WAI 1750 – NORTH-EASTERN BAY OF PLENTY DISTRICT INQUIRY

HEARING WEEK 5

HELD AT KUTARERE MARAE, ŌPŌTIKI

MONDAY 25 AUGUST 2025 - FRIDAY 29 AUGUST 2025

Tribunal:	Judge Michael Doogan Professor Tom Roa Dr Robyn Anderson Dr Grant Phillipson Prue Kapua Basil Morrison
Crown Counsel:	Mr Craig Linkhorn Mr Daniel Hunt Kura Moeahu
Claimant Counsel:	Ms Karen Feint KC Mr Michael Sharp Mr Tony Sinclair Mr Bryce Lyall Ms Raewyn Clark Ms Ihipera Peters Ms Annette Sykes Ms Caitlin Fellowes Ms Eve Rongo Ms Matthew Kennelly Ms Tania Te Whenua Mr Preston Rawiri Ms Kalei Delamere-Ririnui Ms Bobbi Walker Ms Nell Ferrall Ms Tatijana Simon-Larsen Ms Jacki Cole Dr Season-Mary Downs Ms Rox Soriano Ms Meg Lamont-Russell
Interpreter:	[Paiheke McGarvey]
Witnesses:	**Day 1 - [25 Aug 2025]** Rachel Wolfgramm Tania Wolfgramm Peter McBurney

Day 2 - [26 Aug 2025]
Peter McBurney (continues)
Ron Crosby (continues)
Professor Te Kahautu Maxwell
Adriana Edwards
Kate Keita Hudson

Day 3 - [27 Aug 2025]
Tuwhakairiora Williams
Nepia James Tipene
Takaparae Te Rangatira Papuni

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(09:35) JUDGE MICHAEL DOOGAN: (MIHI)

Mōrena koutou. Ma wai e whakawātea tā tātou nohoanga ki te karakia? **We will begin our sitting with a karakia.**

KARAKIA TĪMATANGA

JUDGE DOOGAN:

Tēnā koe e koro. Nāu i whakakākahu tā tātou nohoanga ki te korowai o te Atua, nō reira tēnā koe. E tautoko ana ahau ngā mihi ki a koe, i a Matua Tom. Kei te tirohanga kanohi – ka hoki ngā mahara i te wā o tāku māuiuitanga mai i te wā tuatahi kua tae mai ki konei ahau, nō reira tēnā koe, mō tō awhi, mō tō manaaki, tae atu hoki ki te haukāinga o tēnei marae ataahua. Ngā karangatanga maha o Kutarere. Kei te hōnore nui i a mātou kua tae mai ki konei anō. Nō reira tēnā koutou. **Thank you elder for cloaking our sitting with the cloak of God, so thank you. I endorse the acknowledgements towards you from Elder Tom Roa. And one sees each other again, and remember back to when I was – from the first time that I came here and so I want to thank you for your assistance and care, hospitality including from the home people, the local people on this marae, beautiful marae, and all of the people of Kutarere. It is a great honour for us to come here once again. And so, thank you elder.**

E koro, I still have that tokotoko and a sense of obligation to return it. I flew to Tauranga yesterday so it's still in my car in Wellington waiting another journey here to come back to you. So, it will get here, but thank you.

We've started a little early so we can use the time we have, and I think some counsel may join us online shortly but first, my name is Judge Doogan for those of you who don't know me. If I just introduce the panel I have the privilege to sit with. On my left Ahorangi Professor Tom Roa, who I don't think needs any introduction. And on the – the panel don't like using the terms far left and far right – but without being in any way political, Dr Anderson, one of our historian

members, is to Professor Roa's left and to my right is Prue Kapua, who has extensive experience in Law, Resource Management, and of course more recently with the Māori Women's Welfare League. To my right, Mr Basil Morrison, who has a very distinguished and lengthy career in local government and has a vast experience, and that is government and policy. Unfortunately, our other historian member, Dr Grant Phillipson is māuiui. We are hoping he's able to join us by remote means, but I understand that's unlikely today, but we are hoping he can join us for most of the week through the technology.

So, I will just go to appearance from counsel. Ms Feint, tēnā koe.

(09:40) MS KAREN FEINT KC: (MIHI, APPEARANCE)

Ata mārie e te Kaiwhakawā. Tuatahi, kei te mihi atu ki te haukāinga, e kui mā, e koro mā, tēnā koutou. Tuarua, he mihi nui ki Te Rōpū Whakamana i te Tiriti o Waitangi, e koutou mā. Ko Karen Feint tōku ingoa. He māngai rōia o Ngāti Rua Takenga. Tēnā rā tātou.

I am not sure whether Ms Sykes officer is online, but I need to record apologies for Maia Te Hira who was supposed to be here all week but has suffered a bereavement and will now be at a tangihanga. Ms Sykes is making a cameo appearance tomorrow, I believe, and Ms Cole, who I haven't seen yet, I understand is attending at some point as well. Tēnā rā tātou.

JUDGE DOOGAN:

Tēnā koe Ms Feint. I see we have Ms Delamere-Ririnui online, tēnā koe. Mr Sharp.

(09:42) MR MICHAEL SHARP: (MIHI, APPEARANCE)

Tēnā koutou katoa. Sharp appearing for Wai 2160, Ngāti Muriwai.

JUDGE DOOGAN:

Mr Sinclair.

(09:42) MR TONY SINCLAIR: (MIHI, APPEARANCE)

Tēnā koe te Kaiwhakawā me tō rōpū, e Whakamana te Tiriti. Ki Whakatōhea, ngā uri, ngā hapū ki Ūpokorehe, tēnā koutou, tēnā anō rā tātou katoa. **May it please your Honour and the Waitangi Tribunal and Whakatōhea, to the descendants, to the hapū and to Ūpokorehe, greetings one and all.**. Sinclair appearing, Sir, for Wai 87. Thank you.

JUDGE DOOGAN:

Kia ora Mr Sinclair. Mr Lyall.

(09:43) MR BRYCE LYALL: (MIHI, APPEARANCE)

Ka mihi atu au ki te whare e tū nei, tēnā koe. Ki ngā tāngata whenua, tēnā koutou. Tēnā koe e te Kaiwhakawā, anō hoki ki a koutou ngā mema o Te Rōpū Whakamana i te Tiriti o Waitangi, tēnā koutou. **Greetings to the house that stands here, to the people of this land, greetings. May it please your Honour and the members of the Waitangi Tribunal, greetings.**

Your Honour, Lyall appearing this morning in person. Ms Swedlund is joining us online and we are here for Te Ūpokorehe claimants, Wai 1092, Wai 1787, Wai 3272 and for Ngā Ariki Kaiputahi, interested parties, the claims are Wai 499 and Wai 874. Ngā mihi.

JUDGE DOOGAN:

Thank you Mr Lyall, Ms Swedlund. Ms Clark.

(09:43) MS RAEWYN CLARK: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, ngā mema o Te Rōpū Whakamana i Te Tiriti o Waitangi, ngā rōia, ngā haukāinga, tēnā koutou katoa. **May it please your Honour and the members of the Waitangi Tribunal. To Counsel and the local people, greetings all.**

Counsel's name is Ms Clark. I am appearing with my friend Ms Walker who is a little way away from me, ready to present with the first witnesses this morning. We are appear on behalf of a number of claims, Wai 1827, who will present this

morning, the descendants of Te Rangihaerepō. Other Wai 1920 claim, the Economic Development Claim, also of Ms Tania and Rachel Wolfgramm and others. Wai 1781, the hapū of Ngāi Tamahaua, Tracey Hillier being the named claimant. Wai 1795, Tāwhirimatea Williams on behalf of himself, his whānau and Ngāti Rua hapū. And finally, also, the whānau Mokomoko, Wai 203, thank you Sir.

JUDGE DOOGAN:

Thank you Ms Clark, Ms Walker.

(09:45) MS IHIPERA PETERS: (MIHI, APPEARANCE)

Tēnā tātou. E te rangi kai tāmiro o te whenua ki te rangi, te rangi ki te whenua, tēnei te reo whakamanawa atu ki a koe e koro. Ki te hunga kua riro atu ki te rae wharangi o Paerau, he mamae aroha ki a rātou. Hoki wairua mai ki a tātou, te hunga kōhurihuri, tēnā tātou katoa. Tēnā koutou e te haukāinga, āe, i pōhiri mai kia whakatau mātou i runga i te aroha, i runga i te ngākau mahaki, i runga i ēnei whenua taurikura, anō koutou, tēnei te mihi nui ki a koutou katoa. **Greetings all to binding the heaven and earth and the earth to the heads and so I want to thank you very much to the elder and to those who have departed, passed away and so we pay tribute to them. Return spiritually to us, those living, greetings, greetings all. And greetings to the local people who greeted us formally with love and a humble on these precious lands that belong to you and so greetings to you all.**

E te Kaiwhakawā, tēnei te mihi matakuikui ki a koe, otirā koutou katoa, ngā pou whiriwhiri i runga i tēnei rōpū Whakamana i Te Tiriti o Waitangi, tēnei te mihi nui. Ki a koutou, otirā ki ngā kaihāpai o tēnei nohoanga, o tātou kaiwhakahaere hangarau, tō tātou kaiwhakawhiti reo, tēnei te mihi nui ki a koutou katoa. **Your Honour, warm greetings to you and all of the members on this panel of the Waitangi Tribunal, greetings all to you. And to the supporters of this sitting, our IT experts, our interpreter, and so greetings to everyone.**

Ko Mrs Peters tōku ingoa. E whakakanohi ana i te kerēme, te hapū o Ngāti Patumoana, ko Wai 1775 tēnā. Tēnā tātou. **My name is Mrs Peters,**

and I am representing the claim hapū Ngāti Patumoana Wai 1775, thank you.

JUDGE DOOGAN:

Tēnā koe, Mrs Peters. **Thank you Mrs Peters.**

(09:46) MS CAITLIN FELLOWES: (MIHI, APPEARANCES)

Tēnā koe e te Kaiwhakawā, otirā tēnā koutou e Te Rōpū Whakamana i te Tiriti o Waitangi. E te whare, tēnā koutou katoa. Ko Caitlin Fellowes rāua ko Rox Soriano ēnei. He rōia o Mahony Horner Lawyers. **May it please your Honour and greetings to the Waitangi Tribunal. To the house, everyone in the house, greetings all. Caitlin Fellowes and Rox Soriano speaking. Counsel from Mahony Horner Lawyers.**

Your Honour, we are appearing on behalf of two clients, Wai 339, a claim by Dean Flavell and Miranda Horan on behalf of the Hiwarau C Trust, and Wai 1865, a claim by Miranda Horan and Roslyn Adair Pukepuke, on behalf of the descendants of the original owners of Hiwarau B1B1 and Hiwarau B1B2. Tēnā koutou.

JUDGE DOOGAN:

Tēnā kōrua, thank you.

(09:47) MS EVE RONGO: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā **May it please your Honour.** May it please the Tribunal, counsel's name is Rongo, and I appear alongside Ms Lamont-Russell, and we are here for Ngāi Tai Wai 78. Kia ora.

JUDGE DOOGAN:

Ms Rongo, Ms Russell, tēnā kōrua.

(09:47) MR MATTHEW KENNELLY: (MIHI, APPEARANCE)

Tēnā koe e Te Poho o Tamaterangi e tū nei, ka nui te mihi ki ngā mana whenua o tēnei rohe mō tō koutou manaakitanga, mō tō koutou aroha, tēnā koutou

katoa. Ka nui te mihi ki ngā Taraipiunara o Whakamana o te Tiriti o Waitangi. Ko Judge Doogan, rātou ko Professor Roa, Dr Anderson, ko Mr Morrison, ko Ms Kapua, me Dr Phillipson kāore i kōnei i tēnei. **To Te Poho o Tamaterangi in standing here, greetings. And I want to acknowledge people of this land, and I want to thank you for your hospitality and your love, greetings all. And also, I want to acknowledge the Waitangi Tribunal, Judge Doogan, along with Dr Roa, Dr Anderson, Mr Morrison, Ms Kapua and Dr Phillipson who is not here today.**

Ki ngā kaikerēme, he mihi maioha, he mihi aroha ki a koutou katoa i tae mai i tēnei rā ki tēnei kaupapa nui. Kei te hiahia au ki te mihi ki ngā rōia, koutou me te Karauna hoki, tēnā koutou. Ko Mr Kennelly ahau, te rōia o Te Mata Law. Ko ngā kaikerēme tokorua, ko Takaparai Pāpuni nō Ngāti Ruatakenga me Te Whakatōhea i raro i te kerēme Wai 2066 me Bella Savage mō ngā uri o Hineatua Savage i raro i te kerēme Wai 1789. Kei te hiahia au ki te whakamihi ki a Mr Pāpuni e tū ana hoki i te wharenui i tēnei rā, tēnā koe. Ka tuku kōrero taunaki ia a te Wenerei. Nō reira, tēnā koutou katoa. **And to the claimants, warm greetings to you and to all of you who came today, to this important matter. And I also want to acknowledge the lawyers as well as the Crown. Mr Kennelly, I'm Mr Kennelly, counsel for Te Mata Law. Two claimants, Takaparai Papuni from Ngāti Ruatakenga and Te Whakatōhea for the claim, Wai 2066. Bella Savage on behalf of the descendants of Hineatua Savage, claim Wai 1789. I want to pay tribute to Mr Papuni who will – who stood in the wharenui, meeting house today and he will give evidence on Wednesday and so thank you all.**

JUDGE DOOGAN:

Tēnā koe Mr Kennelly. And online, Ms Te Whenua.

(09:49) MS TANIA TE WHENUA: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, otirā, te Rōpū Whakamana i te Tiriti o Waitangi, to pae rangatira, tēnā koutou. Whenua, te whare, ko aku whānau ka nohonoho i roto i te maru o te whare i tēnei rā, ka mihi ki a koutou katoa. Ki ngā hoa rōia anō hoki, kei te mihi atu au ki a koutou. Ko taku ingoa ko Te Whenua, kei konei

au mō Wai 1511, koirā te kerēme o Ngāi Tamatea ki Waiotahi. E te Tā, ko taku tono atu ki a koe kia whakaae mai kia hono atu au ki tēnei hui o tātou mā runga i te ipurangi mō te wiki ki tō tātou judicial conference anō hoki ka kōrerongia hoki mō te kaupapa o jurisdiction. Tēnā koe. **May it please your Honour and the Waitangi Tribunal, your distinguished panel, greetings. And to everyone in the house, my whānau who are sitting under the shelter of the house, and so I want to thank you, greetings to you all. To my fellow counsel, greetings to you also. My name is Te Whenua, appearing for Wai 1511, it's the claim of Ngāi Tamatea a Waiotahi. I want to seek leave to join this meeting of ours online for the week and also join online to our judicial conference as we will discuss our jurisdiction.**

JUDGE DOOGAN:

Āe. Kia ora, tēnā koe Ms Te Whenua. Mr Rawiri. **Yes, thank you Ms Te Whenua.**

(09:50) MR PRESTON RAWIRI: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā. **Greetings, your Honour.** Mr Rawiri appearing on behalf of Karen Mokomoko, Wai 203. Also just noting that Ms Mataira will be appearing online when we have the judicial conference. Ngā mihi. **Thank you.**

JUDGE DOOGAN:

All right, thank you. All right. I think, as I said, there may be some others who will join us shortly online, but I will just go down to Crown counsel. Sorry.

(09:50) MS KALEI DELAMERE-RIRINUI: (MIHI, APPEARANCE)

Tēnā koe, aroha mai. **Greetings, apologies.** Tēnā koe Sir. Just want to note my appearance as well. Tēnā rā tātou katoa, otirā, tēnā koe e te Kaiwhakawā. Kua roa nei e tūtaki atu tāua. E te pae tapu e noho nei, tēnā rā koutou. Tātou kua karahū hui koutou a-tinana, mātou mā runga i te ipurangi, e mihi ana ki a tātou katoa. Ko Ms Delamere-Ririnui tōku ingoa. Nō te umanga ture o Annette Sykes and Co. **Greetings all and greetings your Honour. It's been a long time since we've seen each other, and to the panel sitting there,**

greetings. And to everyone that has gathered in person, and we who are joining online, greetings everyone. Ms Delamere-Ririnui is my name from Annette Sykes and Co.

Ko mātou ngā rōia pou mō ngā kerēme e rima. Tuatahi, ko Wai 558, he kerēme tērā mō te hapū o Ngāti Ira o Waioweka. Ko mātou hoki ngā rōia e whakakanohi ana i ngā kerēme Wai 2510, he kerēme mō te Whānau Kahika, Wai 2728, he kerēme mō Whaea Sharon Campbell me tōna whānau. Otirā, ko mātou hoki ngā rōia haumuri mō ngā kerēme Wai 864 me te kerēme Wai 1782, engari ka noho rōia – ko ngā rōia e whakakanohi ana i ērā kerēme i tēnei wiki ko Ms Karen Feint rāua ko Ms Jacki Cole. **We are counsel representing five claims. Firstly, Wai 558, a claim for Ngāti Ira of Waioweka and also counsel appearing for the claims Wai 2510, a claim for the Kahika Whānau. Wai 2728, a claim by Sharon Campbell and her whānau and we are also counsel for a claim Wai 864 and Wai 1782, however the counsels representing those claims this week are Ms Karen Feint and Ms Jacki Cole.**

Ka tautoko i ngā kōrero a taku tuakana, a Ms Karen Feint. Ka tuku atu ngā whakapāha, kare mātou e tae atu a-tinana i te rā nei. Kua kii atu ia kei te noho pani ana ētahi o a mātou rōia, nā reira ka tūhono a ipurangi ahau i tēnei wiki. Ka tae atu a Ms Sykes ki reira hei āpōpō. Hei whakamōhio atu, kare au e tae atu – e taea te tūhono atu mō te wiki katoa, nā reira he tuku inoi tēnei, mena e pai ana ki a tūhono a-ipurangi hoki, tō tātou kaimahi, a Ms Rangipurei Manly hei āpōpō tae atu ki te toenga o te wiki. Kare ia kia eke ki te pae rōia i tēnei wā, engari kei te whakarongo noiho ia. Koirā noa taku, Sir. Tēnei au e mihi atu. **I endorse the sentiments made by my senior Karen Feint and I also wish to make an apology, that we will not appear in person today. She has said that some of our counsel are bereaved at the moment. And so, I will join online this week and Ms Sykes will appear in person tomorrow. I am not able to join for the entire week and so I seek leave for me to join online during our – for our staff to main join tomorrow for the rest of the week. She has not yet joined the bar, but she is just listening, and so that's all I have at this time, Sir.**

JUDGE DOOGA:

Tēnā koe Ms Delamere-Ririnui. My apologies, I had thought there had been a partial appearance by Ms Feint, so thank you. All right. Crown counsel, Mr Linkhorn.

(09:53) MR CRAIG LINKHORN: (MIHI, APPEARANCE)

Ata mārie koutou. Tēnā koutou katoa. E te Rōpū Whakamana i Te Tiriti o Waitangi, tēnā koutou. Ko tēnei te mihi ki a koutou. Ko Craig Linkhorn ahau, kei kōnei mātou ko Daniel Hunt, ko Kura Moeahu. **Good morning everyone, greetings all. To the Waitangi Tribunal, greetings, greetings to you. I am Craig Linkhorn appearing along with Daniel Hunt and Kura Moeahu.**

Craig Linkhorn with Daniel Hunt as counsel for the Crown. We are accompanied by Mr Moeahu. As before, there are officials here from Te Tari Whakatau to observe as well, Sir. Kia ora.

JUDGE DOOGAN:

All right. Te Tahi Whakatau? Is that a new name for?

MR LINKHORN:

The Office of Treaty Settlements.

JUDGE DOOGAN:

Okay. That's right, thank you. Ka pai. Thank you, tēnā kōrua, Mr Moeahu, tēnā koe. Thank you.

All right. Just before we hand over, Ms Walker, to commence, if I could just touch on it quickly, a couple of matters on the procedural front.

HOUSEKEEPING – MICROBREAKES (09:54:42 – 09:55:09)

TIMETABLING – JUDICIAL CONFERENCE (09:55:14 – 09:55:50)

JUDGE DOOGAN:

By memoranda last week, Mr Lyall and Ms Feint had raised some issues concerning evidence to be heard in the next couple of days and I called a teleconference on Friday just with those counsel, with Crown counsel and Mr Sharp, and we did plan to have Mr Sinclair but unfortunately he was not able to join us. But the outcome of that counsel and I am obliged to counsel is that, with respect to some of the evidence where there is a contest around some of the matters covered in Mr McBurney's report, counsel will record the fact that there is an issue in a submission to – in the proceedings, but – and there will be process by which counsel can also refer the Tribunal to other material which is on our record and that includes some of the material filed in the Takutai Moana or the MACA proceedings, which has been added to our record.

We are doing it this way simply to try and avoid our hearing time being taken up with questioning on contested issues of customary evidence, tribal identity, hapū identity and the like, so that we can use our hearing time to focus of questions of clarification of the witnesses, as opposed to adversarial cross-examination and it's – I am just giving an general outline of how we wish to proceed in that way so that the hearing can focus so far as possible on getting clarity as to what the witnesses we are to hear from, have to tell us.

The fact that there may be aspects of the evidence that other's don't agree with is something we are aware of, and we will take note of but how we deal with that contest will be something that will go forward into the next phase of our inquiry and into the research we do when we ultimately have to prepare our report.

Now, one of the matters – I just, very briefly Mr Sinclair, we didn't have the opportunity to clarify with you on Friday, but it was just clarity about who is to be giving evidence in your panel, whether it's a larger cohort than the four or five named spokespeople.

MR SINCLAIR:

Thank you Sir. No, it's not a larger cohort than the four or five named persons, Sir. The panel, however, will be in attendance should there be questions be required of them from the report, the evidence, the extracts that were filed with the Mr Peter McBurney report.

JUDGE DOOGAN:

All right.

MR SINCLAIR:

Sir, I have given a list of those who will be in attendance, who have confirmed they will be here if you would like me to read those names out again?

JUDGE DOOGAN:

Yes, please.

MR SINCLAIR:

Adriana Edwards, Tuwhakairiora Williams, Muriel Smith Kelly, Graham Riesterer, Robert Edwards, Keita Hudson. Kim Hudson, Heremaia Warren has given an indicative signal that he may be in but he's not certain, Sir.

JUDGE DOOGAN:

All right.

MR SINCLAIR:

And Ms Walker and Gloria Collier Tahiri. And they've all given evidence, Sir, in Peter McBurney's report. As I have made clear, there's only four speakers though, Sir, and those brief exerts that are filed.

JUDGE DOOGAN:

All right. Thank you. Thank you Mr Sinclair. There was just two other brief matters I wanted to touch on. One of the matters that arose in discussions with counsel last Friday was the – the Supreme Court have recently issued a decision on the second phase of the MACA proceedings which a number of you

will be aware of, I am sure, and the Supreme Court has made a number of observations about this inquiry and the future outcomes of this inquiry. That is a matter which – a tentative view, and I haven't had a chance yet to talk to the panel about this, but I am considering asking counsel to make some submissions, including Crown counsel about that in due course. Not this week, but to allow a time for claimant counsel and then Crown counsel to respond, to just give some advice to the Tribunal about what implications counsel think the Supreme Court's decisions may have for our inquiry, so I just note that.

And then lastly, amongst the evidence, in Mr McBurney's report and in some of the other evidence that we have before us for this week, there is reference to the Mangatū and Waipaua Forest lands and I just wanted to be clear that, and again I am sure that a number of you will be aware, there is now another Tribunal who will be making an inquiry into the Crown Forestry Rental lands with Waipaua in the Mangatū lands that are not part of the previous inquiry. Therefore, those lands and those issues won't form part of our inquiry.

We're not going to exclude any evidence about them from our record, but they simply won't be the focus of our inquiry because they are before another panel of the Tribunal and counsel have quite properly raised that this issue with us and the approach we have signalled is that while – we're not proposing to remove all reference to those lands, or to the history of those lands from our record, in light of the fact that the other panel will be inquiring into those issues, it won't be a focus for us and we expect counsel and witnesses to just note that. It's not out of disrespect to the importance of the *take*, it's just the nature of the administrative way the Tribunal works when it sets inquiry boundaries. So, I am just flagging that so that you are aware if at any point I need to intervene or stop counsel if we think we're going in to questioning on areas that aren't strictly going to be relevant to our inquiry.

Counsel, is there anything arising out of those observations? All right. All right, thank you. I will now hand – is it to Ms Walker who will do opening submissions.

MR SINCLAIR:

Yes.

JUDGE DOOGAN:
Tēnā koe.

(10:04) MS BOBBI WALKER: (#3.3.035)
Tēnā koe e te Kaiwhakawā, otirā, ngā mema o te Rōpū Whakamana i te Tiriti o Waitangi, tēnā koutou katoa. **Greetings your Honour and greetings to the members of the Waitangi Tribunal. Greetings to you all.**

Counsel is privileged today to introduce Wai 1827 claim and the named claimants Rachel and Tania Wolfgramm. This is the first time the claimants have appeared before this tribunal in respect of their claim since first filing it in 2008. We acknowledge the significance of this kaupapa to the claimants and that they have waited a long time to share their kōrero.

The Wai 1827 claim is brought on behalf of the claimants, their whānau and ngā uri o Rangihaerepō. The claim concerns Crown breaches of Te Tiriti o Waitangi in the inquiry districts and have and continue to prejudice the descendants of Rangihaerepō.

The Claimants recognise their relationship and the interrelatedness of their claim to the wider Whakatōhea claims and consider that sharing the story of ngā uri o Rangihaerepō helps to illustrate and reiterate the devastating outcomes Te Whakatōhea have suffered as a consequence of Crown actions.

Te Rangihaerepō was an influential rangatira who signed Te Tiriti in May 1840 at Ōpōtiki. Rangihaerepō was connected to Ngai Tamahaua, Ngāti Patu, Te Ūpokorehe and Ngāti Rua, and is said to have held mana whenua throughout Whakatōhea. The claimants say that Rangihaerepō's signing of Te Tiriti would have therefore aligned with aspirations to safeguard his people and whenua, and support the continued exercise of their tino rangatiratanga.

Despite signing under the pretence, the Crowns destructive actions against Whakatōhea, including Rangihaerepō, have left his descendants virtually landlessness and culturally, spiritually and economically depleted.

For the Claimants in particular, the Crown's disruption of traditional leadership and knowledge systems, has left deep gaps in their own oral and traditional history. This has had a compounding effect on their sense of identity and belonging.

As such the Claimants have relied heavily on the evidential record and the Tribunal inquiry process to piece back together what the Crown has taken from them.

The Tribunal will hear today from the Claimants themselves, Tania and Rachel Wolfgramm, who have provided a joint brief of evidence with the document number of #E022. Tania and Rachel are direct descendants of Rangihaerepō through his daughter Hineīāhua and her daughter Georgina Rangihaerepō Balneavis.

Tania and Rachel are respected academics, researchers, and lecturers in their own right. Their mahi has contributed greatly to spheres of indigenous studies, scholarship, leadership and innovation.

For the purposes of this hearing week, the Claimants have provided evidence that broadly traverses 19th Century land alienation in the inquiry district including missionary land purchases, old land claims commission, the raupatu period, including the military invasion, and confiscation of Te Whakatōhea lands, native resources and the Compensation Court and the Native Land Court operation.

The claimants have also found that despite being a prominent Whakatōhea figure, the records relating to Rangihaerepō have been sparse. They, therefore sought to draw together from the evidential record in their own kōrero, an account of the whakapapa and life of Rangihaerepō and his early descendants.

The claimants have also undertaken to trace through their evidence where their tīpuna were involved and implicated in these early land alienation events.

Finally, the claimants highlight the compounding and lasting impact that Crown induced harm has had on their whānau and descendants of Rangihaerepō.

Counsel have set out and I have written submissions, the principles engaged by this claim including tino rangatiratanga, active protection, good faith partnership and equity. And the claimants allege that through its acts and omissions, the Crown has breached Te Tiriti o Waitangi including its terms and principles and those breaches include the waging of a war in Raupatu in which the Crown unjustly invaded lands belonging to Te Rangihaerepō and waged war against his people causing devasting effects. Including the occupation of their lands, loss of life and the destruction of their property and possessions. The Crown then wrongfully, unjustly and illegally confiscated over 140,000 acres of Whakatōhea lands, including lands belonging to Rangihaerepō and his descendants.

The Crown's operation of the Compensation Court process was practically defective, and it did not operate to restore any form of justice for those affected by raupatu, instead applicants were forced to pledge loyalty to the Crown, further undermining their mana and rangatiratanga.

The Crown wrongfully forced Rangihaerepō and his descendants to relocate from their traditional rohe on to native reserves. And concurrently, the Crown failed to ensure sufficient lands and resources were set aside for the present and future needs of the descendants of Te Rangihaerepō.

Through various Native Land legislation and the operation of the Native Land Court, the Crown caused and permitted the alienation, fragmentation and individualisation of traditional lands of Te Rangihaerepō and his descendants, without their proper consultation or consent.

As a consequence of the Crown breaches the claimants have and continue to suffer various prejudicial effects, including:

- The rapid alienation of almost the entirety of their land base;
- The loss of mana and rangatiratanga and a consequential loss of economic, cultural and political autonomy;
- The loss of life, oranga, health and wellbeing;
- The damage and desecration of wāhi tapu and taonga; and
- The loss of reo, mātauranga, customary religious practices and tikanga.

To conclude, the claim highlights how the Crown's actions and breaches of Te Tiriti have left the descendants of a rangatira and Treaty signatory virtually landless in Whakatōhea. The claimants evidence clearly speaks to the contingent effects of cultural disconnect that have lasted through the generations. The Claim also concerns restoring what has been lost, in part, through the reclamation of their story and the recognition of the rangatira, Te Rangihaerepō and his descendants. Thank you, Sir.

JUDGE DOOGAN:

Tēnā koe, Ms Walker. I will just check if the panel have any pātai for you. Thank you, that's very – I don't have any pātai either so thank you for your submissions.

MS WALKER:

Yes, Sir. Just before we move to call the witnesses, the claimants – we have prepared a summary, a presentation summary of the joint brief of evidence. We haven't yet filed it but we will be doing so after proceedings today. Because that document isn't before you, Sir, would you like me to orientate the Tribunal roughly with the framework of the summary or are we happy to –

JUDGE DOOGAN:

So, will we have it as you go – as the witnesses go through it or after that?

MS WALKER:

After that.

JUDGE DOOGAN:

All right. If you think it's helpful to give us a steer, go ahead.

MS WALKER:

So, briefly it opens with the first two sections of the joint brief of evidence which focuses on the whakapapa and Rangihaerepō tipuna. It then moves into Crown breaches but of a specific focus on where Rangihaerepō and his descendants were located in regard to the breaches and then concludes on the effects of landlessness.

JUDGE DOOGAN:

All right. And do you know about how long that will take to present?

MS WALKER:

No more than 30 minutes, Sir.

JUDGE DOOGAN:

All right, ka pai. Thank you.

MS WALKER:

Tēnā kōrua. I will swear you in. I will go one by one.

MS WALKER CALLS

TANIA HAEREKITERĀ WOLFGRAMM (SWORN)

Q. So, Tania, could you please state your full name for the Tribunal.

A. Yes, it's Tania Wolfgramm.

Q. Kia ora. And you have prepared a joint brief of evidence with the appellation #E022 for this inquiry.

A. Yes, that's correct.

Q. And you have also filed a document titled *The Hagger Family Book*, is that correct?

A. Āe, correct.

Q. Can you confirm you would like to include that as part of your evidence.

A. Āe.

Q. Thank you.

MS WALKER CALLS

RACHEL MAUNGANUI WOLFGRAMM (SWORN)

Q. Tēnā koe Rachel. Can you please state your full name for the Tribunal?

A. Rachel Wolfgramm.

Q. And can you confirm you have prepared a joint brief of evidence with the appellation #E022.

A. Yes.

Q. And you have also filed a document titled, *The Hagger Family Book*.

A. Yes.

Q. And do you confirm you would like that to form part of your evidence.

A. Yes.

Q. Sorry, could you please confirm that the evidence is true and correct to the best of your knowledge and belief.

A. Yes.

MS WALKER:

I'll hand it over to you.

(10:15) TANIA WOLFGRAMM: (#E022)

Ko te Atua tāku piringa, ka puta, ka ora. Ki ngā mate o te wā me ngā tupuna ki te pō, hoki atu rā ki te poho o te Atua, tēnā tātou. Ki tau ai ngā manaakitanga ki runga ki tō tātou kuini, Te Arikinui Kuini Nga Wai Hono I Te Po. Ki runga hoki ki te whare ariki o Pōtatau, rirerire hau, pai mārire. E te hunga, tēnā rā koutou kua rangatira tēnei hui i tā koutou taenga mai, koutou kua tae mai i runga i te karanga o te rā ki tēnei kaupapa whakahirahira o tātou, o te nohoanga o te Taraipiunara o Waitangi. Ko koutou te whakatinanatanga o te manaaki kaupapa. Me kore ake koutou i tutuki pai i tēnei kaupapa. Ki ngā mana whenua o tēnei rohe, o tēnei marae, tēnā koutou. Nō reira, e rere ana ngā mihi aroha ki a koutou, tēnā koutou, tēnā koutou, tēnā tātou katoa. **God is my shelter and emerge to the deceased, currently, and those return to the bosom of good, greetings all. May our queen be blessed, Nga Wai Hono I Te Po and also the house, the royal house of Pōtatau. Goodness through peace. To**

those present, we are honoured by your presence. Those of you who have come on the call of today, to this most important matter pertaining to us, sitting on the Waitangi Tribunal. Realisation of caring for these matters and if it was not for you, these matters would not be addressed, and so to the people of this territory, of this marae, greetings and so I want to extend my love to you all. Thank you all.

Ko Te Moana nui a Kiwa te moana. Ko Aotearoa, ko Hokianga, ko Vava'u Tonga ngā motu. Ko Tarakeha, Tawhitirahi ngā maunga, ko Mataatua, Mamari, ko Kurahaupo ngā waka. Ko Te Whakatōhea, Te Aupouri oku iwi. Ko Rangihaerepō, Hineīāhua, Haerekiterā ngā tupuna, ko Ōpape, Kutarere, Pōtahi ngā marae. Ko Muriwai, Tamaterangi, ko Waimirirangi ngā whare tupuna. **Pacific Ocean is my ocean and Aotearoa, Hokianga and Rarotonga are my islands. Tarakeha, Tawhitirahi are my mountains. Mataatua, Mamari, Kurahaupo are my waka. Te Whakatōhea my iwi and Rangihaerepō, Hineīāhua, Haerekiterā, my ancestors, and Ōpape, Kutarere are my marae. Muriwai, Tamaterangi, Waimirirangi are my ancestral houses.**

Ko Lavaki, Wolfgramm, Balneavis, Kapa Hagger oku whānau. Ko Tevita Tapueluelu rāua ko Horiana Kapa oku matua. Ko Wikuki Kingi tōku hoa rangatira. Ko Johanna, Darcy, Vincent aku tamariki, ko Aliyah, Hayley and Mason oku mokopuna. Ko au, Ko Tania Haerekiterā Wolframm, tēnā koutou. **Lavaki, Wolfgramm, Balneavis, Kapa Hagger are my whānau and Tevita Tapueluelu and Horiana Kapa are my parents. Wikuki Kingi is my husband. Darcy, Vincent are my children, Aliyah, Hayley, Mason are my grandchildren, and I am Tania Haerekiterā Wolfgramm. Thank you all.**

(10:17) RACHEL MAUNGANUI WOLFGRAMM: (#E022)

Tēnā tātou e te whare. Ki te Rōpū Whakamana i te Tiriti o Waitangi, ngā mihi nui ki a koutou katoa. Ka nui te mihi ki a koutou mō tō mahi whakamīharo. Ki ngā mana whenua o tēnei rohe, o tēnei whare, ka nui te mihi ki a koutou mō tō manaaki ki a mātou. **Greetings to everyone in the house. To the Waitangi Tribunal, I want to thank you very much for your (inaudible**

10:18:03) and to the local people of this house, I want to thank you all very much for your care that's been afforded to us.

Ko Rachel Maunganui Wolfgramm tōku ingoa. Ko Te Whakatohea, Te Aupouri me Ngāi Takoto oku iwi. Hineīāhua Rahgihaerepō me Horiana Balneavis Rangihaerepō oku tipuna nō Ngāi Tamahaua, Ngāti Patumoana me Ūpokorehe. **Rachel Maunganui Wolfgramm is my name. I'm of Te Whakatōhea, Te Aupouri and Ngāi Takoto are my iwi. Hineīāhua Rangihaerepō – Balneavis Rangihaerepō are my ancestors. I'm from Ngāi Tamahaua, Ngāti Patumoana and Ūpokorehe.**

A hundred and eighty five years ago our great-great-grandfather, Rangihaerepō here in Opotiki, signed Te Tiriti o Waitangi. A hundred and eighty five years on, we stand here before you as his direct descendants, in this country, landless. We have no land, we have no whenua, nothing 185 years later. This is a really common story amongst our people and it's one that we reiterate, you know, in terms of the evidence that we have provided today, and we just want to make sure that the focus of our kōrero is not with our whānau, not with our hapū of Whakatōhea, but it is with the Crown and continues to be with the Crown. They are the reason why we are in the position that we are today.

So, Tania are the claimants for Wai 1827 on behalf of ourselves and our whānau and descendants of Ngā Uri o Rangihaerepō, te Rangatira and one of those original signatories along with seven others.

The evidence that we are providing includes a focus on pre-1865 as well evidence regarding the raupatu as outlined by our counsel. In doing so, it highlights many, many various activities that the Crown undertook that continue to sever our connection with our whenua, fracture our whānau history and leave deep gaps in our mātauranga iwi, mātauranga hapū.

Because of the lack of records in regards to our own whānau or a sparse amount of evidence that we have managed to find, some things have been pieced together as best as we can based on archival information, based on our

whānau kōrero and based on actual reports, series of report that have been released through the Waitangi Tribunal.

In terms of establishing the whakapapa of Te Rangihaerepō and his mana moana, mana whenua, marae kāinga, he was known to be a leader, a rangatira of mana and involved in many tribal affairs across the rohe of Whakatōhea.

In 1864, there was a battle, the Battle of Kaokaoroa and in 1864, in that battle, it was said by J.A.Wilson that many of the old Whakatōhea chiefs passed away and he named those – included those chiefs he named Rangihaerepō, a significant leader.

The Battle of Kaokaoroa was the Crown and Te Arawa fighting against many of the hapū across Tai Rāwhiti, including Whakatōhea, and many of the leaders and rangatira of the time lost their lives in that battle. So in 1864, Whakatōhea and their hapū were left incredibly vulnerable without the leadership of the leaders that passed away at that time in that battle prior to the 1865 raupatu. So, the Crown was continuing to weaken the position of Whakatōhea at that time.

Our records show that Te Rangihaerepō's whakapapa included Ngā Hapū o Ngāi Tamahaua, Te Ūpokorehe, Ngāti Rua and Ngāti Patumoana, and his daughter Hineīāhua is our great-great-grandmother. She was named after the eponymous ancestress Hineīāhua from whence Ngāti Patu derived their name.

Te Rangihaerepō is also recorded as being the brother or nephew of prominent, Ngāi Tamahaua rangatira, Titoki and is having the same Ngāi Tamahaua grandfather, te Ata o Rehua.

These hapū affiliation would have been incredibly important in bearing in mind that Rangihaerepō was one of the rangatira who stepped up and signed Te Tiriti o Waitangi with the Crown. When he signed Te Tiriti o Waitangi, he marked his name with a cross, possibly to signify his Roman Catholic faith.

Te Tiriti promised him and his rangatira of Whakatōhea, as we know over and over and over again, we've seen this, they were promised Te Tino Rangatiratanga o ō rātou whenua, o rātou kāinga me o rātou taonga katoa **Their lands and the homes and all of their taonga** or the unqualified exercise of their chieftainship over their lands, villages and all their treasures.

While there is no written records with regards to the motivation for signing Te Tiriti at Opotiki, the promise was likely to have been uppermost in the mind of Te Rangihaerepō and when he followed his name to be added – when he allowed his name to be added, considering the influence of him as a rangatira he signed Te Tiriti as a strategic act, one that aligned with the aspirations of his whānau, of his people, and the support, the expectation that they will continue to exercise their tino rangatiratanga.

Our ancestral line descends from Rangihaerepō through Hineīāhua, also known as Meri Makarina Hineīāhua. By her second marriage to Henry Colin Balneavis, Hineīāhua had five children. Our whānau are the mokopuna of her daughter Georgina.

Hineīāhua also had a son, named Wiremu Rangihaerepō, from her first marriage to Reverend Williams. We note from the records that William Rangihaerepō is sometimes confused with his father Te Rangihaerepō. We do not proport to speak for the descendants of Wiremu Rangihaerepō, however as he as referred to extensively throughout written record.

Hineīāhua already had her children with Henry Balneavis before they wed on 8th of February in 1859, and we know the whānau were living in Auckland 1863 where they acquired the Balneavis house. This was one of the first homes that was given to the University of Auckland and they – it's located at 1 Wynard Street, opposite Waipapa Tangatarau Marae.

Henry Balneavis died in 1876, on the 26th of August and is buried at St Stephens Anglican Chapel in Parnell. His gravestone includes the names of the five children but does not mention his wife Hineīāhua. We have heard accounts of

Hineīāhua having been seen on the ‘east coast’ after her husband’s death, but sadly we do not know when Hineīahua died or where she rests. We do believe that she came down in 1864 to attend the tangi of her father after the battle of Kaokaoroa and the tangi of many of her uncles and cousins that would have passed away in that battle.

Unfortunately her records from 1864 onwards, we have not been able to find anything about her. However, her children and grandchildren did become prominent figures across Aotearoa New Zealand. John Balneavis served as surveyor who worked for Te Whakatōhea. Wiremu Rangihaerepō advocated his hapū and native reserves and was an active petitioner against the old land claims in the Native Land Court. John’s son Henare Te Raumoa Huatahi Balneavis held the post of private secretary and adviser to multiple ministers of Native Affairs including Sir Apirana Ngata.

Our written evidence traverses in detail some technical reports and findings from the Crown alienation and my sister Tania is going to cover areas around the raupatu.

JUDGE DOOGAN:

Just before Tania starts the next section, we might just take a short two minute breather. It’s our first micro break, thank you.

HEARING ADJOURNS: 10.27 AM

HEARING RESUMES: 10.32 AM

JUDGE DOOGAN:

Thank you everybody. We will get started again. Ms Tania Wolfgramm, tēnā koe.

(10:32) TANIA WOLFGRAMM: (CONTINUES #A022)

Tēnā koutou. So, I think it would be really great to paint a little bit of a picture of what an incredible place we are standing in and how amazingly

entrepreneurial our tribe was in the 1800s. And when we say our tribe, Te Whakatōhea and our tupuna Rangihaerepō, all of his whānau. There were less than 900, that's like incorporation and they would have been so incredibly organised and entrepreneurial. We had 30 schooners going backwards and forwards to Tamaki Makaurau. There were reports of this whole area being covered with pigs and potatoes and thousands of trees. We were a really wealthy tribe, and we have continued to today to be really entrepreneurial.

So, you know, this is the 1800s up to 1865, 1840s, 1850s, there were a lot of settlers coming in and as we know, in the 1860s, the Crown started to – there were a lot of wars going on in other parts of the country. As Rachel talked about, 1864, we had the battle down the lie. So, you know, there were other agendas in play as we know what the Crown was looking for and if she took a micro level prospective, this is the empire. So, this is all part of empire building.

So, here we were, down here, Hineīāhua would have only been about 10 or so when her father signed the Treaty in 1840. So, she would have been sort of in her 20s. She would have been married young, first of all to Wiremu Lawrence, had one son and then five children and up to 1859. So, there was a lot going on.

JUDGE DOOGAN:

Sorry. Wiremu Lawrence or Wiremu Williams?

TANIA WOLFGRAMM:

Wiremu Williams Lawrence. So, there were two names. He was called Wiremu and Lawrence. But the children took his name Wiremu as was common using the father's name as surname just to confuse.

So, anyway, the raupatu. As you know, 1865, that was the most devastating thing for a hapū, going from a flourishing economy to a – you know – the invasion, the cavalry, using the excuse of the Völkner murder. Te Rangihaerepō was never involved or recorded as having any involvement in that. It's really highly likely passed away, possibly even in 1864.

So, the Marshall law is very well recorded with devasting effects, not only on our 890 or so – all of Te Whakatōhea, but of course, all of our whānau. Rangihaerepō just trying to defend themselves, his children, his mokopuna, you know, the descendants of him in their land, standing in their land. So, that was, you know, it's well recorded about the scorched earth approach and also that there was recordings of roughly about 58 deaths. But as you know for every fatality there are multiple, multiple injuries. So, just absolutely decimated. When you say decimated, at least one in ten, but if not wholly, everybody was supposedly blamed for this murder and so everybody was punished.

At the same time, as you also know, there was opportunity for personal enrichment of the Crown Military Force. So, that affected all of our property and livelihood and then of course the confiscation, the 140 or so – 143 or so thousand acres. I have some academic degrees in Psychology, so I very much understand the impact, the intergenerational and traumatic impact. If you just imagine if someone came in here right now, took everything away, took us and threw us down on a little reserve, down the back or a little whare down there somewhere, how would be feel today? It's just absolutely devasting.

So, we think about the relocation of our whānau. There are some records of Wiremu Rangihaerepō. He was Rangihaerepō's grandson going into the Ōpape Reserve. And kind of interestingly, he couldn't kind of figure out – he was looking for more whānau and didn't understand the way that the land would be diminished, person by person.

So, essentially, there is that big story of the invasion and the raupatu, but also the personal and impact on Hineīāhua, on our great-great-grandmother, on her five children, her six children and the loss of land, the subsequent loss of land through multiple mechanism, the Native Land Court, the transformation of customary title, hapū of course to the individual, the establishment of the Court to open up the land to private purchase, and of course, the Crown purchase. There are again multiple records of those.

Also, the Oamaru block, that is a well-known thing, story about it being purchased incrementally by land purchase officer Richard Gill and that there was a monopoly buyer due to Crown pre-emption at that time, in the form of undivided interests of induvial registered owners on a take-it-or-leave-it two shillings per acre, just two shillings per acre.

So, obtaining Crown title to customary lands within the inquiry district proved 'a costly, destructive … ' and there's many reports on this, McLellan and Luiten, '…costly, destructive and distressing.' Not only at that time, but again, for all of the descendants, including Rachel and myself. So part of that was – beside the confiscation of the land, of course setting aside tiny little inadequate reserves. The shift to Ōpape, that resulted in further impoverishment. In contrast – and sort of – the other side of the story, when somebody losses something, someone else gains something. So, not only did we lose hundreds and thousands – hundred and something thousand acres of land, but the military and the settlers gained it and the Crown. So, there's a lot of research, some great research by Belinda Borell on intergenerational wealth and intergenerational poverty. And some of these land blocks now, in settle hands, are 500 acres each. So, you know, they are very sizeable.

That was kind of Ōpape. I will just go quickly because this is all in the brief of evidence. In 1866 to 1867, Crown agent Wilson forced Te Ūpokorehe to relocate to Hiwarau Reserve. These two lots totalled just a thousand acres. So, we're talking now about 25 acres per head. So, if we think about – just doing some calculations – So, in 1840, Whakatōhea had about 491,000 acres and if you look at some of the census data, anything between 1800 to 2400 were averaged at about, say, 2100. That's about 239 acres per head. Today, we have zero. While we do have Te Whakatōhea Trust has some land, it's still only about 4 per cent. So, by '67, it was just 25 acres. So, that was like really fast going from 234 acres per head to just 25 acres per head. That was, you know, really devasting.

By 1908 that had gone down to, yes, 23 acres and despite the Stout-Ngata commission finding, Whakatōhea did not have sufficient lands remaining after

the raupatu, the Crown continued to purchase land from them, virtually rendering them landless as we know. Within just a few years, also just the other block that we talked about in our submission was the Tahora 2A and Oamaru blocks. By 1895, the Crown had acquired over 51 per cent of that block, again, 100,000, massive thing, massive loss.

So, as you can see, this is a terrible and tragic, not just evidence, but it's a personal story of how – like Rachel said, when our tipuna Rangihaerepō signed the Treaty, it was like a good-faith contract between him, on behalf of his whānau, his people, his hapū, there were many hapū, he related to Ngāi Tamahaua, Te Ūpokorehe, Ngāti Rua and many others because it was just a small number of people, only 893 by one census. So, he never would have envisaged that 185 years later, his descendants, his uri would have nothing after all of the hard work that had happened in the decades before it.

So, the impacts of this is just, as we've said, has been devasting. To be landless in our own country, landless in our land is just, you know, it's just devasting.

RACHEL WOLFGRAMM: (CONTINUES)

It's also not only about land but it's about our tikanga and our reo and everything else as well. Our great-great-grandmother Georgina, also known as Horiana, Rangihaerepō Hagger Balneavis, has only two surviving great-grandchildren, including her namesake, our mother –

TANIA WOFLGRAMM: (CONTINUES)

Here is a photo of our beautiful mother, you don't see it. She's actually in Dubai in this photo. She's with – yes. So, there are eight children, mum had seven siblings. There are 25 grandchildren and 18 great-grandchildren. Our mother is still alive today. As Rachel said, she's 92 now and she has only one sister, Te Arohanui o Te Ariki (Jackie) Hagger. Both of them have no land here. If we thought about the amount of land that Rangihaerepō had tino rangatiratanga over, we're talking about, I don't know, 50,000, let's just say a lot, thousands and thousands of acres. To be here today with nothing it's hard to get our head

around it. So, we know that it's caused a deterioration of our health and wellbeing, cultural health and wellbeing. Rachel and I, we don't – we're not fluent in te reo. We know that land gives resource, land and whenua and moana, gives us the ability to develop economically. It will give the ability for our whānau and the mokopuna to develop and thrive. We are wāhine Māori.

We've done a lot of research on mana wāhine and not only was it hard for the soldiers and our toa, tama toa who passed away in the war, but we believe that Hineīāhua came back in 1864 and probably was fighting for her land as a young women.

I have a beautiful daughter Darcy, who is 30 and another one, Johanna who is 38. A mother and I find it hard to imagine what it would have been like for a 30 something young wahine to come back here to find her father dead, and her uncles and her relatives and then the Crown coming in and having to fight them as well. So, she was a wahine toa, absolutely and we just want to say that she would have been leader, like her father. They were leaders of their whānau, hapū and iwi and communities and actively involved in everything.

RACHEL WOLFGRAMM: (CONTINUES)

So, just finally, I think we've been pretty clear about our grievance. But our claim however is not just about what was lost, it never is. It's about restoring and the recognition of the mana of Rangihaerepō and his uri and the rights to mana moana and mana whenua in our country.

TANIA WOLFGRAMM: (CONTINUES)

And I would just like to finish on a moemoeā. This is a moemoeā that we put together for mana wāhine in recognition of our mother, our aunty, of Hineīāhua and all of our tupuna.

Hei whakahoki mai i te tapu, i te ihi, i te mana o te wahine ki te ao tūroa. Kia mārama ai te ao hurihuri, ki te mana o ia wāhine. Kia moemoeā ai te wāhine hei wāhine mai te pēpi ki te kōhine, ki te whaea, ki te rūruhi. Ko tōna mana ka tū mō ake tonu atu hei oranga mōna ki tana e pai ai mō ēnei rā, mō ngā rā e

heke mai ai hoki. Haere ake nei, haere ake nei, haere ake nei. Kāti! Kua nui. Tēnā koutou katoa. **Bring back the tapu, the ihi, the mana of women to this world so that this ever changing world will understand the mana of each women so that women can dream as women from the time that they are babies, to girls, to young women, women and older. And that her mana will endure forever in line with her wellbeing into the future and currently and I conclude here. Thank you.**

JUDGE DOOGAN:

Tēnā kōrua. Thank you very much for your evidence. I am just going to check first whether Crown counsel have any pātai for you.

HOUSEKEEPING – MOVING FURNITURE (10:48:54)

(10:49) MR LINKHORN TO RACHEL WOLFGRAMM AND TANIA WOLFGRAMM:

Q. Tēnā kōrua. Ko Craig Linkhorn ahau. **Thank you both. Craig Linkhorn.** Just a few questions really by way of clarification, but I want to begin, of course, by acknowledging that you have given evidence today about the whānau lived experience across generations of the Crown's confiscations of land, the policy, settings behind that and the assumptions around the superiority of colonisation that we all now can see are flawed in light of the promises in Te Tiriti. So, I want to acknowledge that, and its aftermath of course in the form of loss and you both have given evidence about today. I was at page 14 of your brief of evidence, #E022, and at the top of that page there's some whakapapa extract there and I just wondered if that would be the jumping off point for some of the questions that I had. It won't take long, I'm sure. So, looking there at your great-great-grandmother, Hineīāhua, and you both clarified today that she had three sisters and one brother and another half-brother, Wiremu, I think I've got that right, and I see your great-great-grandfather, Henry Collin Balneavis there also, and he was a noted linguist I understand and a military man also. I mention that because it means that there's a particular exposure that your great-great-grandmother had to

the empire and the circumstances of empire and I wondered if you wanted to take the opportunity just to comment on that brief, if there was anything you wanted to say further about that because of that marriage.

A. [Rachel Wolfgramm] Yes. Well, yes, he was. He came down to New Zealand as part of the 58 regiment and he was very much a colonial officer and he was – because his father had been the acting governor in Malta, a (inaudible 10:52:03) in Malta over the British Empire. He had exposure to many, many different groups of people and therefore he spoke fluently multiple languages, Italian, Greek, Arabic, Maltese, French and German. So, he was a fluent linguist. He was – he established the choral society in Auckland. He was the first sheriff of Auckland. So yes, she did have exposure and in fact, in 1859 when they got married, it was just prior to the Crown bringing out their legislation on the Half-Caste Children's Disability Act which came out in 1860. So, that required, you know, a lot of – those that were in mixed relationships and with half-caste children, to get married. And so, they got married in 1859 and our research in the Mana Wahine report also – I actually ended up doing a whole chapter in the Mana Wahine Report on marriage legislation that was brought in by the Crown in 1840 onwards. There was an enormous amount of marriage legislation and a lot of other legislation that was impacting whānau and women, wāhine Māori at that time, not only in terms of marriage and so forth. Anyway, he definitely was, like you say, a colonial officer and she was, yes definitely her whakapapa put her in a different situation so – coming down through Rangihaerepō. I mean, if you think about 1859 as a time when Pākehā and Māori population were equalising in Aotearoa, New Zealand, the settlers were putting more pressure on the Crown at that time as they were equalising in population, to attain more land. And so, Whakatōhea was sitting there, sort of – being taken over, so she would have been in an incredibly compromised situation with her marriage to Henry Balneavis And so, even in the report on the marriage of their daughter Jemima to McEffer Shera, there's no mention of their mother, Hineīāhua in that report about – so, she kind of like went out of the picture all together. And then on the graveyard in Parnell, she's not mention on his gravestone either, just the children. So,

yes, we just don't know enough about what happened after 1864, to her. We've come down here, we've searched archives, we've search council record, and we still can't find anything about here there.

Q. Kia ora and thank you. You mentioned in giving your presentation today that when there's a record of the marriage in 1859, in Auckland, the five children, I am assuming all five were alive by that stage, and I hadn't tried to figure out roughly what the ages of the children would be by that point. But I wondered if that's a relevant and useful thing for the Tribunal to have a bit of an understanding of if you know, in thinking about what then happens in the 1860s, from the Waikato war onward.

A. [Tania Wolfgramm] That's a good point. We will probably do some more investigation, but we do know that she was still relatively young, so the children would have been quite little.

Q. Quite little, is what I was assuming.

A. Yes, it was more – yes, absolutely.

Q. And I have gone off the *Dictionary of New Zealand Biography,* record of your great-great-grandfather's service in Auckland in the 1860s and I assume it's fair to say that he was busily occupied in Auckland with colonial and military business across that whole decade. Is that fair?

A. [Rachel Wolfgramm] That is correct, yes.

Q. And so, your evidence today – I suppose, I arrive today assuming that this whānau, Hineīāhua and her children weren't in Ōpōtiki in 1864, 1865, but I now hear your evidence today that you think that Hineīāhua had come to this region after Kaokaoroa.

A. Yes.

Q. And just to follow on then, am I correct that you are inferring that she stayed here right through to the Crown invasion, or we just don't know.

A. [Tania Wolfgramm] We don't know definitively but we would absolutely be – I would say, it was very likely that she would have come home given the devastating effects and the fatalities, in some records, up to 80 or so from Te Kaokaoroa, for a tiny tribe – she would have been related virtually a lot of them. So, there would have been tangi and things she would have come back to at that time. How long she stayed, we don't know exactly because we couldn't find any of those records.

[Rachel Wolfgramm] The situation down here at the time would have been distressing and devasting. And you know, with the raupatu then happening in 1865, it wouldn't have been a place where she would have been comfortable bringing her little ones to. The story is that they stayed with their father in Auckland, and they were raised by him, and they very much had a kind of colonial, early colonial upbringing at 1 Wynard Street up in Auckland at the Balneavis house.

Q. Yes, thank you. That's why I asked before, just to check my assumption that these children were quite young at the time and whether their mother had returned here, you know, including for tangi or other important reasons, but had then returned or not. So, I won't speculate further on that. I will move ahead then to the Compensation Court process. And I suppose I expect the Tribunal might find this very interesting because here we have whānau who, in a sense, have strong connections and an ability to understand how to work the colonial system, as it were, that the Compensation Court represented and yet, you know, it's no spoiler alert because you've said it, there's no land at the end of it all. Painful as it is, if we just work briefly through that to see how it is that despite relatively well-connected people in terms of colonial society, knowing how to use that system, it still doesn't really work out. So, can we start with the three town acres. This is elsewhere in your brief, isn't it?

A. [Rachel Wolfgramm] Yes.

Q. But there's three town acres for five siblings, have I got that right. There's a table.

A. [Tania Wolfgramm] What page are you working from?

Q. I'll just find it. Sorry, I should have made a note. I'll find it in a sec, sorry everyone. So, we're around page 30 ish by now.

A. [Rachel Wolfgramm] Yes.

MS CLARK:

Paragraphs 209 onwards.

MR LINKHORN:

Thank you.

MR LINKHORN TO RACHEL WOLFGRAMM AND TANIA WOLFGRAMM: (CONTINUES)

Q. The top of page 38, I'm told. Yes. So, there's a table there showing three town acres granted to five siblings, I think. I'm right, aren't I, that these are the five siblings?

A. [Rachel Wolfgramm] Yes.

Q. The daughters of Hineīāhua.

A. Yes, yes.

Q. And on the right hand column where it says, 'Alienation status', for those three town acres, it says: "No further instruments." But from your evidence today that there is no land, I take it those three town acres have been alienated at some point.

A. [Tania Wolfgramm] Yes.

Q. And then we have the larger 28 acre block, again to five siblings and there's an interesting point I picked up from your evidence today, and that it appears that it was alienated by the brother, the only son, and there's an issue, isn't there, as to whether the other siblings were involved in that alienation decision. Can I check, are you reliant on the research by Luiten and Walzl for that or is there further family research behind that?

A. I think mostly Luiten's research, yes.

Q. So, there's something to look into, potentially there, about a family arrangement for that eventual alienation of that block, I suppose. Is that a fair summary.

A. Yes. There isn't evidence of – well, consent from the sisters.

Q. Yes, that's the issue, that's the issue we have unresolved.

A. Yes, that is unresolved (inaudible 11:02:45).

Q. And just to check that I have understood this correctly, there's also some part of your evidence where you talk about the Ōpape 4 block and division, but I am right, aren't I, that that's the other whānau line through Wiremu.

A. [Tania Wolfgramm] Yes, Wiremu Rangihaerepō, her first son, yes.

Q. Yes, okay. So, then turning –

JUDGE DOOGAN:

Sorry. Just before you turn to another topic. Just in the interest of trying to maintain our timetable, we're right on 11. If it's all right, we might break for morning tea and resume in about 20 minutes, or there abouts. You've only got one pātai left have you? Are you sure? All right. If you want to –

MR LINKHORN TO RACHEL WOLFGRAMM AND TANIA WOLFGRAMM: (CONTINUES)

Q. I wanted to finish with the lands ā-waho, the confiscation. Because you gave the very interesting story of Tahora 2A, and again, the surveyor sibling, who is equipped with the knowledge and skills as it were, knows how to try to make something of that, but actually it kicks off some raruraru, doesn't it, and eventually a completely different outcome emerges, and I suppose, again, no plots spoiler, eventually no land.

A. [Tania Wolfgramm] That's correct, yes. As it says, that was John Balneavis who was a surveyor, yes, and there was some raruraru about that.

[Rachel Wolfgramm] Interestingly enough, in our research with the Mana Wāhine work we've done, we also found the Balneavis – which is really unusual – that there was a natural person legislation called Acts to authorise the issue of a grant for certain land to Henry Colin Balneavis.' That was 29th of August 1861 and it was – the amount of land was – 359 acres in Auckland and then that was then repealed and dismissed. So, I don't know, the Crown was definitely up to some really dubious things through the legislation and the Courts, not only to Māori but also their own colonial officers and so forth. So, yeah, it's just really – because my report looked at 110 years, it looked at the impacts of Crown legislation policy and practice on the rangatiratanga of wāhine Māori **Māori women** from 1840 to 1950 and the amount of legislation that the Crown brought into New Zealand from Britian and imposed on to wāhine Māori was phenomenal, it was just endless, it was just hundreds and hundreds and hundreds of pieces of legislation from 1840 to 1950. And many of the wāhine Māori weren't even – they couldn't speak English and yet all of this legislation was in English. So, not only was it the legislation, it was setting up the Courts as well and it was the legislation around wāhine

Māori marriages, every mechanism that the Crown could use to take land off wāhine Māori was used. So, in face of all of this, these – our little stories and all of the little things that you are pointing out are actually very, very minimal. Over the entirety over the period of time that I was studied, the wāhine Māori population decreased to only 41 – to only 20,000 in 1899, just before the 1900s there was only 20,000 wāhine Māori in Aotearoa New Zealand and yet – So, the Crown had relentlessly, you know, brought in this legislation and then policies and practices set up course, and the extent of it was devastating and so we just – one little case study, if you like, and a much bigger and wider picture of what the Crown did to Māori and in this case, our own whānau during that period of 1840 to 1950.

Q. Thank you very much for addressing my questions. I am sorry to have kept the kitchen waiting your Honour.

JUDGE DOOGAN:

Thank you, Mr Linkhorn. We will break now for about 20 minutes or so. Thank you. Kia ora.

HEARING ADJOURNS: 11.07 AM

HEARING RESUMES: 11.36 AM

JUDGE DOOGAN:

It's Judge Doogan speaking. We might resume, thank you. Tēnā kōrua anō. We're just going to pātai from the Tribunal and Mr Linkhorn, I assumed you had finished. Yes, thank you. Just starting with Professor Roa.

(11:37) PROFESSOR TOM ROA TO RACHEL WOLFGRAMM AND TANIA WOLFGRAMM:

Q. Tēnā kōrua, koutou. Koia tēnei tētahi āhua o a mātou mā, he toimaha, te rongo i ēnei tūmomo kōrero. Engari he mea nui, me puta. Mea nui, me roa. Me nui, āe, mō inanahi engari mō āpōpō. Nō reira, kei te nui te mihi, tēnā kōrua, koutou. Pātai iti noiho tāku pātai. **Greetings to you all. This**

is something – nature of our work, it's heavy to listen to this type of kōrero. But what's important is that it's shared and it's important also that it is heard, and it is important also, yes, yesterday but for the future and so I want to thank you very much, thank you both, all of you. I have only a brief question. I've just got a very small question. It's probably not on tac, but you talked about the piece of research that had to do with the – on one hand, the welfare and the intergenerational wealth, then on the other hand, the poverty stricken and the intergenerational effects for the poverty stricken. Can you just tease that out a bit more for me please, but also let me know the name of the person of the writer of that piece of research. Thank you.

A. [Tania Wolfgramm] Kia ora, Professor. Yes, we did quite a lot of research. I was the author of a Mana Wāhine Report on the socioeconomic status of wāhine Māori today, if you like, from 1990 onwards and it was very clear that we are where we are today socio and economically because of what has happened in the past 185 or so years, and that we are the result of multiple generations of land loss and poverty and intergenerational poverty because when – you know, when somebody has lost their land, the thousands of acres of land, then you have lost the ability to work it and be productive and be part of the economic development of that. But what happened in Te Whakatōhea, of course, was that that land went somewhere, went to settlers, went to the military, went to the Crown and there are – and I found some other research, I am happy to share that – but there was very large blocks across Te Whakatōhea, 30 acre blocks, 500 acre blocks, Waioweka and other places, that went to settlers and many of the military. So, we see those who are thriving intergenerationally with intergenerational wealth and the growing inequality. So, just by way of example, the *Otago Times* in 2009 said, "Currently, the combined wealth of 155 people is 34.4 billion which actually rose to several billion from 2009. So, what we are saying is that a professor, Andrew Bradstock, did some absolutely brilliant work, argued that the ever widening gap in New Zealand between those with extreme levels of wealth and families experiencing extremely levels of poverty, is actually widening and we can see that today and one of the

key factors – argues that one of the key factors behind the dysfunctional societies is the level of economic inequality and that 50 per cent of children in New Zealand would grow up in the least wealthy households. Which is basically about entrenching, entrenching generation after generation poverty or wealth. And so, that's what we are talking about, and Belinda Borell has done some absolutely brilliant work in her thesis in intergenerational poverty and intergenerational wealth. So, it comes back, as I said, to the ability to be able to access those vital resource, the whenua, the moana, for economic development and self-sufficiency, which obviously in the early 1800s up to the 1860s and even prior – and Professor Manuka Henare talks extensively about that, the ability to thrive and Māori were very entrepreneurial, we embraced the economic development and we were able to sustain, you know, thriving livelihoods. Manuka called that the economy of hou and the economy of mana. Yes. And – sorry, just very quickly. On top of that I talked about deprivation. So, if you look at the deprivation index of New Zealand, of Aotearoa, some of the highest levels of deprivation are in this area here experienced by not just Māori, but wāhine Māori and their children and there are wāhine today that are living in garages, that are homeless, that are living in cars and vans or wherever while others are living on huge acreage of land, prosperous farms and so forth.

Q. Thank you. I was particular struck by Hineīāhua and her being a young women and the loss of her father, the loss of land. It kind of leads from Mr Linkhorn's question around what do you feel was – how was her – he pai ake pea ki te reo Māori. Ka pēhea te wairua o te pēpi kōtiro noiho nei te hoki mai, ai, kua ngaro tāna pāpā, ana whenua e ngaro haere ana, te whānau, kua rerekē rawa atu, kua pōhara mai te whai rawa. **Better in Māori language. What happened – what was the spirit of an only young girl to come back, she lost her father, her lands, was gradually being lost, the whānau, everything was different, had changed. She had become poor from being wealth.** Can you tease that out for me as well please.

A. I just say she would have come back.

Q. From being wealthy to being poverty stricken.

A. Yes.

Q. In the short span of life.

A. [Rachel Wolfgramm] Yes, yes, and should have experienced the very best that Aotearoa, New Zealand had to offer in Tamaki Makaurau in the 18 – when she was with Colin Henry Balneavis. She had the best of lives, they lived in the beautiful home opposite Waipapa Taumata Rau Marae there up in Auckland. Her children were well looked after and she was caught in this situation where, you know, the Crown – her Crown representing as a colonial officer, you know, they were going against her own people down here. And so, peoples that had been very prosperous and there was no doubt that the increasing number of settlers would have wanted some of that business. They would have wanted – you know, they would have looked at how wealthy and well, you know – Whakatōhea were supplying the settler economy, in fact, they were helping to grow the settler economy up in Tamaki Makaurau and that alliance with Colin Balneavis would have been useful for her and her hapū, you know, and that relationship and that business and entrepreneurial relationship. But yes, at a personal level, she was caught between that situation and then moved – you know, in 1864 after the Kaokaoroa battle and she lost not only her father but her uncles and so forth. That would have been extremely stressful. Why did she permanently leave her children behind in Tamaki Makaurau with her husband, well, we don't really know. She may have well come backwards and forwards, but it would have been extremely stressful and that's assuming that she didn't lose her life either in the epidemic that also occurred in 1864, or the raupatu in 1865, you know. Like I said, we just – we've searched and tried really hard to find more about her but her story it's painful, to be honest.

Q. Kia ora kōrua. Ka nui tērā ki a ahau. **Thank you. That's all from me.**

(11:47) DR ROBYN ANDERSON TO RACHEL WOLFGRAMM AND TANIA WOLFGRAMM:

Q. Tēnā kōrua. Robyn Anderson here. I want to ask you mana wāhine questions, but I will reserve that for a later time. But I am interested in your own upbringing, and did you grow up with stories about your

ancestors and what had happened with them or has this been more something you have come to a bit later in life.

A. [Rachel Wolfgramm] No, we grew up knowing about our ancestors and when we were teenagers, we attended a family reunion up in Awanui, up north where our cousin presented us with this book. We were just teenagers at the time. We would go backwards and forth to the north mostly, not down here.

Q. Right.

A. And then in the book is a story of our – of Hineīāhua and Balneavis and the whole connections to Whakatōhea through our great-great-grandmother. So, yes, we have also felt that loss and yes.

Q. And – please.

A. [Tania Wolfgramm] But because our mother had – she was probably more closely tied to Te Tai Tokerau and to Te Aupouri then to Te Whakatōhea.

Q. Yes.

A. Again, because of that loss of connection, the loss of the land, the whenua, the whānau, all of those types of connections. It was like a little puzzle, if you like, just a bit of information here or there and then we would come to a whānau gathering and then it would, you know, expand a bit. But by and large, there was holes in the kōrero, in the mātauranga. And then, probably more recently we've come to work in this space, more intentionally, you know, through academic work and working with other scholars in the Tribunal space and then coming – spending a lot more time down at Te Whakatōhea with our whānau.

[Rachel Wolfgramm] And you know, as an academic, as an associate professor at the University of Auckland for the last 25 years, my office basically looks down on to the whare, No.1 Wynard Street, on to the Balneavis house and that's all as part of the University of Auckland, one of the first places that was gifted to the University of Auckland. So, it's with me every day basically.

Q. Okay, thank you. You said Hineīāhua was kind of spotted down here. Is that in 1864, '65? Can you tell us a little bit more about that, where that information comes from? It's pretty hard to kind of pinpoint because there

was very little information about Hineīāhua herself. I think it was in one of those other reports.

A. [Tania Wolfgramm] Again, like you say, it's a little bit difficult to actually pinpoint.

[Rachel Wolfgramm] Yes, it's very – a lot of the information we have about him, Colonel Balneavis, there's so much because of his position and you know as a colonial officer. But typically it's very difficult to find information about wāhine Māori and they become invisible, they are invisible in the records. So, she was, unfortunately, made invisible.

Q. But Wiremu seems to have had some prominence here.

A. Yes, that's correct.

Q. So, can you tell us a bit more about that?

A. [Tania Wolfgramm] I think he spent – definitely he spent more time pursuing land and opposing land sales through the courts. You know, he had some more, what do you call, involvement in the Ōpape Reserves. So there is quite a bit more information about Wiremu.

Q. I was interested that there is this petition in 1898, how many decades after that land transaction. Do you have any insight as to what prompted that at that time? I've got my yellow sticker thing going. You're talking about Pakiri.

A. [Rachel Wolfgramm] Yes. So, there's no question that Wiremu Rangihaerepō was very proactive. You know, he was obviously really concerned, and you know recognised that the whānau had lost so much, but he was proactive. We can't speak on behalf of Wiremu Rangihaerepō because he comes off a different line and there's whānau, his whānau will be here, Ūpokorehe, his whānau are here. So, we can't speak, really, directly on behalf of him and that activity too much and we don't tend to because we that is their history. But we can talk to – even though we've put him in here because he is Rangihaerepō's grandson and has immense mana in Ūpokorehe.

Q. All right, thank you, and I love these photos, beautiful wāhine. So yes, thank you very much for your evidence today.

A. Thank you.

(11:53) JUDGE DOOGAN TO RACHEL WOLFGRAMM AND TANIA WOLFGRAMM:

Q. Tēnā kōrua. Just on those photos, do you know approximately what date the photo of Hineīāhua is from?

A. [Tania Wolfgramm] We don't have the exact date, but we're best – thinking it would be in the 1850s.

Q. All right.

A. [Rachel Wolfgramm] Before she – possibly before her marriage to Balneavis.

Q. All right. And your belief is that the marriage was 1859 –

A. Yes.

Q. – But you understand that they had already had their children by that time. And thank you for – through your counsel – I see we have received the copy of that book, the Hagger Family History. So, thank you for that. We haven't, obviously had a chance to look at it yet, but I just note, and I was just looking through it earlier and saw the – around the middle of the bundle, there's an obituary for Henare Raumoa Balneavis, who was the private secretary to many, including Apirana Ngata. And what it says in the middle of that obituary is: "Henare Balneavis was a rangatira in his own right, connected by descent with leading Māori families in the Bay of Plenty, Poverty Bay and Wairoa Districts…" and then it goes on and describes other qualities. So, it seems clear that in that time his peers, he had the knowledge there. Have you been able to see any of his records or papers or ?

A. Some, but you know his association with the Polynesian society and the work that he was doing there and the information that has come through, our whānau records. I understand that there is a collection of his work in Gisborne library. Unfortunately, we haven't been able to go into that, but we want to.

Q. All right. Thank you. So, just so I've got the connections right, John Balneavis, who is the surveyor, was the father of Henare or Te Raumoa Balneavis.

A. Yes.

Q. Right.

A. That's correct.

Q. Just give me one moment. A bit like Dr Anderson, I put little marks on things. So, you spoke of, in the written brief, of the possibility that after – or in some point in possibly the early 1860s, Hineīāhua may have gone to the east coast. Is that right?

A. [Tania Wolfgramm] Coming back here.

Q. Coming back. By that, you mean, coming back from Auckland to here.

A. To here, the east coast.

Q. Right.

A. [Rachel Wolfgramm] Whakatōhea had 30 schooners. So, Whakatōhea had a lot of schooners. They were moving backwards and forwards between Auckland and here a lot because they were sending, you know, food and so forth up into Tamaki Makaurau. So, it's not unusual for them to be moving around. Yes. So, this is Dr Petrie, Dr Hazel Petrie wrote the book, *Chiefs of Industry*. And it was all about rangatira and the economic development of this area during the 1850s, 1860s. Andrea Paki wrote one for the north and Hazel Petrie wrote one for down here.

Q. All right. Thank you. I am just trying to find the paragraph where you say Hineīāhua, also known as –

A. Meri Makarina?

Q. Yes.

A. Yes.

Q. So, that name, that Meri Makarina. Do you know anything about the origin of –

A. It wasn't unusual for wahine Māori, when they became aligned with some Christian faith, to take on a name that was associated with that Christian faith. So, Mary was Meri and Makarina was – It wasn't uncommon for them to take on such names. But she retained her name Hineīāhua as well.

Q. Right, okay. Thank you. I have no further questions.

JUDGE DOOGAN:

But just on behalf of the panel, wish to mihi or support the mihi the other panel members have given you for the evidence you have provided and for the

additional materials. He mihi nui ki a kōrua mō tō mahi **Thank you both very much for your work**. You have given us a great deal, although, we hear what you say about the loss as well of the mātauranga, but thank you for this evidence. He mihi nui ki a kōrua. **Thank you very much.**

RACHEL WOLFGRAMM:

I think I would just like to say that we came down here to give our evidence knowing that the Crown has already stated that their full settlement in Whakatōhea has been done and we just want to state that we actually did support much of Whakatōhea through that process, but we also had required that we had research done prior to the settlement. So, the parallel process has been a kind of interesting one for us, but we recognised that the Crown had said that this is going to be relitigated for, in terms of that settlement.

JUDGE DOOGAN:

Āe, kia ora. **Thank you.**

TANIA WOLFGRAMM:

Ngā mihi, ngā mihi ki a koutou ngā rangatira mā mō te whakatinanatanga o te kaupapa, te kaupapa nui i runga i te rā nei. Ngā mihi aroha ki ngā mana whenua o tēnei rohe, o tēnei marae, tēnā koutou, tēnā koutou, tēnā tātou katoa. **Thank you. Thank you to the assembled leaders for bringing this most important matter to fruition today and I want to extend my love to the people of this land, of this marae, thank you, thank you, thank you all.**

JUDGE DOOGAN:

Kia ora, thank you. Thank you Ms Walker. Just while we are changing over we might as well have a little microbreak. Very fond of those.

HEARING ADJOURNS: 12.01 PM

HEARING RESUMES: 12.06 PM

JUDGE DOOGAN:

Kia ora kōrua – sorry, tēnā koutou. We might make a start, thank you. Mr Sinclair, tēnā koe, Mr McBurney, kia ora.

MR SINCLAIR: (MIHI)

Tēnā koe e te Kaiwhakawā. Tēnā koutou, koutou kua tae mai i tēnei wā mō te kaupapa o Te Whakatōhea. **Thank you your Honour, greetings. Those of you who have come at this time for the matter pertaining to Te Whakatōhea.**

During the small introduction, Mr McBurney is going to make himself known, Sir, to the Tribunal and to a lot of the member here. Many, many of the people here have never met McBurney.

MR SINCLAIR CALLS

(12:06) PETER JAMES MCBURNEY: (AFFIRMED)

Q. Tēnā koe, Mr McBurney. Can you state your full name, please.

A. Peter James McBurney.

Q. And before I take you through the affirmation of your evidence, Mr McBurney, your credentials state that you are a historian of 29 years of experience in the Treaty sector?

A. Thirty, 30 years now. Another year has ticked by.

Q. And you have completed a number of reports.

A. Yes, I have.

Q. And how many would that be, Mr McBurney?

A. I've lost count actually, but over 30.

Q. And you have made appearances as an expert witness before the Tribunal?

A. Yes, I have.

Q. And before the High Court?

A. Yes, I have.

Q. And would you like to remind us how many of those you have appeared at, Mr McBurney.

A. I think less than 20, but around 20.

Q. Thank you. And you have agreed in this hearing to follow the code and conduct required of an expert witness for the Tribunal.

A. Yes, I do.

Q. Now, you and your firm are commissioned by the Crown Forest Rental Trust in association with the Ngāti Muriwai Authority Trust to produce the Ngāti Muriwai Authority Trust oral and traditional report, is that correct?

A. That's correct.

Q. What year was that Mr McBurney?

A. I think we started in 2022.

Q. And the report that you finally filed is in what year, Mr McBurney?

A. I think it's dated January 2024.

Q. Will this be the report here?

A. That's correct, yes.

Q. The appellation for that report is Wai 1750 #A033. Now, as parts of that report, Mr McBurney, you had another part which is #A033(a) for the record, and what would that be made up of?

A. So, we conducted a series of interviews with the pakeke and kaumātua who are associated with the cluster of claims of Wai 87, and we transcribed those interviews and this is a selection or extracts from those interviews based on topics that were covered in the interviews. So, these are samples, if you like, from the interviews.

Q. And those amount to some 197 pages –

A. Kia ora, yes.

Q. – of extracts, of interviews. And accompanying your report as well, you have got two document banks.

A. Yes.

Q. Volume 1 and Volume 2.

A. Yes.

Q. Would you like to make comment on what's contained in those.

A. There's some primary sources from Archives New Zealand, that's quite a long file on the negotiations that went on to form the Whakatōhea Māori Trust Board, and that covers a period from about 1920 to 1950 which we found very useful. There are Land Court minute

books. There's records that were made available to me by claimants and from their own personal records and that sort of thing.

Q. Thank you. And finally, you've got a summary of the evidence that you are going present today.

A. Yes.

Q. And that's at appellation Wai 1750 #A033(c). Now, I need you to take your affirmation. To the best of your knowledge, and your report and appendices has a true and correct account of the oral traditional evidence.

A. To the best of my knowledge, it is, yes.

Q. Thank you.

MR SINCLAIR:

Can you please make yourself comfortable. Mr McBurney will remain seated giving his evidence, Sir. And while you prepare yourself there, I've just got a couple of matters to run past your Honour.

Mr McBurney has timed his evidence, Sir, and it's one hour and 15 minutes, which is a little over the 30 minutes we've been subscribed in the timetable. Mr McBurney is truncating his evidence as he goes through and we've managed to reduce it 15 minutes.

PETER MCBURNEY:

Well, I think I got it down to 45 if I read what I was going to do.

MR SINCLAIR:

I'll call Mr McBurney if there are no further questions.

JUDGE DOOGAN:

That's probably a good idea and we'll take it from there.

PETER MCBURNEY:

Get started.

JUDGE DOOGAN:

So, in terms of truncating, you're talking about the summary of –

PETER MCBURNEY:

Yes, yes.

JUDGE DOOGAN:

And you are expecting 40 to 45 minutes to do that.

PETER MCBURNEY:

Yes.

JUDGE DOOGAN:

All right. Just see how we go. I think that's fine.

PETER MCBURNEY:

Kia ora.

JUDGE DOOGAN:

Thank you.

(12:13) PETER JAMES MCBURNEY: (#A033)

Me mihi ki te Atua, nāna te tīmatanga me te whakamutunga o ngā mea katoa. Ki ngā mate, ki waenganui i a tātou, moe mai, moe mai. Ki te wharenui e tū nei, Te Poho o Tamaterangi, tēnā koe. Ko te marae e takoto nei, ko Kutarere tēnā koe. Me ngā mema mō te Taraipiunara, tēnā koe, tēnā koutou. Nō reira e mihi atu ki a tātou e hui nei i raro i tēnei kaupapa. Kia ora mai tātou. **Pay homage to God who created all things. To the deceased amongst us, rest, rest. To this meeting house standing here, Te Poho o Tamaterangi, acknowledgements and to the marae outside, this marae of Kutarere, acknowledgements to you. And to the members of the Tribunal, greetings to you and so I want to greet everyone gathered for this matter, thank you all.**

Well, Mr Sinclair has already covered a lot of what I was going to say at the introduction here. I've been involved in this for 30 years, this work for 30 years. I completed the Bachelor of Arts degree at the University of Auckland, Waipapa Taumata Rau, specialising in Anthropology and Māori Studies. Since then, I've worked as a researcher, a freelance researcher and historian completing those 30 reports or so.

In 2017 I set up Ardmore History Research Limited which in addition to Treaty sector work, has produced reports for applicants for Customary Marine Title under the Marine and Coastal Area, Takutai Moana Act 2011. Two counsel impacts assessments supporting hapū and iwi input into environmental consent applications and I have appeared as an independent expert witness in the High Court and Environment Court for MACA applicants and other litigants on a variety of matters.

The Ngāti Muriwai Authority Trust, oral and traditional History Report was commissioned by the Crown Forestry Rental Trust to support the claims of a collective of claimants in the Wai 1750 inquiry and represented by the Ngāti Muriwai Authority Trust.

The methodology entailed examining primary and secondary documentary sources, supplemented by oral testimony obtained through a series of interviews with kaumātua and pakeke. The pakeke represented claimants affiliated to Te Whakatōhea hapū, Ngāti Muriwai, Ngāi Tamahaua, Ngāti Patumoana, Te Ūpokorehe and Ngāti Ngahere. Ngāti Rua and Ngāti Ira pakeke were not interviewed for the project, although both hapū are referred to in relevant context within the report using information derived from publicly available sources. A 'case study/overview' approach was encouraged by the claimants, who wanted a report that brought together the various *take* that have challenged and prejudiced Whakatōhea since colonisation.

In addition to the oral interviews, the report draws on published iwi histories, Waitangi Tribunal reports, numerous reports produced for the recent Whakatōhea MACA case, and the extensive archival resources held by Adriana

Edwards, the project manager. We also had access to the archives of the late Dave White, long time chair of the Whakatāne Historical Society and that was courtesy of his daughter Kay McLeod and her husband John.

The minutes of the Native Land Court were the key primary source, although the usual limitations of these as 'historical records' were exacerbated by the manner in which Whakatōhea engaged with the Court process, with witnesses making competing claims for their respective hapū. This contrasted with Ngāi Tai, who presented a united front in the Court. There's a lot of contradictory evidence was presented in those hearings.

Case Studies and Oral Interviews.

The case studies for Ngāti Muriwai, Ngāti Patumoana, Ngāi Tamahaua, Te Ūpokorehe and Ngāti Ngahere took their focus from the oral interviews and materials contributed by the pakeke. The interviews were wide-ranging, examining areas of particular concern, such as the branding of Whakatōhea as rebels, both before and after the killing of Reverend Völkner; the influence of Christianity and Māori adaptations of the Christian message through Pai Mārire and Ringatū, and how Whakatōhea's association with the former and adoption of the latter affected their relationship with the Crown. For Ngāti Muriwai, the limiting of Whakatōhea to just six hapū, when early records indicate the iwi comprised as many as two dozen hapū, is an on-going source of grievance. Whakatōhea customary rights east of the Motu River in the Mangatū-Waipāoa blocks was also identified as an area for investigation.

Over 40 interviews were conducted, and I acknowledge the generosity of all those who shared with the research team their knowledge and experiences, and private records, including whakapapa booklets, manuscripts, and plans. A separate document, containing extracts from the interviews, organised under topic headings which we've covered that.

Okay, so I am just going to go forward to – I am just going to go forward to the next page, and I just want to acknowledge that the Crown had a question of clarification about when Mokomoko's remains were repatriated to Waiaua and

I've said there at the bottom, the last sentence in paragraph 12, that it was not until 2011 that Mokomoko was formally pardoned and his remains returned to Waiaua. Well, that's not correct, his remains were returned in 1989 and a statutory recognition of the 1992 pardon occurred in 2011, and I apologise to the uri of Mokomoko for that error.

So, going forward to page 13 and paragraph 44.

Pākōwhai: Missionaries and Whakatōhea Coastal Traders.

The preceding pages cover topics which are – have generally, fairly well covered in other reports. Perhaps I could talk to all those issues if required.

So paragraph 44. Pre-treaty, Whakatōhea hapū economics were based around accessing the seasonal resources provided by Papatūānuku and Tangaroa, on the fertile river plains, mountain forests, and from the harbour, estuaries, rivers, and sea. From the time of the Ngāpuhi incursions, these kin groups began to congregate in larger settlements, initially for defence purposes and later to facilitate trade. The main settlement of this kind was Pākōwhai, originally named by the founding ancestor Tārawa on account of the numerous kōwhai trees, situated at the confluence of the Ōtara and Waiōweka Rivers.

When the first Pākehā traders and Christian missionaries arrived around 1840, they found a large, thriving community, already well-versed in the teachings of Christianity and eager to take advantage of the new technologies on offer.

Whakatōhea adapted well to the Pākehā trading economy, turning the fertile flats behind Ōpōtiki into market gardens and orchards; quantities of pigs were raised, which served as currency when trading with Pākehā for high-value assets such as schooners and, in one instance, a flour mill. At the mission school, adults and children learned literacy. Chiefs of Whakatōhea hapū such as Te Rangimātānuku, Te Aporotanga, Te Rangihaerepō, Hira Te Popo, Mokomoko and others operated a successful coastal trade between Ōpōtiki and Auckland and sometimes farther afield to Port Jackson, New South Wales.

According to Nēpia Tipene and Heremaia Warren, their tipuna, Rangimātānuku, maintained a fleet of schooners that included the *Linnet*, *George and Catherine*, *Mana of the Queen*, and the *Charlotte*.

The Ngāi Tamahaua schooner, *Tonanaua*, was named after the waka taua captured by Tītoko during the Ngāpuhi raid on Mōtītī island. *Tonanaua* is depicted inside Muriwai meeting house at Ōpape; there is also an image of a steam locomotive, the latter signifying Te Kooti's prophecy of the main trunk line running through Te Kuiti.

As the Pākōwhai trade thrived, it drew in hapū from the surrounding district, including Ngāi Tai, Ngāi Tūhoe, and Te Whānau a Apanui. Whanaungatanga enabled their living together at Pākōwhai, which grew into a large trading centre, with a population of around 1200. Despite the population concentrating at Pākōwhai, Whakatōhea hapū retained a strong sense of independence under their respective rangatira. The schooners were 'owned' by chiefs on behalf of their hapū, who laboured to supply produce, initially to purchase the schooner and secondly for the Auckland trade. Any disputes between the various hapū were generally resolved in the tribal rūnanga.

One of the main tasks of the report was to examine how Whakatōhea's perceived status as 'rebels' affected their relations with the Crown. To this end, Whakatōhea's engagement with Christianity appealed as a useful starting point, initially embracing CMS Anglicanism (exemplified by the building of Hiona Church in the end between 1862 and 1864) and Catholicism, and their subsequent rejection of the Pākehā interpretation of Te Whakapono in favour of Pai Mārire and Te Kooti's Ringatū. The historical arc of Whakatōhea's religious engagement mirrored the iwi's experience of colonisation and became one of the lenses through which they were viewed by the Crown, and I would say by Pākehā generally.

The message promulgated by the missionaries, and those of the CMS in particular, required Māori to adhere to strictly prescribed rules of 'civilized'

behaviour – effectively, middle-class English values – or be condemned as falling back into barbarism.

In the next generation, these prescriptions were upheld by the sons of missionaries, many of whom gained employment in influential positions with the colonial government. Catholicism was adopted by many Whakatōhea following the visit of Bishop Pompallier in March 1840. Catholicism gained a following, partly due to its more relaxed approach to the persistence of Māori cultural practices such as tā moko, but also because the Catholic priests avoided any suggestion that their interests were anything other than spiritual. They did not covet land.

Immediately upon arrival at Ōpōtiki in late 1839, the Anglican missionary J.A. Wilson Snr 'purchased' large areas of land, both for himself and the Church Missionary Society. Whakatōhea viewed the transaction not as a full and final alienation, but as a means of integrating Wilson and his family into the tribe; they saw the land as a tribal asset and continued to utilise its resources as they had always done. After 10 years at Ōpōtiki, Wilson left, with his claims to the land between the Waiotahe and Waiōweka Rivers unresolved. That was through the land claims commissions. A survey carried out in 1853 revealed Wilson's 'Pākihi/Hukutaia' purchase on the left bank of the Waiōweka to comprise some 11,000 acres. When Whakatōhea became aware of the extent of the CMS claims, they successfully repudiated the Te Ngaio purchase at Tirohanga, repaying the society the value of the original purchase in horses and other stock.

In 1862, Commissioner Bell awarded the missionaries' sons, J.A. Wilson Jnr and James West Stack around 1,900 acres each. The government's surplus lands policy meant that the lion's share of the 11,000-odd acres went to the Crown. The loss of such a large area of land, based on a deed the implications of which could not have been understood by those who signed it, must have affected Whakatōhea's perception of both the Crown and the CMS mission. Disillusionment with the established Pākehā church and its evident ties to the colonial government would lead many amongst Whakatōhea to embrace the

alternative faiths of Pai Mārire and Ringatū, as well as the pupuri whenua kaupapa of the Kīngitanga.

War and Raupatu.

Carl Sylvius Völkner was appointed to the Anglican mission at Ōpōtiki in 1860, amid the developing crisis in Māori-government relations. Pākehā land hunger and the Crown's reaction to the emergence of the Kīngitanga, which it characterised as a rebellion against the Queen's sovereignty, led to war, first in Taranaki and then in Waikato. The British army's destruction of the village of Rangiaowhia, a refuge for the women, children and elderly in February 1864 would have fateful consequences for Whakatōhea, as amongst the many killed were the wife and daughter of Kereopa Te Rau. The Tauranga campaign that followed the battle of Ōrākau brought the conflict almost to Whakatōhea's doorstep.

In early 1864, Whakatōhea declared themselves for the Kīngitanga and joined the multi-tribal Tai Rāwhiti war party with the intention of joining the war in the Waikato. However, at Tapuaeharuru, Rotoiti, the taua was driven back, with the loss of the chief, Apanui Pākaha. This was followed in April 1864 by the disaster at Maketū and Matatā, known as the battle of Kaokaoroa, where many Whakatōhea were killed, including the chief Te Aporotanga and as the former witnesses were saying, Rangihaerepō and many other leaders of Whakatōhea. The losses incurred at Kaokaoroa, both in lives and equipment, coupled with the blockade imposed upon the coast, meant the winter of 1864 was especially grim for Whakatōhea. An epidemic that swept the Bay of Plenty was devastating for the people of Ōpōtiki; the loss of life from war and pestilence saw the thriving community of five years earlier reduced to abject poverty.

Meanwhile, Völkner was revealed as having spied for the government when he was found to have written letters to Governor Grey about the movements of war parties, the 'state of the Natives', and significantly, plans of the Waikato settlement of Rangiaowhia. When embarking for Auckland to visit his wife, he was warned not to return. In his absence, Taranaki prophets brought Pai Mārire to the district. The new faith was seen as a blessing by many Bay of Plenty

Māori, as a way of recovering Māori mana Motuhake, an independent Māori authority, while retaining elements of Judeo-Christianity (the Old Testament was a key text in the new religion).

This response is typified by the reported statement of an unnamed Whakatōhea chief, who told Bishop William Williams:

> 'Bishop, many years ago we received the faith from you; now we return it to you, for there has been found a new and precious thing by which we shall keep our land.' (Kua kitea tētahi taonga hou a mau ai to mātou whenua).

Völkner's return to Ōpōtiki aboard the *Eclipse* on 1 March 1865 presented the Pai Mārire prophet Kereopa Te Rau with the opportunity to obtain utu for the killing of his whānau at Rangiaowhia. Following the missionary's death, the outraged Pākehā community considered Völkner's 'own congregation' responsible, a view that branded all Whakatōhea and justified the wholesale confiscation of all of the iwi's arable land.

The Crown's invasion of Ōpōtiki September 1865, and the circumstances that immediately preceded it (the Peace Proclamation and declaration of martial law in the North East Bay of Plenty) are well-covered in other reports. Evidence presented at the 1920 Commission into the Whakatōhea Confiscation speaks of a negotiation that took place in the Spring of 1865 between Whakatōhea chiefs Te Awanui Aporotanga, Te Ranapia Waihaku, Piahana Tiwai and Reweri Rangimātānuku, and the commander of the militia, Major Thomas McDonnell. It appears McDonnell demanded a cession of land as compensation for the killing of Völkner. The Whakatōhea chiefs offered an area west of the Waiōweka River as far as Ōhiwa, with the loyal Whakatōhea retaining the lands to the east. McDonnell demanded land east of the Waiōweka and the parties agreed to extend the land to be forfeited to the west bank of the Ōtara River.

The area between the Waiotahe and Waiōweka Rivers comprised the ‘surplus’ land the Crown had appropriated from the CMS Old Land Claim. As such, it was never likely to be acceptable, as the Crown considered these lands to be already in its possession. In the event, the raupatu was comprehensive, encompassing all of Whakatōhea’s coastal lands, and reserving just 20,000-odd acres at Ōpape and smaller reserves at Hiwarau and Hokianga Island on Ōhiwa Harbour for the subsistence of the iwi. Kōrero tuku iho and waiata such as ‘Pihikete’ speak of the hardships endured by the iwi at that time.

Prior to the events of 1864 and 1865, Whakatōhea were known as King supporters by Crown officials. In his 1862 report on the ‘state of the natives’ in Te Urewera and the Bay of Plenty, C. Hunter Brown described Ōpōtiki as the focus of King agitation in the district. The killing of Völkner and the manner of it led to the fixing of the rebel label on the whole tribe. This view became entrenched in the minds of government officials such as H.T. Clarke and J.A. Wilson Jnr, and persisted well into the 20th century.

Clarke and Wilson Jnr had a significant impact on the fortunes of Whakatōhea; Clarke in his roles as Resident Magistrate and Civil Commissioner in the district, and Wilson Jnr as the Special Commissioner of Bay of Plenty Confiscated Lands. As sons of missionaries, they grew up on mission stations where they learned to speak and write te reo. As already noted, they were imbued with the prejudices embedded in the missionary community. However, unlike their fathers, the power dynamics of the relationship were now wholly in their favour. Clarke’s reports betray his distrust of and antipathy towards Whakatōhea, which only became more marked through their association with Te Kooti.

In 1866, Wilson Jnr was appointed Special Commissioner for the settlement of the Bay of Plenty confiscation district with sweeping powers to determine the size and location of the reserves. Having grown up amongst Whakatōhea, Wilson regarded himself as the pre-eminent expert on the tribe, fully competent to decide the number and make-up of Whakatōhea hapū. While his appointment may have been advantageous to the government on account of his familiarity with the land and the people, Wilson had significant conflicts of

interest. He had recently revived his father's Old Land Claim for Hukutaia, west of the Waiōweka River, which had lain dormant for some 15 years.

The Wilsons' occupation of Hukutaia had been fraught with discord, as Whakatōhea continued to make use of the land as had they always done, cutting timber and establishing their own cultivations. Pigs belonging to Whakatōhea had ravaged the missionary's cultivations and their sheep were killed by dogs. The Wilsons' sense of entitlement to the land Wilson Snr had transacted with Whakatōhea chiefs in late 1839 was not supported by the reality on the ground. Given Wilson Jnr's reputation for being self-centred, intolerant and unable to get along with other Crown officials, we may assume that these qualities typified his relations with Te Whakatōhea as well. Both Clarke and Wilson reported to the Native Minister, Donald McLean, whose judgement on Whakatōhea echoed the views of his subordinates when he said of the confiscation that Whakatōhea got no more than their deserts.

JUDGE DOOGAN:

Mr McBurney, just before you move on to your next topic on Te Kooti, we'll give you a minute or two break just to take a breather.

PETER MCBURNEY:

Thank you. Thank you. Kia ora.

HEARING ADJOURNS: 12.36 PM

HEARING RESUMES: 12.39 PM

JUDGE DOOGAN:

Kia ora anō. Judge Doogan speaking. Mr McBurney, thank you, we'll carry on.

(12:39) PETER MCBURNEY: (CONTINUES A33(c) PRESENTATION)

The report contains a lengthy account of Te Kooti Arikirangi Te Tūruki's involvement with Whakatōhea, from the time Hira Te Popo of Ngāti Ira invited the prophet to bring his people to Maraetahi.

I think I'll leave that part because you are going to hear from Mr Crosby, I think, tomorrow. So going to page 21, 67, paragraph 67.

Whakatōhea and the Six Hapū Model.

Professor Ranginui Walker suggests that Whakatōhea numbered around 2,000 in pre-European times, with as many as 22 constituent hapū. Post-contact, throughout the country, hapū and iwi populations declined significantly due to the ravages of war and disease. Although more than a 1,000 people were living at Pākōwhai in the mid-1850s, by the late 1860s, following invasion, raupatu and enforced resettlement onto Ōpape and Hiwarau/Hokianga Island reserves, Whakatōhea numbers dropped to fewer than 500. It is unsurprising that many hapū that flourished in the first half of the 19th century faded from view, with the morehu coalescing with their more numerous relations.

So yes, I am sort of repeating myself here a bit. Going to 69.

The reserves were manifestly inadequate to sustain the population. The only ploughable land in the 20,000-acre Ōpape Reserve was 200 acres in the Waiaua Valley, where all Whakatōhea hapū soon congregated. The struggle for scarce resources led inevitably to disputes between hapū.

When determining the number of Whakatōhea hapū, Wilson was less concerned with following tikanga as reducing Māori social structures to manageable units. In 1867, Wilson recognised five Whakatōhea hapū in Ōpape reserve: Ngāti Ruatākenga, Ngāi Tamahaua, Ngāti Patumoana, Ngāti Ngahere, and Ngāti Ira and Te Ūpokorehe, five of which were initially associated with Ōpape. A number of the aforementioned 22 hapū that remained active were amalgamated into these six; the membership of Ngāti Muriwai was included in the Ngāti Rua list.

Unfortunately, we do not know Wilson's methodology or motives because he withheld the minutes of his deliberations at Ōpape from his successor,

Herbert Brabant following his dismissal from his position as the Native Land Court judge.

Wilson was brought back to subdivide Ōpape reserve in 1879 but was dismissed the following year and the task was taken up by Brabant. Allocated the poor in Ōpape No.1, Ngāi Tama were worst off, Rewita Niwa describing it as land populated by ghosts. Ngāti Ngahere fared little better on Ōpape No. 2. These hapū also received the bush blocks of Ōpape Nos 11 and 10 respectively.

Ngāti Rua, on Ōpape No. 3, obtained the lion's share of the arable land including Ōmarumutu Pā; they were also awarded Ōpape No. 12, the most remote bush block. I address the apportioning of Ōpape 3A to Ngāti Muriwai later in the summary. Te Ūpokorehe who had previously been confined to Hiwarau were awarded Ōpape No.4 block. Ngāti Patu were allocated Ōpape No. 5 in the Waiaua Valley and the No. 9 block in the hill country. Ngāti Ira got Ōpape Nos 6 and 8; however, as already noted, Hira Te Popo returned to settle on his ancestral land at Ōpepenui when he came in from the Waiōweka in 1870.

The Ngāti Ngahere allocation of Ōpape No.2 and 10 in the reserve were left unoccupied for many years. The rangatira Paora Te Ua refused to move there as he desired to be close to town. The hapū had been included in a 21-acre reserve at Te Rere near Ōpōtiki township by Commissioner Brabant, and there they remained.

Arihia Tuoro says that in the 1930s, her grandmother, Mei Edwards, tried to establish a marae on Ngāti Ngahere's Ōpape allocation, but the people would not move. A wharenui she purchased from Te Whānau a Apanui for £300 was eventually erected at Te Rere as the first hall. In the event, the fact that Ngāti Ngahere never utilised their land at Ōpape benefited the entire iwi, as it was never cut up. Ōpape 2 was transformed into the Ōtānemutu Lands Trust, which Mrs Tuoro describes as the most successful economic block, used for dairy farming, forestry, kiwifruit cultivation and other off-site investments.

I am just going to go on to the commissions of inquiry, paragraph 76.

The report provides an account of the proceedings of the Native Lands Commissions of 1920 and 1927, which inquired into the Whakatōhea raupatu and claims for compensation. The Jones Commission of 1920 examined questions raised in numerous Whakatōhea petitions; it heard evidence from numerous witnesses who pointed out that Whakatōhea's participation in anti-government military campaigns was comparatively minimal. The battle of Kaokaoroa, the main action involving Whakatōhea, was a punishing defeat that cost the tribe dearly. Whakatōhea's resistance to the punitive expedition of September 1865 was sporadic and short-lived. As the witnesses testified to the Commission, a considerable portion of the tribe remained loyal. The blanket confiscation was therefore manifestly unjust.

This was denied by the Crown, whose lawyer maintained that the Whakatōhea tribe as a whole was in rebellion and only surrendered because they had been defeated; that had they not been crushed by the invasion of September 1865 and forced to live on the reserved lands on the coast, Whakatōhea would have continued to provoke rebellion and pose a threat to settlers.

The Crown needed to make this argument, because under the New Zealand Settlements Act, confiscation of iwi land was justified by active rebellion. Whakatōhea had been punished for the killing of Völkner through the invasion of September 1865, while those responsible for the missionary's death had been dealt with by the civil courts, along with the innocent Mokomoko. Whakatōhea's legal counsel was in no doubt that the killing of their missionary was the act for which the land was confiscated.

The Commission seemed to concur in this view, citing a speech in Parliament by Premier Stafford which explicitly linked the Eastern Bay of Plenty confiscations to the killings of Völkner and Fulloon. The Commission commented that, '…righteous indignation at a very diabolical murder partly swayed the judgment of those who advised and authorized the confiscation of

such a large area.' While the Commission recognised that '…the arch-criminal was of another tribe altogether', it concluded, 'No doubt the Whakatōhea Tribe was carried away by fanaticism, and was equally responsible.'

Nevertheless, the Commission cautiously acknowledged that the confiscation inflicted upon Whakatōhea was 'heavier than their deserts'. However, its ruling did not refer to the hardship confiscation had inflicted on the tribe, a key element in the petitions that led to its being empanelled in the first place.

In 1927, the Sim Commission heard no new evidence and took the decision of the 1920 Commission 'as read'. The Crown continued to rely on the decision of the 1920 Commission for the next 30 years. The Sim Commission recommended the sum of £300 per annum as compensation for the Whakatōhea raupatu, which was immediately challenged as manifestly inadequate by the iwi negotiators. The Great Depression caused negotiations to stall and, though they were revived during the War, little progress was made. Members of Whakatōhea, complaining of destitution, petitioned the government to release the money, to no avail.

The legal technicality that Whakatōhea had their land confiscated for being in rebellion and not as punishment for the killing of Völkner continued to elude Crown officials and politicians dealing with the matter. In September 1946, a deputation of Whakatōhea met Prime Minister Peter Fraser, who raised the question of Whakatōhea's culpability in the missionary's death, before repeating the findings of the Sim Commission, that the Whakatōhea confiscations were excessive, but only to a small extent. This speaks to the Crown's enduring perception of Whakatōhea, as not simply 'rebels', but rebels of the most egregious kind.

When the War ended, Whakatōhea were offered a lump sum settlement of £15,000, which was raised to £20,000 after protracted negotiations. The money was to be deposited with the Māori Trustee until a suitable piece of land could be found for purchase as an economic base for the tribe. The negotiators wanted the money paid to the tribe directly, with a trust board set up to

administer the funds. Another group wanted the money invested, with the interest used for the maintenance of each of the Whakatōhea marae. These internal differences led to two committees forming, each purporting to represent the tribe in its negotiations with the government. The settlement monies remained with the Māori Trustee, as both committees searched for a suitable farm block to purchase.

The Whakatōhea Trust Board held its first meeting on 26 March 1950, and was constituted under Section 26 of the Māori Purposes Act 1949 in May the following year. In June 1952, a farm block at Apanui on the right bank of the Waiōweka River was purchased by the Trust Board. The £20,000 raupatu pūtea was augmented by additional compensation of £4,649 for the surplus lands taken by the Crown in the 1850s, when the CMS Old Land Claims were assessed.

Ngāti Muriwai – Traditions, Ōpape Partitions and Sheep Farming.

The whakapapa depicted in Figure 14 on page 381 of the main report shows the descent of Eru Pōnaho from both Muriwai and Tōrere-nui-a-rua, the lines coming together in the marriage of Pōnaho's grandparents, Aohaere and Nuku. This gave their descendants taharua status, dual affiliation to Whakatōhea and Ngāi Tai. This may have been a tatau pounamu, a peace making marriage made between historical adversaries, if so, it was ineffectual as warfare between the two tribes persisted into the 19th Century.

As already noted, during this period of conflict the Ngāti Ngahere rangatira and tohunga Punahāmoa decreed that all Whakatōhea with Ngāi Tai ancestry should be killed. Following the battle of Paengatoitoi, in which Whakatōhea were defeated by Ngāi Tai reinforced by Ngāti Maru, Eru Pōnaho was among the Whakatōhea survivors making their escape along the beach. As they crossed the Ōtara River, one of Pōnaho's companions, Te Uhi, attempted to drown him, apparently on account of his Ngāi Tai affiliation. Pōnaho managed to save himself, but the incident was not forgotten.

The writer of the short paper, 'Ngāti Muriwai Hapū Historical Notes', who is presumed to be the late Matenga Biddle, states that the rohe of Ngāti Muriwai 'originally covered the coastal area from and including Tōrere to the eastern bank of the Ōtara River.' This territorial span underlines Ngāti Muriwai's connections to both Ngāi Tai and Te Whakatōhea and to Te Panenehua I would add.

Ngāti Muriwai assert longstanding customary rights to Waiaua and Ōmarumutu. Kaumātua Robert Edwards attests: '[Waiaua] was ours. Before the raupatu, Pōnaho and his whānau lived there, nobody else, all these other ones. There were other whānau around, but they [Ngāti Muriwai] lived there.'

By 1872, confinement to the Waiaua Valley was causing disputes between hapū, with disputes ending 'with sticks and blows', if it was reported. This climate of conflict led Awanui Aporotanga to claim the whole of the Waiaua Valley for Ngāti Rua, arguing it was their ancestral land. However, his application was rejected on the basis that customary title and all ancestral rights had been extinguished by the confiscation.

Ngāti Rua continued to agitate for exclusive possession of Waiaua, leading Porikapa of Ngāti Muriwai to complain to government officials, that Ngāti Rua 'wish to eject the hapus who are cultivating…', and that Ngāti Muriwai had been singled out. Porikapa asked to have his hapū land defined by survey.

Sheep returns for the year 1879 record that 'Te Paka' was running 168 sheep at Ōpōtiki. Presumably, Te Paka was Te Paku Eruera, Porikapa's nephew. In 1881, the Ōpōtiki Resident Magistrate, R.S. Bush, reported that Māori owned three small flocks of sheep in the district, one of which was formed by Te Paku at Ōmarumutu. Te Paku's attempts to diversify economically led to conflict of other occupants of the Waiaua Valley. Although other Whakatōhea rangatira made forays into sheep, none persevered with it in the same way as Ngāti Muriwai. Sheep farming on unfenced land is incompatible with horticulture, and Ngāti Rua's objections to Ngāti Muriwai was supported by other hapū leaders.

Wilson's partitioning of Ōpape Reserve in 1880 divided between the six hapū he had identified in 1867, Wilson did not set aside a piece for Ngāti Muriwai, whom he saw as a part of Ngāti Rua. When Wilson moved on, he was replaced by Herbert Brabant who was tasked with finalising the list of names in the partitions.

Disputes between Ngāti Rua and Ngāti Muriwai over the sheep were aggravated when Porikapa Pōnaho gave evidence in support of Ngāi Tai in the Whitikau title investigation in December 1881. The Court's decision in favour of Ngāi Tai saw Porikapa and his Ngāti Muriwai whanaunga, Eru Pōnaho, Te Wakahou Eruera and Te Paku Eruera, included in the Whitikau No.2 ownership lists along with more than 200 Ngāi Tai. In February 1882, Awanui Aporotanga and leaders of the other Whakatōhea hapū wrote to Brabant complaining about Ngāti Muriwai's sheep farming, claiming it was in defiance of a tribal edict against the practice.

At one point, the Ngāti Muriwai sheep were driven off the land. A case was brought in the Resident Magistrates Court which came down with a recommendation that Ngāti Muriwai be put in a separate block. Although Brabant was initially reluctant, when Te Paku Eruera agreed to pay the survey costs, the commissioner agreed to cut out 660 acres from Ngāti Rua's allocation for Ngāti Muriwai, to be designated Ōpape 3A. This was some of the best land in the Waiaua Valley and the allocation, calculated at 30 acres for each of the 22 names on the Ngāti Muriwai list, was generous, considering that other hapū allocations included large areas of unusable bush country.

In the years since, Ngāti Muriwai have maintained their discrete identity living alongside their Ngāti Rua whanaunga. Around the turn of the 20th century, a new whare tipuna, named Tūtāmure, was constructed at Ōmarumutu Marae. The two main builders and carvers of Tūtāmure house were Te Awanui Aporotanga and Tupara of Ngāti Rua, assisted by a number of others including Waiapu Te Tāwhiro and Pōnaho Porikapa of Ngāti Muriwai. Up until 1976, the hapū name at Ōmarumutu was an amalgamation of the two –

Ngati Muriwai-a-Rua – with each hapū having a separate wharekai. These were demolished in the late-1950s and a new whare kai, named Hineīkauia after the daughter of Muriwai, was built and blessed in 1961. As with all Whakatōhea hapū, the whanaungatanga is very close; kuia Julie Lux, who affiliates to both, Ngāti Rua and Ngāti Muriwai, says she would have to split herself down the middle: 'If I'm going to separate between Ngāti Rua, Ngāti Muriwai, I can't do that', she said.

In 1976, a hearing to rationalise the titles at Ōmarumutu papakāinga was held. Ngāti Muriwai had always been of the view that the papakāinga was on land owned by Ngāti Muriwai whānui. However, research conducted prior to the hearing by the Deputy Registrar determined that Ōmarumutu village, including the marae, was situated on Ōpape 3B, and not on the Ngāti Muriwai partition, Ōpape 3A. The papakāinga was therefore on Ngāti Rua land, and there were no Ngāti Muriwai names in the title.

The Court moved to remedy this and place those it described as the descendants of 'Paku's people' into the title of Ōmarumutu Papakāinga, so that the ownership would reflect both hapū, Ngāti Muriwai and Ngāti Rua, with historical associations to the marae. This should have resolved any remaining issues between the two hapū. However, at the same hearing, Tiwai Amoamo asked the Court to change the hapū name from Ngāti Muriwai-a-Rua to Ngāti Rua, which the Court acceded to. Julie Lux, who was in Court, tried to ger her aunties to speak up and object, but they kept silent, not wanting to make a fuss. Since that time, many Ngāti Muriwai hapū members have refused to take part in activities at Ōmarumutu, whose wharenui their tīpuna helped build.

In the 1990s, Ngāti Muriwai, in the guise of the Ngāti Muriwai Charitable Trust, was recognised as a representative tribal entity of Te Whakatōhea by Crown agencies and local authorities. The trust co-ordinated youth activities around education and training, family support, and programmes designed to assist young people develop life-skills, improve self-esteem and address drug and alcohol abuse.

Whakatōhea rights in the Mangatū and Waipāoa Blocks.

There is an extensive section in the report about that, but we've had the judge's directions about that. I was going to go to paragraph 102, the last words from Robert Edwards.

I will close with a quote from the interview with kaumātua Robert Edwards who was, at the time, chair of the Whakatōhea Māori Trust Board:

> The raupatu has been a 150-year journey, a journey of lost generations, lost opportunities, and a lot of pain, lot of disharmony. Some of it is rubbing off into the next generation and we want to stop that. Whakatōhea will only thrive if they move together. The Trust Board is just a trust board, it has been the iwi's implement to look after their assets, to help grow their assets. Bearing in mind, the most important asset is not the finance that you can create, but it's the people that you're looking after. That is your main asset, and giving them the opportunity to grow.

Kia ora.

MR SINCLAIR:
Thank you Mr McBurney. If you can remain as you are, and we'll take directions from the Judge regarding next steps.

JUDGE DOOGAN:
Kia ora Mr McBurney, thank you. Well timed, that takes us right to lunch. We will break for kai, I think we've got 40 minutes on the programme, let's make it 45 or there abouts. See you all shortly, thank you.

HEARING ADJOURNS: 1.01 PM

HEARING RESUMES: 1.52 PM

JUDGE DOOGAN:

Kia ora koutou. Welcome back. Mr McBurney, we're just going now to questions from counsel. Ms Feint, are you first?

MS FEINT:

I am, Sir.

JUDGE DOOGAN:

All right. Thank you for the bundle of papers. The record number will be #A033(k) This is a bundle of papers that Ms Feint just put together to make the questioning of Mr McBurney a little bit easier. Thank you.

MS FEINT:

Thank you Judge. Can I just clarify before we started. I understood from our judicial conference on Friday that cross-examination of the expert witnesses is permitted but what you said this morning seemed to muddy the waters somewhat and I think –

JUDGE DOOGAN:

Sorry –

MS FEINT:

I think your Honour intend to refer to tangata whenua witnesses.

JUDGE DOOGAN:

That's correct. My apologies, you are right. There's no change to the protocols in terms of conventional questioning, cross-examination of technical or expert witnesses and the comments were, when relation to the tangata whenua witnesses who may underpin this, some parts of this evidence.

MS FEINT:

Thank you, Judge.

(13:54) MS FEINT TO PETER MCBURNEY:

Q. Tēnā koe Mr McBurney.

A. Kia ora Ms Feint.

Q. My name is –

A. Yes.

Q. I was going to tell you my name. I act for Ngāti Rua hapū and before we start, can I just check, you were referred to by Mr Sinclair variously as Professor McBurney?

A. No, Mr McBurney.

Q. Dr McBurney?

A. Mr McBurney.

Q. Mr McBurney?

A. Yes, I am Mister.

Q. All right.

A. Thank you.

Q. Can I just with some question about methodology and my first question is about who the claimant group is that this report was prepared for? You were commissioned by the Ngāti Muriwai Authority Trust, but you say in paragraph 4 of your summary that your acting in relation to what appears to be a wider group of claimants affiliated with Whakatōhea.

A. Well, I think that the Ngāti Muriwai Authority Trust was the approved client for Crown Forestry Rental Trust and the other groups came in under that as part of the cluster of claims, if you like.

Q. So, is this group the Whakatōhea Kotahitanga Waka Group?

A. Well, I think they might have been that when they were doing that MACA.

Q. Right.

A. Yes. But I couldn't say that for sure, but you might assume that.

Q. So, your chapters 1 to 7 of your report appear to be a broader history of Whakatōhea itself –

A. Yes.

Q. – and then you follow that up with case studies of various hapū such as Ngāti Muriwai, Ngāti Tamahaua, Ngāti Patumoana, and so on.

A. For the project brief we actually had – I actually had project briefs from each of those claimants and that's why they wanted to pursue a case study approach. So, there was a lot of double up in the project briefs and so that's why I thought, well, I can do the case studies there, you know,

where the oral interviews relate, particularly to those hapū, but where it's generic for Whakatōhea as a whole, I will just do that overview history, if you like.

Q. And you say that you – for your oral history project, you interviewed witnesses from Ngāti Muriwai, Ngāi Tamahaua and Ngāti Patumoana, Te Upokorehe and Ngāti Ngahere, but not Ngāti Rua and Ngāti Ira. Can I ask why that was?

A. Because they weren't part of the cluster. I was working closely with the manager of the claim, and she was organising the interviewees.

Q. All right. In terms of the oral history project –

JUDGE DOOGAN:

Sorry. Could I just clarify who the manager was just to be –

PETER MCBURNEY:

Adrianna Edwards.

JUDGE DOOGAN:

Thank you.

MS FEINT TO PETER MCBURNEY: (CONTINUES)

Q. So, as a historian would you agree that when your fact finding oral traditions have value but need to be weighed up and evaluated against other sources of information as such as the documentary record?

A. Yes.

Q. And would you agree that you need to guard against the tendency for a contemporary group to project their identity back in time? Or at least to be aware of that tendency?

A. Yes.

Q. Would you agree that there is a distinction in principle between traditions that may vary from hapū to hapū and information that's simply inaccurate?

A. I suppose so.

Q. In your methodology section, you say at page 23, just in that first paragraph at the top of the page there, that you had protocols for

conducting the oral history interviews and in that last sentence it says there that there are various undertakings made to protect the intellectual property rights of the interviewee and to enable them to maintain control over the material in the manner in which its deployed in the report. Does that mean that in terms of the oral history that you recorded, your role was simply to record that information faithfully without commentary on it?

A. No, I certainly investigated the kōrero and as you say in your first question, I did match it to the written record or the documentary record and certainly found anomalies and they are commented on in the text of the report. And in fact, I – there were several – I mean, we just had witnesses for Rangihaerepō and in Ranginui Walker's book he talks about Hineāhua as being Rangihaerepō's daughter who was killed by Ngāpuhi as those witnesses were explaining that wasn't really possible because their tupuna married Balneavis and wasn't killed at sea in 1831. But there were about three different versions of that kōrero that were given to me, about the origins of the name Ngāti Patumoana in the interviews, and so it was fairly obviously, they couldn't all be right. So, I recorded all of them and yes, put it out there and I came to a conclusion which was very similar to what Rachel and Tania Wolfgramm were talking about earlier today.

Q. All right. Can we look at one exemplar one tradition that you record and if I take you to page 400 of your report, paragraph 1185.

WITNESS REFERRED TO REPORT, PAGE 400, PARAGRAPH 1185

So, this is about Ōmarumutu Marae and you say there that Ngāti Muriwai pakeke assert that Ōmarumutu originally belonged to Ngāti Muriwai who offered to share it with Ngāti Rua when the wharenui of the latter burned down. And then if you look at the source, your footnote says, 'Refer to the *Ngāti Muriwai Hapū Historical Notes* of Matenga Biddle', which you have reproduced at appendix A of your report. So, if I take you to page 585.

WITNESS REFERRED TO #A033, PAGE 585

So, here you have reproduced those historical notes in full, correct?

A. Yes.

Q. And although you say they are more than likely attributable to Matenga Biddle, we don't know who the author is, do we?

A. They came from his papers that are held by his grandson, Paora Brosnan and I have seen them anywhere else.

Q. But we don't know who the author is, do we?

A. We don't know for sure.

Q. And in those notes, so the tradition that you have recounted at 1185 of your evidence, is produced in the third paragraph down, it says: "In the late 1850s, Ngāti Rua, a hapū deriving its origin from Rua Mataranui, a descendant of Repanga the younger brother of Hine-i-Kauia, lots its marae through fire and Ngāti Muriwai true to their tradition offered them joint use of Omarumutu pā." There's very little detail in the account which makes it difficult to evaluate its validity. Would you agree that you would normally expect to see more information about the tipuna who were associated with the marae?

A. Yes, I haven't found anything to substantiate that in the written record apart from this.

Q. And would you agree that given the timing of it, it says in the late 1850s, if Omarumutu marae really was a Ngāti Muriwai pā at this point, you might expect to see some mention of it in the historical record.

A. Yes, I think – there wasn't much of a historical record at that time. There were very few Pākehā living at Ōpōtiki in the 1850s. They say there were only 12 or so in the 1850s, it was so remote. And the people that were there were traders rather than people who were writing things down.

Q. But there is mention of Ngāti Rua in the historical period of the 1850s, isn't there?

A. I don't know.

Q. Can I take you to the bundle of documents, the judgement of Justice Churchman at page 58. So, this is the High Court decision on the MACA Case. Can I ask you to turn to page 68, paragraph 462. In here, Justice Churchman says, the evidence that was clearly incorrect was also pointed out, including Nepia Tipene's evidence that Ngāti Muriwai lived at Ōmarumutu pā and invited Ngāti Rua to come and live with them after the Ngāti Rua marae burned down. Te Riaki Amoamo's evidence was that the pā was burnt down – was at Puketapu, it was Puketapu pā at Ōpape, not a marae at Whitikau as claimed by Mr Tipene. It was also noted that

the wharenui prior to the current wharenui of Tūtāmure which had been opened in 1901 had been Ruatākena, and it clearly would not have been called that if it was a Ngāti Muriwai wharenui. Did you read Justice Churchman's judgement prior to completing your report?

A. I read part of it, I am not sure I read this part.

Q. Would you agree –

A. It was a while ago.

Q. Would you agree that as an expert it's your duty to draw a finding of facts such as this to the Tribunal's attention?

A. Yes, I don't recall reading it.

Q. And if we turn now to evidence of Te Riaki Amoamo which is in the same bundle at page 89. So, this is a Tribunal brief answering written questions of Ngāti Muriwai's counsel, Michael Sharp. And I will ask you to turn to page 94, at paragraph 12 to 14. So, just to give the Tribunal some context. Dr Amoamo says at paragraph 12, and he wants to be clear about this because he thinks its wrong for the Ngāti Muriwai claimants to spread incorrect kōrero and he then relates the account about the Ngāti Rua wharenui being burned down. And in paragraph 14, he talks about the pā at Puketapu that he record had been burned down by Ngāi Tai in the mid-1800s while it was unoccupied. That would fit with the 1850s timing that was referred to in the Ngāti Muriwai historical notes, wouldn't it?

A. Yes. I mean, I have found evidence that – I am not sure that it was a pā that was burned down. But there was some fishing huts that were new Puketapu that were burnt by Ngāi Tai, I believe, in the 1850s. In fact, in the early 1840s, that was around 1843, yes.

Q. So, would you accept that the account in the Ngāti Muriwai historical notes doesn't appear to be plausible given the complete lack of detail and the contrary kōrero that's being accepted by a High Court judge.

A. It's still a legitimate source for my report because it comes from the claimants and it's their sincere belief and so I thought that it was appropriate to put it in there. And I did say in that paragraph you quoted, 1185 of my report. I did preface that the clause you read from Ngāti Muriwai pakeke assert that Ōmarumutu original belonged to

Ngāti Muriwai. I preface that by saying that Ngāti Rua insists that Ōmarumutu is and always has been the marae of Ngāti Rua. So, I think I'm being reasonably even handed there.

Q. All right. So, let's move to the documentary record then and I want to ask you a series of questions now, specially about the historical documentary record. Actually, if we go back to the judgement of Justice Churchman at page 65, paragraph 445. Justice Churchman found that there was in fact no evidence relating to Ngāti Muriwai at Waiaua or anywhere else in the Whakatōhea rohe between 1840 and the 1870s. Now, if we just focus on the historical documentary record, that's correct that there are no historical records that refer to Ngāti Muriwai prior to 1879.

A. That's correct.

Q. And in your report at 1163, paragraph 1163, you refer to what appears to be the first mention of Ngāti Muriwai in the historical record which is the letter that Horikapa writes in March 1879 asking for the land at Waiaua to be surveyed.

A. That's right, yes.

Q. And if we work through the chronology of what we do know about Ngāti Muriwai in this time. So, Whakatōhea were moved on to the Ōpape Reserve around 1866, after the raupatu.

A. Yes.

Q. And the officials proposed creating a subdivision amongst the six hapū which was finally confirmed in October 1881 with the initial subdivision placing Ngāti Rua on Ōpape 3, and that included, at that time, Eru Pōnaho and his whānau on the Ngāti Rua list.

A. Yes.

Q. And then, in your report, in your case study of Ngāti Muriwai, you traced what I think are two key developments which explains some of the tension between these two groups. First is the role that Horikapa plays in the Whitikau block, both the survey and the Native Land Court hearing in 1881, where he acts on the Ngāi Tai side and gives evidence for the – what transpired to be the successful Ngāi Tai case.

A. Yes.

Q. And from Ngāti Rua's point of view and indeed from Whakatōhea's point of view, that was a high and controversial outcome at the time, was it not?

A. Yes, but if you take into consideration that they were having trouble with – Eru Pōnaho's family were having trouble with their neighbours on the reserve and there was just not enough land for them all to, you know, prosper there. Then that sort of raruraru is inevitable and in this case Horikapa appealed to his Ngāi Tai side, to – as an option – that was the option that he took and it was popular, absolutely.

Q. And you have to see that stance in light of the contest between Ngāi Tai and Whakatōhea over Waiaua which had previously been the battle ground between them, lastly at the battle of Waiwhero.

A. Yes, yes. It goes back a long way that raruraru, that – and typically between Ngāi Tai and the Whakatōhea hapū.

Q. And then secondly, as you have just noted, conflict erupted after Te Paku Eruera started running sheep on Ōpape and you say the first return you found where he's recorded as having sheep as 1880.

A. Yes. As I said in my summary, I have since revised that to 1879.

Q. Right. Okay, sorry, I must have missed that. And then if we go to paragraph 1160 in your evidence you site here, Te Paku Eruera himself explaining how the dispute arose and in that quote there he says: "A dispute arose among the people who said we had no right to run sheep there as we were not holding it under our native customs." And I thought that was an interesting phrasing. It seems to me that what he might be alluding to there is the fact that he was profiting from the sheep that he was running there and the hapū was objecting to, perhaps, the proceeds not being shared amongst the hapū given that it was hapū land.

A. No. What I understood at that time, once they were confined to the reserve, that Ngāti Rua's conviction that they were the – had been the mana whenua there at Waiaua, was – they kept advocating to the government, that they should be recognised as the principle hapū there. They got repeatedly knocked back because the Crown said, 'Well, the raupatu confiscation extinguished native title so there is no customary title there.'

Q. Well yes, legally that's true but my –

A. Yes, so – yeah.

Q. I mean, my point is that from a tikanga point of view it might have been expected that the fruits of that sheep business would be shared amongst the hapū –

A. Distributed, yes.

Q. – as was the case when they had ships in the 1840s and the 1850s.

A. Yes, I think the characteristic of Whakatōhea that I see is that they are very hapū focused and quite independent and this is one of the problems with them all being confined to a small reserve with very little arable land. The disputes were inevitable.

Q. Indeed and can I ask the Tribunal now to bring up the document that Jane Luiten filed last week which appears to be the minutes from the trespass action that Ngāti Rua chiefs brought against Paku Eruera and Horikapa in the Magistrates Court. Had you had a chance to review this document, Mr McBurney?

A. I did have a brief look at it.

Q. I just wanted to refer you to a couple of the statements that are made in those minutes. So, it appears to be a document authored by the resident Magistrate, Robert Bush, and if you go down to paragraph 4. So, you are aware, and you state so in your report, that this trespass action had been taken in relation to the sheep running on Ōpape 3.

A. Yes.

Q. And if you look at what the resident Magistrate says in the middle of paragraph 4, four lines down, he says: "The Court considers the simplest way for Ngāti Rua to secure the objectives arrangement of it, is to cut off of their proportion of their section or the owners of the sheep and the members of eligible, by doing so they would compel them to keep the sheep on that particular spot and thus put an end to further trouble." And then if you go down to the last paragraph, it says: "The decision of the Court is that the sheep have a right on the Ngāti Rua block, but not over the whole of it. But that plaintiffs should, if they desire the sheep not to trespass on the whole, cut off a fair share of the land for the owners and the sheep have no right on the eligible, the defendant must therefore pay the sum of £210 for the trespass and the cost." So, it appears from this

decision that this was the genesis of the Opape 3A partition, would you agree with that?

A. Yes.

Q. And the fact that the defendants were not only found to have trespassed, but also to pay damages and costs to the plaintiffs, must have exacerbated the tensions between them. Would you agree?

A. I dare say.

JUDGE DOOGAN:

Ms Feint, just so – you don't mind me, I am just clarifying the chronology. The date of this trespass action in the Luiten extra document, do you know what date –

MS FEINT:

It's not really clear, Sir. So, it says at the top of the page, 1882 to 1885, Opotiki Minute Book.

JUDGE DOOGAN:

Yes, I saw that.

MS FEINT:

But the Opape 3A Partition was created in January 1883. So, that timing would suggest that this decision was most likely from 1882.

JUDGE DOOGAN:

All right. Thank you.

MS FEINT TO PETER MCBURNEY: (CONTINUES)

Q. Are you able to assist us with the timing, Mr McBurney?

A. I see your logic is appropriate, yes.

Q. And it seems from Jane Luiten's report that Brabant then went on to action 3A at the magistrates urging but it was against the opposition of Ngāti Rua, according to Ms Luiten?

A. According to?

Q. Ms Luiten.

A. Have I said that in my report? Am I quoting Ms Luiten?

Q. I am not sure whether you do.

A. No. I understood that Brabant was reluctant to cut out 3A until he received a guarantee from Paku Eruera, that he would survey it and fence it.

Q. Yes, you are right about that. But it's not clear from the historical record, as I understand it, whether Ngāti Rua were ever consulted about this and whether they agreed to it.

A. Well, there was a lot of that sort of thing going on at the time, wasn't there? Not a lot of consultation happening with Whakatōhea at all, with any of this stuff.

Q. No, and indeed Te Awanui Aporotanga attempted to over turn the partition in 1895.

A. He did.

Q. Unsuccessfully.

A. Yes.

Q. Would you agree with Jane Luiten that Ngāti Rua have reason not to be happy with the partition given that, as she puts it, the Ngāti Muriwai early bird consolidation at 30 acres per capita, gave them twice the rate of the premium coastal land, as anyone else?

A. That's a reasonable statement. They would be not happy with that.

Q. And Jane Luiten also suggests that Te Paku Eruera distanced himself from Ngāti Rua from the 1870s onwards, would you agree with that?

A. Yes. I don't know what happens in that period between the sheep debacle and the building of the wharenui together in 1900/1901. Because, by that stage the people – Ngāti Muriwai people are actually assisting with the building of the whare. But there seems to have been some sort of (inaudible 14:25:21) in the intervening years.

Q. And indeed there are – perhaps I could look at that – there are some evidence of Ngāti Muriwai acting as Ngāti Rua –

A. Yes, definitely.

Q. – in the period following, isn't there?

A. Yes. They claimed Oamaru as Ngāti Rua.

Q. Yes, I was thinking of the petition concerning the raupatu that was submitted in –

A. In 1926.

Q. – 1926.

A. Yes, we had a look at that and there are about 30 names which would be Ngāti Muriwai names. I think that there's a reasonable explanation for that. I think that you want to keep things simple, so the Crown doesn't get confused, you know, and we found that in the – I am sure you are going to come to it – the 1976 case, in order to put the names of the 3A people, Paku's people, if you like, in to the papakāinga on 3B, Ōmarumutu, it referred back to the 1903 partition 3A. I can read that to you.

Q. I was going to come to that later.

A. Okay, all right.

Q. Just to orient the Tribunal so that we don't confuse matters. So, the 1926 document I was just referring to is at page 9 of the bundle, if we just quickly go there. It's dated the 4th of March 1926, and it appears to be the minutes of a hui held within Te Whakatōhea at Opape. See, it's all in te reo: "I tū tētahi hui a Te Whakatōhea ki Opape i tēnei rā." And they talk about collecting a fund in order to fund a petition to the Crown about the raupatu. And if we turn over to page 12. So, each hapū has a list of the people who are contributing their koha to the petition. And on page 12 at number 70 is Paku Eruera's name and then you see a whole list of Edwards following him as Mr McBurney said.

A. Not just Edwards. The whole whānau who were found to be entitled in 3A in 1903, who – they did a bunch of successions at that time, when they did the partition.

Q. Mhm.

A. So, that enabled us to see who was who at that time, so that was useful. I've got the minutes of that partition hearing here and for the succession of Eru Pōnaho, it's his granddaughter, Makoha speaking and she's the daughter of Wakahou.

Q. Mhm.

A. And she says: “Eru Pōnaho is dead, an old man. The other was Te Manawa of Ngāti Muriwai.” So, she’s saying that Eru Pōnaho was the heart of Ngāti Muriwai. So, that’s in 1903. As far as they were concerned they were Ngāti Muriwai at that point.

Q. Right, that’s helpful. So, that’s –

JUDGE DOOGAN:

Sorry. Before we move too far. Is it page 12 of the bundle, your question about Paku Eruera’s name, number 17 is it?

MS FEINT:

Yes, 70.

JUDGE DOOGAN:

Thank you.

PETER MCBURNEY:

Seventy - seven, zero.

JUDGE DOOGAN:

Right, thank you very much.

MS FEINT TO PETER MCBURNEY: (CONTINUES)

Q. And what was the document reference of the 1903 –

A. We haven’t filed that yet but it’s Opape – but it’s Ōpōtiki Minute Book 15, page 178 to 183, which is on the record of inquiry as the Ōpōtiki Minute Book if you like.

Q. All right, thank you.

TIMETABLING/MICROBREAK – JUDGE DOOGAN (14:30:34)

HEARING ADJOURNS: 2.31 PM

HEARING RESUMES: 2.35 PM

JUDGE DOOGAN:

Kia ora. Kia ora anō. Just before you start, Mr McBurney, I note that the 1903 Minute Book is a document that's not among the papers you filed –

PETER MCBURNEY:

No, it's not, I found it just the other day.

JUDGE DOOGAN:

All right. Are there others? Are there other papers that –

PETER MCBURNEY:

There is one other paper that I would like to file.

JUDGE DOOGAN:

All right.

PETER MCBURNEY:

So, there is the two of them here.

JUDGE DOOGAN:

Okay. So, when we finish, we will make a note there's some more to come, thank you.

PETER MCBURNEY:

Okay, all right. Thank you.

JUDGE DOOGAN:

Ms Feint.

(14:35) MS FEINT TO PETER MCBURNEY: (CONTINUES)

A. Can I comment on this list, please? Is that all right?

Q. Yes. Are you talking about the 1926 –

A. Yes.

Q. And I've only just realised this looking at the list that I have of the Ngāti Muriwai names and the Ngāti Rua – Yes, the Ngāti Muriwai names.

So, Te Waapu Te Tawhero is Ngāti Muriwai. Makoha is Ngāti Muriwai, these are numbers one and two. Watakihi is Ngāti Muriwai. Te Wakarua – No, Te Wakawrua – yes, he's a Waiapu. Te Oki, Waiapu, Te Urikore is a Ngāti Muriwai, Te Wakahou, these are all Ngāti Muriwais, at the top of the list.

JUDGE DOOGAN:

So, just to be clear, those are numbers one to eight or one to seven.

PETER MCBURNEY:

One to seven as far as I can see.

JUDGE DOOGAN:

Thank you.

PETER MCBURNEY:

But there are others in here as well, further down from Paku Eruera at 70 and then going down from there. This is taken from the 1903 – this is where we got the heads up about it, those are the names of the children who were put into the titles in 1903, of the partition of 3A, the 3A1 and the Residue. So, that was a partition between the interests of Paku Eruera and his cousin, Makoha.

JUDGE DOOGAN:

All right. So, the 1903 (inaudible 14:37:16) partition –

PETER MCBURNEY:

Of 3A.

JUDGE DOOGAN:

Between Eru –

PETER MCBURNEY:

Paku Eruera and Makoha, who is the daughter of Wakahou.

JUDGE DOOGAN:

All right.

MS FEINT TO PETER MCBURNEY: (CONTINUES)

Q. Can I take you back now to the 19th century, Mr McBurney.

A. Yes.

Q. And I wanted to look at the actions of Ngāti Muriwai rangatira in the Native Land Court. So, we've already discussed in the original Whitikau hearing in 1881, Porikapa appeared as a witness for Ngāi Tai, correct?

A. He did, yes.

Q. And in Oamaru, Te Paku Eruera was on the initial claim for the Oamaru block under the name Ngāti Te Urukotia of Ngāti Rua. Correct?

A. Yes.

Q. And then Ngāti Rua required his name to be removed from the application before Whakatōhea would allow the survey to proceed, correct?

A. That's correct, yes.

Q. Which suggests that there's considerable tension at this time.

A. Yes, I would agree.

Q. And then Ms Luiten says that although in the Native Land Court hearing for Oamaru, Te Paku advanced a Ngāti Rua claim, but she notes that he clearly did not enjoy the support of Ngāti Rua in taking that claim. Would you agree with that?

A. So, Te Paku knows that he's Ngāti Rua, it's like – in my brief of evidence I quoted Julie Lux in saying that she couldn't split herself in half, she's Ngāti Rua and Ngāti Muriwai and also Ngāi Tai.

Q. Right. But he also – she says: "Clearly did not have the support of Ngāti Rua, who supported Heremia Hoera.

A. Yes. So, that raruraru and it wasn't just between Te Paku and Heremia, the rivalry was endemic throughout the hapū of Whakatōhea, they were all competing with each other.

Q. And in the Whitikau 3 rehearing in 1895 –

A. Yes.

Q. This Te Paku Eruera claimed as Pananehu, correct?

A. Yes, he did. Yes, he did.

Q. So, in all the claims in the Native Land Court, Te Paku Eruera didn't claim any land as Ngāti Muriwai, did he?

A. He did not.

Q. And the only block that has the Ngāti Muriwai name is the Opape 3A partition, correct?

A. Yes, that's correct.

Q. If I now take you to – back to the bundle of documents, to A.C. Lyall's book.

A. At the beginning, yes.

Q. *Whakatōhea of Ōpōtiki*. You said in your report that you referred to this in the course of your research.

A. Yes, I did.

Q. And if we start at page 1, Mr Lyall has a map there of what he calls the location of the ancient tribes and descendant hapū.

A. Yes.

Q. So, he's talking about Panenehu and Ngāi Tu, I assume as the ancient tribes, and then, what we call the modern hapū underneath that as well.

A. Yes. That's what Lyall wrote and put together in 1970s.

Q. And then in the contents over on page 2, he steps through the history of Whakatōhea including the ancient traditions in relating to Te Arawa, Mataatua, Ngā Ariki, Te Wakanui, Panenehu, Tūtāmure, as a very prominent ancestor and then he has chapters on the hapū.

A. Yes.

Q. You see that?

A. Yes.

Q. And then if we go over to page 4, as I understand it, this is the only mention of Ngāti Muriwai in the book on that left hand side.

A. Yes.

Q. He refers to Ngāti Muriwai being named as a separate hapū in a 1874 list of proposed grantees to Ōpape Native Reserve, the list consisted of 11 adults and 11 children only.

A. Yes. I saw your cross-examination of Jane Luiten about this particular issue, it's the 1983 list that's been somehow transposed back to 1874.

Q. Yes, that was the 1874 census, wasn't it.

A. Mhm.

Q. If we go over to page 6 so we don't confuse the Tribunal. So, the 1874 census statistics, it was the evidence of Jane Luiten that the 1874 date is wrong.

A. Yes.

Q. And that those numbers correlate to the 1881 partition list.

A. Yes, yes.

Q. Do you accept that?

A. Yes, I do.

JUDGE DOOGAN:

Sorry, could you just repeat those dates, please, the correction. And we are talking about –

MS FEINT:

Yes. So, on page 6 of the bundle, Lyall has census figures from 1874 and Jane Luiten's evidence was that this – the 1874 date is wrong and that this figures are actually from 1881 partition.

JUDGE DOOGAN:

Thank you.

MS FEINT:

Because you can see it's Ngāti Muriwai included in there with the 11 adults and 11 children.

JUDGE DOOGAN:

Yes, thank you.

MS FEINT TO PETER MCBURNEY: (CONTINUES)

Q. And then for the sake of completeness, if we turn back to page 5, Mr McBurney. So, Lyall refers to some of the Ngāti Rua hapū –

A. Yes.

Q. – on the right hand side of the page and also Te Urukotia on the left hand side.

A. Yes.

Q. So, there's no other discussion of Ngāti Muriwai in Lyall's book is there?

A. No there is not.

Q. And in terms of that Ōpape 3A list from 1883, that comprised –

MS FEINT:

Sorry Judge, I think gave you wrong date because I was doing it from memory. It was January 1883 that Ōpape 3A was created, so –

PETER MCBURNEY:

That's where that list comes from.

MS FEINT:

Yes.

JUDGE DOOGAN:

So, 1883 rather than 1881?

MS FEINT:

Yes. Sorry. Not a very good historian because I always get the dates muddled up.

MS FEINT TO PETER MCBURNEY: (CONTINUES)

Q. So, the Ōpape 3A list, the 11 adults and 11 children, is it your understanding, Mr McBurney, that that comprises three generations of the whānau of Eru Pōnaho?

A. I think Eru was pretty old at that stage, but I think he was probably still alive so he would have been there. So, yes, it would have been three generations, I gues.

Q. And I want to take you now to the evidence Kaumātua Robert Edwards. So, you interviewed him as part of your report, but he also gave evidence in the High Court. If I take you to page 39 where it has the transcript from

the High Court MACA hearing. And if you see on page 41, that's where I start questioning Mr Edwards. And then if we go over to page 43, go right down to the bottom of that page and I say: "So I am just grappling with who you say comprises Ngāti Muriwai, you are saying in your evidence that it is the uri of Eru Panoho?" and he answers yes, and then I ask: "So, it's the Edwards and Porikapa whānau." And over the page he says again: "Yes". And then further down that page, just over halfway down that page I refer to the fact, he and his people were included in the Ngāti Rua Reserve because they are all Ngāti Rua, are they not by whakapapa?" and his answer is, "They are, yes, as one." So, Is your understanding that Ngāti Muriwai are the descendants of Eru Pōnaho?

A. Pōnaho. Yes, it is.

Q. And if I take you to – now the evidence that Paku Eruera gave in the Native Land Court. So, I am the bundle of documents page 7. So, this is the transcript of the Court minutes from the 1895 Whitikau No.3 case. In here Paku Eruera is being cross-examined by Heremia Hoira and if we start just over halfway, Heremia is talking about the partition of the Ōpape Reserves and Ngāti Rua getting number 3 and he asked Te Paku what hapū were you and Eru Pōnaho included in, and his answer is, 'We're included in Ngāti Rua.' Question: "We obtained a subdivision of the land for you and your people, what name did you have your list with?" Answer: "Ngāti Muriwai." Question: "From what Muriwai did that hapū get their name?" Answer: "The Muriwai from whom Whakatōhea got their name, the sister of Toroa." Question: "Why didn't you call yourself Te Panenehu as you were living on Panenehu land?" Answer: "The name of Muriwai was a correct name as belonging to Whakatōhea. If the land was given to Panenehu, that name would have been given." So, that explanation by Paku Eruera seems to imply, would you agree, that because the Ōpape 3A partition is on Whakatōhea, papatipu land or what had been papatipu land before the confiscation, that's why he used the name Ngāti Muriwai. Would you agree?

A. I don't know why he used the name Ngāti Muriwai apart from the fact that she was the Ariki, the origin of Whakatōhea. You know, Whakatōhea – the name Whakatōhea comes from her disposition, apparently.

Q. And the Muriwai, the tipuna, she was many, many generations back at this stage, my understanding is, 16 generations back from the late 19th Century, would that be right?

A. Yes. It's not an unusual thing to do, to hark back to an ancient ancestor. I know of – in the post-colonial period where you are dealing with Morehu, who are gather around – you know, the are from a scattering of different hapū, to take a name that is all the way back to, to bring them all together, if you like. So, that's happened. He was an estranged from Ngāti Rua. He didn't feel that Ngāi Tai was the appropriate ancestor for that area. You know, Ngāti Muriwai, it makes sense.

Q. And indeed, if we look at the whakapapa you have provided on page 381 of your report, figure 14.

WITNESS REFERRED TO #A033, PAGE 381, FIGURE 14

A. Yes.

Q. What you call the composite Ngāti Muriwai whakapapa.

A. Yes.

Q. My understanding is there, you are showing the Ngāti Rua whakapapa line on the left hand side and then the Ngāi Tai whakapapa on the right hand side.

A. Yes.

Q. Correct?

A. Yes.

Q. And they come together in Eru Pōnaho.

A. Yes.

Q. And his parent (inaudible 14:52:43). So, the proposition I want to put to you is that, if you take this whakapapa into account, which shows the intertwining of the Ngāti Rua and Ngāi Tai whakapapa, the conflict that had been created after the raupatu with the creation of the Ōpape Reserve and the contest in the Native Land Court with Ngāi Tai and the fact that there was no customary land claimed under the name Ngāti Muriwai. What I want to put to you is that it – all that evidence suggests that the identity of Ngāti Muriwai emerged in the lifetime of Eru Pōnaho, and was consolidated by the creation of the Ōpape 3A block.

A. Yes. The name might be a new name, but this is a unique descent line of Eru Pōnaho, as a Taharua individual.

Q. Thank you. And I suppose the contest with Ngāti Rua is a contest over whether – so, the members of Ngāti Muriwai undoubtedly whakapapa to Waiaua through their Ngāti Rua lines, correct?

A. That's not what Uncle Robert and (inaudible 14:54:43) Biddle say, but I think that you could say that that's one argument, yes. Ngāti – yeah, I mean Ngāti Rua. It's not through their Ngāi Tai lines. Could be through their Panenehu lines, according to Paku Eruera.

Q. Indeed. And Paku Eruera actually said in his evidence in the Native Land Court, was that Panenehu lived at Ōmarumutu.

A. Yes.

Q. Rather than Ngāti Muriwai. Do you recall that?

A. Yes, but again, people can change their – you know, the Panenehu was a name that was – although there were still people that were said to be Panenehu at that time, it was a name that once the Crown came in, after the Treaty, it was one that faded into the past. Yes. The colonisation is the context here as well, I think, you know, the changes in hapū identity and it's very much the case for Eru Pōnaho and his offspring, is that they are struggling with their relationships with their kin and with their neighbours, yes.

Q. And Ngāti Rua certainly trace their whakapapa back to Panenehu, in fact, my understanding is all of Whakatōhea do, don't they?

A. Yes, yes.

Q. So, if you think back to my earlier comment, that there might be a tendency in tribal narrative to project an identity back to an earlier time when there may have been a different identity.

A. I've seen it frequently, I think it happens a lot.

Q. And that's really the contest that Ngāti Rua have with Ngāti Muriwai, is that they are claiming customary rights as Ngāti Muriwai when Ngāti Rua say that's through their Ngāti Rua whakapapa.

A. Yes, but it's an organic process, if you like, and it has – you know, it's driven by particular historical circumstances, as we have just rehearsed.

Q. So, you are talking about the raupatu –

A. Yes.

Q. – and the aftermath on Ōpape.

A. Yes. And then the initiative by Paku Eruera to run sheep, even in defiance of his relatives in order to make a living when they were in desperate straits. I think Ranginui Walker comments that Paku Eruera was – or that was one of the only people who could make a contribution to a survey, because he had that income from his sheep.

Q. Right.

A. So, it's a matter of survival.

Q. Indeed, and it must have been very difficult. I wanted to take you to an extract of Ranginui Walker's book which I have reproduced in the bundle, page 38. So, you refer to this extract in your report. So, it's on the right hand side of the page in the second paragraph where he talks about Ngāti Muriwai. So, he says – refers to Ngāti Rua being allocated Ōpape No.3. Then he says: "Paku Eruera applied for and obtained a subdivision for Eru Pōnaho's hapū of Ngāti Muriwai, who was awarded Partition 3A." Then he says: "Ngāti Muriwai originally lived at Te Kaha but had been driven out by Toihau of Te Whānau-a-Apanui. Ngāti Muriwai found refuge with Ngāti Rua through its genealogical connects with that hapū." And the first question I wanted to ask you about that extract is that you talk about them being in exile at Te Kaha, but Ranginui Walker is saying that Ngāti Muriwai originally lived at Te Kaha and then came and found refuge with Ngāti Rua.

A. Yes, I think we are both working with very slim evidence.

Q. So, it's not known for sure?

A. No.

Q. Okay.

A. And people were – in those times that he's talking about, were very, very mobile and living all over the East Coast and Bay of Plenty, all of the hapū, not just Ngāti Muriwai.

Q. So, in your – so this is page 384 onwards of your report, where you talk about the context of the Musket War Period starting in the 1820s and the mobility of people at that time.

A. Yes.

Q. I wanted to ask you about some of the research that Tony Walzl did in the MACA hearing in the High Court because –

JUDGE DOOGAN:

Sorry, Ms Feint, just before you get on to that topic. We are just on three now. How much more do you have in terms of content?

TIMETABLING/BREAK (15:01:05 – 15:01:30)

HEARING ADJOURNS: 3.01 PM

HEARING ADJOURNS: 3.24 PM

JUDGE DOOGAN:

Just while we're getting ready, counsel, timewise, we're okay? Ms Feint's a little bit over time on estimates.

HOUSEKIEEPING/TIMETABLING – (15:25:01 – 15:26:30)

(15:26) MS FEINT TO MR MCBURNEY: (CONTINUES)

Q. So, before the break, Mr McBurney, we were talking about the Te Kaha evidence and you mentioned that it was quite thin.

A. Yes.

Q. And I put to you a document which isn't in the bundle of documents, but I filed separately today, and it's an extract from the Te Kaha Minute Book.

A. Yes.

Q. No.1, 1910 case. And I put this to you because this was one of the extracts that Tony Walzl had uncovered from the footnotes of Ranginui Walker's book.

A. Okay.

Q. And I hadn't seen you mention this part of the evidence because in this evidence someone called Rapata Roihana has given evidence and then that bottom paragraph he refers to a war party of Ngāti Porou coming to fight and that –

JUDGE DOOGAN:

This is the first page?

MS FEINT:

This is on the first page, page 293 it says at the top.

JUDGE DOOGAN:

Thank you.

MS FEINT TO PETER MCBURNEY: (CONTINUES)

Q. And then it says, someone called Tautuhiorongo decided to have Paranahi's death avenged and then they turned to ask Ngāti Muriwai to avenge the death. They belonged to Tamaki near Auckland and Tautuhiorongo was a member of that hapū. Did you look at this evidence as part of your research?

A. No.

Q. So, you can't speculate on whether Ngāti Muriwai have a connection to Tamaki.

A. I've done quite a lot of work in Tamaki, I've never heard of a Ngāti Muriwai in Tamaki.

Q. Right.

A. Or there abouts.

Q. The reason –

A. It's possible there is one.

Q. The reason I thought this was interesting is because the whakapapa given at the bottom of the page, from Muriwai, goes to the son who Whakatōhea call Koau –

A. Koau, yes.

Q. But it's read there as Roau, with an R.

A. Yes.

Q. And I wanted to ask you whether the Ngāti Muriwai claimant group that you have done this report for, recognise the whakapapa through Te Koau?

A. Roau or Koau.

Q. The son of Muriwai.

A. Yes. Actually, there's a whakapapa in my report that's taken from Eruera, teachings of the Māori elder, it was compiled by Anne Salmond, and it has the whakapapa to Eruera Stirling from Koau – no, from Roau, I think it is from Roau in that book. And when I went and interviewed Danny Poihipi, he pointed it out to me and said that this is a connection of Ngāti Muriwai to Whānau-a-Apanui actually, rather than Tamaki Makaurau.

Q. Well, I wanted to ask you about that whakapapa because I could see what the connection was. It appeared to show that Te Whānau-a-Apanui had whakapapa to Muriwai.

A. Yes. And in my interview with Danny Poihipi, he was saying that that was a valid connection that – I mean, Te Whānau-a-Apanui, I believe had a building down here, you know, at Opotiki and what I can remember, that there was talk of – that was based on whanaungatanga. I think, you know, interviews that I did with Tuwhakairiora Williams sitting here, you know, the whakapapa just goes all the way up the coast, you know, the whanaungatanga.

Q. But can we have a look at that whakapapa, it's a page 68 of your report.

WITNESS REFERRED TO A033, PAGE 68

So, as I understand it, and I am simply asking for clarification because I didn't follow this part of your evidence. This shows that Te Whānau-a-Apanui whakapapa to Muriwai, but it doesn't show a connection with the Ngāti Muriwai of Eru Pōnaho, does it?

A. No, it doesn't.

Q. Right. So when you talk about them going to shelter at Te Kaha and that they could do that through their whanaungatanga, you are talking about the whakapapa from Muriwai as being a connection.

A. I am that this is a descendant of Muriwai who happens to be up there so there would have been some route for them to access that area through that whanaungatanga. But I don't – I can't join all the dots by any means.

Q. Right, okay. That's just what I wanted to clarify, that you are not saying that the Ngāti Muriwai –

A. No, I'm not making any definitely conclusions from this. I am just – but, you know, I want to see Danny and Koro Danny and he was adamant that there was a connection there, but this is what he provided me with.

Q. Right, okay.

A. Yes.

Q. So, my last topic is the question of the name Ngāti Muriwai a Rua which you say was the hapū name up until 1979 when the Māori Land Court had a hearing and I want to step through this because as I understand it, the only documentary record where that name appears is the 1976 Māori Land Court minutes, is that correct?

A. Well, I mean, it was spoken of frequently by the pakeke that I interviewed for the project. They were in no doubt that that was a – that that was who they were before, you know, before that got changed at Ōmarumutu.

Q. But there's no documentary record apart from the 1976 Māori Land Court minutes, that use that name, is there?

A. Okay, so we did a little bit of (inaudible 15:34:22) and this is the year 2000. So, there was a Māori reservation, an urupā reservation set aside from – hang on, just looking at it.

Q. What are you looking at Mr McBurney?

A. So, this is a *Gazette* notice and it's Ōpape 3A1E and the *New Zealand Gazette*, 2000 page 1449, and it's for the common us of Te Whānau o Te Urikori. And it says, 'A sub-hapū of Ngāti Muriwai a Rua.

Q. So, that's a second documentary record.

A. Yes, it's on the record.

Q. But there aren't any other records, are there?

A. I don't know of any other records, no.

Q. And neither Lyall nor Ranginui Walker refer to that name, Muriwai-a-Rua.

A. But, you know, the interesting thing there is that the person who actually talked about Ngāti Muriwai-a-Rua was Tiwai Amoamo, when he was trying to get it cancelled.

Q. Yes, and I want to turn to that. But are you aware that Ngāti Rua strongly contest that that name was ever used.

A. I have heard that.

Q. All right. Let's look at the minutes from the 1976 hearing. So, I have included them in the bundle of documents.

A. Yes.

Q. Starting at page 20 and we can see at the top there that's a hearing at Ōmarumutu marae on the 28th of July 1976 before Judge Durie with a clerk, M. R. Johnstone. And if you turn over to page 22, that's where the kōrero Tiwai Amoamo is recorded, at the bottom of that page.

A. Yes, it's very hard to read, isn't it, on that document you have given me, but I do have a better copy, I think, in my own.

Q. Can I just ask you some questions about this document first.

A. Okay, right.

Q. First of all, these appear to be handwritten notes, presumably recorded by the clerk, correct?

A. Right.

Q. And it appears that it's not a transcript of evidence, but rather the clerk is summarising what he or she has heard, correct?

A. Yes, well as I say, just looking at – I can't read any of that which is on the piece that you have given me.

Q. Well, it says for instance, Tiwai Amoamo speaks in reference to the original name. So, it appears to be –

A. Of Ngāti Muriwai-a-Rua.

Q. Right, correct. And it's not clear whether he was speaking in te reo or English, is it?

A. I couldn't comment, I don't know.

Q. Right. So, I wanted to put to you a possible explanation for Tiwai Amoamo making that statement, that the original name was Ngāti Muriwai-a-Rua, which seems odd when it doesn't appear anywhere else and the question was put in the High Court MACA hearing to Tiwai's son, Te Riaki Amoamo. So, can I take you to his evidence, please, which starts at page 45 of the bundle of documents.

A. Yes.

Q. And just to orient the Tribunal, if you turn to page 47, this is Mr Amoamo's evidence in chief and he is asked about the Māori Land Court hearing in 1976, between the lines five and 10, at which his father spoke, is he

familiar with that. And then he's asked, is there anything he wants to say about what his father said, and he gives the whakapapa coming down from Repanga, the son of Muriwai. And then he says at line 20, "Ruatakenga is the main ancestor on the Ngāti Rua marae at Omarumutu, the Omarumutu marae is an ancient marae, not the buildings, but the papa whenua is ancient." And then he is cross-examined by Mr Sharp the next day and so that record starts at page 49. And if we go over to page 53 and we start about line 20. So, Mr Sharp's cross-examining Dr Amoamo and says, "Now, your lawyer asked you about your interpretation of the name Ngāti Muriwai-a-Rua." And he says, "Yes, that's right, I gave a whakapapa where there are a lot of Rua's to get to Ngāti Ruatakenga." And then if you go over the page, he's talking about how Ngāti Rua got Opape No.3 and then Paku Eruera was included in that with Ngāti Rua, that's what it meant, and then he says, "Ngāti Muriwai-a-Rua was included with Ngāti Rua lands." And I just wanted to put that statement to you, Ngāti Muriwai-a-Rua was included with Ngāti Rua lands because if you are speaking in te reo, 'a' can be a possessive in the subordinate 'a' category, and it sounds like he's thinking, well Ngāti Muriwai belongs to Ngāti Rua lands, that's one explanation for what was said.

A. No, that's outside of my expertise all together.

Q. All right. I will move on. So then, if we go to look at the minutes of the hearing, you say in your evidence at paragraph 1200, that the outcome of the hearing was to remove the name Ngāti Muriwai from the marae, and I just wanted to step through that because it appears to me that that wasn't the purpose of the hearing. So, if we go back to the bundle of documents and I have put in a transcript of the minutes which is typed, so it's much easier to read. Have you seen this transcript?

A. I haven't actually, but it's useful.

JUDGE DOOGAN:

Page?

MS FEINT:

It's page 31.

MS FEINT TO PETER MCBURNEY: (CONTINUES)

Q. So, it's the same date, 28 July 1976 before Judge Durie. And actually before we go through those minutes, can I take you to page 410 of your report.

WITNESS REFERRED TO A033, PAGE 410

And you have got a close up of the Ōpape Native Reserve showing the Ōpape 3A partition.

A. Mhm.

Q. Can you see nearer to the coast, it's also got Ōmarumutu Pā recorded on that map?

A. Yes.,

Q. So, it's clear that the pā itself that the pā itself was never on that Ōpape 3A, was it?

A. Yes, yes, I noticed that quite earlier on, from my research.

Q. Right. And it appears that in the minutes, the issue that's being discussed is that the Porikapa and Edwards families aren't owners in the –

A. Yes.

Q. – marae papakāinga.

A. Yes.

Q. That's right?

A. Yes. So, there was a subdivision in 1904 which established, legally I suppose, because they built the meeting house and it established the subdivision of the meeting house, the papakāinga and that's what the Deputy Registrar is saying, is that there must have been some oversight because this is obviously a marae for all of these people and they were not included in the title, so we can rectify that.

Q. Well, that would have – wouldn't that back date to when 3A was created and they were cut out of the Ngāti Rua Ōpape 3A.

A. Well, you might think that, but that's what the registrar is talking about, isn't it.

Q. Right, okay. So, on page 31 at the bottom you see Grace Kirihi Maxwell says: "Porikapa and Edwards families are equally part of Ngāti Rua and

yet have no interest in the papakāinga, how come?" And then Mr Patrick explains, that: "Porikapa and Edwards families are Paku's people and then he explains how they have been left of the marae papakāinga, it's more a mistake that they were left out of the marae and it's open to the people to bring them back in." And then over the page on page 32, it says at the top, "Several persons speak in favour of including Porikapa and Edwards families in the ownership list so that the marae represents all – underlined all – Ngāti Rua, and all have a tūrangawaewae there." And then if we go over to the decision of Judge Durie, he – which starts at the bottom of page 33 and then if we go over to page 34. He notes that there are 60 people in attendance, that they unanimously support, bring Paku's people back into the papakāinga of the marae. Over on page 35 in the second paragraph, he says, if you go down five lines: "Those here today are unanimously of the view that Paku's people should be brought into the marae so that all Ngāti Rua are back together again as one. They are not satisfied the marae merely gazetted for the common use and benefit of all, but seek to include Paku's people in the underlying ownership, so as to confirm their Tūrangawaewae." So, it's clear, isn't it, that the purpose of the hearing was to ensure that those descendants of the Porikapa and Edwards were included in the Ngāti Rua papakāinga.

A. It is, except that when I consider Julie Lux's interview and others who remember that time, they were mortified that that name change happened, and it's caused a schisms. It's divided again those people from that name change.

Q. But there's no evidence that that papakāinga was ever referred to as Ngāti Muriwai a Rua**.**

A. There is evidence in terms of the oral history.

Q. Oral history of whom?

A. Of somebody who was there at the time, Julie Lux and her whānau.

Q. Well, that's a contested point that's strongly –

A. Well, the whole thing is contested, obviously. But all the people that I spoke to in doing these interviews were absolutely adamant and we have a urupā reserve set aside in the year 2000 that talks about – for the sub hapū, for the Te Whānau o Urikore, a sub hapū of Ngāti Muriwai a Rua.

So, I mean that is – it's live, it's not something that's just someone's imagination.

Q. Do you recall that passage of Ranginui Walker's book where he says that Claude Edwards revived the (inaudible 15:48:46) Ngāti Muriwai hapū in the 1990s after he lost his seat on the Māori Trust Board?

A. That was Ranginui Walker's opinion, and he was in dispute with his cousin, Claude, and it was not an unbiased assessment by an academic, really, it was a very biased – that part of the book, they were in dispute at the time.

Q. So to be clear, the only evidence you have that there's ever been a name change is the oral history of the people that you interviewed.

A. Well, as I pointed out from the 1903 partition, Eru Pōnaho's granddaughter talked about her grandfather being dead, she called her father and said, "Father was te manawa of Ngāti Muriwai." The heart of Ngāti Muriwai. And you know, for those people, for them, that's what who they were, Ngāti Muriwai and if Eru Pōnaho was the original tupuna who they are appealing to, if it's his whānau, all hapū start that way, with an eponymous ancestor.

Q. Yes, and I understand what you are saying but I suppose the point is that it doesn't follow that Ōmarumutu marae has ever been known as –

A. I think that that's conclusive evidence, with Tiwai Amoamo. I don't – that's what he's saying. He says we want to change the name. You wouldn't want to be changing the name if it wasn't that previous name.

Q. Well, we don't have a transcript of his evidence, is my point. We don't know exactly what he said.

A. All right, okay.

Q. And if – just to finish this off if we go to page 37 of the bundle. So, the result of that hearing was that Judge Durie made an order that Ōmarumutu papakāinga be a Māori Reservation for the purpose of a marae for the common use and benefit of Ngāti Rua hapū, correct.

A. Yes.

Q. I think we've probably taken that as far as we can, but thank you for your evidence, Mr McBurney.

A. Kia ora. Thank you Ms Feint.

JUDGE DOOGAN:

Thank you. Mr McBurney, the document – the reservation from 2000 is that the second of the two documents you were going to produce?

PETER MCBURNEY:

Yes, yes.

JUDGE DOOGAN ADDRESSES MR SINCLAIR – COPIES OF DOCUMENTS TO BE FILED (15:51:40)

PETER MCBURNEY:

I've got a transcript of the 1903 minutes, but I don't have a reproduction of the actual minutes.

JUDGE DOOGAN:

All right. A transcript prepared by yourself or?

PETER MCBURNEY:

Yes. In fact – here it is here. That's the transcript prepared by myself, yes.

JUDGE DOOGAN:

The reason I am asking is just so that when we come to question – after counsel have finished, that we could have a look at the papers you are referring to. So, that's the – the transcript from 1903 and the 2000 *Gazette*. Thank you. And we'll give them – just so counsel and I – the various documents will then introduce will give them appellations probably in the morning. Thank you. Mr Lyall, kia ora.

TIMETABLING (15:53:06 – 15:53:55)

(15:53) MR LYALL TO PETER MCBURNEY:

Q. Kia ora Mr McBurney.

A. Kia ora Mr Lyall.

Q. You know me well, but for the record, Lyall appearing today for the Ūpokorehe claim, Wai 1092. The Rongopopōia hapū claim which is

Wai 1787, Te Ūpokorehe Settlement Claim, 3272 and on instruction from Ms Zwaan for Te Ūpokorehe Hapū of Ngāti Roimata Marae Trust claim, Wai 1758. I also appear for some Ngā Ariki Kaiputahi claimants, and you would have heard the directions that I am unable to question you here, but again, for the record, I do need to lodge or record that some parts of that report are contested by my claimants, and it may be that we cross swords in the future, perhaps on that.

A. Okay, look forward to that.

Q. So, I would like to start at page 17 of your report, please.

WITNESS REFERRED TO #A033, PAGE 17

Now a theme for the claimants that I represent in this inquiry has been a concern about citation cascading in effect or the issue with a report being produced which makes a tentative conclusion that might then be checked by a future historian who sees that tentative conclusion, doesn't check the primary source material and so and copies that and so on and so on.

A. Right.

Q. So, you get what might be, at one point, a tentative or careful conclusion and it assumes an almost gospel status in the future.

A. Sure.

Q. And you have said here that a starting point for you was secondary sources, rather than the primary records. So, within the terms of your engagement here, did you have the time and funding available to review those secondary sources, check the circumstances in which they were produced, checked the primary materials that they –

A. It is my habit to go back to the primary sources, to check what the secondary sources are relying on. It wasn't quite so easy with Lyall because he was a bit vague, he just says, Ōpōtiki Minute Book 3 or something, it all comes from, but you can go back there and have a look at those sources. And it is my habit to do that.

Q. You say Dr Gilling's Te Raupatu o Te Whakatōhea report which was produced in 1994 was notably examined. Dr Gilling himself has said in this Tribunal, that given the age of the report, the time constraints he operated under, the lack of background material at the time and the limited access to primary sources, really, he report has been superseded.

A. Sure.

Q. Is that something that you took into account when you were reviewing his report?

A. Well, I guess what I am saying here is that you have to start somewhere, and I wasn't familiar with this part of the world really and the history of it, so I just needed to get up to speed with it before I got into the fine detail.

Q. Do you not accept that that might argue for starting afresh with the primary source material?

A. This report had a very broad project brief, and I had a lot of ground to cover, and I knew that other technical reports would be going into greater detail in using – and just, they would be focused on those primary sources and that's what I would be unpacking.

Q. And I should make it clear that my questions today are very much are going to focus on the Hiwarau C case study.

A. Yes.

Q. Given who my clients are, but turning to the interviews that you conducted. You said that the interviews were arranged by Ms Edwards. Were you encouraged or able to interview more widely then that or were you dependent on that connection with the project manager?

A. No, I was dependent on Ms Edwards.

Q. So, we have, for Te Ūpokorehe and going off your table under the descriptions there, Mr Kiwara, Ms Hudson, Ms Tahere, Mr Flavell for Te Ūpokorehe or marae associated with Te Ūpokorehe. But none of the claimants that I represent, or Ms Zwaan represents.

A. No.

Q. Would you accept that if one of your interviewees recollections is incomplete or mistaken or even a fabrication, your report essentially records that without any correction?

A. Yes, I mean, it's an oral and traditional report. So, I am dependent on the contents of the interviews that I've carried out.

Q. And one way that you can be careful about and you've said at page 26, that you take the approach of presenting each version with commentary on its origins and issues which may be contentious.

A. Yes.

Q. But you can't do that if you haven't gone and spoken to a whole group of the claimant community, like my clients, you can't put their kōrero –

A. I can't put their kōrero in it, no.

Q. And you haven't identified that particular issue as something which may make your conclusions contentious in your report, have you?

A. No, I haven't, I haven't addressed that issue particular.

Q. And from page 70 of your report, you discussion the Kahuki traditions. And I think this does present an example of some of those issues with sourcing. So, your narrative here relies entirely on Best and Walker and Walker in turn relies on Best and Lyall. No interviews are cited in that part of your report.

A. No, but I was – they are not cited, I think there's – yes, I did the interview with Dean Flavell, and I didn't – it was a bit late in the piece, I didn't get to weave it in there. But I think it is, actually, in the Hiwarau C or the chapter. But he was relying a lot on Best as well. It seemed to me.

Q. There was a Ngā Kōrero Tuku Iho held at Roimata marae in March 2023 and in my questions of clarification I asked you whether you viewed transcripts of that and you said that you may have watched part of the livestream but didn't review the transcript. That livestream, are you aware that that's still online today?

A. No, I didn't know that.

Q. So, that could have been reviewed any time up to today's hearing. So, you wouldn't be aware that Te Ūpokorehe witnesses there gave significant kōrero around the Kahuki traditions, Rangipāporo and the flight with Kahuki and his ultimate revenge.

A. No.

Q. So, that narrative is just not reflected here, instead we have sources outside of Te Ūpokorehe talking about their histories.

A. Yes.

MR LYALL ADDRESSES JUDGE DOOGAN – TIMING FOR MICROBREAK (16:02:56 – 16:03:15)

HEARING ADJOURNS: 4.03 PM

HEARING RESUMES: 4.05 PM

JUDGE DOOGAN:

Kia ora. Mr Lyall, thank you.

(16:05) MR LYALL TO PETER MCBURNEY: (CONTINUES)

Q. Mr McBurney, could you please turn to page 19 of your report.

WITNESS REFERRED TO REPORT #A033, PAGE 19

And there you set out the, essentially, the commissioning questions for your case studies and under the first points we have the Hiwarau C cases study and the question there is: "What was the impact on hapū relocated by the Crown to the Hiwarau C reservation, and particularly on their cultural identity?" What I would like to put to you is that that's not a particularly helpful question from your point of view as a researcher, given Hiwarau C wasn't in existence at the time that the reserves were made and no one was effectively relocated to Hiwarau C, were they?

AUDIO TECH ISSUE – MICROPHONE OFF (16:06:38 – 16:06:45)

MR LAYLL TO PETER MCBURNEY: (CONTINUES)

A. They were people from the shores of Ohiwa Harbour which would have been much broader than Hiwarau C.

Q. So, this being the commissioning question for this case study, your immediately having to do quite some interpretation yourself to get going on the brief.

A. Well, yes, I mean the interview I did with Keita Hudson and looking at the relative interests hearing on Hiwarau block and the evidence of Te Wanera Mokomoko, that explains just what a diverse grouping to Ūpokorehe or the people who were put into Hiwarau C were and they were the ones that became known as Te Ūpokorehe, but they had affiliations in various other directions as well.

Q. So, if we turn to the case study now and that's at page 440 of the report.

WITNESS REFERRED TO REPORT #A033, PAGE 440

JUDGE DOOGAN TO PETER MCBURNEY:

Q. Sorry, just while you're doing that. Could you just repeat the last part of that answer. I am just – you are saying, the people who became known as Te Ūpokorehe.

A. Yes. So, the people that were living around Ohiwa Harbour when J.A. Wilson created his reserves, he created the reserve at Hiwarau C and Hokianga Island and everybody that was living around Ohiwa Harbour had to go and live in those reserves. And they had a diverse range of affiliations, hapū affiliations, iwi affiliations. So, Ngāti Tamatea from Kahungunu, they were there, and they had to go and live there as well. So, there's a Kahungunu branch of Te Ūpokorehe. There's a Ngāti Patu branch of Te Ūpokorehe and others. Yes.

Q. All right. So, just – sorry Mr Lyall, I am just wanting to be clear on what the answers. So, what I take from that is that following location at the time Hiwarau C is created –

A. Well, Hiwarau C was an amalgamation, so the relative interests hearing was early 20th Century and that was –

Q. Post that time –

A. Yes.

Q. Those of other iwi or hapū affiliations became known as Ūpokorehe.

A. Yes, well that's what both Te Warena Mokomoko was saying and also Ms Hudson –

Q. All right.

A. – was that there was an – Te Ūpokorehe tuturu who are descendants of the ancestor Taikurere who was the person whose head was eaten by crabs or was somehow damaged and that's where the name comes from. And so, the direct descendants of that person are Ūpokorehe tuturu, but the other people sort lumped with that name as well through the reserve process.

Q. All right, thank you.

A. Was that a fair explanation?

MR LYALL TO PETER MCBURNEY: (CONTINUES)

Q. That's according to some. I was going to point you to paragraph 1297 which is possibly the shortest chronology of the Hiwarau Block and Hokianga Island, to bring it up to today's date, possible, and then at 1298 you refer to Des Kahotea who gave evidence in the Marine and Coastal Area Act Applications, to bring it up to the Hiwarau C date, in the 1960s.

A. Mhm.

Q. This is a case study on Hiwarau C. Would you agree with me that those two paragraphs are in fact, they are really the sum total of specific information on the background of Hiwarau C, the land block, the area?

A. Yes, it's not a block history.

Q. Is it a weakness of this case study that there's no chronology or examination of the actual block area, to show how ownership interests would have been awarded and evolved?

A. Yes, I think that's a fair comment.

Q. Over the page at 1302 you are talking about how Ngāti Awa define their territory and at the end of that paragraph you say: "… and all of the Hiwarau C block, which is the site of Roimata Marae." In my bundle that I filed overnight, my apologies for lateness, at page 3 there's a map.

A. I haven't got your bundle.

Q. This is the one that I passed up earlier.

A. Yes.

WAITANGI TRIBUNAL MEMBERS - LOCATING BUNDLE (16:12:50 – 16:13:47)

MR LYALL TO PETER MCBURNEY: (CONTINUES)

Q. The short point, Sir – if you have the map in front of you Mr McBurney.

WITNESS REFERRED TO MAP LOCATED COUNSEL'S BUNDLE, PAGE 3

If you look to the centre of the map there, there is a block which is marked Allotment 190.

A. Yes.

Q. And north of there is marked Roimata Marae.

A. Yes.

Q. And my point here is, Roimata Marae isn't on the Hiwarau C block, is it?

A. Oh I see, okay. Mhm.

Q. And when I filed my questions of clarification for you, I asked whether you had looked into the block file for the Allotment 190 and you said that you hadn't. So, you would agree with me that, again, that's an issue with your –

A. Sure.

Q. – case study here.

A. Mhm.

JUDGE DOOGAN:

Sorry. Just to be clear, on the map, Hiwarau C is the brown coloured –

MR LYALL:

Yes, to the west of the Allotment 190.

PETER MCBURNEY:

Hiwarau Reserve.

MR LYALL:

Hiwarau Reserve –

JUDGE DOOGAN:

Yes.

MR LYALL:

– with Hiwarau C. Difficulties of navigating maps while colour blind.

MR LYALL TO PETER MCBURNEY: (CONTINUES)

Q. Now, on page 368 of your report –

JUDGE DOOGAN:

Sorry, Mr Lyall. Just on the map again, just for completeness. In the rectangular shape in the middle of the Hiwarau Reserve, in green. Do you know what the appellation for that is?

MR LYALL:

I will have to check that, Sir. This has been taken from the materials prepared by Dr Husbands, so it will be finding its way onto the record of inquiry in due course.

JUDGE DOOGAN:

All right, thank you.

MR LYALL:

In the interests of putting the best material possible to Mr McBurney, I sort of taken the liberty there.

MR LYALL TO PETER MCBURNEY: (CONTINUES)

Q. Now here I wanted to take you to an example concerning that allotment while we are there at paragraph 1088 on page 368.

WITNESS REFERRED TO #A033, PAGE 368, PARA 1088

A. Mhm.

Q. You have recorded material from your interview with Ms Hudson, says: "The land on which Roimata marae sits had been purchased by Keita Hudson's tipuna, Te Ani Kotu." Did you follow up on that and examine the circumstances in which that purchase took place?

A. No.

Q. Then I won't take you through the next material, but just to say that you would accept that the circumstances may not be as simple as what Ms Hudson has set out in her interview.

A. Yes, I mean, it was while I was preparing this report that –

JUDGE DOOGAN:

Sorry. Mr Lyall, I think you need to be a little bit more specific about –

MR LYALL TO PETER MCBURNEY: (CONTINUES)

Q. Ka pai, Sir. So, my clients will lead evidence that the land – the purchase was funded through Te Ara Whenua and Papamoa at Mihirangi Koutu told the Native Land Court that her father used money received for her

and Te Ani Kotu to purchase the land, that they also used money due to Henare, Aramoana's mother but she passed away and that in fact, he left that whenua to allow the establishment of Roimata marae.

A. Okay.

Q. And you are not aware of any of that chronology.

A. No, no, but I was aware that there was going to be a standalone report for Ūpokorehe by Paul Husbands and that, I thought, you know, he would cover a lot of this, you know – I had a limited time, and I did what I could in the time, basically.

Q. Now, when I ask my questions of clarification, I think you said you glanced at Dr Husbands commissioning papers.

A. Yes.

Q. Is that a rigorous enough approach for an expert to take? You are telling the Tribunal now that you assume that it would be covered, but in my questions and responses to my questions you were clear that you weren't actually sure what he was going to cover.

A. I have nothing to say.

Q. Now, you've already covered, I think, with his Honour this morning that the interviewees that you spoke to are very strong on – they are saying that Ūpokorehe are the descendants of Taikurere. My clients will give evidence that for Roimata marae at least, that tipuna is noted mainly for the naming kōrero but not one of the key tipuna linking Te Ūpokorehe back to Te Hapūoneone. Have you spoken to people in your interview process who are more aligned with that view?

A. With Hapūoneone?

Q. No, the idea that while that tipuna is important for the naming of Te Ūpokorehe, it's not the front and centre of the role.

A. Dean Flavell, he was very much – you know, he carved this marae, or he was involved – he maybe was the lead carver in this marae and it's all about the many, many strands of whakapapa that inform this area. So, no I haven't heard that kōrero that it was just a naming thing only.

Q. And at the risk of blabbering a point, that's because you didn't go and speak to that community of people.

A. Thank you, (inaudible 16:21:12).

Q. Now, you've noted the dearth of sources for confiscated land because it was outside the jurisdiction of the Native Land Court.

A. Yes.

Q. You discuss Mokomoko's evidence, and we've already been there, slightly, today, talking about the relative interest investigation in 1898. Would you agree with me that what you've set out, his kōrero there isn't an examination of that relative interests investigation itself, but rather you focus on his kōrero alone?

A. Yes.

Q. And you don't discuss –

JUDGE DOOGAN:

Sorry, what passage are we looking at, Mr Lyall?

MR LYALL:

So Sir, this is from page 458 and continuing over into 463, as a treatment of Mokomoko's kōrero but only that.

MR LYALL TO PETER MCBURNEY: (CONTINUES)

Q. Now, having said that, there's a dearth of sources, you don't discuss the Native Land Court hearing that took place in 1939, do you?

A. No.

Q. So, in circumstances where we're already (inaudible 16:22:45) the lack of Native Land Court evidence, you are doing a case study on Hiwarau C. How did you come to overlook a Native Land Court case which other historians have cited in preparation of materials.

A. Obviously, I should have found it.

Q. And you don't focus on the evidence of Mihirangi Kotu who was at that hearing.

A. No.

Q. If we turn to page 467, please.

WITNESS REFERRED TO #A033, PAGE 467

I am looking at the section and titled, Whakatōhea evidence in the Compensation Court re Ōhiwa rights. You would agree with me that this

section relies heavily on the report prepared by Bruce Stirling for the Marine and Coastal Area Act hearings.

A. Yes it does.

Q. And that report was prepared for litigation purposes for a particular applicant.

A. Yes, I believe so.

Q. Are you aware that he accepted, under cross-examination, that he used the term Whakatōhea more as a grab bag term where it was unclear immediately which group or hapū.

A. I wasn't aware of that.

Q. Are you aware that he didn't speak to Te Ūpokorehe in preparation of that report?

A. No.

Q. In the bundle that I handed up, and these should be on the second to last page of the bundle that you have. This is from the transcript of the hearing dated the 17th of September 2020. This is cross-examination from Crown counsel of Mr Stirling. And if you've got the page with 34 at the bottom of it, in front of you.

A. Yes.

Q. And here they are discussing this hearing in 1939, in the Native Land Court, and half way down the page –

MR LYALL:

Sir, I've just paused to checked that you are with me.

JUDGE DOOGAN:

I don't think we have that – the last one I have is page 30 on the bottom. I've got the petition, end of the petition. I don't have those other – if

DOCUMENTS HANDED TO JUDGE DOOGAN (16:25:58)

MR LYALL TO PETER MCBURNEY: (CONTINUES)

Q. So, halfway down this page we have Crown counsel talking about an elderly women named Mihirangi Kuturu – I think that's an error and should

be Kotu. And if we turn the page, we have Mr Stirling describing here as someone four generations later with an axe to grind at the top of the page there, saying that Professor Binney's research is to be preferred. Now, in that hearing, it didn't seem that Mr Stirling was aware that Mihirangi Kotu was the granddaughter of Wī Akeake.

A. Right.

Q. And that was referred to in the Ngā Kōrero Tuku Iho – this whole exchanged was referred to in the Ngā Kōrero Tuku Iho hearing held at Roimata. Do you think that part of the reason that you didn't find that land court case, and weren't aware of Mihirangi Kotu, is because you relied on Mr Stirling's evidence, and he was unaware of those details?

A. It's a reasonable assumption, yes.

Q. And if we turn the page of your report to 468.

WITNESS REFERRED TO #A033, PAGE 468

Here I will ask the registrar if you could please bring up document 7A, page 19 which is Mr Stirling's report.

WITNESS REFERRED TO DOCUMENT 7A, PAGE 19 - MR STIRLING'S REPORT

Hopeful that the panel can make that out. But if we look at your bullet points on page 468 and then look at paragraphs 59, 60 and 61 from Mr Stirling's report. You would accept that what you have done there is copied and pasted from Mr Stirling's report into your report without attribution.

A. Yes, yes, I did.

Q. Do you think those sorts of shortcuts are acceptable for an expert witness appearing in a forum like this?

A. Not really, no.

Q. And if we turn to page 466, paragraph 1370.

WITNESS REFERRED TO #A033, PAGE 466, PARA 1370

Again, there's no citation on this paragraph, final sentence there: "The fact that it did not…" referring to fighting, issuing between Ngāti Awa and Whakatōhea, "… may have been due to arrival of the New Zealand Wars in the eastern Bay of Penty, which overtook the Ōhiwa dispute." I took

from context there that that may have been referring to Mr Johnston's report.

A. Yes, I would say so.

Q. So, if we –

PAGE NUMBER – JUDGE DOOGAN (16:30:17 – 16:30:25)

MR LYALL TO PETER MCBURNEY: (CONTINUES)

Q. If we turn to Mr Johnston's report which is part of the bundle that I passed up to you, Mr McBurney, it should be pages 35 and 36 of that report, hoping that the registrar can bring that up for the panel. Grateful. So, if we look to the bottom of page 35 of Mr Johnston's March 2003 Ōhiwa Harbour Report, you will see there, this action, Miles comments, about fears of renewed warfare, it's unclear, and then quoting, "It's likely the events and connection with the coming of the New Zealand wars to the eastern Bay of Plenty over to the Ōhiwa disputes." So there, Mr McBurney we have, in your report, an unattributed rephrasing of the statement not from Mr Johnston, but from Miles within his report.

A. Kia ora, yes.

Q. And so you can see the concern about this cascading of citations this is born out here**.**

A. Yes.

Q. And someone picking up your report in future years, may not have the context or –

A. Sure.

Q. – or may not look to Mr Johnston's report and may see that as your conclusion. Likewise, paragraph 1371 discusses a meeting held between the Whakatōhea Māori Trust Board and Te Rūnanga o Ngāti Awa in 1991. Do you accept that that telling is taken from Mr Johnston's report as well, rather than being fresh research?

A. Yes, it is.

Q. So, the claimants that you are representing have asked you to conduct fresh research knowing what's available, presumably, and instead are

receiving, in effect, evidence prepared by Ngāti Awa researchers, a generation ago.

A. That's what it looks like, yes.

Q. Before we move away from here, I would just like to cover the Te Ūpokorehe marae timeline at 469.

WITNESS REFERRED TO #A033, PAGE 469

Do you have that in front of you, Mr McBurney?

A. Yes, I do.

Q. So, the second entry there, 1886, Wainui Marae opens. Do you accept that's not a marae associated with Te Ūpokorehe?

A. No.

Q. No, it's not or no, you don't accept that?

A. It's the marae that Te Kooti was associated with.

Q. And then next entry down, my clients give evidence that that date should be 1914 rather than 1916, would you dispute that?

A. I don't know.

Q. The statement below that, that the Kahuki whare was first located on Hokianga Island and had a thatched nikau roof.

A. Mhm.

Q. Just so I am clear, are your interviews the only place that you have seen evidence of that?

A. That was from Gloria Tahere's interview and that was from – she had heard that from Josie Mortensen.

Q. And Ms Mortensen, I presume, had passed at the time of the –

A. She had passed away at that stage, yes.

Q. Did you do any explicit research to try and see if that was in the record?

A. No, no.

Q. In the box below: "The name Roimata commemorates the deaths of twin brothers who drowned when Te Poho o Kahungunu was opened." My clients will give evidence that Roimata pā was an ancient fortification where Hapekituarangi resided, which is the present day site of Roimata, and is named for the tears shared in its defence. Have you see reference to that?

A. No.

Q. For Rongopopōia Marae, the entry below, you say it's also known as Kahikatea. Would you accept that Te Kahikatea is the valley area, and the marae is in fact not known as that?

A. Well, yes, okay.

Q. At page 444 there's a map.

A. Yes.

Q. And it's Waiotahi's sites of significance. Now, I've not been able to find a key, or an explanation of these sites associated with this map, is this a standalone or is there something missing which would explain the various sites identified.

A. Well, certainly I looked at the evidence that I could find for these sites and tried to nail down their locations.

Q. I think for Raetoka pā, for instance, this might be the only mention of it in your report. So, what are we meant to make of knowing where it is if we don't know about it.

JUDGE DOOGAN:

Sorry. While you're looking for a – Mr McBurney, the map sort of appear 443 and the map you were just questioned about at 444, Sites of Significance, both maps, highlighting sites of significance. Are these maps that you compiled from information given to you in your interviews?

PETER MCBURNEY:

And from the reading that I did, yes.

JUDGE DOOGAN:

All right. So, you've – as best you are able, pinpointed the geographic location of the various named sites?

PETER MCBURNEY:

Yes. I spent some time over it.

JUDGE DOOGAN:

All right, thank you.

MR LYALL TO PETER MCBURNEY: (CONTINUES)

Q. Well really Mr McBurney I was checking to see if something hadn't been missed out more than anything else but if that is the total, I have one more just to take you to and that's at page 462 of your report and I am at paragraphs 1353 and 1354.

WITNESS REFERRED TO #A033, PAGE 462, PARA 1353-1354

There you mention the Te Ūpokorehe Treaty Claims Trust.

A. Yes.

Q. Are you aware of what that body is or what it represents?

A. I understand that it's aspires to have Te Ūpokorehe recognised as an iwi.

Q. Are you aware that they are not claimants in the Waitangi Tribunal?

A. No.

Q. I'm looking at the statement made by Ms Edwards that: "Had Roimata, Maromahue, Kutarere, Tūrangapikitoi, Rongopopōia had a place in the (Treaty settlement) mandate as a hapū in their right, the claim by Te Ūpokorehe Treaty Claims Trust that Ūpokorehe be accorded iwi rather than hapū status would never have been made." In trying to understand what that means, to try to assist us I filed the –

JUDGE DOOGAN:

Sorry, where was that statement?

MR LYALL:

This is paragraph 1353, Sir.

JUDGE DOOGAN:

Sorry, thank you.

MR LYALL TO PETER MCBURNEY: (CONTINUES)

Q. And I have filed as part of the bundle on page 2, and this should be in all of the hand up, Sir, I think it was the last pages that were omitted. So, this is document #3.1.306(a) on the record of inquiry for this inquiry in any event. And I will just give you a moment to review that Mr McBurney.

WITNESS REFERRED TO #3.1.306(a), PAGE 2.

A. Yes.

Q. Do you agree with me that in light of the petition there, what was being sought was removal of Ūpokorehe from the Whakatōhea settlement, not a claim by Te Ūpokorehe Treaty Claims Trust, that Ūpokorehe be accorded iwi rather than hapū status?

A. So, what you are saying is that Ūpokorehe are asserting themselves an iwi anyway without – they are not asking anybody else.

Q. Yes. So, I don't see that the view of Ms Edwards there, is coherent in light of the facts. Would you agree with me?

A. Yes, it was what I recorded in the interview, and I put it in the report.

Q. And you didn't challenge her on that or do any research?

A. No.

Q. Thank you Mr McBurney, those are my questions for today.

JUDGE DOOGAN:

Thank you Mr Lyall. Who was to follow Mr Lyall.

MS CLARK:

Sir, I can take the batten next.

JUDGE DOOGAN:

Ka pai.

TIMETABLING (16:44:17 – 16:44:26)

(16:44) MS CLARK TO PETER MCBURNEY:

Q. Tēnā koe Mr McBurney.

A. Kia ora.

Q. Ko Raewyn Clark tōku ingoa and the questions I have for you today are on behalf of Ngāi Tamahaua hapū, the Wai 1781 claim. My first question relates to the first part of your report where you go over some of the early waka arrivals.

A. Okay.

Q. And the connection that I wanted to make with you here is with regards to the Ngāi Tamahaua kōrero which I see you mention, regarding the arrival of the Nukutere waka and the fact that it met with a group of people that already occupied the Ōpape area.

A. Mhm.

Q. That is kōrero that you heard from Ngāi Tamahaua as part of doing your research in this report, isn't it?

A. Yes.

Q. And that kōrero referred to kōrero that the claimant Tracy Hillier, on behalf of Ngāi Tamahaua, has included as part of her evidence, significant kōrero for them in that it ties them to the Ōpape area going back to those very early arrivals, of the intermarriage –

A. Sure.

Q. – between the Nukutere arrivals and the pre-existing Maru iwi, as they are called.

A. Right, yes.

Q. And is it correct that your report has highlighted or has taken this kōrero a bit further and that you have highlighted that the Maru iwi connection also arises, the Maru iwi kōrero also arises in respect of other kōrero from other districts.

A. Can you – yes, so Maru iwi has got currency elsewhere, yes, as an early indigenous tāngata whenua iwi, yes.

Q. And I think the connection that your report suggests, those early arrivals, I think you linked them to the Taranaki Coast.

A. Yes, I think so. Can you take me to the page?

Q. I don't think we need to go to the page.

A. Okay, all right.

Q. I am simply drawing that connection between the kōrero that we have here in respect of Ngāi Tamahaua and then it matches from other iwi kōrero from other districts.

A. Sure, right.

Q. Would you agree with that?

A. Yes.

Q. Thank you. The next – I wanted to open the kōrero around missionaries. Your report has referred to them quite significantly and I note from our statement of issues that the missionary relationships do form an important part of the context in this district that we are examining in this inquiry so hence my questions. You have highlighted the competition, the extreme sense of competition that existed between the Catholic missionaries and the Anglican missionaries. Is that correct?

A. Yes, yes.

Q. And you say that the emphatic rejection and condemnation that these religions appear to have for one another fed into what we then see with an even more emphatic rejection of the Pai Mārire and Ringatū religions when they did emerge. Would you agree with that?

A. Absolutely, yes.

Q. And is what you are saying, is that it was inherent in the beliefs of these missionaries as they operated at this period, that there was a sense of, firstly, the cultural superiority of that particular religion?

A. Absolutely.

Q. Combined with a lack of tolerance for any form of religious expression or religious thinking that did not agree with the core beliefs of the Anglican religion.

A. Yes, the Anglicans particularly, they were very doctrinaire.

Q. Thank you. And you go further to say that this perspective of cultural superiority combined with a lack of tolerance for any form of belief and not according with the Anglican belief system. It went further than the missionaries themselves, it was very much inherent in the attitudes of the colonial government in the pre- in the sort of 1850, 1860, leading up to the 1865 period and beyond.

A. And beyond, yes.

Q. You make a point in your report, perhaps more obviously than I have seen in other reports regarding the significance of the children of the missionaries, having significant posts as government agents in this district. And your report says, for example, Wilson is a very obvious example of this, but you also highlight other significant Crown actors in

this area, such as Clarke, who was posted in Tauranga and was extensively, Wilson's boss.

A. Yes.

Q. And also Brabant.

A. Yes.

Q. They were all children of –

A. I am not sure about – is Brabant one as well, I can't recall.

Q. I believe he may have been. Yes, that's on page 266.

A. Right.

Q. And you are referring to some research by Nightingale.

A. Yes, okay. Yes, indeed.

Q. And the conclusion that you draw, having looked at the evidence, is that these Crown agents, being the children of their parents, your view is that they very much carried the inherent prejudices, viewpoints, intolerances that we've just discussed regarding the Anglican faith as it existed at this time, that they very much brought those prejudices with them into their roles as Crown agents. Would you – what do you stand on that?

A. Yes, that's something that I've thought about, you know, looking in other areas like Walter Buller is another one in Porirua ki Manawatū. I think that those missionary values, I was really quite astounded, really, to read Judith Binney's book on *Legacy of Guilt* which is what I drew a lot from and that was her MA Thesis actually, she never did a PhD, but it is a PhD quality MA, if you like. And I just think that those missionary values, they underpin the whole colonial enterprise really.

Q. And you would say were particular evident in the work of the Crown agents in this district.

A. Yes, I think that everything happened so quickly here, from the arrival of the first missionary and 25 years later, to the Pai Mārire coming here and Whakatōhea had gone from being praised for their resourcefulness and adaptation to the European economic way to being totally vilified and invaded. You know, when Wilson arrived in 1839/40, it was all he could have wanted, was having the Māori teachers here teaching the scripture and teaching literacy and it just – yes, then the association with the land – the missionary land purchases which became apparent to Whakatōhea

– I think I've lost my thread actually, sorry. Yes, I mean, when the surveyor came here and surveyed out the missionary purchases that's when they realised just what it was about, really, and that would have led them to ally themselves with the Kīngitanga and that kaupapa of Pupuri Whenua.

Q. Thank you. And just to finish off that particular line that we're discussing here, your report is also very clear about the blatant differences that existed between the Anglican missionaries and their insatiable desire for land versus the Catholic missionaries.

A. Yes.

Q. And they were, of course, side by side here in this district. So, in the eyes of Whakatōhea, would you agree the insatiable desire for land that existed – appeared to exist within the Anglican faith was very evident when contrasted with the Catholic approach.

A. Yes, absolutely.

Q. And perhaps the way that that was exemplified at a very early stage, was with regards to the early purchase of the Pakahi deed by Wilson when he arrived –

A. Yes.

Q. – and shortly after Pompallier arrived and a very different type of deal, so to speak, was struck with him.

A. Yes.

Q. And of course the deed there was assured communal, that the land was to be held in the possession of all and that sale was unlawful. I will leave my questions there, thank you Mr McBurney.

A. Thank you.

JUDGE DOOGAN:

All right. Thank you Ms Clarke. Thank you Mr McBurney, that's been quite a long innings for you today, so far. So, we'll draw things to a close now and we are back at nine tomorrow morning. So, I think that's – thank you to the haukāinga and to all of you who have been here today. So, he karakia e whakakapi.

KARAKIA WHAKAKAPI

HEARING ADJOURNS: 4.58 PM

HEARING RESUMES ON TUESDAY 26 AUGUST AT 9:06 AM

KARAKIA TĪMATANGA

(09:10) JUDGE DOOGAN: (MIHI)

Tēnā koe, e koro, Joe. Nāu i tuku atu ngā whakamoemiti ki tō tātou Kaihanga, nō reira, tēnā koe. Ka mihi hoki ki a koutou kua huihui mai nei ki te wā tuarua. Nau mai. **Thank you, elder Joe, for giving thanks to our Creator, and so, thank you. I also want to acknowledge everyone that has gathered here for day two. Welcome.**

He mihi tēnei ki a koe **I want to acknowledge you**, Mr Crosby, welcome, tae atu ki a koe **including you**, Ms Sykes, Ms Hata. We were told you would enter a cameo appearance today, so welcome.

All right. We will get underway with questioning for you, Mr McBurney. Thank you for your evidence yesterday.

PETER MCBURNEY:

Kia ora.

JUDGE DOOGAN:

And who is first today? Right, Ms Rongo, kia ora.

HOUSEKEEPING – TIMETABLING (09:11:30)

(09:11) MS RONGO TO PETER MCBURNEY:

Q. Tēnā koe **thank you**, Mr McBurney.

A. Tēnā koe.

Q. My name is Eve Rongo, and I am counsel for Ngāi Tai.

A. Kia ora.

Q. So the questions that I have come from a specifically Ngāi Tai perspective. You might already know some of the questions I have. Can

I get you to turn to page 381 of your main report? Let me know when you are there.

A. Yes.

Q. Thank you. Okay, so on that page, we have figure 14, the composite Ngāti Muriwai whakapapa. That's correct?

A. Yes.

Q. And that is the figure that shows us the whakapapa from Muriwai down to Eru Pōnaho and Tōrere-nui-a-rua down to Eru Pōnaho. That's correct?

A. Yes, it is.

Q. Okay, so I have not seen this written anywhere, but I just wanted to get it clear for the record: Ngāti Muriwai have whakapapa links to Ngāi Tai.

A. Yes.

Q. Is that correct? Yes.

A. Yes.

Q. But Ngāti Muriwai is a hapū of Whakatōhea.

A. Yes.

Q. Is Ngāti Muriwai a hapū of Ngāi Tai?

A. That's a good question. I think it's for Ngāti Muriwai to answer that question, generally, but I do understand that they see themselves as members of Ngāi Tai –

Q. Okay.

A. – through their whakapapa.

Q. Okay. So from the evidence we have on the record, it seems clear to me, but I just wanted to confirm this, that Ngāti Muriwai is a hapū of Whakatōhea who have whakapapa links to Ngāi Tai.

A. Yes, and in the Land Court, identified with Ngāi Tai in the famous Whitikau hearing –

Q. Right.

A. – 1981.

Q. Right. And – but that was then acting as Ngāi Tai, not as Ngāti Muriwai, is that correct?

A. I would say so.

Q. Thank you. So, yesterday, Ms Feint asked you if Ngāti Muriwai are the descendants of Eru Pōnaho, and you answered "Yes", so you would

agree that the emergence of Ngāti Muriwai was some time after Ngāi Tai emerged as an iwi?

A. Yes, although I think in some of the evidence that Paku Eruera gave, I think in Whitikau 3 inquiry, when he was identifying as Panenehu, he was talking about a whanaungatanga, or a marriage, a much earlier marriage between his Panenehu tupuna and a Ngāi Tai tupuna. Yes. Whariu of Panenehu and Kauamowhati of Ngāi Tai.

Q. That is helpful. Thank you. And I asked that question, too, because on page 585, you have your appendices there, Appendix 1. I will give you a bit of time to turn to that. It was page 585.

A. Yes.

Q. So this was – this was from papers that were found within the papers of Matenga Biddle, that's correct?

A. Yes.

Q. But you are not 100% sure on who the author is.

A. No.

Q. Okay.

A. No.

Q. And it says there in the first paragraph of that quote, "Ngati Muriwai has existed for several hundred years originally as the Rangatira Hapu of Pane Nehu and its rohe originally covered the coastal area from and including Torere to the eastern bank of the Otara River", and it is that Tōrere that I want to ask you questions on now.

So Ngāti Muriwai claim their rohe to Tōrere, is that correct?

A. According to this document, that is correct, yes.

Q. Okay. You say "according to this document". Is that the position of Ngāti Muriwai today?

A. You'd – again, you'd have to ask them that. These boundaries were always movable and mutable, and depending on circumstances, but in this document, the writer is extending the rohe from Tōrere to the Ōtara River, which is basically Ōpōtiki.

Q. Yes. I find that interesting. So do you say that Ngāti Muriwai goes to Tōrere? Then you would in effect say that Whakatōhea goes to Tōrere.

A. According to this document, according to this particular –

Q. Yes.

A. – account. There are multiple accounts of boundaries which I found in the course of my research.

Q. Okay. So the marae at Tōrere, would it then follow that that is a Whakatōhea marae, if Whakatōhea goes all the way to Tōrere?

A. My understanding of that is that the idea of physical boundaries is one that we get captured by, but really, the boundaries are all in the whakapapa, and if you can whakapapa to a certain place, then you are home.

Q. All right. So to confirm, Ngāti Muriwai are able to extend their boundary to Tōrere, through their Ngāi Tai whakapapa.

A. That's my understanding.

Q. Okay. Also within that quote on page 585, in that second paragraph, it says, "When Ngai Tai was looking for a home to settle permanently it was Ngāti Muriwai who agreed that this tribe should settle at Torere and allowed them to use this part of the rohe belonging to Ngati Muriwai."
So we have already pointed out in the whakapapa that Ngāi Tai existed, emerged as an iwi before Ngāti Muriwai emerged as a hapū, and the fact that Tōrere is the eponymous ancestress of Ngāi Tai –

A. Kia ora.

Q. – so how does that work that Ngāti Muriwai would invite Ngāi Tai to live in Tōrere?

A. I think, as Ms Feint was pointing out yesterday, there is a tendency which I've found in lots of other conversations I've had with kaumātua and – is that there's a tendency to project back from the extant hapū or iwi and claim those ancestors further back as part of you, and they are part of you, and you're giving them the name that you have now, perhaps. Perhaps that's how it works.

Q. Okay. But in your summary, at paragraph 90 – and paragraph 90 is where you cover this extract, saying that Muriwai "originally covered the coastal area from and including Tōrere", but I do note in the following paragraph –

A. Summary, summary. Sorry.

Q. That's all right. Your summary.

A. Yes.

Q. I am looking at paragraph 91.

A. Yes.

Q. In the next paragraph, you say that "Ngāti Muriwai assert longstanding customary rights to Waiaua and Ōmarumutu", and I almost get the sense that, well, originally, they had included Tōrere, but their longstanding customary interests are actually at Waiaua and Ōmarumutu. Am I correct in that sense?

PETER MCBURNEY:

Can I have your copy of my summary, please?

UNIDENTIFIED SPEAKER:

Which?

PETER MCBURNEY:

Summary.

UNIDENTIFIED SPEAKER:

Which?

PETER MCBURNEY:

I want your paragraph 90.

MS RONGO TO PETER MCBURNEY: (CONTINUES)

A. So what does that paragraph begin with?

Q. So paragraph 90, you start with, "The writer of the short paper, 'Ngāti Muriwai Hapū Historical Notes', who is presumed to be the late Matenga Biddle –"

A. Yes.

Q. "– states that the rohe of Ngāti Muriwai 'originally covered the coastal area from and including Tōrere" –

A. It's on the screen. Okay. Thank you.

Q. And then in paragraph 90, on the following page –

A. 91?

Q. 91, thank you. I get the sense that it is almost like, "But Ngāti Muriwai assert longstanding customary rights to Waiaua and Ōmarumutu."

A. Yes.

Q. Is that the sense you got?

A. From the interviews, definitely, yes.

Q. Okay. All right. Those were all my questions. Thank you, Mr McBurney.

A. Thank you. Kia ora.

JUDGE DOOGAN:

Thank you, Ms Rongo. Who is next? Ms Fellowes, is that correct?

HOUSEKEEPING – TIMETABLING, LEAVE SOUGHT TO QUESTION SEATED (09:22:50)

(09:22) MS FELLOWES TO PETER MCBURNEY:

Q. Tēnā koe, Mr McBurney.

A. Kia ora.

Q. Ko Caitlin Fellowes tōku ingoa. I'm here representing Wai 339 and Wai 1865, which are both claims about the Hiwarau Block. So my questions will mostly focus on your main report, as well as the extracts from interviews sorted into categories, which has the appellation Wai 1750, #A033(a). Do you have both –

A. Yes, I do.

Q. Okay. So if I could take you to the page 155 of #A033(a), so that will be the interviews.

A. 135?

Q. 155, sorry.

A. 155. I beg your pardon. Yes.

Q. Okay. So one of the interviewees is one of the named claimants for Wai 339, Mr Dean Flavell.

A. Yes.

Q. In this extract, he discusses the issues that Hiwarau C trustees are facing are as a result of the amalgamation of the blocks into one. So during your time as a historian, have you come across a situation similar to what the

Hiwarau C trustees are facing, where they're currently struggling to do anything with the land and where they're seeking de-amalgamation?

A. Yes, definitely I have come across that. In Rotoiti, there was a lot of blocks there. Yes, I have, yes. And that was amalgamated to Rotoiti X, I think, from what – from memory.

Q. Yes. And could you share just the issues that you saw with those particular blocks and if there's a common theme that you see?

A. Yes. Well, it's fragmentary title, multiple ownership, does not fit into any economic model that is in the mainstream, and so it cannot be developed. There's – no one will lend money to that land in that condition, with the title in that condition.

Q. Staying on a similar topic, in your main report, so, #A033, at page 442, paragraph 1306, you refer to Johnston's scoping report, which says that the Hiwarau whānau were left with "mismanagement by the Land Court, and the Māori Trustee. As a result, we are left with [a] much run-down block of land, no finance, and arrears of rates and rent." So, whilst we understand the specific issue of the amalgamation and the administration of the Māori Trustee is not covered in your report in detail, is this type of mismanagement common across other areas of New Zealand?

A. Yes, I believe so. It is.

JUDGE DOOGAN:

Ms Fellowes, could I just have that reference again to the –

MS FELLOWES:

The reference?

JUDGE DOOGAN:

Yes, to the extract you were just referring to. Was it – we had 1306 at page 442?

MS FELLOWES:

Yes, that's correct.

JUDGE DOOGAN:

And…

MS FELLOWES:

Of the main report, sorry.

JUDGE DOOGAN:

All right.

MS FELLOWES:

So it will be the extract, and I think it's like the last couple of lines.

JUDGE DOOGAN:

All right, I see. Thank you. Thank you.

MS FELLOWES TO PETER MCBURNEY: (CONTINUES)

Q. And so my last question for you would be: Do you think the problems faced by the Hiwarau C trustees can be attributed back to the original list of owners, the complex tribal traditions in the area, and the allocations of land at that point?

A. Well, that would have exacerbated the structural problems that are there in the multiple ownership and the fragmented title, so that would have only exacerbated that, I would say, what you are describing, yes.

Q. That concludes my questions. Thank you very much.

A. Thank you.

JUDGE DOOGAN:

Thank you, Ms Fellowes. Ms Peters, kia ora.

MS PETERS:

Tēnā koe, e te Kaiwhakawā. **Thank you, your Honour.**

(09:27) MS PETERS TO PETER MCBURNEY:

Q. Tēnā koe **greetings**, Mr McBurney.

A. Tēnā koe.

Q. My name is Ihipera Peters, and I am here representing the Ngāti Patumoana hapū claim –

A. Kia ora.

– registered as Wai 1775. I only have two topics to explore with you, very brief topics, this morning, given many of my pātai were covered yesterday. The first topic is in relation to your methodology as it relates to the Ngāti Patumoana case study in your report, and the second one arises out of your exchange with Ms Feint KC yesterday regarding the tupuna whaea **ancestress** Hineīāhua.

And the first topic, in terms of methodology, I noticed in your project brief relating to the Ngāti Patumoana case study, an absence of any of the named claimants for the Ngāti Patumoana hapū claim or their kaikōrero, so my question is: Did you talk with the likes of Koro Te Riaki Amoamo or Te Ringahuia Hata, who is sitting beside me at the moment, in preparing that section of your report?

A. No. No.

Q. Were you aware that they have presented evidence in earlier hearings in this inquiry for Ngāti Patumoana hapū?

A. Sorry? I beg your pardon?

Q. Were you aware that Te Riaki Amoamo and Te Ringahuia Hata have presented evidence in this inquiry for Ngāti Patumoana hapū?

A. I wasn't aware that they had presented evidence for Ngāti Patu, no.

Q. So you – can I take it from that that you haven't read any of their evidence on this record of inquiry?

A. No.

Q. In preparing your case study for Ngāti Patumoana, which is at chapter 10 of your report, how did you ensure that Ngāti Patumoana's narratives were accurately represented?

A. I interviewed the Ngāti Patu people that it was arranged for me to interview.

Q. And when you say "arranged for you to interview"…?

A. Pardon?

Q. When you say "arranged for me to interview" –

A. Yes.

Q. Is that reference to your exchange yesterday about the managing person who organised all the speakers for –

A. Yes.

Q. – the report that you had –

A. Yes.

Q. – spoken to. Ka pai.

In your research, you mention some significant tūpuna for Ngāti Patumoana, including Hineīāhua and Tīwai Piahana. Have you read any writings or any of the transcripts from earlier hearings where Te Riaka Amoamo has given his oral account?

A. I think I did earlier on, but I didn't incorporate it into my report.

Q. Do you recall which –

A. No, I don't.

Q. – (inaudible 09:31:47) were?

A. It was a while ago.

Q. In terms of the exchange you had with Ms Feint KC yesterday, you mentioned – you made reference to the Wolfgramm sisters, who were presented in the morning, that they had corrected the record regarding Hineīāhua. Do you recall that?

A. Yes.

Q. And that was in relation to the origins of the name Ngāti Patumoana –

A. Yes.

Q. – of one of the accounts for that.

A. Yes.

Q. If I can – I am not sure if you have got a copy of the extract of the transcript before you. I understand you do. So –

A. Yes.

Q. – before you, you should have a three-page document. It is an extract from the transcript from the takahi whenua site visit in 2024.

A. I haven't – no, I don't. No one's given me anything.

JUDGE DOOGAN:

Mr Sinclair, have you got that?

MS PETERS TO PETER MCBURNEY: (CONTINUES)

Q. It might be with your counsel. This is document #4.1.15 in the record.

A. Right. I have that, yes.

Q. We have that for you. So you will see on the front page there it is the takahi whenua site visit held in various locations in Ōpōtiki from Monday 19th February '24 to Wednesday 21st February 2024. The page that I want to take you to is on page 96, but just by way of context, the page before that, on 95, just identifies that it is Te Riaki Amoamo who is speaking.

A. Okay.

Q. So on page 96, which is the last page of that extract, about halfway down the page, he is talking about his tupuna whaea, Hineīāhua, and you will see there he is saying, "Ngāti Patumoana of significance person, her name was Hineiahua from the Ngāi Tū tribe, was caught out at sea by the Ngā Puhi war party and she was killed out at sea and that's Ngāti Patumoana. Ngāti Patu comes under her. Not the Hineahua in Alf Lyall's Whakatōhea book, that Hineahua came from Rangihaerepo."

And then a little bit further down at line 24, he goes on to say, "So, I dispute what was in the book about Rangihaerepo's daughter is the name for Ngāti Patumoana because I come off that whakapapa, I come off Rangihaerepo who had Hineahua. She had a relationship with William Lawrence and later on she had a relationship with Colonel John Henry Balneavis. I come of the Lawrence, William Rangihaerepo Lawrence side. So, she will be named after the ancient Hineiahua that was killed out here."

So he is directly speaking to his oral account and kōrero tuku iho of the origins of the name for the hapū.

A. Yes.

Q. Would you accept that, having seen his account, that there are in fact two Hineīāhua tūpuna whaea?

A. Yes. It's my conclusion in the book as well – in my report.

Q. Ka pai. **All right.** And would you accept that Koro Te Riaki, who is now 87, is a well-respected kaumātua and knowledge keeper for the hapū who would have grown up alongside his elders –

A. Yes.

Q. – who had those kōrero? Tēnā koe. Koinā āku pātai. **Thank you. Those are my questions.** Thank you, Mr McBurney.

A. Kia ora. Thank you.

JUDGE DOOGAN:

Ms Peters, thank you. Just if I could confirm, the named claimants for your Ngāti Patumoana clients included Te Riaki Amoamo and Ms Hata? I am sorry, I was not able to quickly trace back the named claimants for those. Could you just remind me, please?

MS PETERS:

Āe. Āe. Tēnā koe, e te Kaiwhakawā. **Thank you, your Honour.** So the named claimants for the Wai 1775 claim are Te Ringahuia Hata and Antoinette Hata and the late John Hata. Koro Te Riaki is not a named claimant. However, as you will be aware, he is a kaikōrero who has –

JUDGE DOOGAN:

All right. Thank you.

MS PETERS:

– spoken as a witness in support of their claim.

JUDGE DOOGAN:

All right. Thank you. And who is – is that everybody? Ka pai. Mr Lyall.

MR LYALL:

Kia ora. Just before we move on, really a point of clarification. I – it really goes to the heart of who commissioned this report, and I had understood that Mr Flavell's claim was among those commissioning the report, and had not anticipated they would have questions of cross-examination from counsel, (inaudible 09:37:17) for instance of the report, and he is counsel for that claim, so really, and perhaps my learned friend could help us, but whether those questions might better have been put as questions during evidence in chief or quite how we are to understand how those claims fit together with the report?

JUDGE DOOGAN:

All right. So – all right, just help me a little bit more here. Are you referring to Ms Peters' questions, or Ms –

MR LYALL:

Ms –

JUDGE DOOGAN:

Ms Rongo's?

MR LYALL:

Ms Fellowes'. I'm sorry.

JUDGE DOOGAN:

Ms Fellowes' questions?

MR LYALL:

Yes, your Honour. So my understanding is that the Hiwarau C case study flows from the clients' Hiwarau C claim, and at this point, I – sorry, you may have noticed me duck out, and I was just receiving instructions to raise this point, but –

JUDGE DOOGAN:

All right.

MR LYALL:

– it's about having a fair go at things, and procedurally, your Honour.

JUDGE DOOGAN:

All right. Can we come back to that? And I may need just to have a further conversation with both counsel, just to clarify that I have understood the issue, but perhaps if we could complete the questioning for Mr McBurnie from the Crown and from the Tribunal, and perhaps in one of the adjournments, I will take a moment to just have a quick discussion.

MR LYALL:

It may be, your Honour, that I can raise it with my learned friend during the break and come back to you, too.

JUDGE DOOGAN:

That would be helpful, too, thank you.

So, Mr Linkhorn, I think we are coming to you.

HEARING ADJOURNS: 9.38 AM

HEARING RESUMES: 9.43 AM

JUDGE DOOGAN:

Kia ora anō koutou. **Welcome back.** Ms Clark, just before we start, am I correct to recall that Mr Sharp was wanting leave to submit questions in writing to Mr McBurney? All right. Have you received some more homework?

MR MCBURNEY:

From Mr Sharp?

JUDGE DOOGAN:

Yes.

MR MCBURNEY:

He actually produced them before the –

JUDGE DOOGAN:

All right.

MR MCBURNEY:

– before the hearing, and I answered them.

JUDGE DOOGAN:

All right. Ka pai.

MR MCBURNEY:

Yes.

JUDGE DOOGAN:

Thank you. That's good. Okay. Thank you very much.

MR MCBURNEY:

Kia ora.

JUDGE DOOGAN:

All right. Mr Hunt or Mr Linkhorn?

MR HUNT:

Mr Hunt, thank you, Sir.

(09:44) MR HUNT TO PETER MCBURNEY:

Q. Kia ora, Mr McBurney.

A. Kia ora, Mr Hunt.

Q. Daniel Hunt for the Crown. I wanted to ask you first about some of the documents in your bundle of documents, and I'm hoping the Tribunal can pull up the documents. So this is #A033(b) at pages – beginning at page 578, and this is a quick question of clarification I wanted to give you the opportunity to answer, and it arises from your reference to Waipaoa 5A. This will be the only quick question I have on Waipaoa –

A. Yes.

Q. – which is at 103 of your summary –

A. Yes.

Q. – and also for your reference and the Tribunal's reference, page 533 of your main report. So when that document comes up, I will take you to the particular point I am hoping to look at.

Pardon? I am waiting – I want the Tribunal – just waiting for it to come up for the Tribunal as well. Three documents? Okay. We might have a –

MR LYALL:

Your Honour, just while we are waiting for that to come up, I did have a raft of questions about Waipaoa on behalf of my claimants, and we did just want to remind all that we weren't to be asking questions on that topic as part of our cross-examination today.

MR HUNT:

So, your Honour, to cut to the chase, what I am going to be asking about is a different Waipaoa, and it will become evident, I think, once we sort it out.

JUDGE DOOGAN:

All right. Thank you.

UNIDENTIFIED SPEAKER:

Kia ora.

MR HUNT:

So, for context, while the documents are coming up, your Honour, we have at 578 the partition orders for Waipaoa 5A.

MR HUNT TO PETER MCBURNEY: (CONTINUES)

Q. Are you looking at the same document as me, Mr McBurney? This is page 578, partition order for Waipaoa 5A1.

A. Yes, so it's – how do you say? On 578 in the document bank, and it's a petition order for Waipaoa 5A, 25th of September 1911.

Q. That's the one.

A. Yes.

Q. Now, if you could come down to the next page.

A. Yes.

Q. Page 579. And I haven't produced hard copies of this, I only noticed this last night when I went away to look at this reference. So there is a – it's a title plan for Waipaoa 5A.

A. 5A1?

Q. 5A1, sorry, and to the right, or the right-ish, of the plan, it says, "Ruatikuri River" [*sic*].

A. Yes.

Q. So what I wanted to clarify with you, my understanding is the Ruatikuri River [*sic*] is south-west of Waipaoa. They have the Crown Forestry Rental land**.**

A. Now that you're saying that I think I agree with you.

Q. Okay.

A. Yes.

Q. Thank you. That was – had you had a chance to look at these before you referred to them in your report?

A. These – these were – this was archival materials that were provided to me by the claimants.

Q. Okay.

A. And I didn't have access to the minute books that determined these titles, that investigated the titles, and so I had to say, "Well, it needs further research." This was one of the issues that needed further research.

Q. Okay.

A. Yes.

Q. We have it up now. It was the next page along.

JUDGE DOOGAN:

Mr Hunt, just while – and the reason it takes a little while just to bring up is because of the size of the document bank, so that's the issue the staff have.

Your question – you are just seeking clarification about the geographic location of this particular block?

MR HUNT:

That's right.

JUDGE DOOGAN:

And confirming that the Ruakituri River referred to there – I actually know this block, because I have had extensive litigation in the Māori Land Court over this

particular land, so I know I am not supposed to give evidence or anything like that, but if the short point is that it is geographically located well to the south, I think, of the Waipoua Forest lands, then I think yes, that is understood by the Tribunal – at least by this part of the Tribunal. So does that help?

MR HUNT:

It does help. That was the short point; a different – different block.

JUDGE DOOGAN:

Okay, thank you.

MR HUNT:

A different Waipoua.

JUDGE DOOGAN:

All right. And Mr Lyall? You can relax, too, so ka pai. Thank you.

MR LYALL:

Thank you, your Honour.

(09:50) MR LYALL TO PETER MCBURNEY:

Q. Thank you for that. I won't ask – I had some questions about methodology, but I won't ask – don't think I need to ask those, as that was covered yesterday pretty well, so if I could start with 61 of your report summary.

A. 61.

Q. It is 033(c), and by – sorry – 61, I mean paragraph 61.

A. So what is the first sentence there?

Q. Good question. I have it in my notes, but I haven't pulled it up myself. "In 1866, Wilson Jnr was appointed Special Commissioner…"

A. Yes, that's my 61 as well. Just checking.

Q. Sorry, I am not keeping up with myself. I apologise. Now, I'm frozen. But the sentence I was interested in or wanted to ask you about was where

you say, “Having grown up amongst Whakatōhea, Wilson regarded himself as the pre-eminent expert on the tribe...”. Do you have that?

A. Yes.

Q. Just taking the first part, “Having grown up amongst Whakatōhea”, you help – you – in response to our questions of clarification, you provided a biography of Mr Wilson. I do not think we need to go there, but I will just give you some of the key points from that biography, which was helpful, and incidentally, I think – and that was taken from Mr Nightingale’s report.

A. That’s right.

Q. Yes. It has similarities to the New Zealand Dictionary of Biography for Wilson as well –

A. Right.

Q. – so I think one or the other came first, but –

A. Yes.

Q. – but the key points from the biography, which I think are helpful to remind ourselves of – and tell me if you agree with these – Mr Wilson was born in France, 1829.

A. Yes.

Q. Around. The family, so Wilson Senior, the mother, they moved to the Bay of Islands in 1833.

A. Mhm.

Q. And then after schooling at Waimate North, Kings College, I think in Sydney, in New South Wales –

A. Mhm.

Q. – and then back at Auckland, Mr Wilson began farming in this district –

A. Okay.

Q. – in 1945?

A. Okay.

Q. You are familiar with that? 1845?

A. 1845.

Q. Sorry.

A. Okay.

Q. And then he went to Tāmaki to begin – to farm there in 1852.

A. Okay.

Q. That or –

A. So he didn't grow up with Whakatōhea?

Q. That is what I am getting at. Is that – you – that sounds like a fair proposition based on that?

A. It is a fair proposition, yes.

Q. And the reason I wanted to ask about that was that leads into the statement that he considered himself the self-appointed expert on Te Whakatōhea, and I take it, where you have included this in your main report, and that is at page 374, paragraph 1106 –

A. Yes.

Q. – you are adopting there Ms Luiten's view that she set out in her Part One report? Is – you are quoting Ms Luiten?

A. Yes.

Q. And in adopting her statement, is that also based on your own research for your report, or is it in reliance on Ms Luiten's work?

A. I do rely heavily on Ms Luiten's work for that – that part of the report.

Q. Okay. And you have cited – cited the part –

A. Or in fact, not for that part of the report, but I have relied on Ms Luiten's report.

Q. Yes, I think you were referring to the part of your report discussing the Native Land Court –

A. Yes.

Q. – title determination processes. But back to this proposition that Wilson considered himself the self-appointed expert on Te Whakatōhea, so I have looked at the part of Ms Lewerton's report that you cite, and she herself – I think it is a conclusion she reaches, based on what we know of the – Wilson's work in the district, rather than any record of Wilson himself exhibiting this belief or believing himself to be the self-appointed expert on Te Whakatōhea. Does that sound –

A. Well –

Q. – right?

A. – he had his – his father was there. He would have – he would have had his father's input. Presumably his father felt a certain expertise on Whakatōhea from his ten years – was it? – in the district.

Q. Yes, I believe it was – he left in –

A. ’51.

Q. ’51, and never – he didn’t return.

A. He never went back, yes.

Q. Yes.

A. I think that Ms Luiten and myself and Jinty Rorke, his biographer, they comment on his rather high-handed attitude in his way of dealings with the people that he was, you know, managing their land or allocating land to.

Q. So I think in short, we can – and tell me if you can agree with this – we can – we can say that that conclusion that – it is based on what we know of his – his actions and work in the district and his –

A. Yes.

Q. – temperament, but it is not necessarily based on a direct record of him saying, “I’m the expert on Te Whakatōhea.”

A. No.

Q. Okay. So sticking with that paragraph – sorry, were you…

A. Which paragraph?

Q. We are still at 1106 –

A. Yes.

Q. – on page 374.

A. Right.

Q. You also, at the beginning of the paragraph, credit Ms Luiten with pointing out that the notion that Whakatōhea comprise just six hapū originates with Wilson. You have that there?

A. Yes.

Q. Same initial question: Could I just clarify, is that – in making that statement in your report, is that based on your research, or in reliance on Ms Luiten’s work?

A. Well, I’ve got – I’m citing Ms Luiten at her page from her first report at 90-91.

Q. Okay. And this statement – so we are in section 8, and that is your case study number 1 on hapū of Whakatōhea, and that begins at page 361 of the report.

Just to sweep through the topics you cover, you – so we have section 8.1.1, and that is a discussion of whānau, hapū, iwi, "colonial categories, or tikanga?"

Then, over the page, section 8.2 is a discussion on the hapū of Whakatōhea.

A. Yes.

Q. We will come back to "Hapū of Whakatōhea recognised by the Crown", but that section more reads to me as a sort of summary of each of the traditions of the six hapū.

A. Mhm.

Q. Continuing over – and you have the table, "Lyall's 'Other Branches' – additional hapū of Whakatōhea".

A. Yes.

Q. Section 8.3, "Changes to Māori settlement patterns in the 19th century" –

A. Yes.

Q. – and that is a sort of high-level discussion looking at Ballara's work in particular –

A. Mhm.

Q. – I take it. And then, finally, if we get to 374 and the paragraph we were looking at, the reason I have just gone through those sections is what I don't think is discussed in any detail, or at all, in the materials – what is not discussed in the sections preceding paragraph 1106 is the topic of whether or how Wilson came up with the notion that Whakatōhea comprised six hapū.

A. Yes, well, as we do know – that Wilson didn't disclose his workings. Whatever workings he did have, he – he held them back from his successor, Brabant, so we don't know how he came to that conclusion of six hapū.

Q. That's right, and I will unpack that in a second, and I – you are talking there, just for context, about a little bit later, 1880, and when Wilson is –

A. Yes.

Q. – removed and replaced by Brabant to –

A. Yes.

Q. – finalise the partition of Ōpape.

A. Yes. But I mean, there was a lot of organisation of Māori communities happening at that time by various Crown officials, native – the agents for the various districts, and not – there's a lot of – there's not a lot of paperwork around those things, so there might have been paperwork, but Wilson was in the habit of keeping his paperwork to himself. He didn't give it to the central government for record, for a record.

Q. Are you – can I ask, are you basing that statement on Nightingale's – what are the sources –

A. Well –

Q. – for Wilson's habit, the statement you are making there?

A. – I think it's from Nightingale or Jinty Rorke's biography, yes.

Q. I took a look at Nightingale's or (inaudible 10:01:00) going on a little bit of a tangent now – Nightingale's report last night, and that is about the Tauranga lands –

A. Yes, it is.

Q. – it's more focused.

A. Yes.

Q. Yes. But based on your reading, is that also looking at Wilson's work in this district, or –?

A. Well, Tauranga was the central hub for the Crown in the Bay of Plenty during this period, wasn't it?

Q. Okay.

A. Civil Commission was based there.

Q. Yes, no, take your point. So if we could look at that question of records – so I mentioned before that the Brabant – Wilson not handing over the records was later in 1880, but this notion that Wilson came up with the six-hapū model, you tie that first to Wilson's initial work in the district in –

A. Yes.

Q. – 1866, '67, '71.

A. Yes. So I suppose I have seen evidence, possibly Te Warana Mokomoko talking about the Hiwarau block and how – what we were talking about yesterday about how everybody was put into that block, irrespective of their lineage, so it wasn't a hapū block as such, it had multiple affiliations in there, and it was referred that – that Wilson was being, you know – he

wasn't – it was – it was a take-it-or-leave-it situation. You – this is how it was going to be. So – and – and then there was another one, as well, that I was looking at, and I can't remember exactly the – the reference, but I think it was about Ngāti Rua, actually, and about how all of these different hapū who were independent hapū were put into the Ngāti Rua category for convenience, and so that's – I think that was a process that Wilson was directly involved with.

Q. Yes. I do recall reading that, as well, and now I can't – can't come up with a reference off the top of my head.

A. I think it's Whitikau 3, or it could Oamaru, I'm not sure.

Q. Maybe we'll follow – follow up with that.

A. The question.

Q. Yes. But just to be clear, you mention Hiwarau first, but if we could talk about the '66 and the '67 censuses – censuses.

A. Right.

Q. That was a tough one. Are you – so we also – I mentioned that you refer to Ms Luiten's work. Are you familiar with her evidence at the November – November hearing last year?

A. I have looked at it, but I wouldn't say I was familiar with it.

Q. So she made a number of – or in her evidence, she discussed Wilson's processes or what we don't know –

A. Right.

Q. – about his processes for the censuses – So if I could perhaps just put the propositions to you that came out of Ms Luiten's evidence, and you tell me if you agree, disagree or comment.

A. Okay. All right.

Q. So the first was, the purpose of Wilson's 1866 census, so, the first one, was listing people to make sure they had accounted for the displaced.

A. Right, no, I mean, I – I didn't look at it that – in any sort of depth.

Q. Okay. We can't know the extent to which the hapū categorisation that is used in the census was imposed on Whakatōhea.

A. That's what her conclusion was?

Q. That's what she said in her evidence. Do you agree or disagree with that?

A. So if there's no evidence, there's no evidence.

Q. So we can't know the extent.

A. We can't know.

Q. Yes. And we also don't know – and I am using her language here, because I like it. We don't know whether people rocked up and Wilson said, "Pick one of these hapū."

A. Right, we don't know the process.

Q. Okay. And then with the exception of Ngāti Muriwai, and that topic has been covered, there doesn't appear to have been any objection to the lists produced by Wilson after they were completed.

A. Yes, well, as I do write in this report, there was a process around that time where, you know, we were coming out of a population plunge in numbers, and there was – there were amalgamations of hapū happening anyway, just to be viable.

Q. Yes.

A. Yes.

Q. No, I accept that –

JUDGE DOOGAN:

Mr Hunt, sorry, just questions related to Ms Luiten's November evidence from last year – did you have a reference to – is that from the transcript, or from –

MR HUNT:

It is from the transcript, and I can give that to you.

JUDGE DOOGAN:

Yes, please.

MR HUNT:

It is 4.1.19 at page 500, but I can also give you a further reference, and this is Ms Luiten's responses to post-hearing questions, and that is #A012(l) at 10, and I will not ask the Tribunal to put it up, but I will just quote from it, because it might be useful now. So Ms Luiten says, "That said, Te Whakatōhea themselves largely accepted this categorisation. Except for Ngāti Muriwai,

there is no evidence of opposition to Wilson's tribal representation for the remainder of the 19th Century.

JUDGE DOOGAN:

All right. Thank you.

(10:07) MR HUNT TO PETER MCBURNEY: (CONTINUES)

Q. And I will – I wanted to put some propositions to you, and then I will come back to another comment Ms Luiten makes in those responses, but Mr McBurney, based on what we have just discussed, can I put a few propositions to you, and you tell me if you –

A. Okay.

Q. – what you think of those? So, first, because we do not know what processes Wilson used for the censuses, at this vantage point, we cannot really assess the claim in your report that Wilson decided on the six-hapū model without consulting Whakatōhea or using any sort of due diligence, because we just – we don't have enough –

A. Yes, we don't have enough. We don't have enough information.

Q. We don't have enough?

A. Yes.

Q. And actually, I think I – that sort of answers – I won't – the other propositions I can leave, because they sort of just overlap, but I wanted to give you the opportunity to comment on one other point Ms Luiten made, and this is in her answers to post-hearing questions, and it is also – sorry, I should have said, your Honour and Mr McBurney, these responses were in response to the question put to Ms Luiten, which was, "Is it safe to say Special Commissioner Wilson is the originating architect of the six-hapū construct for Te Whakatōhea iwi?" So, I have mentioned before some of the comments she made in response, but she then – she then says, and this sort of answered a – a question I had around the proposition, which is basically about agency, because – and what I am getting at is whether or not Wilson came up with this, the model, as you put it, it's a whole other question as to what Whakatōhea did with the

model, and we don't – we don't know. Do they pick up the census and run with the six-hapū categorisation and that sort of thing? But –

A. Well, they're in a position – there's a power imbalance there, isn't there? They have – their agency, as you say – they have little agency in this situation. This is post-raupatu.

Q. But in terms –

A. They're being told. They're being told.

Q. How do we know they're being told in terms of the six-hapū model?

A. Well, because – because there is a power imbalance. It's assumed by the – by Wilson. Wilson's a Special Commissioner.

Q. But if we move – you say "assumed", but I think we need to move – don't you accept we need to move beyond that sort of general reasoning to something more specific? To Wilson adopts the model, this is what the Crown's going to recognise – and to be clear, I am interested in Crown actions that we can say are the Crown saying, "This is the hapū that we will recognise", and then Whakatōhea saying, "Yes, that's what we're going to go with for our identity", don't we need hard records or sources for that sort of thing?

A. Yes, well, I think that you – the six hapū does become the accepted, or the working model, but I would have thought that Whakatōhea hapū, other hapū apart from the six will also be still current as far as Whakatōhea were concerned, and that – that comes out in the court minutes of the – the title investigations of the outside blocks, and even Wilson himself awards title in, I think, Oamaru to hapū that aren't in the six-hapū model; Tamoko and – other one that I can't remember the name of.

Q. Yes, no, I recall –

A. So there are – there are other hapū identities that are still extant at that time but aren't in the model, if you like.

Q. Okay. Thank you. So I have one and a half more topics, and one thing we have asked the other witnesses, and I am just wondering if this was covered in the oral testimony you received for your report, is whether – is anything on the relocation of Whakatōhea to Ōpape and how that – how that happened. Did you – did you receive any information about that? Because I didn't see it covered in your report, so I was just wondering.

A. Well, I think that what is there is that proposition, the negotiations with McDonnell that came out in the 1920 – information given to the 1920 commission, and they called him MacDonald in the commission, but it was definitely McDonnell, and the evidence they gave there was that the leaders of Whakatōhea who had remained loyal, Ranapia, Awanui Te Āporotanga, and Reweri Rangimātānuku were in negotiations with McDonnell about a cession of land to pay for the killing of Völkner. I think that's what it was for.

And all the land that they proposed to cede was to the west of the Waioweka River, as far as the Waiotahi River. Now, that land was already part of the Old Land Claim of the CMS; of Wilson's Old Land Claim, and the Crown had already – I don't know if it had been finalised when the cessions of land were being discussed. I think it was a bit after that that it was actually finalised, but as far as the Crown was concerned, the surplus land there was Crown land anyway, so they wouldn't have been giving anything up in terms of a cession. Yes.

So there were – there were discussions that happened before the confiscation happened, but I – yes, I don't know anything about the process, about how Wilson arrived at his, you know, Ōpape Reserve here and Hiwarau Reserve in the west at Ōhiwa, as far away as possible from the settlement at Ōpōtiki.

Q. Okay, thank you. Sorry, just to clarify one thing in relation to the – the evidence on negotiations with MacDonnell –

A. Yes.

Q. – I did see that you mentioned that again in your report summary –

A. Yes.

Q. – but in your main report, you also note that there were no contemporaneous – and sorry, just to be clear, that is a slightly separate topic to the question of relocation –

A. Yes.

Q. – but sticking with the negotiations evidence, you note in your main report that there is no – and I was just trying to find it quickly, but I have – my Control-F has not been successful – there were no contemporaneous

records of this supposed negotiation between MacDonnell and Whakatōhea.

A. Yes, it was an oral memory that was brought up at the 1920 commission.

Q. And you – you also said in your main report that it might be that that was – had in mind an event that we do have, say, Crown records of, which was Wepiha talking to MacDonnell, in relation to which MacDonnell said, "If the murderers are given up, then there won't be any land confiscated", and for which he was later censured. Is that right?

A. Yes, probably. Yes, possibly.

Q. Okay. Thank you.

I'm just conscious of time.

I said one and a half topics, but I am just going to add, or keep one quickly. In the section in your report on "Whakatōhea's pursuit of justice", you talk about the petitions of 1914, '15, '17 –

A. Yes.

Q. And then I – I have not had a chance to look at the text of the petitions myself, but do those raise any complaint about the Crown in the aftermath of the confiscation determining how many hapū of Whakatōhea they would be recognising?

A. No, I don't think so. I think it was all about the privations that they were experiencing as a result of not having enough land.

Q. Okay. I was also curious – I didn't see in the report that there was any discussion of the two and six tax. Was there any reason for that? Just not perhaps – I thought it might be –

A. Yes, that should have been in the report. I – actually, in the back of the extracts document, there is a transcription of an interview with Josie Mortensen –

Q. Okay.

A. – and she talks about the two and six tax, and yes, I was aware of it, but if it's not in the report, then it's an omission.

Q. Okay. Final topic, and that's the establishment of the Whakatōhea Māori Trust Board. Some initial questions. It was the Māori Purposes Act 1949 that first provided for the Trust Board to be established, is that your understanding?

A. That's my understanding, yes, I think so.

Q. And the Act provided for the Governor-General to establish the Board, but the Act did not say anything about the hapū composition of the Board?

A. No.

Q. And then the Board was not established until the Whakatōhea Trust Board regulations were first gazetted in April 1951, is that your understanding as well?

A. I don't know about that. I know they had their first meeting in 1850.

Q. 1950?

A. 1950, sorry. Beg your pardon.

Q. Okay. We all – I did it earlier. We all do it. Yes, I think there was a bit of a lag between the first meeting and then the actual –

A. Right.

Q. But if I could give you the steps preceding the establishment of the Board, and tell me if these accord with your understanding as well, or the – preceding the first meeting of the Board.

October 1946, Paora Taia sent a telegram to Prime Minister Fraser requesting that the £20,000 compensation be paid to the Whakatōhea Trust Board formed to administer the compensation.

A. Is that from my report?

Q. It is.

A. Can you take me to it, please?

Q. So if we are at page 347 and paragraph 1016.

A. Right.

Q. Yes, so 7 October – it is the first sentence. And that telegram also nominated 12 members for such a board.

A. Yes.

Q. So from my – my reading of – here, and also looking at the documents, I understood that this was – it was the Whakatōhea negotiators here that first raised the idea of a trust board, is that your understanding?

A. I think that there was always going to be a trust board to manage the pūtea.

Q. But wasn't it the case that the Crown initially pushed that, and they – in saying that the pūtea would go to the Native Trustee to hold until it was used to purchase land for –

A. Yes –

Q. – Whakatōhea?

A. – there was quite a lot of to-ing and fro-ing –

Q. There was.

A. – during the negotiations.

Q. But if we could fast-forward to July 1947, a hui at Ōmarumutu –

A. Yes.

Q. – in that – for your reference –

A. Paragraph 1019?

Q. That's right, yes. So that was attended by Member of Parliament Tiaki Omana, Secretaries Shepherd and Jones, and the Land Development Supervisor.

A. Yes.

Q. And at that hui, Whakatōhea voted in support of the money being handed to a trust board or committee, and that majority in support of that resolution also voted to elect 12 members to the board to each of the six hapū of Whakatōhea.

A. Yes.

Q. Does that accord with your understanding?

A. Yes.

Q. And this is not, I think, in your report, but I took it from Mr Sterling's, that the 12 nominated at that hui were broadly similar to those nominated in the telegram to Prime Minister Fraser the year before. Does that sound right to you?

A. Yes, one of the issues that was causing difficulties in the post-war period coming up to the establishment of the board was that there were two competing groups –

Q. That's right.

A. – in Whakatōhea, so it seems that they had come to a resolution by this time, to enable them to form the trust board.

Q. Yes. Yes. I forget the names, but it was the Whakatōhea petition committee and – committee established under the 1945 economic and social welfare legislation, but we can move forward to 26 March 1950 –

A. Yes.

Q. – and that is the date of the inaugural meeting of the board. I have recorded my – a reference to Mr Stirling's report, which we can go to. Let me ask you the question, and we can go to it if necessary.

A. Yes.

Q. But at this inaugural meeting, Māori Affairs Under-Secretary T T Ropiha attended, but took no part and observed the election of 12 members to the board. Is that your understanding as well?

A. Yes – what date is that? 26 March?

Q. 26 March 1950. Sorry, page 356, paragraph 1040.

A. Yes, yes, I'm looking at that. Yes, it – I don't know that it has the information that you've just been putting to me, unless it's below.

Q. No, I think the reason I have given myself Mr Stirling's reference is that your report doesn't cover the actual nomination, it –

A. No.

Q. – mentions the hui and then moves straight to the appointment –

A. Yes.

Q. – of the reps. But the point I want to get at is that the representatives were voted on – voted by Whakatōhea –

A. Yes.

Q. – and the Crown had no part in that.

A. Yes.

Q. Is that correct?

A. Yes.

Q. Okay.

So I said we would come back to it, and this is page 363, paragraph 1068, at the bottom of the page. And you say the legislation authorising the Māori Trust – the Whakatōhea Māori Trust Board "formally defined Whakatōhea as comprising the following six hapū". Now, we have already covered that it was the regulations that did that, not the legislation itself.

But based on what we have just been discussing, I wanted to put to you that while you describe the establishment of the Trust Board as formally defining Whakatōhea in law as comprising six hapū, it doesn't – and that establishment occurred – that was not based on any evidence that the Crown or Parliament through the empowering legislation imposed that definition on Whakatōhea. Do you accept that?

A. Yes, I accept that.

Q. And so really, what we have just been discussing tends more to illustrate that it was Whakatōhea who proposed this model to the Crown for the purposes of setting up the Trust Board. Do you also accept that?

A. Well, I think it's a legacy thing. I think what was set up in the 1860s has been carried on in perpet – you know, up until the 1950s, for 90 years, as, you know, a working model, I suppose.

Q. But I think if we could – my final question, if we could think back to our discussion of agency before, what we have just been talking about, in terms of the events and the – preceding, and then the establishment of the Trust Board, I would put it to you that the agency there, it seems all to have been entirely with Whakatōhea, and the Crown was acting as an observer.

A. Yes, I think there were a lot of things that Whakatōhea were trying to deal with, and –

Q. Yes.

A. – examining their identity in terms of which hapū to put in there, I mean, that would have been something that had been established, as I say, for 90 years, so they would have been – it wouldn't have been a question that they would have been considering, really –

Q. Okay.

A. – at that time.

Q. Okay. Thank you very much for your answers, Mr McBurney. Those were my questions, Sir.

A. Kia ora. Thank you.

JUDGE DOOGAN:

Thank you, Mr Hunt.

HEARING ADJOURNS: 10.27 AM

HEARING RESUMES: 10.33 AM

JUDGE DOOGAN:

Mr McBurney, as you know, Dr Phillipson is still māuiui **unwell**, so he may – well, I am sure he will have some possible questions in writing.

PETER MCBURNEY:

Okay.

JUDGE DOOGAN:

Well, we will start our questions –

PETER MCBURNEY:

But not too many.

JUDGE DOOGAN:

I will not make any promises on that.

PETER MCBURNEY:

No. Indeed.

JUDGE DOOGAN:

But we will start with Dr Anderson. Thank you.

(10:33) DR ROBYN ANDERSON TO PETER MCBURNEY:

Q. Tēnā koe **greetings**, Mr McBurney.

A. Tēnā koe, Dr Anderson.

Q. I just want to start by thanking you for this report, which – very helpful. You know, these sorts of reports are actually quite difficult to do. You know, they are quite hard to navigate, so I want to thank you for taking on that quite fraught task.

A. Kia ora.

Q. You will be glad to hear that a lot of my questions have been asked already. I just – I wanted to pick up on the question of agency that Mr Hunt was discussing with you, because that was something I was quite interested in. I just – what – what effect do you think the Social and Economic Advancement Act had? That was one thing we did not discuss. Did that have a role in how it was – the Trust Board was imposed?

A. The 1945 Act?

Q. Yes.

A. Well, it – it must have been a positive thing, because it did bring in some reasonably, you know, positive things in terms of a small amount of autonomy, in terms of governing one's own affairs and things like that, tribal committees.

I didn't look at it, but from the evidence of the – the fraught negotiations that – that Whakatōhea were undergoing with the Crown through all that period and the divisiveness of that cause at that time, yes, it was – so they had – yes, it was – whether or not it helped – it probably did help, but they needed a lot of help, actually, I guess, or the – the – the situation they were in was – was particularly difficult, because of the Crown's attitude to the raupatu and to the Völkner shadow was still cast – Völkner was still casting a long shadow for Whakatōhea. The – the Prime Minister raised it, Prime Minister Fraser, in his discussions in 18 – in the 1940s.

So – and then they had – a generational shift was happening at that time, as well, so you had kaumātua who were in the – in the – they were the frontrunners to be the members of the trustees for the Trust Board, but there was another, younger group who were saying, "These people aren't able to manage this money, you know, we shouldn't have them, we need the more competent people." And that was two rival groups. I think there's a telegram in my document bank that sets that out quite clearly, that those people, they can't manage the money, you know, so – so there was – for it to come together as a Tribunal – sorry, as a – as a Trust Board, by 1950, they had to go through quite a lot to get there, if you like.

A. In that competition, or that – we will call it a competition – between a younger generation and an older generation –

Q. Yes.

A. – who won that – that discussion?

Q. I don't actually know. I think that there were still some older ones on that Trust Board, and I think that, you know, they probably would have thought, well, that was correct.

A. Yes.

Q. Yes.

A. Since we are talking about that generational difference, when you – one of the things that struck me – I wondered whether you had come to a conclusion, going back in time, about Te Paku Eruera and what he was doing. Do you see him as a younger generation or leadership looking to sort of engage commercially?

Q. Absolutely, yes.

A. Yes.

Q. And to try and survive –

A. Yes.

Q. – you know, and this was an opportunity, the sheep were an opportunity, to – to pick up from their entrepreneurialship in the 1950s – sorry, the 1850s, with the schooner trade, which had been destroyed, you know. And they were really coming out of a very impoverished – an absolutely impoverished place.

A. That partition seems to have actually settled arguments, do you think?

Q. I think it took a while. I think the animosity was still there, because as Ms Feint said, the Ngāti Rua leaders attempted to overturn that partition, and they succeeded momentarily, until the – Judge Wilson's intervention was then overturned again, so the – the 3A partition was reinstated, or it was not – it was not actually overturned. So – but – but then, by 1900, these groups were cooperating on the building of a wharenui, which – to be, you know, Tūtāmure. Yes. And – and there – certainly, there were Ngāti Muriwai carvers involved in that.

A. All right. Those sort of came off what you were discussing with Mr Hunt, so I will go back to the kind of beginning of my questions.

Q. Okay.

A. And I do think you have traversed quite a lot of matters that I was interested in with Ms Feint yesterday, so I will leave that.

So going back to page 151, and you say that Whakatōhea were well-acquainted with Pākehā and especially CMS missionary land hunger by 1850s, and this is something we discussed with Mr Walzl, I think it might have been, I just wondered about that, because if you look at that – the Pakiri transact –

A. What paragraph was that, sorry?

Q. What paragraph? Goodness. Wait a minute. Maybe I have given you the wrong reference, actually. Sorry, it's – I need my magnifying glass. Maybe it's 130. It's 130, sorry, and it's paragraph 371. I do have a magnifying glass.

It is really about how far Whakatōhea was acquainted with Pākehā land hunger –

A. Well, I – yes.

Q. – and – yes, and I am just wondering, you know, there are not actually many Pākehā in the district. They seem to have – Wilson's gone, the survey's been kind of stopped. I just wondered – life is kind of going on and Whakatōhea still seems to be quite in control of what is happening in their own district.

A. Yes.

Q. So –

A. So – so – but Florance came and surveyed the – the land for the CMS Old Land Claim, and it was a vast area, 11,000 acres, 470 acres or something. As I say, the Wilsons complained about local Māori encroaching on that land and carrying on their customary usage of it, but the – when the surveyor came and went to all of those markers that had been set out, and they were like stump here, and a, you know, this or that, and that then was going to be the land that not only the missionaries were going to get, but the Crown was going to get a large amount of it. They would have been aware of that, and that was in the mid-1950s [*sic*]. That's '53 or '54. And then it was shortly after that the Kīngitanga emerges, and there was communications around the motu. They – they would have known that this was a take. Yes. I think.

Q. All right. Thank you. Now, I hope I have got the page number right here. At page 271, I just – and that would be paragraph – sorry, I do not have my magnifying – 766, and you do – I just wonder – you have got this – this statement about "Anomalies in the way the case was presented suggests that implications of the Native Land Court process may not have been appreciated by…" Whakatōhea at the time. Do you want to – could you expand on that statement?

A. Yes. That might be my initial reading of it, when I didn't really quite appreciate the politics that were involved, because I couldn't understand why Porikapa was appealing to his Ngāi Tai affliliation in that – in that hearing. But there had – then I became more aware, so that's – that's one of those things where you write a sentence, and afterwards, you become more aware of the politics that were surrounding those events, and so yes, I think that's what it is there.

Q. All right.

A. Yes.

Q. On 273, you talk about the appeals being rejected. That's just a – was there any information about the grounds for the appeals to be – for rehearing being refused? It might be a question better directed to Ms Luiten.

A. Yes, I have quoted her extensively, and I think that she is the expert on this –

Q. All right.

A. – rather than myself.

Q. I will ask her. Thank you. On 300, page 300, and you were talking there about the Native Affairs Committee not having jurisdiction over questions of policy and that is something I had not really even thought about after so many years. Do you know what the jurisdiction of the Native Affairs Committee actually was? Was it –

A. Well, I think that's just something that they come up with there. They're saying, "We can't talk about this because it's a question of policy." Now, that's all I've got there, really, but that was their excuse for not dealing with it. Yes. That was a government policy from all those years ago. It's none of our concern.

Q. Yes, I just – as I say, it is something I hadn't thought about, and I just wondered whether – you are not aware of any rules –

A. No. No.

Q. All right. I might talk to Dr Phillipson about this.

A. Indeed. Indeed.

Q. It is the sort of thing he might very well know.

A. Indeed.

Q. I think that is the same page. You talk about Nikora writing to the Native Minister, who I presume was Ngata, about setting up a commission of inquiry in 1920, and you seem to think that – you see that as actually persuading him. Is that a – do you have actual –

A. No, I just – I'm just, you know, assuming that that may have persuaded him, because a commission did follow, and that landless children might have been the trigger to – to get that happening. Yes.

Q. All right. I mean, he is likely to have been sympathetic –

A. Yes.

Q. – to the idea, even though it had been rejected earlier.

A. Yes, and ministers can do things. They can over-ride rules at times.

Q. On page 395 – and again, this might be something that Ms Luiten would be better equipped to answer, but – so we have got this process where Aporotanga has – and the idea that Ngāti Rua is trying to get complete ownership of – of the reserve, and we know there have been requests, but this idea that – that "All our property… has been removed" – is that metaphorical, or is that – was there actually – incident where Ngāti Muriwai had been kicked off in some way?

A. Yes, well, this is 1879 that that letter is dated, and I – you know, I always think that what we were talking about earlier, about the resident magistrate hearings, charges of trespass were later, a couple of years later, so I don't know exactly what this pertains to, but it might – might be the sheep, because I didn't actually think that the sheep were there in 1879, but having then re-looked at the sheep returns and found Te Paka, I'm assuming that was Te Paku Eruera, and so it could have been. The sheep might have been driven off. I think there are stories of the sheep being driven off, so that might have been what it was.

Q. Okay. Thank you. And actually, I think those were – everything else has been covered, so thank you for your evidence today, and thank you for this report.

A. Kia ora. Thank you.

Q. Thank you.

(10:51) PRUE KAPUA TO PETER MCBURNEY:

Q. Kia ora, Mr McBurney.

A. Kia ora.

Q. I just had one question that arose from Ms Feint's questioning of you yesterday. In the bundle of documents for cross-examination, at page 12, she referred you to the Ngāti Rua list –

A. Yes.

Q. – and I think you made a comment of the first one to seven, and those from 70 to about 76, 77 –

A. Yes.

Q. – being Ngāti Muriwai.

A. Yes.

Q. Do you have any view as to why Ngāti Muriwai were not separately listed?

A. Well, as I said yesterday, I think that that – didn't want to confuse the Crown; that the six hapū were what the Crown was dealing with; had been for 40, 50 years at that stage, so – and they were Ngāti Rua anyway, but they were actually leading – by the list – by the way this list is configured, that those members of Ngāti Muriwai are heading up that Ngāti Rua list, and Te Paku Eruera himself leading one of the petitions that was done at that time, you know, they were movers and shakers in the whole process.

Q. So it was essentially to, in your words, not confuse the Crown.

A. Just keep things simple, yes.

Q. Okay. Thank you, Mr McBurney.

(10:53) JUDGE DOOGAN TO PETER MCBURNEY:

Q. Tēnā koe, Mr McBurney. I think I will be last for the panel today. Just a couple of questions, and I just – I think it was fairly clear from your

answers to counsel yesterday, but I just wanted to double-check around the methodology and the nature of your brief.

So, at page 18 of your main report, you have got the heading, "The Project Brief" – "case studies will be based on the following: Whakatōhea Hapū Oral and Traditional Kōrero…", and the second bullet point, "The whakapapa matrix for the customary area and interests. This includes Ngā hapū kātoa o Whakatōhea **all the hapū of Whakatōhea**…", and so on. And you are also clear in the description of the report that the case studies and the interviews didn't extend so far as to representatives of Ngāti Ira and Ngāti Rua, and that was essentially because that is how you were instructed to proceed.

A. Yes.

Q. All right.

A. Yes, and the project brief is in here, but that was presented to me by Crown Forestry.

Q. Yes.

A. And I was trying to meet that project brief with the report –

Q. All right.

A. – as best I could.

Q. And so when you are required to try to understand the customary areas and interests of ngā hapū katoa, but do not have the mandate to seek information from two of the hapū, how did you – and I know you say a little bit later you tried to reconcile as best you can conflicting narratives about certain events and indicate where they're contentious, and you have been questioned about a number yesterday and today, so what is – I just was interested in your thoughts on the obvious kind of tension this gives rise to for your – or the difficulty it, I guess, it puts you in.

A. Yes, it is difficult. Some of the contentious areas I engage in, and some I didn't engage in so much because I just felt like I didn't have enough –

Q. Right.

A. – of my own awareness of what was going on to really grapple with it, you know?

Q. All right.

A. Including the Hiwarau C issues and the Ngāi – Te Ūpokorehe.

Q. Yes. So I am only asking that just to be absolutely clear about the way your brief –

A. Yes.

Q. – essentially unfolded, or –

A. Right.

Q. Was it finalised at the outset, or did it evolve somewhat over –

A. Well, I think the thing – the whole process, the whole research process evolved over time, yes.

Q. All right.

A. Because I think I was supposed to do maybe 12 interviews, and I ended up doing 40.

Q. Yes. And then just a couple of other questions, one on the question of the adequacy of records of the various officials doing the land commissions, particularly from Wilson's time, and you have noted the failure to keep adequate records, not just from Wilson but others as well, and you do not really need to go there, but paragraph 757 at page 265, the inadequacy – this is quoting from Nightingale. Few records of the earlier dealings, and few kept of the work of the early Commissioners Clarke and Mair; the inadequacy exacerbated by Wilson's refusal to hand over records. So do you know from all of the work you have done whether such records as Wilson did have survived in any of his personal papers or collections?

A. I had a feeling that he was – he had destroyed them, and I'm – we've got a small job that we're doing in Taranaki at the moment, and Parris was the agent over there, and we've been able to find no records of how he came to ascertain which hapū should go in which block, and – and – and – but we did find that there was a newspaper report where a meeting was held for this purpose, and it was in a pub, and everybody was rolling home drunk afterwards. So, I mean, this is – this is how things were done in those times, and it's very hard for us now to look back and say, well, how did they work that out? They worked – you know, it was very informal, shall we say.

Q. All right. But it seems to be known that Wilson made an active choice not to hand over records to Brabant.

A. Yes.

Q. So there must have been something he withheld, but any reason for your belief that he may have destroyed what records he did have?

A. That's – that's something I've plucked out of my memory, that there was – that he may have destroyed them.

Q. All right.

A. I don't know. I wouldn't be able to put my hand on that one, I don't think.

Q. Thank you. And yesterday, you provided – among the two documents that were added to the record was a reservation –

A. Yes.

Q. – status change, in – I think it was 2020, was it? No, sorry –

A. 2000; it was 2000.

Q. 2000.

A. Yes.

Q. I do not have the copy in front of me, but I think it reads along the lines of: upon the recommendation of the Māori Land Court, the gazettal is made.

A. Yes.

Q. And that means there will be an underlying application before the court.

A. Yes.

Q. Do you know from the records you have who made that application to the court?

A. No, I don't, and my research assistant came up with this for me two days ago.

Q. All right.

A. So it's very new to me, as well.

Q. I will just note that as a follow-up matter.

A. Yes, please. Yes.

Q. If your research assistant has any of the references to the minute books or –

A. Yes.

Q. – then it would be helpful to just have those. We can also do a quick search just to –

A. Indeed.

Q. – look at the records underlying that. Thank you.

A. Okay.

Q. And as I said, Dr Phillipson is more than likely to have some pātai, so –

A. Yes.

Q. – they will follow, I am sure, and thank you. Mr Sinclair had indicated he may have some matters of re-examination. Is that still the case?

MR SINCLAIR:

Yes, Sir, it is still the case.

JUDGE DOOGAN:

All right.

MR SINCLAIR:

Albeit, Sir, that I am going to follow your line of questioning, so you just about got there, but didn't go far enough, Sir.

JUDGE DOOGAN:

All right. Let's get to the end, then, all right?

MR SINCLAIR:

Okay. Thank you.

(11:00) MR SINCLAIR TO PETER MCBURNEY:

Q. Mr McBurney, can you take your copy (a), 033(a), Extracts from Interviews? And I am going to refer you to page 8 and 9 and page 10. Now, you have had some questions put to you regarding witnesses for Ngāti Patumoana. Now, you have a number of witnesses there from the hapū, Ngāti Patumoana. Now, you remember interviewing them, Mr McBurney?

A. Yes, I do.

Q. And could you just for the record note who they are, please?

A. Muriel Kelly, Graeme Riesterer, Isaac Walker, Colleen Walker, Gerardine Jeffries, Mere Smith, Tonia Hooker, Danny Paruru with Isaac Walker sitting in, and Cheryl Toa.

Q. In your mind, was that sufficient to cover the hapū of Ngāti Patumoana issues that you were dealing with?

A. You can always do more, but that was – that was a good coverage.

Q. Now, you heard your Honour mention Ngāti Rua, and your report makes the point that Ngāti Rua were not a part of the report as such. Now, are you aware of the witnesses you interviewed who are Ngāti Rua? And we can take you page 9 of your – your report.

A. Well, pretty evident from the – from the court minutes that Ngāti Muriwai, people who are Ngāti Muriwai are also Ngāti Rua. A number of the pakeke said that they were Ngāi Tama and Ngāti Rua, Ngāti Patumoana and Ngāti Rua, so the – the whanaungatanga is very close.

Q. You have noted Robert Edwards and Julie Lux there.

A. Yes.

Q. Then you –

A. Yes.

Q. Is that one of the examples you mean?

A. Yes. Yes. Julie Lux, particularly. She – she made it very clear that she was both Ngāti Rua and Ngāti Muriwai.

Q. Now, you also interviewed members of other hapū, Ngāti Ngahere.

A. Yes.

Q. Can you name the witness you interviewed there, please?

A. Well, that was added on towards the end of the project, so I didn't get many opportunities to interview Ngāti Ngahere witnesses. It was Arihia Tuaro that I interviewed in March 2023, and Danny Poihipi in May 2023 for Ngāti Ngahere.

JUDGE DOOGAN:

Mr Sinclair, I just note that I do not recall any questions in relation to Ngāti Ngahere from the –

MR SINCLAIR:

Okay, thank you, Sir. Yes. I thought I heard one, Sir, but we will leave it at that, Sir. That is all my questions. Thank you.

JUDGE DOOGAN:

Thank you. Mr McBurney, I just wanted to add on behalf of the panel, my thanks for your report. As Dr Anderson noted, these are difficult projects, and as we as a panel are aware, there are very few in the field who are able and willing to take on this important mahi, so our mihi to you for your willingness to do the work, for the comprehensive nature of the report, and I also appreciate the honest way you have acknowledged to counsel and to the Tribunal where there are limitations or gaps. Thank you for your evidence. It has been clear and helpful, and apart from the remaining work, thank you very much for your assistance.

PETER MCBURNEY:

Kia ora, Judge. Thank you.

HEARING ADJOURNS: 11.05 AM

HEARING RESUMES: 11.35 AM

LEGAL DISCUSSION – MS SYKES ADDRESSES JUDGE DOOGAN – RIGHT TO RE-EXAMINE (11:35:24)

(11:37) MS SYKES TO RON CROSBY:

Q. Kia ora, Mr Crosby.

A. Kia ora.

Q. Just to confirm that you have sworn several documents, and your oath is still in place. But I would like to actually start with your PowerPoint presentation, which is #E016(b), and if we go to the transcript at page 419, line 10, and the transcript appellation number is Wai 1750, 4.1.020.

WITNESS REFERRED TO PRESENTATION #E016(b) AND TRANSCRIPT #4.1.020, PAGE 419

In that slideshow, where I want to take you, it's the discussion around Hira Te Popo. You said in your evidence in chief and then in questions that followed, that you believed that there had been 35 of Ngāti Ira who were casualties of that particular incident in Maraetahi. Where did you get that information from and can you elaborate, please?

A. Not 35 at Maraetahi, at all, none at Maraetahi. That reference to the 35 was to the attack on Ngāti Ira in 1865, so, that was five years previous at Te Tarata and other locations in the lower Waioweka.

Q. There's a bit of difference in the record, that's why I'm just trying to get some more information, and sorry, that was my mistake about Maraetahi. But to be clear, in your answers, or in your presentation you said: "So, it was for them, 35 killed or thereabouts, 40-odd wounded, it was a horrendous outcome." Where did you get that information from?

A. Well, essentially, particularly from (inaudible 11:39:49) history. But also, from reading the various accounts, and I'm sorry I didn't detail those in the book because it wasn't the subject of the book. But I read various of the accounts that were given of those incidents and the attacks that occurred. There is an uncertainty about the numbers involved and I don't think anybody can ever be certain. But what we can be certain about is that it was horrendous for Ngāti Ira. It really had a major effect on the number of, particularly, fighting men that they had. But I'm not sure that necessarily, the killing was all related to just fighting men.

Q. Now, if I can also go to one of the slides in your presentation, and I'm moving now to the transcript, page 420, and your discussions there, and it commences at line 11. The next slide shows the routes that Te Kooti was involved in. I'm not going to take you through those routes, I'd actually asked if you could, in the context of this question, are you able to tell me whether any Whakatōhea people were involved in navigating those routes?

A. You can be absolutely certain that there were at least two guides who met them at Tawhana, which is in the Waimana valley. But there would have been some, and you can't be certain from the records. But there would have been some Whakatōhea men, possibly young men, and possibly others. Who had accompanied Te Kooti when he left Maraetahi on the

first occasion in 1869, and headed away, basically heading for Lake Taupō and then Tokangamutu, or Te Kuiti, to link up with the Māori king.

It's almost certain there would have been Whakatōhea people with him and probably Ngāti Ira people because he had been at Maraetahi. When he escaped from Ngatapa, he headed north, at their invitation. Hira Te Popo had sent two people who arrived at Ngatapa the night that they escaped and invited them to seek refuge at Maraetahi. He and a large number of his followers had ended up at Maraetahi and then headed west, over into the Waimana. Where they met up with Tūhoe, entered into their arrangement with Tūhoe and then headed for, in due course, Lake Taupō and around to Tokangamutu. So, I can't say to you unequivocally, that there is any record of names, or individuals. But just, it would be a belief that there were not Whakatōhea people.

When they dually ended up being pursued in the western area of the Mamaku rangers and then came south from there, through Rotorua, or south of Rotorua and were involved in the Tumunui pursuit by the Arawa, under Gilbert Mair. They then headed across the Kāingaroa plain, across the Rangitāiki River and up the Horomanga River and over into Whakatāne, and up the Ruatāhuna. Then heard news that they were still being pursued, so they headed down – well, his people headed down to Whakatāne. He headed to Maungapōhatu, and they linked up again at a place called, or around about, probably Neketuri, which is in the head of the Waikari River, in the middle of the Urewera. They then went over to Tawhana, and they were met there by guides, who were definitely Whakatōhea. Those two Whakatōhea guides then guided them back to Maraetahi.

So, long answer, I'm sorry, but it's about the best I can do in terms of identifying particular Whakatōhea people.

Q. One of the things I would like to seek clarification upon, how were they travelling? You know, you have described these routes, can you give us a bit more understanding. Were they using horses, how were they getting through these routes?

A. The period we are talking about really covers about February 1869, through to February 1870. And they, at various times, were able to acquire a number of horses, and they certainly had quite a large number of horses as they headed across the lower Kāingaroa plain into Ōpape. Where they attacked and killed about nine armed constabulary and headed on to Lake Taupō. They then, were successful in ceasing, in a battle at Taupō – they captured it – it would seem, in the 10s of horses from a Ngāti Kahungunu force that they were engaged with there. They certainly had large numbers of horses by the time they reached Tokangamutu.

They then, were really involved in engagements at Te Pōrere and also, Tokaanu, where Te Kooti suffered heavy losses. It probably, highly likely, that he lost most of his horses in escaping, particularly, from Te Pōrere. Then headed west around Lake Taupō, up to the Tapapa area, and the Mamaku Ranges to the west of Lake Rotorua. By that stage, it doesn't seem likely that they had more than a few horses. But it is recorded by Gilbert Mair, that in the pursuit then, as they came back around through just south of Rotorua and in the Tumunui pursuit, that Te Kooti was seen on horseback as they were pursuing him at Tumunui. So, they were possibly down to just literally, one or two, or a handful of horses.

But it is also recorded in some of the oral accounts, or some of the Māori accounts that were recorded from Hoani Te Paiaka and Wiremu Kingi Te Paia who were with Te Kooti at the time. That one of the men who was shot at Tumunui and was wounded there, a chap called Hohepa, died in the Horomanga and was taken up to and buried at **(Māori 11:46:31)**, which was the old pā at the head of that river. So, I suspect for them to have done that must have been a horse that was involved. But really, things then get tougher and tougher because by the time they get to Ruatāhuna, find that they are about to be pursued even further. Then they are heading off north and east, heading for Maraetahi, it's just tough country getting horses over – Yes, I don't think it's practical. But it is very hard to know too, whether Ngāti Ira had horses at Maraetahi, there's no reference to it. But the distances that they covered, just beg it belief, because they arrived at Maraetahi, must have been absolutely

fatigued after this year of hard walking and fighting. And they arrive at Maraetahi within – and when you work out the days and I have, in the book, tried to work out the days that all of that took. He probably arrived at Maraetahi, about the 24th or thereabouts, of February of 1870. And on the 28th of February he's attacking Kokohinau pā in the Rangitāiki Valley to the west of Whakatāne as a diversionary raid. Which he then comes back from, and then attacks Ōpape. You would almost think, there must have been horses involved. But there's no great reference to them, and just myself, having walked over the Raupō Ridge that he went to and fro to get to Ōpape. I don't know how they would have got horses over that.

Q. Continuing on this theme of routes and ability to traverse rough terrain. At page 421 of the transcript, you identified another route taken by Ngāti Porou. You didn't cover that in your present answer. Would you elaborate around that route, and I'm talking here about page 421 of the transcript of your evidence. You said this: "The other route that I want to draw your attention to is the red dotted route which is the route taken by Ngāti Porou. In February of 1870 you'll recall that McLean (Minister of Defence) had decided that only Māori were to be involved in the pursuit of Te Kooti from that time on." Why?

A. Well, that was the result of the, in essence, the three events really, probably started at Tokaanu when Te Kooti was defeated by, particularly, Arawa force there. Then, about a month later, heavily defeated at Te Pōrere by a combination of Arawa, Ngāti Kahungunu, and Whanganui, and some Pākehā. So, that was in October of 1869, and then in February of 1870, Te Kooti is attacked in that day long pursuit by young Arawa under lieutenant Gilbert Mair at that stage. And you have to remember that the government had mounted this huge invasion of Te Urewera in May of 1869, nine months before. Where the columns went in from, basically from Galatea, from up the Whakatāne and then one coming in from the southeast, through to Waikaremoana, which never got over the ranges. But that would have been a huge expense to government, massive numbers of men involved and very little in terms of actual effect on Te Kooti and his forces. A very serious effect on Tūhoe, a very serious effect on Ngāti Whare at Ahikereru and destruction of their gardens and

destruction of you know, their women and children, where Ngāti Whare, taken out to Matatā. But no real effect on Te Kooti's fighting ability, and yet here we are, in McLean's eyes, nine months later, Māori forces have inflicted three defeats on him. In particular, on the 7th of February 1870, Mair and his Arawa have killed about 20 of his men and one day long running pursuit. So, within a matter of days, McLean has decided that only Māori are to be involved in the pursuit of Te Kooti from then on, under Māori command. So, within 10 days he's issued a letter, 18th of February to Lieutenant Colonel McDonnell, stripping him of his command and giving him the news that only Māori were to be involved from then on.

Q. Did that strategy have impact on the interrelationships between those Māori that were working for the forces of the Crown and those that were being pursued? If so, can you elaborate please.

A. Look, it's inevitable and those effects would be lasting, and still remembered, because it very much, from then on, for the next couple of years, was in essence, a civil conflict really. Between those, the Māori who were, for their own reasons, were deciding to pursue Te Kooti, and those who were supporting him. Those who were pursuing him had the support of the government, not great support, they weren't well supplied, they certainly weren't very well supplied with equipment, or with food. But they had weapons, they had ammunition, and they did have the advantage of intelligence, because by then, there was a telegraph system running through the central volcanic plateau. So, they were able to slowly try and work out where on earth he was.

Q. It your last time before the Tribunal, you gave significant evidence about the movement, which took people from the reserve to Maraetahi. Would you, and I just want to be clear, Te Arawa, we the troops involved, is that correct? Were there any other iwi participants in securing the perimeters of those in the reserve?

A. Well, certainly, Te Arawa, as a (inaudible 11:53:14) were located at or about at Ōhiwa Harbour on the eastern side of the harbour. Ngāi Tai were – Wiremu Kingi Te Huarangi was a prominent leader of Ngāi Tai, who was involved alongside the Whanganui contingent and the expedition up the Waimana and the expedition up the Waioweka. Also,

McLean had issued weapons to Whakatōhea at Ōpape and I'm not quite sure of the exact number of those weapons. But it seems likely that, well, we know that there were 34 armed young Whakatōhea who the government had armed. Who joined the Whanganui contingent at Ōhiwa and accompanied them up the Waimana. We also know that there were other weapons still left at Ōpape and when Te Kooti arrived to raid Ōpape, those weapons were taken by Ranapia and an unknown number of young Whakatōhea. Who took them around to Torere to avoid them being captured by Te Kooti. So, in answer to your question, the Māori forces surrounding that reserve really, it wasn't really so much surrounding. It was a combination, because some of those in the reserve were being armed by the government.

Q. Now, and I'm taking you to a different document. You were asked a number of responses in questions in writing –

A. Right.

Q. – and you discussed this at some detail and it's at page 3, and the document number of that is #E016(c).

WITNESS REFERRED TO QUESTIONS IN WRITING, #E016(C)

Well actually, the question, just to refresh your memory, you were asked, and the answer was: "When Te Kooti and his force came to Maraetahi as a base in February 1870, why did they not attack the military settlers at Ōpōtiki?" That was the question you were asked. But I want to actually just seek some clarification of your answer at page 3 and if I could read it our to help those listening: "The best contemporary source of government-aligned Māori numbers is found in the report dated 7 May 1870 by the Resident Magistrate J.H. Campbell from Tūranganui. He was requested by Donald McLean as Native Minister to inspect and report on the state of Māori settlements around the eastern Bay of Plenty from Ōhiwa… The second force was the Arawa group based at a redoubt" which you just talked about: "Campbell recorded 60 Arawa under Wiremu Maihi" Where is the source from that? That's that original – are we going back to that report?

A. Yes.

Q. (inaudible 11:56:14) want to be clear?

A. Yes.

Q. And, "what he called their 'strongly fortified pa'", then you said: "The third resource on the coastal Ōpōtiki plains comprised the young Whakatōhea fighting men, who it is known had been supplied with weapons by the Crown." In terms of your answers, is that the weapons that you just described being provided by McLean?

A. Yes.

Q. Thank you: "A more recent powerful fourth additional force arrived in early 1870 near Ōpōtiki. That was the arrival of the major part of the Whanganui Contingent which Austin accompanied, and which was also based on the eastern side of the Ōhiwa harbour." Are you able to tell me whether any weapons or any assistance from that group was given to either, if I can use this language without leading you, friendly Māori, or those that were opposing the Crown?

A. No, look, they came with their own weapons. They literally carried them halfway across the island, so, up the Whanganui, around the west side of Taupō. Engaged on the western side of Taupō, engaged on the western side of the Mamaku ranges and walked out to Tauranga. They were then taken by ship to Ōhiwa, but they were carrying their own weapons and had their own powder supplies. Although, they would have doubt, that's been replenished, in terms of their ammunition supplies et cetera, when they were in Tauranga.

Q. I'd like to now go to a different topic, I think I have exhausted what I want there, which was the routes, the kinds of weapons which were supplied and in play. I would like to stick to the same document we are on, and its question 6 that was asked or posited of you. The question is this, at pages 128-130 of your book: "Who were these people who were captured in the 'seven night time attacks' on 23 March – were they Ngāti Ira or the Whakatōhea people taken up there by Te Kooti? You set out in your answers, certain individuals. But I want to focus on those that were killed at Waioeka, which is at the bottom part of that answer, and you say this: "'Hira Te Popo, Te Iki, and eighteen or twenty of Whakatōhea are at Te Tahora. They have left Te Kooti by this time. They were mostly old men, and badly armed.' At the end of his statement, he listed those killed

at Waioeka as being: Hakaraia Makika" Can you explain, or tell me who Hakaraia Makika is or was?

A. He was Hakaraia Mahika, so, the spelling that I have in there is the spelling that was on that document. But you know, you have to remember that those were Pākehā officers taking down statements from Māori, so their spelling wasn't necessarily very good.

Q. His whakapapa relationships were with which primary groups, are you able to tell us?

A. Well, yes, he was of Waitaha, from Tauranga initially, captured by Ngāpuhi in the Muskat war raids. Taken back up to Pewhairangi, to the Bay of Islands, educated in the Christian religion up there and was approached then, by Thomas Chaplain, who was the missionary involved. He came Tauranga, who approached the missionary society to be able to take him back to Tauranga. So, he was very steeped in the Christian religion at the time and was obviously a leading proponent of it, and support of Chapman at Tauranga when the Crown invasion occurred of the Waikato. That changed his whole attitude in terms of what was happening, what the Crown were doing to Māori. He then, later, met Te Kooti, it's believed, at Tuhua in the upper Whanganui and became very much imbued with the Ringatū religion that Te Kooti was preaching at that stage. He then became a major supporter and a major leader, and it's very obvious from the newspaper accounts and the reports to the government from the military blokes. That everybody really regarded him as being at a higher level really, or certainly is as prominent as Kereopa in terms of his religious beliefs and leadership. He then ended up at Waipuna pā, which was attacked by the Whanganui, up the Waioeka and he was killed.

Q. The other one that's not identified as having a tribal affiliation is: "Kohupaki, and eleven others." Are you able to help me with Kohupaki?

A. No, look, I'm sorry, I haven't been able to work out who that was.

Q. You do note though, at the bottom, all of those were listed under the heading of Chatham Islanders, why?

A. Basically, a number of the reports differentiated Te Kooti's followers, depending on whether or not they were involved in the escape from the

Chatham's and particularly, whether or not they were involved in the attack on Matawhero. It's very obvious from the reports, from the newspaper reports of the time, that the effect of that was regarded as a massacre of Māori as well as Pākehā and was regarded as being an horrific act. So, the response of a number of hapū, of Ngāti Porou in particular, and some Arawa, was that those people were not really – well, can I put it this way. McLean, when he made that decision, that Māori were to be involved in the pursuit of Te Kooti from February 1870 on. Said that, in essence, in a letter that he wrote to one of the Ngāti Porou rangatira who were involved in raising the force for Ropata Wahawaha. McLean made it pretty plain that those people who had been involved at Matawhero were to be exterminated. So, that differentiation became pretty critical, obviously, when Waipuna pā was captured. Those who they could identify as having been involved from the Chatham Islands were at real risk of being executed, and some 22 odd of them were.

Q. Can I go to question 8, which is page 7, and again, you were asked there if you could assist with the names of those that had been killed in the iwi or hapū affiliations. This time we are focussing on the Whanganui contingent. Are you able to tell me any of those names that were noted, or were there any names? Not so much iwi affiliations of those that were killed at that time. I know the question just asked for those that were killed, but I'm trying to get some names.

A. Yes, it's central to note, the answer that I gave particularly related to the statements that one of Te Kooti's wives had given to Major Charles Westrup when she was captured after Te Kooti's raid on Uawa or Tolaga Bay in July of 1870. She referred to again, she used that phraseology of those from the Chatham Islands. But it's interesting, she distinguished those from those who were from Turanga. So, my perception, again, is that who she was differentiating, those who were the, if you like, the originals who had been on Wharekauri or Chatham Islands with him. And they were, if you like, treated or viewed distinctly, from those who later supported him from Turanga, or the Gisborne area.

Q. Again, I'm just exploring the names. You set out an account from Huhana, she lists 13 names, that's at page 8 in your answer to the same question 8. She say, "three of the Whakatōhea" and again, she identifies others as being part of the Chatham Islands nomenclature. Are you able to help me with any names from there? I know we have some names up the top, but I'm instructed by Ngāti Ira to try and help find out if there are any of their kin that we can identify by name.

A. No, look, I'm afraid I can't. The only reference is to those who she named as being – but again, you just don't know whether the spelling was accurate by Westrup as he taking her statement. So, you know, he's written down as her telling him, "Hakupa" and then one word, "Teneira". Well, it may well be Te Neira, Hohepa, Kiritiwhiwhi, and the woman Haeata. But there's just no other helpful identification, I'm sorry.

Q. Okay, I'm finished on that topic and I'm back to the transcript, madam registrar, and I'm at page 422 of the transcript. I'm starting at line 26, and we are going to the next map, which demonstrates the route on the right hand side of the green dotted line that Te Kooti is believed to have taken from Ōpape and Omarumutu. Which were the two pā in those days, where he took 212 captives of Whakatōhea and then headed for the Tutaetoko River. Why are you so unequivocal that it's 212?

A. Well, in fact, I think it might have been 218 actually. So, if I said 212 in that later statement, I'm afraid that's an error by me.

Q. Where did you get the source for that information from?

A. There were varying figures given by both Austin and also by Porter. But Austin, to me, is the more accurate and he was the one who was living with them at Waipuna pā for three or four days. And then for three or four days as they came down the Waioeka and that was the figure that he gave, and it also coincided with the figure, from memory, it coincided with the figure that Te Kepa Te Rangihiwinui, himself gave, in his own report.

Q. Now, page 424 now, you are describing the kind of terrain, and I wouldn't want you to go into the middle of the transcript at line 16 on page 424, and you are talking about Tutaetoko. I get the sense that this is completely difficult to navigate by humankind, am I right? Can you elaborate that answer for those that – you are describing here from the

slide, the track had gone from Tutaetoko into Raetakahia Stream and following Austin's diaries again.

A. Yes, so, he gave precise distances and in fact, when you walk them, you find that they are absolutely accurate. So, up the Tutaetoko Stream, then into the Raetakahia, and then he gave a distance, from memory – I'm not sure that he gave a distance for that, no he didn't. He then described that they came to another stream in the Raetakahia that was separated – a ridgeline, which they followed up. So, in 2022 I think it was, myself and some companions came up the Raetakahia to that location and fortuitously, I found that there was a surveyed, but never formed, public road line running along that ridgeline. Now, very commonly in the Urewera and in other parts of bush country in New Zealand, you will find that old Māori routes were subsequently surveyed as being potential road lines. It seemed to me, highly likely that that was the spur, and it fit perfect, Austin's description, because as you went up that spur there was a creek on one side, and the Raetakahia on the other side. Which is exactly what he described, but then when you – it's hard to describe this in verbal terms. But when you get up to the head of that and its heavy bush country. When you get up to the head of it, you then have to try and traverse around from one ridgeline to another ridgeline running in a different direction, which is the Raupō ridgeline, and that leads over to the Ōmaukora River. We are talking about a distance that we walked that day, of 25 kilometres in heavy bush and no track, and it's undulating on top of the ridgeline. So, you are not quite sure whether you are on a ridgeline, or whether you are on a spur line that is dropping off into a river, either side. In essence, the Tutaetoko catchment is on one side and the Waioeka is on the other, and you have to try and go up and down the ridgeline and we climbed that day, 1350 metres of elevation. This, you know, then you drop down into the Ōmaukora. We know that Austin, form his diary, they were stuck up on the ridge overnight and they spent 26 hours without water. There was only three of us and we took 10 and a half hours to do that same distance. But it wasn't easy country and the drop off into Ōmaukora was particularly long and hard. So, for me, you know, just beggars' belief that the toughness of the Māori people in those

days, for the men, women, old men, old women, children, when you know that there were babies. For them to have got over that ridgeline and done the walk that they did over the course of two or three days was just extraordinary.

Q. Now, I'm moving again, in topic. I want to go to a slide where you discuss the rangatira, Ropata Wahawaha taking over the two pā Tore-a-tai and Horoeka. That's your discussion at page 429 of the transcript, lines 6 to 24. Do you want me to read it out or are you happy – I just want to know where those pā are in relation to, I know you say Maungapōhatu, but I'd like it in terms of relation to Waioeka.

A. Yes, look, they were two of three pā at Maungapōhatu at the time. So, what we generally, and sort of understand as being Maungapōhatu is not necessarily the mountain, or the maunga. It's more the catchment surrounding it, particularly on that northern side, or north-eastern side. Those two pā are on the ridgeline running down on the, basically, really from the tihi, or the summit of Maungapōhatu. Running in a north-easterly direction down towards the headquarters of the Waikare River, which, in due course, flows into the Whakatāne catchment. So, but they are right up in what we nowadays, call Maungapōhatu. If you were standing at the marae, Maungapōhatu, at the present time there and you are looking east, they're up on the ridge to your right.

Q. In your research, did you find any connection between the hapū of Maungapōhatu and the hapū of Te Whakatōhea or Ngāti Ira?

A. I didn't presume because I haven't got that whakapapa skill to try and relate them in whakapapa terms. But very plainly there was and were many interchanges between those hapū.

Q. Just, really a question of clarification. You talk about Nihoniho, is that his name? Having a different – Tuta Nihoniho, we are at page 430. Having a different account than Porter's. Were there any others, the Nihoniho that also kind of corroborated Austin's position?

A. No, look, the reason for me making that point was just that, if you look at the various accounts that Porter changed over time in terms of the attack by Ngāti Porou on Maraetahi. In his first immediate report that he gave when he got out to Ōpōtiki on the 30th of March 1870 or 31st of March, he

said that from the time of their being fired on by Te Kooti's picquet at Te Karoro a Tamatea, the Hells Gate gorge. Until they reached the pā, two hours had lapsed, and his report said: "Two hours had lapsed, and the enemy was gone." Clearly, they would, they weren't going to hang around. In due course, when he went away and spent some six weeks writing up a so called contemporary diary, that time came down, and became about an hour and a half I think it was. By the time he wrote his newspaper stories about it, about 30 or 40 years later, he was saying it was only an hour that was involved. When you actually physically go there and physically look at where the picquet would have been. The two men, initially, who opened fire on Ngāti Porou as they were approaching, it was an ideal defensive position. Shear rock face, right up against a great big gorge, a deep crossable gorge and you could fire all you like, you weren't going to get passed that picquet. In the meantime, Te Kooti had heard the shooting, about 20 reinforcements were sent down to help the picquet, and it would have been impossible to get passed them without climbing about a thousand foot up above to try and get around it. The easier hunt was to do what Tuta Nihoniho's account said in Māori. When I read that in Māori, you immediately realise that he was saying that they went down the river for about, he said, a mile, but lets say a K. When you go there physically, and if you go down the river form the gorge, about that distance, you can get across the river. And so, you would cross the river there as Nihoniho described, come back up the other side. That then puts you on a terrace elevated above where the picquet would have been, and you could fire across and force the picquet to abandon their position. Which is what I believe, happened, and that would have taken you, if you think about bush country and moving, crossing the river, coming back up, it would have taken you about an hour or so. You would then fire across at the picquet, the picquet leaves, we know that one of them was at least, and possibly more, were wounded and got away, and then pursued up the river until they hit Maraetahi pā. Well, it's about two kilometres and it was heavy bush country. Quite tricky getting through the gorge itself anyway. Then we know they are on the other side of the river, because Porter does say that. They arrived at the pā

and down the other side of the river and had to cross the river, which you can do at the pā. But that would coincide, on my thinking, that would coincide with two hours. So, I'm sure that that's how they got through and Tuta Nihoniho's account was accurate.

Q. I'm going to stick to the slides, I have a couple more questions on your answers. But if we could go to please, page 431 and the escape route. I just need some clarity around that. You describe it in some detail, from line 27 to line 33, and you have it in your slide, and it's marked with an X. So, if I'm getting the sense – can you just elaborate how steep it was for them to escape, I mean, given what you have already just said in your earlier testimony today.

A. Yes, look, I'm not sure in wording it, I did it that well. When they saw, or realised they were under attack from Ngāti Porou and Ngāti Porou were coming and they knew, or they would have known that hundreds were coming to attack them. Te Kooti gave them the order to disperse, to flee. So, the natural thought might be that you would race up the ridge behind. But as soon as you do that, you realise that what that ridgeline takes you to is further up the Waioeka River and drops you into the stream called the Wairata. That's where they knew, because the night before the attack, or in the dawn hours rather, before the attack on Maraetahi, three people, two women and a man had arrived from up river and carried the news that Waipuna had been attacked the day before by government forces. So, they knew that there was a government force up the river. So, to my way of thinking, you would not go up the ridge at the back of the pā because inevitably, that was going to drop you back into the Waioeka and there was a government force up there. So, what Huhana said in her statement was that, when the attack occurred, they crossed a creek and then climbed up a big, high ridge. That leads up to the point Pōkirikiri, and if you follow that ridge in a westerly direction, that then leads you over into the Waimana. We know from later accounts, that they did reach Waimana, went up the Waimana, and then crossed back over to the Waioeka again. So, it's a really long, steep, haul and I have to confess that we didn't climb all the way up, there's a farm track halfway up, we went up that in a vehicle. But we walked up from there and then

we walked to get over to the Waimana, well, again, same problems. That you have big descents, and you are not quite sure whether you are dropping off on a spur ridge or whether you're on the main ridge. But what you are trying to do is keep the Ōponae Stream to your north and the Wairata Stream to your south, and you are trying to get across to the Waimana River before you can safely drop into it. It took us 15 hours and we ran out of daylight, and we got caught out in the dark, et cetera. So, it is not an easy escape route, but you have to remember that from Te Kooti's viewpoint and his wives and his followers who were with him. You would have pushed yourself, you are being pursued by the enemy, you have to get away, 12 or 15 hours is nothing if you can save your life and get away.

Q. Now, I'm happy with the rest of that part, but I want to go to Ropata Wahawaha's response and disappointment, which you describe at page 433 of the transcript. I'm looking at line 12: "The intriguing thing is that after Maraetahi fell Ropata was obviously very disappointed, and I suspect whakamā and pretty ashamed of the fact that Whanganui had been so successful, and they had been so unsuccessful". Where did you get that understanding, or how did you draw that inference?

A. Well, particularly from the fact that Austin recorded and also did Clark, in his report, to McLean. That a request had been made by Ropata to Topia Tūroa and also, Te Kepa Te Rangihiwinui, for them to handover some of the prisoners so that he could kill them. They refused, said that the prisoners had to be taken out and dealt with by the government. To me, that was an indication of Ropata feeling the ultimate frustration that they hadn't been successful. You only just have to place yourself back in that situation that he was in. Where he's taken Maraetahi pā, he's been involved in three days walking up the Waioeka to get there, hard work. Involving the engagement with the picquet but doesn't really inflict any – he doesn't kill anybody, he didn't even know that he wounded people at that stage. Then, the next day, the Whanganui arrive, and they have 300 odd prisoners, they've killed 22 men, they've taken Waipuna pā, they've burnt Waipuna pā. The contrast in mana of those events would have been extreme.

Q. Then at the end of that page, you talk about the role of Hira Te Popo and Paora Te Ua and I'm trying to keep this an open question, Sir. You describe there, they weren't killed but the land at Ōpeke Marae was take. Why?

A. Sorry, just the last part of that again.

Q. So, you go there: "Their request to be allowed some land at the Ōpeke area was conceded." Why?

A. Right, right. Well, strangely enough and ironically enough, in the time that elapsed after they all emerged from the Waioeka at the end of March. Ropata had been charged by McLean with, if you like, keeping an eye on the Whakatōhea. He came back in July and met with Paora and Hira Te Popo, and was obviously, hugely impressed by them, he makes that very plain in his report. At that stage, about 50 odd of the prisoners are on trial down in Wellington for treason, and they're facing the death penalty. In his report, he pleads with the government to release those men and makes the point that there's no purpose served in executing them. But he particularly praises Hira Te Popo and Paora, as being imminent responsible leaders, and I suspect, he doesn't say so in so many words. But you get the feeling that he's respecting their courage, their fortitude, and their dignity. So, he's paying the ultimate credit, really, or respect, of asking the government to look kindly on their request to have some of their lands given back to them so that they can live in their own rohe. And the consequences at Ōpeke Marae, or the area there, becomes reinhabited by Ngāti Ira.

Q. If we fast forward and we are at page 445 now. You describe at line 28: "What happened was that in July, about three or four months later, Ropata came back to this area in terms of that charge that he had been given by McLean and he spoke with Hira Te Popo and Paora Te Ua and was obviously highly impressed by them". Why the change in attitude, why, why?

A. I suspect that the shear personality of the rangatira must have played a major part in that. But also, Ropata was clearly a highly intelligent man and he, in March, you can understand his frustration. He had walked right across the Urewera, he had taken Maungapōhatu. He hadn't been

involved in any engagement because (inaudible 12:25:59) and Te Kepa Te Rangihiwinui had entered into a peace accord. The Rongopai down in the Waimana, news of that had arrived at Maungapōhatu. So, he must have been horrendously frustrated really, leading this force of 300 odd men through the Urewera for a month and a half. Then walking all the way up the Waioeka, attacking Maraetahi pā, but in fact, finding no one there by the time he gets there. You can understand, for him, as a fighting rangatira, he would have been frustrated, angry, and upset. But give him a bit of time to think things through, to reflect, and then he meets his, well, enemies, Hira Te Popo, and Paora Te Ua, and he's impressed by them. He, I suspect, saw men of the same elk as he was and to me, it's highly understandable, the change of attitude.

Q. Now, my last question and I don't want to take you to any specific reference, you talked about a manoeuvre where people were put on the outside in columns to protect people moving back up the Waioeka River. Can you just elaborate, where did you get that, and did you look at any Māori sources of what that manoeuvre might have meant?

A. No, not particularly. The account was given by a man who was standing – well, we don't even know which maunga it was, but I'm sure it was Makeo, which is the flat topped, very prominent maunga at the back of Omarumutu. He described seeing Te Kooti's force leaving Omarumutu and heading up the Waiaua, which, from where it's pretty gentle when you get across to Tutaetoko. It was him who described that formation, so, that he saw Te Kooti's men who were surrounding the 218 Whakatōhea people who were being escorted, if you like, in a southerly direction up the Waiaua. From where they would have gone over that gentle country into the Tutaetoko, and then up the gorge of the Tutaetoko. So, that's my sole source, and it was that verbal account that was given to Captain Walker by one of the Whakatōhea who had managed to get out of Omarumutu and avoided being taken up.

Q. What happened to the Arawa people that obviously, didn't do their job properly, if I can use that term, or allowing them to get taken in the way they did?

A. I think you are being a bit tough on your fellow Arawa.

Q. It might be called tenants on my part.

A. I mean, you have to remember, they were at Ōhiwa, and what they were basically doing was on occasion, and it was only on occasion, they would ride out and visit the Ōpape, Omarumutu area. Which to them, was peaceful, and it wasn't expected that there would be anybody that they had to fight. That's very much demonstrated by the fact that unknown to them, Te Kooti had emerged from the Urewera. Had seized the people at Ōpape and Omarumutu and was at Omarumutu when they arrived, and two of them dismounted off their horses and one of them happened to be Wiremu Maihi's son. They went into the pā and were shot down. So, the first, the Arawa knew what had occurred, was when they lost their two men, so the others were in a small cluster at the mouth of the Waiaua. Captain Walker's a bit disparaging in his report about the fact that they standing off, three or 400 metres and firing, you know, rather pointlessly. But yes, I don't think that they failed at all, I think they just, were taken by surprise.

Q. Following up on that though, when the Compensation Court came, were any of those individuals who had been charged with those responsibilities compensated with land in the Compensation Court?

A. Look, I'm sorry to confess that I haven't followed in detail, the Compensation Court process, or the Arawa claims in that area. I haven't looked at that at all.

Q. Thank you, I have no further re-examination. But can I say on behalf of Ngāti Ira, we are indebted to you for the work that you have done for us. Words can't express our gratitude for you for the time and effort you have made to forge relationships with us. To understand what is a deep passion of yours, which is research and getting the record straight, and our desire to maintain relationships to our lands that you intimately described in all of these incursions. I know Te Rua is here today, because we feel so indebted to you for those matters.

A. Thank you very much for those kind comments and I certainly treasure the warmth, which, with my conclusions were received by Ngāti Ira. Because I can remember sitting in a bush up with a couple of mates and

saying to them that I was going to contact these people, Ngāti Ira, and go and see them about what I thought had happened. The response from my mates were, what, you are going to tell these people the history that they have learnt from Porter is just all wrong and I said, yes. They said, I don't know if they'll let you and it never happened. I was warmly greeted and was given a tokotoko made of Tanekaha. Which, the Ngāti Ira people twist into a certain form, and it grows like that for 20 odd years and then they cut it and the tokotoko has a handle, which is natural. So, to me, that was very moving and unexpected.

Q. Thank you. Don't forget, we'll see you at Te Tarata, you are our special guest on that day. Kia ora.

HOUSEKEEPING (12:32:39)

HEARING ADJOURNS: 12.32 PM

HEARING RESUMES: 12.36 PM

MS RONGO ADDRESSES JUDGE DOOGAN – FURTHER QUESTIONS (12:36:25)

(12:36) MS RONGO TO RON CROSBY:

Q. Mr Crosby, on page 167 of your book, you probably don't need to go there. You talk about Wiremu Kingi taking a contingent from Torere, over a track and came out at Turanga. Can you tell me anymore about that track? Have you visited it?

A. My understanding, but I should refresh my memory. Page 167 you say.

Q. Page 167, the bottom of that page, last paragraph.

A. To answer your question. In the early 1970s, at a time when the Moa series, typographical maps had a great big gap with no aerial photography available. A friend and I rather foolishly, took a little 11 foot dinghy and went down the Takaputahi River into the Motu. And because we had the advantage of a boat, we tied a food pack in, so we had a food

pack, and we had two packs of personal gear, and we lost our food pack in the Takaputahi.

So, we got down to what I now know is a creek called the Mangakirikiri and it seemed to flow from the west into the Motu. So, we climbed up the Mangakirikiri and up on to a ridge and three days after we left the Motu, we came out at Omarumutu. So, to answer your question, I've probably walked through some of the country that they might have gone through, but I don't know the particular route that they followed. As I understand it, we were looking down when we hit the main ridgeline that we walked out on, we were looking down on Torere.

All I can say to you is that I have flown over it since in a helicopter and its tough country. We had no food, and I lost a stone in weight in those three days. I remember we walked 10 hours a day with our packs, took three days to get out. So, I take my hat off to the Ngāi Tai for doing that and carrying on once they hit the Motu and carrying on up the Motu and over to Turanga. But all I can say is, it's tough country.

Q. That's really helpful, thank you.

LEGAL DISCUSSION – FURTHER QUESTIONS (12:39:37)

(12:39) JUDGE DOOGAN TO RON CROSBY:

Q. I have a couple of pātai, and they are really just to give you an opportunity to elaborate on a number of matters that you did touch upon when you first appeared. In relation to which you have also had, some discussion with Ms Sykes this morning. So, first, in the chronology, can you remind me please, when did the government arm the Whakatōhea at Omarumutu, Ōpape. Was that 1869 or thereabouts?

A. Yes, I believe that so.

Q. All right, and that was sufficient weapons for about 30 fighting men or?

A. I think more, because we definitely know that 34 armed young Whakatōhea turned up to go up the Waimana with the Whanganui contingent. We also know that the Whanganui contingent were away from Ōpape when it was attacked by Te Kooti. And the Whakatōhea complaint that was lodged with McLean recounted the fact that the

weapons that had been left at Ōpape had been taken by Ranapia and he had taken them to Torere with a number of young men. But they didn't say how many, but I suspect it was about 20, possibly.

Q. All right, so, if I have understood the sequence correctly. At the time Te Kooti came in, in this, called it a raid, on Ōpape, Omarumutu, around about 34 of the fighting men were already with the Ōhiwa contingent?

A. Yes.

Q. And there were still some remaining arms that were shifted from Ōpape over to Wiremu Kingi at Torere.

A. By boat, yes.

Q. Yes, by boat. All right. So, there is a bigger question sort of underneath all of this, but perhaps the easiest way to get to it is to just take one example, right at the very end of your book. The last appendix, just before the glossary, there is a letter from Gilbert Mair to Cowan, and from about 1921.

A. Yes.

Q. Again, taking issue with Porter's account of the events and you set out, from Gilbert Mair's letter, around about the middle of the letter they totally deny, well, just recording that Ngāti Porou are bitter about the manner in which, Porter claimed much of the kudos Wahawaha was entitled to. A bit further down, referring to the place of the Waioeka, resulting in the capture of eight rebels, fighting men. Those found were the helpless Whakatōhea, principally, women and children, whom Te Kooti, with the connivance of two or three of their disloyal chiefs, had inveigled a way up the Waioeka. To escape being destroyed by Te Kooti in a threatened attack on the, you know, final destruction of the Europeans and loyal natives.

Now, when you first appeared there was some discussion in the questioning with you about trying to understand what actually happened. So, the extent of which those who went with Te Kooti, did so voluntarily, either because they feared the threat that Te Kooti was making, or whether they were in fact coerced and then marched up in the columns, in the way described by Captain Johnson, is it?

A. Walker.

Q. Walker. So, I just wanted to ask you whether you had a view from all of the research you have done, as to the most likely scenario. The reference Mair is making here, two or three of the so-called disloyal chiefs seems to imply that a number of the influential rangatira at those places were receptive to Te Kooti's message.

A. Yes, indeed, and certainly the view, no one will ever know, certainly. But the view that I have is that you need to start from a period only five years before, where Whakatōhea are flourishing. They are doing very well, they have their own ships, they are trading well with Auckland, et cetera, and suddenly this government force arrives and really whacks them about. Then their lands get confiscated, and they are shoved on to a reserve. It's just absolutely human that they would feel better and feel – and this is a government which has a treaty with Māori to protect them.

So, it's just inevitable that they would have been receptive to any form of resistance to that or some manner of easing the pain of that. And at the start of the book, I make the point that, whether it's in New Zealand or in other locations where indigenous people suffered that sort of disrespect of treaties that were entered into by government forces. It's a commonality to find that religious beliefs become a real source of relief, if you like. And here is a man who is suddenly arriving, who has a religion which is, we know, receptive to – a number of Māori in that situation were receptive too.

I think that it's highly likely that a number of those 218 would have been sympathetic to the cause that he was persuading them. So, I don't think he was necessarily coercing them all, I think some of them would have definitely felt coerced. Some of them would have felt that they were living buy the sea, that that was their winter garden basket et cetera, for the forthcoming winter. Why on earth would you go back into the Urewera. So, they would have been very resistant and particularly, there was a difference then too, in religious views, which we don't tend to put much weight on nowadays.

But in those days, there was a strong view between the pure European Christian type, religion and the Ringatū religion that Te Kooti was now espousing. That was very strongly held, that division and I think we often

overlook the strength of that division that drove, particularly Ngāti Porou, in their response. So, yes, I think there would have been a real mix of views amongst those 218 people.

Q. Am I right to understand that there is no record in the sources you have looked at, that suggest that of the 218, or thereabouts that were taken. There doesn't seem to be any record of a loss of people on the march, like so, either through death or –

A. No –

Q. – escape, or –

A. No, not all.

Q. Which, given how tough that particular journey is, it seems somewhat surprising in some respects.

A. Yes, I think it's just a mark of how tough people were in those days.

Q. Yes, that's probably right. But at the same time, from that very community, you have the government arming a section of the community there, only four or five years after the raupatu. Which is, again, an interesting phenomenon and it suggests, at least from the perception of those Crown officials at that time. That the leaders of those communities at Omarumutu, Ōpape were regarded as loyal or regarded as no longer a threat to the Crown, if I can put it that way.

A. And I think also, by that stage, coloured by the fact that Māori communities at Matawhero and at Mohaka had been heavily effected by the actions of Te Kooti. So, I think, amongst a number of the Māori communities around the coast, there was that mixed religious conflict that I was talking about. But also, there were people who knew people, or had whakapapa relationships with people who had been killed by Te Kooti. So, I think that it's understandable, probably, that Crown officials from that viewpoint, had some level of confidence that those factors, obviously, persuaded them that they could rely upon those Whakatōhea –

Q. Yes, and I think there's reference to some of the rangatira demanding or saying, we need to arm ourselves to protect ourselves from this –

A. Yes, indeed.

Q. All right. I think that's the only pātai that I had, but I just wanted to, on behalf of the panel again, thank you for your research, thank you for your

evidence. Also, lend our tribute to your kaha in the extraordinary efforts you have been able to do to walk those paths and put together a more complete picture of these events. So, we are also deeply indebted to you for your research, and very appreciative of your evidence. Thank you.

A. Thank you very much, Judge.

HEARING ADJOURNS: 12.51 PM

HEARING RESUMES: 1.43 PM

JUDGE DOOGAN:

Welcome back after another magnificent kai. I hope you are getting what we are getting in our little room. So, Mr Sinclair, tēnā koe.

MR SINCLAIR:

Tēnā koe, Sir. Sir, just before I get into my opening submissions, just have a bit of housekeeping. The panel have turned up, so we have in the house, in the whare, we have Mr Robert Edwards, Mr Graeme Riesterer, Ms Muriel Smith-Kelly, Ms Keita Hudson, of course, Adriana Edwards and Tuwhakairiora Williams… have Mr Nepia Tipene, chairman of the Ngāti Muriwai hapū trust. We have Kim Hudson. We have Ms Eileen Walker, and there's a couple of others down the back. We have Ms Ann Tipene, secretary of Ngāti Muriwai Authority Trust, Ms Colleen Walker, and we have Geraldine Jefferies, Sir. We also have Ms Irene Moore. All those members that are here today have, over the last five years, Sir, contributed to the Ngāti Muriwai Authority Trust report, and the – the extracts of their evidence are contained in the report appellation #A033(a).

We will – we are only having four speakers today, apart from Mr Te Kahautu, and I will introduce him in a minute; Te Kahautu Maxwell. But the four speaker will address a summary brief of evidence. They won't dive into the extracts of interviews. However, Sir, if there are questions to be put to any other panel members, they are well aware that they are here and if required to answer

questions, they will, Sir. Thank you, Sir. There's no further questions, I'll start with the opening submissions, after which Mr Te Kahautu Maxwell will follow.

JUDGE DOOGAN:

Thank you, Mr Sinclair. Just before you start, Professor Roa has just reminded me to acknowledge the association he has professionally with Professor Maxwell as colleagues at Te Whare Wānanga o Waikato **University of Waikato**, and it is "Professor", isn't it, Maxwell? Okay. Congratulations, Professor Maxwell. I had not caught up with that news, but tēnā koe.

All right, Mr Sinclair, thank you. Your opening submissions document – can you remind me please?

UNIDENTIFIED FEMALE SPEAKER:

#3.3.034.

JUDGE DOOGAN:

Okay, so, right. Thank you. #3.3.034.

(13:47) MR SINCLAIR: (#3.3.034)

Thank you, Sir. I will now address the Tribunal and the parties that assembled their opening submissions.

These opening submissions are filed to this inquiry, the North-Eastern Bay of Plenty, Wai 1750, for and on behalf of Ngā hapū me ngā uri **and the descendants** of all relevant times for Te Whakatōhea iwi. That's the Wai 87 claim.

Now, the Wai 87 claim has its genesis in May the 4th [*sic*] 1989. It was received by the Waitangi Tribunal. Now, it was filed by the late Karauria Augustin Edwards, Executive Chairman of the Whakatōhea Māori Trust Board, and the claim's set out on behalf of the descendants of all of Whakatōhea people.

Now, it's quite interesting. The claim, at that early stage, in 1989, lists several causes of action, and this indicates, to me, at least, that Whakatōhea had spent a long number of years assembling this historical account, because they list causes of action as the loss of life, the burning and the sacking of inhabitants, the confiscation of all fertile lands, resettlement on small areas of marginal land, the destruction of the economic base of Whakatōhea, and so on. There were 19 causes of action. And then they reference a paltry sum of twenty thousand pounds granted to Whakatōhea by the Crown in recognition that the confiscation was excessive.

This is in the late '80s that Whakatōhea filed this claim, and you will see that the tribe as a whole were very united and very supportive of the claim being filed by Mr Karauria Edwards.

Now, we go to a decade later, 8th of February 1999, and we see the claim is filed again as an amended claim for the investigation of Māori customary land, and it's the Foreshore and Seabed claim, and the area that's covered is Te Rangi in the east to Te Horo in the west to the Whakaari Island at its extremities.

Just – I will just pull up a – the application that was filed, and that's January, if you can see it there, and it says there it's an attachment to the Wai 87 claim, so that's an attachment to the raupatu in the whenua claim. And what's interesting with this application is some of the members that are on that application are sitting in this whare today, and we have Mr Tu Williams, Muriel Smith-Kelly, and we have a lot of the leaders of Whakatōhea who have passed since they laid this claim for their people, and of course, we have Mr Claude Edwards.

And as noted before, the claim makes a very – very distinct point, is that it's made on behalf of the beneficiaries of Whakatōhea Raupatu Claim and its underlying hapū.

Now, some time – sometime later, in the – on the 26th of July 2018, the claim was amended again to include customary interests in Mangatu and Waipoua blocks, and the opening submissions make reference to that. Now, as his Honour has mentioned, there's another inquiry that's been granted by the Tribunal, and that will investigate Whakatōhea claims to the Waipoua blocks.

We'll go to paragraph 16, my opening submissions. Talks there a little bit about the Crown Forest Rental Trust and the assistance given to Ngāti Muriwai Authority Trust, and it was that process that allowed this report to be written, authored by Mr Peter McBurney, and paid for, and for that, of course, Ngāti Muriwai Authority Trust are very grateful.

One of the witnesses coming up shortly, Adriana Edwards, is the project manager for Ngāti Muriwai Authority Trust and will answer some of the questions that have been raised earlier regarding the methodology of putting this report together and some of the processes that were, I guess, overcome to ensure that this report covered as much of the Whakatōhea people as it – as it was funded for.

Now, paragraph 17, just for the record and for those that are assembled here, this document here is 197 pages, and this document contains the evidence of many of you sitting here, and you've read that, and it's included in the report of Mr Peter McBurney. He's included extracts of that evidence. Very informative.

I'll move on to the Wai 87 committee panel members, and there's been a lot of discussion regarding this report and where to from here. We've had two iwi-wide reports, the report of Dr Bryan Gilling in 1994, and this is essentially the second report, and the objective of this report was to deal with some of the issues that came about as a result of the land alienation and the effects of the Crown actions beginning in – as – as their genesis, beginning in 1865 to the present day. The report writers and the report contributors didn't simply want to repeat history, they want to create their own history moving forward.

And on that note, talk – spoke to Mr Tu Williams. He's provided evidence, and he will speak to it. Mr Tu Williams will talk about the effects of land alienation, but more importantly, he wants to move on with a reconciliation process. He wants to move on with reclamation and restoration of what Whakatōhea once had and what they once were when they lived in a – in a climate of economic prosperity and wellbeing prior to 1865, and Sir, that's the end of my closing submissions, and I will now hand it on to – unless there's any questions, Sir?

JUDGE DOOGAN:

Tēnā koe, Mr Sinclair. Thank you for your opening submissions.

MR SINCLAIR:

Sorry, Sir, opening submissions.

JUDGE DOOGAN:

That's all right. Just the #A033(a) collation of material is entirely from McBurney's report – that's correct?

MR SINCLAIR:

Yes, Sir.

JUDGE DOOGAN:

All right. Thank you.

MR SINCLAIR:

Yes.

QUESTIONS FROM WAITANGI TRIBUNAL PANEL – NIL

JUDGE DOOGAN:

Thank you, Mr Sinclair.

MR SINCLAIR CALLS

Yes, thank you, Sir. Sir, I will now call on Mr – Professor Te Kahautu Maxwell. Sir, he's – we've got a short PowerPoint as well, and, Sir, Mr –

Professor Maxwell has agreed to have his evidence taken on the record, filed to the record, Sir. Yes. If we can just take a moment.

(13:58) PROFESSOR TE KAHAUTU MAXWELL (#E027):

Te Poho o Tamaterangi, e tū. Tirotirowhitu, e tū. Te Kākaho, e rere rā. Ani-i-waho, te pātaka o te iwi, tēnā koe. Te Ūpokorehe, tēnā tātou. **Te Poho o Tamaterangi, arise. Tirotirowhitu, arise. Te Kākaho, flowing yonder. Ani-i-waho, storehouse of the people, the iwi, greetings. Te Ūpokorehe, greetings to us all.**

Kei taku tuakana, Trevor, tēnā koe. Ra Waho e pupuri nei i te āhuatanga ki te hāhi ki runga i tēnei o ō tātou marae e kōrero nei te kairangahau mō tō tāua hāhi, mō tō tāua poropiti, nō reira, Ra Waho, ko koe tēnā e pupuri nei i te āhuatanga ki ngā rā, mai rā anō i a rātou – **To my elder, Trevor, greetings, and also Ra Waho, upholding the church on this marae of ours…was mentioned by the researcher, the person who researched our prophet, our church, and so, Ra Waho, to you who is upholding the church services of the Ringatū faith from time** – I'm on a diet, so this is my alarm saying to eat 100 grams of – of protein. I'm not sick, I've just been on a – I'm on a health program, and I've lost 30 kgs from the last time you saw me, your Honour, so don't feel sorry for me. Ra Waho, āe, mai rā anō i ō tāua pakeke, i a Uncle Boy, i a Tipi, i a Kimo, tō pāpā e pupuri nei i ngā rā i konei. Nō reira, ka mihi. Uncle Robert, tēnā koe. **Ra Waho, from the time of our elders, Uncle Boy, Tipi, and Kimo, your uncle who held the Ringatū church services here. Robert, greetings.**

Tēnā koutou, hei ngā pakeke. Kia ora koutou, ngā ringawera. Kia ora koutou, ngā tamariki mokopuna. **And greetings to the elders. I want to thank the cooks working at the back, and children and grandchildren.**

Judge Doogan, tēnā koe. Dr Anderson, tēnā koe. Kei te rangatira, Basil, tēnā koe. Kei te māreikura, Prue, kei te hoa, tēnā koe. Kei te ahorangi, e Tame, e Ngāti Maniapoto māua. E Kura, Te Ātiawa, tēnā koe. Koutou katoa, ngā rōia, koutou katoa, te kāwanatanga e tau nei, nau mai, haere mai ki roto i te tupuna

whare nei, Te Poho o Tamaterangi. **Judge Doogan, greetings. Dr Anderson, greetings. To you, chief, Basil, greetings. To the distinguished woman, Prue, to my friend, greetings. To you, Professor, Tame, Tom, we are both Ngāti Maniapoto. Kura, Te Ātiawa, greetings. And to you all, the lawyers, all of you, the government presence, welcome within this ancestral house, Te Poho o Tamaterangi.**

And it's a good day we're in here today. Tamaterangi, he – his proverbial saying is, "He ao te rangi – he ao te rangi ka ūhia, mā te huruhuru te manu ka tau" **clouds cover the sky and feathers coat the bird (interpretation cut off - 14:02:10)**, and sometimes – and they've used it in the context that if we don't have money we can't do anything, so we're here to negotiate – to talk about how we're going to benefit Te Whakatōhea today.

I just want to – I have come in at the time when Mr Crosby was talking about Te Kooti, so I'm going to take a slight deviation, and when he was at Ōmarumutu, he sang a waiata, and it goes like this:

Kāore aku māharahara, aku mānukanuka
ki āku tini mahara e pupū ake i roto i te hinengaro
Kāhore hoki e taea te pēhi ki roto i a ia rā, ē
Me pānui atu ki te tini, ki te mano,
ki te rau e pae nei, ē ī
E hoa mā ē ī, kātahi au,
a Tamarangi,
ka koakoa ki te titotito
ki te hangarau, ē ī
Pere atu, taku pere, ki Te Tai Rāwhiti,
ki a Hinematioro, e kui mā, ē ī
Tēnei au kei te kimi ake,
kei te wawau ake i roto
i te ururua
kia kite atu au i te mārama mai o te ata
kia kite au i ngā hihi o te rā, ī

Kia pā mai te mahanatanga ki te tau o taku ate,
kua papa piritia i te awhitanga a te mātaotao, ē ī
E kui mā, ē ī,
kia tahuri mai te taringa
ki te whakarongo ki te tangi a te mātuhi
e tangi nei, tui, tui, tuituia.

That song, Te Kooti likens himself to the mātuhi, a bird that's no longer with us, and it's a bird that didn't fly high in the sky. It stayed close to the ground, and it stayed within the scrub. It was afraid of the light. That paints a good picture of the predicament Te Kooti was in. He was scared. He was scared, so he's hiding in the bushes "i roto i te ururua". Te ururua. "I te awhitanga a te mātaotao"; it's freezing. Freezing because he was sentenced to exile, freezing because he was no longer allowed home, freezing because he was an orphan in his own land.

He sang that song because he was going back to Tūranga – I think it was 1881, 1883 – to open the house at Te Karaka they called Te Poho o Pikihoro. But just to give some context, perhaps, to what was – the evidence given by Mr Crosby. In terms of – because I wasn't here. But Te Kooti, he didn't trust nobody. He was like that scared mātuhi. And why did our people, Whakatōhea – I think I've said it at another claim hearing; there's been many – that we – he had been given the – the prophecy of God, and **(unclear 14:06:51 - ameko i perene uitia ērā)**, and those are all the promises of God to him that "I will deliver you, I will return you" – i perene – "I will return you to the promised land – uitia ērā – "you need to fight against the people that have done wrong to you and your people".

So on the 1st of January 1869, New Year's Day, Te Kooti arrived here in Te Whakatōhea, and from that time, that was through Hira Te Popo – where's Te Rua? From that time, Te Kooti, Te Whakatōhea didn't submit, but pledged our allegiance to him, because he had – God had said he would return him, God said that he would look after his people, and from that time, since 1869, 1st of January – I can't add that up, but I'll leave it for our maths people to – how

many years since we've been Ringatū. Nō reira, Ra Waho, tēnā koe **So, Ra Who, thank you**.

So I just wanted to give some context to that, and you can also see in the song, "e hoa mā, kātahi au, a Tamarangi, ka koakoa ki te titotito" – to the falsehoods, to the lies that people were talking – blaming him for, accusing him for. First of all, being a spy in Waerenga-a-Hika. "Ki te hangarau, ē" – not this hangarau, but the falsehoods. Funny how we change the words, nē rā, e Kura. This hangarau **technology** is a good one, today.

And then he pleads, "Kia pere taku pere ki Te Tai Rāwhiti, ki a Hinematioro", ki a Ngāti Porou.

So kia ora tātou i tēnei kōrero **thank you for this kōrero, this narrative**.

Toherāoa, toherāoa a Te Whakatōhea maurua. One of my aunties, the late Rangitahi Mitai, charged me with creating a whakataukī **proverb**; a whakataukī for the Whakatōhea, because she was at the kōhanga reo and attending the Mātaatua kōhanga reo hui, and they were – kei hea a Paiheke **where is Paiheke**? Kia ora, Paiheke **thank you, Paiheke**. Tūhoe have got lots of whakataukī. Ngāti Awa have got lots of whakataukī. We don't – we didn't have whakataukī. So we – I showed up just to be nosey at the kōhanga reo at Terere, my marae one day, and she charged with me with this, and I was like, "Oh my god", so I had a prayer, and I opened up the Williams dictionary, and it fell on toherāoa. I thought, "Gee, that's a good word. Sounds like Whakatōhea." And toherāoa is a plant that grows up on the cold mountains, and it grows on the coast, and so I thought, "Oh, well, that – that plant – a small plant – is resilient." So I took that word; "Toherāoa, toherāoa", to be resilient to Whakatōhea. And then I opened the page again on another karakia, and it opened up on "maurua". Maurua, when you make a whāriki, you make a papa, you make another papa, and this – this stitch here is the maurua. Papa kotahi.

Now, everyone around the country, they come, they now say it's like it's an old whakataukī. They say, "Haere mai **come forth**, Te Whakatōhea toherāoa;

haere mai, Te Whakatōhea maurua." I don't know if it's ten years yet, but kua puta **it's out**. Ka pai. It's done its job. But what it does, our people understand, our rangatahi understand, is to whakakotahi i a mātou **to unite ourselves**.

So I'm going to talk about my uncle, Claude Edwards, who was the former chairman of Te Whakatōhea Trust Board, the claimant for Wai 87; lodged the claim. He lay on this marae, along with mine and Adriana's uncle, our mother's brothers and parents, and all our aunties and uncles; takoto i runga i tēnei marae **lay on this marae**. I want to do it in – seeing I'm in a singing mood – trying to lighten up the mood a bit. All five petitions to the Parliament over the hundred years prior to settlement were lodged on behalf of Te Whakatōhea. Raupatu hurt all Te Whakatōhea. Hence Uncle Claude – we used to call him Uncle Claudie – lodged the claim on behalf of Te Whakatōhea. Hapū would not have made it on their own. You needed the iwi. After the raupatu **confiscation** and the consequences that followed, the iwi was decimated. We only had one wharenui that still stands today, pre-raupatu, and it stands at Waioeka. It's called Oropi, and Oropi came from Ōmarumutu or Waiaua. That's the only wharenui before raupatu that exists, and it's not in its traditional form, but there are carvings that remain, whakairo. So that was the extent of the damage done to Te Whakatōhea.

This following whakataukī, "E roi Te Whakatōhea i te roi a Tinirau!", another one of mine. Tinirau, whale; tie the rope on the whale, it has to be a real tight – when our people used to go out whaling, they used to tie it, te roi a Tinirau; tie up the whale, drag the whale and row in. It had to be that special knot, te roi a Tinirau. So, "E roi Te Whakatōhea i te roi a Tinirau!" We must, and we have been united. It's just been the system that's divided us; a system that we have had to play the game in; a system that has ingrained – it's now intergenerational. It's torn us apart.

So I welcome this – this process. I thank the Labour government for the dual process that they have provided us to be able to tangi our tangi **make our laments**. Everyone gets a voice. Everyone gets a voice. All these thousands of cars going past us; this marae – they wouldn't have a clue. You know, I had

to walk out, when I was listening to Crosby, not because I was against Crosby, but ko te mamae **the hurt**. I was like Te Kooti, puta atu ki roto i te rā kia whitiria mai, kia kite au i te mahanatanga o te rā **going out into the sun so I could feel the warmth of the sun**. That's what we're dealing with. And we're going to get there. E roi Te Whakatōhea i te roi a Tinirau. We have to unite to get where we're going to get to. No one's going to – left behind. But this is our chance to ask for more. Our iwi struggle is unique and should not be compared to other settlements or other iwi. Hapū can exercise independence within the iwi structure. We need each other.

We had a fine example the other day. We have those examples all the time where we have to support each other. That's my 90-year-old mother. My 90-year-old mother who ties me to this marae. Her mother had shares at Hiwarau, because she fed the tohunga Hoera at Hokianga. Her job was to row across that moana from Hiwarau. She was to put – put the kai out on the beach, cut up his wood and lay it out there for his fire. She named her oldest brother, which became our mother's younger brother, Hoera. Well, we know him as Nun.

The Māori tradition of waiata composition, I want to go there now. Māori waiata are living vessels of history, memory, protest and tribal genealogy adaptations whereby composers transform existing compositions with the lyrics for contemporary kaupapa while retaining the original structure and essence as a mark of respect and of continuity. Te Kooti Arikirangi, who we've heard about today, Ringatū prophet and master composer, exemplified the adaptive approach, using waiata. We know it. *Pinepine te kura*, Ngāti Kahungunu; *Pinepine te kura*, Te Kooti.

Ka tū au, ka korikori. *Ka tū au, ka korikori* was his first – was his waiata tangi when he was taken as an innocent man sentenced to exile at Wharekauri **Chatham Islands**.

Ka tū au, ka korikori
Ka puta te rongo o Taranaki e hau mai nei

Ka toro te ringa ki te Atua nui e tū iho nei
Ko Tamarura ka mate i te riri ki Waerenga-a-Hika
I te toru o Māehe ka whiua atu au ki runga i te kaipuke
Ka tere moana nui au, ka whakaihu ki Waikawa rā,
Ka huri tēnei te riu ki Ahuriri hei ā te Makarini
I whiua atu au ki runga ki a Te Kira au e noho nei
Whanganui, Whangaroa ngā ngaru whakapuke, kei Wharekauri
E noho e te iwi tū ake ki runga rā, tiro iho ki raro rā
Āwangawanga ana te rere mai a te ao nā runga i Hangaroa
I ahu mai i Tūranga i te wā kāinga kua wehea nei
Nō konei te aroha, e te iwi kua haere nei
Kūpapa e te iwi ki raro ki te maru o te Kuīni
Hei kawe mō tātou ki runga ki te oranga tonutanga
Kāti rā ngā kupu i makā i te wā i mua rā
Tēnā ko tēnei, e te iwi, whakarongo ki te ture kāwana
Hei whakapai ake mō te mahi a Rura nāna nei i raru ai, ī.

Te Kooti's song when he was taken as an innocent man to Wharekauri. That's his tangi, and he's pleading with his people to obey the rule of Kuīni Wikitōria **Queen Victoria**.

"Kūpapa". And "kūpapa" has got a negative context today, but he's pleading with his people, "kūpapa"; "kūpapa ki raro"; "kūpapa ki raro i te Kuīni", i te mea kei te raruraru tātou **bend down below the Queen, because we are in trouble**. And just behave. That's someone being sentenced to exile, and he's pleading with his people, trying to negotiate a peace for his people, because of the raruraru that arrived in Tūranga, and that was the new whakapono. Kia aroha mai **apologies**, e Kura. E kīia nei ko te Hauhau **called the Hauhau**. So I sing that song and come back to November 1865, when the Hauhau arrived here in Ōpōtiki. They arrived here in Ōpōtiki, and it was Rakataura, Piropa, that's who I can remember. Anyway, Kereopa, he had his own agenda, because his – his wife and daughter had been incinerated inside the church at Rangiaowhia, and his daughter lost to battle at Hairini, and – well, died in a battle at Hairini, in Tauranga. So you know the story about Völkner being

executed on the 2nd of March 1865, then, of course, Mokomoko being executed in May 1866, harakore **innocent**. And he sings this song.

Kāore te tākiri e tute nei te moenga
Kei te hori te tangata mate tēnei au kei te raweke

Whakairi i konā. He sang his song with the rope around his neck.

Völkner was murdered, Whakatōhea katoa suffered. No one escaped. Mokomoko was accused and was executed, Whakatōhea suffered. No one escaped. Whakatōhea, toherāoa, toherāoa.

I want to come to Claude Edwards, his leadership and legacy. Claude Edwards, visionary, rangatira, and former chairman of Whakatōhea Trust Board, Whakatōhea Raupatu Claim Wai 87 in 1989.

After enduring generations-long Crown breaches as exemplified by the wrongful imprisonment of Mokomoko and the execution, after settlement offers collapsed in 1998, he pursued – he lodged a claim for all of Whakatōhea.

He pursued the marine customary rights under the Foreshore and Seabed Act. He lodged that in 1999. And how that happened, Bob Mahuta, Sir Te Kotahi Mahuta, was coming out of Parliament, and Uncle Claude was going into Parliament. Negotiations were happening. And, Sir Bob Mahuta said to Uncle Claude, "There are moves afoot that they're going to pass legislation with regard to the foreshore and seabed, and that's the Marlborough Sounds. Lodge a claim." So Uncle went in there and lodged the claim, 1999. The Act never come out til 2004. Why were we being heard first in the MACA claims? Nā runga i tērā **because of that**. The vision – the vision – the visionary man who lodged a claim on behalf of Te Whakatōhea, because – and that's how our rangatira were operating in those days. No secrets. But to overcome. Toherāoa, endure; toherāoa, be resilient. Not just Whakatōhea, te iwi Māori **the Māori people**.

We say that Te Kooti wrote the song and then the Parihaka – e Kura, kia aroha mai **sorry** – wrote their – they – the always said Te Kooti copied everyone else, but we say that Te Whiti, the people of Parihaka copied Te Kooti. We've got to get one win. And that's their song. It's called *I te rā o Māehe*. Āe. And it follows the same formula as the one I just sang, Te Kooti's waiata tangi **lament**. Slight variation and different vocab, but the kaupapa is the same. I'm not going to sing it, because I don't know it. No, I just want to come in here and do the business.

On the days of March, I am hung on the throne
I stretch my hands to the God of the world, I protest
I hold the plow as the land resounds
The Governor's resentment as he takes the land
I cannot withstand it, descendant of Joseph, of the ancestors
I am thrown into the customs as the flames burn
I sail the great ocean, Raukawa – they're being taken to Otago, to the caves.
The surging waves at Otago – and to build all those roads.
Lifted onto Hinemoa, which was the – obviously the ship of doom – alas, I sail
I turn back, water falls from my eyes
Whanganui, Raukawa, the surging waves at Otago
My people remain, rise up above with joy
There is some pleasure as the world moves at the sound of the owl – what does that mean?
It comes from Zion, the true post, is remembered
My people, be loyal under the protection of the leader
To lead us towards ongoing wellbeing
So much has been said in the past
Now, listen to what the land has come through
To bring joy for the actions of Te Whiti, for which he created the ending.

These are songs of protest. These are songs of sorrow. These are songs pleading for mercy, all inflicted at the hands of the Crown.

So I decided to try my hand. I'm a novice compared to these two. But I have composed probably 200, 300 songs. Have not counted – haven't counted them all yet. But this is my first attempt to apply the methodology that Te Kooti and many other Māori composers have applied and continued to apply today. I wrote this in 2007. This methodology is special to me, Te Kooti being my prophet, of course, and Ringatūism. I'm a tohunga of the faith, and I'm also the chair of the Hāhi Ringatū **Ringatū Church**, and just ten minutes down the road is 600 acres that was given to Te Kooti when he was pardoned, but we're about to lodge a claim coming through the Ngāti Ngahere claim and hearing of the Tribunal, so just giving you a heads-up, your Honour.

Waiata tangi, a song of lament, song of sorry, laments the loss and confiscation of land. That's both those songs. Loss of life. Both songs condemn the Crown. Innocence, harakore. I composed this song to pay – you know, once I knew that Uncle had lodged this claim in 1999, I thought, "Wow." I found that out in 2006, I think, or 2007, when I composed this. The Foreshore and Seabed Act had already been passed. And I thought, "Wow", because I was one of – in the group that opposed our initial claim, against my uncle. 1996, '97, yes. Opposed it. Vaughan Payne was – we were all in the same team. Yes. The first Māori – wahine Māori **Māori woman** district court judge, the late Karina Williams, (inaudible 14:32:32), we were all part of this group that opposed it, and I thought, "Gee, you little shit" – ahau, tamaiti wāwāhi tahā, ihu hupē, whakaputa mōhio **me, a child, a snotty-nosed young person, know-it-all**. And, you know, that – that was a – made me realise how inclusive our uncle was, how forward-thinking our uncle was, how connected our uncle was, our leader, to te ao Māori **the Māori world**.

There was a time when a member of the Clay whānau – and Tracey's here – and Uncle rang up to – was it Muldoon? – and got these children back that were in the welfare system over in Australia, and one of our koroua, Mac Purei, who didn't have a passport, next minute was on the plane, a phone call away. That's the power that this koroua wielded.

And so I felt really aroha, and so since that time I've put all my energies into getting a settlement for Whakatōhea, because I saw Tūhoe buying some land, some farms just down the road here at Waiotahe – yes, Tūhoe. I'm a Tūhoe. I'm a Rakuraku. I'm a Te Maitaranui. Buying some lands down here. Whānau-a-Apanui buying shops in our main street. Next minute you've got the Whānau-a-Apanui Lounge. We could not do anything about it.

So I composed this waiata tangi, a lament, June the 4th 2007. It's dedicated to the foreshore and seabed of Te Whakatōhea. This waiata is my – we'll miss that one – my first – this waiata is my second attempt for composition in response to the Foreshore and Seabed Act 2004, which the government enacted November 24 – 2004. My first composition was a kaioraora, a derogatory haka that targeted the Labour government Māori members who sided with the government and assisted in the passing of the Act, and that's when we got the Māori Party, and Dame Tariana crossed the floor.

This waiata tangi mourns the confiscation of the foreshore and seabed from the mana of Te Whakatōhea, and if we can put it into context, I wrote this – this waiata when we didn't have settlement, and when you grow up in Ōpōtiki and you know pōhara, you know the struggle. You know the stories of our old people going up to dig up, to exhume Mokomoko, who was hanged. The last place we came as Whakatōhea was to this marae to karakia before our tira left. Uncle Boy was standing there ringing the bell, and Nanny Ahu. This house was closed, the old house, and it was just the old school which is now the kōhanga reo over there. Ka karakia a Te Whakatōhea i konei, ka haere atu ki te tūtaki i a Ngāti Awa. Ka karakia i konā. I reira a Te Haututua mā, Len Rangi mā. Ka mutu i konā, ka hanake ki roto o Tāmaki Makaurau. **Te Whakatōhea would hold karakia here and then go to engage with Ngāti Awa and then have a karakia there, and Te Haututua and others were there, Len Rangi and others, and then finish there, and then would travel on to Auckland.** So the – this being our last marae. Monita Delamere, Sir Monita Delamere said, "Me karakia tātou i konei **We should hold a karakia here**." Kei te tatari i tana taina, a Poai, i konei **when Boy would come here, Boy Biddle**.

The Foreshore and Seabed Act vested ownership in the Crown as the, at that time, second raupatu confiscation of Te Whakatōhea taonga. The first raupatu, 1865, we're talking about, we've spoken about, and we've – I've also spoken about the reason why. In composing this waiata, I followed the composition methodology of Te Kooti, yes. Here we go.

Ka tū au, ka korikori
Ka puta te rongo o Pōneke e hau mai nei
Ka toro te ringa ki te Atua nui e ngaoko nei te moana, ko Tangaroa
Ka riro i te riri i Whanganui-a-Tara – that's the big hīkoi
I te rima o Haratua ka whiua atu au ki te Pire Takutai Moana
Ka tere moana nui au ka whakaihu ki Te Koko ki Ōhiwa – so I'm just thinking about our foreshore, Te Koko ki Ōhiwa.
Ka huri tēnei te kōpua o te ururoa kei Tauwhare rā – just past the oyster farm you fellows should all know. When you leave, if you don't know, call in and get you some fish and chips and some oysters. My cousin owns it. But kei reira ko Tauwhare **that's where Tauwhare is**. Tauwhare is a deep pool, where only the female sharks can come in over the – te koko ki Ōhiwa, the bar, and give birth to the young ones in that pool.
I whiua atu au ki runga ki Te Tukerae-o-Kanawa – Te Tukerae-o-Kanawa, or Te Tukirae-o-Kanawa, is where the Horouta waka beached and broke the haumi on the bar at Ōhiwa, and Kanawa was blamed because she had interfered with the tapu, breached the tapu and brought on aruhe, because that boat was – according to the Horouta story, brought the kūmara. Mātaatua, we have another kōrero.
Ka tahuri whakamuri, he wai kei aku kamo e riringi nei
Tohe nui, tohe roa, ngā ngaru whakapuke kei Pākihikura – Pākihikura, at the mouth of where the Ōtara, the confluence of the Ōtara and Waioeka Rivers go out one mouth. Pākihikura, which was – is said to be the waka of Irakewa, the father of Toroa and Muriwai. And from there, we get the – his whakataukī, Pākihi ki uta, Pākihi ki tai. His rohe, from – Pākihi was right up towards the Mōtū and

out to the coastal lands of Pākihikura in town, where our new harbour is – where our harbour is.

E tohe, e te iwi, tū ake ki runga rā, me mate ururoa, kei riro atu rā – die like a, a hammerhead shark. Me mate ururoa. The old people said when they – you know, when you catch a hammerhead shark and hang it up, a week later, you touch him, and it still wiggles. Koinā e kī au me mate ururoa **why we say that you must die like a hammerhead shark**. Āe. You're already hung up, but you're still – your heart's still, your ticker's still beating.

Āwanga ana te rere mai a te ao nā runga i Tangaroa

I ahu mai i Karauria i te wā kāinga, kaua e tukua – Karauria. Claude Edwards. Kaua e tukua te takutai moana **do not cede the foreshore and seabed**. Don't; hold on to it.

Nō konei te mana, e te iwi, mai i Te Horo ki Te Rangi, kua tuku iho mai – so our rohe, our coastal – our foreshore, from Te Horo on the eastern side of Ōhope, just at that bridge in Ōhope to Te Rangi, at Awaawakino, or what's the Pākehā name? Blake's Bay, between Torere and Ōpape. Morrison's Bay.

Kūpapa, e te iwi, ki raro ki te maru o te Atua – ana, me whakapono tātou ki te Atua **Collaborators, people come under the mantle of God, must believe, have faith**.

Hei kawe mō tātou ki runga ki te oranga tonutanga – we've got to have faith to endure, to endure, and we'll make it. And we're making it, whānau – well, I'm making it to the end of my presentation, anyway.

Kāti rā ngā kupu i makā i te wā i mua rā

Tēnā ko tēnei, e te iwi, kaua e whakarongo ki te ture kāwana – don't agree to the Foreshore and Seabed Act.

Hei whakaae ake ki te mahi a Herena nāna nei i raru ai, ī – **Agree to the actions of Helen Clark who undermine.** Herena, Helen Clark, who decided on the day there was the hīkoi to go and watch Shrek being shorn, who thought the – shearing that – Shrek was more important than our takutai moana.

I stood up and I acted
Pōneke's news came resounding to me here
And my hand went out to the God that roars, Tangaroa
He was lost in the battle at Whanganui-a-Tara
On the 5th of May, I was slammed with the Foreshore and Seabed Bill
And sailed the broad ocean to the headlands of the Ōhiwa harbour
Then I turned, this is the deep pool of shark at Tauwhare
I was thrown onto Te Kurae o Kanawa
I turned and gazed back where water is pouring from my eyes
Obstinate, rebel, the waves mounting up at Pākihikura
My people, resist, rise up, die the death of a shark, lest the foreshore be stolen
I am anxious at how the world is moving in regards to Tangaroa
The initiative was taken by Karauria at the home front not to cede
People, the mana belongs here, bequeathed from our ancestors from Te Horo to Te Rangi
People, let us go under the guidance of Karauria
That will bring us to prosperity
Enough of the words thrown about in the past – that was all the accusations, the ridicule – you know, I was one of them – about my uncle
Instead, my people, do not obey the government's law – well, put that in context
And agree to Helen – and don't agree to Helen's deed that brought all this trouble.

So, in closing – okay. There we go. Those – those – those compositions there – Mokomoko, Te Whakatōhea, unlawful imprisonment, loss of 144,000 acres confiscated, poverty, sickness, legal claim, his waiata tangi; Te Kooti, Rongowhakaata, imprisonment, exile, loss of land, exile, lament, prophetic waiata, Ringatū tradition, mana motuhake. Te Whiti and Tohu, imprisonment, army action, major raupatu, Parihaka destroyed, peaceful protest, and the waiata. Claude Edwards, Te Whakatōhea, Tribunal advocacy, marine land claims for all hapū, leadership, unity, inclusive claims.

Hoki kē mai koe ki Ōhiwa, ki te tamāhine a Te Whakatōhea e noho rā i te wai kaukau a tō tipuna, a Taitūtia. He whakataukī tērā. Kei roto i tētahi pātere a Te Whakatōhea. **That is a proverb. It is within a chant of Te Whakatōhea.** Those beautiful things, and the traditions we've grown up on, and we collectively share that resource. And prophesized as – proverbialised as the daughters of Te Whakatōhea.

And here's our whakapapa. E roi Te Whakatōhea i te roi o Tinirau!

And so just in closing, your Honour, and I'll have another dig at it. It was ironic. This morning I was – I was driving here, and on a Teams meeting with the curriculum review committee, reviewing the New Zealand curriculum, and it's – it's – it's quite funny that we're reviewing it and then they're removing everything to do with Māori.

So I want to advocate on behalf of all hapū of Te Whakatōhea, and I said it at Te Rere, and they were speaking about the 27% of our tamariki **children** and our mokopuna **grandchildren** that are in kōhanga, kura kaupapa and wharekura. 75% of our – 73% of our tamariki are in mainstream schools. And they talk about the 3% overall of our tamariki that are succeeding. We don't have a wharekura **Māori immersion high school** here. We've been going forward for a long time through, 40 years, but the Ministry keeps saying, "You don't have the population." We're a Māori population. Ōpōtiki College doesn't service us. We've got Ōpōtiki Primary, Ashbrook, St Joseph's, Woodlands, Waiotahe. Five schools, mainstream schools. We've got Ōmarumutu, Waioeka and Kutarere that are total immersion schools, but they've got nowhere to go. They have to go to Rakaumanga, e Tame, to Ngā Taiātea. But they – they're alien, and they're educated on a tikanga and a curriculum that doesn't belong to them.

So on behalf of Te Whakatōhea, your Honour, the Tribunal, I put it to you today, as part of toherāoa, toherāoa, Te Whakatōhea maurua, that you assist us and recommend – there's one school that's suffering here. It's called Ashbrook. I

went to that school. Who else went to Ashbrook? Tracey? Put your hand up; let's be proud of our school. We did okay, me and Tracey, but the roll is failing. Whānaus are moving. It's a big school. We want it back. Give it to us. The government has said – the Ministry of Education has said to us, whakatū he kura i roto i te kura **establish a kura within the kura**, to build a – what are those schools called? A school inside the school, like Waiōrea. I don't know what those schools are called. But it's not going to work for us.

High unemployment. Our kids rather go – our tamariki and mokopuna would rather join the Mongrel Mob. That's a reality. The review board said to me today, what – how would I measure a good curriculum? I said, if you lift my tamariki and mokopuna in Ōpōtiki out of the slum, out of addiction, because their future is incarceration unless we get this kura going, e te iwi.

Nō reira, e te Kaiwhakawā, tēnā koe. Dr Anderson, tēnā koe. E Tame. E hoa, Prue. **So, your Honour, thank you. Dr Anderson, thank you. Tame, Tom, my friend, Prue.** kia ora koutou katoa.

JUDGE DOOGAN:

Tēnā koe **thank you**, Professor Maxwell. Thank you. I think your counsel had indicated to us previously that the – the waiata – the slides that you have spoken to would be made available to us –

PROFESSOR TE KAHAUTU MAXWELL:

Yes.

JUDGE DOOGAN:

– after today. That's correct?

PROFESSOR TE KAHAUTU MAXWELL:

Yes.

JUDGE DOOGAN:

Āe? Thank you.

PROFESSOR TE KAHAUTU MAXWELL:
Ka pai.

QUESTIONS FROM CROWN COUNSEL – NIL

QUESTIONS FROM WAITANGI TRIBUNAL PANEL – NIL

JUDGE DOOGAN:
Thank you, Professor Maxwell. I have no pātai. It is very clear, and thank you also for again assisting our understanding, not only of some of the contemporary context but also, through the links to the waiata of the Matua Tangata. It has been of great assistance to us, so tēnā koe, thank you.

PROFESSOR TE KAHAUTU MAXWELL:
Tēnā koe, e Kura.

HEARING ADJOURNS: 2.53 PM

HEARING RESUMES: 3.25 PM

JUDGE DOOGAN:
Kia ora anō koutou. **Welcome back.** It is Judge Doogan speaking. Kia manawanui mai. **Thank you for being patient**. Sorry we were slightly late coming back. I think we were being looked after far too well.

All right, Mr Sinclair, just prior to resuming, had just asked for an indication as to whether there was significant time needed for pātai from the panel. I understand the indication we had was for the panel. There were unlikely to be questions from Crown counsel, is that correct? And I am just saying this so that everybody is clear. What I propose is that we proceed in the way that the timetable has been scheduled, so that if you could proceed as you planned, Mr Sinclair.

In terms of pātai, obviously, with Dr Phillipson being unwell, I am not sure what he may have, and that will have to follow in writing, unfortunately, but in light of the – the situation as I see it is a little bit different in that you have had Mr McBurney's primary research, which relies upon, amongst others, the information provided by your panel members and others, and we have had the chance to hear from Mr McBurney and go through the questioning and clarification with him. The briefs that you have submitted for the panel are relatively high-level, so we are a little bit – apart from what is there, we are unsure about whether there is other material your panel wish to highlight or draw our attention to, so the early indication would be I do not expect a great deal of questioning, but we are happy to be guided by you and the speakers that you have for us, and as I see it, we still have time āpōpō **tomorrow**, so, in your hands to some extent as to how you wish to use the time that we have available.

MR SINCLAIR:

Thank you, Sir. This afternoon, I will be proceeding with first witness Adriana Edwards and a joint brief of evidence in Wai 1750 #E023, so that brief of evidence also has Ms Keita Hudson and Gloria Collier Tahere.

Now, the – before I introduce the witness, Sir, a few administrative matters. As I've mentioned before, the text which contains the extracts of the witness's evidence – quoted that before, #A033(a) – essentially, the briefs that we have in front of us are pretty much a summary and a gap-filling exercise of that evidence that's contained in that document bundle.

JUDGE DOOGAN:

When you say "gap-filling", do you mean there is additional information in there?

MR SINCLAIR:

Well, things like whakapapa, Sir; whakapapa of each witness, which wasn't in the extracts, and just normal –

JUDGE DOOGAN:

Right.

MR SINCLAIR:

– normal matters that one would give when giving that type of evidence. Thank you, Sir.

MR SINCLAIR CALLS

(15:30) ADRIANA EDWARDS: (#E023)

Q. I will call the next witness, Adriana Edwards. Would you like to state your name in full, please?

A. Adriana Edwards.

Q. And you've provided evidence to the Peter McBurney report. The appellation is #A033(a). Is that correct?

A. Yes, that's correct.

Q. And to your best of your knowledge, is that evidence you have provided true and correct account?

A. Yes.

Q. Now, you've also provided a – a summary document, and the appellation number on that one, I mentioned it previously, is Wai 1750 #E023. Now, you've read that?

A. Yes.

Q. And you agree that's a true and accurate account of your summary evidence?

A. Yes, I agree that it's a true and accurate account.

Q. Right. I'd like to take you to paragraph 1 of your evidence, and introduce yourself. And I – I'll hand it over to you to go through your evidence.

ADIANA EDWARDS: (CONTINUES #E023)

So I'm the daughter of Karauria Eruera, as my cousin introduced previously, and my mother is – is Moira Mokeke Black. I grew up in – we largely grew up in Toatoa. That's where we were raised.

Aroha mai, I'll go back. I am Ūpokorehe, Kutarere hapū, Ngāti Muriwai hapū, and Ngāti Patumoana hapū, and also, I can whakapapa to the other hapūs, but

these are the three main hapūs that our whānau resonate with, and this is, as my cousin's already said, where many of our whānau have laid when they've passed away, and Ngāti Patu urupā is full of our whānau members as well. This is largely – and I've said this in a previous interview – where the Ngāti Muriwai people virtually fled, or came to, was to Kutarere and to Ngāti Patu. That's where you find a lot of them.

We – I was raised in a large family, and we were raised at – in Toatoa, which is a little valley on the way to – in the back roads to Gisborne, and I've already said this previously. Some points that I want to point out is when you go up to Toatoa, if you've ever been there, you come down, you go up the Meremere hill, and you come down into the valley, and you – you drive along, and as you – you'll come – there's only one road, so there's nowhere else to go, and you'll come to a junction, and with the junction, if you go straight ahead, you come to Whitikau block, and that's where we used to go to school, was that road, we'd go straight ahead – if you turn left at the junction, and you keep driving, you come to the Takaputahi block, and it's quite a drive to the Takaputahi block –

JUDGE DOOGAN:

Sorry, Ms Edwards, just in terms of the direction, we are talking from the coast inland, or from the inland higher points down the valley?

ADRIANA EDWARDS: (CONTINUES)

It's from the coast inland.

JUDGE DOOGAN:

All right. Thank you.

ADRIANA EDWARDS: (CONTINUES)

So we've – start at Waiaua, you're on the main road down to the coast, and we turn where the Ngāti Patu marae is, hapū is, you go up that road and follow that Waiaua Road, and you keep going into the back of Waiaua and you come to Rāhui Valley, then you'll come to the bridge, the Waiaua bridge, and you're up onto the Meremere Road.

MR SINCLAIR:

Would you be able to tell us, tell the Tribunal the name of the road?

ADRIANA EDWARDS:

It's Meremere Road, the one – the one up to Toatoa. It's a steep road, and when you get up the top, you look down into Toatoa Valley, so there's only one road in and one road out, and that is the back road, the old back road to Gisborne, is that road.

JUDGE DOOGAN:

We have travelled on the site visits last year. That's why I am just checking. I am pretty sure we have come in a big circle up the Waioeka and then – and then down – down that road.

ADRIANA EDWARDS:

Yes.

JUDGE DOOGAN:

And on other site visits, I think in the coastal fringes, we have also been partway up those valleys.

ADRIANA EDWARDS:

Yes.

JUDGE DOOGAN:

So I think we are with you, so carry on.

ADRIANA EDWARDS:

Right. And if you go, you know, like Takaputahi, and then if you get up on those ridges, you'd look, and you can see how those – those blocks all kind of line up. You've got Takaputahi. You go onto Whitikau, and Whitikau's a big block, as well, and of course, up in there, in those rivers, you'll find the – up in those back blocks, and going into Matawai, you come across the Mōtū River as well.

So we grew up in that area, and you know, we – Te Kahautu's right, we – they practically grew up with us, as well, and we – many of our whānau would come up there for holidays, and we – you know, they'd come up and – especially in different times of the year for the hunting. That was well utilised, those bush blocks now.

Right now, I sort of wish and think, I wish, you know, me father was still here and some of the elders at that time, because they knew those blocks intimately. They knew all the hunting grounds and they knew our history all the way through, and they knew all the kererū grounds. That was the big – when you go further on into the – past Whitikau into that area, that's where the kererū, you know, it really flourished with the kererū. So that was pretty much our playgrounds, was that area, and – and those are the blocks that butt onto the Tūranga Gisborne side, the Mangatu side.

MR SINCLAIR:
Carry on to paragraph 2.

ADRIANA EDWARDS:
So my father was the – he would have been the mokopuna of Te Paku Eruera, or the – not the immediate mokopuna; I think there would have been another generation before him, and I think I don't need to go into that, because you've heard intensely about the Ngāti Muriwai side and the whakapapa there, and our Ngāi Tai connection, and so – and his dad was Joe Edwards, and then on my mother's side, she was – she liked to say that Ngāti Patu was the hapū that she aligned herself with, and when she passed away, on her birth certificate, she only had – we, you know, went through things and she only had one iwi on her birth certificate, and that was Te Whānau-a-Apanui, so she was very much Te Whānau-a-Apanui, really. And I always used to remember when we'd go down the coast how she'd be talking with the people her age and, you know, they'd – it's like they knew each other, and I realise now that's because they all grew up together. They were all first cousins, and she just loved her cousins and getting with them. Yes. So –

MR SINCLAIR:

If I can take –

ADRIANA EDWARDS:

Then –

MR SINCLAIR:

Sorry – if I can keep you at paragraph 2, in the last sentence there, you talk about Ngāti Patumoana hapū, and you also describe Kutarere hapū. Can you give us a few more details about that?

ADRIANA EDWARDS:

Well, because they were the hapū that recognised, and that's who we, you know, we had to be somewhere, so – and they still were very much our hapū, at Ngāti Patu, I remember I used to go out and help when they first started the fundraising and – and Mere Walker was alive, and Irene's sister Jean was the chief cook, and there used to be lots of catering and fundraising, so I used to help a lot with that, you know, because we'd have to go and do our contribution towards the marae, and so I'd have to go out and do that, and I liked doing it, I enjoyed doing that.

And also at Kutarere, I was – several years, I was the secretary of the Kutarere Marae, so when I was on – the secretary at Kutarere Marae, we – and I'll elaborate a bit more on that – we had a trust called the Ahikāroa Trust, and that trust was formed for the three functioning marae, so we know there's five hapū out here at Ūpokorehe, and three are functioning and two, I'm going to say they're historical hapū, because they're not functioning, but that doesn't mean to say they can't be functioning, but that's what we're looking at right now – even though they still have descendants alive, you know, they're still – so the three functioning ones, and that is Kutarere, Maromahue and Roimata, so when I was the secretary for several years, the actual – the trust, I think, was pretty much formed and Keita was also on that trust. It was called the Ahikāroa Trust.

UNIDENTIFIED SPEAKER:

For Ūpokorehe.

ADRIANA EDWARDS:

Yes. And it was – and it – for Ūpokorehe. Now, the purpose of the trust was for the three marae to – what marae were doing were looking for – they were trying to find a solution within their – looking back now, that's what I can see. We were trying to find a solution of how to function and how we could represent ourselves in a fair and equitable way, because I can always remember my dad said to me in – because he's – encouraged me to go and do that, and he said later on, when he started teaching me, you know, the different things about the raupatu process, he said there was lots of hapū left out, and there was lots of raru, lots of arguing, and we took it back – and I do take it back to the land alienation, when our people were removed off their land and put on those reservations, and he said they had nothing, and they were squabbling, and they were squabbling over those resources. So I'm talking from the point of view of what I know as a family and as our marae, and what I've seen our people suffering from that land alienation. These – I'm getting into the impacts and how it's really affected us as a people.

And he said to me, "The biggest areas where you'll get the raru is on this side, are Te Ūpokorehe, and on that side, it's Ngāti Rua, Ngāti Muriwai." He said, "Because that's where you got the downsizing." And it took a while for me to get my head around it, but out here, you had five commodified into one; five hapū commodified into one. And out there, it just became one, on the other side. And –

(11:01) JUDGE DOOGAN TO ADRIANA EDWARDS:

Q. Can we just – if you don't mind me interrupting, just so we could just clarify, while we go on the –

A. Yes.

Q. Because Mr Sinclair just pointed you to paragraph 2 and the reference to the Kutarere hapū, and in your answer, you referred to three functioning marae, which I followed, but just in terms of the five hapū that we are

talking about in this vicinity, which hapū are you referring to? Te Ūpokorehe…

A. Within Ūpokorehe, we know there's five hapū. We know there's Maromahue, there's Kutarere, there's Roimata, there's Turangapikitoi, and there's Rongopopoia.

Q. And they correlate to marae as well? Because those – are they all marae names, if I am right? So you have got – functioning marae are Roimata, Maromahue, and here. Rongopopoia, I recall on another site visit, quite a way up one of the valleys –

A. Yes.

Q. – being told of a – right on the borderlands with Tūhoe – is that Rongopopōia –

A. Yes, that's (inaudible 15:44:42) –

Q. – which is no longer a functioning marae, but there are aspirations to restore it. Is that correct?

A. Yes. That's where I call two historical, or you know, two –

Q. Yes.

A. – they're still there, and you can see them, and they still – the whānau are still there. We've been out to Tūrangapikitoi –

Q. Yes.

A. You had a hearing out there.

Q. Yes.

A. And there's still been a strong group behind the Rongopopoia, you know, marae, but –

Q. Yes.

A. – they're not –

Q. All right. So just so I don't get confused as to which is which, so Rongopopoia is up the valley, on the Tūhoe borderlands?

A. Yes.

Q. And then Turangapikitoi around the back of Ōhiwa, back of the Hiwarau blocks, āe?

A. Yes, on the way to Whakatāne.

Q. Yes.

A. In the Wainui Gorge. Yes.

Q. Yes. Ka pai. Thank you. And just to be clear again, so when you use those names, you are referring to them as hapū? So each of those locations are a hapū of Ūpokorehe?

ADRIANA EDWARDS: (CONTINUES)

Well, yes. This is the – now, this is the point, and these are the things that I can see, like – so what's happened, and I don't want to be jumping around, because we'd sort of get – but you've got the five hapū, because what is a hapū? Well, we know it's a marae and a group of inter-related whānau. The – if I can use the three that are recognised, the three marae, we at Kutarere run completely independent to Roimata and to Maromahue. We're not answerable to Roimata or Maromahue, and vice versa. That's not to say that we don't support each other and there's not strong whanaungatanga ties, because there are, but we are completely independent, financially, in erecting our buildings, and, you know, we haven't relied on each one to get where we've got, we've just put our head down. But yes, the whānau have pulled in and helped each other, but – so what I'm saying is if you look at us just as we are, there's not really been any dominant hapū.

This changed with the formation of the Trust Board. And this is what my father had said to me, and this is – this is – I take it back to the land alienation, and the land alienation, it was like a genocide on our cultural identity, because I don't think it gave any real thought to the impact of what it had actually done to our identity, when it had just completely removed us off any of our land and then our people had to stand up in the court and validate who they were. And we all know if we really want to validate who we are, it's "Where's our tūrangawaewae **place of belonging**?"

And there was confusion, and you'll see that in some of the petitions, and I know there was one petition that my koroua Te Paku wrote, and he talked about the – the people being in a state of calamity and confusion and shock, and so, you know, these are the impacts that we're actually still dealing with today, because it's never really been resolved, and it's been, "Here we are, you – you guys fix it", you know, and I just think, well, and now it's like, "The hapū, you fix it." You

know, "You sort it out." But really, I think it's a problem that everybody's got to own and get together and put their heads around it, how it's going to be resolved. And it really comes down to – to the resources and the mana, the power, so it's that jostling and that's binding and that's the mana and the rangatiratanga of each hapū. It's never been fully recognised or fully looked at.

So I'm talking from our point of view here at Kutarere, and I'm talking from, you know, my whānau and what we've looked at, and other members. As you know, there's – there's divisions everywhere and others have other viewpoints. I'm not saying that they're wrong and we're right. I'm saying this is how we see it. We just have to – to find some solutions and a reconciliation towards this problem.

So we had this Ahikāroa Trust. Now, we thought this was a good solution, and we had – now, we never excluded Rongopopoia or Turangapikitoi. They were also included, weren't they? But, you know. And there was no domination over any – we – we didn't do any of that. But of course Kutarere and Maromahue and the Roimata reps were always there. Two reps for each marae. And I was also the representative for our marae there on that, and Keita was for Maromahue on the Ahikāroa Trust.

Now, that went along for a couple of years, and then that just didn't work, and it didn't work because one of our marae didn't really want to be a part of it, and that –

JUDGE DOOGAN:

What period are we talking about? What – when did the Trust –

ADRIANA EDWARDS:

So we're talking – this is pre- the settlement, because we thought we would be, you know, getting ourselves ready and getting in a better position. So that was, what, about two thousand and – no, it would have been the 19 – the 19 – say the 1996 period, eh? Yes. Like that, maybe a bit earlier. Like, yes.

Because the problem was, and the problem is – and I'm using this because it's a good example – at Ūpokorehe, you have their three fully functioning marae. And then we only have two representatives – we always were only allowed two representatives in the Trust Board and one marae grant, and our maraes had to share that grant while the other five got equal to our three maraes, and I know that was always dissension out here. I could see it when I sat in the meetings. And so – but under the Trust Board, it was only Roimata that had the hapū status. Now, I don't know who was responsible for that, but I understand, you know, back then, when the Crown set it up, from our elders at that time, they virtually had to go with, in the end, what was decided, which was six hapū. That caused a lot of upset for some, but they had to go with the six-hapū model.

But, you know, we've heard this morning, earlier, there's no hard evidence to show that, so – but that's one of the major impacts for us from the land alienation, and I don't think it's a – it is an impact that's going to go away. Somehow we all have to get our heads around it, and we thought bringing it here and discussing it is a start to that and a, you know, we need to find some way to reconcile that situation.

So there's always a disadvantage, and we all knew it, and we all still know it. We have two reps for our three marae. Now, we know, and we always knew, we'd always say, "Who got in?", when there was an election. If it was the two from Roimata, we all knew that naturally, they're going to, you know, whatever we want out here, it's going to be favoured, whatever Roimata wants. If the two reps from Kutarere get in, then we know that it's going to swing that way. And those are the – and then I sort of thing, when the – Te Tāwharau was set up, all the Trust Board was taken out and then put into the new entity.

What I don't understand is what that looks like now and how that's going to be for our hapū here, because we still have these divisions here and I think they've gotten worse, because now we're challenged with some wanting to be a separate iwi, and then I say, "Well, I'm not going to judge that", because there's a problem, and it's a problem and an impact, right from when we were put on that little reservation, and there's never been enough thought, and we've been

reduced down and there's never really been enough thought about what that's really done to the people, and now it's just started to, like, self-implode, really.

So that's probably all I could say about that.

MR SINCLAIR:

If I could take you to paragraph 13, and you elaborate there the similarity with another example that you've mentioned previously.

ADRIANA EDWARDS:

You mean Ngāti Muriwai?

MR SINCLAIR:

Paragraph 13.

ADRIANA EDWARDS: (CONTINUES)

Yes, well, the same situation with Ngāti Muriwai, and we all know how contentious that is. We've all sat through the High Court in 2021 and heard it day in and day out, and we continue to hear it. Ngāti Muriwai's not going away, and Ngāti Rua's not going away, and again – now, that, again, I take back, and we all, you know, there's this internal friction, but I don't really think our people really had the power that they think they had – we sat in – when there was a meeting, and of course, our people say that they were – the meeting was arranged without their notice, you know, and the name Ngāti Muriwai-a-Rua was removed, so their – their kōrero is that it was arranged and very little notice; only some were really notified, and then Judge Durie, for whatever reason, decided to remove the name. I mean, I'm sure today that would be unheard of. I'd like to think in 2025 that would never happen to any hapū – that you'd ring around, have a meeting the next day and take away their name. Because that's – we've – firstly continually impacted by being put on those reservations, land alienation again, cultural alienation, cultural identity genocide.

MR SINCLAIR:

If I can take you to paragraph 14, and you talk there about Te Paku and grouping together, forming some attempt at whanaungatanga, I guess it is.

ADRIANA EDWARDS: (CONTINUES)

That's – I think that's been spoken about previously, when the leadership got together and they started collecting two and sixpence so that they could register, and I understood that was the beginnings of them going to help them with their first settlement. Now, I know that – and I know it was said that Ngāti Muriwai didn't have their own list, but there is one. I've actually – but I just thought I'd have to go through all my boxes at home, and maybe I have to do that, but they did have a – the Ngāti Muriwai listed there. So maybe I'll have to do that and go digging around and find that – that evidence.

But anyway, the real point is that the hapū came together and – and I think that we just need to get past pointing at one another and, you know, look at the real issue and the goalposts we want to achieve, and where the raru came from and how we're going to reconcile it, which is – so that's what that was about.

MR SINCLAIR:

If you go to paragraph 16, and you've mentioned, again, Kutarere and Maromahue, and progress there. Would you like to make comment on that?

ADRIANA EDWARDS: (CONTINUES)

Well, this is just, you know, from what I've observed, the hapū that have been really oppressed and left to just get on with it, really, pretty much on their own, that's what they've done, and this is a prime example of that, this marae we're sitting in. I can remember my – you know, all our whānau were actively involved for many years. They were determined.

What happened was that originally, we were all up – my father said to me we were all up at Roimata, and then there was an argument, and – there was an argument, and the elders weren't allowed to speak, so they said, "Right, that's it, had enough of this", came down here and built Kutarere, and they said, "We're going to make it a marae that everybody comes to."

Now, that – he said, and he kept pointing out, it was because of what happened to us historically on those reservations, no resourcing, and when we'd get it, it would be meagre, and squabbling over it, always squabbling over the resourcing, and forgetting where the real problem was.

So we came – my family was part of that. They worked hard, did fundraising, and they built the first little original wharenui **meeting house**, and then, of course, you know, in recent times, this – this whare was built, and the wharekai **dining hall**, and then of course Maromahue has done the same, and you've heard the history of Maromahue, and very much like Ngāti Muriwai's become a bit like Maromahue – you know, we've been looked at like aliens and rejected, and I'm sure if we'd been treated differently by the Crown back then, maybe, maybe internally, we might be treated differently as well. But Maromahue has done extremely well, and they've worked hard and rebuilt their complex.

Now – so that – what – what's happened in later years is that – and I think, as one of our whanaunga, Irene, pointed out to me and my Uncle Robert – recognised that the marae grants were not fair, and he insisted that the maraes here be given equal. That's what I understand. Equal of the pūtea **money**. And I thought, that's also recognising the unfairness, how they're not being treated fairly.

So – but you know, now you have – the problem we have here now is we have – and some think that Roimata is the main hapū, but my dad said to me, the Crown really did that. They choose who were the hapū they wanted to deal with. And that then became the main hapū. The same thing happened on the other side. And I think Tu, when he talks, might elaborate on that. So you suddenly get matua hapū, and I don't think they're part of our tikanga. They've just evolved, and people have just accepted that as part of the – who and what we are. But the problem for our two hapū here is that – so we have Roimata who knows that they are the main one. My dad always said in the Trust Board legislation, they were the recognised one. So how does that look in the new entity? If they're the main one, then do they have the say over us here at

Kutarere and at Maromahue? And this is what we, Keita and I talk about and we're concerned about. But they – you know – it's not something that you would think about unless it affects you, because you don't have to, when you're not affected.

So that's something that I think needs to be reconciled – certainly discussed, pulled out, looked at.

MR SINCLAIR:

Thank you. Just before we conclude, I'd like to take you to your report that your organisation commissioned for Ngāti Muriwai Authority Trust, and the evidence extracts you've got here, and I'd like you to give us just a bit of background regarding Ngāti Muriwai Authority Trust and the coming together of this report.

ADRIANA EDWARDS: (CONTINUES)

Well, we originally started because we wanted a report for our hapū, and when I spoke to CFRT, they said that you – you need to get – if you want a research report, you need to come up with something innovative and something that hasn't been done before, because we just don't do hapū reports, and so we kind of put our heads together and thought about it, and we thought, well, what we're going to get is a lot of reports on – and they're absolutely brilliant, and we're not complaining – you know, Crown acts and omissions, but we need to have something that really gets down to the nuts and bolts and can tell everybody, you know, the people's story, what really happened to us, how we're all been affected, because all our hapū, they've all been affected, and you've heard that. They've all been affected in different ways, and they've all been affected from the time they were stuck on those reservations.

And so we came up with the idea of case studies, just to get a slice and an overview of a point in time, and of course, I think – because I don't – about three case studies – and as other members heard about it, a couple of the other hapū representatives approached me and said, "We want…", you know, "What about us? Why aren't we having a case study on us?", and so we increased it, and I had to work with Crown Forest Rental, so we started going outside the brief,

and included a couple more hapū into the case study, and then CFRT said, “We can’t go any more, you’re – you’re well past your brief”, you know, and it’s – it was getting too big. So we also recognised that we’re not going to – it was never intended to be exclusively in one area and doing it really intense, but to give an insight into what the people had really suffered. So we decided – we had to stop it there, but – and it’s not to say that it's a report that’s covered everything, absolutely not. And certainly, you know, there’s nothing to stop anyone picking up and adding and doing another report and extending in different areas. It just comes from another angle. And we wanted to give the people an avenue to have their voice and to have their say. The challenging part was they had to back it up with some kind of evidence as well.

MR SINCLAIR:

So –

ADRIANA EDWARDS:

But there was no intent to try and discredit anybody. It was just we wanted to give that picture.

MR SINCLAIR:

So in an inclusive model, you did try to include the – all the hapū and uri?

ADRIANA EDWARDS:

Well, we – we – we tried to do that by making sure we had key people from each hapū, you know, because Peter realised he still had to sort of try to give that big picture, and it was challenging, and you’re right, it was very challenging for him. It was actually quite difficult, because his partner was seriously ill towards the end of it, so it was very hard, yes. But we’re very pleased with the outcome, under the circumstances that we were in.

MR SINCLAIR:

Have you got any concluding remarks before I hand you over to the Tribunal?

ADRIANA EDWARDS:

The only thing I'm going to say is I – I can remember my dad said way back, he said – I said to him, "Why didn't you just put everybody in and put them all in equally?", and he said the people were not ready for that. They weren't ready. And he said, "It's too soon", and I – I couldn't see it then, but I can see that clearly now. It takes time to – to – to peel back the layers and actually identify where the issues come from, and – so he said it was too soon, but I think he'd agree with what we're doing now. I'm pretty sure of that. He'd be very pleased. And I remember sitting in a meeting and Uncle Ranginui, when he tried to then kick-start the claim off again, and I clearly heard him saying, you know, "Put them all in. They're better all in the pen than out." Not that it was – you know, I think it was, in a way, one of his worst nightmares, but he thought, "Put them in", and – but I looked at his face, and I could see that he realised, "What a heck of a job."

MR SINCLAIR:

Okay, thank you, Ms Edwards, for your evidence, and if you could stay as you are, and the Tribunal ask their questions.

JUDGE DOOGAN:

Might just take a microbreak, you've been going a little while.

HEARING ADJOURNS: 4.13 PM

HEARING RESUMES: 4.17 PM

JUDGE DOOGAN:

Kia ora koutou. We might make a start again in the final run. So, Mr Sinclair, the process you would like to final is we go through just to question each of the speakers as they finish?

MR SINCLAIR:

Yes, Sir, I think that's the best option.

QUESTIONS FROM CROWN COUNSEL – NIL

JUDGE DOOGAN:

All right. Just coming to the panel and going first to Dr Anderson.

(16:19) DR ROBYN ANDERSON TO ADRIANA EDWARDS:

Q. Tēnā koe, Ms Edwards. A historian's question. Can you tell us a bit more about Te Paku Eruera, like, was he missionary train – you know, did he go to school, or do you know much about his life as he was growing up?

A. My dad said that – he thought he was fortunate in that his father – I think his father worked at the Government. So, you know, he had a well-paid job, and he came down here from Auckland – Uncle Robert might have a different story, might be the best one, but this is what I recall and he – well, he fell in love with one of our kuia at Omarumutu, Merita, I think her name was. But he said that his father was European and well educated.

Q. Right.

A. And very politically astute and he taught Te Paku. So, he taught him everything and then, of course, he also learned everything steeped in his taha Māori from his mum. So, he said that he was very fluent in both Māori and European culture.

Q. Right.

A. And he knew how to walk astutely in both those worlds and that's what he said they brought him – they brought him up to do that, yes. You know, just looking at some of the things and some of the courts of things, he obviously devoted his life to what his parents had trained him for, and I think he must have been a good man because he was – he put his inheritance towards the survey costs and he worked towards – you know, he didn't have to do that, and he always worked towards arguing and debating for his people. So, that's what I –

Q. Okay, thank you.

A. He was quite fine looking too with –

Q. (inaudible 16:21:49) me, not.

A. And he was – yes, so – all those things probably didn't help him in other ways.

Q. All right, thanks. I'm just trying to build up a picture of him because he clearly was quite a pivotal figure back in the – you know, turns of the late

19th Century and maybe – did cause quite a bit of controversy at the time with some of his actions and you do see this in other iwi with a younger generation coming in with new ideas and new ways of dealing with things and as a historian you try to get some insight into the thinking behind it and yes, so thank you for that. The interviews with Peter McBurney, were the videoed?

A. I think he did. I am just trying to remember. He definitely recorded them.

Q. Yes.

A. Yes.

Q. Yes. It's not so much the want to see but that's something to be kept, also for you guys. So, that's interesting.

A. Yes.

Q. And I suppose you're talking about how you criticise the fact that the hapū were told we'll sort it out for yourselves, and how difficult that is. Do you see the Tribunal or the Tribunal processes having a role in that?

A. Yes, but I need to add, before that – there's a point I forgot to mention, that I do remember in the Treaty Settlement process, the Pre-Settlement Trust came around and they asked the hapū, and I was here at the meeting when it was held here. I am just trying to remember what the actual question was, from my memory it was, 'Do you want to be hapū of Whakatōhea?' Now, I am not sure whether that was because of the iwi position or whether that was 'Do you want to be hapū, Kuterere, you know, that was a bit unclear. And I think the problem was that it was still a Crown process because it was a Treaty Settlement process and they were under pressure, and they were under a timeframe and they had to get this ticked off and the people – well, I don't think anybody fully understood what that really meant, you know. Are you asking us, do we want to stand as a hapū at our right, or are you asking us, do we want to be a hapū of Whakatōhea and not a hapū to another iwi. That's unclear for me. So, I do see the Tribunal being helpful and that I see the Tribunal as an independent panel that, I think, you give a very fair analysis and critique of the information, and I know you can't make recommendations, but you can make findings. Because it is, I think it is a situation. You heard my cousin earlier and I think that a lot of us feel that way as we like

to see unity. What happened when the Treaty Settlement process started, so Dad lodged the Tribunal claim and then it was a year later or two – a couple of years later we started to get a couple of individual claims and that's where I really – and he said to me, that's when we really started to get the problems. I'm not saying that people shouldn't have individual claims, but he saw that, created a problem because the Crown only wanted to settle with one, you know, do one settlement. I think the underlying factor, at that time was individual settlements for individual claims. Yes, I don't know if that's still one of the underlying factors now, but I think the Tribunal is definitely a good forum and an impartial forum to identify and make findings.

Q. It may be how we write up the history is going to be very crucial, so that's a big challenge for us. Anyway, thank you very much for coming and talking to us again today, thank you.

(16:27) JUDGE DOOGAN TO ADRIANA EDWARDS:

Q. Kia ora anō. Just one pātai and it relates – I think you were here earlier on when Mr McBurney was giving evidence and I had asked him some questions about his project brief, and in his summary he talks about – he notes the fact that pakeke from Ngāti Rua and Ngāti Ira were not part of the interviews that he undertook and that was because the interviews were arranged by, I think, yourself as the project manager. So, I just wanted to invite you to comment on that approach and why was it the pakeke from Ngāti Rua and Ngāti Ira were not part of Mr McBurney's task or – are you able to speak to that?

A. Yes. What I did was – because I work with a small group, you know, the small group that I work with and some of the leadership and I just – the ones that I knew in the hapū spoke to the various ones and said, "Look, who do you think will be good to interview?" So, I just put it out to a wider group, and they said, you know, let us have a discussion and a think about this and we will come back to you with who we think will be good to give an interview. So, I largely left it out to them and at that point – I think one of the underlying problems was that the groups were quite polarised then and Ngāti Ira just really wanted to do its own thing. (inaudible 16:29:22)

didn't want to talk to us, you know, (inaudible 16:29:27) none of those groups at that point in time wanted to communicate or work with us, but other were happy, more than happy and willing to work. So, we just said, look, anybody who wants to come and be interviewed and to give their, you know, to give their view, we were more than willing to include them. There was certainly no desire or no attempt to block people out, at all, but to be honest, the others just didn't want to work.

Q. So, it's fair to say that it just reflects the dynamics between those particular hapū or groups at that time, it's just something we are aware of over the trajectory of the inquiry we've been charged with, so thank you.

A. I think it's shifting a little bit, but some might (inaudible 16:30:32) but you know, we just have to keep trying to move forward and try to be inclusive.

Q. All right, thank you. It's possible Dr Phillipson may have pātai, we're just not sure at this point but thank you very much for your evidence.

JUDGE DOOGAN:

All right, Mr Sinclair.

MR SINCLAIR:

Thank you Sir. If we could have a short microbreak while the witnesses here change over and prepare ourselves, Sir, a couple of minutes.

JUDGE DOOGAN:

All right.

HEARING ADJOURNS: 4.31 PM

HEARING RESUMES: 4.32 PM

MR SINCLAIR CALLS

(16:33) KEITA HUDSON: (#E023)

Q. Ms Hudson, can you please give your full name to the Tribunal?

A. Kate, Keita Hudson.

Q. Now, you provided evidence to the Ngāti Muriwai Authority oral history report authored by Mr Peter McBurney.

A. Yes.

Q. Is that correct? And extracts from those interviews are included in #A033(a) document. Now, you would give an undertaking that that's true and correct to the best of your belief?

A. I do.

Q. Thank you. Now, I take you to your brief of evidence, and can you please introduce yourself, please?

A. Tēnā koe, e te Kaiwhakawā. Ki a koutou hoki, Te Rōpū Whakamana i te Tiriti o Waitangi, kia ora koutou me wā koutou ki mua – muri i a koutou. Ki te Karauna, kanohi i te Karauna, tēnā rā koutou. Ngā rōia, tēnā rā koutou. Te hau kāinga, nau mai, haere mai, whakarongo, titiro. Kia ora rā. **Thank you, your Honour. Greetings also to the members of the Waitangi Tribunal; greetings. And also your friends at the back of – to the Crown representatives, greetings. To the lawyers, greetings. To the locals, welcome. Listen and watch. Thank you.**

Ko Hiwarau, ko Tirotirowhitu me Pukenui-o-raho ngā maunga. **Hiwarau, Tirotirowhitu, Pukenui-o-raho are my mountains.**

Ko Ōhiwa, Tairongo Moana, Te Kākaho me Waiotahe ngā awa. **Ōhiwa, Tairongo Moana, Te Kākaho and Waiotahe are my rivers.**

Ko Roimata, ko Kutarere me Maromahue ngā marae. **Roimata, Kutarere and Maromahue are my marae.**

Ko Te Ao Marama te whare, ko Tamaterangi me Te Poho o Kahungunu ngā whare tupuna. **Te Ao Marama is the house. Tamaterangi and Te Poho o Kahungunu…**

Ko Te Umutao Noa a Tairongo, ko Ani-i-waho me Pouwharekura ngā wharekai. **Te Umutao Noa a Tairongo, Ani-i-waho and Pouwharekura are the dining halls.**

Ōtūrereao, Mataatua me ngā Tākitimu ngā waka. **Ōtūrereao, Mataatua and Tākitimu are my waka.**

E whai ake nei ko tōku kāwai rangatira i te taha o tōku māmā ki te Ūpokorehe tūturu. He hapū tēnei nō Te Whakatōhea. **The following are**

my chiefly descent lines on my mother's side, from true Ūpokorehe. This is a hapū of Te Whakatōhea.

I tīmata mai te ingoa nei, i a Te – a Te Ūpokorehe, i te reherehetanga o te upoko o te tipuna, a Taikurere. **This name commenced from Te Ūpokorehe, from the head…**

Taikurere, ka puta ki waho ko Kura. **Taikurere had Kura.**

Mai i Kura ka puta ki waho ko Kohuki. **Kura had Kohuki.**

Mai i Kohuki ka puta mai ko Ake. Ko Wī Akeake, ko ia tētahi o ngā rangatira o Ōpōtiki i waitohutia Te Tiriti o Waitangi. **Kohuki had Ake. Wī Akeake was one of the chiefs of Ōpōtiki who signed Te Tiriti o Waitangi.**

Ka moe a Wī Akeake i a Paroha Tomeha Toheriri, ka puta ki waho ko Erana. Ko ia te mātāmua o wā rātou tamariki. **Wi Akeake married Parohe Toheriri, and they had Erana, who was the eldest of their children.**

Ko moe a Erana i a Hapeta Toi Kotu, ka puta ki waho ko Te Taheke Te Ani Kotu. **Erana married Hapeta Toi Kotu, and they had Te Taheke Te Ani Kotu.**

Ka moe a Te Taheke Te Ani Kotu i a Pakawe Titia, ka puta ki waho ko Wi Takamua Te Ani. **Te Taheke Te Ani Kotu married Pakawe Titia, and they had Wi Takamua Te Ani.**

Ka moe a Wi Takamua Te Ani i a Keita Koria, ka puta ki waho ko Moke Te Urupiua Te Ani. **Wi Takamua Te Ani married Keita Koria, and they had Moke Te Urupiua Te Ani.**

Ka moe a Moke i a Wiremu Tipi McCormack, ka puta ki waho ko au, ko Kate, ko Keita Hudson. **Moke married Wiremu Tipi McCormack, and they had myself, Keita Hudson.**

Q. Kia ora mai. **Thank you.** As you move on to your evidence brief at paragraph 17, would you like to inform the Tribunal, firstly, have you held any representative positions in Whakatōhea?

A. Excuse me, sorry. Well, because I've been here for – it says 71, but I'm actually 74 years now, so – so it was a little while ago since this was taken – and I'd just like to say that as far as I can think back, I was part of the Whakatōhea Māori Trust Board, a member of the Trust Board; also was

part of the – the research for the Wai 87. I was also – wore many hats for our hapū and my whānau, and when I say "hapū", I'm talking about Maromahue, Kutarere and Roimata. So those are the three maraes that I actually do quite a bit of work for, and one of the positions was on Te Ūpokorehe Ahikāroa Trust. Just like Adriana said, it was set up to help our people, putting ourselves in a position of readiness for the settlement, and you know, I suppose it was that (inaudible 16:38:23) that sort of caused a little bit of friction, and – but hey. The fact of the matter is we were getting ready to move forward with the settlement. But of course, we know that didn't happen at that time, so…

We like to think that – well, I like to think that what I have done all the time for my people has been to make sure they don't miss out on the opportunities to improve and develop, and that's always been my goal since coming back in 1984 to Ōpōtiki after being away for 20 years. I had the opportunity to be going away to Australia to live and work, but I chose to come home and be at the marae. My husband thought I was crazy. But yes, I still say it was the best decision I made.

Yes, so today, you know, I'd just like to give you a bit of an overview of those extracts in the Paul McBurney report, my ones. My – my kōrero highlights the absolute breakdown of our whānau, hapū and iwi by the Crown's structure, the Trust Board Act, decisions and legislations.

The whānau – the Whakatōhea Māori Trust Board Act, the recognition, as everybody has always – have already commented on and – that there were only six hapū that were recognised by this Act, even though they were – they – even though we were a functioning marae, we were sort of not recognised for that, and I suppose the iwi here had reason for Maromahue, because of the totally different history that comes with that – that area, but the fact of the matter is the – if it was looked into it a bit closer, the whakapapa, we whakapapa to Tūtāmure. And that's the Kahungunu whakapapa on that side.

Over this side, we have over here, Hauraro from – what was that place over there? I can't think of it – Hauraro, from over in Kahungunu, and that's where my Te Ani side comes from, that side. And – and you heard

my whakapapa to Te Ūpokorehe. Tūturu ana taku whakapapa ki reira. **True, genuine whakapapa.**

Q. Just on that whakapapa –

A. Yes.

Q. – you heard whakapapa being mentioned earlier today. You were here at the hearing?

A. Yes.

Q. Could you give the Tribunal a little bit of clarification regarding your whakapapa and the whakapapa you heard earlier?

A. You're talking about the Whakatōhea whakapapa?

Q. Āe.

A. Whakatōhea whakapapa? The whakapapa that (inaudible 16:41:43) just put up on the screen when he was speaking, it was part of the research that I'd done for the Whakatōhea Māori Trust Board, the Wai – the Wai 87 research, and I'd pulled that together with the help of my colleagues, Tracy Hillier, Karina Biddle, Julie – Julie – not Julie Hudson – Julie Williams, Julie Williams, and a couple of other ones, yes. Yes. And Mana. Yes. So we pulled that whakapapa together. And me koe hoki, nē? Koe hoki, yes. **And you, too.**

So what I am saying here is, that whakapapa was – like, I actually put the whakapapa together, and it sat like that because things went a bit – little bit haywire with everything, so it just sat there. On – on my notes, I have to be validated by the kaumātua **elders** . Still to be validated. But I'm happy to say that although it didn't go the way I thought it was going, at least Ranginui and Te Riaki validated that.

Q. Could you just explain, how was it that you came to be coordinating or organising that whakapapa?

A. Well, in – for me in my interest in whakapapa is because – because I'm nosey. I'm just like, sort of like, you know, what – who's who in the zoo, kind of thing. And no, I do – I do enjoy looking at whakapapa and connecting the people, connecting everybody up and seeing why – "How come you're my cousin?", "How come you're this and that?" Now – and being here in the rohe, this rohe here with these three maraes, plus Rongopopoia and Turangapikitoi, they're all my whānau. They're all my

whānau. And so it was very important for me to know when I came back from Rotorua, I came back and I found out I didn't know anything, so it was important for me to understand and know who everybody was, and "Why were you my aunty?", and "Why are you my uncle?", or whatever. So anyway, that's the interest I had in connecting everybody together. And so doing the mahi in the Trust Board, that was – for me, that was the most important thing to do, was to see who Whakatōhea were, because at that time, you know, maybe different little bits of information anywhere – we didn't have anything such as that whakapapa to actually say, "Hey, this is you. This is you."

But when I think about it, you know, each hapū, they – they knew who they were, so it was just a matter of coordinating and interviewing whānau from all of the hapū to – you know, to explain their understanding of their whakapapa, and finding out who brought records in, because, you know, there's lots of whakapapa in our court minutes and things like that that would actually give you a clue as to, yes, how – how things fit.

Q. Can I pause you there for a moment? Were you authorised by any group of kaumātua to do that undertaking?

A. Well, I think – yes. Yes, I was. Claude, at the time, was at the – it was a MACCESS program that was running, that – Claude actually utilised that program to get Whakatōhea's raupatu research on the way, and so a few of us who, you know, didn't mind doing things for nothing decided, "Yes, well, we'll come and help out", and yes, no, it was good. And it was really good fun.

But he – he – what he also did, he also said to us, you know, he used to say, you know, "Somebody doesn't want me to do it", whatever, whatever, and then he would say, "Somebody's got to do it", and – and what he said was the people, the old people that were there then said, "You know what you're getting into, don't you? You could get hurt." That was the kōrero. And he – he talked to – well, I heard him. I was talking with him. And he did say that, "I do understand, but it has to be done." Yes. He understood. And he covered himself wherever he went.

Q. And so can you pause there a moment? Is that the whakapapa that hangs in the previous –

A. In the Trust Board, yes.

Q. Yes, correct.

A. That's the one that hangs in the Trust Board today.

Q. Can I take you to paragraph 20 of your evidence brief?

A. Pardon?

Q. Can I take you to paragraph 20 of your evidence brief? And if you'd like to just carry on and talk to those paragraphs rather than read them verbatim, if you'd like to.

A. Okay. So – yes, okay. So we have a – we sort of had a bit of a situation, Whakatōhea Māori Trust Board, with one of our whānau, hapū, and they were – they're in a position of actually pulling out and being their own iwi, but they also still remained in the Trust Board. So, you know, there was some really quite huge conflicts in that for me. That's what it – it was a huge conflict. It came – became very confusing, and one point you – they'd be saying they're an iwi and working as an iwi, then they're saying, "But we're a hapū of Ūpokorehe" – sorry, "a hapū of Whakatōhea", and so that became very difficult, and I recall, in a – I recall saying in one of our meetings that – "Why are we even entertaining this, when they are saying they are a iwi?" So I don't know, it just – left like that.

Q. And if you could carry on to paragraph 21 and – in your own words.

A. Yes, okay. Yes. So one of the – one of the members of the – the whānau that I'm talking about, I actually asked her, "Why are you still in the Trust Board when you want to do what you want to do?", and she says, "Well, we've got to protect our assets." So I guess that is that, as well.

Q. Carry on as you wish.

A. Okay. So if I – if I look at – and number 19, if I'm just looking at number 19 here, I'm speaking of – of Maromahue and Kutarere. We – Adriana sort of touched on it in regards to, "Are we a hapū or a marae of Whakatōhea?" But we do have a bit of a – I don't know if it's something that can be resolved. The fact of the matter is we do have our own history – we have our own history. It's more so – us – well, actually, yes, too, this is a Tūhoe – a mixed – a mixed whakapapa here, as well as in Maromahue, where it's a Ngāti Kahungunu – yes, whakapapa. So for – to just say, "Do you want to be a hapū of Whakatōhea?", it's something

that our hapū would have to discuss, although if you – I can speak for Maromahue – at this stage, is that we understand we can whakapapa to Whakatōhea, but just how do we want to be known in Whakatōhea? Because we don't want to lose our identity, as well. We want to maintain our identity, but we also know we will always be here. We will never leave this place. We can't leave it, because of our history.

So those are things that we need to talk about, but they need to be sorted so that we are recognised, and that's the same for Kutarere. It's very much the same, so just to say that, yes, we – we will be part of Whakatōhea, there needs to be some sort of memorandum of understanding of how that's going to work, how that should work, so that we don't lose our tino rangatiratanga over anything, about anything.

But in saying that, today, we're all Whakatōhea. Our tamariki, our mokopuna are Whakatōhea. That happens over time. Yes. But the history remains the same.

Q. Kua mutu? **Finished?**

A. Kua mutu tēnā. **That's all.**

Q. You got any concluding remarks?

A. Well, I suppose for me, it's like for the – the rest of the panel that's been up so far, is the reconciliation and looking to the future, looking to the future and acknowledging what we've been through. We've learned from it. Well, hopefully we've learned from it. We've learned our lessons, and it's made us stronger. It's made us more resilient. So for me it's – we just need to find those solutions to move us that way, move us to the future.

A. Thank you, Ms Hudson. Sir.

QUESTIONS FROM CROWN COUNSEL – NIL

(16:52) PRUE KAPUA TO KEITA HUDSON:

Q. Kia ora, Ms Hudson. I just wanted to clarify the whakapapa chart that you referred to. Is that the same one that Professor Kahautu showed on the board?

A. Yes.

Q. Ka pai. Thank you.

A. I think it's exactly the same, I think? It's from the Trust Board?

Q. Yes, it's the one from the Trust Board. Yes. Ka pai. Thank you.

JUDGE DOOGAN:

Kia ora, Ms Hudson. Thank you. I do not have any pātai at this point, but I just want to acknowledge some of your closing remarks in relation to Maromahue and the history there, and just so – I am sure you are aware – there are some ongoing issues that we need, as a Tribunal, to understand about the relationship in recent times in terms of the effect of the Kahungunu settlements and the Whakatōhea settlements, and we have been asking counsel for some more submissions on some of those issues, so yes, we have some further thinking to do, and we would value – well, we value what you have been able to tell us today, and I look forward to those matters going forward, depending on resolving some complicated questions about our jurisdiction, so I just want to flag that. But thank you very much for your evidence and for your previous evidence also. Tēnā koe.

HOUSEKEEPING – TIMEKEEPING (16:54:52)

KARAKIA WHAKAMUTUNGA

HEARING ADJOURNS: 4.57 PM

HEARING RESUMES ON WEDNESDAY 27 AUGUST 2025 AT 9.02 AM

KARAKIA TĪMATANGA

(09:04) JUDGE DOOGAN: (MIHI)

Tēnā koe e koro, nāu i tuku atu ngā whakamoemiti ki te orokohanga o ngā mea katoa, mai te rangi, ki te whenua, mai te whenua ki te moana, nō reira, tēnā koe. Ka mihi hoki ki a koutou te haukainga, ngā rōia, ngā kaikōrero, nau mai te wā tuatoru. **Thank you, elder, for giving thanks to the origin of all things, from the heavens to the earth, and from the earth to the sea, so thank you. I also want to acknowledge the local people, the lawyers, and the speakers, the witnesses, welcome to day three.**

HOUSEKEEPING – TIMETABLING (09:04:53)

MR TONY SINCLAIR CALLS

TUWHAKAIRIORA WILLIAMS (SWORN)

Q. Can you please state your name in full, Mr Williams?

A. Tuwhakairiora Williams.

Q. And you have provided evidence for the Ngāti Muriwai Authority Trust report?

A. Yes, I have.

Q. You have also provided a brief of evidence #E024, which you have in front of you.

A. Yes, I have.

Q. And to the best of your knowledge, they are a true and accurate account of your evidence?

A. Yes.

Q. I would like you to start your evidence please, as you have before you in summary, thank you.

A. Kia ora.

(09:08) TUWHAKAIRIORA WILLIAMS: (#E024, #A033)

I te tuatahi, ki a koe rā e te rangatira, nāu ko koe rā hei arahi nei i a tātou kua whakarauika mai i raro i te taumarumaru o tēnei o tātou tipuna whare. Te tuku whakamoemiti, whakawhetai ki tō tātou matua nui i te rangi i runga i ngā kōrero a kui mā, a koro mā, ki a kore e wareware te whakaaro tuatahi, ki te atua. Nānā i uhia mai te korowai o te aroha, me te korowai o te manaaki ki runga ki a mātou e piri tahi nei i tēnei rā. Nō reira, ka nui te mihi atu nei ki a koe. **Firstly, to you, the chief who is guiding all of us who have gathered under the shelter of this ancestral house of ours, to give thanks and to praise our lord in the heaven. In line with the stories of the elders, firstly, we must respect to God who cloaked us with our blessings on us as we are gathered here on this day. So, I want to thank you very much.**

Kia koe rā, e te Kaiwhakawā, me tō rōpū, Te Rōpū Whakamana i te Tiriti o Waitangi, ka nui te mihi atu nei ki a koutou kua tae mai nei i roto ki tēnei o tātou whare. I raro i te taumarumaru o tō tātou tipuna whare, he manaaki nei i a tātou. Me ngā pou, ngā heke e whakaatu mai i ngā whakapapa o tātou i whakarauika mai i tēnei rā. Nō reira, ka nui te mihi atu nei ki tō tātou tipuna whare, hei whakamahana i a tātou i tēnei wā. **To you, your Honour, and your panel of the Waitangi Tribunal, I want to thank you very much for coming here within our house. Under the shelter of our ancestral house that is taking care of us, and all the posts that demonstrate the whakapapa as we are gathered here today. So, I want to thank you, and I want to acknowledge our ancestral house, which has provided us with warmth at this time.**

Nō reira, i runga i tērā kōrero, ka nui te mihi atu nei ki a tātou katoa, huri noa, tēnā koutou, tēnā koutou, kati, tēnā tātou katoa. **With that in mind, I want to greet everyone throughout, thank you all.**

Ko Makeo te maunga. **Makeo is the mountain.**
Ko Waiaua te awa. **Waiaua is the river.**
Ko Upokohapa te haki. **Upokohapa is the flag.**
Ko Ōmarumutu te marae. **Ōmarumutu is the marae.**

Ko Tutamure te whare tipuna. **Tutamure is the ancestral house.**
Ko Hine-i-Kauia te wharekai. **Hine-i-Kauia is the dining hall.**
Ko Ngāti Ruatākenga te hapū. **Ngāti Ruatākenga is the hapū.**
Ko Te Whakatōhea te iwi. **Te Whakatōhea is the iwi.**
Ko Tutamure te tangata. **Tutamure is the ancestor.**

Ko Tarakeha te maunga. **Tarakeha is the mountain.**
Ko Opepe te awa. **Opepe is the river.**
Ko Ōpape te marae. **Ōpape is the marae.**
Ko Muriwai te whare tipuna. **Muriwai is the ancestral house.**
Ko Tapairu te wharekai. **Tapairu is the dining hall.**
Ko Ngāi Tamahaua te hapū. **Ngāi Tamahaua is the hapū.**
Ko Whakatōhea te iwi. **Whakatōhea is the iwi.**

Ko Pukenui-o-raho te maunga. **Pukenui-o-raho is the mountain.**
Ko Waiotahe te awa. **Waiotahe is the river.**
Ko Rongopopoia te whare. **Rongopopoia is the house.**
Ko Te Ūpokorehe te hapū. **Te Ūpokorehe is the hapū.**
Ko Te Whakatōhea te iwi. **Whakatōhea is the iwi.**

Koinā tāku tātai whakapapa i te Whakatōhea. **Those are my lines of lineage to Whakatōhea.** I thought it was appropriate to recite my pepeha so that it's on record. My hapū affiliations to Whakatōhea.

The brief you have in front of you are exerts from the oral evidence that I gave to Mr McBurney during the compilation of the Ngāti Muriwai Authority Trust oral and traditional historical report. I want to acknowledge Mr McBurney for the sterling work that he did in compiling that report and I note, your Honour, that you said to him yesterday, it was not an easy report to compile. I'm pleased that you acknowledged that because a number of us spent the last three years working with Mr McBurney to put this report together.

My brief of evidence has exerts from the oral interview that Mr McBurney conducted with me. I don’t want to kind of, talk the brief, verbatim, except to

say that the brief of evidence really is my lived experience of being Whakatōhea. It was that, that I shared with Mr McBurney, and which, he has recorded in the documentation.

So, that lived experience really begins in the 1950s, and I grew up at Whangaparāoa, Cape Runaway, further down the coast on my Te Whānau-a-Apanui side. Then that, growing up, my family spent many, many holidays and family occasions here, in Ōpōtiki, with my grandparents. My nanny Hema, who I refer to in my brief of evidence, and my grandfather, Tangatakino Williams.

My early childhood recollections are of that, growing up, and that lived experience, very much was spent on Ōpape marae and Ōmarumutu marae. In those days, our community was very active, and I recall that our marae had tennis courts. You know, tennis was a big sporting activity here in Whakatōhea, and my dad was very good tennis player, so he often represented Ōpape in the inter marae tennis competitions.

My older brother, the father of your judicial colleague, Te Kani Williams, was also an excellent tennis player and he competed as well, in those same tournaments as a young teenager.

So, those are the very early recollections that I have of the you know, Te Whakatōhea, Ōpape, Ōmarumutu and in those days, there were very big families. I come from a family of 11 children and in our community, we were one of the smaller families. That does not seem to be the pattern these days. E rua ngā tamariki, ka mutu. **They only have two children.**

So, other really vivid memories I have, coming up from the coast, from Whangaparāoa in the service car, and in those days, it was you know, a metal road. By the time we got to the Aherema turn off, which is where our family estate is, we were white with dust. My grandparents used to come and collect us from down the bottom, by the base farm, because that's where the service car used to stop.

So, those childhood memories are very vivid. My grandparents were fluent speakers of the reo, they were native speakers, and they spoke the mita o **dialect of** Te Whakatōhea. We don't hear te mita **dialect of** Te Whakatōhea that much these days, and it's one of those things that consider to be a really important part of restoration and reclamation, post settlement.

I'm going to talk a little bit about that, your Honour, and I do take note of your direction earlier, around, you know, the remit of this hearing in the Tribunal. But I will contextualise what I have to say post settlement wise, you know, in the history of Te Whakatōhea.

Talking about vivid memories, I remember back then, I must have been about nine or ten years of age, thereabouts, in the 1950s. Coming into town with my grandparents once a month, and I think it was a Thursday. They used to all gather on that day to do their business in the town. Go to the post office, go to the bank, and also to stock up for a whole month, because they only came into town once a month.

But I remember being dressed in my Sunday best and that my grandfather was dressed in a three piece suit with a beautiful fob watch that had pounamu on it and a felt hat. My grandmother was beautifully attired, hat, gloves, seamed stockings, straight as a dye. That was the way they all dressed in those days, when they came into town.

They gathered on one side of the street, outside where the public toilets were back then, and I think they are still there these days. They would gather there after they had done their business and it would be their opportunity to talk to one another, and te reo Māori was the only language that you heard up that street. The other residents of Ōpōtiki always walked on the other side of the street. Yes, so as I said, I remember that vividly. Back then, the community was still made up of those rangatira, kuia and koroua of Whakatōhea and they were still a very strong community at that time.

As in, growing up, I was then sent away to boarding school in Auckland and those of us who were catholic, we went to St Peters Māori College, it was called in those days, but it's now called Hato Petera. That was my first recollection of the late Claude Edwards and not knowing back then, I was going to, in the future, have a very close relationship with one of Whakatōhea's most aspiration and inspirational leaders.

During the harvest season, a truck would arrive from Ōpōtiki with watermelon, kumara, potato, cabbage, and it was Claude. He had four sons at Hato Petera at that time, Joe, the twins and Boss. So, I think as it was typical, you know, of that generation, he sent kai to us at the boarding school in Auckland. This big truck used to arrive with all this kai on it, and what that represented, like, it was, again, the kind of community that Whakatōhea was back then. Guardians of our whenua, what we had left was awash with gardens, and our old people were superb gardeners, and it was gardened by Matariki, the māramataka.

So, my life as I recall, with my grandparents, my aunts and uncles, growing up along the coast here was hugely profound and had a major influence on my growing up and how I chartered my course throughout my life.

In my evidence, I talk about friction, and we had friction at Ōpape marae, I won't go into the reasons why that friction existed, but it was definitely palpable, as I recall. In my brief of evidence, I've given a little bit of an explanation as to why. Why I have made reference to that is that, that friction is friction that characterises, in my view, the relationships within Whakatōhea, you know, and that kind of tension continues and prevails today.

We have it, as we have sat here in this Tribunal talking about Ngāti Muriwai, is it a legitimate hapū of Te Whakatōhea. I strongly believe it is and is it not. We have talked about our other hapū, Te Ūpokorehe and whether we are anywhere, or whether we are not. I was sharing with lead counsel the other day, the Crown has asked me to provide an expression of interest for a particular role that they want me to undertake.

So, I was filling that EOI out on the computer, online, and in that expression of interest they asked for your tribal affiliations, there were about 70 off tribes identified in this document. When I went to Whakatōhea, to tick that box, I noticed underneath it was Te Ūpokorehe iwi. I was surprised, to say the least, because I can't recall, at any stage, where that status, as a status that was commonly held, in the first instance, by Ūpokorehe and then by the tribe.

I say that because, it's part of our history, recent history, we invested considerable resources, time, and effort, and energy, into addressing that issue. Which resulted, in the end, in a vote, by the whole iwi and the iwi supported the proposition that Ūpokorehe is a hapū of Whakatōhea. So, for me, ana, ko te mana, te tino rangatiratanga i whakaatu mai a Te Whakatōhea. **The mana and the right to exercise absolute authority was demonstrated by Te Whakatōhea.**

That decision, in my view is a decision that stands, and I cite that because it does go over to our history, when you look at our history, and I wish to acknowledge, not only Mr McBurney's report. But the huge amount of research work that has been commissioned by the Tribunal and you know, all of that evidence identifies the tension between L-A-W and L-O-R-E. This is one of the really important issues that we have now, we have had in the past, and we continue to have now, of that tension between L-A-W and L-O-R-E.

We said in our MACA case, in our High Court case, MACA, and in reading, I know your Honour, you directed with regard to the MACA. But nevertheless, I just want to say that having read the Supreme Court's judgment and decision on the Whakatōhea MACA claim. That the bottom line is, they have said, here is what we think, Whakatōhea, in accordance with the law, now you go away and sort it out. So, in other words, they have returned that responsibility and that task to us as Whakatōhea to get the issue resolved, because the resolution of that issue does not sit with the judicial system.

So, I think those are some of the issues that are historical, that we in the post settlement era of Whakatōhea are going to have to address as we look to where

we are going in the future. So, I would just like to put on record in this hearing, that that destiny and that future is about reconciliation, now, reconciliation, internally. Because one of the things that is profoundly and significantly obvious, is that the raupatu and the egregious actions of the Crown in the past have made a significant contribution to us as an iwi turning in on ourselves in order to survive.

So, we have some things that have happened in the past that we have to reconcile as an iwi. No one is going to be able to do that, except ourselves. That destiny also means we have to (inaudible 09:29:19), in order to do that, there are things we have to reclaim, there are things that we have to restore. There are things that require us to reset, and there are things that are required in order for us to heal.

I believe an important part of that process is going to be atonement for what has happened in the past, and that's atonement, internally, and atonement, externally, and our relationships, Whakatōhea, with the Crown, going forward into the future. That that relationship has been traumatic for us as Whakatōhea. That relationship has been abusive, and in some ways, many of us argue that that continues, even today. So, that whole reconciliation process and reset, restoration, and reparation is the journey that Whakatōhea has ahead of itself.

I'd just like to share what I consider to be some really important historical indicators and events in our history, that give us the capacity and capability to do all of those things. And it's important that we reach back into the past as our people said, ki a titiro whakamuri, ki a haere whakamua **to look back to go forward**. To understand where you are going in the future, you need to look at the past, and I'd like to just share that as part of my evidence this morning.

The first is, mai i ngā kuri a Whārei ki Tihirau, I was at a function recently at Te Papa and I was on the paepae, and the Taranaki people were on the paepae that day. They saw me there and the first thing they said in their whai kōrero: "Nau mai haere mai, mai ngā kuri a Whārei ki Tihirau." **"Welcome, from ngā kuri a Whārei ki Tihirau, come."** The acknowledgement of that really

important historical event of our tipuna, Muriwai, when her sons Tāne Whirinaki and Kōau were drowned in a fishing expedition and a rāhui was placed from Waihi in the west, to Cape Runaway, Whangaparāoa in the east. Mai i ngā kuri a Whārei ki Tihirau, te rohe rāhui o te waka Mātaatua. **From ngā kuri a Whārei to Tihirau, that is the territory at Mātaatua.**

So, that was acknowledgement by the rangatira of the hapū along that whole coastline, of the mana and status of our eponymous ancestor, Muriwai. That they placed successively, a rāhui in their respective rohe, all the way down to Cape Runaway. That, mai ngā kuri a Whārei ki Tihirau event, to me, represents the mana motuhake and the exercise of rangatiatanga.

The next even that I think is profound for us in Whakatōhea, is kia whakatāne au i ahau **to conduct myself like a man**. That was Muriwai, all the men had gone in land to scout for land, and the women and children were left on the waka. The tide came in and there was a real risk of the canoe being washed out to sea. So, she said: "Kia whakatāne au i ahau." Transform me. So, we have that in our history, transformation and transition, and that's really, an important part of the journey of reconciliation that Whakatōhea has to take.

The next event was the death of Mokomoko by hanging. Before he was hung, he said to the jailers: "Tangohia te taura i tāku kaki ki a waiata au i tāku waiata." **"Remove the noose from my neck so I can sing my song."** Take from my throat, that rope so I can sing my song. For me, that legacy of that tipuna was about us lifting the shackles of colonisation so that we can reconcile, that we can reclaim, that we can restore, and we can reset and heal.

The last event is the 27th and 28th of May 1840. When our tīpuna of Whakatōhea mandated Te Tiriti o Waitangi, the te reo Māori version of The Treaty of Waitangi. It was wonderful, the other day, the first day of the hearing, two great, great, great, great granddaughters of Rangihaerepō presenting to the Tribunal. Rangihaerepō was one of those tipuna who signed that Treaty. It was wonderful also, because I said to Rachel and Tania, I said: "You know, Rangihaerepō has a high profile in this tribe." But I said, "not much

is being said or written about them." So, their research is a really important contribution to filling that gap.

So, mandating The Treaty of Waitangi is a legacy that our tīpuna have left us, clear that the promises and guarantees that were made, would be delivered of. That's the reconciliation that is required in terms of our relationship, post settlement with the Crown. We can no longer abide the kind of behaviour that has characterised the Crown's behaviour towards us in the past.

HOUSEKEEPING – TIMING (09:37:37)

HEARING ADJOURNS: 9.38 AM

HEARING RESUMES: 9.44 AM

TUWHAKAIRIORA WILLIAMS: (CONTINUES)

WITNESS REFERS TO REPORT #A033, PAGE 119

I want to reference this evidence that I gave to the McBurney report because it's the basis on which I want to speak to matters that have had profound effect and contributed significantly to the momentous struggles. And the friction and division that caused right back when our lands were lost through raupatu and the Native Land Court as well.

So, on that page, I talk about Whakatōhea's history being awash with the social, cultural, economic, and environmental deprivation that occurred post the raupatu **confiscations**. Particularly, post the 1860s when the Māori Land Court, there was very little land left after the raupatu. The system was breaking the land up into these allotments and the Native Land Court played the role of the judge and jury.

As we know now, some of the rulings completely excluded members of the tribe and included a small handful of people who had the wear with all to take advantage of the situation at the time. It was a time of transition and a time of

survival of the most dire circumstances. Yesterday, in Mr McBurney's report, he referred to one of the chiefs of Ngāi Tamahaua and Whakatōhea, Rewita Niwa.

Rewita Niwa is my great, great grandfather, and he and my great, great, grandmother had nine children. I feel a real sense of proximity to the raupatu and the circumstances of the time because of my great, great grandfather. Because at that time, he was a parent with about four or five children of the nine children that they had. So, the raupatu occurred during his time, and my great grandmother, his daughter, Taku Rewita was the second of his children.

She, and my great grandfather, Tauha Nikora from Ōmarumutu were teenagers at the time of the raupatu. So, they would have been about 15 or 16 at that time, so they actually experienced the impact of the raupatu on Whakatōhea. Going from a tribe that was economically vibrant, to overnight, being a tribe that had been plunged into dire economic circumstance.

That leads me, fast forward to my adult involvement in Whakatōhea. I was overseas for 10 years and came back in 1989 and I just completed a postgraduate in political science, the University of New South Wales. In all things, the cameral arrangement in Australia, both state and federal. I thought, when I came back, that my destiny was going to be in the mainstream political environment.

However, I came home, the elders had quite a different position and so, when I started coming home on a regular basis, I recall being at a hui at Waiaua. This must have been about, 1993, 94, somewhere, thereabouts, and I can't quite remember what the kaupapa was. But I think it had something to do with the raupatu and the settlement process.

I had stood to say something, this ihu hupe **young kid**, you know, come back home, bit of a whakaputa mōhio **know it all**. I had stood up to say something at the hui and after I had spoken, people said okay, let's go and have a cup of tea. The kuia of the time, aunty (inaudible 09:50:22), nanny (inaudible

09:50:24), aunty (inaudible 09:50:26), aunty (inaudible 09:50:28), aunty (inaudible 09:50:30). They were all sitting on the other side of the house from me, and as I got up to go to the kapu tī, they said: "Taihoa. E noho boy." **"Wait a minute. Sit down."** I thought, I'm going to get a major telling off, you know, for whatever it was that I had said.

But what they said to me was, well, aunty (inaudible 09:50:56), I remember her saying to me: "Tuwhakairiora, ko koe tētahi o ngā waha kōrero o Te Whakatōhea" **"Tuwhakairiora, you are one of the speakers for Te Whakatōhea."** I didn't really, at that time, really understand, you know, what it was that this elder was saying to me until much later in life, I understood the profoundness and the wisdom of this kuia.

I just want to recall, just after we had been given the deed of settlement of 1996 and there was huge tension, as cousin, Dr Maxwell outlined yesterday in his brief of evidence. So, at that time, I was the chief executive for the National Māori Congress, and the patrons of the congress were Te Arikinui Te Atairangikaahu, Sir Hepi Te Heuheu, and Te Reo Hura, who was the head of the Ratana church at that time. Sir Robert Mahuta rang me because, at that time, it was reasonably public that there was tension in Whakatōhea about the Crown's offer.

So, he rang and said look, tell Claude we want, you know, you to come to the Kīngitanga's commemorations, that year was 1994 – no, it was 1995, and they had just concluded their settlement. Anyway, a bus load of Whakatōhea and Whakatōhea elders came up and I met them at Tūrangawaewae. Something happened to their bus, so they were a bit late getting there and missed the big pohiri and we had to go on after that.

I'll always remember, there was a little bit of a thing around, well, who is going to do our karanga, and then they said, aunty (inaudible 09:53:24), ko koe. She said: "I never do the karanga." Anyway, she did the karanga that day and I remember it as being my first experience of a karanga and a tangiapakura of a kuia. When she opened her call, the paepae of Waikato-Tainui sat up because

they recognised and acknowledged that a kuia morehu **great dame**, tērā kuia o te ao tawhito **from the old times** was coming on to the marae. You saw that in their response. So, I just thought I would kind of share that because it was an important occasion, for me anyway, because of my relationship with aunty (inaudible 09:54:29).

So, it goes to the next thing I want to share, which is on page 143 of the report. Which really is a brief description really, of my experience, my lived experience of the leadership of Whakatōhea at that time. I became the hands and the feet, the goffer, go for this and go for that, of the late Claude Edwards and members of the Whakatōhea negotiating committee in 1994, five, eventually in 1996.

When I reflect on that lived experience, how privileged I was to be sitting around the table with people of that calibre, and back in 1999, I was sharing with counsel yesterday. That in this very house was the first hui that we had about foreshore and seabed, that was in 1999. Just after the claim had been lodged and the late Martin Dawson was commissioned by the leadership to be our legal counsel at that time.

So, my involvement in the tribe, you know, is very much characterised by those experiences that I had, during that period of time. Te Kaihautu talked about what happened with the first deed of settlement that Whakatōhea was offered by the Crown back in 1996. I recall that settlement, that offer by the Crown, vividly, because I was with Claude at the time that he met with Sir Graham, who was the Minister of Treaty settlements at that time. And concluded, really, the offer that had been made to Whakatōhea, and our job was to then bring it back to the tribe, for the tribe's ratification.

Having said that, that deed of settlement never got ratified by the tribe, and it is one of the things that we need to reconcile as part of our journey of reconciliation with the Crown, because a deal was done. And the Crown unilaterally withdrew the deal, the deed, on the basis, basically, that it was far too politically sensitive to continue with it. Because at that time, Tainui had just

settled, Whakatōhea were the next iwi that had received an offer from the Crown to settle our claim, and right in behind us was Ngāi Tahu.

So, at that time, the environment, it was like walking on egg shells. There was a huge public opposition to Treaty settlements and the Treaty settlement policy. There was also opposition, bar in large, from the mainstream media to Treaty settlements.

So, we were operating in that kind of environment, and I think the Crown found it, too much of a risk to continue with that offer, because they didn't want that offer to present a real risk to their Treaty settlement policy being scuffed. Notwithstanding that, it is a matter that Whakatōhea has to reconcile with the Crown, amongst a number of other things that will need to reconcile the Crown, going forward into the future.

Coming back to the hui that we had here in this house, the first hui on the foreshore and seabed. Again, you know, it was a huge privilege to be amongst the intelligentsia, if you like, of Whakatōhea, at that time. Just so much kōrero from these knowledgeable kuia and koroua **elders** was shared at that hui as they discussed what the steps were going to be with regard to the progress of that claim.

I have spoken about the settlement offer of 1996, and Professor Maxwell also referred to it yesterday, so I think that's about as much as I need to say on that matter. But if I can come back to L-A-W and L-O-R-E and the necessity for us to determine, if you like, or to set boundaries around L-A-W and L-O-R-E. So, what we have right now, post settlement is the establishment of Te Tawharau o Te Whakatōhea, a creature of statute, therefore, L-A-W.

I can't help but recall the third reading of that legislation, because again, it was a serious breach by the Crown. One hundred and fifty years later, when at the end, after all of the MPs who spoke in the house, that evening, Whakatōhea had the opportunity to conclude with a waiata and our leadership was on show. One hundred and fifty years later, and Professor Maxwell stood to lead us in

that waiata and led out with a tauparapara as the lead in to our waiata. The deputy speaker of the house told him to sit down because he did not have the permission of the house to speak.

It just, you know, goes to show the huge chasm, if you like, between cultural understandings of the L-A-W and the cultural basis of our tikanga as Whakatōhea. That remains a nawe for us in Whakatōhea and I'm just, you know, I'm just pleased that Te Kaihautu had the presence of mind to continue and not to whati his tauparapara. Nevertheless, we had to have that discussion, and we must have it, because it's a matter that requires a resolution and atonement for a serious breach of L-O-R-E by L-A-W.

Just coming to that, it's just one of the things that I'm signalling to the iwi, that we need to have clarity about going forward in this post settlement, is that we have Te Tawharau and its remit was to receive the settlement and to grow it. That's its purpose. Everything else is tribal business. Te Tawharau will grow our asset in order that we have some resources to support our aspirations.

I'll always remember the wise words of the late Claude Edwards and he said, we should never use the principle. We should work hard to grow the asset and live off that growth. So, we have some internal discussions, some internal matters that are serious, that we need to discuss, around boundaries. You know, Te Tawharau and its remit to grow our asset will give us, Te Whakatōhea, the opportunity to transition from being the price taker, to being the price maker.

Since I have been home this past month, helping to pull our evidence together. My young brother, as in, one of the managers of Te Pou Oranga o Te Whakatōhea, along with my nephew, in an operational management role. We have had a number of discussions where they have shared their frustrations that are a consequence of the governments current policies. Where they are required now, to do more for less.

So, that's what I mean about us moving from being the price taker, which is what we are. When we have government contracts to service our social and

health needs, moving, transitioning, as Muriwai said: "Ki a whakatāne au i ahau." Transform and transition to bring a price maker, and that's the role of Te Tawharau, L-A-W. To create that asset, or the growth of that asset that enables us to make that transition.

Coming back to tribal business, which is L-O-R-E. Well, me he kaupapa, he take nui tēnā. **It's a most important matter.** It's massive. But we have to start, and we have to start somewhere, and post settlement offers us the opportunity to do that. To be bold as leaders, here in this house, and leaders who are not here today. To provide the strong leadership that's required, in order for us to make that transition from being price taker, to being price maker.

Mai ngā kuri a Whārei ki Tihirau te mana motuhake me te tino rangatiratanga o Te Whakatōhea **from ngā kuri a Whārei to Tihirau, the distinct mana and the absolute authority of Te Whakatōhea** can be realised. Where the cry, the tangi of our tipuna, Mokomoko: "Ki a tangohia te taura i tāku kaki ki a waiata au i tāku waiata." **"To remove the noose from my neck so I can sing my song."** Can be fully realised. Those are the challenges that we have ahead of us, but I am absolutely confident that we have the leadership that will enable us to make that transition.

One of the matters that I think is really important, you know, that we face as an iwi and it has to do, you know, with our historical circumstances of the 1860s, through to the present time is displacement. Tania and Rachel Wolfgram, giving their evidence about Rangihaerepō on Monday, was a classic example of displacement and the effect, and the impact of displacement. That's huge for us as Whakatōhea.

At Ngāi Tamahaua, it's becoming increasingly obviously that we have that issue, just amongst our hapū there and I'd just like to say, from an example of a whānau that is in that situation. But that whānau represents, for me anyway, the aspirational aspects of our post settlement journey. There is a kuia at Ōpape, hanging in the house, had three husbands and she married a doctor

back in the 1860, 70s. She married a doctor, left home, never came back and had two husbands later.

But from that heke **line**, from the first husband descends the ex-reserve governor bank of – (inaudible 10:10:46) comes from that kuia. From the second husband descends the only Māori oncologist that we have at present, Dr George Laking. He's been in touch with me, who has sabbatical next year and wants to come back to Whakatōhea for that sabbatical. The third line from that kuia is a MA student of Professor Maxwell's, and he's completed that, ka pai tēnā, and he's about to embark next year, on his PhD. The topic that he's going to be looking at is the impact of displacement on Whakatōhea.

So, you know, that's the calibre of people that we have, you know, outside of just ourselves that are in this room. You know, and Tania and Rachel, are other examples, you know, of academics at Auckland University, who have been displaced, but are reaching out, you know, ki a hoki mai anō ki te wā kāinga **to return home**. I think we can identify a plethora of examples of people in our networks from Whakatōhea who are, you know, exhibit the consequences of displacement.

I have that in my own whānau because we have a charitable trust at Ngāi Tamahau, and for those people, young people to put their hand up to be members of that trust said to me: "Uncle, we feel a bit uncomfortable about doing this." And these are young people with superb track records in terms of their career. They are now in their mid-40s, and they are ready for this kind of leadership.

I said to them: "Why are you feeling like that?" They said: "Well, none of us have got our feet on the ground at home." I empathise with that, how they feel, because you know, that's an example of what's happened as a consequence of being displaced. I said to them: "No, you don't have to worry." I said: "Your contribution back to the hapū in this way will start your journey off, ki a hoki mai anō ki te kāinga **to return home again**." Ki te tauawhi, ki te hāpai i tō hapū,

me tō iwi a Te Whakatōhea. **To take care and support your hapū and your iwi of Te Whakatōhea.**

So, those are the things that we have to deliberate and consider as we transact the business, the tribal business that's going to be part of our reconciliation, reclamation, restoration, and reset.

I think I have got to the end of what it is that I wanted to share.

MR SINCALIR:

Do you have any concluding remarks, Mr Williams?

TUWHAKAIRIORA WILLIAMS: (CONTINUES)

Yes, I guess, the concluding remark for me is that, you know, I have gone down this direction, your Honour, because I have always considered the Tribunal, not only to be the house of complaints. But also, to be the house of truth and reconciliation, and that's the reason why I have taken this tact today.

I look, you know, at the 50 years of the history of the Tribunal and the huge impact that it has had on the changing landscape of Aotearoa, New Zealand and I just want to acknowledge the work of that Tribunal over that 50 year period. And as I look at the volumes of evidence, research based work that has been conducted in order to prepare us for this hearing. It's provided us with a bank of information and knowledge that would not have otherwise been available to us, that is about us and now, it is with us.

Just want to acknowledge the work that had gone into producing these reports that have been commissioned by the Waitangi Tribunal. Because I see those reports as being a really important basis upon which we, as an iwi, can reconcile, restore, reclaim, reset, and heal, very important.

So, koinā tāku kōrero whakamutunga, nō reira, he mihi kau atu ki a koutou o Te Rōpū Whakamana i te Tiriti o Waitangi. Kōrua o te Karauna, he Karauna kei waenganui i a tātou, me te hunga rōia kua haramai nei te whakarongo ki

ngā kōrero e whārikihia mātou o Te Whakatōhea. Āe, me tāku whanaunga o Te Whakatōhea kua whakarauika mai i raro i te taumarumaru o tēnei o tātou tipuna whare i runga i tēnei kaupapa o te rā nei. **Those are my concluding remarks. I want to thank the Waitangi Tribunal, and representatives of the Crown that are amongst us, and the lawyers who have come to hear the evidence that is being presented from us of, Te Whakatōhea. and my relatives of Whakatōhea that have gathered under the shelter of our ancestral house for today's matter.**

Kia ora tātou. **Thank you all.**

HOUSEKEEPING – TIMING (10:17:24)

HEARING ADJOURNS: 10.17 AM

HEARING RESUMES: 10.21 AM

MR CRAIG LINKHORN:

Tēnā koe, Mr Williams. Thank you very much for your cogent evidence this morning. I don't have questions as such, but I want to say, you are ahead of me in terms of understanding the Supreme Court's Whakatōhea judgment recently. So, I have to do some reading and catching up on that, but I took what you said about the identity issues being for the people to resolve. I also, was struck by your point about atonement being perhaps, marked across time and substantiated in that way by Act's, plural, not just one. Anyway, thank you very much for your evidence.

QUESTIONS FROM MR LINKHORN – NIL

(10:22) PROFESSOR TOM ROA TO TUWHAKAIRIORA WILLIAMS:

Q. Tēnā koe, Tu. Pai te kite anō i a koe, me te rongo i ō kupu. **Greetings, Tu. It's good to see you again, and to hear what you said.**

A. Tēnā koe. **Thank you.**

Q. Kei te nui te mihi. Ngā wheako, hei tauira pea mō aua tūāhuatanga e kōrero nei koe, te hohounga o te rongo, te whakatau i te wairua, ēnā tūāhua, kei te nui te mihi. **Thank you very much. The experiences, as an example perhaps, in terms of those aspects that you mentioned. The peace making and settling the spirits, all those sorts of things, I want to thank you very much.**

Just have a couple of little questions. The first one, in the settlement process, Waikato-Tainui was first, Whakatōhea was supposed to be second. Ngāi Tahu third and then there were all those other big iwi after that. How come Te Whakatōhea was second?

A. Couple of things, and I think it had to do with the fact that we were a compact iwi, and that the Crown, bar in large, accepted that you know, a serious injustice had been done to Whakatōhea. I do recall though, that at that time – sorry, the minister made overtures at that time and said look, you know, you don't need to go to the Waitangi Tribunal. You can come straight to us, and we can engage in direct negotiations. They said, because at the end of the day, you had a Waitangi Tribunal hearing, you know, you still have to come and sit around the table with us and settle.

So, at that time, we, Whakatōhea, we didn't have the resources to embark on a comprehensive Waitangi Tribunal hearing at that time. So, what the late Claude Edwards did say to the Crown was, well actually, we don't have any research evidence that would substantiate our claim. So, what the Crown did was, it commissioned Dr Bryan Gilling, at that time, to do that report back in 1994.

So, that report was the basis on which, we went into direct negotiations with the Crown, because also too, at that time, the claim was for raupatu and raupatu only. It wasn't until we were three quarters of the way through those negotiations. The Minister of Treaty settlements made contact with Claude and said you need to come to Wellington because there has been a serious change in policy, which the Cabinet have agreed to. So, the negotiators came down and the minister informed the negotiators at that time, that the change in policy was that the Crown wanted all of Whakatōhea's historical claims included in the raupatu.

I think they had learned a bit of a lesson from Tainui, where Tainui had left the awa outside of the 1995 settlement. I think by that time, the Crown had engage in those negotiations with Tainui and realised that it was going to be, yes, much wider implications as a consequence of that. So, really, that was the background to what happened. Then, of course, and you know, in all fairness, I mean, Professor Maxwell said yesterday that you know, none of our people were opposed to the claim. And they were opposed on the grounds that the mandate to settle was a mandate for raupatu only, not for the other historical claims that sat outside of that. So, again, you know, a Crown policy created huge tension of a profound kind in Whakatōhea.

Q. Just, I understand about opportunities lost, and my question to you is, what responsibility do you think the Crown should have for Te Whakatōhea not settling at that time?

A. Yes, I think I indicated that that was a matter that we needed to reconcile with the Crown. I'm certain we will revisit that and does that constitute a contemporary grievance that requires us to engage with the Waitangi Tribunal. We have yet to come to that determinations. But certainly, as one voice amongst many, that certainly would be my position. We need to lodge that as a contemporary claim, because it sits outside of that time period, I think it was 1992 or something, yes.

Q. Ka pai. Tērā, tērā. **That's that.**

A. Koinā. Tika tonu. **You're right.**

I just want to refer to your summary of evidence, which is on #E024 of the bundle, paragraph 16.

WITNESS REFERRED TO BRIEF OF EVIDENCE #E024

A. Paragraph 16?

Q. Paragraph 16. On paragraph 17: "Sometimes people say… it's because of the eponymous ancestor." It hits my head also, this toherāoa, toherāoa, that Professor Maxwell shared with us yesterday: "No, no, that's just that excuse [laughs]!"

A. Yes.

Q. "I said our eponymous ancestor had mana".

A. Yes.

Q. Can you expand on what you mean by that?

A. Yes well, you know, we have a kōrero within the tribe, you know, about our ancestor Muriwai, that she was a contentious person, she was very argumentative, and in that, it's where we get our name from, Whakatōhea. It's not the name of an ancestor or anything, it's the name of a characteristic of our eponymous ancestor. Whakatōhea Tohetohe we refer to ourselves and it characterises the ancestor that we descend from, Muriwai.

I say well, you know, she had mana, that was her mana, and it's one of the things about, you know, she was an ariki tapairu **high chieftainess, paramount**. That status of ariki tapairu has remained with her, it hasn't been passed on to the generations and I think that that, the fact that it has not is really, really important and profound for us in Whakatōhea. That there was nobody who could succeed her, and so, that title, ariki tapairu, remains with her mō ake tonu atu **forever**.

Q. Ka aroha.

A. Yes.

Q. So, in terms of inherited mana, it sounds to me as if, your grandparents, that generation, had mana. Where is that mana now?

A. Yes, in my view, you know, having 40 years of experience, you know, in tribal affairs with the best in our tribe. The mana of Whakatōhea is bested in our ancestor, ancestress, Muriwai, and she continues to be a living presence amongst us, and nothing can trump that. So, we, you know, as I said, you know, the Taranaki people saw me sitting on the paepae and they said, nau mai haramai, mai ngā kuri a Whārei ki Tihirau **welcome, from ngā kuri a Whārei to Tihirau**.

You know, hika, what mana can any of us claim when that's the way in which, you know, yes, that you get referred to. Wasn't me, as such, it's just me, and being a presence of that ariki tapairu **paramount chieftainess** generations later. I think, you know, she's renowned right throughout te ao Māori, for who, in which, she was and what she represented.

I'm given to understand, I mean, she was quite transcend, I understand. She visited lots of places and met with lots of people, and many of the

places that are named Muriwai throughout the country have been named after her because of when she went to visit in that area. So, that's the kind of mana that she represents, those names live on to that, as does the narrative.

Q. Thank you. What about tomorrow?

A. Sorry?

Q. Tomorrow.

A. Tomorrow?

Q. Succession planning –

A. Yes, I mean, and that's a really important part of our journey. You know, you have this book here today, the book is my whānau history, and we had a family reunion in December 2023 to 2024. It was my dad's siblings and the generation that's still left, so, like myself. So, we were all very close and knew one another, you know, intimately, and we were concerned that, you know, generations later that that was being hugely diluted. So, we decided that we would have a family reunion, and we had 460 direct descendants of Tangatakino Harry Williams and Hema Nikora who came to that reunion.

Talking about displacement as I did earlier on, that was a classic example of, you know, the impact of displacement on a whanau. You know, there were six generations represented at that reunion, and you know, and we have, I guess, in a sense, immortalised that in this whānau booklet. That's led to you know, a number of nephews, nieces, you know, reclaiming their Whakatōheatanga **Whakatōhea identity**.

So, that's just a snapshot of our whānau experience, which led me, you know, to realise just how profound displacement is amongst Whakatōhea. I'm one of the two people who sign off on people who apply to be on the Ngāi Tamahaua register, and I've just finished signing off 60 people who applied to be on that register. Which leads me to the thing that, you know, we talked about our population being 500 at the period of the raupatu. We are now 18,000, so that's the growth that has occurred over that period of time, and certainly, I think the settlement has played, it's had such a high profile in Whakatōhea, that that has probably also contributed to people thinking, time for me to reconnect.

That's just Ngāi Tamahaua, the other hapū are having the same experience, as I understand. So, you know, we, as I said, you know, our journey of reconciliation, there is an absolutely profound journey, because you know, that we need to prepare to embrace ngā uri whakaheke o **descendants of** Te Whakatōhea who want to return to their roots.

I mean, I watch the kapa haka, Te Matatini competitions, more the, ngā tamariki mokopuna that are coming through the kura kaupapa movement. You know, watching them on stage, recently, I'm absolutely blown away by the calibre of performance, you know, they could probably, strongly contest some of the pakeke ones. But anyway, yes, the calibre of performance, but it's also the confidence which with they feel because of their cultural identity, and they are immersed in that.

So, they are coming through the system believing that they have rangatiratanga, they have mana motuhake, because that's the learning environment, that is their orientation. We, as an iwi have to prepare for that belief, ki a kore he wheako mō te kura kaupapa noaiho **they don't just experiences in kura kaupapa**. It has to be real.

It's also the calibre of the language as a linguist, you know, listening to these tamariki mokopuna and their reo, you know, it's absolutely amazing. I recall, I was a very young teacher back in 1971, teaching in Wellington, my first year out from Waikato University. You know, the presentation of the language petition back then, not thinking at that time, you know, the full implication of that petition. Following the first research that had been done on the state of the Māori language. Which predicted or forecasted that the five years hence, the Māori language would disappear. When you look at that revitalisation effort over the last 51 years, it has been absolutely amazing and you know, it's the envy of many indigenous peoples, globally.

I guess that language reclamation and revitalisation is a really profound example of the kind of reconciliation reclamation and restoration that we need to undertake to ensure that our language, te mita o Te Whakatōhea **Whakatōhea dialect**, remains safe. When I heard Professor Maxwell talking yesterday about, you know, he wharekura mō Te Whakatōhea, you know, that's what it's about.

Yesterday morning, I saw my young brother off, him and my nephew from Te Pou Oranga o Te Whakatōhea going off to Waikeria Prison to meet with seven of our men who are in that prison. You know, I thought to myself, you know, that's an example of what happened back in the 1860s when we lost our resources. And you know, that's the long term impact of that, so, this morning, he said to me, I said: "How was it yesterday?" He said, you know, we are doing the preparation work for the hearings, but he said: "You know, we really need to be a kaupapa Māori driven social and health service." He said: "We are all Māori in there, we are all Whakatōhea, but that does not make it kaupapa Māori." So, I said to him, well, at the hearing yesterday, I said: "Dudu talked about a wharekura." I said: "We need to grow that kaupapa Māori, so that we have the resource personnel coming out of a system that is relevant and appropriate to our cultural economic and environmental situation.

So, yes, so those are really important take and important challenges that we have on our journey of reconciliation so that some time in the future, not too distant future, I hope. We will have the resource personnel coming out of our trading institutions, who have that background, because otherwise, we are going to struggle to be kaupapa Māori. You know, it's our definition of what kaupapa Māori is that is relevant to us as an iwi.

Q. Ka pai, thank you. Kei te hokia ngā hau ki ngā kuri a Whārei ki Tihirau. **The winds are turning back to the kuri a Whārei ki Tihirau.**

A. Āe, koinā, tika.

Q. Mai i tērā whakaaro, from that thought, the greater percentage of our iwi, but that I mean, Maniapoto and Whakatōhea, more than 90 percent are not in that space. How do we work with that in this reclamation, returning –

A. I mean, to respond to your question, I think the revitalisation of te reo provides us with a great example of how we can do that. Where the language is today is a long way from where it was back in 1971. Engari, it's still not safe yet, and we have more work to do, and you know, I think it is the best example that we have, of kaupapa Māori in action, you know, in a global sense. So, I think that is the perfect context within which the kind of whole kind of, kaupapa Māori movement can take its lead.

I think that that is, you know, tātou o te ao Māori **we, of the Māori world**, we have to lead that. We can't be, you know, it would be inappropriate for the Crown to do that. But the Crown, in its relationship with us, still has a responsibility to support us in that endeavour. Again, that's something that we have to reconcile with the Crown, you know, in terms of our relationships going forward, and that's not just Whakatōhea, but I think, te ao Māori whānui **throughout the Māori world**. And I mean, we have superb leadership, both past and present.

You know, who would have thought that you, every day, in your sitting room, kei te rongo atu i te reo rangatira mai i te pouaka whakaata **we would hear our noble language from the TV**. It was unimaginable back in 1971. But he nui ngā mahi te whakapakari haere tērā kaupapa ki a kore tō tātou reo rangatira e ngaro noa atu. **We have much work to do to strengthen that matter so that our noble language will not become lost.**

Q. Ka pai, and we are not afraid of work.

A. No, we aren't.

Q. Those are all my questions thank you.

A. Kia ora.

Q. But again, thank you for all of your work. Tēnā koutou.

(10:49) DR ROBYN ANDERSON TO TUWHAKAIRIORA WILLIAMS :

Q. Tēnā koe, Mr Williams.

A. Tēnā koe.

Q. I was just going to pick up on a couple of things you were discussing with Professor Roa, and one of your answers, it wasn't quite clear to me. You talked about the rejection of the settlement in the 1990s. Was it because it was just about the raupatu, or was it the effort, the change of policy by the Crown to bring everything into it?

A. Yes, I think it was and, and really.

Q. Sorry?

A. And and.

Q. Right.

A. So, you know, it was about the raupatu and that was the mandate that the negotiators had from the tribe at that time. Then, three quarters of the way through the negotiations, the Crown changed its policy and required Whakatōhea to put all of its historical claims into the one plain package. So, that caused, you know, massive tension and conflict back them, because I remember that when that was brought back to Whakatōhea by Claude and the negotiators, we had a massive hui at Ngāti Ira. I remember cousin Dudu, back then, leading the rangatahi protestors who were protesting that change in policy. So, yes, that was the impact on us in Whakatōhea, it was profound.

Q. The other question arising from your discussion with Professor Roa, I think he asked you what the Crown's responsibility for the rejection of that settlement at the time. You gave, I think, what I would call quite a diplomatic answer. I mean, did Whakatōhea imagine at that time, it would take another 30 years to –

A. No, absolutely, it did not.

Q. And do you have a perception as to why it has taken so long to get to a point of settlement –

A. Yes, I think that that policy, in large contributed to what I call a washing machine tune in Whakatōhea. That change of direction without any engagement or consultation, you know, with Whakatōhea. Where we were meant to be negotiating as equals, I can say that in inverted commas. Yes, it just simply did not happen, we were just delivered this edict from the minister that Cabinet had made the decision to change the policy to everything and not just your raupatu. And of course, their argument too was that at that time, well, we actually haven't had any work done on what those things are that sit outside, you know, of the thing.

I mean, some of that related to land that had been taken by Public Works, that had been taken by the Conservation Act, which were quite significant. The loss of land is a consequence, the alienation of land is a consequence of Native Land Court decisions, you know, all of that. So, yes, I mean, it was understandable now that I reflect, you know, on the level of opposition that had prevailed at that time with regard to that change in policy. And as a consequence, it's had a profound effect on

our capacity to have settled at that time, and opportunities over the last, what is it? 26 years it's taken us to get – yes, about 26 years to finally get a settlement outcome.

I mean it's, you know, opportunities we will never be able to recover and therein lies you know, one of the really important claims that we have with regard to the, you know, unilateral withdraw of the deed of settlement back in 1996 and the impact that it's had on what the potential was for Whakatōhea 26 years on. Never to be realised.

Q. In those intervening years, did the Crown reach out to you to restart negotiations for settlement or was it really left up to Whakatōhea to reach out to the Crown?

A. Well, you know, I don't know that this was just a throw away line by the minister at the time, or whether he was serious. But he said: "If you don't want this settlement, then Whakatōhea, you go to the back of the queue." So, you know, that's one version, you know, and that's not withstanding the, as I said, the churn that occurred as a consequence, you know, of that policy change within Whakatōhea. You know, as incredibly difficult, as you will appreciate, you know, to engage in the settlement process when you know, there's this huge inequity in power distribution between the Crown and the claimant group.

Again, you know, it's one of those things that we need to atone for. One of those things that is a really important part of that reconciliation process is the impact of inequity on in this case, Whakatōhea. But it equally applies, you know, across the board. Not only with tribal affairs, but with the way in which Māori issues get dealt with, whatever the political stripe. You know, one thing I absolutely have confidence in is our ability to raise above that, you know. I mean, we have been talking, "A, waiho, waiho te Karauna ki te taha" **leave the Crown to the side**, here is our huarahi that we need to chart our course.

As we do that, and we become the price maker, rather than the price taker, we will be in a stronger position to address the relationship between ourselves and the Crown, as our tīpuna understood the Treaty of Waitangi and its promises and guarantees to be.

Q. Right, thank you for your evidence today, and your answers. If I might make a personal comment, listening to you, I feel a great deal of optimism for the future of Whakatōhea. So, thank you very much for talking to us.

(10:57) JUDGE DOOGAN TO TUWHAKAIRIORA WILLIAMS:

Q. Tēnā koe, Mr Williams. Just picking up from some of the pātai from my colleagues and thank you for the mihi you have made to the Tribunal as an institution, and the truth and reconciliation function. So, my pātai really is, the distinction between our well understood role in inquiring into claims against the Crown and the consequences of Treaty breaches. We have a wealth of evidence before us about what's happened in Whakatōhea. The more complex, or the more tricky area is reconciliation within Whakatōhea, which you have also touched on, and about, which we have also heard quite a lot over time. So, on that second aspect, what if any role do you see for this Tribunal in that reconciliation?

A. Yes, that's an excellent question, your Honour, and I guess, my response starts with what I said at the very beginning, that, you know, in regard to the Tribunal, not only is the house of complaints but you know, the house of truth and reconciliation. You know, it's that function of the Tribunal to which my evidence today is appealing, and as I said, I have contextualised it, you know, in a historical setting. I think what's important, is I mean, that journey of that reconciliation is a journey that is very much a tribal responsibility.

Where the Tribunal is really important in terms of that, is our ability to come here today and in the future hearings, to be able to attest to that responsibility. And really important, I believe that we do that so that, you know, we're not just talking about the hara. We are talking about rāhui too, and solutions, and much of that solution lays with us.

Q. Thank you, and I will just echo, or tautoko the mihi my colleagues have made for your evidence and for the assistance that you have given us today, and previous evidence. Ngā mihi nui ki a koe, thank you.

A. And just as I close, your Honour, I would just like to acknowledge Robert Edwards and (inaudible 11:00:35), who are here today. Thank you for being here, you know, you have been the upoko, really, of the iwi

as we have traversed the negotiation process that has led to our settlement in the Settlement Act in May of 2024. Yes, we will be forever grateful to that leadership, but it's a leadership that stands as a tohu, tauira **example** for all of us as we go forward. So, kia ora mō te haramai i tēnei wā hei kanohi pakeke mō tātou o Te Whakatōhea, me ō koutou mahi ki te kawe i ngā taumahatanga e pā mai ana ki a tātou o Te Whakatōhea. Ki a whakatutuki pai mō ngā tamariki me ngā mokopuna kei te haramai. **So, thank you for coming to represent the elders, for we of Te Whakatōhea. I acknowledge your work in carrying that weight on behalf of Te Whakatōhea, so that it could be accomplished for the children and grandchildren to come. Thank you.**

WAIATA TAUTOKO

HEARING ADJOURNS: 11.02 AM

HEARING RESUMES: 11.26 AM

(11:26) MR MICHAEL SHARP: (#3.3.33)

Tēnā koe, te whare e tu nei, te whare a Te Poho o Tamaterangi. Tēnā koutou te haukainga. Tēnā koutou Te Whakatōhea. Tēnā koutou Ngāti Muriwai hapū. Tēnā koutou o Kutarere. Nō reira, tēnā koutou katoa. **Greetings to this house, Te Poho o Tamaterangi. Greetings to the local people. Greetings to Te Whakatōhea, Ngāti Muriwai hapū. Greetings to Kutarere. So, greetings everyone.**

If the Tribunal pleases, I am doing an opening submission for my clients, Wai 2160, which is a claim on behalf of Ngāti Muriwai. So, you should have, in front of you, some opening submissions, which are reference 3.3.33. I will just speak to those submissions.

BEGINS REFERING TO OPENING SUBMISSIONS #3.3.33

I have just noted that Ngāti Muriwai have already given some opening submissions in previous weeks, so this opening will really only relate to the issues and evidence relating to this, week five of the hearings.

The evidence will be a sole witness for these hearings, will be Nepia James Tipene and that's further to his brief of evidence dated 1 August 2025, which is reference #C058(c). Mr Tipene is seated beside me.

Mr Tipene provides historical references to historical reports and records that have been recently filed in the Tribunal as relating to Ngāti Muriwai's status as a hapū with connections to Panenehu, Ngāi Tai, as well as Te Whakatōhea.

It was intended for some further tangata whenua evidence to be called this week, but unfortunately, those witnesses are not available. So, Ngāti Muriwai will be seeking just to introduce them, hopefully during the following week in the next hearing week in November.

Now, as well as Mr Tipene's evidence, Mr Tipene, this morning, has filed a whakapapa, so, I am not sure if you have that before you. Just the purpose of that, because Mr Tipene has given whakapapa before. But that whakapapa links him, and his whānau, to the whakapapa given during the Native Land Court hearings by his tīpuna, Te Paku Eruera and Porikapa. Just to give to context for the Tribunal, for a connection between those connections and the connections today.

Now, with regard to the historian's reports, the particular reports that are particularly relevant to Ngāti Muriwai are Jane Luiten's report on the Native Land Court hearings and grants, and Peter McBurney's report. Which we have just heard, which has a section, as we have seen, on a case study on Ngāti Muriwai.

Now, these reports are particularly important to Ngāti Muriwai in the context of this inquiry and they provide further information as to the history and whakapapa connections of the hapū.

In particular, the reports provide further support to the position taken by Ngati Muriwai that they were at 1840 and continue to be a hapu group with connections, not only to Whakatōhea, but also to Panenehu, Ngāi Tai.

Now, in particular, the conclusions of those two reports correctly identify that Ngāti Muriwai have maintained themselves with a taharua, or dual identity. So, as to survive in the eastern lands of Waiaua, Whitikau, where with the decline of their Panenehu tipuna, there were ongoing fights and battles between Whakatōhea and Ngāi Tai.

Now, you will hear evidence, and have already heard evidence that in those times, immediately before and after European settlements, there were different times where Ngāti Muriwai were connecting with Te Whakatōhea and Ngāti Rua connections, and also with Ngāi Tai in order to survive in this volatile environment.

Now, in particular, we have heard evidence, including Mr McBurney's report, that the Ōpape reservation, Ngāti Muriwai were working with Ngāti Rua, as Ngāti Muriwai Rua. As has been found by the Māori Land Court, in the Ōmarumutu decision in 1975. After some disputes in the 1870s, they were asked for and given their own reservation block.

Also, at the same time in the 1870s, Ngāti Muriwai, in the Native Land Court hearings, were working with Ngāi Tai, claiming and receiving interests in a number of blocks against claims for the same area by Whakatōhea and Ngāti Rua.

During this process, as has been noted by Dr Anderson, the Ngāti Muriwai tīpuna, Porikapa, and Te Paku Eruera play key roles in having these blocks surveyed and giving evidence in support for Ngāi Tai, well, participated in.

Now, going forward to more modern times, we have heard evidence of a coming together with Ngāti Rua and Ngāti Muriwai at Ōmarumutu marae with each

group maintaining separate wharekai. But that ended, unfortunately, at the Māori Land Court hearing, in Ōmarumutu in 1975, with an order awarding the reservation to Ngāti Rua only.

That kind of situation has led, once again, to the two groups, Ngāti Muriwai and Ngāti Rua, going their own way and as Pākehās result to that, Ngāti Muriwai have struggled for recognition within Whakatōhea.

Now, relevant to this scenario is the recent Supreme Court MACA decision, this is another forum of the ongoing dispute with Ngāti Rua. Ngāti Rua claimants, in the MACA hearings, from the High Court, Court of Appeal, the Supreme Court, challenged any assertion by Ngāti Muriwai, that they were a separate group within Whakatōhea, and they claim they are only a whānau of Ngāti Rua, so not entitled to customary marine titles and protective customary rights to the Act.

The Supreme Court decision has been files, I have filed a separate memo on the 22nd of August, which is reference #3.2.189 with details of the decision as it relates to Ngāti Muriwai. Of interest, it also makes a finding that the people of here, Kutarere marae, are also a group within Whakatōhea, which was on dispute.

But going back to the issue of Ngāti Muriwai, just to summarise, the Supreme Court determined the issue by finding that Ngāti Muriwai is an (inaudible 11:35:04) evidence of its existence and as its own entity and was entitled to apply for CMT and PCR orders under the Act. (inaudible 11:35:17) rejected the Ngāti Rua appellants arguments of the contrary.

The Court, in making this finding, also referred to Ngāti Muriwai sharing whakapapa lines with Ngāti Rua. Also identifying with the older hapū of Panenehu, Ngāi Tai, which is the evidence that's been heard in this Tribunal. The Supreme Court found no need to find whether Ngāti Muriwai were a hapū in 1840, or at present, for the purposes of those orders. But commented that

it's for Whakatōhea and Ngāti Muriwai to determine in accordance with tikanga, not for this Court.

While this finding has been made in the Supreme Court, as we have seen from the beginning of this week, the Ngāti Rua claimants are continuing to effectively relitigate this dispute in this Tribunal. Which, from a Ngāti Muriwai perspective, is enforcement.

Now, overall, Ngāti Muriwai's position is that this historical and ongoing raru is a direct result of Crown actions from the time of the raupatu, undermining traditional interests and rangatiratanga of groups within Whakatōhea. That's the conclusion, which is particularly emphasised by the historical reports by Peter McBurney and Jane Luiten.

So, they are all the comments I want to say in opening, so, with the Tribunal's leave I would like to ask Mr Tipene to address his evidence.

(11:37) JUDGE DOOGAN TO MR SHARP:

Q. Thank you, Mr Sharp. Just before you do, I don't know whether you just know this, or you have the – is it 1975 or 76?

A. 75.

Q. Can you just remind me, I know the reservation name was changed, but can you recall the underlying beneficiaries of the reservation, how are they characterised in the reservation order, do you know?

A. Yes, so, the initiative for the application was through the Māori Land Court itself, in finding that there wasn't a reservation title for Ōmarumutu Marae, so, they did some investigations. The evidence was that it was originally thought that it was on the Ngāti Muriwai land, (inaudible 11:38:06). But then it was discovered it was on the Ōpape 3 Block. So, when they called a meeting and they had a hearing on the marae, and the owners of the 3A block, of the 3 block, which is Ngāti Rua, were the ones who were directly notified to attend the hui. So, they are the ones who were directly affected by the hearing and attended.

From Ngāti Muriwai's perspective, a lot of their people were not aware of the hearing. The result of the hearing, as you'll know –

Q. Just before you carry on, so, the Court, on its own motion, brought the matter to a hearing because there wasn't previously a Gazettal of the reservation status?

A. That's correct.

Q. So, it was an informal reservation prior to 75, or what was its status, it was a marae trust or – if you don't know –

A. I don't know and it's not clear in the record, but there is certainly no reservation orders made at that stage.

Q. All right, and at some point, if you are able, before we conclude this part of the hearing, if you know what we currently have on our record in terms of the documentary records of the 75 hearing. If you know where they are, if you could just let us know. The inquiry really is, do we need any further material from that hearing, or is it available to us. I'm pretty sure it's in our records, but I cannot recall where.

A. Yes, and was certainly in Mr McBurney's documents, both the handwritten and the typed transcript.

Q. That's right, thank you.

A. I'll just complete the answer to your question with the beneficiaries in the reservation. You may recall there, Sir, and it was discussed with Ms Feint in cross-examination of Mr McBurney. On the initiative of the Ngāti Rua people, the Ngāti Muriwai people from 3A were also put in as beneficiaries of the block.

Q. So, that would then be reflected in the reservation order itself?

A. Yes, they are owners, well, original owners of the reservation. As your Honour is aware that the ownership list is not updated for reservations, but they were originally put in as owners of the reservation.

Q. Or be it, that the land on which the marae itself was placed was on the – being referred to as the three –

A. The Ngāti Rua block.

Q. Ngāti Rua lands?

A. Yes. Mr Tipene will talk a little bit about that during his evidence.

Q. Thank you, Mr Sharp.

HOUSEKEEPING (11:42:02)

MR SHARP CALLS

NEPIA JAMES TIPENE (SWORN)

Q. Mr Tipene, can you just confirm your full name for the Tribunal?

A. My name is Nepia James Tipene, also known as Jimmy Stevens and I have previously given evidence for Ngāti Muriwai before this Tribunal, providing the brief of evidence dated the 13th of June 2023.

Q. You have another brief of evidence, which you have filed, in front of you?

A. Yes, I do.

Q. And can you just confirm that to your knowledge it is true, and correct?

A. It's true, and correct, yes.

Q. Can you just read the brief to the Tribunal, adding any further comments that you wish.

(11:42) NEPIA TIPENE: (#C058(c))

WITNESS REFERS TO BRIEF OF EVIDENCE #C058(c), PARA 2

I am providing this further evidence for Ngāti Muriwai further to the historical reports and court records that have recently been filed, which, amongst the other things, emphasize Ngāti Muriwai's connections to Panenehu and Ngāi Tai. I will make reference to some of these records in my evidence.

I am the 11th of 13 children born September 29, 1950, to Tareha Te Moananui Tipene and Lilly Reremoana Honetana, also known as Johnson.

My whakapapa is attached, and I am directly descended from Eru Ponaho and Rangimātānuku, also known as, Makao or Rewiri.

I affiliate to all hapū o Whakatōhea but have been brought up at Ōmarumutu due to the links with Ngāti Muriwai a Rua.

My great grandfather was Rangimātānuku, who signed the Trreaty, was not only a principle chief of Ngāti Rua, but also, of Panenehu as testified by Te Paku Eruera when asked by Judge Scannell.

Porikapa and Te Paku Eruera emphasised the thei affiliation to Ngāi Tai in Te Paku's evidence.

Eru Ponaho and Rangimātānuku redefined the boundaries between Panenehu and Ngāi Tai that were previously laid down by Tiki because it was believed that Ngāi Tai, through Wiremu Kingi was wanting to avenge the loss of Tunapahore to Ngāti Rua by claiming all the land.

Before the Pākehā fought at Ōpōtiki, Eru Ponaho, Rewi Matanuku, Tauhirau, Patene, Rapia, Te Wakahou, Himiona, Te Puni, Porikapa, Taipua, Papari, Reinga mā, all lived at Waiaua under the tribal name of Ngāi Tai.

Some of these names, Eru Ponaho, Rewi Matanuku, Porikapa, Wakahou, amongst others also appear on the – I have 1874, but I believe I heard 1888 the other day, that this Ngāti Muriwai register of Whakatōhea was –

It has been said that Te Wakanui iwi became Panenehu after Tūtāmure's victory against Kahungunu in reference to the 'buried heads' killed by his whale bone patu.

Some claim that Panenehu ceased 6 generations later in the time of Upokohapa.

However, three generations after Upokohapa, Te Paku Eruera, as a Ngāi Tai witness stated that during the occupation of Waiaua by Panenehu and Ngāi Tai, and I have a spelling mistake here. It should be Kauamowhati of Ngāi Tai married Whariu of Panenehu, giving that link to Ngāi Tai.

You know, this is another part of it.

The ships that were affectionately known as ‘Hoko Poaka’ were owned and paid for with the pigs by my great grandfather, Rangmātānuku, not by the hapū, Ngāti Rua.

He was personally given land at Tirohanga by the Crown, providing he would not go against the Crown.

A statement made by Te Paku in regarding the death of Rangimātānuku at Tirohanga is incorrect, as our family were told by our mother, who was born in 1911, that as a child of 11, he was living with her mother Motoi after his return from Mōtītī.

The confiscastion had a huge negative impact on Whakatōhea and many witnesses have covered the grievances in depth.

Ngāti Muriwai hapū is alive through all our whakapapa to Eru Ponaho, and I would rather dwell on the present situation and find a pathway forward where we as an iwi can be united instead of divided by some hapū.

My whakapapa:

I moe a Rangimātānuku i a Mini Taiparoro Ririna Heeni nō Ngāti Ira, ka puta ko Motoi.
I moe a Motoi i a Honatana nō Ngāi Tai.
Ka puta ko Lily Reremoana Honatana/Johnson.
I moe a Lily i a Tareha Te Moananui Tipene nō Ngāpuhi, Kahungunu, Ngāti Porou, ka puta au, ko Nepia Tipene.

Rangimātānuku had a union with Mini Taiparoro Ririna Heeni from Ngāti Ira and they had Motoi.
Motoi had a union with Honatana from Ngāi Tai, they had Lily Reremoana Honatana.
Lily had a union with Tareha Te Moananui Tipene from Ngāpuhi, Kahungunu, and Ngāti Porou, and they had myself, Nepia Tipene.

My whakapapa from Eru Ponaho.

I moe a Eru Ponaho i a Paripari, ka puta ko Porikapa.
I moe a Porikapa i a Pirihira, ka puta ko Honatana.
I moe a Honatana i a Motoi, ka puta ko Lily Honatana.
I moe a Lily i a Tareha Te Moananui Tipene, ka puta ko au, ko Nepia Tipene.

Eru Ponaho had a union with Paripari and they had Porikapa.
Porikapa had a union with Pirihira, and they had Honatana.
Honatana had a union with Motoi, and they had Lily Honatana.
Lily married Tareha Te Moananui Tipene and they had me, Nepia Tipene.

I have attached this whakapapa that I did last night, showing the connection between Tūtāmure, Hine-i-Kauia down to Te Whāriu, marrying Kaua-mō-whati and right down to my great grandfather, Porikapa, and Honatana, and then my mother.

Kia ora.

MR SHARP:
Mr Tipene, just to confirm that that marriage with Whāriu is the one which is referred to in the Native Land Court minutes by Te Paku as connecting to Ngāi Tai?

NEPIA TIPENE: (CONTINUES)
Connection to Ngāi Tai and Panenehu, Ngāi Tai.

MR SHARP:
Thank you.

JUDGE DOOGAN:
Mr Sharp, just repeat that – you are referring to this whakapapa?

MR SHARP:

That whakapapa, Sir.

JUDGE DOOGAN:

Again, the marriage to –

MR SHARP:

Whāriu.

JUDGE DOOGAN:

Thank you.

NEPIA TIPENE:

And Kaua-mō-whati of Ngāi Tai.

MR SHARP:

Also, Mr Tipene, I understand that you wanted to make some comments about the Ngāti Muriwai Rua issue and the Māori Land Court hearing in 1975.

NEPIA TIPENE: (CONTINUES)

Yes, well, me and my family were living in Auckland at the time and in 1976, my mother rang me and said to come home, and she was pretty upset about it, and I asked why, she said: "We have lost Ngāti Muriwai." At that time, I wasn't too involved with this business as it were.

So, in 1978, we returned back to Ōpōtiki to give my mother support. Who, incidentally, named the land that they were using out at Ōmarumutu after Poua. The land out there is known as the Poua Land Trust. So, we just need to basically get the story from my mother and other people, of course, and she was most upset about the fact that the name Ngāti Muriwai was removed. As Grace Maxwell stated in that meeting, that there was no one from Ngāti Muriwai there, where were they? Grace Maxwell was whāngai'd by my grandmother, Motoi, I just thought I'd throw that in.

QUESTIONS FROM MR LINKHORN – NIL

(11:51) DR ROBYN ANDERSON TO NEPIA TIPENE:

Q. Tēnā koe, Mr Tipene. I'm interested in Porikapa, because of his importance in the Native Land Court hearings. Does your whānau hold memories of what sort of man he was and his background and his ambitions?

A. I have no stories, my family have no stories, but we do have stories of Honatana, his son.

Q. Yes.

A. Who is a cousin of Te Paku, and they work together on the shoe farm as well, so, Te Paku and Honatana were pretty well connected in the mahi up at Ōmarumutu. But Porikapa himself, I have no real stories to tell you, on him.

Q. All right, thank you. I have a suspicion, we have been told about this, but at paragraph 8 and you are talking about redefining the boundaries.

WITNESS REFERRED TO BRIEF OF EVIDENCE #C058(C), PARA 8

Could you just expand on your statement there, tell us a bit more about it?

A. Yes, this was from the interview with Te Paku Eruera, and there was a bit of raruraru between Ngāi Tai at that time, and he was wanting to redefine the boundaries because they had lost the Tunapahore to Ngāti Rua, and they wanted to regain that area back. Bearing in mind that all of them were living in the Waiaua Valley prior to that, and so, what happened between them – and so, they tried to prevent Wiremu Kingi from changing boundaries. So, they were just re-establishing the boundaries that were set by Tiki, reaffirming those boundaries.

Q. Sorry, so, is this in the context of Native Land Court hearings or prior to that?

A. No, this was in the Ōpōtiki minutes, yes, it's referenced there, 9 OPO 309.

Q. All right, well, I might have to look those up myself at some point, when I have time. thank you very much for coming and talking to us today.

(11:54) JUDGE DOOGAN TO NEPIA TIPENE:

Q. Tēnā koe, Mr Nepia. Just in relation to the time when you said your mother had called you back to Ōpōtiki in 1975, 76, or thereabouts, and you said it was, as a result of the outcome of that court case I the Māori Land Court. Can you recall what your mother said about that case and the outcome of that case?

A. Well, she always believed that the land in front of Tūtāmure whare was Ngāti Muriwai's land, she told us that. She was very hurtful that things were being changed up there and monuments were being put up there that had nothing to do with Muriwai. She was really devasted that the Ngāti Muriwai name had been taken out.

Q. Did you, either at that time or since, had you seen the records of the court hearing?

A. Yes, I have.

Q. Ms Feint, the other day, has put in a bundle of documents for questioning of Mr McBurney and they include the handwritten transcript of the hearing, which is quite difficult to read. Have you recently read those?

A. Not recently, but I've seen, but I can't recall them.

Q. On the page in Ms Feint's bundle, and this is the minute book reference, it is 555, I don't have the reference, but it was 21 in Ms Feint's bundle, recording Grace Maxwell. I think what it's saying is that she was addressing the Court, and I may get some of this wrong, but just the gist of it and I just wanted to get your response. Porikapa and Edwards families are equally part of Ngāti Rua, yet have no interest in the papakāinga, how come. Porikapa and Edwards families are Paku's people, I think is what she is saying?

A. Yes, that's correct, yes.

Q. They were given a separate area of 660 acres in two blocks, but two mistakes were made at the time they got the entitlement, because there was no mention of, or they weren't given an interest in the marae itself. I think it what is being said. So, just that passage, I think what she goes on to say, today the result is that Porikapa and Edwards families are not included in the marae, it's more of a mistake that they were left out of the

marae. Does that accord with what your mother, or your understanding of the way this issue arose?

A. Well, she believed that they weren't aware of the meeting, that's her side of it, that's why they weren't there.

Q. Meeting or the hearing in court?

A. Yes, yes.

Q. All right. Thank you. I don't have any further questions at this time, but thank you very much for your evidence, Mr Nepia.

HOUSEKEEPING – TIMETABLING (11:59:00)

HEARING ADJOURNS: 12.00 PM

HEARING RESUMES: 12.04 PM

(12:04) MR MATTHEW KENNELLY: (#3.3.032)

Tēnā koe, e te Kaiwhakawā. Ko Mr Kennelly ahau, te rōia o Te Mata Law. Anei tōku kōrero ka whakataki au mō te kerēme a Mr Papuni e tu ana i te Wai 2066. Ko te tau whakaingoatanga o te kōrero taunaki ko #E021. **Thank you, your Honour. Mr Kennelly speaking for Te Mata Law. I am lead counsel for the claimant, Mr Papuni, who is appearing for Wai 2066. Appellation number #E021.**

He uri a Mr Papuni nō Ngāti Ruatakenga me Whakatōhea. He hononga anō ōna ki Ngāpuhi. I whānau ia, i tipu ake ki Tāmaki-Makaurau, engari, e mau tonu ngā hononga ki tōna kāinga tūturu o Ōpōtiki. He kaiako i a mō te 30 tau neke atu, e aro nui ana ki te whakaako i te reo Māori. He tuku kōrero tēnei mō tōna whānau, ōna tūpuna, āna tamariki, me āna mokopuna, mō ngā pānga o te raupatu. E tino rongo i te mamae, te pouri, te hara. **Mr Papuni is a descendant of Ngāti Ruatakenga and Te Whakatōhea. He also has a connection to Ngāpuhi. He was born and grew up in Auckland, however, he maintains his links to is true home in Ōpōtiki. He has been a teacher for over 30 years, and he is focussed on teaching the Māori language. So, he provides this evidence on behalf of his whānau, his ancestors, his**

children, and his grandchildren, in relation to the land confiscations. The wrongdoings.

Nō reira, kei te mihi nui atu ki a koe, e Mr Papuni. **So, I want to thank you very much, Mr Papuni.**

Tēnā koutou o te Taraipiunara o Te Tiriti o Waitangi. Ka tuku au i te toenga o ēnei kōrero whakataki ki te reo Pākehā. **May it please the Waitangi Tribunal. I will turn to make these submissions in English.**

These opening submissions are made on behalf of Mr Takaparae Papuni, the appellation number is #3.3.032. I plan to speak to these opening submissions rather than read them in full. Mr Papuni will not present his evidence as full as well but will speak to the key headings throughout his evidence. At stages, I may direct him to particular paragraphs of his brief or ask him to expand on his aspects of his kōrero today.

Aroha mai, before I continue, tēnā rawa atu ki a Ngāti Ira Trust **I want to thank Ngāti Ira Trust**. He mihi nunui ki a Ms Te Ringahuia Hata mō tōna āwhina i te haerenga o Mr Papuni. Ka nui te mihi mō te tautoko ki a tae mai a Mr Papuni ki konei. Nō reira, tēnā koutou. **I want to acknowledge Ms Te Ringahuia Hata for her assistance of Mr Papuni. I want to thank the assistance in Mr Papuni coming, so thank you.**

On Sunday, Mr Takaparae and I arrived to Whakatāne from Auckland and to our surprise, our accommodation didn't include any Wi-Fi or any television. But what its allowed is for us to conversate more about Te Whakatōhea, Ngāti Rua, and the Papuni whānau, and we also went on our own takahi whenua, or site visit.

He took me to his marae in Ōmarumutu, where his tupuna, Raimona Papuni assisted with the construction. He took me to the church where Carl Völkner was killed, the Ōpape land reserves, Ōpape marae of Ngāi Tama, as well as

the Waiaua marae of Ngāti Patu. And he pointed out a number of distinctive maunga, awa, and different pā sites that are important to te Whakatōhea.

Alongside these, Mr Papuni also showed me sites of particular importance to his whānau. Again, the Ōmarumutu marae places, he lived in Ōmarumutu and Ōpōtiki. Areas he went hunting and fishing, as well as the kōhanga reo his tamariki attended. Locations he taught te reo Māori, as well as other places of deep significance to Mr Papuni.

These locations all form a big part of his kōrero today. He will speak to the lived experience of the Papuni whānau and intergenerational impacts of the invasion in 1865 and the subsequent conversation of Te Whakatōhea lands had on his whānau, and his hapū, and his iwi. Although not well recorded, the Papuni experience is very much real, and Mr Papuni will shed light on some of these experiences for the benefit of the Tribunal.

REFERS TO OPENING SUBMISSIONS #3.3.032, PARA 6

At paragraph 6 of my openings, I mention some the relevant Treaty principles and those are active protection, partnership, good faith, exercise of tino rangatiratanga and reciprocity.

At paragraph 7 of my opening submissions, I mention some of the breaches from Mr Papuni's statement of claim. Those include the invasion in 1865 of Whakatōhea, the unjustified use of force against Ngāti Rua and Whakatōhea. The labelling of Ngāti Rua and Whakatōhea as rebels and the enduring stigma that is carried. The confiscation of Ngāti Rua and Whakatōhea lands and resources. The widespread destruction of kāinga, cultivated land and other taonga. Resulting in complete disruption of the hapū and iwi economic base and customary way of life.

The imposed Ōpape native land reserve over Ngāti Rua's ancestral lands. The role of the Compensation Court in further alienation of Te Whakatōhea lands. Ongoing socioeconomic issues, as well as the cultural harm caused by suppression of te reo Māori.

The prejudice suffered by the Papuni whānau, Ngāti Rua, and Whakatōhea includes, but is not limited to, the unjust loss of life, alienation from ancestral lands, destruction of economic infrastructure, imposition of poor-quality reserve lands, cultural dislocation, loss of language, and the continuing stigma of the "rebel" label.

The effects are cumulative and intergenerational.

Your Honour, that concludes my opening statement. Unless there are any questions from the Tribunal, or the Crown.

MR KENNELLY CALLS

TAKAPARAE TE RANGATIRA PAPUNI (SWORN)

Q. Can you please give us your full name.

A. Takaparae Te Rangatira Papuni.

Q. Do you just want to repeat that while the mics on, please.

A. Takaparae Te Rangatira Papuni.

Q. You filed a brief of evidence on the 22nd of July, with the appellation number, #E021?

A. Yes.

Q. And to your knowledge, the content is true, and correct?

A. Yes.

Q. Thank you, Mr Papuni. From about paragraph 1 to five, you have given a bit of an introduction of yourself, would you like to introduce yourself to the Tribunal.

(12:11) TAKAPARAE PAPUNI: (#E021)

Kia ora tātou. Tēnei te mihi ki a koutou, te Kaiwhakawā, Te Rōpū Whakamana i te Tiriti o Waitangi, koutou e hāpai nei, e whakakanohi i te kāwanatanga i tēnei rā. Nō reira, tēnā koutou. Ngā rōia e whakarongo mai nei ki tā tātou hui, tēnā koutou. **Greetings. I want to acknowledge Judge and the Waitangi Tribunal, those of you who are supporting the**

government at this time. So, I want to acknowledge, also, the lawyers who are hearing our gathering, greetings.

Ka mihi au ki Te Whakatōhea, ki ngā kaumātua, ngā pakeke, kei a koutou te mana nui, te mana motuhake, e pau nei ki runga i tō tātou marae ki te pupuri i ngā kōrero a kui mā, a koro mā, tēnā koutou. **I also want to acknowledge Whaaktohea, the elders, you have the distinct mana that has been placed upon our marae to uphold the history, the narratives of the elders, thank you.**

Ko Takitimu, ko Nukutere, ko Mātaatua ngā waka. Ko Tautūrangi te rangatira ariki. Ko Waiaua te awa, ko Makeo te maunga, ko Ōmarumutu marae, ko Whakatōhea te iwi, ko Ngāti Rua te hapū. Ko Papuni te ingoa o tāku whānau, ko Takaparae ahau. **Takitimu, Nukutere, and Mātaatua are my waka. Tautūrangi is the paramount chief. Waiaua is the river, Makeo is the mountain, Ōmarumutu is the marae, and Whakatōhea is the iwi, Ngāti Rua is the hapū. Papuni is my whānau name and I am Takaparae.**

Tēnā rā koutou katoa. Kua tae mai au tēnei rā ki te mauria mai ngā kōrero o tōku whānau, te whānau Papuni, i noho tūturu ki roto i te hapū a Ngāti Rua. **Greetings all. I have come today to bring forth stories of my whānau, the whānau Papuni, who lived in the hapū of Ngāti Rua.**

Ka huri au ki te reo Pākehā. **I will now turn to speak English.**

Kia ora, my name is Takaparae Papuni. I'm from Ōpōtiki, from Ngāti Ruatakenga. My whānau name is Papuni and we have a long history, since the arrival of our waka, so I would like to acknowledge my tipuna, Tautūarangi, who came on the Nukutere waka and established the boundary of Te Panenehu i te waka nui, 800 years ago. Our mana motuhake and tino rangatiratanga has been acknowledged ever since.

So, I acknowledge our tupuna, Tautūrangi.

Tīhei uriuri, tīhei nakonako, ka tau hā, whakatau te rangi i runga nei, ka tau hā, whakatau te pāpā i raro nei. Ka tau hā whakatau te matuku mai i Rarotonga, koia rukuhia manawa pou roto, koia rukuhia manawa pouwaho. Ka tina, ki a tina te morehu pūpū ana, e wawana hoki, tārewa tu ki te rangi. Aue, ki a eke, eke panuku, eke Tangaroa. Whano, whano, haramai te toki, haumi ē, hui ē, tāiki ē. **[Ancient karakia]**

This was his incantation on the arrival of the Nukutere waka to a bay called Te Rangi, named after his wife, just on the eastern side of Awakino. Embarked off that waka came our ancestors from Hawaiiki, and they brought a mauri and they went straight to the highest mountain peak and planted the mauri and the ancestor Tama-i-waho. From there, they settled the land here in the eastern Bay of Plenty.

On the arrival of another famous tipuna, Tūtāmure, came direct descendant. Tūtamare is famous for his battle at Kahungunu, with Kahungunu in the Ngāti Kahungunu district in Turanga and establishing the Whakatōhea boundaries. Tūtāmure is the Ngāti Rua eponymous ancestor that descended from the Takitimu waka.

Ko Tama-te-arikinui, te ariki nānā ko Rongokako, nā Rongokako ko Tamateapōkai-whenua. Nā Tamateapōkai-whenua ko Whaene. Nā Whaene ko Haru-a-tai-moana. Ka moe a Hanene-pounamu ka puta ko Tūtāmure. **Tama-te-arikinui, who had Rongokako, who had Tamateapōkai-whenua, who had Whaene. Whaene had Haru-a-tai-moana, who had a union with Hanene-pounamu, and they had Tūtāmure.**

I just recited Tūtāmure's short whakapapa, direct descendant from Tama-te-ariki. I would just like to acknowledge the rangatiratanga that has been hanging down each generation from the time of the arrival of our ancestor, Tautūrangi and Tūtāmure, down to Ngāti Rua to Ruatakenga.

I'd just like to recite the whakapapa from Ranginui-ā-te-Kohu and Ruatakenga.

Nā Ranginui-ā-te-Kohu, ka puta ko tana tamāhine ko Ngāpouperetā. **Ranginui-ā-te Kohu had his daughter, Ngāpoperetā.**

Ka moe a Rēpanga nō Mātaatua waka, nō Muriwai ki a Ngāpouperetā o Ōhiwa, ka puta te kōrero, ngā tamāhine a Te Whakatōhea. **Who had a union with Rēpanga from Mātaatua waka, from Muriwai – Ōhiwa and that's where the story about the daughters of Whakatōhea came from.**

Ka puta ko Ruamatarangi. Nā Ruamatarangi ko Ruamatanui. Nā Ruamatanui ko Ruamataiti. Nā Ruamataiti ko Ruataurau. Nā Ruataurau ko Ruapūtake. Nā Ruaputake ko Ruakaweka. Nā Ruakaweka ko Ngāti Ruatakenga. **They had Ruamatarangi. Ruamatarangi had Ruamatanui, who had Ruamataiti. Ruamataiti had Ruataura, who had Ruapūtake. Ruaputake had Ruakaweka. Ruakaweka had Ngāti Ruatakenga.**

Ka mihi au ki tāku tipuna a Hine-i-kauia, te tamāhine a Muriwai, ka puta ko Te Whakatōhea. Ka mihi au ki ngā hapū o Te Whakatōhea, tēnā tēnā, kua huihui mai nei i te rā nei. **I want to acknowledge my ancestor, Hine-i-kauia, the daughter of Muriwai, from that came Te Whakatōhea. So, I want to acknowledge the hapū of Te Whakatōhea, each and every one that have gathered here today.**

Just acknowledging our ancestor Muriwai and all her dimensions and attributes from her arrival to now. Ka puta te kōrero mai i ngā kuri a Whārei ki Tihirau. **She shared the kōrero, from ngā kuri a Whārei to Tihirau.**

My marae is Ōmarumutu, Te Āporotanga is the chief from there, who signed the Treaty of Waitangi and there are other chiefs I would like to acknowledge them today too. They are signatories of the Treaty of Waitangi, which brings us to today. We have been waiting over, nearly 30 years plus for our day in court, and it's finally arrived. So, I'm just acknowledging the previous work of Claude Edwards and all our kaumātua and kuia that are not here today, that have passed on but have left the abundance of knowledge here with the descendants that are before you today.

Āporotanga signed the Treaty of Waitangi on behalf of Ngāti Rua, making Ngāti Rua and the Crown, Treaty partners. He signed with the expectation that the Crown would honour their duties and promises as Treaty partners.

WITNESS REFERS TO BRIEF OF EVIDENCE #E021, PARA 15

When Āporotanga signed te Tiriti, he believed it would guarantee the mana and tino rangatira of Ngāti Rua. He believed Ngāti Rua would retain authority over their whenua, moana, taonga, awa, wāhi tapu, kāinga, mahinga kai and oranga. It was his understanding that Ngāti Rua would be able to continue the way of life that we had since the time of our ancestor Ruatākenga. He also believed it would mean that the people of Ngāti Rua would be treated equally to Pākehā

It is my firm belief that if Āporotanga knew what would go on to happen to Ngāti Rua and Whakatōhea at the hands of the Crown, he would not have signed Te Tiriti. The invasion, the raupatu, the displacement of his people, and the intergenerational impacts are all completely at odds with the intentions and hopes that Āporotanga had when he signed.

There were long and intense wānanga debating the benefits and drawbacks of signing te Tiriti. It was not done on a whim. It was decided by Āporotanga and other Whakatōhea rangatira that signing te Tiriti was in the best interests of the next generation of our people. Maybe if the Crown had honoured te Tiriti that would have been right. Sadly, they did not.

The Crown betrayed our trust. The promises made in te Tiriti burned to ash in the fires of the Ōpōtiki invasion. The Crown was obligated to protect us, instead they tried to destroy us. We are still dealing with the impacts to this day.

Raimona Papuni

Raimona Papuni, my paternal great-grandfather, was born and raised at Ōmarumutu. He was a strong leader not only for the Papuni family but within

Ngāti Rua. He was one of ten siblings, and his life was largely centred around whānau and hapu at Ōmarumutu Marae.

Raimona was a bushman and carpenter by trade. His skills were invaluable to his whānau and hapū. As a bushman, he worked closely with the natural resources of the whenua, while his carpentry work helped with the construction of Ōmarumutu Marae and of houses in Ōpōtiki.

Raimona was one of the founding members of the Whakatōhea Trust Māori Trust Board. A rangatira nō te putake mai o te poari o Te Whakatōhea.

It was also well known in our whānau that Raimona was a scout for Te Kooti. He was very knowledgeable of the land. At this time, he was a young man with his trusted white horse.

Raimona married Tapuwae Hale from Ngāti Porou, and together they had 16 children. They raised their family in Ōmarumutu, where Raimona passed on his strong work ethic, his experience in bush craft, and skills in the bush.

Raimona passed away at the age of 80, and he is buried at the Oterangimatanui.

MR KENNELLY:

Mr Papuni are you able to tell us more about your grandfather, Jack Papuni. How many children did he have, what kind of person he was?

TAKAPARAE PAPUNI: (CONTINUES, #E021)

I'll just go back to Raimona.

Raimona's father was Papuni and Papuni was a name given by a chief called Te Heretaunga. Te Heretaunga was a chief that migrated to the south of Maungapohatu. He had a hapū with him, and they were searching for food, and for accommodation, and they were attacked by a local tribe of Tūhoe. The

local chief, Mahia, he sent his warriors and challenged them. Heretaunga, they got into a squeamish and the chief, Mahia, was killed.

Mahia wasn't a nobody, he was the paramount chief of the Tūhoe people. His mother was Mihikitekapua and Whakatōhea were victorious in that battle. So, what happened there, they actually established the southern boundary of Whakatōhea and the Tūhoe district of Te Papuni and the Ruakituri River.

Heretaunga and his follows came back to Ōpōtiki some time later and a lady was hapū, and that lady was our tipuna. She was asked, could you name the child, if it's a boy, Te Papuni, after the district they had just left. So, that's how our origin of our family name Te Papuni came about, and we have been known as Te Papuni ever since.

Raimona was our kaumātua of the family and he passed on these traditions. He passed on the kōrero from his tipuna, from Ngāti Rua and the history that was available to him. He was well known in the Whitikahu and the Waiapu blocks at the back of Ōmarumutu and Toatoa.

He had a big family, his son was Jack Papuni or John Raymond Papuni, Takaparae was his Māori name.

WITNESS REFERS TO BRIEF OF EVIDENCE #E021, PARA 25

Jack Papuni is my paternal grandfather, he was the eldest of Raimona and Tapuwae's 16 children. Like his father, he was born and raised in Ōmarumutu, growing up in a large family where the importance of whānau and hapū were core values.

Jack often shared stories of having many names, where he had to find work as a carpenter, and change his name a lot to get work. He was known by various names, Jack and John, by Pākehā, to acquire work.

Jack followed in the footsteps of his father, by becoming a skilled carpenter. He led Papuni Construction, a family business that played a significant role in

developing the Housing Corporation homes in and around Ōpōtiki, including building many of the region's state houses.

It was well known that my grandfather and his team could finish a house in 11 days! Many of these houses are holding up to this day. He was a Māori architect of his time.

Jack married my grandmother, Amy Te Kahika from Mōhaka Tu Mataroa whānau, and together they had ten children.

Jack remained in Ōmarumutu throughout his life, playing a significant role in the whānau's connection to the marae and the wider Ngāti Rua community.

Peter Papuni

My father, Peter Raymond Papuni was the eldest of Jack and Amy Papuni's ten children. He was named after both his grandfather, Raimona Papuni and Peter Te Kahika.

Just letting you know that in that time, to grow up in Ōpōtiki was a struggle, with opportunities, and to have a job was very fortunate. So, working as a carpenter, my whānau took on that role as carpentry and became carpenters.

MR KENNELLY:

Because of their struggles in Ōpōtiki, what did your father decide to do, along with his siblings?

TAKAPARAE PAPUNI: (CONTINUES, #E021)

Yes, my grandfather passed away, and my grandmother passed away, so my dad was 17 and so, he decided to move the family to Auckland for work.

MR KENNELLY:

How many siblings did he take with him?

TAKAPARAE PAPUNI: (CONTINUES, #E021)

There were nine siblings, so, my grandfather and grandmother had a big whānau and my dad was the eldest and he took care of them. He was 17 when he moved to Auckland, because if you had a big family, you could be taken by the state if you didn't have parents. So, he decided to move the family, so, we have been displaced form Ōpōtiki because of opportunities.

So, my dad went to Auckland –

ME KENNELLY:

What work did your father get into when he decided to move to Auckland.

TAKAPARAE PAPUNI: (CONTINUES, #E021, PARA 34)

Yes, well, it was a huge shift for the Papuni whānau, the first time they had ever left Ōpōtiki for any significant duration, probably since our waka had landed there all those centuries ago. While it was a difficult choice for my father, he felt that it was necessary, as Ōpōtiki could no longer provide the opportunities it had offered his father and grandfather.

My father purchased 52 Sandringham Road in the 1960s. He moved there with all his siblings, and it became the family hub.

In Auckland, my father began an apprenticeship in carpentry, following in the family tradition of skilled trade work. My father excelled in his apprenticeship and was even awarded Auckland's Carpentry Apprentice of the Year.

MR KENNELLY:

You talk about when your father met your mother.

TAKAPARAE PAPNUI: (CONTINUES, #E021)

My father went to Ardmore College, to train as a woodwork teacher. He met my mother, and they got married.

MR KENNELLY:

Even though you lived in Auckland, Mr Papuni, what did your father do to ensure you maintained your connection to Ōpōtiki?

TAKAPARAE PAPUNI: (CONTINUES, #E021)

My father had his four children, and we moved back to Ōpōtiki in the holidays and reconnected with family members, with our uncle Jack Hale Papuni, who lived at Ōmarumutu. Some land had become available, and he recommended that my father buy it, so, my father bought some land at Ōmarumutu, a five acre block, we still have it today.

Our grandfather was an exceptional man, he was a return serviceman from the World War II, Jack Hale Papuni, and he was a guiding force in the Papuni family. He was a hunter, fisherman, tangata raupa o te marae **hard worker on the marae**. In 1977, it was time to – the pakeke at Ōmarumutu decided to lift Ōmarumutu off the ground and put piles underneath. So, being carpenters, our family was sorted out to do the job, and my grandfather, Jack Hale Papuni led this expedition in lifting Tūtāmure, with our father, uncle Mark Papuni, uncle Trevor Papuni, and Peter Papuni.

MR KENNELLY:

Thank you, Mr Papuni –

HOUSEKEEPING – TIMING (12:34:59)

HEARING ADJOURNS: 12.35 PM

HEARING RESUMES: 12.39 PM

MR KENNELLY:

He's reluctant to talk about himself, but I have asked Mr Papuni if he can give a – about his upbringing and what he's done as a job and employment.

TAKAPARAE PAPUNI: (CONTINUES, #E021)

Kia ora.

Just getting back to my dad. He was a teacher of woodwork at Kelston Boys High School for 26 years. My mother was a teacher at Kelston Intermediate for 12, and we had good holidays. We would come back to Ōpōtiki all the time in the school holidays. Go to the beaches, go and see whānau, and it connected us to the marae.

So, we grew up around our Papuni whānau that had connections to Ngāti Rua marae, to Ōmarumutu. Raimona being our rangatira, he left a huge legacy for us to follow, and I just like to acknowledge his legacy that he left behind. He left a big family behind, that's still very much part of Ngāti Rua's hapū lifestyle, when we are back here in Ōpōtiki.

We have been supported by our local hapū, Ngāti Patu, Ngāi Tamahaua, Ngāti Ngahere, Ūpokorehe. It's been lovely to find our networks within the Whakatōhea connections. Whakatōhea is a big tribe and has a big future, and you can't stop it, even though we have had a raupatu, our future is huge. I would just like to acknowledge our leadership over the last 30 years of the achievement that they have slowly been chipping away at. Getting a muscle farm, kiwifruit farm, supplying work for rangatahi.

So, as a young person, I have been following the Whakatōhea lifestyle. I moved back in the 90s, I was teaching at Ōpōtiki College, in adult education, teaching te reo and teaching mau rākau, taiaha at the marae. You know, it was good to be around positive Māori.

There was a bit of a stigma about being a rebel iwi, I wrote a little bit about it. Just the way our family was towards working in Ōpōtiki. There were some people that could get all the good jobs and others that had difficulties. With the leadership that we have had today, they have been paving the way for rangatahi and the families, and the Whakatōhea families. So, I would like to acknowledge our leadership, Rob Edwards, and the Wai 87 rōpū that have spoken today. It's been an impressive journey over the last 30 years.

MR KENNELLY:

Talking about the impacts on whānau, do you want to talk about the impacts on your own whānau, your moko and tamariki.

TAKAPARAE PAPUNI: (CONTINUES, #E021)

My whānau, I had two sisters and a brother. Our father moved back after, in 96, he moved back to Ōpōtiki. He had an illness, he didn't last very long, he passed away. But what it did, it brought the family back to Ōpōtiki and we buried him at (inaudible 12:44:49), behind Raimona, our great grandfather. He reset the connection for our family back to Ōpōtiki in the 90s.

In the 90s, we had the emergence of Ōpōtiki Mai Tawhiti, the kapa haka group and that was a positive thing for young Māori to be part of. Just the beaches and the way of life in Ōpōtiki was appealing to us. My family are into education, teachers, and te reo, we are all from a kura kaupapa background at Hoani Waititi Marae in Auckland. (inaudible 12:45:56), he's our chief, back in the day, he helped establish that marae as the educational site for kura kaupapa Māori, and it reconnected us back to Ōpōtiki.

That's all you can ask for as a young person, is to feel connected. So, our leadership has done huge things for us and can be proud of the way we have handled the raupatu over nearly 200 years.

MR KENNELLY:

At 95 of your brief, another important aspect of Ngāti Rua and the Papuni whānau, was the Ringatū Church. Are you able to speak about that please.

TAKAPARAE PAPUNI: (CONTINUES, #E021)

My koroua, Raimona Papuni was a Ringatū tohunga. He had a white horse, he would go to the rā's at Whitianga and Maraenui back in the day. They said he was the scout when he was a younger man for Te Kooti, for the Ringatū church and he lived that life as a Ringatū tohunga. We have a staunch history of Māori independence because of our church.

It brings us together, our tribe, and it grows our young men into role models, and our young women, and it sets the values and tikanga that make us who we are as Whakatōhea. So, I'd like to acknowledge Te Kooti and his teachings, and insight that from out of destruction came prophecy and karakia, and a beaming light for the Whakatōhea people.

MR KENNELLY:

At 107, you talk about Whakatōhea today, do you want to expand on that a little bit.

TAKAPARAE PAPUNI: (CONTINUES, #E021)

I just want to acknowledge the stance of te reo in Whakatōhea. We have a huge commitment to kōhanga reo and to our tamariki and mokopuna. My aunty, (inaudible 12:49:22) is the chairman of our kōhanga reo and she assisted me in supporting me in reconnecting with the reo back in the 90s and the 2000s.

Our kōhanga reo is huge in Whakatōhea, and it's a beaming light for education for our children. I'd like to see them further that and go into wharekura here in Whakatōhea, Te Kaihautu Maxwell mentioned it in his evidence, that we need that. So, I support this as positivity for Whakatōhea future generations, and our kura kaupapa Māori, Waioeka, they are doing wonderful and it makes us proud to see them stand on a stage and say, after a hundred and something years of who they are and where they come from and mention the history of their ancestors.

So, I'd like to bring that to a close, today, Judge Doogan. Nō reira, tēnā koe.

QUESTIONS FROM MR LINKHORN – NIL

(12:51) PROFESSOR TOM ROA TO TAKAPARAE PAPUNI:

Q. Tēnā koe.

A. Tēnā koe, matua.

Q. Kei te mihi ki ō kupu, otirā, ki ngā wheako e tū pakari nei koe i tēnei rā, nō reira, kei te mihi. **I want to thank you for what you shared and the**

experiences that allow youto stand strongly at this time, so I want to thank you. Tāku pātai **my question**, I'm interested about the values that you mentioned with the section with the Ringatū Church in paragraph 97. I still see those values in Ngāti Rua today.

WITNESS REFERRED TO BRIEF OF EVIDENCE, #E021, PARA 97

A. Kia ora.

Q. Can you expand for me, what those values are?

A. It set a model to follow, we have role models to follow and leadership that leads us at Ngāti Rua, and same with other hapū in Whakatōhea, and when we come together, we are a strong iwi to be recognised. Those values are tikanga driven, by the kaumātua and kuia at the marae, and it's about sharing those tikanga and respecting our kaumātua and kuia. That's the model that we follow. So, we can come today like, it's an example to come together as different rōpū, different family's and talk about how the raupatu has treated us and how we have responded in our different ways.

It's exceptional to hear the length of time the Crown has waited for Whakatōhea to come to the table and talk about our role modelling. If it wasn't for our reo, our tikanga, and our marae, to bring us together. It would be really difficult for – I think raupatu would have been successful, lets say that, but it hasn't. Our tikanga and rangatiratanga is strong. If we go through to our kōhanga reo, they get up everyday and they say who they are, their pepeha, and that makes us proud. Those are the next future chiefs for Whakatōhea, and they are home grown.

Q. Thank you. Following on with that, values are modelled, our people and others learn from the model that the leadership provides. As a teacher yourself, you'll know that you've always got these children –

A. Kia ora.

Q. – who will, te kupu Māori, tukituki te hau.

A. Kia ora.

Q. Ringa raweke. **Tamper with things.** How do we allow for them to experiment but bring them into line so that they – the calabash might be broken, but we have a way of fixing it.

A. That's a good question. Fortunately, we have Ōpōtiki Mai Tawhiti and we have broken a few calabashes. But we are hāngai to our rangatiratanga and our chieftainship is strong, and we were forced to stand amongst Mātaatua, other iwi. But it comes down to our education and our pakeke, and what we've been brought up, what's home grown about Whakatōhea. There is something good that Whakatōhea is growing for young people here, and if you let us and support us, we'll certainly show you who we are in the future.

Q. Ka pai.

A. Kia ora.

Q. I do appreciate the positivity in every witness through this hearing, kia ora.

A. Kia ora.

JUDGE DOOGAN:

Tēnā koe, Mr Papuni. There are no other pātai from the panel, I just wanted to tautoko the mihi Ahorangi Roa has given for your evidence, and also to observe that it's striking to us having heard quite a lot of the history over the time we have been on this inquiry journey. In particular, about, just how devastating the raupatu was. But the counter point and the acknowledgement Ahorangi Roa has given to you and to others is the striking evidence of just how resilient Whakatōhea communities have been over time. So, just wanted to acknowledge the demonstration you have given of that in your own whānau and your own whānau history. Also, to mihi to your ongoing mahi in the educations space, so, tēnā koe.

HOUSEKEEPING – TIMETABLING (12:58:40)

HEARING ADJOURNS: 1.02 PM

HEARING RESUMES ON THURSDAY 28 AUGUST 2025 AT 9:02 AM

MIHI (UNIDENTIFIED MALE SPEAKER)

KARAKIA TĪMATANGA

(09:05) JUDGE DOOGAN:

Tuatahi, he mihi tēnei ki a koe, e koro, nāu i whakakākahu tā tātou nohoanga ki te korowai o te Atua, nō reira, tēnā koe. Ngā mihi hoki ki a koutou kua huihui mai nei. Nau mai. Welcome to day four. This week seems to have been going rather fast, but we are looking forward today to hearing from Ms Luiten. Welcome, counsel supporting Ms Luiten, and also welcome to Ms Downs. Ms Cole – I was going to say Clark, sorry; Cole. Any other new counsel today? Just any other appearances to note? Sorry.

(09:06) MS TATIJANA SIMON-LARSEN: (MIHI, APPEARANCE)

Āe, tēnā koe, e te Kaiwhakawā. Counsel's name is Ms Simon-Larsen, and I appear from Tukau Law with Dr Downs presenting Ngāti Ngahere, Wai 1884.

JUDGE DOOGAN:

Kia ora. Thank you. Tēnā kōrua. All right. Ms Ferrall, Ms Holmes, which of you will be leading us today? Kia ora.

(09:06) MS NELL FERRALL: (MIHI, APPEARANCE)

Tēnā koutou. Tēnā koutou, e te Kaiwhakawā me ngā mema o Te Rōpū Whakamana i te Tiriti o Waitangi. Ko Nell Ferrall ahau. Kei konei māua ko Natalia Holmes. He kaiwawao ahau i te tiaki ana i te kaiwhakaatu i tēnei rā. Tēnā koutou, Sir and members of the Tribunal. Counsel's name is Nell Ferrall, and I appear with Natalia Holmes as counsel assisting the Tribunal-commissioned witness today. Sir, I will first call and confirm the evidence of Jane Luiten, after which she will more formally – more fully introduce herself and deliver her presentation.

JUDGE DOOGAN:

Kia ora.

MS FERRALL CALLS

(09:07) JANE LUITEN: (#A025(d))

Q. Ms Luiten, can you please state your full name for the Tribunal?

A. Jane Patricia Luiten. Jane Patricia Luiten.

Q. Can you please confirm that you were the author of the Tribunal-commissioned report entitled "Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty, Part Two: Lands 'a waho'", with the appellation #A025?

A. I am.

Q. And you have also produced a summary of that report, with the appellation #A025(d)?

A. I am – I did. I did.

MS FERRALL:

Sir, I will now pass it over to Ms Luiten.

JUDGE DOOGAN:

All right. Thank you. And Ms Luiten, would you mind just putting the microphone down a little, just so – just closer to you? Thank you.

JANE LUITEN:

He hōnore, he korōria ki te Atua, he maungārongo ki te whenua, he whakaaro pai ki ngā tāngata katoa. Te whare e tū nei, te papa e takoto nei, tēnā kōrua. Ki te hau kāinga, a Te Ūpokorehe, tēnā koutou. Kia ora, e koro, mō tō whakatau mai me tō karakia kia whakatuwhera tā tātou hui i tēnei rā. **(Interpreter: NIL)**

Heoi anō, ki a koutou katoa, ngā iwi, ngā hapū whānui o te rohe nei, ko Tūwharetoa, ko Ngāi Tai, tēnā koutou katoa. Kātahi anō au kia puta i mua i a koutou ā te mutunga o taku mahi rangahau, nā reira, he pīki tei tēnei māku. Ngā mihi. Ngā mihi ki a koutou, ngā mihi hoki ki ō koutou mātua tūpuna. Ka aroha hoki, ka mīharo ki tā rātou māia, tā rātou manawanui, ahakoa kua

huripoki katoa tā rātou ao. And nā tā rātou piri ki te pono, piri ki te tika, te take kei konei tātou i tēnei – tēnei rā. Nā reira, tēnā koutou. **(Interpreter: NIL)**

Ki te Karauna, he tika tonu me āta titiro, āta mārama ai ngā mahi nō mua, nā reira, tēnā kōrua. And ki Te Rōpū Whakamana i te Tiriti, mōrena, tēnā koutou. **(Interpreter: NIL)**

Tēnei au, ko Jane Luiten tōku ingoa. He Pākehā i ahu mai i Te Tai Tokerau, nō Kaitāia. I whiwhi i taku tohu mātauranga i te Whare Wānanga o Waikato. Kua mahia e au ēnei momo mahi rangahau, ooh, toru tekau mā rima tauināianei, pea. E noho ana ki Tūranga. Nā reira, tēnā koutou, tēnā koutou, tēnā koutou katoa. **(Interpreter: NIL)**

E pai ana mena ka noho au?

JUDGE DOOGAN:
Āe, āe.

JANE LUITEN: (CONTINUES)
Ka pai.

JUDGE DOOGAN:
Tēnā koe.

JANE LUITEN: (CONTINUES #A025(d))
So this report is the second part of the study of 19th-Century land alienation and administration of tribal land within this inquiry district. Part One dealt with tribal lands that the Crown confiscated in 1866, and that was presented in December last. This second work concerns the balance “a waho”, or outside of the confiscation district, and it’s about 200,000 acres of rugged, forested hinterland stretching from the confiscation line, bordered on one side by the Waioeka River, and to the south, by the Mōtū River.

And in effect, this history is really contained to the last three decades of the 19th Century, once the New Zealand government had achieved authority over the district through military subjugation. For the defeated Te Whakatōhea nation, it's a story of bruising and bewildering dispossession, wrought by a combination of Native Land Court adjudication and Crown purchase, so that by the time of the Stout-Ngata stocktake in 1908, less than 20,000 acres of their rohe "a waho" remained, and these were held as ten scattered titles, and not by the tribe but individual interests held by individuals.

Ngāi Tai fared comparatively better in the 19th Century. Not only were they the ostensible "winners" in the court battles for Crown title to the disputed hinterland, but unlike Te Whakatōhea, Ngāi Tai were able to keep their tribal heartland of Tōrere out of the Native Land Court altogether in this period. By the early 20th Century, before the next wave of alienation, the tribe held title – court-derived and customary – to some 60,960 acres "a waho".

The alienation of the balance, 120,572 acres "a waho" (which is about 60 per cent) in this 30-year period was entirely the work of the Crown, obtained through purchase and through the enforcement of survey liens, and the Native Land Court was central to this dispossession. The market in Māori land titles was theoretically an open one from 1865, but alienation was statutorily weighted in favour of the State. Government, too, controlled the scope and pace of survey, which determined how tribal lands were packaged for court. In the case of this inquiry district, the lands a waho were carved, in the first instance, seven ways, into the land blocks of Whitikau, Whakapaupakihi, Oamaru, Whitikau 3, Takaputahi, Kapuarangi and Torere. Resulting from a mix of public and privately contracted block surveys, or in the case of Oamaru, a notorious combination of both, the survey of customary land emerges in this report as an integral part of the alienation story.

So Crown purchase negotiations of these lands a waho began on the heels of confiscation, in 1873, and it was part of what was called "progressive settlement". Special Commissioner for the Bay of Plenty Confiscation District John Wilson Jnr was recycled as a land purchase officer to acquire "a public

estate for the purposes of settlement" in the Bay of Plenty and Tūranganui districts, and his appointment was part of an ambitious £10 million public works and immigration programme. It was undertaken post-war to extend settler colonisation into such former "native" districts. The public investment in "progressive settlement" saw the State return to the forefront of Māori land purchase, which it had left to private enterprise the decade before. So preferential legislation was at once passed to recapture the market from private enterprise.

And Wilson worked both sides of the East Coast throughout 1873 to bring about the sale and purchase of the interior country at Mōtū. Like fellow Crown purchase officers, however, he encountered widespread resistance to sale and was forced to default to lease. Ultimately, Te Whakatōhea resolved to withhold their lands from dealing altogether. The first interior lands bordering the inquiry district were packaged into a title for lease to the Crown at a Native Land Court hearing at Ōpōtiki in December 1873. The outcome reflected the tribal consensus reached outside, including the recognition of Te Whakatōhea's boycott north of the Mōtū River.

The leasehold agreements Wilson secured within days of the court's preliminary order at Ōpōtiki were unlawful. They bore, moreover, all the hallmarks of 'ground bait' to draw the lessees into permanent alienation, for progressive settlement was predicated on obtaining freehold, not leasehold. Little rent, if any, was paid before Wilson turned, by 1875, to purchasing the individual interests in the title.

Early in 1876, Wilson recommenced groundwork for the sale and purchase of Mōtū lands within this inquiry district, now accessible by the recently completed Motu Road. Unable to broker a deal at Ōpōtiki, in March 1876 at Tūranga, Wilson instead paid £100 – and that should not read "four men"; it's actually to 13 – there were 13 signatories to that agreement and another five signed as agreeing to the payment, so there were 18 signatures on that agreement, rather than four – but he paid £100 as an advance on the sale and purchase of land on the northern bank of the Mōtū River, inside this inquiry district. The

estimated 20,000-acre block was called Whakapaupakihi. Three months later, Te Awanui Aporotanga and Wi Kingi, the two tribal leaders primarily engaged in the government's road construction, jointly applied to have surveyed adjoining land known as Whitikau, to have it surveyed as a preliminary to title investigation.

Wilson was sacked in December 1876 for his "want of discretion" in advancing monies to the wrong people or doing so on highly contested land. Government negotiations were brought to a virtual standstill as a result. He left, however, a legacy for Crown purchasing policy and practice. The clauses Wilson wrote into the Mōtū leaseholds prohibiting owners from otherwise dealing with their lands under contract to the Crown inspired amendments to the same effect in Immigration and Public Works legislation, in 1874.

In 1877, the government extended this ringfence against private enterprise to any land for which the Crown had advanced money – all those pre-title advances Wilson had lost his job over. More significantly, in contrast to the collective bargaining envisaged by the Native Land Act 1873, in the intensely competitive market dogged by tribal aversion to sale, Wilson had increasingly resorted to dealing for individual interests in Māori land titles. From a grudging approval of such tactics from Head Office in late 1875, legislation passed in December 1877 now empowered the Native Minister to apply to partition the Crown's interest purchased in any block, meaning that for the first time since post-war land purchase operations began, purchased interests could be translated into a tangible award of land, and made available for "settlement".

So it's important to grasp that Wilson was dealing with individuals both pre-title, with advances made with regard to Whakapaupakihi, for example, as well as dealing with individuals post-title, which was contrary to the 1873 Act. The purchase of individual interests, together with the partition of the Crown's interest so acquired, was to become the mainstay of Crown purchase in the decades to come. So the first purchases were the Whitikau and the Whakapaupakihi purchases, and the preliminary agreements were in the spring

of 1879, and they were – it took 'til 1884 before they were able to be completed sufficiently to be made available for settlement.

From 1878, Native Minister John Sheehan promised more transparency in government land dealings, but no let-up in "progressive settlement" per se. On the contrary, government purchase policy was now geared towards the bulk packaging of customary lands in the interior, to save on survey costs. In the turbulent market in East Coast titles, reinvigorated government purchasing on these expansionary lines was preceded by a high-level agreement reached at Gisborne in May 1879, facilitated by Ōpōtiki-based Resident-Magistrate-cum-Land-Purchase-Officer George Preece, setting the Mōtū River between Te Paku and Kaitaura as the boundary between the iwi of Ngāi Tai and Te Aitanga-a-Māhaki and pronouncing Wi Kingi of Ngāi Tai as kaiwhakahaere to "conduct the investigation" on the Bay of Plenty side. Te Whakatōhea were not party to this agreement. Within weeks, Preece received offers from among Te Whakatōhea to sell lands, including Te Wera, Whitikau and Whakapaupakihi, reversing their former resistance to dealing.

The practice of discrete, pre-title advances to individuals had ceased by this time, but not pre-title negotiations or advances per se. Indeed, as outlined above, the government practice was an important tactic to shut out private competition. Preliminary agreements for the sale and purchase of customary lands were once again relatively public affairs, conducted with representative leaders. Hapū claiming an interest were encouraged to participate, not only sharing in the modest advance on purchase, but also practically assisting the survey required by court. Crucially, in each case, the purchase was to be completed, and the balance of payment received, by those found by the Native Land Court to be the owners. To court hapū engagement, by 1879 the government had increased its per-acre price, offered to pay for the block survey, and promised to reserve land for the vendors from every sale.

Preliminary agreements for the sale and purchase of Whitikau and Whakapaupakihi were made along these lines in October 1879. The major incentive driving the government purchases was the Motu Road frontage that

separated the two blocks. In the case of Whitikau, the £100 advance was divided equally between competing tribal representatives Wi Kingi and Te Awanui Aporotanga, both parties undertaking to assist the survey. The purchase, based on 3 shillings per acre and with 5% of the area reserved from the sale, would be completed post-title with the registered owners. In the case of Whakapaupakihi, Preece bargained the Te Whakatōhea vendors down to 2s 6d per acre and 3% reserves.

Title determination took place two years later, in December 1881. In an extraordinary move, the Native Land Court heard both cases together and then reconfigured the surveyed boundary between them. Doing so meant that the valuable road frontage now lay within Whitikau Block, which was awarded to Ngāi Tai. Whakapaupakihi Block, now reduced in area by almost one third, was awarded to Te Whakatōhea and divided in two, the larger portion vested in 12 owners to facilitate the sale to the Crown and a 2,000-acre inalienable reserve ordered in favour of 569 tribal members.

The title determination points to political intrigue we can only guess at. Moving the road into Whitikau Block effectively neutralised the opposition to its inclusion in the Crown purchase. Should Te Whakatōhea baulk from completing the deal under the revised terms, Land Purchase Officer Gilbert Mair stood ready to apply to partition out the Crown's interest – now calculated to include the cost of survey.

Te Whakatōhea appealed the Whitikau decision at once, which put the government sale and purchase of the block with Ngāi Tai on hold. Moreover, a minority also objected to the sale of Whakapaupakihi 1 to the Crown, transacted a fortnight after the decision. Chief Judge Fenton subsequently dismissed the multiple appeals of the Whitikau decision. The sole application advertised for hearing in September 1882 was treated as an application for title determination and similarly dismissed in court. Te Whakatōhea's 1883 petition about the title determination was not supported by the Native Affairs Committee, except with respect to the failure of due process in the Crown's purchase of Whakapaupakihi. The Crown's haste in purchasing the block before the

three-month window for appeal had expired saw legislation passed in 1883 referring the block back to court for title determination. In an out-of-court settlement reached in December 1884, the non-sellers wrung an additional 1,200 acres of reserve from the Crown purchase. The purchase itself – and the altered boundary – stood, spelling the end of Te Whakatōhea's appeal for Whitikau. The sale and purchase with Ngāi Tai for the land was completed over Te Whakatōhea's continued protests a fortnight later.

And the next bit concerns alientation by survey, which affects the Oamaru Block.

Survey was a core component of title determination, and the most expensive part of it. From the outset, cost recovery provisions for surveyors reflected the reality that few customary owners could afford to pay for survey outright. Increasing State control of surveying customary lands from 1873 seems to have been another facet of capturing a market share for progressive settlement. By 1880, the State enjoyed a statutory monopoly: surveys for the purpose of title determination were only to be made by surveyors employed for that purpose by the Surveyor-General. The government also controlled the purse strings: government funding available for the survey of customary land was to be paid back by the landowners in land, and the Survey Department dictated both the survey charges and the value of the land to be transferred in satisfaction.

The economic recession of the early 1880s brought a lull in Crown purchase. In this period, Native Minister John Bryce ended the practice of pre-title negotiations as more trouble than it was worth. Gone, too, were the complimentary block surveys and reserves from any sale: from now on, Crown purchase became a matter of piecemeal purchase – post-title – of individual relative interests. In the straitened times, the government was no longer interested in purchasing difficult country with poor settlement viability, at least in the quantities dictated by hapū mana. The emphasis in the "settlement" of tribal lands shifted from wholesale purchase to the survey – to survey, like packaging lands for title determination in as large parcels as possible. Not to participate was to risk having tribal lands encompassed in any survey awarded

to others. Taking part was to be immediately embroiled in the associated liability, not only for a portion of the initial outer block survey, but also for the survey of any partitioned interest. All roads led to alienation, the first step of which was now the survey application.

The story of the competing Te Wera/Te Houpapa blocks provides an insight into the tension between government policy and the dynamics of hapū mana which, by 1883, had led to something of an impasse. The government's sale and purchase of the 20,000-acre Te Wera Block had been dropped by this stage because the cost of surveying the block was deemed to be twice the value of the land. The government's counter-proposition to survey the 100,000-acre Te Houpapa Block – which encompassed Te Wera – was in turn derailed by local opposition from Wairoa and Ōpōtiki and, by 1884, the more lucrative settlement investment of surveying the King Country.

In the case of Te Whakatōhea's Oamaru lands, private enterprise broke the impasse. In January 1887, having already begun work, private surveyor Alma Baker convinced government officials to authorise his survey of Te Whakatōhea's customary lands. In May that year, having succeeded in surveying the 106,000-acre Oamaru block, Baker convinced Native Minister John Ballance to take over the survey liability. The survey was not mandated by the customary owners, who were opposed to it. Key government officials were aware of Te Whakatōhea's opposition. Baker's audacity, however, not only promised to bring these tribal lands into court, but on terms to the government's financial advantage, once the customary owners were stung with the survey bill.

The Oamaru block began as something much smaller, as title and survey applications for 15,000 acres in January 1885 under the auspices of Ngāti Te Urukotia. The applicants had sale in mind: they were not after a government survey, but rather funds to pay their own surveyor, Alma Baker. The survey application was approved in principle shortly after, the title application forwarded for approval to the Ōpōtiki District Native Committee, which had yet to convene. In March 1885, within weeks of the applications,

Te Whakatōhea informed Assistant Surveyor-General Stephenson Percy Smith that lands within their “rohe potae” would not be surveyed at this time.

State funding was not ordinarily available for private surveys. By November 1886, to attract government funding based on the prevailing land-for-survey cost recovery, the survey proposition was now estimated at “about 75,000 acres not fifteen”, the block now stretching to the Waioeka River. By this time, too, private surveys of customary land required the prior written authority of the Surveyor General. Baker received authorisation in January 1887 because the Native Land Purchase Department was satisfied that “a good piece of land can be got”. Five months later, the Native Minister agreed to take over the survey liability, not least because of an alleged agreement Baker held with “the owners”, just to a survey charge of 5 pence per acre, to be recouped in land valued at 1 shilling per acre. The surveyed block was bigger again, now 106,000 acres.

Percy Smith played a key role in pushing through Baker’s overreaching survey. At no stage did Smith take Te Whakatōhea’s survey embargo seriously. The five-fold inflation of the survey proposal by November 1886 raised no corresponding qualms about the lack of tribal mandate. On the contrary, by May 18 – and that should read “1888” – “1887”, sorry – by May 1887, opposition was dismissed by Smith precisely because of the expanded rohe: quote, “in so large a Block this is only to be expected”, unquote. Asked to explain the District Native Committee’s subsequent disapproval of the title application based on the survey plan in September 1887, Smith represented local opposition to the survey as a matter of partition, evidence that the Assistant Surveyor-General was only too aware that multiple hapū were interested in the survey they had not been party to. By the time of the Oamaru title determination in August 1888, Te Whakatōhea seemed resigned to the fait accompli, bringing distinct hapū-based cases. A seventh case for lands in the south-western corner was belatedly brought by Te Whakatane hapū of Ngāi Tūhoe, who had only recently learned of the survey. Wilson dismissed the minority claimants’ case as, quote, “opposed to the weight of evidence”,

unquote, partitioning the block seven ways for the hapū counter-claimants. The issue of survey costs was not dealt with on this occasion.

The government's sponsorship of a survey in breach of any tribal mandate was matched only by its insistence to hold Te Whakatōhea liable to a deal they had not been party to. The government moved to recover the survey costs in land seven months later, based on Baker's alleged agreed value of 1 shilling per acre. The action for both Baker's block survey and the partition survey to come, prosecuted by Resident Magistrate Robert Bush, resulted in a court order vesting 30,357 acres in Her Majesty, some 29 per cent of the block. The owners in court were told by Bush that the partition survey was conditional on their agreement to the order. Te Whakatōhea's appeal of the decision, heard in Gisborne, was not successful.

And I've been told I've got five minutes left, so would you like me to just summarise the remaining? Because I probably won't get through in five minutes.

JUDGE DOOGAN:

I was going to say when you got to the end of this little section to have a little microbreak, so – which we have been doing this week, as in previous hearings just every thirty or forty minutes, so in terms of the remainder, Crown – or counsel, I presume the estimates given for –

TIMETABLING – MICROBREAK (09:36:45 – 09:37:25)

JUDGE DOOGAN:

Yes, thank you.

JANE LUITEN: (CONTINUES)

Because it's important that – that Te Whakatōhea subsequently petitioned against the – the survey, the amount of land being taken for survey, and what is the important point about this is that within five years of the survey costs, the government begins to purchase interest in those Oamaru partitions, and part of

the rationale for doing so was to "connect" the blocks that have already appropriated by the Crown through confiscation and through survey debt, so that the Crown appropriation becomes the pretext for the next wave of alienation to connect the blocks.

Would you like to leave it there, your Honour?

JUDGE DOOGAN:
Thank you.

HEARING ADJOURNS: 9.38 AM

HEARING RESUMES: 9.41 AM

JUDGE DOOGAN:
Kia ora. Kia ora anō koutou. We might resume. Thank you. Ms Luiten, kia ora. Thank you.

JANE LUITEN: (CONTINUES #A026(d))
Thank you. So, the next section concerns the contest for Waiaua, which is the title determinations of Whitikau 3 and Takaputahi.

Title to the balance of eastern lands a waho was litigated in the closing decade of the 19th Century. Wi Kingi, the government-ordained "conductor", had contracted Alma Baker to survey the rohe into four blocks in 1884 – which is more likely probably 1883, because the surveys were finished by January 1884 – paying him with the proceeds from the sale of Whitikau 1. The Ngāi Tai rangatira had held off taking the blocks into court, however, in the hope of better land legislation. The title determination for the first of these land blocks, Whitikau 3, was set down for hearing in August 1888, but was adjourned when Kingi died. This seems to have been the first inkling Te Whakatōhea had of the survey: Ngāi Tai was accused of doing so by stealth. Adding to Ngāti Rua's outrage on the eve of their Oamaru title investigation, Kingi had altered the boundary between Whitikau 3 and Oamaru Blocks to Te Whakatōhea's

disadvantage, not only reducing the Oamaru Block by 1,500 acres but also transferring – once again – the Motu Road out of the block.

The fierce contest between Te Whakatōhea and Ngāi Tai over the interior was but an extension of their longstanding battle for Waiaua, the coastal belt and the interior arguably part and parcel of the same mana. The 1881 award of Whitikau, together with Wi Kingi's proactive surveying since, was to Ngāi Tai's advantage in the title determinations for the balance to come. Ngāi Tai had won title to Whitikau based on their take of conquest over the former inhabitants, identified as Te Panenehu. Their conquest take was repeated to good effect with respect to Whitikau 3 in 1889, and again in 1895. Ngāi Tai's case came unstuck that year with adverse findings in Kapuarangi and Takaputahi based on the court's site visit to Tunapahore, but Ngāi Tai won back a share of both blocks on appeal, the reversal of the Takaputahi decision based in turn on their successful claim for the intervening land, Whitikau 3.

Ngāi Tai were the evident winners of the title contest for the lands a waho, but this was scarcely the result of a robust judicial investigation of customary title. In the bitterly contested battle for the interior, ancestral boundaries were held to be "beside the real question". Ancestry per se was similarly of little account. The precedence given to conquest paid less attention to internal inconsistencies of such narratives. Out of its depth and unable to distinguish between the competing claims before it, the court seems to have given up the task as too difficult – disbelieving of everything and everyone – and gone with the status quo: the 1889 ruling on Whitikau 3 based on that of Whitikau 1; the 1895 Whitikau Rehearing based on the former 1889 award.

A large factor in Ngāi Tai's success was the dissension among their Te Whakatōhea adversaries. In part, this was related to the adverse outcome of the 1881 Whitikau litigation. But the contradictory hapū counter claims to these Te Panenehu lands also pointed to complex tribal dynamics which only began to be teased out after Te Whakatōhea won title to Takaputahi, in 1895. The definition of relative interests that followed the court decision occupied another 17 days of hearing and 200 pages of minutes. It culminated in the

landmark decision that acknowledged Te Panenehu had not disappeared through any conquest but rather had been absorbed into Te Whakatōhea gradually through intermarriage. On account of shared ancestry from Te Pananehu, Takaputahi 1 was deemed to be the common land of Te Whakatōhea. However, in recognition of Ngati Rua's constant occupation of Waiaua, the court awarded the hapū a larger share.

The centrality of Te Panenehu in this title contest had been something of a surprise to Te Whakatōhea in 1881. By the 1895 Takaputahi hearing, however, the reverse was true, the united tribal claim based on Te Pananehu ancestry and beyond to forebears known as Te Whakanui. The report deals with the title determinations of these Te Panenehu lands at some length, for they inform issues of identity and conflict, as alive today as ever. The court's 1895 conclusion about incorporation through intermarriage supports a thesis of emergent tribal confederation at work decades before Te Tiriti. Five generations before those in court, Te Panenehu occupied the buffer between the two increasingly powerful adversaries of Te Whakatōhea and Ngāi Tai. Tribal incorporation into both was key to survival. It also provides the most cogent explanation for both the "end" of Te Panenehu as a political entity within Te Whakatōhea five generations on, and the presence of a handful of them – Eru Ponaho's family – still living at Waiaua at the time of the government invasion.

And we now turn to the second on closer settlement of the 1890s. This is the reinstatement of Crown pre-emption and the sale and purchase of individual shares.

In the 1890s, the government embarked on another aggressive program of Māori land purchase under the rubric of "closer settlement" based on small farm development. The productive utilisation of land was deemed to be an issue of national interest, the government again contracting major debt to bring about the "settlement" of what remained in Māori hands. The Crown's right of pre-emption was restored in 1894, Crown purchase now unfettered by existing restrictions on alienation.

State purchase of Māori freehold land in this era was a two-part process: the first, the transaction of undivided, individual interests from registered owners, and the second, the Native Land Court's subsequent partition of the Crown's acquired interest in any block. The process required that the relative interests in any land title had been defined. It also involved considerable administration to ensure that the ownership lists were up to date: that interests had been succeeded to; that trustees had been appointed for minors. To this end, government land purchase officers enjoyed the cooperation of the Native Land Court. Land court sittings, too, provided a prime opportunity to deal for the interests of those attending, again at prices and share values dictated by the government.

Between October 1895 and May 1896, Government Land Purchase Officer Richard Gill visited Ōpōtiki three times while the court was in session to purchase shares in Te Whakatōhea's Oamaru titles, at 2 shillings per acre. In all, Gill made 659 transactions for Oamaru shares, for which £5,753 was paid, in cash or kind, the share values ranging from £2 8s 9d to £19 11s 4d. In May 1896, Gill prosecuted the Crown's application to partition its acquired interest. Judge John Wilson presided – our friend, old friend. The resulting Crown awards amounted to 58,736 acres – around 78% of what had been left of Oamaru after the Crown's earlier survey appropriation. The minority of non-sellers were left with 16,839 acres.

On this occasion, Gill also began to purchase interests in Ngāi Tai's lands a waho, the price of 2s 9d per acre higher than what Te Whakatōhea was served, but 3d less per acre than what the government had paid for Whitikau 16 years before. The transactions included Whitikau 2, the 655-acre "inalienable" reserve from the – 1884, it should be – sale and purchase of Whitikau. By October 1898, when Gill appeared in court to prosecute the Crown's partition, he had purchased the interests of 116 of the 211 owners, amounting to 378 acres. Two months later, the Chief Surveyor applied for a charging order against the non-sellers' residue for the proportion of the original survey lien, the 1879 government undertaking to finance the Whitikau survey evidently

forgotten. And on that note, Gill also deducted the survey lien from the amounts that he paid the owners for their interests, even though that survey had - was supposedly paid for by the Crown all that time before. The enforcement of the lien in 1907 shaved a further 78 acres from the former "inalienable" reserve. At the same October 1898 hearing, the Crown was awarded the bulk of the 10,740-acre Whitikau 3B block, having purchased the interests of 148 of the 154 owners, leaving the 11 non-sellers 530 acres. Earlier that year, Gill had successfully stopped one of these owners from partitioning his interest on account of the Crown purchase in train.

Overall, the program of 1890s State purchase resulted in the transfer of 74% of available lands a waho left in the inquiry district (and that's 69,324 acres of the available 93,410). Whitikau 3A, which had been partitioned for Ngāi Tai's minors, was not purchased at this time. Nor was the purchase of Te Whakatōhea's 2000-acre tribal reserve Whakapaupakihi 2 pursued, although the relative interests of the 535 registered owners were defined in 1895. Ongoing litigation over title to Takaputahi and Kapurangi effectively put these blocks out of reach of Gill, and title errors in other Whakapaupakihi partitions may have similarly saved them from alienation at this time.

Gill's purchase of Ngāi Tai interests in 1896 was at their behest. Te Whakatōhea's cooperation with respect to the succession, appointment of trustees, and definition of relative interests could be similarly construed as support for the sales that ensued. But the opportunism of these dealings, which precluded any collective mandate or benefit, was acknowledged at the time and ultimately led to the practice [*sic*: end of the practice] in 1899. This purchasing was happening when the Māori population nationwide had dipped below 40,000, and as I have explored a little in my first report, Te Whakatōhea, their living conditions – they were in a – very marginalised by this time that the Crown purchase happens, and that needs to be – and that's what I'm getting at with this system that takes advantage of a vulnerable indigenous land-owning community, and also, that state purchasing coincides with a prolonged period of Native Land Court litigation in 1895. These – the court has been there full time for most of that year, and that first payment coincides with the beginning

of the Takaputahi case, and that's the first occasion that Te Whakatōhea engage a lawyer to represent them, so there's a lot of context for that state purchasing. By the mid-1890s, Māori registered owners faced the full brunt of a state bureaucracy pitted to acquire their individual land interests, and the fact that anyone emerged from this onslaught with their land shares intact is little short of a miracle.

The last chapter of this report deals with – briefly with land utilisation.

The incorporation of Māori land to better enable landowners to develop their own lands falls more properly into the 20th Century. Much of the lands a waho, it must be said, scarcely made promising farming propositions.

Te Whakatōhea, in any case, had little left to utilise. And there's a case study in the report which traces through Wiremu Te Haeata's attempts to farm Whakapaupakihi 4 and to have the block with other Whakapaupakihi partitions incorporated to enable him to farm, which creates tension with other owners and leads to partition applications in 1907.

The Commissioners Stout and Ngata had been more upbeat about Ngāi Tai's prospects, particularly with respect to incorporation. Wetini Taku had explained to the commissioners that the lease income from the tribe's incorporated titles would enable Ngāi Tai to raise development finance for farming their tribal heartland of Torere, still untitled customary land at this time. The recent sale to the Crown of the 11,474-acre Kapuarangi West 1 block was remarked on by the commissioners, the distribution of the net proceeds among the registered owners working against any capital financing of development. And – but the – the purchasing of the 19th Century doesn't come to an end at the end of the 19th Century. It continues into the 20th Century, and the Crown purchases Takaputahi in 1912 and more than half of Whitikau 3A between 1911 and 1915.

So by way of conclusion, the rapacious alienation outlined in this report was no accident. Making tribal land available for colonisers in the 19th Century was a matter of "public interest". Tribal New Zealanders in this era were not deemed

part of this interest. They were expected, nonetheless, to pay for the exercise: liable for both the cost of measuring their customary lands and cloaking them with the Crown title required to facilitate alienation, at the lowest possible price. For Te Whakatōhea in particular, it is as well to remember that this story of dispossession begins when the Crown had already appropriated the best of the inquiry district on the pretext of quashing rebellion. A respite from further alienation immediately after that was tolerated, but not for long.

The Native Land Court emerges as the engine of dispossession for the colonial state. In the era of progressive settlement, title determination and alienation were so closely entwined as to be inseparable. The economic recession of the 1880s created a breathing space to imagine alternatives to the wholesale alienation of novel Crown titles, so long as the State received its pound of flesh for the privilege – and by that, I mean that the tribal owners were still expected to absorb the costs of making lands available for settlement. In this period, government officials were not above capitalising on private survey risk to push reluctant customary owners into court. The aggressive return to state purchase in the 1890s, to procure the remaining Māori landholdings in the name of productive utilisation, was even more reprehensible for the predatory trade in individual interests at a time of increasing marginalisation.

19th-Century native land legislation in New Zealand is best understood not in terms of any paternalistic protection for indigenous citizens, but rather as a tussle between public and private colonial interests over the spoils of their customary lands and resources, and I think that's a major thesis of this report. The dispossession of the indigenous people was a given. It was just a question of who got to do it, whether it was the state or private enterprise. In this inquiry district, the nature of the lands a waho may have contributed to the Crown's exclusive control over the market, rendering the Crown's conduct even more inexcusable. The story of these lands a waho is not one of Crown concern about the impact of its policies and practices on the tribal custodians, but rather one of a relentless campaign to wrest the entirety of these lands at the least possible cost to the State, and I would submit there is no honour in the business of colonisation.

Thank you.

JUDGE DOOGAN:

Kia ora – kia ora, Ms Luiten, thank you.

HEARING ADJOURNS: 10.03 AM

HEARING RESUMES: 10.07 AM

MS KAREN FEINT KC:

Tēnā tātou. Just to explain what is going to happen with the cross-examination, Judge, so Ms Cole and I were the lead counsel, and Ms Cole has a complicated system of who's doing what, but what it boils down to is I'm going to start with some overview questions looking at the big picture in terms of the whole report and then Ms Cole's going to follow with the detail about the particular blocks, and Ms Clark has volunteered to cross-examine on the Oamaru chapter, so between the three of us, we should cover most topics, I think, and then we move down the batting order, as has been arranged.

JUDGE DOOGAN:

All right, thank you for that indication.

(10:06) MS FEINT KC TO JANE LUITEN:

Q. Tēnā koe, Ms Luiten. Tēnei te mihi nui ki a koe i tāu mahi nui. **(Interpreter: NIL)** I wanted to begin by saying I finished reading your report and I thought it's such an outstanding report that I genuinely don't need to ask you any questions, because I thought not only did you cover all the relevant issues, but you've also done a very good overview analysis, like drawing the threads out of what that means in Treaty terms, so I started thinking, "Well, what on earth can I ask?", and I thought, "It wouldn't be any fun if we didn't ask anything at all", so – the Tribunal's hoping I'll sit down now and it will be sorely disappointed.

But can I start by asking you about the overarching themes of your report? And I thought the – the one that jumped out at me the most is that you say that the native land legislation and the alienation of Māori land are inextricably intertwined, that one inevitably led to the other. Would you agree with that?

A. Yes. I think the Native Land Court was designed – at the time, it was called by Pākehā "direct purchase". It was created to change the process, which had been up to that point Crown pre-emption, which had run to a halt with the – the wars of the 1860s, you've met with increasing resistance. And so title adjudication of customary lands, which would be then able to be purchased by private enterprise, and at that point, the state actually left – left it to private enterprise, during the 1860s, and only entered the market again after the – the progressive settlement after the wars.

Q. Thank you. That's helpful.

JUDGE DOOGAN:

Ms Feint – sorry, was your question the legislation leads inevitably to alienation, or was it the court, the Native Land Court? I thought your question was around the legislation leading inevitably to alienation. Was that correct?

MS FEINT KC:

Yes, that's correct.

JUDGE DOOGAN:

All right.

MS FEINT KC:

And of course the Native Land Court was part of that legislation.

JUDGE DOOGAN:

Is part of that. All right. Thank you.

MS FEINT KC TO JANE LUITEN: (CONTINUES)

Q. Thank you for that answer. And just to tease that out a bit more, if I take you to page 436 of your report, you say at the top there that "Since Treaty times… the myth of a humanitarian colonisation has been kept alive: the belief that however badly things panned out for indigenous New Zealanders, the Crown *meant* well", which I thought was an interesting idea, and I note you quote Professor Richard Boast there, and I think you are not on the same page as Professor Boast in terms of distinguishing between intention and outcome.

So just to read to you what Professor Boast says in his book *Buying the Land, Selling the Land* – and I am at page 64 – he says it's "always important to distinguish motive from effect. Just because the Native Land Acts came to have consequences that were widely perceived as disastrous, it does not prove that this was intended from the beginning. Things occur from human action, but not always the things we expect." You don't agree with him on motive, do you?

A. That's the conclusion I've come to after 35 years in the business, yes.

Q. Are you able to say why you think so? As I understand it, you think that the purpose of the native land legislation was to set up the large-scale alienation of Māori land. Are you able to explain why?

A. It's – it was stated at the time. There are various quotes in my report which – and I think the one at the beginning, right at the beginning, where I start with, with Henry Sewell saying, it's our God-given right to colonise these lands; God did not mean to leave the lands in a waste condition. The whole moral justification for colonisation is to take them over and make them productive, and that is the basis.

And I think we're looking at the native land legislation of the 19th Century always in terms of – of this myth of a protective Crown, but I'm tending to see it more and more as this tussle between private and public benefit. There's no question that the land's going to be taken and colonised.

That's the given throughout the entire 19th Century, and that's shown in the quotes that I've included in the report – that are made in Parliament. They're made openly. I mean, Balance in 1886, when Māori don't go with his Administration Act. He says that's the guarantee of Article 2 of the Treaty. You agreed for the Crown to colonise your land.

The – the interesting thing about the 19th-Century people doing this colonisation is they genuinely seem to believe that Māori are going to go along with this colonisation, that they will see it as their own good. If you look at progressive settlement, after the wars, again, the whole progressive settlement is predicated on obtaining the freehold, and they seem genuinely surprised when there's continued resistance. Māori are no more willing after the war than they were before the land – to sell their land, and so the Crown has to default to lease.

So I guess, along with the idea that it's a given that these lands will transfer into colonising hands, there's a curious belief that Māori will think that's a great thing for them to do, too. And I guess that's the whole British thing about what a great thing we are, and aren't you lucky, and come and be part of this beautiful British enterprise.

Q. Which is really underpinned by racist ideology, is it not, that in the stadial theory of civilisation, the British believe that they're superior?

A. Yes.

Q. Thank you for that interesting answer. You touched on where I was going to be going next, which was that notwithstanding, as you say, that the British had a God – believed that they had a God-given right to the land, to settle it and make it quote-unquote "productive", that ideology competed with the ideology underpinning the early constitutional arrangements, and this may be a contest, perhaps, between the imperial Crown and the local settlement government, because if you think back to 1840, you had Te Tiriti o Waitangi with its property guarantees; you had the 1840 charter, which required the Governor to respect and protect Māori property rights; and the Land Claims Ordinance of 1841, which banned private settlers from acquiring land from Māori in order to give the Crown the right of pre-emption, so you have those competing ideologies in contest with each other, don't you?

A. Again, if you look at all of those things in terms of the tussle between public and private enterprise, you see the Treaty of Waitangi as the Crown saying, "This is going to be a state enterprise. This is a public enterprise, not a private colonisation enterprise." So, again, that comes to intent. The Crown says all these wonderful things in its instructions, how there's

– there's going to be these reserves, and they're not going to take any – we're not going to take the land that these New Zealanders need to live on and occupy, we're only – we're after the surplus – and then you compare that with its practice in Te Wai Pounamu, you compare that with its purchasing practice in Wairarapa, and it does complete opposite. It – it leaves them very small reserves, and then goes and purchases them, so again, this – this constant – do you judge somebody by what they say or by they actually do?

Q. Indeed. And it's ironic, really, if you think about – like, the original intention of pre-emption, which, as you say, was part of the imperial common law, was to protect the property rights of indigenous peoples, but actually, the way it panned out, the Crown used the right of pre-emption to exploit Māori, didn't it?

A. I would even question the first bit of that, whether the intent was protection, or whether it was to actually create – to make colonisation a public colonisation, whether there's any protection at all.

Q. Now, that's interesting. Well, I suppose you would say, if you take the Treaty at face value, there was an intention at least espoused, but there was a difference between what they were saying and what they were doing.

So to turn to the second main theme of your report, which you have touched on already, you quote at page 20 Professor Boast saying that the only debate about colonisation and the public interest in settling the land is the extent to which it should be left to private enterprise, and I think you conclude firmly that ultimately, the public interest won out, because it was essential for the Crown to control the process.

A. Not only that, but because of the – the massive public investment, people like Native Minister, Defence Minister Donald McLean and – and that ministry, just after the war, he was very keen that that massive borrowing – that's public money – borrowing for that progressive settlement – that's public works, immigration – that that was going to have a public benefit, not a private one.

Q. And it's true, as well, isn't it, that Māori heavily subsidised colonisation in two ways: first, because the Crown paid them very low prices for their

land and then on-sold it at a profit; and secondly, because with the native land legislation, the Crown came up with the bright idea of imposing the costs of opening up that land through survey and title investigation on Māori themselves?

A. That's correct.

Q. And then, as you say, the other side of the coin is that Māori were utterly excluded from the public interest. There was no official assistance given to them to use their lands in the new economy, so that the only way that they could participate, and raise capital in order to participate, was by alienating their land?

A. Yes, which is then precluded by the nominal prices that they're paid and the fact that they are burdened with the costs of – of that, so the only thing they can do, under native land legislation of the 19th Century, is to alienate. That's the only power they have in terms of administering their land. And the mode of alienation, with the nominal price and all the costs, works against them having the capital to invest any lands that they retain.

Q. And you say at page 55 that "[w]ithin this colonial paradigm, the line between the 'public estate' and 'native land' was a very thin one", and that struck me, because it reminded me of the waste lands debate of the late 1840s, when Earl Gray had a (inaudible 10:22:57) was arguing that Māori only owned land that they physically occupied and that the remainder of the country was waste land, and although that never became official policy here, the approach of buying vast tracts of land at nominal prices, I think, amounts to much the same thing, doesn't it, that Māori lands, the wider extent of Māori lands, even though Māori were accepted as owning all the land in the country, effectively, their wider territories were treated as waste land that the Crown could help itself to.

A. That's all the way through the 19th Century. You've got Native Minister Sheehan, who's been representing the Repudiation movement, once he becomes Native Minister, he – he says that Māori land is really the public estate, and that goes all the way through to the 1890s, where the Liberal government is – is talking about all this waste Māori land being tied up as if it's not in New Zealand at all. You know,

this whole – this whole idea – I mean, it's – yes. It's part of the ideology that underlies those policies.

Q. So if we turn, now, to think about the introduction of the native land legislation, and I take you back to Professor Boast's book *Buying the Land, Selling the Land*, he says at page 48 that there were three core concepts which the 1862 Act introduced on which the Māori land system still rests: one, the waiver of Crown emption; two, title investigation by a court; and three, conversion of customary tenures to freehold grants. Do you agree with that analysis in terms of those being the core concepts?

A. Yes.

Q. And in terms of that first one, the waiver of pre-emption, as you say, that didn't last long, did it, because the Crown quickly realised that it needed to control the settlement process for its own ends and the public interest?

A. But it didn't reinstate pre-emption. It just re-entered the market. So it – the waiver of pre-emption as its sole right to – to purchase, private enterprise was still allowed to participate, but the legislation of the 1870s tipped things in favour of the Crown. I think Crown pre-emption was brought back in the 1890s with that wave of closer settlement purchase.

Q. I suppose what I am suggesting is that in substance, the native land laws gave the Crown the ability to control the process so that it effectively amounted to pre-emption in terms of shutting private purchases out of the market for most of that period in the latter half of the 19th Century.

A. I would stick to my first answer that from 1865 – there's a period where nobody can purchase from 1866 to 1888, but for most of the second half of the 19th Century until that pre-emption is brought back in 1894, that private enterprise can participate, the government just makes it very hard for them to buy customary – or new – new titles, because the Crown does control – through – through various ways, it tries to weight things in its favour.

Q. Thank you. That's helpful. And in terms of the conversion of tenure, you rightly say, I think, that's the most profound development in this home-grown solution of the native land legislation, because the conversion of tenure from hapū rights and responsibilities in relation to

land to the individualisation of title in effect extinguished the customary title of hapū, didn't it?

A. Correct.

Q. And that individualisation was not only catastrophic in terms of Māori ability to retain land, but also hapū mana and authority over that land. But nonetheless, it was a deliberate decision by the Crown to convert tenure in that way in order to assimilate Māori into what they called the new economy. Would you agree with that?

A. I would agree with that. I think Thomas Lewis – I have it in the report – before the Rees Commission in 1891, he says the – the first object of the native land legislation from – with the Native Land Court was for the alienation of Māori land, and the second purpose was to destroy tribalism.

Q. Indeed. And quoting Professor Boast again, at page 93 of his book, he made a point that I thought was interesting. He said, "The real problem with the court lay not so much in the ignorance or insensitivity of the judges – no doubt some were both and some were neither – or with its procedure, but in that the task which it was directed to do by statute was in fact impossible. The Native Land Court was directed to apply native custom, or as we would say, Māori customary law. The Court was set up to individualise Māori title to land according to Māori custom, but of course, Māori custom did not generally recognise individual tenure, and the Court resolved this difficulty by splitting the process of inquiry into two, first by identifying the right-holding group, and second by vesting the rights so found in the individuals as representative owners."

Would you like to comment on that analysis? First of all, do you agree that the Native Land Court had an impossible task, in that it was being asked to identify who owned Māori land according to tikanga, but then to apply a title that was utterly different and incompatible with tikanga?

A. In my chapter on Te Panenehu's lands, I've argued that the Court's not really concerned with customary title, and is certainly ill-equipped to get to the bottom of customary title, and if that had been the object of the Court, it would have handed the job over to Māori themselves, but that was patently not the work of the Court. The Court – the work of the Court – and I think it comes from Boast in his book, he says it – it needs to be

a title robust enough so that it can be sold. But it's not there to get to the bottom of customary title for the purposes of retention, or it's – I mean, the judges, in the case of Whitikau, they're – they are – they're completely out of their depth, and they don't even understand the point, the cases that are being – that are being brought before them, it seems from the evidence.

So I'm not sure – I can't remember the total substance of your question, sorry. But it's not the job of the Native Land Court to – to get to the bottom of customary title for the – for the benefit of the applicants.

Q. Yes.

A. And also, with – it's not just the individualisation. It's the fixed boundaries, and – and the winners and losers, and the – the rigidity of – of those titles, defined boundaries that don't take account of overlapping rights and all of those relationships, as well.

Q. Indeed. I take your point. There's a lot in that answer, and I suppose where custom comes in is that under the legislation itself, that's what the Court was required to apply, that your answer is, I think, that the courts didn't understand tikanga sufficiently, and probably didn't have the ability to apply the complex and intricate overlapping or intersecting rights and responsibilities, given the limitations of the Māori freehold individualised title that they were required to award to the successful groups. Do you agree with that?

A. I think I have – I think the purpose of the Court is to package customary title into a Crown-derived title that can be alienated, that can be – and that's the sole purpose of the Court, is to package customary land into something that can be sold.

Q. Right, so the point of the title investigation is to identify who the sellers are going to be.

A. Yes.

Q. With the ten-owner rule in the 1862 and 1865 Acts, you make the point that they're absolute owners and therefore able to – those ten owners can sell the land without harking back to the hapū. My understanding is in practice, quite often, those ten owners were rangatira who acted as if they

were trustees, but there was no provision in the Act itself for them to act as trustees. Is that right?

A. That's correct.

Q. And then we come to the 1873 Act, which is when true – true individualisation kicked in through recording all owners on a memorial of title, but they ended up in the worst of both worlds, didn't they, because they had an undivided inchoate interest in the whole, which left them – on one hand, the hapū had no ability to manage and use the land collectively, but on the other, the land could be lost piecemeal through the acquisition of individual interests?

A. The – I think the Native Land Act 1873 is – it's interesting, and what's interesting about it is that, as the report details, I don't think Native Minister McLean intended piecemeal purchasing under that Act, and I have argued that at the time, and the provisions of the Act, it said it – it said that alienation would be a collective decision, and people who did not want to sell, their interests would be partitioned out.

The piecemeal purchase or dealing for individual interests, that came from brokers on the – on the ground, because that was the only way they could actually get any sales done, and that's – an example: Wilson is a – is a great example of that, with the Motu and Waikohu-Matawai blocks in the report. That's not coming from the 1873 Act. That was never the intention, I believe, of the 1873 Act. I think that memorial of title was one of the government's strategies to put purchase out of reach of private enterprise, because it would be much too expensive to have to deal with loads of owners to get their consensus to any sale, whereas the government had a lot more resource at its disposal, so the individual purchase that transpired was – it came from the brokers on the ground, as the only way they could make these deals happen, and it was begrudgingly accepted by 1876 by head office, increasingly accepted, and then actually adopted after that as the way forward.

So at the time that the 1873 Act was passed, I don't think that was the intention of the Act, but it certainly became the basis of the practice that followed.

Q. So in summary, then, the intention of the Act may not have been to individualise the alienation process, but that was the effect, correct?

A. That's how it came to be interpreted.

Q. Right. Thank you. I now wanted to –

JUDGE DOOGAN:

Ms Feint, just before you go to another topic, we might just take a short one-minute-or-so pause. Thank you.

HEARING ADJOURNS: 10.38 AM

HEARING RESUMES: 10.40 AM

HOUSEKEEPING – TIMEKEEPING (10:41:06)

(10:41) MS FEINT KC TO JANE LUITEN: (CONTINUES)

Q. Tēnā anō koe, Ms Luiten. I saw in your bibliography that you had referred to the *Turanga Tangata Turanga Whenua* report of the Waitangi Tribunal, and I wanted to put to you the Tribunal's conclusions on the 1873 Act and see whether you agree with its analysis. So the first point is – and I'm at page 532, volume 2 of the Tribunal's report, "The 1873 Native Lands Act regime led Māori to sell lands individually which they would never have sold collectively because they were critical to community wellbeing." Do you agree with that?

A. I would agree.

Q. Secondly, "The Crown knew that this was the effect of the Act and refused to make provision for community management for that reason." Do you agree with that?

A. Again, with the caveat of what I said before. I don't think that was the intention in 1873, but that was the practice that came to be.

Q. Indeed, although if you think about the legislation itself, it doesn't make provision for a hapū title, does it?

A. Indeed.

Q. The third finding is that "[t]he system of land transfer was such that individual owners did not receive fair compensation for their land interests." Do you agree with that?

A. I would agree. The practice throughout the 19th Century is to have the price of land dictated by the government.

Q. Thank you. And then the fourth finding is that "[t]he Crown was aware of the risks of landlessness and title fragmentation which the system presented and was recklessly indifferent to them." Do you agree with that?

A. Yes.

Q. All right. Thank you.

JUDGE DOOGAN:

Ms Feint, that was the Tūranga report?

MS FEINT KC:

Yes, the *Turanga Tangata Turanga Whenua*.

JUDGE DOOGAN:

Thank you.

MS FEINT KC TO JANE LUITEN: (CONTINUES)

Q. So picking up again on that concept of community or hapū management of land, a fascinating character from Tūranga who also appears to have a lot of influence in this district in the Native Land Court process is that of the rangatira Wi Pere, who was of course a Member of Parliament and was rangatira of Te Aitanga-a-Māhaki, and he actively fought, as I understand it, to reclaim hapū control of land for decades, so the Tūranga report talks about the Rees-Pere trusts, where they attempted a system of land management, and then ultimately, he was forced to take private legislation through Parliament with the Mangatu Empowering Act of 1893, which was for the purpose of establishing the first Māori incorporation in order to protect the Mangatu No 1 Block, which had been awarded to Ngāti Wāhia and Ngāriki.

And I was just thinking about that and thinking that's interesting, because the fact that that legislation was passed in 1893 shows the magnitude of the challenge in terms of seeking to retain hapū control over lands, that you're forced to take private legislation in order to get some semblance of community management.

A. Yes, and Wi Pere starts – begins to – starts that process in the 1870s and is met with obstacle after obstacle.

Q. So it took him until 1893 to get the Mangatu Incorporation established.

A. Yes, but in the process, ngā iwi o Tūranga lost a lot of lands, and the trust arrangements which moved to accompany – I mean, it's an incredibly complex history of effort to manage hapū lands by hapū, which ends up in the loss of thousands of land through debt, and the vesting – I mean, the vesting of their lands in statutory management and all of those things that happened on the East Coast, so yes, decades of effort to try and get some kind of management that is not forthcoming.

Q. And would you care to comment on Wi Pere's influence in the Native Land Court investigations in this district? Because it seems that he had a lot of influence over here and was involved both setting up agreements in terms of who would go for what lands, but also advising people here about going to the Native Land Court.

A. I think he does have a lot of influence. There's a – there's a strong – seems to be a strong Ngāi Tai–Aitanga-a-Māhaki link.

But he's also a person that Henerieta Te Haeata turns to for help when she's a non-seller in Whakapaupakihi, and she turns to Wi Pere for help to – to challenge the sale of Whakapaupakihi to the Crown in – as soon as it's sold in 1881, when title goes through, so he seems to be somebody people think they can go to for help, because he has those channels.

And then, of course, he comes into the Takaputahi decision. He supports – is at the rehearing. He – I think at the rehearing, he comes in as an actual applicant and gets into the title. When that Takaputahi title is reheard and the decision is reversed, he actually becomes – his list of people becomes part of the title, and I think he's – his influence is also shown by the 1890s in getting Kapuarangi also reheard by an Act of Parliament.

So yes, he is individual – he is influential and seems to have relationships with this inquiry district.

Q. It's interesting that as a Member of Parliament, he seemed to have some influence with the Native Land Court in terms of getting, as you said, the hearings deferred for his purposes, or having rehearing as well.

A. I'm sorry?

Q. Or, as you said, getting rehearing of the blocks.

A. Yes. I mean, I didn't – I didn't go into the rehearing in any depth, because it was starting to fall outside the scope of my time, but – and also, with the hearing being deferred, I think that was justified by the fact that he was a Member of Parliament and couldn't attend, but yes.

Q. Right. Just to pick up another point about the hapū versus individual control over the lands, there's – I think there's some suggestion in your report that when you are thinking about the pre-title advances for purchase that were made prior – by the Crown prior to Bryce ending the practice in 1883 –

A. Sorry, my mind's still on Wi Pere. He's – of course he stars in this report with respect to the Te Houpapa survey, because he's the instigator of that, and that survey encompasses Te Whakatōhea's lands on this side, so he – that's part of his – his scheme to get hapū control, but it impacts on – on other entities, tribal entities. So – sorry – so that is a major way that he – he stars in this report.

Q. Yes, that is a good point, because he was a visionary thinker, wasn't he? Another – actually, now that I think about it, another influence from outside the district is the Kīngitanga, because the – there's talk of setting up a rohe pōtae for Whakatōhea lands – at least the lands a waho that still remain in customary title, which shows the – the influence of ideas from the King Country are filtering over this way in terms of putting a boundary around the land and protecting the lands within.

A. I'm not so sure. I've not seen evidence of a – a big Kīngitanga influence, and that term, "rohe pōtae", is used – I have seen it used by other iwi in other contexts. It's not – it's not particular to the King Country. There are – yes.

Q. I suppose it emanates from the King Country, though, doesn't it?

A. Possibly. I can't recall off the top of my head where I've seen it, but I have seen "rohe pōtae" being used by other iwi in other contexts.

Q. Thank you. I'll move on. So the question I started asking before was about pre-title advances for purchase, which took place prior to 1883 when Bryce ended the practice, and I think in your report you say it was a bit of a double-edged sword in that although on one hand it meant that very often the Crown was dealing with the leadership of the iwi or hapū in terms of the agreement for sale and purchase – on the other hand, it also undermined the legitimacy of the title investigation process, because the Native Land Court tended to find in favour of those for whom agreements had been entered into prior to the title investigation process taking part.

A. Yes, well, it kind of undermines any opposition to alienation, if you're dealing with them pre-title, and – yes.

Q. Indeed. So if we turn now to think about the Whakatōhea experience, and I'm getting toward the end of my questions, the – the starting point, I think, must be the looming shadow of the raupatu as context in which the lands a waho are both investigated and acquired by the Crown, because that had had a devastating impact, and Whakatōhea had not recovered by the 1870s and 1880s, had they?

A. No.

Q. And can I take you to page 433 of your report? I wanted to ask you about the statement you make in that paragraph above the heading "As to political engagement", where you say that your Part One report "raised the possibility that the extraordinary delay in granting title to the 'tribal' reserves within the confiscation district (with the corresponding delay in alienation) was linked to the aggressive Crown purchase of lands 'a waho': that the retention of the confiscated 'sufficiency' served as a blind for unfettered Crown purchase". Are you able to unpack that statement a bit more, please?

A. Because this project was done in two parts, when I did the Raupatu report, I wasn't aware of the lands a waho history, so I had wondered whether the extraordinary – well, just the extraordinary delay in actually issuing title to those reserves was – which meant even though it was legally Crown land still, it was nonetheless reserved for – it had a reserve

status for Te Whakatōhea and Ngāi Tai, and I was wondering at that stage whether that – those reserves were left intact in the 19th Century so that there was no obligation to have any regard for the impact of Crown purchase on the lands a waho.

Q. So do you think that the Crown considered the Opape reservation sufficient to support Whakatōhea, or do you think they didn't really think about it at all?

A. I think – they kept on referring to Opape as this vast block, as if it was generous, a generous allocation, and they never – and particularly with Ngāti Tamahaua's petitions, as well, I think the response was, well, they've got 6,000 or 5,000 acres, however it was, and not really addressing the reality of the kind of land and the amount of arable that there was to live on, so I think – I tend to think that the reserve was left, but it was very much out of mind – out of sight, out of mind, without really thinking about what these people had to live on, and the aggressive purchase of lands a waho, I think – I – I – I mean, apart from – from Gill's statement, I didn't come across any written official statement saying that this is why we're doing it, but I think the Crown would have bought every last share of lands a waho if it could have.

Q. Even on the Crown's own measures of sufficiency, I think I read in your report that there's – that there was – needed to be 50 acres per capita for reserves in the 1873 Act, so I did some sums last night, and if you take the 690 people there were in the 1881 lists and multiply that by 50 acres, you get 34,500 acres, which is more than the 20-odd thousand acres in the Opape reserves, but also, as you say, you have got to take into account that half of that land was very steep, rugged bush country that you couldn't live on, so it would seem even by the Crown's own measures that the amount of land Whakatōhea had as at the 1870s, 1880s was insufficient by then already, wasn't it?

A. It was already, but by the 1890s, the Crown is not concerned about reserves or sufficiency whatsoever. It's concerned to get the last ten million acres of Māori land into closer settlement.

Q. And it seems extraordinary, after the raupatu, but do you think the fact that the Crown regarded Whakatōhea as being the authors of their own

misfortune for being in “rebellion”, quote-unquote, underpinned that, or do you think they just didn’t think about what they needed to survive at all?

A. I think they thought in setting aside this reserve, they had done what they needed to do, and then they didn’t think at all.

Q. Thank you.

HEARING ADJOURNS: 11.00 AM

HEARING RESUMES: 11.22 AM

HOUSEKEEPING – TIMING (11:22:01)

(11:22) MS FEINT TO JANE LUITEN: (CONTINUES)

Q. Tēnā koe, Ms Luiten. My first question is about Whakatōhea’s decision to boycott the Native Land Court prior to 1873. It struck me that that’s quite a courageous decision to make in light of the political cloud they were living under post raupatu and the stigma of being labelled rebels. And also, the fact that they are in quite a delicate position, vis a vi, the Crown and very vulnerable because of their poverty. You agree with that?

A. Yes.

Q. In contrast, I thought, also, that the experience of Ngāi Tai is interesting because it seems to me, that Wiremu Kingi was a very savvy operator, and that he had a certain amount of favour due to his relationship with the Crown. But also, that he was able to get first mover advantage with contracting his own surveys for instance and getting claimant status in those a waho blocks. Would you agree with that?

A. Yes.

Q. And have you reflected on the fact that because the a waho blocks were the first ones to go through the Native Land Court, it seems to me, there’s an argument that it puts Whakatōhea on the backfoot because their core coastal lands hadn’t been part of a title investigation. And so, they hadn’t been able to set up their argument. That their patent of occupation, as I understand it, certainly form the evidence in the MACA hearings, was that there's a zone running form the coastal strip where both the resources of

the sea and the arable land are utilised. And then up into the bush country where there are birds, eels, fern root, and other rongoā resources in the bush. So, it just seemed to me that maybe their evidence in the Native Land Court didn't land in terms of that occupation because they hadn't started at the core and worked outwards, if you understand what I'm saying?

A. I hadn't reflected on that, but they are new comers to the court at that 1881 hearing, for certain, yes, that's their first experience other than by observing matters in 1873 at Ōpōtiki. So, 1881 is their first experience in court.

Q. And coming back to that question of the zone that stretches from the takutai moana over the arable flats to the bush country. It seemed to me that the Native Land Court judges understanding of what occupational ahi kā is constituted in tikanga terms was not well understood by the judges?

A. Whakatōhea's argument in 1881, with respect to Whitikau was not accepted by the Court. Te Awanui, Āporotanga's, one of his grievances that he argued on multiple occasions was the way in which the confiscation boundary had divided the rohe into two. But in there 1881 decision, the Court did not accept that Waiaua and Whitikau were one whenua and that went against Te Whakatōhea's case.

Q. Would you agree with me that when the judges make comments such as, the bush country is unoccupied, they are not thinking of occupation through the lens of tikanga. Which thinks about ahi kā in a very different way.

A. I think the judges back then, were looking for tohu of occupation in a way of kāinga and pā, and things like, you could see, and there were few of those on those hinterlands. Also, the people in court generally in that 1881 case, they were talking about resource harvest stories that they had been told by their parents and grandparents. But not necessarily that they, themselves, had participated in, so there's that aspect of it too.

Q. Another interesting theme that comes through in terms of Whakatōhea's experience is the interplay between asking an iwi wide Whakatōhea claim, in some block investigations, and then, when that wasn't successful, trying a hapū approach, which wasn't successful wither. But

just think about that approach to take an iwi claim. That seems to me, fairly remarkable give the tensions between the hapū on the Ōpape reserve, and the fact that the hapū regarded customary title as sitting at a hapu level?

A. Yes.

Q. And it's interesting that in the Whitikau 3 rehearing in 1895, so, you saw Heremia Hoera arguing there, that Ngāti Rua had the ahi kā, but he was including others on the list for aroha. It seemed that there were discussions out of court in terms of what he was saying in evidence. It seems he was being pulled back into line overnight. Would you agree? Because there's kind of an oscillation between giving evidence as Ngāti Rua and thinking about including all of Whakatōhea, which he said he was doing for aroha.

A. I think that's the tension with that Te Panenehu inheritance, if you like. Ngāti Rua see it as theirs through ahi kā, and other hapū of Te Whakatōhea see it as theirs, as descendants of Tūtāmure and their Te Panenehu ancestry, and their defence of that land as well as Whakatōhea. So, I think that tension comes out and is played out and explored in the Takaputahi relative interest's case.

Q. Indeed, and it seems to me that the different positions advance by each hapū are not necessarily contradictory as a matter of tikanga, because tikanga can accommodate intercepting or overlapping rights and responsibilities. But the court regarded it, different hapū accounts, as contradictory, didn't it?

A. I think the Court overlooked, I mean, one of the commonalities in all of those hapū cases was that Ngāi Tai had been driven out by Te Whakatōhea, and that they had held those Panenehu lands. That seems to have been lost sight of in the judgments and the focus becomes on the contradictions about whether it's one land or has boundaries, or other aspects. Whether there was even ahi kā, or whether nobody lived there, or all of those things.

Q. I suppose my point is that if different hapū advance different take whenua, that's not necessarily regarded through the tikanga lens as being

contradictory. It may be, but it may not if different take are accepted by other hapū.

A. In that case, the take were contradictory, I mean, in some cases. But the overarching story of holding the land as Whakatōhea was not.

Q. Do you think that the Native Land Court applied precedent, because it seems in its Whitikau 3 decision, that is was relying on the precedent of what happened in the Whitikau 1 block investigation?

A. I think that's a very strong theme of all these decisions. That the subsequent decisions rely on the decisions that go before and it's very difficult to overturn them. I mean, the reversal of Takaputahi is basically because the decision of Takaputahi disagrees with former decisions. So, yes, I think they are relying on former decisions.

Q. I think you infer this in the report, but don't say it outright, so I'll ask you directly. Do you consider that the Native Land Court got the Whitikau 1 and 3 blocks, and the Takaputahi decision, after it was overturned, wrong, in that Whakatōhea hapū clearly had customary title rights and responsibilities to those lands as being contiguous lands with their coastal rohe?

A. I think Te Whakatōhea had a strong case in arguing customary title to those Waiaua lands, which extended back to Motu. I think that Waiaua was a contested area with Ngāi Tai and had been for a long time and had become escalated in the generations just before about four to five generations. So, my answer is that I accept it was contested land, but I do think Te Whakatōhea had very strong customary rights as through the ancestry from Tūtāmure.

Q. Thank you. Then, you'll be happy to know I have got to my last question. If I can take you to page 334 of your report.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A025

In that middle paragraph on the page, you are talking about the claims made under Te Panenehu and you refer to the debates about whether Panenehu still had an identity at that time. You say that there was the presence of a handful of them, Eru Ponaho's family still living at Waiaua at the time of the government invasion. The question I wanted to ask is that isn't there an alternative explanation to that, that Te Paku Eruera was

being strategic in claiming under Panenehu. As he also, at times, claimed under Ngāti Rua and Ngāi Tai depending on which lands he was claiming to.

A. I don't think so because there is references to Te Panenehu, for instance, that's where Wilson goes in 1873. To get those applications, he goes to Torere to seek out Te Panenehu for applications for Waiopu, Whitikau. So, my feeling was that the Te Panenehu identity was a real one, that was my impression from the evidence.

Q. Certainly, some of the Ngāti Rua witnesses like Heremia Hoera, seem to regard the terms Panenehu and Ngāti Rua as interchangeable?

A. Definitely. I think there is considerable confusion at the initial hearing amongst Te Whakatōhea about Te Panenehu and that's one of the aspects that gets reflected and refined on as the hearings progress. Because the identity of Te Panenehu becomes so central to the whole customary. So, is it Te Tawhero Te Oke, I think, who stands up in that initial Whitikau 1881 hearing and he says, I've never heard of Tūtāmure as Panenehu, he's a Whakatōhea, all these ancestors are Whakatōhea ancestors. So, the Te Panenehu identity is a theme that assumes more importance from that initial hearing.

Q. Probably, if you are thinking about the theory of the case, you would say, Whakatōhea were prejudice through confusing the judge over the Panenehu identity. Which again, from a tikanga Māori perspective would be a fluid and still recognised identity, but seem to create a great deal of confusion in the court?

A. I'm sorry, I don't understand your question.

Q. I suppose I was thinking as a lawyer and thinking, if I was talking that case, you wouldn't want – Ngāti Rua understood that the Crown only recognised them as Ngāti Rua, and in order to avoid confusing the Court, perhaps it would have been better of that Panenehu identity hadn't created so much confusion in the judge's mind.

A. I think Ngāti Rua were at that hearing as Ngāti Rua and claiming as Ngāti Rua to those Waiaua lands. I don't think they had even thought much about Te Panenehu until Ngāi Tai raised the conquest and then they had to figure out. Because, I think, by the time, I think, Te Panenehu

had become so incorporated by the time of, even just after the Treaty when everybody is resettled. They have become so incorporated into both Ngāti Rua and Ngāi Tai, that people know who they are, and they are part of those early agreements. But they are doing it under the agents of either Ngāti Rua or Ngāi Tai.

Q. Yes, indeed, and the evidence is remarkably consistent in that regard. Thank you very much for your evidence, Ms Luiten. As I said, I thought it was an outstanding report. That concludes my questions.

(11:41) MS JACKI COLE: (APPEARANCE)

Tēnā koutou. E mihi ki te Taraipiunara. Ms Cole appearing on instructions from Ms Sykes.

(11:41) MS COLE TO JANE LUITEN:

Q. Tēnā koe, Ms Luiten. I echo Ms Feints compliments in relation to your report. It's an outstanding piece of work and something that I have been reflecting on this morning while you have been answering the questions is that it's August of 2025 when we stand here, and your report is dated August of 2022, so that's three years ago. That means, of course, that, excuse me, the research that you have undertaken and the time that you have spent writing this report was at least four to five years ago. Yet, your recollection of detail and names, places, quotes, et cetera, is just extraordinary. So, thank you so much for that, it makes the Tribunals job, I'm sure, much easier when they have a witness of your calibre.

Now, I just wanted to start with something that you said to Ms Feint just before the morning tea adjournment. You were talking about the aggressive purchase of lands a-waho, and you said: "I think the Crown would have bought every last share of lands a-waho, if they could have." I wonder if I could ask you, why is it that you say that? Yes, so, let's start with that. So, why is it that you say that?

A. There were no checks with the 1890s purchasing program, all existing restrictions on land were lifted. The Crown did not have to conform to the existing regulation of private sales, in which the purchaser had to satisfy

the Court that there was land left enough – that the sellers wouldn't be left landless, that the sale is bonified and all that.

That didn't apply to that Crown purchase, and it really was the land purchase officer rolling up with, basically, an open check book, in terms – except that, at prices dictated by the Crown, to purchase as many shares as he could. And there was no end to it, and it wasn't just once that it happened, if the Crown would partition its interest and then it could reopen sales again, and then partition the next interest. The only limit on this process seems to have been that the Crown itself became – it was quite distasteful. So, by the end of that decade there is an increasing chorus to bring it to an end.

But certainly, I think the Crown, there were no breaks on the Crown purchase as such, it would have kept purchasing every last share.

Q. And that includes the relatively remote, steep, rugged bushland, or were they really just after the more settler friendly –

A. No, Ōamaru block was pretty steep bushland. We're not talking about, I mean, they didn't have any wonderful land, so it was all steep backcountry –

Q. And they wanted to take that too?

A. Yes.

Q. My questions, I'm working through your report on particular chapters and one of the things that I wanted to start with – sorry, I should just say, and my questions are much more targeted to the content of your report, as opposed to the, perhaps, more broad approach that Ms Feint took. So, excuse me if I seem to be getting a bit picky, but I just want to drill down a little bit more into some of the findings or comments that you actually make. Page 10 of your report, this is in your introductory section.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A025, PAGE 10

The bottom of that page you say: "The land alienation that occurred within the *North-Eastern Bay of Plenty Inquiry* District in this era was wholly a Crown affair – private enterprise took no part." Then you say: "Even so, the options available to Māori with respect to the administration and alienation of their land in the nineteenth century were largely circumscribed by this reality." And my question is, when you say, "largely

circumscribed" what other options existed for Māori that were not circumscribed by Crown policies and actions?

A. I guess, Ngāi Tai exercised their option to keep Torere out of the process all together, and they were able to. But Te Whakatōhea didn't have that option in the way that Ōamaru was dragged into court by that overreaching survey. So, in their case, they didn't have other options.

Q. So, Torere is a bit of an outlier in respect of the inquiry district, isn't it?

A. Yes.

Q. So, would you agree with me that really, Māori didn't have any other options other than the administration that was circumscribed by the Crown?

A. Indeed.

Q. Thank you. This is just a smaller point on page 33, at the bottom of the paragraph. You are talking about McLean's 1873 Native Land Act and in particular, the reserves policy. You note that this was the only district for which a district officer, Samuel Locke, was appointed to implement the reserves policies under the 1873 Act. Do you know why this was, or the consequences of it?

A. I don't know why it was, I can only speculate and it's not for this end of his district, it's for the Te Tairāwhiti side of the district. Which escapes confiscation under legislation in the 1860s, because they go with the deed of settlement instead, which applies just to Turanga and leaves the whole coast to go through the court. And possibly, because of that relationship with Crown, of fighting with the Crown, this is the other aspect of this Act that's so interesting, there is an alternative pathway in this Act to have these reserves made from customary land. Which look and smell like confiscation reserves in some extent, which is the point I made in my first report.

The difference between these reserves is that the relative interests are left underdefined, so that that means they can't be sold. Whereas the rest of the land will go through as memorial land that can be sold and maybe this was, I think it was a policy to try and encourage people of Te Tairāwhiti to bring their lands into court. Offering this reserves programme as an inducement and a way of showing that they wouldn't

be left landless, as had happened in Hawkes Bay and other districts of New Zealand. By just having memorial lands, you'll get these reserve lands with this reserve status.

Q. So, Samuel Locke wasn't a district officer for the Tairāwhiti area?

A. He was mostly working on Te Tairāwhiti.

Q. So, effectively, he was appointed into this district, to drag across the type of policy for reserves that was being seen on the ground in the Tairāwhiti, Hawke's Bay area. Is that what you are saying?

A. I think he was mostly working in te Tairāwhiti. He doesn't really have a function in this district, and the reserves policy, that's not applied in this district.

Q. On page 38, you mentioned Wi Pere and the establishment of the Turanganui-a-Kiwa komiti. You say in the last paragraph of that page that: "Former twice-Governor George Grey won the election on a platform of ending the speculation in Māori land." You see that?

A. Yes.

Q. I just find this fascinating when one considers who was voting at that time. So, he won an election, you say, "on a platform of ending the speculation in Māori land." The voters would have been predominately, Pākehā, people new to the country. So, what is it, from your knowledge, what is it that the voters were wanting from George Grey when he was standing on a platform of ending the speculation in Māori land?

A. I think it's the colonisation of New Zealand by people of more moderate or modest means, like smaller settlement rather than massive land blocks held by very wealthy people. I think, the likes of George Grey, I mean, I don't know about the policy in depth, but I think it was about John Sheehan as well. I talk about it, I think, in the next section. It's about small scale settlement so that your ordinary (inaudible 11:53:11) would be able to purchase a piece of land, rather than wealthy people getting in on the speculation game.

Q. So, if we go over the page to 39, at the bottom of that long paragraph, you have a quote there: "I feel assured that this is the one main thing wanting to promote good relations between the two people on the question of land – to encourage the Māori people to put their land through

the Court" and we all know the consequences of that. Then, "to offer it on fair conditions to the European population who want to buy it." So, that's effectively what you are saying?

A. Yes, and Sheehan is working with the beginning of Wi Pere's scheme, who is also starting to think about the hapū getting in on the business of settlement as well. I mean, that's the whole point of the Wi Pere Trust, is that hapū would have a piece of the settlement pie.

Q. But did that eventuate in this area?

A. No, it didn't eventuate in the East Coast either, because they had obstacles put in their way.

Q. Moving over to chapter two, which is about securing control and Crown purchases of Motu lands between 1870 and 1876. Page 61 to 63, you are recounting the dealings of the Ngapotiki block, and you have a quote on page 62, about, "'an unpleasant choking sensation in the throat', there was something distasteful about the way in which the first title determination in the district had been managed." And it is hard to disagree with that description of the unpleasant choking sensation in the throat of what was going on at that time in this area. But do we take it from not just the events of the time, but the report from Judge Rogan to Donald McLean that you quote over the page on page 63. That the title determinations were just being seen as a game. You have described them as a game, you have described them as a charade, and moreover, a game in which, not just the Crown, but in the reports, judicial officers were playing a part.

A. I think that court was about packaging, it's about enabling the sale, the alienation of those lands through court. Judge Rogan never let on exactly what he was talking about, but you do get the feeling that it was managed by those parties involved.

Q. So, the whole point was to have land alienation through title investigation, right?

A. Yes.

Q. And this was under, and you say this on page 94 of your report, this was under the wider (inaudible 11:56:56) with the advance in settlement?

A. Yes.

JUDGE DOOGAN ADDRESSES MS COLE – CLARIFICATION OF REFERENCE (11:57:00)

MS COLE TO JANE LUITEN: (CONTINUES)

Q. And while I'm on that page 94, it's the middle paragraph, you refer to: "The early era of post-war Crown purchase demonstrates the close correlation between land alienation and title investigation. Under the wider rubric of 'advancing settlement', it also reveals a lack of regard for the letter of the law, which seemingly extended to the judiciary." And that is my reason for asking about this 'game', or 'charade', that it appears from the evidence that judicial officers were participating in it just as much as Crown agents. Would you agree with that?

A. I would agree with that. The judges didn't care, particularly, whether it was the state or private purchase, but they were certainly onboard with the colonisation programme.

Q. What were they getting out of it, do we know?

A. A colony.

JUDGE DOOGAN ADDRESSES JANE LUITEN – CLARIFICATION OF ANSWER (11:58:11)

MS COLE TO JANE LUITEN: (CONTINUES)

Q. Many of the judges were large landowners themselves.

A. I don't know that. I think many of the judges were ex-army people, I don't know that they were large landowners.

Q. If I can get you to turn to page 68, again, this is the Motu transaction we are looking at here. You are talking on page 68, underneath that quote, to an inducement and you say: "By way of further inducement to Te Whakatōhea in particular, Wilson", our friend Wilson as you described him earlier, "had told them that their share of the purchase money for Motu, or part of it, could be spent on buying back confiscated government land at Ōpōtiki." My questions, there's two of them. Is there any truth in that and did it actually happened? Was any money spent on buying back confiscated government land in Ōpōtiki?

A. In this particular instance, no, well, I don't know if any – no. I don't know the answer to that.

Q. Was this the sort of inducement that Mr Wilson was prone to make, or give, to potential vendors?

A. Absolutely, he sold it to Te Aitanga-a-Mahaki and he sold it to people on this side. That the capital that they had gained could be invested for their future benefit, all those same wonderful things that are held out as the benefits of purchase. And if you compare what he promised Te Aitanga-a-Mahaki and then what those leases actually delivered, which was basically entrapment, it's a shadow of what he promised.

Q. That leads into something on page 85 of your report, at the bottom of that page. You talk there about: "Wilson maintained that the impetus for sale came from the owners" you quote: "'In this business I have not used any pressure of any kind, on the contrary it is I who have been subject to pressure by the natives who wish to sell'". Back on page 83 of your report, you note at the top of that page that: "Honesty was not Wilson's forte. The following year, an angry Judge Rogan summed up the land purchase officer's propensity to distort matters: 'He is either insane or deliberately and intentionally making false statements for the purpose of deceiving the Government.'" So, this is a judicial officer saying that the Crown's own agent was making things up for the purpose of deceiving his own superiors. But at the same time, very much lying, straight out, to Māori. Isn't that, right?

A. With respect to the first point you made, on page 85, that goes to individual purchases, purchasing from individual. And individuals may have sought Wilson out because there are all sorts of pressures that are happening in these times as well with regards to store debt and all of that context as well. Wilson's practices in terms of what he was saying and what he had paid out to individuals who weren't either the right individuals to be dealing with, or who were doing so against the wishes of the collective, were one of the reasons he was sacked – among the reasons he was sacked in 1876 as a land purchase officer.

Q. Pretty soon thereafter, appointed as a judicial officer of the court?

A. A judge, yes.

Q. I note, over the page on page 86, and I know that you said on the first point, so I will let you go back. But I note that on page 86, you remind us that Wilson's livelihood depended on these transactions.

A. Yes, and you got more for purchase then you did for lease.

Q. So, in addition to a daily allowance, he was entitled to a commission for each completed deal, which was calculated on acreage and the commission rate for purchase was twice that, as for lease. So, there are some pretty significant financial reasons why Wilson would adopt the practices that he did?

A. Yes, yes.

Q. And just to be clear, he's the Crown agent?

A. Yes.

HOUSEKEEPING – TIMING (12:03:56)

HEARING ADJOURNS: 12.04 PM

HEARING RESUMES: 12.08 PM

(12:08) MS COLE TO JANE LUITEN: (CONTINUES)

Q. Kia ora anō, Ms Luiten. So, we are turning now to Whakapaupākihi, Whitikau, and Te Wera between 1879 and 1884, so quite a lot happened in that five year period. Initially, in this chapter, you are covering off the restarting of negotiations by the Crown, or their agents, who are the Crown. And completing them all to district purchases is one of the topics. We hear earlier, a little about, when Ms Feint was asking you questions about different hapū and contestation between different hapū as to who was from where. Which rangatira may have been claiming ancestral interest in land depending on which whakapapa they were referring to, et cetera. What I'm wondering about, is the concept that we hear a lot about of dividing and conquering.

So, for example, this is at the top of page 103 of your report, in the final paragraph, in relation to completing the Motu district purchases and you say – so we are in 1880: "In line with the agreement reached the year

before, in addition to the partitions for non-sellers, in both blocks a 2000-acre reserve was set apart for the original owners, to be inalienable. Within the year, the Crown had purchased the grants of non-sellers Patoromu and Rawiri Noti (900 acres), and that of Wiremu Kingi Tutahuarangi (1,300 acres) in Waikohu-Matawai, having first beaten both sets of vendors down in price."

What I'm wanting to ask you about there is, the way that the Crown and its agents played different rangatira off against each other in order to, once blocks had been partitioned, to purchase those blocks. Can you comment on that?

A. I can't really comment in this particular instance, but I would categorise this more in terms of going after individual owners, post title.

Q. If I can help by taking you back, just to the bottom of page 102, where you are talking about how Gill had refused to entertain any counteroffers in relation to particular owners. He says, if they insisted on – no this isn't a quote, but, if they insisted on retaining any land, Gill stipulated, they would receive nothing at all. That was the sort of conduct that was being adopted, wasn't it?

A. Yes, but again, in terms of beating individuals down to accept government terms rather than, in this particular instance, playing one off against the other. Although, that certainly happened as well in other occasions.

Q. Right, we get to the preliminary agreements that were entered into in relation to Whitikau and Whakapaupākihi and this is in 1879. It again, picks up on this point of beating down vendors on price, and at the top of page 123, you say: "Characteristically, however, Preece seems to have beaten down the vendors further with respect to price and reserves. The price per acre was 2s 6d, the percentage of inalienable reserve to be Crown-granted to the owners a mere 3 per cent." Do we know anything about the tactics used by the Crown or its agents to beat down the vendors on price?

A. Well, no, except that's what they were offered, and it doesn't seem to have been a matter of negotiation, it was just what was offered. There's no evidence on file, which would explain why Te Whakatōhea always got offered less.

Q. And aren't there a number of examples in your report where the powers that be authorised a payment at a higher rate then what was actually offered?

A. Yes.

Q. Can you give us an example of one of those?

A. Isn't that one? Where the authorisation comes –

Q. Well, let's put it this way, it was on more than one occasion where a price per acre was authorised to be paid, but that price was never even mentioned as a starting point. It was always put at a lower price to the vendors.

A. I feel confident I could find examples for you in this report, on more than one occasion.

Q. Yes, I'm sure that I have read them as well, so, thank you. I was going to ask you a question about the Te Wera block in terms of its location on any map. So, the boundary description is given on pages 106 and seven, and then on page 178, there is a description of it being an area south of Te Koranga forks. The map of the area, Te Houpapa, doesn't specifically identify an area of where Te Wera block fits within the wider Te Houpapa block. Are you clear as to where it is? I note that there's a sketch of the Te Wera block on page 106, but that doesn't really put it into perspective.

A. It's shown on the west side of the Waioeka river, and it is shown on the map that I put in here of Te Houpapa if you can find it.

Q. I have seen that map, I just don't think I have tagged it unfortunately. I says, Te Wera, and immediately above the word Te Houpapa, but it doesn't have an outline of an area.

A. Yes, it's Te Wera and then if you look at the map of, I think it's the map of Ōamaru.

Q. Yes, so page 186.

A. Yes, that's the one on page 186, but if you look – no, I don't have it, sorry. There is a – I haven't got the survey plan of Ōamaru in here, but on the survey plan of Ōamaru, it's more, Te Wera actually comes down closer to the confiscation boundary.

Q. When you say comes down closer to the confiscation boundary, you mean within the Houpapa block?

A. Yes, within that.

Q. Okay.

A. Yes, so I wasn't myself, completely sure where that Te Wera land was, but that's the general – that it is in the block that became Tahora 2, was part of that block.

Q. Yes, I see what you are talking about, Tahora 2. So, that map on page 186, which the Tribunal have helpfully put up on the screen, the Te Wera block, you're saying, would be closer to the bottom of the dark outlined Houpapa block, it would be further to the bottom of that?

A. It would be closer to the confiscation line.

Q. Closer to the confiscation line, kia ora.

JUDGE DOOGAN:

Confiscation line, just to be clear, is the dotted line?

MS COLE:

The longer dots, dash line is the way I would describe that, is that right?

JANE LUITEN:

It's the one that's towards the coast that bounds the Ōamaru block, that straight line. The confiscation line forms one boundary, the coastal boundary of the Ōamaru block.

JUDGE DOOGAN:

I have cross fires here. Just, would you mind, on the copy you have in front of you, or perhaps, if I just give you this one. Could you just draw a circle of the approximate location of Te Wera.

LEGAL DISCUSSION – CLARIFICATION OF MAP AREA (12:20:19)

JUDGE DOOGAN:

So, Ms Luiten, it is a tentative answer –

JANE LUITEN:

I would retract my circle, your Honour, and it could be where it is on that map that's further south. But I have seen, I think it is the survey plan of Ōamaru, which show Te Wera marked on the other side of the Waioeka River.

JUDGE DOOGAN:

One of the matters we have discussed with counsel this week is commissioning of what further maps are needed above and beyond those we already have on the record. So, we might make this one of the matters that can be the subject of any further mapping that can be done.

MS COLE TO JANE LUITEN: (CONTINUES)

Q. I would like to talk about the Whakapaupākihi sale agreement, this is on page 123. You'll see there, on page 123, there is a table of the Whakapaupākihi sale agreement signatories in October of 1879. My first question is, with respect to Ngāti Kahu, can we explain why there were no signatories at all?

A. I think because the purchase officer is dealing with Ngāti Kahu and Ngāti Ngahere in one tribe, which is the quote above the table.

Q. Right, so those people who signed from Ngāti Ngahere, who also whakapapa to Ngāti Kahu would have effectively, been giving their agreement through the one signature?

A. Yes, I don't think all of the people signing as Ngāti Ngahere were Ngāti Kahu, but some of them were, like Rawiri Makawe.

Q. Right. For example, I note, in Ngāti Ngahere, signatories included the second name and was Rawiri Makawe, and that person is noted as having received the deposit for Ngāti Kahu?

A. Correct.

Q. Over the page, you note in that first paragraph that, "Ngāti Rua was omitted from any interest in Whakapaupākihi: the parties for the block listed as Ngāti Ngahere, Ngai Tama, Ngāti Kahu and Ngāti Patu. Rather, Ngāti Rua along with Ngai Tai were listed as claimants in Whitikau Block."

A. Yes, and these are the land purchase officer's records.

Q. So, why would the land purchase officer have omitted Ngāti Rua from having any interest in the Whakapaupākihi block?

A. Because he might have thought their interests were –

Q. Only in Whitikau?

A. Would be in Whitikau or would be dealt with as Whitikau rather than part of Whakapaupākihi.

Q. Was there evidence that we know of that would have borne that out?

A. To the contrary.

Q. That's what I would have thought. Can you talk a little bit about that?

A. There are, I think I've, in the same area of the report, there are at least two different Ngāti Rua claims that are lodged at this time for Whakapaupākihi.

Q. Would there have been any benefit in having Ngāti Rua not listed or not getting any signatures from them? What I guess I'm asking here is, was it purposeful that there were no Ngāti Rua signatories to the preliminary agreement?

A. To the?

Q. We are talking about the preliminary agreement, aren't we?

A. There are Ngāti Rua signatories on the agreement, it's just recorded on a different piece of paper that they are not interested in Whakapaupākihi. But they are actually part of the sale agreement signatories, there they are in that table.

Q. Yes, I have just seen that, yes.

JUDGE DOOGAN:

Just by reference to the table, clarify the Ngāti Rua signatories?

JANE LUITEN:

The Ngāti Rua signatories are in the third list in that table, Marino, Hori, and Te Awanui pays the 30 pound deposit.

MS COLE TO JANE LUITEN: (CONTINUES)

Q. So, I have myself confused by asking – so, clearly Ngāti Rua were signatories to the agreement, and then over the page, you have written, Ngāti Rua were omitted from any interest in Whakapaupākihi?

A. On the records kept by the purchase officer and the records on file.

Q. And the reason for that would have been, we just don't know?

A. We don't know. Again, it goes to the intrigue of the boundary change and the manoeuvring that goes on between the preliminary agreement and the title determination, which we don't know what that was.

Q. Nor do we know the reason why it happened, presumably.

A. No.

Q. Okay, deconstructing the 1881 title determination, now I'm getting very close to time. I'm looking at page 145, don't get too concerned about that. So, 145, final paragraph, talking about the moving of the Whitikau block boundary, and you say: "There is no definitive evidence that the Government was behind the extraordinary turn of events at the point of title investigation, but in the circumstances, it is difficult to avoid the conclusion that this was so." I anticipate that Crown counsel would probably want to explore that further. If there is no evidence that the government was behind what happened, why is it that you say that it's difficult to avoid the conclusion that they were, the Crown was?

A. I think it's extraordinary that there's nothing on the purchase file that mentions anything about the changed terms, the silence on the purchase file I think, is extraordinary in the circumstances. I think, if you have a preliminary agreement – I think the fact that Whakapaupākihi is surveyed without any 3% reserve provision is another red flag. I think the fact that they come out of a deal, you have a preliminary agreement which says they are going to have 3% reserves, and they come out reserving 2,000 acres, and the Crown doesn't say anything. I think that's extraordinary, and the Crown gets the prize, the Crown gets the road frontage as the result.

Q. That's what I was going to ask you about, was that road frontage. So, the road frontage, obviously, significantly, increases the value of the Whitikau block.

A. The road frontage was always part of the Whitikau block, it was on one side of it, and Whakapaupākihi was on the other side. But there has always been an element of opposition to the Whakapaupākihi sale and that's why he ends up paying £200 at the point of the preliminary

agreement, to get over that opposition. Then you had the likes of Hinerieta Haeata saying they were always opposed to it.

So, there is an element of opposition and part of the political manoeuvring that goes in between that change boundary, you are talking about divide and conquer. One of the scenarios could be that Ngāti Rua were encouraged to go along with carving of Onukuroa as a separate bit for them because that's where their ancestral interests lay. And that's evidenced by all the applications that come in before the title investigation for the separate piece of land, which is now called either Onukuroa. Which is the top end of the block that ends up being shaved off Whakapaupākihi.

That happens pre-title investigation, those applications, and it's also called Whakapaupākihi 2. So, we don't know how all of that occurred, but there's a deal going down and there is no definitive evidence to say what that looked like and all we have is these hints.

Q. It is not uncommon to hear, in Tribunal inquiries, the phrase, the absence of evidence is not evidence of absence. I think this might be one of those situations where there is a lack of evidence of something that is actually, definitely occurred. Would you agree with that?

A. It smells.

Q. Just moving on to the appeals for rehearing for Whitikau and Whakapaupākihi, I'm on page 154. There is a table on page 155, which sets out the applications for rehearing and also notes that eight out of the nine applications were dismissed. You say on the proceeding page that the grounds for dismissal were not set out. In your experience, was it common practice for the court not to give reasons for why it dismissed applications for rehearing?

A. In the other instances in this inquiry district, there are reasons given.

Q. Yes, but in these two blocks, the applications, there are no reasons given as I understand it.

A. No reasons given, no, that's correct.

Q. So, by saying that, for other blocks, reasons were given, are you saying that it's unusual –

A. It would suggest that it's normal, it is unusual for no reasons to be given.

Q. Does that add to the smell?

A. Yes, it does. I think also, as I have said later on, the Crown goes to extraordinary lengths not to get Whitikau reopened, and that goes to the outer court settlement, which is reached with regard to Whakapaupākihi in 1884. By making that out of court settlement, it stops Whitikau being reopened and to concede 1,200 acres, by Crown standards, is a major concession. So, again, they don't want it being relooked at and that's more evidence that's not evidence, it just builds to this picture that a deal went down.

Q. Over on 165, you talk about the out of court settlement for the Whakapaupākihi 1 rehearing, which happened in December of 1884. This is referred to on page 165. I note that Wi Pere of Te Aitanga-a-Mahaki, who was an MP, and was representing the claimants at that time, entered into that, or effectively negotiated that out of court settlement. Do you have any information to tell you, or to tell us what mandate Wi Pere had to negotiate that out of court settlement that you have just talked about?

A. I don't know, other than that's who Henerieta Te Haeata turned to as a non-seller of Whakapaupākihi for help. She went to Gisborne to get his help to challenge that sale.

Q. And what ended up happening, he negotiated an out of court settlement, so they never went to court?

A. He negotiated 1,200 acres to be reserved from the sale. Even, it's questionable by the later understandings of Te Whakatōhea and Henerieta Te Haeata. How transparent that out of court settlement was because she though and partitioned in 1907, that is was supposed to have gone, exclusively to her as one of the minority non-sellers. In the end, she was very surprised and that's the basis which she told her grandson to go and farm the land. She was surprised to find that so many people were on that title. So, even this out of court settlement between those two men, it's not clear how transparent that was for the people on the ground either. And Te Whakatōhea ideas about those reserves were different from the orders that were made in court when it comes to the definition of relative interests.

Q. So, on page 168, you sort of conclude by saying: "The out-of-court deal struck between Wi Pere and Richard Gill" who was the other man that you referred to when you just said the two men, "put the nail in the coffin to Te Whakatōhea's petition to have Whitikau reheard, leaving as it did the boundary between the blocks intact."

A. Yes.

Q. What happened to the 1,200 acres that were separated out in that out of court settlement?

A. There were three orders respecting that land. One was Whakapaupākihi 4, which was 800 acres. One was a miner's block of 200 acres, and the third was another 200 block, which I think went to Ngāti Ngahere again, Te Manihera Maiki, I think. It's all listed in the report. They were all made inalienable reserves, the survey was to be at government cost. The government got around to surveying it in 1890 but surveyed it as one block instead of three blocks, and then it goes into, I don't know, I can't remember now off the top of my head, how that title business gets sorted out. But I don't think title issues until about 1911 for those blocks, although the relative interests are defined. But they become embroiled in that controversy about – which becomes part of that petition of Henerieta Te Haeata. That she thought they were to be for the non-sellers, and they ended up having a lot more people listed in their ownership lists.

Q. I think, a lot of what you have just talked about there is on page 166 of your report, so thank you for that. Ultimately, 1,200 acres was, despite having been, supposed to be inalienable, was later purchased by the Crown, correct?

A. The Whakapau – those titles are the ones that Gill doesn't purchase in the 1890s, because he can't, because the titles not in order by that stage.

Q. No, but later on?

A. Later on, yes.

Q. It's gone?

A. I'm not sure about that, I think they – by the time – I think those Whakapaupākihi titles, the numbers 1, 3, and 4, are retained, they are

leased, they are put under board control in the 1910s and they are leased to a Pākehā.

Q. The Quirks?

A. Yes, yes.

Q. Right.

HOUSEKEEPING – TIMETABLING (12:38:10)

TECHNICAL DIFFICULTIES – COUNSEL MICROPHONE OFF (12:39:54 – 12:40:18)

MS COLE TO JANE LUITEN: (CONTINUES)

Q. Jumping forward to chapter 6 now, to closer settlement and I just made the comment that I find that phrase quite ironic. Clearly, we have explained earlier this morning, about the Crown stated intention in relation to all of this, to produce, or have an outcome of closer settlement. But if I can take you to page 365, we are looking at Table 10: Alienation of Individual Interests in Ōamaru Partitions. My question here was just in relation to the share value. You'll see the share value in the second column of that table, there are significant disparities in share value for the different Ōamaru blocks. I wondered if you could just give us an explanation as to why these disparities exist, given that it seems that all of the blocks are being bought for the same two shillings per acre price.

A. That goes to the number of owners in each block. So, for instance, Ōamaru 6, which I think is Ngāti Rangi's block. There were, I can't remember, but possibly less than 10 owners who were listed for that block. So, it's all about the number of owners divided by the block price, or the block price divided by the number of owners.

Q. Okay, that's pretty straight forward. But they were all being brought for the same prices, per acre?

A. Yes.

Q. And in fact, I think, Ōamaru block may well have been one of those that a certain price had been authorised, but – in fact, I'm just going to leave

that because Ms Clark is going to be asking questions about Ōamaru block. Actually, while I'm here, I wanted to also ask you about the issue of vouchers, payment being received in vouchers or in cash. I noticed that the Crown also asked a question in their questions of clarification about vouchers. So, over the page, on page 366, you say that: "Overall, cash payments slightly exceeded payment by voucher (356 cash payments to 303 voucher payments), but this practice, too, varied between partitions." Do you know how it was decided whether a vendor received vouchers versus cash?

A. I don't, I don't know, I couldn't find anything about the payment in vouchers.

Q. So, do we have any idea as to whether it was something that was sought by the vendors, or something imposed upon them?

A. No evidence whatsoever.

Q. I understand from your report, that there is evidence of some storeowners sending copies of the bills that certain people owed to their stores, to the Crown.

A. That's in a different district, that was with respect – I've seen that with respect to Horowhenua, but I've not come across any evidence that it was happening in this district.

Q. And no evidence of any of the vendors complaining about the fact that they had received vouchers versus cash? Just nothing, silence –

A. No, I haven't been able to get to the bottom of that, sorry.

Q. Page 371, and we are talking about the partition of the Crowns Ōamaru acquired interests. I found this particularly interesting, you note that, is it, 371: "Te Awanui Aporotanga had sold his single shares in Oamaru 2, Oamaru 3 and Oamaru 6 in October 1895." Then, "old his remaining Oamaru shares (in Oamaru 7) for a voucher". Then he, together with others, appealed to the Minister of Lands for reserves from the recent Crown awards. The reason I was confused about this is, my question I suppose is, why would he have sold if he was then going to turn around and just handout and say, but there need to be reserves?

A. I think he may have been working on the earlier purchase model with respect to Whitikau and Whakapaupākihi when the government policy

was to offer when the provision of reserves was part of the policy back then. So, I think he was harking back to the time of that policy, perhaps thinking it still applied when it didn't.

Q. Right, and I just note, on that same paragraph on page 371, there is a quote there –

A. There is a good example of the reserves from confiscation being used to justify disregard for any impact of the sales.

Q. So, you are talking about there: "'The Natives have plenty of other land to Cultivate and reside on.'"?

A. Yes.

Q. Okay, at this point, I might just whip over to page 396, to a quote that you have there, from the Stout and Ngata commission, I think: "Theoretically the Crown does not buy unless the owners are willing to sell. But the experience of half a century shows (1) that in the absence of competition produced by restrictive legislation, and in the face of encumbrances due to litigation and survey costs, circumstances are created which practically compel the Maori people to sell at any price; (2) that the individualisation of title to the extent of ascertaining and defining the share of each individual owner in a tribal block owned by a large number gives to each owner the right of bargaining with the Crown and selling his interest; it gives scope to secret dealing, and practically renders impossible concrete action on the part of a tribe or hapu in the consideration of the fairness or otherwise of the price offered, or in the consideration of the advisability of parting at all with the tribal land (3) that the weakness and improvidence of the race are directly appealed to."

This was an observation 16 years later, 16 years after when you were talking about what you were talking about, in the 1891 survey. This is exactly the sort of thing I submit, would have been going on when Āporotanga was selling his shares in Ōamaru 2, 3, and 6, wouldn't it?

A. I think that Stout and Ngata here, are referring to practice that predates the 1890s as well. When they are talking about individual secret dealing –

Q. But it carried all the way through?

A. It carries on, but I don't know how secret the 1890s dealing is with Gill rocking up in Ōpōtiki at a court sitting. Yes, he's trading with individual shares, so, to that extent, it's secret. But it's not as clandestine, if you like, as Wilson doing it in Gisborne for Land Acts on this side of the Motu River. So, it's a different scenario, but yes, it's the same trade and individual shares.

You know, I think Ngata, they are talking and the Stout, Ngata report talks about the weakness and improvidence of a race, you are talking at a time – in the raupatu report that I wrote, it's exactly the same time when the school teacher at Waioeka is saying I can't believe people are allowed to live in these deployable conditions in a civilised country. I mean, that's the impoverishment of the people.

So, it's not like they are going to spend it on the race horses, although, I do think the pubs were also open in Ōpōtiki during this protracted court hearing, which took most of 1895. So, there are court bills to pay, there is accommodation pay while you are in town, the pub house is open. They do employ a lawyer for takaputahi, I don't know that all this money was being spent on race horses as these commissioners and motor cars, you know – there wasn't enough of it. But certainly, the payment to individuals also stops any kind of collective capital investment, unless these people all get together after the payment and subscribe.

Q. That's right. I just have three more questions. First of all, page 375 is talking about the Crown alienation of Whitikau 2 between 1896 and 1907.

A. Sorry, what page?

Q. 375. You are talking about the Crown alienation of Whitikau 2: "Minister of Lands, John John McKenzie applied to have the interests acquired by the Crown in Whitikau 2 ascertained by the Native Land Court in February 1898. By October 1898, when Gill appeared in court to support the application for partition", and: "Gill asked that the Crown portion be located on the eastern side" of the block. Then it says: "There were no objections." My question is, do we have any information as to whether there were even any owners present, or did they know what was even going on?

A. There is, in the next sentence or two, the court records discussion ensued, and the proposition was withdrawn as many non-sellers were absent. So, there is some indication that they weren't present, but also, the inference being that there were people interested in that court. I don't know in that particular interest.

Q. Two hundred and eleven registered owners of Whitikau 2.

A. Yes, but he's purchased 116, so they, presumably are not in court because they have sold –

Q. It's been dealt with –

A. Yes.

Q. So, we don't know whether other people who were objecting were even – well, we do know that the non-sellers were not –

A. Were not there.

Q. They are not there.

A. Yes, were not there.

Q. Probably didn't even know it was going on. Would that be fair? Emails weren't very fast back then.

A. Yes, I don't know if applications were advertised in the Pānui or not, I'm not sure.

HOUSEKEEPING – TIMING (12:52:06)

MS COLE TO JANE LUITEN: (CONTINUES)

Q. I'm just wanting to ask about 397 and again, we are talking about the district land purchase officer, Mr Gill. You say, half way down, the final paragraph: "Taking advantage of a vulnerable indigenous land-owning community, by wielding a state-enforced monopoly to dictate low values is but one half of the sorry story." Just wanted to clarify, Gill had the full mandate of the Crown to do this, didn't he?

A. He did.

HOUSEKEEPING – TIMETABLING (12:53:01)

(12:53) DR SEASON-MARY DOWNS TO JANE LUITEN:

Q. Tēnā koe, Ms Luiten. Counsels name is Ms Downs. I have about 30 to 40 minutes of questions prepared for today. Just to preface my questions and where I'm coming from, I'd like to start with a reference to the Te Rohe Pōtae chapter on the Native Land Court. At page 1352, it starts with a summary of findings, and I note that you have referenced multiple Tribunal reports in your report. In that report it says: "The Native Land Court that operated in Otorohanga was an improvement over the courts in other districts." It struck me, as I was working through your report, that Ōpōtiki is potentially one of those others, and I would like to go through some unique factors that I think arise in your report to canvas themes and issues which might lead to that conclusion.

One of the first questions or things that I wanted to work through in terms of your report was a point that you make at page 15 of your report, and you say: "Untangling much of what happened in the North-Eastern Bay of Plenty lies in the detail. This report is necessarily a dense one, requiring close and careful reading."

WITNESS REFERRED TO BRIEF OF EVIDENCE #A021, PAGE 15

What I wanted to ask you was, what does that unpacking of complexity allow the reader to understand?

A. I just think it's a very complex – there are complex customary rights at issue, which were treated by the court, in quite a simplistic way and there is also, it generated a lot of evidence, volumes, and volumes of evidence. The judges themselves speak of the contradictions and it took a lot of study to try and work out what was happening and the cases, and what was going on.

Q. You have covered a lot of ground with Ms Feint and in terms of that, I think you use the word, contradiction, is that a contradiction or a conflict arising between the customary perspective of things or is it the interface between the custom and this new legislative regime and law that's coming into play. What is the contradiction?

A. I think, in part, it does reflect the tension that's there in terms of customary interests and the way they are articulated. But I think the Native Land Court, being what it is, it tends to hone any divisions and

make them more extreme, and less accommodating of overlapping interests and take, and yes.

Q. That arises from the inherent difference between the two systems at play, per say, if I tried to find language for it, tikanga based system in a legal and western based perspective of land ownership occupation tenure?

A. That's an interesting question.

Q. Maybe I'll work through some different questions, and we'll come back.

A. Yes.

Q. Moving on, it's actually a few pages earlier in your methodology section, and you are talking about the constraints of your research being based around – constraints arising from not being able to investigate more, the preliminary or primary based research of Crown policy and practice, sorry. That was a bit convoluted. But to that end, you say you rely heavily on Loveridge and Boast, which is evident in that chapter.

But what emerges in your report, as you work through the chapters is that when you are applying the local examples and specific issues arising in the Native Land Court practice in Ōpōtiki and Te Whakatōhea. You seem to extend the conclusions reached in some of that generic research that has been done, for example, the matter that was explored by Ms Feint. So, I guess my question is, the generic research already done helpful, but further insight and application able to be gleaned when you apply the local experience to that, is that correct?

A. Yes, I was always comparing the local experience back to the generic to see how it contrasted or conformed.

HEARING ADJOURNS: 1.01 PM

HEARING RESUMES: 1.42 PM

JUDGE DOOGAN:

Kia ora koutou. Welcome back, and our mihi again to Gloria and her team. Thank you. Ms Downs, kia ora.

DR DOWNS:

Thank you, yes, I didn't know what I was getting myself into when I said: "shorter lunch break". I can see why we needed the whole time. That was amazing manaakitanga **hospitality**.

(13:43) DR DOWNS TO JANE LUITEN: (CONTINUES)

Q. Kia ora, Ms Luiten. I think where we left off, I was starting to explore how the assessment of the local application of the Native Land Court experience to the general research of Loveridge and Boast's enabled the drawing of additional further conclusions in relation to the Native Land Court, and if I can just take you to page 15 of your report, in – at page 15, you say there, "The chapter provides crucial context for understanding what happened in the North-Eastern Bay of Plenty… district, and a base to compare where local practice departed from ostensible policy", and one of the exercises that we undertook, preparing for today, was to look at what some of those departures in practice – departures from ostensible policy were, and in that exercise in unpacking, there was just so many, so my question is, did your research highlight what basis there was for such departure from ostensible policy? What enabled that flexibility in a practical – in the practice on the ground?

A. Well, it's hard to think of it without concrete examples, but if we take, for instance, the 1873 Native Land law, which we have already talked about this morning, how the purchase of individual interests departs from the ostensible policy, I believe, set out in that Act, and we look at all of Wilson's dubious purchase practices, including – which are successful. He does them because they are successful, and then they become adopted by the government because of their success, so all of the – these unlawfully dubious things that he does are subsequently turned into law. "…local practice departed from ostensible…" With respect to the Native Land Court, I've discussed at the end of that Whitikau chapter in terms of the Court's treatment of take and how – what various historians have said about them, and I put out there my own conclusions about aspects of that, and how they – they didn't – the Native Land Court, it wasn't an application of take, customary take, as such, because it didn't really have an idea of what – what that was, so it kind of ran with a whole

string of things that were not – it was judges making it up as best they could with what they had, rather than any meaningful engagement with customary take, and some – some of them did it better than others. I think Judge Scannell in 1895 really tried to get to the bottom of – of the title to the Panenehu lands, but unfortunately, that's after the Whitikau 3 rehearing that he tried to do that.

What am I trying to say here? A lot of the – a lot of the practice seems to be just doing what it takes to get the job done. I mean, a classic example is the survey of Oamaru. That's a massive departure, a massive departure from the stated policy. It's a massive departure from a policy that says you have to have tribal mandate. That's what the – part of the rationale for setting up the Native Committees are in 1883. And yet the survey gets bulldozed through and sponsored by the government because it gets the land into court.

So I don't know if I've answered your question. I haven't come across any evidence that – that explains why things happen in this district, except that that's what it takes to get the job done.

Q. So you're talking there about practice enabling, or leading to, the ultimate objective, being alienation?

A. Yes.

Q. It felt, when reading the report, like the scale of departures from ostensible policy – you call it a string. I noted that at every subheading, where you were examining how the blocks were investigated, granted, appealed, reheard – at every point, there was a departure.

A. A deviation, yes.

Q. And a deviation from what should or could have occurred, and I am wondering the extent to which that is taken into account when considering impacts, and whether you drew a conclusion in your Impacts section – I couldn't see it so clearly, but I did want to put it to you today, just for your thoughts.

A. Yes. I guess I'm always uncomfortable talking about impacts, as such, because that's something for other people to – you know, they can describe the impacts themselves, so I've tried to keep my discussion of the impacts into, I guess, the more obvious things.

But yes, I think – I think – I think I would agree with you that the amount of times that Te Whakatōhea in particular are presented with circumstances that go against them, whether that's the initial decision or the survey of their land, when they've actually gone to the trouble of having a collective meeting and sending the resolution of that meeting to the Assistant Surveyor-General saying, "No, we don't want our lands surveyed at this time, and when we do want them surveyed, we'll have our own whanaunga to do it", and yet that goes through – they're constantly having to cope – cope with things that fly out of left field. Yes. And I guess, yes, that would have an impact.

Q. I wanted to move on to questioning around the concept of "a waho", and it's not to – to pull that apart. I know language needs to be used to find descriptors for what has happened. But I did wonder, is that a term that you coined as part of your research, or is it from somewhere else?

A. I can't remember.

Q. It's fine. It just led me to, in this particular instance – and Ms Feint has touched on it, but – to think about what appears in the report to be a reading down of the value of land within the a waho area, as compared to the coastal raupatu land, and what struck me there, and this has been touched on, is that that is a very favourable way for the Crown and the government trying to obtain land to characterise it in that way as being residual – some of the language is "poorest quality", "uninhabited", "hinterland", you know, if you get what I am saying?

So I am trying to understand where the notion that inland land was of less value to the other confiscated land came from.

A. I think that the Crown confiscated the best of the land, and if the better land had been a waho, it would not have been a waho, if it was worth – it would have been part of the confiscation if it hadn't been as poor in terms of production, and I get your point that describing land as poor is a – comes from a certain framework of thinking about land.

Q. Yes, well, I – and I guess that the point there is that the segregating and the concept that the inland land was of less value kind of overrides and overlooks a customary and a tikanga way of looking at the value of land or looking at land through the lens of mana, for example, and authority

over land, and I am wondering the extent to which, in your research, those concepts at the customary level, not in relation to who owns what or uses what, but where does tikanga, or where did tikanga, come into play?

And maybe I will – to make this clear, I will refer to the map that was handed up – I think that was handed up by Mrs Simon-Larsen, and it is the map from Mr Williams's *Tribal Connections* report, and he speaks about this map in his report summary and in his main report also. Sorry, at page 11 of his report summary. And he says, "What can be demonstrated, from evidence to the Native Land Court about the inland mountainous areas and from evidence…" of the Kōrero Tuku Iho hearing "…is that the inland areas were a hugely valuable source of food and resources that helped to sustain the population including those who resided for much of the year along the flat country of the coastline."

So my question is around: Is it appropriate to use language like "the best coastal land" and the descriptors for the inland lands being "of poorest quality"? Yes, do – do you think that that is…

A. I think – I understand what you are saying. I would counter with an argument that with the advent of agriculture, which comes from te Tiriti on, and that – which – it's a market – it's a market-driven economy, and supplying the Auckland market, that the population does congregate and live and is less reliant on those mountain resources, because everybody's busy cultivating the lands, the coastal lands, arable, closer to the coast. And I think that's where you come in, and that's reflected in evidence, as I mentioned before, of people in court recounting the stories of their fathers' and their grandfathers' food harvest from those areas, rather than their own, because in their generation, they've been busy cultivating, and I think, too, even before that, I think the concentration on – on the coastal land, yes, those – those hinterlands are – continue to be important in terms of customary rights, but I – I got the sense from all the kōrero about ancient forebears like Te Panenehu who actually used to live on Whitikau in their day, like, generations before, but – but since Te Upokohapa, had tended to live down at Waiaua and not on Whitikau, so you – so you get Te Parata being described as the last actual resident on the Whitikau

block, and that was, like, three to four generations from the people in court.

So – so there is – these places were places of residence in times past, when the people were known as Te Panenehu, but in – in the three or four generations before the Treaty, there has – there seems to have been a shift towards the coast, and using these mountain countries for resource gathering and food gathering, rather than residence.

Q. Would you say that the highly contested nature of the applications that went before the Native Land Court for these hinterlands are demonstrable that in – from a Māori purview, it's – it wasn't so clear-cut; that, you know, they were definitely still holding important that land; that land was central to them?

A. Yes.

Q. So the – where there emerges a prioritisation to acquire land during this period for settlement purposes in the overall objective of the Crown obtaining land, but the notion that it's hardly worth taking up and it's of little value – can that be reconciled?

A. I think a lot of the initial drive, that – that first post-war investment in purchase, I think a large part of that is driven by security measures. They've just conquered this so-called native district, and they want to hold it, so a lot of that investment and purchase is security, and then it becomes you invest in all this immigration, and you want to put people on the land, so that becomes the kind of purchases, for particularly Whakapaupakihi and Whitikau – that's – that's where Motu is now, and that's been turned into farms. But your point – I mean, that – that – basically, your – the – the argument that these are poor lands or waste lands, to use the phrase of the 19th Century, it is also used to fuel the argument about nominal tenure and things, as well. I mean, it's all – it's all connected. And of course, the Crown – it's – yes. I don't know how the – it comes to – to value this land. It's obviously based on productive potential, but yes, it's extraordinary the low value that – that is placed on – on this land.

Q. I wanted to touch on some of the context as being essential to understanding how the – how things played out for hapū and whānau in

Te Whakatōhea, but one of the points that struck me was at page 55 to 56 of your report, and – sorry, I think I might have my page number wrong. Sorry, it is at the bottom of page 55, and it is in your conclusions section, and just at the last sentence there, you say, "Historian Tom Brooking has argued that large-scale land purchase was more effective as an agent of colonisation than war." And you go on to add, "Boast, too, has argued that at the end of the day it made no real difference whether land was bought or confiscated: 'essentially it amounted to the same thing'."

And I appreciate what these experts are trying to say in terms of everything leading to eventual – eventual land loss and alienation, but my question was whether it's accounted for that for the hapū and tribes who experienced war and confiscation and then the Native Land Court over top of that, where is there the account for the layered impact of that to those particular groups who had it all? You know, it's not one and the same, it is actually quite specific to them, their experience.

A. Agreed.

Q. There is a question, I think, put by the Tribunal in the research commission, and it is around the protections that may have been in place for Māori through this period, and it might be an obvious question, but I am going to put it anyway, but did the legislation provide any protection for groups who had experienced raupatu in particular, in terms of whether that is a consideration taken into account when the Native Land Court is operating in that particular area? Does it come up in any of the records at all?

A. No, not at all, except perhaps to, in the case of the example we had just before lunch where the Land Purchase Officer is using the reserve from raupatu as an excuse to – to take the rest.

Q. So, not protective.

A. No. Quite the reverse.

Q. I think I have got about ten minutes left, so this is my last series of questions, I think.

And this one was a little bit harder to unpack, but I am trying to understand here the relative power that each party to this issue has – Crown, Native Land Court, Māori, tribes on the ground. And I took from your

report that you clearly – you squarely, sorry; squarely – put the power in – the power balance in favour of the Crown, the Crown holding the majority, if not all meaningful power.

Q. Yes.

A. Were there any effective mechanisms that would give hapū and whānau some semblance of power in this relationship, and in this particular issue?

Q. None at all.

A. And you mention at page 430, and I don't think I need to take you there; it's a short comment, but you said, "As Boast observes, the law was constantly amended to facilitate Crown purchase for the purposes of settlement", and I was – the sense that I got there is that that raft of legislative change is somewhat abstract to the extent that it is happening away from the district, right? Like, it's driven at a national level, out of government. So how were those raft of legislative changes understood or kept on top of on the ground, if at all?

A. It would be very difficult, if – hardly at all, I would imagine.

Q. And I think one of the central themes that arises in relation to understanding the relationship between the parties is this – the central theme of ongoing resistance, and it appears that the resistance to alienate lands was a pre-Native Land Court feature and a post-Native Land Court feature; that it carried the whole way through the process, whether it was in resistance to engage and sell in the first instance, right through to petition at a government level.

And you say seven petitions, you know, seven petitions, I think, in your report, which meant that it – the way I see it is that there wasn't actually an effective mechanism for Māori to maintain a position in relation to their land and how it was dealt with. Is that a fair question – a fair assessment?

A. I would agree with that. And also –

Q. A – yes, no, sorry.

A. Just a further point about that Liberal government era of purchasing, as well, in the mid-1890s, that's at a time when the government has actually disbanded the Native Department. There is no avenue. There's still a Native Land Purchase Department, but there's no – no longer a Native Department. It's disbanded in 1892. So – so – yes. It's another

– it's another cutting off of what had been an avenue for – for some kind of redress.

Q. And when I was thinking about how the maintenance of powers was, you know, maintained throughout this period, given that it was some 30 years, it led me to wonder what the answer was to this question around what – and I don't know how to put it other than to say, "What is the degree of independence between the Native Land Court and the Crown?" Did that reveal itself in your research?

A. I think it starts off being less independent, and I think it grows more independent as the 30 years goes on, so, you know, Rogan is – is – is writing to McLean in the 1870s – Judge Rogan, that is – but that – that – that level of relationship, I don't know that it continues on into the 18 – I don't know that it's still there in the 1890s, except to the point that the Native Land Court is cooperating with the Land Purchase Officer by the 1890s to make sure all the necessary paperwork is done to enable the alienation, including mass successions and appointment of trustees at reduced prices, and things like that, so I don't think the relationship is as close in the 1890s as it was immediately after the war.

Q. But those – those latter issues that you mentioned are still towards the objective of –

A. Settlement.

Q. – settlement.

A. Yes.

Q. This is more – I should have probably put it in a question of clarification, but at page 433 of your report, you say, "It seems axiomatic – brackets, obvious – that political engagement of hapū within the inquiry district in the latter half of the nineteenth century was prescribed by their forcible submission by the Crown from 1865." And I tried multiple times to unpick that in my head, so I'm still not quite clear what you were saying there in that sentence.

A. Can you say the page again, please?

Q. 433.

A. Where are we?

Q. And it's at the last – the last paragraph of that page. "It seems axiomatic…" That's how it starts. The last sentence of that page.

A. I meant that – by that, I meant that it's not like having been forcibly subjugated, it's not like they're going to kick up a big stink about being cheated in the years that followed, and there's one example of that that comes up in the – I think the Oamaru case where – or maybe it's a letter, I can't remember. I'd have to find it. But – but the person says, "We – we didn't obstruct the survey", and made a reference to – to the war. So if they – they were never allowed to forget their status as surrendered "rebels", and that had an impact on the way that they exhibited their resistance, is what I meant by that.

JUDGE DOOGAN:

Ms Luiten, is the – should the word in the last line be "proscribed" rather than "prescribed"? Is that the sense of the…

JANE LUITEN:

I would have to look at the meaning of those two – yes, I mean, it's like saying they – they had to be submissive, is what I'm saying.

JUDGE DOOGAN:

Well, I would have to re-look at the meaning of the words, as well, but off the top of my head, I think "proscribed" means "limited" in the sense that you are referring to.

JANE LUITEN:

Yes, and – and I'm saying "prescribed" is actually prescribing the way they behave, because of their status as "rebels".

JUDGE DOOGAN:

All right. Thank you.

DR DOWNS TO JANE LUITEN: (CONTINUES)

Q. And I think just as a final question – I hope it turns into a question – but at page 425, which is just a few pages earlier, you are – in that section, you are talking about Boast, I think, as a general observation, again, pointing to the lack of Māori resistance to the operations of the Native Land Court as proof of, on the whole, Māori willingness to bring claims to it, and you go on to say that that "observation ignores both the reality of hapū mana and the State's power to enforce the decisions of the Court", and you end saying "their recent experience of war with the Crown meant civil disobedience was not an option".

So I think the two conversations, or the two questions that we have just been exploring speak to where you are extending – or distinguishing somewhat – a general finding of Boast, and saying, well, not necessarily in Ōpōtiki, and not necessarily in respect of Te Whakatōhea. Their war context meant that they couldn't express civil disobedience, because of the earlier context of the war. Is that correct?

A. I think – I think Boast's point – he – I think Boast was making the point that the whole process of going to the Court was voluntary. Nobody was forcing anybody. They took these – they made these claims, they went to court to get the title. And I think my point is that that denies the reality of what was touched on before today, the divide and conquer, and using hapū mana to – and to defend hapū mana by forcing – you had to go to court, actually, because otherwise your lands will be claimed by somebody else, or – and this – in the case of Ōpōtiki, they will be included in a much larger claim that will be taken to court by somebody else.

So the – what I'm – what I am saying in this particular place is that on the face, it appears voluntary, but in the context of tribal reality, it's not voluntary at all. You have to do it. It's – it – you'll get drawn in, because the costs of standing out, out of it, are – are the – are dispossession as well.

Q. Thank you. I am mindful my time is up. I did have a couple more questions. I will think about overnight whether they are worth putting in writing, if there is that opportunity. They may not be. I will just consider it. But I thank you for your time, and I thank you for your report. I didn't

express my thanks at the beginning like Ms Feint and Ms Cole did, but it was a really valuable and interesting report to read, and I thank you.

HEARING ADJOURNS: 2.16 PM

HEARING RESUMES: 2.19 PM

JUDGE DOOGAN:
Kia ora koutou. Ms Clark, tēnā koe. **Welcome back. Thank you, Ms Clark.**

MS CLARK:
Tēnā koe, e te Kaiwhakawā. **Thank you, your Honour.** Just before I commence, we are looking okay for time, and I have received word from McCaw Lewis that they no longer require questions due to the questions that have already been put, and likewise, we have had that indication from Ms Delamere-Ririnui, so with that in mind –

JUDGE DOOGAN:
All right.

MS CLARK:
– we just provide that reassurance that we are doing okay for time, and definitely, the plan is to finish by the end of the day today.

JUDGE DOOGAN:
Thank you. That is good to hear.

MS CLARK:
(inaudible 14:20:13) counsel.

JUDGE DOOGAN:
Kia ora.

(14:20) MS CLARK TO JANE LUITEN:

Q. Tēnā koe, Ms Luiten. **Greetings, Ms Luiten.** Good to see you again. My name is Raewyn Clark. I am acting on behalf of a number of claimants in this inquiry. The questions that I have for you today are focused on the Oamaru block – thank you – and I am wanting to look into the story of that block, to draw out, essentially, the alienation that occurred as a result of survey in that block.

Before we start, based on Ms Downs's questioning at the end there, you said that you had a recollection with regards to her questioning about "rebel" status and how that affected the engagement of Whakatōhea in this district, and you said that you had a recollection of someone saying that because they had a "rebel" status, they didn't interfere with the survey, and that also rang a bell for me, because that's from the Oamaru chapter, and I believe that's from page 255, in the Oamaru chapter, and it's at the very bottom of that page.

WITNESS REFERRED TO #A025, PAGE 255

And just as you're going there, because I'll ask you to confirm that's what you're meaning, but that is the Whakatōhea, Ngāi Tamahaua-led petition in 1895 to object –

A. Yes, correct, that's –

Q. – to what has occurred in the case of Oamaru.

A. That's what I was referring to, yes.

Q. Thank you. And that's at the very bottom of that page. "Since we took the oath of allegiance to the Queen, we have used our best endeavours to uphold the Queen's Authority – Thus we did not interfere with the survey." Thank you for confirming that's the reference that you had in mind.

You – the Oamaru block takes place in the 1880s, and you start by noting that this is a period of economic recession, and you highlight two factors in this period. Firstly, that the government is looking to economise, and in doing so, surveyed very large blocks, and the second factor that characterises this period is that the Crown is no longer willing to pay for surveys as it has been in the past. It wants to put that cost back onto the Māori owners. Would you agree that these are two – these two factors characterise this period?

A. No, I think – not the second one. The government has always had funding available for the survey of customary lands for the purposes of title determination. It just becomes – I've got the – in 1880, the – I've got the legislation here. One moment. So there's always been an appropriation from – from government funds for the survey of customary land, and there – from 1880, there's been a provision for the court to have a defined portion of the block that's surveyed either sold by public auction and the proceeds applied, or vest the same in Her Majesty, so – so it's not that the Crown stops the funding being available, it's just no longer interested in taking on survey projects if the land in satisfaction isn't – doesn't make economic sense for them.

Q. Thank you for clarifying that. So they will continue to pay for surveys, provided they get land that they approve of and that they think is well worth it in return.

A. At a survey charge determined by them, and the land valued at a value that's determined by the Crown, yes.

Q. Yes, thank you, and we will certainly be going over that.

You also say that government policy at this time – we don't need to go there, but it's page 184, for the record – is to set dealings in train while leaving the issue of entitlement to be decided later by the Native Land Court, and that's described by one Māori onlooker that you refer to in this chapter as a "back-to-front" policy, and the reason that you say it's – or that they say, and I think you do agree – that it's a back-to-front policy is because survey precedes title determination. Is that – do you agree with that?

A. Yes.

Q. And another reason that it's a back-to-front policy is that where survey precedes title determination, significant liabilities are incurred, money being one, another being lines are already drawn on the ground, and that's important, and those things all happen before the owners of the block are even identified, so when they become the owners of the block, they're saddled with a liability, and they're saddled with lines that have already been drawn.

A. Correct.

Q. And I think you've hinted at this already, but this back-to-front policy is intended to force Māori to engage with the title determination process, the end – the end goal of which is individualisation of title. Do you agree that that's the end goal and the reason for this back-to-front policy?

A. Well, the survey is a necessary part of the title determination. You need to know the fixed boundaries of the land that you're – you're bringing into court, so it's – it's an integral part of the process.

Q. I think what I am getting at is – because that could – in a way, that could be done off the basis of a sketch plan, couldn't it? We don't actually have to have a predefined survey.

A. I think the – the nub of your question is that the emphasis changes. In the 1870s, the emphasis is on getting hapū to apply for title determination, and in the 1880s, the emphasis becomes on getting them to apply for survey, because the survey application seems to become the first step in the process of title determination.

Q. That's right. Thank you. And it's much – from the Crown's perspective, it's much more straightforward to approve someone to go and do a survey than it is to go through the process of title determination. Do you agree with that?

A. I would agree with that. It – it leaves the Crown in a position to say, "Well, we'll leave that for the court to determine who the owners are, and once that's determined, we'll deal – we'll deal with those people."

Q. And it also ensures that that particular land block has to get before the court. It can't remain outside the court system, as we know Whakatōhea would have preferred. As soon as that survey has been completed, people are forced to come before the court and engage in that title – title decision, or application.

A. Again, the Takaputahi example says not necessarily, because Takaputahi is surveyed in 1883, and Ngāi Tai don't process – don't apply for title until 1895 – well, it's heard in 1895 – so those surveys fall out of the normal box, but in the normal run of things, Whakatōhea are drawn into that big survey of Oamaru, but the people who applied for the survey in the first instance, they still want to process title, so – so in that sense, the survey of it does draw the iwi at large into the process of title

determination, even if that wasn't how they would have done it – their preference to do it themselves.

Q. Because once that smaller applicant group has their survey, they can take that to the court and apply for title, and it's at that point that everyone with an interest in that block is forced to engage in the title determination process.

A. Correct, and one of the interesting things about that Oamaru case is the intersection with the – one of the checks and balances is the District Native Committee –

Q. Yes.

A. – which kicks in a little late, after the initial application, because it –

Q. Could I – could I possibly pause you there –

A. Sure.

Q. – because I am certainly going to get to the District Native Committee, but I'll – I want to just look at a step beforehand, and that is – that is who the applicant group was in the case of Oamaru, and the size of that initial application as well, so the original application for survey was made by Tauha Nikora, Petimana Patangata – Paku Eruera was on the list, as well as a number of others – and that was made on the 29th of January 1885 for 15,000 acres, and they were – so the process for getting the application approved seems to be two-pronged.

Firstly, he contacts the survey department in Wellington, and they consult with the Land Purchase Department, because those two groups are closely interlinked for the reasons that we spoke about just earlier, which is that if the Crown is to pay for – for a survey, the Land Purchase Department is interested in that, and they know of no reason why it should be disapproved, and it is approved.

And the second way – and then I – I'll hand it over you – is that the Native Committee is supposed to provide the transparency in the process, but they don't appear to play that role here.

So could I perhaps ask you first, Tauha Nikora, who was he, and what – what was motivating him to make this application? You say he's described as "a modern young man, sharp to a degree," and "well educated", and he says, "We are only a few persons descended from the

one ancestor", no other hapū or tribe has an interest in this land, this 15,000 acres.

I've covered a little bit of ground there. Apologies. But I'll try to bring it back. Tauha Nikora, who was he, and what was motivating him to make this application?

A. I think he was a young man, and he had – he was – belonged to Ngāti Rua, part of him, and he was also Ngāti Patu. He – his individual claim for the western part of Oamaru turns into a Ngāti Patu claim in the – in the title determination.

I think he's a young man who wants to have a go at farming, and I think – it says he explains – when his application is turned down, he's wanting the proceeds of this Oamaru land so that he can buy a piece of land and farm, and he's also – he – he's the person who is behind the triangle of land that gets taken from Oamaru and put into Whitikau. He apparently – Wi Kingi asks, because he instigated the survey, he agrees to that triangle, and again, it's – he does it on the understanding that he'll end up with that triangle, so he's – I think he's a young man who wants his own piece of land to farm, is my feeling.

He's also the same person who doesn't sell his Oamaru sections in the 1890s, and he's the one who applies for partition, again so that he can his own bit to farm, and the Crown purchase officer Gill says, "How dare you tell the judge? How dare you –", you know – not "How dare you?", but "Why are you interfering – why are you even contemplating this partition order, when this Crown purchase is in train?"

So Tauha Nikora, I think, is someone who wants his own bit of land in order to farm.

Q. Okay. And – so he's a young man with his own intentions. They're certainly not hapū-based or – or – they're not based off the authority of – of Whakatōhea as a whole. And the reason that we know this is because at around the time that he makes this application that sets off the train of Oamaru, Whakatōhea hold a meeting, and that's on the 13th of March 1885, where they decide as a group of hapū – it's page 189, if we want to see exactly who the hapū were that make that decision – but what – do you want to speak to the decision that is made at that meeting? Because

that is a very important meeting, certainly from Whakatōhea's perspective, but was roundly ignored by the Crown. But could you perhaps comment on that meeting?

A. It's difficult to know whether the meeting is inspired by Tauha Nikora's initiative. He – he makes the application, Nikora makes the application under the auspices of – they're calling themselves Ngāti Urukotia, and that's Peti Patangata's great-grandfather, Te Urukotia, so they're – they're making a – a family plan, if you like.

And then this – this meeting – this – it seems too much of a coincidence for this meeting, given the timeframe, not to have been inspired, but we don't have any evidence that it was, but they come together and – to discuss survey, and the resolution that they come to, which they communicate to the Assistant Surveyor-General, Percy Smith, is that they don't want their lands surveyed at – at this time, and they call their lands te rohe pōtae, and they set out the boundaries of it, and they set out the – the blocks that they envisage may be surveyed at some future time by their whanaunga, Balneavis, who – John Balneavis, who is a – a licensed surveyor. So they're – it's a tribal resolution, I suppose, to the issue of survey of their customary land.

Q. Yes. And you would agree this is a clear tribal decision that they wish to retain customary title in their lands?

A. And possession.

Q. And possession, and it's clearly communicated to the Crown.

A. Yes.

Q. Nevertheless, we know that the Crown does recommend that the – this application to survey be approved.

A. It's – it's approved. It appears to have been – the initial application appears to have been approved in Wellington before Percy Smith is aware of this resolution.

Q. Okay. And it's at that point, upon approval in Wellington, it's at that point that the – that the application gets referred to or is intended to get referred to – in fact, it does – to the Ōpōtiki District Native Committee. Can you please briefly speak to what those District Native Committees were intended to achieve?

A. I think the Native Committees Act – they were set up under the Native Committees Act 1883 – I think they were intended to provide some kind of tribal – some – some kind of tribal oversight or mandate of precisely these kind of issues, the title determination and survey of tribal lands. But it's not explicit in the Act that establishes them that they have any role at all, it's just that these things come under their – their view, and I think it's not the survey application that gets put before them, it's the title application. So – so there's two things, two different things happening here, which is quite difficult to tease out, because the survey application, I believe, is different to a title application.

Q. Well, perhaps they're interlinked, given that the applicant –

A. They're definitely interlinked; definitely interlinked.

Q. Yes, given that the applicant for survey then went on to apply for title.

A. Yes.

Q. So it's essentially one and the same –

A. Yes, yes.

Q. – would you agree?

A. Yes.

Q. And so this shows that there was an intention to have transparency around who could apply for survey and therefore title. There was an intention there. Would you agree with that, as seen by these committees?

A. Yes.

Q. But the conclusion that you seem to draw is that you're very dubious that it – that it actually did provide any form of real transparency to the process. Would you agree?

A. I – the – this particular committee doesn't convene – I think it's May 1885, and they're not – they're not party to the decision – they're not party to the original authorisation of the survey, they're not part of that process, because that goes to the Native Minister, who makes that decision without any input from the District Committee. It – it seems to be forwarded to them at a later date.

Q. Was that an error of process, though? Was it supposed to go to them beforehand to check and approve that the applicant was the appropriate applicant?

A. I think it's – it's part of the process. I'm just – I'd have to – it's difficult to know at which stage that kicks in, because this application does go to the Committee, the initial – the first one does, with Te Paku Eruera's name on it – and apparently the Native Committee won't consider it unless his name's been taken off it, so that's – that's the first applicant. So there is a process of vetting that's happening, and of course, the – the ultimate application is disapproved by the Native Committee.

But I would also point out that the Native Committee is not Te Whakatōhea, it's – it has members of Te Whakatōhea, but it's not Te Whakatōhea. The Native Committee is to give some kind of district-wide oversight of what's going on, but it's not hapū mandate or iwi mandate for any decision, as such.

Q. Thank you. That's helpful. And indeed, the chair of the Committee was Wi Kingi.

A. Yes.

Q. And it was known as "Wi Kingi's Committee".

A. – Committee, yes.

Q. He was – he was a very active chair, you say. Tauha Nikora uses the – because another thing that we see happening with this committee is they get forwarded the survey once the survey's been – been made. It's too late at that point.

A. Yes.

Q. And at that point, they disapprove it, but it's too late. Tauha Nikora uses the apparent approval he says he – he received from this committee during the title determination to – to justify his application, doesn't he?

A. I think he does, yes.

Q. But you – I think you say that it's actually not clear – and I think you've – you've already made the point, the key point is that Whakatōhea itself did not approve of the application, and that's because of the very dubious process that this committee appeared to run by, an example being that it got forwarded the survey for approval after the survey had been made. But I think you also suggest that there's actually no opportunity for Whakatōhea to come before this committee and – and give their views on

the application, so this committee does not provide for Whakatōhea to have any sort of oversight or say around that survey application, does it?

A. I don't think Te Whakatōhea are even aware of the survey until it actually starts happening on the ground, and then they start making their protests known.

Q. Okay. Thank you. Before we get to that stage, I want to talk about how the size of the survey increased so dramatically from the original application, which was for 15,000 acres, and in the event, the actual size of the survey was 105,000, and so I want to look at how – how that survey grew in size so considerably, and perhaps where I'll start on this point is that – is it correct that the government could have paid for the survey and then registered a lien on the block and then left it at that? They could have done that, under the legislation.

A. I think that government funding was only available for government-surveyed surveys, so to pay government money for a private surveyor was outside of the box, and that's why that 15,000-acre application got turned down. It was approved in principle by the Native Minister, but it didn't go anywhere because the government wasn't going to fund anything done by a private surveyor, and Tauha Nikora didn't have the funds to pay him himself, and so it sat there for a year.

Q. It sat there for a year, until Tauha Nikora approached the government for – because he needed the government to pay for the survey. It was possible for the government to – it was possible for a private surveyor to survey this land, because Alma – Alma Baker was a private surveyor, wasn't he?

A. It was possible for him to survey it with the prior written authority of the Surveyor-General, but there was no provision for the government to fund that, so again, it falls out of the box of what normally happened.

Q. Was there a law change? There was a law change that allowed – because ultimately, the government did fund this private surveyor to survey the block – to survey the block.

A. The only way the government – well, that becomes the reason why the survey expands, because the government will contemplate it only if they can be satisfied that a good bit of land can be got, and that's when the

survey expands from 15,000 acres – Percy Smith is asked, "Can a good bit of land be got?", and he responds saying the – the area is now 75,000 acres, and yes. So then it becomes a land-for-funding swap deal involving the government.

Q. And the fact is that if – if the applicants want this land to be funded, the government makes it quite clear that it's not willing to fund a small survey of 15,000 acres. Essentially, it won't consider funding any form of survey unless it's much, much larger. Do you agree with that?

A. Correct, yes, that's the basis of the expansion.

Q. So if any form of survey is desired, the government requires that that application be of a certain size before it will – before it will consider it. So essentially, the applicant is required to increase the size of the survey if he wants the government to fund it.

A. That's what happens in this situation.

Q. Okay. Because it was also open in this situation, under the law – tell me if this is correct – that the private surveyor could have undertaken the survey and registered a lien on the block himself, so that option was open.

A. Let me check. The law is very – under the 1880 Act – and I'm talking about the Native Land Court Act 1880 – there is no specific provision for cost recovery for private surveyors, and that's what made me think when I wrote the report that private surveying of customary land had – was not lawful at this time. I've – since revising for this hearing, I think private surveying was lawful, but there was no cost recovery provisions under that 1880 Act, because it didn't happen. Nobody could afford a private surveyor.

Q. Right.

A. The only – the only way you could get your land – the only way you could afford to get a – your land surveyed was to go through government funding and do the land for – for funding exchange.

Then the 1886 Act comes along, and under that Act, Baker could have registered a lien against the land for his survey work, but he didn't.

Q. Yes.

A. He wanted government funding.

Q. Thank you. And you've highlighted very nicely there how – how much in control of the survey process the government was, given its expense and that it could name – name the price of the survey, the price of the land –

A. Yes.

Q. – and that was all under its control, because only it had the resources.

A. Yes. In 1886, it puts out regulations which have set fees for the – for the charges, surveying charges of customary land. Yes.

Q. So you mentioned that Baker could have registered a lien, undertaken the survey at his own cost, but he didn't want to, and he was supported in that, it appears, by Tauha Nikora, because the two of them go to Wellington, and there is some considerable lobbying that occurs. I – I – yes, there is some considerable lobbying that occurs to reach an agreement that Baker will proceed with the survey, and it's not in writing, it's – you call it a "gentlemen's agreement" – that later on, the Crown will step in and pay for that survey, and it will take land.

A. No, that – that first lot of lobbying that Tauha Nikora and Baker go to Auckland, that's to get the written prior authority. They're after the authority. They're not pressing for the funding at this stage, although in the course of going for the authority, Sheridan does intimate to them that the government will probably fund it, but – but there's not a concrete undertaking at that time.

Q. Okay.

A. He suggests that the government funding is a matter of having more money in the next budget.

Q. Right, so he gives them enough assurance –

A. Yes.

Q. – that he's willing to proceed.

A. Yes. They get their authorisation from that lobbying, yes.

Q. To proceed with the survey.

A. Yes.

Q. And I think there's a further something that occurs. You suggest that this is where the approval to expand the survey into Te Wera comes about, and the reason that I am suggesting that is at the top of page 205 –

WITNESS REFERRED TO #A025, PAGE 205

– you say that "the telegram is evidence that the Government was aware of, and had indeed condoned, the expansion of the survey to take in Te Wera at this point". Is it within that – that lobbying that there's obviously some discussion about Baker being able to expand his survey into the Te Wera-slash-Tahora block?

A. No. I think I'm referring at that stage – Baker's also contemplating – has also got in mind designing to survey the Tahora block, which is the Te Wera, but that's the bit over the river, so his survey of Te Wera is not part of the Oamaru – my reference to Te Wera there is not part of Oamaru block, but part of Te Tahora, which Baker also has his sights on surveying unauthorised.

Q. Yes, and – but what I'm getting at is that what he's receiving here as part of this behind-the-scenes lobbying is not quite an authorisation, but there's obviously some sort of discussion that's occurring between Baker and Crown officials at this point, that his survey could expand beyond Oamaru and into the neighbouring block.

A. That it's under consideration, yes.

Q. It's under consideration, and he's certainly not told that he shouldn't do it.

A. No. And another point – yes. Percy Smith, who's on – who's the Assistant Surveyor-General, he's told at once about that authorisation that Baker gets in – in January, and he's – he's directed to certify Baker's claim for cost before he enters on the work, and the quote is "in which case it will be well to get the consent" of the applicants, which –

Q. Right. Where's that quote?

A. – one would – one would think – I did these notes. It will be in there somewhere.

Q. Yes, I do recall it.

A. This is my notes I've taken for my homework, but – here we – yes, here we go. It's on page 204, the last paragraph: "McKerrow informed the Assistant Surveyor General of the development the same day. 'It will be your duty,'" he's informed, "'to certify to Mr Baker's claim for the costs of the survey, probably you can arrange this before he enters on the work in which case it will be well to get the consent of Tauha Nikora and the other applicants.'"

And so even at this stage, when they know the survey is blown out to 75,000 acres, they're still not thinking it might be a good idea to involve Te Whakatōhea, given it's their customary land, and the other aspect of that is that about the charges, I don't think Percy Smith ever follows that up with Baker, because Baker produces his own agreement – which he can't actually produce, it's just a verbal alleged agreement with Tauha Nikora about the five-shilling charge and the one-shilling value acre, so –

Q. Yes. Yes. And this goes back to the point that we discussed earlier, which was the extensive liability that's being incurred by the owners before they even become owners.

A. Yes.

Q. And the agreement that you're referring to there is the agreement that was made by the applicant, Tauha Nikora, and his man, Alma Baker, because they were closely interlinked, weren't they?

And it was, I would expect a very pricey survey. It has a very expensive cost per acre, five shillings, and a very cheap price for the land, one shilling, meaning that a significant amount of land needs to be taken in order to satisfy that very expensive survey.

And the Crown holds Te Whakatōhea to that agreement much further down the track, don't they, at the – at the survey costs hearing.

A. And I think that attractive offer is – is used to induce the government to get involved and to take it on, and to sponsor the survey.

Q. You can get a lot of land of this –

A. Yes.

Q. – essentially.

A. Yes.

Q. Okay. The survey is complete, and it's a very large block. It's even – I think it comes in at about 105,000 acres.

A. 106.

Q. 106,000 acres, in the end, all – all as a result of this original application. And it's correct, isn't it, that what we find at the title determination is that the judge is very disparaging of the rights that Tauha Nikora and his group

– or the extent of the rights that Tauha Nikora and his group actually have in Oamaru. Is that fair?

A. Yes.

HEARING ADJOURNS: 3.00 PM

HEARING RESUMES: 3.22 PM

HOUSEKEEPING – TIMETABLING (15:22:47)

(15:23) MS CLARK TO JANE LUITEN: (CONTINUES)

Q. To continue, we are at the stage for this block, which is the title determination, and I won't go into the details around the title determination. Except, I do note that there were a number of issues with the title determination, including ownership lists, relative interests and comparative equality of awards between the hapū. But I think, what is significant is that straight after the title determination becomes the Crowns opportunity to take its cut of the land for survey costs. I want to look briefly at how this occurs.

If I could go to page 239, and about three quarters of the way down that page, there is a quote between Lewis, and I believe it's Native Minister Mitchelson. Where, at the very bottom of that quote, Lewis says: "I do not anticipate however there will be any great difficulty in obtaining Land in satisfaction of whatever amount the Surveyor General may certify to, and the Government pay." Then you go on to explain: "Lewis' lack of concern no doubt lay in legislation passed the week before, which enabled the Court to define the Crown's interest acquired in any block, to declare land so acquired by order, at which point the land vested in the Crown."

So, I think you have already touched on these points, but the first point is, well, perhaps I could look at the legislation passed the week before. Which enables the Crown to define its interests and have the land vested in it. It's correct, isn't it, that the Crown could have left the survey lean on the block and at least, perhaps, given the owners the opportunity to pay

down that lean. But what they do is step straight in and in return for that lean, take a share of the land.

A. Correct.

Q. And furthermore, where it says, "whatever amount the Surveyor General may certify to, and the Government pay." Because the Surveyor General holds the authority here to pay a certain amount for the survey, and to price the land at a certain price for that survey, the Surveyor General holds complete control on what the survey costs. Is that correct?

A. The Surveyor General is certifying the charges.

Q. So, the charges are brought to him, Alma Baker's charges, which we know were pricey, five shillings per acre for the survey, one –

A. Five pence.

Q. Five pence, thank you. For the survey and one shilling –

A. Per acre –

Q. Per acre?

A. Yes.

Q. And one shilling for the land.

A. So, the charges that the Surveyor General certifies are just the charges, so, that's just the 5 pence per acre charge.

Q. Right.

A. And what it then covers, at the rate, that's also left to the Surveyor General. But I don't think it's part of the certification, it's a different thing, the certification of the charges. It's two separate administrative procedures.

Q. Right, yes. But suffice to say, what the Surveyor General relies on here, for the one shilling per acre cost is the prior agreement between Nikora and Alma Baker, that we have referred to already –

A. The alleged.

Q. The alleged agreement, which the Crown never asks for a copy, and Baker has lost it, so they take him completely at his word. But that is used to justify a one shilling per acre cost for the land, isn't it?

A. Recoupment, valued at one shillings per acre.

Q. Right. If I could perhaps, bring up table 8 on page 245, I should have given you prior warning about that, apologies. This shows what the

government, or what the Crown was seeking in respect of this block. If we look at, down the bottom line there, the total acreage for the block is 104,480.

A. Yes.

Q. And the existing (outer) lien, which is the only survey that has been done at this point, the acreage demanded is in the third column there, being 26,025, approximately a bit over a quarter, or about a quarter of the block. At this application for the Crown to recoup its costs in land, is it correct that Whakatōhea essentially, oppose the application for such an expensive survey in such a large amount of land to be taken?

A. Correct.

Q. But of course, the deck is stacked heavily against them because what evidence can they bring to show that the cost was unjustifiable. Do you agree that it's really only the Crown that can support its own case here which it does. Whakatōhea are not in a position to engage their own witnesses on this point, and what we find is that the Crown has al the evidence in its favour. That the charges are reasonable.

A. I don't know, even if Te Whakatōhea would have been aware of the survey regulations that set out the charges, that set out that anything over 100,000 acres had to be by negotiation. You know, they're acting blind, they don't have that advice at their disposal. Although, I guess, theoretical, John Balneevis may have advised them, that would be one avenue they'd get that information from. But yes, and some of those factors are brought out at the rehearing. The fact that the boundaries have already been surveyed for the most part, and some cases with the surrounding blocks, and they're brought out at the rehearing. But not at this stage, because, I don't know why, it might not occur to them for whatever reason.

JUDGE DOOGAN:

Just while we are on this table, if you don't mind, it's a convenient time to clarify just one matter. The last column, acreage awarded, and the total at the bottom, 30,357, is that the net amount of land apportioned to the various hapū after survey and partition costs are all deducted. Is that correct?

JANE LUITEN:

I believe so, your Honour. Some of those blocks, it's the ones with the asterisks include the partition cost and that's a projected cost because it hasn't been partitioned at this point. So, the acreage that's awarded takes those into account. But in two cases, they don't agree to that partition cost and so, there may be extra.

JUDGE DOOGAN:

So, the difference between the total area of 104,480, and if you take off that motion or sum of 30,000 hectares and the 26,000 acres for the survey lien, you are still left with a balance and the total of the block. I don't know what the maths is, but what happens to that portion of the block?

JANE LUITEN:

The acreage demanded, the 26,000, that's what Gill comes to court demanding just for the outer survey, I think, I'd have to check. But the acreage demanded is not something to worry about, it's the acreage awarded and the total acreage of the block. So, what happens with that is, on the map, which I think is a little bit further on, the Crown gets its portion of each hapū block, and the balance goes to the owners, in each case, the hapū owners. But that doesn't happen until those partitions are surveyed.

JUDGE DOOGAN:

Okay, thank you.

MS CLARK TO JANE LUITEN: (CONTINUES)

Q. Thank you, that was helpful for me as well, that the acreage awarded is different from the acreage demanded and it's the acreage awarded that is the important column there. Can you confirm, the acreage awarded only includes the exterior survey, or does it also include the projected partitioned survey?

A. In the case of the asterisks blocks in that column, it includes the outer and the partitioned cost.

JUDGE DOOGAN:

I think, just to complete this, over on the page adjacent 255, there is another table, and I think that might have been what you were referring to, which shows the parts that were taken out for the Crown interests. Is that correct?

JANE LUITEN:

Correct.

JUDGE DOOGAN:

The balance of Māori ownership.

MS CLARK TO JANE LUITEN: (CONTINUES)

Q. Thank you, and yes, I was going to go to that table as well, that is also a helpful table. You highlight, don't you, how much in a bind Whakatōhea was considering that the outer survey had already completed and had survey liens attached to it. They were essentially forced to also agree to the partition survey and the liens and acreage that would be associated with that, and why were they essentially in such a bind that they were forced to agree to that partition survey?

A. Because at that hearing, Gill threatened that if they didn't agree to the land exchange, the government would not survey the partitions.

Q. And to not have the partitions surveyed, what implication would that have had?

A. You would go back to having a big block with a lot, well, with Whakatōhea as a whole and not expressed in terms of these hapū partitions, the block not divided up into these hapū.

Q. And there was a perception, wasn't there, that the block needed to be in the partitions to enable the various hapū to get some economic value from this already indebted block. Is that correct?

A. That's an interesting question, yes. The benefits of hapū partition, I think, by that stage, hapū do also believe that they want their own partitions for their own economic benefit. Although, that starts happening with Ōpape reserve a little bit later, but not much later. It's that same thinking about being in control of your bit.

Q. And there were some negotiations, weren't there, about the price for the land with the owners, and the purchase agent, or the Crown agent that was present, allowed the owners to negotiate him up to a price of one shilling, three per acre. So, a slightly more expensive price for the land at the rehearing, or outside the rehearing.

A. I cannot remember. It's resident magistrate Bush who is doing the negotiations. Do you have a reference for that? Is that at the original hearing or the rehearing, hearing?

Q. You might be pressing me now, but I have in my notes, 252. But the point that I want to make is that and I think you point this out, that some 10 years earlier, the Crown had offered double that amount for this land.

A. That's on page 252?

Q. Yes.

A. "Te Whakatōhea's counter offer of 2s 6d was based on what the Government had offered them for the land ten years before, when the cost of the survey was also to be borne by the Government." Yes.

Q. Yes, and the following sentence is actually quite useful because that refers to, "the ultimatum: without the partition survey, the owners were stuck with a liability incurring interest, with no title – and therefore no means to ever discharge the lien." The final stage in this, and there are three final postscripts that I wanted to mention with regards to Ōamaru. The first is the partition that was made in 1895, which referred directly to this particular survey. I don't need to ask anything about that, except that to note that the government doesn't appear to have taken any notice of this partition that follows, objecting to the highly unfair process that was the Ōamaru block. Would you agree that no action was taken in respect of this quite heartfelt petition from Te Whakatōhea?

A. Yes, and I found it curious to find it in the back of the Ōamaru purchase file. It's not like it was in a partitions file, it was at the back of a purchase file in the Māori Land Court, which I thought was curious.

Q. And the second postscript to this saga that I wanted to mention was, and you have set it out on page 257. Notwithstanding the award of land that the Crown received, and we saw it depicted in map form on page 254. Significant award of land, you note that they still left the survey liens on

the titles and were going to prosecute those survey liens until it was objected to in court by Rewita Niwa. Is that what occurred?

A. Do you have a reference for that?

Q. Page 257.

A. Yes, I see that one there. But – yes, I see Rewita Niwa's objection, yes. So, it may have left the survey liens on the blocks that didn't agree to have the partition costs. I mean, yes, it did leave the survey liens, seems to have left them on all of them. Yes, that's crazy.

Q. So, from your understanding, the survey liens were left on all the blocks, despite the Crown having already taken its share out in land.

A. It seems, from this, yes, yes.

Q. Okay, until that was objected to in court by Rewita Niwa.

A. Yes.

Q. And the final postscript that I wanted to mention is, and you mentioned it earlier in response to, I think, questioning form my friend, Ms Cole is that the share of land that the Crown took in the Ōamaru block was then later used as justification to purchase the individual shares that were remaining, wasn't it?

A. Correct.

Q. And part of the justification was that the Crown was seeking to conglomerate its shares in the block. But I think, as you pointed out, the Crowns shares were already co-located. So, that argument holds no water, really, does it, that it needed to –

A. I couldn't see that it did.

Q. Okay, thank you. I'll leave my questions there. Thank you very much, Ms Luiten.

(15:43) MR MICHAEL SHARP TO JANE LUITEN :

Q. Tēnā koe, Ms Luiten. My name is Michael Sharp, I'm representing claims by a group, the Ngāti Muriwai and I'm sorry to come at the end of a long day, hopefully I won't be long. Firstly, just like the other counsel, just like to congratulate you on your report. Because I must admit, I have read quite a few reports on the Native Land Court's and their operation, but you certainly drew some fresh perspectives, which were enlightening, so,

well done. Just, not surprisingly, given my clients Ngāti Muriwai, have just – referring to your reference to Eru Ponaho's whānau being the remaining Panenehu left in the Waiaua area, that you discuss with Ms Feint this morning, page 334. When Ms Feitn asked you about that, you referred to the negotiations, I think you did, to the negotiations that Wilson was having to buy the Whitikau blocks in 1873. Is that correct?

A. Correct.

Q. And I think there are some notes in your report that said he was dealing with a Panenehu group who was part Whakatōhea, part Ngāi Tai, and I think you made a comment further on, that you presume that this is Eru Ponaho's whānau?

A. That's my presumption, yes.

Q. Yes, well, I suppose there wouldn't be many others fitting that description. Now, so, further following from that, we also have Eru Ponaho's son, so, I think it's Porikapo and Te Wakahou signing the agreement in 1879 for Whitikau?

A. Yes, yes.

Q. Then, we also seem to have Te Paku Eruera getting part of the deposit that Wiremu Kingi was given for that land as well –

A. That's what he claims, yes –

Q. That further background, yes. I just wanted to draw, the further background to that was the claims for rights that that whānau was making to that land through their Panenehu whakapapa to tipuna who were defeated by Ngāi Tai. But married into Ngāi Tai and was allowed to stay on the whenua and identified her as Whariu. Now, that seems to be the background to them being involved with these negotiations and transactions.

A. At that stage, yes.

Q. Yes, because that seems to be quite important, especially for Ngāi Tai, because that's the claim they set up for Whitikau 1 and 3 and that was the basis that the land was awarded, wasn't it, to that descent line? I think it was from Whariu to Tamaotea.

A. It was based on the conquest of Te Panenehu and Te Whariu was an important tupuna in that case.

Q. Yes, but wasn't the actual award to that descent line, because I think you made comments how there were some who tried to claim outside that descent line who weren't allowed to Whitikau 1, but were allowed to in Whitikau 3?

A. In that 1881, Te Whariu is described as – excuse me for a minute. I thought I was better organise, sorry –

Q. But perhaps –

A. My understanding is that in the initial hearing, Te Whariu is Ngāi Tai, who marries into Panenehu and that changes in subsequent hearings to being the husband of the Panenehu wife of the son of Tamaotea.

Q. Yes, that's (inaudible 15:49:13), but just the question is, my understanding was that the actual court award was to that descent line.

A. Correct.

Q. Yes, that's right. Now –

A. No, in 1881 it's awarded to Ngāi Tai and then Ngāi Tai come up with a list. Then in the 1889 hearing of Whitikau 3, it's awarded to the descends of Tamaotea and Whariu, that's my understanding.

JUDGE DOOGAN ADDRESSES JANE LUITEN – CLARIFICATION OF ANSWER (15:49:41)

MR SHARP TO JANE LUITEN: (CONTINUES)

Q. And of course, those are the owners that did get into Whitikau 1 and 3, included Eru Ponaho's whānau.

A. Correct.

Q. Now, the other comment I just want to speak to you about is that in some parts of your report, you are referring to Eru Ponaho's whānau as taharua **dual identity**, I think, at page 136, and 164. So, as you see at 136, you see: "Porikapa Ponaho's evidence in this respect was particularly damaging. A taharua of both Ngai Tai and Ngāti Rua, Porikapa appeared for the former in the contest over Whitikau."

A. Correct, he had whakapapa to both, in my understanding.

Q. Yes, so, that's – my understanding is the accepted understanding that someone, or group who has connections with two groups, or has

connections with two different groups. Now, I just want to draw that back to your previous comments that Eru Ponaho's whānau were living in a border area between Whakatōhea and Ngāi Tai. Especially in the battles that were happening around the time the European's came –

A. And before.

Q. And before, yes, and it just seems to be the pattern that with this group, Eru Ponaho's group, that both before the Europeans and after, that they would be able to identify or connect with either Ngāi Tai or Whakatōhea, depending on who is winning, I guess, or who can protect them.

A. I think that the tribal confederation going on was primarily a matter of survival, yes.

Q. Then, what it seems to be is that, if you sort of transfer that to the, I guess, from the warfare before pre-European, and the warfare in the Native Land Court, we can see Eru Ponaho's final group aligning themselves with Ngāti Tai, with regards to Native Land Court blocks. In that they are heavily involved with the surveying, and as we have heard, with the transacting. They become part of the ownership list for the Ngāi Tai blocks. Is that a correct observation?

A. Correct, until 1895, that's correct, yes.

Q. Which you mean, Whitikau 3 or?

A. Whitikau 3 rehearing, I think, is it Te Paku Eruera claims, makes his own claim as Panenehu?

Q. But the point I'm making, Whitikau 3, the – I think Eru Ponaho's whānau, apart from Te Paku, are included in the ownership list.

A. Correct.

Q. Yes. So, and then on the other side, during while this is running, they are identifying as Whakatōhea to get into the Ōpape reserves and get their own block as Ngāti Muriwai.

A. They become part of the Ngāti Rua reserve. In the immediate wake of the war, I think they – and then the Ngāti Muriwai partition happens subsequently.

Q. That's right, but the point is that, while they're overlapping identify of Ngāi Tai in the Native Land Court blocks, who identify as Whakatōhea in the reservation blocks, would you say –

A. Ngāti Rua, in particular.

Q. Yes, so, just an illustration of their taharua **dual affiliation** sort of status in, I guess, surviving in that battle, they can associate with both sides when it's strategically important?

A. I don’t think you can take both sides at the one time, if you are thinking about your security. I think the intermarriage that happens in times of war, that’s a relationship that’s formed, and I don’t know that you would last too long if you are flipping from one to the other, in terms of the security of your tenure on a place.

Q. Well, if you look in the Native Land Court blocks, I guess that the pattern is that we just discussed how they got interest in the Ngāi Tai blocks. But in all the Whakatōhea blocks that were claimed, Whakaputahi, for example, in the first Takaputahi blocks. They didn’t get interest as Whakatōhea in those blocks, did they?

A. In Takaputahi?

Q. No, in the first hearing.

JUDGE DOOGAN:

Sorry, they being, Eru?

MR SHARP:

Eru Ponaho’s whānau.

MR SHARP TO JANE LUITEN: (CONTINUES)

A. My understanding is they didn’t claim as Whakatōhea with Whakatōhea in the Takaputahi case. Te Paku Eruera made a separate case as Te Panenehu and –

Q. Not at the –

A. – I thought I had this, but at one stage that ironically gets dismissed because –

Q. That’s in the Oamaru, you are talking about –

A. No, Ōamaru, he claims as Ngāti Rua.

Q. Yes.

A. But in one of the later Panenehu block claims, I can't remember if it's Whitikau 3 now, or Takaputahi. If he makes a separate claim as Te Panenehu and he distinguishes it from the Te Panenehu, that Ngāti Rua, at that stage, are claiming from.

Q. That's right, and then during questioning from the judge, he accepts that it's the Ngāi Tai conquest?

A. Not sure what you mean –

Q. Anyway, the point I'm making is that in the scenario of the Native Land Court blocks, in other blocks, the continuing pattern of the taharua status or why they behave towards Whakatōhea and Ngāi Tai?

A. I think most of the time they go with Ngāi Tai.

Q. Thank you for your answers.

HEARING ADJOURNS: 3.57 PM

HEARING RESUMES: 4.00 PM

HOUSEKEEPING – TIMETABLING (16:00:35)

(16:00) MR SHARP TO JANE LUITEN: (CONTINUES)

A. Sorry, I had this written right in front of me and couldn't see it. Just to clarify that in Whitikau 1 1881, Te Paku Eruera claims as Ngāi Tai, Ngāti Rua from Whariu, not from Te Panenehu. In Whitikau 3, in 1888, 89, he doesn't participate until Porikapa comes in at the end, who identifies himself as Ngāti Rua. But they are included as owners in that Whitikau 3 block, which goes to Ngāi Tai. In the Whitikau 3 rehearing, Te Paku is claiming as Panenehu, he has his own claim, and that Whitikau 3 rehearing does go Ngāi Tai's way, and I imagine, I haven't checked, but I assume that his status as a listed owner of the blocks doesn't change. But in none of these cases does Te Paku Eruera, he doesn't claim the Whitikau lands as Ngāti Muriwai.

(16:03) MR TONY SINCLAIR TO JANE LUITEN:

Q. Tēnā koe, Ms Luiten, good to see you again. Sinclair is my name and I'm acting for Wai 87, Whakatōhea Raupatu Iwi Claim. I have read your report, and I have brought something along with me here, and it's a book, Toatoa, Takapūtahi and Whitikau. Not sure if you have seen that, and that's written by a local author and it has a nice piece in there, about that majestic piece of country out the back and the early settlers. It also has a nice piece in there about the Edwards whānau, the late Claude Edwards and his family who farmed up in that high country.

A. Tēnā koe.

JUDGE DOOGAN:

The author of that?

MR SINCLAIR:

The author, Sir, is Lorna Aikman and it's a collection of history and memories, Toatoa, Takapūtahi and Whitikau. It's called, The Valley in the Clouds, Sir.

JUDGE DOOGAN:

Thank you, and Ms Luiten, did you say you had or had not seen that?

JANE LUITEN:

I have not read it.

JUDGE DOOGAN:

Thank you.

MR SINCLAIR TO JANE LUITEN: (CONTINUES)

Q. Ms Luiten, I have read your report and the pages 5, six and seven, your bullet points, really for me, do it all.

WITNESS REFERRED TO BRIEF OF EVIDENCE, #A025, PAGE 5

They are very succinct, and they have really got the main issues that I want to talk to really. At page 6, and following the initial raupatu of Whakatōhea, would you say that Whakatōhea had no or little influence

on Crown policies that were to facilitate Crown land acquisition from then on. What's your opinion about that?

A. I would agree with that.

Q. Yes, and in terms of Crown policy, that essentially, would undermine Whakatōhea tikanga, and authority in their customary laws over their lands and practices. What sort of engagement did Whakatōhea have with Crown agents around those sorts of laws and policies, and discussions, were there any?

A. Very little, I mean the resident magistrates were also the land purchase officers in the most case.

Q. So, in essence, would it be fair to say that the Crown policies were designed for the acquisition of Whakatōhea land were unilaterally imposed by the Crown? Would that be fair comment?

A. More or less, I mean, you have the offers of sale, but they come after the agreement to survey. So, mostly imposed, and very limited options for Te Whakatōhea.

Q. Would you go as far as to say that it was just about under duress, or coercive? I mean, a take it or leave it option?

A. I think their boycott is tolerated to begin with, but it becomes less so, as time goes on.

Q. Now, I want to look at the acreage of land removed out of Whakatōhea hapū, mana and ownership, removed from their authority.

JUDGE DOOGAN:

Sorry, Mr Sinclair. Just in relation to that last answer, can I just clarify one matter. You said, I think boycott was tolerated for a time, less so as time went on. So, can you just clarify what you are meaning there, what the boycott of –

JANE LUITEN:

So, Wilson begins his purchase activities in 1873 and Te Whakatōhea decide to opt out and withdraw all their claims from that first Native Land Court hearing in Ōpōtiki in 1873. That extends all the way through the 1870s until those first offers of land that come in the Spring of 1879, once Preece, the register

magistrate land purchase officer has organised that boundary with Wi Pere and Wi Kingi, about the survey of the lands.

JUDGE DOOGAN:

Thank you, I recall that.

MR SINCLAIR TO JANE LUITEN: (CONTINUES)

Q. Just in the question aside, pre the raupatu, I think I have asked you this question before. But did Whakatōhea have, amongst themselves, have a policy such as a land league, not to sell or to have land removed out of their tribal area?

A. I'm not aware of an official league as such, but they certainly, the fact that no alienation occurred in their rohe and the repudiation of the agreement with the CMS, that happened. They had a very firm stance, I think they were very much aware, as the iwi of Turanga were as well, that land alienation was hand in hand with political authority, and they wanted to retain both within their rohe.

Q. Subsequent to the raupatu, the Crown and its agents would have been aware of that, wouldn't they?

A. Of wanting to retain their tribal lands?

Q. Yes, of Whakatōhea's position in retention of tribal lands.

A. Yes, I mean, that's what the 1870s boycott was about.

Q. Yes, thank you. I just want to get your opinion about quantifying the acreage of land removed from Whakatōhea in the raupatu. Now, I understand your report deals with lands outside the raupatu. But can you quantify to the Tribunal the existent of the lands –

JUDGE DOOGAN ADDRESSES MR SINCLAIR – CLARIFICATION OF QUENSTIONING (16:10:03)

MR SINCLAIR TO JANE LUITEN: (CONTINUES)

Q. I wasn't asking about the raupatu, I was asking post raupatu. In terms of the quantification of land removed through the Crown acquisition policies post raupatu.

A. Inside the raupatu area, or outside?

Q. No, no, outside the raupatu area.

A. That is set out in my summary, I believe.

Q. Yes, and in terms of the land acquisition through Crown policy, would you say that it was more significant than land taken to the raupatu, is my question – more significant sum. Would you be able to answer that?

A. I would go to the question put earlier today, I wouldn't like to compare the two. But it's a considerable amount and both were hugely impactful.

Q. I want to go to page 346 of your report and it's really about displacement caused through the land alienation. So, you state that: "In 1866, Te Whakatōhea hapū were removed from their traditional landholdings, lumped together at Omarumutu, and left to deal with the fall-out."

A. What was the page again, sorry?

Q. It's page 346.

A. 346.

Q. It's up on the screen.

A. Thank you.

Q. Now, you say those hapū were lumped together, using that term, is that lumped together as part of a Crown policy, or was that Whakatōhea themselves deciding to do that?

A. Crown policy.

Q. And Ūpokorehe was one of those hapu, weren't they, are you aware of the names of the hapū that were lumped together?

A. I am.

Q. Yes, Ūpokorehe was one those hapū?

A. Yes.

Q. And just in regard to the fall out –

A. Ūpokorehe got their own reserve at Ōhiwa, but they became, subsequently, part of the hapū arrangement at Ōpape Native Reserve.

Q. Yes, so, along with the other Whakatōhea hapū?

A. Correct.

Q. While you are there on that hapū issue, would you like to make comment on the six hapū that were there, and relocated to those reservations, and in terms of whether that was an iwi, or Whakatōhea structured hapū

cluster? Or whether the Crown were part of restructuring Whakatōhea to six hapū? As you are well aware, there were far more than six hapū at that time.

A. I think, we talked about this at the previous hearing. My take on that classification for the purposes of the Ōpape Native Reserve. I think my point there was that, although that categorisation was a convenience for the Crown, and the Crown does have a preference to deal with large natural groupings. There is no pushback, evidence of pushback from Whakatōhea at the time, and even though they know themselves when it comes to the arguing in the Native Land Court. They know there is Ngāti Kahu, and there are other entities that they speak of, Ngāi Tamoko, and they know their whakapapa. But they also seem to embrace, well, not embrace, but hey go along with this idea of the six hapū. Evidence of that is like the survey meeting in 1885, we have talked about today, where their tribal resolution is put to the Crown in terms of a resolution of those name hapū. So, I can accept that it may well have been imposed for the purposes of administration and convenience. But it seems to have been something they lived with.

Q. Thank you. In terms of the statement, you have made there, the fallout, I want to talk to you a little bit about that. When you say, the fallout, whatever consequences that came about as a consequence of six or more hapū living together in one very confined space. What sort of fallout would you anticipate in that area?

A. Well, it's referred to in the resident magistrates reports of the period, these constant quarrels about land and the apportionment of land at Waiaua in particular. Because I think, when they were moved there, it's not like they went on to their separate hapū partitions. I think the community at large, lived where the most arable land was, at Waiaua. So, you have disagreements about who can be where, and you have the tension. I think, from the outset of Ngāti Rua, who consider it to be their ancestral land, and having that stronger right to those lands, vis a vis, Te Whakatōhea, that's all they have now. They have been displaced from their ancestral lands and lots of fallout, I can imagine.

Q. You say at page 346 of your report, that in 1881, the government subdivision of the reserve, along hapū lands. Apparently, it didn't relieve the tension between the constituent hapū there.

A. I think some hapū, like Ngāi Tamahaua regarded it as a second dispossession because they had been removed to Ōpape, the end of that, which is all more discuss in the raupatu report.

Q. Yes. I want to take you to page 347 of your report, and it really does get to the heart of Whakatōhea as a collective group iwi or operating as individual hapū. You quote there, and I'll quote it for you: "Te Whakatōhea's view of themselves as a tribal nation did not alter the reality of a pre-invasion socio political order based on the mana of hapū. As Heremia Hoera explained to the court in 1895, the tribal nation might gather to defend the tribal rohe if required," and I would say, against an external threat. Now, this is quite a different context though in regard to what Heremia Hoera is talking about, isn't it, when we are dealing with the Crown, an essential Crown invasion. Do you agree with that?

A. I'm not sure I understand your point.

Q. All right, I will carry on, because he goes on to say, but in times of peace, hapū return to their own lands and the respective mana held by the constituent hapū within the rohe was known to all. Now, in this particular case, this is not a case of Whakatōhea looking after itself against, say a, Ngāpuhi, or a Ngāti Maru rading party. But they collectively combined together, their resources, to repel an external force. This position we have here, is the Crown have moved them from their lands and their lands have been taken over. There is no going back and leaving the shores and leaving the people back in peace to gather, together and collect themselves. There is no peace following this invasion. Do you understand what I'm saying now?

A. I totally agree and I would say that it's turned mana on its head. It has completely destroyed – that's the point of the raupatu. Its mana is no longer – its trampled on mana and the mana of hapū.

Q. As we have heard many times in this hearing that the economic base is removed, and the authority of the tribe has been displaced. Is that fair to say?

A. Yes.

Q. I just want to go to page 16 of your report, and you talk there of the pacification of the area. At the top of your page, you state that, "the district had been 'pacified'" and that's in 1873. It says there that, "once the district had been 'pacified'", district John Wilson Junior – it would be fair to say, he was let loose as a sales and purchasing agent. Would that be fair to say?

A. Correct.

Q. Yes. so, we have 1865 to 1873, a period of eight years and we see a once vibrant prosperous tribe now subject to the bulk of its fertile and prosperous lands, subject of a rabid sales agent. Would that be fair to say?

A. We see a tribal nation who has had their homes taken, and now their homes outside of that raupatu are now targeted for settlement through government purchase.

Q. I want to get your opinion on a comment you have made here at page 347, I want you to tease it out if you could. What it says there is: "The interplay of mana between and within kin groups belongs entirely to Māoridom." What do you mean by that?

A. I think, just that, the mana as a Māori reality.

Q. Or does that mean Whakatōhea, go and sort your own problems out amongst yourselves?

A. No, I mean mana was the basis of regulating Māori society before any Pākehā were here. That's how society rolled, it was based on mana and that was the order of Aotearoa.

Q. Thank you, good answer: "The imposition of a title determination process that took no account of these realities, however, inevitably resulted in hapū discord." That's what you go on to say, could you make a comment on that please.

A. I'm just trying to find where you are. Yes. I think that goes back to my conclusions about how the Native Land Court title determination process was not really geared for working out customary title. The judiciary wasn't up to the task, and it would have been better left to hapū themselves, to do that.

Q. Just one final piece in that paragraph that I would like to read to you, and then that concludes my cross examination. It says, really something to the Whakatōhea's situation really, that they find themselves in and you have stated it here, and I would like to read it and then get your comment on it. You stated: "It is ironic that Te Whakatōhea's united defence of Whitikau lands in 1881 foundered at least in part because of the reductionist approach adopted for the purposes of winning title. Conversely, subsequent claims brought as distinct hapū were no more successful: treated together by the court as a single 'Te Whakatōhea' case and dismissed largely because of the contradictions within." Now is that, just, yet, another example of the response you have just given previously, of entering those types of jurisdictions?

A. I believe so, yes.

Q. Have you got anymore to add to that?

A. No, I don't, thanks though. I think it's in the report, yes.

Q. Yes, thank you, you have done really well.

(16:26) MS EVE RONGO TO JANE LUITEN:

Q. Tēnā koe, I'm Ms Rongo and I represent Ngāi Tai. I want to mihi to you and your endurance, actually. Sitting the whole day and having to put up with our questions. But rest assured, I'm the last one and I actually think we will finish on time today. But being further along in the batting order, you have already been asked all my generic questions, so, the questions I'm left with are actually specifically focus on Ngāi Tai. I wanted to start off by shining a spotlight on a few characters, the first being Wiremu Kingi, because his name comes up quite often in your report. So, for Ngāi Tai, Wiremu Kingi was a strong rangatira, he worked towards uniting Ngāi Tai. He was their one voice in negotiations and in the court, you never hear a Ngāi Tai descension in these cases. We know he had the backing of Ngāi Tai. He was comfortable in his Māoritanga, as well as in these Crown processes and institutions. He did everything he could to protect, not just the whenua, but his people and he was working towards the best possible outcomes for Ngāi Tai. I think those are attributes you can put to Wiremu Kingi, you would agree?

A. I'd agree with that.

Q. Then we have the Crown getting some of these rangatira together. You talk in your report about how the Crown organised rangatira to come together to try and agree on conducting different areas of land. There were representatives from Ngāti Porou, Whānau-a-Apanui, Ngāi Tai, Te Aitanga-a-Mahaki. Now, the Crown didn't get these rangatira together for the benefit of Māori, did they?

A. For the benefit of the Crown to survey.

Q. Yes, it was just a way for the Crown to put lands in the hands of one or two people so that the government could then go on to large scale purchasing, you would agree.

A. It was a way – they had reintroduced purchase into the district at that time, and there were the survey of lands along there, large lines was becoming hotly contested to the point where there were people arming themselves to stop the surveys. So, the agreement was to try and come to some high level agreement about these surveys, so they could proceed towards title determination, yes.

Q. I'm trying to look at it too, from the perspective of these rangatira. Who they have in these hui, to meet together, it would be clear that these rangatira, you said three of them were government employees, native assessors. So, they would know what happens in Native Land Court processes, wouldn't they?

A. Wiremu Kingi had been involved in the Native Land Court since 1873, and with those leases that Wilson transacted immediately after that court, so he had experience, yes.

Q. So, you would understand that these rangatira were trying to do the best they could to ensure that the lands of their people were protected?

A. Possibly to retain or regain some control over the process.

Q. Regain control of the process to try and retain as much as they could –

A. Āe.

Q. Yes. Then we have Wilson Junior, and you have just said that you agree that he was allowed, he was let loose amongst Māori, but he didn't go rogue. Would you agree with that, that his superiors knew what he was up to?

A. To a point. I don't think, as I have said, some of his tactics were agreed to after the deed, rather than before.

Q. But he wasn't punished, they were agreed to, they actually became the usual practice of the Crown after that?

A. They became law, yes.

Q. Then we have Baker. Now, in terms of Baker's survey's, Wiremu Kingi had actually brought him into the district, he had him do private surveys for Whitikau 3, Takapūtahi and Kapuarangi blocks, and he used the proceeds from Whitikau 1 to pay for those. In your kōrero with Ms Clark, you noted that private surveys were lawful, but they just wouldn't be funded by the Crown. That's right?

A. Private surveys were lawful under the 1873 Native Lands Act. There private surveys become incredibly ambiguous under the Native Land Court 1880. They seem to be allowed, but they are not specifically provided for in the same way that they have in the earlier legislation. And as I said, there is no provision for the recovery of survey costs for such private surveys, so it seems like it's just like, not even an option that the legislators, I think, is worth providing for because it hardly happens. Then it comes back under the 1886 Act, as long as they have the prior consent, it explicitly makes it lawful for private surveyors to do their work.

But the evidence suggests that Baker came, and this would be interesting to look into further, which I didn't for this report, because it hadn't occurred to me. Baker came to the district to do, it seems he came to the district to survey Te Whānau-a-Apanui's Te Paku block. Which became renamed, Kapuarangi and Tunapahore, they were all one land that Te Whānau-a-Apanui had applied for the survey. It seems that Baker came to the district, possibly authorised by the government, to do the Te Paku survey, and then Wiremu Kingi persuaded him to do a private survey for him instead. Which he may have done because he could have paid for it. Wiremu Kingi may have had the funds in hand, or at the time he was persuaded to, he was anticipating the proceeds from the Whitikau 1 sale. Which, of course, weren't paid until Te Whakatōhea's appeal was finally ended, and that was December 1884.

So, Wiremu Kingi may have been anticipating those funds when he might have persuaded. But that whole relationship between Te Paku and Ngāi Tai surveys that came to be is only, I didn't explore whether there were any official survey files about the Te Paku survey because it hadn't dawned on me at that stage. But what I'm saying is based on evidence from Te Whānau-a-Apanui witnesses later on. Who said that actually, Baker came to do the survey of Te Paku block, and then was contracted by Wiremu Kingi instead.

Q. That's really helpful because I was trying to draw the connection on how Wiremu Kingi knew Baker. I thought it was from a previous court sitting. So, Wiremu Kingi, he was trying to maintain a bit of control, wasn't he, by getting these surveys done privately?

A. Definitely.

Q. Because I'm trying to think, so, do you know how much he would have paid for those surveys on those blocks?

A. In says in the report. I think they paid around £300 for the Whitikau – let me get this right. I think they paid £300 for the Whitikau 3 block. There is testimony that they paid £700 for the survey of Takapūtahi. Then the witnesses in the Native Land Court said they didn't pay for Kapuarangi because they had no money left. So, Kapuarangi, later, and I don't know how this happened either. That got slapped with a survey lien much later.

Q. You have a good memory, I was just expecting a yes or a no. Because I guess what I'm getting to is can we assume that by having Baker do a private survey, Ngāi Tai had more control over how much they would pay him?

A. I think it may. You would think it would be negotiated before he set out. But the £700 for Takapūtahi, that's like, so big and again, that's only based on one person's testimony, so who knows how much was paid. But you would think, if it was private, there would be some kind of negotiation.

Q. Yes, that's kind of where I'm going, because if the Crown had of done it, and then they might have taken the cost in land, right. So, do we think that Ngāi Tai would have gotten a better deal by getting a private survey then, if the Crown had of surveyed and taken more of their land?

A. I think there is evidence, which I have referred to in the report, which suggests that they did the private survey to avoid land being taken in exchange.

Q. Okay, following on with surveys, you do talk, I don't think I'll get you to turn there, but it's at page 279. You say, "the act of surveying itself familiarised those undertaking the work with the terrain" and it was to their advantage in court and giving evidence of proofs of occupation. In your report, you then go on to say that Hemi Te Rua, who I assume was one of those who helped with the surveying. Provided a testimony of over 10 pages in length, on land features and places, he spoke about bird catching areas, ancient kāinga, tracks, and even canoe construction sites. I guess, the question I had was, is it possible that Ngāi Tai were actually just producing 10 pages of information because of their ancestral mātauranga that they already had?

A. That's not the impression I got when I read the minutes.

Q. Because producing 10 pages of evidence, that seems like a lot of information from just going out and seeing the terrain on the survey.

A. But you are doing it with the explicit object to win title to that land in a court, which elevates such proofs and traditional evidence, so, yes.

Q. So, you think they would have gone out there to look for, while they were out there helping with the survey, to look for different things so that they could say that in court in evidence?

A. There are accusations to that effect in the testimony.

Q. Now, I considered the comments that you made on large natural groupings, and I don't know if you are aware, but Ngāi Tai, they actually have several hapū. Are you aware of that? Yes, our clients will talk about that further in their tangata whenua evidence. But in the Native Land Court, they chose to have one voice and just looking back in history, me, as a lawyer, trying to find out who is Ngāi Tai, you know. It's from that point that we actually don't hear too much about the hapū of Ngāi Tai. I was thinking, and I was wondering if you would agree, if that was one way in which the Native Land Court contributed towards the breakdown of the traditional governance and structures of Māori, just like that example there?

A. I would agree with that, and I think part of Ngāi Tai's success in the court was this united, cohesive, you know, tribal narrative that they presented, it was part of their success, yes.

Q. So, it worked for them, in terms of their success and having a voice. But then, at that same time, it could have actually worked against them in just subsuming all those hapū into one body?

A. Correct, yes.

Q. And I did want to touch on the cost to Ngāi Tai. You do talk about how Wi Pere had personally funded a large number of people that were attending Native Land Court hearings. You have also quoted Richard Boast, when he suggests that the Native Land Court hearings were well attended. It wouldn't be a jump to assume that Ngāi Tai would have had supporters attending these hearings, would it?

A. Ngāi Tai, sorry?

Q. Had supporters attending their hearings as well?

A. Definitely.

Q. And they would have incurred costs?

A. Correct.

Q. Another cost to Ngāi Tai, we know that Wiremu Kingi used the proceeds to fund surveys until he ran out. We know that Ngāi Tai sold Whitikau 2 and 3 to the Crown to fund a reheaing of Kapuarangi and Takapūtahi, for example. You would agree that these are costs that Ngāi Tai paid due to the Native Land Court process and they were sacrifices that they had to make and when you add them up, they become quite substantial. You would agree?

A. Yes, I agree.

Q. Now, you spoke with Ms Feint about some of the promises Wilson had made and one of those, to induce Māori to sell their land, was that they could use those proceeds that they got from sale to invest in other pieces of land. It almost feels like Wiremu Kingi took that idea on, because he did say to Crown officials that they wanted to sell these lands so that they could pay survey and then invest in other blocks. But of course, because the land had been through the Native Land Court process, the proceeds went to individuals. With this in mind, Ngāi Tai sacrificed a lot in attempt

to realise the benefits of selling that the Crown promised, you would agree?

A. I would agree.

Q. And your section on winners and losers, you spoke about within your report, within that time period, Ngāi Tai had come, had done quite well, quite successful. But despite the knowledge that Wiremu Kingi had and all the ways that Ngāi Tai tried to protect their whenua, their people. In the end, when they come up against the Crown, they end up ebing the losers as well, don't they?

A. That's correct.

Q. Ms Luiten, those are all my questions, thank you so much for your time.

HOUSEKEEPING – TIMING (16:44:51)

KARAKIA WHAKAMUTUNGA

HEARING ADJOURNS: 4.46 PM

HEARING RESUMES ON FRIDAY 29 AUGUST 2025 AT 9.00 AM

KARAKIA TĪMATANGA (JOSEPH PUKEPUKE)

(08:59) JUDGE MICHAEL DOOGAN: (MIHI)

Mōrena. Tuatahi, he mihi anō ki a koe Koro Joe, te kaiwhakarite i a tātou i roto i ngā karakia tapu mai i te tīmata tae mai i te mutunga o te wiki nei. Ko te rangatira o te hui i a koe, nō reira tēnā koe. **Good morning. Firstly, I want to thank you once again, Koro Joe, who recited the sacred karakia from the beginning to the end of this week and we have been ennobled during this hui by you, thanks again.**

Mōrena koutou. Welcome to our last day. Just been reflecting with our panel, what a full week it has been and how appreciative we are of the evidence and the manaaki we've enjoyed, so we're looking forward to our last session.

Ms Luiten, thank you for your kaha yesterday, that was a long day and now is the time for Crown counsel and the Tribunal to ask questions. So, Mōrena and over to you Mr Linkhorn.

(09:01) MS NELL FERRALL:

Your Honour, sorry, just before Mr Linkhorn starts, Ms Luiten wanted to come back to your pātai yesterday about Te Wera, if that's okay, the location of Te Wera.

JUDGE DOOGAN:

Thank you.

(09:01) JANE LUITEN:

Tēnā koutou katoa. Mōrena, your Honour. I just wanted to – the map I was referring to is Baker's survey plan of Oamaru Block and it's on page 209 of the report and it just has Te Wera there next door to the block, it shows that and that's what I was referring to, the map I was referring to. Thank you.

JUDGE DOOGAN:

All right, thank you, that's helpful. And I forget which counsel was questioning – that was you Ms Cole, all right. So –

(09:02) MS JACKI COLE:

Your Honour, I had noted that map and what I didn't understand was how far north, how far south the Te Wera block is in comparison to that and so that was why I was seeking a little bit more clarification, I suppose, because it's described in the report as being part of the Te Haupapa block. So, I think it will still be useful to have a map that shows the Te Wera block within the Te Haupapa block, if that's possible.

JANE LUITEN:

I've not come across one in my research, but we could possibly use the boundaries from the earlier map which, as you pointed out, you couldn't quite tell where it was. Possibly, you could use that to work out the location of Te Wera or perhaps local knowledge.

MS COLE:

That was the last thing that I was thinking too because we do have boundary descriptions in the report. Thank you, Sir.

JUDGE DOOGAN:

All right. Thank you Ms Luiten, and just before you start Mr Linkhorn – Mōrena Dr Phillipson, welcome back. I hope you are feeling better and also counsel online, Ms Swedlund, Mrs Peters.

(09:03) DR GRANT PHILLIPSON:

Good morning Judge. I can't hear, the sound is very, very low on the Zoom, it may just be me.

JUDGE DOOGAN:

All right. I'm not sure if we can help at this end, but we'll have a look at it. I can see Alan working at the moment so if you could send a message if that remains a problem, Dr Phillipson, thank you.

DR GRANT PHILLIPSON:

Thank you Judge.

JUDGE DOOGAN:

Thank you. Mr Linkhorn.

(09:04) MR CRAIG LINKHORN TO JANE LUITEN:

Q. Kia ora tātou. Just thinking along the same lines as your Honour, Judge Doogan, this is a superb facility and the manaaki, of course, is tops and its contributed amazingly to our progress this week. But I also have a sense and maybe other shares this, that our inquiry is humming along because of the collective level of understanding that we're reaching as the professional participants in it, to catch up with the customary understandings of things and the momentum that we seem to have in the inquiry now is just a really positive thing and my respectful observation. And so, the work that we did on Wednesday to schedule out the next hearings, meaning that we all know what we are working towards is a big endorsement from this table anyway. So, kia ora to the Tribunal and kei te mihi nui ki a koutou haukāinga **I want to thank you very much, the locals, local people** for facilitating all of this. Yes. Kei te whiti te rā **The sun is shining** It's a good day.

Tēnā koe Ms Luiten. Kei te mihi nui ki a koe mō tō rangahau **I want to thank you very much for you research** we're very appreciative of the contribution that you have made with this work to our understanding of these lands a-waho, and I wanted to trek through a few topics. I came over and explained before that I wouldn't normally be standing but I am going to try it today because I will probably need to keep moving at pace and I wonder if this will just help me do this rather than settling back into something that's a bit too comfortable and slower. But can I start please, Ms Luiten with a follow up to one of our questions of clarification, about

defining what we understand by the region known as Waiaua, and it's a – I mean, it's a name given to a survey district, among other things. And it's also what we think of as the coastal zone, where the awa comes out of the valley to the moana, right? But in customary terms, the name Waiaua was given to the large region stretching inland to Whitikau and Whakapaupakahi, wasn't it?

A. It was my understanding of how Te Whakatōhea understood matters. It was a region that covered that Te Panenehu inheritance, if you like.

Q. I was wondering – I am assume your answer is very deliberate there in saying, 'this is how Te Whakatōhea understood it', and you are saying that contradistinction to Ngāi Tai, aren't you?

A. And contradistinction to the way the cases were formulated in those title determinations.

Q. Yes.

A. So, in Ngāi Tai's case from 1881 on, well for a little while was that they were two distinct areas that Whitikau was inland and different from Waiaua.

Q. Does the 31 July 1879 joint letter to resident Magistrate Preece from Wiremu Kīngi and Te Awanui Te Aporotanga help though? Because didn't they say in that letter: "We beg to offer for sale to the government one block of land known as Whitikau at Waiaua…" Do you recall that letter?

A. Have you got the page reference there?

Q. No.

JUDGE DOOGAN:

What was the date again?

MR LINKHORN TO JANE LUITEN: (CONTINUES)

Q. 31 July 1879.

A. Is it in the report or is it in the letter?

Q. I am not sure. No, I talking about just the letter.

A. Yes.

Q. Is that a letter that you have consider or maybe not?

A. Yes, it would have been apart of the report, yes.

Q. I was struck by it, you see, because it's their joint letter and I very much doubt that – I very much doubt that it was a case of Te Aporotanga getting one across Mr Kīngi in the sense of putting in a phrase that Mr Kīngi wouldn't agree to, but they said a block of land known as Whitikau at Waiaua. Does that change your view at all about how Ngāi Tai would formulate a case to the inland area and not use the descriptor Waiaua?

A. I think that letter would add to Te Whakatōhea's – to support Te Whakatōhea's contention that it was one land.

Q. It certainly does that, but my question was, what does it say about Ngāi Tai understandings.

A. It would suggest that they understood it the same way, possibly, the time that letter was framed, if they are both signatories to that letter, yes.

Q. And they describe the boundaries of that block they are offering, don't they?

A. I would have to go back and check the letter –

Q. Of course.

A. – but – yes.

Q. Okay. So, what about the 1843 peace, if we could call it that, reached between Ngāi Tai and Te Whakatōhea? I suppose I am raising it because – I guess I want to check your understanding of the impact of this as a brokered peace on the subsequent treatment of inland blocks. So, do you think that for the hapū of Te Whakatōhea and for Ngāi Tai, that 1843 resolution of things at the coastal zone, do you think that had an impact on how each of those groups saw customary entitlement to lands in the interior or was it completely without prejudice to how things would go inland?

A. I think it would have a bearing on the rights to the interior, the coastal boundary.

Q. So, tell me a bit more about that then. What sort of bearing? Like, what factors come to mind for you?

A. It's the - 1843 peace, boundary, is super interesting because Te Whakatōhea case in Court is that it's at Tarakeha and Ngāi Tai first dispute that there's any boundary at all in 1843, but I've pointed out in the

report, in both reports that it may not have been set at Tarakeha at all and I pointed to the dispute with Wiremu Kingi who took on Wilson about resettling Te Whakatōhea on Waiaua and Wilson's letter back to his superiors explaining the dispute and almost – and Wiremu Kingi is saying the boundary at the 1843 was actually set at Awahau on the Waiaua River. And Wilson's says from his letter admits that but says you can't – since then, Te Whakatōhea have moved further east and we can't keep disputing this. So the boundary is where I set the confiscation boundary at Tarakeha. And because Wiremu Kingi keeps on pressing the boundary then takes in all of Ngāi Tai's land. So, even the boundary – we can't say for sure where it was set in 1843 –

Q. Yes, just respectfully Ms Luiten, I wonder if we've just slightly drifted. So, let's come in a minute to the Crown, how this 1843 peace might impact on Crown assumptions later on, about the inland blocks but I am just starting with how did it impact on assertions of customary interests by the groups here. And what I heard from your response was that Wiremu Kingi continued to assert Ngāi Tai interests –

A. As far Tirohanga.

Q. Exactly. And so, I take it that this 1843 peace, so far as it might have any influence on the inland blocks, those leaders would have said: "No influence whatsoever. It's completely without prejudice to how we might argue about our respective strength of interest in the forest lands in the mountains."

A. Well, it was used by Te Whakatōhea, the boundary, the 1843 boundary, to support their customary boundary as Tarakeha and/or Te Rangi, that argue that variously. And the 1843 agreement was used to support their argument of their assertion of customary right extending to Tarakeha or Te Rangi.

Q. Sure, but those are both responses that are talking about – I won't label the point – but those are both responses that are talking about lands at the coast and my question is really, does this inform the leadership of the iwi and hapū groups in their assertions of interest in the interior? Or is it just without prejudice to that?

A. My understanding is – as far as Te Whakatōhea are concerned, that their internal boundary which they repeat on several different forums are bounded – have interior boundaries that would not have been affected by the 1843 peace.

Q. Right.

A. Yes.

Q. Yes. Now, let's come on to – what about the influence of this 1843 agreement on Crown thinking. You've already given a really pertinent example, but it relates to the confiscation lands, about how it really clouded Wilson's thinking from then on, about how he felt he was free to deal with Opape completely, but let's trek forward in time to any factors that this 1843 agreement might have on the Crown officials about interests in the interior, or again, does it just not tell us anything about that?

A. I don't think it does affect Crown officials thinking about land in the interior.

Q. Okay, thank you very much. The 1879 – I call it the Motu River Agreement, that's just a functional label from me, I am not claiming that it's got any pedigree in custom, but if I just call it that, we all know what I am meaning, right?

A. Yes.

Q. Okay. So, I am thinking about participants in that, Wī Pere and Wiremu Kingi. Now, apologies if I haven't really worked closely enough, you might have covered this, in which case, quick question, quick answer. But was this an agreement struck between leaders and I am thinking of those two in particular, as to who as between them would have the primary conduct of taking lands through the court on either side of that awa. I am stressing the word conduct.

A. That's how it is framed by the government.

Q. You mean recorded by the government?

A. That's how it's – that's why it's – it's arranged so they would conduct the surveys and the – which is part of the title investigation.

Q. But do you see where I am going with this questions about whether it's who has the conduct of something, in other words, who is going to take the lead on blocks either side of the river, that's not necessarily the same

thing, is it, as an agreement that says, 'this is reflective of our respective entitlements to the land and resources itself on either side of the river. It's without prejudice to arguments about interests, isn't it?

A. In a Māori context I don't believe that's true. I think mana is a demonstrated authority and so, if you are bestowing on a particular party, the authority to conduct something, I think that becomes, in Māori eyes, a demonstration of mana.

Q. So, is it going too far, Ms Luiten, to say that the agreement was reflective of custom that saw it recorded at this point as to who had the primary mana on each side of the river?

A. It's an agreement – It's giving those two men the go ahead to start that process where those lands on the respective sides of the river end up with a title through the court.

Q. But you are not saying – I take it from that answer, you are not saying that that is reflective of the customary entitlements. That wasn't their settled understanding at the time, that Ngāi Tai go up to the Motu River but not beyond and Te Aitanga-a-Mahaki and other more ancient groups like the Ngā Ariki groups that Wi Pere didn't hesitate to claim when he needed to, that they don't go to the other side of the Motu River. You are not saying that, are you?

A. It becomes an argument in Court that that is the case. That by being named as the conductor, then that is part – that became part of the case for Omana in Court.

Q. But it all fell to be tested in court, didn't it?

A. It did fall to be tested in court, right.

Q. And there was contest. It wasn't as if people referred back to the 1879 agreement and said, 'That's the end of the matter, no point. No point contesting this in court', did they?

A. In the case of Puketauhinu, I think, at his end of the matter, the agreement is produce in Court and then the agreement goes – it is the very strong part of that case. So, it is quite a powerful document in Ngāi Tai's favour, in those court hearings.

Q. Well, that's very useful, thank you, because I take – I hadn't understood you would be placing quite so much weight on it, so that's very useful to

understand. See, I saw it as not – it's an agreement so far as it goes, but it doesn't contain an agreement not to seek interests based on customary entitlement on the other side, does it?

A. That's true and it's accorded less weight by the judiciary further on in the century. But at the time, I think, it is an important part of those early title determinations.

Q. Thank you very much.

A. And I think it's also a huge part of how Wiremu Kingi was able to get the surveys of those blocks done and Resident Magistrate Bush was aware of that.

Q. But you see, my way of looking at it and I want to test this with you quickly, that speaks to who has the conduct rather than who has or has not the entitlement, it doesn't excluded questions of entitlement. It's really saying, who's going to take the lead, isn't it?

A. Yes.

Q. All right. I am 20 minutes on, and I am enjoying this possibly a bit too much because I probably need to move faster because I've got two hours, you see, and this is a huge set of topics. There's no two ways about it, is there. So, I just want to, a light briefly, around page 30 where you are talking about pre-title dealings. I don't think you'll need to go to the page, but you were talking about the provision realty where you say, 'Look, the legislative provision seems to sort of presume that these people will be found to be owners and I guess the point I just wanted to very quickly test with you was that – it's the Crown that's taking the risk here with the pre-title dealings, if they work out in the Court, isn't it? The Crown happens to have ended up dealing with people that don't turn out to be entitled then that's on the Crown, is that a quick way of summarising it?

A. Are you talking about the post-title determination era rather than the earlier pre-emptive era?

Q. Well –

A. Are you talking about the preliminary dealings –

Q. I'm talking about section 42 of the 1871 legislation that you mention on page 30 briefly. And it's may not something we should spend a lot of time on given the ground we've got to cover, but I sort of read your point there,

and I thought, yes, the provision sets it up, but the risk is all on the Crown, that it ends up having dealt with the wrong people.

A. Yes, I take your point.

Q. Thank you, all right. So, page 50 is the next – we're just going to skip through the very large report and unfortunately only have time to land on a few passages really.

A. Yes.

Q. And here we're talking about the point where you are talking about holding the purse strings, end of the second complete paragraph there. "Holding the purse strings gave the Government, rather than hapū, control over the pace and direction of the title determination process." And if we think about government funded surveys, I just wondered if that really – if it can really go so far as to say that that provides the Government with control over the title determination process or whether the most we can say is that the resource the government makes available for survey at that time might influence the sequencing priority, what have you, but the control, fundamentally, of the title determination process skill requires initiative from the customary owners, doesn't it?

A. I guess we see that play out with Oamaru. So, you know, if you want a 15,000 acre block survey and you don't have the funds to do it and the government has the funding that's available, the government authorises that, that's true, but won't provide funding and because it's a private surveyor and I guess the question becomes, would the government have provided the surveyor and the applicants at that stage didn't want the government survey, they wanted the private surveyor. So, I guess that's a - if they had wanted it government surveyed, would the government have entertained that? And I am not sure at 15,000, that it would have.

Q. Yes, yes. Yes, thank you. I think that's a very useful thing to consider as part of this. I want to come later on to some of these examples, just in passing actually. I noted and I revised things over night in light of it, but I noted your response yesterday to another question that you now accept that private survey could and was occurring in response to initiatives from landowning communities whereas in the report, we get the impression that you think that the private survey is beyond the pale. But I think

Ms Clark cleared that up with you yesterday, so that's a whole area I just won't cover this morning. So, coming to your point, though, about whether is a sort of – I think you describe it as a virtual government survey monopoly in this period, page 51. Have you looked at the – this might be a bit nerdy – but have you look at the surveyed apartment reports where the Chief Surveyor for the land districts, like in this case, the Auckland Land District reports, what the staff had surveyed of customary land verses what the private surveyor had surveyed of customary land. It is in the HHR, just wondered if you had looked at?

A. No, I missed those.

Q. Okay, it's a – no criticism, but it's a useful thing to (inaudible 09:30:11) this whole question about, you know, how extensive is the government effort through employed people and how extensive is the private sector effort? You know, whatever the hoops were that had to be jumped through to get authority, certification, what have you. So yes, perhaps for Dr Phillipson's benefit, the HAHRs of 1881 C4, pages 3 to 4 and 1884, page 2 are useful, among other things.

JUDGE DOOGAN:

Thank you Mr Linkhorn, do you have – had you done the exercise to extrapolate some data from those reports in terms of a comparative, private Crown surveying and would –

MR LINKHORN:

I had.

JUDGE DOOGAN:

I thought you might have.

MR LINKHORN:

I don't know if there's time and all fairness to Ms Luiten and given that she hasn't considered it, but we will be making a contribution.

JUDGE DOOGAN:

Thank you, that's my point, just if you could make that available, that would be helpful.

MR LINKHORN:

Yes. Mr Hunt? Mr Hunt says noted.

TIMETABLING (09:31:33)

MR LINKHORN TO JANE LUITEN: (CONTINUES)

Q. So, page 52, last paragraph.

WITNESS REFERRED TO #A025, PAGE 52

"Nineteenth-century policy with respect to the survey of customary lands was based on two underlying presumptions: Māori should bear the cost of measuring the land …" that it would all be for the purposes of sale, right, that's your big thesis really.

A. And sorry, what was the second part?

Q. That it would all be reflected in sale, I think, is your second point, have I got that right? Or I'll ask you, what is the second one that you mean at page 52 to 53?

A. The two underlying presumption that Māori should bear the cost of it –

Q. Yes.

A. – and that doing so was beyond their means.

Q. Got you, thank you.

A. So, you've got the survey recovery provisions because they won't be able to do it – they won't have the money to do it outright.

Q. Yes. And across the period tha you are talking about, there are a variety of regimes, aren't there, on how survey was to be arranged and funded, it's not static across the whole period.

A. No, it chops and changes depending on – it kind of – it seems to change as the government policy on private participation changes, private enterprise.

Q. That is principally a matter for legal submission, I suppose, in the sense of having lawyers trek through the changes to legislation across that time and accompanying regulations including the survey regulations, right?

A. I think it's a matter of history too, yes.

Q. I'm not meaning to rule out your contribution, sorry, I am just meaning lawyers will have to make legal submission in this inquiry on what regime applied at any time. So, page 52, a bit higher you are saying in the middle of the first complete paragraph.

WITNESS REFERRED TO #A025, PAGE 52

"Certified plans were once again required before title investigation could proceed." And that's, I think, the Native Land Court Act 1886. But I saw elsewhere, I think it's page 218 where you say that the people there asked the Governor, Authorised Tahora to be heard under sections 18 and 23, and of course that's – section 18 is the provision allowing matters to proceed on the basis of a sketch map, isn't it?

A. I would have to look it up.

Q. Well, I think you agree with Ms Clark yesterday that an answer to other questions, that proceeding on the basis of a sketch map was permissible at points.

A. At certain points.

Q. Right. So again, it comes to this point about you've got to track the differing requirements and the ability to do things across time based on how the legislation changes, don't you?

A. And then in that – between 1880 and 1886 when the government – when the role of private survey of customary land as ambiguous, it's back where the government seem to be in charge of doing most of the survey of customary land, that's the period that it lacks under the legislation, about needing this survey plan before a title investigation can be heard. You still need one, you still need to have a survey plan before title issues, but the title determination can go ahead without one.

Q. For sure, yes.

A. So, again there's this relationship between survey and who's controlling the survey and the title determination, it is a relationship, yes.

Q. But just to reinforce though, what you we talked about a minute ago, that's why I pointed to section 18 of the 1886 Act –

A. Yes.

Q. – which allows proceeding on the basis of a sketch map.

A. Sketch map.

Q. So, you have just given me an answer – the most recent answer about the sort of period 1880 to 1886 and yet still, in 1886 there was provision to proceed by way of sketch map to at least get int provisional outcome, wasn't there?

A. Yes, I have to check my legislation, yes.

Q. Page 60.

WITNESS REFERRED TO #A025, PAGE 60

You know it's four hundred and something pages, don't you? So, just needing to go a bit faster, obviously. Yes, so you say there is: "A list of 12 'principal names who are selected to represent the whole' was presented as a *fait accompli*, together with a longer list of owner, both lists handed in by Land Purchase Commissioner Wilson." I am just a bit worried about this phrase, *fait accompli*, not only because it's – it's not from here, but – I suppose, am I right that you are implying that some rightful owners were just previously unaware or not taking part or disadvantaged? Like, the lists were the lists weren't they?

A. I'm saying that's an out of Court arranged. It's been arranged out of Court, and it's been brought into Court. That's what I meant by that.

Q. Okay, okay. I misunderstood your meaning there so thank you. Page 73 at the top.

HEARING ADJOURNS: 9.38 AM

HEARING RESUMES: 9.42 AM

JUDGE DOOGAN:

Kia ora. Kia ora koutou. It's Judge Doogan speaking. We might start again, thank you. Mr Linkhorn.

(09:42) MR LINKHORN TO JANE LUITEN: (CONTINUES)

Q. Thank you, your Honour. Kia ora anō. So we are at the top of page 73: "The agreements to lease Waikohu-Matawai and Motu, were signed on 19 December 1873, the ten signatories being the same for both blocks."

We ask this in a question of clarification, I think, and I think you came back and said, "Yes, ten", and I am just wondering if we could quickly check with you what you have looked at for that. Are you working off Cathrine Rose's document bank rather than, say, going back to Turton's deeds or something? Because –

A. **(Microphone off 09:43:08 – 09:43:12)…** Yes, I was working off Rose's document bank.

Q. Thank you very much. All right, so page 74 and this is actually the substantive point for today really.

WITNESS REFERRED TO #A025, PAGE 74

"Wilson's lease agreement for the Motu lands bore the hallmarks of familiar 'ground bait' practices criticised at the time…" because of entrapment, is how you summarise that. Yesterday Ms Rongo asked you some questions about what Wilson's superiors thought about his actions in a general sense and you are saying that this was criticised at the time and Wilson was removed from office, wasn't he, as a land purchase officer?

A. He was.

Q. So, he did things, and his methods were not prudent for a Crown official and that was recognised even by the standards of the time, wasn't it?

A. With this lease agreement, his terms were submitted to McLean for approval and –

Q. I want to come to this particular lease.

A. Yes.

Q. That was a more general point, sorry, that I was just making. He did things and had an operating method that was prudent for a Crown official, even for the standards of the time, wasn't it?

A. Yes.

Q. So coming to the lease, and where I am going with this is, you make some points about the advance, the survey costs being recouped, what have you. You record that the lessee is going to retain and deduct out of the rents, £50 per annum until its paid back and surveys paid back, and no monies are retained and deducted until the expiration of ten years from 19 December 1873. And the advance repayment happens even later,

doesn't it, after the payment of future survey costs out of future rent. In other words, if the payment of surveys starts at year 11, the payment, the repayment of the advance starts years further on because the survey costs are only being recouped at £50 per annum from year 11 of the lease, aren't they?

A. Correct.

Q. And – I mean, just to move on quickly, shall we just proceed on the basis that the memorandum for Motu and the memorandum for Waikohu-Matawai are pretty much doing the same thing here for these survey advance things, yes. But of course, by year 11 –

JUDGE DOOGAN:

Sorry. Was that a yes in response?

MR LINKHORN TO JANE LUITEN: (CONTINUES)

A. Yes.

Q. Sorry, I saw the nod, I should have recorded. But by year 11 the rent was higher, wasn't it, under the deal struck. There was £150 by this point, wasn't it?

A. The rent did increase over time, yes.

Q. So, it was a £100, for the first five years, 125 for the next, 150 for the next. So, your conclusion that sort of, you know, a whole bunch of rent was lost from the first 10 years. We now need to now modify that, don't we, and say that it was from year 11 onwards that the rent actually received was going be impacted by the paying of the survey and repayment of the advance, is that fair?

A. There's still liabilities, but yes.

Q. And these blocks are outside the inquiry district, just to be clear?

A. Yes.

Q. And what became of those 1873 agreements? Like, how long were they in effect for? I guess – I'll jump to it, they were overtaken by events, weren't they?

A. They were.

Q. Yes. There's no indication by the time that they were overtaken by events, as to what the lessee was going to do with the land, was there?

A. Meaning?

Q. Well, the Crown is contracted to lease some land but the Crown' hasn't said to the world what it is going to do with the land leased, has it?

A. It once to make it available for settlement but it can't because it doesn't have the freehold.

Q. So, it's quite a speculative endeavour by the Crown really, isn't it?

A. Yes, it's speculative. They are working on the speculation that it's going to convert to freehold.

Q. Yes, thank you.

A. Your earlier point about the survey requirement under the 1886 Act. I have section 18 in my notes saying that no title investigation without a certified survey plan. So, that's just something.

Q. Have I cited the wrong provision to you?

A. I've taken not of, yes.

Q. So, irrespective of the number of the provision –

A. Yes.

Q. – What I have in mind is the provision that said that you could, with the governor's consent, proceed on title determination merely with a sketch plan.

A. I think that belongs to that error, where the government – where private survey doesn't happen much and as soon as the survey, private surveys are explicitly provided for under the 1886 Act, then it tightens up again in terms of title determination to say you must have a survey plan before title determination can proceed.

Q. Right, okay.

A. That's my point about these two things working together.

Q. So, when you said that error, you are meaning between 1880 and 1886, I think.

A. Yes.

Q. Okay.

A. Of a more relaxed sketch plan thing.

Q. Yes. So, now we have a really practical example as between us as to the respective contributions of the lawyers and the historians, to the legislative environment, thank you. I will go away and check that.

JUDGE DOOGAN:

All right, and just to be clear, the first part of the answer or the point you were making in relation to the – which provision of which act were you referring to when you were talking about the – at the start of that?

JANE LUITEN:

Section 18 of the Native Land Court Act 1886. "No entitle investigation will proceed without a certified survey plan."

JUDGE DOOGAN:

Thank you.

MR LINKHORN TO JANE LUITEN: (CONTINUES)

Q. I am moving on to page 109.

WITNESS REFERRED TO #A025, PAGE 109

See that paragraph beginning, 'Little weight was seeming given…'? And you are making the point there that the leaders weren't even translated, that "…the groundswell of opposition was enough to stay the survey of Te Houpapa." And are you saying that because you couldn't find translation on file?

A. Yes.

Q. And with the absence of translation being more compelling evidence of how the letters were received than the fact that the survey was postponed? Like I am wondering if we've got it backwards there. Whether or not there's a translation on file, that protest there worked a treat, didn't it?

A. The protest did stay the survey of Te Houpapa at that time, but it's not that usual to find an untranslated letter – I mean, it is unusual to find an untranslated letter on file.

Q. Okay. The main – Yes. I want to put to you that the main point is that the protest worked, the survey was –

A. Stopped.

Q. – stopped.

A. Yes.

Q. Got you, thank you. All right. Also on page 109, next paragraph, "Unlike the preliminary agreements…", third line down – "Unlike the preliminary agreements for Te Whakatōhea lands contracted at this time (Whitikau, Whakapaupāhiki and Te Wera) which were predicated on sale, Te Aitanga a Mahaaki's approach involved the alienation of only part of the block, at most 20 per cent." I thought this was a really useful illustration that you have provided us with because there you have someone – leadership of Te Aitanga a Mahaaki, very astute leadership, who are putting together a proposal that would see 20 per cent of the land as the sort of – the cost of taking the land through. And I just wondered, in fairness to you, whether we should put it to you to contrast it with the outcome in the Oamaru block, where, you know, we have this really large area of the block consumed by the survey, is how we all tend to think of it, and I am thinking, yes, here is another lens, we have Wi Pere and Te Aitanga a Mahaaki, you know, doing a lot of business, thinking, yes, let's think of this one as up to 20 per cent, it's going to go on getting this to be a viable outcome. Do you have any comment on that?

A. Yes. I don't think Te Whakatōhea with Oamaru, they didn't – they acknowledge there was a cost to the survey of their land. Their grievance was that the whole thing had been bulldozed without their mandate and that the survey costs were so high based on a charge which didn't take into account the fact that the boundaries had already been surveyed, for a lot of the parts.

Q. I understand all those points. To me, that's you repeating your evidence in chief.

A. Yes.

Q. And I am asking you to comment, I suppose, on the proposition that I am putting to you, that there are these other people who

A. So can –

Q. – are going into it –

A. Yes.

Q. – you know, prospectively, knowing about that kind of outcome.

A. In that proposition, Wi Pere is accepting there is a cost to – he's pro settlement as long as hapū control it and he realises there's a cost to preparing these lands for settlement and his scheme is that, yes, he accepts that that will cost a portion of land, but –

Q. Yes, I am taking it that in fairness to you, that really, you are circling back to a point in your principle evidence, that because the people here never set off to do it that way, then that's why we tend to look at the Oamaru outcomes in a different way, don't we?

A. It's forced upon them, yes.

Q. Understood. Can you tell me whether you have come across material in your research that disclosed any indication that Te Whakatōhea, Ngāi Tūhoe, Ngāti Kahungunu or other groups, intended to retain the Te Houpapa lands along the same lines as Te Aitanga a Mahaaki?

A. That they intended to?

Q. Retain their Te Houpapa lands?

A. I think Te Whakatōhea is part of that Te Wera block. That was the bit that was offered for sale.

Q. Right.

A. So, the application is no.

Q. No? That was my assumption as well, I just wanted to check. So, page 131.

WITNESS REFERRED TO #A025, PAGE 131

There's not much text on that page so you will see it there, where you are saying: "Except for the Motu River boundary, both blocks were now defined in terms of trig lines, rather than the landmarks set out in the preliminary agreements." And just wanted to check though, when you say that, I don't think you are meaning to exclude all the measurements along the road, are you? It's a minor point, we're just – in other words the – because you make a lot of this, the road as it in itself one of the long boundaries with lots of traverses and angles and so on, so it's not just trig point to trig point, is it, for the block?

A. No, no.

Q. And then at 143 to 144, the bottom of the page over to the top of the next one you are saying that the Court considered that the evidence without specifying just what proved Ngāi Tai's contention, the Whitikau block more properly extended into Whakapaupākihi, that is the boundary, wasn't the road as agreed upon and claimed, but rather lay further west and I think this is me looping back, really, to a point from earlier. The road boundary was a creating of Wiremu Kingi and Te Awanui Aporotanga, wasn't it, to facilitate survey and payment of the £100 advance. In other words, it was without prejudice to claiming interest within each block by either group because they each claimed into both, didn't they?

A. No. Ngāi Tai – well, not prior to. At the time of the title investigation Ngāi Tai claims east of the road but not in the applications or the preliminary agreements leading up to that.

Q. So, I am wanting to test – perhaps we will just break into a couple of points. I am wanting to test whether you agree that the original indication of the road boundary was without prejudice to being able to make a claim to either block.

A. It seems to me a transgression of those preliminary agreements where you define a block and that's talked about from the get go as being this.

Q. Could it be similar to the other agreement about who is going to have the conduct of each but without being – without prejudicing who has got the ability to claim an interest in each?

A. Except that the preliminary agreement in each case is with parties and the preliminary agreement with Whakapaupākihi does not include Ngāi Tai as a party. So, the preliminary agreement says, 'We'll give this advance…' and at the time the Court decides the owners, will complete it with them but the whole thing is bounded in terms of that road. So, Ngāi Tai at the point of that preliminary agreement are not party to that agreement and if they had been, if the preliminary agreements had been configured without that road boundary, I think it would have taken on another guise – like it's about, you've got one deal going into a court and title determination and then the ground shifts halfway through and it –

Q. I just wonder if that's your – I just wonder if that's your construction on it looking backwards at the outcomes rather than pointing to any evidence along the way at the time that precluded Ngāi Tai from being able to argue, that they had interests on the – I am just trying to think of my geography, sorry – we're talking about the north of the road – on the other side of the road. Do you see my point? There's nothing that rules – Ngāi Tai don't rule out being able to claim interests on the other side of the road, do they, to really claim it?

A. If they don't stand up at that preliminary – at the point of the preliminary agreement as a party to that because these agreements, at this time, are relatively open and if they don't say we're a party, we have customary rights.

Q. So, in your read, they had to have said so there or else they couldn't say so in front of the Court.

A. That would have been a good time to have said so and then that would have framed the title determination rather than parties moving into a title determination on one understanding and then it become something else.

Q. All right, I think I understand, I think I understand your perspective there. So, it's not so much the case of evidence itself, it's more you saying that would have been the tika way to proceed.

A. Yes.

Q. And you accept that it was for the Court to determine the interests under the legislation and the preliminary agreement couldn't compromise that, could it?

A. Agreed.

Q. Erana Uenuku thought the road was the proper boundary. Do you have a view based on everything you have seen, as to what you think the evidence shows is the proper boundary as a matter of custom.

A. I would have to go and – my under –

Q. If it's no, just say no –

A. No.

Q. Right. Onwards. Page 146.

WITNESS REFERRED TO #A025, PAGE 146

This is at the bottom, last couple of sentences: "Encouraging Ngāti Rua to apply for a distinct Onukuroa block may have been a strategy to overcome their opposition to the Whakapaupākihi preliminary sale and purchase agreement. It was, in effect, a counter claim to that of the wider Te Whakatōhea application to Whakapaupākihi, *not* to that of Ngāi Tai." This October 1879 agreement to convey Whakapaupākihi, that was signed by Marino Hori, Reweti Hoake, Matiu Te Auripo, Rimu Waihono, Haimona (inaudible 10:06:00) **–** I mean, there's a list of names there that are all of Ngāti Rua, right, you accept that I think?

A. Yes, yes.

Q. Thank you. So, if the claims to Onukuroa were intended to overcome resistance to this agreement, I am just wondering why there was this sort of 12 month wait before Ngāti Rua submitted it. Have I got that right?

A. Are you talking about the applications to Onukuroa? Well, these are all things that we can only surmise about because the evidence is not there. So, there's nothing to explain why those applications were made, but they are made post-survey. So, these are the things we can't know about what's going on in the background.

Q. Okay, thank you. Page 149.

WITNESS REFERRED TO #A025, PAGE 149

Bottom paragraph, middle of it, sentencing beginning, "The omission may have been caused by the ongoing resistance to the terms of the proposed alienation that Preece encountered." Is there evidence of any connection between Te Whakatōhea's request for an additional £200 of advance money and Percy Smith's query about the Land Purchase Department's future intentions prior to survey?

A. The £200 is paid over before his query.

Q. So, you think there's no connection?

A. Well –

Q. Leads to the query. I mean, if you could help me here, that would be great.

A. I think the connection is the opposition. I think the extra advance was needed to overcome opposition and it seems Percy Smith's inquiry is saying, are we going ahead with this or not, and that could be a matter of

opposition, continued opposition and that's one of the things we don't know.

Q. Okay. Thank you very much. Page 175.

WITNESS REFERRED TO #A025, PAGE 175

Final complete paragraph, middle of it: "The Native Land Court's treatment of the Whitikau and Whakapaupākihi Blocks as a single title determination, together with the extraordinary decision to shift the boundary between them, remains obscure." Just so I am sure of this, you see the decision as extraordinary because it didn't match the agreement about how to facilitate survey, this is to go back to matters we were talking about a couple of minutes ago, that's what makes it extraordinary, isn't it, in your view?

A. They've changed the configuration of the survey, of the land under determination, they changed the blocks that come into the court, yes, that's what seems extraordinary.

Q. Well, the outcome is a boundary adjustment. Do you see it that way?

A. It's treated – it becomes a boundary adjustment because the Court treats the two blocks as one case.

Q. I think the Court is still determining two blocks, isn't it? Lawyers talk about things being done conjointly, meaning that they occur at the same time but there are still two outcomes. Do you agree with that?

A. I still just think it's extraordinary.

Q. Right, and I am just probing for the reason why it's extraordinary and I think we've got from you that the reason is because there was a boundary adjustment because of how the Court reflected on the evidence of entitlement. Is that a fair summary?

A. Yes.

Q. So, then this point also –

JUDGE DOOGAN:

I just missed that last proposition, can you just repeat your – sorry.

MR LINKHORN TO JANE LUITEN: (CONTINUES)

Q. Can I repeat it? Ms Luiten's research conclusion and opinion, I believe, is that what makes it extraordinary is that the Court, on its determination of what the evidence amounted to, saw fit to make a boundary adjustment in the block as the outcome. Is that fair Ms Luiten?

JUDGE DOOGAN:

So, I follow that. I think you made a slightly different – I may have missed the gist of your last proposition.

MR LINKHORN TO JANE LUITEN: (CONTINUES)

A. I just – why would you consider two blocks together? If Ngāi Tai – Ngāi Tai made a claim, at the time, to Whakapaupākihi, so why treat those two blocks together? It's not –

Q. It's not so uncommon, is it?

A. It's quite uncommon. If you bring a survey plan to Court then you want a decision on that piece of land.

Q. And you got that. And there's an efficiency in dealing with this together, isn't there? I mean, I don't know that you and I are investigating the court decisions of about process, procedure, is really where the Waitangi Tribunal is going to end up in its report, for instance, because of the Court's independent operation. We're really trying to look at this as a sort of system level matter, aren't we? But you are saying, it's systemically problematic because you should treat one, in its own right, on its merits, uncluttered with whatever people say about the next one.

A. I am saying it's unusual for the Court to act conjointly on two claims and come up with a decision. I think it's more than a boundary adjustment, it's seems caught up with the outcome. The hearing of the two cases together seems to be connected to the outcome.

Q. You are suggesting predetermination by the Court, I think, in that. Because these were all decision of the Court, weren't they? So, you are saying the Court had an outcome in mind, so it heard them together. That's headed together to a conspiracy, isn't it?

A. It's – again, I would say, we don't have enough evidence to say one way or another.

JUDGE DOOGAN:

So – sorry, Mr Linkhorn, if I could just – and I don't have full familiarity with all of this part of the report. So, in the conduct of this particular case or – who made the decision to bring the two blocks into the one hearing or procedure? Did the applicants –

JANE LUITEN:

The Court does.

JUDGE DOOGAN:

All right. So, the Court groups the two applications and calls them for hearing at the same time.

JANE LUITEN:

The Court begins by – with Whitikau and then after the evidence is produced for Whitikau it says, 'Now, we're going to not make a decision on that, we're going to hear the evidence on Whakapaupākihi so that we can best decide.'

JUDGE DOOGAN:

All right. Then if that's the sequence, it then hears Whakapaupākihi's –

JANE LUITEN:

Then hears the evidence on Whakapaupākihi and then at that stage Ngāi Tai have claimed the northern part of Whakapaupākihi and the Court gives a judgement on both blocks with the altered boundary.

JUDGE DOOGAN:

All right, I follow. Thank you.

MR LINKHORN TO JANE LUITEN: (CONTINUES)

Q. Thank you, your Honour. I just wanted to move quickly to a point where you say on page 175 also, that the lengths the government went to in order to prevent any reopening of the Whitikau title only adds to the lack

of transparency. But the decision whether to grant a rehearing rests with the Chief Judge of the Native Land Court, didn't it?

A. That's true and the Chief Judge dismisses it. But I am talking about, I guess, the – there I am referring to the – giving back 1200 acres in those Whakapaupākihi blocks, the article settlement that was reached as a way to stop any reopening of the Whitikau boundary.

Q. Just to be clear though, we need to be clear that these are separate things occurring, aren't they. The decision on a rehearing or not rests with a judicial officer and an out of Court brokered somewhere, somewhere else entirely, isn't it?

A. The out of court settlement is brokered at the point of the rehearing of Whakapaupākihi, yes. so, the rehearing is a judicial decision which as been made and it's settled out of Court –

Q. I just think we better be clear for the Tribunal members, you are now talking about the rehearing of Whakapaupākihi.

A. Yes.

Q. My question is about your point that government went to lengths to prevent any reopening of the Whitikau title, and I am saying the refusal of a rehearing rested with Chief Judge Fenton, didn't it?

A. But for the Whakatōhea – appellants for the Whakapaupākihi decision –

Q. Yes.

A. – that is about the Whitikau change of boundary, they think – they are wanting Whakapaupākihi as originally surveyed at the road boundary which has become Whitikau but wasn't part of the Whakapaupākihi block. If you have a rehearing in to the title, you open up that whole boundary again because that is the survey block, and I am talking about from Te Whakatohea's perspective. And I think part – I think the fact that they got 1200 acres in that out of Court settlement, again, is very uncharacteristic of the Crown at that time and it points to the lengths that the Crown did not want any possibility of it being reopened, and that's the point I make, and that's – So, while the Crown would love to – Yes, Whitikau is closed, the fact that a third of Whakapaupākihi block is now in the Whitikau block, it's not closed at all from Te Whakatōhea's point of view.

Q. And the Crown did something about it?

A. Sorry?

Q. The Crown did something about it in the form of the settlement.

A. Something about what?

Q. About the unhappiness with that.

A. The Crown – the settlement as on account of the opposition to selling in the first place, that was about people who had not agreed to the sale and – so, that's a different grievance as well.

Q. Okay. Well, that makes me wonder then whether it is correct for you to conflate government determination that Whitikau not be reopened with this out of court settlement which is about non- (inaudible 10:19:43) in Whakapaupākihi. Maybe there's no connection there.

A. There is a connection, Te Whakatōhea are deeply unhappy with the changed boundary and the fact that part of their Whakapaupākihi block is now in the Whitkau block, and I think separating these two blocks, in Te Whakatōhea's mind, Whakapaupakihi has been transferred into that Whitikau block. So, there's deep unhappiness and there's a lot at stake. They turn up in force, I think, for the 1882 hearing, in huge numbers expecting something, a hearing, and then again they are in big numbers. I don't know – the 1884, there is high expectations as well, because although Henare (inaudible 10:20:42) Te Haeata – her opposition to the sale has got them to the point of having Whakapaupāikihi reopened. Te Whakatōhea, at that time, are supporting it because of their deep unhappiness about the Whitikau decision and the change of boundary. I mean, Ngāti Rua and Te Whakatōhea are unhappy with the decision that Te Whitikau – Whitikau went to Ngāi Tai, yes, but part of that grievance is the fact that they've lost a third of their block, Whakapaupākihi as part of that decision. So, it's all connected.

Q. Okay. And also connected is – I mean, there was opposition to the sale, but also connected is that that was a block targeted for sale by Whakatōhea, wasn't it, that part of Whakapaupākihi.

A. Which bit?

Q. The bit that was lost to Te Whitikau.

A. Well, that is a matter – these are the things – that belongs to that obscure things we can't know like, what were those applications for Onukuroa about, that post-survey, but leading up to the title determination. Are those applications for Onukuroa an attempt to keep them from the sale of Whakapaupākihi? These are all the things we can't know because we don't have any evidence for it.

Q. So, just to be really clear, you are saying, there's no evidence that the portion of Whakapaupākihi is submitted but lost to Whitikau. You are saying there's no evidence that there were people intending to sell that.

A. There's no evidence that they were intending to sell it?

Q. Yes. Is that what you are saying?

A. We are – I am saying there's no evidence. I am saying there's no – if there's not evidence to say which bits of Whakapau – we know there was opposition to Whakapaupākihi's sale.

Q. Understood, but I am talking about the people promoting sale.

A. We don't know which bits were going to be in the sale.

Q. Okay. Well, I don't think I can take that further with you.

A. And the applications, and we can't know what was motivating those separate applications for that – we will call it Onukuroa – the bit that gets swallowed by Whitikau – there are separate application from Te Whakatōhea post-survey, pre—title determination and we don't know what motivated them. And it is a possibility that they were motivated by trying to keep those out of any sale of the Whakapaupākihi block, that was committed for sale in the preliminary agreement.

Q. Yes.

A. And these are things we don't know from the evidence.

Q. Yes, I would love to take that further, I think, but I don't think there will be time to go in to that more deeply.

HOUSEKEEPING – MICROBREAK (10:24:11)

JUDGE DOOGAN:

Yes, thank you. All right, two minutes or thereabouts, thank you.

HEARING ADJOURNS: 10.24 AM

HEARING RESUMES: 10.28 AM

JUDGE DOOGAN:

Kia ora koutou. Judge Doogan speaking. We might start again, thank you.

MR LINKHORN:

Kia ora your Honour. I am just conscious that – sorry, if this is giving the impression, everyone, that we are jumping into particular passages and it's really just a function of how little time there is to discuss this in this forum. So, please don't think that we are not aware of the big themes sitting behind your research in its conclusion in just testing with you some of the weigh points as it were.

(10:29) MR LINKHORN TO JANE LUITEN: (CONTINUES)

Q. And with that, at page 185 where you say in the second complete paragraph, second line: "Te Wera sat within the tikanga of mana but surveying the block would cost twice as much as the Government deemed the land to be worth." And you say: "This points once again to the end goal … alienation rather than retention". I might say, I thought you made a really interesting point yesterday about there being a Land Purchase Department at this time, but not a Land Retention Department, no Native Department. Have I got my time period right?

A. No – that's the 1890s.

Q. No, it's much later, is it?

A. Yes, the 1890s.

Q. So, is it really, at this point, that instead we're mixing up who the approach was made to as it were, because the proposal for Te Wera – it was all premised on the Land Purchase Department funding the survey, wasn't it?

A. Te Wera starts out as a purchase proposition, sale and purchase proposition.

Q. Yes, with a proposal that the survey be funded by the Land Purchase Department in effect, right?

A. Te Wera starts off as an offer in the era that the Land Purchase Department is throwing in complementary survey as part of the deal and that only endures until Bryce takes over and he's not interested in complementary surveys, he ends the practice of preliminary agreements and goes back to purchasing individual interests post title. So, Te Wera spans both of these government policies.

Q. But when it was put together as an agreement, it was premised on the Land Purchase Department funding the survey, wasn't it?

A. Yes.

Q. So, page 187.

WITNESS REFERRED TO #A025, PAGE 187

I think this waws cleared up yesterday, you make the point – it's the big paragraph there, about the middle ish – you say: "They seem to have fallen wholly outside of the existing legal paradigm." You are talking about private survey there, but I think, in answers to questions yesterday, you have now done some more work between writing this and coming along here and you realise that it's not accurate to say that privately contracted survey falls outside of the legal paradigm, is it?

A. The Native Land Court Act 1880, section 17, subsection 4 says: "If the survey plan is made – sorry. Sections 26 to 27, this is 1880, 'Where there is no plan, the Court shall require a survey to be made.' And then section 39 says, 'Surveys required by the Court shall be made by surveyors employed for that purpose by the Surveyor-General, and no survey plan shall be accepted unless that is the case.' So –

Q. But going back to your opening words, 'where there is no plan'.

A. Exactly. So, section 40 says, 'The Governor, at the request of Native claimants or applicants, may cause surveys and plans to be made. So, there seems to be two cases here where if there is no plan, the Court shall direct the plan and that seems to be – goes to the government survey department and they take care of it. But it does – I think my point, I am not being very clear here, but my point is, my change of position – I agree with you, when I wrote the report I couldn't see there was any scope

here for private surveys being – and on further consideration, I think that there was a possibility of a private survey, but the law is ambiguous about it at this point, in 1880. Whereas in 1886, it becomes explicit again. So –

Q. So, as a historian, you are comfortable for we, lawyers, working on this inquiry to also go and look at that legislation and make submissions about, obviously.

A. That would be wonderful, to shine some light on how this sits.

Q. I come back to those HAHRs, the reports of the survey department. So the 1884, 1885 report says that 193,000 acres have been surveyed and paid for by the natives to the surveyors, for instance. So, that's suggesting, isn't it, that in the period reported on, presumably 1883 to 1884 or in 1884, there was a lot of this happening under the 1880 legislation. Does that seem like a fair surmise if that's what was reported?

A. What was the acreage?

Q. A hundred and ninety three thousand acres had been surveyed and paid for by the native to the surveyors.

A. Yes. That suggests to me that it does go on, that it does happen.

Q. Right, and –

JUDGE DOOGAN:

So which district, Auckland District or?

MR LINKHORN:

That might be a nationwide figure, sorry, I haven't brought along that page of the 1885 C1A HAHR at page 4.

JANE LUITEN:

It would be interesting to compare that with the acreage that's being surveyed by government, to see just how usual, like, (inaudible 10:35:47) it is.

MR LINKHORN TO JANE LUITEN: (CONTINUES)

Q. Yes, the respective capacities of the private sector and the public service, waxed and waned, didn't they, but the point that I am trying to explore

with you here really is that you had said in your report that it was outside of the legal paradigm, and I am thinking, I can't possibly be if the Surveyor-General is bold enough to report it.]

A. I agree with that, yes.

Q. Thank you. Page 203.

WITNESS REFERRED TO #A025, PAGE 203

Top of the page. It's noted already, and you also made a claim, "…these subsequent applications were made after the original application for the smaller area had been turned down. The Salient point being that the inflated survey that came to pass was directly related to the issue of government funding." And I just want to contrast that passage at page 203 of your report with a couple of other passages, just to make sure that I understand that it all fits together. So, previously at page 190 – I don't think you need to go there, but just – I will try and summarise accurately here. "On Gill's advice that he knew of no objection to the survey, the next day Surveyor Genera James McKerrow recommended the survey be authorised. If the Government undertook the survey, McKerrow advised the estimated cost was to be paid in advance or else an arrangement reached to vest commensurate land in the Crown." And then at page 199, you are saying: "Fifteen months after their original application, in April 1886, Tauha Nikora and others again appealed to Native Minister Balance to fund the survey. Their application, they pointed out, had ben authorised by the Assistant Surveyor General, the Chief Judge of the Native Land Court and the District Native Committee, but they lacked the funds to pay for the survey themselves." And then at page 200 you are saying: "Lewis' response was to point out that the Government offer – to undertake the survey and have the charge satisfied in land – was still open." And then finally, page 202, "As Lewis had advised," – you say – "… in September 1886 Tauha Nikora approached Assistant Surveyor General Percy Smith with a survey-for-land proposal, but this was still with Baker undertaking the survey." All right. So, there's a number of passages there but the proposition I want to test with you is that the smaller survey of 15,000 acres had been approved, and the offer of a Government survey had been made twice. I am thinking that what

you mean by all of this is that you have reached a conclusion that that 15,000 acre survey was not undertaken because of either two things, either the cost recovery regime or because of the insistence from Tauha Nikora, that Baker survey it. Is it both things, is it one thing? Why wasn't that offer taken up in simple term?

A. To begin with, it's because Tauha Nikora wants Baker to do it, and they don't have the money and the only way they can get the government to pay Baker to do it is to increase the amount of land to be exchanged.

Q. So, the survey of 15,000 acres had been approved and the offer of the government surveying made twice, and that's all turned down, isn't it? I just want to be really clear about this because you are running the thesis, I think, that 15,000 acres is not viable and the government is not interested, but it's approved, it's offered twice.

A. I agree, it's really important to be clear about the steps because it is quite a process. So, the original advice from McKerrow who –

Q. The Survey-General.

A. The Survey-General, he just points out that if the government does it, the estimated cost is to be paid in advance, or a prior arrangement reached to vest commensurate land in Her Majesty.

Q. So, that's the cost recovery regime –

A. That's cost recovery.

Q. – that's the term that I used.

A. Yes. And Ballance gives his – That's the other interesting thing about when we are talking about the legalities of this, it's the approval, the authorisation at this point, sits with the Native Minister which is interesting, it's not actually with the Surveyor-General, it's with the Native Minister. So, Native Minister Ballance approves that survey in March 1885, and it sits for a year because that's not what Tauha Nikora is actually asking for. He's wanting Baker to do the survey. He's wanting government funding for his own survey, and he's told that that's not how it works. Yes, that's not the system. And so, when he raises it again in September 1886, it is – when he raises it November 1886 with the – Under Secretary Lewis, he's asking him to direct Percy Smith to fund the survey, to be repaid in land and Lewis, again, approaches the Under Secretary of Survey

Barron, and Barron again says, "That's not how it works. Are you going to pay it." So, to land purchase. And at that point, Sheridan, who's land purchase says, "The government will pay if the Assistant-Surveyor-General, Percy Smith, is satisfied with the quantity and quality of land proposed to be conveyed to the Crown and Percy Smith is directed to get Tauha Nikora to make a formal application. And Smith responds two days later and at that point the proposition has gone from 15,000 acres to 75,000 acres and the cost has increased as well. So, it's at the point where the Survey Department has said, this is not how it works, we don't fund private surveys. And he says – he hands the ball back to Land Purchase Department and said, "Are you going to pay for this survey", and it's at that point that Percy Smith and the proposition has ballooned to 75,000 acres.

Q. Well, the proposition has ballooned, who's proposition? It's the Nikora proposition, isn't it?

A. The Nikora one, in order to secure the government funding.

Q. So, moving on to page 208 then.

WITNESS REFERRED TO #A0205, PAGE 208

Middle paragraph, last sentence or two. "Nor did the Government follow its own regulation that required an agreement over costs to have been made … where a block exceeded 25,000 acres … where the owners had yet been determined." I think is your point. What the regulatory system anticipates here is not an agreement with everyone who turns out to be an owner, is it, like – because that's not legally knowable in advance. Do you agree with that?

A. I agree with that.

Q. Jumping ahead then to page 255, please.

WITNESS REFERRED TO #A025, PAGE 255

At the very top of the page there. You say: "There was little Day could do to refute such evidence, other than to repeat his argument about the lack of prior arrangement." Day could have called his own witnesses to give evidence, couldn't he?

A. Like who?

Q. Well, we'll just start with the proposition. He could've called some evidence.

A. He could have.

Q. Page 258, I think, although I haven't put a highlighter on it. You will know this though.

WITNESS REFERRED TO #A025, PAGE 259

You say: "Throughout the affair, the Government took Baker's word for the terms of agreement, no questions asked." Let's see how clear we can get about this. Are you suggesting that there is no evidence that officials ever saw the agreement? Or do you think they saw it but then it was later unable to be produced, lost, says Baker.

A. I don't think the officials ever saw the agreement. They were told about it, but I don't know that it was ever officially made.

Q. When you say officially made, is that even a thing, with respect. Are you meaning, it was ever put in front of officials? Like, who was the agreement between?

A. In Wellington, late January, we're talking 1887, when the Surveyor-General recommends the authorisation at Baker's own cost and risk, which may arise from native obstruction or other causes of delay, which suggests they know that this is controversial. So, Sheridan tells Baker that reimbursement is a matter of budgeting and Percy Smith, who is the Assistant Surveyor-General, is told at once about the decision and he's directed to certify Baker's claim for cost before he enters on work. So, I am assuming that this is something that he should have been – that should have been done given he was directed to do it. So, I would have thought the charges would have been something that would have been set down in writing and clarified at the point that Baker was authorised to proceed.

Q. Thank you, that's very useful. So, let's just see if we can capture it. From your review of the evidence you think this was likely reduced to writing rather than simply an oral agreement. Am I right?

A. All we have in evidence is Baker's say so that he has this agreement which is never – which is never – which doesn't exist in terms of any evidence of it.

Q. Can we just – I know we're tight for time – but can we just take this slowly and carefully for a couple of minutes –

A. Sure.

Q. – and see where we get to. There was an agreement, Baker says. Who does Baker say his agreement was with?

A. Tauha Nikora and the applicants.

Q. From all of the evidence that you have reviewed, do you think that agreement, if it existed, was ever put in writing?

A. Baker alleges that it is in writing.

Q. And, from all of the evidence you have reviewed, do you know of any positive indication that a written agreement was put in front of officials?

A. I have not – well, I would have to check. Bush may have – I will have to check the report. Bush may have said he was aware of that agreement at the time that he turned up for –

Q. The cost rehearing.

A. – to enforce the costs. Yes.

Q. Okay. So, you are not suggesting Bush was lying, are you, about having – or shall we just say, being aware of the agreement?

A. Can we go to that cost part so I can refresh myself on that point.

Q. Please.

WITNESS REFERRING TO #A025, PAGE 259

A. So, there's no indication at the original enforcement of what Bush says either way.

Q. I think my question was that you are not suggesting Bush was lying about being aware of the terms of the agreement during the costs rehearing, I suppose I am meaning.

A. I think Bush said that that was his understanding of the agreement, I believe, but I would have to check that.

Q. And just to be clear, that doesn't necessarily mean that he's held a written copy of it, does it? If he says this is my understanding of the agreement, might be in a hearsay sense, this is what people have told me. It's to be fair to you.

A. Well, that's what Baker's told him.

MS CLARK:

Could I just suggest page 252, Bush says he claims to have witnessed the agreement, page 252, middle of the second paragraph.

MR LINKHORN TO JANE LUITEN: (CONTINUES)

WITNESS REFERRED TO #A025, PAGE 252

A. Yes, there we go. That's where Bush is coming from, he's witnessed this agreement.

Q. So, that's suggests that there was something in writing, doesn't it?

A. It does, it's been lost.

Q. I make a big jump now, to page 373, please.

WITNESS REFERRED TO #A025, PAGE 373

This is where you say about Whitikau 3A being made to protect the minors interests and you say these were but pretexts. And then you say: "Sheridan also seems to have baulked at purchasing Whitikau 3A … notwithstanding the request of Te Paea Kingi and others in 1898 …"

I am just wondering about your use of the word pretext there. You meaning that this was all a front or something for the real intention, have I got you right there?

A. I think that might Gill trying to explain why he hadn't made better progress by then.

Q. And he subsequently refuses to buy the block?

A. 3A?

Q. Yes.

A. Yes, that one is not purchased, yes.

Q. Page 423, please.

WITNESS REFERRED TO #A025, PAGE 423

This is really interesting, it's already come up yesterday, I think: "The stand-out of apparent court unconcern for customary *take* must be the inclusion of 'Wi Pere's people' in the Takaputahi appeal award of 1897,…because Ngāi Tai accepted their list." I am just interested how you shoot that home to the Court there, Ms Luiten, in the sense that there's a contemporary agreement by the applicant group, in spite of what they might think about the strengths and custom of the take advanced by

Wi Pere's group. But there is a contemporary agreement as between them to admit those people on to their own list, I think, and it's entirely possible, isn't it, that that was just simply a very pragmatic response by the Ngāi Tai rangatira leading that case to foreshorten the litigation and accommodate a power and persuasive counter-claim, wasn't it?

A. In support of their claim to the block.

Q. Yes.

A. Yes.

Q. And there was a described interests based on descent, so we're not talking about a pure, sort of aroha share, are we?

A. No, the case was based on descent, ancestry.

Q. That's the kind of compromise that we regularly see, don't we, it's resolved by groups talking outside and then bringing it back into the Court for the result. That's not uncommon in terms of lists. Someone might be defeated on the substance of the application even, and then put in the list or someone might – who made a fair fist of their basis for application, be in a relatively weak position but still be put into one big list rather than competing lists. We see this a lot, don't we, in this time period?

A. Yes, but that happens in the submission of the list rather than the judgement itself.

Q. Well here it was foreshortened, wasn't it, in terms of the applicant Ngāi Tai group making the concession upfront, as it were, that they were quite prepared to accommodate this group. That's what happened, isn't it? Sorry.

A. Can we go back and refresh what happened at Takaputahi.

Q. Yes. Good point. I've picked this up from your concluding pages because I am trying to, sort of, get us to the end. I suppose, maybe it boils down to a much simpler point, that I don't think you are suggesting that the Court should have operated inquisitorially to challenge that agreement, are you?

A. Well, you are determining – you are there to determine customary title, so one would think that a decision where you are including somebody's list, would have customary *take* and that the inclusion of that list would be because of customary considerations. And my point there is that the

Court's reference to these people, as Wi Pere's people and before that, hearing Ngāi Tai had never even heard of the ancestor that is being claimed under, would suggest that it's not really about customary interests, the decision, is all the point I am trying to make.

Q. Like well – you are making a point about Ngāi Tai behaviour, are you, rather than about what the court should or shouldn't have done?

A. No, I am talking about the court decision-making process.

Q. So, you are saying the court shouldn't have accepted that litigation compromise?

A. I think that's what I am saying, yes.

Q. Well, thank you very much.

JUDGE DOOGAN:

Mr Linkhorn, just on about 11 now and we were going to break for morning tea as we have been doing. You have got a bit more to go, I see. You have got –

MR LINKHORN:

I've done it, on time. I say surprise to myself with a few nips and tucks as you probably have guessed, but thank you very much Ms Luiten, I really appreciate your patience with me.

JANE LUITEN:

Thank you.

MR LINKHORN:

You know, just zipping into particular bits. So, I have had the best part of two hours and –

JUDGE DOOGAN:

Well done. I had thought you still might have a little bit more, but you are okay for now.

MR LINKHORN:

Ka pai, thank you very much.

JUDGE DOOGAN:

Thank you Mr Linkhorn, well done. We will break now for morning tea for 20 minutes. Thank you.

HEARING ADJOURNS: 11.01 AM

HEARING RESUMES: 11.27 AM

JUDGE DOOGAN:

Kia ora koutou. Judge Doogan speaking.

HOUSEKEEPING – TIMEKEEPING AND SEQUENCE OF QUESTIONS FROM THE TRIBUNAL (11:28:56)

(11:29) DR GRANT PHILLIPSON TO JANE LUITEN:

Q. Tēnā koe, Ms Luiten. I wanted to thank you very much for this report. I agree with what we – the compliments that you received yesterday that it is an outstanding report, and so we are very grateful for it. Thank you for that.

I wanted to start by following up on some of the discussion today, because there is a couple of points I wanted to raise in particular about that. The first is that point that you were taken to on page 252 that Bush claimed to have witnessed the agreement. Now, I looked at that, and those are your words, and I wondered if you – when I read that, I thought that meant he saw – he saw the – an – he saw the agreement. But then, when we were taken to it, I thought, "Did that mean he signed the agreement as a witness?", so – whereas I doubt there ever was a written agreement, so could you actually provide us with that page from the minute book, so that we can see the words used in the minute book? Because "claimed to have witnessed", you know, "witnessed" is your – is your word.

A. Sure. Right now? No.

Q. No, not right now, but I just wanted to – or if you remember yourself what the actual wording was. You probably don't.

A. I don't remember, off the top of my head.

Q. No, no, no. So thank you for that.

The second question I had about that was: Do you know, from your vast experience, was there any debate in the 19th Century about whether the Crown should pay for surveys, given that, as you have argued quite strongly and colonial politicians admitted openly, the whole purpose of the legislation in court was to make – entitle Māori – give titles to Māori lands so that they could be used – so they could be purchased or used in the colonial economy? And also whether there was any debate about whether a legislative cap should be put on how much land could be taken for surveys – do you know if those two things were ever debated or discussed at all in – by – among the surveying community or in Parliament or the press, or anything like that?

A. To the first point, not to my knowledge it was ever discussed, and even – you'll be aware when Bryce raises his alternative to Crown purchase, with the – his Waste Lands Board proposal from 1884, where native lands would be treated in the same way as Crown waste lands – all those costs would be deducted from any net proceeds from the sales before the owners got it, so every single scheme seems to have been based on the given that Māori would absorb the costs of the exercise.

Q. Thank you. Did you mean Ballance there?

A. Bryce has the idea first, and –

Q. Bryce has it first, right.

A. – and Ballance runs with it.

Q. Yes.

A. Bryce can't find any interest in it. He – his one falls. I think that's in the report. His scheme fails, and then Ballance resurrects it, and that becomes the Administration Act of 1886.

Q. Yes. Yes. Thank you. That's very helpful.

A. I missed the second, which was?

Q. Yes, (inaudible 11:33:40) second point – whether there was any debate about putting a legislative cap on either how much could be charged or how much land could be taken. Like, setting a legislative cap on how much land it was reasonable to take for a survey.

A. That – the first bit, as to charges, is set out, for the first time, I believe, in the Survey Regulations of 1886, and as to the cap, that – no, I've never seen a cap, because that depends on the value that you place on the land. I mean, that – that determines how much land is – is taken.

Q. Yes.

A. So I did note that when the Assistant Surveyor-General is first approached about this idea, his advice is – is that the land is worth twice as much as what – you know, he puts the value at two shillings, rather than – than the one shilling that came to be enforced.

Okay. Thank you for that. And I was going to have a discussion with you about Ballance's Act, but I won't, in fact, in the interests of time. With Whakapaupakihi 1, I wondered whether – if one of the key issues that – is that the money was paid to the 12 grantees, and it was never actually distributed on to the other right holders in the block. Was that an issue?

A. I think it was distributed, but not on a – not on a per-head basis. The evidence is it was distributed quite widely. That was the grievance of some of the people who didn't see much from the proceeds, was that it had been distributed to people who had no interest in the block, but –

Q. I see.

A. – that was left up to the 12 nominated registered owners, yes.

Q. Yes. And do the court minutes show whether it was the Crown agent that suggested only having 12 grantees, or was that something that was come up with by the people themselves?

A. I – the court doesn't record it. There's two days between the order and the – sorry, between the decision and then the order which splits the block and vests the land in the 12 people for the purposes of sale, so I don't know precisely if that was the court or the owners.

Q. Yes. Well, it is not uncommon when a block is destined for purchase to just put a few in the title –

A. That's correct.

Q. – so that there are less signatures and it's easier to manage, that's right.

A. Yes, it's done – done to facilitate the transaction.

Q. Yes, that's right. And I noted that Whitikau 1, the purchase of Whitikau 1 was assessed by the Trust Commissioner. That's on page 174 of your

report. Now, that is quite unusual, because the Crown usually took the position that Trust Commissioner check only applied to private purchases and not Crown purchases, so I was wondering, do you know if at, you know, around the same time, the purchase of Whakapaupakihi 1 was also assessed by the Trust Commissioner?

A. I would say no, but I don't know.

Q. Right. You're not sure.

A. No.

Q. No. Okay.

A. My feeling is that it wouldn't have been.

Q. Right. That's helpful. Thank you. Now, on the issue of Chief Judge Fenton's dismissal of Whakatōhea's rehearing applications for Whitikau, were you aware that the Court of Appeal later said that it was unlawful for the Chief Judge to just dismiss applications without holding a hearing?

A. No, I'm not aware.

Q. There was a – yes, and there was a proposal that all such cases dismissed unlawfully should be reopened, which could have been of some benefit to Whakatōhea, but it – it never went anywhere. Were you aware of that?

A. I'm not aware of that. What date was that?

Q. 1891.

A. Well, okay.

Q. Yes. Okay. Thank you. When the Crown made advances on Whakapaupakihi and Whitikau in 1879, did it then gazette those blocks as under negotiation under the Government Native Land Purchase Act 1877 shutting out private (inaudible 11:39:20)?

A. I don't know. I didn't check that.

Q. Would you be able to check that?

A. I could check that.

Q. Yes. Okay. I'll put that in writing. Thank you.

Just going through my questions, because some of them – writing… (inaudible 11:39:46)

I wondered about the issue of the statement in your report, and I think you were quoting someone, that Alma Baker had powerful friends, and I noted, looking at his biography, that his father-in-law was Frederick Whittaker, who is of course in and out of government, and when Native Minister Mitchelson agreed to approve the Tahora 2 survey, Whittaker was the Attorney-General in that government, and I wondered how far there might be something unseen going on behind the scenes that influenced matters. Do you – did you get any whiff of that when you were saying things were smelling at various stages?

A. I – that relationship is in the report. The only thing that struck me was the informal relationship between the Under-Secretary, Lewis, and Baker. They seem to be on chatty – chatty terms in the correspondence, which I've commented on in the report, but no, there's no evidence about that behind-the-scenes connections, no.

Q. Okay. Thank you.

A. I mean, you know, apart from the fact that Baker can go and call on the Native Minister in Auckland and then fly down and get an interview with the Surveyor-General, you know, he's – he's got those connections that he can – can do that. And also the – the speed at which he is informed about those decisions also points to relationships, I think. The speed at which the – the government decisions are – are communicated to him is – speaks of those kind of relationships.

Q. Thank you. Can you remind me, was it telegrams at that point, or is this letters?

A. Both.

Q. Both.

A. Telegrams for the – telegrams in some cases, and letters, yes.

Q. Right, yes. Great. Thank you.

With the Oamaru costs rehearing, do you know if the surveyor, Eric Goldsmith, who presented evidence, had he ever – he said that he was in the district. I wasn't sure what you meant by "the district", and do you know if he ever actually inspected the land that he was valuing at that rehearing?

A. I don't believe he would have. I think he was more associated with Te Tai Rāwhiti.

Q. Thank you. That's helpful. And then the Crown's second witness, Fred Jones, who was he? Was he a surveyor, a valuer? What kind of expertise did he have?

A. Do you have the page number, Dr Phillipson?

Q. Page 253, I've got in my questions.

A. I don't have any background information on Fred Jones.

Q. Nothing was said in court? Didn't say, "Fred Jones, surveyor", or anything like that, that you can remember? Sorry, if you can't remember, that's fine.

A. I can't remember. My feeling is that if it had been said, I would have mentioned it in the report.

Q. Would have mentioned it, yes. Thank you. Can you tell me, when did Whakatōhea become aware of Alma Baker's alteration of that Oamaru-Whitikau 3 boundary?

A. It may have been – I have to – one moment. It may have been at the point where the survey plan was produced just before the court hearing in 1888 for Whitikau 3, which is – I would – so, on the 19th of July 1888, the Assistant Surveyor-General authorises the Oamaru survey plan, and that's minus the boundary alteration, so that's July 1888, and in – five days later, July, Percy Smith signs off the Whitikau 3 survey plan, and that's one week before the – before the hearing –

Q. I see.

A. – so I think that may have been the first that Te Whakatōhea were aware of that alteration –

Q. Right.

A. – and the Oamaru title determination begins on the 3rd of August, so that's, like, a week later.

Q. Okay.

A. So it's in those days leading up, just before those title determinations.

Q. And if not, they would have found out during the court hearing of Oamaru, is that correct?

A. Well, they – they would have that – well, presumably, they've got the survey plan, which has been sent to court for the title determination, in front of them, and they would know as that determination happens.

Q. That survey plan still had the wrong boundary?

A. No, the – the survey plan that gets approved on the 24th of July is minus the triangle that's now in Whitikau –

Q. I see.

A. – so that plan is the one that arrives days before the hearing begins, and that would have been their first intimation that their boundary had changed.

Q. Right. Thank you very much for clarifying that. And did the Crown do the partition – the further partition surveys of the Oamaru hapū partitions, as promised, without further charges?

A. They did do the partitions. I think yesterday it was raised – they – they – in some cases, they tried for a survey lien, but Rewiti Newa objected. But I'd have to check up that to see I've got that right, but my understanding is that they were partitioned with no further charges.

Q. No further – right. Thank you.

With regard to the 1895 petition about Oamaru, I just wanted to check, is it the same year as the petition for a rehearing of Whitikau 3?

A. That sounds right, because the rehearing for Whitikau 3 would have been made after the decision went against them.

Q. Right. And that petition must have been received by the Crown, because it's in that Crown folder, that folder of, you know. So what – do you have any idea of why it's in that folder but was never actually dealt with by Parliament?

A. No, I don't know.

Q. No.

A. I wasn't – yes.

Q. Okay. Thank you. Because I think that is really – a really important issue. Thank you for that. And I noted on page 330 of your report the statement that Ngāti Rua retreated to Toatoa on the Whitikau block during the government invasion, which I think is actually quite a recent evidence of occupation. Do you know where that was; where Toatoa was in the

Whitikau block? If you don't know, the people may be able to help with that, but…

A. They may be able to, yes. My understanding is that it's quite close to the confiscation line, like – but in – in the Waiaua part.

Q. I see.

A. But I'm happy to be corrected on that.

Q. That's really helpful. Thank you. In your discussion of the 1840 Rule, which you discussed on pages 323 to 24, my understanding of the 1840 Rule is it is not that there could be no change after 1840, but that there could be no change by force, and so it allowed for peaceful changes of occupation, et cetera, that occurred, and also, in my experience, I don't think the court hardly ever really used it. Do you have a – what's your view of it?

A. I didn't really look into it in enough depth to comment. I've come across it in the Porirua ki Manawatū, in the case of – I think there – when it was used against Renata Kawepo by his niece – no, that was – sorry, that's not Porirua ki Manawatū. Taihape.

Q. I see.

A. But I don't know enough about the rule and how it was applied to – to really comment.

Q. Thank you. I hadn't heard of that example. That's in Taihape, is it?

A. Yes.

Q. Yes. Okay. Thank you.

A. It was quite a famous one.

Q. Right.

On page 378, and Mr Linkhorn may say this is for the lawyers to answer, but Gill states there that for blocks in which the Crown had decided to purchase individual interests, no owners – or had started to, I guess – I've written "decided", but it may have been "started to" – no owners could get a partition without the prior consent of the Native Minister. Gill had been a judge, so I presume he knew that, but I'd not heard of that before. Are you aware if that's –

A. He wasn't a very good judge.

Q. Well, that may be an issue, but do you know if that was correct?

A. I don't believe so. I think that's his spin, possibly, but –

Q. I see.

A. Yes.

Q. That's really helpful. Thank you.

So those ones are in writing…

Now, I did want to raise with you: during Ms Cole's questioning, I listened to the livestream yesterday, most of it, when I wasn't resting, and I want to take you to page 396 of your report and the quote from the Stout-Ngata Commission. Now, in your answer to Ms Cole, you said that didn't really apply to the 1890s because it was – because of the secret dealings bit, and I want you to reconsider that, to have another look at that quote, because if you take out the one phrase which is in line 7 of that quote, "it gives scope to secret dealing", the rest of that quotation, do you think it actually would apply to the 1890s? Can you read through that and think about if we just take out that one bit, "it gives scope to secret dealing", would the rest of it apply to the 1890s, Gill's purchasing and the individual interests in Oamaru?

A. Yes, I would agree with you.

Q. Okay. Thank you. Because I think that point got lost in that issue of secret dealing when Ms Cole asked you about it. Thank you.

A. Thank you.

Q. One of the interesting points raised – the judge hasn't stopped me yet – one of the interesting points raised in your discussion and your report is about how people talked in terms of the interior about their grandparents' and parents' use of the resources on those blocks, but not their own, and that told against them, and of course, they couldn't point to pā and kāinga, which was what the court thought occupation meant, and I wanted to just say – ask you about this – so my understanding is, most of Whakatōhea had to leave the area in the late '20s and '30s due to the Ngāpuhi and Ngāti Maru attacks, and then in the period from the 1840s to the 1860s, they are all mostly based at Pākōwhai, engaged in, you know, in getting – agriculture, getting stuff for trade, which you talked about, and so, that period – but they also still would have gone up, you know, for some resource use, I'm sure, for their own food supplies, because most of what

they're producing goes to Auckland and not that they eat it themselves – and then, in the '60s and '70s, they were basically being watched at Ōpape and couldn't go up into that area, except for Ngāti Ira, who were up at Maraetahi, and so couldn't go there until after the whole situation with Te Kooti was resolved, and even then, you know, they are at that reserve, fighting amongst each other – forced to fight each other about what – how much of that reserve they can each get, because they're in such a desperate situation.

So there really wasn't much – they really – I think it would have been unfair, due to those historical circumstances, for the – to have expected that they would have been able to point to that more personal extensive use of that entire inland area – and were right to rely on their parents' and grandparents' use, because that land would have become incredibly important to them, getting the resources from there, once they were trapped on the Ōpape Reserve.

Would you agree with that?

A. I would agree with that.

Q. Yes. Okay. That was a very, very long question, with a very helpful short answer. Thank you for that.

And you mentioned just quickly about the – the – that Alma Baker actually came into the district to do a survey for someone else, and Tauha Nikora persuaded him to do his survey instead. Was that in your report?

A. It's not Tauha Nikora, it's Wiremu Kingi, so –

Q. Yes, you are right, sorry. Wiremu Kingi. Yes. Is that in your report? Because I didn't recall reading that.

A. It is in the report.

Q. It is. Okay. Thank you. I won't ask you to point me to a particular page, but I will have another look for that, because I didn't recall that.

And that's all the questions I want to put directly to you, and I thank you in advance for your patience in providing the written answers to my questions in writing, and I just wanted to thank you again very much, Ms Luiten, for the enormous contribution that you have made to this inquiry, and also, because I could not be there to thank Mr McBurney for

his report as well, which has been very helpful. So thank you very much. That's all my questions. Thank you, Judge.

A. Thank you.

JUDGE DOOGAN:

Thank you, Dr Phillipson.

MR LINKHORN:

Excuse me, your Honour, Judge Doogan. There is one matter arising from Dr Phillipson's questions, and I wonder if it would be useful to see if we can clear it up now, and that was the question about whether the Whakapaupakihi deed was also – has attestation by the Trust Commissioner. Would that be useful to clear up now?

JUDGE DOOGAN:

Yes, please.

(11:58) MR LINKHORN TO JANE LUITEN:

Q. So I think, Ms Luiten, your answer to Dr Phillipson was that to your knowledge, it did not have that attestation. I wonder if we just quickly show it to you –

A. Sure.

Q. – and then you can just consider that briefly.

JUDGE DOOGAN:

All right, and just if you restate: the document we are referring to is the…

MR LINKHORN:

Once Ms Luiten has looked at it, we will get that on the transcript, I think, Sir.

MR LINKHORN TO JANE LUITEN: (CONTINUES)

Q. So, Ms Luiten, can you describe for the Tribunal the document you are looking at?

A. It is a deed for Whakapaupakihi for 7,000 acres, dated the 26th of December 1881, and there is a translation, which is signed by a licensed interpreter, and it is signed by Theodore Holton, who is the Trust Commissioner, and he did that – that's not dated, or no signature. It's just written out, but there's no signature as such, and it's not dated.

Q. And has that got the words "duplicate" across it?

A. It's not – yes, but there's no date and no signature on that.

Q. So does that lead you to conclude that the attestation was written out, but that it – but that it was not the subject of the Trust Commissioner's processes?

A. I would imagine that's on it, that – that it should have been a process, yes, that it – I mean, in the same way that the interpreter has signed it, and it doesn't seem to – well.

DR GRANT PHILLIPSON TO JANE LUITEN: (CONTINUES)

Q. Mean that the interpreter has signed the deed, witnessing the deed, or they're witnessing the Trust Commissioner's…

A. The interpreter's signed the translation of the deed.

Q. Right, yes.

A. It's written on the deed as if that was the process, but it's not dated or signed by the Trust Commissioner.

Oh, that does say "duplicate". There's another page that does say "duplicate". Aroha mai.

Down, I think… No… And that's one – that – "duplicate" wasn't on there before, was it? So that – is that another page? And that is also not dated and not – doesn't appear to be signed or dated. Yes. But we didn't see that before, did we?

MR LINKHORN TO JANE LUITEN: (CONTINUES)

Q. So does it add up to this, Ms Luiten? We've advanced things a little bit further in terms of Dr Phillipson's questions, but we haven't quite got to the bottom yet of whether there was ever an attempt to certify it under the Trust Commissioner system, and it might be that it was simply written in

by a – a clerk on a mistaken understanding as to whether this transaction required Trust Commissioner certification or not.

A. Correct.

JUDGE DOOGAN:

Dr Phillipson, anything further you wanted to ask about this?

DR GRANT PHILLIPSON:

Well, it would be helpful – I don't know where the Crown got this from, but it would be helpful if the Crown wants to look further into it. I would be very happy to have a definitive answer on it.

JUDGE DOOGAN:

All right. And Mr Hunt, it is probably another part of your homework.

MR HUNT:

(inaudible 12:03:37) on the list.

DR GRANT PHILLIPSON:

Thank you very much, everyone.

JUDGE DOOGAN:

Can I just add to that: If the document you have there is the duplicate, also clarity as to whether the original is locatable or findable, because the other possibility, Mr Linkhorn, is that there might be attestation on the original.

HEARING ADJOURNS: 12.04 PM

HEARING RESUMES: 12.09 PM

JUDGE DOOGAN:

Kia ora anō koutou. All right. Well, I think Dr Phillipson has messaged that he has one more pātai, so we might go to that now.

JANE LUITEN:

Could I just say, your Honour, with respect to Dr Phillipson's question about the reference of Baker being – going to – Te Whānau-a-Apanui's claim that Baker went there to survey Te Paku, it's on page 270.

JUDGE DOOGAN:

Thank you.

(12:09) DR GRANT PHILLIPSON TO JANE LUITEN: (CONTINUES)

Q. Thank you, Ms Luiten.

I thought I would ask my question at the end if there was time, but since the judge has very kindly invited me to do that, Ms Luiten, on page 48 of your report, you said that "By 1888, Ballance felt betrayed by the lack of Māori buy-in" to his Native Lands Administration Act, "particularly given their earlier support for his Bill".

And I think that's really important, given the timing in the middle of Whitikau and Whakapaupakihi and then this and then Oamaru and Tahora 2, and it was an alternative way of doing things that could have ensured through those block committees more control for the owners over what happened to their land, instead of not allowing those individual interest purchases that happened in the 1890s.

And I think it's really important to look behind – I wanted to ask you whether you have looked at the CNI Tribunal report, because there is in fact a lot of evidence that shows that Ballance did not do what he agreed to do or what Māori asked him to do at the meetings about that proposal, and I don't think they did support his Bill, because, for example, he promised as part of it to give title determination to Māori committees and have the Native Land Court as a court of appeal. Māori wanted, as well as block committees, they'd just want individual, you know, groups of owners. They also wanted a district-level hapū committees that would also be involved in the process. There were a whole lot of things that show that in fact, the particular Bill that Ballance got through Parliament was not actually what Māori wanted.

So I wanted to query that statement about Ballance feeling betrayed because he had had support for his Bill, because it's crucial to – to the issues in your report, I think.

A. I think it speaks to the gap between what Māori – what Māori aspirations are for their own management of lands in terms of all the things you have just talked about and what is driving Native Minister Ballance, which is making lands available for settlement, and there's a gulf between those two ideas, and so he thinks his scheme is fulfilling those aspirations, but it's – it goes to show the gulf between his ideas and – and Māori aspirations for their own land, yes.

Q. Yes, because most Māori groups at that time did want to make some of their lands available for leasing and to get capital to develop the rest, so the two could have come together if there had been more willingness to actually do it in the way that Māori wanted to do it. Would you agree with that?

A. Totally agree with that.

Q. Yes. Okay. Thank you very much. That is my other question. Thank you, Judge.

JUDGE DOOGAN:

All right, thank you. Dr Anderson.

(12:14) DR ROBYN ANDERSON TO JANE LUITEN:

Q. Tēnā koe, Ms Luiten. We can't see each other face to face, so you will be able to roll your eyes at some point and I won't be able to tell. My questions are a mix of things that occurred to me as I was reading your report and things that grew out of the cross-examination yesterday.

Just to – in – just as sort of scene-setting, you talk about the appropriations, the money that was available for land purchase during that public works immigration period, and I think you've given national figures. Do you know how much was devoted to – to this area, or to the Bay of Plenty?

A. Well, it would be a matter of working out what was on offer and – and what the price was, I suppose, because I don't think it was necessarily broken down district by district.

Q. Okay.

A. It was – yes.

Q. And I was wondering about the role of the provincial government in terms – while it was in existence – in promoting purchase in this area. Do you have a view as to how instrumental they were in – in getting things rolling, if you like?

A. So my understanding is that under the 1871 Act, Public Works and Immigration Act, it's – the Crown acquisition is – it's the provincial government who sets that ball rolling, so it's – comes from a provincial…

Q. And then they step aside? Or is there kind of a three-way correspondence going on? I guess I'm comparing to the Wellington region, where provincial government was very involved within the actual practical operations.

A. That would have been earlier on. Their purchasing in the Wellington province was 1850s, 1860s, so this – and not necessarily so much part of the immigration public works, because those purchases in the Wellington, like, if you're talking Porirua ki Manawatū, that's all earlier, pre-war, than this post-war swamp the land with colonists, open up the native districts of the heart of the North Island, so slightly different policy framework at this time, post-war.

Q. I think it does carry on into the '70s, but maybe that grows out of their intensive involvement in the 1860s, but you don't see that in this district.

A. The intense – the – the involvement on the hands-on purchasing? No, that seems to be how it seems to work with Wilson and central government is the provincial government take it to Donald McLean, and he's the one that organises the government land purchase, so it – it's coming from central government, rather than provincial.

Q. And at this point, when – had they digested the land they'd confiscated, if you like to put it that way, in this district? It's been surveyed and cut up and on-sold? Or was there still land available for settlement within –

A. I think – I think there's still – it's very early days. It's still a lot of allocated undisposed-of land within the confiscation district.

Q. Okay. All right. Thank you.

A. And again, that goes to the – what's driving the policy. It's not at this point so much to provide land for settlement, it's to secure the gains that have been made with war. It's to colonise in terms of securing control through purchase, rather than the productive utilisation of the 1890s. I think this – this post-war investment is – is very much to keep the gains of war through what Ballot **(spelling 12:18:47)** calls swamping, through opening up these former native districts with roads. It's about securing control as much as anything.

Q. And of course there is this accusation that the Crown buys pretty much anything that it can get its hands on, if the price is right. Or do you think that's a – a mischaracterisation?

A. In this period, they are trying to purchase, and can't purchase, because there's still resistance, so transacting lease **(unclear 12:19:28)** – yes, there is a lot of investment put into acquiring land, yes.

Q. You talk about the resistance. Were they – do you know if they formally, or if they were involved in the Repudiation movement?

A. The Repudiation movement is – begins out of Hawke's Bay and – and really gets going in the early 1870s, '73, '74, '75, so that's before Te Whakatōhea have – that's before they've even engaged in the title determination process, because –

Q. Right.

A. – up until 1879, they've maintained – they've just said, "We're not dealing. We're not going to court. We're not dealing." So they wouldn't have needed to be involved in the Repudiation movement, because they actually haven't engaged with the whole title determination process.

Q. Okay. I was wondering whether the determination to stay out was influenced by what was – they saw happening elsewhere, but you're saying it really grows out of more of their confiscation experience and…

A. I would imagine. And there is a relationship with Ngāi Tūhoe, which are very much about keeping themselves, their rohe, intact from –

Q. Yes.

A. – purchase and control.

Q. Okay, thank you. I notice you had in your discussion on surveying regulations and – and legislation that the discussion is largely cast in terms of customary land and outer boundaries, and I just wondered whether the regulations were different if they were – it concerned partitioning of land.

A. The regulations – that part of the regulations just deals with the survey of customary land.

Q. And so the schedule – were there prices set for partitioning, as well?

A. Not that I can think of off the top of my head. It's mostly for the partition of customary land – I mean, sorry, the survey of customary land, before the – before – yes. Because partition happens once title – yes – lands are titled.

Q. Okay, that's interesting, because I'm just thinking of the 1891 Native Land Laws Commission, where they actually identified as partitioning and the expenses of survey for that as being even worse than for the initial title determination.

So those schedules – you were talking to either Crown or to Dr Phillipson this morning – the schedules aren't really of price – that's not really a cap, is it, because you could exceed the prices, the schedule? You know, five pence an acre? Under certain circumstances?

A. I think the – the schedule was broken down into – by acreage, like, for this amount of acreage is that charge, and I think – I think it was set out as a – as a guide as – as what you could charge. I think it – yes.

Q. And was there a difference in the schedule between broken country versus flat country (inaudible 12:23:28)?

A. Yes, there are – I think that's part of – that there are clauses in that – that deal with things like that, and also for – if boundaries have already been surveyed in an adjoining block, I think it takes that into account as well. I'd have to re-check it. Yes.

Q. Okay.

A. The details, yes.

Q. All right. Is that within your document bank? We could check it out.

It's all right. We'll work it out later.

A. I can find out. I can make – I can find out and make it available. It's on the Surveying Institute website.

Q. Okay. Thank you.

Just moving on, just – I was really curious about this leasing of land, and I was going to – from Māori, and you've said it's essentially ground bait and that actually the Crown could do nothing with it, so there was no sort of scheme to lease it on to settlers?

A. No. The whole immigration and public works programme is based on making freehold available for settlement, and as the report explains, by 1874, they're starting to question the legality of even spending government money on these leases when that hasn't been provided for. The Act on which this whole programme is based authorises government expenditure on purchase, not lease, so the whole system is based on purchase rather than lease, and Pollen says, "Well, look at the long term, guys. We get the freehold by getting the leasehold, and the freehold will follow." So they're not expecting these leaseholds to run to the tenth or eleventh year. They want – they – they expect that it will be converted to freehold quickly, because their whole immigration and public works system depends on it.

Q. All right, thank you. I might just move on to – I was interested in your conclusion that the 18 – well, certainly McLean setting up the 1873 Native Land Act didn't contemplate individual dealing, and yet there's – there's nothing in the Act that says that when you're – that they had to deal as a community, so I – do you think that was an – you said – are you telling us that it was an oversight, or is it how the Act, the legislation was read?

A. Sections 48 to 49 of the Native Land Act 1873 is memorial lands cannot be sold without consent of all the owners, which suggests that all the owners have to agree, and where all the owners don't agree, the ones who don't agree are to be dealt – have their interests partitioned.

So there's nothing in that that says – that infers that you go off picking off owners, you deal with individual owners one-by-one, and to me, that Act, it came to mean that, because that became the practice, but my argument is at the time, that's not what McLean intended to happen.

Q. All right. When they did legislate, they didn't remedy that situation, though.

A. It became the practice.

Q. Yes. Okay. Thank you. I'm not quite sure what your position is: I see you've quoted David Williams in your – one of your footnotes, which I can't quite tell you what it is, about the court finding in favour of those people who had received down payments. Do you see that as being the general state of affairs? Was it kind of inevitable – well, not inevitable – was the predisposition for the court to find in favour of people who had received down payments?

A. I would say, "Yes".

Q. Of course, it might be argued that the Crown got the down payments correct in the first place.

A. Well, yes, it could be argued that.

Q. Okay. When – I'm just –

A. Can I – just to go back to your point about the 1873 Act, it comes up again when – when – in the report when Wilson starts purchasing these individual interests and gets told off by McLean in 1875, who says, "Until you've got the majority of consent, you shouldn't be purchasing", and that's – and then – so he's told off, but the practice is adopted, because it's the only way the Crown gets the results, so that also is evidence that – of the intention of the '73 Act – was to act with majorities, majority consent, to deal collectively, which is undermined, because the Crown can't get majority consent to sale, and so it defaults to these individual purchases and the partition of the Crown interests. Is that – that becomes the way to do it, because it gets results.

Sorry, that's just a – I just thought of that.

Q. Yes, there's a tension between getting majority consent as a community versus getting – or a difference, I should say, rather than a tension – between getting consent from the majority as a community versus getting consent from the majority by dealing with people one by one.

A. They are two different animals, yes.

Q. Yes.

A. Yes.

Q. Of course, the other aspect you might like to comment on, my understanding of Māori customary law is that things aren't necessarily – aren't decided traditionally as a majority. It should be a unanimous decision, but you discuss it until everybody agrees. Is that your perception as well?

A. You mean voting, as in terms of majority voting?

Q. Yes.

A. Yes. Sure.

Q. All right.

A. Which is – I mean – yes. Yes. Sure.

Q. Makes life for a purchase officer much more difficult.

A. Yes.

Q. Just to get back to whether the Crown's finding in favour of – of people who have received down payments, I wonder whether that is contradicted by Rogan not allowing Wilson to appear in court to – in support of his actions and who he's been paying? Or do you think there's a different motivation going on there?

A. I couldn't get to the bottom of what that was actually about, that particular instance in court, yes. But it's about – I mean it's – it's public versus private dealing, I think, is – is what's at stake there, but it – yes, I didn't get to the bottom of that particular dispute between the two men.

Q. All right.

I'm in danger of exceeding my time. I did have a – just maybe a couple of questions on particular pages, just a couple.

At page 215 to 16, you talk about Nikora appearing before Te Whakatōhea to account for his actions. Do you have more – have I missed more information about that appearing before Te Whakatōhea and who was involved and in what context?

A. Yes – I think of this as a really interesting meeting, and something I've missed when I wrote the report that I picked up again in revising for this hearing is that at the outset of the Oamaru hearing, it's – it's almost like an out-of-court arrangement at that stage, and the application that – the minutes say, "The application is here, we're just waiting for a conductor", so it's almost like at the point of the Oamaru title determination,

Te Whakatōhea are saying, "Okay, we're going to – we'll – we've arranged this between ourselves, how this is going to go", and they even talk about pencil lines on the map, so it's almost like they've got the partitions pre-arranged.

And Heremia Hoera stands up at that point and says, "Okay, I'll be the conductor", and Tauha Nikora says, "No, I'll be the conductor. I made the claim. I've arranged the survey. I'll conduct it."

So this meeting is – is very interesting. It's almost like them – Tauha Nikora coming before them to answer for what he's done, almost, and trying to resolve it in terms of an out-of-court arrangement, and then – and it starts in court that way –

A. Yes.

Q. – and then it all goes – it turns into the normal adversarial title determination when – when he sets up the claim on account of a few individuals who are the original applicants, and then a week into Oamaru, he changes his position, because he's trying to juggle that claim as two different applicants.

He's working for Ngāti Rākautahi on the side of his Ngāti Rua – by the Pakihi River, and then he's also trying to claim the west through descent from Ruamoko, and then a week into the claim, he gives up that claim on behalf of individuals, and that's when he changes his claim to become on behalf of Ngāti Patumoana, so the whole – again, manoeuvring within the hapū politics and what's going on is – something's going on for sure, and all we can do is – is try and work out what that is with very little evidence, but I had missed the fact that he started off that process as individuals of his application and then – it only then turns later into a Ngāti Patu claim, because there's another person at the beginning of that case who claims on behalf of Ngāti Patu, and he withdraws the Ngāti Patu claim.

So there's – there's manoeuvring going on, and I think this – this meeting before that court opens, where Tauha Nikora is called to account by Te Whakatōhea, is a really interesting one, but this is all the information that we have about it. We don't know any more about it.

Q. All right. Thank you. That's intriguing. And I will just ask one more question, or two.

At page 247, Tiwai is brought in and then is accused – by the judge to clarify matters and then is accused of consorting with the witnesses. Can you expand a little bit around that?

A. Sorry, can you please give me the page number again?

Q. I've got 247, or maybe it's 207 – wait a minute. It could be 217 or 247. Maybe I'll ask it in questions (inaudible 12:39:15)

A. No, no, let's – we'll get there. We're all right. We'll – I can't – I know what you're talking about, and that – although I can't find it, but that again goes to that Ngāti Patu – Tiwai, Piahana, is brought in because he's associated with Ngāti Patu, and he – Judge Wilson is wanting some clarification as to those Ngāti Patu rights, so he asks him, and he – he doesn't get it from – he doesn't get the answer he's – the clarification he's looking for, and – and makes that accusation that Piahana is just going along with Tauha Nikora.

Q. So he's looking for a partic – is it that he doesn't get the clarification, or he doesn't get the answer he's looking for?

A. He doesn't believe Tauha Nikora's take of conquest, and Piahana's evidence doesn't make it any clearer for him.

Q. Right. Okay. Thank you. And my very last question is: Your statement about Wilson's – sorry, at 228 to 229, and it is a summarising statement, but you're saying that judgment – his judgment appeared to reflect Whakatōhea's arrangement, but also his own arbitrary ideas about their identity. Would you just like to expand a little bit on what you mean by that?

A. In some – in – to some – in some respects, his partition between the hapū reflects the lines that they've already agreed to at the beginning of the case. But there are allegations that Ngāti Ngahere get the lion's share, which are made. That becomes the substance of – of claims by the appellants of his decision. In particular, with Ngāti Ngahere, of course, you've got that association with Te Manihera Maiki, and that's who Wilson transacted those interior Mōtū lands with –

Q. Yes.

A. – that date back to 1873, so he's had that relationship with Maiki in 1873, and it's Maiki again in 1876 who takes the deposit for Whakapaupakihi,

so the allegation is that the size of the Ngāti Ngahere share – and of course Ngāi Tamahaua want – they – they're arguing a customary interest that extends all the way back to – to the Mōtū River, and they – their bit gets half of that. Their – their – it's confined to the Te Waiti area, so – so you have these allegations about Wilson's relationships with the claimants as determining the outcome.

Q. Yes. All right. All right, well, thank you for that, and I'd just like to add to the accolades that you've already received. They're very well deserved. This is a fantastic report that will be incredibly helpful for us. Thank you, and thank you for your thoughtful answers over the last couple of days.

A. Thank you.

Q. Thank you.

(12:43) PRUE KAPUA TO JANE LUITEN:

Q. Kia ora, Ms Luiten. I don't have many questions. I'm too afraid to ask any questions, because you have got far too much knowledge, but I also want to pay homage to your report, because it is very helpful, and the depth of your knowledge that you have shown over the last day and a half in terms of the – you know, having done it all that time ago and being able to retain all that knowledge.

I just had a question of clarification. On page 10 of your summary, there's a footnote –

A. Oh yes, that I missed.

Q. – that you missed, and –

A. I can –

Q. – I just wondered, is that footnote the one on page 202 of your report, which is, I think, 662, which is about "Barron to Assistant Surveyor General", about that "a good piece of land can be got"?

A. I had the footnote that I wrote into the summary, if I could find my summary… yes, but that one has the footnote missing. If you'd bear with me one moment, I'll find my summary and we can sort it out.

Q. All right. Okay. Well, that – I mean, I think it is, from what I looked at, so I did have a very general question, which was about whether that direction

about “a good piece of land can be got”, was that a general direction, or was it specific to this particular piece of land?

A. Specific to this piece of land, yes.

Q. Land. So it wasn’t a general direction that – you know, when you say they were “satisfied that ‘a good piece of land can be got’”, is that in relation to a general direction, or was that quite specific to this piece of land?

A. Would you please refer me to the page in the report that you –

Q. 202; page 202 in the report, and it’s about – it’s in the second paragraph, about the fifth line down, and the footnote is 662. It says, “You may instruct a Surveyor [if you] are satisfied a good piece of land can be got.”

A. It’s specific to this –

Q. It is specific to this, right.

A. To this, yes.

Q. Ka pai. Thank you. That’s all my questions. Thanks.

(12:46) BASIL MORRISON:

Thank you most sincerely, Ms Luiten, and can I really echo – I can only really echo what has been said by others, in particular, my colleagues, over the last couple of days. Truly outstanding. To read the report, you really need – for someone like me, I need to read it several times, and I’ll go away, and I’ve written down pages and numbers and questions that I’ll reflect on, so truly outstanding.

Can I also thank the hau kāinga for the hospitality today, yesterday, the day before, the day before, the day before, and over the years, some very familiar faces in the room? So thank you for those courtesies. Can I also comment on the attitude and – and the willingness of counsel and – and participants? Truly encouraging, and finally, and not the least, to the Crown, to you, Mr Linkhorn and Mr Hunt, the way you have presented in a non-adversarial way, I truly appreciate it, because it has been a very difficult process and the attitude of both the Crown counsel, those that have, shall we say, concerns, to you all, my thanks and appreciation.

It's – I won't say it's been a pleasure, but it's been something that I don't always sit in an environment of. Very complex and long-held grievances where people can be so respectful of one another, so thank you all.

(12:48) JUDGE DOOGAN TO JANE LUITEN:

Q. Kia ora. Ms Luiten, you have already had a pretty long – I have only got a couple of very quick questions, just in the – just take a minute or two, and really about the Whakatōhea petition in 1895, which strikes me, from the extracts that you have provided in your report at 255 and 256, as quite an eloquent plea at that time. I am assuming from what I see from the extracts that they are just that; they are extracts, not the complete petition, in the extracts that are on those two pages? Can you recall?

A. It looks like quite full extracts, but –

Q. All right.

A. – yes.

Q. And this is the petition that was located at the back of the purchase file. There is an AJHR reference there. And the petition itself refers to – or at the conclusion at the bottom of page 256, it said that "Members Carroll and Wi Pere", the petitioners concluded, "who knew all about it, could give evidence on their behalf to the Native Affairs Committee." From your research, there is no evidence that the Native Affairs Committee or any other proceeding of government or Parliament dealt with or heard anything about this petition, or any action was taken upon it?

A. I never found any record of any – of how this petition – whether it was dealt with at all, no. I haven't found any records to do with that, yes.

Q. All right.

A. Something that I'm not aware of.

Q. Is it a matter that might be worth a little bit of further investigation? I'm not suggesting necessarily by yourself, but – and I'm mindful of the fact that the reference to the members of Parliament in the petition itself raises the possibility they may have taken some steps, so I just note that, and I also note the reference there to the petitioners themselves complaining about Baker's – "who, 'we heard, had friends in high places, and from the way he acted, could do what he likes, without interference by the

Government.'" So there is clearly a perception at that time amongst Whakatōhea that those relationships wouldn't pass the smell test, if I can put it that way.

So thank you. The only other pātai, and I cannot recall from the evidence you gave in relation to your first report, but this came up with Mr McBurney the other day, the question of Wilson's records in relation to the Ōpape allocations and his refusal to provide them to Brabant. Mr McBurney thought the likelihood was that the records were destroyed, and I just wanted to check with you whether in your research, you have any hint as to what may have happened to such records as Wilson had.

A. I've not come across them, and he – yes.

Q. All right.

A. I don't know.

Q. Thank you. I will leave it there. We certainly do not wish to keep Gloria waiting, and her team, and I just wanted to tautoko the sentiments of my colleagues and thank you once again for your outstanding scholarship and the assistance you have given us. Ka nui te mihi ki a koe **Thank you very much**.

A. Tēnā koe.

JUDGE DOOGAN:

I think Dr Phillipson obviously has a few more pātai for you, but I just support and echo the compliments paid to you by my colleagues, and just very briefly, just to acknowledge our hearing week and to support what Mr Morrison said, first wanted to just record our appreciation to all of the tāngata whenua witnesses who have appeared this week, from Rachel and Tania Wolfgramm on Monday to the panel for Wai 87 supported by presentations from Professor Maxwell, evidence from Ms Edwards, from Mr Tu Williams, also the evidence we heard on the following day from Mr Nepia and Mr Papuni, and again, our technical witnesses this week, who have greatly assisted us in our ongoing inquiry, Mr McBurney, Mr Crosby, and of course yourself, Ms Luiten.

I also want to echo and tautoko the mihi made to counsel. I will not name you all, claimant counsel, but thank you for your efficient and focused questioning this week.

Crown counsel, entirely endorse Mr Morrison's thanks for your contribution. Outstanding timing on your questioning, Mr Linkhorn. That is quite an achievement. I know how hard that is to do in these complex matters, so ka nui te mihi ki a koe **thank you very much** – (inaudible 12:54:22) Mr Hunt, and also acknowledge Mr Moeahu.

To counsel from the Tribunal who are assisting, thank you. Tēnā kōrua. I also just acknowledge Ms Ferrall, who is sitting next to Ms Luiten. This is her last day at the Tribunal. She is about to depart for England, so thank you, and safe travels.

I think that is all from me, and that's it. Thank you. So I will hand back to our kaumātua and look forward to seeing you all shortly.

(12:55) JOSEPH PUKEPUKE: (MIHI)

Just before I launch into our farewell karakia, everybody, I'd just like to wish, on behalf of the Kutarere families and Whakatōhea whānau from the other side of the Waioweka River, I'd just like to wish to us all, the Crown, the Tribunal, the supporting counsellors, or whatever you call yourselves over there, lawyers or whatever, and also the technicians, I would just like to wish to us all a safe journey home to your families. I'm sure they must be missing you, and of course, I suppose you (inaudible 12:56:15), so however, with no further ado, we enjoyed you fellows' company. I enjoyed all the statements that the (inaudible 12:56:28) put across and all the cross-examination that came across the other way.

To me, it was very enlightening. I learned something about my district, Te Whakatōhea. Normally, these sort of things, I don't have any part of it. My brother used to run this sort of show, but he's just on the wayside now, and

somebody put me up front, so it's a bit of an experience for me, and I've enjoyed the honour of being part of this process.

Hope to see you fellows again some time, so I presume you will be coming back here again, or – in your future. Looking forward to it. Thank you very much.

We also enjoyed the hospitality from our cooks. We also enjoyed it, the locals. One thing I missed with our meals was a boil-up. Boiled cabbage and a pig head put on the side. They missed that. But they said, "I don't think it's appropriate to have (inaudible 12:57:33) while you people are here", so I just had to settle with rabbit food and et cetera and fancy little cakes, so I'm looking forward to you fellows going out of the way so I can go back to my normal diet.

Thank you very much and hope to see you fellows again. However, I'll get back to our karakia. This karakia of ours is a farewell one to get the big fellow to guide you fellows home safely to your families, et cetera and all supporting the people.

KARAKIA WHAKAMUTUNGA (JOSEPH PUKEPUKE)

WAIATA

KARAKIA WHAKAMUTUNGA (JOSEPH PUKEPUKE)

HEARING CONCLUDES: 1.04 PM

MINISTRY OF JUSTICE
Tāhū o te Ture

Notes of Evidence Legend

National Transcription Service

Indicator	Explanation
Long dash –	Indicates interruption: Q. I think you were – (*Interrupted by A.*) A. I was – (*Interrupted by Q.*) Q. – just saying that – (*First dash indicates continuation of counsel's question.*) A. – about to say (*First dash indicates continuation of witness' answer.*) This format could also indicate talking over by one or both parties.
Long dash (within text)	Long dash within text indicates a change of direction, either in Q or A: Q. Did you use the same tools – well first, did you see him in the car? A. I saw him through – I went over to the window and noticed him.
Long dash (part spoken word)	Long dash can indicate a part spoken word by witness: A. Yes I definitely saw a blu – red car go past.
Ellipses … (in evidence)	Indicates speaker has trailed off: A. I suppose I was just… *(Generally witness has trailed off during the sentence and does not finish.)* Q. Okay well let's go back to the 11th.
Ellipses … (in reading of briefs)	Indicates the witness has been asked to pause in the reading of the brief: A. "…went back home." The resumption of reading is noted by the next three words, with the ellipses repeated to signify reading continues until the end of the brief when the last three words are noted. A. "At the time…called me over."
Bold text (in evidence)	If an interpreter is present and answering for a witness, text in bold refers on all occasions to the interpreter speaking: Q. How many were in the car? A. **There were six.** Q. So six altogether? A. **Yes six** – no only five – **sorry, only five.** *(**Interpreter speaking** – witness speaking – **interpreter speaking**.)*
Bold text in square brackets (in evidence)	If an interpreter is present and answering for a witness, to distinguish between the interpreter's translation and the interpreter's "aside" comments, bold text is contained within square brackets: Q. So you say you were having an argument? A. Not argue, I think it is negotiation, ah, re – sorry. **Negotiation, bartering. [I think that's what he meant]** Yeah not argue.