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

BEFORE THE WAITANGI TRIBUNAL **WAI 2200**

IN THE MATTER OF	**the Treaty of Waitangi Act 1975**
AND	
IN THE MATTER OF	**PORIRUA KI MANAWATŪ DISTRICT INQUIRY**

CLOSING SUBMISSIONS FOR THE CROWN:

PUBLIC WORKS — ISSUE 6A

27 July | Hōngongoi 2026

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MAY IT PLEASE THE TRIBUNAL:

INTRODUCTION

1. The Crown begins these closing submissions by acknowledging the significance of compulsory acquisitions of Māori land in this inquiry district to Ngāti Raukawa and affiliated groups. The Crown also acknowledges the time, mahi, and resources that has gone into bringing and hearing claims relating to public works issues by claimants and witnesses. Crown counsel and officials have carefully considered these claims and evidence.

2. The Crown has previously made a concession regarding landlessness. Public works takings, together with other acts and omissions, contribute to loss of Māori land. The Crown has conceded that:[1]

> The Crown accepts that the cumulative effect of its acts and omissions left Ngāti Raukawa and affiliated groups in the inquiry district virtually landless, and had a devastating impact on their economic, social and cultural well-being and development. The Crown's failure to ensure that these groups retained sufficient land for their present and future needs was a breach of te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

3. The Crown has recently made two new concessions relating to public works takings, namely:[2]

   3.1 the 1931 public works taking of land for Pryce's Line from Te Reureu Reserve (addressed at [72]-[81] below); and

   3.2 the public works taking of customary land in Ōtaki in 1961 (addressed at [233]-[253] below).

1 Crown statement of response and concessions: Ngāti Raukawa and affiliated groups phase of inquiry (21 October 2019) Wai 2200, #1.4.2 at [30].

2 Crown memorandum filing further concessions and seeking extension for closing submissions for the Ngāti Raukawa and affiliated groups phase (30 June 2026) Wai 2200, #3.2.2009.

PUBLIC WORKS TAKINGS

Issue 6.1: What Te Tiriti duties does the Crown have in respect of public works takings that affect Ngāti Raukawa and affiliated groups? To what extent have these been fulfilled?

Necessity of public works regime

4. As a starting point, the Crown submits that the purpose of public works legislation was, and continues to be, the facilitation of the development of particular public works for the benefit of particular communities or for regional or national purposes. The Crown rejects any notion that public works legislation was designed to facilitate the transfer of Māori land to the Crown generally and other than for public purposes.

5. As submitted in previous inquiries, the Crown's position is that all highly structured societies, through their governments, need the power to engage in public works for the greater benefit of society. These benefits have included provision of roading and transportation services, schools, hospitals, water and waste treatment, electricity and telecommunications. These benefits are enjoyed by society as a whole, including Māori. The public works regime therefore represents a level of compromise where private property rights may be acquired by a government for the benefit of the wider community.

6. Without the power to acquire land for public works, the Crown's ability to provide local, regional, and national infrastructure would be restricted, and so too the benefits such infrastructure brings to society. New Zealand's public works legislation thus reflects the judgement that private property rights can be acquired compulsorily for the wider community benefit, provided the processes prescribed by statute are followed and compensation paid, where applicable.

7. The claimants suggest that the establishment of a legislative regime for public works was contrary to advice provided by the Colonial Office.[3] However, the Colonial Office's warning was that taking customary Māori land for roads as an exercise of the Crown prerogative (that is, the power of

3 Generic closing submissions for Public Works Takings and Gifting [Issue 6] (31 October 2025) Wai 2200, #3.3.096 [**Generic Submissions**] at [7.6]-[7.7].

the Crown to take land compulsorily other than under statutory powers) was probably unlawful and unwise as a matter of policy; consent was required, or legislation giving authority to take compulsorily.[4] In 1864, the Public Works Lands Act was passed. This Act provided the first specific legislative authority for central government to take Māori land, whether customary or Crown granted, for public works purposes.[5]

Balance between kāwanatanga and tino rangatiratanga

8. Issues relating to public works takings have been considered in most, if not all, district inquiries to date. The jurisprudence developed through these inquiries on the issue of public works was summarised by the Tribunal in the *Wairarapa ki Tararua Report* as follows:[6]

> …the various Tribunals that have considered these matters agree that the compulsory acquisition of Māori land for public works can be justified in Treaty terms only in exceptional circumstances, where the national interest is at stake and there is no other option. This is now the test that every compulsory acquisition must meet in order to be legitimate in Treaty terms. In all other cases, taking land for public works where either consent or compensation is absent breaches article 2 of the Treaty. Tribunals have also found that article 3 of the Treaty is breached where Māori land is taken in preference to general land, because this is a failure to treat Māori like other citizens.

9. The Crown maintains the view presented in previous district inquiries and respectfully disagrees with the interpretation of Treaty principles summarised above. The Crown considers it sets the bar too high and does not appropriately balance the guarantee to Māori of rangatiratanga in Article 2 with the Crown's Article 1 right of kāwanatanga. The restrictions that there must be exceptional circumstances, a national interest at stake, and no other option before a compulsory acquisition of Māori land can be

4 Cathy Marr *Public Works Takings of Maori Land, 1840–1981* (Rangahaua Whanui National Theme G, Waitangi Tribunal, May 1997) [**Marr**] at 52.

5 Marr at 55.

6 *Wairarapa ki Tararua Report* (Wai 863, 2010) vol II at 743. This position has been endorsed by subsequent Tribunals, for example in *Te Kahui Maunga, The National Park District Inquiry Report* (Wai 1130, 2013) vol 2, ch 10.

Treaty-consistent constitute an unreasonable restriction on a legitimate exercise of the Crown's kāwanatanga right and would, in practice, result in virtually all acquisitions being inconsistent with the Treaty. The interpretation has significant implications for the Crown's ability to meet its obligations to all citizens, particularly in circumstances where there is no or very little Crown or general land available. Such a restraint is itself inconsistent with Treaty principles in that it is an unreasonable restriction on the right of government to follow its chosen policies.[7]

10. While acquisition of Māori land for public works may in some cases constitute a breach of the Treaty, the Crown says the compulsory acquisition of land under the public works regime is not, in itself, inconsistent with the Treaty. The Crown's right of kāwanatanga allows it to compulsorily acquire land, including Māori land, for public purposes.

11. The Crown's position finds support in the jurisprudence of the ordinary courts. In *McGuire v Hastings District Council* the Privy Council noted:[8]

> The Treaty of Waitangi guaranteed Māori the full, exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties which they desired to retain. While, as already mentioned, this cannot exclude compulsory acquisition (with proper compensation) for necessary public purposes, it and the other statutory provisions quoted do mean that special regard to Māori interests and values is required in such policy decisions as determining the routes of roads.

12. In reaching this conclusion, the Privy Council drew on its earlier decision in *Adeyinka Oyekan v Musendiku Adele*,[9] which concerned a claim for a declaration of title, damages for trespass, and recovery of possession of an Iga (palace) in Nigeria. In that case, Lord Denning stated:[10]

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7 *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) [***Lands* case**].

8 *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC) [***McGuire***] at 594 per Lord Cooke of Thorndon. The statutory provisions referred to by the Privy Council were s 6 of the Resource Management Act 1991.

9 *Adeyinka Oyekan v Musendiku Adele* [1957] 1 WLR 876 (PC) [***Oyekan***].

10 At 880 per Lord Denning.

> It has been laid down by their Lordships' Board that "Any inhabitant of the territory can make good in the municipal courts established by the new sovereign only such rights as that sovereign has, through his officers, recognized. Such rights as he had under the rule of his predecessors avail him nothing"… In inquiring, however, what rights are recognized, there is one guiding principle. It is this: The courts will assume that the British Crown intends that the rights of property of the inhabitants are to be fully respected. Whilst, therefore, the British Crown, as Sovereign, can make laws enabling it compulsorily to acquire land for public purposes, it will see that proper compensation is awarded to every one of the inhabitants who has by native law an interest in it: and the courts will declare the inhabitants entitled to compensation according to their interests, even though those interests are of a kind unknown to English law …

13. The Privy Council's decision in the *Oyekan* case was also cited with approval by the Court of Appeal in *Te Rūnanganui o Te Ika Whenua Inc Society v Attorney-General*, which stated:[11]

> It may be that the requirement of free consent has at times to yield to the necessity of the compulsory acquisition of land or other property for specific public purposes which is recognised in many societies; but there is an assumption that, on any extinguishment of the aboriginal title, proper compensation will be paid, as stated by Lord Denning, in delivering the judgment of a Judicial Committee of the Privy Council the other members of which were Earl Jowitt and Lord Cohen, in *Oyekan v. Adele* …

14. The Crown submits that these authorities establish that the Crown may compulsorily acquire land from Māori for public purposes, and such acquisitions are not in and of themselves inconsistent with the Treaty or its principles. Rather, the power to acquire land compulsorily in the public interest in order to provide public works is a legitimate function of

11 *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General* [1994] 2 NZLR 20 (CA) at 24 per Cooke P.

responsible government and a legitimate exercise of the Crown's kāwanatanga right.

15. Article 3 is also relevant, and requires the Crown to act equitably as between Māori and non-Māori in the application of the public works legislation and policies. The Crown is not, however, required to treat Māori preferentially. There will often be a range of factors that influence a decision to acquire land under public works legislation, including choosing a particular piece of land where other options are available. This is true for Māori land as well as non-Māori land. The circumstances of each particular acquisition, and the reasons for the choices that were made, must be assessed; that assessment will disclose—provided sufficient information is available—whether or not the taking is Treaty-compliant.

Framework for assessing Treaty consistency

16. The compulsory acquisition of Māori land is not on its own sufficient to substantiate a claim of Treaty breach. Rather, the authorities outlined above indicate that a detailed examination of the particular circumstances of each acquisition, including whether or not proper compensation was paid, is required before such a finding can be made.

17. The Treaty-consistency (or otherwise) of any public works acquisition is determined by weighing the reasonableness of the Crown's exercise of kāwanatanga under Article 1 against the right of tino rangatiratanga as protected by Article 2. The Crown submits that its kāwanatanga right may be appropriately balanced with the promise to protect rangatiratanga if both the following are met:

    17.1 The Crown is measured in its development and use of compulsory acquisition powers, and timely payment of fair market compensation.

    17.2 The Crown upholds its duty to Māori under Article 2 of the Treaty to consider the implications for Māori of any compulsory acquisition. This requires adequate consultation with Māori and, in some cases, protection of Māori rights and interests in land where

the loss of those interests would have major adverse social, cultural or economic impacts.

18. When considering the Treaty-consistency of a public works acquisition, the Crown says the following five questions should be answered by evidence:

    18.1 Was there consultation and a proper process?

    18.2 Was compensation payable and, if so, was it paid?

    18.3 How was the particular site selected? Were other sites considered?

    18.4 What forms of tenure were considered for the public use of the land? Were alternatives to outright acquisition considered?

    18.5 Were the relevant landowners left with sufficient lands, at the time of the public works takings, for their present and reasonably foreseeable future needs?

19. The Crown says that, having considered each of these factors, the Tribunal should also attempt to weigh the benefit accruing to the former owners of the land as a result of the particular public work. These may be particular and/or general. They may be particular in the sense of enhancement to the value and utility of surrounding land remaining with the people from whom the subject land was acquired. They may be general at the level that any citizen can be said to benefit from the public work and the development of infrastructure which supports economic development.

20. Further, the Crown submits the following factors are important considerations for any assessment of claims relating to public works acquisitions in this inquiry district:

    20.1 The full circumstances of each public works acquisition must be assessed on a case-by-case basis. It should not be assumed that the factors that existed in one case necessarily existed in another.

    20.2 Nor can the general conclusions reached in other inquiry districts be adopted without sufficient evidence to show they apply in this inquiry district. In every instance, the reasonableness of the exercise of kāwanatanga powers of the Crown under Article 1 of the

Treaty must be weighed against the prejudice to Māori rangatiratanga as protected by Article 2.

20.3 Historical acquisitions should be assessed against the standards, circumstances, and attitudes of the time, rather than current standards or understandings.

20.4 The public works regime applied (and continues to apply) equally to all private land and therefore affected both Māori and non-Māori in this inquiry district.

20.5 Without compulsory acquisition of land in the Ngāti Raukawa and affiliated groups' rohe, the Crown would likely have been unable to provide many of the public works which have been of benefit to the community as a whole.

20.6 Evidence of opposition to an acquisition does not automatically result in that acquisition being a breach of the Treaty. The compulsory nature of the public works regime means that there is always a high likelihood of opposition. Again, the particular circumstances of each acquisition must be considered on a case-by-case basis.

21. The claimants' generic submissions adopt a thematic approach in respect of the implementation of public works legislation, attempting to demonstrate systemic breaches of Treaty principles.[12] The Crown submits that general findings of Treaty breach through application of the public works regime cannot simply be adopted in this district without careful consideration of the evidence on the record of public works takings in this inquiry district. The Tribunal should take into account any limitations of the evidence and determine whether it supports broad findings in respect of Crown conduct. In particular, the Crown says the nature of the case studies in the Bassett and Kay report[13] does not provide sufficiently broad evidence on which the Tribunal could safely reach generalised conclusions as to the application of

12 Generic Submissions at [8.1].

13 Heather Bassett and Richard Kay *Porirua ki Manawatū Inquiry District: Public Works Issues* (Wai 2200, #A211, November 2018) [**Bassett and Kay**].

the public works regime across the whole of the inquiry district. Each case must be considered on its facts. Indeed, a detailed examination of the public works acquisitions that were *not* chosen for case study analysis might reveal a different picture of the Crown's conduct.

Crown policy for recognising well-founded public works grievances

22. The Crown has developed a policy for assessing Treaty claims involving public works acquisitions. That policy recognises that a well-founded Treaty grievance may exist where:[14]

22.1 The Crown did not pay Māori landowners timely and adequate (or any) compensation (based on current market value) for their land at the time it acquired it for a public work; or

22.2 The Crown acquired land for a public work without affording Māori land owners an appropriate level of consultation namely by:

22.2.1 not providing Māori with relevant information, such as information about the nature of the public work and the extent and timing of the acquisition;

22.2.2 not giving Māori adequate time and opportunity to fully discuss a public work proposal prior to any decision being made; and

22.2.3 not genuinely and conscientiously considering points made by Māori prior to any decision being made, and willingly considering alternatives.

22.3 A lack of adequate consultation led to significant damage to Māori interests. Significant damage will have occurred where the Crown acquired land for a public work without adequately consulting with Māori landowners and, as a result:

14 Minister in Charge of Treaty of Waitangi Negotiations "The Crown's Policy on Treaty Claims Involving Public Works Acquisitions" (1996).

22.3.1 Left Māori landless or without sufficient endowment, or did not adequately consider the social, cultural or economic impact of the acquisition when:

(a) there was not a high level of need for the public work; and

(b) the negative impact of the acquisition was excessive; or

(c) there was a reasonably practicable alternative which would have had substantially less negative impact;

and/or

22.3.2 Removed, or significantly reduced, an iwi, hapū, or whānau's land of special historical, cultural, or spiritual significance when:

(a) there was not a high level of need for the public work; and

(b) the negative impact of the acquisition was excessive; or

(c) there was a reasonably practicable alternative which would have had substantially less negative impact;

and/or

22.3.3 Compulsorily acquired more land than was reasonably necessary for the intended public work;

and/or

22.3.4 Never used the land for the original purpose for which it was acquired, nor for another legitimate public work

purpose, and did not offer it back to the former Māori owners after a reasonable time;

and/or

22.3.5 Discriminately acquired Māori land in preference to non-Māori land because it was more expedient to do so in terms of either cost or convenience.

22.4 The Crown failed to comply with its statutory duty, after 1981, to offer back land previously acquired for a public work to the former owners or their successors unless a statutory exemption applied.

Local authorities

23. Local authorities are independent of the Crown. They are not part of the Crown and are not agents of the Crown. The Crown does not exercise control over local authorities and is not responsible for the particular decisions that they make. Parliament has created and vested local authorities with their own powers. This reflects the philosophy that it is preferable for decisions affecting the local community to be made by that community.

24. Accordingly, the Crown does not accept that it is responsible for the actions or omissions of local authorities in the course of carrying out their functions. It accepts that there may be an issue as to whether it should have sought to impose additional restrictions on local authorities in the legislation that conferred on them powers to acquire land for public works purposes.

25. The primary focus of these submissions is, appropriately, on the alleged acts and omissions on the Crown rather than those of local authorities. Except in particular circumstances where the Crown became involved, takings by local authorities and other non-Crown bodies are not addressed directly.

ESTABLISHMENT

Issue 6.3: In enacting public works legislation, did the Crown adequately:

(a) Consult with and/or obtain the consent of Ngāti Raukawa and affiliated groups to its introduction? What was the degree of involvement of these groups in decision-making about public works legislation and the form this would take?

(b) Take into consideration the amount of land of Ngāti Raukawa and affiliated groups that had already been acquired by the Crown or private purchasers?

26. The legislation which allowed the Crown to compulsorily acquire Māori land for specified public purposes had two main strands: the Public Works Acts; and provisions in the Native Land Acts which allowed Māori land to be set aside for roads without compensation.[15] The first piece of public works legislation to impact in the Porirua ki Manawatū inquiry district (**PkM**) was the Immigration and Public Works Act 1870.[16]

27. The Crown has consistently maintained the position that there is no general Treaty duty to consult. Rather, the Crown has an obligation to make informed decisions. This obligation is part of the general duty to act in good faith, fairly, and reasonably towards Māori. An obligation to make informed decisions is not the same as a standing, plenary duty to consult with Māori. Such a duty, the Courts have said,[17] is too vague an obligation to impose on the Crown. Whether the duty to make informed decisions requires, consultation, and to what extent, depends on the nature of the issue involved.[18]

28. The technical evidence prepared for this region does not address the extent to which, if at all, Ngāti Raukawa and affiliated groups were consulted prior to enactment of public works legislation. Bassett and Kay confirmed they had not seen evidence of Ngāti Raukawa, Ngāti Kauwhata, or Ngāti Wehi Wehi being involved in the formulation of public works policy or legislation.[19] However, those authors focussed on the implementation of public works legislation in PkM and included no further research into general Crown

15 Bassett and Kay at 20.
16 At 26.
17 *Lands* case at 665 per Cooke P and at 683 per Richardson J.
18 At 683 per Richardson J.
19 Bassett and Kay *Answers to Questions of Clarification* (Wai 2200, #A211(m), 4 November 2020) [**Bassett and Kay, Answers to Questions of Clarification**] at [45].

policy development regarding the compulsory acquisition of land for public works.[20]

29. The Crown submits that there is, therefore, no basis for the Tribunal to reach any generalised conclusion on this issue in PkM. In particular, there is no basis to reach a general conclusion that the Crown's consultation was inadequate.

IMPLEMENTATION

Issue 6.4: How much land was acquired from Ngāti Raukawa and affiliated groups through public works takings? For example, how much land was:

(a) Taken under the 5-percent rule which enabled the taking of up to five per cent of a block for roads without compensation, from 1865 to 1927?

(b) Taken compulsorily under public works legislation?

Overview of public works takings in the Porirua ki Manawatū inquiry district

30. Bassett and Kay compiled a database of public works takings in PkM (**Public Works Takings Spreadsheet**).[21] A summary of these takings is set out below. As the figures relate to the whole of the inquiry district, not all the takings from Māori listed in the Public Works Takings Spreadsheet will relate directly to Ngāti Raukawa and affiliated groups (see [35]-[37] below for figures relating more directly to Ngāti Raukawa and affiliated groups).[22]

Public works takings: patterns over time

31. The first taking of Māori land under the public works legislation recorded in the Public Works Takings Spreadsheet was in 1877 for railway purposes (see [113] below).[23] In terms of patterns over time, public works and related legislation had the most impact in the early period of the development of the basic roading and rail infrastructure in the district.[24] Roading and railways are addressed in more detail below.

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20 Bassett and Kay at 20.

21 Bassett and Kay *Public Works Takings Spreadsheet* (Wai 2200, #A211(b), 30 November 2018) [**Bassett and Kay, Public Works Takings Spreadsheet**]. Bassett and Kay noted the spreadsheet is not a final exhaustive record, but confirmed that the possible underestimate of the total Māori land acquired for roading purposes in the district would be a relatively small amount. See Bassett and Kay, Answers to Questions of Clarification at [14].

22 Bassett and Kay at 12-13.

23 At 40.

24 At 43-44, 50.

32. There was an upswing in takings in the district in the 1950s and 1960s. Most of this is accounted for by the large-scale development of the Porirua Basin for housing purposes (not directly affecting Ngāti Raukawa and affiliated groups). This period also saw the development of State Highway 1 and river control schemes.

Types of takings

33. As to the reasons for public works takings, the vast majority of takings gazetted in PkM are very small areas of land taken for road purposes.[25] This pattern is reflected in takings of Māori land. There were 616 road takings of Māori land in PkM, making up 73% of the number of all takings of Māori land in PkM.[26] The main routes through PkM were laid down at the end of the nineteenth century. Still, more than half the takings of Māori land in PkM for roading purposes (386 takings) occurred in the period 1910 to 2010. Many were very small, starting at 00.09 of a perch, and there were 172 takings which were for less than 1 rood.[27]

Proportion of takings from Māori land

34. Between 1870 and 2010, there were 9,264 acquisitions in PkM proclaimed in the *New Zealand Gazette*. Of these, 841 takings[28] were from Māori (including land vested in the Māori Land Board/Public Trustee/Māori Trustee).[29] Accordingly, 9% of all takings in PkM were from Māori land. The vast majority, over 90%, of all compulsory acquisitions in PkM were from European landowners, Crown, local government, or the Public Trustee (not Māori land). 63% of those acquisitions were from Europeans.

Takings in the rohe of Ngāti Raukawa and affiliated groups

35. Bassett and Kay also provided more focussed figures for the Ngāti Raukawa and affiliated groups phase, confined to takings between the Kukutauaki

25 At 21.
26 At 15, 44-45.
27 At 164.
28 This does not include land acquired through negotiations by the Wellington to Manawatū Railway Company and only includes proclaimed takings in the *New Zealand Gazette* (so may not account for all Māori land, especially roads, taken for public purposes). See Bassett and Kay at 35, 39.
29 Bassett and Kay at 39-40.

Stream and the Rangitīkei River (excluding the Horowhenua block).[30] Counsel note nonetheless that not all such takings will relate to Ngāti Raukawa and affiliated groups,[31] but the refinement is generally useful in contextualising the impact for Ngāti Raukawa and affiliated groups.

36. Of the 841 takings from Māori in PkM, 447 relate to land taken between the Kukutauaki Stream and the Rangitīkei River. The number of takings from all forms of ownership (Crown, European, Local Authority, and Māori) between the Kukutauaki Stream and the Rangitīkei River was 4,895.[32] Accordingly, consistent with the proportion over the wider PkM district, the proportion of takings from Māori land in the rohe of Ngāti Raukawa and affiliated groups was approximately 9%.

37. Out of the 447 Māori land takings in this rohe, 344 were taken for roads.[33] The next largest category was 46 takings for river control and drainage purposes. There were also 20 takings in the Public Works Takings Spreadsheet for railway purposes. The other purposes for which land was taken in this rohe include education, post office and telegraph, sewerage, health, noxious weeds, gravel pits, and housing.[34]

Public works takings in context

38. It is clear that public works acquisitions have not been a significant cause of land loss for Māori in the inquiry district (including for Ngāti Raukawa and

30 Bassett and Kay *Summary for Hearing Week 3* (Wai 2200, #A211(h)) [**Bassett and Kay, Summary for Hearing Week 3**] at [2]. Bassett and Kay note at footnote 1, "While the boundary has been taken as land to the south of the Rangitikei River, an exception has been made to include the Ohinepuhiawe blocks on both sides of the river at Bulls." Bassett and Kay note further at footnote 2, "While all reasonable care has been taken, the extraction of regional figures from the database may not be exact, as it requires filtering by survey district and blocks, which do exactly accord with the boundaries of the Ngāti Raukawa and affiliated groups inquiry or Native Land Court block boundaries."

31 For example, the refined rohe still includes land relating to other iwi, such as Aorangi 2 and 3 Reserve granted to Ngāti Tauira and Rangitāne respectively.

32 Bassett and Kay, Summary for Hearing Week 3 at [2]. Bassett and Kay note at footnote 3, "This figure was calculated by extracting data from the Ongo, Apiti, Umutoi, Oroua, Pohangina, Te Kairanga, Gorge, Moutere (excluding Horowhenua Block), Mount Robinson (excluding Horowhenua block), Arawaru, Waitohu (excluding Horowhenua Block), Waiopehu (excluding Horowhenua Block), Taungata Survey Districts, and Blocks II, III, IV, V (excluding Ngarara Block), VI, VII, VIII of the Kaitawa Survey District, and Blocks IV, VIII, XI (including Bulls), XII, XV, XVI of the Rangitoto District, Te Kawau Survey District except for Block I, and Sandy Survey District except for Block I."

33 At [3].

34 Bassett and Kay, Summary for Hearing Week 3 at [4].

affiliated groups). Further, as noted by Bassett and Kay, the number of takings from Māori ownership seems a relatively small proportion.[35] As a whole, Māori-owned land (including that relating to Ngāti Raukawa and affiliated groups) was not targeted for public works acquisitions.

39. However, that is not to underestimate the impact that public works acquisitions might have had on Māori in the inquiry district. Indeed, the Crown accepts that the alienation of particular sites may have had an impact that is not revealed by its size in hectares or acres.

40. The Crown also acknowledges that the context of prior Māori land alienation is relevant; the Crown purchased large blocks of Māori land, which could be used for public facilities, prior to public works legislation coming into effect.[36]

Five percent rule

Background

41. From the beginning of European settlement, the Crown reserved the right to make provision for future roading needs when Crown-granted land was purchased. Compensation was not a given. Marr says:[37]

> For land well outside existing European settlements, where generally large blocks had been Crown granted but proper surveys other than the outside boundaries had not been made, the right was reserved in the grant for a percentage of land to be taken if required for future roading. Sometimes compensation was also payable in this situation but gradually a rule developed where it normally was not.

42. The Crown's power to take land for roads continued in a range of legislative provisions. For example, as addressed further below at [65.2], the Crown had the power to take European (and other) land for roads without compensation under the Lands Acts.

35 Bassett and Kay at 40.
36 At 26, 40, 42, 48-50.
37 Marr at 63.

43. The so called "five percent provisions" allowed the Crown to take up to five percent of land in a block without compensation for the purpose of roads. The policy developed from the pre-Native Land Court system whereby, once the Crown had purchased Māori land, and then on-sold parcels, the Crown reserved the right to lay out roads without compensation over land it had sold.[38] As to key steps:

43.1 The rule originated in the Native Lands Act 1862:

43.1.1 The rule was not directed at the acquisition of Māori land. Basset and Kay describe the background to this provision as follows:[39]

> As the Crown purchased large blocks of land, which it then subdivided for Pakeha settlement, part of the process involved the laying off of road lines so that each parcel of land would be provided with access. The principle of ensuring access meant that when the Crown relinquished its pre-emptive right to purchase Māori land to allow for private purchasing, provisions were made to ensure that adequate road access would be provided. As Pakeha could purchase from Māori a block of land which included a track used for public access, the Crown wished to prevent the private landowner from obtaining the freehold to such tracks and then conceivably preventing public access.

43.1.2 As provided for by s 27 of the Native Lands Act 1862, when a block had been purchased from Māori, the Crown had the right to lay out public road lines over the block, which then became vested in the Crown. There was no provision for compensation. The amount of land which could be so

38 Bassett and Kay *Answers to Questions* (Wai 2200, #A211(o)) [**Bassett and Kay, Answers to Questions**] at [23].

39 Bassett and Kay at 21.

taken as a road was limited to no more than 5 acres per 100 acres.

43.2 The Native Lands Act 1862 was replaced by the Native Lands Act 1865 which applied to land which had passed through the Native Land Court and been issued with a Crown Grant. Under s 76 of that Act, there was a period of 10 years after a Crown grant was issued allowing the Governor to take five percent of the land subject to the grant.[40] The rule did not apply to Māori only. The five percent rule applied to whoever held the title to the land at the point the land was taken during that 10 year period. If the land was sold by Māori to non-Māori within the 10 year period, the rule entitled the Governor to take land from the non-Māori owner.[41] The timeframe for taking Māori land was extended to 15 years in 1878.[42] There were restrictions on the taking of lands that contained buildings, gardens, orchards, plantations, burial[43] or ornamental grounds.

43.3 In 1880, the power to take roads was extended to include land held under a Native Land Court certificate of title or memorial of ownership.[44]

43.4 In 1894, the provisions were extended to include not only Māori land derived from the Crown but Māori land "of which the ownership had not at the time of the taking" been determined by the Native Land Court, but which "in the opinion of the Native Land Court'" did not exceed the five percent the Governor was allowed to take had the ownership been determined.[45]

43.5 Variations of the five percent provision were in place for many decades and represented a balancing of national interest and

40 See also Native Land Act 1873, s 106.
41 See also s 70 of the Native Land Court Act 1894 and s 388 of the Native Land Act 1909, which confirmed the right to take land within the time limit, no matter who owned the land during this time.
42 Native Land Act Amendment Act (No 2) 1878, s 14.
43 From 1873, per s 106 Native Land Act 1873.
44 Public Works Act 1880, s 20; see also Public Works Act 1882, s 23.
45 Public Works Act 1894, s 91.

private interests.[46] The policy rationale was that contributing up to five percent of any block for public works constituted a reasonable contribution towards national development that was of benefit to all (including Māori).

43.6 The five percent rule was removed in 1927. In introducing the repealing Act, Native Minister Coates remarked that the time had arrived when Parliament could be asked to forgo this right and that, "all Natives as far as compensation is concerned should in future be treated in the same manner as the pakeha … [with] … the same right to claim compensation as the pakeha for the taking of land."[47][48]

44. As a starting point, it is important to note that the five percent provisions did not require the compulsory acquisition of five percent of every piece of land granted under the provisions of the native land legislation or, indeed, any land at all. Rather, the five percent provisions authorised the taking of up to five percent of such land for the purposes of public roads.

45. The process to set apart road lines was considered important policy. As part of its role in facilitating settlement and development, the Crown was responsible for ensuring that adequate access to land existed. The use of up to five percent of land brought into the title system was seen as a reasonable means of providing for future legal access to and across the land.

46. Whenever a block is surveyed or partitioned there is an obvious and important need for access to be provided to it. Usually, though not always, the only people to benefit from the road being laid out are the owner or owners of the land to whom the road provides access. Where title to any road or access way remains with a private individual, the cost of forming and

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46 As Marr notes (at 67), "The myriad of Acts and amendments that continued this legislative provision until 1927 provide a good example of the general entanglement and confusion of legislation concerned with Maori land. Provisions can be found in various Public Works Acts and amendments, as well as numerous types of Maori land legislation including Native Land Acts, Native Land Amendment and Native Land Claims Adjustment Acts, and Native Land Court Acts and their amendments. Important changes are often made in amendments and at times provisions in the Native Land Acts and Public Works do not always appear to coincide. Very careful reading of all the legislation together can still result in uncertainty about the precise provisions applying at any one time."

47 Native Land Amendment and Native Land Claims Adjustment Act 1927, s 30.

48 Marr at 71-72; (1927) 216 NZPD 537.

maintaining any access road also remains with the individual. While the taking of up to five percent of a block of land for a road diminishes the size of the block in question by up to five percent, access to a road increases the land's value. From a commercial perspective, land with access has more value than land without. For those reasons, people are often willing to gift land for a road that provides access to their property on the understanding they will benefit from access and will not be responsible for forming and maintaining the road. As noted below (at [66], [68], [71.7], and [97]), PkM Māori also gifted land/did not seek compensation for roads including on the basis they would be employed in making the road.

47. The Crown acknowledges that the five percent rule would raise Tiriti/Treaty concerns if:

    47.1 the rule had a larger effect on Māori (in terms of having land taken) than non-Māori and if that effect was not proportionate to the benefits for Māori of the provision of road and rail infrastructure bringing access and the opportunity for commercial development; and

    47.2 the provision was imposed on Māori without approval of some sort by Māori representatives, taking into account the standards of the day in respect of consultation.

48. There is not sufficient evidence on the record to assess these issues as a national or systemic matter, although the Crown acknowledges the Native Lands Acts of 1862 and 1865 were passed when Māori were still excluded from parliamentary representation.[49] The application of this rule, and of these potential Tiriti/Treaty concerns, in the circumstances of Ngāti Raukawa and affiliated groups is addressed below.

Application of the five percent rule in the Porirua ki Manawatū district

49. While various legislative provisions made provision for the so-called five percent rule in respect of Māori land from 1865, the Crown notes that the first known taking of land for roads under those provisions did not occur in

49 At 68.

PkM until 1881.[50] The first use of these provisions was for the Foxton-Ōtaki road addressed below at [71]. The five percent provisions were not used for railway takings in this district.[51]

Five percent provisions (and other powers to take without compensation) were not inevitably used to take roads

50. Māori land could be taken for roads under two sets of provisions: the main public works provisions (with provision for compensation), and the Crown right to take certain lands without compensation.[52] The data compiled by Bassett and Kay demonstrates powers to take Māori land without compensation were not inevitably used in PkM (including in respect to lands taken between the Kukutauaki Stream and the Rangitīkei River).

51. As a measure of how often the power to take roads without compensation was used, Bassett and Kay compared the number of takings of Māori land for roads under the Public Works Acts (413 takings) with the number of takings of Māori land for roads under the Land Acts and Native/Māori Land Acts (203 takings).[53] Using this comparison, takings of Māori land for roads under the Public Works Acts were almost twice as likely to occur, comprising 67% of all roads takings of Māori land in the district. In the area between the Kukutauaki Stream and the Rangitīkei River, there were 206 Public Works Acts takings and 138 takings under the Land Acts and Native/Māori Land Acts.[54] Between the Kukutauaki Stream and the Rangitīkei River, Public Works Acts takings comprised approximately 60% of all roads takings of Māori land.

50 Bassett and Kay at 16.

51 Bassett and Kay refer to s 36 of the Immigration and Public Works Act 1872 and suggest this was discriminatory to Māori by allowing up to five percent of a Māori block to be taken for railways without compensation in the same way as for road lines. (See also Generic Submissions at [8.34].) It is correct that this provision extended the five percent provisions to railway takings. However, as below, the five percent provisions could be used to take European land. Further, s 36 of this Act did not just apply to the five percent provisions; rather, it also extended the right to take railways to road reservations in Crown grants and to any other right to take a public road. In any event, s 36 of the Immigration and Public Works Act 1872 was not used to take Māori land for railways in this district.

52 Marr at 72.

53 Bassett and Kay at 46-47.

54 Bassett and Kay, Summary for Hearing Week 3 at [3].

52. However, Bassett and Kay's comparison does not quite capture the nuance of the powers used to take roads. In particular:

52.1 Not all of the 190[55] takings of Māori land under the Native/Māori Land Acts in PkM involved the power to take roads without any provision for compensation to be paid:

52.1.1 Sections 48–53 of the Native Land Amendment Act 1913 provided for the laying out of road lines upon partition. In respect of roads to be laid out in the case of existing block partitions, s 49 of the Act (and later equivalents) required the Native/Māori Land Court to consider what compensation, if any, should be paid by the party who had applied for the laying out of the road. Takings under these powers should not be counted as takings under powers to take without compensation.

52.1.2 Section 13 of the Native Land Amendment and Native Land Claims Adjustment Act 1928 (and later equivalents) permitted roads already in use to be declared as public roads and provided for the payment of compensation. Indeed, compensation is recorded in the Public Works Takings Spreadsheet as having been paid for two such takings. Takings under these powers should not be counted as takings under powers to take without compensation.

52.2 Conversely, not all takings under the Public Works Act provided for compensation. Specifically, s 93 of the Public Works Act 1908 was, in effect, a five percent provision. Such takings should be added to the category of takings without compensation.

52.3 There is also nuance to the category of takings without compensation that is not captured by combining takings under the Native/Māori Land Acts and the Lands Acts. The Lands Acts did not

55 There were 13 takings under the Land Acts which are addressed separately below.

require compensation to be paid for road takings. However, such takings could only occur with the consent of owners; owners had to agree to the taking of their land without compensation. For this reason, the Crown submits they should be distinguished from the five percent provisions which did not require consent.

53. Accordingly, the Crown suggests a more useful categorisation of roads takings of Māori land in PkM is as follows:

Type of taking	Relevant legislation	Number of takings in PkM	Acreage in PkM	No. of takings in rohe[56]	Acreage in rohe[57]
All road takings		**616**	**-**	**344**	**-**
Public Works takings	Public Works Acts[58]	399[59]	-	**212**	**-**
Five percent takings		**141**	**873.97 acres**	**82**	**321.56 acres**
	Native Lands Acts[60]	127	749.05 acres	**79**	**247.43 acres**
	Public Works Act 1908, s 93[61]	14	124.92 acres	**3**	**74.13 acres**
Lands Act takings	Lands Acts[62]	**13**	**28.32 acres**	**2**	**5.9 acres**
Other road takings		**63**	**-**	**48**	**-**
	Native Land Amendment Act 1913, s 49 (and its later equivalents)[63]	56[64]	-	**46**	**-**
	Native Land Amendment, s 7 and Native Land Claims Adjustment Act 1928 (and its later equivalents)[65]	7[66]	-	**2**	**-**

56 Between the Kukutauaki Stream and the Rangitīkei River.

57 Between the Kukutauaki Stream and the Rangitīkei River.

58 Excluding takings under s 93 of the Public Works Act 1908 (which is a five percent provision).

59 413 takings under Public Works Act as a whole, but excluding 14 takings under s 93 of the Public Works Act 1908 (which is a five percent provision).

60 See shaded green rows in **attached** spreadsheet.

61 See shaded blue rows in **attached** spreadsheet.

62 See shaded yellow rows in **attached** spreadsheet.

63 See shaded orange rows in **attached** spreadsheet.

64 Five takings from the Taumanuka Block on 10 August 1914 involve s 49, as do 4 takings from the Waipu block on 12 June 1929, 1 taking from Ohau 3A2 on 15 May 1931, 3 takings from Reureu on 8 August 1931. Similarly, there were takings under s 487 of the Native Land Act 1931 from Taumanuka 2B14 on 29 July 1935, 2 takings from Horowhenua XIB 36 on 10 July 1950. Subsequently, under s 421 of the Māori Affairs Act 1953 the following takings occurred: 13 sections of Hīmatangi 2A were taken on 9 September 1957; Ngarara West A78E 16 on 10 July 1957; Ngarara West A78B8 on 21 August 1958; 11 takings from Hīmatangi 5A sections on 15 October 1959; 5 takings from Hīmatangi 3A 3E sections on 11 March 1960; takings on 6 July 1970 from Part 6A1A Puketotara 334 & 335, Part Hīmatangi 1D1, Part Hīmatangi 4A3E, Part 6A1B & 6A2 Puketotara 334 & 335, and Part Hīmatangi 4C3; 2 takings from Takapuwahuia block on 14 February 1972.

65 See shaded pink rows in **attached** spreadsheet.

66 Two takings from Pukehou 4B on 24 February 1930 involve s 13 of the Native Land Amendment and Native Land Claims Adjustment Act 1928. Compensation of £60 and £100 is recorded in the spreadsheet. Another taking under this provision occurred in respect to "Adjoining and passing through Rakautaua 1, 2, 4 & 5 and Ruatangata 1C1B" on 4 December 1931. Similarly, land from Ruatangata 1B4F was taken under s 484 of the Native Land Act 1931 on 11 April 1939 and land from Part Ngarara West B was taken on 12 August 1948. Subsequently, the following land was taken under s 422 of the Māori Affairs Act 1953: land was taken from Part Urukaika Roadway and Part Kenepuru block on 8 July 1963.

54. Using this categorisation:

54.1 In PkM there were nearly three times as many takings of Māori land for roads under the general powers in the Public Works Acts (399) as there were takings of Māori land under the five percent provisions (141). For the reasons set out at [52.3] above, the Crown submits Lands Act takings should be distinguished from the five percent provisions. However, the addition of the 13 Lands Acts takings does not materially change the balance of takings with and without provision for compensation (399 compared to 154).

54.2 In the area between the Kukutauaki Stream and the Rangitīkei River, there were approximately 2.5 times more Public Works Acts takings (212) than takings under the five percent provisions (82). Again, the addition of two takings under the Lands Acts does not change the balance of takings.

55. Analysis of takings of Māori land over time also demonstrates that, after the earliest takings under the five percent provisions (see [55.1] below), powers to take without provision for compensation were consistently used less in the district than powers providing for compensation:

55.1 1870s legislation: There were 74 takings of Māori land in the district under the Native Land Act 1873 compared to 3 takings of Māori land under the Public Works Act 1876.

55.2 1880s legislation: There were 30 takings of Māori land in the district under the Native Land Court Act 1886 compared to 61 takings of Māori land under the Public Works Act 1882.

55.3 1890s legislation: There were 22 takings of Māori land in the district under the Land Act 1892 and the Native Land Court Act 1894 compared to 25 takings of Māori land under the Public Works Act 1894.

55.4 1900s legislation:[67] There were 23 takings of Māori land in the district under the Land Act 1908, the Native Land Act 1909, and s 93 of the Public Works Act 1908 compared to 79 takings of Māori land under the Public Works Act 1905, Public Works Act 1908 (excluding s 93), and Native Land Amendment Act 1913. The five percent rule was removed in 1927.[68] The last taking of Māori land in PkM under the five percent provisions was 12 years before the power was removed.[69]

56. That five percent provisions would not inevitably be used is also demonstrated in practice. For example, when proposing a combined bridge for road and rail traffic at Kakariki in 1899, it is apparent the Manchester Road Board was cognisant of the ability to use the five percent provisions; a calculation was made by the Board as to how much of the Reureu block would be[70] taken for roads.[71] Under those calculations, 1.6 acres (of the 1.73 acres sought) could be taken before reaching the five percent threshold. Ultimately though, no land was taken under any five percent provision at this time but rather the whole area was taken under s 88 of the Public Works Act 1894.[72]

57. For the reasons above, the Crown does not agree that the evidence supports the position that in PkM, "This [the various Māori Land Acts] was the means preferred by the Crown and local authority, as it allowed for up to five percent of the area of a block to be taken without the payment of compensation"[73] or that "this mechanism came to be viewed by the Crown as a right that could be used as a first resort to take land for road, before it

67 Comparison of takings after this time has not been included because the five percent provisions were removed in 1927 and, as set out above, the takings under the later Native/Māori Lands Acts provided for compensation. There were only 3 takings under s 12 of the Land Act 1924.

68 Native Land Amendment and Native Land Claims Adjustment Act 1927, s 30.

69 Taking under s 93 of the Public Works Act 1908 on 12 July 1915: Bassett and Kay, Public Works Takings Spreadsheet row 810.

70 Bassett and Kay at 130 suggest this was a calculation of "how much land had already been taken under the five percent rule". However, the calculation must have been prospective, rather than retrospective, as by 1899 roads had been surveyed but no roads would be taken from Reureu until 1910.

71 At 129-130.

72 Bassett and Kay, Public Works Takings Spreadsheet row 476.

73 Bassett and Kay at 51.

became necessary to use an alternative taking procedure under which compensation had to be paid".[74]

58. Rather, takings of Māori land for roads in PkM (including land taken between the Kukutauaki Stream and the Rangitīkei River) were much more likely to occur under provisions providing for compensation.

The area of land taken under the five percent provisions was relatively small

59. Between 1881 and 1927, 873.97 acres[75] of Māori land in PkM was taken for roads under the five percent provisions.[76] Of this, 321.56 acres were taken under the five percent provisions between the Kukutauaki Stream and the Rangitīkei River.[77]

Placement of roads

60. The claimants suggest safeguards were "routinely ignored, with officials frequently failing to show warrants, engage with owners, or observe basic legal requirements before entering or surveying Māori land".[78] The Crown accepts mistakes were made when the road through the Reureu reserve was surveyed. The circumstances relating to this particular road are set out below at [72]-[81]. However, the Crown is not aware of other specific examples where this occurred.

61. The Crown acknowledges concerns were raised in Parliament in 1888 about Māori land in this rohe being taken for roads instead of takings being shared fairly between adjoining properties.[79] Ngakaroro 1A Section 7 was raised in respect of such concerns. However, the Crown submits that, despite the owners' initial opposition to the route, a proper evaluation of the

74 David Alexander "Public Works and Other Takings in Te Rohe Pōtae Inquiry District" (CFRT, December 2009) (Wai 898, #A63) [**Alexander, Te Rohe Pōtae Public Works**] at 12–13.

75 As set out in the table above: 749.05 acres under the Native Lands Acts and 124.92 acres under s 93 of the Public Works Act 1908. The calculation of land area for various categories of takings has been undertaken by counsel using the amounts listed in the Bassett and Kay, Public Works Takings Spreadsheet.

76 By comparison, the amount of Maori land acquired under the five percent provisions in the Te Rohe Pōtae was around 3,205 acres (Wai 898, #3.4.284 at [47]).

77 As set out in the table above: 247.43 acres under the Native Lands Acts and 74.13 acres under s 93 of the Public Works Act 1908. The calculation of land area for various categories of takings has been undertaken by counsel using the amounts listed in the Bassett and Kay, Public Works Takings Spreadsheet.

78 Generic Submissions at [8.16].

79 Bassett and Kay at 94; Marr at 75.

circumstances shows this is not actually an example of Māori land being preferred over European land. In that case:

61.1 The owners of Ngakaroro 1A Section 7 objected to the route of the road (which cut through the block instead of following block boundaries), but there is no evidence the route was deliberately chosen to take Māori land instead of European land. The surveyor said the route through Section 7 was necessary because of the natural features of the block.

61.2 Upon inspecting the land, the Chief Surveyor agreed that the low-lying nature of the flood prone block meant the road could not follow the boundary.[80]

61.3 In the end, a compromise was reached after a meeting at the site (see below at [314]-[317]); the road would still cut through the block to avoid the unsuitable terrain, but would run partway along the boundary before doing so.

62. The Crown notes that geographic features will often determine the most appropriate or the best site for a public work (as demonstrated in the Ngakaroro example above). For this reason, specific evidence is required that Māori land has been preferred because it is Māori land and that there is not an alternative explanation for the site chosen.

63. The Crown accepts Pryce's Line is an example where there is sufficient evidence to demonstrate a road being deliberately diverted onto Māori land (see below at [72]-[81]). Otherwise, there is no detail about any other road that might have been affected in this way. Without such evidence, there is no basis to make generalised findings about Māori land being preferred for roads takings (and, as below at [65.2], the majority of takings for roads were from European and Crown land).

64. Further, although the five percent provisions did not require consultation with owners about the routes of roads to be taken, there are examples of engagement with Māori about the location of such roads. Ngakaroro 1A

80 At 97.

Section 7 referred to above is one such example (see also [314]-[317] below). A further example is Rahui Road.[81] Surveyor J.D Climie contacted the owners of Te Roto 1 and 2, Turangarahui 2, and the Rahui blocks prior to the taking of this road in 1884. Pineaha te Mahauariki objected to the line of the road through his land in Te Roto 1 (as did "Messrs Gear & Ling"). No information is available about how these objections were ultimately handled, but this shows that, at least in some cases, owners could engage regarding the placement of roads through their lands.[82]

Application to non-Māori of powers to take roads without compensation

65. The evidence does not suggest Māori land was taken disproportionately without compensation as compared to European land:

65.1 The five percent provisions also affected non-Māori: Crown-granted land was also subject to the taking of up to five percent for roads without compensation,[83] as was native land purchased by non-Māori.[84] European land was taken under the Native Land Acts in this district. In all but one of these cases, Māori and European land was taken together under the same provision.[85] For example, when part of Ngakaroro 1A Section 7 was taken under the Native Land Court Act 1873 (see further at [61] above and [314]-[317] below), land for the road was taken under this Act from three sections of Māori land and three sections of European land.[86]

81 At 91.

82 Counsel notes the table at 92 of Bassett and Kay appears to duplicate the area taken from Te Roto 1. The amount taken from the Māori blocks should be 10a 1r 36p. At the same time the five Māori blocks were taken, 3a 0r 16p of Crown land and 15a 3r 0p of European land was taken under the Crown Grants Act 1866. See Bassett and Kay, Public Works Takings Spreadsheet rows 81-87.

83 Contrary to the suggestion in the Generic Submissions at [8.12].

84 Contrary to the suggestion in Bassett and Kay at 213 and 254.

85 Examples of European land being taken for roads under the Native Land Acts include: Bassett and Kay, Public Works Takings Spreadsheet rows 105-107, 109-110 (taken on 26 August 1885, along with one section of Māori land); rows 301-303 (taken on 23 March 1890, along with six sections of Māori land); row 316 (taken on 21 November 1891, along with two sections of Māori land); row 329 (taken on 6 August 1892, along with two sections of Māori land); row 378 (taken on 20 August 1894, with no Māori land taken); rows 379-380, 387, 394-395 (taken in March 1894, along with 13 sections of Māori land); row 410 (taken on 9 January 1896, along with two sections of Māori land); rows 735-736 (taken on 21 December 1911, along with three sections of Māori land); row 760 (taken on 4 March 1913, along with one section of Māori land).

86 Bassett and Kay at 100; Bassett and Kay, Public Works Takings Spreadsheet rows 307-312.

65.2 In addition, roads could be laid out without compensation over Crown and European land (and, as above, Māori land) under the Land Acts, albeit that from 1892 consent was required.[87] The Public Works Takings Spreadsheet contains 820 such takings from European land.[88] By comparison, there were 154 takings of Māori land in the district under provisions not providing for compensation (including the Lands Acts) (with 84 occurring between the Kukutauaki Stream and the Rangitīkei River).

Roading case studies

Foxton-Ōtaki road

66. It cannot be assumed that Māori (or anyone else) always opposed the taking of their land for roads. For example, in July 1867 Ihakara Tukumaru, Natana, Keremeneta, and Arona te Haua signed an agreement "to give'" a road line across Te Awahou Reserve. This was followed by a further agreement signed by Kereopa Tukumaru in August 1867.[89]

67. More broadly, there are examples of Māori requesting roads and recognising their value. For instance:

67.1 A letter from Alexander McDonald in 1872 said Ngāti Kauwhata were anxious for a road from Palmerston to Bulls to be made, but also implied that the provision of the road had been seen as integral for Tapa Te Whata's assessment of the sufficient amount of reserve land.[90]

67.2 In 1875, it was reported that Awahuri Māori intended to fence their land between Feilding and the Oroua Bridge to prevent traffic through the block. This was reportedly because they had been

87 Land Act 1892, s 13; Land Act 1908, s 11; Land Act 1924, s 12; and Public Works Amendment Act 1948, s 29. See Bassett and Kay at 24-25; Bassett and Kay, Answers to Questions at [23].

88 As well as 830 of Crown land, 77 from local authorities, and 19 from Māori ownership. Bassett and Kay at 25.

89 Bassett and Kay at 70.

90 At 79.

promised a road from Awahuri to Feilding and, although the road had been surveyed, construction had not been completed.[91]

67.3 In January 1905, 46 Māori owners in the Reureu block asked the Oroua County Council to "lay out a new road in vicinity of the said Block" as "the Old Road has been damage[d] by the Rangitīkei River".[92]

68. Initially, Māori agreed to roads through their lands in return for employment building the roads.[93] For example, in 1852, McLean provided a report to the Civil Secretary that many Māori settlements were engaged in road construction. In April 1867, Hakaraia Paora, Reti Mana, and Nohi Remu submitted an invoice for £45-13-6 for work on the "continuation of Ahuriri horsetrack from Palmerston to Orohua [sic]".

69. However, by the late 1870s, Māori were no longer so content to donate their land in return for employment.[94] As Ms Bassett put it during hearing three:[95]

> So, I think it's just a realisation of how this was going to play out expanding and the protests are about wanting to be paid for the land like now they realise the land's going to be lost and they're not going to get any income for it even though they're doing the work they're still losing the land.

70. For example, from 1880, a dispute was underway about the road over customary Māori land from Foxton Town to the beach south of the river.[96] After the Foxton ferryman tried to charge Māori a toll for crossing the river in a waka at Foxton, they responded by preventing travel through Māori land on the coast to the south of the river. At a meeting between the council and Māori, Māori indicated they would be seeking £600 compensation if the land were acquired under the Public Works Act and would not allow a road line

91 At 81.
92 At 134.
93 At 57-60, 70-75.
94 At 16, 82; Bassett and Kay, Summary for Hearing Week 3 at [10].
95 #4.1.26 at 517.
96 Bassett and Kay at 87-90; #4.1.26 at 501; Suzanne Woodley *Porirua ki Manawatū Inquiry District: Local Government Issues Report* (Wai 2200, #A193, June 2017) [**Woodley, Local Government Issues**] at 226-234.

to be made until they were paid that amount. Council sought for the government to acquire the road.[97] In the end, no road was taken.

71. A number of claimants have made submissions about the Foxton-Ōtaki road which was taken under the five percent provisions.[98] The Crown acknowledges that the Foxton-Ōtaki road may raise Tiriti/Treaty concerns because:

71.1 This road served a broader public purpose, forming part of the inland road network in the Manawatū rather than largely serving the land through which it passed (accordingly, the usual private benefit described above at [46] is less applicable).[99] The route of the road traversed only Māori land,[100] but was for the benefit of the community as a whole.

71.2 To begin with, arrangements had been made for land to be given for the road in exchange for the option of building the road.[101]

71.3 Subsequently, however, some Māori owners of the affected land made it plain they did not agree to their land being taken for this road without compensation:

71.3.1 Renao te Wharepakaru and Hoeta Kahuhui advised the Manawatū County Council by letter in April 1880 that payment "at the rate of £3 per acre for the ground taken by the road" was sought through their land at Pukehou.[102]

97 Woodley, Local Government Issues at 228.

98 See Closing submissions on behalf of Ngā Hapū Ahi Kaa ō Ōtaki: Ngāti Huia ki Katihiku, Ngāti Maiotaki and Ngāti Pare (Wai 1626) (19 December 2025) Wai 2200, #3.3.107 [**Ngā Hapū Ahi Kaa ō Ōtaki Submissions**] at [184]; Closing submissions for the Wai 1482 Te Kotahitanga o te Iwi o Ngāti Wehi Wehi claim (19 December 2025) Wai 2200, #3.3.119 [**Ngāti Wehi Wehi Submissions**] at [278]; Joint closing submissions for the Wai 784 and Wai 972 Ngāti Kauwhata claims (19 December 2025) Wai 2200, #3.3.120 [**Ngāti Kauwhata Submissions**] at [286]; Joint closing submissions in the Ngāti Raukawa and affiliated groups phase on behalf of five hapū of Ngāti Huia ki Horowhenua (12 January 2026) Wai 2200, #3.3.127 [**Ngāti Huia ki Horowhenua Submissions**] at [187].

99 Bassett and Kay at 82.

100 At 85, Map 6: Land Taken for the Foxton to Otaki Road 1881-84.

101 Woodley, Local Government Issues at 219-220.

102 Bassett and Kay at 82; Woodley, Local Government Issues at 220.

71.3.2 In August 1880 the council received a letter from Tamihana te Hoea claiming compensation for the road line through Manawatū-Kukutauki 7D.[103]

71.4 On 10 September 1880, a Manawatū County Council meeting considered the objections received to the inland Foxton to Ōtaki road (as above).[104] It was reported that "a whole mass of correspondence claiming compensation was then waded through [by the Council], the reading alone occupying a couple of hours".[105]

71.5 Despite the objections, the Council resolved that the work should proceed, and that any injurious effect would be covered by compensation under the Public Works Act.[106] Replies to that effect were to be sent to parties who had sent objections.[107]

71.6 In February 1881, the Native Office advised the Council that it was considered desirable that the Foxton to Ōtaki Inland Road (as well as the Foxton beach road referred to above at [70]) should be "dedicated to the public", and that the Surveyor General's Department would "take action in the matter towards the attainment of that object".[108] The Chief Surveyor, Mr Marchant, would:

> … receive instructions to visit the ground in company with the County Engineer as suggested by the Council, and will at the same time be provided by the Native Department with the services of an interpreter for the purpose of explaining to the natives the powers possessed by the Government to take the roads. Also the results of these preliminary proceedings are to be reported to the Government before deciding to advise

103 At 83.
104 Bassett and Kay noted there was insufficient evidence to comment on whether or not the Crown was informed about the objections. See Bassett and Kay, Answers to Questions of Clarification at [20], [22].
105 Woodley, Local Government Issues at 223.
106 Bassett and Kay at 84; Woodley, Local Government Issues at 223.
107 Woodley, Local Government Issues at 223.
108 At 224.

the Governor to issue the warrant appointing and empowering a person to actually take the roads on behalf of the public.

71.7 The route of the inland road from Foxton to Ōtaki was proclaimed in July 1881 under the powers of the Native Land Act 1873, Native Land Amendment Act 1878, and the Public Works Act 1880.[109] (More land for this road was taken subsequently under the Public Works Act[110] and by agreement.[111])

71.8 Despite the Council's reliance on compensation as a remedy to objections, the subsequent use of Native Land Act powers meant that no compensation was required to be paid for the land taken.

71.9 This five percent taking was proportionately significant in the context of PkM:

71.9.1 134a 2r 39p (134.74 acres) was taken for the Foxton-Ōtaki road under the five percent provisions.

71.9.2 This amounts to approximately 15% of the 873.97 acres of Māori land taken in PkM under the five percent provisions.

71.9.3 The amount taken under the five percent provisions for this road between the Kukutauaki Stream and the Rangitīkei River was 92.25 acres,[112] or approximately 29% of all land taken under the five percent provisions between the Kukutauaki Stream and the Rangitīkei River (refer [53] above).

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109 At 225; Bassett and Kay, Public Works Takings Spreadsheet rows 54-65.

110 In 1884, an area of 7 acres 1 rood 32 perches was taken from the 'Wirokino' block [later called Awahou 6], and 7 acres and 21 perches from the Oturoa block under s 11 of the Public Works Act 1882. Bassett and Kay, Public Works Takings Spreadsheet rows 78-79.

111 A further 14 acres 1 rood 35 perches through Ōhau 3 was taken by Chief Surveyor Marchant under a Governor's warrant dated 23 October 1883 (not under the Public Works Act), having been agreed to be given by the Ōhau owners on the understanding they would get "the work each half within its own boundaries". See Bassett and Kay at 85; Anthony Pātete *Tū Te Manawaroa: Oral and Traditional Historical Report* (Wai 2200, #A226, February 2021) [**Pātete**] at 690. See Closing submissions on behalf of Te Iwi o Ngāti Tukorehe (Wai 1913) (19 December 2025) Wai 2200, #3.3.116 [**Ngāti Tukorehe Submissions**] at [212]-[214], [220]-[223].

112 Removing the 42 acres 1 rood 21 perches (42.49 acres) taken from the Horowhenua block.

71.10 At least part of the land taken (Manawatū-Kukutauaki 4A, B, C, E) was otherwise protected from alienation as part of the Waikawa Reserve.[113]

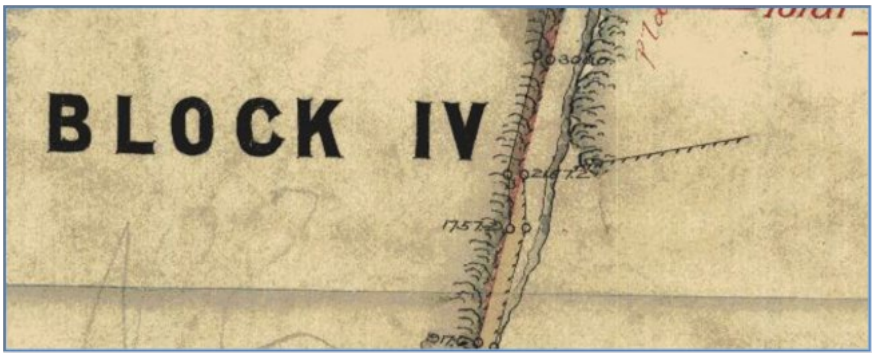
Pryce's Line

72. The Crown acknowledges that the group of Ngāti Raukawa hapū based in Te Reureu valley have a strongly felt grievance over a public works taking from Te Reureu reserve for the construction of a road, known as Pryce's Line.

73. Pryce's Line initially runs along the boundary between Te Reureu reserve and neighbouring Pākehā-owned land. It was Crown policy to take land for such roads, where practicable, equally from both blocks, but a crucial 21-acre length of Pryce's Line was surveyed to lie wholly on Māori reserve land.

74. Roads were surveyed along the boundary between Te Reureu and the Manchester block in 1883, and re-surveyed many times in the following decades, but not formally taken under public works legislation. It appears that one of the succession of surveyors who surveyed this stretch of road between 1883 and 1905 had diverted the road line, at the point where the existing public road ended at Mr Pryce's boundary, onto the Reureu reserve; thereby avoiding Pryce's section of the Manchester Block.

75. An excerpt from ML 1342 I 3,[114] drawn in 1905, shows the road diversion at Pryce's boundary (Pryce's gate) from one side of the boundary to the other. Te Reureu reserve boundary is marked in red, with the reserve to the West. Pryce's gate is at the point where the road crosses the reserve boundary.



113 Ngāti Wehi Wehi Submissions at [279]; Paul Husbands *Māori Aspirations, Crown Response and Reserves 1840 to 2000* (Wai 2200, #A213, November 2018) [**Husbands, Māori Aspirations**] at 286.

114 A copy is included in the **attached** bundle of documents.

76. In 1907, 17 Māori owners of the reserve protested to the Crown that the surveyed road interfered with their kāinga, cultivations, and shelter belts.

77. The Chief Surveyor instructed an inspecting surveyor, J. D. Climie, to investigate the road, noting:

> It is necessary when a road is being taken on the boundary of Native and English lands to take it equally from either if the nature of the ground permits. It would be an injustice to Native owners also, to take an inferior line of road from them merely because no compensation is payable to them, and to neglect a better or the proper line only because European owners must be compensated. The Governor's powers are not to be exercised in this way either by private or any other surveyor.

78. Several surveyors (including the Crown's Chief Surveyor), Crown officials, and a Native Land Court judge all agreed the natural engineering line for the road was across the neighbouring Pākehā-owned land and the road should never have been placed on the reserve at all.

79. Nonetheless, in 1931, the Crown took land for Pryce's Line wholly from the Te Reureu reserve. The Native Land Court laid out the road (on the basis that partitioning of native land had left a subdivision of the land without "reasonably practicable access to any public road"[115]) and the Governor then proclaimed it as a public road vested in the Crown.[116]

80. The Crown neither consulted nor compensated Te Reureu owners before it took land for this road.

81. The Crown has accordingly made the following concession regarding Pryce's Line:

> Te Reureu reserve, a 4096-acre strip of land along the banks of the Rangitīkei, was the only land reserved for the hapū of Te Reureu.

115 Native Land Amendment Act 1913, s 49.
116 Bassett and Kay, Public Works Takings Spreadsheet rows 1327-1330.

> By 1905 a stretch of road, known as Pryce's Line, was surveyed inside the Te Reureu reserve even though the natural line for the road ran through neighbouring land owned by a Pākehā farmer.
>
> In 1907 Crown officials concluded that Pryce's Line had been surveyed through Te Reureu to avoid paying compensation to the European owners of the neighbouring block, who did not wish to give up land for the road. The Crown's Chief Surveyor called it an 'injustice' to the Māori owners of Te Reureu to neglect a better line over neighbouring Pākehā land.
>
> In 1922, a Native Land Court Judge agreed that the road should have gone through the 'splendid track' available on the Pākehā-owned land rather than through Te Reureu reserve.
>
> Despite this, in 1931 the Crown compulsorily acquired the land surveyed for Pryce's Line inside Te Reureu reserve without consulting or compensating hapū of Te Reureu.
>
> The Crown's 1931 taking of Pryce's Line from Te Reureu was unreasonable and inequitable, and breached te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

Hīmatangi block roads

82. Between 1957 and 1970, land in the Hīmatangi block was taken for roads to provide access within the block (which had been sought and discussed since the 1930s). The claimants suggest consultation and compensation arrangements for these takings were inadequate.[117] The Crown does not agree and submits that, when the circumstances of each taking are considered, they are Tiriti/Treaty-consistent.

Paranui Road[118]

83. In 1956, following an application from the Manawatū County Council, the Māori Land Court recommended to the Minister of Works that a roadway

117 Closing submissions in the Ngāti Raukawa and Affiliated Groups Phase on behalf of Ngā Hapū o Hīmatangi (12 January 2026) Wai 2200, #3.3.128 [**Hīmatangi Submissions**] at [351].

118 Bassett and Kay at 167-168; Bassett and Kay, Public Works Takings Spreadsheet rows 3458-3475.

laid out by the Court in Hīmatangi be declared as a road. The Court was satisfied the road would be a "betterment to the Maori land affected".

84. In 1957, 24 acres 3 roods 33.5 perches was then proclaimed by the Governor-General as a road under s 421 of the Māori Affairs Act 1953.

85. Approximately half the land was Māori land[119] and half was European.[120] There is no suggestion Māori land was treated differently to European land in this taking.

86. As to compensation and consultation, the Manawatū County Council met with Māori and Pākehā owners prior to the application to the Court. There is no evidence the owners objected to the Council's proposal that existing rights of way be fenced and accepted as a road without compensation.

87. The balance of seven of the Māori land blocks involved (or parts thereof) remain as Māori land today,[121] continuing to benefit from the access to the land provided by Paranui Road.

Motuiti Road[122]

88. Proper road access to Hīmatangi 5 had long been sought (access to the block was through unformed right of ways). In June 1931, Member of Parliament Taite te Tomo made representations to the Works Department on behalf of Komahi Renata for a road to access Hīmatangi 5.[123] In 1932, Public Works received 'a petition' from 'several settlers' and Māori owners for a road from Hīmatangi 5 to be formed.[124] Roads within the Hīmatangi block, particularly their cost and who should pay, were then debated until the mid-1950s.[125]

89. Upon application by the Manawatū County Council, in August 1958 the Māori Land Court made an order laying out a roadway through the Hīmatangi 5 block to improve access.

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119 Hīmatangi 2A1, 2A2A, 2A2B, 2A2C, 2A2D, 2A2E, 2A2F, 2A3B, 2A3A, 2A4, 2A5A, 2A5B, and 2A6.
120 Hīmatangi 2B3C, and Part Lots (Part Hīmatangi 2B3D) 3, 2, 1, and 2B4.
121 Hīmatangi 2A1C, 2A1A, 2A1B, 2A2B, 2A2D, 2A2F, 2A3B, 2A5B, and 2A6 (source: Māori Land Online - see screenshots in **attached** bundle).
122 Bassett and Kay at 169-170; Bassett and Kay, Public Works Takings Spreadsheet rows 3811-3826.
123 At 164.
124 At 165.
125 At 165-167.

90. In October 1959, an area of 32 acres 2 roods 8 perches was proclaimed by the Governor-General as a road under s 421 of the Māori Affairs Act 1953.

91. Approximately 8 of the 32 acres was taken from European land.[126] The fact more Māori land[127] was taken reflects the fact that more of the affected blocks along the road (a straight line based on existing right of ways along the block boundaries between SH1 and what became Hīmatangi Block Road) remained as Māori land at the time of the taking. The balance of seven of these blocks remain as Māori land.[128]

92. The Crown was not responsible for engagement with owners. The Council submitted to the Court signed consents from the European landowners and told the Court that a council officer had "interviewed most in the district and met with no objection". Letters had also been sent to "many" Māori owners which had either been unclaimed or there was no reply. There is no evidence of contemporaneous objection to the taking of the road.

93. The decision that no compensation was to be paid was made by the Māori Land Court, not the Crown. There is no evidence of contemporaneous objection to the Court's order regarding compensation.

Totara Park Road[129]

94. In August 1959, the Manawatū County Council successfully applied to the Māori Land Court for land in Hīmatangi 3 to be declared a road.

95. In March 1960, an area of 4 acres 2 roods 10 perches was proclaimed by the Governor-General as taken under s 421 of the Māori Affairs Act 1953.

126 Hīmatangi 5A6B, 5A5A, 5A4A, and 5A4B.

127 Hīmatangi 5A6A, 5A5B, 5A5C2C, 5A5C2B, 5A5C2A, 5A5C1, 5A3A, 5A3B, 5A2A, 5A2B and 5A1A.

128 Hīmatangi 5A5B, 5A5C2C, 5A5C2B, 5A5C2A, 5A5C1, 5A2A, and 5A2B (source: Māori Land Online - see screenshots in **attached** bundle).

129 Bassett and Kay at 170-171; Bassett and Kay, Public Works Takings Spreadsheet rows 3885-3890.

96. Half the land taken was from a European owned block[130] and half was Māori[131] land. The balance of one of the Māori land blocks,[132] and part of another,[133] remain as Māori land today.

97. No compensation was ordered because the Court was told the Māori owners did not want compensation as the road improved access to the blocks. There is no suggestion the position of the Māori owners was misrepresented.

Hīmatangi Block Road[134]

98. In September 1967, the Māori Land Court laid out a road from Rangiotu Road travelling south through the Hīmatangi block.

99. In July 1970, Māori land was taken under s 421 of the Māori Affairs Act 1953 from:

    99.1 the Rangitāne reserve;[135] and

    99.2 the Hīmatangi block (the balance of which remains as Māori land today[136]).[137]

100. In addition, European and local authority land were taken for this road under s 29 of the Public Works Amendment Act 1948. Similar amounts were taken from these blocks as for the Māori blocks.[138]

101. Following an objection from the owners of Hīmatangi 4C3 to the road bisecting their block, those owners were awarded compensation of $2,273.

130 Hīmatangi 3A3H.
131 Hīmatangi 3A2E1A, 3A2E1B, 3A2E2, 3A2E3A, and 3A3E3B.
132 Hīmatangi 3A2E1B (source: Māori Land Online - see screenshot in **attached** bundle).
133 Hīmatangi 3A3E3B (that is, 3A3EB1) (source: Māori Land Online - see screenshot in **attached** bundle).
134 Bassett and Kay at 171-172; Bassett and Kay, Public Works Takings Spreadsheet rows 5701-5709.
135 Part 6A1A of Puketotara 334 and 335 (37.2p); and Part 6A1B and 6A2 of Puketotara 334 and 335 (3a 0r 36p).
136 Source: Māori Land Online - see screenshots in **attached** bundle.
137 Hīmatangi 1D1 (2a 1r 27.8p), 3A3E (2a 3r 21.3p), 4C3 (4a 3r 9.5p). Note in respect of Hīmatangi 3A3E, the reference in Bassett and Kay at 172 is correct and the reference in Bassett and Kay, Public Works Takings Spreadsheet row 5709 to **4**A3E is incorrect.
138 The European land was: Part Hīmatangi 2A7A1 (3 acres, 2 rood, 13.1 perches), Part Hīmatangi 2B3A (3 acres 2 roods, 38.3 perches), Part Hīmatangi 3A2B3 (2 acres and 28.6 perches). The local authority land was: Part 6A Puketotara 334, 335 (3 acres, 3 roods, 39.4 perches).

There is no evidence the objection was sustained following the award of compensation.

Railways

102. During the 1870s, the development of New Zealand's infrastructure, particularly roads and railways, became a major focus of the settler Government. Railways were seen as a way of opening up isolated areas of the county, gaining access to new lands and natural resources, and establishing communication links to further the expansion of settlement.

103. PkM is traversed by the Main Trunk Railway Line running from Tawa through Palmerston North to Marton. The Marton–New Plymouth railway line also continues through the north-western part of PkM. Between the mid-1870s and 1959 there was also a railway line running from Foxton to Longburn, where it linked with the main route.[139]

Wellington to Manawatū railway did not involve public works takings

104. In this rohe, much of the railway was built by the Wellington and Manawatū Railway Company, a private company, not the Crown.[140]

105. Construction of a railway link from Wellington to Manawatū (by constructing a new line from Wellington to Foxton) initially began as a public undertaking within Sir George Grey's government in 1878 but was discontinued in 1880.[141] Private enterprise then stepped in, and the Wellington and Manawatū Railway Company (the 'Railway Company') was formed by Wellington businessmen in March 1881.[142]

106. The Government passed the Railways Construction and Land Act 1881 authorising private railway construction by joint-stock companies, and the granting of Crown lands to such companies to induce them to do so.[143] In

139 Bassett and Kay at 210.

140 *Horowhenua: The Muaūpoko Priority Report* (Wai 2200, pre-publication version, 2017) [***Horowhenua Report***] at 200; Bassett and Kay at 235-252, 258.

141 Jane Luiten with Kesaia Walker *Muaūpoko Land Alienation and Political Engagement Report* (Wai 2200, #A163, August 2015) [**Luiten**] at 135.

142 Luiten at 135; T J Hearn *One Past, Many Histories: Tribal Land and Politics in the Nineteenth Century* (Wai 2200, #A152, June 2015) [**Hearn, One Past, Many Histories**] at 658; Dr Grant Young *Muaūpoko Land Alienation Report* (Wai 2200, #A161, August 2015) [**Young, Muaūpoko Land Alienation**] at [41]-[42].

143 At 135.

1882, the Crown and the Railway Company signed a contract for the construction, within five years, of a railway between Wellington and Longburn, Manawatū.[144]

107. In terms of the response of local Māori to the railway:

107.1 In 1879, the Resident Magistrate reported positively on the Māori response to the establishment of this railway, saying:[145]

> Natives on the south side of the Manawatū River owning land through which it is proposed to take the Foxton-Wellington Railway are favourably disposed to the project, knowing that it will improve the value of their property, and afford them what they have always wanted-a means of transmitting their produce to a ready and good market.
>
> …
>
> I notice that the Natives living contiguous to the railway line in my district make greater use thereof, in fact quite as much as, if not more than, their European neighbours.

107.2 In March 1880, the Railways Commission was told[146] that Māori between Foxton and Ōtaki, "have expressed themselves strongly in favour of extending the line to Foxton" and had signed a petition to that effect which was presented to the Minister of Public Works.[147] Reverend Hadfield told the commission that he had heard local Māori say they would give land for the rail line. In the end, the Railway Company decided to run the line direct from Ōtaki to

144 Young, Muaūpoko Land Alienation at [46].

145 Bassett and Kay at 233. Richard P Boast and Alexander P Boast *Ngāti Raukawa and Affiliated Groups: Twentieth Century Land Alienation and Administration* vol 1 (Wai 2200, #A232, 23 March 2022) [**Boast, Twentieth Century Land Alienation**] at 45 also cites Dreaver as follows, "The company was fortunate in having the goodwill of the Māori owners of the land traversed by the new line."

146 Māori did not appear before the Commission. However, Bassett and Kay confirmed they had not seen any evidence to suggest the pākehā witnesses were misrepresenting the views of Māori with whom they had spoken. See Bassett and Kay, Answers to Questions of Clarification at [33].

147 Bassett and Kay at 237-238.

Longburn rather than pass through Foxton.[148] The Foxton to Longburn route became a branch line (see [120]-[123] below).

108. The line to Longburn was completed in 1886.[149] The Crown acquired the Wellington and Manawatū Railway Company in 1908.[150]

109. The Crown does not accept that delegation to the Railway Company was in breach of the Treaty/Tiriti.[151] Further, the Railway Company was not a Crown agent and its purchases were private deals.[152]

110. Accordingly, only a small part of the land on which railways were constructed was acquired by the Crown under the Public Works Act.[153]

Public works takings for railway purposes

111. Between 1870 and 2010, there were 34 Public Works takings from Māori land for railway purposes in PkM.[154] Of these, 20 takings occurred in the area between the Kukutauaki Stream and the Rangitīkei River.[155] The five percent provisions were not used for railway takings in this district. In practice, any compensation for Māori land for the railway in Manawatū tended to be a matter of negotiation in the 1870s and 1880s.[156]

112. The Tiriti/Treaty compliance of the Crown's acquisition of land for the railway requires assessment of Crown policy and conduct at the time of the taking. The Crown's position overall is that the (limited) acquisition of Ngāti Raukawa and affiliated groups' lands for the railway was a legitimate exercise of kāwanatanga and consistent with Tiriti/Treaty principles.

<u>Palmerston North to Whanganui line: Turakina to Bunnythorpe section</u>

113. The majority of the route of the railway line from Palmerston North to Whanganui passed through lands already in Crown ownership. However, the

148 At 243.
149 Boast, Twentieth Century Land Alienation at 175.
150 Wellington and Manawatu Railway Purchase Act 1908.
151 Refer Generic Submissions at [13.12].
152 *Horowhenua Report* at 223, 247.
153 The claimants' Generic Submissions at [6.8(g)(ii)] refer to 355 acres for the Wellington to Manawatū Railway. This was not a public works acquisition by the Crown, but rather a private purchase by the Railway Company.
154 Bassett and Kay at 43.
155 Bassett and Kay, Summary for Hearing Week 3 at [4].
156 Bassett and Kay at 211.

railway line did need to cross some Māori land to link the Crown/European areas and land was thus acquired by the Crown for railway purposes.[157] The first use of the public works legislation in the district was in 1877 for the railway line from Turakina to Bunnythorpe.[158] Some Māori land was taken (56 acres), but the majority was European land (134 acres) or Crown land (258 acres).[159] The areas of Māori land involved were: Kawakawa Native Reserve; Kakariki Native Reserve (Te Reureu); Taonui Ahuaturanga; and Upper Aorangi.

114. Five percent provisions were not used here.[160] The Crown took the approach of negotiating to purchase the railway land and the takings were then formalised under the immigration and public works legislation.[161] Accordingly, the Crown does not agree that such takings can be characterised as being, "a near automatic process, undertaken without Māori consent, consultation, or meaningful opportunity for objection".[162]

Upper Aorangi

115. The Crown obtained land through Upper Aorangi for the railway line through a negotiated purchase. Te Kooro te One agreed to sell 13 acres 2 roods to the Crown for the railway line and the Crown paid £16-17-6 for the land.[163] In February 1877, Te Kooro and Tapa Te Whata also sold to the Crown for £90 a further 30 acres for the roadway between Palmerston North and Whanganui (today's SH3). Ngāti Kauwhata claimants gave evidence that the railway line (and State Highway) pass between the ūrupa and Aorangi Marae.[164] There does not appear to be evidence indicating this was brought to the Crown's attention to the time. The Crown acknowledges the concerns raised about speed limits on the State Highway, but this could not have been

157 At 211.
158 At 16, 49, 212, 255.
159 At 215.
160 Contrary to the suggestion in the Generic Submissions at [8.6].
161 Bassett and Kay at 256; Bassett and Kay, Public Works Takings Spreadsheet rows 32, 38, 40, 41.
162 Refer Generic Submissions at [8.35]. The submissions reference Bassett and Kay at 255. The relevant passage is a general statement about the legislation governing the acquisition of land for railway purposes which applied to both Māori and European land.
163 Bassett and Kay at 215-216; Husbands, Māori Aspirations at 213.
164 Statement of evidence of Hinemoana Durie and others, The social and economic impacts of losing our land (Wai 2200, #M8, 8 June 2021) at [11]. See also Ngāti Kauwhata Submissions at [284] and Generic Submissions at [15.4].

anticipated at the time the agreement was reached with Ngāti Kauwhata to purchase the land.

Kawakawa reserve

116. When Commissioner Alexander Mackay was subsequently investigating the sale of the Kawakawa reserve, he noted that 11½ acres had already been "*sold* to the Government for the railway line" (emphasis added).[165] Little further information is available about how the land was acquired.

Kakaririki Native Reserve[166]

117. Negotiations about the railway were linked with allocation of the Reureu Reserve and the location of the eastern boundary of the reserve which excluded cultivations.[167] At least one rangatira, Rāwiri te Koha, expressed opposition about the railway. The line of the railway cut across another 400 metres of cultivations.

118. Donald McLean met with the Reureu people at Marton in January 1872:[168]

118.1 McLean agreed to add an extra 1000 acres to the Reureu Reserve, with Ngāti Pikiahu and Ngāti Waewae, and Rāwiri Te Koha's Ngāti Rangatahi and Ngāti Matakore both receiving 500 acres each.[169] The Native Minister also offered to pay an amount in compensation for areas falling outside the boundary.[170]

118.2 At the close of the hui, Rāwiri te Koha stated that while he agreed to the surveying of the new reserve boundaries he "would not allow the Railway to pass through". However, a few days later McLean assured Wellington Superintendent William Fitzherbert that Rāwiri

165 Bassett and Kay at 217; Husbands, Māori Aspirations at 433, 440-441, 702.

166 Amended closing submissions for Ngāti Rangatahi and Ngāti Matakore (13 January 2026) Wai 2200, #3.3.108 [**Ngāti Rangatahi-Matakore Submissions**] at [118], [132], [136].

167 Bassett and Kay at 217, 257; Paul Husbands *Ngāti Rangatahi and Ngāti Matakore in the Porirua ki Manawatū Inquiry District 1800-1900* (Wai 2200, #A221, 31 July 2020) [**Husbands, Rangatahi and Matakore**] at 87.

168 Husbands, Rangatahi and Matakore at 88; Husbands, Māori Aspirations at 119-122.

169 Husbands, Māori Aspirations, *Maps to Accompany Summary* (Wai 2200, #A213(b)(i)) [**Husbands, Māori Aspirations, Maps to Accompany Summary**] Map 10.

170 Husbands, Māori Aspirations at 121 refers to, "£500 in 'money and agricultural implements' in compensation for the land the Reureu people had been obliged to give up, and on condition that Carkeek would not be obstructed in laying out the reserve's boundaries". Husbands, Rangatahi and Matakore at 88 refers to, "£300 as compensation for any cultivations that lay outside of the Reureu Reserve's new boundary".

had in fact withdrawn "all opposition" to the planned railway, "and promised to offer no further obstacle to the progress of surveys, roads and railroads through the land, set apart for him".

118.3 Compensation of £60 was paid to Ngāti Rangatahi and Ngāti Matakore for the land taken from the Kakariki Native Reserve for the railway.[171] The community distributed this sum amongst five Ngāti Rangatahi leaders (Toa Rangatira, Tarikama, Mika Hakaraia, Riwai Te Ruakirikiri and Hiri Te Kawa) and three Ngāti Matakore leaders (Wiari Rawiri, Te Katoa, and Te Otimi).

Taonui Ahuaturanga

119. Bassett and Kay state that there is no evidence as to whether the Crown negotiated to purchase the Taonui Ahuaturanga rail strip.[172] In fact, in 1877, this land must have been Crown land because (what became) the Taonui-Ahuaturanga block was within the boundaries of the Te Ahuaturanga-Upper Manawatū purchase.[173] Legislation was needed to return the block to Māori tenure. The Taonui-Ahuaturanga Land Act was not passed until 1877. In 1881, the Native Land Court divided Taonui-Ahuaturanga equally between Ngāti Kauwhata, Ngāti Tauira, and Rangitāne. All three of the Ngāti Kauwhata sections fronted onto the railway line, Taonui 1 from the north, and Taonui 2 and 3 from the south. Dr Husbands notes that, "connection to the railway line was much sought after because it greatly increased the value of the land, while reducing transportation costs for the land's owners".[174]

<u>Foxton to Manawatū railway</u>[175]

120. The Foxton to Manawatū Railway was initially planned as a road. This was commenced by the Provincial government and was subsequently declared a road in 1871 under the Immigration and Public Works Act 1870 (bringing it within the responsibility of central government).[176] However, the swampy

171 Bassett and Kay at 218; Husbands, Rangatahi and Matakore at 91.
172 At 216.
173 Husbands, Māori Aspirations at 219.
174 At 220.
175 Generic Submissions at [6.8(g)].
176 Bassett and Kay at 229. This taking has not been included in the Bassett and Kay, Public Works Takings Spreadsheet because the proclamation did not specify how much land was taken from each block or section.

nature of much of the route meant that a wooden tramway was instead laid along the road line in 1872. This was converted to a railway under the Railways Act 1874.[177] The middle line of the railway was proclaimed in May 1875. A further proclamation was issued in 1883, taking land either side of the original road/railway line to allow sufficient width for both the road and railway.

121. It appears there were on the ground discussions about the original laying of the road/railway line and that these again were tied up with negotiations about reserves.[178] However, there are no detailed records available about the arrangements made for laying off the original road line through the Māori reserves.[179] Bassett and Kay refer to some opposition to the rail line from Rangitāne in 1875, but this does not appear to have involved Ngāti Raukawa and affiliated groups.[180] As Ms Bassett noted, there was evidence that Māori wanted access to these transport routes (see also [107] above).[181]

122. Relevantly to Ngāti Raukawa and affiliated groups, the route passed through Māori reserves between Hīmatangi and Oroua Bridge at Rangiotu.[182] The original Public Works Department plan defining the line of the roadway appears not to have survived.[183] The 1871 description of the route included Māori blocks and customary land as follows: "And *through the award of the Native Lands Court to Te Kooro Te One and others*, crossing the River Oroua at a point where there is a bridge erected by the Provincial Government of Wellington; thence proceeding through Native land to Nga Whakarau;[184] thence proceeding through Native land to the western boundary of the

177 At 231.
178 #4.1.26 at 528.
179 Bassett and Kay, Summary for Hearing Week 3 at [22]; Bassett and Kay, Answers to Questions at [38].
180 Bassett and Kay at 232-233.
181 #4.1.26 at 528.
182 Bassett and Kay at 229-232.
183 Bassett and Kay confirmed it was not unusual in the early to mid 1870s for the proclamation not to specify the amount of land being taken. This information was in the survey plan or record book which was publicly displayed. In this case, the survey plans appear to have been lost. See Bassett and Kay, Answers to Questions of Clarification at [28].
184 In 1883, this last section involved four takings from the Rangitāne reserve of Lower Aorangi. See Bassett and Kay, Public Works Takings Spreadsheet rows 72-75. Bassett and Kay also refer at 234 to a further taking for the Foxton-New Plymouth Railway. Again, this involved the Rangitāne reserve of Lower Aorangi.

township of Palmerston …" (emphasis added).[185] The route also passed through two Rangitāne reserves before the Oroua Bridge.[186]

123. Bassett and Kay estimate that the total amount of Māori land used for the Foxton-Longburn Railway and adjoining road was in the vicinity of 116 acres.[187] Of this, 18 acres would then have been taken from Ngāti Kauwhata[188] (with the remainder being taken from Rangitāne lands). The 58 acres of Māori land taken in 1883 (most of the land covered by the proclamation was Crown railway land) was taken under s 130 of the Public Works Act 1882 (which allowed claims for compensation to be made to the Minister).[189]

Disposal of railway sections

124. The line from Foxton to Manawatū formally ceased operation in 1959. In the early 1960s, portions of the railway land were declared Crown land, and some areas between Foxton and Hīmatangi were disposed of to the adjoining land owners.[190] Bassett and Kay note that some railway strips adjoining Māori owned Hīmatangi blocks remain Crown land.[191] The disposal of some railway strips was not a "revesting" in a public works sense as the land for the railway in this location was not taken under the public works

185 The award to Te Kooro Te One of Ngāti Kauwata is depicted in Husbands, Māori Aspirations, Maps to Accompany Summary at Map 8 ("Puketotara (Oroua Bridge)") and Map 11 ("51-Puketotara (Oroua Bridge)").

186 These reserves are depicted in Husbands, Māori Aspirations, Maps to Accompany Summary at Map 9 ("17-Puketotara" and "18-Native Reserve"). See Bassett and Kay, Public Works Takings Spreadsheet rows 69-70. See also Walghan Partners *Porirua ki Manawatu Inquiry District Research Programme Block Research Narratives* vol I, pt I (Wai 2200, #A212, 26 November 2018) [**Walghan Partners**]; and Walghan Partners *Block Research Narratives* (Wai 2200, #A212(b)) [**Walghan Partners, Block Research Narratives**] at 248.

187 Bassett and Kay at 234. The authors clarified that this figure is the result of doubling the amount taken in 1883. See Bassett and Kay, Answers to Questions of Clarification at [29].

188 9 acres was taken in 1883 from "Native Land Abutting on the Western Bank of the Oroua Stream Rangitikei-Manawatu Block B". If the 1883 taking amount is doubled per the Bassett and Kay analysis, the total amount taken from the Ngāti Kauwhata lands would have been 18 acres. See Bassett and Kay, Public Works Takings Spreadsheet row 71.

189 Bassett and Kay at 234; Bassett and Kay, Public Works Takings Spreadsheet rows 24-30.

190 At 235; Bassett and Kay, Summary for Hearing Week 3 at [22].

191 According to Bassett and Kay, Answers to Questions of Clarification at [30], the relevant lands are: railway strip Section 725 Town of Carnarvon (adjoining Hīmatangi 3B1 & 3A2E1B); railway strip Section 814 Town of Carnarvon (adjoining Hīmatangi 4D1B5); railway strip Section 815 Town of Carnarvon (adjoining Hīmatangi 7); railway strip Section 717 Town of Carnarvon (adjoining Hīmatangi 5A9C114); railway strips Section 716 and 718 Town of Carnarvon (adjoining Hīmatangi 5A9C2); railway strip Section 812 Town of Carnarvon (adjoining Hīmatangi 4D1B3); railway strip Section 813 Town of Carnarvon (Hīmatangi 4D1B4).

legislation (being part of the Rangitīkei-Manawatū purchase). Accordingly, it does not demonstrate "poor compliance with surplus land return obligations".[192]

125. The Crown has sought further information about the disposal of these sections. Counsel are instructed that officials from Te Tari Whakatau have been unable to determine why railway strips adjoining Māori owned Hīmatangi blocks were not ultimately transferred to adjoining owners and remain Crown land, despite being approval to do so having been granted. Relevant documents from archived file 16/1387/1 (R1784538) are **attached** to these submissions, along with NZ Gazette 1963 p 948 and survey plan SO 32681. These documents disclose that:

125.1 In 1963, the Minister of Lands revoked the reservation for the purpose of construction of a line of railway from Foxton to Manawatu over the land running along the eastern and south-eastern and southern side of the Foxton Manawatu Railway "from the point where the northern boundary of the Awa Hou Block (called the Township of Foxton) crosses the railway line, and extending northward and then north-eastward and eastward to a point where the western boundary of a Maori reserve for the Rangitane tribe abuts on the road and railway line".

125.2 In December 1979, a recommendation was sought to classify various sections of Crown land as farmland under s 51(1)(a) of the Land Act 1948 and subsequently dispose of them to the adjoining landowners under s 54 of the Land Act 1948.

125.3 The relevant sections proposed for disposal included all sections identified by Bassett and Kay, plus some additional sections. Those sections were (with those identified by Bassett and Kay bolded): sections **716, 717, 718, 719** (a survey plan SO 32681 confirms that sections 812–815 are subdivisions of former section 719 Town of Carnarvon), 720, 724, **725,** and 726 Town of Carnarvon.

192 Compare Generic Submissions at [8.36]. See also Hīmatangi Submissions at [356].

125.4 The memorandum seeking approval indicates that sections 716-720, 724, and 725 were to be vested in the adjoining Māori owners/Māori titles. It notes, "Those adjoining owners whom the Field Officer was able to contact expressed keen interest in acquiring the Crown land". In addition, the memorandum states, "it would be undesirable to dispose of the areas to any persons other than the adjoining owners because all of the Crown sections provide access on to legal road".

125.5 The file indicates that this recommendation was approved on 1 February 1980.

125.6 Based on the current land records, it appears that the proposed disposal to the adjoining landowners did not proceed. There is, however, nothing on the file to explain why the approved disposal recommendation was not implemented.

Railway takings after 1900

126. The main railway routes were completed by 1900. After that, public works acquisitions involved relatively small takings for purposes such as realignments, station expansion, ballast pits, and accommodation sites for railway staff.[193] In particular:

126.1 Between 1900 and 2010 there were 529 takings for railway purposes in the whole of PkM. Only 14 of these were from land in Māori ownership (of a total of 34 takings of Māori land for railways).

126.2 Only 5 of those takings were from the Ngāti Raukawa and affiliated groups' rohe.[194] In 1901, 2 acres 1 rood 8.6 perches were taken from Reureu 2L, and in 1912, 1 acre 1 rood 3 perches was taken from Reureu 2M.[195] These were, respectively, taken under s 28 of the Public Works Act 1894 and s 29 Public Works Act 1908 which provided for compensation to be paid. In 1910, 1 rood 20.1 perches was taken from Totaranui 11D1 under s 29 of the Public Works Act

193 Bassett and Kay at 252, 259.
194 At 252; Bassett and Kay, Summary for Hearing Week 3 at [26].
195 At 227; Bassett and Kay, Public Works Takings Spreadsheet rows 234 and 313.

1908.[196] The same year, £40 compensation was paid for 3 roods and 4.6 perches from Ngakaroro 1A6.[197] In the case of the 2 roods taken from Manawatū-Kukutauaki 3 Section 1A2 in 1946, the Railways Department negotiated with the sole owner before the land was taken. They agreed on £70 compensation (the special government valuation was £55).[198]

Issue 6.5(a): To what extent did the Crown, local government, or other bodies exercising the power to acquire land compulsorily from Ngāti Raukawa and affiliated groups ensure that Māori landowners were left with sufficient amounts of land to sustain themselves following public works takings?

127. On considering or acquiring lands for public purposes, the Treaty principle of active protection arguably requires that the Crown take positive steps to investigate and ensure Māori are left with sufficient land for their present and reasonably foreseeable future needs.

128. The Crown acknowledges that public works legislation has not contained an express requirement under the legislation that decision-makers consider whether Māori would be left with sufficient land for their needs if a proposed public works taking proceeded. The Crown accepts that there may be an issue as to whether it should have sought to include in public works legislation such a requirement.

129. Nevertheless, from the enactment of the Public Works Act 1908, a process existed by which Māori affected by a proposed taking or public work could object.[199] As Bassett and Kay noted,[200] it was not a standard procedure to pre-emptively assess the adequacy of remaining lands but the objection process provided an avenue whereby Māori could raise issues as to the sufficiency of remaining land.

130. The Crown submits it would be incorrect to assume that, simply because public works legislation did not provide for certain matters, they were not taken into account by authorities in respect of individual acquisitions. It

196 At row 673. Two takings of European land occurred at the same time.
197 At row 683.
198 Bassett and Kay at 254; Bassett and Kay, Public Works Takings Spreadsheet row 2347.
199 See, for example, Public Works Act 1908 s 18(f).
200 Bassett and Kay, Answers to Questions of Clarification at [54].

would be unsafe to assume automatically that the absence of any statutory requirement meant that the remaining land interests of those subject to a particular acquisition were not taken into account in a more general way by officials familiar with the district in which the takings occurred. This needs to be assessed on a case-by-case basis.

131. The limited extent of evidence on the record of inquiry means there is not enough information available for the Tribunal to be able to come to any broad conclusions on this issue.

Specific matters raised by claimants

132. Five percent takings are addressed in detail above (see [41]-[71]). Relevantly, despite the number of individual takings, the amount of land taken under these provisions was cumulatively small. In all, 321.56 acres were taken under the five percent provisions between the Kukutauaki Stream and the Rangitīkei River (of which, the Foxton-Ōtaki road made up approximately 29% as discussed above at [71]). In addition, most of these takings were individually small which would have reduced the impact on the amount of Māori land remaining in particular blocks. The claimants say five percent takings "[left] uneconomic remnants".[201] The Crown is not aware of evidence that these takings had that effect.

133. The public works takings in Porirua in the 1950s-60s are not directly relevant to Ngāti Raukawa and affiliated groups.[202]

134. The claimants say, "a lower proportion of later takings fell on Māori simply because less Māori land remained yet each taking had greater relative impact on the residual base".[203] As above at [40], the Crown acknowledges the context of prior Māori land alienation is relevant. However, the Crown is not aware of evidence specifically addressing the relative impact of public works takings on the residual base.[204]

201 See Generic Submissions at [12.3(a)].
202 See Generic Submissions at [12.3(b)].
203 See Generic Submissions at [12.3]-[12.5].
204 The claimants cite Bassett and Kay at 42, but this reference does not support the proposition.

135. The claimants say, "Māori were often left with parcels that were unattainable... and land that was non-viable".[205] The particular example raised by the claimants is the Whirokino cut. This is addressed below. Otherwise, the Crown does not accept that the evidence supports the proposition that *public works takings* generally, or often, had these effects.[206]

136. In respect of Whirokino, the Crown acknowledges that, in 1941, the District Engineer noted that the cut would leave the remainder of Te Rerengaohau 2B (as well as the European owned Whirokino 1) as severances.[207] He anticipated that "claims will doubtless be received for damages in this connection". No such claims from the Māori owners appear to have eventuated and it is unclear the extent to which the Government valuation took severance into account (compensation for the Whirokino cut is addressed below at [276]). A land exchange was also considered, but not pursued. The balance of Te Rerengaohau 2B did not stay in Māori ownership for long. The remaining 397 acres of Te Rerengaohau 2B were vested in the Ikaroa District Māori Land Board in October 1945 under s 8 of the Native Purposes Act 1943.[208] In 1956, 209 acres of Te Rerengaohau 2B was then acquired by the Crown under the Land Act 1948 for the purposes of sand dune reclamation and the remainder was sold to a private purchaser.

Issue 6.5(b): To what extent did the Crown, local government, or other bodies exercising the power to acquire land compulsorily from Ngāti Raukawa and affiliated groups ensure that no suitable alternative land was available before acquiring?

137. In the *McGuire* case, Lord Cooke observed:[209]

> The Treaty of Waitangi guaranteed Māori the full exclusive and undisturbed possession of their lands and their states, forests, fisheries and other properties which they desired to retain. While, as already mentioned, this cannot exclude compulsory acquisition

205 See Generic Submissions at [12.6].
206 The evidence cited in footnotes 157 and 158 does not directly relate to public works takings.
207 Bassett and Kay at 284.
208 Walghan Partners, Block Research Narratives at 283.
209 At [21].

> (with proper compensation) for necessary public purposes, it and the other statutory provisions quoted do mean that special regard to Māori interests and values is required in such policy decisions as determining the routes of roads. Thus, for instance, their Lordships think that if an alternative route not significantly affecting Māori land which the owners desire to retain were reasonably acceptable even if not ideal, it would accord with the spirit of the legislation to prefer the route.

138. The Crown notes that geographic features will often determine the most appropriate or the best site for a public work, particularly in areas of rugged hill country. Certain geographic features obviously limit the choices that can be made in acquiring land, which in turn may limit the consideration that is given to alternative sites. There may also be particular factors or circumstances that favour the acquisition of one site over another. The circumstances of each acquisition accordingly need to be considered on a case-by-case basis.

139. While the Crown acknowledges that public works legislation did not require Māori-owned land to be avoided or that alternative sites be considered, it would be incorrect to assume that alternative sites were not considered by authorities when acquiring land for public works. In any case, the Crown says that the evidence on this point is incomplete in that it often does not disclose whether or not alternative sites were considered. Moreover, if non-Māori land is ultimately taken, such examples may not come to the attention of researchers looking for public works takings of Māori land.

Issue 6.5(c): To what extent did the Crown, local government, or other bodies exercising the power to acquire land compulsorily from Ngāti Raukawa and affiliated groups limit acquisitions to exceptional circumstances or as a last resort?

140. As set out above, the Crown says the compulsory acquisition of land under the public works regime is not, in itself, inconsistent with the Treaty. Compulsory public works takings do not require exceptional circumstances and need not be a last resort.

141. Nevertheless, there are examples where—despite a power to take land compulsorily—the Crown has been able to resolve matters by agreement

(even if the acquisition is then formalised under public works legislation). See, for instance, various examples at [203]-[214] below.

Issue 6.5(d): To what extent did the Crown, local government, or other bodies exercising the power to acquire land compulsorily from Ngāti Raukawa and affiliated groups explore the taking of lesser interests such as leasehold interests?

142. The *Te Maunga Report* and *Turangi Township Report* noted that alternatives such as leasing land can be preferable to acquisition.[210] The Tribunal considered that use of alternatives such as leasing meant that, when the land was no longer required for a particular public purpose, it could be more easily returned to its former owners and the status of any improvements negotiated.

143. The Crown notes that public works legislation did not require any formal assessment of alternatives to acquiring freehold interests in land required for public works. Leasehold interests could be compulsorily acquired under public works legislation, but generally this provision was used only rarely and was not favoured by the Crown.

144. The Crown accepts that its preferred mode of acquisition appears to have been to purchase Māori land rather than to lease it, as it was generally considered that land had to be in Crown ownership before public funds could be expended to improve that property.

145. The evidence on this point is incomplete, however, in that it often does not disclose whether alternatives to freehold interests were explored, or utilised, by the taking authority. An absence of evidence does not necessarily equate to evidence of absence. For instance, if leasehold arrangements were used, such examples may not come to the attention of researchers looking for public works takings. Accordingly, the Crown does not accept the claimants' submission that, "The evidence before this Tribunal demonstrates that, in acquiring Ngāti Raukawa and affiliated groups' land for public works, the Crown and local authorities made little to no effort to explore alternative mechanisms."[211] The only example relied upon by the claimants directly in

210 *Te Maunga Railways Land Report* (Wai 315, 1994) at 81-82 and *Turangi Township Report* (Wai 84, 1995) at 17.3.5.

211 Generic Submissions at [10.1].

support of this proposition, taking of land from Ōhinepuhiawe 140 and 141 for river protection purposes in 1932, is actually an example of where leasing was considered (although ultimately not pursued) as addressed below at [158]-[167].

146. Claimants refer to the taking of land alongside the Oroua River for river protection as being an example of where "control" was used as justification for taking.[212] In this case:

146.1 In January 1929, a portion of the left bank of the Oroua River was declared as protected under s 207 of the Public Works Act 1928. This meant (*inter alia*) that protection of the banks was a public work. Planting of lupin, willow, and gum trees was undertaken to protect the riverbanks.[213] The affected land included Aorangi Part Lot 273 Part Section 145 Township of Sandon (4a 3r 3p).

146.2 In July 1932, Richard Drummond, who ran cattle on the block, said the Māori owners of Aorangi Part Lot 273 Part Section 145 did not want to lose their land but were willing to allow the Council to plant willows along the dry riverbed.[214]

146.3 Native Department Officer J.H. Flowers noted that Drummond grazed his cattle on this land which damaged the protecting ground cover and recommended the Council acquire the area. The Under Secretary for Works acknowledged that the Māori owners wished to still use their land. Public Works suggested the land should be taken "to give them [the council] better control of the area".[215] It was proposed that a one chain strip be taken along the river frontage for the purpose of willow planting for flood protection.

146.4 Drummond said the Māori owners were willing to help plant trees and fence a one chain strip along the riverbanks.[216] Drummond

212 At [10.3], [10.7]. See also Ngāti Kauwhata Submissions at [308] and Ngāti Wehi Wehi Submissions at [293].
213 Bassett and Kay at 286.
214 At 286.
215 At 287.
216 At 287.

noted that the course of the river had changed over the block and, where it had once been on the boundary of the section, it now ran through the centre of the block. Allowing an area of one chain for river protection did not take into account future changes to the course of the river. Drummond argued the Māori owners could still retain their land if it was planted in willows and retention would take into account any future changes to the river.

146.5 Then, in November 1932, the Council's engineer said Māori owned cattle had been found within the five-chain planted area which he said made the £800 of protection work pointless.[217] This appears effectively to have confirmed the decision to acquire the land. From the fact that Richard Drummond was suggesting fencing off the planted area, it seems unlikely this step had previously been taken to prevent stock wandering. The Crown acknowledges the material before the Tribunal does not indicate real consideration was given to such steps which might have provided the control sought by the Council while allowing the owners to retain their land.

146.6 It appears, however, that owners were not necessarily unanimous in wishing to retain the land. In June 1933, owner Haimona Renao informed the Council that, as a member of 'Kauwhata Tribe', he was willing to sell the Council Lot 273.[218] No evidence has been located of negotiations to purchase the land.

146.7 In October 1933, letters stating that the Council intended taking the land were sent out to a number of owners in Awahuri, Palmerston North, Wairoa, and Manakau.[219] The same month, a notice of intention to take land from Lot 273 Part Section 145 Township of Sandon was issued for river protection work and to safeguard the approaches to the Awahuri Bridge.[220]

217 At 288.
218 At 288.
219 Woodley, Local Government Issues at 160.
220 Bassett and Kay at 289.

146.8 A proclamation taking 7 acres 3 roods 28.7 perches of Lot 273 Part Section 145 Township of Sandon for river protection was issued in February 1934.[221] As below at [264.2], part of the land was returned to the owners the following year.

146.9 In 1936, the Native Land Court awarded £63-12-6 compensation for Part Lot 273 Part Section 145.[222]

Examples where taking of lesser interests was considered/utilised

147. The claimants say the taking of lesser interests "remained largely theoretical" and "almost never applied in practice".[223] However, the Crown notes there were a range of cases where such alternatives were considered and/or utilised. For instance, land for ferry sites (for example, Ōtaki and Ohau) was leased at least up until the late 1870s.[224] Further examples are described below.

Kakariki ballast pit

148. The claimants say this was an example where the taking of a lesser interest was dismissed in favour of a permanent freehold acquisition.[225] This is not correct. In the late 1880s, following opposition from Māori to the taking of land at Kakariki for a ballast pit, the Native Affairs Department supported the owners and a compromise limited term agreement was reached. In particular:[226]

148.1 In 1888, 25 acres of Paiaka Native reserve was proclaimed as taken for the purposes of a railway ballast pit.[227] The Māori owners objected, and Railways was told to "take no further steps to enter upon the land" until the objections had been settled.

148.2 To begin with, the Native Department suggested land be purchased to exchange for the land to be taken for the ballast pit, but this did not eventuate.

221 Bassett and Kay, Public Works Takings Spreadsheet row 1409.
222 Bassett and Kay at 291.
223 Generic Submissions at [10.2].
224 Bassett and Kay at 67-69.
225 Generic Submissions at [10.3].
226 Bassett and Kay at 218, 257; Bassett and Kay, Summary for Hearing Week 3 at [21].
227 Bassett and Kay, Public Works Takings Spreadsheet row 185.

148.3 In January 1893, agreement was reached for Railways to use part of the land. Once Railways had removed all the ballast required, the land would be returned to the owners.

148.4 In 1894, the Native Land Court heard an application for compensation for the ballast pit.[228] The following year, the Native Appellate Court awarded the sum of £176-2-0 of which £88-1-0 was awarded to 9 members of Ngāti Rangatahi and £88-1-0 to 12 members of Ngāti Maniapoto.[229]

148.5 By the time the ballast pit was no longer required in 1911, officials were unaware of this agreement, and leased the land to a Pākehā farmer.[230] In 1913, one of the original owners pointed out that the land was intended to revest. In 1915, the Railways Department decided to take steps to revest the land, but preserve the existing lease. Special legislation was required to revest the land. (s 13 of the Native Land Amendment and Native Land Claims Adjustment Act 1915). The Act provided that the annual rental from the lease would be paid to the owners.

148.6 In 1915, the Native Minister asked the Native Land Court to determine in whom the block should be vested, and their respective shares of the rent money.[231] The Court hearing, however, did not occur until September 1919 (and the Crown does not appear to bear responsibility for the delay). On 15 September 1919, the Native Land Court investigated the title to the Kakariki Ballast Pit and awarded the area to the original owners in their respective portions and directed that the accumulated rents be paid to those named.

148.7 In October 1919 the sum of £105-2 0 from 1 April 1911 to 31 March 1918 at £15-2-0 per annum was available for distribution. The

228 Bassett and Kay at 221-224.
229 At 226.
230 At 226.
231 At 227.

Railways Department paid this to the Aotea District Māori Board for distribution.[232]

Ōtaki Court House[233]

149. Between 1865 and 1893, the Mangapouri section of the Ōtaki township was leased to the Crown for the courthouse. As reported by the Resident Magistrate in 1881, the building was owned by Hoani Taipua and other Māori who received £10 per annum for its use.

150. In the early 1880s, concerns were raised about the condition of the building and alternative options were explored. The owners declined to repair the building, but they were prepared to move the courthouse to another site near the college grounds and provide the government with a five-year lease.

151. In May 1882, the Ōtaki Court House was burned down.

152. In November 1893, the Under Secretary for the Department of Justice inspected sites at Ōtaki for a new courthouse. Hoani Taipua had offered quarter of an acre, but it was on a back street and too small. Hemi Kuki offered half an acre near the railway station, but it was too far out of the way.

153. In March 1894, F. Bright (a European landowner) offered to sell Waerenga 1 (1 acre) on the Ōtaki Main Road to the railway station near the Jubilee Hotel for £110 as the site for the courthouse and police station. In June 1894, the conveyance of Waerenga 1 and 2 to the Lands Department for a courthouse had been completed.

Kakariki fuel depot[234]

154. In June 1942, Kahurautete Matawha on behalf of the owners of Reureu 2F agreed to the use and occupation by the Air Force of ten acres of land at Kakariki.[235] Rental of 30 shillings an acre was to be paid to the owners and the Air Force was to vacate the land after the war. Part of the land was used

232 At 227.
233 At 525-527.
234 At 528-531. See also Ngāti Rangatahi-Matakore Submissions submissions at [140].
235 This was later identified to be 9 acres 2 roods 19 perches of Reureu 2F and 33 perches of the Paiaka reserve.

by the Air Force to construct a fuel depot during the war, and the remainder was used for grazing.

155. After the war, the Air Force wanted to keep the fuel depot located on Reureu 2F. Initially, it was proposed that 9 acres 2 roods 19 perches of Reureu 2F be taken for public works. However, this was reconsidered and amended to include only the existing fuel depot and an easement to access the pipeline and fuel tank.

156. In May 1956, a proclamation taking Part Piaka (33p) and Part Reureu 2F (1r 20.2p) for defence purposes, along with easements over Part Reureu 2F (1r 5.7p) and Part Reureu 2F (32.7p) was gazetted.[236] The Māori Land Court was told that the taking was intended to "affect the Maori owners as little as possible" by restricting the land taken to the fuel depot and easement for the pipeline. In line with the valuation, the Court ordered compensation of £20 for the two areas taken.

157. In June 1959, the land taken from Part Piaka and Part Reureu 2F was no longer required for government purposes, and was declared to be Crown land. It was then given the appellation Section 45 Block VII Rangitoto Survey District. Today it is general land, but is owned by one of the members of the whānau from whom it was acquired.

Ōhinepuhiawe 140 and 141 (1932 river protection)

158. After the existing bridge was destroyed by flooding in 1897, a new timber bridge was completed at Bulls in 1903. It was opened by Premier Richard Seddon. It was reported that, "'The Maoris took a leading part. They gave Mr Seddon a splendid welcome and presented him with mats.'"[237][238][239]

236 Bassett and Kay, Public Works Takings Spreadsheet rows 3281-3282.

237 Mr Alexander noted that, "The dramatically altered course of the river through Ohinepuhiawe as a result of the 1897 flood was not foreseen by the Crown or the Maori owners. Nor, given the location of the meeting house on Reureu block that had to be shifted after the 1897 flood, is it reasonable to imagine that the flood and its consequences for riparian land had been anticipated by the Reureu reserve owners.": David Alexander *Rangitīkei River and its Tributaries Historical Report*, *Answers to Questions* (Wai 2200, #A187(c)) at 17.

238 Alexander, Rangitīkei River Report at 223.

239 Bassett and Kay at 298.

159. In the early 1930s, the river was "dangerously striking into the west bank above the bridge" and the Rangitīkei County Council planned to align the Rangitīkei River so that its flow would not be heading in a direction that attacked or undermined the bridge supports and approaches.[240]

160. On 20 March 1931, the Government issued a warrant giving the Rangitīkei County Council, "the control of the Rangitīkei River Bridge at Bulls, together with the approaches" as far upstream as Cemetery Point (a distance of approximately 100 chains or two kilometres) for the purpose of constructing River protection works on the western bank of the Rangitīkei River.[241]

161. On 29 August 1931, the Rangitīkei County Council issued notice of its intention to take 54½ acres of Ōhinepuhiawe land for "protective works on the western bank of the Rangitīkei River in connection with the Rangitīkei River bridge at Bulls".[242] The Council stated that the protection works were essential to prevent the river from washing away the western approaches to the Bulls Bridge. The notice was displayed at the offices of the Rangitīkei County Council in Marton, the Manawatū County Council in Sanson, and by the Bulls Town Board in Bulls.[243]

162. On 13 February 1932, the 54½ acres were formally taken by the Crown on the County's behalf by a proclamation under the Public Works Act 1928.[244]

163. Contrary to the suggestion by some claimants, the land was not taken "on the basis that the new channel across the reserve was already Crown land".[245] Rather, some of the land (involving sections 140A, 140B, 141B1) was part of the original Ōhinepuhiawe reserve that had become located on the western (Bulls) side of the river once it had burst through the reserve in

240 Alexander, Rangitīkei River Report at 223, 225.
241 Husbands, Māori Aspirations at 648.
242 At 648; Alexander, Rangitīkei River Report at 223.
243 Bassett and Kay at 298.
244 Husbands, Māori Aspirations at 648; Alexander, Rangitīkei River Report at 223, 224 Map 10 (marked green); Bassett and Kay at 299, 300 (Map 30: Ohinepuhiawe Land Taken for River Protection 1932); Bassett and Kay, Public Works Takings Spreadsheet rows 1339-1344.
245 Closing submissions for Ngāti Parewahawaha and Ngāti Manomano (13 January 2026) Wai 2200, #3.3.126 [**Ngāti Parewahawaha and Ngāti Manomano Submissions**] at [239].

1897.[246] The remaining land (involving sections 140C and 141G) was former riverbed that had been vested in the owners of Ōhinepuhiawe in 1930.[247]

164. Some claimants suggest leasing was not considered in respect of Ōhinepuhiawe.[248] This is not correct. Although a permanent taking ultimately resulted, to begin with the proposal did not include a taking under the Public Works Act. It was described in the following terms in November 1930:[249]

> As the river is persistently trying to regain the old course of prior to 1897, eroding away land and threatening the Bulls approach to the bridge, it is proposed to acquire and plant a belt along the west bank…. The work proposed is in conjunction with the Main Highway Board and entirely to stabilise the bridge site. However, in doing so private owners will also be protected, and it is considered that owners should vest the land required in a long lease if the Council and Highway Board do the protective works and planting.

165. It is not clear why the intended leasing was changed to a proposed taking under the Public Works Act.[250] Bassett and Kay say, "it was decided that protective planting work would require ongoing maintenance on these Ohinepuhiawe sections".[251] However, no reference is cited for this point.

166. Bassett and Kay identified alternative arrangements that could have been used:[252]

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246 Alexander, Rangitīkei River Report at 87, Map 6: Ohinepuhiawe Maori Reserve.

247 Husbands, Māori Aspirations at 642-643; Alexander, Rangitīkei River Report at 109-110. Section 58 of the Native Land Amendment and Native Claims Adjustment Act empowered the Native Land Court "to inquire and determine" the owners of the 101 acre three roods and three perches of "the bed of the former course of the Rangitīkei River" where it adjoined Sections 140 and 141 of the Ōhinepuhiawe Reserve. Once the Court had determined ownership, the Crown's rights to the land would "cease", and the land would "become Native Land". The Native Land Court's investigation of title to the former Rangitīkei River bed was held on 12 and 13 March 1930. By agreement, 92 acres (after making provision for a European owner) was divided into six titles: 140C, 141C, 141D, 141E, 141F, and 141G.

248 Closing submissions for the Wai 2197 claim (19 December 2025) Wai 2200, #3.3.121 [**Wai 2197 Submissions**] at [115].

249 Alexander, Rangitīkei River Report at 225.

250 At 225.

251 Bassett and Kay at 299, 319.

252 Bassett and Kay, Answers to Questions at [87]-[89].

166.1 some sort of lease arrangement, whereby the Council was able to undertake tree planting and/or other measures, while the freehold remained in Māori ownership;

166.2 long-term access rights arrangements with the owners, including permission for tree planting and other works to be carried out by Council workers or contractors; or

166.3 establishment of an ongoing contract which would take care of the maintenance (not requiring either the leasehold or freehold to be acquired).

167. However, without further evidence about the decision ultimately to take the land under the Public Works Act, no finding can be made about whether any of these options was feasible in the circumstances. As addressed further below at [209]-[211], agreement to the taking was reached with owners.

Ōhinepuhiawe 140 and 141 (1981 river protection)

168. From 1941, the Crown established a unified regulatory framework within which local bodies could carry out flood control measures, in the form of the Soil Conservation and Rivers Control Act. The Act provided for the establishment of local catchment boards to minimise and prevent damage from floods and erosion and promote soil conservation. The Rangitīkei-Wanganui Catchment Board was the relevant authority for the Rangitīkei river catchment. The Catchment Board was not part of the Crown, nor was it operating on its behalf.

169. Since 1897, the Rangitīkei River had passed through the Ōhinepuhiawe reserve. In the 1970s, the Rangitīkei-Wanganui Catchment Board, as part of a wider drive to acquire title to the flood channel, decided it wanted to acquire the Māori-owned riverbed (as well as other land) at Ōhinepuhiawe.[253]

170. During an informal meeting at Parewahawaha Marae in December 1978, it was apparently agreed that, "the Chief Engineer recommend to the Board that serious consideration be given to the question of an easement with

253 Alexander, Rangitīkei River Report at 473.

restrictions, rather than an actual "taking", the effect being that while the title to the lands remain in Maori ownership the Board will still be able to carry out its work fully and effectively."[254]

171. Subsequently, however, the Catchment Board decided it did need to take the land for river control. Various owners, including Ōhinepuhiawe Māori, sought the independent view of the Planning Tribunal. The Planning Tribunal's 1979 decision on objections to the takings considered the reasons for taking the land and alternative options.

Planning Tribunal confirms taking of Māori land

172. The evidence of the Chief Engineer for the Catchment Board describes the river control measures underpinning the Board's conclusion that, "the only way it could effectively carry out its control works with any degree of certainty as to tenure and as to its powers, was to acquire the land under the provision of the Public Works Act…".[255] The proposed flood control measures involved planting and building of trenches making two lines of defence against flooding. The plantations would be extremely susceptible to stock damage by ring barking which would seriously affect the efficacy of the second line of defence. Areas not suitable for planation needed to be kept clear (without fencing, crops, or buildings) to allow free flow of flood water.[256]

173. The Tribunal's conclusions about whether the Board needed to take land depended on the nature of the works planned for that particular land. This was demonstrated by the differing outcomes for two Pākehā objectors.

174. Mr R.I. Jamieson, a Pākehā farmer, suggested bylaws or town planning controls could be effective in controlling activities on his land to safeguard the river control and flood protection measures and, if so, the taking of his land would not be necessary.[257] However:

254 At 475.
255 Alexander, Rangitīkei River Report, *Supporting Documents* (Wai 2200, #A187(a)) [**Alexander, Rangitīkei River Report, Supporting Documents**] at 3312-3314.
256 At 3313-3314.
257 At 3315-3317.

174.1 The Tribunal dismissed bylaws as being "punitive and negative" and not the type of control required by the Board; the Board required "positive control to ensure that damage does not take place", rather than the ability to prosecute after the fact.

174.2 Town planning controls would be largely ineffective because they did not enable termination of existing use rights and enforcement was not in the hands of the Board.

174.3 The Tribunal also noted that, while the Catchment Board had a harmonious relationship with Mr Jamieson, successors in title might not be so co-operative.

174.4 The Board required "complete freedom to undertake such plantings as they deem necessary and to carry out such other prevention works as may from time to time be appropriate". The Board may also need to exclude stock and "the only way the Catchment Board can effectively achieve this objective is by taking the land."

174.5 Accordingly, the Tribunal concluded that, to achieve its objectives, the Catchment Board "is left with little option but to acquire this land".

175. By contrast, Bartlett's land was to be managed passively so did not require so much control and not all of the land was needed for planting. Accordingly, bylaw powers could be used in respect of the riverbank strip needed for planting.[258]

176. In respect of the Māori land, this was in the same category as Mr Jamieson's land. The Planning Tribunal held that, "the taking is fair, sound and reasonably necessary to achieve the objectives of the Catchment Board" (see also [263] below).[259]

258 At 3317-3319.
259 At 3314-3315.

177. Eight sections of European land were taken in 1980.[260] Seven sections of Māori land,[261] and a further European section,[262] were taken in 1981.

Drainage schemes

178. There were several large-scale drainage schemes undertaken in the Manawatū in the late nineteenth and twentieth century. Bassett and Kay note that, despite the widespread drainage works, there were relatively few acquisitions of land for drainage purposes. The authors posit that this may be because the nature of drainage works were that drains could be constructed without necessarily having to take the land into Crown or local authority ownership.[263]

Issue 6.5(e): To what extent did the Crown, local government, or other bodies exercising the power to acquire land compulsorily from Ngāti Raukawa and affiliated groups take into consideration Māori cultural values, including presence of wāhi tapu when making decisions about exercising their powers?

179. Public works legislation from the Native Land Act 1865 through to twentieth century Public Works Acts have contained a number of protections for specified categories of land. For example, the Native Land Act 1873 provided protections for land occupied by Māori pā, villages or cultivations as well as the more general buildings, gardens, orchards, plantations, burial and other ornamental grounds.[264] Subsequent legislation contained similar provisions.[265]

260 Bassett and Kay, Public Works Takings Spreadsheet rows 7234 (Ohinepuhiawe 141A5A), 7235 (Ohinepuhiawe 141A3), 7236 (Part Ohinepuhiawe 141A5B), 7237 (Ohinepuhiawe 141A1A), 7238 (Ohinepuhiawe 141A1B), 7239 (Ohinepuhiawe 141A1C), 7244 (Part Ohinepuhiawe 141A5B), 7245 (Part Ohinepuhiawe 141A2), 7246 (Ohinepuhiawe 141B3).

261 At rows 7313 (Part Ohinepuhiawe 141B1), 7314 (Part Ohinepuhiawe 141B5), 7315 (Ohinepuhiawe 141B2), 7317 (Ohinepuhiawe 141B4B), 7318 (Part Ohinepuhiawe 141B5), 7319 (Part Ohinepuhiawe 140A), 7320 (Part Ohinepuhiawe 141A2). Alexander's A187 report also refers to takings from Part Ohinepuhiawe 140B3 and Ohinepuhiawe 141A4B, but these are not listed in the Public Works Bassett and Kay, Public Works Takings Spreadsheet.

262 At row 7316 (Ohinepuhiawe 141B3).

263 Bassett and Kay at 319.

264 Although it is noted that under the Public Works Act 1908 these types of land could be taken with the consent of the Governor in Council.

265 See, for example, the Public Works Act 1882, s 20, and the Public Works Act 1894, s 14. Exceptions applied in respect of public works for railways and, from 1894, defence purposes.

180. The evidence on this point is incomplete in that it often does not disclose the way in which decision makers took into consideration Māori cultural values including the presence of wāhi tapu.

Issue 6.5(f): To what extent did the Crown, local government, or other bodies exercising the power to acquire land compulsorily from Ngāti Raukawa and affiliated groups notify rights holders about proposed takings?

181. Statutory processes for notice of public works acquisitions and for land owners to raise objections were developed over time. For example:

181.1 Under the Public Works Act 1894, notification of the taking of non-registered Māori land would be published in the Gazette and a 40-day notice period was given.[266]

181.2 The Public Works Act 1908 required every owner to be notified of the intended acquisition.[267] There was no statutory requirement for the Crown to consult Māori landowners prior to notification of the intention to take land. The applicable public works provisions required any well-founded objections to a proposed acquisition to be heard in person.[268]

181.3 The Public Works Amendment Act 1909 brought the Gazette notification mechanism for multiply-owned land into the same provision as all other forms of notification.[269]

181.4 Today, under the Public Works Act 1981, s 18(5) provides for a process whereby notice to owners of Māori freehold land may be

266 Public Works Act 1894, s 88.

267 Public Works Act 1908, ss 18(1)(c) – public notification; (e) serve on owners and occupiers.

268 Public Works Act 1908, s 18: "… whenever lands (other than Crown lands) are required to be taken for any public work, the Minister in the case of Government works, and the local authority in the case of local works,— (f) Shall, upon receiving any such well-grounded objection as aforesaid, appoint a time and place in New Zealand at which the objector may appear (in the case of Government works) before the Minister or some person appointed by him, and (in the case of local works) before the local authority, and support the objection by such evidence as the objector thinks fit."

269 Public Works Amendment Act 1909, s 4.

given by serving notice on the Registrar of the Māori Land Court for the district in which the land is situated.[270]

182. The Crown acknowledges there were differences in the processes used for acquiring Māori land and general land under the public works regime. A major difference for Māori landowners was in the notification process, which was initially less stringent than for European landowners owing to the difficulties of giving personal notice to multiple owners and because Māori landowners were not required to have a registered title. By contrast, non-Māori landowners generally did not hold land in multiple ownership, making identification and notification relatively easy.

183. However, while there may have been differences in process, the Crown submits that this does not automatically mean that Ngāti Raukawa and affiliated groups were prejudicially affected by these differences.

184. Unless there is evidence to prove otherwise, the Crown says that it is to be assumed that it complied with the statutory requirements for notice in respect of public works takings where it was required to give notice. The Crown is not aware of specific examples where it is alleged not to have complied with these statutory requirements in respect of Ngāti Raukawa and affiliated groups. Consultation is addressed below from [185].

Issue 6.5(g): To what extent did the Crown, local government, or other bodies exercising the power to acquire land compulsorily from Ngāti Raukawa and affiliated groups consult with rights holders and/or seek their consent to alienation?

185. Early public works legislation did not require consultation with landowners, Māori and non-Māori, before land was acquired for public purposes. The Crown accepts that consultation with the owners should have occurred in respect of each public works taking.

186. Where the duty to make informed decisions requires consultation, this does not mean that the Crown is required to exercise its decision-making powers in a particular way. A duty to consult is not a duty to reach an agreement of

270 Public Works Act 1981, s 18(5). This provision is derived from the Māori Affairs Amendment Act 1974, s 71. Both the 1974 provision and the 1981 provision extended the notice periods substantially.

which the consultees approve. The difference between a duty to consult and an obligation to reach agreement is well established in public law.[271]

187. In the Te Ture Whenua Māori inquiry the Crown relied on, and the Tribunal accepted, the following points from the relevant case law:

187.1 Consultation does not mean to tell or present. Consultation must be a reality, not a charade.[272]

187.2 Consultation cannot be equated to negotiation. Rather, it is an intermediate situation involving meaningful discussion.[273]

187.3 The party consulting must keep an open mind and, while entitled to have a work plan in mind, must be ready to change and even start afresh.[274]

187.4 Any manner of oral or written interchange which allows adequate expression and consideration of views will suffice.[275] What is essential is that the consultation is fair and enables an informed decision to be made.[276]

187.5 There is no universal requirement as to duration of consultation, but sufficient time must be allowed and a genuine effort to consult made.[277]

187.6 Those being consulted must know what is being proposed, and have a reasonable and sufficient opportunity to respond to the proposal.[278]

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271 Closing submissions of counsel for the Crown, Review of Te Ture Whenua Māori Act 1993 Inquiry (14 December 2015) Wai 2478, #3.3.6 at [102].

272 *Air New Zealand Ltd v Wellington International Airport Ltd* HC Wellington CP403/91, 6 January 1992 [***Air New Zealand***] at 8; see also *Land Air Water Association v Waikato Regional Council* EnvC Auckland A110/01, 23 October 2001 [***Land Air Water***] at [448] and [453].

273 At 8.

274 At 8.

275 At 8.

276 *Land Air Water* at [448].

277 *Air New Zealand* at 8.

278 *Wellington International Airport Ltd v Air New Zealand Ltd* [1993] 1 NZLR 671 (CA) [***Wellington Airport***] at 674, citing *Port Louis Corporation v Attorney-General of Mauritius* [1965] AC 1111 (PC) at 1124 per Lord Morris of Borth-y-Gest.

187.7 The consulted party's choice to refrain from putting forward its case will not invalidate the consultation process. In *Waikato Tainui Te Kauhanganui Inc v Hamilton City Council*, the Court stated that consultation was a two-way process conducted in good faith,[279] the primary purpose of which was to enable decision-makers to make informed decisions.[280] Where there are issues of taonga particular to an iwi or hapū which they fail to raise with the Crown, the Crown is not at fault for not being informed of these matters.[281]

188. The Court of Appeal in *Wellington International Airport Ltd v Air New Zealand Ltd* summarised the requirements as follows:[282]

> … If the party having the power to make a decision after consultation holds meetings with the parties it is required to consult, provides those parties with relevant information and with such further information as they request, enters the meetings with an open mind, takes due notice of what is said, and waits until they have had their say before making a decision, then the decision is properly described as having been made after consultation.

189. The Crown says that the absence of any statutory requirement does not necessarily mean that consultation did not occur. However, the available evidence as to the extent of consultation with Māori landowners in the Ngāti Raukawa and affiliated groups' rohe is limited. Background information for each taking, including any consultation that might have occurred with affected landowners, is not always available or provided. The absence of this information can potentially distort our understanding of the application of the public works regime in the Ngāti Raukawa and affiliated groups' rohe. Where those details are not available in a particular case, the Crown says there is insufficient evidence from which to draw conclusions about the Crown's conduct.

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279 *Waikato Tainui Te Kauhanganui Inc v Hamilton City Council* [2010] NZRMA 285 (HC) [***Waikato Tainui***] at [49].

280 At [50].

281 *Greenpeace of New Zealand Inc v Minister of Energy and Resources* [2012] NZHC 1422 at [136] and [140].

282 At 683–684.

190. The claimants submit that, "Māori interests were rarely, if ever canvassed before decisions to take lands were made".[283] The Crown submits that, from the examples discussed in the Bassett and Kay report, there is no basis for the Tribunal to reach any generalised conclusion on this issue. There is no basis to reach a general conclusion that the Crown's consultation was inadequate. Particular acquisitions must be addressed on a case-by-case basis.

Specific examples highlighted by claimants

191. The claimants have highlighted the Whirokino cut, the Ōtaki riverbed, and the Kakariki ballast pit.[284] These are addressed below.

Whirokino cut

192. In respect of the Whirokino cut (also addressed elsewhere at [136], [221]-[224], and [276]), the Crown accepts consultation did not occur with the owner of Whirokino 3 before 37 roods was taken, as the owner was deceased and succession orders had not been made. The taking was, however, publicly notified.

193. The Whirokino cut was designed to prevent flooding by creating a spillway across the neck of a loop in the Manawatū River west of Foxton, so the river travelled in a straighter line to its mouth.[285]

194. Alexander notes that (save for the Taupunga Cut[286]), the Public Works Department Head Office file about Manawatū River flood protection and

283 Generic Submissions at [9.2].

284 At [9.2]. The claimants also refer at [9.4] to land taken from Ngarara West B4, but this is not an example with direct relevance to Ngāti Raukawa and affiliated groups.

285 Bassett and Kay at 276. A useful map of the area can be found in Eljon Fitzgerald, Areti Metuamate, Kiri Parata, Tiratahi Taipana, Piripi Walker and Dr Grant Young *Ngāti Raukawa: Rangatiratanga and Kāwanatanga, Land Management and Land Loss from the 1890s to 2000* (Wai 2200, #A199, June 2017) [**Young and others**] at 20.

286 As the Ngāti Whakatere claimants note, one of the owners of Taupunga B, Takerei Wi Kohika, wrote to the Minister of Public Works and the Native Minister indicating that the cut would go through homes and would make "quite a lot" of the owners "practically landless". Ngā Tapaetanga Whakakōpani, closing submissions for Ngāti Whakatere ki te Tonga (Wai 1640) (19 December 2025) Wai 2200, #3.3.111 [**Ngāti Whakatere Submissions**] at [5.8]; David Alexander *Ownership and Control of Inland Waterways within Porirua ki Manawatū Inquiry District* (Wai 2200, #A217, June 2019) [**Alexander, Inland Waterways**] at 173-175. However, the Crown notes this was not ultimately a public works taking. Rather, Taupunga was acquired by the Manawatu-Oroua River Board by means of resolutions passed unanimously at separate meetings of the owners of Taupunga A and Taupunga B held on 9 May 1930 and confirmed by the Ikaroa District Māori Land Board in

drainage operations contains no discussion with or consideration given by the Crown for any Māori interest in the matter between 1927 and 1940. It appears from the file the Crown discussed the matter only with the various local authorities involved.[287]

195. In July 1940, work began on the spillways construction and flood banks west of the Whirokino Bridge across the Foxton Loop.[288] Watkinson, the Resident Engineer, said by the time the proclamation for taking the land was gazetted he would have obtained the written consents from the owners and occupiers to enter their properties.

196. In August 1940, the District Engineer said the owners of Whirokino and Te Rerengaohau had been contacted and consents for entry were being gathered from owners and occupiers:[289]

196.1 At the end of August 1940, the occupier of European owned Whirokino 1, S. Jackson, signed a consent that allowed the Crown to enter the land, construct the cut, and he also agreed to the land being taken under the Public Works Act.[290]

196.2 The owner of Te Rerengaohau 2B was a minor, Naina McMillan. Her trustees, H. McMillan and K. Ruanui, signed a consent for the Public Works Department to enter and construct the cut, and they agreed to Te Rerengaohau 2B being taken under the Public Works Act.[291]

196.3 However, in respect of Whirokino 3, the Crown acknowledges the evidence suggests the consent of the occupier was treated as sufficient authority to enter the land and begin work.[292] In particular:

October 1930. The purchase price was £1040 for Taupunga A and £383-6-6d for Taupunga B, a total of £1423-6-6d (approximately £20 per acre).

287 Alexander, Inland Waterways at 184.

288 Bassett and Kay at 277.

289 At 278.

290 At 278.

291 At 278.

292 At 278. See Generic Submissions at [5.7(d)]; [9.3].

196.3.1 The registered owner of Whirokino 3 was Koroati Kiharoa who was deceased and for whom no succession orders had been made.

196.3.2 The District Engineer acknowledged Whirokino 3 was "Native Land for which there is at present time no owner" but it was being used by the farmer on Whirokino 1, Jackson. There is no information as to the basis by which Whirokino 3 was being used by Jackson.

196.3.3 The consent signed by Jackson in August 1940 (see [196.1]) above), also consented to Whirokino 3 being taken for the Whirokino cut work. According to Bassett and Kay, there are no other indications on file that the Public Works Department sought further information about whether any Māori individuals should be contacted for consent to enter Whirokino 3.

197. In September 1940, a gazette notice was issued under s 207 of the Public Works Act 1928 which declared that the Manawatū River "shall be altered or diverted" through approximately 155 acres of land in Whirokino 1 and 3 and Te Rerengaohau 2B.[293] This proclamation did not actually take any land at that time, but made the work a 'public work' for the purposes of the Act.

198. In December 1942, the plan and notice of intention for the land to be taken for the Whirokino cut were exhibited for 40 days in the office of the postmaster in Foxton.[294]

199. In 1942, 73 acres of European land from Whirokino 1 was taken under the Public Works Act for the construction of the cut.[295] Two parcels of Māori land were taken in 1943: Rerengaohau 2B (27 acres 1 rood 23 perches) and Whirokino 3 (37 roods).[296] The remainder of Whirokino 3 remains Māori land.

293 At 279.
294 At 280.
295 Bassett and Kay, Public Works Takings Spreadsheet row 2201.
296 At rows 2222-2223.

Ōtaki riverbed 1950s

200. In respect of takings from the Ōtaki riverbed in the 1950s, the Crown acknowledges there is no evidence that owners were consulted prior to the takings.[297]

201. In 1954, approximately 100 acres of Māori customary land was taken under the Public Works Act 1928 for the purposes of soil conservation and river protection.[298] The 90-acre area contained the mouth of the river and consisted of beach gravel and shingle and areas of land separated by channels in the river. The 10-acre area was approximately a mile from the mouth of the river and the land was between two channels in the river. At the time, the public works legislation did not require notification or provide for an objection process for the taking of land where the title was not derived from the Crown. Compensation for this taking is discussed below at [283].

202. In 1955, a further 96 acres was taken nearby, also for the purposes of soil conservation and river protection.[299] About 25 acres was European land and the remainder was Māori freehold land. The relevant blocks were Parts Taumanuka, Paremata, Ngakaroro, Tawaroa, Kahukura, Rekereke, Tuahiwi, Hakuwai and Moutere Tahuna. The Māori and European land appears to have been treated the same when it came to engaging with owners. The District Commissioner of Works reported that: "Compulsory acquisition is being resorted to because it has been impossible to obtain properly attested consents from Maori owners and the titles of several European owners are obscure. The Maori Affairs Dept. has no objection." The intention to take was publicly notified on 20 October 1954 and the gazette notice was exhibited in the Ōtaki Post Office for the required 40 day period. Bassett and

297 Bassett and Kay at 265-271.

298 Bassett and Kay, Public Works Takings Spreadsheet rows 3039-3041. This was described as: Ungranted land adjoining Cook Strait, Taumanuka 3F, Paremata 15A, 15B and 11, Subdivision 4A and 4B and Tawaroa No 1, Kahukura No 1, Part Ngakororo 5E, and parts ungranted land (90-2-30); Ungranted land adjoining Tawaroa 1, Rekereke 18 and 5, Kahakura 1 (10-0-11); and Part ungranted land adjoining Part Moutere Tahuna 2 and 4, and ungranted land (0-0-20). The same year, 13 parcels of European land and 1 parcel of local authority land, were taken close by for soil conservation and river protection purposes. There is no evidence about the circumstances of those takings. Bassett and Kay, Public Works Takings Spreadsheet rows 3049-3062.

299 At rows 3161-3175.

Kay do not record any objection having been made to this taking. The blocks were then proclaimed as taken in February 1955.

Kakariki ballast pit

203. 25 acres of land from the Paiaka Reserve was proclaimed in 1888 for a ballast pit. There is no evidence about any consultation prior to the proclamation. However, as detailed above at [148], following owners' objections, an agreement was reached for temporary taking of this land for the ballast pit.

Examples of consultation and/or consent

204. The Crown notes the following (non-exhaustive) examples where consultation and/or consent was demonstrated.

Roads and railways

205. As above from [113], the Crown took the approach of negotiating to purchase the railway land for the Turakina to Bunnythorpe section of the Palmerston North to Whanganui line.

206. In 1874, the Crown considered using the Public Works Act 1864 to take land for a roadway from the Oroua river to the boundary of the Upper Manawatū Block. An Order in Council was prepared but it was not executed because it was decided that it would be better to negotiate with the owners for the road rather than compulsorily take the land under the Public Works Act.[300] In 1877, Te Kooro te One and Tapa te Whata sold 30 acres of Upper Aorangi No 1 to the Crown for the road passing through the reserve as part of the main road from Palmerston to Whanganui, Rangitīkei Line. The Crown paid £90 for the roadway.

207. In the case of the 2 roods taken from Manawatū-Kukutauaki 3 Section 1A2 in 1946, the Railways Department negotiated with the sole owner before the land was taken. They agreed on £70 compensation (the special government valuation was £55).

300 Bassett and Kay at 80-81.

208. In the twentieth century, when land was needed for road alterations and upgrades, it became more and more common for councils or the Crown to negotiate with owners before the land was proclaimed.[301]

Ōhinepuhiawe 140 and 141 (1932 river protection)

209. The background to the taking of land from Ōhinepuhiawe 140 and 141 in 1932 for river protection is discussed further at [158]-[167] above. Relevant to this topic, some of the affected owners, including Hone and Kereopa Reweti, came to an agreement with the County Council over the proposed takings prior to proclamation.[302]

210. In June 1931, Hone Reweti wrote to the Native Minister saying, "We earnestly appeal for your assistance to retain our lands. Our very existence depends on the few acres we now possess. We use the said land for dairying purposes. Confiscation would deprive us of our means of livelihood. We beseech your immediate investigation into the matter." [303] He was told to approach the County Council to state his objections to any taking.

211. Following discussions with the Council, the owners agreed to remove their opposition to the river protection scheme in return for the Council undertaking to: fence off their remaining land from the area taken; fence off the right of way leading to the protection works; provide legal access for the owners to the River;[304] and employ the owners on the protection works for a period of six months (see further at [217]-[218] below). The Council also agreed to "provide a scheme for protection works on the other side of the river without charge", thereby protecting the Reweti family's fertile land on the southeastern banks of the Rangitīkei. In addition, the Council promised "to pay any legal costs incurred" by the Ōhinepuhiawe owners while also paying compensation for the 54½ acres taken.

301 At 164.

302 Husbands, Māori Aspirations at 649; Bassett and Kay at 303.

303 Alexander, Rangitīkei River Report at 225; Bassett and Kay at 299.

304 This had not been done at the time of the Native Land Court compensation hearing in 1933. The owners were awarded additional compensation for this reason. Bassett and Kay did not see any information to confirm whether or how the right of access to the river was provided: Bassett and Kay, Answers to Questions at [52]. However, no evidence was adduced by the claimants demonstrating the access had not subsequently been provided.

Ōhinepuhiawe 141F (waterworks)

212. In June 1945, it was proposed to take some land from Ōhinepuhiawe for a water supply site (waterworks) for Lake Alice Hospital. Most of the land was vested in Rangitīkei County Council (being part of the 1932 river protection takings addressed above at [158]-[167] and [209]-[211]), but a small part of Ōhinepuhiawe 141F was sought.

213. At the time, Ōhinepuhiawe 141F was part of the Ōhinepuhiawe Development Scheme and administered by the Māori Land Board. Initially, Public Works asked for the Board's consent to take this part of the scheme for the water supply site.[305] The Board approved the taking.

214. However, the District Engineer said the Board's consent was not sufficient and asked that the consent of owner Hone Rewiti be obtained.[306] Mr Rewiti consented to the taking of Part Ōhinepuhiawe.[307] In May 1951, 3 roods 36 perches of Ōhinepuhiawe 141F[308] and 1 acre 3 roods 20 perches owned by the Rangitīkei County Council[309] was proclaimed as taken.

Feilding sewage treatment works

215. As discussed further at [299]-[304] below, in 1962 the Feilding Borough Mayor, Town Clerk, and Borough Engineer met with some of the Māori owners of land proposed to be taken to explain the Council's intentions for the construction of the Feilding sewage treatment works on Kawakawa Road.

305 As noted in the Wai 2197 Submissions at [102], citing Young and others at [612]. These submissions also say, "There is no evidence that other sites or leases were considered rather than taking the whenua." The Crown agrees that there is no such evidence, but notes this does not necessarily mean such matters were not considered at the time (but not recorded in the evidence before the Tribunal).

306 Bassett and Kay at 532.

307 Contrary to the suggestion in the Wai 2197 Submissions at [105].

308 Bassett and Kay, Public Works Takings Spreadsheet row 2705.

309 At row 2704.

Issue 6.5(h): To what extent did the Crown, local government, or other bodies exercising the power to acquire land compulsorily from Ngāti Raukawa and affiliated groups allow Ngāti Raukawa and affiliated groups to participate in roading boards and the local administration of public works?

216. The Crown notes that the evidence on this issue is sparse and accordingly does not allow firm conclusions to be drawn.

217. The claimants raise the 1932 river protection takings from Ōhinepuhiawe 140 and 141.[310] The Crown acknowledges the freehold interest was acquired for river protection purposes at Ōhinepuhiawe.

218. However, when land was taken from Ōhinepuhiawe 140 and 141 (see also above at [158]-[167] and [209]-[211]), part of the agreement between owners and the County Council involved ongoing involvement by the owners in river protection works. There is no evidence available about whether any further or additional kaitiaki role was sought by the owners when negotiating with the Council. Evidence about the agreement reached between owners and Council was given in the Native Land Court by Rangitīkei County Council clerk H.H. Richardson.[311] Richardson said that, the "Natives were employed as far as possible on the works" and they "planted the trees" and were "paid about £200 in wages" which he said without the agreement the "greater part of this money wd [sic] have been paid to Europeans". Prior to this point, the owners had not carried out planting on this land; the tree planting done by the owners was undertaken as part of the arrangements made with the Council at the time the land was taken.[312]

Issue 6.6: Are there examples of public works contravening tikanga or interfering with wāhi tapu, urupā and other sites of significance of Ngāti Raukawa and affiliated groups? What was the impact on Ngāti Raukawa and affiliated groups? Were these groups offered kaitiaki roles when such land was affected?

219. Allegations have been made that wāhi tapu and other sites of significance have been damaged through operations on lands acquired through public works takings. The Crown says that each case must be assessed on an individual basis, and in light of the full circumstances of each situation,

310 Generic Submissions at [15.12], [15.15(c)].
311 Bassett and Kay at 302.
312 Bassett and Kay, Answers to Questions at [79].

including whether the sites were made known to officials and whether any damage that did occur was avoidable.

Specific examples raised by claimants

220. Examples raised by claimants which relate directly to Ngāti Raukawa and affiliated groups[313] are addressed below.

Whirokino cut (Te Rerengaohau 3)

221. The background to the taking of land for the Whirokino cut is addressed in more detail at [136], [192]-[199], and [276].

222. In August 1940, the Resident Engineer reported that the area to be taken for the Whirokino cut "carefully excludes" the Te Rerengaohau 3 cemetery reserve block.[314] (In February 1943, the District Engineer, as required by the Public Works Act, advised his department that the land to be taken for the Whirokino cut (see above at [199]) had no buildings, yards, gardens, or burial grounds on it.[315])

223. However, once the channel for the cut was dug, the river broke through one night and the path of the river covered this urupā.[316] Te Rerengaohau 3 remains Māori land, but is today mostly covered by water.[317]

224. Although the intention was to avoid the urupā, the Crown acknowledges the new path of the river has profoundly impacted this significant whenua.

Pryce's Line

225. As above (at [72]-[81]), the Crown acknowledges Pryce's Line should not have traversed through cultivations on Māori land.[318]

313 The claimants refer to efforts to receive compensation for destruction of an eel fishery in respect of a public works taking from Lower Aorangi: Generic Submissions at [15.7]-[15.9], [15.15(b)]. However, the Crown notes that the land taken was from a Rangitāne reserve. Similarly, the example of a road passing through Ngarara West A24C urupa does not relate directly to Ngāti Raukawa and affiliated groups: Generic Submissions at [9.2].

314 Bassett and Kay at 278.

315 At 280.

316 Brief of evidence of Te Kenehi Teira for and on behalf of Wai 1944 – Ngā Hapū o Kererū (Wai 2200, #K15, 29 March 2021) [**Teira brief of evidence**] at [16(r)].

317 Source: Māori Land Online - see screenshot in **attached** bundle.

318 Generic Submissions at [15.3].

Aorangi Marae

226. The claimants say regarding Aorangi Marae, the Crown "used the Public Works Act to push both a railway line and a public road directly between the marae and its urupā" and "failed to identify and avoid wāhi tapu by severing marae from urupā".[319] As addressed at [115] and [206], these takings were by agreement and there is no evidence concerns were raised at the time about the location of the railway in relation to the marae and/or urupā.

Waikawa Beach Road (Te Kiore urupā)

227. Mr Ropata Miratana gave evidence that Waikawa Beach Road was laid through Te Kiore urupā of Ngāti Wehi Wehi.[320]

228. Mr Miratana explained that there had been a track running through the urupā used by tangata whenua to access the forest and this had been replaced with a road taken in 1887 under the public works legislation. Mr Miratana stated that plans show the urupā's boundaries as being to the north of the road, but it is unclear how the surveyor decided the boundary of the urupā. Mr Miratana also thought compensation had not been paid for this land.

229. It seems that land was indeed taken for this road from Manawatū-Kukutauaki 4D, 4C, and 4B in 1887.[321] Moreover, it appears that Waikawa Beach Road forms the boundary of the urupā Manawatū-Kukutauaki 4D1 Sec 5B5F.[322] However, this was not one of the case studies examined by Bassett and Kay and it is not clear how the boundary came to be placed where it was or whether compensation was paid (although, having been taken under the Public Works Act 1882, it is possible compensation was paid). Unfortunately, without such information, the Crown is unable to comment further on the circumstances of this taking.

319 At [15.4], [15.15].

320 Brief of evidence of Ropata William Miratana (Wai 2200, #O5, 25 August 2022) at [168]; Ngāti Wehi Wehi Submissions at [280].

321 Bassett and Kay, Public Works Takings Spreadsheet rows 169-171.

322 Source: Māori Land Online - see screenshot in **attached** bundle.

Tūrongo church reserve

230. Te Kenehi Teira gave evidence for Ngā Hapū o Kereru that a council road was driven through the Tūrongo church reserve site at Moutoa.[323] The Crown apprehends this is the taking in 1968 of 1 acre from Part Section 70 Moutoa District.[324] However, this was not one of the case studies examined by Bassett and Kay and the details of this taking (including whether the Crown was involved) are not known. Unfortunately, without such information, the Crown is unable to comment further on the circumstances of this taking.

Issue 6.7(a): To what extent did the Crown, local government, or other bodies exercising the power to acquire land take advantage of public works takings as a means to enable the alienation of other land of Ngāti Raukawa and affiliated groups?

231. The Crown rejects any suggestion that public works legislation was designed to facilitate the transfer of Māori land to the Crown generally and other than for public purposes. The Crown similarly denies any suggestion or claim that Māori land was targeted for public works acquisition; there is no evidence of any policy on the part of taking authorities to target Māori land for acquisition.

232. As set out above at [34] and [36], consideration of the statistical data on public works acquisitions in PkM reveals that the vast majority of acquisitions, more than 90%, were from non-Māori owners. The Crown says this negates any suggestion that public works legislation was used to acquire Māori land generally and other than for public purposes.

1961 public works taking of customary land in Ōtaki

233. In 1960 and 1961, the Crown facilitated a public works taking by the Horowhenua County Council of 25 acres of land along the south bank of the Ōtaki River, for the purpose of clearing the land of invasive 'noxious' weeds. The land was found to be customary land, and the customary owners had yet to be determined.

323 Teira brief of evidence p 12; Closing submissions for Wai 1944 – Ngā Hapū o Kererū (19 December 2025) Wai 2200, #3.3.114 [**Kererū Submissions**] at [5.10].

324 Bassett and Kay, Public Works Takings Spreadsheet row 5355.

234. The Ōtaki Māori Committee say that compulsory acquisitions of land in the Ōtaki River corridor, including and with specific reference to this land, are "unjustified and fell well short of the Crown's own standards". They say that the Crown failed to identify the rightful owners of the customary land it acquired, acknowledge their objections or provide any compensation for taking such land (as discussed below, compensation was in fact paid to the Māori trustee to be distributed between two local marae). These actions, they say, "speak to the complete dereliction of the crown's responsibilities in respect of ensuring fair and proper practices in land transactions".[325]

235. Noxious weed legislation and Māori land law provided a range of alternative options for dealing with the weed infestation and identifying the owners of customary land. However, the Crown did not pursue any options for weed control other than taking the land. Nor did the Crown take reasonable steps to identify or notify the land's customary owners. The land was compulsorily taken in 1961, cleared of weeds, and on-sold to an adjoining Pākehā landowner in 1962.

236. The Crown has accordingly made a concession in respect of this taking which is set out below at [253].

Background

237. On 10 March 1960, the Horowhenua County Council issued a notice of intention to take 25 acres along the south bank of the Ōtaki River for noxious weed clearance pursuant to the Public Works Act 1928.[326] The land was identified as "ungranted land adjoining Kahukura 1, Pukerarauhi 1, Katihiku 1B, Ngakaroro 3F1, and parts Ngakaroro 3F and 3E". A further Gazette notice was issued in March 1961, confirming the Council's intention to take the land.[327]

325 Closing submissions for the Ōtaki Māori Committee (19 December 2025) Wai 2200, #3.3.109 [**Ōtaki Māori Committee Submissions**] at [76], [79].

326 Bassett and Kay at 272; "Notice of Intention to Take Land" (10 March 1960) 16 *New Zealand Gazette* 311 at 337 [***NZG***].

327 "Notice Confirming Intention to Take Land" (2 March 1961) 17 *NZG* 351 at 377.

238. The land to be taken did not have title and was described as "ungranted land".[328] It adjoined some blocks still in Māori ownership, some in European ownership, and the area of 'ungranted' land taken in the 1950s for river control (see above at [200]-[202]).[329] In November 1960, the Resident Engineer described it as "'no man's land' to which no-one had title".[330] In 1961, the Deputy Registrar advised there were no titles issued by the Māori Land Court for this area and the Chief Surveyor concluded the land was Māori customary land.[331]

239. In August 1961, the land was proclaimed as taken under the Public Works Act 1928 and vested in the Horowhenua County Council.[332] The Māori Land Court awarded £200 compensation to be paid to the Māori Trustee and distributed equally between two local whare. The Council's application for determination of compensation is addressed below at [287]-[290].

<u>Failure to take adequate steps to ensure the customary owners of the land were identified or notified of the proposed taking</u>

240. Public works legislation at the time set out a process for the taking of land where title was not derived from the Crown. Neither notification nor an objection process was required for the taking of land under these provisions where there was no title derived from the Crown. Where untitled lands were sought to be taken, s 103(1)(a) of the Public Works Act 1928 allowed the Governor-General to declare by Order in Council that the lands shown on a map signed by the Surveyor-General (or authorised surveyor appointed by him) were deemed to be taken for the purposes of the public work. The land would then vest in the Crown or (relevantly) the local authority.

328 See Bassett and Kay at 273, Map 26: 'Ungranted Land' at Otaki Taken for Noxious Weeds 1961.

329 Bassett and Kay at 272.

330 At 274.

331 At 274-275.

332 Bassett and Kay at 275-276; Bassett and Kay, Public Works Takings Spreadsheet row 4131; "Māori Land Taken for the Purpose of Clearing Noxious Weeds In Block VIII, Waitohu Survey District, Horowhenua County" (17 August 1961) 52 *NZG* 1245 at 1259. Bassett and Kay refer to an (unavailable) issue of the *Dominion* to state that this taking occurring under ss 103(a) and 35 of the Public Works Act 1928, and s 27 of the Noxious Weeds Act 1927. The reference to s 35 appears to be incorrect, as this section relates to the sale of unneeded land (and the relevant Gazette notice does not refer to any specific provision). Section 27 of the Noxious Weeds Act 1950 appears to be the correct reference. There is no Noxious Weeds Act 1927, and the Noxious Weeds Amendment Act 1927 does not have a section 27.

241. However, prior to confirmation that the land to be taken was customary land, the ordinary notification processes were followed by the Horowhenua County Council. The Council's Gazette notice of March 1960 indicated that a plan of the land was open for inspection at the Council offices and that well grounded objections should be sent in writing to the County Clerk within 40 days of the first publication of the notice.[333] At least one objection was received, and solicitors representing an objector were given a week's notice of an invitation from Council to have their objection heard before a meeting of the Council in August 1960.[334]

242. The source and content of the objection is not discussed in the available papers, apart from a brief mention in the minutes of the Council's August 1960 meeting.[335] Objectors did not appear before the meeting and, in their absence, the Council passed a motion which stated that it did "not acknowledge the objectors' title to the land" and that the "objection is not well grounded", while noting that "without prejudice to the council's non-recognition of title" the objectors had been invited to appear "on the assumption that they may be able to establish their title to the land or their right to object". It is not clear who made the objection referred to (and whether they were Māori), but it appears the objectors laid claim to title for the land.

243. The objection may have been made by Hema Whata Hakaraia, 'of Rangiuru Road, Otaki' who was an Ōtaki Borough councillor at the time.[336] Mr Hakaraia's objection was recorded by the Deputy Registrar in May 1961 when the Māori Land Court confirmed that no titles in the Court's records covered this land.[337] A pencil annotation beside the Deputy Registrar's 1961 comment said, "out of time". There is no information about any response or

333 "Notice of Intention to Take Land" (10 March 1960) 16 *NZG* 311 at 337.

334 Bassett and Kay at 273.

335 At 273-274; J.H. Hudson, Clerk, Horowhenua County Council, Levin, Extract of meeting minutes, 10 August 1960, AATE W3392/12 19/2/8, ANZ Wellington [P 1170395].

336 Suzanne Woodley *The Purchase of Ōtaki Māori Land and the Development of the Ōtaki Township 1840s-2023* (Wai 2200, #A239, 9 May 2023) [**Woodley, Ōtaki Township**] at 215 discusses Mr Hakaraia's term as Ōtaki Borough Councillor between 1943 and 1971.

337 Bassett and Kay at 274; F.T. O'Kane, Deputy Registrar, Palmerston North to Park & Cullinane, Solicitors, Levin, 26 May 1961, AATE W3392/12 19/2/8, ANZ Wellington [P 1170409].

engagement with Mr Hakaraia to definitively determine how the objection was approached by the Council. The Court's Deputy Registrar concluded in May 1961, "This office is not aware of any other objections or evidence of interest in this land". The Deputy Registrar's assessment was 'received by hand' by Crown officials.[338]

244. Once it was determined that the land was customary land, Crown officials should have ensured reasonable efforts were made to identify and notify the customary owners of the land. No such efforts were made, and the only effort made at notifying any party of the proposed taking was that the details were available to view at the Council's offices. In the 1960s, with Ngāti Raukawa and other iwi visible and organised in Ōtaki, it would not have been an unreasonable burden on officials to take some further steps towards identifying and notifying the customary owners of the land of the proposed taking. Officials knew that no such efforts had been made. The Crown was also aware of at least one objection by a local Māori leader to the taking, but made no effort to investigate the substance of his objection.

<u>Failure to take reasonably available steps to avoid the compulsory acquisition of the land</u>

245. The land was "badly infested with lupin, gorse, ragwort and hemlock", and was "a source of infection for adjacent farms". The Ministry of Works' Resident Engineer noted that, while the land remained infested, adjoining farmers were "naturally reluctant" to clear the weeds on their own properties.[339]

246. On 5 May 1961, as part of correspondence between the Council and the District Commissioner of Works, the Commissioner informed the Council that while the issue of title was being determined (eventually, as noted above at [238], determined to be customary land), "if the County wishes to clear the land of weeds, I suggest that the County Clerk should write to both the Commissioner of Crown Lands and Maori Affairs Department for permission to do so. I cannot see any reason why such a request should not

338 At 274; F.T. O'Kane, Deputy Registrar, Palmerston North to Park & Cullinane, Solicitors, Levin, 26 May 1961, AATE W3392/12 19/2/8, ANZ Wellington [P 1170409].

339 At 272; M.S. Goddard, Resident Engineer to District Commissioner of Works, 30 November 1960, AATE W3392/12 19/2/8, ANZ Wellington [P1170398].

be granted."[340] In other words, it was perfectly possible for the land to be cleared ahead of taking.

247. Crown agents were aware of the Council's intention to sell or lease the land to an adjoining owner once the weeds were cleared.[341] This was an option anticipated in the relevant section of the Noxious Weeds Act 1950, had been stated in the Council's original intention to take, and was mentioned in correspondence from Crown officials from November 1960 onwards. For instance, the Resident Engineer noted in November 1960:[342]

> The council can acquire title at the cost of survey and legal expenses, and that done it proposes to clear the land of noxious weeds and then to sell or lease it to one of the adjoining owners by tender. It hopes to recover its outlay by this means.

248. The land vested in the Horowhenua County Council in August 1961.

249. By April 1962, the land was duly cleared of weeds by means of crushing, spraying, and a short-term lease to an adjoining farmer so the land could be heavily grazed. The Council considered at that point the land was no longer required for the public work for which it had been taken, and should be sold. The Ministry of Works' Resident Engineer also considered continued grazing would be sufficient to suppress weeds and, to that end, agreed with Council that the land should be sold by tender to one of the adjoining farmers.[343]

250. Although in 1961 the Deputy Registrar had suggested to the Council's solicitors that an adjoining landowner, Tamati Hawea, could be interested in obtaining the land from the Council,[344] the land appears to have been sold

340 At 275; H.A. Fullarton, District Commissioner of Works to Park & Cullinane, Solicitors, Levin, 5 May 1961, AATE W3392/12 19/2/8, ANZ Wellington [P 1170407].

341 At 275.

342 At 275; M.S. Goddard, Resident Engineer, Porirua to District Commissioner of Works, Wellington, 30 November 1960, AATE W3392/12 19/2/8, ANZ Wellington [P 1170398].

343 At 276; M.S. Goddard, Resident Engineer, Porirua to District Commissioner of Works, Wellington, 18 May 1962, ABKK 889 W4357/364 53/54/1 pt 1, ANZ Wellington [IMG 0489], and D.K. Guy, Chairman Horowhenua County Council, J.D. Aitcheson, Councillor to Governor General, April 1962, ABKK 889 W4357/364 53/54/1 pt 1, ANZ Wellington [IMG 0490-0491].

344 At 274.

to the European owners of the adjoining Kahukura 1 block.[345] (The Crown notes there is little evidence about the sale by the Council.)

251. The weed infestation was a problem the Council needed to address. However, the Crown and Council intended to only hold the land for a small period while the weeds were eradicated. Nonetheless, the Crown and the Council compulsorily imposed a permanent alienation of the land on Māori even though the public usage required for the land was only temporary until the weeds were eradicated. Other options were available to clear the weeds without taking the land. For instance, the land could have been leased to generate income to fund weed removal. A reasonable Crown should have carefully considered options for the land remaining in Māori ownership before compulsorily acquiring it.

252. A reasonable Crown could and should have taken further steps to protect the interests of the customary owners of this land. The fact that it did not meant the customary owners completely lost ownership of another remnant of their ancestral lands.

Concession

253. The Crown has therefore made the following concession:

> The Crown concedes that, when it facilitated the compulsory public works acquisition of 25 acres of land from the Ōtaki River bed in 1961 for control of noxious weeds,
>
> > it failed to take adequate steps to ensure the customary owners of the land were identified or notified of the proposed taking,
> >
> > it failed to take reasonably available steps to avoid the compulsory acquisition of the land, and
> >
> > these failures breached te Tiriti o Waitangi/the Treaty of Waitangi and its principles, including the principle of active protection.

345 At 276. And see DP 53870.

Issue 6.7(b): To what extent did the Crown, local government, or other bodies exercising the power to acquire land acquire more land than required for particular public works?

254. The Crown submits that any assessment of whether taking authorities acquired more land than was required for a particular public work must be considered in light of the circumstances of the time. In particular, regard must be had to:

254.1 the intentions and expectations of the taking authority at the time land was acquired;

254.2 the type of public work and its location;

254.3 the information and technology available to taking authorities that would have allowed them to determine accurately how much land would be required;

254.4 what plans there were for the particular public work at the time land was acquired, including any anticipated future development or expansion;

254.5 what the future needs of the public work might have been; and

254.6 whether plans for the particular work changed over time and, if so, the reasons why.

255. The Crown submits that it is inherently difficult to assess, in respect of any particular case, whether more land was taken than officials at the time thought necessary. As such, the Crown cautions against assessing these matters with hindsight and replacing the judgement of officials at the time of a particular taking with judgements made in light of the knowledge available today. For instance, Ms Bassett noted in respect of the Ōtaki Post Office[346] that the amount taken (an acre, when the building was only a rood)

346 Ms Bassett refers to the Ōtaki post office. However, the circumstances sound similar to those relating to the Ohau post office (discussed in these submissions) and Bassett and Kay does not appear to address Ōtaki post office so it is possible Ohau is in fact the correct reference.

would have reflected the need for the post office itself, as well as a house for the postmaster, and somewhere for him to put his horse.[347]

256. The claimants submit that, "the evidence shows that the Crown and local authorities *often* acquired more land than was reasonably required for the stated public work" (emphasis added).[348] The Crown says that the available evidence does not allow broad conclusions to be made about whether taking authorities generally acquired more land than was needed for public works; each acquisition must be assessed on a case-by-case basis.

Specific examples raised by claimants

257. The examples raised by the claimants are addressed below.

Ōtaki river control

258. The claimants refer to the notice of intention issued in October 1954 to take approximately 96 acres at Ōtaki for river control purposes (see also [200]-[202] above).[349] Referring to A211 at 270, the claimants say that, "While officials described the purpose as "soil conservation and river control", they admitted that only limited areas were required for stop banks and works". Bassett and Kay do not appear to include such a suggestion (including at 270) and the Crown is unable to find reference to this elsewhere in the evidence.

Ōhinepuhiawe 140 and 141

259. The Wai 2197 claimants say the amount of land taken in 1932 appears an extremely large area to take for the river protection works and they dispute the justification for the taking.[350] There is no evidence that more land was acquired in 1932 than was needed at the time.

260. As set out at [211] above, owners agreed to the taking at the time.

261. Valuers for the owners, Duigan and Monrad, agreed that, without the Council's river protection works, much of the rest of the Ōhinepuhiawe Reserve on the western side of the river would have been quickly washed away.[351] The Native Land Court also noted that, due to the erosion caused

347 Transcript of hearing week 3, #4.1.25 at 522.
348 Generic Submissions at [12.11].
349 At [12.12]-[12.13].
350 Wai 2197 Submissions at [110].
351 Husbands, Māori Aspirations at 650.

by the river to the western end of Section 140, the river protection works were in fact, "as directly necessary for the preservation of the land left to the Natives as for the safeguarding of the approaches to the bridge".[352] Bassett and Kay agreed that it was critical for the bridge to be protected by river protection works and ongoing maintenance and that the evidence suggests the owners were also concerned about any further land being washed away.[353]

262. Some decades later, in September 1979, a Māori Affairs Department field officer expressed the view that the land already held by the Catchment Board (the soil conservation and river control reserve) was more than was necessary for the Board to fulfil its functions (see also [319.2] below).[354] However, this assessment was made in relation to the proposed takings, and current circumstances, in the late 1970s. The field officer did not suggest too much land had been taken in 1932.

263. As to the amount of land taken in 1981, this was confirmed as necessary by the Planning Tribunal in late 1979 (see also [172]-[176] above).[355] The Tribunal said in respect of the Ōhinepuhiawe blocks:[356]

> The area of land subject to objection is critical in respect of river control. The Bulls Bridge collapsed in 1973 and this land is immediately upstream...We are satisfied on the evidence that the Catchment Board need the area of land for the purposes of river control and flood protection. Management of this land is an integral part of plans to preserve the present main channel and the preservation of that channel is essential to the safety of the bridge...No evidence was placed before the Tribunal to indicate that the views of the Catchment Board or its future plans were in any way unreasonable, unsound or unfair. There was some suggestion that less land could be taken but this suggestion was rejected by the Catchment Board engineer. Accordingly, in respect of that land, we hold the taking is fair, sound and

352 At 650.
353 Bassett and Kay, Answers to Questions at [81], [83].
354 Alexander, Rangitīkei River Report at 479.
355 At 480.
356 Alexander, Rangitīkei River Report, Supporting Documents at 3315.

reasonably necessary to achieve the objectives of the Catchment Board and we report accordingly.

Deliberate limitation of amount taken

264. There were also a number of instances where the amount of land taken was deliberately limited, including the following examples:

264.1 As above at [154]-[157], it was initially proposed the whole 9 acres 2 roods 19 perches be taken to retain the Kakariki Fuel Depot. However, this was reconsidered and amended to include only the existing fuel depot and an easement to access the pipeline and fuel tank in order to "affect the Maori owners as little as possible".

264.2 As above at [146], a proclamation taking 7 acres 3 roods 28.7 perches of Lot 273 Part Section 145 Township of Sandon for river protection was issued in February 1934. This notice was partly revoked in November 1935 when it was discovered that not all the land taken was required for river protection purposes and 3 acres and 25.7 perches was returned to the owners.[357]

Issue 6.7(c): To what extent did the Crown, local government, or other bodies exercising the power to acquire land acquire reserve lands?

265. There is no comprehensive list of reserve lands acquired for public works. However, such lands were taken. For example:

265.1 In the taking of land for the Foxton-Ōtaki road (see [71] above), at least part of the land taken (Manawatū-Kukutauaki 4A, B, C, E) was otherwise protected from alienation as part of the Waikawa Reserve.[358]

265.2 As set out at [113]-[123] above, land was taken by agreement from reserves for construction of the Turakina to Bunnythorpe section of the Palmerston North to Whanganui line and for the Foxton to Manawatū Railway.

357 Bassett and Kay at 289.
358 Ngāti Wehi Wehi Submissions at [279]; Husbands, Māori Aspirations at 286.

265.3 Roads were laid through the Reureu reserve (see above at [72]-[81]).

265.4 Land was taken from the Ōhinepuhiawe Reserve for river protection in the 1930s and 1980s (see also [158]-[177], [209]-[211], [217]-[218], [259]-[263], [305]-[310], [318]-[319], [341]-[344]).

265.5 In January 1964, 112 acres were taken by the Crown under the Public Works Act 1928 for the construction of the Feilding sewage treatment works on Kawakawa Road (see [299]-[304] below). This included approximately 60 acres of Māori land, including from the Te Awahuri Reserve.

Issue 6.8: Was compensation paid for land taken? If so, were the prices paid fair and equitable?

266. The Crown's policy in respect of public works claims recognises that a well-founded grievance may exist where the Crown did not pay Māori landowners timely and adequate (or any) compensation (based on current market value) for their land at the time it acquired it for a public work.

267. The Crown notes that there was a difference in the compensation process for Māori and non-Māori landowners. Compensation for the compulsory acquisition of Māori land was determined by the Native/Māori Land Court until 1962,[359] while the Compensation Court determined compensation for general land. However, the assessment of compensation by the Native/Māori Land Court did not necessarily result in inappropriate awards.

268. The Crown notes that, from 1936 onward, the Native/Māori Land Court and the Compensation Court both had to assess compensation at market values.[360] Part VI of the Finance (No.3) Act 1944 was to be read with and deemed part of the Public Works Act 1928. Section 29(1) of the Finance Act says that in determining compensation the Compensation Court and the

359 The Public Works Amendment Act 1962 introduced provision for compensation to be negotiated between the Crown and the landowner and provided arbitration and appeal mechanisms in the same manner as for European owned land.

360 Section 28 of the Finance (No.2) Act 1936 and Section 20(1)(b) Finance (No.3) Act 1944.

Native Land Court had to act in accordance with a number of rules. Section 20(1)(b) is one of those rules and states:[361]

> The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller on the specified date might be expected to realize.

Limitations of the evidence before the Tribunal

269. The Crown notes that the evidence on compensation is incomplete and does not present the Tribunal with a full record of the compensation paid to Māori in respect of public works acquisitions. In particular, the Crown cautions against relying on Bassett and Kay's spreadsheet of public works takings as being conclusive insofar as compensation is concerned. The Public Works Takings Spreadsheet includes a column for compensation. The Crown notes that compensation will usually only have been recorded where Bassett and Kay have managed to locate the relevant Native/Māori Land Court records.[362] The fact that compensation is not recorded in the Public Works Takings Spreadsheet does not necessarily mean it was not paid. For example, no compensation is recorded in the Public Works Takings Spreadsheet for the taking of 25 acres of customary land at Ōtaki, because Bassett and Kay did not locate the relevant records.[363] As set out at [287]-[290] below, the Crown has located Māori Land Court minutes ordering compensation of £200 for this taking.

270. Moreover, Bassett and Kay have generally only recorded details of compensation that was ordered in respect of Māori-owned land; no information is provided in terms of compensation paid to non-Māori. This

361 The same provision had previously been present in section 28 of the Finance (No.2) Act 1936.

362 Bassett and Kay *Guide to Public Works Takings Spreadsheet* (Wai 2200, #A211(a)): "T - Compensation – this column records the compensation awarded by the Native/Māori Land Court for the taking of Māori land, sourced primarily from Māori Land Court records. The spreadsheet does not include compensation awards for private European land, and will likely only include compensation awards made up till 1962 (when the Māori Land Court ceased to have responsibility for determining compensation)."

363 Bassett and Kay noted that no information was located to indicate whether "the Māori Land Court or Māori Trustee subsequently sought compensation for the land taken, and if any investigation was done to determine the potential customary owners": Bassett and Kay at 276. Ms Bassett said in response to questions during hearing 3 that, while she had a quick look in the obvious minute books, she felt she probably just had not been able to find the relevant material (Transcript of hearing week 3, #4.1.25 at 524).

prevents any comparison between the compensation for Māori-owned land and non-Māori owned land generally, and whether a different compensation value was applied.

271. Further, it is not possible to determine, usually many decades later, whether a particular valuation is reliable simply by looking at the valuation amount and size of land. The particular characteristics of the specific land will affect its monetary value. Expert evidence will usually be needed to demonstrate that a valuation is not reliable. Such evidence is not before this Tribunal.[364] An example of this difficulty is addressed below at [304.2] in respect of the Feilding sewage treatment works.

272. The adequacy or fairness of compensation to Ngāti Raukawa and affiliated groups for public works takings therefore needs to be assessed on a case-by-case basis.

273. Nevertheless, the claimants make a series of broad generalisations regarding the provision of compensation. As detailed below, these are not substantiated.

Matters raised in generic closing submissions

Availability of valuation expertise

274. The claimants appear to suggest that the Native/Māori Land Court did not have direct access to professional valuation expertise, but the Compensation Court did have such access.[365] This is not correct.

364 The Walghan Partners, Block Research Narratives report reviewed the nature of land values within the five case study blocks. However, the authors noted the complexities and limits on such analysis: "The review has shown that while valuation differences over the years can be recorded, it would required a much broader analysis and data collection to fully explain the data. There are variations not only between the five case study blocks, but within the blocks as well. The exact factors that influenced valuations and how sophisticated were the early twentieth century valuation modelling is not known. Likely factors that were taken into account would be the quality of the land block itself – the soil, the presence of swamp or bush, the elevation, the contours. Contextual factors would include matters such as the proximity of a block of land to existing or developing infrastructure – roading, railways, townships. The value would also be influenced by the market: the demand for land, how much land sold for and how quickly it sold. Exactly how these factors were weighted or came together can not be known without a dedicated investigative research process. In this report, only the recorded valuations can be examined in a basic manner to gain some preliminary indication of trends in land values.": Walghan Partners at 787.

365 Generic Submissions at [11.9].

Use of Government valuations

275. The claimants say that, "[l]imited access to independent valuations also left Māori reliant on Crown assessments designed to minimise cost to the taxpayer."[366] The Crown does not agree. Specifically:

275.1 The proposition that Māori owners could not obtain independent valuations is not accurate. An example of Māori owners engaging valuers is set out below at [305]-[310] in respect of Ōhinepuhiawe.

275.2 There is no evidence before this Tribunal supporting a proposition that Government valuations of land in PkM were generally inaccurate, let alone designed to minimise cost.

276. The claimants refer to compensation for Māori land taken for the Whirokino cut.[367] (The Whirokino cut is addressed elsewhere at [136], [192]-[199], [221]-[224].) In this case, the Court did rely on the special Government valuation and waived an appearance by the owners. However, this was on the basis of the very specific circumstances and cannot be assumed to be representative of compensation hearings in PkM. In particular:[368]

276.1 Public Works had arranged for special valuations to be made in May 1942. No evidence has been produced demonstrating that these valuations departed from market value. It is not clear, however, whether the valuation included any consideration for severance as had been anticipated in 1941 (see [136] above).

276.2 The proclamation taking Part Whirokino 3 and Part Te Rerengaohau 2B was issued on 2 May 1943. On 12 May 1943, Public Works requested that the Native Land Court arrange an application to assess compensation for this work.

276.3 The Court determined compensation in March 1947 (there is no evidence the Crown contributed to the delay in hearing).

366 At [11.11].
367 At [11.1], [11.8], [11.9].
368 Bassett and Kay at 282.

276.4 The Court was asked to waive appearances by the Māori owners. It is not clear whether this request was made with the knowledge or consent of the owners.

276.5 It was apparent to the Court that the land taken was of little monetary value and the owners would gain very little by employing a valuer on their own behalf.[369] The Court made clear that it was the "quite unusual" circumstances) that made the Court feel justified in accepting the special Government valuation in this case. £40.0.0 was awarded for Part Te Rerengaohau No 2B containing 27a 1r 23p and £1.10.0 for Part Whirokino No 3 containing 37 perches.

276.6 The claimants also suggest the compensation awarded here demonstrates compensation for Māori land taken under public works legislation "bore little relationship to true market or cultural value".[370] However, no evidence has been submitted showing the amount of compensation awarded was insufficient in the circumstances.

277. Even when Māori did not bring valuation evidence, the Court could award more than the Crown's valuation. For example:

277.1 This occurred in respect of Muhunoa 1B2B. This one acre parcel was taken in 1921 for the Ōhau Post Office.[371] At the compensation hearing, the Crown presented the Government valuation of £100. The owner, Hema te Ao, asked for £200 (making a comparison with other land across the road). Judge Gilfedder, Hemi Te Ao, Native

369 In July 1941, the Resident Engineer described the land as follows: "The areas concerned are of sandy country, part covered with sand dunes, some fixed and some of live sand, part in a rough state covered with lupin and gorse, and of sandy flats. Section 2 above is little better than worthless.": Bassett and Kay at 284. In 1931, the Chief Clerk of the Native Department inspected this area when considering the establishment of the Manawatū Development Scheme. He said: "The Rerengaohau Block subdivisions and the lands between that Block and the river west of Hartley's Bend are, in my opinion, entirely unsuitable for development, being almost wholly covered with drift sand, the fixation of which, if that where possible, would cost infinitely more then the land would ever be worth.": Young and others at [410].

370 Generic Submissions at [11.1]. The other example cited by the claimants to support this proposition is in respect to Lower Aorangi which relates directly to Rangitāne, not Ngāti Raukawa and affiliated groups.

371 Bassett and Kay at 504-507; Bassett and Kay, Public Works Takings Spreadsheet row 904. See also Ngāti Tukorehe Submissions at [233]-[236].

Land Purchase Officer G. Halliday, and the Government valuer made a site visit. The Judge decided compensation of £150 would be paid, with £130 going to the owners and £20 to the lessee.

277.2 When the Māori Land Court considered compensation for the taking of 25 acres of customary land at Ōtaki, it awarded £200 which was 11% more than the Government valuation of £180 (see below at [287]-[290]).

278. The Crown further submits that the legislation did not prevent the parties from negotiating arrangements as to compensation and presenting these to the Native/Māori Land Court for approval. For example:

278.1 In the case of the 2 roods taken from Manawatū-Kukutauaki 3 Section 1A2 in 1946 (see also [126.2] above), the Railways Department negotiated with the sole owner before the land was taken. They agreed on £70 compensation (the special government valuation was £55).

278.2 In July 1957, the Māori Land Court assessed compensation for approximately 96 acres of land taken at Ōtaki in 1955 for soil conservation and river control (see above at [200]-[202]).[372] The compensation of £1,004-18-6 (inclusive of legal fees) awarded by the Court had been agreed on by solicitors and valuers for the owners and the District Valuer. (The claimants say this was a failure to make payment based on fair market compensation, but have not produced evidence to that effect.[373])

278.3 In December 1958, land was taken for the southern approach to the Ōhau Overbridge.[374] Five areas were taken (four European and one Māori), and the owners all consented to the taking and were paid

372 At 270-271; Bassett and Kay, Public Works Takings Spreadsheet rows 3161-3175.
373 Generic Submissions at [5.7].
374 Bassett and Kay at 178; Bassett and Kay, Public Works Takings Spreadsheet rows 3646-3650.

compensation.[375] The owners of Ohau 3 subdivision 26 Section 1A received £315[376] for 1 rood 12.8 perches of land taken.[377]

Undervaluation of Māori land

279. The claimants suggest the valuations of Māori landowners were "routinely discounted".[378] No example of this occurring is cited by the claimants and the Crown is not aware of evidence before this Tribunal supporting this proposition.

280. The claimants say further that, "[l]and was routinely undervalued".[379] Here, the claimants reference the taking of the ballast pit at Kakariki (refer also [148] above) but there is no evidence to suggest the amount of compensation paid in this instance was too low (the owners were also paid rent and interest when the land was not returned promptly). There is no evidence of undervaluation in respect of the cited example, let alone evidence of routine undervaluation in PkM.

281. Similarly, the submission that "compensation for Māori land taken under public works legislation were [sic] unreasonably low"[380] is not supported by the evidence. The claimants refer here only to Papangaio J.[381] However, this was not a public works taking. Rather, it was a negotiated purchase. In 1964, a purchase price of £20,000 (plus legal costs) was agreed between the Crown and the owners.[382] This was followed by special legislation, s 9 of the Reserves and Other Lands Disposal Act 1965, which extinguished the Māori

375 Bassett and Kay, Answers to Questions of Clarification at [27].
376 Bassett and Kay, Public Works Takings Spreadsheet row 3436.
377 Ngāti Tukorehe say, "there were questions as to whether sufficient compensation had been paid to the owners": Ngāti Tukorehe Submissions at [226]. Those submissions reference Bassett and Kay at 178, but this reference does not raise any questions about the amount of compensation. The Crown is not aware of any other evidence regarding the level of compensation for this taking.
378 Generic Submissions at [11.10].
379 At [11.14], [11.24].
380 At [11.1].
381 Brief of evidence of Michael (Mic) O'Dea (Wai 2200, #K9, 26 March 2021) at [24]: "The whenua is now called Papangaio J, and this is where the river was. This block was the only block our hapu received compensation for – a very small amount, however."
382 Alexander, Inland Waterways at 151-152.

owners' title and gave Papangaio J and all its accretion the status of Crown land.[383]

Delay in compensation

282. The claimants say compensation was "often" or "routinely" delayed for years.[384] The Crown acknowledges there may have been cases where the assessment of compensation for Māori land may have been delayed, but it should be noted that there are relatively few examples where that may have occurred.[385]

283. The sole example relied on by the claimants is in respect of 100 acres of customary land taken in 1954 (see also [201] above).[386] In that case:

283.1 At the time of the taking, there was no legal obligation on the Crown to pursue compensation when customary land was taken. Rather, the Crown had a discretion to apply at any time to the Māori Land Court for determination of compensation.[387] No evidence has been located that it did so.[388] 20 years later, the Assistant Land Purchase Officer surmised that this had been because the land taken was customary land.[389] In fact, the contemporaneous reasons no application was made are not known.

283.2 In 1974, the Department of Māori and Island Affairs claimed compensation for the land.[390] The District Commissioner of Works recommended compensation should be paid and interest should be assessed for five years. The reason for limiting interest in this way

383 Alexander notes that, "[n]o dissension was expressed as the legislation passed through the House of Representatives".

384 Generic Submissions at [11.1], [11.24(a)].

385 The claimants refer to Ms Bassett's oral evidence that, "…its not uncommon to come across cases where Maori owners are writing in saying, where is my compensation, can we get this actioned please, and they are really just at the mercy of waiting for the public works official to initiate the manner. And then for it to get through the Native Land Court too, sometimes delays followed there as well." Despite this broad statement, the Public Works Act report includes few specific examples of delay.

386 Generic Submissions at [5.7(a)], [11.1], [11.16]-[11.20].

387 Public Works Act 1928, s 104(1)(a).

388 The claimants say, "Until 1962, only the taking authority could initiate compensation proceedings, meaning Māori *often* received nothing if the authority failed to act." (emphasis added): Generic Submissions at [11.11]. However, this is the only example the Crown is aware of in respect of Ngāti Raukawa and affiliated groups.

389 Bassett and Kay at 270.

390 At 269.

was said to be because "there is a five year limitation in which they can claim compensation". In fact, the ability for owners of customary land to claim compensation came into force in 1963 and this would already have been more than five years after the taking. As above, at the time of the taking, only the Crown could apply for compensation to be determined.

283.3 Ultimately, a negotiated settlement on compensation was reached. The Māori Trustee, on behalf of the owners, accepted an offer of $700 with interest at 5% for 5 years from 22 November 1954.[391] The claimants suggest this was a "token payment"/"gross undervaluation",[392] but have not submitted evidence supporting this proposition.

284. Where delays occurred in the Native/Māori Land Court, these cannot be attributed to the Crown.

285. There is, accordingly, no evidential basis to make a broad finding about the frequency of delay.

Exchanges/betterment

286. The claimants also referenced land for land exchanges[393] and the "betterment principle",[394] but these do not arise in respect of Ngāti Raukawa and affiliated groups/ are not addressed comprehensively in the evidence and the Crown does not address these further.

391 At 270.

392 Generic Submissions at [11.20].

393 At [11.3]. The example referenced is Lower Aorangi which relates directly to Rangitāne, not Ngāti Raukawa and affiliated groups.

394 At [11.14], [11.24]. As the claimants noted, the "betterment principle" was not analysed in Porirua ki Manawatū. Accordingly, there is no evidence to say "same discriminatory outcomes are evident" or compensation was "eroded though principles such as betterment".

Hapū-specific submissions

Ōtaki river customary land

287. The Ōtaki Māori Committee say that the Crown failed to provide any compensation for the taking of 25 acres of customary land at Ōtaki (see above discussion and concession at [233]-[253]).[395]

288. Compensation was the Council's responsibility under s 104(1)(a) of the Public Works Act. This section required the County Council to make an application to the Māori Land Court to ascertain what amount of compensation ought to be paid "to persons interested in such land" and who were the persons entitled to be paid such compensation. This was required within six months of the Order in Council taking land.

289. Bassett and Kay were unable to find evidence that compensation was paid.[396] However, the Crown has located Māori Land Court Minutes confirming compensation was paid in respect of this taking.

290. On 22 November 1961 the Council's application for compensation to be awarded was heard by the Māori Land Court. The Court determined that the government valuation of £180 was sufficient, and counsel for owners ("if any") was not required. It determined the land was not part of any of the surrounding Māori freehold blocks, and that only one of those blocks had a known living owner, who had purchased the land rather than it being 'ancestral land'. The Court noted that when another block, Tawaroa I, had been taken and compensation payable, the money had been paid to 'meeting houses in locality'. It awarded £200 compensation to be paid to the Māori Trustee and distributed equally between two local whare, one of which was Raukawa marae in Ōtaki, for the maintenance of their meeting houses.[397]

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395 Ōtaki Māori Committee closing submissions Ōtaki Māori Committee Submissions at [76], [79].

396 Bassett and Kay noted that no information was located to indicate whether "the Māori Land Court or Māori Trustee subsequently sought compensation for the land taken, and if any investigation was done to determine the potential customary owners": Bassett and Kay at 276. Ms Bassett said in response to questions during hearing 3 that, while she had a quick look in the obvious minute books, she felt she probably just had not been able to find the relevant material (Transcript of hearing week 3, #4.1.25 at 524).

397 Otaki MB 69, pp.179-180 (**attached**).

Onepuehu Bridge river protection works

291. Ngāti Pikiahu claimants have raised the taking of land at Te Reureu in 1939.[398] They say that the Crown vested 129 acres in the ownership of the Rangitīkei County for the purposes of river-protection works, while a further two acres were taken for the road leading up to the Onepuehu Bridge, but the owners were compensated for just 27 acres. The Crown notes this taking has a complex background and its position is that vital evidence relating to the agreement about compensation is not before the Tribunal.

292. In the late 1930s, the Rangitīkei County Council wanted to take riverbed land for river protection works. However, uncertainty about the legal position regarding most of the land arose. This land had not been part of the original Te Reureu block, being riverbed at the time of the original Crown purchase.[399]

293. It was considered possible that the land was accretion to the Te Reureu blocks. If so, the Council preferred to negotiate with the beneficial owners of the accretion. With this in mind, the Council applied to the Native Land Court to extend the boundaries of the adjacent sections of Te Reureu 1 to include the contested area.[400] The application was heard on 20 April 1938. Judge Browne asked for assistance from the Native Department in ascertaining the views of the District Land Registrar regarding what was required to have the accretions added to the titles of the relevant sections of Reureu 1.

294. The Registrar General of Lands took the view that the land sought by the Council was not accretion but an island in the river. The Registrar General therefore felt that a claim to accretion, if lodged with the District Land Registrar, would probably not be successful.[401]

398 Closing submissions on behalf of Ngāti Pikiahu (Wai 1872) (19 December 2025) Wai 2200, #3.3.113 [**Ngāti Pikiahu Submissions**] at [250].

399 Alexander, Rangitīkei River Report at 210.

400 At 210; Husbands, Māori Aspirations at 556.

401 At 211; Alexander, Rangitīkei River Report, Supporting Documents at 603-604; Husbands, Māori Aspirations at 556.

295. At a meeting at which Judge Browne was present,[402] it was decided that ownership of the land could be argued at a subsequent compensation hearing.

296. On 9 November 1939, a proclamation was issued taking 129 acres for the purposes of river protection works and 2 acres for the road leading up to the Onepuhi Bridge.[403]

297. Agreement was reached on compensation. The Rangitīkei County Council agreed to pay £35 as compensation for the 27 acres, as well as £4 4s to cover the owners' legal costs and this was approved by the Native Land Court on 10 June 1941.[404]

298. Although the Court Minute refers only to 27 acres, there is insufficient information to form any conclusion about the nature of the agreement between the Council and owners. Specifically, despite the formulation of the Court Minute, it cannot conclusively be determined that the £35 related only to the 27 acres. It is entirely possible that the agreement actually related to all the land taken. In particular:

298.1 It is clear that the Council had no objection to paying for the riverbed land and had gone to some lengths to do so by taking the application to the Native Land Court.

298.2 There is no information about what happened to the plan to resolve ownership through the Court (see [295] above). It seems unlikely, given the vehemence with which the owners claimed the riverbed land, that they would have simply let matters rest without some resolution of the position relating to the riverbed land (or, failing that, challenge). No such resolution or challenge is referenced in the evidence.

402 Alexander, Rangitīkei River Report, Supporting Documents at 605; Husbands, Māori Aspirations, Husbands, Māori Aspirations at 557. Judge Browne queried some aspects of the Registrar General's opinion, but did not refer to any concerns about the proposed method for determining ownership.

403 Alexander, Rangitīkei River Report at 211; Alexander, Rangitīkei River Report, Supporting Documents at 616-618; Husbands, Māori Aspirations at 557; Bassett and Kay, Public Works Takings Spreadsheet rows 1800-1804.

404 At 211; Husbands, Māori Aspirations at 557.

298.3 The Government Valuation for the 27 acres was £19. The amount agreed was significantly above this, at £35. Although of great significance to Te Reureu Māori, the riverbed land may not have been given a high monetary value. Dr Husbands asserts that £19 was "substantially less than the owners of Te Reureu 1 might have expected to have received if they had been compensated for all of the 131 acres that the Crown had taken".[405] However, no basis is provided to support this proposition.

Feilding sewage treatment plant

299. Some claimants have raised an apparent disparity between the amount of compensation paid to non-Māori landowners affected by takings for the Feilding sewage treatment plant and the amount paid to members of Ngāti Kauwhata.[406]

300. In January 1964, 112 acres were taken by the Crown under the Public Works Act 1928 for the construction of the Feilding sewage treatment works on Kawakawa Road. This included approximately 60 acres of Māori land (from the Te Awahuri Reserve,[407] Aorangi 1 Section 4C 6;[408] and Aorangi 1 Section 4C).[409]

301. On 6 September 1962, after written notice had been sent out to the affected landowners, the Feilding Borough Mayor, Town Clerk, and Borough Engineer met with some of the Māori owners to explain the Council's intentions.[410] The Mayor told the meeting that the Council hoped to "come to a mutually satisfactory agreement for the purchase" of the required land. He informed the meeting that the Council had been "advised by the Māori Land Court that the best procedure" for "acquiring" the required land was "under the provisions of the Public Works Act".

405 Husbands, Māori Aspirations at 557.
406 Ngāti Kauwhata Submissions at [294], Ngāti Wehi Wehi Submissions at [285].
407 Bassett and Kay, Public Works Takings Spreadsheet rows 4568 (21-0-11), 4570 (0-1-29), 4575 (3-0-03), 4576 (0-0-24).
408 At rows 4571 (27-2-0), 4578 (3-0-19).
409 At row 4577 (3-3-10).
410 Husbands, Māori Aspirations at 458.

302. After the land was proclaimed as taken, the question of compensation for the 60 acres of Māori land taken was referred to the Māori Trustee.[411] The Māori Trustee assessed the compensation to be paid as £2700, plus £124 12s 11d of interest for the period from 1 March 1965 to 31 January 1966. Compensation of that amount was accepted and paid by Feilding Borough Council in February 1966.

303. Subsequently, the Feilding Borough Council paid £6545 to the European owners whose land (approximately 50 acres) had also been taken for the sewage treatment works.[412]

304. The Crown says there is no basis for a finding that compensation paid for the Māori land was too low (inherently or in comparison to that paid to other owners):

304.1 No evidence has been produced that the amount requested by the Māori Trustee was too low.

304.2 Care must be taken when comparing compensation received for different pieces of land. It is not sufficient to compare the amount of compensation against the size of the land. The particular characteristics of the specific land will affect its monetary value. In 1962, the valuer employed by the Feilding Council reported that the Māori-owned land was "good river silt land covered with lupin, blackberry and large willows, with rough grazing land through it all".[413] Most of the area to be taken from the Te Awahuri Reserve was "old river bed" or accretion brought about by shifts in the course of the Oroua River.[414] While acknowledging the cultural significance of the land, the Crown notes that such land would likely have been given a lower monetary value and this would have affected the amount of compensation agreed.

304.3 In any event, neither of the parties to the compensation negotiation (the Māori Trustee, nor the Feilding Borough Council) is the Crown

411 At 460.
412 At 461.
413 At 458.
414 At 459.

and neither was acting on behalf of the Crown. The Crown appears to have had no involvement in the compensation negotiations.

Ōhinepuhiawe 140 and 141 (1932 river protection)

305. The background to this taking is described at [158]-[167], [209]-[211], [217]-[218], [259]-[263], [318], [341]-[344]. As set out at [211] above, owners came to an agreement with the Rangitīkei County Council that compensation was to be paid for the land taken.

306. The land was then assessed by two sets of valuers, one employed by the Council (Moriarty) and others (Duigan and Monrad) representing the owners. When Monrad made his valuation in April 1932, he was accompanied by the Council engineer and chairman who instructed him that, if there was any doubt about the valuation, he should give the owners the benefit of this doubt.[415]

307. The Council agreed to pay a total of £114 10s as compensation for 54½ acres and this was accepted by the owners on the advice of their valuers.[416] The rate of compensation per acre varied widely from section to section, depending on the quality of the land to be taken. Hone Reweti, who had written to the Native Minister in 1931 (as above at [210]), said he was an owner in Ōhinepuhiawe Sections 140B and 141B1 and he consented to the sum offered by the Council "because I consider it adequate".[417]

308. The rates of compensation offered by the Rangitīkei County Council were challenged before the Native Land Court by Te Taite Te Tomo representing Kereopa Reweti and some of the other affected owners:[418]

    308.1 The Court was presented with the agreement that had been reached by some owners with the Council (as above) but, when other owners objected, it undertook its own assessment of compensation (it did not "simply rubber stamp the council agreement").[419]

415 Bassett and Kay at 302.
416 Husbands, Māori Aspirations at 649; Bassett and Kay at 301.
417 Bassett and Kay at 301.
418 Husbands, Māori Aspirations at 649.
419 Bassett and Kay at 301; Bassett and Kay, Answers to Questions at [92].

308.2 On 21 September 1933, the Court rejected the claim for additional compensation.[420] However, because the Council had not provided access for all of the sections to the Rangitīkei River, the Court increased the overall compensation to be provided by the Council from £114 10s to £126.[421]

308.3 On the available evidence, the Court made a fair assessment of the compensation.[422]

Ōhinepuhiawe 140 and 141 (1981 river protection)

309. The Wai 2187 Ngāti Parewahawaha claimants say: "The valuation saga further breaches te Tiriti o Waitangi, as the Board actively sought to downplay the value of the land that it would take. The claimants had to undergo an arduous court process to obtain anything resembling a fair payment for their whenua."[423] However, it is apparent that the Crown was not responsible for the level of compensation offered and took steps to encourage payment of full compensation. As below at [319.3.2], the Māori Affairs District Officer advised the Catchment Board that full compensation must be paid (including metal potential value). The Catchment Board (which was not the Crown) did not, however, offer compensation for the minerals.[424]

310. Some owners accepted the Board's compensation offer.[425] The issue of compensation in respect of some of the sections,[426] particularly whether a mineral value could rightly be included, was referred to the Land Valuation Tribunal as an independent arbitration body. The Catchment Board, not the Crown, appeared before the Tribunal.[427] In its April 1984 decision, the Tribunal found the correct land valuation was "somewhere in between" the differing approaches of the valuers for the Board and the owners, with an additional value of $22,500 over and above the land value for the metal

420 Husbands, Māori Aspirations at 650.
421 Bassett and Kay at 304.
422 Bassett and Kay, Answers to Questions at [94].
423 Wai 2197 Submissions at [131].
424 Alexander, Rangitīkei River Report at 486.
425 At 485, 491.
426 Ohinepuhiawe 140A; Ohinepuhiawe 140B3; Ohinepuhiawe 141B1; Part Ohinepuhiawe 141B5; Part Ohinepuhiawe 141B5.
427 Alexander, Rangitīkei River Report at 490.

resource.[428] The Tribunal also awarded interest from the date of taking and costs of $3000. Payment was made in June 1984.

Issue 6.9: To what extent did the Crown monitor the acquisition of Ngāti Raukawa and affiliated groups' land for public works by local government or other bodies with the power to acquire land compulsorily? What action, if any, did the Crown take as a result of its monitoring?

311. As noted earlier, the Crown does not accept that it is responsible for the actions or omissions of local authorities in the course of carrying out their functions. The Crown also notes that there is limited evidence on the way in which the Crown monitored local authorities or other non-Crown taking authorities. The Crown says, therefore, that firm conclusions cannot be made on this issue.

312. The claimants say the Crown "treated the conduct of local authorities as beyond its jurisdiction and took no remedial action, even when objections were raised".[429] The Crown does not agree. Most of the public works takings highlighted throughout the claimants' submissions directly involved the Crown at some stage of the process.

313. Further, the Crown submits that the evidence demonstrates the Crown was at times aware of particular issues that arose in respect of acquisitions by other authorities, and took steps to ensure concerns raised by Māori were addressed. Examples are set out below.

Examples of Crown oversight of local authorities

Ngakaroro 1A Section 7[430]

314. Bassett and Kay summarise this as follows: "Agitation by the Member of Parliament did eventually see a compromise reached in the case of a road through the Ngakaroro 1A7 block, which was supported by the Chief Surveyor in the face of repeated opposition from the Wellington and Manawatū Railway Company which was arranging the roading scheme."[431]

428 At 487.
429 Generic Submissions at [13.11].
430 Bassett and Kay at 94-100; Bassett and Kay, Public Works Takings Spreadsheet row 310; Ngā Hapū Ahi Kaa ō Ōtaki Submissions at [184].
431 At 203.

315. In 1888, concerns were raised about a road over the Ngakaroro block from Ōtaki Railway Station, which had been laid out by the Wellington and Manawatū Railway Company. Specifically, the Wellington and Manawatū Railway Company surveyor had laid off the road in a way which divided Ngakaroro 1A Section 7 (owned by members of the Moroati whānau) into three pieces.

316. The owners asked the Chief Surveyor to refuse to approve the road, and to instead instruct that the road go around the boundaries of the block. The owners also sought assistance from their local Māori Member of Parliament, Hoani Taipua. In Parliament, Taipua said that the Minister of Public Works had seen plans of the proposed road and agreed that "a hardship had been inflicted upon the owner".

317. In 1889, a compromise was reached when Taipua, the Surveyor General, the Chief Surveyor, the Wellington and Manawatū Railway Company surveyor, the lessee, and the chair of the Te Horo Road Board all met on the block. The road would run partway along the boundary of Section 7, before cutting into the block (which, as above at [61], was necessary because of the natural features of the block). The owners had also agreed to this route.

Ōhinepuhiawe 140 and 141

318. In 1933, Iwa Moeroa Karatea and others petitioned the Native Minister about the Rangitīkei County Council fencing the banks of the Rangitīkei River near the Onepuehu Bridge.[432] When the Council's explanation was reported to the Under Secretary of the Native Department, he instructed that a departmental officer visit Te Reureu, learn more about the concerns of the local Māori landowners, and see if the County Engineer's reasons satisfied them. Hoeroa Marumaru, a Departmental Property Supervisor and Parewanui resident, visited Te Reureu twice in February 1934.[433] When the record of the meeting was sent to the Under Secretary in the Native Department, he recommended to the Native Minister that a report on whether the measures proposed by the Council were necessary be sought

432 Alexander, Rangitīkei River Report at 200; Husbands, Māori Aspirations at 553.
433 At 202.

from one of the Government engineers in the Public Works Department.[434] This report was supplied to the Native Department Property Supervisor to see if he could broker an agreement between Te Reureu landowners and Rangitikei County Council.[435] It appears no agreement was reached. By 1937, the Council proposed to acquire land in this location for river protection. This is also addressed at [158]-[167], [209]-[211], [217]-[218], [259]-[263], [305]-[308], [341]-[344].

319. As detailed earlier, the Rangitīkei-Wanganui Catchment Board took land at Ōhinepuhiawe for river protection purposes in 1981 (see also discussion at [168]-[177], [263], [309]-[311]). The Catchment Board was not part of the Crown, nor was it operating on its behalf. However, Crown officials intervened to communicate concerns and identify the rights of the owners:

319.1 In August 1979, the Māori Affairs District Officer wrote to the Catchment Board raising Mrs Cribb's concern that river metal was being taken off Ōhinepuhiawe blocks.[436]

319.2 At a meeting of the Aotea District Māori Land Advisory Committee in September 1979, a Māori Affairs Department field officer raised concerns about:[437]

319.2.1 the amount of land to be taken since the land proposed to be taken on the western/Bulls bank appeared more than was necessary for the Board to fulfil its functions; and

319.2.2 the Catchment Board having treated the riverbed as being Crown Land (and proposing not to offer compensation for the riverbed).

319.3 In respect of the ownership of the riverbed:[438]

319.3.1 The Chief Surveyor reported in January 1980 that, "As Ohinepuhiawe 140 and 141 were granted by the Crown to

434 At 203.
435 At 205; Husbands, Māori Aspirations at 555.
436 At 478.
437 At 479.
438 At 481.

the Maori owners, that part of the river bed passing through these blocks is not Crown Land. The reservation for Soil Conservation and River Control Purposes of the river bed by Gazette 1959 p.566 does not include any of this land."

319.3.2 When forwarding the Chief Surveyor's opinion to the Catchment Board, the Māori Affairs District Officer noted that full compensation must be paid (including metal potential value) and asked the Catchment Board not to extract further metal until the land was officially taken.[439]

Issue 6.10: Was the operation and impact of public works legislation equitable as between Māori and non-Māori land, including, for example in the application of the 5 percent rule?

320. Consideration of the statistical data on public works acquisitions in the rohe reveals that the vast majority of acquisitions, more than 90%, were from non-Māori owners. The Crown says this negates any suggestion that public works legislation was used to acquire Māori land generally and other than for public purposes. Analysis of the patterns of public works takings is set out above at [30]-[65].

321. The example of Pryce's line is addressed above at [72]-[81].

322. Ngāti Pikiahu claimants refer to a statement from the authors of the *Rangatiratanga and Kāwanatanga* report during hearing 1 of the Ngāti Raukawa and affiliated groups phase.[440] This appears to be cited by the claimants in the context of the Onepuehu Bridge, but in fact the discussion during the hearing related to the taking of land from Ōhinepuhiawe for river protection purposes. In the extract cited, Mr Fitzgerald suggested that Māori land at Ōhinepuhiawe was deliberately taken for river protection instead of land from neighbouring non-Māori owners. Dr Young suggested that Public Works Department officials found it easier to negotiate the arrangements

439 The Māori Land Court issued an injunction two months later prohibiting the Catchment Board from removing or authorising the removal of metal from the Māori Land.

440 Ngāti Pikiahu Submissions at [268], citing #4.1.024 at 615.

with other officials in the Department of Māori Affairs rather than negotiate with owners. The Crown does not accept these propositions in respect of Ōhinepuhiawe:

322.1 First, while the #A199 report covers the Ōhinepuhiawe Development Scheme, it does not appear to cover river protection takings in the Ōhinepuhiawe reserve.

322.2 Second, there is no evidence that Māori land was taken in favour of European land in this instance. Rather, the trajectory of the river's flow and the susceptibility of Ōhinepuhiawe lands to erosion directed the location of the land taken. At the same time Māori land was taken in 1932, 2 acres of European land was also taken.[441] A second setting aside of land for the purposes of protecting the Bulls bridge occurred in the 1930s; the 11 acres 1 rood 15 perches (Section 72 Block XV Rangitoto Survey District) reserved under the Land Act 1924 was not Māori owned.[442]

322.3 Third, Public Works Department officials were not involved in any negotiations regarding the taking of Ōhinepuhiawe, let alone with other officials from the Department of Māori Affairs. Rather, as set out at [159]-[168], [210]-[212], [218]-[219], [260]-[264], [306]-[309], [342]-[345], the County Council directly negotiated, and reached agreement with, owners of Ōhinepuhiawe.

Issue 6.11: Did Ngāti Raukawa and affiliated groups oppose or raise concerns with public works takings? If so, how did the Crown respond to such opposition and was this adequate?

323. As noted earlier, opposition to the compulsory acquisition of land, whether Māori or general land, is common. The compulsory nature of the public works regime means that there is always a high likelihood of opposition. Evidence of opposition to an acquisition does not automatically result in that acquisition being a breach of the Treaty. The Crown does not accept that the

441 Bassett and Kay, Public Works Takings Spreadsheet row 1339.
442 Alexander, Rangitīkei River Report at 226.

compulsory acquisition of land in the face of opposition is inherently a breach of Treaty principles.

324. Rather, regard must be had to the reasons for the opposition, whether the reasons were taken into account by the Crown, and any actions the Crown took as a result of the opposition. Where such evidence does not exist in relation to a particular case, the Crown says the Tribunal is unable to make a finding about that case.

325. Further, while Bassett and Kay provide case study examples of particular acquisitions, the evidence does not provide a comprehensive account of all of the public works acquisitions in the inquiry district, including the extent of any Māori opposition and the Crown's response. This means that the Tribunal should be cautious about drawing conclusions about how the Crown generally responded to Māori opposition.

326. Similarly, there is no comparative evidence in respect of opposition from non-Māori landowners that enables us to assess how the Crown might have responded as between Māori and non-Māori. It is clear that non-Māori landowners did not always achieve the substantive outcomes they sought. For example, Mr Gear, the owner of Ngakaroro 2F (from which land was taken for a road at the same time as Ngakaroro 1A Section 7 discussed at [61], [314]-[317], [327.2]), requested that the Te Horo Road Board reduce the width of the road line from one chain wide to half a chain. It does not appear that the road line was reduced.[443]

327. The Crown submits that the available evidence demonstrates that Māori were able to, and did, raise objections. For example:

    327.1 As above at [209]-[211], the owners initially objected to the taking of land at Ōhinepuhiawe for river protection purposes in the 1930s but ultimately reached agreement with the County Council for the taking of the land. In 1979, owners of Ōhinepuhiawe of were able to present their objections to the Planning Tribunal (see [171]-[176] above).

443 Bassett and Kay at 100.

327.2 As above at [61], [314]-[317], the owners of Ngakaroro 1A Section 7 objected to the route of the road (which cut through the block instead of following block boundaries). In the end, a compromise was reached after a meeting at the site; the road would still cut through the block to avoid the unsuitable terrain, but would run partway along the boundary before doing so. In the instance of another road taking, in 1884 Pineaha te Mahauariki objected to the line of the road through his land in Te Roto 1 (although, as at [64] above, it is unclear what came of this objection).

Issue 6.12: In terms of surplus land:

(a) Did the Crown on-sell or otherwise dispose of surplus land without offering it back to Ngāti Raukawa and affiliated groups?

(b) Did the Crown offer surplus land back to the original owners, their successors or descendants? Were any offers taken up? If not, why not? Were there delays experienced in the return of surplus land?

Change in use

328. In general, it has always been permissible to apply land acquired for one purpose to another purpose should the first purpose not work out or come to an end, or to substitute the original public work purpose for another public work purpose. The Crown says that there is nothing inherently inconsistent with the Treaty or its principles in this policy.

329. On the assumption that appropriate compensation has been paid, it may not be necessary nor appropriate to return disposed land at the least cost and inconvenience to owners.

Offer-back

330. Before the enactment of the Public Works Act 1981, public works legislation did not require the Crown to offer back compulsorily acquired land that was no longer required for public work purposes[444]. Accordingly, the Crown does not recognise the failure to offer back surplus land before 1 February 1982, when the Public Works Act 1981 came into force, to be a Treaty breach.

444 Between 1928 and 1935, the land had to be offered first "to the person then entitled to the land from which such land was originally taken". Due inquiry was required to find such owner/s. This was removed by s 14 of the Public Works Amendment Act 1935.

331. Since 1 February 1982, the Crown has been obliged under the Public Works Act 1981 to offer back land previously acquired for a public work to the former owners or their successors unless a statutory exemption applies.

332. Pursuant to s 40 of the Public Works Act 1981, where any land held for a public work is no longer required for that public work and is not required for any other public work and is not required for any exchange under s 105 of the Public Works Act, the land is to be offered back to "the person from whom it was acquired or to the successor of that person" at its current market value or at a lesser price. Section 40(2) provides exceptions to this general rule. Those exceptions are:

332.1 the chief executive [of the relevant department holding the land] "considers that it would be impracticable, unreasonable, or unfair to do so"; or

332.2 "there has been a significant change in the character of the land for the purposes of, or in connection with, the public work for which it was acquired or is held".

333. The Crown has a Treaty duty to comply with this statutory duty and a well-founded Treaty claim may exist where the Crown has failed to do so. Similarly, a failure to consider an offer-back of surplus public works land where there was a statutory discretion to do so may not be Treaty compliant.

334. In principle, the Crown says that requiring compensation for improvements (such as school buildings) is not a breach of the Treaty.

Disposal of surplus lands in PkM

335. In the generic submissions, the claimants make a series of sweeping statements regarding the Crown's approach to surplus lands in PkM. The sole example relied upon is the hospital and sanatorium lands at Ōtaki. This issue has a complex background and is addressed in separate submissions. The Crown submits there is no evidence to support the following broad propositions:

335.1 "the Crown *frequently* retained land long after it ceased to be required for the original public work and to this day still has not been returned"[445] (emphasis added);

335.2 "departments *often* looked for alternative Crown purposes, delaying any return to Ngāti Raukawa and affiliated groups" (emphasis added);[446]

335.3 "[w]hat limited principle of offer-back had existed was steadily eroded, and by the mid-twentieth century the requirement had been effectively abandoned, with surplus lands instead diverted to other Crown purposes or sold on the open market";[447]

335.4 "[e]ven after the introduction of an offer-back policy in the 1970s, the Crown continued to resist returning lands";[448] or

335.5 "[o]ffer-backs were not triggered until a declaration of surplus was made, and the Crown often sought to derive further benefit through sale or lease before recognising its obligations." [449]

Examples highlighted by claimants

336. The Crown is not aware of lands taken under the public works legislation for railway purposes and never used for this purpose before being sold to European farmers.[450]

337. Land was not taken at Pukekararaka by the Crown. Rather, the Crown understands this involved a gift of land to the Catholic Church.[451]

338. As above at [277.1], a 1 acre parcel was taken in 1921 for the Ōhau Post Office.[452] By late 1953, most of this acre was no longer required for the post office and the Minister of Public Works approved disposal of all but 1 rood 6

445 Generic Submissions at [14.1].
446 At [14.2].
447 At [14.3].
448 At [14.11].
449 At [14.11].
450 Generic Submissions at [14.9], n 201, citing Brief of evidence of Nicholas Turoa regarding Environmental Conservation on behalf of Ngā Hapū o Hīmatangi (Wai 1618) (Wai 2200, #K10, 26 March 2021) at [12].
451 Generic Submissions at [14.9], n 202, citing Second brief of evidence of Dr Oriwia Raureti (Ed.D) [Pukekaraka] (Wai 2200, #S4, 2 November 2023) at [38].
452 Ngāti Tukorehe Submissions at [237].

perches of the land.[453] In April 1955, Part Muhunoa 1B2B (13.3 perches) was proclaimed as a road. In March 1955, Part Muhunoa 1B2B (2 rood 20.7 perches) was declared to be Crown land. In 1958, Lands and Survey transferred this land for railway purposes.

River protection schemes

339. Land taken for river protection schemes at Onepuehu and Ōhinepuhiawe was retained despite the closure of the bridges and subsequently vested in the Rangitīkei Manawatū Catchment Board as a reservation for soil conservation and river control.[454] It appears these lands have not become surplus.

Onepuehu

340. In July 1973, the Minister of Lands was told that, if the Catchment Board could obtain control of the lands at Onepuehu, flooding and erosion of the land during winter months may be arrested.[455] The Minister approved the reservation for soil conservation and rivers control purposes, and the appointment of Rangitīkei-Wanganui Catchment Board to control and manage the reserve. In 1993, after Manawatū-Wanganui Regional Council replaced the Catchment Board, solicitors for Ngāti Pikiahu Waewae claimed that the land should be returned to its former owners in accordance with s 40 of the Public Works Act 1981.[456] However, the Council's position was that, "[t]he Pinus radiata forest block, which is sited on presently designated soil conservation and river control reserve, is an integral part of the Rangitikei River flood control scheme". There is no evidence suggesting this position has changed. The Council is independent of the Crown.

Ōhinepuhiawe

341. The land taken for river protection at Ōhinepuhiawe was transferred from the Rangitīkei County Council to the Rangitīkei Catchment Board in 1962-63.[457] In 1974 the status of the land was changed from freehold to reserve

453 Bassett and Kay at 506-507.

454 Ngāti Pikiahu Submissions at [260]-[262]; Specific closing submissions for Ngāti Parewahawaha (Wai 1619) (19 Hakihea 2025) Wai 2200, #3.3.117 [**Ngāti Parewahawaha (Wai 1619) Submissions**] at [110].

455 Alexander, Rangitīkei River Report at 216.

456 At 217.

457 At 227.

for soil conservation and rivers control subject to control and management by Rangitīkei-Wanganui Catchment Board.

342. As discussed above ([168]-[177], [263], [309]-[311], [319]), additional river protection works were undertaken in this vicinity in the early 1980s. In September 1979 a Māori Affairs Department field officer expressed the view that the land already held by the Catchment Board (the soil conservation and river control reserve) was more than was necessary for the Board to fulfil its functions.[458] The Planning Tribunal said in 1979 (presumably on the basis of Catchment Board evidence),[459] "[w]e record that land on a higher level *which the Board does not need* is at present subject to some negotiations between the parties with a view of possible exchange of or in part payment of compensation." (emphasis added) However, it is unclear whether the land referred to as not needed was the land taken from Māori in 1932 or land taken subsequently in 1935.

343. As to the present status of this land, a map is **attached** to these submissions.[460] Counsel are instructed that on that map:

343.1 Land marked <u>green</u> was the balance of the Ōhinepuhiawe land taken for river protection in 1931. This is Crown land held as a Local Purpose Reserve (s 23 of the Reserves Act 1977). This land is known as "Rangitīkei River No 2 River Control Reserve" and is controlled and managed by Horizons Regional Council.

343.2 Land marked <u>yellow</u> was general land acquired for flood protection. This is Crown land held as a Local Purpose Reserve (s 23 of the Reserves Act 1977). This land is known as "Rangitīkei River No 2 River Control Reserve" and is controlled and managed by Horizons Regional Council.

343.3 Land marked <u>blue</u> was riverbed reserved for flood protection in 1935. This is Crown land held as a Local Purpose Reserve (s 23 of the Reserves Act 1977). This land is known as "Rangitīkei River No 2

458 At 479.

459 Alexander, Rangitīkei River Report, Supporting Documents at 3314.

460 This map is similar to Map 10: Bulls bridge in Alexander, Rangitīkei River Report at 244, but records a small section that is currently in private ownership.

River Control Reserve" and is controlled and managed by Horizons Regional Council.

343.4 Land marked red was Ōhinepuhiawe land taken for soil conservation and river control in 1981. This land is a Local Purpose Reserve for soil conservation and river protection (s 23 of the Reserves Act 1977 and is vested in Horizons Regional Council.

343.5 Land marked purple was part of the Ōhinepuhiawe land taken for river protection in 1931. This land is held under private freehold title (Record of Title 114099).

344. There is no other evidence about the use of the reserve land to present and, relevantly, no evidence it has become surplus. The Council is independent of the Crown.

27 July | Hōngongoi 2026

T C Stephens KC / I M G Clarke
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal

AND TO: Claimant Counsel