IN THE WAITANGI TRIBUNAL **WAI 2200**
WAI 113

CONCERNING the Treaty of Waitangi Act 1975

AND the Porirua ki Manawatu Inquiry

OPENING STATEMENT ON THE NORTHERN NGĀTI RAUKAWA LAND CLAIMS BY SIR TAIHĀKUREI DURIE

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MEMBERS OF THE TRIBUNAL

Tēnā koutou

PART A INTRODUCTION

The Main Claims

1. I am speaking for the Wai 113 Claims Forum. Ngāti Raukawa, Ngāti Kauwhata and Reureu have five main claims. They concern:
    - the purchase of the Awahou and Rangitikei-Manawatū blocks;
    - the Native Land Court decision of 1869;
    - the Native Land Act's reforms;
    - the reserves; and
    - the collapsing of the papakainga.

2. At 1940, one hundred years after the Treaty, and the year of my birth, there was etched on our elders' minds a broad picture of the Government's deceit in buying the massive Rangitikei-Manawatū block. It was some 240,000 acres from Foxton to the hills beyond Kimbolton. Equally on their minds was the decision of the Native Land Court which backed the Government's view and gave our land for European settlement. The size of it is not easily comprehended but when you left Foxton and drove to Hato Paora, if you came that way, for the whole of that journey you were on that land and you have still a way to go to get to the end of it.

3. My grandfather, Hoani Meihana Te Rama Apakura, was on the Board of Māori Affairs. After University, he worked as a Native Land Court clerk and interpreter. The 1869 Native Land Court decision was still notorious in the day. His brief description of the wrong that was done through the Court, was part of the mix of things that led me to accept appointment as a Judge of that Court in 1974. As there had never been a Māori Judge there before there was talk that I might be trouble. With hindsight, I hope they were right.

4. I now have strong feelings about the fact that for the first time in my 80 years, it is only now that Ngāti Raukawa, Ngāti Kauwhata and Reureu have the chance to confront the case that blighted our peoples' chances of economic success in the new economy. I believe it was one of the greatest injustices inflicted on Māori people, matching the confiscations, because of the level of deceit in both the purchase and the judgment.

5. The Forum's position is that the Rangitikei-Manawatū block was held under the mana of the leaders of those of Ngāti Raukawa, Ngāti Kauwhata and Reureu who held possession and was acquired by the government without their agreement.

6. As to how this happened, our argument will be that Ngāti Raukawa, Ngāti Kauwhata and Reureu were twice defrauded. We were defrauded once by the Government when it claimed to have purchased the land from us and other tribes, and once by the Government's own creation, the Native Land Court, when it controversially concluded that Ngāti Raukawa, Ngāti Kauwhata and Reureu were not the true owners.

7. Our case on the purchase is that the sale deed was a fraud. In form it was contractual but in substance it was a taking without a proper consent, creating a fictional ownership to get around the opposition of the hapū leaders who were in possession and adopting confiscation practices from Taranaki to gain the maximum land with minimal reserves. We believe the level of deceit was such as to make this the most dishonest Crown purchase of Māori land on record, and we will set out to prove that point.

8. The Native Land Court came in to back up the Government's purchase and in doing so, to deprive Ngāti Raukawa of some 240,000 acres of quality land. The decision, we will contend, was a contrived and dishonest concoction, and it was assisted by a Government that should not have been involved in the proceedings.

9. We submit that to properly fulfil its purpose the Tribunal should expose the decision for what it was, an imposition by the Government on a Court that

the Government itself had created and appointed, and a pandering by the Court to the Government.

10. To respond to the government purchase at this stage, *Te Pene Raupatu* has been filed by certain of the affected hapū. To respond to the Court decision, the *Rangimarie Narrative* has been filed by another hapū. Because of the importance of these two issues, and because we don't have our own technical advisors, we have submitted these statements to the historic, technical witnesses before a final version is put in. Our own people have already noted that some changes are required and we anticipate feedback from others as well.

Background

11. As mentioned, this opening is made for the northern hapū of the Wai 113 Claims Forum. The Forum was established by hui ā iwi to represent the Ngāti Raukawa hapū in terms of the original claim as filed in 1989. We first acknowledge the original claimants who have now all passed on – Whata Karaka Davis, Ngārongo Iwikatea Nicholson, Te Maharanui Jacob and Pita Richardson. We can only pray that those of us who are left might do justice to their vision.

12. We acknowledge all our elders who have passed on and especially those who within living memory, were born in the late 1800s and who passed on to us the pain that they felt over the land loss and, their anger that that most treasured by them, was taken by stealth.

13. We are grateful too to Hato Paora for the chance to share with the students the journey of the local people. It is the young who provide the hope that our stories will be retold.

14. We are especially grateful to the Tribunal. It has been 150 years since the Court decision, 45 years since the Tribunal was founded, 35 years since historic claims were allowed for and 30 years since our claim was filed. You have almost covered the country since then, it has been a mammoth

task, and we are grateful that you have somehow managed to hang on to the bitter end.

15. We cannot stress enough how important it is for us now, that the voice of Ngāti Raukawa is heard. I was privy to the drafting of your Act and to how Minister Matiu Rata had to fight with Minister Martin Finlay QC to get the restriction on legal attendances into the second schedule. Rata's point was that the important voices to be heard were the voices of the people and their technical advisors and that would mean a constraint on legal intervention. I submit that time proved him right. It was the voice of the people and the reports of the advisors that got the Tribunal off the ground and who made the Tribunal, a powerful force for change.

16. There is also a concern that the issues might be defined before the hapū have prepared their responses. We submit that that would make the peoples' voice superfluous.

17. To explain some terms, "Ngāti Raukawa" means two things. It means the tribe and it means the confederation of the hapū who settled as one in this district. From this point, when Ngāti Raukawa is referred to then unless otherwise stated, we mean the confederation, inclusive of Ngāti Kauwhata, Reureu and any others whose lines to Raukawa are more lateral than lineal.

18. Also, "Kāpiti coast" in the old days meant all the land taken by Te Rauparaha in the North Island from Whangaehu south. The term "Kāpiti coast" is used that way here.[1]

19. The hapū wish to address important social and economic issues as well. They will do so separately. This statement concerns the common issues about the land. One reason for the priority we give to land is that land loss was the greatest concern for our old people, and it is really for them that we bring this claim. Another, which is very important for negotiations, is that

[1] Other points to note are that Māori go up south and down north, but in presenting in English the English idiom is kept. However following how Māori are recited in whakapapa, single names are used unless a distinction is needed so that Taratoa is used for the elder and Nēpia Taratoa for the son.

in settling the compensation the Government gives most weight to land loss and the relative seriousness of the loss.[2]

20. Next to land loss is probably the loss of customary authority over the waterways. For the settlers the water-ways were ancillary to land which is the primary food resource. For Māori the waterways were the primary food resource and the hapū held the land and waterways in the sae way, as territory.

21. On the environmental side the tribunal might note the difference between the coastal plains and the interior. The coastal plains were largely open country. The interior Oroua valley was heavily forested and intersected by major swamps.

The North to South progression

22. The Tribunal has directed a progression of the claims from North to South. For those who were not present at the Hui where this was agreed we explain that "northern district" means north of the Manawatū river from its mouth to the southern boundary of the Kaihinu block, shortly below Shannon, as shown in Map A. The south lies beyond there to Kukutauaki, close to Waikanae.

23. The reason again is that the elders who lived within living memory, knew only too well of the big land purchases of the North that didn't happen in the South and which all happened before the Government turned its attention to the South.

24. The big land buying began in Whanganui, then moved down the coast to Turakina and from there into Manawatū with the Te Awahou block (around Foxton) and the Ahuaturanga purchase (which includes what is now Palmerston North). The massive Rangitikei-Manawatū block came last and,

[2] Page 89 of the Office of Treaty Settlements handbook *Healing the Past, Building a Future* provides "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."

was the last block in the country to be purchased by the Government under the old system. By the old system we mean buying direct from the tribes under a Government monopoly called Crown pre-emption. As we have said, for reasons of deceit or fraud, we see this last Government purchase as also the worst.

25. By then the buying was much mixed up with the events of the New Zealand Wars, and some aggressive attacks on Ngāti Raukawa by other tribes that began in the North and were then repeated in the South when the Government moved down there.[3] To analyse the southern event in proper context one must understand the flow of events from North to South. Only then do we understand that the Government's failure to intervene in Horowhenua was not because the Government was taken by surprise.

26. Similarly, the protection of Muaupoko in Horowhenua flowed on from alliances arranged in the North.

27. We acknowledge however, that the hapū have customary interests on either side of the Manawatū river. For example, Ngāti Huia are spread from Rangitīkei to Ōtaki, Ngāti Kauwhata have interests in Ōroua, Waikawa, Pukehou and Taumānuka and Ngāti Ngārongo interests are to the immediate north and south of the Manawatū river.

28. We submit this require the Tribunal to negotiate the difference between interests in possession which create property rights and interests by historical association which create cultural rights.

29. To further maintain the sequence of Crown contact, the Forum proposed that following the technical witnesses the hapū will be heard by land divisions, in the clockwise order of Te Awahou, Hīmatangi, the coastal plains, Reureu, Ōroua and Kaihinu. These are depicted in Map B which is adapted from the map supplied in Paul Husband's report at page 82.

[3] Most of the northern land, by far, was alienated before 1873, by Crown pre-emption purchases. Most in the south, by far, was alienated after 1873, by Crown and private purchases, and after most had been broken down to small partitions by the Native Land Court.

30. The order may be adjusted to suit the convenience of groups. For example, one group who are in both Te Awahou and Kaihinu, wishes to go at the end.

31. We submit however, that for the purposes of assessing the credibility and reliability of their evidence, it is preferable that presenters present on their own ground in front of their own people.

32. To assist the Tribunal, we give our understanding of the hapū and principal persons in each territorial division when the buying began in 1858:

    i. Te Awahou (Foxton) involving Ngāti Patukōhuru, Ngāti Ngārongo, Ngāti Whakatere and others. A leading figure there was Ihakara Tukumaru who also occupied to the south of the Manawatū river around Kōpūtōroa and Matakarapa.
    ii. Hīmatangi, occupied by Ngāti Rākau, Ngāti Tūranga and Ngāti Te Au with a leading figure from that area being Parakaia Te Pouepa.
    iii. The coastal plains on the southern side of the Rangitīkei river to Kākāriki and inland to Whakaari (Mt Stewart). This area accommodated numbers from several hapū including Ngāti Huia, Ngāti Wehiwehi, Ngāti Maiōtaki, Te Mateawa and Ngāti Kahoro. These had reformed as Ngāti Parewahawaha. Taratoa was a leading figure for this area.
    iv. Te Reureu. This was occupied by Ngāti Pikiahu of Ngāti Raukawa and Ngāti Waewae of Tūwharetoa moving down from the north and by Ngāti Rangatahi and Ngāti Matakore of mixed Ngāti Toa and Ngāti Maniapoto origin moving up from the Pauatahanui area near Porirua in the south. Paranihi Te Tau, Hue Te Huri Rangihoapu, Ngawaka Maraenui and Reweti Rakaherea were leading figures of this area.
    v. Ōroua. This extended from beyond Kimbolton in the north to Rangiotū in the south, and from Whakaari (Mt Stewart) in the west to Mangaone Stream beside Palmerston North airport in the East. It was held by Ngāti Kauwhata who left persons in possession from the time of the migrations. The people recognised themselves as

both Ngāti Wehiwehi (Ngāti Ihiihi) and Ngāti Kauwhata. Tapa Te Whata and Te Kooro Te One are two of the leaders from there.

vi. Kaihinu is the eastern part of the Ngāti Whakatere territory. The western part is included in the Awahou block where we started. Henere Te Herekau is a leading figure from there. Ngāti Whakatere joined the Taranaki migration, Heke Niho-Puta after the Raukawa heke that they were on, Heke Rua-Maioro had been overcome by Whanganui.

33. I understand that there is now some view that those in the North and those in the South were treated the same. I submit that that cannot be correct. Its like denying the holocaust to deny that the Northern land purchases, which were not replicated in the South, ever happened.

34. We record our gratitude to Ngāti Toa for joining with us, as they have done over the years at important occasions to remind of our whanaungatanga and shared history. We are proud that Te Rauparaha and Te Rangihaeata were equally of Ngāti Toa and Ngāti Raukawa and that they looked to the Ngāti Raukawa confederation to complete the customary strategy of following up battle success with territorial occupations that provide a numerical and military domination. We will argue however, as in the *Rangimarie Narrative*¸ that the hapū of the Ngāti Raukawa confederation set out not so much to dominate as to appease.

35. Jerald Twomey has referred to the strength and unity of Ngāti Raukawa as translated through the lateral lines of whakapapa and, through waiata, mōteatea and kōrero tuku iho. Te Kenehi Taylor has explained our hazardous but successful migrations with information never previously collated and Piripi Walker has explained why we are here.

36. We now pick up from the point of our arrival. Following customary tactics, most of Ngāti Raukawa camped together at Ōtaki then spread out after the 1834 battle of Haowhenua, shortly south of Ōtaki, to possess the lands to the north and south of the Manawatū River. The land between the

Rangitikei and Manawatū rivers were sparsely occupied and large numbers of Ngāti Raukawa settled there.

37. As the hapū spread across the land in various combinations, some old hapū names disappeared from everyday use and new ones appeared. We have mentioned Ngāti Parewahawaha for example, adopting the name of a comparatively recent antecedent to forge a common identity for those from several hapū.[4]

38. That brings us back to the hapu claims.

PART B THE MAIN, NORTHERN CLAIMS

Main causes of land loss

39. We estimate that Ngāti Raukawa, both North and South, lost about 90% of their land before 1900, notwithstanding the previous opposition to land sales of the hapū leaders. In view of the opposition, an answer is needed as to how that could have happened? The answer we contend is that Government by-passed the hapū leaders by treating general meetings of everyone and anyone, as conclusive, where Government had some control and could publish the outcome according to its own interpretation.

40. The proper position we will argue, as introduced in Te Pene Raupatu, is that Government needed the separate consent of each hapū through its senior representatives. The principle, we will contend, is now in the United Nations Declaration on the Rights of Indigenous Peoples, that governments are to deal with indigenous people through their customary institutions. The hapū runanga is one such customary institution.

[4] The dividing, collapsing and reformation of hapū is also part of Māori custom, which partly accounts for the substantial changes of the hapū from the migrations of the 1820s to the present. In addition, the democratic nature of Māori society, based on the assumption that the koromatua or family heads will be adequately heard in the hapū runanga, was assisted by the regular division of hapū. Once the hapu got too big for each family to be adequately heard, it might divide, adopting new ancestral names as identifiers.

41. The Government then did the same thing with the Native Land legislation. It vested the remaining land in the multitude, cut out the control of the hapū, and eventually left the Native Land Court to fill the gap. It is standard colonial strategy to separate the people from their political institutions and economic base and then blame to them for their consequential state of dereliction. We will contend that the Native land laws of the day were not just about land reform although they were put that way. They were also wartime measures to destroy the political and economic base of the hapū.

42. Sadly, we have blamed our forebears for selling the land when we should have blamed the Government. Instead of keeping the land as a single, tribal block, the Government, through the Native Land Court, broke it down through partitions and successions, to meaningless, multiple shareholdings in fragmented parcels held increasingly by absentees. As our lands were fertile and sub dividable, we did not have the major blocks of the central North Island that could later be managed as forests or farms. But for cultural sentiment many of our lands might as well have been sold for they served only as sources of disputation.

43. Following the Waikato confiscations, the Kīngitanga search for a tūrangawaewae, at Whatiwhatihoe and Ngāruawahia, illustrated the importance of the land for tribal government. Just how fragile is the prospect of tribal government within the Ngāti Raukawa confederation, however, is borne out by the fact that in the 1850s there were significant papakāinga for each of the Manawatū hapū but by the end of the 1950s there were none. Now, there is no tribal land for papakāinga re-establishment.

44. Ngāti Raukawa have successfully maintained self-government in a modern context, through the Wānanga, the Rūnanga, Raukawa Trustees or Raukawa Whānau ora, but the resources are generally lacking at the marae or community level where it is most needed.

45. To reverse that, we repeat our request for the Tribunal to keep in mind that the amount of land wrongly alienated, the quality of that land, and the

proportion of land lost to that originally held, are key drivers in determining the size of the settlement.[5]

Measuring the impact of land loss on tribal survival

46. The Forum will therefore seek an assessment of how much land in the north was lost and its value, given that all is arable and nearly all is flat. We will do so in the context that the quantum and value of the land lost is not the important measurement but the amount left at the end to maintain the tribe in the future and, the amount of land that is left as a proportion of that originally held. These are necessary, we contend, to fulfil the Tribunal's charge in terms of section 6 of its Act, to measure the extent of prejudice arising from Crown actions, and how that prejudice might be alleviated.

47. The position of Ngāti Raukawa is that they are amongst the most landless tribes in the country and have been that way for over a century. Their land loss was large, the quality of the land was exceptionally high, the way it was lost is appalling, but more significantly, that which was lost was nearly all that they had. That is the key to understanding the Ngāti Raukawa claim. They may have lost less than the central north island hapu, for example, but the prejudice was several times greater having regard to the significant difference in the amount of land that was retained.

Whenua Rāhui

48. We look then to the extent of loss. It was much larger than the Rangitikei-Manawatū block. The original decision of the senior rangatira was to keep as a reserve for future generations, some 319,500 acres of prime Manawatū land.

49. **The claim is that contrary to the Treaty of Waitangi, the Crown pursued the purchase of the Manawatū land, and eventually extinguished the customary Māori ownership to 319,500 acres without the consent of the hapū, or the senior Ngāti Raukawa leaders, and**

[5] Office of Treaty Settlements *Kā tika ā muri, kā tika ā mua* ... pp 14-15, 40, 42, 89

despite the leaders' explicit opposition.[6] Later, a claim will be made in respect of the whole of the land in the south, but on the basis that there, the customary interest was not extinguished by Crown purchase, as was done here, but by the operation of the government's Native land laws.

50. The 319,500 acres that was affected in the north, was the land that the northern hapū had left after the senior leaders had allocated 475,000 acres to the previous occupiers, Rangitāne and Ngāti Apa. Rangitāne and Ngāti Apa had then sold that land to the government. The areas allocated to Rangitāne and Ngāti Apa are shown in Map C. It must be borne in mind then, that when we think of land disposal in the northern area, we must remember that the total area was 794,500. Of that, Ngāti Raukawa released 60%, which then became available for European settlement, and sought to retain only 40% as a permanent reserve.

51. Of the 319,500 acres that the Ngāti Raukawa leaders sought to reserve for posterity, 87% was appropriated in two putative, Crown purchases, of 37,000 acres in 1859 and 240,000 acres in 1869. The balance was appropriated from the land-owning hapū by vesting the control of it in the Native Land Court, which then parcelled it out to individuals. The Ngāti Raukawa reserve, the two purchase areas, and the balance that passed through the Native Land Court, is shown in Map D.

52. This purchase is amongst the largest in the North Island. It will be argued that the so-called sale was too large to allow for each affected hapū to properly agree and was too large to leave Ngāti Raukawa with a sufficient endowment for the future.

Comparative Loss

53. **It will then be claimed that as a result of the Crown's appropriations, the northern Ngāti Raukawa hapū lost a larger proportion of its**

[6] The area is approximate because of the lack of a precise survey of the parent blocks. The assessment is based on the acreages given at the time for Te Awahou (37,000 acres), Rangitīkei-Manawatū (240,000 acres) and the Aorangi, Taonui-Ahuaturanga and Kaihinu flats (42,500 acres). There is no evidence of an intention to reserve that part of the Kaihinu block in the Tararua ranges which the Crown acquired by pre-emption purchase.

customary land than most, if not all, other tribes in the North Island, with marked impacts on the political, social, cultural and economic well-being of the hapū. The comparative loss is presently a guestimate and is the subject of ongoing research.

Te Awahou transaction

54. The Te Awahou block of the Foxton district, of 37,000 acres, was the first part of the whenua rāhui that the Crown acquired. It was acquired in 1859.

55. As was to be expected, the senior leaders of Ngāti Raukawa opposed the sale. It was contrary to settled policy and was contrary to the pledge to the Kīngitanga. Nonetheless, the Land Purchase Commissioner called a general meeting and that meeting generally agreed to the sale. It seems that the dominant group was a younger generation attracted to the pakehā economy, as supported by certain clergy. They were willing to take to a new level, the earlier tribal objective of having a pakeha living amongst them, to the level of having the Māori living amongst the Pakehā, in the anticipated centre of the new economy, the Port of Foxton. On the other hand, the older leaders had the experience of warfare to know the importance of having the numbers when cohabitating with others, just as the numbers had secured their place in Manawatū.

56. However, because the decision was not made in the customary manner, it has been interpreted that the older leaders conceded to the popular clamour. That may not in fact be so. When confronted by his young people Te Rangiotū of Rangitāne he famously replied "māku anō ēnei wa", and that was the end of the matter.

57. The Te Awahou sale will be addressed by the affected hapū but there are issues of policy that affect all the hapū of the northern, Ngāti Raukawa hapū.

58. **It is claimed**

    a. **that it was contrary to the Treaty of Waitangi for the Land Purchase Commissioner to have pursued the purchase when he**

knew or ought to have known that the senior hapū leaders were opposed;

b. **it was contrary to the Treaty, and to tikanga Māori that the Commissioner sought a consent at a general meeting of those claiming an interest rather than a specific consent from each of the affected hapū.** It is not clear that Ngāti Whakatere or Rangitāne agreed;

c. **that contrary to the Treaty, adequate reserves were not made for the affected hapū, as was required in colonial office policy at the time of the treaty.** That is especially clear in the case of Ngāti Whakatere.

Rangitīkei-Manawatū transaction

59. As Dr Doug Pohio-Sinclair wrote in *Te Ao Hurihuri*, the fish nibbles at the bait before it swallows the lot.[7] Far from the 37,000 acres of Te Awahou, the second transaction related to the 240,000 acre Rangitīkei-Manawatū block. The following considers the broad issues of policy and practice.

60. Dr Isaac Featherston was the Land Purchase Commissioner for this block. He was also the Superintendent for the Manawatū Province. These were the days of provincial governments and Featherston had the leading, provincial position. He was also a member of the House of Representatives and a confidant of Sir William Fox who was alternately Premier (Prime Minister) and Leader of the Opposition. He knew the district. His home was on some 5000 acres on the north bank of the Rangitīkei river, amongst Ngāti Apa.

61. Fox and Featherston were both involved in the Taranaki war and confiscations. Featherston also led the Native Contingent comprised mainly of Ātihau of Whanganui, Ngāti Apa and Rangitāne.

62. Featherston supported large Māori land purchases for European settlement. He justified this policy through his publicised belief that Māori were a dying

[7] Michael King (ed) *Te Ao Hurihuri* 1977 Wellington, Hicks Smith, Douglas Pohio Sinclair "Land Since the Treaty: The Nibble, the Bite, the Swallow"

race and his task was merely to smooth their pillow. He was assisted in his land purchase role by a lawyer, Sir Walter Buller, who also supported the purchase of Māori land for himself and who was known for the legal fees he charged Māori for relieving them of the burden of their land. At the same time, he was the Resident Magistrate for the Manawatū and Horowhenua.

63. **The main claim in relation to the Rangitīkei-Manawatū transaction, is that the purchase process reached one of the highest levels of dishonest practice in the history of the Crown's pre-emptive purchasing.**

64. As argued in Te Pene Raupatu, the transaction was contrary to both the Treaty and the standards of the day for Māori land purchases. It failed to meet the requirements for a valid transaction at either Māori or English Law.

65. While the inequality of bargaining power called for the Government's utmost good faith, Featherston, had conflicting ambitions as provincial superintendent and prospective bias through his closeness to Ngāti Apa and Whanganui Māori in the wars. He was equally biased against the Ngāti Raukawa confederation for siding with the Māori King. We will argue that Featherston's bias was manifest in his unequal treatment of the contending Māori parties.

66. Also, Featherston used Taranaki confiscation practices against Ngāti Raukawa interests, although Manawatū was not a confiscation district. Featherston's capacity to acquire land despite opposition confirmed to us that land could be taken by the pen as effectively as by the sword, and thus the metaphor for the purchase as *te pene raupatu*.[8]

The determination of ownership

67. **It will be claimed that it was critical to determine the ownership before buying started, that it was not properly determined in either the Awahou or Rangitīkei-Manawatū purchases and the land purchase commissioners were not qualified for the task in any event.**

[8] The description is taken from the Ngāti Kauwhata claim Wai 1461 as filed in 2008.

68. To establish the importance of properly determining the ownership at the start we will say that the failure to do so started the New Zealand Wars.

69. On the Awahou purchase we will say the Government officer was not a senior officer and appears to have considered that the owners were whoever turned up at a general meeting.

70. When applied to the Rangitīkei-Manawatū case, we will argue that the block was so large that the use of general meetings was bizarre, and the purchasing officer, Featherston, was inexperienced. He had had one shot at buying land, which was in Taranaki. He claimed to have bought it, but even his peers considered the purchase was a fiasco. He had not previously served in the governing department and had no training on the department's ethics. He also had many conflicts as described, but even so was appointed as a land purchase commissioner by Sir William Fox.

71. Because the Tribunal will be confronted with multitudinous facts, I seek to provide in opening a broad overview as the Forum sees it. Featherston considered Ngāti Apa and Ātihau to be the primary owners, just as they were the leaders of the Native Contingent. He also appears to have confused loyalty to the Crown with the right to ownership, adopting the Taranaki, land confiscation test. He also appears to have treated as owners whoever he could get to sign sheets of paper that would later be attached to a deed, so that it looked like they had signed the Deed itself. Most of the signatories on the Deed were not living on the land but were from far away, from Whanganui to Cook Strait.

72. It was also bizarre that the Rangitīkei-Manawatū block had been exempted from the new law that the Native Land Court would determine the owners before buying began. It was to avoid the very thing that started the war. The rationale for the exemption was flimsy, we will submit. It was supposed to protect the New Zealand Company scrip holders. The basis for the Crown's purchase monopoly was supposed to be to protect the Māori.

73. **We will submit that the true reason for why Featherston and Fox moved to have Manawatū excluded from the Court's purview, was because Sir Donald McLean, the supposed doyen of customary rights, had given the Court steer that Ngāti Raukawa were the owners, and it was known that the Ngāti Raukawa leaders would not sell**

74. Another reason why Featherston favoured Ngāti Apa, we will submit, is because Ngāti Apa, on the other hand, were keen to sell. Featherston would have known that. He should also have known that they could be keen to sell because they did not own it and had some scores to settle with Ngāti Raukawa.

75. Ngāti Raukawa had forged a peaceful relationship with Rangitāne. As considered in the *Rangimarie Report* both would live together on the Kaihinu, Tūwhakatupua, Puketōtara, Mangawhata and Ōroua lands (as shown in Map D). Ngāti Raukawa had also forged a peaceful relationship with Ngāti Apa. They had then released Turakina to Ngāti Apa and Ahuatūranga to upriver Rangitāne, covering the areas where they mainly lived and leaving the land between them, which had barely been occupied, for themselves. The three areas were nearly equal despite the larger number of persons and many more hapū, with diverse origins, in the northern part of the Ngāti Raukawa confederation.

76. With the passing of the old tribal leaders of the Ngāti Raukawa confederation and a military alliance with the Government, certain of Ngāti Apa saw the chance for utu and offered to sell the Ngāti Raukawa share, just as they had already sold their own share but leaving significant reserves.

77. So it was that Featherston came to buy the land by soliciting some 1,700 signatures with the largest signatory group coming from Whanganui who never lived on the land. Absent were the signatures of the senior tribal leaders in residence except for one who had been threatened with confiscation for fighting at Orakau in the Waikato war.

78. Featherston trumpeted a successful purchase at general meetings of whoever chose to come and then dealt with the protests of the leaders in actual residence by pushing them off to the Native Land Court to prove their right to a small allotment; a bizarre twist given that the multitude who purported to sell had to prove nothing. In an even more bizarre twist, the Native Land Court decided, at the end of a tortuous process to determine the non-sellers' interests, to instead determine who were the true owners, although there was no application asking it to do so.

79. As luck would happen for the Government, the Court determined that Ngāti Apa were entitled exclusively without the Government or anyone having to apply for such an order. In fairness to the current Court I should add that the Court is not so efficient today.

80. I turn then to indicate the matters that we will look at in relation to the decision.

81. The first is that when the Court sat, Ngāti Apa attacked and destroyed the Ngāti Raukawa papakainga of Pakapakatea on the Rangitikei river, using the rifles of the Native Contingent. We think the message for the Court was that they had the mana now and they could act aggressively with impunity, for the Government was on its side and did nothing. They would do the same later, in Horowhenua, because of their links to Muaupoko.

82. Ngāti Raukawa could not respond without risking a confiscation. They were also handicapped by lack of revenue because Featherston had stepped in to stop their cash flow. Featherston declared their leases to run-holders unlawful and collected the rents himself.

83. When the non-sellers went to Court, the Government brought in a leading legal team to prevent them from claiming the ownership, led initially by the Premier, Sir William Fox. We will submit that the Government, having a conflict, should not have been there, especially when the Native Land Court

had been established to relieve the Government of making decisions in this area. The non-sellers had a layperson acting voluntarily. He had been instructed just beforehand when their lawyer pulled out, possibly because it was learnt that the Prime Minister would be on the other side.

84. We will also contend that the Native Land Court lacked a proper comprehension of Māori custom on which to determine the Maori ownership. This is developed in the *Rangimarie Narrative*. We will say that the Court had developed a one-dimensional framework when in tikanga, Māori looked to the whole of the circumstances to determine what was just. We will contend too that the Government should have appointed Māori to determine the issues for who better to know Māori custom than Māori people.

85. Instead we had a Court that effectively determined that Māori were savages. To effect a proper conquest they had to savagely wipe out their opponents as that is what savages do. Ngāti Raukawa had failed the test of savagery and had not obliterated the other party. We will submit it was the ultimate in racist rubbish. The Court had also failed to review and assess the evidence as Professor Boast has more kindly found.

86. **It will therefore be claimed that the government was wrong to appoint the Native Land Court to determine ownership according to native custom when there were Māori who were willing and able to do that themselves according to their own processes, and when the Native Land Court judges were not competent to do so.**

87. **It will be further claimed that the Native Land Court had a prescriptive framework based on categories of claim, and that this followed a western legal approach that is inconsistent with customary decision-making.**

88. It will be claimed that Native custom, more properly called tikanga Māori, requires instead a search for the true justice of the case, that is, a search for that which is tika, and that requires not a narrow or

prescriptive approach, but an examination of the whole of the circumstances of the case.

89. It will be submitted that the question of whether the Tribunal can contradict a Native Land Court decision does not arise here. The Native Land Court, having found that Ngāti Raukawa had no rights, later went on to find the opposite. As Professor Boast reiterates several times in his report, the Native Land Court was frequently inconsistent in its comprehension of the facts including on the determination of Native custom. In this case, in a decision unearthed by Professor Boast, the Native Appellate Court later found that the conquest was successful and Ngāti Raukawa held the mana of the land.

90. We submit that there is nothing to prevent the Tribunal from reaching a different conclusion from the Native Land Court on a question of fact (and custom is an issue of fact). However, if the Tribunal is pushed to choose on the basis of legal principle, we submit it should choose the Native Appellate Court as the Court of superior jurisdiction and find in favour of Ngāti Raukawa.

Ownership in Tikanga Māori

91. We have submitted that Native custom, or tikanga Māori, required an examination of the whole of the circumstances to determine what is tika, or right. We would also submit that following Māori custom the Tribunal would need to consider the Ngāti Raukawa division of the land between Ngāti Raukawa, Ngāti Apa and Rangitāne, assigning to each the blocks of Manawatū, Turakina and Ahuatūranga respectively. **It is now claimed that consideration of the prior allocations to Ngāti Raukawa, Ngāti Apa and Rangitāne, and of steps taken to secure peace, would entitle the Ngāti Raukawa confederation to the exclusive right to the Manawatū lands between the other two blocks.**

92. In addition to challenging the Native Land Court decision, we will seek to establish that the northern hapū of the Ngāti Raukawa confederation in fact held the mana from Whangaehu to the Manawatū river prior to the three big allocations of Turakina, Manawatū and Ahuaturanga.

93. It will be argued that a picture of Ngāti Toa and Ngāti Raukawa ascendancy was a conclusion of several contemporary observers and latter-day historians that was made from the records of many conflicts, skirmishes, clashes and battles. Some events however were no doubt more influential than others in forging popular opinion. These would probably include the taking of Kāpiti Island and soon after, the successful defence of a few hundred against a few thousand assailants from Whanganui to Arapaoa at Waiorua and the follow-up attacks on Ngāti Apa along the Rangitikei river. Te Rauparaha's treatment of Muaūpoko would also have cut a deep impression and should be included in the significant events.

94. It will be argued however, that the deciding factor in the retention of mana was the arrival of Ngāti Raukawa. Winning the battle is one task but winning the war by holding the land is another. It would require filling the district with many people who are able to fight and prepared to appease.

95. Ngāti Raukawa had the numbers and the battle experience for both. It is indicative of their numbers that of the marae within the inquiry district, there are today, one for Rangitāne, none for Ngāti Apa, two for Muaūpoko, one for Te Atiawa, two for Ngāti Toa and 23 for Ngāti Raukawa. These are shown in Map E.

96. Ngāti Raukawa proved their capacity in warfare, in the battle of Haowhenua. Te Mateawa, Ngāti Kahoro and Ngāti Parewahawaha kept Ngāti Apa to the north of the lower reaches of the Rangitikei river. The several hapū of Reureu would later provide the same block in the upper reaches. Following Ngāti Kauwhata attacks on Rangitāne in the Ahuaturanga block, an alliance would be effected between Hirawanui of upriver Rangitāne and Te Whatanui of Ngāti Huia, and peace would be made with several of the Ngāti Raukawa confederation and the down-river Rangitāne resulting in joint occupancies down the Oroua river and the lower Manawatū river. These are referred to in detail in the *Rangimarie Narrative*.

Custom and the 1840 rule

97. After hearing the hapū of Te Awahou, Hīmatangi and the Manawatū coastal plains, the Tribunal will hear the hapū of Te Reureu: Ngāti Pikiahu of Ngāti Raukawa origin, Ngāti Waewae of Ngāti Tūwharetoa origin, Ngāti Matakore of Ngati Maniapoto origin and Ngāti Rangatahi of mixed Maniapoto and Ngāti Toa origin. There the government declined to recognise that the hapū had land interests there, ostensibly because of the '1840 rule'.

98. The hapū came to Te Reureu after 1840 as a result of circumstances that occurred before 1840. Ngāti Rangatahi, so-called although they were just the Mōkau section of Ngāti Rangatahi, were also known as Ngāti Hāua, a hapū of Ngati Toa, through whakapapa. They shifted south in the first migration of Ngāti Toa, in 1821, and were led by Te Rangihaeata. They fought to uphold the Ngāti Toa interests on Kāpiti Island, the Hutt Valley, the Wairau valley by Nelson, and finally at Horokiri, in the battle of Battle Hill in 1846. It appears that some of Ngāti Matakore also joined them. They escaped from there with Te Rangihaeata to eventually reach Poroutāwhao and, were then relocated by Te Rangihaeata to the Reureu block, at Kākāriki, in the same year. They arrived in impoverished circumstances to be joined by others like the descendants of Tutemahurangi and the Matengaro whānau who came in support.

99. Ngāti Pikiahu of Ngāti Raukawa and Ngāti Waewae of Tūwharetoa, fought with local Ngāti Raukawa in the Haowhenua battle in 1834, under Te Heuheu Tukino and Mananui, and had then returned north. They were later joined by Te Rauparaha and an agreement was made on land boundaries. In 1841, they sent a taua south on learning that Ngāti Apa had sold certain other land extending into Tūwharetoa territory. They came to protect this part, and placed a pou rahui on the Reureu lands. Reureu was on the true left bank of the Rangitīkei and in their view, it had long been settled that Ngāti Apa were to remain on the other side. They may have challenged Ngāti Apa in the battle of Pikitanga but no part of the Reureu block was

acquired by force. In about 1846 the remainder of the hapū settled there permanently, under the mana of Te Rauparaha and Te Heuheu.

100. Later, the block was included in the Rangitīkei-Manawatū Deed of sale. However, when the Reureu hapū did not agree to sell, Featherston claimed that they had no interest there since they arrived after 1840. Much later, another government gave them a reserve as a gratuity, out of kindness. To this day the source of rights, in the government record, is the Crown, not Māori custom.

101. The position of the Reureu hapū is that the land was possessed according to Māori custom. The issue is whether land rights were to be determined at 1840. That is another issue to be addressed in submissions.

102. **It will be argued that the Government wrongly extinguished the native title to the Reureu block as the land had not been acquired by purchase from the Māori owners. The Māori owners at the time of the purchase of the balance of the block were the hapū who took possession shortly after 1840. It will be argued that there was no proper basis for the Government to contend that the right to land was determined at 1840. It will be submitted that Māori custom continued to operate after 1840 as a matter of English law as well as a matter of Treaty principle, and applied in the given circumstances where the possession taken after 1840 was taken without violence, without complaint and on the basis of some customary authority.**

Purchase Price

103. **It will be argued that the purchase price for the Rangitīkei-Manawatū block of £25,000 was grossly unfair. It has been assessed at 2 shillings and sixpence an acre or 25 cents.**

104. To illustrate, without the addition of improvements, 106,000 acres of the block was on-sold to the settlers from Manchester. It was on-sold for three times the price that the Government had paid for the whole 240,000 acres. The rationale for buying cheap and selling well was that Māori would

profit from the increased value of the land they retained. However, they did not retain enough to have the benefit of that rationale.

105. Two unusual features about the purchase price will also be raised. It will be argued that the price was not known when all but 30 of the 1,700 subscribers to the Deed affixed their signatures or marks on sheets of paper. There were debates about the price but no agreement. Featherston fixed the price unilaterally, moments before the cash was distributed.

106. Second the purchase price was not paid to those who gave their signatures or marks. Nor was it paid to the hapū whom the Forum contends were the true owners. It was paid in two lots, one for Ngāti Apa, being the larger share and the other for Ngāti Raukawa without further specification. It was paid to representatives for the two groups as moved by Featherston. **It will be argued that the purchase price was not agreed and was not paid to the right people.**

Reserves

107. It will be argued that the Manawatū reserves had not been agreed ahead of the sale, despite Māori requests that they be defined. It will be argued that as provided by Featherston subsequent to the purchase, and as later adjusted by another Ministry, the reserves were inadequate and unjust when measured against Lord Normanby's expectations, against Māori expectations, and reasonable expectations based on that needed to enable a hapū to look after its members and engage as well as a competitor in the new economy.

108. It will be argued that the reserves provided by Featherston were also unjust when compared with those for Ngāti Apa in Turakina. The reserves for Ngāti Apa on the northern side of the Rangitīkei river amounted to 43,050 acres, 40,000 acres of which was in one compact title. The more populous Ngāti Parewahawaha on the southern side of the river, received 3,795.5 acres. That came in 21 scattered titles. In addition, Ngāti Apa received reserves on the south side of the river, outside of their allocated

area. They received in two titles, a further 1,500 acres, making 43,550 acres in all.[9] A later Government top up did little to redress the imbalance.

109. It will also be argued that the titles to the reserves were so long in coming that individuals were reduced to penury while waiting for them and through meeting the costs of trying to get them. In some cases land was sold to meet the debts before the title was available and the persons pressing the government for a title were in fact European purchasers. The costs included survey, legal documentation, court attendances to settle ownership and agency fees.

110. A special case to which the Tribunal will be referred concerns Lake Kōpūtara. The owners have still to get a proper title, that is, one with unrestricted access to it.

111. It will be argued also that the reserves were inadequately protected. Ngāti Kauwhata will address the machinations of a British agent whom they had engaged to secure the promised reserves from the Government and then to manage them. They were defrauded but were unsuccessful in recovering their losses as the Court proceedings that were taken on their behalf were filed out of time.

112. The agent was lessee of part, owner of part as payment for services, and manager of all. Unbeknown to the Māori he secured title to a large area in his own name that included even the papakainga. To recover that part, at what was several times the true cost, they sold the Kawakawa reserve that adjoined the Feilding township along South Street. It was on that part of the former Māori reserve of Kawakawa that the main recreation facilities for Feilding would be established. That included Manfield Park where the Tribunal had been booked to sit for its earlier intended opening.

113. The next issue concerns the condition of the reserves. Most were scattered and lacked the necessary compactness to be competitive in the new

[9] Husbands pp 13-14, 180-183

economy, or were too small to provide for the future needs of the hapū and its members.

114. Finally, the reserves were not reserves in the anticipated sense that they would be held for and administered by the hapū, that they would provide for the papakainga and for farms that would provide the economic base of the people. They were taken over by the Native Land Court. The lands were vested in the individual members and the hapū runanga excluded from maintaining its customary oversight. The centre shoot of the flax bush had been cut out.

Ōroua , Kaihinu and Native Land Laws

115. As earlier discussed, 87% of our forbear's reserve, going back to the late 1840's, of 319,500 acres, was acquired by Crown purchase. The remaining 13%, or 42,500 acres, from Aorangi to Shannon, was alienated from the hapū under the Native Land Court reforms, in native land laws that date from 1865.

116. It will be submitted that the effect of these laws was to divest the hapū of their possession and control of their land. The contemporary and present-day description of the laws as "individualising" the ownership, does not express the gravity of undermining the political capacity of the people to manage their affairs, which they did through their hapū rūnanga and leaders. "Individualising" does not capture the seriousness of undermining the economic capacity of the people, breaking down the large, economically viable units to patches of ground that provide only for individual subsistence. It does not capture the seriousness of a system that enables the people to be picked off, one by one, when they had the inherent right to be dealt with through their representative institutions, and to develop those institutions to give expression to their right of self-determination.

117. The legislation compelled the Court to determine the "names of the persons" entitled as owners, when, in accordance with native custom, the individuals had only conditional use rights, conditional on contribution to the tribal good, while the land was communally possessed by the hapū. A

modern accommodation of custom would have required recognition of the hapū as customary, corporate entities with the capacity to mandate their representatives. By divesting the hapū of its customary control of the land, the legislation undermined the only political institution Māori had for governing themselves, and the only institution Māori had to strategically manage the alienation of their land.

118. As already indicated, **the Forum will argue that the Native Lands legislation was a wartime measure to divest the people of their political and economic capacity and their existence as identifiable communities, and to facilitate further land alienation. We will also argue that as the land-owning body, the hapū, did not consent to the alienation of the land that had passed through the Native Land Court, there was no Treaty-compliant purchase of any Part.**

119. The Forum will also plot the alienation of the Oroua and Kaihinu lands.

Rangatiratanga

120. We submit that the native land laws spelt the end of the customary form of rangatiratanga. This is a special topic which will be addressed more comprehensively by the legendary Emeritus Professor Winiata and the renowned author and lecturer Ms Ani Mikaere of Ngāti Pareraukawa, when the Tribunal progresses from here to the southern hapū of the Ngāti Raukawa confederation. We will seek to focus on the land administration aspect of rangatiratanga and our customary support for the Kingitanga and the Kingitanga expression of mana motuhake.

121. **It will be claimed that the government eliminated the capacity of Ngāti Raukawa to exercise their rangatiratanga through their own political institutions, by such measures as purchasing the land through general meetings rather than through the hapū, by reserving insufficient land for the hapū, and by excluding the hapū from land management in its Native land laws.**

122. It will also be argued that the land laws were more effective as a confiscatory measure than the overt confiscations in Waikato, for the latter required a military force to achieve it while the other achieved the same by the pen, and thus the paper we have submitted on Te Pene Raupatu.

123. Also, however, the impact of hapū elimination extended beyond land as understood in European law. It extended to the whole of the natural resources in the hapū territory, including the waters, the takutai moana, the haukunui or aquifers, the minerals (whether they were used in custom or not), and ultimately, the people themselves, for the hapū also had oversight of law and order, the care of children, health and education, employment, economic development and the development of the arts.

124. With regard to natural resources the native land laws did away with the Māori concept of territoriality where the hapū and iwi exercised mana over the land, waters and inland seas, and substituted the concept where the Crown owns everything, the people have use rights defined mainly by land. and the hapū are excluded.

125. It was on the social side that the government came closest to recognising the political role of the hapū in the Māori Councils Act 1900, the Māori Social and Economic Advancement Act 1945 and the Māori Community Development Act 1962. The 1900 Act was a response, albeit a weak response, to pressure from the Kotahitanga movement and its pursuit of Māori self-determination through Māori Parliaments. The legislation did not achieve much however, for lack of funding, either from the government, or from what should have been the hapū' primary funding source, the land.

126. The result, by way of illustration, is that our people do not have control over the management of youth offenders or even the placement of our children, as managed through Oranga Tamariki.

127. We will argue that these issues would not have arisen had the hapū retained the control of the 319,500 acres proposed as a reserve by our forebears. We will be seeking recommendations for very significant compensation, and ongoing funding from government departments to

enable us in the North to maintain our own community officers and social workers outside of government constraints.

Leases

128. As mentioned earlier, prior to the government purchases in Manawatū, the Manawatū hapū leased to European run-holders, large open stretches of land, or runs, for the pasturing of sheep and cattle to European run-holders. The leases appear to have been mutually beneficial and to have resulted in friendly relations between Māori and settler families. The leases were obviously profitable for the lessees and would have provided the hapū with funds. Such funds would be necessary to develop other hapū lands and to develop a tribal infrastructure for administration. It had the potential to provide the economic base for hapū rangatiratanga.

129. The Provincial Superintendent, in his capacity as a government land purchase officer, nonetheless intervened to impound the rents and prevent the leasing of the Manawatū land.

130. **It is claimed that government policy was opposed to Māori leasing their customary land and that the policy was contrary to the Treaty and prejudicial to the Ngāti Raukawa hapū in preventing the hapū from developing its economic base and through that base, its own political institutions for the control of its lands and the exercise of rangatiratanga.**

131. Our submission will be that Featherston's primary purpose was to deprive the hapū of the funding necessary for them to more effectively oppose the Government's purchase of the land.

Tikanga and Maungatautari

132. Several of the hapū of the Ngāti Raukawa confederation, made claims to the lands in the Maungatautari district from whence they had migrated. The northern part of the district was within the area that the government had confiscated in the wake of the Waikato wars. Customary land-holders who were not 'rebels' or who had not assisted them were

entitled to a compensatory land award on application to the government's Compensation Court.

133. Claims to lands south of the confiscation line were heard by the Native Land Court. However, both Courts had to determine the customary ownership, and both used the Native Land Court's categories of claims according to taunaha (discovery), ahi kā (occupation), raupatu (conquest) and tuku (gift), as earlier described. In this case the facts were not only that a section of the hapū had migrated but that in their absence the scene had changed by intervening warfare and alternative occupations.

134. From the Courts' perspective the likely issues were whether the mana of the groups at the time of the migration had been maintained, whether the migrants had retained the option of returning, and whether their rights of occupation had grown cold through absence. An assessment would be required of whether there had been an effective conquest, and of whether occupation rights can endure despite an absence of some 50 years.

135. The rūnanga of the Māori King had a more pragmatic view. The southern hapū could have land interests provided they returned.

136. It will be submitted that the King's view fitted with Māori tikanga. All who descend from the hapū ancestor are inherently part of the hapū but only for so long as they actively support it. Some marry out and some migrate, but if they or their descendants wish to come back in, it is likely that they will be invited to do so and will be given a place for their whare and access to common resources.

137. It will be argued that the main problem with our hapū claims to Maungatautari was that the wrong Court was making the decision. The decision of the King's Court was clear, comprehensible, cheap and swift. The decision of the Government's Court was vague, incomprehensible, dragged on for years and cost our people a fortune in travel and accommodation alone. We will submit that had the King's kaupapa on absenteeism been followed, we would have had a policy for managing the

the problem of absentee ownership that is one of the largest problems in managing Māori land today.

138. **It will be argued that the Crown's establishment of the Compensation and Native Land Courts to determine land rights in Maungatautari was contrary to the principle of rangatiratanga in the Treaty. The consequence was prejudicial to the Ngāti Raukawa hapū in that members were denied the option of returning to their previous home and were put to considerable cost and trouble in travelling to Cambridge for consecutive hearings.**

PART D CONCLUSION

139. Hapū throughout the country lost vast, land expanses through questionable Crown purchases and confiscatory laws. Four factors distinguish the Ngāti Raukawa losses, however. The first is the level of deceit in the Government's purchase of the 247,000 acre Rangitīkei-Manawatū block. It will be submitted that the level of deceit has no parallel amongst the other big purchases in the North Island. The second is the level of deceit in the Native Land Court decision of 1869 which too appears to have no parallel in the decisions of that Court.

140. The third concerns the incomparable quality and accessibility of the land. It extended across the greater Part of the Manawatū plains. It was mostly flat with rich soils and wetlands and some easy, rolling land. Nearly all was arable. There was very little steep hill country. In the Oroua valley the vast tracts of well-timbered forest and plantations of flax provided an immediate return to settlers to meet development costs. All was within easy reach of where the settlers were landing, at Foxton and Wellington.

141. The fourth was that the proportion of land acquired by the Crown, in relation to the total land which the hapū possessed, was probably the highest in the North Island. As a result, from as early as the 1870s, Ngāti Raukawa became one of the most landless, North Island, iwi. It has been amongst the most landless for over 100 years, and may have been *the* most landless. The critical issue for tribal survival is not the amount lost but the

amount that remains for the people at the end of the process. It is this extent of landlessness that most calls for a fulsome reparation, to settle the past by providing for a more secure future for the hapū.

142. It also the case that Ngāti Raukawa has been left to the end of the settlement process. Presumably, a reason is the lack of Crown assets in the Manawatū needing to be freed of prospective resumption orders. We are hoping to give evidence on the economic cost of coming last as it is a matter of significance in our view.

143. Land loss has meant lost development opportunities, the lack of a comparative experience in the corporate management of the collective assets, the frequently expressed but undeserved guilt over the failure to hold onto the land, and the extensive population loss. Those of us born in the about 1940, in the first decade of the Treaty's second century, will be giving evidence of the parlous state of Ngāti Raukawa in the north, at that time, 100 years after the Treaty, and the pain that was visited upon our elders, in their assumption that the land, the language, the marae and the identity of hapū, was on the verge of being lost forever. It had an enormous impact on the way that the generation of the 1940s to 1960s were raised. Out of sheer necessity the focus was on surviving on Pakehā terms, even if that meant that we would learn English but not Māori. At that time, no other option seemed practical.

144. The Tribunal will be given evidence that at 1940, Ngāti Raukawa te au ki te Tonga had the highest rate of language loss in the country.

145. I was born in 1940, on the 100th anniversary of the Treaty (almost to the day). My grandparents managed the Aorangi marae which adjoined their home. My grandfather was on the Board of Māori Affairs and chaired the Raukawa Tribal Executive. He also farmed, directly or through his children, at Aorangi and Hīmatangi and with my grandmother, on her farm at Kākāriki. He began his working life as a clerk and licensed interpreter in the Native Land Court.

146. The grandparents' each had first-hand accounts of the land losses, from their parents. While they did not pass on much, they said enough to paint a picture. It implanted in my mind a nascent desire to know the law and Māori land law especially. It was the embryo of an ambition to reverse the historical trajectory.

147. My work as a lawyer led to my appointment as a Judge of the Māori Land Court in 1974, although for reasons of conflict, my appointment was not to my home district but to Waiariki. While that gave me a larger experience in Māori Land administration, it also alerted me to the disparity in terms of land ownership, between there and here, and why their whare runanga were more splendidly decorated, their wharekai much larger, the language more frequently spoken and the whānau and hapū more accustomed to administering assets of extraordinary value. It was a place where it was not uncommon for a Māori to work in a suit.

148. By age 13, I was cycling the length of South Street each working day in summer, on my way to work at the Feilding Freezing Works. In those days I think that compliance with the Factory Act age of 16, was regarded as discretionary. One could find amongst the four chains, of about 30 workers each, nearly all of whom were Māori, some of the best minds and kindest hearts of our northern hapū, and persons with a profound cultural knowledge, each toiling from a small space on a rotating killing chain for forty hours a week.

149. I cycled home between two worlds. On one side of South Street was the bustling town of Feilding with the largest stock-yards of the southern hemisphere, founded by enterprising migrants from Manchester. On the other was the former Kawakawa native reserve of 1035 acres. It had long been sold. At the far end of the reserve was the Awahuri bush, now a public reserve named for Lord Kitchener. It was on the surrounding dryland that Ngāti Kauwhata first settled after their journey from Maungatautari in Waikato and on coming down the Mangaone stream. Nearby, was the Awahuri reserve and original papakāinga where the Kauwhata and Maniaihu whare rūnanga once stood. It was beside that sacred land, on

Boness road, that the town sewage scheme was established, just upstream from the kids' swimming holes.

150. Ask the old people about what happened to the land and they tended to look the other way or to simply respond as my kuia did, that 'that land is yours'. As I biked into the notorious South St headwind, I shared the elders' sense of loss, helplessness and bitterness. If I looked for something to show that this was once the Ngāti Kauwhata reserve, there was nothing to be found. I saw only the lone and level lands stretching far away, and have since carried a sadness for the land, and for the people who were there.

Dated at Wellington this **24th day of February 2020.**

Taihākurei Durie