

Wai 894 – UREWERA INQUIRY

FOURTH HEARING*

OFFICIAL

(Reconvened)

District Court, Wellington

14-15 June 2004

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Tuahine (Joe) Northover
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Tape 1 Side A commences

Peter Andrew cross-examines Cathy Marr

Andrew Kia ora Ms Marr. Can you look please at your summary, #D6? You refer
5 there in paragraph 4 to the Urewera people facing pressures to enter
 negotiations over the future management of the district. You seem, in that
 paragraph, to be referring essentially to external pressures. Is that correct?

Marr Yes.

- Andrew Would you accept that there were also internal pressures, i.e. divisions of opinion amongst Tuhoes themselves, and that those internal pressures are a key feature of the history of the UDNRA scheme?
- 5 Marr My understanding is that there were internal divisions and differences of opinion which were admitted and acknowledged, but a lot of those differences came about through the pressures that were being applied to the district from, such as the Land Court process around the edges, the pressure for gold-prospecting and the pressure of various surveys that were being pushed into the district. So, I do accept there were differences of opinion internally, but I would say that a lot of those came from the pressures that were being applied around the district.
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- Andrew So, would you accept that, in terms of some of these divisions, there was differences between those perhaps more conservatively-minded and those who might have seen themselves as progressive and therefore welcomed some of the European initiatives?
- 15
- Marr I think that this was an issue that was discussed and of great concern in many Maori communities at this time. The Government tended to present developments such as roading and the Land Court as beneficial to Maori communities but Maori communities themselves from their own experiences have seen some of the destructive impacts and there were differences of opinion between various communities as to how well they could handle those destructive impacts, whether or not they could manage them more successfully. There were other pressures where communities especially around the edges felt they had little choice. The Land Court process, for example, operated in such a way that if you didn't participate you missed out. So a number of chiefs would have felt that maybe they could manage the process, others would have felt they had little choice but to engage in the process.
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- 25
- Andrew Just turn over the page please, on page 2, paragraph 4 of the summary. You state there, in the second line, "The Liberal Government believes successful negotiations will enable it to claim more authority over the district and investigate settlement potential without any military force." Do you accept that Seddon's vision that some limited self-government for the Urewera was not out of sync or not inconsistent with his vision for Maori generally?
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- 35
- Marr Sorry, you'll have to explain that.
- Andrew Do you accept that Seddon's vision of limited self-government, you understand that, do you accept that that was not inconsistent or incompatible with the general vision he had for Maori?
- 40
- Marr I'm not sure what you mean by his general vision for Maori?
- Andrew Well, for Maori governance, for Maori administration of land?
- Marr I think that Seddon at this time was relatively new to issues to do with Maori land and he admitted that himself. He came from the West Coast district and he didn't have much experience. I don't think he had a

- particular vision, as such, for local government of Maori, by Maori. His main concerns were that more land was available for settlement and that his government stayed in power and he was quite, at the beginning, he tended to accept what was told to him, that the Native Land Court had to operate and that surveys and roading and all the rest of it was necessary and beneficial for Maori. As he seemed to have more contact with Carroll, he became more supportive of local self-government, as long as it did not stop the flow of land for settlement and as long as it didn't affect his chances of re-election.
- 5
- 10 Andrew But given the nature of the man, the nature of the politician, he had some fairly clear, would have insisted on some fairly clear limits to this concept of local self-government, wouldn't he?
- Marr Yes, I think the documents show that his concept was much more limited in 1893 and '94 than it was by say 1898/99 when he had a lot more contact with Maori communities.
- 15
- Andrew So, would you accept that consistent with that, that from Seddon's point of view, he didn't consider that he was in the business of trading sovereignty with the Urewera people?
- Marr Trading sovereignty? What do you mean by that?
- 20 Andrew Well, negotiating over the issue of sovereignty?
- Marr Well, I think that Seddon saw himself as a statesman. He was an imperialist. He wanted to see the Queen's writ run throughout the entire North Island. He was very impressed with people such as Governor Grey and Ballance, who he saw as negotiating over those kinds of issues earlier on and he did see himself as a bit of a statesman who could, and he wanted to ensure that the district recognised sovereignty. He didn't feel that it had been, that that issue was completely settled, and so he did see himself in a sense of a statesman confirming the district agreement of sovereignty.
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- 30 Andrew Can you turn please to your paragraph 22 in your summary? You say there in 22, "similarly, it is not clear how far Seddon understood the implications of the district's rejection of the Native Land Court process and the insistence of continued customary authority". You say further down, "Seddon may not have realised that the district was not just looking for an alternative means of creating the same outcome as the Court". Are you suggesting there that it was not obvious to Seddon that Tuhoe opposed the operations of the Land Court?
- 35
- Marr No, I'm saying there that Seddon felt that, he seemed to think, initially at least, that an alternative tribunal that wasn't the Court could do much the same process. So, you could still end up with individualised title, you'd just use a different tribunal, is the way he put it. But he was changing his mind right throughout this process and I note in my report that by 1898 he was agreeing that the Land Court could be abolished altogether. He still wanted some form of title. He still wanted some way of making surplus land available for settlement. He didn't necessarily see that that would
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- 45

- 5 have to be through the Land Court process. The differences in views that I was trying to highlight there was that the Tuhoe district, the Urewera district, the Tuhoe people and the people of the district weren't so much opposed to some form of legally recognised title; they were opposed to the consequences of the Native Land Court process as they understood them. So, they wanted to avoid, for example, the undermining of hapu and iwi authority. I'm not sure at that point that Seddon entirely understood their point of view. He seemed to think that maybe just an alternative tribunal would do the trick. So, I am just pointing out there that there could have been some differences of opinion and understanding.
- 10
- Andrew You say in the next paragraph, 23, that Seddon insisted on the concept of the elected committees, as opposed to those selected by customary means. Do you accept that at this time there were a number of models for Maori governance entities to be elected?
- 15 Marr Yes, yeah.
- Andrew So this wasn't wholly new or radical suggestion, was it?
- Marr It wasn't wholly new, but – and Maori communities seemed to accept that they would have to compromise to gain legal recognition and to deal with new pressures, but there was a question of how far the elected system would undermine hapu authority and traditional authority.
- 20
- Andrew Do you accept that the creation of relative interests in land or shares in land is not necessarily inimical to customary rights, is it?
- Marr No, depending on how it's done and what it's meant to represent.
- Andrew Because when you are dealing with the issue of distribution of rents or distribution of proceeds of sale of flax or timber, you might well need to identify individual shares and relative interests, mightn't you?
- 25
- Marr Yes, and my point was that Carroll explained the process of going to individuals and relative shares as a means of providing a kind of electoral roll for elections of the committees and it's my understanding at the time that the district would have wanted some kind of relative voting, that they wouldn't have accepted that everyone had an equal vote; they would have wanted some families or people like chiefs to have a more weighted vote in some areas. So, the determination of relative shares I don't think was necessarily a problem.
- 30
- 35 Andrew Can you look please at your written questions, or written answers to the questions for clarification? On the second page, in response to question 5.2 from the Crown. This is document #D11 I believe. You were asked a question there by the Crown about the Urewera leadership's presentation of unity. There is the issue of the expression of concern by the Urewera chiefs to Seddon in 1894 regarding the Native Land Court. There wasn't a unified rejection of the Native Land Court by the Tuhoe chiefs, was there?
- 40
- Marr At what time?

Andrew In 1894.

Marr In 1894, some of the chiefs indicated that they didn't want to be part of the protected district, the ring boundary, as it was described and – but, as I pointed out, they did have concerns about the Land Court process, so they did want some way of gaining title to their land so they could use it economically, but they did have some concerns about the consequences of the process. So, for example, they expressed concerns about the cost of the process and the problems with rehearings. So, at that point, some did indicate that they were willing to engage with the court process. I don't know that that necessarily indicates approval of the court process. I think some felt that they were under pressure to engage and that's what they wanted to do.

Andrew Despite the pressure?

Luncheon Adjournment

15 Andrew Ms Marr, can you turn please to page 3 of your question and answer series, #D11? Sorry, it's question 6.2, so it's over the page, page 4. This is a question relating to the Ruatoki surveys and the trig(?) survey in 1895. You say in your answer there, "I am referring to military force to impose surveys as was used in the 1893 conflict". The force taken in 20 1893 was only taken after some 12 months of mediation, wasn't it?

Marr I'm not sure how many months' mediation, but yes there was mediation.

Andrew And for quite some period, wasn't there?

Marr Yes, but Cadman made clear that if he had to, he would use force and that he wasn't prepared to not continue with the survey for the block.

25 Andrew That's because he took the view that he was upholding the law, wasn't that right?

Marr That's true.

Andrew And the survey was a response to owners who had requested it, correct?

Marr That's true. The owners had made an application.

30 Andrew Would you accept that the response in 1893 was somewhat different from that in 1895 when there was much more of an immediate response of force by the Crown?

Marr I think in 1893 there was still concern about the gradual creep of the Native Land Court into the district and there were negotiations, but there was also a feeling that, on both sides, that there wasn't much opportunity to negotiate further. By 1895, after the tour, there was much more of a feeling that it was positive and negotiate further. There was still concern about the continuation of survey work but I think that, and Seddon, as I've said, was keen to have a show of force, but I think at this time Carroll had a more important role and was able to persuade people that, to take more

of a negotiating position so there was a quick show of force by Seddon, but I think it was a show of force and by that time Seddon was convinced, or being convinced by Carroll that negotiations were a better alternative.

5 Andrew Would you turn please to your summary again at paragraph 29, page 10? You're talking about the development, the issue of the development of the legislative provisions to implement the September agreement.

Marr Yep.

10 Andrew You say there, on page 10, para 29, "Nothing in the earlier discussions had indicated that the district leadership had wanted a form of transferable land title". You're not suggesting there, are you, that there was no contemplation by the Tuhoe people of alienations short of sale, thinking of such things as mortgaging or leasing of land or issuing licences to fell timber, etc. You're not suggesting that, are you?

15 Marr I'm suggesting that there was a very strong feeling in the district that engaging in that kind of process could have grave consequences and that it could mean a very strong attack on iwi and customary authority. And, while I don't think, necessarily, that some chiefs, anyway, didn't want to use timber or possibly leased land in some way, they wanted a better way of controlling it. So they didn't necessarily want to do that through a form of transferable land title.

20

Andrew No, but whatever they did would involve, to some extent, if they wanted some economic development, some transfer or rights, wouldn't it?

25 Marr Yes, it might have been some form of use right, some form of resource right, but they wanted to control it and they didn't want it in the form that was being created by the Land Court.

Andrew So you would say greater community control over those sorts of rights?

Marr Yes, much more collective decision-making.

30 Andrew We come please to question 11 at point 1 in your question and answer series, which I have as page 10. The version that I have doesn't have page numbers on it but I've marked mine as page 10. You're talking there about assurances from Seddon leading the Urewera leadership to understand they had entered into a solemn constitutional agreement. In stating your answer, "Seddon seemed to accept the district leadership saw the agreement over the principles as an effort to effectively implement the agreement of 1871". You also state that "Seddon does not appear to have considered he was entering a new arrangement rather than confirming and protecting the old agreement in recognising its status". There is no reference to that 1871 agreement in the written memorandum of 25 September, is there?

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40 Marr No, there's not.

Andrew And there's no reference to it in the preamble of the Act, is there?

- Marr No.
- Andrew It appears that Seddon wasn't asked any questions in Parliament about the 1871 Act – this is in relation to the UDNRA Bill – do you accept that?
- 5 Marr He wasn't asked any questions about the 1871 agreement. He did appear to refer to it.
- Andrew In the debates?
- Marr Yes.
- 10 Andrew But isn't the point that, if Seddon had seriously intended the Crown to confirm and protect an old agreement, you would have expected to have seen reference made to it, either in that September memorandum or in the preamble, or in fact in both?
- 15 Marr No, I wouldn't. My point in the report was that the 7 September agreement was the agreement in principle to reaffirm what had been understood and the principles of local government excluding the Land Court, etc. That was referred to in that 7 September meeting. The memo of 25 September was more in the nature of implementing that agreement and so therefore was much more concerned with practical details and the same with the Act.
- Andrew They're still important documents though, aren't they?
- 20 Marr They are important documents, but my point is that the district would have understood that the 7 September meeting and agreement was the agreement in principle. The Act was to implement that agreement and so, to a point, was the 25 September memo. In the debates in Parliament, Seddon again referred to the pledge and to the understanding, and to the agreement with McLean, so he made it quite clear that he was linking it back to those. It's just the Act was more a practical expression of it.
- 25 Andrew Yeah, but the Act was more than that though, wasn't it, it also enshrines basic and important principles, doesn't it?
- 30 Marr Well, I think the way Seddon saw it was that by putting his memo in, of 25 September, he was referring back to the agreement of 7 September. He and Carroll both said that the memo of the 25th was the agreement; wasn't actually the same as the agreement but certainly the agreement of 7 September mentioned that 1871 understanding, so the memo itself was referring back to that, and the memo itself was included in the Act as a schedule to the Act.
- 35 Andrew Come back, please, to your question and answer series document that my page 17, para 19.2. This is dealing with the issue of the revision of the draft bill, the UDNRA Bill between 1895 and 1896. You say there in your answer, "Nor do I think there was even considerable revision between 1895 and 1896 – most of the changes appear to be bureaucratic drafting ones". Isn't it the case that the 1895 memorandum and bill located the locus of power with respect to land decisions at the block
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- committee level and then by 1896 you get a shift of that power to the general committee level?
- Marr I don't think so. The 1895 Act ...
- Andrew Bill?
- 5 Marr Bill, draft bill provides, at clause 6, that the owners of each block elect a local committee and then clause 6.2, they then elect their members to a general committee. I don't think that's hugely different from the 1896 version.
- 10 Andrew But isn't there some shift in terms of the capacity for control and alienation of the land from the block committee to the general committee between those two dates?
- Marr You'll have to point out to me where you think it is.
- Andrew You don't accept that?
- Marr I haven't considered it, so ...
- 15 Andrew Wasn't there a, in the 1895 bill, a general, sort of, inalienability and lease clause and that was scrapped in favour of what became section 21 in 1896, namely that the general committee could alienate to the Crown subject to regulations?
- Marr Yes.
- 20 Andrew That's more than a bureaucratic change, isn't it?
- Marr Well, I'm not saying there weren't some substantive changes. I say in my next sentence that there were substantive changes. I am just saying that I don't think there was as much revision between 1895 and 1896 as there appears to be considered in that question. I was actually saying there that there was a long period between the – when the 1896 bill was introduced and when it went to a Native Affairs Committee later that year. I wasn't actually saying in my report that that was the long period of time that I was referring to, and I think there were changes between 1895 and 1896.
- 25
- 30 Andrew And do you accept that it appears to be the case that some of the changes were in response to concerns put forward by the Urewera leadership?
- Marr I think that there was definitely consultation and an attempt at consultation and I think that should be acknowledged and I do think that the district would have made comments and some of those would have been picked up and they would have probably been favourable to some of the changes that were made. That's true. And in other cases, they may have felt obliged to accept some things because they wanted the bill through. Yes, I'm not saying that there wasn't consultation at that stage.
- 35
- Andrew Turn over, please, to question 22.1, my page 19 of the question and answer series. There's a question posed there dealing with the issue of

- 5 whether of the Tuhoe commissions practically controlled by their European colleagues. And you say there in your answer to this question, the second paragraph, "the Pakeha members also appear to have been paid significant sums for their work (inaudible) the Tuhoe members were at first not paid at all". But that factor, by itself at least, wouldn't necessarily mean that the Tuhoe members were practically controlled by their European colleagues, would it?
- 10 Marr No, what I was trying to say there was that the decisions of officials as to how the different members shall be paid reflected their view of the status of those members. The Tuhoe members actually never asked to be paid and some people in the district were opposed to them being paid, but my point was that it was the way the payments were set up that reflected their official view of how the Commission should operate and the status of the Pakeha as opposed to the Tuhoe members.
- 15 Andrew But, again, that wouldn't necessarily give an answer to whether in fact the Tuhoe members were practically controlled, would it?
- 20 Marr The "practically control" is the Crown's wording, not mine. What I was saying was that the Pakeha members began to assert control and I meant control over the process, not over the Tuhoe members. What I was trying to say was that the way the Commission was set up, the way the officials viewed it, the way the regulations were made, made the process more like a Land Court process where the Chairman and the Pakeha members appeared to be being treated more like Judges and therefore had more control over the process. Whereas ...
- 25 Andrew Their evidence was, obviously, mostly given mostly in Maori, was it not?
- Marr I assume so, yes.
- Andrew And it certainly wouldn't have been a process hostile to the Maori participants, would it?
- 30 Marr Well, some of the participants felt that it was hostile. They found that it was much more like a Native Land Court than what they'd been led to believe, or to expect.
- Andrew Wouldn't some of the reason for that be a reflection of the nature of the evidence that was forthcoming from the Maori participants themselves?
- 35 Marr The process required, as in other land courts, a determination of best and exclusive interests, whereas the intent seemed to be, when Carroll was explaining it, that the Commission should merely substantiate what was already there. The determination of best and exclusive interests naturally required competition and some winners and some losers in the process, much like the Native Land Court, and that's where people tended to find, tended to be concerned and they tended to be concerned with the formality of the process, because the anticipation was, as explained by Wi Pere and Carroll, that it would be much more informal, much less legalistic than the Native Land Court process.
- 40

- Andrew But they continue with this process, so there seems to be some degree of buy-in by the Maori participants doesn't there?
- Marr I noted in my report that there seemed to be a real determination to make it work, so that even when concerns were expressed about the process, about it being a lot like a Native Land Court process, people still felt obliged to take part and as it became more like a Native Land Court process the same kind of processes that are apparent in the Land Court applied. People felt obliged to engage or else they'd miss out.
- 5
- Andrew Can we turn, please, to paragraph 47, page 16 of your summary? You're talking here about the process of the Commission and the regulations that were promulgated. You say "In those cases", the last sentence in para 47, "the regulations enabled Pakeha members to sit alone and failed to provide for Urewera members". Isn't it the case that throughout the 19th century a number of Maori leaders had urged native assessors to be appointed from outside of the district?
- 10
- 15
- Marr Yes, that's true. It was held widely, especially amongst the Pakeha community, that the assessors should be outside the district because then they wouldn't have a vested interest in the land that was being determined, because the process was so competitive and so much was at stake.
- 20
- Andrew In relation to the sittings of the first Urewera Commission, there were no decisions made by European Commissioners alone, were there?
- Marr No.
- Andrew Can you turn please to your paragraph 55 of the summary where you deal with the issue of the 1900 amendment to the UDNRA Act? And, the 1900 amendment, you say, provided for rent from leased land to be used to cover the costs of administering the 1896 Act. But that Act, the 1900 Act provided, did it not, for the balance of rent, after payment of costs, to be distributed to the block owners?
- 25
- Marr That's correct.
- 30
- Andrew Do you accept the interpretation of that 1900 Act that the power to recover administrative costs and survey costs related only to those costs directly associated with leasing, or do you take a wider interpretation?
- Marr I take a wider interpretation because that's the way the officials and politicians seem to interpret it. For example, later Ngata added up the cost of the commissions and survey costs when he said that there was a debt of around 7,000 pounds to be paid.
- 35
- Andrew But was that ever practically implemented?
- Marr I don't – I didn't go into that kind of detail for my report, but I went so far as to note that the general committee at the time, one of the reasons they felt they had to lease land and engage in alienations was because of that debt that Ngata said they had to pay.
- 40

Andrew Yes, thank you, Ms Marr, and the Crown would like to thank you for answering fully the questions for clarification. Thank you.

Richard Boast cross-examines Cathy Marr

- 5 Boast Kia ora Ms Marr. Just a few questions. Paragraph 4 of the brief, #D6. You say, "the Government and the Urewera people" and then it says you refer to the Urewera leadership. Presumably you are using this terminology to avoid any inference that not only Tuhoe, in the strict sense, shared the concerns that you have identified there?
- Marr Yes.
- 10 Boast And, in fact, representatives of Ngati Manawa and Ngati Whare were part of the delegation that went to Wellington, weren't they?
- Marr Yes, that's correct.
- 15 Boast Now, as to the agreement itself, at the end of paragraph 15 you say, "Seddon's assurances in this context appear to encourage understandings of a solemn constitutional agreement" and what I am wondering is, from your research general impressions, was that how the Government saw the deal, as in fact that, a solemn constitutional agreement?
- Marr It's certainly how Seddon presented it. At that time, Seddon probably was the Government.
- 20 Boast Right. Seddon then.
- Marr Yeah.
- Boast How he presented it? Was that how he understood it?
- Marr He certainly presented it in that context to Parliament on the debates. And he certainly presented it that way to the delegation.
- 25 Boast Right. Just following up on the questions from the Crown. We talk about the agreement. Where do you see the agreement between the Crown and the Urewera representatives as primarily embodied? Which particular text?
- 30 Marr I think it was primarily in the 7th of September meeting. I think Seddon deliberately set that up so that that was the impression that everyone was to get. It was no mistake that they met in the Cabinet room at Parliament, that he had a person there to record it and that they went straight onto a social and that the Governor was lined up to meet them a few days later. I think that he wanted to give the impression, both to the delegation and to
- 35 Boast Right. Thank you. And paragraphs 20 to 23 of the brief, again. You consider there was a number of possible – how should I put this? Misunderstandings? Failings of meeting of minds completely between the Crown and the Urewera delegation. The question I'd like to ask you is, to

what extent, in your view, generally, were the aspirations of the Urewera people and the Crown, perhaps at odds or failing to engage fully in terms of economic development of the region?

- 5 Marr I think that, I tried to make clear in Carroll's presentation of the reserve as a reserve, as a sanctuary-type reserve, that that could well have caused some misunderstanding about what the delegation expected. The delegation wanted to maintain customary authority over the district, over the reserve, but they still wanted to participate in some development, but they wanted to be able to manage that development themselves, they didn't just want it to impact on them without any chance of managing it.
- 10
- Boast Right.
- Marr Whereas Carroll was putting it in terms of a sanctuary because he wanted it to be acceptable, but it did have that possibility and(?) misunderstanding.
- 15 Boast You say that Seddon, in order to keep the appeal of the reserve, refused the assistance of telephones or telegraph, seemed to show a certain exception on his part as to how Tuhoe were to continue to live in this area in the future.
- 20 Marr Yes, he said that in the context of it being a great place for Ministers to get away from it all and he didn't want to be disturbed by telegraph or telephones. I don't think he really thought of it in terms of the usefulness of those to the district. I think he, yeah. It's Seddon.
- 25 Boast Cellphone coverage is still not. Para 36 – there you discuss provisions for alienation. You're aware, I'm sure, that the Native Land Court Act 1894 had already imposed a general reimposition of Crown pre-emption throughout the entire country. So what I'm wondering is, well, have you seen anything in the research that you've done that indicates why the Crown felt that specific reservations purchasing to the Crown was necessary in the UDNR Act. After all, the pre-emption applied to the entire country in any event?
- 30
- 35 Marr Well, I haven't seen anything specific to that. Possibly, they felt they wanted everything to be the same, so if it was in the other Act it should be in this one. They definitely wanted the possibility of some kind of alienation which the district hadn't wanted and it's more how that would have been explained to the district that's critical and we don't really have much documentation on that. But it seems that the district may have agreed that in some cases, some small selected cases, there could be alienation.
- 40 Boast Paragraph 49. You say there "Carroll failed to have the Land Court abolished in 1900". Do you mean by that, there was some kind of initiative or proposal around that time associated with Carroll to do away with the Court?
- Marr Oh, definitely, yes.

Boast Ah! Can you tell us more about that?

Marr There was a rejection of the Land Court throughout Maori communities by this time and there was different ways, there were different views of how this might be achieved. The Kohatitanga was opposed to the Land Court and had tried a system of boycotting it in the 1890s. Most districts were, at that time, asking for the Land Court to be abolished. Carroll was, at that time, was very strongly of the belief that the committees he was setting up should be able to take the place of the Court, and that was similar to what he was doing with the reserve where the Commission would take the place of the Court. Even, as I note in my report, by 1898, when Seddon was talking to Kahungunu representatives, he agreed the Court could be abolished. I mean, he'd got that far by then, and in 1899, when he was talking to the Kingitanga, he also agreed the Court could be abolished. But, in that short time period, and I haven't been able to do in-depth research on why, but it seems that there was too much opposition from officials and from the system for the Court to be abolished and Seddon, in the end, wouldn't go that far. And without Seddon, Carroll couldn't do it.

Boast Okay. Just lastly, paragraph 51. The 1908, 1909, 1910 Amendment Acts, those amendment acts were not, by that stage, aimed at the Commission's process were they, after all that had been spent.

Marr Yeah, that had already changed. They were aimed at making the titles that the Commission had made more like general Land Court orders which meant they could be transferable.

Boast More alienable and saleable?

Marr Yes.

Boast Thank you. I've no further questions.

Dominic Wilson cross-examines Cathy Marr

Wilson Kia ora Ms Marr. Dominic Wilson for Ngati Haka Patuheuheu. The area that I want to question about is to do with individual shares. And I heard earlier the Crown asked a question just on that topic and I wanted to explore it further, and dub some of my questions into it, how the Crown began. I understood the Crown suggested that the creation of a relative individual interest for shares is not inimical to customary rights. My question to you is, would you accept that there are other ways which the Crown could have recognised tribal land interests that better reflected custom?

Marr Ah, I think that the District was quite clear that it wanted hapu-based rights and hapu-based ownership. What I was referring to then was whether that system of relative shares could have been used by the District as the basis for the election of committees. I think that in general the District did not want individualisation to any degree of shares. What they'd agreed to, apparently, in discussions with Carroll was that there

needed to be a register of individuals for electing their committees and for keeping out people who had no rights in the district.

Wilson But keeping hapu-control?

Marr Yes, but keeping hapu-control.

5 Wilson I also noticed that the Crown used an example of distributing rentals and, say, flax earnings and the like from land. Surely that could have been carried out by the hapu. The hapu could have distributed it, in terms of tikanga.

Marr That's right. That's what hapu wanted.

10 Wilson Just finally then too, would you agree that these individual shares really became a tradeable commodity?

Marr Umm, by?

Wilson Between the Crown and individuals.

15 Marr They did eventually, yes. Well, when the Act was first debated, Carroll explained that they weren't meant to be transferable, that there wasn't meant to be a form of title that was individualised and transferable. The individual identification was for the purposes of election and protection from outsiders, but as the process went on and as amendments made the title that was determined more like freehold orders of the Court, then they did become individualised transferable titles, which the Crown then started to buy up.

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Wilson Thank you.

Moana Tuwhare cross-examines Cathy Marr

25 Tuwhare Tena koe Ms Marr. I'm Moana Tuwhare, I represent (inaudible) the Ngati Kahungunu claimants. My questions are focused primarily on ...

Tape 1 Side A ends

Tape 2 Side A commences

Moana Tuwhare cross-examines Cathy Marr (cont)

30 Tuwhare ... halfway through paragraph one where you state that "The European Commissioners could appoint any one or two Maori not members of the Tuhoe tribe to sit as members of the Commission". Now, I refer also to your response to the questions of clarification from the Crown and that is document number #C11, specifically paragraph 18.1, where you discuss the (inaudible) and the membership of the Commission at that point were to be two Europeans and the rest Maori. Your term used there is Maori or

35 Maoris and that was subsequently changed to natives of the Tuhoe tribe in the 1896 Bill and then passed under the Act. Now, the question is, does what was proposed in 1895 reflect that the Crown had in mind that there

were other tribal interests that had to be catered for in the membership of the Commission by virtue of non-Tuhoe interests in the area of land which was to make up the area of the reserve? Would you, could you comment on that?

5 Marr I think that at that time Seddon and Carroll were both well aware that there were iwi who were claimed independence of Tuhoe for particular purposes, Ngati Manawa, Ngati Whare and on the eastern side, and there's no, that was omitted during the tour and acknowledged and I think that, in the September 1895 meeting, there seemed to be a feeling that the different communities of the district were willing to work together to get a protected district and then sort out their differences themselves. I think that for quite a long time Seddon insisted that their outer boundary would have to be determined. The implication seemed to be that it would be contested, but that appears to have been – he appears to have given way on that, possibly because the delegation seemed so united about getting a protected district. I think that Seddon tended to use, and a lot of pakeha at the time at the time tended to use the term Tuhoe as interchangeable with the district and that was common at that time and they did the same with other districts. They always referred to the Rohe Potae people as Waikatos, for example, and that didn't necessarily mean that there weren't other communities there, but it just seems to me that, in terms of getting a protected district and having it managed under customary authority, seems to have been fairly widely requested by the whole district.

25 Tuwhare Okay. May I just go back to the 1895 draft Bill? Now, with that in mind it may be better for us to (inaudible speech). Is there any evidence that specifically relates to what caused the change or amendment in 1900 to provide the membership of the Commission being capable of being made up of one or two non-Tuhoe Maori rather than native Tuhoe people which was in the 1896 Act?

30 Marr I think that what happened was that, as the Commission began to act more like a Land Court, some of the participants felt that some of the people on the Commission may have had interests and wouldn't be seen to be fair and therefore it should act more like a Land Court which tended to have assessors from outside a district. But, as I pointed out, that was in contravention of the agreement and the original Act.

40 Tuwhare Is there evidence of specific consultation or negotiation with Ngati Kahungunu parties in respect of your answer to one of Mr Boast's questions in the need to a meeting in 1898 with Ngati Kahungunu parties. Was there any specific consultation that you are aware of which related to the Bill with 1895 the 1896 Act and then subsequently the 1900 amendment?

Marr You mean with Kahungunu?

Tuwhare (Inaudible).

45 Marr I think Carroll was well aware that on the eastern side of the district there were people with Kahungunu affiliations and so was Wi Pere at the time.

5 They had a lot of meetings that weren't reported, but there's nothing in
the documents which suggest that if it was to be run under customary
authority, there were concerns about it. There were concerns once it
became and acted like a Land Court. But at the time people thought that it
was going to be protected from the Land Court and be under customary
authority, there don't seem to be those kind of concerns. And, by the time
Seddon was meeting with Kahungunu in 1898, they were talking about
the proposals for Maori land administration legislations generally and the
people there are reported as asking for very similar to what the reserve
10 was. That the Land Court be abolished, that the local committees have far
more power of management. That kind of thing. But there's no record of
any concerns about the district reserve, although the boundaries would
have known by then.

Tuwhare Thank you very much for your answers. That's all.

15 J Savage Thank you. Mr Harman?

Paul Harman cross-examines Cathy Marr

Harman Tena koe. Just a couple of general questions. In your early part of your
report you mention the 1871 McLean negotiations at (inaudible) and you
decided to quote from Professor Ward about them taking some ideas from
20 the US American Indian reservations.

Marr Did I? I can't remember that.

Harman What I wanted to ask was, was there any of that sort of discussion in the
1890s discussions of the UDNRA(?)?

Marr No, not that I saw. It seemed to me that Carroll really was pushing for
25 this because he had the opportunity, with the pressure from the
Kotahitanga, with the need for the Liberals to get more land and therefore
give way to Maori on certain points, and it seems to me that Carroll was
very, he'd been on the Rees Commission of 1891. He was opposed to the
Land Court and he was very in favour of committees, Maori Committees,
30 and he seems to have been very much behind it. It seems to have been his
view that the Government could do it.

Harman And the second general question is, this level of policy of, as I understand
in (inaudible) involves the breaking up of big estates. (Inaudible) the
Government of the early 1890s through to the 1900 years was, as I
35 understand it, that publicly, and you don't (inaudible), but this is in the
context of a Pakeha Premier saying to his voters we're going to break up
the big estates, meaning the big Pakeha estates in the South Island. That's
correct, isn't it?

Marr Yes, that's correct.

40 Harman Because he couldn't actually, I think (inaudible) history records, he
couldn't actually do it, in reality, they'd thrown up the Maori as the sort of
the straw dog to the public of New Zealand, to the voting public. In other
words, we'll get you the land for settlement. The bloody natives are

holding us up but we'll go and deal to them. It really was all a gigantic political decoy because of his failings to break up the big Pakeha estates. What would you say to that?

5 Marr Well, I think that, at the time it's true, the native difficulty, as people liked to call it, was an important issue. I think that breaking up the large estates had a lot of electoral support and I think that in some cases some estates were broken up, although often with the owner's agreement so Cheviot ...

10 Harman And they were split up and they were put into trusts and management and decoy owners and dummy owners so the actual estate, let's say Rolleston's estate in Canterbury, didn't actually get broken up. The reality was that they still held the power, the money and the control.

15 Marr Well, I think the important thing is that there was a change in economic circumstances and by which the old system of leasing in large estates in the South Island was being taken over by small family farms in the North Island and refrigeration was largely responsible for that and it became economically viable for small families to have farms and to break in, as they called it, the country, rip the trees off, turn it into farms, grass it and then gain the value of the improvements. And so the focus of attention moved from the South Island to the North Island which was mainly owned by Maori at that time and it became economically viable for those areas to be farmed and settled. And so that's where the Liberals started to focus their attention.

20

Harman Thank you very much.

J Savage Thank you Mr Harman. Mr Naden?

25 **Darrell Naden cross-examines Cathy Marr**

30 Naden Yes, your Honour. A bit of an issue has arisen for me. I was looking at the summary provided this morning and it's different to the one I worked off for the cross-examination questions. I did want to put to Ms Marr that one is from their research hui - the 3rd and 4th of October 2002 sitting. Your Honour, to get around this perhaps if I provided this summary to Ms Marr so she can ascertain where counsel's references are coming from. The information are obviously very much the same - wholly similar to that provided in the summary document, #D6, but I'm in the Tribunal's hands there.

35 Male(?) Can I just, the summary or the research hui has never been part of this record of this inquiry.

J Savage Yes.

Male(?) Mr Naden should be on the mailing list and it was sent out several weeks ago. I don't know how that, whether that assists, but ...

40 J Savage You're playing with a card that's not part of the pack.

- Naden Yes I understand that Sir. This is why I've had to raise this at this point certainly ...
- J Savage Is the question capable of being stated in perhaps one or two simple sentences?
- 5 Naden Yes, your Honour, the series of questions which are all in form, touching on ...
- J Savage Well, let's let's have them.
- 10 Naden Your Honour, I did, if possible, want to provide a copy of that that. No, Your Honour, I'll proceed with the document, #D6. Ms Marr, page 2, at the top of page 2, paragraph 4, you refer to customary hapu and chiefly authority. In your view, did the McLean agreement, can you recall that, of 1871, affirm to the Urewera hapu, their customary hapu and chiefly authority?
- 15 Marr That was the understanding that the District appeared to have from that agreement, that they'd be left alone to manage their own affairs, under their own authority.
- Naden Is their customary hapu and chiefly authority – just to get this base clarification established – derived from their custom, in your view?
- J Savage Is that within your area of expertise?
- 20 Marr The way that I explain it is that Crown lands were held to be derived from Crown authority and the Rohe Potae was set up as an alternative similar alternative but complementary symbol as deriving from Maori customary authority. So, it was the authority that pre-existed Crown authority.
- 25 Naden Did that authority, hapu and chiefly authority, include the concept of tino rangatiratanga, in your view?
- Marr Yes, over their lands, yeah. And resources.
- Naden Elsewhere in the summary, you talk about local self-government, a measure of, a degree of – would you agree that local self-government is consistent with the nature of the practice of tino rangatiratanga?
- 30 Marr I would depend how you're defining ...
- Naden Could I perhaps explain a little further. When exercising their tino rangatiratanga, do Nga Hapu o Te Urewera exercise tino rangatiranga locally and just over themselves?
- Marr Yes, yeah.
- 35 Naden Would you agree with the comment that the Urewera Maori hapu were prompted into negotiating over the legislation, 1896 Act as it became, prompted to do that because of a need they had for a more detailed and legally recognised agreement with the Government?

- Marr Yes.
- 5 Naden If that's the case then, this need for more detailed and legally recognised agreement, can that be taken to mean that the UDNRA was such an agreement and it was about the recognition of their rights to continue their hapu and chiefly authority over their district?
- Marr I explained that the way that Carroll explained that he understood it and what he was trying to achieve was a form of legal recognition or substantiation of already existing authority over the district.
- 10 Naden Already existing? Now, are you saying then that it's possible to view the UDNRA as being declarative of the chiefly authority of the hapu and not creating it?
- 15 Marr I think what it was intended to do was recognise it in a form that the legal process at the time could recognise. So, it was giving recognition, Carroll said, to what was already there. That meant that if people were to engage in the modern society, there would have to be, it wasn't frozen in time. There was no sense that there wouldn't be change or possibly development or compromise, but the important point was that hapu could manage it themselves. They could select what they wanted to adopt. They could change as they wanted to change, rather than have it imposed on them.
- 20 Naden Is it possible then in that context that the hapu of the Urewera thought that their customary chiefly authority was simply going to continue as it had since time immemorial?
- 25 Marr Yes. I think what the District was wanting was some kind of recognition of a committee system that was already existing in the district.
- Naden Is it possible to attribute to the general committee the attribute that it made manifest the tino rangatiratanga of the hapu of Te Urewera?
- J Savage You see what's possible isn't always helpful. Anything's possible. It's a question of whether it is probable, isn't it?
- 30 Naden Sir I could rephrase and just ask if it is the witness's opinion that that's ...
- J Savage Well, something more than just possible ... sort of like a meteor coming through your roof.
- 35 Naden Well, Ms Marr, would you agree then that the UDNRA could be ... sorry, the general committee could be seen as the embodiment of the chiefly authority of the hapu of Urewera?
- Marr I'm not entirely sure that I understand what you mean, but I think the Act was meant to substantiate what was already there.
- Naden Perhaps like this then was it a latter day [te whiti tiko]?

- 5 Marr It was meant to recognise that as far as the Government agreed it would recognise it. There were compromises and the District had to make some compromises to fit into the ... to get the recognition they sought. They were seeking as far as possible a legal recognition of their already existing committee system.
- 10 Naden There is an interesting comment you make about the Queen's writ perhaps not running everywhere and the Crown has asked questions about that implied basis for why you think that. Are we to take this comment to mean that in your view the Queen's writ did not run in the Urewera even as late as when Seddon's liberals came to power?
- 15 Marr Certainly not the way that the Government would have wanted it to run. There was an Okati which was in the main able to be policed by the District. People were turned away ... a government minister was turned away in the early 1890s. So, it certainly ... the Government certainly didn't have the kind of authority it was seeking over the District. On the other hand, the District was willing to go to the Government because of the pressures on it. So, in a sense there was a negotiated ... there was a compromise there. There was willing to be a partnership, if you like, a recognition from both sides.
- 20 Naden Seddon it would appear from what you talked about – Seddon continually linked the 1871 agreement to the 1896 legislation.
- Marr Yes, he made a number of links.
- 25 Naden And if the 1871 agreement was about the continuation of chiefly authority, would you agree that Urewera leaders thought that the UDNRA was the continued recognition of ... it meant that their chiefly authority was to be continually recognised?
- 30 Marr Yes, in 1871, the agreement appeared to be that the district was left alone to manage its own affairs under customary authority. In the 1890s, there were a lot of pressures on the District it wasn't being left alone anymore and the District had to handle those pressures. They wanted to do it under their traditional or customary authority so that's why they sought the Act – that's their understanding of what the Act gave them.
- 35 Naden Could you say then that the 1896 legislation was in the minds of Urewera hapu a continuation of the 1871 (inaudible) essential attribution of chiefly authority that the 1871 agreement provided for them?
- 40 Marr In a very large measure. There was some compromises that they seemed to accept that, for example, public works takings ... that there might be some alienations to the Crown at some future date if the general committee agreed and a system of elected committees rather than their customary means of selecting such committees. So, there were some compromises, but generally overall the ... they believed that they'd got ... they had protected their authority to a very large extent.
- Naden You've commented that the Urewera leadership appeared to have been willing to recognise the overall sovereignty of the Crown and the right of

- [settler?] Governments make legislation. What's your basis for saying that they apparently accepted the overall sovereignty?
- 5 Marr Well, they were accepting an act of Parliament to recognise and protect their District. So, they were accepting a Parliamentary way of protecting their District so presumably they were accepting the Parliament could do that. So it was to be limited in the sense that it was protecting their customary authority and they still anticipated being able to consult over their own District.
- 10 Naden But that kind of brings us back to the 1896 Act back to being declaratory of their chiefly authority and not creative of it.
- 15 Marr Yes, I just think that my view is that if they accepted an act of Parliament, then they were to some extent accepting Parliament. Maybe ... not in the sense that Parliament had the right to act unilaterally but they were accepting that an act of Parliament could be passed that would protect them and they were accepting future consultation with the Government.
- Naden In accepting the 1896 Act, they ... we would discuss this (inaudible) were under the understanding that their chiefly authority was to continue?
- Marr Yes.
- 20 Naden And so we are run into some juxtapositions here ... if it's that legislation meant the acceptance of the Crown's sovereignty and yet Tuhoe understood that they were retaining their chiefly authority. How do can that be reconciled?
- 25 Marr I haven't seen records that would illuminate to me exactly how they saw the situation. It seems to me that they felt they needed to protect their District. And therefore to protect their District, some compromises were required. They sought at the highest level of Government in a sense of partnership, if you like, between Government. They didn't see themselves as necessarily lower than Government. They accepted that Government could pass Acts but they – with regard to their own District, they accepted that the Government was recognising their chiefly authority and their system of management of that District and that when there was issues of importance to the District, there would be consultation with the Government.
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- J Savage Does that conclude the matter Mr Naden?
- 35 Naden Nearly, Your Honour.
- J Savage Ka pae.
- Naden Just quickly at page 8 of the main report. Could you [remind?] me, page 31 ... line 31, page 8. McLean had some sympathy for the laws to accept that laws for Maori ... page 8 ... down the bottom ... fourth line from the bottom.
- 40 Marr Yes.

- Naden My records may be incorrect, sorry. It may be page 9.
- J Savage Sorry, is this the report or the summary?
- Naden The main report, Your Honour.
- Marr Page 9.
- 5 Naden If McLean was talking about separate laws for Maori, could Urewera Maori have construed this to mean that their chiefly authority, their tikanga was to remain intact through the talk like that from McLean?
- Marr I think that McLean's view that there could be separate Maori districts for some time at least would have encouraged a district view that they could ... that it was agreed that they could retain their customary authority. I think McLean, while he accepted that there could be separate districts, he saw in future that they may not be required any more so he sought a process of assimilation, eventually. But at the time that he was discussing issues with districts and he did the same in the Aotea Arohi Potae where they also referred back to agreements with McLean of having separate districts, that it would have encouraged their understanding that they could be left significantly to run their district themselves.
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- Naden Thank you Ms Marr.
- J Savage Thank you. Before re-examination, I wish to establish if there are any questions and we will get them dealt with.
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[inaudible mumbling].

Ann Parsonson questions Cathy Marr

- Parsonson Ki ora Ms Marr. Just have a couple of questions. One of them is about the Act itself which you reproduced in your document bank and I just happened to find the wording of the t?? quite interesting because it talks about the Act ... the importance of ascertaining the native ownership of native lands in the district. I'm sorry, it's on ... it's 821A, page 75. And the phrase that follows there is not inconsistent with native customs and usages and I just wondered if you have ever seen that particular wording when you examined the statutes or if you have seen any documentation on why that particular phrasing was chosen as opposed to other kinds of phrasing that might have been chosen? So, is there any significance in terms of what follows in the statute that might be attached to that particular phrase?
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- Marr I haven't looked into that in great detail. I mean the Native Land Court Acts normally say, you know, in accordance with native custom, although it was up to the Court itself to decide what native custom was. So, I think it's probably helpful to look at what Carroll was saying in the debates about that and how far that should go and he was saying that he expected the Act to substantiate and give legal recognition to native or to customary ownership and customary views. So, from that it seems to me that he was ... and the fact that he was expecting it to happen so quickly over such a
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large reserve suggests that he was looking at something that was much lesser than a Land Court transformation.

- 5 Parsonson I just wanted to ask also about your views from the documents you have read about the relationship that Carroll had with the leadership with whom he was engaging in Urewera because there seems to be quite a few parts where Carroll and Seddon were sort of doing a joint act, as it were, and it just raises the question in my mind of how close a relationship you think he did have with the leadership at that time?
- Marr With the Urewera leadership?
- 10 Parsonson Yes.
- Marr I'm not sure – it's difficult to say from the documentary evidence. In 1894 he was greeted by many people in the communities as someone they knew well and someone they trusted and he seems to have had a reasonable relationship and he also, in various hui, which aren't often well recorded and often are only referred to indirectly, he seemed to have discussed matters at length and he seems to have been able to persuade the hui to support his views as opposed to say Hone Heke, the Kotahitanga, and in Wellington it seems that some at least of the delegation may have stayed with Seddon ... he certainly had a number of meetings with them also which aren't reported but which are referred to. So, he does seem to have had quite a reasonable relationship with the District or at least some chiefs of the District, but I can't say any more than that.
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- 25 Parsonson Thank you. So just following that ... in light of that, what significance would you attach to Mr Heke's criticisms in the Parliamentary debate of the Bill?
- Marr Which criticisms?
- Parsonson I'm sorry, I think Ms Edwards referred to these in her report.
- Marr Do you mean that the Government appeared to be conceding more than it really was?
- 30 Parsonson Yes. Yes. She talks about the fact that the Bill did not really contain provisions of self-government as I think they presented it and was also critical about the extent to which it gave effect to Treaty rights.
- Marr I think that, that Carroll was operating in a very difficult environment, politically, because he had to bring other Government members along with him and he had quite a considerable influence on Seddon but not necessarily on other Government members and I think that he was getting ... he was trying to achieve what he could given the circumstances at the time and that made it much more difficult for him. I think Heke was pointing to the fact that what Carroll was trying to achieve was very fragile and that a government ... it could easily be overturned by change in the political climate and a lot of what Carroll was proposing was very ... he said it was brief because he wanted to be flexible but that assumed that he would still have the influence to be flexible and Heke was pointing
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out the very real difficulties that if Carroll did lose influence, then that kind of brief detail and the flexibility that was required could be used against the district.

- 5 Parsonson And just judging by the way you have developed the arguments, in your report, you might think that Heke was right?
- 10 Marr Yes, I think that unfortunately for Carroll 1898/1899 was kind of a watershed and the political climate changed very rapidly after that and he was faced with a tide against him that he couldn't ... and the Urewera District because it had gone that much further was that much more quickly in the firing line and he found it difficult for his own reforms let alone for the district.
- 15 Parsonson You were talking before to Professor Boast about the agreement of 1895 as to the nature of a constitutional agreement and perhaps this highlights the lack of protection in fact for an agreement of that kind or how could it have been protected in the way in which the chiefs of Te Urewera might have expected it to be?
- 20 Marr Yes, it has always been a difficulty about whether and how you legislate for that kind of agreement. There's been discussion over the years about whether the Treaty itself should be legislatively provided for, and one of the arguments against it was that the legislation can be changed, and this is a similar situation.
- Parsonson But you haven't found much evidence of consultation in the later amendments of the Act?
- 25 Marr No, there is quite a remarkable difference between 1895/96 where Seddon made a huge effort to consult, regardless of whether you think they listened to that, and the later amendments to the Act and the next 70 years really of legislation to do with Maori. There's much more attempt at consultation ... there's ... I mean the liberals had earlier sent draft Bills around districts but at this time it was quite unusual and I mean Seddon and Carroll did go around districts to explain legislation but generally for example the 1894 legislation had already been passed – they were more going around to persuade and explain. So this kind of consultation of asking the district to send representatives, to discuss with representatives and to take on board what people were saying was really quite interesting for that time.
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- Male? I have no questions.
- Male? All right then. We'll ?? to re-examination soon.

David Ambler re-examines Cathy Marr

- 40 Ambler Now Ms Marr the first matter for re-examination relates to questions from my learned friends, Mr Andrew for the Crown, and which was picked up by Mr Wilson in relation to what ended up being section 8 of the 1896 Act and this question of relative interests and on my reading of the Bill, the 1895 Bill, which Ms Edwards has annexed to her second report, there was

- 5 no reference to those relative interests in the 1895 Bill but it does appear in the June 1896 Bill. You might need to just look at that. But my question just relates to what extent is there evidence of discussion between October 1895, when the 1895 Bill is produced, and June 1896. To what extent is there evidence of consultation and discussion with Urewera Maori about that level of detail in the Bills?
- 10 Marr There's no documentary evidence that I've found of the actual content of discussions. I'm presuming there were discussions and there were changes in the Bill but I've found no evidence about what those discussions were and what was explained to people at that time.
- Ambler Is there evidence of actual discussions? For example, do we know that there were any meetings between Carroll and Urewera Maori?
- 15 Marr I've found no evidence of them but I'm assuming ... the Governor visited the District in March 1896 and I say in my report that I assume that there would have been discussions around that but I've found no actual evidence of those discussions.
- J Savage If something so important had been discussed, would you expect to find the evidence?
- 20 Marr Well, you would, but a lot of the evidence has been lost to fire from that period.
- J Savage Yes, but you would have expected that there would be evidence or references to evidence?
- Marr Well, Sir, the fact that the Bills changed over that time suggests that there would have been discussions. What I am saying is that I don't know what the nature of those discussions were. I don't know how ...
- 25 J Savage No, you've answered a different question. My question was, if there had been discussions, would you expect there would be evidence of that discussion or references to evidence of that discussion?
- Marr I would expect that if all the records survived there would be evidence of those discussions. There would have been either letters to Seddon or Carroll from the District or there would have been notes of meetings held in the District.
- 30 J Savage Then the proposition is: it is more likely than not that there was no discussion?
- 35 Marr I can't say that because a lot of that record has been destroyed.
- J Savage So it's equivocal.
- Marr Pardon?
- J Savage The position is equivocal.

- Marr Yes. But ...
- J Savage Okay.
- 5 Ambler Then going back to the September 1895 discussions ... were the discussions at that level of detail at that stage, in terms of what we see in the 1895 Bill, 1896 Bill?
- Marr In September 1895, the discussion was more on the principles. The 1895 draft bill was a first or second, if you count the memo, attempt to put more detail ... to put the principles in more detail.
- 10 Ambler In the letter of the second ?? which was again my friend, Mr Andrew's question about the 25 September 1895 memo or letter from Seddon ... so we know that that exists and I see in your document bank and I think it is in volume 2, from pages 165 to 222 and handwritten notes of an interview – of a meeting. That's correct?
- Marr Yes.
- 15 Ambler 7 September 1895. And we also have what was annexed to my opening submissions which is the typed record of the meeting in Maori.
- Marr Yes.
- Ambler Was there actually a typed English version of the meeting or is the handwritten transcript all we have?
- 20 Marr Of you mean the 7 September ...?
- Ambler Of the 7 September 1895 meeting?
- Marr I only found an English version ... I don't know about a Maori version.
- Ambler No, sorry. I might have misstated my question. Is there an English version in typing as opposed to handwritten notes of the 7 September 1895 meeting?
- 25 Marr Not that I've seen.
- Ambler So all we have is the Maori version as typed?
- Marr Yes.
- Ambler Now if you just have the 1896 Act handy. My friend, Professor Boast, referred to the fact that the Native Land Act 1894, I think it was, had brought back Crown preemption. That's the case?
- 30 Marr Was it the Land Court Act? Or, I don't – I'm not sure.
- Male? The Native Land Court Act 1894.
- Ambler Yes. The Native Land Court Act 1894 brought back Crown preemption and the question from Professor Boast was why was it necessary to restate
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the preemption that the Crown had under the 1896 Act and the answer seems to be and I'm just asking for your view on this that under section 3 of the 1896 Act it provided that the Native Land Court Act 1895/94 did not apply in the district?

5 Marr Yes. Yes, that would be right.

Ambler So, it would seem there is a need to restate that principle?

Marr Yes, if the Government wanted there to be a possibility of alienation to the Crown, then and they wanted it to fit in with existing legislation, then yes they would have ...

10 Ambler It's more the legal point of view than an historical point, I guess. That's all I have. Thank you.

[No more cross-examination or questioning on Tape 2 – DJA presents his brief – summary for remainder of tape]

Tape 3 Side A

15 **Monday, 14 June 2004**

David Alexander continues summary

Alexander And so the development scheme did get off again in 1961 and the Crown largely kept to its promises of what it said it would be able to do. It completed the development phase in the eight years that it said it would complete them, so that was completed by 1970, sorry did I say 1971 before, I meant 1961, 1961 was the time when the scheme was commenced. In 1970, the development phase was completed then the Crown intended that it would run on for another ten years to, in effect, recoup the costs of development, at which stage it would then be available to the people to decide its future. The running on and the recouping of the costs didn't take 10 years it took 14 years. But, as I say, compared to what happened around the rest of the country, that's good performance by the Crown and it meant that the scheme was debt free by 1984.

30 The owners and the Crown then agreed to a further loan to improve the fencing and also to establish a deer unit. That loan was in the process of being paid off when, in 1989, the scheme was wound up as a result of the Government's change of policy, whereby it resolved to get out of direct involvement with the Maori people, the Maori land movement to become policy agencies only and the scheme was wound up and was handed back to the people. The people, rather than having a loan with the Crown, got loan money from the private sector and, with that private money, paid back the Crown and the Crown then wound up the scheme.

40 The next thing to look at is Waiohau. Waiohau was, in fact, an offshoot of Ruatoki to begin with and had been caught up in a Ruatoki consolidation scheme. Many of the people in Waiohau had interests in land at Ruatoki. Many of the people at Ruatoki had interests in land at

Waiohau. There were those kinship links which had been established for a while and had got mashed and mangled through the Native Land Court progress, so that they were reflected in the land ownerships in their respective communities. The Waiohau consolidation scheme was envisaged as an ability to make the Ruatoki scheme more successful, but to make it more successful for Ruatoki, not necessarily to make it more successful for Waiohau. The effect was that the Ruatoki scheme was completed in 1930 and it meant that were there a large number of undefined interests at Waiohau which remained undefined until 1936. It was only in 1936 that the Waiohau consolidation scheme was completed, when there was a series of meetings to define who would own what lands at Waiohau, who of those owners who had not been put into Ruatoki, but had been put into Waiohau, how their interests would be defined in terms of land boundaries and land parcels.

One effect of that 1936 scheme was that the Crown had an interest which it had moved on from Ruatoki, as a result of its purchasing of interests in Ruatoki, had moved on to Waiohau and the effect of that was that the Waiohau people, in effect, lost land to the Crown as a direct result of the Crown's purchasing of interests in Ruatoki. There was a large portion of land at Waiohau which was awarded to the Crown as a result of the Waiohau consolidation scheme. I believe that that was basically unfair to the people of Waiohau, but I believe that the people of Waiohau would have been unable to have made any effective protest about that. The reason for that being that everything had already been established at Ruatoki, had been agreed at Ruatoki, had been put into practice at Ruatoki with the development scheme starting in 1930 and the consolidation scheme being done in 1930, so therefore the effects had been running for six years in Ruatoki and there was no way that that pattern could be unscrambled in 1936 if the Waiohau people had wanted it to be unscrambled.

The Waiohau scheme itself had actually started in 1933. That is, the development scheme had started in 1933, before the consolidation scheme. So that the people there were, by force of the circumstances, obliged to think in communal terms, rather than in terms of my land getting developed or individual parcels of land getting developed for individual owners. There were no individual owners. There was no tenure pattern at Waiohau when the development scheme was commenced in 1933. The people were, therefore, were thinking communally of how they would do the work and they were taking it on trust that the consolidation scheme would eventually provide for who would get what land, what of the developed lands for each person.

As with any of these schemes, the 1930s were the apogee of the scheme. It was the time when it was at its most successful. By 1940s, the people were wanting more development for their lands over the other side of the river at Matahina, but the Crown declined to give it to them, to give them that further land.

And the history of the Waiohau scheme, from the end of the second world war, through to the 1970s when it was wound up, is a history of

trying to equate the handing over of developed lands to individual farmers trying to equate that with the needs of setting up economic sized units. Certain of the Waiohau lands had been handed over during the 1930s, the late 1930s, the lands between the river and the road had been handed over to individual farmers, but that had been on the basis of the 1936 consolidation pattern of land parcels and after the Second World War, those land parcels were not big enough to provide an economic living for the people, therefore, the land which was inland of the public road, that's on the eastern side of the road, tended to get divided up into parcels which could be added to the farms which had already been established between the road and the river in order to make those earlier farms large enough to be economic. The effect is that when originally it had been thought that there would be perhaps 20 or more farms in the area, that there ended up being about 12 or 13.

The other aspect that occurred during this 30 year period, in terms of how to hand over the rest of the developed lands, that is, the lands above the road, the other aspect that occurred was the arguments between the Crown and the owners as to who would be the occupiers. Because all these changes were taking place to the pattern that had been agreed in 1936, there was a great deal of unrest among the people that what the Crown had, in effect, promoted and pushed for in 1936 was not what it was pushing for after the war and there was then quite a bit of resistance to the changes that the Crown was promoting, whereby the parcel boundaries would be adjusted all over again to take account of the economics and the circumstances of farming.

In addition there was a dispute that arose over one particular person who was nominated as one of the occupiers, was nominated to be one of the farmers. The people thought that this person was eminently suitable as a farmer. The Crown thought otherwise. The Crown refused to accept that person as the farmer and in so doing I take it that it was using its powers to do so under that 1929 development scheme notice, whereby it was saying that it was the Board of Maori Affairs which could define who would be the nominated occupier, who would be the occupier of the land. The most intriguing thing about it, of course, is that, in the end, that person did get on a farm. The Crown decided that all the reasons that it didn't like that person in the end proved not to be reasons that it held itself to and it did allow that person to get to become the farmer.

The other aspect is that the Crown, when it wanted to change the tenure pattern to take account of economic units, had wanted to hold up the settlement of the lands until the tenure pattern had been resolved, but again, at the end of the day, it decided that that was not a reason to hold things up and that the people could be settled on the land and the tenure pattern did not need to be changed.

So that there were delays that were caused during the 1960s and 1970s that turned out to not be valid reasons and yet had affected the Waiohau people.

One of the unexpected consequences of the delays that had occurred was that the development scheme, when it was wound up, was in surplus. That there was a net profit in the scheme account and this was such an unusual circumstance that it took the Crown about eight years to decide how to solve it, how to actually hand that money back to the owners. And that's explained in my evidence.

The last scheme, which I haven't discussed in my summary, but which I want to discuss now, is that Ngati Manawa scheme, because I am conscious that there are some possible questions which could be raised about it. The Ngati Manawa scheme was started in 1936. It was a little bit later than the others. It had been requested in 1933, the original request had been in the same style as at Ruatoki, whereby individual owners who were already established on the land would receive individual loans to allow their individual farms to be developed further. The Crown, when it started the scheme in 1936, did not follow that approach as requested. It took the development lands as a whole and developed them on what's called "on a face", whereby it started at one end of the lands and moved its way across to the other end, having little regard for tenure and ownership within those lands. Again, it was successful during the 1930s. It was less successful during the 1940s. It required a major decision to, in effect, reinvest in 1951. That decision turned out to not be a good one because, during the 1950s, despite the extra investment that was put into the lands, the property deteriorated, the land failed to earn its keep, so that the debt level stayed high and, in fact, was growing. By 1958 the Crown wanted to pull out. The Crown's solution to that was, as I say, to withdraw its interest rather than want to solve the problem.

The Ngati Manawa did not accept that approach, they took the view that the Crown had got the land into the problem, it should be involved in getting the land out of the problem and it asked that the scheme should be continued for a further round of, in effect, redevelopment of the land from 1958 onwards. The Crown, after being approach by a delegation in Wellington, did agree to that.

The problems that had occurred during the 1950s reoccurred during the 1960s and the scheme again deteriorated, largely because the physical conditions of the land were not really conducive to the type of farming that the Crown had in mind and by the end of the 1960s, the people were in exactly the same position as they had been at the end of the 1950s but, in fact worse, because the debt level was higher. But, in another respect it was better, because it was very apparent there was an alternative land use available because pine trees and the owners then took the view that maybe there was another way, rather than continued emphasis on grass growing. And so, at that point, because the Crown had acknowledged that the scheme was not paying its way, was not showing any obvious signs of being able to be completed to everyone's satisfaction, the Crown agreed to withdraw and that's what happened. The development scheme was wound up, the people took over the land and have run it ever since.

5 So, those are the four schemes that took place in the Urewera - Ruatoki,
 Ruatahu, Waiohau and Ngati Manawa - and in each of them the effects
 have been rather different. In each of them the results have also been
 different. But, overall, I have come to the conclusion that the
 development scheme years or all those communities were largely wasted
 10 years, for those communities, and I have taken that view largely because
 I have looked at the degree of Crown effort that has gone into them and
 compared it with the results that have come out and I have thought that if
 only all that effort had been put in, in other ways I'm sure that those
 communities would have been even better off at the end than they ended
 up being.

Peter Andrew cross-examines David Alexander

Andrew Thank you very much. Look at your summary please Mr Alexander?
 15 You, on page 4, paragraph 6, you're speaking generally about
 development schemes. You refer to Ngata's kaupapa, his articulation of
 the land development scheme, the concept. Do you accept that the
 concept of the scheme is very much a proactive Crown response that we
 perceived to be some fundamentally deep-seated problems?

Alexander Yes, it was a very proactive response in the context of 1929, because
 20 there had been so little response from the Crown before.

Andrew And the Crown was clearly acting in good faith in advising and
 promulgating these schemes, wasn't it?

Alexander I believe so, yes. When you talk about promulgation, of course, if you
 25 are talking about the development scheme notices, then I think the Crown
 failed to consider the consequences of those notices.

Andrew It would be fair to say that the process, was to some extent, experimental
 wasn't it?

Alexander It was experimental in the sense that it had never been tried before for
 Maori land.

30 Andrew It had not been tried overseas either, had it?

Alexander Not for aboriginal land, but it had been tried before in New Zealand on
 European land. So, that, for instance, at Murupara there was the Galatea
 land development scheme on Crown-owned land on the other side of the
 river, which was a Lands Department scheme.

35 Andrew The issues are quite different with Maori land, aren't they?

Alexander They are different, but we're still talking about the Crown being involved
 in land development.

Andrew The Crown never foreclosed on debt associated with any of the schemes
 in the Urewera, did it?

40 Alexander It never foreclosed and it never, it hardly ever wrote off.

- Andrew And assets and improvements were obviously returned to the owners at the termination of the schemes.
- Alexander Not always, no. When you talk about assets of the scheme, for instance, one of the assets of a scheme would have been say the farm manager's house. At Ruatoki there were three houses, one of them was handed over to people, another one was knocked down because it was the end of its life, and another one was removed by the Crown. So, not all of them got handed back to their owners, no.
- 5
- Andrew No, but many of the improvements were handed back weren't they? Generally speaking.
- 10
- Alexander No. I can't say many, I can only say some. Again, you had a water supply scheme at Ruatahuna, a water supply scheme at Ruatoki, those ended up in the hands of the local council, rather than the owners.
- Andrew Was that the result of the council putting in money into those schemes?
- 15
- Alexander No it wasn't, because, in fact, it was, in each of those cases, the council refused to take over the scheme unless the Crown brought them up to scratch. So the Crown had to put in extra money which was, of course, development scheme money and then, as far as I know, those schemes were then handed over at nil cost to the local authority.
- 20
- Andrew Many Maori in the Urewera chose, didn't they, on a voluntary basis, to go into the development schemes?
- Alexander Yes, in all cases there was some degree of consultation at the commencement of the schemes.
- Andrew And during the Depression, the Crown spent quite a significant amount of money, didn't it, relatively, on these schemes?
- 25
- Alexander Yes, I can't say or talk about relatively, because I don't know what was happening elsewhere but, yes, there was, at a time when the Crown was short of money itself, it was spending money on Maori land development.
- 30
- Andrew Can you turn please to page 6 of your summary, paragraph 11? You refer there to the statement of issues raising an issue whether the establishment of a scheme actively protected and promoted the interests of the landowner. You say you failed to see how it can do so and you refer then to loss of ultimate management control rights. It would be fair to say that for most of these schemes it's highly unlikely that they would have been able to borrow money from the private sector.
- 35
- Alexander That was the experience that Maori land generally had, yes. These people had never actually, as far as I know, had never actually made any approaches to the private sector.
- 40
- Andrew It would be unlikely, even if they had, that they could have raised the finance privately.

- Alexander Yes, that was definitely a barrier at the time.
- Andrew Are you seriously suggesting in this paragraph that the owners might have been better off if the Crown had done nothing and simply abandoned them to the rigors of the market?
- 5 Alexander No, I'm saying that I took, in the SOI, the question of active protection and promotion as being an underlying responsibility that the Crown had, and if that was the case, then could it be said that the interests were promoted? Not in all cases no, because the ultimate loss of ultimate management control is not actually an active protection and promotion in my opinion. Certainly, the provision of finance goes towards active protection and promotion, but there are other aspects which don't.
- 10 Andrew The Crown saw the need to assume a higher degree of control, didn't it?
- Alexander The Crown took that view, yes.
- Andrew So, your paragraph 6, on page 4 of your summary, you talk about the drivers or the reasons for the scheme. You list there, at 6, 3 and 4, the lack of organisation and supervision among Maori, the comparative inexperience of the people. Those factors were very significant in terms of informing the Crown's decision that it needed to exercise a high degree of control. Is that right?
- 15 Alexander Yes, Ngata called it benevolent despotism.
- Andrew And that was a reflection of the fact that he saw them as dealing with a fairly dire set of circumstances, didn't he?
- Alexander Well, certainly, yes. I do make the point that I believe that there were alternative mechanisms available, besides taking that power, what I call the power of ultimate management control. So that they already had in place the prohibition on private alienations and when the Crown was making loans to other people, it didn't feel the need to exercise that ultimate management control. But it did when it came to Maori land.
- 25 Andrew We asked you a question of clarification about that, as you'll recall, and it's page 3 of your question and answer series. And, indeed, in response to that question, you talk about this question of pre-emption, in the context of your criticism about the degree of Crown control assumed. Now, pre-emption was pretty unpopular at this time, wasn't it?
- 30 Alexander I don't know about unpopular, I know it was very prevalent. The Crown used it very frequently.
- 35 Andrew It wouldn't have, pre-emption wouldn't have prevented leasing, would it?
- Alexander Yes, it was private alienation so it was sale, lease or mortgage.
- Andrew Given the Crown's understanding and the reality of the complexities of Maori land holdings, land ownership and indeed the harsh economic

conditions in the '30s, it is not really surprising the Crown took the degree of control that it did, is it?

- Alexander
5 I don't see that those circumstances were so different to justify such a level of control, given that I have not seen it applied at other times. No I don't accept that.
- Andrew
10 In your question and answer series, at page 2, you say you prepared your responses without having had access to your supporting papers to your historical report. I acknowledge that the time constraints that operate with these things, but that seems a little bit surprising that you haven't done so, in light of the fairly extensive answers you've given. That's surprising isn't it?
- Alexander
15 I'm just making a general comment that that was the case that I was faced with at the time. I did not have a copy of my supporting papers. So therefore I couldn't refer to them.
- J Savage
15 He really can't know whether it's surprising to you or surprising to me.
- Andrew
20 You acknowledge, fairly appropriately, that you have got no forensic accountancy skills, at page 2 of the question and answer series. And you say, to similar effect, in your main report at page 2 that the purpose of your report is not to consider the financial side of the schemes. Would you accept that in making some overall evaluation of those schemes, that the financial aspects of them are highly relevant, aren't they?
- Alexander
25 Yes they are relevant up to a point, but I believe also that the evaluation that you're referring to, in the context of this Tribunal enquiry, is not necessary at the financial level, it's at other levels besides.
- Andrew
25 Yeah, but in terms of the intent and concept of the scheme, they were very much seen in economic financial terms, weren't they? That was a significant driver of the scheme.
- Alexander
30 That was a driver of the schemes and became more so for the Crown from 1934 onwards. After the 1934 Royal Commission had defined that the accounting within the Native Department had been rather lax, that then became a bigger imperative for the Crown's evaluation of the schemes, in subsequent years, that it was to make sure that, from a financial accounting point of view, that everything was above board. That then came, in my opinion, to actually cloud the issue, as far as the Crown was concerned, in that the Crown took that as the pre-eminent method of evaluation, rather than an evaluation of what it meant for the owners or what it meant for the community within which those development schemes applied.
- Alexander
35
- Andrew
40 The Crown was of the view that it wasn't principally providing welfare assistance wasn't it? These were loans. They were not gifts or donations.
- Alexander
They were loans, but the alternative that was available to the Crown, at the time, was the provision of unemployment relief funds and it depends

whether you think of those unemployment relief funds as part of the welfare state or not.

- Andrew But it did apply those as well, didn't it? It provided those at Ruatahuna.
- 5 Alexander Yes it did provide unemployment relief funds. If the development scheme funds had not been injected into those communities, then unemployment relief funds probably of a greater degree than applied would have been injected. So there would have been that Crown provision of support for those communities in one way, shape or form, in my opinion.
- 10 Andrew Of course, when the Crown, by the time the Crown starts to become as you say more pre-occupied with financial matters the issue of unemployment tends to fall away a bit, doesn't it?
- Alexander Very much so, yes.
- Andrew As the war approaches.
- 15 Alexander Well, most particularly after the war. I see that there was a major shift in thinking in terms of the Crown as a result of what was called manpower planning during the war years. That suddenly people could be moved to the jobs rather than the jobs being moved to the people and therefore after the war that led to approaches like the trade training schemes which took people away from rural communities and put them in the cities areas and gave them trade skills which generally were only available in jobs in the cities which set up welfare offices to handle the welfare needs of Maori who have moved to the towns and the cities and generally tended to look upon the rural communities as, in effect, a source of labour for the work places in the cities. It happened during the 1950s which had never been the case during the 1930s where, as I say, the work was being taken to the people, where the development was being taken to where the people were living.
- 20
- 25
- 30 Andrew Turn please to page 22 of your question and answer series. And you, in your answer on page 22, responding to questions about the Ruatahuna development scheme. You criticised the Crown for lack of clear objectives in relation to this scheme. The immediate objective of the scheme was to provide relief for the stress arising from unemployment and poverty, wasn't it?
- 35 Alexander Yes.
- Andrew And there was a clear need for some pretty immediate and dramatic assistance, wasn't there?
- Alexander Ngata thought so, yes, at the time. He had second thoughts a couple of years later but he thought so at the time.
- 40 Andrew So it's not surprising that there weren't particularly clear objectives beyond that at that time, is it? There was a pressing need and they had to respond quickly, didn't they?

- Alexander There was a pressing need and the Crown's response was to set up a development scheme which, although no one ever realised it at the time, was to run for 60 years.
- 5 Andrew Can you turn please to page 24 of your question and answer series? You're responding there to some questions in relation to the Korean War and prices of wool. You say in your response there "The Crown certainly saw the expected outcome of the scheme as a situation where all borrowers had paid off their debt. It does not seem to have had loftier ambitions of a vibrant farm community of skilled farmers making a significant contribution to the economic health of the Ruatahuna community." But surely that loftier ambition was a general intention of a schemes, wasn't it?
- 10
- Alexander Not at Ruatahuna, no. At Ruatahuna, the Crown officials themselves were saying that this was just another form of unemployment support. It was a way of channeling unemployment relief monies into that community. They were thinking in, what you referred to earlier, as immediate short term pressing needs rather than anything more wider.
- 15
- Andrew So, was it you are saying it just wasn't physically possible to achieve that goal.
- 20 Alexander Well, no. I disagree because I think people there would say that the farming operation they have there at the moment is a viable, is sustainable and is producing benefits for the communities. I think that physically the land is capable of providing some sort of support for the community.
- 25 Andrew You come please to your page 39 of the question and answer series where the Crown asked you some questions about debt ratio in the Ruatoki development scheme and you say in your response talk of a debt ratio assumed some assets at the end of the scheme process, but this was not really the case. Surely there were assets, at least in the form of land, were there not?
- 30
- Alexander No, the land was owned by the owners. It wasn't owned by the development scheme. It wasn't owned by the Crown. The assets owned by the development scheme were those assets which were put in by development scheme funds but were not tied to any particular farm and were not tied to any particular occupier of land. So, the assets of the Ruatoki development scheme were what I referred to earlier, they were the farm buildings, they were the store shed, they were the water supply scheme.
- 35
- Andrew Weren't some of them returned to the owners, weren't they?
- 40 Alexander Yeah, there was one house that was returned to the people.
- Andrew Is that all you say there was returned?
- Alexander Yes.

- Andrew In all the schemes?
- Alexander No, I'm talking about Ruatoki, sorry. Another aspect of Ruatoki which I haven't mentioned was that there were some pine plantations were put in. In effect, shelter belts, and I haven't been able to find out what happened to those in legal terms.
- 5
- Andrew There was actually, in some cases, an improvement to the quality of the land itself, wasn't there, the asset of the land itself?
- Alexander Oh definitely, yes, yes. But that was applied to, what was called the units accounts. To the loan accounts of individual farmers. So that the benefits were, in effect, a money transaction with individual farmers on their individual pieces of land. The development scheme accounts for Ruatoki was not just one set of accounts. There was a general scheme account and there was any number of accounts for any number of loans that were issued to individual farmers. So when you are talking about accounts you have got to actually be clear what you're referring to, and what I am referring to here is the general Ruatoki scheme account which, in effect, got liquidated. The closer you got to the final stage, the less there was in that general development scheme account, because things had got parceled out in different directions and had been sorted out.
- 10
- 15
- 20 Andrew You made a comment at the end of your evidence, sort of a summary overview, about wasted years in the development schemes. There was always a tension in these schemes between the need to amalgamate to increase the size of the units to improve economic performance versus the wishes and desires of the owners, wasn't there? There was a lot of resistance to amalgamation, wasn't there?
- 25
- Alexander Yes, I comment on that, firstly in my main report, but also in some of the questions and answers.
- Andrew Made it very difficult for the Crown to manage, didn't it, that tension?
- Alexander My comments are to the effect that the Crown and the officials working for the Crown, because of their training and background and inclination, were always thinking in economic terms. They were looking for the, maximising the economic benefits of things. I think that it's wrong to necessarily think that all Maori would take that view. There will be some Maori who do take that view, who want to become, in effect, professional dairy farmers. There will be other Maori who are saying that the land is a resource which we are looking after on behalf of the hapu. The land is a resource which we are looking after on behalf of our children and therefore that we want to develop social mechanisms whereby that land can do that.
- 30
- 35
- 40 Andrew But the reality of farming, or the life on the land, is there are real limits in terms of in terms of those sorts of choices, aren't there? If you are to retain the land.
- Alexander Well I don't think that Maori would necessarily agree with you on that, no. But you'd have to ask them.

Andrew Yes, Thank you.

J Savage Ms Ertel, have you established who else wishes to cross-examine?

Ertel Yes I have Sir, and that is Professor Boast and Mr Ambler and I have a couple of matters in re-examination.

5 J Savage Certainly, thank you.

Richard Boast cross-examines David Alexander

Boast Kia ora Mr Alexander. Just to set all this in context, until 1929, it's fair to say, isn't it, that the key problem rural Maori would-be farmers faced was a lack of access to development finance?

10 Alexander Yes, and if I can add a bit more, because of their lack of access they had never, as a result, got into intensive farming to allow to a large degree and therefore it was also a lack of skills faced within the people as well.

Boast So one consequence of that would be that the dairying boom of the early part of the 20th century largely passed Maori by, didn't it?

15 Alexander I don't know enough about it to say yes or no, but I think that the dairying at Ruatoki, the dairy factory had started in about the 1890s, but it's very apparent that, up until 1930, it was largely the Europeans in the district who were the main suppliers.

20 Boast Until Ngata's 1929 legislation, the State had made no effort at all to provide Maori with development finance for farming purposes.

Alexander No.

Boast Whereas, say, under the Advances to Settlers programme, millions of pounds had been available to non-Maori farmers from the State.

Alexander I'll accept that, if you say so.

25 Boast So, is it fair to say that the schemes, as envisaged by Ngata, involved perhaps two key aspects, the development finance from the state and equally important, in his eyes, is training in farming and business skills?

Alexander Yes.

30 Boast Can you generalise for us then as to what extent those two key objectives were realised using these four schemes as a case study? Cheap finance, training and skills.

35 Alexander The finance was provided and had almost immediate effect during the 1930s for all four schemes, in the sense that production was increased from all of them. I think that, in terms of skill development, that applied at Ruatoki more than the other three schemes because there was a farm supervisor based there, because there was a dairy instructor based there at one stage whose, one of whose purposes was to raise the standard of the milk supply from third grade to second grade to first grade, and so there

- 5 was that skill base. In terms of overall community competence, for want of a better way of describing it, I don't think that ever really got off the ground. I think that was part of Ngata's vision for these schemes, but because he had to resign in 1934, I don't think he ever got the chance to properly apply that leg of the development scheme.
- Boast Well, yes, following from what you just said that we talk about land development harming the business skills. That was, in Ngata's mind, in a context of community development, wasn't about land development, as such, to add to the stock of national productive, it wasn't really what he was driving at, it was his benefit to protect and enhance opportunities for Maori rural communities.
- 10 Alexander I'm sure when he was selling the development schemes concept to his Cabinet colleagues he would have told them about the benefits, the national benefits. But when he was talking to the Maori communities he was definitely talking about strengthening communities, yes.
- 15 Boast Strengthening communities. At paragraph 6 of the summary, listed there some of the four scourges, as Ngata put it, affecting Maori owned land, nature of titles, financial assistance and so forth. But also, and you say that the role of the Crown in providing this overall environment was something Ngata neglected rather. There was also the core problem about the actual land base that was in Maori hands by 1929, both in terms of acreage and land quality, was something that put the vision at risk didn't it?
- 20 Alexander Yes, certainly, and it's a comment I make in my main report that these development schemes were available to communities which still had the land base to provide them and those which didn't have the land base, which were so pauperised in terms of not enough land, were not actually aided out of their poverty by these development schemes.
- 25 Boast The Crown didn't consider making Crown land available for Maori land development.
- 30 Alexander Oh, yes it did, but not in Urewera.
- Boast Right. Now, reading your main report, it's clear isn't it, that there's a very large shift in approach by the Crown towards Maori land development after World War Two?
- 35 Alexander Yes.
- Boast How do we characterise that shift? Is it, could we say it's a move away community development more to Maori land just to simply land development *per se*?
- 40 Alexander I characterise it mostly by looking at it in terms of the priorities for the relationships. The Crown had, in my opinion, had a relationship with the owners because it was using land, it also had a relationship with occupiers. And then it had its own personal interest in getting its loan monies repaid. So, the Crown had three things it was juggling. In my

5 opinion after the Second World War the priorities changed to being the
 10 Crown first, being repaid, to its relationship with the occupier, because
 the occupier was the conduit by which the Crown would get repaid and
 its relationship with the owners was third in those three, and yet I believe
 that the appropriate order to should in fact be the other way around. It
 should be the Crown's relationship with the owners which should be pre-
 eminent throughout this as a result of the development scheme notice and
 the fact that it's dealing with Maori-owned land when Maori are
 supposed to have rangatiratanga over that land. And therefore it is the
 relationship with the owners which should be the guiding principle that
 the Crown should have at the core of its thinking.

Boast As well as those shifts, which you have just analysed for us, it also seems
 the case there are more general policy shifts going on in terms of the
 Crown's vision for Maori in terms of their participation in the economy
 15 more generally, in that the policy seems to move much more towards
 encouraging Maori to leave rural areas to move to towns to go to places
 like Kawerau and Murupara, Auckland, Wellington and so forth. Are
 there links between that policy shift and what seems to be a fairly evident
 declining interest on the part of the Crown in the development schemes?

20 Alexander I certainly think it's intertwined. Because the economic size of farm
 units got decreased over time, it became more and more apparent that the
 land was not the resource that could provide a livelihood for all members
 of these rural communities. Therefore, the movement away from those
 rural communities into the towns and cities to where the jobs were was in
 25 effect a safety valve for those pressures that were building up within
 those rural communities. The Crown recognised that and, in fact, and
 ended up encouraging it. Not just accepting it, but actually encouraging
 it.

Boast Ah, yes, which was the next question I was going to put to you. It wasn't
 30 simply an economic shift but the Crown certainly encouraged.

Alexander Because the Crown recognised those trends and actually accentuated the
 trends.

Boast Right, by making it more difficult to live on papakainga and so forth.
 35 You've got Maori, an example might be that Maori Affairs housing
 finance required you to move into an urban area.

Alexander Well yes, I mean basically there was a certain size of the pot of money
 that was available for Maori people, of Crown money, and because there
 were people moving into the towns and cities, a greater proportion of that
 money went into the towns and cities than had previously gone into the
 40 towns and cities and therefore as a consequence there was less available
 for the rural communities.

Boast Right.

Parsonson When would you take the shift to the Crown's encouraging the rural
 community?

- Alexander Well, I date the concept as starting in the 1940s with the manpower planning during the Second World War, that suddenly made that possibility available as a concept and then, after the war, then I see it building up over time so you get the 1945 Maori Social Welfare Act, whatever it's called, you get a separate Maori housing administration developing, you get Maori welfare officers being established in the cities. So, it starts during the Second World War as, not necessarily a Maori concept, but as a concept which applies nationally, to both Maori and Pakeha, this manpower planning, and then that thinking gets applied to Maori after the Second World War.
- 5
- 10
- Boast In your evidence in chief, you stressed the particular importance that Ngata seemed to attach a dairying above all as the progressive way forward and I suppose dairying meant or the model for dairying was the classic New Zealand model, the single family dairy farm which is what Ngata had in mind. Do you think there were inherent problems or difficulties with that as a model of economic rural Maori development?
- 15
- Alexander No. I think Ngata had picked up a good thing about dairying. Dairying, of course, is more intensive than is sheep grazing or beef cattle grazing. Therefore, it's able to use more people on the land than those other things. It provides a good income on a continuing basis through most of the year, not all of the year, but most of the year, rather than just the one crop that might apply in another sense or the one sale of stock that might apply.
- 20
- Boast Or the annual wool cheque?
- 25
- Alexander Yes, yes. So, I think it was the intensity of the land use which appealed to Ngata. As far as Ruatoki is concerned, of course, it was the fact that there was already some dairying farming established there and therefore he was building on an existing activity.
- 30
- Boast Now, you discussed in your evidence in chief also what is a vitally important point which is that of defining the nature of the legal relationship between the Crown and the owners at a time when a scheme was in place for a period of 60 years or whatever it would be. I won't ask about the law, but a key ingredient in such a relationship is, where there is an inequality between the two parties to the relationship, and it certainly was an unequal relationship, you'd agree.
- 35
- Alexander Yes I would.
- Boast And another dimension to the fiduciaryness of a relationship, I'm no equity specialist, I hasten to add, is that the stronger party would have a discretionary power, so that when it exercised that discretionary power than can operate to the detriment of the weaker party. And, again, that pretty much characterises what we have, does it not?
- 40
- Andrew These are very much legal questions in my submission, Sir.
- Boast Well they are not really, they're tests as to what a relationship is.

- J Savage But, he could go about it in a less direct way and produce the same effect. Well, you couldn't object to it if he took 15 minutes sneaking up on a person.
- 5 Boast How would you characterise the relationship in terms of (inaudible)? Put it that way.
- Alexander In terms of equality?
- Boast Yes.
- 10 Alexander I believe that it was not an equal relationship. I believe that the Crown held the ability to decide the timing of events, held the technical expertise when it came to the accounts, held the ability to define when it would consult, held the ability to define when it would get involved and wouldn't. So, and left to the owners on the other, from their perspective in the position when they wanted to, in effect, consult with the Crown, they were almost put into the position of objecting or petitioning for something, rather than feeling that they could go along to the Crown as equal partners. Having said that, there were relationships at the local level between the local farm supervisors and the owners which don't appear in the Crown records and I can't characterise those. However, 15
- 20 there is a general feeling I come across that the circumstances of the 1930s, with limited Crown resources and the pressures on those farm supervisors at the local level, meant that those farm supervisors found themselves in the position, whether they liked it or not, of actually tending to be rather autocratic in their dealings with people, rather than consultative in their dealings with people.
- 25 Boast Okay now, just lastly, just a couple of points about the Ngati Manawa scheme, in particular, which you didn't deal with in the written brief, though you commented on it briefly in your oral evidence in chief. With the Ngati Manawa scheme, you also got this problem, did you not, between the relationship between consolidation and development in that 30
- Ngati Manawa themselves strongly preferred to see their interests consolidated before the development scheme was set in train, whereas the Crown wanted to and indeed did do things in the reserve order.

Alexander Yes.

Tape 3 Side A ends

35 **Tape 4 Side A commences**

Monday, 14 June 2004

Richard Boast cross-examines David Alexander (cont)

- Female(?) ... helping out people who had no rights in the district.
- Alexander But keeping hapu control?
- 40 Female(?) Yes, but keeping hapu control.

- Alexander One of the consequences of the development scheme noticed was that the Crown could, in effect, step over the tenure situation. It could make decisions which largely ignored the boundaries on the ground and that's what it did in the Ngati Manawa scheme.
- 5 Boast And another characteristic of that scheme, perhaps exemplifying the Crown's shift in policies, was that there were particular problems caused by the Crown's delay in deciding where it wanted the new pulp and paper mills to go, there was a plan that this should be built at Murupara and while was being considered, really the Crown seem to lose interest very much in the development scheme. Is that a fair assessment?
- 10 Alexander Yes, I characterise it in my main report as a pecking order among Government Departments. The decision about where the pulp and paper scheme would go was being made by Government Departments like Ministry of Works, which were higher in the pecking order than the Native Department/Maori Affairs Department. Therefore, the Maori Affairs Department actually had to wait for the decision to be made by someone else. In waiting, that had a consequence for what was happening on the ground in the development scheme.
- 15 Boast Right, and with the Ngati Manawa scheme, no separate units were ever established at all, so I understand?
- 20 Alexander Correct.
- Boast Yes. I've nothing further Sir.
- J Savage Thank you very much, Mr Boast. Mr Ambler?

David Ambler cross-examines David Alexander

- 25 Ambler Mr Alexander, as you're probably aware, I act for the Wai 36 claimants who claim on behalf of Tuhoe. First, a small question, we know that in the Ruatoki Valley there had been successful dairy farming by Tuhoe prior to the development schemes and I assume that that was without any government funding from what you can determine?
- 30 Alexander Yes. I have looked to see whether there were any District Maori Land Board loans and I haven't found any reference to them.
- Ambler Were you able to determine when that dairying first started?
- Alexander Not by Maori. As I say, I know that the dairy factory was established in the 1890s, because that was when the land was set aside for a dairy factory but I don't know when Maori started to contribute to that dairy factory.
- 35 Ambler And were you able to determine how much land had been committed by the Tuhoe owners at Ruatoki to dairying prior to the scheme?
- Alexander No.

- Ambler I don't recall it from your report, but ...
- Alexander Page 52 of my original report "Twelve Maori farmers at Ruatoki supplying approximately 30,000lbs of butter fat to the dairy factory. In all there were 1,200 acres in pasture grasses".
- 5 Ambler How many acres?
- Alexander 1,200 – 1,194.
- Ambler Ah yes. Thank you for that. Now secondly, what I wanted to move on to is the consolidation scheme issue and I have a few questions in this regard but, firstly, as I understand from your report, you haven't set out a comprehensive study of the Ruatoki/Waiohau consolidation scheme. There's just some commentary in the lead-in to your report. Is that a fair statement?
- 10
- Alexander Yes, I have not looked at the detail of the, or how various interests were moved around among the groups. I think to do that, I'd probably still be doing it even today because it's ...
- 15
- Ambler So you haven't looked at the detail of who the people were that owned interests in Ruatoki and Waiohau and how they were individually exchanged and so forth?
- Alexander No I haven't, no.
- 20 Ambler Okay. The situation, as I understand it, is that the Ruatoki consolidation started first and then it was realised that there was so much interconnection with Waiohau that it had to include the Waiohau lands in terms of a consolidation.
- Alexander Correct.
- 25 Ambler And, prior to the Ruatoki consolidation commencing, the Crown had only purchased very nominal interests in any Ruatoki blocks back in 1910 through Rua Kenana. Is that correct?
- Alexander Yes, that, I understand it, is correct, but I didn't look back that far but when I looked at the consolidation scheme I could not find anything in the consolidation scheme from 1924 onwards whereby those Crown purchases in that earlier year were actually being put into the scheme, were actually being referred to in the scheme.
- 30
- Ambler Or accounted for.
- Alexander Or accounted for yeah. It appears to be that the Crown had abandoned those earlier purchases and was not using them as an interest in the Ruatoki scheme from 1924 onwards. The only Crown interests, from 1924 onwards, were those interests that were purchased in 1929 and I think there was a survey compromise as well, survey liens compromise.
- 35

- Ambler The purchasing took place by the Crown between 1929 and 1931, from our records, the main part of that being between November 1929 and March 1930.
- Alexander Yes.
- 5 Ambler Now, at page 26 of your report, and I'm afraid my page numbering, I think, may have come out differently from yours, but this is where you start off with a heading "Reallocation of lands under the consolidation scheme".
- Alexander Yes.
- 10 Ambler Page 26. Now, this is in 1930 you're referring to here, the meetings that took place in February and March 1930.
- Alexander Yes.
- Ambler That's when the consolidation scheme was being discussed with the people.
- 15 Alexander That's when the business of the redistribution of interest was being discussed with the people after the, all the successions had been completed. There had been plenty of discussions with the people during the updating of ownership lists, but this was the second phase of the consolidation scheme which was the redistribution of the interest.
- 20 Ambler This is really the actual consolidation as such.
- Alexander Absolutely, yes.
- Ambler What had happened before was just succession.
- Alexander Just the lead up, yes.
- Ambler And as I read from your report from that page and the next two or three pages, there were two or three key issues or complaints that were raised. One was in relation to improvements having been made by non-sellers and not being compensated for. That's correct? And the Crown, from your records, didn't seem to address that issue.
- 25 Alexander I'm not aware of it, no. But I hesitate to say, when we talk about the Crown didn't address the issue, the consolidation scheme was as much the people as it was the Crown. But, no, it was not addressed in the sense that the Judge at the end of the consolidation sent a report to the Minister referring to it.
- 30 Ambler Yeah, well the complaints were raised with the consolidation officer.
- Ambler And who was the consolidation officer.
- 35 Alexander Yes.
- Ambler And who was the consolidation officer.
- Alexander The Crown official, Rangī Royal.

- Ambler A Crown official?
- Alexander Yes.
- Ambler The issue was raised with him. There was also an issue in relation to valuations, secondly, and then what I want to get on to is the important issue of the Crown interests and I have a concern, Mr Alexander, with the way you have answered one of the statement of issues. And, what I'm taking you to is paragraph 55, firstly, of your summary where it says "A statement of issues has raised the issue of the basis on which the Ruatoki owners expected the final Crown-awarded sections to be offered back to them. I do not think there was any such expectation on the part of the Ruatoki owners". Sorry, on the part of the Ruatoki owners and then you go on and explain that and then again at paragraph 82 you address the issue again in relation to the Waiohau owners, and you say "The statement of issues raises in it as an issue the basis on which the Waiohau owners thought the Crown sections would be offered back to them as with Ruatoki. I have not located any suggestion in the Crown records that the Waiohau owners did expect to be able to repurchase or reclaim the larger of the two sections awarded to the Crown". Now, what you say there just doesn't seem to be right when I look at your report, Mr Alexander, because, if I look at page 28, and again my page numbering might be slightly out, but this is where you discuss, you begin discussing what was going to happen with the Crown interests to be in the bush land and then you go on to talk about, the bottom of page 27, "The negotiations which took place between February and March 1930 resulted in a shift of attitude about what should happen to the interests in the consolidation scheme that had been acquired by the Crown". Then you go on "and here we have at the February 1930 hui Hori Ataroa told the consolidation officer that, the Crown having purchased a considerable area, leaves little for us to farm and we ask that the Crown area, when consolidated, be made available for allotment by us or rather by those who are living in Ruatoki". And that seems to be exactly what the statement of issues is talking about, that they were asking for the Crown land to be reallocated to them.
- Alexander Okay, can I clarify, because I think there's a bit of a misunderstanding here on your part.
- Ambler Yes.
- Alexander The Crown, when it purchased interests in Ruatoki, purchased some of the shares in each of about 40 different sections.
- Ambler 48 sections.
- Alexander 48 sections, right. It never purchased all the shares in any one of those sections, right.
- Ambler No.
- Alexander Therefore, when I talk about Crown sections, I'm not talking about these sections which it purchased part interests in. The Crown sections I'm

- 5 talking about are the sections which were awarded to the Crown coming out of the consolidation scheme. The bush covered areas, C61, C something or other and Waiohau B9. The Crown, when it purchased these interests in the land in, between November 1929/March 1930 predominantly, did not see that it was purchasing land. It saw that it was purchasing an interest which would go into the scheme as an interest in the scheme and then would get awarded to the Crown coming out of the scheme, either as land or as monies due to the Crown, because there had been charging orders in favour of the Crown placed on lands owned by Maori.
- 10 Ambler Yes, but what Hori Ataroa is saying here is that the interest that the Crown has, or acquires, they want offered back.
- Alexander Yes. They want it offered back.
- Ambler Yes.
- 15 Alexander They wanted it offered back and they got 60% of it offered back, but not the other 40%. The other 40% got bound up as a value in land which was awarded to the Crown as land.
- Ambler Yes. But the expectation ...
- J Savage In the blocks up the side of the valley?
- 20 Alexander Yes.
- J Savage 60% goes back to the non-sellers, if you could put it that way?
- Alexander Yes.
- Ambler But what I understand from the historical record is that the evidence points to the Tuhoe people expecting to get 100% back, either by allocation or repurchase or whatever.
- 25 Alexander That was the request they made was, in that quote, which was the only quote I found, was that they were asking for 100% to be offered back. But they ended up getting the 60%.
- Ambler Yeah. So, they expected 100% to come back.
- 30 Alexander Can I make one other qualification? They were also saying that if the Crown was to get any land, they wanted it to be the land which had been eroded into the Whakatane River.
- Ambler Sounds fair enough.
- Alexander That was the other thing they said, and they didn't get that.
- 35 Ambler No they shared in the erosion issue, didn't they?
- Alexander No they didn't share, they got all of the erosion.

- Ambler Oh. Well, okay. Having got to that understanding that the people understood that 100% would be offered back to them ...
- Alexander Well, no, they didn't understand – that was what they asked for.
- Ambler That's what they asked for.
- 5 Alexander There is nothing in the written record to say that the Crown actually said we will agree that we will give you 100% back, right.
- Ambler No, that's right. But this is the hui that's taking place before implementation of the consolidation proper, isn't it.
- Alexander Yes.
- 10 Ambler And the people are saying this is what should happen.
- Alexander Yes.
- Ambler So that's their understanding of what they think should happen, and what you've said is that the Crown doesn't respond, but ends up reallocating 60%.
- 15 Alexander Correct.
- Ambler So, having established that they were expecting 100%, I don't understand why you've answered the question as to the basis on which the Ruatoki owners expected the final Crown award of sections to be offered back to them. Isn't that just what we've just established?
- 20 Alexander No, because the Crown-awarded sections I'm talking about are the bush sections up the side of the valleys.
- Ambler But as at 1930, when Mr Ataroa's raising this issue, no one has confirmed where the sections are.
- Alexander Those Crown-awarded sections have not been established.
- 25 Ambler No.
- Alexander No. And when the consolidation scheme was completed later in 1930, since then I have found nothing to say that those lands were either requested since the consolidation scheme or were promised.
- 30 Ambler But, if we're talking about what the request is as at 1930, no one's going to make a specific request about specific blocks, because we don't know what the Crown's going to end up with. That's right?
- Alexander Yes.
- Ambler Yes. But the point is, out of this consolidation, the people didn't expect the Crown to come out with any land interest, did they?
- 35 Alexander No, they didn't want it, no.

- Ambler No, okay. That's helpful thank you you've clarified that for me. Now the other point that I have a concern with is at paragraph 84 of your summary and it's in relation to – again answering question in relation to the statement of issues and the situation of Ngati Haka Patuheuheu and, again, you make the comment “It seems to me to be unjust that the people of Waiohau you could sacrifice some of their tribal estate in order to satisfy the Crown-inspired arrangements that benefited the people over the hill at Ruatoki”. And then you go on comment that they didn't actually voice any concern. But, if we put this in its proper perspective, the Ruatoki and Waiohau consolidation occurred as one, correct? Sorry a nod won't be recorded, Mr Alexander.
- Alexander Yes, correct.
- Ambler And there was substantial commonalities of ownership as between Ruatoki and Waiohau people.
- Alexander Yes.
- Ambler And so there was a consolidation, there was regrouping of ownership, wasn't it?
- Alexander Yes.
- Ambler So, I don't understand why you say that the Waiohau people were penalised to the advantage, it seems, of the Ruatoki people. That doesn't seem to be a fair assessment because what is happening is they're just exchanging their interests.
- Alexander Yes, they are exchanging their interests but the point I'm trying to make is that I believe that when the Waiohau people, Ngati Haka Patuheuheu, agreed to go into the consolidation scheme, I find it hard to believe that they would imagine that they would end up with less land.
- Ambler But there will have been people who had interests at Waiohau, in the land, who decided that they would prefer to reside over the hill at Ruatoki. Isn't that the answer? That they just took their shares over the hill to Ruatoki.
- Alexander Oh, yes, that was the effect, is that there were more share interests that moved from Waiohau to Ruatoki than moved from Ruatoki to Waiohau. Therefore, that imbalance had to be balanced up by some of the Crown interest moving from Ruatoki to Waiohau, yes.
- Ambler But the real problem here is that the Crown decided that of the 40% of the interests it had acquired, it decided to keep those, rather than offer them back, that's correct?
- Alexander Yes.
- Ambler And those ended up, in part, in Waiohau C25 and Waiohau B9.

- Alexander Yes. Yes, what happened was that when the Waiohau consolidation scheme was undertaken in 1936, when the redistribution was undertaken in 1936, the Crown did not say to the people "okay we will offer back our interest in that Waiohau scheme to you in the form of charging orders, we will take it as land instead".
- 5
- Ambler Were you also aware that the Waiohau people also asked to exchange out their interests in the Te Teko blocks which had been provided to them as part compensation for the Waiohau 1B form?
- Alexander I'm aware of it, but not to the degree that I know enough to comment helpfully about it.
- 10
- Ambler So coming back to the sentence when you say "it seems to me to be unjust that the Waiohau people had to sacrifice some of their tribal estate". Do you accept that that's not a fair summary of the situation? In the sense that all we have is more people deciding to stay at Ruatoki rather than Waiohau.
- 15
- Alexander The way I see it is we are dealing with different hapu. At Ruatoki you have got, I think it's four hapu that are being referred to in the consolidation scheme. At Waiohau you've got one hapu which is being referred to. I'm saying that the Crown purchased the interests from the lands of one hapu or more than one hapu in Ruatoki, but it was another hapu altogether at Waiohau which ended up getting part affected by that initial decision.
- 20
- Ambler Well, let's just clarify a couple of things here. Firstly, have you done a study of the different hapu affiliations in Waiohau and Ruatoki?
- 25
- Alexander No.
- Ambler Secondly, by this stage all of these interests are individually held, aren't they?
- Alexander Yes.
- Ambler So a person may have affiliations to hapu in both Waiohau and Ruatoki?
- 30
- Alexander Certainly.
- Ambler So it's the individual that's being reallocated rather than any hapu?
- Alexander Yes, certainly. But it's the tribal estate that ends up being affected. The tribal lands, should I say, rather than estate, tribal lands which end up being affected.
- 35
- Ambler Thank you. I have nothing further.

Ann Parsonson questions David Alexander

- Parsonson Hello Mr Alexander. I just want to ask, on page 12 of your report, you refer to what you call a regime which became progressively more focused

on rigid and unforgiving financial accounting interests and I just wondered if you could expand on why you call them unforgiving.

Alexander
5 I call them unforgiving partly because of the experience of Ngati Manawa and the experience of the Waiohau people where they asked for some of the debt to be written off. They felt that the reason that those schemes had got into debt was primarily, if not totally, the Crown's fault. They felt that if the Crown was to be engaged with those people, they would have to come to the party in terms of writing off some of the debt which they felt that the Crown had, in effect, created. The Crown took the view that writing off any debt, and I'm talking about nationally, was a last resort. It took the view that rather than see write off, it was prepared to reinvest further monies where those monies showed the promise that the larger debt, as a result, would still get repaid further down the line rather than writing off at that early stage. The other aspect I talk about, in terms of 10 unforgiving about debt, is, of course, that debt accumulates and attracts its own interest over time and therefore the longer it is in existence within the accounts, the more of a burden it is.

Parsonson
20 Just following on from that and you referred to the 1934 Commission that examined schemes and referred to, sort of, stricter minutes(?) came after that, could you again just explain what impact, if any, on the ground the findings of that Commission had on the schemes that you (inaudible).

Alexander
25 Well, as I point out, the Royal Commission made two specific references to Urewera schemes. It made one specific reference to the sacking of a farm manager at Ruatoki, and it made the other specific reference to the high cost of purchase of sheep for Ruatahuna. In both those specific instances there was no change arising from that Royal Commission for the Urewera peoples or for the Urewera schemes. At the more general level there was this, as I say, what I call the tightening up of the financial accountability regimes which, at one level you could argue, is not a bad thing because the debt was owed by the people and the stricter the control 30 the likelihood that the people were being better served by that, but at another level, it's very clear to me that the emphasis on financial accountability actually skews the purposes for development schemes. And that was most apparent after the Second World War where that becomes a predominant factor in the thinking of the Crown in its dealings with development schemes. So that has a longer term consequence, but I still refer that consequence back to having its genesis in the 1934 Royal 35 Commission.

Judge Savage questions David Alexander

40 J Savage Just one matter. You've referred on a number of occasions to the economic size of the units created. Just with a very general knowledge of the history of farming in the western world, in the new world, surely an advisor to a Minister like Ngata would have appreciated in 1930 that this was inevitable, highly likely, almost inevitable, let's put it that way, that 45 the size of the units would have to increase to be economic.

Alexander Yes.

Kathy Ertel re-examines David Alexander

- 5 Ertel Thank you. I've just got two matters in re-examination. Mr Andrew asked you that, given the hard economic conditions, it's not surprising that the Crown's took such a high level of control over those farm units and you said that you didn't accept that because the Crown didn't apply such a high level of control at other times. Can you give us an example of what you meant by the Crown not applying such a high level of control at other times?
- 10 Alexander Well, the example I had in mind was in relation to marginal lands loans. Marginal lands loans have been applied since, I think, about 1950s, the Marginal Lands Act, through to the 1980s. They were specifically loans, you know, the purpose behind them was that they were loans for land where farmers had been unable to get loan money from the private sector and yet the Crown was prepared to think that they were still a viable proposition for lending monies. So, they were marginal in terms of their ability to repay, as judged by the private sector, and yet the Crown did not take any extra legal powers in respect of those lands, other than the normal mortgage powers.
- 15 Ertel Thank you. And then, finally, Mr Andrew asked you whether or not the Crown was providing welfare assistance to which you said no, they were loans, the alternative was unemployment relief funds. If development scheme money not injected then it's a higher level of relief funds would have been. What's the key difference, in your view, between the development scheme funding and the unemployment relief funding?
- 20 Alexander The key thing for me is that unemployment relief funding is there purely to provide a means for the people to survive on a day to day, week to week basis with no longer term thoughts behind it, whereas the development scheme funding is there to provide that similar type of support, but with a longer term purpose behind it.
- 25 Ertel Do you know whether or not unemployment relief funds are a loan?
- Alexander No. They are always a grant.
- Ertel So, that would be another key difference that, if you were going to relieve unemployment using those funds, it wouldn't be a burden on the land.
- Alexander That's correct.
- 30 Ertel Thank you. That's all I have.

Tape 4 Side A ends

Tape 5 Side A commences

Tuesday, 15 June 2004

Stephen Robertson reads summary (Summary #B22)

Peter Andrew cross-examines Stephen Robertson

- Andrew Mr Webster, I want to ask you please some questions in relation to issue 20(a) which you have recorded at the bottom of page 2 of the summary. That's document #D22. My question posed is, relates to the valuations used for the Urewera consolidation. Just so that we're clear, we're talking here about the transfer of exchange of interests and not the sale of Maori interests to the Crown. That's right isn't it?
- 5
- Robertson Sorry, it's Mr Robertson.
- Andrew Did I call you something else? I'm sorry.
- 10 Robertson Yes. Mr Webster.
- Andrew Sorry. I'm sorry. I am not confusing you with Mr Webster. Mr Robertson, I'm sorry.
- Robertson I don't understand what you mean by the difference between the sale or transfer.
- 15 Andrew Well, the Crown has purchased some undivided interests in the blocks, hasn't it?
- Robertson I believe so, yes.
- Andrew And the consolidation is essentially exchanging the interest the Crown has purchased for Maori interests - undivided Maori interests?
- 20 Robertson It's recalibrating those interests. It's applying a monetary value to those interests and then, so, there's not a transfer of interest, just a monetary value supplied to it which can then be - the area of land may change.
- Andrew But the point is this is occurring after the initial sale by some Maori of their undivided interests, isn't it?
- 25 Robertson Yes.
- Andrew Yes. And this is an attempt to rationalise what's gone on basically because it's all rather complex and difficult. Correct?
- Robertson Absolutely.
- Andrew So, the Crown has acquired some interests and is exchanging those for other interests which it hasn't, up until now, acquired. Correct?
- 30 Robertson That's right.
- Andrew But because the shares acquired, the Maori shares are undivided, they're spread over the whole block, they're not specific to any particular portion of it are they?

- Robertson That's right. Well, within certain frames of reference. You know, shares are held in particular areas of the reserve. They're not specifically within, I mean ...
- 5 Andrew They're undivided though at this stage. They haven't partitioned out as per a Native Land Court process?
- Robertson It's not an area that I covered specifically in my report, I relied on secondary sources, but I would have thought the blocks defined earlier in the process when the reserve was formed had a relevance to where the shares were, where the undivided interests were held.
- 10 Andrew Can you answer my question? Were they undivided interests? Do you know that? That's what the Crown had purchased wasn't it? Undivided interests? So, hadn't ...
- Robertson Certainly, but in certain blocks of defined land or areas of defined land as determined by the Urewera Commission I believe.
- 15 Andrew So, within those blocks that hadn't been divided up. Correct?
- Robertson That's my understanding.
- Andrew For that reason, there was really no need for any revaluation, was there? Because there would have been no differential between the Crown's interests and the non-sellers' interests. So, there's simply, provided you have a common denominator to ensure an equity or equality of exchange, the valuation is somewhat irrelevant, isn't it?
- 20
- Robertson No, the valuations are highly relevant. I mean, first of all, there's a reason for retaining them and it's articulated in my report that it made a lot of sense, when you went to value the lands for the purpose - ah, sorry - went to define the interests for the purposes of the consolidation scheme, it made a little bit of, sort of, operational sense, if you like, to retain the values used in the purchase of those interests throughout the last decade or so. The point was, though, that those valuations, the way those valuations had been determined and what their uses, sorry, and the use to which they were initially intended. The point, I think I make quite strongly in my work, is that those valuations took into account and were artificially low to take into consideration the costs of future settlement and to make future settlement possible. Future settlement, of course, didn't transpire.
- 25
- 30
- Andrew But just coming back to my question. I put it to you that it doesn't actually matter particularly what method of valuation you use, if you're just talking about this exchange of Crown interests with non-seller Maori interests, provided you use a common denominator.
- 35
- Robertson Yeah, a denominator is one thing, the value of that denomination is another.
- 40 Andrew But it's not going to affect the overall outcome, is it? It's not going to have any impact on the fairness of the equity provided the denominator is the same?

- Robertson I know where you're coming from. On a proportionate basis, not necessarily, but again, the point I'm making is the principle that underlies, you know, I'm talking about the principles that, the value of those denominations, not necessarily the process and because the rules changed, because surveying, sorry, a program of settlement didn't proceed, it would have been more appropriate to revalue those lands.
- 5
- Andrew Did you say the shares were reduced, the old shares, to a common denominator of 1 pence per share? That's right isn't it?
- Robertson Yes.
- 10 Andrew So, wasn't this common denominator factor was applied, wasn't it?
- Robertson Absolutely. It made sense, you had a sort of a framework to, you know, operational framework, it's quite convenient, that applied to the sale and also the way interests were calculated.
- Andrew And because it was applied as a common denominator, it didn't result in any inequity or imbalance in terms of the consolidation scheme, the exchange of interests, did it?
- 15
- Robertson Well, no, we're talking, perhaps not in terms of relative interests, I mean, I think that a common denominator is useful in determining relativities of interest between people and groups. Again, my point is the value of those interests.
- 20
- Andrew But that's not going to have any impact, as you say, on the relative interests, is it, in terms of what's going on in consolidation?
- Robertson Again, it won't affect the relativities but it'll affect the money in people's pocket or the amount of land ultimately that they retained or otherwise, because that denomination is then recalibrated in acres. That's the point.
- 25
- Andrew But so is the Crown interest being calibrated on the same basis, isn't it?
- Robertson No, I don't think so.
- Andrew Of course it is. It's not the Crown's ...
- Robertson Sorry, yes it is. Yes, you're absolutely right. Again, in terms of interest, their proportion of interest. But the point here is that what then, I guess, the significant point is the deduction for roading and survey costs. Because they were based ...
- 30
- Andrew But that's a separate issue though, isn't it? That comes after the consolidation was done or the agreement is reached.
- 35 Robertson Well, it's integral to the process of consolidation.
- Andrew But it's separate from the actual exchange of interests itself? It's part of it but it's a separate issue, isn't it?
- Robertson No, I think it is part of the, an inherent part of the mechanism.

- Andrew Is it your understanding that it is part of the consolidation process that some of the non-sellers generally obtained preferential treatment as to the quality of the land they received?
- 5 Robertson I don't think there's a yes or no to that question. I think, you know, it's clear that the land that was retained was negotiated on a case-by-case, block-by-block basis and there would have been a number of factors determining what that area was. Also, right from the early stages of the purchase program, the Government officials or agents had made it quite clear that there were some area of lands that they would find great difficulty in acquiring.
- 10 Andrew But wasn't it the case the non-sellers tended to end up with the land in the river valleys, the more fertile land? That was the case in fact, wasn't it?
- Robertson I couldn't say with precise accuracy, but if they were existing settlements, and it's likely that they were, then yes.
- 15 Andrew Because their non-sellers were anticipating (inaudible) arterial roads being put in weren't they? There was a roading factor to the agreement.
- Robertson That had been - absolutely - well, that had been part of the lengthy discussions around the scheme.
- 20 Andrew And didn't they seek to locate their interests in the blocks adjacent to where the proposed arterial road lines were to be located?
- Robertson Again, I think both parties to this arrangement would have sought a win/win of that nature. I mean, with, but, I'm not an expert on the roading issue, but it seems to me that the intention of the roading scheme was to increase the potential utility of the lands for settlement. Maori would also have had an interest in this area, you know, in settlement proceeding, one would have thought.
- 25 Andrew Can we come please to your paragraph 7? We're talking here about Wilson's valuations. There are two valuations are there not, 1910 and 1915? Correct?
- 30 Robertson Yes.
- Andrew You say the values Wilson placed on the blocks were unimproved values. That is, you say, an amount that took into account the expenditure required to improve the blocks. That is conceptually wrong, is it not? Because unimproved value specifically does not take into account the development expenditure required to improve a block.
- 35 Robertson Yeah, the phrasing could be better there.
- Andrew Well, it could, it's just wrong, not could be better, it's just wrong, isn't it? I mean, that is just an incorrect factual statement, isn't it?
- Robertson I think in the context of the documents I was working with it has - it's accurate.
- 40

- Andrew I put it to you that's just, it's fundamentally inaccurate. It's just simply, that is not what an unimproved value is. Unimproved value is land in its virginal pristine state without any improvements, without any development costs being applied to it and that's correct, isn't it?
- 5 Robertson I think we're playing semantics a little bit. I think the point is that the values placed were, you know, Wilson worked with a notional value of what this land would be worth once every – roading settlement, clearing and so on had been taken into account – deducted that amount and then said that's the value we should pay for these lands.
- 10 Andrew Well, that's just one method that he adopted, wasn't it?
- Robertson No. That's, what was the other method?
- Andrew Well, I put it to you the other method was valuing the land in its unimproved state for the purposes of purchasing from Maori. That's a different valuation for the purposes of calculating purchasing for the purposes of on-sale, post-development.
- 15 Robertson Is it? There's only one set of valuations and those figures are arrived at and kept as low as possible.
- Andrew Well, they're not low are they, because doesn't one of the Crown officials in 1921 say they are actually pretty optimistic valuations?
- 20 Robertson That's right, and the subsequent 1915 valuations are lower again, but ...
- Andrew Yep, that's because the productive capacity approached, or the figures underpinning that have been changed, haven't they?
- Robertson Or they're just more realistic. Or there isn't ...
- Andrew They'd assessed the productive capacity at one sheep per acre, as opposed to two, hadn't they? That's the reason for the difference in 1915, isn't it?
- 25 Robertson It's not something that I've listed as a reference, as a reason. It may have escaped my reasoning.
- Andrew You say, at paragraph 5 of your summary, "Rather than pay twice, it is perhaps more accurate to suggest that the loading to compensate for roading and survey costs was factored into the Urewera land equation on two occasions". But there's no contribution by Maori to the notional roading cost factored into those valuations, is there?
- 30 Robertson Well, I argue that there is in that they are, those lands are valued at a certain rate and it's mentioned, the rating issue's mentioned at length - let's not put in scheme of roading lest it increases the value of these lands. Let's wait until the lands are ...
- 35 Andrew The Maori aren't about to develop the land, it's Crown to develop and therefore pay for the development, isn't it?

- Robertson As I've said, there's nothing unreasonable in the way that the lands were valued. The point is that the fact that the valuations were subsequently acquired to define the non-seller awards in the consolidation scheme.
- 5 Andrew But yes, but there's no paying twice, I put it to you. No issue of paying twice, or even issue of compensation, because the costs are to be paid for by the Crown for the purposes of that first valuation, not in any way, with regards to first valuation, to be paid for by Maori either directly or indirectly. That's the case, isn't it?
- 10 Robertson Yes. Yes. In 1910 and 1915, yes, but again my point is that, come 1921, those same values are applied and then, having already taken into account a loading, if you like, for survey and roading costs, as Skeet mentions, and then a deduction is subsequently made for roading and survey costs.
- Andrew But that's the only deduction made for survey and roading costs, isn't costs? (Inaudible).
- 15 Robertson Certainly, it's the only deduction but we're dealing with - yes, certainly,
- Ertel Can he answer the question? Could I ask my friend to allow the witness to answer the question before he goes into his next question?
- Andrew (Inaudible).
- Robertson Can you repeat the question please?
- 20 Andrew We were having an exchange I think.
- Robertson Yes. Yes.
- Ertel Well, no we're not because we're having a monologue.
- Andrew Well I can, I'll repeat the question. My question was, the contribution to roading is taken into account only once in terms of an actual contribution by Maori. That is, when a specific contribution is arrived at as part of the consolidation arrangements.
- 25 Robertson In terms of an actual contribution, I agree with you, but my point is that the valuations that are used already took into account roading and survey costs and that's why they were at the rate, at the level they were, which was low.
- 30 Andrew But that was simply the unimproved value. I mean, that's just the basis upon which the land is to be valued, isn't it? That's no (inaudible) or magic or, you know, (inaudible) ...
- Robertson No. But again a scheme of settlement. Yes, but ...
- 35 J Savage But again you're both talking (inaudible).
- Robertson Yes. I'm sorry. But a scheme of settlement didn't proceed, and that's a really important point and that those valuations were placed, were set at a level to encourage a scheme of settlement which then, which included

- Andrew Maori were ...
- Robertson Essentially, you know, due surveying of the blocks determined by the Urewera Commission leading into the scheme. Change of law necessitated that the Government, that the Crown could continue purchasing interests so that there was, you could argue, an ongoing obligation to complete the survey of Maori landholdings in the Urewera. That was historical and that the Urewera consolidation scheme was an attempt to resolve that issue.
- 5
- Parsonson What is the change of law that you're referring to?
- 10 Robertson It's not something I dealt in detail, it's just the, if you'll give me a moment I'll just give you the page reference. The point I was making is that the purchase of interests was essentially stalled in the mid - between - around 1915/1916 through legal uncertainty as to whether proper surveys were required to execute the purchase of Maori lands. Purchasing did continue and there was a sort of legislative cleaning of the slate in 1916. I'm sorry, the 1916 Native Land Amendment Act achieved that.
- 15
- Andrew Could we come please to page 10, paragraph 28 of your summary? Talking there about the Crown (inaudible) Knight. "In other words, Knight could not be sure how much land would be acquired in lieu of survey costs or its value. This fact would make it impossible to communicate the likely deduction of land in lieu of survey costs prior to the execution of the block surveys." It was, in fact, impossible for Knight, or anyone, to know exactly the details of the survey and therefore the amount to be deducted, because it was not clear where the people or the communities, in fact, would be located, wasn't it?
- 20
- 25
- Robertson That's right. That's the point I make.
- Andrew So, you'd agree that it's impossible for anyone to know, therefore, with any degree of accuracy what the survey costs might be?
- Robertson That's right. But the point is, therefore, that Urewera Maori are then, you know, greeted with a fait accompli, if you like.
- 30
- Andrew They didn't actually complain or insist upon knowing upon the values in advance, did they?
- Robertson The minutes of those huis aren't particularly detailed and, you know, other witnesses may be able to give further insight into that but, you know, it's my view, articulated in my report, that the issue of how surveys would be, the cost of surveys would be recovered was essentially fudged during that consultative process.
- 35
- Andrew Would it be fair, though, to say that Maori might have had some idea from experience elsewhere as to the likely survey cost per acre and therefore have been able make some assessment of what the ultimate calculation might have been?
- 40

- Robertson I don't know that I can answer that in any precise detail. I don't know enough about survey activity in adjacent areas.
- Andrew You say, at page 146 of your main report, and which, to be fair, you've repeated in your summary, that you have been unable to locate any information as to the total cost of surveys carried under the provisions of the Urewera consolidation scheme, therefore it's difficult to arrive at any firm conclusions in the absence of any detailed information. Is it correct, therefore, that the various calculations you have made in the latter part of this summary are, to some extent, speculative?
- 5
- 10 Robertson Absolutely. I mean, in the absence of a policy document, if you like, or a schedule or a report, which I haven't been able to source, others may have had better luck, what I've attempted to do at the end is play, and I've quite openly, I think, what's the, worked with those figures to see what they turn up and I don't think, I've been careful not to make any firm conclusions, but I think in the absence of any documented detail it was appropriate to at least try and extrapolate something?
- 15
- Andrew Thank you.
- Ertel Sir, I have polled my fellow colleagues. Mr Ambler would like to question Mr Robertson for five minutes. Mr Boast has reduced his estimate from 30 to 10 minutes after I took him outside, then Mr Harman has requested five minutes.
- 20
- J Savage Thank you very much. Mr Ambler?
- David Ambler cross-examines Stephen Robertson**
- Ambler I may be 10 or more minutes, Sir.
- 25 Ertel A trip outside, Mr Ambler, coming up I think.
- Ambler I think we're pretty safe with the time. Now, the first point I just want to question you about, Mr Robertson, is this question of the factoring in of the roading and survey costs on two occasions, and my friend, Mr Andrew, might jump down my throat in terms of the way I ask the questions but, feel free to do so, but I want to just cut to the chase here to try and distil the important points. When the Crown purchased these undivided interests following 1910, it did so on the basis of the Wilson and Jordon valuations. That's correct?
- 30
- Robertson Initially, yes.
- 35 Ambler Initially. And that's, the 1910 valuations and then the later 1915 valuations?
- Robertson Yes.
- Ambler And, looking at, you don't need to turn to this necessarily, but we've got, in your document bank, page 2 – sorry page 1, is the Andrew Wilson letter of 30 June 1910, where he explains his approach and in that he's
- 40

- deducted, in order to arrive at this prairie(?) value, an amount of 10 shillings for roading and 5 shillings for survey and administration.
- Robertson Yes.
- 5 Ambler That's correct? Yes. So, the point is, is that the Crown bought in on the basis of a valuation which had deducted an allowance for roading and survey, correct?
- Robertson Yes.
- Ambler We then fast forward to the consolidation scheme in 1921/22 and the scheme uses those very same valuations.
- 10 Robertson Yes.
- Ambler And then, for the non-selling Tuhoe owners, from those valuations we then have the roading and survey contribution deducted.
- Robertson That's right, and those valuations are used to determine the size of their relative holding.
- 15 Ambler Yes. So, in terms of the equities as between the Crown, as shareholder, along with the Tuhoe non-sellers, is the point that the Tuhoe non-sellers have had the roading and costs accounted for twice?
- Robertson Yes it is, yep.
- 20 Ambler We then move onto the second point, which is the 1921 consolidation scheme factors in roading and survey costs calculated as at 1921, correct? And there's no, sorry, and those 1921 costs are deducted from valuations which are 11 years old.
- Robertson Or six years old.
- Ambler Or six years old?
- 25 Robertson Yes.
- Ambler Have you, in your workings or knowledge, do you know at all what the land value increase might have been, as a national average between 1910 and 1921?
- 30 Robertson I did attempt to work that out, but the war years had tended to hide any stats of that nature. I couldn't draw a conclusion, basically.
- Ambler Now, my friend, Mr Andrew, just questioned about whether those non-sellers would have appreciated the likely survey costs in 1921 from other experience. Do you know when that consolidation scheme, whether the non-sellers knew what the extent of the Crown purchasing to date?
- 35 Robertson To answer that question, I think there's a section in my report where Ngata talks about, in one of the hui, the extent of purchasing that had been undertaken and it was greeted with some shock. Second ...

- Ambler That it was ...
- Robertson Greeted with some shock, the extent of it was greeted with some shock, and secondly, a better answer to the question around knowledge of survey costs. The Urewera Maori had a historical suspicion of survey activity going back to, you know, to the late 1880s and it's sort of summarised in the first chapter of my report. Sort of had a wariness towards the, sort of, the potential erosiveness of surveying activity and the negative effect that would have on its external boundaries. A wariness would be a good phrase.
- 5
- 10 Ambler Now, you've spoken of your difficulty in, calculated, in coming to some of these calculations in terms of what was, what were the overall costs and I see, in your report, from page 138 you refer to the August 1937 R G Dick report and then you also refer, on page 139, to the 1957 Stone and Mitchell report, and in relation to both reports, you talk about the authors surmising what had taken place. And I just wanted - it gave a sense of considerable uncertainty, even to those officers of the Crown way back then, as to what had taken place in the Urewera consolidation scheme. Is that the sense that you get from what they reported and from the records?
- 15
- Robertson Absolutely. Yeah, and, you know, I've spent a fair bit of time trawling through the records and there are, you'd expect more detail and even perhaps a, sort of, an overarching summary or statement.
- 20
- Ambler Because, if we look at the AJHR report of 1921/22.
- Robertson '21.
- Ambler '21, which led to the legislation, that doesn't seem to set out methodology at all.
- 25
- Robertson No it doesn't, and, you know, I've tried to cross-reference surveying rates, but, again, I don't know that they were the surveying rates applied necessarily on this project, as it were.
- Ambler Because that follows into this issue of whether, firstly, the non-sellers paid a contribution for survey of the land that was actually being taken for the survey contribution, if you follow that question.
- 30
- Robertson Yep.
- Ambler And you weren't able to totally answer that question?
- Robertson No.
- 35 Ambler Is there any, I mean, we talk about a deduction for survey costs. Is there no accounting of the actual cost?
- Robertson I haven't been able to find any. Others may have been able to find documentation, but I wasn't able to.

- Ambler Because Dick, who does the report in 1937, was actually a surveyor on the ground.
- Robertson Yes.
- Ambler In the Urewera during the consolidation scheme, wasn't he?
- 5 Robertson That's right.
- Ambler So were they, were the surveyors officers of the Crown or were they private?
- Robertson Of the Lands and Surveys – contracted by the Lands and Surveys Department, or employees of, as I understand it.
- 10 Ambler So, there's nothing in terms of an overall accounting of that, in terms of actual cost, that you've been able to find?
- Robertson Not that I've been able to find.
- Parsonson Did that surprise you, isn't that pretty unusual?
- 15 Robertson Having worked in this area, not recently, but a few years ago, it's not unusual to find gaps, and surprising omissions. Certainly the archives at the Hamilton offices of Land Information New Zealand contain several, I call them, invoices, from surveyors for the survey of portions of land, but there's no way of telling how that fits together, whether it's complete, to what extent it includes all surveyors. There's, sort of, no overarching, sort of, framework or report which can be used to, sort of, come to a conclusion as to how much money was actually expended. And also it's very hard to differentiate whether surveyors were working on the Maori portion or the Crown portion or the roading portion. All survey activity that was, kind of happening contiguously.
- 20
- 25 Parsonson So the Lands and Survey Department had no overall accounting of what the surveys in the area (inaudible) in respect of (inaudible)?
- Robertson Clearly they have Departmental reports, but I wasn't able to distil from those reports the precise sum expended on the Urewera surveys.
- Ambler I'm assuming from that discussion that the survey of the Crown blocks was taking place at the same time as the Maori blocks?
- 30
- Robertson Well, actually, beforehand, as I write in chapter 6. There were quite clear directives from Skeet and others to proceed with the survey of the Crown portion and the areas most suitable for settlement first. The surveyors responded that that wasn't always necessarily possible. They didn't work like that. You had to, you know, survey areas and line things up together, but that was a clear policy directive to survey the Crown award first.
- 35
- Ambler But the end point is that the Crown and the Maori award, in terms of surveys, were being done as a whole, as part of the Urewera consolidation

scheme? Were they happening as one overall operation, I guess is my question?

5 Robertson I guess so. The reason I say I guess so is because, I mean, it's clear that the Crown's – I have never been able to say for sure whether all the surveys were completed in the Urewera reserve and I don't know if they were and I don't know if they weren't. But it's clear that the (inaudible) the Crown award first. But just the nature of surveying necessitated that some boundaries for that applied to Maori land, or roading, would be completed as a result of that process.

10 Ambler Because there is the second issue of whether the Maori non-sellers also, effectively, paid for the cost of the Crown surveying of its area. But you aren't able to answer that question ...

Robertson I can't, not with any certainty, no.

15 Ambler And there is nothing that you've seen in the records which separately accounts for the survey costs of the Crown blocks?

Robertson No, but, you know, others may have. I mean, I guess that's why the emphasis in my report is kind of on the framework and on the, you know, rather than the detail, but not all the detail's there.

Ambler Thank you Mr Robertson.

20 **Richard Boast cross-examines Stephen Robertson**

Boast Kia ora Mr Robertson. I've got a cold as well, so I'll be as brief as I can. Just - my questions are strictly about surveys - just to clarify, what we're dealing with here are the costs of the surveys of the new, small blocks that are created at the time of the consolidation scheme, correct?

25 Robertson I believe so, yeah.

30 Boast So, for example, on consolidation, say with Te Whaiti, you have the very old, the old, very large, Te Whaiti 1 and 2 blocks, part of the former Urewera District Native Reserve. On consolidation, those blocks disappear and what you get are a number of small blocks, I think about 24 there, each of a few hundred acres which represent the non-sellers portion of the consolidation award, right. And, these are grouped in a number of series, so you have the Te Whaiti series, the Waimana series, I think there's about nine series in all, scattered through the region. All the other big blocks go, correct? And, in each series, the amount the non-sellers get back, or get rather, is reduced for roading and survey costs, right. And that could be a substantial amount in total, for example, I think at Ruatahuna, once you factor in roading and survey, the amount returned is reduced by something like 40%. Now, the question I'm wondering about is, you know, what hard data do we actually have about the process?

35

40 Presumably, we know, don't we, the amount taken for surveys in total across the whole consolidation, that's the 32,368 acres, so we know that. And we know the amount in each series, presumably.

- Robertson Yes, yes.
- Boast But that seems to vary, doesn't it?
- Robertson Yes.
- 5 Boast So, the cost of the surveys at Waimana could be more or less than at Ruatahuna.
- Robertson Yes.
- Boast But we don't know why?
- 10 Robertson No we don't, and we just, we have to assume that it's the nature of the terrain or the proximity to roads or, that determine, that rates or that proportion.
- Boast Right, but we're guessing, as you said ...
- Robertson Yes.
- Boast ... in response to questions from my friend, Mr Ambler, we just don't know the actual costs.
- 15 Robertson No.
- Boast There's no surveyors record books, nothing.
- Robertson Well, yes there are surveyors books, but there's not a complete record, or I haven't, or in my research phase I wasn't able to pull together the data in such a way to create, to achieve an overall picture, or the available resources in such a way to build a complete picture.
- 20 Boast Right. Is there an interconnection, this is something that I puzzle over, is there an interconnection between the land valuation, 1915 valuation, whatever, and the amount of land that the Crown gets for its survey costs? Do valuation and the amount of the Crown survey award interlock in some way, and if so, can you explain what that connection is?
- 25 Robertson At a theoretical level, it absolutely does.
- Boast Right.
- Robertson Because that was the, you know, the premise was the amount of acres you retained were based on relativities, based on valuations, based on shares, and then a proportion is sliced off to take care of roading and fees. Now, that proportion averages out at around 2 shillings 6 pence an acre, but as you say, it varies up and down.
- 30 Boast Right.
- Robertson So, yes, there is, I don't really know how to answer your question without delving in far more deeply, but yes there is a relationship. What that, but that relationship seems to change from block to block, but the premise, the
- 35

basic premise on the way the original piece of, parcel of land before the deduction for roading and survey costs is made, is inextricably tied to those valuations.

5 Boast Right. And, my final question is, and this seems the most extraordinary thing of all, really. From your report, we don't know, it appears, what, if any, surveys were actually done, anyway.

Robertson Well, again, someone else may have analysed that, but I wasn't able to ...

Boast Right.

10 Robertson ... determine for, have a, achieve a degree of finality as to whether all the surveys were completed.

Boast Thank you.

J Savage Mr Harman?

Paul Harman cross-examines Stephen Robertson

Harman Good morning Mr Robertson.

15 Robertson Good morning.

Harman I'd like to look at your main report and start off at page 58, and (inaudible).

Robertson Yes.

20 Harman The paragraph number and the quote there, you discuss 182,032 acres were (inaudible) in areas were specified as, and just a couple of spelling mistakes there and I think you'll agree is that's Paharakeke Block, not Pararakeke.

Robertson Yep.

25 Harman And Manuona(?), not Maunonga(?). (Inaudible), just a couple of (inaudible).

Robertson I apologise for this.

Harman (Inaudible) confirm that over the page, at page 60, there's these valuations of 3 shillings an acre for these three blocks. ...

Tape 5 Side A ends

30 **Tape 6 Side A commences**

Paul Harman cross-examines Stephen Robertson (cont)

Harman And it seems to be the bottom valuation. Now, so we can take it that, in Wilson and Jordon's view, any lands specified as unfit for settlement were

the bottom value of 3 shillings an acre and that's around 1915. It seems a safe assumption, would you agree?

Robertson Oh, it's a possible assumption, but I don't necessarily know that it's the assumption.

5 Harman And, but we do have that quote above that, one of the typos on page 58, where there's been a report about the Waikaremoana Block, in particular that the Crown should offer or acquire the Waikaremoana Block of 73,067 acres, convert it into forest and climactic reserve with a view to preserving the beauty of the lake. So, my first question of any substantive nature is, in these Wilson and Jordan reports, was there any consideration under the rubrick of climactic or forestry reserve as to the possible implications of the lake as a power station generating capacity? Was that known, discussed with them at all, in (inaudible)?

10

Robertson I don't recall that. I can re-read those reports and let you know, but ...

15 Harman I'd appreciate that. I know that we've had on the record that it was publicly mooted and debated from about 1909 onwards, but I'm wondering whether these gentlemen took it into the valuation, that would be helpful for my clients' benefit. Now, the second part of my questioning relates to, coming to page 105 of the report and it goes towards the consolidation scheme (inaudible) 1921 and at page 105 you made a comment "from Balneavis", this is the bottom paragraph, second sentence, "Balneavis noted that Knight had specified in his proposals outlined above that such contributions would come out of lands regarded as useless for settlement but necessary for conservation and climactic purposes". And, then later in the paragraph, something – if you look at the top of that paragraph of the quote, "Balneavis is talking about other blocks excluding Waikaremoana". Now, my question is, why the exclusion of Waikaremoana Block? What's the reasoning there? It's obviously been deemed as land unfit for settlement purposes. The Crown's been told to acquire the whole 73,000 acres. So, why does Balneavis have this, because it didn't make, on your listings, the Waikaremoana Block made no contribution to the, no land was taken from (inaudible) for surveying purposes. Not on the list back on page 155. So, why? He says "such contributions would come out of land regarded as useless for settlement". It would seem to me that there's an internal contradiction here.

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J Savage Well, we'll give him the opportunity of answering.

Robertson I don't know, to be honest. I haven't referenced that matter in my report, and I don't, and I'm reasonably confident there isn't any material inside my report that could answer that question. I wouldn't be confident in giving you an answer. I think others might be better qualified.

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Harman And I guess the overall, general, question is we know that Bowler's index listed all the owners in these land blocks. And my question is, sort of, representative of the owners or the descendants of the owners, Manu o (inaudible) Paharakeke and in the Waikaremoana Block, Kahungunu ones

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5 anyway. Was there any negotiation, discussion with Knight, Carr and others with these owners, of which were listed in Bowler's index, as to "hey, look, we want to acquire your interests in these blocks and we'll exchange your land elsewhere". The history shows that they were purchased. What I want to know from you is in these documents that you've looked at, was there any offer of consolidation or exchange to non-Tuhoe Maori owners, non-sellers, in these blocks?

10 Robertson Again, I don't really know. The actual scheme itself was not a, not in sharp focus in my report, more the issue of surveying and land costs, but someone else may be able to better answer that question.

Harman Thank you very much.

Ann Parsonson questions Stephen Robertson

15 Parsonson I just have one question Mr Robertson relating to Balneavis' report, rather than anything else. On the face of it, it just seems quite remarkable (inaudible) that Urewera Maori had not had not had an opportunity to discuss the options about survey costs with the Crown and as you said, I take you say Balneavis is having an internal discussion with himself as to how to proceed. So, you have found no instructions to the surveyors as to how they were to deal with this matter of allocating costs?

20 Robertson No, and I write at length in the report, well not at length, but several times, about this notion of give and take and fair play that was assumed would apply out on the ground, as it were.

Parsonson So what protection was there for the owners (inaudible)?

25 Robertson Very little as I think I made the point that they essentially, with the mechanism, they were dealt a fait accompli, but in terms of petition and so forth that that would be there, sorry, the standard mechanisms of protest and petition would have been their safeguard and several took that opportunity.

30 Ertel Thank you, Sir. I have nothing in re-examination and I am indebted to my friend Mr Ambler who's covered that adequately.

J Savage Thank you.

Ertel Now might be an appropriate time for adjournment and I can try and rustle up Mr Cleaver.

35 J Savage Yes, we can start again at perhaps at 11. (Inaudible) Mr Cleaver if that's possible, I hope it is.

Ertel Yes.

Morning tea adjournment

Ertel Thank you Sir. Mr Cleaver has arrived. In respect of a (inaudible) summary it's document #D9. He also answered questions of clarification

5 from Ms Tuwhare, that's document #E3. I'm taking that as read in accordance with your directions. I'd ask the Tribunal to also have available, if possible, document #A25, which is the Cleaver substantive report, as Mr Cleaver is going to refer to the maps in the back of that report.

J Savage Thank you.

Ertel I'd like to call Phillip Cleaver to read his brief and answer the questions.

J Savage Ready when you are, Ms Ertel.

Ertel Yes. Thank you Mr Cleaver.

10 **Phillip Cleaver reads brief**

Peter Andrew cross-examines Phillip Cleaver

15 Andrew Kia Ora Mr Cleaver. You say at page 4, paragraph 5, of your summary with reference to Crown policy on roading that the Crown policy focused on the provision of roads to preserve lands taken up by European settlers. And on page 6, paragraph 8, you refer to Ngata informing Parliament that Tuhoe were not obliged to pay a single penny for the arterial roads. "He explains", this is quoting Ngata, "it's always been recognised the opening up of the country with arterial roads is the job of the State". There seems to be some tension between those two paragraphs. Is this political rhetoric on Ngata's behalf, the comments quoted in paragraph 8?

20 Cleaver Not at all. I don't, he was just describing the existing policy towards the funding of roading at that time. It's just a fact that the State did pay for the construction of arterial roads.

Andrew Wherever the roads might need to be laid?

25 Cleaver If they were deemed to be arterial, or what they were called main through roads, yeah, it was funded by the State out of the Public Works Fund.

Andrew There would often be debates, though, about whether the road could properly be called an arterial road through remote areas, wouldn't there?

30 Cleaver Possibly, and you might think that it is strange that the promised roads up the Whakatane Waimana Valleys were classed as arterial roads, but that's how they were described under the terms of the consolidation scheme and also by Ngata. That's how they were seen at the time.

35 Andrew Just looking at some of the history, generally on the issue of roading, there's a delegation in 1908, is there not, by Numea and others to Carroll in Wellington requesting the construction of roads in the Urewera?

Cleaver That's right.

Andrew And the proposal is that Maori lease land and that the rents be applied to servicing loans raised for construction purposes. Is that right?

- Cleaver Yes.
- Andrew Then, in 1910, it appears that Rua and his followers were prepared to sell land in the hope that the Government would construct roads. Is that right?
- Cleaver Yes.
- 5 Andrew Then in 1916, Ruatoki Maori commenced construction of a road from Ruatoki through to the Waikerekere Road. Correct?
- Cleaver Yes that's correct. They did.
- Andrew And that appears, with respect to that project, that it's a combination of
10 contributions from the County Council, from local Maori, the Dairy Company and the Whakatane County Council. Is that right?
- Cleaver With regard to the constriction of the road between Ruatoki and Waikerekere? Yeah.
- Andrew Yes. And then when we come to the negotiations, the arrangements as
15 part of the consolidation scheme, Urewera Maori managed to negotiate the roading contribution down from half - £32,000 to about 31% of the overall cost. Is that right?
- Cleaver Yeah. Well, actually, I'm not, unsure why there is that reduction from the initial plans that charged them £32,000 down to £20,000. I'm not sure if it was the consequence of negotiations, but it was reduced.
- 20 Andrew Isn't that the most likely reason for the reduction?
- Cleaver Possibly. Yeah, I'm not sure. I haven't seen any evidence relating to that matter.
- Andrew When you look at this history, doesn't it suggest that many Urewera
25 Maori are very keen for roads and that there is a preparedness to pay or make some contribution towards their construction?
- Cleaver Yeah, they were certainly keen to have roads constructed, there's no doubt about that and they were prepared to make some contribution as well. That is evident. Yeah.
- Andrew Because they obviously, clearly, and for good reason, saw the
30 construction of roads being in their economic and social interest, didn't they?
- Cleaver They did, but I'm not sure that that was necessarily the reason why they were prepared to make a contribution. They probably believed they had no alternative but to make a contribution for the construction of the roads.
- 35 Andrew But surely there's also a degree of self-interest, isn't there? An understandable degree of self-interest.
- Cleaver I'm not quite sure what you are, sorry, can you clarify what you're saying there?

- Andrew Well, roads are going to benefit them. Benefit and economically, socially.
- Cleaver Oh, yeah.
- Andrew Therefore, you would welcome them then, and that might be a reason why you're prepared to make some contribution, albeit not the full.
- 5 Cleaver Yeah. Yeah. They were prepared to make a contribution, expecting that the roads would benefit them.
- Andrew Because, the comments made as part of the settlement negotiations in 1957 suggest that they were very keen on roads, don't they?
- Cleaver Yes. At the time of the consolidation arrangements, yeah.
- 10 Andrew Just in terms of the degree of opposition to the roading contribution as part of the consolidation arrangements. I get the impression, correct me if I'm wrong, from your methodology, your report, that you simply narrate all known levels, or incidents of opposition, without actually discriminating as to the extent overall of that opposition. Is that what you do?
- 15 Cleaver Yeah, I don't comment on the extent of opposition, no.
- Andrew I mean, is it confined to particular, sorry.
- Cleaver But you can, I think, infer that there was considerable opposition, just by the number of, the separate complaints that were made.
- 20 Andrew But is it confined, though, to particular areas, such as Ruatahuna?
- Cleaver Ruatahuna was definitely where most opposition appears to have been from, but also other places as well. Around Waikeromoana and Te Whaiti. So, it was fairly general I'd say.
- Andrew But have you specifically, sort of, asked yourself or addressed the issue of the overall extent of the opposition?
- 25 Cleaver That's not something that I've commented on in my main report. No.
- Andrew In terms of the allocation and proportions of land as amongst Maori taken as part of the roading contribution, I understand that the formula applied was that the more land Te Raranga owned, the more he or she contributed to the roading. Is that right?
- 30 Cleaver That's right.
- Andrew Did Urewera Maori propose any different formula?
- Cleaver Not that I'm aware of. No. But, the evidence relating to the August 1921 hui, when most of the details of the scheme were worked out, doesn't really go into any sort of detail which would give you an indication of that.
- 35

- Andrew It's quite a tricky and difficult matter to settle on a formula for that sort of issue, isn't it?
- Cleaver Yeah. Possibly. Yeah. I guess it is. The calculations are quite complex.
- Andrew You're not making any specific alternative suggestion, are you?
- 5 Cleaver No. I just suggest that it may have been fairer if all owners had been equally, their interests had been equally affected for the roading contribution, as opposed to just the largest owners.
- Andrew That could've meant that some mightn't have ended up with much land at all, couldn't it?
- 10 Cleaver Probably not because it's likely ... It may have actually, yeah, that's true, yeah.
- Andrew You say, at the final page of your report, the final sentence, indeed, "No evidence has been located to suggest that the Crown sought to monitor how the Trust Board managed the compensation monies". Is there any suggestion in any document that you've seen of the relevant time, the 1950s, that suggests that the Crown had any such responsibility? That is, to monitor how the funds were managed.
- 15 Cleaver No. No.
- Andrew Yes. Thank you.
- 20 Ertel Mr Ambler is the only person who'd like to question Mr Cleaver.
- J Savage Thank you.

David Ambler cross-examines Phillip Cleaver

- 25 Ambler Actually Mr Cleaver. Just picking up on that last point, do you appreciate that under the Maori Trust Boards Act the Minister has a role of monitoring Maori Trust Boards?
- Cleaver Sorry, I don't know enough about that Act.
- Ambler You didn't look at that Act?
- Cleaver No, not in any detail. No.
- 30 Ambler Now, just, as Appendix 1 to your report, are extracts from the Urewera Consolidation Minute book and that sets out the different block series, as I understand it, and shares, road deductions, survey deductions, and, I think, in fact, in Mr Robinson's evidence, he gave evidence just earlier, he has tabulated that, for the Tribunal's benefit, at page 151 and onwards, so he has typed that up.
- 35 Cleaver Okay.

- Ambler And that sets out, in terms of what we're concerned with, the roading deductions. Are you able to confirm when that was completed, as a, when they were writing all of that up?
- 5 Cleaver I get that impression that they were completed, that these calculations were made after the Commissioners had met with Maori during their attempts to settle where the awards would be.
- 10 Ambler It would've been after the work was completed though, wouldn't it, because, I know surveys is not your area, but the survey figures are put in there, in the column next to "road deductions", and those costs were only known when the actual surveys were done. So, I'm just wondering if you could help with when, and if I'm right there, then it would have to have been done when the surveys had been completed. Do we know when that was?
- Cleaver When the surveys were completed?
- 15 Ambler Well, when this was written up? It's still the same question.
- Cleaver Well, I think these calculations were definitely made before the awards were surveyed.
- Ambler The roading calculations? Yep.
- 20 Cleaver Because they needed obviously to establish what the area of each award was going to be and they could make the deductions for survey costs before the survey was carried out as well.
- Ambler The approved – there's a column that says "approved" – I can't quite read what that is. This is page – I'm looking at pages 203 and 204 of the actual document, but it starts off just after page 147 in Mr Cleaver's report and third column in from the right hand side, Mr Cleaver says something approved ...
- 25 Cleaver ... by Commissioners.
- Ambler Okay.
- Cleaver Something.
- 30 Ambler And there's a date, 15 July 1935, and (inaudible) 1936. But in terms of the roading calculation, or the deduction calculation, do you think that that would have happened before then?
- Cleaver I don't see any reason why the roading and survey deductions weren't calculated at the same time and signed off at the same time. I think that may have happened at the same - they would have been worked out together.
- 35 Ambler And apart from what we have here, you're not able to assist us further on that?

- Cleaver No.
- Ambler The reason why I ask is, I'm just interested in the question of when the roading deductions actually took place, in terms of the sequence and I don't know if, you don't have a document bank with your report, but in, this is Cathy Marr's document being, for the Tribunals benefit, document #A21A and at page 59 the 1921/1922 Urewera Lands Act is set out and I just want to read two sections of that Act. Firstly, just section 5(1) provides: "The Commissioners shall with all convenience be proceed to enquiries as to what interests in the said lands are alleged to have being sold to the Crown and shall for that purpose have power to inquire into any objections for such sales that do not arise from any alleged defect in the title or power to sell". Then goes on: "The Commissioners shall allot to the Crown portions of the lands in accordance with the said scheme including in such allotment land to the value of £20,000 given by the natives for roading purposes and a further area of land to represent the probable cost of surveys of natural proportions who shall make one or more orders defining the Crown's interest and allotting to His Majesty the King the area to which it found the Crown is entitled, whether it represents the block or blocks referred to in the instruments of alienation or not". So, there's to be the allotting to the Crown of its area, plus the roading and survey contribution.
- Cleaver [Assents]
- Ambler And then section 7(1) goes onto provide: "After ...", and that's important, the word "after", "... providing for the portion of land to be allotted to the Crown, the Commissioners shall make and issue orders etc". So, what the Act contemplated was the allocation of the areas to the Crown, together with the £20,000 worth of land for roading and then the allotment to the Urewera non-sellers for their land blocks. But when I come to look at these documents as Appendix 1, it appears that they've done it in the reverse. That is, the Commissioners have started off by setting out the blocks which are to go to the Urewera non-sellers and have then deducted the areas for contribution for roading and survey, and it's after that that the Crown's allotment is calculated. Am I correct in assuming that that's what actually happened? Is my proposition clear?
- Cleaver Yeah, I understand what you're saying. Yeah it seems to be how it was worked out.
- Ambler Yeah. Okay. Because some of these blocks were not actually going to be serviced by the roading, weren't they?
- Cleaver No, some not going to be serviced by the arterial roads.
- Ambler Sorry, the arterial roads.
- Cleaver Yeah. That's right.
- Ambler So, if we take, for example, the pages 207 and 208, we've got the Hikurangi and Horomona Blocks series, which are down, bordering on Waiohau. And if you look at Map 3 in your report, where it shows the

arterial roads, proposed arterial roads in black. They don't service the Hikurangi Blocks, which are at the north-western corner of the reserve.

- 5 Cleaver No. No they're not serviced by the arterial roads. No. But, more importantly, they're not serviced by any roading. There weren't any connecting roads either.
- Ambler No, they were an island unto their own. Now, just ducking back to the compensation issue in 1957. Did you uncover any Hansard Reports with discussion in Parliament on the compensation? The basis for it.
- 10 Cleaver I don't think I checked that source of evidence actually. No. I didn't look.
- Ambler The final issue is just in relation to Mr Dick's 1937 report and you refer to that at pages 100-106 in your report. Just give me a moment. You haven't got a document bank, but Mr Robinson just gave evidence. There's a document bank which actually has the Dick report in it. Mr Harman's got it, sorry. Just, I'm interested, particularly at page 102, because you really paraphrased what Mr Dick has said in his report as to what had been constructed. And I have to say that I still struggle in terms of the areas that he's talking about. And I just wondered if, by reference to Map 3 in your book, if you're able to just assist with those three items of work that he had confirms had been completed, or had been done. So, there was half a mile road at Te Whaiti, which I guess we're pretty clear on where Te Whaiti is. But that second section that he refers to - in his report, he describes it as "a portion of the cost of the construction of the roads from the terminus of the old road to Papatotara, at the turnoff to Maungapohatu, a distance of approximately 12 miles at an estimated cost of £3,000". That's just quoting from his actual report. Could you indicate where he was referring to on Map 3? Or is there a better map?
- 20
- 25
- Cleaver Map 4's possibly more helpful.
- Ambler Yep. Hold it up.
- 30 Cleaver Yeah. Sure. Well, Papatotara is this place here. On this map it's called Rua's Turnoff. That's where I understand it to be.
- Ambler So where it says Rua's Turnoff.
- Cleaver Yup.
- Ambler Yep.
- 35 J Savage That's the turnoff point down to Kanohirua(?), is it?
- Cleaver I understand it's where the main road goes up to Maungapohatu.
- J Savage Oh, I see. So it's where the existing road is to Maungapohatu?
- Cleaver I'm a little unsure, but I understand it's where it leaves the road that runs to the Lake. Where the road to Maungapohatu leaves the road to the

- Lake. But, so, on this map, Rua's Turnoff, that's the point that I understand to be Papatotara.
- Ambler Okay.
- 5 Cleaver So, this section of highway that he's talking of, it's either the road that runs to the east or the west of that, the main road that runs to the east or west of that and I assume it's the road that runs to the west.
- Ambler To the west. Well, the road to the east was all through Crown land, because that was the Waikaremoana block, by then.
- Cleaver That's right.
- 10 Ambler And that was constructed by the Crown and I think Dick refers to it in his report, doesn't he?
- Cleaver As a tourist route or something. Yeah.
- Ambler Yeah. So he's talking about 12 miles back from there.
- Cleaver Yeah. I'm assuming so.
- 15 Ambler And then, in your paragraph 3, there's the cost of maintaining the highway and he talks about the eastern boundary of the old Urewera native reserve. So that is going all the way back past Te Whaiti, so, halfway between, probably it must be A on Map 4.
- Cleaver Well, the eastern boundary would be towards the Lake.
- 20 Ambler I'm going the wrong way. So he's talking about the cost of maintaining the highway from the Papatotara turnoff, over the Crown land?
- Cleaver Yeah.
- Ambler Do you know why Mr Dick thought that the Urewera Maori should contribute to the cost of a public highway? It's not even the arterial roads that were to be constructed.
- 25 Cleaver I'm unsure why he would have thought that work to be work that could be seen to have been undertaken as part of consolidation arrangements, especially as later, below what you've just, the three pieces of roadwork that you've just mentioned, I state that Dick noted that the highway, that main highway to the Lake, had been constructed as a tourist route and he claimed that this had not benefited Maori access to the consolidation areas.
- 30 Ambler I think what has, in effect, happened is you've, in fact, misquoted Mr Dick, I just realised, because if I refer to Mr Dick's report, paragraph (c) he actually says maintenance costs from Point A, which is, in fact, on the western boundary of the reserve, to Papatotara, a distance of approximately 40 miles. I'll just show you so that, so you can correct your report.
- 35

- Cleaver Thanks, and this is the map that he was referring to?
- Ambler Well, actually I don't know that.
- Cleaver I can't recall whether this is a map that he was referring to. But, if it was then it would seem that I have misquoted him.
- 5 Ambler Do you know when this map was, where does this map come from? It's in your report.
- Cleaver It comes from a file concerning the implementation of the consolidation scheme. Maori Affairs file.
- 10 Ambler Alright. If he's talking from the eastern, no it doesn't make sense if it's the eastern boundary, does it, to Papatotara? Because it's not 40 miles from Papatotara to the eastern boundary of the reserve, is it?
- Cleaver Probably not.
- J Savage Mr Ambler, I'm not quite clear exactly where Papatotara is.
- Ambler Papatotara has been indicated as being ...
- 15 J Savage Rua's Turnoff.
- Ambler Rua's Turnoff.
- Parsonson Sorry, what page were quoting (inaudible) in Mr Dick's report – was it 128 was it?
- 20 Ambler This is Mr Dick's report. It's page 3, page 159 of Mr Robertson's documents. I don't have a number for his document bank, I'm sorry. 120(a).
- Parsonson Thank you very much.
- Ambler Sorry, 120(a), page 155.
- 25 J Savage Then there's paragraph 16 in the middle there, in error. A short of the promised Waimana Ruatahuna Road that had also been called Ruatakana to Papatotara, a distance of about 2 miles that should be 12 miles. As is ...
- Ambler Sorry where are you reading from, Sir?
- J Savage Page 10 of the summary. (Inaudible) to page 102 of the report? Para 16 of the summary, the line beginning "Maungapohatu ...". I should have said that. "A distance of about 2 miles." That should read 12 miles, shouldn't it, if you look at page 102 of the report? Or should it?
- 30 Cleaver Well it's a bit difficult.
- J Savage Well, you look at page 102 where you have a paragraph at the top numbered 2.

- Ambler Because the map, it doesn't actually mark it out on that map.
- Cleaver Map?
- Ambler Assuming that Map 4 reads with the report.
- Cleaver With Dick's report?
- 5 Ambler Yes.
- Cleaver Yeah, I'm sorry, I just can't recall whether that ...
- Ambler Because the report actually attached maps, a map, or maps and photos. I don't know if I've confused that with a more (inaudible). Alright. Thank you that's all I have.
- 10 Cleaver Okay.
- J Savage Ms Parsonson, do you have a question?

Ann Parsons questions Phillip Cleaver

- Parsonson Kia ora Mr Cleaver.
- Cleaver Kia ora.
- 15 Parsonson (Inaudible) largest question, but it relates to the statement of issues with regards what prejudice Urewera hapu suffered as a result of land being taken for the purpose of roading. I'm also interested in the absence of roads, in fact, because you've talked, in your summary, about the absence of roads making the movement of stock difficult, preventing the transport of wool and cream and then, subsequently, of people, in fact, moving out of the kainga in the Whakatane Valley. What I'm interested in is whether, in your research, you've found records of awareness of the difficulties that people faced as a result of the failure to construct roads, either at a local level or a national level, in terms of the kinds of outcomes that you're talking about here.
- 20
- 25
- Cleaver Yeah. Yeah. There was certainly an awareness of it. Initially, in the, before the consolidation scheme, particularly, in relation to the road from that short length of road south of the Ruatoki to Waikerere, where Tuhoë had began farming, and it was supplying cream to the factory. In fact, the manager of the factory there and also the Council, alerted the Public Works Department how difficult it was becoming for the farmers to get, you know, their cream to the factory. So, the Public Works Department was definitely made aware of that situation. No other Government Department, I don't think, was alerted to it. And later, when the maintenance of the roading that had been constructed up the Waimana Valley had ceased and when that road begin to deteriorate, again, letters were sent to the Public Works Department about how those Maori farmers were faring, including letters from, I think, again, the manager of the dairy factory, a representative of the Federation of Farmers sent a letter to the Public Works Department and also the owners, of course, as well. Yeah.
- 30
- 35
- 40

- Parsonson And what kinds of responses come from those representations? Was there any real concern being expressed in response?
- 5 Cleaver Not, no, not really. It was just, sort of, seen as a funding issue for the Public Works Department. They just felt it was unjustified to spend the money on this roading when Maori weren't contributing and in the case of the Whakatane County Council, if they weren't paying rates, it was also seen to be a problem. Yeah.
- Parsonson They could always come back, simply, to financial considerations?
- 10 Cleaver Yes. Yeah and this expectation that Maori farmers, that they had an obligation to pay, which didn't seem to be the case with, when European farmers were requesting roading.
- Parsonson And there was no concern expressed about the fact that Maori farmers were making a contribution, in fact, to the local economy, which was being jeopardised by the failure to (inaudible) the roads?
- 15 Cleaver No. I think before the, no ...

Tape 6 Side A ends

Tape 7 Side A commences

Ann Parsonson questions Philip Cleaver (cont)

- 20 Cleaver ... concern about that, before the maintenance of the Waimana Valley Road was ceased in 1930. An inspection was carried out of the farming that was being undertaken up the valley and they, sort of, established that the farming operation was being carried out in quite a small way. So, I think they thought that there wasn't really enough farming up there to justify it, even though you get the sense that the farming operations were building up and people were increasing the number of cows that they were milking and, you know, there was further potential for that land to be developed.
- 25
- Parsonson Thank you.
- J Savage I have no questions. Do you have re-examination?
- 30 Ertel No, Sir, I do not.
- J Savage Okay. Thank you Mr Cleaver. Well, we have no further evidence that we can hear have we? Okay. (Inaudible) Another short day for a different reason. I don't feel nearly so guilty now. Just before we conclude, there's one matter that I'd like to raise and that's the series of questions that were asked of the Crown at the end of the Waiohau hearing relating to the administration of a particular block that was gifted for the purposes of establishing a school at Ohiwa. I wondered if you could tell us when we might expect a response to that? Are you aware of that matter?
- 35
- Andrew I'm not, personally, Sir, but we'll obviously find out.

- J Savage All right. Thank you. Ms Kerr.
- Andrew So, she's indicated a Crown response to that and you're querying when you might expect it?
- J Savage Yes.
- 5 Andrew Thank you.
- J Savage Is there any other matter that we could usefully deal with?
- Ambler Your Honour's direction which set up this hearing, didn't come back and respond to the question of Maungapohatu. So, I just assume, for your own benefit, that it's not going to be tacked on to the beginning of Waikaremoana? Or is a decision yet to be made?
- 10 J Savage A decision is yet to be made, but it is highly unlikely that it will be tacked on and thereby stress counsel but more importantly the local people.
- Ambler Thank you.
- J Savage I would be surprised if we were stubborn in that regard. Any other matter?
- 15

Tape 7 Side A ends

END OF TRANSCRIPT