THE WAITANGI TRIBUNAL

WAI No 863 – SOC 3

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 175

SOC 3

23 September 2003

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A. NGA KAITONO – THE CLAIMANTS

1. This statement of claim is filed by JAMES RIMENE and PIRINIHIA TE TAU for and on behalf of the Rangitaane iwi of Wairarapa and its constitutent hapu.

2. The claim is supported by the Rangitaane o Wairarapa Incorporated Society.

3. The constitutent hapu of Rangitaane o Wairarapa are:

- ***Ngati Hamua***
- ***Ngati Whatui***
- ***Ngai Tumapuhiaarangi***
- ***Ngati Te Raetea***
- ***Ngati Moehau***
- ***Hinetearorangi***
- ***Te Hika o Papauma***
- ***Ngati Tangatakau***
- ***Ngati Tamahau***
- ***Ngai Tohinga***
- ***Ngati Te Noti***
- ***Ngati Taimahu.***[1]

4. A number of hapu traditionally had rights of use in the lands and economic resources of South Wairarapa and trace their descent from both Rangitaane and Ngati Kahungunu, those hapu being:

- ***Ngati Te Whakamana***
- ***Ngai Tukoko***
- ***Ngati Hinetauria***
- ***Ngati Meroiti***
- ***Ngati Tauiao***
- ***Ngati Moe.***[2]

B. TE TONO – THE CLAIM

5. This claim concerns Rangitaane taonga, in particular the loss of ownership, possession, authority and access to their lands, waters, estates, forests and other resources, within the Wairarapa (hereinafter referred to as the "claim area") and the diminishment of their identity as a tangata whenua group.

Crown's Response

1. The Crown notes paragraphs 1-5.

C. TE ROHE

6. The Rangitaane tribal rohe begins at the mouth of the Hutt River crossing over to Totara Park and heads north in a straight line to the Tararua Ranges, along those ranges to the Mangahao River and then to Hamua to

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1 Chrisp, #A60, p 27-31.

2 Chrisp, #A60, pp 32-42. These hapu are sometimes referred to as aho-rua hapu.

Tane crossing the Tiraumea River to Rakanui travelling onwards on to Owahanga River to the mouth of the Akitio down to the coastline to Mangatainoka and the Whakataki River mouth to Rangiwhakaoma continuing to Whareama, Motuwaineka along to Flatpoint to Palliser Bay to Orongorongo Baring Head and back to the start of the Hutt River.[3]

7. The tribal rohe overlaps with the rohe of Rangitaane o Tamaki-nui-a-rua and Rangitaane o Manawatu.

Crown's Response

2. The Crown notes the content of paragraph 6-7. It says further 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. 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.

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

8. At all times the Crown were under a duty to actively protect Rangitaane lands and resources to the fullest extent practicable and to ensure that Rangitaane were left with a sufficient land base for their present and future needs.

Crown's Response

3. The Crown does not plead to allegations of Treaty duty.

9. In breach of Treaty principles, the Crown facilitated and/or permitted and/or failed to prevent the permanent alienation of Rangitaane lands and resources within the claim area.

Crown's Response

4. The Crown does not plead to allegations of Treaty duty.

10. As a result, Wairarapa Maori, including Rangitaane, have been rendered landless.

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[3] As supplied by claimant committee. The claimants accept that other iwi also have interests in the rohe described, for example Kahungunu. Refer to map annexed and marked '"A". The shaded area represents the traditional rohe.

Crown's Response

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

Particulars

10.1	***At 1840, Wairarapa Maori, including Rangitane, owned the entire claim area, an area estimated at 1,493,924.[4]***
10.2	***During the 1840s and early 1850s, the Crown took steps to prevent the informal leasing of Wairarapa lands and the acquisition of those same lands.[5]***
10.3	***Between June 1853-January 1854, the Crown acquired the majority of land in the claim area.[6]***
10.4	***By 1865 the Crown had acquired 1,145,396 acres in the claim area.[7]***
10.5	***By 1900, a further 190,016 acres of land had been alienated.[8]***
10.6	***By 1900, 1,335,412 acres of land in the claim area had been alienated, a majority to the Crown.[9]***
10.7	***By 1900, 158,512 acres in the claim area remained in Maori ownership.[10]***
10.8	***The acquisition of Maori land continued throughout the 20th century by both Crown and private purchasers. As at September 2003, the approximate total amount of land in Maori ownership in the claim area is 16,104 acres.[11]***

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4 This figure has been calculated by subtracting the northern area (1,077,714 acres) from the total district figure, of 2,571,638 acres (page 18).

5 For further detail refer to the second and third causes of action.

6 This paragraph refers to the 1853-8154 purchases. There is no specific breakdown in the Acreage and Alienation Report of the amount of Crown purchases in this period.

7 This figure has been calculated by the pre-1865 Crown purchases in the total inquiry district of 1,526,445 minus the pre-1865 Crown purchases in the northern area calculated at 381,049 (pp 20 and 21).

8 This figure is calculated by land alienated by 1900 minus the land alienated by 1865.

9 This figure is calculated by the claim area of 1,493,924 minus the land remaining in Maori hands at 1900, being 158,512. (Refer p 21).

10 This figure is calculated by subtracting the land alienated at 1900 (1,335,412) from the claim area (1,493,924).

11 This figure is calculated by subtracting the current Maori land holdings in the total inquiry district, being 37,749 acres less the current Maori land holdings in the northern region, being 21,645 acres. (Refer p 21).

Crown's Response

5.1 In response to paragraph 10.1, the Crown admits that the area would have been considered subject to native title and admits that the claim area for SOC 3, being the southern portion of the entire Wairarapa Ki Tararua inquiry area is estimated at 1,493,924.

5.2 In response to paragraph 10.2, the Crown admits that steps were taken in an effort to inhibit the further development of informal leases in the claim area. It further admits that the Crown took steps to acquire land in the claim area by purchase.

5.3 The Crown admits it purchased a significant amount of land in the claim area during this period.

5.4 The Crown admits paragraphs 10.4-10.8.

11. At no time did the Crown properly investigate the extent of land required by Rangitaane for their present and future needs.

Crown's Response

6. The Crown denies paragraph 11.

12. The Crown did not permit and/or failed to encourage alternative means for providing for European settlement, for example permitting Rangitaane to directly lease their lands to European settlers.

Crown's Response

7. The Crown denies the allegation in paragraph 12 and states further that the Crown frequently did consider alternative methods of facilitating settlement and development in the period 1846-62 but chose to adhere to the "land fund" model of colonisation based on purchase. Thereafter a system was put in place by which Maori could gain a defined title to their land and deal with their land within a system of Crown-derived title.

13. The Crown failed to ensure that any or adequate reserves were set aside and maintained for Rangitaane.[12]

Crown's Response

8. The Crown denies that no reserves were set aside in the claim area. The adequacy of the reserves (a) set aside and (b) maintained in the claim area will be further addressed as part of the Crown's general statement of position. The Crown notes that the source cited does not purport to give an overall analysis of reserve provisions in the claim area.

14. As the result of Crown policy, acts and omissions, all Wairarapa Maori, including Rangitaane, are left with a miniscule land base totally inadequate for their present and future needs.

Crown's Response

9. The Crown refers to its statement of general position.

E. SECOND CAUSE OF ACTION: INFORMAL LEASING AND THE POST TREATY ECONOMY

15. The Crown has a duty to actively protect Rangitaane lands and resources to the fullest extent practicable. The Crown also had a duty to act reasonably and with the utmost good faith towards Rangitaane, their Treaty partner.

Crown's Response

10. The Crown is not required to plead to allegations of Treaty duty.

16. Between 1843-1853, Rangitaane allocated their lands and resources to early European settlers, such arrangements being akin to informal leases. The presence of settlers also provided an opportunity for trade.[13]

Crown's Response

11. The Crown admits the allegations in paragraph 16 as a general statement applicable to Wairarapa Maori. It says further that the European

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12 Walzl, #A44, pp 437 and 461.

13 McCracken, #A46, p 5.

occupation of the Wairarapa under informal leases from Maori should be dated from 1844.

17. The settlers entered into arrangements with Wairarapa Maori, including Rangitaane, to graze sheep.[14]

Crown's Response

12. The Crown admits the allegation in paragraph 17.

18. Between 1844-1852 at least 27 such arrangements were entered into at an annual total rental of £1200.[15]

Crown's Response

13. The Crown is unable to plead to this allegation because the source relied upon contains no references and, accordingly, the calculations involved cannot be checked. The figure of £1,200 only applies to 1852 – annual totals were lower before this time.

19. By 1848 approximately 100,000 acres in the claim area had been made available to settlers for grazing.[16]

Crown's Response

14. The Crown admits the allegation in paragraph 19.

20. In addition to the rentals received from grazing arrangements, the settlers also entered into trade and barter arrangements with Rangitaane.[17]

Crown's Response

15. The Crown admits the allegation in paragraph 20.

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14 An example of a Rangitaane arrangement is the relationship Potangaroa had with Guthrie at Castlepoint – Refer Cleaver, #A6, p 19.

15 McCracken, #A46, p 7.

16 Cleaver, #A6, p 11; Hippolite, #A3, p16 and Stirling, #A48, p 49.

17 Stirling, #A48, pp 41-43 and 49.

21. Rangitaane supplied wheat, potatoes, pigs, onions, other crops, dried eel and labour to the settlers. In turn, the settlers provided cash and new consumer goods.[18]

Crown's Response

16. The Crown admits that labour and provisions were paid for by settlers in cash and goods.

22. By 1852, a fledging economy had developed in the Wairarapa of mutual benefit to Rangitaane and settlers in that it provided and allowed for the following:[19]

(a) Rangitaane to retain ownership of their lands;
(b) Rangitaane to obtain income from grazing arrangements;
(c) Rangitaane to obtain income from trade;
(d) Settlers to obtain the use of land for grazing runs;
(e) Settlers to obtain basic commodities needed for their survival.

Crown's Response

17. In relation to paragraph 22, the Crown admits that there was by 1852 a fledgling commercial economy and a degree of mutual benefit in these arrangements, but notes that the squatters expressed a desire for more secure tenure (For example, a memorial by a number of squatters to the Lieutenant-Governor dated 10 October 1850. See Walzl #A44, p 333.).

17.1 The Crown admits the content of sub-paragraphs (a)- (d) but says further that the degree of mutual benefit must be examined from the perspective of the potential benefits of other systems of land tenure.

17.2 In relation to sub-paragraph (e), the Crown admits that basic commodities were traded, but says further that this trade was not essential to the 'survival' of the runholders.

23. In breach of Treaty principles the Crown adopted a policy of undermining informal leasing.

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18 Stirling, #A48, pp 41-43 and 49.

19 Stirling, #A48, p 53.

Crown's Response

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

Particulars

The Crown:

23.1 Enacted the Native Land Purchase Ordinance 1846 in an attempt to curtail occupation of Maori land by individuals.[20]

Crown's Response

18.1 The Crown admits the enactment of the Ordinance and admits that the restriction of unauthorised persons occupying Maori land was one of the objectives of the Ordinance.

23.2 Supported the New Zealand Company in their objective to purchase Wairarapa lands.[21]

Crown's Response

18.2 The Crown admits the allegation in paragraph 23.2.

23.3 Used a strategy of acquiring Hawkes Bay land to encourage Wairarapa settlers to move to the Hawkes Bay, thus undermining the viability of the grazing arrangements.[22]

Crown's Response

18.3 The Crown admits that Donald McLean anticipated that Wairarapa pastoralists might take up leases of Crown land in Hawkes Bay, but denies that this was the only or major motivation for acquiring land in Hawkes Bay.

23.4 Used Ahuriri rangatira such as Te Hapuku in the opening up of Wairarapa lands for sale, for example Castlepoint.[23]

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20 Stirling, #A48, p 57.

21 Walzl, #A44, p 191.

22 Stirling, #A48, pp 77 and 78 and Walzl, #A44, p 419.

23 Stirling, #A48, p 83.

Crown's Response

18.4 The Crown admits that Te Hapuku was involved in the negotiations over the Castlepoint block.

23.5 Used a strategy of travelling through the Wairarapa with the first instalment payments for the purchase of Hawkes Bay lands as a means of stimulating interest among Wairarapa Maori to alienate land.[24]

Crown's Response

18.5 The Crown notes that the source cited refers to Bagnall's history of the Wairarapa, which does not identify the original source for this claim. The original source appears to be McLean's journal. The Crown admits that McLean did journey through the Wairarapa carrying the payment for the purchase of land in Hawkes Bay, but denies that this is correctly characterised as a 'strategy' for stimulating interest in the selling of land in Wairarapa.

23.6 Made payments to two Wairarapa rangatira, Potangaroa and Wereta, for their interests in the Hawkes Bay with the intention of inducing a favourable attitude towards future land sales.[25]

Crown's Response

18.6 The Crown admits the fact of the payments alleged in paragraph 23.6, but denies the intention ascribed to the Crown.

23.7 Threatened and used the Native Land Purchase Ordinance to dissuade settlers from taking up runs. [26]

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24 Stirling, #A48, p 84.

25 Stirling, #A48, p 86.

26 Stirling, #A48, pp 84 and 91.

Crown's Response

18.7 The Crown admits that there were several occasions on which intending settlers were warned that they would contravene the Ordinance if they occupied Maori land in the Wairarapa.

23.8 Gave favourable treatment to existing run holders whilst discouraging new run holders, thus selectively applying the Native Land Purchase Ordinance.[27]

Crown's Response

18.8 The Crown admits that it wished to prevent new runs from being taken up, but tolerated the runs that had already been established.

23.9 Encouraged settlers not to pay rental payments.[28]

Crown's Response

18.9 The Crown notes that the footnote cited relates to a letter from Rhodes to the Commissioner of Crown Lands. The Crown admits that Rhodes wrote to the Commissioner of Crown Lands stating:

> "I enclose for your information memoranda of sums paid for rent of lands at Wairarapa by Mr Donald and self £440.10.0 the last payment for rents to Natives was made to Mr McLean on the 12th December 1853. £144. this was claimed by that gentleman as back rents, and was considered at the time to be in full of all demands, and that I should be troubled no more by the Natives – The rent was withheld from the Natives by desire of Sir George Grey and intimated to me by his Private Secretary Mr Wodehouse – of this Mr McLean was fully aware and I paid him more than I thought right in consequence of his informing me it was of great importance my paying this sum, otherwise he could

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27 Stirling, #A48, p 91.

28 McCracken, #A46, p 17.

not negotiate with the Natives for the purchase of the Wairarapa."

18.9.1 The Crown states further that the above sum of £144 was paid to Manihera (letter G S Cooper to McLean 8 October 1855 McCracken #A46 Document bank pp 144-147).

18.9.2 The Crown states further that Cooper reports a difference of view between Rhodes and Maori as to whether the sum of £144 was intended to settle the question of outstanding rents or simply outstanding rents for the Taratahi portion. Cooper wrote that the receipt of £144 held by Manihera indicated that the receipt was for Taratahi only (letter G S Cooper to McLean 8 October 1855 McCracken #A46 Document Bank pp144-147).

23.10 Failed to lift restrictions on leasing of Rangitaane lands until the advent of the Native Land Act 1865.

Crown's Response

18.10 The Crown denies the allegation in paragraph 23.10 and says further that the Native Land Act 1865 did not permit the leasing of customary land.

23.11 Made promises of the benefits of providing land for settlement including education, health, improved roading, increased employment, and an expanded economy.[29]

Crown's Response

18.11 This paragraph references the Stirling evidence 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

[29] Stirling, #A48, pp 98-103 and Walzl, #A44, p 430.

allegation is denied. The Walzl evidence relied upon makes reference to the promise of a mill at Papawai, which is admitted, and to a promise of a village site at the same location. The latter promise is denied.

23.12 Failed to investigate alternatives to the permanent alienation of Rangitaane lands.

Crown's Response

18.12 The Crown denies the allegation in paragraph 23.12 and says further that there was potential for direct dealings of land under the 1846 Ordinance and that the Native Land Acts were intended to allow Maori to deal with their lands without transferring the fee simple.

F. THIRD CAUSE OF ACTION: CROWN PURCHASES 1853-1865

24. On 22 June 1853, the first block of Maori land in Wairarapa was acquired by the Crown, that being the Castlepoint block.[30]

Crown's Response

19. The Crown admits the allegation in paragraph 24.

25. During the period 22 June 1853 to January 1854, a majority of the land in the claim area was alienated to the Crown as a result of 41 transactions.[31]

Crown's Response

20. The Crown admits that a significant amount of land was alienated to the Crown during the period 22 June 1853- January 1854. The Crown notes that the number of transactions is likely to be more than 41 due to deeds and deed receipts being listed separately in Turton's Deeds. There is also a question about whether the Castlepoint purchase should be included in this sequence.

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30 Walzl, #A44, pp 353-357; Stirling, #A48, p 93.

31 This paragraph refers to the 1853-1854 purchases. There is no specific breakdown in the Acreage and Alienation Report of the amount of Crown purchases in this period.

26. By 1865, the Crown had acquired 1,145,396 acres of Maori land within the claim area.[32]

Crown's Response

21. The Crown admits paragraph 26.

27. Rangitaane alienated their lands for a number of reasons, including inter alia:

(a) The deliberate undermining of the informal leasing system as pleaded in the second cause of action;

(b) The fear of losing the presence of Europeans and the benefits their presence brought;[33]

(c) The benefits and promises held out by the Crown of alienation of their land. The benefits and promises included: an increased population and market for Rangitaane to trade with; the provision of education services and facilities; the provision of infrastructure; employment opportunities; the provision of medical services; the construction of a mill and the promise of an ongoing land endowment fund known as the five per cents/koha fund.[34]

Crown's Response

22. The Crown denies the allegations in paragraphs 27 (a) and (b)

22.1 The Crown admits that the potential benefits noted in paragraph (c) may have been reasons for Wairarapa Maori to sell land, but denies that it made specific promises to this effect. It admits that 5% clauses were part of some purchase agreements, but denies that the 5% fund was ongoing in the sense that there was a continuing obligation to disperse money to Wairarapa Maori after the terms of the 5% clauses had been satisfied. The promise to erect a mill is admitted.

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32 This figure has been calculated by the pre-1865 Crown purchases in the total inquiry district of 1,526,445 minus the pre-1865 Crown purchases in the northern area calculated at 381,049 (pp 20 and 21).

33 McCracken, #A46, p 17.

34 McCracken, #A46, pp 16-21; Stirling, #A48 p 103.

28. Rangitaane signatories are present on a number of the deeds entered into during the period 1853-1865.[35]

Crown's Response

23. The Crown notes paragraph 28

29. Between 1853-1865, the Crown had duties to:

(a) Actively protect Rangitaane lands and resources to the fullest extent practicable;
(b) Ensure that Rangitaane would retain enough land for their future economic, cultural and spiritual needs;
(c) Ensure that Rangitaane retained enough lands to participate fully in the settler economy;
(d) Ensure that in the process of acquiring lands the Crown acted reasonably and with the utmost good faith towards Rangitaane.

Crown's Response

24. The Crown is not required to plead.

30. In acquiring Rangitaane lands the Crown acted in breach of those principles.

Crown's Response

25. The Crown is not required to plead.

Particulars

<u>The rapid alienation of land</u>

30.1 In the seven months between June 1853-January 1854, the Crown acquired a majority of the land in the claim area.[36]

Crown's Response

25.1 The Crown admits that there was rapid purchasing of a substantial amount of land in this period.

30.2. The effects of rapid alienation included:

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35 The Rangitaane signatories have been identified by the Wai 175 claimant committee. The list of deeds appears as Annexure B to this statement of claim. Note that the list is indicative only.

36 This paragraph refers to the 1853-1854 purchases. There is no specific breakdown in the Acreage and Alienation Report of the amount of Crown purchases in this period.

(a) The sudden and permanent extinguishment of a significant portion of the Rangitaane tribal estate;[37]

(b) Unsurveyed transactions;

(c) Disputes as to boundaries;

(d) Disputes as to location of reserves;

(e) Disputes as to whether land had been acquired by the Crown.[38]

Crown's Response

25.2 In response to paragraph (a) the Crown admits that it acquired a significant portion of land previously in Maori ownership thereby extinguishing customary ownership of that land.

25.3 In response to paragraph (b) the Crown admits that it did not survey a number of blocks prior to purchase but states that surveys need not have been essential for the purpose of ensuring Maori understood the extent of what they were selling.

25.4 In response to paragraph (c)-(e) the Crown notes the additional particulars provided (McCracken, #A46, pp 88-95 and Rigby, #A33, pp 83-85) and admits that there were some disputes of the kind described in paragraphs (c)-(e). The Crown is still researching the extent to which such disputes arose but notes that the dispute between Ngatuere and Te Manihera regarding the Taratahi Bush Reserve referred to by McCracken was resolved by William Searancke paying an additional £200 to Ngatuere for Taratahi and Hikaawera land (McCracken, #A46, p 93).

Excessive Alienation

30.3 By 1865, the Crown had acquired 1,145,396 acres out of a total of 1,493,924. The amount of land acquired by the Crown was

37 Stirling, #A48, p 125.

38 McCracken, #A46, p 82 and Rigby, #A33, pp 26-29.

excessive for the needs of the Crown and/or the settler economy.[39]

Crown's Response

25.5 The Crown admits sentence one. The Crown refers to its general statement of position on acreage and sufficiency.

The adequacy of the price

30.4 The Crown had a duty to pay a fair and reasonable price for Rangitaane lands.

Crown's Response

25.6 The Crown is not required to plead.

30.5 In breach of that obligation the Crown:

(a) Acquired land as cheaply as possible;[40]

(b) Insisted on paying the absolute minimum price;[41]

(c) Unfairly used its position as a monopoly purchaser to influence price.[42]

Crown's Response

25.7 The Crown notes that the question of price involves some complex issues. It admits that the Crown's policy was to acquire land cheaply. On the basis of the discussion of this issue in the passages cited, the Crown is obliged to deny the accuracy of the allegations in subparagraph (b) and (c).

Survey Issues

30.6 The Crown were under a duty to ensure that all purchases were properly surveyed. In breach of that obligation the Crown:

(a) Failed to carry out adequate surveys;[43]

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39 This figure has been calculated by the pre-1865 Crown purchases in the total inquiry district of 1,526,445 minus the pre-1865 Crown purchases in the northern area calculated at 381,049 (pp 20 and 21).

40 Stirling, #A48, pp 122, 123 and 132; Goldsmith, #A4, p 43; Rigby, #A33, p 20; McCracken, #A46, pp 18 and 19.

41 Stirling, #A48, p 132.

42 Goldsmith, #A48, p 43.

43 McCracken, #A46, pp 313 and 314; Paterson #A1 - refer full report.

(b) Failed to survey blocks prior to purchase;[44]

(c) Failed to properly identify the boundaries of blocks supposedly included in Crown grants;[45]

(d) Sold "reserve" and "unsold" lands to settlers before boundaries or reserves could be defined;[46]

(e) Failed to properly identify what lands were reserved to Maori;[47]

(f) Failed to ensure that Rangitaane understood the extent of the lands acquired by the Crown.[48]

Crown's Response

25.8 The Crown denies that it had a duty to ensure all purchases were surveyed prior to sale but rather, that if not surveyed the Crown needed to ensure that Maori understood the extent of what they were selling. Surveys need not have been essential for this purpose.

25.8.1 The Crown admits that the allegation in subparagraph (b) is true for a number of the Wairarapa purchases.

25.8.2 In relation to sub-paragraphs (c)–(f) the Crown refers to its response to paragraph 30.2 of the statement of claim.

25.8.3 In relation to sub-paragraph (d), the Crown also notes that footnote 326 of Stirling (memorandum of further particulars, paragraph 16) refers to the case of Rawiri Piharau. The Crown admits that land which should have been reserved for Rawiri Pinarau was sold (Rigby #A33 pp 85-87). The Cleaver report also cited in respect of (d) (p 34) refers to two reserves (Takapuai and Waitutu) named in the Castlepoint deed that were

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44 Rigby, #A33, pp 99 and 100 .

45 Rigby, #A33, p 26.

46 Stirling, #A48, pp 141 and 142 and Cleaver, #A6, p 34.

47 McCracken, #A46, pp 313 and 314.

48 Rigby, #A33, pp 26-29 and 105.

not laid out on the ground at the time the other reserves were created. The Cleaver report (pp 60-65) does not explain why the Takapuai reserve was not made around the time of the Castlepoint purchase. Cleaver (p 35) incorrectly states the area of the land provided by the Crown in response to this matter being raised. In relation to the Waitutu reserve, the Cleaver report does not explain why the reserve was not made, or why there are no known complaints. .

Reserves

30.7. In acquiring Rangitaane lands, the Crown were under a duty at all times to ensure that adequate reserves were set aside for and maintained in Rangitaane ownership for their future use and benefit.

Crown's Response

25.9 The Crown is not required to plead.

30.8 The Crown failed to fulfil those obligations as follows:

(a) Failed to secure adequate reserves to Rangitaane;[49]

(b) Ill defined boundaries and surveys resulted in uncertainty over whether reserves had been created or not;[50]

(c) Large reserves which had been set aside in the early Crown deeds were quickly alienated;[51]

(d) Lands were sold prior to reserves being properly defined;[52]

(e) The extent of Wairarapa reserves was not known as they were never properly identified by survey;[53]

(f) Crown Purchase Officers deliberately restricted the size of reserves;[54]

(g) Despite setting aside land for reserves, the Crown actively sought the acquisition of those reserve lands.[55]

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49 Walzl, #A44, pp 437 and 461.

50 Stirling, #A48, p 136.

51 Stirling, #A48, pp 134 and 135.

52 Stirling, #A48, pp 141 and 142.

53 McCracken, #A46, p 290.

54 Walzl, #A44, p 437.

Crown's Response

25.10 The Crown is not required to plead to allegations of duty, but notes that the duty is better conceived as ensuring that Maori had sufficient lands for their needs, whether unsold lands or reserves. In respect of this the Crown refers to its statement of general position.

25.10.1 In relation to subparagraph (a), the Crown refers to its response to paragraph 13.

25.10.2 In relation to subparagraph (b) and (d), the Crown admits that this appears to be true of some purchases and refers to its response to paragraph 30.2.

25.10.3 In relation to subparagraphs (c) and (g), the Crown admits that some reserves were soon purchased and that in some instances lands were sold before the reserves were defined.

25.10.4 In response to paragraph (e), the Crown admits that the Royal Commission into Native Reserves in the Wellington Province was extended to include land in the larger Wellington District including Wairarapa. The Crown notes that the report of 1882/83 recorded 27,000 acres which were still reserve land. The Crown admits that eight reserves or parts of reserves were described missing or possibly set aside elsewhere. (McCracken, #A46, pp 289-290). The Crown otherwise denies paragraph (e).

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[55] Stirling, #A48, p 136.

25.10.5 In relation to subparagraph (f), the Crown admits that McLean issued the cited instructions to Mein Smith but otherwise denies the allegation contained therein.

Payment by instalments

30.9 In acquiring Rangitaane lands the Crown had a duty on it to pay the price agreed in a timely fashion.

Crown's Response

25.11 The Crown is not required to plead.

30.10 In breach of that obligation the Crown:

(a) Did not pay the purchase price in a timely fashion and made payments by instalments spread over a number of years;[56]

(b) The spreading of inadequate payments over a number of years together with the loss of income from informal grazing arrangements led to indebtedness. This indebtedness contributed to the pressure on Rangitaane to alienate land for their survival.[57]

Crown's Response

25.12 In relation to paragraph 30.10(a), the Crown admits that some payments were made in instalments but is unaware of occasions when this was not in accordance with negotiated procedures. In relation to subparagraph (b), the Crown notes that while the source relied upon submits that there is a link between debt, the need to sell more land and payment by instalments, it does not establish such a link..

Signatories to Crown Deed

30.11 In acquiring land blocks from Rangitaane, the Crown had a duty on it to ensure that the signatories to the deeds were representative of their communities.

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56 Stirling, #A48, p 132 and Rigby, #A33, pp 64-69. Examples of this occurring in blocks in which Rangitaane had an interest are the Tauherenikau, Pahaoa and Te Awaiti blocks.

57 McCracken, #A46, p 314.

Crown's Response

25.13 The Crown is not required to plead.

30.12 In breach of that obligation the Crown:

(a) Selectively targeted Rangitaane rangatira and those willing to transfer land without undertaking an adequate inquiry as to whether they had the right and ability to enter into those transactions;[58]

(b) Granted reserves to selected individuals who were willing to sell;[59]

(c) Entered into a number of deeds in Wellington without the knowledge, consent or authority of the majority of those with interests in those blocks;[60]

(d) Made advance payments to individuals in order to bind owners to the alienation of that block; [61]

(e) During the alienation of some blocks, acquired children's signatures as vendors, such children not having the capacity or authority to represent their communities.[62]

Crown's Response

25.13.1 The Crown admits that some reserved land was granted to individuals and some signatories to Wairarapa purchase deeds signed in Wellington, but otherwise denies the allegations in subparagraphs (a) to (d).

25.13.2 The Crown admits that the signatories in some of the Wairarapa transactions were identified as children, but otherwise denies the allegation in paragraph 30.12(e).

Conflict of Interest

30.13 Crown officials had a duty to protect Rangitaane lands to the fullest extent practicable and to act reasonably and with the utmost good faith towards their Treaty partner.

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58 Rigby, #A33, pp 30-42.

59 Rigby, #A33, pp 30-42.

60 Rigby, #A33, pp 54-58.

61 Rigby, #A33, p 64.

62 By way of example see Castlepoint Deed, Turton's Deeds pp 262-264 incl.

Crown's Response

25.14 The Crown is not required to plead.

30.14 In breach of those obligations Crown officials:

(a) Acquired large amounts of Wairarapa lands for their personal use;

(b) Acquired for themselves high quality lands when Maori reserves were often of poor quality;

(c) Made large profits from the sale of lands acquired from Rangitaane.[63]

Crown's Response

25.14.1 The Crown notes that the allegations in paragraph 30.14 are based upon information supplied by Ray Fargher to Dr Rigby. The primary source of this information has not been identified and the Crown is therefore unable to respond to this allegation at present.

G. FOURTH CAUSE OF ACTION: THE FAILURE BY THE CROWN TO HONOUR ITS PROMISES

31. At all times the Crown had a duty on it to act reasonably and with the utmost good faith towards Rangitaane. At all times the Crown had to act honourably in its dealings with Rangitaane.

Crown's Response

26. The Crown is not required to plead.

32. Prior to 1853, Rangitaane were reluctant to alienate their land to European settlers, except by way of informal leasing arrangements.[64]

Crown's Response

27. The Crown denies the allegation in paragraph 32 on the basis that there was not a uniform opposition to sale in this period.

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63 Rigby, #A33, pp 105 and 106.

64 Walzl, #A44, p 357 and Stirling, #A48, p 100.

33. In response, Governor Grey and Donald McLean travelled to and met with a delegation of Wairarapa Maori, including Rangitaane in August 1853.[65]

Crown's Response

28. The Crown admits that there was a meeting between Governor Grey and Wairarapa Maori in August 1853. It seems likely that Donald McLean also attended.

34. Rangitaane were promised that certain benefits of settlement would flow to them if their lands were alienated for European settlement[66]

Crown's Response

29. The Crown denies this allegation insofar as it is based upon the factual assertions contained in the evidence that is cited.

35. Those promises included the following:

(a) An increased population and market for Maori to trade with;
(b) The provision of education services and facilities;
(c) The provision of infrastructure such as roading;
(d) Increased employment opportunities;
(e) The provision of medical services;
(f) The construction of a mill;
(g) The promise of an ongoing land endowment fund known as the five per cent/koha fund. [67]

Crown's Response

30. The Crown refers to its response to paragraph 34. It admits that the Crown promised to construct a mill at Papawai (although it is not established that this promise was made at the meeting in August 1853) and that some Wairarapa deeds contained 5% clauses.

36. Specific promises consistent with those made by Grey and McLean were included in 11 deeds signed between 1853-1854, such clauses being known as the five per cent/koha clauses.[68]

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65 Stirling, #A48, p 100.

66 McCracken, #A46, p 16; Walzl, #A44, p 357 and Stirling, #A48, p 82.

67 Stirling, #A48, pp 82 and 103, 104.

68 McCracken, #A46, p 19. Rangitaane signatories have been identified in the following deeds which have five per cent/koha clauses, West Side of the Lake, Block 1 - Turton's Deed #88, Tuhitarata -

Crown's Response

31. The Crown notes that it is not clear that the 5% clauses were discussed at the meeting in August 1853, but otherwise admits the allegations in paragraph 36.

37. In the five per cent/koha clauses the Crown expressly undertook to:

(a) Provide schools;
(b) Construct flour mills;
(c) Construct hospitals;
(d) Provide medical services;
(e) Provide certain annuities to be paid annually to certain chiefs;
(f) That a committee would be formed which, together with the Crown, would decide upon the distribution of the fund;[69]

Crown's Response

32. The Crown admits that its obligation under the 5% provision was expressed in the language of the deeds as follows:

> It is further agreed to by the Queen of England on her part to pay us at certain periods, within certain years to be decided on by the Governor of New Zealand and ourselves, that is, that we are to have a certain additional consideration for the lands we have sold, to be paid to us for the forming of Schools to teach our children, for the construction of Flour Mills for us, for the construction of Hospitals and for Medical Attendance for us, and also for certain Annuities to be paid to us for certain of our Chiefs; but it is hereby agreed that we ourselves and certain Officers, who shall be appointed by the Queen or the Governor of New Zealand, shall carefully discuss in Committee, to which and at what times and in what proportions the said money shall be applied to each of the purposes above specified. The payments to be made annually to our Chiefs are to be decided upon by the Governor of New Zealand only or by an Officer appointed by him, who shall have the power of deciding as to which Chiefs shall receive the said annual payments. These payments for all the above purposes are to be as follows, that is, when the Surveys are

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McMasters Run - Turton's Deeds #89, Tauherenikau No.4 Block - Turton's Deeds #91, Part Pahaua and Wilson's Run - Turton's Deeds #97, Wharema No.2 - Turton's Deeds #98, Whareama Block (part of) - Turton's Deed #101, Manawatu Block - Turton's Deeds #102, Makoura - Turton's Deeds #103, West Side of the Lake, Part Block No.1 - Turton's Deeds #109.

69 See for example Turton's Deeds #88, 89 and 91.

> completed, and the lands resold, which we have now transferred to the Queen of England or to Kings or Queens who may succeed Her a certain portion of the money to be received by the Queen or Government of New Zealand as payment of the said Land is to be deducted for the purposes which have been above specified, the amount of the money to be returned to us is 5 per cent or equal to five pounds out of every hundred pounds after deducting the Surveys and other expenses connected with laying off the said Lands.

38. The Crown failed to keep the promises it made to Rangitaane. By failing to keep its oral and written promises, the Crown failed to act honourably and with the utmost good faith towards Rangitaane.

Particulars

Provision of Education Services and Facilities

38.1 Rangitaane were expected to provide land for schools notwithstanding that they had already alienated the majority of their rohe and gifted lands at Papawai and Kaikokirikiri.[70]

38.2 Rangitaane were expected to subsidise the remuneration of teachers.[71]

38.3 The Crown failed to provide adequate: buildings; facilities; resources and teachers.[72]

38.4 The Crown failed to provide boarding and lodging facilities.[73]

38.5 Schools suffered from overcrowding.[74]

38.6 Publicly funded state schools were not attractive as they failed to protect Wairarapa Maori children from prejudice and discrimination.[75]

Crown's Response

33. In response to paragraph 38.1 the Crown admits in order for a Native School to be established Maori provided land for the purpose.

33.1 The Crown admits paragraph 38.2.

33.2 In response to paragraph 38.3 the Crown admits that under the legislation applying to Native schools the Crown provided a

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70 Stirling, #A51, pp 207-209.

71 Stirling, #A51, p 218.

72 Stirling, #A51, pp 208, 211, 215-218.

73 Stirling, #A51, pp 230 and 243.

74 Stirling, #A51, p 230.

75 Stirling, #A51, p 195.

subsidy for the buildings and teacher's salary but did not pay for the entire cost of either.

33.3 In response to paragraph 38.4 the Crown states that the particulars cited refer to Papawai School only. The Crown admits that boarding facilities were not provided at Papawai.

33.4 In response to paragraph 38.5 the Crown admits that a complaint of overcrowding was made in respect of the Papawai School.

33.5 In response to paragraph 38.6 the Crown notes that the particulars cited refer to a report from Maunsell in 1880 to the Native Department Under Secretary. The Crown admits that this report stated that Maori children attending public schools had been prohibited from attendance due to antipathy of European parents to the contact of their children with Maori.

The Provision of Infrastructure

38.7 Rangitaane were required to pay tolls to use roads, bridges and ferries when they had provided the land.[76]

38.8 Roads were built slowly, at the expense of Rangitaane and often from lands compulsorily acquired.[77]

Crown's Response

33.6 In response to paragraph 38.7 the Crown admits that Maori made complaints about toll gates. The Crown has not had time to research whether Maori were required to pay such tolls and therefore does not plead to the remainder of the allegation at this time.

33.7 In response to paragraph 38.8 the Crown admits:

33.7.1 That Maori paid half the cost of the road to the Papawai mill.

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76 Rigby, #A50, pp 96-112.

77 Stirling, #A48, pp 190-193 and #A50, pp 112-120.

33.7.2 That some roads were built on lands compulsorily acquired from Maori and that the Native Land Act provided for up to 5% of land passed through the Native Land Court to be taken for public works for a period of 10 years from the date of the Crown grant.

The Provision of Medical Services

38.9 No medical services were supplied until 1860.

38.10 Between 1860-1883, a limited subsidised medical service was performed by Dr Spratt. Dr Spratt's service did not extend throughout the Wairarapa.[78]

38.11 Maori were dissatisfied with the service Spratt provided and petitioned for his removal.[79]

38.12 The first hospital did not open until 1875 and no hospital was ever constructed specifically for Wairarapa Maori.[80]

38.13 Hospital Boards were reluctant to treat Maori. [81]

38.14 The failure to provide free treatment between 1883 until the early part of the 20th century.[82]

38.15 The reliance on Native school teachers between 1883-1910 to supply basic medical services and administer medicine.[83]

38.16 The failure to properly fund Maori Councils, in particular the Rongokako Maori Council.[84]

38.17 The discontinuance of Maori sanitary inspectors due to funding reasons.[85]

38.18 The dispensing with subsidised medical officers in 1909 and 1911.[86]

38.19 The fading out of subsidised doctors.[87]

38.20 The failure to provide Maori nurses to the Wairarapa.[88]

38.21 The disparate and grossly inadequate under funding for Maori health initiatives in general. [89]

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78 Stirling, #A51, p 48. See for example the Te Ore Ore kainga where significant Rangitaane lived but received far less treatment than other kainga.

79 Stirling, #A51, p 49.

80 Stirling, #A51, p 45.

81 Stirling, #A51, p 45.

82 Stirling, #A51, pp 45 and 95.

83 Stirling, #A51, pp 64-69.

84 Stirling, #A51, pp 75-78 and 84.

85 Stirling, #A51, p 83.

86 Stirling, #A51, p 99.

87 Stirling, #A51, p 102.

88 Stirling, #A51, p 106.

89 Stirling, #A51, pp 75-76 and 101.

Crown's Response

33.8 In response to paragraph 38.9 the Crown states:

33.8.1 Some health services were provided through the Native Department from the 1850s (Stirling, #A51, p 41).

33.8.2 The first subsidised doctor in Wairarapa was appointed in May 1859 (Stirling, #A51, p 44).

33.8.3 The Crown otherwise admits paragraph 38.9 but notes that this should be placed in the appropriate historical context of existence and availability of health services generally at that time.

33.9 In response to paragraph 38.10:

33.9.1 The Crown admits that a subsidised medical service was performed by Dr Spratt, from May 1859.

33.9.2 The Crown states further that in 1862 Dr Spratt's salary was increased in order for him to include in his regular rounds the principal native villages from Te Kopi to Te Purupuru (#A51 p 48).

33.9.3 The Crown states further that it has insufficient knowledge as to the extent to which Dr Spratt covered the entire Wairarapa area. This is partly due to the lack of supporting documents for these claims being placed on the record or being referenced in the report.

33.10 In response to paragraph 38.11

33.10.1 The Crown admits that in 1869 153 Wairarapa Maori were reported to have signed a petition calling for Dr Spratt's removal.

33.10.2 The Crown states further that 74 Maori were reported to have signed a petition calling for his retention.

33.11 The Crown admits paragraph 38.12.

33.12 The Crown denies paragraph 38.13 on the basis that insufficient particulars are cited to support this allegation.

33.13 The Crown denies paragraph 38.14:

33.13.1 The Crown states further that free health services were provided during this time through subsidised medical officers, the Wairarapa Public Hospital, through Native Schools and Sanitary Inspectors as well as the improvements in Maori health achieved by the Maori councils in the early 20th century.

33.14 In response to paragraph 38.15 the Crown admits that Native Schools dispensed some medicines between 1883-1910.

33.15 In response to paragraph 38.16:

33.15.1 The Crown admits that Gilbert Mair informed the government that great administrative difficulties affected the national running of the councils through his not having a permanent office.

33.15.2 The Crown admits that Gilbert Mair stated that the lack of availability of reprints of the governing acts made it difficult to educate a number of newly elected councillors on their roles.

33.15.3 The Crown admits that the difficulties referred to above were stated to be responsible for a loss of interest in the Councils.

33.15.4 The Crown states further that Gilbert Mair also stated that an impact of this loss of interest was that "tribes no longer collect sums of money in support of their respective councils".

33.15.5 The Crown states further that a number of cases of embezzlement and poor management and accounting performance were also attributed as causing difficulties for the Councils. (Stirling supporting papers 2061-2061).

33.15.6 The Crown otherwise denies paragraph 38.16 on the basis of insufficient knowledge in that it has not been able to access the Lange report used by Stirling to make out this claim.

33.16 In response to paragraph 38.17 the Crown admits that Maori sanitary inspectors were discontinued. The Crown has not been able to access the Lange report used by Stirling to make this claim and therefore denies due to insufficient knowledge that funding reasons led to the discontinuance of Maori sanitary inspectors.

33.17 In response to paragraph 38.18:

33.17.1 The Crown admits Dr Dawson was subsidised for the provision of medical services to Maori in the Paihiatua district until 1909 when his appointment was terminated. The Crown states further that Dr Dawson was again subsidised between 1920 and 1922.

33.17.2 The Crown admits that Dr Cowie's services in Masterton were terminated in 1911.

33.17.3 The Crown states further that the need for subsidised medical officers was assessed on a case by case basis

and that the effectiveness of this system was reviewed over time.

33.18 In response to paragraph 38.19

33.18.1 The Crown states that it appears from the particulars cited that the subsidy system was proposed for amendment in 1933 with doctors being paid according to a scale of fees for each Maori patient treated.

33.18.2 The Crown admits that the early practice of subsidising doctors for the provision of medical services was:

(i) Variably applied over time depending on the population, the need, geographical coverage, and the accessibility of other health services.

(ii) Criticised as an inefficient system by Te Rangi Hiroa and Gilbert Mair among others (Mair – Stirling – Supporting Papers – 1063. Te Rangi Hiroa – 1921 – 1922, Vol 3, H.31, p33).

(iii) Phased out as a national policy as other health provision services were determined to be more effective.

33.19 The Crown denies paragraph 38.20:

33.19.1 The Crown states that a 1932 proposal for Native District Nurses made an assessment of resourcing and likely effectiveness and proposed that the Nurses were best employed in areas where they had the ability to service 1000 to 1500 patients in an accessible geographical area (Stirling supporting papers 700c).

33.19.2 This assessment noted "The Wairarapa Maoris are so scattered that a district suitable for working by a nurse

would hardly be practicable." (Stirling supporting papers 700d)

33.19.3 The Crown states that notwithstanding the above assessment, a Native District Health Nurse was posted to the Wairarapa two years later, in 1934.

33.20 In response to paragraph 38.21 the Crown states that it has not had time to research the funding provided to Maori health initiatives and therefore does not plead to it at this time.

The Five Per Cent/Koha Clause

38.22 ***The Crown failed to deliver on the agreement to construct schools and hospitals and provide medical and education services.[90]***

38.23 ***The annuities to the chiefs were not paid or paid irregularly.[91]***

38.24 ***The koha payments were staggered and paid a number of years after the deeds were entered into.[92]***

38.25 ***The deferred payment approach resulted in Rangitaane being trapped in a cycle of debt and poverty.[93]***

38.26 ***Persons received koha payments they were not entitled to.[94]***

Crown's Response

33.21 In response to paragraphs 38.22 to 38.26, the Crown states that it is still conducting research on the administration of the 5% fund and therefore does not plead at this stage.

H. FIFTH CAUSE OF ACTION: THE NATIVE LAND COURT ERA

39. The Crown, via the establishment of the Native Land Court, the promulgation of Native Land legislation and its active role as a purchaser, facilitated the alienation and fragmentation of Rangitaane lands.

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90 Stirling, #A48, pp 184-186 and Walzl, #A40, pp 54, 55, 97 and 98.

91 Walzl, #A40, pp 7-26, 97 and 98 and Goldsmith #A4, pp 97-99.

92 Walzl, #A40, pp 7-22, 26, 97 and 98.

93 Stirling, #A48, p 183.

94 Stirling, #A48, p 186.

Crown's Response

34. The Crown admits that, in purchasing Maori land in the Wairarapa, it "facilitated the alienation" of that land. It refers to its response to paragraph 45.8 below. It admits that the partitioning of land was possible under various provisions of the Native Land legislation. On the general issue of fragmentation, it refers to paragraph 42 of its statement of response to the Ngati Hinewaka claim.

40. Between 1865-1900 the Native Land Court carried out title investigations into the land remaining in Maori ownership in the claim area, that being 190,016 acres. [95]

Crown's Response

35. The Crown admits that the Native Land Court investigated the title to customary lands between 1865-1900.

35.1 The Crown admits this would have involved all of the land sold during this period as well as some or all of the land remaining in Maori ownership as at 1900. The Crown admits that at 1900, 190,016 acres remained in Maori ownership.

41. Rangitaane had interests in numerous blocks investigated in this period. [96]

Crown's Response

36. The Crown refers to its response to paragraphs 6-7.

42-43. By 1900 approximately 158,512 acres of land in the claim area remained in Maori ownership. [97]

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95 This figure is calculated by land alienated by 1900 minus the land alienated by 1865.

96 Refer to Annexure C. Annexure C consists of blocks in which the Wai 175 claimant committee have identified Rangitaane have interests in which were investigated by the Native Land Court. Note the list is indicative only.

97 This figure is calculated by subtracting the land alienated at 1900 (1,335,412) from the claim area (1,493,924).

Crown's Response

37. The Crown admits paragraphs 42-43.

44. Between 1865-1900 private purchasers acquired 82,000 acres of the lands alienated.[98]

Crown's Response

38. The Crown notes that the figure of 82,000 acres is obtained by Walzl from Gawith and Hartley #A26 pp 20-21. The Crown accepts that the proportions given in Walzl for Crown and private purchases of 84% (Crown) and 16% (private) are likely to be correct.

45. The institution of the Native Land Court, the enactment of Native Land legislation and the further alienation and fragmentation of Rangitaane lands was in breach of the duties on the Crown to actively protect Rangitaane lands to the fullest extent practicable and to act reasonably and with the utmost good faith towards their Treaty partner.

Crown's Response

39. The Crown is not required to plead.

Particulars

<u>Tenurial Reform</u>

45.1 The Native Land legislation introduced a system of tenurial reform:

(a) Which failed to recognise and protect customaryRangitaane ownership of lands that remained in their hands post 1865; and

(b) Without consulting with Rangitaane.

Crown's Response

39.1 In relation to paragraph (a) the Crown denies that its Native Land legislation failed to recognise or protect Rangitaane customary interests in land. The Crown states that one of the functions of the Native Land Court was to investigate the title to

98 Walzl, #A42, p 9 and Mitchell, #A30, p 7.

customary land and to recommend that restrictions on alienation be imposed where the declared owners so wished.

39.1.1 In relation to paragraph (b), the Crown says that the reception of the Court by Wairarapa Maori requires further consideration, and the Crown does not plead at this stage.

Reserves

45.2 The Crown failed to ensure that any or adequate reserves were set aside for the present and future needs of Rangitaane.[99]

Crown's Response

39.2 The Crown refers to its statement of general position.

45.3 The Crown failed to ensure that reserves had sufficient restrictions to prevent future alienation.[100]

Crown's Response

39.3 The Crown refers to its statement of general position.

45.4 The Crown failed to ensure that restrictions placed on reserves were not subsequently removed:[101]

(a) Between 1865-1900, restrictions on alienation were imposed on 86 Wairarapa blocks, comprising approximately 160,000 acres;[102]

(b) By 1900, restrictions were removed from over 45 of those blocks;[103]

(c) Restrictions on alienations were at times removed to enable an owner to borrow against or sell land due to debt incurred in the Native Land Court process; [104]

(d) Removal of restrictions on alienations were requested due to blocks being left landlocked. [105]

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99 Mitchell, #A30, pp 50-53, 77.

100 Gawith & Hartley, #A26, Table 7.

101 Gawith & Hartley, #A26, pp 25-33.

102 Stirling, #A49, p 173 and Mitchell, #A30, pp 50-53, 77.

103 Stirling, #A49, p 173 and Mitchell, #A30, pp 50-53, 77 and 110-111.

104 Stirling, #A49, pp 181-185 and 187-194 and Mitchell, #A30, pp 110-111.

105 Stirling, #A49, pp 198-200.

Crown's Response

39.4 The Crown refers to its general statement of position and says further that there were various kinds of restrictions but no policy of making restrictions absolute or permanent.

Individualism and Contest

45.5 The Native Land Court era ushered in a new emphasis on the rights of individuals as opposed to the collective. This resulted in:

(a) The usurping of the role of rangatira and tribal structures to resolve disputes;[106]

(b) The preference of the rights of individuals over the collective and consensus view of the hapu;[107]

(c) Individual grantees could act in their own right without recourse to other owners or the collective will of the hapu; [108]

(d) Buyers of individual interests in Maori freehold land could partition their interests which led to fragmentation of blocks;[109]

(e) Contest over blocks which the Court resolved to the detriment of Rangitaane.[110]

Crown's Response

39.5 The Crown has responded to these issues in its statement of response to paragraph 42 of the SOC 4 (Ngati Hinewaka) claim.

Expense and Debt

45.6 The Native Land Court system imposed costs on Rangitaane, examples being:

(a) The financial and physical costs of living away from home during hearings; [111]

(b) The cost of lawyers, land agents and interpreters; [112]

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106 Stirling, #A49, pp 231-271.

107 Stirling, #A49, pp 29, 30, 112 and 113 and Mitchell, #A30, pp 10-14.

108 Stirling, #A49, p 113 and Mitchell, #A30, p 73.

109 Stirling, #A49, pp 114 and 117-120, a Rangitaane example being the fragmentation of the Te Ore Ore block.

110 For example the Tararua block, Mitchell, #A30, p 71 and O'Leary, #A62, pp 57-58.

111 Stirling, #A49, p 45 and Mitchell, #A30, pp 35 and 36.

112 Stirling, #A49, p46 and Mitchell, #A30, pp 35 and 36.

(c) Court fees; [113]

(d) Survey expense. [114]

Crown's Response

39.6 These issues have been responded to in the Crown's statementof response to paragraph 40(b) and 41(a) of the Ngati Hinewaka (SOC 4) statement of claim.

45.7 The high cost of survey resulted in debts recorded against at least 60% of all blocks investigated in this period. Those costs contributed to the further pressure to alienate Wairarapa land. [115]

Crown's Response

39.7 The Crown admits that survey costs could be significant relative to the value of the land and refers to its statement of response to paragraph 41(a) of the Ngati Hinewaka (SOC 4) statement of claim.

Private Purchase

45.8 The process of investigation in the Native Land Court facilitated Maori land becoming available for sale to the Crown and private purchasers. [116]

Crown's Response

39.8 The Crown denies the allegation in paragraph 45.8 is accurate as a general statement.

39.8.1 The Crown states further that its Native Land legislation can be said to have three principal elements:

39.8.2 The waiver by the Crown of its right of pre-emption over Maori customary land

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113 Stirling, #A49, p46 and Mitchell, #A30, pp 35 and 36.

114 Stirling, #A49, p46 and Mitchell, #A30, pp 35 and 36.

115 Stirling, #A49, p51-53 and Mitchell, #A30, p 36.

116 Mitchell, #A30, pp 90-92.

39.8.3 The establishment of a court to ascertain ownership of customary land and determine certain rights of succession

39.8.4 The creation of codes governing dealings in the various categories of Maori owned land

39.9 The Crown also states that while its Native Land legislation sought by way of reform to assimilate Maori land tenure as closely as possible to English forms of tenure, in doing so, it sought to enable Maori, where they so desired, to deal with their lands. At the same time, the Crown provided certain protective mechanisms governing such dealings and other rules such as protecting land being charged with certain kinds of debt. The Crown further states that while its Native Land legislation facilitated the alienation of Maori land in the sense that it permitted many types of dealings in that land, it denies that its Native Land legislation caused the alienation of Maori land.

45.9 During the period 1865-1900 private purchasers acquired approximately 82,000 acres in Wairarapa.[117]

Crown's Response

39.10 The Crownnotes that the figure is obtained by Walzl from Gawith and Hartley (#A26 pp 20-21). The Crown accepts that the proportions given for Crown and private purchases in Walzl, 84% Crown and 16% private, are likely to be correct.

45.10 Costs, the court process, debt, individualisation and fragmentation of title contributed to pressures on Rangitaane to sell to private purchasers.[118]

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117 Walzl, #A42, p 9 and Mitchell, #A30, p 87.

118 Stirling, #A49, pp 140-141 and Mitchell, #A30, pp 92-95.

Crown's Response

39.11 The Crown notes that Maori motivations for selling land were complex. It acknowledges that some of the factors mentioned might well be related to decisions to sell, but is unable to plead to this allegation without reference to particular factual contexts. It is unclear, for example, exactly what is meant by the term "the court process."

45.11 Debt incurred as the result of the Native Land Court process was at times secured by mortgage and then used as a lever for purchase. [119]

Crown's Response

39.12 The Crown denies that the allegation in paragraph 45.11 is an accurate generalisation and observes that the footnote in the paragraph does not reveal a relationship between the debt referred to and the cost of passing land through the Native Land Court or of the title options available to Maori or of pressure otherwise arising from the Native Land Court regime but rather of the difficulties of attaching debt to Maori owned land and of the entrepreneurial and other activities of certain chiefs.

Sufficiency of Land

45.12 Between 1865 and 1900, 190,016 acres of land in the claim area were acquired, the majority by the Crown. [120] ***In so acting, the Crown continued to diminish the tribal lands of Rangitaane without any regard as to the effect of the large scale alienation of Rangitaane lands prior to 1865 and whether Rangitaane has a sufficient endowment of land for their present and foreseeable needs.***

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119 Stirling, #A49, pp 154-166.

120 By 1900, 1,335,412 acres of land in the claim area had been alienated out of Maori ownership. This figure is calculated by the claim area of 1,493,924 minus the land remaining in Maori hands at 1900, being 158,512. (Refer p 21).

Crown's Response

39.13 The Crown admits the first sentence of paragraph 45.12. In response the second sentence the Crown refers to its general statement of position.

45.13 At no time during the period 1865-1900 did the Crown ever inquire into whether Rangitaane retained a sufficient and proper endowment of land.

Crown's Response

39.14 The Crown denies the allegation in paragraph 45.13.

39.14.1 The Crown further refers to its response to paragraph 45.15 below.

45.14 At no time did the Court set aside tribal title for Rangitaane.[121]

Crown's Response

39.15 The Crown is still considering the specific examples cited.

45.15 At no time did the Crown prevent or attempt to slow the process of alienation.

Crown's Response

39.16 The Crown states that following claims of unconscionable dealings in Maori land, especially in Hawkes Bay, in the immediate aftermath of allowing Maori to deal freely in their lands, it appointed Trust Commissioners to vet such dealings. (See The Native Lands Frauds Prevention Act 1870.) Amongst the criteria the Trust Commissioners were required to inquire into and decline if the stipulation was not satisfied was that the Maori alienors had sufficient land left for their support. (See sections 4 and 5 of The Native Lands Frauds Prevention Act 1870.) This stipulation, the duration of the Native Land

121 Stirling, #A49, pp 25 and 27.

Administration Act 1886 excepted, was a constant aspect of Native Land legislation. (See variously s.6 of The Native Lands Frauds Prevention Act 1881; s.53 of The Native Land Court Act 1894; and s.220 of The Native Land Act 1909.)

45.16 As a result, by 1900 Rangitaane were virtually rendered landless and had insufficient lands to participate in the 20th economy.

Crown's Response

39.17 The Crown refers to its statement of general position.

Unscrupulous Tactics

45.17 During the period 1865-1900, Crown officials breached the duty to act reasonably and with the utmost good faith by employing unscrupulous tactics in order to obtain Rangitaane lands, examples of which are:

(a) The carrying out of negotiations with selected willing sellers in Wellington; [122]

(b) The payment of commission for signatures; [123]

(c) The use of advance payments – Tamana; [124]

(d) Improper pressure being placed on people to sign sale deeds; [125]

Crown Response

39.18 The Crown denies the opening text of paragraph 45.17

39.18.1 In response to paragraph (a) the Crown admits some purchase negotiations for some Tamaki-nui-a-rua blocks occurred in Wellington. (The Crown notes that the evidence cited in support of this is Mitchell #A30 who in turn cites Robertson's, Seventy Mile Bush Report in support of this claim).

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122 Mitchell, #A30, p 70.

123 Mitchell, #A30, p 70.

124 Mitchell, #A30, p 70.

125 Mitchell, #A30, p 70.

39.18.2 In response to paragraph (b) the Crown states it has not had time to research the example of commission cited but has not been able to locate the reference cited in Mitchell (#A30, footnote 7). The Crown refers to its response to paragraph 8.1.5 in SOC 2 regarding payment of commission in the Tamaki-nui-a-rua area.

39.18.3 In response to paragraph (c) the Crown notes the footnote refers to the Tararua block. The Crown is yet to research this and does not plead at this stage.

39.18.4 The Crown denies paragraph (d).

39.19 The Crown does not plead to the allegation of Treaty breach. The Crown is still considering the specific examples cited.

I. SIXTH CAUSE OF ACTION: THE ALIENATION OF WAIRARAPA MOANA

46. Lake Wairarapa and Lake Onoke were important sources of resource to Rangitaane. The resources available from the Lakes and surrounding lands included inter alia:

- ***Various types of eel;***
- ***Fish, including flounder and whitebait;***
- ***Shellfish, in particular the Kokopu; and***
- ***Vegetation, including fern root, korau, flax and rushes.*** [126]

Crown's Response

40. The Crown notes paragraph 46.

47. At all times, the Crown was under a duty to actively protect the lakes, their resources and lands surrounding the lakes.

Crown's Response

41. The Crown does not plead to allegations of Treaty duty.

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126 Crocker, #A37, pp 12-16 and Chrisp, #A60, p 51.

48. During 1853-1854, the Crown entered into transactions which resulted in the acquistion of four blocks of land surrounding Lake Wairarapa, they being the Turakirae, Turanganui, Tauherenikau, and Kahutara Blocks. [127]

Crown's Response

42. The Crown admits the purchase of the four blocks alleged in paragraph 48, but adds that the Tauherenikau block did not abut the lake according to the 1891 McKay Commission report. The 1891 report stated:

> "the petitioners are mistaken in supposing that [Tauherenikau block] abuts the lake; the nearest point on the boundary is about 5 miles distant. The block that is meant is one that is known to the department as 'Owhanga'".

49. Despite signing those deeds, McLean promised Wairarapa Maori, including Rangitaane, that ownership of the lakes belonged to them. [128]

Crown's Response

43. The Crown accepts paragraph 49 to the extent that paragraph 49 alleges that McLean acknowledged Wairarapa Maori as the owners of the lake at the time of signing the first four deeds. The Crown otherwise denies paragraph 49.

50. After the 23 January 1855 earthquake, the Crown came under increasing pressure from settlers to acquire lands surrounding Lake Wairarapa. [129]

Crown's Response

44. The Crown admits that from the 1850s it came under increasing pressure from some settlers to acquire lands surrounding Lake Wairarapa. The Crown further states that flooding of lakeside lands, particularly on the Eastern side of the lake, was the major source of this pressure.

51. Between 1874-1876 various attempts were made by the Crown to acquire Lake Wairarapa.[130]

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127 Crocker, #A37, pp 23-26.

128 Crocker, #A37, p 27.

129 Crocker, #A37, p 28.

Crown's Response

45. The Crown admits paragraph 51.

52. On 14 February 1876, the Crown purported to acquire Lake Wairarapa from Te Hiko and others. [131]

Crown's Response

46. To the extent that paragraph 52 alleges that the Crown signed a deed of transfer with Te Hiko and fourteen others in 1876 the Crown admits paragraph 52.

46.1 The Deed defined the rights being surrendered as:

> "…such eel-fishery rights, and other rights and interests of any kind whatsoever which we claim to have in such lakes, or in the borders of such lakes, whether in land or whether in the waters thereof, between the lands already sold to Her Majesty the Queen bordering on such lakes - that is to say, between the blocks of land called Turakirae, Turanganui, Kahutara, Tauherenikau, and including the sand-spit between Kiriwai and Okorewa, at the ferry, as shown on the plan drawn hereon" (*AJHR*, 1981, G-4, p. 69).

46.2 The Crown otherwise denies paragraph 52.

53. Between 1876-1895 there was sustained and vigorous protest by Wairarapa rangatira against the acquisition. [132]

Crown's Response

47. The Crown admits that there was protest by a number of Wairarapa rangatira to the acquisition. The Crown further states that the protests were sometimes about matters other than the acquisition, such as the

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130 Crocker, #A37, pp 32-41.

131 Crocker, #A37, p9 42-43 and Turton's Deeds #198.

132 Crocker, #A37, pp 44-72 inclusive.

protests about the opening of the lake (Crocker #A37). The Crown otherwise denies paragraph 53.

54. As a result of pressure by Rangitaane and others, the Government established a Royal Commission which sat in Greytown during April-May 1892 to investigate claims for Lake Wairarapa and adjacent lands.[133]

Crown's Response

48. The Crown admits that it established a Royal Commission to investigate "*claims to the Wairarapa Lake and certain lands adjacent thereto*", but notes that the Commission sat in Greytown in 1891.

55. The findings of the Royal Commission were inter alia:

(a)	***Te Hiko did not have paramount control over the lakes and could not act in a manner detrimental to the fishing rights of others;*** [134]
(b)	***Maori did not own all land below high water mark;***
(c)	***The Crown fraudulently deprived Maori of their fishing rights solemnly guaranteed by the Treaty;*** [135]
(d)	***The Crown had wrongfully seized and sold a large area of land in and around the margin of the Wairarapa Lakes which the owners never ceded to the Crown;*** [136]
(e)	***Maori retained ownership of the lakes;***[137]
(f)	***Maori owned the spit between Lake Onoke and the ocean; and***[138]
(g)	***Whilst retaining their fishing and other rights in the lakes Maori were not justified in allowing the lakes to flood.*** [139]

Crown's Response

49. The Crown admits that paragraph 55(a) correctly states one of the findings of the 1891 Commission.

49.1 The Crown admits that paragraph 55(b) correctly states one of the findings of the Commission.

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133 Crocker, #A37, pp 71-72.

134 Crocker, #A37, p 73.

135 Crocker, #A37, p 73.

136 Crocker, #A37, p 73.

137 Crocker, #A37, p 74.

138 Crocker, #A37, p 74.

49.2 The Crown denies paragraph 55(c) and further states that the statement in paragraph 55(c) appears in the submissions by the "solicitors for the Natives", not in the findings of the Commission.

49.3 The Crown denies paragraph 55(d) and further states that the statement in paragraph 55(d) also appears in the submissions by the "solicitors for the Natives", not in the findings of the Commission.

49.4 The Crown admits that paragraph 55(e) correctly states one of the findings of the 1891 Commission.

49.5 In regard to paragraph 55(e) it notes that the 1891 Commission also found that:

> "It has been previously shown that both the Owhanga and the Kahutara blocks include portions of the lake within their boundaries" (1891 Commission, p 4.).

49.6 The Crown admits that paragraph 55(f) correctly states one of the findings of the Commission. .

49.7 The Crown admits that paragraph 55(g) correctly states one of the findings of the 1891 Commission. The Commission further stated that:

> "The Native Proprietors… are not justified, while conserving their own interests, to allow the lakes to flood the lands sold by them to the Government, to the detriment and loss of the settlers who now own it, as the disposal of property by an owner implies that such owner will not allow anything to happen that may be reasonably prevented on the part of the estate retained by him, which abuts on the portion alienated to others, that will operate detrimentally to the interests of the person or persons to whom such

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[139] Crocker, #A37, p 74.

> portion was sold, or their assigns (1891 Commission, p 11.). …"

56. On 13 January 1896, Wairarapa Maori agreed to gift the lakes to the Crown and entered into a deed to that effect. [140]

Crown's Response

50. The Crown accepts paragraph 56 to the extent that it acknowledges that a deed transferring the lakes was signed.

50.1 In respect to the reference to the agreement being a gift the Crown states:

> Reference to the transfer of ownership of the Lake to the Crown as a gift was made by both Maori and the Crown participants in the process (Crocker A 37, p.80-84).

50.2 The Agreement for transfer is more conventionally drafted in the language of contract referring to consideration of £2,000 paid by the Crown in return, together with a promise for the provision of "ample reserves:" for the benefit of the Native owners"

57. Many of the signatories had Rangitaane whakapapa. [141]

Crown's Response

51. The Crown notes paragraph 57.

58. The agreement for the Wairarapa Lakes provided that the Crown was to set aside ample reserves for the benefit of the owners. [142]

Crown's Response

52. The Crown admits paragraph 58.

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140 Crocker, #A37, pp 80-81.

141 Persons identified by Wai 175 claimant committee, those persons being: RH Manihera, Hoani Ngaturere, M Kahungunu Maara, Raharuhi Tuhokairangi, Te Whatahoro, Kingi, Ngatuere, Hoani, Te Tohu, Rangitakaiwaho, Ratima Ropiha.

142 Refer to the Deed as set out in Crocker, #A37, p 80.

59. In acquiring Lake Wairarapa, its resources and surrounding lands, the Crown breached the obligation on it to actively protect those interests for Rangitaane and others.

Crown's Response

53. The Crown does not plead to allegations of Treaty duty.

Particulars

59.1 McLean promised that the lakes would be reserved to Maori ownership. That promise was not honoured.

59.2 Despite knowledge of the outcome of the 1891 Royal Commission, the Crown proceeded to acquire Lake Wairarapa.

59.3 In acquiring the Lake Wairarapa, the Crown removed the ability of Rangitaane to access customary resources such as eels, fisheries, and vegetation.

59.4 The Crown failed to set aside the promised reserves in the Wairarapa.[143]

59.5 The Crown set aside reserves in the Pouakani Block, a great distance from the Wairarapa and in a different tribal rohe.[144]

Crown's Response

53.1 In response to paragraph 59.1 the Crown states that at the time of the sale McLean recognised that Lake Wairarapa was not part of the purchase but remained owned by Maori but otherwise denies paragraph 59.1.

53.2 In response to paragraph 59.2 the Crown:

53.2.1 Admits it knew of the 1891 Commission's findings.

53.2.2 Admits its acquisition of Lake Wairarapa.

53.2.3 States further that the Commission did not recommend that the Lake should never be acquired by the Crown.

53.3 The Crown does not plead to paragraph 59.3, on the grounds that it is not adequately particularised as to how Crown ownership denied access to customary resources, by what

143 Crocker, #A37, 88.

144 Crocker, #A37, pp 88-89.

means, and to which resources was the access denied, at which periods of time.

53.4 In response to paragraph 59.4 the Crown admits that the promised reserves were not set apart in the Wairarapa.

53.5 The Crown admits paragraph 59.5.

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

60. In exchange for the cession of sovereignty, the Crown had a duty to protect Rangitaane tino rangatiratanga.

Crown's Response

54. The Crown is not required to plead.

61. At all times the Crown has duties to act reasonably and with the utmost good faith and provide redress for Rangitaane, if by its actions, omissions and policies the Crown impinged on Rangitaane's tino rangatiratanga.

Crown's Response

55. The Crown is no required to plead to paragraph 61.

62. Throughout the 19th century, Rangitaane protested to the Crown about a number of matters, examples being:

(a) The large scale alienation of their land base and other resources;
(b) A diminution of their rangatiratanga;
(c) Delay over payments for the alienation of their lands;[145]
(d) Reserves not being properly surveyed and later included in Crown grants;[146]
(e) A lack of proper surveys which resulted in confusion over lands being sold and boundary issues;[147]
(f) The failure to make the koha payments; [148]
(g) Delay in issuing Crown grants; [149]

145 Stirling, #A48, pp 146, 148, 211 and 232.

146 Stirling, #A48, pp 141, 149, 169, 178, 183 and 211.

147 Stirling, #A48, pp 137, 141, 147, 148, 178 and 211.

148 Stirling, #A48, pp 177 and 179.

149 Stirling, #A48, p 159.

(h)	***The failure to deliver on the promises of schools, hospitals and roads;*** [150]
(i)	***The level of debt which rangatira found themselves in;*** [151]
(j)	***The alienation of Lake Wairarapa and its resources in 1871;*** [152]
(k)	***The workings of the Native Land Court.*** [153]

Crown's Response

56. The Crown has insufficient evidence and therefore denies paragraphs (a) and (b).

56.1 In response to paragraph (c), the Crown admits some Maori complained to the Crown about delays in payments for alienation of their lands.

56.2 In response to paragraph (d) the Crown notes that footnote 146 refers to some pages of Stirling, one of which refers to the land which should been reserved for Rawiri Piharau. The Crown admits Wairarapa Maori complained to the Crown regarding the fate of this reserve.

56.3 In response to paragraph (e) the Crown admits that some Wairarapa Maori complained to the Crown about problems with surveys.

56.4 In response to paragraph (f) the Crown admits that Wairarapa Maori complained to the Crown a number of matters related to 5% payments.

56.5 In response to paragraph (g) the Crown admits that some Wairarapa Maori complained about delays in the issue of Crown grants.

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150 Stirling, #A48, pp 159, 187, 188 and 191.

151 Stirling, #A48, pp 177 and 179.

152 Crocker, #A37, pp 44-72.

153 Stirling, #A50, pp 5, 6, 11 and 81.

56.6 In response to paragraph (i) the Crown admits that some Wairarapa Maori wrote to Crown officials regarding their debt levels.

56.7 In response to paragraph (j) the Crown notes that although paragraph (j) refers to 1871 it believes it is intended to refer 1876 when "Hiko's purchase" was made. The Crown admits that protest followed this agreement.

56.8 In response to paragraph (k) the Crown admits some Wairarapa Maori complained about the working of the Native Land Court.

63. Rangitaane responded in a number of ways in an attempt to maintain their tino rangatiratanga, examples being:

(a) Selling reserves and then later securing them in a Crown grant at a greatly increased price; [154]
(b) Sympathy for the Kingitanga movement; [155]
(c) Sympathy for and conversion to the Pai Marire faith; [156]
(d) Attempts to boycott Native Land Court sittings; [157]
(e) Participation in the Repudiation Movement; [158]
(f) Participation in the Wairarapa Komiti; [159]
(g) Support for the prophet, Paora Te Potangaroa; [160]
(h) Support for the Kotahitanga movement. [161]

Crown's Response

57. In response to paragraph (a) the Crown admits that one of the Castlepoint reserves was sold in 1855 with a buy-back clause enabling owners to re-purchase part of the land at set prices and obtain a Crown grant. The

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154 Stirling, #A48, p 149 and Cleaver, #A6, p 66.

155 Stirling, #A48, pp 208 and 209. Examples of rangatira with Rangitaane whakapapa including Te Manihera and Wi Waaka as provided by claimant committee.

156 Stirling, #A48, p 266. Examples of rangatira converting to the Pai Marire being Karaitiana Te Kourou and Wi Waaka.

157 Examples of blocks involving Rangitaane interests being withheld from investigation, including Papawai, Whangaehu, Whareama, Seventy Mile Bush, and Te Ore Ore.

158 See for example involvement of Rangitaane hapu such as Te Hika-o-Papauma, Ngati Moe and Hamua - Stirling, #A50, pp 41 and 42.

159 Rangitaane members of the Komiti were particularly opposed to the Native Land Court, examples of protest coming from Paora Potangaroa, Te Whatahoro and Nireaha Tamaki.

160 Stirling, #A50, p 198-204.

161 Stirling, #A50, pp 272 and 294 particularly Ngati Hamua.

Crown has not researched the allegation in paragraph (a) more generally and therefore does not plead further at this time.

57.1 In response to paragraph (b) the Crown admits that some Wairarapa Maori supported the Kingitanga movement.

57.2 In response to paragraph (c) the Crown admits some Wairarapa Maori converted to the Paimarire faith.

57.3 In response to paragraph (d) the Crown has not had sufficient time to research this allegation and does not plead to it at this time.

57.4 The Crown admits paragraph (e).

57.5 The Crown admits paragraph (f).

57.6 In response to paragraph (g) the Crown has not had time to research this and therefore does not plead at this time.

57.7 The Crown admits paragraph (h).

64. Despite protest and attempts at maintaining their tino rangatiratanga, the Crown failed to respond and provide reasonable redress to Rangitaane. As a result Rangitaane continued to suffer in the following ways:

Particulars

64.1 The Native Land Court continued to investigate Wairarapa lands;

64.2 The Crown failed to incorporate Rangitaane protest about the Native Land Court into subsequent legislation;

64.3 Rangitaane lands continued to be available for alienation, both to the Crown and private purchasers;

64.5 Between 1865-1900, the Crown continued to be the major purchaser of Wairarapa lands; [162]

64.6 By 1900 the Crown had largely failed to deliver on the promises of 1853;

64.7 By 1900, Rangitaane were rendered landless.

[162] 190,016 acres of land were acquired in the claim area, the majority by the Crown. This figure is calculated by land alienated by 1900 minus the land alienated by 1865.

Crown's Response

58. The Crown admits paragraph 64.1.

58.1 In response to paragraph 64.2 the Crown admits that proposals by some Wairarapa Maori were not adopted in amendments to Native Land legislation. The Crown states further that the Native Lands legislation was continually being revised and extended in response to problems encountered and Maori complaints.

58.2 The Crown admits paragraph 64.3.

58.3 The Crown admits paragraph 64.5

58.4 The Crown denies paragraph 64.6.

58.5 The Crown denies paragraph 64.7.

K. EIGHTH CAUSE OF ACTION: 20TH CENTURY ALIENATIONS

65. By 1900, approximately 158,512 acres of land in the claim area remained in Maori ownership.[163]

Crown's Response

59. The Crown admits paragraph 65.

66. In July 1908 the Stout-Ngata Commission sat to investigate the status of Wairarapa Maori lands. The findings of the Commission were inter alia:

(a) That there was very little Maori land left unoccupied in Wairarapa;
(b) Of the remnant of Maori land left unalienated, Wairarapa Maori wished it to be reserved for their occupation;
(c) There was a desire on the part of Wairarapa Maori to farm their lands.

[163] This figure is calculated by subtracting the land alienated at 1900 (1,333,883) from the claim area (1,493,924).

Crown's Response

60. In response to paragraph 66(a) the Crown admits that the first Stout-Ngata Commission found this. The Crown states further that this report covered only lands in Masterton County. The second Stout-Ngata Commission (which covered land in six counties) identified 152,188 acres owned by Maori, of which some 56,539 acres were occupied by the owners and 72,280 acres leased. Another 22,800 acres in the Waitutuma block were about to be sold by the owners and the Stout-Ngata Commissioners approved of this. Another 569-acre block was to be set aside to be leased to other Maori.

60.1 In response to paragraph 66(b) the Crown admits that the first report found this. In the second report the Commissioners did not deal with the 56,539 acres in Maori occupation save to note that it was all being used, and made no recommendations for its alienation.

60.2 In response to paragraph 66(c) the Crown admits that the first report found this. The second report by implication found this also.

67. Thus the Crown was aware of:

(a) The need to ensure that Rangitaane, maintained a land base for their economic survival;

(b) A need to encourage by policy, legislation or any other means the retention of the remnant land in Rangitaane ownership;

(c) A need to encourage Rangitaane in the development and utilisation of their lands for farming their economic survival.

Crown's Response

61. In response to paragraph 67(a) the Crown admits that as a result of the Stout-Ngata Commission it was aware of the land base held by Wairarapa Maori. The Crown states further that the purpose of the Stout-Ngata Commission was to ensure that Maori owners were getting a proper return for the lands they held. The Wairarapa was one of the few

places where the Commission did not find that land should be compulsorily vested in the Maori Land Boards for sale or lease.

61.1 In response to paragraph 67(b) the Crown refers to its response to paragraph 67(a).

61.2 In response to paragraph 67(c) the Crown admits that this was the Stout-Ngata Commission's conclusion.

68. In breach of those obligations the Crown continued to act in breach of Treaty principles:

Crown's Response

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

Particulars

68.1 The enactment of the Native Land Act 1909 which removed restrictions on alienation and permitted private purchase of Maori lands; [164]

68.2 The continued purchase by the Crown of Rangitaane lands throughout the 20th century; [165]

68.3 The almost total alienation of the remaining Maori land base in the claim area whereby Wairarapa Maori including Rangitaane are left with a miniscule remnant of 16,104 acres of the land base as at 1840. [166]

Crown's Response

63. In response to paragraph 68.1 the Crown admits the enactment of the Native Land Act 1909 which lifted existing restrictions on the purchase of Maori land and replaced this with a uniform system of administration under Maori Land Boards. However, it is not correct to say that the Act removed all restrictions on alienation. The Crown further states that private purchasing of Maori land had been permitted before the 1909 Act.

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164 Walzl, #A42, p 36-39.

165 Walzl, #A42, p 40, particularly during the period 1900-1920.

166 This figure is calculated by subtracting the current Maori land holdings in the total inquiry district, being 37,749 acres less the current Maori land holdings in the northern region, being 21,645 acres. (Refer p 21).

63.1 In response to paragraph 68.2 the Crown admits that it continued to purchase Maori land in the 20th century.

63.2 In response to paragraph 68.3 the Crown refers to its general statement of position.

L. NINTH CAUSE OF ACTION: GIFTED LANDS FOR SCHOOLS

69. In 1853, a 400 acre block of land at Papawai and a 190 acre block at Kaikokirikiri were gifted to Bishop Selwyn of the Anglican Church by Wairarapa Maori including Rangitaane.[167]

Crown's Response

64. The Crown admits paragraph 69.

70. Rangitaane were persuaded to gift land for schools by both Grey and Bishop Selwyn. [168]

Crown's Response

65. The Crown admits paragraph 70.

71. Rangitaane rangatira and Rangitaane hapu were involved as donors of the gifted lands.[169]

Crown's Response

66. The Crown admits that Maori gifted lands. The Crown refers to its general statement at the commencement of this claim on tribal affiliations.

72. Rangitaane gifted lands on the understanding that two schools would be built at Papawai and Kaikokirikiri.[170]

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167 Stirling, #A51, p 156.

168 Stirling, #A51, p 155 and 156.

169 Stirling, #A51, p 161. See for example Karaitiana Te Kouru, Retimona Te Korou and Ropiha , Te Hika-o-Papauma and Ngati Hamua.

170 Stirling, #A51, p 161 and 162.

Crown's Response

67. The Crown admits paragraph 72.

73. Rangitaane understood that should the lands not be used for the purpose of schools, then the gifted land should be returned to them and other owners.[171]

Crown's Response

68. The Crown admits that Maori gifted land with the intention that schools would be built at Parawai and Kaikokirikiri and that later some Maori stated that it was intended that the land would be returned to them if it were not used for that purpose.

74. Throughout the 19th century, the Church, in breach of the conditions upon which the land was gifted to it, failed to establish schools at Papawai or Kaikokirikiri.[172]

Crown's Response

69. The Crown notes that from 21 December 1860-January 1865 (Stirling A. 51, Volume 4, p 190) a Government subsidised church school operated at Papawai on the gifted land but otherwise admits paragraph 74.

75. Throughout the 19th century there was concerted protest by Wairarapa Maori including Rangitaane rangatira at the consistent failure of the Church to provide the schools as promised and/or return the gifted lands.[173]

Crown's Response

70. The Government admits that at various times in the 19th Century there was protest by Wairarapa Maori at the failure of the church to provide schools as promised or failing that to return the gifted lands.

76. The Crown was aware of this state of affairs as:

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171 Stirling, #A51, pp 157, 162.

172 Stirling, #A51, p 162.

173 Stirling, #A51, p 168, see for example the petition by Hamua and Te Whatahoro.

(a) The Native Affairs Committee investigated the matter in 1896;[174]
(b) Premier Seddon undertook to rectify the situation in 1898;[175]
(c) A Commission of Inquiry was held in 1905; [176]
(d) There was further investigation by the Joint Committee on Church Trust Lands in 1941.[177]

Crown's Response

71. The Crown admits paragraph 76.

77. All inquiries established that the Church, despite accumulating large assets from the gifted lands, had failed to:

(a) Deliver on its promise to provide schools for Wairarapa Maori;
(b) Return the lands. [178]

Crown's Response

72. In response to paragraph 77 the Crown states:

72.1 That the 1896 and 1905 inquiries concerned Kaikokirikiri land only (Stirling #A51, p 175).

72.2 The 1896 inquiry found that the petitioners had a just grievance on the basis that it appears that "the conditions under which the land was given to the Church by the Natives have never been carried into effect."(Stirling, #A 51, p 169).

72.3 The Crown admits that the 1896 inquiry by the Native Affairs Select Committee recommended that land should be returned to its original owners.

72.4 The 1905 inquiry found that the trust associated with the gift had not been carried out until very recently, the reason given being that the funds derived from the trust had not been sufficient for

174 Stirling, #A51, p 169.

175 Stirling, #A51, p 198.

176 Stirling, #A51, pp 175-177.

177 Stirling, #A51, pp 181 and 182.

178 Stirling, #A51, pp 169, 177 and 182.

the purpose. The inquiry also found that a promise, direct or implied, to establish the college was the inducement which led Maori to give the land for the purpose of the trust and that they and their descendants had long felt aggrieved at the delay in carrying it out. (Stirling, #A51, p 177).

72.5 The 1941 Joint Committee on Church Trust lands related to land at both Kaikokirikiri and Papawai. The Committee found that "the inability of the church to administer the trusts according to the original intention was not due to any fault of its own". The Committee recommended (among other things):

72.5.1 That the trusts continue to be administered in the name of the Church of England and as far as possible be administered to provide the educational training contemplated by Maoris when the lands were granted.

72.5.2 That the boards governing the trusts should be representative of the Church of England, Maori and the Education Department.

72.6 That the boards be empowered to assist Maori by scholarships to attend secondary schools, providing books, clothes or other equipment for such pupils and by erecting, purchasing or otherwise acquiring suitable buildings to house such pupils (Stirling document bank, pp 2210-2214).

78. At all times the Crown has a duty on it to actively protect Rangitaane lands to the fullest extent practicable and to act reasonably and with the utmost good faith towards their Treaty partner. The Crown breached those obligations:

Crown's Response

73. The Crown is not required to plead to paragraph 78.

Particulars

78.1	***By failing to take steps to encourage the Church to honour the gifts by either building the schools or returning the lands to the original owners;***
78.2	***Despite promising to rectify the situation in 1898, by failing to introduce legislation to remedy the problem until 1943, 90 years after the lands had been gifted;***
78.3	***By enacting legislation, the Papawai and Kaikokirikiri Trust Act 1943 which provided benefits to persons who were not descended from the original owners;***[179]
78.4	***By enacting legislation which provided for the preferential treatment of children of Ngati Kahungunu only, the legislation failing to refer to and provide similar preferential treatment to children of Rangitaane.***[180]

Crown's Response

73.1 The Crown denies paragraph 78.1 and further states that the various inquiries conducted by the Crown constitute some actions taken to address the fact that schools were not established on the lands.

73.2 In response to paragraph 78.2 the Crown admits that on 26 May the Premier promised to bring a bill before the House dealing with Maori lands held by the Church but that legislation was not introduced until 1943. (Stirling document bank, p 2474 – Nelson Evening Mail 27 May 1898).

73.3 The Crown states further:

73.3.1 That in 1899 Anglican Bishop Wallis proposed the establishment of an agricultural collage at Hikurangi but this appears to have been delayed by litigation regarding the Church's plan to draw on funds from Porirua trusts to support the college.

73.3.2 That from 1903 – 1932 a Maori boys boarding school was established by the Anglican Church at Hikurangi

179 Stirling, #A51, p 186 and s.12 of the Act.

180 Stirling, #A51, p 186.

(near Clareville) supported with money from the gifted lands. (Stirling, #A51, 170-174).

73.4 The Crown admits paragraph 78.3.

73.4.1 The Crown states further that subsection 4(a) of section 12 of the Papawai and Kaikokirkiri Trusts Act 1943 gave the Board the power to provide scholarships for children of British subjects of all races, and for children of other peoples of the islands of the Pacific Ocean.

73.4.2 That the foregoing was consistent with the wording of the original Crown Grant of the land to the Bishop of New Zealand. (Kaikokirikiri Crown Grant, reproduced in *AJHR* 1905, G5 p 197.)

73.4.3 That subsection 4(a) of section 12 of the Act states that preference should be given to children of Ngati Kahungunu residing in the Wairarapa, south of a straight line passing through Akitio and Pahiatua. The Act then states that failing that, the scholarships should be offered to children of Maori descent residing on the east coast of the North Island, and failing that, to children of Maori descent living elsewhere in New Zealand.

73.5 In response to paragraph 78.4 the Crown admits that the legislation provided for preferential treatment for the children of Ngati Kahungunu.

73.6 The Crown admits paragraph 78.3. It further states that section 12(4)(a) provides as follows:

> "(4) Subject to the foregoing provisions of this section, the Board may from time to time apply its net income towards all or any of the following purposes:—

> (a) The provision of scholarships for [the post-primary education of] children of British subjects of all races, and for children of other persons being inhabitants of islands in the Pacific ocean, but so that preference is given to boys and girls of the Ngatikahungunu Tribe residing in the Wairarapa district south of a straight line passing through Akitio and Pahiatua, and then to other Maoris or descendants of Maoris residing on the east coast of the North Island of New Zealand, and, failing such, to Maoris or descendants of Maoris of any part of New Zealand:"

73.7 In response to paragraph 78.4, the Crown admits that the legislation provided for preferential treatment for children of Ngati Kahungunu and refers to the text of section 12(4)(a) of the Act set out above for its terms.

M. TENTH CAUSE OF ACTION: PUBLIC WORKS ACT TAKINGS

79. At all times the Crown was under a duty to actively protect Rangitaane lands to the fullest extent practicable.

Crown's Response

74. The Crown does not plead to paragraph 79 on the basis that it consists of allegations regarding the content of Treaty duty.

80. In breach of that duty, the Crown adopted and pursued a policy of compulsory acquisition of Rangitaane lands, notwithstanding that Rangitaane had been dispossessed of the bulk of their tribal lands by 1865. The Crown breached its duty by, inter alia:

Crown's Response

75. The Crown does not plead to paragraph 80 on the basis that it contains allegations of Treaty breach.

Particulars

80.1 Taking of lands for public works purposes:

(a) In the Huranuiorangi, Kopuaranga, Manaia Sec. 107, Okurupatu blocks;[181]

[181] Blocks identified as having Rangitaane interest by claimant committee. Cross reference also to Gawith Report #A26, Schedule at pp 1-13.

(b) For Castlepoint roads between 1890-1907;[182]

(c) For Gladstone roads; [183]

(d) For the Waiohine Bridge deviation and Mangatere Stream diversion.[184]

Crown's Response

75.1 In relation to the allegations as they apply to the blocks in paragraph 80.1 (a):

75.1.1 The statement of claim states "Blocks identified as having Rangitaane interest by claimant committee. Cross reference also to Gawith Report #A26, Schedule at pp 1-13."

75.1.2 The Crown states that this referencing does not assist in understanding issues concerning consulation, compensation or consideration of alternatives in relation to these public works takings.

75.2 In relation to the allegations as they apply to the blocks in paragraph 80.1 (b):

75.2.1 Marr states that the land over which the Castlepoint Road traverses was largely bought by the Crown in 1853. The Deed provided for 10 reserves. A clause in the Deed states owners consent to the construction of roads over these reserves (Marr, #A32, pp 84-85).

75.2.2 Marr acknowledges that consultation occurred in this case at the time of establishment of the reserves (Marr, #A32, pp 84-85). It is a matter for submissions as to whether further consultation should have occurred.

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182 Marr, and Others, #A32, pp 84-94.

183 Stirling, #A51, pp 144-171.

184 Stirling, #A51, pp 172-185.

75.2.3 The Crown states further that the issue of compensation for the land for these roads is tied up in the original sale transaction.

75.3 In relation to the allegations as they apply in the blocks in paragraph 80.1 (c):

75.3.1 The Crown notes that the reference given to support this claim is to Stirling, #A51, pp 144-171.

75.3.2 The Crown admits that at #A51, p 164, reference is made to land being taken for public works.

75.3.3 The Crown states further that the land in question was land gifted to the Church in 1859, that is 20 years before this public works taking. Compensation was given to the Church for this taking. (The Crown acknowledges that the issues concerning gifting/trusts are addressed elsewhere).

75.4 The Crown notes that the footnoted reference to Stirling #A51 pp 172 – 185 in regard to paragraph 80.1 (d) does not assist an assessment of the examples cited.

80.2 Failing to consult with Rangitaane prior to acquiring those lands.

Crown's Response

75.5 The Crown denies paragraph 80.2 due to insufficient particulars.

80.3 Failing to provide Rangitaane with adequate compensation for the takings of those lands.

Crown's Response

75.6 The Crown denies paragraph 80.3 due to insufficient particulars.

80.4 Failing to consider alternatives to the compulsory acquisition of Rangitaane lands.

Crown's Response

75.7 The Crown denies paragraph 80.4 due to insufficient particulars.

N. ELEVENTH CAUSE OF ACTION: ENVIRONMENT DEGRADATION AND MANAGEMENT

81. At all times the Crown was under a duty to actively protect the lands, waters and resources of Rangitaane to the fullest extent practicable.

Crown's Response

76. The Crown does not plead to allegations of Treaty breach. These will be addressed in submissions.

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

Crown's Response

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

The Wairarapa Plains

83. The Crown pursued a policy of acquiring the majority of the claim area and encouraging the establishment of intensive small farms and townships. Those policies have damaged the customary relationship Rangitaane enjoyed with the environment by, inter alia:

Crown's Response

78. The Crown admits that it purchased the majority of the claim area. It further states that a series of governments had a vision of transforming parts of the Wairarapa into an agriculturally based economy. The Crown admits that the sale of Wairarapa lands disconnected some Rangitane from their formerly-owned lands, but otherwise denies paragraph 83.

Particulars

83.1 The clearance of indigenous vegetation and destruction of major areas of indigenous habitats;[185]

[185] Marr, #A25, p 73.

83.2 ***Remnant areas of indigenous flora and fauna not being available for Rangitaane use and management;*** [186]

83.3 ***Pollution of the Wairarapa Plains by the introduction of pests and weeds and application of poisons and pollutants in pursuit of farming interests.*** [187]

Crown's Response

78.1 In response to paragraph 83.1, the Crown admits that significant areas of indigenous vegetation were cleared, both before Crown purchase, and after.

78.2 In response to paragraph 83.2, it admits that as part of the transfer of ownership, remnant areas of indigenous flora and fauna were no longer available to the previous owners for Rangitane use and management.

78.3 In response to paragraph 83.3, the Crown admits that during the process of increased settlement of the Wairarapa, and the transformation to a pastorally based economy, certain pests and weeds were introduced. The Crown notes that the introduction and spread of new species was conducted by various groups and individuals, and began before 1840, continued in the period before Crown purchase, and accelerated thereafter as settlement increased. The Crown also admits that various agricultural chemicals have been used by the farming community, and subject to developing legislation throughout the period covered by this inquiry.

78.3.1 The Crown states further that any inquiry into the above allegations needs to take into account the wider economic, social and political context including the benefit to all citizens (including Maori) of economic development.

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186 Marr, #A25, p 73.

187 Marr, #A25, p 68.

<u>Mountain Ranges</u>

84. The Crown failed to protect indigenous flora and fauna in the mountain ranges of the Wairarapa area by, inter alia:

Crown's Response

79. The Crown denies the opening text of paragraph 84.

Particulars

84.1 Failing to protect the forest ecology including fisheries, birds and plant life;[188]

84.2 Permitting major forest clearance;[189]

84.3 Permitting the introduction of introduced species which have destroyed indigenous flora and fauna.[190]

84.4 Failing to actively protect the Huia, a taonga to Rangitaane.[191]

Crown's Response

79.1 In response to paragraph 84.1 the Crown states that the allegation is too general to enable a response.

79.1.1 The Crown states further that measures to protect the forest ecology have developed as knowledge has grown regarding the impact of changes to the environment on habitat.

79.2 In response to paragraph 84.2, the Crown admits that it did not in earlier years prohibit forest clearances which were made in the inquiry area but further states that it has acted to preserve a proportion of the Wairarapa forests.

79.3 In response to paragraph 84.3, the Crown admits that historically it permitted and aided the introduction of some species which have destroyed indigenous flora and fauna.

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188 Marr, #A25, pp 32 and 33.

189 Marr, #A25, pp 33-36.

190 Marr, #A25, pp 33-36.

191 Marr, #25, pp 40-43.

79.3.1 The Crown states further that such introductions must be assessed in accordance with the knowledge of the time.

79.4 In response to paragraph 84.4, the Crown denies that it failed to actively protect the huia, but notes that previous attempts to preserve this species (unlike subsequent preservation attempts with other species) were not successful (Marr, #A25, p 43).

Inland waterways

85. Inland waterways are of particular importance to Rangitaane, for example Lakes Wairarapa and Onoke, and the Ruamahanga, Waiohine and Waingawa Rivers.[192]

Crown's Response

80. The Crown notes paragraph 85.

86. The inland waterways were the sites of kainga, waahi tapu, pa sites and used as access ways. The rivers also contained resources of importance to Rangitaane, including various forms of eels, fresh water crayfish, mussels, (kakahi), black pipis.[193]

Crown's Response

81. The Crown notes paragraph 86.

87. The Crown have failed to protect the inland waters and the resources as follows:

Crown's Response

82. While acknowledging that greatly increased settlement and the creation of a pastorally-based economy has resulted in changes to the inland waters of the Wairarapa, the Crown denies that it has failed to protect inland waters.

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192 The rivers are simply examples identified by the claimant committee.

193 Chrisp, #A60, pp 51, 52 and 56, and information supplied by claimant committee to be expanded upon in tangata whenua evidence.

Particulars

87.1	***Increased sedimentation and silting of riverways and the subsequent effect on freshwater fisheries;*** [194]
87.2	***The use of poisons and contaminants and the subsequent effect on freshwater fisheries;***[195]
87.3	***The altering of water levels at Lakes Onoke and Wairarapa and the subsequent effect on the eel fishery;***[196]
87.4	***The decline in water quality as a result of intensive farming and sewage;*** [197]
87.5	***The general decline in the native fish communities in Wairarapa.***[198]

Crown's Response

82.1 The Crown states that paragraphs 87.1, 87.2, 87,4 and 87.5 are too general to enable a response. The Crown would require details of the time period, and actions or omissions alleged to be able to plead to these allegations.

82.2 In response to paragraph 87.3 the Crown refers to its response to the allegations regarding the alienation of Wairarapa Moana.

82.3 In response to paragraphs 87.4 and 87.5:

82.3.1 The Crown acknowledges that wastewater discharges led to some "major fish kill events" in the Manawatu River outside the inquiry district which may have affected fish migration in the inquiry district and that stimulated efforts to improve wastewater management in the 1980s (NIWA #A56 p 5) but has insufficient knowledge at this time of Crown acts or omissions that relate to this to plead more fully.

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194 Marr, #A25, p 74.

195 Marr, #A25, p 74.

196 McLean, #A41, p 194.

197 Niwa, #A56, IV.

198 Niwa, #A56, IV.

82.3.2 The Crown acknowledges that the water quality is variable in the region with some rivers being affected by (among other things) sewerage and dairy run-off discharges whilst the water quality in other rivers and streams appears generally good (NIWA, #A56, pp 6-9). The Crown has insufficient knowledge at this time of Crown acts or omissions that relate to this situation to plead more fully.

82.3.3 The Crown states further that the NIWA report attributes differences in water quality throughout the Wairarapa region to factors such as river size, climate, topography, rainfall and geology. The Crown accepts the NIWA comment that:

> "For the eastern tributaries, factors such as low flows, limestone and soft sedimentary geology combined with intensive agriculture are likely to be the main causes of poor water quality." (NIWA, #A56, p 10)

Management of the Environment

88. The Crown has assumed management rights over the lands, waters and resources the claim area.

Crown's Response

83. The Crown admits that it has certain powers and management rights over lands, waters and resources in the claim area.

89. In breach of the duty on it to actively protect Rangitaane's lands, waters and other resources the Crown have excluded Rangitaane from the management of the environment by, inter alia:

Crown's Response

84. The Crown does not plead to paragraph 89 on the basis that it consists of allegations regarding Treaty duties.

Particulars

89.1 ***Their historical and ongoing exclusion from legislation governing the environment;***

89.2 ***Their historical and ongoing exclusion from participation in management systems established by the Crown;***

89.3 ***The delegation of authority to local authorities who have excluded Rangitaane from effective participation in management systems.***[199]

89.4 ***By failing to allow Rangitaane to practice their customary use rights over the natural resources in the claim area***

Crown's Response

85. In response to paragraphs 89.1, 89.2 and 89.4 the Crown states that the allegations are too general to enable a response. The allegations do not indicate the time or the particular Crown actions or omissions to which they relate.

85.1 The Crown states further that current legislation governing environmental issues reflects the need to protect Maori values (for example, the Conservation Act 1887 and the Resource Management Act 1991).

85.2 In response to paragraph 89.3 the Crown admits that Parliament, through legislation, it has transferred certain powers to local authorities. The Crown states further that it has not had sufficient time to research this allegation and does not plead to it at this time.

85.3 The Crown states further that Parts 2 and 6 of the Local Government Act 2002 contain principles and requirements that are intended to facilitate participation by Maori in local authority decision-making processes.

O. TWELFTH CAUSE OF ACTION: THE FORESHORE, SEABED AND PROTECTION OF FISHERIES.

199 Marr, #A25, pp 24, 29, 51, 52, 53, 54, 58, 79, 80, 81 and 97.

90. At all times the Crown have a duty to actively protect Rangitaane's interests and resources in the foreshore, seabed and sea to the fullest extent practicable.

91. The Crown have acted in breach of those obligations by, inter alia:

Particulars

91.1 Enacting legislation in which they assumed ownership of the seabed and foreshore inconsistent with the rights of Rangitaane, in particular the Territorial Sea and Exclusive Economic Zone Act 1977 and the Foreshore and Seabed Endowment Revesting Act 1991.

91.2 Enacting legislation in which they assumed the right and ability to control and manage the coastal and marine area inconsistent with the rights of Rangitaane in particular by the enactment of the Resource Management Act 1991;

91.3 Denying Rangitaane's customary rights of ownership of the foreshore, seabed and the resources they contain.

91.4 Denying Rangitaane the right and ability to access the resources of the foreshore, seabed and sea;

91.5 Failing to permit Rangitaane to maintain their customary harvest practices associated with the resources of the foreshore, seabed and sea;

91.6 Failing to protect Rangitaane's customary resources by permitting the depletion of fish and shellfish resources.[200]

Crown's Response

86. The Crown refers to its statement of general position.

P. THIRTEENTH CAUSE OF ACTION: THE FAILURE TO PROTECT THE RANGITAANE IDENTITY

92. In exchange for the cession of sovereignty the Crown had a duty to protect Rangitaane tino rangatiratanga.

Crown's Response

87. The Crown does not plead to paragraph 92 as it concerns the content of Treaty duty.

93. At all times the Crown had a duty to actively protect the Rangitaane identity within the claim areas as one of the constitutent tangata whenua.

200 Marr, #A25, p 149-155.

Crown's Response

88. The Crown does not plead to paragraph 93 as it concerns the content of Treaty duty.

94. In breach of those obligations, the Crown has failed to identify and recognise the identity of Rangitaane as an iwi and a tangata whenua group within the claim area by, inter alia:

Crown's Response

89. The Crown is not required to plead to allegations of Treaty breach.

Particulars

94.1 ***The classification of Rangitaane as a "conquered iwi".*** [201]

94.2 ***The failure to carry out any searching investigation of iwi affiliation, whakapapa links and land tenure rights.*** [202]

94.3 ***The use of non resident, non Rangitaane rangatira as signatories and brokers for the acquisition of Wairarapa lands.*** [203]

94.4 ***The use of a small number of "principal chiefs" in the acquisition of much of the claim area in the period 1853-1854 rather than deal with resident descent groups.*** [204]

94.5 ***The failure to refer to Rangitaane in any of the 1853-1854 purchase deeds.*** [205]

94.6 ***The labelling of rangatira from the Hamua hapu, a principal Rangitaane hapu, as Ngati Kahungunu.*** [206]

94.7 ***The labelling of Rangitaane rangatira who attended the Kohimarama conference in 1860 as Ngati Kahungunu.*** [207]

94.8 ***The establishment of a system of title investigation which pitted claimants against each other. In the Wairarapa context, the reliance upon non objective sources of evidence to the detriment of Rangaitaane.*** [208]

94.9 ***The failure to refer to Rangitaane in the promulgation of the Papawai and Kaikokirikiri Trust Act.*** [209]

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201 O'Leary, #A62, pp 18, 21, 31-35.

202 O'Leary, #A62, pp 26-30.

203 O'Leary, #A62, pp 36 and 37.

204 O'Leary, #A62, p 38.

205 O'Leary, #A62 pp 42-45 inclusive.

206 O'Leary, #A62 p 44.

207 O'Leary, #A62, pp 45 and 46.

208 O'Leary, #A62, p 58.

209 Stirling, #A51, p 186 and s.12 of the Act. Note these are examples only and will be expanded upon in evidence to be given.

Crown's Response

89.1 The Crown has not had time to research these allegations and therefore does not plead to them at this time.

89.2 In the case of paragraphs 94.2, 94.4 and 94.9 the Crown refers to its responses where those particular matters are addressed.

Q. PREJUDICE

95. As a consequence of the Crown's acts, omissions, legislation and policy, Rangitaane has suffered from various prejudicial effects, including:

(a) The alienation of almost their entire land base; [210]

(b) The loss of access to sites of significance such as pa sites, waahi tapu and kainga; [211]

(c) The loss of their cultural, spiritual, economic and political base; [212]

(d) The loss of mana and rangatiratanga and a consequential loss of economic, cultural and political autonomy; [213]

(e) The damage to and gradual destruction of the social structure and organisation of the iwi, hapu, and whanau of Rangitaane; [214]

(f) The marginalisation of the Rangitaane identity; [215]

(g) The destruction of their traditional tenurial system; [216]

(h) Being left with fragmented, insubstantial, individualised land holdings of little economic or cultural value that are manifestly insufficient for their present and future needs; [217]

(i) Being left with an insufficient land base and resources to actively participate in the New Zealand economy; [218]

(j) Loss of income resulting from the undermining of the informal leasing regime; the destruction of the post Treaty economy, and delays in paying for Crown purchases; [219]

(k) The damage to the natural environment of Rangitaane and all its resources caused by deforestation, intensive pastoralism, pollution of lands, waterways and sea; [220]

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210 Refer first, third, fifth, sixth, eighth and tenth causes of action.

211 Refer first, third, fifth, sixth, eighth and tenth causes of action.

212 Refer first, third, fifth, sixth, eighth and tenth causes of action.

213 Refer all causes of action.

214 Refer all causes of action, in particular first, third and fifth causes of action.

215 Refer thirteenth cause of action.

216 Refer fifth cause of action.

217 Refer fifth cause of action.

218 Refer first, third, fifth, sixth and eighth causes of action.

219 Refer second cause of action.

220 Refer eleventh cause of action.

(l) ***The loss of harvest of the foreshore, seabed and customary fisheries;***[221]

(m) ***The loss of the lands gifted to the Anglican Church for school purposes and the lost opportunity to benefit from the development of those lands;***[222]

(n) ***As a direct or indirect result of: massive land loss; the dislocation as the result of land loss; the failure of the Crown to honour its promises and the prejudice and losses referred to above, have suffered disadvantage by comparison with their non Maori counterparts and other Maori nationally in areas of educational achievement, employment, income benefits and housing, health and imprisonment rate.***[223]

Crown's Response

90. The Crown is not required to plead to paragraph 95.

R. RELIEF

96. 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 provide 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 it 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 together with any improvements thereon.***

(f) ***The compulsory resumption in favour of Rangitaane of all Crown forest land and licenced land situated within the claim area pursuant to the Crown Forests Assets Act 1989, together with 100% of the compensation calculated in the First Schedule to the Crown Forests Assets Act 1989, together with all accumulated rentals held by the Crown Forestry Rental Trust in response to the Crown forests land and licenced lands;***

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221 Refer twelfth cause of action.

222 Refer ninth cause of action.

223 Sceats & Ors, #A28, pp 56-57, 67-69, 76-77, 99 and 104.

(g) ***The provision of easements and such other access as is necessary to relieve all Rangitaane land within the claim area from its status as landlocked land;***

(h) ***Recognition of Rangitaane tino rangatiratanga and the restoration of Rangitaane self government including appropriate recognition by all Crown departments and agencies and local government authorities within the claim area;***

(i) ***The restoration and recognition of Rangitaane's customary ownership and management rights in the waterways within the claim area;***

(j) ***Make provision for the participation of Rangitaane on all statutory boards, authorities, agencies, companies and other Crown organisations that function within the claim area;***

(k) ***A recommendation that the Papawai Kaikokirikiri Act 1943 be amended where appropriate to include reference to the members of the Rangitaane tribe residing in the Wairarapa Distrct;***

(l) ***Pay the full costs of Rangitaane for the preparation and presentation of this claim and the costs of recovering any land recommended to be returned or other costs incurred in securing the implementation of recommendations;***

(m) ***Any further relief that this Tribunal deems appropriate.***

Crown's Response

91. The Crown is not required to plead to paragraph 96.

97. The claimants seek leave to amend this amended statement of claim as further reports commissioned by the Crown Forestry Rental Trust, and the Waitangi Tribunal become available, and as a result of evidence and submissions presented to this Tribunal.

Crown's Response

92. The Crown is not required to plead to paragraph 97.