IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND

IN THE MATTER OF:	The Treaty of Waitangi Act 1975
A N D	
IN THE MATTER OF:	The Wairarapa Ki Tararua Inquiry **Wai 863**
A N D	
IN THE MATTER OF:	The claims by **MANAHI PAEWAI** for and on behalf of the Rangitāne iwi of Tamaki nui a Rua and their constituent hapū – **Wai 166**
A N D	
IN THE MATTER OF:	The claims by **JAMES RIMENE** and **PIRINIHA TE TAU** for and on behalf of the Rangitāne iwi of Wairarapa and their constituent hapū – **Wai 175**

CLOSING SUBMISSIONS ON BEHALF OF RANGITĀNE O TAMAKI NUI A RUA (WAI 166) AND RANGITĀNE O WAIRARAPA (WAI 175)

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B. INTRODUCTION

1. These closing submissions are made on behalf of both Rangitāne o Tamaki nui a Rua (**Wai 166**) and Rangitāne o Wairarapa (**Wai 175**). Their respective claims cover most of the total land mass of the Wairarapa and Tararua districts, which excluding water areas is 2,571,631 acres.

Refer Ellis and Small (#A70) page 18

2. The dominant theme underpinning both Rangitāne claims is the loss of their tribal land base and accompanying resources. Today the Rangitāne claimants own a mere fraction of their tribal estate, as it existed at 1840. Land remaining in the ownership of Rangitāne o Tamaki nui a Rua is 21,645 acres or 2% of their former tribal estate. In the case of Rangitāne o Wairarapa it is 16,104 acres or 1%.

Table at 22.3.3 of the SOI

3. This state of virtual landlessness has been conceded by the Crown in its statement of general position dated 1 August 2003 (#2.249) when they made the following concession:

"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 and its principles".

Refer Crown statement of general position #2.249, para 10

4. The other major theme which dominates both Rangitāne claims is the diminishment of their tribal identity and the role the Crown played in failing to protect it.

The Role of the Crown

5. In reflecting on the hearing process undergone by the Wairarapa Ki Tararua claimants one is struck by the almost complete lack of engagement in this inquiry by the Crown. The Crown has chosen to curtail its cross-examination, present potted examples of technical evidence and rehash evidence presented at previous regional inquiries.

6. When the Crown has filed evidence on a specific topic such as the Native Land Court in the Wairarapa (Goldstone #A86) the material has been found wanting as it concentrates on only a few brief years, fails to consider the situation in the Tararua district and fails to consider important context such as the boycott of the Native Land Court and the Repudiation movement.

7. The situation for the Tararua portion of this inquiry is exacerbated because, apart from responding to the statements of claim, the Crown has led no evidence on pre-1865 Crown purchasing and the operation of the Native Land Court.

8. As discussed, the Crown made a general concession on 1 August 2003. In the same statement of general position the Crown suggested that further contextual work would be needed in assessing the issue of sufficiency. They also saw the need for further exploration of a number of issues surrounding the operation of the Native Land Court.

Refer 2.249, paras 19, 21, 23 and 24

9. With respect the claimants are still waiting to hear from the Crown what their particular concerns were.

10. The failure of the Crown to engage during the hearing process is of concern for the following reasons:

(a) For the past two years Rangitāne time and energies have been devoted towards the hearing process. There is a huge amount of technical evidence on this inquiry which they have familiarised themselves with. Furthermore nobody should ever under estimate the commitment involved in preparing and leading tangata whenua evidence. Given that there has effectively been little or no challenge by the Crown to much of the technical and tangata whenua evidence led in this inquiry, Rangitāne pose the question of whether they would have been better served entering into the negotiation process some time ago;

(b) They raise the concern that the Crown may leave any challenge to the negotiation process itself;

Tangata Whenua Hearings

11. Having said that Counsel doesn't overlook the cathartic importance of the process, particularly when the claimants themselves get their opportunity to give evidence. In Counsel's submission the new approach has the tendancy to relegate the importance of tangata whenua evidence behind that of the technical evidence. When one compares the resources channelled into the preparation of technical evidence as compared to tangata whenua evidence the disparity is marked. However both Rangitāne Tamaki nui a Rua and Rangitāne o Wairarapa are grateful for the opportunity, limited that it was, to put their case to the Tribunal at both Makirikiri and Te Oreore Marae.

The Approach Adopted In These Submissions

12. Section **C** which immediately follows is a discussion of the claimants, their claims and claim area. It includes a summary of their traditional history and interests.

13. These submissions will then discuss the 19th Century allegations (Sections **D-M**) to be followed by 20th Century allegations (Sections **N-R**). Section **S**

discusses the allegation that the Crown failed to protect the Rangitāne identity. Section **T** contains concluding remarks whilst Section **U** is an outline of the recommendations and relief sought by both Rangitāne claimants.

14. In developing these submissions Counsel has not answered each issue posed by the Tribunal. The approach adopted is to identify points of particular importance to Rangitāne and then cross-reference them to the relevant section of the SOI.

15. In preparing these submissions Counsel has had the benefit of reading the Ngā Hapū Karanga draft submissions in respect of issues 1 and 2, 3-13, 17 and 22 of the SOI. There is a particular emphasis in those submissions on 19th Century issues as they relate to the Wairarapa portion of this inquiry. To the extent that Rangitāne o Wairarapa have made similar allegations concerning 19th Century issues, they concur with much of the analysis undertaken by Counsel for Ngā Hapū Karanga. Thus there is no need to repeat much of the submissions already made. Obviously differences of interpretation and emphasis exist and where they do the Tribunal's attention will be drawn to that particular point.

16. No specific submissions are made on behalf of either Rangitāne claimant group concerning (SOI 17) the ownership of the foreshore, seabed and rivers. Counsel has had the benefit of reading the draft submissions made by Ngā Hapū Karanga on that point and adopt them. The Tribunal is reminded however that both Manahi Paewai and Jim Rimene, two of the named claimants, filed evidence with the Foreshore and Seabed Tribunal outlining the Rangitāne customary relationship with the foreshore. Mr Paewai's affidavit is referred to in part at page 7 of the Tribunal decision when he described Rangitāne rongoa (healing practices) associated with the sea and its gifts.

Refer affidavit Manahi Paewai (Wai 1071, #A84 and Wai 863, #E20)
Refer James Rimene (Wai 863, #F12)

C. THE CLAIMANTS, THE CLAIMS, CLAIM AREA, TRADITIONAL HISTORY & INTERESTS

The Claimants

17. The named claimant for Rangitāne o Tamaki nui a Rua (Wai 166) is Manahi Paewai. The named claimants for Rangitāne o Wairarapa (WAI 175) are James Rimene and Piriniha Te Tau.

The Claims – Rangitāne o Tamaki nui a Rua (Wai 166)

18. The claims made by Rangitāne o Tamaki nui a Rua (SOC 2) are a combination of 19th and 20th Century allegations. The dominant themes to emerge in their claim are:

    (a) Pre-1865 alienations of land by non resident rangatira;

    (b) The inclusion of non-resident rangatira as grantees in the Tamaki and Seventy Mile Bush blocks. The Crown preference for pre-investigation dealing with non-resident rangatira and the subsequent sale by non-resident rangatira of the majority of the Tamaki and Seventy Mile Bush blocks;

    (c) Insufficiency of land and resources; and

    (d) The failure on the part of the Crown to protect the Rangitāne identity.

19. Throughout these submissions reference will be made to the Tamaki nui a Rua district which is the preferred nomenclature used by the Wai 166 claimants for the Tararua district.

Rangitāne o Wairarapa (Wai 175)

20. The dominant themes which emerge in this claim are:

(a) The deliberate undermining of the informal leasing system;

(b) Large scale Crown purchases in 1853-1854;

(c) The "mopping up" of Wairarapa interests during the Native Land Court era;

(d) Insufficiency of land and resources; and

(e) The failure on the part of the Crown to protect the Rangitāne identity.

The Claim Area

21. The total acreage in this Inquiry District, excluding water areas is 2,571,631 acres. The area claimed by Rangitāne o Wairarapa (Wai 175) is 1,493,924 acres. The area claimed by Rangitāne o Tamaki nui a Rua (Wai 166) is 1,077,714.

Refer table at para 22.3.3 SOI

22. For a visual depiction of the respective claim areas references made to the Rangitāne Map Booklet (#E39) Maps 1 and 2. It should be noted that there are blocks in this inquiry in which the Rangitāne claims overlap, the relevant blocks being the Puketoi No. 4, Ihuraua, Manawatu-Wairarapa Nos. 1, 2 and 3 blocks. The Tribunal is also reminded that the "Castlepoint" block, acquired in 1853, was later divided into the Castlepoint block No. 1 and Puketoi (Castlepoint block No. 2). Both Rangitāne claimants have interests in the original Castlepoint block.

Refer to Rangitāne Map Booklet (#E39) Maps 1 and 2

23. Rangitāne recognise the predominant mana whenua of Ngāti Hinewaka and Tumapuhiārangi in their respective takiwā. Having said that Rangitāne have also argued that:

(a) Traditionally and today there exist strong relationships between Rangitāne and those two hapū;

(b) Some of the land rights in the respective takiwā of the two hapū are derived from Rangitāne tūpuna;

(c) Rangitāne hapū have retained interests in those respective takiwā.

Refer for a discussion on this to Chrisp (#A60) pages 32-49 inclusive

Traditional History

24. A feature of both Rangitāne hearings was the emphasis on traditional evidence. Both groups prepared traditional history reports and also led traditional evidence.

Refer Chrisp – Rangitāne o Wairarapa – Traditional History (#A60)
Refer Rangitāne o Tamaki nui a Rua – Traditional History Report (#A68)
Refer James Rimene (#F1)
Refer Manahi Paewai (#E3 and #F18)

25. Rangitāne placed particular emphasis on that type of evidence because it is the foundation upon which their claims are based. Indeed it is difficult to see how a claimant could prosecute a claim if they are unable to give evidence of waka traditions, whakapapa, migration and settlement patterns and occupation rights.

26. A major theme in both Rangitāne claims is the allegation that the Crown failed to protect the identity of Rangitāne as tangata whenua groups within

the Wairarapa and Tamaki nui a Rua. By giving explicit evidence of Rangitāne migration, settlement patterns and occupation rights Rangitāne have sought to underscore the fact that their identity should not have been ignored by the Crown and subsumed under the mantle of Ngāti Kahungunu.

27. Rangitāne were not satisfied that the technical evidence as a whole did justice to clearly identifying who and what they were about. For those reasons they placed considerable emphasis on outlining their waka tradition, settlement patterns, occupation rights, sites of significance, identification of hapū and identification of sites of resource gathering during the course of their respective hearings.

28. Rangitāne witnesses were able to identify tūpuna from the Kurahaupō who were responsible for naming important physical land forms in the claim area such as Te Tapere-nui-o-Whātonga, the Tararuas and the Rimutakas. Those witnesses were able to point to historical events outlining why certain names were given to physical land forms. They were able to point to the development of hapū. They were able to give actual evidence of places used for gathering resources during the cyclical season of resource gathering. They were able to name specific taniwha/kaitiaki and their experiences with them. Contrast this to the type of evidence all too often brought before the Tribunal in which wide sweeping and generalised claims to "mana whenua" are asserted.

29. Rangitāne trace their origins to the arrival of the Kurahaupō waka which made its final land fall on the Māhia peninsula at Nukutaurua. Rangitāne trace their descent from Whātonga the rangatira of the Kurahaupō waka.

Refer Paewai (#E3) paras 23 and 24
Refer Chrisp (#A60) page 9

30. After residing at Nukutaurua, Whātonga then moved to a place south of the Māhia peninsula, known as Te Kauae-o-Māui (close to Cape Kidnappers). Whātonga's whare was situated just inland from Te Kauae-o-Māui, his

whare was called Heretaunga. The name Heretaunga eventually came to refer to the entire district.

Refer Paewai (#E3) para 40
Refer Chrisp (#A60) page 9

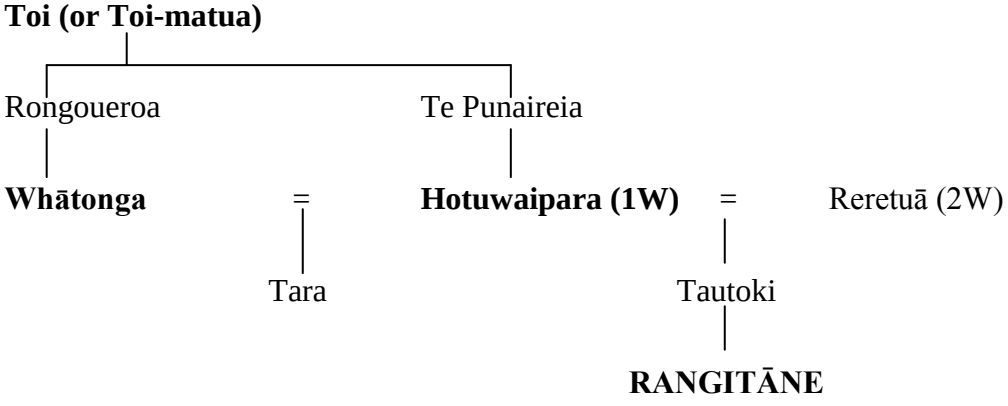
31. Whātonga travelled widely throughout the Tamaki nui a Rua and Manawatu areas. It was Whātonga who named the vast forest known as Te Taperenui o Whātonga.

Refer Paewai (#E3) para 43

32. Through the union of Whātonga and Hotuwaipara, Tara-ika was born. Tara-ika is the eponymous ancestor of Ngāi Tara. There has always been a close connection between Rangitāne and Ngāi Tara. Rangitāne narratives frequently treated the two iwi as the same entity.

Refer Chrisp (#A60) page 9

33. Through his union with Reretuā, Whātonga had a son Tautoki. Tautoki's wife was Waipuna. Waipuna was a great granddaughter of Kupe. Through the union of Tautoki and Waipuna the eponymous ancestor Rangitāne was born.



Refer Paewai (#E3) paras 54 and 55

34. Rangitāne was born, raised and buried in the Heretaunga district. Throughout his lifetime he travelled throughout the Tamaki nui a Rua, Wairarapa and Manawatu districts.

Refer Paewai (#E3) paras 56 and 57

35. The descendents of Rangitāne dispersed and can still be found today in the Manawatu, Wairarapa, Tamaki nui a Rua and Te Whanga-nui-a-Tara regions.

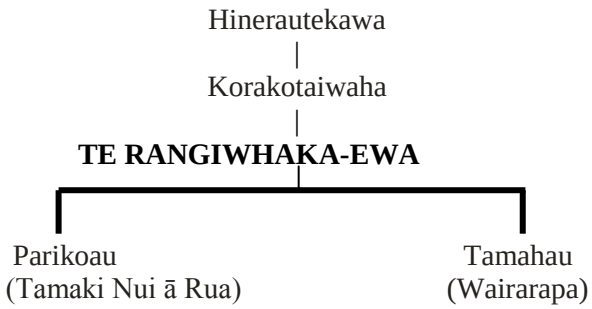
Refer Chrisp (#A60) page 10

36. The first major Rangitāne hapū that developed was Ngāti Hāmua. Hāmua was a direct descendant of Rangitāne being his great-great grandson. Hāmua's area of influence straddled both the Wairarapa and Tamaki nui a Rua takiwā.

Refer Paewai (#E3) paras 62 and 63

37. The point at which the two branches of Rangitāne become identifiably distinct is through the children of Te Rangiwhaka-ewa, the great-great grandson of Hāmua.

Toi Te Huatahi
|
Rongoueroa
|
WHĀTONGA
|
Tautoki
|
RANGITĀNE
|
Kōpuparapara
|
Kuaopango
|
Uengarehupango
|
HĀMUA
|
Wahatuara
|



Refer Paewai (#F18) para 10

38. Today the Rangitāne people of Tamaki nui a Rua recognise Te Rangiwhaka-ewa as the principal tupuna of those people who claim interest in the Tamaki nui a Rua district.

Refer Paewai (#E3) para 71

39. In the Wairarapa Ngāti Hāmua remains the principal hapū of Rangitāne o Wairarapa.

Refer Rimene (#F1) para 17

Rangitāne o Tamaki nui a Rua – Wai 166

40. Rangitāne acknowledge the prior arrival of coastal groups descended from Kupe, in particular Te Aitanga a Kupe.

Refer Paewai (#E3) para 49

41. The hapū of Rangitāne o Tamaki nui a Rua are:

- Ngāti Te Rangiwhaka-ewa
- Ngāti Te Ruatotara
- Ngāti Rangitotohu
- Ngāti Te Koro
- Ngāti Parakiore

- Ngāti Pakapaka
- Ngāti Mutuahi
- Te Kapuarangi

42. Each of these hapū are discussed in the evidence of Mr Paewai (#E3) paras 70-115 inclusive. Detailed evidence is given concerning the identification of eponymous ancestors, whakapapa, places of occupation and the relating of important events concerning those hapū.

43. Mr Paewai gave evidence of the close relationship with Te Hika o Pāpāuma. Rangitāne and Te Hika o Pāpāuma are connected through Rangitāne's mother, Te Waipuna who was a direct descendant of Kupe. That close relationship was reflected during the hearing week at Makirikiri Marae. Rangitāne o Tamaki nui a Rua and Te Hika o Pāpāuma (the Wai 420 claim) have been part of a cluster of northern based claimants known as the Rangitāne Cluster. During the hearing at Makirikiri that cluster was heard on the first three days of the hearing. Rangitāne o Tamaki nui a Rua were content to leave the leading of evidence concerning the gathering of kaimoana on the coast to Te Hika o Pāpāuma. In essence this was a modern day example of the close relationship in action.

44. An important feature of Rangitāne's history is the formation of the eastern Rangitāne alliance. This alliance comprised a series of occupied garrisons established by prominent Rangitāne persons, at strategic points in the northern Tamaki nui a Rua district. The alliance was established in response to the armed conflict that swept through the North Island during the 1820-1835 period.

Refer Paewai (#E3) paras 126-143

45. This was an important event in Rangitāne history as a myth has developed that as the entire Tamaki nui a Rua and Wairarapa area was abandoned by all concerned and refuge was sought at Nukutaurua. Whilst it is accepted that

some Rangitāne did seek refuge at Nukutaurua, many remained in Tamaki nui a Rua and Wairarapa in order to maintain ahi kā and protect their takiwā.

Refer Paewai (#E3) paras 129 and 143

46. Rangitāne have led detailed evidence of sites of significance, examples being:

(a) Te Taperenui o Whātonga

- The extent of the forest;
- Clearings/kāinga; and
- Resources used for housing, shelter and clothing, wood for warmth and cooking, medicines, native birds, fruit and vegetables, materials for building of waka.

Refer Paewai (#E3) paras 147-149

(b) Identification of important maunga, particularly Ngā Pae Maunga o Ruahine and Ngā Pae Maunga o Tararua;

Refer Paewai (#E3) paras 150-153

(c) Significant rivers particularly the Manawatu:

- The creation of the Manawatu River;
- Significant kaitiaki and taniwha situated along the Manawatu River such as Paketahi, Rumano and Mohangaiti;
- Other significant rivers within Tamaki nui a Rua

Refer Paewai (#E3) paras 154-158

47. Many of the Rangitāne witnesses spoke of sites of special significance. Mrs Noa Nicholson spoke about the following matters:

(a) Te Awa Kowhai, an event which occurred when the Manawatu River floods and turns yellow. That is a signal to go to the coast and gather kina.

(b) She discussed important kaitiaki and taniwha such as Peketahi and Whāngaimokopuna.

(c) She referred to wāhi tapu at Kaitoki. Mrs Nicholson identified a sacred place in the Kaitoki Stream where tupāpaku were washed. She also identified a second urupā where Paora Te Rangiwhaka-ewa and his children are buried there along with her own husband and mokopuna.

(d) She referred to the importance of Akitio, collecting kaimoana and observing the tikanga as it relates to the kaitiaki Peketahi.

Refer Nicholson (#E5) paras 14-29 inclusive

48. Mr Herbert Chase discussed the Kaitoki area and special places on that block they being:

(a) The tapu lake called Mohangaiti;

(b) The significance of a kauri tree called Moetu, which signified an apology from the Ngā Puhi people;

(c) The kaitiaki/taniwha Peketahi;

(d) The Waitapu urupā;

Refer Chase (#E6) paras 20-28 inclusive

49. Mrs Titihuia Karaitiana discussed the following matters:

(a) The importance of Tahoraiti Pā

Refer Karaitiana (#E7) para 5

(b) The importance of the Kaiwhakapuki River as a source of eels.

Refer Karaitiana (#E7) paras 7-9 inclusive

(c) The river Raparapawai. This river was named to commemorate an event when a number of men and boys were killed whilst sleeping. The crying of an old kuia when she saw her deceased mokopuna lent its name to the river.

Refer Karaitiana (#E7) para 12

(d) The importance of gathering resources from Te Taperenui o Whātonga including bark, plants, medicines and kai.

Refer Karaitiana (#E7) para 13

(e) The importance of native birdlife in Te Taperenui o Whātonga. She stressed the imporatance of the huia and the fact that her own name refers to the feathers of the huia which were worn by rangatira on their heads. She also remembered to discussions she had with her grandmother who would emphasise that the huia became extinct after the arrival of the Pākeha.

Refer Karaitiana (#E7) para 15

50. Mrs Kurairirangi Pearse discussed a number of significant places at Kaitoki including the following:

(a) The Pinepine area. This area was used for gathering kai from the Manawatu River and also used as cultivations;

(b) The importance of Lake Mohangaiti to gather kakahi and koura. She also discussed the fact that it is now a tapu area;

(c) The importance of the Manawatu River and the kaitiaki Peketahi.

Refer Pearse (#E8) paras 13-26

51. Mr Peter Ropiha discussed the following matters:

(a) A number of pā sites identified as part of the eastern Rangitāne alliance.

Refer Ropiha (#E11) paras 17-23

(b) The Mangatoro block which included the papakāinga Okurehe, a papakāinga of Ngāti Te Rangiwhaka-ewa/Ngāti Pakapaka. This was the papakāinga which should have been excluded from the lease to Hamilton which was eventually included in a mortgagee sale by the Bank of New Zealand

Refer Ropiha (#E11) paras 34-38

52. Mrs Maisie Gilbert-Palmer discussed the following:

(a) The Pahiatua area and its original Rangitāne name, Keremutupou. She referred to an atua known as Rongomai which resides in a cave situated on a hill known to Rangitāne as Te Pane Atua.

Refer Gilbert-Palmer (#E12) paras 8-16 inclusive

(b) The importance of the Ngaawapurua area on the Mangatainoko block well known for its rich soil and successful cultivation areas.

Refer Gilbert-Palmer (#E12) para 17-22 inclusive

(c) She referred to the Hāmua area, a major Rangitāne settlement during the lifetime of Nireaha Tāmaki.

Refer Gilbert-Palmer (E#12) paras 25-27

(d) Mrs Gilbert-Palmer confirmed the importance of Te Taperenui o Whātonga. She remembers discussion with her koro Te Ao, who would bemoan the loss of birds. Her koro would particularly talk about the loss of the huia and the kereru. Mrs Gilbert-Palmer also produced photographs depicting the destruction caused by the clearance of Te Taperenui o Whātonga.

Refer Gilbert-Palmer (#E12) paras 33-38

53. Mr Hepa Tatere discussed a number of significant places at the Ngaawapurua and Hāmua areas in the southern Tamaki nui a Rua including the ferry business established by Nireaha Tamaki and urupā at Ngaawapurua on the embankment of the Manawatu River.

Refer Tatere (#E14) paras 9-18 inclusive

54. Punga Paewai spoke of the following:

(a) The importance of the Kaitoki kāinga and community. At Kaitoki he referred to Lake Mohangaiti which he described as being like a supermarket providing local Māori with kakahi, tuna, koura, pukeko and duck eggs.

Refer Paewai (#E15) para 15

(b) He also gave evidence of paua and pipi gathered from Akitio.

Refer Paewai (#E15) para 15

55. A number of witnesses also spoke about kāinga, pā sites and marae, examples being:

(a) Kaitoki kāinga

Refer Chase (#E6) paras 8-12
Refer Pearse (#E8) paras 7-11
Refer Rautahi (#E9) paras 4-13 and paras 19-20
Refer Punga Paewai (#E15) paras 16-17 inclusive

(b) Hautotara kāinga

Refer Chase (#E6) para 9

(c) Okurehe papakāinga

Refer Chase (#E6) para 9
Refer Ropiha (#E11) paras 34-38

(d) Tahoraiti Pā

Refer Karaitiana (#E7) paras 5-11
Refer Pearse (#E8) para 11

(e) Aotea Marae

Refer Karaitiana (#E7) paras 16-27
Refer Pearse (#E8) paras 27-42 inclusive
Refer Punga Paewai (#E15) paras 23-28

(f) Whiti-te-Ra Pā

Refer Pearse (#E8) para 11
Refer Rautahi (#E9) para 21

56. Supplementing the written evidence of the Rangitāne witnesses was the Sites of Significance Booklet "He Kohinga Whakaahua" (#E40). The majority of the sites photographed are cross-referenced to the written statements of evidence and Rangitāne Map Booklet (#E39).

57. Two further points are worth noting at this juncture. Rangitāne o Tamaki nui a Rua prepared a detailed Whakapapa Booklet (#E21). The Tribunal may recall particularly during the evidence of Mr Manahi Paewai that he was able to give detailed whakapapa evidence demonstrating descent from specific tūpuna and linking groups and individuals. Secondly Rangitāne o Tamaki nui a Rua place considerable emphasis upon the retention of tribal knowledge within waiata. Many of the waiata contained within their booklet and sung by them for the Tribunal commemorate important historical events and tūpuna.

Rangitāne o Wairarapa – Wai 175

58. According to Rangitāne narratives, they were the first inhabitants of the Wairarapa and occupied it for some 10-12 generations after initial settlement.

Refer Chrisp (#A60) pages 12 and 14

59. Three migrations then took place which significantly impacted upon Rangitāne occupation south of Greytown. The most important migration was led by Te Rangitāwhanga who although usually referred to as Ngāti Kahungunu also had strong Rangitāne associations. Te Rangitāwhanga requested and was granted land in the south Wairarapa by his Rangitāne uncle Te Rerewa and Te Whakamana. It is important to highlight that the Rangitāne narratives point to a limited transfer of land in the south Wairarapa.

Refer Chrisp (#A60) pp 14-19

60. During the lifetime of Te Rakaumoana, a prominent Rangitāne rangatira who lived some four generations after Te Rerewa, serious conflict arose between Rangitāne and Ngāti Kahungunu. Ngāti Kahungunu defeated Rangitāne at Ōkahu Pā. The Rangitāne narratives however state that Te Rakaumoana sought the assistance of his Tamaki nui a Rua relatives. He raised at taua at current day Dannevirke returned to the Wairarapa and avenged the defeat at Ōkahu in a series of three battles with Ngāti Kahungunu.

Refer Chrisp (#A60) pp 22-24

61. Rangitāne accept that following these incidents, Ngāti Kahungunu assumed rights of use to lands and economic resources, particularly in the south Wairarapa through exchange of lands and conflict, however they shared the occupation of this district of Wairarapa with Ngāti Kahungunu.

Refer Chrisp (#A60) p 24

62. During the Musket Wars of the 1820's and 1830's, much of the Wairarapa was abandoned due to fighting with Te Āti Awa. The Wairarapa people, both Rangitāne and Ngāti Kahungunu fought Te Āti Awa. Following defeat at Pehikātia, near Greytown, the majority of the Wairarapa people withdrew to Nukutaurua and the Manawatu. Ngāti Hāmua of Rangitāne however remained to fight a rear guard action which eventually led to the defeat and ousting of Te Āti Awa.

Refer Chrisp (#A60) p 25

63. Peace arrangements were finalised at Pitoone in January 1840 following which Rangitāne hapū re-established their communities and interests after returning from exile.

Refer Chrisp (#A60) p 26

64. Both Rimene (#F1, para 17) and Chrisp (#A60, page 27) confirm that Ngāti Hāmua is the principal hapū of Rangitāne o Wairarapa. Mr Rimene also identified sub-hapū of Ngāti Hāmua including:

- Ngāi Tamahou;
- Ngāti Hinetearorangi;
- Ngāti Te Raetea;
- Ngāti Te Noti;
- Ngāti Whātui;
- Ngāti Mātangiuru;
- Ngāti Te Hinaariki;
- Ngāti Tangatakau;
- Ngāi Taimahu

Refer Rimene (#F1) paras 17-53 inclusive

65. Mr Rimene also discussed other Rangitāne hapū which are not descended from Ngāti Hāmua they being:

- Ngāti Te Atawhā;
- Ngāti Meroiti;
- Ngāti Tauiao;
- Ngāti Ruateika;

Refer Rimene (#F1) paras 54-59

66. Mr Rimene also discussed the importance of Tumapuhiārangi in Rangitāne history and the connections between Rangitāne and Te Hika o Pāpāuma.

Refer Rimene (#F1) paras 60-66 inclusive

67. Both Rimene and Chrisp discuss hapū which share Rangitāne and Kahungunu descent particularly in the South Wairararapa they being:

- Ngāti Te Whakamana;
- Ngāi Tūkoko;
- Ngāti Hinetauira;
- Ngāti Meroiti;
- Ngāti Tauiao;
- Ngāti Moe;
- Ngāti Tohenga

Refer Rimene (#F1) paras 67-75
Refer Chrisp (#A60) pages 32-34

68. Rangitāne hapū re-established their communities and interests in Wairarapa after returning from exile. In the second half of the 19th century, Rangitāne hapū had rights of interest as follows:

(a) Ngāti Hāmua (and related hapū) occupied lands from the Manawatu River in the north to Carterton and Te Whiti in the south; these interests also extended from the Tararua ranges to the Pacific Ocean at Castlepoint and Mātaikona. Ngāti Hāmua also had 'outlier' interests in south Wairarapa, at Lake Onoke, Lake Wairarapa and Pahaoa.

(b) Ngāti Hāmua had a close relationship with the Te Hika o Pāpāuma hapū that occupied the territory between Akitio and Castlepoint, based on whakapapa, intermarriage and joint military actions. This hapū acquired interests in lands at Puketoi and elsewhere through their relationships with Ngāti Hāmua and Rangitāne.

(c) Several hapū in the vicinity of Greytown and Gladstone claimed interests in lands based on their descent from Rangitāne ancestors, including Ngāti Tauiao, Ngāti Ruateika and Ngāti Te Atawhā. Ngāti Moe of Papawai also had significant connections with Rangitāne.

(d) On the Wairarapa Coast, south of Castlepoint, Ngāi Tumapuhia maintained interests in lands at Te Maipi, Te Unuunu and elsewhere based on their descent from Rangitāne ancestors (especially Hinematua and Tukoroua).

(e) Further along the coastline, at Pahaoa, the Ngāti Meroiti hapū of Rangitāne were acknowledged as possessing significant land interests at Pahaoa, Waikekeno and eastern parts of the Ngā-Waka-a-Kupe blocks.

(f) In south Wairarapa, Rangitāne hapū such as Ngāti Hinetauira and Ngāi Tūkoko were recognised as holding interests around Lake Wairarapa and at the base of the Rimutaka ranges. The members of these hapū were aho-rua; that is they maintained dual identification with hapū of Rangitāne and Ngāti Kahungunu simultaneously.

Refer Chrisp (#A60(a)) pages 19 and 20

69. Mr Chrisp also provided a series of examples confirming the utilisation of natural resources throughout the Wairarapa by Rangitāne, examples being:

(a) Eel fisheries at Lake Wairarapa and Pahiatua;

Refer Chrisp (#A60) pages 50 and 51

(b) The importance of Lake Wairarapa as a source of flounder, whitebait, kokopu, eels, ducks, whitebait fern root and korau;

Refer Chrisp (#A60) page 51

(c) Coastal fishing carried out by Rangitāne at various places along the Wairarapa coastline including Lake Onoke, Pahaoa, Waikekeno, Te Unuunu, Mātaikona. The records refer to people catching various

types of fish and shellfish including hapuka, kahawai, paua and crayfish;

Refer Chrisp (#A60) page 52

(d) Bird snaring in the heavily forested north Wairarapa in particular on the Ōkurupēti block and at Te Whiti and Weraiti;

Refer Chrisp (#A60) pages 53 and 54

(e) Rat snaring places;

Refer Chrisp (#A60) page 55

(f) Foraging for: fern root; kōrau; hinau; karaka berries and harakeke. Rangitāne cooked kauru from tī and collected mokimoki, a plant used for scenting oils. Chrisp's evidence was that traditional foraging and food collection practices continued well into the 20th century.

Refer Chrisp (#A60) page 58

70. All Rangitāne were involved in gardening traditional and introduced crops. At the large Ngāti Hāmua settlement at Kaikōkirikiri, 184 people were engaged in growing wheat, maize, potatoes and other traditional crops. Rangitāne narratives indicate Ngāti Hāmua cultivated kumara.

Refer Chrisp (#A60) pages 55 and 56

71. Rangitāne o Wairarapa also led comprehensive evidence on sites of significance to them throughout the Wairarapa. Mr Rimene in his section on Rangitāne hapū also discussed and identified significant pā sites, kāinga, referred to places commemeorating specific events such as Hinetearorangi, wāhi tapu sites, eel and food gathering places, papakāinga, urupā and marae sites. With respect to many of the sites named Mr Rimene was able to give

evidence of important tūpuna associated with those sites and how those persons connected to Hāmua and Rangitāne.

Refer Rimene (#F1) para 17-75 inclusive

72. Mr Rimene also provided accounts of and the meaning behind numerous place names throughout the Wairarapa examples being:

(a) The naming of the Rimutaka Range by Haunui-ā-Nanaia;

Refer Rimene (#F1) para 80

(b) The naming of Wairarapa by Haunui-ā-Nanaia;

Refer Rimene (#F1) para 81

(c) The naming by Haunui-ā-Nanaia of a number of rivers in the Wairarapa including the Tauherenīkau, Waiōhine, Waingawa, Waiopoua and Ruamahanga;

Refer Rimene (#F1) paras 82-90 inclusive

(d) An indication of the importance of the Ruamahanga River in Rangitāne history, containing 25 Hāmua marae, urupā and other wāhi tapu;

Refer Rimene (#F1) para 87

(e) The naming of the important maunga, Rangitūmau;

Refer Rimene (#F1) paras 91-93

(f) The naming of the Tararua Ranges by Whātonga;

Refer Rimene (#F1) paras 94-97

73. Mr Rimene provided an outline of the correct place names for a number of modern day townships of the Wairarapa in particular:

(a) Paetūmōkai – Featherston;
(b) Hūpēnui – Greytown;
(c) Taratahi – Carterton;
(d) Whakaoriori - Masterton

Refer Rimene (#F1) paras 98-106

74. Other Rangitāne witnesses also supplemented the evidence of Messrs Rimene and Chrisp. In the evidence of Siobhan Garlick (#F2) she discusses the importance of the Ngamu area as a place of refuge during the migration of Ngāti Kahungunu into the southern Wairarapa. The Ngamu area includes:

(a) A number of pā sites including Hakikino, Te Kumeroa, Te Wharau, Ruakiwi;

(b) Gardens situated in an area known as Tikouka;

(c) A number of caves at the Tikouka area being the resting places of koiwi;

(d) Kāinga, wāhi tapu and cultivation sites at Taueru;

(e) Umu and kumara pits at southern Ngamu Forest block area;

(f) Battle sites at Te Parae and Pukeroro;

(g) An urupā at Te Unuunu and on Homewood Road near Riversdale;

Refer Garlick (#F2) paras 4-17 inclusive

75. Mike Kawana (#F3) spoke of the importance of the Castlepoint area, known as Rangiwhakoma to Rangitāne. In his evidence he discussed the tradition

of Kupe chasing his wheke Muturangi into a cave named Te Ana o Te Wheke o Muturangi, located at Castle Rock. Mr Kawana gave evidence of the name Rangiwhakaoma referring to a group of people Kupe left at Castlepoint when he set off again in pursuit of his wheke. Mr Kawana also noted the tragic story of the death of Te Aohuruhuru when she leapt to her death from a rock known as Te Rerenga o Te Aohuruhuru.

Refer Kawana (#F3) paras 30-34

76. Joseph Potangaroa (#F4) gave evidence of the Rangitāne GIS computer mapping project in which Rangitāne seek to map all sites of significance as identified from a number of sources. The sites mapped include urupā, caves, maunga, rivers, lakes, pā sites, resource gathering areas, battle grounds, taniwha lair, mahinga kai, bird snaring areas, papakāinga, tracks, monuments (which mark pito and peacemaking), kāinga, birthing places, water bodies where ceremonial rites were carried out, gardens, refuge places, tauranga waka both coastal and river.

77. Findings which arose out of the GIS mapping programme was concentration of a cluster of sites of significance for Rangitāne in the Whakaoriori/Masterton area and in the Rangiwhakaoma/Mataikona area. This can be clearly depicted by reference to Maps #F23 and #F24 produced on behalf of the Rangitāne o Wairarapa claimants.

78. Last but by no means least, Te Taperenui o Whātonga was also important to the Rangitāne o Wairarapa. The last remnant of the great Seventy Mile Bush can now be found at Pūkaha/Mt Bruce. The importance of Pūkaha/Mt Bruce is referred to in the evidence of Mr Rimene (#F1 paras 113-114) and Mike Grace (#F57) all underpinned by the site visit undertaken to Pukaha/Mt Bruce.

79. Similar to their whanaunga from the north Rangitāne o Wairarapa also produced detailed whakapapa evidence particularly in the brief of Mr James Rimene (#F1). They too supplemented and complimented their evidence by

the production of Sites of Significance Booklet (#F14), a Tūpuna Photograph Booklet (#F15) and a Waiata Booklet (#F13). Many of the waiata chosen and sung for the Tribunal were done so deliberately to emphasise certain tūpuna, historical events and portray a sense of Rangitāne tribal identity.

D. PRE-1853 'WAIRARAPA MĀORI' LEASES (SOI 1)

80. The Mohaka Ki Ahuriri Tribunal made the following comment on the development of leasing in the Wairarapa:

"*By the beginning of 1844, many Wellington settlers had become disgruntled with the lack of available land upon which to graze their flocks and herds, and had begun moving over the Rimutaka Range to the open grasslands beyond. There, they found Māori willing to lease runs to them, and by April 1845 there were already 12 stations and 40 or 50 Europeans in the Wairarapa. By 1849, there were 19 stations with over 100,000 acres being used for sheep and cattle runs, from which Māori received £800 per annum in rents. Although these runs were illegal under the Native Land Purchase Ordinance 1846, the terms of which had been broadened to encompass leases, the move northward into Hawke's Bay was inexorable. In 1849, one J H Northwood secured a lease over some 50,000 acres from Te Hapuku and drove 3,000 marino ewes up the coast to establish Hawkes Bays first sheep station. Native Secretary Henry Tacy Kemp noted in 1849 that 'the prevailing disposition of the natives on the coast is not to sell but to lease, and the squatting system seems to be fast extending' ".*

Refer Mohaka Ki Ahuriri Report, Volume 1, page 68

81. At its height Wairarapa Māori including Rangitāne were receiving £1,200 per annum in rental, together with significant income from trade and employment opportunities with the squatters.

Refer McCracken (#A46) p 7
Refer Stirling (#A48) p 42

82. Rangitāne welcomed the early lease arrangements. They viewed them as important for the following reasons:

(a) They provided income from the rentals;

(b) The arrangements provided Rangitāne with an opportunity to enter into trade and barter arrangements with settlers to supply: wheat; potatoes; pigs; onions; fish and labour to the settlers who in turn provided cash and consumer goods. The trade and barter arrangements had a significant economic value over and above any rental payments;

Refer Chrisp (#F11) paras 7(a)-(c) inclusive
Refer Stirling (#A48) page 42

(c) Most importantly the arrangements enabled Rangitāne to retain their lands whilst participating in substantial new economic opportunities. In a sense they were pursuing modernity at their own pace and via arrangements over which they had control.

83. The pursuit of the new economic opportunities that presented themselves, whilst retaining ownership and authority over their lands, was a true expression of tino rangatiratanga.

84. Rangitāne developed a number of personalised and close relationships with squatters, examples of which are:

(a) The relationship between Pōtangaroa and Guthrie at Castlepoint;

(b) The relationship between Te Korou and Donald and Rhodes in the Solway area of Masterton;

(c) The relationship with John McKenzie (known to Rangitāne as Te Ono) at Te Whiti.

Refer Chrisp (#F11) paras 8-9

85. Rangitāne do not agree that the Wairarapa leases were analogous to customary Māori land allocation practices **(SOI 1.4.2)**. The leases were a new form of arrangement entered into with settlers. They were characterised by the preparation of written deeds which specified annual payments usually for fixed terms.

86. No doubt there were aspects of the leasing regime which we would not recognise as characteristic of leases today. A possible example is the strong, understated relationships between the squatters and Māori which initially were vital for the survival of the squatters. One such example being the lament expressed by the hapū of the Castlepoint area, including Ngāti Hāmua and Te Hika o Pāpāuma in Te Waka Māori o Niu Tirani on 8 August 1876, when they learnt of the death of Thomas Guthrie.

Refer Chrisp (#A60) page 54 and translation 38 at page 78
Refer Stirling (#A48) page 42

87. This was still a frontier society, to an extent Māori could set the rules, therefore whilst it might be unrealistic to expect leases to operate as they would in today's society that does not necessarily mean that they were analogous to customary Māori land practices. They were first and foremost commercial transactions carried out for the payment of remuneration and were by definition finite arrangements.

88. There is no doubt that the early leasing regime was not only successful but important to Rangitāne and all Wairarapa Māori **(SOI 1.4.4)**. By 1852 the annual rental had increased to £1,200 per annum.

Refer McCracken (#A46) p 7
Refer Gilling (#A118) p 89

89. The leases gave Rangitāne opportunities to supplement their income from the trade and barter arrangements. Although the leasing system was embryonic only, Henry Tacy Kemp had noted that "the prevailing disposition of the natives on the coast is not to sell but to lease, and the squatting system seems to be fast extending".

Refer Mohaka Ki Ahuriri Report, Volume 1, page 68
Refer Gilling (#A118) page 91

90. It was never fair or reasonable for the Crown to decide that the Wairarapa leases be made illegal and or actively discouraged by the Crown. **(SOI 1.4.5)**.

91. The leasing system was not acceptable to the Crown as it struck at the heart of its systematic colonisation policy based on the land fund policy. That policy required the Crown to purchase land so far ahead of the needs of settlement that Māori vendors were not aware of the potential value of the lands. In that way it was intended that the Crown could secure large tracts of land for a trifling consideration. By acquiring land, Māori claims would be extinguished throughout the country and the Crown would use its pre-emptive monopoly to ensure that what it did pay was little more than a pittance.

Refer Mohaka Ki Ahuriri Report, Volume 1, pages 66 and 67
Refer Loveridge (#A81) page 118, para iii.8.1

92. That the leasing system could not be tolerated by the Crown is best summed up in the quote by Grey to Wairarapa Māori in March 1847 when he said:

"My friends,

I have been told that you will not make any arrangement with the Government for the sale of your lands, although sufficient portions would be reserved for yourselves and your children use. My friends, this is not right. Ample reserves shall be retained for you if you will sell your lands; but if

you will not conclude such an arrangement, then I shall desire the Europeans to depart from your land, and shall put an end to the arrangements at present existing between you and them".

Grey to Wairarapa chiefs cited and referred to in Mohaka Ki Ahuriri Report, Volume 1, page 70

93. At the same time key Crown Officials formed moral judgements on the leasing system and whether it was harmful to Māori or not. McLean and Kemp both suggested that the leasing of Māori to Europeans was morally harmful in that it permitted Māori to be "lazy" and live in the comparatively easy manner from European rents rather than working the land for themselves as "yeoman farmers".

Refer Gilling (#A118) page 90

94. The leasing system whilst not perfect, was as close an example of rangatiratanga in practice as one could wish to hope for. Clearly however it was antithetical to colonisation as envisaged by the Crown.

95. Rangitāne have long maintained that the Crown adopted deliberate policies to end leasing in the Wairarapa. Such policies contributed to the end of the leasing regime and contributed to the widespread purchases seen in 1853-1854 **(SOI 1.4.6 and 1.4.7)**.

96. Rangitāne have characterised the policy adopted by the Crown as "a carrot and stick" approach. The stick being the deliberate policy of undermining the informal leasing economy through the enactment of the Native Land Purchase Ordinance, the carrot being the promised benefits of schools, hospitals, pensions and mills if Rangitāne sold their lands.

Refer Chrisp (#F11) para 11
Refer Stirling (#A48) page 84

The Stick

97. The Rangitāne experience is that the Crown sought to stop rental payments on existing leases, prevent the take up of new leases and enforce the Native Land Purchase Ordinance against existing squatters, examples being:

(a) Donald and Rhodes where convinced by Grey and McLean not to pay their rents to the Ngāti Hāmua rangatira Ngātūere Tāwhao;

Refer Chrisp (#F11) para 14(a)
Refer letter from Rhodes to Crown land cited in McCracken (#A46) page 17, para 1.73. See also paras 4.3.19-4.3.20

(b) J A Wilson was warned by McLean not to take up land beyond Castlepoint amongst Te Hika o Pāpāuma and Ngāti Hāmua. In warning Wilson, McLean also made it clear to local Māori that leasing would be discontinued;

Refer Chrisp (#F11) para 14(b)

(c) Squatters were directed to abandon their runs an example being McLean directing John Sutherland to abandon his run in the Whareama area;

Refer Chrisp (#F11) para 14(c)

(d) McLean promised favourable treatment of existing run holders in order to ensure their support for his attempts to secure Wairarapa land;

Refer Stirling (#A48) page 91

(e) McLean's threatened to use the Native Land Purchase Ordinance against Guthrie who was squatting at Castlepoint;

Refer Stirling (#A48) page 84

98. In addition to these specific examples, Grey had threatened in 1847 that if Māori were not prepared to sell their land then he would "desire the Europeans to depart from your land, and shall put an end to the arrangements at present existing between you and them".

Refer Grey to Wairarapa chiefs cited and referred to in the Mohaka Ki Ahuriri Report, Volume 1, page 70

99. Clearly such practices contributed to the pressure on Rangitāne to make their lands available for the Crown in the 1850s.

100. Wairarapa Māori expressed a clear preference for a leasing system rather than sale to the Crown and/or the New Zealand Company. Until 1853 Wairarapa Māori, including Rangitāne had resisted all overtures by the Crown and New Zealand Company to sell their land. They were involved in a system which was becoming increasingly profitable for them both by way of direct income from the rental and secondary income from the trade and barter arrangements. Importantly although the leasing arrangements were a new arrangement they allowed Rangitāne to retain control and authority (their rangatiratanga and mana) over those arrangements. The Crown had an obligation to actively protect those arrangements, as long as Rangitāne wished for them to continue. Instead the Crown in breach of that duty actively undermined those arrangements in clear breach of the duty of active protection.

E. CROWN SETTLEMENT AND LAND PURCHASE POLICY PRE 1865 (SOI 2)

101. In 1849 the Crown shelved its attempts to purchase land in the Wairarapa and instead turned its attention to the Hawkes Bay, in particular the Ahuriri region. Some Ahuriri Māori were already willing to sell to the Crown, there was no sizeable squatter population paying high rentals as there were in the Wairarapa and pastoralists could be offered secure title for their runs. In acquiring Ahuriri land, the Crown sought to deliberately undermine squatting in the Wairarapa.

Refer Mohaka Ki Ahuriri Report, Volume 1, page 72

102. On 28 December 1850 McLean wrote to the Colonial Secretary with respect to the Mohaka block. He reiterated his view that a purchase of Hawkes Bay land would be the means to entice squatters away from the Wairarapa and break down the system of leasing.

Refer Mohaka Ki Ahuriri Report, Volume 1, page 77

103. In January 1851 Lieutenant Governor Eyre forwarded McLean's reports to Grey and commented that if McLean was successful that would enable the government to deal with the "difficulties" in the Wairarapa by providing a locality to which the Wairarapa settlers could move their stock. Obviously the "difficulties" he was referring to was the practise of leasing which had taken hold in the Wairarapa.

Refer ibid

104. By the end of 1851 McLean had completed three major transactions in the Hawkes Bay namely Waipukurau, Ahuriri and Mohaka. By acquiring those blocks McLean had deliberately ensured that the Wairarapa system of leasing did not take hold in the Hawkes Bay. In May 1852 McLean said to the New Munster Executive Council:

"*When I first visited Hawkes Bay the Natives were fully debating the advantages of leasing their land as compared with the absolute sale of it, and I found it necessary to convince and assure them that no leasing should for the future be sanctioned [and] that a law which I translated, and explained to them [the Native Land Purchase Ordinance 1846] had been passed to stop such proceedings and that the only legitimate means by which they could realise revenue from their waste lands would be by disposing of them to the Crown… steps [were] taken to prevent parties from entering into any arrangements excepting through the Agency of the Government for the occupation of land at Hawkes Bay and this opportune interference while several flock-owners were preparing to go there has entirely prevented the Wairarapa system of squatting from extending so far and it has also been instrumental in securing the Crown a property of upwards 600,000 acres in that valuable and fertile district".*

Refer Executive Council, Minutes, 6 May 1852 cited and referred to in the Mohaka Ki Ahuriri Report, Volume 1, page 85

The Carrots

105. At the same time the Crown was dangling carrots in front of Wairarapa Māori in order to free up their land. One of those early carrots was the tactic of McLean departing for the Hawkes Bay in September 1851 carrying £3,000 in gold sovereigns. He embarked upon a deliberate route through the Wairarapa and made a point of displaying the money to rangatira as well as telling both Māori and squatters to relinquish their leases.

Refer Stirling (#A48) pages 84 and 86
Refer Mohaka Ki Ahuriri Report, Volume 1, pages 84 and 85

106. The carrots dangled in front of Rangitāne were:

(a) Grey's promises to make ample reserves should they sell their lands;

Grey to Wairarapa Chiefs – referred to in Mohaka Ki Ahuriri Report, Volume 1, page 70
Refer Chrisp (#F11) para 22

(b) The general promises of an increased European population (as an outlet for trade and labour), the provision of education, medical services, pensions and mills;

Refer Stirling (#A48) pages 98-103
Refer Walzl (#A44) page 430
Refer McCracken (#A46) pages 16-21

(c) The express promises of education, schools, medical services, hospitals, mills and annuity contained in the koha clauses.

107. Rangitāne maintain that it was these twin streams of pressure characterised by a "carrot and stick" approach that contributed to them alienating their lands. Gilling refers to the decision to make land available being a result of a mix of economic push and pull factors, social elements and promises by Crown representatives (Gilling #A118, p 107).

108. McIntyre sums up the factors that influenced Rangitāne and other Wairarapa Māori to make the land available as follows:

"*Why did Wairarapa Maori leaders sell? Because, in the absence of Colenso's protective defences, they were openly exposed to a volley of threats and enticements. They feared the loss of their leases and their mana if they did not sell. The older chiefs were shaken by hot-headed younger men who were eager to receive immediate material gain and heightened mana. Subjected to the intense flattery and persuasive powers of two highly skilled negotiators, Grey and Mclean, Maori were lured by their promises of the benefits that would ensue from their involvement in the new European economy. They were influenced by the precedent set by Te Hāpuku [selling*

Waipukurau and other blocks in southern Hawkes Bay]…Grey and McLean also offered reward for compliance: Te Wereta was reportedly 'delighted at being entrusted with such a large sum' of gold coins; Te Raniera received a Crown grant for his reserve; and Te Manihera, Ngatuere, Te Wereta Kawekairangi, Hemi Te Miha, Raniera Te Iho-o-te-rangi, Te Hiko Tamaihotua and Karaitiana Te Korou were among those made assessors… The threat that Pakeha leaseholders would be prosecuted and forced out of Wairarapa…was probably used as a bargainaing chip by Grey, along with a provision unique to Wairarapa [the five percent clauses]…A further concession was Grey's absolute assurance that European squatters 'adopted' by Wairarapa Maori, such as Angus McMaster, would have the first option to buy their homesteads and essential parts of their runs".

Cited and referred to in Gilling (#A118) p 107

109. The Crown had a duty to actively protect Rangitāne interests. This included the maintenance of the leasing regime as long as Rangitāne wanted it to remain in place. The Crown in breach of that duty embarked upon a policy of:

(a) Deliberately undermining the leasing system;

(b) Acquired land in the Hawkes Bay to draw squatters away from the Wairarapa;

(c) Dangled various promises in front of Rangitāne in order to open up their lands.

All such actions by the Crown were in breach of the duty of active protection.

The Promises (SOI 2.4.6 & 2.4.7)

110. In preparing Sections **E-G** of the submissions Counsel has had the benefit of reading the Ngā Hapū Karanga submissions in draft including the overview and specific answers to the issues posed. In general terms Rangitāne agree with the analysis promoted by Ngā Hapū Karanga. There are however some differences of emphasis which will be referred to.

111. Although a record of the hui at Turanganui in 1853 was not kept the impact was immediate and profound. What followed within a very short space of time was the alienation of close to three-quarters of the total land available in the Wairarapa.

112. Although little specific evidence survives of any promises made, as early as 1847 Grey had promised Wairarapa Māori ample reserves should their land be sold.

Refer Grey to Wairarapa chiefs as set out in the Mohaka Ki Ahuriri Report, Volume 1, page 70

113. In May 1855 McLean noted that specific promises had been made in relation to the building of a mill and village at Papawai.

Refer Walzl (#A44) para 4.402

114. It was Crown policy at the time for Crown purchase agents to make promises of the benefits of sale such as the building of schools, hospitals and the provision of medical services. Similar promises were made by Mantell in the South Island and McLean in the Hawkes Bay.

Refer Walzl (#A44) para 4.408

115. On 9 February 1857 Governor Gore-Browne, acknowledged that promises of schools, hospitals, roads, constant solicitude for their welfare and general

protection on the part of the Imperial Government had been held out to Māori in order to induce them to part with their land.

Refer Walzl (#A44) para 4.411

116. In 1877 Grey, in referring to the Hawkes Bay purchases, confirmed that Hawkes Bay Māori were promised carts, horses, ploughs, cattle, property, schools, doctors and nurses.

Refer Walzl (#A44) para 4.410

117. In 1879, Grey acknowledged, when appearing before the Smith-Nairn Commission inquiring into the South Island purchases that it was quite likely those sort of promises were made. He said:

"*... those were the instructions I always gave. They were the instructions I gave in the old Hawke's Bay purchase, and I explained that the payment made to them in money was really not the true payment at al"l.*

Refer Walzl (#A44) para 4.409

118. There can be little doubt that general promises of a nature similar to those made in the Hawkes Bay and South Island were held out to Wairarapa Māori including Rangitāne, which contributed to them making their lands available to the Crown.

F. PRE-1865 CROWN PURCHASE TRANSACTIONS (SOI 4)

Turanganui Hui – Compact, Treaty or Alliance? (SOI 4.4.5)

119. Rangitāne have not suggested that what happened at Turanganui could be treated as a compact, treaty or alliance with the Crown.

120. Rangitāne accept that McLean and Grey made general promises of the benefits that would flow should Rangitāne sell their lands to the Crown. Furthermore the koha clauses are examples of specific promises made. Having made those general and specific promises, the Crown were of course under an obligation to honour them. That they didn't means that the Crown failed to act honourably and with the utmost good faith towards their Treaty partners. Furthermore in failing to honour the specific promises of the koha clauses the Crown failed to honour their fiduciary and contractual obligations.

Refer Section F discussion on koha clauses

121. Over and above that however very little evidence exists of what was said at the Turanganui hui. Rangitāne submit that the actions of Grey and McLean in seeking to open up the Wairarapa were far more cynically motivated than wishing to establish a compact, treaty or alliance.

122. As set out earlier in these submissions the Crown deliberately set about destroying the leasing economy by the threatened use of the Native Land Purchase Ordinance, by encouraging squatters not to pay rent and the purchase of land in the Hawkes Bay to entice squatters there.

123. The priority for the Crown was to promote the interests of settlers not Māori. As Gilling states there was:

"a conscious prioritisation of the interests of settlers ahead of those of Maori. The aim was not simply acquiring land so that it would then be held under Crown-derived title and thus extending practical sovereignty: it was to remove the land from Maori and redistribute it to Pakeha settlers".

Refer Gilling (#A118) page 94

124. The Crown wanted the best agricultural land available. As McLean stated to Grey on 22 September 1853:

"The Natives have now disposed of all their extensive districts of waste land beyond Tararua so that every future purchase effected here must include the best parts of the valley and I am endeavouring as far as I can to confine the sales to those parts most available for agriculture and settlement as I know that the rest of the coast line can always be obtained at moderate prices and the land is not essential for any immediate purpose,

The great thing is to acquire the whole of this valley and if it is not done now it may here after be a question of years. I am therefore extremely anxious that two or three additional good blocks should be acquired here so that the question can be finally disposed of …"

McLean to Grey cited in Gilling (#A118) page 94

125. Parties who forge a treaty or alliance seek mutual benefits and advantage from it. Rangitāne lands were opened up because they saw an enforced end to the leasing economy. Squatters were being encouraged and drawn off to the Hawkes Bay. Grey and McLean were actively undermining the leasing economy by encouraging squatters not to pay rental and threatening the use of prosecution under the Native Land Purchase Ordinance of 1846. There is no doubt that Grey and McLean wanted the Wairarapa opened and it was in that context that the hui at Turanganui in 1853 was held and the promises made.

126. Rangitāne submit that their lands were opened up as a result of deliberate cynical strategies employed by the Crown. There can be no doubt that the Crown was applying pressure to the arrangements made between Rangitāne and the squatters. There can be no doubt that the Crown was attempting to entice squatters away to the Hawkes Bay. How then can the promises held out be elevated to a compact, treaty or alliance, when Rangitāne maintain that the Crown was cynically manipulating and undermining the leasing system? It was as a result of overwhelming pressure that Rangitāne opened there lands, not on the basis of a treaty or alliance.

The Nature of the Transactions (SOI 2.4.5, 4.4.1)

127. Rangitāne have not advanced an argument that the pre 1865 Crown purchases were akin to customary "tuku whenua" arrangements.

Refer Rangitāne Opening Remarks (#A92) paras 32 and 33

128. Prior to the 1853-1854 acquisitions informal leasing had taken hold for the better part of a decade. Those leases, whilst they might not align exactly with leases as we understand them today, were certainly marked by written deeds, payment of a rental and terms negotiated with settlers. Underpinning those arrangements however was the fact that Rangitāne and other Wairarapa Māori retained the authority/rangatiratanga over the land subject to the leasing arrangements.

129. The crucial difference between the leases and the arrangements of 1853-1854 is that the latter envisaged a permanent transaction. Turton's Deeds are available and are on the Record of Inquiry at (#A100). Many of the deeds feature elaborate tangi clauses. The deeds frequently use the word 'hoko', denoting a permanent transaction. Just as important is the lack of contemporary protest by Rangitāne as to the essential nature of the transaction. Whilst there was later dispute as to boundaries, surveys and the location of reserves, there is little evidence protesting the essential nature of the transaction.

130. It may be possible to argue that the leasing regime was more akin to a customary tuku whenua arrangement. However Rangitāne agree that the 1853/1854 acquisition encapsulated a permanent conveyance.

131. That is not to say that they were arms length conveyancing transactions as we now understand them. They were bereft of survey plans, done in haste, often signed in Wellington and usually signed by only a small group of the owners. None of these are features of what we might understand as arms length conveyancing transactions today.

Outside Rangatira (SOI 2.4.9, 4.4.9, 4.4.10, 4.4.11, 4.4.13, 4.4.14) – Tautāne and Castlepoint

132. Ballara and Scott in particular have been severly critical of the role Te Hāpuku played in the early Wairarapa purchases. With respect to the Tautāne acquisition they say:

"The purchase of the Tautāne block demonstrates the degree of fraud and avarice of which Donald McLean and Te Hāpuku were capable. It is very clear from the outset Te Hāpuku had not the slightest right to enter negotiations about Tautāne without the consent of the people living on the land. McLean's expertise in the Māori affairs of Hawke's Bay was too great for him not to have realised that Te Hāpuku was running roughshod over the rights of the Porangahau people".

Refer Ballara and Scott (#A19) p 16

133. Te Hāpuku participated in seven Wairarapa purchases most of them on the east coast. Dr Rigby noted that Te Hāpuku's support for McLean undoubtedly facilitated the first wave of purchases and provoked criticism from Wairarapa rangatira Tutepakihirangi and Ngairo.

Refer Rigby (#A33) pages 40 and 42

134. There can be no doubting the early influence of Te Hāpuku and others in paving the way for Crown purchases in the Wairarapa particularly in the Castlepoint transaction and the acquisition of the Tautāne block.

135. In the Hawkes Bay Te Hāpuku was the instigator of the Waipukurau purchase. His experiences at Waipukurau convinced McLean that Te Hāpuku was the paramount Hawkes Bay chief and the principal man for him to work with.

Refer Mohaka Ki Ahuriri Report, Volume 1, page 75

136. Te Hāpuku's propensity to sell land without the consent of the owners/occupiers ultimately led to conflict with other Hawkes Bay rangatira at Pakiaka.

Refer (#E48) Te Hāpuku, Dictionary of New Zealand Biography, page 3

137. McLean fostered Te Hāpuku's enthusiasm for the sale of land. In January 1851 McLean recorded that:

"Hapuku is acting precisely as I have directed him, that is he goes about negotiating arranging with his tribe for the sale of more land".

Refer ibid, page 2

138. Te Hāpuku promised to assist McLean in the acquisition of Wairarapa. He confirmed this during the Waipukurau negotiation when he told McLean:

"I once offered to help you in getting the Wairarapa and in purchasing more land in the district, but I was wrong and I now feel sorry that I have done so. I quite feel and mihi with the people of Wairarapa they get a 1,000 [pounds]

every year for the land and I am only offered £3,000 all together for mine, it will not satisfy my tribe".

McLean journal 17-18 April 1851 cited and referred to the Mohaka Ki Ahuriri Report, page 79

139. Mr Chrisp referred to and produced a letter from Te Hāpuku and others to McLean dated 20 March 1852. In his interpretation of the letter Mr Chrisp opined as follows:

(a) Te Hāpuku wanted a Pākeha settlement close to where he lived;

(b) He wanted to achieve this by having the squatters of Wairarapa moved from there to the Hawkes Bay;

(c) Te Hāpuku was clearly aware of the economic impact that this would have on Rangitāne and other Wairarapa Māori, and he appeared to want to leave them in a vulnerable state;

(d) Te Hāpuku was aware of the strategy that McLean was applying to undermine the leasing economy in the Wairarapa and he had previously discussed that with McLean.

Refer Chrisp (#F11) paras 14(d)-16 inclusive
Refer Chrisp (#F11 (a) & (b))

140. In the letter cited by Chrisp, Te Hāpuku indicates to McLean that he and Hori Niania would go to Castlepoint. He urges McLean to see that the land is offered and to send surveyors.

Refer Second Statement of Evidence of Stephen Chrisp (#F11(a)) attachment "B"

141. Te Hāpuku and Hori Niania travelled to Castlepoint in April 1852. They reported to McLean that whilst Wiremu Pōtangaroa was receptive they were berated by Te Ropiha (of Rangitāne/Ngāti Parakiore). Te Ropiha was so incensed he indicated he intended to ask McLean to investigate the activities of Te Hāpuku and he was going to cease his friendship with all Pākeha.

Refer Stirling (#A48) page 88

142. The influence of Hawkes Bay rangatira in the Castlepoint transaction cannot be doubted when following the signing of the deed, in July 1853, Hori Niania wrote to McLean and claimed that it was "through the influence of the natives of Heretaunga that enable McLean to purchase it". At the same time he added that "for a further £5,000 or £6,000 the remainder of the Wairarapa could be purchased in the same way that the floods sweep obstacles into the sea".

Referred to in Stirling (#A63, #A48, pages 93 and 94)

143. Te Hāpuku's influence was more overt in the Tautāne purchase. The Tautāne deed was signed on 3 January 1854. Te Hāpuku, his brother, his cousin and Hori Niania were amongst a number of Hawkes Bay signatories to the Tautāne deed. As the Dictionary of New Zealand Biography entry records, those sales were undertaken without the knowledge of many of the owner/occupants of the land, and, without the agreement of others outrage spread and protests were made to the Land Commissioners.

Refer (#E48) Te Hāpuku, Dictionary of New Zealand Biography, page 3

144. What then were the complaints about Te Hāpuku, Hori Niania and their roles in the Tautāne sale. The concerns raised were:

(a) That neither of them had customary rights in the Tautāne area;

(b) That they were entering into clandestine sales without the authority or knowledge of the owner/occupants.

145. At a later Māori Land Court hearing at Waipawa in 1887 concerning the Porangahau block, evidence was given of the opposition to the activities of Te Hāpuku and Hori Niania. In particular Henare Matua was critical of the clandestine way in which the sale was completed in Wellington. Henare Matua confirmed that Te Ropiha had threatened to cut off the noses of Hori Niania and Te Hāpuku. Ropiha was later to repeat that threat directly to Te Hāpuku who after hearing of it confronted Te Ropiha

Refer Ballara and Scott (#A19) page 13

146. In the same year the Native Affairs Committee heard a case relating to the Porangahau block. During the hearing Tautāne was frequently mentioned. Native Land Court Judge Alexander McKay was stingingly critical about surreptitious lands sales by Te Hāpuku. He said:

"The Land Purchase Department and the Government frequently elevated persons of the Native race into positions that they were not entitled to occupy".

Refer Ballara and Scott (#A19) page 13

147. During the same hearing Cooper, the District Land Purchase Commissioner, was called to give evidence. He confirmed that the actions of Te Hāpuku and Hori Niania had nearly caused a quarrel. He was asked whether either Te Hāpuku or Hori Niania had any right to sell the Tautāne block without the concurrence of the various hapū, Cooper replied they had no such authority and there was a tremendous row about it. Cooper's evidence was that Te Hāpuku had claimed mana over land which he did not own and that Hori Niania had no right to sell the block.

Refer ibid, pages 14 and 15

148. Cooper also confirmed that many of the Māori owners were averse to selling and held out for some time, principally the Matua family. There was further protest about the Tautāne acquisition led by Rangitāne tupuna namely Hōri Herehere and who petitioned parliament in 1899 and Tawhai Rangiwhakaewa who did likewise in 1901.

Refer ibid, page 15

149. Ballara and Scott in their summary of the acquisition of the Tautāne block have this to say:

"The Government did not offer, at any stage, to let the matter drop despite the fraudulent nature of its initial pay out to Te Hāpuku, and in spite of the expressed wishes of many of the Māori occupants/owners to retain the land. Instead the Māori advance to Te Hāpuku became regarded by Crown agents as a form of pledge or deposit, forcing the owners to continue the sale in order to salvage any advantage from the situation".

Refer ibid, page 16

150. In the traditional history report for Rangitāne o Tamaki nui a Rua Mr Pat Parsons said:

"Te Hāpuku's signature on the deed of sale was long a point of contention. He had no known ancestral occupation links to Tautāne and shouldn't have received any of the purchase money".

Refer (#A68) page 69

151. Mr John Meha gave evidence on behalf of Rangitāne o Tamaki nui a Rua. Mr Meha is a descendant of Te Ropihā. Mr Meha discussed the threat by Te Ropihā to disfigure Te Hāpuku's face.

Refer (#E10) paras 27-32 inclusive

152. In summary it is clear that Te Hāpuku and Niania were influential in the opening up of the Castlepoint purchase. Both of them were also signatories in the Tautāne purchase. There is significant evidence of their right to participate in those transactions being challenged particularly by Rangitāne tūpuna led by Te Ropihā and Henare Matua. There is no evidence either of them had customary interests in or any right to sell Tautāne.

Refer Ballara and Scott (#A19) p 16

Ngaawapurua, Makuri and Ihuraua

153. The influence of Manawatu based Rangitāne chiefs in particular Hoani Meihana and Peeti Te Aweawe is a particular focus of the Wairarapa o Tamaki nui a Rua (Wai 166) claim. In simple terms it is that the Crown sought to deal with the Manawatu based rangatira in preference to resident based rangatira in Tamaki nui a Rua.

154. The phenomenon of dealing with Manawatu based rangatira in preference to Tamaki based rangatira was a feature of the 1858 Ngaawapurua purchase. In April 1858 resident Manawatu chiefs Hoani Meihana and Peeti Te Aweawe were signatories to the Ngaawapurua sale. Rangitāne o Tamaki nui a Rua accept that Hoani Meihana and Peeti Te Aweawe had whakapapa links to their whanaunga in Tamaki nui a Rua. However neither of those tūpuna resided in or had specific interests in Tamaki nui a Rua. They used a Rangitāne whanui scenario as a basis for claims in Tamaki nui a Rua.

Refer Manahi Paewai (#E3) paras 198 and 199

155. The acknowledged leader of Rangiwhakaewa between the 1820s-1870s was Te Hirawanu Kaimokopuna. Mr Paewai described him in his evidence as the ariki of the time for Tamaki nui a Rua. Te Hirawanu led the opposition to the Ngaawapurua sale claiming that Hoani Meihana had acted in direct

opposition to the express desire of the people resident on the land and that he "would not sell in the dark".

Refer Manahi Paewai ibid, para 166
Refer McBurney (#A47) page 64-66 inclusive
Refer Ballara (#A83) page 219

156. In October 1859 the Crown purchased the Makuri block. Makuri was later designated as Puketoi Nos. 4 and 5 when the Tamaki blocks were investigated by the Native Land Court in 1870. The resident rangatira in this area was again Te Hirawanu. A number of concerns are raised in respect of the Makuri purchase they being:

(a) Te Hirawanu and his hapū had the strongest claims to ownership. Despite that they were not recorded as owners;

(b) There is a strong suggestion in the evidence that the transaction was completed in a clandestine fashion. The transaction was completed at Mataikona some 30-35 kilometres distance from the Makuri block. Access from Makuri to Mataikona was difficult as they were divided by a mountain range. Most importantly Te Hirawanu was not present when the signing of the deeds was completed.

Refer McBurney (#A47) pages 69 and 70

157. Later in October 1859 the Ihuraua block was acquired by the Crown. This block had originally been sold by Ngāti Kahungunu interests. Te Hirawanu was not originally included in the purchase price. He protested and the situation was only later remedied when Searancke paid him for his interests.

Refer McBurney (#A47) page 74

158. Crown Officials knew that the resident bona fide owners of the soil were objecting to purchases in the Tamaki nui a Rua/Seventy Mile Bush area.

Cooper when discussing the obstacles to purchase in that area said in correspondence to McLean in 1861:

"I believe that the obstacles to completing the purchase of the blocks arise from objections by bona fide owners of the soil, who have a right to a say in the disposal of it, and who were not consulted by the sellers; until, therefore, these men gave their assent it will be out of the question to move any further in reference to these blocks".

Reference – Cooper to McLean, 20 June 1861, AJHR 1862, cited in McBurney (#A47) page 76

159. From the earliest days of the colony, Crown purchase agents were aware of the complexity and competing interests in Māori land tenure. Rogan, McLean and Fenton confirmed the complicated nature of claims in Māori land to the 1856 Board of Inquiry into the State of Native Affairs. McLean later stated that Crown purchase agents "were all fully appraised of the complexity of customary tenure and conflicting claims in various areas". He assured the Governor that his agents would exercise "utmost caution in negotiating purchases".

Refer McLean to Governor's Private Secretary, 4 June 1856, pp 306-308 cited and referred to in Auckland Rangahaua Whanui District 1 Auckland, page 168

160. In the cases of Castlepoint, Tautāne, Ngawaaparua, Makuri and Ihuraua opposition was expressed, sometimes in quite violent terms, to the ability of non-resident rangatira to sell those lands. There is no evidence that Te Hāpuku, Hōri Niania, Hoani Meihana and Peeti Te Aweawe had interests in, let alone the authority to sell the lands they did. Indeed the opposition expressed to their authority by the likes of Te Ropiha and Te Hirawanu quite clearly indicates they did not have that authority. The fact that the Tautāne and Makuri sales took place at a distance from the actual lands themselves, lends itself to the strong suggestion that those signing as

vendors did not have the authority to do so. Indeed there was protest at the clandestine fashion in which those sales took place.

161. At all times the Crown had an active duty to protect Māori interests including their land. When the Crown wished to acquire land they needed to carry out a searching and adequate investigation of the rights and interests of all those concerned. In these cases, quite clearly the Crown chose to deal with those rangatira who were disposed to sale. Not only did the Crown fail to adequately investigate their interests and authority to sell, they clearly ignored the interests of those resident based rangatira and hapū who opposed sale. In so acting the Crown clearly breached the principle of active protection.

The Adequacy of Price (SOI 4.4.15)

162. Assessing the adequacy of the price paid is of course an imprecise exercise. Having said that the land fund system was of course predicated on the basis that land would be bought "cheaply" from Māori and sold on at a profit to the Crown. As Gilling has stated:

"If the payments were artificially depressed because of McLean's agenda and low budget, then the acreages being bought were markedly under-estimated so that the quantum was further reduced (to the extent that these matters were actually decided by acreage), and then the method of payment resulted in many, even most, owners missing out on even their fair share of that quantum, then there is no way that the sale of land, even on the massive scale of the mid-nineteenth century, could have provided all of the Maori population of Wairarapa Ki Tararua with the funds necessary to give them a foundation for participation in that new economy".

Refer Gilling (#A118) pages 103 and 104

163. As Chrisp has referred to in his evidence Rangitāne were aware that the Crown were exercising a monopoly situation. Mr Chrisp gave the example

of Hikawera Mahupuku of Ngāti Meroiti (Rangitāne) and Ngāti Hikawera (Ngāti Kahungunu) complaining that it was McLean who invariably fixed the price for each block and not the sellers. He also goes on to cite the example of McLean stating, with reference to the purchase of the Huangarua that "I cannot help thinking that this land has been secured at a wonderfully cheap rate". Mr Chrisp also refers to the fact that there was no competitive market, the government had a monopoly and thus Rangitāne had to take the price offered by the Crown.

Refer Chrisp (#F11) para 19

164. Chrisp also goes on to opine that the sale arrangements were unfavourable to Rangitāne and other Wairarapa Māori given that the sale prices received would have been realised in a few short years of leasing. He gave two examples they being the Turakirae and Manaia blocks in which the purchase price would have been received from the rental in 16 and 11 years respectively.

Refer Chrisp (#F11) para 17(a) and (b)

165. As an example of the substantial mark up from on sale, Chrisp refers to the example of Matiaha repurchasing land at a mark up of 230 percent profit to the Government.

Refer Chrisp (#F11) para 20
Refer McCracken (#A46) p 71

Reserves (SOI 4.421-4.424)

166. In 1847 Grey promised Rangitāne and other Wairarapa Māori that "ample reserves" would be made available to them if they sold their land to the Crown.

Grey to Wairarapa chiefs, cited and referred to in Mohaka Ki Ahuriri Report, Volume 1, page 70

167. Grey was personally involved in formulating details of the purchase strategy used by Bell and Clarke in their 1847 purchase attempt. That strategy included ensuring that "ample reserves" were made for Māori. Grey envisaged that these reserves should consist of land for cultivation and be of sufficient extent to enable Māori to lease the land as sheep and cattle runs.

Refer Walzl (#A44) page 192

168. Gore-Browne, the Governor at the time the majority of the 1853-1854 transactions took place indicated that there was:

"A distinct understanding that Maori should not in any time be called upon to alienate any lands so reserved, it being considered essential for their own maintenance and welfare to retain them".

Cited and referred to in Stirling (#A48) p 135

169. Despite the Governor's talking of ample reserves and/or reserves essential for their own maintenance and welfare, McLean seemed to take it upon himself to limit the definition of reserves in his correspondence to the surveyor Mein-Smith when he said:

"I believe the Natives will be demanding extravagant reserves at Opaki, Makoura, Koangawareware and other plains within the valley. In such case you will be good enough to inform them that you are not prepared to agree to such reserves, and that, although they give information respecting them, it is necessary to confer with me before acceding to any beyond what you may consider essential for their welfare".

McLean to Mein-Smith, 20 October 1853, cited and referred to in Walzl (#A44) para 4.292

170. Mr Chrisp after noting the promises by Grey of "ample reserves" indicated that Rangitāne with the absolute trust in the promise of rangatira, agreed in various deeds that the Crown officials could identify the extent and location of reserves. He also notes that the reserves referred to in McLean's correspondence to Mein-Smith were blocks in which Rangitāne had specific interests.

Refer Chrisp (#F11) para 29

171. In practice the amount of land set aside for reserves was as Mr Chrisp states "mean-spirited", almost negligible. Furthermore he points to the fact that the Crown purchased reserves shortly after they were first set aside, the examples he gives being Porotawao, Puketewai and Whakataki.

Refer Chrisp (#F11) paras 30 and 31

G. KOHA CLAUSES (SOI 5)

172. Rangitāne alienated their land in 1853/1854 in return for a bundle of promises by the Crown. The bundle of promises included ample reserves, the promise of an increased European population (as an outlet for trade and labour), the provision of education, medical services, pensions, a mill and the provision of a land fund known as the five percent/koha fund.

Refer Chrisp (#F11) para 22

173. Of the eleven deeds in the 'Wairarapa' portion of this inquiry containing koha clauses, Rangitāne signatories have been identified on seven, the relevant deeds being:

- West side of the Lake Block 1 - Turton's Deeds #88
- Tuhitarata – McMaster's Run – Turton's Deeds #89
- Tauherenīkau No.4 Block – Turton's Deeds #91
- Part Pahaua and Wilson's Run – Turton's Deeds #97
- Wharema No.2 – Turton's Deeds #98
- Whareama Block (part of) – Turton's Deeds #101
- Manawatu Block – Turton's Deeds #102
- Mākoura – Turton's Deeds #103
- West side of the Lake Part Block 1 – Turton's Deeds #109.

174. In Tamaki nui a Rua the Tautāne Deed contained a koha clause.

Refer Turton's Deeds – Hawkes Bay Province, page 498 and #E50

175. In preparing submissions in this section Counsel has had the benefit of reading the draft Ngā Hapū Karanga submissions and agrees with those submissions. What follows are some additional points.

176. The land fund policy in place at the time required the Crown to purchase Māori land cheaply and then on sell it at a profit. The true consideration for the sale of land was the promise of development and infrastructure. Grey, Gore-Browne and McLean were consistent in emphasising that point. As Grey said on 2 September 1852:

"…and as it has also been frequently explained to them that such expenditure of part of the land fund, rather forms the real payment for their lands, than the sums in the first instance given to them by the Government,…"

Grey to Wynyard, 2 September 1852 cited and referred in Walzl (#A44) para 4.176

177. An issue arises **(SOI 5.4.1 and 5.4.3(d))** as to the interface between the general promises held out to Wairarapa Māori and how they related to the promises contained in the koha clauses. One is immediately struck by the similarity between the specific assurances made in the koha clauses and the general promises.

178. A characteristic of the 1853/1854 transactions was the apparent casualness to matters of detail. Apart from Castlepoint no surveys were completed. Thus the boundaries of blocks sold to the Crown were difficult to define as were the reserves supposedly set aside. Little is known of what was promised at the Turanganui hui as no record survives. Why koha clauses were recorded in some deeds and not others there is no evidence for. The lasse-faire approach, prevalent at the time might provide an explanation why koha clauses appear in some of the deeds and not others.

179. Whether the express promises contained within the koha clauses were intended to be for the sole benefit of the respective vendors of each block or a wider group of beneficiary there is very little evidence for. However the evidence of the express written promises contained in the koha clauses together with knowledge that the Crown purchase agents were making

general promises of schools, education facilities, doctors, hospitals etc would suggest that the promises were being made to a wide group of Wairarapa Māori and not simply limited to the vendors of blocks which contained koha clauses.

180. Having said that Counsel agrees with the submissions made by Counsel for Ngā Hapū Karanga that the clauses came to be rigidly interpreted by the Crown whereby the benefits were limited to the vendors of the particular block involved and, secondly were used simply as an income stream rather than for infrastructural development.

181. At the very least the koha clauses assist in overcoming the lack of evidence available from the Turanganui hui as they are a contemporaneous, written record of the type of promises being held out to Wairarapa Māori.

182. If the "true payment", was not the purchase money received but rather the delivery of infrastructural development, that means Rangitāne paid dearly for the development of infrastructure. They paid with their land, they paid in accepting low prices and they paid out of the funds accumulated from the koha clauses.

183. In agreeing to exchange their sovereignty, Rangitāne became citizens of the Crown pursuant to Article Three. Thus they were entitled to services such as health and education and infrastructure like any other citizens of the Crown. Whilst there were limitations on what 19th Century governments could achieve, why should Rangitāne have had to pay for schools, hospitals and any developing infrastructure themselves?

184. As Chrisp said there is ample proof that the benefits were infrequently and ineffectually provided (if at all) and that Rangitāne and other Wairarapa Māori protested about the inadequacy of the services provided and the failure to pay annuities **(SOI 5.4.9)**.

Refer Chrisp (#F11) para 27(b)

185. The Crown not only failed to deliver on the specific promises expressed in the koha clauses (Stirling #A48, pages 184-186 and Walzl #A40, pages 54, 55, 97-98), they also failed to deliver on the promises of:

(a) Schools and education services;

Refer Stirling (#A51) pages 207-209, 208, 211, 215-218, 230 and 243

(b) The Crown failed to provide infrastructure and where it did so it was provided slowly;

Refer Stirling (#A51) page 48

(c) The Crown provided limited medical services;

Refer Stirling (#A51) pages 45, 48 and 49

186. Chrisp sets out in full the relevant Māori version of the koha clause in his evidence (#F11 at para 25). He makes a number of pertinent points they being:

(a) The clauses made reference to the provision of benefits in the plural. His view was that Rangitāne and other Wairarapa Māori would have understood that the Crown promised several mills, schools, hospitals in the contemporary present and future. That interpretation is supported when one looks at the English version of the Turanganui (East Side of the Lake) Deed and the (West Side of the Lake) Deed, which refer to "mills, schools and hospitals";

Refer Chrisp (#F11) 27(a) and Turanganui – East Side of the Lake Deed 582 (#A105) and West Side of the Lake Deed 88 (#A105)

(b) Chrisp also opines that there was evidence that some Wairarapa Māori thought that the koha fund would be an ongoing land tax. He points to correspondence between Ngātuere and Searancke which support this viewpoint. Furthermore he notes that there is no deadline specified in the Māori language text of the Turanganui Deed. The situation was exacerbated by the koha fund not being paid out until nearly twenty years later which may well have given the impression that it was to be ongoing **(SOI 5.4.3(a) and (b))**.

Refer also to Stirling (#A48) pp 185 and 186

187. The Ngā Hapū Karanga draft submission has stated that the proper administration of the fund was subject to the Treaty duties of the utmost good faith and act of protection. Furthermore they submit that the Crown was a trustee with fiduciary obligations on it to act properly in the administration of the fund for the relevant beneficiaries.

188. Counsel for Rangitāne agrees with that analysis and further submits that the Crown had contractual obligations as a result of the koha clauses. Such obligations existed along with the Treaty and fiduciary duties upon the Crown. Although there is debate as to the exact nature and extent of the 1853/1854 transactions, there is no doubt that they resulted in permanent alienation of land to the Crown. They were recorded in deeds which were quite clearly intended to permanently convey land. Part of the consideration for that conveyance was the specific consideration set out in the koha clause. The relevant part of the Turanganui Deed reads:

*"**It is further agreed** to by the Queen of England on her part to pay us at certain periods, within certain years to be decided on by the Governor of New Zealand and ourselves, that is, that we are to have a **certain additional consideration for the lands we have sold, to be paid for us** for the forming of Schools to teach our Children, for the construction of Flour Mills for us, for the construction of Hospitals and for Medical Attendances for us, and*

also for certain Annuities to be paid to us, for certain of our chiefs;…" (Emphasis added).

See English version of Turanganui Deed (#A105)

189. Thus the Crown had a contractual obligation to establish schools, flour mills, hospitals, medical attendances and annuities. In failing to do so they were in breach of their contractual obligations. In failing to properly administer the fund they were in breach of their fiduciary obligations. In failing to adequately deliver at all they were in breach of the Treaty duties of utmost good faith and protection.

190. The Tautāne Deed also contained a koha clause. The Tautāne Deed was signed on 3 January 1854, the agreed price was £1,000. £500 was paid on that day with an agreement to pay the remaining £500 in January the following year.

Refer Turton's Deed, Hawkes Bay Province, page 497

191. The remaining £500 was not paid until 11 March 1858. The payment for that is recorded in Turton's Deeds, Hawkes Bay Province, page 526.

192. A receipt dated 11 March 1858 records that the koha clause was surrendered in return for the payment of an additional £500.

Refer Turton's Deeds, Hawkes Bay Province, page 526

193. Ballara and Scott have opined as follows:

"In permitting the owners to trade their right to 5% of the value of the block after sale, the Crown was significantly failing in its duty under the provisions of the Treaty of Waitangi. Its fiduciary duty included protection of Māori land sellers by ensuring their continued economic viability as a community. Its duty under the Treaty was to represent the interests of the

owners since no other mechanism for their protection was in place. What kind of solicitors or other representatives would advise their clients against their interests? Loss of a major source of such benefits to the community as ongoing income, schools and medical care for a sum of money which, when distributed among more than one 100 people, was less than the current price of a horse, a cart, or plough with draught animal, was, in such circumstances, nothing less than fraud".
Refer Ballara and Scott (#A19) page 8

194. Whilst Rangitāne o Tamaki nui a Rua do not necessarily agree with the allegation of "fraud" in either the civil or criminal sense, they do agree with the suggestion by Ballara and Scott that the purchase by the Crown of the koha clause was in breach of Treaty principles.

H. PRE-1865 CROWN PURCHASE SURVEYS (SOI 6)

195. Counsel has had the benefit of reading the draft Ngā Hapū Karanga submissions on pre-1865 Crown purchase surveys and agrees with those comments.

196. The example of the Makuri purchase illustrates the dangers of the Crown purchasing in the absence of completed surveys. The Makuri block was discussed earlier in these submissions at paragraphs 156-161. No survey was completed for the Makuri purchase although a sketch plan, later appeared in Turton's Plans, Volume II. The majority of the block was defined by rivers with the south western corner located at the confluence of the Makuri and the Tiraumea Rivers. Unfortunately the confluence did not occur where the sketch map indicated, but rather 10 kilometres further to the west at Ngaturi. The discrepancy between the sketch and final surveyed block meant that an additional 10,000 acres was included in the Makuri purchase over and above what was originally intended.

197. Crucially the sketch plan depicted in Turton's plan notes that land to the west of the confluence was "Maori land belonging to Te Hirawanu", the Tamaki nui a Rua based ariki of Rangitāne. Te Hirawanu was not present at, a signatory to or give his permission to the transaction proceeding. As a result of the land being sold "site unseen" McBurney estimates that Te Hirawanu lost 10,000 acres of land in the Makuri sale.

Refer McBurney (#A47) pages 69 and 70 and 209
Refer Paewai (#E3) paras 150-166

I. THE NATIVE LAND COURT (SOI 7-11 INCLUSIVE)

Establishment of the Native Land Court – Tenurial Reform (SOI 7.4.1-7.4.4)

198. Neither Rangitāne claimant group were ever consulted about the introduction of the Native Land Court. The concept of individualisation was not explained to them nor were they informed that the introduction of the Native Land Court would extinguish their traditional customs, social order authority and leadership. Furthermore they were never informed that the process would involve them incurring survey, Court, agent and legal costs which would contribute to the alienation of their lands.

199. As the Mohaka Ki Ahuriri Report said:

> *"Nor was it required by British colonial law, since plural legal systems, with native customary law operating alongside English law, were had been common in most British colonies, such as in North America before the revolution and in Britain's tropical African and Asian colonies. But to satisfy there incessant appetite for Maori land, British colonists in New Zealand were determined to assimilate Maori and their customary law as quickly and as thoroughly as possible into the English legal system. They were intent on destroying communal tenure, often described as 'the communism in land', in favour of individual titles, and their excuse was that Maori had demonstrated a will and a capacity for 'civilisation' that was unusual in native people".*
>
> *Refer Mohaka Ki Ahuriri Report, Volume 1, pages 24 and 25*

200. The Tribunal's Muriwhenua Land Report of 1997 said that:

> *"Maori never consented to the substitution of an alternative tenure system or the diminution of the laws of their ancestors".*
>
> *Refer Muriwhenua Land Report, p 206*

201. In the most recent discussion on the role of the Native Land Court, the Turanga Tribunal said:

"…we find therefore that Maori nationally and in Turanga did not accept in the circumstances of the new economy, the need for an external adjudicator of customary entitlements in the form of the Native Land Court. They were extremely enthusiastic about the opportunities the colonial economy presented to them. They accepted that certainty of title was important for successful participation in the new economy. They accepted too that this would require new techniques for ascertainment of title. They needed, as we have said, officially sanctioned titles for the security they offered. But they overwhelmingly resented the land court to the extent that it was an attempt by the Crown to usurp the ability to decide these matters for themselves both within and between their communities…;"

The Turanga Tribunal went on to say:

"The court was imposed on an initially unsure an ultimately unwilling people in breach of their tino rangatiratanga guarantee in the Treaty of Waitangi. As the Tribunal in the Taranaki Report found:

The Treaty vested the authority of Maori lands in Maori, not in the Native Land Court, and that must have included the right of Maori to maintain their own way of reaching agreements. To the extent that it presumed to decide for Maori that which Maori should and could have decided for themselves, the Native Land Court encroached on Maori autonomy and was acting contrary to the Treaty of Waitangi. It follows that the legislation that permitted of that course was also inconsistent with Treaty principles".

Refer Turanga Report, Volume II, p 425

202. The above quotes are equally apposite as far as Rangitāne are concerned. Within a very short space of time after its commencement in the Wairarapa, Rangitāne were protesting at its operation. Within five years of its inception Rangitāne sought to boycott the Court. Their alternatives to the Native Land

Court were local rūnanga and kōmiti. Rangitāne should have been permitted the ability to determine matters of customary interests and title themselves. When they attempted to they were received dismissively by the Court. Examples of that dismissive attitude are:

(a) Judge Munro refusing to acknowledge the local kōmiti in February 1872;

Refer Goldstone (#A86) page 97

(b) The dismissive comments made by Rogan during the hearings of the Seventy Mile Bush blocks at Masterton in 1871;

Refer Robertson (#A27) page 95 and 96

Rangitāne o Wairarapa (Wai 175)

203. The total acreage in the inquiry district, excluding water areas is 2,571,638 acres.

Refer Ellis and Small (#A70) p 18

204. The claim area for Rangitāne o Wairarapa is 1,493,924 acres. By 1865 the Crown had acquired 1,145,396 acres in the Rangitāne o Wairarapa claim area. The land remaining as at 1865 was 348,528 acres or 23% of the original claim area. By 1900 only 158,512 acres or 11% of the claim area remained in Rangitāne ownership.

Refer to table at SOI 22.3.3

205. These acreage figures bear out the point which Rangitāne made in opening submissions (#F22, para 10(c)) and Chrisp (#F11, para 32) that the advent of the Native Land Court, the title investigations and subsequent sales were in effect a "mopping up" exercise of the remaining Rangitāne land base.

206. Nevertheless significant issues remain concerning the advent of the Native Land Court they being: the introduction of radical tenurial reform; reserves that were set aside being inadequate in size, difficult to access and easily sold; the emphasis on individualism resulted in fractionalisation of title; the heavy debt burden as a result of survey, Court, legal, land agent and interpreters fees and unscrupulous tactics used in order to obtain Rangitāne land. A feature of this era was that the Crown continued to be the largest purchaser of Rangitāne lands.

207. Rangitāne o Wairarapa have had the benefit of reading the Ngā Hapū Karanga draft submissions both overview and the issues analysis section on the Native Land Court and concur with the well-made submissions. Thus they do not propose to repeat those submissions other than to highlight points pertinent to them.

Reserves (SOI 9.4.5 and 11.4.5)

208. Reserves set aside during the Native Land Court era were inadequate in size, restrictions originally placed on reserves were subsequently removed, title for reserves was individualised and then alienated to the Crown and/or private purchasers.

Refer Chrisp (#F11) para 33

209. Of the reserves created during the Native Land Court period Gawith and Hartley record an incomplete list of seventy reserves existing during the period 1865-1880. During the decade 1880-1900 fifteen had restrictions removed, and a further eleven unrestricted reserves were sold or partitioned and partially sold.

Refer Mitchell (#A30) p 51

210. Chrisp in his evidence gave the example of the Ngā Tāhuna reserve of approximately 1,500 acres being reserved from the Castlepoint purchase in 1853. The reserve was divided into two blocks, the first block of 1,400 acres was awarded in 1869 to Atareti Matini and nine others of Ngāti Hāmua. This block was not declared inalienable despite its reserve status and was later sold to Herbert Wardell the local magistrate. A second block of 67 acres was a mahinga kai. It was awarded to Ihaia Whakamairu and nine others of Ngāti Hāmua and declared inalienable. The owners applied to have restrictions lifted as it was too far from the kāinga and landlocked by the 1870s. Ultimately the restrictions on the alienation were lifted and the block was sold.

Refer Chrisp (#F11) paras 35-37

Individualisation/Fragmentation (SOI 7.4.5-7.4.10 inclusive and 7.30)

211. Rangitāne o Wairarapa gave evidence of the impact of titles being awarded to individual grantees and subsequent succession and fractionalisation of title.

212. The Otawhake Reserve was a 259 acre reserve, reserved from the 1853 Manawatu purchase. Title was granted to Matini Ruta who in 1873 entered into an agreement to sell the land to a European publican, Cattell for £160. When the matter came before Trust Commissioner Heaphy he discovered that the reserve had been intended for the Hāmua hapū, that there were persons with rights in the reserve other than Matini and the land was being cultivated. Heaphy, whilst initially refusing to endorse the transaction, later did so in September 1874. The reserve also contained a Hāmua urupā.

Refer Stirling (#A49) page 101
Refer Chrisp (#F11) page 40

213. This example clearly demonstrates the danger of the "ten owner rule" and individualisation of title. The reserve had been intended as a hapū reserve, it

contained cultivations and an urupā. In those circumstances Hāmua's tribal right should not have been extinguished by an individual.

214. The Te Oreore block was owned by Ngāti Hāmua. Four subdivisions were created during the 1869 title investigation of the parent block. In the following thirty year period individual interests were partitioned out of the subdivisions and sold. By 1900 barely a tenth of the original block remained in Rangitāne ownership.

Refer Chrisp (#F11) paras 41-44 inclusive
Refer Stirling (#A59) pages 117-121 inclusive

215. Chrisp gave evidence that lands at Te Oreore remaining in Rangitāne ownership today fall into two broad categories they being:

(a) Small blocks that are marae reserves and urupā;

(b) Long thin blocks referred colloquially to as "bowstring blocks". In the remaining Te Oreore blocks the largest is just under 20 acres and the smallest 0.1 acres.

Refer Chrisp (#F11) para 45

216. Punga Paewai gave evidence of attempting to assist his wife's whānau and others in navigating the minefield that is the legacy of Māori ownership today. He gave evidence of being involved in three different blocks of Māori freehold land. A feature of them all was that succession and fractionalisation of interests had resulted in an uncontrollable and chaotic ownership position. As a result leases were not formalised, income was not being received and it was difficult to ascertain who was entitled to rental entitlements.

Refer Paewai (#F8) paras 13-24 inclusive

217. That small case study demonstrated clearly that lands remaining in Rangitāne ownership today are small and uneconomic. Fractionalisation has resulted in a chaotic ownership scenario. Little wonder then that Mr Paewai introduced this section of his evidence with the question, "asset or liability?"

218. It is a pity Mr Goldstone's evidence concerning the Native Land Court (#A86) did not continue beyond 1882. Had it done so what would have emerged was that the work of the Native Land Court post-1882 was increasingly dominated by succession applications. Indeed there is a hint of that in Mr Goldstone's report at para 497 when he states that "by 1882 the business of the Court was to a great extent taken up with hearing and processing succession applications" (refer Goldstone #A86, page 497).

219. Indeed logically this must be the case, as the first grantees died, succession applications must have become the predominant business of the Court. With each generation succession was the main driver for subdivision into smaller and smaller blocks. Thus today a feature of Wairarapa land blocks is subdivisions whose titles read like telephone books, examples being Te Oreore 2 Sub 2B3B1E1 and Te Oreore 2 Sub 2B3B sec 1C.

Refer Chrisp (#F11) para 45

Expense/Debt – Survey Costs (SOI 7.4.26, 7.4.27, 8.4.3 and 8.4.6)

220. In the evidence they produced Rangitāne were able to point to examples of their lands incurring heavy Court costs and survey fees.

Refer Chrisp (#F11) paras 47-48
Refer Stirling (#A49) pages 64-72

221. Okurupatu was situated north of Masterton and adjoins the Te Oreore block. It has particular significance to Ngāti Hāmua. There are pā, kāinga, mahinga kai and wāhi tapu sites situated on that block. The block was claimed by

various hapū within Ngāti Hāmua and became heavily contested in the Court process.

Refer Chrisp (#F11) paras 47-48

222. As Stirling states in the two decades between 1870-1890, there was an endless round of hearings, rehearings and appeals. He sums up the effect of such protracted dispute as follows:

"Okurupatu also epitomises the ruinous financial and human cost of such a protracted dispute. The survey charges owed were significant in themselves, with £213 for the 1881 survey £204 for the main 1895 surveys and a further £73 for the other 1895 surveys. That was just the amount unpaid at the time of hearing each claim, with other amounts probably paid to surveyors prior to hearing. The court costs would also have mounted up over the many weeks of protracted hearings, while there were additional expenses such as agents, travel to Wellington and accommodation there with respect to petitions, and accommodation and food cost during the numerous and protracted hearings".

Refer Stirling (#A49) page 72

223. Rangitāne also point to the Akura block as an example of accumulating Court, survey costs and the cost of attending Court. The Akura block claimants and counterclaimants were of Ngāti Hāmua hapū.

Refer Chrisp (#F11) para 49

224. In 1872, 52 acres of the 1,000 acre Akura block was sold to Bannister. According to Trust Commissioner minutes Bannister stated:

"I am the purchaser of 52 acres at Akura. The whole of the £130 was paid to the natives in this manner. I paid for the survey of the large block of about 1,000 ac. and paid the expenses of the Court, and kept the natives

while the three separate sittings of the Court took place at Greytown and Masterton. The natives set aside 52 acres next the Bishop's Reserve to compensate me for my trouble and outlay".

Minute cited and referred to in Goldstone (#A86) page 202, para 555

225. Rangitāne also point to the Taumatarai block as an example of survey expenses leading to sale. In that block survey costs totalled £74. Following investigation the owners mortgaged the block to James Gilligan to pay off the survey costs. Gilligan then entered into a lease and later purchased 566 acres of the land.

Refer Goldstone (#A86) para 557

226. The case study examples of the Akura and Taumataraia blocks demonstrate a connection between costs incurred in the Native Land Court process, those costs being privately financed and land then being subjected to alienation in favour of the private third party who provided the finance. In the absence of any other capital, the price Rangitāne paid was with their land.

227. Rangitāne also point to the example of the Kopuaranga block, a block situated north of Masterton. That block was acquired for public works. Legislation in place at the time required title investigation before compensation under the Public Works Act could be paid. The title investigation required a survey. As a result the owners were charged with a £20 survey lien as well as £14 in Court fees.

Refer Chrisp (#F11) para 50

228. Thus Rangitāne lost out twice. They lost out on the first occasion by having their land acquired for public works. Secondly the compensation, which should have been available to them in full was reduced by survey and Court costs.

Rangitāne o Tamaki nui a Rua (Wai 166)

229. The Rangitāne o Tamaki nui a Rua claim area is 1,077,714 acres. By 1865 381,049 acres had been acquired by the Crown in pre-1865 purchases, the blocks being Castlepoint (the Puketoi portion), Tautāne, Makuri and Ihuraua.

Refer SOI table that appears at para 22.3.3
McBurney (#A47) pages 42-56 inclusive

230. The pre-1865 Crown purchases in Tamaki nui a Rua had been noteable for the opposition from Te Hirawanu Kaimokopuna and Te Ropiha.

Refer McBurney (#A47) pages 58, 64 and 65

231. There were no Crown purchases of Tamaki nui a Rua land in the 1860's. However Te Tapere-nui-o-Whātonga otherwise known as the Seventy Mile Bush became increasingly strategically important in order to complete the infrastructural link between the Hawkes Bay and Wellington provinces.

Crown Purchasing and the Native Land Court Era 1865-1900 (SOI 9.4.4)

232. On 6 September 1870, Locke and Grindall attended a hui at Waipawa. The purpose was to discuss the government's proposal to purchase the Tamaki blocks. Locke is quoted as saying:

"The reason why the Government wants to buy this land is to open it up for settlement and to also build some scenic roads from Napier through to Wellington, and to the western side too. The Government says that it will build a railway through the bush. However, I cannot give you a definite word on that at the moment – however as to an ordinary road, I can say that that will certainly be completed. The Government does not wish to buy from

you all of that land; however it does want some large areas so that the Government's improvement of the land is meaningful".

Refer (#A97) extract from Te Waka Māori – 20 September 1870, page 4

233. J D Ormond stressed in correspondence to McLean on 30 September 1870 the importance of acquiring the bush blocks to enable the construction of a railway:

"I cannot learn much about the ownership of any Wairarapa Natives, although I expect they do come in there, and may give trouble, as they seem in a sulky state. If any of them are interested it will be the old Ritimona [Te Korou]. Please take care the matter is properly attended to as any mess with it would seriously interfere with our railway plan".

Refer Ormond to McLean, 30 September 1870, cited and referred to in McBurney (#A47) page 135

234. On 1 June 1871 the Crown acquired 12 blocks of land totalling 231,430 acres known as the Tamaki purchases. On 10 October 1871 the Crown acquired a further 120,631 acres in 10 blocks known as the Seventy Mile Bush purchase. By the end of 1871 the Crown had acquired 352,061 acres out of a total of 696,665 acres which remained in Tamaki nui a Rua Māori ownership as at 1865.

Refer McBurney (#A47(b)) pages 2-4 inclusive

235. Map 4 of the Rangitāne Map Booklet #E39 illustrates those blocks acquired by the Crown in the Tamaki nui a Rua pre 1865 and those blocks acquired in the Seventy Mile and Tamaki sales of June and October 1871.

236. The tables provided by McBurney confirm that until 1900 the Crown was easily the largest purchaser of Māori land in Tamaki nui a Rua. Indeed private sale does not seem to be a feature in the Tamaki nui a Rua district until the decade 1890-1899.

Refer McBurney (#A47(b)) Appendix 1

237. The Crown have denied that it had a policy "to acquire all Māori land between Hawkes Bay and Wellington by 1900". At the very least the Crown wished to acquire large amounts of land in both the Tamaki nui a Rua and Wairarapa districts. Locke had admitted that to the Waipawa hui on 6 September 1870. McLean had indicated in the Wairarapa context that the Crown intended to acquire virtually all of the district and certainly the best agricultural land in the Wairarapa valley. By 1871 the Crown had acquired approximately 75% of the Wairarapa district, most of the east coast and half of the bush blocks. Whilst their policy may not have been to "acquire all of the land between Hawkes Bay and Wellington" in reality by the 19th Century that is exactly what the Crown had achieved.

Outside Rangatira (SOI 7.4.13, 7.4.14, 7.4.17, 9.4.2(d)(iii))

238. A feature of the pre-1865 Crown purchases in Tāmaki nui a Rua was the opposition to sale by resident based hapū. In summary resident based hapū led by Te Hirawanu Kaimokopuna and Te Ropiha were opposed to the role Hawkes Bay rangatira Te Hāpuku and Niania played in the acquisition of Castlepoint and Tautāne. They also opposed the role Manawatu based chiefs Hoani Meihana and Peeti Te Aweawe played in the sale of Ngaawapurua, Makuri and Ihuraua. Those tensions were to resurface many times during the Native Land Court era.

239. Professor Ballara discusses the occupants of the Tamaki nui a Rua area. She concludes that Ngāti Rangiwhakaewa lived mainly in the Tamaki area with claims in the Tahoraiti, Mangatoro and Kaitoke blocks. Other names associated with Ngāti Rangiwhakaewa were Ngāti Mutuahi and Ngāti

Pakapaka. She refers to their chief who between 1820 and the 1870s was Te Hirawanu Kaimokopuna and the later prominence of the Paewai family. She also refers to another important resident hapū, Ngāti Parakiore.

Refer Ballara (#A83) pages 219 and 220

240. At pages 157-158 of her report Professor Ballara discusses the use of the name "Rangitāne" during the Native Land Court investigations. She notes that the description "Rangitāne" referred to the Manawatu based hapū led by Hoani Meihana. She notes that no group descended from Rangitāne, living east of the Tararua and Ruahine Ranges (the Tamaki nui a Rua district) called itself by the name "Rangitāne". However many of the witnesses in the Land Court traced their descent from Rangitāne the tupuna.

Refer Ballara (#A83) pages 157-158

241. Ballara and Scott refer to these distinctions and the bitterness that developed between Rangitāne living west and east of the Tararua Range:

"One of the problems with identifying the Rangitāne tribe as the main owners of the Seventy Mile Bush is that Rangitāne leaving [sic] east of the mountains were often bitterly resentful of the chiefs of Rangitāne living west of the mountains, such as Hoani Meihana Te Rangiotū, Peeti Te Aweawe and others. These chiefs, who were fighting land battles of their own against Ngāti Raukawa and other peoples who had invaded the west coast in the 1820's and established claims to land there, were often willing to sell the land east of the mountains for revenue, since they did not normally occupy lands to the east of the ranges, and their claims were restricted to the tenuous one of common descent from Rangitāne. Numerous efforts were made in the land court battles for the blocks (see below), to restrict ownership of the blocks to eastern descendants of Rangitāne such as Rangiwhakaewa, Irakumia, Parakiore and others. But they were doomed to fail, because Crown agents were happy, of course, to deal with willing

sellers, and could fall back on the argument that Rangitāne were 'all one tribe".

Refer Ballara and Scott (#A18) page 7

242. Hoani Meihana and Te Ropiha were traditional rivals. Both had been implicated in the death of each other's relatives. It was Te Ropiha who had threatened to disfigure Te Hāpuku for his role in selling the Tautāne block. Te Hāpuku was also implicated in the death of Te Hirawanu Kaimokopuna's grandchild in the 1830s.

Refer McBurney (#A47) page 212
Refer Ballara and Scott (#A18) page 13
Refer Dictionary of New Zealand Biography (#E48)

243. Rangitāne o Tamaki nui a Rua accept that the Manawatu based rangatira had whakapapa links to the tupuna Rangitāne, however they did not reside in Tamaki nui a Rua. Furthermore they used a Rangitāne whanui scenario as a basis for their claims to Tamaki nui a Rua lands. Their view is that they had little or no interests in Tamaki nui a Rua lands and were over represented in Crown grants at the expense of local rangatira.

Refer Paewai (#E3) para 200

The Tamaki Blocks

244. In 1870-1871 a series of hui were held at Waipawa to discuss the proposed Crown purchase of the Tamaki blocks. Copies of newspaper articles which appeared in Te Waka Māori are on this Record of Inquiry at (#A97).

245. The following points emerge from those newspaper articles:

(a) When referring to "Rangitāne" the description is of Rangitāne based in Manawatu led by Hoani Meihana and Peeti Te Aweawe;

(b) Tamaki nui a Rua based hapū were Ngāti Rangiwhakaewa, Ngāti Pakapaka, Ngāti Mutuahi and Ngāti Parakiore.

(c) The newspaper articles reveal clear conflict between those who wished to sell and those who did not. Ngāti Pakapaka and Ngāti Parakiore would not agree to sell. The Manawatu based rangatira Hoani Meihana and Peeti Te Aweawe supported sale.

Refer (#A97) page 4 last para and first para on page 5

246. The same tensions were also present in the subsequent Native Land Court hearings. The Tamaki blocks were investigated by the Native Land Court at Waipawa between 8-11 September 1870. The minute books give the impression of general agreement having been reached amongst claimants prior to the investigation, however in the subsequent Court cases that followed and protest that eventuated, the case for prior agreement is overstated.

Refer McBurney (#A83) page 47 and pages 106-121

247. Karaitiana Takamoana a chief of the Heretaunga acted as the Government's agent in organising the sale of the Tamaki blocks. Hoani Meihana was recruited by Ngāti Mutuahi. The cross-claimants were Ngāti Rangiwhakaewa, Ngāti Pakapaka and Ngāti Parakiore.

Refer McBurney ibid, pages 83 and 106

248. A feature of the investigations was the success rate of non resident rangatira being appointed as grantees in the blocks. One example was Karaitiana Takamoana. His inclusion in many of the Tamaki blocks was to cause resentment. Manahi Paewai, the tupuna, was later to state that he could not understand why Karaitiana was put into so many blocks when he had no

"take" in the land. He stated that the reason he did so was because he was a man of influence and capable of dealing with the Europeans.

Refer Parsons (#A68) page 75

249. Another feature was the exclusion of resident based rangatira opposed to sale. A good example of that is what occurred in the investigation of the Te Ahuaturanga block.

Refer McBurney (#A47) page 107

250. Ngāti Rangiwhakaewa/Ngāti Pakapaka/Parakiore opposition was led by Aperahama Rautahi. He wanted to limit ownership to resident based hapū who lived and cultivated the block. He was opposed to selling land. He was not admitted as a grantee in either of the Maharahara and Te Ahuaturanga blocks.

Refer McBurney ibid, page 107

251. Protest concerning the investigation was almost immediate. It was led by Te Ropiha who wrote to Chief Judge Fenton on 14 October 1870 strongly disapproving of the procedure during the Tamaki hearings and criticising the outcome of the hearing on a number of accounts. He was critical of the fact that no survey had been carried out and more importantly that Ngāti Rangiwhakaewa/Ngāti Parakiore had not been admitted to the blocks. According to Ropiha "everyone knew of their interests in those blocks".

Ropiha to Fenton, 14 October 1870 cited and referred to McBurney ibid, pages 107 and 108

252. Opposition to the Native Land Court hearings and later Crown purchase of the Tamaki blocks continued. Ropiha's letter was simply one of a number from Tamaki nui a Rua Māori objecting to the investigation other examples were:

(a) Correspondence from Nōpera Kuikāinga to Chief Judge Fenton in July and August 1871;

(b) On 26 August they again wrote to Fenton complaining that persons who had no interests in the land were selling their pieces and that Ormond and Locke constantly turned to persons who agreed to sell.

Refer McBurney ibid, pages 119 and 120

(c) Henare Matua wrote to Chief Judge Fenton on behalf of himself and the Tamaki rūnanga. He was critical of the non-inclusion of Aperahama's claim and the Court's rejection of the claims of non-sellers.

Refer McBurney ibid, page 121

253. From this time on Henare Matua became a focal point for opposition to the Native Land Court and sale to the Crown. In 1873 Henare Matua led evidence before the Hawkes Bay Native Lands Alienation Commission. He referred to the non-inclusion of Te Ropiha, Aperahama, Rautahi, Wi Matua and Hōri Herehere. He was critical of the fact that in the Te Ahuaturanga case Te Ropiha and Aperahama's non-inclusion became a precedent for their non-inclusion in any block. Henare Matua said:

"They [Te Rōpiha and Aperahama] were defeated in this instance, and their defeat would remain on this and every other block in which they or their descendants were interested. Neither of those people or their descendants were allowed on any of their blocks. Did they oppose on any of the other blocks? No; that was left as a (tanira) ruling case".

Refer AJHR 1873, G-7, Hawkes Bay Commission, cited and referred to in McBurney (#A47) pages 11 and 12

254. Concerning the Umutaora block Matua went on to say:

"After the investigation some people were crying because their lands had been taken by the people. Only one person belonging to Aperahama's side was admitted, Mata Te Opukahu, and a number of others who had claims on the land were left out. The investigation of the remaining blocks was the same as I have mentioned. When they went to the Puketoi block it was just the same. Two blocks adjudicated on were given to Aperahama's party – Tiratu, 7,700 acres, and Otanga, 4,400 acres. Those were the only blocks they had left to them, all the other lands were taken. What I have to say blaming the Government is this: the Court had not any authority (mana) in reference to these decisions, it was the Government. I blame the Government for only acting with one party, and preventing the surveyor, whom we asked Mr Fenton to send, from surveying the land".

Refer ibid

255. Ballara and Scott have discussed the investigations. They confirm that non resident rangatira such as Karaitiana Takamoana, Hoani Meihana, Peeti Te Aweawe, Nepe Apatu and Hōri Niania, all outside rangatira were included as grantees in all 12 of the blocks.

Refer Ballara and Scott (#A18) pages 23-30 inclusive

256. On virtually every occasion there was objection, the objectors were not included as grantees, the examples being:

- Puketoi No. 1 – Objectors Henare Matua and Aperahama Rautahi;
- Puketoi No. 5 – Claimed by Henare Matua – objected to by Locke on behalf of the government;
- Te Āhuatūranga – Objected to by Aperahama Rautahi and Te Ropiha;

- Māharahara – Objected to by Aperahama Rautahi;

- Manawatu No. 1 – Objected to by Hori Herehere, Rāwinia Te Ōtene Tākihi and Aperahama Rautahi. The claims of the first three were admitted, Aperahama withdrew his claim but only after Rāwinia was admitted.

Refer Ballara and Scott (#A18) ibid

257. The influence of the Crown agent Locke is clear. He objected to the claims of Henare Matua in respect of Puketoi No. 5 on behalf of the government. It was Locke who had attended the Waipawa hearing on 6 September 1870 in an attempt to persuade those gathered to sell to the government. He was accompanied by Grindall who also happened to be the editor of the Māori sponsored newspaper, "Te Waka Māori". As an interesting side note the report of 20 September 1870 notes that Locke and Grindall were accompanied by Judge Rogan. It is difficult to believe that Rogan who sat in the subsequent investigation with full knowledge of those who were objecting was able to bring an impartial mind to the proceedings.

258. In summing up the investigation process into the Tamaki blocks Ballara and Scott conclude as follows:

"These brief hearings, held for many square miles of territory over three days, were hardly adequate investigations of the Māori ownership and occupation of the Seventy Mile Bush. Certificates of Title for all 12 blocks were ordered by Judge John Rogan, at Waipāwa, under the Native Land Act of 1865, on 10 and 11 September, 1870, in each case to ten or less people. This Act which restricted the number of owners in each block to 10 people, despite the huge size of the blocks concerned, and the large numbers of people interested in them, disempowered many Rangitāne people. Because of the lack of restrictions on alienation on all of the blocks save Tāmaki and Piripiri, and because grantees including chiefs of the western Rangitāne

were enabled to treat the blocks as their private property, eastern Rangitāne as a people were powerless to retain sufficient lands for themselves".

Refer Ballara and Scott (#A18) page 30

Seventy Mile Bush Blocks

259. The Seventy Mile Bush blocks were heard by Judge Rogan in Masterton in September 1871.

260. A resident Rangitāne rightholder, Nireaha Tamaki, was unable to attend the sittings, as he was detained by flooding. Immediately following the investigation Tamaki petitioned Parliament. The Legislative Council Committee convened to hear his petition on 18 October 1871. The terms of his petition and extracts from the transcript of the hearing appear as Appendix 2 to the evidence of Robertson (#A27, pages 89-96 inclusive),

261. A key aspect of Nireaha's petition and evidence was that he had interests in the lands investigated in particular in the Pahiatua, Kaihinu, Ruawhenua, Pipirihi, Tirohanga and Tutahihara lands. He strongly objected to the Manawatu based Rangitāne who were awarded as grantees. An interesting feature of the make up of the Legislative Council Committee was that Ormond and McLean were members, both of whom had campaigned for the Crown to purchase the bush blocks. It is readily apparent that they did not see any conflict of interest. According to Robertson there is no account of the Council's finding and no rehearing was ever granted. It is clear from the petition and the evidence given by Nireaha Tamaki that had he been able to attend the original investigation there would have been strong opposition to the Manawatu based rangatira.

Refer Robertson (#A27) Appendix 2, pages 89-95 inclusive

262. At the start of the Native Land Court hearing there was an attempt to halt the Court proceedings. This was the first instance of the attempted boycott of the Native Land Court. Rogan in addressing the Court made it quite clear that if anyone did not support the boycott and wished their claims to be heard, there was nothing other Māori could do to prevent the case being heard. In those circumstances Peeti Te Aweawe proceeded with the Mangahao case, the first to be called.

Refer Stirling (#A50) page 12

263. There was an objection during the Mangahao case by Piripi complaining about the Manawatu based Rangitāne:

" they have taken all Manawatu and have crossed over here and have not considered me in the least. I have a claim to this land. I do not wish my name to be written down".

Wairarapa Native Land Court Minute Book 2 pp 1-6 cited and referred to in Stirling (#A50) page 13

264. Rogan who presided over these sittings at the Native Land Court at Masterton rejected the possibility of a rehearing. In correspondence on 15 November 1871 he stated:

"The Native Land Court held at Masterton lasted for a considerable period and there was a good attendance of Natives from all Wairarapa and other places. Every opportunity was afforded to those who desired to prefer claims to come forward. There was a Committee formed for the purpose of obstructing the business of the Court, and several protests were made at the time which were disregarded. As I have never been in Wairarapa but once and know little of that district or the Natives, I may possibly be doing an injustice to the Wairarapa Natives. Yet I cannot see that these people are Entitled to a rehearing when they did not as far as I Know recognise the Court which waited for their convenience in every case. To grant a rehearing would cause an amount of confusion and dissatisfaction in

perhaps all the cases which have been disposed of in the 70 Mile Bush as the land has been purchased by the Government".

Rogan to Walsh Halse cited and referred to in Robertson (#A27) pages 95 and 96

265. Robertson (#A27, pp67-80) discusses the investigations of the Seventy Mile Bush blocks. An examination reveals the predominance during these hearings by the Manawatu based rangatira Hoani Meihana and Peeti Te Aweawe. They were included as grantees in 10 out of 11 blocks namely:

- Mangahou No. 1;
- Mangahou No. 2;
- Eketahuna-Manawatu-Wairarapa No. 1 Block;
- Ngātapu No. 1;
- Mongorongo;
- Pahiatua;
- Pukahu/Manawatu-Wairarapa No. 2;
- Kaihinu No. 1;
- Kaihinu No. 2;
- Mangatainoka/Manawatu-Wairarapa No. 3 Block

Refer Robertson (#A27) pages 67-80 inclusive

266. It is significant that in the case of the Manawatu-Wairarapa No. 2 block the Ngāti Hāmua rangatira Karaitiana Te Korou appeared in opposition to Hoani Meihana. Rogan did not accept the evidence and claims of Karaitiana Te Korou and he received no interests in that block.

Refer Robertson ibid, pages 75 and 76

267. Following the investigation by the Native Land Court there was protest by way of petition and correspondence. The petition of Nireaha Tamaki was

lodged with Parliament. Te Rangiwhakaewa filed a petition as did Te Otene Matua. None of the petitions were successful.

Refer Stirling (#A50) page 14

268. The issue of outside rangatira resurfaced during subsequent partition hearings concerning the Mangatainoka block. Title had orginally been awarded to Peeti Te Aweawe and others.

Refer Robertson ibid, pages 78 and 79

269. Following investigation the Crown steadily acquired interests and in February 1875 the block came before the Court for partition. During the subdivision hearings Nireaha Tamaki claimed a predominant interest for the Tamaki nui a Rua based hapū. Nireaha opposed to the claims of Hoani Meihana on the basis that he had never occupied the land. Nireaha Tamaki demanded that the name of the tribe Rangitāne (in reference to the Manawatu based Rangitāne) should be thrown down in favour of the five resident hapū.

Refer Ballara (#A83) page 158

270. Although Nireaha Tamaki received interests in some of the subdivided blocks, he was aggrieved by the Court ruling diluting his interests. He was also aggrieved that Hoani Meihana was prepared to sell part of the Mangatainoka blocks in which Nireaha Tamaki and his people had cultivations and urupā. He corresponded with McLean in June and July of 1875 and threatened to resort to arms should the issue not be resolved.

Refer McBurney (#A47) pages 145 and 146
Refer McBurney (#A24) pages 8 and 9

271. The cases of the Tamaki and Seventy Mile Bush blocks reveal the following points:

(a) The Crown wanted to open up the bush bocks to complete infrastructural development and facilitate settlement;

(b) Crown agents were in negotiations, prior to Native Land Court sittings with those rangatira disposed to sale;

(c) The Crown agents promoted those rangatira disposed to sale, who in the main, were non-residents;

(d) The Court failed to undertake a comprehensive and adequate investigation of the rights and interests of the resident based rangatira. The Court effectively chose "winners" and "losers". Thus resident based rangatira, opposed to sale, received little or no interests in the Tamaki and Seventy Mile Bush blocks;

(e) Crown purchase agents were influential during the hearings;

(f) The Court dismissed the attempt at boycotting its hearings;

(g) The Court when faced with compelling evidence of Nireaha Tamaki's inability to attend, refused to grant a rehearing;

(h) Correspondence and petitions evidencing protest were unsuccessful.

272. The issue of rights and interests in Tamaki nui a Rua lands was to continue to bedevil the Native Land Court for the remainder of the 19th Century. In subsequent hearings before the Native Land Court the issue continued to be raised including in applications brought under the Native Equitable Owners Act 1886.

273. Later partition hearings brought to the surface deep divisions which existed amongst those that attended the Waipawa hui of September 1870, examples being:

(a) The Piripiri block. A case was brought under the Native Equitable Owners Act 1866 by Manahi Paewai and Hōri Herehere who stated that resident owners were not included in the original grant;

Refer McBurney (#A47) page 237

(b) Tahoraiti. That case is notable for the concession by Judge Gudgeon that the original investigation did not definitively ascertained the owners. In that case Manahi Paewai complained of the presence of Karaitiana Takamoana who had been listed as a grantee in many of the Seventy Mile Bush blocks. He said that he did not have any "take" to the land;

Refer ibid, pages 243 and 244

(c) The Manawatu No. 4 block (Tipapakuku). This case came before the Native Land Court on 4 May 1894. The usual protagonists were there including Hoani Meihana, Hōri Herehere, Nireaha Tamaki. Hoani Meihana was opposed by Ihaia Ngārara. Ihaia's case was that Hoani Meihana and Peeti Te Aweawe had no valid claim to the land, they had simply been put in as grantees for "aroha", after appearing as advocates in the Te Ahuaturanga case of 1870. The case was significant for reference to the large hui of 1870 that preceded the Native Land Court hearing. Ihaia's evidence was that the meetings were deeply divided and there was a great dispute outside the Court amongst the tribes assembled there. The judgment refers to the fact that many of the grantees were "selected without reference to individual rights" and that it was not pretended that all who had a right were admitted into title;

Refer McBurney (#A47) pages 289-295 inclusive

Increased Conflict Between Whānau, Hapū and Iwi (SOI 7.4.8)

274. The above discussion clearly demonstrates that the Native Land Court was a new theatre of contest in which old enemies brought their ongoing conflict. A contest concerning mana can be found in the example of the investigation into the Māharahara block. Aperahama Rautahi objected to the inclusion of Manawatu based Rangitāne. He was challenged by Hoani Meihana to produce his whakapapa and he promptly left the Court. Ropiha in his letter of protest to Fenton suggested that Aperahama Rautahi was intimidated by the Court and insulted by Meihana.

Refer McBurney (#A47) page 109
Refer Ballara and Scott (#A18) page 26

275. Hoani Meihana's oratory coupled with his command of history and whakapapa was used to defeat the claims of Aperahama Rautahi and those of Ngāti Rangiwhakaewa at the Waipawa hui and in the Native Land Court investigations.

Refer McBurney (#A47) page 94
Refer Paewai (#E3) para 200

276. In the Wairarapa there was contest in the Okurupatu and Akura block hearings. The extent of the dispute is discussed in Stirling (#A49) at pages 64-86 and 207-230 inclusive. Mr Chrisp has examined the individuals involved and has identified all the claimants as belonging to Ngāti Hāmua. Significantly there was contest between various sub-hapū of Ngāti Hāmua. As a result of claims and cross-claims the hearings extended for a number of years which resulted in the accumulation of significant Court and survey costs. The Okurupatu and Akura blocks are useful demonstrations of the Native Land Court being a vehicle for dispute even amongst the same hapū grouping.

277. Although the Wairarapa Court minutes are relatively free of contest, this was not the case in the investigation into the Ngā-Waka-a-Kupe hearings. In that case Tunuiārangi led the claims for exclusive Ngāti Kahungunu rights. He was opposed by Wi Hikawera Mahupuku who stressed that Ngāti Kahungunu and Rangitāne shared mana whenua rights in the South Wairarapa.

Refer Chrisp (#F11) paras 110-112

278. There is evidence before this inquiry that the Native Land Court was used as a forum for contest between different tribal groupings, residents and non-residents and divisions within hapū. To a certain extent many of those divisions and conflict existed prior to the advent of the Native Land Court. The danger however for the "losers" was that the Native Land Court would permanently determine their rights and interests. As we have seen in the case of Aperahama Rautahi and Te Ropiha should a European Judge find for whatever reason that they had no rights and interests, they and their descendants forever lost out.

279. The Crown was supposed to actively protect Rangitāne lands, waters, forests etc. That duty of active protection continued to apply even when the Crown introduced the Native Land Court and its accompanying legislation. Although the Native Land Court was supposed to determine ownership of land according to custom, the evidence in Tamaki nui a Rua demonstrates that the interests of non-residents was clearly promoted over and above that of resident. This suited the Crown agenda as it was with the non-residents that the Crown had sought to purchase the Tamaki and Seventy Mile Bush blocks. To that end in the Tamaki nui a Rua the Court became a theatre of contest with the losers paying the ultimate price, the sale of their lands.

Adequacy of the Land Remaining – The Acquisition of Te Taperenui o Whātonga – (SOI 9.4.5)

280. A feature of this era was the acquisition of Te Taperenui o Whātonga. As Manahi Paewai states:

"Perhaps the most important spiritual, cultural and physical feature of our takiwā was Te Taperenui o Whātonga or as it was known to the early settlers, the "Seventy Mile Bush".

Refer Paewai (#E3) para 145

281. Rangitāne witnesses have explained the importance of Te Taperenui o Whātonga as providing natural clearings where kāinga were established. The bush provided resources for materials for housing, shelter and clothing, wood for warmth and cooking, medicines for health such as rongoa, native vegetables, fruit and birds for sustenance and the raw material for the building of river waka.

Refer Manahi Paewai (#E3) para 147

282. Te Taperenui o Whātonga contained a number of kāinga of significance to Rangitāne. It was also a place of refuge during warfare particularly during the early part of the 19th Century. The bush contained a number of resources used by Rangitāne such as bark, plants, rongoa, kai and native birds. It was particularly prized as being the home of the huia. Mike Stone gave evidence that Te Taperenui o Whātonga could claim to be "the home of the huia". He opined that the demise of the huia was well documented in a complex mix of habitat loss, predators, human greed, disease and a lack of co-ordinated effort to protect the species.

Refer Paewai (#E3) paras 126-135
Refer Karaitiana (#E7) para 15
Refer Gilbert-Palmer (#E12) paras 33-38
Refer Stone (#E13)

283. Photographs graphically demonstrating the effect of bush clearance can be seen attached to Mrs Gilbert-Palmer's evidence.

Refer Gilbert-Palmer (#E12) Appendices "A"-"D" inclusive

284. Mr Manahi Paewai was firm in his view that the felling of the bush had a severe impact upon traditional relationships between those Rangitāne hapū living in the bush and those living in the central Wairarapa valley. With the creation of European settlements and the introduction of new foods Rangitāne changed their traditional seasonal pattern of kai gathering. The traditional seasonal cycle of resource gather cemented relationships between hapū living in and outside of the great bush. Gatherings for cultivation and mahi tuna ceased as the bush was cleared. He summed up by stating that clearance of the bush had a negative effect on the psychological wellbeing of Rangitāne.

Refer Paewai (#F18) paras 17-20

285. There is very little evidence that the Crown considered the importance of Te Taperenui o Whātonga to Rangitāne in acquiring and clearing the bush blocks. It is submitted that the Crown had little interest in ensuring that Rangitāne o Tamaki nui a Rua had the ability to continue to access resources of Te Taperenui o Whātonga. The priority for the Crown was to clear the bush for settlement purposes and develop infrastructure between Hawkes Bay and Wellington. There is very little evidence on this record of inquiry that Rangitāne o Tamaki nui a Rua participated in the bush clearance, however as a result they have lost access to and the resources formerly provided by Te Taperenui o Whātonga.

Prior Negotiation of Sales and Payment of Cash Advances – Ground Bait and Bounty Hunters (SOI 7.4.14 & 15, 9.4.2)

286. Rangitāne allege that the Crown used unscrupulous tactics in order to acquire Tamaki nui a Rua lands. Prior to the acquisition of the Tamaki block the Crown advanced Māori sums of money whilst the Waipawa hui was in progress. The Crown purchase agent Locke, kept a record of total payments totalling £1,290 which was spent on survey and storekeepers. The sum was charged against the Tamaki lands then still under

investigation. The term "ground bait" was the phrase used in an undated memorandum of 1871 carried out by Mr Lawson when referring to the sums advanced. In that memorandum he stated:

"In the course thereof money has occasionally been advanced for "ground bait", for surveys to enable lands to be passed through the Court".

Cited and referred to in McBurney (#A47) page 97

287. Advance payments were also made to various persons in respect of the Mataikona block in 1873. A request had been made on account of persons being very hard up and wanting food. The amounts advanced were to be charged against the block in later partition applications.

Refer McBurney (#A47) pages 143-144

288. As an example of its desire to acquire as much land as possible, the Crown paid agents to secure the signature of owners who thus far had not agreed to sell. An example being that James Grindall was offered £1 per day and £10 per signature.

Refer Ballara and Scott (#A18) page 58

289. Following the subdivision of the Mataikona block as an example the Crown pursued an aggressive policy of purchasing interests, notwithstanding opposition from the likes of Nireaha Tamaki. The Crown was successful in its pursuit of those willing to sell where by 1890 the Crown had purchased 58,000 out of the original 66,395 acres.

Refer McBurney (#A47) pages 142 and 156

290. There can be no doubt that the Crown wanted to open up the Tamaki and Seventy Mile Bush blocks. They enlisted the assistance of rangatira willing to sell. They attempted to persuade Māori to sell at the pre-Court hui held a

Waipawa. At the same time resident based Tamaki nui a Rua rangatira, opposed to sale were being sidelined during the investigation process. These factors assisted the Crown in being able to open up the acquisition of the Tamaki and Seventy Mile Bush blocks.

291. In this context the Native Land Court simply became a conduit for prearranged sales. As can be seen from the discussions in McBurney (#A47), Ballara and Scott (#A19) and Robertson (#A27) those unwilling to sell simply became marginalised prior to, during and post the Native Land Court hearings. The Crown was supposed to be protecting the interests of resident based hapū. Rather than protect those interests they sought to actively undermine them. They sought to undermine their interests by engaging in pre-Court negotiations, by promoting and encouraging non-resident rangatira during the Court process who they knew would be amenable to sale and by indulging in advanced payments and ground bait. The Crown knew that by paying advanced payments and ground bait, those payments would effectively tie the recipients into an eventual and inevitable sale of their lands, all of which flies in the face of the principle of active protection.

Native Land Court: Surveys (SOI 8.4.1-8.4.8)

292. The boundaries of the Tamaki and Seventy Mile bush blocks were not surveyed at the time they were put through the Native Land Court and subsequently sold to the Crown. The boundaries were instead indicated by means of a sketch plan, based on the boundaries of other blocks and natural features **(SOR 2: 9.1)**.

293. As a result of inaccurate survey lands retained by Tamaki nui a Rua owners was found to be overestimated examples being:

(a) Mataikona 1B – 77 acres, 1 rood, 22 perches

Refer McBurney (#A47) page 211

(b) Mataikona 1BC2 – 45 acres

Refer McBurney ibid

(c) Pahiatua – 7,625 acres

Refer McBurney (#A47) page 198

294. Rangitāne protest concerning lack of proper surveys during the Tamaki and Seventy Mile Bush block hearings was led by Te Ropiha. He criticised the surveys "having been made merely by the guess of a Pākeha in Napier". He complained that no surveyor went on to the Puketoi, Ahuaturanga, Maharahara, Otanga, Tiratu, Te Umutaoroa, Te Piripiri, Ngamoko and Te Tuatua blocks.

Refer McBurney (#A47) pages 209 and 210, page 107-109 inclusive

295. Mr Peter Ropiha, himself a qualified surveyor, noted the discrepancy between the ability of J D Ormond to have surveys carried out in preparation for sale to the Scandanavians and yet no such surveys were carried out when land was being acquired from Māori.

Refer Ropiha (#E11) paras 30 and 44

296. The most celebrated case involving inaccurate surveys in Tamaki nui a Rua involved a dispute as to where the boundary between the Mangatainoka No. 3 block and the eastern boundary of Kaihinu 2 block was. Kaihinu No. 2 had been purchased by the Crown in 1871. The Crown argued that the land in question, some 5,184 acres, was part of Kaihinu No. 2. Nireaha Tamaki claimed that it was part of the Mangatainoka No. 3 block. The significance of that was Mangatainoka No. 3 was a Native Land Title. Alternatively Nireaha Tamaki argued that the land in question had been unascertained, that is it remained customary land.

Refer McBurney (#A24) pages 30-38

297. The Court of Appeal rejected Nireaha's claim that the land in question formed part of the Mangatainoka block on the ground that the Native Land Court order was subject to a condition that a proper survey should have been furnished to the satisfaction of the Chief Judge of the Native Land Court. As no such survey had been complied with he could not rely upon the Native Land Court title. The Court of Appeal therefore noted that Tamaki was arguing for a "purely Māori title". As such the Court of Appeal applied the authority of *Wi Parata v the Bishop of Wellington*. The Court of Appeal went on to state:

"…the mere assertion of the claim of the Crown is in itself sufficient to oust the jurisdiction of this or any other Court in the colony. There can be no known rule of law by which the validity of dealings in the name and under the authority of the Sovereign with the Native tribes of this country for the extinction of their territorial rights can be tested".

Cited and referred to in McBurney #A24, p 18

298. The Privy Council rejected the Court of Appeal's approach concerning the existence or not of customary law. They stated:

"Their Lordships think this argument goes too far, and think that it is rather late in the day for such an argument to be addressed to a New Zealand Court. It does not seem possible to get rid of the express words of the 3rd and 4th sections of the Native Rights Act, 1865, by saying…'a phrase in a statute cannot call what is non-existent into being'. It is the duty of the Courts to interpret the statute which plainly assumes the existence of a tenure in land under custom and usage which is either known to lawyers or discoverable by them by evidence".

Refer Nireaha Tamaki v Baker (1901) 371 NZPCC 577 cited and referred to in McBurney (#A24) page 37

299. As a result of Nireaha Tamaki's success in the Privy Council, the Crown was faced with two issues they being:

(a) That the issue of customary title was justiciable; and

(b) The case provided a possible precedent for further litigation by Māori against titles held by the Crown and/or Europeans.

300. The Crown's resolution was to legislate. It enacted the Native Land Claims Adjustment and Laws Amendment Act 1901. As a result of that legislation native title to the land in question was deemed to have been extinguished according to the law.

Refer McBurney (#A24) page 47

301. Quite clearly the legislation passed by the Crown whilst lawful was hardly fair to Nireaha Tamaki and any other Māori who found themselves in the same situation. The genesis of this dispute was due to inaccurate survey. In taking the proceedings Nireaha Tamaki did no more than what he was legally entitled to do. He took a case which went to the highest echelons of our Judicial system. The Privy Council found that he was entitled to bring his case in the Supreme Court. He never got to test his case as the government legislatively intervened.

302. In introducing a system of Crown derived title, reliant upon survey, Nireaha Tamaki and other Māori could have expected the Court to insist upon proper surveys when investigating land especially when it was anticipated that land would be sold. In this case neither the Kaihinu or Mangatainoka blocks had been surveyed at the time of their investigation and more crucially remained to be properly surveyed at the time the Crown purchased Kaihinu No. 2. Thus the introduced system of the Native Land Court, reliant upon surveys as it was let Nireaha Tamaki badly down.

303. Although Nireaha Tamaki was successful before the Privy Council the ultimate remedy was however denied due to legislative intervention on the part of the government. Nireaha Tamaki was denied his day in Court. In so acting the Crown acted unfairly, unjustly and in breach of the duty on it to to act honourably and with the utmost good faith. **(SOI 12.4.9)**.

Reserves (SOI 9.4.5)

304. Throughout Tamaki nui a Rua a number of reserves were set aside following purchase. Almost invariably restrictions on alienation, where they existed, were lifted and sale followed either to the Crown or to private purchasers.

305. Following the Tamaki purchase five reserves were made comprising 19,870 acres. Reserves were set aside at Umutaora, Te Ohu, Te Whiti and Ahuaturanga (two reserves). Restrictions on alienation were lifted on Umutaora in 1889, Te Whiti-a-Tara on 19 March 1910 and Ahuaturanga on 17 January 1910. The Crown then purchased Umutaora, Te Whiti-a-Tara, part of Ahuaturanga and part of Te Ohu. The remaining parts of Te Ohu and Ahuaturanga were sold to private purchasers.

Refer SOR 2: 10.1.1

306. From the Seventy Mile Bush block eight reserves were set aside they being Eketahuna, Pahiatua, Ngā Tapu No. 1, Ngā Tapu No. 2, Mangahao No. 1 and 2. Alienation restrictions were placed on at least the Eketahuna and Pahiatua reserves. The Crown purchased a portion of Ngā Tapu No. 1 reserve, Ngā Tapu No. 2 reserve and Mangahao No. 1.

Refer SOR 2: 10.1.2

307. The Crown has admitted that between 1872-1883 they had purchased fifty percent of the acreage set aside as reserves in the southern portion of the Seventy Mile Bush.

Refer SOR 2: 10.1.7

308. The Crown later compulsorily acquired portions of the Eketahuna and Pahiatua reserves for public works. In 1909 the Crown removed restrictions against alienation from the title of both reserves and the reserve was purchased by the Crown and private purchasers.

Refer McBurney (#A47) pages 196-198 inclusive

309. Huge amounts of land were acquired by the Crown in the Tamaki nui a Rua area between 1865 and 1900. As a percentage of the total lands acquired the reserves set aside were miniscule. In breach of the principle of active protection alienation restrictions were lifted and the Crown did not hesitate to acquire supposedly reserved lands.

Adequacy of Price (SOI 9.4.3)

310. Between 1865 and 1900 the evidence is that the Crown paid less per acre for land that it had before 1865. The figures supplied by McBurney show a downward trend in the purchase price for Māori post-1865.

Refer McBurney (#A47) pages 336-342 inclusive
Agreement recorded at SOI 9.3.6

311. The Crown paid an average of 1s 6d per acre for land obtained in the two bush purchases of 1871. The Hawkes Bay Special Settlements Act 1872 stipulated that the price to be paid by settlers should be between 10s - 40s an acre that is between 6 - 25 times what Māori were paid for the land.

312. In this context Mr Peter Ropiha referred to the large number of Scandanavians who were settled in Tamaki nui a Rua in the late 19th Century. He highlights the point that in relation to the Tamaki purchase, the Crown paid £16,000 for an area of approximately 240,000 acres, this equating to 15.95p per acre to Māori. On the other hand the Crown charged Scandanavians 240p per acre, this amounted to a mark up of 1,506.59%.

Refer Ropiha (#E11) para 29

313. The Crown have further admitted that between 1865 and 1900 there was a significant difference between the price paid to Māori for the land and the price received by the Crown for that land when on sold to European settlers. The Crown claims that the proceeds were used to pay for public works of benefit to all. The Crown has admitted that some of the land sold to Scandanavian settlers sold for as much as £1 per acre.

Refer SOI 9.2.18 and 9.3.7

314. In acquiring the Tamaki and Seventy Mile Bush blocks the Crown acquired the heavily forested Te Tapere-nui-o-Whātonga. The Crown agrees that generally Crown agents did not take account of timber values during land purchase negotiations and the Crown purchase agents may have undervalued the timber resources in the Seventy Mile Bush.

Refer SOI 9.3.8

315. By the end of the 19th Century timber was, once costs were deducted, valued at £60 per acre. McBurney notes that of the 837,067 acres acquired between 1850 and 1899, the Crown had paid on average 1s 5d per acre. Clearly Māori did not get full value for this valuable resource.

Refer McBurney (#A47) pages 362-363

316. Two discernable trends are noted they being:

(a) As the 19th Century progressed, Rangitāne received on average less per acre then they had done before 1865. At the same time the Crown was introducing Scandanavian settlers and selling land to them at a huge mark up;

(b) There is evidence that the timber was a valuable resource and that the Crown did not take account of timber values during the land purchase negotiations and may have undervalued the timber resources in the Seventy Mile bush.

317. The Crown will no doubt respond that the proceeds were used to pay for the clearance of the bush and the provision of infrastructure. There is little evidence that Rangitāne were involved in the clearance of the bush, in fact contrary is the case the Scandanavians were used. As for the provision of infrastructure Rangitāne had to pay dearly for those benefits.

Location and Timing of Hearings (SOI 7.4.12)

318. The investigations of the Tamaki and Seventy Mile Bush blocks are noteable for the fact that they did not take place within Tamaki nui a Rua. The Tamaki investigations took place at Waipawa. The Seventy Mile Bush blocks investigated took place at Masterton. For Tamaki nui a Rua based residents that meant having to travel some distance to attend Court and be accommodated away from home.

319. The case of Nireaha Tamaki and his inability to attend the Masterton hearings of 1871 is illustrative of the difficulties faced. Inclement weather delayed the commencement of the hearings. Nireaha was unable attend due to being flooded in at Ngaawapurua. His inability to attend and subsequent exclusion from the investigation led to his petition to the Legislative Council.

Refer Robertson (#A27) pages 65 and 89-96 inclusive

320. John Meha, a member of Ngāti Parakiore gave evidence concerning the relocation of his people to the Waipawa locality. Mr Meha was aware that the Native Land Court sat at Waipawa in the 1870's. He gave evidence that certain people were sent to Waipawa to safeguard Ngāti Parakiore interests before the Native Land Court. Mr Meha expressed amazement at how a Court which was ultimately detrimental to Rangitāne attracted the Parakiore people away from their homeland. He posed the question "why didn't the Court sit in Tamaki nui a Rua where the land was located?"

Refer Meha (#E10) paras 11-17 inclusive

321. The Crown was insistent that titles to land should be derived from a Crown grant. In order to achieve that they introduced the Native Land Court. The Crown at all times was supposed to actively protect Māori interests. It is difficult to see how the Crown were actively protecting Māori interests when they required them to travel to and attend hearings at a distance from their home. Rangitāne have led specific evidence that in the case of Ngāti Parakiore they had to relocate in order to defend their interests. In that instance it can hardly be said that such a system was safeguarding and protecting Rangitāne interests.

Fragmentation – Uneconomic and/or Inaccessable Parcels (SOI 7.4.30)

322. Hepa Tatere (#E14) and Punga Paewai (#E15) gave evidence of the legacy of partitioning and succession. Punga Paewai, who was a member of the Māori Land Advisory Committee for the Ikaroa District, obtained a good working knowledge of the difficulty Māori land owners face today, in summary they being:

(a) Financial institutions being reluctant to lend against multiply owned land;

(b) Poor quality land blocks with difficult access;

(c) Lack of security;

(d) Multiple ownership requiring high attendance for proxy vote.

In his view the Māori Land Advisory Committees were not able to go far enough in assisting in the development, utilisation and management of lands.

Refer Paewai (#E15) paras 29-38 inclusive

323. Mr Hepa Tatere gave specific examples of the difficulties in developing Māori freehold land. He gave evidence of remaining lands being small in size and the difficulty in obtaining finance to develop land. He also gave evidence of funding sometimes being available but only if the status of the land had changed to a general title.

Refer Hepa Tatere (#E14) paras 26-31 inclusive

324. The legacy of individual grantees, succession and subsequent fractionalisation of interests has today resulted in Rangitāne land holdings being small, uneconomic and difficult to access. The evidence demonstrated that their mere status of Māori land has been a barrier to development.

325. Surely the framers of the Treaty did not envisage that Māori would be left on small uneconomic blocks struggling to make a subsistence lifestyle. The Treaty guaranteed more than that. The legacy of a system based on individual interests has led to small uneconomic holdings with large numbers of owners holding fractured interests. The Rangitāne experience has been that Māori ownership today allows only a subsistence existence to be eked out.

Private Alienation – Leases (SOI 10.4.10)

The Mangatoro Block

326. The Mangatoro block was investigated by the Native Land Court in January 1867. It was a block of some 30,750 acres. On the block was located a Ngāti Rangiwhakaewa papakāinga named Okurehe. It was situated on 500 acres of flat land.

Refer Ropiha (#E11) page 34
Refer McBurney (#A47) page 218

327. The block was leased to George Hamilton. Throughout the term of the lease the lessee, Hamilton was aware of the presence of the papakāinga and had agreed, informally it appears, to keep his sheep off the papakāinga.

Refer McBurney (#A47) page 223

328. In 1878 Hamilton renewed his lease but by 1884 he was in financial difficulties with the Bank of New Zealand. The Bank of New Zealand entered into possession of the lease and brought the leasehold at auction in the mid 1880's.

Refer ibid

329. The BNZ Estates Company, who had acquired the leasehold interest, later brought trespass proceedings against Hōri Herehere and Tapapa Rautahi. They repeatedly drove sheep across the Okurehe area and the BNZ sought an injunction against them and sued them for alleged trespass. During the Court case Hōri Herehere outlined the importance of Okurehe to Ngāti Rangiwhakaewa. He referred to there being fifteen whare at the settlement and cultivations. Hōri Herehere was the son of Paora Rangiwhakaewa and

Mata Te Opukahu. Manahi Paewai has outlined in his traditional evidence the importance of Mata Te Opukahu to Rangitāne/Ngāti Rangiwhakaewa.

Refer McBurney (#A47) pages 322-325
Refer Paewai (#E3) paras 171-176 inclusive

330. Hōri Herehere's evidence is important as he confirmed that he was alive when Okurehe was investigated by the Native Land Court. He was aware of the lease with George Hamilton which was signed at Waipawa. He was aware that people living at Okurehe had asked Hamilton for the papakāinga to be excluded from the lease.

Refer McBurney (#A47) pages 323 and 324

331. Although there were suggestions in the evidence that the papakāinga was formally excluded from the lease, quite clearly that is not the case. As Mr Robert Hayes said in his evidence:

"It can be said that the sad tail of ejectment of those Maori occupying a part of the Mangatoro Block – the part the Maori owners and their lessee (Hamilton) intended to be excluded from the lease – was the inevitable result where the lease failed to record this arrangement".

Refer Hayes (#H4) page 56

332. Mr Hayes goes on to comment in his footnote 135 that it would not be reasonable for a Trust Commissioner to pick up such an omission in a deed unless they were alerted by some extrinsic evidence. Warren, a shepherd for Hamilton, later gave evidence in the trespass case. He confirmed the presence of extensive cultivations at the papakāinga and that they were not permitted to run sheep on the "reserve". He confirmed that a great fuss was made when sheep strayed onto Okurehe.

Refer McBurney (#A47) page 323

333. This case study demonstrates the weakness of the Trust Commissioner regime. The Trust Commissioner in the absence of any evidence to the contrary would not have known of the presence of the papakāinga. Clearly Hamilton did not bring it to his attention. In the absence of being able to ascertain whether there were any competing interests in the land, nobody raised the fact that the lease failed to exclude the papakāinga. Ultimately it was Ngāti Rangiwhakaewa who bore the loss as their papakāinga became part of the estate acquired by the BNZ at the mortgagee auction.

J. PROTEST AND POLITICAL MOVEMENTS (SOI 12 & 13)

334. Prior to 1865 Wairarapa Māori including Rangitāne protested over a variety of matters. They complained about delays in payments, reserves not being properly surveyed and included in land sold to the Crown, inadequate surveys which resulted in confusion over lands being sold and boundary disputes, the failure to make the koha payments, the delay in issuing Crown grants and the level of debt the rangatira found themselves in. The Crown have admitted all or part of these allegations.

SOR 3: 56.1-56.6 inclusive

335. Rangitāne leaders were also particularly vociferous in stating their opposition to outside rangatira involved in the sales of Castlepoint and Tautāne.

Refer to paragraphs 132-161 of these submissions for a more detailed discussion

336. Much of the protest from Wairarapa and Tamaki nui a Rua Māori centered around the Native Land Court. As early as 1867 Wairarapa Māori were protesting about the operation of the Native Land Court. Within a few short years of its operation Wairarapa Māori attempted to boycott the Native Land Court.

337. Tactics used varied from use of the introduced legal system, petitions and letters through to activity which could be classified as standing outside the system such as the attempted boycott of the Native Land Court, participation and support for the Kingitanga movement and involvement in the Kotahitanga movement.

338. Protest often took place at a macro level involving attempts at pan iwi organisation, examples of that being the Repudiation and Kotahitanga

movements. Protest also took place at a micro level in response to quite specific matters. Regardless of at what level it took place, protest about Crown policy, land loss and the activities of the Native Land Court was a dominant feature of the Rangitāne existence in the 19th Century.

339. The middle and latter part of the 19th Century was a time of intensive change for Rangitāne. Chrisp in his evidence (#F11), has characterised Rangitāne protest as "the response to the changed circumstances they found themselves in and an effort to cling to their chiefly mana".

Refer Chrisp (#F11) para 60

340. Rangitāne tūpuna participated in all manner of protest activity examples of which are:

(a) Outrage was expressed by Ropiha in the involvement of Te Hāpuku and Hori Niania in the Castlepoint and particularly Tautāne transactions. This led to the famous threat by Ropiha to cut off the noses of Te Hāpuku and Niania;

Refer Ballara and Scott (#A19) page 13

(b) The 1867 petition of Wairarapa Māori concerning the Native Land Court;

Refer Stirling (#A50) page 5

(c) Opposition by Te Hirawanu and Te Ropiha to sale of the Tamaki lands, expressed at the Waipawa hui of 1870;

Refer Paewai (#E3) paras 191-197
Refer McBurney (#47) pages 94 and 95

(d) Criticism by Paora Ropiha and Henare Matua at the inclusion of outside rangatira and exclusion of resident rangatira in the Tamaki blocks;

Refer McBurney (#A47) pages 107-109 inclusive

(e) The petition by Nireaha Tamaki to the Legislative Council in October 1871 protesting at the insertion of outsiders in the Seventy Mile Bush blocks;

Refer Robertson (#A27) pages 89-97 inclusive

(f) The boycott of the Native Land Court 1871-1872. This commenced with the attempted boycott of the Seventy Mile Bush hearing at Masterton in 1871.

Refer Stirling (#A50) pages 15 and 16

(g) The growing preference for tribal rūnanga to decide land matters:

"There were a great number of cases to be heard, but most of them have been withdrawn by the natives. It appears that at Ori Ori last year, a committee was formed consisting of about 20-4 Maories, [sic] who were instructed to watch over the interests of the natives, and also their wish is to settle their own arrangements about possession of lands, and then for the Court to ratify their decision…During the hearing of one of the cases, however, a witness mentioned the name of the "committee", and was interrupted by Mr. Munro, who said the Court did not acknowledge the Committee; Wi Mahupuku told him to "hold his tongue", and a messenger was at once dispatched for a policeman".

Refer Goldstone (#A86) at page 97 quoting from the Wairarapa Mercury, 10 February 1872

(h) The Repudiation Movement. Te Hika o Pāpāuma, Ngāti Moe and Ngāti Hāmua were specifically involved in the support of Henare Matua in the Repudiation movement, (Chrisp #F11, page 62). Henare Matua gave evidence before the Hawkes Bay Alienation Commission of 1873. Henare Matua had a number of complaints which he raised before that Commission they being:

- That the survey of the Tamaki bush was not agreed to by all;

- That the interests of Aperahama and Te Ropiha, who opposed sale, were not and should have been included in the Te Ahuaturanga list of grantees. He also complained that that decision became a precedent in all other blocks in which Aperahama and Te Ropiha and their descendants were interested in;

- The government had not listened when he told the Crown purchase agent Locke to be patient and wait until disputes were settled before trying to make the purchase.

Refer Ballara and Scott (#A18) pages 46 and 47

(i) The criticisms by Te Whatahoro Jury in 1877 concerning the operation of the Native Land Court;

Refer Stirling (#A50) pages 77-79 inclusive

(j) Support for the prophet Pāora Pōtangaroa. Pōtangaroa was of Ngāti Kahungunu descent on his mother's side and Rangitāne in particular Te Hika Pāpāuma and Ngāti Hāmua on his father's side. Pōtangaroa called a major hui at Te Oreore in March 1881 at which he made prophetic statements that Rangitāne and other Wairarapa Māori

should not sell any futher lands, should incur no further debts and should refuse to honour debts already incurred;

Refer Michael Kawana (#F3) paras 30-34
Refer Chrisp (#F11) paras 63-65

(k) A number of Rangitāne tūpuna had sympathy for the Kingitanga movement and converted to the Pai Marire faith. Karaitiana Te Korou was a scribe of the Ua Rongopai. Other supporters included Te Manihera, Wī Waaka and Ngāiro. Ngāiro and Wī Waaka both fought in Taranaki and supported the King movement.

Refer Chrisp (#F11) para 61

(l) Rangitāne hapū in particular the Ngāti Hāmua communities at Tamaki and Te Oreore were also supportive of and participated in the Kotahitanga movement.

Refer Chrisp (#F11) para 66 and 67

(m) Rangitāne tūpuna used the Native Land Court to protest at what they considered to be injustices. During orginal investigations and subsequent partition and hearings they protested at the inclusion of grantees whom they considered had no interests.

Refer to detailed discussion at paragraphs 239 - 273 of the submissions

(n) Nireaha Tamaki was not averse to using the Courts of ordinary jurisdiction in an attempt to resolve the survey/boundary difficulties encountered in the case of the Mangatainoka and Kaihinu blocks.

Refer to more detailed discussion at paragraphs 296-303 of the submissions

(o) Paora Ropiha protested against illegal milling.

Refer Oliver (#A35) pages 55 and 56

(p) Rangitāne o Tamaki nui a Rua also used civil disobedience as a form of protest. Ngāti Rangiwhakaewa led by Hōri Herehere opposed the path of a new road and site of the Manawatu bridge. They attempted to block the construction of the road by pulling up survey pegs and warning contractors against the taking of gravel. In the case of the Ngāti Rangiwhakaewa papakāinga at Okurehe Hōri Herehere and Tapapa Rautahi repeatedly drove sheep across the Mangatoro block in protest at the acquisition of those lands by the BNZ Estates Company;

Refer McBurney (#A47) pages 319-325 inclusive

(q) Two decades of protest followed Te Hiko's "sale" of Wairarapa Moana in 1876, led by Piripi Te Maari;

Refer Section K of these submissions
Refer Crocker (#A37) pages 44-78 inclusive

(r) Protest at the failure of the Anglican Church to build a school on gifted land at Kaikōkirikiri. Protest at the inactivity of the part of the Crown to intervene in the case of the gifted lands at Kaikōkirikiri;

Refer Section L of these submissions

(s) Failure on the part of the Crown to deliver on its promises of schooling and medical services.

Refer Section M of these submissions

341. The above summary hardly does justice to the concerted efforts of Wairarapa and Tamaki nui a Rua Māori to rationalise and respond to the rapidly changing and complex circumstances of the mid to late 19th Century. What it does demonstrate however is that a variety of processes and mechanisms were used, some of which were made available by the state, e.g. petitions, Court hearings and some of which stood outside the machinery of state, e.g. participation in the Kingitanga movement.

342. Although there were some modifications to Māori land legislation throughout the 19th Century, the ultimate outcome of all of this protest was to have little benefit for Wairarapa and Tamaki nui a Rua Māori. The Native Land Court remained intact. Restrictions on alienation continued to be removed, cases continued to be investigated, land continued to be made available for sale, particularly to the Crown and inreasingly in the latter part of the 19th Century to private purchasers. Despite concerted efforts at protest, by the turn of the century in both districts only 11% of the total land base remained in Māori ownership. The harsh reality for Rangitāne o Wairarapa and Tamaki nui a Rua was that their protest ultimately achieved very little

Refer SOI, para 22.2(ix)

343. A final point can be made in respect of this section. The Crown prepared a report (#A86) which concerned the operation of the Native Land Court at Wairarapa 1865-1882. In reality the report considered only eight years operation of the Native Land Court. The report did not consider the investigations of the Seventy Mile Bush blocks at Masterton in 1871 and the Tamaki blocks investigated at Waipawa in 1870.

344. More critically, notwithstanding repeated references cited from newspaper reports on the operation of the local rūnanga, the report failed to address important contextual matters of the time. Specifically the attempted boycott of Court hearings, the growth in preference for tribal rūnanga to decide land matters and the Repudiation movement of the 1870s. By limiting itself

almost exclusively to the Native Land Court records the report gives a narrow and inaccurate view of the response by Rangitāne to the operation of the Native Land Court.

345. In summary protest by Rangitāne tūpuna was not successful, as it was either ignored or dismissed. When successful as in the case of Nireaha Tamaki legislation was introduced to override the effect of that success. Ultimately Rangitāne were the losers. The attitude of the Crown and Native Land Court towards Rangitāne protest is best encapsulated in Rogan's correspondence in 1871 about the failure to adjourn the Masterton hearing into the Seventy Mile Bush blocks:

"There was a Committee formed for the purpose of obstructing the business of the Court, and several protests were made at the time which were disregarded".

Refer Rogan to Walsh/Halse, 15 November 1871 referred to and cited in Robertson (#A27) pages 95 and 96

K. ALIENATION OF WAIRARAPA MOANA (SOI 18)

346. Wairarapa Moana was named by Haunui-ā-Nanaia, a tohunga aboard the Kurahaupō waka. He named it after gazing upon the lake with the reflection of the sun catching his eyes and making them water. The whakatauākī "Ka rarapa ngā kanohi ko Wairarapa" can be found in a number of traditional waiata referring to the occasion.

Refer Rimene (#F1) para 77 and 81

347. From the time of Haunui-ā-Nanaia, Rangitāne hapū, in particular Ngāti Hāmua and the aho-rua hapū of Ngāi Tūkoko, Ngāti Hinetauira and Ngāti Te Whakamana have exercised resource rights at Lake Wairarapa to take eels, flounder, whitebait, kokopu, ducks, fern root and korou.

Refer Chrisp (#A60) page 51

348. The chronology of events including the 1855 earthquake, the pressure to acquire the surrounding lands, the 1876 "purchase", subsequent protest and findings of the Royal Commission are well known. They are essentially captured in the agreement set out at **(SOI 18.3)** and do not need to be repeated here. Having said that a number of Treaty issues arise out of those events for Rangitāne.

349. Wairarapa Moana was a taonga for Rangitāne and other Wairarapa Māori. Continued ownership was guaranteed to them under Article Two. The desire to retain ownership of the lake was made clear to McLean who promised Wairarapa Māori that the lakes belonged to them and would never be opened without their authority.

1891 Commission AJHR sess II G – 4 pp2-3, cited and referred to in Crocker (#A37) page 27

350. Notwithstanding the guarantee contained in the Treaty and the faith Rangitāne placed on the promise of a high ranking Crown Official, those promises were put aside in the subsequent attempts by the Crown to purchase Wairarapa Moana.

351. McLean later attempted to reduce Māori rights in the lake to "an alleged right to the closing of the lake".

Refer Crocker (#A37) page 33

352. Te Hiko's "sale" was accomplished in February 1876 in Wellington. Notwithstanding the earlier oral promises given to Wairarapa Māori the Crown was quite content to acquire those rights. The "sale" was almost immediately challenged and protest ensued for two decades. This series of events reveal a number of breaches of Treaty obligations by the Crown they being:

(a) The Crown was prepared to ignore/override earlier promises by McLean;

(b) The Crown was prepared to surreptitiously acquire the lake from those willing to sell;

(c) The Crown failed to carry out a searching and adequate investigation of the rights of all those who had interests in the lake.

353. An issue is raised in the statement of issues **(18.4.5)** whether it was "reasonable under the Treaty that local land owners should have their properties protected from flooding. Was there a reasonable and practicable way of protecting both settler and Māori interests?"

354. In answer to the first question there is no obligation under the Treaty for the Crown to protect local land owners. Quite clearly the Crown did seek to protect land owners at the expense of Māori, whom it should be stated are

also citizens of the Crown. Theoretically whilst one would hope that the Crown would always look at a reasonable middle path to protect both Māori and non Māori interests, as this example demonstrates, yet again Māori interests ran a distant second to settler interests. The Crown did not look for a middle path, their path was to acquire and extinguish Māori rights in Wairarapa Moana.

355. There was sustained and vigorous protest by Wairarapa rangatira between 1876-1895 against the acquisition and opening of the lake. That protest was led by Piripi Te Maari who identified the aho-rua hapū of Ngāi Tūkoko as his link to Wairarapa Moana.

Refer Chrisp (#A60) page 33

356. As a result of continual protest by Piripi Te Maari and his petition of 1890, a Royal Commission sat in Greytown in April and May 1891. It is an indictment on the Crown that it took fifteen years of protest by Wairarapa Māori before their concnerns were properly heard.

357. Whilst some of the findings of the Royal Commission were favourable towards Wairarapa Māori the Government took no steps to bring about a resolution of the matter. Indeed this led to the 13 May 1892 stand off between the River Board and local Māori.

Refer Crocker (#A37) pages 75 and 76

358. Whilst the Government remained inactive Piripi Te Maari did not. He took trespass proceedings against the Chairman of the River Board and petitioned parliament in 1893 and 1895. Notwithstanding a favourable recommendation by the Native Affairs Committe in 1893, no further action was taken before Piripi Te Maari died in August of 1895.

359. Despite favourable findings for Māori, by the Royal Commission in 1891 and the Native Affairs Committee in 1893, the Crown chose not to adopt a

middle path that might have protected Māori and non Māori interests. Instead they relied on the time honoured practice of spreading money to sooth all problems. In choosing not to safeguard Māori ownership of the lake, the eel resource and rights to open and close the lakes, the Crown breached its duties to actively protect Māori interests.

360. A further issue arises in the promise of reserves. The English version of the agreement reads as follows:

"...and shall out of any lands which shall come into the possession of the Government through such conveyance or out of any other lands acquired from Natives and still in possession of the Government make ample reserves for the benefit of Native owners. The term "ample reserves" in this paragraph shall be interpreted by the Honourable the Native Minister together with the Honourable the Minister for Lands".

Refer Joel supporting documents (#A120(a) SD35)

361. The Māori version reads as follows:

*"me whakahaere i runga i etahi tikanga hei muri nei whakaritei ai-kaati ka ata rahui tia etahi waahi to tika hei oranga mo ngā Māori whai take he aua moana i roto i ngā whenua e tai mai ana kite ringaringa o te karauna i raro i taua ota whakawhiti e etahi atu whenua Maori ranei e tika mai ana ki te kawanatanga **i roto i tenei takiwā**".* (Emphasis added).

Refer Joel supporting documents (#A120(a) SD38)

362. Crucially the Māori version refers to reserves being set aside "i roto i tenei takiwā". Therefore the two possibilities present themselves, either the reserves were to be located in the vicinity of Lake Wairarapa or at the very least in the Wairarapa district. As is well known the Crown set aside reserves, some nineteen years later, in the Pouākani block. Just like the explicit promises contained in the koha clauses the Crown yet again

breached an express promise to Māori by locating the reserves hundreds of miles away. Once again the Crown failed to act honourably and with the utmost good faith towards their Treaty partner.

363. A further issue arises as to what was the Māori understanding as to what was transacted? Brent Parker records that although both Māori and Seddon stated that the transfer was "a matter of goodwill there was a clearly transactional element to it". Having said that when one reads the 1896 deed it reads more like what lawyers today would call an agreement to purchase/lease or a memorandum of wishes.

Refer Parker (#H1) para 11

364. Seddon was later to have reported that the lake was not sold it was simply given away.

Cited and referred to in Parker (#H1) para 13

365. Wairarapa leader Tunuiarangi in correspondence to Maui Pomare in 1920 set out his recollection of what was transacted. He stated:

"The lake itself was not included in the sale; the mana of the lake remained to the Maoris, as it is to this day".

Refer Tunuiarangi to the Honourable Maui Pomare, 11 August 1920, cited and referred to in Crocker (#A37) pages 84 and 85

366. Thus it would appear that there are fundamental differences between what some Wairarapa Māori thought had been transacted and what the Crown thought they had acquired.

L. GIFTED LANDS FOR SCHOOL – PAPAWAI AND KAIKŌKIRIKIRI TRUSTS – (SOI 27)

367. In 1853 tūpuna of Ngāti Hāmua and Te Hika o Pāpāuma were amongst the major donors of land at Kaikōkirikiri to the Anglican Church for educational purposes.

Refer Chrisp (#F11) para 68
Refer Stirling (#A51) page 161

368. There can be do doubting the influence of Governer Grey who was present with Bishop Selwyn when the gifts were discussed and made. Indeed the Crown have admitted that Grey and Selwyn persuaded Rangitāne to gift lands for schools.

Refer SOR para 65

369. Rangitāne gifted the land on the understanding that schools would be built at Papawai and Kaikōkirikiri. The Crown have admitted this (SOR 3:67).

370. The Rangitāne position is that if the lands were not used for the purpose of schooling, they should have been returned to the original owners. The Crown have admitted that that was the understanding of some Māori.

Refer Chrisp (#F11) para 69
Refer SOR 3:68

371. For the remainder of the 19th Century no school was built at Kaikōkirikiri.

Refer SOR 69

372. There was protest by Wairarapa Māori concerning the failure of the Anglican Church to establish schools on the gifted land or return the land to the donors. In 1896 for example a petition was filed by Ngāti Hāmua who

had originally gifted the land at Kaikōkirikiri. They expressed dissatsifaction that nothing had been done for forty years.

Refer Stirling (#A51) pages 168 and 169
Refer SOR para 70

373. In 1896 the Native Affairs Committee investigated the petition of Hamuera Karaitiana of Ngāti Hāmua. The 1896 inquiry found that the peititioners had a just grievance on the basis that the conditions under which the land was given to the church were never carried into effect. The 1896 Committee also recommended that the land be returned to its original owners.

Refer Stirling (#A51) page 169
SOR 72.2 and 72.3

374. Premier Seddon became aware of this state of affairs in May 1898. He undertook, during a visit to Papawai, to introduce legislation to deal with the land which had been gifted to the church. No such legislation was enacted until 1943.

Refer Stirling (#A51) page 169

375. The reaction of the church was to establish Hikurangi College at Clareville. Ngāti Hāmua were involved in protest about the operation of the college. In 1927 Kōruarua Peneamine and others of the Ngāi Tūhakeke hapū of Ngāti Hāmua petitioned parliament concerning, the location of the college at Clareville nine miles away from the gifted land and the failure of the Trustees of the Papawai-Kaikōkirikiri lands to advise them concerning the administration of the Trust.

Refer Chrisp (#F11) paras 71 and 72

376. In 1905 a Commission of Inquiry was established concerning various Trusts based on gifted land at Kaikōkirikiri, Motueka, Otaki, Porirua and

elsewhere. At this time the church was embroiled in litigation concerning the use of the Trust funds for the establishment of schools.

Refer Stirling (#A51) pages 170 and 171

377. The 1905 Commission heard evidence from Te Whatahoro Jury and Hapeta Whakamiru. Both of them rightly complained that for a period of fifty years not one of the promises made had been honoured. Te Whatahoro was of the view that the proper thing would be return the land to the original donors.

Refer Stirling (#A51) pages 160 and 176

378. The Commission of Inquiry came down firmly in favour of the Māori petitioners. They found as follows:

" the Trust has not been carried out until very recently, the reason assigned for this failure being that the funds derived from the trust have not been sufficient for the purpose. It does not appear to us that it was contemplated at its origin that the trust estate was to be the sole source from which the funds should be derived. A promise, direct or implied, to establish the college was the inducement which led the natives to give the land for the purpose of this trust, and they and their descendants have long felt much aggrieved at the delay in carrying it out".

Refer AJHR, 1905, G5, px.i. cited and referred to in Stirling (#A51) page 177

379. Despite the outcome of the Native Affairs Committee investigation of 1896, Premier Seddon's promises of 1898 and the recommendations of the Commission of Inquiry 1905 little happened. Hikurangi College was established and limped along until 1932 until it burnt down.

Refer Stirling (#A51) page 178

380. Rangitāne again resorted to protest. In 1937 they met with the Bishop of Wellington at Papawai and Te Oreore. Despite attempts at legislative change, they again had to take the initiative with further petitions in 1941.

Refer Stirling (#A51) pages 178 and 180

381. The concerns of the peititioners were referred to a joint committee on church Trust lands known as the Otaki-Poriru and Papawai-Kaikōkirikiri Trust Committee established in 1941. The Committee presented its report in 1943. The Committee's findings were not as firm in their view as the 1896 Native Affairs Committee and 1905 Commission of Inquiry as to the culpability of the Church. As Stirling comments the Committee rather surprisingly considered that, "the inability of the church to administer the Trusts accordingy to the original intention was not due to any fault of its own and it thus urged that the Trust be continued in the name of the church".

Refer Stirling (#A51) page 185

382. The example of gifted lands for schools provides a classic case study of the Rangitāne and Wairarapa Māori experience of the 19th Century. Rangitāne were persuaded by the Crown and Anglican Church to make their lands available for the establishment of a school. No such school was ever built at Kaikōkirikiri. Throughout Rangitāne protested. Their protests were endorsed by the findings of the Native Affairs Committee in 1896 and the Commission of Inquiry of 1905. To further rub salt into their wounds, Rangitāne had to wait a further 38 years until legislation was enacted dealing with the lands.

383. A Treaty breach can be located post the Commission of Inquiry of 1905. Having been in receipt of the 1896 and 1905 reports and with full knowledge of Seddon's 1898 promise, the Crown should have intervened to legislate at a much earlier date. They failed to introduce any legislation until 1943. By 1943 there was still no school built on the gifted lands at Kaikōkirikiri. It

must be remembered that it was the Crown's representative Grey who together with Selwyn had persuaded Rangitāne in the first instance to part with their lands. That fact together with the knowledged they possessed that the Church had failed miserably to honour the trust upon which the lands were gifted meant that the Crown should have intervened to act much sooner than they did. The fact that they waited until 1943, some 47 years after the findings of the Native Affairs Committee of 1896 means it is submitted that the Crown failed to act honourably and with the utmost good faith towards Rangitāne.

384. Section 12(4)(a) of the Papawai and Kaikōkirikiri Trusts Act 1943 provides as follows:

> *"(4) Subject to the foregoing provisions of this section, the Board may from time to time apply its net income towards all or any of the following purposes:-*
>
> *(a) The provision of scholarships for [the post-primary education of] children of British subjects of all races, and for children of other persons being inhabitants of islands in the Pacific ocean, but so that preference is given to boys and girls of the Ngatikahungunu Tribe residing in the Wairarapa district south of a straight line passing through Akitio and Pahiatua, and then to other Maoris or descendants of Maoris, residing on the east coast of the North Island of New Zealand, and, failing such, to Maoris or descedants of Maoris of any part of New Zealand".*

385. The legislation enacted was inadequate for the following reasons:

(a) There was a clear preference in the legislation for Trust funds to be used on scholarships for Māori children for secondary education. The reality for Wairarapa Māori meant travelling to secondary schools outside the Wairarapa such as Te Aute and Huakarere. It

must be recalled that the lands were gifted at Kaikōkirikiri, for the establishment of a school at Kaikōkirikiri;

(b) Subsection 12(4)(a) provided a hierarchy of those entitled to scholarships. In descending order of priority it was:

- For boys and girls of the Ngāti Kahungunu tribe resident in the Wairarapa;
- For any other Maoris resident on the east coast of the North Island;
- To any other Maoris in New Zealand;
- For children of British subjects of all races including the Pacific Islands.

386. The legislation should have been restricted to benefit those descendants of the original donors. The ancestors of Pacific Island children and Māori living elsewhere in the country were not the original donors, why should they have profited at the expense of the descendants of the original donors? In that context Ngāti Hāmua witnesses before the 1905 inquiry were clear that the purpose of the gift was to establish schools for the education of the children of the donors.

Refer evidence of Hapeta Whakamairu, Toi Tamati and Te Whatahoro Jury cited and referred to in Stirling (#A51) pages 159 and 160

387. A final concern Rangitāne have concering the legislation is the failure to refer specifically to Rangitāne at all. There is clear evidence that Rangitāne, in particular Ngāti Hāmua tūpuna were amongst major donors of the land in 1853. Ngāti Hāmua tūpuna were also involved in the protest concerning lands gifted at Kaikōkirikiri. Despite that fact Rangitāne is not specifically mentioned in the legislation.

Refer Stirling (#A51) pages 161, 168-169
Refer Chrisp (#F11) paras 68, 71 and 72

388. Piriniha Te Tau gave evidence of applications brought before the Papawai-Kaikōkirikiri Trust Board being refused where descendants of original donors stated a preference for a Rangitāne whakapapa.

Refer Te Tau (#F10) para 28

389. In order to rectify this anomoloy Rangitāne seek a recommendation that the Act is amended to specifically refer to and include Rangitāne alongside the reference to Ngāti Kahungunu, on the basis that Rangitāne were amongst the major donors of the Kaikōkirikiri lands in 1853.

M. SOCIO-ECONOMIC IMPACT – FAILURE TO HONOUR PROMISES (SOI 23)

390. The Rangitāne pleadings captured in this section of the SOI relate to allegations that the Crown failed to deliver on promises to provide education, medical services and the benefit an increased European population would bring by way of economic opportunity.

391. The provision of education and medical services had its genesis in the Land Fund policy which Grey promoted to Wairarapa Māori. In explaining the Land Fund in 1852 Grey stated:

"I have to acquaint you that as the natives have been given to understand, on many occasions, on disposing of their land, that the proportion of the land fund above alluded to would if necessary be expended in promoting their welfare, and as it has also been frequently explained to them that such expenditure of part of the land fund, rather forms the real payment for their lands,…"

Refer Grey to Wynyard, 2 September 1852, cited and referred to in Walzl (#A44) para 4.176

392. On 29 December 1877 Grey when addressing Māori gathered at Waiohiki said:

"I came here first to you a great many years ago to ask you to sell me some land, for the Europeans to be settled on by them. I told you all then that that would be for your benefit - that you would get protection from your enemies, and that an end would be put to your wars among one another. I told you of a good many things – carts, horses, ploughs, cattle, property which you had not then – that you would get schools for your children, and doctors to nurse you when you were sick".

Refer Grey's speech, 29 December 1877 set out in Te Wananga, cited and referred to in Walzl (#A44) para 4.195

393. If there is any doubt that such promises were made to Wairarapa Māori including Rangitāne one need look no further than the actual expressed words of the koha clauses. The English version of which reads:

"It is further agreed to by the Queen of England on her part to pay us at certain periods, within certain years to be decided on by the Governor of New Zealand and ourselves, that is, that we are to have a certain additional consideration for the lands we have sold, to be paid for us for the forming of Schools to teach our Children, for the construction of Flour Mills for us, for the construction of Hospitals and for Medical Attendances for us, and also for certain Annuities to be paid to us, for certain of our chiefs;…"

Refer Turanganui-Eastside of the Lake Deed 582 (#A105)

Schools

394. On 21 December 1860 St Thomas's opened at Papawai. It lasted only until January 1865. The Crown subsidised what in effect was a church school operating on gifted land at Papawai.

Refer SOR 3, para 69
Refer Stirling (#A51) page 190

395. As Gilling comments the comparable Pākeha school at Greytown was better funded and resourced.

Refer Gilling (#A118) page 310 and 311

396. No further schools were made available for Māori in the Wairarapa until the 1880's when two Native Schools were opened at Te Oreore and Papawai. Although Native Schools were later opened at Turanganui and Okautete, the school closest to Ngāti Hāmua settlements was Te Oreore.

Refer Stirling (#A51) page 199

397. Te Oreore was closed in 1890 due to the fact that no agreement could be reached with local Māori as to the provision of a suitable site and building. That no such agreement could be reached with Te Oreore Māori is hardly surprising given that they were still waiting for a school on the lands they had gifted at Kaikōkirikiri.

Refer Gilling (#A118) page 311

398. Whilst some Wairarapa Māori children would have attended public schools, Native Agent Maudsell in 1881 wrote to the Under Secretary for the Native Department confirming European antipathy towards Māori children attending public school:

"During the past year Maori children attending public schools have been prohibited from attendance through their filthy conditions and antipathy of European parents to the contact of their children with Maori. In Greytown several Maori children attended; they were declared infested with vermin, and prohibited from further attendance on that ground. I noticed on several occasions that European children in a body showed their contempt in a practical manner by abusing the Maoris, who were in a considerable minority and unable to resist. Maoris do not generally appreciate the advantages of education, but where there are symptoms of a wish to avail themselves of the opportunity offered they should be encouraged to send their children to school. If there attendance is objectionable to parents as hitherto, a small ward might be set apart for their accommodation".

Maunsell to Native Department Under Secretary cited and referred to in Stirling (#A51) page 195

399. Nireaha Tamaki and others were amongst a group who petitioned in 1899 requesting the establishment of an agricultural/technical college in Wairarapa. As Gilling states:

"Clearly this wish for proper wish for agricultural education had been a desire of long standing amongst Wairarapa Maori, and they had some time previously extracted a government promise to provide for this. It was, moreover, an ongoing desire for self-improvement such that they were prepared to pursue the government to have the promise fulfilled".

Refer Gilling (#A118) page 312

400. Hikurangi College opened in November 1903. Again this was not a state school but one run by the Trustees of the Papawai and Kaikōkirikiri Trust Board.

Refer Stirling (#A51) section 8.212

401. The Crown provided general promises of schools and education to Rangitāne. Such promises were a feature of Crown negotiation policy in the mid 19th Century. In the Wairarapa the Crown made specific promises of schools in the koha clauses. It is submitted that the only reasonable interpretation of the koha clauses is that Rangitāne and other Wairarapa Māori were promised free education from the Crown. Not only was the delivery of education to Rangitāne patchy as the above narrative shows, it was hardly what could be termed free. Rangitāne had paid for that education by accepting lower prices for their land and also made gifts of land for schools which were never delivered.

402. Quite clearly the Crown has an obligation to provide education to Rangitāne and other Wairarapa Māori. That is an obligation which the Crown assumed pursuant to Article Three. Not only did the Crown fail to provide that basic level of service, they also failed to fulfil the expressed promises made and contained in the koha clauses.

Doctors and Health Services

403. In the arena of health services Rangitāne were no less insistent that the promises made be honoured.

404. Between 1859-1883 Dr Spratt provided some medical services in the Wairarapa. Prior to then some health services had been provided through the Native Department.

Refer Stirling (#A51) pages 41 and 44

405. Dr Spratt's practice was based at Greytown and the majority of his patients were from nearby Papawai and Waiohine. Other kāinga such as Te Oreore, where a significant number of Ngāti Hāmua lived, received less treatment.

Refer Stirling (#A51) page 51

406. The first hospital did not open in the Wairarapa until 1875, no specific ward or hospital was ever opened for Wairarapa Māori.

Refer Stirling (#A51) page 45
Refer SOR 33.11

407. Dr Spratt was not replaced and Wairarapa Māori had to rely upon health services provided by the Wairarapa Public Hospital, Native Schools and sanitary inspectors and occasional subsidised treatment and assistance from the likes of Dr Bey.

Refer Stirling (#A51) pages 53-59 inclusive

408. Towards the end of the 19th Century and in the early 20th Century Wairarapa Māori were quick to remind the Crown of the express promises made of medical practitioners. In 1895 Paratene Matenga and others filed a petition

calling for the appointment of a doctor for Wairarapa Māori. It was later reported back that Wairarapa Māori:

"…base their claim to a right to have medical aid given to them, at the public expense, upon the original contract of sale of their lands in the Wairarapa to the Crown, and referred for proof of their statement to the deeds of sale executed by them…

I have only to say that from the statements of the Natives, the conditions of the sale of the Wairarapa lands in so far as they relate to hospitals and medical attendance have not been performed… they have a reasonable claim to gratuitous medical assistance granted to them by the Government".

Cited and referred to in Stirling (#A51) page 60

409. Further letters and petitions followed in 1898 from H P Tunuiarangi and Tamahau Mahupuku, the 1899 petition from Nireaha Tamaki, and a petition in July 1908 by Rimene and others of Ngāti Hāmua.

Refer Stirling (#A51) pages 60-63
Refer Gilling (#A118) pages 304-306

410. Despite endorsement from Dr Pomare in 1908 that sale of Wairarapa Māori lands to the Government were made on the basis of promises of free medical attendance, the response of the Minister was not to undertake any responsibility arising out of the sale of lands.

Refer Stirling (#A51) pages 63 and 64
Refer Gilling (#A118) pages 307 and 308

411. The Crown was well aware that based on the express promises contained in the koha clauses, they were contractually (and morally) bound to provide the free medical services promised. What was supplied was a regime of adhoc medical services Gilling sums up the Crown position when he states:

"Clearly it was not felt necessary to treat the contract as anything binding on the Crown or affecting its honour after half a century's non compliance".

Refer Gilling (#A118) page 308

412. The situation as far as Tamaki nui a Rua was no better. Hospitals in the area were not opened until 1902 and 1906 respectively at Pahiatua and Dannevirke respectively. In June 1899 Nireaha Tamaki had written to Premier Seddon requesting that a doctor be appointed for Dannevirke and Porangahau to "protect us from the numerous ailments of the world". Seddon passed Nireaha's request onto Under Secretary Waldegrave who consulted Judge Butler. Judge Butler was of the view that whilst Māori could pay for medical care, they usually used traditional remedies and thus no medical officer was required for the area.

Refer Irvine (#A64) pages 60 and 61

413. The Crown made general and specific written promises to Rangitāne in exchange for acquiring their land. Those promises included the establishment of schools, free education, doctors and free medical services. In the 19th Century the Crown largely failed to deliver on its promises. At least with respect to the provision of medical services, the Crown appeared to actively attempt to duck its promises. In so acting the Crown acted dishonourably and without the utmost good faith expected of a Treaty partner.

Economic Opportunities

414. As the Mohaka Ki Ahuriri Tribunal said:

"What we can say here is that Maori hoped for, and were indeed promised, more than a subsistence lifestyle from the coming of European colonists in the Treaty of Waitangi. In our view, their right to development, combined

with the Crown's fiduciary obligations, entitled them to participate fully in the developing colonial society and economy. The chiefs who welcomed McLean with offers of land for colonists in 1851 clearly expected no less".

Refer Mohaka Ki Ahuriri Report, Volume 1, page 27

415. There is very little evidence before this inquiry of either Rangitāne claimant group having anything other than a subsistence lifestyle on their increasingly shrinking tribal land base.

416. In instances where it might have been expected that Rangitāne would participate in the developing economy there is little or skant evidence of actual participation. In Tamaki nui a Rua, most of the infrastructural development was carried out by Scandanavian settlers brought into New Zealand under the provisions of the Immigration and Public Works Act 1870 and the Hawke's Bay Special Settlements Act 1872.

Refer Irvine (#A64) p 32
Refer SOR 8:13.1.1

417. Rangitāne o Tamaki nui a Rua received some limited contracts for the formation of roads whilst most of the bush felling work was carried out by the introduced Scandanavians.

Refer Irvine (#A64) p 32

418. An example in Tamaki nui a Rua of Māori being denied the opportunity to participate in the developing economy involved Nireaha Tamaki who operated the Ngaawapurua-Manawatu Ferry Service. Nireaha Tamaki and Huru Te Hirao operated the ferry service and indeed were subsidised to do so until the service was transferred to the Wairarapa West County Council in 1880. Nireaha Tamaki and Huru Te Hirao did not wish to lose control of the ferry service and protested. They were of the view that the ferry should continue to operate under their management, as had been promised to them

in return for a road being put through between Ngaawapurua and Mangatainoka.

Refer ibid page 34

419. Eventually Nireaha Tamaki and Huru Te Hirao were compensated for the loss of the ferry service. However in protesting Huru Te Hirao indicated to the Crown agent Maunsell that the ferry was not only profitable but "an heirloom from his ancestors".

Refer ibid

420. Maunsell in correspondence to the Wairarapa West County Council acknowledged the presence of "native rights", but indicated a clear desire on the part of the Crown to extinguish them. He said:

"Will however confer with the Native Minister and he may see a way of getting rid of the Native rights set up. I think they are entitled to consideration for past promises".

Maunsell to Wairarapa West County Council, 10 August 1880 cited and referred to in Irvine (#A64) page 35

421. Descendants of Nireaha Tamaki also gave evidence of the extinguishment of the Ngaawapurua-Manawatu ferry business established by Nireaha Tamaki.

Refer Tatere (#E14) paras 12-13
Refer Gilbert-Palmer (#E12) para 30

422. This case study has a depressingly familiar ring to it in the context of this inquiry. Here Tamaki and others were promised that they could continue to run a ferry business in return for the establishment of a road. In running the ferry business they were exercising their ancestral rights and at the same

time participating in the developing economy. The Crown and the local territorial authority could not tolerate the existence of a Māori run business and sought to extinguish those rights in clear breach of the earlier promises made to Nireaha Tamaki.

N. TWENTIETH CENTURY ALLEGATIONS – ENVIRONMENTAL MATTERS (SOI 14 & 15)

Introduction

423. The earlier submissions have dealt primarily with 19th Century allegations. The submissions that follow in sections **N-R** address 20th Century allegations. Whilst not minimising these allegations, Rangitāne remind the Tribunal that by the turn of the 19th Century, in both claim areas only 11% of the land remained in Rangitāne ownership, thus much of the damage had already been done.

424. In the submissions that follow particular attention is paid to the evidence led by the tangata whenua witnesses for Rangitāne. Counsel for Rangitāne is content to leave a discussion of the management/legislative regime of the natural environment, to those more familiar with the arguments. In preparing these submissions Counsel has had the benefit of citing draft submissions on behalf of the claimants in Wai 741 the local government claim by Mr Murray Hemi.

425. Thus the issues to be addressed in this section are as follows:

(a) The removal of indigenous flora, in particular Te Tapere-nui-o-Whātonga and the impact on Rangitāne. At the same time there will be discussion on the impact of the loss of the huia;

(b) The importance of inland waterways, particularly rivers to Rangitāne;

The Clearance of Te Taperenui o Whātonga

426. At SOI 14.3.1 the Crown have agreed:

"The settlement of Wairarapa Ki Tamaki nui a Rua resulted in significant transformation of the environment. The transformation included substantial

modification of wetlands, massive forest clearances and the introduction of exotic grasses, crops, animals and fish".

427. In its SOR at para 16.1.3 the Crown admits that much of the Seventy Mile Bush was either felled or burned following its sale to the Crown in the 1870's and subsequent purchase by settlers.

428. The Seventy Mile Bush was situated between the northern Wairarapa and southern Hawkes Bay. It extended from Rākautatahi in the north to Opaki, just north of present Masterton. To the west it extended over and into the lower Manawatu area and as far west as Ashurst in present day Palmerston North. However the majority of it lay east of the Ruahine and Tararua Ranges.

Refer Paewai (#E3) para 146

429. Steven Oliver in his report after reviewing evidence in the Native Land Court about mahinga kai within Te Taperenui o Whātonga reached the conclusion that there was a decline in the reliance on mahinga kai by the mid 19th Century. He does however accept that Rangitāne suffered an environmental loss by the destruction of the forest:

"The degree of reliance by Tararua Māori on traditional food gathering in the late 19th Century is difficult to determine but they did sustain an environmental loss by the destruction of the forest of their district. In addition eel fisheries declined with the degradation of rivers from deforestation and resulting erosion. Traditional food sources such as huia and titi disappeared and there was a loss of sacred sites associated with food collection".

Refer Oliver (#A35) pages 36 and 37

430. The Rangitāne tangata whenua evidence is far less equivocal. The importance of Te Taperenui o Whātonga was a theme which permeated much of the evidence given by Rangitāne.

431. Mr Paewai referred to the fact that Te Taperenui o Whātonga was named by their ancestor Whātonga. The forest provided natural refuge for Rangitāne, particularly during times of warfare in the early 19th Century;

Refer Paewai (#E3) paras 43 and 126-143 inclusive

432. The resources of the forest were important for housing, shelter, clothing, wood for warmth, cooking, medicines for health such as rongoa, native vegetables, fruit and birds for sustenance and the provision of raw materials for the building of river waka;

Refer Paewai (#E3) para 147
Refer Karaitiana (#E7) para 13
Refer Gilbert-Palmer (#E12) paras 33 and 38

433. A number of important kāinga were situated within the bush. Important kāinga existed at Te Hawera, also known as Hāmua and Ihuraua;

Refer Paewai (#E3) para 149

434. The bush was an important location of Māori spiritual deities such as Tāne-Mahuta, Rongo, Haumietiketike and Papatuanuku;

Refer Paewai (#E3) para 148

435. Mr Chrisp also discussed traditional Rangitāne economic activities. He was able to provide specific references from Native Land Court minutes of Rangitāne being involved in resource gathering in the southern portion of the Seventy Mile Bush. He refers to bird snaring at Ōkurupēti, the importance of the huia as a trade item, the catching and eating of indigenous rats, significant cultivations at Ngā Tapu and Mangahao, gathering fern root and

kōrau at Ōkurupēti, collecting berries at Ōkurupēti and growing flax at Te Hāwera.

Refer Chrisp (#A60) pages 53-58 inclusive

436. Mr Chrisp's evidence was that these traditional foraging and food collection practices continued well into the 20th Century.

Refer Chrisp (#A60) pages 53-58 inclusive

437. The significance of native birds particularly the huia was a further theme which emerged in the Rangitāne evidence.

Refer Karaitiana (#E7)
Refer Gilbert-Palmer (#E12) paras 33-37
Refer Mike Stone (#E13)

(d) Mr Stone's evidence was important in confirming the presence and density of the huia in the Seventy Mile Bush. Indeed he concluded by stating that:

"The region of Tamaki nui a Rua has more reason to claim to to be the "home of the Huia" than any other and the various factors contributing to its demise can be well documented and are a complex mix of habitat loss, introduced predators, human greed, disease and lack of coordinated effort to protect the species. To Maori, this Huia bird had more mana than any others and was treasured with efforts to ask the Queen's representative to restrain the Pākeha from shooting it".

Refer Stone (#E13) para 52

(e) Mr Stone's evidence leaves us in no doubt that the felling of the Seventy Mile Bush was a direct cause contributing to the decline and ultimate disappearance of the huia so prized by Rangitāne.

438. The decline of the huia was brought to the attention of the Earl of Onslow. At that time Māori, recognising the danger the huia was in had placed a rahui on sections of the Tararua Range. In 1892 a ban on the hunting of the huia was put in place pursuant to the Wild Birds Protection Act. A number of island sanctuaries were proposed, where it was hoped the huia numbers would recover. Unfortunately no huia were ever released onto the offshore islands. At least one commentator, Marr opines that the history of government attempts in the latter part of the 19th and early 20th Century to save the huia make dismal reading.

Refer Stone (#E13) para 29
Refer Marr (#A25) page 43

439. Mr Paewai noted the negative effect the clearance of the bush had on Rangitāne communities. The clearance of the bush coupled with the introduction of new foods began to change the traditional seasonal pattern of obtaining kai in the bush. Where once inter-hapū relationships were created and cemented by participation in the seasonal cycle of resource gathering, this changed with introduced European style settlement and foods. Mr Paewai noted the decline of traditional cultivation and mahi tuna activities. He goes on to state:

"The clearing of the bush had a negative effect on the psychological wellbeing of Rangitāne living in the bush and those using the bush as a resource and for security. There are a number of references that I have seen over the years to the depressed state of the Rangitāne people living in their kāinga following the clearing of the bush".

Refer Paewai (#F18) paras 17-20

440. There is very little evidence of Māori participation in the clearance of Te Taperenui o Whātonga, which in the main was carried out by Scandanavian immigrants.

Refer SOR 13.1.1

441. An insight into the mind of the Crown and settlers towards the bush can be gleaned from the Te Waka Māori newspaper articles (#A97). In the article dated 20 September 1870 at page 4 the author said:

"Now, the best of that land at present, it appears, is as a nesting area for the kereru and his friend the kaka. However it is right that the land be opened up to be improved right now".

442. In the article dated 8 November 1871 at page 14, the author said:

"Let him have his small areas in the bush on that untamed land. It has not been trodden on by his feet, nor seen by his eyes – only the pig, the rat and the weka are there going about. The European will open it up to that great thing the railway so that it can be said that it is suitable for people to live there".

443. Contrast this to the attitude expressed by Mr Rimene when describing the importance of Pūkaha/Mt Bruce:

"Pūkaha contains some of the last remnants of Te Tapere-nui-o-Whātonga, it is the last reminder of our tūpuna and their taonga such as ngā manu. Pūkaha was a pātaka (food house) for us. Pūkaha contains our whakapapa. Pūkaha contained our rongoa (medicines). I was often told by my old people that Pūkaha was like a dictionary for Rangitāne".

Refer Rimene (#F1) para 113

444. What can confidently be said on behalf of Rangitāne is the ongoing high value they placed on their relationship with Te Taperenui o Whātonga. There can be no denying that it is now almost totally gone and the most prized taonga, the huia, has also disappeared. The Crown had a duty to actively protect Rangitāne taonga. This taonga included the resources of Te Taperenui o Whātonga. In permitting the almost total clearance of Te

Taperenui o Whātonga, the Crown have obliterated the Māori landscape and the prized taonga the huia. This has had a negative impact on the collective psyche of Rangitāne.

Rivers and Lakes

445. Both Rangitāne groups gave evidence of the importance of rivers. For Rangitāne o Tamaki nui a Rua the most significant river is the Manawatu. The Manawatu provided a highway for communication and access to interrelated kāinga, particularly as it wended its way through Te Taperenui o Whātonga. Significant kaitiaki could be found in the Manawatu River including Peketahi, Ruamano and Mohangaiti.

Refer Paewai (#E3) paras 155 and 157
Refer Nicholson (#E5) paras 14-21
Refer Chase (#E6) paras 20-28
Refer Pearse (#E8) paras 13-26
Refer Tatere (#E14) paras 9-18

446. Rangitāne o Tamaki nui a Rua were also able to name other significant rivers, point to their importance of rivers as a source of food namely eels and point to significant events commemorated and associated with rivers.

Refer Paewai (#E3) para 158
Refer Karaitiana (#E7) paras 7-9 inclusive and para 12

447. Many of the Rangitāne o Tamaki nui a Rua witnesses spoke of the significance of lakes as resource gathering areas such as kakahi and koura and tapu lakes.

Refer Pearse (#E8) paras 13-26
Refer Chase (#E6) paras 20-28

448. In the south Mr James Rimene gave evidence of the Kurahaupō rangatira Haunui-ā-Nanaia who named Lake Wairarapa and the Rivers Tauherenīkau, Waiōhine, the Waingaawa, Waipoua and Ruamahanga.

Refer Rimene (#F1) paras 81-86 inclusive

449. Mr Rimene went on to indicate the importance of the Ruamahanga in Rangitāne history containing as it does 25 traditional Hāmua marae including urupā and other wāhi tapu. He indicated the significance of the Ruamahanga as providing the best eels, freshwater koura and the last place where Peketahi a kaitiaki was sighted.

Refer Rimene (#F1) paras 87-89

450. Mr Rimene confirmed that the course of the river has changed so much so that every wāhi tapu along the banks had been destroyed, due mainly to River Boards changing the direction of the Ruamahanga's natural course.

Refer Rimene (#F1) para 89

451. Mr Chrisp confirmed the importance of Lake Wairarapa to Rangitāne as a provider of resources including eel, flounder, whitebait, kokopu, ducks, fern root and korau.

Refer Chrisp (#A60) page 51

452. Although both Rangitāne groups were able to point to the traditional significance of these inland waterways and the resources they have a number of concerns they being:

(a) A decline in water quality in the Manawatu River;

(b) The lowering of water levels and the effect on the eel fishery at Lake Onoke and Lake Wairarapa;

(c) A decline in the native fish communities in the Manawatu River

(d) A decline in the eel and koura fishery in the Ruamahanga;

(e) The release of sewage into the Ruamahanga.

Refer Rimene (#F1) para 89
Refer NIWA (#A56) part 4
Refer Marr (#A25) page 74
Refer McLean (#A41) page 194

453. The release of human effluent into rivers, particularly the Ruamahanga is of serious concern to Rangitāne. The Masterton District Council operate the municipal sewage system. They have an interim consent to discharge into the Makoura Stream which flows into the Ruamahanga River. The Rangitāne attitude towards this is best summed up by Liz Burge who stated:

"For Rangitāne the issue of human sewage into waterways is abhorrent. Waterways are, as previously mentioned, the blood veins of Papatuanuku of whom Rangitāne are descended. They are also food baskets, and used for many spiritual and ceremonial occasions. They are physical boundaries of whanau, hapu and iwi and the whakapapa connections to these waterways are integral to the mana of Rangitāne people".

Refer Burge (#F5) para 62

454. Rangitāne in both Tamaki nui a Rua and Wairarapa have long standing relationships with rivers and other inland water bodies within their respective takiwā. They trace these relationships right back to the creation of and/or naming of those water bodies. They were able to point to the use of those water bodies as transport and resource gathering sources. They also point to those waterways as the homes of significant taniwha and kaitiaki. In

the case of the Ruamahanga they point to its significance as a place of 25 pā, kāinga and other wāhi tapu.

455. Their traditional relationships with their waterways have been almost totally obliterated. Rangitāne feel an overriding obligation to protect these inland waterways. They feel overwhelmed and marginalised by the actions of territorial authorities and their predecessors who have assumed control over rivers and lakes. They point to the ongoing degradation of those inland waterways in particular the decline in water quality and native fish life as symptomatic of the powerlessness they feel.

O. CUSTOMARY FISHERIES (SOI 16)

Introduction

456. Rangitāne take this opportunity to remind the Tribunal of the importance of the resources of the sea and coast to them. In Tamaki nui a Rua they were content to leave the leading of this type of evidence to their whanaunga Te Hika o Pāpāuma, the Wai 420 claimants. However they also led evidence of regular expeditions to the coast to gather kai moana, particularly kina, pipi and paua.

Refer Nicholson (#E5) paras 14-15 and 24-29
Refer Punga Paewai (#E15) para 15
Refer Stephenson (#E16) para 8

457. Rangitāne o Wairarapa gave evidence of being involved in coasting fishing at various places along the Wairarapa coastline including Lake Onoke, Pahaoa, Waikekeno, Te Unuunu and Matikona. At these places Rangitāne caught or collected various types of fish and shellfish including hapuku, kahawai, paua and crayfish. They referred to narratives in the Native Land Court about various toka hapuku and the collection of edible seaweed.

Refer Chrisp (#A60) pages 52 and 53

458. Rangitāne o Wairarapa were able to point to significant relationships with Te Hika o Pāpāuma which enabled them to have shared rights of access to lands and economic resources. In particular they pointed to the seasonal movement which occurred between Te Oreore and the East Coast as people of the hapū accessed the resources of those districts.

Refer Chrisp (#A60) page 48

459. Mr Kerehi specifically referred to those Rangitāne hapū who continued to maintain coastal relationships, the relevant area and the associated pā and marae.

Refer Kerehi (#F6) particularly the table at para 20

460. Mr Kerehi also commented on the close relationships between Rangitāne and the coastal hapū Te Hika o Pāpāuma and Ngāi Tumapuhiaarangi.

Refer Kerehi (#F6) paras 23-28

Fisheries (Kai Moana Customary Fishing) Regulations 1998

461. Mr Potangaroa gave evidence of the effect of the Fisheries (Kai Moana Customary Fishing) Regulations 1998 to Rangitāne particularly Ngāti Hāmua. The impact of the regulations 1998 has been to:

(a) Permit applications for the appointment of kaitaki, from individuals whether or not they have wider whānau or hapū support;

(b) Permit hapū to claim areas on an exclusive basis which has pitched hapū against hapū. This has ignored traditionally accepted discreet fishing areas in the takiwā of another hapū;

(c) Create a bottleneck of applications under the regulations;

(d) Has resulted in the recent phenomenon of hapū being labelled "inland" and "coastal". It has been the experience of Ngāti Hāmua that they have been labelled "inland" hapū with little or no customary fishing rights. As Mr Potangaroa clarifies, this ignores seasonal migration patterns to the coast by Ngāti Hāmua to gather fish and kai moana.

Refer Potangaroa (#F4) paras 34-74 inclusive

462. It is the experience of Rangitāne o Wairarapa that rather than assist, the introduction of the Fisheries (Kai Moana Customary Fishing) Regulations 1998 has been a hindrance. They have found themselves pitched into a competitive environment with their coastal whanaunga

463. Rangitāne also point to the legislation being faulty in the sense that there is no mechanism to resolve disputes. Although there is a dispute resolution clause, clause 8 in the Regulations, should the parties ultimately decide not to agree then the dispute remains unresolved.

464. Mr Lynch the MAF witness recognised that there are problems with the regulations (#G4, paras 103 and 117). At paragraph 117 he said:

"Progress in implementing the customary fishing regulations has been slow in some areas. Implementation requires addressing the difficult issue of identifying who is tangata whenua for specified areas. The Ministry has had insufficient capacity to assist tangata whenua enough with this process on a face-to-face basis, and tangata whenua have struggled due to lack of resources and the complexity of the issues involved. There is a need for some specific training on the provisions in the regulations, and implementation issues including options that can be used to help resolve disputes relating to mandate and boundaries".

465. Mr Lynch indicated that the regulatory scheme allows for the appointment of more than one kaitiaki to be made for the same or overlapping areas by more than one iwi or hapū. With respect that is far from clear within the Regulations. The evidence of Mr Potangaroa demonstrates that the current mind set amongst applicants for kaitiaki status is a competitive one which ignores traditional relationships and interests.

466. Rangitāne accept that the Fisheries (Kai Moana Customary Fishing) Regulations 1998 were well intentioned. However in practice they have caused multiple problems. They have meant for Rangitāne, in particular Ngāti Hāmua traditional fishing rights being ignored. Ngāti Hāmua have

now found themselves in a competitive process for which ultimately there is no mechanism to break that dispute.

P. CENTRAL (DOC)/LOCAL GOVERNMENT (SOI 24)

Introduction

467. Both Rangitāne groups have given evidence of their responsibilities and obligations they have in the management of the natural environment and its resources.

Refer Stephenson (#E16)
Refer Potangaroa (#F4)
Refer Burge (#F5)
Refer Kerehi (#F6)

468. Tamaki nui a Rua have an established relationship with the Tararua District Council as expressed by a Memorandum of Partnership (Stephenson, #E16(a)). Rangitāne o Wairarapa are one of three parties to a Memorandum of Understanding with DOC and the National Wildlife Centre Trust concerning Pūkaha/Mt Bruce (Grace #F7, paras 30-33). They are signatories to a Charter of Understanding with the Wellington Regional Council and have informal relationships with Masterton District Council, Carterton District Council and the South Wairarapa District Council (Burge #F5, paras 51-81).

469. Notwithstanding their success in forging recent relationships with both central and local government the key issue for both Rangitāne claimants are their lack of capacity and resources to respond to and engage with central and local government **(SOI 24.4.5)**.

470. The realities facing the Rangitāne claimants can be summarised as follows:

(a) Within this district inquiry there are numerous local government authorities and Crown entities to interface with. They include the two Regional Councils (Greater Wellington Regional Council and Horizons Manawatu), the four District Councils (Masterton,

Carterton, South Wairarapa and Tararua), various government departments including DOC, Historic Places Trust, Transit New Zealand, Ministry for the Environment, Ministry of Fisheries, Environmental Risk Management Agency, Te Puni Kokiri, Minstry for Economic Development;

Refer Burge (#F5) paras 23 and 24

(b) The sheer number of entities Rangitāne has to work with means they have to prioritise their interests, it has been near impossible for Rangitāne o Wairarapa to do so;

Refer Burge (#F5) paras 26 and 27

(c) Both groups receive little or any funding to discharge their obligations. During the time Liz Burge worked for Rangitāne o Wairarapa much of the work she and others carried out was done on a voluntary basis;

Refer Burge (#F5) paras 29-38 inclusive

(d) The work carried out by Lorraine Stephenson on behalf of Rangitāne o Tamaki nui a Rua was on a voluntary basis.

(e) The Wellington Regional Council provides some financial support for Regional Council related consents and the development of the GIS Mapping Programme. However as Jason Kerehi stated in his evidence:

"Lack of resources means that the task that Rangitāne staff undertake to respond to consents becomes a financial burden on the iwi. This money needs to be found from other sources and often it is covered by the surplus left by the delivery of unrelated contracts.

This however hides the true cost to iwi of responding to resource consent issues".

He goes on to state as follows:

"In regards to resource consent issues Rangitāne receives no funding from any of the three District Councils (Masterton, Carterton and South Wairarapa). Even though responses to District Council consents make up nearly half of the unit's workload. Rangitāne are duty bound to respond to all consents to ensure that development or activities do not damage sites of significance or degrade important cultural values but are not resourced to do so. The local District Councils often state that the rating base is too small to assist iwi financially but the obligation to consult with iwi remains. So, iwi are caught between their duty to protect their heritage and the reality that there is little or not recompense for doing so".

Refer Kerehi (#F6) paras 75 and 76

(f) Importantly Mr Kerehi goes on to identify that financial assistance is not the only resource that is lacking. Professional capacity is needed to be developed to deal with consent issues, consent authority hearings and Environment Court hearings. He identifies that there needs to be targeted training for iwi representatives to help raise their professional level;

Refer Kerehi (#F6) para 77

(g) Rangitāne o Wairarapa have at times been strained to fulfil its relationship as part of the Memorandum of Understanding concerning Pūkaha/Mt Bruce. Mr Grace refers to the fact that Rangitāne have little in the way of resource, they have a number of projects on their agenda including preparation for Waitangi Tribunal hearing and fish negotiations and contracts as service providers in

Masterton and relationships with territorial and regional authorities to discharge. He confirms that the reality for Rangitāne which is that it is a huge drain on a relatively small organisation with limited funding;

Refer Grace (#F7) para 42

(h) No funding is provided by DOC in relation to its relationship with Rangitāne at Pūkaha/Mt Bruce.

471. Both Rangitāne o Wairarapa and Rangitāne o Tamaki nui a Rua have recognised the need to have relationships with regional and territorial authorities and government agencies. As a result they have formed an array of formal and semi formal relationships. Rangitāne are acutely conscious of the need to protect their interests in the natural environment and engage in such relationships. The difficulty they have is lack of capacity, people, professional capacity, money and resources.

472. To what extent then does the Crown have a duty to ensure that Rangitāne are sufficiently resourced to form relationships with territorial/regional authorities and DOC and discharge their environmental obligations?

473. That question can perhaps be answered in this way. Rangitāne are one of the tangata whenua groups in both the Tamaki nui a Rua and Wairarapa regions. They have their own unique history and korero associated with all aspects of the environment including mountains, rivers, coastal environment, bush areas and the spirituality associated with such areas. As their Treaty partner, the Crown has a duty on it to actively protect and sustain such relationships. They can protect and sustain such relationships by ensuring that Rangitāne are sufficiently resourced to engage in any dialogue concerning the environment.

474. The above comments don't even begin to address the fundamental issues of ownership and joint management of the environment. The Rangitāne o

Wairarapa experience has been that local government have tended to consider their obligations as discharged if they have simply consulted. The more complex underlying issues of ownership and joint management have yet to be properly addressed.

Refer Burge (#F5) para 22

475. Jason Kerehi has suggested a number of sensible and simple steps which the Crown could take to ensure this is possible they being:

(a) The provision of financial assistance, technical support and capacity building;

(b) Increasing consent fees to enable compensation to be paid for iwi involved in consent applications. That would enable District Councils to be responsible for setting performance standards with iwi, negotiating a reasonable fee with iwi charging and receiving consent costs from applicants and monitoring and developing the iwi's performance;

(c) Sponsorship/scholarships to upskill iwi staff by providing courses, workshops and seminars;

(d) Territorial authorities should be encouraged to use the resources of central government to become more effective in their dealings with Māori. Mr Kerehi points to the resources contained within various government agencies;

(e) The development of better relationships with iwi groups.

Refer Kerehi (#F6) paras 81-91 inclusive

The Importance of Pūkaha/Mt Bruce to Rangitāne

476. Rangitāne enjoy a special relationship with Pūkaha/Mt Bruce. That was confirmed in the evidence of Mr Rimene (#F1 at paras 113-114) and Mr Grace (#F7). That special relationship was recognised by DOC and the National Wildlife Centre Trust during the site visit to Pūkaha/Mt Bruce. Mr Field also recognised the importance of the relationship with Rangitāne in his statement of evidence, Field (#G3) paras 30-49 inclusive.

477. Having said that the issue of lack of capacity continues to bedevil Rangitāne in fulfilment of its obligations as a member of the Memorandum of Understanding.

Refer Grace (#F5) para 42

478. Notwithstanding the success of the relationship thus far, Rangitāne seek further outcomes in their relationship with DOC they being:

(a) An agreement that the informal brand Pūkaha/Mt Bruce becomes formalised;

(b) A development of the cultural tourism project to the point where Rangitāne derive employment and an income stream from it;

(c) The development of a joint management plan with DOC for Pūkaha/Mt Bruce.

479. When those aims are achieved, it is submitted it would be a better reflection of and fulfilment of the Treaty partnership that should exist between DOC and Rangitāne.

Q. PUBLIC WORKS (SOI 20)

Rangitāne o Tamaki nui a Rua – Wai 166

480. A number of Public Works acquisitions occurred within the Rangitāne o Tamaki nui a Rua (Wai 166) takiwā. Those acquisitions were made by both the Crown and local body authorities. Those takings in which Rangitāne o Tamaki nui a Rua are particularly interested are as follows:

481. Acquisitions by the Crown:

- Tahoraiti (Lot 1) – Rifle Range – 10a 1r 14.7p
- Tautāne No. 2 – Road – 2a 13p
- Tahoraiti 2 sec 13 – Makirikiri Scenic Reserve – 38a 2r
- Piripiri – Railway – 45a
- Tahoraiti – Railway – 18a, 40a 3r 23p and 23a 2r 38p

482. Local authority acquisitions:

- Tahoraiti 2 sec 18 – Gravel Pit – 3a
- Tahoraiti 2 – sewage reserves – 56a
- Tahoraiti 2A27 – Aerodrome – 105a
- Tahoraiti 2A13B and 2A14A2 – 2.5460ha and 3.0416ha respectively – rubbish dump.

Refer Marr et al (#A32)
Refer McBurney (#A47) 241 and 242 and 234
Reference is also made to the Sites of Significance Booklet prepared for Rangitāne o Tamaki nui a Rua (#E40). Photograph 36 demonstrates where the rubbish dump and sewage ponds are in relation to Makirikiri Marae. Photograph 37 shows the Dannevirke Aerodrome

483. What follows is a consideration of the Dannevirke Aerodrome takings by the Dannevirke County Council. The issues that arise in this case study are typical of the issues that Rangitāne o Tamaki nui a Rua wish to bring to the attention of the Tribunal.

484. Chronology of events is as follows:

- In 1933 the Dannevirke Airports Association ("the Association") obtained a sub-lease and then later a primary lease from the land owner Eriata Nopera;
- The Association occupied the land, laid off the Aerodrome, made improvements to the property and erected buildings. The Association paid a rental of 11s 4d to the Native Trustee;
- In October 1935 the Association applied to the Native Land Court for confirmation of the lease at the existing rental. The Court ruled against that and increased the annual rental to 14s 8d per acre;
- The Association decided not to pay the increased rental and sought the assistance of the Public Works Department proposing that they acquire the lease, with the Association becoming the sub-lessee;
- The Public Works Department informed the Native Trustee who in turn approached Eriata Nopera in 1936 proposing a lease for a period of 21 years at an annual rental of 11s 4d per acre;
- Nopera was not satisfied with the rental and refused to accept the offer;
- The Association wrote to the Minister of Lands and Minister of Defence. They gained assistance from government departments to

erect buildings and earthworks, £10,000 was spent on labour for levelling the Aerodrome;

- The Association also sought central government assistance to try and compel local authorities to either take over the lease or purchase the land outright for the Aerodrome;

- Between 1934-1937 the Association continued to pay rental at 11s 4d, despite the Court's ruling in 1935 to pay an increased amount;

- The matter was brought before the Native Land Court in 1937, the issue being whether there was a formal revocation of the lease;

- Judge Harvey was critical of the treatment of the owner and stated:

  "Arrayed against him are a local faction and coterie of bodies and Departments imbued with a common idea of securing the land from him as a rental below that which This Court has decided is an adequate rent. It is not a little humiliating to contrast the public spirit of Eriata Nopera, who's interest it is the duty of the Court to protect, with the sorry picture built up by the intrigues of quasi public bodies and Government Departments in their endeavour to place Eriata beyond the Court's protection and all that that means to him and his interests. The Court has no hesitation in finally refusing confirmation of this contract on the ground that it is quite plain that the lessee abandoned it in 1935 and that it has not acted in good faith in the matter".

- A new lease was entered into on 21 December 1937 to run for 18½ years;

- Prior to the expiry of the lease in the mid 1950s the Council moved to acquire the title outright;

- The Civil Aviation Authority noted in 1954 that the Government had spent approximately £13,000 on the development of the Aerodrome. They encouraged the local authority as a matter of Government policy to accept responsibility for the maintenance of the local Aerodrome;

- By 1954 Eriata Nopera was deceased. The Trustee of his estate was Hohepa Tatere. The Borough Council began discussing the lease with the Trustee in December 1954;

- At that time the Trustee proposed granting a new lease. He indicated that the estate would consider selling the property for £10,000, the Borough Council sought its own valuation which placed a value on the land of £6,060;

- In 1955 the Council made an offer to the Trustee to purchase the property at £6,060 considerably lower than the owner's valuation;

- The Trustee replied that the owners no longer wished to sell and that in any event the proposed purchase price was too low;

- The Council made no further attempt to purchase but instead moved towards compulsorily acquiring the land;

- At this time Mrs Muri Paewai, a beneficiary in the estate, became concerned at the possibility of the land being compulsorily acquired and wrote to the Minister for Māori Affairs. She complained that the Aerodrome was being extensively used for topdressing purposes and that it would benefit local farmers only and not the general public. She indicated that she intended to take the land after the lease expired to develop it as a sheep farm. She further advised that the land was accessible to the family home, she had no intention of selling the

land, she needed it for her children and to increase their standard of living. She stressed that it was her right to keep the land;

- The Minister of Māori Affairs replied to Mrs Paewai in April 1955 assuring her that there was no Government intention to take the land under the Public Works Act;

- In 1955 Mrs Paewai wrote to the Minister indicating that she and the Trustee would object should the need arise;

- In August 1955 the Borough Council gave notice of its intention to take the land pursuant to the Public Works Act 1928;

- Following that Mrs Paewai again wrote to the Minister of Māori Affairs informing him of the Council's intention. The Minister replied that neither he nor the Government had the power to intervene in the matter and that the Council was acting within it's powers. He advised her that she should consult a solicitor;

- In July 1955 the Borough Council had written to the Commissioner of Works and the Governor-General requesting that the land be compulsorily acquired by them and then vested in two local authorities, the Dannevirke Borough Council and Dannevirke County Council;

- The Dannevirke County Council then notified its intention to take the land;

- Mrs Paewai exercised her right to object. The County Council heard her objection on 8 November 1955. Her objections were unsuccessful;

- On 11 November 1955 the County Council submitted a memorial to the Governor-General requesting approval for the land to be taken under the Public Works Act 1928, in the memorial they confirmed that all requirements under the Act had been complied with and the taking would not cause any private injury;

- The land was taken in February 1956;

- The Māori Land Court heard an application for compensation in October 1956. The County Council submitted that they could pay no more than the amount offered originally to purchase, i.e. £6,060. The Court accepted the evidence of the Nopera estate of £10,000 and also awarded compensation of £250 for injurious effect resulting from noise due to the proximity of the remaining 24 acres to the Aerodrome;

- The Dannevirke County Council transferred the land to the Borough Council as joint tenants in 1957;

  Refer Marr et al (#A32) pages 255-269 inclusive

- In 1968 the Dannevirke County and Borough Councils purchased two blocks of land, Certificate of Title references 121/36 and 121/37 from Evelyn Chick;

- On 20 March 1980 the Borough and County Councils purchased a block of land from John and Donna Clarke, Certificate of Title reference part F3/375;

- On 28 October 1975 the Dannevirke Borough and County Council sold 16.3.3 acres, being part of the lands compulsorily acquired in 1956, to the New Zealand Insurance Company Limited;

- In 1980 the Borough and County Councils sold 5.9905 hectares to John and Donna Clarke, being part of the lands compulsorily acquired in 1956;

  Refer Galvin (#E51) in particular refer to the timeline and plan of the Tahoraiti blocks Galvin has filed with her evidence

485. Mr Stephen Paewai has attached to his evidence letters written by his grandmother Muri Paewai to the Minister of Māori Affairs and various responses.

Refer Paewai (#E17 "A"-"D")

486. The following issues emerge from this case study:

(a) The owner Nopera was sympathetic to the needs of the Association and had entered a lease arrangement with them. After the Court in 1935 proposed to increase the lease payments, the Airports Association sought the assistance of the Public Works Department and the Native Trustee;

(b) The Crown attempted to lease the land at the amount of rental rejected by the Court. Rather than acting in the interests of Nopera, the Native Trustee promoted the interests of the Association;

(c) The Association, local body authorities and Crown were severely criticised in the 1937 Court decision which clearly contrasted with the publicly spirited Nopera;

(d) When the lease was coming to an end in the mid 1950s, the local authorities did not attempt to purchase or re-lease the property. Rather they moved to acquire the title outright;

(e) Mrs Paewai protested on a number of occasions. She received no Government assistance which can be contrasted to the earlier assistance by government to the Association in an attempt to obtain the lease. It can also be contrasted to the Crown expenditure of over £13,000 on developing the Aerodrome;

(f) Mrs Paewai indicated very clearly in her letter to Mr E Corbett, the Minister of Native Affairs in 1955 that:

- The property was freehold and had been willed by Eriata Nopera for Mrs Paewai and herself;
- The donor was a tipuna to her children;
- The property was situated in the vicinity of her home which made it convenient for the purposes of farming;
- She had already arranged for her second eldest to purchase stock;
- The purpose for which the airport would be used for top dressing purposes and not for the general public benefit;
- Several farmers had their own top dressing strips on their properties;
- A suitable property existed at Oringi, seven miles from Dannevirke for an aerodrome.

(g) At no time did the County or District Council consider a renewal or further lease from the Trustee of the estate;

(h) The compulsory acquisition of Māori freehold land can be contrasted to the purchase of land by the Councils from neighbouring Europeans in 1968 and 1980;

(i) On two occasions, land which was compulsorily acquired in 1956 was sold. On neither occasion was the land offered back to Mrs Paewai or her family.

487. This case study neatly encapsulates many Māori complaints about the use of Public Works legislation to acquire their land despite their opposition. Mrs Muri Paewai's descendant, Stephen Paewai confirms the bitterness and dismay still felt amongst today's generation at this acquisition. He notes the arrogance of the local Council in proceeding to compulsorily acquire the land and the complete lack of assistance from the government to prevent this from happening.

Refer Paewai (#E17) paras 5-13 inclusive

488. In the Turangi Township Report the Waitangi Tribunal said:

"Maori insistence on their right to retain tino rangatiratanga over the land resulted in the inclusion of article 2 in the Treaty, and was a measure of the depth and intensity of their relationship to their land and other natural resources. It follows that if the Crown is ever to be justified in exercising its power to govern in a manner which is inconsistent with and overrides the fundamental rights guaranteed to Maori in article 2 it should be only in exceptional circumstances and as a last resort in the national interest".

Refer Turangi Township Report (1995) p 285

489. In this case there is absolutely no evidence that exceptional circumstances existed which warranted the taking of land for the aerodrome. Indeed there was evidence from Mrs Paewai that an alternative suitable site was available a short distance away. There was also evidence that many farmers in the

district had their own top dressing airstrip. No national interest was at stake. Indeed it is submitted the only interest at stake was a small sector of the local community that being the farming community.

490. None of the bodies lined up against Mrs Paewai considered alternatives. In the 1950s the Association, Dannevirke County Council and the Dannevirke Borough Council did not consider the alternative option of a new lease. They had the power to take compulsorily and did so. Māori sentimentalities and aspirations were simply swept aside.

491. It makes no difference it is submitted that the actual taking in this case was by a territorial authority. Their ability to acquire the land was by virtue of the Public Works Act 1928 which permitted taking by local authorities. Therefore although the actual taking was carried out by a local authority they were permitted to do so by legislation enacted by the Crown. The sad history of this case demonstrates the complete lack of support for Mrs Paewai by the government.

Rangitāne o Wairarapa – Wai 175

492. Rangitāne o Wairarapa led case study evidence concerning the following Public Works acquisitions:

- Kopuaranga – Railway Takings – 8a 2r 8p and Roads – 3a 6p and 4a 2r;
- Ōkurupatu – Roadway Takings – 271a;
- Eketahuna Reserve – Road and Railway Takings – 16a 2r 30p and 7a 3r 25p

Refer Chrisp (#F11) paras 78-82 inclusive
Refer McBurney (#A47) pages 196 and 197
Refer Stirling (#A50) pages 121-137 inclusive
Refer Gawith & Hartley (#A26) pages 3 and 6

493. In his evidence Mr Chrisp discusses the Kopuaranga takings (#F11, para 78). Despite being a reserve, land was taken in the Kopuarangi block for roading and railway purposes. The legislation in place at the time required that there be a Native Land Court hearing prior to any compensation being heard. Prior to that taking place surveys had to be carried out and Court costs were incurred. The compulsory title investigation did not take place until some four years after the initial takings. This case study is an example of, through no fault of their own, Rangitāne o Wairarapa losing reserve land for Public Works and then having to incur costs due to a process which they did not instigate and was not for their benefit.

See also discussion in Stirling (#A50) pages 121-124 inclusive

494. The largest amount of land taken in the Wairarapa for public purposes was the 271 acres taken from the Okurupatu block. This land was taken for roading purposes. There was tremendous opposition to these takings, particularly from the Te Oreore community as the roads cut through customary land and encroached upon the Te Oreore kāinga and cultivation. Indeed Mr Chrisp confirmed that the example he referred to was particularly relevant to the hearing as the land and roads in question were literally right outside the front door of the Te Oreore Marae. The road was hotly disputed, defensive works were prepared and troops were sent for. Civil unrest only avoided through the intervention of Te Manihera and Ihaia Whakamairu, but only at the continuing enmity of the Te Oreore people.

Refer Chrisp (#F11) paras 80-82
Refer Stirling (#A50) pages 124-137 inclusive

R. 20TH CENTURY LAND ALIENATION AND SUFFICIENCY (SOI 21 AND 22)

495. By the turn of the century only 158,512 acres (11%) of the area claimed by Rangitāne o Tamaki nui a Rua remained in their ownership. The picture was no less grim for Rangitāne o Wairarapa, by the turn of the century only 118,039 acres (11%) of their tribal takiwā remained in their ownership.

Refer SOI table at para 22.3.3

496. For Rangitāne o Tamaki nui a Rua today only 2% of the tribal takiwā remains in their ownership. For Rangitāne o Wairarapa only 1% of the tribal takiwā remains.

Refer ibid

497. Although there were regional variances between the two districts in the 19th Century effectively both have ended up at the same end point. This state of affairs is recognised in the Crown's concession of virtual landlessness.

Refer Wai 863 # 2.249

498. A key feature of both districts is that by far and away the largest purchaser of Wairarapa and Tamaki nui a Rua lands was the Crown. If the Crown did not have a deliberate policy of acquiring all lands in the Wairarapa and Tamaki nui a Rua regions, in effect that is virtually what has happened.

499. The Crown, particularly throughout the 19th Century had any number of opportunities to pause, audit and review. The failed to do so following the rush of acquisitions in 1853-1854. They failed to do so prior to the establishment of the Native Land Court. They failed to do so pre and post the acquisition of the Tamaki and Seventy Mile Bush blocks and failed to do so at the end of the 19th Century.

500. As early as 1858, Richmond was warning that excessive sale of Māori land would result in them ending up as a "wandering and lawless class of natives occupying a position like that of the gypsies in Europe, reduced to a condition of wandering vagrants".

Refer Hayes (Wai 215, #M11) p 19 and 20

501. H T Clarke in his report as to the state of affairs in Tauranga 1877, in recommending restrictions on alienation said:

"A large section of Natives are imbued with the sentiment "let us eat and drink, for tomorrow we die" hence they are perfectly oblivious to their future, and will inevitably pauperize themselves and their successors if the Government do not stretch forth a protective hand to save them from their own worthless extravagance".

Refer Hayes (Wai 215, #M11) p 50

502. In the Wairarapa context Searancke as early as 1861 referred to *"an incessant craving desire not only to sell the lands still in their hands but also to keep a constant agitation over the lands formerly sold…The leading Chiefs of Wairarapa having have sold nearly the whole of their available land, and they are now in a helpless state of debt and poverty,".*

Refer Gilling (#A118) pages 127 and 128

503. Such general and specific warning were largely ignored by the Crown who continued to be the largest purchaser of Māori land in both Wairarapa and Tamaki nui a Rua.

504. The Crown were advised of the difficulties facing Wairarapa Māori following the release of the Stout-Ngata Commission Report. As recorded at agreement 21.3.5, the Stout and Ngata Commission found "there was very little Māori land left unleased or unoccupied in the Wairarapa. Of the

remnant left unalienated, Wairarapa Māori wished it be reserved for their occupation, and there was desire on the part of Wairarapa Māori to farm their lands".

505. The Stout-Ngata Commission findings essentially relate to those lands within the Wairarapa portion of this inquiry with the exception of the Mataikona block.

Refer Oliver (#A78) page 6

506. Notwithstanding that their findings relate largely to the Wairarapa portion of this inquiry, it is submitted they are no less applicable in Tamaki nui a Rua. Surely that must be the case when one looks at the bare statistics which confirm that for both Wairarapa and Tamaki nui a Rua that only 11% of their lands remained in their ownership as at 1900.

507. Despite the warnings contained within the Stout-Ngata Commission Report, the Native Land Act of 1909 removed restrictions on alienation and permitted private purchase of Māori lands.

Refer Walzl (#A42) pages 36-39

508. However the evidence before this Tribunal confirms that during the 20th Century it was the Crown who was the largest purchaser of Māori lands.

Refer Walzl (#A42) page 40
Refer McBurney (#A47) pages 344-346

509. Counsel sees little point in a lengthy discussion on the issue of sufficiency. Counsel has already made a submission on this issue (refer #E41, paras 11-23). Counsel has read Mr Powell's submissions on behalf of Ngā Hapū Karanga (#C38, paras 6-21) and has had the benefit reading Mr Powell's draft submissions on sufficiency in advance, which he agrees with.

510. If pushed Counsel for Rangitāne would locate the date of landlessness for Rangitāne at the turn of the 19th Century, at the latest. That date is adopted for two reasons. The first reason is that the bare statistics indicate that Rangitāne o Wairarapa and Rangitāne o Tamaki nui a Rua could not afford to lose any more land in the 20th Century. The reality is that both groups did lose considerably more land during the 20th Century. The second reason is that the Stout-Ngata Commission gave the government a clear warning that Wairarapa Māori could not afford to lose any more lands.

511. Rangitāne submit that their situation is little different to their whanaunga in the Mohaka Ki Ahuriri. As that Tribunal said:

"The question of what might constitute a 'sufficient endowment' has always been difficult to answer. As the Ngai Tahu Tribunal put it, there was no one answer and any particular answer depended on demographic and economic factors, such as the nature of food supplies and production, as well as when the land was alienated. In that case, it was necessary to reserve sufficient good land for the existing and future needs of Ngai Tahu so that:

> they would, as Lord Normanby contemplated, later enjoy the added value accruing from British settlement. Sufficient land would need to be left with Ngai Tahu to enable them to engage on an equal basis with European settlers and pastoral and other farming activities.

What was said about Ngai Tahu's needs is especially relevant to the claims before us, since Hawkes Bay, like the eastern South Island, was used by colonists for extensive pastoralism. Ngati Kahungunu, like Ngai Tahu, could, with Crown assistance, have expected to participate in that. It was envisaged that both Maori and Pakeha would benefit from colonisation, and this was in the mind of leading Hawke's Bay chiefs when they engaged in early land transactions."

(Refer Mohaka Ki Ahuriri Report 2004, page 26)

512. The same Tribunal later said:

"The development right inherent in the Treaty needs to be kept steadily in mind as we proceed with our report. Before the 1930s, Crown officials commonly assumed that it was sufficient to reserve land for Maori subsistence, and Maori could earn supplementary income from labouring for Pakeha settlers or the Government. We will return to this when we consider claims that, as a result, Maori were left impoverished in rural districts until the coming of full-time urban employment after the Second World War. What we can say here is that Maori hoped for, and were indeed promised, more than a subsistence lifestyle from the coming of European colonists and the Treaty of Waitangi. In our view, their right to development, combined with the Crown's fiduciary obligations, entitled them to participate fully in the developing colonial society and economy."

(Refer ibid, page 27)

513. Rangitāne have led specific evidence of the difficulty in developing and managing their lands today. They have discussed the difficulty in attempting to maintain little more than a subsistence lifestyle on remnant lands. A feature of their land holdings are that they are relatively small, the land is difficult, they face problems of multiple ownership with financial institutions being reluctant to lend against Māori land. A feature of Māori lands in the Wairarapa are problems encountered with succession that is the difficulty in finding and dealing with all the owners, the phenomenon of bowstring blocks and difficulties of access.

Refer Chase (#E6) paras 13-19
Refer Tatere (#E14) paras 19-32
Refer Punga Paewai (#E15) paras 29-44
Refer Chrisp (#F11) para 45
Refer Paewai (#F8) paras 13-24

514. Significantly Rangitāne were unable to give evidence of any economic initiatives based on land within Māori ownership today. The only exception to that is that some Rangitāne are owners in the Mataikona blocks which form the Aohanga Station. The frustration of dealing with small scattered blocks in which title had been fractionalised was expressed quite clearly at both the Makirikiri and Te Oreore hearings by Punga Paewai. He rightly raised the issue of whether continued ownership of the lands was an asset or liability.

515. The evidence before this record of inquiry is that Rangitāne retained very little by way of reserves. What reserves they did retain were swifty alienated, usually to the Crown. There is no evidence before this record of inquiry that Rangitāne were able to successfully participate in the new economy. There are examples in this record of inquiry of some Māori participating in farming with the odd success story. None of them are from Rangitāne. The evidence Rangitāne has led is that with respect to their land it is extremely difficult to make anything other than a subsistence living. The food sources contained within Te Taperenui o Whātonga, the rivers and lakes of both districts and the coast are now difficult to access.

S. THE FAILURE TO PROTECT THE RANGITĀNE IDENTITY (SOI 26)

Introduction

516. Both Rangitāne o Wairarapa and Rangitāne o Tamaki nui a Rua have alleged that their identity and standing as tangata whenua within the Wairarapa and Tamaki nui a Rua has, until very recently been subsumed under the mantle of Ngāti Kahungunu. Notwithstanding a recent renaissance of identity both Rangitāne claimants say that the Crown was obliged to protect their identity and that they have failed to do so.

517. It is orthodox Tribunal jurisprudence today that the principle of active protection, sourced in Article Two, includes the protection of the Māori language, Māori culture and Māori knowledge. Recent Tribunals have of course extended the definition of taonga which require protection by the Crown. A preliminary issue arises though, to what extent does the Crown have a duty to actively protect tribal identity/tangata whenua status?

518. As at 1840 Māori organised themselves into tribal structures typically hapū and sub-hapū. Notwithstanding that Māori today may opt to organise themselves for political and/or legal reasons into a variety of structures, many Māori choose to identify as tribal people. As Mr Chrisp stated in his evidence:

"For tribal peoples, tribal affiliations, connections and histories are critical components of cultural identity".

Refer Chrisp (#F11) para 85

519. In many respects it is submitted that tribal identity and tangata whenua status underpins the very essence of Māori identity. If that is accepted by the

Tribunal then it naturally follows that tribal identity and tangata whenua status must be a taonga that the Crown have a duty to actively protect.

520. Alternatively it is submitted that the Treaty itself envisaged that the guarantees would extend to tribes and hapū. Support for this proposition can be gained itself from the literal words of the Treaty:

(a) In the Māori version the preamble refers to "ki nga Rangatira me nga Hapu o Nu Tirani…". Article Two of the Māori version refers to "ki nga Rangatira ki nga hapu…";

(b) The preamble in the English text refers to the "Native Chiefs and Tribes of New Zealand…". Article Two refers to the confirmation of guarantees to the "Chiefs and Tribes of New Zealand…";

(c) Sir Hugh Kawharu's translation in the preamble at Article Two refers to "the Chiefs and Sub-Tribes…"

521. As the Treaty guarantees were in part extended to the tribes and tribal groupings, it is difficult to see how the Crown could possibly argue that they do not have a duty to actively protect tribal identity/tangata whenua status.

Examples of Rangitāne Identity Being Subsumed Under the Identity of Ngāti Kahungunu

522. Rangitāne have put numerous examples, historical and contemporary, of their identity having been subsumed under that of Ngāti Kahungunu. Examples were:

Rangitāne o Wairarapa – Wai 175

(a) Turton's Deeds – 1853-1854, none of the rangatira are described as being of Rangitāne descent;

(b) 1874 census, none of the 41 Wairarapa hapū listed were described as linked to Rangitāne;

(c) 1878 census, only 3 members of Ngāti Hinewaka described as belonging to Rangitāne;

(d) 1881 census, the only Rangitāne residents described were residents of Ngaawapura and Hāwera;

(e) A reliance upon the theory promulgated by S Percy Smith that Rangitāne were a defeated people;

(f) A reliance upon Ngāti Kahungunu informants and sources that Rangitāne had been defeated and expelled from the Wairarapa;

(g) The Papawai and Kaikōkirikiri Trust Act 1943 which refers to Ngāti Kahungunu solely;

(h) The register of chiefs records Ngāti Hāmua as a sub category of Ngāti Kahungunu;

(i) Reference to Rangitāne rangatira who attended the Kohimarama conference in 1860 as solely Ngāti Kahungunu;

(j) The Department of Māori Affairs promoting Ngāti Kahungunu to the exclusion of Rangitāne;

(k) Historians eschewing the neutral option of Wairarapa Māori in preference to Kahungunu;

(l) Publications by government departments which identify Ngāti Kahungunu as the sole tangata whenua in Wairarapa, examples being:

- He Mātāpuna in 1979;

- Te Māori in 1986;
- The Treaty of Waitangi by Dr Claudia Orange;
- The New Zealand Official Year Book (Statistics New Zealand) 1996.

(m) Numerous reference maps which indicate Ngāti Kahungunu as the only tangata whenua group of the Wairarapa examples being:

- He Mātāpuna, NZ Planning Council 1979;
- Māori – Michael King – 1983;
- Te Māori – 1986
- The Treaty of Waitangi by Dr Claudia Orange – 1987;
- The New Zealand Wars – Belich – 1986;
- New Zealand Year Book 1996 – Statistics New Zealand;
- He Tipua – R J Walker – 2001;
- Ki Te Whaiao – Ka'ai et al – 2004;
- The New Zealand Historical Atlas (1997);
- Māori Land Court Pouwhenua publication.

(n) In Jock McEwen's book "Rangitāne: A Tribal History", published in 1986, McEwen claims that Ngāti Hāmua was "originally a hapū of Rangitāne but is now known as a Kahungunu hapū". Although the book contains information about the traditions and whakapapa of Rangitāne and is an invaluable reference book, the significant error is noted by Rangitāne. They also note that funding for the book was provided by the Māori Purposes Funds Board.

Refer Chrisp (#F11) paras 83-141
Refer O'Leary (#A62) pages 44 and 45
Refer Rigby (#A33) pages 46 and 47

Rangitāne o Tamaki nui a Rua – Wai 166

523. Examples were also provided by Rangitāne o Tamaki nui a Rua they being:

(a) Ngāti Mutuahi described in official lists as a hapū of Ngāti Kahungunu;

(b) Ngāti Rangiwhakaewa and Ngāti Pakapaka not mentioned in official lists;

(c) Ngāti Parakiore, being described in official lists as a hapū of Ngāti Kahungunu, despite the fact that Land Court witnesses were firm that they were hapū of Rangitāne;

Refer AJHR 1874, G7 pages 12 and 13 cited and referred to in Ballara (#A83) page 220

(d) The failure to refer to Rangitāne in Turton's Deeds with the exception of the Mangatainoka block. In that case the Rangitāne grantees were exclusively Manawatu based Rangitāne;

(e) The exclusion of Rangitāne during the identification of tūpuna for the Kahungunu ka moe ka puta presentation;

(f) A series of maps which fail to identify Rangitāne as tangata whenua group of Tamaki nui a Rua. Examples being:

- The People of the Land – Binney & Bassett – 1990;
- Māori Tribal Boundaries & Canoe Areas – S Dell – September of 1984;
- 1984 Information Handout entitled "A Guide to Sources of Information in the Alexander Turnbull Library;
- Correspondence School, Department of Education New Zealand Grammar Booklet;
- Department of Māori Affairs 1993;
- Māori District Council Maps 1978-2004;
- Pouwhenua, December 2004, Issue No. 26.

Refer Manahi Paewai – Third Statement of Evidence on behalf of Rangitāne o Tamaki nui a Rua – no ROI number to date

(g) A list of iwi published by the Ministry of Education – Teacher census 2004 excluding Rangitāne.

Refer Manahi Paewai – Third Statement of Evidence on behalf of Rangitāne o Tamaki nui a Rua – no ROI number to date

524. When and why did this state of affairs happen? In his evidence (#F11) and (#A57) Stephen Chrisp provides a number of suggestions.

1850-1920

525. Despite significant evidence that Wairarapa Māori continued to describe themselves in terms of Rangitāne and Ngāti Kahungunu identities, the Crown and Māori Land Court records consistently referred to Wairarapa Māori as Ngāti Kahungunu. In Mr Chrisp's opinion this was simply a matter of bureaucratic convenience.

526. According to census figures Rangitāne had completely disappeared from the Wairarapa when it is know from other official records that Rangitāne continued to exist in the Wairarapa. In this period the Ngāti Kahungunu ascription had little long term significant implication whilst sophisticated understandings and knowledge of the relationships and whakpapa that existed at the time were maintained.

Refer Chrisp (#F11) paras 83-101

527. The elevation of Ngāti Kahungunu as the sole tangata whenua in the Wairarapa become the historical orthodox once academic articles were written by non Māori authors such as S Percy Smith. His article 'The Occupation of Wairarapa by Ngāti Kahungunu', published in the Journal of Polynesian Society in 1904 became the accepted academic orthodoxy which dominated 20th Century thinking.

528. Smith's article, based as it was on Kahungunu sources has been uncritically accepted. Mr Chrisp was able to demonstrate by reference to other sources such as whakapapa manuscripts, newspaper articles, private papers, correspondence and particularly the Native Land Court minutes comprehensive and consistent evidence of the ongoing Rangitāne occupation throughout the Wairarapa.

Refer Chrisp (#F11) paras 102-115 and (#A60) pages 27-50 inclusive

1920s-1960s

529. This period was notable for active steps taken by the Crown to suppress the Māori language and the relocation of Māori from rural to urban communities. With the subsequent breakdown of the Māori language, intergenerational transmission of relationships, meanings and access to whakapapa information and korero tuku iho was lost. Hapū communities were broken up and the regular opportunity to maintain and transmit such information was lost.

Refer Chrisp (#F11) para 116-125 inclusive

1960s-1980s

530. This period was marked by the difficulty in attempting to reassert a Rangitāne identity. Mr Chrisp gives evidence of opposition to this being led in the Wairarapa by the very Department which should have been promoting Rangitāne interests that is the Department of Māori Affairs.

Refer Chrisp (#F11) paras 126-132

531. The evidence of Mr Piriniha Te Tau confirms difficulties encountered with the Department of Social Welfare, the Department of Māori Affairs, local Members of Parliament and the Papawai-Kaikōkirikiri Trust Board in their refusal to recognise Rangitāne as an iwi of the Wairarapa.

Refer Te Tau (#F10) para 19-30 inclusive

532. There is overwhelming evidence that the identity of Rangitāne in both the Wairarapa and Tamaki nui a Rua regions has been subsumed under the mantle of Kahungunu since the Crown first set foot in the Wairarapa. The above is simply only a summary of the evidence which Rangitāne put before this Tribunal. If it is accepted that such evidence exists, which cannot be denied, the issue then becomes to what extent was and is the Crown responsible for this state of affairs?

533. As a general proposition it is submitted that within a very short period of time following the establishment of the colony, the Crown via its Crown purchase agents were aware of the complexity and complicated nature of Māori customary tenure. In 1856, Johnson, Whangarei District Commissioner in writing McLean said:

"the complicated nature of the claims of tribes and individuals require much patient investigation before a conclusion [of Crown purchase negotiations in this district] can be arrived at".

Johnson to McLean, 3 April 1856, AJHR, 1861, C1 cited and referred to in Rangahaua Whanui District 1 Auckland, page 167

534. Fenton in giving evidence to the 1856 Inquiry into the State of Native Affairs said he had "never heard of a native holding a strictly individual title to land". Rogan appearing in his capacity as the Whaingaroa District Land Purchase Commissioner stressed the need for tribal consent before proceeding with a major purchase, or with the individualisation of tenure.

Refer ibid, page 168

535. McLean in endorsing the findings of the Board claimed that the Crown purchase agents were all fully appraised of the complexity of customary tenure and conflicting claims in various areas.

Refer ibid, page 168

536. In 1860 when asked in the House of Representatives what the meaning of a tribal right was McLean said:

"In some tribes the different hapus must be consulted, and others the chiefs; much depends upon the personal character of the latter…The various hapus or families which compose a tribe must frequently have the right of disposal [of land], but not always: the custom varies.

How do you discover what the rights of the parties are?

You must discover them by inquiry of the people in the district where the land is situated, and elsewhere".

Refer opinions on native tenure attached to Browne to Newcastle, 4 December 1860, AJHR 1861 referred to and cited in Rangahaua Whanui District 1 Auckland, page 167

537. That this situation applied to the Wairarapa is equally as certain. Mr Stirling in his report (#A48) at page 47 has set out an untitled, undated transcript from the McLean papers which reads as follows:

"the various complications of native ~~tenure~~ title had to be investigated, the claims of the conquerors and conquered ~~to be~~ adjusted, ~~the jealousies of rival tribes to be reconciled out [of]~~ the rights of ownership of the various subdivisions of the same tribe ~~to be analysed~~, regulated and defined, the ~~innumerable jealousies reconciled, conflicting interests~~, various motives, whether adverse or favourable to the sale of land analysed, and numerous

jealousies ~~reconciled before concluding any purchase~~ of rival and opposing claimants reconciled before ~~completing any~~ purchases could be effected on any extended scale".

538. What can we draw from these extracts? What we can draw is that the Crown had knowledge very early in the establishment of the colony that Māori customary tenure was complex and required careful and close consideration of those who claimed rights. Secondly, with specific reference to McLean's 1860 untitled document, he was aware of the competing claims in the Wairarapa.

539. In the Wairarapa and Tamaki nui a Rua context did the Crown have knowledge of the existence of Rangitāne as a distinct grouping from Kahungunu? The answer is a resouding yes. Examples of this abound. Although groups descended from Rangitāne living east of the Tararua and Ruahine Ranges did not call themselves by the name Rangitāne, witnesses in the Land Court traced their descent from him or claimed to belong to the Rangitāne tribe.

Refer Ballara (#A83) page 158

540. The major descent group of pure Rangitāne descent, living east of the Tararua Ranges was Ngāti Hāmua. Every time Hāmua's genealogy was traced in the Land Court it was given from Rangitāne. In no case was it traced from Kahungunu or any other ancestral line.

Refer Ballara (#A83) pages 159 and 160

541. Ngāti Rangiwhakaewa were descendants of Hāmua. As Nireaha Tamaki said in the Native Appellate Court:

"The descendants of Rangiwhakaewa (sic) are always spoken of in Court as Rangitāne. Outside the Court they are called Hāmua some times".
Refer Ballara (#A83) page 217 and 218

542. Ngāti Mutuahi – were of almost complete Rangitāne descent. Despite that they were described in official lists as hapū of Ngāti Kahungunu.

Refer Ballara (#A83) page 219

543. Ngāi Parakiore – witnesses in the Land Court were firm in the view that they were a hapū of Rangitāne. Despite that official lists proclaimed them to be a hapū of Ngāti Kahungunu.

Refer Ballara (#A83) page 220

544. Chrisp in his traditional history (#A60) particularly at pages 27-50 inclusive has traced the identity of Rangitāne hapū with particular reference to evidence given in the Native Land Court. He is able to establish, by specific examples that land rights were claimed on the basis of Rangitāne descent. Appearing as Appendix 2 in the evidence of Mr Chrisp are translations of Māori text. They are cross-referenced to extracts he has used in his report from Native Land Court Records, newspaper publications and correspondence. In the 40 examples included in Mr Chrisp's Appendix 2 Rangitāne is referred to as a separate tribal entity on no fewer than 23 occasions. In many of the other examples the reference is to Ngāti Hāmua, the principle hapū of Rangitāne, one example follows:

"I claim through Tukoko, my ancestor. Also through Rangitawhanga, also through Rakairangi and others…Tukoko was a permanent resident here. Tukoko belonged to Rangitaone [sic] and N' Kahungunu. Rangitaiwhanga has two claims (Rangitaone [sic] and N' Kahugnunu tribes). Both of these parties have the same claim. Tukoko comes from Rangitaone [sic] ancestors…from Tukoko down to the present time, we have always resided on this land. I was born there and cultivated there also. I can point out all the places where Tukoko down to myself have lived on this land. Tukoko has a claim to both the lakes in the western side".

Cited and referred to in Chrisp (#A60) page 33

545. The Ngā Waka Kupe block hearing in 1890 involved a contest between a party on the one hand led by Tunuiārangi who asserted exclusive Ngāti Kahungunu interests and Wi Hikawera Mahupuku on the other who stressed that Ngāti Kahungunu and Rangitāne had shared mana whenua rights in the South Wairarapa.

Refer Chrisp (#F11) paras 110-112

546. The Crown were aware of this state of affairs as they and/or the Native Land Court were the gatherers, recorders and repositories of this information. There can be no excuse for the Crown in stating that they were not aware of the existence of the two tribal entities within the Wairarapa and Tamaki nui a Rua district.

547. Why is tribal identity so important for Rangitāne? It is submitted that the answer was neatly encapsulated by Chrisp in his evidence when he stated:

"For tribal peoples, tribal affiliations, connections and histories are critical components of cultural identity. Several commentators have identified various components of 'being Māori' that derive directly from tribal identity including: knowledge of whakapapa, linkages with whānau, hapū and iwi, linkages with ancestral lands and involvement with marae".

Refer (#F11) para 85

548. What then has been the prejudice to Rangitāne? The evidence from Rangitāne confirms the following:

(a) That there has been decades of infighting amongst whānau about this issue;

(b) That there has been decades of fighting with Crown officials about tribal identity;

(c) That Rangitāne have committed time and energy to this issue when they have lost opportunities to promote tribal development;

Refer Chrisp (#F11) para 143

(d) That Rangitāne individuals met with open hostility from the local department of Māori Affairs;

(e) Ministers of Parliament refused to consult with Rangitāne;

(f) Te Oreore Marae came to be considered as an outsider within Wairarapa;

(g) Applicants were denied Māori education and Papawai-Kaikōkirikiri Trust Board grants;

(h) Local body authorities refused to speak with Rangitāne;

(i) Rangitāne received no support or funding from the Crown or local body authorities during the 1980's;

(j) The re-identification of Rangitāne identity strained whanaunga relationships within the Wairarapa Māori community;

(k) Tribal pepeha and whakatoki have been incorrectly taught and stated.

Refer Te Tau (#F10) paras 19-35 inclusive

549. That is not to say that all is negative. Rangitāne have led evidence of a reassertion of tribal identity. Indeed they have given many examples of the re-establishment of their tribal identity and recent exercise of tribal authority.

Refer for example to evidence of Manahi Paewai (#E19)
Refer Mike Kawana (#F3) para 62
Refer Te Tau (#F10) paras 41-46 inclusive and 60-67 inclusive

550. The presentation of their respective claims at Makirikiri and Te Oreore were in part a continuation of the reassertion of their tribal identity and mana. Both claimant groups gave detailed evidence of waka traditions, migration, settlement patterns, places of occupation, sites of significance, identified major hapū, identified sites of resource gathering, identified important tūpuna. They also captured and demonstrated their tribal identity in waiata, whaikorero and karakia.

551. Should then there be anything done in order to remove the prejudice to Rangitāne? It is submitted that the prejudice is ongoing and the need exists for it to be specifically commented upon by the Tribunal. As Mr Te Tau said:

"This journey will be a continuing one. To some extent it is still in its infancy. We are still having to deal with generations of wrongly held views about our whakapapa and status within the Wairarapa. Such attitudes within the Māori community and outside will take time to change. For that reason we take the opportunities where possible to give Rangitāne perspective of our history, our whakapapa, our rights and interests. The Tribunal process is one of those opportunities".

Refer (#F10) para 46

T. CONCLUSION

552. It is submitted that the claims of Rangitāne o Tamaki nui a Rua (Wai 166) and Rangitāne o Wairarapa (175) are well founded.

553. Rangitāne o Wairarapa were participants in a new economy prior to 1853 based on informal lease of their land. That enabled them to earn rental income, establish relationships with settlers and trade and barter. Importantly that economy allowed Rangitāne to retain ownership and authority over their land. It was as close an expression to tino rangatiratanga as one would hope find. The Crown cynically undermined the informal leasing programme by threatened use of the Native Land Purchase Ordinance, encouraging squatters not to pay rental money and the acquisition of lands in the Hawkes Bay.

554. The Crown then in a frenetic rush acquired the majority of Wairarapa lands between 1853-1854. The acquisitions were done in such haste that surveys were not carried out and there was total and utter confusion as to what the Crown had acquired for decades. Reserves were poorly defined and soon acquired by the Crown.

555. The Crown deliberately bought at low prices. General and express promises were held out of ample reserves, schools, education, medical facilities and doctors, mills and annuities for their chiefs. The promises were not kept throughout the 19th Century. The koha fund was poorly administered and limited only to the blocks in which express koha clauses were present.

556. The introduction of the Native Land Court regime was a disaster for Wairarapa Māori. The system forced Wairarapa Māori to participate whether they wanted to or not. Wairarapa Māori incurred survey, legal, Court, accommodation costs for the dubious benefit of obtaining Crown titles. Importantly the system introduced the concept of individualism whereby titles were held by individual grantees who could treat with those

titles as they saw fit. The system of individualism resulted in fractionalisation of title. The legacy of generations of succession and increasing fractionalisation of title is a chaotic ownership structure in Wairarapa today.

557. Restrictions on alienation were inevitably lifted and land sold. A feature throughout was that the Crown was by far and away the largest purchaser of Māori land.

558. Rangitāne specifically gifted land at Kaikōkirikiri after being persuaded to do so by Bishop Selwyn and Governor Grey. The Crown failed through the 19th Century to build any school on the gifted lands and Kaikōkirikiri. No such school was ever built at Kaikōkirikiri and the Crown failed to introduce legislation to remedy this situation until 1943.

559. Wairarapa Māori were promised that their interests in Lake Wairarapa would be acquired. No sooner had those promises been made, the Crown set about attempting to persuade Rangitāne and other Wairarapa Māori to sell the lake. They "succeeded" in 1876. However it is clear that they failed to adequately consult with and ascertain the input of all those who had interests in the lake. Thereafter followed two decades of protest. The Crown eventually acquired the lake by "gift". In acquiring Wairarapa Moana, Māori rights in the lake in particular to the eel fishery, the rights to open and close the lake and ownership of the lake itself were acquired. The Crown promised reserves to be made in the vicinity of Lake Wairarapa, no such reserves were set aside in that vicinity, they were set aside hundreds of miles away in a different tribal area.

560. In Tamaki nui a Rua the situation was no less grim. By 1865 the Crown had acquired a large amount of land in the Tamaki nui a Rua region in both the Tautāne and Castlepoint acquisitions. In both of those acquisitions resident based hapū protested against the involvement of outside rangatira.

561. A feature of the introduction of the Native Land Court system in Tamaki nui a Rua was the protest by resident based hapū to sale and the inclusion of Hawkes Bay and Manawatu based Māori as grantees. A feature of the investigation process itself was the sidelining of those who opposed sale and the inclusion of non resident based rangatira who had no "take". Following investigation of title large portions of the Tamaki and Seventy Mile Bush blocks were alienated to the Crown.

562. The Tamaki and Seventy Mile Bush blocks were extremely important to Rangitāne o Tamaki nui a Rua as they contained much of Te Taperenui o Whātonga. Te Taperenui o Whātonga was of importance to Rangitāne o Tamaki nui a Rua, it contained many of their kāinga, contained many traditional resources and as Mr Paewai explained was of spiritual significance to them. The felling of Te Taperenui o Whātonga had a negative impact on the collective psyche of Rangitāne o Tamaki nui a Rua.

563. At the turn of the century both Rangitāne claimants possessed only 11% of their respective tribal areas. There is no evidence that Rangitāne collectively benefited from the introduction of the new economy. Although there are examples of individuals who did well in the new economy for example as farmers, the evidence suggests that Rangitāne were not successful participants in the agricultural economy of the mid to late 19th Century. In the Tamaki nui a Rua area the evidence is that most of the work carried out in the clearance of the bush and development of infrastructure was done so by Scandanavians.

564. The Crown was aware, at least as late as 1909 that Wairarapa Māori had very little land left in their possession and wished to retain what they had. Notwithstanding that the 1909 Native Land Amendment Act removed alienations and permitted private purchase. A feature of the 20th Century for both Tamaki nui a Rua and Wairarapa areas was the continued disproportionate amount of purchasing by the Crown.

565. Thus today both Rangitāne o Tamaki nui a Rua and Wairarapa are left virtually landless. They have given evidence of their small fragmented holdings which are difficult to access and virtually impossible to make a living from.

566. If that wasn't bad enough Rangitāne also point to the subsuming of their tribal identity which has effectively led them to be strangers in their own land. For this and the other reasons cited above Rangitāne are entitled to generous redress.

U. RECOMMENDATIONS AND RELIEF

567. The Crown concession of 1 August 2003 obviates the need for the Tribunal to make a finding of landlessness on the part of both Rangitāne o Wairarapa and Rangitāne o Tamaki nui a Rua.

568. The Tribunal will be aware that the Rangitāne claims cover the entire land mass of this district inquiry. They are conscious of the fact that within the same inquiry district there exists another iwi group namely Ngāti Kahungunu and that vaarious hapū groups have also brought their claims before this Tribunal namely Ngāti Hinewaka, Tumapuhiārangi and Te Hika o Pāpāuma. Notwithstanding that Rangitāne o Tamaki nui a Rua consider that they had and continue to have the predominant interests in the Tamaki nui a Rua region, neither Rangitāne group believes that it is appropriate for this Tribunal to undertake a percentage apportionment as occurred in the Turanga Tribunal Report.

569. Rangitāne seek the following recommendations:

(a) That the Crown provide a full and comprehensive apology for the breaches of the principles of the Treaty as outlined in the amended statement of claim;

(b) That the Crown provide full and comprehensive financial compensation;

(c) That the Crown return all land owned by it within the claimed area and any improvements thereon;

(d) Pursuant to sections 8A-8HJ of the Treaty of Waitangi Act 1975 return to the claimants all relevant Crown land, including:

(i) Land owned by any State Owned Enterprise;

(ii) Land held by any institution under the Education Act 1989; and

(iii) Land vested under the New Zealand Railway Incorporation Restructuring Act 1990, or any interest in any such land together with any improvements thereon.

(e) Upon release of the Tribunal report a recommendation that all Crown forest land and licenced land situated within the claim area pursuant to the Crown Forests Assets Act 1989, together with 100% of the compensation calculated in the First Schedule to the Crown Forests Assets Act 1989, together with all accumulated rentals held by the Crown Forestry Rental Trust in relation to the Crown forests land and licenced lands be vested in an entity to be held on behalf of those claimants who have interests in Crown forests lands

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

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

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

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

(j) A recommendation that DOC and Rangitāne make a joint application to the National Geographic Board to change the name of Mt Bruce to Pūkaha/Mt Bruce. A recommendation that DOC and Rangitāne investigate the possibilities of joint management of the DOC estate at Pūkaha/Mt Bruce. A recommendation that DOC and Rangitāne investigate the possibilities of Rangitāne being involved in eco-tourism based at Pūkaha/Mt Bruce with a view to providing income, training and employment for Rangitāne.

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

(l) Any further relief that this Tribunal deems appropriate.

Findings and Recommendations in Relation to the Failure on the Part of the Crown to Protect the Tribal Identity

570. Rangitāne seek the following findings with respect to the failure on the part of the Crown to protect their tribal identity:

(a) A finding that the tribal identity of Rangitāne within both Tamaki nui a Rua and Wairarapa has been subsumed historically under the general banner of Ngāti Kahungunu;

(b) A finding that the Crown was aware of that situation based on the knowledged gleened by its Crown purchase agents, the knowledge available in the Native Land Court records and other sources such as Māori newspapers during the 19th Century. Despite that knowledge the Crown continued to subsume Rangitāne iwi and hapū under the general banner of Ngāti Kahungunu;

(c) A finding that the tribal identity of Rangitāne within the Wairarapa and Tamaki nui a Rua has been prejudiced and compromised;

(d) A finding that the Crown has a duty to actively protect tribal and hapū identity.

571. By way of specific recommendations to relieve that prejudice Rangitāne seek the following:

(a) The restoration of the name Tamaki nui a Rua for the area today known as Tararua;

(b) A removal of the name "Takitimu" to describe the Māori Land Court district and replaced with the generic term "Ikaroa";

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

(d) The allocation of resources to prepare and disseminate information about Rangitāne to the community, for example through wananga, the development of a publications programme, the creation of an iwi radio station;

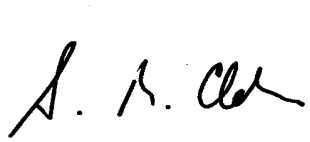
(e) All documentation produced by government departments and/or private documentation with the assistance of government departments, be amended to reflect the fact that there are two iwi groups with tangata whenua status in the Tamaki nui a Rua/Wairarapa district.

(f) Specific recommendations that all central and local government authorities ensure that they have relationships with both Rangitāne and Kahungunu;

(g) An apology for incorrect historical census data, maps and documentation which referred to the Wairarapa and Tamaki nui a Rua as Ngāti Kahungunu only;

(h) An apology to Rangitāne o Wairarapa and Tamaki nui a Rua for failing to guarantee and sustain their identity as a tangata whenua group within Tamaki nui a Rua and Wairarapa.

Dated at Hamilton this 1st day of February 2005.



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