Parewahawaha Statement No. 2

Leases and Reserves

Prepared and filed with assistance from Woodward Law Office.

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SUMMARY

1. With others of Ngāti Raukawa, Ngāti Parewahawaha sought to keep their allotted land and lease it. Government, however, broke the leases, got the land, and stymied tribal development by leaving them on uneconomic, fragmented reserves in multiple ownership. It was doubtful that the tribe could survive this change, but the scheme's author thought the tribe was a dying race in any event.

2. This paper develops the Ngāti Raukawa vision of leading in the new economic environment. It picks up on the threads left hanging in *Nō Mua Atu i Ngā Hokonga* and the *Parewahawaha Statement on Te Awahou.* It covers the growing realisation of Ngāti Parewahawaha that to build the tribe's economy and government, Ngāti Parewahawaha, like others of the confederation, would need to reserve their land and control alienations. They could then engage in the business of leasing, to make money, connect with Europeans and learn more about farming.

3. The paper addresses the leadership of Taratoa of Ngāti Parewahawaha in reserving and leasing the land. On his death however, the Government moved in to buy the land, despite considerable opposition. The paper then considers the reserves that the Government made following the purchase, and how Ngāti Parewahawaha were left with no capacity to realise their former objectives. The issue was now whether the tribe and its treasured customs would be able to survive at all.

4. This paper considers the leases and the Government reserves but not the purchase. The story of the leases and the reserves is different for each hapū, but the story of the purchase is so similar for so many that Ngāti Parewahawaha are looking to cover that matter with other hapū in hearings to come.

SUBMISSION

Introduction

1. We are Pita Savage, Robyn Richardson and Jessica Kereama whose background and credentials were provided in Parewahawaha Statement 1 on Te Awahou.

2. In making this statement we are joined by Sir Taihākurei Durie for those parts where submissions are made on matters of tikanga and te ture. His qualifications in those areas were also set out in the Ngāti Parewahawaha statement on Te Awahou.

3. We confirm the Summary above and include it as part of our submission

Historical Background

4. We add to the joint statement in *Nō Mua Atu i Ngā Hokonga* our particular perspective and give emphasis to parts.

5. Before the migration of about 1827, the people who later formed the hapū of Ngāti Parewahawaha were based in South Waikato.[1] Our forebears had come from Kāwhia, the final resting place of the Tainui waka which brought our ancestors to Aotearoa. After much deliberation, the celebrated warrior, Taratoa, led us south to settle along the lower Rangitīkei River on the coastal plains of Rangitīkei and Manawatū. We were also at Raumātangi near Lake Horowhenua, with the senior rangatira, Te Whatanui, until after the battles of Haowhenua.

6. Our arrival sealed the prior conquest of the iwi kāinga under the leadership of Te Rauparaha. He conquered the people from Whangaehu (near Whanganui) through to Te Ūpoko o Te Ika. Later, Raukawa joined with Te Rauparaha to exact utu from the local people in Whanganui, but there was no attempt to settle there.

7. Although Te Rauparaha was also of Ngāti Raukawa and had taken the mantle of Hape ki Tūārangi, he had migrated with his father's people of Ngāti Toa. The leading rangatira of Ngāti Raukawa were not inclined to move under Te

[1] The details of the historical background are contained in Nō Mua Atu i ngā Hokonga, a paper filed with the Waitangi Tribunal from representatives of several hapū including Ngāti Parewahawaha.

Rauparaha whose status was less than theirs. Te Rauparaha and Ngāti Toa left from Kāwhia in about 1821.

8. We came after Te Rauparaha had several times requested our support to hold the large territory he had conquered, especially from a resurgence of the vanquished. However, our leaders were careful to establish that in terms of our customs, they came on the basis of their own mana and did not sit under the mana of Te Rauparaha. Pointedly, they declined to come at the request of Te Rauparaha, for whom it was correct to rely on the whakapapa of his father, and accepted instead the invitation of his sister Waitohi, for whom it was correct that she should lean to the distaff. Through that whakapapa, they were from a senior line.[2]

9. Accordingly, our leaders maintained an independent authority. Ultimately, they replaced the vengeance that Te Rauparaha had justifiably sought, with relationship building acts of leniency, protection and marital arrangements that would enable us all to switch from warfare to trade. Unlike Waikato, the Manawatū was almost vacant. There was room enough for all and there were opportunities for trade that had not existed before. After some battles to demonstrate their capacity, Te Whatanui and Taratoa, who had journeyed together on the Heke Kariritahi, sought to peacefully resolve differences with each of Ngāti Apa, Rangitāne and Muaūpoko. It resulted in the release of large parts of the territory to Ngāti Apa and Rangitāne. Taratoa would also seek to incorporate into his care, the remnant of Ngāti Apa in Manawatū, sharing rents with them and so seeking their confidence. It was a plan that was likely to have worked, we submit, but for the Government's intervention to terminate the leases and purchase the land.

10. We emphasise that the terms of coming were so clear that there was no conditional gift but just a customary allocation, where the benefits of conquest are apportioned amongst the victor's allies. In our case however, we had already taken possession of the south bank of the Rangitīkei River.[3]

11. We also emphasise that our primary papakāinga and pā were on the coastal plains beside the Rangitīkei River, where they had military significance.

[2] Again, the details are in Nō Mua Atu i ngā Hokonga.
[3] He Iti Na Motai vol 2 p16.

Although Taratoa had his kāinga there, he was a senior chief for all Ngāti Raukawa and lived at various places along the Manawatū and Horowhenua coast. These places included Raumātangi, where his cousin Te Whatanui had settled with his people, Ōhau where he was involved in a mediation and, Te Awahou where, as at 1841, a section of Ngāti Parewahawaha had erected a pā.

12. Our first papakāinga on the river was at Poutū i te Rangi ('Poutū'), midway between Tangimoana and what is now Bulls, where most of the heke that followed after us passed through. In time, papakāinga were established at Matahiwi, Maramaihoea, Mangamāhoe and Ōhinepuhiawe. With each were large cultivations of which the largest was called Te Puki o Heke. Those at Mangamāhoe and Matahiwi continue to this day. Our main pā were Matahiwi, Poutū and Tawhirihoe.

13. When our people of Ngāti Raukawa were resident in the south at Kāpiti, Ōtaki and Ōhau, they were introduced to trade through whalers. These came not as strangers but to live alongside or amongst their Māori hosts. The prospect of more contact with Europeans to live amongst them for the same purpose had enticed Taratoa and others to treat with Colonel Wakefield and the New Zealand Company to establish settlers on discrete, small blocks. However, the arrangements did not progress beyond a couple of small placements when it was learnt that the New Zealand Company was treating the arrangement as a sale of some 25,000 acres.

14. Having been exposed to the true intentions of the New Zealand Company, and on becoming aware of the major purchases to the north and south of the Raukawa takiwā, as discussed in *Nō Mua Atu* and our statement on Te Awahou, Taratoa and the other senior chiefs retreated from the thought of further sales. They moved instead to the leasing of the land to Europeans. Taratoa was particularly involved with the Manawatū leases.

15. As part of the relationship building exercise, in 1849 the Rangitīkei-Turakina lands were released to Ngāti Apa in 1849, an act that also enabled the Ngāti Apa to sell it and the Government to buy it. In that process, Government was also informed by the Ngāti Raukawa rangatira, that Ngāti Raukawa had reserved from sale, all their remaining lands (apart from Te Ahuaturanga which would later be released to Rangitāne). They did so by the customary

mode of placing them under the mana of a leading rangatira, Taratoa in this case. The message was clear. We now call this 'the Raukawa reserve'.

16. Owing to the implacable opposition to land sales by Te Rauparaha and Te Rangihaeata, and despite the New Zealand Company's misinterpretation of Ngāti Raukawa intentions in seeking settlers to live amongst them, the untouched Ngāti Raukawa lands were nearly all that was left to acquire in the Government's land purchase programme for the lower west coast and Cook Strait regions. Having witnessed the massive land sales to their north and south, Ngāti Raukawa had become firm in their view that they would hold onto their lands and would work with those settlers who were willing to work with them to engage in the new economy.

17. As we will later submit, the Government moved in to purchase the land from anyone who would sell, whether they were persons in possession or not. However, that is for later debate. **At this stage we submit that the Government's purpose in buying was not only to settle Europeans, but was also to so divest Ngāti Parewahawaha of land as to exclude them from any significant role in national economic development and to leave them with little chance of surviving as a tribe.**

18. We rely first on the presumption that people are presumed to have intended the natural and probable consequences of their acts. We rely also on the widely disparate treatment of Ngāti Apa and Ngāti Parewahawaha in the provision of reserves, especially at the time of the purchase itself before our voluble protests forced a reluctant Government to throw in a little more.

19. We further contend that the Tribunal should conclude from the evidence that Government was motivated by an improper consideration of backing Ngāti Apa for their support of Government objectives and of punishing Ngāti Parewahawaha for supporting the policies of the Māori King.

20. We also submit that in assessing the extent of prejudice arising from the paucity of the land reserves, the Tribunal should find that there was not only a substantial economic loss, including the loss of the large pastoral runs, but also the loss of the capacity of Ngāti Parewahawaha to govern itself and look after our own people.

21. We will consider the business opportunities, the effective extinguishment of the leases, the tests for adequate reserves, and the Government policies and practices that led to an almost total loss of Ngāti Parewahawaha tribal capacity.

The Process

22. By 1858, when Government agents first sought to buy our land in the Rangitīkei-Manawatū block, those of us who remained on the Rangitīkei river and who had taken to identifying as Ngāti Parewahawaha (as well as any other ancestral allegiances), were well on the road to establishing a prosperous place for us all in the new, national economy.

23. Our Parewahawaha economy, like our political authority, was soundly in place simply because we possessed the rivers, lakes, seas and land of our customary takiwā. Leaving aside Te Awahou, our landed share of the district, marked out as the Rangitīkei-Manawatū block, would have been about 72,000 acres. It was enough to sustain our communities, and those customs that would maintain social standards in the new environment.

24. Putting things in modern terminology we had a sound business case to support our vision. In accordance with our rights under Te Tiriti o Waitangi, we had taken the necessary steps to protect our capital base by declaring our Raukawa Reserve and had relayed our position to the Government. We had seen the enormous government purchases that had happened all around us, from Taranaki to Nelson, and had opted out of a similar fate for ourselves. We had declared a reserve of the lot under the mana of our own rangatira, Taratoa.

25. Our decision was reinforced soon after by the Castlepoint purchase over the ranges at Wairarapa, in 1853, and the rapid mopping up of the smaller blocks in the vicinity immediately after.

26. To further hold to the land, by ensuring its economic development, Taratoa had begun the fashioning of a leasehold economy, leasing large runs to pastoralists. It was only a small step from there to developing our own farming capacity.

27. However, our pathway to prosperity was blighted when the Government purchase agents, Grindell, Searancke and later, Featherston, broke from the

practice of Governor Grey and Donald McLean, who had been involved in negotiations with Māori from 1844, of dealing with the leading chiefs. When it transpired that the leading Ngāti Raukawa chiefs were opposed to land sales, and had declared that our lands were not for sale, Grindell, Searancke and later, Featherston, worked around the leading chiefs by calling meetings of all and sundry, whether or not they were in possession of the land, and by hunting down willing sellers, whether or not they were entitled to be owners.

28. We submit that Government had first to determine the appropriate persons to treat with on the basis of Māori custom. Looking at the particular circumstances applying to Manawatū at the time, where a confederation of hapū had existed to manage the migrations and the settlement of the land, and where the sale of the land by one hapū could affect the integrity of the confederation as a whole, it was tika that a decision should be made to hold the land under the mana of a single rangatira. It would also be tika that if a hapū was free to sell, the hapū leader would decide after discussing it with the whānau heads.

29. Taratoa had very recently passed. Ordinarily one would expect the Government to withhold discussions until a successor was in place. Failing that, there would need to be at the very least, a separate agreement from each hapū for their respective part, subject to some agreement on its boundaries. We of Ngāti Parewahawaha do not agree for example, that a decision on our land should be made by the members of other hapū. We need not go into detail, however. This is first because nothing near to that process eventuated and, secondly because, the government's own policies on the lands that Māori needed to retain for themselves meant that in the Parewahawaha case, there was little if anything that could have been sold. We will come back to that point.

30. We also rely on the findings of the Tauihu Tribunal to contend that the first requirement for a valid sale under the Crown pre-emption purchases, was to determine the correct right holders, and all the right holders for consent and payment purposes before the buying began.[4]

[4] The several tests for a valid purchase are considered by the Waitangi Tribunal in *Te Tauihu o te Waka a Maui Report on the Northern South Island Land Claims* 2008 at pp 25-26, 77-79, 84-86, 179, 270, 286 – 304, 1359, 1366-1367 and 1372 - 1374.

31. What we see in the Te Awahou and Rangitīkei-Manawatū purchases however, is a Government that did not seek to determine first, who is entitled to sell, but who sought to determine only, who was willing to sell. It should be obvious that where there is a willing buyer, and there is no intention to determine who is entitled to sell, there will be no shortage of willing sellers. The very process compels one to put self-interest ahead of the tribal interest or risk missing out altogether.

Leases

The beginning of the Manawatū leases

32. The first planned settlers of Manawatū, lived along the lower Manawatū River or ran stock on the Whakaari Plains along the Manawatū coast.[5] They were mostly immigrants brought in by the New Zealand Company. They had purchased scrip before leaving, entitling them to a certain quantity of land. While at Wellington however, the Government rejected the Company's 'Manawatū' purchase as outside the terms agreed by Hobson in 1843. Impatient for land, several ventured north. Most landed on the northern side of the river even although the purchase had been arranged for land to the south. They sought their own arrangements with resident Māori for the use of land.

The Plains

33. The Whakaari Plains were especially favoured for large-scale pastoral farming or runs. They had been cleared of native bush by former inhabitants and were largely in pātītī (native grasses or tussock), with fern, mānuka, tutu, toitoi and flax.[6] Much of the Oroua valley interior, by contrast, was impenetrable bush.

[5] These should not be confused with the whalers and traders who were there before them, or the Government immigrants who followed later, like the large number from Manchester who settled around what became Halcombe, Feilding, Bunnythorpe and Ashurst.

[6] The original bush was probably cleared through the spread of fire in making waerenga or clearings for papakāinga and māra; and probably by accident because of the value of the bush for bird snaring, kiore runs, vegetables like pikopiko, berries, medicines, timber and house cladding. For fuller descriptions see Catherine Knight *Ravaged Beauty an Environmental History of the Manawatu* 2014 Dunmore Publishing Ltd chapter 5.

The Extent of Leasing

34. As described in more detail below, the leasing of land from Māori had been made unlawful. Successive colonial administrations had turned a blind eye to the existence of informal leases because of the influence that the run-holders had in the national politics and the local economy. Government purchase agents for example, were instructed to use their powers sparingly so as not to incite trouble.[7] We presume that they had been authorised under the relevant ordinance to refer cases for prosecution.

35. Leasing had expanded into the Manawatū as a result. It was reported in 1864 that in Manawatū – Horowhenua, some 150,000 acres was under lease. This generated considerable revenues for the Māori right-holders. Searancke, a Land Purchase Commissioner who operated in the district, complained that Māori were demanding high prices for their lands.

36. Attached as Appendix F is a Table of Manawatū Leases as known to the Government in 1864. It is compiled from Hearn (p 241) and from Anderson Green and Chase (pp 250 – 260). It is likely that it is not a complete list of the leases that operated. Buller, who assisted in the purchase of the Rangitīkei-Manawatū block and was also the Resident Magistrate, compiled a list of the leases known to the Government, on which the tables are based. He advised that both Māori and European were unlikely to give the full story 'for obvious reasons', a reference no doubt to their illegality.

Sharing the rents

37. The analysis of Anderson, Green and Chase, commissioned researchers, is that the leases came largely under the authority of Taratoa.[8] Hearn agrees and notes that Ngāti Apa, needing cash, co-operated with Taratoa, at least initially, lacking confidence to do otherwise. Referring to Ngāti Raukawa he also notes that co-operation was part of the larger Ngāti Raukawa strategy to preserve the land from sale.[9] We attribute the leadership in this matter at this time to Taratoa, with widespread support from others. We submit that Taratoa

[7] Anderson, Green, Chase p 249.
[8] Anderson, Green, Chase p 249.
[9] TJ Hearn *One past, many histories: tribal land and politics in the nineteenth century* 2015 CFRT A152 pp 238, 331.

pursued a policy of relationship building through three objectives. He released land to the iwi kāinga to create a roughly equal land allocation. He sought to bring under his authority, to both control and support, those of Ngāti Apa who remained in the Manawatū. Finally, he sought to hold onto the Ngāti Raukawa part for the hapū of the Ngāti Raukawa confederation.

38. We emphasise that when Taratoa shared the rents with Ngāti Apa it was not, as Featherston later claimed, an acknowledgement that Ngāti Apa were entitled to the land. It was an exercise of goodwill and relationship building, and of bringing the Ngāti Apa in Manawatū 'under his feet', as he put it. The late Iwi Nicholson made this point to you in the Kōrero Tuku Iho sessions. Taratoa made it plain that he did not regard the previous iwi kāinga as having an interest in the land south of the Rangitīkei River and west of Te Ahuaturanga.

39. There is agreement amongst the researchers however, that initially, and until the death of Taratoa in 1863, Ngāti Apa, Rangitāne and Ngāti Raukawa co-operated over leasing and the division of the rentals, with Taratoa taking the leading role.[10]

The Dispute Over the Leases

40. The researchers also agree that there was a vacuum in the leadership following the death of Taratoa and that Ngāti Apa, emboldened by his death and their alliance with both the Government and Whanganui in the Taranaki wars, challenged the Ngāti Raukawa right to the leases. It began a dispute that the Land Purchase Commissioner, Featherston, would capitalise on to justify the outcome that Ngāti Apa sought, namely, the sale of the Rangitīkei-Manawatū block. It was a dispute, Hearn's finds, that was 'provoked, if not deliberately manufactured, by Kawana Hunia', the new Ngāti Apa leader following the death of his father, Hakeke.[11]

41. For his part, Featherston capitalised on the challenge of Hunia to Ngāti Raukawa by painting the picture of a dispute that could lead to trouble so serious, that it could lead to fighting unless he intervened to impound the

[10] Hearn p 311.
[11] Hearn pp 311 – 312.

rents, purchase the land and apportion the proceeds as he determined right. Hearns considers that while Featherston later claimed that the proposal to purchase, as a means of settling the dispute, came from the disputants themselves, testimony offered during later Native Land Court sittings at Hīmātangi in 1868, suggests that it emanated from Featherston himself.[12]

42. Hearn also disputes Featherston's claim that the parties themselves agreed that the pastoral rents should be impounded for a short period as a means of preserving the peace and asserts that his true purpose was to withhold the rents for a protracted period to deny them what was practically the sole source of income available to the protagonists in the hope that impoverishment would induce them to sell.[13]

43. The foregoing has been put up as background to the issues that follow, about the actions of the Government in making the leases unlawful, in creating a punishable offence, and then in the Manawatū case, of impounding the rents. We will now consider those actions and how they measure up with the principles of Te Tiriti o Waitangi and, in the event that the Tribunal finds those actions are contrary to Te Tiriti, the extent of the prejudice that followed.

44. As we have said, the issues relating to the Rangitīkei-Manawatū sale itself will be addressed later, in a separate submission.

The Leases and their Legality

45. The arrangements with Māori have been described as a mixture of Māori custom and English Law. Boundaries were settled and the lease terms set out in what was called a Deed.[14]

46. As the leases were unlawful, and it was an offence for settlers to engage directly with Māori, we cannot be sure of the full extent of them, but those that have been recorded are in the annexed table, compiled from the Hearn and Husbands reports.

[12] Hearn pp 312 – 313.
[13] Hearn p 313.
[14] Anderson, Green, Chase p 90.

47. Crown officials condemned direct leasing as threatening Government purchases at cheap rates and as being contrary to colonial common law. The English legal theory was that land was held by the Crown except that the Crown's title in New Zealand was encumbered by the Native title until it was extinguished. Accordingly, British subjects did not have the right to treat directly with Māori over their land without a charter or patent to do so, a provision that was thought to protect both Government and Māori. The law was clarified by section 2 of the 1841 Land Claims Ordinance which declared, in summary, that all land within the colony was Crown land subject to Māori usage (also referred to by the Court's as the Native Title), that the sole right of pre-emption from Māori was vested in the Crown (and note the comment that follows) and that any title by purchase, gift lease or other conveyance which was not allowed by the Crown, was null and void.

48. As to 'pre-emption' it is clear from the context of the Ordinance that although today pre-emption means a first right to purchase or appropriate, as given in the Concise Oxford Dictionary (which is preferred by the Courts) on the day it meant, or was intended to mean, an exclusive right to purchase, including an exclusive right to lease, or to receive land by gift or by way of a licence to use or exploit. The modern usage could in fact be quite recent. As late as 1927 the Osborn Concise Law Dictionary defined pre-emption as 'The right of purchasing property before *or in preference to* other persons' (italics added for emphasis).[15]

49. The Native Land Purchase Ordinance of 1846 took the matter further by making leasing, amongst other things, an offence. It provided, in summary that anyone seeking to purchase an estate or interest in land from a person of the Native race, including rights of timber cutting, mining, pasturage or use and occupation (and thus leases or licences) without a licence from the Government, would commit an offence and be liable to a fine between five and a hundred pounds except that no-one would be convicted unless on the complaint of the Surveyor-General or someone else authorised by the Governor.

[15] Osborne *Concise Law Dictionary* (1927 Sweet and Maxwell, Chancery Lane London).

Te Tiriti Compliance

50. The question is how these laws measure up to Te Tiriti o Waitangi. The English text provides that the Chiefs 'yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate.' The Ordinance preamble stated that Crown control of the disposal of land was essential to the peace and prosperity of the colony, and 'to that end, the right of pre-emption in and over all lands … [had] been obtained by Treaty'. The Ordinance then assumes that Te Tiriti conferred an exclusive right to buy, lease or acquire some other right like a right to cut timber.

51. We accept that presumption as correct. In the day, as we have said, a pre-emption meant more than a first right of purchase and included an exclusive right to purchase or otherwise acquire an interest in land. It was undoubtedly based on a need to maintain the legal theory about the King holding the underlying title to all the land in New Zealand from the Declaration of Sovereignty and that no one else could obtain a right to the land except by a grant from the sovereign.[16] In addition a pre-emption may apply to more than a purchase. Although the definition in many dictionaries refer to just a purchase, the Concise Oxford Dictionary, on which the Courts most commonly rely, refers to a "purchase or appropriation". That includes a lease. 'Alienation' in Te Tiriti likewise includes a lease. On the face of the English version therefore the Crown has the exclusive right of purchase or lease.

52. In the Māori text however the reference is to hokonga or a trade or barter of the land, and which at some stage came to mean 'sale'. It did not mean 'lease'. When later, Māori sought a word for lease they did not use 'hokonga' but adopted the transliteration of 'rehi'.

53. In marrying the two versions we submit it is helpful to consider what might have been said to Māori at the time. Colenso did not record any discussion on the issue at Waitangi.[17] We submit however that the signing on Kāpiti Island is more relevant. There, and on Queen Charlotte Island, Te Rauparaha had already given occupation rights to various whalers, most notably to Hemi Kuti

[16] However we do not necessarily accept that the legal theory that the radical title is vested in the Monarch is or was part of New Zealand law at the time the leases were made as it may have been inapplicable to the circumstance of the colony (as considered in the English Laws Act 1858).
[17] W Colenso *The Authentic and Genuine History of the Treaty of Waitangi* 1890 Government Printer Wellington.

(James Cootes) with whom he also arranged significant marriages and to whom he gave on the island, 500 acres. We submit that if Te Rauparaha had been informed that only the Government could give a lease or licence of his land to the whalers, Te Tiriti would not have been signed, first because it would be an affront to his mana to do as he wished with his land, and second because his trade in flax and ship provisioning would be threatened.

54. If purchase was discussed, Te Rauparaha may well have been eager to sign. He did not have a continuing trade relationship with the New Zealand Company and the Company to his chagrin had dealt with Te Atiawa over the purchase of Whanganui a Tara (Port Nicholson/Wellington).

55. We submit therefore that the prevention of the leasing of the land in Manawatū was an act of the Crown that was inconsistent with the principles of Te Tiriti o Waitangi and was prejudicial to the Ngāti Raukawa hapū whose present and future economy was dependent on the lessees.

The Impounding of Rents

56. We now turn to the actions of Mr Featherston, when, as a Land Purchase Commissioner appointed by the Government, he was negotiating the purchase of the Rangitīkei-Manawatū block. The purchase of the Rangitīkei Manawatū block will be considered in a separate statement later, as we have said. For present purposes we submit that the several leases provided an income for the hapū through their leaders and provided opportunities for the whanau to develop a farming capacity. In addition, Taratoa, in sharing the rents with Ngāti Apa, was developing his policy of relationship building, to establish peace and to bring Ngāti Apa 'under his feet', as he put it.

57. However, the rents were also a major impediment to Featherston's plans to buy the land. Who, if properly informed, would consent to a sale if by leasing, the amount of the purchase price could be obtained in a few years and the income would be ongoing? And who was more likely to sell if they lost the income on which they had come to depend?

58. Buller, the Resident Magistrate and also Featherston's assistant in the purchase, attributed the impounding of the rent to the 'the Government'. He presumably meant the Provincial Government, but as we shall see, neither the

Provincial nor the central Government had the authority to impound the rents. He did explain however that it was done by requiring that the lessees pay Featherston. Buller wrote 'as the illegal occupation of the land by European runholders under Native leases was complicating the question and causing difficulties to the Commissioner, the Government stepped in and impounded the rents, by prohibiting, under pain of expulsion, all payments to the Native owners pending the completion of the purchase.' He subsequently affirmed that the rents had been impounded 'in the hope of impoverishing the Natives, and making them sell the land.' He suggested that that action had had the desired effect.

59. Despite Buller's statement, we submit it has not been established whether, in impounding the rents, Featherston was acting as Provincial Superintendent or as a Land Purchase Commissioner who had been authorised under section 2 of the Ordinance to lay an information or complaint (such as would result in a prosecution). Either way however, Featherston did it. When he was before the Native Land Court in 1868, he attested that he stopped 'the payment of the rents' himself in connection with the purchase of the Rangitīkei-Manawatū block, adding that the leases affected 'nearly the whole' of the block.[18]

60. Featherston's impounding of the rents led to a rash of incongruities, as follow:

a. He was punishing the wrong persons. The offence was that of contracting with Māori. Featherston did not punish the Europeans who alone could be liable, but only the Māori who could not be liable. He impounded the rents that were due to Māori but supported the illegal acts of the Europeans by continuing their leases.

b. Featherston was complicit in the ongoing commission of an offence, as separately provided for in the Native Land Purchase Ordinance, by collecting the rents from unlawful tenants. Ordinarily they would be required to take their stock and leave.

c. Featherston had no lawful authority to impound the rents. If he was acting as Provincial Superintendent he was interfering with the statutory function of others. Only the Solicitor-General or a Government officer

[18] Hearn p 269.

approved by the Government could intervene on a lease with Māori. Also, the powers of the Superintendent did not include Magisterial powers to impose penalties.

d. If he had been approved under the Ordinance to take action as a Government officer, and in particular as a Land Purchase Commissioner, he was exceeding his statutory powers which were limited to laying an Information or a complaint.

e. He was displacing the statutory process. The process was that a fine was to be imposed. Featherston was imposing a different outcome.

f. Featherston was acting unlawfully by effectively approving the leases that were unlawful. Only the central government could do that. The Act acknowledged that a person could lawfully lease land from Māori under licence from the Government. Here the lessees were paying rent under an unlawful licence from Featherston.

g. If Featherston, or any of the lessees, were given a licence from the Government to allow the leases to continue, then in terms of the Ordinance the leases would be lawful and the rents should have been restored to Māori.

Impounding and Te Tiriti

61. When we come to make submissions on the Rangitīkei-Manawatū block we will submit that this confusion was typical of Featherston. To all appearances he had little ability to comprehend the requirements for a fair process. He was both the master of mistakes and the mentor of corruption.

62. We doubt that Featherston was ignorant of his wrongdoing. He had the confidence of Sir William Fox who was alternately the Premier and Leader of the Opposition. His deputy and advisor was a competent lawyer, Walter Buller, later Sir Walter. He was also the Resident Magistrate who would have heard the cases against the run-holders had they been charged. We submit that his process was outside the law and that Featherston must have known of that.

63. The central government too, and Governor Grey in particular, must also bear responsibility. It was open for the Government to approve the leases insofar as they were fair and equitable and would assist Māori to engage directly in farming in time. The real problem was that for Government to secure a reasonable amount of land for European settlement, Government had first to identify a generous quantity for Māori, reserve that land for them, promote policies for Māori to partner with Europeans on its development, and negotiate the purchase of the balance.

64. The Kīngitanga opened the door to such an approach but Governor Grey rejected the invitation and preferred a period of further confrontation in which Government sought to get all that it could by fair means or foul.

65. We submit that in not intervening on Featherston's impounding of the rents the Government was acting contrary to Te Tiriti. The leases were consistent with Te Tiriti and were integral to developing the Māori economy and capacity and to developing working relationships with the settlers.

66. The aggravating factor was in the way that Featherston, whose power devolved from the Government whether as purchase agent or provincial superintendent, went about his purpose of relieving our forebears of their customary authority and their income. It involved dishonest and fraudulent conduct by a person in power in the six respects we have given, and therefore amounted to corruption.

67. The prejudice to us was considerable. It removed us from the leasehold economy our forebears were developing and from the receipt of funds, it was diminishing of their mana in the eyes of their competitors of Ngāti Apa and Whanganui, and it was a contributing factor in the loss of our lands in the Rangitīkei-Manawatū block by significantly reducing our capacity to remain in control of our own affairs.

The Leasehold Economy

68. At 1840 we had our own land and our own laws and needed only the settler's technological experience to develop our own capacity to compete successfully in the western trading economy. Our leaders were eager to do that and for that purpose were keen to have some Europeans living amongst us. We

capitalised on our experience with the whalers and traders who were given land or a place to live and operate their business, not just to introduce us to the whaling business, but because they were the facilitators of a trade in flax and horticultural produce.

69. When the runholders moved into Manawatū, our leaders recognised the advantage in having them amongst us. We refer not just to the new age leaders who had attended the mission schools. We refer especially to those who led the migrations and fought the battles here, Te Rauparaha, Te Rangihaeata, and those of the Ngāti Raukawa heke. They were interested in trade and contact with Europeans but were also conscious of the need to keep their own land and to govern that land themselves.

70. Leasing to selected lessees served both ends. It also built up personal relationships with the Europeans and some cases to intermarriage. This is reflected for example in the gifts of land to various settlers as follows, either directly or through their half-caste children, the whaler James Cootes, following his polygamous marriage to senior Māori women, Thomas and William Dodds (10 acres) Thomas Bevan (43 acres) Albert Nicolson (two lots of 700 acres), 100 acres (Frederick O'Donne), Thomas Cook (197 acres) and James Duncan (91 acres).[19]

71. Robyn Richardson, a lead presenter of this paper, for example, descends from the Scottish settlers Duncan & Marjory Fraser, who were one of the original lessees, farming initially on the Parewanui Reserve on the Rangitīkei River. Their daughter Ann Fraser married Thomas Furner Richardson whose parents came from Sussex in England. They had fifteen children. The oldest son of this union was Thomas Fraser Richardson, who was the only child to marry into the local Māori, married Unaiki Keremihana Wairaka, daughter of Keremihana Wairaka who tended his maara kai from Pakapakātea to Matahiwi. Keremihana also had a papakainga at Ohakēā. Thomas Fraser and Unaiki Keremihana had Pita Te Aikiha Richardson who had Robyn's father Pita Fraser Richardson. The fuller whakapapa can be seen at Appendix A. Pita Fraser lived and farmed in the same area as his tupuna excluding the whenua of Keremihana Wairaka at Pakapakātea (Ohakēā) as that was given to Kawana

[19] Armstrong, Green, Chase pp 250 – 260; Husbands p 26.

Hunia of Ngāti Apa by the Crown and subsequently Keremihana's papakainga was destroyed through fire as a result of that decision. Later that whenua was sold to the crown which is now the current site of the Ohakēā Air Force Base. Today, from their Mangamāhoe papakainga looking across to Ohakēā the whānau have a constant reminder of the whenua where their tupuna lived. Pita Fraser Richardson was also a tribal leader and one of the original claimants in the Wai 113 claim filed for all of Ngāti Raukawa in the 1980s.

72. On 19 August 1863 Fox estimated the annual rents at £600, rising to £800 or £900 and indicated that most if not all leases had been negotiated originally by Nepia Taratoa. Hearn states that it is worthwhile noting that Ngāti Apa received £2,500 for the Rangitīkei-Turakina block thus making the total annual rents of some £900 a very significant sum of money.[20] In only three years of leasing their land, Māori would have been able to make the same amount which the land was purchased for, and would still retain the land.

73. We submit that prior to 1864, when negotiations to purchase the Rangitīkei-Manawatū block began, Ngāti Raukawa were well on the road to establishing a prosperous place for us all in the new, national economy.

74. We draw on the Tribunal's findings in the Wairarapa ki Tararua Report 2010 where similar fact patterns occurred with the leases. The pastoral leasing economy existed in the Wairarapa between 1844 and 1853.[21] Māori were adapting well to the new economy and participated in trade and leasing successfully prior to the Ordinance. However, following the Ordinances, Māori were left with little choice besides selling.[22]

75. The Tribunal stated in the Report stated that "if leasing was more likely to enable Māori to continue to exercise te tino rangatiratanga, and it was an option that they preferred to outright purchase, the Crown certainly was obliged to support it ... Māori should have had available to them the option of retaining lands to use in a way that preserved their authority in the colonial economy."[23]

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[20] Hearn p 250.
[21] Waitangi Tribunal, *Wairarapa ki Tararua Report* 2010 Volume I p 32.
[22] *Wairarapa ki Tararua* Volume 1 p 35.
[23] P 66 Volume I.

76. The alternative was that under the Ordinance, the Crown may have given a licence to specified lessees to proceed with the leases provided they were fair to Māori. We submit that the failure to do that was inconsistent with Te Tiriti and led to the exclusion of Māori from an adequate participation in the country's development.

77. With Māori seeking relationships with Europeans and Government seeking land for freehold allocation to settlers, and with both requiring the necessary, national governance and the infrastructure for development, we consider a more equitable solution should reasonably, have been found. As we submitted earlier, Government had properly to begin with securing a generous quantity of land for Māori, to guarantee their place, and then to negotiate only for the purchase of the balance.

78. We submit that the Crown's failure to secure an adequate reserve for the hapū to enable them to participate in the national economy from a position of strength, was the more significant Tiriti breach. It is to the reserves that we now turn.

Reserves

79. By 'Reserves' we mean the land set apart for us on the sale of our land to the Government. The Government put great store on the reserves because, according to the Government's Land Purchase Commissioners, our land was disputed land but the Government would give us a title that no one could dispute because the right to it was guaranteed by the Government.

80. We wish the Tribunal to be clear that in our view, looking back on it with hindsight, that we would much rather have kept the Native Title, as it was called. First the Crown grant covered just the land. Our native title gave us exclusive access to everything that was within our customary territory, the land, rivers, lakes, streams, wetlands, foreshore and inshore seas. Second, it was title was held by the tribe and our own laws applied, while the Crown Grants issued to tribal individuals and the Government's law applied. Third, the Crown Grants caused far more disputes than ever came from our own titles. Multiple ownership meant multiple trips to the Native Land Court to

manage internal dissension and there was also no place for our close-to-home rūnanga.

81. Of the various policy criteria for reserves therefore, as considered below, we much prefer that of Lord Normanby and the British Government as in the New Zealand Constitution Act, as preserving the Native Title.

Reserves Criteria

82. Husbands has referred to two tests for reserves adequacy, Lord Normanby's standards and, those set for the Government land purchase officers.[24] There is a significant difference between them.

The Normanby Tests and the Raukawa Reserve

83. The Normanby tests, we submit, should prevail over the alterative tests of the home government. Normanby's tests came as part of an instruction from the Imperial Government of August 1839 to Captain Hobson as the basis for Te Tiriti and so his instructions are evidence of the Crown's intentions and expectations on the drafting and execution of Te Tiriti.[25] Indeed we submit that Normanby's instructions should be read as part of the Te Tiriti.

84. The tests were:

    a. Government is not to purchase 'any territory, the retention of which by (Māori) would be essential, or highly conducive to their own comfort, safety or subsistence';

    b. Government purchases were to be 'confined to such districts' as Māori could 'alienate, without distress or serious injury to themselves'; and by necessary implication

    c. the lands that Māori would retain would be held by them in a tribal title, according to their customs.

85. The corollary to Normanby's second test was that Māori could retain whole districts, the intent for which was borne out by a further 'instruction' from the

[24] Paul Husbands Māori Aspirations, Crown Response and Reserves 1840 to 2000 November 2018 Crown Forestry Rental Trust #A213 pp 5 – 22.
[25] 'From the Marquis of Normanby to Captain Hobson, RN', 14 August 1839, *British Parliamentary Papers. Colonies: New Zealand.*

Imperial Government in the form of the New Zealand Constitution Act 1852. This was of a higher order of law that could over-ride ordinary legislation of the New Zealand Government.

86. Section 71 of the New Zealand Constitution Act allowed for "Māori districts" to be maintained where Māori law and custom were to be preserved. This was allowed for rather than required. As such it was discretionary. We submit however that the failure to exercise that discretion to create a Māori district in a case where one was warranted and necessary to protect Māori interests, would be unconstitutional and therefore unlawful.

87. For the same reason, the failure to create a Māori district in a proper case would also be contrary to Te Tiriti o Waitangi.

88. We submit that the failure to recognise the Raukawa Reserve as a Māori District under the Constitution, or to investigate whether such a District was justified, was contrary to Te Tiriti o Waitangi on the grounds that the circumstances called for it. The circumstances, some of which are explained further below, were:

    a. The senior leaders of Ngāti Raukawa had agreed to it at a major hui.

    b. The need for such reserves had been expressed at national hui which called for a stop to the sale of Māori land.

    c. There had been massive sales along the coast from Taranaki to Nelson

    d. The Raukawa Reserve was the last remaining district in Māori hands for the lower west coast of the North Island and the top of the South.

    e. The recognition of the Reserve as a Māori District was necessary to maintain the Māori economy, culture, tradition and principles of self-government.

89. We can now explain the implied condition that constitutes the third Normanby test given above, namely, that the land should be held in tribal title. Normanby did not refer to the creation of Māori reserves but rather to Māori retaining land unsold. They would therefore be retained in tribal title. Second, section 71 of the NZ Constitution Act considered the same. Māori would hold the land under their customs and those customs were based on tribal ownership.

90. We know that no districts were in fact created as provided for in the Constitution. However we submit that that does not mean that they were not needed. The Government's destructive purchase of the Rangitīkei-Manawatū block is proof, we submit, that they were needed very much. The evidence is rather that the New Zealand Government was not prepared to even consider them.

91. We elaborate on our reasons for submitting that the whole of the Rangitīkei river to Kukutauaki stream should have been set aside as a Māori district.

a. As referred to in Nō Mua Atu i ngā Hokonga ("Nō Mua Atu"), and in Parewahawaha Statement No 1 (Te Awahou), it was settled on the release of the Rangitīkei-Turakina block to Ngāti Apa in 1846, that the Raukawa Reserve would remain in Ngāti Raukawa possession under their customs.

b. At 1864, when the Government first sought to buy into Rangitīkei-Manawatū, the constitution enabled the Raukawa Reserve to be held as a Māori district under Māori custom. The creation of such districts in an appropriate case was a matter of constitutional significance.

c. There was a reasonable expectation that such a district would be created in this instance given that the Government had acquired more than enough land for European settlement along the coast from Taranaki to Nelson, that Ngāti Raukawa had proposed the reserve, and that this was the last district in the region still under Māori custom.

d. Although the Government considered it was obliged to complete the purchase of land for settlement as proposed by the New Zealand Company, that was not an obligation that was binding on Ngāti Raukawa. On the basis of Commissioner Spain's report, we submit:

i. Commissioner Spain had determined that the Company's claimed purchase of 25,000 acres was outside Governor Hobson's remit that the Company might acquire discrete "habitations".

ii. Te Whatanui and Te Ahukaramū had likewise envisaged the sale of only small parcels to enable "white men (to be) introduced amongst them as settlers". The Company had wrongly envisaged the Europeans taking the lot with only some small Māori reserves.

iii. Taratoa agreed to the transfer of only 100 acres.

iv. All the chiefs declined a proposal for the Company to take the lot by paying extra "compensation".

v. Accordingly, while the Government took it upon itself to redeem the land scrip that the Company had issued, there was no obligation on us to help redeem it.

e. The Colony would not lose the benefit of the land in the District as the Māori were intent on developing it, initially at least by way of leases, for the benefit of the national economy. The arrangements that Māori had with certain whalers and pastoralists is also evidence that the holding of land under custom law was not an impediment to the development of the land. There was also nothing in custom law that prevented Māori from making agreements with Europeans or that prevented Europeans from living amongst them. Custom law like all law was also not static but, so long as certain core values were maintained, it could change where changing circumstances required. We also have the benefit of knowing today that it was not custom but the Government's policy to substitute individual ownership, that detrimentally affected the commerciality of Māori land.

92. We are conscious that had Government acceded to the creation of the Ngāti Raukawa reserve there would have been an unfairness for those other hapū from Taranaki to Nelson who did not get the same. However, there is no fairness in saying that because others had been robbed, Ngāti Raukawa should be robbed as well. The point of difference as we see it is that through their traditional leaders Ngāti Raukawa had resolved to reserve their lands from sale. They were entitled to have that decision respected. We are not aware that other groups had taken a similar initiative.[26]

93. As we also see it, the Government itself had caused the problem. Had Government adopted the Normanby test, as reinforced by the 1852 Constitution, Government would have negotiated with the tribal

[26] In the Wairau purchase from 3 persons of Ngāti Toa, for some 3 million acres, 117,000 acres was reserved, but there does not appear to have been a conscious decision by the Māori sellers to retain it as most of it was sold soon after.

confederations of each district by first defining the Māori district to be retained and then the balance to be available for the Europeans, thereby guaranteeing to each of the confederations a place in the national economy and administration.

94. The closest Government came to doing that was when McLean reserved 40,000 acres for a relatively small tribe of a few hundred, between the Whangaehu and Turakina Rivers. Had Government adopted a similar approach with the other iwi, but with larger reserves for those with larger populations, we think it more likely that European settlement would have been consensually achieved.

The Government Tests – ample/sufficient and permanent

95. As Husbands has explained, the Government expected the Crown land purchase agents to ensure that on the sale of the land, enough land was to be set aside or 'reserved' to be 'ample' or 'sufficient' for the former owners' 'present and future' needs.[27] Following best conveyancing practice the boundaries of the land and the reserves to be set aside had also to be settled at the time of the sale. We do not object to those tests. They are sound in themselves. The problem is that in our district, the standards were effectively ignored. Our reserves were not agreed at the time of the sale and came nowhere near to being ample or sufficient for our present and future needs.

96. The first point concerns the process. Normanby anticipated that Māori would retain the land that they needed with the Government buying for European settlement only that which was surplus to their needs and which they were willing to sell. That process put the focus on an agreement with Māori as to what they would retain, before any buying began, along with an independent assessment, possibly by something like the Māori protectorate that the Government set up but then abolished, that sufficient was being retained.

97. The Government process in Manawatū reversed the priorities. The Government acquired the whole of the land in one parcel then itself set aside the Māori reserves later. This reflected the Government's priority of meeting

[27] Husbands, above, p 5.

first the settlers need for land but it detracted from Normanby's emphasis on examining first whether Māori were keeping back sufficient for themselves.

98. In brief, Normanby envisaged areas as large as districts being retained. The inclusion of European operators would be left to Māori discretion. In the Manawatū purchases, Government envisaged that the large districts would be sold, with the inclusion of some Māori being left to the Government's discretion.

99. In several other respects, as Husbands has found, the Government practice fell well short of its own standards. We first examine what those standards meant.

100. We submit that objectively, 'sufficient' must be taken to mean 'sufficient for the hapū to provide for their members' physical, cultural and educational needs, to pursue their economic and social development and to maintain and develop their political and legal institutions for the government of themselves.

101. The authority for this interpretation is the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP, we submit, declares those rights that are inherent in being Indigenous. They should therefore have been apparent to colonial governments. They appear to have been apparent to the British Government. Normanby's instructions and section 71 of the NZ Constitution Act, coupled with the Ngāti Raukawa reservation of their land in 1849, in fact laid the foundation for a policy that would have met the United Nation's standards.

102. The reserves had also to be permanent, we submit, until Māori had developed the necessary infrastructure and capacity for commercial engagement in the western economy. To that end the reserves should have been inalienable except by lease or licence for limited terms with provisions ensuring there is no liability for improvements at the end. Those conditions should have applied whether the leases or licenses were to hapū members, to other Māori or were to settlers.

The Fair Price rationale

103. As Husbands notes, the Government policy to buy cheap and sell well assumed that Māori would benefit from the increased value of the land

retained from the development going on around them, of roads, railways, bridges, portages and towns financed from the on-sale profits.

104. There are two aspects to this. We first submit that the policy, although initially proposed by Normanby, was contrary to Ngāti Raukawa interests, and contrary to Te Tiriti. We submit that there is no capital gain if the land retained cannot and should not be sold. The gain to Māori, on the land retained, was rather from the government expenditure on roads and bridges that provided access to the lands retained, but the finance for that is equitably to be drawn from the taxation of profits and the rating of productive land, rather than have them paid for by Māori through the cheap purchase of their land.

105. Second, the policy assumes that Māori would retain extensive lands. We submit that where they did not, as we in Ngāti Parewahawaha did not, then Government should compensate the loss. **We seek a finding that in view of the inadequacy of the reserves, as is later referred to, Government is obliged, or morally obliged given the lapse of time, to compensate for the economic loss from the extraordinary lack of reserves for Ngāti Parewahawaha.**

Contract Certainty – Discretionary Reserves

106. From where we stand today, it seems incredible that our ancestors should have agreed to sell the land to the Government while leaving it to the Government to decide at some later time, what reserves we should have. However, our ancestors were doing what was right in Māori law.

107. When a coastal tribe sent dried sea-food to an inland hapū they would expect a return in time of some suitable produce from the inland resources.[28] In such cases there was no immediate trade. The prompt for a generous response was 'mana', although Europeans might see it as 'trust'. A poor response meant loss of mana for the respondents, meaning they could not be trusted and should be excluded by all the hapū from future trading opportunities.

[28] As mentioned in Nō Mua Atu, gift exchange is explained in Raymond Firth Economic*s of the New Zealand Māori* 1929, London, George Routledge and Sons.

108. The norm however was an excessively generous response that would prove to all who would hear of it, the awesome capacity or mana, of the respondent's leader. It would be normal to expect that the response would be more than one would have been prepared to ask for, while a weak response could be seen as an insult requiring utu.

109. For its part, the Government had to comply with its own legal standards. Standard conveyancing practice requires that on the sale of a part of the land in a block, the part sold and the part retained are both defined and on settlement, both receive the necessary documents to provide them with a title, at the one time. As Husbands has pointed out, it was required by the instructions given to the land purchase commissioners, that the reserves were to be settled ahead of any sale.[29]

110. We submit that in our case, the Government agent specifically provided that the reserves were left to his discretion. However, the Government's provision of reserves was so miserly as to amount to an insult to our leaders that would have entitled our leaders, given that warfare was no longer a realistic option, to repudiate the agreement.

111. We submit that when the Tribunal considers the different cultural expectations a mere finding that Te Tiriti was breached for lack of an informed consent would not be an adequate response either. The Tribunal has also to assess the extent of prejudice from a Tiriti breach in order to determine the appropriate remedy to remove that prejudice. Subject to such other findings that the Tribunal may make to dispose of the Rangitīkei Manawatū purchase, **we seek a finding that Ngāti Parewahawaha never gave a valid consent to the sale of the land on the basis of the reserves that were provided.**

112. We submit that the proper test is that of a free, prior and informed consent as referred to in UNDRIP.

[29] Husbands, above, p 14.

Compliance with Criteria

The inadequate process

113. If the tree is poisoned so also is its fruit. The reserves were unlikely to be satisfactory for they were the fruit of an unsatisfactory purchase. The nub of the problem is that the land was possessed by the tribe, but it was not the tribe who sold it. The land was sold by a host of signatories many or most of whom belonged to tribes who lived somewhere else. It seems they sold because the Government agent said they could, probably on account of some historic association or current alliance.

114. Historic or empathetic associations have cultural and political significance that may serve to constrain a sale, but in a capitalist economy that which is sellable, is invariably an interest in possession. Ahi kā is what counts.

115. The primary interest in possession, we submit, is held by the tribe. Use rights exist at the will of the tribe. For the tribe to sell required a rūnanga of the whānau heads. The Rangitīkei-Manawatū block was the home for several hapū, each of whom would speak for their own part. Each had to be dealt with separately unless they otherwise agreed.

116. There was no such rūnanga of Ngāti Parewahawaha. Had there been we doubt that the rūnanga would have sold for although Taratoa had recently died, his word still lived amongst us. There were several sellers amongst us too but whether they would have carried the day, was never put to the test.

117. Had we sold, as a tribe, then a tribal reserve would have been made. That, we submit, is what Normanby had in mind and probably also McLean. However, Featherston, the Government agent of the day, had not the slightest understanding of tribal polities or if he did, he paid them not the slightest attention. It could only have been in the frame of mind that disregards cultural preference, that the Government proposed separate reserves for sellers and non-sellers. The allocation of land according to some temporary persuasion is abhorrent to a tribe for whom there is customarily only one persuasion, the unity and coherence of the tribe. The tribe is either all in or all out.

118. For want an honest purchase and because the reserves should be held for all by the tribe, those opposed to sales (the so-called nonsellers) the non-sellers rejected Featherston's offer of a reserve and petitioned Queen Victoria for "an investigator of sound judgment".[30] They also interrupted surveys for which one of our members went to prison.[31]

119. The Government responded in 1867 with legislation enabling non-sellers to file in the Native Land Court to have their interests determined and converted to land shares.[32] Many took up the opportunity, but the legislation was not in fact a win for the tribes as they may have thought. For example, Pumipi Te Kaka, Hare Hemi Taharape, Keremihana Wairaka and Akapita Te Tewe filed their claims to Mākōwhai, Omarupapako, Tawhirihoe and Hikungarara respectively, not for themselves but for Mateawa and Ngāti Kāhoro of Ngāti Parewahawaha. Try as they might to have the reserves held by the tribe, it was to no avail as the legislation allowed only for claims by individuals.[33]

120. We ask the Tribunal to note that our submissions on the reserves' inadequacies, through paucity, lack of protection, unilateral determinations and tardy title delivery, we do not imply that they were otherwise acceptable. The sale process was fundamentally flawed in our view, and that flowed into the way in which the reserves were provided. Throughout the process the tribes were treated as though they did not exist when the tribes were the heart of our existence.

Sufficient Reserves

121. We submitted above that 'sufficient' should mean 'sufficient for the hapū to provide for their members' physical, cultural and educational needs, to pursue their economic and social development and to maintain and develop their political and legal institutions for the government of themselves'.

[30] Petition to Queen Victoria, 29 June 1867 Paranihi and Eruini Te Tau for Ngāti Pikiahu, Ngāti Waewae, Ngāti Maniapoto and Ngāti Hinewai, Husbands p 80.
[31] Miritana Te Rangi of Ngāti Kahoro and Ngāti Parewahawaha, Husbands p 97 and p 130.
[32] See Native Lands Act 1867.
[33] Husbands, pp 80-81.

122. Featherston's reserves for our sellers were derisory – 100 acres at Maramaihoea and 50 acres at each of Matahiwi and Maramaihoea.[34] They were received with contempt.[35]

123. Featherston's rationale was that the land belonged to Ngāti Apa who had allowed Ngāti Parewahawaha to have only small areas. If that were true, which we dispute, he should not have been buying from our people at all, for in Normanby's terms, none of our lands would have been excessive to our needs.

124. The so-called 'non-sellers', more aptly called 'protestors', rejected Featherston's offer of reserves, preferring to challenge the validity of Featherston's putative purchase and the dismemberment of the tribe.

125. As we have described, the Government responded to the protests by inviting the protestors to have the Native Land Court cut out from the block, such part as they may prove to be theirs. We submit it was a trap. They claimed there was not a proper sale. The invitation was for them to establish their land interests on the basis that the sellers had validly sold.

126. Separate submissions will be made on the resulting Court decisions. Our interest is in the outcome for Ngāti Parewahawaha. To cut short a long story, as we see it, the Court adopted the Featherston contention that Ngāti Apa were the true owners then held that the only occupations to which Ngāti Apa had agreed, were the occupations of only Ngāti Kauwhata and ourselves, and then in respect of only those parts where we lived.

127. We question Featherston's belief that Ngāti Apa owned the block. If that was his considered view, why did he collect so many signatures from others and why did he pay out to so many? If he was so uncertain as to need to call in a multitude from throughout the district, why did he not let the Native Land Court decide who owned it before he muddied the waters. It is consistent with the evidence, we submit, that Featherston was avoiding a finding on the ownership so that he could hunt down a multitude of willing sellers whose noise would obscure the absence of a proper inquiry.

[34] Husbands pp 72-73.
[35] Husbands p 74.

128. The Court had also made a finding that the Hīmātangi block was held by Ngāti Apa and the hapū there equally but the Government abandoned its claim to have purchased the area. The reason has not been explained but Buller had advised Government that it was unsuitable for settlement because of sand drifts.

129. With regard to the rest of the block the Court, having found that Ngāti Apa had agreed to the occupation of only Ngāti Kauwhata and us, scrutinised the 500 or so non-sellers who had claimed interests and found, without explaining how, that only 62 now qualified, and sought submissions on what the size of their interests might be.

130. With some pragmatism Ngāti Kauwhata and we sought an agreement with Ngāti Apa as to the amount of land they were supposed to have given us.[36] Since Ngāti Apa had sold all such interests as they may have possessed they had nothing to lose but perhaps something to gain by being generous. We were headed off however by Featherston and his deputy Mr Buller, who got to see one of the Judges in Wellington. They falsely claimed (in our view) that the 62 had agreed to take 100 acres each. Without a hearing, the Court made orders to suit.

131. So it was that the non-sellers got reserves of 6,200 acres not because that was necessary for their present and future needs but because that is what they were supposed to have agreed to as the totality of their interests. Of that, our non-sellers got 1000 acres at Mangamāhoe.

132. Giving the lie to Featherston and Buller's advice that they had agreed, the non-sellers protested that they were entitled to many thousands of acres more. However, the Court did not reconsider its decision.

133. We were thus reliant once more on protests and survey disruptions until McLean came in at the urging of the Provincial Government. The Provincial Government hoped that McLean would 'use his personal influence to persuade the Natives to allow the surveys to proceed.' Failing that, the

[36] Husbands pp 86-87.

provincial authorities looked to the native and defence Minister to use the power of the colonial government to bring an end to the dispute by force.[37]

134. McLean refused to revisit the real bone of contention – the sale itself and now, the Court's decision. Instead he was amenable to making more reserves, on no greater rationale than that of appeasing the protests (and possibly because we might otherwise have joined King Tawhiao at Te Kuiti). Our non-sellers settled for an additional 1000 acres of which 750 acres were taken at Hikungārara and the balance in small lots for cultivations, urupā or customary mahinga kai. Some extra land was given also to the sellers. Kemp made further small reserves after McLean left in 1870.

135. The Parewahawaha reserves, as finally established, amounted to 4,818 acres. They had come in dribs and drabs, without any particular rationale, through Government decisions, Court determinations and appeasement interventions in response to protests. They came in uncustomary forms, none being vested in the tribe and all limited to those who engaged as sellers or those who claimants who were found to have had an interest but who had not sold.

136. The economic viability of the combined reserves was severely compromised. Only one reserve exceeded 500 acres and that was in multiple ownership. The 27 others were not adjoining but were peppered over a wide area. There was no way by which the lands could be repackaged as a compact economic unit and the title reformed to restore the ancestral endowment of our tribe. The reserves were of little use in meeting the needs of the many communities along the river and of meeting the present and future needs of the tribe. We were the korimako after the centre of the flax bush had been cut out.

137. The reserves, which were nothing like the districts that Normanby had in mind, are listed as **Appendix B** (compiled from Husbands pages 180 - 184). Along with other reserves for different hapū, they are depicted in **Appendix C** (Husbands p 149).

138. The main issues, the integrity of the purchase and the decision of the Court, were not addressed.

[37] Husbands p 102.

139. Why did our opponents of the sale accept the reserves in final satisfaction of their interests? Based on Husbands' quotes from various of the hapū, we submit the answer to be, in a word, 'exhaustion', especially after McLean had staunchly refused to review the integrity of the transaction.[38] There was talk of re-occupying the land and of further protests but this time, we can find no record that such action was taken. Our point however is that, if there was in fact a purchase that was valid in other respects, there was not a free and willing consent by all of us, there was not an informed consent, and, to the best of the researchers' inquiries, there was not a collective decision of the tribe as the owner.

140. Husbands also describes the toll that the struggle had had on the communities opposed to the sale and how their kāinga, cultivations, and sheep and cattle runs remained legally unprotected, and vulnerable to confiscation or encroachment.[39]

141. That Government was focused to securing the maximum land for settlers and the minimum for Māori, was evident from the parliamentary and public debate over McLean's additional reserves, as Husbands has described.[40] "The Province will get more than nine-tenths of the whole block" the Native Minister retorted. Instead of rewarding the 'dissatisfied Natives', Featherston countered, the Government should have continued the 'vigorous action' that had led to the arrest and imprisonment of Miratana. McLean stressed the relatively limited size of the area that he had agreed to grant back to Rangitīkei-Manawatū Māori: '14,000 acres, scattered over different parts of the block', from a total of 240,000 acres, over which Wellington now enjoyed 'a clear title.' No-one argued the case for Māori, that the reserves were meant to be ample and sufficient for their needs.

142. Objectively, how much land would have met the tests of being 'ample' or 'sufficient' for Ngāti Parewahawaha (having regard to our definition of 'sufficient'? Reservations like the 117,000 acres in the Ngāti Toa sale of Wairau or the 28,000 acres reserved in the Castlepoint sale in Wairarapa, are not helpful comparisons because of the wide variation in the applicable

[38] Husbands p 103, p 109.
[39] Husbands p 109.
[40] Husbands p 130, 152.

circumstances. In comparing likes with likes we need not look beyond the other side of the Rangitīkei river, to Ngāti Apa, a tribe of comparable size at the time.

143. As mentioned, the Ngāti Parewahawaha reserves, as finally established, amounted to 4,818 acres, scattered over a wide area in 28 divisions. The Mangamāhoe block comprised 1026 acres and there were two Poutū blocks of 410 and 439 acres. The remaining 25 were comparatively small.

144. This compares with over 43,050 acres reserved for Ngāti Apa on the adjacent Rangitīkei-Turakina block with nearly all of it in large blocks suited for corporate, tribal development. The sizeable reserves were about 40,000 acres between the Whangaehu and Turakina rivers, the 900 acre Turakina reserve which adjoined, and on the Rangitīkei river, the Parawanui block of 1,600 acres, 450 acres at Te Taure-Tohikura and 100 acres at Otakupu.[41] These areas are depicted in Appendix D (from Husbands p 19).

145. The Rangitīkei-Turakina reserves, though less than the area that Ngāti Apa had suggested, were probably adequate for a small tribe that the Government had estimated, in 1850, to 'scarcely amount to more than 300 souls', assuming that the members would be able to seek work with the general community.[42] As a larger tribe, we submit that 50,000 acres in one, tribal title along the Rangitīkei river, and down the coast, would be the minimum needed for the survival of Ngāti Parewahawaha culture and tradition and to engage adequately in the new economy.

146. A 50,000 acre reserve would constitute the greater part of the Parewahawaha takiwā. Assuming that the Rangitīkei-Manawatū Block was about 240,000 acres divided along the lines claimed in Appendix E (Husbands p 82), and assuming Ngāti Parewahawaha was dominant along the coast from Kākāriki, as shown on Appendix E, to the southern boundary adjoining the Te Awahou Block, the Parewahawaha takiwā may be assessed for present purposes at about 30% of the block, or about 72,000 acres.

147. We would resist determining the appropriate size of a reserve as a proportion of the total tribal territory. If a tribe had fully agreed to the sale of their land

[41] Husbands above p 14.
[42] Husbands, above, pp 15-16, 20 – 21.

and left the reserve to the discretion of the Government, then the size of the minimum reserve is not a proportion of the total area but is still the amount required for its present and future needs.

148. The reserves for both Ngāti Apa and Ngāti Parewahawaha had been left to the discretion of the Government. The exercise of that discretion should have resulted in reserves for Ngāti Parewahawaha that were comparable with those for Ngāti Apa but they were almost nine times smaller. In addition, Featherston provided certain of Ngāti Apa, who ordinarily resided north of the river, with a further 1000 acres at Pakapakatea, 500 acres at Te Kawau, and two small blocks at Te Awahou, all on the south side of the river. He also gave them 'the exclusive right to the Kaikōkopu and Pukepuke eel fisheries', coastal dune lakes south of the Rangitīkei River, and the 'eel ponds' at Kaikōkopu and Pukepuke.[43] The enormous disparity of treatment probably reflects the close association that Featherston had with Ngāti Apa as the commander of the Native Contingent in the Taranaki wars.

149. Perhaps some indication of the extent of land that was considered appropriate for one European was the 5,000 acres held by the Premier, Sir William Fox, a close confidant of Featherston. This was shortly upstream on the northern banks of the Rangitīkei river by the Ngāti Parewahawaha northern boundary.

150. In considering the sufficiency of the reserves, special consideration is due to the Government decision, without the consent of the tribe, to vest the reserves in individuals. Not one part of the land was left for the physical, social, economic and cultural needs of the tribe. Accordingly, for example, when Ngāti Manomano established themselves as a separate hapū, there was no land the tribe could provide as a site for the papakāinga, no timber for the buildings and no cladding for the roofs and walls. Tribal survival came to depend on individual goodwill notwithstanding that in custom, individual survival depended on the goodwill of the tribe.

151. The impact of what is called tenure reform, the change from communal ownership to a capitalist regime, is considered below, in relation to the delivery of land titles. For now, it is somewhat illusory to consider whether the

[43] Husbands pp 69 – 70.

quantum of land left after the Rangitīkei-Manawatū purchase was sufficient for our needs when we are a tribe, and the tribe as an entity, was now landless.

Permanent Reserves

152. While the reserves were meant to be permanently reserved, they never really were. What remains today is 318 acres at Mangamāhoe and 105 acres of Ōhinepuhiawe a total of 423 acres. None is tribal land although there are urupā and marae as Māori reservations.[44]

153. We submit that the main causes of land-loss were the substitution of individual ownership for the tribal title and the failure to maintain restrictions on alienation. Tribal control was most likely to have maintained the land because it was supported by an ancient legal culture that reinforced respect for the interests of the group. Once individual ownership was substituted it was inevitable that landholders would insist on the right to manage their own property, including by selling it, especially when multiple ownership was an impediment to effective utilisation.

154. A great deal of the land was alienated even before 1900. This was especially so where the Native Land Court had partitioned the reserves into allotments owned by a single person along the Rangitīkei river or on the outskirts of Sanson township. For example 8 of the 20 sections of 50 acres into which the 1000 acre Mangamāhoe reserve had been partitioned, each held by one person, were sold before 1885, almost immediately after the Court had divided them.[45]

155. As shown in Appendix B, 15 of the 28 reserves were to be made inalienable that is, they could not be sold, leased or mortgaged. The restrictions on alienation were continually being removed however and all restrictions on alienation were finally removed by the Native Land Act 1909. In the decade that followed all but 9 acres of the 410 acre Poutū Reserve was sold and some 460 acres around Maramaihoea.[46]

156. We need to be reminded then that the Government's justification for the extremely cheap purchase of the Rangitīkei-Manawatū block was because of

[44] Husbands p 709.
[45] Husbands pp 701 – 702.
[46] Husbands pp 703 – 704.

the increased value in the land that we would retain. It was a specious argument from the beginning but were it to have any truth in it all, it would depend on an assumption that we would in fact retain it. As Governor Grey told his superiors in London, 'the security which is afforded' by the definition of permanent reserves was 'the real payment' Māori vendors received from the Crown upon selling their lands. Guaranteed by the Crown, such reserves offered those who had sold land to the Government the assurance of having somewhere 'that themselves and their children shall for ever occupy.'[47]

Agreed Reserves

157. It is very clear, we submit, that the policy laid down by the Government was that the reserves were to be settled with the customary owners before a sale deed was completed. As we have seen, it was also clear that in the Rangitīkei-Manawatū case, as in the case of Te Awahou, that was not done. The reserves were in fact left to the discretion of the Government agent, Mr Featherston in this instance.

158. Featherston made no bones about doing as he did. He wrote that with 'the whole block . . . in dispute', and 'every acre of it . . . fighting ground', any attempt to define reserves prior to purchase would be 'a constant cause of contention between the tribes.' In these circumstances as he saw them, the only solution was for the Government to take complete ownership of all the disputed land. Once the purchase had been completed, and the 'contention between the tribes' brought to a close by the absolute alienation of all of the disputed land to the Crown, Featherston promised to 'grant' 'suitable and ample reserves' to the former owners.[48]

159. It is typical of Featherston, we submit, that he was making up an argument to suit himself. If the ownership was heavily in dispute, as he claimed it was, then he should not have been buying at all until the ownership was settled. As he knew full well, having been intimately involved in the Taranaki war, the war broke out because of an attempted purchase at a time when the title had been in dispute.

[47] Husbands p 7.
[48] Husbands p 62.

160. As Featherston also knew full well, it was as a result of the outbreak of the Taranaki war, and the purchase of land while the title was in dispute, that the Government, of which he was a member, had established a Native Land Court to determine the ownership of Māori land before any further transactions were entered into. It was then Featherston who with others, had arranged an amendment to the Native Land Court Act, to have the Rangitīkei-Manawatū block excluded from the Court's jurisdiction.

161. We submit that in those circumstances, of which he was fully informed, it was duplicitous of Featherston to say he should not define the reserves because there would be trouble, when the options were well known to him. When we look to his subsequent conduct, his award of reserves for Ngāti Parewahawaha that comparatively, amounted to almost nothing, his true purpose becomes apparent, to punish Ngāti Parewahawaha who would not admit to the Ngāti Apa rights south of the Rangitīkei river, and to please Ngāti Apa, his old comrades in war.

162. When McLean saw the Deed of Sale that Featherston had drafted he expressed his astonishment with customary constraint. He wrote:

163. It is somewhat singular that no mention of reserves for the Natives is made in the deed, for it has always been the custom in properly conducted transactions of the kind to state in the deeds what special portions of the land ceded should be reserved for the use of the Natives, all the arrangements respecting which land should be clearly understood before the final completion of the transaction by payment of the purchase money.[49]

Delivery of Title

164. The partnership principle in Te Tiriti o Waitangi requires of Māori and the Crown that they should relate to each other with the utmost good faith.[50] Applying the principle to the facts we would expect that on the completion of the purchase, the Government, as the self-appointed manager of the process, and having the responsibilities of a trustee for our people who were effectively in their care, would adhere strictly to the normal conveyancing practice of

[49] Husbands p 63.
[50] *New Zealand Maori Council v Attorney-General (The Lands Case)* [1987] 1 NZLR 641, 664.

ensuring that the Government and we would each receive full lawful access to our respective parts of the land, at one and the same time.

165. For the Government to do what it wanted with the land it needed only an Order in Council proclaiming that the native title had been extinguished, supported by a survey plan to accurately define the boundaries of its part. In English legal theory the Crown had the radical title to the whole country but it was encumbered by the native title until the native title was extinguished, as by a purchase of a defined part. Accordingly, on the gazetting of the proclamation the Government could on-sell the land to the many settlers in Wellington, chaffing at the bit, and use the on-sale profit to reduce its debts, for which purpose the Government was chaffing at the bit as well.

166. For Ngāti Parewahawaha, the expectation of equal treatment inherent in the principle of good faith, meant that they would receive at the same time, a registrable Crown Grant, or a title order of the Native Land Court (which by statute takes effect as a Crown Grant), supported by a survey plan to accurately define the boundaries of our parts. This would enable us to use our land knowing precisely the part that was ours. It would enable us to know exactly where to put our fences for example, to keep the settlers' stock out of our cultivations or sacred sites. It would tell us how we could access our land. We would not have agreed to the Government taking its part if we did not have the same access to ours.

167. As we shall see, the Government was in fact to take out its part in 1869, long before the work had been done for us to receive ours. Having taken its part, and having on-sold it in a hurry, the Government had no incentive to see that we received ours and we in turn had no leverage to compel compliance. We did not get the last of our titles until 1887, 16 years after the Government had what it needed, and as we will explain, it is possible that a Crown Grant for at least one title, for 276 acres, is still outstanding.

168. The Crown Grant also meant that the land was freed from the Ngāti Apa claims. Although we regarded the Ngāti Apa claims as spurious, Featherston had enlisted support for the sale by treating them as serious. He advised that the resolution of this serious dispute as he saw it, could be resolved only by a sale to the Crown which would then give us a guaranteed grant for our part.

At that time, we had no idea that Featherston would reserve for those of us who agreed to this scheme, a mere 200 acres, and nor could we have known that he would take his part and leave us waiting for ours.

169. In addition to the good faith principle, it was standard conveyancing practice, we submit, that on the sale of a part of the land in a title, where the buyer takes possession of part and the seller has a new title for the balance, each party received the necessary documents for their sections at the same time, at a settlement meeting. The only question is whether there were exceptional circumstances that might require otherwise.

170. We are not aware of such an exceptional circumstance. The two impediments to completing the documentation for our reserves were first, to have them surveyed and second to determine the ownership. We submit that the Government was responsible for both problems.

171. We look first to the surveys. There is no doubt, we submit, that in terms of the Government's own rules the reserves were to have been marked out on the ground and surveyed at the Government's cost before the sale was completed. However, this had not been done for the additional reserves arranged by McLean and Kemp. In addition, the non-sellers (of both Ngāti Kauwhata and Ngāti Kahoro) had incurred survey and legal costs of £1,500 in defining their claims to land. They were in a difficult financial position. Eventually the Government covered the cost but at a huge cost to the non-sellers. They had to forego one reserve of 500 acres and their claim to another area of 1150 acres.[51] Had the entitlement of the non-sellers been determined before the proclamation of extinguishment was issued, and should have been the case, we submit, the £1,500 debt would not have been incurred.

172. At a meeting at Matahiwi in September 1871, speakers were outraged that while their reserves remained unsurveyed, the government was proceeding with the subdivision and sale of the rest of the purchase area.[52]

173. The mystery was in understanding how the Government could have got its part when to do so it would have had to survey out the reserves. The boundaries of the reserves could then have been compiled from the survey of

[51] Husbands 133-135, 139.
[52] Husbands p 136.

the land that was purportedly sold. It transpired however that Featherston cheated on the Government's own rules, by slipping in a sketch plan instead of a proper survey, in support of the proclamation extinguishing the native title. It was a cheat that had a severe impact on our people. He effectively left our people to their own devices and with the prospect that they might have to pay for the surveys themselves to get a Crown grant for their reserves.

174. Following the Matahiwi meeting in September 1871, a party of about 20 men confronted the district surveyor and told him to stop work until McLean's promises had been fulfilled. They stopped but when the resumed work 10 days later, a Ngāti Kauwhata party 'struck' the surveyors' tents, 'packed up' their 'instruments' and 'conveyed them across the Rangitīkei River.' [53]

175. McLean then intervened and gave detailed instructions for the survey of the reserves. The survey of the first of our reserves was completed in 1874 and the last in the area of the Rangitīkei river in 1879.

176. There was a problem with the final reserve however, which related to our eel fisheries further to the south. Featherston had given our eel fisheries in the dune lake at Kaikōkopu to Ngāti Apa and while we had a reserve at Lake Kōpūtara awarded to us it was only of part of the land. Featherston had given the bigger part to Ngāti Apa.[54]

177. Husbands has a separate section in his research report on the issues over Lake Kōpūtara.[55] It will also be the subject of a separate submission to the Tribunal by the Lake Kōpūtara Trustees. For the present we refer to it in the context of the Government's failure to provide us with surveyed reserves prior to the completion of the purchase in accordance with the Government's own standards, and the serious consequences of this failure for our people. We also note that the issue about the failure to complete the reserves may be outstanding to this day. Husbands advises that he is unable to locate a Crown Grant for the part of the Kōpūtara reserve known -as Carnarvon Sec 383 containing 276 acres.[56]

[53] Husbands p 136-7.
[54] Husbands p 141.
[55] Husbands pp 659 – 684.
[56] Koputara (Carnarvon sec 382) Husbands, above, p 184.

178. We interpose our strong support for the claim of the Kōpūtara Trustees and the Trust in which we have an interest. The Kōpūtara Reserve came about as a result of the Ngāti Parewahawaha and Ngāti Kahoro pursuit of reserves. It was one of our important places for harvesting eels. Today, all of our food gathering places have been affected by the drainage or pollution of our rivers, lakes and wetlands and we are no longer able to host our guests at hākari with the traditional delicacies for which we were once famous. Now the Trustees have taken enterprising steps to restore the lake and stream and the surrounding land and to re-establish a bountiful supply of eels for our dining room tables. Their efforts are a critical part of our cultural rejuvenation and we hope that that the Tribunal will support them.

179. The absence of titles created uncertainty for our people. It was not clear where houses should be built, farm roads established or fences erected, there were disputes over wandering stock and a damper on completing leases, where leases were allowed, when the lessee could not be informed of the boundaries. It was particularly galling that Featherston, as well as McLean, had encouraged selling on the basis that the people would get secure titles for what they insisted was disputed land. This problem was not finalised until 1879.

180. There was then a further problem that had to be resolved and which would defer the finalisation of a Crown grant for the reserves until 1887, sixteen years after Featherston had walked off with the Government's share of the deal. The Government had determined that the reserves should not be taken in the name of a hapū, but should stand in the name of individual members.

181. Once more, the problem was of the Government's own creation. The requirement to vest the land in individual owners gave vent to the Government's objectives, not ours. We were entitled to have our land held by the tribe as a customary entity.

182. If the people wanted different sections of the tribe in different reserves that again was a domestic matter for the tribe to deal with according to our customs on land allocation.

183. The present point however, is that if Government was to add on a requirement that had not been agreed, then without accepting that

Government had a right to do so, Government had to defer the taking of its own land until all necessary tasks were completed.

184. The Government then learnt that to issue Crown Grants in the name of individuals would require legislative approval. Unfortunately, our people had reached a stage where they just wanted some certainty. Erenora and Atereti Taratoa, Kereama Taiporutu, Kereama Paoe, and Weretā Kīmate all threatened to reoccupy the surrounding land and drive stock all over it if something did not happen.[57] The authority to proceed was then given in the Rangitīkei-Manawatū Crown Grants Act 1873.

185. To complicate matters, the Government Land Commissioners, especially McLean, had already promised particular reserves to particular persons. We submit that it was not for the Commissioners to do so. The allocation of land was the tribe's function. The Government had purchased the land in tribal title and it was in tribal title that the reserves should have returned. As we have said, that was inherent in Normanby's contemplation of reserves. The effect of McLean's intervention was to create a dependency on him and to disparage the standing of our own leaders. In seeking to recover the reserves, the argument that we were entitled to them in our own right was reshaped into an argument that McLean had promised them. To get back what was ours we were unwittingly buying into a position of dependency on the whims of officials.

186. The immediate problem was that there was no clarity around who had been promised what. This was especially the case where land had been added to a reserve. There was no clarity as to whether the addition was intended to augment the shares of those who had first been promised the land or was intended to bring in others who might not otherwise have land.[58] The Ōhinepuhiawe and Poutū reserves were especially the subject of contention.

187. Eventually, in 1882, the disputes were referred to a Royal Commission under Alexander Mackay, not just for our reserves but for other lands in the Wellington province where similar disputes had arisen.[59] In addition to Poutū

[57] Husbands pp 155-156.
[58] Husbands p 156.
[59] Husbands p 58-59.

and Ōhinepuhiawe, Mckay's investigation included reserves that had been made for Kaikōkopu, Kōpūtara, Mangawhero, Maramaihoea, and Matahiwi.[60]

188. So it was that Government officials took over the traditional task of the rangatira and rūnanga to decide how our people were to be distributed over the land, like the apartheid South African government deciding who of the indigenous people should be in what homeland, and all without knowing how our people organised themselves. So began the process of title fragmentation as the Commissioner partitioned the proposed owners into ever diminishing allotments to sever the unity of possession. So began the fragmentation of ownership when for example, the Commissioner awarded 89 acres to a list of 70 owners. Following the natural growth of populations in geometric progression it would not take long before the reserves would be an illusory asset, impossible to properly utilise.

189. So also began the uncustomary concepts of absentee and missing owners for a people for whom the only persons to benefit from the land were those who contributed to the tribal good.

190. Crown grants for the reserves at Matahiwi, Maramaihoea, Ōhinepuhiawe, and Poutū issued in July and September 1887.[61]

[60] Husbands p 160.
[61] Husbands p 163.