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Wai 950 #2.1299
Wai 951 #2.1135
Wai 952 #2.1100

THE WAITANGI TRIBUNAL

WAI No 1200

IN THE MATTER	**of the Treaty of Waitangi Act 1975**
AND	
IN THE MATTER	**of claims by of the Central North Island Inquiry consolidated under Wai 1200**

DRAFT CROWN STATEMENT OF RESPONSE FOR STAGE I

Dated: 17 September 2004

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INTRODUCTION

1. In its directions of 25 March 2003 (Wai 950 #2.1096; Wai 951, #2.1011; Wai 952, #2.1000), the Tribunal adopted a plan for hearing the Central North Island claims in two phases. In further directions dated 15 July 2003 (Wai 950 #2.1156, Wai 951, #2.1054; Wai 952, #2.1039), as amended, *inter alia*, by directions dated 16 July 2004 (Wai 950 #2.1270; Wai 951, #2.1114; Wai 952, #2.1081), a timetable was established for the filing of draft and final amended statements of claim from the claimants and statements of response from the Crown. The Tribunal's draft and final Statements of Issues will draw upon these indications of the parties' positions.

2. This document is the Crown's draft statement of response. It is incomplete and may yet undergo significant change before a final version is filed. This is partly a reflection of the incompleteness of the draft amended statements of claim. The research for both claimants and Crown is also unfinished. Despite these limitations, the Crown hopes this draft document will assist with the process of issue definition by the Tribunal.

Nature of a Stage I inquiry

3. Because of the novelty of this procedure, some comment is called for on the nature of a Stage I inquiry and the form of the Crown's statement of response. Stage I is intended to result in a Tribunal report that "addresses the major issues affecting most of the claimants in a district or the region

as a whole". The report will be based upon material that, by and large, is in the nature of "overview" research. That research is not intended to cover specific grievances, or only so far as these illustrate the broad events, policies and processes said to have resulted in Treaty breaches.

4. This new approach to research for a large regional inquiry allows the participants and the Tribunal many positive opportunities to tailor the inquiry to evolving needs. A lot of useful research has been done to this point that will be valuable before the Tribunal and in settlement negotiations. However, the research to date will limit the Tribunal's ability to make findings on the balance of probabilities.

5. It has to be acknowledged that the research has been produced under great pressure of time. There should be a degree of realism about its limitations and how these must affect any Stage I report. The Crown's position has always been that the completion of Stage I research ought to provide a good foundation from which the parties can assess their positions. Claimants will be better placed to make informed decisions about how their claims should be advanced from that point.

6. Although it is too early to make any firm assessment of the research thus far, it does appear that the approach and depth of content are variable. In some cases there may be questions about the selection of illustrative material or the use (or failure to use) sampling methodologies. In this context it is worth noting that the concept of an agreed approach to research received less emphasis once the decision was made to embark on a two-stage inquiry. Much of the work should be regarded as

exploratory in the sense that by definition overview research will identify areas where further work is necessary and areas where further work is desirable.

7. These points are made not to detract from the achievements to date. The effort thus far seems likely to be a significant and useful corpus of material in settlement negotiations with large natural groupings. But the inevitable limitations of the research may mean that there is much further to go in some areas before the Tribunal will be able to make findings on the balance of probabilities.

8. There are a number of topics that will require more systematic research for a full inquiry. For example, the alleged connections between Māori borrowing, titles conferred by the Native land legislation and the costs of obtaining them, land sales and the adequacy or otherwise of statutory protections are matters that require systematic research of a kind that appears beyond this first stage of inquiry. That is not to say that such issues should not be explored, but the results may be tentative.

9. The Crown also notes that Dr Phillipson has already commented on the difficulties of adequately dealing with the question of Crown actions and their "social impact". It does not seem that these will be overcome by the research provided in Stage I. As with the Gisborne inquiry, it would be prudent for that question to be dealt with in a later phase of investigation, if the need arises.

Nature of the Crown's Response

10. At this stage, the Crown has responded to the statements of claim at two levels. The first part of this document records the Crown's view of the salient issues for inquiry, together with its general thinking on those matters. The second part is an appendix that attempts to respond to some of the more detailed factual pleadings, though here again there has been an attempt to group issues.

11. In common with preceding Tribunal inquiries, a number of broad themes stand out in the history of the CNI region – among them Crown purchasing activities, retention of land by Māori, and issues concerning the Māori land legislation, both as a process for ascertainment of ownership and for regulating dealings in land. The Crown's thinking on such matters has naturally been shaped by the work already done on these subjects and the position it has adopted in legal submissions. There are also important questions that are either distinctive to the CNI region or assume unusual prominence in this area.

12. The first part of this Statement of Response proceeds by addressing these two categories of issues. This is in response to the amended statements of claim filed to date.

13. Any appearance of uneven treatment in Appendix One should bear in mind that this second part is conditioned by the limited number of amended statements of claim filed at this time. The Crown understands Ngāti Tuwharetoa are still considering the formulation of their claims.

The net result is that the appendix focuses on factual allegations concerning the Rotorua district.

14. This exercise in pleading is far from complete and yet it is doubtful that it can be greatly extended by the time the Statement of Response is finalized. It partly serves the function of identifying areas of agreement, even if this is at a detailed level. It may also illustrate the investment of time that would be needed if the claims were to be fully litigated before the Tribunal.

15. The Crown sees the following as the most important issues for Stage I of this inquiry:

15.1 Crown purchasing;

15.2 Retention of land by Māori;

15.3 The operation of the Native Land Court;

15.4 Natural resources;

16. The Crown sees the following as important Central North Island specific issues for Stage I of this inquiry:

16.1 The Fenton Agreement[1] and the thermal springs legislation;

16.2 Public Works;

16.3 Development schemes;

16.4 Forestry.

17. Many of these important issues will require careful analysis to determine how they can be meaningfully addressed in any report on Stage I of this inquiry. The body of this document discusses examples where particular consideration of this will be required.

18. The overall point is that in determining whether and when to proceed to a hearing, the Tribunal will need to have regard to the adequacy of the research made available to it.

Factual examples

19. The Crown has attempted to verify and respond to alleged factual examples of general themes. In admitting that the examples cited are factually correct, the Crown is not to be interpreted (except where it expressly says otherwise) as acknowledging that the more general contention or pattern is also admitted. The claimants' pleadings are somewhat selective in terms of examples cited. The very real challenge posed by the generic inquiry approach will be to determine the extent to which these selective examples properly demonstrate a wider theme or pattern and are representative. It may be that in many instances they are exceptional rather than normal.

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[1] The Crown notes that some claims relating to the Fenton Agreement have already been settled and accordingly the settled issues fall outside the scope of this inquiry.

Progress towards a finalised Statement of Response

20. The Crown and claimant research is ongoing. The Crown will further develop this document as a result of increasing understanding of the claims and in response to feedback from other participants.

21. This statement of response has been drafted with the generic nature of the inquiry in mind. To the extent that a number of paragraphs in claimants' statements of claim have not been addressed, the Crown denies those paragraphs at this stage of the Tribunal's overall inquiry processes for the CNI Region.

prejudiced; and whether, and to what extent, the Crown unfairly took advantage of CNI Māori poverty and/or indebtedness.

22.6 Reserved areas.

Māori motivation for selling land to the Crown

23. The statements of claim generally fail to acknowledge and/or mis-state the extent to which Māori owners of land were actively engaged in negotiations with the Crown over the sale of land.[2] By failing to account for Māori participation there are gaps to address before conclusions can be drawn about Māori motivations.

24. The statements of claim generally fail to acknowledge and/or mis-state Māori motivations for selling land to the Crown. A variety of motivations may be identified. Some Māori willingly sold land to raise capital. The assessment of Māori agency and motivation in selling land will require careful assessment by the Tribunal.

Extent of Crown purchasing, patterns of alienation and processes followed

25. The Crown admits that it was an active purchaser of Māori land in the CNI, particularly in the nineteenth century. It states further that the Crown's policy was to purchase land for settlement.

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2 Wai 257, para 6.4; Wai 996, para 3.5(d).

under a responsibility expressly to carry out an economic recovery programme to alleviate destitution caused by the land wars.[7]

Use of monopoly powers of purchase and adequacy of prices paid

31. The Crown admits that in the Rotorua and Kaingaroa inquiry districts, it negotiated for and acquired significant amounts of Māori land pursuant to monopoly powers of purchase, i.e. powers which prohibited private dealings in land.[8] This included the Thermal Springs Act 1881, the Government Native Land Purchases Act 1877 and the Native Land Act 1894 which re-introduced pre-emption. The Crown admits that the suspension of the Native Land Court in the Taupo and Bay of Plenty regions from August 1873 to mid-1877 had an inhibiting effect on the ability of Māori to sell land to private purchasers.[9]

32. The Crown accepts that, in principle, it was required in Treaty terms to exercise its monopoly powers of purchase fairly and responsibly. Whether and to what extent the Crown can be said to have abused or misused its monopoly powers of purchase is an issue for any Stage I Tribunal inquiry.

33. The Crown admits that in 1878 it proclaimed as under negotiation pursuant to the Government Native Land Purchase Act 1877 in excess of one million acres in the CNI.

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7 Wai 257, para 5.2.

8 Wai 257, para 8.3; Wai 1034, para 7.12(a).

34. A number of claimants contend that the Crown paid inadequate purchase prices for CNI Māori land, particularly in the nineteenth century, and that often this was achieved by the absence of competition.[10]

35. The Crown accepts that the adequacy of purchase prices is an issue for Stage I of the Tribunal's inquiry. It states further that to answer this issue it would be necessary to assess critically factors such as location and quality of land in making a comparison between prices paid for CNI Māori land by private purchasers, with those prices paid by the Crown.

36. The Crown admits that generally it sold land to settlers at higher prices than it paid when it bought the land from CNI Māori. It denies that this was exploitation or inherently wrong.[11]

Valuation Issues

37. A number of claimants allege that the Crown had no fair and reliable system of valuation in place at the time of its land transactions with CNI Māori (at least throughout much of the nineteenth century).[12] In response the Crown says:

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9 Wai 257, para 7.9(j).

10 Wai 996, para 8.3; Wai 1034, para 7.3; KFSC claim, para 15.10; Wai 664, para. 73 and 120(c); Wai 18, 114, 500, para. 33; Wai 257, para 8.3.

11 KFSC claim, para 15.11.

12 Wai 1034, para 7.10; Wai 257, para 8.10.

37.1 It denies that it generally had no fair or reliable system of valuation for CNI Māori land at the time of many of its land transactions.

37.2 It states further that Crown Land Purchase Agents, including those of the nineteenth century, had a knowledge of the value of the Māori land they were treating for, and that many of the leading Māori, with whom they were dealing, likewise had knowledge of the value of their land.

37.3 The Crown admits that, in general, there was no statutory requirement or procedure for obtaining an independent valuation (from the Valuation Department) until 1905, although there was a statutory procedure for independent valuations under the Native Land Purchase and Acquisition Act 1893.

Purchase Practices

Advance payments

38. The Crown admits that up until 1879 it was common practice for Crown Purchase Officers to make advance payments to CNI Māori before the relevant land had been surveyed or before any Native Land Court determination of ownership had occurred. It admits that these advance payments were unenforceable under section 75 of the Native Lands Act

1865 and section 87 of the Native Lands Act 1873.[13] The Crown says further:

38.1 Section 83 of the Native Lands Act 1865 provided that the Native Land Court could recognise transactions agreed between the Government and Māori prior to the land concerned passing the Court;

38.2 Section 107 of the Native Land Act 1873 provided that the Native Land Court could continue to recognise such transactions if they had been entered into before 1 January 1874;

38.3 Section 42 of the Immigration and Public Works Act Amendment Act 1871 provided that the Government could enter into negotiations for land needed for special settlements prior to that land passing through the Native Land Court. Section 42 also required the Government to pass the land through the Court before any agreement would become enforceable.

39. The Crown denies that advance payments made to CNI Māori in the nineteenth century were generally vague as to what land was being sold and at what price.[14]

40. The Crown admits there are examples of refusals by the Crown to refund advances made to Māori for a purchase and when the Crown preferred

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[13] KFSC claim, para 15.3.

[14] KFSC claim, para 15.5.

that existing obligations be met and a sale proceed to completion. This includes Rerewhakaitu and Pukahunui. The extent to which this occurred generally is an issue for any Stage I Tribunal inquiry.[15]

Dealings with Individuals

41. A number of claims address the Crown dealing with individual owners,[16] or ignoring in bad faith, owners who did not want to sell.[17]

42. The Crown admits that Crown Purchase Officers in the CNI in the 1870s did, on occasions, deal initially with individual Māori rather than the hapū or community for purchase of the land, but denies that this was a universal practice. It states further that Native Minister McLean reminded Crown Purchase Officers in 1875 of his instructions not to negotiate with individuals and to deal openly with Māori. The extent to which the Crown Purchase Officers dealt with non-representative individuals and whether they complied with McLean's instructions, is an issue for any Stage I Tribunal inquiry.

43. The Crown denies that it allowed its Crown Purchase Officers to deal primarily with Māori owners by way of closed meetings, rather than widely publicised, open meetings.[18]

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15 KFSC claim, para 15.3.

16 Wai 257, para 8.7; Wai 1034, para 6.1.

17 Wai 664, para 115(c).

18 KFSC claim, para 15.2.2.

44. The Crown denies that it was the common practice for individual CNI Māori in the 1870s in Kaingaroa, Rotorua and Taupo inquiry areas to be given redeemable Treasury vouchers in lieu of payment for land. It says further that generally CNI Māori were paid in cash.[19]

Collateral promises

45. The Crown denies that it consistently made express or specific promises of free medical treatment, schools, roads and collateral advantages as inducements for sale and for leasing. It says further that the Crown's general view in the nineteenth century was that settlement through the purchase of Māori land would lead to infrastructural development that would be a benefit for all in the community, including Māori.[20]

Leasing with or without an option to purchase

46. The Crown admits that it entered into extensive lease negotiations with CNI Māori in the 1870s, particularly in the Rotorua and Kaingaroa inquiry districts. It says further that most of the negotiations did not result in concluded leases.

47. The Crown admits that many of the lease agreements that were entered into between Crown Purchase Agents and CNI Māori landowners in the nineteenth century contained a clause preventing the owners from selling

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19 KFSC claim, para 15.4.1.

20 KFSC claim, para 15.12.

the freehold to private purchasers (i.e. inalienation clauses). This is raised by a number of claims.[21]

48. The Crown admits that in September 1874 it proclaimed a relatively large amount of CNI Māori land in the Rotorua, Taupo and Kaingaroa districts, as being subject to Government lease pursuant to section 3 of the Immigration and Public Works Act Amendment Act 1874.

49. The Crown admits that where agreement by Māori to lease was obtained, that generally rents were not paid until the Native Land Court had determined ownership. The Crown says further that some rental deposits were paid by the Crown to CNI Māori in advance of the Native Land Court determining title. It says further that generally Māori remained in possession of the land prior to the Native Land Court determination and that until such time as the Native Land Court had adjudicated on title, the Crown could not put settlers in secure possession of the land.

50. The Crown admits that in the 1870s it attempted to obtain the agreement of CNI Māori to convert a number of leases into the sale of land.

51. The extent to which rental payments owing to Māori were offset against the purchase price and/or unaccounted for, is an issue for any Stage I Tribunal inquiry.[22]

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21 Wai 257, para 8.4(c); Wai 1034, para 7.4(c); Wai 996, para 89.4(i).

22 Wai 257, para 8.6.

52. The Crown denies that generally it undermined the lease returns to Māori so that they were left with little option to sell.[23]

Reserved areas from land sold

53. A critical issue, directly related to the transfer of land from Māori ownership, is the extent to which the Crown considered the provision of reserves of land for CNI Māori, during its extensive purchasing of CNI Māori land, particularly in the Kaingaroa and Rotorua districts in the nineteenth century. This is an issue for Stage I of this inquiry.[24]

54. There is no simple equation or relationship between the area of a block and the issue of whether reserves should be made from that block or whether the sellers had sufficient lands elsewhere. Retention of land is addressed in the next section.

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23 KFSC claim, para 10(a).

24 Wai 664, paras 70 and 117; Wai 726, para 37(n); Wai 615, para 12. KFSC claim, paras 15.28.1 and 15.29.

RETENTION OF LAND IN MĀORI OWNERSHIP

General Contentions

55. The Crown agrees that a principal theme of the various claims, and critical issue for this inquiry, is that the Crown allegedly breached the principles of the Treaty by failing to ensure that the claimant hapū and iwi were left with sufficient land for their reasonably foreseeable maintenance, support and future needs.[25]

Tenure reform is not a Treaty breach by itself

56. The Crown acknowledges there is very little if any Māori customary land Māori ownership today. It denies that tenure reform or title transformation in itself breaches the principles of the Treaty.[26] Introduction of a new form of land tenure was inevitable and is not in breach of Treaty principles.[27]

Land retention is not uniform

57. The bald and general contention that Māori ownership generally in the inquiry region declined from 100% ownership in 1860, to less than 20% now requires close scrutiny.[28]

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25 Wai 445, 781, 786, 787, 832, para 7, para 11; Wai 443, paras 12-13, 20, 22, 23, 28, 29; Wai 615, para 10-12; KFSC claim, para 6, 6.1; Wai 7, 204, 223, 363, 453, para 40; Wai 664, paras 115(a) and 121; Wai 1027, paras 5-7; Wai 1032, paras 10-11.

26 Wai 615, paras 13, 15 and 16.

27 Wai 1027, para 6(b), para 7; Wai 1032, paras 7-8; Wai 445, 781, 786, 787, 832, paras 6-7; Wai 443, paras 12-16, 20-23, 27.

28 KFSC claim, para 6.1.5(a).

58. There is considerable variation in the extent to which hapū and iwi have retained ownership interests or influence in land. The experience of hapū and iwi in the inquiry region has not been a uniform one.

59. The Crown denies that individualised Māori freehold title holdings are generally small and not of prime quality nor particular economic value.

Geothermal land

60. The Crown admits that relatively little of the geothermal lands, in acreage terms, that may have been part of the taonga of claimant hapū and iwi, remain today in Māori ownership. The extent and reasons for alienation of geothermal land and the extent of geothermal land (in particular where geothermal resources are concentrated) retained in Māori ownership are issues the Tribunal should inquire into.[29]

61. The Crown sought actively to purchase and control lands containing geothermal resources. There were national interest objectives in doing so. The critical issue is whether sufficient regard was had by the Crown to protect Māori interests in lands with geothermal resources.

Twentieth century assessments of land for Te Arawa

62. The Crown admits that in 1908 the report by the Stout-Ngata Commission concluded that, with the exception of Ngāti Pikiao, the

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[29] Examples of geothermal land retained in Māori ownership are discussed in the preliminary report on the Te Arawa Representative Geothermal Resource claims (Wai 153) 1993. Wai 615, para 24; Wai 257, para 11; Wai 664, paras 124-5; Wai 1032, para 20-1.

hapūs of Arawa did not have surplus lands for sale, nor a large area available for lease (in the lands investigated by the Commission).[30]

Twentieth century assessments of land for Ngāti Tuwharetoa

63. The Crown notes that no pleadings have been received for this issue as yet.

Retention of land generating tourist revenue

64. The Crown admits that prior to Crown purchasing in the period 1870 to 1900, claimant hapū charged tolls for a number of prime tourist attractions.[31]

65. A number of the tourist attractions listed in the KFSC claim, including Whakarewarewa Village, Mokoia Island, Tikitere, Orakei Korako and Ohinemutu, remain in Māori ownership. In some instances Māori continue to charge entry fees.

66. The extent to which these tourist attractions have been improperly alienated by Māori leading to prejudice the Crown is responsible for is a claim specific matter the Tribunal should more properly inquire into at any Stage II hearings.[32]

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30 KFSC claim, para 6.4.

31 Including some of those listed in KFSC claim, para 6.1.10.

32 KFSC claim, para 6.1.10; Wai 445, 781, 786, 787, 832, para 11(i).

Treaty settlements

67. Below in this document the Crown refers to land returned to Māori ownership as part of recent Treaty settlements.

Insufficient Particularisation of these Claims

68. Despite the central importance of this issue being agreed by the claimants and the Crown there is insufficient research or detail in the claim documents for the Crown to give any further particularised responses on whether particular groups have in fact retained sufficient land (insofar as the experience of those groups might be an example of a generic issue).

THE NATIVE LAND COURT

General Contentions

69. The Crown contends the following major issues arise in considering the operations of the Native Land Court in this inquiry region:

69.1 The nature of Māori engagement with the Court process (including the circumstances leading to the suspension of the Court in August 1873);

69.2 The objectives of Māori in bringing their property under the Native Lands Acts;

69.3 The immediate impacts of the process;

69.4 The quality of the title options available; and

69.5 The adequacy of the checks upon improvident dealings.

70. The Crown denies that the principal object of conferring titles naming individuals through the operation of the native land laws was the facilitation of sale. The Crown states that the relationship between the Native Land Court's adjudication of title function and land alienation was not one of cause and effect. It states further that the CNI experience of land alienation was diverse.[33]

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[33] Wai 443, paras 22-24. Wai 1032, para 7; Wai 726, para 38; KFSC claim, para 11.6, para 12.2, para. 11.4; paras 14.1 and 14.2; Wai 996, para 3.5; Wai 1032, paras 7-9; Wai 1027, para 7; Wai 445, 781, 786, 787, 832, paras 6-7.

71. The Crown states that the Native Land Court in the nineteenth century had two principal functions, namely, an adjudication of title function and the role of supervising the rules for dealings in Māori land, (i.e. that code contained in the native land laws that regulated the alienation of land whether by way of lease, sale or other disposition). An issue for any Stage I Tribunal inquiry is the extent to which the Court discharged its function of regulating the alienation of Māori land and the Crown's response to this.

72. The Crown denies that the listing of names of individual Māori on a Memorial of Ownership can properly be categorised as individualisation.[34] The Crown states further that individualisation was the capacity of individuals to deal separately with their interests in land independently of the community of other owners. An issue for any Stage I Tribunal inquiry is the extent to which owners with undivided individual shares dealt separately with their interests. Native Land Court determinations did not result in the automatic termination of customary relationships.[35]

73. The Crown accepts that the nineteenth century native land laws can fairly be criticised for failing to provide for more effective corporate/communal governance mechanisms. It notes that the incorporation model was not available until 1894. The extent to which Māori land owners in the CNI

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34 Wai 257, para 4.

35 Wai 443, para 24; Wai 615, paras 11, 15; Wai 1032, para 7; KFSC claim, para 11.

adopted the incorporation model of ownership is an issue for any Stage I Tribunal inquiry.

74. The Crown admits that there were complaints from Māori in the CNI district about the operation of the Native Land Court.[36]

75. The Crown denies that the Native Land Court generally fostered debt, although it accepts that there are some examples of lengthy and expensive Native Land Court hearings. It says further that it is necessary, at the very least, to have regard to CNI Māori income levels to determine whether, and to what extent, CNI Māori were burdened with debt as a result of Native Land Court processes.[37] The nature of Māori economic activity is a complex area. As stated above, the Crown considers that there is insufficient evidence to sustain more than a tentative exploration of such issues at Stage I.

Suspension of the Native Land Court

76. The Crown admits that pursuant to section 4 of the Native Lands Act 1867 and section 6 of the 1873 Act, it had the power to suspend the Native Lands Acts in proclaimed regions.[38]

77. The Crown admits that it suspended the Native Land Court in the Bay of Plenty and Taupo regions between August 1873 and February 1877. It denies that there was anything improper in the suspension of the Court.

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36 Wai 257, paras 6.3 and 7; Wai 1034, para 6; Wai 615, para 13-23.

37 Wai 726, para 43. Wai 443, para 26.

It further denies that the suspension of the Court at that time can properly be regarded as establishing that the Court was an instrument of the Crown.[39]

The Practical Operation of the Court in the CNI

78. The Crown denies that the Native Land Court made no attempt in the nineteenth century to observe tikanga and to allow Māori to exercise tino rangatiratanga. It says further that the Court did provide some opportunity for communal decision-making by CNI Māori, and would often adjourn hearings of the Court at the request of claimants. This was to enable them to resolve their differences. The Crown says further that it was generally the practice of the Court to accept the list of names provided for titles, subject to no objections being made.[40]

79. The Crown denies that generally the Native Land Court favoured those CNI Māori prepared to sell their land. It also denies that the Court generally ignored the decisions and views of Māori, including Māori Komiti. It says further that whether, and to what extent, the Native Land Court allowed the Crown, on partition, to choose which land was allocated to it, is an issue for any Stage I Tribunal inquiry.[41]

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38 Wai 996, para 7.7(g).

39 KFSC claim, paras 14 and 14.4.4.

40 Wai 445, 781, 786, 787, 832, para 8(ii); KFSC claim, para 12.9.

41 KFSC claim, para 12.9(b); see also para 13.11.

Court Costs

80. The issue of court costs is raised in pleadings.[42] The Crown admits the Native Land Court hearing fees were £1 per day and that such hearing fees could, at the discretion of the Judge, be a charge on the land. (Section 62, Native Lands Act 1865). The Crown says further that each item listed in section 62 cost £1 (at the discretion of the Judge) and that generally an unopposed claim before 1873 would have cost £3. It says, further, that witness fees were 20 shillings per witness from 1880.[43]

81. The Crown admits that relatively protracted Native Land Court hearings were held at Rotorua between 1881 and 1886. It says further that generally the lengthy hearings involved large blocks of land involving relatively large numbers of people.[44] This experience is not typical of the inquiry region.

82. Whether, and to what extent, court costs were a disproportionate burden for CNI Māori is a matter for any Stage I Tribunal inquiry.

Location and Scheduling of Native Land Court Hearings

83. Location of the Native Land Court hearings is raised.[45] The Crown admits that Native Land Court hearings were sometimes held some distance from the relevant localities. The Crown says further that the

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42 Wai 257, para 7.7; Wai 1034, para 6.7; Wai 615, para 21; Wai 996, para 7.5.

43 KFSC claim, para 12.3.3.

44 KFSC claim, para 13.4.10.

45 Wai 257, para 7.7; Wai 996, para 7.6; Wai 1034, para 7.6.

Native Land Court in the nineteenth century sat at Maketu, Whakatane, Matata, Taupo, Opotiki, Ohinemutu, Cambridge and Tauranga. The extent to which CNI Māori were prejudiced by the location of the hearings and the hearing dates is an issue for any Stage I Tribunal inquiry.[46]

Survey Costs

84. The Crown admits that survey costs were potentially a burden for CNI Māori and, in particular, a burden for non-sellers when a block was partitioned between non-sellers and those wishing to sell. The Crown also admits that some alienation of land in the inquiry region is likely to have occurred in order to meet the costs of survey. The Crown states further that the extent to which survey costs were a disproportionate burden for Māori in the CNI, and the extent to which there was alienation of land in order to meet survey costs, is an issue for any Stage I Tribunal inquiry.[47]

85. The Crown states further that the more appropriate way to measure survey costs is to ascertain the proportion of survey costs relative to the value of the block, as demonstrated by sale proceeds and revenue from such sources as timber cutting rights.

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46 Wai 664, para 19, Wai 726, para 41(d); KFSC claim, para 12.3.1; Wai 996, para 7.6; Wai 1034, para 7.6; Wai 257, para 7.7; Wai 443, paras 25-26.

47 Wai 18, 114, 500, para 30; Wai 257, para 7.5; Wai 1034, para 6.4; Wai 996, para 7.3 and 7.4.

86. Consideration of survey costs will require examination of the relevant legislative framework affecting each representative example.

Partition

87. The Crown admits that there was extensive partitioning of CNI Māori land, particularly in the nineteenth century. This often involved partitioning out Māori interests acquired by the Crown. It also reflected decisions by communities of Māori owners to divide their interests.[48]

Fragmentation of Title

88. The Crown adopts Sir Hugh Kawharu's description of the term "fragmentation" to mean the "result of the state of title through rights of succession over several generations".[49]

89. The Crown admits that in principle fragmentation can lead to the alienation of land because cultural attachment to the land and connections with the broader community of owners has, for some reason, diminished and the individual shares may be seen as of little economic value. The Crown further admits that the problem of fragmentation created considerable administrative difficulties for some communities, which did impact on their ability to deal with their lands and may have been a factor in sales in some cases.[50]

1. _____

48 Wai 257, para 8.8.

49 I H Kawharu, Māori Land Tenure (Oxford 1977), pp 102-108

50 KFSC claim, para 12.1(c) and para 13.8.

NATURAL RESOURCES

Management of Environmental Impacts

90. As the relevant report has only just been received, the Crown has not had an opportunity to respond to the claims made at this time. It also notes that the balance of the claims are not particularised, as the draft report was not available at the time the draft statements of claim were filed.

91. The issue is raised, in some form, by a number of draft statements of claim.[51]

Waterways

92. The claims and evidence available at the time of drafting this document did not disclose sufficient detail for the Crown to respond at this time about the environmental status of the waterways and rivers.

93. The issue is raised, in some form, by a number of draft statements of claim.[52]

Ownership claims are denied

94. Where ownership of the waterway or water is claimed, the Crown denies the allegations.

1. _____

51 Wai 443, para 31; Wai 1034, para 10.1; Wai 445, 781, 786, 787 and 832, para 10; Wai 257, para 14; Wai 664, paras 126-7; Wai 996, para 3.1.

52 Wai 1034, para 8; Wai 615, para 26; Wai 996, para 9; Wai 257, para 13; Wai 1032, para 17-18.

95. The Crown notes the ongoing settlement negotiations over lakes in the Rotorua region and the previous reports of the Tribunal into a number of the significant rivers in the areas. This is addressed further in the section below regarding claims which have been considered or settled.

Geothermal Resources

96. A number of claims have been made within the CNI inquiry process in relation to geothermal springs and more broadly to geothermal resources.[53]

97. In relation to claims made to particular springs, the Crown submits that these raise questions in relation to the alienation history of the particular piece of land. These claims should be considered individually. Such inquires may not be suitable for the Stage I process.

98. In relation to wider claims being made to the ownership of the geothermal resource, the Crown denies that the Geothermal Energy Act 1953 and section 354 of the Resource Management Act 1991 are in breach of the principles of the Treaty of Waitangi.[54]

1. _____

53 For example Wai 1032, paras 14-16.

54 KFSC claim, para 22.3.1.

CENTRAL NORTH ISLAND ISSUES

THE FENTON AGREEMENT AND THE THERMAL SPRINGS ACT 1881

General Contentions

99. The Crown admits that there may be valid Treaty claims and historic injustice arising from land transactions relating to the Crown's administration of land under the Thermal Springs Act 1881. The Crown states further that it has, on at least two previous occasions, provided compensation for these grievances. These are discussed in the section below addressing claims which have been considered or settled.

100. At this point, some particular matters are noted.

Relevant Particulars of Claims Settled

101. The 1948 Myers Commission, and the inquiry of Chief Judge Jones of 1935, concluded that Ngāti Whakaue had suffered loss by reason of the mismanagement of the leasing administration under the Thermal Springs Act 1881, and that there had been inadequate consideration for the sale of the Pukeroa Oruawhatua Block to the Crown. In 1954 the Crown paid £16,500 following the recommendation of the Myers Royal Commission.

102. In 1993, as a settlement of claim Wai 94, the Crown transferred railway reserve land (described in Addendum B to that Deed of Settlement) to Pukeroa Oruawhatua Holdings Ltd (owned by the Pukeroa Oruawhatua Trust) on behalf of Ngāti Whakaue. If necessary, the Crown will refer at the hearing to the Deed of Settlement.

Ancillary Promises to the Fenton Agreement

103. In addition to the elements of the Fenton Agreement relating strictly to the operation of land tenure, ancillary promises were made. For example, paragraph six of the Fenton Agreement records the "Māori sick are to be admitted to the Hospital without payment". The Agreement related specifically to hospital treatment without charge. The Crown denies the formulation of the promise in the KFSC claim.[55]

1. _____

[55] KFSC claim, paras 15.12.1-2.

PUBLIC WORKS

General Contentions

104. There are five matters to assess in particular when considering public works acquisitions by or on behalf of the Crown in this region:

104.1 Was there consultation and a proper process?

104.2 Was compensation payable, and if so, was it paid?

104.3 How was the particular site selected? Were other sites considered?

104.4 What forms of tenure were considered for the public use of the land? Were alternatives to outright acquisition considered?

104.5 Were the relevant landowners left with sufficient lands at the time of public works takings for their present and reasonably foreseeable future needs?

105. The Crown did acquire a range of properties for public works purposes in the inquiry region.[56] In the Crown's view, the public works issue will be difficult to address generically with representative examples. It will be difficult to select examples that are representative. If the Tribunal agrees that these are claim specific issues the matter should be addressed in any Stage II inquiry.

1. _____

[56] See the Appendix One to this document for a discussion of particulars.

DEVELOPMENT SCHEMES

General Contentions

106. This issue has been included in the CNI specific issues for two reasons:

106.1 although development schemes have operated in various parts of New Zealand, their initial development and use is a particular feature of this region (especially the Rotorua district);

106.2 the development schemes put into operation in this region are important to any understanding of the overall position of the affected Māori communities through to the present time.

107. There were a number of development schemes in the CNI region. In any Stage II inquiry, each scheme could be considered on its merits. For any Stage I inquiry, a generic level of inquiry should be formulated. The Crown's present view is that this will be a difficult task given the extent of variation in the schemes' actual application.

108. There is insufficient detail provided in the draft research and statements of claim for the Crown to respond further at this point.[57] For example, the Crown is unable to plead to the allegation that some 102,722 ha of the Rotorua District was made subject to a Part XXIV Scheme.[58] There is no source provided for the data in this allegation.

1. _____

[57] This issue is raised in a number of draft statements of claim. Wai 445, 781, 786, 787 and 832, para 9 (iv); Wai 996, para 3.1; Wai 1032, para 19.

[58] KFSC claim, para. 6.1.7(d).

SOCIO-ECONOMIC ISSUES

General Contentions

109. The Crown contends that the issue of how far historical land alienation, poverty or other factors have directly caused deprivation to modern CNI Māori (i.e. the cause and effect claims) should not be addressed at Stage I of this inquiry. A number of claims make reference to this.[59]

110. The Crown contends that the Tribunal should adopt the same approach as that followed by the Tribunal in the Gisborne Inquiry where this complex issue was deferred.

111. The Crown denies the simple allegation that land transfer by CNI Māori to the Crown has caused Māori to be "entrapped in poverty."[60]

1. _____

59 Wai 1034, paras 10.1 and 12.3; Wai 443, para 31; Wai 257, para 15.

60 KFSC claim, para 6.5.

FORESTRY

General Contentions

112. The principal generic report for forestry contains no commentary at this time and accordingly, the Crown is unable to plead to those allegations which are made. [61]

Claims in the Urewera inquiry

113. In relation to any claims which have been or may be made by Ngāti Manawa or Ngāti Whare about forestry issues the Crown notes that the issues relating to the milling of indigenous forest are primarily in the Urewera District and are the subject of a week of hearing in the Urewera Inquiry in September 2004. In light of that examination of these issues, it would seem a lower priority to devote resources of this Tribunal in any Stage I inquiry to this matter.

1. _____

[61] Wai 445, 781, 786, 787 and 832, para 11(ii); Wai 257, paras 9 and 19; Wai 996, para 3.1.

CLAIMS WHICH HAVE BEEN CONSIDERED OR SETTLED

General Contentions

114. Stage I of this inquiry is to consider generic issues raised within the inquiry district. There is a limited time for this consideration, given the size of the inquiry district. Accordingly, the Crown contends that where issues have been subject to previous consideration by panels of the Tribunal, or where consideration has been given to similar issues, they should not be inquired into at Stage I.

115. Similarly, there have been a number of Treaty settlements with iwi and the return of land to Māori ownership. These do not need to be considered further. The Crown envisages a further significant settlement will be initialled prior to the Stage I hearings beginning. The Crown contends that the historical issues relating to settlement negotiations about 14 lakes in the Rotorua region, should not be inquired into. The parties have made substantial progress towards an agreement on the historical background to the settlement and it is appropriate that any lakes claims are dealt with through that process.

Claims which have been considered by the Waitangi Tribunal

116. The following reports produced by the Tribunal address both specific issues and those with wider application.

Wai 4 - Report of the Waitangi Tribunal on the Kaituna River Claim

117. The claim was filed on behalf of Ngāti Pikiao, and concerned the Kaituna River pipeline scheme, a project developed to address pollution affecting Lake Rotorua. The claimants alleged that the pipeline project was contrary to the principles of the Treaty of Waitangi and asked that it be stopped.

Wai 153 - Preliminary Report on the Te Arawa Representative Geothermal Resource Claims 1993

118. In November 1992, the Tribunal acceded to an application by certain Te Arawa claimants to accord urgency to their claims, which concerned their interest in a geothermal resource in the Rotorua district.

119. The report is preliminary only and as such, the Crown accepts that the Tribunal will have to decide whether to allocate time in Stage I to look at geothermal matters further. It is the Crown's view that in the context of a generic inquiry, there is little efficacy in revisiting matters already considered by this report.

Wai 212 - Te Ika Whenua Rivers Report

120. Claim Wai 212 concerned claims by the hapū of Te Ika Whenua in relation to the Rangitaiki, Wheao, and Whirinaki Rivers and their tributaries. It built on the Te Ika Whenua energy assets claim and, like that claim, was severed from Te Ika Whenua's original claim and accorded urgency by the Tribunal.

War and Confiscation Inquiries

121. This issue arises for what are, in the context of the whole inquiry district, relatively small areas within the region. Although acknowledging the seriousness of the issue, the Crown's general contention is that other panels of the Tribunal in other inquiries have investigated the events. Notably, the Urewera and Tauranga inquiries.[62]

122. The Crown notes that in the Urewera Inquiry (Wai 894) that it has accepted that the use of the New Zealand Settlements Act in the Eastern Bay of Plenty was a breach of the Treaty of Waitangi.[63]

123. The Crown accepts that the wars of the 1860s may form an important part of the broader historical context for some of the Central North Island claims. The Crown contends that the impact of the wars should be considered within the various other issues in this inquiry (such as land alienation) to which the wars are said to have contributed.

Claims in the Urewera and Tauranga Inquiry Districts

124. The claims by Ngāti Haka Patuheuheu regarding the illegal waging of war against Ngāti Haka Patuheuheu, 1864 and 1872, and the alleged forced re-settlement at Te Putere are being dealt with by the Urewera Inquiry (see sections 3 and 4 of the Urewera Statement of Issues).[64]

1. _____

62 Wai 257; Wai 664; Wai 996.

63 Wai 894 #1.3.4, para 3.103 of the Statement of Issues (Stage I).

64 Wai 726, paras 33-36.

125. The war claims of Ngāti Whare (Wai 66) are also being dealt with by the Urewera Tribunal.[65]

126. The Crown notes the general acceptance by the Waitaha claimants (Wai 664) that they do not expect the CNI Tribunal to reconsider Waitaha's claims as they relate to the Tauranga Moana District, albeit that Waitaha requests that the CNI Tribunal take into account what occurred in the Tauranga Moana District.[66]

Other claims insufficiently particularised on this issue

127. The Crown has insufficient knowledge of, and insufficient particulars are provided in relation to, the matters discussed in Wai 1120, Wai 996 amended statement of claim for Ngāti Rangitihi, 13 August 2004 at paras 6.1 and 6.2. The Crown does not plead to those paragraphs at this time. It notes further that the Ngāti Rangitihi statement of claim indicates that further particulars will be provided in the future.

Claim specific matters remaining on this issue

128. To the extent there are specific matters about events connected with war and confiscation in this inquiry region remaining to be inquired into the Crown contends this would be appropriately addressed at any Stage II inquiry.

1. _____

65 Wai 66, paras 32-43.

66 Wai 664, para 7.

Claims which have been settled

Wai 32 - The Ngāti Rangiteaorere Claim Report 1990

129. Claim Wai 32 was received on 15 April 1987. It was lodged by Te Aho Welsh and others of Ngāti Rangiteaorere and alleged that they had been prejudicially affected by the Crown's granting of tribal land at Te Ngae to the Anglican Church.

130. In 1991, Ngāti Rangiteaorere entered into a full and final settlement of their claims under Wai 32, with the exception of geothermal aspects (now included in Wai 153) and the Rotorua Lakes Claim (Wai 240).

Wai 33 - The Pouakani Report 1993

131. In March 1987, John Paki lodged a claim with the Waitangi Tribunal concerning the Māori-owned Pouakani B9B block and adjoining Crown lands. The Crown notes that these claims were settled and Tribunal jurisdiction to enquire further into these claims was removed, through the Pouakani Claims Settlement Act 2000.

Kiore Whakakau Claim

132. The Crown and the Wai 231 claimants signed an agreement on 15 February 1992 concerning Wai 231. The agreement is a full settlement of the Wai 231 claim.

Ngāti Whakaue settlement

133. The Ngāti Whakaue settlement settles a number of Ngāti Whakaue's historical claims. The Crown is prepared to provide further information to the Tribunal on the scope of matters settled if necessary.

Rotoma settlement

134. This settlement was reached in 1996. Paragraph 1 of the Rotoma settlement agreement states "This deed constitutes the entire agreement between the parties and will form the full and final settlement between the Crown and the claimants of all aspects of the Wai 90 claim and any other claim arising out of Wai 90 whether at law or otherwise."

Ngāti Turangitukua settlement

135. This settlement was given effect by the Ngāti Turangitukua Claims Settlement Act 1999. The Act settles all claims relating to any loss of interests in land or natural resources made by any Ngāti Türangitukua claimant relating to loss between 1964 and 1992. This included Wai 84 (the Turangi Township claim). Excluded from the settlement were all claims (other than the ancillary claims) relating to land and other resources outside the Turangi Township in respect of losses also suffered by other hapū of Ngāti Tuwharetoa.

136. An Ancillary Claims Deed (which was signed in December 1998) enabled the Ancillary Claimants to pursue legal remedies in respect of the Ancillary Claims.

Claims in advanced negotiations

Rotorua Lakes

137. Claims are made to the lakes in the Rotorua region by the KFSC claim draft statement of claim.[67]

138. Fourteen of these lakes are the subject of ongoing negotiations with the Te Arawa Māori Trust Board. An Agreement in Principle was signed between the Crown and the Te Arawa Māori Trust Board on 11 December 2003. A Deed of Settlement is expected to be initialled and ratified later this year.

139. The lakes included in this settlement are Rotoehu, Rotoma, Rotoiti, Rotorua, Okataina, Okareka, Rerewaakaitu, Tarawera, Rotomahana, Tikitapu, Ngahewa, Tutaeinanga, Opouri/Ngapouri. These 13 lakes were vested in the Crown by the Native Land Amendment and Native Land Claims Adjustment Act 1922. Lake Ngakaro/Okaro was also vested in the Crown in 1922 but is now vested in the Rotorua District Council.

140. Lake Rotokakahi is not part of the settlement negotiations. It is in Māori ownership and controlled by the Lake Rotokakahi Board of Control.

141. The negotiations are intended to settle all of Te Arawa's historical claims to the lakes and only those claims. This means every claim or part of claim made at any time by Te Arawa or a representative entity of Te Arawa that arises from all or any of the fourteen lakes. It is anticipated it

1. _____

[67] KFSC claim, para 21.

will also settle all claims arising from any remaining annuity issues arising from the lakes in relation to the Te Arawa Māori Trust Board.

142. Insofar as the claims regarding indigenous fish and the introduction of foreign fish species arise from the fourteen lakes, they will be settled by the present Lakes negotiations.

TO: The Registrar of the Waitangi Tribunal

AND TO: The parties by their Counsel

APPENDIX ONE – RESPONSES TO SPECIFIC ISSUES

143. Where present research has allowed, the Crown has responded to a number of the specific allegations made in the claims filed.

144. Where specific allegations are not pled to, the Crown denies them at this time. A number of allegations cannot be answered given the draft state of the present research in this inquiry. The Crown refers to its statements above, regarding concerns over the need for the Tribunal to closely examine the representativeness of examples used by claimants.

Crown Purchasing

145. The Crown admits, by way of example, that it purchased the following blocks:

145.1 Te Puke (of 24,391 acres approx.) in 1878;

145.2 Kaingaroa No. 1 (of 104,480 acres approx.) in 1880;

145.3 Kaingaroa No. 2 (of 91,529 acres approx) in 1881;

145.4 Pukeroa 2 (of 20,388 acres approx) in 1881;

145.5 Allotment 63, Parish of Matata (of 35,916 acres approx.) in 1883;

145.6 Waitahanui No. 1 (of 26,407 acres approx.) in 1883;

145.7 Okoheriki (of 19,000 acres approx.) in 1884;

145.8 Runanga No. 1A (of 34,057 acres approx) in 1884;

145.9 Kaikokopu (of 14,676 acres approx) in 1884;

145.10 Tauhara Middle No. 4 (40,276 acres approx.) in 1887;

145.11 Kaimanawa 1A (of 19,548 acres approx) in 1887;

145.12 Kaimanawa 2 (of 53,360 acres approx) in 1892;

145.13 Kaimanawa 1B (of 28,700 acres approx) in 1894;

145.14 Kaimanawa 3A (of 18,786 acres approx) in 1894);

145.15 Rotomahana Parekarangi No. 6 Block subdivisions (totalling 26,533 acres approx.) in 1895;

145.16 Mangorewa Kaharoa (totalling 14,185 acres approx.) in 1896;

145.17 Pohokura (40,676 acres approx.) in 1898;

145.18 Rotomahana Parekarangi No. 6A2 Block (55,752 acres approx.) in 1899.

146. The Crown admits that section 6 of the Native Land Amendment Act 1877 entitled the Crown to apply to the Native Land Court to partition out shares purchased by the Crown, dividing blocks into those held by the Crown and non-sellers.[68]

1. _____

[68] Wai 996, para 7(i).

147. The Crown denies that it adopted a land purchase strategy of seeking to acquire lands between Te Urewera and Te Rohe Potae (of Maniapoto).[69]

148. The Crown admits that Crown purchase officers, Davis and Mitchell, in the 1870s, were put on a bonus for the areas they managed to lease or purchase for the Crown (respectively 100 pounds per 100,000 acres leased, or 200 pounds per 100,000 acres purchased).[70]

Use of monopoly powers of purchase and adequacy of prices paid

149. As discussed above, the Crown admits that in 1878 it proclaimed as under negotiation pursuant to the Government Native Land Purchase Act 1877 in excess of one million acres in the CNI. The Crown estimates the total acreage to be approximately 1,329,688 acres, including 209,809 acres in the Taupo district.

150. The blocks included *inter alia* Pukahunui, Paengaroa, Te Puke, Kaikokopu, Parekarangi, Tumunui and Ratoreka, Paeroa, Rotomahana, Rotohokahoka, Kaingaroa, Tauhara Middle and Tatua West. The Crown says further that there was a significant Crown review in 1881 of the lands under negotiation and advances paid in 1880. This resulted in the Crown abandoning the purchase of some blocks, including Tatua West, Runanga No. 1 and Paeroa.[71]

1. _____

69 Wai 726, para 37(a).

70 KFSC claim, para 15.1(b).

71 KFSC claim, para 15.8.5.

151. The Crown admits that in 1881 it completed its purchase of the 13,250 acres in the Tauhara Middle Block for £965 and that this equates to 1/5d per acre.[72]

152. The Crown admits that in 1880 it purchased Kaingaroa No. 1 Block for £7,754 and Kaingaroa No. 2 Block for £6,659.[73]

153. As stated above, the Crown admits that generally it sold land to settlers at higher prices than it paid when it bought the land from CNI Māori. It denies that this was exploitation or inherently wrong.[74] The Crown states further that:

153.1 in the nineteenth century, Government revenue derived from land acquisition and sale policies was seen as an appropriate instrument for ensuring that the settlers who benefited paid the cost of subsidised immigration and infrastructural development.

153.2 increasingly, from the 1870s, the Crown offered different forms of tenure for settlers taking up land purchased by the Crown from CNI Māori, and which did not involve a cash sale from the Crown to settler.

Purchase Practices

154. The Crown admits:

1. _____

72 KFSC claim, para 15.10.4.

73 KFSC claim, para 15.10.3.

74 KFSC claim, para 15.11.

154.1 in the case of both Rangiuru and Te Puke, the Crown did not agree to requests from the relevant CNI Māori owners to accept refunds of advances made, and to abandon the transactions. In the case of Rangiuru, lease negotiations were transformed into purchase negotiations, and further deposits paid. In 1881 the Native Land Court excised a portion of the block equivalent in value to the combined advances of rent and deposits of purchase money that the Crown had paid.

154.2 in the case of Te Puke, agreement was reached with Waitaha that the agreement that they had sought to repudiate be amended and the price to be paid by the Crown increased, as well as the acreage of the reserves.

Native Fraud Prevention Act 1870

155. The Crown denies that arms and liquor made up a substantial portion of the advances made by Mair relating to the Kaingaroa Block, and contrary to the Native Lands Fraud Prevention Act 1870.[75]

Leasing with or without an option to purchase

156. As mentioned above, the Crown admits that in September 1874 it proclaimed a relatively large amount of CNI Māori land in the Rotorua, Taupo and Kaingaroa districts, as being subject to Government lease pursuant to section 3 of the Immigration and Public Works Act

1. _____

[75] Wai 726, para 37(h).

Amendment Act 1874. The blocks proclaimed included Tumunui, Parekarangi, Ratoreka, Rotomahana, Pokohu, Kaikokopu, Whakarewa, Runanga 1, Ruanga 2, Paeroa, Lower Kaingaroa, Pukahunui, Oruanui, Tauhara Middle, Tatua and Tatua West. The Crown estimates the total acreage to be approximately 906,142 acres. The Crown further admits that section 3 of the Immigration and Public Works Act Amendment Act 1874 prohibited private parties from acquiring any interests in the listed blocks proclaimed under the legislation.

157. The Crown denies that it improperly withheld lease payments from Ngāti Manawa in respect of Kaingaroa in 1875. It further denies that Ngāti Manawa were forced to sell Kaingaroa 1 in 1880.[76]

158. The Crown denies that under pressure from the Government Minister, Ngāti Whakaue and Tuhourangi agreed with the Crown to lease an area now forming part of Rotorua City and surrounds.[77]

159. The Crown denies that it can be said to have "procured" a Native Land Court award of Pukeroa Oruawhata No 1 primarily to Ngāti Whakaue rather than to those hapū opposed to the leases.[78]

160. In relation to the leasing and subsequent purchase of the Parekarangi Block, the Crown says:

1. _____

76 KFSC claim, para 15.14.2; Wai 257, paras 6.2(f) and 6.4.

77 KFSC claim, para 10.1.1.

78 KFSC claim, para 10.1.2.

160.1 it admits that there were protests from Tuhourangi in 1873 regarding the leasing of the Parekarangi Block, and that such protests related to Crown Purchase Officers dealing with Te Manihera;

160.2 it admits that the Parekarangi Block was gazetted as a Government lease under section 3 of the Immigration and Public Works Amendment Act 1874, in September 1874;

160.3 it admits that the Block was proclaimed in 1878 as being under negotiation by the Crown for purchase pursuant to the Government Native Land Purchase Act 1877;

160.4 it denies that the Parekarangi Block is a case where the Crown ignored Māori protest.

161. The Crown says further that:

161.1 it did not pay any further deposits on the Parekarangi Block after May 1874, and did not complete its purchase of that block until 1890;

161.2 that McLean reminded Government Land Purchase Officers, including Davis and Mitchell, in March 1875, that it was not Government policy to negotiate for land with individuals.[79]

1. _____

79 KFSC claim, para. 15.1.

Reserved areas from land sold

162. The Crown admits that the land set aside as reserves in the Kaingaroa No. 1 Block of approximately 104,480 acres, was 2,735 acres (Oruatewehi, Karatia and Rangipo). It further admits that Ngāti Manawa have long complained about a lack of reserves in Kaingaroa. It says further, that there was a settlement with respect to Motumako grievances in 1981 with the return of Whirinaki 1 section 4A and the amalgamation of the Nahuinga Block.[80]

163. The Crown admits that, in respect of the Te Puke Block, reserves of 1,500 acres in total were provided for – i.e. Te Puke 1 (1,000 acres) and Te Puke 2 (500 acres). The Crown further agrees that it was not until 1883 that a hearing into the ownership of the Te Puke reserve was held. The result was that the Court subsequently divided the reserves, granting 1,200 acres to Waitaha and dividing the remaining 300 acres between three other hapū.[81]

164. The Crown admits that it purchased the Oruatewehi No. 2 Reserve (44 acres) out of the Kaingaroa No. 1 Block in 1928, and that between 21 February 1927 and September 1928 it prohibited the alienation of the block to anyone but the Crown.[82]

1. _____

80 KFSC claim, para 15.29; Wai 257, para 4.4.

81 Wai 664, paras 70 and 72.

82 Wai 726, para 37(p).

The Native Land Court

165. As noted above, the Crown admits that there were complaints from Māori in the CNI about the operation of the Native Land Court. The Crown admits that a delegation of Arawa Chiefs travelled to Wellington in 1874 to lay grievances before the Government.[83]

166. The Crown denies that it was not until 1926 that it made the law changes necessary to permit Māori to raise finance on land in Māori ownership. It states further that it will refer at any hearing to the Native Land Laws Amendment Act 1895, the Native Land Laws Amendment Acts of 1897 and 1898, the Māori Lands Administration Act 1903 and the Māori Land Settlement Act 1905.[84]

167. The Crown denies it excluded Māori from participation in the Advances to Settlers Scheme created in 1894.[85]

The Practical Operation of the Court in the CNI

168. The Crown admits that a list containing a reduced number of grantees was drawn up for the Kaingaroa No. 1 Block in 1880. It denies that Mair was responsible for this. It states further that examples of this occurring were limited, and that this was not the general experience in CNI.[86]

1. _____

83 KFSC claim, para 13.3.4; Wai 726, para 38; Wai 615, para 13.

84 KFSC claim, para 9.4.

85 KFSC claim, para 9.5.

86 Wai 726, para 41(c).

Court Costs

169. The Crown admits that the Rotomahana-Parekarangi Blocks were first investigated by the Native Land Court in 1882 and that there was a rehearing in 1887 under a special Act of Parliament.[87]

Survey Costs

170. As noted above, in assessing survey costs, the relevant legislation must be considered carefully.

171. The Crown admits that under the Native Lands Act 1862 (section 13) and the Native Lands Act 1865 (section 25) blocks of land coming before the Court had to be surveyed. It also admits that under sections 38, 68 and 71 of the Native Lands Act 1865, the Māori owners were to pay the costs of survey. The Crown states further that often the cost of survey would be reflected in the purchase price paid for the land (or equivalent rentals).[88]

172. The Crown says that under section 68 of the Native Lands Act 1865 the Native Land Court was empowered to order that the Crown grant be delivered to the surveyor who was entitled to hold the same under lien until the survey fees were paid. This section was revoked by section 31 of the 1867 Act.[89]

1. _____

87 KFSC claim, para 13.5.3.

88 Wai 996, para 7.7(c).

89 Wai 996, para 7.7(d).

and reasonable, but not exceeding 5% per annum. The interest was to commence one year after the order, and to accrue for no longer than five years.

177. The Crown admits that in 1880 it purchased the approximate 103,393 acres of Kaingaroa No. 1 Block for £7,754, or 1/6d per acre. It also admits that in 1881 it acquired the 91,529 acres (approx.) of Kaingaroa No. 2 Block for £6,659, or 1/5½d per acre.[92]

178. The Crown denies that the Kaingaroa example demonstrates that survey costs were excessive.

179. The Crown denies that a survey lien on Paeroa East Block equivalent to 6% of the value of the land (£586) can be described as excessive. It queries whether the date of 1861, as pleaded, is correct.[93]

Partitions

180. The Crown admits the following examples:

180.1 in 1881 Pukahunui Block was partitioned and 5,500 acres, known as Pukahunui No. 1, awarded to the Crown;

180.2 in 1881 Rerewhakaitu Block was partitioned to create Rerewhakaitu No. 2 of 9,000 acres awarded to the Crown;

1. _____

92 KFSC claim, para 16.2.2.

93 KFSC claim, para. 16.6.1.

173. The Crown admits that under section 28 of the Native Lands Act 1862 there was provision for the Crown to pay the survey costs and to recover that expenditure from the owners. It also states that under section 39 of the Native Lands Act 1873, Māori were required to satisfy the Inspector of Surveys that they were able to pay for surveys in cash or willing to convey to the Crown the equivalent value in land. It states that under section 73 of the Native Lands Act 1873, the Crown was empowered to define a portion of the land to be transferred to the Crown to discharge all fees owing in respect of that land, or any other land owned by the same person or tribe.

174. The Crown admits that under section 14 of the Native Lands Act 1866 that there was power to fix a fee at 6 pence per acre, payable for examining and recording plans supporting every certificate of title or Crown grant.[90] The Crown states further that this regulation-making power was never invoked.

175. The Crown admits that the Native Land Amendment Act (No 2) 1878 (section 7) allowed land to be transferred directly to private surveyors to meet survey debts.[91]

176. The Crown admits that pursuant to section 66 of the Native Land Court Act 1894, the Native Land Court was empowered to charge interest on charging orders securing certified survey charges at a rate it deemed fair

1. _____

90 KFSC claim, para 16.2.2.

91 Wai 996, para 7.7(k)