

**IN THE WAITANGI TRIBUNAL
TAIHAPE-RANGITĪKEI KI RANGIPŌ INQUIRY DISTRICT**

WAI 2180

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of Taihape-Rangitīkei ki Rangipo Inquiry (Wai 2180)

**GENERIC CLAIMANT REPLY SUBMISSIONS TO CROWN CLOSING
SUBMISSIONS ON ISSUE 5: MĀORI ECONOMIC DEVELOPMENT AND
CAPABILITY**

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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

1. These generic claimant submissions in reply (“**reply submissions**”) address the Crown’s closing submissions regarding economic development and capability (“**Crown closing submissions**”) and are filed for the benefit of all claimants within the inquiry district.¹
2. In the generic claimant closing submissions regarding economic development and capability (“**generic claimant closings**”), counsel submitted that the experience of Taihape Māori in relation to these issues has been characterised by marginalisation, missed opportunities and inequity.
3. While the Crown submissions concede some aspects of the Crown’s breaches in relation to economic development and capability, the overall approach of the Crown submissions has been an attempt to diminish and minimise the culpability of the Crown for these failings.
4. In particular, the Crown submissions propose a narrow approach toward their roles in relation to control, the setting of conditions, causality in relation to the actions and inactions of the Crown and the use of counterfactuals. In doing so, the Crown attempts to narrow their culpability which are at times inconsistent with the concessions made.
5. The primary distinction between the Crown’s and the claimant’s position is around the scope of the responsibility and duties the Crown have under Te Tiriti o Waitangi (“**Te Tiriti**”) in respect of the economic development and capability of Taihape Māori.
6. Therefore, counsel confirm the reliance on the position set out in generic claimant closing submissions on this issue and do not propose to restate matters addressed there. Counsel will only address Crown submissions where further analysis or a response appears to be necessary.

¹ This is not to prevent claimants from taking their own positions in respect of any of these issues.

ROLE OF THE CROWN

Access to economic opportunities

Crown submission

7. At paragraph 108, the Crown submits that it can only adopt measures to help ensure equal access to the economic opportunities it creates and that Te Tiriti does not require the Crown to guarantee economic outcomes.² To this end, the Crown submits:³

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 te Tiriti/ the Treaty require the Crown to guarantee such outcomes..."

8. At paragraph 32, the Crown further submits that it is not able to guarantee these economic outcomes because of the factors beyond the Crown's control, stating:⁴

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 economic activity are beyond the Crown's control.

9. At paragraph 81, the Crown submits that "[t]he available economic opportunities - particularly in the primary sector – have largely been defined by factors outside of the Crown's control."⁵

Reply

10. In reply, the claimants have not submitted that the Crown was required to guarantee economic outcomes, nor have they asked the Tribunal to focus or restrict its inquiry to economic outcomes.
11. It is accepted that Te Tiriti does not require the Crown to guarantee economic success, as set out in the *He Maunga Rongo report*.⁶

² Wai 2180, #3.3.100 at [108].

³ Wai 2180, #3.3.100 at [108].

⁴ Wai 2180, #3.3.100 at [32].

⁵ Wai 2180, #3.3.100 at [81].

⁶ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 4, at 896, 911 and 1012.

However, it is submitted that economic outcomes are still a relevant factor in considering whether the Crown has ensured equal access to opportunities. In particular, where non-Māori have significantly better economic outcomes than Māori, it is submitted that this provides evidence that the Crown failed in its duty to provide equitable treatment under Article 3.

12. The Crown's actions and inactions has resulted in longstanding economic disparities between Māori and non-Māori in the Taihape district.⁷
13. The link between these socio-economic outcomes and the inability for Taihape Māori to take advantage of the economic opportunities are highlighted by Phillip Cleaver who states:⁸

... that [Taihape] Māori generally occupy a lower socio-economic position, reflecting that they have not equally been able to take advantage of the key economic opportunities that have existed in the inquiry district.

14. Counsel also note that, economic outcomes can be evidence of the failure of the Crown where there is a strong correlation between the actions and/inactions of the Crown and the economic outcome. For example, the significant reduction in numbers of sheep owned by Taihape Māori are correlated with the failure of the Crown to respond to the letter(s) of Taihape Māori.⁹
15. It is also submitted that the submissions do not concern matters outside the Crown's control. Rather, it is the Crown's acts or omissions on matters directly in its control which negatively impacted Taihape Māori, and which significantly prejudiced their economic position further.
16. Counsel refer to the generic claimant closing submissions that refer to matters directly under the Crown's control that impacted on Taihape Māori economic development and capability.¹⁰

⁷ See the generic closing submissions for economic development and capability (Wai 2180, #3.3.50) at [6.3] – [6.5].

⁸ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 302.

⁹ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 297–300.

¹⁰ See the generic closing submissions for economic development and capability (Wai 2180, #3.3.50) at [4.1] – [4.86].

17. Furthermore, the Crown has properly conceded that the following actions have directly impacted the lands of Taihape Māori. In particular, the Crown has conceded that *“the individualisation of Māori land tenure provided for by the Native Land Laws made the lands of iwi and hapū in the Taihape: Rangitikei ki Rangipo inquiry district more susceptible to fragmentation, alienation and partition and this contributed to the undermining of tribal structures in the district.”*¹¹ The Crown’s concession relating to the establishment of the Native Land Laws, and its ensuing effects, support the evidence regarding causation and Crown culpability in respect of the ability of Taihape Māori to access economic opportunities on an equal basis with Pākehā in the district.

18. As noted by the Tribunal in the *He Maunga Rongo* report:¹²

We also accept that, as with any development venture, there were wider economic and social factors influencing the outcome of the schemes that it was not always possible for the Crown (or owners, for that matter) to foresee or control. What was required of the Crown were reasonable steps, in the circumstances, to establish processes and policies that encouraged development while protecting the development rights of owners and their communities.

19. The question that should be asked is whether the Crown took reasonable steps, in the circumstances, to establish processes and policies that encouraged development while protecting the development rights of owners and their communities. The generic closing submissions have clearly shown that this has not occurred.¹³

Role of the Crown in setting conditions

Crown submission

20. At paragraph 110.2, in relation to the role of the Crown, the Crown states that:¹⁴

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);

¹¹ Crown memorandum on early concessions – Native Land Court, dated 27 July 2015 (Wai 2180, #1.3.1) at [2].

¹² Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 4, at 1012.

¹³ See the generic closing submissions for economic development and capability (Wai 2180, #3.3.50) at [4.1] – [4.86].

¹⁴ Wai 2180, #3.3.100 at [110.2].

21. The Crown's submissions attempts to restrict the role of the Crown to one where they simply set the conditions within which economic activity in New Zealand will be conducted.
22. At paragraphs 109.4 and 109.5, the Crown notes that, there must be a wider range of interests to be considered which may have the indirect effect of excluding some Māori, they state:¹⁵

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.

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.

Reply

23. It is submitted that the relationship envisaged by Te Tiriti requires the Crown to provide active assistance to Taihape Māori to achieve equality with settlers. This includes providing equality of access to development opportunities.
24. The Waitangi Tribunal in the *He Maunga Rongo* report states that:¹⁶

The Government was required to provide equality of access to development opportunities. In practical terms... this meant providing the same level and quality of assistance to Maori that it provided to settlers and, where its own actions had created barriers to Maori development, appropriate assistance to overcome those barriers.

25. Crown Counsel's limited interpretation of the role of the Crown fails to account for the duty to provide equality of access to development opportunities. The Crown cannot simply set the conditions, but must

¹⁵ Wai 2180, #3.3.100 at [109.4] – [109.5].

¹⁶ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 4, at 896.

provide the same level and quality of assistance as provided to settlers and where its own actions have created barriers to Māori development appropriate assistance to overcome those barriers. The evidence shows that the Crown has failed in both respects.¹⁷

26. Counsel also note that this requirement for the Crown to provide equality of access to development opportunities is not grounded in presentism, and was recognised as necessary from the very outset by British politicians and officials.¹⁸ As summarised in He Maunga Rongo report:¹⁹

The Hauraki Tribunal also found that British politicians and officials recognised, from the very outset of the colony, that specific efforts were required from the Crown not just to grant Maori formal legal equality with settlers (as is implied in article 3 of the Treaty), but also to help them become 'equal in the field' with settlers.

27. It is further noted that while a goal of the Crown may be to lift the living standards for all its citizens, this cannot come at the expense of Māori. The Crown's submissions submit that "*the national interest is an overriding consideration.*"²⁰ The claimants submit that the rights and obligations under Te Tiriti cannot be overridden by a claim to 'national interest', especially in circumstances where Crown actions have created barriers to Māori development.

Causality and counterfactuals

Crown submission

28. At paragraph 110.3, in relation to causality, the Crown submits that:²¹

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.

¹⁷ See in particular submissions made and evidence referred at [4.1] to [4.86] in the Generic Claimant Closing Submissions on Economic Development and Capability (Wai 2180, #3.3.50).

¹⁸ Waitangi Tribunal *The Hauraki Report* (Wai 686, 2006) vol. 3, at 1211.

¹⁹ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 4, at 893.

²⁰ Wai 2180, #3.3.100 at [109.4].

²¹ Wai 2180, #3.3.100 at [110.3].

29. Further at paragraph 110.3, the Crown states that:²²

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.

30. At paragraph 110.4, the Crown submits that “[c]ounterfactuals [are] of limited assistance: and should be employed and treated cautiously.”²³ In particular, the Crown submits that the mock consolidation exercise undertaken by Tony Walzl is a “counterfactual which (at best) points to a possible alternative future.”²⁴

Reply

31. In reply, these issues have been traversed in the *He Maunga Rongo* Report, which states that:²⁵

In the strictest sense, such an analysis must be ‘counterfactual’ because the proposals were not carried out (and hence there are no facts), but the historical evidence is such that we can still evaluate them in their context.

32. Furthermore, the *He Maunga Rongo* Report provides an approach that allows for the assessment of alternatives:²⁶

We also agree that such alternatives had to be ‘visible’ to policy-makers, and reasonably practicable, although this was an active, not a passive, requirement – that is, the Crown had to inform itself of Maori views and wishes where they were not known.

33. The approach set out above in the *He Maunga Rongo* Report should be adopted by this Tribunal. In particular, the Tribunal should assess two key factors which are:

- (a) How visible was the alternative to the key decision makers?

²² Wai 2180, #3.3.100 at [110.3].

²³ Wai 2180, #3.3.100 at [110.4].

²⁴ Wai 2180, #3.3.100 at [106.2].

²⁵ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 1, at 192.

²⁶ Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) vol. 1, at 192.

- (b) How reasonably practicable were the alternatives?

34. In response, the claimant submit:

- (a) Visibility: Taihape Māori sent letters to the Crown which provided detailed alternative solutions to the Crown to address issues that they were facing. These letters demonstrate that alternatives were and/or should have been clearly visible to the Crown and within the reasonable contemplation of the Crown from the 1890s.
- (b) Reasonably practicable: The alternatives proposed by Taihape Māori in the letters could reasonably have been implemented by the Crown and were within the control of the Crown. For example, these included:
 - (i) Consolidation and defined land titles: The Crown could have legislated and provided mechanisms to allow for consolidation and to define land titles. The evidence is clear that the response of the Crown to requests for consolidation was that they would provide for this after its purchasing programme had run its course.²⁷ It is submitted that consolidation and defined land titles were not provided when requested not due to a lack of practicability but rather due to the Crown's concern to proceed with its purchasing programme to acquire substantial land from Taihape Māori.
 - (ii) Collective management of land: Provisions for the collective management of land were available to Taihape Māori by 1896.²⁸ However, this was too late as Taihape Māori had already lost too much of their land.²⁹ It is submitted that the failure of the Crown did not arise as a result of impracticability but rather due to the failure by the

²⁷ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 311.

²⁸ Hearing week five transcript (Wai 2180, #4.1.012) Cross-examination of Bruce Stirling and Evald Subasic at 342 – 343.

²⁹ Hearing week five transcript (Wai 2180, #4.1.012) Cross-examination of Bruce Stirling and Evald Subasic at 342 – 343.

Crown to respond to requests by Taihape Māori in a timely manner. Instead the Crown focus was to take advantage of the individualisation of Māori land tenure provided for by the Native Land Laws and pursue its purchasing programme to acquire substantial land from Taihape Māori.

- (iii) Provision of secure, reliable and equitable source of finance: The Crown was providing low-interest state loans to settlers under the Government Advances to Settlers Act 1894. The nature of Māori land tenure meant that Taihape Māori were not able to access state loans to the same extent as settlers.³⁰ It is submitted, therefore, that the provision of finance for Taihape Māori to develop their lands was reasonably practicable and within the control of the Crown.

35. Therefore, the claimants submit that dismissing the use of counterfactuals would prevent a substantive analysis of the Crown's past actions.

36. In particular, there were clear alternatives proposed by Taihape Māori, presented to the key Crown decision-makers through the 1892 and 1895 letters.

Limiting factors of the district

Crown submission

37. At paragraph 31, the Crown submits that *"the economic and development potential of the Taihape district was limited due to the topography and climatic conditions of the district."*³¹ The Crown refers to the population of the district,³² the suitability of the land³³ and the location of the district³⁴ as the limiting factors of the district.

³⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 193.

³¹ Wai 2180, #3.3.100 at [31].

³² Wai 2180, #3.3.100 at [35].

³³ Wai 2180, #3.3.100 at [36].

³⁴ Wai 2180, #3.3.100 at [41].

38. At paragraph 41, the Crown describes the location of the district as, being *“away from the coast, it’s lack of easily navigable rivers, and its generally rugged topography”*.³⁵ The Crown then stated that *“this constituted a significant obstacle to economic development for Taihape Māori and the district’s European settlers”*.³⁶
39. At paragraph 41, the Crown states that *“For much of the 19th century, a lack of transport infrastructure presented an obstacle to the development of key economic activities”*.³⁷
40. At paragraph 44, the Crown then states that their *“most significant investment in the area – the North Island Main Trunk Railway – mitigated Taihape remoteness to a significant degree.”*³⁸

Reply

41. The Crown’s characterisation of the location of the district as a limiting factor on the economic viability of the area is misguided. As highlighted in the evidence and submissions, Taihape Māori accessed the broadest of landscape in the district.³⁹
42. The evidence shows that the economic and development potential of the district was not limited. This is evidenced by the fact that Taihape Māori had been living in the district long before Pākehā settled in the area and had a well-established and successful customary economy that was utilised to sustain Māori living in the district.⁴⁰
43. The limitations identified by the Crown submissions are limitations from a Pākehā conception of economic development and capability. However, as noted in the generic submissions on economic development and

³⁵ Wai 2180, #3.3.100 at [41].

³⁶ Wai 2180, #3.3.100 at [42].

³⁷ Wai 2180, #3.3.100 at [41].

³⁸ Wai 2180, #3.3.100 at [44].

³⁹ Wai 2180, #3.3.50 at [11.2].

⁴⁰ Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 34.

capability, Taihape Māori had lived and thrived on the land well before Pākehā settled on the land.⁴¹

44. However, when Taihape Māori sought to engage in the new settler economy, these 'limitations' to the settler economy were exacerbated by the Crown's actions. This included the purchase by the Crown of the land with the highest Land Use Capability ("LUC") and the lack of access to a significant portion of the remaining Taihape Māori land as a result of landlocking.⁴²
45. Furthermore, if we are to accept the Crown's argument that the topography and location were significant limitations on the economic development and capacity of Taihape Māori, then the Crown should have been even more careful to actively protect Taihape Māori by ensuring that they retained sufficient land with the highest LUC and with appropriate access to development opportunities.
46. In response to the Crown's submission on the NIMT, the claimants' submit that the result of the NIMT railway was primarily beneficial for Pākehā settlers in the district. The extensive landlocking of Taihape Māori land, as conceded by the Crown, meant that they were not able to benefit from the NIMT railway to any great extent as the construction of the NIMT did little to give Taihape Māori access to their lands.⁴³

Access to finance

Crown submission

47. At paragraph 60, the Crown notes in their submissions several factors made it difficult to manage land effectively and secure loans from private lending institutions, and thus created significant barriers for Taihape Māori seeking to develop their lands, referring to succession, the

⁴¹ Wai 2180, #3.3.50 at [11.1] – [11.4]; See Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 20; Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 34.

⁴² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 180; Suzanne Woodley *Maori Land Rating and Landlocked Blocks Report 1870-2015: Errata and Additional Information (2)* (Wai 2180, #A37(m)) at 3; Suzanne Woodley *Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015* (Wai 2180, #A37) at 516.

⁴³ Wai 2180, #3.3.100 at [6].

subsequent fragmentation of interests, and the existence of multiple owners.⁴⁴

48. At paragraph 63, the Crown submits in respect of access to finance:⁴⁵

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.

49. In paragraph 63, the Crown further submits that they “continued to improve access to finance whilst attempting to also actively protect retention of the lands Māori wished to retain.”⁴⁶

Reply

50. The Crown submissions are not consistent with the actions taken by the Crown. The submission that the Crown was anxious to “actively protect retention of the lands Māori wished to retain” is contrary to the Crown purchasing of Taihape Māori land, far above the 100,000 acres offered to them in the 1892 and 1895 letters.⁴⁷ Furthermore, it is inconsistent with the actions in respect of Crown purchasing in the region generally and the establishment and effects of the Native Land Court.
51. This position is untenable particularly in light of the 1892 and 1895 letters at a time when Taihape Māori retained rangatiratanga and communal ownership over most of their lands and resources. Taihape Māori through the letters proposed several restrictions to ensure the borrowed finance was strictly controlled and would not put the land at risk. These included, as set out in our generic submissions:⁴⁸
- (a) That finance would be provided only on the application of an established committee;
 - (b) The finance would be provided to the committee;

⁴⁴ Wai 2180, #3.3.100 at [60].

⁴⁵ Wai 2180, #3.3.100 at [63].

⁴⁶ Wai 2180, #3.3.100 at [63].

⁴⁷ Wai 2180, #3.3.100 at [64].

⁴⁸ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 313; see Wai 2180, #3.3.50 at [4.49].

- (c) Any finance provided could never be greater than half the value of the land to protect it from having interests repayments absorbing all the earnings from the land; and
- (d) The finance could only be advanced to improve and stock the land.
52. Taihape Māori were aware of the risks associated with financing. Therefore, they proposed to the Crown a detailed plan of how financing could work, which included mechanisms to address these risks.
53. It is further submitted that the factors identified by the Crown that made it difficult to secure loans from private lending institutions, namely, succession, the subsequent fragmentation of interests, and the existence of multiple owners, were barriers arising from the imposition of the land tenure system by the Crown.⁴⁹
54. Furthermore, available evidence suggests that the Crown at crucial times took active steps that made it more difficult for Taihape Māori to access finance.⁵⁰ Counsel also refers to submissions made in Generic Claimant Closing submissions regarding the Native Land Court⁵¹ which highlight that the Native Land Act Amendment Act (No. 2) 1878, s 4, explicitly prevented Māori from using their lands to raise finance by way of mortgage:⁵²
- It shall not be lawful for any person to pay any sum of money by way of mortgage on any land held by a Native under memorial of ownership or Crown grant.*
55. As Bruce Stirling states, the Native Land Act Amendment Act 1878, s 4, prevented Māori from raising finance from their land and notes the view of the Native Minister that Maori seeking to raise finance should sell rather than mortgage their land:⁵³

⁴⁹ Wai 2180, #3.3.100 at [60].

⁵⁰ See also Crown Closing Submissions in Relation to Issue 4: Crown Purchasing (Wai 2180, #3.3.78) at [128] to [138]. These show that the Crown took active steps through imposing monopoly powers to from 1884 to 1896 that impacted significantly upon the ability of Taihape Māori to retain, utilise and develop their lands. As noted in [136]: “*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).*”

⁵¹ Wai 2180, #3.3.76 at [109] and [110]; Wai 2180, #3.3.76(b) at [11].

⁵² Native Land Act Amendment Act (No. 2) 1878, s 4.

⁵³ Bruce Stirling, Nineteenth century overview, at 252.

“The 1878 Act also prohibited Māori from taking out mortgages of land held under a memorial of ownership or Crown grant, Sheehan being of the view that Māori seeking to raise finance should sell, rather than mortgage their land.”

56. In respect of the improvements made to access finance, the claimants submit that these improvements came much too late and should have been made when they were requested by Taihape Māori at a time when they retained rangatiratanga and communal ownership over most of their lands and resources.

Employment

Crown submission

57. At paragraph 109.2, the Crown states that:

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.⁵⁴

58. At paragraph 87, the Crown further states that “[w]orking for wages was important for Taihape Māori from the start of their engagement with the settler economy.”⁵⁵

Reply

59. It is submitted that waged employment arose as Taihape Māori had no other choices. Due to the actions and inactions of the Crown, Taihape Māori did not have the sufficient capital for their economic development and capability and, therefore, had to turn to waged employment. The potential of economic development and capability for Taihape Māori in the region would have been ensured through the retention of sufficient quality lands to use as an economic base for moving forward.
60. Wage employment was a necessity due to the drastic land loss and the inability to participate in the economy through land-based activities. The Crown acknowledges this in their submissions, stating that “[a]s the

⁵⁴ Wai 2180, #3.3.100 at [109.2].

⁵⁵ Wai 2180, #3.3.100 at [87].

*amount of economically viable land available to Taihape Māori decreased, many came to rely on wage work*⁵⁶ and that throughout the 20th century Taihape Māori derived an increasing proportion of their income from waged work.⁵⁷ These statements highlight the fact that Taihape Māori had little choice but to turn to waged labour as a last resort after losing most, if not all, of their most productive land by this time.

61. It is submitted that there has been a significant loss for Taihape Māori to move from the ability to sustain and thrive on their own lands to being forced to turn to, primarily Pākehā, waged employment to sustain themselves and their whānau.

OTHER MATTERS

Economic choices

Crown submission

62. At paragraph 1 and footnote 1, the Crown submits that:

*From their earliest engagements with Europeans, Taihape Māori embraced the new settler economy in that light.*⁵⁸

[...]

*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.*⁵⁹

Reply

63. The claimants submit that Taihape Māori had no choice but to engage in the new colonial economy, irrespective of their desire to do so. The ability of Taihape Māori to sustain themselves in ways previously done was no longer feasible.

⁵⁶ Wai 2180, #3.3.100 at [29].

⁵⁷ Wai 2180, #3.3.100 at [88].

⁵⁸ Wai 2180, #3.3.100 at [1].

⁵⁹ Wai 2180, #3.3.100 at fn 1.

64. Taihape Māori had to actively engage with the ‘modern economy’ as ‘entrepreneurial, adaptive and strategic people’ as their customary economy was becoming eroded by the actions and inactions of the Crown. The fact that Taihape Māori sought to engage in the opportunities that arose in the new settler economy does not detract from the fact that Taihape Māori had no choice but to engage with the settler economy if they wished to sustain their people.
65. It is further noted that under the principle of partnership the Crown has a duty to ensure Māori can decide the nature and pace of their economic development in partnership with the Crown.⁶⁰ The Crown submission fails to engage with this aspect of the generic submissions on this issue.
66. Taihape Māori did not have the opportunity to decide the nature or pace of their economic development. They were faced with the Crown imposed Native Land individualised tenure system, aggressive purchasing tactics of the Crown, the loss of their whenua, resources and customary economy and a drastically changing landscape that they had very little, if any, say in. On this basis, Taihape Māori were faced with a situation of adapt or face the consequences.

Sheep economy

Claimant submission

67. The Crown states that:

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.⁶¹

Reply

68. The claimants agree that the sheep economy was not extant at 1840. However, to clarify, the claimants submit that Taihape Māori had, at and prior to 1840, a customary economy that was able to sustain themselves and their whānau.⁶² As noted above, Taihape Māori were not allowed to

⁶⁰ Wai 2180, #3.3.50 at [3.16].

⁶¹ Wai 2180, #3.3.100 at ftn 11.

⁶² Philip Cleaver *Maori and economic development in the Taihape Inquiry District* (Wai 2180, #A48) at 20.

decide the nature and pace of their economic development in partnership with the Crown.

Partitioning

Claimant submission

69. At paragraph 51, the Crown states that:

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.⁶³

Reply

70. The claimants submit that partitioning was undertaken as a response to Crown action and inaction. In particular, as noted in the key concession by the Crown:⁶⁴

The Crown concedes that the individualisation of Māori land tenure provided for by the Native Land Laws made the lands of iwi and hapū in the Taihape: Rangitikei ki Rangipo inquiry district more susceptible to fragmentation, alienation and partition and this contributed to the undermining of tribal structures in the district.”.

71. By imposing a system that individualised Māori land tenure, it follows that partitioning would be undertaken in this land tenure system.

72. Furthermore, as stated by the Crown in their submissions, partitioning was also likely due to the need to overcome problems associated with multiple ownership which were a result of the imposition of the Native Land title system.⁶⁵

⁶³ Wai 2180, #3.3.100 at [51].

⁶⁴ Crown memorandum on early concessions – Native Land Court, dated 27 July 2015 (Wai 2180, #1.3.1) at [2].

⁶⁵ Wai 2180, #3.3.100 at ftn 44.

Response to 1892 and 1895 letters

Claimant submission

73. At paragraph 20, the Crown acknowledges the importance of the 1892 and 1895 letters.⁶⁶ However, at paragraph 21, they also state that:⁶⁷

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.

74. At paragraph 66, the Crown states that many issues were “explicitly brought to the Crown’s attention by Taihape rangatira in their 1892 letter”⁶⁸ and that some of the issues identified in those letters “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).”⁶⁹

Reply

75. It is unclear when and where these substantive discussions took place. The Crown submissions fail to reference evidence for these discussions. Even if the discussions took place, it is unclear what was discussed during these discussions.
76. However, what is clear is that the letters were effectively ignored. Taihape Māori never had a substantive response from the Crown in relation to these letters. None of the actions suggested by the letters were undertaken. These include:
- (a) The request by Taihape Māori for consolidation or defined land titles was not provided. The Crown instead stated that such tidying up of titles would only occur after they had finished their purchasing programme.⁷⁰

⁶⁶ Wai 2180, #3.3.100 at [20].

⁶⁷ Wai 2180, #3.3.100 at [21].

⁶⁸ Wai 2180, #3.3.100 at [66].

⁶⁹ Wai 2180, #3.3.100 at [66].

⁷⁰ Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 311.

- (b) The request by Taihape Māori for the ability to collectively manage land. As recognised by the Crown “effective collective land mechanisms became available only after Taihape Māori land had been alienated.”⁷¹

- (c) While 100,000 acres were offered for sale in the 1892 letter, the Crown purchase just over double what was offered.⁷²

Dated this 27th day of September 2021



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⁷¹ Wai 2180, #3.3.100 at [101.1].

⁷² Tony Walzl *Twentieth Century Overview* (Wai 2180, #A46) at 321.