IN THE WAITANGI TRIBUNAL

Wai 2200
Wai 113

IN THE MATTER of the Treaty of Waitangi Act 1975

AND IN THE MATTER of the Porirua ki Manawatu Inquiry

PENE RAUPATU: A STATEMENT FOR NGATI PAREWAHAWAHA, NGATI MANOMANO AND NGATI KAUWHATA THAT THE CROWN WAS NOT ENTITLED TO THE RANGITIKEI-MANAWATU BLOCK

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To the Waitangi Tribunal
Porirua ki Manawatū Inquiry

Pene Raupatu

A statement for Ngāti Parewahawaha, Ngāti Manomano and Ngāti Kauwhata that the Crown was not entitled to the Rangitīkei-Manawatū block.

Introduction

1. The first premise of this statement is that the Crown acquired the Rangitīkei-Manawatū block without the consent of the owners. The owners were the hapū represented by the senior leaders for each, and with only one or two exceptions, the hapū leaders did not consent. The hapū were those of the Ngāti Raukawa confederation in actual possession at the time of the purchase and the Ngāti Rangitepaia hapū of Rangitāne in respect of what became the Puketōtara Reserve.[1]

2. The second premise is that the transaction was a fraud. In form it was contractual, but in substance it was a taking without proper consent. It involved the creation of fictional ownership to get around the opposition of hapū leaders, and the adoption of practices applied in the Taranaki confiscations. We use 'fraud' to mean the acquisition of a benefit by deceit.

3. The purchase of this 240,000 acre block was primarily the work of the Government's agent, Dr Featherston. Shortly before this purchase it was said he had been "guilty of a flagrant want of proper prudence" over his purchase

[1] Ngāti Raukawa confederation refers to all the hapū and iwi who work together under that name. For this paper, the term also includes Ngāti Kauwhata, although Kauwhata does not descend from Raukawa.

of lands in the Taranaki confiscation districts. His explanations were described as "one of the most remarkable cases of perversion of truth that it is possible to perceive".[2] Our contention is that Featherston plunged to even greater depths of deceit in Manawatū.

4. Our argument is not simply that the Government agent did wrong. Our argument is that the Government never validly acquired the land.

5. Presently, this draft is based on the report of Anderson, Green and Chase.[3] We regret that there was not the time to incorporate into this draft, the necessary references to Hearn, Boast and Husbands. We hope to correct this in the final iteration. We chose to start with Anderson et al, as the terms of reference for Hearn and Anderson are the most focused to the issues being discussed, and because Anderson et al review Hearn in their composition.

Ngā kaikorero

6. This statement is made by:

> Pita Savage, Robyn Richardson and Harold Wereta for Te Mateawa, Kahoro te Tini and Ngāti Parewahawaha, and who are associated with Mangamāhoe, Matahiwi, Poutū i te Rangi, Marama i Hoea, Tāwhirihoe and Ōhinepuhiawe papakāinga, Clifford Brown for Ngāti Parewahawaha, who is also associated with Ōhinepuhiawe papakāinga, Jerald Twomey and Miriama Kereama for Ngāti Manomano, and for the three operative hapū of Ngāti Kauwhata in Manawatū, Dennis Emery and Rareti Mataki for Ngāti Hinepare, John Cribb for Ngāti Tūroa and Hon Sir Taihākurei Durie and Tīpene Mereti for Ngāti Tahuriwakanui.

Our qualifications are given in the appendix. The positions of the named hapū are discussed below.

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[2] TJ Hearn *One Past, many histories ….* 2015 A 152, pp 233 – 236.

[3] Robyn Anderson, Terrence Green and Lois Chase *Crown Action and Māori Response, Land and Politics 1840 – 1900* Crown Forestry Rental Trust 2018 #A 201 hereafter called "Anderson et al"

7. Ngāti Parewahawaha (of Ōhinepuhiawe or Bulls) and Ngāti Manomano (of Whaurongo or Halcombe) occupy the area known as the Manawatū coastal plains. This was largely open tussock country with discrete forest stands. The Oroua Valley, which runs parallel to it in the once forested and swampy interior, is occupied by the Ngāti Kauwhata hapū who are based at Aorangi, Te Arakura and Te Awahuri.[4] The Government claimed to have purchased these lands in the Rangitīkei-Manawatū sale deed of 1866.

8. The other hapū of the Rangitīkei-Manawatū block, are the hapū of the Hīmatangi and Reureu land divisions. The Government abandoned its purchase of the Hīmatangi division near Te Awahou (Foxton) except for the part called Puketōtara which the Government reserved for Ngāti Rangitepaia of Rangitāne. The balance of the Hīmatangi division is occupied by Ngāti Te Au, Ngāti Tūranga and Ngāti Rākau.

9. The northern Reureu division is occupied by Ngāti Pikiahu, Ngāti Waewae, Ngāti Matakore and Ngāti Rangatahi. The Government considered that these hapū had no rights as they were not there at 1840. Nonetheless, the Government purported to set apart a reserve for them. The Hīmatangi and Reureu hapū will make separate statements, outlining their unique stories and how they were affected, which differ to those hapū of the coastal plains and the Oroua Valley.

10. 'Ngāti Parewahawaha' is used here to include the sections of Mateawa and Kahoro te Tini who settled in the area. The Ngāti Parewahawaha tūpuna involved in the 'purchase', are now represented by uri of Ngāti Parewahawaha and Ngāti Manomano. Ngāti Manomano established themselves within the iwi in the 1980's with Manomano, the kuia-ā-whare being opened on Taumata o te Rā Marae in

[4] More detailed hapū profiles for Ngāti Parewahawaha, Ngāti Manomano and Ngāti Rangatahi are in *He Iti Nā Mōtai* #H1, Volume 2. Expanded hapū profiles will also be provided in the separate statements for the hapū that will follow.

1996.[5] Through whakapapa Ngāti Manomano connect also with Ngāti Pikiahu, Ngāti Kauwhata and others.

The claims

11. As indicated in our introduction, the purpose of this statement is to seek findings of the Waitangi Tribunal with regard to the Rangitīkei-Manawatū 'purchase'. First, we seek a finding that the Crown's purported purchase of the Rangitīkei-Manawatū block was inconsistent with the principles of the Treaty of Waitangi. We claim, amongst other things, that the hapū who possessed the land did not consent to its sale.

12. However, in the interests of an appropriate settlement we need to go further than that. We also seek findings on the gravity of the Treaty breach. First, we are mindful that on the settlement of Treaty claims, Government places weight on the extent of land loss and the seriousness of the breaches involved.[6] Secondly, we are mindful that the Tribunal must determine whether there is prejudice and if so, what should be done to remove it. We submit that to do that the Tribunal must assess the extent of prejudice.[7] Therefore, in this statement we will contend:

    - The persons who conveyed the land to the Crown had no right to do so as they purported to act on behalf of large, iwi confederations, or they purported to sell as individual members for themselves and their "relatives". In fact, the land was not owned by large tribal compacts or

[5] See *He Iti Nā Mōtai* #H1, Volume 2 p 47 - 83

[6] *Kā tika ā muri, kā tika ā mua,* the Crown's guide to Treaty Claims and negotiations states at page 89 "In deciding how much to offer, the Crown mainly takes into account the amount of land lost to the claimant group through the Crown's breaches of the Treaty and its principles, the relative seriousness of the breaches involved (raupatu with loss of life is regarded as the most serious) and the benchmarks (measures) set by existing settlements for similar grievances".
Raupatu is used in this paper to refer to either a conquest or a confiscation. That appears to be the popular use. Raupatu is also used that way in the Crown's guide (p163) notwithstanding that in Taranaki it refers to just the conquest, muru being used for the confiscation.

[7] Treaty of Waitangi Act 1975 s6.

individuals but, by the hapū. Hapū are a customary, corporate entity and are represented by the senior leaders, not by the masses.[8]

- Further, nearly all of the individuals who purported to convey the land, in whatever capacity, were not members of the hapū that owned it.

- The process by which the Crown conducted and completed the purchase was wrongly modelled on the practices of post-war confiscation when, as a purchase to be ratified under English law, it should have been based on the established principles of contract and conveyance.

- The purchase practices were fraudulent, that is, they intentionally deceived for the purposes of gain. This included the creation of a fictional ownership.

13. We will address each of those contentions in turn.

The Deed

14. The instrument by which the land was acquired was a sale deed of 13 December 1866. The Deed purported to be made by the "chiefs and people" of the following tribal confederations or iwi: Whanganui, Ngāti Apa, Rangitāne, Muaūpoko, Ngāti Awa, Ngāti Toa and Ngāti Raukawa.

15. However, we submit, it is not the iwi who owned the Rangitīkei-Manawatū block but the hapū in actual residence/possession. We will consider the relationship between the hapū and iwi and will then look at the position on the ground.

[8] While in terms of their culture the hapū are best described as possessing land rather than owning it, for the purposes of English law their possession was equivalent to ownership in that they had the authority to exclude others from possessing it.

16. Hapū manage their own rohe, exercising kaitiakitanga and mana over the resources within. In times of need hapū unite together to achieve a desired outcome, utilising common whakapapa (which, in contemporary times is when the word 'iwi' is often applied) or kaupapa (e.g. ngaki mate - to exact revenge). When the reason for unification is over, hapū return to managing their own affairs, that is, the political authority for the management of the land and the people rested with each hapū and not with some overarching body.

17. Each hapū was autonomous in looking after itself but found support in being part of a larger collective. The collective was simply called 'the people' or the 'iwi', iwi being the collective noun for all the people who came from the original ancestor. The iwi exercised no regular corporate functions and came together, in whole or part, only when required, for trade, defence, joint ventures or socialising. We submit that each of the hapū of the seven named tribes at the time of the Deed, with the possible exception of Muaūpoko, was autonomous and had their own rohe.[9]

18. Standing outside of this depiction of autonomous hapū were those hapū who remained in the territory in a subservient role, following a conquest for example. It is submitted that these generally would have had no expectation of being able to alienate the land they occupied without the agreement of the dominant hapū. It may be added that even the autonomous hapū would think carefully about alienating land against the wishes of other hapū in view of the customary ethos of solidarity.

19. On the Deed were about 1,700 signatures or marks. The Deed may be read as contending that the 1,700 or so Māori subscribers were acting on behalf of the seven iwi. However, the Deed also states that they were acting on behalf of themselves and their "relations and descendants".[10] It could be inferred that

[9] Our reference to Muaūpoko as a possible exception is expressed that way because there is an issue about land ownership between Ngāti Huia and Muaūpoko which is not relevant to this paper and which we are not wanting to address at this time.

[10] The English text of the Deed is reproduced at Anderson *Crown Action…* A 201 at p317.

the Deed intended that the Māori subscribers were acting for any or all of their iwi, their hapū or their whānau, as well as themselves. We will consider the position of each.

Iwi entitlement to ownership

20. We will examine first the seven named iwi. We will submit that none of them were entitled to be treated as an owner in the Rangitīkei-Manawatū block.

    1. "Whanganui", so called in the Deed but better known as Te Ātihaunui-a-Pāpārangi, occupy the Whanganui district. We know of no record, either oral or written, that they lived on the Rangitīkei-Manawatū block at the time of the Deed, or indeed, at any time before or after the Deed, right through to this present day. Their association with Dr Featherston, the Government purchase agent who oversaw the purchase, was not because they were landowners in the block. It was rather that they knew Featherston because they were part of the Native Contingent of 'friendlies' that Featherston led in the war that was then happening.[11]

       Therefore, we submit the Whanganui people had no interests in the land referred to in the Deed.

       We also note at this point that Ngāti Toa and Ngāti Raukawa attacks on Te Ātihaunui had left Te Ātihaunui with some scores to settle, so that there was presumably some willingness to sell 'their attackers' land from under their feet.

    2. Ngāti Apa, as a tribe, lived north of the Rangitīkei River at the time of the Deed and were therefore outside the block. Our position, which we believe to have been generally accepted, was Te Rauparaha ultimately

[11] In the second Taranaki war officers of the contingent insisted that they be led by Dr Featherston although Featherston was under the command of Major General Trevor Chute.

held mana over the Ngāti Apa land from Whangaehu to Rangitīkei, even more so, after the tatau pounamu (marriage to secure the peace) of his nephew Te Rangihaeata, to Te Pikinga of Ngāti Apa.[12] After this important union, and in keeping with the close relationships of Te Rauparaha, Te Rangihaeata and the Parewahawaha people, the area from Whangaehu to Rangitīkei was released back to Ngāti Apa on the basis that they remained north of the where the Rangitīkei River ran at that time.[13] In line with that position, Sir Donald McLean had advised Government that any conveyance south of the river would require Ngāti Raukawa consent.

Ngāti Apa then sold the land from Whangaehu to the Rangitīkei River but for some large reserves. A remnant of Ngāti Apa remained on the coastal plains south of the Rangitīkei River but were under Ngāti Raukawa domination. They would merge with Ngāti Raukawa in time. There is no Ngāti Apa presence there today.

Ngāti Apa had several times been defeated by Ngāti Toa, most notably in the battle of Waiorua and in the follow-up attacks on their pa on the Rangitīkei River, so that they too had an unrequited obligation to seek utu.

Ngāti Raukawa hapū had meanwhile taken physical possession of the land, as is referred to in more detail below, and as will be elaborated on in separate submissions to be filed. They had by far the greater numbers. They had taken possession of the land from the time of the migrations. For example, Ngāti Kauwhata came south down the Rangitīkei River and then cut inland along the Rangataua Stream to

[12] Whangāehu marks the northern end of the Rangitīkei-Turakina block, shortly south of Whanganui.

[13] This is discussed in more detail in the *Rangimarie Narrative.* Note, the Rangitīkei River course changed dramatically after a flood in the 1890s, the boundary agreement mentioned here pertains to lay of the land pre-1890s, i.e. the boundary line did not move when the awa changed course..

emerge in the Oroua Valley where they stayed, while some went forward to join Te Rauparaha at Kāpiti Island.

One of the reasons Featherston gave for supporting the entitlement of Ngāti Apa was that the allocation of rights purportedly undertaken by Te Rauparaha had extended only as far as the Manawatū River.[14] However, Featherston provided no grounds for that opinion and it does not fit with the oral tradition. Like the hapū of present day Ngāti Parewahawaha and Ngāti Kauwhata were already there and Te Rauparaha confirmed their presence there.

The remnant of Ngāti Apa on the land were not entitled as owners on the basis of Māori custom, in our submission, but ordinarily would have merged with Ngāti Raukawa.

3. Rangitāne lived along the Manawatū River at the time of the Deed, to the east of the Rangitīkei-Manawatū block. The leaders of Ngāti Kauwhata and Ngāti Raukawa had agreed that the upper river section of Rangitāne would take the Ahuaturanga block between the ranges and the Taonui Stream, with the Manawatū river running through it.[15] The boundary was well clear of the Rangitīkei-Manawatū block. The only known presence of any Rangitāne on the Rangitīkei-Manawatū block was that of Ngāti Rangitepaia at Puketōtara Pa, next to the Hīmatangi block. We emphasise that Puketōtara was possessed by Ngāti Rangitepaia, not by the whole of Rangitāne.

[14] Anderson et al p 240

[15] See Rangimarie Narrative. Ngāti Kauwhata agreed to Rangitāne taking Ahuaturanga block in the 1830's. Taratoa of Ngāti Parewahawaha and Parakia Te Pouepa of Hīmatangi agreed in 1858 when Hirawanu of Rangitāne advised that he wished to sell. There was a difference over whether the western boundary of the block was the Mangaone Stream or the Taonui Stream but Ngāti Kauwhata eventually conceded to the boundary being set at the Taonui Stream.

The connection which some Rangitāne leaders had with Dr Featherston was not because they had interests in the land, but because, like Whanganui, they were part of Featherston's army. Ngāti Rangitepaia did have land interests in the block, but their leaders did not join the army under Featherston.

We submit that the hapū of Ngāti Rangitepaia had an interest in the land at Puketōtara but Rangitāne as an iwi had no interest in any part.

4. Muaūpoko lived in the Horowhenua district at the time of the Deed. They had an historic association with parts of Manawatū which may have included parts of the Rangitīkei-Manawatū block. Ancestral associations have cultural significance for Māori but we submit they do not have significance for land rights unless the association is maintained by a physical possession.[16] We know of no record that Muaūpoko lived on the Rangitīkei-Manawatū block at the time of the Deed and they do not have a presence there today. Their association with Dr Featherston was not because they had land rights in the block but because some persons with significant connections to Muaūpoko were part of the army that Dr Featherston led.

   We submit that Muaūpoko were not entitled to be treated as owners in the block.

5. Ngāti Awa lived at Waikanae and Waitara at the time of the Deed. To the best of our knowledge they had never lived on the Rangitīkei-Manawatū block, they were not there at the time of the Deed and they are not there today. They were not part of the army that Featherston led but had fought in opposition to the Government.

[16] The descendants of ancestors who were killed in battle on foreign soil frequently claimed land rights in the land. We submit that while the spot where the ancestor bled was made tapu to the ancestor's descendants, it gave rise to a cultural interest not a land interest that was a near equivalent to ownership.

We submit that Ngāti Awa were not entitled to be treated as owners in the block.

6. Ngāti Toa had significant associational interests in the block at the time of the Deed, but as a tribe, did not have interests in possession that would entitle them to be recognised as owners.[17] They were not part of the army that Featherston led.

   We submit that Ngāti Toa were not entitled to be treated as owners in the block at 1866.

7. Several hapū of Ngāti Raukawa have land interests through possession, which as previously stated meant *hapū who resided in and exercised mana over their particular rohe*, but the whole of Ngāti Raukawa were not in possession of the land at the time of the Deed and therefore it is not the whole tribe who are entitled to be recognised as owners.[18] We submit, for reasons to follow in the section on "The Hapū ….", that those of Ngāti Raukawa who were entitled as owners were the hapū in physical possession at the time of the Deed. Ngāti Raukawa were not part of the army that Featherston led and instead, some of their hapū fought in opposition.

[17] By associational interests we mean that their tūpuna were associated with events on the land of such historical significance that they should be respected by the current occupiers.
An exception may be Ngāti Rangatahi who were both Ngāti Maniapoto and Ngāti Toa, where they were known as Ngāti Haunga and also as Ngāti Te Rā.

[18] The title of Ngāti Raukawa is used for both the tribe and a tribal confederation. As a tribe Ngāti Raukawa does not include Ngāti Kauwhata. Ngāti Kauwhata descent is traced through Whatihua, whereas, Ngāti Raukawa descent is through the brother of Whatihua, Tūrongo. . However, Ngāti Kauwhata is part of the Ngāti Raukawa confederation which includes all who collectivised for the migration and settlement of the land. It is Ngāti Raukawa as a confederation which has a political interest. The interest is in jointly seeking the survival and advancement of the constituent hapū.

We submit that the iwi of Ngāti Raukawa were not entitled as owners but that those Ngāti Raukawa hapū in possession were entitled.

8. Ngāti Kauwhata are not named in the Deed. While it might be argued that Ngāti Kauwhata did not therefore consent to the sale, it appears that a Ngāti Kauwhata leader signed the Deed and could be seen as having done so on behalf of Ngāti Kauwhata.[19] The exclusion of Ngāti Kauwhata was probably because of the Government's assumption that Ngāti Kauwhata was part of Ngāti Raukawa. If we rectify that assumption by including Ngāti Kauwhata as an interested iwi, we would add that Ngāti Kauwhata as a tribe were not entitled as owners but only their relevant hapū, because, as in the previous case, it was not the iwi who owned the land but the hapū in possession at the time of the Deed. There were several hapū of Ngāti Kauwhata who were not living on the block but who were living in various locations to the South.[20]

   We submit that Ngāti Kauwhata as an iwi were not entitled to ownership in the block but the hapū who were in possession were entitled.

21. We submit therefore that the Government, as author of the Deed, was wrong in asserting that the seven named iwi were entitled to the ownership of the land. Putting the matter in terms of Māori law, the only fires that were freely burning on the land at the time of the Deed were those of Ngāti Pikiahu, Ngāti Waewae, Ngāti Matakore and Ngāti Rangatahi of Te Reureu, Ngāti Parewahawaha of the coastal plains, Ngāti Te Au, Ngāti Tūranga and Ngāti Rākau of Hīmatangi, Ngāti Rangitepaia of Puketōtara, and Ngāti Tūroa, Ngāti Hinepare and Ngāti Tahuriwakanui of the Oroua Valley.

[19] Tapa Te Whata of Te Awahuri who led a section of the migration and established himself from the time of the migration by the Oroua river. He fought with the Waikato Māori in the battle of Ōrākau but was identified and was required to surrender his arms at Wellington. He claimed to have been informed that if he was to retain a share of the land, he would have to sign the Deed in order to get a reserve.

[20] For example, members of Ngāti Kauwhata were living at Kuku, Manakau, Waikawa and Waitohu.

22. Should the Tribunal have doubts about our submission, we submit that insofar as the Crown asserted the iwi as the owners to justify its purchase, the Crown must bear the onus now of proving them to be the true owners.

Hapū entitlement (and iwi interests)

23. We have submitted that ordinarily those entitled as owners in the context of Māori custom are the hapū, and in this instance, the hapū of the Ngāti Raukawa confederation were in free possession at the time of the Deed. As already indicated, land was possessed by communities called hapū, and hapū were the only Māori political body that exercised regular governance functions, including controlling the management and use of the land.

24. Some flexibility is needed, however. Māori hapū were regularly waxing, waning, dividing and regrouping so that for a time, several hapū might jointly possess an area without clear boundaries between them. The joint occupation of the Kaihinu blocks by Rangitāne and Ngāti Whakatere is an example.

25. Also, the respect paid to hapū with historical or kin associations may influence the decisions of a hapū in possession, and some land may be common to several hapū.

26. Ngāti Raukawa were also in a special position. The fact that Ngāti Toa had taken the land initially, is respected even today. For example, Ngāti Toa were invited to speak first in the opening of the Manawatū phase of this inquiry. We need to consider also that Mātene Te Whiwhi and Tamihana Te Rauparaha, whose parents were involved in the original conquest, sought the sale of the land (although Te Whiwhi later pulled back from that position) and we need to consider also that several persons of the hapū in possession also complained that people who were not living on the land were presuming to support its sale.

27. We note first that land sales were new to the district at that time and the protocols had still to be worked out. Ngāti Toa could not have sold the land without the consent of the hapū in possession for to hold otherwise would go against the word of their parents and grandparents in allocating the land in the first place.

28. Later, each of our hapū will give separate statements as to how they came by the land, as each came to it in their own way. For now, we just record the outcome.

29. The western, coastal plains were held by a mixture of persons who by 1866 identified as Ngāti Parewahawaha, a hapū of Ngāti Raukawa, and who now identify as both Ngāti Parewahawaha and Ngāti Manomano. While persons of Ngāti Apa had small holdings in that area they were not in free possession in customary terms as they lived under Ngāti Raukawa domination, as already mentioned. Had custom continued to apply, they would normally have merged with the local Ngāti Raukawa hapū or they would have become part of the Ngāti Raukawa confederation as happened with Ngāti Rangatahi, Ngāti Matakore and Ngāti Waewae on the Reureu block.

30. The lands bordered in the east by the Oroua River, from its source at Te Umutoi almost to its mouth where it flows into the Manawatū River, were held by various persons of Ngāti Kauwhata. At 1866, these people identified as Ngāti Tūroa, Ngāti Hinepare and Ngāti Tahuriwakanui.[21]

[21] As at the date of the Deed, some of Ngāti Kauwhata are described as being both Ngāti Kauwhata and Ngāti Wehiwehi also called Ngāti Ihiihi. However, their descendants just call themselves Ngāti Kauwhata, perhaps to distinguish themselves from others of Ngāti Wehiwehi who remained in the south at Manakau. For example, Reupena Te One who led a section of the Ngāti Kauwhata migration, was the father of Te Kooro Te One who was well known for his opposition to the sale and who was described as being of both Ngāti Wehiwehi and Ngāti Kauwhata. He had no issue but his sister, Enereta had Hurihia who had Meihana Durie Snr of Ngāti Tahuriwakanui. The family today call themselves Ngāti Kauwhata but also acknowledge their Ngāti Wehiwehi ancestry.

31. We submit that these were the groups with whom the Government should have dealt in order to acquire the western and eastern parts of the Rangitīkei-Manawatū block.

32. We look then to the principle by which ownership should be decided. The logical principle, and the one already accepted by Government in the Native Lands Acts of 1862 and 1865, was that the ownership should be determined according to Māori custom.

33. Much like this tribunal process today, the complexities of ownership by multiple, small hapū would not have suited the government and undoubtedly, it would have suited the Government more to deal with large groupings, like iwi. However, Māori custom had to be determined in accordance with Māori custom and not according to the Government's convenience.[22]

34. As we have said, the Government did not deal with the hapū and so the land was never sold with the free, prior and informed consent of the true owners.

Whānau and individual entitlement

35. Obviously, whānau and individuals cannot transfer more than what they own. What they owned, we submit, was along the lines of a conditional right to use the hapū resources, whether of land, water, stones or trees, for a particular purpose, for a particular period or in a particular way. Once the regular use was generally recognised by members of the hapū, it would be seen as a right. Others could succeed to it simply by asserting for example, 'this was my mother's plot' but it seems the right to use could not pass outside the hapū without general approval, the over-riding ethos being to maintain unity by keeping the use of the land within the whānau.

[22] In this case it is submitted that in fact, the number of hapū were not many and the Government could have dealt with each of them with relative ease. This is referred to below. It is also submitted that in this case the Government did not wish to deal with the hapū leaders because the hapū leaders were opposed to sales.

36. The question then is whether the 1,700 or so Māori subscribers could have sold. The answer we submit is 'no', because they did not own it. Dismissing those who we have already shown to have no interest in the land within the Deed, the remaining had only a right of use .

37. The further question then, is whether they were acting on behalf of their hapū. The answer we submit is 'no', because the construction of the Deed does not allow for such a possibility. The individual subscribers are not grouped according to their customary entities and none purport to convey the land as a representative of an iwi or hapū. Furthermore, only two of the seven named iwi have hapū with an interest in the land (the Ngāti Raukawa confederation hapū and Ngāti Rangitepaia) so that the vast majority of the subscribers are unlikely to belong to the hapū who do have interests. We will come back to this point.

38. In addition, the evidence as referred to later is that all but 30 of the 1,700 or so subscribers, did not in fact sign the Deed. They signed on sheets of paper before the Deed was even prepared and so could not possibly have known what the Deed contained.

39. Sir Walter Buller, the Resident Magistrate and deputy land purchasing officer, witnessed all or most of the subscriptions by signature or mark but, he did not record the date or place of signing so that on the face of the Deed, Sir Walter witnessed some 1,700 signatures at one place on 13 December 1866. However, the clear evidence as referred to below, is that the signatures were gathered well prior to 13 December 1866, starting in 1864, that the Deed itself was drafted on 13 December 1866, and that on 13 December 1866, only 30 persons signed. They were random persons who were at hui on that date.

40. We submit the inevitable conclusion to be that the sheets of signatures collected before the Deed was prepared, were simply added to the Deed when it was subsequently drawn up, so that all but 30 of the 1,700 signatories could not have known what was written in the Deed to which their signatures are

now appended. The assertion that the Deed was signed by 1,700 persons is in fact, we submit, a falsity.

The subscribers' entitlement

41. Because the subscribers to the Deed are not identified by the group to which they belong, or do not subscribe as a group representative, then leaving aside the falsity, the Deed becomes a conveyance by an amorphous mass of marks and signatures whose provenance is mostly unknown and whose purpose in subscribing is mostly unclear. They are just like seeds in a desert wind with a forlorn hope that one might strike fertile ground. A Deed that is not specific as to who conveys what, conveys nothing, in our submission.

42. To illustrate the difficulty that this loose process creates, it is not possible to tell from the face of the Deed whether anyone could have claimed the authority to sell the long stretch of Ngāti Kauwhata land taking up about half of the block, along the west bank of the Oroua River from Te Umutoi to Rangiotu. Amongst the subscribers to the deed is the name of Tapa Te Whata, a leading Ngāti Kauwhata figure with an authority in respect of the Te Awahuri district, but no other names are known to us as being of Ngāti Kauwhata.

43. There is also evidence that Tapa Te Whata signed through duress and misrepresentation but that is another matter. If any weight is due to the compilation of marks and signatures, the absence of others who can be said to be of Ngāti Kauwhata, especially those of the leading rangatira of other papakāinga casts serious doubts on the adequacy of the tribal consent.

44. There are also serious doubts that the witness to all the 1,700 or so signatories, who was invariably Walter Buller, could have verified the identity of each person. For example, Nēpia Taratoa is one name on one sheet. Many have assumed that this was the leading rangatira of Parewahawaha and Ngāti Kahoro; which seems odd since he was strongly opposed to the sale. However, given he died in 1863 and the collection of signatures appears not

to have started until 1864, it is obviously not him. His son, however, was also called Nēpia Taratoa. It is most unlikely that the son signed either for he too was well-known for his opposition to the sale.[23]

The size of the purchase area

45. We turn now to the scale of the Rangitīkei-Manawatū lands. We submit that the block should have been subdivided into at least 4 lots corresponding to four geographical zones. Such a breakdown would assist in ensuring that each hapū independently consented and would have required that each subscriber to a sale first pinpointed the place where they had an interest.

46. Smaller divisions were especially necessary in this case where Featherston had been accused of adopting a process of "majority wins" in relation to his previous purchase of Waitōtara. If a majority process was to be conducted in this case and was proper, which we contend it was not, one would need to look at the majority according to discrete areas. It would be wrong if one hapū opposed to a sale was obliged to sell because of the numbers favouring a sale from somewhere else.

47. Four districts would still require some clustering of hapū but it would be easier to ensure that each hapū consented separately.

48. We submit that it was practical for the land to be subdivided to four parts. Undoubtedly one reason for not subdividing the land would be that the Government found it easier to deal with large clusters of hapū, but as we have said, the government's convenience cannot trump a customary compliant process.

49. Four parts would also be practical in terms of survey costs it is submitted. We submit that for sale purposes it could be done by a surveyor's sketch plan

[23] See Anderson et al pp 288, 294, 304

utilising straight lines for the internal boundaries. A full survey would be required only where a purchase was settled.

50. The block was also easily divided. It was all arable and nearly all flat. It was also readily divisible into four parts as the customary occupations corresponded with four geographical land types.

51. The Hīmatangi block of Ngāti Te Au, Ngāti Tūroa and Ngāti Rākau fronted the Manawatū River, the customary pathway to the interior. Without the protective domes that are a feature of the lands to the immediate north, it was characterised by sand drifts.

52. The coastal plains of the Ngāti Parewahawaha hapū, was open tussock country suitable for large runholders. The open coastal plains extended from the Manawatū River to the Rangitīkei River. The Reureu block, on a plateau above the Rangitīkei River was suited for more intensive cropping or stocking. It was held by the hapū of Ngāti Pikiahu, Ngāti Waewae, Ngāti Matakore and Ngāti Rangatahi. Lastly, the heavily timbered and watered Oroua Valley was held by Ngāti Kauwhata. The proposed areas are indicated by an attached map.

53. We accept that subdivisions within the four areas of Hīmatangi, the coastal plains, Reureu and Oroua could create problems for lack of recognised internal boundaries.

54. To be effective the Deed for each division would need to recite a separate consent for each hapū. If all did not agree, a sale of any part would require an agreement on boundaries and a survey of the land to be transferred.

55. None of that happened in this case. We submit that when the scale of the Deed is laid alongside other evidence of ownership concoction, the maintenance of the block in one title is consistent with a scheme on Dr Featherston's part to by-pass the hapū in possession by treating with all and sundry by way of general hui. The same evidence supports our proposition that the land was never properly sold.

56. Those are our conclusions in relation to the ownership of the land and whether it was sold by the right people. We now set out more fully our reasons for regarding the hapū as the political unit of Māori society and the correct body that should have been treated as the owner.

The Hapū as the governing body

57. This section seeks to support the submission that the hapū was the customary governing body and the body that controlled the land.

Customary Terminology

58. The Māori text of the Treaty of Waitangi was undoubtedly correct in using 'hapū' for 'tribe' in our view. The use of 'iwi' to mean just 'the people', the reference in this instance being actually to the people of England, supports other evidence that at 1840, iwi was not known as a tribal institution as it is today. Its current use appears to derive from 20th century European ethnologists who imagined an hierarchy of whānau, hapū and iwi and which was supported by governments who found it easier to deal with large, natural groups.

59. That was not the position amongst Māori as at 1900, on the drafting of the Māori Council's Act of that year. The members of Kotahitanga, the Māori parliamentary leader Sir James Carroll, and the secretary of the Young Māori Party, Apirana Ngata, who developed the Council structure, regarded the papakāinga communities, which were effectively the hapū, as the foundational unit of Māori society. The structure was substantially re-enacted in the Māori Social and Economic Advancement Act 1945 and again in the Māori Community Development Act 1963.[24]

[24] The drafting of the Act involved leaders of the Kotahitanga Movement, Sir Timi Kara (James Carroll) as a member of Parliament, and Apirana Ngata and members of the Young Māori Party. The history is recounted in the Waitangi Tribunal Report on the Māori Community Development Act *Whaia Te Mana Motuhake.*

60. In our opinion the European ethnologists' hierarchy did not fit with Māori tradition. Māori have a flat structure where the people at the bottom are also the people at the top. Māori place a high value on community autonomy, and are suspicious of control from afar. Despite the emergence of pan-tribal movements from the mid-nineteenth century, at 1866, we submit that the day to day administration continued to be managed by the hapū.

61. That which the European ethnologists identified as the iwi, we submit, was really a tribal confederation, which European ethnologists misinterpreted (whether deliberately or not) to suit their own means.[25]

62. To establish that Māori operated mostly by hapū, we will refer to the customary Māori manner of socialising and doing business. While this will be well known to the Tribunal, we seek to put our perspective on the record.

Customary interactions

63. We contend that the method by which the Māori of one community engaged with others for social and political purposes was pre-eminently on a hapū to hapū basis. Tangihanga, pakanga, hākari and hui for political or commercial purposes were perhaps the main reasons why people from several papakāinga came together. The Tribunal will be so familiar with protocols on such occasions as to need no

[25] Chief Judge Durie as chair of the Waitangi Tribunal prepared a discussion paper for Tribunal members in 1994 which examines the hapū as the political unit of Māori Society and considers the roles of hapū and iwi. In 2013 the paper was published by Richard Hill for the Treaty of Waitangi Research Unit of Victoria University. It is available on-line through the Unit. Durie also considered the rise of the Iwi to assume corporate functions in the 20th century, but here we are concerned with the position at 1866.

Durie's paper led on to the comprehensive study paper *Māori Custom and Values in New Zealand Law* by the New Zealand Law Commission in 2001. This is also available on-line.

The hapū as the political unit is considered in depth by Angela Ballara in *Iwi: The Dynamics of Māori Tribal Organisation from C.1769 to C.1945* Victoria University Press 1998. From the records of early visitors (pp 55, 65), Māori manuscripts, letters and newspapers, and from Court evidence, Ballara sees the hapū alone as the functioning political unit of the 18th - 20th centuries. The hapū were politically independent, corporate social groups but who also regarded themselves as categorically identified with a wider set of people (p 161). Thus, they considered themselves a part of the people, not the whole of the people (p 164).

convincing that when hapū met together as an 'iwi', the people came and went according to their hapū affiliations. The same applied when there was a collective rūnanga to make war or peace. If war, they fought alongside others of their hapū and if peace, then as the *Rangimarie Narrative* shows, marriages were sought that linked hapū with hapū.

64. However, our focus is on the Rangitīkei-Manawatū purchase transaction and so our evidence in this instance is mainly directed to how, in custom, Māori engaged in business. Trade by individual bartering was common from first contact with Europeans, but we submit, the most significant tool for the widespread distribution of goods was tūmahana (or tākoha), known to anthropologists as gift exchange.[26] This was invariably done on a hapū to hapū basis.[27]

65. Typically, large quantities of food and other supplies were transported and presented by one hapū to another, the gift in a classic case being that which was readily available to the giver but not so available to the receiver. For example, given the environment in which Ngāti Kauwhata lived prior to the purchase, before the repo were drained and the ngāhere were burnt off throughout the Oroua Valley, Ngāti Kauwhata would have been known for the rare breed of swamp eels from Taonui and Te Rotonui a Hau, for huahua or birds preserved in fat, which would also carries the bonus of the prized huruhuru or feathers of manu such as pūkeko, kererū and tūī used in raranga and whatu work. Any of these commodities would be readily tradable for resources from other areas, such as smoked fish, dried shark, kōkī, tuatua or other kaimoana from hapū on the coast.

66. The food given was preferably in ostentatiously large quantities so as to brand the hapū as the first choice for a trading partner. This required that all members of

[26] While tākoha is probably the term most frequently used, we use tūmahana because tākoha appears to have been captured in the historical literature as the term for Government advances on the purchase price.
[27] This is covered extensively by Raymond Firth in *Economics of the New Zealand Māori* Government Printer 1959 originally published in 1929 as *Primitive Economics of the New Zealand Māori.*

the hapū who could do so, should help with harvesting, collecting, preparing and carriage.

67. With the loss of resources following the Government's acquisition of the Rangitīkei-Manawatū block, the practice of tūmahana could not be sustained in the same manner, and even affected the mana of hapū when they were unable to provide these delicacies. A taste of it continued in other ways, for example, visiting hapū still bring food to the hosts wharekai. This custom is one reason why the claim to the Tribunal by the Lake Koputara Trustees has special significance in this inquiry, as the Koputara Trustees will address.

68. The concepts of tūmahana may also explain certain aspects of the Rangitīkei-Manawatū purchase which might otherwise be incomprehensible. For example, there was no barter in gift exchange. One just gave with a display of generosity while expecting a return in time. For their part the respondents knew that to retain mana, they had to match that given and to gain mana, they had to outdo it.

69. This characteristic of tūmahana may explain why Māori, in the Rangitīkei-Manawatū transaction, did not seek to settle the purchase price, the price for each hapū, or the size of the reserves to be laid off, before the land was transferred.[28] Naivety to such matters may be another, as is the lack of understanding that this was a sale or the unwillingness to permanently alienate land.

70. Other districts have associated tūmahana with a tendency amongst Māori lessors, to prefer as lessees, those with whom they would seek a long-term relationship rather than those who offer the highest rental.

[28] A purchase price of £25,000 was stated in the Deed, but it was set unilaterally by the Government, without bargaining, and it was not broken down to the amount to be paid to each hapū, or to the leaders of each hapū.

71. Tūmahana fits also with the Japanese business ethic whereby a failure to uphold one's word in a commercial transaction can lead to exclusion from further transactions throughout the related business community.[29]

72. The extent to which the values of tūmahana were ingrained is borne out by the extent to which they survived despite 200 years of exposure to, and eventual displacement by, the western system of immediate barter. The values of tūmahana were the same as in takoha or koha and utu or utuutu. These also describe gifts made to create or requite obligations with an expectation of ongoing reciprocity. This tikanga survives today in the form of a monetary koha placed on the marae by manuhiri during pōwhiri. One element of the modern form of koha includes the keeping of a record of who gave what, to enable a suitable return in time.

73. However, takoha should not be confused with the payments that the Government distributed to persons on signing the Rangitīkei-Manawatū Deed. It is submitted that the recording of Government payments as takoha in various accounts of the time confuses Māori practice. The Government payments were not intended as returnable gifts, as the Māori word implies, but as advances on the purchase price, or simply as whakapoapoa - inducements or bribes.[30]

74. Underlying gift exchange is an intention to establish goodwill and a relationship that could also lead to help when help is needed. Patently, Government did not transact with Māori for such an outcome. That would have become painfully apparent to our forebears. After the Government proclaimed that the land had been finally conveyed to the Crown, in 1869, to the disgust of our forebears, Government did not hold to its promise of providing extensive reserves.

[29] This is based on Taihākurei's discussions with Japanese law professors at Tokyo in the 1980s.
[30]

75. The point is, Māori business was done through the hapū, in mana enhancing ways which typically showed a generous nature. Not only did the government fail to deal with the correct entity to buy the land, but they failed miserably in regards to Māori tikanga of generosity, failed to be mana enhancing and failed at keeping their word.

Customary land tenure

76. This section contends that the Māori land tenure system was based on the hapū having the control of the land.

77. When describing the sale Deed earlier we asserted that the hapū in free possession should be treated as the owners of the land. We said the members had the use of the land but the hapū had control of it and therefore the hapū had effective ownership. For the colonial government there should have been nothing unusual about a corporate body holding the fundamental title while the people were mere users, for the same was applied in England.

78. In early English law the Crown held the fundamental or radical title while the people had use rights on various tenures or terms involving the provision of some public benefit of which the most popular became in time, freehold tenure, the least onerous, tenure form. The customary Māori tenure was simpler but similar. The hapū held the land keeping it safe from external aggressors and internal abusers. The people had rights to use subject to a contribution to the common good. The provision of a taua or the supply of food for a hui are examples of these contributions.

79. The major differences were mainly that the Crown being a national institution was remote from those on the ground, while the hapū is a collective of those on the ground; and where the Crown tended to punish defaulters the hapū tended to acknowledge performers.

80. With English land enclosures from the 18th century all the use rights in a defined land parcel could be held by a single person on a transferable, freehold

tenure, so that ownership shifted from a right to use in a certain way to a right to exclusively possess and to alienate a defined allotment. It was the start of capitalism and land commodification.

81. The Māori tenure system did not follow the same direction. The Māori ethos values the group or the community and looks to the community benefit from the use of land rather than to the individual gain. This ethos is not based on one's subservience to law but exists because community service is extolled as a virtue. This continues through to modern times.

82. To illustrate, Piripi Walker's account of Ngāti Raukawa cultural and social institutions in *He Iti Nā Mōtai* is a testament to years of voluntary effort to establish those institutions.[31] To achieve that end, individual, personal wealth was sacrificed to building the cultural and intellectual wealth that now exists.

83. The ethos has also been maintained by the close link between the community and their leaders. The leader is not a remote monarch. Historically, this close link was maintained by the tendency of whānau to form new hapū when the whānau became too big, so that the hapū tended to stabilise at about 2-300 people. Evidence of the success of the cultural revival that Walker describes, is the establishment of Ngāti Manomano, a rare feat today when there is no longer the facility for a new hapū to appropriate vacant land at will.[32]

84. For the sum of these reasons we submit that the hapū was the political unit of Māori society:

    - that the hapū possessed the resources within such territory as they were able to hold a claim to,
    - that it was this form of possession that was the nearest equivalent to ownership in western terms,
    - that the individual did not have the capacity to transfer land

[31] *He Iti na Mōtai* H1 Vol 1 pp 316 – 572.

[32] For the establishment of the Ngāti Manomano hapū see *He Iti na Mōtai* H1 Vol 2 pp 47 – 83.

and therefore that it was the hapū that should have been treated as the owners.

When customary title is determined

85. We submit by 1866 tribal identities were relatively settled.

86. Dr Featherston assumed that entitlements were fixed at 1840 and reasoned that therefore, the Reureu hapū were entitled to nothing because they arrived in 1846. The Reureu hapū will address their position themselves but for us, the question is relevant to the fact that hapū identities had not settled in 1840 but were settled by 1866. Members of different hapū moved onto the land at different times and a common identity had still to develop.

87. We submit the proper principle to be that Māori custom did not cease to exist at 1840 and that the changes to the ownership by customary means after 1840 should be recognised. The principle fits with the legal recognition of custom as a source of law and the proviso recognises the change to custom effected by the Treaty of Waitangi.[33] Several Native Land Court decisions follow that position. They look at how things were at 1840 then allow for non-violent changes by customary means after then.

88. Taking the coastal plains division as a case example we submit that several groups of various Ngāti Raukawa hapū occupied the plains after the battle of Haowhenua in 1834 and that some had been there before then. Following a customary pattern, some stayed, and some went but those who remained eventually came together as Ngāti Parewahawaha and with Taratoa as a pre-eminent rangatira. We cannot be sure whether the customary process of hapū reformation was complete or not complete at 1840 but it is clear that by 1866 those in possession were united under the name of the eponymous ancestor, Parewahawaha.

[33] The most recent iteration is *Takamore v Clarke* [2012] NZSC 116 which holds that the common law imports tikanga as a relevant value to be considered even today.

89. The custom law continues to apply today and so presently, as we have seen, Ngāti Manomano are now also owners in customary terms, along with Ngāti Parewahawaha.

90. Our evidence is also that in 1868, when the Native Land Court sat to determine aspects of the ownership question, a group of Ngāti Apa soldiers of the Native Contingent, under Kawana Hunia, attacked and burnt some of the homes of Ngāti Parewahawaha to show their dominance in the area. However, no weight should have been given to this demonstration of violence. We submit further that the incident was in fact evidence that Ngāti Apa were not dominant in this area, for if they plainly were, they would have had no need to try and prove it in that way.

Customary representation

91. This section considers that to deal with the outside world the hapū were represented by rangatira or senior leaders, and that those rangatira were reasonably identifiable.

92. Ngāti Raukawa papakāinga significantly collapsed from after the 1940's when many shifted to town in 'the urban drift', typically at the direction of health, housing or planning officials. Those directions, and the lack of a tribal land resource, affected the capacity of the hapū to govern its affairs, choose its representatives and communicate on the basis of shared values and common empathy.

93. However, those who grew up on pā in the 1940's recall that the hapū still governed the community through family representatives. For example, representatives for ten foundational families were expected to attend the rūnanga meetings on Kauwhata Marae at Kai Iwi Pā. There were clear understandings about who staffed the paepae, ran the kitchen and followed up on rūnanga decisions.

94. Those who were elders in the 1940s also relayed how things were done when they were young, or what their grandparents had passed on to them. A picture emerges

of the structure at the end of the 19th century, of meetings on demand of rangatira or whānau representatives, with settled standards of conduct where tuakana speak but not teina, of whaikōrero not whakawhiti kōrero, and of the summing up by the senior member of the house.

95. All were equally informed of the issues, had grown up together and were schooled in the same values, there was probably more chance of consensus than today.

96. With this sort of structure, and because the senior representative in the house had a settled seat between the matapihi and the kūwaha, there could have been little doubt for those from outside wishing to treat, as to who was the first point of contact.

97. Our evidence is that unless the hapū chose a representative for some particular purpose, each hapū was represented by the leading rangatira. The leading rangatira were invariably either senior persons with a record in advancing the hapū interests, or as we have said, borrowing a modern phrase, they were chief executive officers, ensuring that decisions were made when required and were executed as required.

98. We submit then that the leaders of the hapū should have been reasonably identifiable by the Government when the Rangitīkei-Manawatū Deed was executed in 1866. There were not a large number of hapū over the area and it would not have been a large task to have determined the leaders of each, besides, a simple question would have exacted the answer.

99. We have then to add that while the rangatira spoke for the hapū, it was expected that they would act in accordance with the direction of the hapū assembly or rūnanga. For example, when Īhakara Tukumaru, Hoani Meihana and others wrote to Dr Featherston as Land Purchase Commissioner on 17 September 1864 proposing to place the Rangitīkei-Manawatū block in Featherston's hands for sale, they said, "The final decision as to selling or refusing to sell rests of course with the whole tribe…. It is only when both chiefs and people are agreed the land can

be absolutely ceded.[34] By 'tribe' they meant 'hapū' as indicated in the separate letter the following year by Hoani Meihana.[35]

100. Today, clauses 18 and 19 of the United Nations Declaration of the Rights of Indigenous Peoples recognise that Governments should deal with indigenous people through their own institutions and representatives. It is a statement of the obvious. Those making first contact with indigenous peoples knew enough to say 'take me to your leader'. The United Nations appreciates this in its insistence that the Assembly it is not creating rights but recognising rights that are inherent in human society.

Pene Raupatu

Eliminating the hapū

101. Following on from our previous discussion, we submit that by 1866 the Government should have known that hapū rūnanga, represented by its rangatira, managed hapū land. The Government must also have been aware however, that the hapū rūnanga were likely to thwart the Governments' plan to purchase the Rangitīkei-Manawatū block. The individual might waver but the group was steadfast, as shown by general adherence of the senior, hapū leaders to uphold the principles of mana motuhake and pupuri whenua.

102. We are aware of instances where the rangatira in other districts were corrupted by Government, including some whom Governor Grey had on his payroll as Court Assessors but who never set foot in a Court. However, we submit that the Manawatū hapū leaders were generally staunch in holding to the Kīngitanga kaupapa and the position against land selling taken by Te Rangihaeata. We include Tapa Te Whata in that cluster. His people were heavily compromised because of their role in the Ōrākau battle, but we believe that after surrendering his arms Te

[34] Anderson et al p 275.
[35] Anderson et al p 284.

Whata signed the paper put to him, on a promise that that was the means by which his people would hold onto their lands as a Government-backed reserve.

103. We submit that had the Deed been put to each of the hapū leaders in residence, each talking for their own "rohe", as custom required, and had it been explained that the Deed made no mention of the promised reserves, the land would not have been sold. We now know that the Deed was not so put, and in truth, the Deed itself was never actually signed by any one of them.

104. 'Pene raupatu' is the term we use to describe the process by which the government acquired the land and eliminated the hapū as the drivers of community policy and development. The term draws on Edward Bulwer-Lytton's thought that the pen is mightier than the sword but refers here to the capacity to achieve by a Deed, notwithstanding that the Deed was a sham.

105. Our case is that in order to purchase the land in the face of hapū opposition, Dr Featherston as the land purchase commissioner for Manawatū, constructed a false edifice to circumvent the hapū and to marginalise the traditional, hapū leaders.

106. For its part the Government dismissed the hapū throughout the country by national legislation. Starting with the Native Land Act 1862 the Government laid the foundations for a land policy that, as it developed over time, would have a bigger effect on constraining Māori development than any other Government policy, including the policy of land confiscation. The first part of the Government's land policy was to remove the hapū from its management by vesting the land in individual members, and eventually, for Government to manage it for the owners, first through the Native Land Court and later through the Native Department as well. This legislation did not allow for all within the hapū to be included any one title.

107. The second part of the land policy was to deprive the hapū of funds by distributing the rent and other land income to each member, through the offices

of the Government. We refer later to the leases to Pākehā run-holders, millers and farmers and to Featherston's impounding of the rents to prevent the hapū from developing – or from funding a war. Under the land legislation, as it developed in time, the rents would be managed by government and the funds dissipated by direct payments to members.

108. To introduce Featherston's exclusion of the hapū, we refer to his rise to the highest position of influence in the Manawatū district and to his plans for European settlement. We refer as well to the war that also shaped Featherston's and the Government's proposals.

109. In 1853, Manawatū came under the governance of Dr Featherston when Featherston was elected Superintendent of the Wellington Province. Anderson et al describe Featherston's anxiety to obtain large tracts of Māori land for European settlement with Manawatū holding the greatest prospects.[36] Its extensive plains were readily accessible by boat, Te Awahou (a.k.a Foxton) provided a safe port on the Manawatū River, and a steamer on the river could run deliveries near to the heart of the interior, at Ngāwhakaraua, a former papakāinga shortly down river from present day Ōpiki.

110. To realise his hopes of massive land acquisition, Dr Featherston sought appointment as Commissioner for the Extinguishment of Native Title in Manawatū, more usually called a land purchase commissioner. Featherston's appointment was made in 1862 by Sir William Fox as Minister of Native Affairs.[37] Sir William and Dr Featherston were also contemporaries in the House of Representatives. In the 1860s and 1870s Sir William was alternately Premier, or Prime Minister, and Leader of the Opposition.

111. Featherston's plans to buy the land could have fallen apart when, in 1862 the Dommet Ministry came to power and introduced a Native Lands Bill which would, amongst other things, establish a Native Land Court to decide the ownership of

[36] Anderson et al pp238 – 242.
[37] Anderson et al 241

customary Māori land. This would have overcome the conflict between the Government's role as purchaser and its role of determining the ownership. Given the previous advice of Sir Donald McLean, that Ngāti Raukawa would need to approve any sale in Manawatū, and given that the Ngāti Raukawa hapū were opposed to land sales, this could have put paid to Dr Featherston's prospects of a major land purchase in Manawatū. Sir Donald was regarded as the country's leading advisor on Māori land rights.

112. However, Manawatū was then excluded from the operation of the Native Land Act. It was the only part of the country to be so excluded. This was no doubt due to the influence of Dr Featherston and Sir William Fox and the close relationship between them, and the Government's need to secure their support for the Bill in the House. Sir William Fox was Native Minister from December 1861 to October 1863. The effect of the exclusion was to leave Dr Featherston in sole charge of buying the land and of determining who he could buy it from. It gave him the opportunity to construct a scheme that would by-pass the hapū and it's rangatira.

113. Featherston and Fox shared common political interests and were in frequent contact. Sir William lived on a 5000 acre run on the north bank of the Rangitīkei River known as Westoe, immediately next to the Rangitīkei-Manawatū block. Westoe was included in the Government's purchase of the 260,000 acre Rangitīkei-Turakina block which was acquired in 1849 from Ngāti Apa. Westoe passed to Sir William soon after. Sir William thus lived amongst the Ngāti Apa people around what is now called Bulls.

114. Meanwhile the war had opened in Taranaki in 1860. The Native Contingent formed the same year, recruiting from Rangitāne of Ahuaturanga, Ngāti Apa of Turakina and Te Ātihaunu-a-Pāpārangi of Whanganui. Rangitāne and Apa are from the Kurahaupō tradition who arrived prior to the advent of the Ngāti Raukawa migration. Ngāti Parewahawaha and Ngāti Kauwhata aligned with the Taranaki and Waikato hapū. Their support for the Māori King is evidence of their

opposition to lands sales and their commitment to mana motuhake, tino rangatiratanga or Māori self-government.[38]

115. Following the outbreak of the Taranaki war in 1860, Dr Featherston was involved in the Taranaki district from at least 1863 when he led the purchase of the 40,000 acre Waitōara block south of Pātea. He was involved with the war from at least 1864 in raising further recruits for the Native Contingent, particularly amongst the Whanganui hapū and Ngāti Apa. Also in 1864 he launched his land purchase operations and began the collection of signatures that would come to include those from Rangitāne, Ngāti Apa and Te Ātihaunu-a-Pāpārangi. He led the Native Contingent in 1865 when Major-General Chute's west coast campaign opened.[39]

116. The sale deed for the Rangitīkei-Manawatū block was therefore completed at a time when the Government was at war with those hapū throughout the country who were opposed to land sales and Government control. The hapū in possession of the Rangitīkei-Manawatū land were amongst those who were so opposed. Featherston then slid around the impasse by creating a new fiction of an extraordinary support for sale amongst seven iwi of the Wellington Province from Whangaehu to Te Moana a Raukawa (Cook Strait), as though the seven iwi jointly owned every part of the Province and so owned this part too. That is an extraordinary proposition with no authority that we know of to support it.

117. In then proclaiming the extinguishment of the native title to the Rangitīkei-Manawatū block on the basis of a purchase, the Government conveniently bought into Featherston's sham, ignoring the role of the hapū and their control of the land with the same efficiency as a confiscation of property.

[38] We consider that the extent of the Ngāti Raukawa and Ngāti Kauwhata engagement in the wars is not well recorded and possibly because of the risk of confiscation involved. The war did not finally end until 1872. Their support was acknowledged later when King Tāwhiao was hosted by Ngāti Tūroa at Te Iwa Tekau mā Iwa Marae in 1883 and Te Kooti and a party of about 100 were hosted by Ngāti Tahuriwakanui at Aorangi in 1892.

[39] David Hamer, Featherston Isaac Earl, https://teara.govt.nz/en/biographies.

118. We submit that the Government has to be brought to account for appointing and supporting Dr Featherston in regard to this 'purchase'. At best the Government was recklessly negligent and at worst it was complicit in the scam and not just vicariously. Featherston had no experience as a purchasing agent for the government and no training. He had not worked in either the Native Protectorate Department or the Native Land Purchase Department which had engaged the government purchase agents in the past. He had no particular experience with Māori custom.

119. The Government must also have been aware of the extraordinary criticism of his handling of the Waitōtara purchase, in 1863, the year after his appointment as a Land Purchase Commissioner. Waitōtara was a 40,000 acre block within what would become the Ngāti Ruanui confiscation district of Taranaki. As reported in the Tribunal's *Taranaki Report,* the general opinion was summed up by General Cameron who described it as 'a more iniquitous job than that of the Waitara block'.[40] TJ Hearn has provided a full account for this inquiry. Hearn describes the intense criticism from the colonial press who considered he had simply paid the purchase price to a few willing sellers without little more than a token effort to establish the true owners and ignoring those who were acknowledged claimants. He was described as being "guilty of a flagrant want of proper prudence". Featherston's explanations were described as "one of the most remarkable cases of perversion of truth that it is possible to perceive".[41] Hearn's impression was that Featherston had dealt with other than the principal owners and had exploited divisions among the owners to secure a consent. He observed that the same elements would be embodied in the Rangitīkei-Manawatū purchase.

120. Hearn describes Featherston as 'autocratic, intransigent, and intimidatory, contemptuous of constitutional norms and procedures … ever prepared to defend

[40] Waitangi Tribunal *Taranaki Report* 1996 p64 – 67.
[41] TJ Hearn *One Past, many histories ….* 2015 A 152, pp 233 – 236.

and advance Wellington's interests; and determined to extinguish Native land titles wherever they imperilled or impeded his political and economic agenda.'[42]

121. One commentator quoted by Hearn, raised the critical question of conflicting interests. He suggested that so long as the provincial governments relied for their revenue on the purchase and resale of Māori land, 'all sorts of dodges will be worked to get the lands to sell'. Featherston's appointment as a purchase agent carried responsibilities to ensure that Māori were fully informed and freely consented and the purchase agents were acting in Māori best interests. This duty conflicted with Featherston's interest as provincial superintendent to gain as much Māori land as he could for the best price.

122. Featherston's role as a government agent also conflicted with his responsibilities as a member of the House of Representatives. His warrant should have been recalled for that reason. His warrant should also have been recalled after the public criticisms of the Waitōtara purchase, or even after he led the Native Contingent in the war, given Featherston's task of determining the ownership and given that Ngāti Apa, Rangitāne and Te Ātihaunu-a-Pāpārangi of Whanganui were in contention for the ownership in opposition to Ngāti Raukawa.

123. In addition, we impute to Dr Featherston a wilful ignorance of Māori custom and a fraudulent intent. He must have known of Sir Donald McLean's opinion that Ngāti Raukawa were the dominant iwi south of the Rangitīkei River whose consent would be necessary for a purchase and he must have known that Ngāti Raukawa and Ngāti Kauwhata leaders on the land, strongly resisted sales.[43] We submit that Featherston created a fabric of deceit to overcome that opposition by presenting an illusion of the seven iwi as the owners and an illusion of widespread support for the sale from 1,700 subscribers.

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[42] TJ Hearn pp 198-9

[43] Anderson et al pp 238-9. We do not imply however that McLean, knowing of Ngāti Raukawa opposition to sales, was reluctant to attempt a purchase. McLean encouraged Ngāti Apa to claim against Ngāti Raukawa and to call upon the support of Rangitāne, Whanganui and Kahungunu while discouraging any connection between the tāngata heke on the coast and the iwi of the interior - p 248

The Manawatū exception

124. We also contend that the Government was complicit in the fraud by excluding Manawatū from the provisions of the Native Lands Acts of 1862 and 1865 on grounds that were tenuous and fabricated. As we have considered, a purpose of the Act was to sever the Government from deciding who could sell when the Government was also the buyer. The Government agreed to exclude Manawatū from the Act to gain the support of Featherston, Fox and others in order to get the Bill through the House.[44] Even so, we submit, justice should not bend to political expedience, and Government must bear the consequences of its decision.

125. The rationale for excluding Manawatū was stated in the Act itself, to protect the statutory right of the New Zealand Company scrip holders to select lands within any blocks laid out by the New Zealand Company within the Province, after the native title had been extinguished. One flaw in the rationale is that there was no logical basis for an exclusion clause that was detrimental to Manawatū Māori as potential sellers, and beneficial to the Government as potential buyers, when Māori had no interest in the Government's ostensible purpose of assisting the scrip-holders. The detriment for Manawatū Māori was that they would not be able to seek a market value for the land by an open market sale, like all other Māori would now be able to do. The ostensible benefit for the Government was that if it was able to purchase, it could meet the scrip-holders' needs, and satisfy the Government's (voluntary) promise to them on the collapse of the New Zealand Company.

126. We consider the pressing needs of the scrip-holders stranded in Wellington could have been met from other, Government acquisitions of the day, at Waitara, New Plymouth, Whanganui, Turakina, Te Awahou or Ahuaturanga – or from the confiscation of close to a million acres in Taranaki.

[44] Anderson et al p 242,

127. In addition, we submit that the New Zealand Company had not laid out land blocks in the Rangitīkei-Manawatū purchase boundaries but only around Shannon, which was outside the boundaries.

128. Our view is that the story in the Act was a charade. The true purpose was to give free reign to Dr Featherston to determine the ownership and to handle the purchase at the same time.[45]

129. Later, Featherston advised Māori that the basis for continuing to proceed outside of the Native Land Court was because of the provisions of section 83 of the Native Land Act 1865. This allowed for sale agreements existing before 30 October 1865 to be settled outside of the Act (until the end of 1866). We contend that no binding sale agreement existed at 30 October 1865.[46] The Takapū hui was not until April 1866 (and in our view the sale was not complete even then).

130. We finally add that as chapter 6 of the Anderson report shows, Māori were opposed to the exclusion of the Manawatū block from the Native Lands Acts of 1862 and 1865. However, we acknowledge that this was not only on the ground that the ownership needed to be settled in advance of any action, but also because the monopoly limited the price to be gained on a sale.

The Native Lands legislation

131. At the same time, starting with the Native Lands Act 1862, and then following the Native Land Act 1865, which downgraded the Māori judges to assessors, the Government eliminated the hapū from its self-governing role by removing its autonomy over the land, it's access to land income, and by transferring its oversight of the hapū land to the Native Land Court.[47]

[45] The unsustainability of the Government's professed concern to protect the scrip-holders interest is considered in the Rangimārie Narrative.

[46] See Anderson et al p 281.

[47] Removing hapū from access to funds included as well, the impounding of land rents, but that will be dealt with by Ngāti Parewahwaha and Ngāti Kauwhata separately, as the circumstances for each were not the same.

132. It was a matter of positive Government policy in our view. As we have indicated, the first effect of the Native Land Laws was to replace community possession with private ownership and in time, with fragmented and absentee ownership; helping to effect the planned demise of Māori sovereignty, and it's society. In separating the land from the community, hapū have become disenfranchised, impoverished and dependent as their economic base was taken from them. Hapū members are becoming increasingly bereft of the histories, whakapapa, waiata and other intimate knowledge of the land afforded those who nurture and are nurtured by the whenua. Whānau have become colonised through the 'pepper-potting' policies of the 20th century governments, separated from their language and customs, lost in urban jungles and values which give rise to a susceptibility to depression and other mental illnesses which stem from being constantly treated as 'being less' and feeling like you 'don't belong', are 'lost' or 'missing something'. In hui for those lucky enough to have land shares, the voting power of the ahi mātaotao have increasingly predominated while the ahi kā have been increasingly disenfranchised.[48]

133. The western notion of land ownership with its shift from community use to private commodification, has also seen a shift from land that is loved to land that is abused. From our perspective, a Māori system that links land with community is vital for land rehabilitation and indeed, for human survival.[49]

134. The second effect of the Native land laws was to replace customary, corporate management with management by government appointed institutions, initially, the Native Land Court and in time the Native Department. The driving forces were intensely political, commodification for private (settler) gain and government control of the economic base of the Māori communities.

[48] Consider for example the 10 hectare Piaka block on the Reureu land with over 1000 owners of whom only a few actively support the local hapū. The land is suitable for a marae papakainga but on a meeting of owners, if there is a quorum, the people of the marae who represent the hapū will not decide the future development.

[49] As to the need for a new form of land ownership or use see Prue Taylor and David Grinlinton (eds) *Property Rights and Sustainability* 2011 Korinklije NV Netherlands, ISBN 978 90 04 18264 6 Chapter 1 *Toward a New Vision of Property* pp 1 -20.

135. As necessary to allay the concerns of the British Government, or their own moral conscience, the arguments for and against the Bill, expressed concerns for Māori interests. Some of those concerns were no doubt genuine, but it must have been apparent to all that the Bill was also removing the one bulwark to alienation, the hapū and rangatira who remained committed to the kaupapa of pupuri whenua and mana motuhake.

136. Those promoting the Act contended that Māori would regain the right to manage their own lands and would readily sell once they were confident of securing better values when the market was opened to private purchasers. Crown purchasing, they contended, had been depriving Māori of a fair price. Those opposed claimed that direct purchasing related only to lands surplus to Māori needs and protected Māori from the avarice of private dealers. Featherston claimed that the proposed laws would ruin the province financially and that the low prices were offset by the increased value of the land retained. However, those opposed accepted the Bill with the addition of the Manawatū exemption and an exemption for transactions partially completed.[50]

137. Some years after the 1862 Act, a rationale for the legislation was provided by CW Richmond, in the debate on the Native Land Act 1865, and in similar terms by Henry Sewell in an address to the Legislative Council in 1870.[51] As put by Richmond it was all about overcoming "the beastly communism" that pervaded Māori society. Such explanations may be given to conceal rather than enlighten, however. Had he been so minded, Richmond could also have said that the Māori social order and land structure laid the foundations for a fine, joint stock company, with the hapū members as shareholders and the hapū rūnanga as a directors' board.

[50] Anderson et al p 244 - 8

[51] For a fuller account see David Williams *Te Kooti Tango Whenua: The Native Land Court 1864 – 1909* Wellington 1999, p 88.

138. We submit it is more enlightening to consider that the Native Land Act 1862 was enacted during a war that the Government needed to end, and end in a way by which it would not occur again. In that context the Native Land Act 1862 and the New Zealand Settlements Act 1863 are companions. The 'Settlements' Act confiscated the land of rebels, and in practice the land of the loyal Māori as well and vested the land in the Government. The 'Lands' Act extinguished the authority of the hapū to manage the land that remained or was returned as reserves and vested the management in a government- controlled entity.

139. As we, the victims of the process see it, the 1862 Act, and subsequent Native Land legislation was more draconian than the confiscation. The new laws applied to everything left over from what the Government had already acquired so that the hapū had nothing to work from. In the Manawatū that included the reserves and the Aorangi and Kaihinu blocks, that Dr Featherston missed when he defined the Rangitīkei-Manawatū boundaries.

140. It was also more draconian than the New Zealand Settlements Act for another reason. The New Zealand Settlements Act 1863 was modelled on the Act for the Settlement of Ireland 1652. Both envisaged land confiscation to recoup the cost of suppressing the insurrection and the placing of English settlers on the confiscated land to prevent a recurrence. The Native Land Act 1862 however, took what happened in Ireland to a higher level. It started a plethora of Native Land Laws that extinguished the customary authority of the hapū to manage the hapū land and increasingly vested the control in the Native Land Court and in Europeans. It was as though all the land in Ireland that had not been confiscated, was given over to an English Government institution to manage.

141. The consequences were no accident in our view. In severing the hapū from the land, the effect was to do more than expose the land to alienation. The effect was also to remove the hapū from the necessary funds or resources for further war, as well as from tribal (as distinct from private), economic development.

142. As an attack on the Māori economic base, the Government policy emulated the purpose of the United States Confiscation Act of 1862. The US Confiscation Act provided for the slaves of the Confederate supporters to be freed if there was not an immediate surrender. The principle was the same. The purpose was to sever the southern states from their slave-based economy by which they could fund a war.

143. For those reasons we contend that the Native Land Act 1862 and its many successors were more serious for Māori than the confiscation under the New Zealand Settlements Act 1863. The Native Lands Act 1862 and the amending Acts that followed concerned much more than the investigation of customary title and the reform of customary tenure.

Excluding a Māori Court

144. It was necessary that the Native Lands Act 1862 took away from the Government the responsibility for deciding who should be regarded as the owners of Māori customary land. It took a war to bring home to the Government that its conflict was untenable.

145. We submit however that it was not necessary for the Government to appoint a body that looked like a Government institution, to which the Government would make the appointments, which the Government could influence (and also overturn) by legislative measures and which the public could influence by popular condemnation or acclamation. We concur with the opinion of Ngāti Tahuriwakanui in the *Rangimarie Narrative* that Māori were capable of impartially determining the customary entitlement themselves and were more competent than the European judges to do so.

146. There may have been an opinion that Māori were not up to it. **T**he prescriptiveness of Governor Grey's rūnanga plans of 1861 or those of Sir Donald McLean in 1869 could suggest so or they could show an unwillingness to hand over

the reins. Our submission is that the matter should not be judged by the predilections of just one side. We submit that the capacity to adopt and adapt was evident in 1858 in the election of a Māori King and in the reform of the rūnanga outside of the schemes of Grey or McLean to provide for self-government in new contexts. We submit that the problem was not whether Maori were up to it but whether an honest inquiry into their capacity was made.

147. The Kīngitanga decision on the Ngāti Kauwhata claim to Maungatautari lands showed how Māori could make decisions on customary Māori rights, more efficiently and accurately than the Native Land Court. In response to a request from Ngāti Kauwhata, the Kīngitanga determined that land would be made available to Ngāti Kauwhata if Ngāti Kauwhata returned. It was a clear statement on the primacy of ahi kā and did in days at no cost, what the Native Land Court did in over a year at huge cost – and still got it wrong.

The Awahou purchase

148. We have considered that Featherston might have been following the precedent of Government Agent, Searancke, on the Te Awahou purchase of 1859. Searancke ignored the hapū and instead called general hui of anyone interested.

149. It may be that Featherston took a lesson from that process as a technique for side-lining rangatira. However, the system that Featherston used for the Rangitīkei-Manawatū block was of another order, involving as it did the importation of hapū from outside of the Ngāti Raukawa confederation and takiwā and amassing an extraordinary number of subscribers of uncertain provenance.

150. We come then to consider how Featherston went about the purchase itself.

The Leases and the prospect of war

151. As we see it, Featherston began the purchase of the Rangitīkei-Manawatū block on the pretext that he was settling a dispute over leasing to avoid imminent warfare. It was a surreptitious beginning. We will look at the leases, the death of

Taratoa, the impact of war and the capacity of Featherston and Ngāti Apa to exploit the opportunities that these events presented.

152. Ngāti Raukawa were engaged in leases from the arrival of the first settlers in Manawatū. It must have been obvious to Ngāti Raukawa that by leasing, they could keep the land and still have money for hapū development. Leasing had also been considered for other purposes as well. In 1847 a Committee of rangatira had laid out plans for a township at Ōtaki on leasehold titles, as had been done in other parts of the country including most famously, Pūtiki and Ōrākei. The latter was known to Māori throughout the country who attended the Ōrākei Conference of Pāora Tūhaere in 1860.[52] However, well before then, Taratoa of Ngāti Parewahawaha had taken the leasing of the land to a higher level, mainly in the form of extensive pastoral leases to large run-holders.

153. Taratoa was a warrior, leader, trader and statesman. His exploits as a warrior of Maungatautari are of epic proportions, as when his taua of some 60, defeated a force assessed in the thousands. He then led some 600 of his people to the Kāpiti coast in the Heke Kariritahi in 1827. He settled at Matahiwi on the Rangitīkei River, but his mana extended the length of the Kāpiti coast from Whangaehu to Kukutauaki.[53]

154. As a statesman he was noted for his unwavering adherence to what he considered right, his support for the Kīngitanga, his fierce opposition to the sale of Māori land, his close relationship with Te Rauparaha and his policy of appeasement which saw him include Ngāti Apa in his lease arrangements. Amongst the rangatira of the district, he was paramount. In his day, none dared to cross him and his wise counsel was held in the highest regard.[54] As Īhakara Tukumaru put it "While Nēpia Taratoa lived, there was no trouble." His death was

[52] For the Ōtaki and Pūtiki townships see Anderson et al pp 95-97. For the Ōrākei case see Waitangi Tribunal *The Orakei Report* 1987 p 57.
[53] In the day, 'Kāpiti coast' described the coastline from Whangaehu to Raukawa Moana (Cook Strait).
[54] See *The Late Nēpia Taratoa* Māori Messenger: Te Karere Māori Vol III, Issue 3, 20 April 1863.

followed by dissension and a spate of pā building, as necessary to protect one's people in the event of a war.[55]

155. A return tabled before the House in 1864 gave the number of known leases to Europeans at that time. It showed large areas under lease in Manawatū, mostly arranged by Taratoa.[56] The leases related mainly to large cattle runs on the coastal plains. One such run, of an estimated 20,000 acres, extended from the coast to the Oroua river.

156. Taratoa died on 14 January 1863. With his death came a considerable change in fortune for Ngāti Raukawa.[57] The outbreak of the Waitara war in 1860 saw an alignment of Ngāti Apa and other hapū who formed the Native Contingent in support of the Government. Fox, the member for Whanganui, became the advocate for Ngāti Apa and the Whanganui hapū. Featherston, who was recruiting more soldiers for the Native Contingent in 1863, led the contingent into Taranaki in 1865.[58] In 1864, Pūtiki Māori of Whanganui would become famous for halting the advance of the Pai Mārire forces down the Whanganui River, at Moutoa Island, just north of Rānana.

157. For their part, the hapū of Ngāti Raukawa north of the Manawatū river-mouth were generally in support of the Māori King. Several would take part in the wars on the side of those fighting against the Government. Later, towards the turn of the century three marae, Te Hiiri, Te Tikanga and Te Poupatatē, would bear names that commemorate events or tongi kura from the Kīngitanga, King Tāwhiao would visit Te Iwa Marae and today, Whakawehi Marae in the Manawatū, is the only place in the southern, North Island where the Kīngitanga poukai operate.[59] While

[55] Anderson et al p 288,

[56] The leases are documented with supporting commentary by Anderson et al at pp 249 – 270.

[57] The rest of the material in this section is covered in more detail by Anderson et al at pp 240, 249 – 270.

[58] Anderson et al pp 239 – 240.

[59] Some who had attended the Ōtaki mission tended to side with the Government and the new economy and supported selective land sales. Hoani Meihana Te Rangiotu of Rangitāne (Ngāti Rangitepaia) and Ihakara Tukumaru of Ngāti Raukawa (Ngāti Ngārongo) were amongst them. We submit however that the hapū of the Ngāti Raukawa confederation were less divided between 'friendlies' and 'Kingites' than in the south, and were

we have no doubt about the support for the Kīngitanga, support for the King was not the only reason for engaging in the wars. Whakapapa, of course, also had a bearing, as did the fact that our forebears claimed land interests in the war zone, or near to it, at Maungatautari.[60]

158. Accordingly, in 1864, when Featherston began his purchase process the balance of power had shifted. Ngāti Apa had the backing of: the Whanganui hapū, the Premier Sir William Fox, the Provincial Superintendent and land purchase commissioner- Dr Featherston, and the Resident Magistrate and deputy land purchase commissioner, Sir Walter Buller. As members of the Native Contingent, Ngāti Apa retained the right to carry arms while in the same year, 1864, those of the Ngāti Raukawa confederation, which included Ngāti Parewahawaha, Ngāti Whakatere, and Ngāti Kauwhata, were required to surrender their arms and submit to the Queen's law.[61] Several did.

159. In addition, Fox, Featherston and Buller between them changed official attitudes to customary tenure and authority over the lands south of the Rangitīkei River from Ngāti Raukawa as the undoubted owners, to Ngāti Raukawa living in the area on the sufferance of Ngāti Apa.[62] It was pure propaganda.

160. Later, in 1866, Kāwana Hunia of Ngāti Apa provided the Fox-Featherston-Buller propogandists with the evidence they needed for their concoction of imminent warfare and Ngāti Apa supremacy. It was reported that:

> Governor Hunia made a still more violent speech against the other tribes, openly boasted that they …. now had plenty of arms and ammunition, and could easily drive off their opponents, and that they would now prefer an appeal to arms to any other course. He almost intimated that they had during the West Coast campaign reserved their ammunition for that purpose.

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generally resolute in their support for the Kīngitanga. EventuallyĪhakara and Hoani Meihana opposed land sales and sought reserves. The position is considered by Anderson et al at 248 – 9.

[60] Anderson et al p 275.

[61] Anderson et al describe the surrender of arms and submission to the Queen's law at pp 270 – 275.

[62] Anderson et al p 240.

We are not aware of any similar talk of violence from the Ngāti Raukawa side. The Government's evidence of imminent warfare was coming from their own allies.

161. The course of provocation that followed the death of Taratoa, culminated in 1869 with Kāwana Hunia and the Ngāti Apa members of the Native Contingent destroying the homes and crops of the Parewahawaha resident on the Rangitīkei, and in 1873, those of Ngāti Pareraukawa resident on Horowhenua block in the south. In both cases the Ngāti Apa troops were able to do so without any punitive response from either the national or the provincial governments led by Fox and Featherston respectively. Such incidents provided no confidence for those of Ngāti Raukawa who were branded as rebels, to submit to the Queen's law as was required, but we are not aware of any acts of retaliation.

162. The provocation of Ngāti Raukawa began with a challenge to the right of Ngāti Raukawa to maintain the leases and receive the rentals. In the view of Ngāti Raukawa, Ngāti Apa became 'covetous' wanting all the revenues for themselves.[63] Ngāti Te Au and Ngāti Rākau entered the fray, opposing the Ngāti Apa attempts to break the leases approved by Parakaia Te Pouepa in Hīmatangi. Te Kooro Te One of Oroua protested that Ngāti Apa had been included in the leases out of kindness but were now seeking the lot. Rangitāne and Ngāti Whakatere as joint occupiers of the Kaihinu blocks, also opposed Ngāti Apa intervention.

163. The dispute over the leases and the rents, which was now widespread, provided Featherston with the opportunity he needed. The most serious obstacle to Featherston's hopes of a large purchase was in our view, the capacity of most of the hapū rangatira to maintain their opposition to land sales. They were intelligent, articulate and determined. Through the rentals, they also had access to some funds. They had no reason to support a sale.

[63] Anderson et al p 260

164. The rental dispute however, enabled Featherston to impound the rents under the guise of keeping the peace, despite extensive opposition from the Ngāti Raukawa confederation and Rangitāne.[64] Outwardly, Featherston could present as acting from principle. In fact, however, the conflict between Featherston's peacekeeping role as superintendent, his interest as purchase commissioner and his bias through a close association with Ngāti Apa, gave the lie to such a noble purpose.

165. There was little that Ngāti Raukawa could do as they were now politically compromised. The dispute over the rents could have led to an outbreak of fighting. That is something that Ngāti Raukawa could not afford. Ngāti Raukawa had participated in the war in Waikato, Taranaki and, in 1864, in Tauranga, where Hēnare Taratoa came to fame. Under the Suppression of Rebellion Act 1863 the hapū rangatira of the Ngāti Raukawa confederation could be arrested as rebels for as little as being suspected of "aiding or in any manner assisting in the said rebellion". Buller had given these words a liberal interpretation to include persons who "… took no active part in the war [but] encouraged the rebels by their presence, and by their assurances of sympathy and support".[65] By Featherston's interpretation, most of Ngāti Raukawa having given their support to the Māori King, were now rebels. Any recourse to violence on their part, would provide Sir William Fox and the Government with the excuse to declare that the war had extended to Manawatū and their lands confiscated.

166. Any spread of the war to Manawatū would have been disastrous for Ngāti Raukawa. The prospect of land confiscation had been on the political agenda from soon after the war began in 1860 and it was made lawful in 1863. It required only some evidence of violent retaliation to the earlier Ngāti Apa provocation.

[64] Anderson et al record Māori opposition to the impounding of the rents at para 6.6 p 275 and 6.9 p 281.
[65] Anderson et al p 271.

167. Then came the ultimate blow. With hindsight, and in light of Featherston's predisposition, it could have been expected. When Ngāti Raukawa and Rangitāne joined forces against Ngāti Apa in relation to the leasing of the Kaihinu blocks, Fox and Buller proposed an arbitration. Ngāti Raukawa and Rangitāne supported the arbitration. As already discussed, Ngāti Raukawa had no option. Ngāti Apa and Whanganui on the other hand, were armed and ready, and declined. They paved the way for Featherston to assert that there was now a widespread dispute that would lead to fighting unless he intervened.

168. In what we submit had the appearance of collusion, Ngāti Apa then proposed a sale – which fitted exactly with Featherston's own thoughts, that the only way to settle this manufactured dispute that foreboded of war, was for the parties to sell the land. It was the ultimate sting. A result would be achieved without the need for a proper inquiry of the ownership. Waitara was bad, Waitōtara was worse and now Featherston had reached the pinnacle of his career over Rangitīkei-Manawatū which was worse still. The common denominator for each was that the Government acquired the land without the free and informed consent of the owners.

169. The supposed offer to sell from Ngāti Apa led immediately to the collection of Ngāti Apa and Whanganui signatures for the purposes of a sale deed, without sorting out where their land interests lay. Featherston's unique process for acquiring the land was underway.

Whārangi and the invitation to treat

170. In September 1864, seven rangatira purported to place the land in the hands of Mr Featherston for sale while noting that the price and the reserves had still to be resolved and that the consent of the people had still to be obtained.[66] As they put it, correctly in our view, "it is only when chiefs and people are agreed that land can be absolutely ceded" and that meant, as one of them said, "each hapū

[66] For this section see Anderson et al pp 275 – 285.

had to consent".[67] The seven rangatira went on to challenge the retention of the rentals and the right of Government to buy when everywhere else Māori land was now on the open market. We interpret the possibilities to be that the true purpose of the seven rangatira was to recover the rents and to remove the Government from its position of having the exclusive right to buy. In any event when a proposal is made subject to a consent being given it is at best an invitation to treat, that is, an invitation to talk, without any legal commitment involved.

171. Being true to himself, following a meeting at Whārangi (Foxton ferry) Featherston declared that he had a binding contract. This was notwithstanding that his deputy, Buller, was a lawyer and must have known that the proposals at Whārangi fell far short of a contract. As we have seen, Featherston then defended his monopoly to buy on the ground that the Native Land Act exempted lands that were subject to a contract for sale, despite the fact that any such contract had to exist at the time the Act was passed, not afterwards as in this instance.

The Whārangi misrepresentation

172. We then ask the Tribunal to note that it would not be correct to imagine that the offer of the seven rangatira to place the land in the hands of Dr Featherston, was done entirely of their own volition. We submit that it responds to a false image created by Featherston of an intractable tribal rivalry that could only be resolved by handing the land to him and he would provide those affected with a Crown recognised title.[68] The result was a letter inviting discussions and a meeting at the Whārangi Hotel that Featherston then represented as a binding contract, when it plainly was not.[69]

[67] Anderson et al p 275. Hoani Meihana Te Rangiotu went further. He agreed that the hapū had to endorse any decision and added that he could only talk for "the other side of the Oroua", making the point that each hapū had to consent for its own lands. It should also be noted that 'the other side of the Oroua' refers to the Aorangi and Taonui-Ahuaturanga blocks which are outside the Rangitīkei-Manawatū block.
[68] See for example Anderson et al pp 243 – 4, 281.
[69] Anderson et al pp 275 – 276.

Takapū and the opposition to sales

173. Further hui followed starting with an important hui at Takapū in April 1866. Located on the lower reaches of the Manawatū River, 20 miles along the river's meandering route, Takapū, like Whārangi, was accessible for the southern sellers like Mātene Te Whiwhi and Tamihana Te Rauparaha. Anderson et al cover the progress of the meetings up to and following Featherstons' claim to have effected a purchase.[70]

174. The period post Takapū is significant we submit, not for the numbers who supported the sale, but for the numbers who didn't and for the fact that those who did not support a sale included most of the rangatira of the Ngāti Raukawa hapū in actual possession. As we have stressed throughout, it is those hapū in actual possession who held the equivalent to ownership at English law.

Sealing the deal at Parewanui

175. Richmond, the then Native Minister, and Governor Grey, both sought to intervene, but nothing could stop Featherston from sealing the deal by the payment of the purchase price. Richmond questioned the integrity of Featherston's purchase process, rallied against a sale by a majority vote against a vociferous minority and must have despaired at Featherston's inadequate responses. Richmond's recommendations were simply ignored.[71]

176. Governor Grey met with Parakaia Te Pouepa but failed to secure his support for the sale. Responses by Parakaia to intense examination demonstrate his extraordinary capacity.[72]

[70] See Anderson et al, pp 285 - 321
[71] Anderson et al pp 304 – 306.
[72] Anderson et al pp 307 – 310.

177. Featherston estimated that some 1,500 persons attended the hui that he called in December 1866 at Parewanui to pay out the purchase price.[73] After much debate as to how the purchase price of £25,000 should be distributed, it is said that the hui endorsed Featherston's recommendation. £15,000 was paid to Kāwana Hunia and Aperahama Tipae for Ngāti Apa and Rangitāne, and, £10,000 to Īhakara Tukumaru and Aperahama Te Huruhuru for Ngāti Raukawa.[74]

178. We see the meeting's pertinent features as follows:

- The meeting was held outside of the Rangitīkei-Manawatū block at Parewanui in Ngāti Apa territory. This meant that Kāwana Hunia of Ngāti Apa opened and had a significant say at the meeting. The location would also have allowed him to have a large supporting contingent in attendance.

- Featherston arrived with some 200 supporters of his own.

- Because of the debate the hui ran from 6 to 13 December with payment being made on 14 December.

- Those attending ranged from Whanganui to Porirua

- Notwithstanding pressure, Featherston refused to define what reserves would be made before concluding the Deed by payment.

- Hunia proposed £22,000 for Ngāti Apa and supporters and £3000 for Ngāti Raukawa. He declared his intention to drive Ngāti Raukawa from the land by force if he did not have his way and the meeting was adjourned to the next day.

[73] Anderson et al cover the issues at pp 310 – 317.

[74] Īhakara Tukumaru we understand, was not ordinarily resident on the land but lived near Kōpūtōroa, at Matakarapa and at Te Awahou. He was for a time at Tāwhirihoe at the mouth of the Rangitīkei River.

- Many Ngāti Raukawa non-sellers who were resident, boycotted the meeting saying that they would not accept the purchase money. We do not know which of the non-sellers, if any, attended the meeting. The meeting considered that those receiving the Ngāti Raukawa share should pay out to the non-sellers as well.

- The Deed was written on 13 December. It follows that the signatures collected over the years on separate sheets were added to it. The record states that 30 signatures were added when the Deed was read on the last day.

179. Following the hui some 300 'dissentients', who now included Mātene Te Whiwhi, met at Ōtaki to put aside the local split between Kingites and Queenites, to set aside the division and belatedly, to oppose the putative purchase. It was too late to close the stable door of course for the horse had already bolted.

180. Nēpia Taratoa declared that he would accept no part of the purchase price. He also claimed that the amount owing in back rents was then £3000.[75]

The Process

181. Below are our submissions on Featherston's purchase programme having regard to the facts collated by Anderson et al.

Pre-emption

182. The Crown's pre-emptive right of purchase was used to look after the scrip-holders and not to look after Māori. One rationale for the Crown's pre-emptive right was to protect Māori from unscrupulous, private purchasers.[76] We submit

[75] Anderson et al pp 317 – 319.

[76] Another rationale for the Crown's pre-emption was that all titles passing to British subjects must emanate from the Crown. However, the Native Lands Acts of 1862 and 1865 show that pre-emptive purchasing was not

that the use of the Crown's pre-emptive right to protect the scrip holders was an abuse of the Crown's monopoly. But for the excuse of looking after the scrip holders, the ownership would have been settled before an offer was made to buy, and the key impediment to the purchase, the failure to determine the ownership, would not have arisen.

Purchase price

183. It was an abuse of the Crown's purchasing monopoly, we submit, to buy the land at less than a fair price unless the Crown provided extensive reserves. The rationale for buying cheap and on-selling at the proper price was that Māori would profit from the increased value of the land they retained as a result of European settlement and infrastructural development. In fact, in Featherston's purchases at Waitōtara and Rangitīkei-Manawatū, the reserves were so negligible that the purchase price was grossly inadequate. Without wishing to engage in hyperbole, we think it is fair to call it a rort.

184. Also, there is no record of an agreement on the purchase price.[77] The price appears to have been fixed unilaterally. The evidence from meetings subsequent to the collation of signatures supports the view that signatures were obtained on sheets before the price had been settled and the Deed prepared.[78]

185. We considered how in tikanga Māori, transactions were done by an exchange of gifts so that the utu for that given was not specified. We have considered how those who purported to give the land to Featherston to sort out what was right, may have been influenced by that practice. We further note however, that there were complaints at the hui that signatures were being sought before the price had been settled.

necessary to maintain the Crown's prior title. It was enough that the Court orders determining the Native title and vesting a defined parcel in given owners, would be treated by the Act as a Crown grant of the freehold. In brief, the proposition that freehold titles must issue from the Crown, did not mean that only the Crown could buy from the Māori owners.

[77] Anderson et al p 293

[78] Anderson et al p 275 para 6.6 nd 281.

186. We then come to the payment of the purchase price. Ordinarily no purchase is settled until the purchase price is paid to the owners of that which is sold. In this case that would mean that the payment would be made to either the seven tribal groups named in the Deed or to the 1700 or so whose marks or signatures were appended. The payment was made to representatives for two groups - Ngāti Apa and Ngāti Raukawa respectively.[79] Our submission is that if there had been an agreement, the Deed should have been signed by two or three rangatira for each of the hapū in residence on the land, and payment made to them proportionate to the areas they occupied.

187. As certain Māori put it to Judge Rogan "Mr Buller and Dr Featherston drove in a dog cart to Rangitīkei, spilled £25,000 out to be scrambled for, and left the settlement."[80] Of course that is not accurate but it conveys the essential message that the method of payment, which was highly debated, left a lot to be desired. We submit that in oral cultures, hyperbole is used to convey essential messages in ways that stick in the mind and get passed down to future generations.

Payments in Advance

188. We have mentioned that Featherston or perhaps mainly Buller paid money to those who signed the deed and that these were sometimes described as payments on account of the purchase price or as tākoha. Clearly these were not tākoha. We have expressed our concern that tākoha is the term that was used. Tākoha are gifts made in anticipation of a return in the course of time with a view to building or maintaining an ongoing relationship. It appears however that these were not payments in advance either. That were not brought into account in the final settlement. They were simply unlawful bribes, the very thing by which a contract may be set aside.

[79] Anderson et al p 297
[80] Anderson et al p 240

189. Worse, they seem to have been aimed at undermining the authority of the hapū rangatira. It is recorded that Featherston distributed purchase money to the 'young men' which Māori rangatira described as a 'bait to lure people'. Parakaia of Hīmatangi and Te Kooro of Ngāti Kauwhata insisted that the young people had no claim to the land and no authority to accept the money. The money was spent on alcohol, they added. It would be entirely consistent with Mr Featherston if he did this in our view, with the intention of undermining the political unity of the hapū, seeking a split between the young and the elders.

General hui

190. We submit that the use of general hui to collect signatures of support for the sale, was meaningless when the status of the signatories as owners had not been established.[81] There were numerous meetings throughout the district and outside of it, for example at Ōtaki.[82]

Subscription

191. Signatures were collected without sorting out where the interests lay of those concerned. Signatures or marks were collected from persons not resident on the land and at distant places like Wellington and Whanganui.[83] In 1866 Featherston estimated that of the 1700 signatures; 800 were from Whanganui, 200 were from Ngāti Apa, and 100 were Rangitāne and Muaūpoko.[84] We do not know how many were from Ngāti Toa, Te Ātiawa and Ngāti Raukawa south of the Manawatū river. What we do know is that the most significant Ngāti Raukawa rangatira were opposed including Parakaia Te Pouepa, Nēpia Taratoa and his uncle Aperahama Te Huruhuru, Henere Te Herekau, Paranihi Te Tau, Wirihirai Te Ngira, Epiha Te Riu,

[81] Anderson et al citing Hearn p 296
[82] Anderson et al 282
[83] Anderson et al p 240.
[84] Anderson et al p 294

Heremia Puke and Te Kooro Te One and his father Reupena Te One.[85] Our point is that if one accepts that the owners were the hapū in possession represented by their respective rangatira, then it appears to us that no-one of the Ngāti Raukawa confederation who was entitled, agreed to a sale including Tapa Te Whata whose signature was obtained by a contractual misrepresentation.[86]

192. There are also doubts that some of those on the Deed actually signed.[87] A case in point concerns the signature of Nēpia Taratoa. As we have said, Nēpia Taratoa I, a leader in the migrations, was stoutly opposed to the sale of the land. He could not have signed as he died the year before the collection of signatures began. The signature might therefore be that of his son, Nēpia Taratoa II, but Nēpia Taratoa II held to his father's view. Nēpia Taratoa II is recorded several times over as strongly opposed to the sale.[88]

Whenua tohetohe

193. Featherston spread the word that the fighting and trouble was such that a sale was the only solution.[89] Ngāti Apa gave support by regularly threatening warfare (and Featherston himself is said to have threatened the gatherings with the "massed presence" of the tribes who fought with the Crown).[90] We submit that there was in fact no evidence of a likely outbreak of violence other than the violence threatened by Ngāti Apa and possibly, Featherston himself.

Customary entitlement

194. Featherston's supposed basis for proposing sale as the only option, was that there was a difficulty in dividing the land between Ngāti Apa, Rangitāne and Ngāti

[85] Anderson et al p 294
[86] Again, Ihakara and his hapū were not in possession.
[87] Anderson et al p 304.
[88] Anderson et al 288, 294, 304.
[89] Anderson et al p 288.
[90] Anderson et al 286, 291, 292, 295 (with reference to Featherston making threats)

Raukawa.[91] The flaw in Featherston's statement was that this had already been done, with Ngāti Apa residing on the northern side of the Rangitīkei River, Rangitāne residing in Ahuaturanga and Ngāti Parewahawaha and Ngāti Kauwhata residing in the Manawatū, as detailed in the *Rangimarie Statement*.

195. The further flaw in Featherston's approach lay in the inference that Ngāti Apa still had mana in Manawatū. In fact, it was long settled by 1840 that Ngāti Apa were to remain north of the Rangitīkei River.

196. When dealing privately with Native Minister Richmond, in 1866, Featherston conceded that Ngāti Apa did not have that mana. The record is that Richmond raised the greater Ngāti Raukawa view that they had driven Ngāti Apa out of Manawatū and that the land belonged to them by native custom, as a result. Featherston replied that "Ngāti Apa got strong friends and in fact Māori custom might soon have changed the ownership of the land again." We submit that this is evidence that in Featherston's mind, it was Ngāti Raukawa who "owned" Manawatū at that time. "Strong friends", we believe, is a reference to the Whanganui Māori whose defence of the Whanganui River at Moutoa was becoming legendary.

197. We submit also that it was irrelevant that in custom Ngāti Raukawa could conceivably lose possession on account of Ngāti Apa's "strong friends". First ownership was determined at the time of sale and not on the basis of a contingent possibility. Second, the legal principle was that change could be effected by customary means only if the means were non-violent and did not depend on "strong friends".

Whenua rāhui

198. Featherston also represented that Māori needed to sell the land in order to secure an uncontested title to part. In legal theory, and from a government viewpoint, there was a measure of truth in that but it was certainly not the whole

[91] Anderson et al p 304

truth. A Crown grant is like a rāhui. To have it is strong proof of entitlement and it is enforceable in a Court against the claims of others.

199. However, to say that Māori had to sell the land in order to obtain a Crown grant was an orchestrated fabrication (as Buller would have known). The Government had only to remove the Manawatū exclusion clause so that an order could be obtained from the Native Land Court determining the ownership. In terms of the Native Lands Act 1865 an order determining the title had the effect of a Crown grant.

200. The irony was that Featherston, having said that Māori could only get a reserve by selling the land, did not then provide the hapū reserves that Māori expected. For example, Tapa Te Whata was amongst those who were promised a reserve if he agreed to the Deed. He agreed, but when he found that the reserve was only a small fraction of his people's land, he was voluble in his protests. In short, Te Whata had been duped.

Whenua Raupatu

201. Another false inducement, we submit, was the advice to Tapa Te Whata (and possibly others) that he must sign or have his people's lands confiscated because of his participation in the Ōrākau battle. In fact, Manawatū land could not be confiscated unless there was an insurrection in Manawatū and, thanks to Ngāti Raukawa constraint in the face of provocation, there was no insurrection.

202. However, as we have mentioned, Te Whata could have been arrested, tried and put to death under the Suppression of Rebellion Act 1863 and that could have been pointed out to him.

Branding as rebels

203. Following on from the previous point, Ngāti Raukawa had not only to prevent the perception of armed hostilities in Manawatū, they had also to take care that they were not arrested under the Suppression of Rebellion Act. As indicated, that Act enabled individuals to be punished, including by death, for aiding or in any manner assisting in rebellion or for that purpose, maliciously attacking or injuring the persons or properties of loyal subjects. The legislation applied whether or not the matter complained of was in an area liable for confiscation under the New Zealand Settlements Act. Buller maintained a record of persons whose actions might make them rebels including those who merely gave assurances of sympathy and support for those Māori engaging in war.[92] Anderson refers to several who were affected including Tākana of Ngāti Kauwhata who had joined the 'rebels' at Meremere and for whom imprisonment was deemed to be merited. His 'offence' however, carried the death penalty.

Extinguishment and opposition

204. We submit that for the purpose of extinguishing the native title on the grounds of purchase, Featherston advised the Government of extensive support for a sale, when in fact there was significant opposition and extensive protests.[93]

205. The full extent of that opposition became increasingly apparent after Featherston announced that the land had been acquired for the Government.[94]

206. Parakaia Te Pouepa was amongst the leading rangatira who opposed the sale. He added that he had agreed to the Te Awahou sale on the basis that that would be the only purchase in the district.[95]

Possession

[92] Anderson et al p 271 – 275.
[93] Anderson et al pp 283, 289, 294, 298
[94] Anderson et al pp 302 et seq.
[95] Anderson et al p 296.

207. We have contended that the hapū in possession owned the land. This is supported by Māori complaints that those agreeing to the sale, did not live on the land.[96] It appears that those who did not live on the land were mostly in favour of a sale.[97] Conversely, those who declared that they did live on the land were invariably opposed.[98]

Adopting the confiscation method

208. This section contends that Dr Featherston modelled the purchase of the Rangitīkei-Manawatū on the Taranaki confiscations.

209. In the first instance, he treated Ngāti Raukawa as rebels and Ngāti Apa as the Crown's loyal servants as though that were determinative of land entitlement (as indeed it was in Taranaki). Ngāti Apa were included in the Deed as owners and then took out the lion's share of the purchase monies, even although only a small remnant were living on the land as against a significant Ngāti Raukawa population. That is evidence in our view that Featherston saw them as 'friendlies', allies supportive to his cause, and the examples of 'loyalists' being rewarded with financial bias in relation to land sales is heavy. ,

210. The same bias was shown in the provision of reserves for Ngāti Parewahawaha. The reserves for Ngāti Apa in the Turakina block on the northern side of the Rangitīkei river amounted to 43,050 acres, of which 40,000 acres was in one title. In addition, on the south side of the river they received another 1,500 acres making 43,550 acres in all. Ngāti Parewahawaha received all up, 3,795 acres in 21 widely scattered titles. Effectively, Ngāti Parewahawaha, as Kingites or non-sellers, were punished for un'friendly'ness, and were thus excluded from participating in the new economy.

[96] Anderson et al pp 295, 298 and 304.
[97] Anderson et al p 287 and see p 293 for the groups not living on the land.
[98] Anderson et al p 287, 293

211. More significantly, Featherston appears to have borrowed the confiscation method of acquiring the whole of the land and passing some back later. The confiscations were authorised by the New Zealand Settlements Act 1863. The Bill was introduced to the House by Sir William Fox as Native Minister on 5 November 1863.[99]

212. In Taranaki, the whole of the land in the three confiscation districts to which it had been divided, was taken; not just the land of the rebels.[100] The rationale appears to have been that one could not immediately tell who were or were not rebels. The land was therefore taken on the basis of promises that after the Europeans were settled on the land, those who were not rebels would get their land back and those who were rebels would get back only some.[101]

213. A major downside of this 'take all and pass back" process was that it took up to 30 years to get the land back and then some got nothing because not enough was kept vacant after the Europeans were settled.

214. Manawatū was not a confiscation district but that did not stop Dr Featherston from applying the "take all and pass back" process in Manawatū. Promises were made that those who agreed and signed the Deed would get a reserve.

215. As we have already mentioned, Tapa Te Whata of Ngāti Kauwhata is a case in point. He was to get a reserve if he surrendered his arms, took an oath of allegiance and signed the Deed. He did all that but when the reserve came it was pathetic, in Te Whata's view. Te Whata may have had the impression that he would get back the whole of the land that he regarded as belonging to his hapū.

216. Featherston also insisted that the right to the land was highly disputed. His comrades in arms had no doubt pressed that view. His comrades were keen to sell

[99] W. Fox, 5 November 1863, NZPD, 1861 – 1863, pp 782 – 783.

[100] The lands in the districts were larger than those of the Rangitikei – Manawatū block but were not necessarily more valuable for much of the Taranaki land was in mountain or rugged terraine.

[101] In making our submission on the Taranaki confiscations, we rely on the findings of the Waitangi Tribunal in *The Taranaki Report: Kaupapa Tuatahi* 1996 especially pages 107 – 170.

just as Featherston was keen to buy but for Ngāti Raukawa who would not sell, Featherston was able to offer the option that if they signed the Deed they would get back a reserve with their right to it guaranteed by the Government.

217. On Featherston's advice, the native title to the whole block was declared to have been extinguished by purchase. Following the Taranaki pattern, the amount to be handed back as a reserve, its whereabouts, when it would be handed back, to whom and for what reason were all left at Featherston's discretion. The result was that the reserves handed back were small and few and far between.

218. The irony for Ngāti Raukawa was that the whole of their reserves were far less than those for Ngāti Apa. The Ngāti Apa reserves of 43,550 acres exceeded all the reserves for the many hapū with different iwi lines on the Rangitīkei-Manawatū block.[102]

219. To deal with the paucity of the reserves that came back in Taranaki, a Commission of Inquiry would be established. To deal with the same problem in the Manawatū, the Government would appoint Sir Donald McLean. By then Dr Featherston had retired. It may have seemed to Dr Featherston that his task was done for even although Ngāti Raukawa had still to receive their reserves, the settlers had their land, Ngāti Apa had received most of the purchase price, and Ngāti Apa was secure on its reserves north of the Rangitīkei river.

220. The paucity of the reserves, and the fact that it took up to 30 years to get a title for them, is another matter that the hapū represented in this statement will deal with separately, and for the same reason, that the circumstances for each are not the same. We raise the matter now to illustrate the consequences for Ngāti Raukawa in leaving everything to the discretion of Dr Featherston. We mention also that many of those awaiting reserves incurred debts for food, clothing and shelter and unfortunately for some, alcohol. The settlers had taken over most of

[102] These were Ngāti Waewae of Tuwharetoa, Ngāti Matakore of Maniapoto, Ngāti Rangatahi of Ngāti Toa – Maniapoto, the three hapū of Ngāti Kauwhata, and the five hapū of Ngāti Raukawa.

the land and the food resources were no longer in Māori hands. When the titles for the reserves were received, lands were sold to clear the debts.

221. In Taranaki a Court was established to compensate those who were not rebels but who still lost land. In Manawatū, those who claimed they had not sold, but had still lost land, were given the right to file claims in the Native Land Court for a land award. Those who did so apply received nothing from the Court. In a decision that is strongly challenged, the Court found that the land was owned by Ngāti Apa. Ngāti Tahuriwakanui have challenged the decision in *The Rangimarie Narrative*[103] and we support that challenge.

222. Dr Featherston was familiar with confiscation policies and practice. As a member of the House of Representatives he was privy to the legislation, the preceding debate, and the Parliamentary reports on the confiscation progress. As leader of the Native Contingent in Taranaki he would have been aware of its application on the ground and of some of the local opinion as to its efficacy from a settler or government viewpoint.

223. In addition, his confidant, Sir William Fox, had introduced the confiscation legislation. It was no doubt due to Sir William's experience that it was Sir William who was appointed to the West Coast Commission in 1880 to report on such issues as the Government's failure to deliver on the promises of reserves.[104] Although Sir William was appointed along with Sir Francis Bell and Hone Tawhai, Tawhai resigned early in protest over the alleged bias of Fox and Bell towards the European settlers, Sir Francis resigned at the end of the year and for the next four years Sir William was in sole charge.

224. The truth was that in Taranaki, only a fair amount of the rebels' land should have been taken in the first place and none of the lands of those who were not rebels. The rationale appears to have been that to end the war, it would help to get as many settlers on the land as quickly as possible. Working out the true justice

[103] See *The Rangimarie Narrative.*

[104] Waitangi Tribunal *The Taranaki Report Kaupapa Tuatahi* 1996 pp 246 – 262.

of the case would take too long. In the Manawatū case there was no war and therefore, we submit, there was no justification for adopting the confiscation process at all

The Contract

225. The confiscation process left critical matters undecided at the time the signatures were collated and even on the execution of the Deed – who truly owned the land, how much was to be paid and to whom, what would pass forever and what would come back as reserves. This section contends that the uncertainties were such that there was no proper agreement for sale and purchase that could justify the conveyance of the land or the proclamation extinguishing the native title.

226. The basic requirements for a valid contract for the purchase of land as understood at the time, we submit, were certainty of ownership, subject matter, consideration and settlement. We will consider each.

Ownership

227. We submit that the space between an agreement to sell and the final settlement is to resolve critical issues like proof of ownership. In this case Featherston's omission to record any findings on the ownership, tell that no such findings were made before the land was sold.

228. Featherston had also to note that the Native Land Act 1862 set the principle that ownership had to be settled before there could be a purchase The exclusion of Manawatū from the Act changed none of that as the exclusion was purely to support the scrip-holders. The Act also noted that the land could be owned by a hapū which was a reminder for Featherston that hapū ownership was also up for consideration.[105]

[105] The 1865 Act limited tribal ownership to lands over 5000 acres but that does not alter recognition of the fact that in custom and in law, land could be held as a tribe.

229. Further, as we see it, the failure to inquire of the ownership was not an act of omission but of deception. Māori were deceived into believing that the land could be sold on the basis of a popular referendum of anybody as shown by the number of signatories or the numbers attending at a hui.

230. The failure to disclose an inquiry into the ownership also meant that Featherston had no need to explain his conflicts in including the hapū of the Native Contingent or his relationship with Fox who also had an interest in providing for Ngāti Apa.

Subject matter

231. For a valid contract the subject matter had to be certain but there was no certainty as to what was being transferred and what was to be kept as reserves. Many Māori expected that the reserves would be settled before the Deed would be completed.[106]

232. Where land is sold on the basis that part is retained, the part retained and that to be given are defined before anything is settled. Before there is any absolute payment of money, the seller and the buyer will each secure legal possession of their respective new titles at one and the same time. In this case there was no certainty about the hand back process and some hapū did not get their land until after 30 years.

233. In this instance the deception lay in allowing Māori to believe that they would get adequate reserves when nothing was in place to ensure that that would happen.

234. Further, it was normally the case that persons wanting to sell Māori customary land, would first need to prove their right in the Native Land Court on an application to determine the title. Under Featherston's process those wishing to

[106] Anderson et al p 275 para 6.6 and p281.

sell the Rangitīkei-Manawatū block had to prove nothing. They had only to sign the Deed. Those who had to prove something, were the non-sellers! They had to apply to the Native Land Court and satisfy the Court that they had a definable interest that should be cut out of the block.

235. Conceptually the process replicated the Taranaki situation. The Government did not have to prove that people were rebels. It just took all the land. It was those who were loyal who had to go to the Compensation Court to prove that they were loyal and had a definable interest in the land which should be passed back to them.

Consideration

236. There is no contract if the purchase price has not been settled. The Deed gave the purchase price as £25,000 but it seems to have been fixed by Featherston on his own and no-one seems to have known about it until the day of settlement, at Parewanui, and after the signatures had been obtained. The Deed did not inform the hapū how much each would get (if anything) for their land area, or how the purchase price (or consideration) would be paid or to whom it would be paid.

237. Arguably, the price should have been paid to the 1,700 or so subscribers who conveyed the land in the Deed. The fact that it was not paid to the subscribers suggests they were not the owners. The fact that it was not paid to the seven tribal confederations at the beginning of the Deed suggests they were not the owners either. The only reason why the money was paid to persons for Ngāti Apa and Ngāti Raukawa it appears, was because a hui at the end of the process, of anyone who wished to attend, voted that way. That suggests that no-one actually knew who the owners were when the transaction was discussed and subscribed to, and so it cannot be said that the consideration was settled and was paid to the owners.

238. We submit also that as part of the final settlement there should have been an accounting for the casual payments to subscribers when subscribing. If these payments were part of the purchase price they should have been disclosed so that

all interested could see and express their agreement or disagreement. If they were not payments on account of the purchase price, then most likely they were bribes.

Settlement

239. It follows that there was no proper settlement. The document to effectuate the conveyance of the land was a sale deed, the equivalent to the memorandum of transfer used today. It is the last step in a process that normally begins with an agreement for sale and purchase. After all necessary inquiries have been made, as to ownership for example, and all conditions fulfilled, like the definition of the reserves to be made, the process ends with a settlement in which those recognised as the owners hand over a formal and solemn deed conveying the property to the purchaser while at the same time the purchaser hands to those selling, the purchase price less any part paid earlier as an earnest.

240. That is not what happened here. As we have seen there was no dedicated inquiry as to the ownership, there was no agreement on the property to pass over or to pass back and the Deed did not specify to whom the payment would be made, or how much would be paid after deducting any payments on account. There is also no sufficient evidence that the purchase price was paid to those entitled to be owners.

241. Finally, the Deed in any event was not a proper Deed. The signatures or marks of over a thousand people put up as having signed the Deed had in fact signed separate sheets before the Deed was written. Putting all together we submit that the transaction was a fraud.

Conclusion

242. The Crown's alleged purchase of the Rangitīkei-Manawatū block was no ordinary transaction. The process of buying began in 1864 but the Crown did not proclaim the extinguishment of the customary title by a purchase until 1869 and

the purchase was not finally settled by the necessary conveyances until 1896, the date when the last title issued for a reserve.

243. In the *Rangimarie Narrative* Ngati Tahuriwakanui point out that the Court that was set up to determine the ownership before the land was sold, ended up determining the ownership after the land was sold and by which time the settlers were either moving onto the land, or were holed up in Wellington waiting to do so.

244. The Native Land Court decision was that Ngāti Apa owned the land. Ngāti Tahuriwakanui have challenged the decision and we record our agreement with their argument. It appears from the way that the decision came about that there was actually no application for title determination before the Native Land Court so that the decision was without jurisdiction.

245. For the reasons given in this statement we submit that the Rangitīkei-Manawatū block was acquired by the Government without the consent of the owners. The owners were the Ngāti Raukawa hapū in free possession at the time of the purchase and the Ngāti Rangitepaia hapū of Rangitāne in respect of what became the Puketōtara Reserve, and those hapū did not consent. Some individuals of the hapū may have done so but not the hapū as a customary institution acting through its chosen representatives.

246. We contend as well that the Government, through its purchasing agent, was aware or ought to have been aware of the hapū interest but sought to circumvent the hapū as the hapū leaders were opposed to a sale.

247. For the reasons given in this statement we also submit that there was no valid transaction conveying the right to the Rangitīkei-Manawatū block according to the standard principles of English law.

248. Also, for the reasons given in this statement, we submit that the transaction was a fraud and that the Rangitīkei-Manawatū block was not purchased on the

basis of a consensual contract but on the basis of a confiscation as effected in Taranaki.

249. We finally submit that the Tribunal should resist the temptation to talk down the hard findings that should be made in relation to the Government's proclaimed purchase. It could be tempting to think that the Government is entitled to some latitude because the normal rules of contract should not be imposed where they are unknown to one side whose own laws and institutions are thought to lack definition.

250. Our position is that the Government, having elected to transact according to its own law, must be held to the highest standards of compliance with that law insofar as it provides the basis for a fair outcome. The highest standards of good faith are also required because Māori inexperience with that law made them vulnerable. Ultimately, Māori could do no more than repose in Dr Featherston, an absolute trust.

251. Dr Featherston's famous statement that it had fallen on him to smooth the pillow of a dying race, indicates to us that his mind was not directed to a fair long-term outcome for Māori. As it has been put, Featherston "had very little regard for the notion of making extensive, or even 'sufficient' reserves for a race he considered doomed to falter and fade."[107] His statement of the "dying race" was directed to justifying his large land purchases with minimal Māori reserves and his provision of some palliative care by supplying cash for signatures.

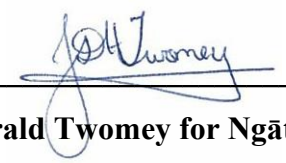
252. For those reasons and those that follow, we urge the Tribunal to call the transaction for what we believe it truly was, a fraud. We urge the Tribunal to consider first, that Māori should not be held to account for failing to observe the law if the government is not likewise firmly held to account when it fails to do the same. Second, it is not difficult to know that in seeking the land of another people, that one should go to the people's leaders and treat with them with the utmost

[107] Anderson et al p 239

good faith, while making an honest inquiry of the facts. Third, a full appraisal of the seriousness of the Treaty breach is relevant to the assessment of compensation.

Dated at Wellington this 24th day of February 2020

Donna Hall / Johanna Guest
Counsel for the claimants



Jerald Twomey for Ngāti Manomano