

Wai 894 – UREWERA INQUIRY

FOURTH HEARING **OFFICIAL**

Mataatua Marae, Ruatahuna

17-21 May 2004

- Tribunal:** Judge Patrick Savage
Tuahine Northover
Joanne Morris
Ann Parsonson
- Staff:** Pam Wiki – Claims Co-ordinator
Barry Rigby – Research Facilitator
Tom White – Report Writer
Leanne Boolton – Research
Niwa Short – Kaikaranga
- Claimant Counsel:** Kathy Ertel/Meg Poutasi
Campbell Duncan
David Ambler/C Bidois
Annette Sykes/Jason Pou
Dominic Wilson/Te Kani Williams
Bonnie McKinney/Dale Takitimu/Richard Boast (from Tuesday)
Paul Harman
Darrell Naden (Tuesday)
- Crown Counsel:** Annsley Kerr
Kirsten Harper
Cecelia Edwards
Sally McKechnie
Tikirau Stevens

Monday, 17 May 2004

Annsley Kerr cross-examines Tamati Kruger

- 5 Kerr Thank you Mr Kruger. I have a few questions I'd like to clarify with you. I'm referring to your written summary of your evidence not the main Tuawhenua report. Page 46, you refer to September 1868 Tomaikauha and his forces including 70 men from Ruatahuna attacking Raku Raku in a lightening strike. I have a recollection that in that particular incident the

men from Ruatahuna gave Raku Raku a warning. Is there anything you can speak, any evidence you can give concerning that?

- 5 Kruger [Translation] [I] am aware. That's correct, but Raku Raku was outside of the Okati barrier. The Okati – the barrier was erected around the territory because Tuhoe was concerning that Raku Raku went outside of the Okati line. He went to Ohiwa and that when the warning reached Raku Raku but as far as I'm aware Raku Raku did not respond to those warnings and so he was attacked by Tamahikoha and perhaps my translation of that would be it was to show physically, to show Raku Raku physically that the iwi did not agree with some of his actions. The chiefs did not agree with some of his actions. Perhaps so that he would know, that Raku Raku would know that some chiefs are saying, accusing him, some are saying "he's aligning himself and working with the Crown". So, the words were being finished and actions were being taken.
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- 15 Kerr Thank you. Now moving on to the peace arrangements with Mr Clark in 1878, I think, anyway, on page 49 at the top of the page, you say that Tuhoe went to Native Commissioner Clark and made peace arrangements with him and they presented with the famous patuhotapua. You also talk about patu being presented at later peace arrangements. I wonder if you can tell us where those patu are now? Do you know whether they are located somewhere now?
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- Kruger I am not personally aware of the location of those possessions but there may be some people here who are aware but myself personally I am not aware where they are.
- 25 Kerr On page 56 of your evidence Mr Kruger you are talking about the scorched earth tactics and you also, on paragraph 200, at the end of that paragraph you talk about the attack and mutilation of women and children. You give the example of the Turanga rover arriving. I don't know that particular evidence. Can you locate it for me in time and who people are who perpetrated this on these women and children?
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- Kruger We will look for that information. My understanding is your question is what year did that statement emanate? We'll find those information and respond tomorrow but these are the stories that were taken from some of the speakers, from Waimana and Maungapohatu. He will find the appropriate response to your question.
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- Kerr I wondered, on page 67, you are talking about the huia at Ruatoki in March 1892, the letter produced from 79 tribal leaders including Te Whenuanui and the tribal decision for no survey and then you say Numea pressed ahead with the survey and Tuhoe split. I understand Numea Kereru and Hetaraka were signatories of that particular letter. So, they decided after that, that they would proceed with the survey. I wonder if you have anything further to say concerning that particular evidence?
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- Kruger These are my thoughts at this point. As far as I'm aware, when Numea saw that there was no benefits and no use in fighting the Crown, Numea realized the fruits, the benefits to the iwi that resisted the Crown. All their
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land was confiscated. So, Numea did not want Tuhoe to suffer that. Numea perhaps thought that the Ranga chiefs such as Paero and Te Whenuanui and others. They came from an older generation – when you are attacked you attacked in return. Numea was a different kettle of fish. Numea's views there was no benefits from fighting. Perhaps more disaster would fall upon Tuhoe. So, Numea was strong in looking for other avenues to appeasing the Crown. He was concerned that all of the lands of Tuhoe may be confiscated but he was the leader who debated (?), who resisted and sought to find ways to appease the Crown, to show the Crown that Tuhoe is making friends with the Crown.

When Numea did his actions the other chiefs sent Te Kooti to go and talk to Numea and that was some of the chiefs who had disagreed with Numea and it was Te Kooti said, it was his words "no leasing" and Te Kooti met with Numea and the surprise was – the shock was – Te Whitu Te Kau was waiting for Numea to come out of that hui chastised by Te Kooti – not to lease. But after the hui, Te Kooti said, "We'll go with what Numea's settled on". That was the big shock and some were angry at Te Kooti, directed their anger at him.

Kerr And then the last paragraph of your brief of evidence you talk, you say it was not until 1894 that a month-long hui was held to address the issues of the tribe and the paragraph goes on. Was that the hui in March/April 1894?

Kruger Yes.

Kerr [?] doesn't read quite correctly that concessions had been made, the boundary was opened for survey but not the interior. Is that intended to be "not the interior"?

Kruger Ae.

Kerr Ae. And it says that major areas such as Ruatoki were excluded from the governments and conditions of Te Rohe Potae. Is this the hui that Numea explained the purport of the to the Government and Te Wharekautua at another occasion. He reported the unified policy of the hui.

Kruger I'm not quite clear of your question.

Kerr I understand that Numea and Te Wharekautua explained the effect of that hui to the Government and the elements of the hui that they explained were that the Rohe Potae there'd be a survey of territorial boundary, no internal surveys within that boundary, no prospecting, no roads, no leasing and committees would be established to deal with any troubles relating to the land and Tuhoe recognized Government authority and would pursue prosperity was the other element. Is that the hui that we are talking about here?

Kruger We'll look at our information and respond later.

Kerr Ask you one question of that where you say areas were excluded and perhaps you can respond later too, are you meaning Ruatoki? Are there

other areas you (?) and Terera (?) refer to and I'm wondering about the source of this evidence because it's not necessarily clear on the written evidence that we've heard. Okay.

- Kruger I'll respond tomorrow.
- 5 Kerr Thank you. Those are my questions. Thank you for your evidence Mr Kruger.
- Judge Savage [inaudible] questions that we have reserved until tomorrow. I understand that concludes the cross-examination of the Crown and I want to quickly go round counsel to see who else intends to cross-examine tomorrow.
- 10 Mr Harman? So, I'll write here Harman, two questions. Thank you. Do you intend to cross-examine? No. Mr Ambler?
- Ambler Yes.
- Judge Savage And could you give us an indication please of the length of that cross-examination?
- 15 Ambler No more than 10 minutes, Sir.
- Judge Savage No cross-examination from ???. Cross-examination?
- Female (?) No Sir. Mr Boast may wish to however in the morning.
- Judge Savage You can't speak for him.
- Female (?) He has sought leave to do so, Sir.
- 20 Judge Savage Yes. Could you refresh my memory as to how much time he indicated he'd need?
- Female (?) Ten minutes I think it was.
- Judge Savage Ten minutes. Thank you. No examination. All right, then before I hand it back to Nga tangatawhenua to close us off. I simply want to say this that when you're sitting to all hours preparing this cross-examination please bear in mind that precision and brevity will be marked highly.
- 25 Thank you. Kia koutou.

[End of session from 5.40pm to end of day]

[Session reopens 9.00am Tuesday 18 May 2004]

30 **[Opening Kara Kia]**

- Pou Temara [Translation] I acknowledge the prayers this morning. For those of us who are not aware, last night one of our elders of the Marae passed away at the end of the hui yesterday he fell. The whanau met and decided that the hearings continue. That his passing away not interfere with the
- 35 hearings and he'll be taken to Te Wheraiti Marae. Request has reached the Judge to set aside some time tomorrow so that the Tribunal and others who are unable to go because of the commitments to the hui that a time be

set aside tomorrow for them and he has agreed to that request and so around 4pm tomorrow the Tribunal will adjourn early. This is not to stop any who feel they wish to attend prior to 4pm tomorrow but the kaupapa must carry on. So, these are the clarifications at this stage.

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[inaudible speaking]

Sykes (?) We have a new solicitor with us that I'd like to introduce him to the Tribunal. May it please the Tribunal, please to say that I'm accompanied today by Mr Miharo Armstrong who has just joined our firm. He'll be making submissions this morning for and on behalf of Nga Rauronga Potuku (?). Kia ora.

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Annsley Kerr continues cross-examination of Tamati Kruger

Kruger Kia Ora tatou. Morning everybody I am just here to respond to some of the questions I raised yesterday. One of the questions where was the statement that said that some people abused and their mokos were abused within the research we found the responses in page 268 of the report but this statement came from Te Whitu Te Kau and he heard these things when he was from the people of Maungatapu according to Te Whitu Te Kau it was said to him that from the time of 1871 that period the time Maungatapu was invaded by the crown soldiers and they erected their pa at Maungatapu. It was there these abuses were committed that is the response to the first question. The second question asked about the big conference the big meeting of the Te Whitu Te Kau in 1894 whether that was the same hui that letter was written from by Numea. As I am aware that we was one month along from the first of February to the 4th of March in 1894. I do not know whether that was the same hui that Numea wrote his letter. I do not know whether that was the hui but what I do know from that hui some customs were laid down by Te Whitu Te Kau. No sell on sale on land no leasing of land no surveying of land no rating of land. It was Makarangi who wrote these statements on page 309 of the report and that was the third question there are other parts of the territory of Tuhoe which were bound were not bound by the ruripiti? In page 309 of the report it says at that hui the boundaries and territory was discussed to be surveyed. It was stated there that they outlined the lands that had been surveyed already as I am aware Rapoiki was listed as one of those such pieces of land. I do not know if other pieces of land beside Rapuki which was stated but Rapuke was within that roe and that is the response to the question three.

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Kerr That is right Sir I would just like to pick up something coming up from the response Sir. Thank you Mr Kruger you have answered that very clearly for me and I understand now that in this last paragraph here that the February through to March hui before the hui with Seddon in 1894 laid down those matters that some of the members that people who attend that who spoke to Seddon about in the different places going around the roi is that's your understanding to.

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45 Kruger

Ae.

- Kerr At that hui they discussed the bounds that they would discuss with the government with the ruipoiti.
- Kruger Ae.
- Kerr Thank you very much for your answers.
- 5 Harman Te nga koi Mr Kruger. Sir the two matters I want to raise with you the first one is in your document that's got the number b4(a) Te Manua Te Koe Ruatuhuna Part 1 have you got a copy that you can look at.
- Kruger Ae.
- 10 Harman At pages 225 of that report there is a map with a line which is on it and is marked Te Roi Pohati and the first part of my question is related to where did that line come from? Where is the source of that line and if you wish to take I can take a written on answer on that. It is just not referenced in the report but the first part of my question is about that boundary line that is on those maps. Can you see the one I am talking about.
- 15 Kruger Ae. Yes. Thank you for the question. The territory that was written here came from the hui of the Whetuteka. It was from those hui that the rohe was defined.
- Harman Now that follows on the question then the rohe was I understand from the Te Whitu Te Kau or at least the first written record of it is summarized the only one I could find last night but it is a quote from a letter to Parliament and I am looking at Miles report that cites it and it mentions name in there. It is a big quote we have heard many times but it mentions places at the end of it like Arawera, Mangatoupri, Mokonuiarangi. Now for Arawera it has got Aniwa. Now as I understand that boundary line, that is more in the nature of where we have current day Aniwa Doc Conservation quarters and so I am wondering whether the map I am just for clarification and I ask you to look at how that line came to be drawn on that map and if you wish to, you know its not I am just questioning whether it is following the lines at least this is the first written record for Te Whitu Te Kau. I am just asking that it be questioned again to look at that line again or could you point out on one of those maps so on page 25 where for instance Arewera lies or Mokonuiaranga or pokuiaraho because I don't think that line follows those points. That is it quite bluntly.
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- 35 Ambler I wonder Sir Mr Ambler here my friend is referred to Ms Miles report it would help if we could have a page reference.
- Harman? Sorry page 116 sorry ??? Like the line here would you agree that ??? for instance is slightly further north than where this line shows.
- Kruger I am saying that it is an Aniwa, perhaps there is another Unewa.
- Harman Thank you for that. The other issue I wish to examine is at paragraph 83 of your summary I read it in the document B4(a) you discuss a link through Tapawai Turengia Tapawai and Matanoa and you discuss at paragraph 83 for instance that there were clear linkages with Mataruipani
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and through Tapawai with Ngati Kohunui. Now are you familiar with this text Taki Timu by J H Mitchell and the discussion he has in there on Tapawai and Rohena.

Kruger. Ae. Yes.

5 Harman In the whakapapa of the Tapawai in this text in this instance his mother is Hene Pehena and he had a twin brother so you are not suggesting that the tapawai in the house where I had been sleeping at Tai Taitawahi? is the same Tapawai. Are you suggesting that in your evidence.

10 Kruger I state that there were many schools of learning of this land. These are the words that we of this area know but if there are korero from other iwi so they are differing they are appropriate for those area for that iwi. I cannot say and assert the genealogy of kohunga but I can assert the ones that I know of Tuhoe. Those are the ones that I can carry.

15 Harman Thank you for that. It would be helpful for us to understand from your paragraph 83 what the whakapapa connection between the Tapawai you mentioned there is with kohunga. That would be very helpful information for us and please if you could at a later time provide it or even now but at a later time that would be most helpful for us. Thank you. Thank you for your evidence

20 Kruger Kia Ora.

Harman Thank you Judge.

25 Ambler Tena Koe Tamati. First I am following one of the questions that my friend Paul Harman stated for Te Ngiwaniwa. If we look in the two reports of Judith Binney for this area that was defined by Richard Tekoe the Nga Niwaniwa that is referred to is that the Aniwaniwa at Te Rangi Toiki. That is do you agree with it. Perhaps that is likely. Secondly I am following on of Annsley Kerr's questions pertaining to Nuiua. And we saw in your summary at page 238 and you state there about the mother of Numea and her request for Ratoke before the Maori Land Court. Were you aware that the first claim to the Maori Land Court for Ratoke was by Bine Teto Hawe of Ngati Awa. Were you aware of that.

30 Kruger Yes I was aware of that I was aware that there were new oppressions among Numea to Numea's opinion perhaps his elders of Te Whitu Te Kau were clear and aware that Tuhoe were quite likely be subsumed by the claims of Ngati Awa and others and Numea had all these difficulties problems on his shoulders. So I am clear that one of the reasons that Numea clashed with the resolutions of Te Whitu Te Kau he was aware that if the lands were not surveyed Tuhoe lands perhaps they would end up in the hands of Ngati Awa.

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40 Ambler In your report the summary report at 108 you talk here of the Te Moihihi land that is whenua ????. I did not see that term in the Maori Land Court records or in the writings of the Urewera Commission now my question to you is where is that term from?

- Kruger
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When I was living at Ruatahuna in my research pertaining to the customs and traditions of Tuhoe one of my discussions was with Tehikawera Pai and I asked him about some of the territories of the Tuhoe and that was one of his terms that he uttered. I asked him what was the meaning of that term and he stated that whenua rohirohi was land that the majority can have access to. It is like a whenua punananga. It is a place that can be accessed by the iwi or hapu in times of suffering or battle. It is a refuge and that is a term that the Tehikawera used. It is a land that is open and accessible. It is an old word or whether it is a word that he got to clarify to me the custom but that is the word that he used. As far as I am aware in the Ngati Awa ropatu conferences Ngati Awa komatua Hirini Mead laid down his term and his term was a whenua taitoihoi that was a term that he used to clarify that the custom.
- Ambler
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Perhaps this term is similar to the thought the action but that term of Hirini Mead did he himself compose.
- Kruger
Yes. I am aware. There is nothing wrong with that. Perhaps he was trying to find a term to clarify that custom and this is the term that I heard from Tehikawera Te Korepa when he was clarifying things.
- Ambler
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May I ask so that we know this whenua morohuihi was this discussed was this discussed by your elders before the Maori Land Court or the Commission.
- Kruger
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I cannot answer your question whether that was a term used before the Land Court or the Commission. However there were many terms that I have seen that were not used in those places but they are original terms and that terms like Apereweta? that is an evil and bad word/term but was a term that was used by the elders. That terms is an offensive word. It is worse than a traitor or something worse than that but it is a Tuhoe term. My apprehension is that the Crown may think and their lawyers may think that until a term has been laid before the Court only then will that tem have mana but to me if that term has been used by Tuhoe people it has mana. What is it to me whether it has been heard by the Courts or not or whether it has been heard by the ears of the Crown or not. It is not for that to validate my terms.
- Ambler
In this I have a similar question for the term Ahitautau? Clarify that term.
- Kruger
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That term also came from discussions along with Te Aroehoihi. It was a term to clarify by Tehikawera and his example was if we see the term Ahikaroa that term is clarified as the person or hapu or group or iwi or family who have long occupied a locality. Who have their mana of the land over the people have been asserted and that was the Maori term Ahikaroa. It is of no concern whether it was land that was discovered or whether it was ceded or whether it was conquered land but it was through Ahikaroa custom that your mana was asserted. Its opposite is Te Maiti Tatou the cold fire. A person who is distant from the land who has long been a face that has been lost from the land, that locality, they are said to be a cold fire. The good thing about that term it is not an ahiweko or an extinguished fire or ahi pero? it is a cold fire. That type of fire can be able

5 to be lit again. Ahi Tahu Tahu perhaps is for those people who have been discovered but then are lost again. Discovered and now lost again. They do not occupy a locality for any long length of time but some times they are seen and that was his term Ahi Tahu Tahu is similar perhaps once along with Te Aroha Roihi?.

10 Ambler My last question pertains to the sections 202 – 204. It was in your summary. And at 204 you talk of Te Whitu Te Kau and we are all aware that the Te Whitu Te Kau was a body council made up of Tuhoe but you are saying that the Te Whitu Te Kau was from Ruatahuna. Do you state that?

15 Kruger Thank you for the question. I am not saying here that the Te Whitu Te Kau was exclusively of Ruatahuna but I was saying that let us be aware that the Te Whitu Te Kau was established here and began here. There were many meetings here in Ruatahuna of the Te Whitu Te Kau but I am aware that they also held hui at other areas in Tuhoe but the thing our hui this week here is to look at Ruatahuna I state here that the Te Whitu Te Kau was a thing that was conducted and arisen by the chiefs of Ruatahuna the chiefs who were living at Ruatahuna. Yes they were living at Tuhoe but I wanted to emphasise so that the Crown is aware that the political issues pertaining to Tuhoe were conducted from Ruatahuna. I am not saying that the Te Whitu Te Kau was blocking off Tuhoe chiefs from other areas but to make permanent that term that this was the nest of the tribe.

Ambler From all parts of Tuhoe were the Te Whitu Te Kau.

25 Kruger Yes that is correct.

??? Now it is my understanding that there is no further counsel that wishes to cross examine. That is correct. Thank you. ??? Have you got any questions.

30 Parsonson Tena koe Mr Kruger. I wanted to ask something about the way that you have described the arrival of Christianity amongst Tuhoe and the immense movement that was going on from Te Urewera from Tuhoe trading as you described it and the missionaries coming through here and that seems to raise questions about the pace and the nature of change that's going on. You have described Christianity as thwart with consequences for Tuhoe's political power. You also refer on page 31 when you are talking about utu that it was like a descending spiral and you talk about Tuhoe having engaged in a challenge to their mana and having to see it through to the end but clearly and I suppose this is my question you don't see Christianity as the missionaries did as providing an answer to that descending spiral that you talk of.

40 Kruger Thank you for the question. Perhaps the advantage I have is that I look back to those times and those statements from now from today, today's perspective. On my ... look seeing at the benefits that have accrued to Tuhoe from the actions of those last centuries but if I was to return myself to the 19th century I would not perhaps see truly the consequences from

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Christianity. If I was in the shoes of our ancestors of those times. I could and would not perhaps see the negative effects but we all agree the spokespeople of Tuhoe all agree that it was the peace and good word it was the Christianity brought the good word to Tuhoe and it is agreed that what was stated that rapoke was the area that was encircled and he added by the spokespeople of rapoke that it was the Christianity the good fath that cemented that so I agree that were benefits that accrued that were seeing with the coming of the missionaries. Yes. That was what our elders said. They would know. There was good within. However later we have seen other outcomes. It was Christianity that enticed and evolved some of our customs.

Parsonson You have also spoken about the ??? of literacy and at that time of the scriptures which were the main form that the written form took. How is it possible to consider how quickly the change that came with literacy impacted on Tuhoe beliefs?

Kruger In my opinion it was a very fast transition. One aspect of writing the writing was not educated to the elders but it was given to those who were keen and so some of the people who knew how to read and write who were not chiefs they were common people but because of their knowledge of reading and writing their status had risen and so they had become the spokespeople, the adjudicators and mediators between the Maori worlds or the Pakeha worlds and Nga Tuhoe and their status had become close to that of the chief. Sometimes it would be similar with the Pakeha in laws? Pakeha who knew how to speak Maori and Pakeha. Their status had raised as if they were tohuna as though they were chiefs and so the transition was very quick.

Parsonson Kia Ora. I have a question also from your main report on page 213 where you are talking about Rewi's call to Tuhoe and you say that those who went from here to Waikato did not go because they supported the kingitanga. Was there support among Tuhoe for what the kingitangi stood for or was it more that the kingitanga was not seen as being relevant to Tuhoe at that time.

Kruger Perhaps there is another option to consider. That Tuhoe hold that is the encounter between Te Putewa? and ??? in the earlier period. This is what tuhoe states. It was in that encounter that these two chiefs agreed that they stalemated in their battle but and so later they enhanced each others mana and it was there according to Tuhoe that statement and alliance type statements were made between Tuhoe and Waikato. And that pledge was held dear until the time of Rewi Manupoto and Roaka. I state that Tuhoe went to Orakau to support their thought. To close off and ward off the Crown and the Government. I state that is what the reason for Tuhoe going to Orakau. I do not agree that Tuhoe went to support the King movement but they went there to ward off and keep away the Crown because they were the enemy who were invading and assailing their mana Monuhakei?.

Parsonson And when that tower arrived at Orakau and Rewi responds with a wiata as you say describing his kite for Orakau and suggest that Tuhoe fight at

Nonatature? what was the reason that that party preferred not to go to Mongatotere but stay at Orakau.

- Kruger Excellent question. My answer may not be so good. I am not able to respond to it.
- 5 Ertel Thank you sir I do have one topic to discuss with Mr Kruger and that is Ms Kerr for the Crown mentioned to you that there was a letter signed by 179 Tuhoe chiefs where they pledged allegiance to the Crown. In your opinion is that inconsistent with Tuhoe still exercising and maintaining its mana motuheke?
- 10 Kruger This is something that Maori world view as far as I am aware that Maori world view the world is huge. The world can embrace all types of people and all types of customs. That thought brings it forward to today and the schools of learning of Tuhoe and on this marae Tuhoe has no concerns about your faith whether it is different or whether it is from some other place. Tuhoe's thoughts is that our house, our Marae can embrace and accept all customs and so that's why Te Korete stated when he said for other faiths you have the large portion of the house and I shall have the small side of the house and so I say here is that the Maori world view don't say that there is no place for other customs. That is there is no place for other languages or voices but to pursue the aim that these things can sit comfortably together. That is why I look at the Treaty of Waitangi. They want us to live together and that the rangatiratanga of the hapu and the whanau would be similar to the mana of the Crown of England. Now the Maori world view that if that is the case and the Maori is not would have negative thoughts towards the Treaty so the chiefs of Tuhoe saw that if everyone could live together the customs side by side but I state that that was not the Crowns view. In my view it was correct the statement that the Prime Minister of those times Tehikawera ??? said there can only be one sun in the sky and that was the thought of the Pakeha world view. There can be no two ??? there can only be sun not two in the sky. That is the term that states there can only be one mana. Now that is the Pakeha world view.
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- Ertel Thank you I have nothing else.
- ??? That completes your evidence Mr Kruger. Thank you very much.
- 35 Ertel Sir I have consulted with other counsel who have indicated that they wish to address the Tribunal on thematic matters. We have roughed out a batting order and also I have now got copies of the written submissions which total around 50 pages so I can imagine that's going to take about an hour and a half of presentation time. We have got the order as Mr Ambler kicking off, followed off by Mr Duncan, Mr Harman then by Ms Sykes and Ms Armstrong, Mr Boast and finally Mr Williams. If at the end of the presentation of opening submissions we are running behind time it may be that we need to consider whether or not Dr Binney's summary is read out because it may be more efficient that it not be given that she is not here to answer any questions however I will leave that up to a decision to be made in the future.
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Well as we proceed with these openings counsel will appreciate that there is little profit for them or for us in hearing the same things over and over again so as we proceed counsel will be able to trim their submissions accordingly. Thank you.

5 **Annalsley Kerr cross-examines Anita Miles**

10 Kerr Thank you Sir. Thank you Ms Miles. I will be referring to your main report A11 and your summary report. I will also refer to a report for the Crown Cecelia Edwards report, the Urewera District Native Reserve Act 1896 prior agreements and legislation. So if people want to get those documents available.

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If it saves times why don't I just advise that the witness has said that she has not read Cecelia's report so it might as she does not have a copy of it either.

15 Kerr Sure, given the fact that Ms Miles hasn't had the opportunity to respond to our questions of clarification I propose we go through those because they were intended as an indication to lines of cross examination and we will – please indicate at the time whether it is possible for you to comment on some of these issues or whether you prefer to respond in writing.

Miles Thank you.

20 Kerr Thank you, and so I don't intend to go much further than that at this point in time. Can I just acknowledge that it must be quite difficult to come in having done the rangiho whanau report when a lot of people have done research since this time and have added to it. So, again if it is an area which you haven't researched please indicate to me because it probably isn't appropriate to ask you to go away and do a lot of research on issues.

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Miles Thank you.

30 Kerr If I can ... the other document I will refer to is the written questions of clarification. If we go to the first page of those questions and take paragraph 4 of your summary report. I refer to your summary report at the end of paragraph 4 where you say the documentary evidence pointed to Government contemplation of events in the district after the capture of Te Kooti is Ormond (?) wrote to Te Whenuanui in Paeru? Once Te Kooti was surrendered then Ngati Porou would withdraw and the management of your people would be left as arranged to yourselves. I would like to go to the second question of clarification and as I understand it the Ngati Porou contingent was temporarily placed through a Tehuna in Mongapahautu in the later half of 1871 following suspicion that Te Kooti was in the area and that it was withdrawn before the Government gave up its pursuit of Te Kooti in mid 1872. Is that your understanding of the situation?

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Miles Yes it is and Professor Binney clarified for us which is something that I didn't make ... a point I did not make in my report that Te Kooti wasn't actually in the Urewera at the time of that correspondence with the chiefs.

Kerr Well I pick up again in paragraph 3 of the questions of clarification the implications of that particular set of facts and at paragraph 5 of your summary you say the implications of having the regulation of affairs in the Urewera would not be negotiated and worked out. McLean worked instead on extending circular institutions into Maori districts. I have asked the question of clarification is ... do you accept that the regulation of affairs meant in the context of the time the statement was made that Ngati Porou or Government forces would not continue to garrison the inner Urewera District and instead that would be left to Te Whenuanui in Paero?. Is that one of the factors that you consider in the context of the discussions with McLean in 1871?

Miles I don't accept that that limited interpretation of the correspondence to the chiefs ... I don't accept that a reading of that correspondence leaves you with that limited interpretation. The reason why I don't is looking first of all at the correspondence written to the chiefs is what was said in them and the key phrases that I took out of those letters, if I could refer to the fact that the letters refer to "the management of the district in their own hands ... the regulation of affairs ... the direction of affairs ... the management of people". The letter also did refer to the chiefs preserving peace and keeping a supervision in the Urewera and while I accept that the context about the force is not continuing to garrison the Urewera was certainly part of what was being communicated in those letters I think that they indicated, as I said in my summary, a situation that would obtain after Te Kooti had been caught with the help of Tuhoe. So, that is the first thing that I looked at. The other compelling things I took into account were the timing of subsequent correspondence and events. We have these letters written in November 1871 Te Whitu Te Kau is set up very shortly thereafter and in June 1872 the chiefs write to tell the Government that it had been set up. If I was to interpret ... take a very limited interpretation about just preserving peace and keeping supervision in their district if that was the only thing I looked at in the 1871 correspondence then I found it hard to explain the genesis, the reaction why Te Whitu Te Kau had been formed only a few months afterwards. It seemed to me that it *was* a response to whatever they had taken from those letters. So that series of correspondence and the fact of Te Whitu Te Kau being formed at that time seemed to me to be connected. That was the first thing. There are other clues, if you like, in source material that, for example, in 1874 Tu Taiatuwha? said that he was clear about the plans of Tuhoe spoken to McLean's face in Napier about the law setting forth the boundary of the land so extracting from that again I took the broader meaning from the 1871 correspondence. It also seemed problematic to me to take a limited view about what those letters were trying to communicate. As others have pointed out there were quite a few subsequent references to McLean's promise to Tuhoe and what that had meant to them and we see that come out in the 1894 Reports of Seddon and Carroll's tour through the Urewera. Te Pukierotu's (?) reference to the protectorate. We also see Seddon himself refer to the promise of protection and a protectorate in 1895 and again in Parliament with the passing of the UDNR. So, to answer your question those were the reasons why I don't think that the limited reading of that 1871 correspondence stands up.

- Kerr Okay. Just picking up one of the comments you have made about Seddon's statements in respect of the 1871 agreement. He certainly uses linkages with the agreement in Parliament but there does not appear to be, from the evidence that you and others have produced, any real indication of Seddon knowing what that agreement was about beyond through the discussions he had had with Tuhoe or checking what McLean had perhaps arranged and there is no particular reference to it in the memorandum he sent to Urewera chiefs in September 1895 so I wonder if you can comment on Seddon's actual knowledge of that or whether he was using it as a relationship continuation?
- Miles A political question?
- Kerr Yes.
- Miles Well I mean it is appurtenant. You know what you put to me is an interesting and worthwhile question. I have thought about it to some extent. I would have to say that I don't know what Seddon's understanding of that 1871 agreement was but I did think it was significant that he did in fact refer to it and that he acknowledged that Tuhoe and others saw the agreement in the broader sense. But I have also wondered what Carroll was able to tell Seddon and I would just bring to the attention reading a bit about Carroll born in Wairoa with an internship in the Native Department under Samuel Lock on the East Coast. Carroll also traveled with McLean, I understand, in the early 1870s period on the East Coast in Wairoa and up the coast. It seems conceivable to me that Carroll may have known about the 1871 agreement and what it had meant or not meant so you know I just put that out there for consideration as well.
- Kerr Okay. Now turning to my questions at paragraph 5 of the questions of clarification. This is when you discuss at paragraph 10 of your summary Valance's promises of a separate native district. You say when signs of a Crown reconsideration of the Urewera question emerged in 1886 when Valance, the Native Minister, promised Urewera leaders a separate district under the Native Committees Act 1883 the initiative was abandoned as Government officials believed that Urewera leaders would act upon Te Kooti's principles which were anti theoretical to the regime of surveys in the Native Land Court. Now I have asked you a particular question about the sources there but first I would ask you if you have had a chance to check those sources.
- Miles No. No. I haven't researched any primary sources myself in respect of Valance's promise. I have relied upon Professor Binney's work.
- Kerr What I would like to do. Have you got available Ms Edwards' research report? Perhaps I will put a general point to you first about that set of discussions with Valance. As I understand the situation, and please tell me if you have sufficient from Professor Binney to comment on this, but in 1886 Valance was engaged in a number of meetings with groups wider than Urewera Maori, Ngati Awa and Ngati Pukeko and others were seeking a district under the 1883 Committees Act and as part of

Government's discussion on that Raku Raku and other chiefs indicated that they didn't want a district with these other groups, Ngati Awa and Ngati Pukeko. Are you aware of that context?

- 5 Miles Actually I'm not. I am aware of the broader context that groups objected to committees or districts that cut across areas of interest as they saw them. In short, that they were too big and too broad.
- 10 Kerr Okay. So, the point of asking the question was to identify that there was a series of correspondence and a series of changes over those issues from 1886, 1887, 1888 but since it isn't an area that you researched perhaps that's just something that you wouldn't give an answer to.
- Miles No. I am actually not at all familiar with that correspondence.
- 15 Kerr Thank you. Now turning to paragraph 11 of your summary. You have indicated that Ngongia Koreru of Ngati Rongo applied for the survey of the Ruatoki Block against the wishes of most of the Ruatoki hapu and that subsequent obstruction of the survey and imprisonment of Tuhoe objectors lead to efforts by James Carroll to persuade Tuhoe to a limited survey of the block. Now I have asked a couple of questions of clarification concerning those. One was whether you, in determining that Numea Kereru, applied for the survey, you were relying on the Foster letter to the Native Office that you cite there.
- 20 Miles At this distance it is hard to know if that was the only thing I was relying on.
- 25 Kerr Well if I ... This is another matter that has been addressed in our evidence or the evidence commissioned by the Crown and it seems clear that there had been eight applications for investigation of this block and a number of survey applications in a period in late 1890 through 1892 and it seems most unclear about Numea Kereru's particular application being against the wishes of the hapu, at least initially. Have you read further into these documentations?
- 30 Miles No I haven't but you are right. His certainly wasn't the only or the first application and I understand that there had been prior applications from Ngati Awa hapu.
- Kerr And are you aware of applications from others within the Urewera hapu?
- Miles Actually, I am not.
- 35 Kerr And Tamati Kruger made the important point this morning that perhaps those applications, whether they be by Numia or other members of the hapu, may have been a reaction to the fact that Ngati Awa had made an application to the Court. Do you think that's quite an important aspect of this issue?
- 40 Miles I don't know how important it was but it would certainly be something that you would have to factor in to answering the question and I would like to read Ms Edwards' report and reply to that in writing.

- Kerr Thank you.
- Judge Savage The way this is going to be achieved are these questions already ...
- 5 Kerr These questions have already been submitted, Sir. What I will try to do is perhaps embellish the reasons for submitting the questions to assist the witness to answer them. Perhaps for counsel to assist you, Ms Miles, I can note some references in Ms Edwards' evidence. She discusses the issue at pages 22 through 24 and 26 of her report and there is also a mention at page 74.
- 10 Ambler(?) Can I just clarify that? What I am assuming is the first report, Prior Agreements in Legislation?
- Kerr That is right.
- Judge Savage So Mr Ambler you will coordinate the answering of what stands still to be answered?
- Ambler Yes.
- 15 Judge Savage If at all?
- Kerr One question though arising from your analysis of this, is it clear that Numia Kereru wished to be regarded as the key applicant as it were in the Native Land Court process? The person ... at this stage there seems to be a sense that having control of the survey was very important as to your success in the Native Land Court and do you think that is one aspect of the approach taken by Numia Kereru ... in his discussion of his survey?
- 20 Miles I probably haven't done enough research to comment on that.
- Kerr The second aspect of this question was referring to Carroll's actions following the arrests, trials and imprisonments. The purpose of my question here is simply to get the sequence correct. I understand that it was in 1892 that James Carroll sought to negotiate a more limited survey of the Ruatoki Blocks and that was prior to the March 1893 imprisonment issues and that he came back at a later stage again to try and address the issues. Is that your understanding of the sequence?
- 25 Miles Yeah. I don't think I cover the sequences of events very well in my main report and I will say that here and it has been covered by other people but I think you are right. I think that he does talk with Tuhoe on at least two occasions in 1892 and 1893.
- 30 Kerr Thank you. Paragraph 12 of your summary report? This is the next set of questions I am going to ask. You conclude by saying that Seddon believed that Tuhoe acknowledged the mana of the Government and expressed their goodwill and commitment to further negotiations for which he invited the Urewera chiefs to Wellington. The question I pose there is, essentially, what is the focus of those further discussions that arise from the 1884 discussions he had with these people. There are a number of subjects covered obviously in the visits through the various
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- 5 places that we went to with them and visited with them but the key issue it seems and I ask you this question is that further discussion related to the issue of further surveys and to title investigation processes within the Urewera District and that has to be placed in the context of Seddon's views as to title clothing the country.
- 10 Miles Well certainly the surveys and title investigation were a key concern of Seddon's. I don't think that you could say that the surveys were the key issue discussed in 1895. From being a key issue I think it is more of a trigger and it became entirely obvious with the events surrounding the resistance to surveys. Seddon's response to the resistance that negotiations would need to be carried out to establish more fundamental relationships before any surveys could or would be contemplated so I don't see it as the key issue rather I see it as a trigger.
- 15 Kerr And what about the title investigation issue? That seems to be a major aspect of this.
- 20 Miles Well it's a major aspect for Seddon certainly. I mean there's no doubt he wanted to cloth the country in title and was trying to persuade Urewera Maori to participate in that process. But equally there were many who were trying to persuade Seddon that before that process could be underway that they needed to talk to him about their relationship.
- Kerr And the message was they were wanting to talk about how ... well, one of the messages was that they wanted to talk about how that whole process should be conducted and it shouldn't be through the Native Land Court. Is that correct?
- 25 Miles Yes that is my understanding.
- Kerr I followed up with a question on Carroll in 1892. Was he delivering a similar message at the time of the Ruatoki survey issues?
- 30 Miles He was saying. I mean, this is something I would and do prefer to answer in writing, but what I can say here is that he was saying that or I talk it that he meant the application had been made that Tuhoe therefore had to participate in the legal process having made the application. That they had committed themselves to that path which he then you know tried to mediate by getting agreements to a smaller area being surveyed but it is something that I will address in my written answer.
- 35 Kerr But then he then said the issue of wider set of surveys would be a matter that they should come to Wellington to talk about or wider issues relating to the surveys and title investigation but you are going to address that in writing.
- Miles I will address that later.
- 40 Kerr Now paragraph 8 I have asked what you mean by strategic in the context of the road from Te Whaiti to Ruatahuna. I guess I was picking up on a thread that you can see appear quite frequently in Government officials' discussion of roads and roading in the Urewera particularly that road from

- Galatea to Te Whaiti to Ruatahuna being a strategic road. These comments appear particularly after the war period where security of the district is obviously uppermost in the minds of the Government and its officials and yeah that word does arise and that theme does arise in relation to talking about roads in the Urewera. Specifically about that road I think to illustrate that Best, for example, called that road "the wedge that broke up the Tuhoe and policy of isolation. So, I was trying to connect the fact that roads were not only a means of transport but that they had political overtones for everybody ... for Urewera Maori as well as the Crown.
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- Kerr This is a particular issue that I would like to see explored more and it is the genesis of that particular road survey. I think at pages 270 to 271 of your main report you talk about the two surveys that were going on. One, being the triangulation survey and the one being the road survey. There are two separate parties. Is it your impression that they seem to be quite separate and distinct parties of surveyors going about separate activities here?
- 15
- Miles I don't know. Yeah. And your questions have prompted me to look at that again in terms of the sequences and part of the problem is the sources that I have relied upon, Carroll and Best and so forth, though I understand that James Carroll was actually attached to one the survey parties so I did place some reliance on what he had to say, but you are right to draw attention to the sequences and to whether I have either the one or two survey parties. Whether I have got that correct but I will address that in my written answer.
- 20
- 25
- Kerr This particular road survey was that one of the topics ... and perhaps you can address to if you prefer in your written comment ... Was that one of the particular roads that one of the Urewera groups said to Seddon they really wished to see proceed?
- 30
- Miles One of the Urewera groups? Certainly I think possibly Ngati Whare may have ...
- Kerr Or Ngati Manawa.
- Miles Or Ngati Manawa. I mean there was differing opinion on the road but I understand that Pairou? stopped the road and said that it wouldn't go ahead and indeed for the time being it didn't.
- 35
- Kerr Actually something I have omitted to ask you about and I wonder if I can go back to it now, is page 255? I think it's a point, you say line following the heading in 1894 Seddon and Carroll set out on a tour of Maori districts in the North Island in order to explain the Native Land Act 1894 and the resumption of Crown pre-emption. Am I to understand, I think Professor Binney says no it wasn't the Land Act 1894 we were talking about here, and I suggest to you that it was correct in that that Act wasn't passed until October 1894 though some of the issues of course might have been discussed in the hearing. Can you clarify that now?
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- Miles I think you are correct. Yes.

- Kerr
5 Also in terms of the purposes of Seddon's tours around this area was it the case that he had been ... he was newly the Native Minister and he saw this tour around the Maori districts in the North Island as a fact finding mission ... a mission to understand issues as they saw them and to essentially to establish a relationship with these people.
- Miles
10 Well I understand that would have been ... yes, as you say ... a new Native Minister would no doubt have been one of the aims from Seddon's point of view but as I suggest and others cover more fully, I mean you know Seddon is also geared towards trying to deflect criticism from other Maori kotahitanga? Movement, etc as to Government policy in this area so there were probably a number of aims or motives for the tour.
- Kerr
15 Okay. Now moving to page 268 of your evidence, main report. At the end of page 268 you say that Seddon's main bargaining chip in the Urewera at these meetings seems to have been the establishment of schools and to a lesser degree the construction of roads. Neither of which could be attained without the co-operation of the Government. These considerations may have encouraged Tuhoe to consider a compromise on the issue of survey for public works. I would just like to address schools issue with you. If you look at the records of the discussions with Seddon
20 it appears that some communities sought schools, some communities didn't want schools and others wished to discuss the title investigation and the control of the district issues first before they were established. My understanding of Seddon's speeches during this tour was to advocate the importance of getting schools established and not leaving them to a later point when all other issues had been addressed. Is that your
25 understanding of the tenor of some of his speeches?
- Miles
Oh, he certainly wanted them established as soon as possible as did some Tuhoe. Sorry could you repeat the question. What's the ...
- Kerr
30 Well, the point I am making is that in the course of his discussions with the various communities there were those who supported schools and those who didn't or wanted other matters dealt with before schools were established, such as title to land, who owned particular land, who would give land up for a school site and he urged them on a number of occasions to leave that issue to him to decide and to suggest to them that schools
35 were important to establish as soon as possible and not await the outcome of title determination and issues such as that. Is that your recollection of that evidence?
- Miles
That appeared to be the stance taken by Seddon.
- Kerr
40 So I suppose the point I am trying to get to, is in what sense do you see that as a bargaining chip?
- Miles
45 It is something tangible that he could offer. You know, I think that there was a widespread desire for schools and notwithstanding some of the comments made, particularly at Ruatoki where there were disagreements ... and this is coming after, of course, the survey issue where there were disagreements about where the schools should be located and so on and so

- Miles I will certainly consider it. I mean as a general comment it seemed to me that Urewera Maori objected to all surveys without their notification and consent and apart from that it would be evidence I would consider in my written questions to you. Can I also point out that this chapter, chapter 6
5 that we are looking at at the moment, it wasn't actually written by me.
- Kerr Oh.
- Miles There was a footnote in my report. It was written by someone else and I think that that has quite rather a lot to do with the fact that subsequent research has tended to confuse me on the sequence of events and just in relation to the Ruatoki survey, the road survey, the trig survey all being very close occurrences in a short space of time so I am not trying to dodge the question but I will look at the evidence and give you a comprehensive written answer.
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- Kerr Okay. Then moving to paragraph 14 of your report ... of your summary is this an area where you would want to, given your indication now that its an area that you didn't research yourself or write yourself, is this another issue ... this is dealing with what Seddon said in the definition of the outer boundary and the sub divisional surveys ...
15
- Miles This is your question 10.1?
- 20 Kerr That's right.
- Miles I think that you are correct. I think he was referring ... subdivisioal surveys did refer to the partitioning of blocks identified as hapu blocks.
- Kerr Right. And the second question I then ask is whether you mean to infer that the surveyed Land Court Blocks by your reference to those surveyed Land Court Blocks that Seddon accepted Tuhoe had an exclusive right to all of the remaining uninvestigated blocks and/or lands and that this did not need to be tested through a title investigation process.
25
- Miles No, I didn't mean to infer that at all. All I was saying is that there was discussion of survey of the outer boundary when it fact it seemed it had already been defined because of the surveys of the adjacent Land Court Blocks that ringed it.
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- Kerr Yes.
- Miles That was all I was saying.
- Kerr And does the Act I think that identifies the area reflect that as well?
- 35 Miles Yeah, it does in the schedule. Yes.
- Kerr I have gone on to, in the next paragraph, to ask you to explain again, I think you have explained some of the element of your argument that these discussions were of a constitutional nature, I have asked you to perhaps define what you mean there?

- Miles Well, as you have pointed out not only issues of a constitutional nature were discussed but what I am saying is that Tuhoe and others indicated that constitutional ... that these other matters couldn't be dealt with until some more fundamental issues ... that were some agreement and understanding between themselves and the Premier on it. I mean the reality was that Tuhoe had been self-governing and that Pakeha were turned away from the boundaries from the Urewera that they did eject intruders as they saw them into the district and they rejected the Native Land Court and I think we can see that quite clearly through the 1870s and 1880s. I think, when you look at Numia's opening at Ruatoki, comments made by Te Whare Kotua and Pokeota at Ruatahuna that the conversation even if in Seddon had gone there to talk about preemption and Native Land legislation that when you read those discussions they cut pretty quickly to issues of how is a collective Urewera entity going to engage with the Crown and on what terms and that is what I was driving at. I just think that is a very strong theme that comes out.
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- Kerr So, it's the local or self-government negotiations that then went on that you were pointing to with the constitutional ...
- Miles Hmm. That's correct.
- 20 Kerr Turning to paragraph 15 of your summary report. I'm very interested in the development of the relationship through legislation, through this letter and through legislation between the general committee and the local committees and how those committees were intended to operate together. I've asked a question there, whether you accept that while the letter recorded the chiefs requested that the general committee decisions be binding on local committees and hapu that Seddon only agreed that their decisions should be communicated to local committees for their guidance. I've got a reference to Ms Edwards' report if you want to just have a look at that particular point again. It is on page 198.
- 25
- 30 Miles That's a penetrating question that you asked. The trouble is that I didn't have access to the minutes of the 1895 meeting to really go back and have a look at them though I intend to.
- Kerr Right. I ask it because you see it in the draft Bills and it may be something I take up with Ms Marr but you see it in the 1895 draft Bill and then you see it in an 1896 draft. There is a shift between the first which does not give any sort of control, power to the general committee in respect of alienation of land, to the next version which then seems to acquiesce to the request that the general committee have control over those issues. So, I think it's quite an important issue to draw out in that context.
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- Miles It's also an issue that requires quite careful looking at the primary sources. So, I would defer to Cathy Marr who's done that research.
- Kerr Okay. Okay. So, for that one you probably won't answer that question. We'll leave it to Cathy Marr to look at those issues. Thank you. And is

that the same with the following paragraph where I raised that issue in the context of the Bills, paragraph 13?

- 5 Miles Oh, even more specifically in respect of that because I haven't seen the Bills and also I'm not aware of what extant evidence there is as to how those Bills were explained to Tuhoe and I think that that would be the key issue.
- 10 Kerr Just picking a point, I think you said in your summary that you have not necessarily addressed this point but I'll just clarify it with you. Do you consider the Act was for Tuhoe or Nga Hapu-o-Te Urewera or essentially whoever was within those boundaries?
- 15 Miles Hmmm. Well, that's a very good question. I don't know. I mean, just to follow up on that. I mean, it is a good question and what complicates it is that I think Tuhoe is used in contexts by Seddon and Carroll to mean wider groupings than just my Tuhoe iwi. So, I'd have to look at the material very carefully to answer that question and I certainly haven't done that level of detailed analysis on the UDNR.
- Kerr Seddon also though met with Ngati Manuwa and Ngati Whare and there quite strong speeches that they shouldn't be seen as part of Tuhoe and so he was certainly aware of those issues.
- 20 Miles Oh, he was aware of it but he, like myself, can use it in broader context at other times.
- 25 Kerr Sure. The next paragraph I ask you about the Commissioners' role, you say they moved away from determining ownership in accordance with Tuhoe customs and usages and I've put the full direction to them which included elements of adopting as far as possible hapu boundaries in such a manner as their opinion will enable them to arrive at a just and equitable decision in each case. So, does that tend to indicate that ... a recognition that it wasn't going to be an easy task of separating the ...
- 30 Miles Well, no, not necessarily, because Carroll said that he thought it was going to be an easy task.
- Kerr Well, what about the question that there is an acknowledgement that it wasn't going to be a case of clear boundary lines between hapu ... that there was obviously going to have to be a juggling?
- 35 Miles I think that you could read that into it but it's ... and you're right to point to the qualifiers of due regard to native custom adopting as far as possible hapu boundaries, but a question is, how far does the commission stray from the principle of doing those things in accordance with Maori custom and usage. I mean, Carroll had said in Parliament that no one was better placed than Tuhoe themselves to determine their own titles. He seemed to place quite a high premium on the fact that they would have a large involvement and influence and the fact that the Act specifically says in accordance with Tuhoe customs and usages, I placed a lot of weight on that.
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- Kerr
5 Okay. I've asked some subsidiary questions in the following questions of clarification but I think those are better addressed as you're going to this issue. Can I raise one matter though? And that is, there were very full investigations carried out between 1900 and 1902. I guess the question I have actually derives from a report we have seen in draft of Steven Webster where he suggests that Tuhoe, through the Commission process, largely controlled the process of title determination and that by and large it wasn't dominated by the pakeha Commissioners. I'm just interested in what you think of that argument.
- 10 Miles Hmmm. Tuhoe largely controlled the investigation, he says?
- Kerr Meaning the Commissioners and the people who placed ...
- Miles I wouldn't arrive at that conclusion, though I'm pretty interested to read his report if he said that. I wouldn't arrive at that conclusion when I looked at the title orders, I noted how few Maori names of the
15 Commissioners were appended to them and it's also Tuhoe controlling the investigation process ... it's not entirely clear to me that they had agreed to the determination of relativities in terms of shareholding and the issues that that brought out. I think that ... very difficult thing to try and control.
- Kerr
20 Have you had an opportunity to look at the minutes and how those minutes indicate it (overtalking)?
- Miles I think I may have said in my report that I've looked at very, only selected parts of the Urewera investigation minute books. I mean, they are voluminous and I certainly haven't looked at them. In fact, I noted that as one of the primary resources, primary sources that should be looked at.
- 25 Kerr Thank you.
- Miles Sorry, just in reference to your previous question, I seem to also recall a remark made by Pakeha Commissioners on the title investigations. I think they said that they left many of the smaller blocks, at any rate, for the owners to try and sort out. I'm not entirely sure what that implies in
30 relation to the larger blocks where presumably there would be more or overlapping interests within them.
- Kerr And there seemed to a lot more contention with the larger blocks. Was that your impression?
- Miles
35 It isn't my impression. It's just an inference I'm making from that statement they made.
- Kerr Okay. Just clarifying too the point you make about the influence of the Pakeha Commissioners. Are you making that observation in respect of the ... each of the Commissions or do you see a distinction between ...
- Miles Sorry, pardon.

- Kerr Yeah. Between the ... well, there was a preliminary investigation and then there was the first Commission and the second Commission. Would you apply that conclusion to each of those?
- Miles Ah no. I was mainly talking about the first Commission there.
- 5 Kerr Okay. Picking up the point you made before that Carroll was surprised or I would say disappointed about the keen contestation of titles. Again, in Mr Webster's report there's an anthropological explanation which is associated with an assertion of mana over lands and that that emerged even within situations where hapu were affiliated and even in the situation
- 10 where they were closely bound together by marriage alliances and shifting political alliances. Have you thought about that context in your evidence?
- Miles Does that relate to your question 18.1 at the bottom of page 6 of your questions of clarification? Yes, again. I mean, I was thinking about your questions again. I think it relates to what the Commission was actually
- 15 being asked to do and whether that dissention and conflict would have arisen had all they had to do was compile lists of hapu members, if you like. It seems quite different to do that than to have a process where you start introducing relativity and shares between family groups and within family groups and I do know that many of the appeals that streamed in were on that issue of adjustment. And I think, I mean I want to answer
- 20 this in writing but I think just to preview that again I'm going to take that back to the task that the Commission had set out to do. Whether or not that was the task that the 1896 Act had anticipated necessarily is unclear to me.
- 25 Kerr Wasn't the actual listing of members of hapu, wasn't that the first step that was actually taken in 1899 and then it was a case of perhaps of location of people and ... so there were three tasks involved.
- Miles Well, yes and a lot of the thrust that Carroll puts on the process had to do it seems to me with keeping outsiders out but like I say I think that the
- 30 Commission interpreted section 8 of the UDNR in such a way that it anticipated or that it contributed in large part to the differences that arose between the owners.
- Judge Savage (inaudible) an hour now. Could you give me some indication of how far through your cross-examination that you are so that ... I'm not trying to
- 35 speed you up or constrain you in any way ... I'd just like to be able to plan.
- Kerr I'll wrap it up tonight. I'm not intending to cross-examine closely on the later part of the summary so I would say about five, five-ten minutes, Sir.
- Judge Savage More? Is that all? Oh great. Thank you.
- 40 Kerr Yes. I've asked you the question of clarification about the legislation you're referring to. Can you answer that now or you'll come back to that on paragraph 20 of the questions of clarification?
- Miles Yes, that's correct. The 1905 Act.

- Kerr I'm also interested in the purpose of the question at paragraph 21 is whether you're aware of any documents outside Government archives concerning the operation of the general committee in 1909 and 1910.
- 5 Miles No, I'm not. I'm referring to those documents reproduced in the special files held at archives 13/90 and 13/91 I think.
- 10 Kerr Okay. You ... in your main report and in your summary you identify the divisions and you attribute it mainly to the lateness in terms of setting up the general committee but you refer to Rua and his influence in 1906 and following and the closing of schools and issues such as that and his offers to the Government to alienate land outside Maungapahatu, outside the general committee structure and you also identify on a number of occasions I think the situation where individuals offered to sell their interests.
- Miles That's correct.
- 15 Kerr As well as the Government pursuing. And you've got quite a detailed analysis of how this happens in steps from 1909 through to the establishment of the Urewera Lands ... or the enactment of the Urewera Lands Act 1921-1922. I'd be interested in your views of the general committee as set up and its relationship with the local committees. It seems that on several occasions they indicated either that land would be available for leasing or identified certain land could be purchased. Is that correct?
- 20
- Miles Yes.
- 25 Kerr Yes. If the legislation was implemented as it was intended, do you envisage the situation may have been that an area was defined by the general committee in consultation, perhaps, with the local committee that was to be alienated or alienated by lease or purchase and that it would not have been, apart from identifying the location of that land, would not have been necessary to have sellers and non-sellers. There could have been a proportionate reduction in shares or something like that. Is there any indication do you think from the sources as to how that committee structure may have been implemented or do you think that was something that was to be established after the committee had been set up under the 1896 legislation?
- 30
- 35 Miles You used the phrase within the intention of the Act? Well, it's ... it's not clear to me whether Tuhoe and others did intend or what degree they did anticipate alienation in the first instance but in respect of the relationship between the local and block committees and whether they could have put aside areas of blocks for alienation. I mean, that was I think ... yes ... oh it's such a penetrating question. That is a very good one. Could I answer that in writing? It's going to take me a while to work through that. It's got quite a few implications.
- 40
- Kerr Can you think in that question about section 21 and the fact that the general committee had a veto power essentially. It could control ... it

could identify what land was to be sold but it could also prevent local committees ...

Miles
5 Well, I mean, certainly some of the local committees if, *if* they had wanted to alienate land and *if* they put the proposition to the general committee and *if* the general committee had the power to say yes or no to the alienation, I mean, I think that you can see from the correspondence of some of those committees ... areas, I'm thinking Ngati Whare, Ngati Manuwa particularly, but not solely probably within Ruatoki as well, that it would have been most disagreeable to those local committees. It would
10 have been a source of contention. Nonetheless, all of the representatives of the delegation who went to Seddon, it seems to me, undertook to agree to tribal ... you know, a broader structure that would look after the affairs of the district as a whole. And I think that they did that because it was obvious to everyone that alienation of land, you know, had ramifications,
15 political ramifications for everybody involved. So, I suspect that's why Numia or main drivers in the general committee would have got that adherence to the principle but yeah I'll answer that in writing.

Kerr
And you pick up there is signs that there could have been tensions and we have the example of Rua with that sort of control?

20 Miles
Well, there were signs district-wide that there were tensions on some issues going back to 1872 but the very fact that there were those tensions I would argue is why the local governance structures were so sorely needed and why Numia fought so hard to maintain them.

Kerr
Thank you very much for your evidence Ms Miles.

25 Ambler
I wonder, Sir, just before next counsel asks a question, I just wanted to be clear on what the question was from Ms Kerr because it was almost getting into a hypothetical of what if and I don't think that was what was intended. As I understand it the question is really about what evidence
30 there is of how this local committee, general committee structure would work.

Kerr
You're right. There's two aspects. It's what evidence there is of how it would work ... or three aspects ... whether it was clear that it was going to be necessary to have further legislation implemented after the general committee had identified what procedures, what regulations it wanted.
35 I'm adding as I go. And, but also the third aspect is the hypothetical. You identify an area of land to be sold in a situation where titles aren't identified on the ground and that's the purchase of shares issue. What the Land Department took is the purchase of shares from individuals but if it was controlled by local committee or a general committee, as contemplated by the legislation, is it possible that you wouldn't have had
40 to have sellers and non-sellers? That you'd have a reduction in the value of the shares or something like that? It is a hypothetical question but it's trying to get to what that section 21 power was intended to be about and what the relationship between these two was about.

- Ambler Perhaps if that could be committed to writing. I'm always conscious that we're told to be very wary of hypothetical questions, especially historical hypothetical questions.
- Kerr Certainly. Thank you, Sir.
- 5 Judge Savage Professor Binney wasn't terribly keen on them was she?
- Ambler No. In Wairarapa last week, we were told by historians they weren't keen on them either.
- Judge Savage Okay.
- 10 Ambler See I've canvassed other counsel and Mr Harman has questions, Mr Duncan, Ms Sykes, Mr Williams and Professor Boast.
- Judge Savage And in that order is it?
- Ambler Whatever works I guess.
- Judge Savage Mr Harman?
- 15 Harman (inaudible) First of all I'd like to express my thanks which I'm sure everybody is on this rangiowhanui series(?) report. When I started in this area two years ago it was a great start. So, without further ado. I'd like to go to what I call my hoary chestnut and that's pages 203, 206, 208, 210 of that document 11. And it deals with your discussion of the East Coast legislation and the four Southern Blocks. So, starting off at page 203 what I intend to do is just if you want the mark the line that I read because they all follow ... it boils down to questions stemming from those words that are in these pages or however you want to deal with it. I'll try not to rush it anyway. Okay. So, on page 203, just above the bottom paragraph ... you have "two years later they" meaning Tuhoe "were compelled to appear in the Native Land Court to fight for their interest in the Waikeomoana lands". Okay? We go over the page 206 and in their you have a statement just above 5.5.2, middle of the paragraph there, and here you are acknowledging that the Crown intended to pursue cessions (?) of land in lieu of claims under the Act meaning the East Coast Lands Alienation Act ...
- 20
- 25
- 30
- Miles (inaudible) three?
- Harman It's the paragraph directly above 5.5.2 on page 206.
- Miles Okay.
- 35 Harman And at page 210 we have a quotation from Locke in a report and he discusses what he put about the four Southern Blocks and what he put to Tuhoe and that was and I quote halfway through the quote, and it goes "that on the Wairoa Waikeromoana side the Government had taken a certain a certain portion. The remainder had been handed back by Major Biggs acting for the Government and to settle the disputed title to it they and the Ngati Kahanganui (?) had better take it through the Native Land
- 40

5 Court". And then you go on to say, "If Tuhoe wanted to dispute the
 interests relative to Kahanganui in the four returned blocks they probably
 felt they had no choice but to go to Court. They applied for title
 determination to the Tukurangi, Tauranga-ma, Ruakaturi and Waiiau
 10 Blocks in May 1874". I know this is ... I need to go just one final step
 further and it's at page 218 and you have there at the top of that large
 paragraph which is the last paragraph of that page that, "as for the Tuhoe
 tribe, their chiefs had strenuously refused to sell the land and had returned
 original Government advances with the approval of Te Whiti Te Kau for
 15 the purchase of the four blocks. Just weeks later they signed away Tuhoe
 and Ruapongi (?) interest in the land, under the threat of losing everything
 in the Native Land Court which was compelled to give cognizance to the
 East Coast confiscation legislation". Now the question that I have for you
 arising out of that falls ... first of all, do you accept that the Crown
 withdrew under the Tehaiatepi ? Deed all its claims to the four Southern
 Blocks. That it withdrew all its claims under the confiscation legislation
 under that Deed?

Miles I think you're correct. Yes.

20 Harman Right. And do you accept that Locke explained to Tuhoe and Kahanganui
 that they would both have their customary interests in those four Southern
 Blocks investigated if they wanted them investigated, they'd have to take
 it to the Native Land Court?

25 Miles Yes, I think the minutes of the 1875 meeting that he does say that. Can I
 just say? I didn't realize that given the themes of the way that we would
 be traversing this chapter at all.

Harman Yes. I'm sorry Ms Miles but the whole point of it was that this is our only
 opportunity to question witnesses on the whole of their report and I'm
 sorry that that wasn't explained to you. I'm not intending to go through
 every page.

30 Miles It's probably my error that that so ?? I didn't think of this.

35 Harman But this is a really important ... thank you ... a very important issue here
 because you do put in these pages ... well, you do say at page 218 that the
 Native Land Court was compelled to give cognizance to the East Coast
 confiscation legislation and I ask you in light of the Deed and in light of
 what we have agreed, why was the Native Land Court compelled to give
 cognizance over these four Southern Blocks?

Miles It's very clear, like when you read my discussion of these episodes ...

Harman Yes.

40 Miles ... that I have ... that is 5.5 in my report that I've taken this almost solely
 from research that was existing on the record.

Harman Yes. No, I understand that. Now, my questions of clarification, my first
 question was to you on that point but within the context of your own
 report you are acknowledging that the Crown withdrew all its claims

- 5 under the Tehaiatepi Deed. You are acknowledging that Locke is saying, "Oh, you must both, Tuhoe and Kahangunui, go ..." ... "if you want your customary rights investigated to the four Southern Blocks you'll have to go to Court" and then you're saying that Tuhoe and Ruapungi, this is page 218, "under the threat of losing everything in the Native Land Court". Now, if the Crown's withdrawn all it's claims, where does the threat arise?
- Miles I can't answer your question, counsel. But I will answer it if you want me to go back and look at it and supply your question in writing.
- 10 Harman (inaudible) Are happy to? Thanks very much.
- Miles It's just you've referred back to too much material.
- Judge Savage ??
- Harman I mean, I think ...
- 15 ?? Sir, I'd like the answer in writing. I certainly am interested in this for my Waikarimoana claimants. I'd like that question and answer from Ms Miles in writing.
- ?? That's fine.
- Judge Savage Yes. All right. Well, thank you. If we can pass on to a new topic?
- 20 Harman I want to go on now to the UNDR looking at the, in particular, paragraphs 18 and 21 of your summary. As I read your paragraph 18 I have just got a preliminary matter to clarify. What is you mean by Cowel? and Witeri? present in the 1895 discussions would have been aware of coning? and interests in the maters under negotiation.
- 25 Miles All I am saying that I thought given Carroll you know being born in Wairoa has links their whakapapa interests if Kanununu claimed into lands that was anticipated would be brought under the UDNR then it seemed likely to me that they would have been aware of those claims. That is all I meant.
- 30 Harman Alright. Did you see any evidence of Carroll or Witeri I mean I accept that answer actually I am. But of communicating what was going on to Takunu?
- Miles No because I haven't don't that level of research.
- 35 Harman Okay. That brings me over to the thing of paragraph 21. At the bottom there you have a sentence there and you have the overall result seems to be a long way from the original idea of having and I quote "Tuhoe and others determine their own titles" and you are the first historian that I have seen put in that there was some consideration that others other than Tuhoe would be involved in title determination. I am interested where you get that from.

- Miles All I mean there is that in the delegation that went to Wellington Tuhoe were not the only people in that delegation.
- Harman So that's a reference to Ngati Whare and the others that were in the delegation.
- 5 Miles Yeah. Yes.
- Harman Thank you for that clarity. And that sort of takes me back to something the Crown raised in questioning on their question of paragraph 14.1 but it goes to the commissioners that sat ...
- Miles Where are we looking sorry?
- 10 Harman Sorry that paragraph 21 of Tuhoe and others determining the titles. In an answer to the Crown you gave ... or above in that paragraph I suggest the Commission moved away from determining ownership in accordance with Tuhoe customary usages and in answer to a question raised by my learned friend on her question of clarification 14.1 you orally stipulated or I think sit to be corrected that they were directed to have regard for Tuhoe custom and usages whereas the Crowns question was that section 6 directed them to have regard for native customs and usages and if you are accepting that there were going to be Tuhoe and others in respect of for it was Kahuna? If it was Manawa I te whuru doesn't that imply that a better interpretation of native customs and usages that the commissioners had to operate to by was the native customs and usages ahe kote iwi on matter the iwi or the people in front of them.
- 15
- 20
- Miles I accept that. I think that Tuhoe might have been the phase that Carroll used in parliament. I am not sure about that. I think he may have, but as I have said in answer to another question of clarification I think that that was a broad rubric and other people.
- 25
- Harman Right and I just want to move on to the consolidation comments that you have at paragraph 57 of your summary and pages 428-429 of your main report.
- 30 Miles What page of my main report are looking at?
- Harman 428-429. Now we are discussing here you say at the top of page 79 you need clarification on this. I noted this is paragraph 57 of your summary I noted it was recorded that every family of non sellers in Urewera were represented at the August hui whereas when you go to your main report at page 428 what you actually have written and correct me if this is not where this summary is drawn from the first full paragraph from the bottom a large number of Tuhoe attending the Ruatoke hui – every family of non sellers were allegedly represented and each group elected a member to a committee which received government proposals. Now you go on in paragraph 57 you say that I assumed ... this is the bottom of paragraph I have hand numbered them it is page 27 but where paragraph 57 begins on that page going over to the other page I assumed that if it was the case then all the non selling families were represented at the Ruatoke meeting and knowing that non sellers had included non Tuhoe
- 35
- 40

- 5 and the non Tuhoe families would have had some degree of representation during the negotiations. Now I look at your report and in particular that sentence I read at 428 plus footnote 46 on page 429 which lists the actual families and I put it to you that what you have assumed or say you have assumed there is incorrect.
- Miles Ah. You mean in paragraph 57 of my summary.
- Harman Yes. Because it is quite clear isn't it even from your sentence with the hyphen in it that this was an all Tuhoe Crown affair.
- 10 Miles Well where I get this information from that is the allegation and then I do say allegedly complete representation of all non sellers interest in that one place. I mean that comes from the record of what went on there. I think it may have been published in the 1921 official report.
- Harman Yes and that report lists those non sellers and their representatives in that committee all those named people all those named people.
- 15 Miles Right.
- Harman Those whanau and they are all Tuhoe whanau.
- Miles Sorry I don't know if they were all Tuhoe.
- Harman Okay and so why is it that you have a hyphen a large number of Tuhope attended the Ruatoke – every family of non-sellers that sort of implies.
- 20 Miles Well its poor drafting. It shouldn't just solely be Tuhoe which is I think where your question is going.
- Harman And I thank you for that.
- Miles I mean it was something in the statement of issues that caused me to go back and reflect on that which is why I put that in paragraph 57 it is every family of non-sellers.
- 25 Harman Even more bluntly then do you know of any kahanui farmer amongst those names? Or any Kahanui representation at that hui?
- Miles I don't.
- 30 Harman Well the final question then at the bottom of page 429 I think in your summary and I haven't been able to go back and find it exactly so please correct me if I am wrong but at this hui the government you say at the bottom "the government subsequently decided to include the Waikarimoana Block in the scheme as well as the 4 Ngati Ruapane Reserves on the Southern Side of Lake Waikarimoana". Now I think in your summary somewhere you are implying that the initiative for this new proposal came from Tuhoe or from Maori.
- 35 Miles That's correct and so the government subsequently decided upon representation from Tuhoe. There was expressed a great deal of

- disappointment at first when the Waikarimoana Block wasn't to be included in the scheme discussions negotiations took place.
- Harman Yes.
- 5 Miles The Block was agreed to be brought within the scheme so its not strictly correct. That sentence is again poor drafting that the government subsequently decided to include the block.
- Harman But you are clear then or you are saying it was from Tuhoe initiated.
- Miles Well that would depend if only Tuhoe were present at the hui which is something that I am saying that I don't know.
- 10 Harman Well I accept that. Thank you very much.
- Duncan Thank you Your Honour. Only one question Ms Miles in your summary you refer to the fact that your rangiho whanui project was a broad overview of relevant Crown policies and actions. And that it's a reference document for the Tribunal enquiry parties and future research commissions.
- 15 Miles That's correct.
- Duncan Its fair to say that as a first working draft and in your words a reference document that the report could or perhaps should be seen as a work in progress document which other historians can utilise and particular issues can be developed.
- 20 Miles That's correct.
- Ducnan And its also fair to say that the work which you called a first working draft focuses on the Tuhoe experience and relation with the Crown.
- Miles I think it would be fair to say that the report is Tuhoe's centric and partly that has to the do with the definition of boundaries the working rangiho whanui boundaries which of course I did not determine.
- 25 Duncan I accept that. But its fair to say that your report does not focus say on my clients Ngati Tame Terangi hina manahere experience and relationship with the Crown.
- 30 Miles Um. That's true but I would also qualify that by saying it's a reflection of the sources as well. That's to say that the war period aside and in the war period I have relied on secondary sources. The war period aside the material I looked at and the primary source material I looked at you know your clients didn't figure large and others did. And I say that ...
- 35 Duncan I am talking about my clients including those descendents of Hine Manahere ??? Tame Terangi being the eldest child of ...
- Miles I know what you are saying but I am saying that the source material I consulted you know I had to make judgment calls on what I ??? and I

- 5 didn't and I was also fairly aware that there were other rangiho whanuui projects underway such as the one at Wairoa Poverty Bay or the ones circling the Urewera it seemed to me that much of that material and focus of the experience of the relationship with the Crown would be focused on and that has got to do with the shape and form and the focus of my report.
- Duncan Thank you Ms Miles. That's all I have.
- 10 Sykes Sir I have one question from the written and my friend Mr Pou has a couple around Ruakinina. I notice that she didn't understand my first question and I apologise for the obstruction in the way that it was drafted but the question was actually a simple one and I would like you to reflect again. Umm. In your paragraph two you say that you were required to make preliminary steps to try and identify personal group and dynamics in the Urewera. And then in your summary of course you mention both Sou Te Ranga Ngata and Ture Carroll quite a lot. One of the matters raised in our statement of claim is some questions of perceptions of bias or confusions of role particularly of Sou Te Ranga Ngata? In our statement of claim for Ruatahuna, Waikarimoana and Maungapohatu? for instance we raise issues about his relationship with Rapata Wahawaha?. We also raise issues about some confusion of roles. In one time he was an advisor in your words in your brief to the Te Whitu Te Kau around the implications of UDNR and at another time he is a representative of the Crown and of course as a Minister of the Crown. That was the purpose of the question. Have you got any comments you would like to make around that?
- 15
- 20
- 25 Miles The comment I would like to make around that concerns Ngata's role of consolidation which I think is something I wish I knew more about and that is how he was selected to represent the non sellers. All I point out is that the source material I looked at and that is the consolidation files discussions between officials about how to partition of land and so forth by this stage they seemed to identify or picked Ngata as being you know a suitable person for that role prior to that May and August hui in 1921 so to what extent Ngata was chosen by Tuhoe is not at all clear to me and others.
- 30
- 35 Sykes Are you familiar at all with the work of Ranginui Walker around Te Ata Ranga Ngata? or other writings in general. For instance the highlight that he was the first Maori lawyer and of course in the Maori world may have been relied upon for that skill.
- Miles Well you know no doubt Ngata had a status and as I say an experience albeit limited on consolidation on the East Coast before we get to the Urewera consolidation scheme for example and that may have been a compelling and attractive to the non sellers at the time. And I mean if your question is driving at whether the non sellers felt that they could trust Ngata that he was called upon to explain the law frequently in its dealing with Maori communities then yes I agree with you.
- 40
- 45 Sykes Did you consider and accept that is the point of my question though in writing your report did you consider there might be a conflict of roles or a

- conflict of interest because of that reliance on the first Maori lawyer to advise properly around those matters.
- Miles I didn't really go into that in my report.
- Sykes Thank you I have no further questions.
- 5 Pou Kia Ora Ms Miles just a few questions. I just want to explore some of the answers. The answer that you gave to our question of clarifications in paragraph 7 with respect to the reasons that Te Rua sold land. What you have said is that you stated his objectives in selling land were to raise capital to develop his community at Maungapohatu. Were you aware at
10 the time that he wasn't really the government most favourite person. They quite hated him.
- Miles Ah. Yes but as I say it was a relationship that took a rather interesting turn when he made an offer to sell.
- 15 Pou Ah. We are just going to get there. There were a number of pressures on Rua because of the hatred that the government exerted towards him and his people.
- Miles He wasn't favored he was seen as detrimental to progress and that is in terms of health, education, sanitation religion and so on and so forth. He was seen as backward. He was seen as isolationist and all of the things that Pakeha wanted Maori to give up.
20
- Pou All these negative perceptions.
- Miles Yup.
- 25 Pou And he was pressured ... I would like to take one instance of the way that he was pressured. The promise of roading that you mention in your answer to the question of clarification that roading was vital to him. Roading was promised by the Crown are you aware of that.
- Miles At what point are you talk about?
- 30 Pou I am talking about the tracks that were promised, the roading to Maungapohatu that was promised by the Crown. Sorry paragraph 7 of your response you say on page 5 "the government would not consider roading until owners committed lands for settlement where those roads would run".
- Miles And I say Rua anticipated.
- 35 Pou And the promise of roading essentially held people like Te Rua within Te Urewera to ransom because they needed roads for the development to actually maintain their communities.
- Miles I am not saying in the context of ??? or whether any promises of roading were made at the time. I am saying it has been made clear to the owners

- of lands in the Urewera District that they are not getting roads until they commit land for settlement. No promise.
- Pou There was ...
- 5 Miles It was widely anticipated that roads would be needed. Maori obviously were thinking about so was the Crown.
- Pou And the government ... and based on an anticipation of that Maori acted in ways they required these roads otherwise the lands that they had settled in would be uneconomic.
- Miles Absolutely.
- 10 Pou And basically they would be forced from their lands because of how hard it would be to live there because of the denial of those roads.
- Miles Oh yes. Yes. They were keen to what Rua was trying to achieve.
- Pou Essentially when Rua was selling land he was selling it to ensure not just the development of his community but the survival of his community. That's a fair comment wouldn't you say.
- 15 Miles Yeah its reasonable.
- Pou To ensure that they wouldn't be ripped from Maungapohatu it's a fair comment wouldn't you say.
- Miles Well it seemed to me that you couldn't have a self economically self sustaining community at Maungapohatu which is what Rua was trying to achieve there ...
- 20 Pou So its wasn't just a development it was to maintain his turangawaewae.
- Miles I cant really comment on that it is out of my league.
- Pou I would just like to put an analogy to you it would be like in a burning house where a beam had fallen on his leg and he would have to cut his leg off in order to survive. That's the feeling that he was going through when he sold the land. He didn't want to cut his leg off he didn't want to sell the land but he had to to survive and maintain a presence at Maungapohato.
- 25 Miles As I say in my summary it was fairly common. I mean Maori were starved of development funds and this is how you could develop land by selling land and ...
- Pou But Im not ... sorry. I am just saying it was more than just a developed land. It was so that they could actually maintain a presence at a very very special place for all of Tuhoe really.
- 35 Miles That is probably a reasonable comment.

- Pou I would just like to one more issue. Question around Tuhoe accepting the acceptance of the sovereignty of the Crown. Would you say giving permission to raise a flag outside a marae was the acceptance of sovereignty?
- 5 Miles I don't think that I could answer that.
- ??? Inaudible
- Pou Uum just trying to ... because the witness actually says that it clearly shows that Tuhoe accepted the sovereignty of the Crown over their district. I am just wondering whether or not that is a fair assumption to make or whether it is generally the view that its like a divergence on what has been ceded in the treaty. Some people say kawanga tirorangatiratanga. Is it possible that Tuhoe didn't actually accept sovereignty over their district except that the Crown was a sovereign but didn't have sovereign power in that they had absolute authority in any way over their district, their minds, their people, their mokapuna and their taonga so in that sense isn't the assumption that they had actually accepted sovereignty over their district maybe pushing it a bit far.
- 10
- 15
- Miles They accepted the Queens mana but highly conditional upon their own authority being recognised I mean it was a mutual thing so you cant adjust I think say that they accepted Crown authority and leave it there. They accepted it expecting that their own authority would be recognised and I think it does become clear that they would not accept the Crown authority until they had their guarantee.
- 20
- Pou So would it be fair to say that they accepted that the Queen had mana but not over them. That their absolute authority that their mana motuhake remained intact.
- 25
- Miles You are taking it too far from the historical sources for me to comment on.
- Pou Kia ora. I don't have any further questions.
- 30 Sykes Sir Can I just have a follow on. Did you listen to the evidence at Waimana of ??? and this morning of Mr Kruger around the issue of flags. That's the context of things and I just wanted to put it to you are you aware of any written material around the raising of flags not to succumb to sovereignty but to actually recognize the mana of the Crown.
- 35 Miles I'm not.
- Judge Savage I have let it happen that time but I am unlikely to allow a cross examination like tag wrestling. Now Mr Williams.
- Williams It is me Sir. Ms Miles I wanted to thank you firstly for your answer to our questions of clarification. They are extremely helpful.
- 40 Miles Good.

- Williams Now could I ask you just one small point in your main brief page 222 of your summary report. Do you have that?
- Miles Yes I do.
- Williams At the second paragraph you talk here of the Pokuku Lands or the lease of the Pokuku Lands. Do you have that?
5
- Miles Yes.
- Williams These lands are they also now known as Matahina.
- Miles Yes that's correct.
- Williams Okay. You say further down this paragraph that they decided that we patina and I assume when you say they here you mean Mitchell and Davis the Crown agents.
10
- Miles That is correct.
- Williams Right. You say here that they decided that we Patene and party with Ngati Hoko and then in your footnote you refer to Ngati Hoko as probably being Ngati Haka are acknowledged to me the real owners of the block. Can I take it to imply that they acknowledged that Ngata Haka were the real owners of the Matahina Block?
15
- Miles Yes though just the size and shape of that block at that time. I mean certainly Pukehu became known as Matahina but on the western boundary I am not sure if it had the same extent surveyed boundary as Matahina. It may have extended further over into what was or became the Pukehu block proper.
20
- Williams So the suggestion would be is that what is now Pokeo and Matahina was then known in totality as Whukaho? lands.
- Miles I don't know if it was totality but in a large part yes.
25
- Williams Thank you that's the extent of my questioning sir.
- Judge Savage you have indicated that you wanted to cross examine is it likely to be a lengthy cross examination.
- Boast About 5-8 minutes Your Honour but ...
- Judge Savage I will take Mr Boast and then we will pass the evidence.
30
- Boast Kia ora Anita oh Ms Miles I should say.
- Miles Kia Ora.
- Boast Just a couple of questions. Paragraph 7 of your brief you say the willing sellers were negotiating in respect of land that was not solely theirs to dispose of and referred earlier to Ngati Manawa and Ngati Pukeko? I assume you mean then that you are ... you do have Ngati Manawa in mind
35

with that comment and you are thinking of such blocks as Kuawai Whenanaki? etc. Correct

Miles Yes.

5 Boast But you would accept that Ngati Manawa naturally have their own story and their own interpretation as if mana whenua rights in those blocks.

Miles Certainly.

10 Boast Right. Now the only other points. Paragraph 34 one of the most troublesome problems with this whole history is we want to put this to you as an expert in this field. What is Ngata's strategy in that period around about 1908 to 1910 when those first Crown purchases are done. There seems to be some kind of an alliance between Ngata and Rua. What do you think Ngata is actually doing? What's his game?

Miles When you say alliance between Ngata and Rus what do you mean?

15 Boast Well I mean that certainly there seems to be some evidence that Ngata is engineering Rua onto the general committee and presumably at least at that juncture the two of them are working in tandem. Even if there not thought what do you think Ngatas strategy is.

Miles Ngata wants to be able to purchase Urewera land.

Boast But why.

20 Miles I think for political gains. I mean he and Carroll are under intense pressure. The liberal government is under intense pressure. It had lost some by elections and so forth. The way to woo back the small would be farmer to the liberal vote was to demonstrate serious efforts to purchase Maori land and I think particularly from the Urewera district because that
25 wasn't just any Maori land.

Boast So so its your reading that at that time Ngata is really being a good liberal politician he's following governments objectives.

30 Miles I haven't. I think possibly Cathy Mair who has worked in the UDNR would no more about Carroll and Ngata and Professor Binney but I don't claim to know what sacrifices Ngata was willing to make in terms of Urewera land in order to save broader policy in the liberal context. That I am unsure of.

35 Boast Okay. Now paragraph 39 you refer to the Native Land Purchase Board constituted under the Native Land Act 1909 and that the Board then decided to open Urewera blocks to purchase without any reference to the general committee.

Miles Yes.

- Boast But that would have been illegal wouldn't it? I shouldn't put an illegalk question to you rather the Native Department thought or believed or knew that would they were going to do is illegal in fact.
- Miles Yes and this is shown in correspondence at the time.
- 5 Boast Right. Right. Paragraph 47 quote at the end which I agree seems very important "the natives were keenly adverse to selling and it was impossible to purchase by assembled owners meetings therefore individual purchase had to be adopted". Did the Crown ever try to even have any assembled owners meetings with any of the Urewera district native reserve blocks?
- 10 Miles The only assembled owners meetings would be within the 1909/1910 context of the general committee and the resolutions for sale etc that it received from some of the local committees nonetheless at the time that we are talking about it has gone beyond that. So in this period from 1914-1915 onwards completely I have seen no evidence whatsoever that they had assembled owners meetings.
- 15 Boast Just the block was said to be open for purchase and Mr Bolder would then go and start ticking off whoever he could.
- Miles As I said it was the Native Land Purchase Board that decided where and when the blocks would be open for purchasing.
- 20 Parsonson Sorry I just wanted to follow up that question while we were on that particular point. Can you tell us what the actual mechanism of purchase adopted was in dealing with individual owners during this period?
- Miles Do you mean what happened on the ground?
- 25 Parsonson Yes.
- Miles No in fact I think Professor Boast does a better job of describing that in his research unfortunately. I got the impression that Boler frequented many places where he thought that owner or non sellers would be and that it was basically open cheque book and that they rolled up.
- 30 ??? Race meetings
- Miles Fairs you know I notice references to fairs and markets and the like. Not necessarily within the Urewera but outside the district in Napier on the East Coast.
- Parsonson And these are the absentee owners.
- 35 Miles That's correct and as I said in my report the absentee owners a large proportion of the offers to sell this is just reflected in the correspondence from absentee owners. Bolan knows this of course so as well as going through the district he goes to where the absentee owners live and I am not entirely sure what his connections on the ground were that he knew were and when to turn up but you know he's a senior purchase officer and
- 40

- 5 very experienced so you know to get back to your question I think it was open cheque book. People signed their names and he had the lists of the non sellers which he was constantly trying to update because of successions and things like that but they would turn up and want to sell. He would check how much shares they still retained and he would write a cheque. That is what I thought happened.
- Parsonson Thank you.
- Boast In fact theres a letter from him that ??? basically refers to the persuasive power of the cheque book.
- 10 Miles yes he does. He does indeed.
- Boast My last question paragraph 57 these are the non Tuhoe non sellers at that time that would havbe included wouldn't it Ngati Whare and Ngati Manawa non sellers into Whaiti 1 and 2 blocks.
- Miles Yes.
- 15 Boast That's all thank you.
- Naden Yes sir conscious of time Tena koe Ms Miles.
- Miles Kia ora.
- Naden I want to refer to the answers of questions of clarification as well so I was just wondering if you had a copy of that there.
- 20 Miles Oh I do have my answers to you if you just give me a moment to find them.
- Naden Two in particular question 7
- ??? I wonder if Mr Naden can just confirm his claim number for reference.
- Naden 4 Te Mahurihuri 761.
- 25 ??? 761.
- Miles Yes I am ready now.
- Naden That question 7 I had asked what the Tuhoe chiefs had understood were taking the claims assurances to me and you begin your answer with "I understood this to mean" and I just wanted to clarify whether you meant that you understood that he chiefs understood McLeans assurances.
- 30 Miles Yes. Yes. I will say yes. I think I would.
- Naden That is right isn't it.
- Miles Yes.

- Naden Turn to paragraph 4 of your summary to the sentence there that ends “the Crowns recognition of their authority in the Urewera”. It is about halfway down of paragraph 4.
- Miles Yes.
- 5 Naden Is authority used there in the same way as in your answer to question 7 and your answer to clarification chiefly mana does authority there paragraph 4 mean ...
- Miles yes I am using that in the same general sense.
- Naden Alright. Thank you. Paragraph 6 of the summary ...
- 10 Miles Sorry.
- Naden Te Whiaitu Te Kau had informed the government that they would not permit road surveys leases sales and the Native Land Court. Te Whiaitu Te Kau’s prohibition on these activities in their rohe is an indication that they regarded their authority and I refer to paragraph 4 use of their authority as being largely unfettered by the Crown. Would you agree with that.
- 15 Miles Sorry can you repeat the question. You are asking me if the Te Whiaitu Te Kau saw there authority as unfettered by the Crown.
- Naden Yes. When they established the prohibition on roads and sales and ...
- 20 Miles I am unable to answer that.
- Naden Could ??? in writing perhaps and you could answer that in writing.
- Miles Yes it would depend on what you meant by unfettered and I could take quite some time walking around that so I will answer it in writing.
- Naden What about if I quickly elaborated on what I meant by unfettered and they didn’t ask the Crown if they could prohibit sales, leases, roads did they.
- 25 Miles I don’t know. I don’t think so. What they had got from McLean they thought was a recognition of their chiefly mana, their authority, their district, their preference for local government. If they thought that they had had that acknowledged then they would see it fully within their rights within their authority and their mana and their local context to ban or to accept whatever form of roads surveys leases that they wanted.
- 30 Miles Ms Miles I was wondering if I might put that to you in writing for a response in writing although your response has been helpful.
- Miles Okay.
- 35 Naden Turning to paragraph sorry 6 again, over the page the sentence there right at the top “as the 1870s progressed it became clear that McLean and subsequent Ministries did not accept Te Whiaitu Te Kau’s boundaries nor the customary authority they claimed to exercise within them” I just

wandered how you might reconcile that statement with in paragraph 4 thw earlier reference to McLeans recognition of the authority in the Urewera.

- Miles I don't understand your question.
- Naden Paragraph 4 you say McLean recognised the authority in the Urewera.
- 5 Miles ????
- Naden In paragraph 4. About halfway down we discussed that sentence just about a couple of minutes ...
- Miles Yes. Yes. They he recognised the authority in the Urewera.
- 10 Naden Yes. And then in paragraph 6 the sentence I just read out it became clear that McLean did not accept Te Whiaitu Te Kau's boundaries. Uum I wanted to suggest an answer to you. If it is simplicitious action on McLeans part that might give rise to an explanation as to the consistency between.
- 15 Miles Oh I see. I think I see. Hes given the recognition and then he's taken it back and not officially given the recognition that Tuhoe and others were seeking whether that was simplicities or not. It's a good question. I mean I suggest in my report it might have been and I think I referred Alan Ward speaking of McLean generally in his pacification policies that they were effective because he simply promises he would take no more land from
- 20 people and he would leave them alone.
- Naden Was that kind of approach every reflected in Crown Government policy that the approach talked about here you know pacification and Mr Krugers term ukahu so then ...
- Miles I didn't hear Mr Krugesr evidence sorry.
- 25 Naden Alright. I wont go there with that.
- Miles I mean I don't know the extent to which or what exact apart from the boundary, the authority, their mana yeah I don't know to what extent Seddon anticipated the chiefs suddenly coming out with their prohibitions on roads, leasing, sale etc that is something I don't know but what we do
- 30 know is that he didn't accept it and he strove to undermine it.
- Naden You said Seddon did you mean McLean.
- Miles Oh pardon me. That McLean.
- Naden Thank you for that. I will just move onto paragraph 8 of your summary. Paragraph 8 there is a sentence there just pause at the bottom of the page
- 35 "while land purchasing in the Native Land Court activities continue to chip away at the Urewera boundaries government did not actively and explicitly engage with Te Whiaitu Te Kau on issues of tribal authority and self governance. The government there not engaging did that have been taken to by Urewera chiefs to mean that the state of affairs as they existed

at that time being left alone, the Crown not engaging meant that their customary authority was continuing unabated. I can repeat that. I will clarify that question for you if required.

- 5 Miles Well if you are getting to the point that the fact that McLean did not engaged with them or give legal recognition to them I don't see how that could. I mean their autonomy was the reality of their live you know they put up these boundaries and the roads did not pass them. The Court did not enter it.
- 10 Naden What I mean Ms Miles perhaps is if a child is told nothing about conduct that they shouldn't be doing maybe they are going to think that its okay.
- Miles I would not take it from the fact that McLean did not engage with them.
- 15 Naden You talk in paragraph 9 of your summary about and this is the second sentence it was unacceptable to most of the settler electorate that the Urewera District remained effectively self governing. The last couple of words effectively self governing. Ah that's effectively they were continuing with their customary authority. They had ????. Would you agree with that.
- Miles Oh the large part of it yes.
- 20 Naden To the bottom of paragraph 9 until the Crown legally recognised their customary authority the Urewera would remain closed and it is my understanding that customary authority, customary rights exist without the need for legislation. You are not suggesting that their customary authority required legislative ???
- Miles Sanctioning.
- 25 Naden Sanctioning.
- Miles No. It exists whether or not there was a legislature but I am saying they wanted that legal sanction. They wanted that protection. They wanted that recognition of their authority.
- 30 Naden That leads into my main question about UDNR. Was that Act in your view declarative or constitutive of their customary authority. What I mean is did that Act give them the power of their customary authority or did it simply reflect the state of affairs. This approach has been applied to the treaty where there was an argument that was the treaty declarative or constitutive of the rights of Maori to their resources and other taonga.
- 35 Ambler I think Sir if I can step in here its really a legal proposition which is being put to a historian and I am also stepping in because we are almost on 4.00 and it seems that Ms Miles will need to come back in the morning.
- Naden Sir just a couple more I think.
- Judge Savage Two more thank you.

- 5 Naden Alright. You took in paragraph of your summary sort of about six or seven lines up your sentence reads "or there Tuhoe would recognize the sovereignty of the Queen over their district" and I wanted to know what your source was and if its Seddons letter of September 1895 then perhaps that is Seddons view only.
- Miles I think that the source for that is not only the letter but what was said in 1894, 1895 and 1896.
- Naden Okay. What was said by?
- 10 Miles Well during Seddon and Carrolls visit through the Urewera to their negotiations in Wellington to the passing of the UDNR.
- Naden Thank you and finally at the bottom of paragraph 14 third line from the bottom "that these were discussions of constitutional nature". That phrase. Is it your view that by 1896 given that these were discussions of a constitute nature in your view to use a colloquial term was sovereignty still on the table as an issue if we are talking issues of a constitutional nature was sovereignty still on the table as at 1896 in your view.
- 15 Miles I don't understand the question and also I think there are legal implications of using the words sovereignty like that. I will endeavour to answer it in writing but it is too broad and it is something that I certainly haven't looked at.
- 20 Naden Yes. I could put that to you in writing and see what we get out of there.
- Miles Okay.
- Naden Thank you Ms Miles.
- 25 Northover ??? nga ta toe. We have reached the stage where we consider the actions before us and so I would like to thank you all to those who have submitted today and so Pou I hand back to you to carry our arrangements from here on.

[Closing karakia].