WAI 863

Wairarapa ki Tararua district inquiry claims

FINAL STATEMENT OF ISSUES

Electronic Draft: Part 1 of 2

Issues 1 – 15

February 2004

IN THE WAITANGI TRIBUNAL **WAI 863**

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of the Wairarapa ki Tararua claims

FINAL STATEMENT OF ISSUES FOR THE CLAIMS IN

THE

WAIRARAPA KI TARARUA DISTRICT INQUIRY

February 2004

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Introduction

Tena koutou katoa,

This document is the Waitangi Tribunal's final Statement of Issues for its Wairarapa ki Tararua district inquiry.

One purpose of the document is to analyse the particularised statements of claim and the Crown's response, and to identify the matters in agreement between the parties. It appears to the Tribunal, after conducting this exercise, that there is broad agreement on some matters of historical fact, but very little agreement on any of the significant matters of interpretation and argument. As a result, most of the key issues as raised by the Wairarapa ki Tāmaki-nui-ā-Rua claimants remain in contention for this inquiry.

With this in mind, the Tribunal has defined a set of issue questions as a focus for the claimants, witnesses, and counsel in the conduct of the substantive hearings. In some cases, the Tribunal has gone beyond the allegations and response as pleaded, to include key issues which appear to it to arise from the casebook of evidence. In posing these questions, the Tribunal has grouped the pleadings and issues into six main divisions, with thirty specific sections, as follows:

- The relationship between Crown and Māori from 1840 to 1865, with a particular emphasis on pre-1865 Crown purchases (sections 1-6)
- The relationship between Crown and Māori from 1865 to 1900, with particular emphases on native land laws and the Native Land Court, Crown and private purchases, and Māori political responses to these matters (sections 8-13)
- Non-agrarian resources and the environment, with a particular emphasis on the Wairarapa Moana, rivers, foreshore and seabed, and environmental management and degradation (sections 14-17)
- Loss of land and resources in the twentieth century, with a particular emphasis on the impact of that loss and the question of what was 'sufficient', and when the Crown's admission of Treaty breach in respect of landlessness can be said to have applied (sections 18-23)
- Management of heritage, sites of cultural significance, the environment, the coast, and the taking of land for public purposes, whether by central or local authorities (sections 15, 16, 20, 24, and 25)
- Issues raised by specific claims, not already covered in sections 1-25 (sections 26-30)

Although the Tribunal has attempted to rationalise and divide material into thematic and issue-based sections, some repetition and duplication has been unavoidable. Aspects of claims dealing with reserves and restrictions on alienation, for example, have had to be dealt with in more than one section. Nevertheless, the Tribunal considers that it has made a workable division of themes and issues for its inquiry. Our aim has been to arrange the issues thematically, to provide a rational framework for this inquiry.

This final version has considered all parties' submissions, filed between December 2003 and February 2004, on the first, and second, drafts of the 'statement of issues' document. It does not include the Crown response to Ngāti Hinewaka's specific customary fisheries issues because the final deadline for this response was later than the deadline for the final statement of issues. These customary fish issues and the Crown's response to them will, however, still be the subject of inquiry by the Tribunal when it addresses Ngāti Hinewaka's claims.

The 30 themes are listed below.

Structure

Each of the 30 themes has been allocated its own number and divided into 4 sections:

1. Claimant allegations;

2. Crown response;

3. Agreements between the parties; and

4. Primary issues as identified by the Tribunal for its inquiry.

Claimant pleadings and the Crown response have been synthesised by Tribunal staff to highlight commonalities and avoid, as far as possible, reproducing duplication between pleadings. The SOI is designed to assist the later inquiry to avoid unnecessary duplication of evidence, cross-examination and argument during hearings. Therefore, matters pleaded by more than one counsel have, in many cases, been brought together.

In outlining the Crown's response, its terminology of 'admits', 'denies' and 'states' has been used. In a number of places, the Crown uses the word 'admits' but its statements do not exactly match the original pleadings, and have therefore been expressed as 'states'. Often this has been necessary because the Crown's particular view is close to that expressed by the claimants, but nonetheless is different in some significant way. In some cases, the Crown appears to be in partial agreement but the distinction is important to maintain.

The 'Agreements' section identifies the areas of agreement between the claimants and the Crown, as they appear to the Tribunal.

The 'Issues' section lists a series of questions concerning the issue that the Tribunal wishes to investigate during the hearings.

Where possible, issues have been framed in broad terms, but still providing for the investigation of the range of specific claims made in the pleadings. Claimants should assure themselves that specific claims are encompassed within this document.

The terms "Wairarapa Māori", Tāmaki Māori, and Wairarapa ki Tāmaki-nui-ā-Rua Māori, have been used as shorthand for kin groups in the area of the Wairarapa ki Tararua inquiry district. This has been necessary given the range of whānau, hapū and iwi claims before the Tribunal, and the significant overlap that exists in issues. It

should not be read as anything more than a textual convenience and on occasion, groups are mentioned by name.

Abbreviations:

SOC – statement of claim

SOR – statement of response

SOGP – Crown's statement of general position 1.8.03 (Wai 863, #2.249)

Thematic list of issues

Issues in the Wairarapa ki Tararua district inquiry
1. Pre-1853 'Wairarapa Māori' leases
2. Crown settlement and land purchase policy
3. Maungaroa Cession/Barton's Run/Mataoperu deed
4. Pre-1865 Crown purchase transactions
5. Koha 5 percent Clauses
6. Pre-1865 Crown purchase surveys
7. Native Land Court: General
8. Native Land Court: Surveys
9. Crown Purchasing in the Native Land Court Era, 1865-1900
10. Private Alienations in the Native Land Court era, 1865-1900
11. Native Land Court: Protection
12. Native Land Court: Crown response to protests
13. Crown response to Wairarapa ki Tararua political movements
14. Degradation and pollution
15. Natural environment and its resources including inland waterways, coastal area and flora and fauna: Management/Legislative Regime
16. Customary fisheries – inland, coastal and sea - Management/ Legislative Regime
17. Ownership of foreshore and seabed and rivers
18. Alienation of Wairarapa Moana
19. Pouakani Issues
20. Public Works
21. Twentieth century: Land Alienation (excluding public works)
22. Sufficiency of lands and resources
23. Socio-economic impact
24. Central (DOC)/Local Government
25. Heritage Management: Loss and management of wāhi tapu and portable taonga
26. Failure to protect Rangitāne identity
27. Gifted lands for School – Papawai and Kaikokirikiri Trusts
28. Outcomes for the Jury and Pirere whānau
29. Outcomes for the Te Karaitiana Te Korou whānau
30. Outcomes for the Henare Matua whānau

List of Wairarapa ki Tararua claims covered in draft Statement of Issues:

Wai 863 SOC #	*Associated Group*	*Individual Wai numbers*	*Named Claimant(s)*
SOC 1A & 1B	Ngā Hapū Karanga	Wai 52	Jean Budd, Katie Lynch, Danny Leslie Hancock, Miller Waho, Matthew Matamua, Marokopa Wiremu- Matakatea, Shane Wilson, Kay Pene, George Tukapua, Joseph Tukapua, Teresa Moses & Timothy Tukapua
		Wai 97	Hinepatokaariki Paewai & Niniwa Munroe
		Wai 744	Bernard Patrick Manaena
		Wai 897	Toi Walker & Rehu Hawea
		Wai 939	Matai Broughton & Takere Leach
		Wai 944	Frances Reiri-Smith & Henare Manaena
		Wai 1019	Murray Allan Hemi
		Wai 1022	Jim Hemi, Amelia Jaro & Kingi Matthews
		Wai 1023	Noelene Reti
		Wai 1049	Charmaine Kawana
		Wai 1057	Manu Te Whata and Michael Allen Jnr
SOC 2	Rangitāne o Tāmaki-nui-ā-Rua	Wai 166	Manahi Paewai
SOC 3	Rangitāne o Wairarapa	Wai 175	James Rimene & Pirinihia Te Tau
SOC 4	Ngāti Hinewaka	Wai 959	Memory Te Whaiti
SOC 5	Ngāi Tumapuhia ā Rangi	Wai 429	Ryshell Griggs
SOC 6	Wairarapa Moana ki Pouakani Inc.	Wai 85	Kingi Smiler
SOC 7	Ngā Hapū Karanga	Wai 741	Murray Allan Hemi
SOC 8	Ngāti Kahungunu ki Tāmaki-nui-ā-Rua	Wai 652	Josephine Hape
		Wai 1021	Claude Pene
SOC 9	Jury whānau	Wai 962	Rebecca Harper
SOC 10	Ratima whānau	Wai 943	Lance Ratima
SOC 11	Anaru whānau	Wai 1008	Kerylee Jan Anaru
SOC 12	Karaitiana whānau	Wai 770	Edward Karaitiana
SOC 13	Mataikona A2	Wai 420	Warren Chase
SOC 14	Henare Matua whānau	Wai 171	Henare Matua Kani
SOC 15	Chown whānau	Wai 1050	Dorothy Chown and ors
SOC 16	Joe Runga	Wai 687	Te Okoro Joe Runga
SOC 17	Randell whānau	Wai 1056	Michael Randell

1. Pre-1853 'Wairarapa Māori' leases

1.1: The Claimants contend that:

First contact period

1.1.1 Prior to 1843, Ngāi Tumapuhia ā Rangi had seldom dealt with Europeans in land transactions (SOC 5: 15.1).

1.1.2 Ngāi Tumapuhia ā Rangi had in place their own traditional transfer or tuku system based on tikanga Māori, whereby a conditional transfer would establish relationships between particular groups of people. Under this system the land was still owned by Ngāi Tumapuhia ā Rangi and managed by them in accordance with their tikanga (SOC 5: 15.2).

1.1.3 On the arrival of Europeans into their rohe, Ngāi Tumapuhia ā Rangi were eager to establish relationships which would benefit their own economic status (SOC 5: 15.3).

Nature of leasing arrangements

1.1.4 From the 1840s, Wairarapa ki Tāmaki-nui-ā-Rua Māori controlled and facilitated settlement by allocating occupation rights for land and resources to settlers, based on and consistent with custom, and broadly consistent with the European concept of leasing (Wairarapa leases) (SOC 1A: 7; SOC 3: 16; SOC 4: 25(a); SOC 5: 16.1, 16.1.2).

1.1.5 The Wairarapa leases began in 1844 through hapū allocation of Wairarapa land to Pākehā settlers in exchange for regular payments while retaining ownership and control over such lands (SOC 1A: 7.1).

1.1.6 The occupation by the squatters was controlled by Ngāi Tumapuhia ā Rangi, for example, and was ultimately for the benefit of Ngāi Tumapuhia ā Rangi. Ngāi Tumapuhia ā Rangi rangatira sought koha or payment for the use of the land as they deemed appropriate (SOC 5: 16.1.1-2).

1.1.7 While Ngāi Tumapuhia ā Rangi acted according to their tikanga and understanding of the relationship, the squatters did not understand the complexity of the Māori custom and complained about the manner in which Māori carried out the terms of the arrangement (SOC 5: 16.1.3).

1.1.8 Although Europeans thought of the transactions as leases, leasing documents used language and form associated with Māori traditional land allocation mechanisms (SOC 5: 16.1.1).

1.1.9 Up to 1853, the Crown was aware that the Māori traditional view of the leasing arrangements remained prevalent and in force, but nevertheless misunderstood or misinterpreted them (SOC 5: 16.10):

1.1.9.1 In 1849, Kemp stated that 'native usages are in force in this district' (SOC 5: 16.10.1).

1.1.9.2 The official Crown translations of letters by Māori misunderstood, edited and/or misinterpreted the concepts and terms that revealed the prevalence of Māori customs, and the Māori understanding of the arrangements (SOC 5: 16.10.2).

1.1.9.3 Kemp's translation of a letter from Te Wereta to Governor Eyre contains a fundamental inaccuracy as it refers to Wereta's proposal to provide land for sheep grazing or sale whereas a more recent translation refers to a proposal only for sheep grazing and a leasing arrangement, not the sale of land (SOC 5: 16.10.2(b-d)).

1.1.9.4 On 12 January 1852, McLean wrote to Te Wereta and suggested that Wereta, 'leave him [Potangaroa] to tuku that side of the land'. The Māori concept of tuku did not include the permanent alienation of the land, yet McLean interpreted the situation as a sale by Māori of their land (SOC 5: 16.10.2(e)).

Wairarapa leasing economy

1.1.10 The fledgling Wairarapa leasing economy was of mutual benefit to Māori and settlers. Leasing allowed Māori to retain ownership and control of their lands and resources while receiving significant benefits such as income from grazing arrangements and trade, and allowed settlers to use land for grazing runs and to obtain basic commodities for their survival (SOC 1A: 7.2; SOC 3: 22; SOC 4: 25(a); SOC 5: 16).

1.1.11 The benefits of the leasing economy to Ngāi Tumapuhia ā Rangi, which included an income of £300 per annum by 1847 and double this by 1848, as well as fostering trade between Ngāi Tumapuhia ā Rangi and Europeans worth £200 in 1848, resulted in the rapid socio-economic advancement of Wairarapa Māori and Ngāi Tumapuhia ā Rangi (SOC 5: 16.8).

1.1.12 The Crown was aware that the Wairarapa leases were valued by Māori (SOC 1A: 8; SOC 4: 25(i)).

Crown policy towards the 'Wairarapa' leases

1.1.13 The Crown perceived that the Wairarapa leases were the major obstacle to a successful purchase programme in the Wairarapa and took active steps to undermine and end them (SOC 1A: 9; SOC 3: 23).

1.1.14 The Crown placed pressure on Wairarapa ki Tāmaki-nui-ā-Rua Māori to sell their land by adopting an aggressive strategy of actively interfering with and undermining existing leasehold arrangements by:

1.1.14.1 encouraging settlers to withhold rental payments due to Māori (SOC 1A: 9.2.4; SOC 2: 6.1.1(h); SOC 3: 23.9; SOC 4: 24, 24.3, 25(k)).

1.1.14.2 encouraging settlers to abandon their leases with promises of preferential treatment and benefits (SOC 4: 25(g)).

1.1.14.3 actively encouraging Pākehā settlement outside the Wairarapa with the express intention of drawing away settlers participating in the Wairarapa leases. This involved a deliberate strategy (especially by Donald McLean) of acquiring land in southern Hawke's Bay to encourage pastoralists to move north (SOC 1A: 9.3; SOC 2: 6.1.1(c); SOC 3: 23.3); (SOC 4: 25(j-k)).

1.1.15 The Crown took active steps to end the Wairarapa leases, notwithstanding that it knew, or ought to have known, that such leases were consistent with custom and ensured that if they continued, ngā hapū karanga would retain sufficient land to benefit from the settler economy (SOC 1A: 9.4).

1.1.16 The Crown was aware of the traditional land allocation mechanisms operating and actively opposed them:

1.1.16.1 Māori indicated their support of the leasing arrangements to the Crown.

1.1.16.2 Crown and New Zealand Company officials opposed the leasing situation, claiming that European settlement enhanced the value of land and would reduce the Crown's profit from its resale, and that Māori and squatter disputes threatened national security (SOC 5: 16.2, 16.2.1, 16.2.2(a-b)).

1.1.17 The Crown undermined Māori traditional values with regard to leasing. In 1848, Wereta asked the Crown to assist Ngāi Tumapuhia ā Rangi to continue the existing leasing framework. The Crown indicated that it would not assist and that it would actively oppose any new leases. Accordingly by May 1849, Wereta had agreed to transfer his lands in accordance with the Crown position (SOC 5: 16.2, 16.9).

Use of the Native Land Purchase Ordinance 1846

1.1.18 In 1846, the Crown promulgated the Native Land Purchase Ordinance which wrongly prohibited Māori from selling or leasing land other than to the Crown, made it an offence to lease land directly from Māori, and was enacted in an attempt to curtail occupation of Māori land by individuals (SOC 1A: 9.1; SOC 3: 23.1; SOC 4: 23, 25(b)).

1.1.19 The Crown used the Native Land Purchase Ordinance to prevent Wairarapa Māori from utilising their timber cutting rights, pasturage rights or any other use or occupation of their land (SOC 1B: 33(b)).

1.1.20 The Crown used the Native Land Purchase Ordinance to deter continued leasing by:

1.1.20.1 threatening Māori that if they did not sell their lands to the Crown, the Wairarapa leases would be stopped (SOC 1A: 9.2.2; SOC 4: 25(e)).

1.1.20.2 threatening Māori and settlers with actual prosecution under the Ordinance, including publishing notices in the Gazette warning that offenders under the 1846 Ordinance would be prosecuted, and printing and distributing publications warning Māori (SOC 1A: 9.2, 9.2.1. 9.2.3; SOC 4: 24.1, 24.2, 25(f)).

1.1.20.3 dissuading pastoralists from taking up runs, for example, the threat by McLean to use the ordinance against their lessor, Potangaroa (SOC 2: 6.1.1(b); SOC 3: 23.7; SOC 12: K).

1.1.20.4 the result was that the Crown actively prevented Māori from enjoying the benefits of settlement, including income from leases, trading in goods and participation in the settler economy (SOC 4: 25, 25(c), SOC 12: K).

1.1.21 The Crown was able to prosecute Wairarapa Māori for breach of the Ordinance (SOC 4: 25(e)).

1.1.22 In practice, the Crown selectively applied the Native Land Purchase Ordinance 1846 to favour existing run holders whilst discouraging new run holders (SOC 3: 23.8).

Alternatives to sale

1.1.23 The Crown failed to make any legislative provision to enable the claimants to lease their land or to protect and utilise their land in any other way than by its permanent alienation, until after the Crown had secured the acquisition of the majority of the lands within the claim area (SOC 1A: 10; SOC 4: 25(c)).

1.1.24 Restrictions on leasing from Māori were not lifted until the passing of the Native Lands Act 1865 (SOC 1A: 10.1; SOC 3: 23.10).

1.1.25 The Crown failed to investigate alternatives to the permanent alienation of Rangitāne lands (SOC 3: 23.12).

1.2: The Crown responds that:

First contact period

1.2.1 Admits that prior to 1843, Ngāi Tumapuhia ā Rangi had seldom dealt with Europeans in land transactions (SOR 4: 12.1).

1.2.2 Denies the allegation and says further that the pattern of land use and transfer in pre-settlement society cannot be reduced to these simple principles (SOR 5: 12.2).

1.2.3 Admits that Māori were eager to have European settlers in their vicinity and hoped to gain economic advantage thereby (SOR 5: 12.3).

Nature of leasing arrangements

1.2.4 Admits that these early arrangements approximated leases (but were not enforceable at law) by which Europeans occupied land in the Wairarapa district for pastoral purposes, and that squatters regarded the arrangements with Māori as agreements approximating leasing, but otherwise denies the allegation (SOR 1A: 3.1-2; SOR 3: 11; SOR 4: 20.1; SOR 5: 13.1.2).

1.2.5 Admits that the allegation is, in general terms, an acceptable summary of leasing in the 1840s, with the proviso that the Crown understands the retention of 'ownership and control' to mean that leases did not imply a permanent transfer of the land involved (SOR 1A: 3.3).

1.2.6 Denies that the occupation by the squatters was controlled by Ngāi Tumapuhia ā Rangi and was ultimately for the benefit of Ngāi Tumapuhia ā Rangi (SOR 5: 13.1.3). States that rangatira of Ngāi Tumapuhia ā Rangi were probably involved in some of the negotiations, saying further that the terms of the leases, if not always honoured, appear to have been the product of negotiation (SOR 5: 13.1.5).

1.2.7 Denies the allegation, and says further that disputes about the agreements cannot be explained simply as a product of fundamental miscommunication (SOR 5: 13.1.6).

1.2.8 Denies this allegation because the evidence is based on a single lease document, and an analysis that that only highlights the words 'tuku' and 'tukunga kāinga'. This is not an adequate basis for alleging that Māori regarded the agreement as having fundamentally different terms from European leases (SOR 5:13.1.4, (a)-(b)).

1.2.9 Denies the allegation that up to 1853 the Crown was aware that the Māori traditional view of the leasing arrangements remained prevalent and in force (SOR 5: 13.10).

1.2.9.1 States that the allegation that in 1849 Kemp stated that 'native usages are in force in this district' is misquoted and presented out of context. Quotes the passage in full in SOR 5 (SOR 13.10.1-2).

1.2.9.2 Notes that the alleged deficiencies in Crown translations would need to be particularised before the Crown can plead, and that the only reference is to a general conclusion in Walzl #A44 (SOR 5: 13.10.3).

1.2.9.3 Admits that on 23 January 1849, Kemp spent a day with Ngāi Tumapuhia ā Rangi rangatira Wereta, who gave him a letter for Eyre and that a more recent translation exists, but does not plead to the accuracy of this translation (SOR 5: 13.10.3(c)-(d)).

1.2.9.4 (a) Admits that McLean wrote to Te Wereta on 12 January 1852. The Crown notes, however, that the passage quoted does not appear in this form in the only report cited. An unreferenced passage in #A44 (p 339) contains a translation of the letter referred to, but in a different form.

(b) Is not yet aware of how matters stand on the translation issues it has raised concerning the statements of claim and notes counsel's memorandum of 28 August 2003, para. 31, that cross referencing is still being undertaken and that counsel will file a memorandum listing correct page references once the translation issue has been dealt with (SOR 5: 13.10.3(e)).

Wairarapa leasing economy

1.2.10 Admits that there was by 1852 a fledgling commercial economy and a degree of mutual benefit in these arrangements, 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, and notes that the squatters expressed a desire for more secure tenure. Admits that basic commodities were traded but says further that this trade was not essential to the 'survival' of the runholders. Admits that it is likely that both European and Māori parties to these arrangements generally perceived some benefit in them (SOR 3: 17, 17.1, 17.2; SOR 4:20.3).

1.2.11 Admits that the system of leasing produced some 'rapid advancement' in the prosperity of Wairarapa Māori. Admits the rental income figures stated. Notes that the trade figure of £200 is derived from deducting Bell's estimate of rental from Kemp's 1849 estimate of the value of rent and trade received by Māori but considers that this should not be regarded as a precise amount. Admits, however, that the trade associated with leases was likely to have been a significant component in Kemp's estimate (SOR 5: 13.8).

1.2.12 (a) Admits that the Crown was aware that the Wairarapa leases were valued by Māori. States, however, that there is some evidence that the leasing arrangements were perceived as having disadvantages also, such as disputes over authority to

lease and the distribution of payments, and disputes with lessees in which neither party had a recourse to a higher authority for resolution (SOR 1A: 4).

(b) Admits that the existence of unauthorised leasing arrangements in the Wairarapa was perceived as one obstacle to the successful negotiation of purchase of land from Māori in the region (SOR 4: 21.14).

Crown policy towards Wairarapa leases

1.2.13 Admits that the existence of the unauthorised leases was perceived as a significant obstacle to the purchase of land in the region but denies that 'active' measures were taken to deter leasing until the early 1850s (SOR 1A: 5.1-2, 5.5; SOR 4: 21.14).

1.2.14 Denies that the Crown's policy toward the Wairarapa leases was one of 'aggressive' interference, saying further that new leases continued to be taken up after 1846 (SOR 4: 19.1).

1.2.14.1 Denies that the Crown encouraged pastoralists not to pay rental payments to Māori. Notes, however, one such arrangement was made towards the end of the leasing period in 1853, and cites primary documents in support of it (SOR 1A: 5.6; SOR 2: 6.1.1(h); SOR 3: 18.9; SOR 4: 19.3, 21.18).

1.2.14.2 Admits the European lessees were given to understand that they would have a pre-emptive right to purchase their homesteads if these were affected by Crown purchases from Māori, but otherwise denies the allegation (SOR 5: 21.10). Refers to instructions of October 1847 given by the New Zealand Company (Fox) to its agent Bell, suggesting that squatters could be compensated with land 'beyond the limit of the lands required for settlement to which the squatters might retire' and a maximum total of £2000, although this amount could potentially be larger if Bell found that more than this was necessary. Says that Fox's instructions were not actions of the Crown, though the Crown had authorised the New Zealand Company to negotiate with Māori for the purchase of land for the projected Canterbury settlement (SOR 5: 21.6-9).

1.2.14.3 Admits that it was hoped the purchase of land in Hawke's Bay would curb the expansion of leasing and encourage the sale of land to the Crown in the Wairarapa saying further that this was not the sole or the major reason for buying land in Hawke's Bay. States that that there was a desire by some Crown officials, including McLean, for Wairarapa squatters to move to Hawke's Bay. States further that it was concerned that leasing would spread into Hawke's Bay (SOR 1A: 5.6.4: SOR 2: 6.1.1(c); SOR 3: 18.3; SOR 4: 21.16; SOR 5: 13.7).

1.2.15 Denies that 'active' steps were taken to end the Wairarapa leases, stating that while the Native Land Purchase Ordinance had been enacted in 1846, 'few tangible steps were taken to curtail practices in place' (Walzl, #A44, p 182). Otherwise denies the allegation (SOR 1A: 5.7).

1.2.16 Admits that it was aware of the informal leasing arrangements but otherwise denies the allegation.

1.2.16.1 Admits that Māori communicated their support for the leasing arrangements.

1.2.16.2 Admits that one of the reasons that Crown and New Zealand Company officials opposed leasing was that European settlement enhanced land value and thus reduced the Crown's profit from the re-sale of land. States that Lt. Governor Eyre wrote to Grey expressing concern about squatting within the district, and of his concern about the consequences if squatting within the district were allowed to continue (SOR 5: 13.2, 13.2.1-3).

1.2.17 Admits that Wereta wrote to Eyre on 23 January 1849 offering land for settlers to lease. States that it is not aware of what the Crown's response was to Wereta's request but admits it is unlikely that the Crown would have sent settlers to lease land. Admits that Wereta wrote to Governor Grey and Governor Eyre on 18 May 1849, offering to sell his lands to the Crown (SOR 5: 13.9).

Native Land Purchase Ordinance 1846

1.2.18 Admits the enactment of the Ordinance, which made it an offence to lease land directly from Māori. Says further that only the Governor could initiate a prosecution. States that the restriction of unauthorised persons occupying Māori land was one of the objectives of the Ordinance. Admits that the Ordinance affected the kind of arrangements by which European occupied Māori land in the Wairarapa in 1846. Otherwise denies the allegation (SOR 3: 18.1; SOR 4: 18, 20.5-8).

1.2.19 Admits that it enacted the Native Land Purchase Ordinance to prevent such agreements but that ineffectual efforts were made to implement it. Denies that the purpose of the Ordinance was directly related to attempts to purchase land in the Wairarapa (SOR 1B: 29.2).

1.2.20 See response immediately below:

1.2.20.1 Admits that the Governor wrote to Wairarapa Māori in 1847 to the effect that if they did not sell their lands to the Crown, he would 'desire the Europeans to depart from your land, and shall put an end to the arrangements at present existing between you and them.' States, however, that this letter apparently had little influence, may have been limited in its circulation and does not appear to have been followed with significant action (SOR 1A: 5.5.3-4; SOR 4: 20.15-16).

1.2.20.2 (a) Denies that Māori were threatened with the 1846 Ordinance noting that Māori could not be prosecuted under the Ordinance. Admits that it is likely

that both Māori and their lessees were aware of the Crown's view that the leases were unlawful, though only the lessees could be prosecuted under the Ordinance.

(b) States that the Ordinance was invoked on only a few occasions, and there appears to be no case of actual or threatened use of the Ordinance after 1852. Says further that Mr Walzl's statement at #A44, p 182 is likely to be correct – i.e. 'Despite the official viewpoint held throughout 1847 and 1848, few tangible steps were taken to curtail the practices in place' (SOR 1A: 5.5.1-2, 5.5.5(a)-(b); SOR 4: 19.2; No direct response to SOC 4: 24.2, 21.4-5).

(c) As regards the printing and distribution of warnings to Wairarapa ki Tāmaki-nui-ā-Rua Māori notes that a letter from Fox to Harington suggests that copies of the proclamation of 12 October 1848 were 'extensively distributed in the district', but it is not thereby demonstrated that copies were distributed to Māori, and on that basis the allegation is denied (SOR 1A: 5.5.5(c)).

1.2.20.3 Admits that there were several occasions on which intending pastoralists were warned that they would contravene the Ordinance if they occupied Māori land in the Wairarapa (SOR 2: 6.1.1(b); SOR 3: 18.7).

1.2.20.4 Denies that, in practice, the Ordinance prevented Māori from receiving income from arrangements approximating the lease of land and that the Ordinance prevented Māori from economic interaction with Europeans, except by sale (SOR 4: 20.9-10).

1.2.21 Denies that the Crown was able to prosecute Wairarapa Māori for breach of the Ordinance (SOR 4: 21).

1.2.22 States that it wished to prevent new runs from being taken up, but tolerated the runs that had already been established (SOR 2: 6.1.1(g); SOR 3: 18.8).

Alternatives to sale

1.2.23 Denies the allegation, saying further that while the 1846 Ordinance provided for licences to occupy customary land, it was decided in 1849 that a policy of purchase only should be followed (SOR 1A: 6.1).

1.2.24 Denies that restrictions on leasing land from Māori were lifted under the 1865 Native Land Act, saying that while section 3 repealed the Native Land Purchase Ordinance, leases of Māori customary land remained void under section 75 of the Act (SOR 1A: 6.2; SOC 3: 18.10).

1.2.25 Denies that the Crown failed to investigate alternatives to the permanent alienation of Rangitāne lands 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 Māori to deal with their lands without transferring the fee simple (SOR 3: 18.12).

1.3: Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

1.3.1 The early arrangements with European pastoralists were broadly consistent with, or approximated, in some respects, the European concept of leasing.

1.3.2 The Wairarapa leases began in 1844 through Māori allocation of Wairarapa land to Pākehā settlers in exchange for regular payments while retaining the ownership and control of such lands. The Crown adds the proviso that the retention of 'ownership and control' is assumed to refer to the fact that the leases did not involve a permanent transfer of the land.

1.3.3 There was by 1852 a fledgling commercial economy and a degree of mutual benefit in these arrangements.

1.3.4 The arrangements between Wairarapa ki Tāmaki-nui-ā-Rua Māori and the settlers resulted in significant benefits to Māori, including money, goods, and access to European technology and markets.

1.3.5 The Crown was aware of the informal leasing agreements.

1.3.6 The 'unauthorised' leases were perceived as obstacles to purchase.

1.3.7 One reason the Crown opposed leasing was that it reduced profit from the on-sale of land.

1.3.8 The Crown was aware of Māori support for the leasing arrangements.

1.3.9 The Crown was aware that Māori valued the Wairarapa leases. The Crown adds, however, that there is some evidence that the leasing arrangements were perceived as having disadvantages also.

1.3.10 The lessees were promised a pre-emptive right to purchase their homestead from the Crown.

1.3.11 It is unlikely that the Crown would have responded favourably to Wereta's offer to lease.

1.3.12 There were several occasions on which intending pastoralists were warned that they would contravene the Ordinance if they occupied Māori land in the Wairarapa, though the Crown states that it tolerated the runs that had already been established.

1.3.13 The Crown encouraged and assisted European settlement outside of the Wairarapa by acquiring land in Hawke's Bay, and it was hoped that this would curb the expansion of leasing. The Crown, however, disagrees with any implication that the

sole or principal reason for attempting to acquire land in Hawke's Bay was to attract squatters away from Wairarapa.

1.4: Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

1.4.1 What customary Māori land allocation practices were in place leading up to and during the leasing period, and what did they entail?

1.4.2 Were Wairarapa leases analogous to customary Māori land allocation practices? For example, what customary practices characterised the arrangement between Richard Barton and Māori at Te Kopi, for the use of land at Whāwhānui?

1.4.3 What was the social and economic context of the leases? Were there significant disputes, involving perceived disadvantages for settlers and a desire to acquire more secure title? Was there an obligation on the Crown to provide a means for resolving lease disputes between settlers and Māori?

1.4.4 How important and successful was the post-Treaty leasing/trading economy for Māori?

1.4.5 Was it fair and reasonable, in the context of the mutual benefit to Māori and some settlers of the Wairarapa leasing economy, for the Crown to decide that the Wairarapa leases would be made illegal and/or actively discouraged by the Crown and its officials?

1.4.6 To what extent did the Crown adopt, and enforce in practice, policies to end leasing in the Wairarapa? Were these policies in breach of the Treaty and, if so, was there a prejudicial effect? To what extent were threats, however much or little they were carried out, factors in the later Crown purchase of land?

1.4.7 Overall, if such policies were adopted, threatened or enforced, what contribution did they make to the Crown's purchase of Wairarapa ki Tararua lands in the 1850s?

2. Crown settlement and land purchase policy

2.1: The Claimants contend that:

2.1.1 From 1840, the Crown developed policies to acquire the whole of the Wairarapa lands from hapū and iwi, including taking active steps to prevent alternatives to sale, attracting settlers out of the Wairarapa and actively seeking to purchase Wairarapa lands or allowing other parties to do so (SOC 1A: 5.1.2; SOC 2: 6.0).

2.1.2 The Crown has duties, pursuant to Article II of the Treaty, to act in good faith towards and actively protect the rights and property of Māori. In breach of these duties the Crown used legislation, policies, procedures and practices to facilitate alienation of land within Tāmaki-nui-ā-Rua against the wishes and sometimes without the full knowledge of Tāmaki Māori. The Crown purchased excessive amounts of land, more than was required to facilitate its settlement and public works objectives (SOC 8: 1.1-1.2, 3.1 & 3.2).

2.1.3 At 1840, Tāmaki Māori had authority over Tāmaki-nui-ā-Rua, an area containing 1,077,714 acres. Between 1850 and 1900, the Crown procured the majority of lands within Tāmaki-nui-ā-Rua (SOC 8: 1.3.1 & 1.3.2).

2.1.4 The Crown failed to undertake or develop a plan for settlement that would have ensured that hapū and iwi retained land around the new settlements, had access to such settlements, technology, markets, infrastructure, and health and education services, so that hapū and iwi would have been in a position whereby they could substantially benefit from and successfully participate in the settler economy (SOC 1A: 5.3.3; SOC 1B: 10(c), 12(c) & 30(b)).

2.1.5 The Crown failed to investigate and implement alternative means of facilitating European settlement and development, which would have protected the land base of hapū and iwi within the claim area, such as leasing land from hapū and iwi, and allowing them to control settlement through customary allocation of land and resources (SOC 1A: 5.5; SOC 1B: 10(b), 12(b)).

2.1.6 The Crown's purchase programme failed to entertain alternatives to sale such as leasing, despite knowing that such was consistent with custom, had worked well in the Wairarapa, and was ultimately to the benefit of hapū and iwi (SOC 1A: 19.6; SOC 8: 5.3.2).

2.1.7 The Crown purchase transactions between 1853 and 1865 were not permanent sales or alienation of land in the European sense, but incorporated customary understandings consistent with the Wairarapa leases supported by the promises made by Crown officials and/or an overall agreement between Governor Grey and the chiefs of ngā hapū karanga (SOC 1A: 16).

2.1.8 The Crown failed to provide adequate medical and educational services, or townships, infrastructure and local government to meet the needs of hapū and iwi (SOC 1A: 19.1.1-3; SOC 3: 38).

2.1.9 The Crown acquired title to the Wairarapa Moana Riparian Lands, Te Puata and Seventy Mile Bush when it did not need to purchase those lands and resources and/or such purchases were in excess of the Crown's legitimate needs (SOC 1B: 9(a), 10(a), 12(a) & 30(a)).

2.1.10 The Crown did not obtain those titles in a manner and via a process that was in accordance with tikanga Māori (SOC 1B: 9(d), 10(d), 12(d) & 30(d)).

2.1.11 The Crown had an obligation to but did not scrupulously and promptly deliver the agreed consideration to Wairarapa Māori (SOC 1B: 30(c), 32; SOC 3: 30).

2.1.12 Around 1844, the Crown developed practices and policies to procure large tracts of land including the southern portion of Seventy-Mile Bush. These practices included: encouraging the New Zealand Company to attempt to purchase lands in the Wairarapa; granting Hawke's Bay blocks to pastoralists with security of tenure to encourage Wairarapa settlers to lobby for Crown purchases to obtain similar security; paying cash advances and bribes; dealing and with non-resident Māori who did not have the strongest right; inducing officials with bonuses and using an endowment scheme to influence Māori to sell (SOC 1B: 33(a), (c)-(j); SOC 5: 15, 15.4).

2.1.13 In breach of Treaty principles, the Crown specifically designed policies and practices intended to alienate Rangitāne lands and resources prior to 1865 (SOC 2: 6).

2.1.14 The Crown promised Rangitāne collateral benefits, if they agreed to alienate their land for European settlement (SOC 3: 34).

2.1.15 The Crown failed to deliver collateral benefits of health and educational services and social and economic development to Wairarapa Māori and Ngāti Hinewaka, promised when it entered into a 'compact' at Turanganui in 1853 (SOC 3: 38; SOC 4: 29).

2.1.16 The Crown failed to protect Ngāi Tumapuhia ā Rangi from unregulated land dealings during the 1840s, when it could have mediated disputes and provided other appropriate forms of assistance (SOC 5: 16.4-16.4.2).

2.1.17 The Crown, without consulting Māori, assisted the New Zealand Company in its attempt to purchase 300,000 acres in Wairarapa during the 1840s. It also granted the Company a one million-acre Wairarapa reserve in 1847 or 1848 (SOC 5: 16.6).

2.1.18 The Crown engendered support for widespread purchases from rangatira outside Wairarapa to actively encourage Wairarapa Māori to relinquish their land, and in doing so undermined the tribal authority of rangatira within Wairarapa (SOC 5: 17.3d).

2.1.19 The Crown made deliberate payments to Rangitāne rangatira, Potangaroa and Wereta, for their interests in the Hawke's Bay with the intention of inducing a favourable attitude towards future land sales (SOC 2: 6.1.1(f); SOC 3: 23.6).

2.1.20 McLean employed a strategy of travelling through the Wairarapa with the first instalment payments for the purchase of Hawke's Bay lands, to stimulate interest among Wairarapa ki Tāmaki-nui-ā-Rua Māori to alienate land (SOC 2: 6.1.1(e); SOC 3: 23.5).

2.1.21 The Crown did not ensure that those Māori who purported to act on behalf of Tāmaki Māori in the sale of lands to the Crown, in fact had the authority and mandate of Tāmaki Māori (SOC 8: 4.3.2).

2.1.22 The Crown did not ensure that it paid purchase monies to all those Tāmaki Māori entitled to such money or that those Māori to whom purchase monies were paid distributed such monies to those who were entitled to it (SOC 8: 4.3.3).

2.2: The Crown responds that:

2.2.1 Denies that Crown policies were aimed at the acquisition of all land in the Wairarapa. States that the Crown did not intend to leave Māori without any land (SOR 1A: 1.2.2; SOR 2: 6)).

2.2.2 Does not plead to the content of Treaty duty. Concedes that it failed actively to protect the lands of Wairarapa and Tāmaki-nui-ā-Rua Māori to the extent that today Wairarapa and Tāmaki-nui-ā-Rua Māori are virtually landless and that this was a breach of the Treaty of Waitangi and its principles (SOR 1B: 3-3.1, 5-5.1).

2.2.3 Admits that at 1840 the Tāmaki-nui-ā-Rua area comprised 1,077,714 acres and was owned by Māori. Admits that between 1850 and 1900 the Crown purchased most of the lands within Tāmaki-nui-ā-Rua (SOR 1B: 3.1.1-3.1.2).

2.2.4 States that the Crown's alleged failure to develop a settlement plan appears to envisage a single planning document. Admits that no such plan was produced in the 19th century and that it would be anachronistic to expect this to be done (SOR 1A: 1.4.3).

2.2.5 Denies that the Crown failed to consider alternatives to the widespread alienation of Māori land to promote European settlement. States that the Crown considered such alternatives in the period 1846-62, but chose to adhere to the "land fund" model of colonisation based on purchase. States that after 1862 the Crown established the Native Land Court [NLC] by which Māori could gain a defined title to their lands and deal with them within the system of Crown derived title (SOR 1A: 1.6).

2.2.6 Denies that the Crown failed to consider alternatives to widespread alienation of Māori land. States that the Crown seriously considered leasing customary lands, but ultimately decided that Crown pre-emptive purchasing was in the best interests of all (SOR 1A: 15.6; SOR 8: 7.1.3-3a).

2.2.7 Denies that Māori understood purchase transactions between 1853-1865 as something other than permanent alienations of land (SOR 1A: 12).

2.2.8 Denies that the Crown's alleged failure to provide adequate medical and educational services, or townships, infrastructure and local government to meet Māori needs, breached the agreed terms of the purchase transactions. States that it has not yet researched the factual matters alleged as particulars and does not plead to them at this stage (SOR 1A: 15.1-2).

2.2.9 States that Crown purchasing activity was for the purpose of obtaining land to on-sell to settlers, not for the purpose of utilising the land itself. States that the transfer of the lake was finalised between the Crown and Māori in 1896 by mutual agreement. Concedes that it failed actively to protect the lands of Wairarapa and Tāmaki-nui-ā-Rua Māori to the extent that today Wairarapa and Tāmaki-nui-ā-Rua Māori are virtually landless and that this was a breach of the

Treaty of Waitangi and its principles. Refers to its statement of position. Otherwise does not plead (SOR 1B:5.1, 7.1, 25).

2.2.10 States that an agreement for transfer of the lake was finalised between the Crown and Māori in 1896 by mutual agreement. Otherwise does not plead. (SOR 1B: 4, 5.3, 7.1, 26).

2.2.11 Concedes that it failed actively to protect the lands of Wairarapa and Tāmaki-nui-ā-Rua Māori to the extent that today Wairarapa and Tāmaki-nui-ā-Rua Māori are virtually landless and that this was a breach of the Treaty of Waitangi and its principles. Refers to its statement of position. Otherwise does not plead (SOR 1B: 25).

2.2.12 (a) Admits that in 1847 and again in 1848-1849, the Crown encouraged the New Zealand Company to attempt to purchase land in Wairarapa, but that such attempts were unsuccessful (SOR 1B: 29.1; SOR 12, 12.4, 12.5).

(b) Admits that Donald McLean anticipated that Wairarapa pastoralists might take up leases of Crown land in Hawke's Bay but denies that this was the only or major motivation for acquiring land in Hawke's Bay (SOR 1B: 29.3).

(c) Admits that it made some payments to Māori who had decided to sell their land, in advance of some of the deeds to purchase that land being signed. Admits that some of these payments were made to Māori who were not resident in the area. Admits that it entered into agreements to purchase land with Māori who were not resident on the land. Otherwise denies the allegation that the Crown dealt with, paid bribes to, and entered into agreements to purchase lands with Māori who were not resident in the area and who did not have the strongest right in such lands (SOR 1B: 29.4-29.4.4).

(d) Admits that non-resident chiefs were among those listed on the title but denies this excluded those who had stronger claims to the land. The Crown refers to its response to pleadings regarding sale of the Seventy Mile Bush Blocks for further response on this matter (SOR 1B: 29.6).

(f) Admits that it entered into negotiations for the purchase of Wairarapa lands from those who had been awarded title, and who the Crown knew were willing sellers. Further states that if it wished to purchase land it had to do so from persons awarded title for that land (SOR 1B: 29.7-29.7.1).

(g) Admits that cash advances were paid to Māori who had decided to sell their land in Tāmaki-nui-ā-Rua and that it charged such amounts against the future purchase price of the land. Otherwise denies the allegation concerning cash advances and bribes to Māori (SOR 1B: 29.8).

(h) Admits that it engaged agents to secure the signatures of those owners who had not so far agreed to sell and admits that it promised a payment for each signature obtained and, in the case of Josiah Hamlin, payment of £200 if he obtained all seven outstanding signatures (SOR 1B: 29.9).

(i) Admits that some deeds contained 5 per cent clauses and admits that such clauses may have encouraged some Māori to sell their land. Accepts that the administration of the fund is a matter that requires further investigation (SOR 1B: 29.10).

2.2.13 The Crown is not required to plead on Treaty breach allegations. It otherwise denies the allegations that its pre-1865 policies and practices were specifically designed to alienate Rangitāne land (SOR 2: 6).

2.2.14 Denies that the McCracken, Walzl and Stirling evidence cited proves that the Crown promised collateral benefits to Rangitane in return for alienating their land (SOR 3: 29).

2.2.15 Denies that the Crown entered into a 'compact' in 1853 at Turanganui (SOR 4: 25).

2.2.16 Denies that the Crown had an obligation to regulate and mediate land dealings when such dealings were in fact illegal (SOR 5: 13.4-13.4.2).

2.2.17 Admits that, without consulting Māori, the Crown assisted the New Zealand Company in its attempt to purchase 300,000 acres in Wairarapa. Denies that it granted the Company a one million-acre Wairarapa reserve (SOR 5: 13.6).

2.2.18 States that the reference to the Crown undermining the authority of Wairarapa rangatira concerns Te Hapuku. The Crown admits that Te Hapuku was involved in some purchase negotiations but has no knowledge of whether this affected the existing authority of chiefs resident in the Wairarapa and therefore does not plead (SOR 5: 14.2.3).

2.2.19 Admits that payments were made to Potangaroa and Wereta but denies they were intended to induce a favourable attitude towards future land sales. States further that the payments were for their interests in the Waipukurau block and that distributions were also made to Manawatu Māori (SOR 2: 6.1.1(f); (SOR 3: 18.6).

2.2.20 Admits that Donald McLean travelled though the Wairarapa with the first payment for the purchase money for the Hawke's Bay purchases but denies that this is correctly characterised as a 'strategy' for stimulating interest in the selling of land by Rangitāne (SOR 2: 6.1.1(e); SOR 3: 18.5).

2.2.21 Denies that the Crown did not ensure that those Māori who purported to act on behalf of Tāmaki Māori in the sale of lands to the Crown, in fact had the authority and mandate of Tāmaki Māori. States further that the paragraph contains insufficient particulars of the matter alleged (SOR 1B: 6.1.2).

2.2.22 States that the paragraph contains insufficient particulars of the matter alleged and therefore does not plead to it (SOR 1B: 6.1.3).

2.3: Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

2.3.1 The Crown did not produce a settlement plan to ensure that hapū and iwi participated fully in colonial development, although the Crown contends that to produce a plan in a single planning document would be 'anachronistic'.

2.3.2 Without consulting Māori, the Crown assisted the New Zealand Company in its attempt to purchase 300,000 acres in Wairarapa.

2.3.3 At 1840 the Tāmaki-nui-ā-Rua area comprised 1,077,714 acres and was owned by Māori.

2.3.4 Between 1850 and 1900 the Crown purchased most of the lands within Tāmaki-nui-ā-Rua.

2.4: Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

2.4.1 Although the terminology of modern 'planning' may not be appropriate to the nineteenth century, the New Zealand Company and the Crown nevertheless had policies and objectives for settlement. To what extent were the Crown's policies and objectives for the settlement of Wairarapa ki Tararua consistent with its Treaty obligations to Māori?

2.4.2 Were Crown purchase policies aimed at acquiring all (or practically all) land and resources in the Wairarapa, and did the Crown develop policies which actively protected the interests of Māori?

2.4.3 Did the Crown consider realistic alternatives to the absolute alienation of Māori land, which may have been more compatible with customary resource transfers, such as leasehold arrangements? Should the Crown have done so? What were the alternatives available? Would prejudice to Māori have been averted?

2.4.4 What are the reasons for the Crown's statement that pre-emptive purchases, to the deliberate exclusion of other forms of exchange, were 'in the best interests of all'?

2.4.5 To what extent was there mutual understanding between the Crown and Māori, as to whether the 1853-65 Crown purchase transactions were absolute European-style alienations? If there was not mutual understanding, what were the respective understandings regarding these transactions?

2.4.6 Were promises of collateral benefits generally made to Māori to encourage land sale? If so, were such promises consistent with the Crown's Treaty duty to actively protect Māori interests?

2.4.7 Did the Crown make explicit promises to Wairarapa ki Tāmaki-nui-ā-Rua Māori of economic development, educational and medical services, and necessary infrastructure (such as roading and bridges)? Did the Crown promise education to Wairarapa ki Tāmaki-nui-ā-Rua Māori as a 'specific' benefit explicitly linked to 'the allocation of land for settlement'?

2.4.8 If so, did the Crown fulfil these promises? If not, did the general context of negotiations lead to a belief in such promises, which may not have been explicitly or fully recorded?

2.4.9 Did the Crown have a policy to deal preferentially with 'outside rangatira' to negotiate sales in Wairarapa ki Tararua? Did the Crown undermine the authority of resident rangatira in the process of negotiating purchases with 'outsiders' such as Te Hapuku, and with what effect?

3. Maungaroa Cession/Barton's Run/Mataoperu deed

3.1: The Claimants contend that:

3.1.1 In breach of the principles of the Treaty of Waitangi and its duty to act in good faith towards Māori, in March 1845 the Crown, through its agent Forsaith, forced the cession of land at Maungaroa (Barton's Run) from Māori (SOC 1A: 11; SOC 4: 15, 20(e)).

3.1.2 The Crown's intervention was purely for its own benefit and to further the implementation of its own land purchase policies. Its coercive actions undermined the authority of rangatira Te Wereta Kawekairangi (SOC 5: 16.5-16.5.4).

3.1.3 Between February 1845 and March 1845 the Crown, through Forsaith, failed to properly investigate a dispute arising between individuals including Te Wereta Te Kawekairangi and a local settler, Richard Barton, which resulted in Te Wereta seizing certain chattels belonging to Barton (SOC 1A: 11.1; SOC 4: 14, 14.1-14.3, 20(c)).

3.1.4 As a result, Forsaith held Māori responsible for the dispute and demanded that land be transferred absolutely to the Crown as punishment (SOC 1A: 11.2; SOR 4: 20(d), 20(e); SOC 5: 16.5.1).

3.1.5 When Māori, including Te Wereta, refused to cede the land, the Crown used threats of force to compel Māori to sign the Maungaroa Deed, which resulted in the cession of up to 40,000 acres (as per SOC 1A) or 80,000 acres of land (as per SOCs 4 and 5) to the Crown (SOC 1A: 11.3; SOC 4: 11(b), 14.4, 20(f), 20(g); SOC 5: 16.5.3-4).

3.1.6 The forced cession was unjustified and excessive, did not reflect the dealings between Barton and Te Wereta, and nor did it recognise an offer of compensation made by Te Wereta (SOC 1A: 11.4, 20(h); SOC 5: 16.5.2)).

3.1.7 The Crown acknowledged that its actions in forcing the cession of Maungaroa amounted to an illegal confiscation of land (SOC 1A: 12.1; SOC 4: 20(j)).

3.1.8 The Crown failed to return the ceded land to the customary owners or pay compensation, even when it realised the cession was wrong. Instead, it used the cession as the basis for a compulsory Crown purchase transaction (the Mataoperu purchase of 1853), incorporating more land that the original 1845 cession (SOC 1A: 12; SOR 4: 20(k), 20(l)).

3.1.9 Instead of recommending compensation or return of the land to the customary owners, the Crown through its agent McLean entered into negotiations for a new deed, offering to make additional payment to Te Wereta and others for the ceded lands, but only if additional land was included in the new Crown deed (SOC 1A: 12.2; SOC 4: 20(k)).

3.1.10 The Mataoperu Crown purchase transaction was flawed in the same way as other 1853-1854 Crown purchases (SOC 1A: 13).

3.1.11 The Crown's investigation of the 1845 dispute between Te Wereta and Barton was flawed in that it ignored relevant hapu affiliations and customary practices, and forced Ngāti Hinewaka to cede 80,000 acres in the vicinity of Whāwhānui or White Rock (SOC 4: 20(l), 14-15).

3.1.12 The Crown coerced Ngāti Hinewaka into becoming party to the [1853] Mataoperu Deed, in which the payment to the Māori owners was below market value (SOC 4: 16-17.1).

3.1.13 The Crown failed to assess accurately customary interests in the [Mataoperu] land, and failed to obtain from the owners of that land their consent to the purchase. The Crown also failed to set aside reserves within the area covered by the 1845 Maungaroa cession, or within that covered by the 1853 Mataoperu purchase, thus ensuring the dispossession and impoverishment of Ngāti Hinewaka (SOC 4: 17.3-19).

3.2: The Crown responds that:

3.2.1 (a) Does not plead to allegations of Treaty breach (SOR 1A: 7).

(b) Has insufficient knowledge and therefore does not plead to the allegation that the block was the customary land of Ngāti Hinewaka (SOR 4: 8.1).

(c) Admits that Forsaith insisted on a conveyance of land to the Crown and the cancellation of the agreement between Māori and Barton (SOR 4: 13.9).

3.2.2 Denies that the Crown intervened at Maungaroa in 1845 to promote its own interests, particularly land purchase policies. Admits that the Maungaroa cession was punitive, and accompanied by threats. Notes that Donald McLean later reported Crown actions in 1845 to be unfair (SOR 5: 13.5-13.5.3).

3.2.3 (a) Admits that there was a dispute between Te Wereta Te Kawekairangi and Richard Barton and that the former seized some property belonging to the latter. Admits that the investigation during these months can be accepted here [sic]. Has insufficient knowledge to plead to the allegation that the Crown disregarded the hapū affiliations and mana of Te Wereta Te Kawekairangi and other Ngāti Hinewaka rangatira during the investigation. Admits that Forsaith was supplied with information concerning the incident before the meeting with Māori.

(b) Says further that Barton was not present when the goods were seized. It is not apparent the 'most' of the goods were returned before the incident was investigated. Admits that the incident was investigated by Sub-Protector Forsaith. Denies that the cession was inconsistent with custom. The particular respects in which his inquiry is alleged to have been deficient are not pleaded to and the remainder of the allegation is denied (SOR 1A: 7.1-7.2.1; SOR 4: 7, 7.1, 7.4, 13.6).

3.2.4 Admits that Forsaith held certain Māori responsible, including Te Wereta, and that he sought the cession of land to the Crown as punishment. Forsaith wrote that he had told Te Wereta that he would 'abide by the consequences of a refusal'. Admits that Major Richmond left the punishment of Te Werata to Forsaith's discretion. Admits that Forsaith insisted on a conveyance of land to the Crown and the cancellation of the agreement between Māori and Barton (SOR 1A: 7.3; SOR 4: 13.7-9).

3.2.5 (a) Admits that Te Wereta initially refused to sign the deed. Admits that after Te Wereta refused to sign the deed, Forsaith told him that if he 'returned without making peace, they might expect a messenger after me of a very different character, one who would offer no terms, but proceed to inflict the punishment the law prescribed and their conduct deserved.'

(b) Admits that this was a threat and probably influenced Te Wereta in his decision to sign the deed. Admits that Forsaith believed that several people with claims inside the boundary took no part in the robbery. Otherwise denies the allegation that many of the other owners of the land covered by the

Mangaroa Deed had their land confiscated despite the fact that they were not involved in the incident.

(c) Admits that the deed required the cession of an area of land, but denies that it amounted to 80,000 acres, noting that the cession was never effectively enforced. States that the area of the land described by the Deed is uncertain. Has no precise knowledge of the acreage involved and therefore does not plead to the allegation that the area of purchase was approximately 80,000 acres. Notes that much smaller estimates of acreage are given in other evidence filed for this claim (SOR 1A: 7.4-7.4.2; SOR 4: 7.5, 13.10-13, 15.9; SOR 5: 13.5.5).

3.2.6 Admits that the remedy insisted upon by Sub-Protector Forsaith was disproportionate to the gravity of the incident to which it was intended to be related. Also admits that an offer of forty pigs and other produce was offered by Te Wereta as compensation. Considers, however, that the Maungaroa cession appears to have had little practical impact upon those who might prefer claims to the land. Admits that Forsaith did not purport to be acting under the Native Exemption Ordinance 1844 (SOR 1A: 7.5; SOR 4: 14).

3.2.7 Admits that Donald McLean regarded the Maungaroa cession as unfair. Denies that the Crown admitted that the Maungaroa cession was an illegal confiscation of land (SOR 1A: 8.3; SOR 4: 15.2-3).

3.2.8 Denies that the subsequent Crown purchase of the same area amounted to a 'compulsory Crown purchase' but admits that Donald McLean was not prepared to admit that the Maungaroa cession was invalid. Admits that McLean did not recommend compensation or return of the land. Admits that McLean entered into negotiations for the purchase of a block embracing the land described in the Maungaroa deed, and offered payment. Admits that the boundaries of the later Crown purchase embraced a larger area (SOR 1A: 8.1-8.2; SOR 4: 15.4-8).

3.2.9 Admits that it did not return the land or pay compensation, but that it offered payment for the 1845 ceded land so long as additional land was also included. Denies that the additional land was intended to be transferred in payment for goods taken from Barton and not returned (SOR 1A: 8.4; SOR 4: 15.6).

3.2.10 States that its position on the Mataoperu Purchase is otherwise identical to its response on other purchases (SOR 1A: 9).

3.2.11 Denies that the cession was inconsistent with custom. States that the Crown has insufficient knowledge of hapū affiliations and therefore does not plead to this allegation. (SOR 4: 7.1, 7.4).

3.2.12 Denies that it coerced Ngāti Hinewaka into signing the 1853 Mataoperu deed, or that it paid them less than market value for the land (SOR 4: 9.1, 10).

3.2.13 Denies that it failed to assess accurately customary interests at Mataoperu, or that alleged failure to set aside reserves resulted in the subsequent dispossession and impoverishment of Ngāti Hinewaka (SOR 4: 10.3-12).

3.3: Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

3.3.1 The Crown's threats in 1845 probably influenced Te Wereta to agree to the cession of Maungaroa.

3.3.2 The Maungaroa cession was punitive, and Donald McLean later reported Crown actions in 1845 to be unfair.

3.3.3 The Crown did not return the land or pay compensation, but it offered payment for the 1845 ceded land so long as additional land was also included. There are problems to resolve regarding the acreages involved.

3.4: Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

3.4.1 Did the Crown force Māori to cede Maungaroa in 1845 without due process, and to promote its land purchase policies?

3.4.2 Was undue pressure brought to bear on Māori in the 1853 Mataoperu purchase?

3.4.3 How far can the Mataoperu transaction be seen as similar to the other 1853-54 Crown purchase transactions? If the other Crown purchase transactions contained common flaws, were these also shared by this transaction?

3.4.4 Did the Crown compel Māori to sell Mataoperu at 'below market value'? How does the price paid for Mataoperu compare with the price paid for the other Wairarapa blocks transacted at this time?

3.4.5 Did the Crown assess customary interests at Mataoperu accurately? If not, how did it err?

3.4.6 Did it fail to reserve sufficient land from the purchase? If it failed to do so, did this have a prejudicial effect on Māori?

4. Pre-1865 Crown purchase transactions

4.1: The Claimants contend that:

4.1.1 The Crown purchase transactions between 1853 and 1865 were not permanent sales or alienation of land in the European sense, but incorporated customary understandings consistent with the Wairarapa leases, and supported by the promises made by Crown officials and/or an overall agreement between Governor Grey and the chiefs of the Wairarapa ki Tararua area (SOC 1A: 16).

Promises, custom, and mutuality

4.1.2 Prior to 1853, Rangitāne were reluctant to alienate their land to European settlers, except by way of informal leasing arrangements (SOC 3: 32).

4.1.3 In August 1853, Grey met with rangatira in Turanganui to reach an overall understanding on the basis of the relationship between the Crown and Wairarapa ki Tāmaki-nui-ā-Rua Māori (SOC 1A: 16.2.2; SOC 3: 33).

4.1.4 This resulted in an overall agreement (or 'treaty of Wairarapa') between Grey and Wairarapa ki Tāmaki-nui-ā-Rua Māori. In return for the transfer of extensive areas of Wairarapa lands, Grey undertook that the Crown would ensure that Māori benefited from European settlement in the area. These benefits included:

- the provision of koha
- infrastructure such as roading
- towns and markets
- educational services and facilities
- medical services including hospitals
- construction of a mill
- other benefits of settlement (SOC 1A: 16.3; SOC 3: 23.11, 34-35; SOC 4: 31(d)-(e)).

4.1.5 Specific promises were later made, consistent with the overall agreement made with Grey. They were established Crown policy and were made by McLean and other Crown officials involved in the individual Crown purchase transactions (SOC 1A: 16.5).

4.1.6 These customary understandings, promises and agreements imposed ongoing obligations on the Crown, and were fundamental to Māori understanding of the transactions. Unless they were delivered, the consideration paid by the Crown for the transfer of the Wairarapa lands in the claim area was inadequate (SOC 1A: 18; SOC 4: 31(g)).

4.1.7 In addition to the payment of £275, the Castlepoint transaction of June 1853 was induced by promises made by McLean of the ongoing benefits that the customary owners would receive from the transaction, including the provision of koha, infrastructure, markets, European settlers, towns, schools, medical assistance, other benefits of settlement, and the securing of extensive reserves (SOC 1A: 16.1).

4.1.8 The extensive area of land transferred between August 1853 and January 1854 was induced by the August 1853 compact, which promised these benefits of European settlement (SOC 1A: 16.2; SOC 3: 27(c), 33; SOC 4: 31(g)).

4.1.9 The Crown broke the promises made to Wairarapa Māori in 1853, which induced them to sell their land. It failed to promote economic and social development in the form of medical and educational services, roading and infrastructure, and/or to allow for participation in settlement (SOC 1A: 19.1-19.1.3; SOC 3: 38; SOC 4: 29, 29.1-4, 31(e)).

4.1.10 The broken promises undermined Rangitāne tribal authority/rangatiratanga over their lands and resources (SOC 2: 6.1.1(i)).

4.1.11 The Crown acquired title to the Wairarapa Moana Riparian lands and assumed ownership of Te Puata when it could have entered into a lease or other mutually beneficial transaction for those lands (SOC 1B: 10(b), 12(b)).

[NB: For specific allegations and responses concerning Koha or the 5 percents see section 5]

Authority to transact

4.1.12 The Crown targeted rangatira and others willing to transfer land without undertaking an adequate inquiry as to whether such sellers had the customary authority to enter into the transactions, or whether all those with interests in the land involved were party to the transactions (SOC 1A: 19.7; SOC 3: 30.12(a)-(b); SOC 4: 30.4, 31(jj), 31(nn); SOC 8: 3.3.1, 4.3.1-2).

Ngāti Hinewaka (SOC 4)	Rangitāne o Tāmaki-nui-ā-Rua (SOC 2)	Ngāti Kahungunu ki Tāmaki-nui-ā-Rua (SOC 8)	Henare Matua whānau (SOC 14)
Awhea	Ihuraua	Puketoi	Tautāne
Pahaoa	Makuri	Makuri	
Turanganui		Manawatu	
Part Pahaoa Wilsons Run			
Te Awaiti Part Pahaoa			

4.1.12.1 Ihuraua was originally sold by the wrong vendors. This was only later remedied after Rangitāne protest (SOC 2: 6.1.2(e)(i)).

4.1.13 The Crown signed a number of the 1853-54 deeds in Wellington without the consent and/or knowledge of the majority of those with interests in the land,

including the alienation of reserves (SOC 1A: 19.5.6, 19.10; SOC 2: 6.1.2(b)(iii); SOC 3: 30.12(c); SOC 4: 31(v); SOC 8: 3.3.1.1).

Ngā Hapū Karanga (SOC 1A)	Rangitāne o Tāmaki-nui-ā-Rua (SOC 2) Kahungunu ki Tāmaki-nui-ā-Rua (SOC 8)	Ngāti Hinewaka (SOC 4)
Awhea Turakirae Reserves Waiorongamai Owhanga Kaiwhata Te Awaiti Wharekaka Ahiaruhe Kohangawariwari Ponui (Ratunga-a-matangi)	Tautāne	Awhea

4.1.14 The 1858 Tautāne Crown purchase was a completion of the 1854 purchase that claimants allege to have been fraudulent. The 1858 purchase was therefore a continuance of Crown action done in bad faith and with no regard for the needs of the resident owners (SOC 14: 8-9).

4.1.15 In 1859, the Crown and nine Māori entered an agreement for the sale of parts of Puketoi, Makuri and Manawatu for £240.00 with later payments that increased the price. In the case of Makuri block, the Crown was aware of which Tāmaki Māori, as the group with the strongest claim to the block, had authority in the area. Donald McLean knew that the rangatira whose hapū had the strongest ownership claims to Makuri, Te Hirawanu, was not present at Mataikona when the sale was arranged. Yet, negotiations were carried out at Mataikona without their presence or sanction and 30-35 kilometres from Makuri (SOC 2: 6.1.2(d)(i-ii); SOC 8: 3.3.1.2).

4.1.16 The Crown's policy was to reward and favour willing sellers and grant reserves to them. In particular the Crown allocated a reserve to Raniera from the Turanganui purchase, thus undermining traditional leadership and customary ownership of land (SOC 4: 31(zz)).

4.1.17 The Crown allowed individuals, including Hawke's Bay and other non-resident rangatira to assent or otherwise give support to the Crown purchase transactions, without ensuring that they had the sanction of their respective communities or the resident communities (SOC 1A: 19.9; SOC 2: 6.1.1(d), 6.1.2(a)-(b); SOC 3: 23.4; SOC 4: 31(ii); SOC 8: 3.3.1).

Rangitāne o Tāmaki-nui-ā-Rua (SOC 2)	Ngāti Hinewaka (SOC 4)
Castlepoint Tautāne Ngaawapurua	Pahaoa

4.1.17.1 The Crown acquired Ngaawapurua block from persons outside Tāmaki-nui-ā-Rua and, despite Rangitāne opposition, proceeded with the sale (SOC 2: 6.1.2(b)(i)-(ii)).

4.1.18 During the alienation of some blocks, the Crown acquired children's signatures as vendors although children had neither the capacity nor authority to represent their communities (SOC 3: 30.12(e)).

4.1.19 The Crown failed to instigate any process by which Māori with an interest in the land under negotiation could register that interest (SOC 1A: 19.8).

Adequacy of price

4.1.20 The Crown unfairly used its position as a 'monopoly purchaser' to influence price and insisted on paying the absolute minimum price (SOC 3: 30.5(a)-(c)).

4.1.21 The purchase price paid to Wairarapa Māori for land was arbitrary, due to the uncertainty of the definition of boundaries of land, the owners of the land, and the number of owners to be compensated, and was below market value (SOC 4: 17.1, 31, 31(w), (kk), (ll)).

Ngāti Hinewaka (SOC 4)
Awhea
Mataoperu
Part Pahaoa Wilsons Run

Advances and payment by instalments

4.1.22 The Crown engaged in questionable purchase practices such as advance payments in order to induce sales, without adequate investigation as to those who had interests in the land (SOC 2: 6.1.3).

4.1.23 In the course of the Crown purchase transactions, the Crown made advance payments to individuals to bind all owners to the alienation of the particular block (SOC 1A: 19.11; SOC 3: 30.12(d); SOC 4: 30.3).

Ngā Hapū Karanga (SOC 1A)
Upokongaruru
Kohangawariwari
Kaiwhata
Manawatu

4.1.24 The Crown breached its duty to pay the price agreed in a timely fashion by making payments by instalments spread over a number of years, which together with the loss of income from informal grazing arrangements led to indebtedness. This indebtedness added to the pressure on Rangitāne and other Māori to alienate land for their survival (SOC 1B: 16(a); SOC 3: 30.9, 10(a)-(b)).

4.1.25 The Crown acquired lands as cheaply as possible and used a variety of unfair and unconscionable tactics to deprive the owners of their true value. Purchase

payments were not made or withheld or lost their value by dissipation in small instalments (SOC 3: 30.14; SOC 15: 11(c)).

Conflict of interest of Crown agents

4.1.26 The Crown failed to ensure that its officials did not benefit personally from the purchases, which compromised their ability to be objective and act in good faith. For example, in 1853 and 1854 Crown official McLean (and Wellington merchant Kelham) leased a 10,000-acre run from the Crown at Akitio and McLean privately purchased land from Castlepoint block. Crown surveyor [Mein] Smith (and his partner Revans) purchased 18,000 acres in Martinborough (SOC 1A: 19.12-19.12.1-4; SOC 3: 30.14(a)-(c); SOC 4: 31(s)).

Purchase process

4.1.27 The pre-1865 Crown purchase transactions were so substantively flawed, completed in haste and poorly documented, as to be uncertain in terms of their validity, and in breach of the principles of the Treaty (SOC 1A: 19.4; SOC 3: 30.2(b)-(e); SOC 4: 30.2).

4.1.28 The Crown inaccurately or carelessly translated into Māori the documents witnessing the sale (SOC 12: 6D(iv)).

4.1.29 Pre-1865 Crown purchase transactions failed to define boundaries and reserves adequately or properly (SOC 1A: 19.4.6).

Reserves

4.1.30 The Crown failed to ensure that any reserves were made from some purchases, adequate reserves were made from any purchases, and that the reserves that were made remained in hapū and iwi ownership and control within the claim area (SOC 1A: 19.5; SOC 3: 30.8(a)).

4.1.31 The Crown inadequately worded the documentation witnessing the sale thereby derogating from the original agreement where it concerned reserves (SOC 12: 6D(v)).

4.1.32 Twelve of the 25 major blocks in the 1853-54 purchases, totalling some 672,000 acres, had no land set aside as reserves (SOC 1A: 19.5.2).

4.1.33 Only minimal areas were set aside and protected as reserves for ngā hapū karanga in 1853 to 1854 (SOC 1A: 5.4.2; SOC 1B: 14(a)-(b), 16(b)).

4.1.34 McLean and subsequent purchasing officers deliberately restricted the number and size of reserves (SOC 1A: 19.5.1; SOC 3: 30.8(f)).

4.1.34.1 The Crown deliberately limited the extent of land reserved near Masterton for the forebears of the Te Karaitiana Te Korou whānau claimants, that same land being a significant part of their overall landholdings (SOC 12: 6F(i)).

4.1.35 The Crown failed to set aside reserves despite Māori protests. For example, an agreed 500-acre reserve (at Rerewhakaaitu) in the Te Awaiti and Part Pahaoa deed was not set aside, but was instead onsold to local settlers (SOC 4: 31(oo)).

4.1.36 The Crown only belatedly confirmed that the reserves in question were those agreed in the Awhea deed. For one of those reserves, it failed to ensure that the agreed acreage for coastal land (1800 estimated, 2280 surveyed) between White Rock and Tora was set aside as a condition of the deed (SOC 4: 31(x-z)).

Ngāti Hinewaka (SOC 4)
Oroi
Awhea sections 73 & 74

4.1.37 The Crown failed to protect coastal land at Oroi as a fishing reserve, despite undertakings of its agent, Kemp (SOC 4: 31(aa)).

4.1.38 Despite setting aside land for reserves, the Crown actively sought to acquire them only weeks or months after the original Crown purchase transactions (SOC 1A: 19.5.4; SOC 3: 30.8(c), (g); SOC 4: 31(c)).

4.1.39 By January 1854, only a relatively small proportion of the land purportedly reserved from the 1853 Crown purchase transactions remained in Māori ownership (SOC 1A: 19.5.7).

4.1.40 Many of the deeds transferring land previously allocated as reserves were allowed to be executed by only a minority of the vendors of the original block (SOC 1A: 19.5.5).

4.1.41 In the second Tautāne deed signed in March 1858 the reserves were identified as being a 1111-acre block and 52 acres for urupa and cultivations. Today none of the Tautāne reserves are Māori land, there is no archive material held by the Māori Land Court in respect of this land (SOC 8: 2.3.8.4).

4.1.42 As part of the Ihuraua purchase, a single reserve of 230 acres was set aside for one individual who was not resident in Tāmaki-nui-ā-Rua (SOC 8: 2.3.8.5).

Rapid alienation and quantum

4.1.43 In the seven months between June 1853 and January 1854, the Crown acquired a majority of the land in the Rangitāne o Wairarapa claim area in 41 transactions (SOC 3: 25, 30.1).

4.1.44 The Crown purchases occurred without any regard for the duty of active protection owed to Wairarapa Māori, and to Ngāti Hinewaka as an example. The purchases were hastily completed with 1,500,000 acres of land (being approximately three-quarters of all the land in the district) purchased between August 1853 and January 1854 (SOC 4: 30-30.1).

4.1.45 After the 1853-1862 McLean purchases, a rapid European settlement process occurred within Wairarapa. Only then were Ngāi Tumapuhia ā Rangi aware that their transactions were not tuku but sales (SOC 5: 19.1).

4.1.46 As a consequence of purchasing approximately 1.5 million acres by 1865, the Crown effectively denied hapū and iwi full participation in the colonial economy (SOC 1A: 14, 19.3; SOC 15: 9).

Crown response to protest over Crown purchase transactions

4.1.47 The Crown failed to adequately investigate complaints about the Crown purchase transactions or to provide any redress or mechanism for redress (SOC 1A: 19.13).

4.1.47.1 Māori protest was expressed orally to Crown officials, through written petitions to the Crown, and through physical intervention in Crown surveying (SOC 1A: 19.13.2).

4.1.48 Due to their economic and political marginalisation, Ngāi Tumapuhia ā Rangi felt betrayed and demonstrated their discontent by protesting to the Crown and its officials (SOC 5: 19.2).

4.1.49 Ngāi Tumapuhia ā Rangi joined the Kīngitanga movement in an attempt to restore their tribal lands and mana (SOC 5: 19.3).

4.1.50 The Crown did not respond to the protests of Ngāi Tumapuhia ā Rangi about purchases (SOC 5: 19.4).

4.2: The Crown responds that:

4.2.1 Denies that Māori understood purchase transactions between 1853 and 1865 as something other than permanent alienations of land (SOR 1A: 12). States that the sale of lands was probably the most significant contributing factor to the loss of access to, and use of, traditional resources, and that the earliest sale deeds for lands in the Wairarapa indicate that Māori were aware at the time of sale of this reality (SOR 1B: 31).

Promises, custom, and mutuality

4.2.2 Denies the allegation that prior to 1853, Rangitāne were reluctant to alienate their land to European settlers, except by way of informal leasing arrangements, on the basis that there was not a uniform opposition to sale in this period (SOR 3: 27).

4.2.3 Admits the fact of the meeting between Grey and Māori in August 1853 but denies, on the basis of insufficient evidence, the inference that the purpose of the meeting was to forge a 'compact' with Māori. Admits that it seems likely that Donald McLean also attended (SOR 1A: 12.2.2; SOR 3: 28).

4.2.4 Denies the allegation on the basis that the available evidence does not establish that there was a 'treaty of Wairarapa' (SOR 1A: 12.3; SOR 4: 27.5-6).

4.2.5 Denies the suggestion that binding promises were made in the context of a special 'compact', 'Treaty' or overall agreement, on the basis of insufficient evidence. Admits that Grey made some specific promises such as the promise of a mill at Papawai, although it is not established that this promise was made at the meeting in August 1853. Denies the promise of a village site at Papawai but admits that some Wairarapa deeds contained 5 percent clauses (SOR 1A: 12.5; SOR 2: 6.1.1(i); SOR 3: 18.11, 29, 30; SOR 4: 25, 27.10-11).

4.2.6 Says that there is insufficient evidence of the statements made by Governor Grey at the meeting in August 1853. Denies that ongoing obligations were imposed as a result of existing customary understandings, promises and agreements. Denies that the price paid for the Crown purchases was inadequate (SOR 1A: 13, 14; SOR 4: 27.10).

4.2.7 States that there is little evidence about discussions for the Castlepoint purchase and accordingly no evidence that any discussion on these matters amounted to a binding term of the agreement. States further that payment for the Castlepoint purchase amounted to £2500 (SOR 1A: 16.1).

4.2.8 Admits that the potential benefits of European settlement as described may have been reasons for Māori to sell land, but denies that it made specific promises to this effect (SOR 3: 22.1).

4.2.9 Denies that the failings concerning social and economic development as particularised, breached the agreed terms of the Crown purchase transactions. Has not yet researched the factual matters alleged as particulars and does not

plead to them at this stage. Denies the existence of a compact alleged to have been entered into. (SOR 1A: 15.1-2; SOR 4: 25).

4.2.10 Denies existence of binding promises made in the context of a special compact (SOR 2: 6.1.1(i)).

4.2.11 States that Crown purchasing activity was for the purpose of obtaining land to on sell to settlers, not for the purpose of utilising the land itself. States that agreement for transfer of the lake was finalised between the Crown and Māori in 1896 by mutual agreement (SOR 1B: 5.1, 7.1)

Authority to transact

4.2.12 Admits that some reserved land was granted to individuals, and that some signatories to Wairarapa purchase deeds signed them in Wellington, but otherwise denies the allegation. Does not plead on the basis that the sources referred to fall short of showing that the Crown targeted rangatira willing to transfer land without adequate inquiry as to their authority to sell. States that it is still researching its understanding of the issue of authority to sell and therefore does not plead to the Ngāti Kahungunu ki Tāmaki-nui-ā-Rua allegation regarding the strength of claims at this stage (SOR 1A: 15.7; SOR 3: 25.13.1; SOR 4: 27.55; SOR 8: 5.2.1, 6.1.1-2).

4.2.12.1 Denies that Ihuraua was sold by the wrong vendors. Admits that payment of £50 was made by Searancke to Te Hirawanu and the Rangitāne Natives for their claims on lands sold by Ngāti Kahungunu in the Forty Mile Bush but does not consider that this indicates that those signing the Deed for purchase of a 25,000-acre portion of the Ihuraua block had no right to sell (SOR 2: 6.1.2(h)).

4.2.13 Admits some signatories to Wairarapa purchase deeds for blocks, such as Awhea, signed them in Wellington but otherwise denies the allegation. Admits that signatures were obtained in Wellington for some of the reserves listed in SOC 1A but otherwise does not plead to the allegation at this stage because of insufficient knowledge. Admits that the first Tautāne deed was signed in Wellington but has not had time to research the extent to which those occupying the block consented to the sale, and does not plead at this time. States further that an additional Tautāne deed for the second instalment of the purchase price was signed by 90 Māori on March 1858 (SOR 1A 15.5.6-(a); SOR 2: 6.1.2(c)-(c)(i); SOR 3: 25.13.1; SOR 4: 27.36).

4.2.14 Denies that the 1858 Tautāne Crown purchase was a continuance of an 1854 Crown action done in bad faith (SOR 14: 5).

4.2.15 (a) Admits that on 7 October 1859 the Crown and nine Māori signed a deed for purchase of land which 'adjoins Puketoi and goes on to the Makuri and Manawatu' for £240. Admits that later payments to three persons increased the price to £400. Has insufficient knowledge as to the residential status of Te Potangaroa and Hoera Rautu and therefore denies that they were not resident.

(b) Admits that the negotiations were carried out 30-35 kilometres away from the land in question but has insufficient knowledge whether, and therefore denies that, it took place without the presence of those Tāmaki Māori who had the strongest claims to the block. Admits that the Crown was aware of which Tāmaki Māori had authority in the area. Admits that McLean knew who owned Makuri but otherwise denies the allegation, stating further that the signing of the Makuri Deed followed a large meeting at Mataikona regarding the sale of the land. Has insufficient knowledge as to whether Te Hirawanu was present, and therefore denies the allegation (SOR 2: 6.1.2(f)(i), 6.1.2(g)-(g)(i); SOR 8: 5.2.3(a)-(d)).

4.2.16 Admits that Raniera was granted the largest reserves from the Turanganui block and that the 1863 grant would have extinguished any customary title, but otherwise denies the allegation (SOR 4: 27.83).

4.2.17 (a) States that it negotiated with rangatira who were not resident in the Tāmaki-nui-ā-Rua rohe for the sale of land but otherwise denies the allegation. States that it is still researching its understanding of the issue of authority to sell and therefore does not plead to the Ngāti Kahungunu ki Tāmaki-nui-ā-Rua allegation regarding the strength of claims at this stage. Accepts that the issue of authority to sell is an issue to be addressed in this inquiry. (SOR 1A: 15.9; SOR 2: 6.1.2; SOR 4: 27.54; SOR 8: 5.2.1).

(b) States further that Hawke's Bay rangatira such as Te Hapuku and Hori Niania, who were involved in negotiations over the Castlepoint and Tautāne blocks, were connected to those residing on the land and denies that they had no interests in the land. As to the allegation of the right of these rangatira to sell Tautāne block, the Crown has not had time to research this issue and therefore does not plead at this time (SOR 2: 6.1.2(a-b)).

4.2.17.1 Admits that it signed a deed for Ngaawapurua block with Peeti Te Aweawe, Hoani Meihana and seven others but has not had time to research whether the signatories resided outside Tāmaki-nui-ā-Rua, or whether there was opposition, and so does not plead at this time (SOR 2: 6.1.2(d)-(e)).

4.2.18 Admits that the signatories in some of the Wairarapa transactions were identified as children but otherwise denies the allegation that they were not representative of their communities (SOC 3: 25.13.2).

4.2.19 States that it is unclear what kind of registration process is envisaged by the allegation. There was, of course, no equivalent of the Native Land Court in the period contemplated. The real issue in this period appears to be the quality of the negotiations, which is responded to in the context of other allegations (SOR 1A: 15.8).

Adequacy of price

4.2.20 Notes that the question of price involves some complex issues. Admits that the Crown's policy was to acquire land cheaply but denies the accuracy of the allegations regarding absolute minimum price and unfairly using its position as a monopoly purchaser (SOR 3: 25.7).

4.2.21 Denies the allegation that the purchase price paid to Wairarapa Māori for Pt Pahaoa Wilsons Run was arbitrary in nature or not a fair amount. Admits that Te Wereta sought £3500 during the negotiations and says further that there was no agreement that this would be the purchase price. Denies that the price paid for Mataoperu block was below market value. Denies that the payment of £400 for Awhea block was inadequate for the large area involved. Notes that the allegation concerning Awhea appears to be based upon a private source written some 30 years after the event (SOR 4: 10, 27.37, 27.48, 27.56-59).

Advances and payment by instalments

4.2.22 Admits that Crown agents made advance payments to Māori, but denies this was improper. The Crown states further that such [advance] payments were made to Māori who had decided to sell their land (SOR 2: 6.1.3).

4.2.23 Does not plead on the basis that the evidence cited does not bear out the allegation or because of insufficient particulars (SOR 1A: 15.11; SOR 4: 26.2).

4.2.24 Admits some payments were made in instalments but is unaware of occasions when this did not accord with negotiated agreements. States that a link has not been established between debt and the need to sell more land, and payment by instalments (SOR 3: 25.12).

4.2.25 Is still considering further particulars provided in Schedule 3 for the Chown whānau statement of claim (SOC 15) (SOR 15: 7.1).

Conflict of interest of Crown agents

4.2.26 Denies the allegations concerning McLean and Mein Smith's alleged conflict of interest on the basis that the nature of the source cited does not enable verification (SOR 1A: 15.12-15.12.3; SOR 3: 25.14.1; SOR 4: 27.32).

The Tribunal understands that the source for this allegation is Bruce C Parr, 'The McLean Estate, A study of pastoral finance and estate management in New Zealand, 1853-91', MA Thesis History, University of Auckland, 1970. The Tribunal invites the Crown and other parties to refer to this source.

Purchase process

4.2.27 States that, in response to allegedly flawed Crown purchases breaching Treaty principles, the Crown does not plead to allegation of Treaty breach. Does not respond to the point that what was purchased was uncertain. The Ngāti Hinewaka allegation requires particularisation (SOR 1A: 15.4; SOR 4: 26.1).

4.2.28 Denies allegation on the basis of insufficient particulars (SOR 12: 12).

4.2.29 States that the Crown's alleged failure to define boundaries may have been true of some, but not all pre-1865 purchases. Further work is required before the Crown can plead to the extent of any problems of boundary definition (SOR 1A: 15.4.6).

Reserves

4.2.30 Admits that it did not set aside reserves in the case of every purchase. Denies that there was an obligation to set aside reserves in the case of every purchase. A key issue is whether Māori retained the lands they desired to keep in their possession (SOR 1A: 15.5; Crown memo of 9.12.03: 13.1).

4.2.31 Denies the allegation on the basis of insufficient particulars (SOR 12: 12).

4.2.32 Admits that the 12 blocks identified by Goldsmith [#A4, p 39] did not contain reserves (SOR 1A: 15.5.2).

4.2.33 Admits that not all purchases contained reserves and that some reserves were sold soon after the sale of the parent block. States, however, that significant areas within the ngā hapū karanga claim area remained in Māori ownership as at 1854 (SOR 1A: 1.5.2; Crown memo of 9.12.03: 7.1).

4.2.34 Admits that McLean issued the cited instructions to Mein Smith but denies that officials deliberately restricted the number and size of reserves (SOR 3: 25.10.5).

4.2.34.1 Admits that McLean instructed the surveyor that he was not to agree to extravagant reserves at Opaki, Makoura and Kohangawara and the other plains in the valley. Has had insufficient time to research the extent to which such land was part of the overall landholding of the Karaitiana Te Korou whānau claimants and does not plead to this at this stage. Otherwise, denies the allegation (SOR 12: 14).

4.2.35 Admits that there was delay in fulfilling some of the reserve obligations but otherwise denies that the Crown failed to set aside reserves in this Deed despite Māori protests. Has to give further consideration to the sources on the factual matters claimed (SOR 4: 27.67-68).

4.2.36 Admits that Oroi and Awhea sections 73 and 74 were belatedly confirmed as reserves but denies that the acreage range for land between the Paukenuiri and Awheanui Rivers of 1800 (estimated) to 2280 (surveyed) acres was a condition of the Awhea deed (SOR 4: 27.38, 27.40).

4.2.37 Has not been able to locate material relevant (from the source cited) to the allegation that Kemp undertook to protect land at Oroi as a fishing reserve (SOR 4: 27.44).

4.2.38 Admits that some reserve land was soon purchased afterwards, and that in some instances, reserves were sold before being defined. Denies, however, that the Crown 'actively sought to acquire the reserves' (SOR 1A: 15.5.4; SOR 3: 25.10.3; SOR 4: 27.3).

4.2.39 Admits that some reserves created had been purchased by 1854, but does not plead to the proportion at this stage (SOR 1A: 15.5.7).

4.2.40 Further particulars are required before the Crown is able to plead (SOR 1A: 15.5.5).

4.2.41 Admits that in the second Tautāne deed signed in March 1858, the reserves were identified as being a 1111-acre block and 52 acres for urupa and cultivations. States that it has not had time to research the allegation that today none of the Tautāne reserves are Māori land and that there is no archive material held by the Māori Land Court in respect of this land (SOC 8: 4.1.16).

4.2.42 Admits that as part of the Ihuraua purchase a single reserve of 21 acres was set aside for Karanama. The Crown has insufficient knowledge as to whether he was resident or not in the Wairarapa at any time and therefore does not plead to the remainder of the allegation at this time (SOC 8: 4.1.17).

Rapid alienation and quantum

4.2.43 Admits that there was a rapid purchasing of a substantial amount of land by the Crown between June 1853 and January 1854, noting 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. Questions whether the Castlepoint purchase should be included in this sequence (SOR 3: 20, 25.1).

4.2.44 Admits that it purchased a large area of land between August 1853 and January 1854 (SOR 4: 26).

4.2.45 Denies that Ngāi Tumapuhia ā Rangi became aware that their transactions were not tuku but sales only after 1862 (SOR 5: 16.1).

4.2.46 Admits that the Crown purchased approximately 1.5 million acres prior to 1865 in Wairarapa. In response to the alleged denial of Māori participation in the colonial economy, states that, on the consequences of this widespread alienation of Māori land, the 'Crown refers to its general statement of position'. This is that it concedes that it: 'failed actively to protect the lands of Wairarapa ki Tāmaki-nui-ā-Rua Māori to the extent that today Wairarapa ki Tāmaki-nui-ā-Rua Māori are virtually landless and that this was a breach of the Treaty of Waitangi and its principles' (SOR 1A: 10, 15.3; SOR 15: 5; Crown memo of 9.12.03: 11).

Crown response to protest over Crown purchase transactions

4.2.47 Admits that particular aspects of the purchases were the subject of complaint from about 1855 (SOR 1A: 15.13).

4.2.47.1 Notes that the allegation that protests were expressed orally to Crown officials, and through petitions, is likely to be true, though it is unable to plead to the unreferenced allegation about physical intervention with surveying (SOR 1A: 15.13.1).

4.2.48 States that it has received further particulars on Ngāi Tumapuhia ā Rangi's protests regarding Crown purchase grievances. The Crown admits letters were written to Crown officials regarding purchase issues (SOR 5: 16.2).

4.2.49 States that particulars are required to establish that participation in the King movement was motivated by the objective of recovering land (SOR 5: 16.3).

4.2.50 Denies that it made no response to protests from Wairarapa Māori (SOR 5: 16.4).

4.3: Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

4.3.1 The full extent of pre-1865 Crown purchases in the Wairarapa ki Tararua inquiry district amounted to approximately 1.5 million acres.

4.3.2 Governor Grey and Donald McLean attended a hui with Wairarapa ki Tāmaki-nui-ā-Rua Māori at Turanganui in August 1853.

4.3.3 Specific promises were made by Grey and McLean concerning the 5 percent koha payments for certain blocks and the construction of a mill at Papawai. The Crown, however, considers that there is no evidence of an overall agreement or compact concerning the promotion of Māori socio-economic development as part of the payment for the 1853-54 Crown purchase transactions.

4.3.4 The Crown rapidly purchased a significant amount of land during the period 22 June 1853 to January 1854.

4.3.5 Non-resident rangatira were involved in negotiation and sales of land.

4.3.6 Some boundaries were not properly defined, but the Crown notes its intention to carry out research before reaching a position on the extent of boundary problems.

4.3.7 Advance payments and instalment payments were made, but there is no agreement on the interpretation and effects of these types of payments.

4.3.8 Some reserves created from the 1853-54 Crown purchase transactions had been purchased by 1854.

4.3.9 The Crown purchased some reserved land soon after the original transaction and, in some instances, the reserves were sold before being defined.

4.3.10 Signatures were obtained in Wellington for some of the blocks and reserves.

4.3.11 The Crown belatedly confirmed three reserves out of the Awhea Deed, being the Oroi Reserve and Awhea Sections 73 and 74.

4.3.12 Particular aspects of some of the Crown purchases were the subject of Māori complaints from at least 1855 onwards.

4.3.13 Ngāi Tumapuhia ā Rangi protested aspects of some of the purchases.

4.4: Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

Promises, custom, and mutuality

4.4.1 When claimants say the Crown purchase transactions between 1853 and 1865 were not permanent sales or alienation of land in the European sense, but incorporated customary understandings consistent with the Wairarapa leases, which customary understandings do they mean? If these understandings are borne out by the evidence, could and should the Crown have been aware of them? What was the result for the integrity of the deeds if there was no mutuality of understanding?

4.4.2 Was it fair and reasonable for the Crown to expect that Wairarapa ki Tāmaki-nui-ā-Rua Māori knew 'the reality' (4.2.1) of losing access to their customary resources from the time of the early Crown purchase deeds?

4.4.3 Did the mode of payment, when advances and instalments were employed, contribute to an alleged understanding that transactions were more similar to leases?

4.4.4 What other evidence, such as Māori sources, aside from that in the existing casebook, is there concerning what was said and understood by parties at the hui at Turanganui in 1853?

4.4.5 Does the evidence enable a view to be reached on:

(a) what was discussed at the hui?

(b) whether any agreement or understanding was reached between the Crown and Māori, and the nature and content of any such understanding or agreement?

(c) the nature of the relationship entered into in August 1853, as alleged to have been understood by Māori?

(d) whether there was a compact or 'treaty'?

(e) why, if there was no overall agreement, specific promises were made by Grey such as the mill at Papawai?

(f) what, if there was no overall agreement, underlay Māori agreement to the multiple transactions of June 1853 to January 1854?

(g) why, if there was an overall agreement, there were so many separate Crown purchase transactions between June 1853 and January 1854, rather than one or two transactions, as envisaged in the 1840s?

4.4.6 Did the terms and context of the original purchase agreements envisage an undertaking by the Crown to set aside adequate reserves and create an endowment fund to provide for the present and future requirements of Wairarapa ki Tāmaki-nui-ā-Rua Māori? Were there Crown promises of health services, education, and infrastructure?

The role of the homestead and Castlepoint purchase transactions in the process

4.4.7 What was the significance of the 1853 'cessions' of homestead blocks and the pastoralists' subsequent acquisition of title to them? What were Māori expectations in agreeing to these cessions? What were the Crown's assurances to the pastoralists over the homestead blocks, and could these be seen as rewards for assisting with Crown purchase policies? What was the significance of these cessions for the Crown's ability to bring its large purchases to a successful conclusion?

4.4.8 What effect did the Castlepoint transaction in June 1853 have on the subsequent Crown purchase transactions in Wairarapa between August 1853 and January 1854?

Authority to transact

4.4.9 In its pre-1865 Crown purchases, did the Crown have a valid and agreed process for identifying and negotiating with right-holders? Did it obtain their full and free consent to alienation? Did it obtain their full and free consent to alienation of land within properly defined boundaries? Did it extinguish the interests of all such right-holders clearly, with their consent, and in a manner consistent with tino rangatiratanga and custom?

4.4.10 If it did not do these things, was prejudice suffered as a result?

4.4.11 (a) What was the nature of the Hawke's Bay rangatira interests, if any, in the Castlepoint, Tautāne and other blocks transacted with the Crown between June 1853 and January 1854?

(b) What process did the Crown adopt to find out the interests of non-resident rangatira?

(c) Did Hawke's Bay rangatira appear as signatories in Wairarapa ki Tararua transactions in which they had no customary interests, and if so, with what effect on the interests of other parties to the transactions (both Crown and Māori)?

4.4.12 Was it unreasonable for the Crown to have acquired the signatures of children as vendors on some of the Wairarapa deeds? How might Māori have viewed the participation of their children in the transactions?

4.4.13 Did the Crown undermine the authority of resident rangatira by negotiating purchase transactions with 'outsiders'? Did the Crown identify and deal with those who had customary authority (tino rangatiratanga) to represent and deal with right-holders and the land?

4.4.14 As a matter of tactics, did the Crown target rangatira or others willing to sell without making full and proper inquiries as to the right-holders in the land it wanted to purchase?

Adequacy of price

4.4.15 Were the amounts paid by the Crown adequate? For the Crown purchases between June 1853 and January 1854, what does the evidence indicate about the relationship between price and acreage on the one hand and the koha clauses/alleged promises of collateral benefits and price on the other? In addition, how did the prices compare to rental incomes?

4.4.16 For those purchases that did not contain written koha clauses, upon what basis was the price determined? Did the Crown pay a fair price according to the standards of the time?

4.4.17 If acreage was a factor in the determination of price, why did Wairarapa ki Tāmaki-nui-ā-Rua Māori alienate lands to the Crown when boundaries and acreage were not defined prior to the deeds being signed?

Advances and payment by instalments

4.4.18 How did the mode of payment, whether in advances, lump sums, or instalments, affect the Crown's ability to make purchases, and the outcomes (whether economic or otherwise) for Māori? Did this contribute to an alleged understanding that transactions were more similar to leases?

Conflict of interest of Crown agents

4.4.19 What was the nature and circumstances of McLean and Mein Smith's acquisition of land and/or leaseholds in the Wairarapa ki Tararua district? Was there any conflict of interest with their Crown roles, and if so, was the conflict serious?

Purchase process

4.4.20 Were the deed translations accurate? If not, were the oral explanations (as far as they were recorded) reasonable and accurate? Did the Crown ensure that Māori were adequately informed as to the meaning and effect of the deeds, before Māori agreed to them?

Reserves

4.4.21 Were instructions given to Crown purchase agents to limit the size and number of reserves? If so, to what extent were they implemented? If not, what were the instructions given? And did the agents in fact limit the size and number of reserves on the ground?

4.4.22 In reserving lands from sale, did the Crown take account of the preferences of Māori to retain mahinga kai, wāhi tapu, rongoa, and sites of cultural significance, in addition to land for commercial economic use? Did the Crown

have an obligation to protect Māori ownership and enjoyment of these reserves?

4.4.23 Should the Crown have purchased reserves? Did it do so with the full consent of all beneficiaries of those reserves, and for a fair price? Were these reserves adequately defined and, if not, what was the significance of that fact in their alienation?

4.4.24 Did the Crown make any or adequate reserves during these purchases, so as to enable Māori to retain sites of cultural significance, mahinga kai, and sufficient land for them to retain their association with an area, and to meet their present and future needs?

Crown response to protest over Crown purchase transactions

4.4.25 Did Ngāi Tumapuhia ā Rangi (and other Māori) support for the Kīngitanga reflect dissatisfaction with Crown purchases?

4.4.26 Did the Crown adequately investigate and respond to Māori complaints about the Crown purchase transactions, and with what remedy or outcome?

4.4.27 What is the significance of the Repudiation Movement for the Wairarapa ki Tararua pre-1865 Crown purchases?

Rapid alienation and quantum

4.4.28 What were the Crown's requirements in terms of land for public purposes and settlement during this period? Was the amount of Wairarapa ki Tararua land acquired by the Crown before 1865 excessive for the needs of the Crown and/or the settler economy?

4.4.29 Overall, to what extent, if any, did Wairarapa ki Tāmaki-nui-ā-Rua Māori suffer economic, social, or other prejudicial effects from the alienation of 1.5 million acres of their land? What, if any, is the Crown's responsibility for these effects?

5. Koha 5 percent Clauses

5.1: The Claimants contend that:

5.1.1 In its purchase transactions, the Crown failed to give effect to oral promises of koha and failed to honour the written koha clauses in deeds. The written clauses were merely inducements to encourage land sales (SOC 1A: 19.2; SOC 1B: 33(j); SOC 2: 6.1.4; SOC 15: 11d).

5.1.2 The Crown failed to address or remedy ongoing hapū and iwi complaints concerning the delivery on the oral promises of koha and the koha clauses, and concerning the administration of the 5 percent fund (SOC 1A: 19.13.4; SOC 1B: 33(j)).

5.1.3 The Crown's promise of an ongoing land endowment fund known as the 5 percents/koha fund contributed to Rangitāne's decision to consent to widespread alienation (SOC 3: 27c).

5.1.4 The 5 percents or koha deed clauses expressly required the Crown to provide schools, hospitals, mills, annuities to certain chiefs, and to set up a committee to allocate these funds (SOC 3: 37).

5.1.5 The Crown failed to deliver the promised educational and medical services to Rangitāne, and annuities to the chiefs were not paid or paid irregularly. The Crown administered the fund irresponsibly and in an irregular manner, making cash payments to individuals on an ad hoc basis rather than using the funds for projects for the common benefit of Wairarapa Māori. The deferred payment approach resulted in Rangitāne being trapped in a cycle of debt and poverty (SOC 3: 38.22-26; SOC 4: 31(l)).

5.1.6 The Crown failed to ensure that koha clauses were included in all sale deeds within the Ngāti Hinewaka rohe (SOC 4: 31(h)-(k)).

5.1.7 Despite complaints and requests in relation to the koha clauses, the Crown failed to provide adequate information and explanation to Wairarapa Māori of the extent of the money received for the 5 percent fund and what payments were made (SOC 4: 31m).

5.1.8 The Crown policy from 1870 to 1890 to pay Wairarapa Māori in lump sums from time to time prevented payments based on need. The Crown's failure to adequately administer the 5 percent fund undermined their promises to Ngāi Tumapuhia ā Rangi (SOC 4: 31(n); SOC 5: 18.5).

5.1.9 The Crown promised Ngāi Tumapuhia ā Rangi 5 percent or koha in order to convince them to transfer most of their lands in return for reserves and the benefit of an ongoing endowment fund (SOC 5: 18).

5.1.10 The 5 percent fund purported to ensure that Ngāi Tumapuhia ā Rangi would benefit from European settlement through the provision of koha, infrastructure,

markets, European settlers, towns, schools, hospitals and other benefits (SOC 5: 18.1).

5.1.11 Māori viewed the 5 percent fund as a koha. The guarantee of that koha was critical to Ngāi Tumapuhia ā Rangi agreeing to the Crown purchase transactions, which they viewed as tuku whenua (SOC 5: 18.2).

5.1.12 The term 'koha' was translated as a lease payment, similar to that used in the tukuwhenua lease arrangements that Ngāi Tumapuhia ā Rangi and the squatters had entered into previously (SOC 5: 18.3).

5.1.13 Ngāi Tumapuhia ā Rangi did not benefit from the 5 percents and expressed their disappointment to the Crown (SOC 5: 18.6).

5.1.14 The Crown was prepared to admit that the endowment intention of the 5 percent fund had not been a success (SOC 5: 18.8).

5.1.15 The 1873 Moroa deed of gift required the Crown to pay a 5 percent fund or koha upon any future sale of those lands. The Crown made only a few koha payments and these were usually to individual rangatira (SOC 9: 9.1-9.2).

5.1.16 The Crown offered the inducement of the so-called 5 percent payment, the promise of which was honoured more in the breach (SOC 12: 6A).

5.1.17 As a condition of the Tautāne sale, two reserves were set aside as well as a '5 percent' component. The final purchase payment made by the Crown was doubled from £500 to £1000 to reflect a deal whereby the Tautāne '5 percents' endowment was traded for a cash payment of £500 (SOC 8: 2.3.8.3).

5.2: The Crown responds that:

5.2.1 Denies that the Crown failed to honour the promises of koha and the written koha clauses. States that it has not had time to research this allegation of the 5 percent fund constituting an inducement to sell, and therefore does not plead to it at this time (SOR 1A: 15.2.10; SOR 2: 6.1.4; SOR 15: 7.2).

5.2.2 Admits that there was protest over the administration of the 5 percent fund. Not aware of oral promises of koha (SOR 1A: 15.13.3).

5.2.3 Denies that the 5 percent fund was ongoing in the sense that there was a continuing obligation to disperse money to Wairarapa Māori after the terms of the 5 percent clauses had been satisfied (SOR 3: 22.1).

5.2.4 Admits that the 5 percent deed clauses refer to the Crown using the fund to establish schools, hospitals, mills, and paying annuities to 'certain of our Chiefs'. The deed clauses also specified that a committee would allocate funds for collateral benefits, but that the Governor or his designee (not a committee) would allocate annuities to chiefs (SOR 3: 32).

5.2.5 In response to the allegation of unsatisfactory provision of collateral benefits and annuities, the Crown states that it is still conducting research on the administration of the 5 percent fund and therefore does not plead at this stage (SOR 3: 33.21; SOR 4: 27.16).

5.2.6 Denies that the Crown was under any obligation to include 5 percent clauses in all purchase deeds without the agreement of both parties (SOR 4: 27.13, 27.15).

5.2.7 Denies that the Crown failed to inform Wairarapa Māori complainants and inquirers adequately of the reasons for its payments of 5 percent funds (SOR 4: 27.17).

5.2.8 States that it is still conducting research on the administration of the 5 percent fund and therefore does not plead at this stage (SOR 3: 21; SOR 4: 27.16, 27.18; SOR 5: 15.5).

5.2.9 Admits that the 5 percent provision is likely to have been one inducement (though not necessarily the sole or major inducement) for Ngāi Tumapuhia ā Rangi to engage in Crown purchases (SOR 5: 15).

5.2.10 Denies that the 5 percent clauses obliged the Crown to provide Ngāi Tumapuhia ā Rangi benefits other than those specified in the purchase deeds (SOR 5: 15.1).

5.2.11 States that the word koha was used in some purchase deeds, but does not admit the tuku whenua construction that is placed on this wording by Ngāi Tumapuhia ā Rangi (SOR 5: 15.2).

5.2.12 States that koha was not translated in purchase deeds as ' a lease payment' and therefore denies the allegation (SOR 5: 15.3).

5.2.13 Denies that Māori received no benefit from the 5 percent fund, admits that there were expressions of dissatisfaction, but does not plead further in the absence of particulars (SOR 5: 15.7).

5.2.14 Admits that HT Kemp wrote that the endowment intention of the 5 percent fund had 'proved to be in great measure and from many unforeseen causes a comparative failure' (SOR 5: 15.9).

5.2.15 Admits that the 1873 Moroa deed of gift stated that the Crown would pay into the 5 percent fund. On the administration of the fund, the Crown is still conducting research and does not plead at this stage (SOR 9: 9.1, 9.4).

5.2.16 Admits that 5 percent clauses were included in some deeds but denies the allegation that its obligation under the 5 percent payments was not honoured (SOR 12: 9.2).

5.2.17 Admits that as a condition of the Tautāne sale, two reserves were set aside as well as a '5 percent' component. The final purchase payment made by the Crown was doubled from £500 to £1000 to reflect a deal whereby the Tautāne "5 percents" endowment was traded for a cash payment of £500 (SOR 8: 4.1.15)

5.3: Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

5.3.1 There was some Māori protest over the way in which the Crown administered the 5 percent fund.

5.3.2 The 5 percent clauses in Crown purchase deeds obligated the Crown to use the fund to support the establishment of schools, hospitals, and mills; and to pay annuities. A committee was to allocate funds for collateral benefits.

5.3.3 The 5 percent fund was one inducement for Ngāi Tumapuhia ā Rangi (and other Māori) to engage in Crown purchases.

5.3.4 As an endowment, the 5 percent fund was, in HT Kemp's judgement, 'a comparative failure'.

5.3.5 In the 1873 Moroa deed of gift, the Crown agreed to pay into the 5 percent fund.

5.4: Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

5.4.1 What was the relationship between any promises of collateral benefits made by Crown officials and purchase agents, and the koha clauses included in various deeds?

5.4.2 What role did the koha clauses play in Māori decisions to transact with the Crown?

5.4.3 What understandings were Wairarapa ki Tāmaki-nui-ā-Rua Māori entitled to take from the Crown's conduct and/or statements? In particular,

(a) Was there a Māori understanding that koha would be a permanent endowment fund?

(b) Did the Crown clearly explain and make known its view that the fund was finite and limited to 5 percent of on-sale profits?

(c) What is the significance of the use of the word 'koha' in the deeds in respect of (a) and (b)?

(d) Was there a Māori understanding or expectation, from oral promises and the negotiations context, that koha were part of all 1853-54 transactions?

(e) Should the Crown have included the koha clause in all deeds? Did some groups, such as Ngāi Tumapuhia ā Rangi, miss out altogether?

(f) Could Māori have reasonably understood that 5 percent payments were equivalent to the koha alleged to have been exchanged in customary tuku whenua transactions, or as 'rent'? Could Māori have reasonably understood, therefore, that such payments confirmed that Crown purchases were lease-like, tuku whenua transactions and not absolute European-style alienations?

5.4.4 Why did the Crown stop offering koha clauses? Was it still an issue for those, such as Tāmaki-nui-ā-Rua Māori, who transacted most of their land after 1865?

5.4.5 To what extent did the 5 percent clauses meet the Crown's policy of reserving part of the purchase price for the future benefit of Māori? Did the Crown have a coherent and clear understanding, from its point of view, of the purpose and use of the 5 percent fund? Did it deliver its policy in a fair and proper manner?

5.4.6 What was the Crown's duty in respect of the administration of the 5 percent fund? Did the Crown fulfil its duty?

5.4.7 Did the Crown respond appropriately and effectively to Māori complaints about the administration of the fund?

5.4.8 Was the Crown obligated to provide the full range of benefits sometimes described as part of koha or the alleged 'compact', regardless of the precise wording of the koha or 5 percent clause when it appeared in a deed? If not, did the Crown carry out the precise terms of each deed in its administration of the fund?

5.4.9 Overall, did the Crown honour its koha promises, and to what extent did Wairarapa ki Tāmaki-nui-ā-Rua Māori benefit in a lasting way from this reserved part of the purchase price?

6. Pre-1865 Crown purchase surveys

6.1: The Claimants contend that:

6.1.1 None of the 1853-54 Crown purchase transactions, with the exception of Castlepoint block, adequately identified the boundaries of the transactions or were surveyed prior to purchase (SOC 1A: 19.4.1).

6.1.2 The remaining Crown purchase transactions to 1865 failed adequately or properly to define boundaries and reserves (SOC 1A: 19.4.6; SOC 3: (a)-(c)).

6.1.3 In breach of its duty to ensure that all purchases were properly surveyed, the Crown failed to carry out adequate surveys (SOC 3: 30.2(b); 30.6, 30.6(a); SOC 4: 30.5; SOC 15: 11(a)).

6.1.3.1 The survey of Tautāne block was left uncompleted (SOC 2: 9.1.2(a)(i)).

6.1.3.2 The Crown failed to set aside areas reserved for Māori at the time of signing the Part Pahaoa and Wilsons Run deed in 1853. When some of the reserves were defined in 1855, they were still not surveyed, their boundaries were vaguely described, and their names differed from those in the deed (SOC 4: 31(dd), (ff)-(gg)).

6.1.4 The Crown failed to ensure that Wairarapa ki Tāmaki-nui-ā-Rua Māori had a clear understanding of either the extent of the land acquired by it in 1853-54 or the extent of land retained by Māori (SOC 1A: 19.4.3; SOC 3: 30.6(f); SOC 4: 30.5).

6.1.5 The ill-defined boundaries resulted in uncertainty over whether reserves had been created or not, and lands were sold prior to reserves being properly defined (SOC 2: 10.1.2; SOC 3: 30.8(b), (d); SOC 4: 30.2).

6.1.6 The extent of Wairarapa reserves was not known as they were never properly identified by survey (SOC 3: 30.8(e); SOC 8: 2.3.8.1).

6.1.7 The lack of certainty in the 1853-54 Crown purchase transactions resulted in the Crown wrongfully treating land that had not been sold as Crown land and sometimes subsequently onselling that land to settlers (SOC 1A: 19.4.5; SOC 2: 9.1.2(d); SOC 3: 30.6(c)-(d), 30.8(d); SOC 4: 31(oo), 31(ww)).

Ngā Hapū Karanga (SOC 1A).	Rangitāne o Tāmaki-nui-ā-Rua (SOC 2).	Ngāti Hinewaka (SOC 4).
Te Kokoti-a-whakaahuria reserve Awhea reserve	(Castlepoint reserves). • Waitutu • Takapuai	Turanganui and its 8 reserves Te Awaiti and Part Pahaoa block reserve.

6.1.7.1 Ngā hapū karanga complaints from 1871 over the Crown's wrongful granting to Bidwell of the 64-acre Te Kokoti-a-whakaahuria block were never addressed or remedied (SOC 1A: 19.4.5(a), 19.13.4(e)).

6.1.7.2 An area agreed to be reserved from the Awhea block was mistakenly sold to Riddiford (SOC 1A: 19.4.5(b); SOC 4: 31(x)).

6.1.7.3 Two of the Castlepoint reserves, Waitutu and Takapuai, were not set aside and were subsequently included in Crown grants (SOC 2: 9.1.2(d)).

6.1.7.4 As neither the exterior boundaries of the Turanganui block nor its eight reserves were surveyed prior to the deed being signed or immediately afterwards, the boundaries of the land were not known and land reserved to Ngāti Hinewaka or excluded from the deed was sold to settlers (SOC 4: 31(ww)).

6.1.7.5 The Crown failed to set aside areas reserved in the Te Awaiti and Part Pahaoa deed, despite Maori protests. Though Crown official Searanke accepted a claim by Hoera Whakataha to a 500-acre portion of the block at Rerewhakaaitu under the 1853 deed, it was never honoured and the Crown had sold the land to local settlers (SOC 4: 31(oo)).

6.1.8 The lack of definition of reserves that were set aside led to ongoing disputes with Wairarapa ki Tāmaki-nui-ā-Rua Māori as to boundaries, the location of reserves, and whether land had been acquired by the Crown (SOC 1A: 19.5.3: SOC 3: 30.2(c)-(e)).

6.1.8.1 There were protests over blocks such as Part Pahaoa and Wilsons Run, where Wairarapa Māori, including Ngāti Hinewaka, argued that the area purchased was much smaller than that asserted by the Crown (SOC 4: 31(dd)).

6.1.9 The lack of certainty in the 1853-54 Crown purchase transactions adversely affected the position of ngā hapū karanga in the conduct of later Crown purchase negotiations, as to what land was included in what transaction (SOC 1A: 19.4.4).

6.1.10 The Crown's failure adequately, or properly, to define the extent of land reserved from the 1853-54 Crown purchase transactions (including Castlepoint block) resulted in the progressive alienation of such reserves prior to definition and survey or the subsequent failure to give effect to all or part of such reserves (SOC 1A: 19.4.2).

6.1.11 The Crown failed to address and remedy complaints relating to the 1853-54 Crown purchase transactions such as enlarging boundaries from those agreed, and taking possession of areas not agreed. Specifically, there was also a failure to survey or give effect to the reserves agreed to as part of the Castlepoint transactions, including Waimimiha (SOC 1A: 19.13.3(a)-(b), 19.13.4(b)).

6.2: The Crown responds that:

6.2.1 Admits the allegation so far as it relates to survey before purchase and otherwise does not plead at this time (SOR 1A: 15.4.1).

6.2.2 States that on the basis of existing knowledge, it appears that this may have been true of some, but not all of the remaining pre-1865 purchases. Further work is required before the Crown can plead to the extent of any problems of boundary definition (SOR 1A: 15.4.6).

6.2.3 Admits that it did not survey a number of blocks prior to purchase. Denies, however, 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 Māori understood the extent of what they were selling. States that surveys need not have been essential for the purpose of ensuring Māori understood the extent of what they were selling. States that the Ngāti Hinewaka allegation requires further particularisation and refers to its statement of general position. Is still considering the further particulars provided in schedule 3 of the further particulars provided for SOC 15 (SOR 3: 25.3, 25.8; SOR 4: 26.4; SOR 15: 7.1).

6.2.3.1 Admits that the survey of the Tautāne block was not completed at the time of purchase in 1858. States further that District Land Purchase Officer G S Cooper attributed the incomplete survey to the fact that the roughness of the country meant no one was likely to purchase the block, so the cost of the survey was not justified (SOR 2: 9.4(a)(i-ii)).

6.2.3.2 Notes that the names of reserves on the deed for Part Pahaoa and Wilsons Run were different than those listed by Mackay when giving the surveyed acreages. Denies that it failed to adequately define the area included with the Deed or to survey areas reserved from it. Says further that it has been unable to verify the source for Mr Stirling's claim that the block was estimated in 1862 to contain 110,000 acres. Notes that there is evidence of dissatisfaction concerning the purchase in later years, but observes that such protest is not clearly linked to concerns over the size of the block (SOR 4: 27.49; 27.52, 27.67-69).

6.2.4 Notes that the claim is made on the basis of a lack of visual representation of boundaries. States that without reference to particular blocks, it is hard for the Crown to assess whether the methods of defining boundaries left Māori unable to assess what they had sold and retained (SOR 1A: 15.4.3).

6.2.5 Admits that the allegation that ill-defined boundaries resulted in uncertainty over whether reserves had been created or not, and that lands were sold prior to reserves being properly defined, appears to be true of some purchases such as Castlepoint (SOR 2: 10.1.3(a); SOR 3: 25.10.2).

6.2.6 States that the Royal Commission into Native Reserves in the Wellington Province was extended to include land in the larger Wairarapa District, including Wairarapa. Notes that the report of 1882/3 recorded 27,000 acres

which were still reserve land. Admits that eight reserves or parts of reserves were described as missing or possibly set aside elsewhere. Otherwise denies the allegation (SOR 3: 25.10.4).

6.2.7 See responses below:

6.2.7.1 Admits that Te Kokoti-a-whakaahuia reserve was erroneously granted to Bidwell, apparently as a result of a survey error. Admits that Māori complained about the granting of the block to Bidwell and that the matter does not appear to have been remedied. Notes that different figures are given for the acreage in various documents (SOR 1A: 15.4.5, 15.13.7).

6.2.7.2 Admits that an area agreed to be reserved from the Awhea block was mistakenly sold to Riddiford in 1854, saying further that the land was returned to Māori as a native reserve (SOR 1A: 15.4.5(a); SOR 4: 27.39).

6.2.7.3 Admits that two of the 10 reserves named in the Castlepoint deed, Takapuai and Waitutu, were not laid out on the ground with the other reserves. States further that Takapuai was later set aside by the Crown after the omission was identified 50 years later. Has not had time to research the allegation as it applies more generally and so does not plead at this time (SOR 2: 9.4(j)-(j)(i)).

6.2.7.4 Admits that the Turanganui reserves were not surveyed prior to the deed being signed. Admits the allegation may be true that, as a result of uncertain boundaries, some Turanganui reserves and other land excluded from the deeds was sold to settlers. Denies the allegation as a general statement (SOR 4: 27.79-80).

6.2.7.5 Admits there was a delay in fulfilling some of the reserve obligations for the Te Awaiti and Part Pahaoa block but otherwise denies that the Crown failed to set aside reserves despite Māori protests. As regards the allegation that reserved land was incorrectly sold to settlers, states that it has been unable to resolve these matters from the claimant sources that are cited and will have to give further consideration to them (SOR 4: 27.67-69).

6.2.8 In response to the Ngā Hapū Karanga claim (SOC 1A), states that the source cited refers to the Castlepoint reserves and that the allegation would require the Crown to consider the issue in broader terms. Refers to SOR 2: 10.1.3, where the Crown admits that in the case of the Castlepoint block there was uncertainty over whether some reserves had been created or not. The Crown has not had time to research the allegation as it applies more generally and therefore does not plead to it at this time (SOR 1A: 15.5.3; SOR 2: 9.1.2(d), 10.1.3).

6.2.8.1 (a) In response to the Rangitāne o Wairarapa claim (SOC 3), admits that there were some disputes over boundaries, the location of reserves, and whether land had been acquired by the Crown. Is still researching the extent to which such disputes arose (SOR 3: 25.4).

(b) Notes that there is evidence of dissatisfaction concerning the purchase of Part Pahaoa and Wilsons Run block in later years, but observes that such

protest is not clearly linked to concerns over the size of the block (SOR 4: 27.49).

6.2.9 Refers to same response in 6.2.4 above (SOR 1A: 15.4.4).

6.2.10 Admits that the definition of reserves was inadequate on some occasions, but denies the implication that, on all occasions, this was directly linked to the loss or transfer of the reserves (SOR 1A: 15.4.2).

6.2.11 Admits that there was protest concerning the Waimimiha purchase, but the lack of particularisation in the sources referred to means that the Crown is unable to plead to the remaining allegations at this stage (SOR 1A: 15.13.2, 15.13.4).

6.3: Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

6.3.1 None of the 1853-54 Crown purchase transactions (with the exception of Castle Point block) were surveyed prior to purchase.

6.3.2 On the basis of existing knowledge, some pre-1865 Crown purchase transactions failed adequately or properly to define boundaries and reserves. There is uncertainty over whether some reserves were created or not. Parties do not agree on the extent or implications of the issue.

6.3.3 Justified Māori complaints about the granting of the Te Kokoti-a-whakaahuria block to Bidwell have never been remedied by the Crown.

6.3.4 Ill-defined boundaries did result in uncertainty over reserves, and in some purchases, such as Castlepoint, lands were sold prior to reserves being properly defined.

6.4: Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

6.4.1 Did the Crown have a duty to ensure that surveys were completed before the signing of the purchase deeds, particularly if reserves were to be set aside?

6.4.2 Why did Māori transact land with the Crown without the land concerned and reserves being fully defined and/or surveyed before signing the purchase deeds? Did this lack of definition assist the Crown to buy land that Māori did not intend to sell?

6.4.3 Were Māori able to understand the extent of what they were transacting with the Crown without a completed survey prior to signing? In what other ways were boundaries described and defined, and to what effect? Was there mutuality of understanding?

6.4.4 Given that surveys were not always completed prior to Crown purchase, what process was adopted to ensure that Māori understood what they were transacting and the impact on their access to traditional resources? Was this properly recorded?

6.4.5 What process did the Crown follow when land was surveyed several years after the signing of the purchase deeds? How did it ensure that the survey included and/or excluded land and resources that Māori understood they were transacting and/or retaining? Did the Crown take steps to ensure it was not on-selling promised reserves?

6.4.6 When the land was later surveyed, were the surveys of sufficient quality?

6.4.7 What recourse did Māori have to challenge any later survey of land that differed from their understanding of the earlier transaction?

6.4.8 To what extent did Māori protest and was the Crown response reasonable and fair in the context of the time?

6.4.9 If the survey of the Tautāne block purchase was not completed at the time of purchase because of 'the fact that the roughness of the country meant no one was likely to purchase the block' and 'so the cost of the survey was not justified', then why did the Crown purchase the block?

7. Native Land Court: General

7.1: The Claimants contend that:

The Establishment of the Native Land Court

7.1.1 The Crown has breached its duty to actively protect Māori (pursuant to Article II of the Treaty) by introducing the Native Land Acts, including the 1862 and 1865 Act, and by establishing and using the Native Land Court. The purpose of the Native Land Court, established by the Crown under the Native Land Acts, including the 1862 and 1865 Acts, was to investigate and extinguish Māori customary title and to convert traditional modes of ownership into individual titles derived from the Crown (SOC 1B: 144, 145, 146(a)-(b); SOC 3: 39, 45; SOC 5: 20.1(a, b); (SOC 8: 6.1, 6.2, 6.3.1). This was in order to:

7.1.1.1 facilitate the purchase of Māori land by the Crown and private purchasers (SOC 1B: 33(e), 144, 145, 146(a)-(c); SOC 8: 6.3.1).

7.1.1.2 defeat chiefly Māori authority and traditional iwi and hapū systems of land tenure and management, in order to facilitate the alienation of Māori land (SOC 4: 37).

7.1.1.3 promote Pākehā colonisation and settlement on lands made available by alienations consequent upon Native Land Court title investigation, which breached a relationship of trust based upon the Treaty (SOC 4: 37; SOC 12: 8Ci-iib; Diii).

7.1.2 The Crown did not consult with Wairarapa ki Tāmaki-nui-ā-Rua Māori prior to the introduction of the legislation and the establishment of the Native Land Court (SOC 1B: 144, 147; SOC 2: 7.1.1; SOC 3: 45.1(b); SOC 8: 6.3.3).

7.1.3 The Crown imposed the Native Land Court system on Ngāti Hinewaka and Wairarapa ki Tāmaki-nui-ā-Rua Māori contrary to their wishes (SOC 4: 39; SOC 8: 6.4).

Determination of title

7.1.4 The Native Land Court encouraged the extinction of Māori customs, social order, authority and leadership and facilitated the alienation of Wairarapa ki Tararua lands by awarding interests to Māori, particularly rangātira, who were not local and did not occupy the land, at the expense of Wairarapa ki Tāmaki-nui-ā-Rua Māori, including local rangātira, with much stronger claims to the land (SOC 1B: 33(f); SOC 2: 7.1.3(c, d, d: i, d: ii); SOC 8: 7.2, 7.3.1).

Ngā Hapū Karanga (SOC 1A)	Rangitāne o Tāmaki-nui-ā-Rua (SOC 2)
Southern section of the Seventy Mile Bush	Puketoi No 1 Puketoi No 4 Te Ahua-turanga Maharahara Manawatu No 4A Mangahao No 1

7.1.5 To facilitate the alienation of Tāmaki-nui-ā-Rua Māori lands, the Crown failed to ascertain and register all beneficial owners to blocks in Tāmaki-nui-ā-Rua, despite being given clear evidence that such claims existed, with devastating consequences for Tāmaki-nui-ā-Rua Māori. It also failed to ensure that the court ensured that such people were aware of and consented to the alienation of lands, before confirming any such alienation (SOC 8: 7.2, 7.3.2, 7.3.9).

Individualisation

7.1.6 The operation of the Native Land Court failed to recognise and protect Māori customary title over those lands investigated by the Court; extinguished that customary title; resulted in individual titles being issued to those lands; and facilitated the purchase of land by the Crown and private purchasers, thus prejudicing Wairarapa ki Tāmaki-nui-ā-Rua Māori (SOC 1A: 24.4, 24.4.3; SOC 1B: 146, 148; SOC 2: 7.0, 7.2(a, d); SOC 3: 39, 45.1(a); SOC 4: 47.5; SOC 8: 6.3.2.1-3).

7.1.7 The Crown failed to ensure that the determination of interests in land accorded with Māori custom, as the Native Land Acts wrongly provided that customary title could only be recognised by individual interests in land, and failed to provide for land to be held and managed by iwi or hapū according to Māori custom (SOC 1B: 148; SOC 4: 38, 42(a), 45(b); SOC 5: 20.2, 20.4.5, 20.6(a)).

7.1.8 The Native Land Court's recognition of fee simple interest in land only, which did not take into account other forms of interests such as occupation rights, wrongly elevated the claimed interests of some Māori into fee simple interests (SOC 4: 45(b)).

7.1.9 Despite the collective nature of traditional ownership, the individuals granted title by the Native Land Court were almost always granted legal ownership free of any trust. The Crown failed to ensure that those listed as owners understood that they owned the land as trustees for the benefit of others and acted as such (SOC 5: 20.2.1; SOC 8: 7.3.5).

7.1.10 The owners recorded on the title as a result of individualisation were not always those with the strongest claim to the land: the Native Lands Act 1865 allowed any party claiming an interest to initiate proceedings to have a block's title determined by the Court; other parties were then forced to take part or risk losing their rights;

that land was often submitted to the Court for title determination by those with 'doubtful interests'; and Wairarapa Māori with strong claims, but who boycotted the Court to show their lack of support for it, did not have their claims considered and were excluded from title awards (SOC 1B: 33(f); SOC 4: 42(e), Memorandum of further particulars 22.9.03, paragraph 16).

7.1.11 The Native Land Court process wrongly allowed any individual to put land through the Court so that others with interests in the land were forced to participate in the process or not have their claim to the land considered (SOC 4: 39(b), 42(f)).

7.1.12 The Native Land Court imposed the Pākehā adversarial system of determining title that resulted in arbitrary decisions contrary to the correct approach to determining customary interests. It also led to bitter contests, sometimes prolonged, and between close relatives (SOC 4: 45(a); SOC 8: 7.3.3).

7.1.13 The Crown's implementation of the '10-owner' rule saw owners with interests not being legally recognised, resulting in a loss of mana and tino rangātiratanga. This facilitated the alienation of Wairarapa ki Tararua land (SOC 1A: 26.3; SOC 2: 7.1.3(a, a: i-ii), 7.2(b); SOC 4: 42(d); SOC 8: 7.3.4).

Rangitāne o Tāmaki-nui-ā-Rua Some '10-owner rule' blocks
Te Ahuaturanga
Maharahara
Ngamoko (Manawatu No 5)
Rakaiatai (Manawatu No 7)
Te Ohu (Manawatu No 3)

7.1.14 The process of individualisation imposed by the Native Land Court resulted in:

7.1.14.1 the destruction of traditional leadership and damage to social structure and organisation for Wairarapa ki Tāmaki-nui-ā-Rua iwi, hapū and whānau (SOC 1A: 24.4, 24.4.1; SOC 2: 7.2(c); SOC 3: 45.5(a, b, c); SOC 5: 20.6(c, d)).

7.1.14.2 the inability to utilise and develop remaining lands effectively, and to participate in the settler economy on terms preferred by them (SOC 1A: 24.4, 24.4.2; SOC 4: 42(c), 47.4).

7.1.14.3 uneconomic land holdings which were impractical to develop or which were ultimately alienated to surrounding landowners (SOC 4: 42(c)).

7.1.14.4 One example is the case of the 7200-acre Pahaoa block, which was subdivided into 10 pieces with a total of 98 owners in 1890. Individualisation of title enabled the partitioning out of individual interests in Pahaoa and the subsequent sale of those interests. The fragmentation of the block as a result of partitions led to smaller holdings of reducing economic value. The size of the interests held by Māori meant that owners were able to realise an economic return on their land only through sale or long term lease to local run holders. Of the

approximately 7200 acres originally reserved to Ngāti Hinewaka, most has now been sold and only 10 small areas remain in Māori ownership ranging in size from 2 to 153 acres. The total land remaining is 395 acres or 4 percent of the original block reserved (Memorandum of further particulars, 22.9.03, paragraph 15).

7.1.15 By imposing individualisation of title and the Fenton succession regime, the Crown failed to protect customary rights and customary ownership of land by Ngāti Hinewaka (SOC 4: 42(b).

Native Equitable Owners Act 1886

7.1.16 The Crown implemented the Native Equitable Owners Act 1886, the aim of which was to allow those with an interest in land to apply to have the ownership lists adjusted to include more than 10 owners. The Act only served, however, to further individualise and fragment the title to Māori land, thereby facilitating further alienation of the land (SOC 8: 7.3.6, 7.3.6.6-9, 7.3.6.12).

Ngāti Kahungunu o Tāmaki-nui-ā-Rua (SOC 8)
Piripiri
Tahoraiti No 1
Tahoraiti No 2

7.1.17 The Native Equitable Owners Act could not apply if the land in question had already been subject to an alienation and this occurred in the case of Oringi Waiaruhe (SOC 8: 7.3.6, 7.3.6.4).

7.1.18 In the 1897 Tahoraiti Equitable Owners case, the Native Land Court found that earlier courts had been notorious for treating as a 'dead letter' the provisions of the Native Lands Act 1865, which required the Court to ascertain all of the owners. The implication of this finding was that none of the Tāmaki-nui-ā-Rua blocks that passed the Native Land Court during the early period were dealt with according to the law (SOC 8: 7.3.6.9-11).

Notification/location/timing

7.1.19 The Native Land Court encouraged the extinction of Māori customs, social order, authority and leadership, for example by failing to carry out proper and adequate title investigations, when it investigated large blocks within a few days and in a cursory manner.

7.1.19.1 The Court allowed inadequate time to hear evidence of ancestral occupation, thus leading to errors such as the exclusion of the Okurehe papakāinga situated on the Mangatoro block (SOC 2: 7.1.3(b, b: i, b: ii).

7.1.20 The Crown failed to ensure that the Native Land Court conducted its hearings and dealt with administrative matters in a timely and organised manner to the extent that Tāmaki Māori were prejudiced by the Native Land Court's failure to hear

applications, issue Crown grants, and ensure that proper surveys were completed (SOC 8: 7.3.8).

7.1.21 Kaitoki contains 16,292 acres and has a papakainga known as Hautotara that is important to Tāmaki Māori. The first sale of land to a private purchaser was illegal as it took place prior to the completion of a certified survey, which was required before a transferable title could be issued. At 1900, 12,250 acres of Kaitoki was sold. Approximately 6 percent of Kaitoki remains in Māori ownership today (SOC 8: 7.3.9.5-7.3.9.7).

7.1.22 The Native Land Court failed to adjourn the 1871 court hearings for the southern portion of the Seventy Mile Bush when it was clear that inclement weather precluded the attendance of several significant right-holders, most notably Nireaha Tāmaki (SOC 2: 7.1.3(e)).

7.1.23 The Native Land Court process was unfair and prejudicial to Ngāti Hinewaka in that the Court failed to give adequate notice of hearing to Ngāti Hinewaka, the hearings were held at inconvenient venues, at inconvenient times and for inconvenient periods of time, which meant that Ngāti Hinewaka were unable to participate fully in all hearings (SOC 4: 40, 40(d, e)).

Kaiparoro and Oringi Wahiaruhe

7.1.24 In 1892, the Crown ignored the parliamentary petition of Tāmaki Māori for compensation for a 5184-acre block, later Mangatainoka L, which had been overlooked by the Native Land Court in its partition of the Seventy Mile Bush blocks in the 1870s and 1880s. Further, the land in question was incorrectly proclaimed for settlement as part of a composition block of 20,000 acres known as Kaipororo (SOC 8: 7.3.9.1-2).

7.1.25 At great expense, from 1893 Tāmaki Māori continued to oppose the Crown's actions, and Nireaha Tāmaki brought an action in the Supreme Court seeking recognition of his ownership of the 5184 acres. In 1901, the matter was taken to the Privy Council, which found in favour of Nireaha Tāmaki (SOC 8: 7.3.9.3).

7.1.26 Pursuant to the Native Land Claims Adjustment and Laws Amendment Act 1901, the Crown made a one-off compensation payment of £5000. Cross claims were made by other Māori to the compensation, but these were resolved in 1904 (SOC 8: 7.3.9.4).

7.1.27 In January 1870 Tāmaki Māori applied for a rehearing of the Oringi Wahiaruhe investigation of title by the Native Land Court in 1867, claiming that they had been wrongly left out of the grants. The Native Land Court did not rehear the investigation (SOC 8: 7.3.6.2).

7.1.28 In 1876 Tāmaki Māori again applied to Court seeking subdivision of the block, to divide some owners' interests from those that had been leased to the

Superintendent of Napier. However because none of those seeking the subdivision were on the Crown grant, the Court refused to hear the application (SOC 8: 7.3.6.3).

Judges and legal representation

7.1.29 The Native Land Court employed Judges who were poorly qualified and biased, or who had the appearance of bias, and the Crown failed to provide Māori with access to a properly qualified judiciary like the one provided to Pākehā (SOC4: 40(a)).

7.1.30 The Native Land Court imposed a complex legal process without providing representation for Ngāti Hinewaka for any of their appearances (SOC 4: 40(b)).

Translation

7.1.31 The Crown failed to translate into Māori, or to circulate legislation affecting Wairarapa Māori, and failed to conduct Court business in Māori, forcing Wairarapa Māori, including Ngāti Hinewaka, to rely on the interpretation of self-interested Crown agents (SOC 4: 40, 40(c)).

Court and hearing costs

7.1.32 Wairarapa ki Tāmaki-nui-ā-Rua Māori were prejudiced by the nature of the Native Land Court system imposed by the Crown from 1862, including the inconvenience of participating and the high costs of the process, such as Court and survey costs; legal, land agents', witnesses' and interpreters' fees; food, accommodation and travelling expenses; and the costs of being absent from usual work duties during hearings, many of which were held outside the Wairarapa. The resultant debts and survey liens facilitated the alienation of Wairarapa ki Tararua land (SOC 1A: 24, 24.1, 24.2, 25.1; SOC 3: 45.6(a, b, c, d); SOC 4: 41(a, c); SOC 5: 20.2.3, 20.4.1, 20.4.2; SOC 8: 7.3.3, 7.3.7; SOC 12: 8(A & D); SOC 15: 17).

Ngāti Hinewaka (SOC 4)	**Te Karaitiana Te Korou Whānau (SOC 12)**		
Matakitaki a Kupe	Akura	Kai o Te Atua	Kurumahinono
	Manaia	Mangapokia	Mataikona
	Nga Umu Tawa	Ngaipu	Okurupatu
	Taumataraia	Te Ahitainga	Te Kohutu
	Te Oreore	Te Weraiti	Waipoua
	Whangaehu	Whangaehu No 2	Tararua
	Whareama	Rangataua	Opaki

7.1.33 Wairarapa ki Tāmaki-nui-ā-Rua Māori were also prejudiced by legal burdens imposed through the Native Land Court system including: a 10 percent duty on the sale of Native land; survey inspection fees where the title was not available; and

the inability to set aside Crown Grants where these had been incorrectly issued (SOC 1A: 24.3, 24.3.1, 24.3.2, 24.3.3; SOC 5: 20.4.3, 20.4.4).

Response to Native Land Court process problems

7.1.34 The Crown failed to take active steps itself, whether by legislation or otherwise, to remedy errors of the Native Land Court and instead enacted legislation such as the Native Land Act Amendment Acts 1877 and 1878, which made the investigation and amendment of Native Land Court findings more difficult (SOC 4: 46; Memo of further particulars 22.9.03: paragraph 20).

Partitioning, fragmentation and succession

7.1.35 The individualisation of land title led to fragmentation of ownership, partitioning and alienation of land. From 1900, the Crown failed to prevent further subdivision and fragmentation of Wairarapa ki Tararua land as a result of the Native Land Court system (SOC 1A: 30, 30.1; SOC 1B: 148; SOC 2: 7.2(e), 12.1.2(a), 12.2(d); SOC 3: 45.5(d); SOC 4: 42; SOC 8: 6.4; SOC 15: 15, 16).

Ngāti Hinewaka, Nga Aikiha and Ngāti Moe (SOC 15)
Matikitiki

7.1.36 Māori customary rules of succession were significantly modified by the Native Land Court, and outcomes in that Court did not reflect a tikanga-based view of succession when it ought to have (SOC 12: 9(A)).

7.1.37 In February 1877 the owners of the Mangatoro, an important block for Tāmaki Māori with two papakainga sites; Ohurehe and Okarae, applied to have the block partitioned. The Court failed to hear the partition application. As a result Ohurehe and Okarae were not partitioned out nor recognised as reserves. In the 1880s the Bank of New Zealand entered into possession of the lease over the block and purchased much of the block including Okurehe (SOC 8: 2.3.8.21-2.3.8.23).

<u>Anaru whānau</u>

7.1.38 The Crown failed actively to protect the descendant whānau of Pahira Anaru when it enacted section 188 of the Native Land Act 1931 and section 81(a) of the Māori Land Amendment Act 1967, under which succession orders were made by the Māori Land Court that allowed the ancestral land of the whānau to be alienated to alienees who cannot whakapapa to the ancestral lands of the whānau and who are absentee owners.

7.1.38.1 To their economic, cultural and spiritual detriment, the whānau have been prevented from acquiring any ancestral land interest in Te Ewe Anaru's share interest (SOC 11: 2, 8, 10, 13, 14).

Randell whānau

7.1.39 The Crown has failed to guarantee the forbears of the Randell whānau rangātiratanga over, and the rights of ownership to real property, to which they were entitled by Māori custom. It has also thereby failed actively to protect their taonga (SOC 17: 5N).

7.1.39.1 Māori customary rules of land tenure and succession were significantly modified by the Native Purposes Act 1941 and the Māori Affairs Amendment Act 1967 and the Administration Act 1952, which did not reflect a tikanga-based view of succession when they ought to have. This was unfair, in that it derogated from the tikanga in the case of succession (SOC 17: 5A, 5L(i)).

7.1.39.2 The transfer of interests on intestate succession alienated Part Papawai 4A2 block, the papakainga land, to Taiawhio Waaka (Tehere Randell's husband) and out of the control of those who should have been the rightful owners of the land (namely Michael Edward Randell and his whānau, the descendants of Tehere Stella Waaka (nee Manihera) (SOC 17: 5B, K).

7.1.39.3 Te Ture Whenua Māori Act 1993, whilst providing in section 44 for applications to be made to the Chief Judge to remedy historic errors in certain cases, provides no remedy for the case of the Randell whānau (SOC 17: 5M).

NB: Please note that Native Land Court issues specific to the Jury, Korou and Matua whānau are addressed separately below in Issue Nos. 28, 29 and 30 respectively.

7.2: The Crown responds:

Purpose

7.2.1 Admits the establishment of the Native Land Court under Native Land legislation and that the effect of issuing a Crown Grant in substitution for customary modes of ownership was the extinction of native title and its conversion into titles derived from the Crown, but states that these objectives were not ends in themselves (SOR 1B: 144; SOR 5: 17.1).

7.2.1.1 Denies that the purpose of granting these individual titles was to facilitate the alienation of Māori land and states that with the exception of a brief period, the Native Land legislation consistently provided the opportunity for owners to select a form of communal title. Contemplates further research to understand the choices available to Māori and the outcomes of those choices with a view to assessing the nature of any prejudice suffered (SOR 1B: 29.5, 143; SOR 8: 8.1.1).

7.2.1.2 Denies that it enacted the Native Lands Acts, including those of 1862 and 1865, to defeat chiefly Māori authority and traditional iwi and hapū systems of land tenure and management in order to facilitate the alienation of Māori land (SOR 4: 33).

7.2.1.3 Denies that it enacted the Native Land Acts to facilitate the alienation of Māori land for the purpose of colonisation and settlement. Otherwise is not required to plead (SOR 1B: 143; SOR 4: 33; SOR 12: 26).

7.2.2 Denies that it did not consult with Māori, in so far as this is a comment of general application. Accepts, however, that it did not directly consult with Tāmaki-nui-ā-Rua Māori. Is still considering the reception of the Court by Wairarapa ki Tāmaki-nui-ā-Rua Māori (SOR 1B: 146; SOR 2: 7.1.1; SOR 3: 39.1.1; SOR 8: 8.1.5).

7.2.3 States that responses to the Native Land Court varied over time but denies that the allegation that the Crown imposed the Native Land Court system on Ngāti Hinewaka contrary to their wishes, accurately represents the original reception of the Court in the Wairarapa (SOR 4: 35).

Determination of title

7.2.4 (a) Admits that non-resident chiefs were among those listed on the title in Wairarapa lands, including the southern portion of Seventy Mile Bush, but denies that this excluded those who had stronger claims to the land (SOR 1B: 29.6).

(b) Admits that there were Manawatu and Hawke's Bay rangātira grantees in various Tāmaki-nui-ā-Rua blocks, stating that these rangātira were connected to those residing on the land and in some cases were regarded by resident Māori as leaders whom they wished to represent them. Admits that Aperahama Rautahi was

not a grantee of Maharahara and Ahuatanga blocks (SOR 2: 7.1.14, 7.1.15; SOR 8: 9.1.1).

7.2.5 States that it was the duty of the Native Land Court, not the Crown, to ascertain the customary owners of this land. Denies that it failed to ensure that the Court identified all people with an interest in Tāmaki-nui-ā-Rua lands, and that such people were aware of, and consented to, the alienation of lands before confirming any such alienation (SOR 8: 9.1.2, 9.1.38).

Individualisation

7.2.6 (a) Notes that the mere process of investigation of title did not, of itself, result in the extinguishment of native title, but admits that this result could flow from investigation. States that the outcome of the process depends partly on the applicable legislation (SOR 1B: 145).

(b) States that 'Native title' or customary ownership was necessarily extinguished by issuing of Crown-derived titles but it is not apparent that this in itself was prejudicial (SOR 1A: 19.6.3).

(c) States that the process of title investigation did not inevitably result in 'individual' titles being issued, and raises a question as to the meaning of the term 'individual titles' (SOR 1B: 145.1).

(d) Admits that it was possible to sell land that had been clothed in title by the Native Land Court, but denies the generalised implication that the workings of the Native Land Court compelled Māori to sell (SOR 2: 7.3).

(e) States that one of the functions of the Native Land Court was to investigate the title to customary land and to recommend that restrictions on alienation be imposed where the declared owners so wished. As regards specific Tāmaki-nui-ā-Rua blocks, the Crown has not yet researched all the blocks concerned, and does not plead at this stage (SOR 3: 39.1; SOR 8: 8.1.3).

7.2.7 (a) Denies that the Native Land legislation individualised customary rights in the sense argued for by the claimants, or that the legislation failed to provide for land to be held corporately, that is, to be held by the community of owners who wished to act collectively and continue to act collectively.

(b) States that the claimants appear to consider the mere recording of all persons having customary rights in a block of land as the individualisation of those rights. Regards that definition as unsatisfactory, and prefers to define individualisation as the ability of an individual owner to sell, lease or otherwise deal with his or her interest without reference to the remainder of the community of owners (SOR 4: 34, 38, 38.2).

7.2.8 As regards the allegation that the Court wrongly created only fee simple interests in land, states that the Court process was fundamentally concerned with organising Māori land claims into a new form of tenure. Says that this allegation does not concern itself with Māori understanding of, and consent to, the compromises required by the conversion process and that it also overlooks the fact that the weighting of claims to land could be reflected in agreements or determinations concerning relative interest (SOR 4: 41.1).

7.2.9 As regards individuals almost always being granted legal ownership free of any trust, says generally that it does not accept that the Native Land legislation individualised customary rights in the sense argued for by the claimants, or that the legislation failed to provide for land to be held corporately. As regards the claim that the Crown failed to ensure that those who were listed as owners of Māori land understood that they owned the land as trustees for the benefit of others and acted as such, the Crown notes that the allegation is not particularised sufficiently for it to be able to respond (SOR 4: 34, 38; SOR 5: 17.2; SOR 8: 9.1.5).

7.2.10 As regards the claim that the owners recorded on the title as a result of individualisation were not always those with the strongest claim to the land, states that the Native Land Court was fundamentally concerned with organising Māori claims to land into a new form of tenure (SOR 4: 41.1).

7.2.11 (a) Denies that under its Native Land legislation, an individual Māori could always apply to have his or her claim to land investigated without the consent of their hapū or community or others who might be interested in the land. Says further that the rules governing who could apply for a title investigation were modified from time to time to circumscribe the ability of an individual to press for the investigation of title, where there was reasonable opposition to the application. Moreover, applications made by individuals were often made by chiefs on behalf of a hapū, or community, or group, as is regularly evidenced by the Court's minutes. Notes that the claimants do not particularise cases where individuals were acting solely in their own cause (SOR 4: 38.7).

(b) Admits, however, that after the first Native Lands Act was enacted, it was necessary to submit claims to land to the Native Land Court to obtain a title under the Act and further admits that Ngāti Hinewaka would have been obliged to participate in the Native Land Court to secure their claim to land where that land was claimed by other Māori (SOR 4: 35.2).

7.2.12 As regards the claim that the Crown imposed the Pākehā adversarial system of determining title, rather than Māori systems, the Crown notes that it is still developing its understanding of how Wairarapa Māori used the Native Land Court but says, however, that this allegation is unlikely to be admitted as a statement of general application. Requires further particularisation for the allegation relating to bitter and long-standing legal proceedings between close relatives (SOR 4: 41; SOR 8: 9.1.3).

7.2.13 Admits that the Native Land legislation provided several options and that one option, section 23 of the Native Lands Act 1865, contained a restriction on the number of people (a maximum of 10) who could be registered as owners. This section might be applied in such a way that others having customary rights in the land were excluded from the award of title and, as a result, were prejudiced if the land was transferred without their knowledge and consent and without their participating in the benefits of the transfer. While the Crown is aware of the potential for prejudice under the rule, it is not aware of the degree of actual prejudice arising in the inquiry district. Admits, however, that most of the Tāmaki-nui-ā-Rua land blocks had 10 or fewer grantees, and that this applied to the examples cited in SOC 8: 7.1.3(a:ii). Contemplates further research relating to this issue (SOR 2: 7.1.9-11; SOR 4: 38.5; SOR 8: 9.1.4).

7.2.14 See responses immediately below:

7.2.14.1 States that the issue of traditional authority and the influence of the Native Land Court needs to be assessed with reference to, firstly, the process of social change before the advent of the Native Land Court and, secondly, factors other than the Native Land Court that affected the organisation of Māori society in the nineteenth century. Notes that the claimant evidence does not address the question of the effect of the individualisation process imposed by the Court from this perspective. Prefers to ground any discussion of the relationship between the Native Land Court and social change in the Wairarapa area in research still to be conducted (SOR 1A: 19.6.1; SOR 4: 38.2).

7.2.14.2 For the allegation of the inability to utilise remaining lands effectively, the Crown states that the objective of the Native Land legislation was to provide titles that would enable Māori owners, or their successors in title, to utilise their lands effectively. Accepts, however, that the quality of the title options provided by the legislation is a significant issue. (SOR 1A: 19.6.2).

7.2.14.3 Refers to its response in 7.2.7 above and 7.2.35 below (SOR 4: 38.4).

7.2.14.4 See response for 7.2.3.

7.2.15 Refers to response in 7.2.7 above and says further, as a general observation, that the replacement of customary modes of ownership with title conferred by the Crown necessarily changed the manner of ownership, but need not have been destructive of rights to the land. It was an attempt to introduce certainty and definition of ownership, and to guarantee that ownership. As earlier noted, the allegation that this conversion was opposed by Māori does not, at this stage, appear to be soundly based (SOR 4: 38.3).

Native Equitable Owners Act 1886

7.2.16 Admits that the Native Equitable Owners Act 1886 was intended to remedy the potential for prejudice arising from the misapplication of the 10-owner rule under

the 1865 Act but denies that the Act only served further to individualise and fragment the title to Māori land, thereby facilitating further alienation of the land (SOR 8: 9.1.6).

7.2.17 Admits that the Native Equitable Owners Act could not apply if the land in question had already been subject to a sale, and that this occurred in the case of Oringi Waiaruhe (SOR 8: 9.1.10).

7.2.18 States that in the 1897 Tahoraiti Equitable Owners case, Judge Gudgeon observed that earlier Courts had failed to ascertain all of the owners, which he believed was a requirement of the 1865 Act. Observes that under Native Land legislation, Māori communities were always able to settle disputes and make other types of voluntary arrangements. Notes that it has yet to refine its understanding of how claimants presented their claims to the Tāmaki-nui-ā-Rua blocks (SOR 8: 9.1.16-17).

Notification/location/timing

7.2.19 As regards the investigation of large blocks within a few days and in a cursory manner, the Crown notes that it is still examining the circumstances of the blocks referred to, but should not be understood as accepting at this stage that the investigation of title was improper.

7.2.19.1 Admits that the investigations were of short duration, but notes that this in itself is not an indication of impropriety. States further that the failure to reserve separately the Okurehe kāinga from the lease could have been corrected by a variation of lease, and rectification of this was not dependent on partition of the land by the Court (SOR 2: 7.1.12, 7.1.13).

7.2.20 Denies that it failed to ensure that the Native Land Court conducted its hearings and dealt with administrative matters in a timely and organised manner, to the extent that Tāmaki Māori were prejudiced by the Court's failure to hear applications and to issue Crown grants (SOR 8: 9.1.37).

7.2.21 (a) Notes that the Native Land Court Order dated 10 January 1867, for a certificate of title to issue, records the acreage at 16,045 acres. (See Berghan Supporting Papers, vol 2, p 670.) Does not plead to the importance of the Block due to insufficient knowledge (SOR 8: 9.1.43.

(b) Observes that the allegation is made on the assumption that a survey was not undertaken or a title issued. Questions the correctness of this assumption as the 1873 Native Land Court Order in the Berghan Supporting Papers records that a Crown Grant issued on 22 June 1868. (Berghan Supporting Papers, vol 2, p 671.) Says that in these circumstances the sale referred to was not necessarily illegal (and observes, at the same time, that the date of the sale is not noted in the allegation) (SOR 8: 9.1.43-44).

(b) Admits that at 1900 the total area of Kaitoki sold was 12,250 acres. Does not plead to the second sentence due to insufficient knowledge (SOR 8: 9.1.45).

7.2.22 Denies that the Court failed to adjourn the 1871 hearings when it was clear that inclement weather precluded the attendance of several significant right-holders, most notably Nireaha Tāmaki, and states that the hearings were adjourned on 31 August to allow time for Māori delayed by the weather to appear (SOR 2: 7.1.16).

7.2.23 Is still examining the issue of whether hearings, venues and times were inconvenient for Ngāti Hinewaka, which meant the hapū was unable to participate fully in all hearings. Present indications are that these allegations are unlikely to be accepted (SOR 4: 36.6, 36.7).

Kaiparoro and Oringi Wahiaruhe

7.2.24 (a) Admits that Huru Te Hiaro and two others petitioned Parliament alleging that through a survey error, a 5180-acre piece of land between Kaihunu [sic] and Mangatainoka blocks had been wrongfully taken from them, and asking for compensation. Admits that it advertised the Kaipororo block lands for sale or lease.

(b) Is yet to research its response to the petition and to refine its understanding of the history leading to the *Nireaha Tāmaki* v *Baker* case and the subsequent settlement and does not plead to the claim relating to the Native Land Court overlooking a 5184-acre block, later Mangatainoka L (SOR 8: 9.1.39; 9.1.40, 9.1.40(a)).

7.2.25 Admits that Nireaha Tāmaki brought an action in the Supreme Court regarding the 5184 acres and that the matter was ultimately heard by the Privy Council which found that Nireaha Tāmaki was entitled to sue for an injunction and that the Court had jurisdiction to decide whether the Commissioner of Crown Lands' [Baker] actions were within his statutory powers (SOR 8: 9.1.41).

7.2.26 Admits that pursuant to the Native Land Claims Adjustment and Laws Amendment Act 1901, the Crown made a one-off compensation payment of £5000 and that that cross claims made by other Māori to the compensation were resolved in 1904 (SOR 8: 9.1.42).

7.2.27 Admits that the rehearing requested by Te Otene Matua and four others was not granted. Observes that the request demonstrates that the applicants for the rehearing had made an arrangement with others having customary rights in the land that 10 persons would be placed on the title with the intention that they would be representatives for those others who held rights in the block. Says that it is also apparent that Te Otene Matua and the others requested a rehearing some three years after the title investigation because those placed on the title had apparently failed to share the rent. Notes that the period allowed for a rehearing – 6 months – had long expired (See section 81 of the Native Land Act 1865). Also notes that Chief Judge Fenton, when declining to recommend the very late application for a

rehearing, requested that Te Otene Matua be informed that Mr Heaphy would shortly be visiting the district with a view to having communities perfect informal trusts by way of formal trust deeds (See Berghan Supporting Papers, vol 5, pp 2223-24), (SOR 8: 9.1.8).

7.2.28 Admits that in 1876 Tāmaki Māori again applied to Court seeking subdivision of the block, to divide some owners' interests from those that had been leased to the Superintendent of Napier. States that, however, because none of those seeking the subdivision were on the Crown grant, the Court refused to hear the application (SOR 8: 9.1.9).

Judges and legal representation

7.2.29 (a) Denies that the Native Land Court employed Judges who were poorly qualified or biased or who had the appearance of bias, and that the Crown failed to provide Māori with access to a properly qualified judiciary like the one provided to Pākehā.

(b) Says further that in the early decades of the regime, Native Land Court judges were selected on the basis of their knowledge of Māori custom and language and that these judges were assisted by Māori assessors. In the latter part of the nineteenth century, newly appointed judges were qualified in law. Says that this change in appointment reflects in part the greater administrative role of the Court over Māori land (SOR 4: 36).

7.2.30 Says that the claim made here does not make clear the circumstances in which the claimants assert that the Crown ought to have provided representation for Ngāti Hinewaka. Says further that in response to repeated requests from Māori, section 44 of the Native Land Act 1873 prohibited lawyers and agents from representing claimants, and provided for Māori to appoint their own conductors. Observes that it is clear from the subsequent history of legislation that the control and regulation of representation remained a difficult issue for the Crown. Is still refining its understanding of how Wairarapa Māori made use of the Native Land Court (SOR 4: 36.1-36.4).

Translation

7.2.31 Denies that it failed to translate into Māori or to circulate legislation affecting Wairarapa ki Tāmaki-nui-ā-Rua Māori, and that it failed to conduct Court business in Māori, forcing Māori to rely on the interpretation of self-interested Crown agents (SOR 4: 36.5).

Court and hearing costs

7.2.32 (a) States that it is still considering its response concerning the costs imposed by the Native Land Court system, but makes the general preliminary observation that the evidence falls short of establishing that the overall cost and inconvenience of the process could be considered excessively high.

(b) As a general proposition, considers that the Court fees charged were not substantial relative to either the intrinsic value of the subject matter of the application, or the running of the Court.

(c) Accepts as a general proposition that survey costs were often significant relative to the value of the land and acknowledges that they were sometimes a burden for Māori.

(d) Notes that the Matakitaki a Kupe block was not forcibly sold to settle the survey costs, but rather that the owners appear to have had a management plan that included the sale of a small part of the block (on which Pharazyn had his homestead) and the leasing of the remainder. States that the sale proceeds and first year rents were sufficient to clear the whole of the survey costs.

(e) States by way of a preliminary response that the relationship between debt and alienation by sale or lease, is often complex, and it is likely that this issue will require further consideration. Observes that it is apparent that Māori land was often not liable for the recovery of debt, yet Māori communities sometimes purposely alienated land to honour debt that had not been incurred as a result of the Court's title investigation process (SOR 1A: 19.3, 19.4, 21.2; SOR 4: 37, 37.1, 37.2, 37.6; SOR 8: 9.1.27, 9.1.28; SOR 12: 21.1, 24; SOR 15: 13, 13.1, 13.2).

7.2.33 Admits that the duty imposed by private purchasers of Māori land may in certain circumstances have had an influence on prices offered. Denies that there was a survey inspection fee where title was not available, and observes that the source relied upon does not demonstrate the accuracy of the allegation. As regards the claim relating to the inability to set aside Crown Grants incorrectly issued, the Crown says that the allegation is obscure and cannot be responded to (SOC 1A: 19.5, 19.5.1, 19.5.2).

Response to Native Land Court process problems

7.2.34 Notes the further particulars provided for the allegation that the Crown failed to take steps to remedy errors of the Native Land Court in paragraph 20 of the Memorandum of Counsel for Ngāti Hinewaka of 22.9.03 (SOR 4: 42). No other response to allegation.

Partitioning, fragmentation and succession

7.2.35 (a) Admits that all Māori land legislation provided for the partition of Māori land but states that the history of legislation regarding partitioning is complex, and that at times purchasers of individual interests in Māori freehold land could partition out their interests, whereas at other times they could not.

(b) Accepts that rights of succession resulted in enlarged communities of owners and that some of these were sometimes unable to cohere in the management or utilisation of their land, while other communities did have that

capacity. Considers that that there is no simple solution to the problem of ever-increasing numbers of owners via rights of succession, as is evidenced by the development in its Native land legislation of an expanding range of title options for the more effective management and utilisation of multiple-owned land (SOR 4: 38.1).

(c) States that 'fragmentation' refers to a trend that might better be described as the increasing fractionalisation of each recorded owner's interests through rights of succession over generations, which resulted in an ever increasing number of owners having rights in the land (SOR 4: 38.1).

(d) Notes that title to the Matakitaki block was awarded to 10 owners in 1870 and that the owners partitioned the block amongst themselves in 1890, and that the first sales did not occur until several years later and were between Māori (SOR 15: 12.3).

(e) As regards further subdivision and fragmentation after 1900, the Crown says that for Rangitāne it is still examining these allegations and does not plead at this stage (SOR 2: 12.1.2).

7.2.36 Admits that the Native Land legislation allowed for limited modification of the customary rules of succession in that it provided for rights of succession to be ascertained 'according to law, as nearly as it can be reconciled with Native custom' (section 30 of the Native Lands Act 1865) (SOR 12: 27.1-2).

7.2.37 (a) Admits that papakainga of Okurehe and Okarae were situated on the Mangatoro block. Has insufficient knowledge about the importance of the whole block to Tāmaki Māori and therefore does not plead (SOR 8: 4.1.33).

(b) Admits that on February 1877 the owners of Mangatoro applied to the Court for a partition of the block and that the application does not appear to have been dealt with by the Court at that time. Has insufficient knowledge as to the reason for this and therefore denies that this was due to a failure of the Native Land Court. Has insufficient knowledge as to whether the reason for the partition application in 1877 was a desire to set aside Okurehe from the rest of the block. An application for partition of the block was heard on 16 September 1891 with the block being partitioned into four separate areas. Has insufficient knowledge as to whether Okurehe and Okarae were contained in one of the partitioned blocks and therefore denies that Okurehe and Okarae were not partitioned out nor recognised as reserves.

(c) Admits that in the 1880s the Bank of New Zealand entered into possession of the lease over the block after the lessee, Hamilton, was unable to repay his loans to the bank. Admits that the BNZ purchased much of the block but has insufficient knowledge as to whether Okurehe was purchased by the BNZ and therefore does not plead to this. States further that it appears that the lease between Hamilton and the Mangatoro owners was on the basis of an understanding that certain areas of

Okurehe were excluded but that this understanding was either not known to or not accepted by the BNZ when it succeeded to the Hamilton lease (McBurney, #A47, pp 324-325).

Anaru whānau

7.2.38 As regards the succession to Te Ewe Anaru's interest in the share interest of Pahira Anaru, accepts that certain land interests were once held by Te Ewe Anaru and, on his death, were transmitted to his wife Katarina Anaru pursuant to his will and with the consent of his kin. Accepts that beneficiaries of the estate of Katarina Anaru were not progeny of Pahira Anaru, according to the whakapapa provided in the claim (SOR 11: 12.1-2).

7.2.38.1 Denies that the beneficiaries are absent owners who cannot whakapapa to the land blocks, on the basis that it has no knowledge of the tribal affiliations of these people (SOR 11: 2).

Randell whānau

7.2.39 (a) Not required to plead but states that it does not currently consider that, as a matter of law, the succession provisions in place at the time of the death of Tehere Stella Manihera are the critical matter. Its preliminary view is that the critical act in the events outlined in SOC 17 was the vesting of land jointly under section 7 of the Māori Purposes Act 1941. Under that section, the class of permitted alienees was limited to 'any Native'.

(b) Notes the differing intestacy succession provisions relating to spouses in legislation from the Native Land Act 1931 through to Te Ture Whenua Māori Act 1993. Under the legislation at the time of Tehere Stella Manihera's death, the distribution provided for one third of the estate to go to the surviving spouse and two thirds on trust for the issue of the person dying intestate, but claims could be made to the High Court under the Family Protection Act 1955. States that it is still considering its position on this matter (SOR 17: 15.1-3).

7.2.39.1 (a) States that significant tenurial reform was brought about by Māori land legislation that was fundamentally concerned with organising Māori claims to land into a new form of tenure. This statement cannot be isolated from the contextual reasons for tenurial reform, including economic, technological and political changes; and the developments in the legislation over time.

(b) Notes that the allegation does not concern itself with the question of Māori understanding and consent to the compromises required by the process of tenure conversion. Is still developing its understanding of how changes in tenure impacted on Māori in the inquiry regions and the present indications are that this allegation is unlikely to be admitted as a statement of general application (SOR 17: 5-5.3).

7.2.39.2 (a) Notes that Papawai 4A2 was vested jointly in Tehere Waaka and Taiawhio Waaka under section 7 of the Māori Purposes Act 1941 and that the opportunity to vest the land as tenants in common was not taken up. Notes that this choice is relevant to the subsequent succession of Taiawhio Waaka. Says further that no evidence has been submitted showing if or when separation or dissolution of the marriage occurred.

(b) States that this is a complex matter of law to which it is not required to plead but says, however, that its preliminary thinking is that due to Tehere Stella Waaka choosing to vest Papawai 4A2 in joint tenancy, and due to there being no apparent legal change to this circumstance before her death; her estate held no legal interest in Papawai 4A2 following her death.

7.2.39.3 Not required to plead but makes an observation that Te Ture Whenua Māori Act 1993 intestacy provisions ensure distribution is to the children or through the derivation of entitlement. A surviving spouse may be entitled to an interest for life or until remarriage but cannot succeed to that land absolutely. Elsewhere states further that section 147A of Te Ture Whenua Māori Act 1993 requires that the 'preferred class of alienees', summarised as those with whakapapa interests in the land, be given right of first refusal (SOR 17: 15.2.5, 9.4).

7.3: Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

7.3.1 The Crown established the Native Land Court and the effect of issuing a Crown Grant, after inquiry by the Court, in substitution for customary modes of ownership, was the extinction of native title and its conversion into titles derived from the Crown.

7.3.2 The Crown did not consult with Tāmaki-nui-ā-Rua Māori regarding the establishment of the Native Land Court.

7.3.3 After the first Native Lands Act was enacted, it was necessary to submit claims to land to the Native Land Court to obtain a title under the Act. Ngāti Hinewaka would have been obliged to participate in the Native Land Court to secure their claim to land where that land was claimed by other Māori.

7.3.4 Section 23 of the Native Lands Act 1865 contained a restriction on the number of people (a maximum of 10) who could be registered as owners. This section was capable of being applied so that others with customary rights in land were excluded from title and, as a result, could be prejudicially affected if the land was transferred without their knowledge and consent, and without their participating in the benefits of the transfer.

7.3.5 Most of the Tāmaki-nui-ā-Rua land blocks had 10 owners or fewer.

7.3.6 The Native Equitable Owners Act 1886 was intended to remedy the potential for prejudice arising from the misapplication of the 10 owner rule under the 1865 Act, but could not apply if the land in question had already been subject to an alienation by sale.

7.3.7 In the 1897 Tahoraiti Equitable Owners case, the Judge observed that earlier Courts had failed to ascertain all of the owners, which he believed was a requirement of the 1865 Act.

7.3.8 Legislation required that Māori customary rules of succession be, to some extent, modified by the Native Land Court.

7.3.9 Certain land interests were once held by Te Ewe Anaru and, on his death, were transmitted to his wife Katarina Anaru. Beneficiaries of the estate of Katarina Anaru were not progeny of Pahira Anaru, according to the whakapapa provided in the claim.

7.3.10 The quality and utility of title options provided by the Native Land legislation for Māori retaining their land is a significant issue.

7.3.11 Some Native Land Court investigations of title were of short duration. The significance of this point is not agreed.

7.3.12 Non-resident chiefs were among those listed on the title in Wairarapa ki Tararua lands, including the southern portion of Seventy Mile Bush. Aperahama Rautahi was not a grantee of the Maharahara and Ahuatanga blocks.

7.3.13 Māori petitioned Parliament alleging that, through a survey error, a piece of land of at least 5180 acres in extent between Kaihunu and Mangatainoka blocks had been wrongfully taken from them. The Crown advertised the lands for lease or sale.

7.3.14 Nireaha Tāmaki brought an action in the Supreme Court regarding the 5184 acres. The matter was ultimately heard by the Privy Council.

7.3.15 Under the Native Land Claims Adjustment and Laws Amendment Act 1901, the Crown made a one-off compensation payment of £5000. Cross claims were made by other Māori to the compensation, but these were resolved in 1904.

7.3.16 Survey costs were often significant relative to the value of the land, and were sometimes a burden for Māori.

7.3.17 The duty imposed on private purchasers of Māori land may in certain circumstances have had an influence on prices offered.

7.4: Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

Establishment of the Native Land Court

7.4.1 What were the Crown's purposes in establishing the Native Land Court?

7.4.2 To what extent, if any, did Crown policy as embodied in the Native Land legislation and in the operating of the Court, actively facilitate the alienation of Māori land in the inquiry district for the purpose of settlement and colonisation?

7.4.3 Was the establishment of the Native Land Court contrary to the wishes of Wairarapa ki Tāmaki-nui-ā-Rua Māori?

7.4.4 What was the social and cultural context in which Wairarapa ki Tāmaki-nui-ā-Rua hapū and/or iwi owned and managed land in the 1860s? Were there other social and/or economic factors tending towards changes in the ownership and management of land, at the time of the establishment of the Court? What was the relationship between the operation of the Court and other determinants of social

change? In this context, what were the roles and responsibilities of the Crown in the mid to late nineteenth century?

Individualisation

7.4.5 Were forms of communal title available to Wairarapa ki Tāmaki-nui-ā-Rua Māori through the Native Land legislation? If not, should there have been? If so, were these forms of title explained to Māori, and to what extent were they adopted within the inquiry district? How did the role and actions of the Court itself affect the outcome?

7.4.6 How and to what extent did the operation of the Native Land Court in Wairarapa ki Tararua, and the institution of a system of Crown-derived titles, impact on the exercise of traditional leadership and traditional social structures?

7.4.7 How, at whose wish, and to what extent, was the ownership of land individualised through the Native Land Court system? What impact did this have on Wairarapa ki Tāmaki-nui-ā-Rua Māori?

7.4.8 To what extent, if at all, did the operation of the Native Land Court in Wairarapa ki Tararua lead to an increased level of conflict within and between whānau, hapū and iwi?

7.4.9 Did Crown-derived titles provide for the recognition of a range of customary rights, including shared and usufructuary rights?

7.4.10 To what extent, if any, did applications for title investigation from individual Māori, sometimes non-resident, require Wairarapa ki Tāmaki-nui-ā-Rua Māori to participate in the Native Land Court process against their wishes? To what extent, if any, did the Crown encourage such applications?

Hearings

7.4.11 Were Wairarapa ki Tāmaki-nui-ā-Rua hapū adequately notified of Native Land Court hearings?

7.4.12 Is there specific evidence that the location and timing of title investigation hearings created difficulties for Wairarapa ki Tāmaki-nui-ā-Rua Māori in respect of their attendance for the duration of the process? Was the Crown aware of such difficulties, and did it act to address the problem?

Title investigation

7.4.13 To what extent, if any, did the award of interests to Māori who were not resident in Wairarapa ki Tararua, at the expense of resident Māori, subvert Māori custom and facilitate the alienation of Wairarapa ki Tararua lands?

7.4.14 What effect did the prior negotiation of sales and payment of cash advancements to selected possible right-holders, including non-residents, have on the title options chosen, title investigation, and ultimate decisions of the Court?

7.4.15 To what extent, if any, were Wairarapa ki Tāmaki-nui-ā-Rua Māori who had not accepted cash advances from the Crown prior to hearing prejudiced in title investigation hearings?

7.4.16 What role did the Crown land agents play in the Court process and its decisions?

7.4.17 Did the Crown ensure that the rights of all customary right-holders of Wairarapa ki Tararua blocks were acknowledged when the Native Land Court conducted title investigations?

7.4.18 At the times when the Court had the power of confirming alienations of land, did it ensure that all owners were aware of, and consented to, such alienations?

7.4.19 Did the change from Māori-derived customary authority to Crown-derived land titles have a significant effect on tino rangātiratanga? If so, was the effect serious and was it prejudicial to Māori?

Remedies for Māori aggrieved by title decisions

7.4.20 Did the Crown provide recourse for Māori aggrieved by Native Land Court deliberations and decisions? If so, were those mechanisms suitable to Māori needs? If not, why not?

7.4.21 Were there situations where the Crown was made aware of Court decisions that resulted in significant injustice? Did the Crown respond appropriately?

Court appointments

7.4.22 Did the Crown ensure that the judges appointed to the Native Land Court who presided in Wairarapa ki Tararua hearings were competent to determine matters of law and custom, and were free from real or apparent bias?

Court rules and procedures

7.4.23 Given that the Crown had created a court to determine customary ownership and translate it to Crown-derived titles, what role (if any) should lawyers have played in its process? Did the Crown have a duty to provide legal representation for Wairarapa ki Tāmaki-nui-ā-Rua Māori? To what extent was legislative provision regarding the representation of Māori before the Native Land Court by lawyers and agents responsive to the needs of Māori?

7.4.24 Did the Crown fail to translate or circulate legislation affecting Wairarapa ki Tāmaki-nui-ā-Rua Māori? Were Māori reliant on agents of the Crown for

interpretation during the conduct of the business of the Native Land Court and, if so, was this prejudicial to Māori?

7.4.25 Did the Native Land Court adopt rules and procedures that were, in the circumstances, fair to Māori litigants?

Court costs

7.4.26 To what extent, if any, did Court-related costs, including Court fees, survey costs, accumulating debt on survey liens, and the costs of attending hearings, contribute to the alienation of Wairarapa ki Tararua lands? Did the costs cause hardship for Wairarapa ki Tāmaki-nui-ā-Rua Māori?

7.4.27 What impact, if any, did the ten per cent Māori land duty on the value of alienations have on Wairarapa ki Tāmaki-nui-ā-Rua Māori?

Ten owner rule and Native Equitable Owners Act

7.4.28 To what extent was the '10 owner rule' applied to Wairarapa ki Tararua land, and how did this affect Māori?

7.4.29 To what extent was the Native Equitable Owners Act 1886 applied to Wairarapa ki Tararua land, and how did this affect Māori? Was it a sufficient remedy for the perceived problems arising from the 10 owner rule?

Partitioning, succession, and fragmentation

7.4.30 To what extent did Wairarapa ki Tararua land become fragmented over time into uneconomic and/or inaccessible parcels? To what extent did this process facilitate the alienation of Māori land?

7.4.31 In what ways did the mechanisms provided in the Native Land legislation for partition work either to the benefit, or to the detriment, of Māori owners? To what extent was there a departure from custom on this matter in the Native Land Court, and to what extent, if any, did that departure reflect the wishes of Māori?

7.4.32 In what ways did the mechanisms provided in the Native Land legislation to regulate succession work either to the benefit, or to the detriment, of Māori owners? To what extent did the Native Land Court rules on succession depart from custom, and to what extent, if any, did that departure reflect the wishes of Māori?

7.4.33 In particular, has twentieth-century legislation and Court practice provided a fair and appropriate system for members of the Anaru and Randell whānau to succeed to their interests in Māori land?

Māori agency

7.4.34 What were the nature of, and reasons for, Māori engagement with the Native Land Court process in the Wairarapa and Tāmaki-nui-ā-Rua?

7.4.35 Did the title options available to Māori through the Native Land Court meet their needs in terms of tikanga Māori and Māori social structures and economic aspirations?

The Court

7.4.36 Was the Native Land Court an appropriate body, with appropriate processes and mechanisms, to determine the customary 'owners' of Māori land? To what extent were Māori experts, or matauranga Māori, employed to determine Māori customary rights?

7.4.37 What was the overall impact of the Native Land Court process on Wairarapa and Tāmaki-nui-ā-Rua Māori?

8. Native Land Court: Surveys

8.1: The Claimants contend that:

8.1.1 The Native Land Court requirement that land had to be surveyed before title could be granted led to unreasonably high survey costs that were wrongly imposed on Ngāti Hinewaka, and which should have been met by the Crown (SOC 4: 41(b)).

8.1.2 The high cost of survey resulted in debts recorded against at least 60 percent of all blocks investigated during the Native Land Court era and these costs contributed further pressure to alienate Wairarapa land (SOC 3: 45.7).

8.1.3 The Crown failed to survey Tāmaki-nui-ā-Rua blocks before finalising sales, even though section 25 of the Native Lands Act 1865 stipulated that land had to be surveyed and marked off prior to a certificate of title being ordered (SOC 2: 9.1.1, 9.1.2(a:ii)).

8.1.3.1 There was no satisfactory Crown response when Rangitāne protested at the lack of and inadequacy of surveys following the sale of the northern portion of the Seventy Mile Bush in 1870 (SOC 2: 9.1.2(g)).

8.1.4 The survey plans placed before Judge Rogan, who investigated the southern portion of the Seventy Mile Bush, were rudimentary and crude, simply based on the back boundaries of earlier purchases by the Crown (SOC 2: 9.1.2(vi)).

8.1.5 The Crown was inconsistent in its dealings with survey errors. For example, compensation was paid to Rangitāne for the surveying error with respect to Pahiatua block but the Crown failed to compensate Rangitāne for a similar surveying error with the Mangatainoka and Kaihinu blocks (SOC 2: 9.1.2(c)).

8.1.6 The effect of failure to survey or of inadequate survey led to an area of more than 5000 acres of Tāmaki-nui-ā-Rua land 'going missing', which led to court proceedings involving the Rangitāne rangatira, Nireaha Tāmaki (SOC 2: 9.1.2(h)).

8.1.7 In 1895, the Surveyor-General obtained a Native Land Court order for survey costs for the partition of Waikopiro block, which was being partially alienated to the Crown. The block's non-selling owners subsidised the Crown's partitions by paying nearly two-thirds of the survey costs, although the Crown was purchasing more than half the block (SOC 8: 7.3.7.1-4).

8.1.8 When the owners complained to the Native Land Court that the survey charges of £807.4s for Ngapaeuru block in 1893 were excessive, the Native Land Court had no discretion to vary the amount charged and imposed the charges as asked for by the Chief Surveyor (SOC 8: 7.3.7.5-8).

8.2: The Crown responds that:

8.2.1 Admits that surveys were required before title could issue and says further that accurate surveys were fundamental to the integrity of the system of title determinations and registration, especially the Torrens system of registration with its Crown guarantee of title. Denies that survey costs were wrongly imposed on Ngāti Hinewaka or that the Crown should have met such costs saying further that, as a general rule, it is appropriate for the landowners to meet the cost of surveys (SOR 4: 37.3, 37.4).

8.2.2 Admits that survey costs could be significant relative to the value of the land, that the title investigation process could result in liens for survey costs, and that land was sold to meet survey costs. Denies that such costs inevitably resulted in land being lost, that is, being forcibly sold to satisfy such liens (SOR 1A: 21.1; SOR 3: 39.7; SOR 4: 37.2).

8.2.3 (a) Admits that parts of the boundaries of some of the Seventy Mile Bush and Tāmaki blocks were not surveyed at the time the blocks were put through the Native Land Court and at the time some of the blocks were subsequently sold to the Crown, and were instead indicated by means of sketch plans based on the boundaries of other blocks and natural features.

(b) Admits that section 25 of the Native Lands Act 1865 stipulated that land had to be surveyed and marked off prior to a certificate of title being ordered. Further states that section 68 of the same Act authorised the Court to recognise and receive in evidence at its discretion surveys of lands which had been granted before the passing of the Act, notwithstanding that such surveys had been made by a surveyor not licensed under this Act (SOR 2: 9.3.1(a, a:i).

(c) States that it proposes to carry out further research and analysis to clarify issues related to the survey and subsequent alienation of the Tāmaki and Seventy Mile Bush blocks (SOR 2: 9.3.2).

8.2.3.1 Admits that Paora Ropiha criticised the surveys for the Tāmaki block but has had insufficient time to research its response to these protests and does not plead at this time to whether its response was satisfactory (SOR 2: 9.4(o)).

8.2.4 As regards the survey plans placed before Judge Rogan, states that the boundaries of the southern portion of the Seventy Mile Bush purchase were based principally upon natural features such as mountain peaks and rivers. Admits that not all the external boundaries were surveyed, being instead indicated by means of sketch plans based on the boundaries of other blocks and natural features, and that surveys for all of the Tāmaki blocks were completed by 1879 (SOR 2: 9.4(f, f:i)).

8.2.5 Denies the pleading relating to inconsistency in dealing with survey errors. Says that its preliminary view is that the cases cited arise from different circumstances.

States that the Pahiatua block case resulted from an error in the estimate of acreage which was identified following survey and addressed by an additional payment through the Native Land Court. Further states that the other case concerned a claim regarding a dispute as to where the boundary between the Mangatainoka and Kaihinu blocks was intended to be located (SOR 2: 9.4(i, i:i)).

8.2.6 States that the effect of not surveying or inadequately surveying the western boundary of Mangatainoka No 3 and the eastern boundary of Kaihinu No 2 led to a dispute over whether an area of 5184 acres was included in the Kaihinu No 2 block, and thus purchased by the Crown, or was excluded from Kaihinu and thus remained in Māori ownership. Admits that this dispute led to Court proceedings involving Nireaha Tāmaki (SOR 2: 9.4(p, p:i)).

8.2.7 Admits that it purchased certain interests in the Waikopiro block and applied for the partition of these and that the survey costs were apportioned as alleged, but denies that the owners (presumably the non-sellers) subsidised the partitioning of the parent block (SOR 8: 9.1.29-32).

8.2.8 Admits that the Ngapaeuru block was partitioned in 1893, that the survey charge was £807.4s and that the owners complained to the Native Land Court that the charge was excessive. Admits that the Court ruled that it had no discretion to vet the charges as assessed by the Chief Surveyor (SOR 8: 9.1.34-36).

8.3 Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

8.3.1 Surveys were required before title could be issued.

8.3.2 Survey costs could be significant relative to the value of the land. The title investigation process sometimes resulted in liens for survey costs. In some cases, land was sold to meet survey costs.

8.3.3 Parts of the boundaries of some of the Seventy Mile Bush and Tāmaki blocks were not surveyed at the time the blocks were put through the Native Land Court and at the time some of the blocks were subsequently sold to the Crown.

8.3.4 Not surveying or inadequately surveying some Tāmaki-nui-ā-Rua land led to a dispute over more than 5000 acres of land that led to Court proceedings involving Nireaha Tāmaki.

8.3.5 The Crown purchased certain interests in the Waikopiro block and applied for partition of these.

8.3.6 Ngapaeuru block was partitioned in 1893 and the owners complained to the Native Land Court that the survey charge was excessive. The Court ruled that it had no discretion to vary the charges as assessed by the Chief Surveyor.

8.4 Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

8.4.1 Was it consistent with the Crown's legal and Treaty obligations for the Crown to require Wairarapa ki Tāmaki-nui-ā-Rua Māori to have land surveyed for title investigation by the Native Land Court?

8.4.2 Should Wairarapa ki Tāmaki-nui-ā-Rua Māori have been required to meet the cost of surveys? Was this situation, in terms of policy and the Treaty, in keeping with the Crown's general proposition that landowners should meet survey costs? If full surveys were necessary, how should the costs have been apportioned?

8.4.3 What impact, if any, did survey liens and survey costs have on the ability of Wairarapa ki Tāmaki-nui-ā-Rua Māori to retain their land? To what extent did the level of survey costs trigger the alienation of their land?

8.4.4 To what extent did surveying in Wairarapa ki Tararua, particularly in the Tāmaki and Seventy Mile Bush blocks, adhere to legislative requirements, contemporary survey regulations, and due process?

8.4.5 Did the Crown have fair, appropriate and affordable processes for remedying survey errors? Did the Crown deal with survey errors in different parts of Wairarapa ki Tararua consistently? In particular, did it deal consistently in the Pahiatua block case, and the case involving the boundary between the Mangatainoka and Kaihinu blocks?

8.4.6 To what extent, if any, did Wairarapa ki Tāmaki-nui-ā-Rua Māori bear the survey costs of the Crown? Is the Waikopiro block an example of a situation where the Crown required Māori to bear an unfair proportion of survey costs?

8.4.7 Were practical but cheaper alternative methods of defining titles available, for instance in the Ngapaeruru block? Did the Crown have a Treaty obligation to protect Wairarapa ki Tāmaki-nui-ā-Rua hapū from unnecessarily expensive survey methods?

8.4.8 Were there ways of aligning court boundary-setting with custom?

9. Crown Purchasing in the Native Land Court Era, 1865-1900

9.1: The Claimants contend that:

9.1.1 Between 1865 and 1900, the Crown facilitated the alienation of between approximately 447,537 and 461,667 acres within the Ngā Hapū Karanga claim area from hapu and iwi ownership. By 1900, hapu and iwi held only between approximately 177,689 and 191,819 acres (8.2-8.6 percent) of their original land holding within the claim area. These Crown purchases accounted for approximately 84 percent of all alienations during this period (SOC 1A: 21-22).

9.1.2 The Crown, through its purchasing agents, employed tactics in breach of the Treaty principles of utmost good faith and active protection in acquiring land during this period, including the use of advance payments to selected individuals, and in carrying out negotiations in Wellington with selected vendors (SOC 1A: 23; SOC 1B: 8.1.2; SOC 3: 45.17(a)).

9.1.3 The Crown was aware that Tāmaki Māori retained the Mangatainoka block and had excluded it from sales. The Crown pursued an aggressive campaign to purchase the block and put pressure on individuals to sell their shares by advancing money to individuals and charging such amounts against the land. By 1890, the Crown had purchased approximately 87 percent of the block (SOC 8: 3.3.2.5, 3.3.2.6, 3.3.2.7, 3.3.11.1-3.3.11.6.).

9.1.4 In acquiring land in the period 1865-1900, the Crown relied upon and facilitated debt amongst hapu and iwi, 'which resulted in the further alienation of their land' (SOC 1A: 25).

9.1.5 Throughout the period, the Crown failed to ensure the retention of a proper endowment of land for hapū and iwi, and to avoid further alienations. Instead, the Crown continued to actively pursue further alienations of hapū and iwi land (SOC 1A: 26).

9.1.6 Five reserves totaling 19,870 acres were set aside in the Tāmaki purchase of 1 June 1871. The Crown relentlessly sought to purchase Te Ohu during the late 1870s and into the 1880s. By 1883, the purchase was substantially completed (SOC 8: 2.3.8.6, 2.3.8.8).

9.1.7 In 1872 the Crown purchased Ngatapu No 2 and purchased Ngatapu No1 reserve in June 1879. By December 1883, the Crown had purchased Puapuatapotu, Huru's Reserve, Tararu or Ihaka's Reserve and Rakikohua or Tutaepapara reserves (SOC 8: 2.3.8.17, 2.3.8.18).

9.1.8 Seven allotments of Section 115 and the whole of Section 116 of Tutaekara reserve were sold to the Crown in 1891 (SOC 8: 2.3.8.19).

9.1.9 The Native Land Court ensured the further alienation of Rangitāne land (SOC 2: 7.1.2).

9.1.10 Despite being aware of opposition by Tāmaki Māori, on 10 October 1871 the Crown entered an agreement with 57 Māori to purchase 120,631 acres of the Wairarapa end of Tāmaki-nui-ā-Rua, in 10 blocks, for the sum of £10,000 (SOI 8: 3.3.2.4).

9.1.11 The Crown's land purchase policy in 1870-1900 was to acquire all Māori land between Hawkes Bay and Wellington including all Rangitāne lands (SOC 2: 8.1.1).

9.1.12 By 1900, only 11 percent of the land within the original Rangitāne rohe or Tāmaki-nui-ā-Rua remained in Māori hands. Much of what remained in the ownership of Tāmaki Māori was of poor quality (SOC 2: 8.1.1c; SOC 8: 2.3.2).

9.1.13 Section 42 of the Public Works and Immigration Act 1871 allowed Crown Agents to negotiate land sales without any adequate investigation of title or otherwise led to purchases from the wrong vendors (SOC 2: 8.1.2).

9.1.14 Prior to title determination, the Crown made advance payments indiscriminately to those who were known sellers and to those who did not have rights and interests in Tāmaki-nui-ā-Rua blocks, as opposed to dealing with those Rangitāne who had significant interests in the land (SOC 2: 8.1.3).

9.1.14.1 The advance payments to Māori were charged against the future purchase price of the land (SOC 8: 3.3.11).

9.1.14.2 The Crown's sharp practices included advance payments to pressure Māori into selling land (SOC 4: 44(a)).

9.1.14.3 The Crown, through its agents, encouraged Wairarapa Māori to undertake surveys and apply to the Native Land Court for title (SOC 4: 44(b)).

9.1.15 Crown agents preferred to deal with outsiders rather than negotiating purchases with Rangitāne living on the land (SOC 2: 8.1.4).

9.1.16 Crown agents employed 'bounty hunters' to secure signatures of those Rangitāne previously unwilling to sell. The Crown pursued a practice of paying 'bounties' for signatures to purchase deeds in Tāmaki-nui-ā-Rua (SOC 2: 8.1.5, SOC 3: 45.17(b); SOC 8: 3.3.3-3.3.10).

9.1.17 Between 1850 and 1865, the Crown purchased 381,049 acres in Tāmaki-nui-ā-Rua for £3750. Between 1865 and December 1899, the Crown purchased 578,626 acres for £92,588 (SOC 8: 2.3.4-5).

9.1.18 The Crown made significant profits by on-selling the land it had purchased in Tāmaki-nui-ā-Rua to European settlers. At 1871 the Crown purchased land at an average rate of 1s 6d per acre. (In 1873 Kauhanga No 1 and No 2 were sold to the Crown at a rate of 1 6d per acre.) The Crown then onsold such land to settlers for £1 per acre. The Hawke's Bay Special Settlements Act 1872 stipulated the price to be paid to settlers for land, which was at a rate between 6 to 25 times the amount paid to Tāmaki Māori (SOC 8: 2.3.7.1-2, 2.3.8.20).

9.1.19 The Crown was aware, before and at the time of sale negotiations, that the timber in Tāmaki-nui-ā-Rua held a potential value. The Crown did not take into account the value of the timber on Tāmaki-nui-ā-Rua lands when making offers to purchase such lands (SOC 8: 2.3.7.3-4).

9.1.20 The Crown negotiated purchases in Tāmaki-nui-ā-Rua despite being aware of the opposition of some Tāmaki Māori to such sales (SOC 8: 3.3.2).

9.2: The Crown responds that:

9.2.1 Admits that the Crown purchased acreage within the range [447,537-461,667] stated, and that this accounted for 84 percent of all purchases during 1865-1900. States that it believes the actual figure may fall at the lower, rather than the higher, end of the range (SOR 1A: 17-18). **[The Tribunal thinks that the Crown may have miscalculated the allegation; the allegation relates to 84 percent of the acreage range, not that the acreage is 84 percent of the land purchased. The Tribunal requests clarification from parties].**

9.2.2 States that the Crown has yet to develop a position on the allegations of unfair post-1865 purchases. Although the Crown appears to have made advance payments, the evidence establishing compulsion to sell appears generally to be lacking (SOR 1A: 19).

9.2.3 (a) Admits that it was aware that Tāmaki Māori intended to retain the Mangatainoka Block at the time when the other Seventy Mile Bush Blocks were sold to the Crown. States further that when the Block was brought before the Native Land Court in 1871, Hoani Meihana stated that '…the whole tribe claimed and owned the land and would divide it amongst themselves at some future time' (SOR 8: 5.2.9).

(b) Admits that it sought to purchase Mangatainoka, and that it advanced money to individuals charging such amounts against the land. Otherwise denies the allegation (SOR 8: 5.2.10(a)-(b)).

(c) Admits that following subdivision, the Crown purchased individual interests in Mangatainoka but otherwise denies the allegation (SOR 8: 5.2.22).

9.2.4 States that the meaning of the allegation that the Crown fostered and used indebtedness to force the sale of Māori land is unclear (SOR 1A: 21).

9.2.5 States that, on the Crown's alleged failure to ensure retention of Māori land, this is referred to in its general statement of position (SOR 1A: 22).

9.2.6 Admits that the five reserves as detailed in the allegation were set aside from the Tämaki purchase. To the extent that this statement is intended to refer to the Te Ohu reserve, denies the allegation. Further notes that although the source #A47, p 96 refers to the Crown pursuing the purchase of the Te Ohu reserve and substantially completing this by 1883, this description appears to relate to the Crown obtaining the agreement of the remaining signatory required for the agreement to purchase the Te Ohu Block. Te Ohu was one of the blocks into which the Tämaki purchase was divided. (Ballara and Scott, *Tāmaki Repor*t, p 74, footnote 252 states 'No further records have been found concerning the Te Ohu, Ngaawapuru and Te Rotoahiri reserves' (SOR 8: 4.1.18, 4.1.20).

9.2.7 Admits that the Crown purchased Ngatapu No 2 in 1872, Ngatapu No 1 reserve in June 1879, and that by December 1883 the Crown had purchased

Puapuatapotu, Huru's Reserve, Tararu or Ihaka's Reserve and Rakikohua or Tutaepapara reserves (SOR 8: 4.1.29-30).

9.2.8 Admits that seven allotments of Section 115 and the whole of Section 116 of Tutaekara reserve were sold to the Crown in 1891 (SOR 8:4.1.31).

9.2.9 Denies that the introduction of the Native Land Court ensured the sale of Māori land, but admits the extent of the alienation conducted between 1865 and 1900 in Tāmaki-nui-ā-Rua (SOR 2: 7.1.2).

9.2.10 Admits that on 10 October 1871, the Crown entered an agreement with 57 Māori to purchase 120,631 acres of the Wairarapa end of Tāmaki-nui-ā-Rua, in 10 blocks, for the sum of £10,000 and was aware of opposition by Tāmaki Māori (SOR 8: 5.2.8).

9.2.11 Denies that its policy was to acquire all Māori land between Hawkes Bay and Wellington by 1900 (SOR 2: 8.1.4).

9.2.12 Admits that by 1900, approximately 11 percent of the land within the original Rangitāne rohe or Tāmaki-nui-ā-Rua remained in Māori hands (SOR 2: 8.1.4c; SOR 8: 4.1.2a).

9.2.13 Admits that it applied section 42 of the Immigration and Public Works Act 1871 to purchase Seventy Mile Bush blocks but otherwise denies that it paid willing sellers without verifying their rights. States that prior purchase arrangements would not become binding until the Native Land Court validated them (SOR 2: 8.1.5).

9.2.14 (a) Admits that it made cash payments to Māori who had decided to sell their land prior to land being investigated by the Native Land Court but otherwise denies that it paid willing sellers in full without verifying their rights.

(b) States further that the cash advances were paid to cover the expenses of food and accommodation prior to Native Land Court hearings and for the costs of surveying the land. States further that in some cases these were paid to the Māori owners themselves and in other cases money was paid direct to third parties for expenses incurred. Says that Māori named in Locke's accounts as having received advance payments included local rangatira from the Seventy Mile Bush area (SOR 2: 8.1.6-(a)(ii)).

9.2.14.1 Admits that it charged such amounts against the future purchase price of the land (SOR 8: 5.2.20).

9.2.14.2 Is still considering the specific examples cited. As a general proposition, the allegation that the Crown paid advances to Māori to pressure Māori to sell land is denied (SOR 4: 40).

9.2.14.3 (a) Admits that where it had negotiated to purchase or lease land before that land had passed through the Native Land Court, it encouraged the Māori party to those transactions to have their title to the land in question investigated by the Court and either undertook the necessary survey itself or

encouraged Mäori to have the survey undertaken. The Crown states that in these circumstances, it was bound to ensure that the land was passed through the Court and a title issued to the Mäori party to the transaction.

(b) The Legislature's purpose was to have the Native Land Court satisfy itself that the Crown was dealing with those having rights in the land (SOR 4: 40.1).

9.2.15 Denies that it failed to negotiate purchases with Rangitāne living on the land. Admits that it negotiated with non-resident rangatira in respect of some blocks, but maintains that these rangatira held valid rights in that land (SOR 2: 8.1.7).

9.2.16 Admits that it entered into agreements with agents to secure signatures of those owners who had not so far agreed to sell, but denies the alleged questionable purchase practices. Admits that it promised agents a payment for each signature obtained (SOR 2: 8.1.8; SOR 8: 5.2.14).

9.2.17 Admits that the claimed purchase prices prior to 1900 are substantially accurate, except that a small portion of these purchases were private purchases in the era 1890-99 (SOR 8: 4.1.5).

9.2.18 (a) Admits that there was a significant difference between the price for which it purchased the land and the price for which it sold the land to European settlers. Admits that it sold some of the land so purchased to Scandinavian settlers for £1 per acre. States further that due to poor quality and rugged terrain, not all the land purchased from Māori could really be sold. The Crown used the proceeds from on-sale to fund various public works that benefitted both Māori and Europeans, including roads, railways, and other infrastructure aimed at promoting rapid economic development (SOR 8: 4.1.7, 4.1.8).

(b) Admits that the Hawke's Bay Special Settlements Act 1872 stipulated this but is yet to research the remainder of the allegation. States further that the allegation does not indicate whether or not this Act applied to the purchases in Tāmaki-nui-ā-Rua (SOR 8 4.1.9).

(c) Admits that in 1873 Kauhanga No 1 and No 2 were sold to the Crown at a rate of 1s 6d per acre (SOR 8: 4.1.32).

9.2.19 Admits that the Crown did not take account of timber values during purchase negotiations. States that Crown purchase agents may have under-valued timber resources in the Seventy Mile Bush. Says that this was probably because of access difficulties, and the view that the Crown might have to bear the cost of bush-clearance (SOR 8: 4.1.10-11).

9.2.20 Admits that the Crown was aware of Māori opposition to some purchases in Tāmaki-nui-ā-Rua (SOR 8: 5.2.4).

9.3: Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

9.3.1 From 1865 to 1900, the Crown purchased approximately 84 percent of all land alienated in the Ngā Hapū Karanga claim area. There is still uncertainty about the acreage involved.

9.3.2 By 1900 approximately 11 percent of the land within Tāmaki-nui-ā-Rua remained in Māori hands.

9.3.3 The Crown used the provisions of the Immigration and Public Works Act 1871 to begin purchasing Seventy Mile Bush land in advance of any Native Land Court inquiry.

9.3.4 The Crown made advance payments to Māori prior to Native Land Court determinations, and it charged these payments against the future purchase price of the land.

9.3.5 The Crown entered into 'bounty' agreements with purchase agents to secure the signatures of non-sellers. It promised a payment for each signature obtained.

9.3.6 Between 1865 and 1900, the Crown paid Māori less per acre for land than it had before 1865.

9.3.7 Between 1865 and 1900 there was a significant difference between the price paid to Māori for the land, and the price received by the Crown for the land, which was onsold to European settlers. But the Crown claims that the proceeds were used to pay for public works of benefit to all.

9.3.8 The Crown generally did not take account of timber values during land purchase negotiations, and Crown purchase agents may have under-valued timber resources in Seventy Mile Bush.

9.3.9 The Crown was aware of Māori opposition to some of the Tāmaki-nui-ā-Rua purchases.

9.4: Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

9.4.1 What obligations were there on the Crown to enable Māori to exercise customary authority in the negotiation of land sales? Were those obligations met?

9.4.2 What obligations were there on the Crown to purchase land only by means that were fair and above board? Were those obligations met? In particular,

(a) Why were advance payments made?

(b) What effect did they have on the negotiations?

(c) What was the significance of the fact that the Crown negotiated for the purchase of land in advance of formal adjudication by the Native Land Court?

(d) Did the Crown use the following methods to induce sale?

(i) fostering indebtedness, or exploiting a situation of indebtedness

(ii) using willing sellers to commit unwilling sellers to sale

(iii) using non-residents to commit residents to sale

(iv) paying a fee to Crown agents (so-called 'bounty hunters') if they obtained the agreement of those who were yet to agree to sale

(e) If so, what was the extent of these practices?

(f) Were sales unfair as a result of such conduct?

(g) To the extent that the sales were unfair, how significant were the flaws in the process?

9.4.3 How did the Crown arrive at a purchase price for Māori land during the period 1865 to 1900? Was the process robust, in terms of fairness? Were resources such as timber taken into account in the price? Were Māori deliberately short-changed?

9.4.4 Was it the Crown's policy 'to acquire all Māori land' between Hawke's Bay and Wellington by 1900? If not, what was the policy?

9.4.5 In terms of the adequacy of land remaining to Māori, did the Crown make any or adequate reserves of land from the purchases, so as to enable Māori to

(a) retain sites of cultural significance;

(b) maintain the coherence of traditional social structures;

(c) have ongoing access to mahinga kai;

(d) retain their customary association with their traditional area;

(e) meet their present and future needs?

9.4.6 Did Māori benefit from the proceeds that the Crown received from on-selling land for profit, for instance, by the construction of public works from which both settlers and Māori derived benefit?

9.4.7 To what extent did Māori benefit, and the Crown lose its investments, after the Native Land Court had determined the owners of land under negotiation?

10. Private Alienations in the Native Land Court Era, 1865-1900

10.1: The Claimants contend that:

Native Land Court process and alienation

10.1.1 The operation of the Native Land Court in the Wairarapa extinguished Māori customary tenure and resulted in individual titles being issued to those lands in Wairarapa that were investigated. The result of this was to facilitate the purchase of Wairarapa lands by private purchasers (SOC 1B: 146 (a), (b), (c); SOC 3: 39, 45.8).

Quantum of land sold to private purchasers

10.1.2 During the period 1865-1900, private purchasers acquired approximately 82,000 acres in Wairarapa (SOC 3: 45.9).

10.1.3 Between 1866 and 1900, the Crown was the largest purchaser of Tāmaki-nui-ā-Rua lands. Between 1890 and 1899, private purchasers became increasingly significant with respect to Rangitāne Tāmaki-nui-ā-Rua lands (SOC 2: 7.1.2, 7.1.2 (a-e)).

Rangitāne o Tāmaki-nui-ā-Rua (SOC 2)
Mangatainoka J2A2
Kaitoki 1 and 3
Piripiri
Otanga

Native Land Court and alienation to private purchasers

10.1.4 The process of investigation in the Native Land Court extinguished Māori customary tenure and facilitated Māori land in the Wairarapa ki Tararua district becoming available for sale to private purchasers. The Crown introduced the Native Land Acts of 1862 and 1865 and successive legislation. It set up the Native Land Court to investigate and extinguish Māori customary tenure, and to grant individual titles derived from the Crown and thereby facilitate the purchase of Māori land by the Crown and private purchasers. (SOC 8: 6.3.2, SOC 3: 45.8; SOC 8: 6.3.1).

Native Land Court Related Costs and Private Land Alienations

10.1.5 The Native Land Court process, individualisation and fragmentation of title contributed to pressures on Rangitaane to sell to private purchasers (SOC 3: 45.10).

10.1.6 The Native Land Court process imposed unnecessary cost burdens on Māori, which led to the alienation of land and impoverishment of the people. The Native

Land Court imposed substantial costs, including court costs and sale costs, as well as substantial associated costs. The latter included food, accommodation and traveling costs, lawyers' fees, land agents' fees, interpreters' fees and witnesses' fees (SOC 1A: 24, 24.1, 25; SOC 3: 45.10; SOC 4: 41, 41(c);).

10.1.7 Debts arising out of Native Land Court costs including survey costs resulted in Māori having to sell their land to pay the debts incurred (SOC 1A: 25.1; SOC 4: 41).

10.1.8 Debts to private individuals and recorded against their land resulted in Wairarapa Māori having to sell their land (SOC 1A: 25.2).

Ngā Hapū Karanga (SOC 1A)
Akura
Kaioteatua
Te Ao Tuhirangi
Kaitara
Maramamau East
Masterton Pt Sec 28 and 110
Maungaraki No 2
Moiki No 1
Ngapuke
Ngutukoko
Potakakuratawhiti No 2
Taratahi B and C
Taumata Kaihuka A and B
Taumataraia
Te Iringa
Tuarawhati
Uruokakite South B No 3

10.1.9 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 (SOC 3: 45.11).

10.1.10 In relation to the Matakitaki a Kupe block, Ngāti Hinewaka had to grant Pharazyn, a settler, a mortgage over their land in order to finance putting the land through the Native Land Court (SOC 4: 41(c)).

Alienations – leases

10.1.11 Because the interests of the 10 legal owners to Tāmaki block were undefined, the lessee took timber from all over the block, the lease of which had been granted to the Hawke's Bay Timber Company by one of the 10 legal owners, Karaitiana Takamoana (SOC 8: 7.3.6.16, 7.3.6.17).

10.1.11.1 The Crown took no action over the request in 1886 by Tāmaki Māori to the Native Minister to cancel the Timber Company's lease. The request arose from concerns regarding the activities of the Company (SOC 8: 7.3.6.18).

10.1.11.2 In 1893, the Crown negotiator for the purchase of Tāmaki block, Gilbert Mair, reported some interest in selling, and concerns relating to the timber lease. The Crown, aware (by June 1894) that the lease encumbered the block until 1907, decided that the Native Department would purchase the reversionary interest when the owners were willing to sell. The owners wanted £2 per acre, but the Crown's valuation and offer was 10s per acre (SOC 8: 7.3.6.19, 7.3.6.20).

10.1.12 Because individual interests had not been defined within the Tahoraiti block, one lessee of 5000 acres, the Hawkes Bay Timber Company, cut timber at various places all over the block and destroyed a large quantity of timber. The owners filed an application with the Native Land Court to partition the block, but the Court did not hear the application (SOC 8: 7.3.9.13-14).

10.1.13 In 1877, the Native Land Court failed to hear the owners' application to partition the Mangatoro block, which was being leased to a European settler (SOC 8: 7.3.9.8, 7.3.9.9).

10.1.13.1 In February 1882, the executor of Karaitiana Takamoana's estate sold the latter's interest in Mangatoro to the lessee. Approximately 27,675 acres remained subject to the leasehold. When in the 1880s, the lessee failed to comply with the Bank of New Zealand's demand for immediate repayment of a loan to develop the land, the bank entered into possession of the lease and bought the leasehold at auction. To realise its investment, the bank aggressively endeavoured to purchase the interests of each of the owners so that it could re-sell the block to the Crown for settlement (SOC 8: 7.3.9.10, 7.3.9.11).

10.1.13.2 When the Native Land Court partitioned the block in 1900, approximately 11,500 acres were vested in Māori owners, and approximately 17,000 acres were vested in the BNZ Assets Realisation Board (SOC 8: 7.3.9.12).

NB: Please note that Native Land Court issues specific to the Jury, Korou and Matua whānau are addressed separately below in Issue Nos. 28, 29 and 30 respectively.

10.2: The Crown responds that:

Native Land Court process and alienation

10.2.1 Notes that the mere process of investigation did not, of itself, result in the extinguishment of Native title. Admits, however, that this result could flow from investigation. Contends that the outcome of the process depends partly on the applicable legislation. Adds that the process did not inevitably result in 'individual' titles being issued and that the sense in which the titles are described as 'individual' is not clear from the allegation. Does not respond to the third part of the allegation that this facilitated specifically private land purchasing (SOR 1B: 145, 145.1).

Quantum of land sold to private purchasers

10.2.2 In response to the claim that, during the period 1865-1900, private purchasers acquired approximately 82,000 acres in Wairarapa, the Crown notes 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 percent Crown and 16 percent private, are likely to be correct (SOR 3: 39.10).

10.2.3 Admits that the Crown was the largest purchaser of Tāmaki-nui-ā-Rua lands between 1866 and 1900. Admits that private purchases occurred between 1890 and 1899 and that the blocks listed as examples were private purchases (SOR 2: 7.1.3-7).

Native Land Court and alienation to private purchasers

10.2.4 Denies, as a general statement, the claimants' contention that the process of investigation in the Native Land Court facilitated Māori land becoming available for sale. In relation to the Native Land Court extinguishing Māori customary tenure over lands investigated by the Court, it has not yet researched all blocks, and does not plead at this stage (SOR 3: 39.8; SOR 8: 8.1.2).

10.2.4.1 States further that its Native Land legislation can be said to have three principal elements:

- The waiver by the Crown of its right of pre-emption over Māori customary land (SOR 3: 39.8.2).
- The establishment of a court to ascertain ownership of customary land and determine certain rights of succession (SOR 3: 39.8.3).
- The creation of codes governing dealings in the various categories of Māori owned land (SOR 3: 39.8.4).

10.2.4.2 Also states that while its Native Land legislation sought by way of reform to 'assimilate' Māori land tenure as closely as possible to English forms of tenure, in doing so, it sought to enable Māori, where they so desired, to deal with

their lands. States that 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. States further that while its Native Land legislation facilitated the alienation of Māori 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 Māori land (SOR 3: 39.8, 39.9).

10.2.4.3 Admits that it introduced the Native Lands Act 1862 and the Native Lands Act 1865, and successive legislation to those Acts. The Crown states that with the exception of a brief period, the Native Land legislation consistently provided the opportunity for owners to select a form of communal title (The communal titles are those available under section 17 of The Native Land Act 1867, s.47 of The Native Land Act 1873, ss 26 and 33 of The Native Land Court Act 1880; sub sections 20 and 22 of the Native Land Court Act 1886, and section 122 of the Native Land Court Act 1894.) The Crown contemplates further research to understand the choices available to Māori and the outcomes of those choices with a view to assessing the nature of any prejudice suffered (SOR 8: 8.1.1).

Native Land Court related costs and private land alienations

10.2.5 Notes that Māori motivations for selling land were complex. Acknowledges that some factors, including the court process and individualisation and fragmentation of title, 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' (SOR 3: 39.11).

10.2.6 (a) Considers that the issues of court related costs leading to alienation of land require further examination. Is able to indicate, in general terms, that the costs arising from its Native Land Court regime need to be broken down into two categories. The first category is that of Court imposed fees such as application fees, title fees, and witness fees. The other category is that of survey costs. It states that,

- Regarding Court imposed fees, as a general proposition, the fees charged were not substantial relative to either the intrinsic value of the subject matter of the application, or the running of the Court (SOR 4: 37.1)
- Regarding survey costs, the Crown accepts as a general proposition that the costs were often significant relative to the value of the land and acknowledges that they were sometimes a burden for Māori (SOR 1A: 19.3; SOR 4: 37.2).

Admits that the title investigation process could result in liens for survey costs but denies that such costs inevitably resulted in land being lost, that is, being forcibly sold to satisfy such liens (SOR 4: 37.5, 37.6).

10.2.7 Considers that these issues require further examination. In response to the claim that debts arising out of Native Land Court costs including survey costs resulted in ngā hapū karanga having to sell their land to pay the debts incurred, the Crown admits that land was sold to meet survey costs (SOR 1A: 19.3; SOR 4: 37).

10.2.8 Is still considering the histories of the parcels cited in the statement of claim. By way of a preliminary response, however, it notes that the relationship between debt and alienation by lease or sale is often complex, and requires a more discriminating analysis. Says that it is likely that this issue will require further consideration. In the meantime, observes that it is apparent that Māori land was often not liable for the recovery of debt, yet Māori communities sometimes purposely alienated land to honour debt that had not been incurred as a result of the Court's title investigation process. States that it is also apparent that in relation to debt incurred as a result of title determinations, some communities were evidently following a deliberate strategy, as is evidenced by their selling a small portion of a block to settle survey costs (Akura Block (52 out of 868 acres) and Kaioteatua Block (200 out of 4526 acres) (SOR 1A: 21.2).

10.2.9 Denies that the allegation that 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, is an accurate generalization. Observes that the footnote in SOC 3 claiming this 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 Māori, or of pressure otherwise arising from the Native Land Court regime. Rather, it refers to the difficulties of attaching debt to Māori owned land, and the entrepreneurial and other activities of certain chiefs (SOR 3: 39.12).

10.2.10 Notes that the block was not forcibly sold to settle the survey costs but rather that the owners appear to have had a management plan that included the sale of a small part of the block (on which Pharazyn had his homestead) and the leasing of the remainder. The sale proceeds and first year rents were sufficient to clear the survey charges for the whole of the survey costs (SOR 1A: 21; SOR 4: 37.5, 37.6).

Alienations – leases

10.2.11 Does not plead, due to insufficient knowledge, as to whether Karaitiana Takamoana granted a timber lease in Tāmaki block, or as to whether the lessee took timber from all over the block because the interests of the10 legal owners were undefined. Observes, however, that if there were such a lease, the remainder of the community of owners had legal remedies against the putative lessee regarding their interests in the trees, and it was for them to pursue those remedies (SOR 8: 9.1.22, 9.1.23).

10.2.11.1 Admits that Tāmaki Māori asked the Native Minister to cancel the timber leases, but observes that the source relied upon does not indicate that the complainants were concerned at the activities of the Hawkes Bay Timber Company. Admits that its officials advised the Native Minister that he should not interfere as, if the leases were invalid, the owners had their remedies at law (SOR 8: 9.1.24).

10.2.11.2 Admits that it engaged Mair to treat for the block, and that he reported some interest in selling. Observes that the evidence relied upon does not support

the claim that Māori were still concerned about the lessee's felling activities and its failure to pay adequate and regular rent. Notes that the evidence suggests that one of the owners had merely sought clarification as to the effect of the lease on the prospective sale. Admits that by June 1894, the Crown, aware that the lease encumbered the block until 1907, decided that the Native Department would purchase the reversionary interest when the owners were willing to sell, and that the owners wanted £2 per acre, but that the Crown's valuation and offer was 10s per acre (SOR 8: 9.1.25, 9.1.26).

10.2.12 Notes that individual owners of Tahoraiti block appear to have entered into a lease of their individual shares. Notes the allegations that one of the owners (Takamoana) granted to the Hawkes Bay Timber Company a right to cut trees; and the allegation that this company was cutting trees without the permission or a grant from the remainder of the owners having rights in the trees. Says that in these circumstances, the remainder of the community of owners had legal remedies regarding their interests in the trees and that it was for them to pursue those remedies. Observes that the source cited does not support the claim that the owners filed an application with the Native Land Court to partition the block, but that the Court did not hear the application (SOR 8: 9.1.52, 9.1.53).

10.2.13 Admits that from the 1860s, the Mangatoro block was leased to a European settler and that several owners appear to have applied for a partition of the block, but observes that the Berghan Supporting papers indicate a problem with the application. Is yet to refine its understanding as to this problem (SOR 8: 9.1.47).

10.2.13.1 Admits that the Takamoana estate sold its interest, but does not admit to the acreage represented by that interest due to insufficient knowledge. Admits that in the 1880s, the lessee failed to comply with the bank's demand for immediate repayment of a loan to develop the property, and that the bank entered into possession of the lease and bought the leasehold at auction. Admits that the bank purchased some of the interests of the owners but due to insufficient knowledge, does not plead as to whether the bank did so either aggressively or in order to sell the block to the Crown for settlement (SOR 8: 9.1.48, 9.1.49, 9.1.50).

10.2.13.2 Admits that in 1900, the Native Land Court partitioned the block on the lines stated in the allegation (SOR 8: 9.1.46-51).

10.3 Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

10.3.1 For the period 1865 to1900, approximately 16 percent of Māori land that was alienated in the Wairarapa was alienated to private purchasers. The Crown does not directly state whether or not it accepts the figure given in SOC 3 for a total of land alienated of 82,000 acres in the 'Wairarapa'. The Crown has accepted the claim of Rangitāne o Wairarapa (SOC 3) that their land base at 1865 was 348,528 acres and that their land base at 1900 was 158,512 acres. It therefore implicitly accepts that a total of 190,016 acres was alienated in the period, of which 16 percent (or approximately 30,403 acres) was alienated to private purchasers.

10.3.2 The court process and individualisation and fragmentation of title might have been a factor related to decisions to sell.

10.3.3 The title investigation process could result in liens for survey costs. Land was, in some cases, sold to meet survey costs. The implications of this are not agreed.

10.3.4 Tāmaki Māori asked the Native Minister to cancel the Tāmaki timber leases. Later, the Crown engaged Mair to treat for the block and he reported some interest in selling. By June 1894, the Crown, aware that the lease encumbered the block until 1907, decided that the Native Department would purchase the reversionary interest when the owners were willing to sell. The owners wanted £2 per acre, but the Crown's valuation and offer was 10 shillings per acre.

10.3.5 From the 1860s, the Mangatoro block was leased to a European settler. Several owners appear to have applied for a partition of the block. The Takamoana estate sold its interest. The lessee obtained finance from the Bank of New Zealand to develop the property. In the 1880s, the lessee failed to comply with the bank's demand for immediate repayment. The bank entered into possession of the lease and bought the leasehold at auction. The bank purchased some of the interests of the owners. In 1900, the Native Land Court partitioned the block. Mangatoro 1A and 2A (approximately 11,500 acres) were vested in Māori owners; blocks 1B and 2B (approximately 17,000 acres) were vested in the Assets Realistion Board.

10.4: Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

10.4.1 To what extent did the passage of land through the Native Land Court lead to individualisation of title to Māori land, and did individualisation of title facilitate the private purchase of land against the wishes of its owners and their communities? Did this pattern change over time?

10.4.2 Did the forms of succession provided for in the relevant Native Land legislation impact upon the efforts of private purchasers to acquire land? If so, how did they affect the activities of private purchasers and the prices they paid? How did they affect those who wished to sell and those who did not?[1]

10.4.3 How much land was alienated to private purchasers across the whole inquiry district from the period 1865 to 1900?

10.4.4 Were there regional variations in private land purchasing activities?

10.4.5 Periodically throughout the Native Land Court era, the Crown introduced restrictions on private purchasing of Māori land. To what extent did varying rates of private purchasing reflect the regulation of it by the Crown? What were the Crown's intentions in regulating private land transactions? To what extent can such actions be seen as an attempt to protect the land base of Wairarapa ki Tāmaki-nui-ā-Rua Māori?

10.4.6 At any time, did the Crown impose restrictions on private purchasing of Māori land in a way that was likely to suppress competition and depress the prices that Māori vendors received for that land?

10.4.7 What was the relationship between the costs involved in passing land through the Native Land Court, debt, and the alienation of land to private purchasers? Were non-court-related debts relevant? What was the Crown's responsibility, if any, in regulating and offering protection from loss of land through debt? What was the responsibility of the owners? In particular what was the role of private debt and survey liens in the alienation of Okurapatu block?

10.4.8 What was the extent of the practice of private parties advancing money against a block of land before its title had been investigated? What was its effect in terms of subsequent alienation history of the land? What action did the Crown take to regulate such dealings? Were these actions effective?[2]

10.4.9 What alternatives to private borrowing and land sales were available to Māori holding land under customary title, in order to pass land through the Court? Were there public sources of credit available?

10.4.10 During the Native Land Court period, where some owners entered into a lease of a block where owners' interests were undefined, was there adequate legislative provision to enable owners who had not entered into the lease to protect their interests? Did owners take advantage of any such provision?

[1] The alienation histories of the following blocks may shed some light on these questions (proposed by the Tribunal) – Te Whiti North, Waikoukoutauanui, and Uruokakite. Refer to section 2.2.2 in James Mitchell, 'Land Alienation in the Wairarapa', 1880 to 1900', Wai 863, #A30, which discusses successions and partitions.
[2] Blocks with histories which may help to formulate answers to these questions include – Taumatakaihuka A and B, Matauha, Matiti, Maramamau East A, Taumatawhakapono, Taumataria, Pounui, Waipoua A (Mikomiko), Kai o te Atua, Te Ao Tuhirangi, Uruokakite South A (proposed by the Tribunal).

10.4.11 During the Native Land Court period, to what extent, if any, did leases lead to pressure on Wairarapa ki Tāmaki-nui-ā-Rua Māori to sell the land?

10.4.12 Are there instances where private parties advanced money on blocks at interest rates which the owners were unable to sustain? How did these loans compare with the ability of blocks or the capital loaned to generate income? What was the role of such private debt in the alienation of Māori land in Wairarapa ki Tararua? What steps did the Crown take to regulate private mortgaging of Māori land, and were these effective?

10.4.13 Did Māori receive sufficient returns from private alienations by lease or sale, to enable capital investment in their remaining lands? Did they receive fair prices? What was the overall prejudice suffered, if any, as a result of land alienated privately under the native land law regime?

11. Native Land Court: Protections

11.1. The Claimants contend that:

General

11.1.1 The Crown failed to implement safeguards to ensure hapū and iwi were adequately recognised in the Native Land Court process (SOC 4: 43(b)). For example:

11.1.1.1 The Native Lands Act 1865 and subsequent legislation undermined traditional forms of iwi and hapu ownership of land. Only those individuals listed on the title were recognised as owners, and hapu and iwi interests in land were ignored.

11.1.1.2 The 1873 Native Lands Act, despite allowing all parties with traditional interests in land to have their names recorded on a memorial of ownership, still failed to ensure that hapu and iwi were adequate recognised in the Native Land Court process. The 1873 Act allowed the owners of a majority of the shares in land to agree to subdivision of that land and the individual interests therein being sold. The Crown and private land agents could then acquire blocks of land by dealing directly with individual owners rather than hapu and iwi groups.

11.1.1.3 From 1878 the Native Land Act Amendment Act allowed any interested person including Pakeha to apply for a determination of their interest, and a partitioning out of that interest irrespective of the views of other shareholders, including iwi and hapu (SOC 4: Memorandum of further particulars, 22.9.03: paragraph 17).

11.1.2 The Crown failed to implement safeguards to protect Wairarapa ki Tāmaki-nui-ā-Rua Māori from loss of land through fraud (SOR 4: 43(c)).

11.1.3 During the period 1865 to 1900, the Crown failed to give sufficient power and resources to the Trust Commissioners established under the Native Lands Frauds Prevention Act 1870 to enable them to be effective in protecting Wairarapa land, including the land of ngā hapū karanga and Ngāti Hinewaka, from wrongful alienation (SOC 1A: 26.2.3; SOC 4: 43(e)).

Restrictions on alienation

11.1.4 The Native Land Court allowed the sale of land which it had marked as being restricted (SOC 15: 18).

11.1.5 From 1865, insufficient or inadequate restrictions on alienation were imposed by the Native Land Court to protect land required by Wairarapa ki Tāmaki-nui-ā-Rua Māori for their present and future needs. Restrictions were either not noted, or were removed to permit borrowing against the land, or were never removed but

alienation was nevertheless permitted (SOC 1A: 5.4.4, 5.4.5; SOC 5: 14.2; SOC 15: 18).

Ngā Hapū Karanga (SOC 1A)	
Blocks where restrictions were either not noted, removed to permit borrowing against the land, or never removed but alienation was still permitted	*Blocks or partitions permanently alienated despite restrictions on alienation*
Te Para, Te Waihinga, Papawai No 6, Whakatomotomo, Maramamau East, Maramamau West, Ngatahuna No 2, Te Ngatukoko, Ihurarua Reserve (Morua), Akura No 2	Hahaia, Hinana, Hupenui, Kehemane, Kiore, Manaia Sec. 107, Manaohawea, Mangapiu, Maramamau East, Maramamau West, Matapuha, Maungaraki, Moroa, Ngatahuna, Opuakaio, Oruatamore, Pahaoa, Papawai, Pokohiwi, Potakakuratawhiti, Purakau, Ramapuka, Tahorahina, Tahuroa, Te Para, Te Waihinga East, Te Waihinga Middle, Te Waihinga West, Te Whiti North, Te Whiti West, Tutaehauhau, Waikoukoutauanui, Waituhi, Whakatomotomo, Wharehanga, Whawhatawahine

11.1.6 The Native Land Court failed to place restrictions on alienation of Tāmaki-nui-ā-Rua land following title investigation. Only two out of 12 northern Tāmaki-nui-ā-Rua blocks had such restrictions imposed (SOC 2: 7.1.2(f)).

11.1.7 The Crown failed to ensure that restrictions placed on reserves between 1865 and 1900 were not subsequently removed. By 1900, restrictions were removed from over 45 of the 86 (c.160,000 acres) Wairarapa blocks that had restrictions imposed upon them. During this period, restrictions on alienation were at times removed to enable an owner to borrow against or sell land due to debt incurred in the Native Land Court process, or removal was requested due to blocks being left landlocked (SOC 3: 45.4, 45.4 (a)-(d)).

11.1.8 Remaining restrictions on alienation were removed by the Crown through the enactment of the Native Land Act 1909 (SOC 1A: 5.4.6; SOC 3: 68.1).

11.1.9 The further breakup of the Te Kawakawa and Ngawakaakupe blocks in the twentieth century by the Crown was a result of the Native Land Act 1909, which eased restrictions on alienation of remaining land of Ngāti Hinewaka, Nga Aikiha and Ngāti Moe (SOC 15: 23).

Reserves

11.1.10 During the Native Land Court era, the Crown failed to ensure that any or adequate reserves were set aside for the present and future needs of Wairarapa ki Tāmaki-nui-ā-Rua Māori iwi and hapū, or that reserves had sufficient restrictions to prevent future alienation (SOC 1A: 26.2, 26.2.1-2; SOC 2: 10.1.1; SOC 3: 45.2-3; SOC 4: 43(a), (d); SOC 5: 21.9; SOC 8: 2.3.8.7; SOC 8: 2.3.8).

11.1.11 Of the approximately 72 reserves to pass through the Native Land Court in the Wairarapa during the period 1865 to 1900, 50 were alienated either by lease or by sale. During this period, 16 [Wairarapa] reserves had their restrictions removed and were subsequently sold (SOC 1A: 26.2.1, 26.2.2).

11.1.12 The Crown failed to place Wairarapa ki Tararua reserves into hapu or tribal title. For example, for Rangitāne o Tāmaki-nui-ā-Rua only the Mangatainoka [sic] block was placed into 'tribal title' by the Native Land Court (SOC 2: 10.1.4).

11.1.12.1 Five reserves totalling 19,870 acres were set aside following the 'Tāmaki' purchase in June 1871. The Native Land Court recorded that these reserves were inalienable by sale or lease, but the reserves were subsequently purchased by the Crown (SOC 2: 10.1.1(a)).

11.1.12.2 Eight reserves totaling 4,369 acres, set aside following the sale of the southern Seventy Mile Bush blocks, were made in favour of Rangitāne, all of which had alienation restrictions removed. Later, a majority of the reserves were purchased by the Crown (SOC 2: 10.1.1(b)).

Trusteeship: protection of the Waikari Ratima estate

Alienation of Trust Property

11.1.13 To actively protect the beneficial owners' interests in Waipuka 1B2A2, Kairakau 1E4 and Tiratu 2A, the Crown should have specifically provided in section 227 of the Māori Affairs Act 1953 that the Māori Land Court seek the direct approval of the beneficial owners of the Waikari Ratima Estate before these lands were alienated.

11.1.13.1 The beneficial owners did not know, let alone approve, of the alienation of these lands and as a result have been dispossessed of their lands and prevented from, or hampered in, the proper economic utilisation and development of their lands (SOC 10: 14, 15, 19, 20, 24 -26).

Appointment of trustees

11.1.14 Section 30(1)(e) of the Māori Affairs Act 1953 conferred upon the Māori Land Court the jurisdiction to enforce the obligations of a trust on trustees appointed by the Māori Land Court. It also incorporated the then Supreme Court's jurisdiction under the Trustee Act 1956. The Trustee Act 1956 did not set out any criteria for the Māori Land Court to consider when appointing trustees (SOC 10: 33, 34).

11.1.15 Section 443 of the Māori Affairs Act 1953 set out the Māori Land Court's power to appoint trustees, but did not set out any criteria for the Court to consider when so doing (SOC 10: 35, 36).

11.1.16 The interests of Ngāti Te Hore in the Waikari Ratima Estate were prejudiced because of the appointment of a trustee who was unsuitable because of her close

familial relationship with the other trustee of the Waikari Ratima Estate at the time (SOC 10: 37).

Duties and responsibilities of trustees

11.1.17 The Māori Affairs Act 1953 did not contain any specific provisions setting out the duties and responsibilities of trustees and the Trustee Act 1956 did not contain any provisions setting out the duties and responsibilities of trustees appointed by the Māori Land Court (SOC 10: 41, 42).

11.1.18 The interests of Ngāti Te Hore in the Waikari Ratima Estate were prejudiced since the Crown, in breach of Te Tiriti, failed to provide the Māori Land Court with adequate guidelines as to the duties and responsibilities of trustees. Consequently Ngāti Te Hore did not know exactly what the duties and responsibilities of the trustees of the estate were, and so they could not know whether or not the trustees were acting in accordance with the trust (SOC 10: 38, 43).

Promotion of occupation and use of lands

11.1.19 The beneficial owners of the Waikari Ratima Estate were desirous of occupying and using lands in the Waikari Ratima Estate. The Crown failed actively to protect the interests of Ngāti Te Hore in the Waikari Ratima Estate by failing to implement legislation to compel the Māori Land Court to promote the beneficial owners' occupation and use of lands in the estate. As a result, to their economic and developmental detriment, Ngāti Te Hore have occupied lands other than those in the estate, and they have been forced to find work away from the estate (SOC 10: 44-47).

Provisions for review of operation of trusts

11.1.20 The Māori Affairs Act 1953 did not contain any specific statutory provisions to compel the Māori Land Court periodically to review the operation of the Waikari Ratima Trust. The Crown failed actively to protect the interests of Ngāti Te Hore in the Waikari Ratima Estate by failing to enact legislation to compel the Māori Land Court periodically to review the operation of the Waikari Ratima Estate. As a result, Ngāti Te Hore have been dispossessed of lands that were in the Waikari Ratima Estate (SOC 10: 48 – 50).

NB: Please note that Native Land Court issues specific to the Jury, Korou and Matua whānau are addressed separately below in Issue Nos. 28, 29 and 30 respectively.

11.2: The Crown responds that:

Protection – general

11.2.1 Notes paragraph 17 of the memorandum detailing further particulars and refers to its response 7.2.11(a) above.

11.2.1.1 Refer 11.2.1 above

11.2.1.2 Refer 11.2.1 above

11.2.1.3 Refer 11.2.1 above

11.2.2 States that for the allegation that the Crown failed to implement safeguards to protect Wairarapa ki Tāmaki-nui-ā-Rua Māori from loss of land through fraud, the relevant footnote reveals no specific reference to Wairarapa apart from the Ahikouka case, which the Crown is still examining (SOR 4: 39.2).

11.2.3 Denies that it failed to give sufficient power and resources to the Trust Commissioners established under the Native Lands Frauds Prevention Act 1870 to enable them to be effective in protecting Wairarapa land from wrongful alienation. Observes that this allegation appears to misunderstand the function of the Trust Commissioners (SOR 1A: 22.2.3; SOR 4: 39.4).

Restrictions on alienation

11.2.4 States that it is still considering this issue, but notes that the allegation appears to assume that restrictions on alienation were intended to be permanent which is not the case. States that this issue merges with the question of the sufficiency of lands remaining, and refers to its statement of general response (see SOI issue no 1 above) (SOR 15: 14).

11.2.5 States that as regards the issue of insufficient restrictions on alienation, and the subsequent removal of these, the Crown is still considering the various allegations. Notes, however, that restrictions on alienation were never absolute because there was always a process by which restrictions could be lifted (SOR 1A: 1.5.4, 1.5.5; SOR 3: 39.4; SOR 5: 11.2; SOR 15: 14).

11.2.6 Admits that, out of the 17 blocks identified in connection with SOC 2: 7.1.2(f), claimants only wished restrictions to be placed on two blocks. Says further that the Court awarded a form of title according to the wishes of the successful claimants and stated explicitly that restrictions were not desired (SOR 2: 7.1.8).

11.2.7 Says further that there were various kinds of restrictions but no policy of making restrictions absolute or permanent (SOR 3: 39.4; Crown memo of 9.12.03: 23).

11.2.8 Admits that earlier restrictions on alienation were removed by the 1909 Act and says further that a new process for managing the disposal of Māori land was set

up. In other words, the sale of Māori land did not become 'unrestricted' after the 1909 Act (SOR 1A: 1.5.6; SOR 3: 63).

11.2.9 Has not had time to research the Te Kawakawa and Ngawakaakupe blocks and does not plead to the allegation at this time (SOR 15: 18).

Reserves

11.2.10 States that it is still examining whether the Crown failed to ensure that there were adequate restrictions on the alienation of Māori reserves and that alienation restrictions on reserves were maintained. Says that in part, it may be subsumed by the wider question of the sufficiency of lands remaining in Māori hands at any particular period. States that it is unclear whether the allegation in SOC 4 is confined to reserves created from the pre-emption purchases (SOR 4: 39.3; SOR 5: 19.2).

11.2.11 States that has had difficulty in interpreting the Gawith and Hartley evidence relating to numbers of reserve blocks and restrictions referred to in paragraph 15 (SOR 1A: 22.2.1, 22.2.2).

11.2.12 As regards the issue of failing to place reserves in hapu or tribal title, notes that there needs to be clarity about what form of tribal title is intended. States that it is still examining this matter (SOR 2: unnumbered response to SOC 2: 10.1.4).

11.2.12.1 (a) Admits that five reserves were set aside following the Tāmaki purchase. States that the reserves were awarded by the Crown under the Volunteers and Other Lands Act 1877. Has been unable to find reference to the placing of restrictions on these reserves by the Native Land Court at the time they were set aside. Admits, however, that it appears that restrictions were placed on alienation of the reserves at some point.

(b) States further that restrictions were lifted on the blocks Umutaoroa (25.6.1889 by Governor Onslow), Te Whiti-a-Tara (19.3.1910 by Order in Council signed by Native Minister James Carroll and Governor Plunket), and Te Ahuaturanga (17.1.1910 by proclamation made on recommendation of Native Minister James Carroll). Admits that Umutaoroa, part of Ahuaturanga and part of Te Ohu were purchased by the Crown and that part of Te Ohu and part of Ahuaturanga were sold to private purchasers (SOR 2:10.1.1-10.1.2).

11.2.12.2 Admits that eight reserves were set aside following the sale of the southern Seventy Mile Bush Blocks. Admits that two reserves (Eketahuna and Pahiatua) had alienation restrictions placed on them but the particulars provided are insufficient to enable the Crown to ascertain whether restrictions were placed on the other reserves. Admits that a portion of Ngatapu No 1 Reserve, Ngatapu No 2 Reserve and Mangahao No 1 were sold to the Crown. Says that there are insufficient particulars in the research reports to enable the Crown to plead to

whether the majority of the reserves were purchased by the Crown (SOR 2: 10.1.2(a)(i)-(iii)).

Trusteeship: protection of the Waikari Ratima estate

Alienation of Trust Property

11.2.13 (a) States that it is not required to respond to statements regarding section 227 of the Māori Affairs Act 1953 and is still considering this matter. Its preliminary views, however, are that section 227(1)(b) of the Act requires the Court to be satisfied that the alienation is not contrary to equity or good faith, or to the interests of the Māori alienating. Further, section 227(1)(f) requires the Court to be satisfied that the alienation is not in breach of any trust to which the land is subject.

(b) Also states that the Court recorded the statements of the solicitor and trustee that meetings of beneficiaries had been held; that money from the transaction was to assist in housing for beneficiaries; and that all beneficiaries agreed, and there is no other evidence on the record of this inquiry 'of this matter'. Its preliminary view is that the legislative provisions provided sufficient protection to beneficiaries, and that the Court was entitled to accept the representations of a solicitor as satisfaction in these matters.

11.2.13.1 Denies, on the basis that there is no evidence on record to support the claim, that the alienations of any of the three blocks took place without the knowledge, let alone the approval, of the beneficial owners. As regards dispossession and utilisation and development of lands, the Crown is not required to plead to allegations of law and Treaty breach (SOR 10: 11, 12.2, 16, 17, 21-23; Crown memo of 9.12.03: 24).

Appointment of trustees

11.2.14 Admits that section 30(1)(e) of the Māori Affairs Act 1953 conferred upon the Māori Land Court the jurisdiction to enforce the obligations of a trust on trustees appointed by the Māori Land Court. Admits that this section incorporated the then Supreme Court's jurisdiction under the Trustee Act into the jurisdiction of the Māori Land Court. But notes that the section extended the power to the Māori Land Court to exercise the power vested in the Supreme Court by the Trustee Act (1908 and later 1956) over the trusts specified in this section only. Has not yet researched the broader legal context relating to the appointment of trustees by the Māori Land Court and will respond to this in its submissions. States further that the powers and obligations of Trustees, the ability to remove Trustees and the termination of Trusts are contained in the Trustee Act 1956 (SOR 10: 30.1-2, 31, 31.1).

11.2.15 Admits that section 443 of the Māori Affairs Act 1953 sets out the Māori Land Court's ability to appoint new trustees (SOR 10: 32.1).

11.2.16 States that there is no evidence of prejudice resulting for Ngāti Te Hore from the events listed in the claim regarding the appointment of two trustees for the Waikari Ratima Estate. Also states that there is no evidence on record of any contest to the appointment of Nicole Mary Roberts as a trustee (SOR 10: 34.1, 34.2).

Duties and responsibilities of trustees

11.2.17 Denies that the Māori Affairs Act 1953 did not contain any specific provisions setting out the duties and responsibilities of trustees. Also denies that the Trustee Act 1956 did not contain any provisions setting out the duties and responsibilities of trustees appointed by the Māori Land Court. States that the provisions governing the duties and responsibilities set out in the Trustee Act 1956 also apply to trustees appointed by the Māori Land Court (SOR 10: 38, 39).

11.2.18 Is not required to plead to allegations of law and Treaty breach but its preliminary view is to deny the allegation that Ngāti Te Hore were prejudiced because they did not know exactly what the duties and responsibilities of trustees were, in that trustee conduct is clearly guided by the terms of their trust, and by the legislative regime governing trustees. States further that the powers of owners are provided in part XXIII of the Māori Affairs Act 1953 (SOR 10: 35, 40).

Promotion of occupation and use of lands

11.2.19 (a) Denies that the Māori Affairs Act 1953 did not contain any provision to compel the Māori Land Court to promote the beneficial owners' occupation and use of lands in the Waikari Ratima Estate. States further that section 327(1) of that Act provides that the 'main purpose of this Part of this Act is to promote the occupation of Māori freehold land by Māoris and the use of such land by Māoris for farming purposes.'

(b) Also states that there is no evidence on the record to support the allegation that the beneficial owners of the Waikari Ratima Estate were desirous of occupying and using lands in the Waikari Ratima Estate, or that to their economic and developmental detriment, the claimants have occupied lands other than those in the Waikari Ratima Estate and that they have been forced to find work away from the Waikari Ratima Estate (SOR 10: 42, 42.1, 43, 44, 44.2).

Provisions for review of operation of trust

11.2.20 Is still considering the broader legal context of the claim that the Māori Affairs Act 1953 did not contain any specific statutory provisions to compel the Māori Land Court periodically to review the operation of the Waikari Ratima Estate (SOR 10: 46).

11.3 Agreements

11.3(a) The Crown in its Statement of General Position has conceded that it failed actively to protect the lands of Wairarapa Māori to the extent that today Wairarapa Māori are virtually landless and that this was a breach of the Treaty of Waitangi and its principles.

It appears to the Tribunal that the Claimants and the Crown agree that:

11.3.1 The Crown enacted the Native Land Act 1909 which lifted existing restrictions on the alienation of Māori land.

11.3.2 Section 30(1)(e) of the Māori Affairs Act 1953 conferred upon the Māori Land Court the jurisdiction to enforce the obligations of a trust on trustees appointed by the Māori Land Court. This section incorporated the then Supreme Court's jurisdiction under the Trustee Act into the jurisdiction of the Māori Land Court.

11.3.3 Section 443 of the Māori Affairs Act 1953 sets out the Māori Land Court's ability to appoint new trustees.

11.4: Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

11.4.1 What was the purpose of the Native Lands Fraud Prevention Act 1870, and the role of Trust Commissioners? Were they adequately resourced? Did they prevent fraudulent and/or inequitable transactions? Were there legislative and administrative protections in place after the end of pre-emption? If so, did they meet the Crown's Treaty obligations?

11.4.2 Were restrictions on alienation a sufficient and effective means of actively protecting the Māori land base as it remained after 1865? Were the number and nature of restrictions in Wairarapa ki Tararua appropriate, in the light of the expressed desires of Māori, Māori population numbers, contemporary patterns of land use, and economic opportunities open to Māori?

11.4.3 During the period 1865 to1909, was the extent to which restrictions on alienation were removed from Wairarapa ki Tararua land generally, and reserve land in particular, appropriate in the light of the expressed desires of Māori, Māori population numbers, contemporary patterns of land use and economic opportunities open to Māori?

11.4.4 Did Māori perceive restrictions as protective, and were restrictions consistently applied by the Court?

11.4.5 In what circumstances were restrictions removed? Was there provision for all Māori owners to be involved in decisions to remove them? Were restrictions effective in protecting owners from attempts to purchase their interests? Was the removal of restrictions an appropriate and necessary response to Māori agency?

11.4.6 How did the enactment of the Native Land Act 1909 affect Māori land subject to protective measures in the Wairarapa ki Tararua inquiry district?

Issues relating to the specific claims

11.4.7 Was the Māori Land Court provided with adequate powers and resources to create, administer and review trusts that protected beneficiaries in the use, administration and disposal of their lands?

11.4.8 What does the alienation of the Waikari Ratima Estate reveal about the adequacy of Māori Land Court powers and resources in operating trusts in the interests of, and with the approval of, beneficial owners?

11.4.9 What does the administration and alienation of the Waikari Ratima Estate reveal about the nature and effectiveness of trusts as operated by the Māori Land Court? Was a legal trust an appropriate vehicle for these beneficiaries to manage, profit from, and retain their turangawaewae?

12. Native Land Court: Crown response to protests

12.1: The Claimants contend that:

Ngā Hapū Karanga

12.1.1 The Crown failed to rectify defects in the Native Land Court system when these were identified by ngā hapū karanga through petitions and attempted boycott of the Native Land Court (SOC 1A: 24.4.4).

Rangitāne

12.1.2 The Rangitāne response to the activities of the Native Land Court and the legacy of Crown purchasing was varied (SOC 2: 11.1.2).

12.1.3 Rangitāne were involved in the following activities which included protests at the legacy of the Native Land Court;

(a) Participation in the Repudiation Movement, in particular by Henare Matua, a Rangitāne rangatira;

(b) Submissions and involvement in the Hawkes Bay Land Alienation Commission inquiry of 1873;

(c) Use of the legal system by Nireaha Tāmaki, a Rangitāne rangatira;

(d) Petitions to the Crown, for example those by Hori Ropiha in respect of the timber leases (SOC 2: 11.1.2, 11.1.2(a-d); SOC 3: 63(e), 62(k)).

12.1.4 In the nineteenth century Rangitāne was involved in a boycott of the Native Land Court (SOC 3: 63(d)).

12.1.5 Despite protest and attempts at maintaining their tino rangatiratanga and wellbeing, the Crown failed to respond and provide reasonable redress to Rangitāne. As a result, Rangitāne continued to suffer in the following respects:

12.1.5.1 The Native Land Court continued throughout the nineteenth century to investigate Rangitāne lands (SOC 2: 11.1.3; SOC 3: 64.1)

12.1.5.2 Henare Matua's submissions to the Hawkes Bay Native Land Alienation Commission in 1873 were dismissed. The protests made by the Repudiation Movement, including those made by Henare Matua concerning legislative change were rejected (SOC 2: 11.1.3(b)).

12.1.5.3 The Crown failed to take heed of Rangitāne protest about the Native Land Court in subsequent legislation (SOC 3:64.2).

12.1.5.4 The Crown introduced new legislation to ameliorate the effect of the 'Nireaha Tāmaki'; Privy Council decision (SOC 2: 11.1.3(d)).

Ngāti Hinewaka

12.1.6 Ngāti Hinewaka opposed the operation of the Native Land Court in the Wairarapa. They expressed their opposition through involvement in protest including the Kīngitanga, Kotahitanga and Repudiation movements, the establishment of Wairarapa Komiti, and numerous petitions to the Crown (SOC 4: 39(a)).

Ngāti Kahungunu ki Tāmaki-nui-ā-Rua

12.1.7 The Crown dealt with and entered into agreements with Māori to purchase lands within Tāmaki-nui-ā-Rua despite being aware of the opposition by some Tāmaki Māori to such sales. Some Tāmaki Māori vehemently opposed a June 1871 agreement to sell to the Crown, and complained to the Native Land Court. Despite this opposition, a second sale deed was signed on 16 August 1871 (SOC 8: 3.3.2, 3.3.2.1, 3.3.2.2).

Jury whānau

12.1.8 The Crown failed to heed the significant protest of Wairarapa Māori against Māori land legislation from circa 1870 to 1900, and adequately incorporate the reformist views of Wairarapa Māori into Māori land legislation of the time (SOC 9: 14.1). The protest of Wairarapa Māori included:

12.1.8.1 Petitions to Parliament calling for changes to the Native Land Court and Native Land legislation in 1871, 1872, 1873 and 1876 (SOC 9: 15.2, 15.3, 15.5, 15.7);

12.1.8.2 Boycott of the Court by many Wairarapa ki Tāmaki-nui-ā-Rua Māori in 1873 (SOC 9: 15.4); and

12.1.8.3 In 1876, at a hui of Te Komiti o Tamatea at Pakowhai, Te Whatahoro Jury spoke in support of Hikawera Mahupuku's petition against the alienating practices of the Native Land Court (SOC 9: 15.6).

12.1.9 Despite these protests and calls for reform from Wairarapa Māori, the Crown enacted:

12.1.9.1 The Native Land Amendment Act 1877, enabling the Crown compulsorily to refer Māori land to the Court, regardless of the owners' wishes (SOC 9: 15.9).

12.1.9.2 The Native Land Amendment Act (No 2) 1878, restricting the period in which Māori could apply for a rehearing to three months after the last determination; prohibiting Māori from taking out mortgages of land held under memorial ownership [sic]; and allowing any interested party (such as any grantee

or a purchaser of an individual interest) to apply for the partitioning of their interest (SOC 9: 15.10-12).

12.1.10 The Government's failure to respond to their protests against, and calls for reform of, Māori land legislation, led Wairarapa Māori to turn to more traditional structures, using rūnanga and forming komiti to advance their views on Māori land issues. For example:

12.1.10.1 In 1877 and 1878, Te Whatahoro Jury wrote extensively on problems with, and recommendations regarding, the Native Land Court (SOC 9: 16.2-4).

12.1.11 From 1879 onwards, total Māori expenditure by the Government was reduced, while the Native Land Court vote continued to increase (SOC 9: 16.18).

12.1.12 Wairarapa Māori played a critical role in the Kotahitanga movement and in the Māori Paremata and this was a continuation of their early opposition to the Native Land Court and their participation in the Repudiation Movement and in the Komiti Māori (SOC 9: 16.19):

12.1.12.1 The pan-iwi hui in Wairarapa in 1888 culminated in a draft Bill seeking the repeal of all existing Māori land legislation (SOC 9: 16.25).

12.1.12.2 The first formal national Kotahitanga hui in 1892 at Waitangi set goals, which included the abolition of the Native Land Court (SOC 9: 16.28).

Henare Matua Kani

12.1.13 Henare Matua, absolutely disillusioned with the Native Land Court process by 1870, sought a political social solution to the threat and became the key founding person in the Repudiation Movement (SOC 14: 11.2).

12.1.14 The Hawkes Bay Native Lands Alienation Commission, established following the endorsement by a parliamentary select committee of Māori petitioners' call for a commission of inquiry into Native land legislation, ended up both having a too narrow focus, and being ignored by the Crown in any case (SOC 14: 11.5).

12.1.15 Following hui from July 1875 to March 1876, organised by people including Henare Matua and held because the Commission was seen as a wasted effort, Ngāti Kahungunu, Rangitāne, and various rangātira met and filed petitions calling for an annual Māori Parliament, and asking that the Native Land Court laws and operations be examined (SOC 14: 11.5-6).

12.1.16 Henare Matua, from 1877 until his death, appeared in numerous Native Land Court cases, and drafted hundreds of petitions and advised numerous rangātira (SOC 14: 11.8).

12.2: The Crown responds that:

Ngā Hapū Karanga

12.2.1 Admits that, in 1872, a petition by certain Wairarapa Māori called for the 'reorganisation' of the Native Land Court, and applications affecting four blocks were withdrawn in 1871. States that the Native Land Act 1873 was intended to rectify problems that had arisen under the earlier legislation. Is still considering the general issue of Māori reception of the Native Land Court in the Wairarapa (SOR 1A: 20).

Rangitāne

12.2.2 Admits that Māori response to the activity of the Native Land Court and Crown land purchasing was varied (SOR 2: 11.1.2).

12.2.3 Admits that Rangitāne protest included participation in the Repudiation movement; submissions and involvement in the Hawkes Bay Land Alienation Commission Inquiry 1873; use of the legal system by Nireaha Tāmaki; and petitions to the Crown (SOR 2: 11.1.2(a)).

12.2.4 Has not yet had time to research Rangitāne involvement in attempts to boycott Native Land Court sittings and does not plead at this time (SOR 3: 57.3).

12.2.5 No response given.

12.2.5.1 Admits that the Native Land Court continued throughout the nineteenth century to investigate Rangitāne lands (SOR 2: 11.1.3; SOR 3: 58).

12.2.5.2 Admits that Henare Matua's submissions to the Hawkes Bay Native Land Alienation Commission in 1873 were dismissed. Has had insufficient time to research whether the protests made by the Repudiation movement, including those made by Henare Matua concerning legislative change, were rejected (SOR 2: 11.1.3(b)).

12.2.5.3 Admits that proposals by some Wairarapa Māori were not adopted in amendments to Native Land legislation. States further that Native Lands legislation was continually being revised and extended in response to problems encountered and Māori complaints (SOR 3: 58.1).

12.2.5.4 Admits that it introduced new legislation to ameliorate the effect of the 'Nireaha Tāmaki' Privy Council decision (SOR 2: 11.1.3(d)).

Ngāti Hinewaka

12.2.6 In terms of Ngāti Hinewaka's claimed opposition to the operation of the Native Land Court in the Wairarapa, states that it is still refining its understanding of the history of the Native Land Court in this region, but indicates that a picture of

generalised and continued opposition to the Court, as suggested by the wording of the claim, is unlikely to be admitted (SOR 4: 35.1).

Ngāti Kahungunu ki Tāmaki-nui-ā-Rua

12.2.7 Admits that some Tāmaki Māori opposed the June 1871 sale of Tāmaki land and wrote to the Native Land Court complaining about the conduct of the Court hearings of the Tāmaki blocks. Admits that despite this opposition, a second sale deed was signed in August 1871 (SOR 8: 5.2.5, 5.2.6(a, b)).

Jury whānau

12.2.8 States that in 1873, it introduced reforming legislation that made changes to the law in a number of the areas raised in the 1873 petition (SOR 9: 15.2.2).

12.2.8.1 Admits that Wairarapa Māori sent, or were involved in the sending of, petitions to Parliament in 1871, 1872, 1873 and 1876, calling for changes in the Native Land Court and/or land policy (SOR 9: 15.2.1, 15.3, 9 15.5.1, 15.7).

12.2.8.2 Admits that in 1873 a number of cases were withdrawn from the Native Land Court, and states that this appears to have been as a result of decisions made by a Wairarapa rūnanga (SOR 9: 15.4, 15.4.1).

12.2.8.3 Admits that Te Whatahoro spoke in support of a speech calling for the end of land selling at a hui at Pakowhai in 1876 (SOR 9: 15.6).

12.2.9 see below

12.2.9.1 States that the Native Land Amendment Act 1877 provided for the Crown to apply to the Native Land Court to ascertain and determine what interests in Māori land had been purchased by the Crown (SOR 9: 15.9).

12.2.9.2 (a) Admits that the Native Land Amendment Act (No 2) 1878 restricted the period for having a matter reheard to three months after the last determination in respect of the land. Denies that this discouraged proper investigation of title (SOR 9: 15.10).

(b) Admits that the Native Land Amendment Act (No 2) 1878 made it unlawful for any person to pay any sum by way of mortgage on any Māori land held under memorial of ownership or Crown Grant (SOR 9: 15.11).

(c) Admits that the Native Land Amendment Act (No 2) 1878 allowed a grantee or other interested person to apply to the Court for their interest to be partitioned (SOR 9: 15.12).

12.2.10 Admits that rūnanga and komiti were used by some Wairarapa Māori to advance their views of Māori land issues (SOR 9: 16).

12.2.10.1 Admits that Te Whatahoro wrote extensive analysis of what he considered the adverse effects of the Native Land Court, and that his analysis was published in *Te Wananga* (SOR 9: 16.2.1, 16.2.2, 16.3, 16.4).

12.2.11 Has had insufficient time to research, and therefore does not now plead to, the claim that from 1879 onwards, total Māori expenditure by the Government fell while the Native Land Court vote continued to increase (SOR 9: 16.18).

12.2.12 Admits that Wairarapa Māori were involved in the komiti Māori, Kotahitanga Movement, the Māori Paremata, opposition to the Native Land Court and the Repudiation Movement, but has insufficient knowledge to plead to the alleged connections (SOR 9: 16.19).

12.2.12.1 Admits that there was a pan-iwi hui in Wairarapa in 1888 but states that the draft Bill apparently emerged from a meeting at Putiki (SOR 9: 16.25, 16.25.1).

12.2.12.2 Admits that the first formal national Kotahitanga hui in 1892 at Waitangi, set goals including abolition of the Native Land Court (SOR 9: 16.28).

Henare Matua Kani

12.2.13 Admits that Henare Matua became disillusioned with the Native Land Court process, and was a founding figure of the Repudiation Movement and assisted with the preparation of petitions (SOR 14: 7.4).

12.2.14 Admits that the Hawkes Bay Land Alienation Commission was established to investigate fraudulent transactions in Hawkes Bay. Denies that the Commission was totally ignored by the Crown and states further that many of the Commission's recommendations, in particular with regard to the impact of the 10 owner rule, were incorporated into land legislation in the following year (SOR 14: 7.7).

12.2.15 Admits that Henare Matua organised a large pan-tribal hui and that the hui endorsed an annual Māori Parliament and asked for the Native Land Court laws and operations to be examined (SOR 14: 7.9-10).

12.2.16 Admits that subsequently Henare Matua appeared in numerous Native Land Court cases and drafted petitions but does not plead to the number of these. Also does not plead as to any counsel given by Henare Matua to rangātira (SOR 14: 7.12).

12.3: Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

12.3.1 In 1872, a petition by certain Wairarapa Māori called for the 'reorganisation' of the Native Land Court. Applications affecting four blocks were withdrawn in 1871.

12.3.2 Rangitāne response to the activity of the Native Land Court and Crown land purchasing was varied.

12.3.3 The Crown admits that Rangitāne protest included participation in the Repudiation Movement; submissions and involvement in the Hawkes Bay Land Alienation Commission Inquiry 1873; use of the legal system by Nireaha Tāmaki; and petitions to the Crown.

12.3.4 The Native Land Court continued throughout the nineteenth century to investigate Rangitāne lands.

12.3.5 Henare Matua's submissions to the Hawkes Bay Native Land Alienation Commission in 1873 were dismissed.

12.3.6 Proposals by some Wairarapa ki Tāmaki-nui-ā-Rua Māori were not adopted in amendments to Native Land legislation.

12.3.7 The Crown introduced new legislation to ameliorate the effect of the 'Nireaha Tāmaki' Privy Council decision (SOR 2: 11.1.3(d)).

12.3.8 Some Tāmaki Māori opposed the June 1871 sale of Tāmaki land and complained in writing to the Native Land Court. Despite this opposition, a second sale deed was signed in August 1871.

12.3.9 Wairarapa ki Tāmaki-nui-ā-Rua Māori sent, or were involved in the sending of, petitions to Parliament in 1871, 1872, 1873 and 1876 calling for changes in the Native Land Court and/or land policy.

12.3.10 In 1873, a number of cases were withdrawn from the Native Land Court.

12.3.11 Te Whatahoro spoke in support of a speech calling for the end of land selling at a hui at Pakowhai in 1876.

12.3.12 The Native Land Amendment Act 1877 provided for the Crown to apply to the Native Land Court to ascertain and determine what interests in Māori land had been purchased by the Crown.

12.3.13 The Native Land Amendment Act (No 2) 1878 restricted the period for applying for a rehearing to three months after the last determination in respect of the land.

12.3.14 The Native Land Amendment Act (No 2) 1878 made it unlawful for any person to pay any sum by way of mortgage on any Māori land held under memorial of ownership or Crown Grant.

12.3.15 The Native Land Amendment Act (No 2) 1878 allowed a grantee or other interested person to apply to the Court for their interest to be partitioned.

12.3.16 Rūnanga and komiti were used by some Wairarapa ki Tāmaki-nui-ā-Rua Māori to advance their views of Māori land issues.

12.3.17 Te Whatahoro wrote extensive analysis of the adverse effects of the Native Land Court, and his analysis was published in *Te Wananga*.

12.3.18 Wairarapa ki Tāmaki-nui-ā-Rua Māori were involved in the Kotahitanga Movement, the Māori Paremata, the Repudiation Movement and in opposition to the Native Land Court.

12.3.19 There was a pan-iwi hui in Wairarapa in 1888.

12.3.20 The first formal national Kotahitanga hui in 1892 at Waitangi, set goals, including abolition of the Native Land Court.

12.3.21 Henare Matua became disillusioned with the Native Land Court process, and was a founding figure of the Repudiation Movement.

12.3.22 The Hawkes Bay Land Alienation Commission was established to investigate fraudulent transactions in Hawkes Bay.

12.3.23 Henare Matua organised a large pan-tribal hui, which endorsed an annual Māori Parliament and asked for the Native Land Court laws and operations to be examined.

12.3.24 Subsequently Henare Matua appeared in numerous Native Land Court cases and drafted petitions.

12.4 Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

12.4.1 How generalised and continuous was the opposition of Wairarapa ki Tāmaki-nui-ā-Rua Māori to the Native Land Court during the period 1865 to 1900?

12.4.2 How extensively were hearings of the Native Land Court in Wairarapa ki Tararua boycotted during the period 1865 to 1900, how effective were the boycotts, and how did the Crown respond to them?

12.4.3 How much support was there among Wairarapa ki Tāmaki-nui-ā-Rua Māori for komiti, particularly the Wairarapa Komiti, undertaking decisions about the ownership of land and other resources? What difficulties did komiti encounter in implementing these decisions?

12.4.4 To what extent was the involvement of Wairarapa ki Tāmaki-nui-ā-Rua Māori in the Repudiation Movement, the Kotahitanga Movement and the Māori Paremata attributable to opposition to the operation of the Native Land Court, and what form did their involvement take? To what extent, if any, did the Crown receive and act upon the concerns and recommendations of these movements, with regard to the Native land laws and Native Land Court?

12.4.5 How significant was the role of *Te Wananga* in expressing and encouraging Māori opposition to the Native Land Court?

12.4.6 What attitude did the Hawkes Bay Native Land Alienation Commission take to the Repudiation Movement and Henare Matua's concerns about the Native Land Court? Did the Crown fail to consider wider criticisms of the court submitted to the Commission?

12.4.7 To what extent was the passage of the Native Land Act 1873 intended to rectify problems with earlier legislation that had been of concern to Māori, particularly Wairarapa ki Tāmaki-nui-ā-Rua Māori? Was it successful in doing so?

12.4.8 Was the passage of the Native Land Amendment Act 1877 and the Native Land Amendment Act (No 2) 1878 in any way a response by the Crown to concerns of Wairarapa ki Tāmaki-nui-ā-Rua Māori regarding the Native Land Court?

12.4.9 Was legislation passed by the Crown after the Nireaha Tāmaki Privy Council decision equitable to Nireaha Tāmaki and other Māori?

12.4.10 To the best of their ability in the circumstances of the time, did Wairarapa ki Tāmaki-nui-ā-Rua Māori exercise their tino rangatiratanga by bringing the concerns of Māori communities to the attention of the Crown? Did the Crown, in its legislation, policies, and practices, make a sufficient and appropriate response to the collectively-expressed concerns and grievances of Māori?

12.4.11 Did the legislative amendments covering the Native Land Court in the nineteenth century adequately attempt to address Māori protest, or were Crown concerns to alienate Māori land and undermine customary authority given priority over attempted reforms?

13. Crown response to Wairarapa ki Tararua political movements

13.1: The Claimants contend that:

13.1.1 Rangitāne participated in the Repudiation movement in response to the legacy of Crown purchases (SOC 2: 11.1.2(a); SOC 3: 63(e)).

13.1.2 The Crown rejected Repudiation movement protests, including Henare Matua's proposed legislative change (SOC 2: 11.1.3 (b)).

13.1.3 Rangitāne sympathised with the Kīngitanga movement, and with the Pai Marire faith (SOC 3: 63 (b), (c)).

13.1.4 Rangitāne participated in Wairarapa Komiti, and supported the Kotahitanga movement (SOC 3: 63 (f), (h)).

13.1.5 The Crown's failure to acknowledge Māori protests against Native land legislation led Wairarapa Māori to support more traditional rūnanga and komiti (SOC 9: 16).

13.1.6 Following protests against Native land legislation, Wairarapa Māori participated in the 1870s Repudiation movement and komiti, in the 1880s Kotahitanga movement, and in the 1890s Paremata (SOC 9: 16.19).

13.1.7 Henare Matua helped establish the Repudiation movement as a protest against the Native Land Court's failure to protect customary rights, and its suspected promotion of Te Kōti Tahae Whenua (SOC 14: 11.2).

13.1.8 Ngāi Tumapuhia ā Rangi joined the Kīngitanga movement in an attempt to restore their tribal lands and mana (SOC 5: 19.3).

NB: Please note that allegations concerning the involvement of the Jury, Korou and Matua whānau in political movements are addressed separately in Issues Nos. 28, 29 and 30 respectively.

13.2: The Crown responds that:

13.2.1 Admits that Rangitāne participated in the Repudiation movement (SOR 2: 11.1.2(a); SOR 3: 57.4).

13.2.2 States that it is unable to plead on the alleged rejection of Repudiation movement protests, including Henare Matua's proposed legislative change because it had insufficient time to research the issue (SOR 2: 11.1.3 (a), (i)).

13.2.3 Admits that some Wairarapa Māori sympathised with the Kingitanga movement, and with the Pai Marire faith (SOR 3: 57.1, 57.2).

13.2.4 Admits that Rangitāne participated in Wairarapa Komiti, and supported the Kotahitanga movement (SOR 3: 57.5, 57.7).

13.2.5 Admits that rūnanga and komiti were used by some Wairarapa Māori to advance their views on land issues (SOR 9: 16).

13.2.6 Admits that Wairarapa Māori were involved in Native land protests, the Repudiation movement, komiti, the Kotahitanga movement and in the Paremata, but has insufficient knowledge to plead to the connections alleged (SOR 9: 16.19).

13.2.7 Admits that Henare Matua became disillusioned with the NLC process, and that he was a founding figure in the Repudiation movement (SOR 14: 7.4).

13.2.8 States that the evidence establishing that participation in the King movement was motivated by the objective of recovering land requires to be particularised (SOC 5: 16.3).

13.3: Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

13.3.1 Rangitāne participated in the Repudiation movement.

13.3.2 Some Wairarapa ki Tāmaki-nui-ā-Rua Māori sympathised with the Kingitanga movement, and with the Pai Marire faith.

13.3.3 Rangitāne participated in Wairarapa Komiti, and supported the Kotahitanga movement.

13.3.4 Rūnanga and komiti were used by some Wairarapa ki Tāmaki-nui-ā-Rua Māori to advance their views on land issues.

13.3.5 Wairarapa ki Tāmaki-nui-ā-Rua Māori were involved in Native land protests, the Repudiation movement, komiti, the Kotahitanga movement and in the Paremata.

13.3.6 Henare Matua became disillusioned with the Native Land Court process, and he was a founding figure in the Repudiation movement.

13.4: Issues

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

13.4.1 Were the various political movements of the 1860s to the 1890s an attempt by Wairarapa ki Tāmaki-nui-ā-Rua Māori to express their collective views and authority and exercise their tino rangatiratanga?

13.4.2 Did the Crown engage constructively or at all with these movements, their leaders, and their issues/recommendations? If not, why not?

13.4.3 Could or should the Crown have worked in partnership with the Wairarapa komiti, and given legislative recognition and sanctions to the komiti's authority and work?

13.4.4 Did the colonial state provide any or effective mechanisms for Māori to participate meaningfully in national policy making? If not, why not?

13.4.5 How successful were the efforts of the Repudiation movement, the komiti, Kotahitanga, and the Paremata? To the extent that they were unsuccessful or that the Crown did not foster, engage with or listen to them, what (if any) prejudice was suffered by Wairarapa ki Tāmaki-nui-ā-Rua Māori as a result?

14. Degradation and Pollution

14.1: The Claimants contend that:

14.1.1 Policies pursued by the Crown led to a massive transformation of the indigenous environment, which contributed significantly to loss of access to, and use of, traditional resources for Wairarapa ki Tāmaki Nui-a-Rua Māori (SOC 1B: 35; SOC 3: 83).

14.1.2 The Crown failed to acknowledge and protect the right of Tāmaki Māori to exercise tino rangatiratanga over the environment, including the right to make and implement decisions regarding the management and use of lands, waters, forests, flora and fauna and wāhi tapu (SOC 8: 9.2).

14.1.3 The transformation of land for farming use involved explicit degradation and pollution including modification of wetlands, massive forest clearances, and the introduction of exotic grasses, fish and animals. This further endangered traditional resources (SOC 1B: 36; SOC 8: 9.4, 9.7).

14.1.4 The Crown's breach has prejudiced Tāmaki Māori in that they have been forced to rely on the Crown to protect the environment from degradation or destruction. The Crown has often failed in this task and has allowed therefore the destruction or depletion of the natural resources that Tāmaki Māori relied upon for survival and the maintenance of cultural practices (SOC 8: 9.4, 9.7).

14.1.5 In breach of the principles of the Treaty of Waitangi, including the principle of active protection, the Crown and its agents (including the Forest Service) failed to adequately protect Ngāi Tumapuhia ā Rangi taonga and ensure their enjoyment of those taonga (SOC 5:27).

14.1.6 In breach of the principles of the Treaty of Waitangi, including the principle of active protection, the Crown's policies, practices and acts regarding the management of the environment have undermined the spiritual and cultural relationship and whakapapa connections that Ngāi Tumapuhia ā Rangi has with the natural environment, including wāhi tapu, forests, fresh and sea waters, indigenous plants, birds, insects, fish and other taonga (SOC 5: 30).

Mahinga kai

14.1.7 Because of the Crown's failure to protect resources, there was a progressive decline in the availability and quality of mahinga kai (SOC 2: 15.1.2).

14.1.7.1 The Crown was responsible for the loss of uncultivated mahinga kai, including birds, fernroot, berries and kiore; and the loss of resources such as feathers and raupo, which were used to make tools, clothing, and to support other economic activity (SOC 5: 27.3).

14.1.7.2 The felling of Seventy Mile Bush in particular resulted in a depletion of mahinga kai, as well as a loss of mauri and sacred places being desecrated (SOC 2: 15.1.4).

Extinction of the huia

14.1.8 There was a failure to protect taonga, such as the huia, in particular by not supporting the efforts of Wairarapa rangātira to protect the huia by not banning hunting of the huia until 1892 and doing little to enforce the ban, which led to the bird's extinction. The Crown also failed to protect the tītī which disappeared from the region (SOC 2: 15.1.3; SOC 3: 84.4; SOC 5: 25.1).

Inland waterways

14.1.9 Ngā Hapū Karanga exercised tino rangatiratanga over the fresh water resources within their rohe. Inland waterways such as Lakes Wairarapa, Onoke and surrounding wetlands, the Ruamahanga, Waiohine, Waingawa, Tauherenikau, Kopuaranga rivers including the Manawatu and its tributaries, and the smaller Wangaehu, Taueru, Huangarua and Turanganui rivers are a taonga of Ngā Hapū Karanga and were the sites of kāinga, wāhi tapu, and pā, and also contained food sources such as eels, koura, and fresh water mussels (SOC 1B: 38; SOC 2: 15.1.5; SOC 3: 86), and were adversely affected by:

14.1.9.1 The altering of water levels at Lakes Onoke and Wairarapa and the subsequent effect on the eel fishery (SOC 3: 87.3).

14.1.9.2 Increased sedimentation, river erosion and silting of riverways and the subsequent effect on freshwater fisheries (SOC.3: 87.1; SOC 5: 29.22).

14.1.9.3 A decline in water quality, through intensive pastoral farming and sewerage (SOC 1B: 43(j); SOC 2: 15.1.5(a,b); SOC 3: 87.4; SOC 5: 29.21).

14.1.9.4 The use of poisons and contaminants and the subsequent effect on freshwater fisheries (SOC 3: 87.2; SOC 5: 29.23).

14.1.9.5 The failure to protect the flora and fauna by allowing the introduction of exotic fish (SOC 1B: 43(k)).

14.1.9.6 A general decline in fish communities, including freshwater fish stocks (such as tuna and kokopu), birdlife (such as pūkeko and matuku) and plants (such as raupo and bread pollen) (SOC 2: 15.1.5(c); SOC 3: 87.5; SOC 5: 29.24).

14.1.9.7 The taking of shingle contributed to the destruction of traditional mahinga kai, depletion of freshwater fisheries and degradation of water quality (SOC 5: 29.17).

14.1.9.8 Sewage and run off were permitted by local authorities to enter into waterways that were significant to Māori for spiritual and kaimoana purposes (SOC 5: 29.21).

Highlands and forests

14.1.10 As at 1840, Ngā Hapū Karanga exercised te tino rangatiratanga over the flora and fauna resources within their rohe. The Treaty guaranteed they would retain their tino rangatiratanga over their resources and maintain their practices until they desired to relinquish them. (SOC 1B: 51, 52).

14.1.11 The Crown failed to protect indigenous flora and fauna, and headwaters of rivers in the mountain ranges of the Wairarapa ki Tāmaki-nui-ā-Rua area, by failing to protect the forest ecology, including fisheries, birds and plant life. Examples include deforestation at Wainuioru, Maungarake, Weraiti, Te Maipi, Te Pohue blocks and part of Pikihorohoro (SOC 1B: 51; SOC 3: 84.1; SOC 5: 26.6).

14.1.11.1 Major forest clearance was permitted, particularly lowland and hill country forest, which has devastated ownership of and access to taonga including bird and plant life. Forest trees were replaced with pastoral plants, especially grass, accelerating the rate of soil erosion and undermining kaitiaki obligations. What little significant hill country indigenous habitat remains is in the hands of the Crown (through its agents the Department of Conservation, and local and regional authorities) or in private hands (SOC 1B: 60; SOC 3: 84.2; SOC 5: 26.2,4,5).

14.1.11.2 As a result of forest clearance, Ngāi Tumapuhia ā Rangi no longer has any, or sufficient, access to totara, rimu, matai, kahikatea and other indigenous plant species (SOC 5: 26.3).

14.1.11.3 There was failure to protect what little indigenous forest remained despite the devastation of forests and birds. From 1966 to 1967 for example, a quarter of the timber cut in the Wairarapa was indigenous forest (SOC 5:27.1).

Introduced species, pests and pollutants

14.1.12 There was pollution of the Wairarapa Plains, including habitats and species, by the introduction of pests and weeds and the application of poisons and pollutants, especially in pursuit of farming interests (SOC 3: 83.3; SOC 5: 29.23).

14.1.13 The Crown, by allowing the introduction and management of introduced species by bodies such as the Wellington Acclimatisation Society, has permitted the destruction of indigenous flora and fauna. These species included red deer, possums, game birds, and game fish such as brown trout. For example, possums were liberated at numerous places along the edges of the Tararua and Rimutaka ranges (SOC 1B: 55; SOC 3: 84.3; SOC 5: 28.4-5).

14.1.14 In breach of Treaty principles, including the principle of active protection, the Crown failed to protect the taonga of Ngāi Tumapuhia ā Rangi from the introduction of pests (SOC 5: 28).

Coastal environment

14.1.15 In breach of Treaty principles, including the principle of active protection, Crown practices, policies, acts and omissions allowed the depletion of kaimoana, through overfishing and degradation of the marine habitat, leading to the loss of crayfish, fish, paua, karengo, ingo, shellfish and other traditional kai moana (SOC 5: 31.1).

14.2: The Crown responds that:

14.2.1 Admits that the settlement of the Wairarapa resulted in significant transformation of the environment. Further states that the sale of lands was probably the most significant contributing factor to the loss of access to, and use of, traditional resources, and that the earliest sale deeds for lands in the Wairarapa indicate that Māori were aware at the time of sale of this reality (SOR 1B: 31; SOR 3: 78).

14.2.2 Does not plead (SOR 8:11.1).

14.2.3 Admits that the transformation included substantial modification of wetlands, massive forest clearances, and the introduction of exotic grasses, crops and animals, but generally does not plead to allegations of degradation and pollution (SOR 1B: 32; SOR 8: 11.3, 11.6).

14.2.4 Does not plead (SOR 8: 11.6).

14.2.5 Does not plead (SOR 5: 25).

14.2.6 Does not plead (SOR 5: 28).

Mahinga kai

14.2.7 Admits that it is likely mahinga kai declined, but states that the claim does not sufficiently detail the specific Crown actions or omissions which are alleged to have caused the decline, so does not plead regarding availability or quality (SOR 2: 16.1.1(1a)).

14.2.7.1 Admits that the loss of forest was associated with a loss of the resources mentioned. States further that the Conservation Act provides for Māori access to certain resources for cultural use, for example in section 30 (SOR 5: 25.3).

14.2.7.2 Admits that much of Seventy Mile Bush was either felled or burnt, and that the disappearance of the bush had an impact on the general physical environment, but states that it appears that a decline in reliance on mahinga kai had occurred before the felling of Seventy Mile Bush. Does not plead due to insufficient knowledge as to whether the felling of the bush caused a loss of mauri or had a spiritual impact on Māori (SOR 2: 16.1.3(a,b,bi)).

Extinction of the huia

14.2.8 Admits that the huia became extinct and that it is likely the tītī disappeared from the district. Admits that hunting the huia was banned in 1892 but does not plead, due to insufficient particulars, about the claim not to have enforced the ban appropriately. Denies that it failed to actively protect the huia, and notes that previous attempts to protect this species had not been successful. Notes references cited to the effect that a part of the Tararua ranges had been made tapu by some

chiefs in an effort to preserve the huia. Notes further the reference to the continuing hunting of huia, apparently as part of a continuing trade in skins between districts (SOR 2: 16.1.2,16.1.2(a); SOR 3: 79.4; SOR 5: 23.1,2).

Inland waterways

14.2.9 Notes the general information (SOR 1B: 34; SOR 3: 81), and deals with the specific claims about adverse effects as follows:

14.2.9.1 Notes that McClean (#A41, p 79) states:

> 'After 1848, the new opening [of the Lake Onoke bar] had an immediate and direct effect on lake levels within both Lake Onoke, Lake Wairarapa and the Ruamahanga River. The new opening was a dramatic event of environmental change in the lower Wairarapa area and no doubt the eel fishery would have suffered.'

Has not researched this further but admits that the quantity of eels available for taking in the Lake is likely to have been affected by the opening of the Lake Onoke bar (SOR 3: 82.2; Crown memo of 9.12.03: 27-27.1).

14.2.9.2 Does not plead as the allegations concerning the effect on freshwater fisheries of increased sedimentation and the silting of river ways are too general or that the sources cited do not support the precise allegation (SOR 3: 82.1; SOR 5: 27.22).

14.2.9.3 Admits that a decline in water quality through intensive pastoral farming and sewerage is a likely outcome, given the introduction of a modern infrastructure and pastoral economy. 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. Admits the instances of pollution as cited. Otherwise requires further particularisation before it can plead, noting that with evolving knowledge about water ecosystems, current legislation attempts to prevent a deleterious impact on water and other environments (SOR 1B: 39.2; SOR 2: 16.1.4, 4(b); SOR 3: 82.3.1-2; SOR 5: 27.21).

14.2.9.4 Admits that chemical and fertiliser use has probably resulted in some run-off into waterways, but states that legislative controls over agricultural chemicals have improved as knowledge of environmental impacts has developed. States that more detail is required before the Crown can plead (SOR 3: 82.1; SOR 5: 27.23).

14.2.9.5 Admits the introduction of exotic fish but otherwise denies failure to protect flora and fauna (SOC 1B: 39.3).

14.2.9.6 Does not plead due to insufficient knowledge of Crown acts or omissions, or insufficient time to research the allegation. Admits that the development of a modern economy in the Wairarapa is likely to have seen a decline in the number of certain species of native flora and fauna. 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, but does not plead due to insufficient knowledge (SOR 2: 16.1.4a; SOR 3: 82.3.1; SOR 5: 27.24).

14.2.9.7 Does not plead as there are insufficient particulars concerning the taking of shingle contributing to the destruction of mahinga kai, the depletion of freshwater fisheries, and the degradation of water quality (SOR 5: 27.17).

14.2.9.8 Does not plead due to insufficient time to research the allegation (SOC 5: 27.21).

Highlands and forests

14.2.10 Does not plead on the basis that the allegation contains matters of Treaty interpretation (SOR 1B: 48).

14.2.11 Does not plead as the allegation is too general, but states that measures to protect the forest ecology have developed as knowledge has grown in this area. States that the examples are insufficiently particularised as to the alleged acts or omissions of the Crown, and in the absence of knowledge of the history of title transfer or of forest clearance on these blocks, does not plead. Notes that the clearance history of some Wairarapa blocks was complex, including pre-sale and post-sale clearance involving Māori (SOR 3: 79.1, 79.1.1; SOR 5: 24.10).

14.2.11.1 Admits that forest clearance was permitted, but states that it acted to preserve a proportion of the Wairarapa forests. Admits that the development of a pastoral economy resulted in the clearance of indigenous forest and a continued decline in indigenous bird and plant life in the area, but also notes preservation and re-establishment activities as knowledge developed. Admits that forest clearance contributed to accelerated rates of soil erosion, but notes that the factors causing erosion are complex, and states that measures to control erosion need to be seen in the context of developed knowledge since 1840 regarding erosion management. Does not plead to undermining kaitiaki obligations due to insufficient particularisation. Admits that some significant indigenous habitat in the Wairarapa hill country is in Crown ownership, but does not plead to the rest of the final sentence due to lack of knowledge (SOR 3: 79.2; SOR 5: 24.7, 24.9,10).

14.2.11.2 Admits that with the transfer of title to the land, continued forest clearance and the development of a farming economy, indigenous timber and plant material have become less readily available to previous owners, including Tumapuhia-a-Rangi. States further that agricultural development also brought

many benefits, and notes that Māori were also involved in the clearances of forest and the new economy (SOR 5: 24.5,6).

14.2.11.3 Admits that it did not prevent the milling of indigenous forests for significant periods, but states that legislative protection of indigenous flora and flora has progressively increased over time, as have programmes of preservation and regeneration (SOR 5: 25.1).

Introduced species, pests and pollution

14.2.12 Admits that certain pests and weeds were introduced by the process of settlement in the Wairarapa and transformation to a pastorally based economy. Admits that various agricultural chemicals were used by the farming community, but states that legislative controls over agricultural chemicals have improved as knowledge of environmental impacts has grown (SOR 3: 78.3; SOR 5: 27.23).

14.2.13 Admits that historically it permitted and aided the introduction of some species, specifically that the introductions of game, possums and trout have occurred, which have destroyed indigenous flora and fauna. Further states that at the time it is likely that many would have believed introduced species could live alongside the already established native species, and few foresaw the full ecological impact on native species (SOR 1B: 51; SOR 3: 79.3; SOR 5: 26.4).

14.2.14 Does not plead (SOR 5: 26).

Coastal environment

14.2.15 Does not plead (SOR 5: 29.1).

14.3: Agreements

It appears to the Tribunal that the Claimants and the Crown agree that:

14.3.1 The settlement of Wairarapa ki Tāmaki-nui-ā-Rua resulted in significant transformation of the environment. This transformation included substantial modification of wetlands, massive forest clearances and the introduction of exotic grasses, crops, animals and fish.

14.3.2 The sale of lands was a significant contributing factor to the loss of access and use of traditional resources.

14.3.3 Indigenous flora and fauna were adversely affected leading to a decline in numbers, and it is likely that mahinga kai declined.

14.3.4 The introduction of a pastoral economy has led to variable water quality in the region, some run-off of agricultural chemicals and fertiliser into waterways, pollution and soil erosion.

14.3.5 Forest clearance was permitted, as was the milling to indigenous forests for significant periods. The development of a pastoral economy resulted in the clearance of indigenous forest and a continued decline in bird and plant life.

14.3.6 The huia became extinct and it is likely that the tītī disappeared from the district.

14.4: Issues

14.4.1 From what does a duty on the Crown to protect the environment arise? What is the content of the duty? From what time should the Crown have apprehended its existence?

14.4.2 Were there instances where knowledge at the time should have alerted the Crown against permitting certain actions that adversely affected Wairarapa ki Tāmaki-nui-ā-Rua Māori?

14.4.3 Could, and should, the Crown have taken more cognisance of Wairarapa ki Tāmaki-nui-ā-Rua Māori customary life, including their knowledge and protection systems for the natural environment?

14.4.4 Given Crown recognition by 1892 that the huia needed protection, could the Crown have acted sooner to avert its eventual fate? Were the protections the Crown chose to implement adequate or practical in the circumstances? Should the Crown have involved Wairarapa ki Tāmaki-nui-ā-Rua rangātira in attempts to protect the huia?

14.4.5 Is there any obligation on the Crown to take special care of waterways, such as Lakes Wairarapa and Onoke, and the Ruamahanga, Waiohine and Waingawa, Manawatu, and other rivers, in view of their status within Wairarapa ki Tāmaki-nui-ā-Rua Māori culture, and what form should this take?

14.4.6 If it were thought that the results of the transformation in the Wairarapa justified the negative side effects, who makes this judgement, what criteria have they used in making it, and to what extent were Wairarapa ki Tāmaki-nui-ā-Rua Māori involved?

14.4.7 What was the impact of the felling/clearance of the Seventy Mile Bush on Wairarapa ki Tāmaki-nui-ā-Rua Māori?

14.4.8 Could Wairarapa ki Tāmaki-nui-ā-Rua Māori involvement in activities such as timber clearance and farming be construed as support for transformation of the natural environment, with consequent decline or loss of mahinga kai, in favour of the benefits to be obtained by farming and new economic activities?

14.4.9 If Wairarapa ki Tāmaki-nui-ā-Rua Māori have suffered prejudice from the adverse effects on the natural environment, do efforts to reduce environmental damage become more urgently necessary, perhaps involving more stringent legislation and more active protection including tikanga-based values?

14.4.10 What other specific instances of degradation and pollution have occurred in Wairarapa ki Tāmaki-nui-ā-Rua claim areas, and what role has the Crown or local government taken in respect of them?

14.4.11 Was there a reduction in use of mahinga kai in the nineteenth century by Wairarapa ki Tāmaki-nui-ā-Rua Māori? If so, was this sufficient reason for permitting the transformation of the natural environment, which made pursuit or reliance on mahinga kai less feasible for the future, regardless of whether customary use was in the process of changing?

14.4.12 To what extent did the Crown's actions and policies, in permitting the transformation of the natural environment and in allowing agencies such as acclimatisation societies to introduce and manage exotic species, undermine or prevent Wairarapa ki Tāmaki-nui-ā-Rua Māori from exercising kaitiakitanga and their ability to maintain control over cultural practices involving indigenous flora and fauna and taonga in the district?

14.4.13 Should Māori be actively involved when decisions are made concerning the environment of Wairarapa ki Tāmaki-nui-ā-Rua and, if so, to what extent?

15. Natural Environment and its Resources, including Inland Waterways, Coastal Areas, and Flora and Fauna: Management/Legislative Regime

15.1: The claimants contend that:

15.1.1 In breach of the principles of the Treaty of Waitangi, including those of partnership and active protection, the Crown failed to recognise or incorporate the traditional management systems of Ngāi Tumapuhia ā Rangi and Wairarapa Māori within its systems for managing indigenous forests, wildlife, freshwater fisheries and waterways; and/or to implement policies, practices and acts that ensured Local Government managed the environment in a way that involved Ngāi Tumapuhia ā Rangi and Wairarapa Māori (SOC 1B: 35, 37 & 39(b); SOC 5: 25, 29).

15.1.2 At 1840, Tāmaki Māori exercised tino rangatiratanga over the use and exploitation of the environment within Tāmaki-nui-ā-Rua. The Crown has duties, pursuant to Article II of the Treaty, to actively protect the rights and property of Tāmaki Māori and to protect their right to exercise tino rangatiratanga over the environment, including lands, waters, forests, flora and fauna and wāhi tapu (SOC 8: 9.1, 9.3, 9.5.1).

15.1.3 The Crown allowed local authorities to exercise rights and powers that affect the taonga and property of Tāmaki Māori without ensuring that such local authorities were required to, and did, comply with the Treaty (SOC 8: 9.5.3).

15.1.4 The Crown failed to ensure that the Resource Management Act 1991 and all other environmental legislation gave Tāmaki Māori appropriate influence over environmental issues within Tāmaki-nui-ā-Rua (SOC 8: 9.5.5).

15.1.5 The Crown pursued policies that contributed significantly to the loss of access to, and use of, traditional resources, and failed to provide for effective Māori participation in new environmental management systems. The Crown increasingly marginalised the traditional authority of Wairarapa Māori (SOC1B: 35).

15.1.6 The Crown assumed it had management rights over land and resources on two bases: first, the assertion of Crown prerogative, and secondly, following from the acquisition of land (SOC1B: 37).

15.1.7 Under certain legislation, Boards were empowered to act as Crown agents. These include:

(a) River boards under the River Boards Acts of 1884 and 1908 (SOC 5: 29.1).

(b) Wairarapa Catchment Board (WCB) under the Soil Conservation and Rivers Control Act 1941 (SOC 5: 29.2).

(c) Drainage boards under the Land Drainage Act 1893 (SOC 5: 29.6).

15.1.8 In 1920, the Crown established the Wairarapa Electric Power Board and empowered it to build and operate the Kourarau Dam and Power Station on the Waiohine River (SOC 1B: 42).

15.1.9 The Crown seized management of the fresh water resources of Ngā Hapū Karanga by:

(a) Establishing the South Wairarapa River Board in 1866, the Waiohine River Board in 1876, the Kahutara River Board in 1931, the Ahikouka River Board in 1907, and Te Ore Ore River Board in 1933;

(b) Vesting powers in the South Wairarapa Board (including the power to divert) over the fresh water resources of Ngā Hapū Karanga;

(c) Empowering the River Boards, specifically the Ahikouka, Wairarapa South County Council and Te Ore Ore River Boards, to extract gravel and shingle from the Waiohine, Ruamahanga, Tauherenikau and all other gravel rivers within the Ngā Hapū Karanga rohe;

(d) Reserving to itself the sole power to generate electricity from Ngā Hapū Karanga fresh water resources via the Water Power Act 1903 and its successors;

(e) Establishing the Wairarapa Catchment District and Board in 1944 and deeming all watercourses within that District to be under the exclusive care, control and management of the Wairarapa Catchment Board;

(f) Establishing and empowering the Wairarapa Regional Water Board (and its successors), pursuant to the Water and Soil Conservation Act 1967 (and its successors), to issue water permits for the abstraction, use, discharge and diversion of water;

(g) Failing to ensure that all bodies to whom it devolved power over the fresh water resources had a duty to observe the principles of the Treaty (SOC 1B: 43(a), (b), (d) – (i).)

15.1.10 The Crown empowered the Wairarapa Catchment Board to control exclusively and regulate all water and watercourses within the Wairarapa catchment, which included the rohe of Ngāi Tumapuhia ā Rangi (SOC 5: 29.3, 29.4).

15.1.11 The Wairarapa Catchment Board prepared a scheme to prevent or minimise flooding and erosion in the Wairarapa, for approval by the Crown's agent, the Minister of Works, without any or sufficient consultation with Ngāi Tumapuhia ā Rangi (SOC 5: 29.5).

15.1.12 Only neighbouring landowners had a statutory right to object to the activities of drainage boards. Māori had no separate right to object, despite any interests they had in other resources, including waterways, wetland ecologies, and plant, fish and bird life (SOC 5: 29.7).

15.1.13 The Crown's policies, practices, acts and omissions contributed to drainage of swamps within the Ngāi Tumapuhia rohe, including the Waiorongo swamp (SOC 5: 29.8).

15.1.14 The Crown failed, and continues to fail, to adequately regulate water use within the rohe of Ngāi Tumapuhia ā Rangi. For instance, the WCB allowed owners of land adjoining waterways to freely reclaim wetlands, and to take from, discharge into, realign, divert, stopbank, stop and otherwise use waterways within the Ngāi Tumapuhia ā Rangi rohe (SOC 5: 29.9).

15.1.15 The Crown disregarded Māori cultural values in its actions relating to wetlands, including native plant species, fisheries, and birdlife (SOC 5: 29.10).

15.1.16 The Crown, and its agents, developed and implemented policies and practices to control shingle taking, without adequate consultation with Māori, without adequate regard for Māori views on the management and use of the rivers and associated taonga, and without adequate compensation relating to draining swamps and taking shingle without regard to Māori cultural values (SOC 5: 29.12, 29.13).

15.1.17 In 1972 the Crown granted the WCB a general licence to control the taking of shingle pursuant to section 165 of the Land Act 1948. In 1977 the Crown approved shingle taking controlled by WCB from rivers within the Ngāi Tumapuhia ā Rangi rohe, including the Awhea River. Until 1985, the WCB encouraged shingle takings from the Awhea-Opouawe scheme area by allowing shingle to be taken without fee or licence (SOC 5: 29.14-16).

15.1.18 The Crown failed to consult with Wairarapa ki Tāmaki-nui-ā-Rua Māori in respect to environmental issues within the coastal and marine area (SOC 5: 31.8).

15.1.19 The taking of shingle contributed to the destruction of wāhi tapu and traditional mahinga kai, depletion of freshwater fisheries and degradation of water quality (SOC 5: 29.17).

15.1.20 The Crown failed to give Ngāi Tumapuhia ā Rangi or Wairarapa iwi an opportunity to be heard in the decision-making process in relation to waterways and the environment (SOC 5: 29.18; SOC 16: 8).

15.1.21 Local authorities permitted sewerage and runoff to enter waterways that were significant for spiritual and kai moana purposes (SOC 5: 29.21).

15.1.22 Inland waterway food sources were affected by a decline in water quality in the Manawatu River as a result of pastoral farming and sewerage (SOC 2: 15.1.5(a)-(c)).

15.1.23 Rangitāne values and customs were excluded from legislation and management systems governing the environment, for example the failure to recognise

customary Māori fishing rights in the Salmon and Trout Act 1867 (SOC 2: 15.1.6, 15.1.7; SOC 3: 89.1-2).

15.1.24 Rangitāne were not consulted over important environmental issues, such as the establishment of the Mangahao Hydro Electric Scheme on the Mangahao River (SOC 2: 15.1.8).

15.1.25 The Crown empowered its agents, the Wellington Acclimatisation Society and the Wildlife Service, to manage introduced and indigenous animals, fish and bird species, including regulating hunting and enforcing legal provisions (SOC 5: 25.2, 25.3).

15.1.26 The Crown failed to provide for Māori participation or voice in the Wildlife Service, Forestry Service and Wellington Acclimatisation Society (SOC 5: 25.4).

15.1.27 From the late 1940s to 1970s, the Wildlife Service established a breeding programme for rare and endangered native birds. There was no consultation with Wairarapa ki Tāmaki-nui-ā-Rua Māori over such developments and programmes (SOC 1B: 61).

15.1.28 The Forest Service, from 1954, established a 10 year working plan for the Tararua ranges and established an advisory committee of representative groups to provide advice concerning management from a recreational and hunting perspective. In 1963, the advisory committee was widened to 'be fully representative of all interested parties'. Wairarapa ki Tāmaki-nui-ā-Rua Māori were not represented or invited to be included in the advisory committee in 1954 or 1963 (SOC1B: 62, 63).

15.1.29 The Crown enacted the Forests Act 1949; section 57 generally prohibited traditional harvest of birds and plants (SOC 1B: 64).

15.1.30 The Crown enacted the Wildlife Act 1953 which: gave the Crown sole control over the management and harvest of indigenous species, including control over traditional materials like bone and feathers; created procedures for cultural use of indigenous plant materials; and allowed traditional resources to be collected by other groups, including for scientific/commercial research and development purposes, without consulting Māori (SOC1B : 65(a)-(d)).

15.1.31 The Crown amended the Forests Act 1949 in 1965, to formalise the Tasman Forest Park including the Mount Bruce area. The wildlife centre at Mt Bruce continued without Māori consultation until the late 1980s (SOC 1B: 66,67).

15.1.32 The Crown completely controls the management, harvest and use of indigenous birds and marine mammals (including feathers) (SOC 5: 25.5, 27.2).

15.1.33 The Crown gazetted part of the Aorangi Ranges as the 'Haurangi State Forest Park' in 1974. Although the Park is now known informally as the Aorangi State Forest Park, its legal name still contains the word 'Haurangi', which Ngāi

Tumapuhia ā Rangi consider to be an insult in its corruption of the word 'Aorangi', and incorrect (SOC 5: 26.5).

15.1.34 The Crown has failed to ensure that Ngāi Tumapuhia ā Rangi are sufficiently resourced to participate in the management of indigenous forests, plants, birds and fisheries (SOC 5: 25.7).

15.1.35 The Minister of Māori Affairs is neither obliged nor required to consult with Ngāi Tumapuhia ā Rangi, Ngāti Kahungunu nor with Māori generally when recommending appointments to the New Zealand Conservation Authority, and the Wellington Conservation Board. Similarly, the Minister of Conservation is neither obliged nor required to consult in making those appointments (SOC 5: 25.8).

15.1.36 The Crown adopted a policy of offering subsidies to land owners under the Land Act 1892, which encouraged land to be developed and resulted in the almost total clearance of indigenous forests within the Ngāi Tumapuhia ā Rangi rohe (SOC 5: 26.1).

15.1.37 Ngāi Tumapuhia ā Rangi was given no, or insufficient, opportunity to be heard in the management and control of indigenous species, even where those introduced species undermined the viability of indigenous species (SOC 5: 28.1, 28.2).

15.1.38 The Animals Protection Act 1862 and the Salmon and Trout Act 1867 both protected introduced species but did not protect indigenous species, despite the fact that introduced species were contributing to the decline in indigenous species' viability (SOC 5: 28.3).

15.1.39 The Wairarapa Catchment Board and local authorities, as Crown agents, used pesticides to control introduced species, but failed to consult with Ngāi Tumapuhia ā Rangi, or to consider the effect of those pesticides on the interests of Ngāi Tumapuhia ā Rangi in their waterways and native plant, fish and bird life (SOC 5: 28.5).

15.1.40 In breach of the principles of the Treaty of Waitangi including the principle of partnership, the Crown failed to give Ngāi Tumapuhia ā Rangi an opportunity to be heard or a role in the decision-making processes regarding waterways. In further breach of the principle of partnership, the Crown failed to provide for or protect Ngāi Tumapuhia ā Rangi in their ownership of, and access to, their inland waterways and associated taonga, including freshwater fisheries, flora and fauna (SOC 5: 29, 29.18).

15.1.41 The Crown failed to empower and resource Tāmaki Māori to manage and protect the Tāmaki-nui-ā-Rua rohe and wāhi tapu (SOC 8: 9.5.4).

15.1.42 The Crown failed to ensure that all and any developments within Tāmaki-nui-ā-Rua were and are undertaken in a manner that recognised and promoted the exercise of tino rangatiratanga by Tāmaki Māori within their rohe (SOC 8: 9.5.6).

15.1.43 The Crown's breach has prejudiced Tāmaki Māori in that they have been unable to exercise their rights to manage the environment, and particularly those aspects of the environment important to Tāmaki Māori for their survival and maintenance of cultural practices (SOC 8: 9.6).

15.2: The Crown responds that:

15.2.1 It is not required to address allegations of Treaty breach (SOR 5: 23, 27).

15.2.2 Is not required to plead and/or has insufficient knowledge to plead (SOR 8: 11, 11.2, 11.4)

15.2.3 Admits that some earlier legislation did not refer to the Treaty of Waitangi. The Crown states that Parts 2 and 6 of the Local Government Act 2002 contain provisions designed to facilitate participation by Māori in local authority decision-making processes (SOR 11.4.2).

15.2.4 Does not plead on the basis that the claim contains insufficient particulars (SOR 8: 11.4.4).

15.2.5 Admits that the settlement of the Wairarapa resulted in significant transformation of the environment. Further states that the sale of lands was probably the most significant contributing factor to the loss of access to, and use of, traditional resources, and that the earliest sale deeds for lands in the Wairarapa indicate that Māori were aware at the time of sale of this reality (SOR 1B: 31).

15.2.6 Does not plead on the basis that the paragraph consists of allegations of law (SOR 1B: 33).

15.2.7 Admits that the legislation in question empowered the Boards in question to exercise certain functions, but denies that any of these acted as its agents (SOR 5: 27.1-2).

15.2.8 Has not had time to research the allegation that the Crown established the Wairarapa Electric Power Board and empowered it to build and operate Kourarau Dam and Power Station on the Waiohine River, and therefore does not plead at this time (SOR 1B: 38).

15.2.9 Admits the establishment of the bodies listed and the legislation or legislative provisions referred to in the allegation. Admits that much of the legislation under which the bodies listed above operated did not refer to Treaty obligations but has not fully researched this matter (SOR 1B: 39-39.1)

15.2.10 Admits that the WCB was empowered to control and regulate the flow of water towards, and into, and from, watercourses, but has not researched whether the WCB had exclusive control (SOR 5: 27.3-4).

15.2.11 States that although Ngāi Tumapuhia ā Rangi were not consulted separately, a public meeting was held in 1955, and thus, denies the allegation of insufficient consultation (SOR 5: 27.5, 27.5.1).

15.2.12 Admits that the Land Drainage Act 1893 only contained provision for arrangements between neighbouring properties, and gave Māori no separate rights to object (SOR 5: 27.7).

15.2.13 Admits that its drainage policies under the Land Drainage Act contributed to the drainage of some swamps, but because it has no detailed knowledge about drainage at Waiorongo, does not plead on this matter (SOR 5: 27.8).

15.2.14 It has not researched the issue of the use of waterways within the Ngāi Tumapuhia ā Rangi rohe at this time, and does not plead (SOR 5: 27.9).

15.2.15 Does not plead to the allegation that it disregarded Māori cultural values in its actions relating to wetlands as the claim is insufficiently particularised (SOR 5: 27.10).

15.2.16 Has had insufficient time to research the allegations relating to draining swamps and taking shingle without regard to Māori cultural values (SOR 5: 27.11-13).

15.2.17 Admits to taking shingle in 1972 and 1977, and to allowing others to take it for free until 1985 (SOR 5: 27.14-16).

15.2.18 States that the provisions of the RMA provide for Māori input into environmental issues and refers to the Act for its terms. Not required to address allegations of Treaty breach in pleadings.

States that as regards Ngāi Tumapuhia ā Rangi, the time periods during which the Crown failed to consult Ngāi Tumapuhia ā Rangi require specification before the Crown is able to plead to this allegation (SOR 5: 29.8; SOR memo of 12.11.03: 6.8).

15.2.19 States that the allegation that shingle taking led to environmental degradation is insufficiently particularised to enable it to plead (SOR 5: 27.17).

15.2.20 Denies that Ngāi Tumapuhia ā Rangi and Wairarapa iwi had less decision-making rights than the general public, but admits that consultation processes have developed since the nineteenth century (SOR 5: 27.18.1, SOR 16: 7).

15.2.21 Does not plead to the allegations of its failure to protect waterways and taonga, and will address such matters in submissions. With the exception of its admission that some run-off into waterways has occurred, and that modernisation has seen the likely decline of some flora and fauna, due to insufficient particulars it does not plead in relation to the various ways that waterways are claimed to have been damaged (SOR 5: 27.21, SOR 3: 82.1).

15.2.22 Admits that the introduction of a pastoral economy would likely have affected water quality and fresh water food (SOR 2: 16.1.4(a)).

15.2.23 Admits that salmon and trout were protected species under the Salmon and Trout Act 1867, but otherwise denies the claim that Rangitāne, and their cultural values, were excluded from environmental management and notes that this claim is too general to enable a response (SOR 2: 16.1.5-6, SOR 3: 85).

15.2.24 Admits that the State Supply of Electrical Energy Act 1917, which authorised the construction of power schemes, has no requirement for consultation (SOR 2: 16.1.6(b)).

15.2.25 States that it requires further research on the issue of the management of introduced and indigenous animals, fish and bird species, including regulating hunting and enforcing legal provisions, and does not plead at this time (SOR 5: 23.3, 23.4).

15.2.26 Says that the source cited in support of this pleading notes that in the years up to the 1970s no evidence has been found of consultation with iwi by the Wildlife Service and that the Tararua State Forest Park Management Plan for 1977-87, and the Rimutaka and Haurangi Forest Park management plan for 1982 contained no mention of formal consultation with Māori. Has not researched this further (SOR 5: 23.5).

15.2.27 Admits that the Wildlife Service was operating a breeding programme at this time. Notes that the source cited found no evidence for the years up to the 1970s of consultation with iwi over developments and programmes. Has not researched this further, but notes that partnership between the Department of Conservation and the National Wildlife Trust at Mt Bruce has now been extended to include more formal links with local Rangitāne and Ngāti Kahungunu. (SOR 1B: 57-57.1).

15.2.28 Notes that the above is indicated by Marr, and that Marr also states that no special allowance was made for iwi representation. Does not plead further at this stage. (SOR 1B: 58-59).

15.2.29 Admits that section 57 of the Forests Act 1949 prohibited the hunting, shooting, or capturing by setting snares, of any animal or bird on state forest land, except pursuant to a license, lease or permit under that Act or other lawful authority. Refers to the Act for its terms (SOR 1B: 60).

15.2.30 Will address this matter in submissions (SOR 1B: 61).

15.2.31 Admits that the Forests Act 1949 was amended in 1965 to enable the Governor-General by proclamation to set aside any area or areas of permanent state forest land as a state forest park (section 63A(1)(a)). States further that the Tararua Forest Park was set aside as a state forest park under this provision (Marr, #A25, p 52). Has not yet researched this allegation and does not plead further at this stage. (SOR 1B: 62-63).

15.2.32 Admits that under the Wildlife Act 1953, it controls dead birds and their feathers, but further states that in specific instances authorised by the legislation, control passes out of the Crown's hands. Has not had sufficient time to research the legislative regime governing management and harvest and does not plead at this time (SOR 5: 23.7).

15.2.33 Does not plead to the issue of the naming of 'Haurangi State Forest Park' at this time (SOR 23.8).

15.2.34 States that the allegation is insufficiently particularised to enable it to respond as to the manner in which Ngāi Tumapuhia ā Rangi are prevented from participation (SOR 5: 23.9).

15.2.35 States that the Minister of Conservation makes appointments to the 13-member New Zealand Conservation Authority, two of whom are appointed after consultation with the Minister of Māori Affairs. Says that in addition, four members are appointed after public notice calling for nominations. States that the Minister of Conservation appoints 12 members to the Wellington Conservation Board after giving public notice seeking nominations and after consultation with the New Zealand Conservation Authority and having had regard the interests of the local community including the tangata whenua of the area. Further states that before making any appointment representing the interests of the tangata whenua the Minister must consult with the Minister of Māori Affairs about those interests. Admits that the legislation does not require the Minister of Māori Affairs him/herself to consult (SOR 5: 23.10, 23.11, 23.12).

15.2.36 Admits that the government introduced a system of advances to supply credit to buy and develop farms, for example the advances to Settlers Act 1894. Notes the significant extent of forest clearance prior to Crown purchase, and states that clearance by the increasing numbers of settlers is likely to have continued even without the provision of subsidies. States further that the Land Act 1892 provided for the creation of reserves for flora, fauna and scenery (SOR 5: 24.1, 24.2).

15.2.37 States that the allegation concerning Ngāi Tumapuhia ā Rangi not being given any or sufficient opportunity to be heard in the management and control of indigenous species is not sufficiently particularised, and does not plead. Further states that, over time, there has been considerable development of consultative processes in the various legislation and Crown policies (SOR 5: 26.1, 26.2).

15.2.38 Admits that the Protection of Certain Animals Act 1861 and the Salmon and Trout Act 1867 protected introduced species. States further that other legislation provided for the protection of indigenous species and for the control, and sometimes eradication, of some introduced species. Further states that as knowledge of threats to indigenous species became better known, the Crown acted to protect indigenous species also (SOR 5: 26.3).

15.2.39 Denies that the bodies referred to above were Crown agents. Admits that pesticides were used by various agencies to control introduced species. Also states that with advancing scientific understanding of the effects of pesticides on the environment it has greatly increased the statutory controls on the approval, control and use of such materials; and has also increased the provision for community consultation and input (including that of Māori) regarding activities with significant environmental impact (SOR 5: 26.5, 26.5.1).

15.2.40 Does not plead to the allegations of treaty breach and will address in submissions the matter of Ngāi Tumapuhia ā Rangi's role in the decision making processes regarding waterways. Denies, for lack of knowledge, any allegation that members of Ngāi Tumapuhia ā Rangi have had less rights than other citizens to be heard in decision-making processes, however, admits that consultation processes have developed since the nineteenth century. Admits that not all previous or current legislation has contained Treaty clauses, however, notes that such clauses do appear in a number of relevant Acts including the Local Government Act 2002, the Resource Management Act 1991 and the Conservation Act 1987 (SOR 5: 27.18, 27.18.1).

15.2.41 Does not plead on the basis that the claim contains insufficient particulars (SOR 8: 11.4.3)

15.2.42 Does not plead on the basis that the claim contains insufficient particulars (SOR 8: 11.4.5)

15.2.43 Is not required to plead (SOR 8: 11.5)

15.3: Agreements

It appears to the Tribunal that the claimants and the Crown agree that:

15.3.1 The introduction and/or spread of new wildlife species at some locations was conducted by the Wairarapa Acclimatisation Society as well as by private individuals.

15.3.2 Some significant indigenous habitat in the Wairarapa hill country is in Crown ownership.

15.3.3 The Wairarapa Catchment Board was empowered to control and regulate the flow of water towards and into and from watercourses.

15.3.4 The Land Drainage Act 1893 only contained provision for arrangements between neighbouring properties, and gave Māori no separate rights to object.

15.3.5 The Crown's drainage policies under the Land Drainage Act 1893 contributed to the drainage of some swamps.

15.3.6 The Crown took shingle in 1972 and 1977, and allowed others to take it for free until 1985 without licence.

15.3.7 Some runoff into waterways has occurred.

15.3.8 Modernisation has seen the likely decline of some flora and fauna.

15.3.9 The introduction of a pastoral economy would likely have affected water quality and fresh water food.

15.3.10 Salmon and trout were protected species under the Salmon and Trout Act 1867.

15.3.11 The State Supply of Electrical Energy Act 1917, which authorised the construction of power schemes, has no requirement for consultation.

15.3.12 After the sale of the Seventy Mile Bush blocks much of the forest cover was removed.

15.3.13 Historically, the Crown did not prohibit forest clearances or the introduction of species that destroy indigenous flora and fauna.

15.3.14 Under the Wildlife Act 1953, the Crown controls dead birds and their feathers. The Crown further states that in specific instances authorized by the legislation, control passes out of the Crown's hands.

15.3.15 Legislation does not require the Minister of Māori Affairs him/herself to consult with Māori when making appointments to the New Zealand Conservation Authority.

15.3.16 The government introduced a system of advances to supply credit to buy and develop farms.

15.3.17 The Protection of Certain Animals Act 1861 and the Salmon and Trout Act 1867 protected certain introduced species.

15.3.18 Pesticides were used by various agencies to control introduced species.

15.4: Issues:

On the basis of what is currently known, the Tribunal considers the following questions to be primary issues for its inquiry:

Environmental planning and decision making

15.4.1 Does the Crown have a duty to manage the environment and its natural resources? What is the nature and extent of the duty, and from what does it arise? Is the duty properly able to be delegated? When such a delegation occurs, what obligations remain with the Crown?

15.4.2 In establishing or changing environmental planning and decision-making regimes for the Wairarapa ki Tararua district, has the Crown adequately consulted with Wairarapa ki Tāmaki-nui-ā-Rua Māori about such introductions and/or changes?

15.4.3 In implementing environmental planning and decision-making regimes for the Wairarapa ki Tararua district, prior to the existing resource management regime, did the Crown make adequate provisions for ongoing representation, input, and partnership with Wairarapa ki Tāmaki-nui-ā-Rua Māori? What would adequate representation, input, and partnership on these issues have involved? Was it sufficient for the Crown or its agencies to consult with government ministers and officials, such as the Minister for Māori Affairs, rather than directly with Wairarapa ki Tāmaki-nui-ā-Rua Māori?

15.4.4 Have any historical inadequacies concerning consultation been removed by recent legislation, such as the Local Government Act 2002, the Resource Management Act 1991, and the Conservation Act 1987?

15.4.5 Prior to the existing resource management regime, did the Crown provide mechanisms for Wairarapa ki Tāmaki-nui-ā-Rua Māori participation in environmental planning and decision-making processes?

15.4.6 Did these planning and decision-making processes provide adequate mechanisms for protecting taonga? If not, was any prejudicial effect caused by any such failure?

15.4.7 In delegating powers and functions concerned with environmental planning and decision-making to local authorities, such as the Wairarapa Catchment Board, river boards, drainage boards, and local authorities, did the Crown adequately require those agencies to take account of Wairarapa ki Tāmaki-nui-ā-Rua Māori concerns and/or provide for their adequate participation in the decision-making processes of those agencies?

15.4.8 Did the Crown provide resources to such agencies for their effective protection of taonga? Did the Crown monitor and review those agencies to ensure Wairarapa ki Tāmaki-nui-ā-Rua Māori did not suffer prejudice?

15.4.9 Did, or should, the Crown have provided for the incorporation or recognition of customary knowledge and/or management systems of Wairarapa ki Tāmaki-nui-ā-Rua Māori in environmental planning and decision-making processes up to and including the existing resource management regime? What is the nature and extent of the Crown's duty to provide for the cultural and spiritual relationships of Wairarapa ki Tāmaki-nui-ā-Rua Māori with their taonga, and the natural environment? Has the Crown fulfilled its duty? If not, has any prejudicial effect been caused by that failure?

15.4.10 Does the existing environmental management regime, through legislation such as the Resource Management Act 1991, provide an effective mechanism for the participation of Wairarapa ki Tāmaki-nui-ā-Rua Māori in environmental decision making? Do the legislative requirements for Māori concerns and values to be considered, or taken into account, adequately reflect the partnership relationship between Wairarapa ki Tāmaki-nui-ā-Rua Māori and the Crown?

15.4.11 Are planning authorities and Wairarapa ki Tāmaki-nui-ā-Rua Māori adequately resourced so that Wairarapa ki Tāmaki-nui-ā-Rua Māori can participate in the current environmental planning and decision-making process?

15.4.12 Do current resource management mechanisms and procedures adequately provide for Wairarapa ki Tāmaki-nui-ā-Rua Māori participation in planning and decision-making where significant developments may have considerable impacts on cultural and spiritual relationships or kaitiakitanga obligations, such as hydro-electric schemes or coastal subdivisions?

Indigenous species and their habitats

15.4.13 Does the Crown have Treaty or other legal obligations to Māori with respect to indigenous species and their habitats? What are they? How have they been met in the Wairarapa ki Tararua district?

15.4.14 Was the assumption by the Crown of responsibility for and control over indigenous species and their habitats in the Wairarapa ki Tararua district consistent with Treaty principles? If not, were and are alternatives open to the Crown?

15.4.15 What have been the practical results for Wairarapa ki Tāmaki-nui-ā-Rua Māori of the Crown's statutory assertion of management and control powers over inland waterways and parts of the coastal area within the Wairarapa ki Tararua district?

15.4.16 Does the Crown have Treaty obligations with respect to the management of fresh water and associated resources? What are they? How have they been met in the Wairarapa ki Tararua district?

15.4.17 Was there consultation with Wairarapa ki Tāmaki-nui-ā-Rua Māori over legislation, policies and practices concerning the management, use and protection of indigenous species and their habitats in the district? If so, was the consultation adequate?

15.4.18 Did the Crown provide for the adequate participation of Wairarapa ki Tāmaki-nui-ā-Rua Māori in agencies that were previously responsible for the management, use and protection of indigenous species and their habitats including:

(a) agencies of government such as the Wildlife Service, the Forest Service, the Lands and Survey Department and the Ministry of Agriculture and Fisheries; and

(b) agencies delegated such powers and functions, such as local councils, parks boards, and the Wellington Acclimatisation Society?

15.4.19 Was the Crown under a duty to require these agencies to identify and take account of Wairarapa ki Tāmaki-nui-ā-Rua Māori concerns and their relationship with indigenous species and their habitats? If so, what was the nature of the duty, and from what did it arise? Was the naming of 'Haurangi' park a result of any Crown failure, and does the Crown have any responsibility to try to effect a resolution?

15.4.20 When the Crown made public appointments to agencies in the Wairarapa ki Tararua district, such as parks boards, did it put in place mechanisms for sufficient involvement of Wairarapa ki Tāmaki-nui-ā-Rua Māori in those appointments? Was it sufficient to seek the views of government ministers or officials, instead of direct consultation with or involvement by Wairarapa ki Tāmaki-nui-ā-Rua Māori?

15.4.21 Were there, and should there have been, mechanisms for Wairarapa ki Tāmaki-nui-ā-Rua Māori to participate in management decisions over introduced species in the Wairarapa ki Tararua district, particularly where they appeared to be impacting on the viability of indigenous species and their habitats?

15.4.22 Did the Crown, having taken on management and control of indigenous species and their habitats, adequately provide for

(a) the continued access to and use of these resources by Māori?; or

(b) the continuing cultural and spiritual relationships of Wairarapa ki Tāmaki-nui-ā-Rua Māori with indigenous species and their habitats, their continuing kaitiakitanga obligations, and customary management and protection systems?

15.4.23 Do the agencies currently responsible for implementing and administering existing management regimes concerning the access to, and use and protection of, indigenous species and their habitats, such as the Department of Conservation, the Ministry of Fisheries, regional councils, fish and game councils, Ministry of Agriculture and Fisheries and ERMA, have adequate legislative or other provision for effective consultation and involvement of Wairarapa ki Tāmaki-nui-ā-Rua Māori?

15.4.24 Do these agencies have adequate mechanisms for the adequate participation of Wairarapa ki Tāmaki-nui-ā-Rua Māori in decision-making?

15.4.25 Do these agencies have adequate mechanisms for recognising and providing for the protection of taonga, and for the recognition of cultural and spiritual relationships of Wairarapa ki Tāmaki-nui-ā-Rua Māori with natural resources, and their kaitiakitanga responsibilities regarding them?

15.4.26 Do these agencies adequately provide for the continued access to, and customary management and use of, resources such as indigenous timbers, feathers and whalebone?

15.4.27 Should legislation concerned with the management and protection of indigenous species and habitats, such as the Wildlife Act 1953, be updated to include specific references to the Treaty of Waitangi and its principles? Is it sufficient for agencies to provide for some role for Wairarapa ki Tāmaki-nui-ā-Rua Māori over the use and management of indigenous species, without specific legislative requirements?