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

BEFORE THE WAITANGI TRIBUNAL

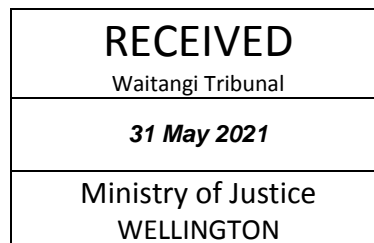
WAI 2180

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IN THE MATTER OF                      the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF                      THE TAIHAPE: RANGITĪKEI KI  
RANGIPŌ DISTRICT INQUIRY



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**CROWN CLOSING SUBMISSIONS IN RELATION TO  
ISSUE 5: ECONOMIC DEVELOPMENT AND CAPABILITY**

28 May 2021

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**CROWN LAW**

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## INTRODUCTION

1. Economic development is a key factor in efforts to improve quality of life and prosperity. From their earliest engagements with Europeans, Taihape Māori embraced the new settler economy in that light.<sup>1</sup> From the late 1860s, Taihape Māori became involved in sheep farming.<sup>2</sup> Mr Neville Lomax noted in his evidence that his tūpuna understood the opportunities arising from the North Island Main Trunk railway:<sup>3</sup>

I'm convinced that our tupuna were happy with the railways coming through. They could see the opportunities that the railways would provide for them as farmers, as land developers, [...]

2. However, Mr Lomax acknowledged that this strategic and pragmatic acceptance of new economic opportunities would involve difficult decisions and come at some cost (which the Crown accepts would be expected to be proportionate to the benefits to be gained):<sup>4</sup>

they also realised that to – for them to or for the Crown to go through the process of the Court hearings to determine the ownership of the land, that they would have to concede some of their lands to enable them to retain sufficient to continue to provide sustenance for their people.

3. For Taihape Māori, then, engaging with the new settler economy required a balance to be struck between the pursuit of new opportunities and the maintenance of their traditional values, cultural practices and social relationships. Importantly, Mr Lomax identified the retention of land as a key part of achieving that balance:

They wanted to keep big blocks of land together so they could keep their people in the business of farming, developing, whatever it was [...] and have sufficient for their people to continue their traditional food gathering practices. To continue to operate in the ways of their tūpuna.

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<sup>1</sup> Claimant generic closings characterise the economic choices of Taihape Māori as “In short, it was a case of adapt or face the consequences.” The Crown considers that submission fails to acknowledge the evidence of Taihape Māori actively engaging with the opportunities presented by the modern economy – not as a reluctant forced measure but as entrepreneurial, adaptive and strategic people responding to the opportunities presented through different land uses; increased access to markets, infrastructure development et al.

<sup>2</sup> It appears that farming activity on the early informal leases in the southern lands generated rental income but did not involve Taihape Māori farming sheep. The northern lessees did partner with Taihape Māori – particularly Bately.

<sup>3</sup> Wai 2180, #4.1.12, at 76.

<sup>4</sup> Wai 2180, #4.1.12, at 76 – see also Ūtiku Pōtaka at 52 discussing challenges of striking right balance in legislation and policy between individual and collective interests and economic choices.

4. The Crown recognises that its actions and omissions significantly limited the ability of Taihape Māori to achieve that balance. In brief, the Crown concurs with Mr Walzl and Mr Cleaver that the extent of purchasing undertaken by the Crown in (and up to) the 1890s, and the further alienation between 1900 and 1930 of the majority of the ‘usable land’ that had been retained at 1900 (to private interests) significantly limited the ability of Taihape Māori to undertake meaningful economic development.
5. While land is not the only basis for economic development (others include investment, manufacturing, and labour), the Crown accepts that in the Taihape inquiry district – particularly during the 19th century – access to useable land was by far the most important basis for economic activity. Given New Zealand’s primary economic status as a producer of frozen meat, wool, butter and cheese for the British market at that time, it is not unreasonable that Taihape Māori economic aspirations centred around land retention, development and use.<sup>5</sup>
6. The Crown also accepts that while the construction of the North Island Main Trunk Line through the Taihape district was intended to, and did, improve economic opportunities for all residents, including Māori, the large-scale acquisition of Māori land prior to, and for the railway and associated settlements, limited the ability of Taihape Māori to take advantage of those economic opportunities. By the time the railway was completed in 1908, the burgeoning Taihape Māori sheep farming sector of the 1880s had largely ended.

### **APPROACH TO THESE SUBMISSIONS**

7. The Crown acknowledges the thorough submissions filed as generic submissions on this topic by Rainey Collins.<sup>6</sup> Those submissions: set out a Tribunal jurisprudence on economic matters;<sup>7</sup> fairly and thoroughly record the submissions and acknowledgements made by the Crown on economic matters in its opening submissions and early memoranda;<sup>8</sup> and list the

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<sup>5</sup> Boast, *Buying the Land, Selling the Land* (2008) VUP at 292–293.

<sup>6</sup> Wai 2180, #3.3.50.

<sup>7</sup> Wai 2180, #3.3.50 at 4–10.

<sup>8</sup> Wai 2180, #1.3.1; Wai 2180, #3.3.1; Wai 2180, #3.3.30; Wai 2180, #3.3.31.

relevant evidence on the record.<sup>9</sup> The Crown sees no need to duplicate that introductory material.

8. The Crown wishes to complement that material, however, by also recording Tribunal jurisprudence that the Crown's duties of active protection (including Māori rights to development) cannot guarantee economic success – and nor is there a Tiriti/Treaty duty for it to do so. The Tribunal and parties are also well aware of the Crown's repeated iteration of the position that the Crown can only be held to account for matters reasonably within its control or influence (Tribunal commentary on this is included below).

### **TRIBUNAL STATEMENT OF ISSUES (SOI) QUESTIONS**

9. The Tribunal's SOI for this topic stated the following questions:

- |         |   |
|---------|---|
| Issue 1 | To what extent did the Crown facilitate the economic development of Taihape Māori through legislation, policies and practices? To what extent did the Crown attempt to mitigate barriers to Māori participation in the economy?   |
| Issue 2 | <p>What Crown-led initiatives assisted Taihape Māori in effectively participating in economic opportunities including, for example:</p> <ul style="list-style-type: none"> <li>a. Assisting in the maintenance and/or development of Māori land in the district; and</li> <li>b. Providing financial or other support for Māori to encourage their participation in the economy?</li> </ul> |
| Issue 3 | Did the Crown take a partnership approach to the development of economic sectors in the Taihape district with Taihape Māori?  |
| Issue 4 | What other economic opportunities did the Crown make available to Taihape Māori, for example, in the sectors of farming, forestry, fishing, tourism, aquaculture or mineral extraction? How do these compare with opportunities available to non-Māori and Māori elsewhere?   |
| Issue 5 | To what extent was the Crown obliged to ensure that Taihape Māori had equal access to economic opportunities as compared to their non-Māori counterparts?   |
| Issue 6 | To what extent have Taihape Māori been disadvantaged by Crown acts, policies and omissions relating to  |

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<sup>9</sup> Wai 2180, #3.3.50, at 13.

economic development (such as the Advances to Settlers Act 1894)?

Issue 7 What responsibility did the Crown have to ensure that Taihape Māori were able to exercise adequate control and management over their commercial interests, including effective management of their lands, fisheries, forests and other economic resources?

Issue 8 To what extent, if at all, did the Crown purchase of land and the activities of the Native Land Court obstruct, disadvantage or negatively affect the economic development of Māori?

10. Many of the above questions overlap with each other and/or with matters addressed in more detail under other Topics. These submissions attempt to respond to the questions by first providing a high level account of the economic history of Taihape – and applying acknowledgements and concessions in relation to that. The submissions then in turn assess the evidence concerning the conditions relevant to economic development in Taihape, the economic experience of Taihape Māori, and analysing Crown actions that restricted Taihape Māori in their economic development.

## EVIDENCE IN THIS INQUIRY

### Taihape economic history and Crown concessions and acknowledgements

11. The Crown recognises that the history of the economic development of Taihape Māori is inextricable from the history of Crown Tiriti/Treaty breaches. The following section provides a brief economic history of the Taihape inquiry district, including relevant Crown concessions.
12. Māori customary occupation of the Taihape district was mainly confined to the river flats through the central part of the district.<sup>10</sup> The customary economy involved fishing and hunting and the seasonal planting and harvesting of crops. There is very little evidence on the record of Taihape Māori engaging with the new settler economy prior to the 1860s.<sup>11</sup> Limited private leasing took place in the southern lands in the early 1850s<sup>12</sup> and northern lands from the mid-1860s.<sup>13</sup> Mr Cleaver concludes that “before the

<sup>10</sup> Wai 1040, #A48, at 28.

<sup>11</sup> At times the claimant generic closings seem to suggest Taihape Māori economic activity in 1880 (sheep economy, Moawhango being developed) were extant since 1840 without such evidence being on the record.

<sup>12</sup> See Wai 2180, #A07 and submissions on Issue 4: Crown purchasing. Earliest date stated for private leasing activity in the district is 1849 - that same leasing is elsewhere referred to as starting in the 1850s. Efforts to expand it in the mid 1860s were rejected (through Rēnata Kawepō withholding consent).

<sup>13</sup> Wai 2180, #A06, at 139.

mid-1860s Taihape Maori do not appear to have been involved in trade or other activities within the developing colonial economy.”<sup>14</sup>

13. The mobility of Taihape Māori into other districts, and the arrival of European traders and settlers brought new economic opportunities to Taihape Māori, based on large-scale trade, and connections to the wider international economic system.<sup>15</sup> As set out in Crown submissions on Issue 4 (Crown purchasing) Taihape Māori appear to have developed clear strategies for their utilisation of the southern part of their rohe (where their interests overlapped with Ngāti Apa). By the mid-1860s, this strategy was to retain their southern papakainga lands (Taraketi and Ōtamakapua 1), while selling other areas that had not traditionally been occupied by them.<sup>16</sup>
14. The Crown began to purchase southern lands from the 1870s, largely under monopoly conditions. Cleaver suggests there is little evidence of the Crown actively seeking to protect the future ability of Māori to participate in land-based economic activities in the south of the inquiry district. Between 1871 and 1885, the Crown purchased approximately 241,000 acres (about 70%) of the southern Taihape blocks. Purchasing took place in a context of significant disagreement between and within Māori communities about their respective interests.
15. The Crown has acknowledged that when purchasing land in the southern Taihape blocks:
  - 15.1 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;

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<sup>14</sup> Wai 2180, #A48, at 43.

<sup>15</sup> Waitangi Tribunal *He Whiritanoka: The Whanganui Land Report, Vol 2* (Wai 903, 2015) at 973.

<sup>16</sup> Wai 2180, #A48(e) at 7. This is dated to the discussions between Ūtiku Pōtaka, Rēnata Kawepō and Aperahama Tipae about “Greater Paraekaretu”.

- 15.2 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
- 15.3 it sometimes used aggressive purchasing tactics, including:
- 15.3.1 imposing monopoly powers where Māori were already in negotiations with private parties who were offering higher prices than the Crown;
  - 15.3.2 using debt pressure to induce a leading rangatira to complete a sale;
  - 15.3.3 paying owners incentives to induce other owners to sell; and
  - 15.3.4 in at least one circumstance, intimidating or applying inappropriate pressure on owners to sell their interests;
- 15.4 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.
16. The Crown recognises that its purchase of lands, in the circumstances above, negatively impacted the ability of Taihape Māori to develop the economic potential of their southern lands.
17. The central lands of Taihape Māori constituted their 'rohe potae' - in the sense that there were few overlapping interests of non-Taihape groups in these lands (compared to the southern lands where interests overlapped with Ngāti Apa, or the highly-contested northern lands).<sup>17</sup> Due to the amount of high quality land, the nature of political and customary interests, and the demographics of Taihape Māori at the time, the central blocks constituted a critically important economic land base for Taihape Māori (subject to factors discussed below) – for which they also had clear strategic intentions. The

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<sup>17</sup> That is not to say these blocks were without contest also – however that contest is (at least to a greater extent than that for the southern or northern lands) amongst the five Taihape tribal groupings themselves.



Crown’s purchasing of central Taihape lands was therefore a critical development in the economic history of Taihape Māori.

18. In 1892, Taihape rangatira wrote to the government setting out aspirations that were directly relevant for their future economic development. They informed the government that most of their homes were located on these central lands and highlighted their “desire to have our interests guarded with more care than has been shown in the past in respect to our lands.”
19. The letter recorded the (qualified) consent of rangatira to the Crown purchasing 100,000 acres of land out of the approximately 300,000 acre Awarua and Motukawa blocks for the North Island Main Trunk Railway and associated settlement. The letter also set out their collective aspirations regarding the balance of the land. Taihape rangatira sought:<sup>18</sup>
  - 19.1 certainty of title for subdivisions in a timely manner (at hapū and whānau level) and a requirement that their consent be gained prior to any further surveys being charged against the land;
  - 19.2 legislative provisions that would enable Taihape Māori mechanisms “to form themselves into a company or companies with a committee or committees of management” who would more effectively manage collectively owned land;
  - 19.3 the ability to control any further retention or alienation (including leasing) of the balance of the central lands (under a mechanism that required reference to the collective of owners);<sup>19</sup>
  - 19.4 Government advances for development finance (with certain conditions, including that any loans would not exceed half the value of the land, that interest rates would be equal to those available to Europeans, that loans would be “solely for the purpose of

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<sup>18</sup> Ūtiku Pōtaka and others to the Native Minister, 9 September 1892, Wai 2180, #A16(a), at 12272; also set out in various technical evidence eg Wai 2180, #A10, at 95.

<sup>19</sup> Ibid. “That should any of the owners in the said blocks wish at any time to sell some portion of their land they may do so only through the particular committee of management having authority over the land desired to be sold – but if there should be no such committee, the owners of the said land shall not be able to dispose of the same until they have formed themselves into a company and elected a committee of management from themselves.”

improving and stocking the land”;<sup>20</sup> and that expenditure would be “under such official supervision as the Government may deem necessary.”<sup>21</sup>

20. As the Crown has acknowledged in its submissions on Issues 1 and 2, the 1892 letter represents an important point of coherence amongst Taihape Māori.
21. While there is no record of the Crown agreeing (or otherwise explicitly commenting on) the letter or its terms, substantive discussions did subsequently take place between Taihape Māori and government officials, Ministers, and even the Premier. While the Crown does not accept that there was sufficient meeting of minds or clarity in terms for the letter to constitute an “agreement” between the Crown and Taihape rangatira, the Crown nonetheless does accept that the letter was a clear and unified expression of how Taihape rangatira wanted to control and develop their economic future.<sup>22</sup>
22. The Crown has conceded that its failure 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 was a breach of te Tiriti o Waitangi/the Treaty of Waitangi. This concession remains of critical import in regards to Taihape Māori economic history – the absence of such a mechanism, along with the compromises to tribal structures contributed to by the native land laws, limited economic development for Taihape Māori.
23. In terms of its subsequent purchasing in those central lands, the Crown has conceded that:
- 23.1 when purchasing lands associated with the North Island Main Trunk Railway in the Taihape inquiry district it placed much more

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<sup>20</sup> The letter recorded that whilst some people had interest in “open lands” that required only fencing and surface sowing to increase its carrying capacity by a factor of three; other people’s interests were in lands that remained forested “bush” and would require more assistance to bring into “cultivation and grass”.

<sup>21</sup> Ibid “Such advance to be made at the same rate of interest as is charged by said Department to Europeans and to be made solely for the purpose of improving and stocking the land upon which the said money is borrowed, the expenditure of said money so advanced to be made under such official supervision as the Government may deem necessary.”

<sup>22</sup> Ibid “Therefore it is for these reasons we now approach the Government with the earnest hope that the conditions we ask may be granted and that the Government will introduce such other measures as they may seem fit towards supporting and carrying out our views and so bring about without delay a better state of things for our people and our lands than that which now exists”

land under monopoly restrictions than was required for the railway, and kept those restrictions in place for too long;

- 23.2 its misuse of monopoly powers unreasonably limited the ability of Taihape Māori to develop their lands or raise finance between 1884 and 1896;
- 23.3 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
- 23.4 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.
24. The Crown recognises that the actions acknowledged above impacted upon Taihape economic capability and development. This statement is made at a general level, as it is not possible (on the available evidence) to identify the degree to which any particular action affected or restricted any particular aspect of Taihape economic capacity, development, opportunity, or opportunity loss.
25. By 1900, the Crown had purchased approximately 50% of the Taihape district, including 70% of the southern and central lands (where much of the higher-quality lands were located). While the amount of usable land retained by Taihape Māori in 1900 was significantly reduced, the amount they retained was of sufficient quality and quantity to provide a viable economic land base for the population size. However, the development potential of that remaining land was not realised, due in large part to the form of tenure the land was held in, and the lack of access to finance (these issues are discussed further below). With regard to the impact of the native land laws, the Crown has conceded that:
- 25.1 the requirement of Taihape Māori to defend their interests in the Native Land Court significantly damaged relationships between

Taihape Māori and their neighbours, and amongst the iwi, hapū and whānau of Taihape, the effects of which are still felt today;

- 25.2 the overall operation of the native land laws, in particular the awarding of land to individuals, undermined tribal Taihape Māori decision making and made their land more susceptible to partition, fragmentation, and alienation;
- 25.3 this eroded Taihape Māori traditional tribal structures; and
- 25.4 the Crown's failure to protect Taihape Māori tribal structures was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
26. The 'usable' lands retained by Taihape Māori in 1900 had largely been sold by 1930. The usable land they retained by that point constituted less than 4% of their original landholding. Approximately 70% of that remaining land did not have reasonable access. The Crown has conceded 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.
27. The Crown has also conceded that 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 – or to develop those lands economically. 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. 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.
28. During the mid-20th century, urbanisation generally reduced the proportion of Māori living in rural areas. In Taihape, this coincided with the expiry of long-term leases to non-Māori farmers. Some Taihape Māori owners sought to farm their land themselves, and some set up trusts to manage the land

collectively. Success was mixed, however, and some blocks were sold or leased again, usually to non-Māori (except where whānau strategies were in place and able to be implemented).<sup>23</sup> By the 1970s, many of the rural kāinga that had previously served as important centres for Taihape Māori were almost deserted, while the Māori population in the district's main townships of Taihape, Mangaweka and Hunterville increased – as did the military base at Waiōuru. Māori from outside the district also moved to Taihape district in this era.

29. As the amount of economically viable land available to Taihape Māori decreased, many came to rely on wage work – primarily agricultural work in the private sector but also railways, roading, and public works, and from the 1940s work with Waiōuru Military Exercise Area.
30. Mr Peter Steedman gave evidence of Taihape being an attractive and thriving place to live and the impact of the 1980s state services restructuring on Taihape Māori and the associated job losses. He states:<sup>24</sup>

I hope to show the Tribunal that Taihape was a thriving community with boundless employment opportunities and a great sense of community. With the advent of Crown policies that resulted in the closure of the railways and an exodus of our younger people from Taihape in pursuit of work this has changed.

### **Economic development of Taihape lands: relevant factors**

31. The economic and development potential of the Taihape district was limited due to the topography and climatic conditions of the district. As the discussion below will demonstrate, these limitations meant that viable economic enterprise in the northern part of the district generally required reasonably large areas of land and even in the central and southern lands required larger units to be viable than the 100 – 200 acre farms initially created for closer settlement. The Crown recognises that its dealings in, and protections for, Māori land should have taken such factors into consideration.
32. The Crown accepts it has a role to play in economic development and the creation of economic opportunities. However, the Crown is not able to guarantee economic outcomes because a number of factors that shape

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<sup>23</sup> See for example evidence of Neville Lomax, Kerry Whale and Hari Benevides.

<sup>24</sup> Wai 2180, #K05.

economic activity are beyond the Crown's control. The Crown also submits that the degree to which it can promote economic activity in any given area is often limited by particular factors in that area. Some of the factors that applied in Taihape are summarised below.

### *Population*

33. Taihape district was relatively sparsely settled. Evidence on population is “sketchy and impressionistic” but seems to indicate a population in 1881 of approximately 450 Taihape Māori (about half living outside the district).<sup>25</sup> Mr Armstrong suggested that the best estimate of 1886 Taihape Māori population could be the Awarua title list given that most, if not all, Taihape Māori had interests in Awarua. Population estimates remain unreliable until the 1921 census.<sup>26</sup> Between 1936 and 1966 there was a significant increase in the overall Māori population of the Taihape district, but evidence suggests that this was due largely to large numbers of non-Taihape Māori moving in to the area to work at the Waiōuru Military camp, New Zealand Rail, and the Tongariro Power Development Scheme.
34. Over the same period, there was a significant increase in the Pākehā population. In 1896 the European population in the district was 86. In 1900/01, Mangaweka had a European population of 300, and Taihape (and its immediate surrounds) had 401 European residents.<sup>27</sup> In just 15 years, the European population of the Taihape district increased 18-fold, from 86 in 1896 to 1577 in 1911.<sup>28</sup>
35. However, the overall population of the district remained small relative to other parts of New Zealand. This meant that there was both a relatively small local market and limited access to broader markets for much of the 19th century.

### *Land quality*

36. The Taihape inquiry district has a low proportion of land suitable for agriculture, relative to other parts of New Zealand. Only 3.8% of the district

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<sup>25</sup> Wai 2180, #A48, at 20, 25, 31. See also R Steedman summary and mapping of census data.

<sup>26</sup> Cleaver at 33: From 1886 to 1921, census results do not give localised information and instead record only the number of Māori living within local body boundaries – counties and their interior boroughs. As these do not align closely to the inquiry district, the census figures are of limited utility.

<sup>27</sup> Wai 2180, #A46, at 205.

<sup>28</sup> Wai 2180, #A48(e), at 11.

– mainly in the river terraces – falls within the highest quality land classifications (classed as suitable for arable cropping), compared with about 7.4% for the North Island more generally. 51% of the district’s land is in the lowest classifications compared with 33% across the North Island.<sup>29</sup> The balance of Taihape lands are suitable for pastoral or forestry uses.<sup>30</sup>

37. Assessments of land quality in Taihape has changed significantly over time. In the 1860s, assessments divided Taihape into two broad categories: the “rich and sheltered valleys” characterised by high-quality soils and forest cover, and the higher-altitude interior zone with its open grasslands and more challenging climate.<sup>31</sup> During the 1880s Crown officials investigating options for the rail route assessed the land as being of high quality, one stated that “nowhere in New Zealand is a finer class of country to be found” than in Taihape. However, those land-quality assessments were revised following the mixed success of the early settlers. By 1905, the area was being described as “patchy” with some “very good grass”. A government assessment of Awarua 1B from the same year found 12,000 acres of the block suitable for settlement purposes, but described the remaining 45,000 acres as “hard rocky country, with an elevation of from 2000 to 5500 feet, most of it being covered with snow in the winter time, and only suitable for small grazing or pastoral runs.”
38. By 1913 many settler families were “leaving the country” around Mangaweka and “townships were becoming impoverished” – in part due to an increasing realisation that the land quality and the climate could not support the ‘close’ settlement of small runholders promoted by governments at the time.<sup>32</sup> Even the larger farms were failing due to land suitability issues: the viability of farming at Ōwhāoko was limited (without access to Mangaohane land for lambing and winter grazing). In 1905, the prominent farming family the Studholmes abandoned their Ōwhāoko lease. In the 1930s leases of Waiōuru lands were being surrendered as the volcanic plateau soils proved extremely difficult to improve.

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<sup>29</sup> Wai 2180, #A48, at 39 – Cleaver drawing on Mr Innes’s report.

<sup>30</sup> Wai 2180, #A48, at 38-40.

<sup>31</sup> Wai 2180, #A48, at 49 summarising Crawford’s 1862 assessment.

<sup>32</sup> Wai 2180, #A46, at 232.

39. Mr Cleaver suggests that in hindsight, some areas of the inquiry district should not have been cleared at all, due to the limited success of subsequent farming operations and the environmental degeneration that deforestation caused. While farm development did succeed in some parts of Taihape, this often depended on the coming-together of a number of factors including land quality and location, access to development finance, and favourable market conditions.
40. The Taihape economic story centres around sheep (particularly wool production). There is some, but minimal evidence of other stock or crops. Meat production was not feasible until the railway enabled access to markets. Dairy development was limited by both access to markets and the suitability of the lands (and the climate).

### *Transport infrastructure*

41. The Taihape district's location away from the coast, its lack of easily navigable rivers, and its generally rugged topography limited the ability of the district's residents to move people and produce both within the district itself and outside the district to larger markets in other parts of New Zealand and beyond. For much of the 19th century, a lack of transport infrastructure presented an obstacle to the development of key economic activities, such as agriculture and sawmilling, in the southern half of the inquiry district (and in the north also, although the Napier Taihape Road was useable by heavy drays from (at least) the 1880s).<sup>33</sup>
42. This constituted a significant obstacle to economic development for Taihape Māori and the district's European settlers. The following quotes from around 1900 illustrate some of the challenges issues that dairy farmers were facing at that time:<sup>34</sup>

the hills were rather precipitous for such stock [...] the arterial roads are well-nigh impassable

[Settlers in Taihape] find it impossible to establish creameries and factories at such distances from civilisation. The existence of a railway is as essential to these settlers as the most modern facilities are essential to the convenience of the city dweller in the transaction of his business.

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<sup>33</sup> Wai 2180, #A48, at 76.

<sup>34</sup> Wai 2180, #A46, at 210.



[horses] struggled along knee deep, in sticky mud for miles and miles

43. Infrastructure development within the region was undertaken by Māori and early settlers (early iterations of what is now the Napier Taihape road); by the Crown (arterial roading in lower altitude more populous areas); and directly and substantially by settlers (later ratepayers) in the central and southern areas.
44. The Crown’s most significant investment in the area – the North Island Main Trunk Railway – mitigated Taihape remoteness to a significant degree. The railway had progressed as far as Rangatira in southern Taihape by the 1880s, and by 1908 the railway had been completed. For Taihape settlers who had “devoted many years of strenuous toil to the improvement of their holdings”, work on the railway construction provided a welcome supplementary income source<sup>35</sup> Mr Cleaver suggests that Taihape Māori may not have been employed equally on the rail construction but this claim has not been closely assessed by the Crown prior to filing these submissions.
45. The Public Works Department, the Lands Department and local authorities (including the Rangitikei County Council) were involved in road building to provide access from main railway and roading routes to settler properties. That did not prevent some newly settled areas having inadequate road access, for example in the lower Moawhango area.<sup>36</sup>

### **Limiting factors on Māori economic development**

#### ***Land alienation***

46. This section sets out the broad statistics regarding land alienation relevant to these submissions.
47. By 1900, the Crown had acquired 503,790 acres of Māori land in the Taihape district.<sup>37</sup> Approximately 561,953 or 48% of the total district remained Māori land.<sup>38</sup> However, only 1.3% of that remaining Māori land was high-quality (classed as having slight or no limitations for use for cultivating crops, pasture, or forestry). Approximately 60% of the remaining Māori-owned

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<sup>35</sup> Wai 2180, #A46, at 208–209.

<sup>36</sup> Wai 2180, #A48, at 153.

<sup>37</sup> Wai 2180, #A15(m), at 113 district area is 1,169,226 acres; at 154 table of alienation by type by decade (private purchasers had acquired 93,378 acres in the same period).

<sup>38</sup> Wai 2180, #A15(m), at 153. Mr Cleaver gives 458,983 acres remaining.

land (about 277,000 acres) was very poor quality in economic terms (classed as having “severe to extreme limitations” for use for cropping, pasture, or forestry).<sup>39</sup>

48. By 1930 a further 177,186 acres of Māori-owned land had been alienated (by gift or sale – this figure does not include lands leased) and 32% of the district remained Māori land.<sup>40</sup> The quality of this land has not been assessed.
49. By 2013 approximately 137,546 acres (11.8% of the total district) was retained in Māori ownership.<sup>41</sup> Approximately 70% of that land (very approximately 96,000 acres) suffers from serious access restrictions. The balance (approximately 41,000 acres) constitutes approximately 3.8% of the lands within the district but the analysis of LUC categories of those lands has not been undertaken.<sup>42</sup>

***The land title system and partitioning***

50. The Crown accepts that the loss of such a significant proportion of economically viable land significantly impacted the ability of Taihape Māori to achieve meaningful economic development in their rohe. The Crown also accepts that the ability of Taihape Māori to utilise the land they retained was limited by the fact that most of that land had been partitioned down to whānau or individual level by 1900.
51. There is little direct evidence (ie Taihape Māori voices or thoughts) on why much of the partitioning was undertaken – particularly in the northern blocks where extensive partitioning is apparent despite the poor quality of the land, and where Crown purchasing was not involved. Mr Cleaver considers it may have been a strategy to overcome land management difficulties but notes that, if so, it was an expensive strategy and:

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<sup>39</sup> Wai 2180, #A48, at 182.

<sup>40</sup> Wai 2180, #A15(m), at 113.

<sup>41</sup> Wai 2180, #A15(m), at 113. Māori ownership used as shorthand throughout these submissions for Mr Innes’s category of “Māori Land Court title private land”.

<sup>42</sup> The 30,000 acres estimate in the paragraph proceeding clearly exceeds the 41,000 acres of land that is retained that has reasonable access. Counsel has not undertaken in the time available the analysis to determine if the 11,000 difference constitutes land that is not ‘usable’ but has reasonable access; or if the calculations are not entirely accurate. Counsel suspects the latter may be the case but proceeds regardless as the analysis is sufficient to demonstrate the point, for the purposes of this submission, that it appears likely that the majority of ‘usable land’ retained by Taihape Māori as at 1900 was sold to private interests between 1900 and 1930.

in the long-term, the strategy of reducing ownership through partition was likely to be undermined by the process of succession, which in many cases would have ensured that problems associated with multiple ownership would re-emerge as generations passed.

52. Elsewhere in the district, partitioning was necessitated to cut the Crown-purchased interests out (sometimes in successive rounds as further purchasing was undertaken eg Awarua). The Crown has acknowledged the overall operation of the Native land laws, in particular the awarding of land to individuals, undermined tribal Taihape Māori decision making and (amongst other matters) made their land more susceptible to partition and alienation. The Crown has also made concessions in relation to the Awarua purchasing.
53. Evidence shows that by the start of the 20th century, the small (100 acre to 200 acre) holdings that had been created in Taihape through the government's promotion of 'close settlement' proved to be uneconomic. The heavy partitioning of the remaining Māori-owned land made it difficult for Taihape Māori to establish larger farming enterprises such as incorporations, or large individual farms. In addition, while some Taihape Māori retained substantial interests in land, the small size of the Taihape Māori population and the close whakapapa connections between them meant that individual or group interests were often spread across a number of blocks throughout the district. The Crown also notes the evidence of Mr Walzl, which says that while the Land Court had identified the interests of many Taihape Māori down to a whānau or individual level, these interests had not necessarily resulted in a clear title to a defined piece of land. Without a secure title, owners could not utilise their land as, firstly, they did not know where it was and, without this, they could not attract finance or make arrangements over the land.<sup>43</sup>

### *Collective land management*

54. By the 1890s, many politicians and officials had become aware that one of the most important problems facing Māori land-owners was the lack of a legal structure for owners to operate communally. The Crown has made an

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<sup>43</sup> Wai 2180, #A46, at 310.

acknowledgement and concession of Tiriti/Treaty breach concerning the lack of an effective mechanism for the management of collectively owned land.

55. The Native Land Court Act 1894 enabled the court to incorporate block owners, who could then manage their land as a single legal entity through elected block committees. Despite some early interest from Taihape Māori in company or committee structures (as expressed in the 1892 letter) or incorporations and trusts, Taihape Māori (along with many other districts) did not draw heavily on such mechanisms when they were introduced. There appears to have been only one incorporation in 1899 (which sold the land within a year).
56. In other district inquiries Tribunals have concluded that Māori owners chose not to form incorporations either because the legislation gave the Government too much control; the incorporations were unable to raise finance, or there was little suitable land remaining in Māori ownership by the time the provisions became available (or became more attractive – ie with finance provisions improving in 1895, 1905 and 1909). Mr Cleaver suggests that the Taihape Māori strategy of partitioning down to small whānau groups or just one or two owners (which was the case for most of the “usable” Awarua lands by 1900) may have negated against the need to use other collective land mechanisms (although notes that was not a durable strategy).<sup>44</sup>
57. Even in the latter half of the 20th century, when these mechanisms became more popular elsewhere, they were not drawn on – perhaps due to the limited landholdings retained by that time.
58. In Taihape, the vehicle that seems to have become preferred for collective ownership is the Trust. Most Taihape lands remaining in Māori ownership today appear to be administered within Trusts.

### *Access to finance and development support*

59. Māori in Taihape generally lacked the necessary funds to develop their land. Based on the 1895 statement of Hiraka te Rango, much of the flock and land

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<sup>44</sup> Wai 2180, #A48, at 208 “By 1900, Mokai Patea Maori had partitioned much of their most valuable land so that it was held in subdivisions owned by small whanau groups or just one or two owners. It seems likely that owners resorted to this costly process in order to overcome some of the problems associated with multiple ownership, which not only posed a barrier to effective land management, but made access to lending finance more difficult.”

development was funded by credit (though not all – Winiata te Whaaro had sufficient liquidity in the 1890s to meet two large debt demands rapidly – as addressed in Issue 6 submissions).

60. The Crown accepts that the individualisation of titles by the Native Land Court, associated partitioning, and the process of succession to titles often resulted, over time, in the fragmentation of land interests, and that this could create significant difficulties for owners seeking to develop their land or use it profitably. The existence of multiple owners could make it difficult to manage land efficiently, while private lending institutions were generally reluctant to lend money secured against land with multiple owners. Factors such as these could, and did, create significant barriers for Taihape Māori seeking to develop their lands.
61. The Crown made land available to Pākehā settlers in various ways under the Land Act 1892, as part of the Liberal Government's drive to make land available for close settlement, on the model of the family farm.<sup>45</sup> The Crown could sell land to settlers outright, provide for settler occupation with a right to purchase, or could lease land in perpetuity.
62. The government also provided direct support to settlers through various means. In some cases the Crown paid settlers to fell bush on their land (to a certain limit) and created "Improved Farm Settlement" schemes, under which selected settlers would receive leases for 999 years at 4% rental on capital value (plus 5% on amount advanced by Government for clearing, grassing etc). Advances were also available for housing or fencing (and employment might be available on the railway).<sup>46</sup>
63. From 1894 the Crown made large sums available to Pākehā settlers throughout the country in the Advances to Settlers scheme. In Taihape, ten loans were made under this scheme to Māori, but as in other districts this represented a fraction of the loans advanced to Europeans. In 1907, a Royal Commission of Inquiry criticised the Crown for not providing Māori with the same level of support to develop their land as it provided to Pākehā landowners. If recipients of these loans defaulted, the asset borrowed against

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<sup>45</sup> Wai 2180, #A48, at 130.

<sup>46</sup> Wai 2180, #A46, at 215.

could be recovered (ie default on loans could result in the loss of the land). The government was anxious to protect Māori from foreclosure in cases of default (as was available for lands that qualified to receive loans under this regime) and continued to improve access to finance whilst attempting to also actively protect retention of the lands Māori wished to retain.

64. From 1899, the Crown provided development/financial assistance for European settlers in Taihape through Improved Farm Settlements schemes. In 1899, the three Improved Farm Settlement schemes in Taihape together covered nearly 3,800 acres of land in 29 sections, and supporting a total of 114 residents.<sup>47</sup> None of these settlements supported Māori farmers.
65. In 1905, legislation was passed that allowed the private leasing of Māori land. This change followed direct approaches to the government by settlers, advocating for further Taihape lands to be purchased by the Crown in the district and be made available purchase or lease.<sup>48</sup> In the following five years, several thousand acres of Awarua and Motukawa land was leased to Pākehā farmers.<sup>49</sup>
66. The Crown recognises that many of the issues outlined above were explicitly brought to the Crown's attention by Taihape rangatira in their 1892 letter.<sup>50</sup> Issues around the security of title; sufficiency of land (held in economically viable units); collective land management mechanisms; and development financing were identified as factors which significantly limited the ability of Taihape to develop their lands. They are issues that were widely noted and discussed at the time and for which various different policies or mechanisms were trialled over time to address (none with absolute success).

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<sup>47</sup> Hautapu/Motukawa: 1204 acres, 11 sections, 59 residents; Rongoiti/Te Kapua: 2,387 acres, 8 sections, 16 residents; Taihape: 200 acres, 14 sections, 10 settlers, 39 residents.

<sup>48</sup> Wai 2180, #A46, at 227. Note they advocate for farms 100 – 200 acres in size - asserting for instance that one 8000 acre block could support 40 families. This has relevance to the scale of partitioning and viability for Māori land holdings also.

<sup>49</sup> Wai 2180, #A46, at 241.

<sup>50</sup> See Wai 2180, #A48, at 11: Mr Cleaver defines economic capability as “an individual or a group’s ability to take advantage of available opportunities to achieve economic well-being. In practical terms, it means that an individual or a group has all the things that are required to participate in a particular economic activity, including, for example, the necessary skills, capital, and resources. Those who possess economic capability in respect of a particular opportunity are able – if they choose to participate – to derive an economic benefit from that opportunity.”

## Māori involvement in the Taihape economy

### *Wool production*

67. As above, the primary economic endeavour of Taihape Māori (and indeed most Taihape farmers) during the 19th century was sheep farming. The sheep economy was primarily for wool production, and supply of livestock (meat production was limited, even after refrigeration was established in the early 1880s, by the lack of access to markets prior to railway).<sup>51</sup>
68. The number of Māori sheep operations increased from three flocks in 1879 (totalling 6,000 sheep) to 20 in 1890 (72,221 sheep). A further 4,650 sheep were owned in partnerships between Taihape Māori and Europeans in 1879, increasing to 14,000 by 1890. Over the same period, the number of sheep owned by Pākehā increased from 68,328 to 177,860. That is, by 1890 approximately 30% of the sheep in the district belonged to Māori or were owned in partnership with Māori.<sup>52</sup>
69. In 1892, 107,000 sheep are recorded in 26 flocks (ranging from 200 to 16,000 animals, with 19 of the 26 flocks less than 5,000 sheep).<sup>53</sup> This is the peak of the Taihape Māori burgeoning wool production and farming.
70. Between 1898 and 1910, the number of sheep owned wholly by Taihape Māori, excluding partnerships, declined sharply from 83,002 to 5,874.<sup>54</sup> Over the same period, the number of Māori-only sheep-farming operations fell from 29 to just six.<sup>55</sup> This decline may partly at least be explained by a move by Māori landowners from sheep farming to leasing, once leasing was allowed under the 1905 legislation.<sup>56</sup> However, it is notable that this decline roughly coincided with the completion of the North Island Main Trunk Line in 1908. Taihape Māori may therefore have been not well-placed to take advantage of the improved access to agricultural markets.

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<sup>51</sup> Wai 2180, #A48(c), at 4–5, and 14.

<sup>52</sup> Wai 2180, #A48, at 67.

<sup>53</sup> Wai 2180, #A46, at 248.

<sup>54</sup> Wai 2180, #A48, at 165.

<sup>55</sup> Wai 2180, #A48, at 162–163.

<sup>56</sup> Wai 2180, #A46, at 535–536. see the figures from Mr Walz's report cited in the Twentieth Century submissions; in summary these show that leased areas doubled for some key blocks in the period 1900–1910.

71. Mr Walzl's data differs somewhat from Mr Cleaver's.<sup>57</sup> The difference might be attributable to one author including Airini Donnelly as a Taihape Māori owner, and the other not doing so (on account of her marriage and partnership with a European). On Mr Walzl's account, at 1914 there were 35,000 sheep owned by Taihape Māori (in 9 flocks - with 90% of the sheep held by two owners – Anaru te Wanikau and Whenuaroa (who, it appears, may have acquired Airini Donnelly's flock in 1906)).
72. On Mr Walzl's data,<sup>58</sup> Taihape Māori ownership of sheep increases markedly after 1886 (when Awarua title was determined though subdivision was yet to occur). The trend is a steady fall from a peak in 1892 of 107,000 sheep through to 1914 where only two Māori farmers report significant flocks. Although the earlier sheep data provides comparisons with Pākehā flocks, it is not provided for the later years.
73. Hiraka Te Rango stated in 1895 that all of the Māori-owned sheep flocks were heavily loaded with debt (ie minimal equity in these flocks at this point). To accurately assess the economic viability of the flocks or their significance as indicators of the level of economic activity being undertaken by Taihape Māori in this era, the level of equity in those flocks must be taken into account. The technical evidence does not disclose whether that 1895 debt was incurred over a short period (eg which indicate the costs of the 1892 Awarua subdivision process) or over a longer period (ie the stock was developed on credit alone).
74. Sheep returns provide an indication of overall trends concerning Taihape Māori farming activity but, on their own, are of limited value in assessing the economic viability of those operations, or in attempting to compare the viability of Māori farms with non-Māori. Such assessments would require evidence about factors such as the relative levels of investment; equity in sheep flocks or on farms; levels of borrowing; and the amount of income being generated.
75. Notwithstanding these caveats, the Taihape sheep returns do show that significant Māori enterprise was underway and that – at its peak in 1892 – a

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<sup>57</sup> Wai 2180, #A46, at 249–253.

<sup>58</sup> Wai 2180, #A46, at 249–253.



sizeable portion of the Taihape Māori population were engaged in sheep farming (30 flocks are listed, and it can be assumed that owners included whānau in their operations). That reduced over time until by 1914 there are really only two active Taihape Māori sheep operations – with one of those being in partnership with a European.

76. The returns also show that the decline in sheep numbers between 1892 to 1914 is fairly constant at the district level. This perhaps indicates the shifting balance from multiple owners down to fewer owners (and emphasises at an individual level, the reduction in Winiata Te Whaaro’s flock by 1900 – a matter discussed in Issue 6 submissions).

*Agricultural alternatives to wool*

77. There is minimal evidence of Taihape Māori farming sheep for meat production. There is also very little evidence of Taihape Māori involvement in dairying. European settlers established a dairy cooperative in 1902 but it did not thrive, and farmers retreated toward more wool production by the 1910s. Cleaver reports some very limited Māori dairying in the 1890s.<sup>59</sup>
78. Taihape Māori undertook some arable farming. In 1906, the census sub-enumerator noted that at Opaea, Māori had ‘plenty of work, and worked their lands for growing grains’. The scale of this operation is unclear, and it is uncertain whether Maori in other locations were also involved in what appears to have been commercial crop growing.<sup>60</sup>

*Other income sources*

79. The Tribunal’s question 5.4 asks about the extent to which the Crown made economic opportunities available in the primary sector (for farming, forestry, fishing, aquaculture or mineral extraction) or tourism and how that compared with opportunities available to non-Māori and Māori elsewhere. Farming is covered elsewhere in these submissions.
80. In the period 1891-1909, the Crown invested in the transport infrastructure of the district, which increased access to land and encouraged land use. Cleaver notes that while an indigenous timber-milling industry had started in

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<sup>59</sup> Wai 2180, #A48, at 166.

<sup>60</sup> Wai 2180, #A48, at 167.

the district during the 1880s, the subsequent development of that industry was closely linked to the Crown's construction of the North Island Main Trunk Railway.<sup>61</sup> Growth in the agricultural sector was supported by Crown measures aimed at fostering land settlement and development (eg experimental farms to research improvements in pasture, inspectors to improve livestock health and productivity, agricultural training).<sup>62</sup>

81. The Crown has not taken an active role in relation to the remaining sectors in Taihape (ie fishing, aquaculture, mineral extraction or tourism) – for Māori or non-Māori. The available economic opportunities – particularly in the primary sector – have largely been defined by factors outside of the Crown's control.
82. The section below provides further detail about the economic activity of Taihape Māori in the inquiry district in industries other than farming. It also discusses the public sector opportunities that emerged in the district from 1935 onwards, including through New Zealand Rail, the Army and Ngā Whenua Rāhui.

### *Non-agricultural endeavours*

83. Taihape Māori appear to have engaged in some non-agricultural commercial endeavours, although there is little evidence on the record of that activity. The flour mill and accommodation house at Moawhango in the 1880s – 1890s was Māori-owned, as was the accommodation house at Ūtiku.<sup>63</sup> Two timber mills were developed by Taihape Māori, then sold (Ūtiku and Winiata). No evidence has been located of Taihape Māori involvement in the transport business.
84. In addition to farming and leasing lands, Taihape Māori have generated income through timber cutting rights, gravel extraction royalties, agricultural contracting and labouring, and other wage work.
85. Timber milling was economically significant in the district for a time, including for Māori through timber royalties. Before the introduction of railways and with few formed roads, it was often not viable to haul logs out

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<sup>61</sup> Wai 2180, #A48, at 224.

<sup>62</sup> Wai 2180, #A48, at 119.

<sup>63</sup> Wai 2180, #A48(e), at 7.

over hilly or forested terrain by ox and horse . Indigenous forest was usually burnt off to make way for farm land. The completion of the main trunk line in 1908 ushered in a short ‘boom period’ for the timber industry. Between the late 1890s to 1910-15, timber milling was the dominant industry in the inquiry district, employing most of the local workforce, including many Māori. Timber milling leases were recognised by Taihape Māori in the 1890s as a way to raise money without land loss and generated significant (although shortlived) income for landowners in the central and southern lands.

86. Large quantities of gravel have been extracted from river beds within the inquiry district – this has been the main economic opportunity associated with the inquiry district’s mineral and stone resources.<sup>64</sup> Other minerals were explored at times (including gold exploration in the 1860s) but none of those explorations identified economically viable deposits.<sup>65</sup>

### *Waged employment*

87. Working for wages was important for Taihape Māori from the start of their engagement with the settler economy. Living and working from Ōmahu (to undertake agricultural and other work) appears common in the nineteenth century.<sup>66</sup> Mobile agricultural work was on contract basis (shearers and shearing gangs). The work done by Taihape Māori in this time was casual or seasonal, and usually low paid.
88. Mr Cleaver states that, up to 1910, other than some involvement in township development, Taihape Māori did not participate in state-sector employment such as railway construction and “overall derived very little benefit from the opportunities that existed outside the dominant agricultural and sawmilling industries”.<sup>67</sup> To the extent that is accurate,<sup>68</sup> it changed throughout the 20th century as Taihape Māori derived an increasing proportion of their income from waged work in dairy factories, meat processing works and in the

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<sup>64</sup> Wai 2180, #A48, at 42 and 268. Royalty agreement in place for Awarua 1A2 West A from (at least) 1965 – minimum annual payment \$1,200 (royalty of 20-25c per cubic yard depending on volume); Awarua 4C12A2 royalties paid (1982 settlement \$40,816.63 backdated royalties and interest on them); also at 269 and Wai 2180, #A40, at 117–127 Mr Alexander discusses Ōtamakapua 1B owners not receiving royalties (due to ad medium filium). Gravel extraction environmental issues discussed in submissions on Issue 16.

<sup>65</sup> Wai 2180, #A48, at 54.

<sup>66</sup> See for instance Winiata Te Whaaro and Irimana Te Naoho evidence at Mangaohane title determination and Patricia Cross evidence on Winiata te Whaaro’s mobility in the 1850s – 1880s.

<sup>67</sup> Wai 2180, #A46, at 120; Wai 2180, #A48, at 269.

<sup>68</sup> Counsel for the Crown recalls evidence from tangata whenua of their tupuna working on railway construction but has been unable to locate it so cannot take the point further in these submissions.

district's growing towns (Taihape, Mangaweka, and Hunterville) – as well as state sector employment.<sup>69</sup> Meat processing facilities were established in the district after 1910, including the largest at Winiata – a co-operative works that opened in 1914 with a killing capacity of 1,000 sheep per day. These works closed in the early 1920s.<sup>70</sup>

89. Before the First Labour Government of 1935, Māori leaders such as Apirana Ngata focussed on utilising or developing remaining Māori land as a key aspect of improving the economic situation of Māori. By 1935, the government no longer expected land development to be capable of meeting all Māori economic needs. The First Labour Government (with Ratana allies) “emphasised equality of rights for Maori and the potential for Maori involvement in paid employment” alongside land development, and those three themes largely continued for the remainder of the century under successive administrations.<sup>71</sup>
90. Tangata whenua have given evidence of state sector employment in Taihape through New Zealand Railways, the Ministry of Works, and the Army (including at Waiōuru Military Base).<sup>72</sup> A further, very targeted form of state intervention and support that recognised economic realities is Ngā Whenua Rāhui.<sup>73</sup> This is discussed further below.
91. Electoral roll evidence from 1960, 1978 and 1996 indicates Taihape Māori were employed in a range of employment types, including managerial roles, professionals (mostly educational and health), engineering and construction, hospitality works and clerical, road drivers, farm workers, and soldiers – with the last categories being involving relatively more people.<sup>74</sup>
92. Employment statistics from the 2013 census shows similar rates of participation in the workforce for Māori and non-Māori in Taihape

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<sup>69</sup> Wai 2180, #A48, at 270.

<sup>70</sup> Wai 2180, #A48, at 233.

<sup>71</sup> Wai 2180, #A48, at 269. Mr Cleaver notes: As the CNI Tribunal has observed, these three features of Labour's policy 'became recurring themes for the rest of the twentieth century'. The National Government of the 1950s, for example, continued to develop policy and legislation within this general framework. Illustrating this, the Maori Affairs Act 1953 was viewed as an effort to encourage equality in employment, education, housing as well as the utilisation of remaining tribal lands.

<sup>72</sup> Peter Steedman (railways – also highlights impacts of 1980s restructuring of state sector); Ihakara Hunter and others (including Terry Apatu– Army).

<sup>73</sup> Wai 2180, #M06.

<sup>74</sup> Wai 2180, #A48, at 274–277.

(77.1%/77%) and suggest that rates of unemployment for both being relatively low (Māori unemployment 5.7% and non-Māori at 2.4%).<sup>75</sup> Military employment has been important for the district in the latter half of the 20th century especially.

93. In 2013, the iwi affiliations of Māori in Taihape district are diverse (as noted above, non-Taihape Māori also reside in the district).<sup>76</sup> The workforce figures for Māori above do not distinguish between Taihape Māori and others.

### *More recent diversification*

94. Various non-sheep based uses for the land have been explored and developed since the 1970s including deer farming, tourism-related initiatives, and honey production. Despite attempts to diversify, it is very apparent that large areas of the inquiry district would always be difficult to 'farm viably' and/or without huge economies of scale. As acknowledged in submissions on landlocking, efforts to better utilise the high altitude lands that Māori retain have been significantly and adversely affected by access issues (to the extent that the Crown concedes that Taihape Māori are in a situation akin to being landless).
95. Mr Karena's efforts in the 1970s to establish deer and tourism operations faced multiple difficulties. Peter, Herbert and Richard Steedman each gave evidence of diversification and development attempts around Ōwhāoko D2, and in more recent times (and more successfully) with beehives, an industry the government has provided technical, policy and trade support to. Business and ecological cases have been repeatedly made for exotic forestry however have concluded that the topography and climate are not suitable (see also Crown response to this particular issue under Ngā Whenua Rāhui below).

## **SUBMISSIONS**

### **Crown initiatives to assist Māori development**

96. Access to development finance was improved over time as follows:
- 96.1 After 1900, Crown policy responded to the need for development loans by removing some of the restrictions for Māori mortgaging or

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<sup>75</sup> Wai 2180, #A48, at 280.

<sup>76</sup> Wai 2180, #A48, at 212–216.

otherwise dealing in land – with a degree of supervision to reduce the risks of failure or default or those presented by “unscrupulous lenders”.

- 96.2 From 1905, the Minister of Lands could use the Lands for Settlement Fund to lend Māori owners up to a third of the unimproved value of their land for farming purposes. The Government also turned its attention to Māori incorporations’ borrowing powers. From 1906, incorporations could raise mortgage loans from Government lending departments following a resolution of owners and with the consent of the district Māori land board. Given there were no incorporations in Taihape the provision was of little local benefit but does remove one of the reasons that they might not have utilised the mechanism.
- 96.3 In 1906, new legislation empowered the Government Advances Office to recover a loan by leasing out the land rather than selling it if a borrower defaulted. This innovation was plainly intended to facilitate borrowing but to avoid mortgagee sales, a consistent concern of the Crown from the 1890s as set out above.
- 96.4 The biggest changes in lending to Māori were probably caused by the wide ranging removal of restrictions on the alienation of Māori land under the native Land Act 1909.
- 96.5 Two other sources of State mortgage funds were established in the early 1920s. In 1921, the newly created native trustee was empowered to lend out the accumulated funds he received from the administration of Māori land, which had not been distributed because the sellers or beneficiaries could not be correctly identified. The following year, Māori Land Boards were also given the power to provide mortgages to Māori, mostly from funds held in trust for owners. Neither of these changes made a substantial impact, however. An unstable economy caused produce prices and land

values to slump. In the end, neither the trustee nor the district Māori land boards were able to provide substantial loans.<sup>77</sup>

96.6 In the late 1920s targeted funding to develop Māori lands was provided.

97. The Tribunal states:<sup>78</sup>

... in the early twentieth century, when it seemed that the Crown might at last offer substantial support for Māori farming. The Crown was influenced by a new generation of Māori leaders that was coming to the fore: men like James Carroll and Apirana Ngata, who were effective in both the Māori and European worlds. Premier Richard Seddon supported Carroll and Ngata's development ideas around dividing remaining Māori land into large sections for commercial farming; papakāinga blocks for communal use, subsistence living, and some farming; and other areas set aside for urupā, with swamps and bush areas kept for traditional hunting and firewood collection. Land that Māori could not use in the near future would be leased to the general public, but would eventually come back to Māori ...

98. The takeaway here is that the Crown was active in trying to address the deficiencies in the system and continued to tailor and improve land administration measures throughout this period (under the leadership of the Young Māori Party). This is of direct relevance to the Tribunal's SOI questions 5.1–5.4.

99. However, as discussed earlier, there is a direct correlation between credit availability and risks assumed. The Crown acknowledges that, after it enabled the private purchase or lease of lands, those options were taken up with some alacrity in the inquiry district.

100. The Crown agrees with Mr Walzl's view that:<sup>79</sup>

The question of whether the 1905 and 1909 Act were in accordance with Treaty principles is a subject beyond the resources of this report to consider as essentially it would have to be researched and evaluated on a national level.

101. As above, various Crown actions were taken to improve the economic potential of the district, and/or to address some of the shortcomings acknowledged in the Crown's concessions. However, those actions were

<sup>77</sup> Waitangi Tribunal *He Whiritannoka: The Whanganui Land Report, Vol 2* (Wai 903, 2015) at 996.

<sup>78</sup> Waitangi Tribunal *He Whiritannoka: The Whanganui Land Report, Vol 2* (Wai 903, 2015) at 970.

<sup>79</sup> Wai 2180, #A46, at 173.

repeatedly too late to significantly improve Taihape Māori economic potential:

- 101.1 The Crown has acknowledged that effective collective land mechanisms became available only after Taihape Māori land had been alienated.
  - 101.2 The railway addressed the substantive economic limitation of access to markets (and diversification from dry goods only). However, the railway was only completed in 1908 by which stage the burgeoning Taihape Māori sheep farming sector of the 1880s had been largely discontinued.
  - 101.3 Although access to development finance improved for Taihape Māori from the 1890s, the land base had been significantly reduced by that time.
  - 101.4 When substantial targeted development financing was introduced in the late 1920s, Taihape Māori did not retain sufficient “usable land” to provide an economically viable land base for the population.
102. In the above context, non-land based economic opportunity increased in importance. Two of the Crown’s non-agriculturally based responses were:
- 102.1 From 1935, the Crown provided increased state sector employment opportunities. In Taihape, state sector employment was provided through Waiāuru Military Area, New Zealand Rail, and the Ministry of Works.
  - 102.2 Ngā Whenua Rāhui entered kawenata with Taihape Māori from the 1980s which provided some economic consideration and support for the high altitude lands retained by Taihape Māori. Today, there are examples of whānau successfully farming their lands, and rebuilding their landholdings, however, they are the exception not the norm.



**Quality and quantity of land retained at 1900 sufficient, but form it was in rendered it vulnerable**

103. As at 1900 – whilst a fraction of their original landholdings – Taihape Māori retained a significant amount of land (561,953 acres – 48% of the district).<sup>80</sup> Mr Walzl states:<sup>81</sup>

In 1900, the several hundred Maori landowners of Mokai Patea held almost half a million acres of land. Of this, a fifth could be regarded as being better quality land that provided good potential for commercial utilisation.

104. Although this had potential to provide a viable economic base, that potential was not subsequently realised.<sup>82</sup>

105. Mr Walzl’s report took a somewhat unique whānau-level approach to the assessment of land holdings and economic development. This was possibly due to the relatively small populations involved (the approximately 500 people on the Awarua block titles constituted the bulk of the population at the time) and because, by 1900, many of the Taihape blocks, especially in the central and southern blocks with typically better LUC ratings, had been partitioned down to whānau level. Some of the outlying areas, especially the more mountainous country in the north and east, were still held by a range of hapū and whānau interests, and many individual titles were also created in Awarua. Mr Walzl’s report is helpful in that it narrated whānau stories and traced their land holdings over time. (This methodology was remarked on for its uniqueness and helpfulness by Dr Soutar and Dr Ballara in questioning.<sup>83</sup>)

106. Dr Soutar questioned Mr Walzl on the land ownership figures by whānau and how he thought they were unusual (implying that they presented a more beneficial picture) as compared with wider New Zealand statistics for Māori holdings. Mr Walzl agreed with him, stating that “it certainly is, yes, it’s a unique large amount of land for sure”.<sup>84</sup> There are, however, two critical caveats on this as set out by Mr Walzl. Whilst the quantity and quality of land retained as at 1900 may have been sufficient to provide an economically

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<sup>80</sup> Wai 2180, #A15(m), at 153.

<sup>81</sup> Wai 2180, #A46, at 976.

<sup>82</sup> This is accepted for the purposes of this analysis however it is noted that Mr Walzl premises this on the lands remaining in the central and southern parts of the inquiry district. In his report (Wai 2180, #A46) it is shown that some northern land retained by Taihape Māori was within reasonable LUC categories also.

<sup>83</sup> Transcript, week 7, Wai 2180, #4.1.015, at 163, 182.

<sup>84</sup> Transcript, week 7, Wai 2180, #4.1.015, at 183.

viable base for Taihape Māori (albeit much reduced from their previous holdings):

- 106.1 In 1900, around 180,000 acres (or 40%) of the remaining Māori land was usable land in LUC category 6 or under (category 6 involving moderate limitations for pastoral uses) – the balance (60%) was effectively unusable:<sup>85</sup>
- 106.2 The “usable land” retained was not co-located, nor was it in a form of title that enabled collective administration. Mr Walzl proposes as a thought exercise a “mock consolidation” scheme of what could have been and opines that *if carried out*, it would have created large and economically viable holdings. Of course, it was not carried out and thus remains a counterfactual which (at best) points to a possible alternative future. In reality, the titles were not amalgamated, incorporated or consolidated and were thus not an economically viable landholding as at 1900. The reasons these available tools were not drawn on is addressed below.
- 106.3 At the same time as better enabling development financing, enabling private purchasing and leasing had the potential to (and for Taihape Māori did) enable divestment of land interests by individuals without reference to the collective (subject to some safeguards in this era but still a risk).
107. Whereas Crown purchasing was a central contributor to 1870-1890 economic experience of Taihape Māori, the witnesses agree that Crown purchasing is not a big part of the 1900 – 1930 picture. Mr Walzl states:<sup>86</sup>

compared with the Crown’s activities during the nineteenth century, the acquisition of land essentially was opportunistic rather than the result of a strong Crown acquisition policy - land was accepted if offered at the right price or if circumstances, such as gifting, enabled a grant to the Crown.

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<sup>85</sup> Wai 2180, #A48, at 181–182.

<sup>86</sup> Wai 2180, #A46, at 270.

## CONCLUSIONS

108. It is important that equality of access and equality of outcome are clearly distinguished. While the Crown can ensure that its economic policies and initiatives are applied equally and can adopt measures to help ensure equal access to the economic opportunities it creates, it cannot guarantee outcomes. As set out above, nor does the Tiriti/the Treaty require the Crown to guarantee such outcomes, as the Tribunal has previously observed:<sup>25</sup>

We accept that it was neither possible nor necessary for the Crown to guarantee Maori commercial success in ventures, with the exception that the Crown must protect Maori retention of taonga (where that is their wish) and their relationship with their ancestral lands and waters. The Crown's obligation was to enable participation, not to ensure success.

109. The Crown accepts it has a role to play in economic development and the creation of economic opportunities – and that that role is substantive. At a general/systemic level:

109.1 The way in which the Crown involves itself in such activities is primarily through the development of policies and initiatives that help provide an environment that is conducive to economic activity and allows individuals to exercise their own skill and initiative to realise their economic development goals (with some notable exceptions, for instance the construction of the North Island Main Trunk Railway).

109.2 The Crown also provides a more direct role in economic development as a major employer throughout New Zealand – including in Taihape, primarily in the various government agencies and services, public works endeavours, and defence force.

109.3 The Crown's role has evolved over time, adapting to its available resources, changes in technology, the evolution of the views of its citizens in respect of the Crown's role, and the general growth in the range of matters governments are expected to provide for today. Over the course of the 20th century, successive governments have also increasingly taken steps to address and alleviate social and economic disparities, including for Māori. This work remains ongoing.

- 109.4 It must be recognised that there are a wide range of interests that the Crown must consider when developing its economic policies. As well as Māori, those interests include business owners, industry, agriculture and farming, the general public, and the thousands of employees throughout the country that rely on the success of their employers for their livelihood. The national interest is an overriding consideration.
- 109.5 Further, the Crown has a range of goals that it seeks to achieve through its economic policies, including lifting living standards for all its citizens, and the funding of essential public services like hospitals and schools. Achieving these goals may, at times, require economic policy to be targeted at particular industries or sectors of the economy, which may have the indirect effect of excluding some Māori. The Crown submits that this is a legitimate exercise of its right of kāwanatanga.
110. The position taken by the Crown on Māori economic development is well known to the Tribunal and is thus only briefly recorded here. The brevity should not undermine their importance:
- 110.1 Control: As above, the Crown can only be assessed for matters that were within its control or influence;
- 110.2 Conditions: It's primary role in an economic sense is setting the conditions within which economic activity in New Zealand will be conducted (ie legislation, regulation, oversight);
- 110.3 Causality: Due to the wide range of factors that can have an effect on economic development, and the large number of non-Crown actors that play a part in creating economic opportunities, it is difficult to assess the effects of any one impediment, if an impediment exists, on economic development. Each issue must therefore be considered on a case-by-case basis, which requires an initial inquiry as to whether there was in fact an impediment to accessing economic opportunities. While the Crown says that, at a high level, it is possible to determine whether a particular factor might have made it more difficult for Taihape Māori to pursue

certain endeavours or participate in particular industries, quantifying effect in terms of, for example, financial loss is not possible. Indeed, reaching such conclusions would require the assumption of a number of factors, including that any particular venture would have been successful and Māori would have derived benefits had a particular impediment not existed. The Crown says it is unsafe to make such assumptions.

110.4 Counterfactuals of limited assistance: and should be employed and treated cautiously (as set out in submissions on Issue 12).

111. At the Taihape inquiry district level:

111.1 The economic potential and development of the Taihape district was limited due to the topography and climatic conditions of the district. Dealings in, and protections for, the limited amount of “usable land” were of critical importance in those circumstances. Distance from market was also a significant limiting factor.

111.2 By 1900 the Crown had purchased approximately 50% of the district, including 70% of the southern and central lands (where much of the higher quality lands were located). The Crown’s acknowledgements and concessions regarding the impact of native land laws, the lack of effective mechanisms for administering collectively owned land, and its purchasing in the southern and central lands apply here. Those actions significantly restricted the already limited economic potential for Taihape Māori.

111.3 The amount of usable land retained by Taihape Māori in 1900 was significantly reduced but nonetheless was of sufficient quality and quantity to provide a viable economic land base for the population size. That development potential was not realised due in large part to the form of tenure the land was held in, and lack of access to finance. The Crown’s acknowledgements and concessions concerning the impact of the native land laws (in particular the increased vulnerability to fragmentation, partitioning, and alienation and the effect of that on tribal structures) are of direct relevance here.

- 111.4 The “usable” lands retained by Taihape Māori in 1900 were largely sold by 1930. The usable land they retained by that point constituted less than 4% of their original landholding. The Crown’s acknowledgments and concessions concerning the lack of a mechanism to monitor sufficiency of lands retained is of direct relevance. The Crown recognises that by 1930 Taihape Māori did not have sufficient lands of sufficient quality to provide for their future and were thus akin to landless. Although Taihape Māori retained a (relatively) large quantity of land, that land was not of a quality to provide for their future needs (and 70% of it did not have reasonable access).
112. The Crown took steps to introduce measures aimed at removing impediments to Māori economic development. Issues relating to access to loan capital, land retention, access to land, land tenure, infrastructure, and leasing are variously addressed in the Crown’s closing submissions in respect of Issues 3, 4, 7 and 12.
113. Various Crown actions were taken to improve the economic potential of the district, and/or to address some of the shortcomings acknowledged in the Crown’s concessions. However, those actions were repeatedly too late to significantly improve Taihape Māori economic potential.
- 113.1 The Crown has acknowledged that effective collective land mechanisms became available only after Taihape Māori land had been alienated.
- 113.2 The railway addressed the substantive economic limitation of access to markets (and diversification from dry goods only). However, the railway was only completed in 1908 by which stage the burgeoning Taihape Māori sheep farming sector of the 1880s had been largely discontinued.
- 113.3 Although access to development finance improved for Taihape Māori from the 1890s, the land base had been significantly reduced by that time.

- 113.4 When substantial targeted development financing was introduced in the late 1920s, Taihape Māori did not retain sufficient “usable land” to provide an economically viable land base for the population.
114. In the above context, non-land based economic opportunity increased in importance:
- 114.1 From 1935, the Crown provided increased state sector employment opportunities. In Taihape state sector employment was provided through Waiōuru Military Area, New Zealand Rail, and the Ministry of Works.
- 114.2 Ngā Whenua Rāhui entered kawenata with Taihape Māori from the 1980s which provided some economic consideration and support for the high altitude lands retained by Taihape Māori.
115. Today, there are examples of whānau successfully farming their lands, and rebuilding their landholdings, however, the Crown recognises they are the exception not the norm.

28 May 2021



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R E Ennor / MGA Madden  
Counsel for the Crown

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