subdividing the Awarua Block. Certain large divisions were made, the owners to each found, and the extent of individual interests defined. But nothing was done in the way of allocating individual interests because of the incomplete condition of the Map before the court as to internal details.
>
> In 1894 a Subdivision Court sat at Moawhango, but the only work done there was to allocate the shares purchased by the Crown in the Awarua Block. The Court refused to do anything more.

164. Despite this eleven-year ordeal of monopoly restrictions, court processes and Crown purchasing, as at 1895, the Awarua owners still lacked any titles that were useful for any purpose for the whānau of Awarua, other than sale to the Crown. Hiraka went on to point out the suffering this had caused to them:

> Through want of allocation of our interests in Awarua we have been caused, and continue to suffer, a great deal of trouble, pain and unhappiness. We have constant quarrelling and wrangling over this spot of land or the other piece of land – as to who has the better or sole right here or there – quite preventing us making improvement to the land and fixing permanent homes for ourselves.
>
> There were certain reasons long since past which led to our forming the 'village in common' where it is now at Moawhango – and had our interests in Awarua been early allocated we would long ago have moved out on to the land and made separate holdings and dwellings on different portions of our country. This would have broken up to a great extent the communal style of living as existing in the village of Moawhango and have brought about a better state of things for my people. […]
>
> […] We beg and pray you will do your best to assist us in the matters now laid before you and help us become good and useful settlers on our own lands, instead of living as we are now doing comparatively a life of enforced idleness.

165. The desire for certainty of title was primarily to enable the owners to utilise and develop their lands. It was also to address debt issues. Hiraka described the flock sizes, the limitations on farming occasioned through not having secure titles, and debt levels amongst the Moawhango people and noted:[219]

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219 "The whole block, in fact, all the Patea country, is over-stocked and the death rate of sheep last winter was very large. All the flocks of sheep in Patea, excepting Anaru Te Wanikau's, are heavily mortgaged, quite up to full value now, since the fall in prices of sheep and wool."

> The only persons really benefiting by the existing state of things on our lands in Patea, in the past and up to the present, have been the storekeepers and Mercantile Loan Companies holding mortgages and wool liens over the sheep.

166. The plea for certainty of titles was also to better target further sales of land. That is, in April 1895, further sales were contemplated (as were costly further rounds of subdividing):[220]

> …further subdivisions would show what other portions of the block it would be to our advantage to part with.

167. Purchasing continued until July 1896. It was undertaken with the knowledge of the rangatira who had signed the 1892 letter, but without any further reference to the collective, and in excess of the amount of land the Crown had said in 1892 was needed for settlement to warrant its investment in the railway.[221] The Crown had purchased a further 51,146 acres. Again, the agreements as to where partitions were to be located was agreed out of court and partitioned by the Court without contest.[222]

168. The Crown commencing this second round of purchasing in these circumstances was inconsistent with the expressed intention of the Crown in 1892 to acquire 100,000 acres, and the collective offer made by Taihape Māori to meet that intention. It is also inconsistent with the undertakings made by Premier Seddon at Moawhango in 1894 to partition out the Crown's interests rapidly (in order to enable owners to finalise titles and use their lands). There is no evidence of the Crown seeking the views of Taihape Māori in any collective sense prior to recommencing purchasing.

169. It is clear that a significant level of discussion occurred between the Crown and Taihape Māori between 1886 and 1896, and that Taihape Māori did retain most of the land around Moawhango as at 1900.[223] However, it is also clear:

169.1 the Crown purchased significantly more land than any iteration of collective Taihape Māori intentions to retain the majority of their key central lands; and

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220 "We have sold a great deal of the Awarua to the Crown but a further subdivision would show what other portions of the block it would be to our advantage to part with."

221 Some of the rangatira signatories to the 1892 letter sold interests in both rounds of purchasing.

222 Wai 2180, #A43, at 514.

223 Wai 2180, #A46, at 38.

169.2 the Crown undertook that purchasing through the acquisition of undefined individual shares in the lands despite consistent advocacy by Taihape Māori that purchasing be planned with reference to the collective.

170. These matters are acknowledged in paragraph [21.3].

Absence of effective mechanism for managing lands collectively

171. The 1892 letter, 1894 representations in person to Premier Seddon, and the 1895 Hiraka Te Rango letter all sought an effective mechanism for the collective administration of lands.

172. Evidence to the Rees-Carroll Native Lands Commission in 1891 (including from Hiraka Te Rango and others in relation to Awarua) shows a full spectrum of opinions existing as to the relative benefits of partitioning down to individual or family subdivisions, whilst at the same time struggling with issues about how to represent the collective interest.[224]

173. The development achieved at Moawhango in the 1880s (in the absence of subdivision or a collective land administration mechanism at law) demonstrates both the possibilities and the limitations of not having a secure title. Significant development was achieved, however it was limited by the risks in undertaking significant efforts on collectively owned lands (eg investing in fencing, etc), by the lack of clear and certain titles, and by the inability to secure credit in the absence of such titles (as above, the specific context of monopoly in Moawhango is also of direct relevance).

174. The Crown has acknowledged the lack of provision for collective administration of land under Native Land Laws until 1894:[225]

> The Crown concedes that it failed to include in the native land laws prior to 1894 an effective form of title that enabled Taihape Māori to control or administer their land and resources collectively. This has been acknowledged previously as a breach of the Treaty of Waitangi and is again acknowledged as such for the Taihape inquiry district.

175. The Crown further acknowledged in its opening submissions that, by the time an effective form of collective title was provided for in the native land

224 AJHR, Session 2, G-01.

225 Wai 2180, #3.3.01, at [27].

legislation (1894), the bulk of Taihape Māori land holdings had already had title granted and a significant portion had already been purchased.[226]

176. The timeframe in the above acknowledgement is premised on the Native Land Court Act 1894 subsequently providing an effective form of title for collective administration of lands. That legislation was enacted on 23 October 1894.

177. The incorporation provisions of the 1894 Act were only available for land "in respect of which the Crown has not acquired a right or interest".[227]

178. As at 23 October 1894, the second round of purchasing was underway for Awarua. It was not completed until the partition order in August 1896. For Motukawa, the Crown's interests were not partitioned out until 1899.

179. The Crown therefore acknowledges that an effective form of title that enabled owners to control or administer their land and resources collectively was not in practice available to the owners of Awarua until 1896, and for Motukawa, until 1899. Taihape Māori did not have access to an effective, legally-enforceable form of collective ownership prior to a significant portion of their lands having been sold (including to the Crown).

Pre-title and pre-subdivision advances not paid in key central blocks

180. Purchasing in the central blocks took place well after the practice of paying pre-title advances had been discontinued (in 1879). No pre-title advances were paid for the key central blocks before the parent titles were determined in 1886.[228]

181. Nor were any pre-partition advances paid prior to partitioning determining relative interests being completed in 1892. The government stated consistently from May 1889 that no payments would be made prior to the partition hearings and upheld that undertaking.[229] Interest holders

226 Wai 2180, #3.3.01, at [27].

227 Native Land Court Act 1894, s 122.

228 The only pre-title advance relevant to the central blocks was that paid for Otairi in 1879, a portion of which was subsequently sought (unsuccessfully) by the Crown to be recovered against Te Kapua given it was part of the original Otairi block. See section on Te Kapua below.

229 Wai 2180, #A08, at 93–94; and at fn 276 (1890).

repeatedly sought assurances on this account and repeatedly received them.[230]

Table: Government purchases in the alienation restriction area by year 1890 - 1900[231]

Year	Block	Area (acres)
1891	Te Kapua	11,000
	Te Kapua A	8,978
	Te Kapua B	1,900
1894	Awarua 1A1	18,852
	Awarua 1B	57,500
	Awarua 1C	18,806
	Awarua 2A1	735
	Awarua 2B	13,729
	Awarua 3A1	7,462
	Awarua 3B1	3,396
	Awarua 3C	1,204
	Awarua 4A1	770
	Awarua 4A2	770
	Awarua 4B	19,361
1896	Awarua 1DA	22,807
	Awarua 2A2A	84
	Awarua 2C1	10,905
	Awarua 3A2A	5,388
	Awarua 3B2A	862
	Awarua 3D1	680
	Awarua 3D2	1,492
	Awarua 4A3A	224
	Awarua 4A3B	2,817
	Awarua 4C1	864
	Awarua 4C2	5,937
1899	Motukawa 1A	1,566
1899	Motukawa 2A1	850
	Motukawa 2B1	4,284
	Motukawa 2B2	900
	Motukawa 2C	850
	Motukawa 2D1	1,945
	Motukawa 2E1	164
	Motukawa 2F1	12
	Total	228,112[232]

182. In addition to the lands listed in the table above, the Crown acquired 594 acres under the public works compulsory acquisition provisions (ie approximately 99.8% of the land acquired for the railway and associated

230 Wai 2180, #A08, at 80 (1890).

231 Wai 2180, #A09, at 145.

232 A further 76,847 acres was purchased in Rangipō Waiū in 1900. Note, this table is extracted from Mr Cleaver's #A09 report – this includes the total however we note there may be a slight rounding approximation (the figures in the table add to 227,094).

settlement from Taihape Māori was purchased, 0.2% was compulsorily acquired). It has not been possible to identify with any accuracy what proportion of the lands purchased were ultimately used for the railway route and necessary related infrastructure but it is clear that it is a small fraction of the land purchased (ie compared to the lands purchased for associated settlement). What is also clear is that, other than the 12 acres taken from Taraketi in 1888, the lands acquired under public works are all in the northern section of the railway route (a relatively small proportion of the total track length that traverses the inquiry district).

CROWN PURCHASING IN OTHER BLOCKS

Te Koau and Timihanga blocks

183. The Crown alienated part (7,100 acres of the total 17,340 acres of the block) of Te Koau block, believing it to be part of an earlier (1859) Crown purchase (Otaranga block in Hawke's Bay).

184. In 1890, the Awarua Commission adjudged this portion of the land not to have been included in the earlier purchase and having thus been sold in error. The Commission found that "the Ruahine Range … and not the Otupae Watershed is the [western] boundary of the lands sold by the Natives to the Crown."[233] It found the Crown had no claim in law or equity to land west of the Ruahine range proper (based on this earlier purchase).[234] It also found that the evidence showed the Crown had never claimed the Otupae watershed as the western boundary of the land sold in the 1850s until 1887 (three years prior to the Commission).[235]

185. As a result of the Commission findings, the Crown provided for owners of the Te Koau (7,100 acres) and Timahanga blocks to be compensated through the mechanism of legislation in 1894.[236] A Native Land Court investigation in 1900 identified the owners for payment of compensation.

186. Crown officials were less than diligent in their conduct of the earlier transaction by not obtaining more exact delineation of the western boundary of the Otaranga block. The Commission observed that survey

233 Northern Block Study supporting docs, Wai 2180, #A06(a), at 274.

234 Wai 2180, #A6(a), at 274.

235 Wai 2180, #A06(a), at 281.

236 The Native Land Claims and Boundaries Adjustment and Titles Empowering Act 1894, s 3.

officials had some doubt about the western boundary of Otaranga. The extent to which the Crown dealt with the land (by selling Otaranga block) while entertaining doubts that it owned it is not clear on the evidence.

187. Following complaints by Taihape Māori, the Native Land Claims and Boundaries Adjustment and Titles Empowering Act 1894 (section 3) provided for some of the land to be returned to Māori under customary title. It also provides for previous owners to receive monetary compensation for parts of the block which had been "heretofore disposed of as Crown lands".

188. The Crown recognises that the owners of land that was sold suffered prejudice through the loss of their lands, irrespective of whether or not they later received compensation.

Te Kapua

189. Te Kapua (21,878 acres) was initially part of the Otairi block dealings. It was surveyed in 1882 and title awarded in 1884 to Ngāti Poutama (dismissing the claims of the six counter-claimants).

190. After title determination in late 1884, purchase negotiations with those named on the title proceeded.[237] Discussions on terms of purchase commenced after the three-month re-hearing window had elapsed. The Crown did not make any purchase payments on the block until well after applications for rehearing (see below) were dismissed in October 1885.[238] The owners of the title had been informed in the middle of 1885 that a portion of a pre-title advance paid in the Otairi negotiations was charged against the block. They disputed the appropriateness of that, however it remained as a charge on the block.[239]

191. The 1884 title determination was contested vigorously – initially by the non-Taihape counter-claimants, and from 1888 the Taihape counter-claimants took the lead. Petitions by non-Taihape counter-claimants to Parliament in

237 Wai 2180, #A08, at 26.

238 Wai 2180, #A16, at 12010. Wai 2180, #A08 Central Aspect Report is inconsistent on this point. At 26–28, it acknowledges that no advances were paid but at 37 in its conclusion on Te Kapua it states they were. The evidence is clear that no advances were paid until purchasing in 1891 (at which point the applications for rehearing and petitions had been dismissed).

239 Wai 2180, #A08, at 26.

1885 and 1886 resulted in investigations (four and two days respectively) by the Native Affairs Committee which found against the petitioners. Two further petitions in 1888 were subsequently dismissed by the Committee, as was one in 1891 (including those of Retimana Te Rango, a Taihape rangatira).[240]

192. Taihape Māori[241] counter-claimants are not described as submitting any applications for rehearing until 1888 although Ūtiku Pōtaka gave evidence to the select committee investigating Winiata Te Puhaki's petition in 1885. Retimana Te Rango petitioned Parliament in 1888 and 1891 without result. In 1892, he and Hoera Te Rango took the case to the Supreme Court.[242]

193. The government delayed purchasing the block whilst the rehearing applications and the petitions were being considered.[243] By 1891, the Crown considered it appropriate, given the dismissal of the rehearing applications and the repeated petitions, to proceed to purchase. Further negotiations on price took place. A proposal that the three principle owners be paid £500 above other owners (premised on their shares relative to those of other owners) was proceeded with. The Crown purchase officer stated this proposal was developed by the owners themselves, "agreed to at a public meeting", however there is no record of either that meeting or the other owners' agreement to this arrangement.

194. Subsequent events indicate that the principal owners were induced by the payment to induce unwilling owners to sell. The owners' earlier rejection of an equal share price was reversed. Payment of the £500 for their shares was only to be made when "all they can induce to sell have signed the deed and the Court has removed the restrictions".[244]

195. This is acknowledged as a factor contributing to aggressive purchase tactics in the compound breach acknowledgement at paragraph [17.3.3] above.

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240 Wai 2180, #A08, at 29.

241 Ngāti Hauiti (Ūtiku Pōtaka represented); Ngāti Whitikaupeka (represented by Retimana te Rango); and less directly - Ngai Te Aute (represented by Te Oti Pohe).

242 Wai 2180, #A08, at 36.

243 Wai 2180, #A08, at 27, 35 (allowing for protests confirmed in 1892 as reason for delay). See footnote 239 above as to inconsistent commentary on this point in #A08.

244 Wai 2180, #A08, at 30–33.

196. The Crown proceeded to purchase the block, with title being transferred to the Crown in late 1891.[245] It appears some negotiations with some counter-claimants occurred prior to that purchase but did not reach agreement (although they were not registered on the title, the Crown sought to settle/discontinue further litigation).[246]

197. In 1893, the Supreme Court dismissed a case brought by Taihape counter-claimants (Retimana and Hoera Te Rango) given the case did not challenge the Crown's 1891 title and thus could not gain the relief sought even if their case succeeded.[247] In doing so, the Supreme Court made adverse comment about the Chief Judge of the Native Land Court having dismissed the applications for re-hearing without giving the applicants an opportunity to appear and support them.

198. The Central Aspect report states in its conclusion on Te Kapua:[248]

> … without waiting for the appeals against the Court's award to be decided, and heedless of sustained protests from the appellants, the Crown commenced paying advances on its purchase of Te Kapua to some of the individuals awarded title in 1884.

199. That allegation does not appear to be supported by the chronology or the earlier analysis in the report itself.[249] There can be no doubt that the 1884 Native Land Court ruling was strongly disputed by the counter-claimants (without making comment here as to the merit or otherwise of their concerns). In terms of purchasing, however, the Crown exercised considerable restraint in the face of settler pressure to proceed with purchase,[250] by delaying any purchase payments from the award of title in 1884 until 1891 after the multiple rehearing applications and the petitions to Parliament had been considered (and dismissed). There is no evidence of the Crown acting in undue haste – neither is there evidence of the Crown having notice at the time it completed the purchase of the Court case being

245 Wai 2180, #A08, at 32.

246 Wai 2180, #A08, at 35.

247 Wai 2180, #A08, at 36.

248 Wai 2180, #A08, at 37.

249 Wai 2180, #A08 Central Aspect Report is inconsistent on this point. At page 26-28 it acknowledges that no advances were paid but at page 37 in its conclusion on Te Kapua it states they were. The evidence is clear that no advances were paid for Te Kapua itself. As addressed above, an advance made to Hunia for Otairi was partially charged against Te Kapua (given it formed part of the Otairi block at an earlier point). Other payments were not made until purchasing was completed in 1891 (after the applications for rehearing and petitions had been dismissed).

250 Wai 2180, #A08, at 35.

planned. The Supreme Court application was filed after the Crown had conducted the purchase and thus could not have informed the Crown (nor could the Crown have paid advances as alleged "without waiting for the appeals against the Court's award to be decided").[251]

CONCLUDING COMMENTS

200. Crown purchasing was contemplated by te Tiriti/the Treaty and the Crown's actions in seeking to purchase lands in the inquiry district were not a breach *per se*. The purchasing occurred in an era of rapid and significantly transformative tenure change. It was undertaken to enable close settlement and the "opening up" of lands for productive uses (with various policies from different administrations as to how the interests of Māori should be protected or provided for within those objectives).

201. Boast describes 1869 to 1921 as a period of "systematic, relentless, and dislocating Crown purchasing of undivided interests in Māori freehold land."[252] The transformation that occurred within the inquiry district, largely within the twenty years between 1880 and 1900, was enormous and, even if conducted immaculately, would have been profoundly challenging. Crown purchasing was a significant part of that transformation.

202. From the 1870s, Taihape Māori were rapid adapters to the land-based primary production opportunities presented through the transformation to a modern economy. They were also aware of the limitations of operating without certainty of title in that economy. In the period Crown purchasing occurred in the inquiry district (mid 1870s onwards) Taihape Māori were not (for the most part) opposed to their district being opened up for settlement, however the scale and pace of the changes that occurred and their limited ability to collectively control that process must have been dislocating.

203. By 1900, the Crown had purchased approximately half of the land within the inquiry district. That purchasing was concentrated in the central and southern parts of the district – in which, by 1900, the Crown had purchased 70% of the land.

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251 Wai 2180, #A08, at 37.

252 R Boast QC Buying the Land, Selling the Land (2008) VUP.

204. As set out in the "Crown acknowledgements and concessions" section at the start of these submissions, various Crown actions whilst undertaking that purchasing did not meet the standards required of the Crown. The Crown acknowledges that those actions cumulatively breached te Tiriti o Waitangi/the Treaty of Waitangi.

7 May 2021

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