THE WAITANGI TRIBUNAL

WAI No 863 – SOC 2

IN THE MATTER	**of the Treaty of Waitangi Act 1975**
AND	
IN THE MATTER	**of claims in the Wairarapa ki Tararua Inquiry**

CROWN'S FINAL STATEMENT OF RESPONSE – WAI 166

SOC 2

23 September 2003

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A NGA KAITONO - THE CLAIMANTS

1.0 This statement of claim is filed by Manahi Paewai for and on behalf of Rangitaane o Tamaki-nui-a-rua iwi ("Rangitaane") and its constituent hapu. This claim is supported by the Rangitaane o Tamaki-nui-a-rua Incorporated Society.

2.0 The constituent hapu of Rangitaane are:

- ***Ngati Rangiwhakaewa***
- ***Ngati Mutuahi***
- ***Te Hika O Papauma***
- ***Ngati Parakiore***
- ***Te Kapuarangi***
- ***Ngati Pakapaka***
- ***Ngati Hamua***
- ***Ngati Te Koro***

Crown's Response

1. The Crown notes paragraphs 1 and 2.

B TE TONO - THE CLAIM

3.0 This claim concerns Rangitaane taonga, in particular the loss of ownership, possession, authority and access to the lands, waters, estates and forests, within the Tamaki-nui-a-rua rohe. The claim also concerns the loss of identity as tangata whenua of the Tamaki-Nui-A-Rua rohe. The Wai 166 claim is a comprehensive claim on behalf of Rangitaane, covering the entire rohe referred to as the Tararua region for Tribunal purposes, but known as Tamaki-nui-a-rua by the claimants.

Crown's Response

2. The Crown notes paragraph 3.

C. TE ROHE

4.0 A full description of the Rangitaane rohe and a map are annexed and marked "A" and "B" respectively. The Tamaki-nui-a-rua boundary is further defined by Peter McBurney in his Land Alienation Overview report.[1] The claimants accept that their tribal boundary overlaps with Rangitaane o Wairarapa. The claimants also by statement acknowledge their Rangitaane kinsmen north of the Tamaki-nui-a-rua rohe, annexed and marked 'C'.

Crown's Response

3. The Crown notes paragraph 4.

D. FIRST CAUSE OF ACTION: FAILURE TO PROTECT THE LAND BASE AND OTHER RESOURCES OF RANGITAANE

[1] McBurney #A47 pp 16, 17

5.0 In breach of the principles of the Treaty of Waitangi, between 1840 and the present day, the Crown facilitated and/or permitted and/or failed to prevent the permanent alienation of a majority of Rangitaane land and resources within the Tamaki-nui-a-rua rohe. The land and resources remaining in Rangitaane ownership is insufficient for their present and future needs.

Crown's Response

4. The Crown concedes that it failed actively to protect the lands of Wairarapa and Tamaki nui a rua Maori to the extent today that Wairarapa and Tamaki nui a rua Maori are virtually landless and that this was a breach of the Treaty of Waitangi and its principles.

5. The Crown states that it pleads to the allegations in this statement of claim on the basis that, in many instances, it has no knowledge of the tribal affiliations of the historical figures involved in the events referred to, or the extent of their property ownership. With a view to the identification of issues to be inquired into, the Crown pleads to the statement of claim without taking a position on whether persons identifying as Rangitaane were on all occasions involved

5.1 In breach of its duties to actively protect Rangitaane in the use of their lands and resources to the fullest extent practicable, to ensure Rangitaane were left with a sufficient land base, to act reasonably and with the utmost good faith towards Rangitaane, the Crown:

Crown's Response

5.1 The Crown is not required to plead to paragraph 5.1.

Particulars

5.1.1 Adopted and/or facilitated and/or allowed a series of mechanisms and processes which led to the alienation of the vast majority of the Rangitaane land base and resources, they being:

(a) Crown purchases;[2]
(b) The Native Land Court;[3]
(c) Private purchases;[4]
(d) Public Works takings; and[5]

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2 Refer second and fourth cause of action

3 Refer third cause of action

4 Refer third cause of action

5 Refer ninth cause of action

(e) Purchasing reserves set aside for Rangitaane.[6]

Crown's Response

5.1.1 The Crown admits that land in the claim area passed from Maori ownership by the various processes described in paragraph 5.1.1.

5.1.2 These mechanisms and processes have resulted in Rangitaane being rendered virtually landless today:

(a) As at 1840, Rangitaane had significant interests in the entire Tamaki-nui-a-rua rohe which contained 1,077,714 acres of land (excluding water areas;[7]

(b) Between 1853-1859, the Crown purchased 381,049 acres of Tamaki-nui-a-rua land;[8]

(c) From 1865 – 1900 following investigation by the Native Land Court 578,626 acres of land was acquired by the Crown;[9]

(d) By 1900 approximately 118,039 acres of land remained in Maori hands, 11% of their original rohe.[10]

(e) Between 1890-1899, private purchases became increasingly significant with respect to Tamaki-nui-a-rua lands;[11]

(f) The current amount of Maori freehold land is 21,645, 2% of the original rohe. ;[12]

Crown's Response

(a) The Crown admits paragraphs 5.1.2 (a)-(f).

(g) The Crown has assumed ownership and control of an important Rangitaane resource and taonga, namely the foreshore and seabed from Arataura to the mouth of the Mataikona River;[13]

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6 Refer sixth cause of action

7 Page 18, Ellis and Small – Acreage and Alienation Data from 1865

8 Page 21, Ellis and Small – Acreage and Alienation Data from 1865

9 Page 21, Ellis and Small, "The total 1865 acres remaining of 696,665 minus the land remaining in Maori hands as at 1900, 118,039 leaves 578,626 acres alienated during that period."

10 Page 21, Ellis and Small – Acreage and Alienation Data from 1865.

11 McBurney # A 47 p 342

12 Page 21, Ellis and Small – Acreage and Alienation Data from 1865. It is accepted that this figure is not indicative of land remaining in Maori ownership, as non Maori may own Maori freehold land and Maori may own general land.

13 Refer twelfth cause of action

Crown's Response

(b) In response to paragraph (g), the Crown refers to its response to the twelfth cause of action.

(h) The lack of proper surveys resulted in more land than actually purchased by the Crown being alienated out of Rangitaane ownership;[14]

Crown's Response

(c) In response to paragraph (h), the Crown refers to its response to the fifth cause of action.

(i) The felling of the trees and the clearing of the bush on the Seventy Mile Bush blocks destroyed an important Rangitaane resource and taonga; and[15]

Crown's Response

(d) In response to paragraph (i), the Crown admits that, after the sale of the Seventy Mile Bush blocks, much of the forest cover was removed.

(j) Other important resources and taonga such as rivers, mahinga kai, Pa sites, and waahi tapu were destroyed or adversely affected by Crown actions and/or omissions.[16]

Crown's Response

(e) In response to paragraph (j), the Crown refers to its response to the eleventh cause of action.

Prejudice

5.2 The claimants say that as a result of the Crown's failure to protect the Rangitaane land base and their resources as alleged in the first cause of action, they have been prejudicially affected in the following ways:

(a) Forever dispossessed of their lands, estates and forests;

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14 Refer fifth cause of action

15 Oliver # A 35 pp 55-58, 93

16 Refer eleventh cause of action

(b) Left with isolated and fragmented land insufficient for their present and future needs;
(c) Displaced from their ancestral sites of significance including Pa sites and other waahi tapu;
(d) Subjected to the erosion of iwi and hapu structures and social patterns;
(e) Prevented from exercising their tino rangatiratanga as guaranteed by Article Two of the Treaty of Waitangi; and
(f) Subjected to adverse consequences to their health, education and general welfare.

Crown's Response

5.2 The Crown is not required to plead to paragraph 5.2.

E. SECOND CAUSE OF ACTION: PRE- 1865 CROWN PURCHASES
6.0. In breach of the principles of the Treaty of Waitangi, the Crown's policies and practices pre 1865, were specifically designed and implemented to alienate Rangitaane lands and resources.

Crown's Response

6. The Crown is not required to plead to the allegation of Treaty breach and otherwise denies the allegations in paragraph 6.0.

6.1 In facilitating the acquisition of Rangitaane land and resources, the Crown breached its duties to actively protect Rangitaane in the use of their land and resources to the fullest extent practicable, to act reasonably and with the utmost good faith towards Rangitaane, in the following ways:

Crown's Response

6.1 The Crown is not required to plead to paragraph 6.1

<u>Particulars</u>

6.1.1 Undermined Rangitaane tribal authority/ rangatiratanga over their lands and resources, examples of which are:
(a) The enactment of the Native Land Purchase Ordinance 1846;[17]
(b) The threatened and actual use of the Native Land Purchase Ordinance to dissuade pastoralists from taking up runs, for example the threat by McLean to use the ordinance against Potangaroa;[18]
(c) The deliberate strategy of acquiring Hawkes Bay land to encourage pastoralists to move north to the Hawkes

17 Stirling # A 48 p 57

18 Stirling # A 48 p 84

Bay thus undermining the viability of the grazing arrangements already in place at Castlepoint;[19]

(d) The use of Hawkes Bay rangatira, (who had no right to sell Tamaki-nui-a-rua land, for example Te Hapuku and Hori Niania) in opening up the Castlepoint block for sale and Te Hapuku and members of his whanau as vendors for the sale of the Tautane block;[20]

(e) The strategy employed by Donald McLean of travelling through the Tamaki-nui-a-rua rohe with the first payment for the purchase of Hawkes Bay land, to stimulate interest among Rangitaane in Tamaki-nui-a-rua to sell land;[21]

(f) The deliberate payments to only two Rangitaane rangatira, namely Potangaroa and Wereta, for their interest in Hawkes Bay land blocks with the intention of inducing a favourable view towards future land sales;[22]

(g) The Crown's favourable treatment of existing run holders whilst discouraging new run holders and selectively applying the Native Land Purchase Ordinance to pastoralists;[23]

(h) The Crown's encouragement to pastoralists not to pay rental payments to Rangitaane;[24]

(i) The broken promises made by Crown officials and Governor Grey of the benefits that would flow from providing land for settlement including education, health, improved roading, increased employment and an expanding economy.[25]

Crown's Response

6.1.1 In response to paragraph 6.1.1:

(a) In response to paragraph (a) the Crown admits the enactment of the Native Land Purchase Ordinance.

(b) In response to paragraph (b) the Crown admits that there were several occasions on which intending pastoralists were warned that they

19 Stirling # A 48 pp 77, 78, Walzl # A 48 p 419

20 McBurney # A 47 pp 43, 44, Ballara and Scott # A 19 p 2

21 McBurney # A 47 p 42

22 Stirling # A 48 p 86 & McBurney # A 47 p 43

23 Stirling # A 48 p 91

24 McCracken # A 47 p 19

25 Stirling # A 48 p 98-103, Walzl # A 44 p 430

would contravene the Ordinance if they occupied Maori land in the Wairarapa.

(c) In response to paragraph (c) the Crown admits that Donald McLean anticipated that Wairarapa pastoralists might take up leases of Crown land in Hawles Bay, but denies that this was the only or major motivation for acquiring land in Hawkes Bay.

(d) In response to paragraph (d) the Crown admits that Te Hapuku and Hori Niania were involved in negotiations over the Castlepoint block. The Crown also admits that Te Hapuku and members of his whanau signed the Tautane block deed.

(e) In response to paragraph (e), the Crown admits that Donald McLean travelled through the Wairarapa with the first payment for the purchase money for the Hawkes Bay purchases. The Crown further states that there is no evidence this was a deliberate strategy employed by McLean to stimulate interest among Rangitane in selling land.

(f) In response to paragraph (f), the Crown admits that payments were made to Potangaroa and Wereta but otherwise denies paragraph (f). The Crown states further that the payments were for their interests in the Waipukurau Block (McLean Journal, 5 November 1851. Wai 201 #A21(e), p 1344) and that distributions were also made to Manawatu

Maori (McLean to Colonial Secretary, 19 November 1851, AJHR, 1862, C-1, p 315).

(g) In response to paragraph (g) the Crown admits that it wished to prevent new runs from being taken up, but tolerated the runs that had already been established.

(h) The Crown denies paragraph (h)

(i) In response to paragraph (i) the Crown notes that this paragraph references the Stirling paragraph on an alleged 'compact' or 'treaty' between the Crown and Wairarapa Maori. To the extent that the allegation is that binding promises were made in the context of a special 'compact' or 'treaty' the allegation is denied. The Walzl evidence relied on makes reference to the promise of a mill at Papawai which is admitted. The Crown states further that the mill was provided. Walzl also refers to a promise of a village site at the same location. This promise is denied.

6.1.2 Crown agents employed a strategy of using rangatira from outside the Tamaki-nui-a-rua rohe in order to secure sales of land. The over-riding criteria was a "willingness to sell", examples of which are:

(a) Castlepoint

(i) The use of Te Hapuku who had no interest or right in the land;[26]

Crown's Response

6.1.2 In response to the opening text of paragraph 6.1.2, the Crown states, that it negotiated with rangatira who were

[26] McBurney # A 47 p 43, 44, 66

not resident in the Tamaki-nui-a-Rua rohe for the sale of land but otherwise denies the opening text of paragraph 6.1.2. It states further that these rangatira were connected to those residing on the land.

(a) In response to paragraph (a), the Crown admits that Te Hapuku took part in the negotiations for the Castlepoint deed but denies he had no interest or right in the land. The Crown states further that there were 301 signatories to the deed.

(b) Tautane

(i) The use of Te Hapuku and other Hawkes Bay rangatira to secure the Crown purchase of the Tautane block in 1854. Those rangatira had no interests in Tautane and no right to sell the block to the Crown;[27]

(ii) McLean's knowledge that Te Hapuku had no right to sell the Tautane block;[28]

(iii) The purchase of the Tautane block in Wellington without the knowledge or consent of the owners actually occupying the block;[29]

Crown's Response

(b) In response to paragraph (b)(i):

(i) In response to sentence one, the Crown admits that it negotiated with Te Hapuku to secure the Crown purchase of the Tautane Block.

(ii) In response to sentence two, the Crown denies that these rangatira had no interests in Tautane.

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27 McBurney # A 47, 50-60, Ballara and Scott # A 19 p 2

28 McBurney # A 47 p 55

29 Ballara and Scott # A 19 p 5

(iii) In response to the allegation regarding the right of these rangatira to sell the Crown has not had time to research this issue and therefore does not plead to it at this time. The Crown states further that there were both Hawkes Bay and Tamaki-nui-a-rua Maori among the signatories to this deed (McBurney, #A47, p52). The four Hawkes Bay signatories were Te Hapuku, Te Waihiku Te Haurangi (Te Hapuku's brother), Hienipaketia (Te Hapuku's cousin) Puhara (Hinepaketia's husband) and Hori Niania Te Aoratua (McBurney, #A47, p 52). There were 32 signatures in total.

(iv) The Crown denies paragraph (b)(ii).

(c) In response to paragraph (b)(iii), the Crown admits that the first Tautane deed was signed in Wellington. The Crown has not had time to research the extent to which those occupying the block consented to the sale and therefore does not plead to this allegation at this time. The Crown states further:

(i) That a further deed for the second instalment of the purchase price was signed by 90 Maori on March 1858 (Berghan, #A39, p 291).

(c) Ngaawapurua

(i) The Crown acquiring the Ngaawapurua block from persons residing outside Tamaki-Nui-A-Rua;[30]

(ii) Despite Rangitaane opposition, the Crown proceeded with the sale;[31]

Crown's Response

(d) In response to paragraph (c)(i), the Crown admits that it signed a deed with Peeti Te Aweawe, Hoani Meihana and seven others.

(i) The Crown has not had time to research whether signatories resided outside Tamaki-nui-a-rua and therefore does not plead to this aspect of paragraph (c)(i) at this time.

(e) In response to paragraph (c)(ii), the Crown admits it proceeded with the sale. It has not had time to research the issue of opposition to the sale and therefore does not plead to this allegation at this time.

(d) Makuri

(i) The Makuri purchase negotiations were carried out at Mataikona some distance from the land in question and without the presence or sanction of Te Hirawanu, the rangatira whose hapu had the strongest ownership claims to the Makuri block;[32]

(ii) McLean knew who owned the Makuri land and knew that the owners, in particular Te Hirawanu, were not present at Mataikona when the sale was arranged;[33]

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30 McBurney # A 47 p 64-67

31 McBurney #A47 p 66

32 McBurney # A 47 p 68

33 McBurney # A 47 p 73

Crown's Response

(f) In response to paragraph (d)(i), the Crown admits that the purchase negotiations were conducted at Mataikona some distance from the Makuri block.

(i) The Crown has insufficient knowledge as to whether Te Hirawanu was present and therefore denies the allegation that he was not present.

(g) In response to paragraph (d)(ii), the Crown admits that McLean knew who owned Makuri but otherwise denies paragraph (d)(ii) on the basis of insufficient knowledge. The Crown states further:

(i) That the signing of the Makuri Deed followed a large meeting at Mataikona regarding the sale of the land (Ballara and Scott, #A18, p 14).

(e) Ihuraua

(i) Ihuraua was originally sold by the wrong vendors and only later remedied after Rangitaane protest.[34]

Crown's Response

(h) The Crown denies paragraph (e). The Crown admits that payment of £50 was made by Searancke to "Te Hirawanu and the Rangitane Natives for their claims on lands sold by Ngati Kahungunu in the Forty Mile Bush".

[34] McBurney # A 47 p 74

(McBurney, #A47, p.74) but does not consider that this indicates that those signing the Deed for purchase of a 25,000 acre portion of the Ihuraua block had no right to sell.

6.1.3. Crown agents paid cash advances, a process known as "ground baiting" to Rangitaane rangatira and non Rangitaane rangatira in order to induce the sale of Rangitaane land, without adequate investigation as to those who had interests in the land. Examples within the Tamaki-nui-a-rua rohe are:

- ***(a) Payment to Te Potangaroa and Wereta for their interests in Hawkes Bay blocks paving the way for the Castlepoint purchase;[35]***
- ***(b) £100 paid to Hoani Meihana and others in July 1858 for the Ngaawapurua block;[36]***
- ***(c) Cash advances were paid to Te Potangaroa and Hoera Rautu in response to the Makuri block which was later repurchased as part of the Puketoi block.[37]***

Crown's Response

6.1.3 In response to the opening sentence of paragraph 6.1.3, the Crown admits that Crown agents made advance payments to Maori. The Crown otherwise denies the opening sentence of paragraph 6.1.3. The Crown states further that such payments were made to Maori who had decided to sell their land.

(a) In response to paragraph (a), the Crown admits that Te Potangaroa and Wereta were paid for their interests in the Waipukurau Block in Hawkes Bay but otherwise denies paragraph (a). The Crown states further that considerable sums were also paid to Manawatu Maori (McLean to Colonial Secretary, 19 November 1851, AJHR, 1862, C-1, p 315).

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35 McBurney # A 47 p 43

36 McBurney # A 47 p 337, Ballara and Scott # A 18 p 14

37 McBurney #A47 pp 70, 71

(b) The Crown admits paragraph (b).

(c) In response to paragraph (c), the Crown admits that cash advances were paid to Te Potangaroa and Hoera Rautu in respect of the Makuri Block.

6.1.4 The Crown failed to provide benefits promised of alienation as provided for by the five percent/koha clauses. The five percent/koha clauses were merely inducements to encourage land sales:

(a) A five percent/koha clause was present in the Tautane Deed, a block Rangitaane had significant interests in;[38]

(b) The five percent/koha clause was intended to provide a fund whereby the Crown would provide the owners of Tautane with schools, hospitals, medical services and other annuities;[39]

(c) The Crown breached its own five percent/koha policy and the expressed agreement recorded in the Tautane Deed by purchasing the endowment fund;[40]

(d) By purchasing the Tautane endowment, the Crown deprived Rangitaane of the benefits of the five percent/koha clause.[41]

Crown's Response

6.1.4 In response to the opening text of paragraph 6.1.4, the Crown states that it has not had time to research this allegation and therefore does not plead to it at this time.

(a) The Crown admits paragraph (a).

(b) The Crown admits paragraph (b).

(c) The Crown admits it paid to extinguish the five percent clause but otherwise denies paragraph (c).

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38 Ballara and Scott # A 19 pp 1-4

39 Ballara and Scott # A 18 p 8

40 Ballara and Scott # A 19 p 7, McBurney # A 47 p 53

41 McBurney # A 47 p 54, Ballara and Scott # A 19 p 8

(d) In response to paragraph (d), the Crown admits that payment to extinguish the five percent clause meant that Maori owners of the Tautane block did not receive the benefits which would have been owing to them had the five percent clause remained in the Deed.

Prejudice

6.2. The claimants have been prejudicially affected by the policies and practices, acts or omissions of the Crown as alleged in the second cause of action in the following ways:

(a) The loss of individual and collective mana and rangatiratanga;

(b) Destruction of social structures and organisation of iwi, hapu and whanau of Rangitaane;

(c) Destroyed responseships among Rangitaane kin, the effects of which are still prevalent today;

(d) Dispossessed Rangitaane of their land and resources in which they had strong spiritual links to;

(e) The diminution of the Rangitaane traditional land base; and

(f) The inability to fully access the benefits of education, medical services and economic opportunities that were promised.

Crown's Response

6.2 The Crown is not required to plead to paragraph 6.2.

F. THIRD CAUSE OF ACTION: THE NATIVE LAND COURT ERA

7.0 In breach of the principles of the Treaty of Waitangi between 1865-1900, the Crown through the institution of the Native Land Court facilitated the alienation and fragmentation of Rangitaane land and resources.

Crown's Response

7. The Crown is not required to plead.

7.1 In breach of its duties to actively protect Rangitaane in the use of their land and resources to the fullest extent practicable, to act reasonably and with the utmost good faith towards Rangitaane, the Crown introduced by legislation the Native Land Court which:

Crown's Response

7.1 The Crown does not plead to allegations of breach.

Particulars

7.1.1 Created a new land tenure system without consultation with Rangitaane.

Crown's Response

7.1.1 The Crown regards the reception of the Native Land Court by Wairarapa and Tamaki-nui-a-rua Maori as an issue requiring further consideration.

7.1.2 Ensured the further alienation of Rangitaane land;

(a) During the period 1866-1900 the Native Land Court investigated a number of Tamaki-nui-a-rua blocks which were subsequently purchased by the Crown;

(b) In following investigation by the Native Land Court, 578,626 acres of land was alienated between 1865 to 1900 ;[42]

(c) At 1900 an estimated 118,039 acres of land remained in Maori ownership;[43]

(d) Between 1866-1900 the Crown was the largest purchaser of Tamaki-nui-a-rua lands;[44]

(e) Between 1890-1899 private purchasers became increasingly significant with respect to Tamaki-nui-a-rua lands.[45] Examples of private purchases in this period are;

Mangatainoka J2A2[46]
Kaitoki 1
Kaitoki 3
Piripiri
Otanga

(f) The Native Land Court failed to place restrictions on alienation on Tamaki-nui-a-rua land following title investigation. Only two out of twelve northern Tamaki-nui-a-rua blocks had such restrictions imposed.[47]

Crown's Response

7.1.2 The Crown denies that allegation that the introduction of the Native Land Court "ensured" the sale of Maori land in Wairarapa ki Tamaki-nui-a-rua.

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42 Ellis and Small, Acreage and Alienation Data from 1865, p 21.

43 Ellis and Small, Acreage and Alienation Data from 1865, p 21.

44 McBurney # A 47 pp 338-343

45 McBurney # A 47 p 342

46 McBurney # A 47 p 324

47 Ballara and Scott # A 18 p 30

7.1.3 The Crown admits the allegation in paragraph (a).

7.1.4 The Crown admits the allegations in paragraph (b).

7.1.5 The Crown admits the allegations in paragraph (c).

7.1.6 The Crown admits the allegation in paragraph (d).

7.1.7 In response to paragraph (e) the Crown admits that private purchases occurred between 1890-1899 and that the examples given at paragraph (e) were private purchases.

7.1.8 In relation to paragraph (f) the Crown admits that, out of the 17 blocks identified, claimants only wished restrictions to be placed on two blocks. It says further that the Court awarded a form of title in accordance with the wishes of the successful claimants and stated explicitly that restrictions were not desired.

7.1.3 Encouraged the extinction of Maori customs, social order, authority and leadership, for example:

(a) The Native Land legislation emphasised the rights of the individual in preference to that of the wider collective rights of the hapu, an example of that being the application of the ten owner rule:[48]

(i) Most of the Tamaki-nui-a-rua land blocks had ten or less grantees following investigation by the Native Land Court;[49]

(ii) Despite evidence from Rangitaane Maori that a number of Tamaki-nui-a-rua land blocks had more than ten owners, the Court failed to exercise its powers to include more than ten owners as grantees and/or place the blocks in "tribal title". Examples within the Tamaki-nui-a-rua rohe being:

Te Ahuaturanga
Maharahara
Ngamoko (Manawatu no. 5)
Rakaiatai (Manawatu no. 7)
Te Ohu (Manawatu no. 3)[50]

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48 Stirling # A 48 p 29

49 McBurney # A 47 p 80

Crown's Response

7.1.9 In relation to paragraph 7.1.3 and 7.1.3 (a), the Crown admits that s 23 of the Native Lands Act 1865 contained a restriction on the number of people (a maximum of ten) who could be registered as owners. This section might be applied in such a way that others having customary rights in the land were excluded from the award of title and, as a result, were prejudiced if the land was transferred without their knowledge and consent and without their participating in the benefits of the transfer. While the Crown is aware of the potential for prejudice under the rule, it is still carrying out research into whether prejudice arose as a result of the operation of s 23 in the inquiry district. In so far as the relationship of the Native Land Court to the process of social change, the Crown refers to its response on this issue as set in its response to paragraph 42 of the Ngati Hinewaka statement of claim.

7.1.10 The Crown admits paragraph 7.1.3(i). It says further that the reasons for this pattern require examination.

7.1.11 In response to paragraph 7.1.3(ii) the Crown admits that the examples given did not include more than ten owners on the title. It says further that the reasons for this pattern require examination.

(b) Failed to carry out proper and adequate title investigation, examples of which are:
(i) The investigation of large blocks within a few days and in a cursory manner;[51]

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50 Berghan # A 39 p 85, 106, 107, 124, 194, 311

51 McBurney # A 47 p 106 and Robertson # A 27 p 65-80

(ii) Allowed inadequate time for the Court to hear evidence of ancestral occupation that led to errors. For example, the exclusion of the Okurehe papakainga situated on the Mangatoro block.[52]

Crown's Response

7.1.12 In relation to paragraph (b), the Crown notes that it is still examining the circumstances of the blocks referred to, but should not be understood as accepting at this stage that the investigation of title was improper. In relation to paragraph (b) (i), it admits that the investigations were of short duration, but notes that this in itself is not an indication of impropriety.

7.1.13 In response to the example given at paragraph (b)(ii) the Crown states that failure to separately reserve the kainga from the lease could have been corrected by a variation of lease and rectification of this was not dependent on partition of the land by the Court.

(c) The inclusion of Manawatu and Hawkes Bay rangatira as grantees within a number of Tamaki-nui-a-rua blocks, examples being;
Puketoi 1[53]
Puketoi 4[54]
Te Ahuaturanga[55]
Maharahara[56]
Manawatu 4A[57]
Mangahao 1[58]

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52 McBurney # A 47 p 178, 356, 357

53 McBurney # A 47 p 105

54 McBurney # A 47 p 105

55 McBurney # A 47 p 105

56 McBurney # A 47 p 105

57 McBurney # A 47 p 105, 106

58 McBurney # A47 p 137, 138 & Robertson # A 27 p 67, 68

Crown's Response

7.1.14 The Crown admits paragraph 7.1.4(c). The Crown states further that these rangatira were connected to those residing on the land and in some cases were regarded by resident Maori as leaders whom they wished to represent them.

(d) Resident Rangitaane rangatira being left out as grantees in favour of Manawatu and/or Hawkes Bay rangatira,[59] for example:

(i) Aperahama Rautahi and others with respect to the Maharahara block;[60]

(ii) Aperahama Rautahi with respect to Ahuaturanga;[61]

Crown's Response

7.1.15 The Crown admits that Aperahama Rautahi was not a grantee of the Maharahara and Ahuaturanga blocks.

(e) The Court failed to adjourn the 1871 court hearings in response the southern portion of the Seventy Mile Bush when it was clear that inclement weather precluded the attendance of several significant right holders most notably Nireaha Tamaki.[62]

Crown's Response

7.1.16 The Crown denies that the Court failed to adjourn the court hearings. The hearings were adjourned on 31 August to allow time for Maori delayed by the weather to appear.

Prejudice

7.2 The claimants say that they have been prejudicially affected by the workings of the Native Land Court as alleged in the third cause of action in the following ways;

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59 McBurney # A 47 p 105-107

60 McBurney # A 47 p 107, 108, Berghan # A 39 p 85

61 McBurney # A 47 p 107, 108, Berghan # A 39 p 33

62 Robertson # A 27 p 65

(a) It caused the continued alienation of their land base and resources;
(b) The loss of mana and rangatiratanga as a result of the ten owner rule;
(c) Damage to the social structure and organisation of the iwi, hapu and whanau of Rangitaane;
(d) The destruction of the Rangitaane's traditional tenurial system; and
(e) Being left with fragmented, insubstantial and individualised land holdings of little economical value that are manifestly insufficient for their present and future needs.

Crown's Response

7.2 The Crown is not required to plead to paragraph 7.2

7.3 In relation to paragraph 7.2 (a), the Crown admits that it was possible to sell land that had been clothed in title by the Native Land Court, but denies the generalised implication that the workings of the Native Land Court compelled Maori to sell.

7.4 In relation to paragraph 7.2. (b) the Crown refers to its response to paragraph 7.1.3 (a) of this statement of claim regarding s 23 of the Native Land Act 1865.

7.5 In relation to paragraph 7.2 (c) the Crown refers to its comments on the relationship between social change and the activities of the Native Land Court in its statements of response to paragraph 42 to the Ngati Hinewaka statement of claim.

7.6 In relation to paragraph 7.2 (d), the Crown admits that the Native Land Court replaced customary modes of ownership with titles derived from the Crown, but otherwise denies the allegation made therein.

7.7 In relation to paragraph 7(e), the Crown refers to its statement of general position and its discussion of partition in its statement of response to paragraph 42 the Ngati Hinewaka statement of claim.

G. FOURTH CAUSE OF ACTION: CROWN PURCHASES 1870-1900

8.0 The Crown through its purchasing agents ("Crown Agents") employed tactics in breach of the Treaty of Waitangi principles in order to acquire Rangitaane lands and resources during the period 1870-1900.

Crown's Response

8. The Crown does not plead to paragraph 8 on the grounds that it consists of allegations of Treaty breach.

8.1 In breach of its duties to actively protect Rangitaane in the use of their land and resources to the fullest extent practicable, to act reasonably and with the utmost good faith towards Rangitaane, the Crown employed tactics during the period 1870-1900 in order to facilitate the continued acquisition of Rangitaane lands and resources:

Crown's Response

8.1 In response to paragraph 8.1:

8.1.1 The Crown does not plead to the allegations of Treaty breach contained in paragraph 8.1.

8.1.2 The Crown admits that it acted during the period 1870-1900 to purchase land and resources.

8.1.3 The Crown otherwise denies paragraph 8.

<u>Particulars</u>

8.1.1 The Crown's land purchase policy which was to acquire all Maori land between Hawkes Bay and Wellington including all Rangitaane lands:[63]

Crown's Response

8.1.4 In response to the opening words of clause 8.1.1 the Crown admits that it wished to purchase Maori land between Hawke's Bay and Wellington but denies that its policy was to acquire all Maori land.

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63 McBurney # A 47 p 56

(a) During the 1870s, the Crown's focus was on acquiring Rangitaane land within the Tamaki-nui-a-rua rohe;[64]

Crown's Response

(a) In response to paragraph (a) the Crown admits that it was interested in purchasing land within the Tamaki-nui-a-rua rohe.

(c) By 1900 approximately 118,039 acres of land remained in Maori hands, 11% of the original rohe;[65]

Crown's Response

(c) The Crown admits paragraph (c).

(d) Between 1870-1900 the following blocks within the Tamaki-nui-a-rua rohe were purchased by the Crown, all of which Rangitaane had interests in:
<u>Northern Seventy Mile Bush Blocks</u>
Puketoi 1
Puketoi 2
Puketoi 3
Puketoi 4
Puketoi 5
Te Ahuaturanga
Maharahara
Manawatu 1(Umutaoroa)
Manawatu 3(Te Ohu)
Manawatu 5(Ngamoko)
Manawatu 6(Tuatua)
Manawatu 7(Rakaiatai)[66]
<u>Southern Seventy Mile Bush Blocks</u>
Kaihinu 1
Kaihinu 2
Mangahao 1
Mangahao 2
Eketahuna
Mongorongo
Pukahu
Pahi atua

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64 Ballara and Scott # A 18 p 8

65 Ellis and Small, Acreage and Alienation Data from 1865.

66 McBurney # A 47 p 338 (These blocks were sold as part of the northern portion of the Seventy Mile Bush sale to the Crown in 1870).

<u>Other Tamaki-nui-a-rua Blocks</u>
Kauhanga[67]
Mangatainoka B
Mangatainoka D
Mangatainoka I
Mangatainoka G
Mangatainoka L
Mangatainoka F
Mangatainoka 1BC1
Mangatainoka 4E 1
Mangatainoka 2BH 1
Mangatainoka J 1
Mangatainoka K 1
Piripiri
Waikopiro A
Waikopiro 1A
Waikopiro 2A
Waikopiro 3A
Waikopiro B17
Waikopiro 1B1
Waikopiro 1B2B1
Waikopiro 1B2B1
Waikopiro 2B1
Waikopiro 3B1
Ngapaeruru 5
Ngapaeruru 8
Ngapaeruru 9
Ngapaeruru nos 1,2,3,4,6 and 7 (parts of)
Ngapaeruru 1B1
Ngapaeruru 2B1
Ngapaeruru 4B1
Ngapaeruru 6B2
Ngapaeruru 7F1
Ngapaeruru 1B2A
Ngapaeruru 7F2A
Tamaki 1[68]

Crown's Response

(b) In response to paragraph (d) the Crown admits that the blocks listed had been purchased by the Crown between 1870–1900. The Crown states further:

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67 McBurney # A 47 p 340

68 (The above list does not include sales to private owners and does not include Public Works takings).

(i) That in the list of Southern Seventy Mile Bush Blocks the block name Manawatu 1 (Umutaoroa) should be substituted for Manawatu 2 (Umutaoroa) (McBurney, #A47, p 339) and that in the list of Other Tamaki-nui-a-rua Blocks, the name Ngapaeruru 2B1 should be substituted for the name Ngapaoruru 2B2 (McBurney, #A47, p 343).

8.1.2 Section 42 of the Public Works and Immigration Act which allowed Crown Agents to negotiate land sales without any adequate investigation of title by the Native Land Court or otherwise, led to purchases from the wrong vendors.[69]

Crown's Response

8.1.5 In response to paragraph 8.1.2, the Crown admits that it applied s 42 of the Immigration and Public Works Act 1871 in respect of the purchase of the Seventy Mile Bush blocks. It otherwise denies paragraph 8.1.2 but states further:

(a) That under s 42 such arrangements still had to be placed before the Native Land Court for title determination and a certificate of title for the person entering into such an arrangement obtained. If that certificate were not obtained the prior arrangement would not be binding.

8.1.3 The continued use of cash advances, a process known as "ground baiting" prior to investigation by the Native Land Court.[70] The cash advances were indiscriminately applied to those who were known sellers and/or did not have rights and interests

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69 McBurney # A 47 pp 79, 94, 97, 98, Robertson # A 27 p 54

70 McBurney # A 47 p 79

in Tamaki-nui-a-rua blocks, as opposed to dealing with those Rangitaane who had significant interests in the land.[71]

Crown's Response

8.1.6 In response to sentence one of paragraph 8.1.3 the Crown admits that it made cash payments to Maori who had decided to sell their land prior to the land being investigated by the Native Land Court. It otherwise denies sentence one of paragraph 8.1.3.

(a) In response to sentence two the Crown admits the advances were paid to those who had decided to sell their land but otherwise denies sentence two. The Crown states further that:

(i) The cash advances were paid to cover the expenses of food and accommodation prior to Native Land Court hearings and for the costs of surveying the land. In some cases these were paid to the Maori owners themselves and in other cases money was paid direct to third parties for expenses incurred. The Crown states further:

(ii) That Maori named in Locke's accounts as having received advance payments included local rangatira from the Seventy Mile Bush area (McBurney, #A47, p 98 – list of Locke payments and pages 19 and 87 identifying some local rangatira).

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71 McBurney # A 47 pp 96-98

8.1.4 The Crown Agents failed to negotiate with Rangitaane living on the land. In preference Crown Agents dealt with outsiders, for example:

Crown's Response

8.1.7 In response to sentence one of paragraph 8.1.4 the Crown denies sentence one of the opening text.

(a) In response to sentence two of paragraph 8.1.4, the Crown admits that it negotiated with non-resident rangatira in respect of some blocks. The Crown states further:

(i) These rangatira were connected to those residing on the land;

(ii) In some cases those rangatira were regarded by resident Maori as leaders who they wished to represent them (McBurney, #A47, p 88).

(a) Negotiating with Manawatu and/or Hawkes Bay rangatira,[72] an example being payment to Te Hapuku and Tareha £500 to extinguish their claims to the northern Seventy Mile Bush blocks which they had no interests in.[73]

Crown's Response

(b) In response to paragraph (a) the Crown admits it negotiated with Manawatu and Hawke's Bay rangatira and that it paid Te Hapuku and Tareha £500 to extinguish their claims to the northern Seventy Mile Bush blocks but it denies that they had no interests in these blocks.

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72 McBurney # A 47 p 86, Ballara and Scott # A 18 p 7

73 Ballara and Scott # A 18 p 12

(b) The Crown did not discriminate between Rangitaane occupying the land and those from the Manawatu and/or Hawkes Bay;[74]

Crown's Response

(c) The Crown denies paragraph (b) and refers to its response to paragraph 8.1.4.

(c) Manawatu and/or Hawkes Bay rangatira were appointed as grantees in Tamaki-nui-a-rua blocks, examples of which were;[75]
Te Ahuaturanga[76]
Maharahara [77]
Mangahao[78]
Eketahuna[79]

Crown's Response

(d) The Crown admits paragraph (c).

8.1.5 Crown Agents employed "bounty hunters" to secure signatures of those Rangitaane previously unwilling to sell, which put undue pressure on Rangitaane to sell,[80] for example Crown Agent James Grindell was offered £1 per day and £10 per signature to obtain outstanding signatories.[81]

Crown's Response

8.1.8 In response to paragraph 8.1.5 the Crown admits that it entered into agreements with agents to secure signatures of those owners who had not so far agreed to sell and that James Grindell was offered £1 per day and £10 per signature to obtain outstanding signatures but

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74 McBurney # A 47 pp 86, 87

75 McBurney # A 47 pp 89, 95, Ballara and Scott # A 18 p 7

76 McBurney # A 47 pp 105-107, Ballara and Scott # A 18 p 25, Berghan # A 39 p 33

77 McBurney #A47 p 107 and Berghan #A39 pp 85-86 and Ballara & Scott #A18 p 26

78 McBurney # A 47 p 107, Berghan # A 39 p 85-86, Ballara and Scott # A 18 p 26

79 Robertson # A 27 p 70

80 Ballara and Scott # A 18 pp 58-60

81 Ballara and Scott # A 18 p 58

otherwise denies paragraph 8.1.5. The Crown further states:

(a) That the agents so employed do not appear to have obtained signatures (Ballara and Scott, #A18, p 60)

8.1.6 The Crown proceeded to gazette the northern Seventy Mile Bush blocks as Crown land without firstly having all of the required Rangitaane signatories to complete their title.[82]

Crown's Response

8.1.9 The Crown denies paragraph 8.1.6. (Although Ballara and Scott allege this at page 55 of their Wai 201 Report, (Wai 863 #A18) their subsequent discussion of the purchase does not demonstrate this nor is the claim repeated in their discussion of the purchase or conclusions.)

Prejudice

8.2 The claimants say that they have been prejudicially affected by the policies practices, acts or omissions of the Crown as alleged in the fourth cause of action in the following ways:

(a) The loss of individual and collective mana and rangatiratanga;
(b) Destruction of social structures and organisation of iwi, hapu and whanau of Rangitaane;
(c) Destroyed responseships among Rangitaane kin, the effects of which are still prevalent today;
(d) Dispossessed Rangitaane of their land which they had strong spiritual ties to; and
(e) The diminution of the Rangitaane traditional land base.

Crown's Response

8.2 The Crown does not plead to paragraph 8.2.

H FIFTH CAUSE OF ACTION: FAILURE TO ENSURE PROPER SURVEYS WERE UNDERTAKEN PRIOR TO PURCHASING RANGITAANE LANDS

9.0 In breach of the principles of the Treaty of Waitangi the Crown failed to ensure that proper surveys were undertaken prior to the Crown purchasing Rangitaane lands.

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82 Ballara and Scott # A 18 p 58

Crown's Response

9. The Crown does not plead to the allegations of Treaty breach contained in paragraph 9.0.

9.1 In response to the allegation regarding surveys the Crown admits that parts of the boundaries of some of the Seventy Mile Bush blocks (Wellington) and Tamaki Blocks (Hawkes Bay) were not surveyed at the time the blocks were put through the Native Land Court and subsequently sold to the Crown and were instead indicated by means of sketch plans based on the boundaries of other blocks and natural features.

9.2 The Crown otherwise denies paragraph 90.

9.1 In breach of its duties to actively protect Rangitaane and the use of their lands and resources to the fullest extent practicable, to act reasonably and with the utmost good faith towards Rangitaane, the Crown:

Crown's Response

9.3 The Crown does not plead to the opening text of paragraph 9.1 on the basis that it consists of allegations of Treaty breach.

Particulars

9.1.1 Failed to survey Tamaki-nui-a-rua land blocks before finalising sales. Section 25 of the 1865 Native Land Act stipulated that land had to be surveyed and marked off prior to a certificate of title being ordered.[83]

Crown's Response

9.3.1 In response to sentence one:

(a) The Crown admits that parts of the boundaries of some of the Seventy Mile Bush and Tamaki blocks were not surveyed at the time the

[83] McBurney # A 47 p 209

blocks were put through the Native Land Court and at the time some of the blocks were subsequently sold to the Crown and were instead indicated by means of sketch plans based on the boundaries of other blocks and natural features. The Crown admits sentence two. The Crown further states:

(i) That section LXVIII of the Native Lands Act 1865 authorised the Court to:

> "recognise and receive in evidence at its discretion surveys of lands ceded to the Crown and made by officers of the Government and official surveys of lands which have been granted before the passing of this Act notwithstanding that such surveys have been made by a surveyor not licensed under this Act."

9.3.2 The Crown proposes to carry out further research and analysis in order to clarify issues related to the survey and subsequent alienation of the Tamaki and Seventy Mile Bush blocks.

9.1.2 Failed to either survey blocks at all, or undertook inadequate surveys which led to further alienation of Rangitaane lands:

Crown's Response

9.4 In response to the opening text of paragraph 9.1.2 the Crown admits that parts of the boundaries of some of the Tamaki and Seventy Mile Bush blocks were not surveyed at the time the block were put before the Court and in some cases at the time deeds were signed for the sale of the blocks to the Crown.

(a) Surveys were either non-existent or poorly done;[84]

(i) The survey of the Tautane block was left uncompleted;[85]

Crown's Response

(a) In response to paragraph (a)(i):

(i) The Crown admits that the survey of the Tautane Block was not completed at the time of purchase in 1858

(ii) The Crown further states that District Land Purchase Officer G S Cooper attributed the incomplete survey to the fact that the roughness of the country meant no one was likely to purchase the block, so the cost of the survey was not justified.

(ii) No surveys were carried out in response to a number of Tamaki blocks;[86]

Crown's Response

(b) In response to paragraph (a)(ii)

(i) The Crown admits that parts of the external boundaries of some of the Tamaki blocks were not surveyed at the time the blocks were put through the Native Land Court or when they were sold to the Crown and were instead indicated by means of sketch

84 McBurney # A 47 p 208

85 McBurney # A 47 p 209

86 McBurney # A 47 p 210

plans based on the boundaries of other blocks and natural features.

(ii) The Crown further states that surveys for Tamaki blocks were completed by 1879 (McBurney, #A47, p 124).

(iii) In February 1875, owners of the Mangatainoka 1B lost 77a 1r 22p of land due to an inaccurate survey;[87]

Crown's Response

(c) In response to paragraph (a)(iii), the Crown denies paragraph (a)(iii). It further states:

(i) That although the original acreage of the Mangatainoka 1B block was estimated as containing 1,710 acres, this estimate was found to be too large after sub-division surveys had been undertaken. It is in this context that the discrepancy of 77a 1r 22p arises. (McBurney, #A47, p 211).

(iv) In November 1888 owners of the Mangatainoka 1BC2 block lost 52a 10p of land due to an inaccurate survey;[88]

Crown's Response

(d) In response to paragraph (a)(iv), the Crown denies paragraph (a)(iv). It further states:

(i) That although the original acreage of the 1BC2 Block was estimated at 1,000 acres, this estimate was found

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87 McBurney # A 47 p 211

88 McBurney # A 47 p 211

to be inaccurate after sub-division surveys had been undertaken. It is in this context that the discrepancy of 52a 10p arises.

(v) When the Pahiatua block was finally surveyed, it was found that the larger block sold to the Crown contained an additional 7,625 acres of land;[89] ***and***

Crown's Response

(e) In response to paragraph (a)(v), the Crown admits paragraph (a)(v) and further states

(i) That following a hearing in the Native Land Court a payment of £1,999 was paid for the additional acreage to Nireaha Tamaki and Hoani Meihana.

(vi) The survey plans placed before Judge Rogan who investigated the southern portion of the Seventy Mile Bush were rudimentary and crude, simply based on the back boundaries of earlier purchases by the Crown.[90]

Crown's Response

(f) In response to paragraph (a)(vi), the Crown states that the boundaries of the southern portion of the Seventy Mile Bush purchase were based principally upon natural features such as mountain peaks and rivers and admits that not all the external boundaries were surveyed being instead indicated by means of sketch plans based on the boundaries of other

89 McBurney # A 47 p 198

90 Robertson # A 27 p 65

blocks and natural features. The Crown further states:

(i) That surveys for all of the Tamaki blocks were completed by 1879 (McBurney, #A47, p 124) but otherwise denies paragraph (a)(vi).

(g) The Crown otherwise denies paragraph (a).

(b) The Crown used the fact that surveys were incomplete to their advantage in order attain its goal of alienating Rangitaane land, an example being the refusal by the Native Land Purchasing Office to allow a private timber lease due to the fact that the survey on the Tiratu block was incomplete;[91]

Crown's Response

(h) The Crown denies paragraph (b).

(c) The Crown was inconsistent in its dealings with survey errors for example, compensation was paid to Rangitaane for the surveying error with respect to the Pahiatua block but the Crown failed to compensate Rangitaane in response to a similar surveying error with the Mangatainoka and Kaihinu blocks;[92]

Crown's Response

(i) The Crown denies paragraph (c). The Crown further states:

(i) That its preliminary view is that the cases cited arise from different circumstances. The Paihiatua Block case resulted from an error in the estimate of acreage which was identified following survey and

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91 McBurney # A 47 p 210

92 McBurney # A 47 p 198

addressed by payment of additional purchase price through the Native Land Court. The other Blocks concerned a claim regarding a dispute as to where the boundary between the Mangatainoka and Kaihinu Block was intended to be located.

(d) Owing to the failure to properly survey reserves some reserves were not set aside and were subsequently included in Crown grants, examples of which are the Waitutu and Takapuai reserves;[93]

Crown's Response

(j) In response to paragraph (d)

(i) The Crown admits that two of the ten reserves named in the Castlepoint Deed (Takapuai and Waitutu) were not laid out on the ground with the other reserves. The Crown further states:

- That the Takapuai reserve was later set aside by the Crown after the omission was identified approximately 50 years later. The Cleaver Report #A6, p60-65 does not indicate why the omission was not brought to the attention of the Crown at an earlier date.
- The Crown has not had time to research the allegation as it applies more generally and

[93] McBurney # A 47 p 179

therefore does not plead to paragraph (d) at this time (Cleaver, #A6, pp 34, 60-65, 105-111).

(e) Reserves not surveyed or defined adequately led to waahi tapu being absorbed into European owned farms, for example Tuatua.[94]

Crown's Response

(k) In response to paragraph (e), the Crown does not plead to paragraph (e) due to insufficient particulars being provided. The Crown notes that tangata whenua evidence will be given on this issue (Para 8, Memorandum of Counsel for SOC 2, dated August 2003).

(f) The Makuri block was purchased by the Crown unsurveyed. As a result, 10,000 acres was sold without the knowledge of Te Hirawanu, a Rangitaane rangatira;[95]

Crown's Response

(l) In response to paragraph (f) sentence one, the Crown admits that the purchase of the block was undertaken on the basis of a sketch plan not a full survey of external boundaries on the ground. The Crown further states:

(i) That the purchase was not finalised until 1871 as part of the Seventy Mile Bush purchases.

(m) In response to sentence two, the Crown states that it appears probable that Te Hirawanu

94 McBurney # A 47 p 209

95 McBurney # A 47 p 209

received payment of £50 in response to this purchase (McBurney, #A47, p 98).

(n) The Crown has not had time to research whether the 10,000 acres was sold without Te Hirawera's knowledge and therefore does not plead to this allegation at this time.

(g) Rangitaane protested at the lack of and inadequacy of surveys following the sale of the northern portion of the Seventy Mile Bush in 1870, with no satisfactory Crown response to that protest.[96]

Crown's Response

(o) In response to paragraph (g), the Crown refers to its earlier responses regarding the surveys of the Tamaki Blocks. The Crown admits that Paora Ropiha criticised the surveys for the Tamaki Blocks. The Crown has had insufficient time to research its response to these protests and therefore, at this time, does not plead to whether its response was satisfactory.

(h) The effect of not surveying and/or inadequate survey led to an area of more than 5,000 acres of Tamaki-nui-a-rua land "going missing" which led to court proceedings involving the Rangitaane rangatira, Nireaha Tamaki.[97]

Crown's Response

(p) In response to paragraph (h), the Crown states that the effect of not surveying or inadequately surveying the western boundary of the

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96 McBurney # A 47 pp 209, 210

97 McBurney # A 47 pp 210, 211

Mangatainoka No 3 block and the eastern boundary of the Kaihinu 2 block led to a dispute over whether an area of 5,184 acres was included in the Kaihinu 2 Block and thus purchased by the Crown or was excluded from the Kaihinu block and thus remained in Maori ownership (McBurney, #A24, pp 11-12).

(i) The Crown admits that this led to Court proceedings involving Nireaha Tamaki.

Prejudice

9.2 The claimants say they have been prejudicially affected by the actions and/or omissions of the Crown as pleaded in the fifth cause of action in the following ways;

(a) The lack of and inadequate surveys led to the further alienation of the Rangitaane land base and waahi tapu sites;

Crown's Response

9.5 The Crown is not required to plead to paragraph 9.2.

I THE SIXTH CAUSE OF ACTION: FAILURE TO PROTECT RESERVES SET ASIDE FOR RANGITAANE.

10.0 In breach of the principles of the Treaty of Waitangi the Crown failed to protect reserves set aside for Rangitaane.

10.1 In breach of its duties to actively protect Rangitaane lands and resources to the fullest extent practicable, to act reasonably and with the utmost good faith towards Rangitaane, the Crown:

Crown's Response

10. The Crown does not plead to paragraph 10.1 on the basis that it consists of allegations of Treaty breach.

Particulars

10.1.1 Failed to ensure that reserves remained subject to restrictions on alienation, for example:

(a) Five reserves totaling 19,870 acres were set aside following the 'Tamaki' purchase in June 1871. The Native Land Court recorded that these reserves were

inalienable by sale or lease. The reserves were subsequently purchased by the Crown;[98]

Crown's Response

10.1.1 In response to 10.1.1 paragraph (a), the Crown admits that five reserves were set aside following the Tamaki purchase. The Crown states further that the reserves were awarded by the Crown under the Volunteers and other Lands Act 1877. The Crown has been unable to find reference in the Berghan document bank to the placing of restrictions on these reserves by the Native Land Court at the time they were set aside. However, the Crown admits that it appears that restrictions were placed on alienation of the reserves at some point. The Crown states further that restrictions were lifted on the blocks listed below as follows:

- Umutaoroa – 25 June 1889 by Governor Onslow (Ballara and Scott, #A18, p 74).
- Te Whiti-a-Tara – 19 March 1910 by Order in Council signed by Native Minister James Carroll and Governor Plunket (Ballara and Scott, #A18, p 76).
- Te Ahuaturanga – 17 January 1910 by proclamation made on recommendation of Native Minister James Carroll (Ballara and Scott, #A18, p79).

10.1.2 The Crown admits that Umutaoroa, Te Whiti-a-Tara, part of Ahuaturanga and part of Te Ohu were purchased

98 McBurney # A 47 p 71

by the Crown. Part of Te Ohu and part of Ahuaturanga were sold to private purchasers.

(b) Eight reserves totaling 4,369 acres, set aside following the sale of the southern Seventy Mile Bush blocks, were made in favour of Rangitaane, all of which had alienation restrictions removed and later a majority of the reserves were purchased by the Crown;[99]

Crown's Response

(a) In response to paragraph (b), the Crown admits that eight reserves were set aside following the sale of the southern Seventy Mile Bush Blocks.

(i) The Crown admits that two reserves (Eketahuna and Pahiatatua) had alienation restrictions placed on them (McBurney, #A27, pp 23 and 32).

(ii) Particulars provided are insufficient to enable the Crown to ascertain whether restrictions were placed on the other reserves.

(iii) The Crown admits that a portion of Ngatapu No. 1 Reserve, Ngatapu No.2 Reserve (McBurney, #A23, p 38) and Mangahao No 1 (McBurney, #A23, p36) were sold to the Crown. Insufficient particulars are available in the relevant reports regarding the sale of the other reserves to enable the Crown to plead to whether the

[99] Robertson # A 27 p 65

majority of the reserves were purchased by the Crown.

10.1.2 Ill-defined boundaries and surveys resulted in uncertainty over whether reserves had been created or not;[100]

Crown's Response

10.1.3 In response to paragraph 10.1.2, the Crown notes that the source cited for this allegation relates to the Castlepoint block.

(a) The Crown admits that in the case of the Castlepoint Block there was uncertainty over whether some reserves had been created or not. It refers to its response to paragraph 9.1.2(d).

10.1.3 Land supposedly reserved to Rangitaane was on-sold having been wrongly included in Crown grants;[101]

Crown's Response

10.1.4 In response to paragraph 10.1.3, the Crown states that in so far as this paragraph concerns the Castlepoint Block, it admits that two reserves named in the Castlepoint Deed were not set apart at the time this should have occurred in 1853. The Crown further states:

(a) That the Takapuai reserve was later set aside by the Crown after the omission was identified. (Cleaver, #A6, pp 34, 60-65, 105-111).

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100 McBurney # A 47 pp 117, 179

101 McBurney # A 47 pp 179, 209

10.1.4 Failed to place Rangitaane reserves into hapu or tribal title, for example only the Mangatainoka was placed into "tribal title" by the Native Land Court.[102]

Crown's Response

The Crown notes that there needs to be clarity about what form of 'tribal title is intended'. The Crown is still examining this matter and does not plead at this stage.

10.1.5 The Crown actively sought to purchase Rangitaane reserves despite a strong desire of Rangitaane to retain them, for example the Mangatainoka block.[103]

Crown's Response

10.1.5 In response to paragraph 10.1.5, the Crown admits that it sought to purchase some reserves and that it sought to purchase the Mangatainoka reserves. The Crown further states:

(a) That it purchased interests from owners who wished to sell.

(b) The Crown otherwise denies paragraph 10.1.5.

10.1.6 Throughout the 19th and 20th centuries, the Crown purchased a number of the Rangitaane reserves, examples of which are:
Ahuaturanga reserve[104]
Ngatapu 2
Puapuatapotu
Ngatapu1
Huru's reserve
Tararua
Rarikohua
Tutaetapera

102 Robertson # A 27 p 79

103 McBurney # A 47 p 156

104 McBurney # A 47 p 181-193

Crown's Response

10.1.6 In response to paragraph 10.1.6, the Crown admits that in the 19th and 20th Centuries the Crown purchased a number of reserves including those listed.

10.1.7 Over 50% of reserves set aside in the southern portion of the Seventy Mile Bush were alienated by the Crown between 1870 and 1890.[105]

Crown's Response

10.1.7 In response to paragraph 10.1.7, the Crown admits that over 50% of the acreage set aside as reserves in the southern portion of Seventy Mile bush (as calculated by McBurney on estimates of the time) was purchased by the Crown from 1872-1883.

Prejudice

10.2 The claimants say that they have been prejudicially affected by the actions and/or omissions of the Crown as alleged in the sixth cause of action as follows;

(a) The continued alienation of Rangitaane land base and resources;

(b) The loss of ownership and access to sites of significance such as Pa sites, waahi tapu and kainga situated on the reserves; and

(c) Loss of mana and rangatiratanga as a result of the Crown alienating Rangitaane reserves despite the expressed desire of Rangitaane to retain them.

Crown's Response

10.2 The Crown is not required to plead to paragraph 10.

J. SEVENTH CAUSE OF ACTION: RANGITAANE PROTEST AND THE CROWN'S FAILURE TO RESPOND

11.0 In breach of the principles of the Treaty of Waitangi, the Crown failed to adequately respond to Rangitaane protest and concerns relating to Crown actions and/or omissions throughout the 19th century.

105 McBurney # A 47 p 196

Crown's Response

11. The Crown does not plead to the paragraph 11 on the basis that it consists of allegations of Treaty breach.

11.1 In breach of its duty to act reasonably and with the utmost good faith towards Rangitaane the Crown failed to adequately respond and address Rangitaane protest and concerns relating to Crown actions and/or omissions throughout the 19th century:

Crown's Response

11.1 The Crown does not plead to the allegations of Treaty breach contained in 11.1.

Particulars

11.1.1 Rangitaane protested in response to the following matters:

(a) The large scale alienation of their land base and other resources;

Crown's Response

11.1.1 In response to paragraph 11.1.1:

(a) The Crown has not yet researched this allegation and therefore does not plead to it.

(b) A diminution of their rangatiratanga;

Crown's Response

(b) The Crown has not yet researched this allegation and therefore does not plead to it.

(c) Blocks not being properly surveyed;[106]

Crown's Response

(c) In response to paragraph (c), the Crown admits that Paora Ropiha wrote to Chief Judge Fenton

[106] McBurney # A 47 pp 107, 108, 110, 111

concerning the hearing for the Tamaki Blocks and that he complained that individual interests in the block were not defined and that no surveyor went onto certain listed blocks (McBurney, #A47, p 109).

(d) The workings of the Native Land Court;[107]

Crown's Response

(d) In response to paragraph (d), the Crown admits that Henare Matua complained to the Hawkes Bay Native Lands Alienation Commission, 1873 regarding the conduct of the Native Land Court hearing into the Tamaki blocks. The Crown also admits that Henare Matua wrote to Chief Judge Fenton regarding the Native Land Court hearings into the Tamaki block and in particular Judge Rogan's conduct of Aperahama's claim.

(e) The use of outside Rangatira to negotiate sales of Tamaki-nui-a-rua land;[108]

Crown's Response

(e) The Crown admits that some Maori complained that Rangitira living outside the area took part in the negotiations for the sale of some Tamaki-nui-a-rua land.

(f) The felling of timber by lessees of Rangitaane land.[109]

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107 McBurney # A 47 pp 110, 111, 112, 120, 121. For example the submissions made to Hawkes Bay Native Land Alienation Commission in 1873 by Henare Matua.

108 McBurney # A 47 pp 86, 87, Ballara and Scott # A 18 p 7

109 Oliver # A35 pp 55-58

Crown's Response

(f) In response to paragraph (f), the Crown admits that a protest was made regarding the felling of timber on Maori land. It states further:

(i) That the petition was brought by Hori Ropiha who had not agreed to the sale of Rakaiatai and Te Ohu Blocks and protested the felling of timber by sawmillers who had obtained a railway contract. The Crown further states:

- That in response to this petition the Native Affairs Committee found that the Government had stopped the taking of the timber and had stationed a policeman at Rakaiatai.

11.1.2 The Rangitaane response to the legacy of Crown land purchasing and the activity of the Native Land Court was varied. The 19th Century saw Rangitaane people involved in the following activities:

Crown's Response

11.1.2 In response to sentence one, the Crown admits that the Maori response to Crown land purchasing and the activity of the Native Land Court was varied.

(a) Participation in the Repudiation movement, in particular Henare Matua a Rangitaane rangatira;[110]

(b) Submissions and involvement in the Hawkes Bay Alienation Commission Inquiry 1873;[111]

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110 Stirling # A 50 p 41, 42

111 McBurney # A 47 pp 110-113

(c) Use of the legal system by Nireaha Tamaki, a Rangitaane rangatira;[112]

(d) Petitions to the Crown, for example petitions by Hori Ropiha in response to the timber leases.[113]

Crown's Response

(a) The Crown admits paragraphs (a)-(d).

11.1.3 The Crown failed to identify and then remedy Rangitaane attempts at maintaining their rangatiratanga and their wellbeing, particulars of which are:

(a) The Native Land Court continued throughout the 19th Century to investigate Rangitaane lands;

Crown's Response

11.1.3 In response to paragraph 11.1.3:

(a) The Crown admits paragraph (a).

(b) Henare Matua's submissions to the Hawkes Bay Native Land Alienation Commission in 1873 were dismissed.114 The protests made by the Repudiation movement including those made by Henare Matua concerning legislative change were rejected;[115]

Crown's Response

(b) The Crown admits sentence one of paragraph (b).

(i) In response to sentence two of paragraph (b) the Crown has insufficient time to research and therefore does not plead to it at this time.

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112 McBurney # A 24

113 Oliver # A 35 pp 55-58

114 McBurney # A 47 pp 113

115 McBurney # A 47 pp 110-113

(ii) The Crown states that in response to legislative change the Native Lands Act 1873 constituted a significant change in the way Maori lands were dealt with and followed wide ranging debate on the Native Land Court and its operations.

(c) Following investigation by the Hawkes Bay Native Lands Alienation Commission, Rangitaane lands continued to be available for alienation both to the Crown and private purchasers; and

Crown's Response

(c) The Crown admits paragraph (c).

(d) The Crown introduced new legislation to ameliorate the effect of the "Nireaha Tamaki" Privy Council decision.[116]

Crown's Response

(d) The Crown admits paragraph (d).

Prejudice

11.2 The claimants say that they have been prejudicially affected by the failure of the Crown to respond to their protest and concerns throughout the 19th century as alleged in the seventh cause of action in the following ways:

(a) The loss of individual and collective mana and rangatiratanga;

(b) The continued alienation of the Rangitaane land base as well as their timber resources; and

(c) Destroyed the political and autonomy structures of Rangitaane.

Crown's Response

11.2 The Crown does not plead to allegations of prejudice.

K EIGHTH CAUSE OF ACTION: 20TH CENTURY LAND ALIENATION

12.0 In breach of the principles of the Treaty of Waitangi the Crown continued to act in a manner which allowed the continued alienation of Tamaki-nui-a-rua lands.

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116 McBurney # A 24 p 32

Crown's Response

12. The Crown does not plead to paragraph 12 on the basis that it consists of allegations of Treaty breach.

12.1 In breach of its duties to actively protect Rangitaane land and resources to the fullest extent practicable, to act reasonably and with the utmost good faith the Crown continued to act in a manner which was inconsistent with these duties in particular:

Crown's Response

12.1 The Crown does not plead to 12.1 on the basis that it consists of allegations of Treaty breach.

Particulars

12.1.1 Failed to protect the miniscule land base still remaining in Rangitaane ownership during the period 1900 to the present day:

(a) As at 1900, 959,675 acres out of 1,077,714 had been alienated within the Tamaki-nui-a-rua rohe;[117]

(b) As at 1900, approximately 118,039 acres, 11% of land remained in Maori ownership;[118]

(c) Despite the fact that the bulk of the Tamaki-nui-a-rua tribal lands had been acquired by 1900, throughout the 20th century successive alienation continued which reduced the Rangitane tribal estate to 21,645 acres, a mere 2% of their former estate;[119]

(d) Between 1920-1970, the Crown continued to purchase Maori land within the Tamaki-nui-a-rua rohe;[120]

(e) Maori land was also acquired by private purchasers and by takings under Public Works legislation.[121]

Crown's Response

12.1.1 The Crown admits paragraphs 12.1.1 (a)-(e).

12.1.2 Failed to ensure that Rangitaane were able to utilise their remaining lands, for example:

(a) The Crown failed to prevent further subdivision and fragmentation of Rangitaane land resulting from the Native Land Court system;

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117 Ellis and Small, Acreage and Alienation Data from 1865, p 21.

118 Ellis and Small, Acreage and Alienation Data from 1865, p 21.

119 Ellis and Small, Acreage and Alienation Data from 1865, p 21.

120 McBurney # A 47 pp 344-346

121 McBurney # A 47 pp 344-346

(b) Due to the lack of capital, Rangitaane were unable to utilise their remaining lands effectively; and

(c) The Crown failed to provide training and expertise to enable Rangitaane to utilise their remaining lands effectively.

Crown's Response

12.1.2 In response to paragraph 12.1.2(a), the Crown refers to its statement of response to paragraph 42 of SOC 4.

12.1.3 The Crown is still examining the allegations in paragraphs (b) and (c) and does not plead at this stage.

Prejudice

12.2 The claimants say that they have been prejudicially affected by the actions and/or omissions of the Crown as alleged in the eighth cause of action as follows:

(a) Continued alienation of Rangitaane lands which left them with an insufficient land base for their present and future needs;

(b) Continued destruction of the social structure and organisation of the iwi, hapu and whanau of Rangitaane;

(c) Being left with an insufficient land base to actively participate in the New Zealand economy; and

(d) Being left with fragmented, insubstantial and individualised landholdings of little economic value that are manifestly insufficient for their present and future needs.

Crown's Response

12.2 The Crown is not required to plead to paragraph 12.2.

L. NINTH CAUSE OF ACTION: THE FAILURE OF THE CROWN TO HONOUR PROMISES

13.0 In breach of the principles of the Treaty of Waitangi the Crown failed to honour promises made to Rangitaane in the 19th Century.

13.1 In breach of its duties to act reasonably and with the utmost good faith towards Rangitaane, the Crown and its Agents failed to honour promises made to Rangitaane about the benefits of settlement that would flow if their lands were alienated for European settlement.[122]

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122 McCracken # A 46 p 16, Walzl # A 44 p 357, Stirling # A 48 p 82 - those promises included an increased population and market for Maori to trade with, the provision of education services and facilities, the provision of infrastructure such as roading, increased employment opportunities, the provision of medical services, and the promise of an ongoing land endowment fund known as the five percents/koha fund.

Crown's Response

13. The Crown does not plead to paragraph 13 on the basis that it consists of allegations of Treaty breach.

Particulars

13.1.1 The Crown failed to honour its promise of the benefits from the infrastructural development of Tamaki-nui-a-rua such as employment and a growing economy for Rangitaane during the 19th century:

(a) Most of the infrastructural development of Tamaki-nui-a-rua was accomplished without Rangitaane assistance. This was achieved mainly by settlers brought into the district under the provisions of the Immigration and Public Works Act 1870 and the Hawkes Bays Special Settlements Act 1872;[123]

Crown's Response

13.1.1 In response to paragraph 13.1.1(a):

(a) The Crown admits that much work was done by settlers. It has insufficient knowledge as to whether such work was done without Rangitane assistance and therefore does not plead to the remainder of sentence one of paragraph (a) at this time.

(i) In response to sentence two it admits that the settlers were brought into the district under the provisions of the Immigration and Public Works Act 1870 and the Hawkes Bays Special Settlements Act 1872.

(b) Crown policies including Vogels, Public Works and Immigration Scheme marginalised Rangitaane from the economic benefits that could have been derived from

[123] Irvine # A 64 p 32

participating in the infrastructural development within the Tamaki-nui-a-rua rohe;[124]

Crown's Response

(b) The Crown denies paragraph (b).

(c) Rangitaane received limited contracts for the formation of Tamaki-nui-a-rua roads;[125]

Crown's Response

(c) In response to paragraph (c), the Crown admits Maori received contracts for formation of Tamaki-nui-a-rua roads.

(i) The Crown has insufficient knowledge as to whether the two contacts listed by Irvine A67 at page 32 were the sole contracts issued to Maori and therefore does not plead at this time as to whether receipt of such contracts by Rangitane was limited.

(d) The Ngawaapurua-Manawatu Ferry Service operated by Rangitaane rangatira Nireaha Tamaki and Huru Te Hirao was transferred by the Crown to the Wairarapa West Country Council in 1880, despite protest from Rangitaane;[126]

Crown's Response

(d) In response to paragraph (d), the Crown admits that the responsibility for running the ferry service was transferred to the Wairarapa West County Council in 1880 at which time the

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124 Irvine # A 64 p 31

125 Irvine # A 64 p 32

126 Irvine # A 64 pp 33, 34

subsidy paid to Nireaha Tamaki and Huru Te Hirao for operation of the ferry ceased.

(i) The Crown admits that Nireaha Tamaki and Huru Te Hirao protested at the loss of their subsidy.

(ii) The Crown states further that Nireaha Tamaki and Huru Te Hirao were compensated for this with £100.

(e) The Crown knew at the time of purchasing the Seventy Mile Bush blocks in the 1870s, that the timber would realise significant economic benefits.[127] Despite this knowledge, the Crown did not take this into account in calculating the price paid for the Seventy Mile Bush blocks and failed to advise Rangitaane of the potential economic benefits that could be realised from the timber trade economy;[128]

Crown's Response

(e) In response to paragraph (e):

(i) In response to sentence one the Crown admits that some Crown officers were aware that some of the timber on the block was of good quality (Berghan, #A39, p9). However, the Crown further states that it appears that little economic value was attached to the value of the timber on Seventy Mile Bush at the time most of the Bush was sold to the Crown (Oliver, #A35, pp 63-64).

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127 Oliver # A 35 p 49

128 Oliver # A 35 pp 46,47

(ii) The Crown states that it is therefore unlikely to have advised Maori that the timber was potentially valuable.

(iii) The Crown admits it is probable that the Crown did not take the value of the timber into account in calculating the price paid for Seventy Mile Bush.

(iv) The Crown otherwise denies paragraph (e).

(f) The Crown purchased the endowment fund set aside in the Tautane sale deed thus denying the owners of Tautane the benefits that the fund promised;[129]

Crown's Response

(f) The Crown admits that it purchased the 5% endowment clause in the Tautane sale deed.

(g) Casual or seasonal labour was the primary source of paid employment for Maori within the Tamaki-nui-a-rua rohe. During the late 1800s and into the 20th century, this work was notoriously unpredictable and vulnerable given its seasonal nature.[130]

Crown's Response

(g) In response to paragraph (g), the Crown admits sentence one.

(i) The Crown has insufficient knowledge as to whether this work was unpredictable and vulnerable and therefore denies sentence two of paragraph (g).

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129 Refer second cause of action paragraph 6.1.4

130 Irvine # A 64 p 49

13.1.2 The Crown failed to honour its promise of providing provision for educational services and facilities to Rangitaane:

(a) Rangitaane were not afforded the benefits of the Native School system for some time;[131]

Crown's Response

13.1.2 In response to paragraph 13.1.2 the Crown denies the opening text.

(a) The Crown admits that the people of Tahoraiti may not have had access to a native school in their area until at least 1890. The Crown does, however, note that they had received schooling at Dannevirke, which was three miles away, and at Mangatainoka, which was 20 miles away (Irvine #A64 pp45-46).

(b) Rangitaane at Tahoraiti subsidized their own teacher and school room from their own funds;[132]

Crown's Response

(b) The Crown has insufficient knowledge as to whether Rangitaane at Tahoraiti subsidised their own teacher and schoolroom from their own funds. (The source, Irvine #A64 p 47 states that it is unclear "whether local Maori were supporting the school from their own pockets.")

(c) In 1902, Rangitaane at Mataikona requested that the Crown provide a school at their kainga. A school was never opened at that time, despite evidence that there was clearly a need for a school in that region;[133]

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131 Irvine # A 64 p 47

132 Irvine # A 64 p 47

133 Irvine # A 64 pp 47, 48

Crown's Response

(c) The Crown admits that Maori at Mataikona requested a School for their kainga in 1902 and that no school was opened there at that time. The Crown notes that a school had been established at Mangatainoka by the local Education Board but that this was closed in 1902 (NZ Parliamentary Debates, Vol 121, 12 August 1902, pp280-281). The Crown admits that in 1906 the census enumerator commented that a school was much needed at Aohanga.

(d) It was not until 1947, almost a century after the initial promise for educational services, that a school was opened at Mataikona.[134]

Crown's Response

14. The Crown states that the source cited in support of paragraph (d) does not discuss the establishment of a school at Mataikona in 1947.

13.1.3 The Crown failed to honour its promise of providing medical services:

(a) Prior to 1900, the delivery of health services to Rangitaane in the Tamaki-nui-a-rua rohe was ad hoc, with no consistent comprehensive approach;[135]

Crown's Response

14.1.1 In response to paragraph 13.1.3:

(a) In response to paragraph (a) the Crown has not had time to research the nature of the medical

134 Irvine # A 64 p 48

135 Irvine # A 64 p 60

services provided and does not plead to this allegation at this time.

(b) Hospitals were not opened in the Tamaki-nui-a-rua rohe until the Pahiatua hospital in 1907 and the Dannevirke hospital in 1906;[136]

Crown's Response

(b) The Crown admits that hospitals opened in the Tamaki-nui-a-rua rohe on these dates. The Crown has not research whether there was any other facilites in the area of this nature in the area prior to this and therefore does not plead further to this allegation at this time.

(c) Rangitaane were clearly of the view that the Crown were responsible for payment of health services. For example, Nireaha Tamaki advocated that medication he had purchased would be reimbursed by the Government. The Government rejected this suggestion;[137]

Crown's Response

(c) The Crown has insufficient knowledge as to the views of Rangitane and therefore does not plead to sentence one. The Crown admits that Nireaha Tamaki told his chemist to seek payment for medicine from the Government and that Under-Secretary Waldegrave indicated that the payment could not be made because the medicine had been provided prior to the appointment of a subsidised medical officer.

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136 Irvine # A 64 p 60

137 Irvine # A 64 pp 60, 61

(d) Nireaha Tamaki's request for a doctor to be appointed for Dannevirke and Porangahau was rejected on the basis that Maori usually used traditional remedies rather than visit a doctor;[138] and

Crown's Response

(d) The Crown admits that Nireha Tamaki's request in 1899 for appointment of a doctor of Dannevirke and Tamaki was rejected by Under-Secretary Waldegrave after seeking comment from Judge Butler who expressed the view stated in paragraph (d).

(e) It was not until 1900, more than four decades after promises were made that initiatives to address Rangitaane health were implemented, for example the Maori Council and the Health and Sanitation Inspectors.[139]

Crown's Response

(e) The Crown admits that in 1900 Maori Councils and Health and Sanitation inspectors were introduced.

<u>Prejudice</u>

13.2 The claimants say that they have been prejudicially affected by the Crowns failure to honour its promises as alleged in the ninth cause of action as follows;

(a) Rangitaane health statistics are well below the levels of non-Maori in Tamaki-nui-a-rua;

(b) Rangitaane educational achievement is well below the levels of achievement of non-Maori in Tamaki-nui-a-rua;

(c) Rangitaane employment statistics still reflect in the main manual and/or seasonal labour as the main source of employment; and

(d) The economic statistics for Rangitaane are well below that of non-Maori in the Tamaki-nui-a-rua rohe.[140]

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138 Irvine # A 64 p 61

139 Irvine # A 64 pp 61 - 63

140 Portal Consultants # A 28 for further particulars.

Crown's Response

14.2 The Crown does not plead to paragraph 13.2 as it consists of allegations of prejudice.

M. TENTH CAUSE OF ACTION: PUBLIC WORKS TAKINGS

14.0 In breach of the principles of the Treaty of Waitangi the Crown facilitated and/or allowed the Rangitaane lands to be taken for public works purposes.

Crown's Response

15. The Crown does not plead to paragraph 14.0 on the basis that it contains allegations of Treaty breach.

14.1 The Crown failed in its duties to actively protect Rangitaane lands and resources to the fullest extent practicable, to act reasonably and with the utmost good faith by:

Crown's Response

15.1 The Crown does not plead to the opening sentence of paragraph 14.1 on the basis that it contains allegations of Treaty breach.

Particulars

14.1.1 Failing to adequately protect the already miniscule land base of Rangitaane by allowing further alienations by way of public works takings through out the 19th and 20th centuries;

(a) The Crown allowed seven separate takings of land from the Tahoraiti block:

- ***18 acres of Tahoraiti 2 block for railway purposes;***[141]
- ***Tahoraiti 41 acres;***[142]
- ***Tahoraiti 2 (Lot 1) / 10 acres 1 rood 14.7 perches for the purpose of a rifle range;***[143]
- ***50 acres of Tahoraiti 2 for the purpose of the Dannevirke sewage;***[144]
- ***Tahoraiti 2 section 13 for the Makirikiri Scenic Reserve;***[145]
- ***105 acres of Tahoraiti 2A 27 for the Dannevirke Aerodrome;***[146]

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141 McBurney # A 47 p 341

142 McBurney # A 47 p 342

143 Marr and Anors # A 32 p 211

144 Marr and Anors # A 32 p 223

145 Marr and Anors # A 32 p 231

- ***Tahoraiti 2A 13B and Tahoraiti 2A 14A2 2.5460 hectares and 3.041 6 hectares respectively for the Dannevirke rubbish dump.***[147]

Crown's Response

15.1.1 In response to paragraph 14.1.1:

(a) In response to the first bullet point, the Crown denies due to insufficient particulars that 18 acres of Maori land was taken from Tahoraiti 2 block for railway purposes. (The Crown has checked the NZ Gazettes database but has been unable to find a Gazette notice relating the Public Works Act taking referred to in paragraph (a)).

(b) In response to the second bullet point, the Crown denies due to insufficient particulars that 41 acres of Maori land was taken from Tahoraiti block. (The source (McBurney, #A47, p 342) merely states that part of the block was taken for public works. The source does not state when it was taken. The Crown has checked the NZ Gazette database but has been unable to find a Gazette notice relating to the taking referred to in paragraph (b)).

(c) In response to the third bullet point, the Crown admits that slightly over 10 acres was taken from Tahoraiti 2 in 1904 for the purpose of a rifle range.

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146 Marr and Anors # A 32 p 255

147 Marr and Anors # A 32 p 276

(d) In response to the fourth bullet point, the Crown admits that 50 acres of Tahoraiti 2 was taken in 1906 for the purpose of the Dannevirke sewage reserve. (*New Zealand Gazette* 1906/3019 in Marr, #A32(a), p 58). The Crown states further that this taking was cancelled in 1907 and replaced with a new proclamation taking an increased area of 56 acres from Tahoraiti 2 for the same purpose. (*New Zealand Gazette* 1907/2904-2905 in Marr #A32(a), pp 59-60)

(e) In response to the fifth bullet point, the Crown admits that Tahoraiti 2 section 13 was taken for scenery preservation purposes in 1911.

(f) In response to the sixth bullet point, the Crown admits that 105 acres of Tahoraiti 2A27 block was taken in 1956 for the purpose of an aerodrome.

(g) In response to the seventh bullet, the Crown admits that 2.5460 hectares of land was taken from Tahoraiti 2A13B and 3.0416 hectares of land was taken from Tahoraiti 2A14A2 in 1981 for the purpose of the disposal of refuse and rubbish.

14.1.2 Failing to consult with Rangitaane prior to the enactment of Public Works legislation;

Crown's Response

15.1.2 The Crown has had insufficient time to research the claim in paragraph 14.1.2 and therefore does not plead to it at this time.

14.1.3 Failing to adequately consult with Rangitaane prior to land being acquired under Public Works legislation, examples of which are:
Castlepoint roads;[148]
Tautane reserve road;[149]
Dannevirke Rifle Range;[150]
Makirikiri Scenic Reserve.[151]

Crown's Response

15.1.3 The Crown has had insufficient time to research the claim in paragraph 14.1.3 and therefore does not plead to it at this time.

14.1.4 Failing to ensure that non-Maori land was not available as an alternative and that all practical alternatives to purchasing land such as a leasehold interest had been exhausted prior to taking Rangitaane land.152

Crown's Response

15.1.4 The Crown has had insufficient time to research the claim in paragraph 14.1.4 and therefore does not plead to it at this time.

14.1.5 Failing to protect sites of significance to Rangitaane, in particular the location of the Dannevirke rubbish dump near the Makirikiri Marae.153

Crown's Response

15.1.5 In response to paragraph 14.1.5, the Crown admits that the land taken under the Public Works legislation for the Dannevirke Rubbish Dump was 216 metres from the Makirikiri Marae at its closest point (Marr, #A32 p 290).

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148 Marr and Anors # A 32 p 53

149 Marr and Anors # A 32 p 106

150 Marr and Anors # A 32 p 220

151 Marr and Anors # A 32 p 251

152 Marr and Anors # A 32 pp 255, 256, 260, 263

153 Marr and Anors # A 32 p 280

(a) The Crown otherwise denies paragraph 14.1.5. The Crown further states:

(i) That the Minister of Works declined to recommend that the Governor General sign the proclamation authorising the taking of this land until the High Court (in proceedings brought by the Dannevirke Borough Council) held that the Minister must recommend that the Governor General approve the proclamation if certain conditions had been met by the Council.

14.1.6 Failing to ensure that land taken compulsorily was offered back to the former Maori land owners once it had served the purpose for which it was taken, in particular the Dannevirke aerodrome.[154]

Crown's Response

15.1.6 In response to paragraph 14.1.6, the Crown admits that land compulsorily taken for the Dannevirke aerodrome was not offered back to the former Maori owners after it had served the purpose for which it was taken. The Crown further states:

(a) That this was because the land was exchanged for other land owned by neighbouring farmers for the public works purpose of the airport (Marr, #A32, p 270).

Prejudice

154 Marr and Anors # A 32 pp 269-272

14.2 The claimants say that they have been prejudicially affected by the acts and/or omissions of the Crown as alleged in the tenth cause of action as follows:

(a) The continued alienation of the Rangitaane land base and resources;

(b) Loss of mana and rangatiratanga; and

(c) Affected sacred sites and values.

Crown's Response

15.2 The Crown does not plead to paragraph 14.2 as it consists of allegations of prejudice which are for the Waitangi Tribunal to determine.

N. ELEVENTH CAUSE OF ACTION: ENVIRONMENTAL DEGRADATION AND MANAGEMENT

15.0 In breach of the principles of the Treaty of Waitangi, the Crown has pursued policies and implemented various legislative and regulatory regimes which have adversely affected the environment and resources of Rangitaane.

Crown's Response

16. The Crown does not plead to paragraph 15 on the basis that it consists of allegations of Treaty breach.

15.1 In breach of its duties to actively protect Rangitaane land and resources to the fullest extent practicable, to act reasonably and with the utmost good faith towards Rangitaane, the Crown through its actions and/or omissions allowed;

Crown's Response

16.1 The Crown does not plead to the allegations of Treaty breach contained in paragraph 15.1. In response to the factual allegations regarding Crown actions and omissions the Crown's response is detailed in its response to the particulars below.

Particulars

15.1.2 Throughout the 19th century the progressive decline in the availability and quality of mahinga kai within Tamaki-nui-a-rua rohe.[155]

155 Oliver # A 35 pp 28-37

Crown's Response

16.1.1 In response to paragraph 15.1.2, the Crown admits that it is likely that mahinga kai declined within the Tamaki-nui-a-rua rohe.

(a) The Crown states that the paragraph does not sufficiently detail the specific Crown actions or omissions which are alleged to have caused the decline of mahinga kai and thus does not plead to the remainder of the paragraph 15.1.2.

15.1.3 The extinction of Huia and the disappearance of the Titi from the Tamaki-nui-a-rua rohe.[156]

Crown's Response

16.1.2 In response to paragraph 15.1.3, the Crown admits that the huia became extinct and that it is likely that titi disappeared from the district.

(a) The Crown states that paragraph 15.1.3 does not sufficiently detail the specific Crown actions or omissions which are alleged to have caused the extinction of the huia and the disappearance of titi from the district and therefore does not plead to the remainder of this paragraph.

15.1.4 The felling of the Seventy Mile Bush following the sale to the Crown in the 1870s which had both a physical and spiritual impact on Rangitaane, in particular:
(a) A loss of mauri;[157]
(b) A depletion of mahinga kai;[158]
(c) Sacred places being desecrated;[159]

156 Oliver # A 35 p 35

157 Oliver # A 35 p 35

158 Oliver # A 35 pp 28-37

159 Information to be provided by claimants as part of their traditional evidence.

(d) Adverse effects on the various waterways within the Tamaki-nui-a-rua rohe, for example the collapsing of river banks and soil erosion.[160]

Crown's Response

16.1.3 In response to paragraph 15.1.4, the Crown admits that much of the seventy-mile bush was either felled or burned (Oliver, #A35, p 64) following its sale to the Crown in the 1870s and subsequent purchase by settlers.

(a) The Crown admits that the disappearance of the bush had an impact on the general physical environment.

(b) The Crown has insufficient knowledge as to whether the felling of the bush caused a loss of mauri or had a spiritual impact on Maori and therefore does not plead to this aspect of paragraph 15.1.4. The Crown further states:

(i) That by the mid 19th century Tararua Maori were in possession of European crops and animals and that it appears that a decline of reliance of Tararua Maori on mahinga kai had occurred by the mid 19th century well before the felling of the seventy mile bush (Oliver, #A35, pp 36-37).

15.1.5 Inland waterways which were the sites of kainga, waahi tapu, and pa sites, also containing food sources such as eels, koura, and fresh water mussels were and continue to be affected by:[161]

(a) A decline in water quality and the effects on fisheries within the Manawatu River and its tributaries;[162]

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160 Oliver # A 35 p 78

161 Information to be provided by claimants as part of their traditional evidence.

(b) A decline in water quality as a result of intensive pastoral farming and sewage; and
(c) A decline in native fish communities.[163]

Crown's Response

16.1.4 In response to paragraph 15.1.5, the Crown has insufficient knowledge as to the location of kainga, wahi tapu and pa sites and therefore does not plead to this aspect of paragraph 15.1.5.

(a) In response to paragraphs (a)-(c), the Crown admits that the outcomes described in (a)-(c) are likely to have occurred following the introduction of a modern infrastructure and pastoral economy

(b) The Crown states that paragraph 15.1.5 does not detail the specific Crown actions or omissions which are alleged to have caused such a decline. The Crown further states:

(i) That legislation has evolved with the growth of scientific knowledge of water ecosystems, and that current legislation attempts to prevent deleterious impacts on water and other environments.

15.1.6 The exclusion of Rangitaane values and customs from legislation governing the environment, for example the failure to recognise customary Maori fishing rights in the Salmon and Trout Act 1867.[164]

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162 NIWA Report # A56

163 NIWA Report # A 56

164 Oliver # A 35 pp 71-72

Crown's Response

16.1.5 In response to paragraph 15.1.6, the Crown admits that salmon and trout were protected species under the Salmon and Trout Act 1867.

(a) The Crown otherwise denies paragraph 15.1.6.

15.1.7 The exclusion of Rangitaane from participation in environmental management systems established by the Crown.

Crown's Response

16.1.6 In response to paragraph 15.1.7, the Crown states that paragraph 15.1.7 does not sufficiently detail the specific Crown actions or omissions which are alleged to have excluded Rangitaane, and it therefore denies paragraph 15.1.7. The Crown states further:

(a) The Crown states further that current legislation governing environmental issues reflects the need to protect Maori values (for example, the Conservation Act 1987 and the Resource Management Act 1991).

15.1.8 Important environmental issues, for example the establishment of the Mangahao Hydro Electric Scheme on the Mangahao River, were addressed without consultation with Rangitaane.[165]

Crown's Response

(b) The Crown notes that the Oliver report #A35 cited in support of paragraph 15.1.8 located no evidence of consultation. The Crown has not researched this allegation further. The Crown admits that the State Supply of Electrical Energy Act 1917, which authorised the

construction of power schemes did not require public consultation.

Prejudice

15.2 The claimants say that they have been and are prejudicially affected by the acts and/or omissions of the Crown as alleged in the eleventh cause of action as follows:

(a) A loss of mauri, mana and rangatiratanga in response to important taonga;

(b) Affected the responseship that Rangitaane had with the environment prior to 1840;

(c) Affected the health and wellbeing of Rangitaane; and

(d) Forever changed the flora and fauna of the Tamaki-nui-a-rua rohe.

Crown's Response

16.2 The Crown does not plead to paragraph 15.2 on the basis that it consists of allegations of prejudice.

O. TWELFTH CAUSE OF ACTION: OWNERSHIP OF THE FORESHORE AND SEABED

16.0 In breach of the principles of the Treaty of Waitangi the Crown has assumed ownership of the foreshore and seabed.

Crown's Response

17. For this cause of action, refer to the Crown's statement of general position.

16.1 In breach of its duties to actively protect the Rangitaane in the use of their land and resources to the fullest extent practicable, to act reasonably and with the utmost good faith towards Rangitaane, the Crown has assumed ownership of the foreshore and seabed from Arataura to the mouth of the Mataikona River without;

Particulars

16.1.1 Without consultation with Rangitaane;

Crown's Response

17.1 The Crown is not required to plead.

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165 Oliver #A35 p 84

16.1.2 Without taking into account the continued ownership and occupation of the lands adjacent to the foreshore and seabed from Arataura to the mouth of the Mataikona River:

(a) Since the time of Rangitaane arrival in the Tamaki-nui-a-rua rohe, the coastline from Arataura to the mouth of the Mataikona River has been of importance to them as places of occupation and providing access to the resources of the foreshore and the sea.[166]

Crown's Response

17.1.1 For this cause of action, refer to the Crown's statement of general position.

16.1.3 Without taking into account the importance of the foreshore and seabed to the Rangitaane people as a resource and taonga:

(a) Important Rangitaane coastal sites of significance include the following:

(i) Archaeological sites in the Castlepoint region including urupa, middens and ovens;

(ii) Numerous archaeological sites between Whakataki and the Mataikona River including urupa, terraces, middens;[167]

(iii) The resources caught and collected by Rangitaane include paua, kuku, koura, hapuka, kahawai and whitebait.[168]

Crown's Response

17.1.2 For this cause of action, refer to the Crown's statement of general position.

16.1.4 Despite Rangitaane having continued ownership and occupation of the lands adjacent to the foreshore and sea from Arataura to the mouth of the Mataikona River, the Crown has enacted legislation in which they assume ownership of the seabed and foreshore:

(a) The Territorial Sea and Exclusive Economic Zone Act 1977;

(b) The Foreshore and Sea Bed Endowment Revesting Act 1991; and

(c) The Resource Management Act 1991.

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166 As conveyed by claimant committee. Boundary confirmed in description of rohe annexed and marked "A" to this amended statement of claim.

167 Ellis # A 31 p 23

168 Ellis # A 31 pp 28, 29

Crown's Response

17.1.3 For this cause of action, refer to the Crown's statement of general position.

Prejudice

16.2 The claimants say that they have been prejudicially affected by the policies, practices, acts and omissions of the Crown as alleged in the twelfth cause of action in the following ways;

(a) The loss of ownership and control of an important resource taonga;

(b) Further destruction and impact upon Rangitaane mana and rangatiratanga; and

(c) Impacted on the responseship Rangitaane have with Tangaroa.

Crown's Response

17.1.4 For this cause of action, refer to the Crown's statement of general position.

P. THIRTEENTH CAUSE OF ACTION: FAILURE TO PROTECT RANGITAANE'S IDENTITY AS TANGATA WHENUA

17.0 In breach of the principles of the Treaty of Waitangi the Crown failed to protect the identity of Rangitaane as tangata whenua.

Crown's Response

18. The Crown does not plead to allegations of Treaty breach.

17.1 In breach of its duty to act in a manner consistent with partnership, that is to act reasonably and with the utmost good faith the Crown failed to protect Rangitaane's identity as tangata whenua by:[169]

Crown's Response

18.1 The Crown does not plead to allegations of Treaty breach.

Particulars

17.1.1 Failing to protect their land base and resources that underpin their identity as tangata whenua, to the extent that Rangitaane is virtually a landless iwi.[170]

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169 For evidence of Rangitaane's status as tangata whenua of Tamaki-nui-a-rua refer Parsons and Ropiha Rangitaane o Tamaki-nui-a-rua, Traditional History Report (yet to be filed), O'Leary #A62 p 48

Crown's Response

18.1.1 The Crown refers to its general statement of position on sufficiency.

17.1.2 Using Maori who were not tangata whenua when negotiating and purchasing land within the Tamaki-nui-a-rua rohe, despite knowing that the vendors were not tangata whenua.[171]

Crown's Response

18.1.2 The Crown admits that non-resident Maori took part in the negotiations of land and that the Crown knew this. The Crown refers to its earlier response in response to 6.1.1(d), 6.1.2 and 8.1.4(b).

17.1.3 Failing to adequately understand and/or adequately investigate who were the tangata whenua and/or the principal hapu when the Crown sought to acquire Rangitaane land, for example:

(a) The inadequate investigations by the Native Land Court;[172]

(b) Application of the ten owner rule;

(c) Using "ground baiting" tactics which were indiscriminately applied to known sellers who resided outside of the Tamaki-nui-a-rua rohe.[173]

Crown's Response

18.1.3 The Crown denies paragraph 17.1.3 and refers to its statement of response to paragraphs 8.1.4 and 6.1.3 of this statement of claim.

17.1.4 Recording non-Rangitaane iwi in sale deeds as the only vendors despite the land being within the Tamaki-nui-a-rua rohe and owned by Rangitaane, for example Makuri.[174]

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170 Refer first cause of action.

171 Refer paragraphs 6.1.1 (d), 6.1.2 and 8.1.4 (b) of this amended statement of claim.

172 Refer paragraph 8.1.4 of this amended statement of claim.

173 Refer paragraphs 8.1.4 and 6.1.3 of this amended statement of claim.

174 Refer Turton's Deeds

Crown's Response

18.1.4 In response to paragraph 17.1.4, the Crown has not had time to research the recording of iwi in sale deeds within the Tamaki-nui-a-Rua rohe and therefore does not plead to paragraph 17.1.4.

17.1.5 Allowing official documentation to exclude reference to Rangitaane as an iwi of the Tamaki-nui-a-rua rohe, for example:

(a) Various maps referring only to Ngati Kahungunu as the only iwi in the Tamaki-nui-a-rua rohe;[175]

(b) The 1919 electoral roll listed a voter from Tahoraiti as belonging to "Rangitaane, a hapu of Ngati Kahungunu";[176]

(c) The 1949 census listed Rangitaane as a hapu of Ngati Kahungunu.[177]

Crown's Response

18.1.5 In response to the opening sentence of paragraph 17.1.5, the Crown states that it has not had time to research whether or not official documentation has generally excluded reference to Rangitane as an iwi of the Tamaki-nui-a-Rua rohe and therefore does not plead to the general statement that the Crown allowed official documentation to exclude reference to Rangitane as an iwi of the Tamaki-nui-a-Rua rohe.

(a) In response to paragraph (a), the Crown admits that the Defence Department Map of 1869 and the 1870 "Map of Tribal Names and Boundaries" reproduced in O'Leary #A62, do not include Rangitane as an iwi of Tamaki-nui-a-Rua but describes the iwi as Ngati Kahungunu. (O'Leary, A 62, p 26 and 34).

175 O'Leary # A62 p 26, 34.

176 O'Leary # A62 p55.

177 O'Leary # A62 p55.

The Crown has not had time to research official maps in general and therefore denies that official maps generally did not refer to Rangitane.

(b) The Crown admits paragraphs (b) and (c).

Prejudice

17.2 The claimants say that they have been, are and are likely to be prejudicially affected by the failure of the Crown to protect their identity as tangata whenua in the following ways:

- ***(a) The loss of mana and rangatiratanga in their own rohe;***
- ***(b) Led to generations of Rangitaane, non-Maori, historians, Crown officials, and other iwi to the mistaken belief that Rangitaane are not tangata whenua of the Tamaki-nui-a-rua rohe; and***
- ***(c) Caused difficulties in being recognised by their own people, central and local government bodies and other iwi as being tangata whenua in Tamaki-nui-a-rua rohe.***

Crown's Response

18.2 The Crown is not required to plead.

Q. RELIEF

18.0 The claimants, being desirous to achieve the removal of the prejudice inflicted upon Rangitaane seek recommendations as follows:

- ***(a) Findings that the Crown breached the principles of the Treaty as set out in the above amended statement of claim;***
- ***(b) That the Crown provides a full and comprehensive apology for the breaches of the principles of the Treaty as outlined in the amended statement of claim;***
- ***(c) That the Crown provide full and comprehensive financial compensation;***
- ***(d) That the Crown return all land owned by the Crown within the claimed area and any improvements thereon;***
- ***(e) Pursuant to sections 8A-8HJ of the Treaty of Waitangi Act 1975 return to the claimants all relevant Crown land, including:***
  - ***(i) Land owned by any state owned enterprise;***
  - ***(ii) Land held by any institution under the Education Act 1989; and***
  - ***(iii) Land vested under the New Zealand Railway Incorporation Restructuring Act 1990, or any interest in any such land and together with any improvements thereon.***
- ***(f) The provision of easements and such other access as is necessary to relieve all Rangitaane land within the Tamaki-nui-a-rua rohe from its status as landlocked land, all added costs to the Crown;***
- ***(g) Recognition of Rangitaane, tino rangatiratanga and the restoration of self government within its rohe, including***

	appropriate recognition by all Crown departments and agencies and local government authorities within the Tamaki-nui-a-rua rohe;
(h)	***The restoration and recognition of Rangitaane's customary ownership and management rights in the waterways including the foreshore and seabed within their rohe;***
(i)	***Make provision for the participation of Rangitaane on all statutory boards, authorities, agencies, companies and other Crown organisations that function within their rohe;***
(j)	***Pay the full costs for the preparation and presentation of this claim and the costs for recovering any land recommended to be returned or other costs incurred in securing the implementation of recommendations;***
(k)	***A change to the name of the Tararua Regional Council and other Crown and Local Government authorities to correctly reflect the rohe of Tamaki-nui-a-rua;***
(l)	***The Crown to set up in conjunction with Rangitaane a full restoration package to restore the identity of Rangitaane as tangata whenua in the Tamaki-nui-a-rua rohe; and***
(m)	***Any further relief that this Tribunal deems appropriate.***

Crown's Response

19. The Crown is not required to plead.