WAI 863

Wairarapa ki Tararua district inquiry claims

FINAL STATEMENT OF ISSUES

Electronic Draft: Part 2 of 2

Issues 16 – 30

February 2004

16. Customary Fisheries – inland, coastal and sea: Management/Legislative Regime

16.1: The Claimants contend that:

16.1.1 The Crown seized and exercised control over the customary fisheries resources of the Wairarapa ki Tāmaki-nui-ā-Rua Māori, with the consequent ability to protect and promote these fisheries, but failed to implement provisions at all, or adequately, to ensure adequate access to, control and management over and supply of fish and shellfish to meet the customary needs of the claimants (SOC 1B: 47a, 49, 50; SOC 13: 2B(iv); SOC 16: 10).

16.1.1.1 The Crown enacted the Oyster Fisheries Act 1866 and in the 1870s brought the foreshore oysters of Ngā Hapū Karanga under the control of the Act; the Salmon and Trout Act 1867, the Larceny Act 1869, the Floatage of Timber Act 1873; the Harbours Act 1878 and its successors; the Fish Protection Act 1877; the Sea Fisheries Act 1894 and its successors; the Māori Councils Act 1900; the Fisheries Act 1908 and its successors; the Māori Social and Economic Advancement Act 1945; and the Fisheries (Amateur Fishing) Regulations 1986; and in doing so, failed to implement provisions to protect and promote Māori customary fisheries adequately or at all (SOC 1B: 48, 49).

16.1.2 The Crown has granted itself the right to control and manage the coastal area and sea, in particular under the Territorial Sea and Exclusive Economic Zone Act 1977, the Foreshore and Seabed Endowment Revesting Act 1991, and the Resource Management Act 1991. This has excluded Ngāi Tumapuhia ā Rangi from participating, and failed to provide for customary management practices and rights, and continues to do so (SOC 3: 91.1; SOC 5: 31.6.1, 31.7).

16.1.3 The Crown failed to ensure that the Wairarapa ki Tāmaki-nui-ā-Rua Māori were, and are, able to exercise their tino rangatiratanga over their customary fisheries resources (SOC 1B: 47b; SOC 13: 2B(iii)).

16.1.4 The Crown failed to reserve to Ngāti Hinewaka the full, exclusive and undisturbed possession and ownership of their customary fisheries (SOC 4: Memo of 5.12.03, para. 2).

16.1.5 The Crown has failed to allow Māori to maintain their customary practices associated with the resources of the foreshore, seabed and sea (SOC 3: 91.5; SOC 15: 24).

16.1.6 The Crown failed to protect Wairarapa ki Tāmaki-nui-ā-Rua Māori customary resources by permitting the depletion of fish and shellfish reserves (SOC 3: 91.6; SOC 4: 50; SOC 5: 31.1; SOC 13: 4I(vi))

16.1.7 The Crown omitted to remedy legitimate complaints by Wairarapa ki Tāmaki-nui-ā-Rua Māori dating from the 1950s concerning the depletion of fishing resources, thereby omitting to act to protect customary fishing rights (SOC 13: 4I(vi)).

Access

16.1.8 In acquiring Lake Wairarapa, the Crown removed the ability of Rangitāne o Wairarapa to access customary resources such as eels, fish (including flounder and whitebait), and shellfish, especially the kokopu (SOC 3: 46, 59.3).

16.1.9 In assuming ownership of the foreshore and seabed, the Crown did not take into account the importance of customary fishing practices involving, for example, paua, kuku, koura, hapuka, kahawai and whitebait, and did not permit the continuation of customary harvest practices (SOC 2: 16.1.3iii; SOC 3: 91.5).

16.1.10 The Crown has denied Wairarapa ki Tāmaki-nui-ā-Rua Māori ownership of , and the right and ability to access, their traditional fishing areas, and sources of the foreshore, seabed and the sea. In the case of Ngāi Tumapuhia ā Rangi, the traditional fishing areas include Waikare, Waikohi and Rangipo Reef (SOC 3: 91.4; SOC 5: 31.2; SOC 13: 3H, I).

Legislation and policy regarding customary fisheries

16.1.11 The Crown failed to implement legislation or policy to protect Ngāti Hinewaka's customary fisheries and, where legislation or policy was implemented for the purported purpose, failed to utilise the said legislation or policy to protect Ngāti Hinewaka's customary fisheries (SOC 4: Memo of 5.12.03, para. 5).

16.1.12 The Crown failed to ensure that Māori, including Ngāti Hinewaka, were aware that there was the ability to reserve fishing grounds, oyster, mussel, and pipi beds for the exclusive use of Māori (SOC 4: Memo of 5.12.03, para. jj).

16.1.13 The Crown failed to exclude areas identified by Ngāti Hinewaka as being of specific importance to the gathering of fish and other edibles for their own consumption from the licences granted to commercial fishers in the 1950s (SOC 4: Memo of 5.12.03, para. (x)).

16.1.14 The Crown failed to ensure that the claimants and their tikanga were accorded a Treaty-compliant place within all regulatory and statutory provisions affecting the customary fisheries resources of the claimants (SOC 1B: 47c).

16.1.15 Māori fishing rights were not recognised in the Salmon and Trout Act 1867 (SOC 2: 15.1.6).

16.1.16 The Crown implemented ineffective policies to protect the customary fisheries resources of the claimants (SOC 1B: 47d; SOC 3: 91.6).

16.1.17 The Marine Department and Māori Affairs Department held an assimilationist policy regarding the conferring of fishing 'privileges' on Māori only (SOC 4: Memo of 5.12.03, para. (nn)).

Fishing Reserves

16.1.18 The Crown failed to protect Ngāti Hinewaka's customary fisheries by failing to set aside for Ngāti Hinewaka the exclusive ownership, use and management of the customary fisheries as part of Ngāti Hinewaka's reserves (SOC 4: Memo of 5.12.03, para. 3).

16.1.19 The Crown has ignored the protests and petitions of Ngāti Hinewaka concerning its customary fisheries and in particular in relation to the seven fishing reserves that were meant to have been created by the Crown (SOC 4: 53).

16.1.20 The Crown failed to set aside or recognise the fishing reserves along the Wairarapa coast from Palliser Bay to the mouth of the Aohanga river, which had been reserved from the McLean purchases, including the following reserves (SOC 4: 49):

(a) Matakitaki a Kupe

(b) Pukaroro

(c) Wharaurangi

(d) Te Kopi

(e) Okorewa (Lake Onoke)

(f) Awhea (at Tora)

(g) Te Unuunu

16.1.21 In the case of the Matakitaki No 3 Reserve, which was purported to be reserved to Ngāti Hinewaka as a 'fishing reserve', the Crown failed to:

16.1.21.1 reserve the adjacent customary fisheries as part of the said reserve;

16.1.21.2 properly to address the enquiries and petitions of Ngāti Hinewaka concerning the said reserve and their customary fisheries generally; and

16.1.21.3 ensure that the 1953 petition was properly inquired into by the Māori Land Court (SOC 4: Memo of 5.12.03, para. 4-4.3).

16.1.22 The Crown failed to actively protect Ngāti Hinewaka's customary fisheries surrounding the fishing reserves in order to ensure that they remained viable customary fisheries (SOC 4: 51).

16.1.23 The Crown failed to properly manage and protect the customary fisheries in the area from Lake Onoke to Flat Point, with the result that fish species of importance to Ngāti Hinewaka have been decimated (SOC 4: 52).

16.1.24 The Crown failed to set aside and protect any or any sufficient fishing reserves, for the benefit of Ngāi Tumapuhia ā Rangi, between the mouth of the Whareama River and the mouth of the Awhea River (SOC 5: 31.1)

16.1.25 The Crown failed to manage and protect Ngāti Hinewaka's customary fisheries with the result that fish, shellfish and other species have been devastated in terms of quantity and quality (SOC 4: Memo of 5.12.03, para. 6).

16.1.26 The Crown delayed in implementing a customary fishing regime, which brought about a depletion in crayfish and paua stocks for customary fishing (SOC 13: 4I(vii)).

16.1.27 The Crown failed or neglected to protect Māori river fisheries (including the eel fisheries) sufficiently between 1870 and the date of this claim. A range of legislation, namely: Rivers Board Act 1884; Counties Act 1886; Coal Mines Amendment Act 1903; Water Power Act 1903; Public Works Act 1908; Fisheries Act 1908; Land Drainage Act 1915; Town and Country Planning Acts of 1926, 1953, and 1977; Soil Conservation and Rivers Control Act 1941; Water and Soil Conservation Act 1967; and Resource Management Act, has promoted forms of environmental management of Wairarapa rivers that has in the past marginalised Wairarapa ki Tāmaki-nui-ā-Rua Māori participation, and currently does not permit sufficient Treaty of Waitangi protection of the eel fisheries (SOC 16: 11).

16.1.28 The Crown's Taiāpure and Mātaitai provisions fail to protect Ngāti Hinewaka's customary fisheries adequately as contemplated by the Treaty (SOC 4: Memo of 5.12.03, para. 7).

16.2: The Crown responds that:

General Crown position on customary fisheries

16.2(a) In its response to all claims concerning customary fisheries issues, the Crown refers to its statement of general position of 1 August 2003, (Wai 863, #2.249). In paragraphs 28-38, the Crown submitted that examination of the customary fisheries matter should not be the subject of further inquiry by the Tribunal. The Crown contended that the Fisheries (Kaimoana Customary Fishing) Regulations 1998 have been made to address the Crown's Treaty obligations for non-commercial fishing, and that there has been more progress in implementing the regulations in the Wairarapa than in any other part of the North Island.

16.2(b) The Crown said further that any remedy recommended by the Tribunal to address any identified prejudice arising from customary fishery matters would focus on how to prevent such prejudice occurring in the future. As the Crown is currently considering the operation of the regulatory framework, and how implementation of the regulations might be improved, the normal policy and legislative process should be allowed time to address any matters arising from this review process. The Crown considered that sufficient time has not yet passed to indicate that further guidance on the customary fisheries matter is needed.

16.2(c) The Crown submitted that sufficient time had not yet passed to indicate that further guidance on the customary fisheries matter was needed, therefore the examination of the question of non-commercial fishing matters should not be the subject of further inquiry in this claim.

16.2(d) In her direction of 3 October 2003 (Wai 863, #2.273) Presiding Officer Judge C M Wainwright considered it appropriate for the Tribunal to inquire into claims relating to non-commercial customary fisheries. The inquiry may include consideration of the adequacy or otherwise of the regulatory regime in Treaty terms.

Specific response

16.2.1 Does not plead and refers to its statement of general position as at 1 August 2003 (SOR 1B: 43,45,46).

16.2.1.1 Admits the enactment of the 1866 Act and the 1874 Amendment, and admits that the Acts applied to the Wairarapa coast. States that the Larceny Act was passed in 1867 and amended in 1870. Admits the enactment of the Salmon and Trout Act 1867, the Floatage of Timber Act 1873; the Harbours Act 1878 and its successors; the Fish Protection Act 1877; the Sea Fisheries Act 1894 and its successors; the Māori Councils Act 1900; the Fisheries Act 1908 and its

successors; the Māori Social and Economic Advancement Act 1945; and the Fisheries (Amateur Fishing) Regulations 1986 (SOR 1B: 44-44.3).

16.2.2 States that systems for management of wai moana, coast, foreshore and seabed and of mahinga kaimoana have varied over time. In respect of the current arrangements, the Crown denies that Ngāi Tumapuhia ā Rangi are excluded from participation. Refers to the Fisheries (Kaimoana Customary Fishing) Regulations 1998, which provide for customary food gathering in accordance with s10(c) of the Treaty of Waitangi (Fisheries Claims) Settlement Act, and Part IX of the Fisheries Act 1996, which provides for the creation of taiāpure local fishery areas. Proposes to separately address the issues of foreshore ownership and management (SOR 5: 29.6, 29.7; SOR memo of 12.11.03: 6.7).

16.2.3 Does not plead (SOR 1B: 43).

16.2.4 Is yet to respond.

16.2.5 Denies that it has failed to protect customary resources. States that it has enacted measures to regulate the taking of kaimoana resources but admits that notwithstanding enactment of such measures overfishing, depletion of fish and shellfish resources, and degradation of the marine habitat occurred (SOR memo of 12.11.03: 5.6, 6.1).

16.2.6 Admits that it has regulated the taking of resources of the foreshore, seabed and sea. It otherwise does not plead to the allegation on the basis that the manner in which the Crown has failed to permit Māori to maintain their customary harvest practices is not specified (SOR memo of 12.11.03: 5.5).

16.2.7 Admits that complaints were made from the 1950s concerning the depletion of fishing resources. At this stage the Crown has not sufficiently researched its response to these complaints and does not plead further (SOR 13: 11.1).

Access

16.2.8 Does not plead to the allegation as it is not adequately particularised as to how Crown ownership denied access to customary practices, by what means, and to which resources was the access denied, at which periods of time. Refer to its statement of general position (SOR 3: 53.3).

16.2.9 Admits that it has regulated the taking of resources of the foreshore, seabed and sea. Otherwise does not plead on the basis that the manner in which the Crown has failed to permit Rangitāne to maintain their customary harvest practices is not specified (SOR memo of 12.11.03; 5.5).

16.2.10 Denies that the Crown denied Wairarapa ki Tāmaki-nui-ā-Rua Māori the right and ability to access the resources of the foreshore, seabed and sea.

As regards the traditional fishing areas outlined by Ngāi Tumapuhia ā Rangi, the Crown is unable to plead to the allegation of denial of access to the areas listed, due to insufficient particulars. Proposes to separately address the issues of foreshore ownership and management (SOR memo of 12 .11.03: 5.4, 6.2).

Legislation and policy regarding customary fisheries

16.2.11 Is yet to respond.

16.2.12 Is yet to respond.

16.2.13 Is yet to respond.

16.2.14 Does not plead (SOR 1B: 43).

16.2.15 Admits that salmon and trout were protected species under the Act but otherwise denies the allegation (SOR 2: 16.1.5, 16.1.5a).

16.2.16 Does not plead and refers to its statement of general position (SOR 1B: 43; SOR 3: 86).

16.2.17 Is yet to respond.

Fishing Reserves

16.2.18 Is yet to respond.

16.2.19 Refers to its statement of general position (SOR 4: 49).

16.2.20 The Crown has yet to research these allegations (SOR 4: 45).

16.2.21 Is yet to respond.

16.2.21.1 Is yet to respond.

16.2.21.2 Is yet to respond.

16.2.21.3 Is yet to respond.

16.2.22 Refers to its statement of general position (SOR 4: 47).

16.2.23 Refers to its statement of general position (SOR 4: 48).

16.2.24 Has difficulty in pleading to the allegation that the Crown failed to set aside any or any sufficient fishing reserves for Ngāi Tumapuhia ā Rangi between the mouth of the Whareama River and the mouth of the Awhea River on the basis that a source in support of the allegation is not identified. Admits that fishing reserves under s33 of the Māori Social and Economic Advancement Act 1945 were not made in the area (SOR memo of 12.11.02: 6.3).

16.2.25 Is yet to respond.

16.2.26 States that prior to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Fisheries Act 1983, the Crown enacted measures to regulate the taking of fish and shellfish but admits that depletion of stocks available for customary fishing occurred. Admits that it did not introduce the customary fishing regime as provided under section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and section 89 of the Fisheries Act 1983 until the enactment of legislation but does not plead to the allegation regarding delay, which is in the nature of a submission (SOR 13: 11.2).

16.2.27 Does not plead (SOR 16: 10).

16.2.28 Is yet to respond.

16.3: Agreements

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

16.3.1 Wairarapa ki Tāmaki-nui-ā-Rua Māori engaged in non-commercial customary fishing in the past and continue to do so to the present day.

16.3.2 Notwithstanding the enactment of various measures by the Crown, overfishing, depletion of fish and shellfish resources, and degradation of the marine habitat has occurred. Wairarapa ki Tāmaki-nui-ā-Rua Māori complained to the Crown from at least the 1950s about the depletion of customary fishing resources. The Crown has yet to research its response to these complaints.

16.3.3 Fishing reserves, which could have been made under s33 of the Māori Social and Economic Advancement Act 1945, were not made in the inquiry district.

16.4: Issues

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

Ownership

16.4.1 Has the Crown ensured the retention of customary freshwater and sea fisheries in the full, exclusive and undisturbed possession of Wairarapa ki Tāmaki-nui-ā-Rua Māori, for so long as they chose to retain them? If not, why not, and with what effect on Wairarapa ki Tāmaki-nui-ā-Rua Māori?

Access

16.4.2 Has the Crown actively or sufficiently protected access by Wairarapa ki Tāmaki-nui-ā-Rua Māori to customary lake, river, and sea fisheries?

Reserves

16.4.3 Were the coastal reserves from Crown purchase transactions with Ngāti Hinewaka intended to include customary sea fisheries? If so, what customary sea fisheries were included, and has the Crown dealt appropriately with Ngāti Hinewaka's petitions and complaints?

Management

16.4.4 From what does a duty on the Crown to manage and protect customary fisheries arise? What is the content of the duty? How does the Crown's duty relate to the role of tangata whenua in exercising their tino rangatiratanga?

16.4.5 Why has the Crown not managed commercial, recreational, and customary fishing in such a way as to prevent the admitted depletion of customary freshwater and sea fisheries? What has been the impact of the admitted depletion on Wairarapa ki Tāmaki-nui-ā-Rua Māori?

16.4.6 Have recent legislation and regulations provided a timely and sufficient remedy?

16.4.7 In particular, how effective are the taiāpure and mātaitai provisions as a mechanism to protect customary fisheries?

17. Ownership of foreshore and seabed and rivers

17.1: The Claimants contend that:

Foreshore and seabed

17.1.1 The Crown failed and/or refused to formally recognise and/or actively protect Wairarapa ki Tāmaki-nui-ā-Rua Māori in the customary ownership and management of their foreshore, seabed and marine resources (SOC 1A: 31.1; SOC 2; 16.1; SOC 3: 90; SOC 4b: 64; SOC 5: 31, SOC 13: 3B(i)).

17.1.2 By enactment of the Territorial Sea and Exclusive Economic Zone Act 1977 and the Foreshore and Seabed Endowment Revesting Act 1991, the Crown assumed ownership of the seabed and foreshore in a manner inconsistent with the rights of Wairarapa ki Tāmaki-nui-ā-Rua Māori (SOC 2: 16.1.4; SOC 3: 91.1; SOC 4b: 67; SOC 5: 31.6.1, SOC 13: 3H(iii), 4I(i)).

17.1.3 The Crown assumed ownership of the foreshore and seabed without consultation with Rangitāne (SOC 2: 16.0, 16.1.1).

17.1.4 By enactment of the Resource Management Act 1991, the Crown assumed the right to control and manage the coastal area in a manner inconsistent with the rights of Wairarapa ki Tāmaki-nui-ā-Rua Māori (SOC 2: 16.1.4; SOC 3: 91.2; SOC 4b: 67; SOC 5: 31.6.1; SOC 13: 3H(iv), 4I(ii)).

17.1.5 The Crown failed to take into account when it assumed ownership of the foreshore and seabed, the continued ownership and occupation of the lands adjacent to the foreshore and seabed by Wairarapa ki Tāmaki-nui-ā-Rua Māori (SOC 2: 16.1.2, 16.1.4; SOC 5: 31.6).

17.1.6 When the Crown assumed ownership, it failed to take into account the importance of the foreshore and seabed to the Wairarapa ki Tāmaki-nui-ā-Rua people as a resource and taonga (SOC 2: 16.1.3).

17.1.7 The Crown has failed to actively protect the foreshore, seabed and the resources contained therein and has permitted the depletion of fish and shellfish resources (SOC 4b: 66).

17.1.8 The Crown has denied Wairarapa ki Tāmaki-nui-ā-Rua Māori customary rights of ownership to the foreshore, seabed and the resources they contain (SOC 3: 91.3; SOC 4b: 65).

17.1.9 The Crown failed and/or refused to seek or obtain the consent of nga hapū karanga before using the foreshore and seabed for its own purposes, including use of such land for lighthouses (SOC 1A: 31.2).

Mataikona

17.1.10 Members of Te Hika o Papauma were, and are, in continuous occupation of the foreshore and seabed adjacent to the Mataikona land block before and after 1840 and exercise tino rangatiratanga over the Mataikona foreshore and seabed (SOC 13: 3E-G, 4G-H).

17.1.11 The Native Land Act 1865 did not permit Te Hika o Papauma claimants' forebears to have an exclusive proprietary title to their foreshore recognised as a result of the investigation of title of the Mataikona blocks and ought to have (SOC 13: 3H(i)).

17.1.12 The Harbours Act 1878 failed to recognise Māori rights and interests in the foreshore, including those of the Mataikona claimants' forebears (SOC 13: 3H(ii)).

17.1.13 Te Hika o Papauma claimants have been prejudiced by the Crown's assertion of prerogative ownership of their foreshore from 1869, or, in the alternative, the Crown's assertion of an irrebuttable presumptive ownership of the claimants' foreshore from 1869 (SOC 13: 3H(v-vi)).

17.1.14 The Crown's currently stated position is that 'although the foreshore may be granted at English law, it [the claimants' foreshore of the Mataikona block] is presumed to be in Crown possession, subject to public rights and any rights of frontage' (SOC 13: 3H(vii)).

17.1.15 The Crown through the Marine Department, directly asserted or purportedly reasserted Crown ownership of the foreshore of Mataikona block in 1968 (SOC 13: 3H(viii).

17.1.16 The Crown, through the Minister of Transport, approved the Dannevirke County Council's foreshore control by-laws in 1986 which:

(a) made it illegal for the claimants to prevent vehicles or people moving along the foreshore of the Mataikona block; and

(b) provided that claimants were to be charged a fee for landing fish and launching or retrieving boats from their own land in their use of the Mataikona foreshore (SOC 13: 3H(ix)).

17.1.17 The Crown, through the Department of Conservation, directly asserted or purportedly reasserted Crown ownership of the foreshore of the Mataikona block in 2000, and has not taken into account s4 of the Conservation Act 1987 (the 'Treaty section') in its conduct relating to the Mataikona block foreshore (SOC 13: 3H(xi)).

Rivers

17.1.18 Prominent rivers marked the boundaries of Crown land purchases in Wairarapa after 1853 without 'any separate purchase agreement conducted between Māori and the Crown for the purchase of any particular river' (SOC 16: 6).

17.1.19 The Crown applied the English common law doctrine of *ad medium filum aquae* to seize the ownership of river beds and certain Lake beds when such doctrine was confiscatory and unknown to the claimants (SOC 1B: 40).

17.1.20 The Crown has denied, and continues to deny, Wairarapa iwi the tino rangatiratanga of their significant rivers, whether navigable or non-navigable, by implementing legislation that has vested the bed of the rivers, or parts thereof, in agencies which have effectively assumed, and continue to assume dominion and control (SOC 16: 9).

17.1.21 The Crown seized the bed of navigable rivers via the Coal Mines Amendment Act 1903 (SOC 1B: 41).

17.1.22 In breach of the Treaty the Crown:

(a) without seeking or obtaining consent from the claimants seized and exercised control over the freshwater resources of the claimants; and/or

(b) failed to ensure that the claimants and their tikanga were accorded a Treaty compliant place within all regulatory and statutory provisions affecting the freshwater resources of the claimants and enable the claimants to exercise their tino rangatiratanga; and/or

(c) built structures or allowed structures to be built by third parties within the freshwater resources of the claimants (SOC 1B: 39(a)-(c)).

17.2 The Crown responds that:

General Crown position on foreshore and seabed issues

17.2(a) In its response to all claims concerning issues relating to foreshore and seabed, the Crown refers to its statement of general position of 1 August 2003, (Wai 863, #2.249).

17.2(b) In the SOGP, the Crown notes that the recent Court of Appeal decision in *Marlborough Sounds* has upset certain of the legal assumptions underlying the pleadings dealing with foreshore and seabed. The government has publicly indicated that it is currently developing proposals that may include legislation, to clarify how the various rights and interests in the foreshore and seabed are reconciled. In particular, paragraph 27 states:

> Because the Crown's response to foreshore and seabed issues is in progress, and because claimants are contemplating a discrete Tribunal enquiry, the Crown considers it can best respond to the allegations of marine rights in the Wairarapa pleadings by keeping the Tribunal advised of any Crown decisions on foreshore and seabed matters.

Specific Responses

17.2.1 States that it is not clear to what extent the allegation that 'the Crown failed and/or refused to formally recognise and/or actively protect Wairarapa Māori in the customary ownership and management of their foreshore, seabed and marine resources', concerns matters relating to fisheries that are not within the jurisdiction of the Tribunal (SOR 1A: 27).

As regards the Ngā Hapū Karanga allegation, states that the basis upon which Ngā Hapū Karanga own foreshore and seabed, and the locations of the areas so owned, are not identified (SOR memo dated 12.11.03: 3-3.1).

As regards the Ngāti Hinewaka and Ngāi Tumapuhia ā Rangi allegations, states that the basis and extent of ownership of foreshore and seabed, and marine resources, are not identified (SOR 4a: 5; SOR memo dated 12.11.03: 6).

17.2.2 Admits that the Territorial Sea and Exclusive Economic Zone Act 1977 and the Foreshore and Seabed Endowment Revesting Act 1991 were previously understood as conferring Crown ownership over much of the foreshore of land and seabed of New Zealand. Admits the terms of section 9A of the Territorial Sea and Exclusive Economic Zone Act 1977 as enacted, but otherwise is not required to plead (SOR memo dated 12.11.03: 3, 4, 5.1, 6.6; SOR 4a: 5; SOR 13: 8.2).

Admits that previously the foreshore and land fronting the sea has generally been regarded as under Crown control, except in situations where the sea frontage was Māori customary land. Unless the sea frontage was held as Māori customary land, the ownership of land above mean highwater mark would previously not have been seen as relevant to the Crown's ownership of the foreshore (SOR memo of 12.11.03: 4.2.1, 6.6.1).

Denies that it has wrongly enacted legislation in which it has assumed ownership and management rights inconsistent with the rights guaranteed to Ngāti Hinewaka under the Treaty of Waitangi (SOR 4a: 8).

17.2.3 Admits that the Territorial Sea and Exclusive Economic Zone Act was passed without consultation with Rangitāne o Tāmaki-nui-ā-Rua. Submissions from Rangitāne on the Foreshore and Seabed Endowment Revesting Act were received by the relevant Select Committee (SOR memo of 12.11.03: 4.1-2).

17.2.4 Admits the terms of the Resource Management Act 1991 and that it confers powers of management and control over the 'Coastal Marine Area', but otherwise denies the allegation (SOR memo of 12.11.03; SOR 4a: 8; SOR 13: 8.3).

17.2.5 Admits that the Territorial Sea and Exclusive Economic Zone Act 1977 was previously understood to confer ownership of seabed upon the Crown (SOR memo of 12.11.03: 4.2.3; 6.6).

17.2.6 Admits that its understanding of the legal status of foreshore and seabed would not have been influenced by the importance of the foreshore and seabed as a resource and taonga (SOR memo of 12 .11.03: 4.2.2).

17.2.7 Denies that it has failed to actively protect the foreshore, seabed and the resources contained therein. States that it has enacted measures to regulate the taking of fish and shellfish. Admits that, notwithstanding these measures, there has been depletion of fish and shellfish resources (SOR 4a: 7).

17.2.8 The nature of the rights amounting to ownership is not specified and the Crown is therefore unable to respond to this allegation (SOR memo of 12.11.03: 5.3).

Denies that the Crown has illegally assumed ownership of and the right to control, manage and deal with the foreshore, seabed and coastal marine area in the Ngāti Hinewaka rohe (SOR 4b: 6).

17.2.9 The Crown is unable to plead because of the absence of particulars concerning the issue of failure to obtain ngā hapū karanga consent to use the foreshore and seabed for uses such as lighthouses (SOR 1A: 27.2, SOR memo dated 12.11.03: 3.2).

Mataikona

17.2.10 Admits that there is likely to have been a long history of Māori occupation of Mataikona block. Save as admitted, it has insufficient knowledge of the history of occupation of this land in the periods alleged, the identity of the occupiers and the degree of continuity alleged, and therefore does not plead. Says further that a significant area of land in the area remains in Māori ownership. States that the acts manifesting the tino rangatiratanga over the foreshore of coastal lands comprising the Mataikona block are not specified, and therefore is unable to plead. (SOR 13: 2-3, 5 & 6).

17.2.11 Admits that the Crown in the Parliament enacted the Native Lands Act 1865. States further that the Native Land Court, in several cases, interpreted s23 of that Act as enabling it to exercise a jurisdiction over foreshore and awarded certain exclusive property rights to Māori provided evidential tests laid down by the Court were met. Notes that the Mataikona Block was not granted under this section and that no application was made in 1869 for title to be issued over foreshore (SOR 13: 8).

17.2.12 Admits that the Harbours Act 1878 prohibited grants of foreshore except by special Act of Parliament (SOR 13: 8.1).

17.2.13 Has no knowledge and therefore denies the allegation that it has asserted prerogative ownership, or an irrebuttable presumptive ownership, of the foreshore, alleged to be owned by Te Hika o Papauma claimants (SOR 13: 8.4-5).

17.2.14 Admits that the passage quoted formed part of the Crown's closing submissions in the Hauraki inquiry, but otherwise is not required to plead to this allegation (SOR 13: 8.6).

17.2.15 Admits that the Marine Department advice quoted in the Ellis report at p11 states that 'normally the foreshore is Crown land…'. Notes that the report does not identify the practical outcome of this advice (SOR 13: 8.7).

17.2.16 Admits the approval of the by-laws on 11 February 1983. Has not viewed the by-laws and cannot plead to their content at this stage (SOR 13: 8.8).

17.2.17 Notes that the evidence referred to does not mention an assertion of Crown ownership of foreshore and therefore denies the allegations (SOR 13: 8.9).

Rivers

17.2.18 Admits that rivers marked some boundaries for some of the Crown purchases and that there does not appear to have been any separate purchase agreement for any particular river (SOR 16: 5).

17.2.19 Admits that the common law doctrine of *ad medium filum aquae* applies in New Zealand, but denies as a general proposition that this was unknown to the claimants. As regards the allegations concerning seizure of river, and lake bed ownership, and that this was confiscatory, states that it is not required to plead (SOR 1B: 36).

17.2.20 Admits that the bed of any navigable river was, and is deemed to have always been, vested in the Crown under the Coal Mines Act Amendment Act 1903 and in subsequent coal mines legislation (such as the Coal Mines Act 1979) and that vesting is now preserved under the Resource Management Act 1991 (SOR 1B: 37; SOR 16: 8).

17.2.21 See 17.2.20 above. As regards the alleged 'seizure' of rivers, states that it otherwise is not required to plead to the allegation (SOR 1B: 37).

17.2.22 Does not plead to the allegation that the Crown seized ownership and control over the freshwater resources of ngā hapū karanga, failed to ensure that their tikanga was statutorily recognised, and allowed third parties to build structures within ngā hapū karanga freshwater resources, on the basis that it consists of allegations of Treaty breach (SOR 1B: 35).

17.3: Agreements

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

17.3.1 The Crown (previously) presumed ownership of much of the foreshore and seabed of New Zealand under the Territorial Sea and Exclusive Economic Zone Act 1977 and the Foreshore and Seabed Endowment Revesting Act 1991.

17.3.2 The Territorial Sea and Exclusive Economic Zone Act 1977 was passed without consultation with Rangitāne o Tāmaki-nui-ā-Rua.

17.3.3 The Crown was not influenced by the status of the foreshore and seabed as a resource and taonga in arriving at a view of its legal status.

17.3.4 There has been a depletion of customary fish and shellfish resources.

17.3.5 The Crown has assumed ownership of navigable riverbeds through legislation.

17.3.6 The common law doctrine of *ad medium filum aquae* applies in New Zealand.

17.3.7 The bed of any navigable river was, and is deemed to have always been, vested in the Crown under the Coal Mines Act Amendment Act 1903 and in subsequent legislation.

17.3.8 Rivers marked some boundaries for some of the Crown purchases and there does not appear to have been any separate purchase agreement for any particular river (SOR 16: 5).

17.4: Issues

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

Foreshore and seabed

17.4.1 (a) By what means did the Crown purport to assert ownership of, or rights of management and control over, the foreshore and seabed of Wairarapa ki Tararua?

(b) Were those measures inconsistent with, or did they otherwise fail to recognise or give effect to, the rights of Te Hika o Papauma and other Wairarapa ki Tāmaki-nui-ā-Rua Māori (whether those rights are law- or Treaty-based) in that zone?

(c) Did the measures breach the principles of the Treaty?

(d) What prejudice was suffered?

Rivers

17.4.2 Was the Crown's acquisition of rights to riverbeds and waters in breach of Treaty principles? In particular:

(a) What were the pre-existing rights of Māori in rivers and waterways in Wairarapa ki Tararua?

(b) Were those rights abrogated or denied? If so, by what means, and when? In particular, what was the significance of the pre-1865 Crown purchases and the coal mines legislation?

(c) Did the Crown consult with Māori about the effect of the legal processes by which any Māori rights of ownership and management of rivers and waterways would be removed?

(d) Was there compensation for the removal of those rights? Was compensation appropriate?

(e) Were the boundaries of areas designated for Crown purchase sufficiently clear for the vendors to understand what rivers were implicated? Did deeds extinguish title to such rivers? Was there mutuality?

(f) As regards the application of the common law *ad medium filum aquae* rule with respect to rivers;

(i) when and by what means was the rule applied to rivers in Wairarapa ki Tararua?

(ii) was the nature and effect of this rule explained to those who sold land to the Crown in Wairarapa ki Tararua in the nineteenth century?

(iii) is there any evidence that those Māori either understood the nature and effect of the rule, or agreed to its application?

(iv) is the rule consistent with tikanga Māori concerning rivers?

(g) Was the Crown's taking of the land for the Kourarau Dam and Power Station (on the Waiohine River), and diversion of water and resources, in breach of Treaty principles? Did the Crown consult Wairarapa Māori over the taking of land and construction of the dam and power station? What impact did/does the dam and power station have on Wairarapa Māori?

(h) Has the Crown provided protection for the use rights of tangata whenua in rivers and waterways, particularly where others' use of waterways impacts on the use by tangata whenua?

18. Alienation of Wairarapa Moana

18.1: The Claimants contend that:

18.1.1 Lake Wairarapa and Lake Onoke and surrounding wetlands were important sources of abundant resources for Wairarapa Māori. The resources available from the lakes and surrounding lands included:

(a) Various types of eel;

(b) Fish, including flounder and whitebait;

(c) Shellfish, in particular the kokopu;

(d) Birdlife; and

(e) Vegetation, including fern root, kōrau, flax, and rushes (SOC 1B: 7; SOC 3: 46).

18.1.2 During 1853 to 1854, the Crown entered into transactions that resulted in the acquisition of four blocks of land surrounding Lake Wairarapa i.e. Turakirae, Turanganui, Tauherenikau and Kahutara blocks (SOC 1B: 14, 16-18; SOC 3: 48).

18.1.3 When Wairarapa Māori entered into the deeds for these riparian lands, Donald McLean acknowledged that the lakes belonged to Wairarapa Māori, including Rangitāne, and said that they would never be opened without Māori authority. McLean promised that the lakes would be reserved to Māori ownership (SOC 1B: 19; SOC 3: 49, 59.1).

18.1.4 In 1855, a major earthquake raised some of the bed of Lake Wairarapa so that it became dry land known as the Te Puata block. Despite assurances from the Crown that the lake was excluded from previous deeds of sale, the Crown assumed ownership of Te Puata and sold it in 1862 (SOC 1B: 20-21).

18.1.5 After the 1855 earthquake, the Crown came under increasing pressure from settlers to acquire lands surrounding Lake Wairarapa and between 1874 and 1876, various attempts were made by the Crown to acquire Lake Wairarapa (SOC 3: 50-51).

18.1.6 On 14 February 1876, the Crown purported to acquire Lake Wairarapa and Lake Onoke when Te Hiko Piata, Hemi Te Miha and 13 others signed a deed agreeing to sell their interests for £800 plus annuities (SOC 1B: 22; SOC 3: 52).

18.1.7 The remainder of Wairarapa Māori opposed the sale and petitioned the government to have their rights recognised. From 1876 to 1895, there was sustained and vigorous protest by Wairarapa rangatira against the acquisition (SOC 1B: 23; SOC 3: 53).

18.1.8 In 1876, the Wairarapa Komiti convened a hui to discuss the sale of Wairarapa Moana lands. In 1877, a member of the Komiti wrote in *Te Wananga* that the

Komiti held the Wairarapa Moana lands. In 1883, Paraone Pahoro and others filed claims with the Native Land Court to the Wairarapa Moana lands. The Komiti opposed the claims. Although the Court found for the claimants, the Komiti continued to assert rights over the Wairarapa Moana lands (SOC 9: 16.8, 16.10-11).

18.1.9 As a result of pressure by Rangitāne and other Wairarapa Māori, the government established a Royal Commission in the early 1890s to investigate claims for Lake Wairarapa and adjacent lands (SOC 3: 54; SOC 15: 21(a)).

18.1.10 The findings of the Royal Commission included:

18.1.10.1 Te Hiko did not have paramount control over the lakes and could not act in a manner detrimental to the fishing rights of others;

18.1.10.2 Māori did not own all land below high water mark;

18.1.10.3 The Crown fraudulently deprived Māori of their fishing rights solemnly guaranteed by the Treaty;

18.1.10.4 The Crown had wrongfully seized and sold a large area of land in and around the margin of the Wairarapa lakes, that the owners never ceded to the Crown;

18.1.10.5 Māori retained ownership of the lakes;

18.1.10.6 Māori owned the spit between Lake Onoke and the ocean;

18.1.10.7 Whilst retaining their fishing and other rights in the lakes, Māori were not justified in allowing the lakes to flood (SOC 3: 55(a – g)).

18.1.11 Despite knowing the outcome of the Royal Commission, the Crown proceeded to acquire Lake Wairarapa (SOC 3: 59.2).

18.1.12 The Crown coerced Wairarapa hapū to cede the lakes despite the 1891 Royal Commission and despite the fact that the Crown, through its agent McLean, had promised previously that the lakes would be reserved to Māori ownership (SOC 15: 21(a)).

18.1.13 On 13 January 1896, Wairarapa Māori agreed to gift the lakes to the Crown, and entered into a deed with the Government to that effect. Both lakes and the Ruamahanga River connecting them were declared Crown land under section 250 of the Land Act 1892. Many of the signatories had Rangitāne whakapapa (SOC 1B: 24-25; SOC 3: 56, 57).

18.1.14 In addition to the £2,000 to be paid to Wairarapa Māori, the agreement for the Wairarapa lakes provided that the Crown was to set aside ample reserves for the

benefit of the owners. No reserve was made in the Wairarapa area (SOC 1B: 26; SOC 3: 58, 59.5).

18.1.15 In acquiring Lake Wairarapa, the Crown removed the ability of Wairarapa Māori, including Rangitāne, to access customary resources such as eels, fisheries and vegetation (SOC 3: 59.3; SOC 15: 21(b)).

18.1.16 The Crown did not set aside the reserves for 19 years. On 22 January 1915, as 'compensation' for the failure to make a reserve, an order was made vesting the Pouakani block containing 30,486 acres in southern King Country in the names of Arete Tamahau and 229 others, being the descendants of the Māori who had been identified by the Native Land Court in 1883 as the owners of Lake Wairarapa. Pouakani block was a great distance from the Wairarapa and in a different tribal rohe (SOC 1B: 27; SOC 3: 59.5; SOC 15: 21(c)).

18.2: The Crown responds that:

18.2.1 Notes the points made regarding the resources provided by the lakes and the surrounding wetland (SOR 1B: 2; SOR 3: 40).

18.2.2 Accepts that it purchased the Turakirae, Turanganui, Tauherenikau and Kahutara blocks in 1853 to 1854 but adds that the Tauherenikau block did not abut the lake according to the 1891 MacKay Commission report (SOR 1B: 5, 9, 11, 12, 13; SOR 3: 42).

18.2.3 (a) Accepts that McLean acknowledged Wairarapa Māori as the owners of the lake at the time of signing the first four deeds but otherwise denies that McLean promised that the lakes would be reserved to Māori ownership, including that of Rangitāne, and that that promise was not honoured (SOR 3: 43, 53.1).

(b) Admits that Russell, who in 1853 acted as secretary to McLean, gave evidence to the 1891 MacKay Commission that McLean had promised that the lake [Wairarapa] should not be opened. States, however, that 'McLean, in instructions to Wairarapa Resident Magistrate Wardell instructed Wardell to "buy out their alleged" right to the closing of the lake (emphasis added), rather than acknowledging rights that McLean was said to have reserved at the time of purchase' (SOR 1B: 14.1, 14.2).

18.2.4 (a) Admits that the 1855 earthquake raised some of the bed of Lake Wairarapa and that some of this land became known as the Te Puata block, but it states that it is not clear that all of the land raised by the earthquake became known as the Te Puata block (SOR 1B: 15).

(b) Denies that it assumed ownership of Te Puata and, in spite of assurances, sold it in 1862. States further that it entered into a deed for the purchase of Te Puata block in 1862, and this was listed in Turton's Deeds under its other name Te Taheke (SOR 1B: 16).

18.2.5 (a) Admits that from the 1850s it came under increasing pressure from some settlers to acquire lands surrounding Lake Wairarapa. States further that flooding of lakeside lands, particularly on the eastern side of the lake, was the major source of this pressure (SOR 3: 44).

(b) Admits that between 1874 and 1876, various attempts were made by the Crown to acquire Lake Wairarapa (SOR 3: 45).

18.2.6 Admits that on 14 February 1876, Te Hiko Piata, Hemi Te Miha and 13 others signed a deed agreeing to sell their interests in Lake Wairarapa and Lake Onoke for £800 plus annuities. States further that the English version of the Deed specified 'an annuity or pension of £50, to be paid to Hiko Piata, one of us'. Also states that the Deed defined the rights being surrendered as 'such eel-fishery rights, and other rights and interests of any kind whatsoever which we claim to have in

such lakes, or in the borders of such lakes, whether in land or whether in the waters thereof, between the lands already sold to Her Majesty the Queen bordering on such lakes' (SOR 1B: 17, 17.1, 17.2; SOR 3: 46, 46.1).

18.2.7 (a) Admits that some Wairarapa Māori opposed the sale and petitioned the government to have their rights recognised. States further that the petition was from Te Maari and 138 others. Denies, however, that those who opposed the sale and petitioned the government constituted 'the remainder' of Wairarapa Māori.

(b) Admits that there was protest by a number of Wairarapa rangatira to the acquisition. States further that the protests were sometimes about matters other than the acquisition, such as protests about the opening of the lake, and otherwise denies the allegation (SOR 1B: 18, 18.1; SOR 3: 47).

18.2.8 Admits that in 1877, a member of the Komiti wrote in *Te Wananga* that the Komiti held the Wairarapa Moana lands. States that the dispute went to Court in 1883 when Paraone Pahoro and others filed claims to the Wairarapa Moana lands, and that the Komiti opposed the claims. Admits that the Native Land Court awarded title to 139 people, and that the Komiti continued to assert rights over the lake (SOR 9: 16.8, 16.10, 16.11, 16.11.1).

18.2.9 Admits that it established a Royal Commission to investigate 'claims to the Wairarapa Lake and certain lands adjacent thereto', noting that the Commission sat in Greytown in 1891 (SOR 3: 48).

18.2.10 Concerning the 1891 Commission:

18.2.10.1 Admits that the Commission found that Te Hiko did not have paramount control over the lakes and could not act in a manner detrimental to the fishing rights of others (SOR 3 :49);

18.2.10.2 Admits that the Commission found that Māori did not own all land below high water mark (SOR 3: 49.1);

18.2.10.3 Denies that the 1891 Commission found that the Crown fraudulently deprived Māori of their fishing rights solemnly guaranteed by the Treaty. States further that the statement here denied appears in the submissions by the 'solicitors for the Natives', not in the findings of the Commission (SOR 3: 49.2);

18.2.10.4 Denies that the 1891 Commission found that the Crown wrongfully seized and sold a large area of land in and around the margin of the Wairarapa lakes, which the owners never ceded to the Crown. States again that the statement denied appears in the submissions by the 'solicitors for the Natives', not in the findings of the Commission (SOR 3: 49.3);

18.2.10.5 Admits that the 1891 Commission found that Māori retained ownership of the lakes but notes that the Commission also found that 'it has been previously

shown that both the Owhanga and the Kahutara blocks include portions of the lake within their boundaries' (SOR 3: 49.4-5);

18.2.10.6 Admits that the Commission found that Māori owned the spit between Lake Onoke and the ocean (SOR 3: 49.6);

18.2.10.7 (a) Admits that the 1891 Commission found that, whilst retaining their fishing and other rights in the lakes, Māori were not justified in allowing the lakes to flood.

(b) Notes that the Commission also stated that the 'Native Proprietors… are not justified, while conserving their own interests, to allow the lakes to flood the lands sold by them to the Government, to the detriment and loss of the settlers who now own it, as the disposal of property by an owner implies that such owner will not allow anything to happen that may be reasonably prevented on the part of the estate retained by him, which abuts on the portion alienated to others, that will operate detrimentally to the interests of the person or persons to whom such portion was sold, or their assigns (1891 Commission, p 11)' (SOR 3: 49.7).

18.2.11 Admits that it knew of the findings of the 1891 Commission and that the Crown acquired Lake Wairarapa. States further that the Commission did not recommend that the lake should never be acquired by the Crown (SOR 3: 53.2.1-3).

18.2.12 Denies that it coerced Wairarapa hapū to cede the lakes (SOR 15: 17.1)

18.2.13 (a) Admits that a deed transferring the lakes was signed on 13 January 1896 and that the area was declared Crown land under the Land Act 1892. States that reference to the transfer of ownership of the lake to the Crown as a gift was made by both Māori and the Crown participants in the process.

(b) States, however, that the Agreement for transfer was more conventionally drafted in the language of contract, referring to consideration of £2,000 paid by the Crown in return, together with a promise for the provision of 'ample reserves for the benefit of the Native owners'. Notes the claim that many of the signatories had Rangitāne whakapapa (SOR 1B: 19, 19.1, 19.2, 20; SOR 3: 50, 50.1, 50.2, 51).

18.2.14 Admits that, in addition to the £2,000 to be paid to Wairarapa Māori , the agreement for the Wairarapa lakes provided that the Crown was to set aside ample reserves for the benefit of the owners. Admits that no reserve was made in the Wairarapa area (SOR 1B: 21; SOR 3: 52, 53.4).

18.2.15 Does not plead to claims that it removed the ability of Māori to access, or failed to maintain the right of Māori to access, customary resources such as fisheries, on the grounds that it is not adequately particularised as to how Crown ownership denied access to customary resources, by what means, and to which resources access was denied, or at which periods of time (SOR 3: 53.3; SOR 15: 17.2).

18.2.16 Admits that the Crown did not set aside the reserves for 19 years and that the promised reserves were not set apart in the Wairarapa. Admits that in 1915 an order to vest the Pouakani block (in the southern King Country) in the descendants of the Māori who had been identified by the Native Land Court in 1883 as the owners of Lake Wairarapa, was made. Admits that the Pouakani block is a great distance from the Wairarapa and in a different tribal rohe (SOR 1B: 22; SOR 3: 53.5; SOR 15: 17.3).

18.3: Agreements

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

18.3.1 The Crown purchased the Turakirae, Turanganui, Tauherenikau and Kahutara blocks in 1853 to 1854.

18.3.2 McLean acknowledged Wairarapa Māori as the owners of the lake at the time of signing the first four deeds. Russell later gave evidence that McLean had promised that the lake should not be opened.

18.3.3 McLean also recognised that Wairarapa Māori had an authority or 'right' to open or close the lake, though the Crown notes that in instructions to Wardell, McLean referred to it as an 'alleged' right.

18.3.4 The 1855 earthquake raised some of the bed of Lake Wairarapa, and at least some of the land raised became known as Te Puata block.

18.3.5 From some point in the 1850s, the Crown came under increasing pressure from at least some settlers to acquire lands surrounding Lake Wairarapa.

18.3.6 Between 1874 and 1876, various attempts were made by the Crown to acquire Lake Wairarapa.

18.3.7 On 14 February 1876, Te Hiko Piata, Hemi Te Miha and 13 others signed a deed agreeing to sell their interests in Lake Wairarapa and Lake Onoke for £800, plus annuities.

18.3.8 At least some Wairarapa Māori opposed the 1876 sale of Lake Wairarapa and petitioned the government to have their rights recognised, and a number of Wairarapa rangatira protested the acquisition.

18.3.9 In 1877, a member of the Komiti wrote in *Te Wananga* that the Komiti held the Wairarapa Moana lands. The dispute went to Court in 1883 when Paraone Pahoro and others filed claims to the Wairarapa Moana lands, and the Komiti opposed the claims. The Native Land Court awarded title to various people, but the Komiti continued to assert rights over the lake.

18.3.10 In the early 1890s, the Government established a Royal Commission to investigate claims to Lake Wairarapa and certain adjacent land.

18.3.11 The findings of the Royal Commission included:

(a) Te Hiko did not have paramount control over the lakes and could not act in a manner detrimental to the fishing rights of others;

(b) Māori did not own all land below high water mark;

(c) Māori owned the spit between Lake Onoke and the ocean;

(d) Māori retained ownership of the lakes; and

(e) Whilst retaining their fishing and other rights in the lakes, Māori were not justified in allowing the lakes to flood.

18.3.12 The Crown knew of the findings of the 1891 Commission.

18.3.13 A deed transferring the lakes to the Crown was signed on 13 January 1896.

18.3.14 On 7 July 1896, the Wairarapa Moana area, including Lake Wairarapa, Lake Onoke and the Ruamahanga River connecting both lakes, was declared Crown land under section 250 of the Land Act 1892.

18.3.15 In addition to the £2,000 to be paid to Wairarapa Māori, the agreement for the Wairarapa lakes provided that the Crown was to set aside ample reserves for the benefit of the owners. No reserve was made in the Wairarapa area.

18.3.16 In 1915 an order was made to vest the Pouakani block (in the southern King Country) in the descendants of the Māori who had been identified by the Native Land Court in 1883.

18.3.17 The Crown set aside reserves 19 years later in the Pouakani block, which was a great distance from the Wairarapa and in a different tribal rohe.

18.4: Issues

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

18.4.1 What commitments, if any, did McLean make regarding Lake Wairarapa at the time of the acquisition of the Turakirae, Turanganui, Tauherenikau and Kahutara blocks by the Crown?

18.4.2 What course of action did the Crown pursue regarding the land raised from the bed of Lake Wairarapa in 1855, and what was the attitude of Wairarapa Māori to this land and the actions of the Crown?

18.4.3 What was the Crown's nineteenth-century policy on Māori title to waterways and the acquisition of lakes? What was the impact of the policy on Wairarapa ki Tāmaki-nui-ā-Rua Māori? Were the policy and its outcomes consistent with the Treaty?

18.4.4 Between 1876 and 1895, what was the extent of protest, including petitioning, from Wairarapa Māori, concerning the 1876 alleged acquisition of Lake Wairarapa? Did opposition extend to other issues related to Wairarapa Moana? What was the Crown's response?

18.4.5 In their attempts to control the opening and closing of the lakes, were Māori exercising customary authority (tino rangatiratanga)? Did the Crown accept and protect this authority, or undermine and circumvent it? What was the outcome for Māori? Was it reasonable under the Treaty that local landowners should have their properties protected from flooding? Was there a reasonable and practicable way of protecting both settler and Māori interests?

18.4.6 To what extent, if at all, did the 1891 Commission find that the Crown had acted wrongfully in its dealings with Wairarapa Māori with respect to Wairarapa Moana? Were its recommendations consistent with the Treaty? Were those recommendations carried out by the Crown? If not, why not?

18.4.7 What was the perception of Wairarapa Māori, both in 1896 and subsequently, as to the nature of the transaction into which they entered in 1896 regarding Wairarapa Moana? In particular, did Wairarapa Māori regard this as a gift and, if so, what did they think that they were gifting to the Crown? What was the Crown's perception of the transaction, both in 1896 and subsequently? To the extent that the perceptions of Wairarapa Māori and the Crown differ, what factors explain this difference?

18.4.8 Were the reserves promised in 1896 supposed to be, in toto or in part, lakefront reserves that guaranteed Wairarapa Māori access to the lake and its resources? If so, what was the outcome for Māori when the reserves were not created?

18.4.9 What effect did the 1896 transaction have on the access of Wairarapa Māori to customary resources such as eels, fisheries, and vegetation? Was it intended to, and did it have the effect of, extinguishing their customary rights in the flora and fauna of the lakes?

18.4.10 How has the relationship of Wairarapa Māori with their taonga, the lakes, been provided for and protected by the Crown since 1896?

19. Pouakani Issues

19.1: The Claimants contend that:

Location and condition of land at Pouakani as exchange for Wairarapa Māori

19.1.1 The land vested in Wairarapa Māori pursuant to the proclamation of 14 April 1916, known as Pouakani (Wairarapa Māoris) Block, was remote from the Wairarapa, and initially had no rail access or infrastructure support. As a result, the beneficial owners were generally unable to obtain access to the land, and were not aware of its condition (SOC 3: 59.5; SOC 6: 6, 9.1).

19.1.2 In breach of Treaty principles and its duty, the Crown substituted for Wairarapa land, land at a distance and not readily accessible, depriving the beneficial owners of the opportunity to continue farming and enjoying their own land (SOC 6: 16, 16.1).

19.1.3 The land was incapable of sustaining pastoral farming until the initiation of farm development schemes in the late 1940s and early 1950s (SOC 6: 9.2).

19.1.4 Other than an economically and socially disadvantageous native timber cutting contract, the land was of no benefit to the beneficial owners until the development of hydroelectric power generation and its associated infrastructure (SOC 6: 9.3).

The Township and Hydroelectric development

19.1.5 On 27 October 1949 and in June 1950, just over 1500 acres of the Pouakani Block were taken by the Crown under the Public Works Act for the site of the temporary Mangakino Village, for hydroelectrical purposes and for roading (SOC 1B: 28).

19.1.6 In breach of the principles of the Treaty of Waitangi, the Crown deprived the beneficial owners of the use and enjoyment of their land and resources without obtaining their voluntary consent, without adequate consultation, and without adequate or timely compensation (SOC 6: 11, 12).

19.1.7 The Crown acquired an interest in the freehold of the site for hydroelectric power generation (including the land on which the dam was constructed to form Lake Maraetai) by compulsory acquisition under the Public Works Act at a valuation based on the rural land value. The valuation did not take into account the hydroelectric power generating potential of the land, the loss of resources and future revenues to the beneficial owners from the hydroelectric scheme or the value of mineral resources available for construction purposes (SOC 6: 11.1, 12.1).

19.1.8 The physical development of the hydroelectric power generation and township proceeded with no effective notice or consultation with the beneficial owners and was substantially completed before the legal formalities were put in place (SOC 6:11.1).

19.1.9 The Crown, by statutory authority, allowed power transmission lines to pass across the land without consultation with, or the voluntary consent of, the beneficial owners, and without adequately compensating the beneficial owners for the economic advantages accruing to the Crown from generation and transmission of electric power across their lands. The claimants note they are commissioning further research into this issue (SOC 6: 11.2, 12.2, 6a: 4).

19.1.10 By proclamation, the Crown acquired an interest in leasehold in the area developed as the township of Mangakino. In breach of the principles of the Treaty of Waitangi, and its duties, the Crown failed to adequately consider alternative sites for the township such as the use of available Crown land, for example, at Whakamaru (SOC 6: 11, 13, 13.1(d)).

19.1.11 The establishment of the township was to the detriment of the beneficial owners because:

(a) The Crown induced them to adopt a perpetual ground lease system of tenure, the motivation for the Crown being the opportunity to recover all or part of the Crown's investment in the township.

(b) The Crown acted in a manner that indicated it was principally concerned about the interests of the then inhabitants of the township, including other Māori, rather than the interests of the beneficial owners, who then lived mainly in the Wairarapa. In particular, the developed township had value for the Crown, which it wished to realise by securing land tenure for purchasers of houses and commercial buildings from the Crown. The beneficial owners were left with no option but to submit to a leasing regime unless they were to lose their land. In the absence of rent reviews in the long-term leases, the beneficial owners were faced with financial difficulties. The cost of collecting the rents and the value of the rent collected did not keep pace with the increase in rates and other costs. The financial returns to the beneficial owners were low; in many years the township cost as much to administer as was collected in rent. Very few of the tenants who had the benefit of the favourable lease arrangements were beneficial owners.

(c) The Crown had no realistic expectation that the township would retain its population and sustain the infrastructure the Crown had developed. It was therefore motivated to transfer the capital risk of ownership of the township development to others, including the beneficial owners. The Crown retained, for itself and local authorities, the land required for the infrastructure of the township, and restored the remainder of the township to the beneficial owners, subject to various conditions. This land was vested in the Proprietors of Mangakino Township Incorporation by order of the Māori Land Court (SOC 6: 13.1(a-c), 13.2, 6a: 5.1-5.6).

The Farm Development Scheme

19.1.12 Under Part I of the Native Land Law Amendment Act 1936 (later Part XXIV of the Māori Affairs Act 1953), the Crown established a farm development scheme on parts of the land (SOC 6: 14).

19.1.13 Prior to, and since the 1983 handover of management of the farm lands to the control of the beneficial owners, the beneficial owners have consistently complained about the quality of management of the development scheme and its condition at the time of handover. In particular, the Crown failed to take account of the high capital cost of developing the land when distant from infrastructure and support, and of a land type where higher than normal costs could be expected (SOC 6: 16.2, 16.2 (a)).

19.1.14 The Crown failed to adequately support members of the beneficial owners' whānau who were settled on the land. There was inadequate supervision and training of those who came up from Wairarapa to undertake farm training once they were placed on leased farms. There was inadequate training provided to owners in the areas of financial and legal responsibilities associated with farming. The owners' settled farmers did not receive the same loan concessions as other settlers in the rehabilitation block at Whakamaru. In some cases the owners' settled farmers were overcharged interest on their loans (SOC 6: 16.2(b), 6a: 6.1-6.4).

19.1.15 The land development scheme was ill conceived and driven by government policy rather than the needs of the beneficial owners (SOC 6: 16.2(c)).

19.1.16 At the time of handover, the land was in an unsatisfactory condition in that: farm infrastructure, particularly that for dairy farms, was run-down; maintenance was inadequate; lease terms had been inadequately enforced; farming practices were inappropriate; and infrastructure, such as legalised roadways and lease titles, had not been put in place (SOC 6: 16.2(d)).

19.1.17 The Crown managed the development scheme in such a manner that it yielded no significant benefits to the beneficial owners as a whole (SOC 6: 16.3).

19.1.18 The Crown's breach of the principles of the Treaty of Waitangi and of its duty, was aggravated by its consistent refusal to acknowledge fault on its part in administering the development scheme, and by persistently failing to negotiate, in good faith, a resolution of the beneficial owners' claims. The trust paid off some of the development debts without the claim being settled (SOC 6: 17, 17.1).

19.2: The Crown responds that:

Location and condition of land at Pouakani as exchange for Wairarapa Māori

19.2.1 Admits that the land at Pouakani was remote from the Wairarapa and initially had no rail access or infrastructure support and as a result the beneficial owners were generally unable to obtain access to the land, and were not aware of its condition (SOR 6: 3.2).

19.2.2 Admits that instead of reserves in the Wairarapa area, land was provided at Pouakani. This land was some distance from the Wairarapa and not readily accessible at the time it was provided. The Crown denies, however, that it deprived the beneficial owners of the opportunity to continue farming and enjoying their own land (SOR 6: 10.1.1-10.1.3).

19.2.3 Admits that the land was incapable of sustaining pastoral farming until the initiation of farm development schemes in the late 1940s and early 1950s (SOR 6: 3.3).

19.2.4 Denies that other than an economically and socially disadvantageous native timber cutting contract, the land was of no benefit to the owners until the development of hydroelectric power generation and its associated infrastructure. States that an offer to purchase timber-cutting rights was made in the 1930s but was declined because of its low value. States that an offer made in 1946 for the timber was accepted and work began in 1947 (SOR 6: 3.4).

The Township and Hydroelectric development

19.2.5 Admits that just over 1500 acres of the Pouakani Block were taken by the Crown under the Public Works Act for the site of the temporary Mangakino Village, for hydroelectrical purposes and for roading. States further that 787 acres were taken permanently and 680 acres were taken under a 21-year lease (SOR 1B: 23).

19.2.6 Does not plead to allegations of Treaty breach concerning depriving the beneficial owners of the use and enjoyment of their land and resources without obtaining their voluntary consent, without adequate consultation and without adequate or timely compensation (SOR 6: 5,6).

19.2.7 Admits that the Crown acquired an interest in the freehold of the site for hydroelectric power generation, including the dam that formed Lake Maraetai. Admits that the land was compulsorily acquired under the public works Acts. The Crown has not had time to research the way in which the land was valued and therefore does not plead concerning the factors that were alleged not to have been taken into account (SOR 6: 5.1, 6:6.1).

19.2.8 Has not yet researched the allegations concerning the physical development of hydroelectric power generation and the township without effective notice, consultation and before legal formalities were put in place and therefore does not plead to the allegations (SOR 6: 5.1.1).

19.2.9 Has not yet researched or does not have sufficient particulars to plead to the allegations concerning power transmission lines and the advantage to the Crown (SOR 6: 5.2, 6.2). The Crown notes that the claimants are commissioning research on this.

19.2.10 Admits that it acquired by proclamation an interest in the leasehold in the area developed as the township of Mangakino. The Crown does not plead to allegations regarding consideration of alternative sites as it is not required to plead to allegations of Treaty breach (SOR 6: 5.1, 7, 7.1).

19.2.11 Denies that the establishment of the township was to the detriment of the beneficial owners, however:

(a) Admits that a perpetual ground lease system of tenure for Mangakino Township was the result of an agreement reached between the owners and the Crown on 2 June 1959. Admits that a benefit it received from the system of tenure agreed to in 1959 was that it was able to recoup part of the money it had invested in the township. States that there were also benefits from this for the proprietors of Mangakino. These included that residents would obtain secure tenure with which they would be much more likely to stay in the township when hydroelectric construction wound down and therefore provide continuing rental income to the owners. The township could also be planned on a more permanent basis and there would be little likelihood that a competing township would be established nearby (SOR 6: 7.1- 7.1.2).

(b) Denies that it acted in a manner that indicated it was principally concerned about the interests of the inhabitants of the township rather than those of the beneficial owners. States that it was faced with two options – to remove as much of the property as possible when the Mangakino lease expired and thereby suffer a loss to taxpayers on the cost of creating the infrastructure, or alternatively, to assist the owners to retain the township at Mangakino and to receive some return from the rentals of properties leased by the owners. States that the utilisation of township sites by way of Glasgow leases had been viewed from the outset as the best means of obtaining a return for the owners. The other option was for the owners to wait until the Waipapa power scheme was at an end when their lease with the Crown would end and they would regain the township lands. The owners and their advisers however, were of the view that the income derived from the issue of Glasgow leases would create an income stream far in excess of what the land could generate through agriculture (SOR 6: 7.1.3).

(c) Admits that in 1961, a report by the Town and Country Planning Branch of the Ministry of Works concluded that the cessation of hydroelectric construction activity in the vicinity of Mangakino would see a drop in the population of the town as a proportion of the workforce left the area to find work elsewhere. States that in 1959 a decision was made to proceed with the construction of the Maraetai II hydroelectric development. This meant that a significant workforce would be retained in the town for a number of years. However, a decision was made in 1961 not to continue with that development. That decision was reversed in 1965 when construction of Maraetai II began

again, and the scheme was completed in 1970-71. Admits that it retained for itself and local territorial and other authorities the land required for the infrastructure of the township and restored the remainder of the township to the beneficial owners, subject to various conditions, and that this land was vested in the Proprietors of Mangakino Township Incorporation by order of the Māori Land Court (SOR 6: 7.1.1-5, 7.2).

The Farm Development Scheme

19.2.12 Admits that under Part I of the Native Land Law Amendment Act 1936 (later Part XXIV of the Māori Affairs Act 1953), the Crown established a farm development scheme on parts of the land (SOR 6: 8).

19.2.13 Has not researched and therefore does not plead to the allegations regarding the complaints of beneficial owners regarding the quality of management of the development scheme (SOR 6: 10.2).

19.2.14 Admits that JH Flowers, employed by the Māori Affairs Department to inspect properties, questioned the quality of the supervision the occupiers were receiving and reported that in his opinion this was partially a consequence of insufficient supervision for the number of occupiers. States further, that in August 1959, an investigating committee pointed out to occupiers that their supervisor's advice and guidance was always available to them and that the occupiers had themselves admitted that some of them were experiencing problems due to their failure to carry out that advice. Admits that the occupiers did not receive the same loan concessions as those on the rehabilitation block at Whakamaru. Accepts that in some cases some of the occupiers were overcharged interest on their loans. States that the source for this statement indicates that one of those overcharged received a refund of that amount and that it was unknown if the others who were overcharged also received refunds (SOR 6: 10.2.1-2).

19.2.15 Does not plead to allegations concerning the development scheme being ill-conceived and driven by government policy rather than the interests of owners, on the basis that it is a matter for submission (SOR 6: 10.2.3).

19.2.16 Does not plead regarding the hand over of the land as it has not yet researched this matter (SOR 6:10.2.4).

19.2.17 Has not yet researched the matter and therefore does not plead to it at this time (SOR 6: 10.3).

19.2.18 Does not plead regarding Treaty breach and does not plead regarding the resolution of beneficial owners' claims as the matter is still being researched (SOR 6: 11-11.1).

19.3: Agreements

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

19.3.1 Instead of reserves in the Wairarapa area, land was provided at Pouakani. This land was remote from the Wairarapa, and initially had no rail or infrastructure support. The beneficial owners were generally unable to obtain access to the land and were not aware of its condition.

19.3.2 The land was incapable of sustaining pastoral farming until the initiation of farm development schemes in the 1940s and 1950s.

19.3.3 Some 1500 acres of the Pouakani block was compulsorily acquired by the Crown under the Public Works Act for the site of Mangakino village, for hydroelectric power generation and for roading.

19.3.4 The Crown acquired an interest in the freehold of the site for hydroelectric power generation, including the dam that formed Lake Maraetai, and acquired an interest in leasehold of the area developed as the township of Mangakino.

19.3.5 The Crown entered an agreement over a system of perpetual ground lease. A benefit of adopting this system was that it was able to recoup part of the money it had invested in the town. In 1961, a government report forecast a population drop in the town as hydroelectric construction work ceased. The Crown retained for itself, and local government authorities, the land required for the infrastructure of the township. It restored the remainder of the township to the beneficial owners, subject to various conditions, and this land was vested in the Proprietors of Mangakino Township Incorporation by order of the Māori Land Court.

19.3.6 The Crown established a farm development scheme on parts of the Pouakani block under Part 1 of the Native Land Law Amendment Act 1936 (later Part XXIV of the Māori Affairs Act 1953).

19.3.7 A Māori Affairs Department employee, JH Flowers, did question the quality of the supervision the occupiers were receiving, reporting that this was partially a consequence of insufficient supervision for the number of occupiers.

19.3.8 The occupiers did not receive the same loan concessions as those on the rehabilitation block at Whakamaru. In some cases, occupiers were overcharged interest on their loans.

19.4: Issues

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

19.4.1 Why did the Crown decide to offer land at Pouakani in place of promised lake reserves? Were Wairarapa Māori consulted about this, and did they agree to it? Why was land in Wairarapa not offered?

19.4.2 Were Wairarapa Māori fully informed of all the implications of this exchange, including the location, condition and accessibility (including rail access and infrastructure) of the Pouakani block? Did Wairarapa Māori consent to the exchange?

19.4.3 Why did the Crown provide land that was at the time of its transfer (1915) unusable? Was the substitution of Pouakani for turangawaewae and/or lakefront land consistent with the Treaty? What prejudice, if any, did Māori suffer from these aspects of the exchange?

19.4.4 Was the form of title granted to Pouakani an appropriate one, given the nature of customary title in the lake, for which it was exchanged? Were all Wairarapa Moana right-holders made beneficiaries of the Pouakani lands?

19.4.5 What efforts, if any, were made by the Crown to improve access to the Pouakani block and to provide any assistance to its owners?

19.4.6 How much Pouakani land was alienated under the Public Works Act, when, and for what purpose or purposes? Was there any consultation with the owners regarding to the location and extent of land taken? What, if any, compensation was paid to the owners? On what basis was any valuation made of the alienated land?

19.4.7 What consultation, if any, took place, and what compensation, if any, was paid in relation to the construction of hydroelectric generation facilities, along with associated roads, power transmission lines, and any other features?

19.4.8 Was there protest, in any form, from the Pouakani owners with regard to the acquisition of land for public works, and the uses that this land was put to? If so, was anything done in response?

19.4.9 Did the Crown adequately consider alternative sites, including Crown land at Whakamaru, for the creation of the Mangakino township?

19.4.10 What steps, if any, were taken by the Crown to protect the interests (including leases) of the Pouakani owners in the town? Were the long-term leases administered to the satisfaction and benefit of the owners? Did the Crown have a realistic expectation that the town would be able to retain its population and sustain its infrastructure when hydroelectric construction wound down?

19.4.11 To what extent did the owners of Pouakani benefit financially and/or in other ways from ownership of the township?

19.4.12 What efforts were made by the Crown to ensure that the Pouakani farm development schemes were successful in all respects? In particular:

(a) What was the nature and extent of the complaints received from owners with regard to the quality of management of the schemes?

(b) How were such complaints responded to?

(c) Why did occupiers on Pouakani land not receive the same loan concessions as those on the neighbouring rehabilitation block at Whakamaru?

(d) Were all cases in which Pouakani occupiers were overcharged interest on their loans resolved by way of refunds?

(e) In what state was the Pouakani land at the time of the handover of management in 1983?

19.4.13 To what extent did the owners of Pouakani benefit financially and/or in other ways from the development scheme?

19.4.14 Did the Crown ensure that Pouakani owners received maximum benefit from native timber cutting contracts and forestry development? If not, why not?

19.4.15 What has happened in the use of the land since the 1980s? To what extent have Pouakani owners benefited, financially or otherwise, from the Pouakani lands? Overall, was the exchange ultimately to their benefit?

20. Public Works

20.1: The Claimants contend that:

General policy and impact

20.1.1 In breach of the Treaty the Crown enacted and utilised the Public Works Act 1864 and its successors. This facilitated and/or enabled Wairarapa ki Tāmaki-nui-ā-Rua lands to be taken for public works purposes thus contributing to the loss of the majority of Wairarapa ki Tāmaki-nui-ā-Rua Māori lands and resources (SOC 1B; 70, 72; SOC 2: 14.0; SOC 8: 8.8-8.8.1).

20.1.2 The Crown failed to consult with Wairarapa ki Tāmaki-nui-ā-Rua Māori prior to the enactment of public works legislation since the 1860s, which provided specific authority for central (and later local) government to take Māori land for public works purposes (SOC 2: 14.1.2; SOC 3: 80.2; SOC 4b: 61(a); SOC 5: 23):

20.1.2.1 The first of these Acts was the Public Works Lands Act 1864, which was passed without consultation with Ngāti Hinewaka, and at a time when Māori were not represented in Parliament (SOC 4b: 61(a)).

20.1.3 The Crown failed to protect the declining land and resource base of Wairarapa ki Tāmaki-nui-ā-Rua Māori, by adopting and pursuing a policy of compulsory acquisition of Māori lands for public works purposes. For Rangitāne o Wairarapa, in particular, this policy was adopted even though they had been dispossessed of the bulk of their tribal lands by 1865 (SOC 2: 14.1.1; SOC 3: 80; SOC 4b: 61; SOC 8: 8.2).

20.1.4 The Crown applied the English law, empowering the taking of land for public works (SOC 1B: 71).

20.1.5 In breach of its duty, the Crown adopted and pursued a policy of compulsory acquisition of the limited Wairarapa ki Tāmaki-nui-ā-Rua Māori land remaining for public works without sufficient consultation (SOC 4b: 61; SOC 5: 23; SOC 14: 12.4).

20.1.5.1 The Crown failed to consider alternatives to the compulsory acquisition of Rangitāne lands (SOC 2: 14.1.4; SOC 3: 80.4).

Process

<u>Notification and lack of statutory protections</u>

20.1.6 Under the Public Works Lands Act 1864, land could be taken for public works: without notice to the owners; there was no limit on the amount of land that could be taken; there was no provision for purchase of the land from owners by agreement; there was no protection for land in use or occupation; there was no

protection for sites of significance or sites that contained wāhi tapu, and there was no offer back of surplus land to owners (SOC 4b: 61(b)).

5 percent rule

20.1.7 Through various Public Works and Native Land Acts, in particular the Native Lands Act 1865, from the 1860s through to 1927, the Crown enacted what has been known as the '5% Rule'. The 5 percent Rule enabled the Crown to take 5 percent of Māori land for roading (and later) rail purposes without compensation (SOC 1B: 73; SOC 4b: 61(c)).

20.1.7.1 The 5 percent Rule was applied differently to Māori land compared to General land. For example, the right to take a percentage of Māori land for roads, without compensation, was extended to 10 years and then 15 years, when the general rule for ordinary Crown granted land remained at five years (SOC 4b: 61(d)).

20.1.7.2 The use of the '5% Rule' resulted in the effective confiscation of substantial amounts of Māori land without consultation (SOC 4b: 61(e)).

Discriminatory provisions

20.1.8 The Crown has duties, pursuant to Article II of the Treaty, to actively protect the rights and property of Tāmaki Māori and, pursuant to Article III, to ensure that Tāmaki Māori are accorded the rights and privileges of British subjects (SOC 8: 8.3).

20.1.9 Further Public Works Acts and Amendment Acts were enacted between 1876-1928. The Crown breached its Treaty duty, in that those various Acts provided for only limited consultation with Ngāti Hinewaka, which was often discretionary, with minimal notification periods for takings, with discriminatory practices against Ngāti Hinewaka as compared to their Pākehā counterparts in terms of compensation awarded for land taken, and only limited and inconsistently applied protection, from time to time, for pā, villages, cultivations, and gardens (SOC 4b: 61(i)).

20.1.10 The Public Works Act 1928 and its Amendment Act were discriminatory, and treated Ngāti Hinewaka land differently, by providing lesser protections for customary land than for general land SOC 4b: 61(j)).

20.1.11 Tāmaki Māori have been treated inequitably in comparison to their European counterparts (SOC 8: 8.8.3).

Compensation

20.1.12 Compensation for the taking of customary Māori land was approached differently to other types of land, and was determined under the New Zealand Settlements Act 1863. Under that Act, those Māori deemed to be rebels were not entitled to

compensation for land taken. The Act was oppressive, and Ngāti Hinewaka were not given equivalent status or protection of their lands as Pākehā (SOC 4b: 61(b)).

20.1.13 Compensation for land taken was dealt with under the Public Works Act 1928, by the Māori Land Court, which had less expertise in matters relating to public works than the dedicated Compensation Court (SOC 4b: 61(k)).

20.1.14 In breach of its duties under Article II and III, the Crown has failed to provide any, or adequate, compensation to Wairarapa ki Tāmaki-nui-ā-Rua Māori for the taking of their lands for public works purposes (SOC 4b: 61; SOC 8: 8.4; SOC 3: 80.3; SOC 5: 23; SOC 8: 8.4; SOC 14: 12.4).

20.1.14.1 The Crown's failure to pay compensation, or the payment of inadequate compensation, failed to restore Tāmaki Māori to the position they were in prior to a public works taking (SOC 8: 8.8.2).

Local Government and other authorities

20.1.15 The Crown enacted the Provincial Compulsory Land Taking Act 1866 and its successors, and thus empowered local bodies to compulsorily acquire Māori land (SOC 1B: 74).

20.1.16 The Public Works Act 1876 enabled local authorities to take all types of Ngāti Hinewaka land, including customary land, for public works purposes (SOC 4b: 61(f)).

20.1.17 The Crown failed adequately to monitor local government use of public works powers. Local government's approach to, and exercise of, public works powers exacerbated tensions between Wairarapa Māori and Pākehā (SOC 4b: 61(g)).

20.1.18 Ngāti Hinewaka were not adequately represented in local government authorities, and those bodies were not required to take account of Māori interests or concerns (SOC 4b: 61(h)).

20.1.19 The Crown has a duty, pursuant to Article II of the Treaty, to actively protect the rights and property of Tāmaki Māori, including a duty not to divest itself of its Treaty obligations by conferring an inconsistent jurisdiction on judicial or other authorities (SOC 8: 8.5).

20.1.20 In breach of its duties, the Crown has empowered local authorities to compulsorily acquire lands from Tāmaki Māori for public works purposes and classified those lands as privately owned, thereby excluding those lands from inquiry by the Waitangi Tribunal (SOC 8: 8.6).

20.1.21 Tāmaki Māori have been prejudiced by the Crown's breach, in that they are unable to seek an inquiry into, and recommendation relating to, lands that the Crown has compulsorily acquired from Tāmaki Māori for public works purposes and subsequently vested in local authorities (SOC 8: 8.8.4).

Offerback

20.1.22 The Crown failed to ensure that land, taken compulsorily, was offered back to the former Māori land owners, once it had served the purpose for which it was taken, in particular the Dannevirke aerodrome (SOC 2: 14.1.6).

Access

20.1.23 The Crown failed to ensure that land-locked Ngāi Tumapuhia ā Rangi had access to their lands at Te Awaiti, despite guarantees to provide beneficial public works when Māori required them (SOC 5: 23.3-23.3.2).

Specific public works issues

Gladstone road deviation, gravel pit and gravel extraction

20.1.24 The gravel pits and the new road for the Carterton to Gladstone road deviation were taken into Crown ownership without sufficient consultation with owners, and without the express consent of Hurunui o Rangi (SOC 1B: 76(a), 89, 117(a), 118(a); SOC 3: 80.2).

20.1.24.1 The construction disturbed and disrupted Hurunui o Rangi Marae, the new road was constructed through the marae and divided the papakāinga from the urupā (SOC 1B: 76, 77(a), 80).

20.1.24.2 The Crown failed to ensure that the process of taking land from Hurunui o Rangi was, and produced an outcome that was, in accordance with the Treaty (SOC1B: 76(c), 77(b).

20.1.24.3 Objections to the decisions taken to use the land for the deviation were publicly expressed by Māori, but not addressed (SOC 1B: 92).

20.1.24.4 Where compensation was agreed to be paid by the Crown, there is no evidence as to whether it was in fact paid or to whom (SOC 1B: 97).

20.1.24.5 Gravel pit two was also acquired without sufficient consultation or agreement among the owners, nor with adequate understanding of compensation procedures (SOC 1B: 107, 108, 110).

20.1.24.6 From November 1955, the Council received objections to the taking of land for gravel pit three, as it was too close to the urupā and sacred land. The Council reduced the amount of land taken but still acquired it (SOC 1B: 111-113)

20.1.24.7 The Crown failed to ensure that when gravel pit two was no longer utilised for gravel extraction, it was returned to Hurunui o Rangi in accordance with the Treaty (SOC 1B: 118(c)).

20.1.24.8 Gravel pit three has, since 1984, had an abattoir sited there which has an unsatisfactory method of waste disposal, leading to complaints, about which

nothing has been done to date. Hurunui o Rangi marae and urupā were disturbed and/or disrupted by the construction of the abattoir near the marae (SOC 1B: 117(b), 118(b), 124, 126,127,128).

20.1.24.9 Gravel pit three was acquired on the understanding that trees would be planted between the gravel pit and the urupā, but this has yet to be done (SOC 1B: 118(d), 129).

Okautete School

20.1.25 In 1902, Ngāi Tumapuhia ā Rangi lobbied for and sought to gift land for the establishment of a school for Māori children of the area. In spite of the intended gift, in 1903 the Crown took just over two acres from Ngapuketurua Māori Reserve under the Public Works Act 1894 and its 1900 amendment, for education purposes, and to establish Te Okautete Native School. The school was not opened until 1906. Despite protests by Ngāi Tumapuhia ā Rangi, the Crown disestablished the school on 1 February 1963 and, at the same time, established a new public school on the site. When the site was no longer required for a Native School, the land ought to have been returned under section 436 of the Māori Affairs Act 1953. The school lands have not been returned to Ngāi Tumapuhia ā Rangi, nor have they received any compensation. (SOC 5: 23.1.1 -23.1.7).

20.1.25.1 In breach of Treaty principles, the Crown failed to return, or provide adequate compensation for, lands used for Te Okautete Native School to Ngāi Tumapuhia ā Rangi when those lands were no longer in use for their original purpose (SOC 5: 23.1).

20.1.25.2 The government was not willing to open the school for Ngāi Tumapuhia ā Rangi without the hapū's contribution and participation. Ngāi Tumapuhia ā Rangi were required to provide land, contribute to maintenance expenses, provide half the cost of buildings, and a quarter of the salary of the teachers. The school komiti also contributed labour and materials to the school. Therefore, in addition to the land required by the Crown, Ngāi Tumapuhia ā Rangi also gave more than a reasonable contribution for the establishment of the school (SOC 5: 23.2.1-23.2.4).

20.1.25.3 In 1902 Piripi Waaka (Walker) wrote to Native Minister Carroll on behalf of the Rongokako Māori Council, asking for a school at Okautete and offering land for it. In response to Crown requirements that land had to be gifted for a Native school, the Walker whānau agreed to gift over two acres for the school site. Although a gift, the land was taken under the Public Works Act 1894, the taking notice acknowledging the gift. Okautete Native School opened in 1906. In 1963 it was disestablished as a Māori school and it became a public school under the control of the Wellington Education Board. In April 2001 the school was closed, and the Minister of Education has failed to make an application under the Te Ture Whenua Māori Act 1993, or taken any other steps to return the land to the Walker whānau (SOC 1B: 130-142).

Tahoraiti block takings

20.1.26 The Dannevirke Borough Council took the Dannevirke gravel pit by proclamation despite objections from Māori. The Council took three acres in Section 18 of the Tahoraiti block. The Council ought to have applied to the Native Land Court for compensation to be assessed within six months of the taking. Proper compensation was not paid; when the pit was exhausted it was not returned to Tāmaki Māori and the land was lost to private ownership. (SOC 8: 8.7-8.7.9.).

20.1.27 Dannevirke sewerage reserve, 56a from the Tahoraiti No 2 block; land taken and inadequate compensation offered (SOC 2: 14.1.1a; SOC 8: 8.7.22-8.7.24).

20.1.28 Tahoraiti, 18a, 40a 3r 23p for railway purposes; 23a 2r 38p for railway and recreational purposes; land unspecified for public works including a rifle range and gravel pit; 19a sold off to Dannevirke Racing Club; land taken and inadequate compensation paid (SOC 2:14.1.1a; SOC 8;8.7.26-8.7.35).

20.1.29 Dannevirke Rifle Range, 10a 1r 14.7p in Tahoraiti 2 (Lot 1); land taken, inadequate compensation paid, poor consultation and land not returned on ceasing to be a rifle range (SOC 2: 14.1.1a, 14.1.3; SOC 8: 8.7.36-8.7.44).

20.1.30 Makirikiri Scenic Reserve, 38a 2r from Tahoraiti 2 section 13 for scenic purposes; land taken, inadequate compensation paid, poor consultation and land not returned (SOC 2: 14.1.1a, 14.1.3; SOC 8: 8.7.45-8.7.50).

20.1.31 Dannevirke Aerodrome;105a from Tahoraiti 2A27; land taken, inadequate compensation paid, and land not offered back (SOC 2: 14.1.1a, 14.1.6; SOC 8: 8.7.51-8.7.58).

20.1.32 Dannevirke rubbish dump, 2.5460 hectares from Tahoraiti 2A13B and 3.0416 hectares from Tahoraiti 2A14A2; took land despite objections and land not offered back when not required (SOC 2: 14.1.1a; SOC 8: 8.7.59-8.7.65).

20.1.32.1 The Crown failed to protect sites of significance to Rangitāne, in particular the location of the Dannevirke rubbish dump near the Makirikiri Marae (SOC 2: 14.1.5).

Other Tāmaki-nui-ā-Rua takings

20.1.33 Land taken for a road in the Tautāne reserve, 2a 13p; road taken despite objections which were ignored by the Crown, failure to consult prior to taking; inadequate compensation paid (SOC 2: 14.1.3; SOC 8:8.7.10-8.7.21; SOC 14: 12-12.4).

20.1.34 Piripiri block, 45a taken for railroad purposes; land taken and inadequate compensation paid (SOC 8: 8.7.25).

20.1.35 Eketahuna reserve, 16a 2r 30p and 7a 3r and 25p taken for railway and roading purposes, restrictions against alienation from the title removed with the remainder subsequently sold off at public auction (SOC 8: 2.3.8.15).

20.1.36 Pahiatua reserve 3a 3r 32p and 1a 1r 34p, taken for a waterworks reserve with reserve subsequently sold (SOC 8: 2.3.8.16).

Castlepoint blocks takings

20.1.37 Castlepoint roads between 1890-1907, no details provided; land taken, failure to consult prior to taking, and compensation not paid (SOC 2: 14.1.3; SOC 3 80.1b, 80.2).

20.1.38 As part of the alienation of the Ngatamatea/Waihiharori Reserve (the sixth reserve listed in the Castlepoint Deed), the Crown took land, 1r 21p, without the required application to the court, and therefore no compensation was paid to the Pirere whānau (SOC 9: 27.6).

Other Wairarapa takings

20.1.39 Hurunuiorangi, Kopuaranga, Manaia Sec. 107 and Okurupatu blocks, no details provided; land taken without prior consultation, compensation or alternatives considered (SOC 3: 80.1a, 80.2).

20.1.40 Gladstone roads, no details provided; no prior consultation, land taken with no compensation (SOC 3: 80.1c, 80.2)).

20.1.41 Waiohine Bridge deviation and Mangatere Stream diversion, no details provided; land taken without prior consultation, compensation or alternatives considered (SOC 3: 80.1d).

20.1.42 Palliser Bay Road, 56a 2p, 10a 1r 8p, 12p, 12.2p; land taken, site of significance not considered, no consultation, inadequate or no compensation, damage incurred as a result of public access affecting coastal land and resources, and continued unwillingness to assist in dealing with problems that have arisen concerning this road (SOC 4b: 61m-v).

20.1.43 The Crown acquired 55a for the Cape Palliser lighthouse. In 1992 the land was offered back, less the lighthouse, at government valuation, then finally returned without charge to the owners. Although compensation was not paid for the loss of the land nor for legal costs incurred in order to secure its return, Ngāti Hinewaka do not wish to pursue this claim before this Tribunal (SOR 4b: 61l).

SOC 1B	SOC 2	SOC 3	SOC 4	SOC 5	SOC 8	SOC 9	SOC 14
Waikoukou Tauanui 6C, 6D Hurunui-o-rangi 1B, 1C, 1D, 1F, 1G, 1H, 1P, E, N1, P3 Okautete School	Tahoraiti 2 Lot 1, 2 Sec 13, 2A27, 2A13B, 2A14A2	Hurunui-o-rangi Kopuara-nga Manaia Sec 107 Okurupatu	Matakitaki 1B2, 1C2, 1D, 2, 3, 4 Kawakawa 2A1, 1C1, 1D Stream Bed Te Kopi 22, 25 23C2, 23C1, 23B	Okautete School	Eketahuna 1, 2, 2A, 2B Pahiatua 2,3 Tautāne 2 Tahoraiti 2 Sec.18, 2 Lot 1, 2 Sec 13, 2A27, 2A30B, 2A30C, 2A13B, 2A14A2 Piripiri	Ngatama-tea	Tautane No 2

20.2: The Crown responds that:

General policy and impact

20.2.1 Admits that it enacted and utilised the Public Works Act 1864 and its successors. Does not plead to allegations of Treaty breach (SOR 1B: 66; SOR 8: 10.6, 10.6.2; SOR 2: 15).

20.2.2 Admits that Parliament enacted legislation providing specific authority for central (and later local) government to take Māori land for public works purposes. Does not plead where there is allegation of Treaty breach, and otherwise because of insufficient time to research the claim (SOR 2: 15.1.2; SOR 4a: 2.1; SOR 5: 21).

20.2.2.1 Admits that the first such Act was the Public Works Act 1864 and that the Act was passed when Māori were not represented in Parliament (SOR 4a: 2.1).

20.2.3 Does not plead to the allegation that it failed to protect the declining land and resource base of Wairarapa ki Tāmaki-nui-ā-Rua Māori, by adopting and pursuing a policy of compulsorily acquiring their lands for public works purposes, on the basis that it contains statements of Treaty breach (SOR 3: 75; SOR 8: 10.1; SOR 4a: 2).

20.2.4 Admits that the Public Works Act 1864 was modelled on the English law. It otherwise denies the allegation (SOR 1B: 67).

20.2.5 Also admits that the Public Works Act 1864 was passed without separate consultation with Ngāti Hinewaka, and that there was likely to have been little or no consultation with Māori leadership. Does not plead on the basis that it consists of allegations of Treaty breach (SOR 4a: 2.1; SOR 5: 21; SOR 14: 8.4).

20.2.5.1 Denies or does not plead to claims that there was failure to ensure non-Māori land was available as an alternative, and that other alternatives had been exhausted prior to taking land (SOR 2: 15.1.4; SOR 3: 75.7).

Process

Notification and lack of statutory protections

20.2.6 States that the claims consist of allegations of law to which the Crown is not required to respond in pleadings (SOR 4a: 2.2).

5 percent rule

20.2.7 (a) Admits that it enacted the Native Lands Act 1865 and its successors. Says further that section 76 of the Native Lands Act 1865 authorised the Governor to take, without compensation, and lay off for public purposes, roads through Native lands which had been the subject of a Crown grant, provided that the total quantity of land taken for such roads did not exceed 5 acres in every 100 acres. The power

to take such land for roads ceased at the expiration of 10 years from the date of the Crown grant for that land. Otherwise denies the allegation (SOR 1B: 69-69.2.1).

(b) Admits that the 5 percent Rule enable the Crown to take 5 percent of Māori land for roading (and later) rail purposes without compensation. States further that this rule also applied within the statutory timeframe to land purchased from Māori and to Crown granted land (SOR 4a: 2.3).

20.2.7.1 Admits that the 5 percent Rule was applied differently to Māori land than General land (SOR 4a: 2.4).

20.2.7.2 Admits that the use of the 5 percent rule resulted in some Māori land being utilised for road and railway purposes, but denies, due to insufficient knowledge, that this was done without consultation for a substantial amount of Māori land (SOR 4a: 2.5).

Discriminatory provisions and process

20.2.8 Does not plead to the allegation that, under Article II of the Treaty, the Crown has a duty to actively protect the rights and property of Tāmaki Māori, and, under Article III, to ensure that Tāmaki Māori are accorded the rights and privileges of British subjects, because it consists of a statement as to content of Treaty duty (SOR 8: 10.2).

20.2.9 Admits that further Public Works Acts and Amendment Acts were enacted between 1876 and 1928. Does not plead to allegations of Treaty breach (SOR 4a: 2.9).

20.2.10 States that the Public Works Act 1928 applied a different regime to customary land and that this could have applied to any Ngāti Hinewaka customary land (SOR 4a: 2.10).

20.2.11 Does not plead to the allegation that Tāmaki Māori have been treated inequitably in comparison to their European counterparts by the Crown, in respect of public works takings (SOR 8: 10.6.2).

Compensation

20.2.12 Not required to respond in pleadings as consists of allegations of law (SOR 4a: 2.2).

20.2.13 Admits that under the Public Works Act 1928, the Māori Land Court determined compensation for the taking of Māori land, whereas compensation for the taking of general land was determined by the Compensation Court. Denies that the Māori Land Court had less expertise in this regard than the Compensation Court (SOR 4a: 2.11).

20.2.14 Does not plead to the allegation that it failed to provide any, or adequate, compensation to Tāmaki Māori for the taking of their lands for public works

purposes, because it consists of a statement as to content of Treaty duty (SOR 8: 10.3).

20.2.14.1 Does not plead to the allegation concerning the Crown failing to restore Tāmaki Māori to the position they were in prior to a public works taking, on the basis that it contains allegations of Treaty breach (SOR 8: 10.6.1).

Local government and other authorities

20.2.15 Admits that the Crown enacted the Provincial Land Taking Act 1866 and its successors. States further that the result of these Acts was that local bodies were empowered to compulsorily acquire any land the subject of a Crown grant, including Māori land. Otherwise denies paragraph 74 (SOR 1B: 70-70.3).

20.2.16 Admits that the Public Works Act 1876 enabled local authorities to take all types of Ngāti Hinewaka land, including customary land, for public works purposes (SOR 4a: 2.6).

20.2.17 Denies, due to insufficient particulars, the allegation that the Crown failed adequately to monitor local government use of public works powers, and that local government's approach to, and exercise of, public works powers exacerbated tensions between Wairarapa Māori and Pākehā (SOR 4a: 2.7).

20.2.18 Denies, due to insufficient knowledge, the allegation that Ngāti Hinewaka were not adequately represented on the local authorities in their district. Has not carried out an analysis of local government legislation sufficient to enable it to plead to this allegation, but admits that some earlier local government legislation did not contain references to the Treaty of Waitangi (SOR 4a: 2.8).

20.2.19 Does not plead to the allegation that it has a duty not to divest itself of its Treaty obligations, by conferring an inconsistent jurisdiction on judicial or other authorities, because it consists of a statement as to content of Treaty duty (SOR 8: 10.4).

20.2.20 Admits that Parliament empowered local authorities to compulsorily acquire lands from Māori (including Tāmaki Māori) for public works purposes. Admits that land acquired by local authorities is not available for Treaty redress. Does not plead to the allegation of Treaty breach (SOR 8: 10.5-10.5.2).

20.2.21 Does not plead to the allegation concerning Tāmaki Māori being prejudiced by not being able to seek an inquiry into land that the Crown has compulsorily acquired for public works purposes and subsequently vested the land in local authorities, on the basis that it contains allegations of Treaty breach (SOR 8: 10.6.3).

Offerback

20.2.22 Admits that land compulsorily taken for the Dannevirke aerodrome was not offered back to its former Māori owners after it had served the purpose for which it

was taken. States that this was because the land was exchanged for other land, owned by neighbouring farmers, for the public works purpose of the airport (SOC 2: 15.1.6, 15.1.6a).

Access

20.2.23 Does not plead on the basis that it contains allegations of Treaty breach (SOC 5: 21.3).

Specific public works issues

Gladstone road deviation, gravel pit and gravel extraction

20.2.24 States that in reference to the Carterton to Gladstone road, gravel pits and abattoir, there seem to be basic errors of fact. Only one gravel pit was taken, that is gravel pit three. States that owners were consulted and agreement was given (SOR 1B: 71.3; 77.1; 85.1, 85.2, 89; 94).

20.2.24.1 Admits that the new road cut through Hurunuiorangi Marae and severed the Hurunuiorangi papakāinga from the urupā (SOR 1B: 76).

20.2.24.2 Does not plead on the basis that the claim consists of allegations of Treaty breach (SOR 1B: 72, 73.1.2).

20.2.24.3 Admits that Māori protested at the land being used for the deviation (SOR 1B: 88).

20.2.24.4 States that money for compensation was paid to the Māori Trustee, for distribution to the owners of the taken land and therefore denies claim (SOR 1B: 93).

20.2.24.5 States that gravel pit two forms no part of a claim, and has been confused with gravel pit three. Gravel pit two was acquired in 1964 from two Pākehā owners (SOR 1B: 94, 111.2).

20.2.24.6 Admits allegation insofar as it applies to gravel pit three. Denies the allegation insofar as it applies to gravel pit two (SOR 1B: 108-110).

20.2.24.7 Does not plead on the basis that the claim contains allegations of Treaty breach (SOR 1B: 115).

20.2.24.8 States that gravel pit one was acquired from a farmer in exchange for the land containing an exhausted gravel pit three. An abattoir was built on the former gravel pit three. It admits there have been complaints about the abattoir, in particular about its methods of waste disposal, and that these complaints were justified (SOR 1B: 71.4, 124, 125).

20.2.24.9 States that trees have not been planted between the urupā and gravel pit three, the present site of the abattoir, because there was never an agreement to do

so. The agreement was to plant trees between the urupā and gravel pit one (SOR 1B: 122.3).

Okautete School

20.2.25 (a)Admits that, in 1902, Ngāi Tumapuhia ā Rangi lobbied the government for the establishment of a school for Māori children of the area. Admits that, in 1903, just over two acres of the Ngapuketurua Māori reserve was taken by the Crown under the Public Works Act 1894 for education purposes and the establishment of Te Okautete Native School.

(b)Admits that, although the owners sought to gift the land, the Crown decided to take it under the Public Works Act 1894 and its 1900 amendment. The Crown further states that it was standard practice, as per the Public Works Act 1894, to issue notices taking land that had been gifted for school purposes, and that the notice for this taking stated it was a free gift from the owners to the Crown. Admits the school was not opened until 1906. The Crown does not plead as to whether it should have returned the land under section 436 of the Māori Affairs Act 1953, due to the question of law.

(c) States that the parents and komiti of Okautete School voted unanimously to support the change in administration in 1963, and therefore denies the allegation concerning protests. States that the land is to be offered back to the descendants of the original Māori owners, and contact has been made with the Māori Land Court to establish the correct process to follow to enable this to occur (SOR 5: 21.1.1 – 21.1.8).

20.2.25.1 Does not plead to allegations of Treaty breach (SOR 5:21).

20.2.25.2 Admits that it was Crown policy that native schools would not be opened, unless there was a contribution from parents (usually by way of a gift of land) and the participation of parents. Admits the Native Schools Act 1867 required Māori to provide land and contribute to maintenance expenses, provide half the cost of buildings, and a quarter of the teacher's salary. The 1871 Native Schools Act enabled Māori to provide extra land in lieu of money, if they wished. The Crown has not yet researched the extent to which Māori were required to contribute towards the expenses of Okautete School or the teacher's salaries. Denies Ngāi Tumapuhia gave more than a reasonable contribution, due to insufficient particulars, but does admit that, over the years, the school komiti undertook a number of activities around the school (SOR 5: 21.2.1-21.2.4).

20.2.25.3 Admits the land was gifted by Piripi Walker and a number of other owners. States the application for the school was on behalf of hapū living within the Rongokako Council district, and not on behalf of the Council itself. Admits land was required to be gifted for a Native School. Admits the land was taken, but notes the taking acknowledged the gift. Does not plead to Treaty breach regarding the return of the land. Admits that it has not yet returned the land, but states that

contact has been made with the Māori Land Court to establish the correct procedures to follow to enable this to occur. States that the Crown, through its agents, is carrying out procedures required, and it intends to deal with the land under sections 40 and 41 of the Public Works Act, with any vesting of the land carried out by the Māori Land Court under Te Ture Whenua Māori Act (SOR 1B: 128-141).

Tahoraiti block takings

20.2.26 States that there were legitimate reasons for compensation not being paid, with the main reasons being that the block had not been partitioned and individual ownership established. Accepts that the compensation application ought to have been made within six months of the taking. Admits the land is now in private ownership (SOR 8: 10.5.6 - 10.5.11).

20.2.27 Admits that land was taken and compensation paid (SOR 2: 15.1.1d; SOR 8: 10.5.24; 10.5.25).

20.2.28 Admits that 17a 14p were taken for railway purposes under the Public Works Act 1882 and states that no compensation was due; admits to taking 40a 3r 23p and paying compensation although not as much as the owners had wanted; admits 23a 2r 38p were taken and compensation paid, stating that the value the owners had put on the land was judged by the judge of the Native Land Court to have been excessive; denies that 19a were sold off due to insufficient knowledge (SOR 8: 10.5.28-10.5.34).

20.2.29 Admits to taking land and paying compensation, states that the land was sold into private hands after it no longer served its original purpose of acquisition, but denies knowledge of whether the land remains in private ownership (SOR 8: 10.5.38-10.5.46).

20.2.30 Admits land was taken and compensation paid, but does not plead regarding knowledge of present situation due to insufficient evidence (SOR 8: 10.4.47-10.5.52).

20.2.31 Admits to the initial taking of land but does not plead further claims concerning subsequent developments due to insufficient time for research. It states that the land was not offered back as it had been exchanged for other land, owned by neighbouring farmers, for the public works purpose of the airport (SOR 2: 15.1.6a; SOR 8: 10.5.53-10.5.60).

20.2.32 Admits that land was taken, despite objections, but states that proper procedures were followed, and admits that compensation was settled by negotiation and paid (SOR 8: 10.5.61-10.5.67).

20.2.32.1 Admits that the rubbish dump was sited 216 metres from the Makirikiri Marae at its closest point (SOR 2: 15.1.5).

Other Tāmaki-nui-ā-Rua takings

20.2.33 Admits that the land was taken, despite objections, but states that correct procedures were complied with (SOR 8: 10.5.18-10.5.22a).

20.2.34 Admits land was taken and states that proper compensation was paid (SOC 8: 10.5.27).

20.2.35 Admits land was taken, admits restrictions against alienation were lifted and that the land was subsequently sold at private auction. It states the procedure by which this was done (SOR 8: 4.1.27a-b).

20.2.36 Admits land was taken, admits restrictions against alienation were lifted and that the land was subsequently sold. It states the procedure by which this was done (SOR 8: 4.1.28a-b).

Castlepoint blocks takings

20.2.37 Admits that the land was taken. The Deed provided for 10 reserves. A clause in the Deed states owners consent to the construction of roads over these reserves. Consultation occurred in this case at the time of the establishment of the reserves. States further that the issue of compensation for the land for these roads is tied up in the original sale transaction (SOR 3: 75.2-75.2.3).

20.2.38 Admits that land was taken, admits that no record of an application to the Court has been found in respect of this land and does not plead to the claim that compensation was not paid (SOR 9: 27.4).

Other Wairarapa takings

20.2.39 States that the referencing used as the basis for this claim does not in fact relate to what is alleged (SOR 3: 75.1-75.1.2).

20.2.40 States that the land in question had been gifted to the Church 20 years before the taking. The land was subsequently taken from, and compensation paid to, the Church (SOR 3: 75.3-75.3.3).

20.2.41 States that the referencing used as the basis for this claim does not in fact relate to what is alleged (SOR 3: 75.4).

20.2.42 (a) Re: Taking of land for Palliser Bay Road in 1934

Admits that land totalling 56a 8p was taken under the Public Works Act 1928 for the Palliser Bay Road and that 9p of this (Te Kopi No. 2 sub 5) was land which was used as an urupā (SOR 4a: 2.13-2.14).

Is unaware of any evidence that Ngāti Hinewaka were not consulted about the taking. Denies that no burial grounds were considered or noted when plans for the

road were prepared, despite the District Engineer recognising that the proposed road passed through the corner of a 'Native Cemetery'. States further that the plan referred to in the proclamation clearly shows the line of the road passing through a corner of the burial ground (SOR 4a: 2.15-2.15.1).

Admits that no Ngāti Hinewaka owners were represented at the compensation hearing. Admits that although lessees indicated that the road did not require fencing and that swing-gates could be used across the road, there is no evidence of consultation or negotiation with the Ngāti Hinewaka owners. Also admits that no compensation was paid for the taking of the urupā at Te Kopi No. 2 sub 5 (SOR 4a: 2.16).

Denies that as part of the compensation due to the owners, the court ordered that the local council was liable for fencing the road if required. Admits, however, that the court ordered that the council or its successor would be liable for the cost of fencing the road if, at any time in the future, an authority vested with the power to order that the road be fenced, made such an order. Does not respond to the allegation that the council has not always undertaken its duties in this regard, on the basis of insufficient knowledge (SOR 4a: 2.17).

(b) Re: Taking from Matakitaki No. 1 in 1934

Admits that land taken from Matakitaki No. 1 was not included in the proclamation of April 1934, and that on 29 May 1935 the Featherston County Council made application to the Native Land Court to have the roadline through the block legalised under s484 of the Native Land Act 1931 (SOR 4a: 2.18).

Admits that the owners of Matakitaki 1 were not represented when the Court heard the compensation case on 29 May 1935. Denies, however, due to insufficient knowledge, that the owners had not been consulted (SOR 4a: 2.18.1).

Denies that more land than was required for the road was taken, because map 5.2 is not a sufficient basis on which to conclude that more land than actually required was declared public road, or that this land included foreshore and seabed. In relation to the statement that the land taken included parts of the foreshore and seabed owned by Ngāti Hinewaka, states that such ownership has not been established (SOR 4a: 2.18.3).

Admits that compensation of £21 was ordered to be paid to the Ikaroa District Māori Land Board. Denies that the true valuation of the land was £45, stating further that the capital value of the land had been assessed at that figure, but that £40 of that represented road and fencing improvements made by the Crown. The Judge took this fact into consideration when assessing the amount of compensation due to the owners (SOR 4a: 2.18.4).

(c) Re: taking of land for realignment of Palliser Bay Road between 1937 and 1968

Admits that further Ngāti Hinewaka land was taken from Te Kopi 2, including 12 perches of Te Kopi 2 sub 5 (the urupā) between 1937 and 1968 for the realignment of Palliser Bay Road, and that work commenced before the legalisation of the taking process had been completed. States that it believes the third sentence refers to Te Kopi 2 Sub 5 and not Sub 2. If this is the case, it denies due to insufficient knowledge that no compensation was paid for the taking of 12.2 perches of Te Kopi 2 Sub 5 (SOR 4a: 2.19).

(d) Re: taking of land for further realignment of Palliser Bay Road in 1997

Admits that the Palliser Bay Road required further realignment in 1997, when an area of land alongside the Te Kopi urupā was excavated for the purposes of widening the road. On the basis of insufficient knowledge, does not plead to the allegation that the Council Engineer ignored the recommendations of archaeologist, Dr Foss Leach, and excavated the roadway with a steep batter against the urupā (SOR 4a: 2.20).

Admits that as a result of the construction of the Palliser Bay Road there has been greater public access to Ngāti Hinewaka's coastal lands and foreshore. Admits that Ngāti Hinewaka have protested against, and raised concerns about the negative impacts of public access, including the depletion of fish and crayfish stocks, the increasing and uncontrolled use of the land by the public, and the extensive damage to their land, for example, by fire and illegal removal of timber (SOR 4a: 2.21).

Admits that it was unwilling to provide funds to assist with the construction of cattle stops where the road entered the Matakitaki reserve. States further that it did not provide funds as the road was a public road and it believed it was a matter between the owners and the territorial authority. Does not respond to the claim regarding the Featherston County Council and the South Wairarapa District Council, on the basis of insufficient knowledge (SOR 4a: 2.22).

20.2.43 Notes that Ngāti Hinewaka do not wish to pursue the allegation concerning land around Cape Palliser Lighthouse, and therefore does not respond to it (SOR 4a: 2.12).

20.3: Agreements

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

General

20.3.1 The Crown enacted and utilised the Public Works Act 1864 and its successors to take land from Wairarapa Māori at times for the purpose of public works. The Public Works Act 1864 was modelled on the English law.

20.3.2 The Public Works Act 1864 was passed when Māori were not represented in Parliament. The Act was passed without separate consultation with Ngāti Hinewaka, and there was likely to have been little or no consultation with Māori leadership.

20.3.3 The Crown enacted and utilised section 76 of the Native Land Act 1865, which enabled the Governor, for 10 years from the date of the grant, to take and lay off roads through Crown-granted native lands, without compensation, provided the amount taken did not exceed 5 percent. This was the beginning of the 5 percent rule, renewed in later legislation, which enabled the Crown to take 5 percent of Māori land for roading (and later) rail purposes without compensation.

20.3.4 The 5 percent Rule was applied differently to Māori land than General land.

20.3.5 Under its application, some Māori land in the inquiry district was taken for road and railway purposes. Parties do not agree, however, on whether this was done with or without consultation, or for what extent of land.

20.3.6 There was a differential regime for determining compensation under the Public Works Act 1928. The Māori Land Court determined compensation for the taking of Māori land, and the Compensation Court determined it for the taking of general land.

20.3.7 From 1866, legislation empowered local authorities to compulsorily acquire any Crown-granted land, including Māori land. From 1876, legislation empowered local authorities to take all types of land, including Māori customary land.

20.3.8 Parliament empowered local authorities to compulsorily acquire lands from Tāmaki Māori for public works purposes. The land acquired by local authorities is not available for Treaty redress without a change of legislation or government policy.

20.3.9 The Crown's policy in the nineteenth and early twentieth century was that Native schools would not be opened unless there was a contribution from parents (usually by gift of land). It was standard practice for such gifts of land to be taken under public works legislation. The Native Schools Act 1867 required Māori to provide land, contribute to maintenance expenses, provide half the cost of buildings, and a

quarter of the teacher's salary. From 1871, Māori could provide extra land in lieu of money.

Specific

Gladstone – road and gravel pits

20.3.10 The new Carterton to Gladstone road cut through Hurunuiorangi Marae, and severed the papakāinga from the urupā. Māori protested at the land being used for the deviation.

20.3.11 From November 1955, the Wairarapa County Council received objections to the taking of land for Gladstone gravel pit three, as it was too close to an urupā and sacred land. The Council reduced the amount of land taken but still acquired it.

20.3.12 A gravel pit (the exact appellation is disputed) which was originally taken from Māori land was, when it became exhausted, later used as an exchange of land with a farmer, in order to acquire another gravel pit. An abattoir was built on the site of the original gravel pit. There have been complaints about the abattoir, in particular about its methods of waste disposal, and these complaints were justified.

Okautete Native School

20.3.13 Land was taken for Okautete Native School in 1903. The owners sought to gift the block but the Crown decided to take it under the public works legislation.

20.3.14 The land is no longer used for the purpose of a school. The land and the former school building that stands upon the land are to be returned, but this has not yet happened.

Tahoraiti

20.3.15 Compensation was not paid for the taking of three acres in section 18 of the Tahoraiti block. The Council ought to have applied for a compensation hearing within six months of the taking but did not do so. When the gravel pit was exhausted, the land was not returned to Māori and is now in private ownership.

20.3.16 No compensation was paid for the taking of 17a 14p for railway purposes. Compensation was paid for a further 40a 3r 23p, although not as much as owners requested. Compensation for a further 23a 2r 38p was paid but again less than the owners requested, by judgement of the Native Land Court.

20.3.17 Land taken from Tahoraiti for the Dannevirke Rifle Range was not returned to Māori when it was no longer required for public purposes. It was sold to private buyers.

20.3.18 Land compulsorily taken for the Dannevirke aerodrome was not offered back to its former Māori owners after it had served the purpose for which it was taken.

20.3.19 Land was taken compulsorily from Tahoraiti for the Dannevirke Rubbish Dump, despite the owners' objections. The rubbish dump was sited 216 metres from Makirikiri Marae.

Tāmaki-nui-ā-Rua

20.3.20 Land was taken from the Tautāne reserve despite the owners' objections.

20.3.21 Land taken from the Eketahuna and Pahiatua reserves was protected by restrictions on alienation, which did not prevent compulsory takings for public works.

Castlepoint Roads

20.3.22 In the case of the taking of 1r 21p from the Ngatamatea/Waihiharori Reserve, the law required that the Native Land Court determine compensation. No record can be found of any application to the Court in respect of this taking. The Crown does not accept, however, that this necessarily means that no compensation was paid.

Palliser Bay Road

20.3.23 Nine perches (Te Kopi No. 2 sub 5) of the land taken under the Public Works Act 1928 for the Palliser Bay Road was land that was used as an urupā, and no compensation was paid for the taking of this urupā. No Ngāti Hinewaka owners were represented at the compensation hearing.

20.3.24 Land taken from Matakitaki No 1 for the Palliser Bay Road was not included in the proclamation of April 1934. On 29 May 1935, the Featherston County Council applied to have the roadline through this block legalised retrospectively. The owners of Matakitaki 1 were not represented when the Court heard the case in 1935. Compensation of £21 was ordered. There was a valuation of the land at £45, but parties do not agree on the significance of this point.

20.3.25 Further Ngāti Hinewaka land was taken from Te Kopi 2 between 1937 and 1968 for the realignment of the Palliser Bay Road. Work commenced before the legalisation of the taking process had been completed.

20.3.26 The road was realigned again in 1997. An area of land alongside the Te Kopi urupā was excavated for the purpose of widening the road.

20.3.27 As a result of constructing the road, there has been greater public access to Ngāti Hinewaka's coastal lands and foreshore. Ngāti Hinewaka has protested this greater access and raised concerns with the Crown about its impact. This has included depletion of fish and crayfish stocks, increasing and uncontrolled use of land by the public, and extensive damage to Ngāti Hinewaka land by fire and illegal removal of timber.

20.3.28 The Crown has refused to provide funds to assist with the construction of cattle stops where the road enters Matakitaki reserve. The Crown's view is that this is a matter between the owners and the local authority.

20.4: Issues

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

20.4.1 Is the compulsory acquisition of land for public works in accordance with the principles of the Treaty of Waitangi under any circumstances? What are those circumstances? How were they applied in this inquiry district?

20.4.2 When, and under what circumstances, did the Crown begin compulsory acquisition of land for public works in Wairarapa ki Tararua?

20.4.3 Was there consultation with Māori over the nature and effect of compulsory acquisition of land for public works at that time? Was there consultation about compulsory acquisition generally, or in particular cases, later? Was the consultation adequate?

20.4.4 Did the Crown give consideration to amending the application of public works principles in Wairarapa ki Tararua so as to take account of Māori concerns and preferences, or the Crown's duty under the Treaty? Was leasehold considered as an option?

20.4.5 Have Māori in the Wairarapa ki Tararua district been prejudiced by the application of public works principles and practice, including the regimes of:

(a) Notice of a compulsory taking:

(i) Did provisions and practices regarding notification of compulsory takings of Māori land adequately meet the principle of effective and timely notification of land takings so owners would not be disadvantaged regarding their rights to object and be compensated?

(ii) Were Māori less likely to find out about proposed takings than other landowners?

(iii) Were Crown attempts to improve notification for Māori timely and effective?

(iv) Should the Crown have had a responsibility to notify the interested community as well as the legal landowners in cases where public works takings of Māori land impacted on community facilities and taonga?

(b) Protections for important sites, such as urupā.

(i) Did provisions and practices regarding protections associated with compulsory taking of Māori land adequately meet the principle of protecting sites of special value to the owners?

(ii) Should the proximity of a potentially offensive work, such as a rubbish dump or gravel pit, next to an important site such as a marae or urupā, have been a matter requiring consideration when protections were provided?

(c) Opportunities to object to a taking:

(i) Did provisions and practices regarding opportunities to object to compulsory land taking, in the case of Māori land, adequately meet the principle of affording reasonable opportunity to make an objection and have it seriously considered?

(ii) Did such provisions take account of the difficulties of notifying Māori owners?

(iii) Were Māori of the district realistically able to participate in the objection process?

(iv) Did the Crown review or monitor the decision of authorities with power to hear objections to ensure they made adequate provision for Māori participation in the process and that they gave adequate consideration to Māori objections?

(d) Compensation paid for land taken:

(i) Did provisions and practices regarding compensation for compulsorily acquired Māori land adequately meet the principle of full and timely compensation for land taken?

(ii) Were the provisions for applying for, determining and paying out compensation for compulsorily acquired Māori land adequate?

(iii) Did such provisions place Māori at a disadvantage compared with other landowners?

(iv) Did the nature of Māori tenure, such as multiple ownership, cause difficulties for agencies in assessing and paying out compensation?

(v) Did compensation provisions for Māori adequately address any such difficulties?

(vi) In the examples researched for this inquiry district, was a fair compensation determined, and was it paid to all those entitled?

(e) Offers back or disposal of land no longer required:

(i) Did the provisions and practices concerning offer back of land to the original Māori owners, or their successors, satisfy the principle embodied in such Acts as the Public Works Acts of 1876, 1928, and 1981, that the first offer should in fairness be to those who had suffered the initial loss?

(ii) In the case of Māori land, was it appropriate for land no longer required for the purpose for which it was originally taken to be used for another public work, or as an exchange to acquire other land required for a public work, as in the example of the Gladstone gravel pit?

(iii) Was this a widespread practice in the inquiry district?

(iv) Was, and is, it more difficult to offer back Māori land taken than general land?

(v) Has this caused disadvantage to Māori seeking the return of land when it is no longer required for the original public purpose?

20.4.6 To what extent did the Crown consider (or require those agencies it delegated compulsory land taking powers to consider) the remaining Māori land base in Wairarapa ki Tararua, and its forms of value to Māori, when taking land for public purposes?

20.4.7 To what extent have public works takings contributed to land loss by Māori in Wairarapa ki Tararua?

20.4.8 Should the Crown have amended its public works policy and practice with respect to the Māori people of Wairarapa ki Tararua, in light of the levels of Māori land retention? When and how should the policy and practice have been amended?

20.4.9 Was public works policy and legislation used in a manner that disadvantaged Māori landowners more than other landowners in Wairarapa ki Tararua? In particular:

(a) Was advantage taken of the nature of Māori landholding (e.g. multiple ownership)?

(b) Was there a failure to tailor notice requirements to the realities of Māori land tenure?

(c) Was the application of the 5 percent rule discriminatory?

(d) Did the Crown resort to the compulsory acquisition of land owned by Māori in preference to taking other land? For example, why was land in the Tahoraiti block the subject of many takings?

20.4.10 Did Māori in Wairarapa ki Tararua request that public works provisions be used to benefit them, for example to provide access to landlocked Māori land? How did the Crown respond? Did the Crown's response breach the principles of the Treaty?

20.4.11 Has the treatment of gifts of land (for purposes such as establishment of schools) as if they were public works takings, resulted in breaches of the principles of the Treaty? Where land was gifted, but treated as a taking, should compensation have been paid?

20.4.12 In what manner and to whom, does the Crown propose to return Okautete School? Is the Crown's proposal, and the time taken so far to provide for the return of the school, reasonable? If not, does this constitute a breach of the principles of the Treaty?

20.4.13 Is there land in the inquiry district that was compulsorily acquired for public works, is no longer required for that purpose, but has not been returned to the successors of its original Māori owners? If so, what were the circumstances? What recourse do successors of original owners have when land is not returned? Does the current regime provide for them adequately, in terms of the principles of the Treaty?

20.4.14 Land owned by local authorities is designated as private land, and is therefore unable to be recommended for return to Māori as redress for Treaty of Waitangi claims:

(a) Was it consistent with Treaty principles for the Crown to delegate to local authorities the power to take Māori land compulsorily?

(b) Did the Crown sufficiently monitor and address any problems that arose from this delegation?

(c) Were Māori prejudiced by the delegation and its consequences?

(d) Is it incumbent on the Crown, in order to meet its Treaty duties, to amend the current regime to facilitate the return to Māori of Māori land that was compulsorily acquired by local government authorities for public works, and is no longer required for those purposes?

20.4.15 Are changes required to the current regime for public works in order for it to comply with the principles of the Treaty?

21. Twentieth Century: Land Alienation (excluding Public Works)

21.1: The Claimants contend that:

Alienations

21.1.1 During the twentieth century, the Crown continued to act in a manner which was inconsistent with its Treaty obligations, including its obligation to protect actively the interests of Wairarapa ki Tāmaki-nui-ā-Rua Māori (SOC 1A: 27; SOC 2: 12.1).

21.1.2 During this period between approximately 143,039 and 157,169 acres (or between 80 percent and 82 percent) of their remaining land was alienated such that by 2003, Ngā Hapū Karanga were left with approximately 34,650 acres (SOC 1A: 28).

21.1.3 From 1900 to 1920, at least 75,000 acres were acquired by the Crown and private owners. From 1920 to 1940, at least a further 22,000 acres were alienated from Ngā Hapū Karanga. From 1940 to 1960, at least a further 5,000 acres were alienated from Ngā Hapū Karanga. From 1960 to 1980, at least a further 17,500 acres were alienated from Ngā Hapū Karanga (SOC 1A: 28.1, 28.2, 28.3, 28.4).

21.1.4 The Crown continued to purchase, or to facilitate and permit private individuals to purchase, the remaining lands despite the fact that it was aware, or ought to have been aware, that Ngā Hapū Karanga were effectively landless at the beginning of the period (SOC 1A: 29).

21.1.5 The interim findings of the Stout-Ngata Commission of 1908 indicated that the vast majority of Wairarapa Māori land was under lease, and that where Wairarapa Māori occupied their land, they were living on small subdivided sections (SOC 1A: 29.1).

21.1.6 In July 1908, the Stout-Ngata Commission investigated the status of Wairarapa Māori lands. The findings of the Commission were:

(a) That there was very little Māori land left unoccupied in Wairarapa;

(b) Of the remnant of Māori land left unoccupied, Wairarapa Māori wished it to be reserved for their occupation; and

(c) There was a desire on the part of Wairarapa Māori to farm their lands (SOC 3: 66).

21.1.7 The Crown, through the passing of the Native Land Act 1909, removed all remaining restrictions on the alienation of Māori land at a time when no further alienations of Wairarapa ki Tāmaki-nui-ā-Rua Māori land ought to have been permitted (SOC 1A: 29.2; SOC 3: 68.1).

21.1.8 Given the miniscule land base still remaining in Rangitāne ownership at 1900, the Crown had an obligation under the Treaty to restrict private purchasing of the land and resources of Tāmaki-nui-ā-Rua lands in the twentieth century and failed in this duty (SOC 2: 12.1.1).

21.1.9 In breach of the principles of the Treaty, the Crown failed to ensure that Wairarapa ki Tāmaki-nui-ā-Rua Māori were able to utilise their remaining lands after 1900. For example, the Crown failed to prevent further subdivision and fragmentation of Wairarapa ki Tāmaki-nui-ā-Rua Māori land via the Native Land Court system (SOC 1A: 30-30.1).

21.1.10 Due to lack of development capital and an increasing debt burden, Wairarapa ki Tāmaki-nui-ā-Rua Māori were unable to utilise their remaining lands effectively (SOC 1A: 30.2).

21.1.11 The Crown failed to provide the necessary training and expertise to enable Wairarapa ki Tāmaki-nui-ā-Rua Māori to utilise their remaining lands. This was despite the recommendation of the Stout-Ngata Commission that training 'in practical farming for themselves' be provided (SOC 1A: 30.3).

21.1.12 The Crown failed to protect the miniscule land base still remaining in Rangitāne ownership during the period 1900 to the present day:

(a) As at 1900, 959,675 acres out of 1,077,714 had been alienated within the Tāmaki-nui-ā-Rua rohe;

(b) As at 1900, approximately 118,039 acres (11 percent) of land remained in Māori ownership;

(c) Despite the fact that the bulk of the Tāmaki-nui-ā-Rua tribal lands had been acquired by 1900, alienation continued throughout the twentieth century and reduced the Rangitāne tribal estate to 21,645 acres, a mere 2 percent of their former estate;

(d) Between 1920 and1970, the Crown continued to purchase Māori land within the Tāmaki-nui-ā-Rua rohe;

(e) Māori land was also acquired by private purchasers and by takings under public works legislation (SOC 2: 12.1.1).

21.1.13 By 1900, approximately 158,512 acres of land in the Wairarapa o Rangitāne claim area remained in Māori ownership (SOC 3: 65).

21.1.14 In breach of its obligations to protect the existing Rangitāne Māori land base at the time of the Stout-Ngata Commission, the Crown enacted the Native Lands Act 1909 which removed restrictions on alienation and permitted private purchase of Māori lands. The Crown also continued to purchase Rangitāne o Wairarapa lands throughout the twentieth century. This has resulted in the almost total alienation of the remaining Māori land base in the claim area whereby Wairarapa Māori,

including Rangitāne o Wairarapa, are left with a miniscule remnant of 16,104 acres of land (SOC 3: 68, 68.2-3).

21.1.15 Ngapuketurua and Te Maipi were the only land blocks in the Ngāi Tumapuhia ā Rangi rohe that were not purchased in whole or in part between 1853 and 1854 (SOC 5: 22.2).

21.1.15.1 Due to the nature of individual land titles and the increasing number of owners for each block, Ngāi Tumapuhia ā Rangi partitioned and subdivided their interests in Ngapuketurua and Te Maipi in an attempt to effectively utilise their meagre interests (SOC 5: 22.3).

21.1.15.2 Despite resistance by Ngāi Tumapuhia ā Rangi, there was immense pressure to lease, or if leased already, there was pressure to sell. The Crown did not adequately alleviate this pressure or adequately assist Ngāi Tumapuhia ā Rangi to resist such pressure (SOC 5: 22.4).

21.1.15.3 On 22 August 1940, 2,500 acres of the Te Maipi and Ngapuketurua blocks were used for the Homewood Development Scheme ('Homewood Scheme'). Due to the failure of the Homewood Scheme, Ngāi Tumapuhia ā Rangi were unable to effectively utilise the lands that were put into the scheme (SOC 5: 22.5, 22.5.2).

21.2: The Crown responds that:

21.2.1 Does not plead to the allegation that it failed to act in a manner which was consistent with its Treaty obligations, including its obligation to protect actively the interests of Wairarapa and Tāmaki-nui-ā-Rua. It is not required to plead to allegations of Treaty breach (SOR 1A: 23, SOR 2: 12.1).

21.2.2 Admits that by 2003, Māori in the Ngā Hapū Karanga claim area were left with approximately 34,650 acres. States further that it considers the figures for land alienated during this period should be between approximately 142,794 and 156,924 acres. (This amendment to the figures as stated in SOC 1A 28 is based on the acreage total given for the Manawatu-Wairarapa (Mangatainoka) Block in Ellis and Small, #A70, Base Table, entry 304) (SOR 1A: 24).

21.2.3 In response to the data presented by claimants on the periodic alienation of land throughout the twentieth century, the Crown refers to its statement of general position (SOR 24.1-24.2.3) In its statement of general position, the Crown concedes that, where claimants have given land alienation figures in their statements of claim for their separate claim areas, and these figures correlate with calculations based on the report by Ellis and Small (Wai 863, #A70) or the tables subsequently produced by the Crown (Wai 863, #A74), the Crown has accepted the totals (see for example SOR 2: 5.1.1(a), SOR 3: 5.4).

In relation to the specific allegation by Ngā Hapū Karanga, this means that the Crown accepts the following totals:

Year	*Quantum remaining (acres)*	*Proportion of original landholding remaining (percent)*
1840	2,165,811	100
1865	665,811	30.7
1900	177,689-191,819	8.2-8.6
2003	36,650	1.6

Because the alienation figures given in SOC 1A: 28.1-28.4 (SOI 23.1.3 above) correspond to the evidence of Tony Walzl, and not to either the evidence of Ellis and Small or the tables produced by the Crown, it can be inferred that the Crown does not accept the 20-year breakdowns suggested by claimants. The Crown also indicates that it considers there are inconsistencies in Walzl's calculations (SOR 1A: 24.1).

21.2.4 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 (SGP: 10). Does not concede that Ngā Hapū Karanga were virtually landless at 1900, and suggests that further work needs to be done to ascertain when landlessness occurred (SGP: 11-13).

21.2.5 Notes that the first Stout-Ngata report simply commented that 'the larger portions' of the remaining lands had been leased, and that little land was being farmed, while most of the Māori in the Wairarapa were working for wages or living on lease income. The second report noted that 47.5 percent of the lands remaining were under formal leases, and that of the 56,539 acres in Māori occupation, most (except for three large blocks) was 'in very small subdivisions, and consists for the most part of papakāingas and Native reserves in the occupation of the owners' (SOR 1A: 25.1).

21.2.6 (a) Admits that the first report of the Stout-Ngata Commission found that there was very little Māori land left unoccupied in Wairarapa. Of the remnant left unalienated, Wairarapa Māori wished it to be reserved for their occupation, and that there was a desire on the part of Wairarapa Māori to farm their lands. States further, however, that this report only covered lands in Masterton County.

(b) The Stout-Ngata Commission's second report (which covered land in six counties) identified 152,188 acres owned by Māori, of which some 56,539 acres were occupied by the owners and 72,280 acres were leased. Another 22,800 acres in the Waitutuma block were about to be sold by the owners and the Stout-Ngata Commissioners approved of this. Another 569-acre block was to be set aside for lease to other Māori.

(c) In the second report, the Commissioners did not deal with the 56,539 acres in Māori occupation save to note that it was all being used, and made no recommendations for its alienation. Admits that the second report, by implication, also found that there was a desire on the part of Wairarapa Māori to farm their lands (SOR 3: 60-60.2).

21.2.7 Contends that the Native Land Act 1909 removed existing restrictions and that Māori land was placed under a new system of administration. It would be incorrect to infer that the transfer of Māori land thereby became 'unrestricted' (SOR 1A 25.2).

21.2.8 Admits that Rangitāne land was alienated to private purchasers in the Tāmaki-nui-ā-Rua district in the twentieth century. Does not plead to the claim that it had an obligation to restrict private purchasing of these lands because of the diminished quantity of land left in Rangitāne lands at the time (SOR 2: 12.1, 12.1.1).

21.2.9 Does not plead to the allegations of Treaty breach (SOR 1A: 26). With regard to subdivision and fragmentation, states that fragmentation should be better classified as fractionalisation, in which an ever-increasing number of owners obtained rights through succession. Admits that this resulted in enlarged communities of owners, which were sometimes unable to cohere in managing or using their land. States that other communities did have a capacity to manage or use their land. Contends that there was no easy solution to the problem, and that it tried to create additional title options for the more effective management and utilization of multiple-owned land (SOR 4: 38.1).

21.2.10 States that it is unable to plead due to the generality of this allegation. The causes of the 'increasing debt burden' are not apparent. Accepts, in the case of multiply-owned land, that the community of owners would have found it difficult to borrow on the security of their land. Observes that from 1897, the owners of such land could borrow under sections 3-5 of the Native Land Laws Amendment Act 1897. Notes that claimant evidence does establish that some Wairarapa Māori (who held their land in severalty) received 'Advances to Settlers' loans (SOR 1A: 26.1-26.3).

21.2.11 The Crown provided little agricultural training for Māori in the pre-World War One period of the twentieth century. In relation to the Stout Ngata reports, it would be more accurate to say that the first report simply observed that these 'people have not been engaged in practical farming for themselves'. It 'urged' that instructors be provided, adding: 'In a few districts the Māoris are capable farmers, and are not in need of such extraneous aid; but where they are experimenting it is absolutely necessary that such guidance should be afforded to them'. The Commissioners considered Wairarapa Māori to fall into the latter category, although in the second report they noted that there were 23 registered Māori flocks in the district (SOR 1A: 26.4).

21.2.12 Admits that the quantities of Rangitāne land purported to have been alienated since 1900 have been alienated. Accepts that this alienation is the result of a combination of Crown and private purchases, and public works takings (SOR 2: 12.1.1).

21.2.13 Admits that by 1900, approximately 158,512 acres of land in the Rangitāne o Wairarapa claim area remained in Māori ownership (SOR 3: 59).

21.2.14 Admits the enactment of the Native Land Act 1909 which lifted existing restrictions on the purchase of Māori land and replaced this with a uniform system of administration under Māori Land Boards. It is not correct, however, to say that the Act removed all restriction on alienation. Further states that private purchasing of Māori land had been permitted before the 1909 Act. Admits that it continued to purchase Māori land in the twentieth century. For the allegation concerning remaining acreages, refers to its statement of general position (SOR 3: 63-63.2).

21.2.15 Has yet to consider the allegation that Ngapuketurua and Te Maipi were the only land blocks in the Ngāi Tumapuhia ā Rangi rohe that were not purchased in whole or in part between 1853 and 1854, and does not plead at this stage (SOR 5: 20.2).

21.2.15.1 Notes that the source cited does discuss the motives for partition in a general way. In relation to the specific examples of Ngapuketurua and Te Maipi, however, the discussion does not clearly concern the allegations made. Has yet to consider the general issue of partition and does not plead at this stage (SOR 5: 20.3).

21.2.15.2 Has yet to research this subject and does not plead at this stage. As a preliminary comment, notes that, in light of the passages cited, it is hard to accept

that the events in question are usefully understood as a contest between ‘pressure’ and resistance. The second sentence is in the nature of a submission (SOR 5: 20.4).

21.2.15.3 Has yet to research the history of the Homewood Development Scheme and does not plead at this stage (SOR 5: 20.5).

21.3: Agreements

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

21.3.1 The Crown has failed actively to protect the lands of Wairarapa and Tāmaki-nui-ā-Rua Māori, to the extent that they are now virtually landless. This failure was a breach of the Treaty. The time at which landlessness occurred, however, is not agreed. The Crown does not agree that Ngā Hapū Karanga were already virtually landless by 1900.

21.3.2 By 2003, Māori in the Ngā Hapū Karanga claim area were left with approximately 34,650 acres. There is no agreement on the number of acres alienated between 1900 and 2003, although the difference between the figures is relatively small.

21.3.3 As at 1900, 118,039 acres (11 percent) of Rangitāne's Tāmaki-nui-ā-Rua lands remained in their ownership. A combination of Crown purchases, private purchases, and public works takings has reduced this land base to 21,645 acres (2 percent) by the end of the twentieth century.

21.3.4 By 1900, approximately 158,512 acres of land in the Rangitāne o Wairarapa claim area remained in Māori ownership.

21.3.5 The Stout-Ngata Commission found that there was very little Māori land left unleased or unoccupied in Wairarapa. Of the remnant left unalienated, Wairarapa Māori wished it to be reserved for their occupation, and there was a desire on the part of Wairarapa Māori to farm their lands. Despite the Stout-Ngata reports, these Māori aspirations were not met and land alienation continued for the rest of the twentieth century, much of it by way of Crown purchase.

21.3.6 In the case of multiply-owned land, the community of owners would have found it difficult to borrow on the security of their land. Also, the process of fractionalisation created a situation where at least some Māori communities were unable to make decisions on the management and utilisation of their land.

21.3.7 The Crown provided little agricultural training for Māori in the pre-World War One period of the twentieth century, despite the recommendation (whether explicit or implicit is not agreed) of the Stout-Ngata Commission.

21.4: Issues

Introduction

The Tribunal notes the inter-relationship between this section and the next, which covers issues of sufficiency of land. The primary concentration here is on the facts as alleged with regard to alienation of land, and the question of whether the Stout-Ngata Commission

provided a warning to the Crown early in the century that it could or should have heeded. Matters to do with sufficiency, and the Crown's duty to actively protect Māori from landlessness, which arise from the allegations and response as pleaded here, are covered in the next section and will not be duplicated here.

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

21.4.1 Is it possible to further refine the land alienation figures and arrive at an agreed position on the quantity and means of alienation for each twenty-year period in the twentieth century? Is it necessary to inquire further into the quantitative details of incremental land lost in the twentieth century?

21.4.2 If Ngā Hapū Karanga and other Wairarapa ki Tāmaki-nui-ā-Rua Māori were virtually landless at 1900, was the Crown aware of this and did it continue to purchase and to allow the purchase of land regardless?

21.4.3 What was the import of the Stout-Ngata Commission's assessment and recommendations in its two reports? Did these reports make the Crown aware of Wairarapa ki Tāmaki-nui-ā-Rua Māori aspirations with regard to their remaining land? Should the Crown have taken action to assist Māori farming and prevent further alienation of Wairarapa ki Tararua land, after receipt of these reports?

21.4.4 What was the actual effect of the Native Land Act 1909 on land formerly protected by restrictions on alienation? Did the change in law and policy constitute an effective removal of protections, or merely a change in the way in which Māori lands were protected? How significant was the end of the pre-1909 restrictions on the continuing alienation of Wairarapa ki Tararua land in the twentieth century?

21.4.5 What were the other effects of the Native Land Act 1909 and the new systems for managing Māori land between 1900 and 1953? In particular:

(a) What was the role of Māori Land Boards, assembled owners' meetings, and other mechanisms for administering land alienation?

(b) How effective were the protections built into the system, such as the Māori Land Board certification that vendors had sufficient other land and that transactions were equitable? Did the Crown ensure that Māori Land Board decisions were adhered to or enforced?

(c) Why did the Crown not apply these systems and potential protections to its own purchases of land, and with what effects for Wairarapa ki Tāmaki-nui-ā-Rua Māori?

(d) What was the relationship between leases, rents, debts, and private purchases, and did the Māori Land Board system ultimately operate in the best interests of the owners or the lessees/purchasers?

(e) Why was so much of the small remaining Māori land base alienated between 1900 and 1953?

21.4.6 What were the effects of native land legislation change and reform in the period after 1953, and in particular after the demise of the Māori Land Boards? For example, was Māori land in Wairarapa ki Tararua alienated through mechanisms to acquire 'uneconomic' shares, and to change land from Māori freehold to general title? Why did alienation continue in this period, and what was the Crown's role and responsibility?

22. Sufficiency of lands and resources

22.1: The Claimants contend that:

Sufficiency

22.1.1 The Crown had a duty to ensure that Wairarapa ki Tāmaki-nui-ā-Rua Māori maintained a land base of sufficient quantity and quality for their present and future needs to allow them to prosper and participate in the new economy from a reasonably well-resourced base (SOC 1B: 10(c), 12(c); SOC 2: 5.1; SOC 3: 8; SOC 4: 8, 13; SOC 14: 8.7).

22.1.2 The Crown has a duty, pursuant to Article II of the Treaty, to actively protect the rights and property of Wairarapa ki Tāmaki-nui-ā-Rua Māori and to act in good faith toward Wairarapa ki Tāmaki-nui-ā-Rua Māori (SOC 3: 8; SOC 8: 2.1, 5.1, 8.1).

22.1.3 The Crown failed to develop or implement a settlement plan whereby the Wairarapa ki Tāmaki-nui-ā-Rua Māori retained sufficient land around new settlements and had the access and opportunity to benefit from economic developments and social services (SOC 1A: 5.3.3, 5.5; SOC 3: 8, 10).

22.1.4 The Crown failed to investigate or allow alternative means of settlement such as leasing of Māori land whereby Wairarapa ki Tāmaki-nui-ā-Rua Māori would have retained sufficient land, and been able to control settlement in their areas (SOC 1A: 5.5; SOC 3: 12; SOC 4: 11(a), 23, 24, 25).

22.1.5 The Crown failed to take steps to implement sufficient protections to prevent the ongoing alienation of Wairarapa Tararua lands to ensure that Ngāti Hinewaka retained land of sufficient quantity and quality for their present and future needs (SOC 4: 11).

22.1.6 Tāmaki Māori have been prejudiced by the Crown's Treaty breaches, in that the majority of their lands and resources have been alienated. The Crown purchased land at inadequate prices and without sufficient areas or reserves being set aside and protected from alienation, leaving Tāmaki Māori with insufficient means to provide for their present needs (SOC 8: 1.4, 2.4, 3.4, 4.4, 5.4, 7.4).

22.1.7 The Crown failed to institute a process whereby the present and future land and resource needs of the Wairarapa ki Tāmaki-nui-ā-Rua could be assessed, and failed to assess those needs (SOC 1A: 5.2, 5.3, 5.3.1; SOC 1B: 153, 154; SOC 2: 5.0, 5.1, 5.1.2, 12.1.1, 12.2a; SOC 3: 14, 45.13; SOC 4: 9; SOC 8: 5.2, 5.3.1).

22.1.8 The Crown failed to assist the Wairarapa ki Tāmaki-nui-ā-Rua Māori to acquire the necessary skills and expertise to develop their lands to a quality sufficient to support them in the new economy and to participate in the new economy (SOC 1A: 5.3.4, SOC 2: 12.2d, SOC 3: 67c).

22.1.9 The Crown had a duty to purchase from Wairarapa ki Tāmaki-nui-ā-Rua Māori only land that it needed for settlement or public works (SOC 1B: 9(a), 30(a); SOC 8: 1.2).

22.1.10 The Crown's policy or intention was to acquire the whole of the Wairarapa ki Tāmaki-nui-ā-Rua Māori land (SOC 1A: 5.1.2; SOC 2: 8.1.1).

22.1.10.1 The Crown pursued the elimination of ngā hapū karanga ownership of lands in the Wairarapa (SOC 1A: 5.4.1).

22.1.10.2 The Crown pursued a policy of acquiring the majority of Rangitāne o Wairarapa's claim area and encouraging the establishment of intensive small farms and townships (SOC 3: 83).

22.1.10.3 As at 2002, 21,645 or only 2 percent of Tāmaki-nui-ā-Rua remained in the ownership of Tāmaki Māori (SOC 8: 1.3.5)

22.1.11 The Crown focused on acquiring sufficient land for settlement or the use of European settlers at the expense of considering the needs of Māori landowners and users (SOC 4: 11a).

22.1.12 In acquiring or permitting the alienation of Wairarapa lands in the claim area, the Crown failed to either investigate the extent of land required by ngā hapū karanga for their present and future needs or to identify the extent of those needs (SOC 1A: 5.3).

22.1.13 From 1853, the Crown actively facilitated and/or permitted the transfer of the majority of land and resources belonging to Wairarapa ki Tāmaki-nui-ā-Rua Māori so that the land remaining in Māori ownership was insufficient for their present and future needs (SOC 1A: 5; SOC 2: 5; SOC 4: 10).

22.1.14 The Crown adopted and/or facilitated a process of progressive alienation of lands that resulted in Wairarapa ki Tāmaki-nui-ā-Rua Māori being rendered landless without any regard as to the effect of the largescale alienation of lands prior to 1865, and whether Māori had a sufficient endowment of land for their present and foreseeable needs (SOC 1A: 5.1; SOC 1B: 30(b); SOC 3: 45.12; SOC 4: 11, 13; SOC 5: 13; SOC 8: 2.2; SOC 9: 4.1; SOC 10: 3).

22.1.15 By 1899/1900, ngā hapū karanga were facing landlessness and/or were recognised as being landless and that the Crown nonetheless failed to stop the acquisition of Wairarapa lands and/or prevent the ongoing alienation of Wairarapa lands. Successive amendments to the Native Land Acts to 1993 had the object and/or effect of facilitating the further alienation of Wairarapa lands in the claim area (SOC 1A: 5.2).

22.1.16 The Crown has failed to take any or any adequate steps to remedy the loss of the land and resources of ngā hapū karanga within the claim area (SOC 1A: 6).

Remaining lands – quantum and adequacy

22.1.17 The Crown was under a duty at all times to ensure that adequate reserves were set aside for, and maintained in the ownership of, Wairarapa ki Tāmaki-nui-ā-Rua Māori (SOC 3: 30.7).

22.1.18 The Crown failed to ensure that any or adequate reserves were set aside and maintained in the ownership of the Wairarapa ki Tāmaki-nui-ā-Rua Māori or otherwise made inalienable (SOC 1A: 5.4; SOC 3: 13, 30.8 (a), 45.2: SOC 5: 21.5).

22.1.18.1 As a result of the insufficiency and inadequacy of reserves, many of Ngāi Tumapuhia ā Rangi reserve blocks had to be sold (SOC 5: 21.13).

22.1.18.2 The Crown failed to ensure that reserves had sufficient restrictions to prevent future alienation and between 1865 and 1900, of the approximately 72 reserves to pass through the Native Land Court, 50 were alienated either by lease or by sale (SOC 1A: 26.2.2).

22.1.18.3 The Crown failed to ensure that restrictions placed on reserves were not subsequently removed and during the period 1865 to 1900, 16 reserves had their restrictions removed and were subsequently sold (SOC 1A 26.2.2).

22.1.19 The Crown actively sought to purchase Rangitāne reserves despite a strong desire of Rangitāne to retain them, for example the Mangatainoka block (SOC 2: 10.1.5).

22.1.20 The Crown failed to prevent the complete removal of restrictions on Māori land in 1909 (SOC 1A: 5.4.3, 5.4.4, 5.4.5, 26.2; SOC 2: 10.1; SOC 3: 45.3, 45.4).

22.1.21 Land Board recommendations not to sell lands were easy to circumvent by individuals subdividing the land, and the pressure for sale caused much division amongst Ngāi Tumapuhia ā Rangi (SOC 5: 21.13.1, 21.13.2).

22.1.22 The Crown failed to ensure that Māori were able to utilise their greatly diminished landholding during the twentieth century by preventing fragmentation, reducing debt burden, and providing development capital and land use training (SOC 1A: 30, 30.1, 30.2, 30.3; SOC 2: 12.1.2).

Quality of remaining lands, including access

22.1.23 Remaining Māori land was of marginal utility due to limited quality, isolated location, and lack of access. It was subject to increasingly fragmented titles. These factors contributed to further alienations (SOC 1A: 5.4.7; SOC 2: 7.2e; SOC 3: 45.4d; SOC 4: 11e-f, 31(hh), 31(ss), 42c; SOC 5: 21.5.4).

22.1.24 The greater Seventy Mile Bush area, also known as Tāmaki-nui-ā-Rua, contained 139,625 acres. By 1900 only one percent of greater Seventy Mile Bush was left in the hands of Māori and much of what was left was of poor quality (SOC 1B: 31).

22.1.25 Only 4 percent of the land transacted in the Crown purchase of Part Pahaoa and Wilson's Run block was reserved. The two largest reserves in the block, Te Ununu and Waikekeno, were never large enough to form a viable farm (SOC 4: 31(ee)).

22.1.26 Much of the Ngāi Tumapuhia ā Rangi reserve land was not well suited to profitable European-style farming, and the interest of Europeans in acquiring the reserve land arose only out of its value as an adjacent property. The reserves were not economically viable to separately farm for Ngāi Tumapuhia ā Rangi and European alike (SOC 5: 21.5.1-21.5.4; 21.5.4).

22.1.27 The Crown has failed, and continues to fail, to provide legal access to Pukaroro, Huariki, Te Awaiti and Pirinoa reserves, which remain in Ngāti Hinewaka ownership (SOC 4: 34).

22.1.27.1 As a result of the Pirinoa reserve being landlocked, the Ngāti Hinewaka owners' ability to economically develop and use the land has been severely restricted. The owners have not been able to lease the land at market rates and have only been able to lease the land to the Didsbury family (SOC 4: 34(c)).

22.1.27.2 As a result of the Crown failing to provide legal access for the Huariki, Te Awaiti and Pukaroro reserves at the time titles were granted in 1887, the reserves remain without legal access (SOC 4: 34(d)-(f)).

22.1.27.3 The Ngāti Hinewaka owners of the Huariki, Te Awaiti and Pukaroro reserves have not been able to use the reserves as was intended when they were first set aside. They have been unable to lease the land at market rents and have been left with no option but to allow informal leases to the Riddifords to continue at nominal rentals. The rentals have been hardly worth the cost of collecting and distributing them (SOC 4: 34 (g)).

22.1.27.4 The Crown never provided for any form of legal access to the Huariki Reserve and the Te Awaiti Reserve. Since their creation they have been more or less informally occupied by the Riddiford family. This has meant that the Ngāti Hinewaka owners have had to suffer the humiliation of seeking permission from the Riddiford family to access their own reserves. This has resulted in a loss of mana for Ngāti Hinewaka (SOC 4: 34 (h)).

22.1.27.5 Some within the Riddiford family have in recent times taken advantage of the Ngāti Hinewaka owners' plight. In the early 1990s one member of the Riddiford family, an owner and trustee of the neighbouring land, charged commercial fishers as much as $5,000 per annum to use the Te Awaiti reserve lands to launch commercial fishing boats. In addition, wāhi tapu were damaged by the bulldozing of land to create the launching ramps. The Riddiford family have refused to pay any rent to the owners for use of the land (SOC 4: 34 (i).

22.1.27.6 The owners have attempted to prevent the Riddiford family from trespassing on the Te Awaiti, Huariki and Pukaroro Reserves. In about 1994,

they successfully obtained an injunction against Mr Dan Riddiford in the Māori Land Court. This was a costly exercise which resulted in a pyrrhic victory as the Riddiford family continues to trespass on the land. The owners remain in an invidious position as, on the one hand, they cannot afford the costly exercise of enforcing the injunction to prevent the Riddiford family from trespassing on the land, and, on the other hand, they must go 'cap in hand' to the Riddiford family to seek permission to gain access to their own land (SOC 4: 34(j)).

22.1.28 Many reserves granted were insufficient for the number of people who had interests in them and thereby diminished the economic viability of the land. Also, the numbers of owners in undivided blocks increased to an unreasonable and unworkable level (SOC 5: 21.6.1, 21.7).

22.1.29 The subdividing and partitioning of the reserves further fragmented title and by 1900, fragmentation was such that 168,950 acres remained in Māori ownership in Wairarapa, split into at least 101 blocks (SOC 5: 22.1, 21.8).

22.1.30 The Crown failed to protect Ngāi Tumapuhia ā Rangi over the leases. As the reserves were often only viable as parts of larger farms, the Native Land Court was reluctant to separately specify any improvements in these leases, as it normally would have done, so as not to interfere with farm practices. This meant that the leases of such reserves were often overly favourable to the lessees (SOC 5: 21.11, 21.11.1).

22.1.30.1 The Crown failed to ensure sufficient infrastructural development, such as roads, so that lease rentals were of low value. The isolation of the blocks and the fact that they were often surrounded by a single European farm further restrained any increase in value, and the reserves were merely farmed as part of the surrounding estate. Leasing the land and living away from it did not produce sufficient returns for Ngāi Tumapuhia ā Rangi (SOC 5: 21.10-21.11.1, 21.12-1, 21.12.3. 21.12.4).

22.1.30.2 The Crown permitted lessees to decrease the viability of leasing by holding back rental payments and refusing to enter into short-term leases, thereby pressuring Ngāi Tumapuhia ā Rangi into selling their lands (SOC 5: 21.12.5).

22.1.31 The Crown failed to provide infrastructure such as roads, townships and transport which would have increased the value of remaining Māori land, and rendered it more in keeping with the needs of Wairarapa Māori in the new economy (SOC 1A: 19.1.3; SOC 5: 21.12.2).

22.1.32 The Crown failed to respond to the findings of the Stout-Ngata Commission that there was very little unoccupied Māori land left in Wairarapa, and that Māori wished to reserve and farm the land that remained (SOC 3: 66).

22.1.32.1 As a result of the findings of the Stout-Ngata Commission, the Crown was aware of the need to ensure that Rangitāne o Wairarapa maintained a land base for their economic survival, and a need to encourage by policy, legislation or any other means the retention of the remnant land in Rangitāne

ownership, and to encourage Rangitāne in the development and utilisation of their lands for farming for their economic survival (SOC 3: 67 (a)-(c)).

22.1.33 The implementation in 1940 of the Homewood Development Scheme which included 2,500 acres of the Te Maipi and Ngapuketurua blocks failed to provide the financial relief and opportunities promised to Ngāi Tumapuhia ā Rangi such as farming and horticulture, employment, and housing. Due to the failure of the Homewood Scheme, Ngāi Tumapuhia ā Rangi were unable to effectively utilise the lands that were put into the scheme (SOC 5: 22.5, 22.5.1, 22.5.2).

22.1.34 Policies pursued by the Crown led to a massive transformation of the indigenous environment, which contributed significantly to loss of access to traditional resources and their use for Wairarapa Māori (SOC 1B: 35).

22.1.35 In breach of its duties and its obligations under a number of sale agreements, the Crown failed to ensure that Tāmaki Māori retained or had access to sufficient resources to improve and maintain their health, living conditions, educational needs, cultural practices and religious practices (SOC 8: 10.2).

22.2: The Crown responds that:

General Crown position on sufficiency

22.2(i) In a general response to all claims concerning the issue of sufficiency of land and other resources, the Crown refers to its statement of general position of 1 August 2003, (Wai 863, #2.249). The statement of general position does not respond directly to questions of the Crown's obligations concerning sufficiency, but it concedes that the Crown:

> failed actively to protect the lands of Wairarapa [and Tāmaki-nui-ā-Rua] 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 (SOGP: 10; SOR 8: 3.1.5).

22.2(ii) Has acknowledged 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. Suggests that to understand how this situation arose, it is necessary to understand the context in which this occurred. This would require an appraisal of the population, resources and circumstances at the time of the initial sales in the Wairarapa ki Tāmaki-nui-ā-Rua area, and an examination of developments in these spheres over time (Crown memo of 9.12.2003: 37.1).

22.2(iii) In assessing how the situation of virtual landlessness arose, it is helpful to examine factors such as the size of the tribal population, the land they were occupying or enjoyed rights over, and the types of uses that land was put to at the time of alienation - for example gathering of mahinga kai, the location of wahi tapu and the likely impact of European farming practices (SOGP: 14-15; Crown memo of 9.12.2003: 38-38.1).

22.2(iv) Observes that one of the main foci of the statements of claim is the issue of whether the sale of land left Māori without sufficient provision for their present and reasonably anticipated needs. Some statements of claim have portrayed the Crown as having failed in its obligations as a result of the first series of purchases in the 1850s. Others allege that a situation of inadequate provision had been reached by the end of the nineteenth century. Some statements of claim have been content to list the acreages that are presumed to have passed from Māori hands at various times up until the present (SOGP: 13).

22.2(v) Comments that 'substantial areas remained in Māori ownership after the 1850s' (SOGP: 16).

22.2(vi) Concludes its statement of general position on sufficiency by suggesting what needs to be done to assess the issue of sufficiency (Crown memo of 9.12.2003: 39-39.1):

> The claims as pleaded suggest a need for the kind of contextual approach outlined by the Ngai Tahu Tribunal: that is, one based on an appraisal of population, resources and circumstances at the time of the initial sales in the Wairarapa, and examining developments in these spheres over time. Land retention is, clearly, an important issue, but retention and alienation need to be appraised against the

changing background of population numbers, patterns of land use, changing life styles and economic opportunities available to Māori (SOGP: 19).

General Crown position on quantum of reserves and remaining land

22.2(vii) In its statement of general position (Wai 863, #2.249), the Crown admits that 'it purchased a substantial quantity of land in the district during the period 1853-1871' (SOGP: 7). Considers that the figure given for existing Māori landholdings today is imprecise but concedes that with further investigation, it is unlikely to be revised upwards significantly (SOGP 9).

22.2(viii) Regarding the quantum of land alienated in the different claim areas within the Wairarapa ki Tararua inquiry district, the Crown admits that:

(i) it purchased 'a significant amount' of land in the period 1853-1854 (SOR 3: 5.3).

(ii) the majority of the land was alienated from the Rangitāne o Wairarapa claim area between 1853 and 1900 (SOR 3: 5.4).

(iii) between 1850 and 1900, it acquired most of the lands within Tāmaki-nui-ā-Rua area (SOR 8: 3.1.2).

22.2(ix) Admits the following quantities of land were retained by Wairarapa ki Tāmaki-nui-ā-Rua Māori in the inquiry district at various points in time (SOR 5: 10):

Date	*Quantum remaining*	*Quantum remaining as % of total land at 1840*
1840	2,571,638	100
1865	1,045,193	41
1900	276,551	11
2003	37,749	1.5

22.2(x) Where claimants have given land alienation figures in their statements of claim for their separate claim areas, and these figures correlate with the above table, or calculations based on the report by Ellis and Small (Wai 863, #A70) or the tables subsequently produced by the Crown (Wai 863, #A74), the Crown has accepted the totals (see for example SOR 2: 5.1.1(a), SOR 3: 5.4). These figures for the different claim areas and the Crown's acceptance of them are outlined in the agreements section 24.3 below.

Specific responses to sufficiency allegations

22.2.1 In response to the claim that the Crown had a duty to ensure that Wairarapa ki Tāmaki-nui-ā-Rua Māori maintained a land base of sufficient quantity and quality for present and future needs, the Crown responds that it does not plead on this question of Treaty duty. States that as at 1853-54 there was no evidence to show that Ngā Hapū Karanga did not have a sufficient land based from which to prosper and participate in the new economy. Otherwise refers to its general statement on sufficiency (SOR 1B: 5.2, 7.2; SOR 4: 3, 6; SOR 3: 8; SOR 2.5.1; SOR 14: 4.17).

22.2.2 Does not plead to allegations of Treaty breach (SOR 8: 4, 7, 10).

22.2.3 Admits that it did not produce a 'single social planning document' such as the claimants appear to have envisaged i.e. to ensure that Wairarapa ki Tāmaki-nui-ā-Rua Māori retained sufficient land and had the opportunity to benefit from new European settlements, new economies and improved social services. States that it would have been anachronistic to expect it to have done so (SOR 1A: 1.4.3: Crown memo of 9.12.2003: 40-40.1).

22.2.4 Denies the allegation that it failed to investigate and implement alternative means of settlement, such as leasing of Māori land or allowing Māori to lease land directly to settlers. Adds that the Crown frequently did consider alternative methods of facilitating settlement and development in the period 1846-62, but chose to adhere to a model of colonisation based on purchase. Thereafter, it asserts, a system was put in place by which Māori could gain a defined title to their land and deal with it within a system of Crown-derived title (SOR 1A: 1.6; SOR 3: 7).

22.2.5 States concession as outlined in 22.2(i). Also refers to its statement of general position concerning the issue of sufficiency as stated above (SOR 4: 4-4.1).

22.2.6 Does not plead to allegation on the basis that it consists of allegations of Treaty breach and prejudice (SOR 8: 3.2, 4.2, 5.3, 6.2, 7.2, 9.2).

22.2.7 (a) Refers to its statement of general position (as above) for allegations that it both failed to develop a method to ascertain and failed to ascertain the present and future land and reserve needs of the Wairarapa ki Tāmaki-nui-ā-Rua Māori. **[The Crown needs to clarify its position on the question of whether the Crown should have developed such a method.]**

(b) Admits that landlessness was the result of the mechanisms and processes of Crown purchasing, the Native Land Court, private purchases, public works takings and purchasing reserves set aside (SOR 1A: 1.4; SOR 1B: 151, 152; SOR 2: 5.1.1a; SOR 3: 9; SOR 4: 2; SOR 5: 5.1.1).

22.2.8 In response to the allegation that the Crown failed to assist Wairarapa ki Tāmaki-nui-ā-Rua Māori to develop their land to a quality suitable to support them in the new economy, contends that the nature of such assistance and the time at which it should have been provided is unclear. Adds that there is also evidence of some Crown assistance with Māori agriculture and therefore denies the allegation (SOR 1A: 1.4.4, SOR 2: 12.2).

22.2.9 States concession as outlined in 22.2(i). Does not plead directly to the allegation that the Crown had a duty to purchase from Wairarapa ki Tāmaki-nui-ā-Rua Māori only land that it needed for settlement or public works (SOR 8: 3.1).

22.2.10 Admits that it wished to purchase Māori land between Hawke's Bay and Wellington, but denies that its policy was to acquire all Māori land in the Wairarapa district. Adds that, while it wished to acquire land for European settlement, it was not the intention to leave Māori without any land (SOR 1A: 1.2.2; SOR 2: 8.1.4).

22.2.10.1 Admits it pursued the purchase of lands in the Wairarapa, but denies that it did so with the aim of eliminating all Māori ownership of land in the Wairarapa (SOR 1A: 1.5.1).

22.2.10.2 Admits that it purchased the majority of the claim area. Further states that a series of governments had a vision of transforming parts of the Wairarapa into an agriculturally based economy. Admits that the sale of Wairarapa lands disconnected some Rangitāne from their formerly-owned lands, but otherwise denies that the Crown pursued a policy of acquiring the majority of Rangitāne o Wairarapa land (SOR 3: 78).

22.2.10.3 Admits that as at 2002, 21,645 or only 2 percent of Tāmaki-nui-ā-Rua remained in the ownership of Tāmaki Māori. Further states concession as detailed in 22.2(i) above with addition of 'Tāmaki-nui-ā-Rua Māori' (SOR 8: 3.1.5)

22.2.11 In response to the contention that the Crown's land purchase strategy focused solely on the purchase of sufficient areas of land for settlement to the exclusion of the needs of Māori, refers to concession stated above and statement of general position (SOR 4: 4.1).

22.2.12 Refers to its statement of general position (SOR 1A: 1.4).

22.2.13 (a) States concession as outlined in 22.2(i) above and refers to its statement of general position.

(b) Says further that it pleads to the allegations in this statement of claim on the basis that it has no knowledge of the tribal affiliations of the historical figures involved in the events referred to. With a view to the identification of issues to be inquired into, the Crown pleads to the statement of claim without taking a position on whether persons identifying as iwi or hapū of Ngā Hapū Karanga, Rangitāne o Tāmaki-nui-ā-Rua were on all occasions involved (SOR 1A: 1, 1.1; SOR 2: 4, 5; SOR 4: 3).

22.2.14 States concession as outlined in 1.4(a) and refers to its statement of general position. Otherwise states that not required to plead to allegations concerning Treaty breaches (SOR 1A: 1, SOR 1B: 25; SOR 2: 5.1, 5.2, 7.2; SOR 3:1.5; SOR 4.4; SOR 5: 9; SOR 9.4; SOR 10: 2).

22.2.15 Refers to its statement of general position but records its initial impression that the sources cited do not bear out the allegations that by 1899/1900, ngā hapū karanga were facing landlessness and/or were recognised as being landless (SOR 1A: 1.3).

22.2.16 Admits that there has not been a settlement of claims, based on Treaty principles, which allege the excessive transfer of land and resources by Wairarapa Māori. Does not plead to allegations of Treaty Breach (SOR 1A: 2).

Specific responses to remaining lands – quantum and adequacy

22.2.17 Does not plead on the question of whether it had an obligation under the Treaty to ensure that sufficient reserves were set aside for Wairarapa ki Tāmaki-nui-ā-Rua Māori. Notes that the duty is better conceived as ensuring that Māori had sufficient lands for their needs, whether unsold lands or reserves. In respect of this the Crown refers to its statement of general position (SOR 3: 25.9, 25.10).

22.2.18 (a) Refers to its statement of general position (SOR 1A: 1.5).

(b) Denies that no reserves were set aside in the Rangitāne o Wairarapa claim area. Admits that not all purchases contained reserves and that some reserves were sold soon after the sale of the parent block. States further, however, that significant areas within the claim area remained in Māori ownership following the purchases of 1853-54 and that a key issue is whether Māori retained the lands they wished to keep in their possession. Notes that the source cited does not purport to give an overall analysis of reserve provisions in the claim area (SOR 3: 8; Crown memo of 9.12.2003: 43).

22.2.18.1 The Crown is still considering these matters (SOR 5: 19.6).

22.2.18.2 It is noted that Gawith records 72 reserve blocks. The data requires checking. (For example, a Crown grant was issued to Whareanga in 1865 but title was not awarded through the Native Land Court.) Gawith's data suggests that, in 48 blocks, there was leasing or selling activity – with the selling of interests occurring in 29 of those blocks (SOR 1A: 22.1.1).

22.2.18.3 Has encountered trouble in interpreting the Gawith and Hartley evidence (especially reconciling tables 4 and 5 and identifying the nature of the restrictions). It is likely that this issue will require further consideration (SOR 1A: 22.2.2).

22.2.19 Admits that it sought to purchase some reserves and that it sought to purchase the Mangatainoka reserves. States further that it purchased interests from owners who wished to sell. Otherwise denies the allegation that the Crown purchased reserves despite a strong desire of Rangitāne to retain them (SOR 2: 10.1.5).

22.2.20 Admits that restrictions on alienation of Māori land were removed in 1909 but states that a new process for managing Māori land was established. The sale of land which had hitherto been Māori reserve land did not therefore become unrestricted after 1909 (SOR 1A: 5.4.3, 26.2; SOR 3: 63, 39.4).

22.2.21 The Crown is still considering these matters (SOR 5: 19.6).

22.2.22 (a) Denies that it failed to prevent fragmentation or multiple-ownership, because Native land legislation permitted corporate or community ownership, that is, land to be held by the community owners who wished to act collectively and continue to act collectively. 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. States further that the term

'fragmentation' is used in a general and unparticularised manner. It is the nature of the case that the rights of succession resulted in enlarged communities of owners, and that some of those communities were sometimes unable to cohere in the management or utilisation of their land, while other communities did have that capacity (SOR 4: 38-38.1; SOR 1A: 26; SOR 2: 12.1.2).

(b) Accepts that in the case of multiply-owned land, the community of owners would have found it difficult to borrow on the security of their land. Notes that from 1897, the owners of such land could borrow under sections 3-5 of the Native Land Laws Amendment Act 1897 and that some Wairarapa Māori (who held their land in severalty) received 'Advances to Settlers' loans (SOR 1A: 26.1-3; Crown memo of 9.12.2003: 46.2-2.1). The Crown is still examining Rangitāne's allegations concerning development capital (SOR 2: 12.1.3).

(c) Admits that the Crown provided little agricultural training for Māori at the time of the Stout-Ngata commission. The Crown is still examining Rangitāne's allegations concerning land use training (SOR 1A: 26.4); SOR 2: 12.1.3).

Quality of remaining lands, including access

22.2.23 Refers to its statement of general position concerning sufficiency and its discussion on partition (refer Native Land Court section on individualisation). Otherwise does not plead as still doing further research or giving further consideration to the allegations (SOR 1A: 1.5.7; SOR 2: 7.7; SOR 3: 39.4; SOR 4: 38.4; SOR 5: 18.5).

22.2.24 (a) Admits that the greater Seventy Mile Bush area contained 139,625 acres and that by 1900 approximately 1 percent of the Greater Seventy Mile Bush blocks remained in Māori hands. Notes that the land remaining at 1900 is 24 percent of the reserves made from these blocks when purchased by the Crown.

(b) For land remaining in Māori ownership, the Crown has insufficient knowledge as to the quality of that land and therefore denies that such land was of poor quality (SOR 1B: 27, 27.1).

22.2.25 Notes that Stirling contends the reserves were too small, but cites Walzl who suggests that some of the reserved land was unsuitable for farming for reasons of quality rather than size. The Crown is not in a position to plead to the suitability of the reserves at this stage (SOR 4: 27.50).

22.2.26 Is still giving consideration to these allegations concerning the quality and economic viability of Ngāi Tumapuhia ā Rangi reserves and does not plead at this stage (SOR 5: 18.5).

22.2.27 Has not given consideration to the issue of allegedly landlocked land in the Ngāti Hinewaka claim and does not plead to the allegations concerning the Pukaroro, Huariki, Te Awaiti and Pirinoa reserves at this time (SOR 4: 30).

22.2.27.1 Does not plead to the allegation that as a result of the Pirinoa reserve being landlocked, the Ngāti Hinewaka owners' ability to economically

develop and use the land has been severely restricted, on the basis of insufficient knowledge (SOR 4: 30.4).

22.2.27.2 Admits that in 1887 the Crown issued title to the Huariki, Te Awaiti and Pukaroro reserves to Ngāti Hinewaka. Is yet to research the issue of no legal access being provided (SOR 4: 30.5).

22.2.27.3 Does not plead to the allegation concerning Ngāti Hinewaka not being able to use the reserves as was intended, on the basis that the Stirling report does not provide sufficient references to enable the Crown to verify the claim (SOR 4: 30.8).

22.2.27.4 Does not plead at this stage (SOR 4: 30.9).

22.2.27.5 Does not plead at this stage (SOR 4: 30.10).

22.2.27.6 Does not plead at this stage (SOR 4: 30.11).

22.2.28 Refers to its statement of general position (SOR 5: 18.6, 19).

22.2.29 Refers to its statement of general position and to its response to the issue of partition/fragmentation in the Native Land Court section (SOR 5: 19.1, 20.1).

22.2.30 (a) Denies the allegations that the Crown failed to ensure that the leases were advantageous for Ngāi Tumapuhia ā Rangi and that leasing the land and living away from it did not produce sufficient returns for Ngāi Tumapuhia ā Rangi, so far as they appear to be allegations of general application (SOR 5: 19.4).

(b) States that the allegation that the terms of the leases were often overly favourable to the lessees requires particularisation (SOR 5: 19.5).

22.2.30.1 (a) Denies the allegation that there was a reluctance to specify any improvements separately on Part Pahaoa block, as it would interfere with farming practices, insofar as it purports to be a statement of general application. Is unsure whether it is alleged that the Crown was involved, or should have been involved, in the negotiation of the lease referred to (SOR 5: 19.5.1).

(b) Has yet to consider the allegations concerning the failure to ensure sufficient infrastructural development and regarding the isolation of the blocks (SOR 5: 19.5.2).

22.2.30.2 Has yet to consider the allegation that the Crown permitted lessees to decrease the viability of leasing by holding back rental payments and refusing to enter into short term leases, thereby pressuring Ngāi Tumapuhia ā Rangi into selling their lands. Observes, as an initial impression, that the allegations appear to be based upon misunderstandings of the Crown's obligations (SOR 5: 19.5.2).

22.2.31 The Crown has yet to research the history of this development scheme and does not plead at this stage (SOR 5: 20.5).

22.2.32 (a) Admits that the Stout-Ngata Commission found that:

(i) There was very little Māori land left unoccupied in Wairarapa;

(ii) Of the remnant of Māori land left unalienated, Wairarapa Māori wanted it to be reserved for their occupation;

(iii) Wairarapa Māori wanted to farm their lands (SOR 3: 60, 60.1, 60.2).

(b) States further that this report only covered lands in Masterton County. States that the second Stout-Ngata Commission report (covering six counties) identified 56,539 acres occupied by Māori, 72,280 acres leased, 22,800 acres in the Waitutuma block about to be sold, and 569 acres about to be leased to other Māori. (SOR 60).

(c) Drawing on this information, states that the commissioners did not comment on the land in Māori occupation in their second report, other than to note that it was all being used, and made no recommendations for its alienation. States that Wairarapa was one of the few places where the commission did not recommend the compulsory vesting of any land in the Māori Land Board for sale or lease. Appears to accept that this report also supports the admission (24.2.31 (a)(ii)) noted above (SOR 60.1, 61).

(d) States also that the second Stout-Ngata report, by implication, found that Wairarapa Māori wanted to farm their own lands (SOR 3: 60.2; Crown memo of 9.12.2003: 44-45).

22.2.32.1 (a) Admits that as a result of the Stout-Ngata Commission it was aware of the land base held by Wairarapa Māori. States further that the purpose of the Stout-Ngata Commission was to ensure that Māori owners were getting a proper return for the lands they held. The Wairarapa was one of the few places where the commission did not find that land should be compulsorily vested in the Māori Land Boards for sale or lease (SOR 3: 61, 61.1).

(b) Admits that the Stout-Ngata Commission concluded that there was a need to encourage Rangitāne in the development and utilisation of their lands for farming, for their economic survival (SOR 3: 61.2).

22.2.33 Is yet to research the history of the Homewood Development Scheme and does not plead at this stage (SOR 5: 20.5).

22.2.34 Admits that the settlement of the Wairarapa resulted in significant transformation of the environment. It 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).

22.2.35 Is not required to plead (SOR 8: 12.1)

22.3: Agreements

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

22.3.1 The Crown had a duty to ensure that Wairarapa ki Tāmaki-nui-ā-Rua Māori retained sufficient land for their present and future needs, that this duty was not met, and this failure constitutes a breach of the principles of the Treaty of Waitangi. There is not yet agreement, however, on the time at which the land base became insufficient, or the degree of prejudice suffered as a result.

22.3.2 The Crown continued to purchase land after the 1850s and had acquired a 'substantial' amount of land by 1900. This constituted a majority of the claim area.

22.3.3 Parties generally agree on the amounts of land alienated at certain points of time within the various claim areas. The following table shows the agreed amounts of land remaining at various points in time for respective claimant groups and as a percentage of 'land at 1840'.

Statements of claim	*Land at 1840*	*Land at 1865*	*Land at 1900*	*Land today*
Ngā Hapū Karanga (SOC 1A)	2,165,811	665,811	177,689-191,819	36,650
	100%	30.7%	8.2-8.6%	1.6%
Rangitāne o Tāmaki-nui-ā-Rua (SOC 2) and Kahungunu ki Tāmaki-nui-ā-Rua (SOC 8)	1,077,714	696,665	118,039	21,645
	100%	65%	11%	2%
Rangitāne o Wairarapa (SOC 3)	1,493,924	348,528	158,512	16,104
	100%	23%	11%	1%
Ngāi Tumapuhia ā Rangi (SOC 5)	2,421,543	795,543	168,950	34,710
	100%	32.8%	6.9%	1.4%
Crown Submission (Wai 863, #A74)	2,571,638	1,045,193	276,551	37,749
	100%	41%	11%	1.5%

22.3.4 Following the Stout-Ngata Commission, the Crown was aware of Māori desire to farm their own lands and, from its first report, to reserve unalienated land for their own occupation.

22.3.5 As a result of the Stout-Ngata Commission, the Crown was aware of the land base held by Wairarapa Māori.

22.3.6 The Stout-Ngata Commission concluded that there was a need to encourage Wairarapa Māori in the development and utilisation of their lands for farming for their economic survival.

22.3.7 The sale of lands was a significant contributing factor to the loss of access to and use of traditional resources.

22.3.8 Landlessness was a result of the mechanisms and processes of Crown purchasing, the Native Land Court, private purchases, public works takings, and the purchase of reserves that had supposedly been set aside.

22.4: Issues:

On the basis of what is currently known, and without defining its criteria for sufficiency at this stage, the Tribunal considers the following questions to be primary issues for its inquiry:

Sufficiency

22.4.1 Given the context of the time(s), what definition might be applied to 'sufficient'? In particular:

(a) should 'sufficiency' be understood to include the retention of mahinga kai and non-agrarian resources, wāhi tapu, and sites of cultural importance; that is, all those things which made the land, in the words of Lord Normanby, 'essential, or highly conducive, to their own comfort, safety or subsistence'?

or

(b) should 'sufficiency' be understood, as appears to have been partly suggested, in terms of farming or use in the colonial economy at any particular time period? If so, on what basis should consideration of 'sufficiency' be so confined?

22.4.2 Given that Wairarapa ki Tāmaki-nui-ā-Rua Māori landholdings were being significantly reduced by Crown purchasing through the nineteenth century, was the Crown obligated to ensure that Māori were able to utilise their remaining lands as effectively as possible, if they so wished, such as through preventing uneconomic fragmentation of title, providing ready access to development capital, and providing land use training and expert advice?

22.4.3 By what period in time was there insufficient land for the present and future needs of the Māori communities of Wairarapa ki Tararua?

22.4.4 Was there regional variation in the timing of any 'insufficiency' within the inquiry district? Is the variation of such significance that we should pursue inquiry into the difference?

22.4.5 Is it useful to attempt a correlation of Māori people and remaining acres in Māori hands in the nineteenth century? In particular:

(a) Are the statistics adequate?

(b) Do the statistics and other known information permit differentiation between claimant groups?

(c) Are other factors, such as the quality of and access to remaining land, and other values attaching to the land, really more important?

22.4.6 Did the Crown adequately inquire into the lands and resources remaining to those from whom it purchased land, or who otherwise alienated their lands? How did the Crown respond to any advice or inquiry it conducted on this question, such as the recommendations of the Stout-Ngata Report?

22.4.7 To what extent did Crown settlement policy in the Wairarapa ki Tararua district attempt to evaluate and provide for the needs of Wairarapa ki Tāmaki-nui-ā-Rua Māori with respect to quantity and quality of land, access to European settlements, and provision of social services?

22.4.8 Are there instances where the Crown gave priority to the needs of settlers over the needs of Wairarapa ki Tāmaki-nui-ā-Rua Māori in its land settlement policy? What was the impact of such decisions on the quality and sufficiency of land owned by Māori?

22.4.9 Did the Crown have an obligation to assist Māori to participate in the European-style economy, for instance by means of training in farming or access to credit? If so, what assistance was offered by the Crown to Māori? Was this adequate? Is this relevant to the question of the sufficiency of land owned by Māori, in terms of their ability to actually use it?

(a) In particular, were development schemes a successful enterprise? Why were there so few of them and what results did they have for Māori?

22.4.10 To what extent was the remaining land viable in terms of:

(a) quality

(b) quantity

(c) shape and location

(d) access

(e) title (in the sense that the form of title allowed it to be used in some way, whether to raise capital, for farming, or some other purpose)

(f) infrastructure

(g) Māori cultural use and values?

22.4.11 In terms of 24.4.10 (a), was land of sufficiently good quality left to Wairarapa ki Tāmaki-nui-ā-Rua Māori to enable them to engage on an equal basis with European settlers in pastoral and other farming activities?

22.4.12 In terms of 24.4.10 (d), what obligations did the Crown have to ensure that Wairarapa ki Tāmaki-nui-ā-Rua Māori had legal and practical access to their remaining lands? If the Crown did have an obligation to ensue legal and practical access, did it fulfil that obligation?

22.4.13 To what extent could and/or did Māori access resources for capital development, whether by mortgage loans from lessees, assistance from the

Public Trustee, or by 'advances to settlers' loans? Has the type of land tenure affected access to capital resources?

22.4.14 To what extent could Māori use their remaining land effectively for both customary purposes and new forms of agriculture, as they needed or wished?

22.4.15 To what extent did fragmentation of land or fractionalisation of title affect the ability of Māori communities to manage and use their lands effectively? What was the impact of the size of blocks on their viability as economic units? How did this impact on the sufficiency of the land remaining to Māori over time?

22.4.16 Were Māori provided with adequate infrastructure, such as roads, to allow their lands to be utilised in such a way as to sustain the owners? What was the duty of the Crown with respect to the provision of infrastructural services to Māori?

22.4.17 What conclusions can be drawn about the quality of and access to land remaining in Māori hands at various points in time? To what extent did this vary through time and across the district? What have been the effects on Māori communities' health, education and general welfare, of the Crown's acknowledged failure to protect a sufficient Māori land base?

Reserves and Restrictions on Alienation

22.4.18 Was there a difference between reserve land, restricted land and unsold land in the eyes of the Crown and Wairarapa ki Tāmaki-nui-ā-Rua Māori? Did understandings of these various concepts differ? If so, what are the implications of these differences for the retention of sufficient land by Māori?

22.4.19 Did the Crown have a duty to ensure that sufficient reserves were set aside for Wairarapa ki Tāmaki-nui-ā-Rua Māori? If so, were the reserves set aside adequate in terms of the criteria set forth in 22.4.10? If not, why not?

22.4.20 Did the Crown have a specific obligation to ensure the protection of lands set aside as reserves in the Crown purchase deeds?

22.4.21 Did restrictions on alienation serve to protect the land which Māori wished to retain, to protect a viable and sufficient Māori land and resource base, and to meet the Crown's Treaty obligations in these respects?[1]

[1] Issues with regard to restrictions on alienation have been explored in more detail in earlier sections. The topic arises here as it relates to sufficiency.

23. Socio-Economic Impact

23.1: The Claimants contend that:

23.1.1 In 1840 Māori enjoyed health and prosperity, and possessed the capacity to participate in the emerging New Zealand economy (SOC 1B: 151; SOC 8: 10.3.1).

Land loss and economic impact

23.1.2 The terms of original purchase agreements obliged the Crown to set aside reserves and create an endowment fund for the benefit of claimants (SOC 1B: 149).

23.1.3 The Crown has duties, pursuant to Article II of the Treaty, to actively protect the rights and property of Tāmaki Māori and, pursuant to Article III, to ensure that Tāmaki Māori are accorded the rights and privileges of British subjects. The Crown also had obligations, pursuant to a number of sale agreements, to set aside resources, including an endowment fund, for the benefit of Tāmaki Māori (SOC 8: 10.1).

23.1.4 Māori wished to accommodate European settlement, while retaining most of their land and resources to ensure their full participation in the developing economy (SOC 1B: 152; SOC 8: 10.3.2).

23.1.5 The Crown was aware that its widespread post-1853 purchases left many Māori landless and impoverished, yet it failed to curb continued purchasing or to protect Māori from further alienation (SOC 1B: 153, 154; SOR 2: 12.1.1; SOC 8: 10.3.3-4).

23.1.6 The consequences of the widespread alienation of Māori land and resources, without adequate compensation or provision of an adequate endowment regime, included poor living conditions, ill-health, inadequate medical service, low educational achievement and loss of language and culture (SOC1B: 156; SOC 8: 10.4).

23.1.7 The Māori Affairs Act 1953 did not compel the Māori Land Court to promote the beneficial owners' occupation and use of lands in the Waikari Ratima Estate (SOC 10: 45).

23.1.8 The Crown failed to provide adequate social, health and educational opportunities to Māori (SOC 1B: 155; SOC 8: 10.3.5).

23.1.9 The Crown failed to honour its promises of the benefits from the infrastructural development of Tāmaki-nui-ā-Rua, such as employment and a growing economy for Rangitāne during the nineteenth century. Most of the infrastructural development was accomplished by settlers, without Rangitāne assistance (SOC 2: 13.1.1).

23.1.10 The Crown failed to honour promises of providing infrastructure to Rangitāne in Wairarapa. Rangitāne were required to pay tolls to use roads, bridges and

ferries when they had provided the land, and roads were built slowly, at the expense of Rangitāne and often from land compulsorily acquired (SOC 3: 38.7, 39.8).

23.1.11 In breach of the principles of the Treaty of Waitangi, the Crown continued to allow for the marginalisation of Ngāi Tumapuhia ā Rangi in an essentially European economy (SOC 5: 32.4).

23.1.12 In breach of the principles of the Treaty of Waitangi, the Crown failed to provide Ngāi Tumapuhia ā Rangi with adequate housing and social welfare assistance (SOC 5: 32.3).

23.1.13 The Crown failed to ensure that the claimants retained or had access to sufficient resources to improve and maintain their health, living conditions, educational needs, cultural and religious practices (SOC 1B: 150).

Educational impact

23.1.14 The Crown failed to honour promises to provide Rangitāne with educational services. Rangitāne were expected to provide land for schools, notwithstanding that they had already alienated the majority of their rohe, and had gifted lands at Papawai and Kaikokirikiri (SOC 2: 13.1.2; SOC 3: 38.1).

23.1.15 The Crown failed to provide adequate buildings, facilities, resources and teachers. Rangitāne were expected to subsidise the remuneration of teachers, and the Crown failed to provide boarding and lodging facilities (SOC 2: 13.1.2(b); SOC 3: 38.2-38.4).

23.1.16 Schools suffered from overcrowding, and publicly funded state schools were not attractive, as they failed to protect Wairarapa Māori children from prejudice and discrimination (SOC 3: 38.5-38.6).

23.1.17 Rangitāne were not afforded the benefits of the Native school system for some time. In 1902, Rangitāne at Mataikona requested that the Crown provide a school at their kāinga, but a school was never opened at that time, despite evidence that there was clearly a need for a school in that region. A school was only finally opened in 1947, almost a century after the initial promise for educational services (SOC 2: 13.1.2(a), 13.1.2(c)-(d)).

23.1.18 The Crown failed to provide education, which was one of the specific benefits of entering into a relationship with the Crown, and one that was explicitly linked to the allocation of land for settlement (SOC 4: 31(p)).

23.1.19 The Crown failed to provide adequate education and schools. Only four schools were opened in Wairarapa, being at Papawai, Te Ore Ore, Turanganui and Okautete. The schools that did operate required Wairarapa Māori to donate further land. The Crown failed to open a school for Māori in Southern Wairarapa. The school that was opened at Turanganui suffered a lack of resources, was poorly staffed, poorly housed and given little support by the Crown. The schools did not deliver the promised benefits (SOC 4: (q)(i)-iv).

23.1.20 The Crown failed to observe Treaty principles in providing adequate education to Ngāi Tumapuhia ā Rangi. They were expected to provide for schools out of their own remaining land. The Crown also pursued assimilationist education, causing loss of language and culture, and preparing Māori only for menial labour (SOC 5: 32.1).

Okautete School particulars

23.1.21 In 1902, Ngāi Tumapuhia ā Rangi lobbied for and sought to gift land for the establishment of a school for Māori children of the area. In spite of the intended gift, in 1903 the Crown took just over two acres from Ngapuketurua Māori reserve under the Public Works Act 1894 and its 1900 amendment, for education purposes and to establish Te Okautete Native School. The school was not opened until 1906. Despite protests by Ngāi Tumapuhia ā Rangi, the Crown disestablished the school on 1 February 1963 and, at the same time, established a new public school on the site (SOC 5: 23.1.1 -23.1.6).

23.1.22 In breach of Article Three and the principles of the Treaty of Waitangi, the Crown failed to provide Okautete Native School with sufficient and/or adequate facilities, resources, funding and support (SOC 5: 23.2).

23.1.23 The government was not willing to open the school for Ngāi Tumapuhia ā Rangi without the hapū's contribution and participation. Ngāi Tumapuhia ā Rangi were required to provide land, contribute to maintenance expenses, provide half the cost of buildings, and a quarter of the salary of the teachers. The school komiti also contributed labour and materials to the school. Therefore, in addition to the land required by the Crown, Ngāi Tumapuhia ā Rangi also gave more than a reasonable contribution for the establishment of the school (SOC 5: 23.2.1-23.2.4).

23.1.24 The Crown did not provide adequate supplies, resources or support for the efficient and sound running of the school, or for the health and wellbeing of the students. The buildings were sub-standard and contributed to ill-health, teacher accommodation was poor, medical and dental care provided on behalf of the Crown was sub-standard, and the Crown failed to provide for quality teaching and an appropriate curriculum. The school also had less, or poorer, access to Crown services compared to other schools under the Wellington Education Board (SOC 5: 23.2.5-23.2.11.1).

23.1.25 In 1902 Piripi Waaka (Walker) wrote to Native Minister Carroll, on behalf of the Rongokako Māori Council, asking for a school at Okautete, and offering land for it. In response to Crown requirements that land had to be gifted for a Native school, the Walker whānau agreed to gift over two acres for the school site. Although a gift, the land was taken under the Public Works Act 1894, the taking notice acknowledging the gift. Okautete Native School opened in 1906. In 1963 it was disestablished as a Māori school and it became a public school under the control of the Wellington Education Board (SOC 1B: 130-142).

Medical services impact

23.1.26 The Crown failed to honour promises of providing medical services to Rangitāne in Tāmaki-nui-ā-Rua, and to Ngāti Hinewaka in Wairarapa. Prior to 1900, the delivery of health services to Rangitāne and Ngāti Hinewaka was ad hoc, with no consistent, comprehensive approach (SOC 2: 13.1.3, 13.1.3(a); SOC 4: 31(o)(i)).

23.1.27 Hospitals were not opened in the Tāmaki-nui-ā-Rua rohe until the Pahiatua hospital in 1907 and the Dannevirke hospital in 1906 (SOC 2: 13.1.3(b)).

23.1.28 Rangitāne were clearly of the view that the Crown were responsible for payment of health services. For example, Nireaha Tāmaki advocated that medication he had purchased would be reimbursed by the government. The government rejected this suggestion (SOC 2: 13.1.3(c)).

23.1.29 Nireaha Tāmaki's request for a doctor to be appointed for Dannevirke and Porangahau was rejected on the basis that Māori usually used traditional remedies rather than visit a doctor (SOC 2: 13.1.3 (d)).

23.1.30 It was not until 1900, more than four decades after promises were made, that initiatives to address Rangitāne health were implemented, for example the Māori Council and the health and sanitation inspectors (SOC 2: 13.1.3(e).

23.1.31 In the Wairarapa, no medical services were supplied until 1860 (SOC 3: 38.9; SOC 4: 31(o)(ii)).

23.1.32 Between 1860 and 1883, a limited subsidised medical service was performed by Dr Spratt. Dr Spratt's service did not extend throughout the Wairarapa. Māori were dissatisfied with the service Spratt provided and petitioned for his removal (SOC 3: 38.10-38.11; SOC 4: 31(o)(iii)-(iv)).

23.1.32.1 When Dr Spratt ceased to be the Native medical officer for Wairarapa in 1883, he was not replaced. Dr Bey of Greytown attended to Wairarapa Māori, but only during outbreaks of serious communicable disease (SOC 4: 31(o)(v)).

23.1.32.2 Despite Māori protests, requests for a doctor, and a petition from Wairarapa Māori for a doctor to be appointed south of Papawai, the Crown failed to appoint any permanent doctor for the benefit of Māori (SOC 4: 31(o)(vi)).

23.1.33 The first hospital did not open until 1875 and no hospital was ever constructed specifically for Wairarapa Māori. Furthermore, Hospital Boards were reluctant to treat Māori (SOC 3: 38.12-38.13).

23.1.34 There was a failure to provide free medical treatment between 1883 until the early part of the century, and there was a reliance on Native school teachers between 1883 and 1910 to supply basic medical services and administer medicine (SOC 3: 38.14-38.15).

23.1.35 Due to the Crown's failure to provide a Native medical officer or subsidised health care, Wairarapa Māori were forced to sell land to pay for private medical services and to otherwise rely on Native school teachers to supply basic medical supplies and medical care (SOC 4: 31(o)(vii)).

23.1.36 There was a failure to properly fund Māori Councils, in particular the Rongokako Māori Council, a failure to provide Māori nurses, and a disparate and grossly inadequate under-funding for Māori health initiatives in general (SOC 3: 38.16, 38.20-38.21).

23.1.37 Māori sanitary inspectors were discontinued due to funding reasons, subsidised medical officers were dispensed with in 1909 and 1911, and the subsidised doctors faded out (SOC 3: 38.17-38.19).

23.1.38 The Crown failed to provide adequate health services and infrastructure promised as part of the 1853 Turanganui compact (SOC 4: 31(o), 31(r)).

23.1.39 In breach of Article Three and the principles of the Treaty of Waitangi, the Crown failed to provide Ngāi Tumapuhia ā Rangi with the same health care services as Europeans received (SOC 5: 32.2).

Consequences

23.1.40 The Crown failed to honour its promises with the following prejudicial effects (SOC 2: 13.2(a-d);

(a) Rangitāne health statistics are well below the levels of non-Māori in Tāmaki-nui-ā-Rua.

(b) Rangitāne educational achievement is well below the levels of achievement of non-Māori in Tāmaki-nui-ā-Rua.

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

(d) The economic statistics for Rangitāne are well below those of non-Māori in the Tāmaki-nui-ā-Rua rohe.

23.2: The Crown responds that:

23.2.1 States that it is not required to plead to what is essentially a submission regarding Māori health, prosperity, and capacity to participate in economic development. States that it has insufficient knowledge to plead to the above (SOR 1B: 149; SOR 8: 12.2).

Land loss and economic impact

23.2.2 States that it is not required to plead on matters of Treaty breach, although it has responded to several claimant contentions about the so-called 5 percent fund (SOR 1B: 148).

23.2.3 Not required to plead (SOR 8: 12).

23.2.4 Denies the allegations in SOC 1B: 152 'so far as they are allegations of fact'. **[This appears to refer to the contention that Mäori wished to accommodate European settlement while retaining most of their land. If this is not the case, the Crown needs to clarify.]** Admits that Tāmaki Māori 'wished to retain some land but denies that this comprised the majority of their lands' (SOR 1B: 150; SOR 8: 12.2.1).

23.2.5 Admits 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. States that the statement of claim does not identify precisely when the purchase of land should have ended (SOR 1B: 151-152; SOR 8: 3.1.5; Crown memo of 9.12.2003: 48-48.1).

23.2.6 States that it is not required to plead on what is essentially a submission regarding the deleterious health, social, cultural and economic consequences of landlessness (SOR 1B: 154; SOR 8: 12.3).

23.2.7 Denies that the Māori Affairs Act 1953 failed to compel the Māori Land Court to promote the beneficial owners' occupation and use of Māori freehold land. States further that the Māori Affairs Act 1953 section 327 (1) provides 'The main purpose of this Part of the Act is to promote the occupation of Māori freehold land by Māoris and the use of such land by Māoris for farming purposes' (SOR 10: 42-42.1).

23.2.8 States that the Crown is unable to plead to an allegation of such a general nature. Denies the specific allegation that it failed to provide adequate social, health and educational opportunities to Tāmaki Māori (SOR 1B: 153; SOR 8: 12.2.4).

23.2.9 Admits that much work was done by settlers. Does not plead, due to insufficient knowledge, as to whether such work was done without Rangitāne assistance (SOR 2: 13.1.1, 13.1.1a).

23.2.10 Admits that Māori made complaints about toll gates, but does not plead to the rest of the allegation concerning tolls, owing to lack of time for research. Admits that Māori paid half the cost of the road to the Papawai mill, and that

some roads were built on lands compulsorily acquired from Māori (SOR 3: 33.6-33.7.2).

23.2.11 States that the Crown was not required to address allegations of Treaty breach regarding the economic marginalisation of Ngāi Tumapuhia ā Rangi (SOR 5: 30.4).

23.2.12 States that the Crown was not required to address allegations of Treaty breach regarding housing and social welfare obligations to Ngāi Tumapuhia ā Rangi (SOR 5: 30.2).

23.2.13 This is essentially a submission to which the Crown is not required to plead (SOR 1B: 149).

Educational impact

23.2.14 Denies that it failed to honour general promises of providing Rangitāne educational services. Admits that in order for a Native school to be established, Māori had to provide land for the purpose (SOR 3: 33).

23.2.15 Admits that Rangitāne were expected to subsidise the remuneration of teachers. Admits that the Crown was to provide a subsidy for the buildings and teacher's salary, but did not pay for the entire cost of either, and admits that boarding facilities were not provided at Papawai, to which the particulars refer (SOR 3:33.1-33.3).

23.2.16 Admits that, in a report from Maunsell in 1880 to the Native Department Under-Secretary, it was stated that Māori children attending public schools had been prohibited from attendance due to antipathy of European parents to the contact of their children with Māori. Admits that a complaint of overcrowding was made in respect of Papawai School (SOR 3: 33.4-33.5).

23.2.17 Admits that the people of Tahoraiti may not have had access to a Native school in their area until 1890, but notes that they had received schooling at Dannevirke, which was three miles away. Admits that Māori at Mataikona requested a school for their kāinga in 1902 and that no school was opened there at that time. Admits that in 1906 the census enumerator commented that a school was much needed at Aohanga. States that the source cited in support of opening the school in 1947 does not discuss the establishment of this school (SOR 2: 13.1.2 (a), (c), (d)).

23.2.18 States that the Crown is unable to plead on the alleged explicit link between education and the allocation of land for settlement, because it is unclear from the source cited (SOR 4: 27.26).

23.2.19 Admits that Papawai, Te Ore Ore, Turanganui, and Okautete Schools were opened but otherwise denies the allegation. Is unaware of information to support the implied allegation that land was not willingly supplied. Is unable to respond at present to the allegations concerning the failure to open up a school in southern Wairarapa. States that the allegation that the schools did not

deliver the promised benefits is apparently based on the alleged compact of 1853. On that assumption, it denies the allegation (SOR 4: 27.27-30).

23.2.20 States that the Crown was not required to address allegations of Treaty breach regarding education obligations to Ngāi Tumapuhia ā Rangi (SOR 5: 30.1).

Okautete School particulars

23.2.21 (a) Admits that, in 1902, Ngāi Tumapuhia ā Rangi lobbied the government for the establishment of a school for Māori children of the area. Admits that, in 1903, just over two acres of the Ngapuketurua Māori reserve was taken by the Crown under the Public Works Act 1894 for education purposes and the establishment of Te Okautete Native School.

(b) Admits that, although the owners sought to gift the land, the Crown decided to take it under the Public Works Act 1894 and its 1900 amendment. The Crown further states that it was standard practice, as per the Public Works Act 1894, to issue notices taking land that had been gifted for school purposes, and that the notice for this taking stated it was a free gift from the owners to the Crown. Admits the school was not opened until 1906. The Crown does not plead as to whether it should have returned the land under section 436 of the Māori Affairs Act 1953, due to the question of law.

(c) States that the parents and komiti of Okautete School voted unanimously to support the change in administration in 1963, and therefore denies the allegation concerning protests. States that the land is to be offered back to the descendants of the original Māori owners, and contact has been made with the Māori Land Court to establish the correct process to follow to enable this to occur (SOR 5: 21.1.1 – 21.1.8).

23.2.22 Does not plead to Treaty breach (SOR 5:21.1).

23.2.23 Does not plead to Treaty breach (SOR 5:21.2).

23.2.24 Admits that it was Crown policy that native schools would not be opened, unless there was a contribution from parents (usually by way of a gift of land) and the participation of parents. Admits the Native Schools Act 1867 required Māori to provide land and contribute to maintenance expenses, provide half the cost of buildings, and a quarter of the teacher's salary. The 1871 Native Schools Act enabled Māori to provide extra land in lieu of money if they wished. The Crown has not yet researched the extent to which Māori were required to contribute towards the expenses of Okautete School or the teachers' salaries. Denies Ngāi Tumapuhia gave more than a reasonable contribution, due to insufficient particulars, but does admit that, over the years, the school komiti undertook a number of activities around the school (SOR 5: 21.2.1-21.2.4)

23.2.25 Admits that, at times, supplies, resources or support for the efficient and sound running of the school was lacking. Admits that, at times, pupil attendance was affected by sickness, and a 1925 report found too few desks, and children sitting at desks made out of benzene cases. Admits substandard buildings and

poor accommodation for teachers was frequently commented on by health officials and school inspectors. Denies that medical and health care was substandard, or that the state of the buildings led to health problems. Admits that the low roll led to problems recruiting teachers. Admits there were times when the school was without a teacher, but denies that the Crown did not assist the school over the provision of teachers. Denies that the curriculum was not appropriate. Has not yet had time to research the school access to Crown services (SOR 5: 21.2.5-21.2.11).

23.2.26 Admits the land was gifted by Piripi Walker and a number of other owners. States the application for the school was on behalf of hapū living within the Rongokako Council district, and not on behalf of the Council itself. Admits land was required to be gifted for a Native school. Admits the land was taken, but notes the taking acknowledged the gift (SOR 1B : 128- 141).

Medical services impact

23.2.27 States that it had insufficient time to research provision of medical services to Rangitāne, and does not plead. Denies the Ngāti Hinewaka allegations except where expressly admitted elsewhere in SOR **[Crown needs to clarify where its other responses to this issue are located in SOR 4]** (SOR 2: 14.1.1(a); SOR 4: 27.19).

23.2.28 Admits that hospitals were opened on these dates, but has not researched as to whether there were other facilities in the area of this nature prior to this, therefore does not plead further to the allegation (SOR 2: 14.1.1(b)).

23.2.29 Does not plead to sentence one due to insufficient knowledge. Admits that Nireaha Tāmaki could not have his medicine paid for by subsidy, because the medicine had been provided prior to the appointment of a subsidised medical officer (SOR 2: 14.1.1(c)).

23.2.30 Admits that a request for a doctor to be appointed for Dannevirke and Porangahau was rejected, on the basis that Māori usually used traditional remedies rather than visit a doctor (SOR 2: 14.1.1(d))

23.2.31 Admits that in 1900 Māori Councils and health and sanitation inspectors were introduced (SOR 2: 14.1.1(e)).

23.2.32 States that, as regards Wairarapa medical services, health services were provided through the Native Department for the 1850s, and that the first subsidised doctor was appointed in May 1859. Admits that Wairarapa Māori received no medical services provided by the government in the Wairarapa prior to 1859. Notes that provision should be seen within the context of existence and availability of health services generally at that time (SOR 3: 33.8.1-33.8.3; SOR 4: 27.20).

23.2.33 Admits that a subsidised medical service was performed by Dr Spratt, from May 1859, states that it has insufficient knowledge as to the extent of the Wairarapa Dr Spratt covered, admits that 153 Māori petitioned for his removal, but states further that 74 are reported to have signed a petition for his retention.

States that in 1862 his salary was increased to enable him to include in this regular rounds the principal Native villages from Te Kopi to Te Purupuru (SOR 3: 33.9.1, 33.9.3, 33.10.1-33.10.2; SOR 4: 27.21-22).

23.2.33.1 Admits that when Dr Spratt ceased to be the Native medical officer for Wairarapa in 1883, he was not replaced. Admits that Dr. Bey of Greytown did provide some medical assistance to Wairarapa Māori after Spratt's tenure ended. Except as admitted, the Crown is unable to plead to the allegation because of insufficient knowledge (SOR 4: 27.23).

23.2.33.2 Is unable to plead to the allegation because of insufficient knowledge (SOR 4: 27.24).

23.2.34 Admits that the first hospital did not open until 1875 and no hospital was ever constructed specifically for Māori, and denies that Hospital Boards were reluctant to treat Māori on the basis that insufficient particulars are cited (SOR 3: 33.11-33.12).

23.2.35 Denies the allegation and states that free health services were provided from 1883, through subsidised medical officers, the Wairarapa Public Hospital, through Native schools and sanitary inspectors, as well as the improvements in Māori health achieved by the Māori Councils in the early twentieth century. Admits that Native Schools dispensed some medicines between 1883-1910 (SOR 3: 33.13-13.13.1, 33.14).

23.2.36 Admits that Native School teachers did provide some medical supplies and medical care. Has concerns about the manner in which the source material has been used in the cited passages and does not plead to the remainder of the allegation (SOR 4: 27.25).

23.2.37 Denies the failure to properly fund Māori Councils on the basis of insufficient knowledge, but admits administrative difficulties are likely to have affected their functioning, and states that cases of embezzlement, poor management and accounting performance also contributed to difficulties. Does not plead to the allegation of under-funding, owing to lack of time for research. Denies there was a failure to provide Māori nurses, stating that it was considered, but rejected as hardly practicable. Despite this, a Native District Health Nurse was posted to the Wairarapa two years after the report in 1934 (SOR 3:33.15.1-33.15.6, 33.19-33.19.3, 33.20).

23.2.38 Does not plead, due to insufficient knowledge, as to whether funding reasons led to the discontinuance of Māori sanitary inspectors. Admits that Dr Dawson was subsidised for the provision of medical services to Māori in the Pahiatua district until 1909 when his appointment was terminated. He was subsidised again between 1920 and 1922. States further that the need for subsidised medical officers was assessed on a case by case basis and that the effectiveness of the system was reviewed over time. Admits that, as a national policy, the practice of subsidised doctors was phased out, as other health provision services were determined to be more effective (SOR 3: 33.16, 33.17.1, 33.17.3, 33.18(iii),8-20).

23.2.39 Denies the existence of the so-called Turanganui compact and the alleged health and infrastructure obligations arising from it (SOR 4: 27.5, 27.19, 27.31).

23.2.40 States that the Crown was not required to address allegations of Treaty breach regarding health care obligations to Ngāi Tumapuhia ā Rangi (SOR 5: 30.2).

Consequences

23.2.41 Does not plead as it contains allegations of prejudice (SOC 2: 14.2).

23.3: Agreements

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

23.3.1 Land use training was not available to Wairarapa Māori at the time of the Stout-Ngata commission. Otherwise, there is very little agreement between parties on these matters.

Okautete School particulars

23.3.2 Māori were required to gift land in order to obtain schools, and to make substantial contributions to the operation of the school, in the form of money and sometimes additional land. Land gifted for schools was actually taken under the Public Works Acts.

23.3.3 During the period of Okautete School's existence, there were sometimes insufficient supplies, resources, and support for its efficient running. There were substandard buildings and poor accommodation for teachers, and health problems. There were also problems recruiting teachers, and sometimes the school was without a teacher.

23.4: Issues

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

23.4.1 Did the widespread alienation of their land contribute significantly to poor living conditions, ill-health, inadequate access to medical services, low educational achievement and loss of language and culture for Wairarapa ki Tāmaki-nui-ā-Rua Māori?

23.4.2 Did the Crown have a duty, under the Treaty, to provide medical, educational and other social services to Wairarapa ki Tāmaki-nui-ā-Rua Māori? If so, what level of services was required? In particular:

(a) what medical and educational services were available to these Māori?

(b) did the level of services available to them meet the level of services available to settler communities in the same period?

(c) was the housing and social welfare assistance provided to Māori at the same level as that provided to non-Māori in the same period?

(d) Was adequate education available to Māori?

(e) Should the Crown have expected Māori to gift lands for schools?

(f) with respect to native schools,

(i) did the Native school system undermine Māori language and culture?

(ii) was its aim to prepare Māori only for work as labourers?

23.4.3 What was the Crown's duty in the instance of the Okautete School? Were the financial and other contributions required from Māori reasonable? What were the reasons for the substandard buildings, lack of teaching staff and other resources? Did the Crown meet its obligations?

23.4.4 Were, and are, the Māori people of Wairarapa ki Tararua socially and economically marginalised? If so, what is the relationship between their social and economic marginalisation and the ongoing purchase of their lands by the Crown?

23.4.5 Have the legislative regimes for Māori landholding contributed to economic marginalisation of the Māori people of the region? How might different policies relating to occupation and use of Māori freehold land by its beneficial owners have ameliorated the situation?

24. Central (DOC)/Local Government

24.1: The Claimants contend that:

24.1.1 In breach of the principles of partnership, the Crown has failed to ensure that the process of delegating its powers to local government is consistent with Treaty guarantees and principles (SOC 5: 24, 24.1.1).

24.1.2 Since 1852, the Crown has chosen to statutorily delegate some of its powers and functions to local government agencies in a manner inconsistent with the terms and principles of the Treaty and in breach of its duty of good faith (SOC 7: 3-6).

24.1.2.1 In all legislation delegating authority from the Crown to local government since 1852, up to and including the Local Government Act 2002, the Crown has manifestly failed to require those exercising powers as statutory delegates of the Crown to observe or give effect to the principles of the Treaty (SOC 7: 6.1).

24.1.2.2 In all legislation delegating authority from the Crown to local government since 1852, up to and including the Local Government Act 2002, the Crown has manifestly failed to protect the relationship of Wairarapa/Tararua Māori and their culture and traditions with their ancestral lands, waters, sites, wāhi tapu, flora and fauna and other taonga (SOC 7: 6.2).

24.1.2.3 In all legislation delegating authority from the Crown to local government since 1852, up to and including the Local Government Act 2002, the Crown has manifestly failed to ensure the protection of the ancestral lands, waters, sites, wāhi tapu, flora and fauna and other taonga of Wairarapa Māori (SOC 3: 88, 89, 89.2; SOC 7: 6.3).

24.1.2.4 In all legislation delegating authority from the Crown to local government since 1852, up to and including the Local Government Act 2002, the Crown has manifestly failed to provide Wairarapa/Tararua Māori with any meaningful ability to exercise decisions in accordance with the guarantee of tino rangatiratanga in Article II of the Treaty (SOC 4: 58.5(i), SOC 7: 6.4).

24.1.2.5 In all legislation delegating authority from the Crown to local government since 1852, the Crown has manifestly failed to provide any mechanism to ensure adequate representation for Wairarapa Māori in local government in the claim area (SOC 7: 6.5).

24.1.3 Ngā Hapū Karanga, Ngāi Tumapuhia ā Rangi, Rangitāne o Wairarapa, and other Māori were excluded from local government institutions set up by the Crown to run the Wairarapa district (SOC 1A 19.1.3d, SOC 3: 88, 89, 89.2, and SOC 5: 24.1).

24.1.4 In managing the lands, waters and resources in the Wairarapa area, the Crown has delegated decision-making to local authorities that have excluded Rangitāne o Wairarapa from effective participation (SOC 3: 89.3).

24.1.5 The Crown has failed to ensure that local government is accountable in Treaty terms since 1994 by failing to define local government as 'the Crown' or 'a Crown entity' for the purposes of the Public Finance Act 1989 (SOC 7: 6.6).

24.1.6 Decisions, particularly under the Resource Management Act 1991 and Local Government Act 1974 have been made by local government within the Wairarapa/ Tararua claim area which are manifestly inconsistent with and/or have otherwise failed to give effect to the principles of the Treaty of Waitangi and have resulted in the ongoing destruction of the ancestral lands, waters, sites, wāhi tapu, flora and fauna and other taonga of Wairarapa/Tararua Māori and/or their relationship with Wairarapa/Tararua Māori (SOC 7: 8.3).

24.1.7 As a result of local government institutions established under the Local Government Act 2002 not being defined as 'the Crown' or as 'a Crown entity', lands held by such institutions are not subject to recommendations by the Waitangi Tribunal even when acquired and/or retained in breach of the Treaty (SOC 7: 8.4).

24.1.8 The Crown established third party bodies, local authorities, which have operated to undermine the control, authority, tino rangatiratanga and mana of Tāmaki Māori (SOC 8: 9.5.2).

24.1.9 The Crown has failed to consistently incorporate the Treaty into legislation that has delegated powers to local government. As a result, the traditional management and governance of Ngāi Tumapuhia ā Rangi and Kahungunu ki Tāmaki, with their distinct spiritual and cultural values, has not been incorporated into decision-making (SOC 5: 24.1.2, 24.1.4, 25, SOC 8: 9.5.2, 9.5.3, 9.5.5, 9.6, 9.7).

24.1.10 The Crown's delegation of its powers to local authorities in the management of the environment has failed to protect it from degradation, particularly in those areas important to Tāmaki Māori for their survival and maintenance of cultural practices (SOC 8: 9.4).

24.1.11 By requiring office holders in local government to be freehold owners or ratepayers, Māori who held land in common have been excluded (SOC 5: 24.1.3).

24.1.12 Although the Conservation Act (1987) requires the Department of Conservation (DOC) to give effect to the principles of the Treaty (section 4), DOC has, historically and in the present, overlooked its Treaty responsibilities in the administration of the conservation estate within the Wairarapa/Tararua claim area (SOC 7: 12.1, 12.2).

24.1.12.1 DOC's planning instruments and conservation strategies in the claim area are inconsistent with Treaty principles (SOC 7: 12.4).

24.1.12.2 DOC has not provided for adequate participation by Wairarapa Māori throughout their claim area, particularly with regard to the New Zealand Conservation Authority and the Wellington Conservation Board (SOC 7: 12.3).

24.1.13 The Crown has failed to incorporate Ngāti Hinewaka in the management of wāhi tapu situated on DOC land (SOC 4: 54p).

24.2: The Crown responds that:

24.2.1 It does not plead to allegations of Treaty breach (SOR 5: 22.2).

24.2.2 Admits that Parliament has chosen to statutorily delegate some of its functions and powers to local government agencies (SOR 7: 4).

24.2.2.1 Admits that some earlier legislation relating to local government did not refer to the Treaty or its principles. The Crown otherwise denies that it has manifestly failed to require those exercising powers as statutory delegates of the Crown to observe or give effect to the principles of the Treaty. States that sections of the Local Government Act 2002 contain principles and requirements that are intended to facilitate participation by Māori in local authority decision-making processes (SOR 7: 5.1, 5.1.1).

24.2.2.2 No particulars are provided in support of the allegation concerning the failure of local government to protect the culture, traditions, waters, sites, wāhi tapu, flora and fauna and taonga of Wairarapa Māori. As a result, the Crown is unable to respond (SOR 7: 5.2).

24.2.2.3 No particulars are provided in support of the allegation concerning the Crown's failure to ensure the protection of the ancestral lands, waters, sites, wāhi tapu, flora and fauna and other taonga of Wairarapa Māori. As a result, the Crown is unable to respond (SOR 7: 5.3).

24.2.2.4 Refers to its response in 26.2.2.1.

24.2.2.5 Refers to its response in 26.2.2.1.

24.2.3 Does not plead to the allegation that ngā hapū karanga or Ngāi Tumapuhia ā Rangi were excluded from local government. States further that during the consultation before the Local Government Act (2002) it consulted widely with Māori (SOR 1A 15.2.8, SOR 5: 22.4).

24.2.4 Has not had sufficient time to research, and does not plead to, the allegation that Rangitāne o Wairarapa were excluded from local government institutions set up by the Crown (SOR 3: 85.2).

24.2.5 Admits that local government is not included in the definition of a Crown entity for the purposes of the Public Finance Act 1989 (SOR 7: 5.6).

24.2.6 States that it is not required to plead to allegations that under the Resource Management Act 1991 and Local Government Act 1974, decisions have been made by local government within the Wairarapa/Tararua claim area that are manifestly inconsistent with and/or have otherwise failed to give effect to the principles of the Treaty of Waitangi (SOR 7: 7).

24.2.7 States that it is not required to plead to allegations that as a result of local government institutions established under the Local Government Act 2002 not being defined as 'the Crown' or as 'a Crown entity', lands held by such institutions are not subject to recommendations by the Waitangi Tribunal even when acquired and/or retained in breach of the Treaty (SOR 7: 7).

24.2.8 Admits that Parliament, through legislation, established local authorities and other local bodies, but denies that local authorities have operated to undermine the control, authority, tino rangatiratanga and mana of Tāmaki Māori (SOR 8: 11.4.1).

24.2.9 (a) Admits that historically some local government legislation has not contained Treaty clauses, yet states that they now appear in relevant Acts such as the Local Government Act 2002, the Resource Management Act 1991 and the Conservation Act 1987.

(b) Has insufficient particulars to allow it to address specific allegations about the management and governance of Ngāi Tumapuhia ā Rangi, and its spiritual and cultural values. Denies the allegation that local authorities have operated to exclude the authority of Tāmaki Māori (SOR 5: 22.4, 22.4.1, 22.4.2, 22.4.4; SOR 8: 11.4.1, 11.4.2).

24.2.10 Is not required to plead about whether the delegation by Parliament to local authorities has failed to protect Tāmaki Māori from the environmental degradation of areas important to them. Does not plead as to whether the Resource Management Act gave Tāmaki Māori sufficient influence over environmental issues, as the claims contain insufficient particulars (SOR 8: 11.3, 11.4.4, 11.4.5).

24.2.11 Admits that, until 1900 when the Municipal Corporations Act 1900 was enacted, those who stood for office on city and borough councils were required to be freehold land owners or ratepayers. Admits that until 1944, when the Local Elections and Polls Amendment Act was enacted, those standing for office on County Councils and Roads Boards were required to be freehold land owners or ratepayers (SOR 5: 22.4.3; Crown memo of 9.12.2003: 50-51.1).

24.2.12 Denies that DOC's work is inconsistent with the Treaty (SOR 7: 11.1, 11.2).

24.2.12.1 Denies that DOC's planning instruments and conservation strategies are inconsistent with the Treaty (SOR 7: 11.4).

24.2.12.2 Denies that DOC has failed to provide Wairarapa Māori with adequate participation in conservation bodies (SOR 7: 11.3).

24.2.13 Provides no stated response.

24.3: Agreements

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

24.3.1 Parliament, through legislation, has delegated certain powers to local government bodies.

24.3.2 Historically, some local government legislation has not contained provisions which indicate the manner in which the Treaty of Waitangi is to be recognised or reflected in the relevant legislation.

24.3.3 Local government is not included in the definition of a Crown entity for the purposes of the Public Finance Act 1989.

24.3.4 Public office was limited to freehold owners or ratepayers in the nineteenth century. The Crown suggests that this was altered for municipalities from 1900, and for counties from 1944.

24.3.5 The Department of Conservation has a statutory responsibility to give effect to the principles of the Treaty. Parties do not agree on any particulars about the various mechanisms through which DOC should do so.

24.4: Issues

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

24.4.1 What, if any, are the Treaty obligations of local government bodies? From what do they arise? What are the Crown's Treaty obligations with respect to ensuring that its statutory delegates in local government have acted consistently with the principles of the Treaty of Waitangi? Has it fulfilled those obligations?

24.4.2 What mechanisms, if any, did the Crown establish to monitor and review the ways in which local authorities carried out the powers and functions delegated to them, and the outcomes of delegation?

24.4.3 Has Crown resourcing and legislative provisions been adequate for local authorities to adequately fulfil any requirements the Crown has placed on them with regard to opportunities for Māori participation, input and partnership in local authority decision-making?

24.4.4 Historically and today, has the Crown required local government and local authorities to provide any or sufficient opportunities for Māori representation, decision-making, and partnership? If not, have Wairarapa ki Tāmaki-nui-ā-Rua Māori suffered prejudice as a result?

24.4.5 Has Crown resourcing ensured that Wairarapa ki Tāmaki-nui-ā-Rua Māori are able to take up opportunities (if any) for Māori representation, decision-making, and partnership? If not, have Wairarapa ki Tāmaki-nui-ā-Rua Māori suffered prejudice as a result?

24.4.6 Historically and today, has the Crown been made aware of Wairarapa ki Tāmaki-nui-ā-Rua Māori concerns, complaints and issues with regard to the exercise of delegated powers by local authorities, and the outcomes of that exercise of authority? Did the Crown take proactive steps to inform itself on these matters? Were the representations of Māori to the Crown, including through political movements such as the Repudiation Movement and the Kotahitanga, significant in this respect?

24.4.7 In relation to the administration of the conservation estate in Wairarapa ki Tararua, has the Department of Conservation given effect to the Treaty of Waitangi?

24.4.8 Is there an adequate level of participation by Wairarapa ki Tāmaki-nui-ā-Rua Māori in the work and decisions of the Department of Conservation, and other statutory bodies such as the New Zealand Conservation Authority or the Wellington Conservation Board?

24.4.9 Are the Crown's conservation planning instruments (including conservation strategies and plans), which have been adopted by DOC in Wairarapa ki Tararua, consistent with the principles of the Treaty?

25. Heritage Management: Loss and management of wāhi tapu and portable taonga

25.1: The Claimants contend that:

25.1.1 The Crown has failed to actively protect wāhi tapu (which include for present purposes urupā and sites of cultural significance), kōiwi and taonga of Ngāti Hinewaka (SOC 4: 56).

25.1.2 Important resources and taonga such as rivers, mahinga kai, pā sites, and wāhi tapu were destroyed or adversely affected by Crown actions and/or omissions (SOC 2: 5.1.2(j)).

25.1.3 In breach of the duty to actively protect the Māori interest, and in particular taonga Māori, including wāhi tapu and artefacts, wherever they are located, the present mechanisms provided under the Antiquities Act 1975, Historic Places Act 1993 and Resource Management Act 1991 do not protect taonga in a manner consistent with the principles of the Treaty of Waitangi (SOC 7: 9-10).

25.1.4 Prior to the coming into effect in 1976 of the Historic Places Amendment Act 1975, which for the first time gave protection for both European and Māori archaeological sites within New Zealand, Ngāti Hinewaka had suffered the desecration of wāhi tapu and the looting of taonga over many years (SOC 4: 58(d)).

25.1.5 The Antiquities Act awards prima facie ownership of found artefacts (taonga) to the Crown, rather than tangata whenua (SOC 4: 58.1, SOC 7: 10.1):

25.1.5.1 The Antiquities Act contains inadequate deterrents to the illegal export of taonga (SOC 7: 10.3).

25.1.5.2 The Antiquities Act does not pertain to, or protect, taonga found before 1976 (SOC 4: 58.2).

25.1.5.3 The Act contains no obligation for the Crown to consult tangata whenua in decision-making over taonga found in its rohe (SOC 4: 58.3, SOC 7: 10.2).

25.1.5.4 The Crown has failed to expeditiously review the Antiquities Act as recommended by the Waitangi Tribunal in 1985 (SOC 4: 58.5).

25.1.6 Artefacts found during the Palliser Bay Archeological Project, which took place before the Antiquities Act 1975, are held at Te Papa, the National Museum. Ngāti Hinewaka assert that they are the true owners of these taonga (SOC 4: 58s).

25.1.7 The Historic Places Act 1993 ('HPA') does not provide Māori with power or control over their wāhi tapu. Rather than protect wāhi tapu, the Act only provides a process to authorise the modification of sites (SOC 7: 10.6, 10.7; SOC 4: 57.1).

25.1.7.1 The HPA and its predecessors have failed to:

(a) protect Ngāti Hinewaka wāhi tapu (SOC 7: 10.6; SOC 4: 57).

(b) provide Ngāti Hinewaka with any role in the management and control of wāhi tapu (SOC 4: 57.2).

(c) prevent the desecration and destruction of wāhi tapu of Ngāti Hinewaka (SOC 4: 57.5).

25.1.7.2 The HPA and the Resource Management Act 1991 ('RMA') fail to effect a cohesive and coordinated approach to the protection of wāhi tapu (SOC 4: 57.3).

25.1.7.3 The Historic Places Trust ('HPT') is inadequately funded to protect wāhi tapu in the manner envisaged by the HPA (SOC 4: 57.4).

25.1.8 Despite the supposed protections under the Historic Places Act, between 1991 and 2000, seven instances of damage to Ngāti Hinewaka wāhi tapu at Matakitaki a Kupe, Black Rocks, Mangatoetoe, Te Humenga, Pararaki, Te Awaiti Station, and Waikekeno have occurred (SOC 4: 58.5(m)).

25.1.8.1 The RMA excludes Ngā Hapū Karanga from decisions about wāhi tapu, and makes wāhi tapu only one consideration in the provision of resource consents (SOC 7: 10.8, 10.10).

25.1.9 Due to the lack of protection offered by the RMA, the Crown has allowed the desecration of Ngā Hapū Karanga wāhi tapu within the Ruamahanga catchment as a result of sand and gravel extraction, sewerage and pollution (SOC 7: 11.1, 11.2).

25.1.10 In public works legislation, the Crown has:

25.1.10.1 taken 55 acres of land including urupā in 1897 at Cape Palliser for a lighthouse (SOC 4: 54(e)).

25.1.10.2 failed to reserve 200 acres, including urupā, at Turanganui in the nineteenth century, and subsequently refused to recognise the existence of urupā during works in the 1930s (SOC 4: 54(e)).

25.1.10.3 taken land including urupā comprising Te Kopi during road construction in 1934, 1968 and 1997 (SOC 4: 54(e)).

25.1.10.4 destroyed part of the wāhi tapu Ngā Ra o Kupe rock formation in the 1940s in order to construct the Cape Palliser Road (SOC 4: 54(e)).

25.1.10.5 quarried the Parikarangaranga pā in a Featherston County Council Reserve on the north-east side of Whakatomotomo Road in the 1960s and 1970s (SOC 4: 54(e)).

25.1.11 The Central Index of New Zealand Archaeological Sites identifies 269 sites in the South Wairarapa district and 20 in Carterton. Despite this, the HPT has registered only five in the South Wairarapa district, and none in Carterton (SOC 4: 58.5 (b)).

25.1.11.1 Statutory recognition was not given to Māori traditional sites until more than 25 years after the passing of the Historic Places Act 1954 and it took 40 years for wāhi tapu to receive statutory recognition and for the Māori Heritage Council to be established under statute (SOC 4: 58.5 (c)).

25.1.11.2 The Crown has failed to remedy the deficiencies in the HPA and RMA which have been identified by the Waitangi Tribunal in the Manukau Report (Wai 8), the Te Roroa Report (Wai 38) and other reports by the Parliamentary Commissioner for the Environment, by individuals involved in Māori Heritage Management, and by Māori themselves (SOC 4: 58.5 (g)).

25.1.11.3 The HPA and HPT have failed to give adequate recognition to Māori heritage compared with that of European New Zealanders as is reflected in the composition of the HPT Board itself, the inadequate resources allocated by the HPT to Māori heritage, and the greater achievements of the HPT in relation to European built heritage compared with Māori buildings and sites. There are a lack of resources for the Trust to actively assist Māori to protect their wāhi tapu and taonga. Other deficiencies include the inadequacy of the HPA in dealing with Māori values associated with archaeological sites, the inappropriate ranking of sites of significance to Māori, and the lack of authority given to the Māori Heritage Council and the failure to establish it as a stand-alone Māori heritage agency (SOC 4: 58.5 (h)).

25.1.11.4 There are deficiencies in the ways that the RMA and Conservation Act are working to protect wāhi tapu. The regime still follows monocultural models in that the power of decision making rests entirely in Pākehā hands. A lack of coordination between statutory agencies involved in the management of historic and cultural heritage (such as the HPT, Department of Conservation, district and regional councils), and between them and Māori management organsations. There are potential gaps between the archaeological site provisions of the HPA and the RMA where local authorities fail to provide for the protection of sites in their policies and plans. There is a lack of guaranteed protection of confidential information on sites of significance to tangata whenua. There is inadequate funding and technical support of Ngāti Hinewaka to assist in the production of heritage planning documents as contemplated by the RMA, and to take the leading role in managing their own heritage. There is a lack of resourcing to complete improved archaeological survey and databases and in particular the restriction on eligibility for the Public Good Science Fund (SOC 4: 58.5 (i)).

25.1.11.5 The Crown agents involved in the registration of archaeological sites, particularly the HPT, have in the past failed to consult Ngāti Hinewaka about proposed registrations (SOC 4: 58(j)).

25.1.11.6 The process of registration of archaeological sites under the HPA is unnecessarily time consuming and provides limited protections to Maori. In respect of the registration of Matakitaki A Kupe as an Historic area, the process took more than two years, the area was registered only as an Historic area and not as an Historic area and a Traditional Site as originally sought, and the HPT Board demonstrated reluctance to progress the application given opposition from local European landowners. Registration itself gives limited protection and responsibility still falls to the South Wairarapa District Council (which has not listed the Historic area in its District Plan) under the RMA, and the HPT under the archeological provisions of its own Act. Ngāti Hinewaka has no recognised role in the process (SOC 4: 58(k)).

25.1.11.7 Since 1976 the HPT has issued no authorities to modify archaeological sites in the Carterton District Council area and only three in the present South Wairarapa District Council area. This is despite the numerous archaeological sites in the region and substantial coastal residential development in and around those sites since 1976. In respect of those authorities that were issued the following faults arose:

- For the stone walls at Mangatoetoe both the conditions of the authority and the provisions of a Heritage covenant were subsequently breached.

- There was no consultation with tangata whenua before the authorities were issued in respect of the Mangatoetoe and Whatarangi and Black Rocks authorities (SOC 4: 58(l)).

25.1.11.8 Despite the high number of archaeological sites in the South Wairarapa district the South Wairarapa District Council has failed to provide any protection for Maori sites in the South Wairarapa District Plan. The RMA therefore provides no practical protection for these sites (SOC 4: 58(n)).

25.1.11.9 The Crown has failed to involve Ngāti Hinewaka in the management of wāhi tapu situated on Crown land and in particular situated on the DOC estate. The Crown's policy statements about consultation with tangata whenua are not reflected in actual consultation with Ngāti Hinewaka (SOC 4: 58(p)).

25.1.11.10 The Crown has failed to implement adequate measures to prevent the digging up and removal of koiwi and portable taonga and to assist Ngāti Hinewaka to have a direct role in the continuing maintenance of such portable taonga (SOC 4: 58(q)).

25.1.11.11 The provisions of the Antiquities Act have not protected Ngāti Hinewaka's rights in relation to portable taonga. Under the common law which

applied prior to the Act, taonga found on land were deemed to belong to the owner of the land. As a result, Ngāti Hinewaka's taonga are dispersed among private and public collections (SOC 4: 58(r)).

25.1.11.12 Since 1976 when the Antiquities Act came into force there have been only five notifications of finds in the Southern Wairarapa, of which only two would be in Ngāti Hinewaka's rohe (SOC 4: 58(t)).

25.1.11.13 As a result of the Crown's actions and policies, Ngāi Tumapuhia ā Rangi have not been able to manage, maintain or protect their wāhi tapu, traditional and sites of significance, including (but not limited to):

(a) Urupā such as Waipuna, Mangapiu, Ahirara, Wainuioru.

(b) Wāhi tapu and urupā on Te Maipi.

(c) Kāinga and ancestral sites at Waikekeno, Ngapuketurua, Nga Mahanga and Whakawhiti (SOC 5: 30.1).

25.1.12 The Crown failed to ensure Ngāi Tumapuhia ā Rangi retained access to sites of importance along the coastline such as: Te Unuunu; Ahirara; Waikekeno; Waikaraka; Kaihoata and; Waimimiha (including mahinga kai, and wāhi tapu), and failed to protect those sites from degradation (SOC 5: 31.5).

25.2: The Crown responds that:

25.2.1 Is still considering the remaining allegations and is not yet in a position to respond (SOR 4: 52).

25.2.2 Refers to its response to environmental degradation and management claims (SOR 2: 5.1.1(e)).

25.2.3 Is not required to plead (SOR 7: 8-9)

25.2.4 No response from the Crown

25.2.5 Admits that the Antiquities Act makes the Crown the prima facie owner of taonga found in New Zealand. States, however, that the owner, custodian, interested person or Minister responsible for administering the Act can, under section 12 of the Act, apply to the Māori Land Court. Section 12 of the Māori Land Court gives it the jurisdiction to establish actual or traditional ownership, possession or custody of taonga. States that the Antiquities Act provides a mechanism for the return of taonga, since it replaces the common law that would otherwise grant the finder total possession (SOR 7: 9.1, 9.1.1, 9.1.2, 9.1.4, 9.1.5).

25.2.5.1 States that the allegation over insufficient penalties for the illegal export of taonga is in the nature of a submission (SOR 7: 9.3).

25.2.5.2 Admits that the Antiquities Act only applies to artefacts found after 1976, but states that all artefacts are protected from export, irrespective of the date at which they were found (SOR 7: 9.4, 9.4.1).

25.2.5.3 Admits that the Antiquities Act gives it no responsibility to consult with or include tangata whenua in decisions. Recognises, however, that tangata whenua have a 'special relationship' with a found taonga, and under Ministry operational policy, it will notify iwi of artefacts found in their rohe, seek their input into the custody process, and advise them to apply for ownership through the Māori Land Court (SOR 7: 9.1.6, 9.2, 9.2.2a-e).

25.2.5.4 As no particulars are provided in support of this allegation, the Crown is unable to respond (SOR 4: 54, SOR 7: 10.1- 10.4).

25.2.6 Gives no stated response.

25.2.7 (a) Admits that the Historic Places Act 1993 does not provide for iwi management and control of wāhi tapu. States that the Act provides a regime for the registration of wāhi tapu (see sections 25-37). Protection of registered sites is then governed by the Resource Management Act. When preparing a district plan or regional plan, a local authority must have regard to any relevant entry in the Historic Places Trust Register (SOR 7: 9.6).

(b) Admits that under the Historic Places Act, application can be made to modify, destroy or damage wāhi tapu (SOR 7: 9.7).

25.2.7.1 Refers to SOR 7: 9.6-9.7 as stated above (Crown memo of 9.12.2003: 54).

25.2.7.2 Refers to SOR 7: 9.6-9.7 as stated above (Crown memo of 9.12.2003: 54).

25.2.7.3 Refers to SOR 7: 9.6-9.7 as stated above (Crown memo of 9.12.2003: 54).

25.2.8 Gives no stated response to the seven particular claims detailed in SOC 4: 58.5(m).

25.2.8.1 Denies that the Resource Management Act excludes Ngā Hapū Karanga from decisions affecting wāhi tapu. States that significance to Māori is one of six matters to which regard must be had under the Resource Management Act (SOR 7: 9.8, 9.10).

25.2.9 Is unable to respond to claims concerning the desecration of Ruamahanga catchment since no particulars are provided (SOR 7: 10, 10.1, 10.2).

25.2.10 No response required.

25.2.10.1 Gives no stated response to the particular claim detailed in SOC 4: 58.5(e).

25.2.10.2 Gives no stated response to the particular claim detailed in SOC 4: 58.5(e).

25.2.10.3 Gives no stated response to the particular claim detailed in SOC 4: 58.5(e).

25.2.10.4 Gives no stated response to the particular claim detailed in SOC 4: 58.5(e).

25.2.10.5 Gives no stated response to the particular claim detailed in SOC 4: 58.5(e).

25.2.11 Gives no stated response to the particular claim detailed in SOC 4: 58.5(b).

25.2.11.1 Gives no stated response to the particular claim detailed in SOC 4: 58.5(c).

25.2.11.2 Gives no stated response to the particular claim detailed in SOC 4: 58.5(g)).

25.2.11.3 Gives no stated response to the particular claim detailed in SOC 4: 58.5(h)).

25.2.11.4 Gives no stated response to the particular claim detailed in SOC 4: 58.5(i)).

25.2.11.5 Gives no stated response to the particular claim detailed in SOC 4: 58.5(j)).

25.2.11.6 Gives no stated response to the particular claim detailed in SOC 4: 58.5(k)).

25.2.11.7 Gives no stated response to the particular claim detailed in SOC 4: 58.5(l)).

25.2.11.8 Gives no stated response to the particular claim detailed in SOC 4: 58.5(n)).

25.2.11.9 Gives no stated response to the particular claim detailed in SOC 4: 58.5(p)).

25.2.11.10 Gives no stated response to the particular claim detailed in SOC 4: 58.5(q)).

25.2.11.11 Gives no stated response to the particular claim detailed in SOC 4: 58.5(r)).

25.2.11.12 Gives no stated response to the particular claim detailed in SOC 4: 58.5(t)).

25.2.11.13 Does not plead at this time to the allegation that it has prevented Ngāi Tumapuhia ā Rangi from managing, maintaining or protecting their wāhi tapu and traditional sites of significance on the basis of insufficient particulars (SOR 5: 28.1).

25.2.12 Does not plead to the allegation concerning access to coastal sites of importance to Ngāi Tumapuhia ā Rangi on the grounds that insufficient particulars are provided to support the allegation (SOR 5: 29.5).

25.3: Agreements

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

25.3.1 The Antiquities Act makes the Crown the prima facie owner of taonga found in New Zealand.

25.3.2 The Antiquities Act gives the Crown no responsibility to consult with or include tangata whenua in decisions.

25.3.3 The Antiquities Act only applies to taonga found after 1976.

25.3.4 The Historic Places Act does not provide Māori with management or control over their wāhi tapu.

25.3.5 Under the Historic Places Act, application can be made to modify, destroy or damage wāhi tapu.

25.4: Issues:

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

25.4.1 To what extent are the researched grievances of Ngāti Hinewaka representative of Wairarapa ki Tāmaki-nui-ā-Rua Māori experience and heritage issues?

25.4.2 Did (and do) the Antiquities Act and the Historic Places Act, and the agencies charged with administering these acts, adequately protect the cultural relationship of Māori with their taonga and wāhi tapu? Do they adequately provide for the exercise of te tino rangatiratanga over taonga and wāhi tapu?

25.4.3 Historically and today, what is the relationship between the cultural taonga of Māori and the heritage of the bicultural nation established by the Treaty partners? Is it incumbent on the Crown, under the Treaty, to allow Wairarapa ki Tāmaki-nui-ā-Rua Māori to make their values and authority primary to the management of their heritage in their rohe?

25.4.4 In-depth archaeological studies carried out in the 1970s identified several hundred sites of cultural, historical and spiritual significance within Ngāti Hinewaka's rohe. Why has the Historic Places Trust not registered more than five of these? Given that the Resource Management Act contains no definition of wāhi tapu, yet it contains scope for Māori to make their own definitions and assessments, can these archaeological sites be included? How representative is this situation of wider Māori experience in Wairarapa ki Tararua?

25.4.5 Were and are immovable and movable taonga adequately protected by the Crown, whether on Crown, Māori, or general land?

25.4.6 Are the arrangements wherein, under section 12 of the Antiquities Act, the Crown provides for an application for ownership to be made to the Māori Land Court, sufficient to enable the re-establishment of tino rangatiratanga over taonga?

25.4.7 Given that the Crown has admitted that under the Historic Places Act, application can be made to modify, destroy or damage wāhi tapu, are there circumstances in which this is justified under the Treaty? Are there sufficient mechanisms to ensure that decisions of this nature are made in full partnership?

25.4.8 To what extent does the Resource Management Act exclude Ngā Hapū Karanga and other Wairarapa ki Tāmaki-nui-ā-Rua Māori from decisions affecting wāhi tapu? Should the consideration of a site's significance to Māori be one of six undifferentiated and equal considerations under the Resource Management Act? Does the Act enable decisions about these issues to be made in full partnership with Māori?

25.4.9 Are Wairarapa ki Tāmaki-nui-ā-Rua Māori entitled to a greater role under the Historic Places Act, Antiquities Act, and Resource Management Act in relation to decision-making, protection, and management of their wāhi tapu and taonga?

26. Failure to protect Rangitāne identity

26.1: The Claimants contend that:

26.1.1 The Crown failed to recognise and protect the identity of Rangitāne as an iwi and tangata whenua within their rohe by (SOC 2: 17; SOC 3: 94):

26.1.1.1 Classifying Rangitāne as a conquered iwi (SOC 3: 94.1).

26.1.1.2 Failing to protect the land base and resources that underpin their identity as tangata whenua, to the extent that Rangitāne is virtually a landless iwi (SOC 2: 17.1.1).

26.1.1.3 Knowingly using Māori who were neither Rangitāne rangatira or tangata whenua when negotiating and purchasing Wairarapa ki Tararua land, despite knowing that the vendors were not tangata whenua (SOC 2: 17.1.2; SOC 3: 94.3).

26.1.1.4 Failing to adequately understand and/or adequately investigate who were tangata whenua when they sought to acquire Rangitāne land, and failing to carry out any searching investigation of iwi affiliation, whakapapa links and land tenure (SOC 2: 17.1.3-17.1.3(a); SOC 3: 94.2).

26.1.1.5 Failing to refer to Rangitāne in any of the 1853 – 1854 purchase deeds and also recording non-Rangitāne iwi in sale deeds as the only vendors despite the land being within the Rangitāne rohe and owned by Rangitāne (SOC 2: 17.1.4; SOC 3: 94.3, 94.4 and 94.5-9).

26.1.1.6 The labelling of Rangitāne rangatira from the Hamua hapū, a principal Rangitāne hapū, and those Rangitāne rangatira who attended the Kohimarama conference in 1860, as Ngāti Kahungunu (SOC 3: 94.6-7).

26.1.1.7 Allowing official documentation to exclude reference to Rangitāne as an iwi, for example:

26.1.1.7.1 Various maps referring only to Ngāti Kahungunu as the only iwi in the Tāmaki-nui-ā-Rua rohe;

26.1.1.7.2 The 1919 electoral roll listed a voter from Tahoraiti as belonging to ‘Rangitāne, a hapū of Ngāti Kahungunu’;

26.1.1.7.3 The 1949 census listed Rangitāne as a hapū of Ngāti Kahungunu (SOC 2: 17.1.5(a)-(c))

26.1.2 The establishment of a system of title investigation which pitted claimants against each other and, in the Wairarapa context, the reliance upon non-objective sources of evidence to the detriment of Rangitāne (SOC 2: 17.1.3(a)-(b); SOC 3: 94.8).

26.2: The Crown responds that:

26.2.1 See responses immediately below:

26.2.1.1 States that it has not had time to research into the allegation that the Crown classified Rangitāne as a conquered iwi and therefore does not plead to the allegation at this time (SOR 3: 89.1).

26.2.1.2 In response to the allegation that the Crown failed to protect the land base and resources that underpin the identity of Rangitāne as tangata whenua, to the extent that Rangitāne is virtually a landless iwi, the Crown refers to its statement of general position, 1 August 2003, (Wai 863, #2.249):

> The Crown concedes that it failed actively to protect the lands of Wairarapa 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 (paragraph 10).

26.2.1.3 Admits that non-resident Māori took part in the negotiations of land transactions and that the Crown knew this (SOR 2: 18.1.1).

26.2.1.4 Denies the claim that it failed to adequately understand and/or adequately investigate who were the tangata whenua and/or the principal hapū when it sought to acquire Rangitāne land (SOR 2: 18.1.3).

26.2.1.5 States that it has not had time to research the recording of iwi in sale deeds within the Tāmaki-nui-ā-Rua rohe and therefore does not plead to the allegation that the Crown failed to refer to Rangitāne in any of the 1853 to 1854 purchase deeds (SOR 2: 18.1.4).

26.2.1.6 States that it has not had time to research whether Rangitāne rangatira were 'occasionally' labelled as Ngāti Kahungunu (SOR 3: 89.1).

26.2.1.7 States that it has not had time to research whether or not official documentation has generally excluded reference to Rangitāne as an iwi of the Tāmaki-nui-ā-Rua rohe and therefore does not plead to the general statement that the Crown allowed official documentation to exclude reference to Rangitāne as an iwi of the Tāmaki-nui-ā-Rua rohe (SOR 2: 18.1.5).

26.2.1.7.1 Admits that the Defence Department Map of 1869 and the 1870 'Map of Tribal Names and Boundaries' reproduced in O'Leary #A62, do not include Rangitāne as an iwi of Tāmaki-nui-ā-Rua but describes the iwi as Ngāti Kahungunu (O'Leary, A 62, p 26 and 34). The Crown has not had time to research official maps in general and therefore denies that official maps generally did not refer to Rangitāne (SOR 2: 18.5(a)).

26.2.1.7.2 Admits that the 1919 electoral roll listed a voter from Tahoraiti as belonging to 'Rangitāne, a hapū of Ngāti Kahungunu' (SOR 2: 18.1.5(b)).

26.2.1.7.3 Admits that the 1949 census listed Rangitāne as a hapū of Ngāti Kahungunu (SOR 2: 18.1.5(b)).

26.2.2 The Crown has not had time to research the allegation concerning the reliance upon non-objective sources of evidence to the detriment of Rangitāne in the Native Land Court title determination process, and therefore does not plead at this time (SOR 3: 89.1).

26.3: Agreements

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

26.3.1 Non-resident Māori took part in the negotiations of land and that the Crown knew this.

26.3.2 The Defence Department Map of 1869 and the 1870 'Map of Tribal Names and Boundaries' reproduced in O'Leary #A62, do not include Rangitāne as an iwi of Tāmaki-nui-ā-Rua but describes the iwi as Ngāti Kahungunu (O'Leary, A 62, p 26 and 34).

26.3.3 The 1919 electoral roll listed a voter from Tahoraiti as belonging to Rangitāne, a hapū of Ngāti Kahungunu.

26.3.4 The 1949 census listed Rangitāne as a hapū of Ngāti Kahungunu.

26.3.5 The Crown concedes 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.

26.4: Issues

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

26.4.1 To what extent, if at all, did the Crown seek to recognise and protect the identity of Rangitāne as tangata whenua within the claim area?

26.4.2 In its conduct of Crown purchases, and in its response to the decisions of the Native Land Court, did the Crown act appropriately with regard to the rights, identity, and tino rangatiratanga of Rangitāne right-holders? If not, was it made aware of a situation that required its remedy? In terms of the rights of non-resident rangatira, allegedly 'conquered' peoples, and resident communities, did the Crown act fairly, reasonably, and in good faith?

26.4.3 If the mana and identity of Rangitāne has suffered as a result of Crown actions or inaction, has there been a prejudicial effect, and how might that be remedied?

27. Gifted lands for School – Papawai and Kaikokirikiri Trusts

27.1: The Claimants contend that:

27.1.1 A 400-acre block of land at Papawai and a 190-acre block at Kaikokirikiri were gifted by ngā hapū karanga, and Rangitāne at the instigation of Governor Grey and Bishop Selwyn in 1853, to the Church of England, for the purpose of Māori schools. These were not utilised until 1860, and then only briefly at Papawai between 1860 and 1865, due to insufficient Crown support. Throughout the nineteenth century, the Church failed to establish schools at Papawai or Kaikokirikiri (SOC 1A: 19.1.2 (a) (iv); SOC 3: 69, 70, 74).

27.1.2 Rangitāne gifted lands on the understanding that two schools would be built at Papawai and Kaikokirikiri (SOC 3: 72).

27.1.3 Rangitāne understood that should the lands not be used for the purpose of schools, then the gifted land should be returned to them and other owners (SOC 3: 73).

27.1.4 Throughout the nineteenth century, there was concerted protest by Wairarapa Māori, including Rangitāne rangatira, at the consistent failure of the Church to provide schools as promised and/or return the gifted lands (SOC 3: 75).

27.1.5 After 1896, the Crown conducted official inquiries which established that the Church, despite accumulating large assets from the gifted lands, had failed to deliver on its promise to provide schools for Wairarapa Māori and/or return the lands (SOC 3: 77, 77 (a), 77 (b), 77 (b)).

27.1.6 At all times the Crown has a duty to actively protect Rangitāne lands to the fullest extent practicable and to act reasonably and with the utmost good faith towards their Treaty partner. The Crown breached these obligations by failing to encourage the Church to honour the gifts by either building the schools or returning the lands to the original owners (SOC 3: 78, 78.1).

27.1.7 The Crown's legislated remedy (the Papawai and Kaikokirikiri Trust Act 1943), benefitted people not descended from the original owners, and gave preferential treatment to Ngāti Kahungunu, to the exclusion of Rangitāne (SOC 3: 78.3, 78.4)

27.1.8 The Crown regularly neglected the proper provision of education for Māori in the Wairarapa, and this impacted adversely on the forebears of the claimants. In this instance, land had been set aside for the Church to provide this service, but when this was no longer possible or practical, the Crown was in a position to take over in providing that education. In the event, it purposefully neglected to do so (SOC 12: 10 (a)).

27.2: The Crown responds that:

27.2.1 Admits the gifting of land to the Anglican Church, and that Grey and Selwyn had persuaded Rangitāne to gift lands for schools. Admits that the gifted Papawai land was utilised as a school only from 1860 until 1865. Has not yet researched the allegation that insufficient Crown support caused it to cease operating in 1865 (SOR 1A: 15.2.7; SOR 3. 64, 3. 65, 3. 69).

27.2.2 Admits that Rangitāne gifted land on the understanding that two schools would be built at Papawai and Kaikokirikiri (SOR 3: 67).

27.2.3 Admits some Māori stated that the gifted school land should be returned to them if it were not used for that purpose (SOR 3: 68).

27.2.4 Admits that, at various times in the nineteenth century, Wairarapa Māori protested the Anglican Church's failure either to establish schools on the gifted land, or to return the land to the donors (SOR 3: 70).

27.2.5 Admits that, as a result of several official inquiries between 1896 and 1941, the Crown was fully aware that the Church had not complied with the terms of the giftings. Admits that the 1896 inquiry recommended that land should be returned to its original owners (SOR 3: 72, 72.1, 72.2, 72.3, 72.4, 72.5, 72.6).

27.2.6 Does not plead to allegations of Treaty breach. Denies that it failed to encourage the Church to honour the gifts, and states further that the various inquiries conducted by the Crown constitute some actions taken to address the fact that schools were not established on the lands (SOR 3: 73, 73.1).

27.2.7 Admits that the 1943 Act provided preferential treatment for Ngāti Kahungunu, which was consistent with the terms of the original giftings. The Crown states that subsection 4(a) of section 12 of the Papawai and Kaikokirikiri Trusts Act 1943 gave the Board the power to provide scholarships for children of British subjects of all races, and for children of other peoples of the islands of the Pacific Ocean, and that this was consistent with the wording of the original Crown Grant of land to the Bishop of New Zealand. Furthermore, subsection 4 (a) of section 12 states that preference should be given to children of Ngāti Kahungunu residing in the Wairarapa. The Act then states that failing that, the scholarships should be offered to children of Māori descent residing on the east coast of the North Island, and failing that, to children of Māori descent living elsewhere in New Zealand (SOR 3: 73.5, 73.6, 73.7).

27.2.8 Denies that the Crown regularly neglected the proper provision of education for Māori in the Wairarapa, and the specific allegation concerning lack of education provision (SOR 12: 33, 33.1).

27.3: Agreements

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

27.3.1 Rangitāne were persuaded to gift land for schools, by both Governor George Grey and Bishop Selwyn.

27.3.2 Gifted Papawai land was utilised as a school only from 1860 until 1865.

27.3.3 Wairarapa Māori protested the Anglican Church's failure either to establish schools on the gifted land, or to return the land to the donors.

27.3.4 As a result of several official inquiries between 1896 and 1941, the Crown was fully aware that the Church had not complied with the terms of the giftings.

27.4: Issues

27.4(a) For a broader statement of the issue concerning the Crown's duty to provide education, see 23.4.2.

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

27.4.1 Did the Crown have a duty, arising from the Treaty and/or the circumstances in which the school was established, and/or any other historical circumstances, to support Papawai School? Did the Crown support the school appropriately? Was the school's closure related to any failure of the Crown to fulfil its duty?

27.4.2 Did any duty on the Crown arise from the nature of Governor Grey's involvement in the Crown grant of land to the Anglican Church? What was the nature and extent of any such duty?

27.4.3 Did the Crown have a duty, arising from the Treaty, or from any historical event or circumstance, to intervene and return the school land to its original Māori owners, when the Anglican Church failed to use the land for the purpose for which the Māori donors gifted the land?

27.4.4 Having acknowledged the need to remedy the situation regarding Papawai School, was the Papawai and Kaikokirikiri Trust Act 1943 an appropriate and/or sufficient remedy?

28. Outcomes for the Jury and Pirere whānau

28.1: The Claimants contend that:

The Jury Whānau (Descendants of Te Whatahoro)

Land Interest Loss

28.1.1 As a consequence of Crown Treaty breaches, the Jury whānau suffered the loss of their interests in the lands known as Tauherenikau No.4, Moroa, Waka-a-paua and Wharehanga (SOC 9: 17.1.1). In particular:

28.1.1.1 No member of the Jury whānau signed the Deed of Receipt for the sale of Tauherenikau No.4 other than Anne Jury, the seven-year old daughter of Te Aitu and John Milsome Jury (SOC 9: 5.3).

28.1.1.2 When Moroa was gifted to the Crown, Te Whatahoro did not sign the deed of gift, and proper koha payments were not made (SOC 9: 6, 7.3, 9-9.4).

28.1.1.3 The Crown, in breach of the Treaty, failed to protect the interests of Te Whatahoro and the Jury whānau in Waka-a-paua, with no award being made in favour of Te Whatahoro when the Native Land Court in 1868 awarded Waka-a-paua to Charles and Anne Jury (SOC 9: 10.1, 11.1 – 11.5).

28.1.1.4 The Crown, in breach of the Treaty, failed actively to protect the interests of Te Whatahoro and the Jury whānau in Wharehanga. In the early 1840s, Wi Paki, Wi Kingi and Te Manihera gifted Waka-a-paua, including Wharehanga, to Te Aitu-o-te-rangi and John Milsome Jury. In 1856, Wi Kingi and Te Waka effectively transferred Wharehanga to the Crown. In 1868, the Native Land Court heard a claim lodged by Te Whatahoro to Wharehanga and failed to make an order in relationship to the land (SOC 9: 12.1, 13.1 – 13.3, 13.5, 13.7).

28.1.1.5 The Jury whānau experienced lost economic opportunity as a result of the loss of their interests in the lands known as Tauherenikau No.4, Moroa, Waka-a-paua and Wharehanga (SOC 9: 17.1.2).

Political activities and marginalisation

28.1.2 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).

28.1.3 Two of the nine members of the Wairarapa Komiti established in 1876 were Ms Harper's tipuna, Te Whatahoro and Ihaia Whakamairu (SOC 9: 16.1).

28.1.4 In 1877 and 1878, Te Whatahoro submitted lengthy analyses of the Native Land Court to Parliament highlighting the operation of the Court, the adverse effect it was having on Māori land holdings and changes he proposed. He

further published his thoughts, in reply to an earlier invitation by Premier Grey and John Sheehan, in the periodical *Te Wananga* (SOC 9: 16.2-4).

28.1.5 In 1877, the Wairarapa Komiti, including Te Whatahoro, took charge of settling the Papawai dispute, by fixing a boundary between the Ngāti Kauhi and Ngāti Pā-te-ika (SOC 9: 16.7).

28.1.6 Te Whatahoro was one of the 50 rangatira who attended the hui convened by the Komiti in 1876 to discuss the sale of Wairarapa Moana lands. The Komiti subsequently asserted rights over the Wairarapa Moana, and continued to do so although in 1883, the Native Land Court found for Paraone Pahoro and others who had filed claims to the Wairarapa Moana lands (SOC 9: 16.8-16.11).

28.1.7 Te Whatahoro was elected Tiamana or chairman/leader of the inaugural Māori Paremata. (SOC 9: 16.29).

Cultural and Political Loss

28.1.8 Loss of mana as a result of the loss of their land interests (SOC 9: 17.1.3).

28.1.9 Loss of identity as a result of the loss of their land interests (SOC 9: 17.1.4).

28.1.10 Loss of faith in the New Zealand system of government (SOC.9: 17.1.5).

28.1.11 Political marginalisation and disempowerment (SOC 9: 17.1.6).

Pirere whānau (descendants of Te Otene-me-Atua Pirere and Pane Taroro)

Land Loss of Mataikona Reserve and Effects

28.1.12 The Crown failed to protect the Pirere whānau's interests in the Mataikona reserve by failing to ensure that the land remained 'reserve' land, and by allowing parts and/or the whole of it to be sold, subdivided, leased, partitioned and transferred into individual titles pursuant to the orders and decisions of the Native Land Court (SOC 9: 20.1; 32.1.1).

28.1.13 The Crown failed to protect the interests of the Pirere whānau in respect of the 'partitioned' Mataikona reserve because the Native Land Court and the Native Trustee failed to administer the lands in a way that economically benefited the owners (SOC 9: 22.1; 32.1.2).

28.1.14 The Crown failed to protect the interests of the Pirere whānau in respect of the refusal by the Native Land Court to incorporate the landholdings in Mataikona A2 at an earlier date, thereby adversely affecting the chances for achieving economic success for its proprietors (SOC 9: 24.1; 25.6; 32.1.3).

Land Loss of 'Second Reserve' and Effects

28.1.15 The Pirere whānau have suffered lost economic opportunity as a result of the Crown's failure to protect their interests in the lands known as the 'Second Reserve' (SOC 9:32.1.4).

28.1.16 The Pirere whānau have lost mana, whānau cohesion and some of their identity as a result of the loss of their interests in the lands known as 'Second Reserve' (SOC 9: 32.1.5).

Land Loss of Ngatamatea/Waihiharori and Whakataki Reserves and Effects

28.1.17 The title to the Ngatamatea reserve was investigated by the Native Land Court in 1868, and it was made inalienable except by lease for a period not exceeding 21 years. The Crown failed to protect the interests of the Pirere whānau in respect of this land by allowing the alienation of most of it through the unlawful operation of the Public Works Act 1905 and the Native Land Act 1909 (SOC 9: 26.1, 27.4).

28.1.18 A large proportion of the original Whakataki Reserve was granted back to the former owners under the Whakataki Grants Act 1874. The Crown failed to protect the interests of the Pirere whānau in respect of this land by failing to ensure that the land remained as reserve land, and by allowing parts and/or the whole of it to be subdivided, partitioned, leased and transferred into individual titles pursuant to orders and decisions of the Native Land Court (SOC 9: 30.1, 31.3, 32.1.6).

28.2: The Crown responds that:

The Jury Whānau (descendants of Te Whatahoro)

Land Interest Loss

28.2.1 Does not plead to the general claim and deals with the particulars as follows (SOR 9:17):

28.2.1.1 Does not plead due to insufficient knowledge as to whether or not any other members of the Jury whānau signed the Tauherenikau deed but admits that Anne Jury, aged seven, signed the deed (SOR 9: 5.3).

28.2.1.2 Admits that Moroa was gifted to the Crown, that Te Whatahoro appears not to have assented to the deed of gift and notes that he did not sign the deed of gift. Admits that a koha to Māori upon any future sales was payable, noting the reference to the koha in the deed of gift, but does not plead concerning administration of the 5 percent fund as research is still being conducted. States that some payments were made in 1881,1885 and finally in 1899 (SOR 9: 7-7.3, 9.1-9.4,9.6).

28.2.1.3 Admits that the Native Land Court in 1868 awarded Waka-a-paua to Charles and Anne Jury, but it does not respond to the statement that no award was made in favour of Te Whatahoro. It otherwise does not plead to the allegation (SOR 9: 10, 11.4).

28.2.1.4 States that evidence regarding the early 1840s gift refers only to Waka-a-paua. The Crown is therefore not yet in a position to respond to whether Wharehanga was included in the gift and therefore does not plead to it at this time (SOR 9: 12, 13.1, 13.2).

28.2.1.5 Does not plead to the allegation concerning the loss of economic opportunity as a result of the loss of interests in Tauherenikau 4, Moroa, Waka-a-paua and Wharehanga (SOR 9: 17).

Political activities and marginalisation

28.2.2 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).

28.2.3 Admits that two of the nine members of the Wairarapa Komiti established in 1876 were Ms Harper's tīpuna, Te Whatahoro and Ihaia Whakamairu (SOR 9: 16.1).

28.2.4 Admits that Te Whatahoro wrote extensive analysis of 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).

28.2.5 Admits that in 1877, the Wairarapa Komiti took charge of settling the Papawai dispute (SOR 9: 16.7).

28.2.6 Admits that the Wairarapa Komiti asserted rights over the Wairarapa Moana lands and that it continued to assert rights over the lake, although the Native Land Court awarded title to 139 people (SOR 9: 16.8, 16.10-16.11.1).

28.2.7 Admits that Te Whatahoro was elected Tiamana or chairman/leader of the inaugural Māori Paremata (SOR 9: 16.29).

Cultural and Political Loss

28.2.8 Does not plead (SOR 9: 17).

28.2.9 Does not plead (SOR 9:.17).

28.2.10 Does not plead (SOR 9: 17).

28.2.11 Does not plead (SOR 9: 17).

The Pirere Whānau

Land Loss of Mataikona Reserve and Effects

28.2.12 Admits that the Mataikona reserve comes from the Castlepoint block and that parts and/or all of the reserve have been sold, subdivided, leased and partitioned. It otherwise does not plead to the allegation (SOR 9: 20, 21.1, 21.2, 21.3, 21.5).

28.2.13 Admits that Court orders made in 1929, 1954 and 1959 vested part or all of the partitioned reserve in the Māori Trustee. It otherwise does not plead to the allegation (SOR 9: 22, 23, 23.2, 23.4).

28.2.14 Admits that in 1956 the Māori Land Court disallowed a resolution of the owners of the Mataikona block that the lands be incorporated, and refused an application from the Māori Trustee for incorporation. States that the Court held that 'To hand over to owners without the business acumen to manage it until some steady process of selection and education is made would amount to a public scandal. The Māori trustee should continue in his capacity as the trustee for the owners and regard it as part of his duties to seek out some such process.' Admits that the land was incorporated in stages between 1973 and 2000. It otherwise does not plead to the allegation (SOR 9: 24, 25, 25.1, 25.3).

Land Loss of 'Second Reserve' and Effects

28.2.15 Does not plead to failure, but states that the claim regarding a second reserve appears to have resulted from confusion in 1879 on the part of the claimant's ancestor (SOR 9: 28; 29; 32).

28.2.16 Does not plead to the allegation that the Pirere whānau have lost mana, whānau cohesion and some of their identity as a result of the loss of their land interests in the lands known as 'Second Reserve' (SOR 9:32).

Land Loss of Ngatamatea/Waihiharori and Whakataki Reserves and Effects

28.2.17 Admits that the title to the Ngatamatea reserve, from the Castlepoint block, was investigated by the Native Land Court in 1868, and was made inalienable except by lease for a period not exceeding 21 years. Admits that part of the block was taken for a road under the Public Works Act 1905 and that no record of an application to the Court has been found in respect of this land. Admits a sale of further land from the block in 1919 and that only a very small part of the block containing an urupā, remains in Māori ownership today. It otherwise does not plead to the allegation (SOR 9: 26, 27.1 – 27.6).

28.2.18 Admits that Whakataki reserve is a reserve from the Castlepoint block, that the reserve was bought by the Crown in 1855; that a large proportion of the reserve was granted back to the former owners under the Whakataki Grants Act 1874, and that all or parts of the block have been subdivided, partitioned, leased or transferred into individual titles. It otherwise does not plead to the allegation (SOR 9: 30, 31.1, 31.2, 31.4, 31.5, 31.7).

28.3: Agreements

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

28.3.1 Moroa was gifted to the Crown without the signature of Te Whatahoro, and that koha to Māori was payable upon any future sales.

28.3.2 Te Whatahoro was actively involved in political movements to assert Māori land rights, resolving some disputes, criticising the Native Land Court and pushing for political and legal resolutions of Māori concerns.

28.3.3 The Mataikona reserve comes from the Castlepoint block and parts and/or all of the reserve have been sold, subdivided, leased and partitioned.

28.3.4 Court orders made in 1929, 1954 and 1959 vested part or all of the partitioned Mataikona reserve in the Māori Trustee.

28.3.5 In 1956, the Māori Land Court disallowed a resolution of the owners of the Mataikona block that the lands be incorporated, and refused an application from the Māori Trustee for incorporation. The land was incorporated in stages between 1973 and 2000.

28.3.6 The title to the Ngatamatea reserve, from the Castlepoint block, was investigated by the Native Land Court in 1868, and it was inalienable except by lease for a period not exceeding 21 years. Part of the block was taken for a road under the Public Works Act 1905. No record of an application to the Court has been found in respect of this land. A sale of further land from the block occurred in 1919. Only a urupā, a very small part of the block, remains in Māori ownership today.

28.3.7 Whakataki reserve is a reserve from the Castlepoint block. The reserve was bought by the Crown in 1855. A large proportion of the reserve was granted back to the former owners under the Whakataki Grants Act 1874, and all or parts of the block have been subdivided, partitioned, leased or transferred into individual titles.

28.4: Issues

Introduction

28.4(a) The Tribunal notes that the Jury and Pirere whānau claims may be seen in part as case studies of many of the broad themes addressed in other sections. For example, the claims relate to wider thematic questions in section 4, of whether the Crown undertook full and proper inquiry into right-holders, obtained full consent before concluding purchases, and whether the signatures of children should have been acquired for purchase deeds.

28.4(b) The claims also illustrate: issues concerning the understandings and undertakings over koha payments as outlined in section 5; the impacts of Crown purchasing in section 6 and of Native Land Court policy, operations and protections in sections 7 and 11; Crown responses to protests and political movements in sections 12 and 13; and the impact of public works in section 20. The claims also contribute significantly to wider issues developed for sufficiency of land and socio-economic impact in sections 22 and 23.

28.4(c) Matters relating to the wider thematic issues will not be restated here. The issue questions for this section will focus on those allegations of particular concern to the Jury/Pirere whānau that have not already been covered in earlier sections.

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

28.4.1 Are the Jury/Pirere whānau experiences typical of matters as raised in sections 4, 5, 7, 11, 12,13, 20, 22 and 23? In what ways are they not typical?

28.4.2 Did the Crown allow the political and protest role of Te Whatahoro Jury to influence its dealings with him over his concerns about the gifting and sales? Did this cause economic or other disadvantage to the Jury whānau?

28.4.3 Did the Crown respond in a reasonable and fair manner to Te Whatahoro Jury's political activities in the context of the time?

28.4.4 To what extent were the Jury whānau politically marginalised and disempowered by Crown acts or omissions in relation to the sales and gifting?

28.4.5 To what extent were the Pirere whānau prejudiced by the operations of the Native Land Court and the application of public works provisions to land they wished to remain inalienable except by lease?

29. Outcomes for the Te Karaitiana Te Korou whānau

29.1: The Claimants contend that:

29.1.1 The Native Land Purchase Ordinance (NLPO) 1846 was accompanied by Crown policy which forced the claimants' forebears to alienate their land by selling it to the Crown (SOC 12: 5 G).

29.1.2 Claimants have been prejudicially affected by the NLPO, and by the Crown conspiring to enjoin with squatters to withhold paying rent money for the Manaia block during the 1850s. This cut off a major source of income for Māori owners (inclusive of the forebears of the Karaitiana Te Korou whānau), forcing them to sell the land (SOC 12: H, I, J, K).

29.1.3 Crown land purchases in 1853 to 1854 were often concluded hastily and carelessly in order to finally end the leasing regime. The result was uncertainty as to boundaries and precisely whose interests were alienated or retained. The Crown offered the inducement of the five percent payment, but this was not honoured (SOC 12: 6A).

29.1.4 Specific Crown purchases (Castlepoint, Te Witi, Kohangawariwari, Kaiaho) in 1853-54 were enacted without due care for boundaries and documentation, with delayed payment, and induced selling by promises of the five per cent payment when such promises were not in reality to be acted upon as agreed to (SOC 12: 6 C, D).

29.1.5 After the land sales were completed, the Crown failed to survey land boundaries and reserves, and to issue Crown grants and 5 percent payments (SOC 12: 6 E, 7A).

29.1.5.1 5 percent payments were delayed, withheld, and remitted erratically and unevenly. Projects such as schools, medical services, flour mills were not provided, or five per cent payments were misdirected by funding developments which were geographically remote and therefore of little or no relevance to the claimants' forebears (SOC 12: 7C).

29.1.6 The Crown failed to establish who were, or were not, right holders when land purchases encompassed overlapping areas. It delayed or failed to issue Crown grants in respect of reserved lands, and failed to remedy these matters (SOC 12: 7 C xvii, xviii).

29.1.7 In an investigation of title by the Native Land Court, tikanga overall was supplanted. Debt induced by the Native Land Court process was a prodigious consumer of the tribal estate (SOC 12: 8A).

29.1.8 The Native Land Court and subsequent legislation permitted land belonging to claimants' forebears to become unreasonably burdened by survey liens, charges or other debt, resulting in the forced alienation of, or loss of real legal interest in, the land (SOC 12: 8D).

29.1.8.1 The Crown failed to remedy prejudice caused by the establishment of the Native Land Court, giving rise to circumstances that resulted in the loss of claimants' forebears' land (SOC 12: 8E).

29.1.9 In the matter of land named in a will executed by Retimana Te Korou before his death in March 1882, the law on the subject of succession as it affected Māori, and therefore the forbears of the Karaitiana Te Korou Whānau, was unfair, in that it derogated from tikanga in the case of succession; was confusing or ambivalent; and was not the subject of consultation before its passage into statute law. Hence, the Crown failed to guarantee the forbears of this whānau rangatiratanga over, and the rights of ownership to, real property to which they were entitled by tikanga, and also thereby failed actively to protect their taonga (SOC 12: 9 B, C).

29.1.10 In the matter of the succession concerning the estate of Karaitiana Te Korou, who died in August 1901, the law on intestate succession as it affected Māori and therefore the forbears of the Karaitiana Te Korou Whānau, was unfair, in that it derogated from tikanga in the case of succession. The Crown failed to guarantee to the forbears of this whānau, rangatiratanga over, and the rights of ownership to, real and personal property to which they were entitled by tikanga, and also thereby failed actively to protect their taonga (SOC 12: 9 D, E).

29.1.11 The Crown regularly neglected the proper provision of education for Māori in the Wairarapa and this impacted adversely on the forebears of the claimants. For instance, a substantial acreage had been set aside for the Church to provide this service in Papawai and Kuripuni , but when this was no longer possible or practical, the Crown neglected to take up the responsibility for education, despite being in a position to do so (SOC 12: 10 A, B, C).

29.2: The Crown responds that:

29.2.1 Denies that the NLPO was accompanied by Crown policy that forced the claimants' forebears to alienate their land by selling it to the Crown (SOR 12: 3).

29.2.2 Admits that the land was leased, but states that there was a misunderstanding between the squatters and Māori as to whether the rent paid was intended to settle the question of outstanding rents or simply outstanding rents for the Taratahi portion. Denies that there was a Crown conspiracy to dispossess Māori of the land. While the Crown admits that it purchased the land during the period when it was leased to the squatters, it states that it has insufficient knowledge of the motive for the sale of the land to plead on this matter (SOR 12: 4.1, 4.1.1, 4.1.2, 4.1.3, 4.2, 4.3, 5, 6.1).

29.2.3 Has not had time to research whether it acquired the blocks listed in a careless fashion, resulting in uncertainty as to boundaries and as to precisely what interests were alienated or retained, and does not plead on this matter. Denies that it acted with undue haste in order to take advantage of Māori financial hardship. 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, 9.1, 9.2).

29.2.4 Denies the allegations relating to the 1853 to 1854 sales, due to insufficient particulars. Admits that some 5 percent payments were promised and were paid in instalments, but denies that they were not in reality to be acted on (SOR 12: 12, 12.1, 12.2, 16).

29.2.5 Does not plead due to insufficient particulars (SOR 12: 13, 13.1, 13.2, 13.3).

29.2.5.1 Does not plead, as it is still conducting research on the administration of the 5% fund (SOR 12: 18).

29.2.6 Denies that it failed to establish who were or were not right holders when land purchases encompassed overlapping areas, but admits there was a delay in the issue of Crown grants. Denies that it failed to remedy these matters (SOR 12: 19, 19.1, 19.2).

29.2.7 Notes that except for a brief period, the Native Land legislation consistently provided the opportunity for owners to select a form of communal title. Requires further research before pleading on the issues of tikanga under the Native Land Court, and debt and land alienation (SOC 12: 21, 21.1).

29.2.8 Admits that the title investigation process could result in liens for survey costs but denies that such costs inevitably resulted in land being lost, in the sense of being forcibly sold to satisfy such liens (SOR 12: 24).

29.2.8.1 Denies that it failed to act to remedy any prejudice identified as a result of the establishment of the Native Land Court (SOR 12: 25).

29.2.9 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). In relation to succession by will, the Crown admits that the Native Land Court allowed for land held in freehold tenure to be bequeathed as the testator chose. The Crown states further that the rules of succession appear to have had widespread support amongst Māori in the nineteenth century as is evidenced by the very few objections to these rules (SOR 12: 27, 27.1, 27.2).

29.2.10 Admits that Retimana Te Korou bequeathed certain land by will. It denies that the law on succession after 1840 as it affected the forbears of the claimants was unfair as regards tikanga, or confusing or ambivalent. As regards the claim that the law was not the subject of consultation before it was passed, the Crown responds that it has not had time to research this allegation and does not plead at this time. As regards the claim that the Crown has failed to guarantee the claimants' forbears' rangatiratanga, the Crown does not plead on the basis that it is insufficiently particularised (SOR 12: 28, 28.1, 29, 31).

29.2.11 Denies that it regularly neglected the proper provision for education of Wairarapa Māori. Admits that land at Papawai and Kaikokirikiri was gifted to the Anglican Church for educational purposes but otherwise denies that it improperly neglected to take the opportunity to provide education in this circumstance (SOR 12: 33, 33.1, 34, 35).

29.3: Agreements

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

29.3.1 Wairarapa land was leased to squatters for a period, during which the Crown purchased land.

29.3.2 Five percent payments were promised and were paid in instalments.

29.3.3 The title investigation process could result in liens for survey costs.

29.3.4 Māori customary rules of succession were to some extent modified by the Native Land Court.

29.3.5 Retimana Te Korou bequeathed certain land by will.

29.3.6 Land at Papawai and Kaikokirikiri was gifted to the Anglican Church for educational purposes.

29.4: Issues

Introduction

29.4(a) The Tribunal notes that the Te Karaitiana Te Korou whānau claim may be seen in part as a case study of many of the broad themes addressed in other sections. For example, the claim relates to wider thematic questions concerning Crown settlement and purchase policies and practices in 1853 to 1854, inadequate purchase surveys, koha understandings, the purpose, operation and impact of the Native Land Court and the Crown response to protests and gifted land for schools, which can be found in sections 1, 2, 4, 5, 6, 7, 12 and 27.

29.4(b) Matters relating to the wider thematic issues will not be restated here. The issue questions for this section focus on those allegations of particular concern to the Te Karaitiana Te Korou whānau that have not already been covered in earlier sections.

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

29.4.1 Did the Korou whānau benefit at all from Crown 5 percent payments (koha)?

29.4.2 Was the Korou whānau detrimentally affected by the delay in issuing of Crown grants in respect of reserved lands?

29.4.3 Concerning the estate of Retimana Te Korou, did the limited modification of the customary rules of succession allowed under Native land legislation detrimentally affect the Korou whānau's forebears?

30. Outcomes for the Henare Matua whānau

30.1: The Claimants contend that:

Tautāne Purchase Deeds

30.1.1 The Crown conducted the first Tautāne purchase, in clear breach of Treaty principles of sincerity, justice and good faith. In sum, it was a fraud, done in bad faith with the intent of forcing the sales process upon the owners (SOC 14: 8).

30.1.1.1 The Tautāne Block was first allegedly 'purchased' by the Crown in 1854, the deed of sale dated 3 January 1854. Between 3 and 17 January the Crown at Wellington with the 'seller' being Te Hapuku (and others) made four 'secret' purchases, in that the deals were done without knowledge of the Māori living on the lands. Tautāne was one of these deals. The price to be paid for Tautāne (then estimated at 70,000 acres) was £1000. Two reserves were made, and the Deed also specified that five per cent as payable in the purchases at Wairarapa was also to be paid (SOC 14: 8.1).

30.1.1.2 The Deed was signed on behalf of the Crown by Chief Land Purchase Commissioner Donald McLean. For the alleged sellers, Te Hapuku and 32 others signed, all being persons affiliated to Ngāti Whatuiaapiti (Heretaunga) and Ngāti Kurukuru (Waimārama) (SOC 14: 8.2).

30.1.1.3 Almost immediately after signing the Crown agent, District Land Purchase Commissioner George Cooper reported serious and complete complaint as to the validity of this first 'Tautāne' sale (SOC 14: 8.3)

30.1.2 The Crown breached the Treaty duty not to use unfair means when dealing with Māori. The second Tautāne purchase was a 'completion' of the 'first purchase' and was therefore a continuance of Crown action done in bad faith and with no regard for the needs of the resident owners. (SOC 14: 9, 9.7).

30.1.2.1 On 11 March 1858, the owners signed a second Deed of Sale over Tautāne lands, with Donald McLean again signing on behalf of the Crown. They were never offered the option of repudiation of the first sale (SOC 14: 9.1).

30.1.2.2 Henare Matua signed this second deed, and later stated that the reserve was intended for himself and Hoera only (SOC 14: 9.4).

30.1.2.3 The second deed was signed in Hawke's Bay with a receipt for £500. This second payment was made more than two and a half years after it was due, that delay in itself is an injustice (SOC 14: 9.5).

30.1.3 The five percents mentioned in the first Tautāne deed were sold for an additional £500. This 'sale' and 'purchase' of the 5 percents was in itself a Crown action which even that time failed to have any regard for the future

well-being of the hapū members who had sold all their interests in the Tautāne lands (SOC 14: 9.6).

Tautāne Native Reserve

30.1.4 The Crown's allowance of Tautāne Native Reserve lands to be alienated out of the ownership and control of the descendants of Henare Matua, was contrary to the Treaty. In particular McLean, as Chief Land Purchase Officer in the 1854 to 1858 period at Hawke's Bay clearly intended to limit the acreage of native reserves. McLean recognised the Māori need for lands they customarily used and occupied. When he, McLean, used the term reserve he was referring to tribal or customary land that Māori wished to retain (SOC 14: 10-10.1).

30.1.5 The Native Land Court ordered a certificate of title for Tautāne Native reserve in January 1867, with restrictions making the land inalienable by sale, or by lease for a period longer than 21 years, or by mortgage, except with the assent of the Governor (SOC 14: 10.4).

30.1.6 At Henare Matua's death in 1894 all (900) except 100 acres of Tautāne reserves was leased. Of this 100 acres, part was an urupā, and the remainder contained a pā and cultivations. In 1897, Matua's two brothers, who were managing the family lands, sought a mortgage from the public trustee to rearrange their indebtedness to stock agents. Their application to the Governor to 'let native land be treated as non-native land' was declined (SOC 14: 10.5, 10.8, 10.11, 10.16).

30.1.7 Soon after their application, Section 6 of the Native Land Laws Amendment Act 1897, provided a formal procedure for raising a mortgage on native land on certain conditions, provided that the land was owned in severalty (SOC 14: 10.12).

30.1.7.1 The only way for Tautāne native reserve to have ownership in severalty was by a partition application to the Native Land Court. This was applied for, and ordered by the court in 1899, subject to restrictions contained in the original Crown grant.

30.1.7.2 The application for partition was made in order to meet the mortgage lending criteria of the public trustee. Another application was then made to arrange mortgage finance (presumably from the public trustee) on lots 5 and 6. An Order in Council, permitting the lands to be mortgaged to a lending department of the government, was published on 14 March 1900. This preceded, by five months, the Native Land Court order of August 1900 approving the land for mortgage. (SOC 14: 10.17-18.

30.1.7.3 No further applications were made to the Native Land Court to permit sale. Nor were mortgages found in research enquiries (SOC 14: 10.20).

30.1.8 When the sale of Tautāne Native Reserve lots took place in the mid 1910s, there is a question over the absence of any reference to the alienation restrictions, in particular for lots 5 and 6. While none of the Tautāne lots were the subject of applications to the Native Land Court to remove alienation

restrictions for sale, it may be that section 207 of the Native Land Act 1909, which removed all existing restrictions on native land, may have finally led to the pitowhenua of the mother of H Matua finally being lost to her descendants (SOC 14: 10.21-22).

Crown treatment of Henare Matua

30.1.9 The Crown persecuted Henare Matua for his political activities. The intent and actual conduct of the Crown can only be construed as conduct designed to actively erode, diminish and subsequently usurp the identity, customs, interests and rangatiratanga of Henare Matua, such that this can only be seen as a deliberate effort to gain the property and to subsume the authority of Henare Matua over his lands; peoples and esteemed institutions while afflicting upon him the encumbrance of the Crown's will (SOC 14: 6.1, 11).

30.1.10 By 1870, Henare Matua had became absolutely disillusioned with the failure of the Native Land Court process to protect the customary manner in which Māori held their lands. He perceived the real agenda as being Te Kooti Tahae Whenua. He sought a political social solution to the then perceived threat and became the key founding person in a movement historically referred to as the 'Repudiation Movement'. Over the next two years he assisted hundreds of local Māori to file petitions on a range of land questions (SOC 11.2).

30.1.11 Henare Matua wished to have all the early 'purchases' back to 1850 investigated and, if found wanting as to fairness and equity, repudiated. This of course made him and his associates target practice for Ormond (Superintendent of the Province), McLean and other 'leading settler/politicians who had in reality established a "land ring" which saw them personally holders of vast Hawkes Bay estates, known locally as the "Apostles"' (SOC 14: 11.3).

30.1.12 Henare Matua from 1877 until his death was to appear in numerous Native Land Court cases, and draft hundreds of petitions and give counsel to numerous rangatira in what can only be described as a biblical epic struggle beyond the proportions of David versus Goliath (SOC 14: 11.8).

.

30.2: The Crown responds that:

Tautāne Purchase Deeds

30.2.1 The Crown is not required to plead to the allegation that the Crown's conduct was in clear breach of the Treaty and a fraud (SOR 14: 4).

30.2.1.1 (a) Admits that Tautāne block was purchased by Deed on 3 January 1854 but otherwise denies the allegation that it was allegedly 'purchased'. Admits that it made four purchases between 3 and 17 January 1854. State further that Te Hapuku signed all but one (part Ruataniwha) of these deeds. Has had insufficient time to research the circumstances of the other three purchases and therefore does not plead as to whether they occurred without the knowledge of the people living on the lands.

(b) Denies that Tautāne was a secret purchase. Has not had time to research the extent to which those occupying the block consented to the sale and therefore does not plead. Admits that the price to be paid for Tautāne was £1000. States that an acreage of 70,000 was listed in a Return of Native Purchases as the acreage for the block. Has insufficient knowledge as to whether the figure of 70,000 acres is accurate and therefore does not plead to this figure. Admits that two reserves were made and that the deed specified that five per cent koha was to be paid (SOR 14: 4.1-4.8).

30.2.1.2 Admits that McLean and Te Hapuku signed the deed. States that 31, not 32, others also signed the deed. Admits that some of the signatories were affiliated to Ngāti Whatuiaapiti and Ngāti Kurukuku but has insufficient knowledge to plead as to whether all of them were. States further that some local Māori also signed the deed (SOR 14: 4.9-4.11).

30.2.1.3 Admits that District Land Purchase Commissioner George Cooper wrote that when he arrived in the Porangahau area, the first thing 'was a row about sales at Tautāne and the Umuopua'. States that this statement was contained in a letter to McLean dated 19 April 1856 (SOR 14: 4.12).

30.2.2 Admits that the second Tautāne purchase was a completion of the first Tautāne purchase but otherwise denies that the Crown's action was done in bad faith with no regard for the needs of the resident owners. Does not plead to allegations of Treaty breach (SOC 14: 5, 5.11).

30.2.2.1 Admits that the owners signed a second Tautāne deed on 11 March 1858, stating that 90 people signed the deed. States that the owners dealt with by the Crown in 1858 could not repudiate the sale of another group of owners. They had the option of selling or not selling their interests. They chose to sell. Is still considering its position on the relationship between the two transactions (SOR 14: 5.1-5.3).

30.2.2.2 Admits that Henare Matua signed the second deed and later stated that the reserve was intended for himself and Hoera only (SOR 14: 5.6).

30.2.2.3 Admits that the second deed was signed in Hawke's Bay with a receipt for £500. Admits that the money paid under the second deed was paid more than two and a half years after the date of the first deed. Otherwise, denies the allegation that there was a delay in payment and that this delay was an injustice in itself (SOR 14: 9.5).

30.2.3 Admits that an additional payment of £500 was made and quotes the text of the deed for the terms on which this payment was made. Denies that the 'sale' and 'purchase' of the five percents was in itself a Crown action that failed to have any regard for the future well-being of the hapū members who had sold all their interests in the Tautāne lands (SOR 14: 5.9).

Tautāne Native Reserve

30.2.4 Admits that McLean recognised the Māori need for lands they customarily used and occupied, and that when he used the term 'reserve' he was referring to tribal or customary land that Māori wished to retain. Does not plead to the allegation that McLean intended to limit the acreage of native reserves because it is not sufficiently particularised. Otherwise, does not plead to allegations of Treaty breach (SOR 14: 6-6.1).

30.2.5 Admits that the Native Land Court ordered a certificate of title for Tautāne Native reserve in January 1867, with restrictions making the land inalienable by sale, or by lease for a period longer than 21 years, or by mortgage, except with the assent of the Governor. States further that the title investigation was on 9 January 1867 and orders for certificates of title were made the following day (SOR 14: 6.4).

30.2.6 Admits facts as stated (SOR 14: 6.5, 6.8, 6.9).

30.2.7 Admits that the Native Land Laws Amendment Act 1897 was passed but denies the remainder of the allegation on the basis that its consists of allegations of law (SOR 14: 6.10).

30.2.7.1 Admits that a partition was required for ownership in severalty and this was undertaken as described (SOR 14: 6.11).

30.2.7.2 Admits that another mortgage application (presumably to the Public Trustee) was made and that the Order in Council lifting restrictions on mortgaging Lots 5 and 6 was made in March 1900. States that the Native Land Court issued a certificate stating that the applicants possessed sufficient lands for their support, and authorising the mortgaging of the land to a lending department of government. States that the application to the Native Land Court was heard in September 1900 and therefore denies that the Order in Council was gazetted five months before the Native Land Court order (SOR 14: 6.15-6.16.2).

30.2.7.3 Has not had time to research whether no further applications were made to the Native Land Court to permit sale or mortgages (SOR 14: 10.21).

30.2.8 Has not had time to research whether applications were made to lift restrictions on alienation for the remaining lots making up Tautāne reserves and therefore does not plead. Admits that the Native Land Act 1909 lifted existing restrictions on the purchase of Māori land and replaced this with a uniform system of administration under Māori Land Boards. However, it is not correct to say that the Act removed all restrictions on alienation. The Crown has not had time to research the allegation that no applications were made to lift restrictions other than those for lots 5 and 6 and therefore does not plead to this allegation at this time (SOR 14: 6.19-20).

Crown treatment of Henare Matua

30.2.9 Denies the allegation that the Crown persecuted and deliberately attempted to gain the property of Henare Matua. Otherwise does not plead to Treaty breach (SOR 14: 2, 7).

30.2.10 Admits that Henare Matua became disillusioned with the Native Land Court process, and was a founding figure of the 'Repudiation Movement'. It admits that over the next two years Henare Matua assisted with the preparation of petitions on a range of land questions (SOR 14: 7.4).

30.2.11 Admits that Henare Matua wished to have all the early 'purchases' back to 1850 investigated and, if found wanting as to fairness and equity, repudiated. Otherwise denies allegations concerning Matua and his associates being 'target practice' for Crown official Ormond, McLean and other leading settler/politicians who had established a 'land ring' (SOR 14: 7.5).

30.2.12 Admits that Henare Matua appeared in numerous Native Land Court cases and drafted petitions but does not plead to the number of these. Otherwise does not plead to the allegation at this time (SOR 7.12).

30.3: Agreements

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

30.3.1 There is a Tautāne purchase deed dated 3 January 1854. The Crown made four purchases between 3 and 17 January 1854. Te Hapuku was involved in signing most of these deeds. The price to be paid for Tautāne was £1000. Two reserves were made and the deed specified that five percent koha was to be paid. McLean and Te Hapuka were among the signatories to the Tautāne deed. District Land Purchase Commissioner George Cooper wrote in April 1856 that when he went to Porangahau the first thing he encountered was a row about the sales at Tautāne and Umuopua.

30.3.2 The second Tautāne purchase was a completion of the first. A second Tautāne deed was signed on 11 March 1858. Henare Matua signed the second deed and later stated that the reserve was intended for himself and Hoera only. The second deed was signed in Hawke's Bay with a receipt for £500. The money for the second deed was paid more than two and a half years after the date of the first deed. An additional £500 was paid in return for giving up the five percent koha agreement.

30.3.3 McLean recognised the Māori need for lands they customarily used and occupied and when he used the term 'reserve' he was referring to the tribal or customary land that Māori wished to retain.

30.3.4 The Native Land Court ordered a certificate of title for Tautāne Native reserve in 1867 with certain restrictions on alienation. These included that lands could not be sold but could be leased for a period of 21 years. The assent of the Governor was required for a mortgage. By 1894, all except 100 acres of the reserve was leased. Matua's brothers sought to address debts on the land by seeking to have the land treated as non-Native land. A partition was required for the land to be owned in severalty. This was applied for and a partition carried out. Another mortgage application was made and an Order in Council lifted restrictions on mortgages for lots 5 and 6. The Native Land Court issued a certificate authorising the mortgaging of the land to a government lending department.

30.3.5 Henare Matua became disillusioned with the Native Land Court process and was a founder of the Repudiation Movement. Over the next two years he assisted with the preparation of petitions on a range of land questions. He wished to have all the early purchases back to 1850 investigated and, if wanting in fairness and equity, repudiated. Henare Matua also appeared in numerous Native Land Court cases and drafted petitions.

30.4: Issues

Introduction

30.4(a) The Tribunal notes that the Henare Matua whānau claim may be seen in part as a case study of many of the broad themes addressed in other sections. For example, the claim relates to wider thematic questions concerning the Crown purchases of 1853 to 1854, koha understandings, and pre-1865 Crown purchases, which can be found in sections 4 and 5; Native Land Court purpose, operations and protections in sections 7 and 11; Crown response to protests and political movements in sections 12 and 13, and sufficiency of remaining lands and socio-economic impact in sections 22 and 23.

30.4(b) Matters relating to the wider thematic issues will not be restated here. The issue questions for this section will focus on those allegations of particular concern to the Henare Matua whānau, that have not already been covered in earlier sections.

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

30.4.1 Did the Crown deliberately seek to deny Henare Matua's rangatiratanga?

30.4.2 Given Henare Matua's perceptions of the first sale of the Tautāne Block, and his conditional agreement to the second sale, did Crown actions subsequently show an appreciation of his concerns and a willingness to take them into account in future decisions?

30.4.3 Did the Crown take into account the concerns and implications for the Henare Matua whānau of the alienation of the Tautāne Native Reserve lands?

30.4.4 What obligations did the Crown have to the Henare Matua whānau and to what extent were they adequately fulfilled?

30.4.5 Is there any link between Henare Matua's political activism and the subsequent alienation of the Tautāne Native Reserve lands?