

WAI 2200 - PORIRUA KI MANAWATŪ INQUIRY HEARING WEEK 1
HELD AT HATO PAORA COLLEGE, FEILDING
ON MONDAY 9 MARCH TO FRIDAY 13 MARCH 2020

Tribunal: Deputy Chief Judge Fox
Dr Monty Soutar
Dr Grant Phillipson
Tania Simpson

Crown Counsel: Jacki Cole
Tim Morrison
Tim Stevens

Claimant Counsel: Donna Hall
Mark McGhie
Jerome Burgess
Hemi Te Nahu
James Lewis
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Dr Bryan Gilling
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Stephanie Roughton
Eve Rongo
Cameron Hockly
Kylee katipo
Lyndon rogers
Phillip Cornege
Chris Beaumont
Neuton Lambert
Danyon Chong
David Stone

Interpreter: Conrad Noema

RECEIVED Waitangi Tribunal
5 Jun 2020
Ministry of Justice WELLINGTON

Witnesses:

Day 1 - 9 March 2020

Jerald Twomey
Te Kenehi Teira
Robbie Richardson
Sir Edward Taihakurei Durie

Day 2 - 10 March 2020

Dennis Emery
Dr Terrence John Hearn
Dr Robyn Anderson

Day 3 - 11 March 2020

Professor Richard Boast QC

Day 4 - 12 March 2020

Dr Paul Husbands
Anita Miles

Day 5 - 13 March 2020

Dr Areti Metuamate
Dr Grant Young
Kiri Parata
Eljon Fitzgerald

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HEARING COMMENCES ON MONDAY 9 MARCH 2020 AT 10.41 AM**MIHI****KARAKIA TĪMATANGA**

5

MIHI**MIHI / HOUSEKEEPING**10 **(10:47) DR MONTY SOUTAR: (MIHI)**

Heoi anō rā ka mihi anō ki a koutou te haukāinga tēnā rawa atu koutou ngā kaikerēme Ngāti Kauwhata, Ngāti Raukawa me ōna karanga hapū ngā iwi o Te Reureu koutou katoa anei rā te mihi a te Taraipiunara ki a koutou tēnā koutou, tēnā koutou, tēnā tātou katoa. Me ngā rōia e awhinatia i te kaupapa, me te Karauna tēnā anō hoki koutou.

15

[Interpreter: Again, I wish to acknowledge and endorse the expressions you have given us Raukawa and all the many associates. This is the greetings of the Waitangi Tribunal acknowledging you all and of course counsel groups and Crown counsel representing your various claimants.]

20

Ka tukuna atu te rākau ki te Kaiwhakawā.

[Interpreter: I will hand matters over to the Judge.]

25

(10:47) DEPUTY CHIEF JUDGE FOX : (MIHI)

Tēnā koutou, nau mai haere mai ki tēnei nohonga o te Taraipiunara o Waitangi. Kei te tautoko au i ngā mihi kātahi kua oti ki ngā iwi whānui o tēnei rohe o Manawatū, otirā o Porirua ki Manawatū hoki. Nā reira i runga i ngā mihi o taku rangatira a Monty ki a koutou ka tautoko au ngā mihi, ka noho iti mātou ki konei mō tēnei wiki ki te whakarongo i ngā kōrero ngā nawe o te iwi o Ngāti Raukawa e pā ana ki te mahi a te Karauna i tēnei takiwā.

30

[Interpreter: Again, welcome to these hearings of the Waitangi Tribunal. I certainly do endorse all the expressions that have been given and the many collectives of this area in Manawatū, and again within this Inquiry District from Porirua to Manawatū. And again, which has been expressed clearly by my
5 colleague, Monty, we are humbled to be here to listen to all that needs to be expressed in relation to breaches from the Crown.]

*Kei te mihi atu au ki a koutou o tēnei kura. He mea nui tēnei mahi, nā te mea ka whakarongo ngā tama i te wā tuatahi pea ēnei mahi e pā ana ki te
10 Tiriti o Waitangi ki ngā iwi o tēnei rohe. He mea tino nui tēnā ki ā rātou. Ahakoa mō te nuinga kāore rātou i te tino mārama he aha ngā hōhonutanga o ngā kaupapa e pā ana ki te Tiriti i konei. Nā reira i runga i ngā whakaaro nui a te iwi tēnei te mihi atu ki a koutou tēnā koutou.*

15 [Interpreter: Again, to those of the college here it is a huge task, particularly with our young men it will probably be the first time that they have engaged in this space of what we call the Tiriti o Waitangi and its manifestations. This will be a huge opportunity for them. There is no about that the majority will be first timers of how protocols and procedures are done in this setting. So to the
20 organising committees and peoples who brought us here.]

Well, welcome everybody to this first hearing of the Ngāti Raukawa claims beginning here in the Manawatū. I especially want to acknowledge the iwi of this particular part of the Porirua ki Manawatū region *Ngāti Kauwhata, ngā iwi
25 o Te Reureu, Ngāti Parewahawaha koutou o Himatangi, koutou hoki ngā iwi whānui o Manawatū, Ngāti Raukawa whānui, Ngāti Toa, ngā iwi taketake o te rohe nei tēnei te mihi atu ki a koutou.* [Interpreter: ...of course the indigenous peoples of this area as well.]

1050

30 So having opened our proceedings today, I would like to also take this opportunity to introduce members of the Tribunal. You will have heard who they are on the paepae this morning but, we have Tania Simpson who will be known to many of you because of her links both to Waikato, to Ngāpuhi, and through the relationship with Te Whatanui to Ngāpuhi. She is here with the

Tribunal providing expert advice about many of the cultural matters pertaining to the iwi associated with this district. She also is a recognised scholar, publisher, and also a very important member of various boards. She is well-known to people in entrepreneurial and management circles.

5

Next to me we have Dr Monty Soutar who again needs no introduction to you all. Highly regarded for his work in the recording of history of the Māori Battalion and the First World War contribution of Māori. And from Ngāti Porou, the same tribe that I am from.

10

Finally, we have Dr Grant Phillipson and Dr Grant Phillipson is now the longest serving member of the Waitangi Tribunal both as a member of the Tribunal and previous to that as the chief historian of the Waitangi Tribunal. His expertise and knowledge in this field is really beyond description we are very lucky to have him on this Tribunal.

15

As you heard from Dr Monty this morning, Sir Douglas Kidd who – the Honourable Sir Douglas Kidd is unable to be here. As he gets better he is progressing. He is reading material. We hope that he will become a fully active member again of the Tribunal and we are keeping that door open for him but at this stage he is not able to participate fully.

20

And I am going to now give each member of the panel the opportunity to do a short intro for themselves, Dr Grant.

25

(10:52) DR GRANT PHILLIPSON: (MIHI

Tēnā koutou katoa. Thank you for your wonderful welcome this morning that was amazing. I just wanted to actually briefly talk about the north/south progression to explain what we are doing this week and for the next six weeks before we move on to the southern part. You will hear more about it as we go on through the week and Sir Taihakurei also talks about it in his opening statement.

30

I just wanted to say briefly for those who are wondering, the northern blocks have a different history of Crown actions and that is why we are dealing with them first and separately from the south. It has nothing to do with customary history, but because of different ways in which the Crown interacted with and obtained the land. That is because in the period from 1840 through to 1865 the Crown operated a system of what was called pre-emption purchasing where Crown land purchased commissioners went around the country they decided who had the rights in land. There was a system for how land should be purchased, paying low prices on the idea that the value of the land, the true value would be when settlement occurred, and economic development occurred. They were supposed to make full reserves for present and future needs of the people those reserves were supposed to be beforehand, marked out and surveyed. The boundaries were supposed to be walked.

There was a whole system which changed completely in the 1860's when the Native Land Court was set up. Now the Court is involved in the northern blocks because it comes in later when reserves were made. But basically, there is a complete difference in how the Crown obtained land in the north to the south and because that was earlier and an earlier system it made the most sense in terms of hearing claims and claim issues about the Crown to start with the north and deal with those big northern blocks. So, Te Awahou, Rangitīkei, Manawatū, Rangitīkei, Turakina and Te Ahuaturanga and Waitapu. So, that is what we are doing for the next six hearing weeks and that is why we are starting in the north. Kia ora tātou.

1055

(10:55) DR MONTY SOUTAR: (INTRODUCTION)

Kia ora anō tātou. I would just like to say this is probably the most greeting that we have ever had to do as a Tribunal in preparation for a hearing week, but I assure you that we have got through it all and it is very revealing.

As I said on the marae, as an old boy of this school I can recall learning about the farm that was here when I was at school that Ernest Short owned but nothing about the Māori history of the place. In fact, I was quite shocked when

I read that Ngāti Kauwhata were associated with the land we are on, so it is very revealing. It is a sad read I must admit.

I understand that the majority of you have not read some of this material and I know some of the counsel are looking at opportunities to make sure that you get to learn about some of this stuff. *E hia kē ngā tau i rangahautia e koutou i wānangatia e koutou ngā whakapapa ngā kōrero kia taea e koutou te whakatakoto ngā nawe ki mua i te Karauna i tēnei rangi.*

[Interpreter: I know you have done an extensive amount of research, you have spoken about it, you have gone to look at whakapapa records and again and how you can bring about those breaches before the Crown on this day.]

I know it has been many years that you have been preparing for this, people have passed away in that time and we do hope that by the time this is over, you know, the result might be if nothing else, some unity going forward for you. *Nō reira, tēnā koutou.*

(10:57) TANIA SIMPSON: (MIHI, INTRODUCTION)

Tēnā koutou, tautoko ana ngā mihi kua mihia mai i te ata nei. Tautoko ana ngā mihi ki tō tātou Kīngi a Tuheitia e noho ana i te ahurewa tapu o ōna mātua tūpuna, paimārire. Otirā, ko rātou kua mene ki te pō, te tokomaha o ngā kaikerēme kua ngaro atu, heoi anō, haere, haere, haere atu rā. Engari kua tae mai tātou te hunga ora ki te rā nei te kawea tēnei kaupapa ki mua. Nā reira e mihi ana ki a koutou katoa, me kī ngā kākano i ruia mai i Rangiātea, te waka o Tainui e mihi ana ki a koutou katoa. Ko Tania Te Rangingangana Simpson tōku ingoa, he uri ahau nā Te Rangingangana, he uri hoki nā Te Maiharanui Maupo, ā, i tupu atu au ki Te Kuiti, tētehi o āku marae ko Miringa Te Kakara, tētahi o āku kainga kei Kawhia. Nā reira, i waenganui ngā hononga katoa i mua i a tātou katoa, e mihi ana. Tēnā tātou katoa.

[Interpreter: I certainly do want to endorse all of the expressions given earlier and again I acknowledge the Māori King and the Paimārire and of course those who have since passed beyond sweat and again those many lead claimants

that have since passed, may you rest in peace and again for those who are present we are here giving manifestation to what was laid and of course the many of representations of Tainui waka, I am from Te Rangingangana, a descendant. I am Te Maihara Maupo, I grew up in Te Kuiti, my marae is Miringa Te Kakara, one of my homes is at Kawhia so within in those many links and connections I wish to acknowledge you all.]

DCJ FOX:

As you have heard, my name is Judge Fox, I am the Deputy Chief Judge to the Māori Land Court, presiding officer of this Tribunal. Ngāti Porou is my background and Rongowhakaata of Tūranga. We have with us, supporting this staff, Peter Harvey who is our new manager claims and registry. Would you like to put your hand up? Peter is available to take any complaints you have about any of the documents that have been filed, do not come and see me. See him. Him and Sasha-Lee Douglas for our claims coordinator who is part of his team, so they are going to be available to deal with any facilitation issues concerning the hui that you would like brought to the attention of the Tribunal so feel free to approach both of them.

We have Barnaby Melville who is our assistant with report writing, he is here today from the report writing team in the Tribunal. Can you put your hand up Barnaby? And then we have Angelina Kirk who is out inquiry facilitator and she is being responsible for liaising with the research teams and making sure that the Tribunal is getting the research we – that has been produced and then providing us with briefing papers, so I want to record that contribution has been excellent and then we have Te Amohaere Reihana who was in that role up until recently and is here to facilitate and assist her over the next week, they are working together as a team. We have our interpreter, trustee interpreter, probably still aspiring to be a bit like Piripi Walker but getting there

30 1100

His name is Conrad Noema and I will be interested to see especially in this rohe Ngāti Raukawa ngā āria o te reo Māori i konei. Those of you ngā tohunga, I

will be interested to see what you think or make of his translations, and then we have with him Allan. Allan is in charge of all our equipment. So, as you heard, you can listen to simultaneous translations as we go along. If for any reason your little box here is not working, please see him.

5

And now I take appearances from all those present thank you. When you give your name as counsel, could you say not only your Wai numbers but what hapū you are purporting to represent thanks.

10 **(11:01) DONNA HALL: (MIHI, APPEARANCE)**

Ma'am, because the time is so I've just been nudged. We'll give you a written note at lunch time. If I could simply start by saying, "I myself, with me is Mr Lyndon Rogers." Can you stand Lyndon, Mr Phillip Cornege and Ms Lisa Hansen? Behind us we have Jake Buckthara and with him is
15 Tai Durie (Jnr) and captain of the team is Taihākurei (Snr).

DCJ FOX:

Thank you. And you are Wai 113 which I know is a long list because it goes to #A002 the letter it finishes at. So, Mr McGhie.

20 **(11:01) MARK MCGHIE: (MIHI, APPEARANCE)**

Counsel's name is McGhie. I'm representing Wai 977 Ngāti Te Paea.

(11:02) JEROME BURGESS: (MIHI, APPEARANCE)

Tēnā tātou katoa. May it please the Tribunal, counsel's name is Burgess
25 appearing on behalf of Ngāti Pīkiahū Wai 1872, ngā iwi o Te Reureu Wai 651, and te iwi o Ngāti Tukorehu Wai 1913. Kia ora.

DCJ FOX:

Kia ora.

30 **(11:02) HEMI TE NAHU: (MIHI, APPEARANCE)**

Tēnā tātou katoa. Ka nui te mihi ki a koutou te haukāinga, nāu i pōhiri mai i a mātou i te ata nei, nāu i tuwhera tēnei wiki o tātou.

[Interpreter: Again, I wish to acknowledge you for your warm welcome and of course, opening up our hearing.]

- 5 *Ko Hemi Te Nahu tōku ingoa.* I am the counsel for Wai 1460 Ngāti Whakātere and counsel for Wai 1944 Ngā Hapū o Kereru. Kia ora rā.

[Interpreter: My name is Hemi Te Nahu.]

- 10 **(11:03) JAMES LEWIS: (MIHI, APPEARANCE)**

Tēnei te mihi atu ki a koutou te tangata whenua ko Raukawa ko Ngāti Kauwhata. [Interpreter: Again, I wish to acknowledge Ngāti Raukawa, Kauwhata.]

- 15 May it please the Tribunal, counsel's name is Lewis. I will need clarification as to who I am representing today Ma'am based on the direction that was filed on Friday. It is unclear as to whether I am still leading Dr Soutar' Anderson, Green, and Husbands.

DCJ FOX:

- 20 All right. Well, you do not represent them because they are technical witnesses.

JAMES LEWIS:

Yes, Ma'am.

DCJ FOX:

So, who do you represent?

- 25 **JAMES LEWIS:**

I represent Wai 609 that would be Yvonne Mitchell on behalf of Te Whānau o Te Ngārara.

DCJ FOX:

That is Te Āti Awa?

JAMES LEWIS:

Yes, Ma'am.

DCJ FOX:

So you are here on a watching brief?

5 **JAMES LEWIS:**

I was going to seek leave given the direction to –

DCJ FOX:

To do the leading?

JAMES LEWIS:

10 – have a watching brief I believe and was to pass on to other counsel.

DCJ FOX:

Yes. Yes, well let us come back to the leading issue. But you have not sought time have you to cross-examine?

JAMES LEWIS:

15 No, Ma'am.

DCJ FOX:

That is very good. Thank you. All right. Mr Watson.

(11:04) LEO WATSON: (MIHI, APPEARANCE)

20 *E te mana whenua ko tēnei te mihi atu ki a koutou huri noa ki te whare tēnā koutou katoa.*

[Interpreter: Again, I wish to acknowledge locals and again to this great house.]

25 Counsel's name is Watson Ma'am. I am appearing in relation to Wai 1626 in this part of the inquiry Te Waerea Carkeek on behalf of Ngāti Whare and Ngāti Huia, the claimants on behalf of Ngāti Waiotake, Ngāti Waihurihia,

Ngāti Moewaka, and claimants on behalf of Ngāti Huia ki Katihiku and Ngāti Tuwhakahewa of Ngāti Raukawa. Those hapū have principal interests in the Ōtaki area but held customary interests and exercise rangatiratanga in the north here and hence the reason that I am appearing here today.

5 **DCJ FOX:**

Yes.

LEO WATSON:

Nō reira tēnā koutou.

DCJ FOX:

10 Kia ora. Dr Gilling.

1105

(11:05) DR BRYAN GILLING: (MIHI, APPEARANCE)

15 *Tēnā koe e te Kaiwhakawā, e te Rōpū Whakamana o Te Tiriti o Waitangi me ngā kaimahi tēnā koutou, tēnā koutou, tēnā koutou. E te whare e ngā mana whenua tēnā koutou, tēnā koutou, tēnā tātou katoa.*

[Interpreter: Again, to the Waitangi Tribunal and your dedicated staff, I wish to
20 acknowledge you. Those within this house in particular our local hosts thank you very much.]

May it please the Tribunal, counsel's name is Gilling. The claims I represent in this part of the inquiry are Wai 972 one of the Kauwhata claims, Wai 757
25 Ngāti Huia ki Horotawhao principally, and Wai 1618 Ngā Hapū o Himatangi. I also represent in the Ōtaki area –

DCJ FOX:

When you say Ngā Hapū o Himatangi are you talking...?

DR BRYAN GILLING:

Ngāti Tūranga, Ngāti Rākau and Ngāti Te Au. In the Ōtaki area Wai 1628, which is Andre Baker whom you have met in Te Āti Awa, and Stephanie Turner and Heeni Collins Wai 2419 focussed on Ngāti Kikopiri, and of course one
5 solely Te Āti Awa claim Mr Tutere Parata [Wai] 1945.

DCJ FOX:

But you are not here for them today other than as a watching brief?

DR BRYAN GILLING:

Correct –

10 **DCJ FOX:**

And that Mr Baker is also Ngāti Raukawa isn't he?

DR BRYAN GILLING:

Yes.

DCJ FOX:

15 Yes, so that is fine.

DR BRYAN GILLING:

In fact, the original historic core of the claim is at Ōtaki.

DCJ FOX:

Yes.

20 **DR BRYAN GILLING:**

Ma'am, I am in the process of receiving instructions from several other hapū in the northern area, but I will advise the Tribunal when or if those instructions are finalised.

DCJ FOX:

25 Yes, thank you Dr Gilling.

DR BRYAN GILLING:

Tēnā koe.

DCJ FOX:

Ms Thornton.

5

(11:07) LINDA THORNTON: (MIHI, APPEARANCE)

Tēnā koe Ma'am.

DCJ FOX:

Please tell me you are not here for Muaūpoko?

10 **LINDA THORNTON:**

I am here for Muaūpoko.

DCJ FOX:

Are you just doing a watching brief then?

LINDA THORNTON:

15 I am watching.

DCJ FOX:

Thank you.

LINDA THORNTON:

Do you want to hear who I am watching for or am I –

20 **DCJ FOX:**

Yes, yes, please because that changes.

LINDA THORNTON:

All right. Not too much. Muaūpoko claimants Vivienne Taueki Wai1629 –

DCJ FOX:

25 Ms Taueki.

LINDA THORNTON:

– and Wai 493 Cheryl Stanford both Ngāti Tamarangi hapū.

DCJ FOX:

Thank you. Mr Hunt.

5

(11:08) DANIEL HUNT: (MIHI, APPEARANCE)

Tēnā koutou katoa. I am appearing for Wai 2197 Oma Heitia who asserts that she is the correct claimant for Ngāti Parewahawaha, although there is another claim lodged under that name. I just wanted to make the point that she asserts that, in fact, they do not whakapapa back and it is in fact her claim.

10

DCJ FOX:

All right. Well, I hear you and I will be interested to hear what Ngāti Parewahawaha say about that.

DANIEL HUNT:

15 Yes. Thank you, Ma'am.

DCJ FOX:

So we have two people – that is right they have been introduced. Mr Johnston?

(11:09) PETER JOHNSTON: (MIHI, APPEARANCE)

20 *E te Kaiwhakawā Deputy Chief Judge Fox tēnā koe.*

[Interpreter: The Judge, Deputy Chief Judge Fox.]

DCJ FOX:

Kia ora.

PETER JOHNSTON:

25 *E ngā mema o te Taraipiunara tēnā koutou.*

[Interpreter: Members of Waitangi Tribunal greetings.]

May it please the Tribunal, counsel's name is Johnston. I appear with my learned colleague Ms Martinez.

Ma'am, we are delighted to represent three claims not only with this inquiry
5 district generally but also have customary interests in the northern area. They
are Wai 784 which is a claim by Rodney Graham and others on behalf of
themselves and the Kauwhata Treaty Claims Committee and Ngā Uri Tangata
o Ngāti Kauwhata ki te Tonga so that is Wai 784. I am delighted to say that
Mr Graham is present today.

10

Ma'am, the next claim is Wai 1482, a claim by Ropata Miratana,
Patricia Jacobs, the late Archdeacon Te Hopehuia Hakaraia and the late
Richard Orzecki on behalf of themselves and of Te Kotahitanga o Te Iwi o
Ngāti Wehiwehi. So that is Wai 1482.

15

Finally, Ma'am, a claim by Simon Austin on behalf of himself and the
descendants of James Howard Wallace which is Wai 2031. Ma'am, that is a
Raukawa claim. I m also delighted to say that Mr Austin is also present today.

20 Thank you, Ma'am.

DCJ FOX:

Mr Austin's hapū is?

PETER JOHNSTON:

Well, he is from Ngāti Raukawa –

25 **DCJ FOX:**

Yes.

PETER JOHNSTON:

– and he affiliates to a number of hapū.

DCJ FOX:

I see, okay.

PETER JOHNSTON:

Yes.

5 **DCJ FOX:**

So he is not purporting to represent any of them, he is...

PETER JOHNSTON:

No, he is purporting to represent the descendants of James Howard Wallace.

DCJ FOX:

10 Okay, thank you.

PETER JOHNSTON:

Thank you, Ma'am.

DCJ FOX:

Ms Sinclair?

15

(11:11) MOANA SINCLAIR: (MIHI, APPEARANCE)

Tēnā tātou. Tuatahi he mihi ki aku whanaunga o Ngāti Kauwhata nō Ngāti Kauwhata ahau. He uri nō Ngāti Kauwhata. Ko Moana Sinclair tōku ingoa engari he Adams he Durie ōku nei iwi – names rather. [Interpreter:

20 Firstly, I wish to acknowledge my relatives of Ngāti Kauwhata, I am of Ngāti Kauwhata. I am a descendant of Ngāti Kauwhata. Adams and Durie are my people – names.] Those are my parents. I just wanted to acknowledge that I am from here.

25 Your Honour, we are here representing a claim Wai 113(c), a claim by Stephanie Turner as whānau of Te Rauparaha, as descendants of Hapekituarangi, Ngāti Kikopiri, hapū of Ngāti Raukawa. Also for Wai 1729 a claim by Sara Poananga on behalf of her whānau and in association with the

whānau, hapū and iwi of Ngāti Kauwhata ki te Tonga. Also, Wai 1815, a claim by Kahu Stirling on behalf of his whānau and in association with the whānau, hapū and iwi of Ngāti Kauwhata ki te Tonga. Wai 1928 a claim by Gloria Karaitiana on behalf of herself and her whānau and the descendants of
5 Te Hirawanu Kaimokopuna.

Also, Wai 1936 a claim by Maruhaeremuri Stirling (deceased) and Ruiha Stirling on behalf of the Stirling whānau and in association with the whānau, hapū and iwi of Ngāti Kauwhata ki te Tonga. Also, Wai 2032 a claim
10 Lee Iranui Lee, also a Poananga, on behalf of her whānau and in association with the whānau, hapū and iwi of Ngāti Kauwhata ki te Tonga. Also, Wai 2199 a claim by Kim Poananga on behalf of her whānau and in association with the whānau, hapū and iwi of Ngāti Kauwhata ki te Tonga. Wai 2570, a claim by Mihingarangi Greenaway on and behalf of Ngāti Huia ki Katihiku. *Ka nui tēnā,*
15 *ngā mihi.*

DCJ FOX:

Anyone else?

(11:15) JOSEY LANG: (MIHI, APPEARANCE)

20 *E Te Rōpū Whakamana o Te Tiriti, tēnā koutou. Ki ngā haukāinga, tēnā koutou katoa. Ko Josey Lang tōku ingoa.* [Interpreter: To the Waitangi Tribunal, to our hosts, I wish to acknowledge you. I am – Josey Lang is my name.] Ma'am, here representing Wai 1630 which is a claim by Ngāti Kapu, a hapū of Ngāti Raukawa.

25

(11:15) CORAL LINSTEAD-PANOHO: (MIHI, APPEARANCE)

*A tēnā tātou e te whare. Kei te tautoko i ngā mihi kua mihia ki a koutou ngā tangata whenua, ngā hapū me ngā iwi o tēnei takiwā, nui rawa te mihi ki a koutou. I tino rongō ai i te mahana, i tino rongō ai i te manaaki i te rangi nei, nō
30 reira kei te mihi ki a koutou. Huri noa ki Te Rōpū Whakamana i Te Tiriti, ki a koe e te Kaiwhakawā, ki a koutou ngā rangatira o te tēpu rā, tēnei te mihi nui, te mihi kau ana ki a koutou. Ko Ms Linstead-Panoho tōku ingoa. A ko ahau ko tētahi o ngā rōia mō te kerēme Wai 1619, ā, he kerēme anō mō*

Ngāti Parewahawaha me te kerēme Wai 1260 mō te hapū o Ngāti Waewae, nō reira kei te mihi ki a koutou.

[Interpreter: I certainly do want to endorse all what has been expressed, in particular to our hosts and of course the hapū and peoples of this area. We
5 certainly felt the warm embrace and the means of how you welcomed us was dearly felt. To you Judge, and of course the esteemed panel members, I certainly do want to express my gratitude. Linstead-Panoho is my name. I am a lawyer – 1619 representing Ngāti Parewahawaha, Wai 1260 for the hapū of
10 Ngāti Waewae. Again, acknowledgements to everyone.]

DCJ FOX:

So Ms Panoho, are you saying you represent those hapū or individuals of those hapū?

CORAL LINSTEAD-PANOHO:

15 *Ko te kaikerēme matua ko John Reweti.* [Interpreter: John Reweti is the lead claimant.]

DCJ FOX:

And the question, are you representing the individual or the individual is purporting to represent the hapū?

20 **CORAL LINSTEAD-PANOHO:**

It's for the benefit of the hapū, Ma'am –

DCJ FOX:

For the benefit but not purporting to represent?

CORAL LINSTEAD PANOHO:

25 – of Ngāti Parewahawaha –

DCJ FOX:

Yes.

CORAL LINSTEAD-PANOHO:

– and for Ngāti Waewae they are representatives of the hapū.

DCJ FOX:

Okay, thank you.

5

(11:17) STEPHANIE ROUGHTON: (MIHI, APPEARANCE)

E te Kaiwhakawā me koutou o te Taraipiunara, ngā rōia mō te Karauna, ngā rōia mō ngā kaikerēme, koutou ngā kaikerēme, huri noa ki te whare, tēnā koutou katoa. [Interpreter: Nil.]

10

May it please the Tribunal, counsel's name is Roughton, I appear on behalf of Mr William Taueki, the late Ron Taueki, the Taueki whānau, their hapū Ngāti Tamarangi and Muaūpoko, that's Wai 237.

DCJ FOX:

15 Thank you, and you are here on a watching brief?

STEPHANIE ROUGHTON:

I am. We also sought leave for some cross examination.

DCJ FOX:

Yes, well you did not get it.

20 **STEPHANIE ROUGHTON:**

Okay.

DCJ FOX:

Have you read my direction? Read it. Thank you.

STEPHANIE ROUGHTON:

25 Thank you.

(11:17) EVE RONGO: (MIHI, APPEARANCE)

May it please the Tribunal, counsel's name is Rongo. I am here this week on a watching brief for Wai 2383 Trevor Hill on behalf of – who is of Muaūpoko descent. Kia ora.

5 DCJ FOX:

Sorry, I missed that.

EVE RONGO:

Counsel's name is Rongo. I am here this week on a watching brief for Wai 2383 Trevor Hill who is of Muaūpoko descent.

10 DCJ FOX:

Thank you. Mr Hockly?

(11:18) CAMERON HOCKLY: (MIHI, APPEARANCE)

15 *Tēnā koe e te Kaiwhakawā. Tuatahi, te tini me te mano o Ngāti Raukawa, ka nui te mihi ki a koutou katoa. A ki te whare e tū mai nei, Hato Pāora, ka nui te mihi. E ngā rangatira o te tēpu, kia ora tātou katoa. Hockly tōku ingoa, Loader tōna ingoa. E pā ana ki te tikanga o te whare me te whakataukī o te kura 'Whāia te tika', kei te mārama au te tikanga o tēnei wiki e pā ana ki tō whakatau.*

20 [Interpreter: First, I wish to acknowledge all Ngāti Raukawa for your welcome. Of course, the college of Hato Pāora, I wish to acknowledge you as well. I wish to acknowledge the esteemed panel members I have before me. I am Hockly, this is Loader. And according with the procedures and protocols I will – and of course with the 'Whāia e tika', the representative of – this is certainly going to
25 be the theme of our week.

DCJ FOX:

That is a relief. Thank you, Mr Hockly.

CAMERON HOCKLY:

I am here, Ma'am, for Wai 623, 624 and 1490 the hapū of Ngāti Te Ao, Ngāti Pariri, Ngāti Ngarue and Whanokirangi, hapū of Muaūpoko. Kia ora.

DCJ FOX:

5 Thank you. Any other counsel? Any unrepresented claimants, meaning there is nobody here that is going to speak on your hapū's behalf and you have a claim before the Tribunal? No? That is okay, you can sit, do not worry about standing because we can pick you up that way with the microphone. Yes, thank you. Kia ora.

10

(11:20) JERALD TWOMEY: (MIHI, APPEARANCE)

Tēnā koe. I've just been reminded that I am speaking on behalf of our hapū of Ngāti Manomano but also on behalf of the Wai 113 claim.

1120

15 DCJ FOX:

Thank you. All right. Ms Cole.

(11:20) JACKI COLE: (MIHI, APPEARANCE)

E te Kaiwhakawā tēnā koutou katoa. Ko Jacki Cole tōku ingoa. [Interpreter:

20 Jacki Cole is my name.]

I appear for the Crown with my learned friends Mr Tim Morrison and Mr Tim Stevens who is behind me. I would also like to acknowledge that both Frith Driver Burgess' Messrs is in the audience on behalf Te Arawhiti, she is a
 25 Senior Historian at Te Arawhiti and also Jack Mace who some people will be very familiar with who appeared in the Te Atiawa hearings, he is an Operations Manager with the Department of Conservation, and also present with him today is Leah Strongman (and I apologise if I have got her surname it just slipped out of my mind), she is the Treaty Implementation Manager for
 30 Department of Conservation for the Manawatū area.

DCJ FOX:

Excellent. Can they all just stand up, so people know who they are? All right.

JACKI COLE:

Thank you. There will be other Crown representatives coming later in the week
5 and I will introduce them on the occasion.

DCJ FOX:

That will be excellent, thank you.

JACKI COLE:

Kia ora. Oh, I missed the most important person, I do it every time, matua
10 Wiremu Kaua who is present with us and has spoken to the whare today.
Kia ora.

DCJ FOX:

Thank you. Well, I think we are ready to deal with any issues that counsel want
to raise. I have made a ruling regarding Muaūpoko, that ruling stands, I do not
15 want to discuss that further. In terms of the issue Mr Lewis has raised about
leading technical witnesses, Mr Lewis?

I had assumed and maybe rightly or wrongly that you and Ms Hall from
Woodward Law had sorted out the issue about who is leading who. Last week
20 I got a memorandum indicating that you had team, Ms Hall who will be divided,
two teams, one dealing with leading what are essentially CFRT organised
researchers move through their reports and what would you like to say about
that?

JAMES LEWIS:

25 Ma'am, I was only really seeking clarification on the matter. We had –

DCJ FOX:

Maybe you could talk to Ms Hall at the next break.

JAMES LEWIS:

Yes, that sounds good, thank you.

DCJ FOX:

All right, thank you. You can join their team.

5 **JACKI COLE:**

Your Honour, the Crown does have something to say about this issue of the leading cross-examination.

DCJ FOX:

Yes, I thought you might.

10 **JACKI COLE:**

Yes.

DCJ FOX:

What would you like to say?

JACKI COLE:

15 Merely that, as long as the cross-examination is limited to the nature of the questioning that has been indicated through the Woodward Law memoranda, the Crown has no issue with it. If it goes beyond that though, the Crown does perceive that there are matters of concerns with having a team, two teams or whatever teams with no Chinese wall in the firm built doing leading,
20 cross-examination, and re-examination of the same witness. It is totally understood that they are not their witnesses that they are CFRT witnesses, but notwithstanding that there do seem to be some procedural issues.

DCJ FOX:

What is the procedural bias or prejudice that you might suffer?

25 **JACKI COLE:**

It is not case of suffering from the Crown it's more the procedural irregularity of having a process such as that and with respect I would suggest -

DCJ FOX:

Well, as you know I can set the process for the hearings and so long as there is no unfairness then there is no issue. So, what do you say would be something that I have to take into account in that regard?

5 **JACKI COLE:**

As I said at the outset, Ma'am, the issue would purely be whether or not the cross-examination extends beyond that which has been indicated and if that is –

DCJ FOX:

10 All right, I am sure you will let me know if it does.

JACKI COLE:

Happy to do so, Your Honour.

DCJ FOX:

Okay.

15 **JACKI COLE:**

Otherwise, the Crown has no issue with the matter.

DCJ FOX:

Thank you, that is helpful.

JACKI COLE:

20 Kia ora.

DCJ FOX:

Any other matters?

JACKI COLE:

I do have some other preliminary issues not related to that, but I would rather
25 the – just in case you don't come back to me, if you could come back to me.

DCJ FOX:

I think the discussion on that the issue has ended so what is your other matter?

JACKI COLE:

Well, as I say, unless other counsel have other preliminary issues this is
5 completely unrelated to the leading cross-examination. Happy to go? So, first
of all with the respect to the opening statements/statements of evidence issue,
which you addressed in your memo, which came out of on Friday. I apologise,
but I can't actually discern from your memo what you have decided in respect
of whether they are to be taken as evidence or whether they are to be taken as
10 opening statements.

1125

DCJ FOX:

Well, the opening statements are opening statements, that is exactly what they
15 are.

JACKI COLE:

So, does that mean that it is Sir Taihākurei –

DCJ FOX:

It means that instead of any lawyers cross-examining, only the Tribunal can ask
20 questions.

JACKI COLE:

Thank you, that is excellent.

DCJ FOX:

The two papers, Pine Raupatu and Rangimārie, the status of those papers as I
25 understand it is that they are in evolution, which means that they are not being
presented rather, they are being used to build a consensus. I can be corrected,
but that is my understanding.

JACKI COLE:

Yes, the Crown's issue is not with either of those papers. It was more the statements from Mr Ropata, Mr Teira and Mr Tumi.

DCJ FOX:

- 5 Yes, well I have read them and they all look like opening statements to me to be filled out by evidence at a later point.

JACKI COLE:

That clarification we are grateful.

DCJ FOX:

- 10 Thank you.

JACKI COLE:

- So, that was all I was seeking. The second thing that arises from that, it does not arise actually because it is not evidence. You had made a ruling in your memo of Friday that any questions of clarification relating to the statements was to be due by the 20th of March, but if they are opening statements, then you probably saying that there wouldn't be any questions of clarification, would that be right?
- 15

DCJ FOX:

- No, because as – I agree that there might be aspects that need further clarification.
- 20

JACKI COLE:

Okay, well then, the issue that I want to raise.

DCJ FOX:

And that is why I framed it questions for clarification.

- 25 **JACKI COLE:**

That's fabulous. The issue then that I am simply raising is the date. There is a significant hui for the Wai 275 Housing Kaupapa Inquiry next weekend. We are

simply not going to have enough time to do our questions of clarification by the 20th, and I wish to – I expect that a number of claimant counsel might be in the same position actually, but I just simply saw an extension of time perhaps through to just before Easter.

5 DCJ FOX:

Yes, I am happy to entertain that. Just let us know at the end of the hearing that that is matter we have to put in to the follow-up directions.

JACKI COLE:

That would be terrific. And, oh, there is one other issue that we needed to highlight, and it only came to my attention late last week. It relates to two Ngāti Waewae claims Wai 1260 – no, it is just the one, I am sorry. Yes, 1260 fully and Wai 651 and Wai 1461, which are related to Ngāti Waewae claims. It has been brought to my attention and it is not something that we are seeking a ruling on at this stage and we're certainly not objecting to claimants being heard in this inquiry. But it does seem that they may have actually be fully settled through the Ngāti Tūwharetoa Settlement and we - see, the decision just needs to be addressed properly in writing as to whether or not those claims actually can continue to be inquired into in the strict legal sense through this Tribunal Inquiry.

20

The Crown would not have any objection to the evidence that the claimants were intending to put before the Tribunal being presented because there are other ways and means in which – and other claims under which that evidence could be brought potentially. But we wanted to highlight that right at the very beginning.

25

DCJ FOX:

Yes, what is the name of the Tūwharetoa Settlement legislation?

JACKI COLE:

I didn't write that down Your Honour.

DCJ FOX:

You do not even know section of our jurisdiction? It will be helpful to know what section.

JACKI COLE:

5 Of the?

DCJ FOX:

Either the deed or the...

JACKI COLE:

10 Well, it is in the Waitangi Tribunal Act that the – perhaps I could come back to that and perhaps I could actually –

DCJ FOX:

It will be in the settlement legislation.

JACKI COLE:

And I haven't looked specifically at the settlement legislation.

15 **DCJ FOX:**

Okay. Well, once you have a look let me know –

JACKI COLE:

Yes.

DCJ FOX:

20 – and what clauses I should look at –

JACKI COLE:

Very happy to do so.

DCJ FOX:

25 – and what sections of the Act I should look at. What clauses of the deed, what sections of the Act, that would be helpful.

JACKI COLE:

Certainly. What I was going to suggest was the matter be dealt with – I think there is somebody's phone ringing under the desk.

DCJ FOX:

5 Well, do not answer it.

JACKI COLE:

No.

DCJ FOX:

You are talking to me in the middle of a hearing.

10 **JACKI COLE:**

The plan was perhaps to put in writing, so it is done properly so that you are fully informed as to what your concerns are. Once we have actually investigated it further, it may be that the concerns goes away but at this stage my instructions are that those claims –

15 **DCJ FOX:**

Yes, well it does depend on legal submissions doesn't it?

JACKI COLE:

Yes. So if I put it in writing and – that is not me.

20 **TECHNICAL DIFFICULTY**

DCJ FOX:

It is Alan.

JACKI COLE:

Sorry, Alan.

25 **DCJ FOX:**

Okay. It is a sign.

JACKI COLE:

So perhaps, again, if we aim for something to be filed before the Easter break

–

DCJ FOX:

5 Okay, thank Ms Cole.

JACKI COLE:

– that was what I was going to suggest. Thank you. Those were all the issues for the Crown.

DCJ FOX:

10 Thank you. All right. Now turning to the serious matter at hand that is the opening statements, unless you got something else Ms Hall?

1130

DONNA HALL:

15 Ma'am, if I can. Look we just want to say and be very clear that the first speakers are most definitely giving classic oral and traditional evidence in its most classic sense. Beginning with Ngāti Toa because that is how custom is done around here. So, we have Ngāti Toa leading off then we have Mr Twomey and then we have the trails been given to us as well with Te Kenehi Teira. So,
20 it is classic oral and traditional evidence. That is what is before you to come now.

DCJ FOX:

All right. Well having said that the ruling still applies. Only the Tribunal will ask
25 questions about all those opening statements and as is the case with traditional evidence, questions of clarification can be filed after this hearing rather than asked during the hearing. All right, Ms Hall.

(11:31) TE KAHUOTERANGI ROPATA: (#H10)

30 *Kia ora huihui mai tātou. E tika ana pea kia mihi. Te mihi tuatahi ki a koutou Ngāti Kauwhata. Te āhuatanga o te pōwhiri i tēnei ata, e mihi ake tēnei ake ki*

a koutou, otirā Ngāti Raukawa ki te tonga, tēnā koutou, tēnā koutou katoa. I te tuarua ki a koutou o te Taraipiunara, i te whai whakaaro ahau ki te taha o tōku Māmā. Mehemea e ora tonu ana, ka paki aku taringa ki te korenga āku te mihi atu ki a koutou aku whānaunga o Ngāti Porou, Hikurangi maunga, tēnā koutou.

5 *E Wī, Monty, e Karen tēnā koutou katoa. Huri rauna i tō tātou nei i tō tātou nei whare, tēnā koutou. Engari kei konei ahau hei waha i ngā kōrero mō te taha o tōku Pāpā. E te Taraipiunara, tēnā koutou katoa.*

[Interpreter: And a warm welcome to all those present here. It's only right we must firstly acknowledge Ngāti Kauwhata. It was certainly evident with the welcome we had this morning. So again and of course to Ngāti Raukawa of the south, again thank you very much. Secondly to the Waitangi Tribunal and I must give thought to my Mum if she was alive she would give me a whack around the ears for not acknowledging you and of course I am of Ngāti Porou and Hikurangi. To you Wiri and Dr Soutar, again here I am to give evidence on behalf of my father. To you the Tribunal I wish to acknowledge.]

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15

READS BRIEF OF EVIDENCE #H10

“The main focus of this evidence is to give a pre-text of the Ngāti Toa history to their version of events and the migrations of our ancestors from Kawhia and Maungatautari in support of the Ngāti Raukawa treaty claims. As time does not allow to discuss this in its entirety I will attempt to cover some of the more relative points in the northern end of Raukawa boundaries as discussed by the Raukawa Claims Committee for your considerations.

20

25 Although it would be very convenient/easier to put the Ngāti Raukawa migration south to one major event when Waitohi the older sister of Te Rauparaha who at her request to Te Ahu Karamu and other Ngāti Huia Raukawa chiefs to ring people south to the environs of Kapiti and Te Upoko o Te Ika. I feel it would be somewhat remiss of me not reference some of the major events leading up to our departure of Kawhia. Our strong kinship bonds between the two tribes and Te Rauparaha's influence or lack of in some cases over the Ngāti Raukawa tribe.

30

Then building into a crescendo of Waitohi and her take tono or invitation to Ngāti Raukawa to take up permanent residence in the south. The contents of this evidence are:

- 5 a) the events leading up to Ngāti Toa migration south, a post Hingakākā situation.
- b) the amio whenua tuatahi of 1818.
- c) the significance of the death of Marore and Hapekituarangi, the mere pounamu, amokura and Ngāti Raukawa.
- 10 d) Te Rangihaeata and the Rangitīkei. The marriage of Te Pikinga and Te Pounamu Te Whakahiamoe.
- e) the battle of Waiorua and
- f) Waitohi's take tuku whenua.

15 *Whakarongo mai e te kāwana, Whakarongo mai e ngā rangatira Pākeha, Whakarongo mai e ngā rangatira Māori katoa o runga hi, o raro ha, o te tai hauāuru o te tonga e. He kōrero tēnei mō tōku kaha. I riro mai ai i tēnei motu i tērā motu me Te Waipounamu e. Nā tōku kaha, nā tōku uaua kite ai i te whenua e. Ehara ia nei ināianeī. Nō mua he ōwhana ōku tūpuna. Tana mahi he tango whenua. Tana mahi he tango whenua. Tukua te ihu ki tō tamaiti. Me pēwhea*

20 *ka kite koe i te tai whakamanamana, te toa e haere ana. Āwhea tō ure ka riri? Eke i te tai ka wīwī, eke i te tai ka wāwā. Āwhea tō ure ka toro. Eke i te tai ka wiwini, eke i te tai ka wawana.*

[Interpreter: Oh, my people listen. Listen tom these great chiefs of Māori. To

25 you of the west and of the south I wish to speak of – I speak of this island and that particular and I do acknowledge the South Island and then from there I was able to see the land. It is not something that I can see now but certainly is in my memory. And of course, what he does is takes land and acquires more land. And to send out to your son and how do you – how will you see it? And

30 of course, as you continue on with your journey and then you will see my genitals rising and moving and continue on with its pulsating within me until it finds.]

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A Post Hingakākā situation.

The battle of Hingakākā was fought at Te Mangeo near the lakes at Ohaupo
 5 which lie over the hills to the northeast of Kawhia and the Waipa Valley and
 was the stronghold of the Ngāti Apakura tribe. Historians and kaumatua differ
 by as much as 20 years as to its actual date between 1790 and 1805. The most
 comprehensive account of the various battles and skirmishes fought by
 Ngāti Toa against Ngāti Maniapoto and Waikato including the defeats at
 10 Taharoa and Te Arawi is in te Pei Te Hurinui's 'Pōtatau'. His account for
 reasons of his own sought to demonstrate the completeness of a Ngāti Toa,
 Ngāti Koata and Ngāti Rarua defeat.

Te Rauparaha, Waitohi, Nohorua, Te Peehi Kupe, Te Rangihiiroa,
 15 Te Rangihaeata, Rangitopeora, Mahurenga, Pokaitara, Te Puoho,
 Te Aratangata, Ropata Hurumutu and, Te Maihengia and others grew up in a
 post-Hingakākā society that for the next 40 to 50 years was in constant feud
 with the interior based Tainui of Waikato, Apakura, Mahanga, Hikairo,
 Ngāti Haua and the west coast Mataatua based Ngāi Te Rangi. Their closest
 20 enemy in distance and in relationship were Ngāti Maniapoto who lived over the
 Hauturu Ranges that separate Kāwhia from the Waipa Valley. It runs from the
 Waikato and Ngaruawāhia river to the sea at Mōkau. The Tainui
 contemporaries of Pīkau Te Rangi and his brothers were the likes of
 Rauangaanga of Waikato and Pēhi Tūkorehu of Maniapoto. Te Ouenuku Rene
 25 states:

*Tērā ētahi take anō i pā ki waenganui ia Ngāti Toa tae atu ki ngā iwi
 e noho ana i reira, tae mai ki a mea, i a Waikato, i tēnei wā kua tīmata
 te honohono o ngā hapū katoa o roto i a Waikato, a Maniapoto mā.
 Katoa ēra iwi kua haere rōpu tonu rātou ki ngā pakanga o roto i ērā,
 30 ngā rā. Koia tēnei te take, i heke mai ai a Ngāti Toa ki te tonga ki
 konei noho ai.*

[Interpreter: There is definitely a friction between us and of course between us
 in Waikato, at this time we will be able to connect and make fusions with

Maniapoto and of course their achievements and again they were able to continue on with their military quests and of course Ngāti Toa migrated down here in to the south.]

- 5 Patariki Te Rei was of the view that the Ngāti Toa defeat in this battle was a severe loss of mana whenua, making it inevitable that sooner or later Ngāti Toa would have to leave Kawhia.

Te Amio Whenua 1 1819

10

According to Boast and Gilling research of the Ngāti Toa Manuscripts pay very close attention to the first 4A to the south for the opportunity for new lands and the reprise of the incessant intergenerational fighting. Te Ouenuku Rene of Ngāti Toa refers to it as the Amio whenua tuatahi or the encircling of the land made in 1819. He states:

15

Tērā i a mātou e noho ana i Kawhia ka tae ake te ope tauā o Tūwhare, ko tēnei ope nō Ngāpuhi e haere ana ki te patupatu tangata mā rātou nei mai anō i Ngāpuhi, rā anō i Te Pewhairangi huri noa i te motu, tae noa ki ngā takiwā o Heretaunga kātahi ka hoki atu nā te awa nei o Ngaruroro. Ka tae ki ērā takiwā, ki mea māra, ki Kaimanawa mā, ā, tika tonu te haere ki Kawhia. Nō konei ka haere tonu te ope o Tūwhare mā ki o rātou nei kāinga, ā, ka wehe mai a Te Rauparaha mā ki reira. Nō konei i tupu ake i te whakaaro i te mea he kaha rawa o Waikato. He iwi moroiti noa iho tēnei o Ngāti Toa kātahi ka takoto te whakaaro i o mātou pakeke, pai atu te haere mai ki konei, pai atu te heke mai o Ngāti Toa ki te tonga ki te ūpoko o te ika ki konei noho ai.

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25

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[Interpreter: To Kawhia, when we came to a war party that came from Ngāpuhi and of course with their conquests from Ngāpuhi to Pewhairangi, right throughout the whole country and again eventually to Heretaunga and Hastings and of course through their journey through Ngaruroro and when they arrived at those particular – with those great cultivations and again from there I want to circumnavigate to Kawhia and of course I remember Tuwhare and again

Te Rauparaha was able to launch from there and again this all came to because they gave the effect to Waikato, Ngāti Toa are only a small number and again we must acknowledge our – and again the old people said it is okay to come down here, it is okay for Ngāti Toa to migrate to the south and again that the head of the fish, they will settle.]

This journey was hugely significant to Ngāti Toa at the time and although there are varying opinions of who organised this tāua and who was present, the account is the same, it led to one of the largest and most likely the farthest-reaching war party to traverse the north island, from the far north up to Kawhia, Taranaki to Wellington, Wairarapa then back down to Heretaunga following the Ngaruroro river to the Kaimanawa ranges on to Kawhia.

In the Himatangi and Kukutauaki books both Matene Te Whiwhi and Tamehana Te Rauparaha state approximately 30 Ngāti Toa chiefs joined this tāua and then Ngāpuhi had a renowned fighting tutor such as Tūwhare, Patuone and Tamati Wakanene. The overall success of this tāua, I was joint too to the even of the Norther tribes acquiring muskets which virtually laid waste from Whangaihu to Otaki which is why it made it easier for Ngāti Toa to come down the second time. It was on this heke of 1819 the tauā arrived at Omere that either Tuwhare, Patuone or Waka Nene uttered these words:

Ko te kōrero hoki a Tuwhare i pēnei nā ana i to rātou taenga atu ki Omere. Ka titiro atu ki te moana o Raukawa, ka kite i te kai puke e rere ana. Katahi ka kī atu a Tūwhare ki a Te Rauparaha, ‘Tēnā e Raha, haere mai, tangohia tēnei whenua mōu. Titiro ake te Pākehā e haere rārā i runga i te kai puke, ka whiwhi pū koe māu, hei puhipuhi tangata māu.’ Takoto tonu te kōrero a Tuwhare i roto i te ngākau o Te Rauraha, nō te hokinga ki te kāinga ka tīmata te whakaaro nei nā, pai atu me haere mai rātou ki konei ki te Tonga noho ai.

[Interpreter: What Tuwhare said when he arrived at Omere. I look upon the Raukawa Moana and Tuwhare said to Te Rauparaha, ‘E Raha, come to us. I have a land i wish to gift to you. See look at the Pākehā, they are going on their

vessels and their many marine, again there is an opportunity to purchase guns and Tuwhare had a soft spot for Te Rauparaha and it was agreed that it was okay for him to migrate to the south.']

5 Te Rauparaha returned to find that his principle wife Marore had been killed by a Waikato chief named Te Rangimoewaka. Te Rauparaha then arranged for the killing of a Ngāti Maniapoto chief Te Moerua. This of course served only to escalate matters and conceivably this may have been Te Rauparaha's intention. The result being a very hard-fought battle at Te Karaka with a great
10 loss of life. But the invasion force of Waikato and Maniapoto overwhelming Ngāti Toa where upon they were besieged for some weeks at Te Arawi. With the state of enmity between Waikato and Maniapoto and Toa and the Kawhia tribes it was inevitably a no prisoner situation at Taharoa and Te Arawi, until the intervention of Te Rangituatea and his offer of a noble retreat from Kawhia, the
15 ceding of ancestral Toa lands to the victors. This caused some friction between Rangituatea and the leaders of Waikato and Maniapoto, Rauangaanga and Peehi Tūkorehu, who were for total extermination of Ngāti Toa.

I make note here of a line in Te Rauparaha's mōteatea, '*Tērā ia ngā tai o
20 Honipaka,*' where he states, '*Nāku i a rā koe i waiho i taku whenua iti*'. I leave to you this, my portion of land. Confirming Ngāti Toa's ceding their ancestral lands with a negotiated exit over a period of time as opposed to Pei Te Hurinui's picturesque view of Ngāti Toa and Te Rauparaha escaping in the dead of night under extreme duress.

25

'Haere rā e koro kia whanga ai koe i ngā kōrero huhua noa mōku.' Go now e koro to the night, there to await and hear of my many deeds.

This is a reference to Te Rauparaha's immediate Huia whānau who are part of
30 the original heke in which he was rangatira. Having ascended to that position at the passing of Hapekituarangi in a famous story of social climbing. It says Te Rauparaha gained ascendancy and mana at Hape's ōhaki or death bed speech. Generally a time when chiefs would make their final wishes known and who was to succeed in at his death."

Mā wai taku mana me taku tūranga e hāpai?

[Interpreter: Who will have my mana and who will take over my position.

- 5 Basically he is asking who of you will hold my mana and take my position for the future.

“The silence inside that where as Te Rauparaha and his cousins sat with their matua must have been deafening. Who of these men in the where of
10 Hapekituarangi were prepared to uphold the mana of Ngāti Huia in the civil war against Tainui, especially the fearsome dragon, Te Rauangaanga of Waikato Taniwha rau. Considering Hape had a lot of enemies near and afar in a life of incessant warfare? Te Rauparaha seized the opportunity and assumed the mantle of Hapekituarangi of Huia and Raukawa. The mother of
15 Te Rauparaha, Parekohatu was from a junior daughter of a junior line of Ngāti Huia and so the social standing of Te Rauparaha among his peers and contemporaries was considered ‘inferior’.

Iwikatea Nicolson states:

20 ‘Although he wasn’t of senior birth or senior lineage, from the time of his birth he was taken and raised as a rangatira, to be trained as a leader, in fact when Te Rauparaha was old enough to learn about war, he was taken back to Maungatautari to Hape and trained by Hape. He became the “*Kai hāpai rākau a Hape,*” or the personal
25 arms bearer of Hapekituarangi. He would have experienced and probably even blooded or made his first kill in the company of his uncle. So, understanding that it’s not surprising to find Te Rauparaha at his uncle’s death bed.’

30 1145

Iwikatea goes on to state

‘the way historians have written about this incident is as if he just turned up with all the cheek in the world and put his hand up! he may

have already been selected by Hape to be the leader ahead of his sons anyway, which wouldn't have been unusual. Maybe this is the reason for the lack of response to Hape pleas. Understanding this you see that Te Rauparaha would have made sure to be there at his uncle's death bed. Also, historians state that Te Rauparaha at the death of Hape received the paramountcy of all Ngāti Raukawa which is quite incorrect. Iwikatea emphatically states that Te Rauparaha received Hape's mana'.

5

10 Although Hape son Te Horohau with some Ngāti Raukawa chiefs may have accompanied this original heke of 1820 Iwikatea states Ngāti Raukawa had nothing to do with the original heke as they were reluctant to come south and didn't come down until much later.

15 Iwikatea further highlights

'Te Rauparaha left Maungatautari with Te Akau people of Ngāti Tuarā and Tūhourangi of Te Arawa who weren't necessarily supporting the heke for the sake of Te Rauparaha and Ngāti Toa, more likely for Te Akau's sake.'

20

The other section who followed was Ngāti Akamapuhia, who are of Ngāti Toa/Ngātokowaru/Maniapoto construct residing in around Maungatautari at that time. And also, I've got to say, Hemi, Ngāti Whakatere, although I didn't put it in here.

25 a

Thus, Raha found himself leader of the Ngāti Kimihia of Ngāti Toa following the death of his father Werawera (likely at Hingakākā) a section of Ngāti Tuara, Tūhourangi and some Ngāti Huia of Raukawa following the death of Hape. To validate this ceding of mana Te Rauparaha receives the famed mere pounamu Amokura, which we couldn't get up here today for reasons of its own, the two wives of Hape, Te Akau and Te Kiri wērā and the respective families of Te Arawa, along with two fully carved waka tauā, Te Paenui o Whiti and Te Ahikākāriki also carved by Te Arawa. Although Te Rauparaha urged Ngāti Huia/Raukawa to follow him south, it was Hape's son Te Horohau who

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replied to Te Rauparaha saying the people will not follow him to Te Pane o te Ika, Te Rauparaha then left by the way he came without the support of Ngāti Raukawa as a whole.

5 **Te Kākākura: I tāpukengia, oratia**

This phrase is in reference to an incident that occurred prior to Ngāti Toa leaving Kawhia. At the request of the kaumatua that were unable to make the arduous journey south they were buried alive under a waka, at an undisclosed
10 place. This is an old Māori custom of better to die at the hands of your own people rather than be killed, eaten, and desecrated by the enemy, or worse to be made a 'herehere', a prisoner to live a subservient life under their Tainui relations. This incident although unimaginable to us today in a modern context highlights two things. The constitution of those ancestors with their explicit
15 determination to forge a new future in the south and the finality of the Ngāti Toa exit from Kawhia. Te Peehi Kupe was to use this whakatauaiki later as his ohaki before his death at Kaiapohia referring to his elders who were left behind in Kawhia.

20 *Kaua e tuku au ki ngā atua, erangi tukua ahau ki Te Kākākura*

Do not send me to the gods, but instead to Te Kākākura, the burial place of my ancestors

25 As time does not allow, and the Ngāti Toa Deed of Settlement of Historical Claims and Raukawa History will shed ample light on the heke or migrations south, I will fast forward to some of the more pertinent points raised by the Raukawa steering committee. In regard to issues of settlement and reoccupation of some of the iwi taketake through Featherston in the northern
30 boundaries of Miria Te Kakara, Te Reureu, and the Rangitīkei.

Te Rangihaeata and the Rangitīkei: The Marriage of Te Pikinga and the pounamu of Te Whakahiamoe

On the downward journey of 1818 with the northern tribes Te Rangihaeata showed some clemency towards a section of the Ngāti Apa tribe firstly by sparing some of their rangatira allowing them to live, and remain on their lands. Under Māori tikanga these chiefs were now beholding or obligated to

5 Te Rangihaeata. To seal this arrangement Te Rangihaeata took to wife Te Pikinga one of the daughters of a high ranking Ngāti Apa chief. The significance of the union was highly political for both sides. For Ngāti Toa it meant a valuable connection to the South and relative reprise from enemy tribes as they considered their returning in the near future to take up permanent

10 residence in the Kapiti and Wellington Districts. For Ngāti Apa the ability to be part of what would be a new world order or be a subservient lifestyle of sorts but remaining alive and well on their ancestral lands.

It is at this point that the pounamu slab, Te Whakahiamoe, should be mentioned

15 as this was the proverbial seal in the deal. After the union of Te Rangihaeata and Te Pikinga she then accompanied the army ō whenua south and later back to Kawhia. On the second journey south and initial migration of Te Heke Tataramoa a slab of highly prized pounamu was presented by Te Pikinga's father to Te Rangihaeata and Te Rauparaha with the intention he would not take up arms against Ngāti Toa in the future and probably really

20 happy to see that his wife and his daughter was still alive as well. Te Rangihaeata agreeing to this dually accepted. From this point on Ngāti Apa lived in relative security on their tribal lands unmolested until the battle of Waiorua in 1822.

25

Te Rauparaha had intended later to use a portion of this pounamu for a waka, promised by the Muaūpoko at Lake Papaitonga, the outcome of which Te Rauparaha was invited by the Muaūpoko purporting hospitality to offer him with a feast and present him with a waka. Instead, the final outcome was his

30 children were killed in the dead of night, himself escaping by busting a hole through the back wall of the whare. This act of treachery of Paturarekaipo, a dishonourable treacherous killing at night used as a proverbial insult for that tribe was to prove disastrous for the Muaūpoko tribe later who if not for the

intervention of a Ngāti Raukawa chief, Te Whatanui, more than likely would have led to the complete extermination of that tribe.

5 The following is a whakatauaiki from Te Rauparaha to Te Whatanui as a rebuttal when the later chief made an appeal of clemency to Te Rauparaha to spare the Muaūpoko tribe.

10 *Ka pā he rakau Kotahi, tēnā he rakau rua, whata ake he rākau, hāpai ake he rakau. Kei te whai au ko te kakī tangata, ko te kakī whenua kia mau i au.*

When a weapon strikes another reprise, when a weapon is poised another lifted. I go for the human throat in order to seize the throat of the land.

15 **Te Rangihaeata and the battle of Whakapaitai/Te Umupakaroa/Wai-o-rua 1822.**

20 *‘Ākuanei ka rongo rātou i te riri o te pākeha.’* [Interpreter: and they certainly heard the smite of the colonials.]

It was said by Te Rangihaeata the night before they attacked,

‘Shortly the enemy will hear the anger of the Pākeha.’

25 and that is a reference to the guns, the few guns that we had.

I will make mention here to this battle more commonly known as the Battle of Waiorua, as it highlights three things. Firstly, the intense disdain of the iwi taketake towards these new Tainui immigrants and their attempt to
30 take up permanent residence in the area. Secondly, Ngāti Toa’s ascendancy as mana whenua of the whole district. Thirdly, the end of the Ngāti Apa slash Toa alliance. Later Featherston ignoring these facts in his land dealings by alienating Ngāti Raukawa *mana whenua* rights in the Rangitīkei area and acquiring huge tracks of land and purchasing from Ngāti Apa and others.

The term *Whakapaetai* is an expression reflecting that there were so many enemy waka seen crossing Te Rau o te Rangi Channel off Waikanae and Paraparaumu that the sea could not be seen or that there was an unbroken line of canoe from the mainland to the island. Although this is perhaps an exaggeration, which quite often happens when using Māori metaphor, in terms of the number of waka in Toa present researchers vary between two to three thousand. It definitely gives effect to the fact that this was a very, very large war party comprising of Ngāti Hau of Wanganui, Ngā Rauru, Ngāti Apa, Rangitāne, Kahungunu, Muaūpoko, Ngāti Te Ira, Ngāi Tara, Ngāti Kuia, and Kai Tahu.

Secondly, Ngāti Toa's ascendancy to *mana whenua* of the whole district is exemplified in this expression, 'Te Umupakaroa', bluntly refers to the long roasting fires used to cook and devour the enemy and (for a number of months) later of which their remains were discarded into the Ōkupe Lagoon on Kāpiti Island.

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Thirdly the end of the Ngāti Apa/Toa alliance. The prospect of a reconciliation between Ngāti Toa and Ngāti Apa had virtually been destroyed at Waiorua, where Ngāti Toa had captured a high ranking Ngāti Apa chief Te Rangimairehau. The chief called on Te Rangihaeata to have regard for his close blood relationship to his wife Te Pikinga and to show mercy.

Te Rangihaeata is said to have responded savagely and had him hurled alive into the open cooking fires. Numerous Ngāti Apa were killed and eaten at Waiorua. But Ngāti Toa did not stop there. A Ngāti Toa tauā was led up the coast and attacked a pā at Awamate on the Rangitīkei River, killing some ten leading Ngāti Apa chiefs. The same tauā recommenced the widespread killing of Rangitāne and Ngāti Apa inland killing about another 40 as it returned to the coast. Numerous tauā now scoured the Rangitīkei-Manawatū, Horowhenua, and Porirua areas killing all the Ngāti Apa, Rangitāne, Ngāti Ira and Muaūpoko

they encountered. It should be mentioned here that all resistance of these tribes was eventually non-existent from Whangaehu to the top of the South Island. Ngāti Raukawa were given as was promised all the area from Whangaehu to Kukutauaki. The Rangitīkei Purchase saw a change to some of the abovementioned area.

The Rangitīkei Purchase

Later the Ngāti Raukawa chief Nepia Taratoa who had controlled the leasing of Rangitīkei lands chose to distribute and share the rents received with Ngāti Apa and others from Whangaehu to the Turakina and later to the Rangitīkei but whom remained venomously opposed to any considerations given to these tribes south of the Rangitīkei. After his death the Rangitīkei purchase was agreed to and consistent with recognition of the original giver, a large number of Ngāti Toa are listed in that transaction.

Two points regarding this transaction:

- a) Not all of Ngāti Raukawa agreed with the sale.
- b) Ngāti Apa who were included agreed not to claim south of the Rangitīkei River.

Te Rangihaeata some years before this sale between in 1844-5, personally escorted Ngāti Rangatahi to Te Reureu at Rangitīkei to settle these lands as a type of gratuity perhaps for their fortitude in their stance with Te Rangihaeata at Pāuatahanui and their expulsion from the Maraenuku Pā at the Hutt Valley in a highly dramatic conflict culminating in open warfare from the Hutt to Pāuatahanui and Battle Hill. As there was a very real threat that Ngāti Toa would be killed, Ngāti Toa, Raukawa, Huia under Te Rangihaeata, Ngāti Rangatahi of Maniapoto, and a small section of upper Wanganui under Te Mamaku, and Ngāti Mutunga, Ngāti Tama under Taringa Kuri held out the might of British forces for several days in order to allow elders, women and children relative safe passage to Te Waka (which is the way out to Katihiku) and then they went to Te Rāhui over by the Otaki Racing Course and later on

to Poroutawhao north of Levin. Eventually this led to Te Rangihaeata being exiled to Poroutawhao, and Te Rauparaha illegal detention sometime after.

5 Prior to the invasion of Kapiti and the success of Ngāti Toa at Waiorua the Te Atiawa and Ngāti Tama contingent of Te Rauparaha original heke had returned to Taranaki, so that's prior to Waiorua, for reasons of their own. Shortly after Waiorua – shortly after Waiorua a powerful of chief of Raukawa and close relative to Te Rauparaha, Te Ahukaramu arrived in the Kāpiti area this heke was known as the Heke Karere (this was not an occupation force).
10 According to Iwikatea Nicholson the word had got back to Maungatautari that '*ī kōhurungia a Te Rauparaha me Ngāti Toa*' or that Te Rauparaha and Ngāti Toa had been murdered. Now, there are a few interpretations of the word kōhuru one is a curse, the other is to be murdered. Whatever the interpretation under Māori tikanga the result was the same either one of these interpretations
15 required utu. Although after numerous attempts by Te Rauparaha to elicit the support of his Raukawa relations they were always reluctant to follow him."

1200

20 Ena, probably see why, is a bit hot to touch somethings that fulla.

"Iwikatea goes on to say: 'but as soon as they heard their relations had been murdered they were quick to raise a war party.'

25 Well, Te Ahukaramu at least seemed to be responsive and arrived at Kāpiti with approximately 120 warriors. This was to be a visit of considerable significance for observing Te Rauparaha totally dominant position in the area and the lack of local inhabitants as Ngāti Toa ranged far and wide seeking utu. He was to return to Maungatautari some months to urge Ngāti Raukawa to change their
30 plans of settling in Heretaunga under Te Whatanui and move to the Horowhenua. His commitment to moving Ngāti Raukawa to the south was extreme when they refused to migrate to Kapiti he was incensed and burnt their whare to the ground which proved to be very persuasive in the iwi choice of its final location.

Waitohi He Take tuku whenua:

5 *Ngāti Raukawa e hoki ki Maungatautari mā wai o koutou e mau mai
aku werewere, hei noho mai ki runga i tōku whenua kua oti nei i au
te haha!*

Ngāti Raukawa return to Maungatautari who of you will bring my
barnacles to this land we have cleared.

10 This statement made by Waitohi given to Te Ahukaramu and others of
Ngāti Raukawa is a metaphor expressing her desire for Ngāti Raukawa to come
and occupy the lands to the south.

The reply being:

15 *Ka tū mai a Te Ahukaramu.*
Te Ahukaramu stood and said
Māku mā te tuarā nui o pakake
I will, by the strong back of pakake .

20 This event highlights a couple of important facts. Firstly the mana of Waitohi
and the high regard of which she was held by Ngāti Raukawa and especially
Ngāti Huia. Even after numerous attempts by her brother Te Rauparaha to illicit
the tribes support it generally fell on deaf ears. Huia must have held Waitohi in
such high esteem that it was only under her tono and Te Ahukaramu
25 commitment to keep his mana intact as he had given his word to Waitohi,
Te Rauparaha and Ngāti Toa stating on the marae that he had the mana to
bring Ngāti Raukawa/Huia to the South could possibly have been the reason
that led to his extreme course of action.

30 For whatever reason later saw en masse under three main heke and the boys
will talk about that shortly, and various minor heke of Ngāti Huia and
Ngāti Raukawa arrive to settle in the Kāpiti Horowhenua, and Rangitīkei
environs. Even Te Whatanui himself who still insisted on Heretaunga went with
a section of Ngāti Raukawa to settle there (whom later were repelled by a huge

force of Ngāti Kahungunu), (well that is a whole another story) had to acquiesce and eventually joined up with his relations at Kapiti.

Tā Ngāti Toa he Take Muru raupatu i te Whenua, Tā Ngāti Raukawa He

5 Take Tuku Whenua:

As there seems to be some conjecture over the definition of a take tuku whenua I would like to state here my definition under traditional Māori land tenure when Uenuku Kaitangata, and Tumatauenga mana reigned supreme. Anytime any land was given to another whānau, hapū, or iwi it was theirs and held in
10 perpetuity to do with as they pleased, what they pleased, and for as long as they pleased whether that be for example a year, a 100 year a 1000 and so on. But as soon as that land was not occupied regardless of the time period it was returned to the people or descendants of who originally gave the whenua.

15 And I noticed that's one thing that's not really recognised in the Courts in your fullas Tribunal and the machination of the Crown, and I think that's one big point we need to look back kei tōku iwi o Ngāti Kawa.

Ngāti Raukawa au ki te tonga are so inextricably intertwined into the fabric of
20 Ngāti Toa whakapapa, history, and events it is hard to imagine our past and in some respects our future without them. Our Tainui relations have 20 Marae, 25 hapū fully operational and active to varying degrees providing a sense of permanence and I cannot imagine our people ever experiencing another dramatic separation such as the one our ancestors persevered under such
25 extreme circumstances. But instead should be used as an example of our shared tenacity, endurance and constitution together into the future.

1205

30 I now make reference to the Raukawa chief Te Whatanui who some years later, at the request of his relations at Maungatautari was asked to return to reoccupy their lands. He was to refute any considerations of himself, Ngāti Huia and Ngāti Raukawa returning to Maungatautari in a waiata or spontaneous

composition called *Rongo Kōrero au...* which seems appropriate to finish this submission with his words stating his desire to remain in the south permanently.

5 ...*Me hoki au a Ngāti Raukawa ki Maungatautari? Ki te kainga hoki i whakarerea nei e te ngākau...* [Interpreter: I should return back to Maungatautari to the time that I left behind.]

Shall I (Ngāti Raukawa) return to Maungatautari? To the home that my heart has left behind!!”

10

Ko Toa ki runga, ko Toa ki runga. Ko Karewa ki raro rā te marae tupuna kei Te Paikea e. Tuwhareiti, Rawiri Puaha, rāhuitia i ngā tini kaupapa e. Tū mai rā e Toa hei pōwhiri o tini rau whanaunga mai e. He kupu a Waitohi, ka wawatia tō waka, ka oti rawa, tau ana e. Ka hoki ki ngā whakataukī, pou pata tēnā pou o te whare, ka uia ki a Hape, ko wai kei te toa? A kimihia ki runga rā, Taihakurei, ko Te Haunga ki raro rā e.

15

[Interpreter: Karewa below. As he gave effect to all. Stand Toa and give a warm welcome to all. The words of Waitohi, bring your vessel until you arrive. And we go back to the proverbs, and the shaking of the posts of our house of Hape. Who is the chief? And of course what is spoken above and of course the rubbish which is fettered below.]

20

MŌTEATEA

25 **TE KAHUOTERANGI ROPATA:**

Nō reira kei te Taraipiunara, tēnā koutou, a tēnā koutou, kia ora huihui mai tātou.

1210

30

DCJ FOX:

Tēnā koe, otirā koutou, tēnā koutou. I kite au te mana kei muri i a koutou. [Interpreter: I certainly did see the mana expressed very clearly.]

All right. Mr Ropata, this is the third time that you have assisted the Tribunal and we are so grateful.

5 **TE KAHUOTERANGI ROPATA:**

Thank you.

DCJ FOX:

10 So, I am going to ask the Tribunal if they have any questions and perhaps after that you could talk to us a bit about or maybe you could do it beforehand some of the tāonga that are in front of you.

TE KAHUOTERANGI ROPATA:

15 Kia ora. I will let you all. No, I will. I will just get my breath back. Pause for suspense and you do these things it just takes you over. But anyway, officially the korowai that I am wearing, thank you my cousin Elaine. She is from the Kaki whānau, the direct line of Waitohi and Te Rangitopeora of the Ngāti Kimihia and Ngāti Te Maunu lines of Ngāti Toa.

20 Secondly this niho rei is a spoon tooth given to me by my Uncle Morphy Kerehoma who is no longer here with us today. It is cut in half. One half is given to his oldest mokopuna, the other half was given to me as a speaker for Whakarongotai because he was our main speaker at Whakarongotai Āti Awa, Ngāti Toa. With the thought that one day him and
25 myself and his mokopuna will one day be sitting on the paepae at Whakarongotai looking after that marae.

Down on the bottom there we got the lighter mere pounamu and that is the frame Te Heketua. You might be familiar, that was from – owned by
30 Te Rangihaeata. It is a tāonga that was brought down from Kawhia and it features the story. It features at the battle of Wairau which I am sure you are probably familiar with that and these 22 Pākehā who were to death by that – the *niwhaniwha o tērā mere pounamu*. Over land, disputes and surveyors and I suppose the complete frustration of Te Rangihaeata who had signed the

Treaty of Waitangi in 1840 and then 1843 it had enough and the kōrero of that was that, *kāore a Ngāti Toa i haere atu ki reira ki te whawhai, i haere ki te kōrero. Engari ka komekome te tou o te Pākehā ka taka te pū ka mate a Rongo.*

[Interpreter: Ngāti Toa did not go there, they went there to talk and of course things evaporated.]

5 So, Ngāti Toa never went down there to fight. They went down to kōrero and then it must have been one of the soldiers from the Pākehā side, the Crown and I do not blame them because I do not think those people from Nelson that

10 walked over there and if you have a look at the narrative, a lot of them were farmers, store keepers. They did not realise what they were just about to get themselves involved with. You know these Ngāti Toa, they were hardened veterans. They had three generations of incessant fighting and killing and those

15 Pākehā people holding the guns, one of them must have got scared and left off a shot. *Koina te komekome, te tau o te Pākehā.* It's an expression for when you get – when you are scared your anus contracts and it is in one of the claims Uncle Iwi actually told us that and so that shows you the intimacy that our people knew about their body, their wairua and their tinana. And anyway, a

20 stray shot went off that started the whawhai where those Pākehā went up the Tuamarina Hill asked Te Rauparaha if they could with a white flag but obviously Te Rangihaeata when he found out that his wife Rongo had been killed, it incensed him so much that he lined them all up and killed all those fellows, 22 of them with Te Heketua.

25 The one next to it is Te Amokura. Not Te Amokura sorry that could not come, that is Tuhiwai. Tuhiwai was the mere pounamu of Te Rauparaha. That was Te Rauparaha's, I suppose that was the one that guided us all the way down from – that was the one that led our people Ngāti Toa from Kawhia. They say it is a mere pounamu matakite. It can see the future and given the right karakia

30 and incantation when you place it into the water it used to glow and then that's how he knew that he was making the right decisions and that is called Tuhiwai and I would just like to acknowledge my cousin, my tuakana, Tāku, for coming up and supporting me today, giving me the opportunity to speak because under our tikanga it should be Taku speaking but he *kua whakahia, kia tū ahau, haere*

a mai tērā taonga, Tuhiwai. [Interpreter: He certainly did agree for me to stand and we both brought the Tuhiwai together.]

Amokura was supposed to come but for reasons of its own, it did not and that was – that is still held within the whānau of Ngāti Toa and that was the mere pounamu that I talked about earlier when Hape passed and Te Rauparaha receiving the *mana* and the *Tūranga* of Hape ki Tuarangi. Kia ora.

DCJ FOX:

Thank you, and the big mere? Is that something someone else is going to talk to us about?

TE KAHUOTERANGI ROPATA:

Oh, that is one of the – I think that whānau will talk about that, but we are all related to that one too.

TANIA SIMPSON

15 *Tēnā koe, tēnā koe ka marama mai ērā kōrero i mua i a mātou tēnei rā.*
[Interpreter: Thank you for your explanation of your evidence.]

When Iwi was presenting in the oral *kōrero tuku iho* at one point he said something along the lines of, “I don’t know what all of this has to do with claims against the Crown.” You know he was giving the – there was some reluctance I suppose to go into some things, but I just wondered how you think about it in terms of the importance of the traditional history for setting the context of the claims against the Crown?

TE KAHUOTERANGI ROPATA:

25 Yes, I have thought about that that is why I am very reluctant to get involved with these things. I know that it can cause a bit of distress amongst other people and everyone has their versions of *kōrero*.

At this stage I think I need to acknowledge Uncle Iwi taking me under his wing for the last 15 years just being around the *kōrero*. Also, that Uncle Iwi was a

speaker for Te Atairangi Kaahu. That his tutor and his kaiako was Te Uenuku Rene who I also talked about in this kōrero. He was a speaker for Koroki and quite often he would tell me that he is not really on that paepae at the Kīngitanga by virtue of his Raukawa whakapapa because there is plenty of
 5 Raukawa speakers, but he was there by virtue of his Ngāti Toa whakapapa and being trained by Joe Rene, so I needed to acknowledge those two. And thirdly, my tuakana Paora Temuera who passed away a few years ago, four years ago now, he was a prolific researcher and reader of our tribal history who instilled it in me.

10

So to answer your question I think that for me personally, although it was hard because it can consume you when you write these things—I think it is about 5000 words—it consumes me day and night day and night, and quite often I will ask myself actually why I am giving all of that kōrero. Some kōrero is all right
 15 to give and actually the hard part is knowing what to give and what not to give. Because we were so stressed for time I just basically put it all out there and I think it went in to about 7-8000 words and then I had to sort of cull it back. You know it is easier to cull than to actually keep.

20

So I think it is important in terms of giving emphasis to historical kōrero especially in terms of Ngāti Toa, and today I acknowledge Ngāti Raukawa asking us to come up to set a pretext or a tūāpapa, with the thought that they can append and add-on their version of histories and ours together. If that is what it is going to take to beat the Crown – no offense because you know I
 25 know lovely lady I have met, you through the – and if that is what it is going to take to get some culpability back for our people who have suffered literally for a couple of hundred years because of some of the bad things that have happened in our past. So especially for us down here in the Tonga disaffected with our reo with our tikanga and our kawa. The cities moving to us not us
 30 moving to the city. *Āhua rerekē i tōku taha Ngāti Porou, I heke mai koutou ki ngā tāone, engari mātou e noho ana ki konei ā mā ngā tāone kē i hūnuku mai ki a mātou.*

[Interpreter: As you can see form my Ngāti Porou side, no we moved to the towns whereas from the other side it's the towns moving towards us.]

1220

And so living, what would it be, trying to live off the land and all those things
 5 happening by 1950. We can't eat out of our harbour anymore in Porirua and
 so that is indicative to all the stories that have been happening nationwide for
 last couple of 100 years.

All you fellows be careful, once we all settle and claim we'll all be coming to the
 10 table. I don't like the process of the Tribunal because it's been divisive, and
 you spoke to it on the marae today. But how can we be unified when we'd ask...

TECHNICAL DIFFICULTY – AUDIO

15 **(MICROPHONE SWITCHED OFF – 12:20:24 TO 12:45:05)**

DCJ FOX:

You have to take your seats everybody.

Please forgive us, we need to be able to record this evidence or opening
 20 statement, so we want to make sure that it is captured from beginning to end
 otherwise, we will have to interrupt the proceedings again. That is the reason
 why I stopped.

We know definitely that all the orators that are giving evidence are...
 25

TECHNICAL DIFFICULTY – AUDIO

(MICROPHONE SWITCHED OFF – 12:45:40 TO 12:47:57)

30 **PĀNUI (HAUKĀINGA)**

HEARING ADJOURNS: 12.48 PM

HEARING RESUMES: 1.57 PM**DCJ FOX:**

Dr Grant, we are waiting, and I think we are still waiting for Ms Simpson. Well, the panel is ready and given we are an hour and half I thought we would save
 5 two minutes by getting you start right now, thank you. The Tribunal had no further questions as I said earlier. Thank you for helping the Tribunal again, though. Kia ora.

(1:58) JERALD TWOMEY: (MIHI)

10 *E te Kaiwhakarite rauroha, mou i tuku atu ngā whakaaro ki te (Māori 13:58:25), nei rā te mihi, tēnā koe. E te kahurangi, kia tika atu ngā kōrero a Matene Te Whiwhi, tana kōrero e te Kānara, kei a koe e kani. (Māori 13:58:35) te paua kia nanahu ki roto i te whare. Nei rā ngā paua ka piri ki a koe, te toka a taiao, tēnā koe. Otirā, Hikurangi maunga, te Matanga, Matanga hītori nei.*
 15 *Kia tāku manuhiri kua hoki mai nei ki te kainga, tēnā koutou katoa e te Taraipiunara.*

[Interpreter: I was to acknowledge the elder who led us in prayer this morning. To you the Judge and of course I must go back to Matene Te Whiwhi and he
 20 speaks of it to – and of you that opened up this opportunity for us to have our hearing here. Hikurangi, the mountain, the expert in his field. And of course, it's obvious that you have returned back like the bird to its home.]

Ko tāku nei te tautoko i ngā kupu rahi, utaina rā ki runga ki a koutou, ki runga i
 25 *te marae, ngā tau hou, ngā waewae tapu kua tae mai nei, tēnā koutou. Ngāti Toa Rangatira, nei rā te mihi. Nā koutou te huarahi para, nā koutou anō enei ngā taonga, ngā hua mō te kōrero i hari nei i tēnei rā hei whakamana i tā tātou kaupapa, tēnā koe.*

30 [Interpreter: And I do want to acknowledge all the expressions expressed and particularly all those who are new is new are most welcome here. Ngāti Toa, my acknowledgements to you all. And of course all these particular treasures

that you have brought forward for us has given, added more integrity and mana to our proceedings.]

E kui mā, e koro mā, ki a manawanui mai ki tēnei e tū mai nei i mua i a koutou.

5 *E te iwi, tēnā koutou. Otirā, tēnā tātou i tēnei tūāhuatanga, he mea waiho mai e rātou mā, te iwi e putiki mai rā e te kapuni katoa o te wairua. Nō reira, e kui mā, e koro mā i te pō, maranga. Maranga, maranga mai kia tatū mai rā koutou hei waha i tāku tua. Kia tika nei te mahi.*

10 [Interpreter: To my elders, matriarchal, patriarchal, I am in good heart that you are here and to all the many peoples present here. And again, welcome to our hearing. And of course, I must acknowledge those old people in acknowledging the spirituality of our side. And of course, our dear elderly raise and be with me at this point of time to ensure that I do what is right.]

15

MŌTEATEA

He waiata tēnei nā Te Ao mō Te Tahuri Whatanui, tama a Te Whatanui. I haere a Te Tahuri ki Taranaki ki te kimi wahine māna, engari i haere takakau atu, hoki

20 *takakau mai. Ko te mate kua mahue te kī atu kua haere ia, kāore i āta whakarite i a ia i mua i tana haerenga. I te waiata nei ka whakahuahua haere ngā hononga matua ki ngā waka, ki ngā iwi, ki roto, ki waho tonu o Ngāti Raukawa.*

[Interpreter: This is the son of Te Whatanui who wrote this, and it was at the

25 time he was going to find a wife for him, and of course he did swim and Mahoe said it's Haria, and he did not agree before – when he left. And course, the many areas that he did visit on his journey. And of course, one -]

And hopefully this presentation will fulfil that similar role, that is to explain the

30 iwi connections, you'll see that we are difficult, however, that we are one as well.

(2:04) JERALD TWOMEY: (#H13)**READS BRIEF OF EVIDENCE #H13**

“*Ngāti Raukawa, e hoki ki Maungatautari! Mā wai o koutou e mau mai aku werewere hei noho mai i runga i te whenua i hāhā nei?*’ *Kia whai nei i te kōrero a taku rangatira o Ngāti Toa Rangatira.* [Interpreter: I will speak on behalf of my ancestors.]

Although Te Rauparaha had tried to encourage his Ngāti Raukawa kin to move south to support Ngāti Toa Rangatira; it was these words by his sister, Waitohi, that elicited the desired response, as issued by Te Ahukaramū; ‘*Māku, mā te tuarā nui o Pakake*’. With these words Ngāti Raukawa was committed to moving south to new lands.

Werewere can be translated as part of the female, the pubic hair and was an old way of talking about a female lineage, whereas today you might hear people use *whare tangata*. Waitohi was referring to her mother, Parekōwhatu, and her Raukawa lineage.

Under their fighting chief, Te Rauparaha, Ngāti Toa Rangatira had seized a large area from Te Whanganui ā Tara through to the Manawatū Rangitīkei area. Settling into the area was not without challenges, including an attempt on the life of Te Rauparaha. *Te Reikeipō kua kōrerohia.*

He escaped but his children and others were not so fortunate. Later, an unsuccessful raid on Kāpiti was made by a large coalition of tribes from the Lower North Island, and the top of the South Island, in an effort to rid themselves of Ngāti Toa Rangatira. When Raukawa heard that, “*kua kōhurutia a Te Rauparaha,*”

[interpreter: That kōhuru had.]

they were duty bound to check on their whanaunga and prepared to seek retribution if required. A fighting party made their way to the south to confirm

what had happened. Called Te Heke Karere, this is regarded as the first of the Raukawa heke to the south.

5 They were relieved to find that Te Rauparaha was alive but lamented the loss of his people. It was towards the end of the visit, while preparing to leave, that the offer by Te Rauparaha, and then Waitohi was made to their Raukawa relations. It was not the first time that such an offer had been made, but this time it was accepted.

10 Maintaining dominance over such a large area would have been a difficult task. Modern armies recognise the importance of seizing and holding ground. Many armies have won the battle but lost the war due to a lack of numbers and logistics to hold the ground. The support from the Taranaki and Raukawa tribes would be critical for the control of the region. A solid base would allow
15 Te Rauparaha to further extend his control.

Te Ahukaramū returned to Maungatautari to encourage his people to move south; when they disagreed Te Ahukaramū set fire to their houses; forcing them to move. “*He mana tō te kupu,*” it was important to his mana, and the
20 other Raukawa chiefs, that he fulfilled his word, as given to Waitohi.

“*Mai i Waitapu ki Rangataua, mai i Miria te Kākara ki Kukutauaki,*” is a current rohe of the Ngāti Raukawa that moved from the central North Island, in a series of migrations, big and small, from the mid-1820s onwards. Raukawa contend
25 that it is smaller than the original space that the iwi occupied.

Iwi of Ngāti Raukawa still reside in the north where they are sometimes described by the area that they live in, such as Raukawa ki Te Waotū, ki Te Pae o Raukawa, ki Panehākua, ki Whare-puhunga, ki
30 Te Kaokaoroa o- Pātetere, and Raukawa ki Maungatautari. Similarly, we have been described by the area that we live in; we have been called Raukawa ki Kāpiti, Raukawa ki Tai, ki te Tonga, and Raukawa te au ki te Tonga.

As with our northern relations, we are made up of hapū and iwi that may not be of Raukawa descent. Shared experiences, both good and bad, has seen us stand together, prior to, during and post migration, up until the present day. The area allocated was large. As well as supporting Ngāti Toa Rangatira, it would
5 require mutual support from throughout the Raukawa confederation to hold it.

Ngāti Raukawa te au ki te Tonga is a confederation of independent, and interdependent hapū and iwi. Independence provides the freedom for each to make their own decisions. Interdependency arises from a range of reasons,
10 including allegiance, whakapapa, mana, threat, necessity, responsibility, opportunity, and other factors where whānau, hapū and iwi will join together for common goals.

It was opportunity that led to Te Rauparaha joining the northern tribes in their
15 excursions to the south Te Amiowhenua. He and some of his people joined the expedition, “*ki te patu tangata, ki te muru taonga.*” When the northern people decided to return home, one of the chiefs said to Te Rauparaha, “*E Raha, tangohia tēnei kāinga hei nohoanga mōu. Kia kite ake hoki i te kaipuke o te Pākehā e rere ana i Raukawa.*”

20 There are many versions of this kōrero, from Raha, “*Anei tō whenua nohia*” to this one. The main point is that Raha was told to occupy the area; it provided an opportunity to barter with the ships that sailed, in the waters of Te Moana o Raukawa what we know today as Cook’s Strait. Those words
25 planted the seed that led to the tribes of Toa Rangatira, Taranaki, and Raukawa establishing themselves in a new territory.

1410

30 Each Raukawa hapū and iwi made the decision to migrate, to leave their ancestral home and cross the lands of allies but mainly foe, to settle in a new area. The land was initially allocated or agreed to by their Ngāti Toa Rangatira relations. Of course, there were expectations that Raukawa hold the area to the north which it did and continues to do today.

Land retention would be through a number of factors including kotahitanga and whanaungatanga. Their internal whānautanga and kotahitanga ensured that they fought together, as one, where never threatened or seeking *utu*.

5

Their external connections to other powerful iwi were well known to threaten the Raukawa could inside a reaction from their relations. This was illustrated by Taonui o Maniapoto and Te Heuheu o Tūwharetoa when they arrived with their warriors to support Raukawa at the battle of Haowhenua.

10

This was similar to when Raukawa raised Te Heke Karere to check on Te Rauparaha. Likewise, when Raukawa sought retribution for the loss for Te Ruamaioro and others, who were killed while trying to migrate to the south, they were supported by Ngāti Toa Rangatira in Te Atiawa.

15

MOTEATEA (TAKOTO RAWA IHO KI TE PŌ)

JERALD TWOMEY: (CONTINUES)

He waiata tangi, he (Māori 14:13:23) nā Matangi Hauroa. Kua tae atu te kōrero ki tekāinga mō te Parekura a Te Ruamaioro mā i to rātou hekenga mai ki te tonga. E me waiata e waitangi – e Matangi ki a Te Whatunui me te tono, te tūmanako nui mā te Whatunui, te Parekura, otirā ngā mate o Te Ruamaioro mā e pakipaki.

20

[Interpreter: This is a waiata – a song of lament of Tauran[g]iwarua and it speaks of the murders of Te Ruamarino as they migrated south and it acknowledges Whatanui and Whatanui was acknowledged and of course that talks of the death of Ruamaioro.]

25

So, this is a lament by Matangi Hauroa it was also referred to Te Whatanui that he avenged the deaths of Te Ruamaioro and others who suffered a heavy loss on their migrations to the south. As I said before the waiata, the three iwi did rise up at a later time to seek redress.

30

CONTINUES BRIEF OF EVIDENCE #H13 FROM PAGE 5, PARA 18

“On Kāpiti Ngāti Toa had two houses that were named to commemorate the two parekura suffered, the two disasters that had befallen the iwi - the tragic loss of the children of Raha and also the great misfortune suffered by
5 Te Heke Ruamaioro. The houses served as a daily reminder of the scores that needed to be settled.

At the time of the migrations, Raukawa was an iwi accustomed to fighting together – to protect themselves, to hold their lands, to maintain their mana, to
10 seek utu, to support or dominate others. They would hold the new lands through whanaungatanga and kotahitanga, but it would be underpinned by strength, and also consideration.

This submission will talk to the whanaungatanga and kotahitanga as it relates
15 to the relationships or whakapapa within Ngāti Raukawa. The whakapapa shows that we are different but there is still a unity. The intention is to provide the Tribunal with an understanding of the iwi relationships that existed prior, and post migration, up until today.

20 1415

Within the whakapapa presented the connections are the priority. The normal convention of showing the tuakana on the left of the line has been put to one side so that the connections can be easily displayed. Likewise, while there are
25 many lines of descent associated with any one person; we have chosen those that illustrate best how we connect through whakapapa, marriage or events.”

And I continue on, please, Your Honour.

30 “As shown in Whakapapa, Raukawa and Toarangatira share the same common ancestry from Hoturoa.” Hoturoa, Hotuope, Hotumatapu, Mōtai-Tangata-Rau, Ue, Rakamamao, Kākati. “...at which point they separate. From Kākati and his wife Kurawakaimua, of Aotea waka, comes Tuhianga,” *heke iho ki a*

Poutama, ki a Mangō, Ngāti Mangō, Ngāti Toa Rangatira e noho mai nei ki muri i ahau. [Interpreter: Ngāti Toa behind me here.]

5 “Kākati had another wife, Ururangi, heke mai i a Kurahaupō waka; she was the mother of Tāwhao. Tāwhao married two sisters; Punuiatekore and Marutehiakina, both of whom bore him sons. It ended up that the younger sister gave birth before her tuakana; leading to an ongoing debate over which child was the tuakana and which was the teina.” *Tēnei te tuakana e tū ake nei.* [Interpreter: This is the elder of that speaking here.] “A competitive relationship, 10 encouraged by the mothers, developed between the brothers, Tūrongo and Whatihua.

As young men, while Tūrongo was making preparations for his betrothed, his brother Whatihua purposefully provided advice and made arrangements that 15 would serve to undermine the regard in which Tūrongo would be held by his intended bride, Ruapūtahanga. He was so successful that the Ngāti Ruanui maiden forsook Tūrongo and married Whatihua instead.

One day Ruapūtahanga became upset with the actions of her husband and left 20 him, taking their youngest child, Uenuku-te-rangi-hoka, with her. When Whatihua discovered that his wife had left he set off after her. Ruapūtahanga was returning to her homelands via the coast when she turned and saw her husband. She stopped to dig a hole in the sand, then carefully placed their baby in it; forcing Whatihua to stop, retrieve and care for their child.

25 At that time Ruapūtahanga had arrived at a bay called *Rākei mata taniwha rau* where the tide was coming in. She swam across and from the other side she called back to her husband advising him to cease his chase.” That was mentioned in the very first waiata that I sung this afternoon.

30

E tama tū kino, tē whai muna iho ki ahau. Ka tū tāua, ka whai i te tira o to tupuna o Whatihua. Kī mai Rameka – anei ngā kupu a Ruapūtahanga, ‘E hoki i konā ka mate koe i te whāinga mai i taku hika taukē.’ Ka tū ngā tai o Rākei mata taniwha rau.

“Whatihua abandoned his chase and returned home. Apakura, his other wife raised the child and hence his name was changed to Uenuku-whāngai.

5 Whakapapa 2 shows the hapū within the confederation that descend from Whatihua, but particularly Uenuku-whāngai.” Anei a Whatihua, anei a Uenuku-whāngai. “We have hapū of Ngāti Kauwhata at the marae of Kauwhata and Aorangi, Ngāti Hinepare and Ngāti Tahuriwakanui respectively, with Maniaihu,” te koroua nei, “being the whare at Aorangi. Ngāti Kauwhata had
10 another marae, Te Iwa at Awahuri, but the house fell victim to a storm in the 1930s. The resident hapū of Ngāti Tūroa moved in with their kin at the other marae.

At Kuku we have Ngāti Tūkorehe, with Te Mateawa and Rangitāwhia, while at
15 Manakau is Ngāti Wehiwehi. At Ōtaki is Ngāti Korokī, one of the three hapū that reside at Raukawa Marae, ‘te marae matua o ngā iwi e toru.’

Despite the competitive nature between Tūrongo and Whatihua, their descendants remained close. The daughter of Tūrongo, Rangitairi, married
20 Uenukutuwhatu. *ka heke atu a Tūatangiroa. Nāna ko Hineaupounamu, ka moe a Rereahu ka puta ko Maniapoto* and his siblings. [Interpreter: him and married Rereahu and of course begat Maniapoto.]

Important links can be seen. From” – I will just dwell just a little bit further on
25 that. From Maniapoto, *nāna ko Te Kawairangi, nāna ko Tūtanumia ka moe a Tūtete. Taihoa ake.* [Interpreter: Tūtanumia, and married Tūtete.]

From Wehiwehi, you can see those important links from Tūtete. He married Tūtanumia, *ko tana ko Parekārewa, ka moe a Hae, ka heke iho ki a*
30 *Ngatokowaru.* [Interpreter: Hae and of course had Ngatokowaru.]

There were also – The next lecture from a – is Maniaihu from Wehiwehi, Maniaihu, *Tama te wero, Ngakuratū. Ka moe a Ngakuratū i a Te Autuiroro, ka*

puta ko Te Rakumia. Ka moe a Werawera, ka puta ko Te Rauparaha. Taihoa, Kowhatu kātahi ko te Parekowhatu kātahi ko Te Rauparaha.

And the last one that we have from Wehiwehi is Hounuku. *Ko tana tamāhine a Parehounuku ka moe a Toarangatira, ānei te iwi e noho mai nei.* [Interpreter: Toarangatira of course are here behind me.]

From Tūkorohē we have Tūwhakarara nāna ko Hinetore and Hinetore married Huitao who was a mokopuna of Takihiku and it comes down again, once again down to Hae. Hae rāua ko Kapu and Kahorotetini but we will come back to her later on.

Tuwhakarara also had a sister Punoke and then down through that heke you can see Te Rangihakaripa. He was one of the chiefs that brought Ngāti Tūkorehe to the south.

The last one that we have there is Ihuwera, nāna ko Rauti heke iho ki a Korokī.

CONTINUES READING #H13 FROM PAGE 9, PARA 32

“Tāku ara rā nā Tūrongo i wawaea ki te Tairawhiti. Ko Mahinaarangi, te rua rā i moe ai a Raukawa. He ara tautika mai ki ahau e. [Interpreter: Raukawa and falls back to me here.]

A disconsolate, Turongo dismantled the whare that he had built for Ruapūtahanga and went to the East Coast to find a hand, to seek the hand of the famed maiden Mahinaarangi. At Kahotea he found the object of his desire and with his industrious labours soon being noticed he proved successful in his quest and they were wed. Their first child was the eponymous ancestor, Raukawa named after the perfume that his mother used during the courting.

Raukawa married Tūrongoihi and they had three sons, Rereahu, Whakatere, Takihiku, te whakapākanga or the pōtiki and Kurawari their sister. Despite all being uri of Raukawa, it is said that the iwi Ngāti Raukawa are those that descend from the whakapākanga, Takihiku which is really this line that comes

down through here, Takihiku and I just want to indicate Maihi. The father of Maihi was Tamatewhana and Tamatewhana was a brother of Tamateura. Sorry his father (**Māori 14:23:48**) was a brother of Tamateura. So, you can see that is another Raukawa line there and Maihi actually had these two daughters,
 5 Pareunuora and Te Ruaioterangi.

Within the confederation we have hapū and iwi who descended from Whatihua, tēnei taha. From Rereahu, that is your Maniapoto type lines. From Whakatere and also from Takihiku. We also have a hapū from the eponymous ancestress
 10 Waewae of Ngāti Tūwharetoa which we will see later.

Tēnei ka noho i te mahau o tōku whare, ka whakarongo rua aku taringa ki te taunu mai a te tangata. E kore au e aro iho ka whakamau atu ki ōku kāwai kei te hiria mahuta ko Ngāti Rangatahi matakore. [Interpreter: I sit at the front of
 15 my house and I put my ear at the arrival of people and then gain I look and wonder and as I look upon my gaze, Ngāti Rangatahi have arrived.]

Starting from the north I will describe where the hapū and marae are located today. It is important to note that it may not reflect where the hapū were when
 20 they settled here or prior to land sales or allocation of reserves, nor should infer that the area described is solely where their interests lie. Starting from the north at Kākāriki we have our Ngāti Maniapoto whanaunga, of Matakore and Rāngatahi living together at Te Hiiri Marae. Further down at Te Reureu, Tokarangī, where the people of Ngāti Pīkiahū and Ngāti Waewae, which I will
 25 talk to later on at both Te Poupatatē me Te Tikanga Marae. Today they are commonly called Ngāti Pīkiahū Waewae.

Te kuia Parewahawaha stands as a shoulder for her people at Ōhinepuhiawe while at Halcombe her mokopuna, Manomano does the same for her hapū at
 30 Taumata ō te rā Marae.

Close to Feilding we will have the two Kauwhata marae that we have already talked about, tūrangawaewae for Ngāti Kauwhata, Hinepare, Tahuriwakanui and Ngāti Tūroa.

Travelling south towards Foxton we come to Ngāti Te Au, *anei*. At Himatangi well Ngāti Rakau, Rakau Paewai, Ngāti Rakau resides at Motuiti Marae. Inland at Shannon is Ngāti Whakatere, Te Ngare o Tūrongo, standing on Whakawehi
 5 Marae. The descendants of his teina, Takihiku reside with Ngāti Ngārongo at Kererū, Kōpūtōroa. Ngāti Tūranga also reside in the Horowhenua district and they will provide their own kōrero when they present to the Tribunal.

Moving back towards State Highway 2 are the Ngāti Huia, Matau and standing
 10 across the road is Huia. Other marae of Te Ngare o Huia are nearby. At Raumatangi, there is Pareraukawa on Ngātōkōwaru Marae. At Muhunua is Ngāti Kikopiri i runga i a Kikopiri Marae and close by is Māhoenui, the kāinga of Ngāti Hikitanga prior to being displaced.

15 We have already talked about Tūkorehe at Kuku and Ngāti Wehiwehi at Manukau.

Coming onto Ōtaki we have Raukawa Marae with the three hapū, Ngāti Korokī, *anei*, Ngāti Maiotaki, kei konei , and Ngāti Pare, the three resident hapū on the
 20 Raukawa Marae. Also, in Ōtaki at Te Pou o Tainui is Ngāti Kapu while across on the other side – on the southern side of the Ōtaki River is the last marae of the confederation at Katihiku, the home of Ngāti Huia, another one of the Huia hapū.

25 The Raukawa tales of warfare begin with the sons of Takihiku. When Parawhete, the wife of Wairangi, ran off to be with her illicit lover, her husband and his brothers followed to return her home. After their arrival at the enemy's pā a word of caution was issued from Parawhete, "*He aha koe i haere mai ai te rourou iti a Haere, tē noho atu ai i te tokonga nui a Noho*. Why did you come
 30 with a small traveller's basket when you really should have stayed home with a large basket?" [Interpreter: Why did you come here and come all the way from te tokonga nui ana.].

This is just one of the matters that gave the brothers cause for concern. The brothers composed and performed a haka that lulled their would-be executioners, so they were able to strike first and defeat those who had planned to kill them. The brothers returned home victorious with their haka still being performed today.”

HAKA (KO TE AEA O IA RANGI)

1430

CONTINUES READING #H13 FROM PAGE 11, PARA 44

10 “The brothers had a cousin Korokore, the daughter of Kurawari and Wharerere. Wharerere was a grandson of the eponymous ancestor Haumia; with Haumia being the brother of Mangō.” We already talked about Mangō. “When Korokore (Koroukore rānei) was killed by her husband, her brother Whaitā, called on his cousins to assist him in seeking revenge. The sons of Takihiku answered the call and were accompanied by their close relations, the sons of Tūkorehe, and Poutū, son of Whakatere. Together they avenged the death of Korokore (Koroukore rānei), albeit with their own losses.

20 The people of Whaitā and his cousins took over the lands of the defeated tribe, which they continue to occupy to this day. Part of that territory, called Te Pae o Raukawa, borders on the Ngāti Tūwharetoa domain. The neighbours inevitably developed many close connections between the iwi that Raukawa were able to rely upon during the time of the migrations.

25 Coming down from Tamatehura and Rongorito,” ka moe a Tamatehura i a Rongorito, tuahine a Maniapoto, and then to Huitao, and as I talked about before married Hinetore, mokopuna nā Tūkorehe. “Then his daughter Kahorotetini and sons Haetapunui and Kapu, the tohunga and the warrior. The fame of Kapu was sealed when he took retaliatory action to avenge the loss of the sons of Tūirirangi,” anei a Tūirirangi, who had tried to avenge themselves the loss of Tukemata. Actually, two brothers – two sons of Tūirirangi ka mate, kātahi ka patua a Tukemata rāua ko Urungaterangi. But these two brothers,

the brothers – the tama a Tūirangi were out to avenge the mate of Tukemata. “Unfortunately, three were killed with only Tangaroakino escaping.

When asked who will avenge the deaths of the brothers of Tangaroakino, it was
 5 Parekārau, the daughter of Tukemata, who foretold, ‘*He iti nā Mōtai, he uri tamawāhine, tēnā kei te rāwhiti e taka ana, māna e takahi te one i Hākerekere.*’ It was Kapu, with his warriors who travelled to the west to avenge their deaths. His brother Haetapunui, the tohunga, accompanied him on the expedition but along the way his brother told him to return home. In the battles that followed
 10 ‘seven tides were attacked, seven pā fell.’

Haetapunui and Parekārewa had a son, Ngātokowaru, who went on to become a warrior of renown. In one of his battles, Ngātokowaru led a party that included two chiefs from Waikato. Before the battle, the pair received a calabash of food
 15 that had already been partaken of. One turned to the other to complain, ‘E Hua, he papa takere.’ Upon hearing the criticism, Ngātokowaru turned to them to say ‘*Riria, riria! Māku hei whakakī!*’ The war party was successful and Ngātokowaru...”, so he said, ‘Carry on battling and I will fill that calabash of food’. “Ngātokowaru fulfilled his promise to fill the calabash by marrying his
 20 daughter Toreheikura to Te Huaki.

1435

Later Ngātokowaru turned his attention towards increasing his territory until *one day his party was defeated and he was captured. Knowing that his end was nigh he asked his captors if he could have an audience with their great chief*
 25 *prior to his death. The wish was granted but as Ngātokowaru stepped close to the elderly high chief he withdrew his dagger and killed him, at the same time exclaiming, ‘Ko te tete a Ngātokowaru tēnā e rangona, tēnā e rangona!’* He then smeared himself with the sacred blood of the high chief so that he would escape the fate of being consigned to an oven. Later, a mokopuna of
 30 Ngātokowaru married the son of the great chief, Tawhiakiterangi nei, creating a connection.”

Tawhiakiterangi was the son of the great chief Te Putu, *nā rāua ko Te Atairangikaahu, ko Tuata, nāna ko Te Raungaanga, nāna ko Kīngi Pōtatau,*

Kingi o te tika, heke, heke iho ki a Kīngi Tūheitia Pōtatau Te Wherowhero Te Tuawhitu, Te Ariki Tamāroa i tae mai ki a Poutu i te Rāhoroi kua hipa, kia tau ngā manaakitanga ki runga ki tōna whare ariki. Pai mārire.

5 “The descendants of Takihiku and Rereahu started close, an example being the marriage between Tamatehura and Rongorito, the youngest and cherished sister of Maniapoto. Within the confederation are two hapū that are often described as being of Ngāti Maniapoto; Ngāti Rangatahi and Ngāti Matakore. Matakore, a younger brother of Maniapoto, supported his tuakana in tribal
10 matters and warfare. In recognition of his support Maniapoto granted his brother control over a large estate.

The eponymous ancestress Rangatahi, was a grandchild of Maniapoto,” but also ka heke iho i a Kinohaku, he also descended from the sister. “It had been
15 arranged that Wairangi, the son of Takihiku, was to marry Rangipare, daughter of Kinohaku. However, while Rangipare was travelling to the home of Wairangi she met, and then eloped with Tūtakamoana, the son of Maniapoto. They went on to be the parents of Rangatahi.

20 The jilted Wairangi was enraged,” that is old Wairangi over here, “and with the support of his Whakatere whanaunga marched against Maniapoto and his people. The hostility was the beginning of the separation of the descendants of Raukawa. It was during the battle that followed that Maniapoto uttered the warning words not to desecrate the area of his sister, Rongorito, ‘*Kei hewa ki*
25 *Te Marae o Hine.*’ This was peaceful place, warriors bearing arms, war parties were not allowed on Te Marae o Hine.

Te Marae o Hine was the name of the Ngāti Matakore marae at Kākāriki. A fire there in the 1960s destroyed the house; this led to them residing with their
30 whanaunga of Ngāti Rangatahi at Te Hiiri Marae. Te Marae o Hine is also the name of The Square in Palmerston North. A meeting of tribal elders from various iwi was convened in 1878 to discuss the naming of the area but could not come to an agreement. The involvement of the old Raukawa chief,

Mātene Te Whiwhi, was sought, and it was he who proposed the name that it bears today.

The ancestress Rangatahi married Maniauruahu. One of their children,
 5 Tūkawekai, was slain in battle by Toarangatira. The lines were later joined when it was arranged for the great granddaughter of Tūkawekai, to marry the grandson of Toarangatira.

This connection came about from the death of the Raukawa chief,
 10 Te Autuiroro,” kei konei, “who was slain by another iwi. Raukawa tried more than once to avenge his death but were unsuccessful each time. Finally, Korouaputa enlisted the assistance of the Kāwhia chief, Marangaipāroa, the son of Toarangatira. Unfortunately, when he arrived with his men, which included his own sons, the small size of the force disappointed their Raukawa
 15 relations. They were not treated as well as they should have been.

They marched to battle but upon seeing the size of the enemy army Raukawa became worried about their numbers; to which Marangaipāroa responded, ‘*He iti pou kapua ka ngaro, ka huna tini whetū ki te rangi.*’ A fierce battle ensued
 20 with the forces of Marangaipāroa leading the way to victory, and his sons, Tūhaha and Te Haunga, excelling on the battlefield.

Raukawa saw that they had underestimated Marangaipāroa and his warriors. In an effort to make amends, and to acknowledge their efforts in avenging the
 25 death of Te Autuiroro, Raukawa presented the young woman, Te Kāhuirangi, to Marangaipāroa as a bride for Te Haunga.

1440

30 Te Kāhuirangi was an appropriate choice. Her grandfather Ue, he was the son of Tūkawekai, had married Parehuitao, daughter of Ngātokowaru and also the sister of Te Autuiroro, the one who was slain. The marriage to Te Haunga created a connection between Rangatahi and Toarangatira and led to other marriages that kept the tribes close, notably the marriage of Te Rauparaha to

Marore, his first wife. Marore was the mother of the children, who were killed in the attempt on the life of Te Rauparaha as described earlier by Ngāti Toa Rangatira. It should be noted that the Ngāti Rangatahi that migrated were often known as Ngāti Haunga, Te Haunga, the husband of Te Kāhuirangi.

5 Therefore, we can say that for some whakapapa lines, they are synonymous, Ngāti Rangatahi and Te Haunga.

The people of the eponymous ancestor – taihoa. The people of the eponymous ancestor, Whakatere stayed close with their Takihiku relations both in location and battle. Their warriors were well regarded within the iwi and at the battle of Haowhenua, on the south side of the Ōtaki River, it was Ngāti Whakatere that carried the body of Papaka Te Naeroa back to his brother Mananui.”

WAIATA

15

I te mea i kawea atu te tūpāpaku ki te aroaro o te tuakana a Mananui, i reira a Ngāti Whakatere ki te whakarongo ki te waiata nei ka mau tonu nei ki roto i te iwi. [Interpreter: And of course, Mananui – and of course, Ngāti Whakatere are here to hear those sentiments expressed in this waiata.]

20 **CONTINUES READING #H13 FROM PAGE 15, PARA 60**

“It must be said that the relationship between Tūwharetoa and Whakatere did not start of well. Poutūterangi, the son of Whakatere, advised another iwi to kill a Tūwharetoa chief; which they did. When retribution was sought, that advice cost Poutū his life.

25

It was the death of Poutū that Te Ataunutai, sorry, I've got to come over here somewhere, yes. It was the death of Poutū that he was seeking retribution for at the time, when he was in the district. He had already killed the person responsible for the death of Poutū-te-Rangi and was taking the opportunity to battle other pā when he was wounded by a warrior from a pā that they had besieged. He decided to seek a peaceful resolution which was sealed with the marriage of his daughter, Waitapu, to the warrior chief Te Rangiita. *I roto i te*

30

waiata tuatahi, i haere rā ia i te maungārongo o te turiāwhiro, nānā i awahi a Parekāwa. [Interpreter: Heard within the first part of the song it mentions that.]

5 Their mātāmua was Parekāwa, and she was followed by three sisters, something that worried Te Rangiita who had been hoping for a son. They parted company with Waitapu reminding him ‘Kei te tuwhera tonu ana te awa ki Nukuhau’ meaning she was capable of producing more children. He did return, and they then had four sons, who were prominent in their time within Tūwharetoa.

10

Unfortunately, others were not so happy with the peace pact, and later Te Atainutai was killed. His death was avenged by Whitipatoto on the request, and with the support, of one of the sons of Waitapu and Te Rangiita. There are many connections that descend from the pair, including a mokopuna of Kapu, 15 Parehingaawatea – who married Pakaketaiari.”

Nā rāua ko Te Rangipūmamao ka moe i a Parewahawaha, ka puta ki – ka hekeheke iho. [Interpreter: Married Parewahawaha and of course we have the descendants from there.]

20

“Te Whatanui and Te Heuheu had often supported each other on the battlefield. There is another hononga.”

25 *Nā Tokowaru ko Huia nei, ka puta a Pareunuora, engari ka moe i a Te Rua o te Rangī, nāna ko Rautaokura heke iho ki a Moeroro and ki a Rangiaho.* [Interpreter: Married Rua o te Rangī, and Rautaokura and Moeroro from there, and then Rangiaho.] that one there.

So, they were very close relation Whatanui and Te Heuheu Mananui.

30

“When Te Whatanui left for the south he said to Te Heuheu, ‘E Heu, kia kaha te manaaki i ērā ka ngahoro mai ki waho o taku kete.’ Te Heuheu travelled south to support Raukawa during the battle of Haowhenua. Later he also sent

an emissary to ask Te Whatanui to return to the north. In response Te Whatanui composed a waiata that refuted the proposal; he was not going anywhere.”

MOTEATEA (RONGO KŌRERO AU)

5

1450

“...*Rongo kōrero au e ko tū ki roto i tuku mai nei i haere mai ana pea ki te tika mai i rā waru, kia whakakurī au, kia whakapai ai he kai ewaewa, he rau harakeke te aho o tāku kōiwi.* Tukino have you sent someone to treat me as Maui did to his brother-in-law, Irawaru, turned into a dog returning home with his tail between his legs or am I to be accused of being a wanderer of no fixed abode or compared to a flax leaf that yields when blown by the wind instead of standing in resolute?” Te Whatanui was resolute, he was not going anywhere.

15 CONTINUES READING #H13 FROM PAGE 16, PARA 64

“Coming back to Whakatere, Uenuku Pīkiahū, the son of Poutūterangi is the eponymous ancestor of Ngāti Pīkiahū. Ngāti Pīkiahū were living with Ngāti Waewae at Rotoaira prior to both hapū moving south to live at Ōtara. They were there for a few years before moving further south to finally settle in

20 Te Reureu. The marriage of Ngawaka, a Ngāti Pīkiahū rangatira to Huna of Ngāti Waewae was a key relationship at that time; and there have been many more since. Their closeness of the two hapū is reflected in the name Ngāti Pīkiahū Waewae, that is often used by their descendants. *Aroha mai. Engari ko Waewae ka heke pēnei mai.*”

25

So, her ancestress. So, Waewae was a female, she is an actress of an eponymous ancestress, Ngāti Waewae ka noho tahi a Pīkiahū, Pīkiahū Waewae.

30 “The Ngāti Huia name is carried by a number of hapū. So that others understand where they are from, that they are from different marae they have added their locale. So, we have Ngāti Huia ki Katihiku, Ngāti Huia ki Matau and Ngāti Huia ki Poroutāwhao.

There are five other hapū that stand under the banner of Ngāti Huia or Te Ngare o Huia; Ngāti Parewahawaha, Ngāti Manomano, Ngāti Pareraukawa, Ngāti Kikopiri and Ngāti Hikitanga. It is probably no coincidence that Ngāti Huia holds the northern and southern boundaries or borders, with a concentration in the middle they could quickly move either way to support as required.

Huia, the eponymous ancestor was a warrior who gained more fame than his elder brother, causing the tuakana to become jealous and bitter. Despite the negative antics of his tuakana Huia maintained his mana advising his brother ‘*E kore taku tupu e heke i a koe.*’ When Huia was killed by another iwi, it was left for Wahineiti and Hape, they took on the task of seeking retribution and led war parties to assist the other iwi.”

15

WAIATA MAMAE

CONTINUES READING #H13 FROM PAGE 17, PARA 68

“Wahineiti was lost on an ill-fated expedition, unfortunately it was not due to battle as a warrior of his standing would have wished. His loss is recounted in a Maimai – part of which you have just heard, a composition lamenting his death, in which he is remembered as being of Kauwhata and Raukawa descent. Hapekitūārangi took over from his tuakana Wahineiti, to raise and lead Raukawa war parties in the manner of his ancestors.

1455

The Ngāti Huia links to Waitohi and Te Rauparaha were central to the request and acquiescence of Raukawa moving to the south. As described earlier Te Rauparaha had been the arm bearer of Hapekitūārangi. When Hape was on his deathbed he asked those gathered, who would take on his mantle? No one responded until Te Rauparaha spoke up saying, “*E koro haere atu ki te pō, whanga ai i ngā kōrero huhua mōku.*” [Interpreter: Rest in peace and I will continue your legacy.]

30

It was foretold that Te Rauparaha would rise to prominence. His father, Werawera, travelled to Maungatautari to ask Korouaputa for one of his daughters as a bride. Korouaputa responded reluctantly – *kei kī taku*. But he only had one daughter left, Parekōwhatu, '*Kotahi anake te mea i mahue mai ki ahau, ko taku mōkai, he mea harihari wai māku.*' [Interpreter: One daughter left. The only one I can gift to you.]

However, he assured Werawera that one of their children would grow up to be a "*taniwha*."

10

So whenever Parekōwhatu gave birth, Werawera would travel from Kāwhia to Maungatautari, carrying the baby to Korouaputa, to ask whether the child was the one. It wasn't until their fifth child, Te Rauparaha was born that Korouaputa verified that indeed, he was the taniwha that had been predicted.

15

Despite Te Rauparaha claiming the position of Hapekitūārangi, his Raukawa relations retained their autonomy somewhat and other chiefs rose to take on leadership roles within the iwi. Leaders such as Te Ahukaramū, Taratoa, Te Whatanui, and others emerged from Ngāti Huia, while other chiefs guided their own hapū.

20

Te Whatanui led his people to the east in an effort to settle there. After experiencing the perils of living in an area surrounded by others, without close support, he eventually moved to the south.

25

Like his tūpuna, Te Whatanui was known to seek retribution; through other parties but also directly, avenging the deaths of Te Momo Irawaru, he was killed over in the east coast, and Te Ruamaioro, it was spoken about before. He was also known for his consideration of others. He aided those who had helped his people, he actively protected those that others wanted to exterminate and put his own life in danger by rowing between warring parties to bring a halt to hostilities.

30

He followed the tikanga of *tatau pounamu*, marrying his daughter to a chief from

another iwi to seal the peace. *Anei te hua e noho mai nei.* [Interpreter: And the respirometry of that.]

5 Within the iwi there were other arranged marriages, *moenga rangatira*, between the hapū of the confederation but also between the iwi and others in an attempt to maintain a peaceful balance. We have many uri that are a product of those marriages. Other chiefs of the confederation were also known for their exercise of consideration, or exercise of the tikanga that were designed to hold the peace. “*Rongo ā whare, rongo ā marae,*” where discussions were held, and
10 arrangements agreed upon to provide a peace and understanding that did not require assistance or intervention. Hapū will provide examples of all of these peaceful expressions of tikanga.

There were other activities within the iwi that relied on and recognised the
15 kotahitanga of the iwi, but also the wider Te Ātiawa, Raukawa and Toa Rangatira of the ART Confederation. The Rangiātea Church in Ōtaki was built on the orders of Te Rauparaha. Tragically, after standing for over 140 years it was lost to fire but was later rebuilt. Also in Ōtaki is the Ōtaki Racing Club, the last active Māori Racing Club.

20

We have Raukawa Marae, with trustees from the three iwis of the ART Confederation. It was these trustees that, in 1975, approved the initiation of Whakatapuranga Ruamano. *Tōnā Mere Pounamu e takoto mai nei.* [Interpreter: To the Greenstone before you.]

25

Which an iwi development that included language revitalisation. This iwi development led to Te Wānanga o Raukawa being established for the ART Confederation. Ōtaki Porirua Trust Board is another confederation organisation that assists whānau with education scholarships.

30

The latest iwi driven venture was Te Rūnanga o Raukawa which has seats for all hapū of the Raukawa confederation. A branch off which is the Raukawa Whānau Ora.

In summary, we are an iwi with shared experiences and whakapapa that connected us prior to moving. With whakapapa leading to the move, settling and holding of the area allocated. Whanaungatanga, external and internal, as well as kotahitanga, has helped us to hold the area in the manner expected.

5 We were an iwi accustomed to fighting to maintain mana, to seek utu, to support or dominate others. We also arranged marriages to initiate and hold the peace; arranged agreements using *tikanga Māori*, our actions were underpinned by strength but also consideration. We are Ngāti Raukawa; a confederation of independent, and interdependent hapū and iwi. Tēnā koutou.”

10

1500

DCJ FOX:

Well, that was extremely powerful, and I just want to note the waiata that was singing – were sung. We have a copy of **Te Ahukaramū’s** book, Charles Royal
15 and we found some of the waiata in here because the words are really important but not all of them, so I was wondering whether we could get copies of the words of each of those waiata and the haka that was performed, would we be able to do that.

JERALD TWOMEY:

20 Yes.

DCJ FOX:

I also note that the text that you were reading from was different from the text that was filed so could we get a –

JERALD TWOMEY:

25 *Āe, paku rerekētanga.* And I will send you the updated version. [Interpreter: Yes, there were points of differences.]

DCJ FOX:

Yes, thank you. So, do you have any questions?

DR MONTY SOUTAR:

Just the whakapapa, that was very, very helpful and we can see how, as you say, how closely connected everybody is, but distinct but in order for us to understand this, when we read again we are going to need the whakapapa, will it be made available to us?

JERALD TWOMEY:

I think we've already filed it with you. So, we filed it with – but I must note that it differs slightly from what I've presented today so I will file that – I file an updated version, so yes. But, please note there will be an updated version.

10 **DR MONTY SOUTAR:**

Kia ora.

DR GRANT PHILLIPSON:

I just wanted to thank you very much for your evidence and are you going to be coming back in later hearings?

15 **JERALD TWOMEY:**

I think I might be.

DR GRANT PHILLIPSON:

Good, I will have more questions for you then, thank you.

DCJ FOX:

20 Well, thank you again and as everybody said it is extremely helpful and we are going to be able to use this whakapapa in particular and the words of these waiata and the stories that were told throughout the next few weeks while we are listening to the claims of the hapū as they present.

JERALD TWOMEY:

25 Kia ora.

MOTEATEA (E RANGI AKU)

JERALD TWOMEY:

I just wanted to add that that was a composition by Te Whatanui who became a little bit worried after he had sent his daughter off as Pārei/Tatau Pounamu and *ki roto nei ka whakapuaki, uaua haere i ona whakaaro*. Tēnā koutou.

5 [Interpreter: Because he reflected on that.]

DCJ FOX:

Tēnā koe. Just before you step down I wonder was there anything further you wanted to say in respect of the taonga ...

10 **(AUDIO ISSUES (15:03:46 – 15:05:13))**

(3:05) TE KENEHI TEIRA: (PRESENTATION)

Takahia atu rā tawhiti nui tawhiti pāmamao, takahia mai rā, kumea mai rā tō waka e ngā heke o Raukawa e. Tēnei te mihi ki a koutou o te Taraipiunara, Kaiwhakawā, tēnā koutou. Tēnā tātou e huihui mai i tēnei wā ki te whakarongo ki ēnei kōrero o Ngāi mātou ngā kaihītori, ngā kaikōrero tuku iho, tēnā tātou.

15

[Interpreter: I continue on my journey from its distant paths and speaking of the many emigrational patterns of Raukawa and again I wish to acknowledge the Tribunal, to Judge and again to all of us who are gathered here to listen to our evidence, historians, those professional witnesses giving evidence. I wish to acknowledge you all.]

20

I want to start by saying that I am going – not going to read from my notes because they are too short. Not unlike the speaker. I just wanted to start by introducing two elements to this kōrero today.

25

One, that it is based on ongoing research and by that I mean this has been a journey for our Raukawa people to put together our stories and in particular this area of ngā heke, there is lot to be gained from the many writers and tūpuna who have given their own accounts of the heke and what we have tried to do is pull them together so it can embellish our kōrero and as Kahu and Jerald have

30

done, they have begun talking about those heke that have taken place that have related to Ngāti Toa and the first lot of heke that came down here.

When we started this journey under Wai 113 our Ngāti Raukawa
 5 comprehensive claim. We put together a number of principals and they very
 closely relate to the principals that I think our tūpuna encompassed in their
 tikanga and the kaupapa of why they came down here to the
 Manawatū-Horowhenua Kapiti area. The first principal is kotahitanga and it is
 something that we aspire to and there has been some kōrero today on the
 10 marae about that particular principal and it was decided that under the
 kotahitanga and a tono of Te Rauparaha all our various hapū and iwi came
 south.

The next principal is called whakauru or haumi and it is a principal we often talk
 15 about in this area, it talks about the confederation of our three iwi, that includes
 Ngāti Toa and Te Atiawa ki Whakarongotai but more so the alliance between
 all the hapū and iwi in this area. As Jerald has pointed out some of those
 examples of work around the Otaki Māori Racing Club, Rangīātea and
 Raukawa marae represent that alliance. The whakauru, the haumi. In putting
 20 together, the principals for the Wai 113 forum we talked about inclusiveness
 and in that way, we know that we don't necessarily speak for all the hapū, the
 hapū can speak for themselves.

There is a principal called whakamana ngā whānau, ngā hapū, ngā iwi and that
 25 particular principal is based around the fact that all the hapū get to speak for
 themselves, that is the reason why we are appearing here in front of the
 Tribunal instead of going to direct negotiations with the Crown, our iwi chose to
 come here, and it is probably that principle that began the journeys of our
 tupuna where they lived along the Waikato River where we were part of the
 30 notion, *he piko, he taniwha*.

1510

So each hapū has its story. We have our own place, our own bend on the river
 in which to contribute our part of the story to the total story of our confederation
 of Ngāti Raukawa ki Tai. So Jerald talked about some of the names that are

used for our iwi, we are Ngāti Raukawa ki Tai our whanaunga who remained or returned to the south Waikato area, are Ngāti Raukawa ki Uta.

This particular story and the way we are going to tell it is extremely complexed.
 5 It is complexed because there are many strands to the kōrero during a very topsy-turvy time, our tupuna came south, and it is worth saying again that our people did not take a step back. So if they were put into the situation where we had to fight, our tupuna fought, and so I want to say as a way of introducing these maps and these kōrero that there are many heke and journey's of our
 10 people, and the historians over the years have tried to reduce it down to three or four but there are many, and we hope to demonstrate part of that story.

So Kahu began by talking about Te Heke Tahutahu-ahi and I am included in that heke from the Raukawa point of view, Ngāti Parekōwhatu, also
 15 Ngā Uri o Te Akau. So they had a karanga rua and they went under the mana of Te Rauparaha and Ngāti Toa. They came to this area. Now it is interesting to find that the name Ngāti Parekōwhatu still is recorded in many of the accounts in the south Waikato area. So it must have been a name that was used by the descendants prior to coming to this area, and Ngāti Parekōwhatu
 20 still recognised as being traditional owners along with three other hapū of Raukawa in Lake Horowhenua.

So the second part of the heke that you see on that map, it is called Te Heke Tataramoa and that is where the two heke came together. One
 25 around the coast of Taranaki and the other one directly to the east of Maunga Taranaki. They came down the coast because they acquired a number of waka and came to the Manawatū River where one of the first conflicts took place, and it was the fact that some of those waka were stolen, and they chased the people up the river to get their waka back, and a particular story that is noted in relation
 30 to that is how, Nohorua the older brother of Te Rauparaha took utu to a certain limit for that transgression against Ngāti Toa.

1515

Then we have another heke that came down through Taranaki. Ko Te Heke Nihoputa and that particular heke was joined by Ngāti Whakaterere and

Ngāti Rangatahi, certain sections of both those iwi. They joined the heke coming south from an area that is in the north that belongs to the iwi of Ngāti Tama. So that heke was joined by a tupuna called, Tawhiri. He is the father of Ruta Tawhiri, the wife of Tamihana Te Rauparaha. So, both those iwi
 5 joined in that heke and they came down Oroua river when they got to the Manawatū and took a pā called Oraua pā and a tupuna called Te Rangihwinui was killed there and it is believed that that is where Major Kemp got his name from in order to remember what took place.

10 Right, the next slide if we want to flick to that. Okay.

DCJ FOX:

So, you called the second slide, Te Heke Nihoputa which is a term that I have heard before in this Inquiry District but your slide calls it Te Heke a Tawhiri?

15

TE KENEHI TEIRA:

Yes, and that is because Ngāti Whakaterere joined that particular heke –

DCJ FOX:

20 I see.

TE KENEHI TEIRA: (CONTINUES)

– at Pukearuhe.in north Taranaki. So that was a particular arm of Ngāti Whakaterere that came down the western side of Lake Taupo. They could
 25 have very well gone to Rotoaira and it could be very well a part of the story of the killing of Te Wharerangi but what – it needs to be pointed out that they did not get to far down the Wanganui river before they came under – under siege. So, that is how those two heke join up.

30 Right, next map. Okay. Te heke karere led by Te Ahukaramu and this particular heke has already been noted in the kōrero of my two relatives and they have pointed to the fact that it was a reconnaissance and a heke that looked at obtaining guns and ammunition. There was an earlier excursion down to Kapiti and that was taken by Te Whatanui and Taratoa but this particular one

te heke karere was led by Te Ahukaramu and what we can ascertain is that it came down to through this middle of the island and they chose to come down the Whangaehu river and across down to the Rangitīkei. So, it was probably state highway one that they linked into. Still the heke path that many of our people take when they are travelling to Waikato.

5 1520

Then on the next slide is Te Heke Hirinui, I hope? Yes. Again, led by Te Ahukaramu but there you will see that there were different paths taken once they got down to the Rangitīkei. Ngāti Kauwhata in particular came down the Oroua River where many prisoners were taken and that began up in the Whangaehu area right down to the Rangitīkei. They went to a pā called Tūwhakatupua which is associated with the Tūwhakatupua Block where two Rangitāne chiefs Pero and Kaihinu were killed. The Kaihinu Blocks that run north of Shannon down the south of Tokomaru are named after that tupuna and it's probably because our people wish to remember the tupuna that was killed there. There was a hapū o Rangitāne called Ngāti Tūtaeroa, they fought in battle and were moved out and they went to live with their relatives in the Te Ahuaturanga area.

20 Then the next heke. Te Heke Kariritahi, led by Nepia Taratoa. Again, took prisoners coming through the Rangitīkei but they seem to have come down the coastal way, and on the Rangitīkei river are two names: Paeroa and Poutu. And according to the counts of that particular heke, that was the place that the Rangitīkei river was crossed. So we have some idea of the places where people had crossed the rivers, particularly those that couldn't be crossed too easily. They go down to Te Awahou (Foxton today), crossed the river like the other heke did to Matarapa and followed the coast down to Ōtaki, staged a canoe ride across to Kāpiti where they'd go to pay their respects to Ngāti Toa and Te Rauparaha, as did most of the heke.

30

Now comes the complicated area. Hopefully those were easier to understand. But there's a kōrero that we have for Te Heke Mai Raro, and for most of us we understand that, as mentioned before, that Te Heke Mai Raro came through Hawkes Bay, but there were other elements to Te Heke Mai Raro.

Once Ngāti Raukawa came down to Otuatara which is in the Central Hawkes Bay area. They were besieged on an island called Otuatara in the middle of the lake by the same name, and it was after being there for two
5 years, two seasons I think they recorded as, and Ngāti Whatuiāpiti returned with their close friends of Ngā Puhī under Te Wera Hauraki and they were heavily armed. So our people in the pā were put under great scrutiny and were challenged to return back to Waikato. Some of our people took that option, namely two chiefs led a heke back to Waikato and their names were
10 Te Ao Katoa and Tongariro. They belonged to Ngāti Takihiku, Ngāti Kere, Upokoiti. Some of them also belonged to Ngāti Wairangi from the northern Taupō area, and they decided to return back to the south Waikato area, and that left a smaller group to run the gauntlet after the siege. One group decided to go with Ngāi Te Upokoiri over the Ruahine Ranges. The other group came
15 south into another section of Rangitāne that live in the Tāmaki-Nui-a-Rua area, and they stopped at a place that was known as the kāinga of Ngāti Parakiore.

So you will see in my evidence we have misspelt the name, but we will correct that and send it in to correct the record. And the chief of Ngāti Parakiore at the
20 time was one man named as Te Ropiha and he established a peace-making between Ngāti Raukawa and Rangitāne, and many of the people, particularly from the Himatangi Block and the Ropiha family in particular are descendants of that peace-making.

25 On the other hand, when they moved further south towards Dannevirke and Woodville, they ran into another hapū and that weren't so hospitable, and they caught one of the chiefs of the hapū there, Ngarara was his name, and he was consigned to the hāngi or the umu and based on that kōrero the hapū took the name Ngāti Pakapaka, and the descendants of Ngāti Pakapaka are still part of
30 our iwi today. So the peace-making must have taken place after the fighting took place. So we have a number of families that belong in the Dannevirke area that are very closely related to us and vice versa at Motuiti Marae on the Himatangi Block. I think I've covered what I could on that one. Next one please.

This is where it starts getting complicated and Te Heke Maioro has already been mentioned too, but it needs to be said that a large portion of that heke that was trying to come down the W[h]anganui River were decimated and those survivors were taken by Te Whatanui back over to Hawkes Bay and some of them may have come down through the centre of the island as well. I've got the lines on the map showing two different arrows pointing in two different directions for that reason.

So Te Whatanui rescued those people, the survivors on that heke, and a lot of the descendants in Ōtaki and amongst us are the descendants of those who survived coming down the W[h]anganui River. All right, I think I'm just about getting to the end of the maps.

1530

There you see a composite of how complicated it could be. Not one story, but many stories, and just to complicate the story even more, if you have the opportunity to read the Waikato Minute Books No. 8, page 182 you will see the account of one rangatira of Ngāti Huia, his name is Te Wērā Mahuta and he gives the account, or his nephew gives the account on his behalf of several heke, so we will supply you with a copy of that script. It was later recorded by Joanna Simmons, one of our whanaunga from Ngāti Huri in her thesis and we can give you a copy of that but also in Phillipson's *Ngā tohu o Tainui* and we have a copy of that if the Tribunal doesn't have that as well. So, a lot of the places –

DCJ FOX:

25 Yes, yes, we would like copies of all of those.

TE KENEHI TEIRA:

What you gain from reading those publications is that the return of Ngāti Maihi, Ngāti Mutu, Ngāti Ataotu, Ngāti Huri as seen on the landscape down here because those hapū don't register within our hapū down here. So, they came south with Te Wērā Mahuta but they all returned back to the Waikato area.

And so, you've got a toing and throwing if that's the right way to explain it, between a number of hapū that went backwards and forwards. There was the return of Ngāti **(Māori 15:32:09)** and others with Te Ao Katoa and Tongariro but also the return of some of Ngāti Tukorehe and Ngāti Te Kohera with others
5 after the battle of Haowhenua.

Many of the hapū went as far as that area just north of Taupo particularly around the western shores of Lake Taupo where some of our tupuna are still buried in caves and to an area called Te Tatua and you will see on that map Te Tatua is
10 just north of Taupo and that was the staging place after leaving the Maungatautari District. So many of the hapū went there.

I've been there today, I've been there in the past – today it's covered in pine forest so it's very difficult to find as are many of those places on that map.
15 We've tried to go there and it's difficult to understand how our tupuna lived in those areas, but they've been recorded in different publications.

DCJ FOX:

That might be a good place to start there Te Kenehi for afternoon tea.

TE KENEHI TEIRA:

20 Yes, kia ora.

DCJ FOX:

So, it is 3:33 at the moment so back here by 10 to 4.

WAIATA (TIROTIRO KAU AU)

25 **DCJ FOX:**

So, we are going to take a 20-minute adjournment, thank you.

HEARING ADJOURNS: 3.35 PM

HEARING RESUMES: 3.57 PM

DCJ FOX:

Kia ora anō tātou katoa. We will start again me tīmata tātou.

Te Kenehi, we have one question from Dr Grant Phillipson or are you
5 continuing?

TE KENEHI TEIRA:

No. I have just got questions and I have got the answers because you'd want to know.

DCJ FOX:

10 And you are going to tell us about the taonga as, well, aren't you?

TE KENEHI TEIRA:

Yes.

DCJ FOX:

Yes. Dr Phillipson.

15 **(3:58) DR GRANT PHILLIPSON TO TE KENEHI TEIRA:**

Q. Tēnā koe Te Kenehi, thank you for your evidence.

A. Tēnā koe.

Q. I just have one question. You mentioned Te Ūpokoiri and they feature a
great deal in the research reports and I thought since you mentioned
20 briefly and that there was a relationship there I think if you could explain
who they are and how they come into this district?

A. If you go to Ōmāhu the people there are Ngāi Ūpokoiri, they also have
other hapū names that are associated with – but Renata Kawepō was
their leader in times after all these Heke. Renata's brother, Te Waniko,
25 he travelled with Ngāti Raukawa down to the Manawatū area and he built
a pā at Massey University, just below on the flats at Turitea. And when
Te Waniko died and Renata was freed from Ngapuhi he came back with
– I got to get this right – Colenso and he came back to his people. He
travelled through from Hawkes Bay to find his people who were all living

in and around Palmerston North area. But they also live with Ngāti Raukawa at Te Rewarewa, which is where the Turongo Church stood – the church is later taken to Poutu Marae so they could look after it but there is a little block there at Moutoa and Ngāi Ūpokoiri lived there too. They were also known as Te Pane Iri.

5

Q. Okay, that is very helpful because I was very confused as to how they were claiming rights in the Rangitīkei-Manawatū purchase and that is very helpful, thank you for that.

A. They gave them all up for Ngāti Raukawa.

10

Q. Oh right. Thank you.

DCJ FOX:

All right, thank you for that and the taonga?

(4:00) TE KENEHI TEIRA: (KŌRERO MŌ NGĀ TAONGA)

15

Yes, you have got several taonga there, one of them is a *mere-pākohe* and it is called *Whakamana*, to remind us to and be *mana*-enhancing. So, it belongs to the kaupapa of *Whakatipuranga-Ruamano* and if you know them the many sayings of our koroua our rangatira, Whatarangī Winiata, that has that name and it means *whakamana ngā kōrero ō ngā hapū ō ngā iwi*. And it is purposefully bought here because we have been asked to make sure that we are advancing the kōrero for all of the hapū and all of the iwi within our people.

20

The other one is a *kuia* of mine because they represent kōrero for our *tupuna kuia* and we quite often talk about Heke and they forget about all of the women that gave birth to children and carried their children all of the way from

25

South Waikato to here and so Hine bought her *tupuna-kuia*, Meretini te Akau and I bought along Akanihi, Teira, and her mother Aperira Renata Te Roherohe. And that is the reason, so we got some balance, and the other – yes?

DCJ FOX:

30

Can I just have some clarity. Is the Mere Whakamana the pounamu?

TE KENEHI TEIRA:

No, no it is a Mere Pākohe, and Pākohe is Argillite.

DCJ FOX:

Okay. Mere Pākohe.

TE KENEHI TEIRA:

5 Sorry. Is that on? Yes. It is not made of Pounamu, it is made of Pākohe.

JUDGE FOX:

Okay.

TE KENEHI TEIRA:

10 And for those who are missiologist, they will know that all the Mere around the world that are of a black kind were being manufactured well before you had Pounamu.

JERALD TWOMEY:

Kōrerohia te Tuarānui.

TE KENEHI TEIRA:

15 The what?

JERALD TWOMEY:

Tuarānui. Te mea roa.

TE KENEHI TEIRA: (CONTINUES)

20 You want to do that? I just wanted to finish my part and then Jerald's got another kōrero for the taonga here as well. There is a photo here of one our tupuna, Hokowhitu McGregor Makarika, and the reason why we bought his photo along like many of the waiata that record that connections from Waikato to here, he was apart of a carving school that carved a whole series of meetings house between this rohe and Waikato, and three in particular. Hoturoa at
25 Aotearoa Pā on the Wharepuhunga Block. Whitikaupeka which is at Mōwhango which is north of Taihape, and Te Tikanga which is just down the road here, Tokarangī. Those were the first three of the reconstituted carving

school and that carving school was given the mandate by King Tāwhiao to carve these houses to make sure that our people had all these places to stay along the way. So there is a whole number of houses that record a journey of heke, to and fro from the Waikato area. So that is why Hokowhitu is there, and that is me. Someone else speaking to the other one?

JERALD TWOMEY:

I would have preferred that somebody from the Wananga had spoken for the large Mere Pounamu. *Heoi anō ko te Tuarānui tēnei. E hāngai ana ki te kōrero mo tērā o ngā tupuna Te Ahukaramū me tana Tuarānui. Engari he mea hōmai e te - hoatu e ngā trustees o Raukawa – te marae o Raukawa ki a Whata hei tohu i ngā mahi* [interpreter: To add it belongs to an ancestor of Te Ahukaramū. It was given to us by the trustees from the marae's of Raukawa from Whata and it was them that made it.]

15 1605

DCJ FOX:

Yes, nearly finished. What about mere pounamu – mere, whalebone?

JERALD TWOMEY:

Kei konei Parewaha mā rātou kē e kōrero mai. Te kuia, te kuia.

20 [Interpreter: Parewahawaha is present, they will speak of it]

(4:05) ROBBIE RICHARDSON:

Tēnā koutou, Robbie Richardson Wai 113, alternant claimant for Parewahawaha. The Patu parāoa is named Parewahawaha and that particular patu parāoa is our connection to Ngāti Tūwharetoa, so that one comes in through there. Kia ora tātou.

DCJ FOX:

Ngā mihi, thank you. Thank you, all of you.

UNSPECIFIED FEMALE SPEAKER: (16:06:34)

Can I just say one thing before we start, if I may, earlier I mentioned that when Jerald Twomey began his presentation I said it was one that could not be stopped, once it began it had to be allowed to run. This presentation is the opposite, at an appropriate point like 5 o'clock we can stop it if necessary and that is what you wish.

DCJ FOX:

We do not need him to stop, we would like you to finish your statement today, thank you. Kei te pai ki a koe e Tā?

SIR EDWARD TAIHAKUREI DURIE:

10 *Kei te pai kē au, kei te pai kē au.* [Interpreter: Absolutely fine.]

DCJ FOX:

Tēnei te mihi atu ki a koe – [Interpreter: Again, welcome back -]

SIR EDWARD TAIHAKUREI DURIE:

Āe.

15 **DCJ FOX:**

- hoki mai ki tō rōpu. [Interpreter: - to your company.]

(4:07) SIR EDWARD TAIHAKUREI DURIE: (#H8)

20 *Te mea tuatahi e mihi atu ki a koutou o te tēpu, e ngā kaiāwhina kei muri i a koe, kei muri i a koutou. Tēnā koutou e te Karauna, tēnā koutou. Ngāti Kauwhata, Te Reureu, Ngāti Raukawa, tēnā koutou, tēnā tātou.*

[Interpreter: Firstly, I must acknowledge you, those my esteemed panel members, dedicated staff behind and of course before you. Crown counsel, 25 Ngāti Kauwhata, Te Reureu, Raukawa, again I acknowledge you all.]

Just the four points at the beginning, all of these papers that you have heard today and including this one were read at a hui last week and we thought that that would be a final, but some people came up with some amendments. So,

what I have done is I have put all the amendments down on a piece of paper referenced to the paragraph to which they relate to and that is now about to be passed up to you by the lady who said you can stop me any time you like and there will be copies for counsel as well.

5

I point out that to save time I'm going to omit parts of this paper and what you said to a previous speaker was that there is a difference between your paper and what that speaker read, the same will happen here but I ask you to take the parts that are omitted as having been read and the written material with the written amendments to be the copy. I just point because of some matters that have been raised by way of an extra nation that the first iteration of this paper was made seven months ago, in July and it's been to several hui ā iwi in order to get some feedback on it and the other matter is that although I am going to omit parts, I still need to keep it reasonably full because there are people who are hearing this by live streaming and who wanted to find out what their claims are supposed to be.

15

1610

READS BRIEF OF EVIDENCE #H8

"So, I am speaking for the Wai 113 claims forum Ngāti Raukawa, Ngāti Kauwhata and Te Reureu of the north have six – that's the first amendment, six main claims. They concern:

20

- 1) The purchase of the Awahou and Rangitīkei-Manawatū Blocks.
- 2) The Native Land Court decision of 1869.
- 3) The Native Land Acts reforms.
- 4) The reserves.
- 5) The collapsing of the Papakāinga.
- 6) (which is new) claims to Maungatautari.

25

At 1940, 100 years after the Treaty and also the year of my birth, there was etched on our elders minds a broad picture of the governance deceit in buying the massive Rangitīkei-Manawatū Block. It was some 240,000 acres running from just north of Foxton to the hills beyond Kimbolton. Equally on their minds was the decision of the Native Land Court which backed the Government view

30

and gave our land defective leave for European Settlement. The size of the block 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 still have way to go to get to the end of it.

5

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 his time. His brief description of the wrong that was done through that Court was part of the mix of things that led me to accept appointment as a Judge of that Court in 1974.”

10

His view is that, if you can't get rid of it then you should at least change it. We've been successful I think in changing it. I was the first Māori of course to go into that Court.

15

“I have now a strong feeling about the fact that for the first time in my 80 years it is only now that our people can confront the case that blighted their chances of economic success in the new economy. I believe it was one of the greatest injustices inflicted on Māori people anywhere matching the confiscations in severity because of the level of deceit in both the purchase and the judgement.

20

The forums position is that the land here is acquired by the Government without the agreement of the hapū who possessed it.

25

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

30

Our case will be that the sale deed was a fraud. In form it was contract but in substance it was a taking without a proper consent, creating a fictional ownership to get around the opposition of the hapū leaders and adopting

confiscation practices from Taranaki to gain the maximum land with minimum reserves. We believe the level of deceit was such as to make this the most dishonest Crown purchase of Māori land on record.

5 The Native Land Court came in to back up the Government – the Government’s purchase. 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.

1615

10 We submit that to properly fulfil its purpose the Tribunal should expose the decision for what it was, an in position by the Government on a Court that the Government itself had created and appointed, and a pandering by the Court to the Government.

15 To respond to the government’s purchase, the paper *Te Pene Raupatu* has been filed. To respond to the Court decision, the *Rangimarie Narrative* has been filed. As we don’t have our own technical advisors, we have submitted these statements to the historic, technical witnesses for their advice before a final version is put in.” To explain this another way, it is common practice that when
20 you have expert witnesses and you present evidence that contains material that is not with the technical witnesses, that you should have given them the opportunity to comment before you put your material up. That is the reason why we have put that material up at this stage. If there is anything wrong in it, they would have the opportunity to point that out to us.

25

Can I just, while mentioning the technical witnesses, Ngāti Raukawa and Ngāti Kauwhata, Reureu, we would like to thank the Crown Forestry Rental Trust for the enormous assistance it has given in allowing all that to develop and for the maps that have been handed out today and the Tribunal for making
30 Terry Hearn available for us as well – sorry, Dr Hearn. We acknowledge all our elders – sorry.

“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 Wai 113 was filed. You have almost covered the country since then, and we are grateful that you have somehow managed to hang on.

5 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
10 technical advisors and that would mean a constraint on legal intervention."

I ask that the Tribunal then takes as read paragraph 16 and to replace that with the insertion at the end of that paragraph that is before you which is done in the interests of time.

15

As I have said, we cannot stress enough how important it is for us that our voice is heard after 30 years since the claim was filed. We have been patient. When Muaūpoko asked to go first, we agreed. Afterall, they were here before us. Ngāti Apa have settled, they were here before us. Rangitāne have settled. We
20 waited until all of those things were done. We did not intervene on any of their stories. We ask the same now of them that we are free to present our case as Your Honour has already directed.

1620

At paragraph 17 we explain that we use the term "Ngāti Raukawa" to refer to
25 two things. First, the tribe of that name and then the confederation of that name. Ngāti Raukawa, as Mr Twomey has explained is a confederation of several hapū who come from diverse places including Te Arawa, Maniapoto, Tūwharetoa. And I would like to pick up on the closing words of what Mr Twomey had to say when he described Ngāti Raukawa as, "A confederation of
30 independent and interdependent people," and I ask that we keep those wise words in mind. Independent and interdependent. I explain too that when we use the term 'Kapiti Coast' we use it in the way that it used to be used in the old days as running from Whangaihu right down to Cook Strait. Today it refers to a place somewhere around Paraparaumu, it used to be much bigger than that.

I am at now paragraph 19. The hapū wish to address important social and economic issues as well. But they will do so separately. This statement concerns the common issues about the land. One reason for the priority that 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 reason for the emphasis on land, which is very important for negotiations, is that in settling the compensation the Government gives most weight to land loss and the relative seriousness of the loss.

10

So, if I go to footnote 2, it is page 89 of the Office of Treaty Settlements Handbook, it says, "In deciding how much to offer the Crown mainly takes into account the amount of land loss to the claimant group through the Crown's breaches of the Treaty and its principals and the relative seriousness of the breaches involved."

15

Next to land loss is probably the loss of customary authority over the waterways. For the settlers the water-ways were ancillary to land, land being the primary food resource. For Māori the waterways were the primary food resource and the hapū held the land and waterways in exactly the same way as you hold the land simply as territory.

20

On the environmental side the Tribunal might note the significant 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 and was more sparsely occupied prior to the Ngāti Raukawa migrations.

25

As I have mentioned on the forums motion the Tribunal has directed a progression of the claims from North to South. The "northern district" means north of the Manawatū River from its mouth to the southern boundary of the Kaihinu Block, shortly below Shannon, and that is shown in Map A. Now, I am hoping that the Tribunal does have the maps with them that go with this – you do have that, thank you.

30

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.

The big land buying program as we see it began in Whanganui, it then moved down the coast to Turakina, which was the next big purchase. 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 Rangitīkei-Manawatū Block came last. It was the last block in the country I believe to be purchased by the Government under the old system of Crown pre-emption.

1625

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 who were fighting for the Crown." Can I just say by way of explanation, I'm not wanting to be critical of those other tribes and that I personally belong to both sides, we were fighting of both sides of that.

20

"These attacks on Ngāti Raukawa began in the North and were then repeated in the South when the Government moved down there. 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." The Government already had the experience of it.

25

"Similarly, as we see it, the protection of Muaūpoko in Horowhenua flowed on from alliances arranged in the North.

30

We acknowledge however, that the hapū have customary interests on either side of the Manawatū river." The examples of that are given in paragraphs 27 and at the hui that we had about a week ago I was asked to add several more, but in the interest of time I'm not going to read them, you will have them there

in front of you with your notes setting out the interest of both, perhaps some of the interest for both North and South.

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

10 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,” as shown in Map B which depicts Te Awahou, Himatangi, the coastal plains, Reureu, Ōroua, and it should be on the map, it’s not there, Kaihinu. On to paragraph 31.

15 “We submit 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.

20 To assist the Tribunal, we have given our understanding of the hapū and principal persons in each territorial division when the buying began in 1858.” This is presented at paragraph 32. I don’t propose to read it, but I ask that you simply note it and to note that at the end of paragraph 32, iii, could you add in there the words at the very end, “And also Hare, Hemi, Taharape.”

25 I’m up to paragraph 34. “We record our gratitude to Ngāti Toa for joining with us, as they have done over the years at important occasions to remind us of our whanaungatanga and our shared history.” Just in my own period of time as a youngster, it was Ngāti Toa that opened the proceedings for the welcome to Lord Cobham in Palmerston North. It was Ngāti Toa that opened the proceedings when Governor Bernard Fergusson opened the
30 Māori Battalion War Memorial Hall in the early 1960s and that has been the same with other occasions as well and I’m very pleased that we have maintained that particular kaupapa. It is also tika that they opened in terms of Māori lore.

“We are proud that Te Rauparaha and Te Rangihaeata were equally of Ngāti Toa and Ngāti Raukawa and that they looked to Ngāti Raukawa 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 rangimārie narrative that the hapū of Ngāti Raukawa confederation set out not so much to dominate as to appease and I have an assertion there which is with your notes.

There are two matters in the Ngāti Toa evidence that we wish to emphasise. The first is the evidence of Ngāti Toa tradition that they held the mana of the Kapiti coast, that is from Whangaehu to the south. Second, it may be inferred from Mr Ropata’s evidence that those of Ngāti Toa who purportedly subscribed to the deed of sale for Rangitīkei-Manawatū may have done so only on account of their historical association.

Going to paragraph 35, Gerald Toomey has referred to the strength and unity of Ngāti Raukawa as translated through whakapapa, waiata, mōteatea and kōrero tuku iho. Te Kenehi Taylor has explained our hazardous but successful migrations with information never previously collated. Can you delete the words and Piripi Walker has explained why we are here?

And to just insert a bit from the additional notes. Both of these speakers remind us that Ngāti Raukawa who arrived here were battle hardened warriors with reputations gained in battles in the places from whence they came and also in battles along the way. I mention that because of this Court decision which said that Ngāti Raukawa had not affected a proper conquest. My submission is nothing could have stood in the way of Ngāti Raukawa and – but instead Ngāti Raukawa sort too make peace.

I am now at paragraph 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 Rangitīkei and Manawatū rivers were sparsely occupied and it is there that large numbers of Ngāti Raukawa settled.

5 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 as an example.

10 That brings us back to the hapū claims. We estimate that Ngāti Raukawa, both North and South, lost about 90% of their land before 1900, notwithstanding that Ngāti Raukawa were so strongly opposed to land sales. In view of the opposition, an answer is needed as to how this could have happened? The answer we contend is that Government bypassed the hapū leaders by treating general meetings of everyone and anyone, as conclusive, where Government could control the outcome and could publish the outcome according to its own
15 interpretation of what those meetings had decided.

1635

20 The proper position we will argue, as introduced in Te Pene Raupatu, is that Government needed to have the separate consent of each hapū through its senior representatives. That principle we 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. And the hapū rūnanga is one such customary institution. I should
25 have added a footnote there and will slip it in now the relevant clauses of the United National Declaration, clauses 18, 19, 20 and 23.

30 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. We will submit it to be a colonial strategy to separate the people from their political institutions and their economic base. We will contend that the Native Land Laws of the day were not just about land reform. We will submit that they were wartime measures to destroy the political and economic base of the hapū.

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 easily subdivided, we were not left with the major blocks of the central North Island that were later to 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 dispute.

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.

Paragraph 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.

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 that is 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 the Act, to measure the extent of prejudice arising from Crown actions, and how that prejudice might be alleviated.

1640

The position of Ngāti Raukawa is that we are amongst the most land less tribes in then country and have been that way for over a century.

We then look to the extent of life, it was much larger than the Rangitīkei-Manawatū Block. The original decision of the senior rangatira was to keep as a reserve for future generations, some 319,500 acres of prime
5 Manawatū land.

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

The 319,500 acres was also the land that the norther hapū had left after the senior leaders had already allocated 475,000 acres to the previous occupiers Rangitāne and Ngāti Apa. Rangitāne and Ngāti Apa then sold the land to the
15 Government. The areas that we allocated to Rangitāne and Ngāti Apa are shown in map C. It must be borne in mind then, that we think of the land disposal in this area, we must remember that the total area was 794,500 acres. Of that Ngāti Raukawa released 60%, which then became available for European settlement and sought to retain only 40% but on the basis that that
20 40% would be a permanent reserve for their people.”

So, when you look at the map of the two areas you will note that the area east of the Oroua river down to Shannon is occupied jointly by Rangitāne and Ngāti Raukawa. The myth that we commonly hear, that we were disputing with
25 one another is wrong. Certainly, we fought and certainly with respect to Rangitāne we generally won but at the end of the day we arranged and married settlement and a piece agreement and agreed that they should be able to sell the Ahuaturanga Block.

30 “The Rangitīkei-Manawatū purchase then 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 each of the Ngāti Raukawa hapū with a sufficient endowment for the future.

It will then be claimed that as a result of the Crowns appropriations, the norther Ngāti Raukawa hapū lost a larger proportion of its customary land than most hapū in the country. If not, all of the tribes in the north island with marked impacts on the political, social, cultural and economic well-being of the hapū.”

I will summarise paragraphs 54 to 57. We will claim that Te Awahou Block was not sold by the old guard of leaders who had the right to speak but by the young guard who had been to the schools of the missionary groups and who thought, they, the young people knew best. We still have that problem today.

I start again at paragraph 58. “It is claimed:

- a) that it was contrary to the Treaty of Waitangi for the Land Purchase Commissioner to have pursued the purchase of Te Awahou 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.
- c) and that is 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.”

We come to look more closely at the Rangitīkei-Manawatū transaction. We will argue that in looking at the Rangitīkei-Manawatū transaction the Tribunal show know first the dominant position of the Crown officials, and their extensive conflicts of interest.

“Dr Isaac Featherston was the Land Purchase Commissioner for this block. He was also the Superintendent of the Manawatū Province. These were the days of the 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 or Prime Minister who is here today and leader of the opposition. Sir William Fox knew the district.

His home was on some 5000 acres on the north bank of the Rangitīkei River, amongst Ngāti Apa.”

5 The Government of the day considered 5000 acres a reasonable amount of land for one person to hold. On the immediately opposite bank the amount left for Māori, set for Māori was 15 acres.

10 “Fox and Featherston were both involved in the Taranaki wars and confiscations. Featherston also led the Native Contingent comprised mainly of Āti hau, Ngāti Apa and Rangitāne.

15 Featherston supported large Māori land purchases for European settlement. He justified this policy through his publicised belief that Māori were a dying race and his task was merely to smooth their pillow. He was assisted in this land purchase role by a lawyer, Sir Walter Buller, who also supported the purchase of Māori land but mainly for himself and he was known for the legal fees he charged for relieving Māori of the burden of their land. At the same time, he was a Resident Magistrate for the Manawatū and Horowhenua.

20 **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.**

25 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 also the requirements for a valid transaction at either Māori or English Law.

30 While the inequality of bargaining power called for the Government’s utmost good faith, Featherston, had conflicting ambitions as provincial superintendent and a 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.

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 given by Ngāti Kauwhata is, "*Te Pene Raupatu.*"

1650

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."

Moving to paragraph 70. We will argue that, "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. Featherston had only one previous shot at buying land, which was in Taranaki, even his peers considered that that purchase was a fiasco. Featherston had not previously served in the governing department and had no training in the department's ethics. He also had many conflicts, but even so was appointed as a land purchase commissioner by Sir William Fox.

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 Ātīhau 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, those sheets of paper would later be attached to a deed, so that it looked like they had signed the deed when they hadn't. Most of the signatories on the deed were not living on the land but were from far away, from Whanganui to Cook Strait.

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 this very policy that was set up to avoid the thing that started the New Zealand war. The rationale for the exemption was flimsy, we
5 submit and is based on the assumed rights of certain scrip holders who had purchased from the New Zealand Company.

We will submit that the true reason for why Featherston and Fox moved to have Manawatū excluded from the Court's purview, was because
10 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

Ngāti Apa, we will submit, is because Ngāti Apa, on the other hand had
15 expressed their keenness to sell. It's logical Featherston chose Ngāti Apa.

Ngāti Raukawa had forged a peaceful relationship with Rangitāne. As considered in the Rangimarie Report both would live together on the blocks along the river entrance as shown in Map D. Ngāti Raukawa had also forged a
20 peaceful relationship with Ngāti Apa as we have said. They released Turakina to Ngāti Apa and Ahuaturanga to upriver Rangitāne.

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
25 chance for utu and offered to sell the Ngāti Raukawa share as well. It is most significant that Nepia Taratoa, the old warrior died in 1863 and Featherston began buying in 1864.

So it was that Featherston came to buy the land by soliciting some 1,700
30 signatures with the largest signatory group coming from Whanganui who had 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.”

I should add, there was another signature on their of Nepia Taratoa who was already dead when that signature was put on there.

5 “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; it was 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, 10 to determine instead who were the true owners, although there was no application before the Court asking the Court to determine that.

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 15 such an order. In fairness to the current Court I should add that the Court is not so efficient today.

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

20 The first is that when the Court sat, Ngāti Apa attacked and destroyed the Ngāti Raukawa papa kāinga of Pakapakatea on the Rangitīkei 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 would do nothing. They would do the same 25 later, in Horowhenua, because of their links to Muaūpoko.

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 from the land leases. Featherston declared their leases to 30 run-holders as unlawful and collected the rents himself. He dried up the source of revenue by which they might have been able to withstand the onslaught.

We will consider also that 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 none other than the Prime Minister, Sir William Fox. We will submit that the Government, having a conflict, should not have been there at all, especially when the Native Land Court had been established to relieve the Government of making decisions on ownership. The non-sellers had a
5 layperson acting voluntarily who came onto the job the night before the case was to be heard. They had instructed a lawyer in Wellington, but he pulled out and I think once he knew that it was the Prime Minister who would be on the other side.

10 We will also contend that the Native Land Court lacked a proper comprehension of Māori custom on which to determine the Māori 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
15 Government should have appointed Māori to determine the issues for who better to know Māori custom than Māori people.

1700

Instead we had a Court that effectively determined that Māori were savages. It held that to effect a proper conquest, Ngāti Raukawa had to savagely wipe out
20 their opponents because that's what savages do. They said that Ngāti Raukawa had failed the test of savagery and had not obliterated the other party. We will be submitting that this was the ultimate in racist rubbish. Genocide has never been part of Māori for the purposes of effecting a conquest.

25 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.

30

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.

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 or correct, and that requires not a narrow or prescriptive approach, but an examination of the whole of the circumstances and here the
5 obvious circumstances are that Ngāti Raukawa had split the land to three parts equally to provide for everyone.

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
10 found that Ngāti Raukawa had no rights, later went on to find that Ngāti Raukawa the rights. 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 to whom we are very grateful, the
15 Native Appellate Court later found that the conquest was successful and Ngāti Raukawa held the mana of the land.” Great decision, just too late the land had already gone.

Paragraph 91. “We have submitted that Native custom, or tikanga Māori,
20 required an examination of the whole of the circumstances to determine what is tika, or right. 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.

25 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.

30 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 to which Kahu Ropata referred as the battle of Waiorua and soon after – sorry the taking of Kāpiti Island was the first one then soon after that the Waiorua battle, the successful defence of a few hundred against a few thousand
 5 assailants from Whanganui to Arapaoa at Waiorua and the follow-up attacks on Ngāti Apa along the Rangitīkei River. Te Rauparaha’s treatment of Muaūpoko would also have cut a deep impression and should be included in the significant events.

10 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 who at the same time are prepared to appease and make peace.

15

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

20 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 Rangitīkei River. The several hapū
 25 of Reureu would later provide the same block in the upper reaches and on the eastern front Ngāti Kauwhata and Rangitāne would reach a peace agreement which saw them both occupying the lands the lengths of the Oraua and Manawatū Rivers.”

30 I come to paragraph 97 and will summarise I hope and will summarise paragraphs 97 to 106.

Because the Reureu hapū arrived after 1840 Dr Featherston excluded them as owners. These hapū will say that he was wrong. They came peacefully on the

basis of Māori law and Māori law did not cease to operate at 1840 as we well know now from the Supreme Court decision of about 2012, Takamore Case.

With regard to the purchase price we will contend four points:

- 5 • The purchase price was not agreed by the 1700 or so who signed the paper that was later attached to the deed.
- The price was not paid to those who did sign.
- There is no way of knowing who all shared in the proceeds and who didn't.
- 10 • And as to the value, 106,000 acres was immediately on sold to the Manchester Company had more than 6x times the prices Government had claimed to have paid for it.

So, I am now at paragraph 107.

15

“The Reserves

It will be argued that the Manawatū reserves had not been agreed ahead of the sale which was a normal practice in the Crow pre-emption buying and that was
 20 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 especially 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
 25 which was in one compact title. The more populous Ngāti Parewahawaha on the southern side of the river, received 3,795.5 acres.

1710

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
 30 titles, a further 1,500 acres, making 43,550 acres in all,” as against the 3700 for Parewahawaha.

“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 the titles. In some cases land was sold to meet the debts before the title was available, so the persons pressing the government for a title were in fact European purchasers. The costs that I refer to are those of survey, legal documentation, court attendances to settle ownership and agency fees.

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.

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 in proceedings against the agent on the grounds that the proceedings were filed out of time.

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 papakāinga.” The homes in which the people were living. “To recover that part,” the papakāinga area around Awahuri, they had to pay several times the true cost of that land, much more than the agent had taken from them, and to pay for that they sold the Kawakawa reserve that adjoined the Feilding township along South Street, in which where you were originally intended to hold this hearing at Manfield Park.

The next issue concerns the condition of the reserves. Most were scattered and lacked the necessary compactness to be competitive in the new economy, or they were too small to provide for the future needs of the hapū and its members.

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 papakāinga and for farms that would provide the economic base of the people. The reserves in turn were taken over by the Native Land Court. The lands were
 5 vested in the individual members and the hapū rūnanga was excluded from maintaining its customary oversight. The centre shoot of the flax bush had been cut out.

As earlier discussed, 87% of our forbear's reserve, going back to the late
 10 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.

It will be submitted that the effect of these laws was to divest the hapū of their
 15 possession and control of their land. The contemporary and present-day description of these laws as "individualising" the ownership, does not express the gravity of undermining the political capacity of the people to manage their affairs, and to hold on to the land.

20 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."

I'm at paragraph 118. "As already indicated, **the Forum will argue that the
 25 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
 30 Treaty-compliant purchase of any Part.**

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 Kīngitanga and the
5 Kīngitanga expression of mana motuhake.

**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
10 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.**

123. Also, however, the impact of hapū elimination extended beyond land as
15 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
20 development and the development of the arts.

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
25 everything, the people have use rights defined mainly by land, and the hapū are excluded.

127. We will argue that the social issues that now confront us would not have arisen had the hapū retained the control of the 319,500 acres proposed as a
30 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.

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

5

10 1720

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.

15

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.

20

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."

25

I will summarise paragraphs 132 to 138. Several hapū made claims to the lands back in the north particularly at Maungatautari. We will argue that the wrong Court was making the decision. It should have been the King's rūnanga. The King especially understood the customary position of absentee ownership and his decision we would say was correct and the Native Land Court was wrong.

30

Secondly the Government Court exposed the Ngāti Raukawa hapū to undue legalism and undue costs.

I carry on to paragraph 139. Please if I read out the heading of this section is headed,

Conclusion.

“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.

10

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.

15

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.

20

25

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.

30

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
5 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. Many of our people died with that impression. It had an enormous
10 impact on the way that the generation of the 1940s to the 1960s were raised. Out of sheer necessity the focus was on surviving on Pākehā terms, even if that meant that we would learn English but not Māori. At that time, no other option seemed practical.

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

I was born in 1940, on the 100th anniversary of the Treaty (almost to the day).
20 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 Himatangi and with my grandmother, on her farm at Kākāriki. He began his working life as a clerk and licensed interpreter in the
25 Native Land Court.

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
30 especially. It was the embryo of an ambition to reverse the historical trajectory.

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 and also a wife, 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.

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 as most Ngāti Kauwhata young children did. 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, but each toiling from a small space on a rotating killing chain for forty hours a week.

1730

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 of South Street was the former Kawakawa Native Reserve of 1035 acres. It had long been sold to pay the debts in relation to the lands at Te Awahuri. 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.

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 Street 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.”

Thank you.

5

WAIATA

HAKA

10 **HAKA (KA MATE)**

DCJ FOX:

Kia ora kia koe, we are going to take questions, Dr Grant Phillipson will go first.

(5:33) DR GRANT PHILLIPSON TO SIR EDWARD TAIHAKUREI DURIE

A. He will have too many.

15 Q. I do have a few.

A. I am not surprised.

Q. But some of them are just small points and you can deal with them in writing if you want to, but I will run through them

A. Yes. Kei te pai.

20 **DCJ FOX:**

Are you happy to continue to stand or would you like to sit?

SIR EDWARD TAIHAKUREI DURIE:

Yes, I might take a seat, thank you. That way I can get the answers in my left ear.

25 **DR GRANT PHILLIPSON TO SIR EDWARD TAIHAKUREI DURIE:
(CONTINUES)**

Q. Just my first question, Sir, relates to paragraph 64 on page 15 where you said that the Rangitīkei-Manawatū purchase failed to meet the

requirements for a valid transaction and you said an English Law was one of the things.

A. Yes.

Q. Is that more fully explained in the *Pene Raupatu Statement* or –

5 A. Yes, it is.

Q. Okay, so I will see if I still have that question after I study that.

A. Yes, this was meant to be an indication of what you are about to hear.

Q. Right, okay, thank you.

A. Sort of like Grace.

10 1735

Q. I have actually culled some of my question but –

A. That is good.

Q. Now, you suggested in paragraph 73 on Page 17 that Sir Mclean had given the Court a steer that Ngāti Raukawa were the owners and I do not understand that statement.

15

A. When he finished the purchase of the Turakina Block he designed a standard, he stated that the purchase could not proceed south of the Rangitīkei River because that was Ngāti Raukawa territory.

Q. And that was known to the Native Land Court when it sat in 1868?

20

A. I would have thought so considering that he was the head of the – of his department, I expect it would have been especially known to Featherston who was a land purchase commissioner and Sir Donald Mclean had been the head of that outfit. It should – I would have thought that all of the land purchase commissioners would have been aware of Donald Mclean's statement.

25

Q. Yes, that department was shut down after Waitara, but I cannot remember exactly when and it might have been later in the 1860's and I need to check that.

A. So, Waitara was 1860 –

30

Q. Yes.

A. – and the purchasing began in 1864.

Q. Yes. So, I am not sure whether the department still existed when Featherston was appointed.

- A. Oh, yes. Whether or not the department existed the point is, it is material, it is information that should have still been around.
- Q. So, he should have known that?
- A. Yes.
- 5 Q. Okay, thank you. In paragraph 77, on page 17 you said that one of the senior leaders in residence was threatened with confiscation for fighting at Ōrākau.
- A. Yes.
- Q. Just wondered what the name was of that leader?
- 10 A. Tapa te Whata.
- Q. Tapa te Whata.
- A. I should have mentioned at that point too that the Nepia Tara taught could have been his son.
- Q. Yes.
- 15 A. It could have been his signature that was there but what I cannot reconcile about that was that he was so persistently opposed to the sale.
- Q. Yes, thank you. I think that is discussed in some of the research reports that he did sign it and later decided that he should not have, from my memory. And paragraph 96 on page 21 you may have actually corrected
- 20 this when you were delivering your paper. Yes, it is just the sentence, “The several hapū of Reureu would later provide the same block in the upper reaches.” I did not understand that.
- A. Okay, so we had in the southern – out towards the coast we had Ngāti Parewahawaha who were there to block Ngāti Apa from crossing
- 25 over, but they could have gone further north than that and the Reureu people were there to block them going over there.
- Q. I read that as a block of land.
- A. I see.
- Q. Sorry, now I understand what you mean, yes. Right.
- 30 A. So, they erected pou there and they were also involved in a major fight with Ngāti Apa.
- Q. Right, no I understand that now.
- A. Yes

Q. Thank you and I have a couple of others which I would rather you answer in writing, so I will put those in writing

A. Yes, okay thank you.

5 Q. Thank you very much and thank you for your wonderful presentation. Kia ora.

(5:39) DR MONTY SOUTAR TO SIR EDWARD TAIHAKUREI DURIE:

10 Q. Kia ora, Sir Eddie. Thank you very much. I do not know if these are questions or comments but there was one thing I had heard you say I just wanted to make sure. At paragraph 104 when you said it was on sold for more than six times the price, but it actually says three times in the brief?

1740

15 A. Yes, that is correct. The reason is that it was expressed in a difficult way the earlier time around. That was for 106,000 acres out of 247,000 acres, so I did it the other way around of saying, well if you take it as part of the whole, it would come out at that figure. Is that double-dutch?

Q. Yes.

A. Yes, okay, let's have another shot at it. The – what part is it?

Q. Paragraph 104.

20 A. Paragraph 104. So, “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.” So I thought, well that's about six times the price.

Q. I see.

A. Because it was only half the block, yes.

25 Q. I see. I just want to make a point or to comment on a point you made at paragraph 55 where you were talking about the old guard of leaders.

A. Yes.

30 Q. I think that point is often lost by Māori today. I'd seen it in other places about that old guard, how whatever their word was in those days, that was it, and you never challenged it, and it seems to be in about the 1860s you get this young leadership coming through –

A. Yes.

Q. – begin to challenge and as you say, and I think it's interesting here in this area, they were Mission-schooled young men –

A. Yes.

Q. – who were probably getting advice from the Missionaries?

5 A. Yes, and been given new ideas and I think they've got good read and all those sorts of things and they had suddenly got the idea that, "Well we know better than the old people."

Q. In general, I wanted to say how well-written I thought this was and I wondered whether your own people appreciated what they had in you.

10 Certainly could do with you in our own tribe.

A. Kia ora.

DCJ FOX:

No questions from Ms Simpson.

(5:42) DCJ FOX TO SIR EDWARD TAIHĀKUREI DURIE:

15 Q. My question, dare I say it, goes back to my own tribe and Dr Monty's tribe. In order to prepare for the Moriori Chatham Island hearings –

A. Yes.

Q. – Apirana Mahuika was asked to do a brief and his brief was on conquest and he talked about in order to establish effective conquest you had to annihilate completely. You, I think in one of these documents with some
20 of the other authors, point out that, given your experience and the experience of the other authors, that no one could actually identify an occasion where conquest resulted in total annihilation –

A. Correct.

25 Q. – in Māori custom pre-1840. So I am interested if you have given any thought to what that means beyond what you have written so far?

A. I think the Chatham Islands is well regarded as a very exceptional case. It is well worth noting how they got there, they got there on a brick, on a European ship. They had guns, the other people did not, and Moriori
30 people did not have guns and I think they just got a bit carried away with the – so I don't regard that as a traditional conquest when you've got that many guns against a people with no guns. But I – huge respect for

Api Mahuika of course, but I do have a different view. When I looked at several of the Native Land Court records and invariably the efforts seem to be to conquer an area and then incorporate the people whom you have conquered into your own tribe to build up the tribal strength.

5 Q. And in terms of Ngāti Toa's position at the time as put by Tamehana and others -

1745

A. Yes.

Q. - the idea of tuku whenua –

10 A. Yes.

Q. - and being able to do what you wanted on the land as a confederation of iwi –

A. Yes.

Q. That is a matter that is going to be explored further?

15 A. I think it does need to be explored further, we use the word tuku whenua which the Native Land Court interpreted to mean a gift. Tuku can be a release of anything, the last person – the last breath you give in life is referred to as a tuku of that breath, a giving away of it, a releasing of it. When the Native Land Court determined it as a gift, I think it had it wrong.
20 What was happening here was really an allocation of the land. So, we talk about Ngāti Raukawa coming down here was not because of a gift of the land, it was to back up Ngāti Toa and the call of Waituhi for her relatives to come down and give help. So, we were giving, I think more than we got.

25 Q. All right.

A. So, I don't see it as a tuku in the sense of gift but tuku in the sense of allocation.

Q. Yes, all right. Thank you and final question relates to – so we are going to hear more about that –

30 A. Yes, you will hear more about that –

Q. - and obviously or probably –

A. - mainly because you have asked for it, so we are going to have to.

Q. - yes, and you will be cross-examined on it by the Crown and –

A. Sure.

Q. - I'm sure. Or at least questions of clarification will be sought. Now, the final thing was He Iti nā Mōtai?

A. Yes.

Q. What is the status of that paper now?

5 A. The status of He Iti nā Mōtai is that it is put in as a depository of oral and traditional history, in my view it is not evidence until somebody relies on that part and it forms evidence and at that point it can be challenged but I see it in the same category as that what Your Honour – order that Your Honour made in relation to the filing of the Ngāti Toa evidence on the
10 record of this inquiry. You said all of that evidence goes on but the only part that we will take notice of is a part that we rely upon.

Q. All right.

A. Or given evidence.

Q. So, the opportunity is there for hapū who wish to draw upon it.

15 A. Yes, now what we need to note about He Iti nā Mōtai is that it was written before the technical research had been done and a number of people now that they have seen the technical research will want to give a different statement about their evidence.

Q. Well those are all the questions I have.

20 A. Thank you.

DCJ FOX:

Engari, me mihi atu au ki a koe. E kore e taea ahau ki te mutunga o tāku mihi ki a koe i tēnei rangi. Thank you so much, it has been extremely helpful to give us an overview of the arguments that we are going to be hearing over the next
25 few weeks of hearing, so I want to thank you for that.

[Interpreter: I do want to acknowledge you, my gratitude for you and what you have given to us today.]

SIR EDWARD TAIHAKUREI DURIE:

30 Kia ora.

DCJ FOX:

Kia ora.

JACKI COLE:

Your Honour, may I just ask you a question in relation to the paper that has just been presented. Just for clarification, the passages that were not read, are they
5 to be taken as read?

DCJ FOX:

I think they are still relied upon, he was summarising –

JACKI COLE:

Yes, no. That is fine.

10 **DCJ FOX:**

- for the benefit of time.

JACKI COLE:

I just wanted to clarify and the second one was where words were changed during the delivery, you know, very small passages that were changed. Do we
15 take the spoken words or the written words as being the words on the record?

DCJ FOX:

That is a good question because I know I change the text a few times.

JACKI COLE:

Yes, so did I.

20 **SIR EDWARD TAIHAKUREI DURIE:**

Perhaps I could assist here by filing another copy. For every word that was changed it was written in here, so I can easily file a copy that will show all the changes.

DCJ FOX:

25 Thank you.

JACKI COLE:

Ma'am, if we could just have that as a tracked changed document, that would be very helpful as per your memo for the protocols.

DCJ FOX:

5 Alright.

SIR EDWARD TAIHAKUREI DURIE:

Yes, that can be done.

DCJ FOX:

Well that brings us to the close of the day. We have no opportunity to hear
10 Dr Hearn this evening. Is he here still?

UNSPECIFIED SPEAKER: (17:49:56)

Yes.

DCJ FOX:

Dr Hearn, could you stand up? We are looking forward to hearing from you.
15 You were going to stay overnight. You will open in the morning with your
summary and then we will have the cross-examination time with you. You will
be able to get away by lunch time at least we hope. I am always hopeful.
All right. I am going to pass it over to Professor Meihana Durie.

KARAKIA WHAKAKAPI (PROFESSOR MEIHANA DURIE)

20 **HEARING ADJOURNS: 5.51 PM**

HEARING RESUMES ON TUESDAY 10 MARCH 2020 AT 9.04 AM

MIHI (KAUMĀTUA)

5 **HĪMENE (MŌ MARIA)**

KARAKIA TĪMATANGA (KAUMĀTUA)

HOUSEKEEPING (AWHINA TWOMEY)

10

(09:12) DENNIS EMERY: (KŌRERO MŌ NGĀ TAONGA)

Mōrena tātou. Ki a koutou nei e te Kaiwhakawā, koutou nei i te ata nei i runga i tēnei tāhū o te whare nei ki Hato Paora, tēnei me mihi anō ki a koutou nei. Tēnā he whakamārama tēnei o ngā taonga i tuku iho mātou nei nō Ngāti Kauwhata. Nā reira tēnei ko Dennis Emery e kōrero ake nei mō Ngāti Kauwhata, Ngāti Maniapoto mō mātou nei. So thank you for the opportunity.

15

[Interpreter: Again, welcome to everyone and of course to you Judge, and welcome again here to our house here at Hato Pāora. And just to give more clarification on these particular taonga that we have before us, they all belong to Ngāti Kauwhata. I am Dennis Emery speaking to you representing Maniapoto and Kauwhata.]

20

25 Following on from the kōrero of Taihakurei Durie yesterday, this was the two taonga that have been sitting here as well as with Ngāti Toa Rangatira and I just wanted to explain it briefly for you today. But might I say that what an ecstatic start yesterday as we of Ngāti Kauwhata *ka pai i roto i tēnei te ngākau mō mātou nei* for the start here at Hato Paora College for the College and everybody and for the Tribunal, we are really, really grateful and we went home
30 buzzing last night. Kia ora.

So in terms of the two taonga that you have in there. One of the taonga here is called Wehiwehi and we are going to be talking briefly about the connections

between Wehiwehi Kauwhata and the Kīngitanga as mentioned by Gerald Twomey yesterday, by Te Kenehi Taylor, by Kahu Ropata and then by Taihakurei – Sir Eddie Durie.

- 5 So Wehiwehi is made of the Kahurangi variety of pounamu, is approximately 30 centimetres long and eight centimetres wide at its widest point. Wehiwehi is a slender shaped mere and very sharp around its edges.

10 Kauwhata is made of the kawakawa variety of pounamu and is approximately 25 centimetres long and 10 centimetres wide at its widest point. Kauwhata is a solid thick mere with veins of colouring of light green and light red stemming from its handles, and like Ngāti Toa Rangatira they sit at the present moment at Te Papa and we weren't able to bring them up here across today but our whakaahua, our pikitia is the next bit and we wanted it, so it's recorded on the
15 record for ourselves.

So the kōrero, and I have to acknowledge James Ratapu, Ngāti Tahuriwakanui, James is very, very unwell at the present moment, but this kōrero that I've got here is what James did for us back in 2006 when these mere came back to us
20 and he's done the research and provided it to us of Ngāti Kauwhata and our connections to Wehiwehi and through to the Kīngitanga.

So, the mere were first presented in 1920 at Rotorua by King Te Rata, the fourth Māori King, and the Māori speaker for Ngāti Haua, Takutai Ngakawa, and
25 Kauwhata was presented to the Prince of Whales at the time who then went on to become King Edward VIII who not long after he became King abdicated for an American called Mrs Simpson. So the two mere of Kauwhata and Wehiwehi then went over to France because they were there and when King Edward died they became into possession of Mr Simpson who then sold them to Mr
30 Mohamed Al-Fayed who then had them with Dodi Al-Fayed with Princess Diana when she died. So these two mere have travelled.

Then out of nowhere, out of nowhere they arrive from Tiesendorf, in front of the foyer at Te Papa in a crate, no name, no nothing, sitting there. So luckily for

us, the CEO at the time, Arapeta Hakiwai, he went down and when they opened up the lid he saw the two mere and he knew what they were. So he then tried to contact ourselves, and finally got to me and I went down to have a look at them and they were Kauwhata and Wehiwehi. They've travelled all the way, unaided, by themselves. So the arrangement that we now have is that they will never go separate, they will always go together, and we have an agreement between Te Papa, Ngāti Wehiwehi and Ngāti Kauwhata whenever they are to be moved. So that's the point behind it for us. Important that we had it and to continue on the kōrero that Gerald, Te Kenehi, Taihakurei and Kahu had for us yesterday morning. *Koia nei hei whakamāramatia tēnei taonga mō mātou nei.* [Interpreter: Just a point of clarification in regard to the treasures we have before you.]

(09:16) DEPUTY CHIEF JUDGE CAREN FOX: (MIHI)

15 *Mōrena. Tēnei te mihi atu ki a koe Mr Goddard, nāu anō te mahi tuku whakamoemiti ki te Atua otirā ki a rātou ngā tama o te kura. He mihi nui ki a rātou. Te ātaahua hoki o ngā waiata mai i te tīmatanga o tēnei hui tae atu ki tēnei rā, tau mai ki tēnei rā, nā reira me mihi ki a rātou mā me o rātou kaha ki te whai i ngā tikanga a o tātou tīpuna.*

20

[Interpreter: I wish to thank you for that Mr Goddard for leading us in prayer, and of course the students of the college and the beautiful singing that came with it, certainly from the beginning of yesterday's pōhiri through to today. We certainly do appreciate that. And ensuring that all those protocols are adhered to.]

25

All right. Well good morning everybody. We were two minutes late because we did some site visits as we came along direct this morning, we missed the turnoff and I was not driving but I am not going to say who was, but we did see some interesting places that have featured in some of the kōrero so far. So forgive us but know that we were only two minutes late.

30

So thank you for organising the start of the day so well for all of us those of you responsible, and without further ado, unless anybody has got anything they wish to raise for me on this side?

5 **(09:18) EMILY MARTINEZ: (APPEARANCE)**

Your Honour, Ms Martinez here.

DCJ FOX:

Ms Martinez.

EMILY MARTINEZ:

10 Just like to record an appearance for Ms Scoular-Sutton who is joining me today. She is appearing for the same claims as outlined yesterday and she is here for the cross-examination on the A201 report. We seek Your Honour's leave for her to withdraw at the end of today.

DCJ FOX:

15 Yes, thank you.

EMILY MARTINEZ:

As Your Honour pleases.

(09:18) KYLEE KATIPO: (MIHI, APPEARANCE)

20 *Tēnā koe e te Kaiwhakawā, tēnā koutou ngā mema o Te Taraipiunara.*

DCJ FOX:

Ms Katipo.

KYLEE KATIPO

Ms Katipo appearing along with Mr Burgess for Wai 1872 and Wai 651.

25 **DCJ FOX:**

Thank you. Anyone else? No. Let us start then. Dr Hearn is giving his evidence today and we are really grateful Dr Heard that you could stay, and I

know you were going to have difficulty being here for the rest of the week, but we will not keep you any longer than an extra couple of hours I think today. So Ms Hall, I am going to hand it over to you to lead through your team's – the leading of this witness.

5

(09:19) LYNDON ROGERS: (MIHI, CALLING WITNESS)

Kei te pai tēnā. E ngā tīpuna kua hīkoi i te ara roa i mua ake ki a mātou tēnā koutou, tēnā koutou, tēnā koutou. E te Kaiwhakawā e ngā kaiwhakamana o Te Tiriti o Waitangi tēnā koutou. Kei te mihi au ki tō mahi roa i te rohe nei e whakarongo ana e pānui ana e whakarongo ana anō, he mihi nui ki a koutou. E taku rangatira e te tākuta kei te mihi au ki a koe. He puna māramatanga tō mahi mō mātou mō mātou tēnā koe, tēnā koe, tēnā koe.

10

[Interpreter: I wish to acknowledge for making available to you Judge and of course esteemed panel members and of course your extensive work within this area, listening, reading and the extensiveness of – and to you Dr, Sir, and certainly the repository of knowledge which you have to offer. We are certainly eager to hear what you have to offer.]

15

(09:20) LYNDON ROGERS TO DR TERRENCE HEARN: (SWORN)

20 Q. So, I turn to you Dr Hearn, if you would please state your full name for the Tribunal?

A. Terrence John Hearn.

Q. You have a PHD in Historical Geography from the University of Otago.

A. Correct.

25 Q. Kei te pai. You are presenting today on a report titled *One past, many histories: tribal land and politics* and that being 19th Century which you wrote in 2015?

A. Sure.

30 Q. He pai tēnā. You have presented a summary of that report to present for us today, in that case I hand the microphone to you. Kei te pai?

A. Okay. Thank you.

(09:21) DR TERRENCE JOHN HEARN: (#A152(i))

READS SUMMARY REPORT #A152(i)

My name is Terrence John Hearn and I did prepare this report entitled *One past, many histories: tribal land and politics in the nineteenth century*. I do
5 hold a PHD in historical geography for the University of Otago. In 2002, I was invited to contribute to the Central North Island research programme and since that time have prepared reports for a large number of other inquiries, most recently the Māori Military Veterans, an inquiry under further report indeed for this inquiry.

10

As I outlined in an earlier summary, *One past, many histories* attempts to compare and evaluate the many narratives that proposit to describe and explain the tangled history of this district. Now, a key part of that history has been a protracted, often violent and intensely bitter struggle for the control of its lands
15 that began with the displacement of the original habitants by Ngāti Apa and Muaūpoko, and Rangitāne, continue with the arrival of several iwi from the north during the 1820s and 1830s and culminated in the political then legal struggle that marked the aphis of the Crown to extinguish native title. So, displacement, dispossession and loss are recurring themes in the pre and post annexation
20 history of Porirua ki Manawatū. So, that history and especially the Rangitīkei-Manawatū purchase have been the subject of many and varying assessments, hence in this report, or in this summary I have endeavoured to focus upon the key events and issues and to reach some conclusions about the integrity of the Crowns efforts to acquire the Manawatū lands.

25

First, just a brief summary of the Crowns land purchasing policies and objectives. They were clear enough, namely, through the purchase of land and customary title to expand and consolidate the reaching authority of the Crown and through the implementation of the so-called land fund model of colonial
30 development to establish a new socio-economic and political order. Purchasing was also intended to enhance internal security by establishing settlement bridgeheads, strategic corridors linking Pākeha settlements and zones of European dominance that collectively would eventually bring the entire colony

under the control of the Crown. Purchase would restrict Māori to small, rural, and largely subsistence settlements, discourage shifting cultivation and seasonal food migrations, while what was turned a city of residence would enhance security, policing and administrative control. Finally, purchasing would

5 allow the Crown to settle, potentially destabilising conflicts among Māori by the land. All of these considerations would bare upon the Crowns determination to extinguish Native title over Wellington’s west coast lands. But the drive to acquire the highly coveted Rangitīkei-Manawatū block in particular also arose out of the financial difficulties that confronted the Wellington provincial

10 government by 1860 and which, by the end of that decade, left it teetering on the brink of default and insolvency. So, the Crown’s purchasing policy thus rested on several pillars, namely the acquisition of land and customary ownership for what Governor Grey turned a trifling consideration. The promise to Māori of collateral benefits as an inducement to sell, the re-sale of lands

15 acquired at appreciably enhanced prices, and reserves for Māori based on existing and likely future subsistence needs. So it brings us to the question of purchasing standards.

0925

20

(2) Purchasing standards

Now In his August 1839 instructions to Hobson, Normanby as Secretary of State for the Colonies specified that negotiations with Māori for the purchase of land were to be conducted with sincerity, justice, and good faith, that all

25 contracts entered into were to be “fair and equal,” that Māori were not to be permitted to enter into any contracts in which they might be “the ignorant and unintentional authors of injuries to themselves,” that all purchases were to be undertaken with the free and intelligent consent of Māori expressed according to their established usages, namely open debate by leaders before their people,

30 and finally that in all dealings with Māori, the Crown would provide for and protect Māori interests. Now on that basis, the Crown developed a set of purchasing standards or guidelines that required it to investigate customary ownership and to settle disputes prior to entering into purchase negotiations, to define carefully the boundaries of purchase blocks, to conduct all negotiations

in public, to secure the full and informed consent among all rightful owners over the terms and conditions of sale, to identify and have surveyed reserves prior to the conclusion of any contract for sale and purchase, to emphasise that “collateral benefits” constituted the real payment, and to have comprehensive purchase deeds prepared, approved, and signed by all parties. Now Normanby’s instructions and the purchasing standards developed by Governors Shortland, FitzRoy, and Grey offer collectively a useful basis on which to assess the Rangitīkei-Manawatū purchase.

10 **(3) Planning for purchase**

Large-scale land purchasing was initiated by Governor Grey. His first land purchases were intended to remove the causes of Māori hostility and to provide for landless immigrants, they included the Wellington-Hutt-Porirua purchase and the acquisition of Whanganui. He then turned to purchasing land required for future settlement, foremost among them were Kemp’s 1848 acquisition of the bulk of the South Island, McLean’s 1849 purchase of the Rangitīkei Turakina Block, and Mantell’s 1853 purchase of Murihiku. During 1851 to 1853, he turned to the acquisition of the extensive areas in Hawke’s Bay and the Wairarapa that Māori had leased to pastoralists. In 1853 he approved the establishment of a land purchase department and Donald McLean was made Chief Land Purchase Commissioner. Concurrently, the newly established settler Government made clear, in June 1854, its desire for the purchase of a total of 12 million acres over a five-year period at an estimated cost of not less than £500,000. The plan called for the purchase of 2.5 million acres in Wellington Province, including the acquisition of key town sites and river crossings in a bid to enhance the re-sale value of adjacent lands. The New Zealand Loan Act 1856 empowered the Government to raise a loan of up to £500,000: of that sum, £54,000 was allocated to the purchase of land in Wellington Province, notably the Manawatū lands.

30

(4) Ngāti Raukawa’s strategy

In the wake of the Crown’s interest in acquiring both Rangitīkei-Turakina and the Manawatū lands, Ngāti Raukawa decided to define the core lands that constituted its rohe and to try to secure them from purchase. It relinquished,

albeit reluctantly, its claims to the ownership of the lands lying to the north of the Rangitīkei River, consented to McLean's purchase of Rangitīkei-Turakina from Ngāti Apa, and restated its determination to resist any effort by the Crown to acquire the Manawatū lands. The weight of evidence indicates that

5 Ngāti Apa, Ngāti Raukawa, and McLean agreed that the lands lying to the south of the Rangitīkei River would not be sold, that they would be held for both iwi. Now Ngāti Raukawa was astute enough not to rely on McLean's promises and hence it began to negotiate pastoral leases as a bulwark against purchasing. In 1852 it proposed the creation of a permanent reserve that embraced the

10 lands between the Manawatū River and the Kukutauaki Stream. That the proposed reserve did not include the land lying to the north of the Manawatū River did not imply that it had relinquished any claims to ownership. The proposal failed to gain the support of the Crown. The latter was averse generally, I might add, to creating large and permanent reserves for Māori, preferring rather that they repurchase sections from purchase blocks, partly as

15 a means of expediting the individualisation of Māori land ownership, partly as a means of bringing more Māori owned land into the market, and partly as a means of recouping the costs of its purchasing programme. Ngāti Raukawa reached an agreement with Rangitāne under which it recognised the claims of

20 the latter to the lands that would comprise Te Ahuaturanga, while Rangitāne apparently accepted Ngāti Raukawa's claim to the Manawatū lands. So the sale of the 250,000-acre Te Ahuaturanga was finally concluded in 1864, but only after Searancke had endeavoured to deceive the owners over the extent and thus the price by declining to have the block surveyed prior to sale. On the

25 other hand, the bitterly contested 35,000-acre Te Awahou sale in 1859, a block greatly desired by the Crown for the access it offered to the Manawatū lands, exposed differences within Ngāti Raukawa over the wisdom of selling land. Accounts of that purchase suggest that McLean and Searancke skilfully exploited those differences. While the Rangitīkei-Turakina transaction is held

30 to demonstrate McLean's preference for dealing with iwi rather than hapū, he was ever the pragmatist and ever keen to exploit intra-iwi differences where it suited his purpose, and it was clearly with that particular purchase in mind that Hadfield later claimed that when it came to purchasing McLean was guided by no fixed principles.

(5) Now The exemption of the Manawatū

Now once installed, the Wellington provincial government, having begun to borrow to finance public works and still endeavouring to meet the demands of its original land purchasers, turned to the acquisition of the Manawatū lands. It redoubled its efforts in the early 1860s as the Crown moved to bring its pre-emptive right of purchase or pre-emptive purchasing to an end and to establish a court charged with establishing the ownership of and clothing customary land with transferable titles. Now in deference to the wishes of the Wellington party, Parliament included a provision in Native Lands Act 1862 that excluded the Manawatū lands from its jurisdiction, and so the basis for the protracted struggle that followed had been set in place. But Featherston also successfully pressured the General Government into delegating to him, as Wellington's Superintendent, the power to acquire customary land. So the exemption meant that the Manawatū lands would not be brought before what was originally a predominantly Māori Court and the likelihood of contested and protracted hearings, and the appointment meant that Featherston was free to conduct the purchase as he saw fit. In the evidence indicates that over neither the exemption nor the appointment which conflated the power to determine customary ownership with the power to purchase were west coast Māori consulted, much less their views taken into account. So the Manawatū Block as exempted by the Native Lands Act of 1862 and again by the Native Lands Act 1865 embraced all that part of the west coast lands that lay between the Rangitīkei and Ohau Rivers and between the sea and the Tararua and Ruahine Ranges as such it enveloped a substantial proportion of the area that Ngāti Raukawa, a few years earlier proposed as a permeant reserve. You should also note that the exempted block included lands that featured prominently in the Domett Government's plans for the defence of Wellington.

Now just turning to number **(6) Minor dispute or *casus belli*?**

The arrival of pastoralists on the west coast from about 1845 onwards clearly encouraged Ngāti Apa, Rangitāne, and Ngāti Raukawa, to cooperate over the definition of lease terms and the distribution of rents. Notwithstanding the prohibition against private leasing provided for in the

Native Land Purchase Ordinance 1846, by 1861 runholders were well established. It was not that the Crown lacked the will to proceed against those who transgressed under the 1846 measure, but rather, in order to advance its own interests, it expressly chose not to do so. Given the leases and the determination of most Ngāti Raukawa hapū not to sell the Manawatū lands, Featherston sought leverage. What appears to have been a minor dispute over the distribution of pastoral rentals was thus elevated into what he termed the ‘Rangitīkei land dispute.’ It is clear that Ngāti Apa, Ngāti Raukawa, and Rangitāne had been able to arrange lease terms, share the rental income, and settle disputes without the benefit of external intervention, that is, until 1863 when Ngāti Apa decided to assert a right to receive the rentals in their entirety, all the while refusing to negotiate a settlement. Although earthworks were thrown up, taunts and insults issued, and a day for fighting set, the preliminaries setting Ngāti Raukawa and Rangitāne against an out-numbered Ngāti Apa appear to have been more about bluff and bluster than serious intent, a ploy on the part of Ngāti Apa to draw the Crown into the dispute and a ploy to which Featherston was ineluctably drawn.

Featherston, citing a desire to preserve the peace, chose to intervene and then to ‘impound’ the rents until the matter was settled, clearly demonstrated his willingness to use whatever method suited his purpose. Thus, Māori were reminded that the leases were illegal and that the Crown could confiscate the rents, runholders were reminded that the leases were illegal and could be terminated. So, while Featherston might project himself as ‘peace-maker,’ and however assiduously he tried to persuade Ngāti Raukawa that he was also a ‘reluctant purchaser,’ his purpose was perfectly clear. So much was made plain by his apparent efforts to discourage the parties from submitting their claims to arbitration, not that Ngāti Apa, in particular, needed much encouragement. In short, the dispute neatly suited the ambitions of both Kāwana Te Hūnia Hākeke and Featherston, the former to reverse the humiliations of the conflicts that accompanied the arrival of iwi from the north during the 1820s and 1830s, the latter to rescue the Province of Wellington from its increasingly dire financial straits. For his part, Kāwana Te Hākeke would later concede that he set out ‘to have a disturbance with Ngāti Raukawa’ in an effort to ensure that the

Manawatū lands were not brought before the Native Land Court, the very same anxiety that agitated Featherston. It was, as one of Ngāti Apa's supporters observed, far easier to divide money than to divide land.

5 0940

So Featherston found in a minor dispute over rents the leverage he sought. But threatening criminal prosecution as a means of resolving a political problem and furthering a political agenda hardly constituted a proper or even legally justifiable manner of enforcing compliance with the Crown's desire to purchase the Manawatū lands. Further, Walter Buller (Featherston's 'little pilot' as Hadfield labelled him) later acknowledged that impounding the rents had been about 'impoverishing the Natives and making them sell the land.' Unsurprisingly, the runholders complied, Ngāti Apa did not object, and Ngāti Raukawa, fearing the permanent loss of an important source of revenue, acceded to what in any case had been represented to them as a short-term measure (but in fact not finally settled until 1885). Featherston's tactic, to secure compliance through fear of impoverishment, was far removed from Normanby's 8 August 1839 instructions.

20

So to number 7, **Agreement or contract?**

Towards the end of 1864, Featherston claimed to secure the agreement of Ngāti Apa, Rangitāne, and Ngāti Raukawa to the sale and purchase of Rangitīkei-Manawatū. But his claim was followed by reports of Ihakara Tukumarū's extreme displeasure upon realising that ownership of the block and the allocation of interests would not be matters for the Native Land Court to investigate. That response was a clear indication that those rangatira who met Featherston on 12 October 1864 had done so not to conclude but to explore the terms of a possible sale. They made it clear that they did not have the support of their people to proceed further, that is, that they were not then competent to conclude a contract, and that any sale was contingent upon a formal investigation into ownership and a division of the contested lands among the rival claimants. Given that the apportionment of purchase monies would depend on relative interests, that was a sensible precaution.

30

With the essential terms outstanding – boundaries, price, reserves, and iwi shares, it is clear that no binding contract for sale and purchase had been agreed. Featherston’s assurance to Premier Weld in May 1865 that such an agreement had been concluded and that just the ‘details’ had to be arranged was disingenuous. Moreover, his claimed ‘agreement’ hardly sat comfortably with the basic tenets of contract law. Featherston appears to have been anxious over proposed changes to the Native Lands Act 1862, and Ngāti Raukawa’s determination to have the Manawatū lands brought before the Native Land Court. So Featherston thus demanded that the new (1865) Native Lands Bill again exempt the Manawatū lands: the exemption was renewed, the outcome, it was claimed, of what was termed ‘provincial log-rolling.’

At a meeting with Ihakara Tukumarū in November 1865, Featherston thus insisted that the Manawatū lands were ‘virtually, already in the hands of the Commissioner, and that ‘It was only fair to deal with the Rangitīkei-Manawatū block as land under sale to the Government, although the final terms had not yet been arranged.’ Featherston was now clearly aware that the ‘agreement’ reached on 12 October 1864 did not constitute a formal contract and that his efforts to induce Ngāti Raukawa to honour a contract that had never been concluded had failed. Hence a further hui was arranged, for Te Takapu, where the terms of the proposed sale would be settled.

0945

Now, having announced prior to the meeting that he would ignore the claims of those opposed to a sale and distribute purchase monies accordingly Featherston, unsurprisingly, encountered strong opposition during the April hui. Those opposed to sale renewed their demands for a Native Land Court hearing. In response, Featherston shifted his ground: whereas in August 1865 he had indicated that sale (probably ’64, I’d have to check that Ma’am) required the consent of all owners, now he insisted that only majority consent was required. The reason for Whanganui’s presence at the hui was immediately clear:

swamping would allow him to dismiss his opponents as a ‘small section’ of Ngāti Raukawa. The price was set at £25,000, allowing Wellington’s Treasurer to declare that expected sales of land within the block ‘would reap a rich dividend and allow the Government to extricate itself from its financial woes.’

5 Thus stood exposed Featherston’s self-proclaimed role of peacemaker and reluctant purchaser for what it had always been, a stalking horse. Now, swamping the hui may have allowed Featherston to secure the majority consent to sale and purchase: he was as far as ever from securing quiet possession of the Manawatū lands.

10

So, a great deal of criticism followed his claim of a successful purchase. Critics insisted that the exemption of the Manawatū lands had constituted an injustice to Māori, fears of hostility had been deliberately over-blown, Ngāti Raukawa had been coerced into selling, the Crown had paid a nominal price for an
 15 immensely valuable block of land, and that Featherston had managed to conflate and confuse to his advantage the roles of purchaser, peace-maker, and protector. Ngāti Raukawa took its case to the public through the columns of the colonial press, emphasising the ‘arrangement’ reached during the Rangitīkei-Turakina negotiations, suggesting that it had been deceived by
 20 Featherston, pointing out that he had chosen to deal with those who had only remote connections with the land, and insisting that the iwi had not agreed during the Te Takapu hui to the sale of the block. To those claims, Ngāti Kauwhata added its weight.

25 So, concerns emerged within the General Government: Featherston was instructed to demonstrate that **he** had ‘duly investigated’ claims to ownership of the block, that such investigation had been conducted after ‘due publicity,’ that ownership had been properly established, that the area of and price for the block had been ‘accurately defined and laid down,’ and that all claimants had
 30 agreed to the proposed distribution of purchase monies. Public disquiet intensified, and discomfiting parallels were drawn with the Waitōtara transaction in which Featherston had elected to deal with and pay a small group with minor claims to that block. Buller’s efforts to acquire signature – or ‘padding’ as Hadfield termed them -- to the Deed of Cession were bitterly

criticised. Now, Buller eventually secured some 1,400 signatures: whether they were of the 'real owners' was not known since ownership of the block had never been established, a fact that even Featherston's 'organ', the *Wellington Independent*, felt obliged to concede. The claimants had signed, but whether
5 the claimants were the owners was another matter entirely.

In October 1866, Ngāti Raukawa took its case to Minister of Native Affairs Richmond. It emerged that Featherston had still to furnish the report that had been requested in the previous May. In advance of the hui planned for
10 Parewanui in December 1866 when the distribution of the purchase monies would be decided, the General Government again directed Featherston to submit a full report, including the basis upon which the purchase monies would be allocated, and details of the reserves set apart for the 'dissentients.' Without such information, Featherston was informed, the Governor would be advised
15 not to approve the transaction. Featherston complied, seizing the opportunity to minimise and discredit the opposition, and to describe the Whanganui signatories as practically irrelevant – but including them in his analysis of iwi/hapū support for the transaction. He would later concede that, without its support, Ngāti Apa would never have attempted a trial of strength with
20 Ngāti Raukawa. In other words, Whanganui were included not as claimants but as military backers: for that support they would receive £2,000, monies that therefore did not go to the rightful owners the identity of whom remained unknown. The Irrelevancy, it seems, came with rich rewards. So, of 1,647 signatures on the completed Deed of Cession, 730 or 44.3 per cent were
25 members of Whanganui. That Featherston was clearly aware of the reasons for Whanganui's involvement raises serious questions about his probity and about the integrity and validity of the entire Rangitīkei-Manawatū transaction.

An interesting point about Featherston's analysis of support is that while he took
30 pains to distinguish between 'resident' and non-resident' Ngāti Raukawa, the 'residency' or otherwise of Ngāti Apa, Ngāti Te Upokoiri (whose claims to the Manawatū lands were not defined but who nevertheless secured £1,000), Muaūpoko, and Ngāti Toa did not rate a mention. He also set out the allocation of the purchase monies, but without defining any basis therefore, and claimed

that at the request of the owners reserves would be defined once purchase had been concluded. That was clearly contrary to well established Crown policy and contrary to the General Government's direction. Featherston was clearly determined that he would define the location and area of reserves: the owners
5 would be rendered supplicants for their own lands.

Richmond was not reassured, seizing on the fact that Featherston had failed to comply with the Government's direction issued in May 1866, observing that his stance on the matter of reserves embodied 'a principle new to the practice of
10 the Government in land purchases,' insisting that the Government had never recognised the right of a majority in an iwi to override the minority, suggesting that the 1862 exemption had been less than well founded, and complaining that Featherston had unilaterally fixed a hui at which the distribution of purchase monies among the sellers would be arranged. Richmond's complaints
15 constituted a devastating critique of the manner in which Featherston had conducted the transaction. But the Government failed to order a halt to the hui, instead indicating that it was prepared to approve the payment of advances in order to meet the expectations of sellers. All claims and thus the final distribution of purchase monies would be matters for inquiry by a commission
20 'acting in the manner adopted by the Native Land Court.'

Featherston threatened to abandon the entire proceedings, but chose to ignore Richmond's directions (including the matter of reserves) and proceeded to Parewanui where, after tense negotiations, those assembled agreed to the
25 allocation of the monies exactly as he had indicated several months earlier. Featherston (you should note) had been delayed in his arrival at the hui, his buggy having 'come to grief in a quicksand' along the beach that served as a road: it was an apt metaphor for the transaction and a portent of the troubles ahead.

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That the sellers among Ngāti Raukawa and Ngāti Toa agreed to set aside £2500 of the £10,000 they secured for the non-sellers was a clear indication of the strength of the opposition to the sale within Ngāti Raukawa and a rebuff to Featherston's standing efforts to dismiss those involved as 'a small section.'

The Superintendent's assumption that the sellers would 'encourage' the non-sellers to fall into line (a standard Crown purchasing tactic) would prove to be ill-founded. To Featherston's defiance as a land purchase commissioner acting on behalf of the Crown, the General Government was either unable or unwilling to respond.

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The first Himatangi hearing.

10 The matter did not end there as those opposed determined to remain in occupation, to resist surveying, and otherwise to deny the Wellington Provincial Government quiet possession. After an extended campaign of passive resistance that included appeals to the Queen, responses from Richmond that in the light of his earlier tangles with Featherston could best
15 be described as equivocal, belated efforts by Featherston to assuage concerns over reserves and again employ the uncollected rents to pressure the non-sellers, Parliament passed the Native Lands Act 1867. Section 40 empowered the Crown to refer to the Native Land Court the claims of the non-sellers, while section 41 released from exemption the lands outside the
20 Rangitīkei-Manawatū Block. In 1868, the Native Land Court (acting as 'a commission of general inquiry' as Richmond described it) heard an application by Parakaia Te Pouepa and others for a certificate of title to the 11,500-acre Himatangi Block (within the Rangitīkei-Manawatū Block). It was one of 11 such claims and on the outcome the fate of the Rangitīkei-Manawatū
25 transaction appeared to rest.

The commission found that the 'original' owners – Ngāti Apa and Rangitāne – had been so 'weakened' by the 'Ngāti Toa' invasion that they had been 'compelled to share their territory with his [that is Te Rauparaha's] powerful
30 allies the Ngāti Raukawa and to acquiesce in joint ownership.' Nevertheless, Ngāti Apa and Rangitāne 'possessed equal rights in, and rights over the land' when negotiations for sale and purchase began. How iwi 'compelled' to do the bidding of others could be said to possess equal rights and interests is something that the commission failed to explain. Further, it found that 'The

tribal interest of Ngāti Raukawa vested in the section of the tribe which has been in actual occupation to the exclusion of all others.’ The commission thus declined to recognise any ‘tribal’ right to the Manawatū lands, rather only the rights of resident hapū. But that did not apparently apply to Ngāti Apa whose tribal right the commission clearly recognised.

Finally, the commission decided that it had heard sufficient evidence to enable it ‘to decide this question of tribal right, and by recording our decision on this point in the present judgment, we indicate a principle which may be conveniently and justly applied by this Court in dealing with other cases of claims in the Rangitīkei-Manawatū Block, which have been or may be referred to it.’ In other words, the commission claimed that its findings applied, without the need for further investigation or qualification, to the Manawatū lands as a whole. Apart from anything else, the finding was hardly consistent with the Deed of Cession: where were Whanganui, Ngāti Upokoiri, Ngāti Kahungunu, Ngāti Ruanui, Ngāti Toa, and Te Āti Awa? If the commission failed to recognise them as owners, why had Featherston sought their assent to the sale and why had they received purchase monies?

The ruling suggested that the entire transaction might be rendered invalid or that the Crown had acquired only Ngāti Apa’s share of the block plus those lands that sections of Ngāti Raukawa had agreed to sell. The non-sellers stood to secure as much as 40,000 acres and thus seriously compromise the Wellington Provincial Government’s expectations of a rich harvest. That and Featherston endeavoured to have the remaining ten applications dismissed suggested considerable consternation over the implications of the ruling. In the face of criticism, the commission retreated, now claiming that the evidence presented did not prove any conquest by Ngāti Raukawa or any forcible dispossession of Ngāti Apa and Rangitāne. It did not attempt to reconcile that view with its original finding.

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As the legal and political struggle continued, the Wellington Provincial Government's financial position continued to deteriorate. The pressure to secure quiet possession of the entire Rangitīkei-Manawatū Block mounted, and hence the General Government
 5 decided, in November 1868, to appoint a special commission to inquire into the entire Rangitīkei-Manawatū transaction and to make recommendations for settling outstanding claims. It abandoned its decision when Featherston, predicting 'ruin' and 'utter destruction,' described the proposal as 'utterly impracticable,' and upon McLean declining an invitation to sit as a member.

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The second Himatangi hearing.

The outcome was a second Himatangi hearing. The Native Land Court (in this case Fenton and Maning) decided that the central question was whether Ngāti Raukawa had secured dominion over the land prior to 1 January 1840. In Part
 15 1 of its ruling, it found that Ngāti Raukawa as an iwi did not do so, that three hapū of the iwi did establish rights of ownership by occupation, and that such rights existed alongside those of Ngāti Apa. In Part 2, the Court ruled that it had decided not to investigate the Ngāti Apa's claims on the grounds that it had declared dominion to rest with that iwi: in effect the claims of Ngāti Apa were
 20 never tested. Of some 500 Ngāti Raukawa claimants, just 62 were admitted as having a right: for those claimants Ngāti Apa was instructed to mark off portions of the block.

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Maning then offered his version of the region's pre-annexation history in which he claimed that Ngāti Raukawa had only ever taken 'nominal' possession of the land. Of what 'nominal possession' consisted, he did not say, other than it did not confer on the iwi any rights over the lands of Ngāti Apa. By such means, the finding of the 1868 commission that Ngāti Apa and Ngāti Raukawa shared equal interests and rights was parlayed into a finding that the former had never
 30 forfeited its rights at all. That three hapū of Ngāti Raukawa had settled on the Manawatū lands, Maning attributed to an invitation extended – for reasons not specified – by Ngāti Apa, thus turning on its head the findings of the earlier commission. Under pressure from Featherston and somewhat against its better judgement, reserves having still to be defined, in October 1869 the general

Government issued a proclamation declaring native title over the block as having been extinguished.

5 So, another round of protests followed. Matters were not assisted by an effort on the part of Featherston and Buller to pre-empt the Native Land Court's direction to Ngāti Apa and Ngāti Raukawa to mark off the awards made and to secure the Court's approval in the absence of claimants and their counsel. It was now clear that the 6,200 acres awarded by the second Himatangi ruling were not reserves at all, but lands awarded to the non-sellers. So that 10 Featherston's failure to comply with the General Government's direction, namely, that reserves for sellers should have been agreed and defined before the purchase was concluded would mean further delay. Resistance turned violent as Buller, in an effort to force on the surveys, set iwi against iwi. Featherston pressed for the deployment of the Armed Constabulary and for the 15 application of the draconian Disturbed Districts Act 1869 to suppress all dissent and resistance as those opposed to the transaction were cast as 'obstructionists.' Wiser counsels prevailed.

20 So, as the Wellington Provincial Government trembled on the brink of insolvency, Native Minister McLean was directed to conduct an inquiry: he would later describe the task as one of the 'most disagreeable' that he had undertaken. During his meetings with Ngāti Raukawa, he acknowledged that an understanding had been reached in 1849 over the Manawatū lands whilst not denying claims that Featherston had refused to honour that agreement. 25 Rangitāne adverted to the Whārangī discussions, insisting that those who had attended had not agreed to sell the Manawatū lands, that they were 'only commencing the matter'. Iwi also insisted that Featherston's alleged usurpation of the Native Land Court's 1869 direction to them to mark off the lands it had awarded had prolonged the dispute. For its part, Ngāti Apa now 30 claimed that it had been out of fear of attack following the death of Nepia Taratoa, and that it had pressed Featherston to acquire the Manawatū lands. Plainly, Māori considered that they had been deceived, misled, intimidated, and betrayed.

So, McLean declined to traverse the history of or to re-litigate the transaction, but he did conclude that it was Featherston who had first proposed purchase, that Featherston and Buller had secured on the Deed of Cession the signatures of many without any valid claim to the Manawatū lands, that they had interfered with the Court's 1869 order, and that the core of the continuing difficulties lay in Featherston's refusal to secure agreement over reserves before concluding the Deed and distributing the purchase monies. In short, the entire transaction had been mishandled. McLean identified three groups of objectors – those who had sold but not received promised reserves; those who had not sold and were dissatisfied by the awards made by the Native Land Court; and those who resided on the land but whose claims had not been investigated or indeed recognised at all. As a general result, he recommended that an additional 14,379 acres should be granted to Māori in addition to the 3,361 acres set apart by Featherston and the 6,226 acres set apart by the Native Land Court (to which I should add, McLean later proposed to add the whole of the Himatangi Block). So the total of 23,967 acres represented over ten per cent of the Rangitīkei-Manawatū Block, or with the Himatangi Block included, 35,000 acres or 14 per cent). By December 1870, McLean had thus reached an agreement with all iwi and hapū involved: implementation awaited though the passage of the Rangitīkei-Manawatū Crown Grants Act 1873.

Featherston was dismayed and, on the eve of his departure for England as Agent General, presented the General Government with a demand for £15,300, a demand that the Government flatly rejected. McLean insisted that he had acted to discourage Māori from repudiating the entire transaction. Further delay and confusion followed, especially as McLean appeared to waver and unable to enact the agreements reached. Surveying was halted again during October 1871 and pressure mounted on both the General and the Wellington Provincial Governments to resolve the dispute. In the House, Stafford summed matters up succinctly. 'They had had,' he remarked, 'a Commissioner doing just as he liked, and going directly in the face of instructions from the Native Minister, and they had seen a payment made by the same gentleman before the native title had been conclusively decided.'

In fact, the failures were not solely those of Featherston. Parliament itself, by acceding to Featherston's demand for exemption, and the general Government by acceding to his demand for appointment as land purchase commissioner and failing to exercise any oversight of his actions were also responsible. In effect, the general Government, certainly by default, had allowed the inability of the Wellington Provincial Government to manage its finances and to conduct the negotiations in accordance with standing instructions, to trump its obligations as specified by Normanby. Premier Vogel's effort, in 1874, to deny the general Government's responsibility was less than honourable. Speaker F.D. Bell was more forthright when he concluded that the history of the case showed incontestably that both the General and Provincial Governments had been mistaken in the course they took with regard to this land.

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For Ngāti Kauwhata, Ngāti Parewahawaha, and Ngāti Kahoro, a further struggle followed as they endeavoured to secure the implementation of McLean's arrangements. Although they reached an agreement, further difficulties and delays followed and charges of deceit over the matter of reserves were now levelled at both Featherston and McLean essentially over the extent and location of McLean's awards to the non-sellers and over the Crown's failure to issue Crown grants. A delay in the return of the entire 11,000-acre Himatangi to Parakaia and his people as promised by McLean in 1871, as the Wellington Provincial Government sought to acquire a block for which it insisted it had paid was finally resolved by the Himatangi Crown Grants Act 1877.

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Perhaps the last word should be left to Daniel Pollen who was premier 1875-1876 and J.C. Richmond, Native Minister 1866-1869. In 1885, the former conceded that There are a good many circumstances connected with the Rangitīkei-Manawatū purchase of which nobody need be proud. The latter recorded that the whole Rangitīkei-Manawatū transaction was anomalous. The Government of the time did not interfere, it was not thought desirable to interfere with Dr Featherston's operation, except that it reserved itself the right of supplementing those operations, so that justice might be meted out to those who objected. That the Rangitīkei-Manawatū transaction proved to be

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protracted, costly, and controversial was as much a failure of the General Government as it was that of the Wellington Provincial Government and its Superintendent. It was to the credit of neither that they each sought to eschew responsibility by blaming the other for a transaction that earned it the sobriquet of Wellington's Waitara.

So some **conclusions**,

- First, that Parliament elected, upon pressure from Wellington's representatives long determined to acquire the Manawatū lands but without consulting or securing the consent of Māori, to exclude those lands from the jurisdiction of the newly established Native Land Court so that competing claims were not tested and customary ownership not defined until the hearings of 1868 and 1869, that is, after the purchase had been concluded and purchase monies distributed.
- Second, is that the General Government, having appointed Wellington's Superintendent as a land purchase commissioner, allowed him to act without effective oversight or supervision and failed to ensure that he complied with its directions.
- Third, that Featherston employed tactics that were at variance with the Crown's purchasing guidelines. He ignored the agreement or understanding that McLean and Ngāti Raukawa had reached in 1849 over the Manawatū lands. He exploited a minor disagreement over pastoral rents in an effort to secure leverage over Ngāti Apa, Rangitāne, and Ngāti Raukawa; he employed the threat of Crown-enforced impoverishment as an inducement to sell; he attempted to pressure Māori into honouring an agreement for sale and purchase without having first defined, completed, secured full and free consent to, and recorded all the relevant terms; he swamped the probable owners in order to minimise and circumvent opposition to sale; he cultivated a fear of loss of purchase monies in an attempt to sway objectors and doubters; he held out collateral benefits but failed to embody the promises thus made in the Deed of Cession; he failed to reach agreement over reserves in advance of the conclusion of the Deed of Cession; he attempted to

pre-empt and manipulate a directive of the Native Land Court; set out to confine Māori to minor reserves, failing thereby to protect Māori interests, most notably over the critical matter of sufficiency; he negotiated with and allocated purchase monies to hapū and iwi whose connections with the Manawatū lands were remote at best and contrived at worst; and he sought to maximise the financial return to the Wellington provincial government so as to rescue it from impecuniosity.

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- Finally, that the transaction was inconsistent with Normanby's instructions of August 1839 to the effect that the Crown should seek to acquire land from Māori by contracts that were 'fair and equal,' and through negotiations that were conducted with 'sincerity, justice, and good faith.'"

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DCJ FOX:

15 So, I understand that it will be Woodward Law leading off with cross-examination and that would be Mr Cornege. Mr Cornege will do that.

(10:16) PHILLIP CORNEGE:

20 Tēnā koe Dr Hearn. First, I want to thank you for the quality of your research and for the quality of the summary today. I imagine that has been of great assistance to the Tribunal, certainly to the parties.

Your Honour, I discovered that Dr Hearn has in fact prepared a written response to the approved question. It's not – I haven't yet been in a position to able to file that so I'm not sure if the Tribunal won't have that. I have seen a copy. It's about three pages long. It's not particularly lengthy. It may be useful. There are two – Dr Hearn has filed – there is filed an answer to some of the questions, but he has now prepared a response to the Rangimarie Narrative and Pene Raupatu Statement. So, I don't think the Tribunal has that as yet.

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30 **DCJ FOX:**

Dr Hearn when did you file it?

DR TERRENCE HEARN:

They would have filed late, Ma'am.

DCJ FOX:

That is okay, did you know that?

5 **DR TERRENCE HEARN:**

Probably towards the end of last week. I understood I had the option of either commenting on those narratives or presenting some views in writing and I took the latter option, but when I submitted them to the Tribunal, the word I got back was that they would look to file those. So, what's happened since, I don't know.

10 **DCJ FOX:**

Well, that is helpful.

PHILLIP CORNEGE:

And in any case Your Honour, I have seen the response.

DCJ FOX:

15 Have other counsel seen that?

PHILLIP CORNEGE:

The other counsel. It's three pages long.

DCJ FOX:

And has the Crown seen it?

20 **PHILLIP CORNEGE:**

No, they won't have. So, it may be useful if Dr Hearn –

DCJ FOX:

Reads it, yes.

PHILLIP CORNEGE:

25 – reads it, sure.

DCJ FOX:

Well, that is probably something lead counsel should be doing.

DR TERRENCE HEARN:

Would you like me to read those out?

5 **DCJ FOX:**

Mr Cornege?

PHILLIP CORNEGE:

Yes, that would be helpful, thank you.

DCJ FOX:

10 Okay, if you would sit down then and your colleague could...

JACKI COLE:

Ma'am, can I just query whether Woodward Law would have copies for us all?

DCJ FOX:

Well, they probably expected the Tribunal to provide them.

15 **JACKI COLE:**

Well, not if they were filed late.

DCJ FOX:

Well, he's the Tribunal commissioned the searcher, so they probably expected it to come from us.

20 **DR TERRENCE HEARN:**

I should apologise for the late submissions, but such were the pressures.

DCJ FOX:

I think it will be very helpful to have your written considered view on the questions that were to be answered.

DR TERRENCE HEARN:

Right.

DCJ FOX:

5 So, do not in any way apologise. It is about to be emailed electronically to all of you. Hopefully, you can pick up reception here and pick it up, but if you could read it into the record and if you could bring it up on the screen as well?

(10:19) DR TERRENCE HEARN: (#A152(n))

10 It is quite short, and it traverses some of the – a lot of the ground... So, I prepared some remarks on the Rangimarie narrative and I say that the only comments that I have relate to the exclusion of the Manawatū lands from the jurisdiction of the Native Land Court.

READS COMMENTS ON RANGIMARIE/PENE RAUPATU NARRATIVE #A152(n)

15 “This is important to note that exclusion was founded on the basis that under the land orders, it strip Acts of 1856 and 1858. The Crown had undertaken to fulfil the contracts entered into between the New Zealand Company and those who had purchased land from that corporation.

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25 So, in effect, we are supposed Māori would not deny the right and opportunity as provided under the Native Lands Act 1862 to have the ownership of the regents lands and investigated and defined in order that the Crown might fulfil a commitment over which they had not been consulted to which they had not agreed to which they were not a party and for which only a small proportion of the Rangitīkei-Manawatū Block was needed in any case.

30 Second, I think it’s important to note that although rūnanga through which customary ownership was determined by Māori according to Māori custom were displaced by the Native Land Court established under the Native Lands Act 1862 effective – although – but effective control of title investigations

remained in the hands of Māori until the reconstitution of that called by the regulations of December 1864 and their subsequent embodiment of the Native Lands Act 1865.

5 Third, it was the general but not unqualified support among West Coast Māori for Grey's Rūnanga and the subsequent vesting of how, and the Māori Judges of the Native Land Court that greatly discomforted Featherston. While he might claim otherwise, he was aware of the pre-annexation history of the Manawatū lands, just as he was aware through McLean and Buller of the determined
10 opposition on the part of those Ngāti Raukawa Hapū to land sales. The likelihood of contested and protracted hearings are the very real possibility that ownership might be decided in favour, not of Ngāti Raukawa as some imagined corporate entity, but of the hapū and effect of occupation, let him and his political allies to employ their power in the House of Representatives, of
15 representations to the secure the exclusion of the Manawatū lands. The possible award in the Manawatū lands and several hapū would have complicated Featherston's desire and pressing financial need to acquire the block in its entirety and to do it as quickly as possible.

20 Further, should be borne in mind that under the Native Lands Act 1862, the Crown without consulting Māori waving it's pre-emptive right of purchase. The prospect of private purchases acquiring the Manawatū lands. In doing so, a crisis of the Crown could not afford, and thereby, depriving the Wellington Provincial Government of its chief source of revenue, and imperilling its ability
25 to repay its loans was again that Featherston was not prepared to complicate. His clear preference was with the system of Crown pre-emptive purchasing implemented with the exception of FitzRoy's pre-emption way of a scheme of 1844, 1846 over the period from 1840 – 1862. It's worthwhile noting that Wellington interests had divided that system as 'McLeanism'. That is until
30 Featherston decided that a revival of 'McLeanism' would allow him to step over the complications that a formal title determination and process and in all likelihood would have generated. So, the exclusion of the Manawatū lands thus ran directly counter to the purpose of the Native Lands Acts of 1862 and 1865,

namely the determination of customary ownership by an institution established for that express purpose and for the fostering of a private landmark.

5 With respect to the 1869 ruling, I simply observe that the dismantling of the arguments advanced by the Court appears to me to be thorough and complete.

The Pene Raupatu Narrative

10 The essential arguments advanced is that the purchase of the Manawatū lands constituted a fraud. The ordinary meaning of the word ‘fraud’ as I understand it is intentional deception undertaken to secure an unfair gain, lawful financial or other gain. So, it would appear to be necessary to establish a number of matters, among them that Featherston set out intentionally to mislead or to deceive Ngāti Raukawa; that Ngāti Raukawa rangatira relied on such misrepresentation, that such reliance was reasonable and that Ngāti Raukawa
15 sustained material injury as a result of any misrepresentation and reliance thereon.

Perhaps the closest that Featherston came to be deceiving Ngāti Raukawa rangatira was his claim that, as a result of the Whārangi Hui, a contract for sale
20 and purchase had been reached, although he did employ that qualifier practically. That claim was quickly debunked. On the other hand, it was the case that in his conduct told the purchase, Featherston failed to comply with the Crown’s own purchasing standards, that he failed to comply with the Government’s directions over key matters – such key matters as reaching
25 agreement over reserves and the distribution of purchase monies; that the Government itself failed to exercise for control over its land purchase commission under the Government failed, in advance of the distribution of purchase monies to establish that those who would sign the deed of session had been entitled to do so. The Government had only been prepared to
30 intervene JC Richmond conceded to see that justice might be metered out to those who objected. It was hardly principal position and certainly not one calculated to ensure that the contraction – transaction comply in all respects with Normanby’s instructions of August 1839 or indeed with the purchasing standards that the Crown developed to compliment those instructions.

Whether those failures amounted to intentional deception is less clear. Featherston did commit some egregious errors and the Government failed to act in a timely manner. Those failures certainly raised serious questions over whether the Rangitīkei-Manawatū transaction was ever properly concluded. Those questions centre on the matter of acceptance, that is whether all rightful owners accepted the Crowns offer. They centre on the matter of free and informed consent, that is, whether all rightful owners freely consented to the transaction; on the nature in meeting the contract that is whether all rightful owners understood and accepted that the contract meant the permanent alienation of the lands in question and on the matter on contractual capacity, that is whether those who signed the deed have the legal competence to do so. The key fact about the Rangitīkei-Manawatū transaction was that the rightful owners of the land were never formally established before a contract for sale and purchase was completed rather Featherston's approach was to deal with all of those believed to have a connection with the block however tenures that connection they have been and to sprinkle the purchase monies accordingly.

I do not disagree with the journal thrust of the argument advanced, mainly that the Rangitīkei-Manawatū transaction was never properly concluded but I would hesitate before describing it as a fraud and that was the end of that.”

DCJ FOX:

Thank you, Dr Hearn.

(10:28) PHILLIP CORNEGE TO DR TERRENCE HEARN:

Q. Sorry just a couple of minor question of clarification. If you turn to the second paragraph –

DCJ FOX:

Well, can you tell me, are you leading or are you cross-examining?

PHILLIP CORNEGE:

I am cross-examining.

DCJ FOX:

Thank you.

PHILLIP CORNEGE TO DR TERRENCE HEARN: (CONTINUES)

5 Q. If we can turn – it is the second paragraph on the first page in the beginning. Rangimarie narrative, starting second, I think it is important that the latter part of that paragraph where you describe or explained that effective control of title investigations remained in the hands of Māori so between 1862 and December 1864. Is that a reference to the fact that the Native Land Court at that point was a predominantly Māori led Court.

10 A. It was up until – excuse me, those regulations were issued in December 64, yes.

15 Q. Thank you and then if we can turn over the page to the Pene Raupatu – your comment on the Pene Raupatu narrative and in that first paragraph given a definition of fraud and you may or may not be aware of it, particularly if you look at the latter part of that paragraph. That is essentially the elements of a precontractual misrepresentation, but you would presumably accept that ultimately whether there was fraud in a legal sense or not is a legal issue, a matter for submission and that is something the Tribunal may need to – sure to grapple with at some point.

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A. I am just expressing a layman's understanding of what fraud constitutes.

Q. Indeed, thank you very much. No, I do not have any further questions, thank you.

DJC FOX:

25 All right, now we have Mr Te Nahu

(10:30) HEMI TE NAHU TO DR TERRENCE HEARN:

30 Q. Thank you, Ma'am. Tēnā koe, Dr Hearn. I represent the claimants within this district, namely Wai 1640, Ngāti Whakatere and Wai 1944, Ngā Hapū o Kereru, and those hapū constitute Ngāti Ngarongo, Ngāti Takeiku and Ngāti Hinemata and their interests within this northern phase of this inquiry fall within the Te Awahou Block and the

Manawatū-Rangitīkei Block. They also fall within the Tawhiri Hoe Block at Tangimoana, the southern side of the Rangitīkei River. So, just to give you some background as to the claimants that I represent.

A. Sure.

5 Q. And you might have heard some kōrero yesterday by Mr Teira in relation to heke and there has been issues and kōrero raised regarding these claimants that I represent, particularly where I am going to go in terms of the Kīngitanga movement, there was – there is Ngāti Whakaterere were directed by King Tawhiao to be responsible for carving marae, the first
10 three were Te Tikanga at Tokorangi, Whitikaupeka at Moawhango, and the Hoturoa meeting house at Aotearoa Pā in the Wharepuhunga Block. Then when they were on the heke and they came down to the Rangitīkei they resided there and were responsible as directed by King Tawhiao to build pā along that route to allow those who were in support of the
15 Kīngitanga movement to go to and from between this district and the Waikato. Two of those Ngāti Whakaterere carvers were identified as Huhe Takarei and Motu Raimapaha and I am raising these because if we look at page 62 of your full report you have made reference to Angela Ballara’s report talking about Whatanui, “He was a relative of
20 Ngāti Whakaterere, taking his people from Kapiti up into the Manawatū and settled in places within the Manawatū district,” correct? According to your evidence. Because if you look at page 31 of your full report and you have discussed Dr Ballara’s referencing stating that, Ngāti Whakaterere did not reside in the Manawatū-Rangitīkei and yet you have had this evidence
25 been given in your report as well as in the kōrero yesterday about Ngāti Whakaterere and their movements within this district. Is that what your evidence is? If you are citing Dr Ballara, stating that Ngāti Whakaterere did not reside in the Manawatū-Rangitīkei?

A. I have relied on Angela Ballara rightly or wrongly. I am not sure that the
30 level of analysis that I got to – got that far. My primary concern in that first chapter was really just to try to offer a general sketch of the background to the struggles that followed. So, it is entirely possible that it is inaccurate in some details. I meant that I would quote, “Readily concede.” I would also concede that some of the evidence that Māori themselves have

generated was not available to me when this report was prepared so there almost certainly are matters that would require amendment and adjustment and that may-well be one of them.

Q. Thank you, Dr Hearn. Just to explore that...

5 **DCJ FOX:**

Mr Te Nahu, could you clarify for me the context of what you have just asked? Because on page 62 in the second paragraph, where I think Ballara is being quoted.

10 1035

HEMI TE NAHU:

Yes.

DCJ FOX:

15 She is quoted as saying, "The various hapū of Ngāti Raukawa and those who came with them, Ngāti Kauwhata, Ngāti Whakaterere and others settled in places pointed out by their hosts. Boundaries were eventually agreed between them and intermarriage began."

HEMI TE NAHU:

20 Yes, but the point that I was making, Ma'am, was that there seems to be an issue in terms of whether they resided and I know that Ngāti Whakaterere certainly did reside and it was just matters that we thought needed to be raised so that in their view it has been clear that Ngāti Whakaterere did accompany, they were part of the heke, they have got all of these stories and that they also resided and because it has also raised an issue, is it your evidence that
25 non-residing equals no interest? Having no interest in land if that is the point that is being made.

DCJ FOX:

Well I am not sure that is his evidence, that is all. I think he has acknowledged that Ngāti Whakaterere were here.

HEMI TE NAHU:

Yes, okay. Thank you, Ma'am. Yes, we will leave that part there.

DCJ FOX:

And the detail of that has escaped him because it is such a large report but –

5 **HEMI TE NAHU:**

Yes, okay.

DCJ FOX:

Dr Grant will get to the bottom of it, I am sure, but it does not appear to be the case.

10 **DR TERRENCE HEARN:**

There is one comment that perhaps I should make, I drew on several publications by Angela Ballara and it occurred to me when reading the later ones that she was refining earlier statements and so it may be that that is what I picked up and reflected. But I think her – that the position was as she has, as

15 I quoted her on page 62.

HEMI TE NAHU:

Thank you.

HEMI TE NAHU TO DR TERRENCE HEARN: (CONTINUES):

20 Q. Now, if we look at page 279 of your full report. That is essentially around Ihakara Tukumarū Henare Te Irikau others making statements about being misled by the Crown and the exclusion of the Manawatū Block, is that correct?

A. Just having a little trouble hearing you, I am sorry.

Q. Sorry, is that?

25 A. That is.

Q. Page 279.

A. 259?

Q. 279. It is essentially around Ihakara Tukumarū Henare Te Irikau, they are talking about making statements about the Crown misleading them in relation to the exclusion of the Manawatū Block.

A. Yes.

5 Q. Correct?

A. Yes.

10 Q. And consequently, there were petitions were signed, sent to the Government about their dissatisfaction with what is going on. They also, in those petitions, make threats to drive stock off land and this is on your page 279.

A. Yes.

15 Q. Would it not be fair to say that the tīpuna of those claimants that I represent were doing what they could to get the Government and to get the Crown to listen to why they were angry and frustrated, why they were filing petitions, why they were threatening to drive stock off land because they were enticed and essentially lied to when the Crown told them, particularly where land was concerned? Wouldn't that be correct?

20 A. Yes, and I think we have to bear in mind that the larger historical context that the Land Wars by this stage were sort of coming to an end. There were doubts raised by Featherston about the loyalty of Ngāti Raukawa. He threatened, at one point, that the merest sign of disloyalty would bring down the constabulary, the imperial army and could result in the confiscation of their lands. So, there is a – in order to register disapproval, Ngāti Raukawa had to devise other means, and they became to my mind adept at finding ways of preventing the Crown from taking quite possession of the Rangitīkei- Manawatū lands, driving off stock, taking surveyors instruments, casting the chains, they would say over the river, and even driving off Mr Gotty's sheep, which was a kind of celebrated example of the way in which Māori try to register their disapprobation of what was going on. But what they were very careful not to do was to provoke the Crown in to the kind of threat or in to fulfilling the kind of threat the Featherston had held out.

30 Q. Yes. But it is also your evidence that despite all of what you have described the Crown didn't did not listen, did they?

- A. Well eventually they were compelled to listen because it was out of those continuing protests that the first and second Himatangi hearings arose. Now you can derive those or criticise the outcomes of those hearings, but they were in fact a response of the continuing protest being mounted by
- 5 Māori and indeed to the mounting level of public disquiet. I do not think – one of the remarkable things about this whole transaction was the skill with which Ngāti Raukawa in particular took to the columns of the colonial press and argued its case over the heads of the politician. *The Littleton Times* I think it was - no, it was *The Press* under the
- 10 editorship of J.E Fitzgerald no doubt for reasons of his own that was disposed to carrying many letters from Ngāti Raukawa as they attempted to challenge Featherston and the Wellington Provincial Government, and to trying to push the general Government into taking some action. Eventually that campaign worked, well that might be to confuse process
- 15 with outcome, but it seems to have its effect.
- Q. Yes. Because you do say in your evidence that Featherston directed Buller to return the area not to mediate, not to rectify, not to put right the lies that the Crown had told the people, but to prevent further mischief.
- A. Which he did. Which he tried to do by employing Ngāti Apa to support
- 20 the surveyors who were on the land.
- Q. Right.
- A. I made that comment about Buller setting iwi against iwi.
- Q. Correct.
- A. I am not sure that, with due respect to Ngāti Apa that they required a great
- 25 deal of encouragement, but nevertheless they were there and there was fracker or two and Buller played what I would I call an unfortunate part in that business.
- Q. Yes, my claimants give that a different name.
- A. Yes, I am sure.
- 30 Q. If we could look at your page 93, you discussed the Te Awahou hui, page 93 of your full report.
- A. Right.
- Q. That hui also included the Manawatū-Rangitikei Blocks. With the Crown bring in representatives, sorry, of Whanganui to that hui who have no

interest in the land they were the subject. Would that be described in your evidence as a kind of a manipulation by the Crown to achieve what they were wanting to do by bringing in people from another area to participate in decision-making in land that they got no interest in?

5 1045

A. For my sins, I have investigated more Crown purchases of land from Māori that I can readily recall. I have looked at Crown transactions in Te Raki and Whanganui and central North Island and other areas. I cannot recall with one possible exception which is the Mahurangi purchase in Te Raki where the Crown has deliberately brought in to the discussions and negotiations people who have no obvious connection with the land in question. I think that is one of the things that – undoubt – well I should not say undoubtedly because I do not know but I have not come across such an obvious example of an attempt of what I have called ‘swamping’

10

15

Q. Correct

A. – and I think ‘swamping’ is the appropriate term. It is one of those matters that so distinguishes the Rangitīkei-Manawatū transaction.

20

Q. Did you in your evidence and research have a look at how the relationships between those Whanganui rangatira that came and that the Crown brought to this hui had with those rangatira from Raukawa and all those hapū that belonged to those blocks?

25

A. I did not pursue Whanganui’s participation in any detail. They kind of moved in and out of the narrative and I was conscious of the time that I would loved to have explored just exactly what was going on and I would very much wanted – well I did want to explore the relationship in particular between Ngāti Apa and Whanganui, but there was not the time, so I cannot comment further I am sorry.

30

Q. Thank you for that, Dr Hearn.

DCJ FOX:

I think that brings us to 15 minutes now that – you asked for 10?

HEMI TE NAHU:

Thank you, Ma'am. I could file the rest of the questions that I had been writing

–

DCJ FOX:

5 Yes, why don't you do that.

HEMI TE NAHU TO DR TERRENCE HEARN:

10 Q. – but I do have one question of clarification. You do have on page 325, you make reference of an Apira Hama Tukumarū. I am just wanting to clarify because the claims that I represent do not actually recognise that person and is that – and you do go on in the following page at 326 talking about Aperehama Te Huruhuru.

A. Yes.

Q. Is that the same person or is it two different people?

15 A. I would have to check it. I am very happy to answer those questions in writing later.

Q. Thank you.

A. Just off the top of my head I cannot.

Q. Thank you, Dr Hearn, very much. It was an excellent report and my claimant appreciate all the work you have done – done on that matter.

20 **HEMI TE NAHU:**

Ma'am, if I can I seek leave to file the rest of my cross-examination questions in writing.

DCJ FOX:

25 Yes, thank you.

HEMI TE NAHU:

Thank you, Ma'am.

30 **DCJ FOX:**

Mr Watson, 10 minutes. Takes us to morning tea. No pressure.

LEO WATSON:

Tēnā koe Ma'am.

(10:49) LEO WATSON TO DR TERRENCE HEARN:

5 Q. Tēnā koe Dr Hearn. We are under a tight timeframe and given the indication to Mr Te Nahu there. What I will do is I will just explore some broad things with you if I may and with your leave Ma'am file particular matters in writing. I want to thank you for your report. I wanted to just start at the Featherston end if I might and work back to those hapū interests that I represent. Your title of your report, you know 'many
10 histories' is obviously and indicator of the nature of the hapū complexity and the inter-relatedness of these histories at this time. So, I will explore that with you, but it occurred to me that there is another sense in which we might refer to the many histories and that is the Pākehā version or the non-Māori version of these events and I just wanted to put to you this
15 quote by David Hamer, his biography is in the *Te Ara Encyclopaedia of New Zealand*. So, if I am a student or a – someone who is not well-versed in this history and I'm going to go to *Te Ara* as my source of information. I just want to read to you four sentence which sum up Featherston's involvement in this Rangitīkei-Manawatū purchase and ask you to
20 compare that to the conclusions that you read out where there was essentially a litany of devious tactics that you had portrayed. Hamer says this, "In this period (and this is the one we're talking about), Featherston became renowned for his diplomacy. Whenever trouble threatened, he intervened personally. He worked to persuade Māori tribes not to join the
25 Kingites using his stand over Waitara as proof of his even-handedness. He acquired mana, perhaps as much as anything because of his courage and boldness." And then Hamer says, "Featherston used his newfound skills as a negotiator with particular effect in facilitating the acquisition of Māori land. In 1862, he was appointed the land purchase commissioner
30 in the province. Most celebrated was his role over seven years in negotiations for the Rangitīkei Block culminating in a great meeting of 1867 where Charles Dyke was very impressed by Featherston's cunning and powers of persuasion."

A. I doubt that Charles Dykes understood much of what was going on, would be a first comment.

5 Q. Yes. Nor do I raise this is a criticism of David Hamer. I'm suggesting to you that really this is firstly an example of the importance of this is process, is it not? Whereby Māori perspectives are able to bring to bear their views supported by technical witnesses such as yourself about what was really happening in this context.

10 A. All history is contested. All history is contestable. Historians cannot read all that relates to a particular matter. They bring different ideas. They bring different perspectives. They follow different hypothesis. They key or one of the keys is to try to engage as thoroughly as possible with the primary record. The other key is to try and interrogate the primary record especially where it has been constructed by those who are also actors in the events that they purport to describe. I am familiar with David Hamer's work. I think his analysis of the liberal Government was a first-rate piece of work, but when it comes to Featherston , I disagree.

15 Q. You would respectfully disagree, yes.

A. Respectfully disagree.

20 Q. Yes.

A. And fundamentally disagree.

Q. Yes.

A. Having seen as I think I have seen Featherston at work and having compared assessments of his work drawn from many sources, yes, I would respectfully disagree.

25 Q. You refer to the importance of the primary record. I would suggest to you that includes the oral traditions held by those who exercise mana whenua.

A. No, I thought that the traditional evidence was best presented by those who created it, and not by me.

30 Q. Thank you for the clarification. My question wasn't suggesting in terms of your role.

A. Right.

Q. You had answered to me about the importance in terms of the analysis of history .

A. Yes.

Q. To ensure that there is an interrogation of the primary record.

A. Yes.

Q. And I would suggest to you, that also includes an act of interrogation of the oral traditions as held by those who exercise mana whenua.

5 A. All evidence should be interrogated.

Q. Right. Just dealing with Featherston in a second sense, there's a strong theme from your research about him as a person and his tactics. You would agree too wouldn't you that through your report you have pointed at various times numerous times where the Crown itself were aware of his mode of operating and had an opportunity to mitigate some of the egregious results of that?

10

1055

A. Yes, that is one of the matters that I find particularly discomforting about the whole transaction, but I mean we should also be clear that Featherston continue to present the general Government with difficulties even after his appointment Agent-General. Now, I'm familiar with his role as Agent-General when it comes to immigration from the United Kingdom to New Zealand during that – the 1870s, during which he was in charge of that whole programme and one of the things that stands out is its disinclination to follow direction. And so, what we are seeing is that there's someone who's bearing was imperious, who did not brook criticism, who do not accept direction, who acted as he thought appropriate and always, he claimed with Wellington's interest in mind.

15

20

Q. Well, I am going to suggest to you that, and this would be a matter for traversing the evidence in detail that there were opportunities where the Crown could have –

25

A. It could have.

Q. – given clear direction and reigned him in and ultimately failed to do so.

30

A. Richmond tried, Richmond tried but he failed to act on his own convictions that Featherston was not conducting the transaction in a manner that was acceptable to the Government.

Q. Yes.

A. And I think it's that failing, as I said, which I find one of the more disturbing features of the whole transaction.

Q. Thank you.

A. The General Government knew, the General Government failed to act. I might point out that, if I may, that that particular failure was not confined to Featherston because we find elsewhere in the country land purchase commissioners acting without direction, the two who sprang to mind are
5 H. Tacy Kemp and E. T. Brissenden, both of whom operated in Northland and there was – and I don't know whether it's something that arises out of the state of the development of Government at the time but there seems to have been a disinclination on the part of the
10 General Government to exercise what we would perhaps in our regards as proper control over it's agents in the field.

Q. Right. Or active protection is another way of putting it.

A. Yes, indeed.

Q. I act for a hapū who reside now predominately in the Ōtaki Rohe –

15 A. Right.

Q. And there's a sense of double jeopardy here because they were – they are the non-sellers in terms of their customary interests up in the Rangitīkei-Manawatū Block –

A. Right.

20 Q. – and there seems to be a clear theme in your report. There was a marginalisation of those non-sellers by Featherston and te Crown because they were essentially getting in the way of Crown aspirations and settler aspirations.

A. Yes.

25 Q. But that's led to a marginalisation in subsequent years where the lack of recognition of those interests has essentially led to an invisibilisation for many of the hapū that I represent now, even continuing into this process to a certain extent. That's an introduction to what I will put down in writing for you just to detail some examples of where I'm inviting you to consider
30 hapū and rangatira, such as Kingi Te Ahoaho as an example, a pre-eminent rangatira of Ngāti Maiotaki who clearly exercised rangatiratanga in the Rangitīkei-Manawatū and yet there's an invisibilisation of his interests subsequently. Are you aware of his close

relative Rawiri Te Wahanui who made a claim to the Kakanui Block up in the Rangitikei as a non-seller, for example?

A. I think she's mentioned at several points in the report, yes.

5 Q. Yes, yes. So, what I will do with Her Honours leave is just give you those examples whereby when you reach conclusions about particular hapū, I am going to suggest to you that there are other threads showing that one of the indicators of one of the consequences of this non-selling approach –

A. Yes.

10 Q. – is that actually, in subsequent years those non-sellers are really erased from a lot of the history?

A. Which is one I dislike the term non-sellers because that was a means of rendering folk invisible as you say. But, yes, and I will be happy to respond.

15 Q. Paul Husbands actually, has given a list, helpfully in his answers to questions around the – he uses the phrase 'the non-sellers list' and their various hapū -

1100

A. Sure.

20 Q. - this includes – you know, really well known rangatira from Ngāti Pare, from Ngāti Huia and the like now are residing in the Otaki rohe –

A. Yes, yes.

25 Q. - but have – and continue to hold strong claims to the Rangitikei-Manawatū. Now, Ma'am that is 11 o'clock. I will pause there and just to extrapolate from Mr Te Nahu's request, are we in – do we have leave to put to Mr Hearn within a briefed period of time because the questions are all here, so it doesn't take long to turn that around, some of the detail that I was going to take him through?

DCJ FOX:

30 Yes.

LEO WATSON:

Thank you for that.

DCJ FOX:

I will follow up with a direction afterwards, after this hearing.

LEO WATSON:

Thank you.

5 **DCJ FOX:**

And that may raise issues for the Crown but she – Ms Cole always goes with me if there are any.

JACKI COLE:

Yes, Ma'am I think that it just raises a bigger picture issue in terms of sufficient
10 time for people to be asking the questions verbally so that we can get oral
responses and so the Crown consider those because I think we all know that
there are very big differences in the way that we can engage with evidence
when it is presented orally versus written. It does come down to that bigger
picture issue of all of us having sufficient time which I know that Your Honour is
15 very conscious of, I think it is just something that we are going to have to
address –

DCJ FOX:

I am working off the counsels assessment of how long they needed, they said
10 minutes, so they got 10 minutes.

20 **JACKI COLE:**

Yes, no, I appreciate that.

DCJ FOX:

Yes.

JACKI COLE:

25 I think we are all feeling under pressure to keep our time estimates as limited
as we possibly can, and we are probably all going to get caught out by it, so it
is a lesson for us all I think.

DCJ FOX:

Alright. I hope that does not mean we are losing power. Dr Hearn, have a cup of tea and we will see you back here in 20 minutes, thank you.

AWHINA TWOMEY (HOUSEKEEPING)

- 5 I am just going to ask you to quickly go and have a cup of tea and do all your conversations outside and then come back in and sit nice and quietly, thank you.

HEARING ADJOURNS: 11.03 AM

HEARING RESUMES: 11:23 AM

10 **DCJ FOX:**

We have Ms Cole present and our next lawyer up is Mr Johnson.

UNSPECIFIED FEMALE SPEAKER: (11:23)

Your Honour, it will be Ms Martinez.

DCJ FOX:

- 15 Ms Martinez. So, we can take Mr Johnston off.

UNSPECIFIED FEMALE SPEAKER: (11:23)

Āe.

DCJ FOX:

All right. Shall we start?

20 **(11:24) EMILY MARJTINEZ TO DR TERRENCE HEARN:**

- Q. Tēnā koe, Dr Hearn. Thank you very much for your evidence. My name is Ms Martinez, as you may have heard, we represent the Wai 784 Ngāti Kauwhata, Wai 1842 Ngāti Wihiwihī and Wai 2031 descendants of James Howard Wallace claimants. Today I will primarily be cross-examining for the benefit of the 784 and 1482 claimants in respect of their interests in the north. Some of my learned friends have
- 25

covered off some of the aspects I was hoping to cover so I have been able to cut my questions down slightly. In terms of the documents you will need in front of you, of course you will need your report #A152, your summary #A152(i), your responses to questions of clarification, which is
 5 #A152(m), and the bundle of documents that we filed, and I understand that have the appellation number #A152(l). Do you have those in front of you?

1125

A. These are the documents I was handed earlier I take it?

10 Q. Hopefully. Do you have our bundle with you there?

A. I have a bundle, yes.

Q. Is the epilation number #A152(l)?

A. No. It does not have a number on it?

Q. Right.

15 **UNSPECIFIED SPEAKER: (11:25:26)**

I can confirm that is the – those are the documents being passed over to the Dr.

EMILY MARTINES TO DR TERRENCE HEARN: (CONTINUES)

20 Q. Kia ora. Wonderful, thank you. All right, so I just wanted to touch on a couple of aspects of your report in terms tribal identity. Now in your report you mention Ngāti Kauwhata and Ngāti Wehiwehi at various points, and at times either directly or by implication your report refers to them as being of Raukawa? I won't take you to all of those points now but in your report, you were commissioned to look at tikanga or whakapapa or oral traditions
 25 of particular groups, that is correct?

A. Correct.

Q. Yes, and you are not an expert at Ngāti Kauwhata or Ngāti Wehiwehi tikanga, whakapapa, or oral traditions?

A. Correct.

30 Q. Yes. So when it comes to those sorts of matters, you defer to tangata whenua?

A. Yes.

Q. Yes, thank you, and now I will get you to turn to that bundle that you were holding up before. That is #A152(l), and I will just get to turn to page 2.

A. I have only just seen these. So I am little reluctant to offer too many comments. I would prefer if I may to study them and then respond to your questions in writing.

Q. Right.

A. Now I am not sure when these were –

Q. They were filed in accordance with the deadline. Shall we perhaps -- I can take you to the one point that I was wanting to cover off.

10 A. Sure.

Q. And you can let me know if you...

A. If I feel comfortable I will answer it.

Q. Yes, absolutely.

A. Yes.

15 Q. Excellent. So just at page 2 of the bundle, you will see there that this is an exert of Dr Anderson, Dr Green and Lou Chase's report. The #A201 report?

A. Yes.

20 Q. Now just in the first paragraph of that section of the report. It is page one of their report, just at the bottom the first or the last sentence on the first paragraph or the last sentences rather, and Dr Anderson states the in general however the historical records refers to after having referred to various iwi and hapū in the area, these hapū as Ngāti Raukawa only thus it is to name tupuna and land names that reference must be to identify the hapū concerned. Do you see that there?

A. Yes.

Q. Yes. It would be fair to say wouldn't that you encountered a similar situation in the course of your research as well?

30 A. Yes. It was a constantly recurring problem and that the confusion between Ngāti Kauwhata and Ngāti Raukawa in particular was a real problem.

Q. Right, thank you. So just turning now to the issue of Crown purchase agents. You are of course familiar with the Treaty and it's general terms, that would be fair to say?

A. Yes.

5 Q. Yes. So you are aware that as part of article two and I will say this in summary form by the Te Reo translation, Māori were guaranteed that they unqualified exercise of their chieftainship over their lands would be protected and by the English text, Māori were guaranteed the full exclusive and undisturbed position of their lands so long as they wish to retain them. You are aware of that?

A. Correct.

10 Q. Yes, and you are also aware that in the Te Reo translation it was provided that sales would occur at a price agreed to by the person owning the land and by the person buying it. In bracket, the latter being appointed by the Queen as her purchase agent. Are you aware of that?

A. Correct.

15 Q. Yes. So thinking about this conduct of purchasing agents it would be fair to say that it would be very important wouldn't it that the Crown ensured the individuals selected for those roles were well versed in what was required to ensure the Crown upheld its side of the Treaty bargain, in terms of purchasing, that would be fair to say?

A. That would be fair to say.

20 Q. And it will be also important that Crown purchase agent actions were adequately monitored by the Crown to ensure it was keeping up its side of the bargain, that would be fair to say?

A. It was important that the Crown did that. The point is that it often did not.
1130

25 Q. Kia ora, and finally just on that point. If it became apparent that there were issues arising and this does tie into your answer just now. If there were issues seemingly arising in respect of particular purchase in terms of how it was carried out, it would also be important that those issues were appropriately addressed, that would be fair to say?

30 A. Well, yes, it would, but again they often were not.

Q. Kia ora. So, I just want to turn now to Crown Purchases in a little bit more detail in some of your conclusions around those. So, in particular in terms of the Rangitikei Turakina Block, I might just get you to turn to your summary at page 4 if you could?

A. Sorry, yes.

Q. Wonderful, I'm just navigating numerous places as well. So, just in that second paragraph there right in the last sentence, and you state there don't you, "That the weight of the evidence indicates that Ngāti Apa, Ngāti Raukawa, and McLean agreed the lands lying south of the Rangitīkei River would not be sold, that they would be held for both iwi," is that correct?

A. Correct.

Q. Now, McLean had recorded in his report during negotiations to this transaction such as for the Te Ao Hui a hui I think it was, that members of Ngāti Raukawa advised that they would oppose the sale of land south of the Rangitīkei River and that this river would be the boundary of sales. That's correct?

A. I think that from memory, that report, that comment by McLean was made in his report 1849 report to Lieutenant-Governor Eyre who was Governor in New Munster which is we are willing to promise, fitted. So, that was at the conclusion of the Rangitīkei Turakina transaction.

Q. Yes. So, he had recorded the understanding there –

A. He recorded that Ngāti Raukawa and I think he made an additional comment that purchasing of those lands to the south of the river would take many years.

Q. Mmm, mmm. And so, now I do not know if – I won't take you to the page, but it is fair to say that similar concerns or understandings about the boundaries were repeated before the Native Land Court in the Himatangi hearings, that's correct?

A. Correct.

Q. Yes. So, we have McLean, he was a fairly prominent purchase agent, that be fair to say?

A. He was Chief Land Purchase Commissioner.

Q. Āe. And it is fair to say that he was aware of the expectations that there were around our boundary?

A. McLean had a very good understanding, yes.

Q. Yes. And subsequently, when it came to the Rangitīkei-Manawatū transaction, further evidence was about those expectations was put

before the Native Land Court. I think it was in the 1868 hearing that's correct?

A. Yes.

5 Q. Yes, and of course, the Crown was actually an active participant in those proceedings as well, wasn't it?

A. Yes, indeed.

10 Q. Yes, thank you. Just turning now to the Rangitīkei-Manawatū Block, you engage with my friend earlier in some detail about Featherston and I would like to just delve a little bit further into that as well. So, of course before the Rangitīkei Manawatū purchase, Featherston was engaged in the Waitōtara purchase, that's correct?

A. Correct.

15 Q. Yes, and I won't get into this in too much detail, but I thank you for including a reference to that purchase, because it does seem to provide quite an instructive example of how Featherston was prepared to operate in purchasing land. So, in your report, I will just get you to turn to page 233 of your report? Actually, we will go over the page to page 234, are you there?

A. (No audible response 11:34:07)

20 Q. Excellent. So, in that first paragraph there, now, the second sentence in if you're not counting the north that slips over from the other page, you state there don't you that or observe rather, that Featherston appears to have included the transaction with a group whose claims to the block were at best minor, but who were prepared to sell, that is correct? Is that yes?

25 Oh, I think your microphone is switched off.

A. Yes, that's correct.

Q. Kia ora.

A. Yes.

30 Q. And this purchase was roundly denounced in the *Colonial Press*. I think you observed that in the following paragraph, that's correct?

A. Correct.

Q. And concerns about the purchase are also raised with the Colonial Government, weren't they?

A. I'm not sufficiently familiar with the aftermath of the Waitōtara purchase. My interest in it was as an example of the way in which Featherston approached the whole business. There is a very good report from memory by Aroha Harris that deals with the Waitōtara purchase and is probably is cited in there somewhere –

5

1135

Q. Right, okay –

A. – which may answer that question.

Q. Yes, yes, I might just draw your attention to I think it is footnote 708 on page 236 and there is some communication there which you outline 'Featherston to Stafford in 1866' and it talks about "Cameron conveying his concerns to the Secretary State of War, but the Imperial Government declined to intervene Carnarvon advising Grey that Featherston's very clear and specific statement and in Field's letter of 1865 had been laid before the Imperial Government", do you see that there?

10

15

A. Yes.

Q. Yes, so it seems like the issue had been drawn to the attention of at least some people within Government, that would be fair to say?

A. Yes, truth.

20

Q. Now, I think later on in that same footnote, so I will just keep your attention on that, the Government by looking at this footnote, there was the conclusion by I think it was Carnarvon –

A. Carnarvon?

Q. Yes, and he says there, "I see no reason for pursuing any further inquiry into – that there be issue raise", that's correct?

25

A. Correct. Imperial Government was always reluctant to intervene on such matters.

Q. Yes, it seems so in this case. So, pulling this together it's fair to say that it's at least likely that Featherston did not come to the Manawatū with particularly clear hands, did he?

30

A. No.

Q. No. And the Crown does seem to have been aware that concerns had been raised about his conduct in respect of that purchase?

A. It had.

Q. Kia ora. Now, I just want to turn next to the matter of leasing and you have included some very helpful sources in your report in this respect. I will get you to turn to page 138 of your report.

A. 138?

5 Q. Yes.

A. Right.

Q. So, sort of say about halfway down, that first paragraph there, you record, don't you that "it is not at all clear in respect of the lands within the Rangitīkei and Manawatū, that Māori were aware that the Crown's claim of pre-emptive right of purchase had been stretched to cover forms of alienation other than sale", that's correct?

10

A. Correct.

A. And further you record that, "the leasing of a Rangitīkei and Manawatū lands indicated that Māori and past oralist were able to arrive at mutually acceptable leasing arrangements and to resolve peaceably and affectively such disputes as arose," that's correct?

15

A. Correct.

Q. So, it's fair to say that leasing of lands within the Rangitīkei/Manawatū was a good example of Māori making commercial decision and entering into their own commercial arrangements?

20

A. Āe, correct.

Q. And there's no evidence in your report to suggest that Māori in the area had agreed to extension of the Crown's right of pre-emption such as would void those leases that they had entered into, that would be fair to say?

25

A. Māori were rarely consulted over any legislation passed through.

Q. Kia ora.

A. It would have been the Legislative Council at that stage.

Q. Okay, thank you. So, I just want to discuss the matter of impounding rents from these leases with you with a particular focus on the disputes that were said to have arisen. So, I will get you to turn to page 122 of your report, so we will be bouncing around a little bit.

30

A. Sure.

Q. So, in the last sentence of that first paragraph, you state there, don't you, that Ngāti Raukawa – “the evidence suggests that Ngāti Raukawa, Ngāti Kauwhata and Rangitāne had at least decided to adopt a plan intended to resolve inter-tribal disputes over land”, that's correct?

5 A. Correct.

Q. And if I just get you to turn to page 239, just in that first paragraph again but we are at the middle of the way down.

A. Yes.

10 Q. You state there, don't you, that “Ngāti Apa and Raukawa had proved capable of resolving earlier disputes”, that's correct?

A. Correct.

1140

15 Q. And I'll get you to turn now to your summary just for a change of scenery. So, if you look down, paragraph 2 there you record there, don't you, that Ngāti Apa, Ngāti Raukawa and Rangitāne have been able to arrange the lease terms, share the rental income and settle disputes without the benefit of external intervention, that is until 1863, that is correct?

A. Correct.

20 Q. And you also observed that Ngāti Apa appeared to be more about bluff and bluster than serious intent about commencing fighting and furthermore that they were outnumbered by the opposing iwi involved, that's correct?

A. Correct.

25 Q. And of course these leases consistent with what you observed later or earlier in your report, these have been going on for approximately 20 years at this point, haven't they?

A. Yes, they have.

Q. Yes. I'll get you to turn now to page 247 of your report.

A. 247?

30 Q. Yes. Now just in the first paragraph again, right at the end of that, still talking about these leases and you state there, “The evidence indicates that there was a means of resolving any difficulty available in this particular issue?”

A. Correct.

Q. Correct, thank you. So it would be fair to say, wouldn't it, that the evidence available in your report suggests that Māori involved had already proven themselves very capable of resolving intertribal disputes in the past without intervention by the Crown?

5 A. Correct.

Q. And it seems likely in this case as well that a means of resolving the disputes were also available without intervention from the Crown?

A. Except that Ngāti Apa set its face against arbitration.

10 Q. So I stay on that same page, on that same paragraph there you discuss the fact that it is possible the disputes were limited to just two of the runs out of those leased and I think it was out of nine, wasn't it?

A. Yes, somewhere around about that.

15 Q. Yes, and in your summary, I won't take you there, but you conclude that what appears to have been a minor dispute over distribution of pastoral rents was thus elevated by Featherston into what he termed as the Rangitīkei land dispute, that's correct?

A. Correct.

20 Q. Now of course in 1862 he'd been authorised while holding the office of Superintendent of Wellington to act as a commissioner of the extinguishment of native title in Wellington, that's correct? And he was given this role to provide, and I quote, "His valuable aid and influence in the purchase by the Crown of native lands in the province of Wellington," that is correct?

A. Kia ora.

25 Q. So if we just draw all these threads together, this intervention on behalf of the Crown through its purchase agent was an intervention, it would be fair to say, into an inter-tribal dispute between Māori, that would be fair?

A. Yes.

30 Q. And further, the evidence indicates that the reason the Crown purchase agent Featherston got involved was not out of the goodness of his heart, it was because he was tasked with acquiring land in the area, that's why he was interested, that would be fair to say?

A. He projected himself as the peacemaker first –

Q. Mmm.

A. – having some years previously to clear the acquisition of the Manawatū lands is fundamental to the economics importance, economic property of Wellington, yes.

5 Q. Yes, and additionally the reason he was seeking to acquire the land was because the Crown had appointed him to obtain land for settlement and for settler population?

A. He had sought that appointment.

10 Q. Yes, and received it, āe, thank you. Now, at page 687 of your report, I won't get you to turn there, but you set out that what McLean sought was a political solution to a dispute that had its origins and events that had preceded annexation and in the competing historical narratives to which those events have given rise. Of course, it's certainly fair to say that on the basis of the evidence available, the Crown including through its purchase agents had exacerbated any tensions that did exist, that would
15 be fair?

A. That is fair.

Q. Yes, thank you. You are almost off the hook, I've got one more question or line of questions rather. So just at page 21 of your report –

A. Yes.

20 Q. Thank you. So just at the first paragraph of that page you refer to Ngāti Kauwhata having left Maungatautari for Taupō as Ngāti Haua extended its control of that region. So you do cite Ballara in this regard, but your footnote for that source also records findings from the Kauwhata Claims Commission of 1881.

25 A. True.

Q. Are you aware that our Kauwhata claimants' narratives and oral traditions differ from the findings of that commission?

A. I'm sorry I didn't quite catch that.

30 Q. Which? Okay. I will say both parts again. So in addition to citing Ballara, that footnote there that you've got, it also records findings of the Kauwhata Claims Commission of 1881.

A. Correct.

Q. Are you aware that our Kauwhata claimants' narratives and their oral traditions differ from the findings of that Commission?

A. I am aware of that, yes.

Q. Kia ora, okay. I won't go any further into that but suffice to say this is a matter that our clients will deal with in their evidence as necessary.

A. Āe.

5 Q. So thank you.

DCJ FOX:

Okay, we are up to 25 minutes.

EMILY MARTINEZ:

Excellent, that's perfect timing.

10 **DCJ FOX:**

Perfect.

EMILY MARTINEZ:

Thank you very much for your time, and kia ora Judge, those are my questions.

DR TERRENCE HEARN:

15 Perhaps Ma'am, I could just comment on one matter? The question of
impounding the rents, my understanding is that the rents were never
impounded, and the reason is that the Crown could scarcely be seen to be
pounding rents that were illegally derived in the first place, and so Featherston,
my understanding is that he directed the runholders concerned not to pay the
20 rents and when it came time to settle the matter up, of course some of those
runholders refused to pay the arrears. So we talk about impounding, but in fact
they were not impounded, they were simply not paid and that is why Fox made
the comments that he did, that the whole thing was politically and legally messy
because the Crown basically had come – well, had not challenged those leasing
25 arrangements either there or in the Wairarapa or Hawkes Bay in particular. So
it was just a question of clarification.

EMILY MARTINEZ:

Kia ora, thank you.

DCJ FOX:

Thank you. Mr Lambert?

CORAL LINSTEAD-PANOHO:

Sorry, Ma'am, it's actually Ms Linstead-Panoho.

5 **DCJ FOX:**

You are with Mr Lambert thought, aren't you?

CORAL LINSTEAD-PANOHO:

Yes, he'll be joining on Wednesday Ma'am, so I'm in his place.

DCJ FOX:

10 Okay.

(11:47) CORAL LINSTEAD-PANOHO TO DR TERRENCE HEARN:

15 Q. Tēnā koe Dr Hearn, thank you very much for your report. I reiterate the sentiments by my colleagues, it is a very extensive, comprehensive and quality report, so thank you for that. Now, the group that I represent is Wai 1260 Ngāti Waewae and I understand that you have also given evidence in the Whanganui and Central North Island Inquiry, so they may be a group that you are familiar with already, that's the hapū of Ngāti Waewae, a hapū of Tūwharetoa?

A. Yes, yes, a little.

20 Q. Okay. So our client's evidence is that they travelled down into the Rangitīkei area in about the 1840s and were one of the groups to have settled at Te Reureu –

A. Yes.

Q. – is that familiar to you?

25 A. Yes.

Q. And that area Te Reureu falls within the Rangitīkei-Manawatū Block, that's correct?

A. Yes.

Q. So it's fair to say that as a group that settled in the area and in particular in that block, they were a hapū that was susceptible to those Crown tactics in terms of adding pressure to purchase and acquire the entirety of that block, is that correct?

5 A. Correct.

Q. Given that they are a group that has travelled down and settled in this area, there's also a risk with this Crown pressure of acquisition of their land that they could become landless if the Crown were to succeed in its desired acquisition of the land, is that correct?

10 A. Correct.

Q. Now this is a group that also voiced that opposition to the sale of the block to the Crown, isn't it? Ngāti Waewae in particular are representatives and I refer you to page 394 of your report –

A. Right, right.

15 Q. – where you mention a petition there by Paranihi Te Tau. I do not think it is necessary that you go there really -

1150

A. Yes. Correct

Q. – the point is that they are a group that –

20 A. Correct.

Q. – voiced that opposition to the sale, aren't they –

A. Right.

Q. – and were not and did not – well definitely did not accept what the Crown was trying to do in that area?

25 A. Correct.

Q. Okay thank you. Those are my questions.

DCJ FOX:

Just to clarify if you go to your report 394.

30

DR TERRENCE HEARN:

Right.

DCJ FOX:

It is not only Ngāti Waewae that has been listed as the petitioners.

DR TERRENCE HEARN:

Correct.

5

DCJ FOX:

Correct. All right. So, could you clarify whether or not Paranihi Te Tau and Eruini Te Tau were Ngāti Waewae or one of the other groups that are listed there?

10

CORAL LINSTEAD-PANOHO:

I do not have evidence to put to you of that whakapapa.

DCJ FOX:

15 I do not want evidence. I am just wondering why you?

CORAL LINSTEAD-PANOHO:

It says there at the – in that petition that they were claiming to represent Ngāti Pīkiahū, Ngāti Waewae, Ngāti Maniapoto and Ngāti Hinewai.

20

DCJ FOX:

I see. So, they could be any one of those groups?

CORAL LINSTEAD-PANOHO:

25 Yes.

DCJ FOX:

Okay. Thank you.

(11:51) JACKI COLE TO DR TERRENCE HEARN:

30 Q. Can I just start by saying, tēnā koe Dr Hearn. Could I start with a – just following up on something that was asked Ms Martinez about the concerns raised and the knowledge of the Crown about the concerns of the conduct of Featherston in relation to the Rangitīkei-Manawatū

purchase and you made a comment in reply to her – to the effect of the Crown was always reluctant to get involved in these sorts of matters. I wonder if you could expand upon that? Do you recall a conversation you were having with Ms Martinez about that?

5 A. I said the Crown was reluctant to interfere with Featherston’s conduct of the negotiation.

Q. I think the word you used was ‘those types of matters’ but yes I am assuming that that is what you were referring to or the conduct of Crown purchase agents generally, perhaps is what you were referring to.

10 A. Yes. Generally the – McLean as chief land purchase commissioner was reluctant to interfere with the activities of this land purchase agent in fact there is a wonderful letter that appears in AJHR 1861 C1, in which McLean is writing to Paris who was the Crown purchase agent in Taranaki and if memory serves me correctly he says, “We do not, I do not wish to
15 enter – issue any instructions that may fetter you in the discharge of your purchasing activities”. That was not confined in fact to Paris or Taranaki, but it was a – both by statement and by active omission if you like. There seems to have been very little control exercised from the centre of government. The objective was quite clear which was to acquire as much
20 land as possible as cheaply as possible and land purchase agents generally were given free reign. When they transgressed as Brissenden did in Te Raki, McLean pulled him out. That I think was one of the very few examples on which an effort was made from the centre to control what was happening out in the purchasing districts.

25 Q. So, from your research and historical knowledge, do you know why the government was the imperial government as you described them when you were talking with Ms Martinez why it was reluctant to take such action?

A. Of the imperial government?

30 Q. Well that was the language that you used –

A. Yes.

Q. – when you were talking with Ms Martinez, why it was reluctant to take such action?

1155

A. Of the Imperial Government?

Q. Well, that was the language that you used when you were talking with Ms Martinez.

5 A. That is why I was slightly confused. The Imperial Government, yes it was reluctant to get involved and if it has conceded the position that was being put forward by Field it would have very likely opened up a whole raft of objections. The Imperial Government was content to leave the matters of – sorry, native policy in the hands of the Governor and subsequently in the hands of the General Government. So, it was reluctant to interfere in
10 matters that it properly – that it regarded as properly falling within the jurisdiction of global entities.

Q. So, bring that down to the Central Government.

A. Yes.

Q. So, the Governor and the Ministers.

15 A. Yes.

Q. So, you referred a little minute ago to Mclean –

A. Right.

Q. – so that was in his capacity as a Minister of the Central Government. Is that right?

20 A. Both as Chief Land Purchase Commissioner.

Q. Yes.

A. Both as Native Secretary until 1861 and then as Minister of Native Affairs.

Q. Yes.

A. Yes.

25 Q. And so, can you speculate on the – or provide the Tribunal with any indication of the reasons why the Central Government was, it appears, reluctant to also, if the example you gave of the intervention in Te Raaki.

A. Yes.

Q. Can you expand upon that for us?

30 A. Why was it reluctant to intervene?

Q. Yes. Or do you have knowledge of any evidence to refer to that?

A. I am a little bit hesitant.

Q. Okay.

A. But one suspects that the reason is that to have interfered may have opened up a precedent that it could not then control because although the Rangitikei-Manawatū purchase was highly contested so were many others.

5 Q. Yes. Normanby of course had set out some fairly clear directives.

A. Yes, he did.

Q. The evidence shows that those were not followed in the instances that we have been discussing during the course of your evidence.

A. That would be my assessment in this case.

10 Q. It is an acknowledgement of the evidence that has been presented to the Tribunal to date, I am not in a position to be making any concessions, Your Honour, as you will appreciate. Where that leads to – coming back to where I was coming from was the issue of the ‘why were the – why the Trib – now I am being thrown by the Tribunal – why the
15 Central Government was not intervening in the way that it did in the Te Raaki example and whether or not you have any information from your historical research which would provide us with some enlightenment.

A. I can only really speculate but I can speculate if I may. I think we tend to assume...

20 **DR GRANT PHILLIPSON:**

Give us an informed opinion.

(11:58) JACKI COLE TO DR TERRENCE HEARN: (CONTINUED)

Q. Thank you, Dr Phillipson.

A. My opinion is that we often fail to estimate the level of underdevelopment
25 within the Government itself. Governments – I mean when we talk about Governments I think we tend to imagine all-powerful, all-far-reaching institutions and organisations but in 19th C, particularly early 19th C in New Zealand they were not. In fact, the New Zealand state was only ever really developed under the Liberal Government of what – the 1890’s so
30 there was always a difficulty, whether that was sufficient to exculpate if you like, the lack of direction from the centre I would be less certain about

that. Richmond's comments about Featherston makes it clear that the General Government was fully aware, but it did not act.

Q. Mhm. In criminal Courts, if I may very briefly digress, when we are doing pleas and mitigation we regularly say, "It is not an excuse, Your Honour, it is an explanation," and I wonder whether that is essentially what we have here is an explanation for what – why the Central Government did not intervene, it is not an excuse, Sir, it is an explanation. Would you agree with that?

A. It is still a failure.

10 1200

Q. I could not possibly comment. Dr Hearn, could I get you to just turn to page 10 of your report? In the bottom of that, you note that with respect to the Rangitikei-Manawatū Block, a great deal has been written about the transaction which Dr Phillipson has mentioned on a number of occasions too and contrasting conclusions have been reached over a number of major issues. You have spoken to this Tribunal another hearing - on other hearing occasions about the differences in views that historians express when they potentially look at exactly the same evidence, much like getting 10 lawyers in the room, you will get 10 different answers. Ten different historians you might get –

A. Or 10 economists and get 20 different opinions, yes.

Q. Quite right, quite right. My question really is, would you agree that the conclusions that you have reached or the information that you've discussed leading to the conclusions that you've reached throughout this report as it pertains to this phase of the inquiry, it has – it really does reflect Ngāti Raukawa's, and affiliated groups' perspectives on the events, would you accept that?

A. The resources I used for – to reconstruct or to prepare this report were almost exclusively Crown's synopsis.

30 Q. Right.

A. And so, they will reflect at least in part, whatever coverage those documents offered. If you say it's from the perspective of Ngāti Raukawa, but that's because Ngāti Raukawa was dominant in this area and Ngāti Raukawa was perceived to be the problem. Ngāti Raukawa were the

obstructionists or numbered amongst the obstructionists. So, it's not surprising that a lot of the historical records focuses on Ngāti Raukawa.

Q. Can I just clarify, when you refer to Ngāti Raukawa, and I think this is again picking up on something that Martinez said early on, you're referring to the more general Ngāti Raukawa and affiliated groups that we are looking at in this inquiry?

A. Yes.

Q. Yes, just wanted to clarify that. And your answer also leads on to what my next question was going to be and that is – and you do not need to necessarily go to it, but at page 82, you are talking about Ngāti Apa and Ngāti Apa's decision to sell. I wondered to what extent any of the narrative reflected in your report is informed by Ngāti Apa narrative?

A. I did try to construct something of Ngāti Apa's perception of the events, which is why I spent some time trawling through the minute books of the Native Land Court. Problem is you don't. It's difficult to know always how reliable those minutes actually are. So, I try to compliment that by examining some other sources, notably press commentary.

Q. Yes.

A. Where you can pick up valuable material. AJHR's NZPD so an effort was made by at least Ngāti Apa once it had accepted the purchase monies kind of moves out of the picture to the battle was then Ngāti Raukawa and Featherston and so on.

Q. You do refer to a large number of newspaper articles or letters to the editor or whatever that might be?

A. Yes.

Q. Can you tell us whether Ngāti Apa were writers of – in the same way that Ngāti Raukawa and affiliated groups were obviously using the opportunity to voice their concerns through the press. Were Ngāti Apa in any way featuring in any of the information that you –

A. No.

Q. No, I thought –

A. No, they don't.

Q. Thank you, thank you.

A. One of the reasons actually that Ngāti Raukawa were such a prolific writer of letters, probably reflects the very early establishment of missionaries submissions what was here.

5 Q. Yes, thank you. I am very conscious of time. So, although I would love to explore those sorts of things further. I wanted to ask you to the extent to which you have engaged with the other technical reports that have been filed for this week. They touch on very much the same events as your evidence. So, that's got Professor Boast, doctors Anderson and Green, Mr Husband to the extent of reserves, but he does go in to a lot of detail of the purchases as well, and the Dr Young and others reports, have you had an opportunity to look through those and –

10 A. I've certainly looked at Dr Husband's work on reserves.

1205

Q. I might pause you there –

15 A. Yes.

Q. - did you – was there anything in that report that you saw that did not align with your understanding?

A. No.

Q. Thank you.

20 A. The others I have not – I would have to confess, I have skimmed through them.

Q. I wish I had.

A. Sorry?

Q. They are very – they take a very long time to read.

25 A. It is just that the pile of reports on my desk never seems to get any smaller –

Q. I know.

A. - but I did read through Dr Anderson's report and there was nothing in there that I felt was in any way inconsistent.

30 Q. Excellent.

A. If anything, she fleshed out a lot of what I had to say.

Q. Excellent, thank you. I wanted to get that confirmation. So, again through your report you identify on a number of occasions the different accounts of history given by different historians –

A. Yes.

Q. - an example of this is at page 132 where you go through an assessment of the – the title is in fact historians assessments and you go through the various different historians who have given accounts of the Ahuaturanga and Te Awahou transactions and you say that their accounts have displayed some marked differences. My question to you really is what is the Tribunal to make of the marked differences of all of these different historians or we just hand it over to Dr Soutar and Phillipson to try and sort that through and land on something that they decide is the real deal.

5

10 A. I can express relief that I am not a member of the Tribunal, I would think. I guess, how can I put this, that they will want to consider the weight of the evidence and the direction in which the evidence seems to travel would be as much as I could say.

Q. Thank you.

15 A. Which is what I have done, the various points of this report, I mean, I cannot be conclusive about many matters, but I can say that the weight of evidence tends in this direction or supports this conclusion.

Q. Thank you. At page 162 you are discussing the Te Awahou purchase from – completed initially in November 1858, finally the following year and you say that that purchase offered some insights in to the fishers, so the fractures , that a merge within Ngāti Raukawa as the Crown pushed forward with its purchasing programme. Again, I might just pause and clarify where you refer to Ngāti Raukawa there, do you mean and affiliated groups?

20

25 A. Yes.

Q. It is the Ngāti Raukawa, not Ngāti Kauwhata and all of the –

A. Yes, yes, yes. Well, Ngāti Kauwhata and Raukawa were usually conflated –

Q. - okay.

30 A. - so, it really is a problem through a lot of the literature distinguishing between those two already.

Q. I just wanted to pause there really for the audience so that they do not get confused by my reference to Ngāti Raukawa where I am reflecting your –

A. I understand.

- Q. - report because I am meaning the more broad group as well in the way that your report does. So, the fractures that a merge within the iwi and hapū as the Crown pushed forward with its purchasing programme. The evening post recorded Parakaia Te Pouepa as saying that McLean had said divided the sellers from – have said divided the sellers from the non-sellers, all the sellers said to give us the money, but he said wait until the subject has been discussed, I do not wish my money to be given for land that may be disputed afterwards. It was the Crown's preferred approach reflecting Normanby – Normanby's instructions from 1839 that that be done before a purchase was completed, correct?
- 5
- A. There had to be agreement reached over the distribution of money shares and further the Crown was required to ensure that the monies were distributed as agreed so there were two parts to that.
- Q. And McLean's on the record as saying that is what I want done –
- 15 A. Yes.
- Q. - and he is the boss in terms of the land purchasing department?
- A. Where was he at that stage, this was prior to his –
- Q. It is, you are right.
- A. - yes. So, he was district land purchase commissioner, wasn't he?
- 20 Q. Yes. He's reflecting – this is a question, is he reflecting the preferred approach of the Crown?
- A. At that stage, yes, he was.
- 1210
- Q. And would you agree that that was the right approach?
- 25 A. Well the question is really whether that was acceptable to Māori.
- Q. Was it acceptable to Māori, do you know?
- A. There were no protesters as I recall in distinction to the Rangitīkei-Manawatū transaction.
- Q. Okay. I wanted to ask you some questions about the exemption of Manawatū lands from the 1962 Act –
- 30 A. Right.
- Q. 1862 Act.
- A. Yes.

Q. So you say at page 228 that Featherston sought to justify the exemption on the grounds that the Crown required the Manawatū lands in order that it might meet its obligations to the holders of the New Zealand Companies land orders?

5 A. Yes.

Q. From your reading, what is your view as to whether or not the Crown would have been able to meet its obligations to the holders of the New Zealand Companies land orders without exempting the lands from the 1862 Act?

10 A. It had the Rangitīkei-Turakina lands available to it, and in fact my understanding, and I may be corrected here, is that a good proportion of those land orders were satisfied through the allocation of land on the Rangitīkei-Turakina Block, which is why the estimates of the area required within Rangitīkei-Manawatū were so modest. I mean, there was
15 one that was, I think it appeared in an AJHR paper that put the area at 30,000 acres and there was a later that put it at something like 18,000 acres. Well, you would hardly think that that was necessary to acquire the entire block to satisfy what was actually quite a modest –

Q. I don't recall reading this, but it may well be in one of the reports. Do you
20 have a sense of what percentage of the Rangitīkei-Turakina Block was used to satisfy those New Zealand Company land orders?

A. No, I do not, no, I do not. It might be difficult to establish, might be difficult.

Q. If the Manawatū lands had not been exempted from the Act, I think your
25 answer before actually just answers this question. What I was going to ask is how else could those orders have been, those land orders have been met. 30,000 acres leftover could've been dealt with through a much smaller purchase I'm assuming would be your answer?

A. Yes, it also had the Wairarapa lands available to it.

Q. The Wairarapa lands, right. Thank you.

30 A. And at that stage – where are we? 1862. When was the Hawkes Bay Province established? 1861 around about.

Q. Mr Watson would be able to tell us that probably, but...

A. So up until that point it had the Ahuriri lands as well.

- Q. Okay, thank you, that's very helpful, thank you. This is a question relating to the impounding of rents, and I understand and agree with you in terms of what the historical reports tell us about the impounding of those rents because one of the questions that I had after reading a number of these reports was were the rent monies ever paid? You know, were they ever un-impounded and actually passed on? But of course I've finally figured out what had happened there. At page 291, Featherston repeats the claims and arguments that he employed in his meeting with Ihakara, namely that the rents had to be impounded to avert conflict. He gives a number of his – you recite at page 291 a number of reasons why Featherston – a number of explanations of Featherston as to why he impounded the rents. My question to you is if there is any chance that the explanations that he gave may actually have been genuine. So we'll just quickly go through them: "Avert conflict; His object had not been to purchase but to ensure that each tribe secured 'its fair share of the land'; That Māori had rejected his proposal for arbitration;" and you mentioned before about Ngāti Apa having rejected arbitration, so there may have been some justification possibly for the 'intervention' if I might use the word that Mrs Martinez used earlier on. "That releasing the rents would lead to trouble." And I'm just citing here from the last paragraph of page 291 here, "And that the genesis of the difficulties could be traced back to the death of Nepia Taratoa in his passing, allowing 'the smouldering feelings of discontent and jealousy... to break into an open flame'." So there's Featherston or a recording of what Featherston was using to justify the impounding of the rents, and my question to you was whether any of that was justified?
- A. Two – well, some responses. On the face of it, Featherston's reasons do not appear as utterly unreasonable. The question is though, why the so-called dispute which was manufactured I submit, why was it manufactured at that precise moment? I mean timing, timing in these things is everything it seems to me. Now, one of the reasons cited of course is the death of Nepia Taratoa in December '62-January '63. Featherston, my impression from having read so much around this area is that Featherston chose to believe that he was intervening for good

reason, but it was not the only reason and it was not the central reason. He needed leverage over Ngāti Raukawa in particular. He was aware of how important those pastoral rents were. I did work it out once where the rents in a year were a significant proportion of the purchase monies paid for particular blocks. So we might be inclined to think that the pastoral rents were insignificant. They weren't. And for many of the hapū in this area they were the only source.

Q. Yes.

A. So we can allow that Featherston believed that he was acting in the interest of peace and stability, but human motivations, human behaviour are very, very complex and I suspect that Featherston had far – well, I don't suspect, I know that Featherston had far deeper motives. But we –

DCJ FOX:

All right, Ms Cole. We are now at 30 minutes.

15 **JACKI COLE TO DR TERRENCE HEARN: (CONTINUES)**

A. We can allow that he was genuine so far as it went.

DCJ FOX:

Yes, we are into 30 minutes. How much longer, Ms Cole?

JACKI COLE:

20 Yes, Your Honour, I only have a couple more questions.

DCJ FOX:

(mic off 12:17:55)

JACKI COLE:

I will, Your Honour.

25 **JACKI COLE TO DR TERRENCE HEARN: (CONTINUES)**

Q. At page 313 you talk of proposing sale as a means of resolving dispute was a well-established part of the Crown's purchasing repertoire.

A. Yes.

Q. I assume that there are other examples of this practice which you are aware of in order to inform you of that?

A. Yes, yes.

5 Q. Yes. My question was whether or not you are aware of other examples of that within the Porirua ki Manawatū region?

A. Not in this region, but aware of them elsewhere.

Q. Thank you. Yes.

A. Yes.

10 Q. No, thank you. At page 538 you are discussing the hui in September of 1972. The heading is the Rangitīkei-Manawatū Crown Grants Bill of 1872 and the debate within Ngāti Raukawa and you say there the meeting – so we are at the hui, “The meeting resolved, among other things, that all disputes about titles to land should be submitted to the Native Land Court,
15 ‘the result of which shall be final, and the losing party shall not bear malice or give trouble on account of an adverse judgment’.” Do we know why or does the information that you are aware of provide us with detail as to why that agreement was reached? And the reason – I might just put that question in context. It does seem from the evidence – this is not a
20 concession Your Honour –that the Native Land Court had largely failed Ngāti Raukawa in the past. So my question is really, why did they then decide in 1872 that ‘we’re going to be okay with referring this back to the Native Land Court and we’ll live with the outcomes’?

A. “Was there an option?” would be the question. I did not quite follow that,
25 your question, but my response would be that by that stage Ngāti Raukawa really did not have any other option but to go through the Native Land Court.

1220

Q. Okay.

30 A. Yes.

Q. Both you and I think Professor Boast refer to the Rangitīkei/Manawatū –

DCJ FOX:

That is three questions, so are we going to wind up or?

JACKI COLE:

Yes, I am Your Honour.

DCJ FOX:

Yes? Well, do so otherwise I am just going to cut you off.

5 JACKI COLE TO DR TERRY HEARN: (CONTINUES)

Q. In your summary at page 10 you refer to the 1400 signatures that Buller obtained on the deed of session, you were present I think yesterday when Sir Eddie raised an issue of whether the signatories on the Deed of Session signatories had actually signed blank pieces of paper
10 which were later attached to the deed of session, were you here when that comment was made?

A. Yes, I was.

Q. Are you aware of any evidence of that? I have – It's just that I have not read that in any of the other reports.

15 A. What I am aware of is – I am sure it supports what's Sir Eddie was saying and that is that to gain those signatures Buller perambulated around on horseback, around the district clutching, it was said, some kind of container to his chest in which all the sheets on which signatories had written, were attached. Whether or not a deed of session was actually
20 displayed to those who had signed, that is not something that I found but I – it's my gut feeling only that what Sir Eddie was saying complimented my understanding of what had gone on.

Q. Well, that's useful clarification, thank you very much, thank you.

DCJ FOX:

25 Dr Grant.

(12:22) DR GRANT PHILLIPSON TO DR TERRENCE HEARN:

Q. Tēnā koe, Dr Hearn.

A. Tēnā koe.

Q. I wanted to thank you for your excellent report and immediately take issue
30 with something you just said earlier which is – I can understand why an

infrastructure argument would be used for all manner of things that a Government could not do –

A. Yes.

5 Q. – but how can it be used for a superior in a department not being – not controlling what his officers are doing?

A. It can't really. I mean, the Native Land Purchase that we were talking about was pretty well staffed. There were constant complaints about the cost of that institution and it was remarkably from what I can tell from the record, remarkably well informed as to what was going on out in the regions as it were. So, there is no real excuse, I was just reflecting that Government generally was by modern standards –

10 Q. Yes.

A. – underdeveloped.

Q. Yes.

15 A. What I was more taken with was McLean saying to his land purchase agents, "I do not wish to fetter you with restrictions or instructions, but you are to use your best judgement although I would like you to do this, this and this."

20 Q. Yes. So, when we come to Richmond as Native Minister and Featherston –

A. Yes.

Q. – wouldn't – it seemed to me from reading your evidence that key issues preventing Richmond from actually doing something about what Featherston was doing was the Central Government's desire not to see the Wellington Province go completely bankrupt and also the tension that was very prevalent of that time between the Central Government and the provincial government –

25 A. Yes, yes.

Q. – so that although the Government had appointed a superintendent as its land purchase commissioner, it was also still dealing with a superintendent. So, that seemed to me to be more likely reasons why.

30 A. And a superintendent who was also a member of Parliament –

Q. Yes.

1225

A. And who commanded a fair degree of loyalty from the other Wellington members. I think the only one who really challenged him was Featherston, was it not? And he paid the political price for that. So in the context of the struggle that was going on at this between the centralist and previsualise, Featherston and his Wellington party as it was known occupied almost critically pivotal role in the balance of power within the general Government, and that is one of the reasons I suspect that it was reluctant to interfere –

Q. Yes.

10 A. – lest it lose that support.

Q. Yes, and I think that is very clear in your evidence.

A. Yes.

Q. So following on from, I have not seen in any of the reports, I want to know when Featherston's appointment as a land purchase commissioner ceased.

15

A. Now that is covered somewhere. The initial appointment was in April 1862.

Q. Yes.

A. A matter about which he was surprisingly coy for reasons which are interesting.

20

Q. Yes.

A. I think that commission ended in 1864 when he was then charged though with completing the Rangitikei-Manawatū transaction. So his commission as it were was narrowed from Wellington's district land purchasing, purchase commissioner to Manawatū purchase.

25

Q. And so through everything that he does through and to the 1870, is he still a land purchase commissioner? Or did that – was his appointment ever actually revoked or?

A. It was transformed but I do not think it was revoked. That is my understanding

30

Q. Right. Okay, so throughout that whole period – yes, okay. And also Buller at one point you described him as an assist land purchase commissioner.

A. Yes.

- Q. Now I am really interested in that because everything else suggest that he is acting as a resident Magistrate but somehow also doing these other things. So was he formally appointed as an assistant land purchase commissioner and if so when, and when did that runout?
- 5 A. I am not sure of the answers to those questions. I think Featherston designated him as an assistant land purchase commissioner.
- Q. So he might not have actually had a formal...
- A. It would be relatively straight to check that.
- Q. Yes, can you check that please.?
- 10 A. I can check that through the 8 hour probably. It will have a list of Crown or at least civil servants.
- Q. Yes, because what I am trying to understand is who Buller is accountable to?
- A. Featherston.
- 15 Q. And why when he is a resident Magistrate.
- A. Yes, well that is part of the conflation and confusion of roles.
- Q. Yes.
- A. Yes.
- Q. So if you could look into that and answer that in writing that would be helpful.
- 20 A. Buller of course remained as Featherston's Private Secretary when he was Agent General.
- Q. Right.
- A. There was very close relationship between those two men.
- 25 Q. Yes. And I should add also that I have got some questions in writing for you that are just small points of detail and...
- A. Sure.
- Q. Okay. So moving on, throughout your report you have presented two narratives. One if the narrative that comes from Featherston and Buller and Ihakara and others, which is that those who were the sellers were the majority, they were the residents and for principle claimants as he called it, and I am only talking about Ngāti Raukawa and affiliated groups now, not Whanganui and all of the others.
- 30 A. Right.

- Q. And that they were the residents, and you have also presented another narrative from the non-sellers which said the opposite of all of that, and you have never really come down between them in your actual report and I wondered which of those two narratives you thought was correct or more correct? So one side is saying, the majority sold, and they were the residents, and the other side is saying, the majority didn't sell, and they were the residents, and you have got both reported in great detail in your report.
- 5
- A. Right. Which one? Which narrative do I prefer?
- 10 Q. Yes. Well from the evidence and from –
- A. From the evidence?
- Q. – and from your experience of knowledge of this.
- A. Then I would prefer the position that was adopted by the non-sellers.
- 1230
- 15 Q. Right, and in association with that, are you aware of any analysis that has been done of what you said were the 341 Ngāti Raukawa names – that signatures to the deed? Who they were?
- A. We did – I did propose that. In fact, I proposed trying to identify every seller, every signatory to the deed. But it was going to be a massive, massive task and that was abandoned fairly early on.
- 20
- Q. Right. So, you are not aware of it – of anything being done?
- A. So, I am not.
- Q. Okay.
- A. But it would be a – if it were capable of being realised it would probably offer some really interesting insights.
- 25
- Q. Yes. Thank you. Now, in November 1866 in his report in which, I think he calls himself Land Purchase Commissioner and Agent of the General Government.
- A. Yes.
- 30 Q. Featherston says that, “The three tribes,” as he calls them, “asked that no reserves be made before the purchase was completed.” Now, that is the first time that that, as far as I am aware, was ever said. That it was actually at the request of the owners that the reserves not be made. Have you seen any evidence to corroborate that statement by Featherston?

A. Not in this region nor have I seen that anywhere where the owners have been satisfied to conclude an agreement for sale and purchase prior to reserves having been defined and agreed. And it was always the standing instruction from the claim and from others, from Shortland on.

5 Q. Richmond has instructed him to do this?

A. Yes.

Q. His answer to that is the owners do not want me to.

A. And I never saw any evidence that would support that contention.

10 Q. Right. Thank you. No, I could not see any either in your report, but I just wanted to check, thank you.

A. When I came across that I actually went back to check some of the sources, but I did not locate anything that would support that argument in plain.

15 Q. Right. Thank you, that is really helpful. Do you think that Featherston did genuinely threaten the Rangitikei-Manawatū iwi with military intervention and confiscation?

A. Yes, he did.

Q. You do?

A. Yes.

20 Q. Right. And does the evidence for that having happened all come from the non-sellers?

A. No, there are reports of Featherston meeting – holding hui at various places at various times. I mean, I cannot locate one in particular but there was – well there was one I think held in the south of the region, it was at
25 Porirua or Waikanae, where Ngāti Raukawa and others, from memory, were expressing, very considerable discomfort about the possibility of the General Government placing troops within the West Coast lands and –

Q. Do you think that is one you could go back and look at –

A. I will have a look and see.

30 Q. Yes, because I would like to be clear on who is actually saying that that happened.

A. Right, right.

Q. Okay, if you could follow that up that would be helpful, thank you.

A. Yes.

DCJ FOX:

If I could just ask a question that is a follow-up. What is the man's name with a P?

TERRENCE HEARN:

5 Parakaia Te Pouepa.

DCJ FOX:

Yes, do you remember there is an indication in your report and – I am sorry I did not write it down, where he had said he had been under custody.

DR TERRENCE HEARN:

10 He had been?

DCJ FOX:

During one of the hui? You said he had been detained? You do not remember?

DR TERRENCE HEARN:

I do not recall that.

15 **DCJ FOX:**

I will find the reference during the lunch and break.

DR TERRENCE HEARN:

Yes.

DCJ FOX:

20 Put that in writing for you.

DR GRANT PHILLIPSON:

Sorry, where was I. Yes, I have some others that I will put in writing.

LYNDON RODGERS:

Your Honour, if it assists, I think it might be at page 329 of Dr Hearn's report.

DCJ FOX:

Thank you. Have you read it?

UNSPECIFIED MALE SPEAKER: (12:34:44)

328 leading – heading over to 329.

5

1235

DR GRANT PHILLIPSON TO DR TERRENCE HEARN: (CONTINUED)

10 Q. Now, one of the things that surprised me was it seemed that there was a relatively small number of people who brought claims to the Land Court in 1868 and 1869, and do you think that quite a lot of people actually just never got into claims to the Court and ended up in reserves? I'm talking about non-sellers at this point, if we can use that designation?

A. That I can't say. My assumption was that those who felt that they had a claim actually lodged an application.

15 Q. They lodged, right okay, thank you.

DCJ FOX:

Dr, because have you started dealing with it in the theme of threatening behaviour, page 328 – 329 that has been helpfully pointed out. So, if you could just read that last two sentences in on page 328 and then the top of page 329?

20 **DR TERRENCE HEARN:**

So, starting with, "In fact the opponents?"

DCJ FOX:

Yes, you do not have to read it out loud. I just would like you to read it.

DR TERRENCE HEARN:

25 Oh.

DCJ FOX:

And the words you used is somewhat ambiguous because you say, "They claim obscurely that they had been detained by the superintendent that Buller had forged had forged the names of Taratoa et cetera.

DR TERRENCE HEARN:

5 I think I would want to go back and have a look at the context of that.

DCJ FOX:

Could you have a look at that, thank you?

DR TERRENCE HEARN:

10 Yes, I put it in quotations marks obviously thinking it meant something particular to me. So, I will go back and see if I can derive the meaning.

DCJ FOX:

Thank you. Sorry.

DR GRANT PHILLIPSON:

That's all right.

15 **DR GRANT PHILLIPSON TO DR TERRENCE HEARN: (CONTINUES)**

Q. Two more questions and then I'm done. Do you think – you've made it very clear in your report the context of Wai from the Crown's perspective in those pre-emption purchases, the price should be low, but you did mention that you thought that Featherston had offered collateral benefits a well. Do you think first of all that there was a reasonable and fair price paid? And secondly, can you specify exactly what collateral benefits Featherston referred to in his negotiations?

A. The answer is fairly long and complicated.

Q. You can put it writing Sir.

25 A. Well I can be brief.

Q. Brief is good.

A. Yes, but not talking about comparative prices because into all sorts of difficulties there, but I'm quite happy to set those out. When it comes to collateral benefits, they were specified originally by, again by Normanby.

Q. Mhm.

5 A. And carried through, but we find them – we get to the point where the Smith Nairn Commission of 1880, '81 which investigated the Ngāi Tahu purchases, Grey, I meant his land agents Mantel in particular who later regretted everything he had done, records that they were instructed to hold out the prospect of important collateral benefits, the real payment,
10 and these were such things as employment, Public Works, schools, medical services, the opportunity to trade. And these were – and plus the rising value of such lands Māori retained. So, these were always held out as the real payments, the collateral benefits that came with selling land. In other words, the Māori – Grey argued that Māori were not really
15 interested in the price, the monies that they were paid. They were interested in what would follow. And so we actually get to the point where in some purchase deeds for the Wairarapa lands I think and 12 of those purchase deeds, and about eight or nine of those concluded in Te Raki where the specific clause in the purchase agreements which state that,
20 “A proportion of the monies will be paid back to the sellers of the land to provide that with the real payments, the collateral beneficiaries.”

Q. Yes, but those are all examples from elsewhere.

A. Oh, yes.

Q. And earlier and I'm wondering if there is any specific evidence in the 18
25 – mid-1860s that Featherston made those specific statements?

1240

A. Again, I would have to check. Mclean, of course regularly held out the prospect and certainly did so in the context of the Rangitīkei Turakina purchase. But I will check to see if I have got something specific on that.

30 Q. Yes, because you made it a point of it in your conclusions and I would like to be sure.

A. Yes. But it was standard part of Crown purchasing policy to hold out the prospect of collateral benefits.

Q. Yes, but I would like to be sure that Featherston did it – so.

A. Certainly, yes. Yes, I understand.

Q. And perhaps Buller may have.

A. Yes, Buller is a slippery customer.

Q. Okay, so you will check that for me?

5 A. I will do my best to see, yes.

Q. Thank you, and my final question relates to the Waitapu purchase up at the top of the Rangitīkei-Manawatū block?

A. Yes.

10 Q. Now, it was not actually in the chapters you had told us to read but it is in a later chapter in your report and I wanted to ask you a couple of questions about it. The first is – well really just one, did Ngāti Raukawa and I am including in that sort of broad appellation there the four groups at Te Reureu, did they play any part in the purchase, were they consulted in the purchase?

15 A. You will find an account of the Waitapu purchase in my *Taihape Report*. That was declared to be Crown land, as I recall, arising out of some surveyor's error as to where the boundaries lay. So, that peculiar triangular piece of land, I think, was declared Crown land from the outset. So, and I am trawling back through my memory trying to recall exactly
20 what I said in that report.

Q. Well, that is different from what you say in – In this report you say that Mclean shifted the boundary and that Kawana Hunia discovered that there was about 30,000 acres –

A. Right.

25 Q. – that were left out and you said that that Buller, I think it was, said that because Native title had been extinguished in the whole of the Rangitīkei – sorry – purchase but Waitapu had somehow, the boundary had moved and Waitapu had been missed –

A. Right.

30 Q. – that it was Crown land but none-the-less they had to purchase it and so you said that they purchased from Ngāti Apa and Renata Kawepō's people but there is no mention of Raukawa involvement –

A. Right.

Q. – and that is what I am trying to find out.

A. Yes.

Q. Were they involved, were they consulted, were they consulted? But I have not read your *Taihape Report*.

A. And I will have to go back and check to see exactly what I said.

5 Q. Right, thank you.

A. But I can do that.

Q. So, you –

A. I will try to **(inaudible 12:43:07)**

Q. Another one to do in writing.

10 A. Yes, another one. Yes.

Q. Okay, those are all of my questions, thank you very much, Dr Hearn.

DCJ FOX:

Yes. Thank you, Dr Grant and can you attach the relevant pages of that report to your written answers, thank you.

15 **DR TERRY HEARN:**

Yes.

GRANT PHILLIPSON:

That report is actually on our record.

DCJ FOX:

20 Good, reference them for those of us who need them. Reference. Dr Monty?

(12:43) DR MONTY SOUTAR TO DR TERRENCE HEARN:

Q. Kia ora, Dr Hearn.

A. Kia ora.

25 Q. Thank your very helpful report. I was – to carry on about narratives because you discuss it in your intro and your conclusions about how narratives are shaped over time, how different influences work on historians. I actually recall you as a historian for the Crown in an earlier inquiry, National Park. Did you.

A. Only ever once, Sir.

Q. Yes.

A. And that was I think for Tuhoe.

Q. Not Tuhoe. National Park?

A. No, I was a CFRT witness.

5 Q. It might have been CFRT. But the flavour of it was quite different from this particular report, which suggests to me it also depends on who is contracting you to write the report. You would agree?

A. No. I recall – let me tell you a little story about that particular report for
10 Tuhoe. I was asked by Crown law to write a report on medical services to the Tuhoe and I said to the Crown Law Office that I would write the report, but that I had a strong feeling that they would feel discomforted by what I would have to say. I was not issued with any instructions, any directions at all, and throughout 20 years of writing these reports, I have always tried to stick as closely as possible to the evidence, and where the
15 evidence leads. So, I've never taken directions from anyone, and my point about the Crown Law applies to the Tribunal at the moment for whom I work. And it applies to CFRT. It also applies to the Office of Treaty Settlements for whom I have done some work. At no time has anyone said to me, "This is what we'd like you to find," or you know,
20 "perhaps you could find this or find that." So, like all other technical witnesses I believe, I've been left practically to my own devices.

Q. That's good to hear, particularly about this report. Of course, we are going to hear from claimants and they are going to put down interpretations on this.

25 A. Yes.

Q. And draw on Oral Traditions.

A. Yes.

Q. And you, when you were asked you know the role that falls to the Tribunal that you would look to see where the weight of evidence falls, as to which
30 narrative to –

A. To adopt.

Q. Yes, and you would agree that once we have heard from claimants it might change our perspectives on some of the narratives?

A. I try to keep as open a mind as possible. I infuriate my family by instructing them not to believe anything, and when it comes to this work, I try to be sceptical of all that I read knowing that all history as I said earlier, as narrative. All history as a construct and is constantly open to reinterpretation.

5

Q. Absolutely agree. So, if I take you to page 120, 121 of your report, part of the narrative is, or you call it an act of Christian charity. Part of the narrative has to do with the turning of Ngāti Raukawa to Christianity, which shapes how they deal with the – with Ngāti Apa. And so, you give us all evidence on it, but you do not lead us to any conclusion, your own conclusion about how you feel about that. Is it valid? Do you place weight on it? See yesterday we heard about Ngāti Raukawa were a – no, before they were peaceful, they were an experienced, hardened group of people who came into this area, who if challenged, could react with arms.

10

15 A. Yes.

Q. But this narrative is, no but they were touched by Christianity, changed their ways, and were, yes, they were making charity towards Ngāti Apa.

A. Correct.

Q. And you tell us all about that, but you don't tell us how you – what you think about that, you as the historian?

20

A. That's very perceptive, because I have I guess some personal views about the role of religion and how it shapes people's values and perceptions and actions. I was content to accept what Ngāti Raukawa were saying of themselves, and what the missionaries were saying. It seemed inappropriate to me to challenge that in any way. I accepted it and I noted that Raukawa resisted many provocations from others, preferring rather to seek alternative ways of settling disputes. So, that is you may think I am still skirting around the issue, but that's my response.

25

1250

30 Q. I think that is my only frustration about the report. You talk about all these narratives, but you don't clearly show us where you lean in what we are to – you are leaving it to the reader to draw their own conclusions.

A. Readers will always draw their own conclusions. My feelings, my assessment is summed up I think in the last two pages of my summary

where I make it abundantly clear what I thought and what I do think about the entire Rangitīkei-Manawatū transaction.

Q. Yes.

5 A. I could not be clear, I don't think, in what I have said. I could say, I could suggest to you that there is some evidence to suggest that Ngāti Apa and Featherston actually conspired, but I have not done that because I did not think that the evidence was quite strong enough. So if at times it looks as if I am tiptoeing around the evidence, it is because although I am prepared always to push the evidence as far as I can, at some point I have to make a judgement as an historian about what the evidence actually allows me to say. But to go back to your point, the last two pages of that summary I think sum up my assessment of the entire Rangitīkei-Manawatū transaction.

10 Q. Yes, no, I have read it, but I was hoping you as the expert historian on this would tell us a bit more clearly about which narrative, as Dr Grant asked you where your leaning was, the Crown narrative or the Ngāti Raukawa narratives?

15 A. It would be towards the Ngāti Raukawa narrative. It is one of the – I mean I take your point. One of the problems that all historians face in dealing with these matters is that most of the report is a Crown generated report. Most of the reports of hui and deliberations and discussions were constructed by Buller or by Featherston himself. That instantly raises warning signals in my mind, and so that is I referred in one point earlier to the importance of always of interrogating the record. But it is a problem that all historians face. The record is always incomplete, it's always partial, it's always constructed and often is constructed by those whose actions are actually under the microscope.

20 Q. Okay, we will not take that any further. Page 127.

A. Yes.

25 30 Q. You make the statement that in short Māori were being asked to trust the Crown and to that end it, the Crown, attempted to cast itself as a parent of Māori, and I read that and wondered was it not the other way around? Rather than the Crown trying to cast themselves in that role, that Māori

had already accepted the Crown as its parent through the signing of the Treaty?

A. Māori might have accepted – or the Crown –well, I am not so sure about that. The Crown often portrayed itself as the parent, but I do not think we should misunderstand what that meant. What that means, as I understand it, is that the Crown accepted a duty of protection towards Māori and that of course is fundamental to our understanding of the Treaty. So that is the sense in which I understand the phrase that the Crown was the parent.

10 Q. What would you say if I said it was the Church that portrayed the Crown as the parent? I am going to give you an example, in 1837 on the East Coast when the Reverend William Williams arrived there and brought back returned prisoners from the North, he left as a koha some flour, the Union Jack, and explained to the people that his religion, the Church he represented, that the mother of that Church was Queen Victoria, the Crown, and from that point on, because he had rescued these people from the North, well that is the perception that they had on the East Coast, they saw the Queen as their mother, the Crown as their mother, as the parent. And the first Māori missionary – Māori minister was ordained at Ōtaki, Rotowai, was sent to the East Coast in the late 1850s.

1255

A. Right.

25 Q. There was communication between these two coasts and the Anglican Church gets here first as well. So, my assumption is from that that they too here in Ōtaki and Ngāti Raukawa would have seen the Queen as the mother of the church, their parent and the Queen as the Crown.

A. Correct, but it's what the term actually meant and what did Māori mean when they – if they describe or when they describe the Crown as parent. What was actually applied? What was meant by that term?

30 Q. I think if you read the Kohimarama minutes of that hui there, of all the chiefs and how they talk about the Queen, the Crown as their parent is abundantly clear that it is not the Crown portraying that to them. They understand that. It goes back to the Treaty and the signing of it and being

a covenant type article for them. They are bound to this idea of this is their parent.

A. But what do they understand by the term parent? And what I'm suggesting to you is that it is a set of expectations around the conduct of the Crown. That the Crown would act in such a way as to protect the interest of Māori.

Q. I agree.

DCJ FOX:

Two historians agree.

10 **DR MONTY SOUTAR TO DR TERRENCE HEARN: (CONTINUES)**

A. So, we arrive where we started.

Q. Well, I mean you might be right that the Crown takes advantage of that, that the Te Ao Māori saw the Queen, the Crown as a parent. They capitalised on that, but what I am saying is that they understood this before the Crown tried to portray that to them.

A. Yes, yes. And the whole reason that we are here is because Māori have **(inaudible 12:57:28)**. Sorry did that pass by did it?

DCJ FOX:

It may not have been captured by the mic.

20 **DR MONTY SOUTAR TO DR TERRENCE HEARN: (CONTINUES)**

A. No, my comment was that we are here because Māori perceive the Crown not to have honoured its duty of protection.

Q. Yes and they also perceived that the Crown is honourable and that it will eventually.

25 A. I hope.

Q. Mmm. On page 118, I was interested in a comment you made about Samuel Williams' letter.

A. Oh, yes.

Q. Where you said, “His account has a fairly contrived feel.” So, I had a yes, look at the previous page and I was trying to figure out why you actually say that about his letter or about his evidence that he gives Himatangi?

5 A. I’m sure now. I will have read that letter fairly carefully I imagine and you – okay, it’s a judgement that I made. I would have to go back to the letter. I don’t readily make judgements of that character without having some firm reason for doing so. And if I felt that it was contrived and that said so, they should point out the – I obviously felt that I had enough grounds to do so. But I’m quite happy to go back and have another look at it.

10 Q. Yes, that will be helpful. Because I could not see anything contrived about it or about your commentary.

A. Yes.

Q. That is all and thank you very much.

DCJ FOX:

15 Ms Simpson.

(12:59) TANIA SIMPSON TO DR TERRENCE HEARN:

Q. Tēnā koe Dr Hearn and thank you for your report. Just one thing for me, in your conclusions you start the summary by saying that this report was about looking at the integrity of the Crown’s efforts to acquire the
20 Manawatū lands and so you have drawn some conclusions around that and the conclusions have – talk about you know a failure to consult or ignoring agreements and attempting to pressure Māori and so forth, failing to protect Māori interests. And finally, that the transaction was inconsistent with Normanby’s instructions, so you’re saying that what
25 you’ve found falls short of the Government’s own expectations or its own standards of good practice in respect of its dealings with Māori for land purchases, is that fair?

A. Yes, I think it is – sorry?

Q. Is that – have I –

30 A. Yes, I think it is true to say that the standards that the Crown set for itself under Shortland and McLean during the 1840s was seriously eroded during the 1850s. From time to time there were efforts to restore what

was seen to be the appropriate manner of approach, but in the case of Rangitīkei-Manawatū we see, I suggest, the complete abandonment of those earlier standards.

5 Q. And that's a different thing to thinking about what might be the standards of good practice or best practice in a, you know, in a Treaty sense for engagement with Māori over purchase of land.

A. Right.

Q. Yes.

A. Yes.

10 Q. So that's one threshold I suppose that you've looked at or that you've assessed it in. It's against the Crown's own –

A. Own purchasing standards.

Q. – standards, yes.

15 A. Yes, yes, that was one of the things I explicitly set out to, was to take the Crown's definition of what it considered to be the appropriate manner of approach and then to work out really whether Featherston had followed that procedure or those – observe those purchasing standards.

Q. And so when we look at the standards that one might expect from a Treaty relationship –

20 A. Yes.

Q. – or the standards that the Treaty partner might expect, those will be different things?

A. Could be –

Q. Yes.

25 A. Yes.

Q. Okay. No, that's all, thank you.

A. Thank you.

(1:02) DCJ FOX TO DR TERRENCE HEARN:

30 Q. Well thank you, Dr Hearn. Just one question from me and it relates to the background of Frederick Manning.

A. Yes.

Q. Yes. Have you read any biographies on him?

A. Yes, I have.

Q. Can you tell us a little about his time that he spent in the North when he was actively participating in warfare with some of the tribes up there?

A. I'd be reluctant to –

Q. Okay.

5 A. It's – I reviewed actually the biography of Manning but it's many years ago now.

Q. All right.

A. And I would want to go back. I mean, he presents himself as a racist and a bigot and frankly his, if I may say, his assessment of – in the second
10 Himatangi Hearing is quite untethered to reality.

Q. All right.

A. But beyond that, perhaps I venture too far in any case, but I would want to go back. I just remember being singularly unimpressed by his conduct.

Q. All right. Thank you. That would be useful just to get an appreciation of
15 the nature of the man.

A. Yes, yes.

Q. Because it provides some context to some of the –

A. He was a trader –

Q. – findings that he made in his judgement.

20 A. Yes. He was a trader, wasn't he?

Q. Yes. Trader.

A. Trader.

Q. Well thank you very much. That brings us to 1.00 o'clock in time for lunch. This has been a very important contribution to our hearing process and
25 we thank you again for giving up your time.

A. You are welcome.

WAIATA (TŪ TIRA MAI)

DCJ FOX:

30 All Right. We will take a 40-minute break for lunch. Thank you.

HOUSEKEEPING (AWHINA TWOMEY)

HEARING ADJOURNS: 1.04 PM

HEARING RESUMES: 1.47 PM

Q.1840 to 1900?

5 A. Yes.

Q. And you also prepared a gap filling report which is dated February 2020 together with Dr Green, Crown action and Māori response report?

A. Yes.

10 Q. And you have also prepared a summary of your evidence dated 10 February 2020?

A. Yes.

Q. Could you please present the summary of your evidence?

(1:48) DR ROBYN ANDERSON: (#A201(c))

15 *Tēnā koe e te Kaiwhakawā, e ngā mana o Te Rōpū Whakamana i te Tiriti o Waitangi tēnā koutou. Ngā mihi ki a koutou ngā hapū o Ngāti Raukawa me ngā iwi o Porirua ki Manawatū. Nō reira tēnā koutou, tēnā koutou, tēnā tātou katoa.*

[Interpreter: Again, to you dear Judge and the esteemed panel of the Waitangi
20 Tribunal and of course, particular mention to the hapū of Ngāti Raukawa and all claimant groups within the Porirua to Manawatū District Inquiry.]

A bit to my dismay when I did a practise run yesterday, I realised that my summary is rather longer than 30 minutes. So, I proposed to go through it and
25 maybe indicate some areas where I think we can take it as read, and just move it along, but I would like to do a fairly full presentation for the people in here so that they can get an overview off the report. And I should say that this, along with Dr Green and Mr Chase authored the report with the assistance of
30 organisation Arc and many others who contributed in various ways, and this was a suite of reports that was commissioned by CFRT.

So, it is really positioned as an overview offering an overall analysis but leaving the more detailed discussion to the specialist and the hapū specific projects.

And I am presenting this report or the summary on behalf of my colleagues. I will just leave the next paragraph and go on to the overview of the important scenes, and we begin by highlighting a number of scenes that run throughout the report.

5 1350

READS REPORT SUMMARY #A201(c)

“The first concerns the strategic objectives of the Crown in acquiring the area between the two established settlements of Port Nicolson and Whanganui and the tactics its officers employed. We include here the Crown’s fostering of tribal discord while presenting itself, it’s land purchaser and the Native Land Court as the only peaceful option available to Ngāti Raukawa and the other Māori of the region. There is evidence of the Crown favouring certain tribal groups over others, of turning an eye blind eye to the armed transgressions of its, so called friends despite protestations to the contrary, and the bullying and denigrating of those who opposed land sale.

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A second theme concerns the assumption of the superiority of British institutions and of the supposed incapacity of Māori to resolve differences other than by force. We quote Richmond, as one among many officials to the effect that the disputes over rights in the region were an – I quote, “insoluble quarrel between half civilized men whose titles all rested on violence,” which was still then the ultimate appeal. The truth of the matter of course, was that Māori were perfectly capable of resolving issues through debate and consensus, and other strategies such as marriage, and the other truth was that the Crown was stirring up trouble by its purchase plans, playing one side off against the other. As Te Rangihaeata countered to Governor – Lieutenant Governor Eyre at an earlier date the only thing likely to interrupt the peace was the Government purchasing Rangitīkei.

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Of particular significance were the general attack on, and interpretation of custom as it suited the Crown’s purpose. We can see aspects of that manipulation in how rangatira were characterised, especially as to whether they spoke on behalf of hapū and the wider collective. There was deliberate

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interference in the relationship between rangatira and hapū, and between hapū, and in any tribal combination deemed to be dangerous by the Crown, as threatening its strategic control or settlement plans.

5 There was also a calculated shift by the Crown from open negotiation with tribal collectives, with all hapū present, to individual dealing and, ultimately, an insistence that questions of right be decided within a land court that was far from impartial in its function or its operation. Nor was it equipped to make such decisions.

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Another important theme is the failure of the Crown to respond meaningfully to sustained demands from Ngāti Raukawa and the tangata heke for the empowerment of their institutions within the governance of the colony; or failing that, or in combination with it, an equal place in the new structures being created. We see this at Kohimarama in 1860, in Grey's new institutions and the way the Native Land Court was developed. Later structures to do with the governance of Māori in particular, or the colony as a whole, also failed to give Māori of the region a meaningful role (although we propose leaving that discussion for the next stage of presentation).

20

An aspect of that seismic shift in power was the reliance of Māori on the advice of agents of dubious character, expertise, and motivation in the unequal and unwanted contest they had been forced into with the government, despite the fact that there had been a clear policy commitment to ensuring that Māori were fully informed and were not the unwitting authors of injury to themselves. Even friends of repute came under sustained attack from Crown agents and the local press when the Crown's interests were seen to be under threat.

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There are two further themes we wish to highlight at this point.

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- One is the changing characterisation of Ngāti Raukawa in Crown discourse from a numerous and powerful tribe whose leaders needed to agree and consent to actions affecting them to one which depicted them as a migrant, fractured people who held no collective standing and whose rights were derived from and were dependent on the sufferance

of others. Even worse, there were many among them who were stigmatised as “Hau Hau”.

- 5 • The other is the continuing agency of the tūpuna of the claimants as they struggled to engage with colonisation and the Crown in its many guises. Governors and increasingly powerful colonial and provincial administrations, Government ministers, their officials and land purchase officers, local Government, the Native Land Court and the law in general.

10 Turn first to the Crown Purchasers. We begin by focusing on the three major purchases all in the northern district, which were undertaken by the Crown in the years when Governor Grey and his successors, and McLean and the Native Land Purchase Department he headed, were in control of native policy and its application, and when they were in charge of all land purchase
15 operations.

From the perspective of Ngāti Raukawa, the first two of these purchases constituted part of a wider territorial arrangement reflecting joint occupation and reached through the customary process of gathering together, discussing the
20 issue and coming to a consensus. The area north of the Rangitīkei River went to Ngāti Apa, Āhuatūranga the area between the Tararua range and the Taonui Stream was accepted as belonging to Rangitāne to do with as they wished. Between the Rangitīkei and Manawatū Rivers the authority lay with Ngāti Raukawa. It was Nepia Taratoa Ngāti Parewahawaha who held the
25 overall say over the coastal plains where some Ngāti Apa still lived, and it was not to be sold. In our opinion, there is much in the written record of the negotiations for Turakina Rangitīkei to support that view.

The purchase of Te Awahou occupies a slightly different space in the historical
30 analysis. The Te Rangimarie submission refers to it as controversial and we agree with that assessment. In part, it was seen by those involved as a final stage of that wider territorial arrangement and as satisfying those within the general Ngāti Raukawa collective who were persuaded of the benefits of sale and having large reserves set aside. For rangatira fully convinced that Māori

and I quote, “should adopt the good customs of the English people” and shake off the evil things of a by gone day” this was but the first plank in the ship of land holding. For Nepia Taratoa, reluctantly agreeing to the sale, this was all the sellers had any concern with and the remainder was for Ngāti Raukawa, 5 Ngāti Apa, Rangitāne and Muaupoko sitting at his feet.”

We note that the focus of our discussion was not on the rights and wrongs of those different positions, but on what the government purchase officers were doing. In our view, the tactics being employed represented an interference in 10 rangatiratanga and a deterioration in the standards exercised by officers of the Crown.

“Overall Policies. The acquisition of land generally was intended to establish British control in the region. Not only putting settlers in possession of landed 15 properties, but enabling the construction of roads, and preventing the migration of hapū into so-called ‘unoccupied’ territories.

Of particular concern to Grey and McLean and other officials of the time was the prospect of large and powerful tribes uniting under the leadership of senior 20 rangatira in their opposition to European settlement. This was a theme to which they returned often. It was imperative to acquire control over the strategic routes, create reserves for so called “loyal natives” who were willing to accommodate the Crown’s settlement plans, and establish a practical sovereignty through land purchase.

25 Undermining the authority of Te Rangihaeata and Te Rauparaha who opposed the further spread of settlement, and persuading Ngāti Raukawa leaders not to support them in that opposition was an important element within this strategy. And while Grey and McLean were busy trying to isolate those rangatira and 30 undermine their prestige, they encouraged the Kurahaupo iwi to band together against the powerful Raukawas.

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This was a practice that would be repeated by other officials. From the beginning Ngāti Apa were seen as a counterweight to Ngāti Raukawa, a tribe

that was proving troublesome, and thus an important means of securing the safety of settlers on the frontier. The upper Rangitīkei River, where Fox would acquire land himself, was a crucial outpost safeguarding the route into the interior where forces hostile to the Crown might combine.

5

I turn now to the *Rangitīkei-Turakina purchase*. Grey and McLean would successfully position themselves as peace-makers between contending tribes even though the conflict was largely sparked by their own efforts to purchase land in the region, another pattern to be repeated over the decades that followed.

10

The issue for Ngāti Raukawa leaders was not whether Ngāti Apa had rights to the land to the north of the Rangitīkei River and even to utilise certain areas on the southern bank – that interest was acknowledged. There seems to have been no intention to interfere with their use or to expel them. What was largely at issue was how far Pākehā settlement should come. As Rangihaeata expressed it, letting Ngāti Apa stand had ‘occasioned trouble in these days by selling land about the very doors of the Ngāti Raukawa tribe’.

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McLean and officials who followed latched onto the acknowledgement of Ngāti Apa “occupation” of land between the Rangitīkei and Manawatū Rivers that had been made during the course of tribal discussion at the important Te Awahou hui. The consensus reached at the time, 1849-50, however, had been that this area was held under the authority of Taratoa for all and would not be sold. That was confirmed in later land court testimony where it was admitted by Kāwana Hūnia himself. That consensus had been again affirmed 18-months later when the flamboyant Kāwana mounted another brief challenge to Ngāti Raukawa authority.

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The question of the inland boundary was far less clear as McLean set out to prevent any attempt by Māori to join in the occupation of land there by supporters of Rangihaeata, or by hapū acting under the authority of Te Heuheu. And we note, we list here, Ngāti Rangatahi, Ngāti Pīkiahū, Ngāti Waewae, and Ngāti Matakore, who we have also listed on page 15 of this summary. Mclean

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wanted to secure the route into the interior, fix hapū in their occupation and ensure there were well-located reserves for friendly natives to ensure the safety of settlers who might be subject to, as McLean phrased it, “annoyances from natives passing to and from Taupo and other parts of the interior.”

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And I will just leave that next section as read, some matters that were discussed on Mclean that will be of interest to the Tribunal, hopefully.

“McLean along with all those engaged in the colonisation of New Zealand from Secretaries of State downwards and including the missionaries and settlers assumed that European laws would prevail, ultimately, and that Ngāti Raukawa resistance to sale would begin to break down. In the meantime, McLean advocated a cautious approach. He manipulated and obfuscated but he did not press, especially when there were easier deals to be struck in the Wairarapa and Hawke’s Bay. Others would be less cautious, however - more ready to cut corners and apply pressure. And that pressure would increase as the Wellington Province became directly involved in acquiring further lands in the region.”

20 I turn now to *Ahuaturanga*. Sorry, I am a little bit nervous.

“As part of the wider territorial arrangements Ngāti Raukawa and Ngāti Kauwhata agreed that the area between the Tararuas and the Taonui Stream could be sold under the authority of Te Hiriwanu’s branch of Rangitāne.

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Again, the Crown agent largely responsible for the conduct of the purchase, surveyor James Grindell, played divide and rule tactics between Rangitāne and Ngāti Raukawa, and within Ngāti Raukawa and Ngāti Kauwhata between non-sellers and sellers. He encouraged Rangitāne to speak with one voice, arguing that if they were disunited by internal dissension they would be laying themselves open to the attacks of the Ngāti Raukawas from whom much opposition was to be expected, and that there would thus be much less chance of coming to an amicable understanding with that tribe. At the same time, he

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identified vulnerability in the non-selling stance of Ngāti Raukawa and Ngāti Kauwhata noting that the supporters of the “Kāwanatanga” among them, looking upon Te Hiriwanu as one of their party, appear disposed to support him, whilst the non-sellers say that the intention of acting independently of them was a piece of assumption. He anticipated that judicious management would undermine any strenuous opposition, and ultimately lead to the acquirement of all lands in the hands of Ngāti Raukawas. In the short term, however, Grindell found that he could not fix the western boundary of the purchase at the Oroua River as he had first intended because Ngāti Kauwhata and Ngāti Wehiwehi had rights to its east and would not sell. As a result, the boundary was set at Taonui Stream instead.”

Te Awahou and just before I start I would like to interpolate. I realised that because I looked at the negotiations for the purchase, often they did not identify who the non-sellers were and it’s actually when the reserves were set up that it was revealed Ngāti Whakitere had been left out – had been on – among those known sellers and had been left out and I refer you to Dr Husband’s report for more information on that, but I wanted to put that, acknowledge that omission on the record.

“As we noted above, the report argues that, under the pressure to sell – under pressure to acquire land for settlement at a faster pace, Crown purchase officers began to deviate from best practise. In contrast to McLean’s former approach of detailed discussion and agreement reached at large scale hui where all endorsed the sale, Searancke pressed ahead forcing the transactions through. Promising to but undefined lands against the expressed opposition of senior rangatira. This was accompanied by a sustained attack on the integrity of Taratoa on his rights in the land and far from veiled threats that if the opposition continued he would be held to blame by the Government.

In our view Searancke is undermined by his own words. He argued that the opposition of Taratoa and his friends had no feasible grounds. That the rangatira’s actions were deceitful and that his opposition to sale had been tolerated for too long. It was not possible in the eyes of Searancke, for Taratoa

to both oppose the sale of land and yet be a friend to the Crown. This view was widely helped by Crown officials with respect to all supporters of the Kingitanga despite repeated demonstrations by those communities that they were for peace and co-operation. It is a puzzle to us as to why Taratoa was perceived as deceitful. We can only presume that Searancke did not want to hear what he was saying.”

Searancke described his refusal to recognise the authority of Taratoa and I would add the down payment of 400 pounds before really there was a full accord as a bold stroke.

“But later while defending the time it had taken to get any purchase through, Searancke accepted that Taratoa’s opposition was based in customary rights and I think it is worth quoting him in full.

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The Awahou purchase was disputed in by inch and was only completed under considerable difficulty. I am well aware that individual natives have expressed their willingness to sell this land. That is to receive the payment for it, but could they give possession of an acre of it to the Crown. I deny it. It must also be born in mind that the Manawatū is a conquered country and not inherited from their ancestors by its present occupants or therefore have a claim not withstanding it’s been portioned off for different tribes or certain individual chiefs. All equally helped conquer it and require to be consulted in case of it’s being offered for sale.

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This was something that Government and the Native Land Court would work against over the next 30 years and more.

30 By 1860 there was such support for the anti-land selling views of the supposedly isolated Taratoa that Searancke recommended a halt to all purchase operations in the district. His overall assessment was that ‘the natives [were] decidedly opposed from conflicting claims and indirect influences to a cession of any portion of it to the Crown.”

And I take the next couple of paragraphs read where I talk about this - debates that were taking place in the district. The recurring themes in this period of their – across the divide of Kawanatanga and Kīngitanga was for peace in a Māori authority over local matters of concern including land title in Law and order,
 5 what they called the substance for the shadow.

I turn now to the Rangitīkei-Manawatū Block in Featherston's negotiations. First, I think the important thing is the shift of responsibility into the hands of the Wellington Province and "I think there's no doubt that the appointment of Featherston as land purchase commissioner in the shift of practical responsibility into the hands of the – for local – for land purchase into the hands of the Provincial Government marked the deterioration in Ngāti Raukawa's position and in that of those attempting to prevent further sale of land.
 10 Increasingly the whole financial future of the province was wrapped up in the successful purchase of the Rangitīkei-Manawatū Block and the pressure was unrelenting.
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Was purchase the only solution?

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Featherston, like his predecessors, positioned purchase by the Crown as the only way to solve an intractable problem that Māori were, supposedly, only capable of settling by violence. He was ostensibly brought in to arbitrate an outbreak of fighting in 1863 – 64. This was an idea that Ngāti Raukawa were willing to support – but which Ngāti Apa refused to countenance. Featherston did not try very hard to convince them of it as a proper option, and when Ngāti Apa offered to sell instead, he had accepted provided that it was only for as far as they could prove their interests. There was a crucial exchange.
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30 In brief, Featherston accepted Ngāti Apa's offer, disavowing any knowledge of the rights or wrongs of their claim and I quote:

Neither tribe, until its interests have been ascertained, is in a position to hand over the lands in dispute to the Government, and I therefore

tell you distinctly that I will not accept the lands. I will not buy a Waitara. All you can offer and all I can accept is the interest which you may be found to have in these lands. Do you clearly understand what I say?

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He continued in his report of the meeting:

10 They were evidently disappointed, and remained silent, consulting, however, among themselves. I repeated two or three times what I had just stated. Their intention in their offer to hand over the lands was simply to have their title to them confirmed, as it were, by the Government, and thus to make the Government the principal in the quarrel.

15 Yet that is exactly what would happen. And though Featherston said that he would accept 'only whatever interest [they] may hereafter be proved to possess in it', signatures began to be collected for the deed without any investigation of, or agreement on, the nature of those interests or where exactly they were located. At some point, what the non-sellers held would have to be defined. The
20 inland boundary and the reserves would have to be surveyed off, but this was an obligation to which Featherston gave no priority at all. They would still be undefined at the point of supposed sale and even as land was on-sold and preparations made for settlers to move onto the block."

25 Move now to the retention of rents to apply a pressure.

"As part of that so-called peacekeeping (as Featherston abandoned arbitration and pursued purchase instead), the leases to which the Crown had been turning a blind eye became an important and effective lever. Featherston
30 apparently won every body's agreement that he hold the rents for distribution until they had agreed to a fair division. In fact, Taratoa had undertaken such a process on his deathbed, but in the eyes of Ngāti Raukawa, Ngāti Apa had become 'covetous'.

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Be that as it may, the agreement as to division became synonymous with agreeing to sell outright withholding of the rents put considerable pressure on Māori to agree to the sale of their land as their usual income was cutoff and their expenses mounted. Even after the deed was supposedly finalised and the

5 Crown was trying to make agree to limited provision of reserves, rents had not been paid out. This was so, even though Featherston often represented the division of rent and purchase monies as an easy matter. Far easier to put into effect than sorting out the allocation of land.

10 **Use of War Measures**

Adding greatly to that pressure on Ngāti Raukawa as Featherston took over direct control of purchase operations, was the introduction of suppression of rebellion and confiscation measures with which Featherston was associated from the get-go. As he set about his supposed arbitration, he was asked many

15 questions by the people gathered at Ihakara's pā about the recent instructions to resident magistrates regarding supporters of the Kīngitanga and 'how far they had in the eyes of the Government committed themselves, and to which of the three classes they properly belonged.' Were they, Ngāti Raukawa, loyalists, rebels or neutrals? This was followed by Resident Magistrate Buller

20 administering the oath of allegiance and surrender of arms. This was too good an opportunity to be lost, Buller reporting that, 'I have obtained from Ihakara and Hoani Meihana a distinct promise that they will make this a pretext for offering for sale the large block of land now in dispute between their tribes and the Ngātiapa.' Ihakara, [he said] had long wished to sell, but had been 'deterred

25 by the strong adverse feeling at Ōtaki.' However, 'the possibility of future confiscation through this participation in the war (by certain sections of the tribe) he considers a sufficient argument for his purpose.'"

Move on to the **Misrepresentation of Rangatira Agreement**

30 The next significant step in the purchase was a letter written in September 1864. at Whārangī nine so-called representative chiefs wrote to Featherston placing 'Our land between the Manawatū and Rangitīkei Rivers ... in your hands, for sale to the Government, as the only means of finally settling our difficulty'. There is no doubt that these were senior men; but they could not speak for the

collective without their presence and consent. The signatories said that very thing themselves: this was the ‘individual act of a few, the leading men in the dispute, and threatened fight’. The ‘general consent of the tribe’ (and actually I have been quoting here), was still required for: ‘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’. In a separate letter, Tapa Te Whata of Ngāti Kauwhata endorsed the proposal.

At a meeting shortly afterwards, Featherston later recalled, Ihakara had presented him with a ‘carved club’ named ‘Rangitikei’, which had belonged to Taratoa, to symbolise the transfer of the land into the hands of the Crown. He saw this as giving him – that Featherston saw this as giving him entire permission though Ihakara said there were still many matters outstanding; and as Meihana would later express it, they had been commencing the matter. They had thought it would be dealt with as the other blocks had been.

Exclusion of the Block from the Native Land Court Jurisdiction

And I propose just leaving that as being read, but I do think it is very significant because it would be – it would mean that the Crown would be very heavily invested in the purchase and in supporting the claims of those who they had paid before any formal examination was made as to who in fact possessed rights.

Then I look at the Collection of Signatures Without Assessment of Rights

The pressure on the non-sellers to give into the Crown’s demands mounted. As Resident Magistrate Buller touted the deed around and collected signatures—individually, in twos and threes, and some in larger groupings - so did the pressure on the non-sellers increase to out sign likewise, because this was the only option, they were told – and the only way to retain the friendship of the Crown. All signatures were accepted, beginning mostly with those located furthest away, and all without any discernible discussion of rights and while Featherston continued to hold onto the rents. Buller later told the Native Court, ‘I allowed any one belonging to the tribes named in the deed to sign... if they alleged a claim’. Nor did he think that the presence of signatures belonging

to those who did not, in fact, have legitimate rights, ‘invalidate[d] the deed’. He asked for signatures, but it was not his ‘practice to investigate claims’. There were allegations, too, of bribery and fraud.”

5 The next section I have entitled **Lack of real consent**.

“There had continued to be clear opposition to the purchase when the General Government decided to ‘clear’ Māori from the planned road between Taranaki and Whanganui. Featherston broke off from land purchasing to join the
10 campaign at the head of a combined force of fighters drawn from Muaūpoko, Ngāti Apa and Te Awe Awe’s branch of Rangitāne.

Shortly afterwards (in April 1866), another key meeting took place – this one at Takapu. As usual, Featherston and Buller under-reported the degree and
15 legitimacy of the opposition while misrepresenting the nature of consent. For those resisting the sale, there was now the added difficulty of facing an armed and emboldened opposition in good standing with the Crown and with Featherston personally.”

20 And I will skip the next paragraph and get on to Featherston’s response to the criticism and objects, and this was that he’d been dragged into the matter.

“He stressed repeatedly that his role was one of mediator only. He had not asked for the job; both the quarrel and the land in dispute had been ‘forced’
25 upon him by the three tribes after other avenues of conciliation had failed. As to the idea of submitting the matter to the Native Land Court, as increasingly the non-sellers demanded, Featherston was scathing of its chances of success – but ‘let them say that they will submit their claims to the decision of Judge Parakaia, and he would declare his concurrence in it’. Nor was the consent of
30 all required, despite earlier statements to this effect; it would be a ‘manifest injustice’ if the minority possessing, as he insisted, ‘little or no interest in the land’ prevented the majority from selling it especially when this was ‘the only means of avoiding an intertribal war’. He was, he said, ‘so confident that the deed would ultimately be executed by all the *real* claimants, that he had no

difficulty in publicly announcing his acceptance of the block, and in congratulating them upon this long-standing feud being thus amicably settled and finally adjusted'. When the deed was supposedly completed (in December 1866) a portion of the final payment was set aside for non-sellers to be held on their behalf but which the government took no responsibility for ensuring was distributed.

An immediate stream of letters, statements and delegations from rangatira protesting what had happened at Takapu undermined the credibility of Featherston's version. There were senior leaders (Parakaia Te Pouepa, Te Herekau, Te Huruhuru, Paranihi Te Tau and Hare Hemi Taharape and I forgot to mention Te Kuru, Te One, amongst many others) who continued to oppose the sale. Some serious allegations were also made about Featherston, namely, that he was using the numbers of Ngāti Apa's allies and their recent armed support for the Crown to bully Ngāti Raukawa into acquiescence. They alleged that he had announced:

There are eight hundred of Whanganui, there are two hundred of Ngāti Apa, Rangitāne and Muaūpoko are one hundred, but you O Ngāti Raukawa are a half – a small portion. Another word of Dr Featherston's was – "We went together with these tribes to fight against the rebel tribes upon the authority of the Queen; they have consented to the sale. I have agreed to their (proposal). This land is in my hand."

We note that there would be other claims that Featherston, although he often spoke of the need for obedience to the law, was, in fact, turning a blind eye to – even encouraging - Ngāti Apa to take armed action against Ngāti Raukawa over contested surveys, leases and court sittings. In this context we note, in particular, the incident over Gotty's sheep in July 1868. We have looked more closely at these allegations in a separate gap-filling exercise and intend to give further evidence on the matter in the second stage of hearings.

Given the lack of proper investigation into ownership, it is far from clear how many right-holders had refused to sign or had been ignored by the time Featherston paid out the final purchase monies at Parewanui in December 1866 - an event described to Judge Rogan as the 'climax of all land purchases' when 'Mr Buller and Dr Featherston drove in a dog cart to Rangitikei, spilled £25,000 out to be scrambled for, and left the settlement.' The figures varied widely. Featherston maintained that they were few and their rights negligible. Hadfield suggested that there were nearly 400. A relatively disinterested observer, EW Puckey, also reckoned (in November) that as many as 392 persons remained opposed to the purchase.

On the other hand, it is equally unclear who the 1,700 signatures on the deed represented; essentially the deed was a mass of signatures of individuals collected at different places and dates and cannot be seen as representing hapū consent reached in the open light of day with the consensus of all that held rights."

In the next section I've titled, **Fair-play in the Native Land Court?**

"In light of the storm of protests and petitions, continuing trouble on the ground, and serious doubts about the integrity and effectiveness of Featherston's procedures, the Crown agreed to submit the question of ownership to the Native Land Court. Native Minister Richmond commented that The Government have never yet recognised the right of a majority in a tribe to override the minority.... Whilst refusing to countenance a small section in pressing their communistic claim in mere obstruction of all dealings by the rest of the tribe, they have at all times been consistent in recognising to the fullest extent the proprietary claims of every bona fide owner.

But was the Native Land Court capable of making an impartial determination of bona fide ownership when so much was at stake for the Crown and for the Wellington Province?

We do not intend to detail here the extensive and often contradictory evidence that was heard nor the Court's two findings which we see as contorted, as based on political convenience, contrary to custom, and as inherently illogical and unjust to the Ngāti Raukawa collective whose interests were reduced first
5 to a half share and ultimately, to those small patches of land on which the "non-sellers" could demonstrate cultivation and residence. The whole notion of authority deriving from "conquest" in which all equally participated followed by occupation of allocated portions was disregarded. Instead, such rights as Ngāti Raukawa enjoyed were seen as those of individual hapū living on the land
10 on the sufferance of Ngāti Apa who were represented in the second finding as the firm allies of Ngāti Toa. We argue that the many earlier observations (including from Te Rauparaha himself) suggest that they were far from that.

We focus instead on the role played by the Crown and whether we think that it
15 was possible for the Native Land Court to reach an impartial decision in the circumstances we have outlined above. Our firm conclusion is "no".

The first major point is that this was an unequal contest weighted against Parakaia Te Pouepa and the other non-sellers by the thousands of pounds that
20 had been paid down.

Further, the Crown threw its weight directly behind the counter-claimants, acting in the capacity of 'opponent'." And I will just skip through that.

25 "But why was the Crown involved at all? The second wave of applicants (after the first Himatangi decision) objected to the presence of the Crown at the next session, held at Rangitīkei rather than Ōtaki, after some successful manoeuvring on Fox's part. Their objection that the Crown had derived its right from sellers and the Native Land Act 1867 section 40 which provided for the
30 entire Manawatū Block to be heard again also stated that no claim by and no question relating to the title or interest of any native who shall have signed the said deed of sale shall be so referred and so they thought that the Crown on those grounds shouldn't be present, but that argument was overruled.

1430

A petition headed by a Henare Te Herekau summed up the inequitable situation they were in and I quote they found their claims opposed by all the power, prestige and influence of the Crown represented by the superintendent of the province, the resident magistrate of the district, an official interpreter of the resident magistrates Court at Whanganui and an English barrister, recently prime minister of the colony arguably they were in a better position when the second hearing got under way in mid-1869 being represented by a lawyer of some repute W.D.T Travers but still with Attorney General Prendergast conducting the Ngāti Apa case.

5
10

Ngāti Apa had to prove a perfect title, the Crown despite the concerns expressed by Richmond did not have to prove anything with respect to itself, it just had to show that Ngāti Raukawa rights were not exclusiveness and in fact the Native Land Court reached a preliminary view in very short order. When the attorney general had finished his opening address, Chief Judge Fenton indicated that it would not be necessary to examine the witnesses for the Crown on the alleged subjection of Ngāti Apa to a condition of slavery and dependence as it appeared to the Court from the evidence before it that the case for the claimants had entirely failed on that point nor did the Crown have to show that those find the deed had done so with the consent of the hapū to which they belonged.

15
20

After six weeks of evidence the Court reached its decision within an hour. Ngāti Raukawa had not acquired dominions through conquest nor had they required rights as a tribe through occupation only Ngāti Kahoro, Ngāti Parewahawaha and Ngāti Kauwhata had done so. Of the more than 500 claimants before it, the Court ended up admitting only – and I have got the wrong number. Only 62 persons entitled to a grand total of 6,500 acres. The Court ignored the fact the Crowns alleged purchased had been made possible by gaining signatures from individuals from Ngāti Apa, Whanganui, Kahungunu and Ngāti Raukawa many of whom were non-residents.

25
30

We note that while the various non-sellers had been attempting to protect their rights in the Rangitīkei-Manawatū the Native Land Court was ruling against

them in their original home lands in south Waikato and Maungatautari, there they were deemed to have been conquered and to have lost all rights despite acknowledgement by the Māori King, this was not so and attempts to show they had left people on the ground and went back and forth. An effort by
 5 Ngāti Kauwhata and Ngāti Wehewehe to gain redress through a lengthy commission of inquiry established in response to their early position proved expensive but ineffective.”

Next section I've headed, **The purchase still incomplete.**

10 “Once the Courts judgement was delivered to the applause of Featherston and the provincial council he moved quickly to have the natal title extinguished. The general Government complied on his assurances that the boundaries of the lands have ordered by the Court had been defined. This was clearly premature; the boundaries had not been established on the ground and the opposition to
 15 the survey was such that McLean had to be called in to negotiate settlement.

Dissatisfaction was shared by sellers and non-sellers alike. All were in a state of what they called affliction and there was growing distrust of McLean as well. They had been humbugged about the reserves which had failed to materialise
 20 or were extremely limited; hapū based Te Reureu had been rendered landless by the Court on the grounds that they had settled there after 1840 and the monies had not been properly distributed. Concerned about the threat to the peace of the colony, the possibility of a grieved and dispossessed hapū making common calls with the existing enemies of the Crown and the growing
 25 possibility that the whole purchase might be repudiated, McLean sought to patch up Featherston's questionable and undoubtedly sloppy purchase. Ultimately a mixture of expanded reserves, monetary compensation and modified boundaries was negotiated. The grievances of Parakaia Te Pouepa's people at Himatangi were dealt with separately in a struggle that lasted over a
 30 30-year period as I have described in the report.

Although there were numerous acknowledgements that the conduct of the Rangitīkei-Manawatū purchase had fallen well short of good practice, that the reserves had been inadequate, and that the Native Land Court award had

dispossessed some groups entirely, redress was offered only as an act of grace not as an admission of government wrong-doing. The vast bulk of the land was gone and that would not change, and any land that was offered back would be under a transformed tenure.

5

The impact of that transformation on the few areas that Māori had retained north of the Manawatū River, sorry. The undermining of hapū control, fragmentation of title and vulnerability to alienation is discussed with reference to Aorangi Block in our report while the subsequent loss of the reserves has been detailed by Dr Husbands.

10

We end by returning to one of the themes noted in our introductory remarks. By this stage, many of the hapū concerned were heavily in debt and reliant on the services of European advisors in both business and government matters.

15

The role played by McDonald and Buller over the course of the purchase of Rangitīkei-Manawatū and the subsequent loss of land and autonomy is quite remarkable. In the case of McDonald, championship of rights in the Native Land Court was trammelled with costs, and eventually corrupted into an abuse of business arrangements over the land; a betrayal of trust and friendship. His capacity to do this exposes a system of mortgaging that disguised the extent of the alienation that had actually occurred in the lands remaining. Buller on the other hand, a Crown agent complicit in the way Rangitīkei-Manawatū had been acquired by the Provincial Government against the wishes of Parakaia and his hapū, ended up supposedly championing their cause, but acting very much in his own self-interest. After much campaigning they received a circumscribed measure of redress but at considerable cost in financial terms and in terms of their rangatiratanga.

20

25

UNSPECIFIED MALE SPEAKER: (14:38:08)

Just before we move to cross-examination, Your Honour. Dr Anderson has prepared a router for her report. It was filed by my friend from Te Mata Law last week by email, but I have hard copies of that for the Tribunal.

30

DCJ FOX:

The changes that you have obviously made during her presentation?

UNSPECIFIED MALE SPEAKER: (14:38:11)

This is just to the full report, not the summary.

DCJ FOX:

5 I see. Thank you.

UNSPECIFIED MALE SPEAKER: (14:38:15)

Thank you.

DCJ FOX:

10 Well on that note before we start questioning, at paragraph – in your summary, when you were reading through, at paragraph 28 said, “in our view Serank is undermined rather than condemned.” Which is it? Undermined or condemned?

DR ROBYN ANDERSON:

Condemned.

15 **DCJ FOX:**

So you want to keep that word?

DR ROBYN ANDERSON:

Yes.

DCJ FOX:

20 Okay, and the only other change was at paragraph 66. You indicated once the Courts judgement was delivered to the applause of Devenson.

DR ROBYN ANDERSON:

Yes.

DCJ FOX:

25 And then you added in and the prudential council.

DR ROBYN ANDERSON:

Yes.

DCJ FOX:

So that obviously would not have been, you mean subsequent to the actual
5 Court hearing?

DR ROBYN ANDERSON:

Yes.

DCJ FOX:

Yes, okay. You want those words left there then?

10 **DR ROBYN ANDERSON:**

Yes. I just thought they are not essential but -

DCJ FOX:

All right. Well, thank you...

DR ROBYN ANDERSON:

15 Sorry, Your Honour, what was the paragraph number that you just mentioned
there?

1440

DCJ FOX:

20 Paragraph 66.

UNSPECIFIED SPEAKER: (14:40:00)

Your Honour, I'm not sure when the erratum was filed but it would be useful if
copies were made available for counsel as well.

DCJ FOX:

25 We will email it right now.

UNSPECIFIED SPEAKER: (14:40:18)

Thank you.

DCJ FOX:

Okay. Well the first – we have got Woodward Law first up, thank you.

5 (2:40) LYNDON ROGERS TO DR ROBYN ANDERSON:

Q. *Tēnā koe e Tākuta, e te rangatira, e rere ana he mihi tino mahana, tino whakawhētai ki a koe i te tukuna o ngā kōrero mamae o ngā tangata me tō kanohi hōmiromiro.* [Interpreter: Warm welcome and appreciation to you, and certainly we heard the emotion that you mention in your report.]

10 A acknowledgement of its warmth and gratitude for your incredible eye and attention to detail in bringing forth such painful stories.

A. Thank you.

Q. Counsel is Lyndon Rogers for Woodward Law for Tahuri Wakanui, for Ngāti Hinepare, for Ngāti Tūroa of Ngāti Kauwhata and also
15 Ngāti Parewahawaha, Ngāti Matekore and Ngāti Rangatahi of the north. So we put a question to you in writing and I wonder, in regard to your response to the *Pene Raupatu Narrative* and the *Rangimārie Narrative* as well.

A. Yes.

20 Q. You responded to us in writing and so we've had the chance to read that, but the people in the room have not had the chance to hear it and I wondered – we will have other questions of clarification to follow but if you would be able to begin by reading your written response?

A. I would if I knew where they were.

25 DCJ FOX:

Do you have a document number for us?

LYNDON ROGERS:

#A201(f).

LYNDON ROGERS TO DR ROBYN ANDERSON: (CONTINUES)

A. I would like to – I do have something to add to what I’ve written here if I may, and I thought I had until the 2nd of April to actually put a more considered response in, so I may do that as just time with all the preparation and summaries and other things was actually quite limited, but I’ll begin with what I’ve started with, which is, “*Do I have comments on the Rangimarie Narrative or on the Pene Raupatu paper?*” So I would say, “We in general agreement with the statements made within the Rangimarie Narrative in so far as they fall within the ambit of our report. We have discussed a number of these matters in our summary. We make two further comments. One pertains to the statement that the Native Land Court concentrated on the question of conquest to the exclusion of other important elements of customary tenure. While we agree with that general proposition, in our view, the court did consider the question of occupation and whether Ngāti Raukawa or any of their hapū had acquired rights as a result. However, as in the case of its consideration of ‘conquest’, the Court’s understanding of ‘occupation’ was limited and inconsistent. In particular, the iwi had spread themselves over the territory to establish and maintain their control, but their rights were assessed only as far as they could demonstrate actual cultivation and residence and reduced to the areas which remaining non-sellers physically ‘occupied’ and, ultimately, a few meagre reserves. Further, the rights of signatories to the deed many of whom were clearly non-resident went unexamined to the great disadvantage of Ngāti Raukawa, Ngāti Kauwhata and other iwi/hapū of that confederation.” And I just wanted to add that, and this is more specifically to what I’ve read in the *Pene Raupatu* submission, I agree that the Crown ought to have been dealing with hapū leadership over much smaller blocks of land and also in this instance ought to have been dealing with the hapū in occupation when it came to purchase. I agree that non-residents should not have been selling the land out from under – ought not to have been selling the land out from under them. I am less certain when it comes to the question of an overarching tribal right in the ability to prevent a hapū from selling, especially in circumstances such as these where the conquest was shared and in which Māori were in fact, confronted by a non-customary

situation. The permanent alienation of land where all rights were lost. If such a right did not exist or was not adapted to meet this new situation, there was nothing to prevent the planks from being removed one by one when the Confederation attempted to retain a substantial stretch of territory. Featherston and Buller, of course accepted the signatures of many who were non-resident, but my unease is heightened by their concerted effort and by the Land Court to deny the rights of non-sellers based at Otaki to have any say in the blocks disposal. And then I go on to say we also agree with the conclusion expressed in the narrative that the Court was biased and that there were better options available to the Government. The idea that Māori were being – better equipped to reach decisions as to right holding through their own institutions than an alien court is well-established in Tribunal jurisprudence and we make no further statement as to that. However, we do note that after the widespread rejection of the Himatangi decision the Crown, in fact, considered establishing a Commission of Inquiry comprising two Native Land Court judges and two further members, one designated by Ngāti Raukawa claimants and the other by Featherston. That proposal fell through when Featherston's delegate, Mclean, declined the appointment. We discuss this in our *Gap-filling Crown Action and Māori Response Land and Politics 1840-1900 Report* in the section entitled *The Failed Option of the Commission*. In that report we also discuss the question of Court bias and the degree of influence exercised by the Government on its operation. We conclude that the Court was an instrument of Crown policy, that the Crown controlled its jurisdiction, the purse and appointment of Judges who shared the objectives and were poorly qualified to assess questions of custom. Although the importance of the Courts independence was recognised and emphasised at the time, the reality of that separation of power was belied by the closeness of communication between Government Ministers, their officials, and the Judges as outlined in the section – the question of undue influence. But I have to note here, that that particular correspondence was more to do with the Horowhenua Block, so we do not have the same sort of smoking gun in this instance as we do later on. And I would just like to make one

more comment, I think that often the Court – I would agree with Professor Boast, that often it was impartial because it did not really matter who went into the title or not, the important thing was to get the title decided and if you – if the Crown officers had made down-payments that were premature, and they were not in the title they could always take it off from other blocks. But in this instance, so much money had been paid down, 25,000-pounds. It is very difficult to see, I think, the Court as being prepared to come to a decision that would be so disastrous for the finances of the Wellington Province and I think you see that in the fact that the Crown is actually appearing as opponents in the Court case, which I have never come across before. Maybe Professor Boast has but it is very, very, very unusual situation.

Q. Tēnā koe. We agree with so much of what you are saying Dr Anderson and I wonder if I could pick up on a – I guess a framing of the question that Ms Simpson used before lunch asking Dr Hearn – there's the standards of Lord Normanby's instructions and there's the standards that the Crown opposed for themselves –

A. Yes.

Q. – but when we are thinking against what standards should the Crown's actions be measured? It is the position of the claimants that I represent that the hapū had a highly consensus base model.

A. Yes.

Q. The rangatira of the hapū was very much part of the fabric of the hapū and could not go and make up some other story somewhere else. That did not sit with what had been talked to about at home –

A. Yes.

Q. – and at page 55, Pene Raupatu has put that actually the Crown's model of engagement should have been to go those hapū leaders, hapū by hapū and speak to them and if possible to obtain their signatures for sale of land. So, in searching for a standard against which the measure of the Crown's actions, how would you respond to that standard?

A. Yes, well they should always have dealt with the hapū leadership, but it was not good enough to just get rangatira to sign. The hapū, the leaders had to go back to the hapū and gain their consent and I mean they

actually said that in the whārangī offer and subsequent to that we cannot make that decision without talking to the hapū first and indeed they said the same thing in the Kohimarama Conference. We have to go back and discuss. So, getting a rangatira to sign sometimes completely off side for whatever reason whether it was promise of a reserve where the pressure was being put on them. We often do not know because there is not a record of those discussions. So that falls well short of both the standards set by the Crown and by the standards that would be expected by Māori themselves. And I see, I think possibly I am not so condemnatory of the large-scale hui that you see operating at the beginning because in those situations everybody with some exceptions like Paranihi Te Tau for example said, “Well you know I wasn’t involved in that. I didn’t know it was going on”. But certainly, on the plains and towards the coast, they did come together. They talked about it and the whole of the gathering came to an agreement. It was done in the open light of the day and that was quite different from the conduct of Featherston in the Rangitīkei-Manawatū purchase.

Q. Tēnā koe. Thank you for that acknowledgement that it is not a – the one voice of the iwi as a whole but it is actually the voice of each hapū that needed to be heard.

A. Yes.

Q. Tēnā koe. Those are our questions.

DCJ FOX:

25 All right. Thank you. Mr Te Nahu?

(2:53) HEMI TE NAHU TO DR ROBYN ANDERSON:

Q. Tēnā koe Dr Anderson. Kia ora my name is Hemi Te Nahu. I am Counsel for Ngāti Whakatere Wai 1640. One of the – those counsel who has asked for questions of clarification. I also represent ngā hapū o Kereru, Wai 1944. The claimants that I represent Dr Anderson, have interests in the northern bays of this inquiry.

DCJ FOX:

So, could you just speak up a tiny bit please?

HEMI TE NAHU:

Okay.

5 HEMI TE NAHU TO DR ROBYN ANDERSON: (CONTINUES)

Q. The claimants I represent have major interests in the Porirua ki Manawatū District Inquiry that spans both the northern phase and the southern phase, and I would like to extend our appreciation for your report which has been excellent for the claimants that I represent.

10 Firstly, I would like to extend our appreciation to you in relation to your interpolation that you did this morning in relation to Ngāti Whakaterere and that you described them as non-sellers and that they as non-sellers still did not receive much in terms of land holdings because that is an issue that my claimants have in terms of their particularised statement of claim
15 has had major impact on Ngāti Whakaterere where they and you would appreciate being deemed a seller as detrimental impacts –

A. Yes.

Q. – on these people and that was as a consequence of Crown actions and behaviour where it is now become generational psychologically for the
20 Ngāti Whakaterere claimants that I represent. So, to have your interpolation this morning and to have Dr Husband's evidence in his report, that's clear that Ngāti Whakaterere were not sellers, but even though they were non-sellers, they still suffered from land loss, is extremely appreciative for the claimants that I represent, and it certainly has reduced
25 the questions that I have for you today, so thank you for that. I'm going to refer you to your full report, page 151.

A. As you may have noticed, I am still a bit visually impaired so –

Q. Sorry, I wouldn't have guessed.

A. – I can never decide whether to use my left eye or my right eye.

30 Q. Page 151 and I'm looking at the last paragraph on page 151, it's in relation to a deputation going to McLean in relation to a house being built at Moutoa and land sales, that's what that paragraph is about. The reason why I'm asking a question on that paragraph is that you've made

reference to a house being built. Are you aware that the house that's at issue is Tūrongo which is a whare karakia that was erected on Moutoa that was eventually removed from Moutoa in 1960 to Whakawehi Marae? Do you understand that?

5 A. Sorry. No, I wasn't aware of that, but of course this is where oral tradition is so important and of course we historians sort of put our thoughts on paper before we had the advantage of the massive oral tradition histories that have now been filed. So...

10 Q. Right. Because you've mentioned in your evidence about the discourse that has caused a lot of hapū affiliated to Raukawa and their relationships with other iwi or other groupings in its district –

A. Yes.

15 Q. – caused by the Crown their deceit, their lies, the conflict that they've created. In terms of extending that issue in relation to Tūrongo, Tūrongo was a symbolic house that four hapū of Ngāti Raukawa, a hapū of Hoani Meihana of Rangitāne and Ngā Hapū o Himatangi used to symbolise to them that they needed to start forging close relationships with each other –

A. Yes.

20 Q. – as a consequence of what the Crown had done to them in causing conflict.

A. Yes.

Q. Would you agree to that?

25 A. Yes, and I mean, we have other instances with marriages and various peace-making, the gift of greenstone that are indications that conflicting Māori groups were perfectly capable of coming to accommodations without the intervention of the Crown.

Q. Thank you, but most of that was because of what the Crown did though.

30 A. Well that is – I mean, that is partly what I have been – my summary was about, that Crown purchase activities and because once the land – you cannot come to the sort of accommodations that you might've come to if the land was not gone, you couldn't absorb hapū into your own, you couldn't move on. There were many things that were – many options that

were closed off as a result of Crown purchasing and individualisation of title in a later period.

Q. Thank you. Just to extend that as well, on page 153 of your report you make reference to a bottle –

5 A. Yes.

Q. – that McLean's using to distinguish boundaries, correct?

A. Yes.

Q. And that he makes reference to a coin that wouldn't fit in the bottle?

A. Yes.

10 1500

Q. Would you in your view, your opinion and you look at the examples that historically and traditionally that Māori have and one of them was Ihakara Tukumarū, who gifted the Mere Pounamu, Rangitīkei –

A. Mm.

15 Q. – as cementing the boundary set for the Manawatū-Rangitīkei Block.

A. Sorry, cementing?

Q. Yes. Cementing the boundary, that is what the Mere Pounamu Rangitīkei was given by Ihakara Tukumarū for McLean to confirm that the boundary for the Manawatū-Rangitīkei Block was set in place, and the Mere was a reflection of that agreement. My question is, if McLean is using this bottle.

20

A. Yes.

Q. To reflect the Crown's agreement on a boundary, because that is in relation to the Manawatū Block, is it your view that the Crown used, tikanga that the likes of Ihakara Tukumarū used and a number of rangatira that is implemented these physical representations of an agreement, like a boundary –

25

A. Mm.

Q. – to entice rangatira to sell land using a similar process like a bottle to entice him to enter into these land sales?

30

A. I do not know that I would use the word entice, I think it helps to explicate to Māori what was going on, using the sort of a Pou to mark a boundary.

Q. Correct.

A. Yes.

Q. Correct. In your view did those bottles serve its purpose?

- 5 A. I think the more important part of the process was the going together, I think I have discussed in the report how Pou had been sent down by the people on the inland Rangitīkei, Ngāti Waewae and Ngāti Pīkiahū to set the boundary, and so then it was question of negotiation to establish something that, that party who were present were able to come to an agreement on. So there was a certain amount of compromise with a little bit of pushing by McLean who, I am going to ignore that Pou, you know, because he would not in that instance, his opinion was that these people have no rights here at all. So for him it was more a political – with as far as he got away with and his decision in that instance was well all the good lands within that boundary that is going to the Crown anyhow, so we are not going to push it too far. I think the use of the – trying to use the Queens – the significance of the coin was that it had the Queens portrait on it, and I think there would be a certain amount of understanding as to what that meant.
- 10
- 15 Q. Correct. But I put it to you Dr Anderson that despite the Crown doing that, they did not intend to honour at all, did they?
- A. They certainly in terms of how far their purchase would go. Is that what you are saying to me?
- 20 Q. Well if the Crown is suggesting by use of this physical representation of an agreement that they do not intend to honour, then in my question is, is that was certainly a Crown tactic by using tikanga that rangatira used against them?
- A. I see what you are saying. Yes, I think certainly I do not know whether I would – yes, I would agree. I certainly think that one side – Māori side certainly Ngāti Raukawa and the people involved in the setting of the boundary thought, that is it, that is as far as European settlements coming. Where as McLean has absolutely no intention of stopping there, and I think I used the word, obfuscate, he is pretty unclear the intention is to continue and purchase operations, and indeed this is not unique to this area and many rangatira who actually began by cooperating with the Government in selling, and I will actually use Major Kemp as an example, in the end he turned very much against the Crown and it's because of its insatiable appetite for acquiring more and more land.
- 25
- 30

1505

Q. That is correct, Dr Anderson. These people are here because of that insatiable appetite so thank you very much for your evidence.

A. Kia ora.

5 DCJ FOX:

Thank you, we will carry on and deal with one more counsel, Mr Burgess and Ms Katipo. Ten minutes and that takes us to afternoon tea, again no pressure but I will keep you to the ten minutes, okay.

KYLIE KATIPO:

10 Thank you, Your Honour and I intend to keep within the ten-minute time-frame.

(3:05) KYLEE KATIPO TO DR ROBYN ANDERSON:

Q. So, tēnā kōrua, Dr Anderson and Dr Green. My name is Kylee Katipo and together with my colleague here we act for Ngāti Pīkiahū and Ngā Iwi ō te Ruru. My questions today focus on the Rangitīkei-Manawatū purchase and the subsequent Native Land Court investigations as they relate to our claimants.

A. Yes.

Q. And I will be mainly referring to chapters 6 and 7 of the report in my questions.

20 A. Mhm.

Q. So, by way of background, Ngā Iwi ō te Ruru comprises Ngāti Pīkiahū –

UNSPECIFIED SPEAKERS: (15:06)

Te Reureu.

KYLEE KATIPO TO DR ROBYN ANDERSON: (CONTINUED)

25 Q. Te Reureu, my apologies. Ngāti Pīkiahū, Ngāti Matakore, Ngāti Waewae, and Ngāti Rangatahi and our claimants say that the hapū and iwi of Te Reureu have an association in shared whakapapa with Ngāti Raukawa. At chapter 6 of your report you discuss Featherston's approach to the purchase of the Rangitīkei-Manawatū block and I just

have a few questions about that and at page 238, if I can begin there. And it is really there that you say that, “Featherston was extremely anxious to acquire the district.” You would agree that with that anxiousness came a sense of urgency to complete the purchase?

5 A. Yes.

Q. Yes. And that sense of urgency led Featherston to favour those in favour of the sale over those that were opposed to the sale?

A. Yes.

10 Q. And coupled with that sense of urgency at page 240 you refer to the change of attitude that Featherston brought with him, just at the bottom there. “The change of attitude towards Ngāti Raukawa hapū as living in the area at the sufferance of Ngāti Apa?”

A. Yes.

15 Q. Yes. And so, with that sense of urgency and the change of attitude it left those opposed to the sale, including our claimants, under a lot of pressure to support the sale, didn’t it?

A. Yes, it did. Especially as he started, or Buller, started accumulating signatures and basically saying, “Well, look, the land is gone, you know, we have all these signatures, you have no choice now except to join in.”

20 Q. Yes, and they continued to oppose it, didn’t they?

A. Yes, right through – right through the end and because essentially the Court decision dispossessed those people who had been living there, those hapū had been living there on the grounds that they had not been there at 1840 and that was against everybody’s understanding. It was not like Ngāti Raukawa was saying they did not have rights, to the contrary Ngāti Raukawa were very supportive of them having rights in that district and so, they readily were very – they led the opposition to the survey after the deed had been signed and the native title had been officially gazetted as being extinguished.

30 1510

Q. Yes, and thank you for that Dr Anderson, and it would be fair to say that they really had no option at the time that they either agree to the purchase or opposed it and there was no other avenue for them to pursue.

- A. No, and I think but I think I mean the terrible thing for them was that they ended up being totally dispossessed by the Court decision. So, a couple of the rangatira had signed but the bulk of the people had clearly not signed and not agreed. And they actually found themselves with no recognition of their rights whatsoever, even though they had extensive cultivations in the area, and so, McLean had to go along and make provision for them, part – less I think, well I am not a great fan of McLean. Maybe hopefully is a sense of justice, but mostly to prevent a combination of those people in the interior joining up with the forces that were – they were still in armed opposition to the Crown. And so, they were worried either that they would leave the district and join with the King party or they would give the King party a reason to come down and fight in their support.
- Q. Yes, and the second half of my questioning was about the Native Land Court finding. So, I thank you for that. And the finding of course as you have said that Te Reureu were rendered landless by the Courts and you have said in your summary at paragraph 57 that the Courts findings were contorted as based on political convenience contrary to custom and as inherently illogical and unjust to the Ngāti Raukawa Collective?
- A. Yes.
- Q. And would it be fair to say that those observations would apply to the findings in respect of the hapū at Te Reureu?
- A. Yes, well I was including them within that collective. Maybe I should have said that Heke Collective or the Heke Confederation, but yes, absolutely.
- Q. Thank you, Dr Anderson, those are my questions.

DCJ FOX:

Thank you. We are guided by the catering, so we are going to the afternoon adjournment and be back here in 20 minutes. Thank you.

HEARING ADJOURNS: 3.13 PM**30 HEARING RESUMES: 3.34 PM**

DCJ FOX:

Thank you. We are now moving to Dr Gilling.

(3:34) DR BRYAN GILLING TO DR ROBYN ANDERSON:

- Q. *Tēnā kōrua e ngā Tākuta*, thank you both for your very detailed report.
 5 You will be pleased to know that actually as I was going through and writing questions for myself I would get five pages further on and found that you had circled back and answered it already. So this will be a jump around a bit and actually, Dr Anderson, most of my questions and certainly all of the early ones will come from your summary, not from the
 10 report, so that is 201(c) I think. Okay? Okay, thank you. Can we start at paragraph 16 and in the middle of the paragraph, six lines down, I was struck by a phrase you use which was establishing a ‘practical sovereignty’ through land purchase’, and it put me in mind of the Te Raki Inquiry and the emphasis on sovereignty up there, but that was the legal
 15 sovereignty that was particularly at issue. During this period that you have studied here, do you have any information, or did you come across any debates about that legal sovereignty question as opposed to sort of this practical sovereignty issue. You are dealing with Crown Māori interactions and I just wondered if there was – microphone please.
- 20 A. Okay, sorry. Legal sovereignty? No, not that I can recollect. There was certainly – I used that phrase ‘strategic sovereignty’ because I was actually quoting officials at the time, it was not me projecting that argument that has been made by various legal and historians about the need to acquire land to establish a practical sovereignty.
- 25 Q. Okay, thank you. Paragraph 28 where you are talking about Searancke pressing ahead in Te Awahou and, “Searancke is condemned by his own words,” you say.
- A. Yes.
- Q. And the next, the two sentences down, “It was not possible in the eyes of
 30 Searancke for Taratoa to both oppose the sale of land and yet be a friend to the Crown.” Is this, do you think, a reflection of what seems to have been a widely held Crown view or was this a widely held Crown view that associated the idea of a unitary sovereignty or any opposition to it in what

it was trying to do with rebelliousness. You will be familiar with, for example, the way the Governor reacts in Taranaki –

A. Yes.

Q. – over Waitara which of course is mentioned frequently in this discussion.

5 Is this another reflection of that sort of attitude, do you think?

A. Can you just go through that again for me please?

Q. So is his view that it was impossible for Taratoa to both oppose the sale of land and yet be a friend to the Crown. Is this a reflection of a similar sort of attitude? You are either doing whatever we say, playing our game, or you're a rebel or somehow definitely unfriendly anyway?

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A. Yes, I think so, and I mean they are often describing all of Ngāti Raukawa and Ngāti Kauwhata and the people up in Reureu as being Hauhau's, and Ngāti Apa I have to say are saying the same thing, but on fairly slim grounds quite often, although of course, their support for the Kīngitanga but a lot of Kīngitanga that's supporters and indeed Matene Te Whiwhi and Tamihana Te Rauparahā, they never dreamed that the idea of having Māori King meant that you were in rebellion. That just didn't occur to them at all. And my reading of the discussions in the meetings was that a lot of the Kīngitanga communities had no interest in being in rebellion. They wanted a share in the Government. They wanted a say in how the colony was run. They wanted to be on juries. They wanted to have their postal service. They wanted a full share in the governance of the colony and autonomy over their own lives.

15

20

25 Q. And would you agree the ability to retain their own lands?

A. Absolutely.

Q. Thank you. Jumping again, paragraph 40, and I should have said my clients in this part of the inquiry are particularly the hapū at Himatangi which is Tūranga Rākau and Te Au and also one of the Kauwhata claims and also Ngāti Huia from a bit further south. Anyway, this is where you talk about Featherston withholding the rents for distribution until they agreed on a fair division. I understood Dr Hearn this morning to say that he was thinking that Featherston was rather instructing the landholders or the runholders rather to withhold the money rather than just – rather

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than actually impounding it and yet of course, I was paying particular attention to what went on at Himatangi where you have years, decades of argumentation about getting the withheld rents back, don't you?

A. Decades, yes.

5 Q. Yes.

A. I think they – I don't know what the financially technical language is. I think Dr Hearn is correct that it's always in the documentation that's generally referred to as impounding the rent. I think in fact they did tell them to stop paying it, but when the rents had to be distributed, the Crown went to the runholders and wanted that money, and in some cases, the stockholders didn't have the money. The runholders didn't have the money and the Crown had to stump up with it, and then complained when Parakaia's people said, "Well, we quite like to have our share. We never got our share" and they are saying, "Oh well, we've already had to pay out of our own pockets to give the rents that we've given over" but without taking them into account at all. Yes, so that is my understanding of it.

10

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Q. The example of Himatangi, we had Captain Robinson who it seemed Featherston had impounded £500 from, do you think then that Robinson hadn't actually given Featherston the missing £500 or that this was just an estimate for a certain period of the rents he had withheld payment of?

20

A. I don't know, I would – I could go back and look at the documents to see if I can find out for you whether that's the case or not.

Q. I don't know that it matters so much, the question is – the big question is, I put to you that the – that the money to which the Māori owners were being entitled is being somehow withheld from them?

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1545

A. Oh, yes. Yes, absolutely and they clearly had been leasing for years and they were entitled to those rents and their shares in the rents but when Featherston handed them over he didn't really care that much who he handed them over to. And so, I think he did sell – he did hand them over to non-sellers but which non-sellers? And so, he took no responsibility for that and I just – this a little bit on-topic but off-topic, I think one of the things that he did, which I – he took down payments – some of those down payments because I wondered well, what happened to – people

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were saying these made down payments, he actually took that off the rent totals. But he does not keep a very good record of how he is making his decisions about these, any of these rent matters so, when the Himatangi people complained about the rents and the back rents, there were
5 actually very difficult to tell what had actually happened because there were no receipts, there was no break-down other than very general break-downs.

Q. And that assists Buller in acquiring two thirds or more of the eventual payment, doesn't it?

10 A. Well, it does. I mean –

Q. He is almost the last man standing with a piece of paper in his hand, isn't he?

A. He is. Well, he gets them to sign a promissory note, I mean I think Buller's motivations are shown when the, it's decided to make the block
15 inalienable and he is very upset about that because he had been intending to get what was owed to him out the sale of the land and I think that is why he actually championed the rent so much. Because that was just a way of getting what he was owed out of them.

Q. Yes, thank you. Turning over the page, I am conscious of the time here.
20 Paragraph 42, final sentence and we are jumping from Himatangi to Kauwhata here, Tapa te Whata endorsed the proposal, Featherston thought, because of the impounding of rents and the high price paid for Ahua Turanga had produced the desired effect. Are you saying there that Featherston has used both the carrot of a possible high price and a stick
25 of impounding the rents if you do not go along?

A. Well, Buller actually says in his – says that it was deliberate strategy on Featherston's part to impoverish Māori to force them into a situation of sale, so it is definitely a stick in my opinion anyhow.

Q. And the enticement of the high price is all the more attractive to
30 impoverished people then you would think?

A. It is. So, I mean I have not looked at the question of price but I think you would have to question how high as price it actually was, the only information I have come across that is the suggestion that twice as much as what was paid was offered by private purchases and of course, that is

partly the why Ihakara and others were spitterer about the exclusion of the block from the jurisdiction – excuse, jurisdiction of the Land Court, because it gave pre-emption to the Provincial Government and put them in a stronger position when it came to negotiation as to price. Plus, of course they had not been consulted about it at all. They only found out about three-years later that in fact, that this is what had happened.

Q. Thank you, can I just now –

DCJ FOX:

Dr Gilling, we are starting to get over the fifteen-minute period.

10 **DR BRYAN GILLING:**

Are we?

DCJ FOX:

Yes. So, unless it is something that adds to what we have heard other counsel ask.

15 **DR BRYAN GILLING:**

One question of clarification then.

DR BRYAN GILLING TO DR ROBYN ANDERSON: (CONTINUES)

Q. In your report, page 471, the first paragraph of that page under the heading 8.9, which is the bit, the second half really which is about the land taken for the rail way line and as I read it there is a standard one and a half chains width for a rail way line but instead this case they are taking three chains which is twice the width, so they are taking 60 meters width there enough.

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25 A. Yes.

Q. Why are they taking three chains? I mean that is a large chunk when it is drenched up the length of a block.

A. I think it was to do with the sand – sandy character of the country and they are wanting to protect the rail way from sand drift. That was my understanding of it.

Q. And when is this block cut out?

5 A. I would have to check that, I'm sorry.

Q. Okay that is fine. Thank you, Ma'am those are my questions. I may have a small number that I seek to leave in writing. Thank you. Thank you, Dr Anderson.

DCJ FOX:

10 Ms Lang.

(3:51) JOSEY LANG TO DR ROBYN ANDERSON:

Q. Thank you, Ma'am. Tēnā kōrua my name is Josey Lang and I am here representing Ngāti Kapu and as you note in your report Ngāti Kapu is a hapū of Ngāti Raukawa and they were involved but they are supporters –
15 known supporters of the Kīngitanga –

A. Yes.

Q. – and they were involved in the events when the Kings flag was flown at –

A. Sorry could you say that last sentence again please?

20 Q. – they were involved in the events when the Kings flag was flown Pukekaraka in 1861.

A. Yes, yes.

Q. Thank you. They key extract that I would like to ask you about is at page 302 of your report. This is – here you are referring to a sworn declaration
25 that came from 151 Māori from Otaki in November 1866 and they are writing to the Crown in opposition to the purchase of the Rangitīkei-Manawatū Block and I just want to note some of the language which is used here because I think it is very important. In the declaration there describing that they are resident on the block, that they are entitled to part
30 of it, that they are strenuously opposed to the sale, they assert their rights and they are saying the block should not be sold without their consent and I thank you for providing the original of that declaration in your

answers to my questions of clarification that was very helpful, and we have been able to establish that some of the signatories have affiliations to Ngāti Kapu. Now, despite this in response to it, Buller essentially just dismisses these claims out right doesn't he, well, the majority of them, 111 of them he simply just says they are non-residents. That is correct isn't it? Your microphone.

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A. It seems to have a mind of its own. Yes, he does and I suppose that was one of my – that I highlighted that concern within my questions of clarification to – on the Pene Raupatu report and I don't know exactly the answer but I was very struck by the concerted effort to hive off the Otaki centre of resistance to sale from the rest of the people despite – I've come across meetings where the people are writing in and saying we are meeting along the whole river to discuss these issues so that was partly what I – the point I was getting to about the interference of the Crown between hapū and hapū.

10

Q. And did I hear you correctly Dr Anderson that the word you used was disquiet? Was that how you described it in relation to these events in Otaki.

15

A. I would have to – I did write it down. I would have to check what I actually said, I think it was disquiet.

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A. 1555

Q. Thank you. So, Buller later concludes therefore that the Ōtaki Declaration is – these are his words, "That was wholly false and deceptive", is that an agree – a conclusion that you would agree with?

25

A. Sorry the...?

Q. "Buller concludes that the declaration was wholly false and deceptive", those are his words, would you agree with his conclusion, Buller's conclusion?

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A. No, I don't see – there was any – there was – it's not - Buller doesn't explain why he's making these judgements and that these decisions are being made by two Crown officials based on what? There's no indication of how they are making these decisions, who they are talking to, event the native – seems strange for a Treaty Historian to be standing up here and defending the Native Land Court but at least in the Native Land Court

you would have – if it had operated as it was meant to you would have had these issues discussed and evidence put on the record and a consensus come to. Featherston and Buller really don't say how they are making these decisions at all.

5 Q. Thank you. The second area I want to discuss with you is what the significance might be in relation to the support for the Kīngitanga and that how that impacts on how they are dealt with in relation to their interests in the block.

A. Yes.

10 Q. My first question is just one of terminology, I note in your report and I think your quoting from the contemporary sources where they refer to the Ōtaki **(inaudible 15:56:55)** –

A. Yes.

Q. – is that one hapū, a number of hapū, do you know?

15 A. It's more generic. I think the centre of the Kīngitanga in Ōtaki is at Pukekaraka -

Q. Pukekaraka, āe.

A. – is my understanding of it.

20 Q. Thank you. And, related to that it refers to various meetings being held at the Rūnanga House.

A. Yes.

Q. What - is your understanding that that is at Pukekaraka?

A. Yes, I thought – Yes, sorry.

Q. Yes.

25 A. I think so because the so called **(inaudible 15:57:32)**, the Kāwanatanga they are meeting within Hadfield's School House was my understanding. So, there's like two centres side by side essentially/.

30 Q. Thank you. So, in your summary you describe one of the “overarching themes as being many Ngāti Raukawa were suffering the stigma of being called ‘houhou’ and that the Ngāti Raukawa support for the Kīngitanga was a nightmare scenario”, those are your words for the Crown.

A. Yes.

Q. So, when Ngāti Kapu were involved in events like the flying of the flag at Pukekaraka, how would that have been perceived by the Crown?

A. Well, that's utterly condemned, it's seen as a challenge to the authority of the Crown and to the Queen's sovereignty.

Q. Okay. Thank you. So, would that then or would you agree then that might then have a bearing on how Ngāti Kapu are dealt with when Featherston and Buller are dealing with the interests in the Rangitīkei-Manawatū Block, this known and understood support for the Kīngitanga?

A. I've never seen any documents as to that affect, but I would be surprised if it didn't effect how they were looking at particular hapū and what rights they had.

Q. And it would – could I suggest that it would be – meaning that they were more inclined to not have that interest acknowledge, would you go that far?

A. More inclined to?

Q. To not have that interest acknowledge or recognised?

A. Well, as I have noted before, this idea that Ōtaki rebels weren't – didn't have interests was pretty – was repeated pretty thoroughly and there was quite a lot of effort, as I said to kind of separate the hapū. So, yes, but I have to say that I can't entirely sure but that would be my opinion, yes.

Q. Thank you very much.

1600

DCJ FOX:

Thank you, right on time and now we have Ms Martinez or Ms Scoular-Sutton.

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1600

(4:00) RACHEL SCOULAR-SUTTON TO DR ROBYN ANDERSON:

Q. Yes, it is Ms Scoular-Sutton thank you. Tēnā kōrua. My name is Ms Scoular-Sutton and we represent three claims so that's Wai 784, which is the Ngāti Kauwhata claim, Wai 1482, which is the claim by Ngāti Wehiwehi, and Wai 2031 which is the Raukawa claims by the descendants of James Howard Wallace. And today, I will be primarily

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cross-examining for the benefit of our Ngāti Kauwhata and Ngāti Wehiwehi claimants in respect of their interests in the north of the inquiry district. So, thank you very much for your evidence and your very detailed and helpful report, as many others have said. Just firstly, so in your report you weren't commissioned to look at the tikanga whakapapa or oral traditions of particular groups, that's correct?

5

A. No. I mean, no I wasn't, or we weren't.

Q. And you're not an expert in Ngāti Kauwhata or Ngāti Wehiwehi tikanga, whakapapa, or oral traditions?

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A. No, I'm not.

Q. So, when it comes to those matters, you defer to tangata whenua, that would be fair to say?

A. Yes, and not only for them but for all hapū.

Q. Thank you. I just wanted to start with some of the aspirations of Ngāti Kauwhata and Ngāti Wehiwehi in relation to their key resources, and so you comment on page 167 that a clear preference among the majority of Ngāti Raukawa was for their own systems like directly seeing their own agricultural production and involvement in the flax industry, that's correct?

15

20 A. I'm still looking for where you are talking about. If it's written there that I would assume it's correct.

Q. And you go on to talk about their early commercial successes as well?

A. Yes.

25

Q. And if I can get you to turn to page 185? So, this is in relation to the purchase at Te Awahou.

A. Yes.

Q. In the middle of that there, you quote Te Kooro Te One and he said there, "All the best land has been sold to the Pākehās and we shall have none left for our support." You see that there?

30

A. Yes.

Q. And the Ngāti Kauwhata and Ngāti Wehiwehi claimants we represent his claims relating to Rangitikei and Manawatū Block so, I just like to quickly go through some of the issues that arose in that block.

A. Yes.

Q. So, you highlight – if I can get you to turn to page 282.

A. Yes, okay.

5 Q. So, down the bottom of that page, you describe a hui in which among others Tohutohu did not consent to the sale of the Rangitikei-Manawatū and he wanted the rents to be paid, that's correct?

A. Yes.

Q. Thank you, and then just turning to the next page, page 283 at the very bottom of that page.

A. Yes.

10 Q. There you described Te Kooro opposing the sale of the Rangitikei and the Manawatū?

A. Yes.

Q. That's correct.

A. Yes.

15 Q. And just flipping forward to page 320.

A. Yes.

Q. On the last paragraph there, you discuss a letter from Kooro Te One and others and in that letter, they clearly set out they had accepted no part of the money and they were not willing to part their land, that's correct?

20 A. Yes.

Q. So, it would be fair to say that the Crown was aware of the opposition of the sale from Ngāti Kauwhata and Ngāti Wehiwehi?

A. Absolutely, yes.

25 Q. Thank you, and yet despite these protests, I've obviously just selected a few examples. Featherston pushed very strongly for the sale of the block, that is correct?

A. Yes.

30 Q. And turning to page 320 of your report near the top of the second paragraph, you say that Featherston presented the purchase of the Rangitikei-Manawatū as the only way to settle the matter and maintain the peace, that's right, isn't it?

A. Yes.

Q. And you've helpfully gone through a lot of the significant issues with the purchase itself in your summary and also in your answers to my friend's

questions, but I just wanted to emphasise later on in the Native Affairs Committee investigation, Buller provided evidence in that investigation, so I can take you to page 479. And in the beginning of the second paragraph Buller said there, “The fact was we were winking at illegalities for the purpose of making a peaceful settlement.” He said that there. And I just want to briefly touch on some other consequences arising from the sale of the block. So for example, turning to page 611 –

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1605

DCJ FOX:

10 You realise with every page you are quoting we are trying to find where you are quoting from.

RACHEL SCOULAR-SUTTON:

Sorry, my apologies.

DCJ FOX:

15 And you are doing it at every question and you are not actually asking any questions, just pointing out what is in the report which we can read.

RACHEL SCOULAR-SUTTON:

Okay.

DCJ FOX:

20 So what is your point?

RACHEL SCOULAR-SUTTON:

Sorry, I will just try and describe it then possibly without the page reference.

DCJ FOX:

Yes, that will be great.

25 **RACHEL SCOULAR-SUTTON TO DR ROBYN ANDERSON: (CONTINUES)**

Q. All right. So this is about the upper Aorangi Block –

A. Yes.

Q. – and it's about Ngāti Kauwhata in relation to that block and you describe in your report that they had little choice in that instance but to sell some of that block?

A. Yes, because they were in debt, they had been in debt by this stage.

5 Q. Yes. So my point there was to say that they needed to sell some of that block to raise money for the debts they had contracted in litigation which arose from the Rangitīkei-Manawatū sale.

A. Partly that, mostly that, but also to be able to develop what land was left to them, but I think the bulk actually went to paying debts that had been
10 occurred.

Q. Right, thank you, and so my final point, well this might seem fairly obvious, was just to say it would be fair to say that the Rangitīkei-Manawatū sale and the ensuing Native Land Court hearings had further adverse consequences beyond the sale for the iwi involved, you'd agree?

15 A. Yes, it did.

Q. Yes.

A. It had long-term downflow effects.

Q. Yes, thank you. I just now want to turn to talk about Crown agents including Crown purchasing agents which we have talked about a fair bit today, and I am interested in your comment in your summary that you say that the reliance of Māori on the advice of Crown agents was part of what caused the seismic shift in power to the Crown, and I just want to go through some examples to illustrate the impact of these Crown agents on Ngāti Kauwhata and Ngāti Wehiwehi. So of course in all of your work you are definitely familiar with the Treaty of Waitangi in its general terms –
20

25 A. Yes.

Q. – and I just specifically want to think about Article Two of the Treaty and I'm just going to read the te reo – well not the te reo text, but in the te reo text Māori were guaranteed they would retain unqualified exercise of their chieftainship over their lands and then in the English text they were guaranteed the full, exclusive and undisturbed possession of their lands that they wish to retain. You would be aware of that?
30

A. Yes.

Q. So when it comes to the conduct of Crown purchasing agents it would be very important, wouldn't it, that their actions were carefully monitored to ensure that the Crown was upholding this, that's correct?

A. Yes, they ought to have been, yes.

5 Q. And when it became apparent that there were issue arising with the manner in which a purchase was carried out, that this was appropriately addressed by the Crown?

A. Yes.

10 Q. And it's also fair to say that it's part of a Crown purchasing agent's responsibility to make sure they obtain permission from all the relevant rights holders in the land and that they found out where the correct boundaries were?

A. Yes, and they were instructed to do so.

15 Q. Yes, yes. So in your conclusion chapter you point out that in the Rangitīkei-Manawatū purchase, that while Featherston held many meetings, it was often only to ensure that a sale would take place not to determine the extent of rights the area of contest or the extent and location of reserves, that's correct?

20 A. In fact, the determination of reserves did not happen until after the sale had occurred which is quite contrary to what was supposed to be happening.

Q. Right.

25 A. Just one point I think that I would like to make in this context too, that idea that paying out money would be easier than allocating land. But of course, by paying out money, it meant that if he'd had to determine the rights of Whanganui on the block for example, he would not have been able to do so I don't think, but by paying out money, that gave the opportunity for Ngāti Apa to pay quite a large amount to Whanganui for their support, and even Richmond – I did find it extraordinary that the
30 Crown would basically say, "Oh well, Ngāti Apa have strong friends, and therefore, it's better to purchase otherwise Ngāti Apa will bring those strong friends down to fight against Ngāti Raukawa." As a defence of a purchase, I find it very lacking.

1610

Q. Mmm, yes, I would agree. So, turning back to the Crown purchase agents, just another couple of examples of some lacking conduct in that regard, so, in respect of the Te Awahou Purchase, Searancke also, there he lacked – he was eager to get signatures on paper and he therefore left
5 the question of boundaries and reserves in that area settled, is that correct.

A. Yes, did.

Q. And this, in the case of the Ahuaturanga Block, the boundaries in that case were drawn incorrectly. So, they were drawn in a straight line
10 instead of following the bends of the river and this incorporated land that Ngāti Kauwhata and Ngāti Wehiwehi intended to retain. So, I can take you to page reference of that if that is helpful?

A. No, I – well, if you wish, that’s – and that ended up – resolving up that problem ended up being part of McLean’s way of getting Ngāti Kauwhata
15 and Ngāti Wehiwehi to accept the fact that the Rangitīkei, the bulk of their lands were gone as a result of the Rangitīkei-Manawatū purchase.

Q. Thank you, that’s very helpful. And so, just want to finish off by just discussing a few instances of where Crown officials were alerted to the poor behaviour of the Crown purchase agents. So, if I can get you to turn
20 to page 302?

DCJ FOX:

We are now getting into almost 15 minutes.

RACHEL SCOULAR-SUTTON:

All right, thank you.

25 **DCJ FOX:**

And it is in the report.

RACHEL SCOULAR-SUTTON:

Okay.

RACHEL SCOULAR-SUTTON TO DR ROBYN ANDERSON: (CONTINUES)

Q. Perhaps I can talk generally then about the delegation who raised issues with Richmond on several occasions?

A. Yes.

5 Q. And Richard did take concern with Featherston's actions and he did warn Featherston that he was in danger of violating one of the Government's purchase principles.

A. Or several of the principles in fact?

Q. Yes.

A. Yes.

10 Q. And I just wanted to raise a piece of correspondence you included in the report from Parakaia and Te Kooro, which related to Featherston and Buller's actions and they raised equally some more concerns there. And I just wanted to ask so there's nothing in your report to suggest that those concerns were properly responded to in any fulsome way and this has
15 already been covered off by some of my friends.

A. Sorry, already – could you please?

Q. So, I just wanted to ask there's nothing in your report to suggest that these concerns were properly responded to?

A. Only insofar as it did go through a Native Land Court Hearing.

20 Q. Yes.

A. But Richmond really wasn't interested in overturning that purchase. He knew it had been conducted unfairly but he stated in fact that fact that he wasn't really interested and wasn't able to overturn it.

Q. Right, thank you very much for your time, those are all my questions.

25 **DCJ FOX:**

(Mic off 16:13:49 – 16:13:51)

(4:13) CORAL LINSTEAD-PANOHO TO DR ROBYN ANDERSON:

30 Q. Sorry, Ms Linstead-Panoho Ma'am. My question has actually been covered by other counsel, but I did want to raise one matter of clarification with you, tēnā kōrua, thank you for your report. And that matter has arisen in respect of the Map Book that was handed out to us yesterday, not sure if you have a copy of that. there's only one page I want to refer you to.

A. Might be getting Dr Green to answer this question.

Q. And just to provide a bit of context, I represent the Wai 1260 Ngāti Waewae claimants.

A. Yes.

5 Q. And so – sorry, it's page – Map 10 I think under. So, on the left-hand side of the page there, do you have that? It's a list of the native reserves?

A. Yes.

1615

Q. And at number 47 is the Te Reureu Block - Reserve. Do you see that?

10 A. Sort of. Yes.

Q. Sorry the text is very small on this copy.

UNSPECIFIED SPEAKER: (16:15:18)

Ms Panoho. We are just blowing it up on the computer, so.

15

CORAL LINSTEAD-PANOHO:

Okay.

UNSPECIFIED SPEAKER: (16:15:35)

20 Is that better?

CORAL LINSTEAD-PANOHO:

Yes. Okay thanks.

**(4:15) CORAL LINSTEAD-PANOHO TO DR ROBYN ANDERSON:
25 (CONTINUES)**

Q. Just checking that you have that now?

A. Yes.

Q. Yes, and so the list of groups there in terms of iwi or grantee, there are four different groups referred to there. Is there any reason why
30 Ngāti Waewae is not referred to in that?

A. No, it is a mistake. It is an oversight.

Q. Okay, thank you that is all.

(4:16) LEO WATSON TO DR ROBYN ANDERSON:

Q. Tēnā kōrua. Can I just ask you to go to page 35, briefly of your report please? In the paragraph which commences, like the church missionary's society the New Zealand Company settlers were invited into the community and you note on this occasion by Ngāti Raukawa rangatira without the sanction of Te Rauparaha and Te Rangihaeata, you say or indeed with the agreement of those occupying those lands. Can I just invite you to – to consider whether the second clause there should be without the agreement of all those occupying those lands.

A. Yes. Yes, sorry it should be.

Q. Right, thank you.

A. It is the first paragraph under the heading 2.7.2.

15 LEO WATSON:

So, Ma'am I think that after the word indeed the text has, with the agreement of all those occupying those lands and the witnesses agree that should be, without the agreement.

(16:17) LEO WATSON TO DR ROBYN ANDERSON: (CONTINUES)

Q. I just want to discuss with you, the notion of this phrase, non-sellers.

A. Yes.

Q. It is certainly not yours and it is found all the way through the documentation. I wanted to suggest to you that it really is a difficult phrase for me to consider and my clients to consider within the context of tikanga Māori because it places those who were in a non-selling context. It defines them in the category of – or in the context of a sale of land.

A. Yes.

Q. There has also been reference to dissensions and again that is in the context of defining them **(inaudible 16:18:21)** there to be an opposition to something.

A. Yes.

Q. And I wonder if you would be comfortable with the concept of 'pupuri whenua', the idea of retaining land. Those who seek to retain land.

A. Yes.

5 Q. As being a more positive expression of what these so-called non-sellers were seeking to do.

A. Yes, I would accept that. That is a better expression.

10 Q. Can I take you to your – the document you read out, A201F which was the answers to the questions and at page three you just gave an answer to the rangimārie narrative and the penny raupatu paper.

A. Yes.

15 Q. You agreed to the general proposition concerning the concentration of the Court on conquest as opposed to other elements of customary tender – tenure. Thank you for your answer there and you note that the Court's understanding of occupation was limited and inconsistent.

A. Yes.

Q. And then you say, the rights were addressed only so far as they could demonstrate actual cultivation and residence.

A. Yes.

20 Q. There is – I used this expression earlier. There is a double jeopardy here isn't there because at the time the investigation – the so-called investigation was being undertaken by the Native Land Court. Those who held a pupuri whenua rationale, the non-sellers were – had moved down onto the Otaki rohe for some and I am talking particular on behalf of my clients.

25

1620

A. Yes.

30 Q. And they get whacked twice in the context of assessing their claims to the exercise of their rangatiratanga and their customary tenure to the northern blocks. Would you agree with that?

A. Yes, I would.

Q. They seem to be doubly penalised through this process. Question mark.

A. So sorry, what is it that they have been forced to – off their land and then denied by the Court decision, is that what you are saying?

Q. Yes, exactly.

A. Yes.

Q. Well that they are denied –

A. Yes.

5 Q. – primary at the start, I would suggest because of their desire to retain their land. So there is a denial of their rights by Featherston and others because among other things, they were regarded as an impediment to the accusation of land?

A. Yes.

10 Q. But the second denial happens when investigations are undertaken, somewhat shortened by the analysis that were given to these members of those non-selling groups, and they were doubly penalised because in an effort to establish their customary tenure and the cultivation rights in the like, they had been moved out of the area and at the stage were resident down in Ōtaki?

15

A. Yes.

Q. And I think you were referring to that in your highlight in that in terms of your response here?

20

A. Yes, I am. I have to say, I would like to think about it a little bit more, but my opinion is tending to support what you are saying.

25

Q. So you were right about the deadline and I think it is important that there be time taken and I would invite you to consider the perspectives in particular of those who are now associated with the Ōtaki rohe, Ngāti Maiotaki, Ngāti Pare, Ngāti Huia, Ngāti Kapu, as my friend has talked about. The perspectives of those hapū, who by the time the Native Land Court investigations were taking place were given, I would suggest to you a double short, sharp, shrift, because they were not their customary tenure that had been exercised earlier was not fully investigated.

30

A. Yes. Well I think the investigation of the Court as a whole was extremely problematic and inconsistent, within the decision and with decision that were made as where around the country, and indeed with the actions of the Crown purchase officers.

Q. Yes, in fact they did not do much better than Featherston himself who seem to regard the claims of Kingi Te Ahoaho and others for instants as not having any particular strength. This is at the time of the purchase negotiations. Even those positions of those descendant or
5 *kai pupuri whenua* were simply dismissed at the time?

A. They were and as I said to one of the other counsel, we just do not really know what sort of investigation or discussion was undertaken. My understanding is the customary way would be ventilating these issues on the land and in fact that was not done by the purchase officers or indeed
10 by the Court.

Q. We are all short for time, I think the best thing would be in the invitation I have extended to you to consider those perspectives the Ōtaki hapū, I might seek leave, Your Honour. If I just indicate to you the particular hapū and the parts in your report where you refer to those matters, it may assist
15 you in your consideration of the response...

A. Yes, thank you. That would help.

Q. Okay, many thanks.

CHRIS BEAUMONT:

Tēnā koe, Your Honour. I am Mr Beaumont here appearing with my colleague,
20 Ms Sinclair. If I can just apologise for the lateness of my appearance.

(4:24) CHRIS BEAUMONT TO DR ROBYN ANDERSON:

Q. Tēnā koe, Doctor Anderson. I represent a number of claimants who are affiliated with Ngāti Raukawa and Ngāti Kauwhata. We just want to refer you to your main report on page 161 and 162. On page 162 you discuss
25 road building.

1625

A. Yes.

Q. You state that the claim reported that Rangihaeata had 'absolutely transferred, according to native custom, the right of chieftainship to the above roads to His Excellency and this circumstance will also have the effect of preventing the Natives from hereafter exercising any exclusive
30 privilege over them'.

A. Sorry, where is that?

Q. So that is at page 162.

A. Yes, okay, thank you, I will just read that section. Yes.

Q. And I presume where it says 'presenting' that's meant to say 'preventing'?

5 A. Yes, it should.

Q. I just wanted to ask about McLean's understanding of the right of native custom. Would that refer to a Māori concept of title transfer rather than English concept?

A. Could you repeat that question again please?

10 Q. Perhaps if I could frame it this way, what would your understanding be of when McLean's says, "According to native custom...", when he's referring to the transfer of the roads?

A. Yes. Well I would doubt – I would have to think about this a bit more, but I do not think McLean was really in that great a position to understand native custom at all and I have not thought about it so much in this context, but I have certainly thought about it in terms of his attitude to the people living on the Rangitīkei River and whether they had rights and whether Te Heuheu had rights. I mean, what he was basing those decisions on is obscure to me and I think he is really trying to fix people on the land in that instance where under native custom Māori could be migrating, seasonal usage, moving around the country. Didn't mean that they didn't have rights in that area. So I don't know if that answers your question?

20 Q. Well would it be fair to say that his understanding of the title transfer in that instance would have been more along the lines of what an English concept of what a title transfer would be?

25 A. I don't think he is –

JACKI COLE:

Your Honour, I just wondered the extent to which this witness can be expected to know what McLean's understanding was. She can certainly speak of what the evidence tells us of what his actions were, but it might be a bit hard for her to...

CHRIS BEAUMONT TO DR ROBYN ANDERSON: (CONTINUES)

A. I do not think he is talking specifically about the title to the road, he is talking about transfer of authority and I do not think he is necessarily correct in that perception of what Rangihaeata is doing.

Q. Yes.

5 A. Rangihaeata did withdraw his opposition to the road but only after he had been put in a position of being forced off his lands and attacked by the Crown.

10 Q. Yes, thank you for that. At page 166, you note that, “In McLean’s view, it was essential that more land be acquired from Māori to satisfy the settler the demand – and acquire quickly, before Māori attained a greater knowledge of its monetary value.”

A. Yes.

Q. So would you agree that that was a deliberate suppression of knowledge by McLean?

15 A. Yes, and it was one shared by – or a pre-emption of knowledge maybe would be a better way of expressing it and one that was widely shared by Crown officials.

20 Q. Yes, I certainly agree with that. Now, on page 172 you discuss the mounting problems regarding the purchase of Māori land. You note that, “A second and equally damaging consequence of the halt to land purchasing was that the colonisers were unable to impose themselves fully on the colonised. As long as Māori ‘retain their territorial rights,’ Richmond wrote, ‘they refuse to recognise British supremacy.’” Now, would you agree that this quote by Richmond indicates a difference of understanding of the Te Tiriti and tino rangatiratanga then Māori would have?

25

1630

A. Yes, I would.

30 Q. And on that same page you refer to Richmond saying that they refuse to recognise British sovereignty, would you agree that this is quite telling regarding his view and by extension, the Crown’s view at the time of the position of Māori and Te Tiriti?

A. Yes, I would.

Q. And would you agree that these statements regarding the supposed British supremacy are clearly in conflict with the commitments made under Te Tiriti by the Crown?

A. I would.

5 Q. Thank you, Dr Anderson those are all of my questions.

DCJ FOX:

(Mic off 16:30:58 – 16:31:03) to re-examine but normally we would wait until after the Tribunal has finished.

UNSPECIFIED MALE SPEAKER: (16:31:03)

10 I am not sure if other members of my team have –

DCJ FOX:

No, us.

UNSPECIFIED SPEAKER: (16:31:11)

– I do have one though.

15 **DCJ FOX:**

So, who is leading, Mr Lewis are you just there assisting the witness then?

UNSPECIFIED FEMALE SPEAKER: (16:31:34)

Your Honour, I was wondering if –

DCJ FOX:

20 Well, usually because we may raise issues you may want to raise, it is better to wait until after we finish. Okay, Ms Cole.

JACKI COLE:

Thank you, Ma'am.

(4:31) JACKI COLE TO DR ROBYN ANDERSON:

Q. Tēnā korua. I just wanted to ask in the first instance, you have clearly both read Dr Hearn's report because you refer to it a number of times in footnotes in your report?

5 A. I have, though it is some time ago I have to say.

Q. I just wondered if there were any matters recorded in Dr Hearn's report which struck you as different in any way in terms of either the historical record or conclusions that you have reached in your reports?

10 A. Not off the top of my head, but you know – I did not go through looking to criticise Dr Hearn at all but, no I think where there may be matters of detail that are different, but I think the underlying message and conclusions are pretty well in alignment.

Q. And I am assuming that you are speaking for Dr Green as well?

A. Yes.

15 Q. Yes, thank you and I wanted to ask the same question with respect to Dr Boast's report as well.

20 A. I have only seen that in draft for but, again I think and certainly in terms of the operation of the – I did indicate that perhaps we are a bit different about whether we consider the Court to be impartial. I tend to – I probably take a more the line that it is not impartial in terms of its objectives but other than that in terms of this particular case, I think we – or this particular instance I do think we are in general agreement.

25 Q. Okay, thank you. The report *Rangatiratanga and Kawanatanga: Land Management and Land Loss*, which is #A199 and it has been prepared by Dr Grant Young and a number of others, have you had an opportunity to have a look at that one?

A. No, I have not.

30 Q. That is fine, thank you. Were you present earlier when Dr Soutar asked Dr Hearn about whether – and these are my words as opposed to Dr Soutar's – whether the manner in which a technical report is written reflects who might have issued the contract for it?

A. I was, yes.

Q. I just noted when you were reading your summary actually, Dr Soutar's words jumped into my mind. When thinking about language such as that

that appears at the bottom of paragraph 5 in your summary. Page 5, sorry the bottom paragraph on page 5.

A. Sorry.

5 Q. It was when you were reading your summary out that and having Dr Soutar ask the question that made me think of it. It is just in paragraph 26 you say, "Again, the Crown agent largely responsible for the conduct of the purchase, surveyor James Grindell, played 'divide and rule' tactics – Played 'divide and rule' tactics between Rangitaane and Ngāti Raukawa." And it was when you were reading those words out that
10 it made me question your view in answer essentially to what Dr Soutar was asking. And I wondered whether that sort of language would be used in your summary or in your report and it is, that type of language is used sometimes in your report if, for example, you had been briefed by the Crown?

15 A. I would hope so.

1635

Q. Can you expand on that?

A. Well, I've never been briefed by the Crown, but I have read quite a bit of documents and I think that my conclusions are based on the evidence.

20 Q. Thank you and motive turns like that, are they conclusions?

A. I don't think divide and rule is a motive at all.

Q. Divide and conquer?

A. Did I say that?

Q. That is what the phrase was, it doesn't really matter. We can move on.

25 A. Well, I think divide – sorry –

Q. No, no.

A. – divide and conquer is a bit of a difference from divide and rule.

Q. Fair enough and it was divided and rule that you used.

A. Can I just say that is a pretty standard expression that many historians
30 use?

Q. Okay. The only other question I have with respect to your summary is at paragraph 55 which is on page 13, you talk about in light of the storm of protest and petitions, continuing trouble on the ground, serious doubts

about the integrity and effectiveness of person procedures, Crown agree to submit the question of ownership to the Native Land Court –

A. Yes.

5 Q. – and Richmond commented that quote the Government have never yet recognised the right of a majority in a tribe to override the minority and according to your footnote, that is from 1866 so it is relatively late in the peace –

A. Yes.

10 Q. – my question was, do you agree that that is an accurate statement at the time?

A. I actually would have to think about that some more. That was certainly the principal that that was meant to be followed and indeed one that we struggle with even today. How do you respect the rights and protect the rights of the minority against the majority?

15 Q. The statement he was making was of course and this is the purpose of my question was that the Government has never yet recognised –

A. Yes.

20 Q. – and that was the point of my question is to whether or not you knew from your knowledge and research whether that was an accurate statement at the time, but I appreciate that is not something you can potentially answer just of the top of your head.

A. No, I actually would have to think about that.

25 Q. Okay, if I can go to your main report now please page 2 and I am not going to take you to every single page but page 2, one of the things you say – so this is very much the introduction part of your report and you say throughout the report – throughout the report attempts to highlight the opinions expressed by Māori in their hui. Their negotiations and political development as they responded to the many challenges posed by colonisation and the imposition of settler dominated institutions and my question was and it is dual I suppose by one of the comments that
30 Dr Hearn said earlier today about how there was a lack of information from the Māori side of the story, one might say, and my question was, was it difficult to find records of this, so the opinions expressed by Māori in their hui, their negotiations.

A. When they are talking with each other, you are reliant on either letter going in to the Crown or sometimes a – like a resident magistrate would be present and would take notes. In terms of meetings with Crown officials, it varied but I mean one of the – ironically one of the problems with this particular project is the huge amount of files and notes of meetings and both published and unpublished, it is quite unusual often and especially in this early Crown purchase period there is not much record at all so in this case we have actually got a wealth of information but of course often those notes are really – are notes, they are not verbatim and I think I have at various point, I don't – I think Featherston's reports and Buller's reports were often shown to not be completely objective.

1640

Q. So, that's why I was picking up on the point it's about the opinions expressed by Māori and my question really was about the records of the Māori conversation, the Māori perspective of the negotiations because Dr Hearn I think was telling us that the bulk of the material was Crown material, sourced material, but so are you telling us that there was actually – there is sufficient information from reflecting the Māori perspective from Māori that you were able to access to inform the information that's in your report?

A. Well, I think there is quite a lot of information there of minutes of meetings and speeches that are quoted especially in the Rangitīkei-Manawatū. Again, were dependent on McLean's diaries and notes.

Q. Mmm, mmm.

A. But in comparison to the sorts of notes he kept in the 1850s, it's a cornucopia of information. So –

Q. Potentially swayed by McLean's listening, the way that he's viewed the conversations?

A. Yes, absolutely, yes.

Q. Right. Just the very next page, six bullet points down, so this is where you are talking about the project brief, and one of the questions that you were asked was what were the implications of the dual roles of Featherston and Buller, purchaser and provincial politician and purchase and resident magistrate respectively? Did your research reveal why

these men held dual roles and such, what would appear at face value to be conflicting roles? Just strikes me that in the current day and age, such a conflict wouldn't arise. Can you give an explanation from a historical perspective as to why they were in these dual roles?

5 A. I think, I think as Dr Phillipson has indicated in his question, Buller's involvement is quite problematic and the origins of it are quite obscure. I think Featherston's role is he's putting pressure on the Central Government to give him control of the land purchasing in the district because he been so much faction amongst, on the provincial
10 Government in particular but Wellington Province in particular about the slowness with which the purchase in this district was progressing, and there was a lot of criticism of the Native Land Purchase Department in this period.

Q. Yes, yes, the evidence certainly displays that, so there isn't any
15 information that we're aware of to explain the appointment of – in his position of resident magistrate, suddenly taking over that dual role for Buller?

A. Not that I'm aware of. I'm not saying it's not there but it's not something I discovered. It just seemed to happen.

20 Q. No, that's fine. This is possibly a matter for the Tribunal, but I just happen to notice in the – about the authors and acknowledgements that Mr Lou Chase is Ngāti Pīkiahū and Waewae from the valley is the way that he is described. I just wondered how you dealt with the conflict issue him being involved in the writing of this report? Was there perceived to be one?
25 Perhaps there wasn't.

A. I think it was felt by the local people that it was important to have some involvement in – of them in some you know, well some involvement and some reward if you like of – in terms of monetary reward and not in the – just you know earning your living, doing the job. He was more in a
30 research capacity than in a writing capacity.

Q. That's useful, thank you. The Crown isn't taking any issue with it, I just happen to notice that and thought I should raise it.

A. You know, I mean the benefit is bringing local knowledge to us as researches.

- 5 Q. Does it give an indication that there may be a – no I retract that in regard to something that you answered earlier on. Can I turn to page 120 please? You were talking here about the Rangitīkei Turakina purchase or transaction and you are referring to the intensive negotiations that McLean undertook.
- A. Yes.
- 10 Q. Goes for a little while in terms of the discussions and there's a number of references in a number of different pages. Would you agree that it does seem that McLean undertook significant consultation up and down the coastline in relation to and indeed within the area for the purposes of that negotiation?
- A. Yes, I have absolutely no problems with what McLean was doing. I think it set a standard with the exception of the inland boundary -
- 15 Q. Yes.
1645
- A. – which I think in fact he kind of sorted out, but they were presented with almost a de facto situation, all they could do is sort of diminish the extent of the alienation, they couldn't prevent, they were not really consulted about the alienation per se –
- 20 Q. Right.
- A. – but I think that this was a, you know, a well negotiated purchase and a standard that they fell away from.
- 25 Q. Thank you, thank you. I will probably leave the Rangitīkei-Turakina purchase with that, but I did want to just ask, and I apologise if I am being completely obtuse here, on the very next page you are referring to Te Rauparaha and Te Rangihaeata opposing the building of roads.
- A. Yes.
- 30 Q. I just wondered if you could explain why they would have opposed the building of roads?
- A. Because they saw it as a means of military control by the Crown.
- Q. I see, thank you. We are now into chapter 5 which is the chapter on Crown and iwi – Iwi and Crown 1850-1862. This is the point that my friend Mr Beaumont raised earlier about in McLean's view it was essential that

more land be acquired from Māori to satisfy settler demand and acquired quickly –

A. Yes.

5 Q. – before Māori attained a greater knowledge of its monetary value. I wanted to just ask you whether there was actually any evidence to support that, that he had that view that they needed to move quickly before Māori attained a greater knowledge of the monetary value of the land or is it a myth that has grown out of – amongst historians? Sorry, yes?

10 **UNSPECIFIED SPEAKER: (16:47:11)**

Could we have a page number please?

JACKI COLE TO DR ROBYN ANDERSON: (CONTINUES)

Q. I beg your pardon; did I not say that?

A. No, you did not.

15 Q. 166, sorry.

A. And so did I not footnote that?

Q. So this was something that Mr Beaumont asked you about before, 166.

A. I cannot produce a document out of – yet.

Q. Yes.

20 A. But I am sure I can if you wish.

Q. So it is not just a myth that has grown amongst historians about this, it is actually 'I am going to take your word for it'?

A. Yes, no, I do not think it is a myth.

Q. Okay.

25 A. And it was a widely held – it was widely held.

Q. That they wanted to ensure that or somehow move fast enough that Māori that Māori did not get to appreciate the true value of their land?

A. Yes, because it would just make it much more expensive, so yes.

Q. Thank you.

30 **DCJ FOX:**

I just wondered, Dr Anderson, if you realise that the footnote refers you to the *National Overview* by Professor Allen Ward?

DR ROBYN ANDERSON:

Well I would hope that is what he said there, so...

5 JACKI COLE TO DR ROBYN ANDERSON: (CONTINUES)

Q. If I can turn to page, and I don't have very many more questions, page 248, this is – we have now gone into chapter 6 which is the Featherston's 'purchase'; Rangitīkei-Manawatū.

A. Yes.

10 Q. Page 248 under the heading 'Featherston's negotiations 1863-1865', and it struck me the very first few words that you use in the first sentence under that heading, "There is no doubt that Ngāti Apa became more assertive of their rights in the late 1850s and 1860s," and that just struck me as a very emphatic statement. I question whether your subsequent
15 analysis supports such an emphatic statement that there is no doubt that they became more assertive, and I would like to ask you your view as to whether in the face, they were always assertive, Ngāti Apa were always assertive, but in the face of chiefs such as Nepia Taratoa that assertiveness was quietened somewhat, and it was perhaps after his
20 death that it emerged again?

A. I think that was a factor. I would point out that when Kawana Hunia definitely was assertive all along –

Q. Yes.

1650

25 A. – but he did not actually have the support of his people or the wider Ngāti Apa collective at that point in Rangitīkei-Turakina and he was actually quite upset about that. I do think that the death of Nepia Taratoa did have an impact. It was widely reported at the time that it had kind of – it had thrown things up in the air if you like, and you have to put in the
30 fact I think that Ngāti Apa ended up being – fighting on the side of the Crown and joining the native contingent and being armed and you do see greater assertiveness as a result.

Q. Has any of this material been assessed from that you are aware of from a Ngāti Apa or other iwi view point? I just wonder the extent to which things like this would be accepted by, other than Ngāti Raukawa.

5 A. Well, there are Ngāti Apa reports that have been done in the past that are available, weren't actually available to me, but I know they exist. So, David Armstrong did a –

DR GRANT PHILLIPSON:

10 Can I just comment there, this is before you were Crown counsel, when we were doing judicial conferences, we asked CFRT to file Ngāti Apa's research on our record. CFRT said that Ngāti Apa had to agree to that. Ngāti Apa declined to agree to it, so we do not have that material on our record, but that is why. However, I have noticed it is not in Dr Anderson's footnotes, but Dr Hearn certainly had access to that research and has cited those reports in his footnotes.

15 **JACKI COLE:**

Thank you, Dr Phillipson, that's very useful. I'll leave that there.

DCJ FOX:

Furthermore, they probably use them in the negotiations with you.

JACKI COLE:

20 Not with me Ma'am, but –

DCJ FOX:

Well, with the Crown.

JACKI COLE TO DR ROBYN ANDERSON: (CONTINUES)

25 Q. The point of the question really is the extent to which this has been in any way fact checked I suppose from a Ngāti Apa perspective and clearly, Dr Anderson and Dr Green don't – haven't engaged in that, so I accept that. I'm going to just ask you very generally I suppose, with respect to Dr Hearn's off-cited statement of you know history is all context and

context is, the historical narratives can be different, and do you generally agree with the comments about historical narratives being different from different people from different historians seeing in different ways, reported in different ways?

5 A. To a certain extent I do, but I think that there is basic agreement between us looking at the evidence, but all – I mean we never – I don't think historians are – we look at different things. We bring different perspectives.

Q. Yes.

10 A. Dr Hearn's a geographer and has obviously a great sort of economist grasp. Professor Boast brings a legal – his legal historian's perspective to it, so, we'll all bring slightly different perspectives to the subject matter.

Q. And that was the reason for my very first questions about whether or not you'd reviewed the other reports and whether you had identified anything that was very different, strikingly different in any way from your own, and you've indicated that you didn't, so –

15 A. Well, you know I have to say I didn't go through looking for that. So –

Q. I'm sure Dr Phillipson would have –

A. Yes.

20 Q. I just have one last question and it's in a conclusion page at page 405 under the 7.16 conclusion. Here, you are referring to that – well, you are talking about the litigation and you say, "An astute and ruthless Crown counsel."

A. Yes.

25 Q. One never knows if that is going to end up in a report about one's Crown counsel. You know it's no unusual case. They did send along – the Crown did send along the advocates that they sent along that you've identified. There was former premier William Fox, first chairing for Himatangi hearings. There is James Prendergast then Attorney-General
30 in the second hearing. My question really is, weren't those lawyers just doing their job, and can't the Crown or whoever, any party to litigation, send along whoever they want to send along? Or should it be swayed? Should a different approach be taken because you're dealing with the type of kaupapa that they were dealing with?

A. Well, I think it was very unusual for Crown counsel to be involved in a title case at all.

Q. Right.

1655

5 A. And I think that those comments were particularly directed at Fox who actually had personal attacks on a number of the witnesses and on Hadfield in particular. This – I sort of really also might note about some of the newspaper reports at the time. We think social media is pretty scurrilous, this insight of it is quite a lot of scurrilous comment about various parties, Parakaia in particular but also Hadfield and Williams –

10

Q. Who were all coming from the same view point, so that is understandable.

A. – that they should be attacked personally?

Q. No, no, no. They were obviously all on the particular side of the debate –

15

A. Yes.

Q. – and they were all going to mount this, the same criticism of the Crown in terms of the level of its involvement and the litigation and then more importantly it is the sending along the people that they sent along was what I was picking up on.

20

A. Sorry sending the people along –

Q. The advocates.

A. – oh, the Crown.

Q. I mean, I have no idea how big the Crown Law Office was in 1860 –

A. Yes.

25

Q. – or how many advocates they had at their disposal to send along to these things once the decision had been made to actually actively participate.

A. Yes, but it is that decision to actively participate that is very –

Q. That is the bit you are being critical about.

30

A. – well it is very unusual, but you might – I don't know of any other case, but you might ask Professor Boast to have a very detailed knowledge of these matters, whether he knows of any other case.

Q. That was very helpful. That is the last of my questions, thank you very much and thank you very much for the report.

DCJ FOX:

Thank you, we can continue, I think and finish the day and that allows you both to go home if you need to.

DR ROBYN ANDERSON:

5 Or have a drink – sorry.

DCJ FOX:

Alright, Dr Phillipson.

(4:57) DR GRANT PHILLIPSON TO DR ROBYN ANDERSON:

10 Q. Tēnā kōrua, wonderful report thank you very much. I do have to ask though, what did Dr Green do? Did he write parts of it or?

A. He wrote some pieces but really mostly he wrote on the Horowhenua case and that is why I have taken the responsibility here and I am going to be delighted to hand it over to him in the next days.

15 Q. In the next days, right. Thank you and just while I am finding my way, I just wanted to add that it has been lake and river cases that the Crown has appeared in the Native Land Court and Appellate Court, hot leg contesting the Māori claim. That is the only other sort of instance I can think of where the Crown has done that kind of level of opposition to a Māori claim. Now, I wanted to ask you and if you cannot tell me about
20 this I am sure I will eventually get it from tangata whenua evidence but what can you tell me about the chief, of Wi Hapi? Because Fox – why did Fox call him an interloper?

25 A. I went through an exercise of trying to find out what his hapū affiliation was and actually I did not find it. I am sure somebody can say – he seems to have moved and been amongst those hapū that came down and settled in the upper Rangitīkei, but he does seem to have moved around quite a bit, he was also in Otaki. Other than that, I really don't know that much about him except that he is well-know to be a leading Kīngitanga supporter.

30 Q. Yes, okay thank you. Hopefully I will get that from the claimants and just continuing on with the theme of Wi Hapi, the constant calling of anybody

that disagreed with the purchase Ahauhau, as you pointed out not just by the Crown but also by others. What can you tell us about the arrival of Paimārire in the district and how it was received because that is not really covered in your report. Are you able to tell us anything about that?

5 A. No, I cannot, sorry.

Q. No, so that is something I think we need some research on - but you would have an idea of whether that could be done from the material that you have reviewed?

1700

10 A. Yes it should be able to.

Q. Okay.

A. I would have to think about, Dr Phillipson.

Q. Thank you, and following up on something that Crown Counsel asked you about being able to hear the Māori voice in the –

15 A. Yes.

Q. – documentary record?

A. Yes.

Q. One of the things that struck was the number of partitions written by Māori but also their letter writing campaign –

20 A. Yes.

Q. – in the publication of so many letters from Māori leaders in the Christchurch press as giving us a good insight into, well at least that group was thinking.

A. Yes.

25 Q. And I was wondering if you could answer, why was *The Press* on their side and willing to publish all their material when the *Wellington Newspapers* would not?

A. No I do not know. That is probably a question you might ask Dr Hearn –

Q. Dr Hearn.

30 A. – who has used the Newspapers very extensively. I am presuming it is a South Island, North Island prudential stilt.

Q. Right.

A. But I would defer to Dr Hearn on that matter.

Q. Okay, thank you. A briefly in terms of Rangitīkei/Turakina, are you aware of any Ngāti Raukawa or affiliated groups, communities living north of the Rangitīkei River and if so what happened to them after the purchase?

5 A. No. I thought Poutu was on the north side, but I do not think it was, but they certainly were living pretty close to it. There were people like, I think I mentioned, Paraongi who was actually married to Ngāti Apa woman. There is mention that when that was discussed, one of the rangatira said, we do not have to move our people on to the other side and McLean also says that they picked up the bones of their dead, disinterred them and
10 moved them to the other side. So I am assuming that there might have been some –

Q. Mhm.

A. – but I do not really have more information than that.

15 Q. Okay, thank you. Now I think I can deduce this from your report, but how realistic do you think Featherston’s argument was that only the sale of the land could prevent bloodshed and intertribal war as he called it?

A. No, I do not think that is justified at all. I mean, certainly there was tension, but I do think it was a convenient fiction for Featherston.

20 Q. Right, thank you, and what is your view of Featherston’s claim that the large majority of Ngāti Raukawa as he put it agreed to the Rangitīkei- Manawatū purchase at Te Takapu hui?

A. Well certainly there were, if you look at Ngāti Raukawa as being a collection of individuals. I think the numbers probably favoured Featherston in terms of a majority but there was still a very substantial
25 minority of those who were considered to have rights, and you can see that I think in the amount of money that was set a side for them. So I think it would have been – I would have to check my figures, but it could have been deferred, set a side, that would indicate to me that there was still a very substantial –

30 Q. Right,

A. – group that had not participated.

Q. And of course that is only a stage in the purchase isn’t it?

A. Which one, sorry?

Q. At Takapu?

A. Yes.

Q. Thank you. Why do you think, this puzzles me? Why do you think Featherston just refused point blank the Governments order, really that he should do the reserves before completing the sale?

5 A. I think he thought that it was going to be problematic setting it on the land that it was – if there is some comment, I think that if land was set aside for the land holders that actually it would cause a lot of dismay because it was going to be quite expensive and it would not be accepted by the sellers.

10 1705

Q. Right, and when Featherston talked about his intention to make ample reserves –

A. Yes.

15 Q. – given that it was only about 3,000-acres that he actually made, what do you think he meant by ample?

A. I think he was lying through his teeth.

Q. Oh right. Right, thank you. It occurred to me that it was his philosophy that Māori were dying out –

A. Well, that is possible too.

20 Q. – and that possibly he just did not think that they needed it.

A. That is another interpretation –

Q. Right.

A. – that I would acknowledge.

25 Q. Right. And I am going to put some questions on just points of detail to you in writing, but I did want to ask you, I am just – it is not clear from any of the reports that I have read and maybe I have missed it, on what criteria the Native Land Court reduced the list of 500-names to 62? You said you were correcting 65 to 62, which is – was it because it was the Courts view that only those 62 individuals lived on the land?

30 A. I think so and in amongst those three hapū.

Q. So, that is particular to Himatangi is it?

A. No, to Orua as well I think.

Q. Can I get you to go away and maybe look at that?

A. Yes. Could you put it in writing for me please? Thank you.

Q. I will, I will put that one in writing.

A. I am not – part of our problem is that there actually is not that much – there are not that many – there is not that much record of what was happening especially. Are we talking in the second case?

5 Q. Well, I actually cannot remember now whether it was the first or the second.

A. Put it in writing and I will look at it.

Q. I thought it was the 1869 case, which was all of the other claims except for Himatangi.

10 A. If it is there it is probably in a Newspaper account rather than in the minute books, but we will certainly have another look and see what we can find out.

Q. Okay, thank you. Because it may be the Himatangi one, I cannot recall. Now, you may also want to answer this one in writing but the payment of the 10,000-pounds to Ngāti Raukawa and affiliated groups, did that all take place in bulk? I know the 2,500-pounds was kept back for the non-sellers but was the rest of it paid over in bulk at that hui or did – I am curious as to whether Buller actually paid people when he went around after the hui getting signatures?

20 A. I think it was and I think, because I think I mentioned before I was a little bit puzzled about the question of down payments because that allegation was made or, you know, payments been made to signatories –

Q. Yes, yes.

A. – and I think it might have come off the rents when the rents were distributed.

25 Q. Right, okay. So, it was all paid at that one, in one go?

A. I believe so. That is my understanding anyhow.

Q. Thank you. And just one final question and this is sort of an all-encompassing one. What do you think were the main flaws in – oh no sorry, I have got two. I will ask the smaller first. Buller –

30 A. Yes.

Q. – he was sent away, wasn't he as Resident Magistrate to Wanganui?

A. Yes.

Q. And then brought back again?

A. Yes.

Q. So, in the Crown's – in the documentation from the Crown asking him to return to carry on assisting with this purchase, did it make clear in that documentation in what capacity, or what his role was, or who he was to be accountable to?

5

A. Not that I am aware of, no.

Q. No, okay, thank you. And then the bigger question was, what do you think the main flaws are in Featherston and Buller's conduct of the Rangitīkei-Manawatū purchase?

10 A. Well, I very helpfully – for me, did a question of clarification on my understanding of the Rangitīkei-Manawatū purchase for one of the counsel –

Q. Okay.

A. – which I can read out to you if you wish or do you want me to just –

15 Q. I must admit I have not read that. Does that answer that question of the main flaws?

A. Yes, pretty much.

Q. Right, okay.

1710

20 **DCJ FOX:**

Just give the document referencing.

UNSPECIFIED SPEAKER: (17:10:01)

Page 201.

DCJ FOX:

25 Page 201.

UNSPECIFIED SPEAKER: (17:10:08)

(inaudible 17:10:08 – 17:10:18)

DCJ FOX:

Well, it won't be a very long answer, so she can read it then.

DR GRANT PHILLIPSON TO DR ROBYN ANDERSON: (CONTINUES)

A. All right, in brief, we consider this to have been a deeply flawed purchase contrary to colonial office instructions that vendors should be properly identified willing, fully informed and not permitted to be the authors of injury to themselves. Reserves were supposed to be substantial, accommodating, both traditional practises and future needs enabling the full participation and agriculture and commerce by future generations. This practise was that purchaser should be limited in size, boundaries established and agreed upon and reserves generous and properly identified. None of those standards were met. The exclusion of the block from the Native Land Court jurisdiction on very doubtful grounds gave Featherston the freedom to pursue his purchase without competition. The involvement of the superintendent of the province anxious to promote settlement and solve the provinces financial woes, while pleading ignorance of prior arrangements undertaken by Crown officials was unlikely to result in a fair process as was the participation of a resident magistrate Buller who had been undertaking a surrender of arms from the – from one party in the contest. The threat of confiscation was used to breakdown resistance to the purchase. There was no prior investigation of who the correct owners were and by Buller's own admission, he let anyone sign the deed of sale who wished to do so. Their right to sign was accepted as individuals rather than as a hapū – rather than hapū members who had collectively agreed to the transaction. Featherston and Buller consistently denigrated the non-selling rangatira and the extent of their rights and their following. The collection of signatures was used to pressure non-sellers and into agreement in the purchase as a matter – sorry. And as a matter in which they now had no choice. The retention of rents was also a deliberate tactic designed to propel **(inaudible 17:13:10)** into agreeing to an outright alienation. The Arms threats and actions of Ngāti Apa sellers were at best ignored and at worst, encouraged by Featherston. Allegations of Featherston's complicity were never investigated. There were also uninvestigated allegations of fraud and bribery which cannot now be proved, but which also cannot be discounted. The refusal of those who continued in their opposition was

negated by Featherston's decision to pay out the purchase price with a portion of the money supposedly retained for them for when they should accept that their land was now gone, but for which Featherston took no responsibility. Reserves were negligible and unsurveyed at the time
 5 Native title was gazetted as extinguished. Although the size of reserves was later increased as an act of grace, tenure was transformed and individualised under the Rangitikei-Manawatū and Himatangi Crown Grants Act 1873 and 1877 respectively. Finally, we note that the flaws and the process were compounded by the actions of the Native Land
 10 Court in which the involvement of the Crown as an opponent was accepted, but which failed to examine the legitimacy of its own title.

Q. That's incredibly helpful, thank you, because it is often easy to lose the point over a thousand pages.

A. Or all of it.

15 Q. That is very, very helpful.

A. Kia ora.

Q. Thank you very much and thank you again for your report.

DCJ FOX:

Dr Soutar?

20 **(5:15) DR MONTY SOUTAR TO DR ROBYN ANDERSON:**

Q. Kia ora Dr Anderson.

A. Kia ora.

Q. I do have some questions that I will put in writing and they are – to do with detail, but I did want to thank you. For the report as background to the
 25 other reports, it was very useful to read first.

1715

Q. So, I think we all appreciated that. Kia ora.

DCJ FOX:

30 Ms Simpson.

(5:15) TANIA SIMPSON TO DR ROBYN ANDERSON:

Q. Tēnā koe. Just on the back of the response that – the written response that you have just read out.

A. Yes.

5 Q. And bearing in mind that part of the Project brief was around – one of the questions was did the Crown officers seek to actively undermine the land holding stance of Ngāti Raukawa and Ngāti Kauwhata and the others. You – Dr Hearn sort of stopped short of using the word, fraud, in terms of the activities that he identified that might have undermined the sales. Do
10 you consider that it's fraudulent activity?

A. I think allegations of fraud are often quite specific that signatures were attached, that were false or that people had been paid that should not have been – been bribed I presume – let us put it. Sorry I will start again. They had been bribed to attach their signatures. So, I tend to think of
15 fraud like that. In the bigger picture it is fraudulent. I think it comes close to meeting that. In that there was no investigation of who had rights until it was too late, and I noticed for example in later discussions before or debates, Wi Parata said, "If this had been properly investigated, Ngāti Toa would not have been paid. Te Atiawa would not have been paid." So
20 there were all sorts of people who were paid that actually had – who's rights were not – were not established and who's rights were pretty tenuous as opposed to people who were resident on the block and who were trying to hold onto it and who were side-lined as a result of this process and confined to quite narrow and quite insubstantial areas of
25 land.

DCJ FOX:

That is helpful. Thank you I will just leave it there, thank you.

30 DR ROBYN ANDERSON:

Kia ora.

(5:17) DCJ FOX TO DR ROBYN ANDERSON:

5 Q. Can I follow on from that question and ask, how does your answer then about what Wi Parata stated regarding Ngāti Toa and Te Atiawa, Ngāti Awa square with the notion that if people claim title via conquest and then occupation that those who assisted with the conquest have some form of residual right?

10 A. I was thinking mostly within that Ngāti Raukawa collective going up and I think it is a matter of debate as to how certainly at the beginning and to the south there was a lot of acknowledgement of Te Rauparaha's importance as a leading and highly respected rangatira. But really the domination of that district I think was a batter on Ngāti Raukawa collective and the numbers that they brought on to the land.

Q. Right. So, it is not your evidence that Ngāti Toa, Te Atiawa should be – should have been consulted with regard to the Rangitīkei-

15 Q. Manawatū Block?

A. If it had been conducted in a different way where everybody was brought within the territory to discuss it first, then I think that would have been much better than what happened and in fact that is what happened in Rangitīkei-Turakina. Everybody with the exception of some of the important inland chiefs, were brought together. They discussed it over 20 three days. They came to a consensus and a general sort of territorial division was agreed to, but that didn't happen in this particular instance.

1720

Q. All right, thank you. So my second question was about Major Kemp.

25 A. Yes.

Q. Did he sign the deed? I have not seen any reference to him in your –

A. I think yes, he did, yes.

Q. And so Major Kemp signs the deed.

A. Yes.

30 Q. He is a very strong figure in both the Whanganui iwi and in Muaupoko?

A. Yes.

Q. And 800 people from Whanganui are signing this deed –

A. Yes.

Q. – allegedly, we still have to go through the names, but it would make sense logically that some of them would have been Muaupoko?

A. I expect that there were some, yes.

5 Q. Given that he was based in Whanganui and in fact he and his father departed Horowhenua at the time of the heke.

A. Yes.

Q. Well, a number of heke, and went to Pūtiki?

A. And sorry, are you asking me a question?

10 Q. Pūtiki in Whanganui. So the question is that they would not have gone alone I do not expect?

A. No, what, Whanganui?

Q. The Muaupoko people who departed from this district to go to Whanganui –

A. Yes.

15 Q. – as a – well, departed Horowhenua to go further north.

A. Yes.

Q. So it is possible, isn't it, that some of those 800 were Muaupoko?

A. It is possible, but I could not swear to it without looking at each individual signature.

20 Q. Do you think we should be conscious of that and take that into account?

A. I am not aware of Muaupoko living on that land before the arrival of Ngāti Raukawa, but I would leave that, I would rather leave that to people who have far stronger understanding of the tribal narratives.

25 Q. Thank you, and do you accept that there were obviously kāinga of Ngāti Apa in the Manawatū-Rangitīkei area both on the Rangitīkei River itself on the southern side of the river?

A. Yes, as did Ngāti Raukawa chiefs of the time.

Q. That is right. All right, thank you, that is all my questions are.

DCJ FOX:

30 Is there a follow up? Any re-examination?

PHILLIP CORNEGE:

Yes, Your Honour, there are two matters. The first –

DCJ FOX:

Actually, before you start, any other counsel? Thank you.

(5:23) PHILLIP CORNEGE TO DR ROBYN ANDERSON:

5 Q. The first is just a minor point but it relates to the map that my friend
Ms Linstead-Panoho put to you and it is to tract from the question she
asked but I understand that that map which is plate 10 in – it's the first
map in plate 10 in the map book and this might be a question for
Dr **(inaudible 17:23:19)** in fact, is not in fact part of your report even
10 though it has found its way into the map book, it wouldn't be as part of
your report, are you able to confirm that?

A. I didn't pay much attention actually. It might be from Dr Husband's report.

Q. Okay, very good. So it may be – but the question was asked, I think the
answer is probably a fair one.

A. Right.

15 Q. And finally, it's really just to deal with the point that my friend from the
Crown was making which is to say that, and I don't mean to put this
colloquially, well I'm paraphrasing, but essentially you were asked
whether you had, and you clearly haven't, fact-checked this from a
Ngāti Apa perspective in the sense of giving it to – I mean, obviously you
20 haven't given it to Ngāti Apa and asked them to comment on your report
which is not something one would expect you to do, but it is true that in
preparing your report you did in fact have access to a quantity of material
which did explain the Ngāti Apa perspective, in particular the material
arising out of the 1868 and 1869 Land Court cases where there was
25 obviously the minute books and the widespread reporting which recorded
the Ngāti Apa perspective in quite a lot of detail?

A. Yes, both that and the meetings that were held by Featherston where I
have cited Ngāti Apa discussion where – I mean, it is a balance, isn't it.
This is a report for Ngāti Raukawa and I feel that I have been, I have tried
30 to be fair in my presentation but obviously I am going to spend more time
talking about Ngāti Raukawa and Ngāti Kauwhata and the affiliated hapū,
I mean, for example, Rangitāne also have interest and you note them, but

I didn't considerate it to be my job to actually explicate their case in particular –

1725

5 Q. Yes, and we have heard evidence from Dr Hearn earlier that unlike Ngāti Raukawa who were capable – sorry, capable with each language, wrote a lot of letters, we have a lot of material recording the Raukawa perspective, independent of those cases. There is no equivalent material that he was aware of from Ngāti Apa is that also your understanding but there is nothing out there you could have been referring to –

10 A. What, like the letter campaign –

Q. – yes.

A. – and the petitions and what have you. No, I think understandably they were relatively satisfied with what had happened and I am not sure, but I think if there is discussion or complaint or petitions from Ngāti Apa it is more to do with their relationship to the north and with the Rangitīkei Turakina Block and the reserves and the loss of those.

15 Q. Thank you I don't have any further questions.

DONNA HALL:

And I have a waiata. I really like doing the waiata for this.

20

WAIATA (PŌKAREKARE ANA)

DCJ FOX:

Well thank you so much Dr Anderson, Dr Green, we look forward to listening to you in the next presentation when we deal with the southern blocks or progress to the southern end of the district. Thank you both and you are released, you may go home. Thank you. Thank you all for being patient and waiting until the end of the day with us today, it has been a fascinating day from the historical point of view and we look forward to another day tomorrow. Professor Boast is coming in the morning. Who is leading him? Have you spoken to him yet?

30 **UNSPECIFIED SPEAKER: (17:28)**

No, I have not spoken to him.

DCJ FOX:

And Mr Lewis, are you assisting again? No. Is there any matter that counsel wish to raise before we close the day? No. In that case I will give the floor to our tangata whenua.

5

MIHI (AWHINA TWOMEY)

HOUSEKEEPING (AWHINA TWOMEY)

10 **MIHI (KAUMATUA)**

KARAKIA WHAKAMUTUNGA (KAUMĀTUA)

HEARING ADJOURNS: 5.32 PM

HEARING RESUMES ON WEDNESDAY 11 MARCH 2020 AT 9.02 AM**MIHI (KAUMĀTUA)****5 KARAKIA TĪMATANGA (KAUMĀTUA)****HĪMENE****HOUSEKEEPING (AWHINA TWOMEY)**

10

(09:09) DEPUTY CHIEF JUDGE FOX: (MIHI)

Tēnā koutou. Nau mai hoki mai ki te rā tuatoru o tēnei nohonga o te Taraipiunara. E mihi kau ana au ki ngā tama nā rātou anō te mahi hōnore ki te Atua, tēnei te mihi atu ki a koutou, koutou kei te toe kei muri i ngā rōia, tēnā koutou.

15

[Interpreter: Welcome back to day 3 of our hearing. Again, I wish to express my gratitude to our students and certainly honouring in prayer and waiata. Again, to all our counsel present.]

20

Ms Hall, you have something to announce?

DONNA HALL:

Good morning, Ma'am. Yes, I do. I have to report some lost property. Dr Boast is going to be a little delayed getting here. We were not given notice until last night and by email and it was clear this morning during breakfast. So, I do need to report that he is not here to start at this time. I have a suggestion for your consideration but the first one was his good friend Dr Gilling was going to see if he could get him by phone to see how far away he is, any luck? Get on your cell friend because I have been trying and have not had too much luck.

25

30

Another option I put before you is that perhaps our very able and good-looking friend over there from Te Mata Law might read the paper and I do think that on

this occasion we will agree with your neutrality and we put that to you as an option, Ma'am.

DCJ FOX:

I think that option is entirely suitable, and we can get Ms – Professor Boast QC
5 to affirm the content of his summary at the time he arrives, and you will do that
won't you Mr Lewis?

JAMES LEWIS:

Yes, Ma'am.

DONNA HALL:

10 I tell you what, I had heard Richard was looking really good but wow, come on
up.

JACKI COLE:

Your Honour?

DR BRYAN GILLING:

15 Ma'am, excuse me?

DCJ FOX:

For the record, I understand that Ms Cole you had no objection to that?

JACKI COLE:

None at all.

20 **DCJ FOX:**

Thank you.

DR BRYAN GILLING:

Ma'am, I have an update I didn't even – I had muted my phone. I have a text
in fact from Ms Edmonds who is of course Professor Boast's driver, "Stuck on
25 a rail crossing closure in Feilding. We will be 5 or 10 minutes." So, not another
hour.

DCJ FOX:

I see.

DR BRYAN GILLING:

Yes.

5 **DCJ FOX:**

Well, that puts a new complexion on things, doesn't it? Are there any – well, we may as well wait for him if he is only five minutes away. Are there any other matters that the Tribunal needs to deal with while we have got this opportunity? Any of the lawyers want to raise any matters? Ms Martinez?

10

(09:12) EMILY MARTINEZ: (APPEARANCE)

Yes, Your Honour. Just want to record an appearance, my colleague Mr Chong.

DCJ FOX:

15 Mr Chong.

EMILY MARTINEZ:

He's appearing alongside me today, we are appearing again for the same claims as outlined on Monday.

DCJ FOX:

20 Welcome.

EMILY MARTINEZ:

He will be here for the cross-examination of Dr Boast – Professor Boast rather and we'd seek leave for him to –

DCJ FOX:

25 Professor Boast QC.

EMILY MARTINEZ:

QC rather, my apologise. We seek leave for him to withdraw at the close of today as well.

DCJ FOX:

Thanks.

5 **EMILY MARTINEZ:**

Kia ora, thank you.

DCJ FOX:

Yes. Dr Bryan?

DR BRYAN GILLING:

10 And Ma'am, just as a matter of the timetable, in the batting order for cross-examination this was the one time when Woodward Law was not leading the cross and so I, with my 45 minutes have somehow ended up at the bottom of the order and with your leave and nobody else's objections I would like to go at the top?

15 **DCJ FOX:**

All right. Mr Cornege or Mr Rogers who – So when – do you go after Dr Gilling?

PHILLIP CORNEGE:

We are not – Mr Rogers was going to cross-examine **(Mic off 09:13:36 – 09:13:39)**.

20 **DCJ FOX:**

Okay, thank you. And what about Mr Lambert, he is not here so who from –

CORAL LINSTEAD-PANOHO:

No, Ms Linstead-Panoho, Ma'am and –

DCJ FOX:

25 Ms Panoho are you going to be –

CORAL LINSTEAD-PANOHO:

Panoho.

DCJ FOX:

5 Panoho, sorry. Must get my pronunciation right. Are you going to be leading all week? Cross-examining all week?

CORAL LINSTEAD-PANOHO:

No, Your Honour. I was going to seek leave to withdraw at the lunch adjournment today. Mr Lambert will be joining at that time and remaining for the week.

10 **DCJ FOX:**

All right. Okay.

CORAL LINSTEAD-PANOHO:

In terms of the timetable, I think I'm allocated 15 minutes today –

DCJ FOX:

15 Correct.

CORAL LINSTEAD-PANOHO:

– But I actually will only need about five minutes. I only had one question to put to Professor Boast QC.

DCJ FOX:

20 All right, thank you. Okay. Is that because –

CORAL LINSTEAD-PANOHO:

Just upon for the reflection of the report, Your Honour.

DCJ FOX:

25 Did you not read it before you did the assessment of how much time we needed?

CORAL LINSTEAD-PANOHO:

No, yes, I did, Your Honour but I just reading through again last night I don't believe that I will need that time.

DCJ FOX:

5 Okay.

CORAL LINSTEAD-PANOHO:

I just have –

DCJ FOX:

10 All right. Well, as I said in my direction counsel can you please weigh up in advance how much time you need given that...

CORAL LINSTEAD-PANOHO:

Yes, absolutely Your Honour.

DCJ FOX:

15 Luckily, we are not under any more time constraints, we have got all afternoon by the look of it, but in the future just keep that in mind, thank you.

CORAL LINSTEAD-PANOHO:

Yes, absolutely.

DCJ FOX:

No one else got anything to say?

20 0915

JACKI COLE:

25 Your Honour, given we have got some time, I was actually going to make a suggestion that at some point, given the timetable and the fact that we do appear to have some spare time, that perhaps it would be useful to spend some of that time given how many claimant counsel are present and accepting that not everybody is here, that perhaps we have a judicial conference just to talk about some planning matters for the further weeks. I am conscious that there

has been a date in May, a week in May indicated as being where the Tribunal is available, I don't think that has been set down in a memorandum locking it in, and I wondered if we could have a talk about the other date, the other periods, because I think the Tribunal may have a sense of when those hearing weeks might be, just to build a bit more structure around where we're headed with the inquiry over the course of the next, let's say, six months or so?

DCJ FOX:

I would prefer not to do that because the reasons why we have not announced those weeks are internal and I am not sure that we would gain anything from having anything discussed off the cuff. I would rather have it in writing.

JACKI COLE:

Fine. If there isn't any certainty within the Tribunal as to when the hearing weeks are going to be then I accept that. Obviously for all of us in terms of planning, we need to get some certainty around those days because they are chunks of time and more importantly there is going to be a significant amount of evidence obviously, and if we have got maybe a two-month period in between each hearing week it is a lot of work to do amongst all of our other work and same with the panel members of course. So the more notice we can get, you appreciate all of this –

DCJ FOX:

Yes.

JACKI COLE:

– the more helpful it will be. I'm also conscious that things like the Housing Kaupapa Inquiry are really starting to ramp up now. It's going to be taking a lot of time for a lot of us, so...

DCJ FOX:

Yes, I am aware of everybody's time constraints including ours, yes. So, as I say, I do not think we would get any further by talking about them without dealing first with the internal issues that have to be dealt with internally.

JACKI COLE:

And I trust that the Tribunal will announce the dates as soon as they are available.

DCJ FOX:

5 We will, yes, you can guarantee that.

JACKI COLE:

Thank you.

DCJ FOX:

10 You can rest assured and I can guarantee that. All right. Any other points anybody wishes to make? No? In that case shall I stand this down? Yes, I am going to stand this down for 10 minutes.

HEARING ADJOURNS: 9.17 AM

HEARING RESUMES: 9.29 AM

DCJ FOX:

15 Morena Professor Boast QC.

PROFESSOR RICHARD PETER BOAST QC:

(mic off 09:29:18)

DCJ FOX:

20 Welcome and we are glad to see you here. We were about to give Mr Lewis the opportunity to read your brief. So I am glad you made it.

PROFESSOR RICHARD BOAST QC:

(mic off 09:20:30)

DCJ FOX:

No that is all very good. I understand Mr Cornege is going to be leading you this morning. Welcome, we are looking forward to hearing from you this morning. So let's begin.

5 **(09:30) PHILLIP CORNEGE: (CALLING WITNESS)**

Professor Boast, may you turn the microphone on. I do not think it is currently on. Now it is off again. I think you have turned it off again, now it is on. Very good. It does seem to have a mind of its own, that microphone. Yes, I see, yes.

10 **(09:30) PHILLIP CORNEGE TO PROFESSOR RICHARD PETER BOAST**

QC: (SWORN)

Q. Your full name is Richard Peter Boast?

A. Yes.

Q. You are a Professor of Law?

15 A. Yes.

Q. And you are one of her Majesty's counsel learned in the Law?

A. So I believe.

Q. You have prepared a report dated 5th of December 2018 entitled *Ngāti Raukawa Custom, Colonisation and the Crown 1820-1900?*

20 A. Correct.

Q. And you have also prepared a summary of your evidence which was dated, Your Honour, about 10th of February 2020.

A. Correct, yes.

Q. Would you be please present a summary of your evidence?

25 **PROFESSOR RICHARD BOAST QC:**

Thank you. I am not quite sure what the practice has been in this inquiry, Ma'am. I guess I will simply read the brief, but we will skip over certain parts of it and might just comment on one or two aspects of it as I go through. I understand that time is short, so without any further introductory ado.

30 **DCJ FOX:**

It is not as short as you might think Professor Boast. You can actually take your time.

(09:31) PROFESSOR RICHARD PETER BOAST QC: (#A215(B))

5 Thank you, Ma'am. That does not happen very often in this process. Well then, I will just read the brief in that case and starting with the introduction, I will skip over the first paragraph there. Moving on to paragraph 1.2.

EVIDENCE SUMMARY #A215(B)

10 So yes, my report is dated the 5th of December, it took me about three years to write, and it was written at the personal invitation of the late and great Iwikatea Nicholson and Ngawini Kuiti, with both of whom I had a long personal and professional relationship going back for about 20 years. I should explain too this was not the first report I have written for Ngāti Raukawa. I had earlier written a report for Ngāti Raukawa (ki Waikato-Maungatautari) to support the negotiations with the Crown, and need to disclose that I did act as counsel for 15 the northern sections of Ngāti Raukawa in the Waitangi Tribunal's Rohe Pōtae Inquiry, and also for Ngāti Raukawa in the north for other Tribunal urgency cases heard at Rotorua, and as I go into a remark here I have also had a long association with Ngāti Toa Rangatira who gave evidenced earlier this week, I think, and with Ngāti Toa in particular in the Wellington Tenth's and 20 Northern South Inquiries. That of course was something Mr Nicholson and Ngawini Kuiti were very well aware of because of their own close association with Ngāti Toa, and I was also involved in the drafting of the Historic Account in Ngāti Toa's deed of settlement. I mention all of this because, only because of 25 the work that has gone into this report drew on that earlier engagement for Ngāti Raukawa and for Ngāti Toa.

0925

30 Paragraph 1.3. My report is a long document, too long of 688 pages of text. I want to explain a bit more about the supplementary volume. So, the second volume is a volume of appendices. That was compiled by myself with the assistance of my son, Alex, who is not here today, he lives in New Caledonia with his French wife and we have a new mokopuna. But they are staying with

us now for my daughter's wedding at the end of this week, so this is a very nice week for me.

5 Now, that supplementary volume contains a lot of extracts from the newspapers and in case anyone is wondering why that is so, my report is principally about the key Native Land Court cases in which Ngāti Raukawa were involved. The principal source that historians use to reconstruct Native Land Court hearings are of course the minute books of the Native Land Court, the manuscript record kept by the clerks of the Court, which have over the years created a vast
10 resource and have been drawn on by expert ethno-historians, such as Angela Ballara. Some historians have wondered, however, whether the minute book record is actually a complete record of everything that was said and done at the hearings and it has turned out that they often are not.

15 What we did for this project, my son, Alex, we compared very closely records of evidence given in the newspapers of the day compared with what is written in the minute books and it does turn out, and this is certainly the case with some of the most important cases for Ngāti Raukawa, as it happens that the minute book record has huge gaps.

20

We are very fortunate with the Himatangi case in particular, that there is a very, very full record of the evidence given in the daily newspapers. Compiling this was a very long project, it quickly became apparent that very important parts of the minute book record – I should, sorry – very important parts of the actual
25 Court process are not in the minute books. For example, opening addresses of counsel in submissions are not. It is only possible to find those by going to the newspapers.

Fox, who was counsel for the Crown in the Himatangi case, gave very lengthy
30 opening and closing addresses which the minute books do not record. Also, the newspaper record is much fuller, much easier to follow and often what has come down to us in the Court minute books is very garbled, unreliable, and it has – all of us who have had to work on the minute books will know is in indecipherable handwriting half the time.

So, Alex and I felt quite proud of ourselves with this discovery that this major source that ethno-historians rely on so much cannot always be trusted as a full record of what was said. Hence the other volume, we thought it might be useful
5 for everybody to get the fullest possible record of the Himatangi case in particular, that one being so important. And if you are looking for any particular highlight to look at, may I suggest you do read Fox's opening and closing addresses, they are somewhat brutal. He was a very good barrister. They are witheringly funny in a very unkind and cruel way about the Ngāti Raukawa case
10 and especially their counsel Mr Williams who wasn't a lawyer before.

0940

While commenting on the sources of my report, I should also point out that the minute book record has to be used with great care because of the way that it's written. The evidence is recorded as a continuous narrative and it is not often
15 clear that what you in fact are getting in the record is cross-examination. The questions are not written down. You just get a continuous narrative as if the witness was speaking from the stand, but of course that is not the case, just the questions are noted down. I also think this is the case with evidence in chief in the minute books too, that if the historians tend to rely on this and quote this as
20 if it's a narrative given on the witness stand, but in fact it can't be and it's not.

The very long narratives given, for example, in the Himatangi case by such witnesses as Matene Te Whiwhi are in fact responses to questions, and once you start looking at that closely that becomes very clear. All right, enough of
25 the methodological stuff, very intriguing to historians, not necessarily to anybody else.

Now, of course this hearing is concerned with lands in which Ngāti Raukawa have customary interests to the north of the Manawatū River. Without wanting
30 to labour the point, the north-south distinction had not become established at the time that the research reports were commissioned and so my report isn't structured in that way. It wonders about north and south as of course so do the other commissioned technical research reports. I don't really want to dwell on that, only to make the point that Ngāti Raukawa's history can only be seen

holistically rather than by an arbitrary dividing line based on land blocks in the river boundary. We have had to have that division for practical management purposes, but in terms of the history it did not really signify. I do not get any sense that the Manawatū River was a customary boundary or a political boundary of any significance in the early 19th century, a period I am principally concerned with.

Another general thing I would say about the report, a lot of it is concerned with cases very far to the north, in fact in the Waikato. When preparing the report I did ask the claimant community whether they would like me to look at the earlier case law and Waitangi – sorry, Native Land Court cases affecting Ngāti Raukawa in the Waikato and the answer was, well my suggestion at that point was I felt probably I ought to because those cases have a lot of detail about Ngāti Raukawa history, they say a lot about the Land Court. But the cases in this region and those in the Waikato interlock. Anyway, I was asked, yes please I would consider that, and so I did.

These Waikato cases mainly relate to the region called Maungatautari. Maungatautari does not simply mean the Waikato. Mountain, the mountain visible to people from Tokoroa where I am from, Ngāti Raukawa's other capital. But Maungatautari as used in customary sources does not simply mean the mountain, it means a large region around the mountain, the area south of the Waikato around about Arapuni, Cambridge, all that large area, the area where Ngāti Kauwhata, Ngāti Whakareta, Ngāti Raukawa lived side by side and are from when they migrated to this region. The amount of case law in that area is simply staggering.

0945

There is a colossal amount of detail in those Waikato cases about Ngāti Raukawa's history, of course, principally in the Waikato but also about their migrations. I'm roughly hovering around paragraph 2.2 I guess. So, to summarise Ngāti Kauwhata and Ngāti Raukawa, Whakareta, all the other groups when explaining where they're from. They all said, "Maungatautari."

Still hovering around paragraph 2.2. There's another general point that needs to be made, which is this, that Ngāti Kauwhata and Ngāti Raukawa had a problem with the Maungatautari cases because the Native Land Court cases relating to Ngāti Kauwhata and Ngāti Raukawa were going on at the same time as the Rangitīkei-Manawatū cases, Horowhenua and others in this region. Both groups had to maintain a presence in these two regions where the Court was sitting. That caused practical problems for both groups, Ngāti Kauwhata for instance actually confronted with two cases affected them going on in different parts of the country, the Himatangi case and an investigation into Maungatautari. Ask the Government which one should they go to. They were told, "Well, go to the one in this region and we'll deal with the after effects of the Courts, Maungatautari decision later," which they did.

This led to endless difficulties with Ngāti Kauwhata and the same thing is true for Raukawa being able to assert their interests in Maungatautari. Large part of my report is concerned with that. the numerous petitions and long struggles that had to take place with respect to Maungatautari.

That's another reason why my report does stray all over the place in that it's concerned with north and south of the Manawatū, but it's also concerned with the Waikato to some degree. I realise this Tribunal isn't looking at particular issues relating to the Waikato Region, but you can't really understand Ngāti Raukawa and Ngāti Kauwhata history by looking at either region in salutation and we have this situation today where the hapū were both of those iwi, maintained interest, north and south.

0950

So, coming back to the end of paragraph .2.2 I just got a quote from my report, "Dear," page 17 of the report just read that out.

"It is my understanding that it is a strong preference of the PkM claimants that every endeavour be made to narrate their history in an integrated way. This here has been put to me very clearly at a number of meetings via the feedback I received from the Crown Forest Rental Trust."

And as I note, my report was designed and structured in a way it was in an effort to meet the wishes of the claimant community as best I could and to do that completely would be a lifetime's work.

5 The sheer volume of Land Court material relating to the history of Ngāti Raukawa affiliates in – perhaps I should say here, because instead of me every time I say, “Ngāti Raukawa,” then also having to add Ngāti Kauwhata, Ngāti Whakaterere et cetera, it's a bit of a mouthful, I will simply be using Ngāti Raukawa in a general holistic sense with all of those groups in mind
10 because it's my view that their historical experience, at least in terms of the Native Land Court is basically the same. I know the whakapapa traditions are different and the migration narratives are different to a certain degree.

All right, moving along. Paragraph 2.4 let's skip over 2.3. In terms of my brief
15 of evidence, I note here, “I have done my best to orient this brief of evidence according to the division of the inquiry district respectively into two sub-districts.”

Parts of my report which relate most to that part of the inquiry district north of
20 the Manawatū River, these are chapter 9 that deals with the Himatangi case. Chapter 10, Rangitīkei-Manawatū case. Two cases – those two cases are often bracketed together but they are in fact distinct. Chapter 12 deals with Aorangi and Ngāti Kauwhata. Chapter 19 is about Te Reureu. Te Reureu is a key block. Finally there is chapter 20 including remarks. But then I go on in that
25 paragraph with the point I've just made now about the Waikato Region, no need to traverse that again.

Paragraph 2.5. May help if I also clarify for the Tribunal which parts of my report do not focus on the northern part of the inquiry district, and these are chapter
30 11 that deals with Kāpiti Island and Ngāti Whakaterere, who have interest there. And also, those chapters dealing with the pivotal Kukutauaki and Horowhenua Blocks. Of course, we have another hearing for that.

There was also the, I included in my report, the Himatangi Tūwhakatupua case chapter 21. Here we have a block which, or a case which is actually, it is on both side of the river. That case was actually about when you have a Māori Land Court block on each side of the river. Does the Māori Land Court title go to the mid-line of the river or not? This is an unknown case. It is the fullest discussion I've found in the Native Land Court about that very point, so I – having had a long association in my lifetime with riverbeds, foreshore and such things, I thought I would stick that in my report as well. I hope everybody finds it interesting. There's also some general stuff in my report about, which relate to Ngāti Raukawa issues in the Native Land Court generally.

0955

Okay, 2.6. I note in the Tribunal directions of 3rd of February that the history of– it is observed that the history of land alienation north and south of the river is markedly different, and I feel I should comment on that. This is in my view correct in a general sense. However with some qualifications because in fact there were both Crown purchases and Native Land Court purchases north and south. So, in fact the inquiry does not really neatly divide into a Crown purchasing north and the Native Land Court south. You get both processes in play, both north and south of the river.

20

Also as I go on to note, I went in my report to explore the – went on in my report to close interconnections between Rangitīkei-Manawatū and Himatangi Court cases and the Rangitīkei-Manawatū Crown Purchase.

My report is essentially about the Native Land Court. That is what I was asked to consider. The point herein is distinguishing between a Land Court South and a Crown purchasing north is in fact that the Native Land Court cases on the north side of the river are inextricably linked to the Rangitīkei-Manawatū Crown purchase. The Court process and the actual purchasing process are co-mingled. They are in fact a single process.

30

It follows that the Himatangi case and the Rangitīkei-Manawatū are actually not ordinary or simple investigations of title by the Native Land Court that had carried out routinely everywhere.

Our special cases operating under a particular jurisdiction that was defined by statute and arose in the context of the purchase.

5 I say here, “The Himatangi and Rangitīkei-Manawatū cases cannot be understood without the context of the Rangitīkei-Manawatū Block purchase and the converse is no less true: the purchase and the fixing of the reserves make no sense without an understanding of the Court processes.”

10 Skipping over the next couple of sentences, “The Tribunal directions do mention the Rangitīkei-Manawatū Reserve Blocks.” These are important. I think it is fair to say that not everyone who lives in the Manawatū Region is aware that there are Māori reserve blocks dotted all over the place in the Manawatū Region. I didn’t know that. I talked about this with my wife Debra who has gone
15 shopping for a wedding present, Fielding, but she is actually from Palmerston, and the Pākehā community in Palmerston, there is no awareness of this, but these reserves arose in two ways, and this goes back to my general point about the inter-relationship between Crown purchasing and the Land Court.

1000

20 Some of these reserves were set aside as a part of the Crown purchasing process by McLean who was called in to pour oil on troubled waters given resistance to surveys and the general commotion that happened in the Manawatū as a result of the Rangitīkei-Manawatū Block surveys. Calm things down, he agreed with Māori rangatira for reserves to be established of varying
25 sizes scattered hither and yon of which the largest and most important of those reserves was Te Reureu. But some of the reserves were also created by the Land Court.

The Court in the Himatangi case and the Rangitīkei-Manawatū case made their
30 judgements with certain qualifications and to find reserves.

There is Himatangi itself which is a kind of quasi reserve too. So, the overall point here is then that is going back to the interconnection, goes back to the interconnection between the Court process and the Crown purchasing process.

Both of those processes resulted in the creation of the reserve blocks north of the river.

As to Crown purchases, of course there are Crown purchases south of the river.

5 The biggest and most important of those was the Porirua Block purchase of 1847. That purchase was inquired into in the Wellington-Thames Inquiry. It had very significant implications for Ngāti Toa. I will not go into the history of that transaction here now. It is safe to note that the Crown pushed that through while Te Rauparaha was being held in the Crown's custody in Auckland and at
10 the same time, Te Rangihaeata of Ngāti Toa was in exile living with his Ngāti Raukawa relatives at Poroutawhao, so the chiefly leadership of Ngāti Toa was absent at the time of that transaction. Very problematic indeed. Probably does have some implications for Ngāti Raukawa as well, given to and the hope nobody will mind if I say that the Ngāti Toa, Ngāti Raukawa boundary is a bit
15 permeable in some ways.

Paragraph 2.7, "To repeat, it is not a case of Crown purchasing," – what I mean by that, and sort of think I've garbled that sentence but not a case of simply of Crown purchasing north of the Native Land Court southward. It is rather a case
20 of everything going on north and south and there are of course major Native Land Court cases affecting Ngāti Raukawa to the south of the river too, Horowhenua, Kuketauaki and to the north Himatangi, Rangitīkei-Manawatū, Te Reureu, Crown Purchases south of the river, Porirua Deed 1847, Wainui purchase, and to the north, Rangitīkei Turakina purchase 1848-9. That
25 purchase which was a bit earlier than the Manawatū Rangitīkei purchase was considered by this Tribunal in its Whanganui Inquiry.

1005

The Te Awahou purchase 1858, Te Ahuaturanga and others, and of course Rangitīkei-Manawatū. So it is much messier than I – two different types of
30 Crown actions north and south of the river.

All right, heading 3, 'Structure and Content of the Report'. "To put it briefly, my report is about the effects of the Native Land Court (and other judicial bodies)." What other judicial bodies? Well as I note in the footnote, my report was not

concerned with *only* the Native Land Court (by which we must include the Appellate Court) but also look at the ordinary courts (Ngāti Raukawa were involved in many Supreme Court and Court of Appeal cases indeed in the 19th century), in ordinary litigation. Particularly in the case of Horowhenua, but
5 not only that. We also have special purpose judicial bodies that I do look at. Most important of those was the Ngāti Kauwhata Commission of 1881. That was a special commission of inquiry set up to look at Ngāti Kauwhata claims to Maungatautari. They were unsuccessful. There is also the Validation Court, a particularly problematic body set up in the 1890s to validate titles to contested
10 Māori land blocks. A few cases did take place in that Court which is usually regarded as principally only of significance in the Gisborne region, but actually there are some cases in this region that the Validation Court heard which relate to Ngāti Raukawa.

15 All right. So the Court and other bodies on Ngāti Raukawa, its affiliates, et cetera. But that is not all as to what my report is about. To a large extent, it is also about the pre-1840 history of Ngāti Raukawa both in the Waikato and in this region. So it is a bit of a critique of the Native Land Court, but it is also in ethnohistory based on the Native Land Court records. To do that, to write a
20 ethnohistory of Ngāti Raukawa in the 19th century in the Waikato and this region, one is a conceptual problem, you have to rely on the very institution you are most critical of. I am not the only historian who has been confronted with that. Angela Ballara in her numerous books and articles who has written books about Māori iwi and hapū structure and about warfare, the so-called
25 Musket Wars period, she admits there the problems that are encountered in writing history, having to rely on the Native Land Court which is the very institution you are criticising, so you have to kind of keep both camps up in the air, which I have had to do with my report. That is a bit of an issue.

1010

30 What else? Paragraph 3.2, I think I have traversed all that, why the need for an appendix volume. So I don't think need to repeat myself there.

How about we move on to 4, 'General history of Ngāti Raukawa and Ngāti Kauwhata'.

Paragraph 4.1, “Much of my report is concerned about the pre-1840 history of Ngāti Raukawa and Ngāti Kauwhata before 1840,” obviously, “focussing in particular on the conflicts in the Waikato and the migrations to the Kāpiti Region in or around the 1820s.”

Point of terminology, Māori sources invariably refer to Kāpiti to describe this region. They do not simply mean the island. They just mean I guess what we might call in terms you know cricketing sides, central districts, Lower North Island and to some extent the north of the South Island too. It’s all Kāpiti. You will often see say in the Waikato sources where Ngāti Kauwhata witnesses in a Court case say that was before the migration to Kāpiti down here.

Migrations principally took place in the decade of the 1820s. Chapter 4 of the report is focused on events in the Waikato and on the migrations of Ngāti Toa, Ngāti Raukawa and other groups from the Waikato and north Taranaki to the Porirua ki Manawatū Region, while chapter 5 of my report, Ngāti Raukawa and the Porirua ki Manawatū Region, circa 1830 or 1850s, deals with events and tensions in the Porirua ki Manawatū Region itself. That is there are the migrations, that’s one part of the traditional history and then is the history of how the migrating groups got along or rather in reality did not get along in the PkM Region from about 1830-1850.

That chapter considers the Ngāti Raukawa and Muaūpoko and “The kindness of Whatanui”, as it was referred to, to Whatanui and Taueki’s boundary. This is of importance at Horowhenua and I need not elaborate here. They also deal with the conflicts between Ngāti Raukawa and Whanganui in the 1830s and what is usually referred to as the Ngā Motu Migration from North Taranaki in 1832 roughly.

30

The Battle of Haowhenua in 1834 and its political consequences and the Battle of Kuititanga in 1839. Both two battles I’ve just mentioned were very serious conflicts. Haowhenua was extremely serious and very destabilizing.

The antagonists were, to cut a very long story short, essentially Ngāti Raukawa on the one hand and Te Āti Awa always referred to simply as Ngāti Awa in historical records, which don't tend to make any effort to differentiate between Te Āti Awa proper, Ngāti Mutunga and Ngāti Tama. Ngāti Awa can practically
 5 mean anyone from New Plymouth Region right up to the Maniapoto boundary in 19th Century material.

So, there was serious conflict in the Kāpiti region. It was serious and especially with Haowhenua because of the possibility of this conflict to draw in alliances
 10 from other sides, groups from as far away as Tūwharetoa, North Taranaki, not unexpectedly Waikato got involved.

1015

I think the Tribunal would have heard earlier this week about the great Battle of Hingakākā in the Waikato. What is very striking, and it is a point that
 15 Angela Ballara has noted is that the alliances at Hingakākā have reproduced themselves to a significant degree in this region.

4.2 that chapter, the same chapter I've just mentioned, also covers Ngāti Raukawa's role in the conflicts between the Crown and Māori in the
 20 Wellington Region in 1846. There was serious fighting between Crown forces and Māori in the Hutt Valley, Kāpiti Coast in the 1840s. It was during that period of fighting that the Battle of Ballcock Farm in the Hutt Valley occurred, Governor Grey's kidnapping of Te Rauparaha and Te Rangihaeata's withdraw to this region.

25

During these complicated conflicts, Ngāti Raukawa were supportive of Ngāti Toa and Te Rangihaeata in particular who withdrew as I said and were supportive of Te Rauparaha. They were deeply grieved by his kidnapping and detention, but they kept out of the military conflicts. It is not really relevant to
 30 our purposes today. In fact Ngāti Toa were deeply divided, split during that time. So, but to narrate this would take too long.

4.3 The narrative of the traditional history I wrote is based principally on Native Land Court records, supplemented by some other primary sources and

secondary works (especially the work of Dr Ballara) and as I note and have said, this morning the evidence about Ngāti Raukawa's pre-1840 history, is amazingly full. Minute Book evidence is an indispensable record, for all its shortcomings and my report is largely based on material from the Ōtaki, Waikato, Wellington, Nelson, Otorohanga and even to some extent, the Chatham Islands Minute Books (especially the first two). So, record very full but with its own problems.

Paragraph 4.4, "My report very briefly covers the broader connections between Ngāti Raukawa and other iwi in the Waikato region, and covers, traverses briefly the Ngāti Raukawa conquest of the Waikato Valley."

So, here I'm talking about those earlier days before the migrations.

Political relations in this area had become very complex by circa 1900 – 1800 I mean. Point is here that even before the migrations, things had got very complicated in the Waikato, in Maungatautari. Let us call it what they called it.

Complexity developed into full-scale conflicts after 1800, computers have minds of their own sometimes. "These conflicts including the spill-over effects by the attacks by Bay of Islands groups on Hauraki and Hauraki's withdrawal inland. (These events became pivotal to the various Land Court cases relating to Ngāti Raukawa and Ngāti Kauwhata interests in the Maungatautari area." I notice it's still very far away from where we are, but it is quite important all the same. Native Land Court developed a narrative relating to Ngāti Raukawa, Kauwhata interest in Maungatautari. It was essentially this Bay of Islands groups, Ngā Puhi et cetera attacked Hauraki. This is after round about 1800, 1810.

1020

Hauraki move inland. They take over Maungatautari, Ngāti Raukawa and Ngāti Kauwhata supposedly. This is, again, summarising the Court's own narrative. They withdraw, the land is abandoned, Hauraki are the occupants, then Waikato and other groups, in particular Ngāti Haua of Matamata, they displace Hauraki. So, Ngāti Haua, Ngāti Korokī and other Waikato groups

acquire, again according to this theory, the mana whenua of Maungatautari by take raupatu. Not over Ngāti Raukawa but rather over Hauraki so the story goes. This story is repeated over and over again in Land Court cases.

5 One of the main themes of my report is the Court’s inconsistency in terms of its historical narratives. The Court could be wildly inconsistent in terms of its history. That narrative I have just given, it did not always adhere to. Another narrative it did not always adhere to was the narrative about Ngāti Raukawa conquest in the Horowhenua area. I do not want to go into that, we will be
10 looking at it later, but the Court said that Ngāti Raukawa did not and also that it did acquire title to that area by take raupatu. So the Court would shift its narratives as the occasion demanded.

“4.5 To prepare a full summary of Ngāti Raukawa’s pre-1840 history even in
15 the Porirua ki Manawatū region would take a long time to write and present. This history raises very complex questions of interactions with other groups in the region, notably Ngati Toa, Ngāti Apa, Muaūpoko, and Rangitāne – and also others.” Many other groups made an appearance, cameo appearances to some extent. Even sections of Te Arawa show up, Hawkes Bay groups come
20 and go. Very complex story. So it’s a complex history full of conflicts with varying degrees of intensity. Probably the most serious conflicts in terms of those between Te Ātiawa and Ngāti Raukawa in the Ōtaki-Waikanae area, that was a full-dress war. All right. Everyone still good? I carry on, no one need a break? It is all right, I am just conscious, you know, giving lectures at the
25 University, the students’ eyes can glaze over a bit.

All right, paragraph 5.1. “I assume that there is no need here to dwell at any length (or at all) on the origins of the Native Lands Acts and the Native Land Court.” That is a legal-historical question which I have written
30 about extensively elsewhere and of course which this Tribunal has repeatedly considered in numerous inquiries. I know this is hold hat, but let’s say that, “The Court was directed to grant titles to land on the basis of ‘Native custom’.” That is the direction in the Native Lands Act, in the statutes, that is what the Court was supposed to consider. We would say now Maori customary law (or

Maori custom law). “In my report I cover the purposes and functions of the Native Land Court, the Ten Owners rule under s 23 of the Native Land Act.” The Ten Owners rule is relevant here because the Himatangi and Rangitīkei-Manawatū cases both fell under the Ten Owners Rule and so did the first Maungatautari cases in the Waikato.

Section 17 of the Native Lands Amendment Act 1867, which most of us have heard of, that is very relevant too because Horowhenua Block fell under section 17 of the 1867 Amendment. I look at the Court’s inquiry process, the Court and Maori customary law social organisation, the ‘1840 Rule’ (so-called) – it was more exception than rule in my view – the formalisation of doctrine by the Court. My point here is that as the Court went on, it overtime formalised the grounds of the basis of a claim, so-called *take et cetera*. This took a while to emerge. Early days of the Court, practically anything would go for a *take*, but the Court systemised its own doctrine. I can even remember one case where, not in this region, where the *take* for a claim for a block, somebody stood up in Court, “My *take* is that my head was chopped off on this block,” whatever that means. Someone from the iwi one assumes. So all this material struck me is important in a general sense and I hope my analysis is helpful to all parties. So I just make a few specific points here.

“5.1 Firstly, there is the question of the relationship between the Court and the Crown. This is much debated.” By historians kind of thing, we historians like to argue about. “I must state here that I differ from some who have argued that the Court was not a ‘true’ Court, whatever that may mean, but was rather simply an agency of the Crown.” Professor David Williams (University of Auckland) has in a number of brilliant arguments made that argument. “Personally, I think that is untenable. The Court was imperfect in many ways, but it did not see itself as a Crown agency.” The Court had a self-perception of itself as a Court, it behaved and acted as a Court or tried to. It was not an ordinary department of state. “But it is in this respect that Ngāti Raukawa’s experience was somewhat unique.” And if there is one core point I would like to underscore today it that, and this arises from the special nature of Ngāti Raukawa’s confrontation with

the Court or its engagement with the Court in the Himatangi and the Rangitīkei-Manawatū Courts.

5 This is a paragraph from my report which I will read out because I think this is, if anything is pivotal it is this:

“In a number cases the Crown was the direct and open opponent of Ngāti Raukawa in the Court itself.”

10 Now that is not typical. Of course it is the Crown that set up the Native Lands Acts, appoints the Judges, finances the Court. Court cases, Native Land Court cases with conflict between Māori inter say. But here it is different.

15 “In the all-important Himatangi case of 1868 Ngāti Raukawa claims were countered by the Crown *in the Courtroom*, represented by William Fox, a powerful politician and experienced barrister”

1030

He had become a barrister in England.

20 “As will be seen, Fox cross-examined Ngāti Raukawa and Ngati Kauwhata witnesses at length, went out of his way to mock and humiliate Ngāti Raukawa’s counsel [TC Williams],” who was an amateur who took on the case because Ngāti Raukawa needed someone to represent them. And – and this is the more pivotal point – “...the Crown
25 had a direct stake in the outcome of the case. In the Rangitīkei-Manawatū case the following year the same thing happened, except that the Crown was represented in that case the following year, by none other than the Attorney-General, Sir James Prendergast. After the case Prendergast, as Attorney-General, was involved in the making
30 of a Proclamation which extinguished the Maori customary title to the lands within the boundaries of the Rangitīkei-Manawatū Block.”

In those days, identities between the Crown in terms of represent – as the Solicitor-General as counsel and as an official were much more blurred than they are now.

5 “Ngati Kauwhata, too, were directly opposed by the Crown, in their case in the Ngati Kauwhata investigation in 1881.”

The Crown went out of its way to oppose Ngāti Kauwhata claims in the Waikato too.

10

Suffice to say that in this inquiry,” this inquiry district I mean, this Tribunal inquiry, “Maori were directly and openly opposed in the Native Land Court by very influential and powerful figures linked to the Government of the day.”

15

Makes the Ngāti Raukawa experience somewhat A-Typical.

20

What our Native Land Court cases typically about? First a matter of timing, it is often thought that the 1862 Native Lands Act was comparatively unimportant, and it is the second of the two Native Lands Acts, the 1865 Act which is the one that really counted. I do not actually think that is the case and in fact there are many cases decided under the 1862 Act, need not go into that. To a very large extent cases in the Native Land Court were not really about Māori custom. That was not debated at length in the Court, what Māori custom was. In my view, what they were really about, mostly, were about historical events and how those events should be interpreted and given effect to at the present day. It is very noticeable how many of the most important Native Land Court cases are concerned with the consequences of the so-called ‘musket wars’ period of about 1810-1835. Nearly all of the major Native Land Court cases that you can name are concerned about the repercussion – repercussions of those events. Horowhenua case is an obvious example, also Rangitīkei-Manawatū, to go wider afield Chatham Islands cases, so many cases in Taranaki et cetera. All about how those events are to be interpreted. Warfare and conflict often within living memory of the people who give evidence in the Court.

30

Paragraph 5.4.

“In my report I discuss the ‘opportunity costs’ of the Court.” Economists tell us that opportunity costs are the costs no one sees. They are the costs of pursuing
 5 one course of action as opposed to another. In this context “I mean that it is probable that the advent of the Native Land Court stymied the efforts of Maori to develop mediation systems of their own, including special *komiti* or Runanga and the practice of inviting senior or especially respected or expert chiefs from outside the district to mediate in land disputes. Something like the latter appears
 10 to have occurred in the case of Te Reureu Block for example.”

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The advent of the Court meant that other pathways were not gone down.

Paragraph 5.5, I think I have already made this point. This is about the
 15 reserves, perhaps it is worth going over again.

Another general point is that the issue of reserves in Crown purchases blocks and Native Land Court title investigations cannot be neatly separated, because as I point out earlier, some of those reserves were created by the Land Court
 20 but also reserves set aside by Crown purchase deeds were subsequently investigated – and often, partitioned and repartitioned – by the Court. One example in fact a very good example of the latter is Te Reureu. Te Reureu was a reserve but it was nevertheless not left in peace by the Native Land Court. There were constant investigations reinvestigations, re-hearings in the Court
 25 relating to Reureu. It’s a long running problem.

DCJ FOX:

Professor Boast we do not need you to read the quotes and I am conscious that we are now, even though we said we have lots of time, we are now 10.36. I would like you to finish before morning tea.

30 **PROFESSOR RICHARD BOAST QC:**

Which is when?

DCJ FOX:

11 o'clock.

PROFESSOR RICHARD BOAST QC:

Be very happy to, or else? Let's skip over those quotes Ma'am.

5

Paragraph 5.7. When did Ngāti Raukawa in this region first start to see the Native Land Court? That was about 1866, very soon after its establishment. There are a number of very early cases around Ōtaki. Those cases were concerned with land south of the river. They were investigations into very small
10 parcels of land, most of them I think parcels originally marked out as part of the Anglican Settlement at Ōtaki.

Real point about these cases is that they were all have given Ngāti Raukawa very little inkling as to what was coming. You have a sequence of small
15 unthreatening cases about very small blocks, probably made Ngāti Raukawa think that the Native Land Court wasn't anything to be excited about. Court came very seldom, sporadically held harmless short cases into small individual sections, so it might have appeared.

20 With the Himatangi case of 1868 and the Rangitīkei-Manawatū case of 1869, there is a quantum leap. They are vastly different because of their scale and because of their interconnection with the Wellington provincial government's Rangitīkei-Manawatū purchase. But in short – have the short cases, little arguments about surveys et cetera, suddenly you have a massive case such
25 as Himatangi, hundreds of witnesses. The Court sits for weeks and Ngāti Raukawa are confronted by an extremely aggressive barrister in the form of Fox who is also a highly placed politician. That must've been quite a surprise.

Okay, the rest of my evidence is concerned with the two key cases, Himatangi
30 and Rangitīkei-Manawatū.

1040

As I have explained both those cases were interconnected with the Rangitīkei-Manawatū purchase. At the core of the complexities were

contestation between Ngāti Apa and Ngāti Raukawa in the lands between the Manawatū and Rangitīkei Rivers. So if the Horowhenua case revolved around issues regarding Ngāti Raukawa and Muaūpoko, these cases revolved around issues connecting Ngāti Raukawa with Ngāti Apa. Both these cases were
5 preceded by a long history of dispute between Ngāti Apa and Ngāti Raukawa which the Tribunal would have heard about already, and by Featherston proceeding with his purchase. So I am sure plenty of evidence has been given already about the purchase itself.

10 I will focus on the Court. Skipping ahead then to paragraph 6.4. This is the Himatangi case. The case was unusual because it was held pursuant to a special statutory jurisdiction, and so I have explained it was not an ordinary investigation of title. In fact the Rangitīkei-Manawatū Block was excluded from the ordinary operation of the Native Land Court by statute, that is the Court was
15 not able to hear cases relating to Rangitīkei-Manawatū. That exclusion was not done to benefit Ngāti Raukawa but was rather a concession to the Wellington Provincial Government, giving to the latter a freehand to see its purchase through to its conclusion. Actually, Ngāti Raukawa were very angry about the exclusion as it prevented them from having their customary interests
20 in the Rangitīkei-Manawatū Block properly defined. Without this they were at the Provincial Government's mercy. Ngāti Raukawa's displeasure can be seen from our letters sent by Ihakara Te Hokowhitikuri or Ihakara Tukumarū to Featherston, June 1865, and I quote, this is Ihakara writing to Featherston, "We have heard from the Pākehā's that all the lands of this island are thrown
25 open by this new law", he is talking about the Native Lands Act, "And that our lands only are left in prison and that we are just like pigs confined in an enclosure." Wasn't thrilled about it." Then clearly Dr Featherston he added, "great is my sadness, all of us a sad." Ngāti Raukawa made numerous efforts to have the exemption removed including a petition to Queen Victoria, perhaps
30 counter intuitively. They wanted to have their lands investigated by the Land Court, they did not want executive decision being made about that.

As to thy page 11 or so, perhaps if I can explain more briefly the real point with this case is that the Crown had a direct stake in the outcome. The more of the

block that the Land Court allocated to Ngāti Apa the more if went to the Crown, it was as simple as that. The Crown had been purchasing numerous interests from various groups in the Rangitīkei-Manawatū Block for Ngāti Apa and it has to be conceded from Ngāti Raukawa too.

5 1045

There were many who would not sell their interests. If I could put it this way the 'weight of the non-sellers' was with Ngāti Raukawa. Most of those who were non-sellers were Ngāti Raukawa people. The Crown was relying on the various purchases that it had made from individual sellers. So, you can see from this
10 simple fact, the more Ngāti Apa get, as I said before, the more the Crown gets. Right. That is why Fox is there presenting a case that is only anomaly a Ngāti Apa case. In fact, the Court recognises that, he is simply referred to as Crown counsel throughout.

15 What was done by a number of rather circuitous mechanisms was that the cases were set up to allow non-sellers in the Rangitīkei-Manawatū Block to test their interests in the Rangitīkei-Manawatū Block. Now, of course if the Land Court found that the whole block belonged to Ngāti Raukawa, for instance, the fact that most of Ngāti Raukawa were non-sellers would leave the
20 Crown in the form of the Wellington Provincial Government with nothing much, it would have wasted all of its money and a great deal of money had been spent on this purchase. Fox is there, runs the case extremely aggressively, the Crown throws massive resources into this case, they call a large number of witnesses, some groups end up split. Ngāti Toa end up split in the case,
25 Tamihana Te Rauparaha gives evidence for the Crown, Matene Te Whiwhi for Ngāti Raukawa.

Ngāti Raukawa's support mainly comes from the Church of England, from the Williams family, Mr Williams, young man who takes on – T.C. Williams took on
30 the task of presenting the Raukawa case. Fox went out of his way to attack the Church of England and to attack the Treaty of Waitangi, which he basically saw as a 'missionary project'. He was exceptionally nasty about CMS, Anglican missionaries in the case, making a number of unpleasant suggestions that the Anglican Church was only backing Ngāti Raukawa because the church was

hoping to get some land from Ngāti Raukawa for the mission. ‘Land-grabbing missionaries’ was a staple of colonial newspapers at that time.

5 So, we really have two separate cases that test the interests of the Raukawa non-sellers in the Rangitīkei-Manawatū Block.

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10 Firstly, there’s the so-called Himatangi case then there is the Rangitīkei-Manawatū case the following year. The two cases represent different groups of Ngāti Raukawa non-sellers. The Himatangi case was about the interests of a small group led by Parakaia Te Pouepa and other representatives of his hapū at Himatangi and was concerned only with interests at Himatangi anomaly, but of course in reality the whole of the Rangitīkei-Manawatū area was at stake.

15 The Rangitīkei-Manawatū case the following year was concerned with different groups of Ngāti Raukawa non-sellers. The procedural background to that case is set out in paragraphs 7.1 or 2.

20 The second case was sort of a rerun of the first but with a different cast so the Rangitīkei-Manawatū case this time, the claimants were represented not by Williams but by Williams Travers a lawyer practising in Wellington.

25 The Rangitīkei-Manawatū case most of the records relating to that appeared to have been lost, not much coverage in the newspapers as compared to the Himatangi case. I think probably the public had lost interest by then, but there is an archival file on the Rangitīkei-Manawatū case which I found MA1371 which has reasonable amount of information.

30 Again, if I may cut a long story short. The effect of the two cases was to find essentially that Ngāti Raukawa as an iwi, did not as an iwi – that was the Crown’s term, the Courts term, did not have substantial customary interests in Rangitīkei-Manawatū and that Ngāti Apa did.

The cases were thus a victory for the Crown. I have already explained the significance of a finding in favour of Ngāti Apa for the Crown. This was well appreciated at the time. It was a newspaper headline relating to the second of the two cases, Rangitikei-Manawatū. I think it is in the *Wellington Independent* headline just said, “The block belongs to the Ngāti Apa!”, like hurray. That means the Crown and we the settler community win.

As to the Court judgments, the Himatangi Block judgment is extraordinarily brief and poorly analysed even by the standards of the Native Land Court. A couple of paragraphs. On the other hand, the judgment in the Rangitikei-Manawatū case is very lengthy. It’s that judgment that’s reprinted in Fenton’s important judgments of the Native Land Court, it is partly written by Fenton, but it was mostly written by his colleague, Judge Manning. Judge Manning had something of a lurid pro style and he fancied himself as a great sage and expert on Māori custom, which he displayed to the full, or thought he was, in his judgment.

I’ve analysed the judgment fully in my report. I describe it as tendentious – has written with a particular orientation and the orientation is an orientation that constructions an outcome that will mean Ngāti Apa wins the case.

To get to that point the Court makes an enormous amount out of a supposed alliance between Ngāti Apa and Ngāti Toa. This is a deliberate effort to marginalise Ngāti Raukawa. Also, Ngāti Apa are described in glowing terms throughout the judgment and I’ve analysed this in my report in glowing language.

1055

They are described as manly, as resolute, that kind of discord. Of course, Ngāti Raukawa are described in rather negative terms as “just having won a few fights”. The alliance with Ngāti Toa is made much of because that is to show that Ngāti Toa were the conquerors, but they shared the spoils with Ngāti Apa, pretty much, and the basis for the alliance is said to be Te Rangihaeata’s marriage with Te Pikinga of Ngāti Apa. Now we all know

about that. This proves that the two groups were allies and so Raukawa do not get a look in.

5 The Court is constructing a narrative. But as I think the Ngāti Toa pointed out this week, there are a few important things that the Court overlooks which it probably did know about it just marginalised them. In fact, Ngāti Apa were part of the group that attacked Ngāti Toa on Kāpiti leading – at the battle of Waiorua. They were part of that opposing coalition. The alliance is made over much of. So as I say it is a tendentious construction supressing or ignoring some
10 important facts in that relationship to manipulate a desired outcome.

As I note in paragraph 7, the decision was greeted with much enthusiasm by the town's people of Wellington and no wonder, the settler community had reason to be enthusiastic. Wellington was desperate to get more land. They
15 desperately wanted the Rangitīkei-Manawatū region. There were not any Crown confiscations in this region. They wanted some land for their expanding town. The later settlement of the Rangitīkei-Manawatū is interesting in itself. I do go into that in my report. There was a land – the Manchester Company was formed to bring settlers out here captained by one Captain Fielding which is of
20 course right where we are. It certainly was used for Pākehā settlement on a significant extent. Anyway, going back to our story very quickly.

Following the enthusiasm of course the Crown now had to mark out the block that it had mostly won. The judgements did set aside some – a few reserve
25 areas and of course did make a finding in favour of a particular Ngāti Raukawa hapū to Himatangi and Himatangi only. Status of Himatangi itself remained complicated afterwards if there weren't enough complications in this story.

So, the next step in our drama is the conflict over surveys. This is
30 paragraph 7.8. Firstly, there is the Crown now proclaims that the customary title over the whole of the Rangitīkei-Manawatū Block is extinguished as a result of the Native Land Court's findings, even including Himatangi itself apparently. I was asked in one of the questions of clarification, were such proclamations were a standard practise? They were.

Paragraphs 7.8. Rangatira could not understand how it could be that the Māori title over the whole block had been extinguished.

DR GRANT PHILLIPSON:

- 5 Sorry, Professor Boast can I just ask did you say they were not, or they were? The proclamations. I did not quite catch whether you said were not or were?

PROFESSOR RICHARD BOAST QC:

They were. Standard practise.

DR GRANT PHILLIPSON:

- 10 They were.
1100

PROFESSOR RICHARD BOAST QC:

- Yes. Following a Native Land Court decision it was quite standard for the Crown to treat that as an enquiry into customary title and then, especially if a purchase was in play. They were more usual in the case of undivided share buying purchasing where a block would be partitioned between non-sellers and the Crown share. Almost always you would get a proclamation, extinguishment of that part of the block that the Crown was said to have acquired.
- 15
- 20 The standard thing that happened with a purchase would be that the Crown would try to partition the block between the shares it had bought and the non-sellers part. That would be done, the Court would rule, Crown would then issue a proclamation of extinguishment.
- 25 Yes, so, Ngāti Kauwhata in particular were simply mystified as to how the Native title over the whole block could have been extinguished.

- Then we have the confrontations over surveys. In fact there was a significant number of open brawls. I think it is the case generally that often local Māori did not really grasp the effects of a Native Land Court decision or a proclamation
- 30

native title until surveyors turn up and start marking sections on the ground. That is something everyone can see. Confrontations can explode at that point and so it happens here. So there was a great deal of physical obstruction of the surveyors. Groups would send them packing. At times the police would be
 5 called in. Walter Buller Magistrate formed a kind of posse to round up. In one instance, people who had knocked over the survey poles et cetera.

Hence McLean is brought in to resolve what had been blown up into a quite serious dispute in the Rangitīkei-Manawatū region. McLean was seen as the
 10 fixer. He was called the Māori doctor in fact; any Māori problem McLean would deal with it. He was wheeled in, McLean was not happy about this. He saw that in his view generally the Wellington Provincial Government had created a serious problem.

DCJ FOX:

15 And it is 11.02 so we have five minutes.

PROFESSOR RICHARD BOAST QC:

Okay. Five minutes. So yes, McLean the fixer. He did fix it. The Wellington Provincial Government wasn't even grateful to him and complained like anything about allocating the reserves that McLean had fixed and paying
 20 extra bits of money.

How about I finish with paragraph 11.1?

DCJ FOX:

Well sorry, I would like you to touch on the experience of Ngāti Kauwhata and
 25 the Aorangi –

PROFESSOR RICHARD BOAST QC: (CONTINUES)

Sure, Aorangi, righto. Okay.

“Chapter 15 of my report is concerned with Ngāti Kauwhata and the various Land Court cases and special investigations and inquiries relating to the

Maungatautari lands.” That is the wrong paragraph, that is them too. Let’s go back to Aorangi.

Ngāti Kauwhata and the Aorangi Block, that is right here at Fielding.

5 CONTINUES READING #A215(B) FROM PAGE 15, CHAPTER 12

“Ngāti Kauwhata’s migration history is no less complex than that of Ngāti Raukawa, with some groups moving south, some staying, and much complex interaction between north and south. Aorangi is interesting because Ngāti Kauwhata, Ngāti Tauira (of Ngāti Apa) and Rangitāne had informally
10 partitioned the block amongst themselves.” This is this opportunity cost point I mentioned earlier. “The rest of the chapter is concerned the Aorangi investigation of title in 1873 and the Aorangi rehearing of 1878. There are some connections between the cases relating to Aorangi and the complex
15 disputation...”, over Horowhenua and I can postpone that later, but the overlaps include the fact that Kawana Hunia of Ngāti Apa shows up in the Aorangi case too.

Chapter 9 or part 9, “Kauwhata and Maungatautari”. That’s a full explanation analysis to the best of my ability of these northern cases relating to Kauwhata
20 interests in Maungatautari.

10 deals with Te Reureu and the reserve lands. Real problem with Te Reureu is relative interests between the groups at Reureu, and in particular, an earlier decision of the Court, that relative interests were calculated on the basis of
25 equal shares, that caused enormous problems.

And lastly, “Inconsistencies in the Native Land Court”. My report, to a large extent, is a story of inconsistencies of historical interpretation, inconsistencies in this region and inconsistencies in the Waikato as well.

30

General conclusions, well, they are set out in my report. I will not read those out, anyone can see those, but they are along the lines that I have gone through today. If there is anything I would underscore is the unusual nature of

Raukawa's confrontation with the Court and the Crown, there as a direct opponent within the four walls of the Courtroom. All right. I will stop there, Ma'am.

DCJ FOX:

- 5 Thank you. I think you have earned your cup of tea and I am actually being kind to you because you were on the floor for a long time, subject to cross-examination and during that period you would be welcome to sit, so when we come back please feel free to sit down

PROFESSOR RICHARD BOAST QC:

- 10 Thank you, Ma'am.

DCJ FOX:

All right. We will take the morning adjournment for 20 minutes, thank you.

HEARING ADJOURNS: 11.07 AM

HEARING RESUMES: 11.34 PM

- 15 **DCJ FOX:**

Have we lost Professor Boast again?

UNSPECIFIED MALE SPEAKER: (11:33:52)

Apparently, he's just a couple of minutes away.

UNSPECIFIED FEMALE SPEAKER: (11:34:00)

- 20 Ma'am excuse me Ma'am, perhaps just before the next session, if I could register an appearance for the now arrived Mr Lambert.

DCJ FOX:

Mr Lambert.

- 25 **(11:34) NEUTON LAMBERT: (MIHI, APPEARANCE)**

Tēnā koe.

DCJ FOX:

Tēnā koe, I have been calling your name all week because you are on the agenda instead of Ms Panoho.

NEUTON LAMBERT:

5 Aroha mai, aroha mai. Kua tae mai au, nō reira tēnei te mihi ki a tātou, kia ora.

DCJ FOX:

Mihi atu ki a koe, kia ora. **(Mic off 11:34:19 – 11:35:17)**

(11:35) DR BRYAN GILLING TO PROFESSOR RICHARD BOAST QC:

10 Q. Tēnā koe e te Rangatira, switched on now as always. I intend to because
of the extensive detail in your report, not to mention the supplementary
volumes which your taking together reminded me of the steam powered
versions in the Encyclopaedia Britannica that we used to get, the – I
intend to stick mostly with the summary and I will refer later on to some
aspects of the Himatangi judgement particularly which come out of your
15 report the relevant pages that we will note those when we get there. Can
I start please with paragraph 2.1, the top of page 3 of your summary. You
are discussing the north-south progression and you warn that the north-
south division and presentation might obscure from us some general
issues of historical interpretation. Now, of course we want to maintain a
20 free flow of information and ideas through this inquiry and not apply a
tourniquet around north specific material. You give one example here of
something that might be affected by not paying attention, that is the effect
of Christianity. Can you just give us by way of warning, things, something
to take note of, what else you might've been thinking of there when you
25 were meaning – referring to general issues?

A. Thank you. The story of Christianity is vital and important in itself and of
course, it affects all groups north and south of the river in that general
sense, but it's not only that. It is the extent to which the teachings of the
missionaries had an impact on how Māori custom or Māori customary lore
30 was interpreted and understood. The missionaries as you will know better
than I Dr Gilling, being an expert in New Zealand religious history, as you

are, were Evangelicals. They were for example, very – they formed part of the opposition to the slave trade and they taught Māori that slavery was wrong and bad, and there cannot be any such thing as slave tribes. This had an impact on Māori customary practice. It meant that some rangatira became reluctant to press the full extent of customary interests as those who have been understood in the period before the advent of the mission and that would include the Rangitīkei-Manawatū area. Ngāti Raukawa rangatira on the whole acquiesced to much of the – to Ngāti Apa selling land beyond the – I think it might have been the, first the Turakina and then beyond the Rangitīkei. That was seen as a concession made in the interest of the gospel. So, there is that impact, and I would say it's most clear I guess in the area north of the Manawatū, but I am certain that it will have influenced perceptions of custom and customary rights in all of the inquiry district and indeed, you can say that to Māori culture generally.

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10
15 Q. Thank you. Were there any other things that you were thinking of that were not related to the arrival of Christianity any social changes or I don't know.

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A. Of course, social changes occur with great rapidity, north and south. There are also, looking at the other side of the equation, of the Crown side, that the Crown, although it was particularly interested in the Rangitīkei-Manawatū Block, which is north of the river, certainly that is not the only land that the Crown, whether in the form of the General or of the Wellington Provincial Government seeks to acquire, the Crown policies driving land acquisition are framed in the case of General Government in the national capital, Auckland in those days, and Provincial Government in Wellington. They simply want land in the region to which – so that Wellington – the Wellington Provincial settlement and its economy can expand. Again, a north-south divide in terms of the formation of those policies by Featherston and others in the Wellington Provincial Government or by Mclean, Grey, et al is quite irrelevant to the river boundary.

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25
30 Q. Thank you and can I take you over the page, top of page 4 paragraph 2.4, where you say that, "The effects of the Native Land Court on

Ngāti Raukawa,” and by that I assume you are meaning Raukawa, Kauwhata, Whakatere and other groups, are you?

A. Yes.

Q. That these effects were cumulative?

5 A. Yes.

Q. Now, you have unpacked that quite a lot already in your interpolations during your presentation and so thank you for that, that has also cut down quite a number of my questions you will be pleased to know. Can you please unpack that a little bit more for us? For example, you have mentioned Maungatautari and the events prior to those key judgements here in this district. Is it an on-going thing? It does not – do the effects of the Native Land Court stop in 1868 or whenever those judgements were paused, or cases were held?

10 A. I see. No, by no means does it stop in 1868. First speaking to the cumulateness, of course once you start looking at Ngāti Raukawa as an entity – a broader entity in the wide sense that you have mentioned – Ngāti Raukawa suffer significant defeats in the Native Land Court, north and south at more or less the same time. At Maungatautari and in – at Himatangi, Rangitikei-Manawatū, all of those cases were in the late 1860s. So, they take a double blow as it were, north and south. It leaves Ngāti Raukawa to start wondering whether there is some general conspiracy against them in high circles, what have they done? So, yes, there is – there is that dimension to it. In terms of the continuing nature of the cases, the cases roll on and on in the north in particular. I do not want to go into too much detail about that but as well as the Maungatautari cases there is then the Rohe Pōtae, the King Country. Ngāti Raukawa have very large interests in the King Country, in the Aotea Block as it became. Ngāti Raukawa participate in the King Country investigation of title in a case whenever that was – 1886. They have interests in north Taupo as well, there are further cases there with the Rohe Pōtae case, the King Country Block is repeatedly partitioned, there are large blocks to the north, Wharepuhunga, which is claimed by Ngāti Raukawa, et cetera. So, the torrent of case law to the north does not end. In the south probably on the hold, they have probably somewhat less case Law,

that is true. But still there are the title investigations to Reureu Validation Court, et cetera.

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5 Q. And south of this part of the country, south of this Fielding Reureu et cetera area?

A. Yes, the ongoing sequence of cases relating to Reureu is the Aorangi Block, not far from where we are. Kāpiti Island which Ngāti Whakaterere assert interests, and there are a number of other quite large Native Land Court cases in the Waikanae, Paraparaumu area too.

10 Q. And Horowhenua?

A. And of course this Horowhenua.

15 Q. Thank you. Apart from the title investigations, does the impact of Native Land Court continue to Ngāti Raukawa's detriment? After that, that early period of 1880s, and I ask this not necessarily because it's in your report but because you have of course produced now several magisterial cones on the ongoing case Law, and the way in which the Court was operating.

A. So your question relates to post-investigation effects pretty much?

Q. Yes.

20 A. Well certainly these do continue. There are very long drawn out processes of inquiry to various parts of land. You mentioned the Horowhenua, that certainly stands out as an absolutely interminable process of investigation, reinvestigation, and it went well into the 20th Century, and again going further north, contestation over
25 Maungatautari and parts of the King County is unending almost to the present day. Of course in terms of effect, we must not forget the long-term social costs of the Court process, the dislocation of relations between customary groups, the magnification of inter-hapū contestation, and all of the ongoing social costs of the Court process, which you could
30 say have never come to an end, still have not come to end even now.

Q. So the effects that you are saying continue to accumulate through the 19th into the 20th Century, and possibly even 'till today?

A. I believe so, yes.

Q. Thank you. Paragraph 2.4, we are still there. You also mentioned that for Ngāti Kauwhata that their most pivotal historical grievance. Are you referring there to the Maungatautari case, and why do you call it pivotal?

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5 A. Why do I call it pivotal? I think my perception is that would be a Kauwhata perception. They saw it as their most important issue. Is the Maungatautari issue in the broader sense. The loss of interest in Maungatautari was keenly felt by Ngāti Kauwhata. Now without wanting to narrate that in any detail now, essentially when the Native Land Court
10 investigated Maungatautari, Ngāti Kauwhata were unable to participate in the investigation of title because as I explained in my evidence in chief, they had a case to attend in this region. Constantly Ngāti Kauwhata sought redress. So it is pivotal in the sense that this is an issue which continues to dominate Ngāti Kauwhata relations with the Crown. You can
15 just see that by the number of attempts that Ngāti Kauwhata make to have interest in Maungatautari reinvestigated, leading in fact to a special commission of inquiry that is set up finely to investigate the case and in which Ngāti Kauwhata all travel north to participate. I think too, if I may say a general mark, which is that this remark is that the distinction that we have got use today in the sort of north and south, Raukawa in the
20 Waikato, Raukawa down here, Kauwhata et cetera, I do not think people had that perception then. Rather, it was a matter of hapū confident that they had interest in both regions. Māori travelled back and forth a great deal, even after the migration period. There was also the matter of
25 Kīngitanga politics and participation in the New Zealand Wars. We do know that Kauwhata and Ngāti Raukawa people travelled north to fight against the Crown in the Waikato, we know that from this of Returns of Surrendered Arms. Ngāti Kauwhata and Ngāti Raukawa people handed in their guns to the Crown in this region, that they had used these guns at
30 Tūranga, at Gate Pā and at of course Ōrākau. It is all one politics.

Q. Thank you, you have answered a number of my other questions both before and then as well. Can we jump through then to paragraph 5.2? Yes, I was going to ask you about that 1900 at the top of the page but you corrected that on the way through.

A. Yes, sorry about that.

Q. I would just like to come back and, briefly, because I am not quite sure how – well anyway, this issue about the thing, the Native Land Court being a true Court versus an agency of the Crown, and I agree with you that there tends to be quite a polarised debate and has been for, I don't know, a couple of decades at least. Is it possible to say that that may be too polarised, that there is some sort of hybrid here normally operating in the regular judicial mode that you refer to, but albeit using – obviously some dodgy practices and principles as it is going, but also that it is susceptible at times, perhaps more than general Courts might be to social or political pressure or a place perhaps used as a political forum?

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A. That is the pivotal question about the Native Land Court if I may say so. Firstly, the true Court thing. In fact, the fact of the matter is that all courts are part of the ruling establishment of the state, are they not? We know, we are taught in Law School about formal doctrines of separation of powers. Courts are conscious of the political realities of the state to which they are a part. But of course, are you asking if it does go somewhat further than that, and I think often it does. And take the very cases we are concerned with here, Himatangi and Rangitīkei-Manawatū, the same goes for Horowhenua, the Court cannot not have been aware of the wider political conscious context of those cases. How could it not have seen that? There in front of the judges in round 1, you have Fox, powerful politician. Round 2, there's Sir James Prendergast representing the Crown, the Attorney-General. It is a clear signal to the Court that this is a serious business for the Crown, besides the Rangitīkei-Manawatū purchase was widely known in the newspapers. It was the subject of endless newspaper comment. The Court must have known about the importance of a finding in favour of the Crown. I don't think it was as simple as the Crown officials taking the Judges behind the scenes and saying, "Well, chaps it will be very nice if you made a finding in favour of the Provincial Government," probably those kinds of conversation might have occurred in the Wellington Club for all we know, it would not surprise me. But I think it was somewhat less blatant than that. These people are

part of – they were wider to the political establishment. They knew the importance of a finding in favour of the Crown. How else can we explain the tendentiousness of the reasoning in the Rangitīkei-Manawatū case. Now the Crown did have certain powers with respect to the Native Land Court that it didn't have with the ordinary Courts. It could close it down. The Crown had power to suspend operation of the Native Land Court by proclamation, which it did not have with respect to the ordinary Courts, would not, could not shut down the Supreme Court. Actually, the Court used that power quite sparingly, but it did interfere with the Court's jurisdiction and again we see that with the Himatangi case because Ngāti Raukawa were blocked from taking their cases to the Native Land Court. Now, that is kind of the other way around from what we are mainly concerned with here, but it does show that the Crown was more than willing to manipulate the Court process by means of legislative intervention now and then. So, yes there is a relationship. It's a complex tapestry and I agree with you, it is not a simple matter of agency of the State or absolute independence of judgment and a Court in the sense that the Court of Appeal or the Supreme Court is a Court. We are in a grey zone between those two options, and I think between those two poles, the Court would oscillate from case to case.

Q. Would that depend on who the actual Judges were, someone like Fenton we had him on record as going toe to toe with Native Minister to actually preserve the independence of the Court and other Judges maybe not so much.

A. I think that is right. It would depend on the Judges, bear in mind too, that most of the Judges of the Native Land Court contrary to what some overseas commentators assume, are not lawyers. They do not have legal qualifications, bear in mind too, there are not any law degrees being granted in New Zealand in those days. Most people get to be lawyers by something resembling an apprenticeship. You could read for the bar, but you go and do that in England. But most of the Judges, well there is a very distinguished report on their backgrounds and qualifications by one Dr Bryan Gilling. The only analysis that anyone has ever done of this.

Pointing out that most of them had qualifications as Army Officers, Engineers, Surveyors, you name it.

Q. The Native Department.

A. Native Department employees. Fenton was one of the few legally
 5 qualified Judges. The Chief Judges were lawyers mostly. He probably
 felt more confident in standing up to the Crown. There was one case in
 which Crown ordered the native – no, that was a different Judge, but you
 do get clashes where Fenton is very insistent that his Court is there for
 claims to be heard and he will not be deterred from that. The other case
 10 I was going to mention there was one case where the Crown refused to
 pay costs. The Native Land Court ordered costs against the Crown, in a
 particular case. The Native Minister wrote to the Judges saying that he
 suggested the Judge pay the cost himself, the Crown had no intention of
 paying a cent – well, a penny dare I say. So, yes it did depend on the
 15 Judges a lot. Have non-lawyer Judges who are often chosen – usually,
 in many cases because they happen to be able to speak Māori from
 experience as surveyors, Crown purchase officers or indeed anyone that
 the Government could find who was willing to be a Native Land Court
 Judge. Of course, people get to be Judges at the Māori Land Court today
 20 through very distinguished careers and practice and at the bar.

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Q. As opposed to being “merely native men”.

A. Native chaps. Yes.

Q. Well, yes. So, perhaps then some of our problems with the Court are
 25 outside the purely political framework, perhaps more the case that the
 Court was too willing a servant of the colonial and paternal zeitgeist that,
 you know, permeated 19th century New Zealand. The men who have
 come up through the society and perhaps they are just a little too trapped
 in it. Is that also fair comment?

A. That is fair comment, certainly. I think all Courts are part of the zeitgeist
 30 of their day are they not and the Courts are in arm of the colonial state in
 that broad sense and at a period of colonisation and of most of the Judges
 are from the British Isles, they are not all English, some are Irish but on
 the whole they are – yes, they are very much in that frame of mind of

British Imperial expansion and the assumption that this is in the words of Sellers and Yeatman's *1066 and All That* a good thing.

5 Q. Can we move on please to another good thing which is your very interesting point in paragraph 5.7? Something that I am not aware has occurred to anybody before and that is the point that you make that is the original cases that Raukawa become familiar with and then all of a sudden wham they are hit with Himatangi then Rangitīkei-Manawatū and I think your suggestion there is that they would have been taken by surprise and possibly even caught out by the change. Do you have any sense of how caught out they were? Clearly, they employed Mr Williams so that is a bit of a change, did they see this train coming down the tracks?

10 A. I do not think they can have and the point you have made about Mr Williams is really the key point. Very hastily as the Court starts as it becomes aware that there is about to be an imminent case about Himatangi. Ngāti Raukawa are quite obviously in a state of complete uncertainty as to what might happen, and you get that from Williams' own comments that he just volunteers to help out. Raukawa need someone to represent them, they do not brief or instruct counsel, now that is not being anachronistic of that time, sometimes, even quite early in the history
15 Māori being represented in the Native Land Court did instruct counsel. That certainly happened in some 1860s cases in Auckland but Raukawa had no resources to do that and there is this other point. The cases they have had, they – it is not that the Land Court was a new institution to them and there are a great many of these very early cases at Otaki relating to
20 the sections and looking at those carefully, I think what these sections actually are were sections that had been laid out by the Church of England around the Church and the mission buildings. It is quite clear that the CMS Mission, because it was as convinced as the benefits of individualisation and living on individualised title as anybody, had – it went to the trouble of hiring an engineer and laid off sections –
25 more residential sections all around Otaki. The sections seemed to have been given individual names so there is this proliferation of small cases at the start of the Otaki Minute Book, so I am pretty sure that this is what these are about. And they cannot have given Raukawa any inclination of
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what was about to come and that also goes to the broader question of the special nature of those cases. I think it is the Crown turned the Native Land Court as a useful device for dealing with the issue of non-sellers in the Rangitikei-Manawatū Block. Hence this enormous case.

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Q. Now, I see my time is marching on, so I will skip the next couple of questions or lines I was going to ask about. Jump down to paragraph 6.9, you mentioned when you were presenting earlier about the ten-owner rule being applied in Himatangi.

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A. Yes.

Q. Is that why we, although we have hapū allocated land in Himatangi we actually only have a total of eight people, Parakaia Te Pouepa and his co-claimants, co-agitators, cohorts, I mean there is a lot of demeaning adjectives applied to those people.

15

A. Yes, I think so, the Court makes an order in favour of the hapū that Parakaia represent and then vest that block in those particular people as a ten-owner block. So, that is what happens with Himatangi. Himatangi I suppose must have surveyed off or identified in some way for the Land Court hearing but for all we know, all the Court might have had in front of them was a map of the Rangitikei-Manawatū Crown purchase. But – but, essentially yes, those particular hapū Ngāti Te Au and the others were the ones that – the ones that Parakaia said he represented were given an interest and then at Himatangi and then those represented in those representative owners under the ten-owners process that the Court applied at that time. So, yes, that is exactly what occurred.

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Q. Thank you, can we now jump to your report and several pages that you have there on the Himatangi or the conduct of the case and the decision starting at page 327.

30

A. 327, yes.

Q. And this is in the middle of your recounting of Fox's – almost abusive, well some of it is abusive treatment –

A. Certainly.

Q. – of the claimants and Williams and then his attack, which astonished me, on the 1840 rule. Now is it, you would agree wouldn't you, that the Native Land Court had developed the rule so as to protect a sort of *Pax Britannica* that was assumed to have come in with the arrival of British rule in 1840?

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A. Yes, as I can see of the 1840 rule the Crown did not want people going around and getting title to land by conquest now that we are supposedly under the authority of the Crown. But yes, it does seem counter-intuitive that Fox opposes the 1840 rule. Why does he? Now, I think that is because it is a particular understanding of the Treaty of Waitangi as well that's kind of in play, that the Treaty of Waitangi means that the discourse about rangatiratanga et cetera did not exist. The understanding of Williams and Co was that the Treaty guarantees to Māori possession of the lands that they had as at 1840. Now, I think as we barristers do, that Fox opposed that rule because it did not suit his case.

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Q. Well, that was going to be my question.

A. Yes, well, yes, he did not want Ngāti Raukawa to be able to say that as at 1840 they had the mana. Let's attack the rule itself.

20

Q. And so, the bigger picture is being obscured then for the short-term benefit of being able to seal the deal with regard to getting Raukawa out and Ngāti Apa in for the Crown's benefit in this case.

A. That must have been a strategy, I am sure of that.

Q. Are you aware of any you know from your encyclopaedic literally, studies of the Native Land Court, are you aware of any other example of the Crown attacking and undermining the 1840 rule?

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A. No, it is unique, never seen it anywhere else. Yes, so we have this strange side of Fox defending Māori customary lore.

Q. Against in fact what was the construct on the benevolent Crown introducing its tax Britannica.

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A. Yes.

Q. Yes.

A. Yes, quite.

Q. For the benefit of course of all its subjects as it – sorry. I was heading towards a question there, thank you. Yes. So, turning over the page on 328, 329, you set out Fox’s argument for Māori customary title being based on a long line of descent rather than on force. Top of page 329

5 that quote there you, about five lines, use the phrase there, or he uses the phrase, “A narrow and restricted examination of actual possession in 1840.” What is he meaning by actual possession because actual possession is what Raukawa have in 1840 is it not?

A. I suppose they do, see what he goes on to say, it is clear I think, clarifies the sense, but ought to be founded on a wide historical review of the period going back at least to the time of Rauparaha’s first invasion. I guess he be using possession in terms of the sense that a common lawyer of his day would use that word, that that is a – who is in actual visible control. So, there what he is saying is, we cannot just have our

10 eyes on who is where. In 1840 we just go back in history and look at the overall relationship, the long history. That enables Fox to bring back the argument of the alliance between Ngāti Toa and Ngāti Apa as he constructed it. So, he is trying to say, “That’s the pivotal thing.” The fact that you have Raukawa Hapū scattered all over the

15 Rangitīkei-Manawatū Block as at 1840 is irrelevant to the wider story. Think that is the strategy.

Q. Further down the middle of that same page is a quote again from him the little paragraph beginning, “It’s perfectly clear.”

A. Yes, see.

25 Q. Originated simply an intrusion was a mere encroachment. Who do you think, or do you have any idea who he thinks is being intruded and encroached upon? Is that Ngāti Toa or Ngāti Apa or someone else?

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A. That is an interesting question. I think he probably means Ngāti Apa. They are simply encroaching in terms, at least in an occupational sense, on Ngāti Apa land which in his reading of the history, I think because of this great alliance between Toa and Ngāti Apa. Toa stand as guarantees of – guarantors of Ngāti Apa’s rights in that area. Raukawa just happened to be around and are intruders, have no real significance on the ground

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or historically either. And if you ask, I will just tell you this to finish your question. I do not get any sense from Fox's discourse that he seems to see Ngāti Toa in occupation at that time particularly. He just sort of sees rather the Ngāti Apa title as derivative from Ngāti Toa's protection and alliance.

5

Q. Thank you and the last paragraph on that page, again in the middle of the quote, he says, "The claimant should not receive more than an acre – an acre more than they have proved a title to". How were they to prove a title do you think? They have said we have been in occupation for 33 years. We conquered to force ourselves in on the land. What more do you think he is wanting or is this a rhetorical flourish?

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A. I think it is a little more than a rhetorical flourish. I think what he is trying to suggest is that all the claimants can have is that small area in which they have some demonstrable association and we are not talking about the Rangitīkei-Manawatū Block as whole, as a larger entity. The most Ngāti Raukawa can get, I think this is what he means, is those small particular areas that are affiliate to particular hapū and that is it. There is no other interest apart from that. My feeling is that is what he means.

15

Q. Which brings us over to the next page, which is a discussion of the Himatangi decision itself. Now this principle of occupation, is the Court saying here that control is not enough that Ngāti Apa had to be exterminated or completely expelled or something to get rid of their claim. Clearly Ngāti Raukawa are in occupation and had been since prior to 1840 which is not enough it seems.

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A. I think yes suggesting that it is not enough, quite what would be enough. I do not get a clear sense of that and note to that the Court goes along with that. That I think in the – yes, the – how it all goes along with Fox's argument, rather about the primacy of hapū interest only. But yes, I think I – I am not sure if I suggest here or elsewhere that Judge Rogan had resided in the Chatham's case where there you do have, and we all know the facts of that particular history, a fairly severe if you want to put it that way. Actual conquest of that area by Ngāti Mutunga. Maybe that is indication of what Rogan thought was required to make a claim on the basis of take raupatu. You really had to wipe people out off the face of

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the land. So, I think that is likely what it is, yes. So at least you want to extinguish – weaken the group so much that they are almost at the point of being enslaved, in fact yes. Enslaved, turn them into slaves.

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5 Q. We will no doubt hear plenty on that point going forward.

A. In the Chathams you mean or in this case?

Q. In this case.

A. Yes.

10 Q. Do you think that, the middle of page 331 over the quote again from the, this is from the *Independent* I think, they possess equal interests and rights over the land in question at the time when the negotiations were entered upon, which is a little hint I think, do you? About the, again, the purposes of this? When the negotiations are being entered upon? The quote in the middle from the *Wellington Independent* in the middle of page
15 331?

A. Beginning the judgment of the Native Land Court, that one?

Q. Correct, and it is the last line. The negotiations for its succession to the Crown were entered upon. It just seems to me that that is another tie to Featherston and the whole Crown attempt to acquire this land, but –

20 A. Quite so.

Q. So are they saying, say 1840 Raukawa may have been conquerable as such but by 1864 Ngāti Apa and Rangitāne had clawed control back to a level of equality or are they denying that Raukawa conquered, in any sense at all?

25 A. A denial of Raukawa conquest I think. It is important to add that there was a considerable amount of public mystification as to quite what the Himatangi Decision actually meant. At first it was thought that the Crown had failed to get its way because of course the interests of Raukawa hapū had been recognised and they were still, at that point, untested. The
30 untested claims of other Raukawa non-sellers that had not been heard, that did not happen until the following year. So there was concern that this might open the way for a loss of the block bit by bit by hapū, then as you can see from the quotes of the *Wellington Independent*, then they think hard about the decision and they think, “Actually, no, it’s a pretty

good outcome for the provincial government and the settler community after all. So yes, there was – people found the decision a bit hard to fathom as I think we still do today. What exactly did it really mean? Just finding in favour of these hapū and the decision that Ngāti Raukawa as a

5 tribe don't have interest over the block. That is not really language the Land Court uses very often. They tend to always find for hapū, for small groups.

Q. And just before Her Honour calls time on me, can we jump back to page 9 right back in your introductory comments.

10 A. This is of the report?

Q. Of the report. Middle of the page, it is page 9, yes, so heading is "Purposes of this report".

A. Yes.

Q. And then the most important paragraph states, "The focus of the report is

15 to look at the sources to understand the extent to which key rangatira and other important tūpuna were able to explain the nature of their rights regarding authority of ownership of land, taonga and natural resources." Part 1, and Part 2, "How Crown officials, Native Land Courts and authorities at the time understood these rights." Now, you have gone into

20 a huge amount of detail to try and answer those questions. Are you able, in 25 words or less, to give us a summary conclusion answering those questions?

A. Run through them?

Q. Well the – no, no, no, the points in that sentence. The first point is –

25 A. I see.

Q. – could the rangatira explain the nature of their rights –

1225

A. Okay, explain the nature of their rights, yes, and how Crown officials, the Native Land Courts and authorities of the time understood those rights.

30 Right. Were they able to explain the nature of their rights regarding an authority and ownership of land, taonga, et cetera. Were they able to? They tried. Did their best. Whether the Court understood or wanted to understand, I think the answer to that is no. How Crown officials – that is such a mixed bag, Crown officials had all kinds of understandings, but

they are Crown officials at the end of the day. How the Native Land Court and authorities of the time understood those rights, the Native Land Court did not have in my opinion an adequate intellectual foundation and a basis for translating in any kind of sophisticated way those rights into legal entitlements. That was just not possible in those days. The discipline of anthropology did not exist, hardly existed at this time. Hence you get very simplified narratives such as you get in the Rangitikei-Manawatū judgment, a story of conquest and invasion alliance by a diplomatic marriage as it is almost thinking in terms of European power politics. What happened with the Native Land Court in a nutshell is the Court setup a process of allocating customary titles on the basis of a judicial process by a Tribunal that did not have the resources or the expertise to do that in any way that we would regard as intellectually sound now. Does that answer your question?

15 Q. Is that your answer to the question?

A. Yes, it is.

Q. Yes, thank you very much Professor Boast QC.

A. Mhm.

Q. Ma'am those are my questions. Thank you, Dr Gilling.

20 **DCJ FOX:**

Mr Rogers.

(12:27) LYNDON ROGERS TO PROFESSOR RICHARD BOAST QC:

Tēnā koe taku rangatira. He nui to pūkenga i te mahi nei, ā, kei te mihi au ki tō – te nuinga o tō kimihia mai kei konei ki raro ki a Waikato. [Interpreter: Thank you, certainly the extensiveness of your work particularly around the research, particularly in this district area, back up to Waikato.]. Thank you so much for the extent of your research both here and all the way down to Waikato as well, but really just giving further acknowledgement. Your Honour we have received answers to our questions of clarification in writing by Professor Boast. We make pick up on one or two details, but I do not see any need to use the Court's time.

DCJ FOX:

All right, thank you.

LYNDON ROGERS.

Ngā mihi, thank you.

DCJ FOX:

- 5 And Ms Katipo or Mr Burgess? Mr Te Nahu sorry first before Mr Burgess or Ms Katipo. Is it going to be you Ms Katipo? Will it be you? Yes.

(12:27) HEMI TE NAHU TO PROFESSOR RICHARD BOAST QC:

Q. Tēnā koe Professor Boast.

A. Tēnā koe.

- 10 Q. Thank you very much for your evidence and your reports. I represent Wai 1640, which is the Ngāti Whakarete claim, and I also represent Wai 1944 which is Ngā Hapū o Kereru claims that contain Patu kōhuru as a hapū, Takihiku, Ngārongo and Ngāti Hinemata. So, those are the claimants that I represent in relation to Wai 1944 claim. I just – I was that
- 15 counsel that you referred to earlier in relation to your proclamations and we asked you questions on how – on whether proclamations were standard practice.

A. Oh, yes.

- 20 Q. That you referred to earlier in your summary and looking at your response – sorry Ma'am I don't have the number for Professor Boast's response that was dated the 5th of February. In paragraph 21 you state, "That proclamations were standard practice. They usually followed a process in relation to Crown Purchase."

A. Yes.

- 25 Q. And the reason why we were asking this is from our reading of your Volume 1 report, page 683 where in relation to the Rangitīkei-Manawatū Block?

A. Sorry, 603, 683?

Q. 683 and Volume 1.

- 30 A. Yes.

1230

Q. And you make reference to the Court's decision relating in 1868, relating to the Rangitīkei-Manawatū and quickly followed by the Court's decision of 1869, and then shortly after that decision was issued, the Crown declared on the 16th of October in 1869 a proclamation in relation to the Rangitīkei-Manawatū Block.

5

A. Yes.

Q. But you also go on to say that the Crown commenced its survey of this block shortly after that. So we are looking at your evidence and we are looking at your response in paragraph 21 that there is a standard practice that the Crown applies when they issue a proclamation. That did not actually apply in this case, did it? Because you go on to say that there are serious legal questions that could be raised as to the validity of the proclamation of the Rangitīkei-Manawatū Block on the 16th of October in 1869?

10

15 A. Would you like me to answer it at this point?

Q. That would be helpful, Professor, and the reason why we are asking that is because if you have a framework, a legal framework that the Crown has created on a practice, which you have said is standard, and in this situation that practice, and that standard wasn't adhered to. What we are say is that proclamation essentially is illegal.

20

A. Well yes. That is a very point. Whether something is standard practice and whether or not is legal are different things. Certainly the Crown routinely issued proclamations of this sort, but I – let me put it this way, if we were testing this in a contemporary Court, or I guess, according to the principles of the Treaty of Waitangi too, come to that there are serious questions about that proclamation.

25

Q. Yes.

A. Definitely. The fact that it is standard practice and I believe it is standard practice, does not mean that for that reason alone *ipso facto*. The proclamation is not something that cannot be attacked. I believe it can be attacked.

30

Q. Thank you, and the people of the day did attack the proclamation, didn't they?

A. They did.

Q. Now I am going to go on to your Volume 2, paragraph 451.

A. Sorry.

Q. Page 451.

A. I did not bring Volume 2.

5 Q. Volume 2.

A. If anyone has that. This is the appendices volume?

Q. It is.

A. 451?

10 Q. 451. That is in relation to where the Treaty is being argued in that particular case.

A. Yes.

Q. I think it is the Manawatū purchase.

A. This is Fox's speech, yes.

Q. And that was in 1868?

15 A. Yes.

Q. If my calculations are correct, we have and that is the first case that the Treaty itself has been argued before a Court or a judicial body and contested by the Crown. We have been doing this for over 150 years then, is that correct? Arguing the Treaty in front of a judicial body being contested by the Crown? Because these people that we represent –

20

A. Yes.

Q. – are the descendants of those original applicants who argued the Treaty.

A. Yes. Sorry to just – I am just pondering whether that is right. You could well be right. This is the first time that the Treaty is raised in legal argument in a Court. There were native – I mean, I wouldn't want to say that categorically, you know, we need to perhaps check. But it is at least one of the first occasions and maybe the first where you have serious debate about the Treaty in a judicial forum. Yes, that may well be the case.

25

30 1235

Q. And the reason we say that is because if William Fox is saying this is the first he has heard of this argument being presented by Māori – if looking at the evidence that you have contained in your bottom two so, that leads me onto that nothing has much changed since 1868?

JACKI COLE:

Your Honour, I think we need to be careful here so that there is no misrepresentation, particularly for the people who are watching this and listening to this kōrero in this room, any misunderstanding that the Crown might be contesting the Treaty at this point in this process because, of course, that is certainly not the case. Are you not – perhaps you are not taking the same impression from what I am from Mr Te Nahu?

DCJ FOX:

No, I am not.

10 **JACKI COLE:**

Well, what he is saying and what he has just said is that, “Nothing much has changed,” and that the Crown – so that by implication he is suggesting that the Crown is contesting the Treaty in the manner in which Fox did in the 1868 –

DCJ FOX:

15 Well, that is not what he said.

JACKI COLE:

Well, I think – well perhaps if we can go back to him –

DCJ FOX:

No, if we go back to the transcript that is not what he says.

20 **JACKI COLE:**

Well, I look forward to reading it.

DCJ FOX:

He says one of the first occasions where there has been an argument based on the Treaty of Waitangi and it is based on what Fox says when he says he has never come – what is exactly the wording? So, we have got it exactly right.

HEMI TE NAHU:

Yes. That there was the first time and this particular –

DCJ FOX:

Are you reading from the actual quote?

JACKI COLE:

I accept what has been – what was said by Fox –

5 **DCJ FOX:**

Well, that is the point is it not?

JACKI COLE:

No, it is not Ma'am, the point is that Mr Te Nahu's comment then after put to the witness was that "Nothing much has changed in the last 150-years." And
10 for the Crown I am wanting to ensure that no one is misled that in this process in any way is the Crown contesting the Treaty of Waitangi.

DCJ FOX:

Do you wish to clarify your question further or would you want to leave it as is?

HEMI TE NAHU:

15 No, we would leave it at that, Ma'am, because the next question I was going to ask Professor Boast –

HEMI TE NAHU TO PROFESSOR RICHARD BOAST QC: (CONTINUES)

Q. – with William Fox wearing so many hats – in Volume 2 and we will be
20 looking at the page 451 and there is a lot of cross-examination from William Fox – but there is nothing clear in there that gives his view about what the Treaty is about, about the application of it, about how much the Treaty is believed and honoured by Māori. Are you able to, in your opinion, give us your view on what William Fox's opinion of the Treaty actually is?

25 A. What page number was that, again? Sorry, I am lost.

Q. It was still in relation to page 451 because there is a lot, it is about the case and it is about William Fox and how he is giving – he is cross-examining and he had made references to the 'there was the first

time the Treaty had ever been argued' and so I am wanting to test from Professor Boast if he could give us, in his opinion, what William Fox's view of the Treaty actually was? Because he was a Crown representative, obviously he was a Minister and for me and the clients that I represent it is important to know how did they apply the Treaty in that situation and whether they actually did believe the Treaty was a document that we have been arguing for over 150-years.

5

A. So, would it be helpful if I attempt to summarise what I think Fox's overall view of the Treaty was and –

10

Q. Correct.

A. – as we can discern it from what he – well. How could I summarise that? He is critical, well he does not actually – he does not attack the Treaty point by point.

Q. No.

15 1240

A. I will tell you what he really – in my opinion what he does do – he stereotypes the Treaty as a Church of England Missionary scheme or project. It is part and parcel of his attack on Williams who was of course a member of the Williams family, and Williams by the same token is a defender of the Treaty. There is almost a feeling in the Williams family that they are in a way the guardians of the Treaty and the churches as well. So it is in the context of what you could call Fox's anticlericalism, that the Treaty is simply a missionary scheme or project and that is about the best that can be said for it and I think he is using that in the – that is part of the overall framework of his argument. It is put in a fairly harsh, brutal way, it must have been something to listen to Fox, he was clearly an imposing presence in the Courtroom, some of his things, the things he does say I have got to admit are wickedly funny, especially about the hatless Mr Williams, but he has no time for the Treaty or the Church of England, put it that way.

20

25

30

Q. Right. So he wouldn't, in your view, believe that the Treaty is a partnership, that it has a relationship –

A. Partnership, no, it would not have crossed his mind.

Q. All right, I think I have made my point. Thank you Professor Boast and thank you for your evidence. Thank you, Ma'am.

DCJ FOX:

Ms Katipo?

5 (12:41) KYLEE KATIPO TO PROFESSOR RICHARD BOAST QC:

Q. A tēnā koe Professor Boast. My name is Kylee Katipo and I represent Ngāti Pīkiahū and Te Reureu claimants which include Ngāti Pīkiahū, Ngāti Matakore, Ngāti Waewae and Ngāti Rangatahi. Unsurprisingly, the focus of my questions are going to be on Chapter 19 of your report –

10 A. Yes.

Q. – where you discuss the Te Reureu Reserve.

A. Yes, let me find it. Yes.

Q. And if I can begin at page 669 of your report?

A. 669?

15 Q. Yes.

A. Mhm.

Q. And you say there that the Te Reureu Reserve had a complicated tenurial history?

A. It did.

20 Q. Can you explain what you are referring to there?

A. I suppose I really meant there the – you could say it is complex to start with, but I really had in mind the sequence of cases, the contestation in the Land Court in particular.

25 Q. Okay. And this complicated history, that would have – that can be looked at I guess alongside the Te Reureu Reserve which was quite different from other reserves at the time, wasn't it?

A. Can you put to me why you say it is different?

Q. Different in terms of its size.

A. Certainly in terms of its size, yes.

30 Q. And other factors like such as the hapū occupying the land?

A. Well in terms of the particular – yes, that is true of all the reserves I guess, they all have different hapū who claim interest, but yes, it is distinctive

certainly in the sense of who those particular hapū are but also in the way there are these four groups with different customary histories too, so yes, I generally agree. There is something a bit unusual, a bit different distinctive about Te Reureu, yes.

5 Q. Yes, a bit of a unique situation, would you agree with that?

A. That is putting it a little broadly, but yes in a unique situation, yes, I would be happy to say that.

10 Q. Okay, and given the distinct features of the reserve, might it have then been expected that the Native Land Court would have regard to those features in making its determinations about the ownership interests in the reserve?

1245

15 A. I do not know if the Court was bothered particularly about the factor of size. It was just a reserve as far as the Court was concerned that it had power to investigate, but it would have been aware of the block's history. It would have known that it was – well at least some of the Judges were quite well aware of the fact that it was a reserve in the Rangitīkei-Manawatū purchase. It treated the block as a reserve block with these four hapū groups and the contestation that had arisen between them. Quite why the block was so fought over and caused so many difficulties is not obvious, and I do have some thoughts about that but in general I would say the answer to your question is, yes.

20

25 Q. Okay. So, at page 667 of your report, you talk about relative interest and in this case those relative interests in the reserve were initially fixed by the Crown, weren't they?

A. I think the reserve was simply allocated to the four groups. That is my understanding. I do not know that the Crown made any attempt to divide interests other than that, it may have.

Q. Okay.

30 A. But certainly, it was the Crown who decided who got the reserve, if you want to put it that way, certainly that was my claim.

Q. And then the issue fell to the Native Land Court to determine the relative interests, the list of ownerships and things like that.

A. Yes, relative interests was what the case was all about, quite right.

Q. Okay and if I can move to pages 674 of your report where you discuss the 1896 Appellate Court decision?

A. Yes. Sorry, 674?

Q. And 675.

5 A. Yes.

Q. And so the Appellate Court there determined that the four hapū at Reureu were equally entitled to the whole of the reserve, didn't it?

A. Can you just point me to that? I just want to make absolutely certain. We are of the opinion that the members of the hapū actually occupying the reserves were, are entitled to equal rights. That's –

10

Q. Equal rights.

A. Yes, that is what it says. I'm not quite sure what they mean, but yes, that's correct that is amongst themselves.

Q. And I guess part of that reasoning was the view that the hapū had been gifted the reserve, would you agree with that?

15

A. Yes.

Q. And you have said further on in your report that the gift from the Crown wasn't a gift in a meaningful sense, so...

A. It was no sort of gift, no, was simply a reserve in a Crown Purchase block. Those reserves were made in order to dampen down quite serious dissension over surveys, that's right, so no if you mean a gift in a beneficent and kindly allocation by the Crown, no, was nothing of the sort.

20

Q. And this approach to the equal rights, it was – would you agree, was different from decisions that the Court was making at the time?

A. I think by equal rights, we have to be clear what we mean. I do not know what we have talking about and just make sure we are talking about the same thing. This could be two issues here. One is whether the four had the same right in the blocks, so it is just divided into four equal sections. But I think the – what the discussion of equal rights means more is we are talking about the individual owners, and they – and that the allocation of rights is working on the assumption that all owners and in a particular block. So, the Court would fix say or perhaps a particular subdivision or I think in the case of all of Reureu, all those named people have an equal

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30

share in the block. When you determine shares, it could be according to Māori custom, or they can simply everyone equal.

Q. Yes.

5 A. That is what happened at Reureu. Everyone was made equal and I think that was the problem.

Q. Yes, and that was the cause of the subsequent Land Court – Appellate Court proceeding, wasn't it, with that?

10 A. Yes, I believe so, and that led to so many attempts to swap interests around and negotiations between the different groups of people, shares being brought, transferred, switched from group to group to break out of this equal basis. I think that was the whole problem with Reureu, yes.

Q. Yes, and would you agree that a more – that basis of allocating the interest wasn't in accordance with Māori custom?

15 A. No it was not. It is unthinkable that in terms of traditional Māori ownership, interests weren't equal, they were unequal. They were according to custom. Also, the Court was well aware of the fact that there was this option of this interest by custom or equal shares. This is a very important point I think, and it has not really been adequately traversed in the historical literature and has not come up in the Tribunal very often. Also,
20 the Court is inconsistent. Sometimes shares are equal, sometimes they are according to Māori custom. There is an amazing diversity of practise, so in fact what I try to do attention and draw attention to my report is that even in some of reserves in this region, there is a variation in practice. Reureu happens to be equal, and others the allocation of shares in the
25 reserves are according to Māori custom, and there you seem to get less trouble.

Q. Yes, and so, if I can, sorry conscious that my time is drawing near. Those subsequent Appellate Court findings they didn't overrule the 1896 decision did they on this equal allocation? Sorry, I'm at page 678 of your
30 report.

A. They did not overrule it, but I think some of the later Court decisions do indicate that some of the later Judges could see that there was a problem because of that.

Q. Yes, yes, they could see that there was a problem with the definition of the relative interest.

A. Yes.

5 Q. But they – by that stage it was too late it seemed, to change, to overrule the 1896 decision?

A. That is correct.

Q. And so, these Court proceedings would have had a direct impact on the hapū at Te Reureu, wouldn't it?

10 A. Certainly. Te Reureu must have been a time in a state of upheaval over these constant battles over the interest of the four groups. It would have had a very severe impact on what is in fact of course a quite large and important Māori community and one of the most important and most prosperous Māori communities in the Waikato. Reureu was known for its success as a farming community. Land was valuable and perhaps for
15 that very reason there is a lot of contestation over it.

Q. And so my final question is in regard to the statement you make at page 677 that more care should arguably have been taken with the establishment of the reserves and calculation of those entitled to interest. Can you explain there what you mean there?

20 A. What I mean is that just handing to the reserve to these four groups who anyone who should have been able to set the time that the groups, the four groups fell into essentially two groups really, and just to say these are the four groups that have interests in this very important piece of land, and leave it that, was a recipe for trouble. And you would've thought
25 McLean for whatever we think of him, I am not carrying a banner on McLean's behalf, it is surprising he did not see that really.

1255

Q. Yes.

30 A. But that is – that was a problem at the – yes, more care should have been taken at the beginning.

Q. More care should have been taken by the Crown in establishing the reserve?

A. Yes, certainly, yes.

Q. And would the same apply to more care by the Court in determining the relative interest?

A. Well, it is more that the Court had to grapple with this relative interest problem. It was left to the Court to figure it out through the succession of cases, and I do not know if it is quite the case the Court did not take care, but it certainly struggled to deal with the complexities that were caused by the groups and this disharmonious community that had developed and I think the Courts, and let me put it this way, the Court's interventions, the constant Court cases far from resolving social and community tensions that Reureu must have exacerbated them, made things worse. That is pretty often the case with Land Court cases.

Q. Thank you, Professor Boast, those are my questions.

A. Thank you.

UNSPECIFIED SPEAKER: (12:56:25)

15 It will be Mr Chong.

DCJ FOX:

Mr Chong.

(12:56) DANYON CHONG TO PROFESSOR RICHARD BOAST QC:

Q. Tēnā koe Professor Boast QC. My name is Danyon Chong.

20 A. Kia ora.

Q. I am questioning on behalf or represent reclaims in this inquiry, so Wai 784 a Ngāti Kauwhata claim, Wai 1482 a claim by Ngāti Wehiwehi, and Wai 2031 a claim by the descendants of James Howard Wallace. In respect of today's hearing I will be primarily questioning for our Wai 784 and 1482 claimants as they rely primarily, well, in both the north and the south but for the interest in the north on the inquiry. I don't intend to cover the areas already covered by the discussions here today, so I may actually require a little bit less time than requested. Now, on page 18 of your report, just below the title 1.6 Role of the Historian, you say that you are not an ethnohistorian and – I will wait for you to get there, apologies.

30 A. Yes.

Q. And you say you are not an ethnohistorian, you give examples of Angela Ballara and Judith Binney –

A. Mhm.

5 Q. – and said it is unwise for non-Māori academics to adopt dogmatic positions on iwi and hapū relationships. Now, this is just for a matter of clarity, in your report you were not commissioned to look at tikanga, whakapapa or a traditional history of particular groups, that's correct, isn't it?

10 A. That is correct. I know if I had been commissioned to do that I would not have done it.

Q. Thank you, and so in terms of Ngāti Kauwhata and Ngāti Wehiwehi tikanga, whakapapa and oral traditions you would defer to tangata whenua in that, wouldn't you?

A. Of course.

15 Q. Yes, okay, thank you, just a matter of clarity. Now, just looking at the cases in the Waikato, particularly Maungatautari –

A. Mmm.

20 Q. – and would you agree that for the purposes of this inquiry district, the relevance of those cases up in Waikato, one of the primary purposes and one of the primary reasons it was important is to compare how the Native Land Court treated iwi such as Ngāti Kauwhata and Ngāti Wehiwehi both up in those inquiry districts and down here in this inquiry district?

A. To compare them?

25 Q. Yes, would you say –

A. That is part of it. I would not say that is the only reason why those cases are important.

Q. No, but it will be one of the reasons they are important.

A. One of the reasons.

30 Q. And Your Honour, I see it is 1.00 o'clock, do you want me to carry on with the cross-examination? Okay. Now, if you turn to page 389 of your report –

A. Yes. Bear with me, yes, 389, yes.

Q. At the top, about the third line down, you set out the fact that Ngāti Kauwhata have always maintained their own separate identity.

A. Yes.

5 Q. And later we see in the 1881 Commission at Maungatautari, so that is on page 399, the Court's position, that is about the fourth paragraph down, the Court's position that Ngāti Kauwhata did not exist, did not actually exist except as a hapū of Ngāti Raukawa and treated Ngāti Kauwhata's assertion of a separate identity as merely a Courtroom tactic? ...

1300

10 A. That is what was said, certainly.

Q. And then we see these same things happen again in the Rangitīkei-Manawatū decision where at 349 of your report at the bottom of the page we see – sorry. Just at the bottom of the page there is a note, “(i.e. Manning sees...”, and there you say in an analysis of
15 Rangitīkei-Manawatū decision that Judge Manning sees Ngāti Kauwhata simply as a Ngāti Raukawa hapū.

A. Yes.

Q. And it's no sense of the differences between Ngāti Kauwhata and Ngāti Raukawa. Would it be fair to say that whether it was in the
20 Maungatautari commission the judicial body that was setup there or the Native Land Court down here in these cases, Rangitīkei-Manawatū, and I think you do make reference of a similar thing happening in the Aorangi 3 judgement that this was a common theme of the conflation of Ngāti Raukawa – Ngāti Kauwhata or Ngāti Raukawa?

25 A. That is exactly right. It is a common theme that conflation, yes.
(inaudible 13:01:33)

Q. Mmm.

A. You see that everywhere.

Q. Now just turning to a point that you have underscored quite a bit in terms
30 of your summary and also in some of the answers you have given as the uniqueness of the Ngāti Kauwhata and Ngāti Raukawa experience in terms the opposition by the Crown. Now for our Ngāti Kauwhata clients, they were also opposed by the Crown, I think you have made mention of this in the Maungatautari 1881 Commission, that is correct.

A. They were.

5 Q. And then again in Himatangi and Rangitīkei-Manawatū. So I guess the question I have is that what you have described is unusual, you would agree that this is something Ngāti Kauwhata, whether they turned up to Maungatautari where they gone up there or having the investigations – sorry, the court down here in the Rangitīkei-Manawatū, Himatangi, they constantly face what you call this unusual situation. This opposition by the Crown, would you say that is a fair comment to make?

A. That is a fair comment to make, yes.

10 Q. And you are aware that Ngāti Wehiwehi, our other clients, also assert an interest in Maungatautari, that is correct?

A. You are referring to Ngāti Whakatere here?

Q. No, Ngāti Wehiwehi.

15 A. Ngāti Wehiwehi in Maungatautari? I am sure they do have a claim there yes.

Q. Yes, and so it would be fair to say the same applies to them in terms of my comments previously?

A. Yes, generally. Yes, that is right.

20 Q. Now the next thing I want to have a look at is the effects of that Crown opposition, and I think you have touched on a few of those elements here today. But I just want to, if I could just tie it up to get some more clarity around that. So you have noted that the effect of the Crown being there sent a clear signal to the Court of the importance it is to the Crown, that is correct isn't it?

25 A. That must be so. Yes.

Q. Yes, and that also you mentioned the fact that, I think in page 83 of your report, and I will just read it out to you that, "The Crown was *in direct competition* with the claimants and sought to undermine or destroy their claimants *as a competitor*," page 83.

30 A. Certainly.

Q. Yes, and then we also see this mismatch between Thomas Williams and William Fox. Thomas Williams obviously not a lawyer as you have said today, and William Fox who you described as, I believe a very good barrister, I think.

A. Sorry where are you in my report?

Q. Sorry, I have jumped off, but I am just discussing particularly in this instance the Himatangi decision, the Himatangi case, and you can see at page 263, where you described Fox as a powerful politician and barrister.

5 But I think you describe him in more than one occasion, so...

A. Yes.

Q. And so what I am trying to get at here is would it be reasonable to suggest that the involvement of the Crown, yes, the unusual involvement of the Crown has created or had created a significant power imbalance in the Native Land Court?

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A. Power imbalance in the Native Land Court?

Q. Yes.

A. In those particular cases that – that is certainly the case. Yes.

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Q. And so, would it be fair to say that given our discussion, that Ngāti Kauwhata were not treated fairly by the Crown in the Native Land Court process particularly?

A. Not treated fairly, that is a rather wide question. But certainly, Ngāti Kauwhata had great difficulties in terms of the questions I was – whether it was fair or not, that is a legal judgement is it not? But certainly, let me put it that way, that Ngāti Kauwhata had an uphill battle to convince the Crown of their interests at either end of their traditional territories, both in this region and in the Waikato. It is – something we have not discussed which would be interesting to traverse is why – we know why the Crown was so strongly opposed to Kauwhata-Raukawa in this area, why the Crown went out of its way to oppose their claims to Maungatautari, I am not sure about. But they had some reason to not allow that to progress, it must be something to do with lands in the Waikato and who may have purchased that area or something like that. But that is – that is, yes, you are right to draw attention to the Crown opposition in the Maungatautari cases to Kauwhata, it was obviously important to the – for the Crown to see that Kauwhata got nowhere in their efforts to have that matter reinvestigated.

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Q. And finally, just in respect of our Ngāti Wehiwehi clients, would you agree that those same comments you made would apply to them as well?

A. Generally, Wehiwehi are not as prominent in terms of seeking redress about Maungatautari, that is an issue that Kauwhata drive.

5 DANYON CHONG:

Your Honour, I have no further questions. Thank you, Mr Boast.

PROFESSOR RICHARD BOAST QC:

Kia ora.

DCJ FOX:

10 We are going to take the lunch and adjournment at this point for 40 minutes, so it is 1.08 at the moment. Back here in 40 minutes.

HEARING ADJOURNS: 1:07 PM

HEARING RESUMES: 1.52 PM

DCJ FOX:

15 Ms Panoho.

(1:52) CORAL LINSTEAD-PANOHO TO PROFESSOR RICHARD BOAST QC:

Q. Tēnā koe Professor Boast, my name is Ms Linstead-Panoho, can't hear?

A. Sorry, cannot hear you.

20 Q. Sorry, I'm a bit tall for the mic. My name is Ms Linstead-Panoho and I represent the claimant John Reweti who has two claims, one on behalf of Ngāti Parewahawaha and one for Ngāti Waewae.

A. Right.

Q. And really this matter is what I'm presuming will be quite straightforward but it's actually a matter of importance to our Ngāti Waewae clients in particular, so if I could just take you in your main report to page 236?

25

A. Yes.

- Q. So, that there is a list and I think you refer to it over on the page 234 but that's a list of the Rangitikei-Manawatū reserves that were published in the *Appendices to the Journals of House Representatives*, is that correct?
- A. That's correct.
- 5 Q. And the reserve there listed as number 47 Te Reureu.
- A. Yes.
- Q. That there was granted to the Ngāti Piki – what's recorded as the Ngāti Piki and others. I mean you've made a footnote there correcting that to Ngāti Piki.
- 10 A. Yes.
- Q. A hapū of Ngāti Raukawa and then you have said, "The others were Ngāti Wehiwehi, Ngāti Maniapoto and Ngāti Rangatahi."
- A. Oh.
- Q. And should that reference actually be Ngāti Waewae?
- 15 A. Yes, it should.
- Q. Rather than Ngāti Wehiwehi, is that right?
- A. That is correct, Ngāti Waewae I think. I will need to go back and check that, but I am pretty sure that's correct.
- Q. Okay, and – well, in terms of that, that's consistent with the rest of your report on the Te Reureu Reserve, isn't it?
- 20 A. That's correct.
- Q. That those four hapū were the interested groups?
- A. Yes, my apologies for that. That list that I transcribed is full of all kinds of errors, mistakes and spelling blunders too, so yes.
- 25 Q. Yes, no absolutely and I think you mentioned that in your report.
- A. Yes.
- Q. So, that was the only matter that I wanted to put to you but other than that, my clients are very grateful for your very detailed analysis and particularly the chapter on the Te Reureu Reserve.
- 30 A. Kia ora.

DCJ FOX:

Thank you. Mr Watson?

LEO WATSON:

Ma'am, I had sought the 10 minutes. I would be grateful if I could extend that to 15 just keeps us within the timeframe and my friend went quite short when she had sought 15. So, that's okay, just on reflection I would need that time and I will try and keep certainly within that. I will keep within that.

(1:55) LEO WATSON TO PROFESSOR RICHARD BOAST QC:

Q. Tēnā koe Professor.

A. Tēnā koe.

Q. Let's just start before I get told I'm not allowed the extra five. I'm here representing a group of hapū who are principally based in the Ōtaki area now and so a lot of their kōrero will come out in the southern weeks of the hearing, but they have important interests in the northern blocks. And just to locate you, given the voluminous report that you have written and thank you for that, those hapū are Ngāti Maiotaki and Ngāti Moewaka. So, people like Kingi Te Ahoaho that you refer to in your report, Rawiri W[h]ānui or Te Whānui sometimes it's referred to, Rota Te Tahiwī and like, and they had customary interests customary interests up in the north in terms of Karaka, Pukepuke and at Kakanui and you may recall there was actually a claim by one of these non-sellers to the Kakanui Block. I also, for Ngāti Huia representatives of Ngāti Huia, people – ancestors like Parakaia Te Pouepa, Karanama Te Kapukai, Matene Te Whiwhi, they got key interests there in the Himatangi Rohe, and then act for Ngāti Pare, not Parewahawaha, Ngāti Pare.

A. Yes.

Q. And again some of the tūpuna that you refer to there, Hōri Kingi Te Puke ki Mahau Ariki who passed away in 1853 of course but was very prominent in the early negotiations. Others, Ropata Te Ao and the like. Moroati Kiharoa and they were also of Ngāti Waihurihia. They have interests up in Rewarewa and Whirokino which is in the mouth of the Manawatū River.

A. Yes.

Q. For them, there is a theme that they wish to – for me to explore with you concerning the way in which their interests up in the northern blocks have

been marginalised by the Crown Purchasing process and then by the later Court investigations. Firstly, I just wanted to go back as you do in your report to ground zero if you like with te Tiriti o Waitangi. My understanding is that some of those key tūpuna that I referred to had all signed the Tiriti and evidence will be given that they regarded those guarantees as solemn and as binding on both parties. You'd agree that you got a sense from your reading of the primary material that the guarantees in Tiriti o Waitangi were regarded as often as highly put as tapu for those rangatira?

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10 A. Well I have no doubt that they were regarded as tapu, certainly and for those rangatira, but –

Q. I'm wanting to –

A. It's not the sort of material I would read about Māori for this research for this purpose.

15

Q. Yes.

A. But in a general sense of course I wouldn't disagree with that, that is right.

Q. There's a continued reference is there not back to te Tiriti at key junctures where these rangatira struggling with this new world order. They regarded the Treaty as continuing to have relevance in their relationship with the Crown and with its agencies?

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A. Mostly, but I also seen references by – from Māori at that time who speak of the Blanket Treaty, and why was it called that? Basically, if you signed it, you got a blanket and so, I think what that indicates is a certain amount of puzzlement at times to what this was all about. But as understanding group I say yes that is correct that it was regarded as a pivotal document. I think would have been reinforced by the teachings of the church. This is something I have emphasised throughout that the relationship between the Church of England and the Treaty was a pivotal one and we are dealing with Māori culture was art – which was ardently Christian at that time, so they would have interlocked.

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Q. It is one of the things I wanted to address with you. Would you agree that in assessing the impact of the missionaries and of Christianity, one must also acknowledge that there was an evolution of thinking in that regard

and that some of those early rangatira, some of the ones who passed away in the 1850's and 1860's had a different assessment of the impact of that missionary thought than those who came later. I will give you an example, Kingi Te Ahoaho has a particular reference point in terms of his customary practice. People who came later and took up his mantle such as Te W[h]ānui and the like were clearly impacted by the missionary thought so is it fair to say that we have to be mindful of the time and which particular rangatira were operating as to the way in which the missionary thought had an impact on them.

5

10 A. Do we have to be mindful of the timeframes? Yes. May I add to that is that of course Māori were exposed to missionaries from different denominations and that is important because for example Ngāti Toa whose history I am fairly familiar with, on the other side of the straights the missionaries over there were Wesleyan and so Ngāti Toa were divided in to a sort of Anglican section and a Wesleyan section so the denominational differences and of course we are at a catholic school. In terms of missionary history, everybody forgets about the catholic missionaries. They are much less written about but of course there are – there is a catholic missionary effort in New Zealand too.

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20 Q. That is helpful, thank you. There was a series of incidents if you like of tino rangatiratanga, the exercise of tino rangatiratanga that I would suggest to you showed the continued mana of those rangatira in the time leading up to the original purchase negotiations by Featherston and the like. I have given the example there was clear participation by some of the rangatira that I referred you to in war, in fighting, many of them both involved in Haowhenua but then came up north to fight against Ngāti Ruanui and the like. There was a participation in the peace-making efforts thereafter, there was use of resources within the rohe, natural resources, there was settlement and occupation – are you comfortable with the broad theme that these are incidents or examples where these rangatira were exercising their tino rangatiratanga in those areas in the north.

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A. Yes, in general. I didn't the – the Ngāti Ruanui conflict you mentioned, I am only vaguely aware of that, but I do not think that is important for

present purposes, knowing about that in depth but certainly and we can probably add other things to your list, for example the resistance to the surveys for instance.

5 Q. And continued objections by those rangatira and those who came after to the prospect of sale of their land. In fact, continued right up to today.

A. Yes, again in general but we cannot forget either that some people did sell their interests in the Rangitīkei-Manawatū Block, had that not so we would not have had these cases trying to define the interests of sellers and non-sellers.

10 Q. Yes, quite –

A. That side, you know your proposition is correct.

1405

15 Q. Now I don't want to labour the point, I put to Dr Anderson yesterday a customary concept rather than this idea of non-sellers and I suggested to her that one way of regarding the vehement opposition to the sale by those rangatira is that they were exercising pupuri whenua or the idea of retaining their land. In a more positive and tikanga based way of expressing their actions. Are you comfortable with that analysis?

A. You are referring to those who "sold"?

20 Q. No, I am referring to those who "were non-sellers".

A. Were non-sellers.

Q. That actually rather than putting them in a negative light in the context of the sale of land. In a positive way they were exercising pupuri whenua or retaining the land.

25 A. I do not regard myself as an expert on customary terminology like that but I what I would say is that the seller, non-seller dichotomy, that is language the Crown devises and employs.

30 Q. Yes. This might be trite, but I think it is important. There is no indication, or no evidence is there that the Crown had actually negotiated with the rangatira and hapū members or consulted with them or even allowed them to participate in any meaningful way in whether or not the Native Land Acts or the creation of the Court system therein was consistent with the Treaty guarantees or whether those steps were even a valid exercise of kāwanatanga.

A. There was no consultation with Māori here or with Māori anywhere else in the country about the introduction of the Native Lands Acts.

Q. This whole system was an imposition was it not?

5 A. It was a step taken by the Crown in right of New Zealand through legislation and yes of course it was an imposition in that sense. There were no Māori MP's even in those days to discuss the legislation nor was there any extra Parliamentary consultation about the Native Lands Acts that I am aware of.

10 Q. And a central tenant of that system, the creation of an individualised title to land was essentially anathema was it not to customary principles of collective tribal title?

A. Anathema, it was certainly in direct contrast. You could not have a more contrasting conception of tenure.

15 Q. Would you accept that the – the history shows that there were no reserves at all set aside for those hapū that I have mentioned, Ngāti Maiotaki, Ngāti Pare, Ngāti Huia in the northern blocks. So, the result of the denial of their interest was that they did not feature at all including in any of the reservation of land.

20 A. I think – I think not. I think that is right unless there is unless – to what extent you are – to the extent to which you are – the clients you represent had interest in Himatangi itself, which was not actually a reserve. It was more an investigated part of a larger block, but I am sorry to answer your question with a question. I know that is a no-no, but I assume though that your clients will have customary interest at Himatangi.

25 Q. They would agree. The upshot however was that in terms of the recognition of their hapū interests through Ngāti Pare if we are taking that example in terms of Himatangi, there was no actual recognition within the Court system, the Court investigation by way of the setting aside of reserves. But I can – that may be a level of detail that we can come to as
30 part of the primary evidence.

A. Yes, that is fine. Also, to add that the after history of Himatangi, after the investigation was very complex. It took a lot of time and effort for a final – for that to be finally Crown granted and a title issue. That did not happen immediately after the Himatangi decision. There was decades of

correspondence after that. Walter Buller became involved in that and then Himatangi became identified. Not as a reserve really but as an ML block, as a Māori – as we would call it a Māori freehold land block

Q. Right.

5 1410

A. But that took some time.

Q. And more broadly than just the hapū I represent but looking at just the paucity of land actually set aside by way of the reserves, would you comment given your experience on the link between the loss of land subsequent economic and social and cultural loss through the rest of that
10 century and into the 20th century?

A. That is a large question, isn't it? What is the relationship between loss of land and the social-economic consequences and effects of that? Of course they are severe, much ink has been spilled by historians trying to delineate those precise connections, but it has always seemed to me that
15 there has to be a connection between land-loss and economic fortunes. You lose your lands then your economic options are constrained and so there are links, in many cases those links are not straightforward, they are difficult to analyse precisely but from – if you are asking me from the research I have done and both in this process and otherwise, are there
20 connections between land-loss and economic options for the future? Yes, there is a – yes, there is a connection and the connection is that one economic historian who gave evidence in the Turanga-Gisborne Inquiry put it this way, I think he said there is a loss of economic space or opportunity space, constrain the land you constrain opportunity space
25 and you cannot develop it.

Q. And with it – Thank you. Sorry I cut you off.

A. No. That is enough.

Q. With a diminution of that economic power and looking at the system in
30 itself as it carried on through the rest of the investigations and the Court hearings and the like, I would suggest that there was a consequent lack of legal power, of political power that those petitioners and others who were seeking to right the wrongs and perhaps give effect to the

guarantees of Tiriti were finding themselves more and more hampered in their ability to change the impacts of the system upon them.

A. To cut a long story short, yes that is right.

5 Q. Just a question I had asked Dr Hearn and I want to finish with this, in terms of Featherston's actions and approach, much has been talked about, his devious ways of operating, my reading is that in addition the Crown infrastructure, those who were involved, were fully aware of his modes of operating and had an opportunity to do something about it but essentially, I would suggest to you, were motivated to not mitigate the
10 excesses of his behaviour because ultimately the results he was getting furthered the aspirations of the acquisition of land and the facilitation of settler development.

A. That is correct. I think actually that Featherston's personal deviousness as a person is irrelevant if I may put it that way. He is carrying out a policy
15 that he wishes to follow through in the Wellington Provincial Government and he represented a powerful party within the politics of the Wellington Provincial Government and he was committed to getting more land for the Wellington Province that could be developed and settled. And he would – he went to all the necessary lengths to achieve that for
20 himself and his political community. I am not defending him I am just making a point that his personal character is not really the question. He is acting for the Crown in the sense of here – because the Crown can mean many things, here we mean the Crown in the form of the Wellington Provincial Government.

25 Q. Yes. Thank you. Thank you for your answers.

LEO WATSON:

Thank you, Your Honour.

1415

DCJ FOX:

30 And Ms Cole can get an extra five minutes now.

(2:15) CHRIS BEAUMONT TO PROFESSOR RICHARD BOAST QC:

Q. Yes, Your Honour. Tēnā koe Professor Richard Boast. My name is Mr Beaumont, I represent a number of claimants who are affiliated with Raukawa and Kauwhata. I just want to briefly discuss pre-emptive Crown purchasing with you and I understand that Crown purchasing was not a focus of your report. So on your main report at page 220 you discuss the Rangitīkei-Turakina purchase of 1848-1849.

A. Sorry, page 220?

Q. Yes.

A. Yes.

Q. You note that the issue of rights to sell was compounded by concerns about colonisation itself and posed the question, ‘What were the risks if the region became densely settled by Europeans. I just wanted to ask, was that mainly a concern of Raukawa or Ngāti Toa or was that more of a concern of the Crown?

A. I mean by those iwi.

Q. And on that same page you discuss the influence of Missionaries on the rangatira in terms of persuading them to engage –

A. Actually, no, I beg your pardon, I must read that sentence again just to make sure that I am answering you correctly. “The issue of rights to sell was compounded by concerns about colonisation itself. What were the risks? The region became densely settled by Europeans.” I must – no, I think I must correct myself. I think that what I was getting at there –

DCJ FOX:

I am not – I am sorry. **(mic off 14:16:58 – 14:17:03).**

**CHRIS BEAUMONT TO PROFESSOR RICHARD BOAST QC:
(CONTINUES)**

Q. All right. It is paragraph 7.4 at page – under heading 7.4, we are at page 220, and the last sentence of the paragraph under the heading, “The issue of rights to sell was compounded by concerns about colonisation itself. What were the risks if the region became densely settled by Europeans?”

A. I think what I am getting at there is that there was a concern on the part of the Crown, I have to correct myself there, that what if unrestrained settlement took place without the mediation or interference of the Crown. That might cause conflict on the frontiers, therefore the Crown had an interest in making sure that the process of colonisation in settlement was orderly and controlled by the Crown. I think that is what I was trying to get at.

5

Q. Thank you, that is helpful, and on the same page you discuss the influence of Missionaries on the rangatira in terms of persuading them to engage in land selling. So it was encouraging the rangatira to sell the land. Was that a pivotal role of the Missionaries?

10

A. Sorry, a pivotal role?

Q. A pivotal role of the Missionaries, apart from the spread of Christianity.

A. Well, I think that the Missionaries, I mean, I do not think they set out to have that role. Well, the purpose of the mission was not to assist with the programme of land selling or anything like that, but I think that the role that the Mission played culturally and generally with the introduction of Christianity, that had an impact on the decisions, especially of the younger more ardently Christian chiefs in their behaviour regarding land, land alienations. Was it pivotal? It was certainly a significant aspect of the decision-making of a number of key figures, yes.

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Q. And you mention that the Missionaries were more easily able to sway the younger generation of chiefs than the older generation. Would you say that they would have targeted the younger men for that reason?

25

A. Targeted them? I do not know that the Christian Mission targeted younger men and had a deliberate policy of bypassing the older chiefs. It is simply that the older rangatira were more conservative. Christianity was the new thing. Older more conservative rangatira were like the rest of us. As we get older, get more set in our ways. They were more resistant to the good news of the gospel. It was a new-fangled thing. The younger men, the younger people generally became intrigued. They became actually not really that, they became seriously intellectually interested in Christianity. They took Christianity seriously. Many trained

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for the church – into church colleges, it went a lot further than going to church, but many became Christian ministers themselves.

1420

5 Q. Thank you. If I could move onto page 221, you state there as far as Ngāti Raukawa were concerned allowing Ngāti Apa to settle the Rangitīkei Block was a generous concession. Not a recognition of a claim of right. In your view –

DCJ FOX:

10 For the record it would pay, I mean I can find it, because you have read the sentence, but it takes a while, to point us to the paragraph.

CHRIS BEAUMONT:

Yes, Your Honour.

DCJ FOX:

Thank you.

15 **CHRIS BEAUMONT:**

Yes, I can see it. Go, starting at the top, it is first paragraph after the quote beginning “Rangihaeata”.

DCJ FOX:

(Mic off: 14:21:31)

20 **CHRIS BEAUMONT:**

Yes, apologies for that, Your Honour. Yes, I have got it here. So it is the beginning of the paragraph – after the paragraph that starts “Rangihaeata”.

**(14:21) CHRIS BEAUMONT TO PROFESSOR RICHARD BOAST QC:
(CONTINUES)**

25 Q. What I am wanting to ask is in your view would that have been clearly understood by the Crown agents involved in the sale? Would they have

understood that it was a generous concession and not a recognition of, right?

A. With the Crown agents involved –

Q. Well perhaps...

5 A. – no, I do not know if they really would have grasped that.

Q. And you also note that it is significant that McLean thought that it was essential to get Ngāti Toa and Ngāti Raukawa's consent before proceeding with the Rangitīkei Deed. Just wondering if you explain a bit more why it was significant?

10 A. Here. It is significant that McLean thought it was essential to obtain Ngāti Toa and Ngāti Raukawa consent before proceeding with the Rangitīkei Deed? Well I think it is significant because that shows that McLean understood that there was at least in McLean's mind some kind of overarching Ngāti Raukawa and Ngāti Toa claim of right to that area.

15 Mclean, we may not like him, but he was no fool and he had a good understanding of Māori customary practice and who was who politically more essentially. A 'Wylie Scott' as people over the time described him. He was very well use to tribal politics coming as he did from the Scottish Islands.

20 Q. Now I just want to go back to something that you mentioned in your summary this morning when you were speaking, you mentioned that the – when you were talking about the non-sellers and you noted that the more that Ngāti Apa get, the more the Crown get.

A. Mmm.

25 Q. Do you agree that in this way the Crown are perpetuating tribal divisions in order to achieve their objectives in the Native Land Court?

A. Broadly they are. I do not think they are trying to whip up tribal tensions as such. But they certainly are targeting those who are willing to sell. That is how it fell out that – and it is the case, I believe that the Crown purchasing team, they did zero in on Ngāti Apa in particular, yes.

30

Q. And just on my last question again referring to your summary this morning and during the cross-examination by Dr Gilling, you noted that the Native Land Court tend to always find the smaller hapū groups that was

during questioning, sorry. Are you able to elaborate a bit more on that statement?

1425

5 A. What I mean by that is that the Native Land Court was aware that true claimants – the true owners of Māori land titles were – tended to be small groups and were typically hapū as the primary right holding group. That is what anthropologists would probably say today I think. I am not an anthropologist I hasten to add, but that was the Court's understanding and usually claims in the Court were brought by quite small groups. The 10 typical Land Court case was a large number of claims by comparatively small groups. Often the – and there were times when the Court awarded sometimes astonishingly large areas to quite small groups and you can see that in the Rohe Pōtae Block, but that was the Court's broad understanding. The right holding group is hapū. So, in its findings in the 15 Rangitīkei-Manawatū case and Himatangi, the Court sort of does that but the – and says – and finds for those particular hapū but as I have spent a lot of today the context of that case was a very particular one.

Q. Thank you very much for that. Those are all of my questions Your Honour. Kia ora.

20 A. Thank you.

DCJ FOX:

Ms Cole.

(2:26) JACKI COLE TO PROFESSOR RICHARD BOAST QC:

25 Q. Thank you, Your Honour. I am pretty sure I am not going to need my full of 30 minutes. Tēnā koe Professor Boast QC. Ko Jacki Cole tōku ingoa. I am appearing for the Crown with my friend Mr Morrison. I do not have too many questions for you however I will just start with something that was raised by Ms Katipo earlier on and she suggested near the end of her questioning of you that more care was needed by the Crown in 30 establishing a Te Reureu Reserve.

A. Yes.

Q. Do you recall that?

A. I recall that.

Q. And you agreed with her. Do you recall that?

A. Sure.

5 Q. Okay. If I say so, right? I just wondered really whether it was more a case that more care was needed in determining the relative interests of those in the reserve as opposed to determining – as opposed to having more care needed the Crown in establishing the reserve. It strikes me that those are two different things.

10 A. It was the relative interest I had particularly in mind. Just to award the block to those four groups just like that –

Q. Yes.

A. – and as it were walk away from Reureu after that. That is what I meant.

15 Q. Yes, that is what I – thank you I just wanted to get that clarification because that was actually the nature of the conversation that you were having with my friend. In discussion with Dr Gilling, you made a comment that the Crown had turned to the Native Land Court as a useful device for the dealing with the non-sellers of the Rangitīkei-Manawatū Block. I wondered if you could expand on what alternatives were available to the Crown at the time for determining the issue of rights and interests between Māori?

20 A. What alternatives? Well prior to that the Court had – sorry the Court rather the Crown had with very mixed success handsomely figured it out itself as with the Ngāi Tahu purchases.

25 Q. But we would not want to suggest that that was a good approach, or would we?

A. No, I am not trying to suggest that was a better approach –

Q. Right.

30 A. – but of course, the Native Land Court was newly established and its – its purpose was to investigate titles and award Crown grants as we know. Here in this instance though the Crown has a problem. It has bought these shares from all these people in the Rangitīkei-Manawatū Block and it needs know – have some way of finding out of what that means. If it is overwhelmingly brought from Ngāti Apa and not that much from

Raukawa. The Crown wants to know how much of the block does that give us? They turn to the Native Land Court for a solution to that.

- 5 Q. So, my question is what other alternatives were actually available to the Crown at the time? If we are being critical of the Crown having turned to the Native Land Court for determining that issue, what were the options open to it as alternatives? If there were none, there were none.

1430

- 10 A. Well I do not know that there were none. Why could it have not, for example relied on Māori customary forms of dispute, resolution collected the opinion of leading rangatira – there were times when the – well let me put it this way that the Crown certainly was well aware of in many parts of the country who was who, in terms of expertise on customary interests that could have done that, established some type of mediation that you see done here and there.

- 15 Q. Well isn't that what the Native Land Court was effectively doing?

A. A mediation? I would not say so, and the – of course the Native Land Court is presided over by unqualified Judges who make a legal determinations. At no time really could you accurately describe the Native Land Court as a mediated process.

- 20 Q. Okay. So you are not giving us any suggestions as to how the alternatives that were available to the Crown at the time beyond it looking at its own knowledge, which I think you had already suggested was probably not the ideal thing to do...

DCJ FOX:

- 25 Well actually no, that is not what his answer was. I want the record to be correct. What he is said is, "Why could the Crown not have relied on Māori customary forms of dispute collected opinions of leading rangatira, because the Crown was well aware of who within Maoridom could have assisted it."

JACKI COLE:

- 30 Which would obviously then mean –

DCJ FOX:

That is his alternative.

(14:32) JACKI COLE TO PROFESSOR RICHARD BOAST (CONTINUE)

Q. Okay that is his alternative. Is that an alternative that actually results in the Crown having to make a decision as to the ultimate outcome? Which
5 I am assuming you would say would not be the desirable or tika process?

A. There is a difference between the Crown making an informed decision and an uninformed one relying on advice from persons with expertise. The other – on the whole the Crown’s practice was making uninformed decisions. You see that for example in the Ahuriri and the Crown
10 purchasing blocks where the whoever is doing the purchasing on ground advances money to whoever the Crown agent in place thinks the money should be paid to.

Q. Mmm.

A. It doesn’t get any more sophisticated than that.

15 Q. Mmm. But in this case, what the Crown actually did was refer the matter to the body that had been established specifically for this purpose. Didn’t it? It did not do the sort of thing that you just described?

A. At first the Crown passed legislation to prevent that from happening, it enacted legislation to prevent Ngāti Raukawa from going to the Court to
20 – well what Ngāti Raukawa wanted to do was to apply to the Native Land Court to have a decision made by the Court in advance of the purchase.

Q. Mhm.

A. The Crown blocked that outcome by legislation.

25 Q. Yes.

A. Excluding that block from the operations of the Native Lands Act.

Q. Yes, I accept that as a matter of fact that had happen in advance of the time that I am talking about. But I think we should just leave it there and move on to the next issue. You did make a comment about again in your
30 discussions with Dr Gilling about Raukawa having been through the 1868-69 experiences and of course the events in Maungatautari, and your comment I think was that there was feeling of is there a general

conspiracy against us? Do you remember making a comment like that earlier?

A. Of course I remember, yes.

5 Q. Yes. I put a question Dr Hearn yesterday because he in his report and I did not see it in your report, it may have been there but there was a hui in 1872 at lihikaretu on the Manawatū River, where Muaūpoko, Rangitāne, Ngāti Apa and Ngāti Raukawa as it's reported came together to – and the outcome of that hui was that, there was an agreement to submit all titles to land from there on, so we are talking 1872, to the Native Land Court.

10 The question that I put to Dr Hearn and I am interested in your response also was given the experience that Ngāti Raukawa and when I say that, I mean the broader group, their experiences through the Native Land Court, why would they have agreed to submit future title issues to the Native Land Court, do you think?

15 1435

A. I'm unclear about your question, are you referring to this 1872 agreement?

Q. Yes.

A. I don't know anything about that and cannot comment.

20 Q. Okay, okay, no that's fine. Just with respect to the Ngāti Raukawa, you mentioned earlier on that they made up the bulk of and that's my phrase, not yours, of the non-sellers and I appreciate that. None of us like that phrase. Do you have a sense of the proportion of Ngāti Raukawa who were sellers as against those who were non-sellers?

25 A. Not really, no.

Q. Thank you. Now, something that came through very clearly in your report and those of the other technical witnesses who presented this week and are going to still present, is the use of the newspaper reports from the time to record the history, and it strikes I think any reader of the reports

30 the very sharp differences between the reporting of one newspaper against another newspaper and perhaps I could use the examples of the *Wellington Independent* and *The Press* from Christchurch. I understand, and if you know this you can confirm it, but I understand that

Isaac Featherston had actually been the first editor of the *Wellington Independent* in 1845, you aware of that?

A. That explains a lot, but I wasn't aware of that.

Q. Right.

5 A. Certainly the *Wellington Independent* was very pro the purchase.

Q. Yes.

A. Yes, and reported Featherston at length.

10 Q. And that was going to be exactly the point, if that is a matter of fact, which I think somebody is going to need to dig out some evidence about this because it's certainly referred to in the Te Ara Encyclopaedia extract that my friend referred to – Mr Watson referred to earlier this week, and I appreciate you wouldn't have heard that, but David Hamer has written a biography of him and he makes reference to that fact. And my point was purely going to be what you just said pretty much. It would explain the
15 slant that the *Wellington Independent* put on its reporting of these matters, wouldn't it?

A. It wouldn't wholly – sorry, have you finished?

Q. Yes, I have.

20 A. It wouldn't wholly explain that slant because I think also the slant is because the settler community would have been wanting to know that the purchase was proceeding and that it was a success. That particular newspaper saw itself as the mouthpiece of not just the settlers or the settler community as I understand it. I don't – but also of that section within Wellington politics, that was eager for land expansion of the
25 province. Wellington party politics in this time were pretty lively so I understand, something that I'm not a specialist in.

30 Q. Thank you. Can I take you to the 1868 Himatangi case and I understand your – well I am aware that your 2013 text well renowned the Native Land Court Volume 1, in discussing the 1868 Himatangi case, you recorded that it would be very difficult to simply dismiss the Crown's evidence as entirely manipulated or self-interested, do you recall that? And I do appreciate that it has been some years.

A. It's my book and I know what I wrote in it.

Q. So, you recall that? You confirm that that's what you'd said?

A. I don't have it in front of me, but yes. You are putting to me an extract from a book I wrote some years ago.

5 Q. Yes, yes, and I'm leading to the question. You suggest in your or you have said in your current report that the picture of the areas aerial history presented by Tamihana Te Rauparaha was at least a plausible one, you agree with that?

DCJ FOX:

Can we have copies of what it is –

JACKI COLE:

10 The text book.

DCJ FOX:

Have you got something you can give him?

JACKI COLE:

Well, as he said, it's his text book.

15 **DCJ FOX:**

Yes, but have you seen the volumes, you are asking him to remember every word he said in that text book?

JACKI COLE:

20 No, I'm not asking him to remember every word, but it is in terms of the nature of the description that he gave to the transition at the time.

DCJ FOX:

Well, I think it would only be fair to the witness to actually give him the extract from –

JACKI COLE:

25 Okay, well, I can do that, but not at the minute, so I will –
1440

PROFESSOR RICHARD BOAST QC:

I'm happy to proceed on that basis Ma'am but it is an accurate statement from my book.

JACKI COLE TO PROFESSOR RICHARD BOAST QC: (CONTINUES)

- 5 Q. Thank you, and all I was going to ask you is I couldn't help but notice that the observation was not repeated in this forum and so I wondered if you could give us an explanation as to why?
- A. Oh, I don't want to impolite, but so what? My evidence is for this, my book isn't in evidence in this inquiry. This is my evidence, and this is the result
- 10 of comprehensive research that I've done for this inquiry, that part of my book and I think it was probably written some time before. So –
- Q. So, your thinking has moved on for instance since 2013?
- A. Well, naturally it has because I've developed this at length.
- 15 Q. Okay, no that's great thank you. The 1869 case, your analysis and presentation of the evidence and the tables in your report which are at pages 295 to 301, the claimants' evidence and then from 314 to 319 for the Crown, extremely helpful the way that you have set that out in those tables. If I can go to page 319.
- A. 319.
- 20 Q. 319.
- A. Yes.
- Q. And when you revert back to the text the narrative and you –
- A. Yes.
- 25 Q. Yes. The Ngāti Raukawa claim has been based on conquest occupation and the complete domination of the region and their own kindness and generosity, in some instances overriding Te Rauparaha's wishes. And the Crown structured its case around the argument that Ngāti Apa were independent allies of Te Rauparaha?
- A. Yes.
- 30 Q. The Crown case deployed a great deal of Māori evidence, but it was principally from Ngāti Raukawa's neighbours and given by people who had signed the deed of cession. The Crown case was supported by amongst others, Tamihana Te Rauparaha, Te Rauparaha's son. Your

analysis of the evidence from the case shows clearly that there were others from Ngāti Toa and Ngāti Raukawa and a number of other iwi also who were supportive of the position. Sorry.

A. Do you mean it wasn't just them? No, there were others of course.

5 Q. Yes, yes, exactly. I'm sorry, I'm sorry. The question is simply whether or not the evidence that was provided to the Crown as in the Crown counsel who were appearing, came from reputable and well-regarded members of the iwi (plural) who were presenting evidence to support the Crown's position?

10 A. Some of it did. Some of it came from one Amos Burr whoever he was, and Isaac Featherston, no less, gave evidence, but yes there were other rangatira who are I agree, they are prominent, well-regarded rangatira of those iwi, such as one instance Whiti Te Aweawe, Hūnia Te Hakeke et cetera in fact all of those witnesses are identified in that table.

15 Q. Yes. Thank you very much for just confirming that. Can I take you to your summary, the summary paper that you prepared and the paragraph that's numbered 7.5?

A. Yes. Well, I've lost it, right.

Q. I beg your pardon?

20 A. 7.5 yes.

Q. This is just picking up on this Ngāti Raukawa, and Ngāti Kauwhata. I don't want to use the word "distinction" but right at the minute I just can't think of a word to use. You note in paragraph 7.5 the Courts principle finding and this is obviously going back to the 1869 case. Crown's principal finding was that Ngāti Raukawa as a tribe had no interest in the block, but there were some Ngāti Raukawa occupation of the land by just three hapū, Parewahawaha, Kahoro and Kauwhata, and you note there that the Crown and as a matter of fact, the Crown treated the latter, so Ngāti Kauwhata simply as a hapū of Ngāti Raukawa. Your report makes
25
30 it very clear about the distinguishing between those two, and the fact that Kauwhata and Raukawa may have had a common ancestor but Kauwhata was not a descendant of Raukawa. That is right?

1445

A. That is my understanding.

Q. Yes.

A. I am not an expert on whakapapa of course.

Q. Yes, no I accept that. My question is from your research do you know whether Ngāti Kauwhata witnesses presented themselves as a hapū of
5 Ngāti Raukawa or as the manner in which you have described in your report, which I do not take any issue with, but do you know from your research of the actual case?

A. That is an interesting question. On the whole, people giving evidence in the Native Land Court did not necessarily say, “I am appearing for an iwi
10 or I am appearing for a hapū.” They just say, “I appear for Ngāti x.” There were also occasions in which groups did – people giving evidence to say, I belong for Ngāti x, which is a hapū of Ngāti Kauwhata as well. It is quite a variegated picture in that respect. The iwi, hapū distinction that we accept as axiomatic today was still in the process of being formed in the
15 19 Century.

Q. Thank you. That is helpful. Paragraph 7.6. I have only got two more things. Paragraph 7.6 of your summary, you note that you have not found any evidence of direct manipulation of the Court behind the scenes and I appreciate the kōrero that you had with my friend earlier on about
20 manipulation by the Crown of the Court, and I assuming in your paragraph 7.6 that when you’re talking about manipulation you are talking about manipulation by the Crown of the Court, am I right?

A. Of course.

Q. Yes. Your view that the Court was not simply an agency of the Crown is respectfully well known, you have said it again today and noted it in your
25 summary, and I wonder whether given this you would agree that if there had been manipulation, even behind the scenes, there would have been evidence of this?

A. Would there? Who knows what discussions behind the scenes go on
30 between the Courts and members of the Crown even these days. I do not think this would be widely known at all.

Q. Notwithstanding all of that the plethora of information that has been available that you have all found – the researchers have found in relation

to these. You do not think that if there had been elements of manipulation by the Crown that there would have been some reporting of it?

A. Records of meetings, minutes of a meeting held between the Attorney General and the Judges of the Native Land Court re: the Himatangi case, something like that, a file? I have not seen anything like that.

Q. Well we cannot prove something that does not exist.

A. Certainly not. Historians do it all the time. Well-argued by counterfactuals. Historians say they never do that but in fact they always do.

10 Q. Just one last question is in relation to the Te Reureu Block.

A. Te Reureu, yes?

Q. At paragraph 10.1 of your summary, you describe it as the largest and most important of the Rangitikei-Manawatū reserves. I just wondered if you had the conversation with my friend earlier about the largest and some very interesting information came out of that exchange. I just wondered if you could expand upon the most important part of your sentence. Why was that particular block considered the most important?

15

A. Most important of the reserves and not merely the size? I think it was very important because of the quality of the land there.

20 Q. Right.

A. It's suitability for farming purposes. It became the centre of a Māori dairy farming district, unique in the Manawatū in my view or as I understand from a comparatively early time.

Q. Had that already been developed prior to the reserve being created?

25

A. Dairy farming? Certainly, no it would not have. It was probably used for cultivations otherwise I do not know.

Q. So the value – and when I say value, I do not mean the monetary value, the valuable aspects of the land, had that been recognised prior to the vesting of the reserve that you are aware of?

30

A. I do not know.

1450

Q. Thank you very much. Actually, sorry I did have one other question in relation to Te Reureu, the litigation that you, again you spoke about and

clearly, we understand the background of that litigation in terms of before hapū, but was the Cron actually involved in any of that litigation?

A. You mean in the Court?

Q. Yes.

5 A. No, it was inter-hapū contestation.

Q. Thank you very much.

JACKI COLE:

Thank you, Your Honour. Those are the questions for the Crown and thank you very much, Professor Boast.

10 **DCJ FOX:**

Thank you. All right, Dr Phillipson.

(2:50) DR GRANT PHILLIPSON TO PROFESSOR RICHARD BOAST QC:

Q. Tēnā koe, Professor Boast QC. We wanted to start by thanking you for your report, it is a fabulous contribution to our inquiry. Just wanted to note that *vis-à-vis* that question – that second last question from the Crown, I am reminded of Fergus Sinclair who was Crown counsel in a number of Tribunal inquiries saying that, “The absence of evidence is not evidence of absence.” Which I think is an appropriate point to start. I just wanted to begin by asking you – I have not yet had time to read all of the evidence presented in the Himatangi case, I am going to but I have not had time yet, and I was puzzled by why the decision of that Court, that half of Rangitīkei and Manawatū belonged to Ngāti Apa and half to Ngāti Raukawa, but it followed that half of Himatangi should belong to one and half to the other when Himatangi could have been completely within the Ngāti Raukawa half if they were going to do that. So why did it follow from one to the other?

20 A. You are right, yes, and I agree, the logical inference too, is that given that Himatangi has to be in the Raukawa bit why have – yes. I agree. That is no – I have to say, no I do not know the answer to that.

30 Q. Right.

A. It is simply a puzzle.

Q. So, there was no evidence given during the hearing, I thought perhaps there was of Ngāti Apa occupation there?

A. All the evidence of occupation I think it is, yes, I think I am justified in saying that. All the occupational evidence related to those
5 Ngāti Raukawa hapū.

Q. Right, okay. Well that is a puzzle that we will need to consider then. Thank you.

A. May I say what a pleasure it is to see you again.

Q. Thank you, and you too. You may not think so at the end of my questions
10 but –

A. That is fine.

Q. Now, I am also curious by something you said towards the end of the answers to claimant counsel where you said that in this case the Crown was the Wellington Provincial Government and I am wondering why you said that when throughout the purchase Featherston was acting as a
15 Crown Land Purchase Commissioner –

A. He was.

Q. – appointed by the Central Government. I mean because –

A. He was acting – that is true.

Q. Yes and so is it actually possible because I read your report having
20 already – I read yours third and so having already read the others I had this in mind and I was trying to work out if you could ever distinguish between him acting as one or the other and it seemed to me that for the purchase he is acting as a Land Purchase Commissioner although his motivations often come from his office as Super Intendent. Would you agree with that or do you think it is more complex than that?
25

A. It might be slightly more complex than that, but I think as a basic analysis that is right, it is actually hard to distinguish.

Q. Right.

A. Between the two and I suppose it is primarily his motivation. The
30 motivation clearly arises from his Wellington Provincial Government orientation and that the purchase was in the interests of the Wellington Provincial Government and also, and the only other gloss is, that it is not that common for a Provincial Governments to have played a

role in the Crown purchasing process that much. I do not think, from memory, the Auckland Provincial Government did not really –

Q. No.

1455

5 A. It was left to the general Government to do that, but here we do have a Provincial Government least – let's put it this way, strongly interested in this particular purchase.

Q. Yes, because their interest lay in the fact that the Crown had promised that whatever land was purchased for the Crown will become wastelands the Crown controlled by the provincial –

10

A. Absolutely.

Q. Yes.

A. Yes.

Q. So that's where the interest comes from but that in his actions he is the Crown Land Purchase Commissioner, was my understanding of it.

15

A. That's correct, the province will benefit.

Q. Yes, yes, thank you. Now, that brings us to the even more perplexing role of Buller.

A. Yes.

20 Q. Who throughout this is a Resident Magistrate, who somehow is supervising surveys and going around collecting signatures to deed and throughout that and there is a – was one sentence in Dr Hearn's report that said that Featherston describe him as an Assistant Land Purchase Commissioner. So, I asked Dr Hearn had he actually been appointed to that role and he was not sure, and he is going to look into that. But I wondered if you could shed any light on when Buller is carrying out these non-resident Magistrate activities, who is he accountable to? Who is he controlling? Is he taking his orders from Featherston or from the Native Minister or Minister of Justice or who, do you know?

25

30 A. I don't know. I can only state my impression. My impression is that he is taking orders from Featherston.

Q. Right.

A. But I don't know of any formal appointment, no.

- Q. Okay, thank you. And in the second decision of the Court, are you able to tell us on what criteria the Court reduced the list of 500 names to 62? That is sorry, that is on page 345 of your report if you want to have a look at it.
- 5 A. I will.
- Q. There it is right underneath the quote.
- A. That is all I know. The – I have looked through the file relating to that case –
- Q. Because this case –
- 10 A. – fairly thoroughly. There is a –
- Q. This case is all the non-sellers in the Rangitikei-Manawatū Block except for Himatangi.
- A. That's right, correct.
- Q. And the Court decides that there's only 62 of them.
- 15 A. Yes.
- Q. And that is a very – I find it difficult – I want to know on what criteria the Court decided that on what evidence and what factual basis.
- A. I don't know because so little of the evidence in that case has survived.
- Q. Right.
- 20 A. It is not covered in the newspapers. There is no minute book evidence relating to that case. There is just what is on my file. The file contains some very scattered material. I have analysed the file at one point in my report. So, that's a, yes, that's another one of those puzzles.
- Q. Do you think you would be able to shed more light on it if you had another
- 25 look or do you think there's just no answer?
- A. I'm very happy to have another look, but I'm sure if there had been extensive documentation on that I would have noticed it.
- Q. Right, yes, okay, because I have also asked Dr Anderson and she was not able to shed any light either, so. And in jumping back from that one
- 30 to the 1868 one, I was fascinated by your description of Manning's tendentious decision this morning and I understood the context in which you placed that, was the need for the settlers of Wellington to get possession of their land I think, and the Crown's interest in seeing the purchase completed was the context you said we were to interpret that

in. But for me that still does not understand why he would use what you call such glowing language about Ngāti Apa and such negative language about Ngāti Raukawa. And with you as you put it then with intention of marginalising the importance of Ngāti Raukawa and even suppressing facts you said. So, was it – I cannot understand why it would be necessary for him to go so far in order to achieve that end. So, do you think that just says something about Manning?

1500

5 A. It probably does. Manning was a very artful writer and I can say that because I have looked at some of his other judgements. He wrote a judgement in regard to the Te Aroha Block which was also re-printed in Fenton's important judgement. It is written in very much the same style. Whereas I think with most judgements of the Native Land Court these are dashed off by the Judges or maybe not necessarily by Fenton, but
10 Manning's judgements at least those two show every sign of having been artfully and carefully composed and he – I think he had a good impression off himself of a pro-stylist. The Te Aroha cases is a case full of the most lurid reference to quivering prisoners being thrown into the glowing ovens and all that sort of stuff. He wrote purple prose and he stated text
15 carefully.

20 Q. Okay. All right, yes, yes. That helps me thank you. The four groups living at Te Reureu which is as we have heard Ngāti Waewae, Ngāti Pikiahu, Ngāti Rangatahi and Ngāti Matakore. Those groups living there, and this is a question really based on your earlier part of your report but having significance for Rangitīkei-Manawatū. Would you have
25 expected those groups to be consulted in the sale? So, I am sort of calling on your – your earlier chapters in your description of the custom – customary history. If you cannot answer that is fine but I am interested in your opinion of that?

30 A. I am uncertain about that. Yes, I would have thought so.

Q. Yes. Okay, thank you. And moving and still on Te Reureu. Alexander Mackay's investigation. Now Paul Husbands has described him as a Royal Commissioner – as a Royal Commission but I have got the impression that perhaps he was doing it in his capacity as the

Native Reserves Commissioner. Can you shed light on that? You discuss his investigation. On what grounds was he doing it?

A. Can you just point me to the page?

5 Q. I do not have a page, sorry it is just part of your discussion in that chapter on that reserve.

A. Yes. I do not know. His report only happens to be preserved in a newspaper account of one of the Reureu decisions. Well that is the source I have relied on. Were it not for that I have not found any archival footprint –

10 Q. Right.

A. – for that inquiry. So, the – historian’s weasel answer. There appears to be no clear evidence of that.

Q. Right.

A. What his precise role was or how he came to be appointed.

15 Q. Okay, because he was the Commissioner of native reserves at the time.

A. He certainly was.

Q. Yes.

A. Yes

Q. That made it seem likely.

20 A. That seems very likely.

Q. Yes.

A. Yes.

25 Q. Okay. Now Dr Hearn has suggested that the Attorney-General said that the Crown Grants Act in 1873 was necessary because the land had become the land of the Wellington Province and you have said in your report on page 367 that you did not think it was necessary at all for that Act to have been passed, for the Crown to grant land and I am wondering what was the basis of your opinion on that point? It is page 367 of your report. It is underneath the quote there, “Why exactly special legislation was necessary to do this was unclear. Why could the Crown not simply

30 make grants out of the land?”

A. Why did it need a statute?

Q. Yes, and what is in Dr Hearn's report is the Attorney-General saying it is necessary because it had become the land of the Wellington Province, but –

1505

5 A. Even that is so, I am still not clear why that would mean that the Crown could not simply make Crown grants as it routinely did.

Q. So that would not be an explanation then as far as you are –

A. Well it might be.

Q. Right, okay, you are not sure. Thank you. It is important because we are
10 trying to work out the basis of the Crown grants and what they mean and that is really quite significant because it is unusual for there to be so many of them. Normally people are getting certificates of title from the Court, and I just wanted to follow on with that to ask you about the material you have given us in pages 667-669. So you put forward this argument first
15 that the language in the Crown Grants Act was not sufficiently explicit to extinguish native custom. That is not on that pages, that is earlier. And then you say that even though their Crown grants awarded in fee simple, nonetheless the land was found by the Court to be customary land because it was, in the Court's reasoning, supposed to have been a
20 reserve and therefore it is still in customary title, and that was a case that you referred to us re: – now I am not sure, I think it is *Pekamu Aterea*?

A. Right, an early case, yes.

Q. Yes. So I am really, really confused by that. I do not understand how a
25 Crown grant in fee simple can be customary land, native title before it is extinguished. So you have got the extinguishment proclamation, you have got the Act and you have got a Crown grant in fee simple and the Court says it is customary land. Can you explain that? Because if that is right, that explains why the Court got jurisdiction over so much land, it was actually done under Crown grants with no relation whatsoever to the
30 Native Land Acts at all.

A. Yes, and even, first, my understanding of a Crown grant is that is something of – that under constitutional practice the Crown can simply do, can make Crown grants, simply because it is the Crown, it does not need any statutory authority to make a Crown grant. With the

Native Lands Act process we have the – but we do have a process there by which there is a statutory framework now, isn't there, because firstly there is the Court investigation of title under the legislation.

Q. Mmm.

5 A. Successful parties in the Court, as it were, can then apply to the Governor for a grant. So there, there is a reference to the two-step process that we find in the Native Land Court. It is also there is general legislation, the Crown Grants Act to which we now have, I assume that it probably would have been an early 19th century variant of that. But in terms of basic land
10 law or tenurial theory, the Crown may make a grant and also Crown grants are regarded by property lawyers as near sacred texts, they are almost – that once the Crown has made a grant it cannot withdraw it, it has been rescinded, and we also see in the *Mabo* decision in Australia that merely making a Crown grant of itself is an extinguishment of native
15 title, that has tended not to be New Zealand practice. It is more that the grant carries the burden of the native title on the grant.

Q. And you are saying – but that is not the reasoning used by the Court in that decision you discussed –

A. No.

20 Q. The Court said it is because it was supposed to have been a reserve and therefore it is still customary land. That is a completely different line of argument. Because if that is correct, then anybody with a Crown grant could turn up in front of the Native Land Court then or the Māori Land Court now and say, "Well this is customary land." I think I might ask you –

25 A. Well in those terms that cannot be right –

Q. I must – I might ask you to respond to this in writing I think because it might be helpful for you to think about it and...

A. Very happy to think about it.

(3:10) DCJ FOX TO PROFESSOR RICHARD BOAST QC:

30 Q. Yes, and if I could just follow up from that and ask you in terms of the chronology after the Vanning decision is released on the Rangitīkei-Manawatū block, the proclamation is gazetted on the 16th of October 1869 and by that stage a number of reserves had been,

well, a number of the non-sellers acquired land whether they were reserves at that stage or something I am not sure about, you could tell me. If they were reserves and a Crown grant was given and if what you say is correct that the grant carries the burden of native title, what is the status of those reserves after the proclamation?

5

A. My understanding would be that mostly the, apart from the reserves that have been mentioned in the Court's own decisions which I think some areas are identified in particular –

Q. Yes, I am only talking about those that were mentioned in the Court's decisions.

10

A. Yes.

Q. Could you think about that at the same time you are thinking about –

A. Well, they have – of course those reserves have been mentioned in decisions, but they will not have been marked out on the ground by survey at that point. They had not – they were, I guess you could say that with the exploring a legal analysis there then of course we have the reserves are identified by the Court, the proclamation is made, we must work on the assumption that the proclamation is decided – the intention with the proclamation is to exclude surely those reserves, areas –

15

Q. That is right.

A. – that have been identified by the Court which had not –

Q. That is what I –

A. Yes, that is what I would say too, but they had not been marked out.

Q. Could you give some thought to that when you have some more thinking around what Dr Grant has asked you?

25

A. I would be delighted to.

Q. Thank you.

**DR GRANT PHILLIPSON TO PROFESSOR RICHARD BOAST QC:
(CONTINUES)**

30

Q. Right, because just one thing that you mentioned in the same thing, same piece of analysis is that you referred to the Native Land Court Act 1894 which said that no matter what the status of the land and no matter what Act it was granted on, the Court was given jurisdiction over successions.

So all of that land would eventually come back under the Court through that provision alone I think. Any Māori succession was subject to the jurisdiction of the Court no matter under what Act that the land was granted, that is what that provision provided.

5 A. Something else I would need to revisit.

Q. Yes.

A. In terms of successions, the Court gets a jurisdiction in probate around about that time, which I guess is a different point, but the Court can then start looking at whether it takes over from the Supreme Court with respect to granting probate of Māori Wills that leave land interests. Court's practice with respect to that, it needed also to make a succession order in the Court and a grant of probate if there was a Will.

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Q. All right. So my final question to you, on the same theme, is that the 6200 acres that was granted as reserves in that Himatangi – sorry, the 1869 decision, was that followed by a certificate of title from the Court under the Native Lands Act? So those people –

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A. One would expect so, but if it was, I have never seen it. The clue is probably in that subsequent narrative of what happened to Himatangi afterwards and Buller's intervention.

20 Q. No, I am not talking about Himatangi, I am talking about the 6200 acres awarded in the 1869 decision.

A. The 1869 decision.

Q. Yes.

A. Okay, sure.

25 Q. Did those people get a certificate of title from the Court? Because they were awarded their land by the Court.

A. Yes, that is correct, they were awarded land by the Court. Again, there was nothing on the file.

Q. So you do not know?

30 A. Well, I have not seen it.

Q. Okay, that is great. Thank you very much and again thank you for your report and just to note too that I have got some questions in writing for you that are just smaller points of detail. Thank you.

A. All right.

DCJ FOX:

Thank you. We are going to take the afternoon adjournment, so you can have a bit of a break and cup of tea. I do not think there are many questions from the Tribunal after that.

5 **PROFESSOR RICHARD BOAST QC:**

There aren't many or there aren't any?

DCJ FOX:

There aren't many.

PROFESSOR RICHARD BOAST QC:

10 All right.

DCJ FOX:

Dr Soutar has a few.

PROFESSOR RICHARD BOAST QC:

Just looking forward to going home to the wedding preparations Ma'am, all right.

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HOUSEKEEPING (AWHINA TWOMEY)

HEARING ADJOURNS: 3.15 PM

HEARING RESUMES: 3.34 PM

(3:34) DR GRANT PHILLIPSON TO PROFESSOR RICHARD BOAST QC:

20 Q. Tēnā koe Professor Boast, you are back with me again sorry. I have one more question I forgot to ask, and that is in relation to, you were referring to Crown powers in respect of the Native Land Court that had been conferred by various pieces of legislation and it occurred to me that in listening to you emphasise the role of the Crown as appearing in Court
25 as a party opposing Ngāti Raukawa in the Himatangi case, that the Native Lands Act 1865 also made the Crown the decision-maker in terms of whether a rehearing should be granted. So, do you have a comment

on the fact that the Crown both a party in the Court opposing Ngāti Raukawa and the decision-maker is to whether Ngāti Raukawa's application for a rehearing should be granted, which of course it wasn't.

5 A. It just struck me as unusual that we have a Crown as opposed to its general powers with regard to rehearings is actually there within the four walls of the Court posing the case by means of a been instructed by the Crown.

Q. Yes.

10 A. That strikes, that is – well I don't think it strikes me as unusual, it is unusual, yes.

Q. But then it was also the Crown that decided whether a rehearing should be granted.

A. Yes.

Q. That Crown had that power until 1880.

15 A. That's right, so – so now we have the fact that the Crown is a participant in the case that it's the deciding body as to whether it can grant a rehearing or not.

Q. Yes, that is what I am asking you for your view on.

20 A. It's not something that every litigant gets the opportunity to decide of course whether there should in effect be an appeal or not. So, one might say that is in a sense, yes, constitutionally questionable perhaps, but at least that, yes, now the – to the general – Crown always generally has that power, well at that time within the Courts who makes decisions on rehearings, so comes and goes over the legislative history of the Court process, but yes. Now we have this if you like the unusual nature of the
25 Crown's direct participation in the Court as a party in effect. It's compounded by now, by the fact that it's in the Crown's hands as to whether there should be a rehearing.

30 Q. Yes, because I think when the 1865 legislation was drafted, which it was by Chief Judge Fenton.

A. Yes.

Q. He would have been anticipating the Crown being the party.

A. He would not have been.

Q. No.

A. In fact a number of judgments he actually said he wouldn't listen to the Crown if the Crown gave evidence about customary – about sorry, gave evidence about a Crown Purchase process as evidence of customary title.

5 Q. Yes, so I am just suggesting –

A. So, if anything he is hostile.

Q. It's another irregularity in the situation.

A. Indeed.

Q. Yes okay, thank you.

10 A. Certainly.

Q. Those are actually now all my questions.

A. Thank you. Kia ora, thank you.

DCJ FOX:

Dr Soutar?

15 **(3:37) DR MONTY SOUTAR TO PROFESSOR RICHARD BOAST QC:**

Q. Well, first of all tēnā koe Professor Boast QC.

A. Tēnā koe.

Q. And thank you very much for the time. It is very helpful that you produced and wish you well for the wedding this weekend, is it?

20 A. Thank you.

Q. Yes, I thought Feilding is not the place to buy a present for a wedding. I have only got two or three questions, but I thought I would test something with you since we have got a bit of time. When I went home, well sorry not home, back to our hotel yesterday, and checked the news to see what was the latest news, the article that came up from Radio New Zealand that popped up in front of me was quoting Sir Eddie Taihakurei Durie, the Waitangi Tribunal told of the most dishonest Crown purchase of Māori land on record. Now, I want to speak to your conclusions. That report not entirely accurate and it conflates one of his quotes, but they quote this. "I believe it was one of the greatest injustices inflicted on Māori people matching the confiscations because of the level of deceit in both purchase and the judgment." Now they are referring to on Monday an

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opening statement that he made to us. Your vast experience in producing reports for a number of inquiries and your long involvement in this whole process, have I got it – deceit and dishonesty I know is a step too far for you, but have I got it right that this is how far that you are willing to go based on your conclusions. The Crown had a direct and immediate stake in the outcome of the Himatangi and Rangitīkei-Manawatū cases that they were direct opponents of the iwi?

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A. Yes.

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Q. And the 1869 judgment was probably driven by political considerations, is that as far as you will go? I tell you why I ask because I got a sense when I was listening to you that based on your experience in putting this report together and working with Ngāti Raukawa that you have some sympathy for their experience in the 19th century.

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A. I have an enormous amount of sympathy for Ngāti Raukawa's experience in the 19th century. That is right, and one reason I have enormous sympathy for their plight in the 19th century is something I have said throughout my report is the compounding effect of cases that the two different paths of Ngāti Raukawa's rohe. So you cannot understand there, in my opinion, their full experience without paying full attention to – well there is due attention, I know, to the Waikato experience as well as the experience here. I know this is an inquiry into a particular Tribunal Inquiry District. But of course Raukawa would not have seen it that way, they would have experienced the effect of the Court cumulatively and they would have been staggered by the combined impact of that, yes.

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Q. It is hard to make comparisons in ranking. So could they have just have been staggered as Taranaki were staggered by the effect of the Taranaki Raupatu?

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A. Well they could have been, and of course Raukawa were affected by Raupatu as well in Waikato and in the Bay of Plenty. Their combined experience was colossal, yes.

Q. So what I read out about my assessment of your conclusions that Crown had a direct and immediate stake in the outcome of the Himatangi and

Rangitīkei-Manawatū cases that it was a direct opponent of the iwi and that the 1869 judgement was probably drawn by political considerations just as much as you would conclude?

5 A. I would go further along the lines just indicated. If we are talking about how Raukawa themselves would have felt about what happened to them then there is the cumulative or combined effect of those twin processes. I was not asked to write a report really about Raukawa in the Waikato, but I certainly know from earlier work and my experience as council in other parts of the country, the fact that Raukawa's – the impact that they suffered in that end were very significant. So we have to put those two sequential experiences together.

10 Q. Kia ora. Page 373 of your report in the paragraph where you are talking about Henare Te Herekau? I will read it. “[He] saw himself as a ‘Government Native’ and did not wish to return, but he eloquently expressed his dismay over what he saw as the collapse of the local, political consensus after 1860. Since then there had been nothing but bitter divisions between Queenite, Kingite, and those who tried to stay neutral, as well as endless conflict and tension over land in the Manawatū Block in particular - and the continued and alarming fall in the numbers of people. Alcohol, as well, was undermining local communities. For once we have a real window into the divisions and politicisation within the Māori world as seen from the inside.” And I found that really interesting because you get this impression when you are following through the report that everything is nice and hunky-dory, they turn up to these meetings and then they leave, do you have no real – there is no real indication of what is Māori society like at the time, and this alcohol issue which he puts around 1860, this is a national problem for Māori.

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A. Of course.

30 Q. So, is sickness and so is death and more. I mean 1860, I imagine the point is that is when the Taranaki – the fighting in Taranaki starts and this is where things you start to see some splits. And the other thing is Māori are very impoverished. I mean I imagine that's why they need the rentals that are being – they get withheld, that the only currency you have got is

land. Is my assessment right, because I am going to get to the point? I am always interested in why did Māori sell their land so readily in that period?

5 A. You are right, and my report was directed at a reasonably constrained focus. If I could be invited to write a second report on the social impacts of the process, I would very much like to do that. that's the other half of the story and I think a lot of the evidence that's been given to the Tribunal from the commissioned historians is very much on the documentary history based on archival material relating to land, land tenure, Crown purchasing. It's almost really, evidence about the Crown on the whole rather than evidence about Ngāti Raukawa itself. That would – that itself calls for full inquiry and investigation. Most of a Tribunal inquiry like this would require a – would separate social impacts kind of study to be done. I'm not sure if one has been done or if it's in train, but I would see something like that as essential for the totality of the evidence to be done.

15 Q. Yes, it has Dr Hearn has done one.

 A. He's done it, I have not seen it.

 Q. Yes, social and economic.

 A. Right.

20 Q. Yes.

 A. But those questions are I agree vital. As to why did Māori sell land? That's something I investigated in a book I wrote some years ago, the answer to that question is a simple. Māori sold interest in land because they were very poor and that was a source of cash which they did not have. They sound brutally simple, but that's pretty much my view. It's driven – land alienation is driven by poverty and economics makes me sound a bit Marxistisch, well, if it does, so be it, but that is really my opinion about that.

25 Q. You know on the previous page you talk about this hui in Ihikaretu I think that is how you say it. Seven hundred people there for 10 days, and I wondered about that. How did they feed these people and who pays for it? Did you see any evidence of – there were lots of hui, big hui of how they coped with the cost.

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- 5 A. Makes one wonder, I mean I haven't seen – there are newspaper descriptions of the large throngs at these hearings. That is something that newspaper reporters can see and observe. Who's providing for the resources for that, probably the local people, who knows. Maybe the Government chipped in here and there, I don't know the answer to that, it is plausible, but on the whole the hearing process itself must've been a colossal drain on local communities and of course, we see elsewhere the disruption that can be caused to quite small, quite poor communities by constantly trapesing off Hastings or wherever going back and forth to the Land Court hearings.
- 10 Q. And that might explain the part of the reason why they sell. We know some people do not want to sell, but I think I asked you in the Taihape Inquiry, "Do you access Māori language sources," and you said to me, "Only if they're translated." Like Māori newspapers that have a translation, am I right?
- 15 A. That won't have been me, I don't think I have given evidence in that inquiry, but generally you do
- Q. That is twice.
- A. Yes, you do evidence of, if I did, I've forgotten but how can you not explore that thoroughly without reference to Māori language sources?
- 20 Q. No, but if there are no translations like some Māori newspapers don't have an English translation, *Te Karere Māori* has some English – has the English printed as well. Would you access those – have access to them? Would you get somebody in to translate or...?
- 25 1550
- A. Not by any kind of formal sort of thing but I would certainly – there are people I know who are fluent and yes. Written Māori is a bit of an artform in itself who I have asked from time to time to assist me with that in my own faculty at the University.
- 30 Q. I read the letters to the editor in Māori newspapers –
- A. Yes, they are wonderful.
- Q. But some of them are not translated but they are a good – they raised some of the issues – some of the social issues that were going on for

Māori at the time and a coming back to this issue about money – why people sell.

A. Yes.

5 Q. There is an article I was reading, 1857 and it is talking about money and Māori and the use of it. I think in one of the reports I read in about 1880, Thomas Williams says putting money in the hands of Māori is to do them a great injustice. Because of the experience of the sales with Rangitīkei-Manawatū and I wanted to ask you, did you do any assessment of is 25,000-pounds worth in today's economy.

10 A. That is a good question, you might need to ask an economic historian about that one. That is – all I can say is that it is a substantial amount. Going back to the documentation, many of the Māori land purchase files will have correspondence written in from Māori people about the purchasing process and these often are translated because, of course,
15 Ministers of the Crown on the whole cannot read Māori so they will be official translations pinned to the file. So, earlier work I have done on this very point has mainly been based on those translations attached to Māori correspondence. There is an enormous amount of that stuff.

20 Q. Coming back to this article about money, it talks about 1857, mind you, the experience that Māori had up to that point with the proceeds from sales of land and they talk about the '*Pākehā rawa kore*' in Wellington, which means a destitute European, who has nothing to start with –

A. Right.

25 Q. – but can turn small savings into a profit. Māori who from the start are given a lot of money will soon be '*he Māori rawa kore*', he will be destitute. They were doing these comparisons and then they were explaining why that is and it generally came down to Māori did not have the – enough business acumen at that point and experience. Now, I have followed through in this area how – examples of how Māori spend money and I
30 would be really interested in how that – that 25,000, how they used it.

A. What did they do with it? I do not know.

Q. Well.

A. Yes.

Q. But even, you know I have written a book on the first World War, even that late in 1914, when Ngāti Huia opened their meeting house down Otaki way, to have a car in those days – they were very expensive in 1914 and there are comments about the amount of vehicles that Māori have in 5 1914 at the opening of this whare – that they had the latest and it came down to the sales from land that they were able to purchase them. One chap was described as having sold a block for 30,000-pounds and all he had to show for it was two cars and some race horses. And so the point I am making is right through to 1914 there is no change in – for a lot of 10 Māori in the way they handle money. To go to another district in 1914, King Te Rata comes back to Auckland and Ngāti Whatua are there to meet him, they have just sold land in Auckland they give him a gift of £600 a brand-new car. They accompany him back into Waikato to his people and Te Puia was a young lady at the time remarks on the first that they 15 are wearing and these hats that these women have the latest style and what I am saying is that some seem to spend money on things that do not have a long-term return for them, which really brings me back to somebody running around with £25,000 in a bag offering it to people who have got no money whatsoever. It is a bit like me if I walked in here and 20 say, “Hey look, we have won Lotto, anybody here who can tell me they have an association with the school, you come and sign this paper and you’re in.” That is pretty much what it looks like happened to me with the £25,000. Anybody who could show some association with the land, we will not question it too much, we got to give the responsibility of the Crown 25 who was promoting its protective role as a parent to Māori. To do that to them, you know I ask the question, isn’t that a breach of its role as a protector of Māori?

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A. Well, I believe so and I can give some other examples that I’m aware of. 30 There was, I won't say who they were, but there was one particular group that I've studied their history. They sell their land and they spend everything they get on having a massive hākari for all their friends and neighbours in the district. Now, we might – on the other hand, of course, we might say, “Well, they're simply wasting the money.” But I guess they

would've seen it that way. Maybe there were other cultural considerations at stake there too. I do know of other examples before the days of cars, similarly. Māori bought horses, buggies. The other thing I would add to is that by the time the money turns up, it's often the case Māori people are already in debt.

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Q. Yes.

A. So, often the proceeds of land sales are not so much, "Yay, let's grab some money. Let's buy some cool stuff." It's more let's use this to discharge debts, and that's something in my book buying the land, selling the land I'm track that, the extent of Māori debt is an enormous amount of evidence that Māori sell interest in land, and we have to differentiate of course between selling whole blocks and people selling their individual shares. It's overwhelmingly driven by debt. Then of course, there is the other question of how these debts run up, and what sort of stuff is brought to the debt. Often it seems to be basic provisions, sometimes it could well be horses, agricultural equipment, and – but you do see also – I have seen references, this is in my other work I did for Ngāti Raukawa in the Waikato. There is a reference to a particular rangatira there, how often he was seen in the streets of Cambridge with his – I think from memory something like his numerous wives and concubines all dressed up in the latest fashion, you know, looking good, well dressed, parading the streets of Cambridge, and dining out in expensive restaurants. A certain recklessness towards money, a lack of skill, on the other hand we have to except too that some Māori were extremely astute and commercially able and well able to compete with their Pākehā competitors, others were not.

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Q. Yes. I certainly do not disagree with you there. I was just reminded while you were talking when you said tikanga. My grand-uncle told me that as a boy his father had told him, and his father was a child in the 1880s on the East Coast, is that he recalls after Land Court hearings where land was sold, the people buying kegs of whisky –

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A. Yes.

Q. – and going to the backcountry and he says his own father had his pockets full with coins and I am sure coin by that he meant dollar to – well

one-pound, two-pound coins. But going out there for a month for a party because of the proceeds from the sale and whether that is tikanga or just reckless as you say, I think the point is and I think the Tūranga Tribunal found this, that Māori, if the land was still in communal ownership they would have sold far less than they were able to when it was put into individual title.

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5 A. That is definitely the case and I am sure that those pressing for individualisation of title were aware of that. They were – pressed, they pressed for that for two reasons. One is that, I think, because that would make land alienable and come onto a market and also so that would facilitate transfers of title. It was an ideological component. It was good for Māori to have – live on individual titles and not on customary titles which were regarded as inefficient. You see that all over the world in other parts of the world that I have looked at. It is partly ideological and partly simply regarded as a useful way of driving the engine of alienation, yes, both at once.

15 Q. Having said all that, it is hard to point the finger at either sellers or non-sellers for what they did.

20 A. I have written about this too. I agree, and the reality is just about everyone was both honestly, to be fair. Most, because we have a situation where land – the interests are divided over scattered blocks, often all over the place, and from the research that I did it was not at all uncommon for Māori who have interests in distant blocks to sell those interests, and then the money that is so generated is then used as a fund to develop the blocks closer to home. Afterall, where could Māori get money from to develop their landholdings? So in fact, land was sold, or interest was sold. I have even found instances of people in the same family where, I don't know, you can imagine, you know, father sells his interest and mother keeps hers, that means they get some money and also stay on in the block and keep tūrangawaewae as it were. And you can just imagine the anxious discussions that happen in Māori families as the Crown is going around offering pounds here and there, "What should we do? Should we take a bit of money and keep some shares or keep it all?", et

cetera. So there was a practice of part selling on the hold, or Crown did not really like that, tried to discourage it because it regarded that as a nuisance, but yes.

5 Q. One last question. Yesterday we asked Dr Hearn, I think **(inaudible 16:02:46)** is how you pronounce is name who did not turn up and so Williams takes over the role in the rehearing.

A. Yes.

Q. Do you know why he pulled out at the last minute?

10 A. Travis takes over. Yes, Williams, he says why he – I think it is in my report somewhere. I think he says that he felt unable, personally unable to deal with the appeal because of his lack of experience as a lawyer. So Williams pulled out for that reason, and I think he probably – I think he felt he did not do very well in round one. I would have to check but I think from memory it is –

15 Q. I think – yes, I think Dr Hearn thought it might have been because of who he was opposing on the other side, but he was speculating –

A. Prendergast as opposed to Fox, they were probably both equally formattable, but I guess opposing the Attorney-General –

Q. Yes.

20 A. – knowing that, I think that is very likely, certainly because you would need somebody of real substance to oppose Prendergast, the Attorney-General and Court, hence Travis who is a prominent Wellington solicitor.

Q. Well thank you once again for your very helpful evidence.

A. Kia ora, thank you.

25 **(4:04) DCJ FOX TO PROFESSOR RICHARD BOAST QC:**

30 Q. Yes and I, just to follow on from the questions about why people sold, I think you have several examples in your report, I hope I have not conflated it with all the other evidence I have been reading, where chiefs are actively distributing the monies from sales and not keeping any for themselves in this district, or were they keeping very small amounts and most of it gets distributed. So I have probably conflated now, you are looking confused.

A. I am just thinking, are they examples of that? I do not recall exactly that happening –

Q. Yes, well it is probably Anderson or –

A. – but it only seems too likely, yes.

5 Q. It is probably Anderson, in Anderson or Hearn. But anyway, I will leave that there, but there are other examples in the evidence that I have read where chiefs have done –

A. Right, yes –

Q. – and it is particularly relevant to this district. All right.

10 **(4:05) TANIA SIMPSON TO PROFESSOR RICHARD BOAST QC:**

Q. Tēnā koe Professor Boast. Just one thing from me. You have pointed us to your chapter 15 Ngāti Kauwhata and Maungatautari and you have said that you do not necessarily think that we go – we will explore it fully in this hearing, but you know, perhaps we have the opportunity in future
15 hearings, but you wanted to raise it because you knew it was significant to Ngāti Kauwhata.

A. Yes.

Q. And so similarly I just want to kind of explore it or talk about it a little bit and maybe we can talk about it some more in the future hearings so I just
20 kind of flag some thinking around it or question around it. In your report you do, in one of your chapters that we are not looking at today, the end of chapter 8, you talk about Ngāti Raukawa's – the participation in Ōrākau, the Battle of Ōrākau and other conflicts.

A. Yes.

25 Q. So we know that Raukawa Te Au ki te Tonga were participating in those –

A. Yes.

Q. – and we can assume that that is likely to protect their interests, land interests of that area and because of their close affiliation to their Tainui relatives there.

30 A. Yes, certainly.

Q. So that reinforces the relationship that they have with the northern Tainui tribes, and then with the invasion and the confiscations in that area, you have said that for the most part Ngāti Raukawa's lands were not

confiscated but that there were some claims by Ngāti Kauwhata and Ngāti Raukawa to lands in the confiscated areas?

A. Yes, I document those, yes, there were.

Q. And that those applications were made quite soon after Ōrākau?

5 A. Yes, they were.

Q. And that Grey seemed to encourage or invite those applications?

A. Yes, I am not quite sure why he did, but he did.

Q. And that those claims to the lands in the confiscated areas were never investigated. You also talk about how the ability to participate in the Maungatautari inquiries were affected by the competing Māori Land Court issues happening in this area.

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A. Yes.

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Q. But I guess my question is around how Ngāti Raukawa and Ngāti Kauwhata rights and interests in the northern Tainui territory might have been overshadowed or impacted by the fact of the invasions and the dispossession of Waikato from their lands, that that was such an enormous event, the moving of Waikato off their lands and into the Rohe Pōtae, that to some extent that has interrupted the relationships and the – between the Tainui peoples here and up there and in respect of the lands. It is not something that you talk about per se, but if we do not talk about it now it is something I would like to talk about maybe at a future hearing.

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A. Well I certainly agree, but we do know more than that because we do know the fate of those various applications made by Raukawa people in this region to those – to confiscated lands, and it is quite clear that what happened was that – because Fenton who as well as being Chief Judge of the Native Land Court had an important role in the Compensation Court which dealt with claims relating to confiscated land. The Court turned the claims by Raukawa people to confiscate – to lands that had been confiscated around into a Native Land Court process. So, out of – partly out of those claims, grew the Maungatautari Land Court case. So, the documentation shows quite clearly that Fenton, rather than wear his hat as Compensation Court Judge, instead ran a Native Land Court case to

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Maungatautari instead, so it is in that sense that Raukawa claims in the confiscated block were never investigated by the confiscation related processes. No, it didn't occur, that's right.

5 Q. Is there anything relating then to the defence I suppose of the Waikato tribal interests in respect of the Ngāti Raukawa ki Te Tonga tribal interests in those areas?

A. We know who exactly surrendered their guns to the Crown. That's documented and so there is a list that I found that's in my report. We know where those people did surrender their guns. They certainly
10 handed those in in this region, and we know where they fought, and some fought in the Bay of Plenty as well. Speaking of confiscation, it wasn't only the Waikato confiscation that impacted on Raukawa, the Tauranga confiscation also impacted on the Raukawa because of Raukawa hapū extending that way up into the Kaimai's.

15 Q. Yes, I guess my interest is in what, yes, how that must have interrupted the relationships between the Tainui peoples, you know the fact of almost then having a new conflict in respect of their ancestral land relationships because of the dispossession factor but –

A. I see.

20 Q. I think I take your point that when we will probably explore this more fully in another hearing.

A. Oh, it probably did have that effect, of course, and then there are all other processes of and the investigation to the Rohe Pōtae Block and Raukawa participation and that. So, there was a long aftermath there too, yes.

25 Q. Okay, thank you.

DCJ FOX:

Yes, I do not have any further questions for you Professor Boast. Thank you for your assistance. We are going to look forward to –

PROFESSOR RICHARD BOAST QC:

30 It is good because my glasses have just disintegrated.

DCJ FOX:

We are going to – I know, we are going to look forward to hearing from you again in the future with regard to the blocks that are part of this north-south progression rather than division, and so we will hear from you again at that point.

5 PROFESSOR RICHARD BOAST QC:

Indeed.

DCJ FOX:

So, thank you. I am now going to ask any counsel if they have any follow-up questions from the questions asked by the Tribunal, not by other counsel, no?

10 In that case, Mr Cole?

UNSPECIFIED SPEAKER: (16:13)

Not re-examination, it was just to assist –

DCJ FOX:

No-no, Ms Cole goes before you do.

15 UNSPECIFIED SPEAKER: (16:13:54)

I'm sorry.

(4:13) JACKI COLE TO PROFESSOR RICHARD BOAST QC:

Q. This is a matter just arising out of a question or a conversation with Dr Soutar. At page 22 of your report, you very candidly note that this report – your report is written for Ngāti Raukawa has been commissioned and funded to support their case in the Waitangi Tribunal, and no doubt in subsequent negotiations, without being or intending to be disrespectful in any way, can I inquire to whether you would accept that the report cannot be taken as an unbiased record of the events?

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25 A. Well –

Q. I am putting it to you because it may be something that is put in later submissions from the Crown, so I'm giving you an opportunity to respond.

DCJ FOX:

Sorry, was that a follow-up question since something we asked?

JACKI COLE:

From Dr Soutar's conversation with him in terms of the enormous sympathy to
5 Ngāti Raukawa.

DCJ FOX:

I see.

JACKI COLE TO PROFESSOR RICARDE BOAST QC: (CONTINUES)

Q. That was his response to you. You said, "Sympathy," he said, "Enormous
10 sympathy."

1615

A. I'm happy to answer the question. Everybody who gives evidence in the
Waitangi Tribunal as a historian because – is conscious of this dual
responsibility. Obviously, you are aware of the fact that the evidence is
15 written to support a particular case. It is no more unbiased – it is the same
as any other kind of expert testimony in any other kind of case. Therefore
of course it is a requirement that as Sir Eddie always used to insist on
when historical evidence was presented that such a witness had to give
evidence of his or her experience because only by – only in that way could
20 you acquire the status of an expert witness. Expert witnesses are allowed
to give evidence of their opinion when non-expert witnesses are not. So,
and it is not just true of me, it is true of everybody who works in this
process that we have to craft something that we see as responsible work
from ourselves as expert historians who are worthy of the name and yet
25 of course we are aware that the reports are evidence for particular groups.
That is simply the reality we are in. If by that, does that mean I see my
report as biased or a partial, no. I would resist saying that. It is simply a
fact and it is a – and the same would be true of someone who gives
evidence for the Crown may I say. That the Crown will no doubt call
30 expert testimony in this process and they will be in exactly the same
position as claimant historians. It is a matter of juxtaposing and balancing

ones responsibility as an expert and not losing sight of the fact that the testimony you are giving is part of a case and one of the important reasons for that is expert historians should not wander off and down frolics of historiographical interpretation and represent stuff that is not relevant to the case that they are involved in and if we did we would be justifiably criticised by any judicial body that is hearing the evidence. So, it is a matter making sure you stick to what is relevant. Any historians such as myself cannot not be unaware of the context in which this evidence is given. That is really all I meant.

10 **JACKI COLE:**

Thank you, Your Honour.

LYNDON ROGERS:

No re-examination.

DCJ FOX:

15 All right. In that case we are at the end of the day and –

UNSPECIFIED SPEAKER: (16:18:39)

He waiata mana?

DCJ FOX:

20 Taihoa, taihoa. So, that means that in terms of hearing from Professor Boast, you are free to go. Again, I want to thank you very much and it sounds like they are going to do a waiata for you here.

WAIATA

25 **DCJ FOX:**

Thank you and you are free to leave now.

PROFESSOR RICHARD BOAST QC:

Thank you, Ma'am,

DCJ FOX:

And good luck with the wedding.

PROFESSOR RICHARD BOAST QC:

5 I will try and make a funny speech there too.

DCJ FOX:

Not for an hour and a half. All right. Are there any matters that Counsel wish to raise before we finish for the day?

1620

10 **UNSPECIFIED SPEAKER: (16:20:07)**

Yes, I'm unable to be here for the next two days and I have a substitute with me, Ms Guest, who will be warming my seat.

DCJ FOX:

I am going to – Ms Hall?

15 **DONNA HALL:**

Just a quick matter Ma'am, we've had an informal meeting us on the front desk and members of the co-ordinating committee. We are planning to circulate a timetable for week 2. It's going to be important if we are going to be able to give adequate time for statements to be prepared. The date will be the
20 13th of April. So, we have agreed that we should look to get the whole of the week taken with the researches. There will be no hapū ready to proceed on that timeframe is our understanding. So, simply giving you that notice and we're talking.

DCJ FOX:

25 What is the deadline in April?

DONNA HALL:

The statements will have to be in on the 13th of April.

DCJ FOX:

Is that according to our timetable?

DONNA HALL:

Yes.

5 **DCJ FOX:**

Is that what you are talking about?

DONNA HALL:

Yes.

DCJ FOX:

10 Yes.

DONNA HALL:

And the researches will need to be notified probably by Friday.

DCJ FOX:

Right. So, are you asking for a hearing date?

15 **DONNA HALL:**

Well, we took it that the week you gave us a week in the 11th to the 15th.

DCJ FOX:

Of May?

DONNA HALL:

20 Of May, yes. So, look I'm simply flagging that the discussions are happening now, and we'll have something out by tomorrow afternoon.

DCJ FOX:

All right, thank you. Ms Cole you knew that – those dates, didn't you?

JACKI COLE:

I was aware that they been put out as the dates that the Tribunal was available, but I haven't seen any memos – maybe I've missed one amongst the plethora but one that had said that it was actually fixed, but either way, that's fine. The only thing that the Crown is anxious about is knowing who the witnesses are going to be, so we can start reading the reports.

DONNA HALL:

(Mic off 16:22:16) understand that's why I'm giving notice that the benches are talking . We'll have something out by tomorrow.

DCJ FOX:

10 That is excellent because Dr Phillipson is extremely anxious to know who might be the technical witnesses that will be presenting that week.

DR GRANT PHILLIPSON:

Yes, because it took me three weeks to prepare for this hearing and if it is another whole week of technical witnesses that is a large block of time, yes.

15 **DONNA HALL:**

We will have something finalised. We are agreeing to meet and sort it out between today and tomorrow.

DCJ FOX:

20 Thank you. Well, I think that brings us to the end, just making sure. In that case, kei a koutou.

MIHI (ĀWHINA TWOMEY)

DCJ FOX:

Ka hoatu au i te wā ki a koe kia whakakapi i tēnei hui. Kia ora.

25 **HOUSEKEEPING (AWHINA TWOMEY)**

MIHI WHAKAKAPI (BRUCE)

KARAKIA WHAKAMUTUNGA (BRUCE)

HĪMENE

HEARING ADJOURNS: 4.28 PM

HEARING RESUMES ON THURSDAY 12 MARCH 2020 AT 8.58 AM**MIHI WHAKATAU**5 **KARAKIA****HĪMENE (TAMA NGĀKAU MĀRIE)****WAIATA (HATO PAORA)**10 **DCJ FOX:**

Tēnā koe te Tumuaki o te whare, o te kura. Tēnā koutou. [Interpreter: Certainly, we want to acknowledge the Principal of the school, thank you.]

MIHI (ĀWHINA TWOMEY)

15

HOUSEKEEPING

0910

20 **(09:10) DEPUTY CHIEF JUDGE FOX: (MIHI)**

Kia ora, nau mai haramai ngā tama o te kura. Tēnei te mihi atu ki a koutou mai te Taraipiunara.

[Interpreter: Certainly, a warm welcome to the young boys from the college, my greetings from the Tribunal.]

25

Well, welcome everybody to the fourth day of this hearing of the Ngāti Raukawa and affiliate groups and Ngāti Kauwhata claims. I am going to open by asking, do counsel have any issues they wish to raise for us before we begin?

30

You are going to record your appearance are you Mr Stone?

(09:11) DAVID STONE: (MIHI, APPEARANCE)

Mōrena e Te Rōpū Whakamana.

DCJ FOX:

Such is noted thank you.

5 **DAVID STONE:**

Thank you.

DCJ FOX:

Anyone else, no? In that case, we can begin immediately with Mr Husbands.

10 **(09:12) DAVID STONE: (CALLING WITNESS)**

Tēnā koe Your Honour. I am going to lead Dr Husbands evidence before I start.

DCJ FOX:

I just want to acknowledge you Dr Husbands and your work and, to also to acknowledge the fact in your previous life you worked for the Tribunal and we
15 are very pleased and happy to see you here today assisting the claimants.

DAVID STONE:

Thank you. Before I begin, one housekeeping matter. Last week filed by email. All counsel should have a copy was a response from Dr Husbands to the Pene Raupatu statement. I have hard copies for the Tribunal. I don't believe
20 its entered on the record of inquiry.

(09:13) DAVID STONE TO DR PAUL HUSBANDS: (SWORN)

Q. Tēnā koe Dr Husbands. Can you please tell the Tribunal your full name?

A. **(microphone switched off – 09:13:47).**

25 Q. And you have a PhD in history from Duke University in the United States?

A. Yes.

Q. You have prepared a number of documents, the first a report dated November 2018 titled Māori aspirations, Crown response and reserves 1840 to 2000?

A. Yes, yes.

Q. There is an errata to that which sets out a reminder to the –

A. Yes, absolute...

5 Q. If I may say so an extraordinarily small number of amendments given the size of your report.

A. I am sure there's more. In fact I know there's more, more than that.

Q. You prepared a summary of your report and also there are maps to accompany that summary, and then you have a PowerPoint presentation to assist today.

10 A. Yes, the maps have been submitted as well. I think they are on the record of inquiry.

Q. They are.

A. It's just to make the summary a bit more comprehensible.

Q. Would you please present your summary?

15 A. Okay.

(09:15) DR PAUL HUSBANDS: (MIHI, #A213(b), #A213)

E ngā iwi e ngā reo e ngā whakahuahuatanga maha tēnā koutou katoa. E te Tiatī Matua e ngā mema o Te Rōpū Whakamana tēnā koutou. Te whare e tū nei Hato Paora e tū, e tū. Te papa i waho rā takoto mai rā. Tēnā koutou katoa.

20

[Interpreter: To all those who are present here, to the Deputy Chief Judge and of course your esteemed Panel Members, and of course, this house representing Hato Paora, may you stand. And of course, our marae that rests

25 outside.]

READS BRIEF OF EVIDENCE #A213(b)

This report is a study of the areas of land – commonly known as ‘reserves’ – that were set apart for the hapū and iwi of Ngāti Raukawa and Ngāti Kauwhata as part of the Crown's land purchasing process. North of the Manawatū River

30 most of the Māori land purchased by the colonial government was acquired in four large Crown purchases: the Rangitīkei-Turakina purchase; the Te Awahou purchase; Te Ahuaturanga or Upper Manawatū purchase; and – most significantly for Ngāti Raukawa and Ngāti Kauwhata – the Rangitīkei-Manawatū

purchase of 1866. In each of these transactions the Māori land owners who participated in the purchase consented to transfer to the Crown the area under negotiation in return for an agreed sum of money, and the promise of reserves upon which they and their children would be able to live after the purchase had been completed.

South, and (in the case of the Kaihinu Blocks, also known as Manawatū-Kukutauaki 2), in their case, east of the Manawatū River, Crown purchasing of Māori land followed a somewhat different process ,with ownership of large areas or 'blocks' being defined by the Native Land Court before being made available for purchase. In theory, this meant that the Court could designate as 'inalienable' areas of particular importance to Māori owners before purchase negotiations began.

15 This summary concentrates upon the chapters of the report that deal with the reserves created for Ngāti Raukawa and Ngāti Kauwhata hapū and iwi as a consequence of a large Crown purchases undertaken by the colonial government to the north of the Manawatū River between 1849 and 1866. As well as examining the processes by which Crown officials created (or failed to create) reserves from their purchases of Raukawa and Kauwhata land, and asking whether the land set apart corresponded to the needs and aspirations of the former owners, these chapters also trace what happened to the reserves after they had been created. Often insufficient and poorly-defined in the first place, and inadequately and inconsistently protected from subsequent alienation, many of the reserves set aside by the colonial authorities for members of Ngāti Raukawa and Ngāti Kauwhata were lost from Māori ownership either in the latter decades of the nineteenth century or over the course of the twentieth. Subject to an imposed colonial land tenure system that vested land in individual owners rather than iwi or hapū communities, the reserved areas that survived as Māori land was subject to an often-relentless process of fragmentation, through repeated partitioning, rendering them increasingly unviable as economic units and vulnerable to further alienation.

First Principles in the Rangitīkei-Turakina Purchase

The report begins by outlining the principles that were supposed to guide Crown officials when they purchase large areas of Māori land. Laid out an official instruction to government agents engaged in land purchasing, and
 5 inconsistently put in to practice in land transactions over the course of the 1840s and 1850s, the principles established a standard of what might be considered 'best practice' when it came to the setting aside of reserves from Crown purchases of Māori land. This standard had four key components:

0920

- 10 1. The land set aside had to be 'ample' and 'adequate' for the 'present' and 'future' needs of the former Māori owners.
2. The location and extent of the reserves cut out of a particular piece of land needed to be discussed and agreed to by the Māori vendors prior to purchase, not simply defined or imposed by Crown officials either before
 15 or after the fact.
3. The boundaries of the reserves had to be clearly marked and described both on paper and on the ground.
4. Reserves had to be permanent and inalienable.

20 Completed in May 1849, Donald McLean's purchase from Ngāti Apa of the land between the Rangitīkei and Turakina Rivers conformed closely to the principles agreed by Crown officials for the creation of 'native' reserves. As such, the purchase can be referred to as a model of best practise against which
 25 subsequent purchases might be compared. In negotiating the Rangitīkei-Turakina purchase McLean met with members of Ngāti Apa on several occasions to secure agreement as to the reserves that would be set aside for them; he also made considerable efforts to ensure that, prior to the purchase, the boundaries of each reserve had been clearly defined and, where
 30 necessary, marked out on the ground. Most importantly, by establishing 'ample' reserves, both between the Turakina and Whangaehu Rivers, and around Parewanui on the Rangitīkei River, McLean ensured that the reserves set aside for the Ngāti Apa vendors were sufficiently extensive to allow the tribe a degree of continuing political autonomy as well as economic security and development. McLean also took pains to ensure that the reserve land would remain the

'permanent property' of the tribe and its 'descendants', protected from unauthorised encroachment by European settlers.

The Te Awahou Purchase Reserves

5 Centred around the township of Te Awahou (modern-day Foxton) on the lower Manawatū River, the Te Awahou purchase was the first significant land transaction between the Crown and Ngāti Raukawa hapū in the Porirua ki Manawatū Inquiry District. The land had been offered to the Crown by the Ngāti Ngarongo chief Ihakara Tukumarū who wanted to encourage
10 European settlement in the Manawatū. The Crown's purchase was confirmed by two deeds signed in November 1858 and May 1859.

While the first deed said nothing about where the reserves promised to the Ngāti Raukawa vendors might be located, the second deed stipulated that an
15 area of 'more than 20 acres' was to be set aside for Ihakara Tukumarū and Kereopa Ngatahuna beside the Te Awahou township. The deed also reserved the Ngāti Whakatere burial places at Moutoa and Whakawehi, while also giving Ngāti Raukawa chiefs the right to buy back pieces of land at Te Awahou and Moutoa. Also set aside from the purchase were larger areas for the children of
20 Thomas Uppadine Cook and Te Ākau Meretini and the missionary James Duncan. In addition, a band of 1960 acres, – can I get the PowerPoint, sorry, yes, this is what we are talking about – representing the rights of those who had not yet agreed to the purchase, was also temporarily reserved. All but 88 acres of this area was subsequently acquired by the Crown in 1864.

25

Ihakara and Kereopa's reserve at Te Awahou was eventually surveyed to cover an area of 36 and a ½ acres. The land was sub-divided into 11 lots which were divided between Ihakara, Kereopa and other eligible chiefs. Rather than being held communally, by the hapū as a whole, these lots became the property of
30 individual chiefs. While fulfilling Ihakara's desire to be in the heart of the developing European settlement, the reserve at Te Awahou lacked direct access to the Manawatū River and was significantly smaller than the areas that had been set aside for both the children of the prominent settler Thomas Cook and the missionary James Duncan. Vested in individual owners, the 11 lots at

Te Awahou were also vulnerable to subsequent alienation. Between 1864 and 1914 all but one of the 11 sections of the Awahou reserve passed either entirely or partially into European ownership. Apart from one acre gifted by Ihakara to the Crown for a courthouse, all of this land appears to have been purchased by private buyers. Today only one two-acre section of the original Awahou reserve remains as Māori land.

While allowing for Ihakara's wish to be close to the growing European settlement at the mouth of the Manawatū River, the reserves set aside by the Crown made little provision for the economic and cultural requirements of other groups with interests in the Te Awahou purchase area. Although allowing small burial reserves for Ngāti Whakatere at Moutoa and Whakawehi, the purchase made no provision for that iwi's cultivations elsewhere while the site of Henere Te Herekau's recently-constructed church at Moutoa was also left unreserved.

Ngāti Whakatere would struggle for decades to obtain a secure title to their two burial reserves and the return of the site of their church. While the reserve at Moutoa was placed under community ownership 'for burial purposes' in 1890, it would take until 1934 for the Whakawehi burial ground to receive similar protection. After a long struggle Ngāti Whakatere finally secured title to the site of their church at Moutoa in 1953.

The Te Ahuaturanga or Upper Manawatū Purchase and the 'Oroua Reserve'

The 'Oroua Reserve' was excluded from the Crown's purchase of Te Ahuaturanga – Upper Manawatū at the insistence of Ngāti Kauwhata and Hoani Meihana Te Rangiotu of Rangitāne. Hoani Meihana and Te Koro Te One (of Ngāti Kauwhata and Ngāti Wehiwehi) were determined that the land between the Oroua and Taonui rivers should be set aside permanently for Ngāti Kauwhata and Rangitāne as a reserve for their children, 'and for their children after them.' In December 1865 Te Koro Te One emphatically told Land Purchase Commissioner Isaac Featherston that he would 'never consent' to the sale of 'the Oroua Reserve.'

Despite the clearly expressed intentions of the leading Māori owners of the land, Crown officials never considered what they referred to, first as the Oroua Block – sorry that’s the Pākehā pronunciation -- and then as the Aorangi and Taonui-Ahuaturanga Blocks to be a permanent reserve for Ngāti Kauwhata or Rangitāne. The land was never accorded any special status by the Crown or vested with any formal protections against alienation.

Like other areas of Māori land, the area between the Oroua and Taonui Rivers was eventually brought under the jurisdiction of the Native Land Court. In 1873 the Native Land Court divided the Aorangi Block into three: ‘Upper Aorangi’ was awarded to Ngāti Kauwhata; Middle Aorangi to Ngāti Apa; and ‘Lower Aorangi’ to Rangitāne. With Native land law making no provision for any form of tribal or communal title, the Native Land Court vested ownership of Upper Aorangi in 69 individuals and placed no restrictions upon the land’s subsequent sale or lease.

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With so many individual owners it was inevitable that Ngāti Kauwhata’s land in Upper Aorangi would be subject to further subdivision. Between 1873 and 1881 the block was divided into 57 distinct sections. Many of these sections were created in November 1881 when the Native Land Court divided 4000 acres of Upper Aorangi 1 into 45 sections. Many of these sections were subsequently sold. No less than 30 of the 45 sections created by the Court in November 1881 had been sold by the end of the century, with all but one being purchased by private Europeans. Altogether, 4579 acres or more than 60 percent of Upper Aorangi had been permanently alienated from Ngāti Kauwhata ownership by 1900. Of these, 3533 acres were sold between December 1879 and May 1892.

The process of ‘community separation through subdivision’, caused in large part by the inappropriate and destructive form of individual land title imposed by the Crown through its Native land laws, continued to divide and diminish Ngāti Kauwhata’s holdings in Upper Aorangi and Taonui Ahuaturanga through most of the twentieth century. The division of the tribe’s remaining land into

smaller and smaller individually-owned sections led in turn to further alienation. Left with fragments of land that were often too small to be economically viable, many individual owners sold their sections to neighbouring European farmers. Between October 1963 and August 1984, Pākehā farmers purchased
5 26 sections of Māori land within Upper Aorangi.

The fragmentation of what was left of Ngāti Kauwhata's land within Upper Aorangi and Taonui Ahuaturanga also made it vulnerable to compulsory conversion from Māori to general freehold land under Part I of the Māori Affairs
10 Amendment Act 1967. Between May 1968 and June 1972, 10 sections of Upper Aorangi were compulsorily converted from Māori to general freehold land. Only two were subsequently restored to Māori land.

Of the original 'Oroua Reserve' sought by Te Koro Te One and
15 Hoani Meihana Te Rangiotu no more than fragments remain as Māori land today. Just 506 ½ acres of the 7526 acres awarded to Ngāti Kauwhata by the Native Land Court in 1873 as Upper Aorangi still have the status of Māori land. Most of the surviving 30 sections are small: more than half are less than four acres, while 13 of the 30 are less than one hectare. Only one section, 4D, is of
20 more than 100 acres. Within Taonui Ahuaturanga just 55 of the 993 acres awarded by the Native Land Court to Ngāti Kauwhata in 1881 remain as Māori land today. Of the six surviving sections, five consist of four acres or less.

The Rangitīkei-Manawatū Purchase Reserves

25 Dr Isaac Earl Featherston's 1866 purchase of Rangitīkei-Manawatū was the largest and most contentious Crown purchase of Māori land in the Porirua ki Manawatū Inquiry District. Embracing an estimated 240,000 acres (or 971 square kilometres), the boundaries of this enormous purchase extended from the Oroua and Manawatū Rivers in the east to the Tasman Sea and
30 Rangitīkei River in the west, from Whitireia (just above Foxton) in the south to Āpiti in the north.

Even by the standards of the time, Featherston's purchase was deeply flawed. The transaction was completed despite the expressed opposition of many of

those within Ngāti Raukawa who claimed interests in the land. Particularly serious was the continued resistance to the purchase from those hapū and iwi who were living upon the land: Ngāti Turanga, Ngāti Rākau and Ngāti Te Au at Himatangi; Ngāti Kauwhata and Ngāti Wehiwehi along the Oroua River; and
5 Ngāti Kahoro, Ngāti Parewahawaha, Ngāti Pikiahu, Ngāti Waewae, Ngāti Rangatahi and Ngāti Matakore beside the Rangitīkei.

Having failed to secure the consent of all of those with interests in Rangitīkei-Manawatū prior to the Crown purchase, Featherston also neglected
10 to designate any reserves: either for those who had agreed to the transaction or on behalf of those who remained opposed. Unlike in earlier Crown transactions, no reserves were either agreed or defined before Featherston's purchase of Rangitīkei-Manawatū. No reserves were marked out on the ground, and there was no mention of reserves in the deed of purchase. Instead,
15 Featherston assumed complete control over the process. The 'extent and position' of the Rangitīkei-Manawatū reserves were 'left entirely' to his 'discretion', to be defined only after the entire block had been 'ceded to the Crown.'

20 When they were eventually defined, the reserves set apart for those from Ngāti Raukawa and Ngāti Kauwhata who had agreed to the purchase (and were living within the purchase area) were the bare minimum Featherston could have provided. Despite having promised to provide reserves that were 'suitable and ample', and included all 'existing settlements', Featherston initially allowed
25 just 500 acres in reserves for those affiliated with Ngāti Raukawa who had signed the deed of purchase. This included 300 acres for Tapa Te Whata and Ngāti Kauwhata at Te Awahuri, and a total of 200 acres for Ngāti Parewahawaha and Ngāti Kahoro at Maramaihoa, Matahiwi and Ōhinepuhiawe. After survey and the addition of 50 acres at Tāwhirihoē for
30 Ihakara and Kereopa Tukumarū, the total area of Featherston's reserves for those from Ngāti Kauwhata and the other Ngāti Raukawa groups (other affiliated Ngāti Raukawa groups) who had agreed to his purchase increased to 647 acres.

As well as being manifestly inadequate, and much less than those who had agreed to the purchase had expected, the reserves allowed for Ngāti Raukawa and Ngāti Kauwhata were substantially smaller than those Featherston had granted to Rangitāne and Ngāti Apa. Matters were further aggravated by the fact that the reserves created for Rangitāne and Ngāti Apa had been located on land that was also claimed – and in the case of Puketōtara and Pakapakatea – actually inhabited by those who continued to oppose the purchase of Rangitīkei-Manawatū.

10 Rather than accepting Featherston's promise of a reserve based on 'the extent' to which their 'claims' were 'admitted' by those who had agreed to the purchase, those from Ngāti Raukawa and Ngāti Kauwhata who had opposed the Crown's acquisition of Rangitīkei-Manawatū insisted on having their claims heard by the Native Land Court. The first of the non-sellers' claims – by Parakaia Te Pouepa on behalf of Ngāti Turanga, Ngāti Te Au and Ngāti Rākau to Himatangi – was heard by the Native Land Court at Ōtaki in March 1868. All of the other claims, including those on behalf of Ngāti Kauwhata, Ngāti Wehiwehi, Ngāti Parewahawaha and Ngāti Pīkahu, were deferred until July of the following year when they were brought before a special sitting of the Native Land Court in Wellington presided over by Chief Judge Francis Dart Fenton and Frederick Edward Maning. As had been the case at Ōtaki, the non-sellers' claims were actively opposed by the Crown.

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In an initial judgment dated 23 August 1869 the two judges ruled that only 'three hapū of Raukawa' – Ngāti Kauwhata, Ngāti Kahoro and Ngāti Parewahawaha – had ownership rights to the Rangitīkei-Manawatū Block outside of Himatangi. The claims of all of the other groups affiliated with Ngāti Raukawa – including the four hapū at Te Reureu – were dismissed. Altogether, the Court identified just 62 individuals as having unsold rights to the Rangitīkei-Manawatū purchase area. This included 41 from Ngāti Kauwhata, 20 from Ngāti Kahoro and Ngāti Parewahawaha, and one (Wiriharai Te Angiangi) of Ngāti Wehiwehi.

Rather than following the advice of the Chief Judge and allowing the successful claimants to arrange between themselves and their Ngāti Apa neighbours the area to be set aside by the Court, Featherston rushed to the Manawatū to organise his own settlement. Bypassing the leading non-sellers of
5 Ngāti Kauwhata, and ignoring the opposition of the non-sellers of Ngāti Parewahawaha and Ngāti Kahoro, Featherston presented to the Court a settlement that would limit the land awarded to the successful claimants to a total of 6200 acres. Sitting at short notice, on 25 September 1869 Judge Maning confirmed the arrangement. Two days later, Featherston
10 applied to the Colonial Government for a formal proclamation declaring Native title – and the non-sellers’ remaining claims – to be definitively extinguished. The proclamation was duly issued on 16 October 1869.

Outraged at Featherston’s short-circuiting of the Court’s process, and the
15 arbitrary awards they were presented with, the non-sellers responded by disrupting the Provincial Government’s survey of the Rangitīkei-Manawatū purchase area. They were joined by the people of Te Reureu who, in April and May 1870, broke up the survey of land within their boundaries. Further disruptions were recorded across Rangitīkei-Manawatū, including the
20 destruction of trigonometrical stations necessary for the subdivision of the land for European settlement.

In order to bring an end to these disruptions, Native and Defence Minister Donald McLean in November 1870 created a limited number of additional
25 reserves to supplement those that had already been granted by Featherston and the Native Land Court. As a ‘final settlement of all’ of their claims McLean provided the Ngāti Kauwhata non-sellers with 1500 acres (500 of which was to be sold to cover the debts they had incurred pursuing their case), as well as a few small fishing reserves. The non-sellers of Ngāti Parewahawaha and
30 Ngāti Kahoro received 1000 acres. McLean also provided an additional 500 acres to the portion of Ngāti Kauwhata that had agreed to the Crown’s purchase, and slightly more than 600 acres to those from Ngāti Parewahawaha and Ngāti Kahoro who had signed the Rangitīkei-Manawatū deed of purchase.

The largest reserve McLean made was for Ngāti Pīkiahū, Ngāti Waewae, Ngāti Matakore and Ngāti Rangatahi at Te Reureu. Although larger than the other reserves created by the Native Minister, the Reureu reserve was much less than the four hapū had sought. Restricting the reserve to a narrow strip
 5 between the Rangitīkei River and the first ridge inland, McLean initially allowed an area of approximately 3400 acres. When McLean's assistant Henry Tacy Kemp – after meeting with the Reureu people and walking the boundary – extended the area of the reserve to an estimated 6400 acres, the Native Minister insisted that it be reduced back to 4400 acres. This was despite
 10 Kemp's advice that the 'considerable body of Natives' living at Te Reureu needed additional land for their livestock, and warnings from the Reureu people themselves that the western Rangitīkei side of the reserve was being eroded away by the river.

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15 Including several supplementary awards made by Kemp after McLean had left the district, the total surveyed area of the 'additional' reserves allowed by the Native Minister was 14,316½ acres. Of this, 10,448½ acres were granted to iwi, hapū, whānau or individuals associated with Ngāti Raukawa and Ngāti Kauwhata. Altogether, the Ngāti Raukawa-affiliated iwi and hapū of
 20 Rangitīkei-Manawatū (outside of the Himatangi Block) received just under 18,000 acres of reserves from the colonial government and Native Land Court. This was less than nine percent of the Rangitīkei-Manawatū purchase area (excluding Himatangi).

25 Having accepted from the Native Minister very much less than they had claimed Ngāti Kauwhata, Ngāti Parewahawaha and the other Raukawa-affiliated groups expected to quickly receive legal title to their reserves. The necessary Crown grants, however, were to prove a long time coming. Delays, first in the survey of the reserves, and then in passing the necessary legislation, meant that the
 30 first Crown grants were not issued until January 1874. For the predominantly Ngāti Parewahawaha and Ngāti Kahoro owners of the reserves at Maramaihoa, Matahiwi, Ōhinepuhiawe and Poutū, as well as the people at Te Reureu, the wait was to prove much longer. Due in part to the failure of McLean and Kemp to clearly stipulate who the reserves were for, as well as

their legal requirement that the name of every individual owner be included on the memorial of title, Crown officials were often unable to identify exactly whose names should be included on Crown grants for tribal, hapū, or even sometimes whānau reserves. In May 1882 the Governor was obliged to appoint a

5 Royal Commission under Alexander Mackay to ascertain the ownership of 21 Rangitīkei-Manawatū Reserves, including 14 of which had been granted to iwi, hapū or whānau connected to Ngāti Raukawa. Crown grants for the reserves at Maramaihoea, Matahiwi, Ōhinepuhiawe and Poutū were eventually issued in September 1887. The Te Reureu people had to wait longer still. They

10 did not receive legal title to their land until December 1896.

The Fate of the Rangitīkei-Manawatū Reserves, 1874-2018

As we have seen, government best practice required that the reserves set aside for Māori from Crown purchases must not only be ‘sufficient’ for the owners’

15 present and future needs, but also permanent. The reserves defined by Crown officials and the Native Land Court and the aftermath of the Rangitīkei-Manawatū purchase proved to be neither. Of the approximately 18,000 acres set aside for the Ngāti Kauwhata and other Ngāti Raukawa affiliated hapū of Rangitīkei-Manawatū (outside of the Himatangi Block),

20 something like 7000 were permanently alienated before the end of the nineteenth century. According to available records, a further 2091 acres were – is that right, my printer missed something there – acquired by private European purchasers between 1900 and 1930.

0950

25 Particularly distressing was the Ngāti Kauwhata community’s loss by 1900 of three quarters of its land at Te Awahuri, and all of its 1035-acre reserve at Kawakawa. From 1874 most of Ngāti Kauwhata’s remaining land within Rangitīkei-Manawatū had been concentrated in these two relatively large reserves. The largest and most important of the two was the 4500-acre reserve

30 at Te Awahuri, which had been awarded by the Native Land Court in 1869 to some of those who had opposed Featherston’s purchase. After their agent and advocate Alexander McDonald was sent to prison in 1874, the six legal owners of Te Awahuri Reserve gifted 850 acres to McDonald’s wife Annie. The Te Awahuri grantees also mortgaged part of their remaining land to raise £960

to support McDonald's wife and family while he was imprisoned. After he was released from prison McDonald persuaded the grantees to take out a second mortgage of £1040 on their remaining land in order to raise money to purchase stock and clear and fence their land.

5

In January 1880 McDonald acquired both of the mortgages on the Te Awahuri Reserve. Having fallen out with the land's legal owners over the subdivision of the reserve's remaining 3650 acres, McDonald foreclosed on the mortgages and had the land put up for sale. Thanks to another mortgage raised on the land, and apparently without the knowledge of his Ngāti Kauwhata clients, McDonald purchased the 3650 acres. By the time the community at Te Awahuri was made aware of this transaction McDonald had sold 1700 of the 3650 acres, as well as all of the 850 acres that had been gifted to his wife in 1874.

15 With what was left of the Te Awahuri Reserve heavily mortgaged by McDonald, the Ngāti Kauwhata non-sellers were obliged to alienate their 1035-acre reserve at Kawakawa in order to buy back 1523 acres of their land at Te Awahuri. Purchased on the condition that the land would be permanently restricted from further sale, the recovered portion of the Te Awahuri reserve (which ended up being no more than 1192 acres) was divided by the Native Land Court into 24 sections in October 1891.

25 Despite the legal restriction on their subsequent sale, the 24 sections at Te Awahuri were almost immediately targeted by private European land purchasers. Between 1898 and 1907 government officials allowed the alienation of four of the 24 sections, while all or part of a further six sections were purchased by private Europeans between 1912 and 1923 (after the Native Land Act 1909 had removed all remaining restrictions on the purchase of land within the Te Awahuri Reserve).

30

Of the 24 sections of the repurchased Te Awahuri Reserve for which Crown grants were issued in October 1891 parts of only six remain as Māori land today. Just two of the 24 have more than half of their original areas still intact.

Altogether, only 110 of the Te Awahuri Reserve's original 4500 acres are still Māori land today.

5 Even when the owners of reserves within Rangitikei-Manawatū were able to avoid the wholesale alienation of their remaining land they often struggled to put it to productive and profitable use. The legal requirement that 'native' land be vested in individual shareholders, rather than held communally by hapū and iwi, led to disagreements within communities over who exactly the eligible individual owners were and which pieces of land they were entitled to. In the 10 case of the Ōhinepuhiawe and Te Reureu reserves these disputes continued well into the twentieth century. Disagreement over which individuals had ownership rights to the Reureu Reserve, and in what proportion, led to more than half a century of royal commissions; Native Land Court and Native Appellate Court investigations and inquiries; petitions to Parliament; and 15 correspondence with the Minister and Department of Native Affairs. Through this long period the exact ownership of much of the Reureu reserve remained unresolved, and subject to ongoing claims and contention.

20 The Crown-imposed system of native land tenure also led to the fragmentation of areas of land that had previously been held as communal assets. The initial subdivisions of Reureu 1, 2 and 3 into 54 sections, for example, was followed by further partitions as individuals and families of owners sought to have their interests geographically defined and set apart from other shareholders. By 7 January 1925, the original Reureu Reserve had been divided into 97 distinct 25 sections of land. Further partitioning in the quarter century after 1940 led to the creation of more than 50 new subsections within Reureu 1, 2 and 3.

30 The efforts of the Te Reureu people to make a living off their land was further frustrated by difficulties obtaining essential infrastructure such as reliable road access to their land. Road access remained a problem for Te Reureu farmers until the end of the 1930s, with the local council refusing to provide a connection between Onepuehu and Kākāriki until the route was finally completed as a relief project during the Great Depression.

Problems with access also bedevilled the owners of the Kōpūtara Reserve. Having not received legal title to their land until April 1964, the Kōpūtara owners spent the next half century attempting to obtain access to their landlocked reserve. Legal access to Kōpūtara had been cut off at the end of the nineteenth century, when the Crown had issued grants to the surrounding land without making provision for a right of way across the privately-owned land to the landlocked reserve. Despite securing the right to apply to the High Court for access through an amendment to the Property Law Act in 1975, the Kōpūtara Trustees did not secure legal access to their land until 2000. Practical access to the Kōpūtara Reserve was delayed for a further decade and a half as the trustees struggled to construct a right of way in the face of practical difficulties and obstruction on the part of the European landowner.

Today 3702, or one fifth, of the approximately 18,000 acres set aside within Rangitīkei-Manawatū for Ngāti Kauwhata and the other hapū and iwi affiliated with Ngāti Raukawa remains as Māori land. Of these 3702 acres, 2474, or two-thirds, are located within the Reureu Reserve. In contrast, just 168 of the 6585 acres reserved for Ngāti Kauwhata in and around Te Awahuri (including Kawakawa) are still Māori land today.

Most of the Rangitīkei-Manawatū reserve land retained today under Māori tenure is either fragmented or isolated. The 2474 acres remaining within the Reureu reserve are divided into 97 sections with hundreds of individual owners. The 105 acres of Māori land at Ōhinepuhiawe,” that is modern day Bulls, “are split into 14 separate sections, while the surviving 168 acres at Te Awahuri are divided into 20 portions. Apart from the 50-acre reserve at Matahiwi, which is now bisected by the Rangitīkei River, the only area to remain entirely intact since the nineteenth century is the landlocked reserve at Kōpūtara.

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30 Tēnā koutou katoa.

DCJ FOX:

Thank you for that very informative summary. We are now going to start cross-examination. Unless there is anything further Mr Cornege, no? In that case, we will begin with Mr Rogers.

5 (10:00) LYNDON ROGERS TO DR PAUL HUSBANDS:

- Q. *A tēnei te mihi ki a koe e Tākuta. Tokomaha ngā tāngata kua whakamana tō ingoa me tō mana hoki hei ngā wāhi e rua kei taua whare karakia Mihingare i Naenae, i Awakairangi. A kei konei hoki te kaupapa o Te Whakamana o te Tiriti o Waitangi.* [Interpreter: I wish to acknowledge you doctor. Your reputation is certainly well known, and again you talked about the church at Naenae, the Anglican Church. And again, we find ourselves here.] Just acknowledging the number of people who are here today, Dr Paul Husbands, what a man and what a strong sense of integrity. I've heard this again and again and again, so I been looking forward to what is for us. Fifteen minutes of kōrero and some questions that I get to put to you. I'm speaking on behalf of and counsel for Tahuriwakanui, Tūroa, and Hinepare of Ngāti Kauwhata, Matakore and rangatahi of Te Reureu and Parewahawaha as well, so you know what angle I'm speaking from. Paul, we were so grateful for the response, the lengthy detailed response that you gave to the raupatu narrative. I'm wondering if I can – it's much too long for you to read within the 15 minutes that we have, but I'd like to direct you to particular kōrero within that. If we could just touch on particular areas. I do specifically want to give Alexander McDonald a bit of our time, and within the connections between the Crown's actions and the harm that was able to do. So, I will keep an eye on at 15 minutes to make sure at least the last five, Judge was that kaupapa, but apart from that, I'll just ask you quite open questions to give you a chance to kōrero to your – to your answers to us. Do you want to have those in front of you are happy to see off the –
- 30 A. Sure if you got a copy. I don't have a copy with me. Maybe I do in the folder, but I probably do in the folder actually. Think I've got this great folder I must as well use. Yes, I came – I flipped right to it.
- Q. Thank you.

A. Two copies now.

Q. Kei te pai. So, ko te mea tuatahi, the first question, yes, I might just pause my time while we are sorting out the tech. Those issues, kei te pai.

A. They both need to be on.

5 Q. Āe, ka tīmata au anō. Begin again, so the first question I wanted to ask, you were considering in your response to pene raupatu where the leading Raukawa sellers of land would have actually sold that land if they had known in advance what the reserves were going to be, and I wondered if you could speak to that issue?

10 A. First of all, I think although I use it in my report, using the words “sellers” is unfortunately because I mean I use it as a shorthand and in some ways just because you have to repeat it over and over in your report to make the report readable, but I think sellers disregards – there was a level of sort of presents them as maybe being more willing to enter into the
15 transaction in the first place than perhaps they might’ve been.

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But I imagine Dr Anderson might have talked about that yesterday. In their testimony before the Native Land Court and in Korerau at hui, in
20 1870 with the Native Minister, members of Ngāti Parewahawaha such as Aperahama Te Huruhuru and Hare Reweti Te Rongorongo and also – who had signed the deed of purchase, and also Tapa Te Whata and his wife, Metapere, all expressed their great disappointment and distress at the small size of the reserves that that been made for them by Featherston and the understanding that Tapa Te Whata had, and I do not
25 think it was only him, he had expected to receive – he had been told – he said he had been told by Featherston and Featherston’s assistant, Buller, that “If you hand all of your land over to me, then I will hand it back to you,” because the thing we need to remember about the Rangitīkei-Manawatū purchase is that it was intended – it was understood
30 by the Māori vendors as first and foremost a way of resolving the conflict, which would have been bubbling away between Ngāti Apa on one side and the Ngāti Raukawa affiliated hapū and iwi on the other. So, Tapa Te Whata said his understanding was you give – he was told that, “you give me the land and then dispute will be settled and then

Featherston will hand a substantial area back to me.” Now Featherston – Now, Te Whata’s understanding – Tapa Te Whata’s understanding was that that was going to be thousands of acres, I think he set it out somewhere and I have written it down, it was maybe you know
 5 somewhere up in the area of 10,000-acres perhaps. Now, Aperahama Te Huruhuru and Hare Reweti Te Rongorongo, and also Nepia Taratoa, they also expressed great disappointment at the very limited reserves they received. I believe it was Te Aperahama Te Huruhuru he sort of said, “Look I am the man who sold
 10 Rangitīkei-Manawatū,” which was only a slight exaggeration but, he was a leading rangatira and he said, “I have hardly anything,” and it was either it was him or Hare Reweti or Nepia, I cannot remember which one they said, “Look basically all I am left is the land outside of my house.” So, yes, they were very, very disappointed and it is interesting because if you
 15 look at the reasons why Mclean intervened and granted those additional reserves, obviously the disruption of the survey by Te Korotauone and the other people who had opposed the purchase was very important but by 1870 he was also very worried that the people had actually agreed to the purchase in 1866 were going to go back on it and renounce the
 20 purchase. And one of the reasons why they were thinking about that was because of the very limited reserves they had been offered so yes, this was a source of a great deal of disappointment amongst the people who had agreed to the purchase.

Q. Kia ora, and I am hearing a real distinction in your understanding between
 25 what was represented to sellers beforehand and the realities they experienced afterwards, is that fair?

A. Yes, it was like I said, it was a source of great disappointment and distress.

Q. There is a section in your answers or responses to us entitled
 30 *Eliminating the Hapū* and you talk about both how the individualisation of title and then also the fact that the administration of Māori lands was taken over by the Native Land Court as the two key levers the Crown had to not just do that one thing but actually have that further political ramification

undermining the hapū and I was just wondering if you could talk to how the Crown used those two levers to achieve that politically.

A. Well, first of all I should make very clear that the term *Eliminating the Hapū* is not my term. And I should have put it in quotation marks, it was the term that was used in the *Pene Raupatu Statement*.

Q. Aroha mai.

A. So, those are not my words. Having said that, that is what the Native Land laws in 1865, 1862, '65, and 1873 and these successes essentially did. What happened was – for example in Rangitīkei-Manawatū, when the land – the reserves were returned to either the people who signed the deed of purchase or to the folks who had not participated and who had opposed the purchase, then land was not returned to say a hapū, say to Ngāti Kauwhata or Ngāti Parewahawaha or to the people of Te Reureu. it was instead returned to individual owners, list of individual owners.

1010

And that was the same within what Te Kooro Te One and his Rangitāne brother-in-law had seen with their Reureu Reserve. Again, the land was not set aside in some sort of communal or corporate title, it was not placed under the trusteeship of, say, tribal leaders. Instead, it was vested in individuals. So, for example, what happened in Upper Aorangi is that initially Ngāti Kauwhata wanted the land to be vested in five rangatira and when that was objected to, the Native Land Court instead vested the land in 69 individuals and I believe that was reduced to 67 on the Crown grant, on the certificate of title. So anyway, did I – so yes, so you definitely have this process of individualisation. In terms of what it does to the ability of hapū and iwi to act collectively and cohesively, I guess in my case I focussed more on the economic aspect rather than the political and I think really probably the most striking example in my report for me was what happened in Te Reureu where you had these people who, in the latter part of the – in the 1860s-1870s had developed what was by all accounts a very prosperous sort of forward looking economy and even in 1913 they're still able to organise themselves to rebuild the road that had been washed away. But as the 20th century progresses, it becomes more and

more difficult for them to act collectively and to organise themselves as a hapū to sort of develop their land and to confront the problems facing them, to such a degree that by the end of the 1930s, so of the Reureu 1 land owners who are facing the loss of their land through river encroachment, they're not even able to raise £100 for river works and instead they are obliged to apply to be made part of a development scheme, and the development schemes at this stage were managed by the Government and the board which oversaw them was an all-Pākehā predominately Government body. So that is an example, and I mean – sorry, am I talking too much?

Q. Kei te pai.

A. I mean I guess the other example is what happened in Te Awahuri where you had a reserve and these attempts to manage it collectively, and then when the land is brought before the Native Land Court all of a sudden, the subdivision of the reserve they have been worked out, out of Court gets completely thrown up in the air and that leads to – sets of a chain of events which has disastrous outcomes for Ngāti Kauwhata.

Q. Yes, and there is an acknowledgement there of the economic realities of people who were innovative and new and creative ways of establishing their tino rangatiratanga and then that was being so undermined by these tactics.

A. Well I think that, and again forgive me if I am using up too much of your time, but again that is really – I mean, there are a lot of tragedies about what happened in Ngāti Kauwhata, Te Awahuri, but one of them is that they were trying to play by the rules, and that is something I say in your statement. They tried to play by the rules pretty much the whole way through when they could except when pushed too far, and they also were trying to play by the rules by the economic game, they want to develop their land, they wanted to be forward looking farmers, they wanted to fence their land and clear it and buy high quality stock and be successful, but I mean there are other factors involved as well. But the problems with their being forced into this framework set by the Native Land laws and then administered by the Native Land Court did make things very difficult

for them, and then obviously you have also got to talk about the whole – the nature of the mortgages they were set up and –

Q. Paul, could I swing it around to –

A. Yes, sorry.

5 Q. I really want – I mean, because we are acknowledging here the tremendous ability with which Kauwhata and Reureu turned their situation around to try and take advantage of it, but we really need to talk about the fox in the henhouse don't we, with Alexander McDonald coming in, they're friendly people and they are undermining them. The narrative
10 around the harm that he did and the character that he displayed is really clear in your work, but what I want to have a kōrero about is how much is the Crown responsible for the harm that Alexander McDonald was able to do.

A. You want me to answer that?

15 Q. Yes, I mean, to my view the Crown left the henhouse open for the fox to come in. They knew the fox was in the henhouse and they let him stay in there for a very long time. I wonder if you could speak to that?

1015

A. First of all I think it is -- in retrospect you can maybe describe McDonald
20 in that way. I mean -- but obviously he had a much more complicated relationship with Ngāti Kauwhata and initially he was maybe the fox helping to defend the hen house. I mean, you can see where regard Ngāti Kauwhata held him and that they gave him 850 acres of their very best land at Te Awahuri when he was imprisoned. So again it made the
25 breach of trust and everything so much more painful. But I mean if you are talking about the Crown's responsibility, I mean, you have to look at first of all the form of title that the owners of the Te Awahuri reserve were obliged to take, and I again it is individualised, but it is even more problematic because not only were they not allowed to have the land
30 vested in some sort of communal collective title, they were not even able to have it owned by trustees owning the land together as a whole. Instead – I think it was in Te Awahuri that five owners were according to the law, they were, I believe the term is tenant in common, I am not a lawyer, but they were seen by the law as holding undefined, each holding their own

undefined shares in the land, and according to the legislation in power at the time, if it was not explicitly fined which it was not, those shares had to be defined by the Native Land Court at a further date. So, this sort of immediately sort of brought in a potential source of problems, and so what you have of Te Awahuri is that the tribal leaders including (Māori: 10:16:02), come to an arrangement about how to subdivide Te Awahuri.

Q. Just letting you know we have got about another minute for this particular kōrero. I know, I know.

10 A. So what happens is basically it gets bought to the Native Land Court. One of the (Māori: 10:17:15) died and then with the advised of Walter Buller a very well-known lawyer in Pākehā that the arrangement arranged by the tribe out of Court is challenging the Native Land Court. The Native Land Court throws the whole thing up in the air and this is the source of a dispute with McDonald and the rest is in my report. So I am sorry. I am sorry if I am rambling or anything.

Q. No, no – really...

DCJ FOX:

No I think you answered that question.

20 **LYNDON ROGERS:**

No, he pai, he pai.

LYNDON ROGERS TO DR PAUL HUSBANDS: (CONTINUES)

Q. What I am seeing is very clear connections through from the legal system that the Crown established and then was responsible for monitoring and the immense harm that other people were able to do. Alexander McDonald first off, the rank but then purchases right through the 20th century as you say squeezing in and the Crown allowing that to happen through that period. Is that a fair representation just in summary?

A. I am sorry.

30 Q. Kei te pai. You probably thought we were...

A. Yes, I was. I sort of blanked out. Yes, I mean you have this problem with individualisation of ownership which means that instead of being held communally, land gets vested in individual shareholders initially, they are shareholders who own a geographically undefine area. So the first thing that has to happen is that share has to be defined as some sort of geographical area. That means that the land has to be partition out and surveyed. So this is two effects, first of all it means that the folks have to go to the Court and get it deprived by the Court, and the land has to be divided obviously. But then it has to be surveyed, so and that cost money, so there is also a tax, or a cost placed on hapū, they have to find the money to pay for the survey. Now once you got the land broken up, divided into these partitions, then it is basically up to whoever the owners of each of those bits of land what they are going to do with it. Now they can be placed – they can have strong sort of moral and tikanga influenced placed on them like what happened in Te Reureu where the fact that they were able to hold on as much of their land as they have is just remarkable in my opinion. But there is no – legally they are now the absolute owners of that land and they can alienate it or divide it as they see fit and what you get is obviously you have mortgages in the case of Te Awahuri and that just is another story. But also by the 20th start of the – end of the 19th, start of the 20th century, you have got individual owners who are in debt, who are facing impoverished.

1020

Some of them, later on in the 20th century, they are sick, they need to pay hospital bills, and in those cases they, you know, there are European farmers nearby who want to add to their lot, and the other thing you have got to remember about the land around Te Awahuri is it is prime dairy farming country, it is really, really good land, super good. I mean, I grew up in the Manawatū, so you know, you could see all the dairy farms and all of that stuff. So this is really, really good land and it was coveted by farmers who was seeking to develop their own enterprises. So, desperate people were, if they had felt constrained to sell, they were being sought out by willing buyers. So, you know, I mean you cannot – the European

farmers were doing what European farmers do, so I do not think, you know, talking about foxes and stuff is necessary.

Q. Okay.

A. For them anyway.

- 5 Q. Thank you for your time and your answers, Paul, and for drawing so much attention to the constant aspirations of the people here and sadly the Crown's constant responses as well. Ngā mihi.

DCJ FOX:

Thank you. That is an extra five minutes.

10 **DR PAUL HUSBANDS:**

Sorry.

DCJ FOX:

But that was a very helpful discussion though. So can I now hear from or the Tribunal hear from Mr Te Nahu. Thank you.

15 **(10:21) HEMI TE NAHU TO DR PAUL HUSBANDS:**

Q. Tēnā koe, Ma'am. Kia ora Dr Husbands.

A. Tēnā koe.

- Q. My name is Hemi Te Nahu and I represent Ngāti Whakatere Wai 1640, also Ngā Hapū o Kereru which is Wai 1944. Those hapū are made up of
20 Patukohuru, Ngāti Takihiku, Ngāti Ngarongo and Ngāti Hinemata, and my clients, when we received your report, want to express extreme gratitude to you for the research you have done on their behalf, particularly Ngāti Whakatere, but it hasn't reduced their anger as you probably would accept. So, my questions relate to your report, but I first start with – we
25 had Dr Anderson giving evidence on Tuesday, I am not too sure if you were here at the time?

A. No.

- Q. She spoke about non-sellers and sellers and she interpolated during her evidence that Ngāti Whakatere were not sellers and that in fact, as a

consequence of being non-sellers, their land was miniscule as a consequence.

A. You mean in Rangitīkei-Manawatū?

Q. Correct.

5 A. I don't – I am not sure if they received any reserves in Rangitīkei-Manawatū.

10 Q. Yes, and that is where I'm heading. We do, as you discuss that term 'sellers and non-sellers', my friend Mr Watson put forward the *pupuri whenua* concept which my clients totally accept was a far better appropriate description. But your, and you have just answered my next question in relation to landholding for Ngāti Whakatere, but if we start in your report at page 31 and you discuss at paragraph 2 that it is your evidence that the Crown vested most of the reserves listed in the May deed were conferred upon individual rangatira rather than the iwi, correct?

15

A. Yes.

Q. Ihakara Tukumarū was one of those rangatira who also had links to Ngāti Whakatere, correct?

20 A. I always refer to him as being Ngāti Ngarongo, so I am not an expert on the whakapapa, so I am sure you are right.

Q. Would you agree, Dr Husbands, that the Crown implemented a process whereby the iwi and hapū who belong to these blocks were not consulted when the Crown conferred reserved land onto individual rangatira?

1025

25 A. Are you talking about Te Awahou?

Q. Yes.

A. I don't know. I can't really answer that question. I mean I assume that Ihakara was consulted because I mean that's why the reserve was placed where it was.

30 Q. No, my question is, is that the Crown initiate processes to bring the people together.

A. I think there was – again, Robyn's better placed to answer this question. I believe there was a hui beforehand because – but I think the main subject there was whether the rest of Ngāti Raukawa was going to allow

lhakara to sell this relatively small area Te Awahou. There isn't any – I wasn't able to find any record of their negotiations about where the reserves were going to be located or whatever. Just talking from memory, I don't think I have any evidence about those negotiations.

5 Q. But essentially, lands held by the hapū were conferred within the Te Awahou into individual rangatira.

A. Yes. What I can tell you is that subsequent of the purchase, Henare Te Herekau of Ngāti Whakaterere wrote a letter to I think it was the head of the Native Department, complaining that certain parts of the bits
10 of land had not been set aside for Ngāti Whakaterere, where they had cultivations. So, he obviously felt that he hadn't been properly consulted and his and Ngāti Whakaterere's interests hadn't been taken account of. I don't think Ngāti Whakaterere initially participated in the purchase.

Q. No.

15 A. That's my understanding.

Q. That's correct, and you've answered the next question I had.

A. Sorry.

Q. So, thank you. But what you can discuss in your report was that the two reserves set aside for Ngāti Whakaterere.

20 A. Yes.

Q. As a people, were two burial sites.

A. Yes.

Q. And Moutoa and Whakawehe.

A. Yes.

25 Q. The position my clients have is that the Crown's actions in this case only provided Ngāti Whakaterere a place in which to die, as opposed to reserves to be able to sustain themselves. What do you think about that?

A. Well, it's a difficult thing to say because I mean it's – I mean I can completely understand the reasons why we have this north-south division
30 in the hearings and in most cases, it is completely – the division is completely valid. I guess the only area where maybe it is a bit problematic is with the groups you are representing because Ngāti Whakaterere still had you know, the Te Awahou purchase remember is in 1858. And in 1858, they still had land on the other side of the river, Kaihinu and yes, around

Kaihinu, so modern day Shannon up to Tokomaru. Now for them and also your other clients, the significance of these very small and inadequate reserves set aside in Te Awahou, becomes much, much greater when they lose – when they experience the Crown Purchasing and then private purchasing of their landholdings on the other side of the river. So, by the end of the 19th Century, perhaps you are getting closer to that description that your clients say, but we have to take into account that there is a process going on, and that in terms of land alienation of Ngāti Raukawa Holdings, 18 – Te Awahou is at the beginning. So you know, excuse me if that's inadequate.

Q. No, no, thank you, thank you.

A. But within the Te Awahou purchase here itself, that's true. They were only allowed these small burial areas and their other settlements within the purchase here. There are the cultivations within the settlement – within the purchase area which I listed in the report. They were not reserved, so that's, yes.

Q. Thank you for that. If you look in your page 27 of your report, it is a map and I think in a map of – it's plate 26.

1030

20 In the map book on the plate 26 map, you got Whakawehe on the right – I am not sure if it is going to come up on the screen and then you have got this yellow section called, Huiti.

A. Yes. Yes okay. Almost there.

25 Q. And you have got land gifted to Reverend James Duncan to the north of that, you have got land gifted to the children of Thomas Aberdeen Cook.

A. Yes.

Q. Around that area Whakawehe to the right of that yellow stretch marked Huiti, there is a – originally was a lake. Ohuiti was the name of it and that is just adjacent from Poutu Marae.

30 A. Right.

Q. I am just wondering why that has not been illustrated on this map and it same applies to Lake Wakapuni which was originally between Foxton and Foxton beach and that was about the size of 700 acres but was drained by the Crown for a road to access the beach? Is there any possibility to

have your maps reflecting those lakes that were there but now have not – but have been drained as a consequence of the Crown.

A. Yes, you are right. It is a problem with the maps in that we get the map makers in. I personally think my map maker did an amazing job. You know. But they are limited by the instruments that are available to them and you know it is something that I have thought about a lot, I mean, in this project and also in other projects in that you do impose these sort of blocks and areas onto templates which are often of the land today which is in many ways very different. So, yes, I acknowledge that problem.

5

10 Unfortunately, I am not really in a position to do that. I mean I cannot remember if I – there is a – hang on a second. I think – in the Te Ahua Turanga chapter I reproduce the plan of – what was his name? Mr Stewart. J T Stewart who did the survey. The problem is – also it is not just a problem with the maps itself. It is also when you are trying to reduce something to A4 – I thought about putting the initial – the original survey plan into the report but when you stick it in to A4, it just sort of disappears and you do not pick the nuances of it because these survey plans, they are huge. They are about this big. You have got to put them on a big table. So, I do not know if that original survey – if Stewart’s original survey

15

20 is on the – is on the record of inquiry. I know the CFRT have it and I am pretty sure the Tribunal has it as well but if it is not I am happy to provide a TIFF, a high definition – yes, no that is not it. A high definition TIFF file if you want it?

25 **DCJ FOX:**

We would want...

DR PAUL HUSBANDS:

But I am not sure if it shows the lake either to be honest.

30

DCJ FOX:

That would be helpful and maybe somebody could just check.

HEMI TE NAHU:

There is a reason why I raise it because Lake Ohuiti...

DCJ FOX:

To see if – it's in the plate book without me having to go through.

5 HEMI TE NAHU TO DR PAUL HUSBANDS: (CONTINUES)

Q. The reason why I raise it Dr Husbands is because Lake Ohuiti was about nine and half thousand acres and in the middle of that lake was and island that peace was brokered –

A. Oh right.

10 Q. – and Ngāti Whakaterere were greatly involved in peace processes as it resulted conflict that was being caused.

A. Yes.

Q. As you would imagine. That was brokered by Te Whatanui between Ngāti Apa, Rangitāne and Muaupoko. Where they came together on that island that was in the middle of that lake that was drained. To as I said before try and broker peace which has been maintained for – by Ngāti Whakaterere since then. Obviously, the draining of the lake had a huge impact on the island –

15 A. Right.

20 Q. – that was there and that is a huge part of the issues that the Ngāti Whakaterere claimants raise.

1035

Q. They have this peace-making āhua about them as a people, they have brokered peace, attempted to, they have Turongo which was built and moved to Whakawehi from Moutua as a physical symbol of what they as a people try to aspire to and yet that is all gone.

25 A. Yes.

Q. The lake. So, you can imagine their frustration –

A. Yes.

30 Q. – as a consequence of that.

A. Well I apologise –

DCJ FOX:

Is there a question?

HEMI TE NAHU TO DR PAUL HUSBANDS (CONTINUED)

A. I apologise for not picking that up and I guess all I can say in my defence is I do provide quite a long account of Ngāti Whakaterere's very long
5 struggle to secure legal title for the grounds on which that church was initially erected and it took them until the early 1950's to actually secure a title but in terms of the peace-keeping side, I apologise, I –

Q. Thank you, Dr Husbands, would you accept –

DCJ FOX:

10 I am interested how you gave some very important evidence from the bar then I hope you are going to bring a witness that can confirm.

HEMI TE NAHU TO DR PAUL HUSBANDS: (CONTINUES)

Q. Would you accept that the lake would have been a source of – a food source for Ngāti Whakaterere?

15 A. Yes, absolutely.

Q. Are you able to explain why and I am talking about Ngāti Takihiku now, why Ngāti Takihiku was excluded totally from reserves being allocated by the Crown despite the fact that Ngāti Takihiku lived amongst others on the Te Awahou Block?

20 A. Can I explain? No, I cannot. I mean, I can just tell you what reserves were made –

Q. Right.

A. – I cannot really explain why other reserves were not made. I guess the only thing you could say in the Land Purchase Commissioner, Sir, ranks
25 defence and in Ihakara's defence in that in 1858 the Te Awahou purchase and its alienation, it was a very relatively, in terms of everything around it, it was a relatively small piece of land, I mean within Raukawa's larger holding. In 1858 Ngāti Raukawa, Ngāti Kauwhata, the people both living south of the river and north of the river, had no idea and certainly no
30 intention of allowing the Crown to purchase Rangitīkei-Manawatū for example. They had ten years earlier and I believe also at that hui where

they discussed it with Ihakara, they made it very clear that, “Okay, you can sell this little bit of land, we have already allowed the folks on the other side of the Rangitīkei River, Ngāti Apa, to sell Rangitīkei-Turakina,” and you know the also I think by then they had given permission or were considering giving permission to Te Hiriwanu, who have upper Manawatū and Te Awa Ahu o Turanga, so, my understanding was that they had no intention that – they were seeing Te Awahou as a discreet Crown purchase which was intending, as what happened for example in what – Whanganui and in other places as a way of – as a strategic was to attract European settlement and to bring prosperity to hapū and iwi living there. They, certainly Ngāti Raukawa and the Ngāti Kauwhata folks and Ngāti Whakatere and everyone else, they were not seeing it as the first step in a chain of land alienation, which by– you know – 1890 – you know – less than 50-years later would see that – you know – hundreds of thousands of acres of land would have been purchased by the Crown and by private purchases. So, you have got to think of it in terms of a – you know – it is part of a historical process. So again, sorry if I am rambling, I am trying.

DCJ FOX:

20 Do not apologise, I think that was a very good answer.

HEMI TE NAHU:

Thank you, Dr Husbands.

DCJ FOX:

And that is the fifteen minutes.

25 **HEMI TE NAHU:**

Yes. Thank you, Your Honour.

DCJ FOX:

Gone into twenty.

HEMI TE NAHU:

Thank you very much.

DCJ FOX:

Thank you.

5 **DR PAUL HUSBANDS:**

Excuse me, I was expecting him to ask me a question about Tangimoana, and it is a little reserve of 50-acres there which is not in my report. So, I have got something if the Tribunal is interested in about what happened to it. I went and researched it when I received his permission.

10 **DCJ FOX:**

Do you want to help us with, Mr Te Nahu? What is this about? This is the little reserve that was –

1040

15 **DR PAUL HUSBANDS:**

At Tangimoana.

DCJ FOX:

At Tangimoana. You don't know about it either?

HEMI TE NAHU:

20 No.

DR PAUL HUSBANDS:

It was just on the permission that they had –

DCJ FOX:

25 Or the Tribunal would welcome and appreciate whatever you got to contribute on that subject.

DR PAUL HUSBANDS:

Okay, okay, all right. But I'm not suppose – no, I think –

DCJ FOX:

Have you got copies with you?

DR PAUL HUSBANDS:

- 5 Yes, I've got this, and I will see – I've got it on a file which I can give to you may be at the end, rather than right now.

DCJ FOX:

Well, I think Ms Cole would appreciate getting a copy or have you got it?

JACKI COLE:

- 10 No, don't know anything about it. I'm quite happy for it to just be filed after the hearing and we can pick it up at a later occasion.

DCJ FOX:

No, we want to see it before the end of today, I am sure other counsel do too. So, can we just get one for Ms Cole at this time, and...

- 15 **DR PAUL HUSBANDS:**

Well, can I just quickly say what it is?

JACKI COLE:

Yes, that's a good idea, yes.

DCJ FOX:

- 20 Yes, yes.

DR PAUL HUSBANDS:

Is that all right?

DCJ FOX:

Yes.

DR PAUL HUSBANDS:

What it is, is that there was a 50-acre, as I said in my summary, there was a 50-acre reserve which was eventually granted by Featherston to Ihakara Tukumarū and Kereopa Tukumarū at Tangimoana and I really tried to get all of the reserves which were made in Rangitīkei-Manawatū and find out what happened to them. I think I missed this one. So, went and looked it up in Archives New Zealand and I found not only the Crown grant for the land but also there's the Crown Purchase Deed. So, this little 50 acres was purchased by the Crown in 1881 and I've got copies of the Crown grant and the Crown Purchase Deed which I am happy to submit to anybody who wants it.

DR MONTY SOUTAR:

Just to be clear, Tangimoana is not in Awahou is it? Te Awahou is further north.

DR PAUL HUSBANDS:

No, it's part of Rangitīkei-Manawatū. It's on – well, at least the river keeps on moving, so I don't know what side of river it's on. When I was about 20, I'm pretty sure it was on this side of the river, and then you got Tangimoana Beach, but last time I went to Tangimoana, the river had moved dramatically, and I am not sure if it's moved back since. So, it may be on the right-hand side of the river now. So, excuse me. Can I – is it all right if I give that to you.

DR MONTY SOUTAR:

Thank you.

DR PAUL HUSBANDS:

Can I – is it all right if I give that to you? It is just yes on the – it just might take five minutes for me to give it, so. I can give it to them in the break.

DCJ FOX:

Yes, could you do that, that would be fine. All right, Mr Burgess.

(10:42) JEROME BURGESS TO DR PAUL HUSBANDS:

Q. Thanks Ma'am. Tēnā koe Dr Husbands. My name is Jerome Burgess and I – we represent claims within the Te Reureu Block.

A. Okay.

5 Q. So, to be specific, Wai 1872 Ngāti Pīkiahū claim on behalf of – brought by Bruce Smith and Hare Arapere and also, Wai 651 claim by Tūroa Karatea on behalf of Ngā Iwi o Te Reureu. So, thankfully, we've discussed quite a bit of Te Reureu already the reserve and circumstances surrounding that, but I did have a few questions just on some of the points
10 that just to pick up on some of the points and comments that you made earlier. So, firstly, my first question is in regard to Donald McLean and how in 1870 when he came and met with some of the local rangatira, because there were some discontention around the reserves and what would happen. You were throwing out figures and Kemp was involved.
15 So, page 118 is where I'm looking at. You threw out figures on how the calculation of the acres changed over that period, so they started off – the Te Reureu Reserve started off as 3400 then it went to 6400 and then when McLean came back he settled on that figure of 4400 acres. Just from your knowledge is there any specific reason why it sort of an up and
20 down and then ended in the middle?

1045

A. Well first of all it was a much larger area, I mean, you can see in the map.

Q. Yes.

A. First of all, I guess where you really need to start is the claims that are
25 the various people who had not participated in the purchase of Rangitīkei-Manawatū submitted to the Native Land Court at the end of 1867 and early 1868. Now, I believe it was Paranihi Te Tau submitted on behalf of Ngāti Pīkiahū and I assume the rest of the Te Reureu people, his claim to the land was that substantial area there, which has just
30 disappeared. So you can see it is that large shaded area. So I cannot remember the acreage of that, but it was maybe 10,000 acres, probably more, I cannot remember. So that is what they initially claimed. But their claim, the claim with the Te Reureu people, Paranihi's claim was completely rejected by the Native Land Court. I do not think they even

really heard evidence on it, it was just rejected out of hand, it was like sort of seen as self-evident because these people had settled at the end of the 1840s there, they were basically considered to be squatters or, well, is considered as having no rights to the land whatsoever. So that is the area they first claimed, and you have got to remember this is, by the descriptions of colonial officiants, this is a very numerous people, they have got a lot of cultivations, they have also got a lot of livestock. For example, if you look on the map, you cannot see it, but the lower boundary is the Rangataua Stream. Now, the people living at the lower end of the Reureu, Ngāti Rangatahi, Ngāti Matakore, they have cultivated, along the Rangataua Stream, pretty much all the way to modern – what today is Halcombe. So they initially claimed a larger area, and part because I assume they had mana over it but also because they were using the area. So then McLean comes in and he is like, “Well we have got to give these some sort of land otherwise they are going to go and head up and cause trouble maybe in the Central North Island, maybe at Mōkau, maybe even go an team up with Te Kooti on the East Coast.” So there is a general consensus that we need to give them some land otherwise we are going to have problems. So McLean goes there in 1870 and he offers them, “I will give you the land along the river where your immediate kāinga are,” and the sort strip. So, basically it is the first area of flat land, it is like the first terrace. So he gives them that and 3400 acres. Then he leaves because he has got other things to do and he leaves Henry Tacy Kemp behind to organise the boundary. So Henry Tacy Kemp goes up with the chiefs of Te Reureu, the four hapū, and they walked the boundary and the Te Reureu people point out that especially on the southern end of the area you just haven’t given us enough land and there is a whole lot of land that we are currently using, we are currently cultivating that we want to have included in the reserve. Now, they mark out an area and that is, I think, where you get the 10,000 acres, and they burn a stump and they do a sort of ritual marking of the boundaries, and Kemp says, “Look, 10,000 acres is just too much.” So this is on the Rangataua Stream you see there, and he pulls the boundary back up the Rangataua Stream towards the Rangitīkei River and that is where you get the 6400 acres, all

right. Now, he agrees that with the Te Reureu folks and they think that this is a formal agreement, but when word of that gets out, not just to McLean but also to William Fox who I believe at the time was the Premier, he is kind of in and out of Government, and he has a large area of land on the other side of the Rangitīkei River. So just – is it over there? From here. He sort of splits the – anyway, he gets upset, Featherston gets even more upset and McLean is also upset, so all of these are basically the three most important Crown officials all object to this larger reserve. So what happens is that in the end McLean comes back, I believe it is 1871, a year later, or it might be – but anyway, he comes back, and he enters into a renegotiation with the Te Reureu people. Now, this is very heated because especially at the lower end Rawiri Te Koha, who is the leader of the folks at the southern end, he is Ngāti Matakore, but he sort of points out, “Well we have got all of these cultivations which are being excluded from the boundary you have set.

1050

And moreover, as we speak at this time, your friend the Rangitīkei River is busy washing away the terrors that you’ve awarded to us, so we need more land. And what McLean says, “well look I am not willing to give you the 6,400 acres, and you need to remember that the only reason you have any land at all is from my grace. The Native Land Court said that you have no rights to this land. So, the only reason you are receiving this land is through the grace of me, McLean, and the Government.” So, what happens is, they negotiate, they argue, McLean ends up giving 500 acres, extra acres to Pikiahu, Waewae and 500 acres to Matakore and Rangatahi, so that brings it up to 4,400 acres. He also offers them a payment to help pay for some agricultural implements, and Rawiri Te Koha on the bottom thing, he's still saying, “no, I don’t want to agree to that, and what is more, I don’t want the railway going through my land as well because that – the railway is also going to go across my cultivations.” But in the end, basically what happens it the Reureu people they realise, well look, if we don’t accept this, we may well not get anything. And so, it’s at that point where they say, “okay, look we accept the extra 1,000 acres,” and they agree to the 4,400 acres. The final figure of 4,510 acres,

that is the final surveyed area, because once the Reureu folks, hapū agreed then as one of the conditions of receiving the Reserve and receiving the payment, they had to allow the boundary to go ahead – the survey to go ahead, and when the survey of the former boundaries of the Reureu Reserve were completed that came to 4,510 acres. So, that is where you get the 4,510 and then I imagine you have got other questions, so I'll stop.

Q. So, just off, you mentioned Premier Fox, off the top of your head, do you know or recall how much land he had?

10 A. I think he had about 3,500, is that right?

Q. One person?

A. Pardon?

Q. One person.

A. Yes, I mean, if you give me two minutes and I will find it for you.

15 Q. That's all right.

DCJ FOX:

But it is actually in the report.

JEROME BURGESS:

That's right.

20 **DR PAUL HUSBANDS:**

It's in the report, yes.

DCJ FOX:

We do not need to go there but –

DR PAUL HUSBANDS:

25 I talk about that and –

DCJ FOX:

- yes, you do, and you make the point that him, Premier Fox and his wife retained almost as much land as the hapū of Te Reureu.

JEROME BURGESS TO DR PAUL HUSBANDS: (CONTINUES)

Q. The others, yes.

A. Yes, and it enabled them, in case you are going to ask me this. I also say
 5 in the report, “in enabled them to maintain a lifestyle that was quite
 different from the folks on the other side of the river,” so you can read that
 in the report as well.

Q. Aue.

DCJ FOX:

Okay, that is nearly your 15 minutes.

10 JEROME BURGESS TO DR PAUL HUSBANDS: (CONTINUES)

A. Sorry, I am talking too much, I apologise.

Q. So, just quickly, a few more questions, maybe one more depending on
 how long you answer.

A. Sorry.

15 Q. Just the Kākariki –

DCJ FOX:

No, it does not work like that because if a witness is taking too long to answer
 then it is your job to try and –

JEROME BURGESS TO DR PAUL HUSBANDS: (CONTINUES)

20 Q. Ka pai mō tēnā, Your Honour. So, my next question is in regards to the
 Kākariki Road access.

A. Yes.

Q. So, the river washed away the road, and you explained, and you
 mentioned how resourceful these people were, that they came together,
 25 and they built their own road.

A. Yes.

Q. Fair treatment? Was that fair treatment?

A. I mean, I guess it depends on who you talk to. I mean you know, the
 Government – the local authorities thought because the Reureu Reserve
 30 wasn't paying rates then they didn't see why they should build it. Of

course, they ignored the fact that the reason they were all settled there was because of the cheap land that had been acquired by the Crown from Māori in the first place, often against the wishes of people like most of the Reureu folks who hadn't agreed to the purchase of Rangitīkei, Manawatū.

5 In terms of the road, I mean, I guess when you are talking about the issue of fair treatment, it is also important to take into account that the Crown had an opportunity to lay out a formal road on what I believe is called the second Manchester Block which is now, I mean, is it Pikes Line? And that land would have been on the European land along the boundary adjacent. Now, because that was not – the Crown neglected to layout that roadline, even though they were legally allowed to, it is similar to what happened in Koputara in a way, in the end when that road was finally laid out and constructed, it was across Māori land within the Reserve rather than on the European land.

15 1055

So, in order to have that road between Kākāriki and what is now known as Onetuhi, they had to agree to allow the land to be taken across the Māori land through the Native Land Court, so yes, if you're talking about fair treatment, then that's maybe another area to think about.

20 Q. Kia ora Dr Husbands I've got one more question Your Honour and I'll ask it. So, to flip the script completely –

DCJ FOX:

I will just point out Mr Burgess if everyone takes five minutes then the Crown is going to have to be given the same amount of time that you have exceeded, all of you.

25

JEROME BURGESS TO DR PAUL HUSBANDS: (CONTINUES)

Q. So, I will seek leave and to file my final questions in writing, but just to leave this last concept with you because we do act for other hapū in the region, specifically Wai 1913 Te Iwi o Ngāti Tukorehe which you're nodding your head, so I'm guessing you have heard of them, but they do have connections up here, interests in the Rangitīkei-Manawatū Block. And we heard the other day that other hapū are in a similar situation

30

where they were non-sellers and there was this aspect of invisibility what he said. Basically, they were invisible or yes, so they were invisible because they were non-sellers and because they stood up for what they believed in for their whenua and for their rangatira who spoke out against what the Crown was doing. So, you do have a table there that mentions them.

5

A. Yes.

Q. And their connection to Mateawa specifically.

A. Yes, yes.

10

Q. So, we just wanted to leave you with that and we will be sending you questions in writing.

A. Can I quickly answer that?

Q. (No audible response 10:57:13)

15

A. So, Hare, you're right that the Ngāti Awa were – did have kāinga along the Rangitīkei River south of modern-day Bulls. Also, Hare Hemi Tahara of the Ngāti Awa was one of the chiefs who issued an application to have his land looked at by the Native Land Court. But unfortunately for him, Ngāti Awa and Ngāti Tukorehu by connection, they were not one of the three hapū who were admitted by the Native Land Court as having rights to Rangitīkei-Manawatū. As well, they were excluded by the Native Land Court. They had not been provided any reserves by Featherston. I believe Hare Hemi Tahara himself might have received 50 acres or something like that from McLean. So, there was a very small – a relatively small individual reserve maybe set aside, but yes, on the whole their rights were not acknowledged by the Native Land Court.

20

25

Q. Invisibilisation, kia ora.

DCJ FOX:

Thank you, Mr Burgess. I remember being in the Muaūpoko Inquiry Hearing announcing that I had beside me the emetrist professor, it should be emeritus.

30

So, I understand entirely the struggle with the English language. All right, so we now we are on to Mr Ghie. Actually, Ms Simpson has just told me it is 11 o'clock. So, we will stand down, in order to have morning tea, back here in 20 minutes, thank you.

HEARING ADJOURNS: 10.59 AM

HEARING RESUMES: 11:23 AM

DCJ FOX:

5 We have lost Dr Husbands. No, here he is. All right Mr McGhie.

(11:22) MARK MCGHEE TO DR PAUL HUSBANDS:

Q. Kia ora Dr Husbands.

A. Tēnā koe.

10 Q. I am acting for Wai 977, now Ngāti Te Paea. Their interest in this part of the district or through Makutu who was the mother of Te Paea.

A. Yes.

Q. I think I asked you some questions about her

A. Yes.

15 Q. And my questions of clarification which were 8213G. You gave very detailed answers to the questions. Thank you for that.

A. That is all right.

Q. Your answers included a transcription of Te Koro Te One's analysis of the list of 151 signatories, the Otaki affidavit.

A. Yes.

20 Q. That was a document sent to the Government opposing the sale of the Rangitīkei-Manawatū Block.

A. Yes.

Q. And it was sent to Government before the sale was finalised?

A. I believe so. I cannot remember at the top of my head.

25 Q. I think it was sent in November and in the final –

A. 1866, right.

Q. – sale – the sale was finalised in December. So, the Government was aware of the level of opposition to the sale.

A. They were aware, yes.

30 Q. And Te Kōau considered the hapū the residence and whether or not the persons listed received rent, that is right?

A. Yes, I think so. I am just looking at it. Yes, whether they were one of the recipients of rent from the various leases that tribal leaders had rented out big areas of land called runs for European farmers to run cattle upon.

Q. Were those leases all in the Rangitikei-Manawatū Block?

5 A. I think so. I mean I believe for the purposes of Te Koro Te One's remarks, they were. Yes.

Q. In that analysis Ngāti Wehiwehi or individuals of Ngāti Wehiwehi were said to be living at several locations, Parahou, Ohau, Waikawa, Oroua. Does that indicate some of them were living as individuals with other hapū?

10

A. My understanding of a situation of Ngāti Wehiwehi is that there were some Ngāti Wehiwehi who were living at Puketotara with Te Koro Te One, so they would have been living also with Rangitāne and with Ngāti Kauwhata. There was also a small kāinga at a place called Ohau. Which I am no doubt pronouncing it incorrectly which is kind of in the vicinity of modern day Rongotea. I think I said it out somewhere and that was the kāinga of Wirihari Te Angiangi.

15

Q. He was the individual who got...

20

A. Yes, well he lived there, and I think his whānau lived there and maybe some other people came up and joined him around the time of the purchase. But he was the one member of Ngāti Wehiwehi who was included by the Native Land Court as having rights to the block.

Q. So, Te Koro says he was uncertain whether Makutu received any rental money.

25

A. Yes.

Q. But he does say she lived at Waikawa which is in the southern part of the district.

A. Yes.

30

Q. But he does say that there were several from Ngāti Wehiwehi who lived at Waikawa. Who were receiving rentals. I think on page 65 of your answers there are four people. Four Ngāti Wehiwehi individuals who lived at Waikawa who were receiving rental money.

A. Yes.

Q. Doesn't that indicate that even though they lived at Waikawa they had interests in – above the Rangitīkei river or above Manawatū river?

I guess so, I mean it is hard for me to make a statement one way or another because I am not an expert on Māori land tenure – in 19th century Māori land tenure. So, it is hard to say, and it is hard to say if they did have interests, what degree that was? I mean because – yes, so it is hard for me to make an authoritative – I am not in a position of making authoritative statements.

Q. Could I because they also had residents in Rangitīkei-Manawatū Block

10 A. Possibly. But I think that is probably more unlikely. It is probably more that they had, you know, kinship links and whakapapa links with people who were living on – within Rangitīkei-Manawatū including especially Te Kooro Te One himself who I believe was one of the people who had given out leases to runholders. So they probably got it through him, through Te Kooro or maybe through Wirihiare as well, I do not know.

Q. Our client understands that Makutu lived at Awarua as well.

A. Pardon?

Q. Our client understand that her tupuna Makutu lived at Awarua at time as well.

20 A. Yes, well she could have done.

Q. Yes. The memorandum by Paki which you refer to in your answers does refer to maps of the area claimed by each of the hapū listed.

A. Yes,

Q. Have you got copies of those maps? Are they in you report?

25 A. Yes. I do not know if we can do it, but it was in my presentation, so you can...

Q. Right. Okay, we can access that, thank you.

A. You can see it. Just keep going. That is it.

Q. All right, thank you for that. I think the Court awarded just one member of Ngāti Wehiwehi land in the reserves, that was Wirihiare Te Angiangi.

30 A. Yes, that is correct...

1130

Q. That was after a hearing in Wellington, wasn't it?

A. Yes.

Q. Which is some distance from this area where the people might have lived.

A. Yes.

Q. Do you know how many tangata whenua witnesses actually turned up there and gave evidence?

5 A. I think quite a lot of them did actually, I mean it was a big – it was a big effort and they – I have – the transcript of a lot of the hearing is in Archives New Zealand so you can actually go and count them if you want, the people who actually gave evidence. But my guess is that this was a very, very important Native Land Court hearing and I – my guess is quite
10 a lot of people would have gone down for it so, certainly Te Kooro Te One was there and other people as well, but I cannot give you an answer off the top of my head how many there were exactly.

Q. So, that is available –

A. Te Kooro Te One was definitely there and he participated when – after
15 the initial judgement then everybody including the unsuccessful claimants submitted names of individuals who they wanted to be included by the Native Land Court as owners in Rangitīkei-Manawatū and at that hearing I can remember Te Kooro was – he was present to make sure that the Kauwhata folks who were eligible were included on the list.

20 Q. Well there may have been some–

A. And Wehiwehi for that matter, but Wehiwehi was blocked.

Q. Well there may been some other witnesses from Wehiwehi who actually made the trip there and gave evidence.

A. I do not know. By that stage you have got to realise – sorry.

25 **DCJ FOX:**

Just for the sake of the record, Professor Boast has the list of the witnesses who gave evidence summarised in his –

MARK MCGHIE:

Right. Thank you, Ma'am

30 **DCJ FOX:**

– Terry.

MARK MCGHIE TO DR PAUL HUSBANDS: (CONTINUES)

Q. In your answers to our questions you give the name of another 18-members of Ngāti Wehiwehi who were awarded some land by Mclean.

A. Yes.

5 Q. Were those people all acknowledged to be resident on the block?

A. I think that was the idea – I mean, the Crown did not give – I mean right from the outset with Featherston, the colonial authorities did not make reserves for people who they did not consider to be resident within Rangitīkei-Manawatū. So, all of those Raukawa folks who had either
10 signed a deed of purchase or opposed a deed of purchase and then were ruled at by the Native Land Court, they were not – they were not allowed reserves with the exception of Matene Te Whiwhi and I am pretty sure he was given the reserve was kind of – it was to cover his payment for testifying on behalf of the non-sellers at the big Court hearing in
15 Wellington.

Q. Okay.

A. So, that was pretty much the whole through, you had to be considered by the Government to be resident on the purchase area if you were going to be considered for any sort of reserve.

20 Q. Just one last question, in the list of individuals in that 151 there is a man called Kipihana –

A. Yes.

Q. From Ngāti Wehiwehi, said he lived at Oroua for two and a half years.

A. Yes.

25 Q. Do you have any other information about that individual?

A. Not off the top of my head, I think there was – the thing is with Rangitīkei-Manawatū is there is a lot of movement back and forth like people are there at different times because at different times this sort of Rangitīkei boundary for Ngāti Raukawa becomes very important and at
30 other times they are sort of drawn back. So, for example, you get say – just to give an example that is in my head at the moment, Ngāti Maiotaki, they sort of head up there, they are up there in the 1830's and then they come back down at the time of Kuititanga in 1839 and then they end up living in Otaki with Octavius Hadfield. So, there is this movement back

and forth and I think with Wehiwehi it might have been different. I mean I think I can remember reading some records of when Featherston and Buller were trying to dismiss their claim to Rangitīkei-Manawatū saying that these particular people from Wehiwehi have only come up in the
 5 1860's or you know – quite close to the purchase so. So, there is this movement back and forth, you know.

Q. So, the analysis of residences in this by Te Kooro in 1866 is where they were living at that time, but they may have moved prior to that, they may have back, or they may have moved into the area.

10 A. Yes, possibly.

Q. Okay, thank you. Thank you, Dr Husbands.

DCJ FOX:

Thank you, Ms Lang?

15 1135

(11:35) JOSEY LANG TO DR PAUL HUSBANDS:

Q. Yes, thank you Ma'am. Tēnā koe Dr Husbands. My name is Josey Lang and I act for Wai 1630 which is a claim by Heitia Raureti on behalf of Ngāti Kapu. I want to start by thanking you as others have, particularly
 20 for your answers to my questions of clarification –

A. Āe.

Q. – and also for transcribing the original – the documents for us, that was extremely helpful and that has allowed me to reduce the number of questions that I have for you today, so thank you for that as well.

25 A. That is all right.

Q. To start things off I just want to start with a very general proposition and what you have described in your report as the first principles for the setting aside or reserving of land for Māori that would have applied in the Rangitīkei-Manawatū Block, and I don't want to go over them because
 30 they are set out very clearly in your report. But you would agree, wouldn't you, as a general principle that in relation to the Rangitīkei-Manawatū Block that those principles were not always followed?

A. No. I mean, I am trying to think of the four principles. No, and the interesting thing is that they were – that Featherston was criticised by his contemporaries at the time, and I am not talking about his Māori contemporaries, he was criticised by his contemporaries and Government. Like, for example, Richmond wrote a letter to him pointing out the sort of how – I cannot remember the exact word he used.

Q. It is page 62 of your report.

A. Yes, he –

Q. 11 November 1866.

10 A. How out of keeping it was with the way you are supposed to do things, and also, likewise, at the time of McLean's intervention in November 1817, a long memo was produced by the Government, I think it was by McLean, it is undated and unsigned because there are two drafts in the MA13 files, and in that file the author who appears to be McLean, because it appears either to have been authored by McLean or at least approved by him because it is a long sort of justification of why he needed to provide additional reserves in Rangitīkei-Manawatū. He also notes the eccentricities of Featherston's way of going about and completing the purchase and one of those was the failure to establish reserves beforehand, and that's something that McLean himself is quite a stickler for, at least the earlier McLean. He was a great believer in defining the reserves and making sure they're actually surveyed and marked out on the ground and if possible they are bordered by rivers and land forms, and one of the reasons he was big on that was not just because he thought it was the right thing to do but also it made it less likely for Māori vendors or other groups to come back and say, "Well this is not what we were expected, these are not the reserves that you told us." So he was a very, very big stickler for getting things down on paper and down on the ground and defined before the purpose.

30 Q. And when Richmond is urging Featherston to make these provisions, it is not just for those who were selling, it was also for those who were opposed, those were his views?

A. No. In fact, I think that is the main point he makes from memory is that he sort of says that there is no – that that established practice is that you

need to make account for the people who are not participating in the purchase –

Q. That's correct.

5 A. – before the purchase can go ahead and I think he even says that he doesn't even recall Featherston's approach being used in any previous purchase, that it is not – that that established practice is that you define the – well, he also says that it is also problematic that they are going ahead with the purchase at all with this, such a substantial minority. I think that it how it –

10 Q. Thank you, that it very helpful.

A. Yes.

15 Q. Yes. If I could take you to page 56, the second paragraph there of your main report, and I explored a similar proposition with Dr Anderson on Tuesday in relation to the purchase and I just want to explore that proposition in relation to the reserves with you.

1140

20 And I also want to be really careful and clear about the language I'm using here because I want to adopt and endorse the language used by Te Nahu and Mr Watson. For those who were seeking to retain their lands and that is pupuri whenua.

A. Yes.

25 Q. That if the Crown's parlance which is non-sellers pupuri whenua is the term that we would endorse. So, about half way down you note as Dr Anderson has as well, that the purchase were being strongly opposed by a number of hapū for Ngāti Raukawa and Ngāti Kapu is one of those hapū listed there, isn't it?

A. Yes.

30 Q. Yes. So, just going back to – and sorry, as you clarified in your – very helpfully in your answers to questions of clarifications to me, Ngāti Kapu were not included in any of the reserves created out of the purchase, were they?

A. No, I don't think so. Again, it's the same problem. They were considered by the Crown by Featherston and everybody else to not be resident. Not to be living on the block, and also the Native Land Court had ruled that

Ngāti Raukawa as a tribe had no tribal rights to Rangitīkei-Manawatū and so, that basically excluded groups like Ngāti Kapu, Ngāti Maiotaki, Ngāti Huia from having any rights, land rights within the purchase area.

5 Q. Thank you, yes. Would it be right or fair to say that if the Crown had followed its established principles that we discussed at the outset and followed best practise that for the pupuri whenua those who were seeking to retain their land opposing the sale, that reserve should've been made for those hapū.

A. For the ones.

10 Q. Opposing the sale and seeking to retain that land.

A. Well, I think given the level of opposition, amongst you know the primary group, the group that had been recognised by McLean in 1849 as the group who had the mana over the land, Ngāti Raukawa, and also the vocal opposition of particularly those people who are living on the land, I don't think the purchase should have gone ahead and I mean you know and again that is not me projecting that my 21st Century views, although it may be obviously I am, but that's what a significant number of colonial observers said at the time, and Richmond was calling Featherston into question about it, and you know there were observers calling it a second
15 Waitara.

20 Q. Mmm.

A. You know, this is like – and of course, that is what started the war in Taranaki that Waitara was sold against the – despite the opposition of the land's principal owners, but anyway, Rangitīkei-Manawatū is even more
25 outrageous because not only was the land sold despite the expressed and clear opposition of a significant portion of Ngāti Raukawa and Ngāti Kauwhata affiliated hapū and iwi, it was sold from under their feet. I mean it was – now this is the land they were living on. I mean, sorry, I know it's not your clients, but just to emphasise that point. So, that's my
30 opinion and I don't think I'm the only one who probably thought that.

Q. No, that's right, that's very helpful, thank you. Those are my questions.

(11:43) NEUTON LAMBERT TO DR PAUL HUSBANDS:

Q. Tēnā koe Dr Husbands.

A. Tēnā koe.

Q. He paku mihi ki a koe. Ko Neuton Lambert taku ingoa. He uri ahau o Tūhoe, Ngāti Kahungunu me Ngāti Ruapani, nō reira tēnei te mihi ki a koe. So, my name is Neuton Lambert, I represent the claims Wai 1260
5 for Ngāti Waewae, and Wai 1619 Ngāti Parewahawaha. The law firm that I represent today is Wackrow Williams and Davies. I want to thank you for your report. I also want to thank you for your questions – your answers to the questions today. You have actually covered off a few things that I was going to ask in your very extensive answers, thank you very much.

10 A. Sorry.

Q. No, that's fine. So, you've already established with my colleague from Woodward Law that your report focus in terms of Māori aspirations, focus mostly on economic development, is that fair to say?

A. Yes, I think so.

15 Q. Mmm.

1145

A. I mean obviously you have the whole – if you are talking about Rangitīkei-Manawatū, I mean, I have got two chapters and the first chapter is, well, it is much more political because it is the struggle of the
20 people basically to get their land back or at least some of it back. So, that is political. When I get to the second portion I guess that is more economic, although there is some political stuff, I mean the whole thing is political because they are dealing with the Government in different ways, so I guess that is political as well.

25 Q. And just touching on that political aspect that you just talked about, you would agree then wouldn't you that also part of Māori aspirations would be to retain the land for future generations, wouldn't you?

A. Absolutely.

Q. Can I just take you to your main report?

30 A. Yes.

Q. It is just on page two.

A. Page two?

Q. Mhm, page two. It's okay, just work with me. What I like in this passage is I think you have summarised the themes of your report pretty well.

A. Thank you.

Q. Can you see the top of the page it says in addition?

A. Yes.

5 Q. Yes. SO, I am just going to read that out. In addition to examining the process by which Crown officials created or failed to create reserves for the purchases of Raukawa and Kauwhata land and asking whether the land set apart corresponded to the needs and aspirations of the former owners, this report also focuses upon what happened to the Raukawa and Kauwhata reserves after they had been created. In particular it shows how tribal and hapū aspirations for rangatiratanga were undermined by a native land system – native land tenure system and so is it fair to say that when you say native land tenure system that is sort of like your summary of the whole system itself including the legislative process, Crown policy, would that be fair to say?

10 A. No, no. It is the individual – it is the actual former land tenure where the ownership of Māori land is vested not in hapū or iwi or even whānau collectivises but in individual owners holding geographically specific but geographically underlying shares in particular areas of land and that was imposed by, I mean, I always think of the 1865 and 1873 acts as the main ones but in the Te Pene Raupatu document they emphasise in particular the 1862 act.

15 Q. Sure, and I was going to get to that point eventually –

A. Right, sorry.

20 Q. – was the fact that – no, no, that is fine. The fact that Crown created legislation –

25 A. Yes.

Q. – obviously you have used the word imposed, facilitated that individualisation of title, didn't it?

30 A. Yes, well facilitated probably not strong enough a word really. Imposed I would say would be.

Q. We will use imposed, I like that word imposed. Thank you. Okay, so you do talk about individualisation of title quite a bit in your report –

A. Yes.

Q. – and the impacts of that.

A. Yes.

Q. So, it would follow, wouldn't it, that the native land tenure system is very different to how Māori viewed having mana over their whenua wouldn't it?

5 A. Yes, I think so. It was very different from – again, I am not an expert on Māori tenure, but it is very different from the way the land was owned prior to, well 1866 or 1870 or whatever.

Q. Yes.

A. 1865, 1862.

10 Q. Yes, and you would have noticed in that – in my question, I was very careful with the wording there. I used mana –

A. Yes.

Q. – over their whenua –

A. Yes.

15 Q. – because the word ownership is really a Pākeha concept, isn't it?

A. I am not going to disagree with you about that.

Q. Yes. So, I guess what I am – I am just trying to tease out –

A. Yes.

Q. – those conceptual differences –

20 A. Yes.

Q. – between how Māori view the land –

A. Yes.

Q. – and how the land tenure system attempted to recognise land and I think I can ask this question with a bit of confidence now that I know your background in working for the Tribunal. You would have heard I am sure the concept of Māori having whakapapa to land?

25

1150

A. Yes.

Q. Right. I was wondering if you – so, your understanding of the word, what would that mean to you?

30

A. Well, usually when I – my understanding of whakapapa is the complex sort of, I guess webs and networks of genealogy which collects or connect Māori people both to their tupuna and ancestors but also to each other amongst the people who are living today. But, I think in terms of – I guess,

I think in terms of genealogy and connections between people more than land but that's just because of my experience but obviously the land is essential as well.

5 Q. Sure. So, did you know that if you break that word down, that the – see how whaka-papa, that the papa there is actually a reference to Papatūānuku?

A. No, I didn't but now you mention it, it seems completely reasonable.

Q. Yes, and did that the – that another meaning of that word is to create layers.

10 A. Right.

Q. He whakapapangia. So, -

DCJ FOX:

It would be very useful to know whether you are going to bring a witness, an expert on Tikanga Māori to talk to what you have just put to this witness?

15 **NEUTON LAMBERT:**

Sure. Your Honour, I'm just merely asking his opinion, he's able to say –

DCJ FOX:

20 Yes, but you are also giving evidence from the bar about the nature of custom and custom in this district may differ to what you have just announced, so if there is a witness in the district, I would love to have them.

NEUTON LAMBERT:

Sure, I'm sure we can certainly find a witness to talk about whakapapa, Ma'am.

NEUTON LAMBERT TO DR PAUL HUSBANDS: (CONTINUES)

25 Q. Okay, I guess my point was that Māori viewed land and their connection to land more than just a commodity or an asset of a propriety nature, you would agree with that?

A. Absolutely, yes.

Q. So, the Native Land Tenure system in your view, if we think about and the ways of Māori signing te Tiriti –

A. Yes.

Q. – and the principles of partnership and protection, active protection, the land – the Native Land Tenure system would essentially mean that – would have created a breach of the te Tiriti principles, would you agree with that?

5

A. I don't think I'm – I don't it's – I'm in a – I think that's the job of a – I don't think I'm supposed to make pronouncements on Treaty principles or whether – or maybe I'm just acting too much like an ex-employee of the Waitangi Tribunal.

10 Q. That's fine, that's fine we can leave it there. I just wanted to move –

A. I mean, it undermined the ability of hapū and iwi to organise and manage their most important asset and to maintain their social and political cohesion and also to pursue important economic and social goals. So, if you want to see that and put that in terms of the Treaty, it's up to you.

15 Q. Yes, because you do actually say in your report that the Native Land Tenure system undermined the rangatiratanga of Māori.

A. Yes, absolutely.

Q. Yes and that the exploration of te rangatiratanga Kāwanatanga is probably best for our witness for tomorrow, but just to finish off I just wanted to touch on land fragmentation.

20

A. Yes.

Q. And I was wondering if you could give your explanation of what you mean there just to see if we are on the same page.

A. Well, it's just the – it's the breaking up of whenua into smaller and smaller sections and subsections of land brought about by repeated partitioning of that particular piece of land. So, basically like in Te Reureu you have one big large reserve that by the 1927s – by the early 1920s is, I believe I said, I believe it has been divided into 97 discreet pieces each with their own individual owners and then that continues in the case Te Reureu so into the post-war period you are talking about maybe 150 pieces and I'm just trying to remember what I said – So, now you've got – now it's divided into 97 sections, so – or maybe I got the numbers wrong there. But, you

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So, what was it? It was the division – yes, so it is that. The division of Māori land in to ever ever smaller pieces which become – which because they are smaller and more fragmented they become increasingly economically unviable.

5

Q. Yes, sorry.

A. I think it was, what it was – sorry, to correct myself, I think it was 54 discreet pieces and then it gets divided again. So, now, in Te Reureu it is a big problem because you have got these little bits of land, so it makes it hard for community leaders to organise themselves economically and to engage in collective ventures I guess.

10

Q. Yes, sure. I am glad to say we are on the same page there, there was just another aspect and you did briefly touch on it with my colleague from Woodward Law, is talking about – would you think that it would also include the diminishment of the shares?

15

A. Yes, that is not fragmentation. I believe the technical term for that is fractionation.

Q. Fractionization, yes, I was just about to.

A. And so, what happens with that is basically, you have got a discreet piece of land and as you go through generations and each share holder passes away and then their successors succeed to that and so you get an increasing number of individuals with ownership shares in a particular piece of land. So, by the time you get to the beginning of the 21st century you have got some pretty small pieces of land which are owned by a very large number of people and again when you combine that with that fragmentation I was talking about, you end up with a situation where it is very for – not only for the hapū and iwi to act purposefully but also it is very hard for individual owners to receive any sort of financially or economically significant return from the land apart and if we now go back to the earlier half of the 20th century by alienating that land, by selling it and then at least you get a big lump sum and that can be portioned out.

20

25

30

Q. Right. Yes, and fast-forwarded to today. Fractionization and fragmentation is still a major issue. You would agree with that. Wouldn't you?

- A. Yes I think it is really interesting because preparing for this hearing because I knew the word raupatu was going to be important, I went back and read Professor Boast's essay in – that raupatu collection of essays and one of the things he noticed in passing was that in the United States of America they went for a similar individualizing of tenure through the Sherman act which was similar, placing ownership of Native Americans land in individuals now what I hadn't been aware of about what Professor Boast noticed – noted was that in the 1930's, the federal Government passed new legislation and I think it was something called the native – anyway I can't remember it's name but what – they abolished that individualised form of tenure and returned to some sort of form of tribal tenure and again Professor Boast is the person to talk to, not me but I was really struck by that, that we have basically persisted with this individualized tenure for 150 years and it was quite striking. Obviously, we still have – we have now, various trusts, Ahu Whenua Trusts and ways of getting around that but the basic land tenure system of individualized tenure is persistent which I think is really interesting, I mean interesting in a bad way I guess more than a good way.
- Q. Thank you, Dr Husbands, Your Honour, those are my questions tēnā koe.

DCJ FOX:

I think Sherman's act was the Allotment act.

DR PAUL HUSBANDS:

Yes.

DCJ FOX:

Yes, that is what it was called.

DR PAUL HUSBANDS:

Yes, the Sherman Allotment act.

DCJ FOX:

Yes.

DR PAUL HUSBANDS:

5 Yes, they allotted the land in to individual portions. I think they got 64 acres or something each and if they held on to the land for a certain amount of time there was a promise that they would end up as American citizens at the end of it because that had shown they were capable American agrarian farmers rather than uncivilized natives running around the great plains chasing buffalo, I guess.

10 **DCJ FOX:**

Yes, Ms Martinez.

(11:59) EMILY MARTINEZ TO DR PAUL HUSBANDS:

Q. Tēnā koe Dr Husbands.

A. Tēnā koe.

15 Q. I just want to take a moment to repeat the sentiments again of a number of my learned friends. Your report has been very useful for our clients so thank you very much for that.

1200

20 As you have heard, my name is Ms Martinez and we represent the Wai 784 Ngāti Kauwhata, the Wai 1482 Ngāti Wehiwehi, and the Wai 2031 descendants of James Howard Wallace claimants. Today, I'll primarily be cross-examining for the benefit of our Wai 784 and Wai 1482 claimants in respect of their interests in the north.

A. Can you repeat that again please?

25 Q. In terms of the claimants?

A. Yes.

Q. Yes, so the Wai 784 Ngāti Kauwhata; the Wai 1482 Ngāti Wehiwehi; and the Wai 2031 descendants of James Howard Wallace claimants.

A. Thank you.

30 Q. So, as I said, just primarily focussing on our Wai 784, Ngāti Kauwhata and Wai1482 Ngāti Wehiwehi claimants for this particular week. So, a

number of my colleagues have asked some questions that I was hoping to cover off, so that had cut down my questions slightly. But for cross-examination today, you would need your report in front of you, #A213, your summary #A213(a) and the bundle of documents that we filed at #A213(h) do you have that in front of you?

5

A. Yes.

Q. Wonderful. So, this is just a preliminary matter in terms of the tribal identity. Now, in your report you have of course discussed Ngāti Kauwhata and Ngāti Wehiwehi, and at times, you do refer to them in your report as part of Raukawa.

10

A. Could you just wait a second? I just –

Q. Kei te pai.

A. Oh, yes, no sorry. Sorry, I just had some notes in relation to your bundle, just so I can answer the questions there.

15

Q. Wonderful. All right, so of course in your report, you do discuss Ngāti Kauwhata and Ngāti Wehiwehi on a number of occasions and sometimes you do refer to them as part of Raukawa.

A. Yes.

Q. Now in your report, you of course, not commissioned to look at tikanga, whakapapa, oral traditions of particular groups, that's fair to say?

20

A. Yes.

Q. Yes, and you're not an expert in Ngāti Kauwhata or Ngāti Wehiwehi tikanga, whakapapa or oral traditions that's fair to say?

A. No.

25

Q. So, you defer to claimant groups and tangata whenua in that regard?

A. Yes, of course, of course.

Q. Wonderful, thank you. Now of course, the focus of your report has been on reserves and of course, in addressing those, you've also looked quite a lot at sufficiency and you do discuss at various points differences between what iwi received or expected to receive versus what was provided in fact. So, indicating for examples that in the case of those who refused to sell within Ngāti Kauwhata, that the reserves were much smaller than they expected, that's correct?

30

- A. Hang on. Did you mean the members of Ngāti Kauwhata who had signed the deed of purchase, they were much more than they expected or the ones who refused to sign ?
- 5 Q. So, at page 99 of your report, I'll get you to turn there. This is really just a preliminary –
- A. Okay, so here you are talking about the Native Land Court Awards, which the Native Land Court awarded in 1869?
- Q. Yes, yes.
- 10 A. Yes, they were very disappointed both with the size and the location of those awards.
- Q. Yes, yes. And so, just in mentioning that, I'm just – I'm tying in just the fact that you do look in part at what people expected to receive versus what they did and coming into that, the idea of sufficiency. Is that fair to say?
- 15 A. Yes, yes.
- Q. Excellent. So, by this line of questioning, I just want to hone in to some of the key issues for our clients. So, of course you are familiar with the general terms of the Treaty, that's fair to say?
- A. Yes, I like to think I am.
- 20 Q. Excellent, and you are aware that as part of this in Article 2 by the te reo translated text, Māori were guaranteed that the unqualified exercise of their chieftainship over their lands would be protected, and by the English version that Māori were guaranteed the full exclusive and undisturbed possession of their land so long as they wish to retain them, you're aware of that?
- 25 A. Yes.
- Q. Now I don't want to draw you outside your comfort zone in this regard, but it is fair to say that the standards of the Treaty demand more than Māori simply retaining sufficient lands that would be fair to say?
- 30 A. Yes. The reason I use the word "sufficient" is that I thought it was important to set out at the beginning an establishment of what Government, Crown officials both in London and in Auckland and Wellington, their expectations of what the practise should be, because I

know that historians who appear before the Tribunal and the Tribunal itself has sometimes been accused of presentism.

1205

5 And so, I thought it was important to get an understanding, and I know it is weird in the title of my report as Māori aspirations and I start by talking about, you know, colonial Government expectations instead –

Q. Right.

A. – which is problematic with – I mean, the title of the report is the title of the project, so –

10 Q. Mmm, mmm.

A. – that may be a source of confusion.

Q. No, no, that is helpful and that does tie into where I will be going to next.

A. So yes, I guess I was talking about colonial expectations –

Q. Mmm.

15 A. – and the idea of sufficient or a sufficiency is something that is very important if you sort of trace the, I guess you could say, the intellectual history of Crown purchasing starts with Normanby's instructions, he is very clear about that –

Q. Yes.

20 A. – and sort of works its way through.

Q. And actually coming to that point. So this ties very neatly with where I was wanting to go. So, I mean, if you could go to page 5 of your report? Nice and early at the start.

A. Okay.

25 Q. So there you are discussing the various formulations and views about what constituted sufficiency of land for the reserves to be allocated to Māori.

A. Yes.

30 Q. So for example, you will see there at page 5, second paragraph, last sentence at the end there, Lord Normanby's instructions and he talks about the acquisition of land to be confined to districts Māori could alienate, without distress or serious injury to themselves. Do you see that there?

A. Yes.

Q. And if you go over the page you have got, second paragraph sort of middle of the way through, Crown officials agreed that the land should be enough for Māori to live upon.

A. Yes.

5 Q. And just later down again you have Governor Grey saying, "...to reserve an adequate portion for the future wants of the natives." So there is nothing in your report, is there, that indicates that Māori were involved in these discussions about what would constitute sufficiency in this time, that would be fair to say?

10 A. I think I go on further and talk about – I can't remem – when I talk about provision for reserves in early Crown purchases I think which I am mainly drawing on the reports by earlier Tribunals, for example Te Tau Ihu for example.

Q. Right.

15 A. And I talk about what they found and basically you get this definition of a reserve which is not just a narrow European idea, that it is the limited only to the very, very discreet settlements and cultivations –

Q. Mmm.

A. – as you would have in maybe an English understanding of what, you know, was necessary in agrarian society. But you get at least certain Crown officials, including perhaps most notably McLean himself developing a much broader understanding of what needs to be set aside for a Māori subsistence economy which involves not just cultivating but also various forms of less intensive – not even necessarily less intensive but use of, for example, wetlands, forests, foreshore –

20

25

Q. Right.

A. All of those different areas of land for gathering not just food but also important goods to be manufactured and maybe even rongoā health stuff. So it is a much broader definition. And then also added to that is also an appreciation, and again McLean is important for this, that there also needs to be enough land set aside that these people, Māori people in general and the participations in particular purchases like Rangitīkei-Turakina have the possibility of participating actively and

30

developing themselves so that they can participate in the sort of developing agrarian economy.

Q. Mmm.

A. So there should be some scope, for example, being able to run cattle or sheep or something like that. So that is why I sort of emphasise the Rangitikei-Turakina purchase because in many ways that sort of broader understanding of what is necessary which I assume was developed not just from the cultural baggage that people like McLean brought with him or his discussion with other colonial officials but also his experience with Māori and his experience with living in New Zealand. And also, I might add seeing we are talking about the United States, he was also reading about what the sort of reserves that were being developed in the US for groups like the Cherokee and the Choctaw. So again, this idea of a large more expansive –

15 1210

Q. Right, but in terms of those specific discussions that you were referencing earlier on in the piece that we have just talked about, there is not a clear Māori voice coming through that –

A. No, not initially, no –

20 Q. – no, okay.

A. – these are the instructions that are –

Q. No.

A. – coming to Crown officials.

Q. Thank you. So, turning to page 179 of your report. Are you there?

25 A. Yes.

Q. Wonderful. So, in the second paragraph there you are talking about section 24 of the Native Land Act 1873.

A. Yes, yes.

Q. And that is requiring an aggregate amount of not less than –

30 A. Yes.

Q. – 50 acres per head for every native man, woman and child –

A. Yes.

Q. – to be set aside in each district, so that Māori would have the sufficiency to live up.

A. Yes.

Q. So, there is no evidence in your report that this Act took explicit consideration of Māori views on what sufficiency of land was, that would be fair to say?

5 A. No, I was just trying to make a point there, I mean and –

Q. Yes.

A. – and I think the point holds, you know, I think the point is particularly striking with the Te Reureu people who I don't – who you know, you have these 200 people, 200 or so people being placed on a reserve of –

10 Q. Right.

A. – 4,500 acres –

Q. Yes.

A. – and these people have been acknowledged by the Crown as being otherwise landless.

15 Q. Yes, yes and –

A. And that holds to a greater or lesser degree for also Ngāti Kauwhata, Parewahawaha –

Q. Yes, well –

A. – and the other folks.

20 Q. – we will come to that shortly as well. So, one of the things I just wanted to delve into is two sorts of questions. Firstly, what the evidence indicates about the land that Ngāti Kauwhata and Ngāti Wehiwehi wish to retain in the Rangitīkei-Manawatū Block, so that is for those who –

A. Yes.

25 Q. – initially agreed to sell and those who refused. And the second one is what the evidence indicates about sufficiency and coming back to that Native Land Act provision.

A. Yes.

30 Q. So, in terms of Ngāriki Kauwhata and Ngāti Wehiwehi who did not wish to sell, it is fair to say, isn't it, that they didn't want to part with any piece of their land within the Rangitīkei-Manawatū Block, that would be fair to say?

A. No, and Te Kooro Te One was very, very explicit about that –

Q. Yes, yes.

A. – he said, they actually – they wrote to the Government and they said, “we do not want to sell our land, we want to hold on to it, that would be much better for man and beast,” it particularly shows that they were already thinking of the pastoral economy.

5 Q. Yes, yes indeed.

A. So, yes, they were very explicit about that and obviously outside of Rangitīkei-Manawatū, Te Kooro Te One and Hoani Meihana Te Rangi Te Rangiotu, said something similar with regards to –

10 Q. Yes, yes.

A. – Oroua as well.

Q. Yes, exactly. And in terms of those who initially signed that purchase deed such as Tapa Te Whata, he expressed, and I think this was touched upon earlier that he had asked Featherston for quite large reserves as well, and that was part of his initial reason for acquiescing to the purchase, that is correct?

15

A. It was one reason, I wouldn't say it was –

Q. No, not the only one, certainly.

A. – it was the only one or even maybe the most important one.

20

Q. Right.

A. But yes, he was – him and his wife Metapere and other people who signed the deed of purchase.

Q. Āe.

A. Did so with the expectation that they would be provided with substantial areas of land.

25

Q. Yes, yes. And so, turning now to what they actually got, it is fair to say that those who did not wish to sell certainly did not retain all that they wished to keep, that would be fair?

A. No, absolutely not –

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Q. Yes.

A. – and they were very – they continued to be unhappy about that.

Q. Yes. And even in terms of those who did initially agree to sell such as Tapa Te Whata, he too did not receive what he wished to retain, that would be fair?

A. No, and it is really interesting because you know again if you get your head into this, you know because this is one of the problems when you're – as a historian and you are sort of submerged in documents which are produced by the colonial government and you sort of get caught up in the language, and I know they tended to talk more about the descendants and non-descendants, but you kind of think of 1866 as this big division within Ngāti Kauwhata between those who signed the purchase deed for whatever reason and those who continued to maintain their opposition. But what is interesting is that by 1870 or by the end of 1869 Ngāti Kauwhata, just to talk about Ngāti Kauwhata, they really come back together again, and they are all opposed to the purchase, and they are all acting as a united group in their opposition to what they considered to be the injustice that the Crown has imposed on them. So, for example, you get a report of when Ngāti Kauwhata go out and they upset the – they prevent the survey of their Native Land Court grant.

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Q. Yes.

A. In the report it is not just the so called, non-sellers like Te Koro Te One or Takana Te Kawa or Te Ara Takana or Hauri Te Kahuhui. Those people there – there is also Tapa Te Whata is there.

Q. Right.

A. And is it, Areta Pekamu? Those sort of people who signed the deed. But not only that, you also have support from members of Rangitāne who also picked the sellers. So you have got people like Te Peeti Te Awe Awe is there and Hoani Meihana, Te Rangitutu. So yes, I mean, now I have forgotten what your question was in the first place.

Q. No that has all been very useful, so kia ora. I wanted to now, back to this question of sufficiency, and that is something that we have briefly touched upon. I will get you to turn page 179 of your report again, and we are talking about section 24 of the Native Land Act 1873, and this is – not less than 50-acre rule. Are you at the page now?

A. Yes.

- Q. Wonderful. So you set out actually at this page that – or you set out what the legislative requirements would have intitled various Ngāti Raukawa and affiliated iwi and hapū to acre wise --
- A. Yes.
- 5 Q. – in this particular paragraph here, and you conclude of course, and you briefly mentioned this before that Ngāti Kauwhata Ngāti Wehiwehi and other iwi and hapū received less than what they would have been intitled to under the dictates of the Act. That is correct?
- A. Yes.
- 10 Q. And this conclusion that you have got there is based on the population as set out in the 1874 senses of the Māori population and that is correct?
- A. Yes.
- Q. Now of course in the 1870s senses is of Māori were generally fairly crude, weren't they?
- 15 A. Yes.
- Q. They were estimates, weren't they?
- A. Yes.
- Q. And I might just get you to turn to our bundle now.
- A. Yes, you mean the Terry Hern thing?
- 20 Q. Yes, exactly.
- A. Yes.
- Q. Your joining the dots. So it is page 43 onwards in the bundle.
- A. Yes.
- Q. And in particular I just want to go over page to page 45 and that first paragraph there. So he states there that with respect to sense, and I think this is before 1945, a new mirative employed methods that pull described as crude, and he sets out there a number of things that impacted on the reliability –
- 25 A. Yes.
- 30 Q. – of those sentences, and I will not take you through all of them, but it is fair to say he outlines that many Māori lived in small and remote villages unknown to the sentence enumerative, that is correct?
- A. Yes.

Q. They were engaged in seasonal employment or food gathering which meant they would not necessarily be in one fixed place. They were also often participating in Native Land Court hearings and sentence was removed from the usual residents, that is correct?

5 A. Mm.

Q. And sometimes Māori were also averse to be included in those senses. That is fair to say?

A. Yes.

10 Q. So I think we have already got there already but it would be fair to say wouldn't it that those estimated numbers are very much an estimate, so they are not likely to be entirely accurate?

A. No, they are estimated.

Q. Yes.

A. I mean –

15 Q. Yes. Okay.

A. Yes.

Q. And based on the information of traverse –

20 A. Well they might not be estimated there. I guess the guy walked around, I mean, it was not like now, where everybody gets a form and they have to fill it and then they gave it. So –

Q. No.

A. – I mean, my understanding is they went and then he basically tried to count, get an idea of the number of people living in each kāinga and how many kids there were and how many adults there were.

25 Q. Yes.

A. So yes, it was not particular so that by modern day standards...

30 Q. No, exactly. But based on that information which basically says, you know, the methods are a little crude and it does seem that people would be more likely to missed off if anything. It would be fair to say that if anything the numbers that you have got for the populations are like to be an underestimate if anything?

A. I do not know.

Q. Okay.

A. I think their unlikely to be an overestimate.

Q. Mm.

A. But I think the 1874 senses are probably the best one of the ones of 1870s, and probably the best ones from – yes, around about that time, and certainly till the 20th century. I mean –

5 Q. Right. But certainly not an overestimate?

A. Probably not. I mean –

Q. Yes.

A. – but I cannot really.

Q. Okay.

10 A. The person who probably knows most about this is Dr Phillipson, but obviously he is not around.

Q. All right. Just want to turn now to the length that some of our client tupuna were --

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15 A. Could I just say something about the whole – I think, if you are talking about censuses being crude sort of ways of measuring things, I think that 50-acre thing, I mean I had it in there to make a point, but I would not want you to make too much of it.

Q. Right.

20 A. Because obviously the quality of the land, the significance of the land, is all very important –

Q. Absolutely.

A. – so, I mean, you know. So, obviously there is also a difference between the amount of land given to the folks in Himatangi for example –

25 Q. Right, yes.

A. – compared to somewhere else because you are talking about quality and what can be done with that land and if the land which is given to people is a whole bunch of sandhills and whatnot –

Q. Yes, yes.

30 A. – then that is a difference as well and I know that later on they did not, the Government made a distinction between first-class, second-class, and third-class land.

DR GRANT PHILLIPSON:

Can I just add to that, Dr Husbands, that Mclean intention in that Act was also that there would be tribal reserves?

DR PAUL HUSBANDS:

As well?

5 **DR GRANT PHILLIPSON:**

Yes.

DR PAUL HUSBANDS:

Okay, well there you are.

DR GRANT PHILLIPSON:

10 So, the 50-acres per person was supposed to after reserves had been set aside for the tribes, although that never got carried out, that was his intention in that legislation.

DR PAUL HUSBANDS:

Okay, well that.

15 **EMILY MARTINEZ TO DR PAUL HUSBANDS: (CONTINUES)**

Q. Kia ora, that is very helpful. So, the next point I just wanted to look at is the lengths that our client's tūpuna were forced to go to try and retain the lands they wished to with a particular focus on the Rangitīkei-Manawatū, and of course there are multiple examples of their efforts, but I am very
20 conscious of the time so, I just want to discuss a selection of those with you. So, it would be fair to say that there is evidence of members of Ngāti Kauwhata and Ngāti Wehiwehi protesting the sale of the block, such as were at hui with Government officials, letters to Governors to Ministers, and the colonial parliament generally, that is fair to say?

25 A. Of Ngāti Kauwhata?

Q. Yes.

A. Yes, and –

Q. Ngāti Wehiwehi?

A. Yes, and also them working within the sort of broader –

Q. Yes.

A. – Ngāti Kauwhata confederation or whatever you want to call it – sort of opposing the purchase.

5 Q. No, that is helpful. And of course, they wrote letters to Government officials and later protested peacefully about others being awarded reserves on the lands they were living on, such as Puke Totara –

A. Yes.

10 Q. – which you mentioned earlier. They made claims to the Native Land Court after a long time of pushing for the land's inclusion within the Court's jurisdiction, that is fair to say?

A. Yes.

15 Q. They again tried to stop surveyors coming onto their lands, after awards at the Native Land Court were decided in the absence of many of the Kiwi members –

A. Yes.

Q. – and without reference to their wishes and after of course that proclamation that came through extinguishing Native title over the purchase area, that is correct?

20 A. Yes.

Q. And thereafter, they continued writing to the Government and they petitioned Parliament – I think it was in 1870 –

A. Yes.

Q. – and continued disrupting those surveys, that is correct?

25 A. Yes, and they hired a 19th C version of a lobbyist. So, you know I mean, Alexander McDonald, '*The Fox*'. Who was not – they hired him, he was basically their – So anyway, Alexander McDonald, they basically – because they knew that they were function – you know – they were dealing with the Government in this Pakēhā world which they struggled with, so they hired – yes, the 19th C – they called him an agent but he was
30 effectively a lobbyist, they paid him a lot of money to write letters on their behalf to go to Wellington to, well, lobby Government officials to appear in Native Land Court hearings. So, again, this is them trying to play by the rules, at least the rules as they understood them.

Q. No, that is very helpful. So just tying all of those threads together, in taking actions like those, it is fair to say that Kauwhata and Wehiwehi they were trying absolutely everything that they could to retain their lands, that would be fair to say?

5 A. Well, it was not to retain it, it was to get it back. Because you know this was – so, the folks who had opposed the purchase, which was the larger part of Ngāti Kauwhata, and I guess even for the people who had signed the deed of purchase with the expectation of receiving large areas of land that was very important to them. They were trying to get it back, they
10 were not trying to retain it. The land had been taken off them and you know – in the purchase, then you get the Native Land Court awards and then you get the extinguishment of Native title. They were trying to get the land back, it was not just a question of retaining it –

Q. No.

15 A. – they were trying to retain it before December 1866, yes, but –

Q. So, fair to say, ‘retain and get back’? They were trying everything that they could, that would be fair to say?

A. Yes.

Q. Yes, okay, thank you. And of course, they were exhausting a lot of
20 different avenues, you mentioned the lobbyist –

A. Yes.

1225

Q. And the substantial cost that came even with retaining him. Of course,
25 all of this pushing must have come at a substantial cost. Not only in terms of time, energy but also a financial cost that would be fair to say?

A. Yes, absolutely.

Q. Yes. Okay so, I just want to point you to what seems to be a good
30 example of the kinds of costs that groups like Kauwhata and Wehiwehi were contending with in these times. So, if I can get you to turn to page 228 of your report? Are you there?

A. Yes.

Q. Excellent. So, this is – in particular I am interested in this table, table 5.7. this sets out survey charges imposed by the Native Land Court on sections upper Aorangi.

A. Yes.

Q. 13A and 5A and you will see there I think – just bear with me a moment. My apologies. I think I have gone to the wrong table. So, I will just go back smartly. Sorry so we will go to page 211.

5 A. I gave you something in your answers to questions of – you asked me something in the questions of clarification about costs as well. I responded to that and the question for clarification as well.

Q. Yes, yes. Okay this one might be related to that in some way then. So, in terms of table 5.3, this outline survey lends imposed by the Native Land Court on sections of upper Aorangi 1. Now I will not ask you to add up all the amounts of how many pounds that adds up to, but it is fair to say it is about – sort of over 200 pounds or so. Would you be comfortable with that as a rough estimate?

10

A. Yes, but that is you know that is true with survey costs but in terms of their fight to get back Rangitīkei-Manawatū and also Maungatautari. We are talking in thousands there.

15

Q. Absolutely.

A. Maybe you were getting to that though?

Q. Yes, I am happy for you to reach that for yourself that is excellent.

20 A. I remember yes these – with the survey lands again this is something sorry. With the survey costs that was a cost of basically holding onto your land because you had to go through the Native Land Court system and the Native Land law which basically made it virtually compulsory to engage in partitioning which brings in surveys which is expensive – which costs money.

25

Q. Yes.

A. I mean in that regard Ngāti Kauwhata probably because the land was so good and so flat and so much was alienated so quickly, you know survey costs was less of an issue than say with the Te Reureu people.

30 Q. Right, so just – I might get you to turn to page 1 of our bundle because it's just to tease, this out a little bit more, so we're looking at approximately £200 or so in today's terms, oh no, £200 rather in 1881 it would have been. So this is – are you at the bundle there?

A. Yes, yes.

Q. Excellent. So, this is in a page from the reserve bank of New Zealand inflation calculator.

A. Yes.

Q. And you'll see there what I've popped in as a cost of £200.

5 A. Yes.

Q. Date of the cost is 1881, which is the date of both those survey liens, and then the date comparison is the last quarter of 2019.

A. Yes.

10 Q. And what we have there is in terms of the basket of goods and services that cost £200 back in that time, today that will be \$35,529.30.

A. Yes.

Q. So, it's fair to say it's pretty substantial cost even just to that one thing, and as you rightly point out, this is just one of the many fires essentially that that Kauwhata and Wehiwehi were fighting during this time.

15 A. Yes, I guess there's two points I could make to that. First of all, I guess somewhere in the report, in the 20th Century I compare, I think with regard to Te Reureu, I compare what they had to pay for survey costs to what they could by in Palmerston North at the time.

Q. Mmm.

20 A. And I think I compared it to how much it cost to buy a model T Ford second hand in Palmerston North or a tractor. So, that's 20 Century.

1230

25 A. But I think, in my opinion, and again, I'm happy to defer to Dr Phillipson, I think if anything these inflation calculators they are interesting guides, but I think if anything they underestimate.

Q. Kia ora.

A. They underestimate, and again, I am not an economic historian, but I think if what you are talking is in – when was that?

Q. 1881?

30 A. – so, in the 1870s and 1880s the Manawatū is still – you are still in the front here pretty much, and as Ngāti Kauwhata learnt to their own expense, you don't have a fully developed financial system, you don't have a fully developed cash economy and you don't have a financial system. So, money is much harder to obtain, like I said with

Ngāti Kauwhata that was a problem because they had to go and get a mortgage not from like a reputable bank like the Bank of New Zealand or whatever, but they had to go and get it from a stock agent, so you had to have these alternative ways of getting money.

5 Q. Yes.

A. And likewise, for the people in the Ngāti Kauwhata community, I mean sure they could lease out some of their land but the opportunities for actually obtaining cash either by working or leasing, or most significantly by borrowing money were actually much more constrained. So, if
10 anything that understates the difficulties that these people may have faced obtaining that money. And the other thing is that again, I'm just thinking about my economic history, you are talking about the latter part of the 19th century was a deflationary period, I bit like now – what we seem to be heading into now, but when they took out survey lines – liens, they
15 were required to pay interest and quite substantial bits of interest. So again, this is another area where perhaps actually using the converter possibly understates rather than –

Q. No, that is very helpful, certainly just as an indication for the kinds of –

A. Yes.

20 Q. – the kind of amount of money we are dealing with in today's terms.

A. Yes, okay.

Q. So, no that is very useful. So, I am conscious that my time is quickly running out. So, I won't take all that much longer, I have just got two more lines which I will fire through quickly. So, in terms of what is left from the
25 Rangitīkei-Manawatū purchase reserve today, of the reserves awarded to Ngāti Kauwhata, you set out that just 168 acres of the approximately 6,585 acres awarded remain in Māori ownership today, that is correct?

A. Yes, around Te Awahuri, there is also a bit at Te Rangiotū but that now is–

30 Q. outside of- yes.

A. – yes, it is that sort of – because of the Te Rangimārie connection that ended up on the –

Q. Right.

A. – Rangitāne side of the family more.

- Q. Yes, okay. And in terms of the two reserves awarded to Ngāti Wehiwehi as an iwi there is the reserve that you mentioned earlier at Oau and Mangawhero. One was only –
- A. You are talking about Ngāti Wehiwehi now?
- 5 Q. – yes, Ngāti Wehiwehi, yes.
- A. Okay.
- Q. And one was alienated in its entirety in 1887.
- A. Yes.
- Q. And the other one almost entirely by 1913, that is correct?
- 10 A. Yes.
- Q. Yes. And so, this is my last line of questions. Of course, one the issues arising out of land loss if the question of how Ngāti Kauwhata – can I have two? Two, I will do them quickly. Is the question of how these groups can sustain themselves and their future generations?
- 15 A. Yes, yes.
- Q. So, if an iwi does not retain sufficient lands they are going to face difficulty in providing for themselves and future generations –
- A. Yes.
- Q. – unless they are provided with an alternative way of doing it, that is fair?
- 20 A. So, you are talking in general?
- Q. Yes, yes in general.
- A. Yes.
- Q. Yes. And further, if there isn't sufficient land remaining for a particular group, people will need to move to other areas to work, to live –
- 25 A. Yes, yes.
- Q. – that is fair?
- A. Yes.
- Q. Wonderful. Thank you very much for your evidence.
- A. Is that it?
- 30 Q. Thank you very much for your time. Your Honour, those are my questions.

DCJ FOX:

Thank you. Mr Watson.

(12:34) LEO WATSON TO DR PAUL HUSBANDS:

Q. E te tākuta, tēnā koe.

A. Tēnā koe.

5 Q. My name is Leo Watson, I am here representing three hapū or those who affiliate to these hapū, Ngāti Maiotaki, Ngāti Huia and Ngāti Pare, and I extend my thanks to you for your research. We are under time constraints, I think probably the easiest thing is I ask you questions, and you say, yes.

1235

10 A. Historians aren't very good at that.

Q. Just thematically, my first theme I just wanted to discuss with you is the concept of non-sellers or as you say dissentions. This phrase, my clients will bring evidence that in terms of their Tribunal perspectives, their hapū kōrero, they view what their rangatira were doing as within the customary principle of pupuri whenua of retaining the land.

15

A. Mmm.

Q. And I was interested in putting this to you because your report is entitled *Māori Aspirations* and I suggest to you that one of the key Māori aspirations as expressed by those non-selling rangatira was to retain their land?

20

A. Yes.

Q. That's a great start. Now, I just want to use the case study of Ngāti Maiotaki if I might. You interpolated it terms of your evidence, I think in terms of answers to question to Mr McGhie that Ngāti Maiotaki was one of those where there was fluidity of movement, although based in Ōtaki. They were up in the northern blocks as well. At page 56 of your report, paragraph 2 there, you note that Featherston's purchase was strongly opposed by a number of hapū. You list them there. They include those of my clients Ngāti Huia, Ngāti Maiotaki also those within the Ōtaki Rohe, including Ngāti Kapu among others, you see that there?

25

30

A. Yes.

Q. You refer to the fact that opposition was particularly resolute from the hapū and iwi who lived on the purchased land and then if you go down a

little bit in terms of that page, you're talking about "The resident Raukawa non-sellers.

A. Mmm.

Q. I just want to talk about this concept of residency if I may.

5 A. Yes.

Q. Because it can be troubling.

A. Yes.

Q. You'd agree there's a slide of life happening here where it depends on what timeframe you're looking as to when somebody might be regarded as resident or not?
10

A. Yes, and that's partic – sorry. That's possibly, I mean Ngāti Maiotaki could be used as a case study of that example, and it kind of – do you mind me not just saying, "Yes."

Q. It was a just a bit of levity. You are entitled to answer as you see fit.

15 A. It kind of got the Raukawa people in Rangitīkei-Manawatū, of interest in Rangitīkei-Manawatū both ways because sometimes the Native Land Court apply that 1840 rule you know so that basically knocks out the Te Reureu people, but if you're being really strict about 1840, you say, "Well what about Maiotaki who went and went to live with Hadfield at Ōtaki when Ōtaki was established but had previously had been up at Rangitīkei. So, when they talk – dealing with Wehiwehi and a group like Maiotaki, it seems like 1866 is the baseline.
20

Q. Mhm.

A. So, again you know there's – it can be, you're right. There is a fluidity which – I mean there's a fluidity but also – I think I should be careful when you start talking about mana whenua and stuff because it's outside of my qualification.
25

Q. Well no, no that's fine, but you've also looked at the evidence, and there is evidence given by Rawiri Te Wānui and others of the residency of Ngāti Maiotaki within the northern blocks. They're at the Te Kakanui Block, they're at Mākōwhai, they are – there's evidence there that we don't have to try and read too deeply. There is clear, an indication of residency and I think as you've indicated in your answer, there is a need to be nuanced about the timing, the lens in which – through which
30

we're looking at this, the fluidity and the ability for us to assess now, how were those rangatira expressing their customary rights and how was that being interpreted by the Crown in a manner that you suggested, and I think I like these words, "Incoherent and duplicitous."

5 A. I can't remember using that.

Q. You refer to these, I mean I'll take you there, it was in the context of the Puketōtara Reserve, but I think it applies generally to the Crown policies during this time. There seemed to be an incoherence, and there seemed to be a duplicity of policy whereby they would pick certain policies as it suited them.

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1240

A. I think – I certainly think people like, just to use an example which does not include your clients, I think people like Tapa Te Whata, people who signed the deed of purchase felt that they had been lied to about the reserves. So if you want to talk about duplicity then I guess that would be a strong candidate for cases of duplicity, and incoherence, yes, I would have to go back and read the paragraph to see what – because the Puketōtara thing was a special, that was a special thing as well. So...

15

Q. Okay, okay.

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A. And there was definitely some, yes, incoherence there as well.

Q. For the record, it was at your page 68 you use that phrase, but that is okay, you have answered clearly in terms of your approach. Just while we are there, if I could take you to page 70 there is a claim there for the reserve at Te Kauwau, claim by Rawiri Te Wānui.

25

A. Yes. Hang on, what page was that?

Q. Page 70. So that is a Maiotaki claim to Te Kauwau, right at the top of the page there.

A. Okay, yes, I think that was his –

Q. And –

30

A. Because he had one of the claims to the Native Land Court, didn't he?

Q. My understanding, he is the first cousin of Kingi Te Ahoaho, he is Ngāti Maiotaki.

A. Yes, and I think you need to under – I mean, sorry to cut into your time, but I think the residency thing also narrows things down because there is

the argument about the residency which is basically what the Crown imposed on the situation. But then, you know, if we are talking about puripuri whenua, we're also talking a much broader Raukawa claim for mana, authority, sovereignty, whatever you want to use it, over Rangitīkei-Manawatū as a whole. And so, you know, if you go back to 1849 when they are talking about Rangitīkei-Manawatū you have got Kingi Te Ahoaho making very explicit about if you guys – if the Crown wants to come south of the Rangitīkei River we are going to fight you.

5

Q. Yes.

10

A. So I mean, it is not just about who happens to be living there in these kāinga along the Rangitīkei River, it is also about Rangitīkei-Manawatū as a whole, as a block of land, and like you say, issues of sovereignty, mana and puripuri whenua.

Q. And think what you would see – you would agree with me is that the idea of being resident is but one incident of the exercise of tino rangatiratanga. Tino rangatiratanga is much broader than whether you happen to be resident at a particular time or not.

15

A. Yes, I think in the case of Rangitīkei-Manawatū it certainly was.

Q. The Te Kauwau example I have just given you is on the earlier page, page 69, just under the heading 'Featherston's Reserves', in that first paragraph you say the reserve was ultimately located at Te Kauwau. This is a reserve for Ngāti Apa on the Makowhai Stream and that is a reserve that although awarded to Ngāti Apa is claimed by Ngāti Maiotaki as part of their resolute opposition.

20

25

A. Yes, yes.

Q. All right. So that is an example of evidence and more will come forward when these hapū give their perspective –

A. Yes.

Q. – of where these tupuna were based. Ultimately, the Ngāti Maiotaki, just to use the case study further, the Ngāti Maiotaki claim was not recognised.

30

A. No.

Q. No, not by Featherston and nor by the later Native Land Court processes.

A. Featherston and Buller considered Maiotaki and other groups like Ngāti Huia and Ngāti Kapu as non-resident, so they basically were not considered to have any claim on the land which the Crown sort of had a responsibility to provide reserves for.

5 Q. Yes.

A. No, you are right about that, and it was also not accepted by the Native Land Court, and like I said before you had this broader Raukawa claim to the whole of Rangitīkei-Manawatū as the Native Land Court said, 'as a tribe' and that was rejected twice.

10 Q. Yes.

A. It was rejected at Otaki and it was rejected at Wellington –

Q. Kia ora.

A. – by the Native Land Court.

15 Q. So just taking the chronology a bit further we come to your page 80 and now we are in the context of the non-sellers in the Native Land Court. Do you see that second paragraph from the bottom, "Passed on 10 October"? Page 80.

A. Yes.

20 Q. You talk about the Native Lands Act empowering the Governor to refer these claims of these non-sellers to the Native Land Court, right?

A. Yes.

Q. And one of those claims is by Rawiri Te Wānui –

A. Yes, yes.

25 Q. – on behalf of Ngāti Maiotaki and you have listed his claim there and the table on the next page.

1245

A. Yes.

Q. It is a claim to an area known as Kakanui?

A. Yes.

30 Q. And helpfully, you have set out a map at 81, which shows Kakanui down in the southern area, quite a large block. Just a question there, can you discern from your research as to how these non-sellers set the boundaries of the blocks that they were claiming amongst themselves.

A. Not really. I mean, I know there is a reasonably broad correlation to where they are living –

Q. Yes.

5 A. – or where they are residing or were residing. So, for example, Te Aratakana is claiming Te Awahuri and that is where – you know – he was – where she was living and where the Ngāti Kauwhata community was. Te Kooro Te One is claiming the area on the, further down the Oroua and that was – would have been claimed by Kauwhata.

Q. Or in the case of –

10 A. And if you go over to the Rangitīkei River, you have got yes, Paranihi Te Tau for the Te Reureu area and then you have got Wirihangi Te Angiangi and yes, Rawiri Te Wanui would have been claiming – it is a bit – there is not a – there is not a like a one to one correlation because if you look at the Native Land Court evidence it is sort of testimony is that Maiotaki were living at various different places on the
15 Rangitīkei River and one of them was Te Kareka –

Q. Yes.

A. – and I know there is probably several Te Karekas but the Te Kareka I know in the Rangitīkei River at least is further up and that is where – that
20 is part of the Te Reureu reserve and it sort of probably was one of reasons for problems later on.

Q. That was certainly regarded as the pā of Kingi Te Ahoaho.

A. Yes, so there is not a one to one correlation to, I mean –

Q. No.

25 A. – part of it was them – I imagine, and I do not have – is that they were organising to make sure they had the whole of the block covered.

Q. The question was whether you had discerned within the evidence how these blocks had been apportioned as between the rangatira when they made their non-seller claims.

30 A. Yes.

Q. But you have not seen specifics as to the apportionment?

A. No, I do not have – I have not seen any written evidence explaining how they actually did it.

Q. Right.

A. I have just got the map, which that – there are and descriptions of the area they are claiming.

Q. Yes. And what is helpful is you have described a sense that they – well not a direct correlation, there is a consistency –

5 A. Yes.

Q. – with some of the evidence around their settlements. What is notable too, and I hope you would agree with this, is there does not appear to be dissention or contest as between these *pupuri whenua rangatira* as to where these claims would be – in other words we are not dealing here with an issue of a customary claim being objected to by another hapū or iwi. We are dealing with, really the contest in the Native Land Court by this stage, is against the sellers and the non-sellers. That is the nature of the debate in the Native Land Court.

10 A. That is the way it was set up but what it was really was between the so-called “non-sellers” and the Crown –

Q. And the – well, sure but –

A. Because the Crown – the thing about these Native Land Court hearings, which is kind of a bit *sui generis* is that the Crown actively took the side, actively participated in those hearings, so for example at Otaki in 1868 –

20 Q. Can I just –

A. Sorry.

Q. The reason I just want to focus on the nature of my question, which is, as you supported entirely by the Crown in terms of the seller’s position but the nature of the debate in the Native Land Court, wasn’t it, was between the issue of whether the sellers or the non-sellers would prevail, not the level below, which is whether within the non-sellers there was contest as to the nature and extent of their customary interests. That was not the focus on the Native Land Court investigation?

A. Not in 1868 and 1869, no I do not think so. No.

30 Q. And it struck my clients as notable that within these claims by the non-sellers there is no evidence of dispute or contest as to the nature of their customary interests.

A. Yes.

Q. Well, we have not seen evidence of that.

A. I mean, in 1869, I mean – I have got it here because I thought you were going to ask me about this. The testimony that I was able to find, returning to Maiotaki was Aperahama Te Huruhuru talks about them and he lists the chiefs of Raukawa and he includes Ngāti Maiotaki and then you have Rototahiwi. So, in the evidence they provide, it is a little bit different, but I guess I take your point. I mean, a farmer Te Huruhuru who was one of the so-called folks, well, he signed a deed of purchase and he did appear on the Crown's side with the non-sellers. He, yes, I mean I can read it to you really quickly if you want. I know the hapū of Ngāti Raukawa who settled at Rangitīkei. Ngāti Parewahawaha, Ngāti Kauwhata, Ngāti Rākau, Ngāti Wehiwehi, Ngāti Tūwharetoa. Ngāti Wehiwehi remained only a year and then went away. Ngāti Awa settled itself near the sea coast, also Maiotaki who lived at Pukepuke. Ngāti Maiotaki also lived there at the time with their Chief Rawiri Wānui, but when the fighting took place with Ngāti Awa, well this tribe left. We all went to Ōtaki, so that's Te Huruhuru who's the, yes, who's on the Crown's side, and then he left the chiefs of Raukawa which I assume are the chiefs of Raukawa, Rangitīkei-Manawatū and amongst them, he includes Rawiri the whānau of Ngāti Maiotaki and Ngāti Rākau, and then later on you have Rototahi who is Ngāti Maiotaki, provides more detail but you can look that up yourself I guess.

Q. No, I have yes, and I will again. Thank you for that. So, yes, just coming to the Native Land Court process there, there's an approach that I've designed from the Crown questioning during the week, which suggests that the referral to the Native Land Court was appropriate and some questions have been asked what were other options available to the Crown. Two questions for you, would you agree that the Court itself was part of the Crown machinery which had been established to essentially further Crown aspirations for the sale of land?

A. I don't know if I'd use those words, I mean yes, I think it's – and again, I think it is probably better to talk to Professor Boast about that, but –

Q. That's fine.

A. Can you repeat that again please, just?

Q. You had talked about this, my friend, the idea of the imposition of the Native Land tenure system upon Māori.

A. Yes, that's the native **(inaudible 12:52:17)**, yes.

5 Q. And I would suggest to you that the Native Land Court was an integral part of that Native Land tenure.

A. Yes, of the administration, but when you are talking about – you also have that thing where the Crown plays that role on investigation of title and I – it was definitely working within the – you know, the Judges were appointed by the Crown. They were working within a legal framework,
10 which was based on statute which was passed by a Colonial Parliament, and they were operating within the certain political context, and also, they brought all their own sort of cultural baggage. But I don't know using the work machinery is possibly –

Q. That's fine, can I put it the other way, because your research is entitled
15 Māori Aspirations, have you seen any evidence that in the, to use your word, "The imposition of this Māori land tenure system," there was any engagement or consultation or negotiation with the rangatira as to how these ways of investigating title of determining disputes could be done in a way that was consistent with their own customary tikanga?

20 A. Are you talking about when – are you talking about the Native Land Laws or the Native Land Court?

Q. Both, I'm talking constitutionally, and in the framework on Māori aspirations it seems clear on reading your report that there's no evidence that the Crown actually engaged with tangata whenua as to how that
25 machinery, the systems of determining these various claims to land, could be done in a manner that was absolutely consistent with tikanga Māori.

A. Yes, I mean I'm sure you are right about that, but I think and other points probably worth making is that, I mean one of the tragedies of this story, obviously, you got the tragedy of the land loss, of you know the purchase and then the conversion of the land, sort of stuff that's talked about and
30 that Te Pene Raupatu statement, but also another tragedy to me which really strikes me when I was researching this is the people in Rangitīkei-Manawatū who had their land sold pretty much from under their feet against their will, what is striking to me and what I find tragic in

its own way is way they repeatedly – they tried to follow the process, and that wasn't the process which they had agreed to. It was a process that was put in front of them that they were obliged to follow. And so, you see them you know like I say you see them writing to colonial officials, partitioning the Queen, and one of the things they were asking for after they were initially unsuccessful in blocking and stopping the purchase was they were initially asking for the Native Land Court to investigate it.

1255

So again, this is, you know, again, these are the early years of the Native Land Court and they were trying to follow the system, they were trying to play by the rules. They sort of, initially they thought that the Government officials would see the justice of their cause and take steps, then they write to the Queen and they hope that Queen Victoria will be understanding and then they put their faith in the Native Land Court and the Native Land Court obviously came up, first of all with judgements and then with the way it went about signing off on their land awards which were extremely disappointing for these people, which was extremely disappointing, and then what do they do? They petition Parliament, they write more letters, and then when they are sort of faced with the land being surveyed, their land, the rest of their claims were being extinguished by the extinguishment in native title. It is only then that they attempts to interrupt the surveys. And how do they do it? They do it in a way which is pretty much with some exceptions very polite, peaceful and law abiding and does not involve the destruction of, you know, like tents or theodolites or carts and stuff. So again I agree with and I accept what you say and you are right, but there is also this other part of the story which I think is important and I would not want people to turn around and say, "Well look, they asked through the Native Land Court, they applied for him to come in and that means that they accepted it," because it wasn't so much that they accepted, it was that that was what was available to them and so that is the avenue they attempted.

Q. Kia ora.

A. And they didn't, you know, start blowing things up, I mean, or shooting people or going around and sort of shooting – murdering settlers and

which you know happened in other places and you can talk about the merits of that and I am not going to make any comment about that, but that didn't happen here.

Q. Kia ora.

5 A. Because they were trying to follow the process that was put in front of them. So sorry to go on about that and eat up your time, but I think it is a point that needs to be made.

Q. You have answered –

DCJ FOX:

10 That is probably a good place to finish, I am not sure that you would improve any further on that.

LEO WATSON:

I can't, no, I was going to leave it there. I just wanted to say thank you for your evidence. You have summed it up there at page 83 too where some of those
15 rangatira, I think you have quoted there, opposed the Court's processes, opposed the power, the prestige and the influence of the Crown and that is translated, the Māori is really strong there, "Ko te kaha me te mana me te ingoa nui o te Karaone," and thank you for summarising that. I know the Karauna gets –

20 **DCJ FOX:**

And that is probably a good place to stop.

LEO WATSON:

Āe, tēnā koe.

DR PAUL HUSBANDS:

25 Yes, I just – because McDonald has received lots of bad press –

DCJ FOX:

See.

LEO WATSON:

I have used my time.

DR PAUL HUSBANDS:

I think it might have actually been McDonald who said that, not me.

5 **DCJ FOX:**

All right, thank you. We are going to finish with Mr Beaumont and Mr Beaumont is going to stick to his 10 minutes because the cooks are going to come in and interrupt you in 10 minutes.

CHRIS BEAUMONT:

10 Yes, thank you, Your Honour, I will probably be much shorter than that.

(12:58) CHRIS BEAUMONT TO DR PAUL HUSBANDS:

Q. Tēnā koe Dr Husbands, thank you very much for your extensive answers to the various questions put to you today. I represent a number of claimants who are affiliated with Raukawa and Kauwhata. Just want to quickly refer to your summary. At page 3 you note that McLean's purchase from Ngāti Apa of the land between Rangitīkei and Turakina conformed closely to the principles agreed by the Crown officials for the creation of the Native reserves, and I know that you had some discussions about the principles with one of my colleagues. I just want to note that while those principles were agreed by the Crown officials amongst themselves, they were not agreed on with any input from Māori, were they?

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A. No, no, that is not what I was trying to do there, so no, you are right. I mean, the principles I start off with talking about at the start of the chapter no, but then like I say there was this process of negotiation on the ground. So for example, by the time you are getting into the late 1840s and early 1850s, someone like McLean, when he is giving instructions about this is what you are supposed to do, and I think I quote McLean in the chapter, he would have developed those ideas from, you know, his time on the ground and his negotiations with Māori. So in that way, there is input that

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way, but no there was not like a formal hui where everybody sat down and 'let's nut this out together', no.

1300

5 Q. Yes. If I could just get you to turn to page 61 of your main report. On that page you discuss Featherston's decision to complete the purchase of the Rangitikei-Manawatū despite opposition from landowners and advice from Richmond. So, it is correct isn't it that Richmond and the Government did nothing to stop the purchase from being completed despite being aware of the flaws in the process employed by Featherston?

10 A. I think he wrote some irate memos but no, they didn't –

Q. Nothing was actually done about it.

A. – like actually actively intervene and stop the purchase.

15 Q. So, would it be fair to say then in your view that that might have been a case of wilful blindness on the part of Richmond and the Crown?

20 A. I don't know if I would use those words and again, I think that is probably a question that was probably better answered by Dr Anderson because she was looking at the broader context. In terms of wilful blind? No, I mean it was more I guess a case of, I don't like this but you know it was more like he knew what was going on and he was looking away, so he wasn't, I guess well it depends what you mean by 'wilfully blind' but, I think it was carried out against his very grave misgivings and better judgement and I think that would probably be a better description of what Richmond thought about it but again, I think Dr Anderson is more qualified to speak on that than me.

25 Q. Yes, thank you. Now if you could please turn to page 198, and it is about five lines down, you discuss the Ōroua Reserve and you note that, "while officials regarded the lands as another piece of Māori land to be purchased by the Crown, the Ngāti Kauwhata and the Rangitāne rangatira living on the land saw it as a reserve to be kept for the future generations.

30 A. Yes.

Q. So, you would agree that the Crown should have been aware of the views of Ngāti Kauwhata and Rangitāne rangatira that they would have had about their land on the block?

5 A. Yes, they were explicitly expressed, I think I have a paragraph where I say that where Hoani Meihana Te Rangiotu and Te Kooro Te One both make very clear that they want to hold on to the land for themselves and their children forever.

10 Q. So, it would have been obvious to the Crown then that their views of the land would have differed from the Crown's view of what the land should be used for?

15 A. Yes, I think so, yes. Well I mean, I mean there is also a question about you know you are talking about different periods of time and communication, so I don't know what each Crown official knew and what they were aware of, but it is very clear that there were two different understandings of the land, and certainly like McLean and Featherston saw it as land that was eligible for Crown purchase and although they didn't actually ever purchase the land.

Q. Well, kia ora –

A. Or that they purchased it.

20 Q. – well thank you very much for that, those are all my questions, Your Honour.

DCJ FOX:

Thank you. Well we are going to take the luncheon adjournment, we will be back here at two o'clock. No, two – 1.40. We are back here at 1.40.

25 **HEARING ADJOURNS: 1.03PM**

HEARING RESUMES: 1.42 PM

DCJ FOX:

Welcome back Dr Husbands, we now have the time for the Crown.

UNSPECIFIED SPEAKER: (13:42:47)

(Mic off 13:42:47)

DCJ FOX:

That might be a good idea. Here he comes.

(1:43) JACKI COLE TO DR PAUL HUSBANDS:

- 5 Q. Thank you, Your Honour. Dr Husbands, ko Jacki Cole tōku ingoa, again thank you for your report. I would like to start reflecting on the questioning from my learned colleagues on the other side of the room today. I anticipate that you are aware that the Crown filed a statement of concessions earlier in the – in October of last year in relation to this phase
- 10 of the inquiry –
- A. No, I have not actually seen that, no.
- Q. – you were not aware of that? Well, I wanted to ask you a question having regard to – yes, yes, I will. It is document #3.2.475 and you just need to go to page 10 on that document. 475. Have they got a different
- 15 appellation?
- A. It is #3.2.0475, yes.
- Q. So, it sounds like it has just had a zero added on as a force number, probably in anticipation of how many documents we are going to get on this record of inquiry.
- 20 A. It is #3.2.475.
- Q. Okay, so Dr Husbands has got a copy of it in front of him. Do you want to wait for the Tribunal to bring it up Ma'am? No, yes. So, the Crown recognises, so at paragraph 21 of that document we have stated the Crown recognises that Ngāti Raukawa and affiliated groups within the
- 25 inquiry district have well-founded claims and at this early stage of the inquiry the Crown is able to conceive that is has acted inappropriately – sorry, inconsistently with the principles of Te Tiriti in the following ways and the reason I am going through these is because of the nature of the questions that were asked by my friends and I wanted to get you to speculate – not to speculate, to give you a view on the appropriateness
- 30 of the concessions that have been made by the Crown having regard to the evidence that you have very helpfully prepared and put in to your –

not prepared, put in to your report. So, the first one is the impact of native land laws on Ngāti Raukawa and affiliated groups within the inquiry district and the concession – well, the background to the concession is that the Crown has a well-established policy of acknowledging that the native laws contributed to the undermining of tribal structures and that its failure to actively protect tribal structures breached the Treaty of Waitangi and its principles. Ngāti Raukawa and affiliated groups have a strongly felt grievance about the impact of the native land laws upon them, these laws were introduced in the 1860's and provided for the individualization of tribal land tenure including the lands of Ngāti Raukawa and affiliated groups. They made land more susceptible to alienation and fragmentation and contributed to the undermining of Māori tribal structures and I would suggest that that is nature of the language that has been heard this morning in relation to a number of the questions that have been put to you today. In the statement of the position and concessions the Crown acknowledges that the native land laws had a significant impact on Ngāti Raukawa and affiliated groups with the Native Land Court operating widely within the rohe of these iwi and hapū and with many land blocks being brought before the Native Land Court in the late 19th century for title determination. The Crown acknowledges that as a consequence of these title determinations those blocks were awarded to listed individuals and rapidly partitioned and sold and the Crown made the following Treaty breach concession. The Crown accepts that the individualisation of Māori land tenure provided for by the native land laws made the lands of Ngāti Raukawa and affiliated groups in the inquiry district more susceptible to fragmentation, alienation and partition and contributed to the undermining of the traditional tribal structures of these groups. The Crown conceives that its failure to protect those structures was a breach of Te Tiriti o Waitangi, The Treaty of Waitangi and its principles. Do you have any comment in relation to that concession?

- A. I think that's some of the concessions that have been made in other earlier inquiries isn't it? I can remember appearing for the Tribunal in the

Te Rohe Pōtae inquiry and my report was about similar issues and I can remember there was a similar concession there.

Q. Yes. That does not take away in any way –

A. I mean it is hard for me to give you a big talk on it because this is the first
5 time I have seen it –

Q. I appreciate it.

A. – but it looks – I would welcome that concession myself.

Q. Thank you, thank you. The next concession related to landlessness or
10 relates to landlessness. Ngāti Raukawa and affiliated groups, do they
have a strongly felt grievance about how little land they retain in their rohe.
The Crowns current understanding of Ngāti Raukawa's rohe and land
loss within it is informed by the information contained in the report we are
going to hear tomorrow but of course it is also informed by evidence such
as that that you have given today. For the avoidance of any doubt, the
15 present assessment of land loss or landlessness by Ngāti Raukawa and
affiliated groups in this inquiry district is predicated on the Crowns current
understanding of their rohe boundaries. Do not need to read anything
further from that paragraph. The Crown accepts that on the basis of its
current understanding of landlessness of Ngāti Raukawa and affiliated
20 groups it is appropriate to make the following Treaty breach concession.
The Crown accepts that the cumulative effect of its acts and emissions
left Ngāti Raukawa and affiliated groups in the inquiry district virtually
landless and had a devastating impact on the economic, social and
cultural well being and development. The Crowns failure to ensure that
25 these groups retain sufficient land for their present and future needs was
a breach of Te Tiriti o Waitangi, The Treaty of Waitangi and its principles.

1350

Your evidence would support the making of such a concession?

A. Yes, I think so especially with regard to Ngāti Kauwhata which is – where
30 I mean it is – re-reading what I wrote, when you write it you are quite
dispassionate, but re-reading it again it was quite, I have to admit I was
quite harrowed even reading my own stuff, I mean especially just the
struggle to get to the point where they receive those – the awards from
the Māori Land Court and from McLean, especially you know Kawakawa

and Te Awahuri and then how they managed to lose that, you know through the circumstances they did with the mortgages and the Native Land Court subdivision and where they end up you know by the start of the 20th century even is, yes, it is – I have to admit that it was quite affecting and really quite depressing reading up you know –

5

Q. And the Crown has at an early stage acknowledged that and conceded that its actions have not met the standards of Te Tiriti, yes?

A. Again, as I said with your learned friends over there, I think I'm supposed to leave making judgments about Treaty and Treaty principles to the Tribunal.

10

Q. No, no my question was that and you accept that the Crown has made that – made those early concessions.

A. Yes, well I can see it there.

Q. Yes, thank you.

15

A. I mean if – like I said, because I have only – it is the first I have seen it –

Q. Appreciated.

A. – I don't want to say something –

Q. Yes, and I suppose it is also potentially something that many of the claimants have not seen, so I thought it was important –

20

A. Yes.

Q. – to highlight the fact that the Crown has –

A. Yes.

Q. – made those concessions genuinely and in good faith towards its Treaty partner.

25

A. Yes, I have to say that I was quite surprised that I hadn't seen anything like that for this inquiry, because like I said, in the last inquiry where I appeared before the Tribunal I can remember there was a concession like that with Te Rohe Pōtae and I remembered that there were similar concessions for other inquiries as well. So, I was – I have to admit I was expecting to have got something that through the mail and –

30

Q. Well I am not sure how you managed to miss it, but we filed it in October, so –

A. Yes, well I apologise for not having –

Q. – not at all, not all, not all. If I can move on, I wanted to comment on the
–

DR GRANT PHILLIPSON:

Ms Cole.

5 **JACKI COLE:**

Yes?

DR GRANT PHILLIPSON:

Just before you move on. It has been moved in the record, it is now #1.4.2.

JACKI COLE TO DR PAUL HUSBANDS: (CONTINUES)

10 Q. Thank you. Thank you, Dr Phillipson. In reading your report, I found it
incredibly easy to read which made for a nice change, but I did want to
remark on the number of times that you effectively are speculating when
you are giving a summary of the evidence, and I wanted to ask you as to
why you are not more definitive in your report, and I just wanted to give
15 you a couple of examples of this. Good old search functions in PDF and
Word allows us to search phrases, around 90 times in your report you use
the phrase, “appears to”. So, for example, page 25, this is just a random
example. Page 25, “Nepia and Parakaia’s agreement appears to have
been based on.” Around 30 times you have used the phrase, “seems to”
20 or “may have”. For example, page 156, “Ngāti Kauwhata and other
groups resolution to disrupt the European settlement of Rangitīkei,
Rangitīkei-Manawatū seems to have finally spurred the colonial
government into action.” And my question is – really is, is there any
reason in your writing why you are not more definitive about the evidence
25 that you have reviewed?

A. I think I am trying to be careful and also you need to be aware of the
limitations of the evidence you are dealing with. I mean, I am a historian
I am not a novelist and I am limited by the sources that are available to
me, and I can only draw – I can draw conclusions from that evidence but
30 I cannot – now I am not in the room when say Parakaia and Nepia Taratoa

are meeting or where Te Kooro Te One and Te Ara Takana are trying to decide whether they are going to accept whatever McLean has offered them, and similar, I cannot remember the last one which you – I am not there so I – you know, there is only so far I can go.

5 1355

I can make a considered judgment and I guess I am trying to be careful and, you know it is one of the – I mean there are many sort of frustrating things about going back and reading something that you've written a year or two ago. You find lots of mistakes, and you also find the text you have as a writer where you sort of repeat things. And usually when I say, "It appears to so I'm trying to be careful," and just trying to flag that and I might be walking into a trap right now.

10

Q. No you're not at all.

A. But saying, acknowledging that there is a level of you know there's always a level of doubt with the evidence because like I say I am as a historian, I am constrained by the information, by what the records that have been left behind for me.

15

Q. Yes.

A. And I think, do you mind if I just say one more thing?

20

Q. Of course.

A. I think the other side is, I mean it maybe this doesn't appear in the search, maybe it does, but just give me a – let me give another example like in the summary, the bit that I gargled, I think I said before in the latter decades of the 19th Century approximately is it 7000 acres were alienated from the 18,000 and then I said, 2191 from the period from 1900 to I believe 1930. Now those figures of both almost certainly understatements of how much land was alienated. And you can see that if you go to the last paragraph of my summary where I say, what did I say? How much is left is it? Maybe two, yes, 2000 where is it, excuse me, one fifth is left. So, there's a big gap between if you know you do the maths between the 7000 and the 2000 and getting down to the 3700 or the ones. So, there's a big gap there where you know we can – it appears, or it would seem that land was lost from Māori ownership by alienation probably I would say because it was purchased by private European

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individuals. Because if it had of been purchased by the Crown we would have a record of it. So, that's another example where I guess despite all it appears and seems to or whatever, I've done my best to put out the evidence that I was there, and when adding up those two figures of alienation, which I guess are the big headlines, I have done that by adding up only the examples of permanent alienation that I was actually able to find in a record that is very, very, limited. And that's especially if you're talking about because the stuff that I was expecting to be questioned about as well, for example were the Te Awahuri Township Reserve, when I was calculating those alienations, in that case I was obliged to rely on the block order files from the Māori Land Court and those files have a lot of gaps in them.

Q. Can I just –

A. So, again, I guess I'm just trying to say is that you're always dealing with these gaps in the record and –

Q. Right, and so to summarise that really, it's another explanation for why it is that we end up with different conclusions from different historians and different narratives as well, because people are trying to interpret the historical information which may not be complete.

A. Yes, I don't think that's the only reason you end up with different interpretations from different historians.

Q. Absolutely, yes, that's probably just one of them. If I can move on, at 2.2, section 2.2 of your report, you describe – you don't need to go there. You describe the four components of the best practise and you said earlier, I could remember those four, they – so they are the best practise for setting up reserves. (1) is ample and adequate. (2) Mutually agreed. (3) boundaries clearly marked.

A. Yes.

Q. And (4) permanent and inalienable.

A. Yes.

Q. So they are the four. My question, and I've done a very crude example of this, if we were to do a little diagram and had those four criteria down here, and each of the landblocks across here and we were to tick off those

that actually met these criteria, how full do you think that table would be?

Some, none, lots, just as broad as that.

A. I guess it depends which. I can't read what you've got up there.

Q. Oh, they are the landblocks.

5 A. I know. So, you know if you're talking about Rangitīkei Turakina –

Q. Mmm. Sorry, did you see that?

A. I mean that ticks most of the boxes, but if you're talking about –

Q. So, all I was doing was to show we've got the four things down here or

A. Yes, yes, if you're talking about –\

10 Q. – and all the land across...

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A. Again, it also depends with you know – you could have in one purchase where maybe for example if we are talking about Te Awahou and you're talking about adequate and ample. Well you know if you are talking about what Ihakara Tukumarū wanted from the purchase maybe even the reserves are very small compared to the whole purchase area. Maybe for him they were adequate and ample –

15

Q. Yes.

A. – because of what he wanted. While the Ngāti Whakātere, well the situation appears – I am sorry. The situation was different because there were a number of cultivations that they later, Henare Te Herekau told Government officials that he wanted that land to have been set aside. So...

20

Q. But if you were to – if you were to be asked to do that chart, to fill in a chart like that. You actually could go through all of the evidence.

25

A. Yes.

Q. And you could put ticks in the boxes that – where there were ticks and you could leave it blank where they have not been satisfied each of the criteria have not been satisfied.

30

A. Yes. The other problem is, and this is where we are getting into what your concession was about. You could – say you are looking at Rangitīkei-Turakina.

Q. Yes.

A. Just to talk about one which is not controversial with the people here anyway. That enormous reserve – that relatively enormous reserve between the Rangitikei – between the sorry – between the Turakina and Whangaehu rivers. That was when you look at it in 1849, you could say well that is a very – there is a very good argument that that was an adequate and ample reserve. But what happens in the 1860's, I believe it is the 1860's, 1860's, 1870's is that whole area of land gets taken through the Native Land Court.

Q. Yes.

10 A. And suddenly it is closed instead of being sort of the tribal reserve that McLean envisaged it. It suddenly starts getting vested in individual owners and you start getting all the fights and all of the division and all the fragmentation and the subsequent alienation that you get with that title and what you talk about in your concession. So, you can have something that is initially adequate and ample but because – then there is this different form of tenure which the land is placed under. Then it is – then I guess I would have more difficulty ticking that box. If you see what I mean

20 Q. Yes, and you – I do, absolutely and you would need to go through the exercise probably at different times too because certainly the fourth criteria of the inalienability changes over time, doesn't it?

A. Well it does but I mean I think you know, when you are saying you know – inalienable forever I mean I guess forever is – I mean I guess the closest we get to forever is - in this historical frame is here. So, I guess on the one yes that changes over time and you can acknowledge the efforts that certain Crown officials made at certain times, which is right. But then it also – yes, I guess you at it now that land is not in Māori ownership, but I guess moving through time you are right it would be interesting, and I think Dr Young has actually done that. He has maps of – at different phases in time. I mean I do ...

30 Q. For these blocks?

A. He has not - I do not know if he has them for these blocks. I think you should have a look. I mean I cannot remember but I think for part of. –

Q. I am not aware of any...

A. – I think for part of this area, there are maps

Q. Right.

A. – which show the level of ownership. I am pretty sure...

Q. Certainly, there are maps that show the change of ownership.

5 A. So, I guess, yes, if you are talking about how much his permanently held, you can see how that permanency change...

Q. Yes absolutely. That leads on to another question and that was off the reserves because obviously we are talking to you about the reserves. We know that many Māori owners later did sell off parts of the land –

10 A. Yes.

Q. – and an example is Hera Tuhangahanga who was the sister of Parekaea –

A. Yes.

15 Q. – and your report tells us that she sold over half of her brother's original block. The Paretao reserve –

A. The Paretao, yes.

20 Q. – within just a couple of years of him passing away and so while respecting owners' rights to sell if they choose to for whatever reasons those might be. What actions should, or could the Crown have done – have taken or put in place to prevent that alienation?

A. Well part of the problem with the whole Paretao thing and that alienation, was that I believe Parekaea died intestate.

Q. Yes, that is right, according to your report that is right.

25 A. Yes, according to my report. According the Native Land Court records which I drew in my report. Now, again I am trying to remember it correctly and I – you know – I am probably...

Q. You probably do not need to dwell on a particular alienation.

30 A. No no, but what I am trying to say is that there was a problem with succession and that again we get back to this whole thing that ownership of Māori land is being vested in and then passed down –

Q. Yes.

A. – from individuals. So, and this happens – you know this happens in other examples as well.

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5 You have one, a tribal leader who has a very strong feeling about holding on to the land, and then when he or she passes away, instead of the land continuing, you know, on some sort of level of tribal or corporate ownership where it is held, it goes to an individual who may be a close relative but is quite often in some cases not such a close relative and they have – they might have different ideas about the importance of holding land, but they also maybe in different circumstances or different situations. So –

10 Q. If I remind you what my question was and that was what could, or should the Crown have done to prevent alienations?

A. Well that is what I am trying to say, is that if the land, if as in your concession if there had been some sort of –

DR GRANT PHILLIPSON:

15 Q. What the Crown is asking you are what instruments were available for the Crown to make land inalienable.

DR PAUL HUSBANDS:

I know, but what I am trying to say is if the land had been invested but –

DR GRANT PHILLIPSON:

20 Could you just answer that question because I would like to know the answer to it?

DR PAUL HUSBANDS:

Okay. Can you repeat it then again just, so I answer it properly?

DR GRANT PHILLIPSON:

What instruments were available for the Crown to make land inalienable?

25 **DR PAUL HUSBANDS:**

Yes, I am sorry I cannot really give a – I mean, obviously there was the whole thing that they would say that this land is inalienable from purchase and sale for a period of 21 years, and that works in some circumstances, but then, you

know, you have problems with, like for example what happened in Te Awahuri or what they were worried about is having Te Awahuri or how do you raise money on a mortgage for example. So that is why I guess I was going back to the corporate thing because if the land can be held collectively and there is
5 some sort of tribal responsibility, tribal ownership, then I think that really is where it starts because, and I don't know, I mean another area where I think they could have done much better is –

DR GRANT PHILLIPSON:

That is one instrument, return the land –

10 **DR PAUL HUSBANDS:**

Yes, okay, all right, I apologise.

DR GRANT PHILLIPSON:

– to a hapū collective.

DR PAUL HUSBANDS:

15 Yes. Another instrument would have been obviously the whole situation with mortgages is problematic and this is something in some of the work I have done in other areas of the country where you see, you know, Māori land owners getting into trouble with mortgages because, you know, they are trying to raise capital and they end up – they do not have access to sort of the more
20 mainstream capital markets. The, for example, investors in Auckland or Wellington might have so they have to borrow – arrange these often quite illegal mortgages from sort of, you know, merchants of some sort. So the Government could have enforced its own legislation with regards to mortgages. Also, I think it would have been interesting, without getting too, what's the word,
25 anachronistic. I mean, if there existed something like the Advancement for Settlers Act, you know, which you get in the 1890s which would have obviously still been too late for Ngāti Kauwhata, but an area, some sort of way where Māori land owners were able to have access to credit. You know, so that is nobody might have helped –

JACKI COLE TO DR PAUL HUSBANDS: (CONTINUES)

Q. A major problem with that I think, I suggest to you, is what comes from collective ownership though, isn't it, in terms of the lender having a difficulty in enforcing or recovering its loan because of the fact that the land is held in collective ownership. So we are torn between

5

A. Well except that –

DCJ FOX:

Yes, the problem is the Advances to Settlers Act was a fund of the Crown.

JACKI COLE:

10 Yes.

DCJ FOX:

So, you know, the Crown is a different form of lender.

JACKI COLE TO DR PAUL HUSBAND: (CONTINUES)

Q. I didn't understand him to be suggesting that the Crown was lending the money, sorry.

15

A. Well in the Advances to Settlers Act it was.

Q. Yes, yes.

20

A. But also, I mean, you can think of – I was thinking about this the other day because after reading some of the stuff, but I mean you can think in one hand I guess hapū, iwi organisations were sort of quite different from Western law and Western examples, in some ways they were, some ways they were not, but you think even in the late 1890s and certainly by the early 20th century you have quite a lot of examples of cooperative or collective organisations going into business and raising money. I mean, I am from Palmerston North and I am old enough to remember, you know, the co-op and the PDC and all that stuff. Do you guys remember that? Now that was a cooperative and they owned the biggest department store in Palmerston North and they owned – that was like the small store we used to go to, to get our groceries from and that was a cooperative.

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30 1410

Now also you think about the Kibbutz in Israel, I mean it is not like corporate bodies, you know, which sort of govern themselves and then go in to business. I mean, you know, like the American railways or the corporation. So, there would have been – I don't think you can just say that there weren't, a way of trying to get around this problem because we are in the 19th century, I mean I think –

5

Q. And I didn't say that.

A. – no, I know you didn't, but I am just trying to say that I think there are historic parallels of experiments and sort of different forms of ownership rather than absolute individualistic private ownership which would have enabled the Government, especially a Government that was open you know, like liberals trying to be more helpful to Māori land owners in retaining their land.

10

Q. And indeed, one of the principles that was set by the Crown but not followed was to make the land effectively inalienable for it to stay in ownership of those Māori it was vested in.

15

A. Yes, can I respond to that?

Q. I would prefer to move on –

A. Okay alright.

20

Q. – reason for that is because of time.

A. No, no that is fine.

Q. I wanted to explore this issue about Alex –

DCJ FOX:

You have an extra 10 minutes.

25

JACKI COLE:

Pardon?

DCJ FOX:

You have extra time because counsel.

JACKI COLE:

30

Thank you, Ma'am.

JACKI COLE TO DR PAUL HUSBANDS: (CONTINUES)

- 5 Q. Alexander McDonald, I got a little confused about the nature of his actual role, because throughout your report and a number of occasions you make it pretty clear that he was Ngāti Kauwhata's agent and advocate or agent and advisor.
- A. Yes.
- Q. But when the dispute about Kaihinu Block arose in the late 1870's apparently, he was, according to your report, he was appointed by the land purchase department to resolve the dispute with Ngāti –
- 10 A. Yes, yes, he was.
- Q. – so, and I think the suggestion from my friend is questioning earlier on about him was that perhaps he was somehow connected to the Crown so can you just clarify?
- A. No, he was. He was then, what happened was, I mean –
- 15 Q. Only then.
- A. Yes, he was –
- Q. Or was he right throughout?
- A. – he was an inspector of sheep for a while and like in the late 1860's and then he, Fox, got him fired from that position because he was screwing up the Governments plans for Rangitīkei-Manawatū by taking too much of a vocal role supporting Ngāti Kauwhata. So, he had that sort of sheep job but then once he gets out of prison and obviously you get this big falling out with Ngāti Kauwhata, then he goes off and gets other employment. So, he –
- 20
- Q. Not with the Crown.
- A. – yes, with the Crown.
- Q. With the Crown.
- A. He was in charge of the purchase of the Kaihinu Blocks, he organised the purchase of the Kaihinu Blocks and at the same time and this is another interesting possible conflict of interest, he was also employed by the Manawatū Wellington rail way company and so he was involved in purchasing land that way. So, he had a very interesting and complicated career but again like you say, we have – just history in general, you know,
- 30

we can go through time and people do different things and are different at different stages of their life.

Q. Is it fair, which is what I think my friend was trying to suggest earlier to ascribe things that he did which were averse to particular
5 Ngāti Kauwhata;s interests. Is it fair to ascribe those to the Crown?

A. Not all of them but some of them. I mean, you need to remember that the thing which kicked off the whole disaster with Te Awahuri was the fact that the grantees who are all leading members of Ngāti Kauwhata, you know, family leaders and tribal leaders. They had agreed a subdivision
10 of Te Awahuri –

Q. Yes.

A. – they agreed to divide it and it was not in the standard Native Land Court thing because they realised the land was different and Te Koro Te One wasn't actually living in Te Awahuri, they tailored the subdivision to meet
15 the needs and the situation of the people but when it gets taken to the Native Land Court it gets completely thrown up in the air, it is not working anymore and that is where McDonald gets upset because, you know, he wants the Native Land Court to basically sign off on the subdivision so he can have his leases but you also get when it comes back and then he
20 threatens to, you know, sets the foreclosure process in motion and also then when Bollar and his clients sort of fold and it comes back and we are going to go okay we will take it to the Native Land Court this time and the Native Land Court is going to decide the division.

1415

25 A. Then the original grantees were still alive like **(Māori 14:15:02)** Hui Te Aratakana, they refused to allow the application to go through because they were worried the shares that they had originally agreed to were going to reduce by the Native Land Court. So you do have the Native Land Court featuring that and obviously --

30 Q. But the Native Land Court is not the Crown.

A. Yes.

Q. Yes. Okay, lets leave it there.

A. But the Native Land Court is enforcing and –

Q. Yes.

A. – administering the laws which when it comes down to it.

Q. Yes, and we all know that.

A. And which are criticised by that High Court Judge when it goes to the Court.

5 Q. Yes.

A. So no you cannot blame that Crown directly for McDonald going behind their back.

Q. Can I just clarify, McDonald was imprisoned for dishonesty offending?

A. No, he was imprisoned for shooting a horse.

10 Q. Shooting a horse.

A. What happened was –

Q. Yes, that is even worse.

A. Yes.

Q. I do not need you to expand on that.

15 A. Yes, it was the royal male horse crossing the bridge at Te Awahou.

Q. Yes that is right. Thank you very much.

A. In his defence he was apparently drunk at the time and he was very.

Q. That is called mitigation as oppose to excusing.

A. Yes, that is why you are lawyer and I am a historian.

20 Q. Can I – at page 4 your main report.

A. Page 4?

Q. Page 4, you identify the focus of the report being on reserved creative from Crown land purchasing activity.

A. Yes.

25 Q. You say that the report does not deal with other forms of reserves created by central or local Government such as recreation scenic or nature reserves. I just wanted to clarify and if you can quickly tell us why not?

A. Well because first of all there turned to be way more native reserves than I had ever imagined when I applied for this process, when I tended for this job. But also what happened when I went out and started consulting, is it people from – but, no all the meeting they went to, they had concerns about conservation reserves, all sort of different reserves, which they wanted me to look into and I just did not have the time –

30 Q. No, that is fair enough.

A. – or the resources to do it. So it was necessary for me to make that very clear at the start, so I would not disappoint people.

5 Q. Yes, thank you. Page 176. This is a question about our friend Mr Featherston. You say here in the first main paragraph on page 176, however in a clear break from established Government land purchasing practice, Featherston made a point of not agreeing to any reserves prior to the completion of the Rangitīkei-Manawatū purchase.

A. Is that page 176?

Q. Yes. Well it is in my copy. The paragraph starts at, “It seems clear that”.

10 A. Yes, I have got it. Sorry, no excuse me. I have got it.

Q. No, that is fine. My question really is simple, in your view is this a case of a single man going ahead with his own ideology, his own hell-bent ideas on how he was going to achieve this purchase, completely ignoring the clear directions of the Crown and yes, we do have the subsequent but the Crown –

15

A. Yes.

Q. – you know turned it’s head or what ever the phrase might be. But he just went off and did his own thing, didn’t he?

20 A. I think the thing is like I am sure you get a lot in these inquires is that the Crown is – there is different parts of the Crown.

Q. Yes.

25 A. The Crown is not just one entity, and what you get here is that Featherston is not just the land purchase commissioner for the colonial Government, he is also the Superintendent of Wellington province, and I do not think he was – I mean, I think he did have his ideology and I think if you go back look at what, you know, what his paper said and what he said he did not have a particularly favourable attitude towards Māori, especially certain groups of Māori, especially compared to say someone like McLean. But also, I think a lot of this is him acting in the interests of, you know, wearing his provincial Government hat and I think this is dealt with quite a lot by Terry Hearn in his report. So you know, they have a pressing need to purchase more to get hold of more land. But there is also financial stresses which has been placed on the provincial Government.

30

Q. Yes.

A. And also, there was one other thing I was going to say but I slipped by mind. Yes, also there is also that political thing with the people who are holding the script from the New Zealand company stuff.

5 Q. Yes.

A. And a lot of them are based in Wellington province.

Q. Yes.

A. So there is also that. So a big part of that is him acting on those provincial considerations.

10 Q. Yes.

A. But also there is a strategic considering from the colonial Government, which goes back to the 1840s as well, that you know, you are looking at a map of the lower North Island and the Rangitikei-Manawatū area is a very strategic, important area.

15 1420

And it had been a priority of Government officials since basically the time that Ngāti Rangatahi and Te Rangihaeata were kicked out of the Hutt Valley and the Kāpiti region and settled up at Porotawhao that they wanted to open up this area for European settlement and also place it under the authority of the Crown.

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Q. But in doing so the Crown did set some rules and the rules were breached, weren't they?

A. Yes, the – yes.

Q. Yes, let's leave at –

25 A. No, no, I have got to make this clear.

Q. Okay.

A. Yes, the Minister and responsibility for the Native Department expressed his misgivings and alerted Featherston to standard practice and then Featherston who was also working for the Crown in his capacity as land purchase officer went ahead with the purchase anyway and, you know, Richmond had quite a lot of notice of that and he sent a number of memo, and I assume at some stage he could have just called the purchase off. And, you know, given their experience in Waitara and what was going in the mid-1860s you kind of wonder why they did not. I mean, an example

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of that is the Te Ahuaturanga purchase, now Upper Manawatū. That purchase was initially negotiated I think in the late 1850s, but they did not go ahead with it because first of all Herewani was asking for too much money but also the Crown decided not to go ahead with it at that time because they were worried that some of the money from the purchase was going to go be used to buy weapons to go up. So there are examples, and again, you know, someone like Dr Phillipson who has a much wider knowledge of all of this can probably perhaps come up with other examples where they looked at a purchase and said, “No, we are not going to go ahead with it at this time.”

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10
Q. Thank you. Can I turn now to page 296? This is looking at the Crown’s purchase of the Kaihinu Block.

A. Is this – I thought in the direction that this was not going to be dealt with.

Q. Yes, no, that is fine.

15 A. I mean I can answer your question –

Q. No, in having coming back for this part I presume?

A. I haven’t prepared for it. Yes, I haven’t prepared for this.

Q. No, that is absolutely fine. No, that is absolutely fine. All right. The Kāweka Reserve and this is page 429 which I think is within –

20 A. Kawakawa?

Q. What did I say sorry? Kawakawa Reserve. So page 429, Alexander Mackay’s investigation in his meetings with Ngāti Kauwhata at Kawakawa.

A. Yes.

25 Q. And you noted in that first paragraph under that heading, “Particularly when compared to subsequent decades, the Government in the 1880s was relatively serious about maintaining restrictions against the sale of portions of Māori land, particularly when the Māori owners in question stood to be left with little or no suitable land if the sale was allowed.” The
30 Minister of Native Affairs at that time John Bryce in a memo of 1883 made it, quote, ‘an indispensable condition to consent being given to the sale... that the Native owners should possess other property held under a similar tenure.’ Which doesn’t sound like a bad thing.

A. I know, that’s what I – I was going to point –

Q. Well my question was going to be why did this resolve with the Crown to ensure that Māori vendors would be left with suitable sufficient land.

A. Pardon? Could you repeat that please?

5 Q. Why did the resolve of the Crown to ensure that people retained sufficient lands, why did that change?

A. Well I mean the Sinnott could say because the 1880s was a decade where there was a depression, but no, no, I mean it is something that in the 1880s it is true that the colonial Government was more serious about enforcing the regulations on and maintaining restrictions against the alienation of land. I cannot really explain to you too much the motivations of the people who were involved who did that and again –

10

Q. So you have not come across any documentation that talks about –

A. No, but I mean, no, but this wasn't just Rangitīkei-Manawatū.

Q. No.

15 A. In my report on the Native Land Court in Te Rohe Pōtae and land alienation there it was the same.

1425

The restrictions the Government – the Colonial Government did a reasonably good job at enforcing restrictions in the 1880's and it was only in the 1890's – I mean it is kind of weird because Bryce, you know in our history is usually seen as this bad guy and the liberals are usually seen as good guys but in the case of enforcing restrictions, protecting Māori land from alienation is actually those administrations in the 1880's which are generally seen as conservative were tended , at least the second half of the 1880's, tended to be more serious about maintaining protections against the permanent alienation of Māori land. While it was the liberals who pretty much – you know – started pulling all of the restrictions off – you know – and making it easier – in the 1890's they were making easier and easier for the Crown to purchase land.

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25

30 Q. Yes.

A. And then of course in 1909 – you know – all of the restrictions get removed –

Q. And this is reflective of changes of Government and changes in time, changes in thinking, right?

A. Yes, I guess so.

Q. Yes.

5 A. But also, maybe also responding the context, the political and strategic context with Māori, like in the 1880's you know, the Government still has to think about the Kingitanga and opening up the King Country and things like that. Well, by the 1890's you know, there may be, you know, there is more and more settlement coming in and maybe staying on the right side of Māori is less of a priority. I do not know, I mean I am not an expert in that aspect of New Zealand's political history.

10 Q. No, that is great. Thank you. My final questions just relate to a couple of questions of accuracy of a couple of quite important quotes in your report.

A. Okay.

15 Q. So, first of all, Normanby's instructions to Hobson. So, if you can go to page 5. In the very bottom of that page, and you quote Normanby's instructions there as, "The acquisition of land by the Crown for the future settlement of British subjects was to be confined to such districts as Māori could alienate without distress or serious injury to themselves." You – I went looking for a copy at the very last minute to actually present you with another example of it, but would you accept that the word 'injury' was actually inconvenience, does that ring a bell for you?

20 A. I do not know, I mean but – but –

Q. No, that is fine.

25 A. – it is quite possible that, yes. I mean you know I – that is one of the unnerving things about reading his report is that I do pick up mistakes that I am not happy with so, I cannot say one way or the other without having it put in front of me though –

Q. And perhaps I could do that, in all fairness.

A. You know –

Q. It is not a –

30 A. Given my experience of reading over this report, it is – I have to admit that there are possibilities that I did get that wrong.

Q. Okay.

A. Although I guess –

- Q. Well, the next one may be – may fall into the same category. It is just over on the next page. Near the bottom of the first paragraph, “The Natives do not support themselves solely by cultivation,” sorry this is Governor Grey, “The Natives do not support themselves solely by cultivation but from fernroot, from fishing, from eel ponds, from taking ducks, from hunting wild pigs, for which they have extensive runs and by such pursuits.” Again, “For which they have extensive runs,” I am going to suggest to you should be for which they require extensive runs, which does change the context of that sentence quite significantly. So, perhaps that is something else that I could put in writing and you could have a look at?
- 5
- 10
- A. Yes. I have to admit that both of those probably strengthen what I was trying to do but –
- Q. Sure.
- 15
- A. But yes, I – you know, I tried to capture them – some in the **(inaudible 14:28:48)** but I have to admit –
- Q. Please do not think I am being critical.
- A. Re-reading stuff I again found, I think there is somewhere where I say “less” when I should have said “more”, and you know, it is just mortifying, and I apologise for it.
- 20
- Q. No, you do not need to.
- A. Well I do.

JACKI COLE:

- Ma'am, if you do not mind I might just get those two because they are two quite important quotes. That is all from the Crown, thank you very much, Dr Husbands.
- 25

(2:29) DR GRANT PHILLIPSON TO DR PAUL HUSBANDS:

- Q. Tēnā koe Dr Husbands.
- A. Tēnā koe.
- 30
- Q. I just want to start by thanking you for your excellent report. It's one of the best we have had and in particular, I appreciate all the wonderful

maps, very helpful when you are reading it to try and work out where things are, so that was very good.

A. Yes, that's Jeanine Bedford who did those, not me.

Q. Well, pass on our thanks.

5 A. She's an amazing map maker.

Q. Thank you. And on that, just that final thing you said, if there is a sentence where you said less instead of more, could you please put that in?

A. Yes, I will. I was mortified, so I apologies.

1430

10 Q. Okay thank you, no it happens all the time.

A. Makes me feel –

Q. And in fact, I myself have – we are all trained as historians to use, it appears that it, it seems that, so that's a profession thing I think for the reasons that you described. So, and I had to train myself out of doing it from the Tribunal, yes.

15

A. Yes, obviously I need to as well.

Q. I just wanted to ask you first why you didn't cover Himatangi in your reserves?

A. Yes, it was the way the – it was you know because you know –

20

Q. Sorry.

A. It was the way the project and the research was designed. I mean you got these four projects and the way the project briefs were in, in retrospect, yes, it should have been in my report rather than Robyn's. I mean it is a – it would have better if it had been included in this. But it is also because you get the Native Land Court hearing in 1868, which finds sort of in favour of Parakaia and Ngāti Rakau, Ngāti Turanga, Ngāti Te Au, and then that kind of that hives off and has its own history, separately. So, it is kind of a distinct history but –

25

Q. Yes, well –

30

A. But, I agree I mean it was the way the research project was designed. I have to admit when I was reading to was something that I was thinking about a lot, that it would have been better if it had been included –

Q. Sorry, I did not mean that to sound accusatory just, when – so when Mclean returns the whole of it do you – would you count that as a reserve?

A. I do not know, I mean I did when I gave the Rainey Collins –

Q. Because it is really just one of the many adjustments that Mclean is making when he does all of these so.

A. Yes, I have to admit I am not familiar enough with the history of Himatangi.

5 I went back and read what Robyn said so I –

Q. Okay, well that is fine, thank you.

A. But I think it is important for one thing because what we do a lot, you know and what I obviously so in this report is you talk about – a lot about acres, you know, there is so many acres – 18,000-acres, 7,000-acres, 10 4,500-acres but for anybody who knows this area of land you can tell that you know, that the land between basically Foxton and up to Te Reureu, you know that the land varies massively in quality, so for example, comparing 4,000-acres at Te Awahuri with whatever it was, 11,000-acres at Himatangi, I mean, it is just a really problematic comparison and I think 15 if you asked pretty much nay Manawatū farmer whether they would rather have 4,000-acres at Te Awahuri or – which is great, great land you know great dairy-farming land, well if they would rather have you know 11,000-acres of sandy land between **(inaudible 14:33:10)** and Himatangi, I am reasonably sure which way they would go. So, I think 20 while I –

Q. Well, I just wanted to know –

A. Yes.

Q. Thank you.

A. No, no I am just saying that I just wanted to add that caveat. I mean, it is 25 kind of – I do not know where – it is interesting the whole thing about reserves because then do you call Te Awahuri and Mangamahoe, you know the land that was set apart by the Native Land Court in 1869, that was not strictly speaking reserves either so, you are right there are these problems of definition that get problematic.

30 Q. Well, I think that one of the things that your – that your report and the other reports show is that in effect, although the Native Land Court was entrusted by the 1867 Act with the task of deciding the claims of the non-sellers that was not a process which decided what was their land and kept it for them.

Q. It was a process of reserve-making and that is what –

A. Yes.

5 Q. – and that is what Donald Mclean's sort of carried that on – so, I think that is one of the things we will have to think about but in respect of that I did want to ask you a question I asked Professor Boast yesterday which was do you know with the 6,200-acres I think it was that the Court granted?

A. Yes.

Q. Did they receive a Court certificate of title for that? Was that done through the Native Land Legislation?

10 A. No, no I think what happened, the Court definitely made an order.

Q. Yes.

A. So, I am not sure if that was a certificate or title or not ,but they made an order, you know, granting the land and the individuals but that was contingent like – and this was the same with Himatangi with Parakaia, it was contingent on the survey being carried out within six months.

15 Q. Yes, I am not talking about Himatangi now. I am talking about –

A. No, no, but I'm talking about – that was Te Awahuri –

Q. – the 1869.

A. Yes, the 1869 one. They received – the Court made orders.

20 Q. Right.

A. A formal order but it was contingent on a surveys being carried out within six months and the surveys were blocked. So, I think what happened.

Q. Did they not get extra time?

A. Yes, they do get extra time.

25 Q. Yes.

A. And I don't know if there was a formal Certificate of Title, but there was definitely the order vesting it in the – how many was it? I can't remember how many people was exactly.

Q. 62.

30 A. Twenty-six or something at Te Awahuri.

Q. Just, you only talking about Te Awahuri.

A. Yes, yes, and – because it is complicated with the whole history of Te Awahuri because then when they come around, and they start issuing Crown grants for all of the land you know, in the 1870s then the land

doesn't get vested like the Native Land Court had in those named individual. It's only vested in those five household heads and so you have a different situation. While with Mangamahoe the Ngāti Kahoro and Parewahawaha award that was when the Crown grant for that was issued. That was in the name of all 20 of the individuals as in the initial ordered by the Court.

5

Q. So they got Crown grants rather than a Certificate of Title.

A. Yes, they definitely got Crown grants and I'm not sure if they got a Certificate of Title as well, but they definitely Crown grants.

10

Q. Thank you. In terms of Ngāti Whakare and the Te Awahou purchase?

A. Yes.

Q. Why were they not included in that purchase, do you know?

15

A. Because they probably didn't want to sell the land, I mean Ngāti Whakare going back were, I think they were – they're part of Ngāti Whakare on that the lower Manawatū River were quite closely associated with Te Rangihaeata. I mean he was at Porotawhao so, I don't have in a document explicitly saying this, but my supposition would be, is because they didn't – they were opposed to the purchase. And the whole Crown's Purchase of Te Awahou for quite a while was a touch and go thing. There were a lot of people within Raukawa who didn't want to sell the land, and it was only sort of after negotiations and sort of assurances, it's going to be limited to this discreet area that the majority of chiefs in Raukawa agreed to the purchase. That's my understanding anyway.

20

25 Q. Okay, thank you. And at page 45, so sorry, .4 in your list of points, that the land should be made inalienable.

A. Yes.

Q. I just wanted to ask, would you add to that, I think the standard accept by way of lease for a limited period of 21 years?

30

A. Well, I mean.

Q. That was the Crown's standard wasn't it?

A. That was the Crown's standard, but I'm talking about sort of policies they were developing from Normanby's instructions on wards. So, yes, I am not sure when that caveat about not by a lease for 21 years was brought

in. I know that you have that in the 1860s, but - or by lease and mortgage. So, I'm not sure when that qualifier was introduced.

Q. Okay, thank you.

5 A. I mean I know that with the Turakina reserves pretty soon after the Whangaehu Turakina Reserve was established European runholders negotiated leases with Ngāti Apa to run stock on those reserves and McLean was very opposed to that. He sort of came down hard on **(inaudible 14:39:30)**, saying that this shouldn't be going on. So, I think in that case, he wasn't thinking of it being by lease. His idea of alienation was, it shouldn't be alienation. But obviously, that changes you know as you go on.

10 Q. Yes, because it was illegal to lease under the Native Land Purchase ordinance 1846 until 1862, so I think you're right. It's probably a thing that comes in the 1860s.

15 A. Yes, that's when I first came across it was when I was looking at the land south of the Manawatū River and looking at the Native Land Court orders and there you start – you see that obviously when they're recommending that land should be restricted from alienation.

1440

20 Q. Yes, thank you. In carrying on from Te Awahou, did any of the signatories buy back the land that was specified in the second deed?

A. I do not know about the signatories. I do not think Ihakara brought back the sort of 16 acres or whatever he could have brought back, I am pretty sure that did not happen.

25 Q. Right.

A. Some Ngāti Whakatere people brought back a bit of land around Moutoa but like you say they don't appear to have participated in the purchase.

Q. Mmm.

A. Sorry, I used the word 'appear' again.

30 Q. Thank you. In terms of the – I think one of the key points that I have taken from what you have said, and I just want to see if I am correct, that your argument would be that because one of the Crown's set standards and its best practice was to mark out and sometimes even survey the reserves before the purchase was completed.

A. Yes.

Q. If that had happened in this instance, and I am referring to the whole of Rangitīkei-Manawatū here, that would have meant that the Crown paid for the surveying of the reserves, and so one of the consequences of Featherston's decision to not do it until after the purchase was completed meant that the cost of paying for the surveying of the reserves fell on the Māori owners, didn't it?

A. No, I don't think that is correct. I think the Crown paid, the Crown paid for the reserves, survey of the reserves, and the reason I say that is that –

Q. So are there no survey costs for the Māori owners from the surveying of the reserves?

A. Not for the initial survey of the reserves.

Q. Okay.

A. The reason I say that is because in the middle of the 1870s the Kauwhata non-sellers and the other non-sellers with their agent Alexander McDonald continued to press to receive what they considered to be a more equitable apportionment of Rangitīkei-Manawatū, and McDonald, and again this is a question of – this is another case of the Ngāti Kauwhata and Parewahawaha folks making a step away from, you know, tikanga Māori and te ao Māori into trying to negotiate with the Crown using the Crown's language, and what they do is they come up with this calculation based on the Native Land Court judgment and those names which have been listed of what they considered to be a proportionate amount of land. If you take all of the people who have been regarded as eligible owners of Rangitīkei-Manawatū, people who signed the deed and people who didn't who have been included by the Native Land Court, and then you divided, you took those people and you divided that number, you divided the area of, Rangitīkei-Manawatū purchase area by those people, so all the people who the Crown have considered to be eligible, Ngāti Apa, Rangitāne, Ngāti Raukawa, Ngāti Kauwhata et cetera, and you get a sum. And sorry this is a garble, but what the Ngāti Kauwhata non-sellers and McDonald, well what McDonald had come up with was a figure of between 21,000 and 19,000 acres. So then what he did is he said, "Well look, you have given us..."

whatever the number is, you know, maybe 8000 acres or 10,000 acres, but there is still this outstanding and we want, you know, you to give us that. So in response, what happened is the colonial authorities in Wellington, they hired the resident magistrate named James Booth and he went through and did his own calculations and all of the land which had basically been already given to the non-sellers and he included the Te Reureu Reserve and this, that and the other thing, and then when he got down to it he still had like about – I wrote about this in one of the answers to the questions, but he was left with about, you know, 2000, 3000, 4000 acres which was still outstanding. And then he said, and – but then he said, “A reasonable share of the costs of surveying the reserves. Let’s say,” and he came up with a figure and then that cross out all of the remaining land. So from that I sort of assumed that I’ve deduced or come to the assumption that it seems like the Crown paid for the initial survey of the reserves.

Q. I don’t think you can assume that.

Q. No, no, well maybe – that from that you could possibly assume that the Crown paid a proportion, but I am afraid I would like more than that, so I will ask you to go and see what you can find out –

A. Yes, okay –

Q. – and respond in writing because –

A. – yes, sorry.

Q. – if you are correct then that means that the survey costs form by the owners began with the partitioning.

A. Yes.

Q. And I want to know if that is correct. So -

A. Well, I mean I haven’t been able to – again, this thing of you dealing with the evidence that’s available to you, I wasn’t able to find any evidence of survey – I mean, you had a reserve like Mangamahoe where because the land is - the Crown grant is to 20 individuals, each with 50 acres, they straight away have to subdivide the 1,000 acre reserve, so why all the boundaries at the 1,000 acre reserve might have been surveyed by the provincial surveyors, the 50 acre – the grid which contains the 20/50 acres, that had to be paid for by the Māori owners. So, they were charged

like 82£ for that, but I haven't found any evidence that the initial boundaries of those reserves –

Q. Right.

5 A. – the outside boundaries which is the starting point they were changing that.

Q. Yes, we know, we know from your evidence that the provincial surveyors –

A. yes.

10 Q. – did survey them, so you are suggesting that the cost of that was borne by the Crown, but you are not sure?

A. Well and according to James Booth's calculations by wiping off that 2,000 acres or whatever it was that maybe the Crown should have returned to –

15 Q. So, is this a matter you would be able to tell us more about if you went and looked, or you –

A. I mean I can tell you the James Booth thing but, I mean if there had been survey charges for the survey of those reserves, I would have put it in the report, I mean I looked for it. I mean the other thing is the other way that the reserves – the owners of reserves paid for it was by the delay in the survey, the survey took a lot longer than it should have done, and then that is followed on by legislative delays which means that they don't receive their Crown grants for reserves that are, you know, supposedly given to them at the end of 1870, they don't start beginning to receive Crown grants, like official legal ownership of their reserves until
20 September – no, not September, until about February 1874. January 1874. So, they pay in other ways, but I wasn't able to find evidence of them having survey lands for example, placed on the reserves –

Q. Okay.

A. – or anything like that.

30 Q. Thank you. Do you know – have you seen any evidence as to why Featherston decided that the reserve should be made after rather than during the purchase?

A. His justification was that what he was doing in purchasing Rangitīkei-Manawatū, was not so much purchasing this large and

valuable and very strategic area from the Crown, but what he claimed he was doing was he was involved in a process of conflict resolution between Ngāti Apa and Rangitāne, mainly Ngāti Apa on one side, and the hapū and other tribal groups affiliated with Raukawa on the other. So, his argument was – is because everybody is arguing, fighting over all this land and it is all contested then there is no hope of defining reserves prior because they will just disagree about them anyway. So, the only solution is for me, Father Featherston, and Buller did refer to him as the Father, come along and I take all of the land under my wing and then in my wisdom and knowledge, I apportion land out once the title has been extinguished and all of the land is in my hands, and then I will sort of distribute out shares to the different groups, the different contending groups. That is what his justification was.

Q. Okay, thank you. And so, why when he was given such a – well took unto himself, such a very significant responsibility did he make reserves that were so tiny, I think you said only 600 acres for the sellers?

A. Well initially 550 acres, yes.

1450

Well, I mean I guess in part he was being duplicitous, sorry to use the word. But also you know, he is also being, I guess there is a number of factors. One, he is being pushed by the, you know, he is also got that conflict of interest of being a provincial superintendent at the same time, and so there is that impulse to get as much land as possible and obviously the more land you that you keep in Crown ownership, the more land you can sell to settlers. So that is more money coming into the provincial Government coffers and is also more settlers you can get onto the land. Also and again it is speculation but Featherston is notorious for famous for that statement about smoothing the pillow with a dying race. So –

Q. Yes. I do not think that is speculation actually. I think that is quite possibly a strong motivation in it.

A. Yes. So the other side of it is, he already, you know there is a debate amongst Crown officials about what constitutes a sufficient an amp ore reserve, there is the folks like McLean in certain cases where you need this broad expansive reserve, which has access to all of these different

things, and then there is a very narrow definition which other officials both in London and New Zealand had that you can limit reserves to a much smaller area which is just a settlement and their immediate intensive cultivations.

5 Q. Yes.

A. Now I think Featherston was in that category already. But also from what he says at various political meetings at times, he seemed to have a very strong opinion that basically the Māori race was in the process of dying out. So you know, maybe you do not need such large reserves as the
10 folks are – if the race is dying out.

Q. Yes, so just following on from that then, from Featherston to McLean, as you said he had this strongly held view when he was in the land purchase commissioner about the need for expansive reserves for fishing and hunting et cetera, that is not what he does when he comes as that minister
15 is it?

A. No, and I think – I mean, fro that chapter most of the stuff I got was from reading tribunal reports. So like I read the *Wairarapa Report* and *CNI*, the *Whanganui Report*, and it is pretty clear that, especially from reading the *Wairarapa Report* that his position on the granting of reserves both in
20 their size and their permanency changed pretty fast when he was the one making the purchasers. So I think – I mean at least in Wairarapa, I know that there is a large reserve he sets out in the Wairarapa purchase, but then not long after he is actually undertaking Crown purchasers of reserves, he may have actually set a side himself, so he sort of moves
25 away from that situation quite...

Q. Yes, I just wanted to confirm with you that it is not only Featherston we have to Judge by those standards.

A. No, yes.

Q. But also McLean as Native Minister, isn't it?

30 A. Yes, and in someway it is more like again from my reading of that Raupatu addition, it seems like this is what they were doing also, I mean, with the Native – with the compensation Court and also in Taranaki.

Q. Yes.

A. And also on the East Coast where they were going and sort of setting aside bits of land.

5 Q. I am going to put some questions of detail to you in writing but there is a couple more I would like to just ask you. The first is about why the list of 500 names was reduced to 62 in the Native Land Court, and I am thinking from what you have said, that quite possibly that is the only individuals of the three hapū that the Court recognised as living on the land out of the list of – they put in a list of names of 500 non-sellers and the Court grants title to 62, is that correct?

10 A. No, not really.

Q. So why does the Court only grant that land to 62 people then?

15 A. Because what happens is that all of the other claimants whose claims have been dismissed in the judgement, despite having been dismissed in the judgement, they all nevertheless still submit names to be included as owners. So for example you have got Ngāti Pīkiahū, you know, the Te Reu, Paranihi Te Taua's people. They submit a list. Ngāti Maiotaki submits a list. So basically everybody submits a list and then they sit down, and they go through it so basically of that 500, most of those people it wasn't that they were not living on the land that they would –

20 1455

Well almost all of them they were – they weren't included on the list because the Court did not consider them to be eligible in accordance with the judgment they just issued. So, it was like these guys - the claims having already lost in the first stage of the court they tried again in the second stage and they were equally unsuccessful.

25

Q. So, I will ask you in writing then to give us a response as to exactly which hapū were included in those lists.

A. Included in the lists that were submitted?

Q. Yes, but not in –

30 A. Okay, yes, sure.

Q. – yes, thank you. And my final question is, it is a small question in a way, but I am trying to work out exactly on what basis Alexander Mackey was acting, you say he was acting as a Royal Commission, and I would like to know what your basis is for saying that?

A. There was a Gazette notice, they set up a Royal Commission.

Q. So, it is not him acting as Commissioner of Native Reserves?

A. No, he was the Commissioner of Native Reserves and they appointed him under this Royal Commission –

5 Q. As a Royal Commission.

A. – to come and hold a Royal Commission which was basically what he was doing was title investigations.

Q. So, can you – yes, can you give us a copy of the Gazette notice then, please?

10 A. Yes, okay I will try and track it down.

Q. Thank you. And there was no suggestion that the Crown would add a Māori member of that Commission?

A. Not that I know of, I haven't come across anything. I mean, I didn't see – I didn't come across any evidence –

15 Q. You did not see any documents about why that Commission was established?

A. – no, I know why it was established –

Q. No, no, I mean if the thinking of the Crown that we will appoint Alexander Mackey.

20 A. – no, no, I've got off the top of my head, what records I have from that is there is the Gazette notice, there is something called McKay's book where he lists you know the outcome.

Q. Yes.

A. And also, there is some minutes from the investigation of the Poutu Reserve, but I don't think I'll be able to find that again because that is for some reason I got it in a box included with something else, and then when I tried to retrieve it was – you couldn't find it through Archway, so I had only really found it fortuitously in the first place when I was looking for a petition on something else.

30 Q. Okay.

A. But I do have photographs of it, so –

Q. Can you file those?

A. – yes, yes.

Q. Yes, thank you. File that and also the Gazette notice.

A. Yes.

Q. And I will –

A. Would you like McKay's book as well?

5 Q. – why not. Yes, thank you. And I will ask – yes, and I have got some questions in writing for you, but I wanted to thank you again for your report, it has been very helpful.

A. Thank you.

Q. And for your expansive but useful answers today.

A. Yes, well I apologise for going on.

10 Q. No, no, no, I am thanking you for it. Thank you.

A. Thank you.

Q. Kia ora.

DCJ FOX:

Dr Monty?

15 **(2:57) DR MONTY SOUTAR TO DR PAUL HUSBANDS:**

Q. Kia ora, Dr Husbands. And I just endorse the comments about the maps and your report, thank you very much. Chapter seven is a big chapter, isn't it?

20 A. Yes, it took a long time to write. It strained the patience of my wife considerably.

Q. And I am impressed by your recall of names and hapū and iwi names.

25 A. Yes, I tried really, really hard with that and I apologise for the pronunciations but I guess it is kind of one of the pet peeves I have is when you read reports by European, Pākehā historians such as myself where they don't really interrogate who the person is or you know they just say a name as if – and there is no sort of interrogation of who that person might be and their connection, so I did spend quite a lot of time to figure who the people were and what they were connected to, and sometimes I succeeded and sometimes I didn't.

30 Q. Tell me, the reserve for half cast children.

A. Yes.

Q. At Te Reureu. Were half casts considered in a different light than we might look at them today? I mean, why are they separated out from the Māori children?

5 A. I think it is because of their parentage and yes, I didn't really get to the grips of it, I think they were the descendants of a certain limited number of farmers, and I think it might have been – yes, I don't really know, I mean –

Q. Who asked for the reserves for them? Was it coming from the Māori?

10 A. Yes. Yes, it came from the Māori, I think it came from the Māori. Yes, that reserve is always a bit of a mystery, I mean, I think – I could be wrong, somebody in the audience probably knows better than I do, but I have got a feeling that Te Tikanga Marae is actually on that land, is that right?

UNSPECIFIED SPEAKER: (14:59:49)

(inaudible: 14:59:49)

15 **DR MONTY SOUTAR TO DR PAUL HUSBANDS: (CONTINUES)**

A. Yes, Tokorangi. Not, not – yes, Tokorangi Marae is on that land.

Q. Do you know if the Māori mothers are in with the others or in with the half cast children?

1500

20 A. That was a source of contention because one of the big issues as I talk about it in my report, because of the sole individualisation thing, there was a massive and also the division of the reserve between the different – the, up river hapū and the down river hapū. The ownership of the reserve, the individual owners whose names were going to be included on the list was
25 a source of great deal of contention and I believe one of the things which came up was the status of the half-cast children and their relatives, whether they should also be included in Te Reureu. So –

TANIA SIMPSON:

30 Belong to that, so in your documents you say in one of the chants it says that that reserve was excluded by the Native Land Court. Did it actually go ahead that –

DR PAUL HUSBANDS:

Yes, it went ahead, but I don't have much. I really, you know this is one of the frustrating things. I don't have very much about it at all and the stuff that I picked up has been more sort of when I been looking for other things, and sort of
 5 stumbling across like with Tokorangi the Marae, Tokorangi and suddenly went, "Oh, my goodness, look at those names, look at the name of that reserve." So, it's not part of Te Reureu. So, it's something that I would like to know more about, but I don't.

DCJ FOX:

10 I thought there was something in the legislation that defined what was a half-cast child.

DR PAUL HUSBANDS:

Yes.

DCJ FOX:

15 And had criteria around landownership accordingly.

DR PAUL HUSBANDS:

Yes, I don't know.

DCJ FOX:

Perhaps Sir Eddie remembers.

20 DR PAUL HUSBANDS:

Yes, I mean my understanding was that probably the worry was that they were going to be landless, sort of something had to be set aside for – I mean that would be, well I am almost sure, and that's why they did it, because they were worried they were going to be landless because they didn't fit under the
 25 Ngāti Pīkahu, Ngāti Waewae, Ngāti Matakore, Ngāti Rangatahi necessarily. So, and –

DCJ FOX:

Yes, will maybe that is a question we can put to Mr Boast he will know.

DR PAUL HUSBANDS:

Yes, yes, well you can.

DR MONTY SOUTAR TO DR SOUTAR: (CONTINUES)

- 5 Q. So, in the Te Awahou Reserve, where the Cook children, land was reserved for them.
- A. Yes.
- Q. They must be the only half-cast down that way?
- A. Well, again, I want to be careful about what I say about that because
10 again, I know that one of the claimants in this inquiry is descended from them, so I want to be very careful what I say. I think with that, the whole half-cast thing, and again, I am not speaking from a position of authority here as I think different parts of the family sometimes went in different directions, and I know that somewhere I mean towards the end of my
15 Te Awahou Report, I talk about one of the descendants of Te Ākau and Thomas Cook and how she had pretty well assimilated into the European Foxton elite. So – and she ends up you know she still owns property and ends up with her husband going off and enjoying a comfortable retirement in the Hawkes Bay and I sort of – there is a newspaper report about it.
20 This is some time sort of in the early 20th Century and I sort of had a little bit about what was said in that report and just that there was no reference to anything Māori and that farewell thing. It was thrown to her like they all got together at the end sang, “Auld Lang Syne,” and sort of you know. So, but I mean if you want a history of the Cook family I think Hemi Collins
25 is the person to not me.
- Q. It shifted to McDonalds. Was only McDonald, Māori?
- A. Pardon?
- Q. Was Ani, Annie McDonald?
- A. Yes, Annie McDonald.
- 30 Q. She part Māori?
- A. I don't think so. No I mean, I mean the thing about the McDonalds was that they were – they had been pretty much adopted by Ngāti Kauwhata,

and I mean again, this is – I mean. The good faith and generosity which you know Ngāti Kauwhata showed through the story, and I mean I guess I am showing maybe some bias or something, but as being influenced by the evidence, I mean it's really quite inspiring or breath-taking. I mean

5 you know this guy he shoots the horse. He gets into prison, and they give up 850 acres of their very best reserve land. These people have already lost so much, had so much taken away from them and had only very limited given back. They gave up their very best bit of land for him, and then they didn't just do that. They went off and mortgaged the rest of the

10 Te Awahou Reserve, the remaining 3650 acres and they gave that money to McDonald. And that was, in my report, I say that it was to support Annie and her children, but it wasn't just for that. I mean what I discovered later on, it was also to provide the surety for Mr McDonald, so he could get out of prison.

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A. So the only reason he got out of prison early, I mean, he eventually got a pardon, but a big pardon that was the surety which was raised by the Te Awahuri people by mortgaging their land. And then of course what happens? Those two mortgages get foreclosed on, not because they cannot pay the principle but because they had missed payments on the

20 interest and the land gets foreclosed on and they lose it. So yes, it is, you know, it sort of makes you question, you know, the working of providence in this world I guess. But because obviously that is not in your jurisdiction.

Q. I mean, it raises an interesting point about manaakitanga. Yesterday I

25 was –

A. Yes, yes.

Q. – talking about why did Māori sell land and what did they want the money for and I referred to an article in the Māori newspapers that was pointing to wastage really in terms of how they are using money. You, in your

30 report, you give all these examples of what they do with the money and I have listed them here as raising money for other claims, e.g. the southern Waikato lands, to pay off debt created by such things as survey charges and legal costs, to raise capital to develop other lands and buy stock, for their day-to-day living needs –

A. Yes.

Q. – and emergencies. You quote Atareta Poananga –

A. Yes.

Q. – and having to sell land –

5 A. Yes, yes.

Q. – for a hospital bill, and I would include wastage. Some people did where you cannot deny that. But the other thing that we were talking about yesterday is this manaakitanga thing and chiefly obligation –

A. Yes, yes.

10 Q. – where prior to I suppose having money and before they had European clothing, you know, Māori had to, the chiefs particularly, had to display their rank by what they wore and the way they manaaki visitors and people.

A. Yes.

15 Q. This example of McDonald and 900 acres, 900 odd acres –

A. Yes, yes.

Q. – is an example of that, you would agree?

A. Yes, I think so, I mean obviously it is a very generous act of manaakitanga. I mean, you know, Annie, and she had a big family, I mean she was destitute, I mean effectively destitute, her husband was in prison. So yes, it was, and you know, at that point he had, you know, he had advocated for their situation and he had got himself on the wrong side of some very powerful people in colonial society. So it is not, you know, he had stuck his neck out on Ngāti Kauwhata's behalf before, before he went out and shot the horse, and the reason he shot the horse was because the horse had just come across what is now State Highway across, you know, that reserve which at that point had still not received its Crown grant. So he was – when he shot the horse which got him sent to prison, he was making a point for Ngāti Kauwhata, and the reason he got sent to prison for such an extended period with hard labour was because initially the Judge thought that he was drunk and was just carrying on as, you know, male settlers were apt to do in those days. But then they came back, "No, actually he was doing it on behalf of Ngāti Kauwhata," and so all of a sudden it is much more serious because

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it is a political act, it is a political gesture, and though he gets a more severe sentence. So the severity of the sentence was because of what he did on Ngāti Kauwhata's behalf. So then of course it just makes what happens afterward, you know, it is just another level of tragedy and poignancy in this story you know.

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Q. The only thing I would say is that tikanga, I guess with manaakitanga there is reciprocity –

A. Yes.

Q. – and I don't think anybody expected him to sell.

10

A. No, I know.

Q. The gift of land.

A. Yes. Can I also just say in terms of the things they spent money on, they did also spend money on consumer goods. Like, I think I had a record of like Hoeta Te Kahuhi buying a watch or a clock, and also you get, you know, people buying carriages. And maybe, you know, from what you just said, maybe that was part of maintaining the chiefly thing as well.

15

Q. Yes.

A. Maybe owning a wrist watch and having a carriage is –

Q. And having a big house –

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A. Yes.

Q. – where you can have your visitors looked after and things like that.

A. Yes, exactly.

Q. The only other question I had was in respect of the reserves. I mean, moving from Normandy right through to what McLean attempted to do, what do you think was in the minds of Crown officials where some people excluded their claims to reserves. Where do you think they thought they were going?

25

A. Well again, I guess you have to look at the historical context. I mean, in 1870 most of Ngāti Raukawa's land south of the Manawatū River was still intact, it had not been subject to Crown or private purchasing. So I guess the Crown officials could have – well, example of Ngāti Wehiwehi, well they can go back to Waikawa and with Ngāti Maiotaki they can say, well, they are in Otaki anyway. They had more of a problem when they were dealing with the Te Reureu people who were actually living on the land

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and were going to be rendered restless and were quite numerous and almost also a formidable group of people. I mean, it is important to remember how the Te Reureu people got there first, originally. Like, Ngāti Rangatahi had come up, you know, they had made the long-forced
5 march from the Hutt Valley up to Porotawhao with Te Rangihaeata and then they came up to the Rangitīkei to put a – to defend Te Rangihaeata’s boundary, Rangitīkei boundary, from the encroachment of European Settlement, and it was the same with the Waewae Pikiahu folks, they came down also to put up a pou at the time of the Rangitīkei-Turakina
10 purchase. So again, to say this is how far things are going to go. So the concerned – McLean expressed and when he was justifying it was that these people, they are numerous and if we do not give them a reserve they are going to go off and they are going cause trouble. You know, they are either going to team up with the Kīngitanga in the Central North Island
15 or Te Kooti or they are going to go to Mōkau or they are going to act like a bunch of bigots or something, you know, like I guess Māori versions of Ned Kelly. So that was the case of, you know, the thinking behind that anyway.

Q. Okay. Well, kia ora.

20 A. Kia ora.

DCJ FOX:

We are going to take the afternoon adjournment. I am aware that we are now nearly 15 minutes over the afternoon cup of tea, and this will give you a bit of a break because Ms Simpson and I have a number of questions still.

25 **HEARING ADJOURNS: 3.13 PM**

HEARING RESUMES: 3:33 PM

DCJ FOX:

30 Ms Simpson.

(3:33) TANIA SIMPSON TO DR PAUL HUSBANDS:

Q. Tēnā koe. Tēnā koe Dr Husbands. It is good to see you again. Alexander McDonald, is he related to Hector McDonald and Rod McDonald the leasees, earlier settlers?

5 A. I do not know. I do not know. What I do know is he came in New Zealand when one of the first New Zealand company ships. So, I think he arrived either 1840 or 1841. I think he came in the same ship as Fox maybe. But no, I do not know his relationship to those other McDonalds. I mean what I can say is that having grown up in the Manawatū there were an awful
10 lot of McDonalds in the phone book so, I would not assume it from the – just from the name.

Q. You have not seen anything that connects them?

A. No, but I was not looking.

Q. Yes. That is right. It is just that the other McDonalds had a close
15 association with the area and the people –

A. Yes.

Q. – and so, it could have explained some of his own affiliation to the area if there was that connection.

A. I think it is interesting that you get a shift with McDonald after he comes
20 out of prison and it just seems like he is associating a lot more with the members of that of developing settler elite in the Manawatū rather than with Ngāti Kauwhata who were sort of you know – obviously he had a lot to do with earlier. So, for example if you look at who financed for example his mortgages. It is the guy – what is the name of the Rangitīkei MP now?
25 Is it McKelvie? McKelvie. It was one of his ancestors who lent him the money and there is also Fraser who is responsible, who himself and his family were responsible for buying up a lot of the Ngāti Parewahawaha reserves on the Rangitīkei river. So, you do see him sort of – I do not know if while he was in prison he decided that he wanted to become a big
30 settler himself or – I mean obviously being a prisoner is a horrible experience but he definitely – you get that impression that he is – deciding to sort of move away from his Māori you know – associations and sort of develop more of these relationships with these land owners and settlers and then of course you know when he basically has to leave Te Awahuri

in disgrace and he goes on has these other jobs like working in Crown land purchasing but also working for the Manawatū-Wellington railway company. So, he definitely moves which I guess you know not just in New Zealand but in other settler situations you sort of see that transition amongst colonial men.

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Q. I just wanted to ask you about a comment that you started to make in some earlier questioning along the lines of residence is one indication of mana whenua and you were starting to talk about the interests of the wider hapū or iwi collective.

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A. Yes.

Q. Can you just say a little more about that?

A. Well I mean I imagine a lot of it is – has already talked about by Dr Anderson and is in her report but I mean...

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Q. I guess the principle that was being talked about at the time was the land owners being allocated blocks of land –

A. Yes.

Q. – that mana whenua relationship that comes from that versus the level of mana whenua connection that other iwi group and

A. Yes.

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Q. – groupings may enjoy and respect of the land but may not be in that land-owning block.

A. Yes. I think – I mean I guess you got two things going on and the Crown

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decided to emphasise one of them but sort of also and the Native Land Court defiant sort of deny the authority or the legitimacy of the other, and

one of them is you obviously have the people living on the land who are cultivating it, who have settlements there, who have their ahi kā. But also,

just in terms of the history of the region, I mean like I was saying before, the Rangitīkei-Manawatū region is a region of great significance, not just

for the people who were living on it but also for the Ngāti Raukawa Confederation as a whole and you could argue not just

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Ngāti Kauwhata – not just for Ngāti Raukawa as well but for other groups like Tūwharetoa in that it becomes, first of you have Te Rangi Haeta

comes up here you know after he gets driven out of the hut so it is important with that, with Ngāti Rangatahi but then it becomes the

Rangitīkei River becomes a very important boundary in 1849 with the Rangitīkei Turakina purchase because that was seen by Mclean and a number of other – and Government officials in general as a sort of way of unlocking, not just the Manawatū, but really the whole lower north island to Crown purchasing and the extension of Government authority and so, you have these very intense hui at the time of that purchase where Ngāti Raukawa chiefs, not just the ones who are living on the land like Nepia Taratoa but also the Otaki, you know, is it Kingi Te Ahuahu. And people like that and they speak in very, very emphatic terms about the importance of Rangitīkei-Manawatū and how they will not allow Crown purchasing and European settlement to come across on to that side and if it does it will be a cause for fighting. Now, that is in 1849-1850 but the significance of the land is maintained and even maybe takes on more significance.

15 1540

Because you know Ngāti Raukawa they have already allowed the Rangitīkei-Turakina purchase and then allow also Hirawanu to engage in the transaction with the Crown over Te Ahuaturanga Upper Manawatū. So, Rangitīkei-Manawatū has this - you know is very, very important piece of land for Raukawa as a whole, and for the mana and rangatiratanga of Raukawa. Now, while the Crown, while government officials, sorry, I shouldn't say the Crown, while government officials are willing to acknowledge the claims of the people who are living on the land, they and the Native Land Court delegitimise and do not accept that broader sort of more sovereignty level claim which Ngāti Raukawa is making over the whole of that land, so I guess that was what the distinction I was trying to make.

Q. Okay.

A. And that is why somebody like the Ngāti Maiotaki chief, is it Wiari Te Waonui? Did I say it right? He – Ngāti Maiotaki has those, you know, has those kāinga and settlements which they had lived at various times at Rangitīkei, but also, he is one of the leaders of the people who is making this broader Raukawa argument as to why the Crown should not be allowed to purchase Rangitīkei-Manawatū. So, you have got people

like Te Kooro Te One and Parakaia Te Pouaka who are sort of living on the land and they are resisting it on that level, and then you have that broader sort of Raukawa level, sort of opposition in defence of the land against the purchase working at the other level and that is the level that like I said, people like Featherston and Manning, and Manning and Penton aren't willing to recognise.

5

Q. Okay, thank you. The discussion around alienation. So, is collective ownership a protection against alienation?

A. Is it a protection in all cases? I think in the question is, well I guess you could say that it didn't work in Rangitīkei-Manawatū, so it didn't, and there

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are obviously lots of cases of you know you have these Crown purchases for example. I guess what I would say is it protection against uncontrolled alienation? Like, at least when they worked, when you you know, and I guess I don't know how many cases there are when they actually did work

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because obviously there is lots of problems with a lot of different Crown purchases, pre-emption Crown purchases, but at least you know you have a process where you know the people have to meet, you know the hapū and iwi leaders they meet, you know for Te Awahou and for these other purchases, where there is a hui and there is a meeting and there has to be some sort of collective agreement. Or at least, even if there

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isn't a collective agreement there is a you know at least a show of it, you know there is enough in appearance, but when you have the individualisation of tenure you can have individuals being picked off and you know selling their little bit one by one and I mean, you know the most

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glaringly example that is in the King Country where after the Native Land Court had come in and the Ngāti Maniapoto folks, they didn't want to sell, and the land had been individualised or at least they wanted to control the alienation, and the first individuals who signed some of the deeds for Wilkinson, who is the land purchase officer there, they were doing it under cover of night and going off and signing. So, that is where I mean where you lose that ability to control the process, so maybe, I don't know if that helps you though?

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Q. Okay, so in a current context the Reserve Bank looks at financial exclusion, it looks at, is there anything the financial system that excluded

sectors of society from participating. So, an example of that might be prisoners reintegrating or coming out of jail, coming in to society and needing to have two forms of ID and a statement from their power company showing their address.

5 A. Yes, yes, yes.

Q. You know, for example, before they can open a bank account –

A. Yes.

Q. – and say WINZ not giving them any money if they haven't got a bank account.

10 A. Yes, yes.

Q. You know that sort of – are there things in the system that precludes sectors of society from participating –

A. Yes.

15 Q. – in the financial sector. So, looking back at the financial system that the tribes are encountering at that time, you know you could ask did the financial system provide for the inclusion of Māori, that is the ability for them to participate in the financial system without risking their land or you know, risk –

A. Yes.

20 1545

Q. – the alienation of their land. Were there mechanisms for them to participate in the financial system without a clear and serious risk to the loss of their land?

25 A. Well I guess the first thing you should say is that the New Zealand financial system as a whole was not in a great state in the earlier 1880s, I mean, you have, I am just trying to think back when I read Russel Stone's make a fortune years, where you know you have, I think the BNZ collapsed at some stage and you have – so the whole banking system is not as developed, you know, does not – sort of spread out as it is now.

30 So that is I guess that first thing you should say. But yes, it is something that really struck me, I mean, like I said, not just with this stuff I have done here but also something in North Land, is this vulnerability of people needing credit and you know, being obliged to seek these sort of what looks to us as unconventional methods of securing, you know, from like

5 stock agents or those more informal agents, and it does seem to be pretty clear that Māori did not have access to the same sort of channels of credit that, you know, some but not all Pākehā farmers had, and again I am not a economists historian but it does make me – it is something that I think would be worth investigating further because it does seem to be a way in which Māori seem to have lost their land, you know, they – and then there is the whole issue of, you know, in the Te Awahuri case, whether the mortgage was even legal and I know that was one of thing the legal representatives of Ngāti Kauwhata when they, you know, at the High Court trial when they sued the McDonalds, they said that the mortgage was illegal and I cannot give you a technical terms for it. But I think that is an important issue and then of course the way the Government in the 1890s solves that for small Pākehā farmers is with the advances to settlement Act and I am not sure how that applied to Māori but again that is probably maybe something –

15 Q. Yes.

A. Maybe Waitangi Tribunal can hold a hearing into the financial thing when they are done, and I do not know...

Q. Yes. But I mean it comes up in the respect of the alienation of land –

20 A. Yes.

Q. –and it comes up in the respect for the ability to participate in the economy to have access to cash and have access to credit and to be able to buy and sell goods.

A. Yes.

25 Q. And the ability to do that through some other mechanism that does not require the mortgaging of land or the threat to land.

A. Yes.

Q. And whether that is by cooperatives as you have suggested or some sort of collective under writing or you know, whatever it is.

30 A. Can I just say one more thing? I mean that was the thing, McDonald said before he gone totally rogue or whatever you want to describe it. He described Ngāti Kauwhata as being relatively land rich but, you know, financially poor. So even though, you know, they got back, you know, this land at Kawakawa and Te Awahuri, and you know, when you are

driving home or whatever you drive across it, you can see that this is great farmland and it had a lot of potential in those days, you know, they get given back the land but, you know, not only do they not have a lot of money, they have got all these debts from trying to get the land back in the first, and from the whole thing in Maungatautari, but also even if you have land, it requires a big capital investment if you do want to sort of participate, you know, in commercial agriculture, like you got to clear the land, you got to fence the land, you have got, you know, pay for stock and also in this part of the country, you know, if you want to use it for, you know, passible stuff, you know, they would have had to spend money on draining and obviously when you get into draining that is a whole other story. But so yes, it is kind of one those things which you do not really, I had not thought about it until I got quite a long way in this project because what happens once they get the land? Even if you are not talking about all of the individualisations stuff which was disastrous. You have the whole thing about, well how do we do it, and that was why that whole story of the Te Reu Reu farmers cooperative is kind of an inspiring, a short lived story where the, I think it was mainly Ngāti Pīkiahū and Ngāti Waewae farmers of Te Reu Reu one when they finally get their land subdivided they all get together and say, “We are going to get into Dairy Farming,” and so instead of going off as individuals, they pull their resources, they got together and acted, you know, collectively, they all went together...

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30 A. ...I mean and so instead of going off as individuals they pulled their resources, they got together and they – you know collectively they all went to together and they made a contract with a stock agent to get the cows in and a contract with him also to take the milk and they also got in touch with someone about getting a good dairy separator and a way of testing

the butterfat and then they went out as a group they, you know, they worked together, they rebuilt the road which was blocking you know – Onepuehu to the northern part. So, they did all of this stuff, it was an amazing feat of collective action but that is kind of what they had to do and it just became more and more difficult as you know their – well for various reasons, their ability to leverage their land because it was getting divided but also I guess you know, problems with road access because you cannot run a dairy-farm if you cannot get your milk out and also the problem you know then you get the great depression so.

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10 Q. Okay, no thanks, thank you for your answers and that is all my questions.

A. Okay, sorry. Thank you.

(3:51) DCJ FOX TO DR PAUL HUSBANDS.

15 Q. Thank you, Dr Husbands. Page 9 of your summary, the first paragraph of that page, the last sentence – the last two sentences, you said, “Two days later, Featherston applied to the colonial Government for a formal proclamation declaring Native title,” do you see that?

A. Yes.

Q. And the non-sellers remaining claims to be definitively extinguished, the proclamation was dually issued on 16th October 1869?

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A. Yes.

25 Q. But in your report at page 93, you said something different and I wondered if you could read under the title, *The Extinguishment of Native Title*, paragraph 1, 2, 3. It is the third paragraph down. “Lacking our formal survey,” and it is particularly the last sentence you said, “The Government however, found this to be sufficient and on 16th October 1869 Colonial Secretary, William Gibson issued a proclamation in *New Zealand Gazette* declaring native title to have been extinguished across the entire Rangitīkei-Manawatū purchase area, accepting the four parcels of land that Judge Manning had granted to the non-sellers.”

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A. Yes.

Q. So, which is it? Did it get definitively extinguished in terms of those four parcels?

A. No, that is what I was trying to say that I did not express as well in the summary.

Q. Okay.

5 A. What happened was, Featherston waited for the Native Land Court to issue its orders defining the land that was going to be awarded to the successful non-sellers and again, this is why it was such a priority for him to get this part of the process through as fast as possible, that is why he rushed to the Manawatū and then rushed back. So, that was still to be Māori – that is still native land, the 6,200-acres is still native land. All of
10 the rest of the land, I mean including problematically, I assume, the reserves that Featherston had supposedly made, native title to that land was declared to be extinguished.

Q. I have presumed we have got the *Gazette* notice on our record?

A. Yes, I mean –

15 Q. Did you put it in your document?

A. Yes, and I –

Q. You did?

A. Yes, and I can look for it if you want.

Q. Okay, that would be helpful for me. I am sure Dr Grant can find it but.

20 A. It becomes a really big problem because when Mclean makes these reserves and you know – and kept making additional reserves – it becomes a problem when it comes time to issuing the Crown grants for that land because they are all ready to issue the Crown grants and then it goes up to Prendergast, who I think is fully Attorney-General at this time,
25 this is the Prendergast who will end up being –

Q. Wi Parata.

A. – you know on the Court and he looks and says, “No, you cannot just make reserves for all of this land, it is illegal because this is now Crown land and it is illegal for you just to turn around and issue reserves on the
30 land, which is Crown land. What you – to make the issuing of all of these reserves legal, you will need an Act of Parliament.” So, this means that the whole process gets delayed for another year, year and a half because first of all, they have to get around to writing the Act and they do not do that until the very end of the session – you know, literally it is the last thing

they do in that Parliamentary session and then when it comes up it gets blocked by Fitzherbert who is, you know the **(inaudible 15:54:55)** named after, but he is also the member for the Hutt because the provincial Government wants compensation for all of these reserves, they want to be compensated, and so it basically, the legislation doesn't go through and they have to wait for the next term. So, you have a big delay.

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Q. Yes, yes, you covered that well in your report.

A. Sorry.

10 Q. Thank you. Page 199, it is the last paragraph of your report, do you know whether or not Ngāti Tauira lived on the Aorangi Block prior to the judgment of the Court?

A. No, I don't know. I mean, Ngāti Tauira, I don't know –

15 Q. You should not answer that, I should say that supposedly a hapū of Ngāti Apa?

A. Yes, but I think they have also got connections with Rangitāne these days, haven't they, or they –

Q. You do not know.

A. No.

20 Q. That is your answer, thank you.

A. Yes.

Q. Now, your conclusions to chapter 5, that interested me when you say, and you covered it in a bit more detail, it is about the McLean visit in 1872 to Te Reureu.

25 A. Yes.

Q. No, sorry, to Oroua and Aorangi, the Oroua area.

A. Yes.

Q. Do you see that?

A. No, what page is that?

30 Q. It is 241, it is conclusions to chapter 5 and it is about the middle of the page, second paragraph. It says, "The eligibility of the Oroua-Aorangi Block for purchase was also underlined by the Native Minister McLean who in January 1872 described the land as exceedingly

valuable from its position and from the timber upon it.” So obviously the land was good land but also there was timber upon it.

A. Yes.

5 Q. So I wondered to what extent do you know whether or not the purchase price took into account the value of timber –

A. You mean within Rangitīkei-Manawatū?

Q. – within the Rangitīkei-Manawatū area generally.

A. Yes.

10 Q. And then as the reserves are reduced in size, what that might have meant in terms of losing value for the –

A. Yes, I do not know how Featherston arrived at the price he arrive at.

Q. So you saw no evidence about whether or not the value of timber on any of the blocks was taken into account?

15 A. The value of timber was taken into account I think with – I think it was taken into account for example when they, Ngāti Kauwhata mainly, requested a little 100-acre reserve from Mātene Te Whiwhi. I believe there was some timber on that, and that land was selected to be sold as, again, I said I think it was, you know, the utu for the assistance he had provided at the Native Land Court hearing.

20 Q. I see.

A. So in terms of other timber, I cannot think of anything off the top of my head, I know that there was –

Q. I am sure you would have put it in your report.

A. Yes, probably.

25 Q. That is probably the answer.

A. I mean I put everything else – yes.

Q. Do you think that is the answer? That because you did not find anything –

A. Well it is also I may not –

Q. That is the reason why it is not mentioned other than –

30 A. Yes, if it is not mentioned. I mean, I know certain bits of land were eligible for Crown purchase. Like, Wiriharai Te Angiangi’s land at Oau, I think there was some standard timber there, so I think – and that got sold pretty fast. So...

Q. All right. Now, the other matter I was interested in in terms of chapter 7 was that many of the alienations that followed the partitions into smaller blocks where only more or less than 10 owners become the owners and, in most cases, less than five –

5 A. Yes.

Q. Whether you had anything to say about that in terms of the legislation after 1907, because isn't 1907 when they set up the land boards?

A. Yes. I –

Q. And then in 1909 you get the meeting of owner qualification.

10 A. You mean the meetings of –

Q. Owners.

A. Yes, I talk about that a bit. I mean, the term –

Q. Would that have acted as a break if the – more of the hapū had got on to the titles?

15 1600

A. Yes, yes, because what the meeting – what's the technical term for that, I'm sorry, I'm tired, I can't remember, the meeting of?

Q. Assembled members.

A. Assembled owners, yes, that's right. That was how land was acquired.

20 Because first of all, the thing you've got to remember is that a lot of land had already been alienated, but the meeting of assembled owners was especially used with some of the Parewahawaha reserves along the Rangitīkei River and that is again the Foster family. Like first of all, Duncan Foster and his daughter, Marjorie and there was a son there as

25 well, and she succeeded in buying up some of the land around Maramaihoea and Matahiwi, and I think some of the later purchases like around in the 1920s they used meetings of assembled owners. I mean,

30 there were other cases, I think there is at least one case in Te Awahuri, where there was a meeting of assembled owners, this now we are getting into the 60s and 70s, or at least the post-war period and the alienation was stopped by somebody who came to the meeting and said, "look, this is the only land we have, and we want to keep it for our family." And then the other case of assembled owners is of – is of course of Koputara, and that's how Koputara ended up getting its finally very belatedly getting its

Crown grant and its official title was because the owner who owned the land around it, and he had been using Koputara basically as his own property for decades before deciding he finally wanted to buy it, and he went and applied for a meeting of assembled owners, and when they called the meeting they had discovered that the land wasn't legally owned.

5

Q. Yes, so thank you, you covered that well in your report too.

A. But then he gets blocked, so that's the assembly owners do actually block the alienation at the end.

10

Q. Yes. So, would you agree that that may have acted as a break on some of the quick alienation of the blocks?

A. I think it –

Q. Post that 1907 period?

15

A. – I think it depends on the time, I don't – not in the 1910s or 1920s but maybe, yes, maybe after the war, after World War Two but not for Ngāti Parewahawaha it didn't.

Q. No.

A. But when Koputara it did, but you know, by then you're getting into you know, the 60s.

20

Q. Right, all right.

A. But, yes, it was used pretty effectively to get hold of Māori land, Parewahawaha land.

Q. We are going to have Dr Young tomorrow.

A. Yes.

25

Q. We will probably talk to him more about the land boards and the role –

A. Yes.

Q. – of the land boards in this district, but I did want to thank you for your evidence.

A. Thank you.

30

Q. And it is going to be extremely helpful. There was one final question and it relates to the matter that Professor Boast raised with us and that, it was about Ngāti Kauwhata and Ngāti Raukawa from the Manawatū-Rangitīkei regions participation in the wars.

A. Yes.

Q. And the surrender of arms, and Nepia Taratoa, his name keeps coming up, he is a very important chief.

A. Yes.

5 Q. Of course. So, his – is it his relation, Henare Taratoa, who goes to Tauranga at Gate Pā and announces what the Māori rules of engagement will be with the colonial troops during that battle?

A. I don't know, but I guess the only thing I can say –

Q. Maybe the local people can tell us that.

10 A. – yes, I don't know. It is one of the interesting things that again, this is something that Dr Anderson has probably researched, and I haven't researched, and it's really just from thinking about the whole thing of raupatu. It seems like in kind of a funny inversion of things, the people who actually agreed to sign Featherston's deed of purchase and agreed at least – agreed to the purchase, were some of the people on that side
15 were actually people who had engaged in the wars while the people who opposed the purchase and maintained resistance seemed to have been people who didn't, so it's a funny kind of thing. So, you've got people like Tapa Te Whata who – because obviously if he had been engaged in the war, and you know Tapa Te Whata is recorded as you know surrendering
20 his weapons, then you've got the whole thing of raupatu hanging over you. So, it is possible that some of the people who agreed to Featherston's purchase of Rangitikei-Manawatū did so because they were worried that if they didn't participate the land would be confiscated, but I mean that's – I haven't done anymore deeper research on that.

25 Q. All right. Have you seen the list? There is a list that – I am not sure it is a complete list, but it is one that has been reproduced by Professor Boast in his report.

30 A. Yes, I've seen it and I was kind of struck by how few people of the names that I was familiar with from my report were on it, I mean you know, the only one I can think of off the top of my head is Tapa Te Whata, and then I know there were **(inaudible: 16:05:13)** who was at Reureu and he was, I think he might have even been up at Ōrākau and again, he also agreed – he was about the only person from Reureu who signed the deed of purchase. So, I just the impression that they might have been doing that

because they were worried about the confiscation and then also there was the promise of reserves, so when you get a secure title while you know, but the people who were the main leaders of the opposition to Rangitikei-Manawatū like people like Te Kooro Te One, Parakaia Te Pouepa, Henare Te Herekau, I don't think they were involved in the wars. I mean, I don't – I haven't come across any record of that core of Kauwhata non-sellers' being involved in that stuff.

5 Q. All right.

A. So, I just think that's an interesting sort of –

10 Q. Yes.

A. – inversion in a way.

Q. Okay, thank you. Well just for the record that was at page 245 –

A. Okay.

Q. – of Professor Boast's report.

15 A. All right.

Q. Thank you. Well are going to be able to use this material, it is going to be extremely helpful throughout our hearing weeks.

A. Okay.

20 Q. It certainly sets what I have heard on one person say, te tāhūhū o te whare, the ridgepole of the whare.

A. Okay.

Q. From which we are going to look forward to hearing more kōrero about the role of the various hapū in this district in terms of the various reserves that you have assisted with in your report. So, thank you so much.

25 A. All right, thank you.

Q. Now, Ms Cole may have something? Any of the lawyers have anything they wish to follow up? No. In that case.

PHILLIP CORNEGE:

30 Sorry, Ma'am, there was one thing which was the documents that Mr, sorry, Dr Husbands was referring to earlier in relation to the Tukumaru Reserve at Tangimoana.

DCJ FOX:

Yes.

PHILLIP CORNEGE:

And he provided those documents to the Tribunal, but whether you wanted him to just explain what they are because they are probably a little bit meaningless
5 in isolation.

DCJ FOX:

Yes, why don't we do that. What document number are you looking at?

PHILLIP CORNEGE:

If I can, I have them on my computer, so I can, I can bring them up.

10 **DCJ FOX TO DR PAUL HUSBANDS: (CONTINUES)**

Q. Yes, we will just get the document number. #213(L) is the document number for the benefit of all counsel, and it will be emailed to you as soon as we can get it to you.

A. Well I thought that – when I saw that Te Nahu Law, their request for
15 cross-examination, when they had the topics one of them was the little block at Tangimoana and so I sort of went and looked up and I realised that I had not explained how it came to be alienated in my report. So, I went and looked it up, I went and researched it, and so basically the 50 acres which was awarded to Ihakara and Kereopa Tukumarū at
20 Tawhirihoē, that was one of the areas of land that Featherston had agreed to provide to people who had participated and purchased because Ihakara Tukumarū and Kereopa Tukumarū were another two of the Raukawa people who signed the deed of purchase. Now for whatever reason because of all – because it took forever for Featherston to make
25 the Raukawa grants, and then it took forever for them to be surveyed, the land wasn't actually – a Crown grant for the land wasn't issued until July 1877, that is 50 acres to Ihakara Tukumarū and Kereopa Tukumarū. Then a succession order was issued in the court at Ōtaki on 6 September 1881 because Ihakara had died interstate and the Court awarded his
30 interest to Te Haputa Tukumarū who is an 11-year-old girl, and it also

appointed two trustees, one of whom was Kereopa Tukumarū on her behalf. Now, on 21 December 1881, the Crown purchased what was officially known as Carnarvon 376, 50-acre area reserve at Tangimoana, the Crown purchased it from Kereopa Tukumarū and Kereopa Tukumarū and Karaitiana Te Ahu who were the trustees for Te Aputa Ihakara, they purchased all 50 acres of Carnarvon 376 for 250£. And we are in the 1880s the Crown is making more of an effort to protect Māori land, so the purchase had to be signed off.

1610

10 First, the Native Land Court Judge signed off on the alienation of Te Aputa's, Tukumarū's interest by making inquiry as required by the Māori Real estate Management Act, which was a piece of legislation which despite it's name was actually, I think designed to protect Māori lands and then also Alexander Mackay, the trust commissioner who also
15 undertook that royal commission, he also signed out – he was also obliged to certify the alienation under the Native Land Frauds Prevention Act, which was definitely a piece of legislation designed to protect Māori land, and so he signed it off and that confirmed the Crown's purchase on
20 31 March 1882. So I have got a little prissy along the lines of what I read with some pictures, some maps, which I have given to the Tribunal and also there is a document bank of the photos I took of the Crown grant.

DR GRANT PHILLIPSON:

The Māori Real estate Management Act is to protect the interest of minors.

DR PAUL HUSBANDS:

25 Okay.

DR GRANT PHILLIPSON:

Not land. So the vendor must have been a minor...

DR PAUL HUSBANDS:

Yes, she was. She was 11 years old.

DR GRANT PHILLIPSON:

Yes. So that is why there is such an extensive level of checks.

DR PAUL HUSBANDS:

Yes.

5 **DR GRANT PHILLIPSON:**

It is because it is a sale by minor.

DR PAUL HUSBANDS:

Yes. Okay, excuse me.

DCJ FOX:

10 Excellent. Thank you.

DR PAUL HUSBANDS:

(inaudible: 16:11:35)

DCJ FOX:

That is extremely helpful. Anything else?

15 **PHILLIP CORNEGE:**

No, thank you.

DCJ FOX TO DR PAUL HUSBANDS: (CONTINUES)

Q. Well we will release you now.

A. Thank you.

20 Q. Due to be here for so long. But thank you so much for the effort you have put in both into the report and your answers today. Most of which was very informative so thank you very much.

A. Sorry if a I talk to much.

25 **WAIATA TAUTOKO**

DCJ FOX:

And you are free to go. I am going to now just call up CFRT's representatives present today to one, acknowledge the map book that has been produced for the benefit of the Tribunal, and all parties, that is extremely helpful to have maps this size, and I would like that to be given a document number and recorded on our record on inquiry, and it is #A220. So we are going to formally enter that on our record of inquiry and the Anita if she is here. Could she come up? Yes, I wondered if you would not mind giving everything an update on the outstanding research matters that the Crown Forest Rental Trust, is engaged in for this inquiry, and also to raise any other issues that you would like to bring to our attention.

(4:14) ANITA MILES:

Thank you, Your Honour. Ki ngā mema o te Taraipiunara, tēnā koutou. Ka mihi nui kia koutou i tēnei wā.

15

My name is Anita Miles. I am from Crown Forestry Rental Trust. I am the principal advisor of funded services there. So much of my job is involved with the research and mapping side this particular point of this inquiry. So maybe we could start with the map book. If it looks vaguely familiar to you, there is a reason for that and that is because that map book is largely a compilation of already existing maps in all of the researchers reports.

20

1615

All of the reports that are getting presented right now, they've all got maps in them and we've compiled that into that map book. So, like the Judge says, maps and like Grant noted earlier, Dr Phillipson, maps are incredibly important. Now, there are some maps in that report which you won't have seen before, and they belong to a gap-filling report that Dr Robyn Anderson and Dr Terrence Green complicated in which the trust filed recently, and that's the gap-filling of the Crown action and *Māori Response Report* because those maps were completed. I did put them in. We did put them in that map book, so that you would have them.

30

The map book is maybe the first part of a series of map books. I think the challenge was to get you some maps for this hearing week, but thinking beyond that, there will be other mapping done by the trust, and it will be done for gap-filling research reports and I'll speak a bit more to what they are in the minute, because while I filed and update, I realise that not everybody you know gets a chance to read these things, so I'll tell the audience there what the trust is commissioning.

I'm interested in identifying any gaps in the mapping. As Dr Phillipson said earlier, Paul's, Dr Husband's report has got very extensive mapping. When you put the maps together and compile them, you can see that perhaps not all the areas of the evidence are as fulsomely mapped, so if the Tribunal has ideas an indications of where some of its priorities are around mapping, and claimants will have their own ideas, then the trust can probably do some of that gap-filling mapping and compile that into another map book.

So, I had thought the first one would just be extent mapping, maybe a second addition of some gap-filling maps in the reports that have been done and any mapping for the inquiry, and depending on how much mapping we do, if I have got resource left over you will also note that that map book doesn't compile the maps from the blocks narrative I think, and there was a reason for that and that's because there's hundreds of them, and it gave me pause for thought. Maybe there's a third volume compiling those maps or not, but I'll be able to advise you and make some judgments around that. I think the priority would be to spend resource and money on new maps and gaps where those are.

So, that's where that particular mapping project is at, while we are talking about maps, the trust funds map projects for its approved clients. So, Tū Te Manawaroa, and Tū Matanui, and Tū Te Manawaroa have mapping approved, and my colleague, Clinton McMillan at the trust, he's engaging mappers for each of those approved clients and they can directly ask for mapping to be constructed directly to the mapper. The mapper will work to their instruction and they might do that – there's a number of approaches they could take to those projects either you got a really good idea of the maps you want to

do, and you give that to a mapper and they do it, and that's the job done, or you identify mapping on a, as required basis. And I can let the approved clients speak to that more fully what they intend to put to you, that those maps might come out of consideration of how they want hearings, presentations to be and
5 what they would need to support the tangata whenua witnesses. Usually those maps are more hapū and claims based than the technical mapping you're seeing in those map books. So, there's – we still got mapping to come is where I'm going with that.

10 On the gap-filling research side, we think, well the trust has recently filed the Dr Anderson, Dr Green gap-filling report, so you've got that, but I think a report that I spoke to at the last JC that I foreshadowed was a Ngāti Kauwhata gap-filling report.

15 1620

Now, the scoping for that project has been filed with you and the funding for the main project was approved by trustees in late February, about the last week in February this year, and it is intended that Peter McBurney, Mr Peter McBurney
20 undertake that research. If that name is familiar it is because he has done an oral and traditional history report for Tūmatanui cluster of claimants. Peter is back from an overseas holiday and he is commencing that project very shortly. Probably after he finishes his response to the *Rangimārie Narrative* and *Pene Raupatu* paper, he has got a bit of a filing date, I think it is 2nd of April, so he will
25 do that and then we will be into this Kauwhata project. When I last spoke with Peter and we were talking about timeframes, he thought he would probably be able to complete that in a late June date.

Your Honour, you know how these things go and you get into research, maybe
30 timeframes slip a little bit, but we are going to try and keep to late June on a July timeframe, around there, for that project. So there is that one.

Dr Husbands is also doing a gap filling project and this was begun late last year but he had to defer completion of it because he had to prepare for this hearing.

So that is a Ngāti Rangatahi and Ngāti Matakore gap filling project where Paul is going to explore some claims, specific issues relating to those hapū. Now, Paul put out a draft of that report I think in December, so that draft has been with claimants for a while. I think Paul and I talked about, he has a contract that would see him deliver a final in 30th of April, although he has a bit of work to do to follow up some questions from this hearing week, so I think he could make 30th of April. May have to talk to him about that date. So that is that gap filling project.

Those are the main gap filling projects underway. I understand – well, Woodward Law has just reminded me about a waterways gap filling project, that is going to be a project that Te Hono ki Raukawa contract and commission and that project is not underway yet. I might leave it to Woodward Law to speak more to the timeframes around that, they will know better about the availability of the intended commissionee than I would.

I understand that there will be a casebook review and I think that the trust, I mean, that is probably a first and initial suite of gap filling projects. The thing is I think the trust in the future would like some – a bit of direction and guidance and the claimants would as well, where the priorities for any remaining gap filling might lie and that will help, I think, guide any future projects the trust may undertake, and trustees may consider funding.

DCJ FOX:

Thank you. Dr Grant?

25 (4:24) DR GRANT PHILLIPSON TO ANITA MILES:

Q. Tēnā koe Ms Miles and thank you for all your wonderful funding of research. We have got a very great product here this week. Two gaps in the evidence have become very clear to me this week. One is the arrival and reception of Pai Mārire in this district.

30 A. I noted that from a question you asked earlier this week.

Q. Yes, yes. So for me, that is something we need to know more about, and the second is that Featherston said that 431 Ngāti Raukawa individuals

signed the deed of cession for Rangitīkei-Manawatū and we do not know who they are.

1625

5 We know some of the names. Only a few really of chiefs have been mentioned as either signing or not signing and it seems to me that if it is possible to do this, an identification of who those 431 are and it maybe he exaggerated the number. We have no way of knowing and if possible their hapū affiliations. So, those are the two gaps that have emerged for me so far. Although I will note that I think there is quite a lot in terms of
10 the report we are hearing tomorrow. So, you will hear from me again on that.

A. That is incredibly helpful, thank you.

SIR TAIHAKAREI DURIE:

15 If something could be added to the – any further research to be done on the deed and that is whether it is evident that the signatures were added to – that the signatures were obtained before the deed was written. The –

DR GRANT PHILLIPSON:

20 Yes.

SIR TAIHAKAREI DURIE:

– concern is that these signatures were gathered we think from 1864 to whenever it was that it was finally settled, and the deed was drafted the night
25 before the monies were distributed. Which would mean that all the signatures were put to a deed and had been signed before the deed was written.

DR GRANT PHILLIPSON:

Yes. No, I had never – that has not come out from the documentary evidence.
30 So, that is very helpful. So, we will add that and in that sense what we know so far is that Buller went arounds collecting signatures afterwards and we are not sure whether they were shown the deed and it was interpreted to them in that or not. But we could also add this other issue. So, that anyway those – that is

what sort of emerged from this week. It is very clear, things we do not know that we need to know. Thank you, Ms Miles.

ANITA MILES:

5 Thank you.

(4:27) DR MONTY TO ANITA MILES:

10 Q. I have been talking during the week about Māori language sources, particularly the newspapers which are online and not sure that anybody has gone through those thoroughly to see what is actually there in relation to this – in relation to the Inquiry District and I am talking particularly about the 1850's and 1860's of which is a lot of material. But I have not seen it appear in any of the – yes not to date in any of the reports.

15 A. Okay, well there are a number – I believe that there are a number of ways to investigate that and that would be to look back at the research assistant's projects done some years ago for what was then the Taihape and Porirua ki Manawatū Districts. I have not looked at those for some time and I cannot actually speak competently about their contents and what sources they do and do not contain. I noted from one of your questions this week, it may have been to Dr Boast about Māori language sources and whether he was able to use them if he came across any –
20 translate them. I would just note that during the four Raukawa projects, the trust did engage a translator in support of those historians. Precisely for that reason that when they came across Māori language sources they would have the facility to get them translated.

25 Q. The problem is that if you do not have the language, you will not realise that ...

A. The importance of them.

Q. Yes.

30 A. Yes, their significance of them and I mean that is a well-known problem This person was able to give – this was Piripi Walker, was engaged by the trust. Was able to make some assessment and give a bit – a little bit of guidance. So, I take your wider point.

Q. I would be happy if Piripi has gone through the Māori newspapers himself and pointed it out to them.

A. Oh no. I mean he certainly has not done that, and it is hard to commit to such a project what seems – seems something you would do at the beginning rather than the end of a suite of research projects I would have to say.

1630

Q. I agree but there may be something in those newspapers that is critical to this inquiry district that we might miss, and to give you an example in National Park when we were discussing what was Te Heuheu's motives in gifting the maunga. Nobody had come across a letter – sorry, a speech that he had made had been recorded in the newspapers what his view was in the gift, in Māori, but everybody had missed it. So yes, it could be something like that in *Te Karere o Pōneke* which covers this area through the 1850s. I mean, my experience of Māori newspapers with somebody with the language it would not take long to skirt through all those newspapers and identify things.

A. That sounds like a thing, an exploratory investigation and then a decision about whether that is something to pursue or not.

Q. Yes, and we do not often give the language resources enough attention or resource.

A. I hear you, I hear you. I am not an historian or qualified really to talk about the sources, so I have to take my guidance from some historians on that or indeed if the Tribunal has done any exploratory work in that area.

25 **DR GRANT PHILLIPSON TO ANITA MILES: (CONTINUES)**

Q. What we could have is a document bank which collects relevant extracts with an annotated bibliography explaining why they are important. That then could be consulted by all parties as the inquiry goes on and used by the Tribunal.

A. Dr Phillipson, pardon my ignorance, did Dr Jane McRae or anybody else do a Māori language sources document bank?

Q. She has, she has collected sources, but I do not know that she used the newspapers, that is something we would have to check.

A. Mmm.

Q. And they are not translated.

A. No.

5 Q. And I am not saying you would need to translate it, but if you have a collection of relevant extracts from newspapers from an annotated bibliography that would help everybody without requiring perhaps as much resource as otherwise.

A. Kia ora, thank you for that.

DCJ FOX:

10 We will be following up with our requests in writing. It will be up to you as an organisation and the claimants to decide whether or not those are matters you can address. But we do have one further request.

(4:33) TANIA SIMPSON:

15 While we are giving our wish list, thank you, the map book is fantastic and a great reference for us to use throughout the hearings. So in a similar vein, we have had a number of whakapapa charts submitted with evidence and so I just wondered about a collation, a similar kind of collation exercise with the whakapapa that has been submitted so that when we are dealing with a take
20 and the people associated with it, you know, we don't have to kind of try and locate those pieces of whakapapa throughout the record.

ANITA MILES:

Thank you, that is a very useful piece of feedback. I would have to, you know, thinking about that, that would be something perhaps suitable for their client
25 map books, to preface them and to have them reproduced in A3 size perhaps where, I think, you know, it kind of naturally fits there maybe?

DCJ FOX:

Yes, we are not about to get requests from the claimants as to their wish list. Te Kenehi, no?

30 **TE KENEHI TEIRA:**

But I have still got a comment.

DCJ FOX:

All right. Would you like to come up to a mic and make your comment?

TE KENEHI TEIRA:

5 Kia ora tātou, kia ora Taraipiunara. First thing is the, from the – us claimants to
thank CFRT for their very generous work. We wouldn't have been able to
produce these maps that we have on the wall if it hadn't have been for the
support that we have had from Crown Forestry Rental Trust. At a judicial
10 are hoping to have some maps and some further research done on the
Tararua Ranges because it is a huge big gap that is missing for our people.

1635

15 But talking to some of my cousins, they think that there's a need to talk about
Raukawa's price of citizenship, which is a very important kaupapa for us. We
were the first to build a Māori Battalion Hall that wasn't put on a marae in this
area to recognise that fact, and it's an area that we want the Tribunal to think
about, given that it became a body of knowledge for other iwi as well.

20 **DCJ FOX:**

You see, you raise a really important point because we were discussion this at
lunch time, Dr Monty, about the contribution of this district and the thread of
conscription.

DR MONTY SOUTAR:

25 Just referring to what I know about the conscription issue in 1914 and being
applied to the Maniapoto Waikato Region in 1917, 1918 and the stance taken
down here, not at Ōtaki, but at Te Reureu to support the Kīngitanga connection.
Yes, which would be covered in that, and I think that it is interesting that you
raise the Māori Battalion Hall as well, given that somebody else has taken the

name Te Reo Aroha and placed it somewhere else without acknowledgement of the home of the Battalion being in Palmerston North.

TE KENEHI TEIRA:

Kia ora.

5 **DR MONTY SOUTAR:**

Thank you.

TE KENEHI TEIRA:

And the other kaupapa is because of the Māori newspapers or the newspapers in te reo Māori, we've been able to find a lot of our tribal members over the
10 years of the Kotahitanga who – not any subscribed to the newspapers of the Kotahitanga but contributed articles, so hopefully that would be picked up in a way that has been suggested for further research, but once again, thank you very much to the CFRT.

DCJ FOX:

15 Kia ora for that. Ms Hall?

DONNA HALL:

(Mic off 167:37:30 = 16:37:43). It is very draft. It has just been handed out to the committee. Hopefully, we can get some feedback on it by tomorrow morning, but it does provide for a great deal of the technical research to be dealt
20 with in Week 2, and I've consulted with Ms Miles on the research that is ready to be presented so we could make a very large clearance of a lot of that research. So, it is available. We'll have it on everyone's screens at the end of the session as a draft and it does include in it the provision for a judicial
25 conference at the start of Week 2 to just address a few things that are showing themselves now, and there'll need to be some agreement on a tidy and orderly way of addressing the interest.

So, we've got them in the programme and we'll circulate it as soon as this session is closed. That way it can be looked at overnight and discussed, and

if necessary, reconsidered before the end of tomorrow and then it's available for sending out to the many researches that need to get it tomorrow night.

DCJ FOX:

Have all counsel participated in the development of this?

5 **DONNA HALL:**

No, that's why I'm saying we'll put it out after this. They'll have tonight to go through.

DCJ FOX:

I see.

10 **DONNA HALL:**

Only the co-ordinating committee have seen it.

DCJ FOX:

Okay.

DONNA HALL:

15 It gives overnight time. There's not a lot of time on this one. If I can just go straight to the dates, the submissions have to be filed. These summaries need to be in by the 13th of April and that'll mean questions and clarification on the 20th of April and questions in reply on the 27th. So, we do need to let everyone know by tomorrow night.

20

1640

DCJ FOX:

Yes, well we have time tomorrow in the morning we will have to deal with it because we will be finishing by the latest 1.00 pm tomorrow, but we have not –
25 have we finished, Ms Miles? The Tribunal will follow this up with a wish list.

ANITA MILES:

It would be incredibly helpful to see that in a direction.

DCJ FOX:

Yes, thank you.

ANITA MILES:

Yes, kia ora.

5 **DCJ FOX:**

Thank you, and Dr Phillipson has a question.

DR GRANT PHILLIPSON:

It is actually for Te Kenehi, the *Kotahitanga* newspapers that you referred to, are they in a public repository where a researcher would be able to find them?

10 **TE KENEHI TEIRA:**

I think so because I was able to tap into some of them online.

DR GRANT PHILLIPSON:

I see. Okay, thank you.

TE KENEHI TEIRA:

15 Yes. Kia ora.

DCJ FOX:

Well thank you, Ms Miles.

ANITA MILES:

Kia ora.

20 **DCJ FOX:**

Now, I just want to also for the record identify the article that Dr Soutar referred to yesterday. It is taken from *Te Karere o Pōneke*, it is dated 10 December 1857 and it is entitled Te Moni and it is Volume 1, number 12, page 2, and that will be put on the record as well for all counsel to review at your leisure.

25

DR MONTY SOUTAR:

For those counsel who do not know the website, you can find it on *Niupepa Māori*, and you can just look it up.

DCJ FOX:

- 5 Now, we presume you will be taking instructions on the proposed agenda and we will hear from you tomorrow about that. Yes, thank you. Any matters that you wish to raise, Ms Cole?

JACKI COLE:

No thank you.

10 **DCJ FOX:**

Any matters any other counsel –

UNSPECIFIED SPEAKER: (16:42:05)

- 15 I would just like to note just in terms of the draft timetable, as members of the coordinating counsel committee we just had a copy passed over to us just now, so we haven't had a chance to look at that in any detail yet.

DCJ FOX:

- 20 Right, thank you. Can you compare it to our timetable as well? You have taken those dates from our timetable have you, Ms Hall? Yes. So I will hear from you in the morning, all of you, about that, and we have now come to the end of the day.

HEMI TE NAHU:

Sorry, Ma'am.

DCJ FOX:

Mr Te Nahu.

25 **HEMI TE NAHU:**

Yes, sorry Ma'am. I just wanted to raise with you the issues in relation to your decision in relation to the eastern boundary. I am not too sure if you have issued anything yet, and they were subject to submissions.

DCJ FOX:

5 You are referring to –

HEMI TE NAHU:

To the extension of the eastern boundary and you sought submissions from counsel on that.

DCJ FOX:

10 No, we have not yet, but we will very soon.

HEMI TE NAHU:

Thank you.

LEO WATSON:

15 May it please the presiding office, just as a matter of courtesy I am just seeking respectfully leave to withdraw at the end of today, I am unable to attend tomorrow but my clients will be present here tomorrow, thank you.

DCJ FOX:

20 All right. We have concluded now. I am going to give the time over to our hosts to complete our sitting today. Thank you.

HOUSEKEEPING (AWHINA TWOMEY)

MIHI WHAKAMUTUNGA (KAUMĀTUA)

25 **KARAKIA WHAKAMUTUNGA (KAUMĀTUA)**

HEARING ADJOURNS: 4.45 PM

HEARING RESUMES FRIDAY 13 MARCH 2020 AT 8.56 AM**MIHI (DENNIS EMERY)**5 **KARAKIA TĪMATANGA (DENNIS EMERY)****HĪMENE****HOUSEKEEPING (AWHINA TWOMEY)**

10

(09:02) DEPUTY CHIEF JUDGE CAREN FOX: (MIHI, TIMETABLE)

Mōrena. Welcome to the final day of this week's hearing of the Ngāti Raukawa, Ngāti Kauwhata, Ngā hapū o Te Reureu me ērā atu iwi o tēnei takiwā, the final day of the hearing for this week.

15

We will begin today with a short judicial conference I think about the agenda for the next hearing week. Ms Hall, I understand, we have a copy of an agenda I hope ready? A possible agenda, is that correct?

20 **(09:03) DONNA HALL: (MIHI, TIMETABLE)**

Good morning Ma'am. The agenda was sent out last night. I have only just had a chance to speak to some counsel but perhaps, if you were just to invite anyone who has comments on it.

25

The only thing I have been told is that the starting time is nine. That is not clear, it is just the way it was set out. But the starting time is intended to be nine o'clock every day. That can be tidied up.

30

I do not know of any other changes. Most of the counsel I have spoken to, certainly the front bench, were happy with it.

There may be pieces of paper handed in with other items for consideration in the judicial conference.

DCJ FOX:

All right. Anybody else wish to add to or indicate an alternative position?

(09:04) PETER JOHNSTON: (APPEARANCE, TIMETABLE)

5 Thank you, Ma'am. Ma'am, just for the record, it is Mr Johnston appearing for this morning taking over from Ms Martinez.

Ma'am, there are three areas that I wish to speak to relating to the documents that were sent out last night and they relate to the proposed JC at the start of the hearing week, the reports proposed to be heard and finally, I have some
10 submissions made regarding day five of the proposed draft timetable.

Ma'am, in terms of the proposed judicial conference suggested for the first day and the topics proposed, it is unclear what the agenda items are as a whole.
15 Can I suggest that our colleagues from Woodward Law set out clearly what their concerns are and what they want to raise as agenda items so that these can be properly considered, and we can obtain informed instructions from our clients and file written submissions? At the moment Ma'am, in my submission, they are unclear as to why they are agenda items and the rationale behind
20 them.

On first appearance, it does not appear to be something that requires the Tribunal's precious hearing time and, in my submission, can be dealt with on the papers perhaps. But it really is unclear as to what those agenda items mean
25 for the claimants, Ma'am, that we represent. That is in relation to the judicial conference.

DCJ FOX:

Yes, thank you. Can you –

PETER JOHNSTON:

30 I do have also – yes –

DCJ FOX:

Sorry.

PETER JOHNSTON:

– Ma'am, there are two other areas in relation to the timetable that I could perhaps discuss now, or my colleague wants to respond?

5 **DCJ FOX:**

Yes, no, discuss it now so we do not have to get to stand up again.

PETER JOHNSTON:

Thank you, Ma'am. In terms of the reports to be heard, the proposal to hear technical reports all in one week, does not appear to align to previous directions
10 which provided that the remaining reports, excluding land of course, would be woven throughout the northern and southern hearing weeks. I do not have a copy of the direction but understand that was at #2.6.80.

There is also a question of whether these reports will be heard in full or be
15 divided into north and south too. That is unclear from what has been provided. And again, if divided this means that the reports and the witnesses will need to be brought back again for the southern hearing weeks and perhaps resulting in additional duplication. That is just unclear from what has been proposed. If they are to be heard in full, as proposed in the draft timetable or in the proposed
20 timetable Ma'am, it is likely that more time than currently provided for each report will be necessary.

Finally, just in relation to Day 5 of the proposed timetable. I note that
25 *He Iti Nā Mōtai* is referred to on the morning of Day 5 and, as has been indicated earlier on in the week, it is not clear on the status of this report. And, if it is to be presented, can we presume that it can be cross-examined on?

Finally, Ma'am, in relation there is a reference to Mr Piripi Walker on the timetable, it is also not clear what report he will be presenting in the timetable
30 as proposed. It may be I understand he was involved with *He Iti Nā Mōtai*, but it is not clear on that timetable.

Ma'am, probably the major difficulty for us is that we only received the timetable late last night, so we have not had an opportunity to fully discuss it with the clients we represent. For two reasons: (1) it is just unclear as to what has been
5 requested and the reasons why and so it has been difficult to obtain instructions.

Those are my submissions Ma'am.

DCJ FOX:

Anyone else? All right. Ms Cole.

10

(09:09) JACKI COLE: (TIMETABLE)

Thank you, Ma'am. Well, Mr Johnston has actually dealt with a number of the concerns that the Crown had also with the draft in terms of the lack of clarity as to what it is that is actually proposed to be called in that hearing week in terms
15 of different aspects of the different reports. Presumably, that is because this has been put together at very short notice, which raises the concern for the Crown and presumably also for the Tribunal, in terms of the lead up to this phase of the PkM Inquiry has been long in coming and it is perplexing as to why it is that hapū claimants are not ready to proceed given the amount of time that
20 they have had to prepare.

It does seem that this draft timetable has been, with the greatest of respect, hurriedly put together for the purposes of not losing the hearing week which the Tribunal has set aside, but whether that actually does address the real concerns
25 for the Tribunal in terms of having the evidence presented in a manner which is of most benefit not only to the Tribunal but also to the claimants, which of course picks up on that point of the interweaving which Your Honour had directed would occur for the remainder of the technical evidence. There is also of course the concern of the amount of time that is going to be needed to prepare for this
30 many technical reports in one week.

I do wish to question the need for hearing presentation of the Block Research Narratives – Dr Phillipson obviously is on top of that one, he

has just nodded at me – and we also had questions about the *He Iti nā Mōtai* and Mr Piripi Walker which obviously needs to be clarified.

5 The Crown of course is not going to stand in the way of a hearing week going ahead but we are just wanting to ensure that it is of most benefit to the Tribunal in terms of the scarce resources of the Tribunal. So it is really a matter for Your Honour.

DCJ FOX:

Thank you. Ms Hall.

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(09:11) DONNA HALL: (TIMETABLE)

If I can start first with the interweaving of hapū. The proposal was to follow the way that the decisions on alienation occurred and that would mean that the hapū of Te Awahou Purchase would go first. They indicated some time ago they would not be ready for week 2 and so all what we have done is accepted that is the indication of counsel who is sitting here at the front bench and we have not questioned that. In the timeframe available, we have just done the best we can because holding the week has been seen by the forum to be the more important concern. So if that addresses my friend's first point.

20

The second is that the Block Research Narrative being led by Mr Walzl was a suggestion we put in because it will assist the room to understand how to use his marvellous resource. All of the families are now coming together. They are understanding they have to get their hapū narratives in and his block research can be extremely helpful to them, but it is communicating how to use it so that is why we put him first. It was purely because I know the hapū are going to have to start drafting and it was thought that he could assist there.

25
30 The issue of *He Iti Nā Mōtai* and its status is, we understand it and left it. It is a resource that is available for any of the hapū to draw on. If they choose to do so, of course it is open to examination.

So, is there cross-examination available for Dr Loader the answer is yes. Will there be cross-examination of Piripi Walker, the answer is yes. I did get a chance to speak to Mr Walker yesterday he will be available.

- 5 This is intended to be early notice out to all experts listed that week two is happening and here are the timetables. The most important point we need to get through is that the summaries need to be ready by the 13th of April.

- 10 So yes, it was done in a hurry, but we do think it can work but we do need to give as much time as possible to the technicians. Once this direction is given, it will go out today to all the researchers who are listed. That is our proposal.

DCJ FOX:

Ms Hall, if the hapū are not ready why don't we just abandon that week and try and schedule another week later in the year?

- 15 **DONNA HALL:**

- The position of Te Hono and the forum convenors who are here said a lot of work has gone into preparation and we do have to deal with this research at some stage. It would be extremely concerning to them to give away the date, there is this very large line-up of research which does need to be heard and this
20 week would be available to hear it. So the room is here, and the forum chairs are here but I would think there will be a great deal of discomfort if they thought they might lose this date; waited a long time to get started and we would be able to proceed if the focus goes on to the technical research.

DCJ FOX:

- 25 Well, thank you. I can indicate now that we will not be making a decision on this today. We will be waiting and give a fully considered view by way of written direction next week.

(09:15) DR GRANT PHILLIPSON:

- 30 Tēnā koutou katoa. Just a couple of brief comments. The first about the block narratives. It is highly unusual that they would be presented and orally

cross-examined purely because of the nature of the information. It is much more sensible if there are questions to have them in writing. But possibly the purpose that you have for calling him could be dealt with through a research hui and maybe a number of research hui if the CFIT is able to get on top of that
5 because I can see how that would be useful for the claimants.

The second point is that those technical reports that are here are not capable of being filleted in such a way that they could be heard north and south because those are district wide reports and they deal with Te Āti Awa, Ngāti Awa as well
10 as Raukawa. So, if we are to hear all of these it would be for the Raukawa and Kauwhata and affiliated groups content and not for a north and south because when you are dealing with a subject like public works you cannot just look at two or three pieces that happen to be in the north. You need to read the whole material about the legislation and the policies and how and it is only looking at
15 it as a whole that you can see patterns and the same with the local government where there are lots of examples in that report of different blocks and what happened in terms of rating.

So, I just think while the reports we have heard this week fitted very well into
20 the north south progression I do not think that these reports do –

DCJ FOX:

Anyway, thank you Dr Grant, we will not be –

25 **DR GRANT PHILLIPSON:**

– and I will stop there.

DCJ FOX:

– engaging in conversation about that. The Tribunal will make a decision and
30 we will issue with written direction next week.

JACKI COLE:

Your Honour, can I just alert one other thing and that is the proposed timing that was suggested yesterday about the timeframe between the filing of the

summaries and the filing of questions of clarification. Ms Hall yesterday suggested that only be one week and the Crown would have some serious concerns about meeting that deadline. If you could just factor that in as well.

5 **DCJ FOX:**

Yes, thank you.

JACKI COLE:

Thank you.

10

DCJ FOX:

All right. Thank you very much for all the work that has gone into that and we will give it full consideration, thank you. We will now move on to the item on our agenda which is the presentation by Dr Young and the various authors of this report that has been produced, Ms Fitzgerald, Ms Metuamate, Ms Parata, Mr Taipana, Mr Walker and Dr Grant.

15

(09:18) JOSEY LANG:

Thank you, Ma'am. Yes, the final report for presentation this week is document #A199 on the record of inquiry, and this is the report entitled *Rangatiratanga and Kāwanatanga – Land Management and Land Loss 1890 to 2000*. So, I would ask the witnesses to come and sit at the table. Ma'am just one point, Dr Metuamate needs to attend a tangi this morning. He can be here until 10.30 and then he needs to depart. So, what I suggest is that both him and Ms Parata will present their summary and then answer any questions that arise and then at 10.30 he will need to depart and then if there are any questions arising that the panel feel that Dr Metuamate would be better to answer that those are put in writing.

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30 **DCJ FOX:**

I am sorry, Dr Metuamate, I got your title wrong. Thank you. All right.

JOSEY LANG:

Thank you. So...

DCJ FOX:

I am not sure. It depends on what part of the report he wrote.

5 **JOSEY LANG:**

Yes, So, if questions arise that fall within the scope of his report then the panel will indicate, and they could be put in writing for him. So, if I could just ask the witnesses briefly to introduce themselves and then Dr Metuamate and Ms Parata will read the document summary which is #A199(d) on the record of
10 Inquiry.

DCJ FOX:

Thank you.

(09:20) DR ARETI METUAMATE: (INTRODUCTION)

15 *Tēnā tātou katoa. Ko Areti Metuamate ahau. He mokopuna nō Ngāti Kauwhata, Ngāti Haua. He tauira tawhito hoki ahau o tēnei kura o Hato Paora.*

[Interpreter: Areti Metuamate is my name. I am a descendant of Ngāti Kauwhata and of course I am an all boy of Hato Paora as well.]

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(09:20) KIRI PARATA: (INTRODUCTION)

Tēnā koutou. Ngā mihi nui kia koutou. Ko Kiri Parata tōku ingoa, ā, ko Ngāti Tūranga, nō Raukawa. Ko Te Āti Awa ki Waikanae, ko Ngāti Toa, Ngāti Ruanui and Ngāi Tahu ōku iwi. Tēnā koutou.

25

[Interpreter: Again, warm greetings to everyone. Kiri Parata is my name. Ngāti Tūranga and Raukawa, Te Āti Awa ki Waikanae, Ngāti Toa.]

(09:20) DR GRANT YOUNG: (INTRODUCTION)

30 *Tēnā ra tātou katoa. My name is Grant Young, my whakapapa takes me to the Northern Hokianga and to Scotland, England and Ireland. The Northern Hokianga is also the source of my whānau's Catholic faith. The Marist Brothers attempted to educate me at secondary school in Auckland and*

I acknowledge the Marist tradition at Hato Paora. I later completed degrees in history at university. I have worked in the Waitangi Jurisdiction for claimants since 1999 and for iwi in Treaty settlement negotiations with the Crown since 2008. I returned to Law School in 2017 and I have nearly finished an Honours
 5 Degree in law. I currently work as a Judges clerk at the High Court at Auckland.
 Kia ora.

(09:21) ELJON FITZGERALD: (INTRODUCTION)

*Tēnā tātou katoa. Ko Eljon Fitzgerald tōku ingoa. He uri whakaheke o
 10 Ngāti Whakatore, Ngāti Manomano. He whāngai mokopuna o Ngāti Kauwhata,
 Ngāti Rangatahi. Tēnā koutou.*

[Interpreter: Eljon Fitzgerald is my name. I am a descendant of
 Ngāti Whakatore and Ngāti Manomano. I am a whāngai o Ngāti Kauwhata and
 15 Ngāti Rangatahi.

The title of expert witness sits uncomfortably with myself although I would admit to being one of the co-authors of the report and welcome the opportunity to present today to everyone. Tēnā tātou.

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(09:22) DR ARETI METUAMATE: (#A199(d))

Kia ora anō tātou. Our first page, our first, second and third actually are our mihi and our introductions, which of course we have undertaken already now, albeit in a more brief manner. So, I wonder if it is all right, Your Honour, if I start
 25 at .9? Which is on page 3? This is a summary of a research report called, “Ngāti Raukawa, Rangatiranga and Kāwanatanga.” Land Management and Land Loss from the 1890s to 2000, Wai 2200, #A199. It was commissioned by the Crown Forest Rental Trust and is a Ngāti Raukawa Historical Issues Research Report prepared for the Porirua ki Manawatū Inquires. The report
 30 was completed in June 2017.

READS SUMMARY OF REPORT #A199(d)

Summary of Report, Overview.

From around 1820, hapū of Ngāti Raukawa and other related iwi settled on the west coast of the lower North Island in the Manawatū and Horowhenua in a series of heke initiated by Te Rauparaha. The relationships they established with the land and with the people already there were complex and layered, 5 forged through conflict, intermarriage, shared whakapapa and through tuku whenua. Connections with the lands and the waters of the coast were reflected in patterns of settlement and resource use which would continue through generations. In the midst of this period of change, Pākehā arrived bringing with them new technologies of production and warfare. They also 10 brought bibles, a treaty of cession, and legal documents which they used to appropriate land. The impact on Ngāti Raukawa would be profound.

The report examines a large number of diverse issues relating to land and autonomy to consider the relationship between rangatiratanga, as it was 15 exercised by leaders of Ngāti Raukawa, and Kāwanatanga, as it was exercised by the Crown, through the twentieth century. Rangatiratanga is the exercise of chiefly authority over land, resources and people which is the hall mark of an independent iwi. It is fundamentally a personal relationship between an iwi and their leaders and it is a relationship bound by whakapapa, by descent from 20 common tūpuna. Rangatiratanga is central to the mana of the iwi and the ahi kā the iwi holds over their lands and resources.

For the purposes of this report, the iwi and hapū of Ngāti Raukawa comprises all those who participated in these migrations. Unless the context refers 25 specifically to Ngāti Raukawa of Ōtaki, they include those of Te Reureu, Ngāti Kauwhata, Ngāti Huia and others.

The report is one of four Ngāti Raukawa specific historical projects commissioned by the Crown Forestry Rental Trust. The two key objectives of 30 the project were to:

- Provide an overview of land management issues and land loss from around 1890 to around 2000 (that is, from the late nineteenth century through the twentieth century); and,

- Discuss whether leadership was assisted – or thwarted – in efforts to exercise rangatiratanga.”

Now we are talking about Structure.

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“The report is organised around seven key themes each considered in a section of the report:

- Quantitative land loss;
- 10 • Land alienation by sale (to explain the experience of land loss of Ngāti Raukawa);
- Crown purchase activity from the 1890s through the twentieth-century;
- Administration of Ngāti Raukawa lands;
- Housing;
- 15 • Title re-organisation;
- Ngāti Raukawa organisations.

The first section provides a quantitative assessment of land loss suffered by Ngāti Raukawa in the twentieth-century. This is followed by two sections which
20 provide more detailed consideration of the experience of the iwi in land alienation. The first examines loss of land through private purchase, which was the most significant mechanism for alienating Ngāti Raukawa from their lands in the twentieth century. The Ikaroa District Māori Land Board was established to manage land alienation in 1909 and it along with successor agencies
25 controlled the flow of land out of the ownership of iwi. Specific examples examining the particular experience of landowners through the twentieth century are discussed.”

Moving on to point 16, page 6.

30

The section on Crown purchase activity is more limited in scope, due to the limited extent of Crown purchasing in the region in the twentieth century. Three particular areas are considered. They are the Crown’s dealings with Ngāti Raukawa interests in Kāpiti Island, the Crown acquisition of certain areas

of land near Ōtaki township and the alienation of Papangaio by the Crown. The section is certainly not exhaustive in considering Crown purchases in the takiwā of the iwi in the twentieth-century, but it addresses several of the more significant which have been located.

5

The fourth section of the report discusses the administration of the lands of Ngāti Raukawa while that land remained in their ownership. The particular focus is on leasing, land development schemes at Matararapa, Ōhinepuhiawe, Ōtaki and Te Reureu, the Crown's dealings with iwi land in the Ōtaki Borough which carried a heavy rating burden and was vested in the district Māori Land Board under special legislation and difficulties relating to access arising from the partition of blocks. All of these activities were managed by a burgeoning bureaucracy controlled by the Crown in its exercise of kāwanatanga and left little space, if any, for the exercise of rangatiratanga.

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As the twentieth-century progressed, housing became a matter of some concern to the Crown and the housing conditions of those living in Ngāti Raukawa kāinga at Ōtaki, Tainui Pā, Levin, Shannon and Kai Iwi Pā came to the attention of government ministers. A new Māori housing policy was established in 1935 and was maintained through to the 1970s. The fifth section of the report examines the development of this housing policy from the 1930s to the 1960s and housing surveys undertaken in Ngāti Raukawa kāinga by the Crown. It also looks at the division of Māori land by the Native Land Court for residential housing sites and the impact of the Town and Country Planning Act 1953 on the subdivision of land for housing, general partitions and the capacity of Māori landowners to use their land.

The sixth section of the report deals with the general theme of title re-organisation. As the twentieth-century progressed, the title system established by the Crown and administered by the Native Land Court became more and more difficult to manage. A combination of the division of land into smaller and smaller blocks and succession to the interests of deceased owners left the blocks with large numbers of owners holding relatively small shares. From the mid-twentieth century, the Crown established a number of policies to

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address these trends and over time these policies became increasingly compulsory. That is, the consent of the landowners whose shares were affected by Crown actions was not required. These policies included defining who was Māori on the basis of blood quantum rather than descent, establishing
 5 a conversion fund to acquire ‘uneconomic interests’ or interest below a specified value in a block and converting Māori land to European land by statutory declaration. Kāwanatanga was exercised in all of these policies with little or no regard for rangatiratanga.

10 The final section of the report provides a brief discussion of the activities of several organisations associated with Ngāti Raukawa and which demonstrate the limited scope the Crown permitted the exercise of rangatiratanga. They were the establishment of the Raukawa Marae Trust in the 1930s, the re-organisation of the Otaki and Porirua Trust in the 1940s and the creation and
 15 development of tribal executives and marae committees from the 1940s to the 1970s. The latter, in particular, were founded and initially managed by the welfare officers of the Department of Māori Affairs. Over time, Ngāti Raukawa came to exercise a level of independence and these organisations, along with the Raukawa District Māori Council became important locations for the exercise
 20 of rangatiratanga.”

(09:31) KIRI PARATA: (#A199(d))

READS REPORT SUMMARY #A199(d) FROM PAGE 7, PARA 21

Section C Methodology.

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The report is based primarily on archival records generated by the Ikaroa District Māori Land Board, the Native Land Court, the Native Department, the Māori Land Court and Department of Māori Affairs. It also draws on the records of other government department and official
 30 publications and reports of government departments. The report also draws extensively on the draft report prepared by Ms Woodley on local government issues. The section on the alienation of land is based on quantitative data compiled by Walghan Partners for their block research narratives project.

Key Conclusions

22. The overarching theme drawing the diverse strands of the report together is 'rangatiratanga versus kāwanatanga'. The problem with characterising the relationship between rangatiratanga and kāwanatanga in this way is that it creates a false dichotomy. It is not that rangatiratanga ceased to exist or that it could not be exercised or influential but that it was always subject to kāwanatanga. Where rangatiratanga and kāwanatanga were in conflict, kāwanatanga would always prevail. From 1905, with the establishment of the district Māori Land Boards appointed by the Crown, and only one Māori member (who was not necessarily of Ngāti Raukawa), a Crown bureaucracy grew over the twentieth century and came to affect every aspect of Māori life by the late 1980s.

Initially focused only on land (alienation, succession, division) and adoption, this Crown bureaucracy came to exercise control as well over finance, land development, welfare, housing, roading, sanitation, water services and communal activities at marae or gatherings elsewhere for hui. A substantial body of legislation gave effect to this bureaucracy which also needed a Court to be an independent decision-maker. Such was the extent of the activities of this bureaucracy and the diversity of Māori experience that the legislative framework was modified annually to authorise the bureaucracy to deal with Māori interests, to validate decisions already made and to address complaints from Māori.

Through the twentieth century significant sums of money were accrued from the sale and lease of land and held by the Crown bureaucracy because they could not be distributed. These funds were held in trust on behalf of Māori landowners who were either deceased or whose address was not recorded. They were also administered by the Crown bureaucracy and applied to various purposes. Investments were designed to protect the capital but the benefit to those for whom the funds were held in trust was seldom clear and substantial sums were, on several occasions, diverted elsewhere for other general purposes. The disposition of the income earned on investments were not

always treated as funds held on trust either. While legislation was enacted to distribute these funds for the general benefit of Māori residing in the Māori land district, no evidence has been located to show steps were taken to give effect to it.

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25. Many of the actions of the Crown bureaucracy had to be submitted to the Māori land Court to be validated (though the Court's powers were also subject to executive control and many actions required ministerial approval). At the margins were local authorities who demanded payment of rates, arranged the alienation of land when they were not paid and initially from 1953 and more extensively from the late 1960s had considerable control over the way in which Ngāti Raukawa could use and occupy their lands. The Court's powers to provide land was fettered from 1967 and consent of the local authority was required. District schemes established land use requirements and rural Māori land which was used for farming purposes was generally acceptable. It became more difficult for Ngāti Raukawa to build houses on rural land (or subdivide residential sections for this purpose) and there were greater constraints when establishing or refurbishing and upgrading marae. The Court could create marae reservations without regard for planning rules but planning rules applied to that land and land use consents were necessary to get building permits. Local authorities authorised by the Crown had control over the subdivision of land for residential dwellings and not partitions of land but land use controls (zoning and building) always applied. They could be ignored by Māori landowners (and perhaps often were) but this was not the case with housing (where mortgages to the Crown meant dwellings had to be permitted) or with marae.

There was no place for rangatiratanga in this structure and no room was made for it. Rangatiratanga, to the extent it could be exercised, worked informally to influence the Crown bureaucracy but had no control. Perhaps the most forceful example of this was the attempt by the Department of Māori Affairs to evict an elderly man from his cottage on land at Matararapa included in the Manawatū Development Scheme. Prominent leaders of a local hapū of Ngāti Raukawa

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intervened and senior Crown officials in the department backed down. The error was not acknowledged but the action was corrected.

Moreover, rangatiratanga was further undermined by Kāwanatanga in
5 Government policy which affected rural Māori communities. Government policy specifically encouraged or required Māori to move away from their rural homes to reside near urban centres where Crown officials considered suitable jobs were more freely available and the housing scheme was designed primarily to provide whānau with homes near places of employment.

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While the Ngāti Raukawa takiwā included one major urban centre and several small provincial towns, many moved further south to Wellington where there was greater employment opportunity. There they were provided with homes by the Department of Māori Affairs, but this also meant severing connections with
15 their tūrangawaewae because getting a loan to build a house meant converting interests in land elsewhere, closer to their ancestral lands, into cash for a deposit or to repay the mortgage.

However, while other iwi were affected by urbanisation, for Ngāti Raukawa, the
20 experience was far more nuanced. The hapū of Ngāti Raukawa did not live disconnected from the urban centres in Palmerston North and Wellington or the towns at Marton, Feilding, Levin, Foxton, Bulls, Shannon and Ōtaki. Indeed, through the twentieth-century, a railway line connected them all together. These hapū lived apart from the Pākehā communities which developed nearby
25 but their dislocation was a consequence of social norms rather than physical distance.

In the first half of the twentieth century, Māori were increasingly unwelcome in colonial towns. Sites which had been occupied in towns such as Wellington,
30 Whanganui (Moutoa) and Auckland (St George's Bay and Mechanics Bay), and even at Ōtaki (Mangapouri Market Reserve), by iwi when they brought their goods to the colonial metropolis to trade went quiet as they no longer made the journey. Officials frankly observed that the Pākehā residents of Ōtaki were keen to see those Māori residing in the town moved out to Tainui Pā (and the

borough council certainly pursued this outcome in its dealings with rates on Māori land).

5 Those who remained on their whānau lands in the takiwā were, if they met the capital and income requirements, able to build a house with assistance from the Department of Māori Affairs. Nevertheless, Ngāti Raukawa, like other iwi, faced the social problems connected with lack of resources and a limited land base at a time the New Zealand economy was primarily focused on agricultural production. There was not enough land, jobs and income to support the iwi in the takiwā. The Crown targeted those who could be moved and settled elsewhere to take advantage of employment opportunities but in doing so undermined the cohesion of Ngāti Raukawa communities. Those who left were usually required to alienate their interests in the tribal estate to fund the Crown's housing and resettlement policies by transferring capital from ancestral landholdings to a house in a town or city. This had a profound effect on rangatiratanga.

Ahi kā, excuse me. Ahi kā is central to the exercise of rangatiratanga. Rangatira have a personal and reciprocal relationship with their iwi, defined by whakapapa, and it is through this relationship that they exercise rangatiratanga. While whakapapa always endures, ahi kā is based on physical presence of some form. Rangatiratanga is a relationship which requires physical presence or ahi kā. The land title system created by the Crown undermined this relationship because it allowed those who were unable to maintain their ahi kā by physical presence to make decisions about land without regard for rangatira. Many landowners holding interests in the rohe held tenaciously to them as a symbol of their ahi kā through the twentieth-century despite residing elsewhere. However, the title system permitted people who no longer directly occupied the land they held interests in to make decisions about that land independent of their rangatira and in consequence undermined rangatiratanga.

The inability to maintain ahi kā by physical presence was often a central consideration in the alienation of land. Those who lived on or near land tended not to be the protagonists in any actions which could lead to the alienation of

land. Indeed, they were often the key figures in ensuring that rates, in particular, were paid to avoid the scrutiny of a local authority and the Court. There were many reasons for selling land: difficulties with the title (either the size or shape of the land, difficulties or absence of access, long deceased owners for whom
5 appointing successors would be a complex and arduous task), pressure from local authorities for payment of rates or the state of the land (noxious weeds), family disputes about the occupation of the land, to release capital to repay debt or obtain a mortgage or to improve an existing dwelling or buy furnishings.

The marginalisation of owners through the long-term administration of the land
10 also influenced its subsequent alienation. Forty-two year leases administered by the Ikaroa District Māori Land Board and its successors (21 year lease with a right of renewal for 21 years) separated Ngāti Raukawa landowners from their lands for two to their generations and in separating landowners from their land for so long, there was often no one available and able to take over the land
15 when the lease expired (along with the agency of the Māori Trustee, which was inherited from the board) and such land was generally sold, usually to the former lessee.

This is clearly evident with the Ōtaki vested lands, which was administered
20 initially by the board and subsequently by the Māori Trustee for two to three decades. Once re-vested in the owners in the 1960s, the blocks rapidly accrued rate arrears and were sold. In many cases none of the Ngāti Raukawa owners were involved in these processes. More generally, in the second half of the twentieth century, local authorities would seek the alienation of land for unpaid
25 rates, insisting that no living owners could be located (or, alternatively, none who were prepared to act as nominated occupiers for the service of rate demands). These actions would be facilitated by the Māori Land Court, which would vest the land in the Māori Trustee under s 438 to sell, and the Māori Trustee would arrange the sale of the land according to the terms of the
30 trust.

36. There is no question that the Crown's approach to dealing with the 'problem' of unoccupied or unproductive Ngāti Raukawa lands evolved during the twentieth century. Until the late 1920s, this so-called problem was simply

solved through alienation to Pākehā settlers. This continued to be the Crown's solution for Ngāti Raukawa lands through the 1960s and 1970s. Section 438 trusts and the Māori Trustee were used for precisely this purpose. During this period, longstanding issues with the title system which the Crown attempted to address with different levels of compulsion through Conversion and 'Europeanisation', were key drivers in the difficulties associated with arranging occupation of Māori land.

Such difficulties were compounded when landowners lived away from the takiwā, especially when they could not easily be contacted or informed about actions affecting their lands. However, the difficulties created by the title system could be just as problematic for those who maintained their ahi kā and continued to occupy their ancestral lands.

It is also clear that the Māori housing scheme established in the mid-1930s arose from a genuine concern for the poor living conditions and poverty of Māori (though it came more than a decade after similar benefits were first available to Pākehā). However, despite high minded rhetoric, the scheme was not designed to meet the needs of Māori communities but to provide housing to Māori at no cost to the Crown. Funds were advanced as loans and secured by mortgages against land or by capitalising the Family Benefit. Interest was charged and added to the debt. Income was necessary to service the loan and repay it. Those who lived in poverty were expected to bring capital in the form of land interests to this joint venture if they wanted a loan to build a house. The housing scheme evolved through several phases in response to demand, but this basic framework remained unaltered from the 1930s to the 1970s.

Those who had no land or income could obtain a state loan, sorry, a state house for rent from the State Advances Corporation but the numbers available in towns in the Ngāti Raukawa takiwā and set aside for Māori were low. Ngāti Raukawa leaders did participate in committees established to identify need and ensure houses were provided to those living in difficult circumstances. However, the committees were dominated by government officials from the Department of Māori Affairs and other government departments and, like so

much of Māori life for most of the twentieth century, it was a Pākehā bureaucracy made up of career public servants who made the decisions. Ngāti Raukawa leaders were not token members of these committees as they were a crucial interface with iwi, but they were certainly marginal figures.

5

I'm at 39. Perhaps the most significant development in the late twentieth-century for Māori was the growing independence of the Raukawa District Māori Council and the various tribal executives and marae committees which supported the council. These were organisations which reflected and gave voice to rangatiratanga within Ngāti Raukawa. They were distinct from the bureaucracy in the Department of Māori Affairs which still managed so much of the resources and life of Māori communities and made decisions for them according to and within the limits of Crown policy. Indeed, incorporating Māori Welfare Officers, who were the interface between the council and the Crown, into the Department of Māori Affairs was a major step backwards for the hapū and kāinga of Ngāti Raukawa.

The council nevertheless provided an independent voice for Ngāti Raukawa and iwi leaders jealously guarded that independence from the department. Like the iwi members on departmental advisory committees in the 1950s and 1960s, the council had little capacity to do anything other than advise while control remained firmly with the department's district officer, but they provided an authoritative voice for Ngāti Raukawa and in time, as the bureaucracy was stripped away, to more clearly assert and exercise rangatiratanga (though even now subject to and at the discretion of kāwanatanga).

Finally, at 41. Through much of the twentieth-century, the lands, resources and people of Ngāti Raukawa were subject to Crown actions which controlled most aspects of the life of the iwi. Most of the difficulties the iwi faced followed from colonisation and were inherited from the nineteenth-century. The consequences of a title system which vested interests in land in individuals and the marginal living conditions of those residing in kāinga of Ngāti Raukawa were the most significant examples. The Crown's attempts to ameliorate some of the more serious outcomes, especially in its housing policy and dealings with

lands vested in individuals, were pursued by a bureaucracy which increased in size and complexity through the twentieth century. However, little progress was made. The Crown, in its exercise of Kāwanatanga through most of the twentieth-century, left little space, if any, for the exercise of rangatiratanga.

5

Kia ora.

DCJ FOX:

Thank you. Would you like to announce what sections of the report questions for Dr Metuamate will be directed at?

10 **DR ARETI MATUAMETE:**

Ma'am, the report was constructed in such a way that we all contributed to the writing of all sections so unfortunately, we can't identify specific parts of the report that he would answer questions to, so.

DCJ FOX:

15 I see that. Yes, right. So, when you leave are your colleagues able to answer questions about the areas you have written? Okay, thank you. Our first counsel listed is Mr Rogers and Mr Cornege. And Dr Grant, helpfully has reminded me I should ask each of you just to announce who you are every time answer a question, so we know who it is in the transcript later, who is answering the
20 question, would you mind doing that? Thank you.

(09:52) PHILLIP CORNEGE TO DR ARETI METUAMATE, KIRI PARATA, DR GRANT YOUNG, ELJON FITZGERALD:

Q. Tēnā koutou. Ko Phillip Cornege tāku ingoa. I am one of the lawyer's representing Ngāti **(Māori 09:52:34 – 09:52:37)** of Ngāti Kauwhata,
25 Ngāti Matekore, Ngāti Rangatangi o Te Reureu and Ngāti Parewahawha. Now, first I want to thank you for the quality of your report. It's excellent contribution to this process. My clients prepared the Rangimariri Narrative and the Pene Raupatu statement. I'm not going to ask you to comment on them directly because obviously your report focuses on the
30 period that commences after those events took place. But, one of the

lines of argument that's advanced in those statements is that first, in negotiating the sale of the Rangitīkei-Manawatū District, the Crown should have been negotiating directly with hapū rather than individuals and secondly, that whatever land was retained, however much it may have been, should have been held not an individualised titles but in some form of collective hapū ownership, whatever again that might look like. So, what I am interested in is if we imagine a world in which, again, however much land it might have been, whatever land was retained by Māori in this district was held in some form of collective hapū ownership. If you can give some specific, perhaps a couple of specific examples of – perhaps, can't put it any more precisely than this, things that may have been different in terms of the engagement between Māori in this district and the Crown if their land was held collective by hapū as opposed to an individual titles.

5
10
15 A. **Kiri Parata:** This is Kiri Parata. I will start with one example. My understanding is that if land had not been individualised in the way that it had and hapū – it had stayed in hapū ownership, is that we would still have the land today, and if we had the land today our people would be in a very different position because by having land we have the ability to have a connection. We have opportunities other expert witnesses this week have spoken about the economic impact that it had but I think it goes much broader than that. I acknowledge that that is a significant point but without the land, our people have not been able to reach their full potential, so that's my response to that question.

20
25 **Dr Grant Young:** The way I probably approach a response to your question is by looking at what did happen and then perhaps comparing it to the alternative situation that you're suggesting, and as a historian, I'm always nervous about counter history but we will start down the road and see what happens. One of the key features of this report, this period and
30 of the experience of Ngāti Raukawa, especially – I am just going to focus a little bit on the early 20th Century because for various reasons that is a little bit easier to address your question. Decisions, final decisions about land, about the disposition of land, how it was going to be occupied, who was going to own it, all of those decisions were made by the

Ikaroa District Māori Land Board that was made up of the Judge of the Native Land Court and the registrar of the Native Land Court. So, those decision-making processes entirely excluded hapū, and there was no role for collective decision-making. The only manner in which collective decision-making was possible was at meetings of owners, but again, once a meeting of – once a purchaser had applied for a meeting of owners and the meeting of owners had been convened, then the inexorable sorry, inexorable movement was you know, alienation – you know the inexorable direction was alienation of the land. So, as I say, there's no capacity for a hapū, anyone who is not listed in that title who is affected by the decision. You know, there are instances where land is alienated and the elderly kuia who is living in a house on the land has no capacity to participate in that decision-making process either because for whatever reason, she doesn't know about it or she doesn't actually have interests in that land they've been inherited by you know, someone else has succeeded to them. So, the absence of any capacity to influence or participate in the collective decision-making process that is controlled by the District Māori Land Court is – leads to alienation as such. That's the way that I'm trying to approach it in answer to your question. I think in the end it would've been a very different world.

Q. Thank you, that's very helpful. I'm not sure if any – the rest of you have any comments otherwise, Your Honour, that's the only questions I have. Sorry that was Grant Young speaking.

(09:58) JEROME BURGESS TO DR ARETI METUAMATE, KIRI PARATA, DR GRANT YOUNG, ELJON FITZGERALD:

Q. Tēnā koutou. My name is Mr Jerome Burgess and I represent Ngāti Pīkiahū, Te Reureu claimants and also Ngāti Tukorehe claimants in this inquiry. First a few questions that I want to look at deals with Te Reureu Development Scheme at page 266 of your report and maybe more specifically the map at page 267, and you had discussions with my friend Mr Cornege about what it would have looked like if Māori had retained all the land but unfortunately that wasn't the case, and we have the situation where land has been individualised so to speak. So,

Dr Husbands commented yesterday that Māori specifically in this block were doing fine. They were flourishing. They were developing the land. They had a lot of land but in this case 30, 40 years down the track, 1938, which is where we are today, they are still doing okay, they have got stock, grazing, cattle and dairying, and then out of the blue the Rangitīkei County Council comes out with this plan to – of rural protection which essentially cuts off access for these rangatira along the river, which puts a spanner in the works again. So, I guess my question is, were they doing this on purpose? Was this purposefully done to not only alienate land further in terms of the processes and organisations and boards, and you talked about funding which caused more issues for those that had to borrow, to grapple with what was happening on their land and around it. But yes, you would agree that this made it difficult for anyone, Te Reureu specifically were trying to develop their land to create a way of life, way of living for themselves. Would that be a fair assessment?

A. **Kiri Parata:** It is Kiri Parata again. I will start and then I think my colleagues might carry on. To answer your question, yes, I believe that you are correct. Our people were developing their land and working on their land. I think the intentions of the development scheme were to support that. How it played out certainly had impact.

Eljon Fitzgerald: Kia ora. Eljon Fitzgerald.

Q. Kia ora.

A. **Eljon Fitzgerald:** A similar situation occurred in the Ōhinepuhiawe Block where river protection was also impacting on Māori who were developing that land and farming that land, you will see that in the report as well. It seems a clear case of when land was to be acquired for river protection and even access in order to affect that river protection that in the very first instance the land was taken from the Māori owners as opposed to the neighbouring non-Māori owners. And in answer to your question, do you think there was a deliberate agenda for alienating Māori from land? I would suggest that there quite possibly is.

Dr Grant Young: Actually, this is Grant. Just one final point that I think I can make is that one of the considerations there too is that in these discussions and I think it is certainly the case in relation to Ōhinepuhiawe,

Public Works Department officials who were, you know, undertaking these works were able to negotiate the arrangements with other officials in the Department of Māori Affairs rather than necessarily having to negotiate with a land owner either Māori or Pākehā and that made the task easier for them as well.

5

Q. And I think you mentioned, Dr Young, that the kuia who was living on the land in the rundown house, that example was from the Te Reureu Block where there was the kuia there who did not know what was happening around her, and how could she. So, moving on from that, I just wanted to look at, on behalf of our Ngāti Tukorehe claimants, at page 406 that I just wanted to look at on behalf of our Ngāti Tukorehe claimants at page 406, paragraph 1030 and this is in regard to the Ōtaki meeting house and you have got a list there at page 407. So, under the Native Purposes Act 1936.

10

DCJ FOX:

We are not really dealing with Ōtaki during this hearing.

JEROME BURGESS:

20 I will leave that questions then for when you come back, ka pai. So, those are my questions then for up here. Kia ora Your Honour.

DCJ FOX:

Mr Lambert.

25 **(10:06) NEUTON LAMBERT TO DR ARETI METUAMATE, KIRI PARATA, DR GRANT YOUNG, ELJON FITZGERALD:**

Q. *Tēnei te mihi ki a koutou. Ko Neuton Lambert taku ingoa, nō Tūhoe, Ngāti Ruapani me Ngāti Kahungunu. Nō reira, tēnei te mihi ki a koutou.*
[Interpreter: I am Neuton Lambert. I am Tūhoe, Ngāti Kahu.]

30

My name is Neuton Lambert. I am from Wackrow Williams and Davies. The claims I represent today are Wai 1260 for Ngāti Waewae. Wai 1619 for Ngāti Parewahawaha. Thank you for your report and thank you for your evidence. I would just like to start off with a quick question just, so I

am clear on what you mean. So, throughout your – both the summary and the report you refer to – like a collective to the Crown bureaucracy. So, what exactly do you mean there? Are you talking about specifically Crown departments?

5 A. **Dr Grant Young:** Yes so, I mean in the first half of the 20th century we are primarily referring to the District Māori Land Board and the Native Department and then from 1953 onwards it is the Depart of Māori Affairs and the Māori Trustee.

10 Q. Okay and would that include – would that term also include the processes of those departments?

A. Yes, absolutely, yes.

Q. And the Crow officials that make decisions?

A. Yes, yes.

Q. Would that include the Native Land Court?

15 A. In - there is this wonderful photo at the Māori Land Court in Gisborne of the department, I think taken in the early 1950's and I apologise for digressing slightly here from this district, but it is just that it has had a profound effect on how I understand these structures. And the department is relatively large. There is a large number of people in it and
20 at the apex of the photo sitting in the middle in the front row is the District Officer and sitting to his left or to his right is Judge Hoey and I think that that sort of – that that is the way that I have always – well that is the way that I have come to understand the structure of the Department of Māori Affairs is that the power resided with the District Officer. The
25 decision-making was with the District Officer and the Court was a branch of the department.

Q. Thank you.

A. I am not sure if that answers your question but that is how I approach it.

Q. Thank you.

30 **DCJ FOX:**

I just wonder whether that is a correct analysis only because the Department of Māori Affairs serviced the Court that acted as the administration

for the Court and now of course that responsibility is vested in the Ministry of Justice. So, you might need to clarify further what you mean.

**NEUTON LAMBERT TO DR ARETI METUAMATE, KIRI PARATA,
5 DR GRANT YOUNG, ELJON FITZGERALD: (CONTINUES)**

A. **Dr Grant Young:** I appreciate that that's the formal structure and that the Court is independent or even in the 1950's the Court was operated under the statute and was an independent decision-maker. But what I am suggesting is that the – is that the – in the final analysis the structure of
10 the department meant that the District Officer was at the apex. The Court was there primarily I think to protect the interests of the owners in blocks who could not be located or could not participate in decision-making processes, but the records anyway suggest to me that – over many years the impression that I get from the records is that it is District Officer who
15 has the final say in whether or not proposals proceed or how people are treated.

Q. I am happy to proceed, thank you for your answer. The report also talks about the false dichotomy between rangatiratanga and Kāwanatanga and that, I mean in your view rangatiratanga was subject to Kāwanatanga.
20 Yesterday questions to Dr Husbands and this was in relation to the enactment of legislation. He characterised it as those laws being imposed on Māori, is that a word that you would use to describe the enactment of legislation as well? Would you use that word, imposed?

A. I have no objections to that, no.

25 Q. Okay. An just in light of your report, the relationship that developed between Māori from the signing of Te Tiriti, would you characterise that as equal partnership?

A. I think – I mean, the straight-forward answer to that question is, no, that, that is not how that relationship developed after 1840. But, I probably
30 also just gave you that, that, that is a little outside the scope of what we were doing in this report, so.

Q. Thank you, I appreciate that. No further questions, Your Honour.

DCJ FOX:

Mr Watson is no here. He took leave to lead yesterday. I do not know why he asked for time today. Obviously had not assessed the matter properly. Mr Johnston?

**(10:11) PETER JOHNSTON TO DR ARETI METUAMATE, KIRI PARATA,
5 DR GRANT YOUNG, ELJON FITZGERALD:**

Q. Yes, thank you, Ma'am. Tēnā koutou, we represent the Wai 784 Ngāti Kauwhata claim, the Wai 1482, Ngāti Wehiwehi claim and the Wai 2031, descendants of James Howard Wallace claim. Dr Young, I have some initial questions regarding your commission, which is set out at
10 Appendix 2 of your report and that is starting at page 451, of your main report, which is document #A199?

A. **Dr Grant Young:** Yes, I have.

Q. Yes, and you will see the project team is listed on the first page of the document.

15 A. Yes.

Q. So, it is entitled 'project brief'?

A. Yes.

Q. Yes. Now, according to your project brief or commission, you are the Contractor Historian?

20 A. Yes, that is correct.

Q. Yes. And as the Contractor Historian, you have the responsibility for the writing and production of the draft and final version of the report? That is correct?

A. I had a role in the production – the presentation of the draft and final
25 reports supported by the other member of the team.

Q. Can you please turn to page 455 of the commission? That is paragraph 21.

A. Yes.

Q. Yes, that it sets out historian?

30 A. Yes.

Q. So, that would relate to you?

A. Yes.

- Q. And that first paragraph, 21 sets out that the contractor is responsible for the writing and production of the draft in final –
- A. Yes.
- Q. – version report? So, I just wanted to clear – you were the one who had the sole, you know, the primal- primary responsibility.
- 5 A. I am not sure if says sole responsibility there Mr Johnston. But I accept your points, sir.
- Q. Thank you. Now each of the –
- A. I cannot claim the full credit, Mr Johnston.
- 10 Q. Now, each of the project team members have specified roles and responsibilities as well, and those are set out in the commission?
- A. Yes, that is correct.
- Q. Thank you. Now, can you please just go to page 452 of the report and we are still in your commission or project brief.
- 15 A. Yes.
- Q. In here I am looking at paragraph 10, which is at the bottom of the page and it goes over the next page. So, and again, I just need some clarification. So, your report was commissioned by the Crown Forest Rental Trust, for all of the hapū and iwi claims broadly associated with Ngāti Raukawa who are participating in the Porirua ki Manawatū Inquiry, that is correct isn't it?
- 20 A. Yes.
- Q. And those hapū and iwi claims are set out in your commission at paragraph 10 on top of page 453?
- 25 A. Yes.
- Q. And Dr Young, would you accept that all of the hapū and iwi groups listed in paragraph 10 at the top of the page 453 of your project brief, “participated in the series of migrations or heke initiated by Te Rauparaha,” that is correct?
- 30 A. That is outside the scope of this report, Mr Johnston, so I don't think I'd want to express a firm opinion on that. I'm not saying that they're not, I'm just not in a position to say that they are.
- Q. Okay, perhaps we go t the start of your report which is page 11, paragraph 3.

A. Yes.

5 Q. And you list out, “for the purpose of this report the iwi and hapū of Ngāti Raukawa comprises all those who participated in these migrations unless the context refers specifically to Ngāti Raukawa of Ōtaki, they include those of Te Reureu, Ngāti Kauwhata, Ngāti Huia and others.”

A. Yes.

Q. So, you would accept that Ngāti Kauwhata participated in the migrations, correct? Because you have mentioned that at page 11 of your report?

10 A. The comment that we have made at paragraph 3 is not the purposes of general context.

Q. Yes.

15 A. Rather than something that is specific to what we were covering in the report, so we are trying to introduce the iwi and hapū that are the subject of the report again. I am not comfortable because of the scope of the report confirming or providing a firm answer to your question.

Q. But it must include Ngāti Kauwhata, correct, because you have said that there?

A. Yes, yes, I have, yes, sorry. No, I have no problem with that, I mean it does.

20 Q. That is correct?

A. Yes.

Q. Yes.

A. I know that from general knowledge rather than the research that I done for this.

25 Q. Well, and it must also include Ngāti Wehiwehi?

A. That is then – whether or not I can say Ngāti Wehiwehi is included, again, I think that is outside the scope of what we were covering in this report. So, I can – I mean, you know, I can say that there were a number of hapū who migrated to the region with Te Rauparaha, I can't from my own
30 knowledge on my feet here confirm all of them to you, now.

Q. But it definitely includes those of Te Reureu, Ngāti Kauwhata as you have said and Ngāti Huia, as you have set out at paragraph 3?

A. Again, that's a term of convenience that we are using in the report.

Q. But it is quite important, isn't it, that paragraph 3 is quite important because you are saying of the purposes of this report the iwi and hapū of Ngāti Raukawa comprises all of those who participated in these migrations, so that is what you have said in your report.

5 A. We are trying to be broadly inclusive in terms of the kinship groups that are within the scope of the report, that is what we are trying to – that is the meaning that we are trying to convey in that sentence.

Q. Right, right. Is there someone else in the group who can answer my question? That is okay, keep going.

10 **TANIA SIMPSON:**

Could I just – sorry, can I just ask for clarification because I am a little bit confused too. Were you asking whether or not Ngāti Wehiwehi and others were included in the definition of the iwi and hapū of Ngāti Raukawa or were you asking whether or not they were included in the statement all those who

15 participated in the migrations?

PETER JOHNSTON:

The point I am wanting to – or the issue I want to cover is that at the very outset of this report the authors have stated that for the purpose of this report the iwi and hapū of Ngāti Raukawa comprises all of those who participated in the

20 migrations. So, throughout this report the term Ngāti Raukawa is mentioned, and I am just trying to elucidate from the authors what does that mean because

–

DCJ FOX:

Why don't you just put it to them? That would short-circuit this.

25 **PETER JOHNSTON:**

Yes, Ma'am.

**PETER JOHNSTON TO DR ARETI METUAMATE, KIRI PARATA,
DR GRANT YOUNG, ELJON FITZGERALD: (CONTINUES)**

Q. So it is clear from your report that it includes Te Reureu, Ngāti Kauwhata, Ngāti Huia and others, correct?

A. Yes.

Q. And you are not sure who the others are?

5 A. As I said, Mr Johnston, the purpose of paragraph 3 was to try and be as inclusive as possible so that when we are – I mean, one of the things you have to remember about doing research in the 20th century is that you don't get, in relation to the lands that we are looking at people are identified as individuals rather than by their kinship affiliations. So, when
10 we are using, when we refer to Ngāti Raukawa through the report, we are referring back to that paragraph 3 to describe them as, you know, to – so that the term is broadly inclusive, but it is very infrequent in the historical records that we looked at that you can actually identify kinship affiliation at all. So it really is just a short hand for the purposes of our report.

15 Q. Thank you. So, it is probably safe to say then, in relation to all of those iwi and hapū who participated in the migrations at the invitation of Te Rauparaha, that is best left to those who participated, the tangata whenua when they give their evidence?

A. Yes, absolutely. I mean, I am not looking to make – sorry, we are not
20 looking to make definitive statements about the migration, that is outside the scope of this report.

Q. Thank you, thank you. Can you please turn to page 15 of your report? And I would like to discuss briefly an aspect of your report methodology. Now, at page 15, paragraph 16 you state, "This draft report is based
25 primarily on archival records." Do you see that?

A. Yes. The draft should not be there.

Q. Obviously not the draft.

A. Yes.

Q. Thank you. Right, can you please turn to page 403 of your report? Now,
30 in your summary and in your report, you refer to the Raukawa Marae Trust –

A. Yes.

Q. – which was formed in the 1930s, correct?

A. Yes.

Q. And at its formation, the Raukawa Marae Trust represented groups that collectively had and have interest throughout the Porirua ki Manawatū Inquiry District, correct?

A. Yes.

5 Q. And it is clear from the trustees that –

A. Although their lands were primarily located around Ōtaki. Sorry, the lands they administered were primarily around Ōtaki.

Q. Thank you. Now, it is clear from the list of trustees that the Raukawa Marae Trust was established as a multi iwi and hapū trust, that is correct?

10

A. It was – it had very – I think one of your colleagues took me to page 07 and it had a very broad representation, yes.

Q. So, Ngāti Te Ātiawa, Ngāti Toa, that's correct isn't it?

A. Yes, yes.

15 Q. And also trustees representing Ngāti Wehiwehi and a trustee representing Ngāti Kauwhata, yes?

A. I did see Ngāti Kauwhata.

Q. I think about halfway down the page there is Ngāti Wehiwehi on the left and across to the right is Ngāti Kauwhata.

20 A. Yes, yes.

Q. Thank you. Now, can you please turn to page 25 of your report? Now, in your report you cover the important theme of land loss?

A. Yes.

25 Q. And at paragraph 22, now this is a question of clarification, you state in the second line, "The data is not complete as further work is planned to further identify the timeframes for specific alienations." Do you see that?

A. Yes, I do.

Q. Are you able to clarify whether further planned work is it?

A. I'm not able to now. I'd have to come back to you on that, Mr Johnston.

30 Q. Okay, thank you. Now, if you could turn a couple of pages, pages 27 – 28, and you've helpfully provided a table setting out the extent of land loss suffered by Ngāti Raukawa in the 20th century.

A. Yes.

- Q. Now, there were some aspects of your table on pages 27 and 28 of your report that I'm not quite clear on, and given its importance, I'd like just to clarify a few points.
- A. Yes.
- 5 Q. Now, you'll see in the first row, you've set out the land blocks, do you see that?
- A. The first column?
- Q. First column, sorry.
- A. Yes.
- 10 Q. So, you've got Aorangi and the Carnarvon?
- A. Yes.
- Q. And then in the second column you've set out the original area for the blocks?
- A. Yes.
- 15 Q. Yes. So, for Aorangi your report provides original area of 19,187.
- A. Yes, that's right.
- Q. See that?
- A. Yes.
- Q. Now, the table doesn't appear to provide the measurements.
- 20 A. No, no it doesn't.
- Q. So, that should be acres?
- A. I will have to check that, but as far as I know, it is acres.
- Q. Okay and if you could also do that for the Māori land retained at 1900 and the Māori land at 2000, that would be very helpful as well.
- 25 A. Yes. I think the Māori land 2000, my memory is that that was all converted back into acres. So, the figures would have been given as hectares and then I converted them back into acres. So, for the purposes of comparison.
- Q. Right. So, your understanding that these are acres?
- 30 A. I'll confirm that, but I'm relatively certain they are, yes.
- Q. Okay. Now, it would be fair to say that one of the key things we can take from your table and the totals that you provide on page 28 is the extent of land loss suffered by iwi and hapū who participated in Heke or migrations?

A. Yes.

Q. So, for instance, at 1900 Māori land retained the total of 28% or 83,402, we will assume acres for now on Māori land, correct?

A. Yes.

5 Q. Thank you. Can you please now turn to page 35? Now, in this section, you refer to section 207 of the Native Land Act 1909, paragraph 33.

A. Of the last line of the page, yes.

10 Q. Yes, yes, down there. And you say that section 207 of this act was significant because it provided that, “all existing restrictions were to have no force or effect on any alienation which might be made after the commencement of the act”, correct?

A. Yes.

Q. So, when you refer to all existing restrictions, you of course referring to restrictions on the alienation of land by Māori, that’s correct?

15 A. Yes.

Q. Now –

A. And just to make sure it is clear, I’m quoting the statute there rather than, it’s not me referring to all existing restrictions. I’m citing the statute there.

20 Q. Yes. Now, it’s evident isn’t it, that removing the restrictions on alienation that this time in 1909 when iwi and hapū in this area had already lost the greater portion of their lands as you’ve shown in the table, would only place greater pressure on them and their ability to retain the remaining lands that they held, you see that?

25 A. Yes, yes, and that’s reflected in the figures and what happened afterwards as well.

30 Q. Thank you. Now, I want to discuss the definition of landlessness which is discussed in your report, and if you just please go over one page to page 36? And here, I’m looking at paragraph 34. So, in your report you discuss district Māori land boards had to meet before it confirmed an alienation involving fewer than ten owners.

A. Yes.

Q. And in that paragraph 34 you set out conditions that had to be met before the board confirmed an alienation.

A. Yes.

Q. And those are contained in the five bullet points there.

A. Yes, and landlessness is the third one.

Q. Yes, you pre-empted my next question. Now, there's nothing in your report, is there, that indicates that Māori were involved in the setting of those conditions? So, the hapū's involved weren't –

A. No, no, other than representation in Parliament, no.

Q. Can you please turn to page 40 of your report? Thank you. Now, if you go to page 36 – where am I at? Sorry, page 40 sorry. Now, at paragraph 46 you suggest that the ability of Māori land boards to protect Māori interests was undermined by the definition of landlessness?

A. Yes.

Q. And you note that the legislation define the definition of landlessness as meaning Māori who's total share of freehold land was insufficient for his adequate maintenance?

15 A. Yes.

Q. Now, not having a – you then say that no specific area was given?

A. Yes.

Q. Now, not having a specific area defined by the legislation is clearly problematic, isn't it?

20 A. Yes, yes, and I mean that that definition – I mean landlessness – the requirement that the board assess landlessness was generally meaningless anyway because even if a, even if someone was rendered landless, you know, they have no Māori freehold land left after an alienation would not the prevent the alienation. The board – there are instances where declarations were made by agents saying that a person had a secure job somewhere or a landowners husband had a secure job somewhere and so they wouldn't become a burden on the state if they were rendered landlessness because they had a source of income and that alienation could also be confirmed even though they were rendered

25

30 landless by alienation. The main purpose of that requirement was, as I say, to avoid Māori land owners becoming a burden on the state.

Q. Now, there's also the evidence in your – I better make it a good one.

JOSEY LANG:

Ma'am, sorry, I just wanted to note that Dr Metuamate needs to
(inaudible: 10:33:34)

PETER JOHNSTON:

Ma'am, I do have a number of lines to go but may I just ask one line which is
5 quite a short line and I could put the rest of my questions in writing?

DCJ FOX:

Yes.

PETER JOHNSTON:

Thank you, Ma'am.

10 **DCJ FOX:**

(Mic off 10:34:04 – 10:34:09)

PETER JOHNSTON:

I will carefully craft my question, Ma'am.

**PETER JOHNSTON TO DR ARETI METUAMATE, KIRI PARATA,
15 DR GRANT YOUNG, ELJON FITZGERALD: (CONTINUES)**

Q. Could you please turn to page 41 of your report?

A. Yes.

Q. And there you refer to some conclusions made by the late
Professor Allen Ward criticising the role of Māori land boards in the
20 process of alienating Māori land particular in relation to these sufficiency
are the land requirements?

A. Yes.

Q. And Professor Ward goes so far as to say that, and I quote, "The duty of
active protection of the Māori people at large meant that sales of Māori
25 freehold land should have been approved very rarely if at all after 1900
and then only on the basis of full hapū involvement?"

A. Yes.

Q. Now, based on the research you have done in our previous discussions relating to land loss and sufficiency, would it be fair to say that the late Professor Ward's conclusions would also apply to this area?

A. Yes, absolutely. I mean, that is evidence from the land loss table.

5 **DCJ FOX:**

That is your answer, thank you.

PETER JOHNSTON:

Thank you, Your Honour.

DCJ FOX:

10 Thank you.

PETER JOHNSTON:

Thank you, Dr Young and ngā mihi to your project team. Kia ora.

DCJ FOX:

All right. Thank you, Ms Cole.

15 **JACKI COLE:**

Thank you, Your Honour.

(10:35) JACKI COLE TO DR ARETI METUAMATE, KIRI PARATA, DR GRANT YOUNG, ELJON FITZGERALD:

20 Q. Tēnā koutou katoa. Ko Jacki Cole tōku ingoa. I appear for the Crown together with my friend Mr Morrison. Thank you for your report. I just want to start with where Mr Johnston finished off actually. You may not be aware, but if you are, the Crown has actually made a concession regarding landlessness. Are you aware of that? And when I say a concession, I mean a Treaty breach concession.

25 A. **Dr Grant Young:** Yes, I am.

Q. Yes. So the Crown has accepted that the accumulative effect of its acts and omissions left Ngāti Raukawa and affiliated groups in the inquiry

district virtually landless and had a devastating impact on their economic, social and cultural well-being and development and the Crown's failure to ensure that these groups retain sufficient land for their present and future needs was in breach of Te Tiriti, and that is a concession that the Crown has already made, isn't it?

5

A. Well it was contained in a memo that I looked at last night, yes.

Q. Thank you, thank you.

A. I think there was a, there was a Treaty breach concession for Native land legislation to Waitangi.

10

Q. I was just about to say that, so we won't bother going through that again. So the Crown has made a Treaty breach concession in relation to that as well and that relates to of course individualisation of land. I also wanted to pick up on something else that Mr Johnston – sorry, Your Honour, did you want to –

15 **DCJ FOX:**

I just wanted to clarify for the record, does that concession extend to the impact of the Māori Land Administration Act 1900, although the Tribunal has said on various occasions that while deficient in some respects was a good attempt at dealing with Māori land matters? And does it also extend to the Māori Land Settlement Act of 1905 and the Native Land Settlement Act 1907 and the Native Land Act 1909?

20

JACKI COLE:

These are matters that are still under consideration and –

DCJ FOX:

25

So when you put these to the witnesses, I think it is very important that we know exactly, at some point, what the length and breadth is of the Crown's concession.

JACKI COLE:

Well Ma'am, as was discussed yesterday –

DCJ FOX:

Well I do not want them to feel inhibited about providing an answer until we have some definitive explanation of the extent to which the Crown is prepared to go in terms of those concessions.

5 **JACKI COLE:**

With respect Ma'am, I was reading directly from the Crown concession document which was referred to yesterday and has been given the appellation, the new appellation of 1.4.2.

DCJ FOX:

10 I just do not want to inhibit the answers that any of the witnesses are going to be given because they think you have conceded these matters. They are not conceded.

JACKI COLE:

15 What I read to the witness was written – is the exact wording that is written in the Crown concession and that is, I think, what he was, certainly my understanding, that was what Dr Grant Young agreed was concession that's been made.

DCJ FOX:

20 And you can have an extra five minutes because it has taken that long to move through that. Thank you.

JACKI COLE:

I hope I won't need it, Ma'am.

DR GRANT YOUNG:

I might.

25 **JACKI COLE TO DR ARETI METUAMATE, KIRI PARATA,
DR GRANT YOUNG, ELJON FITZGERALD: (CONTINUES)**

Q. The other thing that I just wanted to raise from what Mr Johnston was talking about was a suggestion, this discussion that you had about the district officer in the Māori Land Court or the Native Land Court as he referred to it, you accept, don't you, that owing to the separation of powers the Court is not the Crown and the Crown is not the Court?

5

A. **Dr Grant Young:** I accept that is the Crown's position, yes.

Q. Do you think the Crown's position is wrong on that?

A. I think that there is good research which shows that that separation was, at times, challenged.

10

Q. I am not quite sure that answers my question. It was challenged? Do you say that there was in fact no separation of powers between the Māori Land Court and the Crown?

A. I am not going so far as to say that.

Q. Right.

15

A. I am saying that – I mean, we know that Māori Land Court Judges had both judicial and administrative powers which they could exercise almost simultaneously and I think – you know for instance – you know as I have already said, the president of the Ikaroa District Māori Land Board was always – well from 1913, and I think on occasion prior was the Judge of the Māori Land Court and so they were exercising administrative powers and judicial powers almost simultaneously and that really does create what I am suggesting is that from time to time that separation of powers did come under pressure.

20

Q. Okay I would like to move on. This was an answer to questions from my friend, Mr Burgess and Mr Fitzgerald, Mr, Dr, I beg your pardon if I –

25

A. **Eljon Fitzgerald:** Mr.

Q. Mr, I beg your pardon. – about Te Reureu and there was a question about there was a – whether or not there was a deliberate agenda for the alienation of Māori land and you might recall that you said that in respect of that it quite possibly is. That there quite possibly was presumably a deliberate agenda for Māori alienation of land?

30

A. I wouldn't go in so far as to say –

DCJ FOX:

Name? Name please?

JACKI COLE TO DR ARETI METUAMATE, KIRI PARATA, DR GRANT YOUNG, ELJON FITZGERALD: (CONTINUES)

5 A. **Eljon Fitzgerald:** Eljon Fitzgerald. To say that the evidence described a deliberate position, I wouldn't say that.

Q. Thank you for that clarification. I also just wanted to preface the remainder of my, sorry.

DR GRANT PHILLIPSON:

10 Can I just ask here? I thought Mr Fitzgerald was referring to the taking of land for river protections, not the development scheme per se.

JACKI COLE:

The line of questioning was –

15 **DR GRANT PHILLIPSON:**

So, you were asked about –

ELJON FITZGERALD:

20 Correct, correct.

DR GRANT PHILLIPSON:

Yes. So, it is not about the development scheme being – it is about the taking of land for river protection works he was – that was what he was answering. Is that correct?

25

ELJON FITZGERALD:

Correct.

JACKI COLE TO DR ARETI METUAMATE, KIRI PARATA, DR GRANT YOUNG, ELJON FITZGERALD: (CONTINUES)

30 Q. Okay, thank you for that clarification. Now I just wanted to preface that the remainder of my questions are – I have assumed that you are going

to be coming back at some point to talk about the issues in the report that relate to areas other than, yes, this area – so, because I do have a number of questions in relation to that southern block. So, at paragraph 23 of your report, page 25. You make the mention that the interest of Ngāti Raukawa in the Horowhenua Block have not been analysed for the purposes of this report and I am – please do not think I am being critical because I am not. But I just wondered if you could tell us why not? I think it was perhaps because the Walghan Partners had not finalised their report yet, when you wrote this report?

5

10 A. **Dr Grant Young:** Sorry I just – decisions are made several years ago, and you have to try and remember why they were made.

Q. Well can I get you to refer to paragraph 26 because that might help you. So, over the page you do say in paragraph 26 of the second half of it. “It does not include the Horowhenua Block either as Walghan Partners continue to undertake their research,” and I am just conscious that Walghan Partners completed their research. I am assuming that your commission didn’t then allow you to go back in and look at the Horowhenua?

15

A. No, we had finished our report by then and I think I have some memory that – that the block history narratives prioritised lands outside of Horowhenua and so that was the data we had access to at the time we were preparing our report.

20

Q. No that is useful clarification. Thank you and presumably it has not – the Horowhenua Block and I know this will come up in the southern phase of this kaupapa Inquiry – this Inquiry sorry but it has not then to your knowledge been assessed in the same way as that you have for this – the remainder of your report.

25

A. No, no and we certainly have not done that either.

30

Q. That is fine. Thank you. Can I take you to paragraph 59 – page 59 of your report please and you are talking about the transfer of income generating land. This is paragraph 92 and you there, “For a time, Judge Gilfedder,” however you pronounce his name, “the board president, was relatively assiduous in refusing to confirm transfers or recommend mortgages where he considered the land could generate a

lucrative income for the owner, the purpose for which funds (either purchase money or loan) was unsuitable or an owner was rendered landless.” Could you just explain what you mean by the purpose for which the funds was unsuitable?

5 A. That is – so he was relatively – well no, he was prescriptive in terms of what the money could be used for, what the purchase money could be used for. So if he felt that the owner who was looking to alienate their interest would just dissipate the funds in living expenses then he wouldn't confirm the alienation. If the funds were to be used to develop another
10 property or to buy cows or, you know, something of that sort then he would confirm it. So I think he wanted to know that the – he was most insistent that the funds go to a proper purpose –

Q. So was there –

A. – as he understood it.

15 Q. Yes, in his judgment presumably.

A. Yes, that's right.

Q. And was there criticism at the time of that approach? Because it does sound very patriarchal, doesn't it, in this day and age?

A. Yes. I know it didn't last for long. It was –

20 Q. Okay.

A. I haven't got a date in there, but it was certainly, you know, from sort of 19 – I am probably taking a guess here, but you know, from the sort of late teens, you know, he was taking a different approach by then. I do not recall any criticism in answer to your question.

25 Q. Okay. Can I take you to page 86 and this is actually just a question of clarification? The first line of paragraph 168 where you are talking about the Native Land Act 1931.

A. Yes.

Q. You see it says there, “This legislation replaced Part XIX –

30 A. Yes.

Q. – of the Native Land Act 1931.” Should that read, ‘This legislation was replaced by...’? Because you are talking about the Native Land Amendment Act 1913 and maybe that is something you just want to have a look at later in reply, but...

A. Sure, I can check that.

5 Q. I just got a little lost with that perhaps, Dr Grant. The other Dr Grant might have picked up on that too. And just over the page actually, so it is the bottom paragraph, 168, which goes over onto page 87, you are talking there about the 1909 legislation and you say, "Sub-section 2 stated that no purchase would be invalidated if this provision was not met," and this is the provision which –

A. Landlessness.

10 Q. – required the Crown to allow the transaction to proceed. Are you aware of any instance where the provision was actually relied upon?

A. No, no, I am not.

Q. So, it was in the legislation, but it actually was never used?

A. Well, I do not know that it was never used.

Q. Sorry, and I should be really clear, in this region?

15 A. I did not come across any examples, but I am sure I would have cited them if I did.

Q. That's helpful, thank you. Could I take you to page 152 please, it is paragraph 351, and here we are talking about the Crown policy of Māori land development.

20 A. Yes.

Q. And you say there, between 1909 and 1929, two steps were taken to address the situation of the settlement of Native land which had for many years been a vexed question, and I am just going back up to the top of that quote just above that paragraph –

25 A. Yes.

30 Q. – and there had been many and varied attempts to deal with it. And you say, "Between 1909 and 1929, two steps were taken to address this situation. The district Maori Land Boards were authorised to make advances to Māori farmers. Provision was also made for the consolidation of Māori land titles as a step to allowing owners to raise finance on their land for the purpose of developing farms." And then you say there, "Neither proved particularly successful." From your research, are you able to tell us why? Why they did not prove to be particularly successful?

- A. I am possibly being a little more speculative than I would like, but I think a couple of the considerations would have been the nature of the security that was available for the funds advanced, until the titles were in a form where those participating in the development scheme could offer a sufficient title that made advancing funds more difficult. So, you can sort of see why the two were related. You had to have good title to an appropriate block of land before you could secure finance. It wasn't a situation where inferior security would be satisfactory to the boards. I think, especially in Ikaroa, although it's not something that affected this particular inquiry district, because remember that Ikaroa District included at that stage, the Hawkes Bay. There was probably, the boards were more active in developing properties under their own direct management rather than by advancing funds to landowners.
- 5
- 10
- Q. Was collective ownership one of the problems that was –
- 15 A. Collective ownership was always a problem when it came to finance, and it was the same, a lot of the title reorganisation that went on in this district after the Second World War was about making sure – was about arranging ownership of a housing site in one person, so that adequate security could be given for the funds advanced.
- 20 Q. Mmm.
- A. So, collective ownership was a constant problem for the development of land. I mean you have to remember with the –

DR GRANT PHILLIPSON:

- 25 Can I just – sorry, Dr Young, I think you mean multiply-owned land, not collective in you saying that.

DR GRANT YOUNG:

Sorry, yes sorry, yes, yes, I'm sorry, yes.

DR GRANT PHILLIPSON:

- 30 Yes.

JACKI COLE TO DR ARETI METUAMATE, KIRI PARATA, DR GRANT YOUNG, ELJON FITZGERALD: (CONTINUES)

- 5 A. **Dr Grant Young:** So, multiply owned land was – sorry, what you have to remember is that land going into the development schemes, the owners of that land effectively gave up their rights to the Department to manage that land in the hope that one of the whānau would be settled on it.
- Q. I expect that you would agree that there could have been arrangements made to get around the – or get over the hurdle of the difficulties that multiple ownership meant and created for?
- 10 A. And I mean an arrangement was reached. The arrangement was that the department would take over the land and manage it, but it was an arrangement which excluded the landowners and it excluded kinship groups from the management and control of that land.
- Q. Yes, yes. Can I take you to page 160 please, paragraph 372 and it is still
15 on the point of development schemes? You say there three quarters of the way down the paragraph that there were no schemes in Ikaroa funded by the District Māori Land Board.
- A. Yes.
- Q. I'm assuming this is in the Manawatū as you refer to that at the top of the
20 paragraph. Again, I just wanted to ask why not? Did your research tell you, give you any indication as to why there were no schemes funded by the District Māori Land Board in this region?
- A. No, no, I can't offer you more than what's in the text there.
- Q. Thank you. Can I take you to your section on vested lands, so we are
25 looking at page 274 and the only thing you really probably need to do for the purposes of my question is look at your footnotes because my question is, it does appear that the whole section is reliant on Suzanne Woodley's report.
- A. Yes, that's right, yes.
- 30 Q. So, would –
- A. It was a matter of not duplicating research that she had already done but drawing in on an important issue for Ngāti Raukawa into this – into a report that was being prepared for them.

Q. So, would you agree that your – this portion of your report is essentially a summary of what Suzanne Woodley has in her more detailed report? So, we should probably refer to her report on this section or?

5 A. Yes, a summary but in the context of the types of issues that we are looking at in this report, in this project.

Q. Okay. Can I take you to page 321 please? Now, we are talking about housing policy in this section of your report and although – I think it would be fair to say that this portion of the report covers the whole of the district and so if it's not appropriate for me to ask these in this hearing then say so. Page 321 at paragraph 798, you are talking about the Department of Māori Affairs being involved in allocating what houses were made available for Māori residence and especially in Ōtaki. The demand constantly exceeded the houses made available –

10

DCJ FOX:

15 Yes, it is probably not the time.

JACKI COLE:

I just – my question really was going to be –

DCJ FOX:

Related to the North.

20 **JACKI COLE TO DR ARETI METUAMATE, KIRI PARATA, DR GRANT YOUNG, ELJON FITZGERALD: (CONTINUES)**

Q. Well, whether or not this actually applies to the North because it says, “especially in Ōtaki,” but it could have been – I wasn't certain when I read it as to whether it also applies up here –

25 A. **Dr Grant Young:** Yes, I mean it's a problem across all of the Māori communities in the inquiry district, yes.

Q. – so then may I proceed, Ma'am? Thank you. You are talking about the two lists that seem to be being kept. It looks – well it appears that there were two lists essentially being kept for people looking for housing, Māori and everyone else because the nature of the evidence that you are giving

30

is that – well in fact, in we just look at that last line, certainly the allocation certainly has the appearance of taking whatever crumbs are left over after the state housing programme for Māori housing. So, am I right in thinking that essentially there were two lists even if it was a subconscious list?

5 A. I – Yes, I probably hadn't thought of it in terms of there being two lists but there's certainly a state housing programme.

Q. Yes.

A. And then the Department of Māori Affairs is responsible within that state housing programme for the interests of Māori housing, for the interests of those who were seeking houses who were Māori.

10

Q. Yes.

A. And what comes through from the records is it – well I mean I think that last sentence is an accurate description of the record is that departmental officials were – you know, would have to lobby very hard to get a very small number of houses to – for those who they were serving.

15

Q. And I wonder, well, I anticipate that that will be a significant theme in the housing kaupapa inquiry, the Wai 2750 inquiry. So, maybe I just leave that there for the meantime for the purposes of this discussion. At page 328, you are talking about the policy, a definitive policy statement on the departments dealings with these houses followed in 1961, and it says there's, “it was intended to add 50 new state houses and 100 existing vacant state houses previously used for renting to the departments, presumably the Māori Affairs Department, housing scheme for sale in the 61/62 financial year.” Were any of these houses in Ngāti Raukawa takiwā that you are aware of? Because that is quite a few houses, even by today's standards. So, paragraph 821.

20

25

A. Yes, sorry –

Q. Sorry.

A. – yes, no, I'm just looking across the page at paragraph 823 to see – you can see that Palmerston North, you know, you can see references to the – so again, the Palmerston North district includes the Hawkes Bay at that time, so you can see there's reference to Hastings and Napier there, and then you have Palmerston North, Fielding, Levin and Ōtaki, I'm just trying to see if that's the –

30

Q. Well I wonder if –

A. – it is a similar time –

Q. – we jump to the table that is on page 332, does that actually help us more, where that is talking about the in 70 – the financial year in 1970 to 70’ the Board of Māori Affairs approved the purchase of 532 sections, 1.19 million dollars and those numbers there are Palmerston North, Feilding, Foxton. Is that – yes, that’s an indication I presume that indeed these – this housing was being made available –

A. So, yes, some houses were being made available, yes.

10 Q. – some housing, yes.

A. Out of the total number, yes.

Q. Yes, okay.

A. Yes. So, if your question is ‘Were houses made available?’, then the answer to that question is, yes.

15 Q. In this takiwā?

A. Yes.

Q. Yes, yes. Okay. I just noticed a quite significant drop off in numbers on that table at page 332, quite significant drop off in the numbers of houses required, the number required, and I was wondering whether effectively they had managed to get ahead of the game in terms of providing housing for Māori who needed it?

20 A. I mean, from the 1930s through to the late 1970s housing then comes in waves, so I cannot recall on my feet exactly how they work but you know there will be high demand which will be to some extent satisfied and things will continue on for a period and then there will be another round of – I mean, there was certainly one, you know, during the 1950s, 1960s and 1970s there were demands for housing increased significantly and then dropped away, so it did come away. Although, I probably wouldn’t go so far as to say that they got on top of it. It may well be that demand dropped for other reasons rather, you know, rather than that supply with net demand.

25 Q. Do you know whether that is equally applicable to non-Māori social housing or state housing?

30 A. I couldn’t comment on that.

Q. You don't know?

A. No.

Q. No, that's absolutely fine.

A. I looked at these files.

5 Q. No, that is – okay. Page – I have only got a couple more things, page 342, talking about Shannon, which is in this area I think, and you state there that the Minister stated, so you are quoting from the Minister, "...the Department of Maori Affairs cannot compel these people to make applications for housing assistance. The Department officers are continuing their efforts to encourage people to seek housing assistance so that all the sites can be built on." I wonder if you can – if you can tell us, do you have a sense as to why Māori were not making application for housing assistance? Do you have explanations for that? I should note I suppose just for the audience that we are talking about a period in 1952, so the early 50s according to your footnote.

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A. I don't – I mean, there is a number of possible reasons, but I cannot – I mean, one of the possible reasons is that either people did not have a high degree of trust in the Department at a time when it was taking over functions and I mean the Department is just starting up at this time, you know, it is –

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Q. This is Māori Affairs you are talking about?

A. Yes, yes, I mean the Māori Affairs Department was created in 1953. I mean it is, the Māori Affairs, the version of it that is created by the Māori Affairs Act 1953 is, you know, the Consolidated Department is created in 1953. There has been a department prior to that and there may well have been suspicion of the Department. It is also possible that there was, you know, that the – I mean, one thing I can say is that the requirements were onerous in my view in that people had to come to the Department with an appropriate site or with land interests that they were willing to alienate, you know, to convert the capital into funds they could put into their house. All come with an appropriate site that they own to themselves. They couldn't, you know, they couldn't own it with their whānau, you know, there couldn't be brothers and sisters in the title, that that would have made it very difficult for people to apply for their

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assistance, and it may well be that, you know, as a new scheme people were, you know, trying to make sense of what it was that was required. But, as I say, I mean, there is a couple of – the first and the third point that I made there, probably a little speculative on my part, but certainly the terms were a constant problem for people seeking housing assistance.

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Q. Can I just confirm, the department provided district offices to assist with this type of thing, the very difficulties that, well, in terms of the administration and the technicalities of making applications like this, didn't it?

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A. I mean there were officers who did the work, yes.

Q. And they were generally –

A. I mean we're talking about the 1950s and 1960s if I remember.

Q. What difference does that make?

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A. So, well, I mean there was a land consolidation, there was a consolidation officer in the department. There were title officers in the department, but their role was not so much to assist Māori into the process but more about processing applications.

Q. Okay. Did that change later in time?

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A. **Kiri Parata:** It's Kiri Parata, can I add to that?

Q. Yes.

A. I think I agree with all the points that Dr Young has made, but in addition to that you have to remember that this comes after decades of Māori engagement and interaction with Crown agencies. So, there is a deeply level of mistrust that has developed and so while there were welfare officers in place for perhaps for that purpose, there was a lot of reluctance for our people to engage because they did not have confidence in a system that was looking after them. So, I don't know how widely these opportunities were even promoted to Māori, whether or not they were promoted as a positive outcome for them because their previous dealings had been so strikingly alienating in so many ways.

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Q. That's actually a very useful answer to the question that I asked at the beginning which is whether or not you have a sense of why Māori were

not making applications for housing assistance and that could go a long way to answering that question.

5 A. Well I think throughout our research we saw multiple examples of how Māori were disenfranchised through the processes, whether it was the development schemes. Whether it was the housing schemes, but there were multiple times where because of the bureaucracy and the policies that were imposed, we'll use that word "impose" that Māori were disenfranchised and so there was a deep level of mistrust.

10 Q. Thank you. Last question in relation to your substantive report, can I take you to page 391 and here you're on the – we're on the – in the chapter of title, Reorganisation. Paragraph 990, you describe that over period – over the two-decade period that operated from 1954 – 1974, the Māori Trustee acquired some 43,364 "uneconomic interests" in 4154 blocks. Can I just clarify, that number, which sounds staggering, is this
15 across the entire country or is this – do we have any sense of the breakdown for the Ngāti Raukawa takiwā? So, first question is, is that over the whole country? And if it is, do we have a sense of the numbers for this region?

20 A. **Dr Grant Young:** So, yes, yes, that's the – yes, so that's across the country and I'll just – I don't think that I have overall figures for this inquiry district, and it would probably be difficult to have a – there are examples obviously in the report of conversions which occurred, but I think in the past, when I tried to find more specific data about consolidation, it's usually in the form of index cards for each individual interest. So, it's a
25 relatively large-scale exercise to be able to put that together and unfortunately, I don't – we didn't even locate the index cards for this district, so.

30 Q. No, that's fine, thank you. Got three very quick things from your summary. I am very conscious of time Judge. Page 8 of your summary, paragraph 23, so this is the paragraph that starts initially focused only on land. "The Crown bureaucracy came to exercise control as well as over finance land development, welfare, housing, road and sanitation, water services and communal activities at marae or gatherings elsewhere for hui." And then at the very end of the paragraph, you talk about the validity of decisions

already made. I should read the sentence out. Such was the extensive of the activities of this bureaucracy and the diversity of Māori experience that the legislation was modified annually to authorise the bureaucracy to deal with Māori interests to validate decisions already made, and to address complaints from Māori.” My question was, was the Crown generally receptive to remedying these problems when they were identified to them, if the legislative framework was being modified annually?

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A. I mean there was a process especially in the first half. Well, I mean in the first half of the – also of the 20th Century, there were the annual Native Land claims and Native Land – sorry, Native Land claims adjustment and Native Land Laws Amendment Acts, which were passed in annually. And then you had the Māori from about the 1930s, they turned into the, initially, the Native Purposes Act and then Māori Purposes Act. And the Māori Purposes Act would have two parts. One would deal with amendments to Māori Land Laws and the other one would – the other part would deal with adjustments to you know that were required arising out of claims. In most of the provisions of the Native Land claims side of the legislation, most of those rose out of petitions to the Native Affairs Select Committee. So, there was a process and it was probably a relatively formal one I think where people who were facing difficulties with their land could petition the Native Affairs Committee or the Māori Affairs Select Committee later on, and it would go through an inquiry. Essentially, the person decides or the people deciding on whether or not the claim had any merit with officials and the Department of Māori Affairs, so the Native – sorry I hope I’m not going into too much detail. Do you want me to –

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Q. I think so, yes, but thank you. I’m sure we could all sit and listen to you for a long time. Over the page, page 9 of your summary, we were talking about the concerns – sorry, the constraints when establishing a refurbishing or upgrading marae, and you say there, third sentence down, “The Court could create marae reservations without regard for planning rules, but planning rules apply to that land and land use consents were necessary to get building permits. Are you suggesting that it would have

been better to not require Māori buildings to comply with building regulations? Like, should there have been a different set of rules?

A. That's not I'm suggesting. There's an example in the report, at least one example, maybe two, which I can't put my hands on right now. The
 5 difficulties that one of the marae faced in trying to – was it rebuild or build a new whare? I'm not – so no I'm not suggesting that. what I am wanting to make clear to the Tribunal is, is that those rules did create considerable difficulties for Māori communities as they were trying to create their traditional places of gathering.

10 Q. Okay, thank you. Those are the questions for the Crown.

JACKI COLE:

Your Honour, I just wanted to make it very clear for the record that Ms Parata and I grew up together and went through school together, so we know each other quite well, and I just wanted to get that on the record to disclose that.

15 **DCJ FOX:**

Thank you, in that case, I am going to take the morning adjournment at that point and you could have a cup of tea together now. All Right, 20 minutes thank you.

HEARING ADJOURNS: 11:15 AM

20 **HEARING RESUMES: 11.39 AM**

(11:39) TANIA SIMPSON TO DR ARETI METUAMATE, KIRI PARATA, DR GRANT YOUNG, ELJON FITZGERALD:

Q. Tēnā koutou. Thank you for your report. I just wanted to follow up on
 25 some of the discussion around the housing levels of demand and so it was the case that for some who wanted to access the build, the new builds, that they would have had to be able to submit a deposit. You have said something like 10%?

A. **Dr Grant Young:** In the absence of a cash deposit then either land interests that could be liquidated or an appropriate site which – with an appropriate title had to be **(inaudible 11:40:18)**.

5 Q. Yes. So if you did not have land interests that could be liquidated or a site then you would not have needed to have save a deposit?

A. Yes, that is right, and I have to say I cannot think of any examples where a whānau bought a cash deposit to the arrangement. I do not recall any situations where that occurred.

10 Q. And there would have been some sort of debt servicing criteria, I would have had to have sufficient income to be able to service the loan and the interest, the payment of the loan?

A. Yes, that is correct. Yes, there was both capital and income requirements that had to be met, yes.

15 Q. Yes, and the costs of legal fees and insurance and so forth, that standard components of –

A. Yes, that is right, I mean, it was very much a commercial decision on the part of the Department, yes.

Q. And so those things could have been barriers for some families to be able to access the scheme?

20 A. Yes, that is right. I mean, the evidence that we looked at was primarily evidence concerned with people who were able to get into the scheme or were successful, you know, were able to get a housing loan or a house. The evidence on people who wanted to or who were unsuccessful is much more limited. In fact, I cannot recall any evidence that would – di
25 you want to...

Kiri Parata: This is Kiri Parata. In terms of the evidence of those that were unable to and stop me if this inappropriate to put it forward, but I mean just over morning tea a kuia came up to me and gave me her example of exactly that. That in fact they relied heavily upon –

30 **DCJ FOX:**

It probably is inappropriate.

KIRI PARATA:

Is it?

DCJ FOX:

Yes, yes. Thank you.

KIRI PARATA:

5 But there are –

DCJ FOX:

We are restricted to what is in your report, thank you.

KIRI PARATA:

There are examples though.

10 **TANIA SIMPSON TO DR ARETI METUAMATE, KIRI PARATA,
DR GRANT YOUNG, ELJON FITZGERALD: (CONTINUES)**

Q. So I guess the numbers that we are seeing in the report that are related
to demand are as you have just outlined those who have been able to get
past the starting blocks and get through an application process, such that
15 they are actually on the books?

A. **Dr Grant Young:** Yes, so that they are a whānau that advances can be
made to, yes.

Q. And are you aware of whether those who could not read and write English
would have been able to be considered in that process?

20 A. **Dr Grant Young:** I do not recall any evidence that would specifically
indicate that.

Kiri Parata: I would like to go back and check because I do recall that. I
do recall reading that, but I do not have the information at hand. So if we
were able to re-look at that and come back to you? Thanks.

25 Q. Thank you. That is all for me, thank you.

A. **Dr Grant Young:** Kia ora.

DCJ FOX:

Dr Soutar?

**(11:43) DR MONTY SOUTAR TO DR ARETI METUAMATE, KIRI PARATA,
DR GRANT YOUNG, ELJON FITZGERALD:**

- 5 Q. Āe, tēnā koutou. Familiar faces from my past, nice to see you all there again. I have just got a few quick questions. The whole idea of in the 20th century the location of Māori in – and I am talking about the towns and city Palmerston North in the north here, you talk about Māori living separately from the Pākehā communities in these places and I think you say – but that is not – the reason for it is because of social norms and I wondered if you could explain that a bit more what you mean by that? Do you need a paragraph for me to refer you to?
- 10 A. **Dr Grant Young:** I think we have one.
- Q. Well if you go to your conclusions, page 419, para 1059 is where I am looking. The last line there you talk about social norms and the consequences.
- 15 A. Yes, and we elaborate on that at paragraph 743 on page 299 of the main report. Page 299 and – which is the start of the section on native housing policy in paragraph 743. I'll be very careful in how I approach this answer because we have the difficulty identified by Dr Phillips in earlier – in this report in that we want to give examples from the south of the inquiry district which perhaps illustrate this most clearly, but we can also talk about Kai Iwi Pā here which is – which was a, you know, an important community by the river that was not part of Feilding, sorry, that was outside of Feilding, and you'll see in the report that there is quite detailed assessments made of the housing there, and I mean I can read out –
- 20 again, this probably doesn't entirely go to physical, the physical separation that you're asking about but I think it informs some of the values which underpin that physical separation, and if you go to paragraph 878 on page 344. This is a report prepared in the late 1950s by one of the welfare officers, and there's a couple of comments there.
- 25 So, the welfare office is dealing with families experiencing poor living and housing conditions at Kai Iwi Pā. "Explored several means by which to address the problem. Discussions were held with the medical officer of health Palmerston North in December 1957 regarding what could be done to bring about closing orders or demolition orders on substandard housing
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in the area. The question of individual rights was highlighted by the medical officer, the response from the welfare officer being,” and this is the quote from the report, “every individual has a right, he also has a responsibility. In those problem cases where the conditions are appalling
5 or where the wife or children live in unsatisfactory conditions the bread winner has a responsibility to improve his housing, not only from a health standpoint but also from a moral one. In the same way that parents fail to take care of their children the children may be removed from that home.” The threat of – the report continues. Sorry, our report continues.
10 “The threat of removing children in these instances were supported by the district welfare officer,” and here we’re quoting the district welfare officer, “I favour your suggestion to work in collaboration with Child Welfare to threaten taking the children away while living under unhealthy conditions.” And that – as I say, this doesn’t entirely go to your point
15 about physical separation, but I think it does demonstrate some of the values which underpin the physical separation of Feilding the township, the colonial township of Feilding and Kai Iwi Pā out by the river.

Q. Yes, but I am trying to understand what are the social norms that put them out there.

20 A. And I suppose what I'm saying is that these quotes reflect some of those values, some of those social norms that inform that separation.

Q. Because what I am really wanting to understand is – or to put another view to you, it might have not been that there was a preference to actually be separate. I mean, where I come from in Gisborne, Māori live in the
25 same city but almost a separate – some independence. In the sporting clubs we mix, some social events but everybody is happy to live like that, and what I am wondering is Māori are, to use Kai Iwi, they may well have preferred to live like that at a distance from Feilding. Your suggestion is they are pushed out on to the fringes in these towns and almost not
30 wanting to be seen by the community.

A. Yes, I think that I mean I'm not suggesting that they're pushed out of the towns because Kai Iwi Pā as I understand it is a traditional site of occupation out by the river. It’s more that the, as I say, I’m a little bit hamstrung because we can't – because the example that Ōtaki is

probably illustrates this a little bit more clearly, but as I say, you have the Colonial Township at Fielding, you have the pā at Kai Iwi and its – just two are kept apart by those social norms, yet I'm not sure I'm addressing your question unfortunately.

5 Q. Yes, I am really trying to find in that, I know the housing situation in the pā, I understand the problems there, but what was the Crown's role in this?

A. No, no, I mean in that particular situation, I think Dr Soutar, we are providing broader context of the – of social relations in the area rather than necessarily saying that that's something that the Crown is responsible for. I mean the Crown is certainly responsible for these housing surveys and the housing policy but the social norms I think is not necessarily something that the Crown is responsible for.

10 Q. Yes, we will move on. Page 407, the list. I know this is Ōtaki but from what I understand the reading this, the Raukawa Marae Trustees about them, it appears to me that all of Raukawa are involved in this and I am wondering what you know about the list here. It seems to me that in 1936 this is representative of the Raukawa thinking at the time that this is who Raukawa is, and it also shows the relationship with Te Āti Awa and
15 Ngāti Toa at that period. Am I right?

A. Yes, yes. Yes this is a – this is a very inclusive list as far as I can tell, yes, yes.

Q. I am sure when we get down south we will talk a bit more about this, but I was wondering if you pulled in the people who came up with this in 1936
20 today, have a look at all the hapū that exist today and all these claimant groups what they might say about the situation today, if this was their thinking in 1936?

A. I mean but by way of context what's quite interesting about this period is that there are a number of similar entities or arrangements elsewhere in
25 the country that are put in place at around this time. So, the Ter Araroa, the Hinepare trustees are organised in a very similar way. At Ruatoria the Uepohatu – hope I got that right, meeting house is organised in a similar way and up at Kihikihi there's the Maniapoto, the Rewi Maniapoto can't remember the exact name of it, but there's a site at Kihikihi which is
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administered in a very similar way in a structure that was setup at around the same time.

Q. Tell me, the Māori Battalion Hall. I notice it is not in here, but I thought a Raukawa organisation also ran that?

5 A. The one at Palmerston North?

Q. Yes.

A. **Eljon Fitzgerald:** You are quite correct. The Raukawa Māori District Council are the kaitiaki, the proprietors of that building.

10 Q. Right was that –

A. After 1936.

Q. Yes.

A. '60 – '56, 1956.

Q. 1956 is that why you didn't cover it?

15 A. **Dr Grant Young:** It probably didn't come up in our conversations with the claimants.

Q. At page 401, I was interested that the – you could not get access to the district office files. This is para 1018, second line there. That the files are not available.

20 A. Yes.

Q. Where are they?

A. We were able to find parts of them but because the district office, because of the various restructurings of the Department, the files have been transferred to places unknown, and so despite very considerable efforts we were not able to locate them.

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Q. Right.

A. The – because the Palmerston North office, the details are in the report, but I think it existed as district office until 1980 and then most of the work was transferred to Hastings and Palmerston North became a sub office, I think that is the right order, and then with the end of the Department of Māori Affairs in the late 80s and the Iwi Transition Agency the files unfortunately got... So, there are some files, but a number of them, you know, the files are organised by the different parts of the Department and so the Court files are certainly still available, but there

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are other parts, you know, like the consolidation files we were not able to track those down.

5 Q. Last question relates to your chapter on housing in the 1930s and I thought when I was reading this, this is a good reminder that the world was a different world for Māori in that period. I mean, you get a worldwide depression going on at the time but attitudes towards Māori, I mean, it is almost unbelievable by today's standards, and when you – you had this discussion about the pension and the fact that – the widow's pension and the old age pension Māori are paid I think something like three quarters of what non-Māori are receiving and the reasons that are given are generally because Māori don't need as higher living standard and they can live off the land, and that is the justification for it. And –

10 A. I do know, if you would like, the paragraph is 764 I think you are referring to.

15 Q. Yes.

A. Yes.

20 Q. But if you go to 767 – actually, the top of page 309, what I realised when I was reading this is that the officials ignore a Māori worldview of, or the cultural view that Māori have about things. I mean, this statement here by the – who is giving it? The Commissioner of Pensions, is it? Anyway –

A. Bernard Ashwin is the secretary to the treasury.

25 Q. One of the reasons that it is suggested that the pension should not be increased is because Māori shares his wealth and it may be that the increase contemplated would be appropriated by persons other than those whom the Government intended it for. And that ignores the, and we have been talking about it yesterday, the concept of manaakitanga. The fact that he/she should share is – I was thinking about a very Māori thing to do. I have been in many situations where you might walk in on a group of Māori who are having lunch and it is almost, I guess, an insult for them not to offer you some of that food no matter how little they have got, and I guess it is the same even with money, even if you do get a pension. The attitude is to share. And do you see in all of this that that was a weakness of the Crown at that time, that it had no other view than the Western view of how you deal with money?

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- 5 A. **Kiri Parata:** Yes, I would say yes, that is correct, and I think that the report gives many examples throughout of the Crown's – their ability to notice things like the example that you just gave that Māori share their wealth but their lack of understanding around the tikanga or the concepts behind that, and I think there are a number of examples in the report that highlight that. In terms of the point you made earlier about the attitudes in that era, again there are a number of examples through the correspondence written by Crown agencies or Government officials where the way in which they speak of Māori is – shows their lack of appreciation for tikanga Māori and it shows particular bias in terms of the way that they choose to live their lives. Downright derogatory in some points where they describe homes and living conditions which were very poor conditions as was noted. But the – yes, in undertaking the research I was incred – yes, I was surprised at the language that was used when describing Māori by Government officials and saddened deeply on many occasions because of the way in which we were looked upon as what seemed like we were second rate citizens and not living up to a norm that was considered the right way at the time.
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- 20 Q. But they do go for advice, don't they, because they go to the Native Affairs Department – the Māori Affairs Department for advice at times, for opinions, and I was interested in Dr Young's point about the photograph in the 1950s that hangs in Gisborne. I know the photograph well because I am in the next one in the 1990s.
- 25 A. **Dr Grant Young:** Many years later.
- Q. But isn't the photograph a reflection of the Department in that the majority are white, male, middle class –
- A. Yes, yes.
- Q. So I imagine in the 1930s it is even worse. So the advice when you go to the, either the Native Affairs Department or Māori Affairs Department it is not necessarily Māori that you are getting it from, correct?
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- A. Yes, yes, that is correct, yes.
- Q. That is all. Kia ora.
- A. Kia ora.

DCJ FOX:

Dr Phillipson?

(12:02) DR GRANT PHILLIPSON TO DR ARETI METUAMATE, KIRI PARATA, DR GRANT YOUNG, ELJON FITZGERALD:

5 Q. We now come to the white, male, middle class.

A. **Dr Grant Young:** And some confusion over Dr Grant.

Q. Yes. Tēnā koutou katoa and thank you for your report. Most of my questions are quite general in nature here but I do have some questions that I would like to put to you in writing which deal more with points of detail. I just wanted to start with that table at the front that Mr Johnston took you to. You do not need to look at it, but you have stated in your report that you planned to update it when the final figures came in from the block narratives. Those figures are in now. So my question to you is, are you still planning to update it? Because you left that statement in your final report. So...

15 A. My memory is that the – I will have to check that for you, Dr Phillipson. My memory is that we did use the updated data to compile the table. This did go into the draft report and that sentence might have been left in, in error, and I will need to go back because a lot of work was done after the draft report and before the final report was submitted and we also filled, you know, like Raumatangi, we filled some gaps ourselves to be, you know, where there might have still be gaps in the work that –

Q. Right.

A. – Mr Walzl was doing. So we will have to check that for you.

25 Q. Yes, can you check that because I know that it carried on after June 2017 which is the date on your report.

A. Yes, it did, yes, I think that the main work to be done after that related to Horowhenua.

Q. I see.

30 A. But I will check that.

Q. You will check that.

A. Because obviously Horowhenua is a very large complex block in terms of this research but I will check that.

Q. Great, thank you. You mostly talk about the Māori land boards and I am wondering in terms of statutory protection mechanisms, and I am wondering how effective you think those were for Ngāti Raukawa and affiliated groups after the land board period when the Court was doing the protective work?

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A. So, in terms of protection there was more continuity than change after the Native Land Court took over in the early 1930s. the, yes, the protections were largely applied by the Court in the same way in that they were procedural rather than substantive and the Court certainly didn't start declining applications for confirmation and alienation. The difficulties that emerged in the second half of the 20th Century were more related to the structure and arrangement of title rather than any protection that the Court provided administering the alienation process.

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Q. Okay, thank you that is helpful because I was very aware that the 1953 Act for example has a very broad range of things that the Court has to consider when confirming alienation such as the equity of it and all of these other things but – so, you are saying by that point, it is really – most of the land has been alienated. Is that your point?

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A. Well no, I mean alienation continues after in 1953 but I am certainly – I can't think of any significant example where alienation was declined by the Court, and I certainly don't think that – I can't think of any judgment for instance where the Court considered the equity of a particular alienation.

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Q. Okay, and you are just talking about this district here when you say that, are you?

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A. Yes, that is right.

Q. Yes, that is great, thank you. The meeting of assembled owners system, that have extremely low quorum requirements between 1909 and 1974, although there was a slight bump up in 1967. I am really interested to know because you have given us some examples, if you can tell us how much land was alienated through that system in this district?

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A. I can't give you that figure that there would be quite a lot of work to compile.

Q. Is that – I wondered if it is compliable from the information in the Walghan Block narratives. I do not know because I have not looked at them yet.

A. I mean did the – Mr Walzl will have identified where land was alienated via a meeting of owners, so it ought to be.

5 Q. Right okay.

A. Which I hope this is an answer to your question.

Q. Yes, and I should note too that I read the whole of your report rather than just looking at the particular pages, because it did not really work that way.

10 A. I think that would make sense.

Q. Yes, thank you. How much is a general prospect in terms of the development schemes that you have looked at for this district, how much input did the Māori owners have into the management and control of those developments schemes?

15 A. Bugger look like it's me. As I said earlier, in response to one of counsel's questions, the development schemes meant that the landowners were effectively giving up their land to the department to manage, and it may well be that it is just the records that we have looked at, but I do not think that is the case, that these are very much controlled by the farm supervisor and the district supervisor. Right from the start you know from the early 1930s onwards.

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Q. Well, later on there were owner advisory committees and things like that but I am not sure how that worked with the timing of these.

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A. **Dr Grant Young:** And I did not see too much of a role for them in this district. It might be that many of the development schemes were – had phased out by the time they became an option. There is certainly the case where prominent leaders in the, you know, Māori leaders in the district would have informal conversations with Department officials about individuals who could take over the land or the management of a particular property. I am thinking – no, I will not try and identify anyone in particular because I might probably get their name wrong, but there is certainly plenty of evidence of that – those informal discussions and probably the departmental supervisors relied quite heavily on that in making their decisions but in the end, they were their decisions to make

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about the occupation. I mean, the development schemes were very tightly controlled by the supervisors so, you know, how much fencing was going to be done, how much phosphate was going to be spread. You know, all of these were decisions that were made by the departmental officials.

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Q. Right, and carrying on with that general theme of the schemes it is really not clear to me from your report whether the Māori owners ultimately derived any benefits from the schemes in this district.

A. No. I think – I mean, we did not come to any clear conclusion on that because that can be difficult given the nature of the documentary record that is available to us, but it is very, you know, like the Matararapa scheme is probably the most significant development scheme in the district and from memory it was alienated not too long after it came out of the development scheme. So it is, I mean, the benefit was that whānau were occupying and farming the land but that was only while the land was in the scheme. And you know, there were also the constant difficulties over flooding and that sort of thing which made, you know, protecting improvements very difficult.

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Q. Yes, and that was particularly with the Reureu scheme. But why were there so few in this district? I wondered if it was because it just was not enough land, and I am thinking of the northern part here which was where they seemed to be concentrated.

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A. Yes. Well, my answer to that question is yes, yes, and also insufficient land of, you know, adequate size to actually sustain a family. I mean that was a constant difficulty in schemes across the district, was having sufficient land to be able to support one family.

25

Q. Yes, because Ngata's period was very focussed on dairy farming, but later, the later approach to the development schemes was broader and could take in forestry and other such things. So...

30

A. Yes, I do not recall any forestry in this district.

Q. In this district.

A. It was more – I think the focus was primarily dairy farming activity.

Q. Yes and the basic thing is there was not enough land.

A. Yes, that is right, to sustain a, you know, to generate sufficient income to sustain one whānau, yes.

Q. Right, which is pretty sad really.

5 A. **Kiri Parata:** Dr Phillipson, may I add to that please? Kiri Parata. I just want to go back to a couple of the questions you asked and the first one was whether or not Māori had control I believe or...

Q. Well what I asked, what input –

A. What input they had.

10 Q. – the Māori had to the schemes. That would include whether they should be established in the first place, which I think they did, and then how much input they had to how the schemes were run, who went on as occupiers, that sort of thing.

A. That is right, and I think Dr Young has answered that. But just to add to that, I think that Māori certainly were involved in terms of the intention to go and the decision to be, you know, to be part of the schemes, and I think they went into it from my assessment of reading the research material was that they went into it with the intentions that it was going to enable them to stay on their land to have whānau on the land to work their land and improve their land through the scheme. Of course, what the report shows is that they didn't actually have that say and they weren't involved in the decisions around how farming or other practises should take place. And in fact, there are a number of correspondence between the Government officials where they critique the farming practises of whānau on their own land and then possibly reprimanded them as a result of those things. I think your next question that follow that was –

25 Q. It was about so the idea of the schemes was that you would very slowly pay back the initial investment and sometimes the ongoing investment and at the end, a working would be returned to the owners or at least those who have become occupiers sometimes.

30 A. And did you ask whether or not whānau were better off as a result of the scheme?

Q. Yes, I wanted to know –

A. Yes.

Q. – whether the owners of the Te Reureu lands that went into the scheme and also the other one up in the north, what benefit they ultimately got.

A. I guess I just agree with Dr Young and that the benefit was that they got to stay on their land but whether or not that was to their advantage in the long-term in terms of how the land was at the end of it, I'm not...

5

Q. Yes, well this is the thing is that they didn't get to stay on their land in the sense that only one – the land was given to one or two as the occupiers to farm it, and what happened to it at the end is not entirely clear to me.

A. Okay.

10

Q. I might put that question in writing.

A. Yes.

Q. And you can respond further.

A. Kia ora.

15

Q. Great thank you. That's my questions on the development schemes. You mentioned something called the Indigent Scheme as part of the Native Housing policies and things. how did that scheme work? I am sorry I did not note down a page reference but –

A. **Dr Grant Young:** No I can't in the absence of a reference I –

Q. You don't remember what that scheme was?

20

A. No, no, the only –

Q. Indigent Scheme, I-N-D-I-G-E-N-T. I think the word – it is in capital letters, it is called the INDIGENT SCHEME. So, we need to –

A. Yes, yes, I can see that there.

25

Q. Yes, that is the one, paragraph 782. It is – you have got – 19 of these applications were under what was described as the Indigent Scheme and I just want to know what that scheme was. Do you see that, paragraph 702?

A. Yes, I do, yes, yes. Unfortunately, I don't have any information other than what's in the report there. But I can – I'll look at that further...

30

Q. Okay thank you.

A. I mean it is a reference to people without land or money and housing arrangements for them, but I'll come back to you with any further information.

Q. Thank you. And in section F4 of your report, you have given some examples of sales of land so that owners could get money for housing proposals and there is an example on page 351 and I just want to know, how widespread was the surviving land in this district? Did quite a lot of people end up having to sell so that they had money to apply for the housing?

A. Yes, yes, it was a very common – it was a very common practise. I mean these are given by way of example to show what was happening. But if people wanted to pursue you know, get a loan from the department for a house, then they needed to have capital or as I have already said, they needed either to have capital in some form either land or interest in, you know, if someone has an interest in a piece of land at Aorangi and they have an interest in a block of land up at Ohinepuhiawe then that interest would have to come out of that land up at Ohinepuhiawe and be – you know, and be transferred down into Aorangi so that they could get themselves a house on the site.

Q. So, I wondered is this the *Haan Report* in action?

A. Yes, absolutely.

Q. Maori selling their land to get a family home.

A. Yes, absolutely, yes.

Q. And is that the intent behind the policy do you think? Or do you think it is an accidental effect?

A. So which one is the intent? Sorry.

Q. That Hun's idea was that Māori should give up their land and consider their tūrangawaewae to be their family home.

A. Yes, from the Crown. In terms of department policy, yes, absolutely. I think – I mean, you know, this is occurring before Haan as well and I think Haan is probably articulating a policy –

Q. Yes.

A. – that was already in, you know, being applied prior to, you know, his report was to take that policy and broaden it and make it official.

Q. Yes, that is what I thought, yes. Thank you, that is very helpful. Now I wondered from the examples you have given in section F5, which is about the operation of the planning laws, it seemed to me that you were actually

saying that, “The planning laws in counsel oversight provided a sensible break on partitions that were too small and had no access.” Is that correct? That is a general point I took out of what you said.

5 A. I guess that is one general point that could be taken from it. But I think probably the main argument that I was developing there was difficulty that planning laws could create for whānau who were trying to get themselves a housing site.

Q. So you think that is an overly generous point I have taken?

10 A. Also, I would have to check but I have some feeling that the division of land – that was for a purpose other than a housing site, you know, so it was just a division of rural land.

Q. Mhm.

A. Probably was not controlled by the local authority, but I would have to check that.

15 Q. Can you check that?

A. Yes.

20 Q. Thank you, and you have already answered one of my questions when the Crown asked, which was how much land was affected by the uneconomic interests. So could we go to the figure 1 on page 401? I just do not understand this table at all. So I was hoping you could explain it to me how it works and what it means?

25 A. All right. So this is a table which – so obviously as it says in the previous sentence, it is a return to the head office from the Palmerston North office to show progress on implementing the statutory declaration under part 1 of the Māori Affairs Amendment Act 1967. So this was a – there was a very clear policy imperative to implement part 1 statutory declarations as quickly as possible, and district officers were required to send returns and to head office on a regular bases.

Q. And these are the declarations that changed Māori land to general land?

30 A. Yes, from Māori freehold land to –

Q. Yes.

A. – well European land at that time --

Q. Yes.

- A. – by statutory declaration issued by the deputy registrar of the Court, and I was just going to say that these returns were quite carefully scrutinized by officials in the head office and if they felt that certain district officers were not achieving an adequate throughput then they would be – there would be further correspondence. So, what the – so what we are – what is being shown here is the first line is cases under investigation. So, for the six months ended 30 September 1968 in the Palmerston North Office there was 808. The total to date was 15,736.
- 5
- Q. See when I read that I thought that meant the acreage of land, but you mean that is the total number of cases considered to date, is that what that means?
- 10
- A. Yes. Yes, it certainly would not be the area of land.
- Q. No. So, when did that start. That is from 1967 is it?
- A. Yes, that is right. Yes. Actually, my apologies sorry the total is the national total. So that is 808 out of 15,736.
- 15
- Q. That is the national total?
- A. Yes.
- Q. Right.
- A. And then you can see by – to the period ending 1970, there is a total of 2161 cases under investigation and then the other details follow from that, so –
- 20
- Q. So, the next one is...
- A. – cases when investigation is completed. So that is the first step to...
- Q. So why have you got two rows there for the same six months, both called deferred or not being preceded with? Is that a mistake or?
- 25
- A. Yes, that must be a – obviously one group has not deferred, and the other group has. So, I will clarify that and come back to you.
- Q. Right and then returned from Chief Surveyor, what does that mean?
- A. So, before a part one declaration could be issued there needed to be a survey. There needed to be an actual survey and then the survey plan needed to be endorsed by a diagram on the partition order. So, the Chief Surveyor did that. So, the partition order would have been sent off to the Chief Surveyor for the diagram to be endorsed on the partition plan.
- 30
- Q. And that comes after the case is having been investigated?

A. Yes, that is right.

Q. Right.

A. And then you can see the ones that are not being processed for lack of survey. So, so...

5 Q. Does that mean they got abandoned or?

A. Yes, pretty much – they could not proceed further if there was no survey plan.

Q. Right.

A. The – But that did not actually mean the block necessarily got surveyed.

10 A survey might have been compiled from surrounding survey plans.

Q. Right.

A. **Dr Grant Young:** So, that was – it was quite common for that to happen.

Q. And then there is something that says, Advice of Registration received?

A. So, it is sent to the District Land Registrar for registration. That is the
15 statutory declaration.

Q. Yes.

A. And then they receive notice back for the DOR to say that the notice has been registered on the title.

20 Q. Right, okay. I understand that table much better now, but you will fill in those, you will change that ...

A. I will clarify the cases where investigation completed...

Q. Yes, the double right. Okay thank you.

A. Now you do not have anything at all on Trusts and Incorporations in this district?

25 Q. No, the reason is that because there weren't any or so there is some commentary on both which is through the report rather than having separate sections.

A. I did not see any so?

Q. So, there is some...

30 A. Where is it?

Q. There is some analysis of the use of section 438 trusts in particular and there is also an example of – the only Incorporation we found which is land south of the Manawatū river...

A. It is probably – that is probably why I did not see it.

Q. All right. Okay.

A. So, for the northern part?

DCJ FOX:

5 Most references to the section 438 provision are critical of its use indicating that trusts were established in order to promote alienation.

DR GRANT YOUNG:

That was one of the reasons they were used, yes.

10

DCJ FOX:

Is that what you wanted?

DR GRANT PHILLIPSON:

15 No, I just did not think there was any discussion at all but I had not read the southern bit so that will be why.

DR GRANT YOUNG:

Right.

20

DR GRANT PHILLIPSON:

So, do you think then. No, I will save further questions about that until the southern hearing, thank you. And those are all my questions apart from the ones in writing so, thank you very much and thank you again for your report.

25

DR GRANT YOUNG:

Kia ora.

DCJ FOX:

30 Thank you. My questions first of all relate to page 35 and that section. So, other Tribunal reports have indicated the background to the Māori – the Māori Land Administration Act 1900. This was the Crown's response basically to the demands and the petitions from Māori to satisfy with the Native Land Court process who wanted to have a – more involvement in the administration

of their lands. And so, what we got were the Māori Land councils the membership of which were all Māori even though the president was Crown – was appointed by the Crown as were two members, is that right? Do you know and three were elected Māori people? Dr Grant will confirm that is that right?

5

DR GRANT YOUNG: Which Dr Grant?

DCJ FOX:

Dr Grant Phillipson.

DR GRANT PHILLIPSON:

10 It differed between the statutory requirements in the practise so that sometimes depending on how many were appointed there was a majority of Māori member on the Māori Land Councils and sometimes there was not, but that is correct.

DCJ FOX:

15 Yes. So, the Tribunal in other reports has been, while indicating that they did not see it as a perfect reflection of rangatiratanga, it was at least a step in the right direction, and then we get this immediate change through the Native – through the Māori Land Settlement Act 1905 to the land boards, and we have the appointment of a president who is never Māori, usually under that legislation.

20 **DR GRANT PHILLIPSON:**

And not in this district.

(12:31) DCJ FOX TO DR ARETI METUAMATE, KIRI PARATA, DR GRANT YOUNG, ELJON FITZGERALD:

25 Q. But at that point, not expressly stated in the legislation. In this district there was never a Māori of the land boards?

A. **Dr Grant Young:** No, no, the –

Q. It is not expressly stated that has to be European until 1909.

A. Right.

Q. Is that right?

A. I'd have to check that.

Q. Okay, could you check it. Well, I have checked it. I have checked the legislation, so that is the situation. So, if there are only three members under the Māori Land Settlement Act 1905 and then that has continued through into the Native Land Settlement Act 1907 leaving aside what happens in 1909, if that is the pattern, is that an improvement in your view or not towards the direction of recognising Māori aspirations to administer their land?

A. Oh, no, I mean the – firstly you get in late 1899, you get the absolute prohibition on all alienation of Māori land while there is an opportunity to you know James Carroll takes the opportunity to sort of regroup and find a way of addressing Māori aspirations in relation to their land and that is manifested in the Māori Land Administration Act 1900 as you correctly point out. And then through – that is really the high point of Māori participation in decision-making processes about their land, and that immediately comes under pressure the Liberal Government is facing considerable electoral pressures and through 1905 Stout Ngata is an effort to try and slow things down a little bit which is largely unsuccessful. 1905, 1909 and then the Liberal Government goes out of power in 1912. And then of course the reformed Governments in power you immediately get the Amendment Act in 1913. So, sorry, that's a very long answer to your very short question which is, you know, the first decade of the twentieth century you have the high point but it all goes downhill after that in terms of Māori participation.

Q. Yes, you do not have much of a discussion about examples from this district under those provisions and I wondered, why? Is it because that they weren't active at all?

A. I can go back again, decisions are made several years ago, and I have to try and remember what – my recollection is that there was very little happening in this area.

Q. I see.

A. In response to those provision. I mean, I am very clear in the report that Stout and Ngata did not come here.

Q. Yes, I know he did not come here.

A. Yes, and so that –

Q. But no, I mean the –

A. But that is all of the –

5 Q. The actual provisions dealing with the land boards and what they were doing, Māori councils –

A. Yes, they do not really get underway until –

Q. – what they were doing and a comparison between them.

A. In this – sorry, I see, the legislative framework. I think, again, I think it is largely because I did not find much happening in that period in this district.

10 Q. Right.

A. It is not until 1909 when the Ikaroa Board is established and that is when, and you know, and then it starts doing its work under the Native Land Act 1909.

15 Q. Okay. Does that mean there was no board established before 1909 in this district?

A. I would have to check that but that is my memory, yes.

Q. Okay. Can you check that? Thank you.

A. Yes, absolutely, yes.

20 Q. So if we go to pages 77 to 78 and it is this point about the section 438 provision in the legislation and the fact that most of the cases that are given as examples really are about how the provision was used to facilitate alienation and I guess I wanted to ask were there any examples of how section 438 was used at least by some of the Judges in other districts to actively assist Māori in Māori land development.

25 A. Yes, and to manage Māori land. So this discussion on page 77 onwards is in the alienation section of the report so the examples that are given there are primarily concerned with the way those trusts worked.

Q. Yes, naturally so, but my question is –

30 A. Yes, no, and so I just wanted to put that by way of context. In terms of the administration of land in section 438 trusts, it probably – well, no, I mean it was not something that we specifically looked at for the purpose of this report.

Q. Okay, that is fine. At page 83, paragraph 163 there is that indication that at least one block was vested in the county rates officer?

A. Yes.

Q. And you say that is extraordinary, but you only give that one example. Are there others that you saw in the evidence that you traversed – in the material that you traversed?

5 A. I would have cited that because of the particularly unusual circumstances of such a vesting, I would have cited it if I found others.

Q. Okay, and it is a southern block. Sorry.

TANIA SIMPSON:

Sorry, just on that same point, so your sentence says, “Often the Court vested
10 the block in the county rates officer as trustee.”

DCJ FOX TO DR ARETI METUAMATE, KIRI PARATA, DR GRANT YOUNG, ELJON FITZGERALD: (CONTINUES)

Q. Yes, that is right.

15 A. **DR GRANT YOUNG:** I see, right. I mean, that would suggest that there were more than just that example, but again I would have to come back to you on that one.

Q. And then I note the discussion you had with Dr Grant Phillipson about the development schemes and it surprised me that for this area anyway, is it two schemes in the north or just one? Ōhinepuhiawe and Matararapa.

20 A. We are sort of assuming that Matararapa is south, is in the south.

Q. That is south. So it is just Ōhinepuhiawe.

A. And Te Reureu.

25 Q. And yes. So with those two schemes and the discussion that you had, at least it did not seem clear to me that you have provided enough information around why the Māori land owners would have agreed for the schemes to go or did they agree. I think there was one example where there was agreement, but I am not sure whether it is in this district...

A. The details on how the land came into the scheme will be provided in the report because that is something that the files are relatively clear on.

30 Q. Well I think there is only one scheme where there is any statement that the owners agreed.

A. Right.

Q. But we can go – could you check that?

A. Sure.

Q. And if I am wrong on that then I have obviously been reading too late at night, but I think you will find that there is not much information around for example, how many owners were at the meetings where it was agreed, who was taking a record of the meetings, how much notice people got of those meetings, and then how those decisions were then recorded back to the owners.

A. Yes, I mean I could probably respond to that in the sense that whether or not information of that detail is available depends entirely on the records that are – you know, that are available to us, and in some instances those records are available, so we can provide quite a bit of detail.

Q. Excellent, that would be helpful.

A. And in other instances, it is not, so we can't provide that information.

Q. All right. And those are all the questions I had. I just want to thank you, it is going to be a helpful document for us to draw on in terms of developing the case studies throughout the next few weeks as we go through our hearings, and we thank you all for your evidence. Now, do you have any follow-up, Ms Cole?

20 JACKI COLE:

You weren't wanting to ask any of the claimant counsel? Shall I go first?

DCJ FOX:

You will go first and then –

JACKI COLE:

25 Okay, well it is actually just in respect of the indigent schemes, and I may have misunderstood this. So, it was talked about at paragraph 778, so this may or may not clarify it, so it is page 313.

UNSPECIFIED SPEAKER: (12:42:12)

Am I on?

(12:42) JACKI COLE TO DR GRANT YOUNG:

- Q. Yes. If you go back to – sorry, if you go to page 313, paragraph 778, you talk about the Government had decided to provide a separate fund of 100,000£ to address the living conditions of those determined by the Board to be indigent, I took that to be the Indigent Scheme, did I misread that, misunderstand that? Do you see where I'm looking?
- 5
- A. Yes, that's my understanding as well.
- Q. So, that was trying to assist Dr Grant Phillipson with that.

DR GRANT PHILLIPSON:

- 10 Yes, thank you for that. I still would like a bit more detail about how that worked, I don't – although that is, yes, that is the genesis of it, yes. Thank you.

DCJ FOX:

- Do counsel for the claimants have any questions as follow-up from what the Tribunal has asked? No? And anything else you wish to bring to our attention?
- 15 In that case, we have finished hearing from you all. Ngā mihi ki a koutou. Ngā mihi ki ngā kairangahau nō konei , tēnei te mihi atu ki a kōrua, otirā, ki a koe Dr Young. Goodluck in your new career as an aspiring Judge of the High Court. Thank you.

20 **WAIATA TAUTOKO****MIHI (KAUMĀTUA)****WAIATA TAUTOKO (PUREA NEI)**

25

MIHI (KAUMĀTUA)**WAIATA TAUTOKO (E TORU NGĀ MEA)**30 **MIHI (TANGATA WHENUA)****KARAKIA WHAKAMUTUNGA**

WAIATA TAUTOKO

HEARING CONCLUDES: 1:08PM

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