WAI 1750 – NORTH-EASTERN BAY OF PLENTY DISTRICT INQUIRY

HEARING WEEK 6

HELD AT KUTARERE MARAE, ŌPŌTIKI

MONDAY 17 NOVEMBER 2025 – FRIDAY 21 NOVEMBER 2025

Tribunal:	Judge Michael Doogan Dr Grant Phillipson Dr Robyn Anderson Professor Tom Roa Prue Kapua Basil Morrison
Crown Counsel:	Craig Linkhorn Daniel Hunt
Claimant Counsel:	Rox Soriano Ihipera Peters Maia Te Hira Jacki Cole Raewyn Clark Matthew Kennelly Siaosi Loa Tony Sinclair Eve Rongo Meg Lamont-Russell Hannah Swedlund Michael Sharp Preston Rawiri Caitlin Fellowes Style Toleafoa Karen Feint KC Tatijana Simon-Larsen Chelsea Terei-Tipene Tania Te Whenua
Interpreter:	Conrad Noema
Witnesses:	**Day 1 - 17 November 2025** Dean Terekaunuku Flavell Miranda Jayne Horan Joseph Rawaho Pukepuke Jane Turner **Day 2 - 18 November 2025** Bruce Stirling

Day 3 - 19 November 2025
Bruce Stirling
Bella Savage

Day 4 - 20 November 2025
Ronnie Gibson
Harriette Takirua Marjorie Bell
Kate Keita Hudson
Kym Katerina Hudson
Jeanette Mitchell
Donna Tunui
Renee Boyd
Deidre Maraki
Florence De Loree
Winston De Loree

Day 5 - 21 November 2025
Harold Henry Ruff
Tui Pukepuke

TABLE OF CONTENTS

HEARING COMMENCES ON MONDAY 17 NOVEMBER 2025 AT 10.10 AM 1

(10:17) JUDGE MICHAEL DOOGAN: (MIHI) 1

(10:23) MS ROX SORIANO: (MIHI, APPEARANCE) 2

(10:25) MS IHIPERA PETERS: (MIHI, APPEARANCE) 3

(10:26) MS MAIA TE HIRA: (MIHI, APPEARANCE) 4

(10:28) MS RAEWYN CLARK: (MIHI, APPEARANCE) 5

(10:28) MR MATTHEW KENNELLY: (MIHI, APPEARANCE) 5

(10:30) MR SIAOSI LOA: (MIHI, APPEARANCE) 6

(10:30) MR TONY SINCLAIR: (MIHI, APPEARANCE) 6

(10:31) MS MEG LAMONT-RUSSELL: (MIHI, APPEARANCE) 6

(10:32) MS HANNAH SWEDLUND: (MIHI, APPEARANCE) 7

(10:32) MR MICHAEL SHARP: (MIHI, APPEARANCE) 7

(10:33) MR PRESTON RAWIRI: (MIHI, APPEARANCE) 7

(10:34) MR CRAIG LINKHORN KC: (MIHI, APPEARANCE) 8

(10:40) MS CAITLIN FELLOWES: (#3.3.37) 8
(10:50) JUDGE DOOGAN TO MS FELLOWES: 12
(10:56) DR GRANT PHILLIPSON TO MS FELLOWES: 14

MS FELLOWES CALLS 16

(11:12) DEAN TEREKAUNUKU FLAVELL: (#E042, #E042(A), #E042(B)) 16

MS FELLOWES CALLS 28

(11:54) MIRANDA JAYNE HORAN: (#E035, #E035(A), #E035(B), #E035(C)) 28

(12:15) MR HUNT TO DEAN FLAVELL AND MIRANDA HORAN: 36
(12:26) DR ROBYN ANDERSON TO DEAN FLAVELL AND MIRANDA HORAN: 40
(12:35) DR GRANT PHILLIPSON TO DEAN FLAVELL AND MIRANDA HORAN: 43
(12:45) PROFESSOR TOM ROA TO DEAN FLAVELL AND MIRANDA HORAN: 47
(12:48) BASIL MORRISON TO DEAN FLAVELL AND MIRANDA HORAN: 47
(12:52) JUDGE DOOGAN TO DEAN FLAVELL AND MIRANDA HORAN: 49

(13:05) MS TANIA TE WHENUA: (MIHI, APPEARANCE) 53

MS FELLOWES CALLS 53

(14:10) JOSEPH RAWAHO PUKEPUKE: (#E036) 53

(14:11) JANE TURNER: (#E037) 54
QUESTIONS FROM CROWN COUNSEL – NIL 70
(15:25) DR GRANT PHILLIPSON TO JOSEPH PUKEPUKE AND JANE TURNER : 70
(15:36) PROFESSOR TOM ROA TO JOSEPH PUKEPUKE AND JANE TURNER: 73
(15:55) JUDGE DOOGAN TO JOSEPH PUKEPUKE AND JANE TURNER: 78

(16:09) MIRANDA HORAN: (#E035, #E035(A), #E035(B), #E035(C)) 81

HEARING RESUMES ON TUESDAY 18 NOVEMBER2025 AT 09.12 AM 90

(09:19) MS KAREN FEINT: (APPEARANCE, MIHI) 90

(09:19) MS TATIJANA SIMON-LARSEN: (APPEARANCE, MIHI) 90

MR LOA CALLS 90

BRUCE STIRLING (SWORN) 91

(09:24) BRUCE STIRLING: (#A032, #A032(A), #A032(B), #A032(C), #A032(E), #A032(F), #A032(G), #A032(H), #A032(I), #A032(J)) 91
(10:10) MS TEREI-TIPENE TO BRUCE STIRLING: 108
(12:08) MS FEINT TO BRUCE STIRLING: 138
(12:34) MS CLARK TO BRUCE STIRLING: 146
(14:51) MS TOLEAFOA TO BRUCE STIRLING: 179
(15:22) MR SINCLAIR TO BRUCE STIRLING: 183
(15:43) MS TE WHENUA TO BRUCE STIRLING: 192
(16:17) MR SHARP TO BRUCE STIRLING: 203
(16:34) MS TE HIRA TO BRUCE STIRLING: 209

HEARING RESUMES ON WEDNESDAY 19 NOVEMBER 2025 AT 9:09 AM 219

(09:15) MS COLE TO BRUCE STIRLING: 219
(09:37) MR KENNELLY TO BRUCE STIRLING: 229
(09:56) MS LAMONT-RUSSELL TO BRUCE STIRLING: 234
(10:24) MS RONGO TO BRUCE STIRLING: 244
(11:26) MR LINKHORN TO BRUCE STRILING: 257
(14:41) DR GRANT PHILLIPSON TO BRUCE STIRLING: 309
(14:56) JUDGE DOOGAN TO BRUCE STIRLING: 315
(15:06) DR ROBYN ANDERSON TO BRUCE STIRLING: 318

(15:49) MR KENNELLY: (#3.3.036) 323

MR KENNELLY CALLS 327

(16:00) BELLA SAVAGE : (#A039) 327

(16:35) MR HUNT TO BELLA SAVAGE: 341
(16:48) DR ROBYN ANDERSON TO BELLA SAVAGE: 347
(16:53) DR GRANT PHILLIPSON TO BELLA SAVAGE: 349
(16:59) PROFESSOR TOM ROA TO BELLA SAVAGE: 352
(17:00) JUDGE DOOGAN TO BELLA SAVAGE: 352

HEARING RESUMES ON THURSDAY 20 NOVEMBER 2025 AT 8.59 AM 356

(09:06) MR TONY SINCLAIR: (#3.3.38) 356
(09:13) PROFESSOR TOM ROA TO MR SINCLAIR: 358

(09:14) DR GRANT PHILLIPSON TO MR SINCLAIR: 359
(09:15) JUDGE DOOGAN TO MR SINCLAIR: 359

MR SINCLAIR CALLS 360

(09:19) RONNIE GIBSON: (MIHI) 360

(09:22) HARRIETTE TAKIRUA MARJORIE BELL: (#E029, #E029(A), #E029(B)) 361
QUESTIONS FROM CROWN COUNSEL – NIL 370
(09:57) DR ROBYN ANDERSON TO HARRIETTE BELL: 370
(09:59) DR GRANT PHILLIPSON TO HARRIETTE BELL: 371
(10:05) PROFESSOR TOM ROA TO HARRIETTE BELL: 374
(10:06) JUDGE DOOGAN TO HARRIETTE BELL: 374

MS FELLOWES CALLS 376

(10:17) KATE KEITA HUDSON: (#E030) 377

(10:19) KYM KATERINA HUDSON: (#E046) 379
(10:57) MR HUNT TO KATE HUDSON AND KYM HUDSON: 393
(11:01) JUDGE DOOGAN TO KATE HUDSON AND KYM HUDSON: 394
(11:25) PROFESSOR TOM ROA TO KATE HUDSON AND KYM HUDSON: 394
(11:32) JUDGE DOOGAN TO KATE HUDSON AND KYM HUDSON: 397
(11:33) DR ROBYN ANDERSON TO KATE HUDSON AND KYM HUDSON: 397
(11:34) JUDGE DOOGAN TO KATE HUDSON AND KYM HUDSON: 398
(11:35) DR GRANT PHILLIPSON TO KATE HUDSON AND KYM HUDSON: 398

MS FELLOWES CALLS 405

(11:56) JEANETTE MITCHELL: (#E032) 405

MS FELLOWES CALLS 410

(12:10) DONNA TUNUI: (#E031) 410

MS FELLOWES CALLS 415

(12:36) RENEE BOYD: (#E045) 415

MS FELLOWES CALLS 418

(12:44) DEIRDRE MARAKI: (#E044) 418

(14:35) MR HUNT TO JEANETTE MITCHELL, DONNA TUNUI, RENEE BOYD, AND DEIDRE MARAKI: 440
(14:41) PROFESSOR TOM ROA TO JEANETTE MITCHELL, DONNA TUNUI, RENEE BOYD, AND DEIDRE MARAKI: 442
(14:43) DR GRANT PHILLIPSON TO JEANETTE MITCHELL, DONNA TUNUI, RENEE BOYD, AND DEIDRE MARAKI: 443
(14:49) JUDGE DOOGAN TO JEANETTE MITCHELL, DONNA TUNUI, RENEE BOYD, AND DEIDRE MARAKI: 445

MS FELLOWES CALLS 446

(15:24) FLORENCE DE LOREE: (#E043) 447

(15:25) WINSTON DE LOREE: (#E033) 447
QUESTIONS FROM CROWN COUNSEL – NIL 463
(16:17) DR GRANT PHILLIPSON TO FLORENCE DE LOREE AND WINSTON DE LOREE: 464
(16:22) PROFESSOR TOM ROA TO FLORENCE DE LOREE AND WINSTON DE LOREE: 465
(16:24) JUDGE DOOGAN TO FLORENCE DE LOREE AND WINSTON DE LOREE: 466

HEARING RESUMES ON FRIDAY 21 NOVEMBER 2025 AT 9.01 AM 468

MS FELLOWES CALLS 468

(09:08) HAROLD HENRY RUFF: (#E047, #E047(A), #E047(B)) 468
(10:00) MR HUNT TO HAROLD RUFF: 482
(10:13) BASIL MORRISON TO HAROLD RUFF: 485

MS FELLOWES CALLS 489

(10:24) TUI PUKEPUKE: (#E038) 489

QUESTIONS FROM CROWN COUNSEL – NIL 505
(10:57) DR ROBYN ANDERSON TO TUI PUKEPUKE: 505

PLEASE NOTE: In recognising that the spelling of names, dialect, and kupu differ across hapū and iwi, we acknowledge that each kupu has a whakapapa that is valid. With respect of these differences, the following transcripts have been specified for continuity in our mahi. The following mita/dialect has been spoken in this hearing: (insert iwi). The dialectal variations have been transcribed verbatim. We have received preference from (insert iwi/rohe) for the (insert letter) to be included in the written word (although spoken without).

HEARING COMMENCES ON MONDAY 17 NOVEMBER 2025 AT 10.10 AM

KARAKIA TĪMATANGA (DANIEL REWIRI)

(10:17) JUDGE MICHAEL DOOGAN: (MIHI)

Tuatahi, he mihi tēnei ki a koe koro. Nāū i whakakakahu tā tātou nohoanga o Te Rōpū Whakamana i te Tiriti o Waitangi ki te korowai o te atua, nō reira, tēnā koe.

Ka mihi hoki ki a koutou, te haukainga, ngā maruwehi o te rohe nei, Ūpokorehe, koutou mā, tēnā koutou. Kei te tino harikoa mātou kua tae mai, kua hoki mai ki konei anō, nō reira, ka nui te mihi ki a koutou. Nau mai ki te wiki tuaono. **A warm welcome to all, Ūpokorehe, for your hospitality, we are very grateful. It is with our respects that we return here. Again, we do thank you very much. Welcome to week six of our hearing.**

My name is Judge Doogan, welcome. I will just first introduce the panel I have the privilege to sit with.

On my immediate left, Ahorangi Professor Tom Roa, and then Dr Grant Phillipson, one of our historian members and Dr Robyn Anderson, our other historian member. I keep saying far left, far right, which is kind of true in some respects, I think. Then, to my immediate right, Ms Prue Kapua who will be well known for her mahi with the Māori Women's Welfare League and in legal fraternity as well. Then, to my far right, Mr Basil Morrison, who will be well known, also, for his work in local government in particular.

So, as I said, we are privileged to be back here and as one of the whaea in the kitchen was saying to us this morning, it feels like we are back home and honestly, it does. So, we are very pleased to be back here for this week, I see we have a very full week, so, our mihi to you, Ms Soriano and your team for organising the week. We are looking forward, very much, to hearing the evidence that you have for us.

I would also just tautoko the mihi Ahorangi Roa made at the pohiri to Paiheke McGarvey and his whānau, mai i te wā pouri, and this week, we are fortunate to have Mr Conrad Noema join us as our interpreter. So, tēnā koe Conrad and thank you for being available. We are also supported, of course, by Mr Alan, I have forgotten Alan's surname, which is great, I just know him as Alan Doyle, thank you, sorry – and our hardworking staff who get us here on time, which is no mean feat.

I also just wanted to acknowledge the privilege it was for those of us on our panel that were able to attend the Te Tarata commemorations some weeks ago. And what was said about that at the pohiri also, just wished to tautoko and say what a privilege it was to be there for that occasion and to witness all those tohu on the day.

Finally, I am delighted, Joe, or Rawaho, to be able to mihi, again, to you, for your awhi and your tautoko. In the first of the weeks, we were privileged to sit here when my back gave me some trouble. You were very kind and lent me one of your tekoteko. Finally, it has made its way home, so if you just bear with me, I would just like to tuku atu, ki a koe tō taonga.

We will just take appearances from counsel, starting with those in the whare and then we will come to those online.

(10:23) MS ROX SORIANO: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, otirā, tēnā koutou Te Rōpū Whakamana i te Tiriti o Waitangi. E ngā rōia, e ngā kaimahi, tēnā koutou. E te whare, tēnā koutou katoa. E te whānau o Kutarere, te whānau o Hiwarau, tēnā koutou, tēnā koutou, tēnā koutou katoa. **I'd like to acknowledge the presiding officer and the Waitangi Tribunal, counsel, and claimant communities. To those here in this great house, the families of Kutarere, of Hiwarau, again, I must acknowledge you all.**

Ko Rox Soriano tōku ingoa, kei konei a Caitlin Fellowes, Style Toleafoa, nā mātou te tari o Mahony Horner Lawyers. E rōia mātou ngā kerēme e rua,

Wai 339 me Wai 1865, i puta mai he kōrero o rātou mō Hiwarau C i tēnei wiki. **Rox Soriano is my name, Caitlin Fellowes, Style Toleafoa, we represent Mahony Horner Lawyers and of course, we lead two claims, Wai 339 and Wai 1865. Of course, they will be speaking towards the Hiwarau C land block.**

He whakapākehā.

We would also like to take this opportunity to acknowledge past and present owners of Hiwarau, part of Hiwarau C and also to mihi, hugely, hugely mihi to the whānau in this whare and the journey it took to get here to have their claim heard. Particular mihi to matua Dean Flavell and Miranda Horan and the whānau who have volunteered to share their mamae with the Tribunal. I acknowledge matua Rawaho, whaea Jane, whaea Keita, Kym, and all the whānau who have been here. We are very, very privileged and humble to be the ones to help you get to this point in presenting your evidence to the Tribunal.

Tēnei te mihi ki a koutou, kia ora rā e te Kaiwhakawā.

(10:25) MS IHIPERA PETERS: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā. Otirā, koutou katoa ngā mema o Te Rōpū Whakamana i te Tiriti o Waitangi. Tēnei te mihi maioha ki a koutou katoa. Ka huri hoki ki ngā kaimahi, ngā kaihāpai o tēnei nohoanga, ka nui te mihi ki a koutou e kaha whakariterite ana i tēnei nohoanga. Otirā, ki te haukainga anō hoki, āe, he hokinga mahara ki a hoki mai ki waenganui i a koutou, nō reira, ka nui te mihi. **Thank you, Judge, and of course the Waitangi Tribunal before me, it is my privilege to acknowledge you. And of course, officials, dedicated staff, and –**

Ko Ms Peters tōku ingoa. E whakakanohi ana ahau i te kerēme mō te hapū o Ngāti Patumoana, ko Wai 1775 te nama kua rehitatia tā rātou kerēme.

Tēnā rā koe, tēnā tātou.

(10:26) MS MAIA TE HIRA: (MIHI, APPEARANCE)

Ata mārie te Kaiwhakawā, otirā, koutou o te paewhiriwhiri o tēnei Rōpū Whakamana i te Tiriti o Waitangi. Ka tahuri hoki ngā mihi ki ō koutou ringaringa, waewae, e pikau nei e tēnei o ngā nohoanga ki Te Poho o Tamaterangi, te whare e tu nei. Tātou kua huihui mai nei i tēnei ata, tēnā rā tātou katoa. **(Audio begins at 10:26:26)…here within Te Poho o Tamaterangi, who we have gathered in this space, I wish to acknowledge.**

Ko Ms Te Hira tōku ingoa, kei konei ahau no te tari ture o Annette Sykes & Co, e whakanohi ana mātou i te kerēme Wai 558, he kerēme tērā mā, mō te hapū o Ngāti Ira o Waioweka. Te kerēme Wai 2510, ko te kerēme tērā o te whānau Kahika. Te kerēme Wai 2728, ko te kerēme tērā o te whānau Campbell. Kei konei hoki a Ms Cole ki te whakakanohi i te kerēme Wai **(unclear 10:27:11)**, ko te kerēme tērā o te hunga nā rātou ngā whenua o te quarry o Moutohora. Ka tuhono mai a Ms Feint KC, hei āpōpō, ki te whakakanohi i te kerēme o te hapū o Ngāti Ruatakenga, **Ms Te Hira is my name, I represent Annette Sykes & Co and representing this claim is in respect for the hapū of Ngāti Ira of the Waioweka. This claim is through the whānau Kahika. Representing the family of Campbell. Ms Cole is present, representing Wai (inaudible 10:27:14), that's representative of the landowners of the quarry of Moutohora. Ms Feint KC, she will be present tomorrow, representing Ngāti Ruatakenga.**

Kāore e tawhiti ngā whakaaro ki te hunga mate, ngā mate huhua o te wā, rātou kua taka ki tua o paemaumahara. Kua kotahi tau te rangatira o Te Whakatōhea, a Ricky Lee Tapuni Mitai e ngaro ana i te tirohanga kanohi, nō reira, ki a ia, otirā ki te iwi whānui, nei rā ngā whakaaro ōhāki ki a koutou. **I have to acknowledge our dear loved ones who have since passed, Ricky Lee Tapuni Mitai, he is a recent one who has just passed. Again, I wish to acknowledge them and what the bereaved families are going through at this point in time.**

Tēnā tātou.

(10:28) MS RAEWYN CLARK: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, ngā mema o te rōpū, tēnā koutou katoa. Ngā haukainga, kia ora, ngā rōia katoa, tēnā koutou. **To Judge and the esteemed panel members, and of course, representatives of our homes.**

Counsels name is Ms Clark, I am representing a number of claims, Wai 1781, Ngāi Tamahaua, the named claimant Tracy Hillier. Wai 1795, Tawhirimatea Williams on behalf of Ngāti Rua and his whānau. Wai 1827, Tania and Rachel Wolfgramm and the descendants of Te Rangihaerepō. The Wai 1920 claim, also by Tania and Rachel Wolfgramm and others, an economic development claim, also, Wai 203, Te Whānau a Mokomoko.

(10:28) MR MATTHEW KENNELLY: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, tēnā koutou Te Rōpū Whakamana i te Tiriti o Waitangi. Tēnā koe e Te Poho o Tamaterangi e tu nei. Ka nui te mihi ki ngā mana whenua o tēnei rohe mō tō koutou manaakitanga, mō tō koutou aroha, tēnā koutou katoa. 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. **Our presiding officer, I acknowledge you and the Waitangi Tribunal members. Within the auspicious of Poho o Tamaterangi, I wish to acknowledge the local people for your hospitality and love for us. To claimant communities, I wish to offer my support, who have arrived today to present themselves. I do want to acknowledge your respective counsel representatives and of course, Crown Law.**

Ko Mr Kennelly ahau, te rōia o Te Mata Law, ki ngā kaikerēme tokorua, ko Takaparae Papuni no 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. **I am Mr Kennelly, I represent Te Mata Law, and two claimants, Takaparae Papuni of Ngāti Ruatakenga and of Whakatōhea, under the claim Wai 2066. Bella Savage, representing Hineatua Savage under the claim Wai 1789.**

Kei te hiahia au ki te whakamihi ki a Ms Savage, e tu ana hoki i te wharenui i tēnei rā, ka tuku kōrero taunaki ia a te Wenerei. Nō reira, tēnā tātou katoa.

(10:30) MR SIAOSI LOA: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, koutou o Te Rōpū Whakamana i te Tiriti o Waitangi. **I wish to acknowledge the presiding officer, the Waitangi Tribunal members.** Counsels name is Loa, I represent claim number 2743, a claim by Annette Hale and Jim Wikotu on behalf of the late James Toopi Wikotu.

Kia ora.

(10:30) MR TONY SINCLAIR: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā. He mihi tēnei ki tō rōpū, e whakamana te Tiriti. Whakatōhea, Ūpokorehe, he mihi ki a koutou. Tātou katoa, tēnā koutou. **I wish to acknowledge your team, the Waitangi Tribunal. Whakatōhea, Ūpokorehe, I wish to acknowledge you, and of course, to all of us present.**

Sir, Sinclair appearing for Ngatahi Law for Wai 1794, Turanga Pikitoi hapū. They will be presenting evidence this week and we have with us today, Harriette Bell and her whānau.

Sir, I would also like to acknowledge the Wai 87 committee, kuia and kaumātua who are with us this morning as well.

Sir, I am appearing today, being assisted this week with Glenis Fleet, this is her first appearance before the Waitangi Tribunal, Sir.

(10:31) MS MEG LAMONT-RUSSELL: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, otirā, tēnā e Te Rōpū Whakamana i te Tiriti o Waitangi.

May it please the Tribunal, counsels name is Ms Lamont-Russell. I am joined today by my senior, Ms Rongo, we appear for Wai 78, a claim brought on behalf of Ngāi Tai.

Kia ora.

(10:32) MS HANNAH SWEDLUND: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, anō hoki, ki a koutou ngā mema o Te Rōpū Whakamana i te Tiriti o Waitangi. **I wish to acknowledge you, Judge, and the Waitangi Tribunal.** Ko Ms Swedlund ahau, ka tū nei ahau mō **I am Ms Swedlund representing –** Wai 1092, the Ūpokorehe claim. Wai 1787, the Rongopopoia hapū claim, and Wai 3272, the Ūpokorehe settlement claim.

Tēnā koe.

(10:32) MR MICHAEL SHARP: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā. Anō hoki, tēnā koutou Te Rōpū Whakamana i te Tiriti o Waitangi. I appear for Wai 2160, a claim on behalf of Ngāti Muriwai hapū.

Your Honour, just raising a matter regarding my client **(inaudible 10:33:13)** this week. They were, perhaps scheduled to have evidence provided by Mr Te Wheki Porter on Friday. Unfortunately, Mr Porter has suffered a major medical event and will not be able to attend on Friday. I will seek instructions and get back to the Tribunal as soon as I can this week, as to what alternative arrangement there will be.

JUDGE DOOGAN ADDRESSES MR SHARP – FURTHER INSTRUCTIONS (10:33:57)

(10:33) MR PRESTON RAWIRI: (MIHI, APPEARANCE)

E te Kaiwhakawā, tēnā koe. E Te Rōpū Whakamana i te Tiriti o Waitangi, tēnā koutou. Otirā, tēnā rā tātou katoa.

Counsels name is Mr Rawiri, appearing on behalf of Karen Mokomoko, Wai 203.

Also seeking leave to appear via livestream for the week, given we are not actively involved in this hearing week.

(10:34) MR CRAIG LINKHORN KC: (MIHI, APPEARANCE)

E Te Rōpū Whakamana i te Tiriti o Waitangi, tēnā koutou. Ka huri au ki te whare, tēnā koutou katoa. **Just to turn towards those within this great house, I wish to acknowledge you all.**

Craig Linkhorn with Daniel Hunt as lawyers for the Crown and we are obviously accompanied by Mr Kura Moeahu this week. Kia ora.

HOUSEKEEPING – TIMETABLING (10:35:12)

(10:40) MS CAITLIN FELLOWES: (#3.3.37)

I have the privilege today of presenting the opening submissions for Wai 339 and Wai 1865. So, similar to the layout of the written submissions, when we are discussing claim specifics, we will preface this with the Wai number. But otherwise, out statements are going to be made applicable to both claims.

I will also be referring to the map book as part of our presentation, and so, that has the appellation of #E041 but you should all have copies.

JUDGE DOOGAN ADDRESSES COUNSEL – CLARIFICATION OF APPELLATION NUMBER(10:40:36)

MS FELLOWES: (CONTINUES, #3.3.37)

So, Wai 339 is a claim by Dean Flavell and Ms Miranda Horan, on behalf of the Hiwarau C Trust. Wai 1865 is a claim by Mmiranda Horan and Rosalind Pukepuke, for and on behalf of the descendants of the original owners of Hiwarau B1B1 and Hiwarau B1B2.

Now, turning to the opening submissions, these were filed on the 4th of November and have the appellation number #3.3.37. referring

BEGINS REFERRING TO OPENING SUBMISSIONS #3.3.37, PARA 3

If I could take you to paragraph 3 of those opening submissions. By way of background for Wai 339, I will just run you all through this.

Wai 339 was originally filed by Tuiringa (Manny) Mokomoko in the Waitangi Tribunal on 17 December 1992. Dean Flavell and Miranda Horan, the current named Claimants of Wai 339, acknowledge Mr Mokomoko as the original applicant for the claim and note that Mr Mokomoko passed away before seeing these wrongs addressed. The Claimants believe that it was Mr Mokomoko's wish and the wish of the owners of Hiwarau C to have the titles of Hiwarau restored to the owners, therefore allowing their own tino rangatiratanga to be realised.

Wai 339 is a claim about the Crown's breaches of te Tiriti o Waitangi, by creating a statutory regime, the Māori Affairs Act 1953, that allowed for twenty individual land titles to be rescinded and amalgamated without the consent of the owners in 1969. At the time of the amalgamation, the Crown's legislation, the Māori Affairs Act 1953, then enabled the land to be vested in the administration of the Māori Trustee.

Despite repeated requests for assistance, thirty-three years have since passed, with the claim still before this Tribunal. The Crown and its agents have not yet addressed the concerns that have been raised by the Claimants. It has been repeatedly acknowledged over the years by various judges in the Māori Land Court, the difficult situation the Trust is in, but nothing has been done to resolve the compounding issues.

Today, the trustees of Hiwarau C are trying their best to maintain status quo but, as the evidence will show, are struggling. The Trust has no income – there are no leases on the block, and owners are not able to live on their former land titles.

I will now just provide a bit of a summary, just of the background of Wai 1865, that is paragraph 7 onwards of the opening submissions.

Wai 1865 was filed in the Waitangi Tribunal on 5 August 2008, by Miranda Horan. Ms Horan filed the claim at the same time that she made an application to have her whānau land blocks, formerly known as Hiwarau B1B1 and Hiwarau B1B2, partitioned out of the Hiwarau C Block under s 289 of Te Ture Whenua Māori Act 1993. Ms Horan filed Wai 1865 out of concern that the application process of the Māori Land Court and the statutory regime that it operates under will hinder the return of her whānau land blocks.

Sadly, due to the high costs, the convoluted processes, and the lack of assistance from the Crown and its agents (whether that be advice for navigating the application process or financial assistance), Ms Horan was not able to complete the process of having her whānau blocks partitioned out.

Despite the Crown establishing the statutory regime that provided the Māori Land Court with the 'special power' to cancel the Māori freehold titles of Hiwarau B1B1 and Hiwarau B1B2 and amalgamate them into one larger land block, it is Ms Horan and her whānau who have carried the burden of trying to have their whenua returned.

At paragraph 10 of the written submissions, we have outlined the principles of Te Tiriti o Waitangi that we submit are most applicable to Wai 339 and Wai 1865.

On to paragraph 17 to 26 of the submissions, we have provided a short overview of the Hiwarau block. To summarise these paragraphs, the Hiwarau reserve was allocated following the Crown invasion and confiscation in the Bay of Plenty. In 1904, the Hiwarau Reserve was partitioned into Hiwarau A and Hiwarau B, so, plate 34 of the map book, this will show the 1904 partitions.

JUDGE DOOGAN ADDRESSES MS FELLOWES – CLARIFICATION OF REFERENCE NUMBER (10:46:56)

MS FELLOWES: (CONTINUES REFERRING TO OPENING SUBMISSIONS #3.3.37)

Soon after the 1904 partition, Hiwarau A and B were then partitioned into 30 individual land blocks, including the Wai 1865 whānau land blocks, Hiwarau B1B1 and B1B2. So, you will also find on plate 36of the map book, so, two pages over, there is a map of Hiwarau prior to the amalgamation in 1969. So, we believe a number of our witnesses may refer to this plate as it will show their individual whānau land blocks.

JUDGE DOOGAN ADDRESSES MS FELLOWES – CLARIFICATION OF EVIDENCE (10:48:51)

MS FELLOWES: (CONTINUES REFERRING TO OPENING SUBMISSIONS #3.3.37)

When we refer to wanting to go back to the land blocks prior to the amalgamation, this will be the map that we will be referring to.

So, carrying on with a summary of Hiwarau Reserve and the Hiwarau Blocks.

Under section 435 of the Māori Affairs Act 1953 the Māori Land Court rescinded the title of 20 individual Māori freehold titles and amalgamated those into Hiwarau C. So, when you go over to the next page of the map book, that will be when we discuss Hiwarau C, that is what it looks likes at the point of amalgamation.

The witnesses assert that they, and their whānau, did not consent to the amalgamation of their whenua, with many not being aware of the amalgamation until after the process was completed. The Hiwarau C land block was at the same time, placed under the administration of the Māori Trustee.

(10:50) JUDGE DOOGAN TO MS FELLOWES:

Q. Sorry Ms Fellowes. It just might be convenient to just make sure we have understood what the figure 10, which shows Hiwarau C after the amalgamation. Forgive me if this sounds like a silly question, but the sub block shown within the bigger Hiwarau C areas, for instance, A6 or the block mark B1D, B1C, they remained separate titles after the amalgamation?

A. Yes, that is correct, and this is going to be covered in the opening submissions, I believe – I will get back to you on what paragraph it is in our written submissions. But our understanding is that there were some owners or some lessees who were aware of the amalgamation hearings. They went to the Māori Land Court and said we did not want our land to be part of this. Their land blocks were then taken out of the proposed amalgamation.

Q. Yes, I have seen that and assume that some of these were those parcels. So, in figure 10 where we have Hiwarau C appearing in the lower portion of the total block, the large part of the block above that, which has, I think, ML2578, that's part of Hiwarau C still?

A. Yes, that's correct. Then, because it is kind of cut into three different sections in a way, so you will have that upper part that you were just referring to, that middle part where it says Hiwarau C and then there is also a bit of a lower area as well.

MS FELLOWES: (CONTINUES REFERRING TO OPENING SUBMISSIONS #3.3.37)

In 1992, following years of protests by owners, the Māori Trustee resigned and was replaced by the Hiwarau C Ahu Whenua Trust. Fast forward to today, the claimants are before this Tribunal, still trying to rectify the amalgamation, that they did not ask for.

If I could turn you to the Crown breaches, which is covered from paragraphs 27 to 47 of the opening submissions. I won't go through them fully in detail, but in our submissions, the Crown has breached Te Tiriti o Waitangi through:

a. The inadequate allocation of the Hiwarau Reserve;
b. The design and creation of the Māori Affairs Act 1953, in particular sections 137, 435 and 438;
c. The design and creation of the Māori Trustee regime;
d. The failure to oversee the Māori Trustee regime;
e. The Conversion Programme;
f. The failure to oversee Local Authorities;
g. The failure to assist the Hiwarau C Trust in developing housing;
h. The degradation of the Ōhiwa Harbour; and
i. Matekerepū Scenic/Historic Reserve.

The particulars of these breaches are expanded in the written opening submissions as well as in the Wai 339 and Wai 1865 amended statements of claim.

I don't intend on taking the Tribunal there, but at paragraphs 11 to 13 is the list of the witnesses who will be appearing this week on behalf of Wai 339 and Wai 1865. Those paragraphs will also traverse the key themes in the evidence.

So, from paragraphs 48 onwards, we have outlined the prejudice experienced by the claimants as a result of the Crown's breaches of Te Tiriti o Waitangi. As a result, the claimants are seeking for Hiwarau C to be de-amalgamated/partitioned back to the 1969 titles that existed prior to the amalgamation. That is, I believe, plate 34 that I was referring to earlier, that's the box that we are asking to go back to. Plate 36, my apologies.

In order to de-amalgamate or partition Hiwarau C, the claimants are seeking a recommendation from the Tribunal, that the Crown pay the cost of partitioning Hiwarau C and return it to the appropriate owners.

The claimants are also asking for the Crown to provide resources and support for other owners, including education and training and for the Crown to ensure Māori partnership and decision-making related to land use and conservation.

In conclusion, the owners are asking for the de-amalgamation of the land and for owners to be able to go back to their whenua.

Unless your Honour has any questions for us, we will maybe take a micro break and then call our first witness, Mr Dean Flavell.

(10:56) DR GRANT PHILLIPSON TO MS FELLOWES:

Q. Tēnā koutou katoa. I was unwell for the last two hearings here, so it is wonderful to be here in this beautiful wharenui, at last. Thank you for the submissions, I do have a couple of questions. The first one is, so, for the recommendations that you are asking us to make, that means that there has to be an aspect of the claim that's a contemporary claim. So, post that September, I think it is 1992, so what is the justification in terms, because that's what our jurisdiction is for us to make those recommendations.

A. With that one, that might be a question that's best for us to answer in writing, just in terms of jurisdiction with the more contemporary issues. What I could say for now is that these issues are what is happening today, the issues we have raised, which Ms Horan and Mr Pukepuke's evidence will cover, that is going on today. The inability for the owners to live on the land, that's happening today. So, they are contemporary issues, they are issues that the owners are facing today, they are fighting against the trust, that's fighting against, as well.

Q. Well, they have to be contemporary Crown actions or omissions. But anyway, I will wait to see for a written response to that because I think that is quite tricky, but important to clarify. The second question was about, in paragraph 5, you said it has been repeatedly acknowledged over the years by various judges of the Māori Land Court. It would be really helpful to have a case book of any relevant decisions.

A. We can file that for you.

Q. Ms Horan has given us the ones that Judge Fox decided, but any others, that would be helpful, thank you.

A. Yes, we will file that.

Q. My other question, just before we start. So, in order for the Māori Land Court to agree to de-amalgamate, what percentage of owners have to agree to it, that wasn't clear to me. Judge Doogan probably knows, but I thought it would be good to have an answer for the whole whare, so we know. Is it 100 percent of owners have to agree for de-amalgamation to occur or?

A. That will be something we will need to confirm, I believe there has to be a larger proportion of the owners involved in the decision. But that is something we will need to clarify and come back to you on that.

Q. Yes, because the target that has to be reached seems so high that I do not think it is reachable, but it would be good to know exactly what it is.

A. Yes, and I mean, this will be in Mr Flavell's evidence of AGMs where there are those who have been involved in attending the hui. They have always been in support of de-amalgamation.

Q. Yes, and they have about half of them in the 1990s, but that wasn't enough, so I'm just wondering how much is enough.

A. Yes, we can confirm that for you in writing.

Q. Thank you.

JUDGE DOOGAN ADDRESSES MS FELLOWES – CLARIFICATION OF JURISDICTION IN WRITING (10:59:35)

JUDGE DOOGAN:

Despite Dr Phillipson's confidence, Judge Doogan is not too sure about, without going to do some checking on what levels of support might be the threshold, I simply do not recall what the amalgamations and de-amalgamations. But I just wanted to confirm, it would assist to have some clarity about the jurisdictional point that Dr Phillipson raised. Because the focus of the opening submissions and the supporting evidence is clear, about the origin of the contemporary problem, which is the amalgamation, in the 1970s or thereabouts.

So, when it comes to what we are able to do in terms of response to that, we are constrained by the Whakatōhea settlement and need to give that some fairly detailed consideration. So, rather than waiting for closing submissions as a

way to draw some of this together. It would be helpful, while we have the evidence, we are about to hear this week in our minds, to have some further submission from you relatively soon. I just leave that with you and we can talk about when after the hearing, it would be a good time to file, just an updating position on some of this, because it would assist us while what we are about to hear is fresh in our minds. So, if you could give some thought to a more detailed submission and a timeframe, that would be helpful, thank you.

MS SORIANO:

Thank you, Sir, we will give you an update tomorrow morning as to when we can get something provided to the Tribunal. Either orally, or in writing. We are aiming for this week, though.

JUDGE DOOGAN:

Thank you.

HEARING ADJOURNS: 11.01 AM

HEARING RESUMES: 11.12 AM

MS FELLOWES CALLS

(11:12) DEAN TEREKAUNUKU FLAVELL: (#E042, #E042(a), #E042(b))

Kia ora koutou.

Ko Hiwarau me Tirotiro whetu ngā maunga e tu ake nei,

Ko Tairongo te moana me Te kakaho te awa e rere ki Ōhiwa,

Ko Kutarere me Roimata ngā marae

Ko Te poho o Tamaterangi me Te Ao Marama ngā whare tipuna

Ko Ani I waho me Te umu tao noa a Tairongo ngā whare maanaki

Ko Oturereao, Rangimatoru me Mātaatua Tihei mauriora.

I come to the Te Kakaho River, which leads into Ōhiwa

Kutarere and Roimata are the great ancestral houses

Tamaterangi and Te Ao Marama are the names of the respective houses

Ani I waho, Te umu tao noa a Tairongo are the houses that host people

Oturereao, Rangimatoru and Mātaatua, I acknowledge you

E mihi ana ki te atua, te kaihanga o ngā mea katoa, te pou o te ao, te pou o te ora. E mihi ana ki te marae, ki te wharenui o Tamaterangi, te whare tupuna e tu nei hei pou herenga mō tātou. Ngā mihi hoki mō te pohiri me ngā karakia e whakarangatira i a tātou i tēnei rā, e mihi. **I wish to acknowledge our lord above, for all that he gives through life and death. I wish to acknowledge Tamaterangi, this ancestral house that stands, that provides shelter for us. I wish to acknowledge the warm welcome and the prayers given to set our day.**

Ka tuku mihi ki te Taraipiunara o Waitangi, hei whakaputa, hei tō, tō mātou hari me te ngākau koa ki te kawe mai i tā mātou kerēme **(inaudible 11:14:42)**, i a tātou. Nō reira, tēnā koutou, tēnā koutou, tēnā tātou katoa. **I wish to acknowledge the Waitangi Tribunal for your presence, and we certainly are mindful and respectful with your presence here and giving us the opportunity to express ourselves before you. With that, I want to thank you very much.**

WITNESS REFERS TO BRIEF OF EVIDENCE #E042(B), PARA 1

My name is Dean Flavell. I am one of the named claimants for Wai 339, and I provide this evidence on behalf of Hiwarau C Ahu Whenua Trust.

Firstly, I offer my deepest prayers and gratitude to the guiding forces that have carried us to this moment in history. A moment where voices of our collective grievance can finally be heard, acknowledged and considered.

For generations, the weight of injustice has pressed upon us. It has been far too long since our great, great grandmothers and their children were forced to live on this reserve. A bitter consequence of their tribal lands, rivers, harbour and oceans being stripped away by the Crown, that same Crown continues to govern to govern the processes we are compelled to follow, often without question. This is why we stand here today: to confront what has been endured and to seek a path forward.

I must honour those who came before us — the previous whānau trustees who fought tirelessly to correct the wrongs of the past. Their struggle was not only against Crown agents but, heartbreakingly, against each other — whānau against whānau — individuals striving simply to survive on the last remnants of land left to them.

In 1992, Tuirirangi Mokomoko, as chairman, alongside his fellow trustees and shareholders, took a courageous stand by filing a WAI Claim with the Waitangi Tribunal. This claim accused the Crown of failing to consult with all interested parties before amalgamating individual whānau land interests, creating Hiwarau C against the wishes of its rightful owners. Within this claim were countless examples of whānau hui dedicated to reversing this amalgamation. Among those who led these efforts were whaea Keita Hudson— who is with us today — Lorraine Wall, my aunty Hinehou Josephine Mortensen, and many others who have since passed into the next life, including trustee Roka Hurihia. E te tuahine, haere atu rā — your spirit walks with us still.

And so, today, we carry a heavy burden. The task before us is immense, but I hold hope that by the end of this inquiry, the weight will be lighter, and together, we will move forward with the little that remains — strengthened by unity, guided by justice, and anchored in the legacy of those who fought before us.

But hope alone is not enough. Justice must not remain a distant dream—it must be demanded, pursued, and achieved. We call upon this Tribunal, upon the Crown, and upon every person who holds power in this process: hear us, acknowledge us, and act. The time for silence has passed. The time for excuses has ended. The time for justice is now. Let this inquiry not be another chapter of delay, but the beginning of restoration, reconciliation, and rightful return.

I am the current Chairman of the Hiwarau C Trust, and as such, I have the responsibility and the mandate to bring this claim on behalf of the shareholders/owners of Hiwarau C to seek a recommendation from the Waitangi Tribunal for the Crown to assist us in de-amalgamating Hiwarau C.

MY CONNECTION WITH THE HIWARAU BLOCK AND KUTARERE MARAE

A little of me.

My connection to the Hiwarau block is through my mother, Rosalind Moengaroa, along with her siblings. We are the descendants of Erana Tomeha (Erana Akeake) and the original group of kuia and children who were given land following on from the raupatu. I have attached the original list of owners for Hiwarau as ‘Appendix A’.

Prior to the amalgamation, Hiwarau A1 was our whānau block and will be the land block we continue to hold interests in post de-amalgamation. The block was originally granted to Erana and her children before eventually being passed down to my mother and her siblings, and others.

As I got older, I started to ask more questions about my history and the history of my whānau. In 1995, I received a tono from our elders at Kutarere as they were planning to build tēnei whare, this house here. I accepted this tono and carved the whare, Tamaterangi. It took my seven years to learn the history of Hiwarau, Kutarere, Ūpokorehe. I feel truly privileged to have had this

experience and even more so, to share it alongside our kaumātua. I witnessed the deep respect and value they hold for the whenua.

THE HIWARAU C TRUST

My first involvement with the Trust

I first became involved with the Hiwarau C through my Aunty Josephine (Hinehou) Mortensen, who had been a trustee of the Hiwarau C Trust since 1992.

In the 1990s, Aunty Josie called a meeting at Roimata Marae for all the Hiwarau owners to attend. There were only fifty to sixty people who attended this meeting. That was the largest owners meeting to have taken place at that time. Those who attended this hui still considered the land in their whānau allotments even though the amalgamation of Hiwarau C had taken place earlier in 1969. My Aunty Josie was very creative, and she made a map of the individual whānau blocks prior to the 1969 which I've included with my written brief.

My aunty was the art teacher at Ōpōtiki College, also the first Māori women to graduate ELIM. Just a little nod to that.

The Māori Trustee

When our land was amalgamated in 1969 by the Māori Land Court, the Māori Trustee was also appointed to administer our land. This was before I got involved, obviously. I only know parts of what happened, but our grievance with the Māori Trustee was the sheer lack of them not doing anything.

When the Māori Trustee was appointed by the Māori Land Court, there was no plan presented to the owners nor explanation for what was happening, no communication with the owners, and money was paid to the Māori Trustee despite minimal work being done. Funds were owed to the owners, which were often never paid out by the Māori Trustee. When the Māori Trustee and the

owners would meet, there was always talk of change and positivity, however, this never eventuated.

Due to the inconsistency of the Māori Trustee despite numerous repeated requests from the owners due to significant rental arrears, the trustees had no choice but to take the De Loree house. I have sympathy for both the De Loree whānau, for those trustees like my Aunty Josie and the other trustees as they were all put in a difficult position due to the amalgamation and the administration of the Māori Trustee. If the amalgamation had never happened, we do not think this situation would have occurred.

The Attempt to Cancel the Amalgamation in 1995

In 1995, Aunty Josie filed an application with the Māori Land Court seeking an order for the amalgamation of Hiwarau C to be cancelled. A judgment relating to the application has been attached to my written evidence.

Aunty Josie created many hui announcements at this time. The purpose of these announcements was sharing information with the Hiwarau C owners and to share information about Aunty Josie's attempts to have Hiwarau C de-amalgamated. Many owners supported Aunty Josie, and her efforts have the land de-amalgamated, and she worked really hard to get as much information as she could.

I have, as part of my evidence, a draft Brief of Evidence that my Aunty Josie had started to write. But sadly, before she was able to complete it, she passed. Her statement outlines her attempts to have the land de-amalgamated dating back to the early 1990s and her attempts to get owners involved with this block. I hope that sharing this statement ensures her kōrero is heard and that all of her efforts are recognised.

Becoming a Trustee of Hiwarau C Trust in 2010

I became a Trustee for the Hiwarau C Trust at the same time as my co- claimant, Miranda Horan, back in 2010. The Trustee at time were Miranda, Aunty Josie, Phillip Wilson, Wiremu Edwards and me, although Wiremu stepped down after four months.

It was the moment I stepped forward to carry the kaupapa of Wai 339, and it became my responsibility to lead and progress the claim through the Waitangi Tribunal process. I took on this role as a representative of our whānau and our whenua.

At my first meeting, our first action was to investigate the amalgamation of Hiwarau C and look for ways to de-amalgamate the land. There was a strong desire to undo the amalgamation but since then, the only thing we've managed to progress is the owner meetings. But I can tell you now that since 1969 and to this very day, the owners have been asking to de-amalgamate Hiwarau.

The Status of Hiwarau C Trust Since 2010

At paragraph 44 of my written evidence, I begin to describe the status of the Hiwarau C Trust since I was appointed to it. In this presentation summary, I will touch on only a few key points.

Leases

Phillip Wilson was the last lessee of the whole Hiwarau C block. Since then, there has been no lease over the land. Therefore, there has been no revenue being brought in to cover the costs of rates.

Occupation Orders

Presently, we as Trustees are trying to accommodate whānau to live on their land by granting occupation orders. This is a timely and expensive process for both the Trust and the applicants. I do not believe occupation orders are an adequate alternative to de-amalgamation as when land is granted under

occupation, the area may not reflect the shares that person has. I believe de-amalgamation is the only way forward to ensuring it is kept accurate.

Squatters

Besides the occupation orders, and because of how expensive and costly they are, there are also squatters who are living on the block. For some, they may whakapapa back to the land, but they do not have a legal right to live there. It is sad that we have people who are in this situation because we know people need housing and people are struggling.

Aunty Josie once said how she used to call the police, asking for assistance with the squatters. The police would take their time getting to Hiwarau, as they knew it meant trouble. The Ōpōtiki District Council also would often not assist with the squatters as they were “on Māori land”. It is wrong that we would have no assistance from the Council, yet they had no issue in collecting rates from Māori land.

Rates and Services

During the time Phillip Wilson was the lessee of the Hiwarau block, Aunty Josie would use the limited funds from the lease agreement to pay the rates – because there was no other income into the Trust. Aunty Josie got by, but it was due to her continuous efforts and love for the whenua and for our whānau. Today, Hiwarau C is burdened with rates from both Ōpōtiki District Council and the Bay of Plenty Regional Council. The costs of rates continue to rise year after year, and now with both councils charging rates, the financial pressure has doubled.

The most frustrating part is that we cannot benefit financially from the land. There are no visible benefits for the landowners or whānau living there. There are no connected power services past Roimata marae, nor do we have access to support or funds to have safe and legal roads aside from Hiwarau road. We have no support from the councils and instead of supporting our efforts to

maintain and protect our whenua, we're penalised by a rating system that was never designed with Māori landowners in mind. Therefore, we made the decision to stop paying rates to both councils. We have begun an application for a rates remittance with the Ōpōtiki District Council but have had no luck in getting a meeting with them as of yet.

One of the aspirations that I have for this Tribunal process is not only for the block to be de-amalgamated, but also for infrastructure including proper roading, power and water to be put in place so that people are enabled to move back to their whenua. My aspiration for the design of the infrastructure is for the Crown to fund workshops and wānanga with owners, so that we, the Trust, can hear what the owners want and how it should be designed.

WĀHI TAPU AND PĀ SITES ON HIWARAU C

As part of our plan to return Hiwarau back to the pre-amalgamation land blocks, we also look at the wāhi tapu sites, specifically the pā along the Hiwarau ridge and trying to find out what kind of protection they may need.

Hokianga Island (Te Motu) is also included, just to explain that Hokianga Island is also included in the Wai 339 claim – was one place that as kids we used to swim across the Harbour and play there. As we got older, we were told not to go to the top of the Island as there is an urupā situated there. As young adults, we came to understand the deep significance of the urupā as the resting place of our kuia, Erana Wi Akeake and my koro's brother, Kotua, who tragically passed during the influenza epidemic. Learning this transformed the whenua into a wāhi tapu in our hearts, a place of reverence and memory.

Pā sites

The Matekerepuru Historic Reserve was taken by the Crown in 1912. Despite the Crown reserving the land under the pretence of protecting and preserving the area, a powerline has since been placed on and over the Whakarae pā which has damaged the site. Appended to my evidence as 'Appendix H' are

photographs of the power pylon that is located on Whakarae pā. At the moment, as the Chairperson of Hiwarau C, I am involved in discussions with North Power who are wanting to replace the powerline that stands upon Whakarae pā. Although this is ongoing, nothing has been formalised as of yet.

EXPERIENCES WITH HIWARAU AND ŌHIWA HARBOUR AS A CHILD

Our childhood memories taught us to respect the harbour and the abundance of kai it provided, giving rise to the name, Te Kete o Tairongo. As a child, my favourite mahi kai was sweeping the mudflats with a broom made from mānuka. Searching the sea snails called tītiko. We would sweep them into piles, gather them and then take them to Hiwarau to cook over an open fire. Once they were cooked, our kuia would use darning needles to pop off the light shell off and enjoy the tītiko as a delicacy. Especially when prepared with pūhā. We did the same with kūtai, muscles, a process known as tāroi. Another cherished activity was collecting pīpī and tūangi and cooking them over a fire.

Both my koroua were fishermen and would spend countless hours gathering kaimoana. I cherished all the time we spent together on the water, the stories we shared, and the lessons passed down without words, but just observation. These were memories that were woven into the fabric of who I am today and who my children and mokopuna will be in the future. My koro shared with me a story that stayed close to his heart, about his two uncles who were brothers. They ran into trouble on the water while fishing at the moana, I believe they were gathering kai for the opening of Maromahue Marae and sadly, they died, their bodies were eventually found.

In honour of their memory, their sisters took on new names as a gesture of aroha and remembrance – Nanny Onewhero and Nanny Te Aramiria. Those two kuia on the front of our doorway there, you see a waka standing up on its end. That is the waka that represents the brothers that went out fishing. The figure on the top and the bottom are our nannies, they are the first thing, when you enter this house, they are to the right hand side of the whare. This is a

story of tragedy, but also of deep whānau love and enduring power of whakapapa.

Another memory that stands out is surfacing from the water with a kete full of muscles, only to find an octopus perched on top. As I lifted it to the boat, someone grabbed it and placed it on my head. Everyone roared with laughter and at the time, I did not find it funny at all. But now I see it as one of those unforgettable moments that becomes part of your story. So, that's where we all learnt to dive for muscles in the channels and Ōhiwa.

That place, that experience shaped me. It taught me more than just gathering kai, it taught me how to read the harbour, how to set nets for kanae, pātiki, how to read the flounder markings, how to plonk got flounder, and where to find tio clinging to mangroves. I learnt that snapper, tāmure, thrived because of the mass pipi beds and most importantly, when not to take kai from the harbour. Those lessons came with the presence of spiritual kaitiaki who revealed their tohu, like the tiramaka reminding us of the balance we must hold.

THE CHANGING LANDSCAPE OF ŌHIWA HARBOUR

Ōhiwa Harbour has undergone significant changes during my lifetime. Many of which have been detrimental environmental effects. The landscape is no longer what it once was. Where there was once firm sands, there is now soft mud mixed with sand, sinking to your knees in some places, making it difficult for those gathering kaimoana. The unchecked spread of mangroves has further altered the harbours natural balance.

Our rivers in Ōpōtiki have also suffered pollution from nearby farms have degraded water quality to the point where we can no longer drink directly from rivers, streams, without boiling water first. This contamination has wiped out īnanga and the removal of Willow trees has considered evasive as eliminated the shade for tuna – relied on for shelter.

These changes have had a profound impact on our environment and our whānau. They have disruptive traditional practices, diminished food sources and eroded natural systems that have sustained us for generations.

In conclusion, as past and present Trustees, we have spent years doing everything in our power to preserve the integrity of Hiwarau C block – holding the line, keeping it intact, in the hope that one day de-amalgamation will be possible, and the process will be smoother for our whānau. During this time, we have had to carry the burden of expectations, facing the anger and disappointment of whānau – whether justified or not – who simply want to see the land returned to its original partitions, the original blocks. Achieving de-amalgamation of land or obtaining partition orders through the Māori Land Court is extremely challenging, even with the full support of the Trust. The Trustees are caught in an incredibly tough position – torn between the constraints of bureaucracy and the heartfelt aspirations of our whānau.

RECOMMENDATIONS FROM THE TRIBUNAL TO THE CROWN

We, the Hiwarau C Trust, on behalf of the shareholders who have given us the mandate to prosecute this claim, past and present, ask that the Tribunal help us make the de-amalgamation of Hiwarau C a reality. We ask the Tribunal to make the following recommendations:

a. That the Crown cover the costs of surveying the Hiwarau C block, as the cost continues to be a significant barrier to the de-amalgamation;

b. That the Crown to cover any incidental costs relating to the de amalgamation process, including but not limited to organising hui with Hiwarau owners, assisting with the Māori Land Court processes, staffing for the Court to undertake the work, owners' legal costs, and providing resources to help us ensure that we can ensure that all Hiwarau owners know their connection to their own whānau land;

c. For the Crown to cover the costs of putting in place infrastructure that would enable whānau to move back onto Hiwarau. This infrastructure would include proper tar sealed roading that provides access to all Hiwarau land blocks, power lines, and water; and

d. For the Crown to assist us with papakāinga funding so that we can restore Hiwarau C to the once vibrant community it was, prior to amalgamation and prior to the urban drift.

Kia ora tātou, ka mutu a mātou kōrero.

HOUSEKEEPING – TIMETABLING (11:49:12)

HEARING ADJOURNS: 11.49 AM

HEARING RESUMES: 11.53 AM

MS FELLOWES CALLS

(11:54) MIRANDA JAYNE HORAN: (#E035, #E035(a), #E035(b), #E035(c))

Kia ora tātou.

This has been a very long – I have been waiting a very long time to have this kōrero on behalf of myself and on behalf of my whānau, so, firstly, I would like to acknowledge my nanny Hora, my koro Kimoro, my nanny Te Meinga. My uncle Bruce Pokepoke, who is not here today because of his ill health. But it was uncle Bruce who dragged me kicking and screaming into Māori land trusteeship and on to many other boards, so I have to acknowledge that.

WITNESS REFERS TO BRIEF OF EVIDENCE #E035(b)

I would also like to acknowledge my husband, Brendan, without whom, I would have given up a long time ago. It has been his strength and his belief in me, and also, his budget that has kept me going, kia ora darling. As you know, the process, it takes a long time, and I know for many whānau, it is budget and time

that prevent us, or we give up before we get to this point. So, it is a laugh, but it is actually a real thing.

My connection to Hiwarau is through my nanny **(spelling 11:55:41)**, koro Tom, and nanny Hora **(spelling 11:55:46)** and down then, through our nanny Te Meinga.

At the time of the amalgamation, my whānau were probably quite lucky, because we still lived here, we still had whānau on the land block. So, when it was amalgamated, we still came home because we had out batch at our papakāinga here. So, for others that didn't have that, or who may have had older relations that then passed away, they didn't have that connection, we were lucky we did. we are one of the few lucky ones.

After the amalgamation, my koro and nanny were backwards and forwards to a lot of different hui to try and get the land out, and eventually settled for a lease, which was pretty much for the lifetime of my nan and koro, and there was no right of renewal, no right of anything after that. So, my koro passed down to my uncle Bruce, the burden of extracting our land back and in 2005, my uncle Bruce shoulder tapped me. I have a background in real estate and contract law, so, I was the one that got that one.

My earliest memories, I was born in Invercargill. My father followed work down that way, and he made it a priority to bring us back here to make sure we were connected to our whenua. We would come back every year and my earliest memories are of the abundance of living in Hiwarau. We would come back and there was kai for Africa. I would run around with my cousins and other whānau from neighbouring properties, and we would just eat wherever we were. There were cockles, Dean referenced cooking on the beach, we would light a fire, chuck a tin on it and we would eat wherever we were. Everywhere you went, there were apples, plums, tangelos, watercress, aunty Mavy had corn, we would just roam around on horses and eat.

I make reference to that because it's not like that now. As people have lost their connection through this amalgamation because they weren't there, they weren't able to be there. The land has lained fallow and it hasn't been worked and loved like it was.

I can tell a slight story, side track, I actually spoke to uncle Bruce, this would have been maybe 10, 12 years ago. I went home and he says to me: "Hey, niece, what's those food banks, have you heard of those things, those food banks?" I explained, I went: "Uncle, that's where, when people don't have kai, they can go there, and people can give them kai to feed." He sat there with his hand on his stomach, and he looked out at the water, and he looked around at his garden, and at all the fruit trees and I could see his face, he just couldn't: "Food banks, food banks." He reckons. Even a couple of hours later, I'd see him sitting there: "Food banks." Because the difference of living in your whenua and being able to eat and have that abundance and knowing that compared to this deficit, was something that was completely foreign to him.

I just make reference to that to say that's what it was like compared to what it's not like now.

My experience with the amalgamation, the Hiwarau blocks being amalgamated, my understanding is that my grandparents never received the letter. There was a letter that was sent out to owners, they never received it and when they found out that it had been amalgamated, they then spent years going to hui, trying to figure out how to get it out. Eventually settling for this lifetime lease.

Dr Phillipson, you had a question earlier about jurisdiction being post 1992 and contemporary. As part of my evidence, I just want to draw your attention to Appendix C and you don't need to read it, I will read it to you, but you can reference it later. So, appendix C has a ruling there, which was in 1992, Mary Kora Erickson was successfully able to partition or de-amalgamate her block, B1A from Hiwarau C.

In the judgment and I can read it to you now, the judgment states, what happened is, you know, they had all the hui, people came, people didn't come. Judge Doogan, you looked at that map there and you were sort of questioning why there was a bit of Hiwarau here and a bit of Hiwarau there, and a bit in the middle. There were eight parties that went to those hui and said, we don't want to be part of this. A lot of the other owners did not go, so that's why the original letter went out saying we are going to amalgamate 30 blocks. People turned up and said we don't want to be part of it, the order was amended to 22 blocks.

In the judgment from Mary Erickson, the judge states:

> In the interest of natural justice, the parties were entitled to notice of the amendment of the application and to be heard thereon.
>
> The Court, in failing to give such notice and proceeding to make orders on the amended application without notice to the applicant, committed an act of omission sufficient to justify the variation of the order.
>
> According, there is an order under section 452, amending the orders made under section 435 and 438 on the 4th of August 1969, by deleting reference to Hiwarau B1A Block.

At that point, when they actually said, hang on, the owners should have been consulted and were not, and therefore, they, with the stroke of a pen, gave Mary Erickson's block back to her beneficiaries. At that point, they could have unstitched the whole lot, they had actually said, they had made this ruling – 1993 was when the ruling was done. So, if that applies to her block, it applies to all of the blocks. At that point, there should have been, knowing that there was an appetite for de-amalgamation, knowing that there was a Māori Trustee that was being removed, at least at that point, the Crown should have, in my opinion, in the interest of natural justice, had the kōrero then.

With the stroke of a pen, they gave her land back.

JUDGE DOOGAN:

Just to be clear, we are talking about the Court here?

MIRANDA HORAN:

We are talking about the Court, yes. So, you will see it attached to my evidence, yes, it is appendix C, and it is page 44 onwards, but I am just reading you the last three sentences of the judgment.

JUDGE DOOGAN:

I am just making that observation, simply to distinguish the Court from the Crown.

MIRANDA HORAN:

Sorry, yes, I am distinguishing – my apologies, yes, so, yes, the Court made that ruling at that point.

Also, when you have a look through the evidence there, I'm just also making reference back to a point about how many percentage of owners need to agree to de-amalgamate. There's no evidence that there was a percentage of owners actually approving to amalgamate – or I think there was eight, sorry, there's reference to eight owners said amalgamate.

CONTINUES REFERRING TO BRIEF OF EVIDENCE #E035(b)

Just going back to my evidence.

So, from 2005, I went down the path of trying to partition our original shareholdings. It was a long and arduous process and as part of it, we had a number of hui with owners and we were lucky to have the support of Matthew Oakes, who was a surveyor at the time, and he had surveyed the entire block. Unfortunately, we weren't able to get our block out, we did have a ruling approving the partition, but the final cost to survey the entire block with our bit taken out was to prohibitive to proceed.

As part of the application process, we also established that some of our shares had been incorrectly given to another whānau, so that also took a lot of time and effort to unpick and get those shares back.

With regards to the management of Hiwarau C, I became a trustee in 2010, at a meeting at Awahou, with Dean Flavell. The first trustee meeting we attended, there was a vote about pursuing de-amalgamation and that has been ongoing, and I have supplied minutes to that effect to the Court as part of my evidence, along with all of the attendance registers. So, every single hui we have had, every AGM, it's an ongoing theme, so, hence the reason why we are here today.

As trustees, one of the issues that Dean referred to are the squatters on the block. When people come back to the land, they don't go to other people's part, they go back to their historical blocks. So, the map that you've got, where everyone's historical blocks are, those are the bits that they want to go through. When we look at licenses to occupy, the Māori Land Court allow for a license to occupy over any part of the legal entity known as Hiwarau C. We find ourselves trapped between the L-A-W and the L-O-R-E. In that the Māori Land Court say you can go anywhere, but our people say, don't you go on my block, that's mine, and we also have people going, I don't want your block, I want mine.

So, the feeling for people is not, we just want to be anywhere, they want that connection back to their historical blocks, and I probably don't need to reference all the reports that's talked to people's identity and connection with their whenua, and how that helps everyone.

We have had a couple of licenses to occupy, but again, the costs are very prohibitive, and they are still under the auspicious of the trust. So, there is no tino rangatiratanga, there is no exercising of people's mana motuhake over their own place. And because they are only allowed their little, small piece, they are also not managing it and it's not being farmed the way it used to be from when I was little. When I look back and I can see the abundance, and that's what we

want to see back there, the land being utilised and abundant and being cared for by the people.

I just wanted to have a quick, just highlighting the rates.

As part of the process of partitioning, or one of the things we noted is that there has been double rating. So, when the amalgamation happened, there were people like my whānau that were living on the block, and there are other whānau that were also living on the block. We were able to track down that the rates, even though Hiwarau C was being charged rates for the overall block, we had people that were still being double rated because they were still on their ancestral lands. And even though those titles were cancelled, they weren't cancelled through the District Court's and people are still being rated.

You may say, well, why are you paying the rates, a lot of our whānau do have a little PTSD from when land was taken away from people for not paying rates, and also, people want to pay their rates because this is their land. By giving up that, you are giving up that acknowledgement that you belong there and its yours, and yours to take care of.

So, we have tried to go and deal with Ōpōtiki District Council and other councils to try and unpick that figure out, get some rebates back from these people that have been paying rates for decades. We are just told to go back to the trust, and we are the trust, so we don't get to go anywhere. So, as I suppose, part of what I'm asking from the Tribunal is a bit of a report and a look into that.

JUDGE DOOGAN:

Just on this particular topic, just to be clear, the double rating is for subsections within Hiwarau C, not those parcels that were left out?

MIRANDA HORAN:

Correct, the subsections within Hiwarau C. So, when you look at it overall and you look at the legal title, you have the legal title and that's what we get on our land rates. Then, within that, you have say, where our whānau were, we have

been paying rates since prior to the amalgamation, we continued to pay rates after the amalgamation as well.

CONTINUES REFERRING TO BRIEF OF EVIDENCE #E035(b)

Our aspirations.

I think, our whānau knew how to utilise our land and live off it. Today, there are people going hungry, who no longer know how to live off their own whenua. They have no place to go.

Our aspirations for our community at Hiwarau C is to be able to have people back on their land. Living, connected, with community, and able to grow their own kai, and allow their kids to grow up surrounded by whānau on their whenua, knowing where they come from and being part of that community and part of their local marae.

What I would ask the Tribunal is to assist us in de-amalgamating Hiwarau C on the basis that it was not a legal process and that we deserve to at least, from 1993 onwards, have the opportunity to have that discussion on the amended proposal.

We would also ask for better roading and a new bridge into Wainui Road, into Hiwarau. Services like power, and also, to pay for the surveying costs and associated costs of de-amalgamating the land block back to the original titles. The Māori Land Court hold a record of succession, so we are able to track it back.

My koro said in his later years, that before he goes, he wanted to sort out our whānau land and have it back under our control. As I said, this was passed down to my uncle Bruce, who then passed it down to me and I do not want to pass this on to my children, it shouldn't have to go another generation.

Kia ora.

MS FELLOWES:

Tēnā koe, Miranda. I just have one question, well, if you don't mind, could you please just go to paragraph 22 of your summary and just clarify on the partition order for B1B2 and the issues with the survey.

MIRANDA HORAN: (CONTINUES REFERRING TO BRIEF OF EVIDENCE #E035(b))

Our partition order for B1B2 was granted in 2015, subject to a survey. As part of our partition, we tried to get B1B1 and B1B2 back out of the block. My aunty was in the process of succeeding some shares from our nanny **(spelling 12:13:39)** and unfortunately, our aunty passed away prior to that happening. Our survey was based on us having both blocks out with aunty Wini having been able to successfully succeed to the shares from nanny **(spelling 12:13:56)**, but because she passed away, that didn't happen. So, when the judge made the ruling for the partition, it was on a lesser number of shares, which meant that the survey no longer matched.

So, when they gave us the partition, we were then instructed to get another survey done. The original survey, which was done by Matthew Oakes, was done as a way of supporting us to set a precedent for other whānau to follow. Unfortunately, by the time this came about, Matthew was no longer able to do that. So, we weren't able to survey the lesser amount because of the processes through the land court of succeeding, not having it, getting the lesser amount, and then having to re-survey the entire block, so it has just been sitting there.

Kia ora.

HOUSEKEEPING (12:15:26)

(12:15) MR HUNT TO DEAN FLAVELL AND MIRANDA HORAN:

Q. Tēnā kōrua, thank you for your evidence and your summaries presented today. You were just speaking about surveys, so I thought I'd jump to that topic straight away. One question we had in terms of the need for a survey, your counsel, my learned friend, Ms Fellowes, when she was

presenting submissions, she took the Tribunal to map book, which showed a survey previously done. I think that was, I want to say, plate 36, which I understood, showed the blocks prior to amalgamation.

WITNESS REFERRED TO NEBOP MAP BOOK

This is just a question as to whether you might have considered this, or the owners have considered this. We already have that survey, is there a question as to – because presumably, that survey would have involved survey work and there will be underlying data. Is there any extent to which that can be picked up and used again, like, does the survey need to be redone or?

A. [Miranda Horan] Absolutely, that survey can be redone, but those pegs have long gone. So, if someone could put those pegs back so we could see where those lines actually are, then yes, that survey would still be valid.

Q. Thank you, and sort of in a similar vein, Mr Flavell spoke about Ms Mortenson's application in 1995, which was declined by the Māori Land Court. Panel member, Dr Phillipson mentioned that there were about, I think, half the owners – sorry, Mr Mortenson was able to present a record that about half the owners had supported the application for partition. And I think, and I don't want to put words in his mouth, he was getting that from Mr Johnston's report, which refers to, I think it gives that number. Sorry, this is a long winded way of asking my question. What are the steps that have been taken since, for another application, or to put together – have steps been taken to put together another application for partition to the court, since then?

A. [Miranda Horan] There wasn't much of an appetite at the Māori Land Court for de-amalgamation and even when we had the hui back in 2010, when Dean and I first stepped on as trustees, de-amalgamation was like a dirty word. Partition is the way that we were pushed rather than de-amalgamating. So, when I started working on the partition for our whānau land to get out, most of the owners got in behind that to help tautoko that. To the point, like, when Matthew Oakes was driving down from the far north to survey, to tautoko that, to set a precedent, to help open a door for everybody else to go through. That's

kind of the way we went, also knowing that we had Waitangi Tribunal claims in place as well. So, there was never a separate application, other than the two claims, plus the support for our partition rather than another separate one altogether.

[Dean Flavell] Yes, kind of seemed like de-amalgamation was off the table, so, with Miranda and her whānau, it gave us a bit of a bright light, something to follow. But that's proven to be quite difficult too, that process, as you have heard.

JUDGE DOOGAN:

Sorry, Mr Hunt, can I just follow up please, just while we are on this topic and just clarify this issue. Because as I read Deputy Chief Judge McHugh's initial decision, he was under the understanding that there was not, under Te Ture Whenua, a specific power to de-amalgamate. That the legal pathway appeared to be partition, as the only option in the circumstance. I just wanted to check, when you said de-amalgamation appeared to be a dirty word or was off the table. Is that consistent in terms of what you have been told subsequently by the Court, or the Court staff, or the Judges of the court when it has come to court, that this is the only pathway, there isn't a power to de-amalgamate. Is that your understanding of how it's played out?

MIRANDA HORAN:

Correct, which is why I found it really difficult to understand because when I was going through all the documents, and at one stage I took six months off work and practically lived at the Māori Land Court in Rotorua, going through all the court records. When we found the ruling on the Erickson case, which basically said, actually, that wasn't fair, you should have been heard, here we go, stroke of a pen, have your land back and it was taken out. It was at that point that I put forward the Wai claim now, because I'm like well, if it's okay for them, why isn't it okay for everyone else. That was a 1993 ruling, so, whilst we were being told by the land court, you can't de-amalgamate, you have to partition, we had an order in front of us from a judge saying, actually, we can.

MR HUNT TO DEAN FLAVELL AND MIRANDA HORAN: (CONTINUES)

Q. I think that answered a follow up question I had. Then, what I wanted to ask about next, you spoke in your evidence about occupation orders and those not being suitable. You were discussing earlier, one of the reasons for that was the law versus – I'll go to my American accent, lore, and in terms of matching the pre-amalgamation areas, or the blocks. Is there any scope for exploring occupation orders based on the survey prior to amalgamation? Is that something you have looked into?

A. [Miranda Horan] That's kind of what we have been stumbling along with. However, we don't have income to support the trustees who, at the moment, we don't get paid, we don't have any money, we need lawyers, often, in order to represent the trust in those spaces. Also, because there is a lot of owners these days, it's actually a lot of work to go back through the succession, to go right back through to make sure that the right persons on the right bit. So, it's a stop gap, it's not an answer.

The people, our owners, our beneficiaries, they want to have their own mana motuhake, they want to look after their own land. They don't want to be coming to me, I have nothing to do with their piece of land. But I am, according to the L-A-W, Dean and I are the trustees, so they have to keep coming back to ask, and asking us, can we do this, can we do that, can we do something else. It's their land. So, yes, what you are asking, it's a stop gap measure, it's not really a solution.

JUDGE DOOGAN:

Just also, just an important distinction between occupation orders, which the Court grants and licenses to occupy, which the Ahu Whenua Trust has a power to confer. I think in the evidence, we have had both terms used, but what I understand both yourself, Ms Horan and Mr Flavell to say, is that the trust has been giving licenses to occupy. You might have been using the word occupation orders, but they are not done by the Court are they, the trustees are granting those?

MIRANDA HORAN:

They are supported by the Court, because we have to go back and register them, and we have had to go and get legal advice around rules and regulations, and also, enforcement.

JUDGE DOOGAN:

But they are licenses to occupy, rather than occupation orders?

MIRANDA HORAN:

Correct.

(12:26) DR ROBYN ANDERSON TO DEAN FLAVELL AND MIRANDA HORAN:

Q. Tēnā kōrua. While we are talking about occupation licenses, what are the terms of those, are they for a year's duration or particular pieces, what's entailed? What does it give the recipient?

A. [Dean Flavell] So, as trustees, what we have done is we have created kind of, the rules and that, that one needs to abide by if living on a particular piece of land. I think, in regard to time, how long those are, it's the lifetime of the person who made the application.

Q. And how – were you going to add something Ms Horan?

A. [Miranda Horan] Yes, I just wanted to add to that. Having the occupation orders, even then, we have had to go through rules through our lawyer. And one of the things, the rules in there that the lawyer put in, is that we have to make sure that the properties that go on there are legal dwellings, and that they do abide by – I mean, as a trustee, legally, we have to make sure that they are up to code and are able to be signed off and get CCC. We don't have power, we don't have roads, hardly, to get to where people are wanting to live. They don't have water, they don't have sewage, and if they want to go to the bank to get a loan to build these dwellings, they have to have a 50% deposit, 50%.

At a cost to build these days of a minimum cost to build of three and a half thousand dollars a square metre, it's prohibitive. So, what happens is even if we are giving these occupation orders, people are struggling to comply with the rules because I don't know who has, you know, a lot of

money sitting on their bank to do the 50% deposit. So, without having land that they own that they can leverage off themselves, the onus would then come back to the trust, to apply for bank loans and mortgages on their behalf as the owners of the land. That just becomes incredibly complex, to be able to get people living in properties that are up to code and standard. That's just delving a little bit deeper into why the occupation orders are a stop gap rather than a solution.

Q. How many of them are there, that are running, or in existence?

A. [Dean Flavell] We have three legals.

Q. Yes, okay, thank you. Maybe this isn't, because your whānau didn't want to amalgamate, do you have any perception as to why people – what they were told and what they were expecting from an amalgamation?

A. [Dean Flavell] Well, there was a talk about a prospective future and these sorts of things. So, I suppose, the idea of getting back to those old days where you could sustain yourself on the whenua, so, all of these things were done in hui with the Māori Trustee and never carried through.

[Miranda Horan] When I look back and reading through the court documents at the time, the amalgamation simply states that the land would be better utilised. Better utilised by who, for what? It's a very ambiguous statement and obviously, it is not being better utilised, but it's also, even as trustees when we first came on, we got different reports done on how the land could be utilised. And when we have taken it to hui to present, our people have just went, no, we want our land back, not interested.

Q. Are the accounts of the Māori Trustee available? I'm just wondering what their administrative costs were, because no money was being paid out, so I was curious as to whether you had any insight into that at all.

A. [Miranda Horan] From when we came on and looking at the records that we inherited, I think, my understanding is whatever money there was did end up going to legal costs, because there were owners that did not want to be part of the amalgamation and were constantly taking them to court to try and get out. But I'm not too sure about – that was when aunty Josie and them – prior to the Māori Trustee, I'm not too sure.

[Dean Flavell] Yes, so, a lot of the money or the funds that were in the trust were usually used to engage lawyers, or legal advisors because individual groups or people kept on saying, we don't want to be part of this, we want to move on. Those sorts of things. So, yes, it's kind of a catch 22, that the trust is kind of stuck in.

[Miranda Horan] And I think that's what happened with our Walker whānau when their whanaunga Peter De Loree was constantly fighting against the amalgamation and then they lost their house. Which, their koroua built for them, was granted to the trust in lieu of costs because of the legal pathways that Peter De Loree had taken them down. So, they were victims of it as well, so, not only did they have their land taken, they lost their whānau home as well and it was all around the cost around legal entities trying to get out what they didn't want to be part of.

Q. Okay and my last question is, you approached the Ōpōtiki District Council for rates remission. How long ago was that?

A. [Dean Flavell] That would have been last year actually.

Q. Okay, but you haven't had any response yet?

A. [Dean Flavell] Haven't had any response yet, yes. And because there are two sets of rates now, so, there's regional council and Ōpōtiki. So, yes, we will probably have to engage with the regional council as well, around rates and that, so –

[Miranda Horan] The rates arrears has only been since aunty Josie passed away and she passed away in – couple of years – about three years. So, the rates arrears are only for the last two to three years, prior to that, we were fine.

Q. But are you looking to the future, about the rating, you know, the land being rated at all?

A. [Miranda Horan] What we would like – yes, absolutely, we would like to get those rates removed or at least, get to the bottom of the double rating, because it's not like they are not getting rates. They are double rating everybody, so they have more than their bit and if we back date that for how long they've been double rating us, we should get enough money back to pay for a survey.

[Dean Flavell] I think the other thing with the rates, I mean, it's what benefits do the owners get from paying rates? There's no roading, there's no water, there's nothing like that. No rubbish collection, no one on the block goes to the library in Ōpōtiki to read a book. So, what do those rates equate to in regard to those who are paying the rates, those sorts of things.

(12:35) DR GRANT PHILLIPSON TO DEAN FLAVELL AND MIRANDA HORAN:

Q. Tēnā kōrua. Thank you very much for your evidence. I just wanted to ask, Mr Flavell, what was the, when you gave us your aunty Josephine's brief of evidence, what was that done for?

A. [Dean Flavell] For this.

Q. It was done for the Tribunal.

A. Yes, it was done for this hearing.

Q. So, was she going to give evidence in the kōrero tuku iho phase maybe?

A. Yes, that's when she –

Q. That's when she did it, right, thank you. That's helpful. Just, on the councils and the rating, there is, due to recent policy changes, councils are supposed to be actively looking for Māori land that is not productive that they are doing rates remissions for. So, I don't even know why you have needed to apply for this. But I did wonder, if you are successful in partitioning out or de-amalgamating, what would happen then? When people live on the land, you wouldn't have any reason to argue for rates remission and they would all have to start paying rates, is that correct, for all those different sections?

A. Yes, absolutely, yes. I would imagine it would be quite a celebration if we could de-amalgamate the block. But with that hui, then yes, we need to inform the owners and that's part of what we are talking about, about helping to resource the trust to give that type of information across to the owners.

Q. Thank you, and I guess, Ms Horan, this question is for you, in your real estate agent knowledge. So, if you are successful and people want to build houses, have their whānau homes on the land, will they have to

partition out house sites, or what are the rules? Are they allowed to build houses on the blocks as they will be when they get them back?

A. [Miranda Horan] My understanding of it would be that if we, and in my head when I had a vision of partition, well, de-amalgamating, I was seeing that different trusts would administer their historical parcels of land. Then those whānau trusts would actually be able to apply for either papakāinga loans, or apply for funding themselves, with their own properties for their own homes, on their own bit. So, rather than having to come up a couple of steps to us, they'd actually be able to manage that within their own context, within their own whānau, and be able to apply for that, because they would own their own land then. Then, if it was the – in much the same way that you would have like, the Smith Farming Trust owns the land and then they leverage off their land to go and get – they can do that their own way.

Q. Yes, I was just worried that there might have to be further partitions to get house sites, was what I was wondering. I am not sure what the rules are in this case.

A. If you have had a look at the land, a lot of it isn't habitable. There would be a lot of Geotech reports and landscaping. So, there is a lot that's not, and those whānau might just decide to keep it in forestry or do something like that. But just sort of as in aside to that, like, as a real estate agent, I have you know, taken time to be here today and I've spoken to some of my colleagues and said, well, you know, the land with this and they amalgamated, and they are like, no, they can't do that, that's illegal. I'm like, bro, they did it.

I was like, can you imagine if they did that in like, Welcome Bay or you know, go down to Auckland and just go, we think we can manage your land better than you, swipe of the pen, you have no title, here you go, have a lease, stay on your land, and then you are out when you die. Like, people struggled to think that in this day and age that this can happen, and here we are after how many years, to have this hearing to try and rectify it. In my other world, they struggled to think that it's beyond belief to them that this can happen.

Q. Yes, I think that's a very good point actually, because the 1953 Act, and the 1967 one gave the Māori Land Court extraordinarily dictatorial powers. In which, you know, the registrar would just say, well look, this land could be better utilised in this way, and you can establish an amalgamation and the only thing the owners had to be consulted about was who would be the trustee. So, it is just, it is extraordinary, it is hard to – well, it could never have been done if it was general land or you know, yes, it is extraordinary.

A. They don't believe me.

Q. No, well –

A. They literally don't believe me –

Q. No, that's right, because it is so extraordinary.

A. Yes, and I understand that the Tribunal's jurisdiction is only, you know, post 92, but the consequences are post 92. Even though the action was prior, the consequences that we are still dealing with have been huge since then and continue today.

Q. And I guess, the lawyers are going to have a long argument about whether it's an ongoing situation and therefore it counts, or the causes were earlier and so it doesn't, and we will just have to wait for that to play out. But yes, thank you, I have read all the documents and **(inaudible 12:41:11)** Johnston's report, and it is quite mind boggling what happened. But I do wonder, I guess this is more of a philosophical question in terms of hapū and collective ownership and control of lands. It seems like you are trying to go back to individualisation rather than what was before. So, I wondered how, is it a whānau approach as opposed to hapū, or is it just the particular trust that was created is simply something that nobody wanted? Are you able to explain that to me.

A. I don't think it's individualisation as opposed to, I suppose, individual whānau, individual ancestors that the uri of a particular ancestor that now, that own that land. So, it's not individual as such, it's more of a whānau base. When I see it in my head, I see it as individual whānau trusts having their own control over their own spaces that were bequeathed to them by their own ancestors as opposed to an individual.

[Dean Flavell] More around tino rangatiratanga, motuhake, so, owning that land. When you have a look at the history of this land, this land, after the confiscation of all Whakatōhea lands, two reserves were set up, this is one. So, those who were there were placed in there, the only lands that they ever have. So, to be able to spread it out amongst many, you know, although, the old way of thinking around, I suppose, tribalism or looking after collective lands. This is the only piece they have, so, the whakaaro is to – the thought, is around connectivity to the only land you have. And so, yes, I don't think it's individualism, it's more around mana.

[Miranda Horan] Can I just expand on that a little bit as well. So, for me, who was born away from here, that connection to our land, our whenua, our papakāinga, was the thing that gave me my identity. My sense of foundation that I was able to build, because I knew who I was, I know where my home was. If the world turned to custard and it all came tumbling down, I can go home, 'cos that's mine and it didn't matter if I was a monkey, or if I was naughty, I could always go home belong there. That was, you know, my nanny gave that to me, I'm always welcome, I always have a place.

So, when we were raised by you know, our dad, and nana, koro, our aunties, and uncles, they brought us back there because that was important. So, for all my cousins and even my whānau, when we spread out around the world, and I have a daughter over in the states studying now, she wants to come home. You know, she always wants to come home, that's her home, she's probably the only kid rocking some Red Bands in the state, but you know, that's 'cos this was her home. So, even though we might be out in the world, wherever we may be, this is home, and we were lucky to have that, because our nanny and koro fought for that. But we want to fight for that for other people as well so that we don't lose it, how many generations will it take before that's gone.

Q. Yes, well, I think the whānau trusts are crucial there but thank you. Just one last question actually, is the illegal squatting, is that just a problem for Hiwarau C, or is it a wider problem for Ōhiwa Harbour and the lands around here? Is it just on that piece of Māori land?

A. [Miranda Horan] Post COVID, I think it's everyone. Prior to COVID, we weren't so bad, we might have had one or two. But post COVID, I think it's –

[Dean Flavell] It's increased.

Q. Okay, thank you very much.

(12:45) PROFESSOR TOM ROA TO DEAN FLAVELL AND MIRANDA HORAN:

Q. Tēnā kōrua, kei te nui te mihi o te ngākau ki te whakarongo ki a kōrua kōrero. I kind of wanted to also explore that question that Grant has raised, about mana motuhake, I'm quite enjoying this. I'm saddened by it, but I'm kind of enjoying it because there's a whole lot of stuff in there that, as a Māori academic, promises much research. How we have come from this – actually, I think it's a false understanding that the iwi controlled. Then you have this understanding that the hapū controlled. Well, hold on, there's this group called the whānau, but yes, thank you for that, it's really interesting. Anyway, my question, it's to Dean, just one word that you have used on paragraph 36 of your summary. There's a word, tira maka, I'll read that, those lessons came with the presence of spiritual kaitiaki who revealed their tohu like the tira maka, reminding us of the balance we must uphold. He aha te tira maka?

A. [Dean Flavell] The tira maka is the collected power of kaitiakitanga. So, on the front of this house, at the last hearing, I shared the gift that those atua have with our harbour. So, it's that collective approach, rather than looking at one aspect, look at the many aspects because that's the true result of your environment, including looking up.

Q. Āe, ka pai. More philosophy, beautiful. Kia ora kōrua.

(12:48) BASIL MORRISON TO DEAN FLAVELL AND MIRANDA HORAN:

Q. Kia ora and thank you very much for your evidence. Just perhaps, a bit of clarification for me, I wouldn't mind 10 cents for every time in my past life, I have been asked, what do I get for my rates. I won't bore you after 35 years being in local government. So, what I would like to know is, if you do know this, prior to the reform of local government in 1989, the

1st of November 1989, there would have been the Bay of Plenty Catchment Commission and the Ōpōtiki County Council. Do you know, in all of your record keeping, they would have been claiming, charging rates at those times?

A. [Miranda Horan] So, for us, because we haven't moved, despite how the titles have changed, we haven't gone anywhere. Our nanny, our koro, our aunty, our uncle, my great uncle, they were paying rates all the way through. So, the record, the address for service that they had on record has continued to be the same all the way through. So, I was able to track that because, as part of the partition we found that when koro Tom's shares were mis succeeded to and given to another whānau. We were able to prove that because we had a record of those rates, and also a record from the council saying, hey, we want to put a road through your land, you are the legal owner, so, yes.

Q. Okay, so, everything was done, proper, in those times – of rate request and payment?

A. Correct, so the rates were paid like all the way through from day dot.

Q. Okay, the second thing is, when we talk about double rating, I'm just wondering whether you are relating it to, in earlier times, the district council and/or county council prior to 1st November 89. They used to collect the – county council and then the district council used to collect the rates on behalf of the, first of all, the catchment commission, and then later on, the regional council, so, you have one piece of paper. Then they would transfer the money over. Moving on in time, now you get two pieces of paper. One from the regional council and one from the current district council. Is that what you are talking about, double rating – it's not?

A. No.

Q. Okay.

A. So, I think, so, for the overall block, I think our rates are about two grand ish for the overall block. For our individual bit, where we live, well, where we have lived since day dot, we are paying about two and a half. So, we are paying more than the entire block, why, I don't know why. We have gone and asked why, they told us to talk to ourselves. We talk to ourselves, we don't know why.

Q. Okay, right. The next bit is, and I won't get into that, believe you be, that's where the grey hairs come from. Can I then ask then, on the stream that runs through the property, stop banking work being done there in the past by the catchment commission and/or the regional council in recent times. Have they done any works on the streams or anything like that?

A. I think my brother and my dad did – no, nothing.

Q. Okay, so the regional council, the willow removal and all of that was done firstly, and not by the local authority, the regional council.

A. No.

Q. Okay, beauty, thank you very much –

A. Any work that has been done has been done by whānau.

Q. Good on you, thank you very much, thank you.

(12:52) JUDGE DOOGAN TO DEAN FLAVELL AND MIRANDA HORAN:

Q. Kia ora anō kōrua, just a couple of pātai, and first, thank you for getting us straight into the deep end, at the start of the week with the philosophical discussion you have just had with Ahorangi Roa and Dr Phillipson. But just picking up on that discussion and I want to just try to summarise what I think I have heard from both of you and correct me, and this is the bigger picture. Which I think Dean, you spoke to the fact that this Hiwarau, these lands were one of the two reserves post confiscation, post raupatu.

So, there is enormous significance, not only from all that that represents, but once they are allocated and whānau owners have a title. This is the point I'm trying to sort of just explore. Given the history and the context of the raupatu and how unfairly it fell upon across Whakatōhea, how arbitrary some of those allocations were. All that understood, when you come forward another hundred or more years and you have this process, which again, there's an element of compulsion in the legal process coming over the top of those who have these remnants of the land. It's a compounding breach if you I can put it that way because of the lack of, essentially, the fundamental lack of owner consent or control of the process. So, is that a fair summary of one of the key points of the whole amalgamation saga?

A. [Dean Flavell] Yes, absolutely, yes.

[Miranda Horan] It's like a Britney Spears song, oops, they did it again.

Q. Okay, and then, thank you for all of the papers you have pulled together in terms of the history of trying to find a legal pathway through this, because it's clear that you know, it's difficult to put it mildly. Just before I come to that, can I just clarify that I have the areas, the B1B2 and the B1B1 lands clear. Are they, this is plate 36, are they these little narrow blocks here?

WITNESS REFERRED TO MAP BOOK, PLATE 36

Right, thank you, and it goes right along that strip?

A. That's the road and that's the top of the hill, so that's the **(inaudible 12:55:32 – 15:55:38)** –

Q. That's what I was going to ask, yes.

A. There's a spring up there and that's where our water came from.

Q. Right, thank you. Can you put an X where the batch or the – thank you. I'll explain what I'm just being told – I have just been asking for clarification as to where the B1B1 and B1B2 lands were on plate 36. Ms Horan has just confirmed that I had the right one. So, B1B1, bisected by the road, is that a formed road, what's the name of that road?

A. Hiwarau Road.

Q. Hiwarau?

A. Yes, I think the Tribunal has been up to our batch –

Q. Roimata.

A. Yes, my sister Tui showed everybody.

Q. Thank you, I'm with you now. So, this is just beyond or near Roimata?

A. You go past Roimata, down past the seal, hang a right at the second turn off past Roimata and then up on to the hill, over the swamp, up the hill.

Q. Right, thank you, and at my request, Ms Horan has just marked where the batch is located on the land. Also, just clarifying the A1 Block, where Dean, when you say, this is where you are occupying or?

A. [Dean Flavell] In my brief, yes –

[Miranda Horan] You are not occupying –

Q. You are not occupying, no. So, A1 is to the bottom of this plate and there's an A1 on that block. So, that was formerly B1A1 – that's B1A1 down the bottom?

A. [Dean Flavell] Yes.

Q. So, up the top here where it says B1B2, that's a different land altogether – so, there is another little narrow strip next to – sorry, B1 –

A. [Miranda Horan] B1B1, B1B2, B1C2, there are three skinny ones, the two skinny ones are us, the other skinny one is aunty Mavy.

Q. All right, so, the two skinny ones, essentially, one set of interests.

A. Correct.

Q. So, when you were able to get the successful order, subject to survey for partition, that was for both those two skinny blocks?

A. It was actually just for a 12 point X hectares –

Q. Hectare –

A. So, it wasn't – what we were trying to do is take out what was put in and because of the succession, not having the correct number of shares to allocate to that, they just gave us, you know, whatever shares allocated using the formula, 12 point something or rather, hectares. So, they didn't say, you can do it here, they just said that, so we then needed to go back and re-survey to that specification. Whereas the original survey was to take out what was put in.

Q. I know that partition order and I know the section 45 decision both referred to surveying as a necessary condition. Was it ever explored, to your knowledge, in those proceedings, or in any discussions you have had with the surveyor, or with the court staff, as to whether orders could be potentially made based upon the plate 36 pre-amalgamation title history without the need for an entire re-survey of all of those blocks. Has that ever been specifically addressed?

A. I tried that, I did have that discussion and that was back when de-amalgamation was a dirty word, and I was told to partition. When I was told to partition, in the eyes of the Māori Land Court, there were no historical blocks, they didn't exist. So, they only saw Hiwarau C, they didn't see B1B2, they didn't see A1, those things didn't exist as far as they were concerned. So, to try and reference them back to that was a no go

and I was told to partition. That is why we went down that track and tried to get out what was put in, but then we were told, no, no, no, you can have this amount, 12 point whatever acres, go survey that.

Q. Yes, and that process would almost certainly trigger fresh survey requirements as part of what ultimately, LINZ requires of the court to register the new title. So, were you given estimates of, just with respect to the block you made the successful partition application for. Were you given a costing for that survey?

A. It was really prohibitive because the Māori Land Court instructed – like, when you do a partition, you have to do a partition of what you are taking out, but also, what's left. So, it wasn't just a matter of me surveying 12 hectares, I had to survey the 380 hectares, and as it was now, provide that, plus my bit, plus, what it would look like post. So, if you have talked to a surveyor, I'm buying that man an island in Fiji, it was quite prohibitive, the costings. Which was why we were very grateful to Matthew Oakes and his whānau when they came down and did it for free the first time, but he's not able to do that now.

Q. I am just going back to that original decision from Deputy Chief Judge Smith in April 1995, and I take the point that you made, I think, Ms Horan. That the logic of the reasoning here, that there was insufficient notice, and therefore, a major problem would appear to be applicable to all of the blocks. Therefore, there's a basis here for a remedy under section 45, to correct errors in relation to the whole of the blocks. But it doesn't appear to have been – it was left slightly hanging because the observations at the end of the judgment say, there is the problem with survey. The only means of constituting the original titles would either be by partition, or by an order of the Chief Judge under section 45. So, yes, the foundation is there, but the practical achievement of the remedy from an owner's perspective is almost impossible.

A. Correct, and when I went back to the Court with this and said, hang on, can we not do this, I was told no, partition was the only way I was able to go. Then, you know, seven years of work with lots of hui to make sure, which was why we put in the Waitangi Tribunal case that we are hearing today.

Q. Yes, thank you. Thank you, both of you, for the clarity of the evidence and ngā mihi on behalf of the panel for your kaha and endurance. Yes, there is a good deal for us to think about here, but tēnā kōrua, ka nui te mihi ki a kōrua, thank you.

A. Thank you, kia ora.

HOUSEKEEPING – TIMETABLING (13:05:01)

(13:05) MS TANIA TE WHENUA: (MIHI, APPEARANCE)

I would like to give an appearance and also proffer my apologies. When we read the timetable, we made an error as to the start time for those who joined virtually. But myself and Ms **(inaudible 13:05:51)** appearing on behalf of Wai 1511 and we will be sharing appearances across the week, again, virtually. Thank you so much, Sir.

HEARING ADJOURNS: 1.06 PM

HEARING RESUMES: 2.08 PM

HOUSEKEEPING (14:08:34)

MS FELLOWES CALLS

Tēnā kōrua, Rawaho and Jane. I will start off by asking both of you to introduce yourselves to the Tribunal and just when speaking, just to speak – there you go.

(14:10) JOSEPH RAWAHO PUKEPUKE: (#E036)

My name is Joseph Rawaho Pukepuke, born in 1946 in Ōpōtiki. I'm affiliated to, just off the records, I'm affiliated to the three marae, Roimata, Kutarere, and Maromahue. But Maromahue is our main marae, because that is where my grandparents hung out in their days, the Haunui family. This is under my mum's side of the family, my dad, he comes from Maungapohatu, so he's of Tūhoe descent, **(inaudible 14:11:22)**, Ngāti Tawhaki and all those tribes up there. But at the moment I'm under my mum's side, Ūpokorehe, Whakatōhea, Ngāi Tūhoe.

(14:11) JANE TURNER: (#E037)

My name is Jane Turner (nee Manuel). I was brought up by Miranda's great grandparent's and lived at Hiwarau. I lived there for the first 10 years of my life and after that we moved to Kukumoa. So, the first 10 years of my life I lived there, I was brought up there. I'm one of the first whānau that Miranda's grandparents or I call them my parents.

JOSEPH PUKEPUKE: (CONTINUES #E036)

The first eight years of my life, I was brought up by my grandmother due to the fact, when I was born, I ended up with eczema on the top half of my body and I didn't start school till I was eight. My grandmother looked after me and managed to get rid of all the eczema that was on my body **(inaudible 14:12:58)**, that's why I started late when I went to primary school.

I was brought up in the Māori world and when I started primary school, primers, or whatever you call it, I couldn't speak English. So, I had a bit of trouble with the language, with the English **(inaudible 14:13:20)** due to being brought up in Māori out at Hiwarau and Kutarere. Most of my uncles and aunties and everything, they all spoke Māori, so obviously, I spoke Māori quite a bit and that, when I went to school, I had trouble adapting to the English language. When I started school, even when I left high school, I still couldn't speak English properly.

Yes, that's all.

MS FELLOWES: (BEGINS LEADING WITNESSES)

Could one of you please just confirm for us, what was the name of the land block that your whānau had an interest in prior to the amalgamation?

JANE TURNER:

B1B1 – BB1.

JOSEPH PUKEPUKE:

B1B1 and B1B2.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

So, would you like to, just to clarify, so, what your parents and your grandparent's connection was with Hiwarau, just explain that in a bit more detail.

JOSEPH PUKEPUKE: (CONTINUES #E036)

This is just from hearsay, but I heard from the old people that the land was gifted to **(inaudible 14:14:48)**, to my grandmother and her husband – my great, great, grandmother's father. My great grandfather – my grandfather's sister. So, B1 belonged to my uncle Tuhi, which was my grandmother's husband and the other block that we are on, on BB1 or whatever you call it, belonged to my grand aunty, my grandfather's sister, Tuhi's sister. That's all I know and that's just from hearsay.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

So, both of your briefs of evidence, you talk about your childhood memories of growing up on Hiwarau. Would you both like to tell us, just some of the favourite things you used to do when living there as children.

JANE TURNER: (CONTINUES #E037)

For me, I started school at the age of five. I used to go to school from Hiwarau on a horse and those were the good times. The other times, growing up at Hiwarau, I don't think I had any problems at all. I didn't know what stress was, only **(inaudible 14:16:30)** that I knew what stress was all about. But growing up, there was nothing of that, you know, there was plenty of food, like Miranda has already told you about.

Even, I think one of the good times we had was taking hold of my aunties duck eggs and putting it into the hen eggs and she used to wonder why there's something wrong with her ducks. Those were some of the good times we had, it was riding horses, going out picking – you know, kaimoana and all that, you know. It was a lovely time. I cannot remember anything bad.

The only time I ever felt bad, but I think my grandparents took the burden on when I started school because I was one of those generations that weren't allowed – didn't know how to speak English and we weren't allowed to speak Māori. I think that's where I got most of a strapping from, going to school. I never got that from my grandparents, or my mother and father. We were scolded for things that we did wrong, yes, but every time my dad opened his mouth, we cried before he even got to – but I never felt anything about being hit or anything like that. So, I grew up **(inaudible 14:17:54)**, only when I went to school it wasn't so good.

But I think, as time went on, as I got older, I often wonder, you know, as a child being told that you couldn't speak your own language, you know. But I only realised that I didn't feel the burden of being hurt. But I think my grandparents took on that burden, you know, of me being hurt. I think it has the effect that they loved their grandchildren and their children very much, so I knew what love was, I knew what aroha meant and respect. I mean, you can understand what respect is today, but not many know, really, what respect is all about.

So, that's my time of growing up with a great –

JOSEPH PUKEPUKE: (CONTINUES #E036)

Speaking of the language barrier, I **(inaudible 14:19:08)** speak English, we used to speak – the kids used to speak – preach in English, half English, half Māori but the majority of it was mostly Māori with a little bit of English thrown in between. Sometimes, when we didn't get on with my grandparents, we spoke Pākehā to them, half Pākehā and half English so they didn't know what we were talking about.

But my grandmother, I was very close to my grandmother, very, very close. She's buried up at Maromahue and I already told my children that if I clap out, they are to put me on top of my grandmother, **(inaudible 14:20:04)**, that's where I want to spend my days. But she was really, very good to me, she was number one.

When she passed away in 1960, I was lost for about two weeks, a few weeks. Because of my condition, she was the only one that loved me, that always looked after me. Every time we went out to play, I used to be pushed aside because of my condition, so I just hung around with my grandmother. When she went to tangis, I followed her to tangis and all sorts – it was pretty traumatic.

But however, I had another cousin who was in the same boat as me, which was Jane's younger sister, Kahu, she was the same as me, but I think she passed away at the age of 15 due to the same sickness. But she also had asthmatic with it, I think she's planted up here – buried, sorry, buried up there –

MIRANDA HORAN:
(inaudible 14:21:35) –

JOSEPH PUKEPUKE: (CONTINUES, #E036)
Yes, yes, yes. That's when I was at the batch. I never went back to my parents until I was about eight or nine, and then I went to school from then – **(inaudible 14:21:48)**, I'm a bit of a late bloomer, unfortunately.

During those times up at Hiwarau, I had a lot of uncles and aunties and that, like, within Kutarere and Roimata, and Maromahue, because during those times, I'm talking about in the 1940s and the early 50s. There wasn't much work around, there were no factories like Kawerau, where the 20 year olds can go and get a job. There were no jobs, they just hung around the area.

So, what most of the young men did, they looked after the old people, they went out fishing and provided food and chopped wood and dragged them in to look after the old people. Sometimes they used to go around the back to Tauwhare, Tauwhare is where the oyster farm is, the oyster farm at Ōhope. There used to be a pool, **(inaudible 14:22:57)** certain area up there where the sharks used to come in and breed. The dogfish, they would go down and around there on their horses, during the season and grab the sharks, these little dogfish and bring them home and clean them up and hang them up on the fences all around the marae and that, even over here, and dry the food out.

There were no fridges in that pā and all the meat, and all that was just hung up in the trees, it was a bit of a mutton **(inaudible 14:23:40)** thrown around it, or sheep. Then, if you wanted meat, you just go out there, just brush the maggots off and cut the green piece off. Then throw them in a pot, cook them up.

Gardens were plentiful, always big gardens down here and every household that was in the area around here, they all had big gardens because there were no supermarkets at the time. Used to grow all sorts, watermelon, cabbage, you name it, silver beet, beetroot, all the stuff you can buy in the supermarket today, they used to have them all around the area up here.

MS FELLOWES: (CONTINUES LEADING WITNESSES)
What would you used to buy from the supermarket when you went down there, or like, the local shop?

JOSEPH PUKEPUKE: (CONTINUES #E036)
They never had supermarkets, we used to have a local shop over here and they used to call it Moral Store and the old people would just come around and buy a bag of sugar and a couple of bags of flour, and a bag of salt, and that's all they bought. So, they made their own butter, or the ones who never had cows, they just use pig fat. Most households had their little pigsty's with about half a dozen pigs in it, yes, we just live off the land.

JANE TURNER: (CONTINUES #E037)
Yes, in my days, going to the shop to buy something, they have coupons, coupons for butter, a pound of butter, one a week, so that's how they, in my time, because I'm older than him. Just a coupon to buy that, you know, especially butter. But they bought flour, sugar and that was the main shopping list they had.

I think, one of the best times, I used to remember when their grandmother, who brought me up. We used to ride on the horse that I used to use to go to school at Kutarere, and she'll stop at the shop and buy some madeira cake and

sardines and that's what I had for lunch. That something, once a month, you know, that she managed. That was one of the joys of living in my time, you know.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Jane, I was just wondering, so, when you used to ride your horse down to the shop, would you like to tell us, just about the route you used to take across the mudflats.

JANE TURNER: (CONTINUES #E037)

Along the shoreline, yes. on the shoreline, sometimes I go through, I don't know whether you know where Roimata marae is, we used to cut across there, passed the wharenui and then around the back and down to the estuary part in it, or else, straight across. In those days, it wasn't muddy, you now, the horses were able to run across, you know, well, I used to make my horse run. But there was also a time when even, when I used to ride my horse to school from the batch to Kutarere school, there were always kaumātua keeping an eye on me on the way, in case I fell off. So, you know, I grew up not having to fear of the high tide and things like that, lovely vibe.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Then, would you like to just tell us more about the gardens, like your grandparents looked after, and like, did either of you ever help with caring for those or was it something that your grandparents did?

JANE TURNER: (CONTINUES #E037)

Well, mostly their grandparents, you know, the ones that brought me up, she did all the gardening. You see, in those times, they get up quite early and by 10 o'clock, when the sun, or 11 o'clock, it's quite high, and they go back inside and have their morning tea or breakfast, or whatever you like.

The house that I lived in was just built out of corrugated iron and dirt floor, but it was clean. When I look at it, it was absolutely clean. The funny part about it, if it rained, corrugated irons used to have holes in it, we used to put **(inaudible**

14:28:20) soap to stop the rain from coming in. But it was comfortable, it was a comfortable place. But they had a separate room, again, where we slept, in those days, very separate from the kitchen itself.

But you see, as a child growing up, that's what I saw, through the eyes of a 10 year old, I saw that. But when I look back now, I see all the problems that have risen, you know, especially in the time of the amalgamation.

So, we had plentiful to eat, lots of fun, you know and riding a horse to school was the best time.

MS FELLOWES: (CONTINUES LEADING WITNESSES)
Could you tell us, when you didn't ride your horse, would you like to tell us about the track you used to walk to get to get to school.

JANE TURNER: (CONTINUES #E037)
We used to cross the mudflat, or else, over, up towards Roimata marae and go across and then down the other side, and if it's high tide, we just swim across.

MS FELLOWES: (CONTINUES LEADING WITNESSES)
Just going back to the gardens again, would you like to tell us, was it just your whānau that had those abundant gardens or was it –

JANE TURNER: (CONTINUES #E037)
No, no, everyone. You know, they grew it, and I think a lot of it too was like, there was plentiful of cockles and muscles and all that, and when the relatives from Te Urewera came down, they bring meat or something and we swapped, you know. We gave them some kaimoana and they gave us meat in those times.

MS FELLOWES: (CONTINUES LEADING WITNESSES)
So, would you both like to share just what you remember about Ōhiwa Harbour and Nukuhou River, and your memories of what it was like when you were younger.

JANE TURNER: (CONTINUES #E037)

Well, in my time, like I said, you know, as a 10 year old, you looked at it and everything was beautiful. You know, you didn't see any problems, you know, compared to what it is today, it was so clean, it was so beautiful, you know, you can just about drink out of the water. Especially, Nukuhou, all that area and where we were, Hiwarau, at the batch itself. It was clean, it was really clean, you know. Now, it's so different.

JOSEPH PUKEPUKE: (CONTINUES #E036)

As I was growing up, after my grandmother died in 1960, two years after that, we moved away from the area, went out to try and seek my fame and fortune, but before I left the place, like Jane was talking about, everything was green and pure. There was no mangroves in the harbour, and like Jane was saying, you could swim around in the harbour and do all sorts. Walk on the mudflats and the mudflats were quite solid at the time.

But I disappeared and then I come back in the 70s, **(inaudible 14:32:11)**, my children **(inaudible 14:32:15)**, I used to bring them back to Kutarere. When I came back, everything had changed. The land before I left was all green, had grass and **(inaudible 14:32:30)**, there was not much beach forest laying around, no weeds, et cetera. When I came back, my dad had cleared the place up after him being away and as time went on, while I was away, the bush started to come back to the land.

The mudflats started to get all grubby with the water instead of being pure, it come out sort of green, brown due to ingrown forestry's up country and all the stuff coming down the rivers into the estuary. Plus, people with their cow sheds and et cetera, et cetera, they are run off into the streams and then coming through. Through that process, we started to lose some of the shellfish that we used to have at the time.

We used to have these little wee periwinkle things, I think we called them tītoko – used to have these little periwinkle things. And my grandmother, when we got to hard times, grandmother used to send me and my other sister and

another little cousin to go down to the beach and get some tītoko, these little periwinkle. Then we just take them home and then she used to sit down with a needle and pull all the little things out and make soup for us and do a flat wagon wheel bread and that used to be what we would live on till such time that we could go to the shop and get us some, bag of flour or bits and pieces.

So, all in all, you had to be very lazy to starve staying in this area here, because they had horse muscles here, I don't know whether you fellows have tried a horse muscle, they are a very sour shellfish. But yes, at a certain time of the year, they were quite sweet. If you got them at the wrong time of the year, they were very sour. Yes, there's cockles, muscles, plus the place was plentiful for flounders and fish.

I remember my grandparents talking about, way back, a mangrove of island just off the motu, which is that island they call Te Hokianga. They used to get these little birds that used to come up form down south, and they used to head over, migrate over to Russia. And when they used to come through to go to Russia, they would park in these **(inaudible 14:35:28)** and the old people would go there and sit underneath the – just sit there. At a certain time of the hour of the morning, **(inaudible 14:35:39)** all come up, thousands of them and then take off, and they used to sit there with their shotguns and shoot all these little birds. Then take them home and preserve them in kerosene tins with pig fat. That would be a part of our staple diet at the time.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Would you like to tell us about the whitebait as well, that you grew up eating.

JOSEPH PUKEPUKE: (CONTINUES #E036)

The white baiting season, for white baiting, we used to have to come over to the Waiotahe River, it's just over where Cait and them, are staying. The old people used to go over there, white baiting. But during the 50s, my mum and I used to go further upstream to Kahikatea and we used to catch these īnanga, they're the bigger – cockabullies', or whatever they call them. We used to catch them by the bag full and take them home and throw them up on the cow shed

to dry out, and then leave them up there for a couple of days and put them in bags and hang them up in the shed.

When you are hungry, you just go out and get these things, put them in the pot, boil them up and that was a meal, yes, they were quite tasty. Actually, I got some in my deepfreeze now. My son in-law, he goes out white baiting quite a bit and I always tell him to make sure he brings those big ones, the cockabullies' ones back. I **(inaudible 14:37:18)** and take them home. That was part of the food I was brought up on. My children won't eat it.

Another staple diet was a kānga **(inaudible 14:37:31)**, kānga pirau, where the old people would get, I guess, some corn, put it in the sack and drop it into a stream and leave it there for about three, four months, till it ferments. Then pull it out and then take it off the cob and hit it with a milk bottle or whatever and cook them up. My children don't like that either.

JANE TURNER: (CONTINUES #E037)

That's one thing our mother never allowed our dad to cook was kānga pirau or rotten maize as she called it, in the house, it was always outside.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Is there anything else you would like to say about the kaimoana, anything else before we move on –

JOSEPH PUKEPUKE: (CONTINUES #E036)

Most of our meat, sometimes, my grandfather used to make a little hangi and rorerore, what do you call that – throw all the big chunks of meat on the hot stones and cook them on hot stones. The Māori name for that sort of kai is a poaka tao, and when it was cooked, they put it in kerosene tins and fill it up with pig fat and it would last there for a good three, four, five months. When you want it, you just take it and put it in the frying pan and yes, it will just melt all the fat off and then dig in, quite nice. I don't think my grandchildren and children will eat it. That is what you call living off the land, minus the refrigeration, that stuff, and the stove, electric stove.

Shower for bath and that. My grandmother used to have a corrugated tub and then she used to have a taniwha soap. If you fellows don't know what a taniwha soap, it was a real had soap, it was about that long, it was like a block of wood. My grandmother would sit me in there and get this hard soap and grab my legs and **(inaudible 14:40:17)**, and you would be kicking away there, trying to get away. Then she would turn the soap around and dong you on the head and, keep still, and carry on washing your feet, your body with this hard soap. No soap suds would come off that soap because they are bloody hard.

Not nowadays, they got the shower, whatever you squeeze on and then do yourself up.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Just with the tub, whereabouts would you get – would you have to go collect the water and bring it back to the tub?

JOSEPH PUKEPUKE: (CONTINUES #E036)

There was another story. Most of the old houses up at Roimata and that, they all got their own little springs stuck around the hills and et cetera. Every time we needed a bath, grandmother would send us with a bucket down to the spring and get some water and then she would heat it up in the thing and fill the tub up. Then about three or four of us will have a wash in the same water, tip it out and put some more fresh stuff in for the next lot.

JANE TURNER: (CONTINUES #E037)

When Bruce and I used to do that, halfway, before we got to the top, it was empty because we fought all the way up and he had the heaviest and I had the lightest bucket to carry.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

I might just move us on to the amalgamation of Hiwarau. So, we know that both of you have moved away at the time that the land had been amalgamated.

Could you both just confirm whereabouts you were living when Hiwarau C was created.

JOSEPH PUKEPUKE: (CONTINUES #E036)

I was down in Invercargill when that was done. One of my many of hundreds of jobs, down at the meat works down in Bluff. So, I ended up staying down there for about 20 odd years. It wasn't until we come back – I think it wasn't until I come back in the 80s, I think, then I found out that the place had been amalgamated without the consent of the owners. My mum and dad were talking about it, but when I heard about it, I was pretty angry. I was going to hunt these people down, but they said, they are already dead, so couldn't do much about it.

Another thing, I'm part of, somewhere along the line, I think my father got hit with a $15,000 rates bill, which popped out of nowhere. But I think Bruce would have sorted that out, didn't he – but my brother, he just come out of the Navy and that, so he had a pocket full of change, so he dealt to that sort of thing.

Since then, that amalgamations only been an ongoing journey for us and I think, back in the 90s, my brother tapped Miranda to see what she could do about it. I don't know why he picked her, because my brother had his own daughters, I'm sure they could have done it, but he asked Miranda.

How it come about, my brother was staying up there, next minute, he gets a letter for him to remove himself from the block. He was asked to remove his stuff and all his stuff, because the new owners were going to come and was taking over. They had the same name, but their whakapapa didn't align with the families from around this area. They had the same name, but they were from somewhere else. But Miranda sorted that out somewhere along the line, so she's been in that **(inaudible 14:44:56)** and sorting that place out, even up to this day.

JANE TURNER: (CONTINUES #E037)

I was in Auckland, I was married then. I was living in Auckland. It was only when I came back that I heard and realised that our land was taken off, you know. It was a chock, you know, when you suddenly realise what happened to the very place that you called home, you know. Because no matter, well as far as I'm concerned, no matter where I go, it's always here, it's always in my heart, and I don't think you can ever take that out. I might be able to travel anywhere, but I think home is home, Hiwarau is home.

Yes, I was living in Auckland and had my own family, had my own children. But we always came back during the holidays, brought my whānau back, you know, to the batch and joined in with every other ones as family, and my older, Bruce, his family, and my sisters. But they have all passed away, the three, yes.

My mum had six children of her own, and there were four of us that were whāngai. I was the oldest one out of the – I think they took me on because it was their grandmother that brought me out – that took me as – I think I was a month old when they had whāngai'd me. Miranda's, his grandmother and father.

I think, when I got a bit older, when mum and dad were married, they couldn't understand why they didn't have any children, so they took me. When they took me, **(inaudible 14:46:54)** took me as a whāngai, straight after that, they had one, two, three, four, five, six children. But they later on, adopted another three children. So, they brought up about 11, six of their own – no, 10, four adopted.

I mean, you know, even for me, being adopted, I don't see any, because we all grew up and we have that sense of connection that we are brothers and sisters. There is no separation of, I'm adopted, you know, yes, yes, you are from another family, no. I think that's probably part of Hiwarau, because my biological parents weren't that far away from where the batch is, and you know, we always knew, growing up, who my parents were. I think that's that connection we have in Hiwarau. We knew all the family along there, the community, you know, a close knit community.

So, I guess, those are the things I remember, is being able to be connected to everyone that lives on Hiwarau. The Aramoana's, the **(inaudible 14:48:21)**, yes.

HOUSEKEEPING – TIMETABLING (14:48:26)

JOSEPH PUKEPUKE: (CONTINUES #E036)

Like Miranda was saying in her presentation, that land is like, to me, is just part of me, regardless of when I went overseas, I always thought about this place wherever I went. As I was doing my little travels, trying to seek my fortune. I found the fame, but not the fortune. I always thought of this place regardless of where I was around the world and never forgot it. What they call a turangawaewae.

When I had my children, when they came along, I always made it a point, 'cos they were staying down in Invercargill at the time. Every two years I would bring them back up here, I think, one of the times, Miranda was six months old, it was the first time she came up to the North Island from Invercargill. From there on, every two years, I bring my children back all the time, I just want to show them where I came from and hopefully, they'll see where they come from too. As they grow older, when they become of age to do what they want to do, they will migrate us from Invercargill and all come up to stay up in the Bay of Plenty.

Miranda stays up in Tauranga, Mt Maunganui. My other daughter, Tui, I think she's got something going on Friday, she's in Whakatāne, and I have a son, he's at the place now. I used to stay there by myself, but my children pulled me out, they reckon I'm too old to stay there by myself. I'm enjoying life, not quite to the fullest, got a few strings tied to my life at the moment.

ME FELLOWES: (CONTINUES LEADING WITNESSES)

I just had one question, just about living on your whenua today. So, could you just explain to us how the whare has changed. Was it, a new one was rebuilt? Just in terms of where it's located on the block, like, was it in a new location or?

JOSEPH PUKEPUKE: (CONTINUES #E036)

There's a long story about this one. When I turned to the age of 63, I had a building contract up in Rotorua. Then I started getting a bit long in the **(inaudible 14:51:58)**, so I started to think about the future, what I wanted to do with myself when the cash flow stops coming in. So, I decided to come back to Hiwarau, build a little bit of a batch for me.

But both lands, the land that I'm on now belonged to my sister, so I had to go and ask her if I can build a shack on her land. She said, yes, it's okay, you can go and build there, as long as you put a room on there for me. So, I sort of, pre-built a bit of a building while I was working up in Rotorua and brought bits and pieces of it down and stood a house up down there. We forgot about the government, what do you call that thing – compliance, or consents and all that.

Well, the simple reason was, the council never had any services going up there, we had no power, and the road was all, had a bit of a gravel road up there, but they never serviced the place properly. No water system, no refuge truck coming up to take the rubbish. So anyway, Miranda and my other daughter come down and got them a chainsaw each and me one, and we went down and chopped all the trees and flattened the place out and put a two bedroom house. Which ended up as a five bedroom, or six bedroom house now, and it overlooks the Ōhiwa Harbour. We use it for Christmas holidays, birthdays, and Christmas **(inaudible 14:53:48)** and anything that – kiddies' birthdays and all the rest of it.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

So, I was going to ask, just the both of you, so moving forward, what would be both of your aspirations for your whenua? What is something that you would like to see happen?

JOSEPH PUKEPUKE: (CONTINUES #E036)

What I would like to see happen is that we get our block of land back so that my great, great, grandchildren can come in and feel safe when they come and stay on it without being asked to move. 'Cos, my grandchildren, they enjoy

staying at the old place, and they call it home too, and every now and again, they'll just disappear, come down here.

Like, I have great, great, grandchildren coming along, I'm sure they'd like to come here and – some of them, their umbilical cord, their pito, is buried on the land, their placenta or whatever you call it. The idea of that is that, when they grow older, perhaps they will come back to where their placenta is and feel at home. a Māori way of looking at it.

JANE TURNER: (CONTINUES #E037)

I think, for me, especially living in Auckland, it's such a multiculture place, you know. I live in an area, Glenfield, I think I must be the only Māori that lives there. Don't see many because many have probably gone home to their own place, but you have all sorts of different culture that is coming in.

I think, also, I noticed that when I come back home, it takes me about two or three days to get my tongue back into my reo, you see. It takes a while for me to get back into speaking the way I have been taught. I think that's because you live in that society of people that are all different cultures, different languages coming, you know. Maybe some days, when I speak Māori, I might sounds like somebody else, you know.

But for me, I'd like my children to come back, my mokopuna to come back, because I don't want them to lose what they had experienced when they used to come down here as little children, you know. I want my tuarua and so on and so forth, to know where their home, where nana came from and to learn, and to be able to connect together with their cousins, you know. Because so many of our families are living overseas, you know. You don't meet them, you only meet them, maybe once or every two or five years, and you lose that, you lose that connection. But it's nice to know that you can come back to the batch, to Hiwarau, and have that time that we have, you know, for me, growing up.

Those are my hopes, that Hiwarau will be the way that I lived in. But I guess, there would be a change, certain amount of change, but that's all right, as long as it's for good, for our children to learn, to grow, and to know who they are.

HOUSEKEEPING – TIMETABLING (14:58:12)

HEARING ADJOURNS: 2.58 PM

HEARING RESUMES: 3.24 PM

QUESTIONS FROM CROWN COUNSEL – NIL

(15:25) DR GRANT PHILLIPSON TO JOSEPH PUKEPUKE AND JANE TURNER :

Q. Tēnā kōrua, over here, kia ora. Thank you very much for your evidence. I don't have many questions. I did wonder, just in the context of why Hiwarau was created, whether your grandparents ever talked to you about the raupatu, that generation, did they ever talk about that?

A. [Jane Turner] No, actually, they never. As I said before, I suppose, because I was young at that time, then when I went away, by the time I got back they had already passed away. So, I didn't know anything about that at all, and I don't think they knew anything about it, anything about even what was happening to Hiwarau. They didn't say anything to me. [Joseph Pukepuke] No, no, they didn't.

Q. So, living on Hiwarau C and the problems that were facing the people living there. You both talk about how everybody had to leave to go away to find work. I am just wondering, how did the community survive when that happened, and all the younger people went away to find work?

A. [Joseph Pukepuke] When all the men left, when jobs became available through Kawerau and the Te Mahoe dam and the Waioweka gorge and also, the road that's going around to Te Kaha, up to Maraenui hill and that. All the men disappeared and just left the old people and the young. When the young ones came back for the weekends and that, they went out and made sure that the old people had wood and seafood.

What they used to do is they used to go out, sort of, to the main channel out at Ōhope, across from the wharf. There used to be pipi's out there, they were quite big, and they used to get bags and bags of pipi and bring them up, and dig a big hole just outside Roimata marae, and they used to dig another big hole where my nan and them used to stay. They used to tip all these bags in these holes, like, within the sea, so that they didn't go off, they were still fed by the seawater and all that.

As for fishing and that, they'd get them and they'd dry them out, like as I was talking about sharks and all the rest. Getting the sharks and then stripping them down and hanging them on the fence. Then when they became all dried out, they put them in the shed and when we wanted some, you just cut some off and boiled it up, threw in onions and carrots, or whatever you want. Yes, that's how the old people used to get on.

Q. Thank you.

A. [Jane Turner] They call it lemon fish now, don't they, shark?

[Joseph Pukepuke] That's the dogfish, the small one, which is known as a lemonfish. In the old days, the Māori called them pioke.

Q. Thank you, and so, in your briefs and also in a lot of other peoples, they have talked about how the harbour environment has declines and the rivers, and there is a lot less of that kind of food around. So, if the whānau all move back on to their little pieces of Hiwarau, are they going to be able to have that kind of life and to pass those techniques of using food and cooking et cetera, down to the next generation. Is that still possible with the environment at the moment, because that's a challenge, I think, for the future.

A. [Joseph Pukepuke] I'm afraid that thing happened when I left the district in 1962. I mean, things seem to have changes from then, the government bringing laws in, you can do this, but you can't do that, et cetera. They were growing forestry's up in the back blocks and other things they were doing. They were cleaning the rivers out, I think Dean was talking about the willow trees. Willow trees, like Dean was saying, the willow trees were the shelter for eels and fish and the whitebait and that, they used to thing along the banks under the willow and all sorts.

There used to be another freshwater fish, they called them morihana, they about that long, they were like a goldfish. They were another supplement of food, those sort of things. When I left in the 60s and that, they cleaned all the willows along the rivers from Waiotahe, practically just about right up to Kahikatea, which is the last release before you hit the back blocks. It also caused floods because the willows, they slowed the river down, as the currents come down, with the willow branches hanging in the water, it slowed the water from coming down.

What I gather, since they had the forestry and all that, when they harvested the forest, they left the offcuts up there, and when the rain came down off the hills, there were no trees to stop, slow down the mud, et cetera, et cetera. What it did was it washed all the off cuts from thing, down into the river, and they went in the river, and they came down and clogged all the bridges up as they came along. That was thanks to the government's innovation to such and such the environment. All they did was cause another problem, but to my way of thinking, I don't know.

[Jane Turner] I think what my brother was also saying that you like, the way we lived then, we hope that this generation would. But I think it be much different, the way things would be. There won't, you know, I'm hoping that the muscles will return, and the cockles will return. But the way things are going around the harbour, I'm not sure on that. So, the next generation will probably have a different idea, how to cope and how to look after, how to farm that you know, BB1 and BB12, their ideas are probably different to mine, you know.

But my brother and I, we talked about the time when we were living there and how it was so plentiful, and you know. I guess, you can still gather oysters, but you have to go to the oyster farm, you have to go muscle farm, but that cost money to go and buy. Where we were living, it didn't cost us anything. But you know, I do hope that one day it might return, the cockles might return, the muscles might return, you know. Maybe when Hiwarau comes back to us, the iwi, it will return, that's my thought.

Q. Thank you, and we will probably have more evidence about the harbour in later days, et cetera, but thank you very much, both of you, for your evidence. Kia ora.

A. [Joseph Pukepuke] Just before we sign off, I'd like to give you another example about these willow trees. I spent about 20 odd years down in Invercargill. There's a river down there they call **(inaudible 15:35:10)** river and what the council did over there, they cut all the willow trees out from the mouth of the **(inaudible 15:35:20)** river, all the way up to **(inaudible 15:35:27)**, in land. I think this was in 83, I think it was, or 84, that southland had a big flood, and it was due to that.

There were two rivers in Invercargill, there was one in **(inaudible 15:35:48)**, it was quite near the town, and there's another river out at Riverton. Same thing, they cut all the trees down and then we had a big rainfall, and it flooded the whole district and all the farms. Instead of the river going like this, coming down from up land, by the time the storm finished, they had a straight river, it cut through everybody's farms and took houses down in the process.

Q. I live in Invercargill, and I was there in the 1984 flood, so I know what you are talking about. Kia ora.

(15:36) PROFESSOR TOM ROA TO JOSEPH PUKEPUKE AND JANE TURNER:

Q. Kia ora kōrua, koutou. He whakahokinga mahara. Nō reira, pūpū ana te ngākau i a kōrua kōrero. Heoi anō, ka rua noa iho pea aku pātai. Ko te pātai tuatahi, nā te Kaiwhakawā ahau i whakamaumahara mai. **Return to the past. My heart was uplifted of those days that no longer are here. I only have a few questions of you. May I lead with this, and it was just my conversation with the Judge.** Paragraph 29 of Jo's evidence, the last sentence says – it's about the language and the different language that we are exposed to today. That is not the language that my parents spoke.

WITNESS REFERRED TO BRIEF OF EVIDENCE, #E036, PARA 29

"Now, the concept of the whaikōrero has changed. For us old people, sometimes when they stand up to speak, we go to sleep on our walking sticks until they are done." Tāua, tāua, tātou. **I understand it, so well.** Tāku pātai **my question is** how do we effect that, should our young people come back to Hiwarau? Do we have some way of ensuring, and

I think you mentioned my mate, my colleague Wharehuia in the paragraph before: "When people would attend Wharehuia's classes, they would be taught Tainui reo." What can we do with your, our, young people in this new environment that we are trying to recreate for them? Me pēhea rā tā tātou whakaako i a tātou tamariki mokopuna ki a tūturu Māori te reo? **How do we teach, how do we impart our children the authenticity of the reo.**

A. [Joseph Pukepuke] When I first come back home from down south, I was very deep in the European world and 1912, I was getting a bit old, and I went to a tangi one part, and I was the only one there with a white hair, 2012, I'm sorry. I went to this tangi up in Ruatāhuna, and anyways, that **(inaudible 15:39:56)** and they all stopped and looked at me. I didn't know a word of Māori, I had lost my reo and they were looking at me and I got all shy. When I come back from that experience, I thought, I better go and learn my reo again, so I started going to the whare wānanga at Awanuiarangi and Aotearoa, Te Wānanga o Aotearoa and all of those. I learnt nothing from that.

So, the partner I was going with at the time, she said, well, I'll take you back to Ruatāhuna, we might go up there and stay there for a few months, touch up your reo. So, I went over and spent about, three, six months up there, off and on, like, plus working and going up there for the tangihanga and huihui. I managed to get bits and pieces of my reo back, but I still found it was still a bit pihikete, my reo.

So, my partner at the time said, if there's any way you can get your reo back, you have to join the Hāhi Ringatu in Ruatoki. You go there, they don't speak English, so I joined them, and they helped me. In Ruatoki they still speak the old reo, but the Wharehuia reo. Well, the reo now, I hear these educated people that went to learn the reo from all these Wharehuia and that, they started speaking in a reo that I couldn't understand.

Like when they stand up before they did their whaikōrero, they went and did all these chants, they went all up to tūhāhā and all over the place, around the world then come back and their actual kōrero for the kaupapa is only about three, four minutes, and that was it. But all their

tauparapara, they were knocking them out one after the other. Half of them, I couldn't understand and even some of the ones from Ruatāhuna, when we used to have things up there and these fellows from these academic. They would come up to talk, we are all sitting there wondering what they are talking about. We found it hard to thing and sometimes, some of the old ones would tell them to sit down, we couldn't understand them.

Even now, I watch some of the kōrero, like when they have some whaikōrero at Tūrangawaewae. Some of them I understand, some, get these young fellows with these things all over their faces, throwing their sticks up and down. I'm still none the wiser when they finish, and some of the words, they aren't in my vocabulary. But I enjoy your kōrero Tom – no, no, no, very understanding, easy to understand.

There's a fellow I know, Ron Tahi, I learnt from him and he's a pretty basic speaker, and he speaks for the kaupapa. He doesn't go into these big chants about the tūhāhā and go to north Auckland and go down to the Waipounamu and talk about te ahorangi and all of those sort of – he's pretty straight up. He always sticks to the kaupapa, whatever it is. So, for others – I have some people here I would like to teach to whaikōrero, and asked him: "You know any tauparapara?" "I know one." I said: "You need to learn more because you might go somewhere and the fellow on the other side might use your tauparapara and you are stuck." So, it pays to learn at least eight because normally there is about four or five speakers on one side, so they'll use – if you only know four, those eight on that side are liable to use yours and you are stuck, or you have to say, tīhei mauriora, kia ora.

So, Ron set me out a format, how to start one but I jiggled them around a wee bit so that the haukainga aren't saying, that fellow said the same thing last time. I sort of change it up and as for tauparapara, I know about 12. Different ones for different occasions, like the one I did out there this morning, that was a whenua one that one. Ka tangi te tarakōtiwhatiwha mō tana whenua, ko te kuri a Te Māheuheu, well, that's us, that's our one, having trouble with the amalgamating and things. That's the Māheuheu. The Māheuheu, everybody is a weed growing on the whenua, and the

weed we have no is that amalgamation thing that we are trying to get out, that's why I said, **(inaudible 15:46:06)** today. Ron taught me all that.

Q. Ka pai. So, from what you just said, I understand that you are going to be teaching your young people and putting effort into them, not just with them on their land, but in their hearts. Tēnā koe. I just have to tell you a story, I work at The University of Waikato. Wharehuia retired and so, the university decided to give him the highest honour that the university could give, called an honorary doctorate. So, he organised this big hui, Tūhoe came, Arawa came, Scotty Morrison came. Our kaumātua stands up and he does a mihi to them. I'm in the second row, I'm interpreting for the vice-chancellor, the chancellor and the high Pākehā, it's going well, it's going well. Scotty Morrison stands up and he goes –

A. Āe, kua rongo au i a ia.

Q. I said to my bosses: "Gentlemen, Mr Morrison has entered into the realms of metaphor. I'm sorry, I cannot interpret for you." We were looking over to the other side, Wharehuia was sitting beside Timoti Karetu. We saw Wharehuia go – and we saw Timoti go. Not from Hauraki –

A. Those two people, they are uri of mine, yes, Wharehuia rāua ko Timoti, he pāpara rātou ki ahau i te taha tāku pāpā **I'm related to them through my father**.

Q. This new language, I'm sitting at home with my wife watching Te Karere, we get a nephew come in, he wanted to ask me a few questions about some stuff at home. Te Karere is on, Scotty's in his element. My nephew says: "Uncle, what's he saying?" "Ask your aunty." She goes – sometimes, 50 years ago, we were protesting about the state of our language and wanting our language to come back. We are still protesting about our lands and wanting our lands to come back. But sometimes we have to be very careful about what we wish for, and we have to be ever vigilant.

So, that brings me to my second question, my aspiration, and I'm quoting you from paragraph 55: "My aspirations for the Hiwarau Block. My aspiration is for us to have our whenua back – for there to be no more amalgamation of Hiwarau C. This is so that the land will be passed down to my children Miranda, Tui, and Benjamin, who will then pass it down to

their children. Right now, they will only inherit my shares which is not the same." I'm not quite sure what that last sentence means.

A. I think what I meant by that, that you cannot live on shares, which can be taken away and my children will be left out on the branch. Yes, I think that's about the only way I can answer. On the same token, my other brothers and sisters are amalgamated to that land too. But my mum had given one of my sisters most of the land on the other block that we owned in Kukumoa. On top of that, she gave my sister another bite of the cherry, who has shares in the – actual shares that were divided amongst my other brothers and sisters.

So, my sister got two bites of the cherry, which means that my shares, and if I give them to my children, they don't get much. But sister's children, they get two bites of that cherry and if it come to a vote for anything in general, because they have the majority of the shares, my children will be voted out. That's how I see it and that's the same as this block up here, the Hiwarau C, because my brothers and sister's children are all cut into that block too. But they don't seem to be interested in it, but if there was money to be made out of it, I'm sure they'd be interested in the blocks.

At the moment, my son, Benjamin, he's farming the land, he has dry stock on there, sheep, cattle, horses and fruit trees and all sorts. He has fenced everything off and he has also acquired the block next door, to farm on. As Dean was saying, the land is not productive, it's only good for nanny goats, it's all up hill like this and it just has weeds and scrub. It's not a profitable land. If you like, tomorrow, if you like, I could take you fellows up there for a drive and you would see it, it's up on the side of the hill. It's nothing, you can't farm anything, it's only good for blackbirds and possums and Weka.

Q. Ka pai, mārama. I recall our site visit and saw those unprofitable lands, but also saw the beauty in the land. Thank you. Seeing the beauty in your kōrero, kia ora kōrua.

(15:55) JUDGE DOOGAN TO JOSEPH PUKEPUKE AND JANE TURNER:

Q. Kia ora anō kōrua. I just had a couple of pātai to follow on from Professor Roa. So, that paragraph Professor Roa was just talking about, paragraph 55, your aspirations, Jo, for Hiwarau, "they will only inherit my shares, which is not the same." Miranda may know this from the work you have done. But quite often what happens on an amalgamation is that the shareholding that you had, or your parents had in the land is then applied to the bigger block in proportion to all of the shares of all of the owners in all of the amalgamated blocks. That's the other part of the problem that I think you were talking to. Which means that, a proportionate shareholding in a 12 hectare piece of land is quite different from a proportionate shareholding in a 300 or 400 hectare block with, I think, 270 owners at the time it was created.

So, that's a problem if you want to give your interest to your children, they are now a generation or two down the line, in a smaller proportion to the overall block. So, I think, if I am understanding correctly, that's one of the issues you are talking to here. Is that correct?

MIRANDA HORAN:

Yes.

JUDGE DOOGAN TO JOSEPH PUKEPUKE AND JANE TURNER: (CONTINUES)

Q. Āe, thank you. Then, I see, Jane, in your evidence, you talked about the leasing of the land in the 1960s, and I forget you name – originally to John Manuel, and that leasing was just over the B1B2, or the 12 hectare block?

A. [Jane Turner] Yes, well, the whole block.

Q. So, at that time, what did Mr Manuel, what was he doing on the land?

A. It was just, his cows were using the grass to graze on, that's really what it was. But what I gather, I think they were supposed to pay the rates too.

[Joseph Pukepuke] Yes, yes, yes, something like that.

[Jane Turner] But when my parents went back, but he had already passed away. They didn't do anything because the next of kin relatives,

yes, they just left it in – they had paid for his house and all of that **(inaudible 15:58:30)**.

Q. So, of that whole 12 hectares, only a fairly small portion of the land, as I understand it, would be okay for grazing. That is closer to the harbour?

A. Yes.

Q. Right. Then, so, when we come back to now where Benjamin is on the land and he's running some dry stock and it's not a productive farm, it's like, maintaining the land really.

A. Yes, and for food.

Q. Food, yes.

A. Rented – he's leased the next door neighbours, so he's able to raise cows and sheep because not only is he using Hiwarau B1 and BB12, but he's also leased it from neighbours. Well, again, aunty Mavy's block of land that's right next to mum and dad.

MIRANDA HORAN:

He has some pretty wicked gardens too. So, my brother and his wife, they have a lot of eggs, they have chickens, they have ducks, and so, they supply eggs to lots of whānau around there. As the vegetables are ready, they share kai – like the way it used to be. Like, he grows his kai and shares it, you know, if people need – kill a sheep and share it and then other people, do something, and share it back. So, it's not productive for money, but to make their living and to live off the land, it's enough for that, and to help the whānau out, like he'll go fishing and then drop fish. He's like fish Santa, he drops fish all the way home, doesn't eat any for himself, and drops it off to all the old people, so he's living the way it used to.

JUDGE DOOGAN TO JOSEPH PUKEPUKE AND JANE TURNER: (CONTINUES)

Q. Right, okay, and just coming back to this question of rates. This land, this block, the 12 hectare block still has its own rating assessment, yes, and that goes back mai rā anō?

A. [Jane Turner] Mai rā anō.

JUDGE DOOGAN TO MIRANDA HORAN:

Q. So, I'm not sure how it – I know that generally speaking, counsels work on what they term, separately rateable properties. Sometimes all you need is the presence of a building or something on the land. Then they might identify that as a separately rateable property and start to levy rates on that particular block. I don't know what the history is here, but it sounds, from what I've heard, you have rates being levied on the Ahu Whenua Trust who administer Hiwarau C. And the double rating problem you have is you have blocks within Hiwarau C still having these assessments levied on them and you are not yet clear from the council as to the logic for this, or what the reason is?

A. The rates that were originally being paid prior to amalgamation have just continued, they have never stop. So, it would be like having your own title at your house, and you put a minor dwelling on out the back for your grandmother or one of the kids, and then they go, cool, that'll be another two and a half grand thanks. Rather than – it's like, yes, it's rating twice for the one block of land and it's not just us, there are other whānau that are still paying the rates that were prior to amalgamation.

Q. So, do you know if all of the blocks that went into the amalgamation, all have their own separate rates, or is it just some?

A. Some of the ones that were still, like where the people were living on them and utilising them and were already paying rates. When the amalgamation come, it was like another blanket was just chicked over the top of the existing rate's structure.

Q. Right, I follow, thank you.

JUDGE DOOGAN:

I have no further pātai, but I just wanted to tautoko the mihi from our panel, Jane, Rawaho, for your evidence. You have shone a light into another time and in many respects, I'm not sure I could have survived some of those experiences. But thank you both very much for the clarity of your evidence and for also bringing to life, the bigger problems with the amalgamation and what that actually means, so ka nui te mihi ki a kōrua.

HOUSEKEEPING – TIMETABLING (16:03:36)

HEARING ADJOURNS: 4.04 PM

HEARING RESUMES: 4.07 PM

CLARIFICATION OF PRESENTATION (16:08:04)

(16:09) MIRANDA HORAN: (#E035, #E035(a), #E035(b), #E035(c))
Kia ora. The visuals.

WITNESS REFERS TO POWERPOINT PRESENTATION #E035(c)
So, dad was saying about getting the chainsaws out, I'm not too sure if you can see this here. This was us clearing the land to build our batch. That little one on dad's back, she turns 20 in two weeks, so that was, yes, clearing the land.

We run horses, aunty Jane is – the uri of aunty Jane's horse, they still run around here, and our kids still roam free on these ones. That's my brother with his health and safety gear on, clearing the land, all of our uncles. So, our kids grow up, yes, helping out our uncles, our uncles pass down all their knowledge to our kids and us to look after our land.

There's a lot of kai, and walnuts. So, the walnut tree was planted by nanny Hora and so, we still gather our walnuts from there and we come home and pick them all up and go and do some baking. There are many wonderful Afghans that have come out of that tree.

Aunty Jane, back in the day, with our aunty. So, this is just in the kitchen, in our batch, so you can sort of see, yes, these are – it skips around a bit with our different generations, but everyone went from horses to the four wheel horse.

All our aunties in fine form, getting ready to go out.

This is all our boys clearing out the sheds, putting up fences for keeping the cows in.

All the birthdays. So, this is dads' birthday, that's a three generational birthday up at our batch.

This is us when we were young. The one in the bottom corner just turned 50 and this is us, Mira and them in here, way back when, up at out batch. That's our koro, and Mira. **(inaudible 16:11:24)**, that's **(inaudible 16:11:24)** there.

We come back and have working bees quite a lot and our whānau get together and chip in money and rebuild all our fences, and we spend, like, the weekend building our fence and then our kids take off and go for a swim in the harbour. Like we used to. Although, they have flasher boards, we didn't have boards.

These two are 24 and 20 now, running around there and they still run around like that. Yes, those are the flash boards.

So, you can see up on the hill, our batch, so our kids come down and roam around there.

That our sunsets.

That's our koro on our land, back he was a young and spritely young man, prior to the amalgamation.

There's all our kids, and Tui.

We bring a lot of people home. The young girl here, she's from the Czech Republic and so she come and spent some time and learnt how to gather pipi's and do hangi and our kids teach her. The smallest one there is about five foot eight now.

This is our nanny Hora, she's the one whose batch – where our land came from.

That's our nanny **(inaudible 16:12:51)** her daughter.

This was pretty special. So, some of our whānau that had sort of, moved away and hadn't reconnected, they brought all their whānau back to the batch and we had, like a homecoming, and they brought all of their whānau back to see where they are from. This was a couple of years ago. So, bringing their little ones through.

These ones here, this one has their own baby, these ones are like 23, 24 now. That was them learning to fence.

Nana and koro and Te Rangihau, he's like what, 40 now, roaming around there. They still always come home.

There's Christopher and them, back at the batch, that's the little car that nana used to drag us around in with her pig, Arnold. She had a pet pig that she used to bring backwards and forwards to the batch, he would sit in the front seat. We would sit in the back with the dog, should have seen the people when we would pull up to the lights, they'd be like: "There's a pig."

These are at Christmas. So, nana was amazing, we would run feral, but then she would call us in, and kids would come from out of the wood works to come and be fed: "Moko's, it's food."

A lot of these ones have all got their own kids now.

There's nana looking styley.

These ones here, all got kids of their own now. These ones are coming back.

That's another one, that ones from Spain, that's looking out towards the harbour mouth.

That's us learning to cook.

That's me when I was younger.

Some of these ones here, our young boy here in the red, we lost him a couple of years ago and we lost him to a car crash. But he used to love it at the batch and lived on fried bread, so his memories are all back there.

Our aunty and our uncle that we have lost as well, back there as well. So, this was where we, can just sort of see, as we age up and down, how often we are always there together.

Our other nannies, that was Christmas.

More Christmas.

Birthday.

That's me. That was the way back when's at the batch, with my koro.

This was there – there's me, I'm still a baby and all my cousins.

So, this is how long we come back for, all our cousins, but that's how we build those bonds.

There we are all again.

That was **(inaudible 16:15:51)** the dog, I think that was mark one or mark two, we had about four **(inaudible 16:15:55)**.

My uncles – how old is uncle Moa now, 70? When he was in his hay day.

That's dad learning to fence. That's funny, that's my father in the hat and that's my brother BJ whose living up there now, living at the batch. He lived there

with koro and koro taught him how to look after the land and that's where he is now and that's what he's doing. Uncle Nare has hair there.

All the kids growing up.

Aunty Jane, fish heads for breakfast back at the batch. That's Gale, she's like 50 now.

These ones again – yes, everyone's over 50 now. Some of them, maybe not quite.

That's my sister and uncle Moa.

Yes, all these little ones here have all got babies now. We used to like to line them all up and then you sort of see – uncle Bruce.

Learning how to do hangi, our uncles teaching us. Well, actually, they didn't teach us then, we just wait to be fed, but now they teach us.

You know what, we used to bring up our hangi here and cut it all on the back of the ute, and we still do. That technology hasn't change, it still gets put up on the back of the ute.

That's all our fruit trees growing. There's the kids.

We found this one here, that's all the corn that used to grow there. Aunty Mavy and them and we would just gather all that –

JANE TURNER:
Yes, and you look across, that's Roimata –

MIRANDA HORAN: (CONTINUES REFERRING TO POWERPOINT PRESENTATION, #E035(c))

That's Roimata in the background, back when people were living there, and we were able to use the land a lot.

Boys doing all the felling of the trees, the old trees.

Nannies discussing it.

Girl power, more girl power.

I think that's head office discussing what we need to do.

The technology remains the same.

These are the little kids still, and that's some of them growing up.

That's a Christmas.

Building another shed.

There's the kids, feral.

That's me.

This is the new team hangi, so that's head office over there sitting down, directing, and that's our new generation learning what to do and how to do it.

Head office, discussion, solving the problems of the universe. Yes, that's head office and team hangi.

Tuarua, that's our next generation, they are running around.

That bucket, that's the pipi gathering bucket, and there are the pipi gatherers.

We have themed events.

That was good, flashbacks. Uncle Bruce now, there's our view, there's the motu, the boys.

Uncle comes back, he can't stay away for too long, he doesn't live there anymore, but he comes back all the time, when he can.

That's the moon coming up over our place.

The boys looking after our land, doing all the roading and the fencing.

That's head office teaching the boys how to put the deck up on nanny Hora's old place, it's extended.

Head office.

Nanny Hora's parents.

Head office still.

More Christmas's – you can see us gradually getting fatter and older.

That was another themed tea party, with red bands.

The kids going hunting, uncle going hunting.

All the food.

21st – we have had 21st's, weddings, 5th's, 70th.

You can still get lots of kai out of the harbour, if you know where to go.

Yes, that's everyone coming home to put up birthday – that's the bucket bath, the bucket bath that dad and them used to have. The buckets changed but

they are still doing it. We are still washing our babies in buckets, the buckets are just bigger now.

HOUSEKEEPING – TIMETABLING (16:21:37)

JUDGE DOOGAN ADDRESSES MS SORIANO – COPYRIGHT ISSUE (16:21:58)

JUDGE DOOGAN:

Thank you to the whānau for sharing those images, that really does bring to life the many generations.

MIRANDA HORAN: (CONTINUES, #E035(c))

I think it was just, we wanted to show everyone through the generations, how even though it started here, that being part of the land and having that land and being able to go home like that, it teaches, you know, not just the language like dad was saying. But the learnings of the kai gathering, the sharing. You can see – once you connect them when they are little, we just keep on coming back.

HOUSEKEEPING – TIMETABLING (16:23:09)

JUDGE DOOGAN ADDRESSES MS SORIANO – CLARIFICATION OF REFERENCE NUMBERS (16:23:58)

JUDGE DOOGAN:

Just again, thank you to all of our witnesses today, Miranda, Dean, Rawaho, and Jane. Thank you very much for what you have brough to us and the clarity with which, you have answered the questions we have had, and Crown counsel have had. Thank you.

HOUSEKEEPING – TIMETABLING (16:25:17)

KARAKIA WHAKAMUTUNGA (DANIEL REWIRI)

HEARING ADJOURNS: 4.25 PM

HEARING RESUMES ON TUESDAY 18 NOVEMBER2025 AT 09.12 AM

KARAKIA TĪMATANGA (DANIEL REWIRI)

JUDGE DOOGAN: (MIHI)

(09:19) MS KAREN FEINT: (APPEARANCE, MIHI)

Tēnā koutou katoa. Ms Feint appearing for Ngāti Ruatakenga, Wai 1782.

(09:19) MS TATIJANA SIMON-LARSEN: (APPEARANCE, MIHI)

Tēnā koe e te Kaiwhakawā, otirā, ki a koutou ngā mema o te Taraipiunara. **Thank you, Judge.** Counsels name is Ms Simon-Larsen, and I appear with Ms Terei-Tipene on behalf of Ngāti Ngahere, Wai 1884.

We also seek, your Honour, to leave early today, as we have other matters to attend to, but we will be rejoining online.

MS TE WHENUA ADDRESSES JUDGE DOOGAN – SEEK LEAVE TO CROSS-EXAMINE VIA AVL (09:20:08)

HOUSEKEEPING – TIMETABLING (09:21:04)

MR LOA CALLS

E te Kaiwhakawā, me koutou o Te Rōpū Whakamana i te Tiriti o Waitangi, ngā rōia mō te Karauna, ngā rōia mō ngā kaikerēme, koutou ngā kaikerēme. Huri noa ki te whare, tēnā koutou, tēnā koutou, tēnā koutou katoa.

May it please the Tribunal, counsels name is Loa. I am here to assist the presentation of the evidence of Mr Stirling this morning. If I could seek leave for Mr Stirling to present while standing, but when questions begin, may he be seated, your Honour.

Yesterday I filed the PowerPoint presentation to be used in the presentation this morning. If I could ask, through your Honour, for the Registrar to put that on the screen.

BRUCE STIRLING (SWORN)

Q. Tēnā koe, Mr Stirling. Can I get you state your full name for the Tribunal please?

A. Bruce Stirling.

Q. Thank you. Just confirm that you wrote the reports, 'Twentieth Century Land Legislation and its Impacts' in the North-Eastern Bay of Plenty Inquiry?

A. Yes, yes.

Q. Which has been given appellation number #A032?

A. Yes.

Q. Ngā mihi, Mr Stirling. Kei a koe te wā.

(09:24) BRUCE STIRLING: (#A032, #A032(a), #A032(b), #A032(c), #A032(e), #A032(f), #A032(g), #A032(h), #A032(i), #A032(j))

Kia ora koutou.

WITNESS REFERS TO BRIEF OF EVIDENCE #A035(f)

He nui te ngaronga, he iti te putanga
[Great pains, little gains]

This whakatauki was cited (and translated) by the editor of the government's bi-lingual periodical, Te Karere Māori, in his 1858 editorial about the inconclusive resolution to a prolonged and fatal dispute between Ngaitai and Te Whānau a Apanui over the Tunapahore block. "What," asked the editor, "has either of these tribes to show as the results of the work in which they have been engaged for more than two years past? What, besides graves?" Ninety years later, those two tribal groups – not to mention Te Whānau-a-Harawaka – could have asked themselves the same question

about their long-running efforts to complete the title to Tunapahore, which dragged on for sixty years between 1885 and 1945 and left them with great pains, but little gains.

The Tunapahore block was a late addition to this report on twentieth century land legislation and its impacts in this inquiry district, but the pithy proverb applied to it – 'great pains, little gains' – is unfortunately just as relevant to the other blocks considered here. By the dawn of the twentieth, the earlier confiscation and Native Land Court processes had rendered the hapu and iwi of this district effectively landless. From 1900, they spent a century trying to retain and utilise their meagre lands to support a rapidly growing number of descendants, but they ended up much as they started – landless. Their ever-dwindling lands were classified, investigated, surveyed, heard, re-heard, even re-re-heard, reserved, partitioned, incorporated, consolidated, developed, amalgamated, exchanged, farmed, afforested, mortgaged, converted – not to mention leased, purchased, and just plain taken – none of which came close to solving the underlying problem, which was landlessness.

As of 1900, there was about 127,000 acres of Māori land remaining within the inquiry district – that is shown on Map 1. Just to start off on the wrong foot, you will notice there is a bit of a glitch in that map around Torere, the white gap, which should be shaded as Māori land. In my defence, I will say that the first draft of that map was correct, and when I got the second draft back of the final maps, I only rechecked the ones that needed correct and failed to notice that this mistake had crept in. So, I'd say rookie error, but I'm hardly a rookie, so I got no excuses.

JUDGE DOOGAN:

Mr Stirling, just to be clear about where the error is, are we talking about the coastal, that little narrow strip?

BRUCE STIRLING:

Yes, heading across the confiscation boundary in land, to that little triangular white portion, so, that should be coloured in as Māori land. In defence of that

map, I think it was still Papatupu lands, so technically it wasn't a registered Māori title at the time, but it was Māori land and should be shown as such. My apologies for that.

CONTUNES REFERRING TO BRIEF OF EVIDENCE #A032(f), PARA 3

Today about 52,000 acres of that remnant, the 127,000 acres that I mentioned, is still Māori land, that is shown on Map 2. This land was not evenly distributed, then or now. A 1908 commission of inquiry found that those it described as Whakatōhea retained only 43,000 acres of land, just over half of which comprised reserves within the confiscation district. Most of the reserved area lay in the Ōpape block (20,000 acres); land noted for its "sterility… broken with numerous cliffs and gullies" and containing very little "ploughable" land. As such the commission advised that, "the Whakatōhea Tribe has no surplus land for sale." The Crown did not agree with the 1908 commission's finding of Whakatōhea landlessness, insisting into the 1920s that they still had, "more land than they require for their own use." A few years later, the Native Minister accepted this was not true and that land purchasing on top of confiscation had pushed Whakatōhea "to the verge of landlessness."

The other group the commission identified here was Ngaitai, who were described as "a smaller but more compact tribe" and who were seen as, "large landowners." They had much less land within the confiscation district (mainly in the Awaaakino, Waiohoata, and Torere blocks) but still retained large areas in rougher blocks, inland of the confiscation boundary. Which you can see on Map 2, the blue line is obviously the confiscation boundary, and the larger blocks to the right and south, below the confiscation line. Even so, despite Ngaitai being these large landowners, as the commission described them, it urged that almost no more land be purchased but that large areas deemed 'surplus' to Ngaitai's immediate needs instead be leased out.

Instead of adopting the commission's findings, the Crown renewed its (very) briefly stalled purchasing programme; quickly buying up nearly 68,000 acres of Māori land for colonisation in a small number of larger purchases in the east and south of the inquiry district, mainly beyond the confiscation line (see Map 4

at #A32, p.75) – the light blue shaded blocks are the areas of Crown purchase. This was more than half the land that remained at 1900. The Crown made no reserves for Māori in these purchases and severely aggravated the landlessness that existed before this purchasing began.

The Crown acquired this land cheaply, depriving the owners a rare opportunity to accumulate much-needed capital to improve their remaining lands. The average price paid had risen by fifty percent after 1905 legislation required the Crown to pay a price equal to government valuation, but those valuations tended to below market value and below what private purchasers were willing to offer (had they been allowed to compete with the Crown). The average price paid for the purchases under review here was £1 6s. per acre, less than half the average paid by private purchasers in the same period. The Crown imposed a discount on its price to factor in the anticipated costs of opening up the land for colonisation – even for land that was unfit for occupation. Nor, despite complaints from the owners and comment by the 1908 commission of inquiry, did the Crown account for the value of the timber on the land it purchased. It was not prepared to do so until the 1950s, when it was mopping up the last unsold interests in Oamaru 2B5 (amounting to just 84 acres).

A number of Crown purchases were driven by debt. In five cases, the 'purchase' itself was more in the nature of a compulsory acquisition to repay a debt imposed by the Crown (such as survey liens or rates compromises). In other blocks, it was more a matter of the Crown being patient enough to wait until the "private financial reasons" of individual owners made them more amenable to purchase offers. Other vendors had no access to development finance and resorted to selling some interests in order to raise funds to improve their lands.

At the same time as arranging its own land deeds, the Crown facilitated private purchasing which, from 1907 to 1992, accounted for 11,000 acres of Māori land in 114 increasingly fragmented land titles (see Map 5, in #A32, p.153).

I guess the only issue with the private purchases is a lot of them are very small, so, it is a little hard to see in a map at this scale. It also takes in the larger blocks. So, a lot of these smaller purchases are scattered through the confiscation district. Thank you for enlarging it, it does show a bit more clearly if you zoom in.

Just two of these many private purchases accounted for nearly half the total area, being the inland titles Kapuarangi 1 East (3,000 acres) and Whitikau A3B (1,793 acres). The other 112 private alienations were much smaller fragments of land, accounting for about 5,000 acres. But this was lost from the most valuable and productive 'reserves' that Māori had retained within the confiscation district at 1900. As such, the impact was at least as severe as the loss of the much larger inland blocks beyond the confiscation boundary.

Crown and private purchasing was greatly facilitated by Māori land policies designed to, "facilitate European settlement and thus separate the original owners from their lands." A key provision was bypassing the difficulties of acquiring land from numerous owners, who were continually increasing through successions. Rather than deal with so many owners, often scattered across the district and the motu (if not the world), a purchaser need only ask the government's land board to call a meeting of owners to consider a purchase offer. If the meeting satisfied the low quorum of five owners, and if the shareholding represented by those in favour of the offer was larger than the shareholding opposed, then the purchase was confirmed and completed by the Board without further owner input. Thus, one large owner at the meeting could wave through a purchase regardless of what other owners wanted. Poor notification and inconvenient locations (such as Rotorua) for meetings were further hindrances to owner input into these purchases.

Given that many of the titles purchased privately were valuable 'reserves' within the confiscation district, it is hardly surprising that the average price paid was, as noted, more than twice the average paid by the Crown, which mainly purchased inland blocks of lower economic value. But when it comes to private purchases the average price conceals as much as it reveals; if the two larger

inland blocks I referred to earlier, of a much lower economic value, are excluded from the totals in the period 1900 to 1959, the remaining acreages alienated in that period falls from 6,074 acres to 1,281 acres, for which the average price per acre paid was £10 per acre. Prices also increased over time, from about £10 per acre prior to 1920, rising in the period after 1980 to over $1,500 per acre. Had Māori been able to retain more of their land for longer, they might have benefited from this huge increase in value, but they saw very little of that benefit.

Private purchasing was governed by official processes intended to prevent any Māori vendor being left landless by a purchase. Given that Whakatōhea in particular were already landless before private purchasing resumed in 1907, these processes were obviously inadequate. On the other hand, there may have been individual owners who did have sufficiently large land holdings (including in other districts) to be able to sell some land. But given how easily the loose restrictions on landlessness could be skirted around or stepped over, it is hard to see that many of the vendors involved could truly afford to lose any of what little land they retained. What instead emerges from the evidence is that many vendors were indeed rendered landless by the purchasing that continued without pause throughout the twentieth century. In the worst cases, the lands remaining to some owners were deemed to be already too small to sustain them, leading officials to endorse purchase on the basis that the vendor would be no worse off as a truly landless Māori.

A less common feature of private purchasing was the role of debt that induced owners to sell. These debts included survey charges and rates arrears, which could form a significant portion of the value of the land. As Wiremu Kingi said in 1926 when agreeing to the purchase of two Ōpōtiki township sections, “this land has already eaten its head off in rates, and I am the one that does the paying.” Rates debt was usually deducted from the purchase price by land agents or the land board before the balance was paid out.

The preference of Māori owners was to lease rather than sell their land, and a number of leases of small titles were arranged. Unfortunately, leases could be

exploited by the tenant to induce the owners to later sell, particularly where rents where advanced to owners in need who were then left vulnerable to purchase offers. The purchase of Māori land by tenants was later strongly criticised by the Māori Appellate Court as unfair and improper but, by the time it spoke out in 1965, it was too late of owners of several Ōpape titles whose tenants had acquired the freehold. Legislation in 1913 wisely barred the Crown from purchasing any interests in Ōpape, but it neglected to extend this protection to also bar private purchasers, who thus acquired 26 separate Ōpape titles that should have been retained as part of that 'reserve'.

Incorporation was an early Crown effort to obviate the deep defects of the Native Land Court title regime. Once an incorporation was formed a block of multiply owned land was managed by a block committee selected by the owners, thus overcoming the key "handicaps" of individualised titles with many owners. Incorporation was initially developed in the 1890s to streamline land purchasing. From 1909, block committees were enabled to seek state finance for land development, but in this district that was not a feature of incorporation. Instead, the original intention to use incorporation to simplify alienation predominated. Several of Ngaitai's inland blocks were quickly acquired by the Crown after incorporation (see Map 3, in #A32, p.21) – those are all of the incorporated titles. Legislation in 1913 barred the Crown from purchasing incorporated titles but this came too late for the two largest incorporations here (Takaputahi of 32,857 acres and Kapuarangi 1 West of 11,474 acres), both of which were acquired by the Crown. The remaining smaller incorporated titles were briefly leased out with mixed results.

By 1930, a political window opened up for Māori land owners to access the sort of state land development finance that had been widely and liberally available to Pakeha colonisers since the 1890s. Even so, after 1930 Māori were loaned only a fraction of the vast sums used to promote Pakeha farming. Before Māori land development could start, the Crown wanted to rearrange land titles by grouping together scattered and fragmented individual land interests into whanau-based economic titles, which could then be developed and made productive. This 'simplification' of titles was called consolidation and typically

involved many adjacent titles being grouped together into a scheme. Consolidation converted customary interests in various titles into a mathematical share of a defined monetary value within the scheme, and then grouped individual and whanau interests into a new title equal in value to the existing shares: it was a "money question" to be solved by a "mathematical calculation." The fundamental problem here was that no amount of consolidation could magic up any more land for groups such as Whakatohea, who were landless before consolidation began and remained landless when it limped to an inconclusive end decades later.

For the Crown, consolidation also had the benefit of consolidating the heavy debts carried by land within a consolidation scheme, and having those debts paid for in land awarded to the Crown as part of wrapping up a scheme. Most of this debt came from unpaid survey charges and many years of interest, but by 1930 it also included large arrears of local body rates. The Crown induced local bodies to write off these rates arrears in exchange for compromise payments (typically one-quarter to one-third of what the local body was claiming) which it then charged to the consolidation scheme, to be paid for in land. The Crown also wrote off some of its survey debts as part of the consolidation schemes, lest the new land titles be too burdened with debt before development even began.

The Whakatohea Consolidation Scheme included more than 180 Ōpape titles, although that still took in less than half of the Ōpape block which then comprised more than 250 titles (see Map 6, at #A32, p.233). The consolidation area is shown there on Map 6, sort of in the coastal area and the deepest inland areas of the block. By 1930, Ōpape was burdened with £2,524 of survey debts, of which £1,679 was to be written off; leaving £845 (about one-third) to be paid for in land. In some cases, the survey debt was worth more than the title itself while in many more cases it formed an unsustainably large share of the value of a title. And this was after Whakatōhea owners had already paid out hundreds more pounds for prior survey debts in earlier years. The excessive and pointless survey charges arose from the Native Land Court's practice of over subdividing Ōpape into "long elongated 'bootlace' areas" which owners could

not use productively; in many cases, not even a house site could be cut out of these ‘bootlace’ blocks without leaving most of the block landlocked and unusable.

I assume bootlace is self-explanatory, it is just a very long, very thin block, often maybe, you know, a chain or two wide, which is 20 to 40 metres. A very long, narrow, unusable sort of title.

Native Minister Apirana Ngata persuaded officials of the hopelessness of the plight of Ōpape’s owners and, as a result, the entire £2,524 of survey debt was written off for the Whakatōhea consolidation scheme. So, the £845 for one third did not have to be paid in land. Ngata also induced the Ōpōtiki County Council to accept a compromise payment of just 10 percent of the rates arrears it claimed, considerably less than most local bodies obtained. Even so, the Whakatōhea Consolidation Scheme went nowhere; by 1931 it was overtaken by the Crown’s shift in focus to land development schemes, which were intended to simply ‘step over’ the complexities of land titles that consolidation was supposed to address. It was not until 1960 that the consolidation scheme was abandoned for good, when the limits of consolidation were finally acknowledged. As Whakatōhea were then told, “a given area will produce only so many sole-owned blocks and it is hopeless for every person to think that by some serious of title manipulations he can obtain a sole-owned section.”

The Ngaitai Consolidation Scheme fared a little better, but this came at a price: the 152 titles and 27,000 acres within the scheme were charged with survey debts of £1,289, of which £854 was to be written off; leaving again, about a third, £435 to be paid for in land. Another £435 was charged to the scheme for a rates compromise. The land taken by the Crown in payment for these debts was Torere 1B2, Torere 3 Lot 1, and Torere 3 Lot 2; a total of 5,329 acres valued at just £845 (a nominal value of barely three shillings per acre).

That is shown on Map 7, the cross hatch, yellow areas are the other blocks the Crown acquired, and the pink are the titles included in the consolidation scheme for Ngaitai.

This was nearly 20 percent of the land in the scheme. That still left Ngaitai owners a few pounds short, so the balance owing to the Crown was deducted from purchase proceeds of £150 from Torere 1B2, which had recently been sold. The lands within the scheme included the Awaawakino, Waiohoata, Torere, and Tutaepakura blocks as well as several Whitikau titles (see Map 7, in #A32, p.249). The Ngaitai Consolidation Scheme was completed in 1937, when the Whitikau titles were consolidated as Whitikau A1 to A3, while the other blocks were consolidated into 47 small sections in Torere Pā and 65 larger Torere sections, as well as a few small reserves (see Maps 7a and 7b, in #A32, p.p.262-263). It is quite hard to see the pā sections at a larger scale, so that's more of a zoom in on the coastal area of the consolidation scheme.

The Torere titles were consolidated to align with the farms being developed in the Torere land development scheme, which initially took in about 3,000 acres of the coastal plain within the consolidated Torere titles (see Maps 9 and 9a, in #A32, at pp.306-307). This was not a standard development scheme, which typically involved a large area of undeveloped land being broken in by the Native Department before it was divided up into small farms to be leased to individual Māori farmers (or 'units' as they were called). At Torere, the scheme was merely a way of organising the very modest individual loans made to few existing Ngatai dairy farmers, who were already farming about 1,000 acres before 1930 but had struggled with limited finance, small herds, and the impact of the Great Depression.

Through the 1930s finance was extended to some new small Torere farmers, with a peak of 40 'units' by the early 1940s. Many of these farms could support only a very small dairy herd, soon rendering them an uneconomic proposition and forcing officials to admit that Torere was, "one of our worst unit areas." The idea of expanding development by breaking in new land had, by then, been cast aside so the only solution on offer was to amalgamate farms that had been uneconomic to begin with (particularly those further inland). Some farmers had already been forced to walk off their uneconomic land and their farms, combined with others who had their right to occupy taken away, reduced the

number of Torere farms being developed to just 24. Many of these farms emerged from Māori Affairs control in the 1950s, when management of farming and finance was gradually restored to the farmers.

The very modest results of Torere scheme built off a solid foundation formed by ample and consolidated titles already occupied by experienced dairy farmers. But that was a raging success compared to the small Whakatōhea land development schemes on the Ōpape block. Almost the entire Ōpape block was placed under Native Department control for land development in 1930, but within a few years it was evident that only a very small part would ever be developed. By 1934, this comprised less than 2,500 acres nearer the coast, east of Ōmarumutu (see Maps 9 and 9a, in #A32, pp.306-307).

The contrast is shown on Map 9 and 9a. Map 9 shows the area that was placed under development and Map 9a shows the area that was subsequently, actually being developed, which is obviously, considerably more modest.

As at Torere, most of the Whakatohea scheme comprised land that the owners had already begun to develop using their own meagre resources. There were more than 30 small dairy farms at Ōpape and on other Whakatōhea lands, but the inadequacy of their lands meant even these small farms were spread over three or more disconnected parcels. Some farmers – being landless – had even leased from Pakeha to establish a dairy farm. This all made for very difficult farming, on top of the same financing and economic problems hindering the Torere farmers at the time. Land development thus began by focusing on improving the most viable of these existing farmers, rather than on breaking in significant areas of land for new farms. As a result, by 1935, only 25 farmers were being assisted but as more land was brought into production this later rose to 44. Yet, it was soon evident there was not enough land to support that many farmers; after Māori Affairs had ‘eliminated’ its uneconomic small farms, just 31 remained. Impoverishment at the hands of the department and appalling living conditions had forced some to simply walk off the land.

Land development at Ōpape then went into a long slow decline, with Māori Affairs withdrawing from the block in the 1950s and leaving uneconomic farmland to revert to scrub. When Whakatōhea pushed for renewed land development in the 1960s, the department deemed it "either impractical or uneconomic." As noted, nearly all of the Ōpape block had been placed under development control, most of which was never going to be developed. Even so, it remained entirely under the control of Māori Affairs, and it was not until the 1950s that it began agreeing to owner requests for their land to be released so they could utilise it for themselves. Finally, in 1968, all undeveloped Ōpape titles were released from departmental control; leaving just 1,600 acres in 27 land titles that was actually being developed.

The failure of the consolidation scheme combined with the state of Ōpape land titles made it very difficult to arrange leasehold tenures for the development scheme farms. The issue dragged on indefinitely, inducing some farmers to despair that, after 20 years on the land, they still had no security of tenure for the improvements that had cost them dear. The failure of Māori Affairs to resolve such problems – and criticism of the department by the Māori Land Court – was a factor in the department belatedly releasing some land from its control in the 1960s. This meant it was no longer responsible for sorting out the mess it – and decades earlier, the Court – had created.

HOUSEKEEPING – TIMETABLING (09:51:24)

HEARING ADJOURNS: 9.51 AM

HEARING RESUMES: 9.55 AM

BRUCE STIRLING: (CONTUNES REFERRING TO BRIEF OF EVIDENCE #A032(f), PARA 25)

With incorporation, consolidation, and land development having fizzled out by the 1950s, the Crown shifted its focus to what it euphemistically called 'title improvement'. This entailed reducing the booming number of owners in Māori land blocks and 'simplifying' titles. To this end the Māori Affairs Act 1953

imposed what was euphemistically called ‘conversion’ was imposed on Māori land owners. Small land interests worth less than the arbitrary sum of £25 were deemed ‘uneconomic’, and rather than these interests being succeeded to, they were to be taken and sold to the Māori Trustee, who usually sold them to another owner. (The value of uneconomic shares was doubled to £50 in 1967 to widen the net of confiscation). But the Trustee could sell these converted interests to any Māori, to an incorporation, or even the Crown. As a result, Whakatōhea interests in Whakapaupakihi titles were taken and sold to Mangatu Incorporation (which was then leasing the block, in opposition to owner wishes). The Trustee could also acquire uneconomic interests for conversion. The goal of this novel form of consolidation was, as Māori Affairs wrote, “enabling plural ownership of blocks to be converted to sole ownership, or something approaching sole ownership” (that being the Crown’s goal). Māori tended to see it for what it was; a creeping form of confiscation.

Nearly 50 Whakatōhea titles were affected by conversion between 1959 and 1975 (see Map 10 in #A32, p.382). Scattered right across the rohe.

In most cases, the process was not followed through to the conclusion sought by the Crown – sole ownership – but two titles were ‘converted’ in entirety and transferred to a single owner. In one case, the ownership was thus reduced from 70 owners to just one. Dispossessed owners objected to no avail. Te Paea Biddle, for instance, told the Court: “I am very hurt over how all this has come about and over the loss of land. If he gets the land our identity is lost – we have very little to hold on to.” It was also land on which her tipuna was buried. Hirata Hughes added: “It is the last share my grandfather had, and this is all that is left to us as Māori land.” The Court was sympathetic, but the law required confirmation of the alienation.

The final form of title ‘improvement’ imposed by the Crown in the inquiry district came from the Māori Affairs Amendment Act 1967, under which Māori land titles owned by four or fewer owners was compulsorily ‘Europeanised’. This represented something of a high water mark for the assimilationist agenda of the era but provoked such a backlash from Māori – including from those in the

inquiry district – that it kickstarted the Māori renaissance, which slowly began to turn the tide in the 1970s. The 1967 provision was repealed in 1974, by which time 107 titles here comprising 1,120 acres had been 'Europeanised' (see Map 11, in #A32, p.424). Again, most of them are very small, so they are difficult to see at this scale, across the district, but you can sort of spot where they are clustered on the map. They are also listed in the report. Europeanised titles were, like the titles 'converted' to sole ownership, more vulnerable to purchase, as is evident from the fate of many of these titles.

So, the outcome of all these forms of land loss was, as stated at the outset, that Māori ended the twentieth century with considerably less than half the land they began it with (see Map 2 in #A32, p.5).

The report ends with a substantial appendix on a block just outside the inquiry district that was referred to at the start of this summary – Tunapahore (5,449 acres). The main feature of the history of this block is the long and winding – if not tortuous – road to completion of title in 1945. This was 60 years after title was first awarded by the Native Land Court in 1885, when the block was divided between Ngatai in the west (awarded Tunapahore 1 of 2,000 acres) and Te Whānau-a-Harawaka and Te Whānau-a-Apanui in the east (awarded Tunapahore 3, of 3,440 acres) (see Map 12 in #A32, p.471).

When the title was reheard by the Appellate Court in 1898, Ngaitai were entirely excluded, and the block was instead divided between two of the Haweti (Savage) whanau who were awarded 480 acres (Tunapahore 1) with the bulk of the block awarded to 288 Te Whānau a-Apanui and Te Whanau-a-Harawaka (in Tunapahore 2 & 3 of 4,969 acres). Ngaitai petitioned Parliament about their exclusion from the title, and protested that, as part of proving their claim, they had been ordered to exhume the dead from two of their three urupā on the block but were still denied. By 1901 the government was sufficiently aware of the defects in the Court's processes to provide for a commission of inquiry into Tunapahore and the adjoining Kapuarangi block. The commission's 1903 findings restored 278 Ngaitai owners to the western half of the block (Tunapahore South of 2,821 acres). Shown on Map 13. But this time excluded

Te Whanau-a-Apanui entirely. The eastern half of the block was instead awarded to 171 Te Whānau-a-Harawaka (in Tunapahore North of 2,628 acres) (see Map 13, in #A32, p.487). Each group had spent hundreds of pounds to participate in the 1898 and 1903 re-hearings and faced additional charges of hundreds of pounds for surveying and resurveying the varying awards. And they were still far from having a completed title.

Te Whānau-a-Apanui began lobbying the government about their exclusion from the 1903 award. In addition, Te Whānau-a-Harawaka objected to the Hawai river being used as the southern boundary of Tunapahore North, as this left their Hawai papakainga and many cultivations and fields on the southern side of the river in the Ngaitai award.

The Haweti whanau in particular sought an adjustment to the boundary to take in their 270 acres of occupation lands and papakāinga south of the lower Hawai river. Further petitioning by all three groups resulted in 1910 legislation that provided for yet another inquiry into Tunapahore. That inquiry took place in 1913, when the Chief Judge recommended special legislation to enable another rehearing. He was critical of his fellow judges having to earlier "abandon the ordinary principles at law in such matters, because the Native Affairs Committee, in granting re-hearings by statute, has not adhered to such principles." The Court claimed it had thus followed Parliament's supposed lead, "and have ignored most of the legal principles applying to re-hearings." Through further special legislation in 1913, Parliament provided for the Appellate Court to hear appeals against the 1903 decision (deemed by the Chief Judge to the least correct finding in the sorry chain of awards, although later judges instead found the 1914 decision incomprehensibly incorrect).

Te Whānau-a-Harawaka were not notified of the limited window in which to file appeals under the new law and were thus excluded from the 1914 Appellate Court, which upheld Te Whānau-a-Apanui's claim to Tunapahore South (Tunapahore North was not reheard). Te Whānau-a-Harawaka were, however, included in the Tunapahore South

award as part of Te Whānau-a-Apanui, being awarded 700 acres (with the other 2,121 acres going to Te Whānau-a-Apanui). Te Whānau-a-Harawaka protested against exclusion from the title in their own right, but by 1916 were prepared to withdraw further action, provided their interests of 700 acres were awarded at Hawai and along the southern bank of the lower Hawai River.

That still left Ngaitai excluded from Tunapahore, and they continued to pepper Parliament with petitions. In 1915, the Native Affairs Committee recommended that special legislation provide for the block to be divided by the Court into three equal portions for the three groups involved. But that legislation failed to proceed. In 1936, Ngaitai renewed their efforts to secure title to the western portion of Tunapahore South, pointing to their urupā there and asking for the 1915 recommendations to be implemented. Another commission of inquiry was provided for in 1938 legislation, but it did not sit until late-1944. The commission comprised three Native Land Court Judges who found that Ngaitai were entitled to the part of Tunapahore South to the west of the Waipuna Stream. In 1945, in the final act of this sixty-year saga (perhaps better classified as a farce), Ngaitai's interests were awarded as Tunapahore B2A (850 acres), leaving Tunapahore B2B (1,679 acres) with Te Whānau-a-Apanui (see Map 16, in #A32, p.525).

The costs of this latest round of litigation ran to over £1,300, which was belatedly met in 1958 when the Court allocated the Tunapahore rents that had been retained for many years in anticipation of meeting these costs. The ramifications of the 1945 award for the balance of tribal interests in other parts of Tunapahore proved to be a complicated matter to resolve – particularly after the Court had erred in the matter in 1945 – and this dragged on until a final decision was given in 1961. Also in 1961, the interests of Te Whānau-a-Harawaka and Te Whānau-a-Apanui in Tunapahore North 1A1, 1A2, and 1B, and Tunapahore South A and South B1A to B1E were amalgamated.

In 1966, the Savage (Haweti) whanau applied to partition out their interests in the amalgamated title, seeking to locate those interests on the land at Hawai

they had long occupied, cultivated, and farmed for many decades. They also sought to enlarge their interests through a substantial financial settlement with the other owners. Their application was heard not at Ōpōtiki but at Rotorua. The result was two new titles: Tunapahore 3 of 1,137 acres being awarded to 40 owners (of the Haweti whanau) and Tunapahore 4 of 1,677 acres being awarded to the other 378 owners in the amalgamated title. Tunapahore 3, as shown on Map 17, took in the Haweti whānau land east of Hawai papakāinga and along the lower Hawai river, extending to the back of the block (see Map 17 in #A32, at p.545), so it's quite a long elongated form.

Before the partition, one owner of the Haweti whānau had been acquiring individual interests from other owners. The result was that, by 1966, she held nearly half the shares in Tunapahore 3. By 1968, further acquisitions meant she held two-thirds of the shares. Some owners had gifted their shares to her as they were said to be, “under the impression that land belonged to her father Peter Savage,” who had played a leading role in improving the land and defending its title over many decades. In 1968, she called a meeting of owners to acquire the remaining shares, paying $7,000 to do so. The title was promptly Europeanised and by 1972, it had been sold to Pakeha farming interests. Among Te Whanau-a-Harawaka, this land loss remains controversial.

Tunapahore 4 (awarded in 1966 to Te Whānau-a-Apanui and Te Whānau-a-Harawaka) took in Hawai marae and has been retained in Māori ownership, barring a significant area of 154 acres taken for public works in 1980 on somewhat spurious grounds (see Map 19 in #A32, p.561). That’s the large mustard coloured block on the right hand side of the map. This 154 acres comprised a steep ridge running beside State Highway 35 below Rakaukatihi maunga. It was taken “for the use, convenience, or enjoyment of a road,” the stated cause being ‘erosion control.’ It is more likely the land was taken to ensure tourist drivers had a nice bush-covered hill to look at as they climbed up from the Hawai River bridge up to the Maraenui Hill lookout. In any case, the land could easily have been preserved for this purpose in Māori ownership as a Māori reserve, just as land on the other side of the same road had been.

That's the land between the road, which is the blue ribbon on the right hand side of the map. The land between that blue road and the coast is a Māori reserve.

The Ngaitai award, Tunapahore South B2A was incorporated in 1959, partly in order to develop the land partly to protect their interests from conversion. As Hemi Kauta told the Court and its Conversion Officer, "we fought and won this block by petitions and do not want to lose interests, however small. This land is a memorial of the struggle." It remains Māori land today.

Tēnā koe.

HOUSEKEEPING (10:10:24)

(10:10) MS TEREI-TIPENE TO BRUCE STIRLING:

Q. Tēnā koe, Mr Stirling.

A. Kia ora.

Q. My name is Ms Terei-Tipene and we represent Ngāti Ngahere in this inquiry. But my questioning today is more of a generic nature, I'm first because I'm the one that's going to kind of do the more high level questions in relation to the report. Before I start, I just wanted to thank you, not just for this report, but for your ongoing contribution to the Tribunals work. I know you have had a very long history doing many, many reports. So, I looked at the many publications that you have throughout the years, and I can say that your contribution has been invaluable. So, I just wanted to pause and thank you for, not just this report, but also, your contribution to the Tribunals work, also.

A. Kia ora, but I'm not dead yet.

Q. I'm sure there's plenty more work to go too, I'm sure. I'll just take you to page 8, I'm going to work chronologically through the report, I think that that's probably the best approach.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032, PAGE 8

Here, you are talking about the Stout-Ngata Commission, and you say that the commission was, “to determine what Māori lands were required for Māori use and occupation with the rest to be deemed, ‘surplus’”.

A. Yes.

Q. Then a couple of pages over on page 11, you are talking about their terms of reference being to find land for sale or long term lease.

A. Yes.

Q. How did they assess, or what method did they use to kind of determine how much Māori land was required for their use and occupation?

A. I'm not sure they wrote down their methodology. I think it was based on a brief inspection or prior knowledge, in Ngata’s case, I guess, of the lands and information from the Court. Also, information from the owners, as to how much land they had and given the requirement to find something for settlement, they would sort of rely on the owners to try and identify land. What they were willing, perhaps, to sacrifice, or to give up. Usually it was for sale, but in this district, it was more for lease than for sale, because there was so little land left.

Q. Was any regard given to the unique landscape that each area that the commission inquired into? So, for example here, there was extensive raupatu, Crown purchasing in the 19th century and early part of the 20th century. Was there any, kind of unique regard given to the areas that it was inquiring into?

A. Yes, I think so, yes. Ngata certainly commented upon the impact of confiscation and Crown purchasing and why it was people, you know, didn’t have a lot of land, so he was certainly aware of that background.

Q. Now, at the bottom of page 9 and I'm at the bottom paragraph there and I think it's the third line down. You say: “Of the residue they offered only Ōamaru 5B (3,063 acres) for settlement by lease” is they, Whakatōhea?

A. Well, it would be the owners of Ōamaru 5B, so I can’t tell you off the top off my head which hapū that would, or if it even was a hapū award. But yes, it would be the owners of the block sorry, rather than the iwi.

Q. Right, yes, sorry. Yes, the owners of that particular block. Then, at page 10, at the top there, that they, “found that the iwi were virtually landless.” Then there is that quote there that says that there is, “no surplus land for

sale. The total area they now hold is 35,449 acres. Of this they offer 6,733 acres for lease to the general public, retaining 28,676 acres." I am just trying to understand the numbers here, so, of the residue they offer 363 acres. Then there's a difference in this quote of 3,670 acres being offered. So, I am just trying to understand what's being offered and who is making the offer?

A. I don't think I've gone into that in sufficient detail to answer you from the text, but I can certainly go into the records and check it for you if that's feasible?

Q. Yes –

A. I think it's more lands that they offer for lease, I think.

Q. Yes, well, what I was interested in is, is that on page 9, we are talking about 363 acres being offered and then when the commission produce its findings, it's saying there that that 6,733 acres is now being offered for lease. So, I was just trying to understand whether there was a difference there of any significance, or notability, because there's about 3,000 acres.

A. Yes, I think it's just another title being added.

Q. Right.

A. But yes, the numbers are not that easy to reconcile because the data they went off was not the same as the data that's available to us now. And it does get a bit difficult to align them, and how much you include the various small titles in the confiscation district complicates things. But yes, I mean, I think you can see in the table following, on page 10, that some of those other titles like Whakapaupakihi, really, is the bulk of it that is being offered for lease. But that is still a different area from the one in the quote.

Q. Yes.

A. So, yes, there's a lot of confusion in the numbers.

Q. No, I understand that. Okay, that makes sense. Given that, and this, it might be that, yes, as you reconcile the numbers or try to make sense of the numbers, different kind of, understandings of the numbers might arise. But did it really matter what the iwi offered, or what their preferences were at that time? It seems like they didn't really have much influence or certainty, well, certainly no authority in respect of what the commission was going to eventually recommend.

A. Well, the commission certainly had the final say, but as I said earlier, Ngata did have some sympathy for their plight given the state of landlessness. So, he was focused on trying to get land available for lease so it wouldn't be permanently lost, because you know, presumably, the lease would have a fixed term and eventually come back to the owners, and hopefully in a better state. It was land, I guess, he thought at the time, they couldn't then make use of it required capital investment and they didn't have capital.

But ultimately, yes, the recommendations just came out of settlement. It didn't say settlement only by lease, because that wasn't really the rules. The requirement under the legislation the commission was operating under was to identify land for sale and land for lease, not just lease, and not just sale. So, they were sort of restricted by the legislation they were reporting under, but I think he went, well, as far as he could to not include land for sale in his findings. But well, ultimately it was purchased anyway, regardless of what recommendations the commission made.

So, a lot of its work was basically swept aside by the 1909 Act, which sort of turned it into open slater for Māori land purchasing again. Regardless of whether it was reserved by the Scout-Ngata Commission or recommended for settlement. So, that's why I didn't, you know, it's not worth getting too tied down in because ultimately it was pretty much set aside quite quickly. It's more indicative and illustrative of the problems that helps highlight that. But as a solution, it wasn't a solution in the long term.

Q. Yes, and I'm staying on page 11 there and in the second paragraph down, you are talking about the motive to make the poorer in the hinterland available for Pākehā settlement. That was to enable stronger protection for the Ōpape blocks. What do you mean by stronger protection?

A. It is recommended in their report for classification under Pt II of the 1907 Act, which was the legislation they were operating under. Which meant it was effectively reserved for Māori occupation –

Q. Right.

A. But that still had to be Gazetted, and in some cases, it wasn't, and cases where it was Gazetted and registered on the title, it could be removed

under later legislation. So, as I said, these things are a useful illustration of a point in time, of the situation, and what might be done about it. But ultimately, it didn't really amount to a lot because they weren't adhered to, they were easily set aside. But that was the protection they could offer, was setting aside under Pt II of the 1907 legislation, which didn't quite make it a reserve, but it did make it land reserved for Māori use and occupation.

Q. Right, yes.

A. And you can see from that table that you know, nearly all of the Ōpape titles were classified in that way.

Q. Yes, for Māori under the Act, yes.

A. Just a few areas for lease, and often by lease, they meant by other Māori, not necessarily by Pākehā. Then the other categories, settlement under Pt I, which generally meant sale, but it could also mean long term lease.

Q. In terms of – I mean, I completely get your point about not getting too pulled into the weeds in relation to this. But the terms of reference for the commission was to find land that was not required for Māori occupation, and it was to be divided equally in terms of land that was for sale, and then land that was for lease.

A. Yes, it was, yes, that's essentially why they are calling it stock take.

Q. Yes.

A. That's kind of what the idea was, because after 1900 it had this brief period called the taihoa. When the Crown briefly stopped purchasing and also, pretty much put a stop to private purchasing for a few years and it started to open the land up again to purchase. But then it decided maybe it should sort out what Māori actually needed, and you know, because it's not a lot different today. Māori land titles were a bit of a mess and quite hard to quantify and keep track of, so it was even harder back then. So, this is really just a way of identifying what people needed for their occupation and what land maybe was, surpliced, as they called it, to requirements. Then that could be leased, or it could be sold.

JUDGE DOOGAN:

I just want to clarify, one part of the pātai there, Ms Terei-Tipene asked, the task was to identify land, I think the gist was, half for settlement and half for lease. Was or was there not any kind of direction in the terms of reference, or the requirements the commission was operating under to allocate half and half, because I understood that was the way the question was phrased.

BRUCE STIRLING:

Well, that was what the 1907 Act stated, but I think, they seem to have some leeway and actually, in some districts it was different, they had to find more land for sale. I think, Te Taitokerau was one in particular, but here, yes, the legislation was – half of the surplice land was for settlement by sale, and half by lease and you can see that in the final figures in that table, going over to page 13. That was a certain amount set aside for settlement and then a certain amount for lease. I don't think they followed the letter of the law though, I mean, it's not half and half at all in this district, but I think it was exceptional, due to the landlessness that was identified.

JUDGE DOOGAN:

Thank you, I wasn't familiar or haven't had the chance to look in any depth at the 1907 legislation. But did the instructions vary by district, a little?

BRUCE STIRLING:

There were two districts where the criteria were varied. I'm not sure if it was actually in the 1907 Act, or in a subsequent amendment. But I mean, I came across that working in Te Taitokerau, but this district wasn't one, I mean, it was varied in the north to identify more land for purchase. But there wasn't any statutory variation in this district, I think it's just more the commission, maybe, trying to find some leeway in the legislation.

JUDGE DOOGAN:

I understand, thank you for clarifying that.

MS TEREI-TIPENE TO BRUCE STIRLING: (CONTINUES)

Q. I'll just take you to page 18, I'm coming into incorporation here and I'm not going to stay too long in this particular chapter. But you note there on the bottom paragraph that incorporation was initially promoted by the Crown to facilitate the land purchasing and for the purpose of streamlining land alienation. But on the previous page, which I acknowledge is a different period of time, we have Ngata referring to incorporation as a means to facilitate Māori landowners to utilise their land productively. Are these different intents expressed here, reflective of the different time periods, in which, incorporations being spoken about?

A. Yes, I think that page 17 is just a bit of an overview and then page 18 goes back to the beginning, which is the 1894 Act when incorporation was first provided for. But it was then restricted to purchasing by the Crown, I think, only. So, some of the first few incorporated titles were just to make it easier for the Crown to purchase, they didn't have to go around and find all the owners. They could just get a block committee to sign off, so I think that came up in the Taupō District of the CNI inquiry, 20, 40 years. Then I think I have mentioned there, I think in 1895, some regulations were published under the 1894 Act that allowed incorporation, not only for alienation, but also to raise finance for land development.

But I think that was also looked at in the CNI inquiry, and well, you can find a copy of the regulations in the Gazette in 1895. They are incomprehensible in English, I mean, I don't know how anyone would have understood them in Māori. So, they were very little used, if at all, so it's not until sort of, into the 20th century where the idea of incorporations being used more as a development tool, a finance raising mechanism starts to emerge. Because that was something Ngata strongly promoted in Tairāwhiti and wanted to spread around the country. It was reasonably successful in Tairāwhiti in the early 20th century.

Q. Yes, okay, thank you for that.

HOUSEKEEPING – TIMING (10:28:43)

HEARING ADJOURNS: 10.29 AM

HEARING RESUMES: 10.32 AM

MS TEREI-TIPENE TO BRUCE STIRLING: (CONTINUES)

Q. Do you have your summary in front of you?

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032(f)

A. Āe.

Q. I'll just pick up there. I'm coming into Crown purchasing. You actually mention this in your main report at page 2, when you are explaining what chapter three looked at in terms of Crown purchasing. But you succinctly put in your summary at paragraph 5. In here you are saying that the Crown renewed its purchasing programme after the taihoa period that you were just talking about. Quickly buying up nearly 68,000 acres of Māori land for colonisation: "This was more than half the land that remained at 1990." And that: "The Crown made no reserves for Māori in these purchases and severely aggravated the landlessness that existed before this purchasing began." Is it fair to say that the Crown didn't give any special consideration to the particular circumstances of this rohe when it decided to start buying up more land?

A. Well, yes, well, it didn't pay heed to the fact that its own commission of inquiry just pointed out that no more purchasing should occur. But I think, in the report, it does detail some of the political pressure that's coming for further colonisation from various settler associations. And wanting land opened up for settlement, even land that it turned out, you know, was generally, not fit for settlement, the forested hills, in land of the confiscation district. So, to that extent, yes, it didn't really take account of the circumstances.

I should probably qualify that quickly buying up, because the purchasing chapter does cover a period up to the 1950s. But that was really just mopping up a few small interests that had been left over from decades earlier due to complications around one whānau, trying to track them down and buy up those interests. So, the bulk of that was done pretty quickly.

Q. Yes, and, sorry, taking you back to your main report where the start of that chapter begins, which is at page 67 and I'm at the bottom of that page and that goes over to page 68.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032, PAGE 67

Here, you are outlining the Crowns purchasing as being, driven by the promotion of settlement and the hunger of Pākehā colonisers for land. you go on to talk about the Native Minister saying that there was an estimated 12,000 acres of Papatupu land near Torere, under negotiation for purchase and would soon be available for settlers. But that title to the land had yet to be investigated. Is this demonstrable of Crown attitudes at the time, believing that it could, and would acquire the land that it had its eye on?

A. Well, generally it got its way, I mean, it had various legislative mechanisms it could use to pressure owners. Like imposing restrictions of alienation, so people couldn't lease, mortgage or do anything with their land, except sell it to the Crown and those restrictions could be rolled over, year after year. But they actually came in a bit later, so in this period, it's more just, I think, 19th century style Crown purchasing. They are just offering up money and trying to get it acquired. I guess I should qualify, the point about landlessness, because he's talking about this Papatupu land at Torere, so that's not Whakatōhea, that's Ngāi Tai. Who the commission said, did have a lot of land, but they still favoured the surplus being leased out rather than permanently alienated.

So, the same point stands, that it's ignoring the commission's recommendations, but it's not quite as severe. I suppose you could say, as the situation with Whakatōhea, who couldn't really afford to lose any land. Whereas, Ngāi Tai were seen as having quite a lot and perhaps, lesser need of keeping all of that inland hill country. So, yes, that's just a qualification I should add to that page.

Q. Yes, and the Crown knew it had those mechanisms at its disposal. The various ways in which it could turn the acquisition of land to its favour. And they used them, didn't they, to manufacture its preferred outcome in terms of acquiring land?

A. Yes, to some extent, I don't want to overstate it. But it wasn't like a compulsory acquisition, and I think there's new mechanisms, like incorporation are being used to facilitate. But again, that required the owner's consent, I mean, they formed the incorporation, they elected the committee that agreed to sell. In some cases, I think I pointed out, people were selling to raise money, so they could use that money for other land to develop that because they had no other way to access some development capital at the time. So, it's not a one way street by any stretch, but it certainly, once the Crown set its mind on something, yes, it could be feeling determined.

Q. Just taking you over to page 72, on that, what I would consider being the third paragraph down, starting: "Despite this need for caution," you say there that, "no evidence has been found relating to the Crown's purchases in this district that any inquiries were made by either the Native Land Purchase Board or the District Māori Land Board to ascertain the nature or extent of the other land holdings of those owners whose interests it was purchasing." Do you know if those inquiries were undertaken in other areas?

A. Yes, I think on occasion they were. I mean, I have looked at the Pukehina block for Ngāti Whakahemo, just west of Maketu and I think there's a land board file for a Crown purchase and it has that sort of information in it. But it's a little like the restrictions on alienation, like, a title might have restrictions and alienation imposed on it to protect it. But the Crown didn't see those restrictions as applying to it, so it did not bother having them removed before a purchase. So, I think, it possibly saw this requirement to ascertain if its purchase was going to cause landlessness as something that applied to private purchases, not to it. But yes, it doesn't seem to have been much of a consideration.

Q. Right, well, that was, yes, my next question and as the likely reasoning for the lack of evidence because they simply didn't make any inquiries, or like, as you say, they didn't think that that provision applied to them.

A. Yes, well, it's hard to know, they didn't put down in writing, don't bother with this because we don't need to. But that's certainly the impression you get from the failure for that process to be gone through, even though,

technically, it's statutory requirement. I guess I might need to check the legislation to see if there is a carve out for Crown purchasing, but I don't remember seeing one.

Q. Can I please take you to page 136, and this is coming into private purchasing. At the top of the page there, you provide some figures that private purchasing between 1907 and 1992 accounted for 11,021 acres in 114 separate titles. Now, the land lost to private purchasing was some of the more, like, valuable land, wasn't it? It was more economically viable, is that correct?

A. Yes, generally, with the exception, I think of the two larger blocks that I mentioned in the summary in land that were possibly of less economic value. But the rest of it was all basically inside the confiscation district or close to the coast and was more valuable in economic and agricultural terms.

Q. Yes, and I see in the middle, I say middle in my notes, but it's the third paragraph down, fourth line, that you say that that land should have been reserved for its owners and their descendants because of its value. But it wasn't, was it?

A. No, no.

Q. And so, it would be fair to say that although private purchasing accounted for much less than the total land alienation that was happening in the rohe. That it would have been equally as harmful and hard hitting to Māori.

A. Yes, I think that's the point I was making in comparing and contrasting a sort of, the larger area of poorer quality. When I say quality, I mean, in economic terms, I mean, it's obviously still got cultural value and other forms of significance. But in economic terms, that hinterland was a very limited utility in the long run, relative to, you know, the coastal plain.

Q. Right, yes, thank you. Before kind of turning to the next phase of events in the 20th century around consolidation and development schemes. I just wanted to briefly touch on access to and the provision of development finance, and I have noted here, but I will put it kind of more generally. Development finance throughout the early part of the century and

certainly beyond 1930, Māori and Pākehā were not treated the same, were they?

A. No, no, it's not like I'm breaking new ground here, all of this has been well established in the historiography and previous inquiries. So, I'm really just summarising the key data and the sort of, different regimes that were in place. But yes, there was a very well established system called government advances to settlers, which Māori were not entirely excluded from, but almost entirely excluded from. Very, very few, like a handful, across the country ever obtained finance under that system because it was very difficult with Māori land and for Māori landowners to qualify to meet the terms as defined in the Act.

So, yes, they had to wait till the 1920s when the native trustee was allowed to lend money for development. But of course, didn't have much money and could only lend the money that he held from other sources, which came from other Māori land. Then the land boards were in a similar situation, they could advance money, but only from their own funds, which were severely limited. So, yes, it is not until Ngata came along with the 1930, sort of, 29, 1930 land development schemes that larger scale finance was available. But I think I point out in the report that it's still a tiny fraction, even on a per capita basis. That was available to Pākehā for 30 years before then and continued to be made available to them at the same time as Māori were being assisted to a much lesser extent. Not that it wasn't welcomed or utilised, but it was, relatively speaking, not a lot.

Q. That's what I'm interested in, and something that kind of popped out to me when I was reading through your report is, I was interested in understanding why the Crown was reluctant to provide Māori with access to development funding. When, if land development and productivity was the key objective, what was the hesitation there?

A. Well, I think it's clear from that Crown purchasing chapter. In the early 20th century, settlement meant Pākehā, colonisation, it didn't mean Māori land settlement or Māori land development and that was really the focus. That's the political imperative, they have the numbers and the influence. So, that's what the focus is, and the other issue I guess, is with Māori land

and multiply owned land being a bad bet for finance, which made it difficult for owners.

So, I think you have the situation here where some Whakatōhea would lease land from Pākehā and farm that. That was easier than trying to raise money on Māori land, because once they had a lease, that was something you could raise money against. It was an asset, whereas Māori land was generally seen more as a liability than an asset. So, that's something incorporation was intended to maybe get around a little bit. But, yes, as I pointed out in that chapter of incorporation, it was mostly used to facilitate alienation.

There were some quite good attempts at leasing, leasing some of these larger blocks that were incorporated. But once the land boards came along, they took over the management of the leases, so the incorporation was sidelined, and rents weren't getting paid. Most of them fell apart, those leases, yes, they didn't work. I think, possibly the tenants were a bit optimistic about the productivity and what they might get out and what rent they could afford. They were either forced off or walked off the leases, most of them. So, there is a range of difficulties, but the fundamental one is the tenurial problem really, that's always the difficulty with Māori land.

Q. Thank you. Can I please take you to page 221, we are coming into consolidation here. On this page of your main report, you are introducing consolidation schemes, what they are, what they were, the rationale behind them. You arrive at the bottom of the second paragraph there on page 222 and the last sentence of that paragraph, you say: "The most fundamental problem was that, in most districts, remaining Māori lands were inadequate for the growing number of owners, and no amount of consolidation could solve that issue."

Then, just kind of parking that there, I'm kind of getting you to turn quite a few pages over to 276. At the top paragraph, second line down, talking about consolidation there, the limitations of consolidation. You say, "insufficient time and money had been allocated to make consolidation work." I guess my question to you there is, it wouldn't have made a

difference though, would it, time and money, when the real issue was, was that they didn't have enough land for the growing number of owners.

A. Yes, well, yes, as I think I said, and possibly too often in the report, yes that is the fundamental problem, so nothing is really going to fix that. But I think if you look at the Ngāi Tai consolidation scheme, like you get it done quickly and it does at least help, it helped a little bit in allocating titles to land that was being farmed by particular people. So, then they had a decent tenure and a base to work from. At the end of the day, they were only a little bit more successful than Whakatōhea, but I think they did get started earlier and did a little better. So, it didn't have to be a complete waste of time, and I think, because they did it in less than a decade, you know, with Torere.

I mean, I can't speak to the disruption that caused titles into people, looking at the complexity of you know, those titles, but a fair bit of work was put into sorting them out. So, yes, contrast that with Whakatōhea, and the Ōpape titles, and at the end of the day, pretty much nothing was achieved, and it did waste a lot of time and energy on the part of the owners, I think. Over decades, trying to get somewhere with that, because I guess, they saw possibly, that Ngāi Tai, well, they weren't exactly flourishing, they had achieved something, and they possibly wanted to emulate that.

But it was just very difficult with the titles they had and the difficulties they had trying to improve those titles, and in the end, they weren't improved. They kept hassling the government, the government said, we are not doing it anymore, all we care about is development and then of course, the problem with development was, you still had to have a lease hold tenure for the farmer. That certainly, bit of a nightmare, I think, was a couple of detailed case studies in the report of how difficult that proved to be, just trying to sort out a farm title with one farmer, but a lot of owners. So, yes, I take your point, at the end of the day, nothing is going to solve the fundamental problem, well, no Treaty settlement is either. The problem goes right back to the 1860s, but I think the Ngāi Tai example gives you some idea that things could have been done better for Whakatōhea.

Q. Comparing those two schemes side by side, is that demonstrable of the Crown, like kind of pushing on, despite – and not potentially looking up and realising sooner, that the plan doesn't work in all cases. And maybe taking a different track would have been a better cause of action. But the Ngāi Tai obviously worked a little bit, but Whakatōhea, they knew that they were landless before even starting the consolidation schemes. Is that demonstrable of the Crown just pushing on with the policy and kind of applying it broadly across the landscape without really looking at the specific circumstances of each area or scheme that they are trying to implement?

A. Well, they are promoting a policy to get land into production, so that's the goal and they are trying to work with owners to achieve that. But I mean, they decide the goal at the start, and they set the process and manage it. So, it's difficult for Māori owners to have too much input into the whole thing, and of course, the Crown's priorities keep shifting, like, so for a few years consolidation was the go to. Then land development became more important and perhaps we should sort out development and we will do consolidation later. We don't have to do consolidation, we'll just do more development and even, development priorities changed over time, that's another problem with shifting policies.

Initially, a lot of it was about developing the owners and the land so that they would become farmers. That involved training and helpful supervision, and then over time it became just a debt recovery exercise to get people into production and off the books as soon as possible. So, you end up with these very small, virtually uneconomic from the get-go, but quickly becoming uneconomic farms as technology improves and economies scale, go up and these farms just become too small and have to be amalgamated.

So, yes, that's the problem Māori had, it's facing these constantly shifting policy perimeters, in which, they have pretty much, no input. So, they try to work with what they have been given, but what they have been given keeps changing. You can see that through the report, particularly with the Whakatōhea consolidation. They sort of accept that, this might be something that can be useful, try to engage with it, find that the Crown

loses interest, and they keep trying to bring it up again. Then they get told, well, no, go away, we don't do that anymore, we are doing this other thing. Then they come back with these fabulous title improvement ideas that are another way of just reducing ownership.

That is a very long answer, I'm sorry, but yes, I mean, it was intended to help Māori, but it wasn't anything like, by Māori for Māori. That sort of idea didn't really have any play at the time. Particularly when it came to expenditure, if the government was spending money on these schemes, writing off debts, paying for title work. They called the shots, so it wasn't a Māori driven kaupapa on any stretch. So, I think, yes, that is possibly the underlying problem, and it wasn't that nothing could be done. But in the end, very little was done because it was coming from, you know, the flax roots.

Q. Yes, thank you. I'll just put one more question to you and then I think it will take us to the morning tea break. Over in page 223, the third paragraph down starting: "The 1921 Act also provided for Māori owners to be granted title "in any block, notwithstanding that such Native may not theretofore have had any interest in that block." That's obviously, non-owners being able to secure land titles. Is that correct?

A. Yes.

Q. And so, the consequence of this provision is that it could, and in many instances, did dispossess owners of their customary interest?

A. Well, it could, yes, it's a bit hard to quantify how much that happened, particularly with something like the Ōpape block. Which, you know, customary interest wasn't actually the issue to start with, it was just a reserve that everyone was dumped in. Well, not everyone, sorry, I mean, one hapū was already living there, but they have to share it with everybody else, the rest of the iwi.

So, I think that that's more what that 1921 Act is about, it wouldn't necessarily be some Māori from anywhere in the country. It's just someone who wasn't an owner in that particular block would be whānau or at least, hopefully in the same hapū, they would be shifted into a title by giving up other interests. So, it was, you know, shuffling pieces around a deck to try and create more rational titles.

But if you did have a customary connection to any particular land, yes, that didn't necessarily mean you were going to get to keep it. Because if your whānau interests needed to be consolidated into a share worth a certain amount to give you an economic block. Well then, those shares were all going to be moved into that block, and that's where you would now be located.

So, there is a bit of scope for significant reserves, you see that in the Torere scheme, so there are a few urupā and papakāinga reserves that are set aside. But that border, sort of connection is lost, and I think yes, those customary sort of, connections had been established, I think, by the time consolidation ended. I think, yes, those customary sort of, connections had been established I think, by the time consolidation ended. Well, I think the example I gave was actually from a conversion error. But that quote from Te Paea Biddle, about that land being, you know, there were people buried in that land from two generations earlier, and that was being lost.

So, that's the sort of thing that could have happened in consolidation. But it really is, yes, it's taking, it's converting it to maths and money, I think that's the point, I guess, you are really making about consolidation. Then shifting areas of equal value into more usable titles than existed before the scheme. So, to some extent, that worked at Torere, and Whakatōhea, it never really happened.

Q. Yes, I pick up on what you said there, around that the hope was that it went into whānau blocks, and I get that that's a little bit difficult to kind of track to see, in what instances it did or didn't. But there was at least, the possibility that the effect of it was, was that, that those that did have a particular interest in that land. Like the whānau that had tūpuna that were buried on the land, lost interest in that land as a result of consolidating to another area. It could happen.

A. Yes, certainly. Particularly with smaller interests, like, if you have a whānau that is scattered over different blocks with quite small interests, more of them have to be agglomerated into a single title. So, more of them are going to be taken from different parts of the block and put it one place to make a usable title. So, you sort of sacrifice those interests for

something that might be economically viable, that's kind of the trade-off. But the extent to which people entered into such trade-off, you know, voluntarily, is difficult to establish.

I think, the record keeping isn't great, so, I think I went through some of the objections in detail, in one of the schemes. But again, the minutes are quite sketchy, it's hard to know, but in the end, generally, there was agreement, at least in the Torere scheme to the outcome. But I think you can see from the number of titles that that's still quite a complicated outcome. It didn't simplify a hell of a lot.

Q. Yes, thank you.

HOUSEKEEPING – TIMING (11:02:18)

HEARING ADJOURNS: 11.02 AM

HEARING RESUMES: 11.27 AM

MS TEREI-TIPENE TO BRUCE STIRLING: (CONTINUES)

Just going to come into Māori land development schemes and I'll get you to go to your page 304. At the bottom, the bottom paragraph there.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032, PAGE 304

This is actually something that I didn't pick up the first time that I read it, but when I went back, I realised that I was not quite sure that my understanding was right, which is kind of the start of these questions. Here, you say, in 1930, when first Gazetted, the schemes were unrealistically ambitious and that the Ōpape scheme proclamation took in about 15,442 acres. So, was that 15,442 acres that was originally Gazetted, that entire area came and stayed under the authority of the native department?

A. Yes, yes.

Q. So, for the duration that the development scheme lands were under the development provisions, their Māori owners could not develop or utilise their lands as they chose. That's correct, isn't it?

A. Yes, that's pretty much it. Possibly, they could have applied for permission, but I haven't actually seen any evidence of that. it's more, sort of, almost bureaucratic inertia. But initially, I think they put everything under to give them the control they needed to develop the bits they wanted to focus on. And so, you can see overtime, they shift back to a much smaller area, but it takes a lot longer for that to be reflected in the title notices.

So, it is often quite late in the piece before the – under the 1953 Act, it's so long, you know, so it's part 24 of the 1953 Act, so land is released from that much later. But it didn't stop the owners actually, you know, occupying and using their own land. It just made it more difficult to do anything by way of development that required finance. Other than the finance you might be able to raise against chattels or your herd. Which, some people have been doing as early as the 1920s, so they would have a lean on the stock and that sort of thing, to raise money from the local trading company.

Those debts kind of got them into trouble when the depression hit and that's when some of the early land board loans are made to help clear some of those smaller debts. Then they come into the develop scheme with reduced, or no debt at all. Well, that debt gets transferred to the development scheme farm, rather than their own personal account with the trading company.

Q. In that paragraph there –

DR GRANT PHILLIPSON:

Sorry to interrupt. Can I just ask briefly, so, while the whole block is under the departments control, they can't lease their land, is that correct?

BRUCE STIRLING:

As I understand it, yes, but I'm not sure if it actively prevented anyone doing anything with their land, it doesn't really come out of the evidence. But it was a very strong level of control, that development scheme administration.

MS TEREI-TIPENE TO BRUCE STIRLING: (CONTINUES)

Q. Just kind of referring back to that paragraph. You say that kind of by 1934, but you know, the governments turning its focus to, helping, like, the existing farmers in those areas where development had already been progressed. That's a significantly smaller area, we're talking about 15,000 acres to now, zooming in, four years later, on a significantly smaller area. So, the Crown knew relatively quickly, that it was not going to need or utilise the 15,442 acres. Is that correct?

A. Yes, yes.

Q. That authority and control, which I think you have already kind of touched on. It stretched, right out, didn't it, before the land was released. I mean, one of the earlier releases I think you say was in 1946, so that's 15 years. But it went all the way out to the blanket release in 1968, which is almost 40 years later. That's how long the Crown held the strong authority, was the word that you just used in relation to the 15,442 acres.

A. Well, yes, I guess, qualify that. It's a strong authority, where they chose to exercise it. So, often, it might be lifted as a resulted of maybe a partition, or some other action effecting the title. So, the Court itself would be aware that there had to be an application made for it to be removed, so there is a bit of a process there. But yes, I wouldn't say it meant nobody could do anything on their land, it just did restrict their rights of ownership to a significant degree. But that wouldn't have hindered people from carrying on what they were doing before the development schemes. Just without any element of like, leasing out to other people or I guess, well, I was going to say it prevented sale. But of course, private purchasing was barred at Ōpape anyway, so that didn't really come into it.

Q. In the source material you looked at, was there any evidence of where they were doing what they wanted to do with it, and the Crown, or the native department found out that they were, that there were any consequences for them doing what they wanted on the land?

A. No, because the development scheme files are only about the land they are actually administering and are actively funding. So, they are not going to write about other lands in which they don't really have any interest. Unless it's somehow, maybe effected or impinged upon an adjoining

block that they were developing. So, you wouldn't expect to find that evidence, and yes, as I said, I haven't seen it, so it could be argued, it's more of a theoretical limit on usage. But I mean, it is a, it's a proclamation, it's a title notice, it's not without meaning.

Q. Can I just take you back to page 300. Actually, the question is actually in relation to conversion, but I'm going to refer you to page 300, which is at the bottom there. You say: "Before moving ahead with land development in this district, Ngata first sought the support of Whakatōhea for the policy." Now, in respect of conversion, the Crown didn't do the same, did it? It didn't seek the support of Whakatōhea before moving ahead with the policy.

A. No, no.

Q. I will just get you to turn quite a few pages over to 372, which is the start of title improvement. In that top section, you are relaying Dr Harris's observations that: "In the government's view, multiple ownership impeded much more than land development; it obstructed the overall progression of Māori people and their cultural adjustment to the modern world, and indulged Māori people's so-called sentimental attachment to land." The wording she uses in terms of, "their cultural adjustment to the modern world," is she kind of talking about being more like Pākehā, like being in a Pākehā world?

A. Yes, that's the era of assimilation, yes, as I pointed out, it's almost like the high water mark if it was the 1967 Act, which literally Europeanised Māori land as a way to – you know, with the long term goal of getting rid of Māori land as category, it would just be land. It might be owned by Māori, it might not, it didn't matter anymore, it was just an economic unit, be put to the best use as the market determined. So, that was kind of the goal, so they wanted Māori to become, yes, Pākehā, really.

Q. Right, and then you say there, after that, exert from Dr Harris, that: "In this way, title 'improvement' was directly linked to Maori economic development, which supposedly flowed through to social and economic advancement." When you say, 'title improvement' here, do you mean title improvement in all of its forms throughout the 20th century? So, like, including consolidation and land development schemes?

A. Well, yes, as a broad point, it could apply, but I mean, here, I'm more specifically referring to the so called improvement fostered by conversion, and some other aspects of the 1953 Act, but that's kind of the key one.

Q. Right, and so, taking into consideration, kind of, Dr Harris's observations and you know, also the time period of time and your subsequent paragraph there. Would you agree that the Pākehā land tenure was apart of the Crowns, kind of, wider framework or strategy to assimilate Māori, or was a part of it?

A. Yes, certainly, the idea was to have, probably picks up on your previous point. That goes back to consolidation, where the goal of consolidation and development was a Māori whānau on a single farm working like a Pākehā whānau on a single farm with a title in their own names. So, yes, it was very much, that was the goal, was to become like Pākehā.

Q. And over the page at 373 on the second paragraph down there, starting with: "By 1959," you are talking about the Māori trustee's conversion fund and how the Māori Trustee resold converted interests for 25 percent higher than the price paid. Would you consider that, profiting off conversion?

A. Well, it was a profit, but I don't think that was the goal. The goal wasn't to make a profit, I think that just reflects the rapidly rising land values of the post war era. So, they would buy them at a certain price and by the time they came to sell them, they were worth more and that became a real issue with some development schemes.

When Māori Affairs, well, they stopped being called Māori Affairs and became, you know, the Iwi Transition Authority and then TPK. They wanted to get all these things off their books, but the Crown had these massive shareholdings and development schemes through conversion and through other mechanisms. But they wanted to sell them back at market value, which of course, by 1989, was enormous, even though they might have acquired them for pennies back in the 1950s.

So, yes, it does become an issue for the remaining Māori owners when they have to sort of try and get back these interests. But most of those interests the trustee was selling would have been sold to other owners in

the same title, or at least, people closely enough related to be not out of place in that title. So, they were paying the difference.

Q. Was the turnaround of the purchase and the sale quick enough for there to be a profit on the sale or was there like a relatively lengthy period of time, where, as you say, there's like a rising cost of the shares. So, they are just trying to keep up with the land cost?

A. Well, it's just that it's based on value, so, if there's a time lag then the value is likely to go up, so they will sell them at that valuation. Well, yes, and that process, well, it could drag on for years, but the Māori Trustee – they generally picked up interest on succession when they were deemed to be uneconomic. So, the trustee would be invited to acquire them by the Court, and usually did. But not always, or it would express an interest in acquiring them to the Court, then would be invited to purchase them. So, it didn't happen with every succession, it didn't happen with every uneconomic interest, but it did happen with titles in which they, maybe wanted to acquire some shares and possibly envisaged a purchaser within the ownership group and might want to require them. But they might build them up over several years through several successions, before selling them back. So, that explains the time lag and the increase in price. It wasn't often that it would happen like, on the same day or something.

Q. Yes, but there was also an element where it was a bit hazard, wasn't it? Like the Māori Trustee would acquire shares with no real plan around what they were going to do with the shares, they just held on to them until they figured it out at a later time.

A. In some of the titles, yes, it almost becomes a practice. They pick them up and then they are not quite sure what to do with them and they have to, later on, try and find someone who can buy them back. But that would be governed by bigger macro factors like the Māori Trustee's financing and how much they had in the fund and how much they were buying. Whether they were under pressure to sell, so, you know, they would sit on them until they needed to sell them, or they had someone willing to buy them.

It's a little yes, it varies greatly, block by block, that's the problem, and it only effected some titles, so I've gone through the ones that I could find that had been effected. You can see, some of them, it's only a couple of shares, it's not a huge amount. I mean, it probably matters to the person who would have succeeded to those shares who is now shut out of the title. But in terms of a share in the title, it's often very small and they will eventually just sell it to somebody because the trustee doesn't want to hold on to them forever, it's not really the point.

Q. I guess that's the point though, isn't it? Even though it might have only been a couple of shares, or it might have only impacted that one person or those few people. It did have an impact, and it did mean something to that person, or that whānau group that had their shares converted. I mean, yes, it did have an impact, it might have only been one individual over a large and broader scheme of things. But certainly, to that individual, or that whānau, it did have an impact to them.

A. Yes, well, I think in the examples I have managed to find, where it did have an impact, you can see it's quite severe in cultural terms for the people involved. But it's quite hard to find that evidence, I mean, I have to pour through thousands of pages of ownership schedules looking for Māori Trustee transfers and then, under what provision they were made and then, who they got sold to. Then find the appropriate minutes and see if anyone said anything and it's rather labour intensive. So, I wouldn't say I got all of them, but I think the ones I did find did show and had an impact. But I think that's something, well, I'd say that's something whānau and hapū could speak to.

But in a lot of cases, if successors were shut out because the shares they were going to succeed to, got compulsively acquired, they may no longer have an interest and they may no longer be active participants in their own tribal group or on their marae. So, they are not going to be here to give evidence, that's the problem, but that's something really, that I think claimants would need to speak to. Because the records pretty thin and pretty patchy, so I have highlighted what I can, but I think it's really for people to speak to what it's done to them.

Q. At a higher level, is that demonstrable of like, kind of the utilitarian approach that was taken in terms of we all sacrifice this one individual shares for the greater good of our plight to individualise land or do away with Māori land tenure all together as you said previously?

A. Yes, well, the whole drive through the whole of the 20th century, well, at least up until the 1970s. As utilitarian, it's about getting the land into production, the most effective way, and that was seen as being an individual style ownership or an incorporation becomes a legal individual and that's another mechanism. But multiply owned land is an **(inaudible 11:46:09)**, to utilitarianism. So, you could see there's a certain point to that in terms of lifting national production. But there's some land that isn't productive and doesn't have to be productive and has value for other reasons and that kind of gets lost sight of in that approach.

So, you could see that with the example of, maybe the few titles that were entirely converted and transferred to single ownership and then out of Māori ownership. You can see the impact that has on people, but in a lot of other cases, it's just, some shares get moved around and one owner has more shares than they used to. And some other owners are no longer owners, because they didn't get to succeed to those shares, so the impacts are quite small and harder to detect.

Yes, so overall, I guess I spent quite a bit of effort on it because it was something I hadn't really seen or gone into in much detail before. You can see, taken to its logical conclusion, yes, it has quite severe impacts in particular titles. And in others, you know, it's a lot harder to figure out and to detect because the shares involved are quite small.

Q. Yes, thank you. Can I get you to skip over a few pages to page 385, this is at the end of the map that you provide around the titles that have been effected by consolidation, as well as the table. You say in the first paragraph after the table: "In all but two instances, the land affected remain Māori land today." I think we have touched on this a bit earlier. But this doesn't necessarily mean that the land is owned by the original owner or descendants of the owner, does it? It's Māori land, but it might not necessarily be owned by the original owners or the descendants of the owner.

A. By enlarge, it will, in most of those cases. I mean, there are some where, like, 30 shares are affected, 30 owners are affected, but a lot of them, it's one or two, or three. So, most of the ownership will be through succession to the original owners, so it's just going to be a small number of people affected. You can see, yes, there are only a few where it's more than 10 and the two outlies are sort of like, 30 owners and 70 owners, where the alienation is more complete. So, I think, it has a more limited impact at the collective level, but obviously, at the individual level, its severe.

Q. Yes, which we have just talked about, which is helpful. Can you go over to the other side of the page, at page 386. At the bottom paragraph there, you say that "conversion prompted long neglected succession to be prosecuted so that the interest could be succeeded to, converted, and utilised by the Māori Trustee for the benefit of owners other than the successors." I'm just wanting to understand the process a bit better here. When you say, "succession to be prosecuted" it was the descendants, or the pending successors who applied for succession. Is that –

A. Yes, as I understand the process, yes, they would need to apply.

Q. Then the latter part of your –

A. Well, sorry, no. It could be, or anyone who claimed to be the successor, so the application could come from somebody and might be contested by others if they knew about it and turned up. Generally, you would expect the application to come from a potential successor.

Q. Right, and so, the latter part of that sentence there where it says the, "interests could be succeeded to, converted, and utilised by the Māori Trustee for the benefit of owners other than the successors." When, you know, possible successors did apply for succession, and they eventually did. The Māori Trustee would take that opportunity to convert the shareholding and then sell it to other owners in the block. Is that how it worked?

A. Yes, yes. When the interest was determined to be uneconomic, so it would be based on valuation and the Court would, yes, make that point, observe that the interests were uneconomic when it was allocating the shares. Because usually, an owner might have interests in quite a few

blocks, could be a list of blocks that successors were being appointed for. Some were uneconomic, they would be grouped together and there would be a note about the Māori Trustee accepting the offer to buy them. Then that's recorded in the memorial schedule, and the ownership schedule. So, yes, the Māori Trustee is sort of, hovering, if you like, in the process.

Q. Sorry, was your word, "hovering"?

A. Yes, well, it feels like that.

Q. Yes.

A. But really, I guess, they communicated with each other back at the court before the hearing, so they would know and generally, they would be present anyway, for the sitting, because it seemed to be done in-person. You know, the shares would be offered, the Māori Trustee would agree to take them.

Q. Right, thank you. Just coming into the last, well, it's not the last chapter, but around title improvement Europeanisation on your page 417. The bottom paragraph there, you say that the Minister of Māori Affairs is, "advising the Cabinet of the proposal that 'all blocks of Māori land which have single owners should be declared to be European land'" and then he goes on to say that "20 percent of the 52,000 Māori land titles were "singly owned,". Then I note, over the page, you say that that's quite different from the figures that the commission ended up providing. From the sources you canvas, were you able to tell whether his figures, the 52,000 Māori land titles and 20 percent being singly owned, had much influence on Cabinet's support for his proposal at the time?

A. No, don't think I can help you there. Probably just what I have set out is about the limit, of the sources that I examined anyway.

Q. Yes, because I note that over the page, sorry, on the facing side of the page, the actual numbers are 40,161 titles. So, that's 10,000 titles less, with just over 15,000 solely or jointly owned, so that's actually approximately almost 40 percent. Whether the accuracy of those figures played much of a role in terms of Cabinet's enthusiasm for picking up his proposal. So, those figures are at the bottom of page 419 and 420, sorry.

A. Yes, well, I think the point from those figures was more about the size of the titles involved, which, you know, possibly weren't going to be a great economic solution for the problems Māori had with multiply owned land. There were, you know, far fewer larger blocks, and they obviously have much larger numbers of owners. But a lot of them have sort of, structures to manage that through trusts, or incorporations.

Q. Yes, I think what I was trying to explore with you was the difference in the numbers proposed by the Native Minister versus the numbers that were found by the commission. They are quite different, and whether those higher numbers had much influence on Cabinet's support for his proposal at the time, because 52,000 sounds like a lot of Māori land titles and 20 percent sounds like not very much being singly owned. But when you are looking at the actual figures of what the commission found, which is only 40,000 with 15,000 being individually held, that's almost 40 percent. So, I'm just wondering whether, from the sources you canvased, whether those figures that he put forward to them were influential?

A. Well, yes, well, the problem is that 15,000 titles are solely or jointly owned, so that's a different category than singly owned, so you are obviously going to get a lot more titles. But yes, well, the number being that significantly out, I think it just reflects the state of records relating to Māori land. They had always been a little defective and not up to date, and that's something the Stout-Ngata Commission found. I mean, there were blocks they couldn't report on, they had blocks that had the wrong acreage for, and the information just wasn't there. Partitions hadn't been included in their data, you know, there were a lot of problems like that, and I think that just kept flowing through. Like, the minister was probably using some out of date figures and blocks could have been amalgamated or alienated between those two sets of data.

Q. That's helpful. Now, at page 418, the bottom paragraph there, you are discussing the commission and the propositions put to it. Including, "what Māori land should be given the status of European land; to what extent should restrictions on alienation be relaxed or removed; should lands of Māori who died intestate be sold." Do these kind of suggest a foregone conclusion around Europeanisation of land and other Māori land policies?

A. Well, it somewhat predetermines the outcome, yes, when you set the questions or the issues like that.

Q. So, the commission's work, was it more about kind of process and ticking the consultation box, because I see that over the page, they travelled to 46 locations and they talked to Māori and local boards, and et cetera. So, was their work more about process and ticking that consultation box?

A. Well, it's a bit hard to say, because as I note, there don't seem to be records of all these meetings. So, you wouldn't want to go out on a limb and say it was a box ticking exercise where in, it seems to involve quite a bit of work. But it's a little bit irrelevant when the settings for the inquiry are so skewed, and it's sort of interesting, you know, they report that the majority of Māori wanted changes to Māori land because things were in such a mess. But that doesn't really indicate to me they wanted the changes that they got. Obviously, everyone wanted it to be amended and approved, well, as they had since 1865. But, yes, things generally didn't get better.

Q. Because you say there too, like, in your report as well, that they hadn't actually really, you say there on page 419, paragraph two at the bottom, "had not actually put much of what they 'so forcibly expressed' in their report to Māori when they met with them, and the radical reforms proposed were 'scarcely raised during its hearings.'" I know that there's not a lot of evidence in relation to what they actually talked about. But does that suggest that even in the meetings that they had, they weren't really informing the people that they were taking to about what the plan was?

A. Well, I mean, it's kind of indicated by subsequent records, the 1980 inquiry. Which obviously heard from people who were around in 1967 and then there's also, yes, those petitions of complaint in 1968 from Māori who sent their complaints about, some of these issues have been ignored. So, yes, to a large extent, yes, it is sort of predetermined by the settings for the inquiry, and a lot of what Māori wanted would've been something quite different. But obviously, that wasn't really reflected in the report, the final outcomes.

Q. Now, on the other side of the page at 420, I'm coming to the end of my questioning. This is more wanting to understand the impacts or the consequences of this. But on the third paragraph, you are talking about the Town and Country Planning Act and how, "Māori land was made subject to the subdivision rules", and how it, "proved just as provocative and oppressive to Māori as the compulsory Europeanisation enacted in 1967." When you say provocative and oppressive, are you talking in terms of, that Māori were like, restrained from being able to petition house sites and papakāinga reserves. Is that the oppressive nature of that?

A. Yes, that's what I'm referring to, although, it's not exactly a subject of my report, but I understand there is other evidence on record.

Q. This is my last question and it's kind of on the back of the things that we have discussed today in terms of the length of time the various different laws and policies and practices that are happening over the 20th century. You agreed that, for you know, some of the owners that were completely dispossessed of their land, that that would have had a profound effect on them. Do you agree that, not just for them, but also to like, the other generations that come after them that lost their interests in their tūrangawaewae. That that would have had an intergenerational effect?

A. Well, it would be supposition on my part really, that's something people would have to speak to, who have been effected most directly. I mean, it seems obvious, that would be the impact but that's just not something that's going to be written down in archival records in particular.

Q. Thank you very much for your time and your answering my questions today, Mr Stirling. I can say, it was an honour on my behalf to be able to traverse your report with you.

HOUSEKEEPING – TIMETABLING (12:04:12)

HEARING ADJOURNS: 12.04 PM

HEARING RESUMES: 12.08 PM

(12:08) MS FEINT TO BRUCE STIRLING:

Q. Tēnā koe, Mr Stirling. I understand from the mihi this morning, that you truly are a historical taonga to the Tribunal, so it is an honour to ask you some questions. I wanted to go back to the beginning of your report and specifically, I'm interested in the Stout-Ngata Commission.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032

I'm particularly interested in the position of Apirana Ngata, because as I understand it, he wrote a dissenting opinion for this report. Is that correct?

A. I don't think I identified it as a dissenting opinion, I just thought it was his view. I mean, there were only two of them, not much to dissent from. But if that's how it reads to you, yes, I can accept that.

Q. Well, he argued, did he not, that Māori land holdings were already insufficient for long term economic sustainability before they even started?

A. Yes, yes, that is the quote, I have it on page 10, but I understood that to be the commissions view rather than solely his.

Q. Right, okay.

A. But that could be a review and be checked to be certain.

Q. So, but he was in an interesting position, was he not, because as I understand it, his views were very much about supporting Māori economic development and ensuring they maintained their land and their autonomy over their land. But he was effectively placed in a commission where the government had the objective of obtaining closer settlement by Pākehā to Māori land.

A. Yes, well, that was one of the outcomes, but not the only one. So, I guess, he saw enough benefit in the other parts of the legislation and the other parts of the commissions terms of reference to make it worthwhile doing. But you know, clearly, he's walking a fine line, but I think that was a problem that confronted him throughout his time working with the Crown. He had to placate the settler side while also trying to advance the Māori cause. And of course, he had his own ideas about what advancing the Māori cause meant, because he had particular views on Māori development and emerging from the Young Māori Party. Who were sort of, seen as progressives and willing to co-operate more with the Crown

in order to advance Māori interests, at least in terms of economic development. So, yes, he had to walk that fine line his entire career.

Q. I suppose to put it colloquially, he was within the lion's den and seeking to influence policy as best as he could in order to protect and promote Māori interests?

A. Yes, I think that's a key point. I mean, later in his career, being able to secure you know, land development finance for Māori was quite a significant breakthrough and came at quite a lot of cost. Because at the end, a close review of the operations of the department in land development in the 1934 Commission of Inquiry, you know, found quite a few things to criticise and came down on him pretty hard and he had to resign. So, it wasn't easy walking that line and well, I mean, there has been quite a fair bit of criticism of him over the years. It's a shame, yes, we haven't got the benefit of the late Ranginui Walker's perspective, you know, having written a pretty good biography of Ngata. Who could, you know, definitely contribute to that discussion.

Q. Thank you. So, turning to the commission itself, am I right in thinking that they were operating under the powers in the Native Land Settlement Act 1907?

A. Yes.

Q. And I had a look at that Act and so, the only reference I could see to how they were to define surplus lands is that in section 4, it states that if they report, "to the Governor that any native land is not required for occupation by the Māori owners and is available for sale or leasing" it's then, "lawful for the Governor to declare that land will be subject to that Part of the Act". Then they go into the categorisation.

A. Yes, that's essentially the task. Well, I briefly describe that at pages eight to nine, without actually identifying a specific clause you have referred to, but that's certainly where that points made.

Q. Yes, so, in terms of that statutory obligation, I just wanted to pick up what you say at the bottom of page 10 of your report. Where you make the comment that, so, you say at the top of the page, they were of the opinion that the Whakatōhea tribe has no surplus land for sale. The figures show the commission was right to see Whakatōhea as essentially landless.

What's surprising is why they then recommended most of the land be made available for settlement and only 7,000 acres reserved entirely for Māori occupation.

Then you go on to suggest at the top of page 11 that the reason they did that was because they were required to find land for settlement by sale or long term lease. But I'd like to suggest to you that actually, if the land was required for Māori occupation, they could not find it available for sale or lease. So, in other words, they first had to determine whether the land was required for Māori occupation?

A. Yes, well, I'm assuming they did that before making those recommendations, and I guess the distinction there is that that table on page 10 is referring to land outside the confiscation district. So, that is of much lesser economic utility, in practical terms and definitely in Ngata's eyes, I would suggest. So, I think that's possibly why more of that land is recommended under part one or for lease as opposed to the land on the coastal plain within the confiscation district. I think he is a bit more keen to reserve more of that, so I guess, you know, this is part of walking this line that he had to walk and the trade-offs that had to be made to assuage this land hunger on the part of colonists and their government.

Q. Well, let me put the question another way. If they formed the opinion that Whakatōhea had no surplus land for sale, then wouldn't it follow that all of the land that they still held was required for their occupation?

A. Yes, well, that's a pretty logical conclusion. It would come from the quote earlier on page 10, that's certainly indicated by that and the very limited area they agreed to offer for lease, not for sale. So, I think that's reflected in some of the evidence, but the outcome itself, as you pointed out, is not quite in accord with that. But I think I may have said earlier, that goes back to the underlying premise of the legislation, which was to find land for settlement. So, he had to do something, or he and Stout, they had to do something to find land for settlement. I guess it was a matter of identifying the least damaging areas perhaps, that they could offer up, because certainly, that land would not have been considered prime settlement land.

Q. No, well, maybe it depends how you understand the idea of occupation. But I would have thought that if the underlying premises land required for the economic subsistence of Māori that it must be a broader definition than just land that they are literally occupying and using.

A. Yes, well, I doubt the definitions were that precise, so that's where the wiggle room lay, I think. If they were not then occupying it, well they didn't need it for occupation, it's not really thinking about future needs or seasonal occupation, or something like timber extraction in terms of more modern usage of the land, or the food that might be provided by that forested land. So, that might not be seen, strictly speaking, as occupation, even though, in customary terms, it certainly would be. So, I think that goes back to the framework for the inquiry, which you know, was to find land for settlement.

Q. Right –

A. And Māori basically had to sacrifice that, really.

Q. So, it wasn't set out in the terms of reference or explained anywhere, what they understood by occupation?

A. No, not that I can recall, no, I don't think – legislation is a little bit loose on that, it would just have a word like occupation or support. Like I said, that leaves enough room for these kind of recommendations to emerge, where, despite there not being enough land, somehow, land is found for settlement.

Q. And in terms of the process for their inquiry, I take it that they weren't required to consult with Whakatōhea under their terms of reference, but that Ngata chose to do so?

A. Well, I think he definitely tried to get support for what he was recommending. So, I guess he had to tell people, well, we need some land offered up and then it's a matter of working with them to identify what they might be prepared to give up. In the hope that their remaining lands would be better protected under part two of the Act. So, it's a trade off, and I guess, yes, to achieve that he had to put it to them in person. So, they did spend quite a lot of time going around the country and meeting with various tribal groups in the districts in which, they were reporting on. I don't know whether that would have been set out in the terms of

reference, I didn't look at that that closely, but I doubt they could have really done it without being on the ground. That information's just not really available from title data, or not the title data they would have had access to. So, they relied on that data, but then they had to meet people in person and try and get from them, a sense of what they might be able to give up because they sort of, had to and what they really needed to have reserved.

Q. Right, okay, and at the top of page 15, you refer to Ngāi Tai faring relatively better in terms of the quantity of land that was reserved for Māori occupation. Are you able to expand upon why Ngāi Tai might have fared better than Whakatōhea?

A. Well, I think there were fewer of them, and they had basically more land, that's fairly straightforward calculation.

Q. I wondered whether there were some preference shown for them because they had a relatively better relationship with the Crown then Whakatōhea did. Who had been under the shadow of the raupatu for much of the 19th century, the second half of the 19th century.

A. Well, yes, that's an interesting question, but I'm afraid I can't really help you. Yes, I haven't really looked at their relationship with the Crown. Well, that should have been covered in other evidence, looking at broader issues like that. I'm sort of, more focussed, just on the land itself.

Q. I had a couple of questions about the issue of landlessness, which you start discussing at page 171 onwards. You refer, at the bottom of page 171, then the top of page 172 to the 1905 Act, which actually had quantities – well, first, let me ask this. What would you regard as being landless if you were asked to assess whether Whakatōhea's landless, how would you think about that problem?

A. Well, at the most literal level, it's having no land at all. But what it generally means is not having sufficient land for material support. So, that's why there's 100 acres of third class land as being the minimum and it's only 25 acres of first class land, because that 25 acres is enough to support a person. But if it's third class land, as a lot of the inland mountains beyond the confiscation district would have been, yes, you need 100 acres and even that could be a bit of a struggle. But they are

fairly minimum, so I think that's why, despite there being, you know, Stout-Ngata finding. There is a certain amount of land left, but the owners don't have enough to support themselves, so they are effectively landless. So, it's not literally landless, the definition is, not having enough to live on.

Q. What I wanted to put to you is that, in fact, the statutory definitions change quite markedly, don't they, because as I understand it, the 1905 Act is the only statutory definition that has minimum quantities of different categories of quality land. Is that correct?

A. Yes, that's correct. Well, I did note the 1873 Act, which, the provision, it was never really implemented, that had a minimum of 50 acres I think, for everybody, but that never really got paid any heed. So, yes, after the 1905 Act, it was more, the explanation, well, the definition that I gave, not having enough for your support, rather than a fixed amount. That then became a fairly flexible number and whether it was occupation land or what they called, other land, when they were categorising it.

So, land that wasn't really fit for occupation, but might be usable for other purposes. Then later on, I think, as you are perhaps getting at with your question, the definition changes again to not so much related to quantity, but ability to support one self. So, if one had a trade, or one had a spouse with resources or a trade or sufficient land. It could be argued that the land that was being sold, wasn't needed, so it wouldn't matter if you were, thus, landless, because you had other means of support.

So, other means of support became a sort of, get out clause for people who were actually, effectively landless. But they might run a business, they might have a trade, they might labour on a farm, even that was deemed sufficient reason to let the landlessness clause slip by. Yes, it did change and softened over time.

Q. Yes, those other definitions you are referring to are at page 144 of your report. You have the 1909 Act, and then the 1913 Act. So, the 1909 Act –

A. In the paragraph, yes –

Q. Yes, and then the penultimate paragraph refers to the 1913 definition, which, as you have just said, requires assessment of other means of

livelihood. But I would suggest that in fact, that's not a definition of landlessness at all, by that point, is it, that's just a question of whether Māori had other jobs that they could use to support themselves?

A. Yes, well, it brings up the issue related to wanting to prevent landlessness because there was a fear that there would be all these landless Māori pauperized, roaming the country, becoming a burden on the **(inaudible 12:27:37)** welfare state, as limited as that was with charitable aid and that sort of thing. So, they were really looking to try and prevent that rather than – it wasn't so much ensuring Māori retained enough land to become active economic participants in society. It was to stop them becoming a burden and a drain on more productive Pākehā.

So, that's why that clause comes in about having a vocation, or some other means of support. Therefore, you didn't need land, and I think that goes back to the point in the previous set of questions about assimilation and Māori becoming more like Pākehā, or Pākehā didn't all have to own land in order to survive. So, that was the future for Māori as well, or at least that was what was envisaged.

Q. Okay, and then, finally, just a question to put to you about the conclusions that the Tūranga Tribal reach in their report. At page 532 of their report, I'll just read you, their conclusion. They found that in Tūranga, the Crown was aware of the risks of landlessness and title fragmentation and was recklessly indifferent to them. I wanted to put to you whether you would accept that that was the case in relation to Whakatōhea as well?

A. Well, that's the sort of conclusion I would usually the leave the Tribunal to draw from the evidence. But as the Tūranga Tribunal did, I think it's pretty clear from the evidence over time. That there wasn't any regard for the need to preserve that land that Stout and Ngata identified right at the start of the century. That that should be preserved in Māori ownership, other than excluding the Ōpape reserve from Crown purchasing.

That's probably the one positive measure that was taken. But in all other regards, yes, there wasn't anything really done to preserve land, everything was directed towards alienating it and given that the government had been warned that was the wrong path to take as early

as 1908. The fact that they kept taking it, I guess you could describe as reckless indifference. But that sounds a little more like something for legal submission to me. I won't disagree.

Q. But as an expert, Mr Stirling, you are entitled to provide your opinion to the Tribunal. They don't have to accept that of course.

A. Yes, well, I think I pretty much just gave it, in a roundabout way –

Q. Yes, you did –

A. Yes, but that is my opinion, the evidence is there to review, to assess that opinion.

Q. I just had one more question in relation to your chapter on the Whakatōhea Māori Trust Board. The question is this, the voting for trustees to sit on the trust board has always been done in Whakatōhea on a hapū basis. As I understand it, that's relatively unusual in terms of other trust boards around the motu and I wanted to ask you whether you knew why that was?

A. I was aware that it was that unusual. But I think, well, it comes right from the birth of the trust board itself, I think, which I sort of go through in a bit of detail because it seem to have been neglected in other evidence. So, I'm just describing how they develop the idea and how they develop the representation using hapū as the basis. I think that's just really, reflecting their preference and the Crown's willingness to accept it. So, I can't say why other trust boards aren't structured that way, it seems quite natural to me and obvious, that it should be.

Q. Thank you very much, I don't have any further questions, but thank you for your evidence, Mr Stirling.

A. Kia ora.

HOUSEKEEPING – TIMETABLING (12:32:15)

HEARING RESUMES: 12.32 PM

HEARING ADJOURNS: 12.34 PM

(12:34) MS CLARK TO BRUCE STIRLING:

Q. Tēnā koe, Dr Stirling.

A. Mr.

Q. Mr Stirling, thank you. My name is Ms Clark, I act for a number of claims in this inquiry. The questions that I have for you today are largely, either at a generic level on behalf of the claimants that I act for are all primarily on behalf of Ngāi Tamahaua, which is the Wai 1781 claim. You may be aware that Ngāi Tamahaua have particular interests in the Ōpape 1 and the Ōpape 11 block. So, some of my questions relate to those particular blocks where you have given examples of those in your evidence. I'm going to cover a number of the policy areas that you have referred to in your report, in no particular order.

I'm going to start with the development schemes, and I wanted to pick up on a discussion that you had with my friend, Ms Terei-Tipene regarding the extent of the control that the Crown exercised over the designated area. You had a discussion and Dr Phillipson also asked a question there regarding the extent of that control and my reading of your evidence was that the Crown exercised an extensive level of control over the entirety of the designated area.

I wanted to draw your attention to page 314.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032, PAGE 314

Some of the quotes there that I thought were relevant to the discussion of the extent to which owners retained a connection to the land or otherwise, or in other words, the extent of control the Crown exercised. On Page 314, we have a discussion of something that's happening quite early in the development scheme there, where Amoamo Te Riaki points to several problems with this scheme. He told the Native Minister, this is in the second paragraph, "that some of the "young men" would not adhere to the decisions arrived at by the local committee (the Ōmarumutu Committee) and Consolidation Officer Rangi Royal." About where they would be placed on the land, and what they would do on it. And that they were seeking legal opinions as to their rights, or they were putting up fences in opposition to the arrangements and threatening them with proceedings to partition their interests.

A little bit further down, other owners simply did not want the committee telling them who could farm and where, and that they were very put out that the committee was choosing who they like to settle the land. What I want to suggest to you is that here is an example of owners trying to assert rights in the designated area, and here is an example of what is happening. There's something of a **(inaudible 12:38:02)** that erupts around it, and those members of the local committee are very put out by the fact that owners are seeking to exercise the control over their lands, or retain that control over their lands.

Would you agree that this tends to indicate that it was not open to people to come and use those lands that were under the designation?

A. Yes, I think we are talking slightly across purposes. My earlier answers were referring to the entire block that was placed under the development provisions. But was not actively worked on where I was less certain about the impact of that designation and other people not having legal rights to do what they liked. That didn't prevent them, perhaps, doing some things on their land. And the distinction between that broader area and the actual smaller area that was actively being developed and actively put under departmental control, which is what the text on page 314 is about. So, that's about land that is, not just designated, but it is actively being developed.

So, Māori Affairs, or the native Department as it was then, wants to exercise control over that and the using of local committee to assist them with that, so they are in the same position as Ngata, I suppose. Trying to sort of like, walk a line between what the people want and what the government wants and try to find a compromise. Put somebody on the land to farm it and to be assisted with development finance and supervision to farm it. So, that's a different category of land, really, that's what I'm saying, so I take your point. That definitely applied to land that was being developed, but land that was left alone and not touched, even though it was under designation. I think there was a little more freedom for people – owners to do what they wanted on it, they just wouldn't have been able to do things like lease or mortgage, or sell, obviously.

Q. Nothing of a sort of, economic development that had an economic benefit –

A. Only at a small scale because they wouldn't be able to raise funds against the title because they didn't have control of it, so yes, very limited, it obviously greatly limited their development. But at the time, all of the funds, anyway, the state funds were going into the development areas. So, where would anyone else had got any money anyway, there wasn't really finance available, so it's a bit of a moot point in some ways. So, I think people were just left to their own devices on the land outside the development scheme. But you have problems with access, survey costs, title, the state of the title. So, yes, great hindered what people could do, so the focus wasn't much more on the areas being actively developed within the wider designation.

Q. Okay, and on the areas that were not being actively developed, you are very sceptical as to the extent to which, owners could use and develop those lands. What I'm taking from what you are saying is that possibly something self-sustaining for a whānau may have been acceptable in an area that was not being developed, but certainly, nothing more than that would have been possible.

A. Yes, it would have been pretty limited to, you know, carrying on customary occupation and trying to do what they could without any funds, really.

Q. But you would agree, drawing from the quotes that I have just mentioned there, that at the very least, these designations and the development that was being undertaken left a number of owners feeling disenfranchised and alienated from their own lands as a result of the designation and development?

A. Yes, well, it wasn't so much the designation, it's the way the development was managed and who was chosen to farm land. So, obviously, people had whānau interests in that, would want someone from their whānau to be involved. Other times, the department would say, well, that persons lazy, or they are not a good enough worker, or they are not qualified, or they have a bad track record. We have this other person who is better, but they might be from a different whānau, they are not owners in that particular part of the block.

So, that's why the idea was to have consolidation first and sort all that out, have these whānau based titles and then put someone from the whānau on them. But because they did that the wrong way round here, that never happened, so you have all these disputes. Like why can't my nephew go on there or, I think at one point someone even wanted to put a Pākehā on who was married to an owner. Because you know, he had done a really good job on some other land and that was the important thing, was to have a good farmer there. So, there's all those tensions and that's the sort of thing that's reflected on that page.

Q. Thank you. Yes, but isn't that inherent on the very nature of what the Crown was trying to do here. They were seeking to develop land in the Pākehā style, a certain farmer ran a certain unit, and the very essence of this whole scheme was that some would be excluded. Would you agree?

A. Yes, well, most had to be because there wasn't enough land, yes and I think, well, I think I did a few points, contrast that with some other schemes in other parts of the country. Where a large block of land would be developed as what they called a station, like a single big farm, much as an incorporation might run. With the ultimate goal of breaking that up into small farms. But a lot of the time, it took so long to get it to the stage where it was ready for that. That by then, pressure from Māori owners and simply, basic economics, some of those schemes ended up continuing to be run as a station.

So, that becomes a collective asset, so there are Māori people working on it, there is a Māori committee running it. They might hire a Pākehā manager, but they have Māori workers on it and the profits come back to them. But that retains that collective element, which is missing from this kind of small, dairy farmer obsession that the government had.

Q. Yes, and that was applied here in the case of Ōpape, they did not have that benefit of the larger approach that was taken on some of the other schemes that you have mentioned there.

A. Yes.

Q. And just staying, for a moment longer, with the extent of control that the Crown exercised in the case of these development schemes. This was done through if I could summarise the local committee. There was also

a farm supervisor, and it was very much the Māori Affairs department that made the decisions over what happened on these blocks. There was a lot of control exercised by the Crown here. Do you agree?

A. Yes, that's how the schemes worked.

Q. Thank you, and even if the department made a silly mistake, and I think you give an example of ragwort that runs amuck, and the department tells Māori how they are to deal with it. It's completely wrong and ends up costing Māori. They still have to pay for those Crown decisions in relation to their land, isn't that correct?

A. Yes, that's the way our system worked, yes.

Q. Thank you. I want to question you on whether the Crown designated much more land than was actually necessary. We have already established that they developed only a very small part of the block. Did they really need to develop such – to designate such large tracks of land?

A. Well, it was quite common right around the country to do that, I think, because they didn't know at the outset, exactly what they would do. So, they thought, well they just get total control and then work out later what they are going to focus on. And presumably, if the process had worked better, they would be releasing land from that development control much more quickly once they knew they didn't need control over it, because it wasn't ever going to be part of the scheme.

But it's just sort of the inertia and a different focus. The focus is on the area they are developing, they just stop thinking about the wider area that's designated, so it becomes a big effort to have land removed from that control. You need to sort of formally apply and it needs to be Gazetted. It's not a simple matter

Q. Yes, and it remains under that control, my friend pointed out earlier that it was for, I think, some 38 years –

A. In some cases, yes –

Q. – that vast tracks of land were designated and of course, no doubt, I mean, I think you have alluded to the fact that there wasn't a lot of forethought that went into the development that was about to take place. If the Crown had looked at the quality of land and looked at the farming potential of that land, it surely would have seen that it would have no need

for the entirety of the block of the blocks that it did designate. Would you agree?

A. Well, it seems pretty obvious in the case of Ōpape because everybody knew that the inland portions were just, you know, unusable. In the end, they were only really fit for forestry development, well, once they were cleared. If they had been left alone, they wouldn't have even had that, they would just be left in their natural state, which might have been the more sensible option.

Q. Thank you.

A. Yes, it's like you said, a lack of forethought, lack of planning.

Q. Thank you. Something that was particularly concerning to me about the development scheme was that Māori were working very hard on these blocks. And you make the point that, in particular, if it was intended that someone was going to benefit from that block and get tenure to that block, they worked without pay. So, my understanding from your evidence is that there were a number of people, a number of farmers, working without pay with the intention that they would eventually benefit through getting tenure in the block. So, it was very concerning to me that tenure was not awarded for some 16 plus years. Would you agree that this means that there were a number of farmers working for no pay, and we cannot be sure they actually received tenure at the end of it?

A. No, I don't think it's correct to say no pay. The initial work was done, sort of, unemployment relief, that kind of was a massive subsidy, well even though the amounts are quite small. For Māori, it was a large amount of money compared to what they had had in the past, so that did some of the early work, with the unemployment relief subsidies. But then, once they were in production, milking, still being assisted, still under development regime, not yet selected with tenure. They would be earning a portion of their cream check, so that the government would take usually a third, sometimes more of the income from the cows to start repaying the debt. Then they would have to live off the rest, as well as, put some back into the farm.

They weren't on wages, but they were supposed to be farmers, you know, earning a living from their stock. But it was pretty hard going, because

they were very small herds and the lands still being broken in, so it's not usually productive, some people have really bad road access. The dairy company just said, well, we can't even get up there anymore, so you can bring it down, waste half your day hauling cream down a stream bed before it warms up.

Yes, so there were a lot of problems, and then like you say, even after doing that work for years, you might not get tenure, or your farm might turn out to be not economic. So, you just have to give it up and it gets merged with the adjoining one to form an economic unit for somebody else. So, yes, it was a pretty hard life, there was a lot of frustration, which you see coming out now and again in people's correspondence.

I mean, probably see more of it if I'd looked at more of the individual unit files, but I didn't really go into those in a huge amount of detail. Some people didn't want their tūpuna referred to directly, so things like that were left out of the report. In other inquiries I have gone to exhaustive detail with development schemes, to little avail it seems to me. It doesn't seem to be something that the Tribunal, or the Crown has been particularly interested in, in terms of Treaty breaches.

Even though, you look at the actual stories of the people involved, and it does seem pretty harsh and a very tough period for a lot of people. But I guess, I think the Tribunal in the past has found well. At the end of it, they got some help from the state, and they still have their land. So, you know, it's not great, but we are not going to make too big a deal out of it, so I didn't really do as much as I could have if I'd really wanted to drill down. I mean, the more you look the worse it gets, but I had to draw a line somewhere.

Q. I mean, suffice to say, individual Māori did pay a price for these schemes, they were heavily indebted in a number of cases. Well, you have indicated that they did receive a share of that cream check. They certainly, in many cases, didn't receive a title. In a number of cases, they were made to feel that they were at fault if the farm was unsuccessful. So, would you agree, and as you have just said, it was a very, pretty hard life, **(inaudible 12:52:19)** a living on Ōpape, which the Crown was encouraging these people to do. Would you agree there would have been

a personal cost to the efforts of Māori on these development schemes over the years that they were in place?

A. Definitely, yes, I think that's illustrated by some of the individual cases I have been able to highlight.

Q. Thank you, and that's partly where I'm trying to go with my questions, is to try to ascertain from you, were these schemes worth it, or not, was the cost too great versus the benefit that Māori actually obtained from these schemes. I'll continue my questioning to see where we can go with that. With regards tenure and title, the premise of the scheme was that, at the beginning, was that Māori units, as they were called. Would be put on to the land, they would become Pākehā – they would become farmers in the nature of Pākehā farmers and they would receive tenure to the blocks whether it be in the form of a lease hold title. I think would have been what was expected, or possibly even a freehold title if consolidation could have been effective.

But I want to put to you that the Crown absolutely dropped the ball when it came to the provision of titles, because 16 years after the scheme is in place, we have the prime minister up in arms, and I'm at page 350 here. Asking his officials, why on earth there is no tenure in the development schemed blocks yet, and officials seem to be frantically running around and making excuses as to why there is no tenure yet. Supposedly the form of leases unprecedented and that the granting of leases still has to be approved by the owners. But the local committee has been in place since the beginning and that was their job to approve who would be on the land. So, I want to put to you that the ball was absolutely dropped here in terms of what was promised to Māori in terms of tenure and what was achieved, some 16 plus years later. There was no tenure or even consideration of it.

A. Yes, well, dropped the ball is a pretty pithy summary of it, so yes, I'd agree with that. Yes, I mean, it was something that was supposed to be sorted out right at the beginning, as discussed in regard to consolidation, but that was stepped over in favour of development, and then it came back to bite them later. It's like, well, what title do we have and who can go on the lease and who is going to lease it to the farmer, because generally it was

going to be a leasehold interest. Then that brought up another series of problems.

It's like well, the rents going to be based on unimproved value and then you have compensation for improvements. You have to have a sinking fund coming out of a rent that isn't even very high. So, the owners end up with very little for all that trouble, until the end of the lease when they get a developed farm back, presumably if they can buy the farmer out, or they can just keep leasing it to him. Over time, people lose connection with that land because of that sort of tenure. And that makes it easier for things like uneconomic interests or live buying to slowly transfer the title to the person who is leasing it. Which I think, you know, became one of the goals of conversion, was to assist people who were, you know, on a leasehold tenure to obtain the freehold. So, that was another end goal of this kind of assimilation of title process.

Q. Yes.

A. So, yes, definitely, definitely dropped the ball in that. I mean, you think something practical like a – binding like a lease would be something that they would sort out for a farm fairly early on. But it was just left to drift and drift.

Q. Yes, thank you. Obviously, the Crown invested quite a bit in these development schemes. But I want to clarify with you, it certainly wasn't free money, far from it. The Crown wanted that money back, didn't they. And they were looking for units on which to load debt so that they could ultimately be repaid the development money that they were investing into these blocks, with interest?

A. Certainly, yes. I mean, it was finance that Māori lacked access to, so this gave them access to finance. But obviously, finance comes with interest and has to be repaid. It's just that, well, if you are a Pākehā farmer, you might have the government advances to settlers' office to deal with and they would supervise you and make sure you weren't blowing their investment. But I don't think it was anywhere near as oppressive as the Māori Affairs sort of regime that people were under, and the degree of control, I think, was much greater, particularly over income in terms of just taking larger chunks out of the cream check.

As you said, finding titles on which to load the debt, because sometimes, aspects of the debt would not be specific to a farm. But they would try and find a way to make it specific or allocate it amongst a small group of farmers, so that they would bear the cost, because otherwise it was just going to sit there. You know, costs like roading development would benefit several titles and it would be difficult to allocate who got what share of that debt.

Then the issue of being uneconomic comes up. Like, if the debt and the interest gets to a certain point, the land has limited carrying capacity. Even that requires ongoing investment in terms of fertilising and fencing, and those sort of seeding, and those sort of issues. So, the debt tended to keep going up, so it was a major problem. Even though income was also going up, but yes, people did seem to be trapped in a loop that was difficult to escape.

Q. Thank you, that's right. You have suggested that Māori needed access to finance and here was their opportunity to get that. But I would put to you that it's very different from the finance that Pākehā were able to access. This finance was Crown imposed, we are doing X, Y, and Z for you, being the opinion of the farm supervisor and the Māori Affairs department. As to what would be done on the land and that it was that finance that Māori were required to repay. Not finance they, themselves, had chosen to incur.

A. Yes, well, yes, there is a limited amount of consent, like, there was the advisory committee, and the supervisor would talk to each farmer. But ultimately, the supervisor made the decision about what people would get and when, and what they would do with it. So, it's a very, you know, extensive degree of control.

Q. Thank you. Just wanted to touch on the repayments that Māori had to make. They were in the form of the cream tax, and were there other repayments in addition to the cream tax? Something to a consolidated fund, I'm not fully clear on that, my apologies, or was the cream tax the primary way that the Crown was seeking to recoup their investment?

A. Yes, well, yes, that was the primary source of income, and it was the easiest one to tap, because the produce had to go to the dairy company.

Then Māori Affairs could deduct their share at source before the rest was handed on to the farmer. Whereas, you know, other sources of income might be a bit more difficult to manage and identify, like cropping or sheep. But yes, there wasn't a lot of that going on due to the, you know, the smallness of the farms.

Q. Yes, and it was at 40 percent, was it not?

A. That was about the most common figure, yes, sometimes 30, but quite often 40. I think I had one example of a woman running a farm, although I think, maybe her sons were doing a lot of the work, older sons. But she had a huge whānau and what was left from the cream check just wasn't enough to support them. But because any welfare assistance, like family benefit that would have greatly assisted her was based on gross income from the cream check, not what she actually got in hand. She was denied any assistance for, I think she had 12 children, so yes, that's an example of the unintended consequences of that kind of approach.

HOUSEKEEPING – TIMING (13:01:31)

HEARING ADJOURNS: 1.01 PM

HEARING RESUMES: 1.49 PM

HOUSEKEEPING – TIMING (13:51:03)

MS CLARK TO BRUCE STIRLING: (CONTINUES)

Q. We will briefly finish off with regards to the development schemes, and I want to touch on what the Crown actually invested into these schemes. I will try to pass over these quite briefly so I can move on to my next topic. Is it correct that Crown spending was not on new investment, but in the case of Ōpape, they essentially looked at what was already there, they re-financed existing farmers, and they chose to pour their investment into farms that were pre-existing?

A. Well, that's how it started, but it did expand from there, yes, but the initial step, rather than taking over a big area of undeveloped land and –

Q. Yes.

A. – starting to work on it with the idea of breaking it up into farms later, they actually instead started with several dozen small farms that Whakatōhea had already – individuals had already managed to get started, but with the arrival of the Great Depression, they'd got into a bit of trouble with their debt and were falling behind, so a lot of the initial investment was transferring that debt to the Crown and then putting them under supervision and starting to get that debt repaid, and from there, it expanded a little bit onto some other farms. Tōrere was similar, but – expanded onto a greater number of farms –

Q. Okay.

A. – yes, I think they had more – they had more to start with, and slightly less debt trouble –

Q. Okay.

A. – I think, but they too were struggling a little by 1930.

Q. Thank you.

A. Bad times, you know, not – not…

Q. Okay. Thank you. So, it did expand beyond simply refinancing and what was already there.

A. Yes.

Q. Do you agree that there was a strong – you refer in your report to a double purpose, so in terms of the Crown's motivation for investing into these schemes, it was not just to benefit Māori, but there was a wider purpose that it wanted to be seen to be developing the country as a whole. Do you agree with that?

A. Yes, yes, the goal was, you know, to boost national production, as they called it, yes. Economic output, I think, would be the – the current jargon, yes.

Q. So, there was a – and there was essentially a price that Māori were paying here in respect of these schemes to enable this – this goal to be achieved. Do you agree? You have talked about the debt.

A. Yes, well, it's – it's – yes, well, with debt, you get an asset. That's usually how it's supposed to work.

Q. In theory.

A. So, there is a bit of quid pro quo, you know. They – they get some assistance and – and the nation gets some output, so the idea is it's win-win, but at the individual level, it's quite a struggle for a lot of them.

Q. Thank you. Yes. And perhaps I could maybe jump there to considering what the results of the scheme actually were, because if you are saying it was win-win, let's look, for a moment, as to whether it really was win-win, and there are a few places in your report that I have highlighted essentially summarise what the results of these schemes were for Whakatōhea.

The first you mention is on – or the first that I am drawn to was on page 331, where some 12 years into the scheme, only three of the 44 farmers are out of debt, et cetera. I am looking at paragraph 3. The debit accounts of many others were static or increasing, ranging from sort of 2,000, and a significant number that were over 1,000.

So, would you agree that if we are looking at what the results were, this potentially speaks – this enables us to interpret what the results of the scheme were, which was essentially that farmers were remaining in debt as a result of these schemes, and that that indicates the schemes were essentially not successful?

A. I don't think it's quite as simple as that. The more detailed information in the files tends to show a ratio of debt to asset value, and also productive output, so how much – what proportion of the debt – what is the proportion of the debt relative to the value of the asset that has been created, and then what is the repayment of the interest on that in relation to the economic output, so, you know, is it worth pursuing? Can the farmer afford it?

So it's not just a simple matter of debt, because the idea with a debt is that if you pay it off, you have an asset, although given the tenurial problems we were talking about, you know, the asset's a little illusory in many respects, but yes, I don't think you can just look at debt and say, "Well, that's bad", because yes, for each – for each farm, they would have financial information to show whether it was viable or not, and so eventually, the ones that got amalgamated or basically shut down and merged with a neighbouring farmer, it got to the point where the – you

know, the debt was too high for the asset value, and the production was not enough to pay off that debt at any sort of interest rate.

And occasionally, when they thought prospects might get better, they would write off the interest for a year or so or reduce the amount they took from the cream cheque, if the farmer was – you know, needed that income more than it needed the interest repaid. So, there was a little bit of flexibility in there.

Q. But suffice to say, a number of the farms were struggling to pay down their debt, and that – and that is commensurate with the fact that these were difficult blocks to farm and uneconomic in that status as small farms.

A. Yes, I think it's – yes, it's probably more the scale of them is the problem, yes. They're too small to really support a farm, which is why you see quite a few of them being amalgamated later on.

Q. Right. And when did that amalgamation occur?

A. It varies, but I think it – I think it starts more in the '50s, 1950s. Post-war, I think it becomes – a lot of things were on hold during the war, and then it becomes more starkly obvious that it's not going to work, and often a farm might have too much back country in it that is low output and cannot be made terribly productive, so – and not enough good land down on the river flats, where, you know, you can actually run a dairy farm or a dairy herd, so they – yes, they would end up having to merge – merge them.

You know, sometimes that's by sort of a voluntary agreement, but other times, it's just the farmer was just, you know, cut off and had to leave. Yes.

Q. And what are we to make of 1966 and Wiremu Nikora, who wrote to the Minister of Lands to complain about press coverage in regard to idle lands? And my understanding is that there was pressure coming on Whakatōhea in the 1960s because of the way that the vast majority of their lands were – were seen as – as being idle at that time. Is that an indication that by that time, the development schemes had wound down, that those farms were not the success that had been perhaps hoped at the beginning of the schemes? What are we to make of what Wiremu Nikora is approaching the Minister of Lands about there? And that is at page 336.

A. Well, I think his complaint is more about people criticising them for having idle land, when you know, as we've discussed earlier, he – they can't actually do much with it, because it's under the development regime, so that's kind of one – one result of that, so there's a lot of criticism from local Pākehā farmers about, you know, either that that land's not doing anything or it's covered in weeds or, you know –

Q. But doesn't that indicate that the development schemes have not been successful, if it was perceived that way?

A. It does depend on which land's being talked about. If it's land that's under designation but was never actively developed, well –

Q. Okay.

A. – that's an issue caused by the designation, so the owners don't have the right to do much to that land. If it's referring to land that was in development but has since reverted, which is what they are talking about – I think at page 335 he talks about land being incompletely developed, and then once it's abandoned, it deteriorates pretty quickly to scrub – so it's – it's probably both categories were involved here, but the land that was under development should not have been left to revert that that state, I mean, because they had invested quite a lot in it, but…

Q. But it was a comparatively small percentage of land that was under production in that way.

A. Yes. Yes. Yes.

Q. Thank you. And just to round this off, I wanted to put to you the quote that you – or the whakataukī that you started your summary with, "He nui te ngaronga, he iti te putanga", and you applied that to the case of Tunapahore, but I wanted – I want to put to you that to an extent, that would also apply to the development schemes. You have spoken about the personal cost to Māori in particular. Certainly, a lot of money was expended by Māori with regard to cream tax and repayment of debt. Would you agree that overall, there was – there was – these schemes were – were worth the price that Whakatōhea paid? And I should also mention the alienation, or the disconnection of Whakatōhea from their lands, as well.

A. Yes – well, yes, the reason I opened my summary with that quote was because on review, yes, it did seem to apply to the entire period and the entire rohe that I – that I'm addressing, so it does – it's of more general application, even though it was given a long time ago in relation to a specific scheme, but yes, it's certainly how I felt, getting to the – to the end of it, and I think that applies very much to development as well, but I guess the gains there might be slightly more measurable, but I don't know that many of them have really been sustained in the long term, because the land was not particularly viable for – for the use to which it was put.

Q. Yes. Would it be fair –

A. And that's – that's the nature of Ōpape, and that goes – again, we go back to the raupatu and landlessness, but yes, it's just that fixation on dairy farms. It was not always the right use, but it was something that the government pushed pretty hard, because they thought that was suitable for Māori, because you could do it at a small scale. It forced pretty strict, regular work habits on people, whereas, you know, sheep station, well, you've got idle periods, people might sit around and enjoy themselves, you know. We can't be having that. So, a dairy farmer, you've got to be there morning and night every day, so that – that's – I think they thought that would be good for them, you know.

Q. Thank you. And it would be fair to say that those gains were not communal in nature.

A. Not particularly. I guess the land remained collectively owned, multiply owned, at least, so –

Q. (inaudible 14:03:16)

A. – to the extent that it was improved, the owners derived some benefit, but how to realise that benefit was rather difficult, because of the tenure problem.

Q. Thank you. I will move to another topic now, which is the topic of conversion. I expect I have about five more minutes, so I will try to move relatively quickly through this.

Conversion was a key – played a key role in permanently alienating a number of whānau from whenua in the 20th century, didn't it? Whānau

that would have had a connection to whenua at the beginning of the century had lost that connection as a result of this policy?

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

Q. Thank you. And if I look at page 383 to 385, which is where you set out the titles that are affected by conversion, do you agree that of the blocks that are there, Ōpape 1 is particularly affected? I can see 16 Ōpape subdivisions, which appears to be the block that is – has the most number of subdivisions affected by conversion. Do you agree with that?

A. Yes.

Q. And I counted 150 owners in Ōpape 1 that were affected by conversion, and – that is going through and counting the number of owners affected in regard to each of the subdivisions. Could we effectively say that 150 people were disconnected, dispossessed? Or would there be at least some double ups in that figure?

A. Well, yes, there could be – there could be some duplication. Yes –

Q. Are you able to –

A. – it would take a fair bit of work to identify – well, you know, I could do another table and put the names of each person affected in, going back to the source material, and that would show if names showed up more than once, but it's not so much they that were excluded, it's their – their successors, because most of this was done on succession, so the people who would have succeeded do not, and then again, you need to maybe look at their names and say, "Well, did they succeed in other blocks, or did they already have interests in other blocks?", and that's a – well, you're just getting into a great morass of Māori land titles, you know, which I do not want to do, but –

Q. But suffice to say a large number of Ōpape 1 owners, clearly, if we look at this table and we look at the figure of 150 owners affected, a very large number were dispossessed in the Ōpape 1 block as a result of conversion.

A. Yes. Yes.

DR GRANT PHILLIPSON:

Sorry, can I just ask – so is that a yes to that, or is it a yes to their successors being dispossessed?

BRUCE STIRLING:

Well, yes, the successors. The owners themselves have died.

DR GRANT PHILLIPSON:

It could be many more hundreds than that.

BRUCE STIRLING:

Sorry?

DR GRANT PHILLIPSON:

No, I just wanted to check, because you said "Yes" to that, but it is in fact many hundreds more, maybe **(inaudible 14:06:44)**.

MS CLARK:

Thank you, yes. Thank you for clarifying that, Dr Phillipson.

MS CLARK TO BRUCE STIRLING: (CONTINUES)

Q. And again looking at your table here, I can see that given that conversion was intended to concentrate ownership of a block in one person or a very limited number of people, and if I look again at this table, I can only see two blocks where all the shares were converted, and that is Ōpape 1F6 and Ōpape 1B, so from the Crown's eyes, that would appear to be – that conversion operated successfully in respect of those two blocks. What about the other blocks? It seems to me that a number of shares were converted, and a number of owners were affected, but I'm not seeing that there was a policy outcome from the Crown's perspective; that the goals of conversion were actually achieved.

A. No, I think I made that point in evidence, that it only went to its fully complete conclusion in – in those two examples.

Q. In – yes, in very few cases.

A. Yes, and that's possibly due to policy changes, the time it takes, and then the Māori Trustee perhaps abandoning the idea of pursuing some blocks. It's – it's hard to know, because it's not really recorded – if it is recorded, it's in Māori Trustee files, which are generally inaccessible. Privacy reasons.

Q. But suffice to say there was little coordination to back up this policy, was there, from the – from the Crown?

A. Well, because it relied on people dying, I mean, it tended to be a little bit random, yes. That's the – it's not terribly well organised, but I think if there was a succession coming up, I assume there was some thought put into whether it was worth acquiring the uneconomic interests, but it's hard to detect much of that in the sources, but that's not to say it didn't happen. But it does seem to be just as it happened. As they came up, they just, "Well, we'll grab that."

Q. But there's no point in acquiring an uneconomic interest unless you know what you're going to do with it, and the Crown clearly didn't know what it was going to do with these interests, did it?

A. Well, we'd better be careful there, because it's the Māori Trustee and the Māori Land Court, so we'll say that isn't the Crown at all, but obviously, they're operating to a policy defined by the Crown in the 1953 Act, yes, with the goal of reducing or simplying ownership, if you like, improving title and improving production, so that's the endpoint, but it is – it doesn't look very organised from the records that are available, although the blocks where all of the interests were acquired, it does seem to be some effort put into achieving that goal, so I think once they decided that was possible, they could pursue it. In others, it seems a little more opportunistic. Just as the interests became available, grab them, and then think about what to do with them later.

Q. Thank you. And if I can pick up on the fact that some effort was made in some cases, I want to test with you the extent to which this was driven by the Crown or – or the extent to which this was – was owner-driven, and the – the case that I am looking at is the Ōpape 1F6, and there's a nice map of that particular block on page – it might be on page 397. No, on page 399, one of the bootlace blocks that you mentioned, and you give

the example here that 40 owners were dispossessed from this block in a hearing in Rotorua when none of them were present, and the benefit – or the way that this started was that two owners had a house block, and it seems to me – they had a house block on the section. It seems to me that they asked to have that house block partitioned out for them, but the Crown took that further and set the wheels in motion via conversion. It saw an opportunity for two people to have the entirety of the block, and it looked to me as though that was Crown-driven, rather than driven by the – the two owners concerned in that case. Would you agree that was Crown-driven to achieve that outcome?

A. Well, Court- and Trustee-driven, I think, just to be strictly correct. Yes, it doesn't seem to be something they actually wanted, yes, she just needed to partition out a house site, but I think there was an earlier comment about these bootlace blocks, that sometimes if you partition out a house site, the rest of the block was just inaccessible, so – especially when the house site is going to be near the road, because well, why else would you build anywhere inland? So yes, putting a house site on that block near the road was going to basically cut off access to the rest, so that may have been the thinking. It's like, well, the rest of it's now going to be useless, so we might as well just hand it over to them, even though, as you said, well, they didn't actually ask for it, they just wanted to partition out a house site using the interests they had.

And that would have been driven by policy, as well, because to get a housing loan, they would have had to have a house site under separate title. You couldn't get a – a housing loan on that entire block with all those owners under the – the housing scheme that was in place at the time, so it goes – that's perhaps where the Crown responsibility comes in. That was the policy since the 1930s for house sites – or housing loans, yes.

Q. And you would agree that those owners that were dispossessed at the hearing in Rotorua would have no doubt – had no idea. There would have been no ability to communicate to them that they no longer had an interest in that block. They would have found out by accident at some point in the future.

A. Most likely, yes. If – well, if they had been particularly alert, they might have seen a hearing notified in the Gazette, the Kahiti, and if they were lucky, they would have been able to get to Rotorua before the hearing and know what was going on, but that – those are pretty long odds.

Q. Right.

A. So they're not likely to find out until maybe one of them dies and their children think, "They had this interest in this land; I'll apply to succeed", and then they'll get told, "Well, that's gone." Yes.

Q. Thank you. And I will close off my questioning on conversion now and then I will end my questions, but in terms of how conversion worked, there was compulsory – succession- and partition-based conversion, both of which were compulsory. They were driven by the Māori Trustee, I think you said, or the Land Board –

JUDGE DOOGAN:

Could you just repeat that, please, Ms Clark? The two processes?

MS CLARK:

Yes. In fact, there were three processes, but the first was compulsory succession under section 137, whereby, upon succession, any uneconomic shares were – instead of being passed to the heirs, they were passed to the Māori Trustee, who could then on-sell those shares.

The second way that conversion occurred was at the point of partition, where, if there was an application for partition, the Māori Trustee could look around and identify whether there were uneconomic shares in the block that could be vested in the Māori Trustee for resale.

And the third way was – and this is the way I am going to ask some questions of Mr Stirling about – was what you have termed "voluntary purchase", and that was section 151, where the Māori Trustee could buy shares from any owners who were prepared to sell.

MS CLARK TO BRUCE STIRLING: (CONTINUES)

Q. Do you agree those are essentially the three ways that conversion could occur?

A. Yes, yes, yes, under conversion. I think the other – the other way titles were simplified or improved, if you like, was through gifts or transfers between owners, which is section – I think 213.

Q. Yes.

A. So – but that's a different process. That's maybe gifting; that's "I'll swap you this for that" kind of arrangement between owners –

Q. And it's between Māori.

A. – yes, whereas actual conversion in terms of yes, changing the title that way, yes, those are the three methods that you've outlined, yes.

Q. Thank you. And I just wanted to probe the extent to which that third method was in fact voluntary, because there could be an aspect of compulsion with regards to Māori being forced to sell their shares to the Māori Trustee in some instances, and I will – the example that I have in mind is the Edwards Hayes block, which is another Ōpape 1 subdivision, and that's the block where Paea Biddle made comments about being – a certain person, being Edward Hayes, taking additional shares to the block and other owners being dispossessed. As far as I can see, in that case, section 151 is used, the ostensibly voluntary purchase by the Māori Trustee, but what appears to be going on in that subdivision is the owners who do not agree to sell to Edward Hayes are essentially forced – either forced to sell, or forced to relocate their shares to a section of the block where they do not want to be, so I am putting to you that even that voluntary provision could be used in a way to – to force people to sell or to force people to locate their shares in a section of the block where they do not want to be. Do you agree?

JUDGE DOOGAN:

Just for the purposes of the question, the origin of the force? Is this the Māori Trustee applying force, or what is the theory?

MS CLARK TO BRUCE STIRLING: (CONTINUES)

Q. The relevant section that I am referring to is at page 400 onwards, and Edward Hayes is looking to buy up as large a section of the block as he can. At page 404, so – and this is in the Court – in the third paragraph on page 404, "Facing the compulsory purchase of her shares Te Paea Biddle relented and agreed to take her shares in the severance." Are you able to explain what is going on there: "Facing the compulsory purchase of her shares"? There are enough owners – or rather, the owners who do not wish to sell are feeling a sense of compulsion here that they are being forced to give up their interests in this block in favour of Edward Hayes, who is seeking, through conversion, to gain a large share of the block.

A. Yes, I guess that's something that appears on the face of it, of the transfer documentation or the memorial schedule, to be a section 151 voluntary transaction, but if you look behind it, it's – it's got the threat of these uneconomic interests being taken, so I think the – the trade-off for some of those owners was they might be able to get that interest added to some other block nearby. I think – I think 1C and 1P1 are mentioned. And the Court thought that was a useful compromise, but obviously it – it took them out of one block and put them in another, and some of them didn't really want to go, but they didn't have a lot of choice, so they could have refused the 151 purchase but then found themselves with nothing, because it would be taken under the uneconomic interests provision when the block was partitioned or later at succession. So yes, that's kind of, you know, one of those Hobson's choice situations where you get something rather than nothing, but neither option is what you really wanted.

Q. Thank you. And that – it is quite helpful to clarify that. Would you agree that it could be that Paea Biddle was thinking of her successors and she didn't want her successors to be disenfranchised? She knew that if her share was deemed uneconomic, if it could be, then that would occur?

JUDGE DOOGAN:

I'm not sure that – Mr Stirling – I am not sure the extent to which he can go further than what is apparent on the documentary sources in terms of trying to

express an opinion on what Paea Biddle may have thought, but I think, just to go back to the point about the compulsion, and I just want to clarify this with Mr Stirling, as I understand the extracts on this section of the report, the compulsion arises because of the operation of the 1967 legislation, essentially, and that appears to be what Judge Durie is observing at the bottom of page 403 in terms of a limited discretion is available to the Court at that time to protect the minority interests. Although they can do some protection, he has got to confirm the alienation, and once that step is reached, the consequences then flow in terms of their level of compulsion comes in for those opposed. Is that a fair thumbnail sketch of what – this issue of compulsion and where the force is coming from, or the compulsion is coming from?

BRUCE STIRLING:

Yes. Yes, I think that pretty much sums it up. Yes, as I said, the options weren't good. It was either refuse and face compulsion, or agree and go somewhere else and still have something –

JUDGE DOOGAN:

Yes.

BRUCE STIRLING:

– even if it wasn't what you wanted. But with – yes, with regard to Paea, just regarding that question, I mean, she did say, "If he gets the land our identity is lost – we have little to hold on to." So that sort of suggests she's thinking beyond herself, but at the same time, yes, I think earlier, she did mention wanting a house site on the land herself and not being able to get one, so yes, I think she's got current concerns and longer-term concerns.

HOUSEKEEPING – TIMING (14:23:54)

HEARING ADJOURNS: 2.25 PM

HEARING RESUMES: 2.29 PM

MS CLARK TO BRUCE STIRLING: (CONTINUES)

Q. I move now to a new topic, which is the District Māori Land Boards, and I want to probe a couple of matters with you on this topic, noting that in the statement of issues/statement of Crown response, where the District Māori Land Boards are concerned, that the Crown take the position that the District Māori Land Boards were independent of the Crown, and so I am going to probe that with you in my questions, and in fact I will go straight to that now.

It is correct, isn't it, that the Crown-appointed Boards were previously elected by Māori, before – this is before the, I believe it is the 1909 Act, where they were no longer elected but they were – became Crown-appointed; the members of that Board became Crown-appointed? That is correct, isn't it? There was a change from them being elected –

A. Yes. Yes.

Q. – and became appointed? Thank you.

A. Although that began before 1909, but – there were some members appointed, I think from 1903, so the elected Māori body didn't stand for very long, and then it's completely gone from 1909.

Q. And that shift away from election, would you agree that it corresponded with a policy shift that we could see more broadly to facilitate and ease the alienation of Māori land? The two were clearly connected. Would you agree?

A. Yes. Yes, I think the 1909 Act was definitely directed to streamline, really, the process of purchase, to sort of save people the bother of dealing with multiply owned land to reduce the effort required to complete a purchase, and that's quite clear in the structure of the Act and the Boards.

Q. Thank you. And we even have comments from people at that time, not – this is not only looking back at the policy and legislation, but we even have comments from people at that time who very much – and who served on these Boards – who very much saw that as the purpose of the Māori Land Boards, don't we?

A. Yes.

Q. I'm referring to Thomas Fisher.

A. Yes.

Q. So would you agree that, while the Boards may not be the – or maybe let me put it this way. The Crown has set up a statutory regime and then is able to put its preferred people into that regime to act as not quite the agents, but the people who are carrying out that regime. Would you agree that while those actors, being the Māori Land Board members, are not actually the Crown, they are effectively the Crown's chosen people and they are there to carry out a statutory scheme that is driven by the Crown and by its policy, so in effect, they are able to carry out – in effect, they are able to carry out the Crown's wishes in regard to Māori land through the framework they have set up?

JUDGE DOOGAN:

There is quite a bit in there.

MS CLARK:

Yes. Thank you, Sir. I might have overstepped the mark there.

JUDGE DOOGAN:

The last bit, I think the general point – so perhaps if we could just break the question into two bits. One is the structural aspect, which is the Boards are a statutory regime. The last part of the question, carrying out the Crown's wishes, is a quite separate question and goes to the extent to which Boards have operating discretion under the kind of framework they are set up in. The wider question, Ms Clark, about where bodies such as this fit in terms of Treaty responsibility, are of course matters for legal submission.

I just made those observations, Mr Stirling, so that you can respond to the extent you feel comfortable, but if you are going to respond, I just ask perhaps to distinguish them in the first instance with the statutory scheme and the structure of the Boards, and then if you are going to address the second part of the question, which was the extent to which the – I think what Ms Clark is getting at, acting under the direction or control of the Crown, which is a separate question, if you could separate that out.

MS CLARK:

Sir, I may have actually got what I need from Mr Stirling there.

JUDGE DOOGAN:

Or from me.

MS CLARK:

So, I may move on to my next point, unless –

JUDGE DOOGAN:

Well, in fairness, just because I have intervened here –

MS CLARK:

Sure.

JUDGE DOOGAN:

– I need to let Mr Stirling respond to anything I have said, if he feels he wishes to.

BRUCE STIRLING:

Yes, well, they're very much – yes, obviously appointed by the Crown. It sets the framework within which they operate. But they don't take direct orders, instructions from the Crown. Sometimes they might do things that maybe the Native Department did not even like, but that might be just them upholding their own laws. But yes, I don't see that as a lot different from one part of the government disagreeing with another part, and not – not pleasing the Minister, who might be in charge of both parts. It doesn't mean that they're less of – or as somebody called, they're basically a creature of the government, I think was the phrase he used at one point, and I think the government saw them very much as – as doing its work, particularly around Crown purchasing.

With private purchasing, it was not so much doing the Crown's work but fulfilling the Crown's policy of – goals of alienating land. So, I guess the only kind of disputes that might arise is when an action the Board took did not facilitate land

alienation when the Minister thought it should, but it's pretty rare that that happens.

So yes, I see them very much as being part of – of the government and the government itself seems – seemed to think that as well, certainly through until quite late in the day. I think in the 1920s they started transferring some authority from Land Boards to Land Courts, so that made the distinction a little bit clearer. The Boards were much reduced in scope, really to just managing money. But in the early years, they were very much operating effectively as a government agency, as far as I can see.

MS CLARK:

Thank you. I am glad that you were allowed to – encouraged to answer that question. Thank you.

MS CLARK TO BRUCE STIRLING: (CONTINUES)

Q. There were – at page 140, you list the various prerequisites for the Māori Land Board considering alienations of Māori land that come before it that it is required to confirm, and would you agree that of that list there at page 140, there seem to be two which are there to – to broadly protect Māori from landlessness, and those would be the second and the third points there, that there needs to be an examination of whether the alienation is contrary to equity or good faith or to the interests of the Maori alienating the land, and the third point, the second of the two points I am highlighting, that no owner would be rendered landless through the alienation.

So those were the two sort of protector provisions that the Board was required to consider. Would you agree?

A. Yes. Well, yes. The only issue is I never saw any evidence of them considering equity or good faith, although in another inquiry, just – I think there were two examples where that did come up, but it seems to me to be very rare, and even that was just the form of the alienation. The Board decided the land was already under lease so it shouldn't be purchased, because the lease was in the best interests of the native in the long term,

which meant he had a regular rental income and that was better for him than a big cash glut from a purchase, but that was basically a bit of a paternalistic measure to – to – but it had the unexpected benefit of, you know, keeping the land in Māori ownership, because it stayed under lease rather than being sold.

So yes, that's the only time I saw equity or good faith come up before the 1950s, when there was different legislation operating and the Māori Land Court raised it in relation to lessees buying out the interests of their landlords.

Q. And that was in another inquiry district?

A. As well, yes, it was, yes.

Q. Thank you.

A. So yes, I didn't see that – I haven't seen that here. I'd almost forgotten about that, actually, the equity and good faith provision, because it just never comes up.

Q. So, you saw very little example in this inquiry district of either of those two provisions that I have highlighted being considered?

A. Well – well, landlessness was always described in the paperwork, that the landholdings would have to be set out. That was a requirement. It was one of the forms that had to be filled in. But the extent to which those lands could be said to be adequate is pretty dubious in a lot of cases. That's why I've gone through a long list of transactions where it appeared that landlessness was the result, because the other landholdings were just completely inadequate for support or weren't properly described or were already under some other alienation that possibly the Board didn't bother looking into, or it may have been the Court, because the vendors' agent, usually a local lawyer, had to provide that schedule of other lands, and they just got it from the Court, so that's only as good as the Court's own records, particularly if it's land in another district that was listed as other landholdings.

Q. Thank you.

A. So yes, there's a big problem with – with landlessness, but it was always – that requirement had to be met. There did have to be a schedule of other lands. But I think, as discussed earlier, the requirement to have

sufficient other lands got softened over time, so it became a little bit irrelevant, because you could just point to some other means of support and say, “I don’t need the land”, or in one case, they said “Well, I already haven’t got enough land, so selling this won’t make any difference.” So yes, tick that one.

Q. Wow.

A. That’s the sort of absurd point you get to if you follow that line of thought.

Q. Yes. Thank you. And you have actually – might have partly answered my question there in something that you said. It is correct, isn’t it, that it was generally the purchaser that provided information in response to those conditions, but you have said that actually the vendor’s agent was supposed to at least provide a schedule of other lands, but apart from that, is it correct that the purchaser provided this information that the Māori Land Board’s relying on?

A. Well, the purchaser or their agent.

Q. Same thing –

A. – and they would tend to go to the Court to find that information, but then if it looked bad, if the other landholdings didn’t look very adequate, they would add their own comments about some owner might be – either lives – has regular work on a farm, or wife has good rental incomes from her lands, or you know, little comments like that to sort of support the alienation despite the fact that it was clearly breaching the landlessness provision. So that would not come from the Court, that would be the vendor or the vendor’s agent using their local knowledge, and there’s usually a small pool of fairly wily, you know, provincial conveyancers involved in these things.

Q. Yes. And if they’re acting for the purchaser, they are clearly motivated –

A. Yes.

Q. – to do him a good service, or her. Probably him. And of course, there was an aspect that the Board staff were at least supposed to check these items to provide that counterbalance, however, that clearly did not happen effectively, and I think – is it correct that the reason that did not happen effectively is because the Māori Land Boards were grossly

under-resourced and understaffed, so those checks simply could not occur?

A. I don't think I've indicated any evidence of their being understaffed or under-resourced, from memory, unless you can correct me, but I think it's more they're relying on information from the Court, who was basically them with another hat on; the same person, really; the same team of people. So yes, they're relying on that information being accurate and sufficient, and occasionally, one would get sent back saying "Not enough information", or "Where is the schedule of other lands?", or "There should be more, that doesn't seem to be enough", so yes, it was queried very rarely. I'm struggling to think of an example here. I have seen it elsewhere, in other – other inquiries.

Yes. So, it wasn't – it was basically a rubber stamp, but it wasn't – they didn't rubber-stamp it without reading it first. Yes.

Q. You have said, at page 141, "The minimally-staffed Board had a heavy workload, with a huge number of applications for alienation to process", that they were "rarely assessed in any detail", and that this "is reflected in the brevity of the Board's minutes of its business", so you – you –

A. Thank you for that, yes.

Q. – you would accept that these were – the Crown under-resourced these boards with staffing?

A. To some extent, but I think – I think the 1909 Act ended up being more successful than they envisaged, and then so they were swamped. I don't think it was quite what was intended, but it actually opened up a massive era of rapid land purchasing, so I think it took them a bit by surprise, but…

Q. Thank you.

A. So that would have overworked the Board, because they – obviously, they weren't expecting it and they didn't have time to ramp up, scale up their operations. But that really was a reasonably limited period, you know, perhaps ten, ten to twelve years, and you've got a war intervening, and then a bit of a slump in the 1920s, and then a Great Depression, so that put a bit of a crimp in things.

Q. Thank you. And my final question on this topic is with regards to a memorial of dissent, which was if the owners had not attended the

owners' meeting to discuss or to agree to the alienation, which you have already said in earlier evidence could be – had a quorum of only five –

A. Yes.

Q. – and provided that of those owners presented, provided more agreed to the sale than didn't, it would go through, and the only remaining option that was open to owners who disagreed was to file a memorial of dissent, and two things with regards to this.

Firstly, if they did not act quickly enough, it would be too late. The – the Court was, or the Board was – I believe you sort of suggest they're almost one and the same – the Board, or the Court, I think they're acting in the capacity of confirming the sale, was very quick to step in behind the actions of the Board and confirm the sale, to effectively allow – not allowing any owners who wish to raise a dissent to have time to file any form of memorial of dissent. Would you agree with that?

A. Yes, although I just think I need to correct you. I think it's the Board itself that confirmed the purchase. Yes, the Court didn't have any involvement.

Q. Thank you.

A. Yes, but it was quite limited time, and that goes back to the whole meetings-of-owners process, I think, and well, yes, which I think some of the Māori members of Parliament a few years later looked back on and – and referred to as pretty much another form of confiscation and a breach of the Treaty, which I haven't got in my report.

This is something I looked into in response to the questions in writing from Dr Phillipson in the Porirua ki Manawatū Inquiry, so that was given in written answers, looking through Parliamentary debates. We had a bit of a discussion about whether – whether the Boards were operating in a protective or paternalistic fashion. I called it "paternalistic". Crown counsel – different Crown counsel – in that inquiry didn't like that, so I was asked to go off and find some more information, so some of what I found is the Māori MPs condemning this system of meetings of owners as amounting to confiscation and a breach of the Treaty, so if somebody wants to get that filed on this inquiry, or I don't know what the process is, but that could be done.

Q. Thank you.

A. It's in writing already, Dr Phillipson could ask me the same question again, I'll give him the same answer. I don't know how these things work.

Q. Thank you. I will –

A. But it's there, just advising you. Sort of stepping out of bounds here.

DR GRANT PHILLIPSON:

While we are there, can I clarify something. So, my understanding is that you could only sign – you could only put in a memorial of dissent if you were an owner that was at the meeting and voted against it, and so all the other owners outside of that who hadn't been to that meeting couldn't do it. That was my understanding, but I think you might have said something different in your report, so I just wanted to clarify that while we are there on that –

BRUCE STIRLING:

Well, that was – yes, that was my understanding, too, until I saw this, so I think the 40 owners who signed a memorial of dissent, at least some of them must have been at the meeting, otherwise I don't think they could have filed it, because there were five of the 13 at the meeting who opposed the transaction being confirmed, so I assumed they led the memorial of dissent. Yes, I don't – as you say, if you weren't there, you didn't get a say. It was only for the attendees to file a memorial of dissent, so you only had one shot, to be at the meeting.

DR GRANT PHILLIPSON:

Thank you. I just wanted to check that while we were there. Thank you.

JUDGE DOOGAN:

And Dr Phillipson, I presume you are happy to receive Mr Stirling's answers again?

DR GRANT PHILLIPSON:

I won't bother putting the question to him again. I am happy to just have that transferred over.

JUDGE DOOGAN:

All right. So, Ms Clark, we will – it is a bit unorthodox, but it will just shorten the process. We might just direct that – well, I will direct we just place those answers on our record, unless there is any objection from anybody? Crown counsel? All right.

MS CLARK:

Thank you, Sir.

HOUSEKEEPING – TIMING (14:50:57)

(14:51) MS TOLEAFOA TO BRUCE STIRLING:

Q. Tēnā koe, Mr Stirling. My name is Ms Toleafoa, and I am here with my colleagues representing Wai 339 and Wai 1865, which are claims about the Hiwarau C block.

Firstly, thank you very much for your evidence. I only have a few questions to ask you today, so it shouldn't take longer than ten minutes. My questions will focus on – my questions will be focused on your main report and your responses to our questions of clarification, so that will be document number #A032(i).

A. Yes. Kia ora.

Q. I just want to thank you for your answers to our questions of clarification. That was very helpful.

Just on that, at paragraph 1(a), you state that Hiwarau shares were compulsorily acquired by the Māori trustee under section 137 of the Māori Affairs Act 1953. Now, I know you have already touched on the topic of conversion with my learned friends, but I just wanted to explore this a bit further within the context of Hiwarau C.

Forgive me if my questions sound a bit ignorant, but how did the Māori Trustee find out about the deaths of owners? Was it compulsory that they be informed of the passing of people who had interests?

A. Well, no, successions would be advertised by the Māori Land Court; the hearing, so other people, not just the applicant for succession, other – other people could show up and say, "Well, I'm a successor, too", so that

– that was an opportunity for the succession to be aired and heard and decided upon, and so the Māori Trustee would be aware of these hearings.

Q. Okay. Thank you. And just on that topic, you talked about successors being the one to prosecute the succession of compulsory converted shares, so does that mean that the Māori Trustee does not inform next of kin when their loved one's shares have been compulsorily converted?

A. No, I don't think they would. No, if they weren't present in court, they wouldn't know. If they were present, they would find out when the court ordered the shares to be purchased by the Māori Trustee, yes. So, it's a, yes, fairly blunt process.

Q. Thank you. And sorry, Mr Stirling, just on that, so they would not know unless they were in court?

A. No, I don't – yes, I don't see how they could know. And possibly, you know, well, anyone could apply for succession. Normally, you'd expect it would be someone who qualified as successor, but sometimes someone else might apply and then name the person who should be successor. They were sort of acting as an agent for them. So, it's not necessarily the successor who presents the application, but that would be the general rule.

Q. Thank you. And then just going down to paragraph 1(b), you believe those shares were being returned in 1997 to those who may have otherwise succeeded to those shares before 1969. You will be aware that in 1992, the Māori Trustee retired as the responsible trustee for Hiwarau C. Have you come across anything during your research to show why there was a five-year delay between the Māori Trustee retiring from Hiwarau C and those compulsorily acquired shares being returned in 1997?

A. No. No, I haven't got a clue, sorry.

Q. Would you say that that means that the onus would then fall on the new trustees to find the uri of those owners?

A. Yes, quite possibly it would be on them, or the people who were eventually appointed as successors. They may have found out about it and actively approached the Court or the trustees. But I've said these

might be the people who would have succeeded, because I can't be sure. I don't know the whakapapa, and I – I just saw the names were similar and I assumed there was a connection, so that's heavily qualified, what I have said there, so I'll leave it to your owners, your clients, who would know a bit more.

Q. Thank you, Mr Stirling. And in your professional opinion, would you say that it was not in the best interests of the owners to delay the return?

A. No. Well, no, it wouldn't have been in their interests to be kept out of the title for five years longer than – than needed.

Q. No. Thank you very much. I just want to turn back to your main report now, so just at the bottom of page 387, you state that the shares were "transferred to other owners to no apparent end. In many cases, nothing happened other than fractional interests being shuffled about between owners like so many cards in a stacked deck."

Could you please expand more on this point? Is this in reference to those compulsory shares being returned 28 years later in 1997?

A. Yes, it is. Yes. It sort of goes to the sort of pointlessness of the process, in many respects. It didn't actually achieve anything. And I think, as outlined in previous questions, where it did achieve something, it's just the alienation of land, so it's a kind of lose-lose situation.

Q. Thank you. And in your expert opinion, what effect do you think this had on those who should have succeeded to those shares in 1969 but did not?

A. Well, I think – I think they would have to speak to that. I should imagine being closed out of the title to which they should have succeeded, the interests to which they should have succeeded, would be hurtful, but you know, I can't really speak for them.

Q. No. Thank you, Mr Stirling. And I just want to move onto my last couple of questions. I don't intend to take you to the evidence, but in Ms Miranda Horan's evidence, which has the appellation #E035, at paragraph 22, she states that the reason Hiwarau C was amalgamated was for economic purposes. Now, in the Registrar's application for the amalgamation, the grounds for the application was for the effective and profitable use and efficient administration of the Hiwarau lands. Have

you, during your time as a researcher, seen many other instances where 20 individual Māori freehold titles were rescinded and then amalgamated into one block, such as Hiwarau C, and then not put into some form of a land development scheme?

A. Yes, I would have thought it was quite common through the 1960s, because land development was pretty much over by then, but amalgamations were still happening, with a view to, you know, more effective utilisation, which was the goal of the 1953 Act, so yes, I think that – I think that kept happening in a lot of places, with a lot of titles amalgamated in that fashion.

Q. Thank you. And just my last pātai here, Mr Stirling. What other reason is there, aside from the will of the owners, which has not happened in this case, to amalgamate a land block?

A. I think, as I've just mentioned, it's intended to facilitate better economic use of the land by combining the titles into something – into the single manageable unit, after they've been divided up by, you know, partitioning over maybe a century or so and becoming a bit of a hodge podge and a mess, titles that are land-locked and without access, so by amalgamating, you sort of step over all those problems, but it also severs people from particular parts of the land. They – unless they find a way to – to maintain some interest in that through occupation licences or those sorts of provisions, it's a little destructive of that tenure in some respects, but then the whole process of partitioning and succession and the land court title process was pretty destructive anyway, so it's sort of an attempt to fix a broken mess, but it's kind of like sweeping the mess under the rug and putting a nice new rug over the top and saying, "Here's your amalgamated title; now, go and do something with it."

So yes, it's – it's a product of, you know, a century of the Land Court, an attempt to remedy it, but you know, sometimes the cure's worse than the disease.

Q. Ngā mihi nui ki a koe, Mr Stirling. Those are my pātai. Thank you very much. Thank you, Sir.

HEARING ADJOURNS: 3.01 PM

HEARING RESUMES: 3.21 PM

HOUSEKEEPING – TIMING (15:22:24)

(15:22) MR SINCLAIR TO BRUCE STIRLING:

Q. My cross-examination is going to briefly refer to your summary, Mr Stirling, and then I will move to the substantive report and make a few references there. The cross-examination is given on behalf of Wai 87 claim, Whakatōhea Raupatu Claim, as well as Wai 1794, Tūrangapikitoi Hapū Claim.

If I can briefly refer to #A032(f); that's your summary report, and at paragraph 2 of the report, you make the statement there that the Stout-Ngata Commission in 1908 found Whakatōhea hapū and iwi were already – inverted commas – "effectively landless". That would be correct, wouldn't it?

A. Yes.

Q. Yes. And you go on to say in your report there the Stout-Ngata Commission stated Whakatōhea had no surplus land for sale. That would be correct, wouldn't it?

A. Yes.

Q. Yes. So, following on from that, despite the finding of the Commission in 1908, the Crown policy of Māori land purchasing and alienation continued unabated. Would that be correct?

A. Yes. Yes, after 1908, certainly.

Q. Yes. Could you briefly elaborate on some of the ways that the Crown continued that policy of land alienation?

A. Well, through direct purchase, which I've sort of gone through in –

Q. Yes.

A. – chapter 3 in a lot of detail.

JUDGE DOOGAN:

Mr Sinclair, that is pretty much a question that is speaking to the whole report.

MR SINCLAIR:

Yes, correct.

JUDGE DOOGAN:

So, can we be a bit more specific?

MR SINCLAIR:

Yes.

MR SINCLAIR TO BRUCE STIRLING: (CONTINUES)

Q. My next question after that – I just wanted you to say that that was essentially your whole report – my next question is, why would the Crown then ignore the advice of its own commission in terms of –

A. Well, you could ask this commission.

Q. Can I have your opinion?

A. Not pre-empting anything. Well, yes, the Crown's not bound to heed what some commission of inquiry finds, as a rule.

Q. Yes, thank you. Thank you for that answer. I want to move to your – I will stay on your summary, and I am moving to the theme of incorporations, consolidation and land development, which then moves on some time later into title improvement and title conversions. At paragraph 25 of your summary, you make the statement that incorporation, consolidation, and land development fizzled out in the 1950s, and then what has followed is title improvement and title conversions. Have you got a comment to – to explain the changes in the government policy to move to title improvement and title conversions, and what is the distinguishing difference there?

A. Well, it's not entirely unrelated to earlier moves of incorporation and consolidation, it was just a new approach to trying to simplify Māori land titles, which – "simplify" means reducing their ownership, because there were too many owners, too many fractured titles and small partitions, so it was really a matter of trying to remedy that situation to make the land more – ultimately with the goal to make the land more productive, economically.

Q. And would that policy have had a benefit for the Māori owners, or would it have been more beneficial for the Crown management of those land blocks?

A. Well, the Crown benefit's a bit more nebulous in that their goal is to increase national economic output, so that meets their goal if they can achieve it through Māori land title improvement and making the land more productive. It's not a direct benefit, particularly, to the Crown; it's just meeting their policy goal of getting more land into production.

It – I mean, if that succeeded, it worked for the remaining Māori owners, where their title had been simplified and improved, as it were. Those who remained, I guess, derived, or potentially derived some benefit from that, but it's pretty hard to quantify, because the underlying problem was never really fixed, which I think was the point that was made about consolidation. You can consolidate titles, but then succession kicks in again and fragmentation kicks in again and you have to go back to the same problem, so you haven't fixed the underlying issue of the Māori land Acts and the tenure they created.

Q. And moving on to the conversion of those remaining – or those shares that were held by Māori, what was the detrimental effect of that that Māori opposed? And you have – I will take you to it later – you have mentioned Whakatōhea opposing a conversion policy.

A. Well, it – yes, it effectively took away the interests of those who would otherwise have succeeded to interests that are then converted, so they lost – they lost their entitlements, their land interests.

Q. Yes. Thank you. I'm going to take you to your – your main report now, and I want to take you to page 371 and paragraph 3. You just make a comment there that there were – "No positive impact from the sort of Māori Trustee/Māori Land Court transfers set out above – a mix of compulsory takings by conversions and facilitated purchases – can be discerned." Would you like to make a comment on that, please?

A. Well, I don't know what I can add to that, pretty much.

Q. Yes.

A. It's – it's what I said, you know, based on the evidence set out in that chapter.

Q. There were no positive impacts for Māori.

A. Well, other than the potential ones I indicated in my previous answer, that there was a possibility of something positive for remaining owners. There was obviously nothing positive at all for the ones who had been dispossessed.

Q. Can I take you down to page 362 of your report? And you will see a comment there from – commentary there from members of Whakatōhea. Let me just pull this up, sorry. Page 363, paragraph 1. "After conversion emerged in force here in about 1959, it did not take local Māori long to recognise the harm it might cause." Whakatōhea Tribal Executive Committee secretary Tua Hudson wrote to the Minister of Māori Affairs. Have you got that piece there in front of you?

A. I think –

JUDGE DOOGAN:

Page, again?

MR SINCLAIR TO BRUCE STIRLING: (CONTINUES)

A. There was a mess with the pagination of the version originally filed of this report without maps, and when I – the version with maps was filed, it wasn't registered on the record, so I think you might be working from the – the earlier version, without maps, and the pagination is a little different, so I can't find that on page 363 of the final version that is now on the record.

Q. Okay.

A. I'm sorry about that. That was a bit of a filing error. I don't know who; CFRT and the Tribunal, between them.

Q. Okay.

A. Wires crossed.

Q. Yes.

A. If you can maybe give me a footnote number, it would be an easier way to find it, I think.

Q. Okay, that might be – that might be better. Footnote 192.

JUDGE DOOGAN:

1192?

MR SINCLAIR:

Sorry.

MS COLE:

Page 380 of the current report.

BRUCE STIRLING:

Thank you.

MR SINCLAIR:

Thank you.

JUDGE DOOGAN:

Which paragraph, Mr Sinclair?

MR SINCLAIR:

It's the paragraph which mentions the Whakatōhea Māori Committee.

MS COLE:

"After conversion emerged in…"

JUDGE DOOGAN:

Thank you.

MR SINCLAIR:

What paragraph is that?

MS COLE:

(inaudible 15:33:02)

MR SINCLAIR:

Okay.

MR SINCLAIR TO BRUCE STIRLING: (CONTINUES)

Q. Have you got that there, Mr Stirling?

A. Yes, I have, yes. Thank you. **(inaudible 15:33:18)** give me the question again, sorry.

Q. The question is that Whakatōhea had identified clearly in the statements there from leaders concluding Mr Claude Edwards that the detrimental effect on the conversions to the landowners' shareholding was very harmful. Did you see that?

JUDGE DOOGAN:

That is not a question, Mr Sinclair.

MR SINCLAIR:

That's right.

MR SINCLAIR TO BRUCE STIRLING: (CONTINUES)

Q. Would you agree with that, Mr Stirling?

A. Well, I can't disagree with what he said, because he's the person closest to what's occurring to landowners, and it does sort of confirm the evidence I've given about the effects of conversion, so I can – yes, I can agree with it. I can't add much to it.

JUDGE DOOGAN:

And just to be clear, it's Tua Hudson we're referring to, not Claude Edwards.

MR SINCLAIR:

Down further – sorry, Sir, I've got the wrong page number here, but down further, there's two other rangatira as well, Sir. I seem to have the wrong page number.

JUDGE DOOGAN:

So, you are asking about that paragraph on 380 about –

BRUCE STIRLING:

380 going over to 381, that's when Claude and other iwi representatives are giving evidence to the 1980 Māori Land Court inquiry, the Royal Commission on the Māori Courts, sorry, in 1979.

JUDGE DOOGAN:

Yes, all right. Thank you. So, Mr Sinclair –

MR SINCLAIR:

I seem to have a problem with page numbers, Sir.

JUDGE DOOGAN:

That's fine, but I just invite you – it is not necessary to take Mr Stirling to parts and just ask him to confirm what is there. If you have a question, target the actual issue you want clarified or checked, please.

MR SINCLAIR:

Okay. Thank you, Sir.

MR SINCLAIR TO BRUCE STIRLING: (CONTINUES)

Q. I'd like to take you, Mr Stirling, to the matter of land blocks in Whakapaupakihi, and it's staying on the same theme, which is conversion of land blocks and shares. Now, I'm looking at page 362 in the 032 report.

MS COLE:

Which I think is page 379 **(inaudible 15:36:12)**.

MR SINCLAIR:

No, hang on.

MR SINCLAIR TO BRUCE STIRLING: (CONTINUES)

Q. Let's just go straight to the titles affected by conversion, 1960 to 1975. Can we just go straight to the graph, and I'll ask my questions from there? Āe? Yes. Now, the page number I've got there is 366.

MS COLE:

Which I think is 381.

BRUCE STIRLING:

Yes, the maps on page 382, which of course you won't have, but the table is on page 383 of this version.

MS COLE:

383, yes.

MR SINCLAIR TO BRUCE STIRLING: (CONTINUES)

Q. My questions relate to titles affected by conversion, 1930 to 1975.

A. Āe.

Q. So, in that vein, I want to take you to the issues regarding Whakapaupakihi and the Mangatu Incorporation. Now, at the page I've got here, 362, paragraph 3, now this was part of the ongoing transfer of interests of Whakapaupakihi blocks to the Mangatu Incorporation, and I want to know if, in your research, you had found that Whakapaupakihi titles were taken and sold to the Mangatu Incorporation by the Māori Trustee, and I want to know the extent of those shareholdings and transfers.

A. Yes, well, that's listed in the table. It's relatively small shareholdings, sort of affecting eight owners in Whakapaupakihi 1, 30 owners in block 2 and eight in block 3. I think the bigger effect was on the lease being taken up by Mangatu, rather than the small number of shares that were transferred, although obviously that affected the owners whose shares were lost, but I think the bigger impact on the other owners was the land being leased to Mangatu when they had their own ideas about – well, Whakatōhea had their own ideas about leasing it.

Q. That was going to be my next question. In terms of the lease of large areas of Whakapaupakihi to Mangatu, could you elaborate a little bit more on that, please? The size of those leases and whether in fact there was a return of those leased lands back to Whakatōhea or a transfer from Whakatōhea to Mangatu of particular land blocks – are you able to enlighten us on that?

A. I think I only got as far as looking –

JUDGE DOOGAN:

Mr Sinclair, what was the pātai? Transfer – are you saying following the end of the lease, was there a transfer of lands from Whakatōhea to Mangatu?

MR SINCLAIR:

Yes, Sir, that's exactly what I'm asking.

BRUCE STIRLING:

Yes, well, I'm sorry, I can't help you.

MR SINCLAIR:

You can't help –

BRUCE STIRLING:

I'm only focused on the lease and the Trust Board's failed attempts to secure the lease and Mangatu's successful attempts in the 1970s, so I don't know what happened to the lease at the end of it. I presume that will be covered in the block research narratives that Waitangi Tribunal researchers have put on record. I think that will bring the title up to date.

MR SINCLAIR TO BRUCE STIRLING: (CONTINUES)

Q. Were you able to research why Whakatōhea failed in its exercise to secure a lease over the Whakapaupakihi blocks?

JUDGE DOOGAN:

When? What period of time are we talking –

MR SINCLAIR:

1962, the problems started.

JUDGE DOOGAN:

That is the period you are referring to, Mr Sinclair?

MR SINCLAIR:

I am referring to the report in here, Sir, that "the Māori Trustee had leased large areas of Whakapaupakihi to Mangatu", and my question is, those particular leases from Whakapaupakihi, why were Whakatōhea not successful in securing those leases – those particular leases?

MRSINCLAIR TO BRUCE STIRLING: (CONTINUES)

Q. Have you got any information to enlighten us, Mr Stirling?

A. Yes, well, there's some discussion of how that result came about at – well, page 394 of this version of the report, which won't be the same pagination you've got, but yes, there were various parties competing to lease Whakapaupakihi 1 and 3 – sorry, and 2, when the leases were coming up to expiry, including the Trust Board and Mangatu.

There was a meeting of owners in Gisborne in 1962. That resulted in a deadlock. There were, yes, two other Pākehā tenders as well as the Trust Board and the Mangatu Incorporation. They had various meetings of owners – I think four, five? – in one year, and some of the owners wanted the meetings called at Ōpōtiki, not in Gisborne, which presumably disadvantaged Whakatōhea attending, and they got tired of attending all these meetings, with the expenses associated, and complained that, you know, they'd ended up – there was a risk that these meetings would be dominated by the few people who could afford to go and had the resources to support themselves.

So finally, at the end of 1962, I think the – the Court vested the land in the Māori Trustee to decide on the lease, so then there's another round of meetings of owners in 1963, and the Māori Trustee ends up making the decision, but it's pretty opaque, because Māori Trustee files are confidential, so I don't know why it decided that.

Q. Right, thank you for that, Mr Stirling.

(15:43) MS TE WHENUA TO BRUCE STIRLING:

Q. Tēnā koe, Mr Stirling. Are you able to see and hear me clearly?

A. Yes, I can, thank you.

Q. Ka pai. My name is Ms Te Whenua, and I act on behalf of Wai 1511, who are Ngāi Tamatea hapū, a Waiotahe-based hapū of Te Waru Tamatea and his people, who are discussed at chapter 7 of #A012, Ms Jane Luiten's land alienation report, which in our memorandum filing the cross-examination bundle for yourself, we asked you to appraise yourself of for context as regarding our client. Are you comfortable with that? You managed to –

A. Yes.

JUDGE DOOGAN:

Sorry, Ms Te Whenua. Are we talking about Mary Gillingham's draft chapter or Jane Luiten's, or both?

MS TE WHENUA:

Just then, I referred to #A012, Jane Luiten's chapter 7, just for context as to who our clients are. We have also provided in the bundle a draft chapter on behalf of –

JUDGE DOOGAN:

Sorry, Mr Stirling. I just need to briefly address the Gillingham draft chapter, and normally, we wouldn't put in a draft chapter on the record, but for cross-examination purposes, that is fine, you can use it, but just with the caveat, of course, that if there is any material change to the passages that you are relying upon for the questions to Mr Stirling, we might need to give Mr Stirling a chance in the future to respond in writing, if there is a material change. Otherwise, just to avoid confusion on the record, we probably will not put that draft chapter on the record as part of these papers, just so that the final Gillingham report, when it is on our record, stands as it should as a final report. But for today's purposes, you are free to use it as you wish for the purposes of your pātai.

Sorry to interrupt. I had forgotten to address that earlier, but haere tonu, thank you.

MS TE WHENUA:

Thank you, Sir, and for completeness, and for the record, the index and cross-examination bundle have the appellation #A032(j).

MS TE WHENUA TO BRUCE STIRLING: (CONTINUES)

Q. Do you have a copy of those, Mr Stirling?

A. Yes, I do.

Q. Great. So, you will be aware, from your perusal of Ms Luiten's chapter 7, at page 237, she sets out Te Waru Tamatea's customary interests as the upper Wairoa lands, referred to as "Ruakituri, Taramarama, Tukurangi and Waiau blocks – an area of 172,500 acres on the southern shores of Waikaremoana", and that is just to complete the context of their customary interests. You will be aware of that.

A. Yes, I worked on the Urewera inquiry and on Ngāti Ruapani's treaty settlement negotiations, so I'm familiar with those blocks and the interests in them.

Q. That's great. So you first introduced Ngāi Tamatea's landholdings in the North Eastern Bay of Plenty Inquiry district at page 13 of your report, where you will recall that you refer to the Ngāi Tamatea land grants and describe them as some of the most notable larger titles that were awarded to a large number of owners, specifically citing Waiotahe Lot 19, 157 acres, and Waiotahe 388, 165 acres. You will recall that?

A. Yes.

Q. And for completeness, Ms Luiten, at page 235, also cites a third parcel of 12 acres that was granted to Ngāi Tamatea, Lot 386, and you will be aware of that parcel as well?

A. Yes, well, I worked on Ngāti Ira Takutai Moana application, which touched on those lands as well, so yes, I'm familiar with it.

Q. Ka pai. In all, at page 31 of our cross-examination bundle, the Ngāi Tamatea report writer Ms Mary Gillingham quantifies the total land granted to Ngāi Tamatea as around 301 acres. I don't think that figure will change in the final report. You will be aware of that figure, Mr Stirling?

A. Yes, yes. I think the figures in my report are probably earlier and less accurate, perhaps, than her final ones, as a result of more accurate surveying, I suspect.

Q. Yes, that's right. I did pick up there was a slight difference of about 33 acres, which I also suspected came about under the surveying and final grants. You go on to discuss private purchases by lessees in your report, where you refer to one of the parcels, a partitioned bundle of our clients' land, lot 19E, which was sold completely to the lessee, James Dunlop, 22 acres for £1,089. Do you recall that?

A. Yes. Yes.

Q. You note there that – make the note that there was a purchase by lessee, an absentee owner who used the proceeds to clear a Rehab loan. Just for the benefit of our clients and to be sure that we all understand, can you explain what is meant by a Rehab loan?

A. That was a loan granted to returned veterans from World War II. I think in that case it was a housing loan, but some of them were for farming land as well.

Q. Great. Thank you. Kia ora. And at page 202, you go on – you are critical of Crown – sorry, you are critical of Crown land legislation that enables lessees to purchase Māori land, citing a 1965 Māori Appellate Court judgment describing purchasing under such conditions as "undesirable as it enables the purchaser to gain a footing on the land from which he can negotiate from a position of strength", the Court concluding in short that "it is unfair", and in that judgment in 1965, such a transaction was caught by the 1953 Māori Affairs Act, section 227(1)(b) requiring that the alienations of Māori land be not contrary to equity or good faith, and then you make the point that "This finding came rather too late for" our clients' tipuna "Tahere Tuhi in the loss of his Waiotahe 19E land". You will recall that?

A. Yes, yes, I do.

Q. My question is whether it was really too late for the Court to intervene, given that the alienation occurred in 1956, and the reliance is upon the 1953 Act.

A. Yes, well, I think it had already been long since confirmed as an alienation, so I doubt the Court could reverse that, based on the Appellate Court deciding that those sort of transactions are improper and contrary to equity and good faith. I think if somebody had perhaps mounted a legal action to challenge the earlier transaction, than well, they may have succeeded, but I don't know that anybody did. But that's really a legal question about whether it was even possible. I mean, the land could have been on-sold since then, which comes to indefeasibility of title, so yes, I think it's more of a legal issue.

Q. Yes. Maybe if I put it another way. Given that section 227(1)(b) was operative at the time of the 19E transaction in 1956, is it possible that the Court could have looked at that provision but potentially ignored it and allowed the transaction anyway?

A. Seems more likely it wouldn't have even considered it, because I think it's a relatively new interpretation of the situation by the Appellate Court in 1965, so I don't think – in terms of legal precedent, there wasn't one there for the Court to turn that transaction down, because it met all the criteria for – for confirmation as the Court, I presume, understood them then, without factoring in equity and good faith.

I guess, you know, it probably points to the fact that that wasn't something that had been at the forefront of the minds of those confirming these sort of transactions for a long time. I think earlier questions revealed that, you know, there was a provision relating to equity and good faith way back in the 1909 Land Act, which, you know, was fairly marginally operative as well, so yes, I think it would have been – obviously it was possible in nineteen fifty- – earlier, with 19E, for the Court to have said no, based on that, but I think that's an argument someone probably would have had to put to it, and I doubt the owners were represented in court to make that sort of argument. I can't see the courts coming up with that on its own.

Q. No, and this is despite that at page 202 you do note that long before the 1953 Act introduced the concepts of equity and good faith to Māori land transactions, some Crown officials had even criticised the purchasing of land while it was under lease, so against that backdrop, do you agree that the alienation of 19E was nonetheless inequitable and lacked good faith?

A. I think that argument's there to be made. I don't know if it's my place to make it. But the evidence is certainly there on page 201 of the circumstances, and you've already discussed the precedent and the state of the law, so it's entirely possible to make that case.

Q. Thank you. If we turn to other avenues of alienation, at page 200 and 201 of your report, you say that Waiotahe E – you correctly note that Waiotahe E is the only part of – sorry, you correctly note that Waiotahe 19E is the only part of Waiotahe 19, which was 157 acres in total, that was purchased, but at page 203, you also acknowledge that the full extent of leasing is difficult to quantify because it was so prevalent, and what I would now like to explore with you is the extent, the fuller extent, of the unfair and inequitable impacts, arguably, of leasing on my clients' landholdings in the inquiry district, the details of which, on the face of it, are a little less conspicuous from the records and a little more surreptitious, and one of those instances is the sale of Māori land shares to non-Māori lessees.

Our client will give evidence that in 1972, 25% of the shares in 19F1, equating to around 22 acres, were transferred to the non-Māori lessee at the time, Mr Porter Stewart, who had been farming the land for decades for $1,725 whilst the lands were under the administration of the Māori Trustee, and our clients will further give evidence that this transfer makes the lessee the single biggest owner of shares in the block still, even today.

Do you have any comment on the sale of shares to non-Māori lessees?

A. Well, I think it's subject to the same criticism, or perhaps in more – stronger terms as the whole conversion process of taking shares from one owner and transferring them to another or selling them to another. I think the point was made in relation to opposition – the opposition of Whakatōhea to conversion – that in fact the Māori Trustee could sell shares to not just other owners but any Māori, also a lessee, and also the Crown, so I think what you have pointed out is an example of those shares being transferred to a Pākehā tenant on the land, and that's with a view to assisting them to ultimately obtain the freehold. That's usually how it worked. So as a rule, Māori – a single Māori tended to benefit from that

approach, but in this case, because the lessee was a Pākehā, they ended up being the beneficiary of it, although as you say, they haven't got all the shares yet, and it's still Māori land.

Q. Yes, and the fact that the purchaser was a lessee, do you think this compounds matters, if we reflect back to our 19E example, could this be seen as another type of transaction, which, occurring in 1972, could equally be considered inequitable and unfair under section 227(1)(b) of the 1953 Act?

A. Yes, I think that's a good point, a valid point to make, and thank you.

Q. And indeed, potentially more egregious, would you agree, but given that the transfer occurred seven years after the 1965 Appellate Court judgment condemning such purchases of Māori land interests by lessees and almost 20 years after the enactment of section 227(1)(b)?

A. Yes, well, I think that the 1965 decision seemed to relate more to a lessee buying the title outright while it was under lease, whereas I think what you've got here is, yes, as you described it, more surreptitious, acquiring these individual shares from the Māori Trustee, so in some ways, that's worse, because it's – it's not as public. It's conducted by the Trustee without any open court investigation, so possibly that's more inequitable and more in bad faith than the transaction referred to by the Appellate Court in its 1965 judgment. Yes.

Q. Thank you. Another example that our clients will give evidence of is the leasing of block – or Lot Waiotahe 386, which is the Ahiaua block near the pipi bed, and in our cross-examination bundle at page 18, Ms Gillingham notes that the lease of that block occurred, or the lease is dated in 1980 and was a lease between three of the owners, Māori landowners, to Pākehā farmers, and that the lease was for the period October – 1st of October 1980 to the 31st of May 1985, the annual rent being agreed at $600. Ms Gillingham goes on to note at page 19 that there are 13 registered owners today.

Our clients will provide evidence that – and I think, sorry, the Tribunal also – Mr Stirling, we had a site visit, and the Tribunal might recall that it was difficult for our clients to point out to them where this block sat on the

landscape, so sort of divorced, if I can use that time, it would appear the owners are from this block.

They will provide evidence that the land does not appear to be actively administered by the Māori landowners, at least today, to the extent that it is not known if the owners are aware that the lease has expired. It is not known if the lessor is the person who remains in – the original lessor, sorry, lessee, is the person who remains in occupation of the land. It is not known if the lessee continues to pay the annual rent, and if the rent is paid, it is not known if the owners – which of the owners receive the rent. I wondered if you had any comment on this type of situation with respect to 20th Century land legislation and its impacts.

A. Well, yes, it's a little difficult to entirely blame the Māori Trustee or the Māori Land Court or the state of the law for that situation without knowing more details about, you know, how the Trustee has been managing the land or if indeed the Trustee still manages it, because that – yes, that information sounds a little vague for me to comment on, but I think that's – it's not unknown for that level of alienation in terms of people being alienated from – from their land over time, because it is leased out perpetually – well, not perpetually, but leased out on terms that keep getting rolled over with very little input from owners through the Māori Trustee and the Court simply processing the land and making what they consider to be the best use of it for the owners, you know, to ensure that the rates are paid or that the land is producing something.

So that's their focus, even though, you know, as you explained, this reserve was set aside for kaimoana-gathering purposes. It's not actually land that was set aside to be farmed as an economic unit. It's got cultural purposes, although they may have perhaps been undermined by the loss of kaimoana over the century, but that was its original purpose, and it was sought specifically for that, which I recall from working on the Takutai Moana claim, so yes, I take your point, it is not unknown for people to lose touch with their land in that way. To whom you sheet home responsibility is a much bigger question I don't think I should answer.

Q. No, fair enough. Would you accept that the Crown's legislative scheme, then, potentially could do more to actively protect Māori owners from the

occurrence of such a situation, given that the characteristics of multiply owned land, unknown owners, you know, failure to succeed, absentee owners, are so common amongst whenua Māori? I mean, an example could be to require a lease to be renewed and not the situation of implied leases rolling over upon their expiry.

A. Yes, I think it's – yes, getting a bit beyond my brief to answer that. You know, I think obviously the 1953 Act had a much bigger focus on making land productive, whereas Te Ture Whenua, 1993, I think, you know, has a – has a different focus. It should start resulting in different outcomes, but it's a bit disappointing to see that this sort of thing is not really being remedied, but like I said, to whom you sheet home responsibility for that is not for me to say. I mean, I doubt the Court would reject the owners if they came up with a different approach or established a whānau trust or did something that could get the land back in their hands, but how possible that is is not for me to say. But like I said, it does reflect this long period of being disconnected from the land by these legal processes, and it does make it difficult to sustain that connection.

Q. Yes. No, kei te pai. Another instance which –

JUDGE DOOGAN:

Ms Te Whenua, Judge Doogan here.

MS TE WHENUA:

Yes.

JUDGE DOOGAN:

Just not sure whether you have got further pātai along the same lines, but I just wanted to register a caution about the extent to which Mr Stirling can properly go very far in commenting on the evidence that you are indicating your clients will lead in due course, and in the situations you are describing, because they are not particularly the subject of his research and this report, so just if you are able to question on the contents of the report itself, that would be – you know, that is the point – there is a bit of a balance here. You are able to ask questions along the line, but I just note there are some limits about how far Mr Stirling can

properly go, because he hasn't actually had the chance to research in detail or see the evidence that you are referring to, so – and just on time, we have got a few more minutes, but do you have much more?

MS TE WHENUA:

Two more questions.

JUDGE DOOGAN:

All right.

MS TE WHENUA TO BRUCE STIRLING: (CONTINUES)

Q. I guess one is regarding development schemes, and then the last one is a quick question regarding overall landlessness, but just in terms of development schemes, if I may, this is one where our client will give evidence that one of the original landowners on their block, Lot 388A, applied for a land development loan and was turned down on the basis that his holdings were too small. That was for an approximately 20-acre section, but then you, Mr Stirling, note at page 293 of your report that loans were advanced on much smaller – on smaller landholdings, such as Ōpape 3A 2B, 13 acres, and Ōpape 3R4, 14 acres.

My question is whether land development loans were applied indiscriminately by the Crown amongst Māori.

A. Yes, well, I think what you're looking at at page 293 is a slightly different issue. That's – that's loans made by the Land Board before the development schemes were brought into play in 1930, so they're just – that's why they're such small-scale endeavours with people just trying to do something on their own land and looking to the Board for some financial assistance when they got into a bit of trouble with, you know, stock companies and agricultural suppliers in Ōpōtiki.

The later development schemes, which I think is probably what you're referring to, when the owner applied for a loan, the criteria would have been a lot tighter under the formal Māori land development regime, and that 20 acres just wouldn't have been considered an economic title, although it's a bit surprising they didn't look at maybe some of the

adjoining land and its potential for development, but you didn't give me a date for when this application was made, so it may have been that they weren't interested in opening new development by that stage, because certainly interest dropped off post-World War II on starting anything new.

Q. Right. Yes. And that was 1954. Thank you – thank you for that answer. I think, in the interests of time, I will head to my last question, which is around landlessness, which you describe at page 171 of your report, noting that "'landless' does not mean that someone (or some tribal group) has no land at all; it usually means that they have insufficient lands to support themselves and their whanau", and you would be aware that at page 245 of her report, Ms Luiten notes that "in March 1903, Te Rupe Horotiu and 23 others" from our claimant group "petitioned Parliament for more land 'for the reason that", they note, "our land will not contain us all'". You are aware of that petition which Ms Luiten refers to?

A. Only from her reference to it. I haven't actually seen the original or the documents.

Q. This is in the context of the fact we refer back to the evidence which shows that Ngāi Tamatea went from exercising mana whenua over 172,500 acres to just 301 acres. Do you accept that as a result of Crown-planned alienation and the subsequent land legislation, Ngāi Tamatea has and continues to experience landlessness?

A. Well, certainly, yes. I mean, they were exiled from their – their customary lands very early on, and then given just these three small reserves that you have described to live on, and in fact, took decades to even get title to those, so they were in a very insecure position for a very long time.

Q. Thank you very much, Mr Stirling. Those are all of my questions. Tēnā koe, otirā tēnā tātou.

HEARING ADJOURNS: 4.12 PM

HEARING RESUMES: 4.17 PM

(16:17) MR SHARP TO BRUCE STIRLING:

Q. Tēnā koe, Mr Stirling. My name is Michael Sharp. I am representing Wai 2160 claim on behalf of Ngāti Muriwai. Just with regards to the sale of lands sections, the specific questions that I was going to ask have been asked, but I thought it would be useful as a way of background just to clarify with you the different processes for selling land and the different scenarios under the statutes, because it's a little bit complicated, so just so we have got a clear idea on it.

So, the – we start with the situation with multiply owned land in the normal situation, and as you discussed, the process is the Land Board calls a hui of owners, there's a quorum – I think five –

A. Yes.

Q. – and the majority can decide on the sale of land. That is the practice – was the practice?

A. Yes. Yes. Majority by shareholding.

Q. So if we have an incorporation, under the 1909 Act, you made comment in your report how it's a bit different in that the committee has powers of sale, so in my understanding, under the Act, under section 327 of the Act, the committee has the normal powers of a body corporate, except for alienation; in section 330, it has no power of sale, except to the Crown or with Crown approval. Is that your understanding of how it works?

A. Yes.

Q. And if we go on to the 1907 Land Development Act, with part I land, what – my understanding of the legislation is that the Land Board had – had power of sale in itself. It didn't have to seek the agreement of owners. The land was vested in the Land Board, and it can decide whether to sell, and you, I think, in some parts of your report, refer to meeting with owners to get agreement, but on some occasions, it was able to sell without the agreement of the owners, because it had that power. Is that correct?

A. Well, it had that power. I'm not sure if I identified an example where it was used. I think for the – the Crown purchases under part I, they – they did call meetings of owners, as I recall, but –

Q. Yes, so –

A. – **(inaudible 16:20:29)** example where that didn't happen.

Q. So, if you go to page 95, 96, **(inaudible 16:20:34)** Whitikau 2B2, and in that case, I think you – you detailed how the owners wanted a higher price, but the Land Board went ahead anyway.

A. Yes, but they still called the meeting of owners.

Q. Yes.

A. Yes. Yes, yes.

Q. But the point is that ultimately, the power, the decision to make the sale was in the hands of the Land Board.

A. Yes, well, it is in every case, really. Normally, it's subject to confirmation of the resolution at a meeting of owners, but as you say, in – and this is an exception –

Q. In part I, yes.

A. Yes.

Q. And in part 2 of –

DR GRANT PHILLIPSON:

Sorry, Mr Sharp, can I just check – so land proclaimed under part I of that 1907 Act, was it actually vested in the Māori Land Boards? Because you are suggesting it was vested in the Boards and the Boards had the power to sell it. Is that correct, Mr Stirling?

BRUCE STIRLING:

Yes, that's set out on page 95, yes.

DR GRANT PHILLIPSON:

Right. Okay. But and this is the only example in the report of it having happened?

BRUCE STIRLING:

The only example I have noted.

DR GRANT PHILLIPSON:

Right.

BRUCE STIRLING:

Yes. There were other lands vested under part I, but I think a fairly ordinary purchase process was followed in those examples. They were in Oamaru titles, I think.

MR SHARP TO BRUCE STIRLING: (CONTINUES)

Q. And Mr Stirling, if we move on to part II of the 1907 Act, so my understanding is in that situation, the land's not vested in the Board, and the provision under section 54(2), it says that the land cannot be sold by the owners, except with government – with approval of the – of the governor. And then if that's the case, I presume there will be the normal meeting or – or hui of owners with quorum requirements. Is that your understanding?

A. Yes. Yes, that's just a form of restriction on alienation, really. Yes.

JUDGE DOOGAN:

Sorry, which Act? 1927?

BRUCE STIRLING:

1907.

JUDGE DOOGAN:

'07.

BRUCE STIRLING:

'07.

JUDGE DOOGAN:

Thank you.

BRUCE STIRLING:

Yes. I think at page 98 I point out that 1907 Act provision was maintained in part 16 of the 1909 Act, but in that case, it was just a matter of getting the

Native Minister to just consent if you wanted to override the part II protection. It was fairly straightforward.

MR SHARP TO BRUCE STIRLING: (CONTINUES)

Q. Just another thing to note under the part II land is that – and I see an example in my notes and at page 123 of Oamaru 3B, Oamaru land, that even though the land is – is not to be sold except with the governor's approval, on occasions such as this, the Land Board did organise the meetings of owners, and in fact went and sought some owners out to find them, to get to a meeting to make those decisions. Is that correct?

A. Yes, I think that's what's set out at page, yes, 123 to 124.

Q. Yes. Thank you. Now, I just want to move on to land development schemes, and once again, all my specific questions have been answered, but I've just got a – just a general question for you about how these land development schemes operated in a national context, so I presume you have done reports and have knowledge on how land development schemes worked in other parts of the country?

A. Yes. Yes, a couple – a couple of other districts.

Q. So, would – would it be fair to say that the way these schemes operated and, in the end, failed was typical of how schemes were operating or did operate around the country?

A. No, I think I remarked earlier it was a little bit different from development in a lot of other areas where a large block would be set aside for development and then as a – as a single sort of entity; a station, they called it – and then once it was ready to be carved up into farms, they would do that and allocate them to – by lease to particular farmers, but here, they sort of started with the existing small farms that people had been struggling to establish on their small holdings and built on those, and then added to them. So, it's a little different, yes. It's very much just focused on individual, as they called, units; unit development, which was – in other schemes, was a later stage that you got to after you got the land ready for settlement. Here, it was more they just started with units, so there was no larger collective sort of effort.

Q. So, there were no other schemes where individual farmers were put on small allotments like in this case –

A. There were others, yes. I'm just saying it's not – it's not the typical approach, because the approach tended to be sort of big bangs for your bucks, so you'd get a big block and get it developed and carved up into farms as quick as you could.

But in areas where there wasn't much land, yes, they tended to focus more on these smaller unit schemes. I think that happened in the – the Wairarapa as well, because there was so little land left. There was only one large Māori Trustee sort of -run scheme in the last big reserve that was retained in Māori ownership, and everything else was similar to this, just little individual farms.

So it's not a development scheme as such, it's just unit assistance to individuals, really, with a bit of coordination between them, and in this case, they – they bought the leasehold of a larger block, Ōpape 2A1, to serve as a sort of a stock-breeding area to supply all of the little farms around it – well, as well as development schemes and development farms in other adjoining districts.

So, there was – there were some elements of broader development, but the focus really was just on the small cluster of individuals, a couple of dozen unit farmers. So, it's not unknown, but it's less common.

Q. Because when we look at the small unit farms, that was ultimately the aim of – the general aim of these schemes, and I seem to recall that Apirana Ngata, that's how he envisaged that these development schemes would finish up, where there would be individual Māori farmers supporting themselves. Is that correct?

A. I think that was possibly more the government's aim. I mean, he – he had the experience of the East Coast and Te Tairāwhiti to draw on, where larger sort of – larger incorporations were more the model that he was familiar with, so they were like sheep stations and cattle – cattle stations, but the government schemes that he got finance for were much more focused on these little, small-herd dairy farms. So, I don't know if that's entirely his preference. It's more of a compromise. As I said, he had the

– to get the funding, he had to go along with what the Crown wanted. So, I wouldn't say it was entirely his idea.

Q. And just a question: The difficulty with this scheme and other schemes, of getting suitable leases in place for farmers so they have security of tenure to invest in the property, I wasn't quite clear in your evidence in this case why that wasn't done. There seemed to be some reluctance by Māori Affairs, but in the end, was it the lessors did not agree to enter into these leases?

A. No, I think – I think the lessees wanted them. It was a matter of working out who the – who the tenant was going to be and sorting out the title of the owners, because often they were on more than one title, these farms, so it – yes, it just took them a long time to work it out, and it became a lot more complicated than you would have thought it needed to be. That's sort of an inheritance of the tenurial situation that had developed.

Q. And this last general characteristic is – is that the government insistence that the costs of the scheme be recovered from the farm operations in full, which weighed down the schemes, so there was no – as a general practice, the government didn't write those costs off?

A. In a few instances, they would write off interest for a limited period if they saw that it wasn't particularly the farmer's fault that they were unable to meet the interest payments, like, the income was insufficient, and that could be due to climatic reasons or some other failure, or even just, you know, a bad turn in the market briefly. So, they would write off some interest, and the costs they did impose as a loan tended to be reasonably direct, so the costs of supervision were paid for out of, you know, they were Māori Affairs employees, so their time was covered by the government. They didn't allocate that cost. It was just the direct costs; you know, materials, stock, unemployment relief – actually, sorry, no, that wasn't charged either. So yes, it's more just the direct farm costs that are included in the loan.

Q. Mr Stirling, are you aware of the Māori Affairs loans schemes that took place in the 1970s and '80s, where a lot of the costs of the development were written off to allow farms to succeed? Have you ever looked at those?

A. Yes, well, that's generally, yes, in less successful development schemes or ones that just dragged on for decades, you know, like some of the – in the north, in Kaipara, that I'm familiar with, and in the end, yes, they did have to write off a fair bit of what was owing in order to offload the scheme, because this is the period Māori Affairs is being wound up – I think it's more a feature of the 1980s than the 1970s – when they needed to get rid of those farms, get them off the books, so it was not viable to do it at full – full cost. The farm wouldn't be able to support that level of debt, so in some cases, yes, some of it was written off.

The ones I'm familiar with, that tends to be more the bigger schemes, not the individual little farms, but that probably applied there as well, where, you know, where a farm was just not sufficiently well set up to carry the burden of debt that it – that they had on it. You know, it had been over-invested, if you like, or there'd been too much expenditure, possibly not always the wisest, and that goes back to the administration of the Department as much as anything.

Q. Thank you. I have one last question, Mr Stirling, and that's just going to another subject. It's the Whakatōhea Māori Trust Board, and at 455 of your report, you see there where the Trust Board decides not to apply to become an iwi authority, and "It was felt that as an Iwi Authority the Trust Board members need to be extended to have greater representation on it", so do you know if that's referring to having greater representation of all the groups in the iwi?

A. No, I don't know if that's clear from the material I've cited.

Q. Thank you. That's – yes, if it wasn't stated, that's fine. Thank you for your answers.

(16:34) MS TE HIRA TO BRUCE STIRLING:

Q. Tēnā koe, Mr Stirling.

A. Āe, kia ora.

Q. Ko Maia tōku ingoa. I, alongside Ms Sykes and Ms Delamere-Ririnui, act for the hapū of Ngāti Ira o Waioweka, who you are familiar with. I would just like to start by saying that when I was reading your publication history,

I thought, “Wow, is there anywhere across the motu that you haven’t researched?”, because it is extensive, so I just want to –

A. Taranaki?

Q. – just want to tautoko the mihi that have been made to your contributions to the history of Aotearoa.

I’m going to cover a few things today. The first is Crown purchasing and private purchasing of land blocks that are relevant to Ngāti Ira, land grants made to Hira Te Popo, and I will end with a couple of pātai about Ōpape 8 and Tanewhirinaki.

The first series of pātai I want to ask you relate to the Oamaru block, which is a block that Ngāti Ira have customary interests in. If my map reading skills are any good, would you agree that the Oamaru block is the largest block that you researched in preparation of this report, by land area?

A. Well, it was the largest when it was awarded title, but by the time my report starts, there’s not much of it left.

Q. Yes.

A. So, I’m just looking at what’s left over, yes. But it, yes, definitely was the largest block in the district.

Q. So, stepping back a little bit, because I know that Ms Luiten, in her land alienation report, covered the alienation by survey, I think she refers to it as, of the Oamaru block, and then you pick up where she left off, right, from 1900?

A. – ish, yes.

Q. Yes. Right. In your research, was the earliest – like, based on this period in which you spent researching, the earliest title investigations to what was left of the Oamaru block took place in 1907? Would that be –

A. Sorry, the title investigations?

Q. Sorry, not the – the further fragmentation of the large Oamaru block.

A. No, I think it’s 1911 where I pick it up.

Q. Okay.

A. Yes. 1907 was Whitikau. That was the first, in chronological terms, in my period.

Q. And I think it's important to note that the history of the Oamaru block kind of straddles both the late 1800s and the early 1900s, despite the fact that you pick up at, well, 1900.

Jane Luiten had made note of how this – this huge land block was essentially alienated by survey, and she canvasses quite a bit of drama related to the work of people like Alma Baker and Percy Smith, and how there was quite a bit of Māori opposition to Alma Baker's initial survey done on this huge Oamaru block. Would you agree with that?

A. Well, it's outside the period I've looked at, so I, yes, I don't know if I can really comment on it.

Q. Sure.

A. And – let alone critique her work, which is, as you all know, pretty solid.

Q. So, from the early 1900s, would you say that there was a record of opposition to how the block was surveyed and essentially alienated, by Māori?

A. No, I think I left her to cover the issues around survey and the controversy around that. I just sort of pick up purchases, you know, 1911 – mostly in the 1910s, but, you know, a few mopping-up operations right through to the 1950s. So yes, I think – I think she covered that issue better.

Q. In terms of – so I am looking at map 4, where quite a few of the Oamaru blocks that border the confiscation boundary, as well as Oamaru 1C, are highlighted as being purchased by the Crown between 1907 and 1958.

A. Yes.

Q. Now, this period of Crown purchasing is relatively difficult to follow, because the initial motivation behind purchasing these blocks was for settlement, is that correct?

A. Yes.

Q. And then later on, towards the 1958 – or sorry, the – yes, the 1958 period, you almost have a change of Crown attitude towards what this – what these Oamaru blocks can be used for. Would you agree with that?

A. Yes, well, it may have even occurred earlier, but – but they just kept going in 1958, because I think they thought they just had to mop up the last Māori interests, just almost a bit obsessive about it, because otherwise they'd have to be defined on the ground, I think, and I suppose they'd just

end up in the middle of nowhere, which wouldn't be much use to them and would interfere with whatever plans the Crown had, which I think by then would have been, you know, more conservation-minded.

Q. Yes, and you note that by that – by the end of that particular period, the Crown had – the Crown almost decide that they want to – well, because the land is so uneconomic and there's very little chance that it will be settled, they want to change it from – from land that has that purpose to land that is instead reserved for – was it conservation purposes?

Q. Yes, basically, yes. Well, sometimes they called it climatic protection, so it would protect the – the coastal plain from floods caused, you know, which is the result if you clear all the forest off, so it's basically a way of protecting land downstream because it was not worth trying to develop the really hilly parts, you know, of Oamaru inland.

Q. And with that change of purpose, do you think that the intention is to benefit Māori, or it is instead to benefit the settlers, who they had initially purchased this land to try and accommodate?

A. Yes, well, as I said, it's – it's really designed to protect land downstream, which is predominantly occupied by – by Pākehā farmers. You know, protect it from flooding and other, you know, rivers filling up with gravel and runoff from cleared land, because by then they obviously had experience of that on – in Tairāwhiti and Mangatu in particular, which is, as the crow flies, not that far from Oamaru. So yes, again, it's more in the national interest than in Māori interests, but the fact that, you know, it was never really settled and was soon found not to really be suitable for settlement kind of undermines the whole point of purchasing in the first place. It could have been protected just as easily in Māori ownership, if that was the goal.

Q. Thank you. I am interested in this interconnection between Crown purchasing and settler interests in the – at the time, because you note at page 105 of the report that "The Stout-Ngata Commission reported in 1907 that the owners wanted 'further subdivision'", but they didn't provide any details around what that further subdivision might look like, and – but they did know that the owners of the block did not wish to sell any further parcels of land.

A. Yes.

Q. And "The Crown's long acquisition" of the Oamaru 2B block "was almost pre-empted by a private purchase offer in 1908, when Niels Rosgard and Robert Brownlee applied" for the government "to remove the restrictions on alienation on Oamaru 2B".

A. Yes, although, yes, I think I note they were only really after one part of that block, which seems to be the subdivision envisaged by Mere Hira Te Popo.

Q. Yes. And I note that that 664 acres is the exact land area that was recorded as being, well, her acreage.

A. Yes. Yes.

Q. Yes.

A. Yes, well, that's, yes, that's noted in the table, I think, the 2B1 block was awarded to her.

Q. So my interpretation of this is that you had two private individuals who applied to have the Oamaru 2B block alienated, or their restrictions on alienation lifted, so that they could possibly purchase it, and then the Crown essentially allowing for that to take place, and then a couple of years later, their offer is withdrawn, so you have effectively got the Oamaru 2B block without any restrictions and just open to purchase and further fragmentation.

A. No, I think – I think the point I made there was they withdrew that application before it was completed, and the restrictions didn't affect the Crown anyway. Restrictions of alienation were generally not seen as applicable to it.

Q. Right.

A. Only to private purchasers.

Q. Right.

A. So, they – it didn't prevent them opening purchasing.

Q. I am interested in those particular blocks because many of those who were recorded as having interests in them have a whakapapa connection to Ngāti Ira, and as you have acknowledged, it was almost a last resort for the Crown to take any consideration of the Māori interests to those lands ahead of the interests of the non-Māori who were in the area, and I

think that becomes important in the context of, well, a) how large the Oamaru block is, and how today, the vast majority, almost all, is in the ownership of the Crown, and it forms, I guess, all of the Waioweka Gorge and is administered by DOC, and so, given that history, do you think that the relationship between the Crown and Ngāti Ira could be better developed to give effect to that loss, that landlessness, that alienation that Ngāti Ira have suffered?

A. Well, I think that's a bit of a future-focused kind of a question, not a historical one. It seems more related to a, yes, future Crown relationship with Ngāti Ira around DOC lands. That's right outside my purview.

Q. Yes. As you are aware, it is 160 years since the battle of Te Tarata, and I guess this all plays into the historical background, and the Oamaru block is, well, the block in which Ngāti Ira spent five years taking refuge following that battle in 1865, and then 1870, they returned from the hinterland, which is when, I guess, you see the land grants that are made to Hira Te Popo, so in your report, you note that Waioweka 336, 337 and 393 are significant land blocks that have been granted – sorry, not blocks, relatively smaller, but they are granted to Hira Te Popo and members of the Ngāti Ira hapū, and I am wondering whether you could elaborate on how those land blocks came to be granted or how they became further partitioned, subdivided, throughout the 1900s.

A. I think I explained where I listed those titles near the beginning of the report that I wasn't really going to be examining those blocks, partly because they're relatively small, partly because they're largely retained in Māori ownership, and the earlier question around the background to their grant, I think, has been covered by – by Jane Luiten and others, and details of the title history in the 20th Century, I think, are in the block narratives that the Tribunal staff have completed, which are very comprehensive, so yes, I didn't really think I had much to add to that, other than, yes, I think there's a few examples where there were alienation files relating to parts of those blocks that I've looked at in relation to particular Land Board issues or leases or landlessness, those kind of things, but no, I didn't – I didn't focus on the smaller reserves within the confiscation district.

Q. I am going to move now to the questions that I had about Ōpape 8 and Tanewhirinaki, so Ōpape 8, which is part of the Ōpape Native Reserve, you note on map 3, you can see it, that this particular piece of whenua was a later incorporation, so it becomes incorporated, but at a later point in time, and the lease that was established over Ōpape 8 was used to fundraise, essentially, for the building of Tanewhirinaki.

A. Yes.

Q. And the lease was 42 years long, and it expired in 1923.

A. Well, that's when the 42-year lease began, yes.

Q. Right.

A. Sorry. Yes.

Q. Yes, sorry, it began in 1923, and it ended in 1965, which is also when the incorporation dissolved.

A. Yes. Yes.

Q. And you say that "it is not known what the Ōpape 8 incorporation did before it was formally dissolved". That's at –

A. Yes, yes. Page 65, yes. Well, just that the records weren't there – that I had access to – gave me much idea of what they'd been up to. I mean, given that the land was under lease all that time, their job would have been pretty much limited to, you know, distributing the rent, which the Land Board actually probably would have collected on their behalf anyway –

Q. Right.

A. – once it came in and took over.

Q. And that was going to be my question: Why do you think there was no information around what that particular incorporation did before it was dissolved in 1965?

A. Well, yes, because the incorporation, I mean, they're sort of a separate legal entity, so the – the records relating to them are not that accessible.

Q. Sure.

A. Yes. And as I said, well, given that the land was under lease, they didn't really have much to do with the title. There wouldn't have been a lot for the incorporation to do, other than maybe distribute the rents, and I think that relates to the whare as well. I mean, that's where –

Q. Yes, because your paragraphs on Tanewhirinaki highlight how after it fell over, blew down, in 1930, there was quite a lot of motivation around rebuilding it, and in order to do that, financial means would have been needed, but the money that was collected in rent from Ōpape 8 was no longer accessible because the incorporation dissolved.

A. Yes. Yes. I assume – well, it would have been revested in the owners, so what they did with the rent was a different matter.

Q. Sure.

A. So, I guess I haven't followed that through, what entity administers it currently.

Q. You mentioned earlier to my learned friend – I think it was Mr Sharp – that there is quite a clear difference between the purpose of the 1953 Māori Affairs Act and the 1999 Ture Whenua Māori Act and how one was geared towards more economic development, so the first had a more economic development-focused purpose behind it, whereas the Ture Whenua Act has a statutory purpose that – I mean, if you read the preamble, you can kind of see that the language changes quite extensively and the purpose becomes to retain whenua Māori and to protect it and to ensure that it can be utilised for development for the benefit of its owners. That is a 40-year period. I would like to know your thoughts on whether or not – on why you think the drive – what you think the drivers were in that change.

A. Well, I think – yes, I think that goes back to the – to the Māori response to the 1967 Act, and the kind of resurgence of Māori political activism, really, in the 1970s –

Q. Sure.

A. – and – I mean, Te Ture Whenua Act had a very long gestation. I mean, that was discussed and debated way through the '80s, following the commission of inquiry into the Māori Land Court in 1980, so there was a lot – yes, it took a long time to develop that legislation, but it – I think you can date it back to that – that rebirth of – of Māori and wanting things to be done differently, so that affected the Court as well.

Q. Yes, because I note in your first map, which highlights Māori land in the district inquiry by 1990, it is very little, and I mean, that can be said across

the motu for Māori land, that by 1993, yes, there is very little of it left. I think today's – 5.5%, roughly, would be whenua Māori, and so yes, the purpose of that question was to kind of better understand the shift in legislative purpose and whether or not the Crown just woke up during that 40-year period and decided, "Actually, whenua Māori might need to be retained for the benefit of Māori", so thank you.

A. Yes.

Q. I am going to end my questions there.

A. Well, yes, I mean, that's quite a long process. You know, the third Labour government and Matiu Rata had a great deal to do with it, in shifting the focus, and I think I pointed to some of the things he did, just banning conversion, banning Crown purchasing, wiping interest on survey liens – all things that could have been done decades earlier –

Q. Yes.

A. – that were hindering Māori, and that just showed how easily it could be done and how things could be turned around to a more positive relationship, so yes, I think that lit the fuse, if you like.

Q. Yes. Just picking up on that one last point, would you say that throughout the 1900s, there is an air of resistance to the alienation, to the fragmentation, to the partitioning of what land is left? Because you just mentioned there that – like, the political resistance and activism of the late 1900s saw changes to the legislative –

A. Well, that's pretty late. Yes, I'm talking 19 – late 1960s, early 1970s. Yes, I mean, before that, I think people are much more on the back foot and then just having to take what they can get, so I mean, having access to development finance, well, that's an innovation, so they kind of put up with a lot to get it, because otherwise they had nothing, so you don't really get that push-back until the government just goes too far with the 1967 Act. You know, it started with the Hunn Report in 1960 and – and you had a really rapidly rising young Māori population that did – didn't want to just agree to this stuff anymore, so they – they began the push-back, and well, still – they're still pushing.

Q. Yes. Thank you, Mr Stirling. Appreciate your kōrero.

HOUSEKEEPING – TIMETABLING (16:57:52)

KARAKIA WHAKAMUTUNGA (DANIEL REWIRI)

HEARING ADJOURNS: 5.07 PM

HEARING RESUMES ON WEDNESDAY 19 NOVEMBER 2025 AT 9:09 AM

KARAKIA TĪMATANGA (JOSEPH PUKEPUKE)

JUDGE DOOGAN:

Ka nui te mihi ki a koe, Jo, Rawaho, nāu i whakatakoto te ara tika ki a tātou i tēnei wā tuatoru. E tautoko ana ahau i tō whakaaro i te mahi a Tāwhirimātea. Ahakoa he tino ua kei waho, kei roto i te whare, he mahana. He wāhi pai mō te whakawhitiwhiti kōrero; tēnei kaupapa o te wiki nei. Nō reira, tēnā koe, e koro. **Thank you, matua Jo, Rawaho… and ensuring that today runs well today, day three. I certainly do endorse your thoughts in regard to this inclement weather that we have before us. Yes, with the rains that precede us upon this great house, we are still warmed and warmthed with the atmosphere we still find ourselves in. And of course, we still engage authentically, but again, I thank you, dear Sir.**

Ka mihi hoki ki a koutou kua huihui mai nei. **Again, to all those who returned…** Good to see you all made it. Sorry we mis-timed our run again. We thought that the roadworks guys probably wouldn't be on the job this morning, but they were, so sorry.

Welcome back, Mr Stirling, and thank you again for your considerable kaha yesterday.

HOUSEKEEPING (09:12:41)

MS COLE:

Mōrena, e te Kaiwhakawā me te Taraipiunara.

(09:15) MS COLE TO BRUCE STIRLING:

Q. Mr Stirling, nice to see you again. I think the last time we met in this kind of setting, I was sitting over there, so welcome. My role in this inquiry is I am briefed by Ms Annette Sykes on behalf of the Wai 864 claimants,

which is the claim relating to the Moutohorā quarry, and assisting otherwise in respect of others of her claimant clients.

My questions today – I do not have too many, but I shouldn't be more than ten or fifteen minutes, I think – focus largely on the Whakapaupakihi blocks. Now, I was also one of those who, despite careful correspondence from the gentleman to your right, I failed to note that there was an updated report, so I have done my best to correct all of the page numbers that I am going to be referring to, so bear with me if I get any of them wrong, but if we can please turn to page 40, in the first instance, which is 2.5 – section 2.5 of your brief, specifically relating to the incorporation of Whakapaupakihi 2 and 4.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032, PAGE 40

A. Yes.

Q. And I wanted to start just by asking a more general question, and that is, is it fair to summarise the Crown's dealings, both directly and indirectly though legislative means, with the Whakapaupakihi lands and generally Whakatōhea lands, as having proceeded over the decades pre-Stout-Ngata through until pretty much now as gone against the wishes of the owners?

A. Well, yes, it's probably too sweeping a statement to make. In general, yes, but that doesn't mean there aren't instances where there were willing sellers and a willing buyer in the Crown, or willing private purchasers and people prepared to sell to them, who were individuals. So, at the individual level, there are times when there were – a meeting of minds, if you like. Even if the circumstances might not have been ideal, people had various reasons for needing to alienate land.

But across the spectrum, in terms of the legislation, the policy and practice, yes, I think there's a lot of push-back from Whakatōhea in general, when they had the opportunity, and as with most other Māori, yes, that – that position isn't really paid much heed, because the Crown has other priorities.

Q. And I want to ask you about those priorities in a minute.

Just in relation to a statement that you make on – at the top of page 41 – again, we're talking about the incorporation here. So, despite the Stout-

Ngata report, "the incorporation of Whakapaupakihi 2" – and I just might point out that Whakapaupakihi 2 is the land block where the Moutohorā quarry is located – despite the incorporation – it was only the incorporation – sorry, "It was the only incorporation application that provoked significant objections in Court by owners who did not wish to be included." And I am relying upon your extensive knowledge of this legislation and the effects of it across the motu – are you aware as to whether objections by owners were uncommon across the motu when it came to the incorporation policy?

A. I'm not sure I've looked at enough incorporations to really be too authoritative on that, but the ones I have seen are generally agreed before it gets to court, so at court, there is an appearance of agreement, because whatever issues there were have generally been thrashed out before it gets to that stage.

Q. So Whakapaupakihi 2, then, with being – as you say, it was the only incorporation application, presumably within this district inquiry area, that provoked significant objections in court – that was an unusual situation?

A. Yes. Yes, unusual for the set of incorporations I've looked at, yes.

Q. Okay. Can I take you to page 47? What you say, in the paragraph that starts "The Board told the Native Department it was 'shorthanded'", was that there was a request by the Whakapaupakihi to have the block committee distribute the funds, but the Board president said it couldn't be allowed, and then you say, "As noted, the Board essentially rendered incorporation redundant."

So, by even having the incorporation established, is it correct to say that Whakatōhea themselves were effectively cut out of any exercise of mana motuhake?

A. Well, the – the incorporation was supposed to be a way to embody that mana motuhake.

Q. Yes.

A. So yes, they select a block committee, which is, you know, not exactly an expression of mana motuhake, but it – it's an approximation, if you like, in terms of the legal system. So that part isn't too bad.

They organise a lease.

But then – yes, then the Board takes over and takes control, and the same thing happened with Crown purchasing, when – when a committee was formed to arrange a purchase. They would control that process, but then that was it. Once they signed a deed, their role was over, and the Crown took over the distribution of the monies. It wasn't up to the committee to decide how to spend that money, even though they were there to represent the owners. And the same thing happened with Whakapaupakihi and the rents. The Board saw it as its function to distribute those rents according to the shares on the title, rather than whatever other method of distribution the committee might have preferred.

Q. And just to be clear, there were not members of – sorry, owners of Whakapaupakihi or members of Whakatōhea sitting on the Board?

A. No. No, I think, as we established yesterday, it was –

Q. That's right.

A. – it was an all Crown-appointed body by that point.

Q. That's right. In the very next paragraph, you are talking about consequences of non-payment of rents, and I wanted to ask you, or you – you note that there's the Board's failure to pay the rents for such an extended period and that – you have different examples of that across your report.

I want to ask you about the consequences of no receipt of rent, and did you get a sense from your research that that led to an inclination by owners to sell? It's like, well, we've got to get money somehow, we're not getting the rents, we might as well just sell it.

A. No. No, that's not something that seemed to have occurred, because there would have been just – almost as many problems with getting the purchase proceeds, because it's the same method of distribution.

Q. So, this is –

A. The same problem, so I think – well, I mean, once the lease was signed, the lease was going to be maintained until either its term ended or re-entry or abandonment, which occurred in some cases. But generally, the incorporations were formed either with an intention to lease or to sell, so

they would just follow through with that intention. I guess they didn't anticipate these – these problems coming up with distribution.

Q. They, meaning who?

A. The committee, which –

Q. The block committee?

A. The block committee, which is the owners' –

Q. That's right.

A. – effectively the owners' representation.

Q. But by the non-payment of rent, the owners were effectively being significantly prejudiced, because they simply weren't getting any income from the leases.

A. Yes, certainly. Yes.

Q. Can I turn to page – top of – bottom of page 67, top of page 68? And this is under – in your chapter 3, Crown Purchasing, and you say there, "Driving the Crown's purchasing was its desire to promote settlement and assuage the apparently insatiable land hunger of Pakeha colonisers, and it was more than willing to keep stimulating that appetite." And then you say, "In 1906 locals complained of Opotiki having 'long been kept in a stagnant state through the native land problem'". Do you see that?

A. Yes. Yes.

Q. And I couldn't see a footnote as to what that – where that may have come from. It may have come from the Poverty Bay Herald, from the 211 footnote, but what I really wanted to ask you was: What was this "native land problem" that the locals were complaining about?

A. I think they saw Māori land that was unoccupied, or apparently unoccupied, or not being farmed, as essentially idle land, and it should be handed over to Pākehā to make better use of. That's basically – well, that was the problem right – right through 'til well into the 1950s, 1960s.

Q. Okay. Well, that led me further down that page. There's quite a long paragraph, which starts, "When Crown land was put up for sale…".

A. Yes.

Q. And down the bottom of that paragraph, it says, "Māori success provoked 'expressions of resentment... many contending that Natives should not have been allowed to enter when they had land of their own.'"

A. Yes.

Q. My question is: Did you come across anything that indicated that any Crown officials did anything to disabuse settlers of that ignorance, for example, by explaining the fact that they didn't have land of their own that they could sustainably live on?

A. No – well, no, other than the – maybe the Stout-Ngata Commission, in their report, but that wasn't exactly widely publicised.

Q. So, the Crown were complicit in ensuring that that kind of ignorant understanding of the level of landlessness of Whakatōhea subsisted?

A. Well, I don't know about a word like "complicit", but they certainly didn't dissuade people from that, and actually responded positively to, you know, settler associations that were formed to open up land like Oamaru and inland towards Whakapaupakihi –

Q. Well, what more would you need –

A. – and encouraged them, and said, "Yes, we're going to – we're going to try and open up that land, don't you worry." Yes, so that – that was their focus.

Q. What – what more would they – sorry. What more would they need to do – I'm just very conscious of my time. What more would they need to have been complicit than do all of those…?

A. Well, it's more. Well, this is more a sin, if you like, of omission by not mentioning those things. I think "complicit" would require an act of commission, like, actively misleading people.

Q. That might be semantics.

A. Well –

Q. Well, they were misleading, weren't they?

A. Well, no, because they weren't really making any statements to Māori and weren't talking with Pākehā about Māori landlessness. They were just saying, yes, you want land to settle, and we're going to do what we can to get it, without regard for Māori interests. So, yes, that's how I would describe it, so that's not good. I don't think it's quite the same way that you're expressing it.

Q. Okay. That might be –

A. So maybe it's semantics, but –

Q. And that might be **(inaudible 09:26:43)**.

A. – words are important.

Q. They are. Okay, can I get you to move over to page 70, and – where here, you are talking about the undervaluing of Māori land, and I wanted to ask you, was that a widespread practice across the motu, which has been discussed in other inquiry districts?

A. Well, it certainly came up in the Te Urewera Inquiry, not least because I wrote evidence about it, and so did others, yes.

Q. So, you are aware that it was a common practice by the Crown to undervalue?

A. Yes, it was widely acknowledged that Māori land was undervalued, yes.

Q. And it was even widely established back then, wasn't it?

A. Yes.

Q. And some of the things that you say on paragraph [*sic*: page] 70.

A. Certainly, yes.

Q. Jumping across to private purchasing, and if I can take you to page 137, so this really picks up, I guess, on what we have just been talking about. I am not sure where on the page it is, but the paragraph that starts, "The Prime Minister was under the misapprehension…"

A. Yes.

Q. What was – sorry, who created the misapprehension that there had been "meaningful provision to ensure Māori retained sufficient lands"? So, who created that misapprehension? The Crown?

A. Well, I think that's just in the Prime Minister's mind that there had been some efforts made. He obviously didn't understand the thrust of native land legislation, you know, for the past sort of 70 years, so –

Q. Would you – would you agree that pretty much everyone working within – and that's obviously a broad statement, but everyone working within the machinery of the Crown were under that misapprehension?

A. No, I think this is at a much higher level.

Q. So, the Prime Minister's information was being fed by officials?

A. I'm not – well, this isn't really exactly information; it's not technical data, it's just his – his general impression, so he's obviously misinformed, and

at the same time, being a politician, he's trying to put a reasonably positive spin on things.

Q. Okay. So, you say, further in that – in that paragraph, "Far from it; nothing of substance had changed since the earlier periods he spoke of", and then you say, "the goal remained to separate Māori from their lands". Was it ever actually stated as being a goal of the Crown to separate Māori from their land?

A. Well, yes, originally, when the Court was first set up, fairly clear statements about the purpose of it in Parliament by the framers of the legislation.

Q. So, I am interested about the ultimate goal of land alienation, which seems to have remained fairly consistent across multiple administrations and multiple governments. Would you agree that there – that had remained relatively consistent?

A. Yes. Yes. Yes. Production is the key.

Q. Can I take you to page 139? And I think this page is an exact replication of the other – anyway, we are talking about the Native Land Act 1909 and the Waiariki District Māori Land Board from 1909 to 1952, and you – there is a paragraph there that says, "The goal of the 1905 Act was to make more Māori land available for settlement than had been the case under the 1900 Act."

A. Yes.

Q. And then at the end of that paragraph, you have quoted from Alan Ward, who had observed that "the 'Māori' land boards of 1900 'had become Pakeha institutions' in which Māori 'no longer had any direct involvement'", and I wondered if I could put this proposition to you: that there were never any *Māori* land boards, there were *Māori land* boards, if you understand the distinction.

A. Yes, well, now who's – now who's talking semantics? Yes, well, yes, it's a bit – calling it a Māori land board, it deals with Māori land, but it's not a Māori board.

Q. Thank you.

A. Yes.

Q. Thank you. Right. If we jump all the way over to chapter 6, the Māori land development schemes, and we heard a lot about landlessness yesterday, and in fact I took the opportunity this morning to word-search your report, and the word "landless" appears 131 times, and the word "landlessness" appears 51 times.

So top of page 286, you say, "Despite the findings of the Stout-Ngata Commission, the Crown later refused to believe that Whakatōhea were either landless or in need of more lands than they held within and without the confiscation district. In responding to Whakatōhea calls for land at the Native Land Commission in 1920, the Crown insisted that it had 'handsomely fulfilled any promises made for the return of lands' from the confiscation district." Would you agree that Crown officials from – sorry, that – well, yes, that Crown officials and thereby the Crown were well aware of the Whakatōhea objections to continual loss of land post-raupatu, and definitely post the Stout-Ngata Commission report?

A. Well, they were aware that the iwi were essentially landless, yes. I'm not so sure they were aware of any iwi objections to further land loss, because they were engaged in land transactions at the time, so they could always find some people willing to sell for various reasons, but they were certainly aware – well, the 1920 Commission should have been aware that – that that was just factually incorrect.

Q. So, do you know when it was, even just down to a decade, in which the Crown finally acknowledged Whakatōhea's landlessness?

A. Well, it was acknowledged in 1908.

Q. Was it acknowledged by the Crown?

A. Well, **(inaudible 09:32:57)**, well, by the Commission, so – which reported to the Crown.

Q. And the Crown ignored it, right? I mean, all of their actions subsequently, its actions subsequently, demonstrated that they ignored it.

A. Yes, generally. Yes.

Q. You are aware that the Crown has made an acknowledgement concerning landlessness in the Whakatōhea settlement?

A. Yes.

Q. Do you think it took until the Whakatōhea settlement for them to finally acknowledge the landlessness of Whakatōhea?

A. Well, I – yes, I'm not aware of it being formally acknowledged until now.

Q. And the final thing is about conversion under lease from Whakapaupakihi – of the lease, under lease at Whakapaupakihi, I should say – and I guess I'm picking up a little bit of what I think Mr Sinclair was trying to get to yesterday, so from page – this is addressed from pages – in pages 391 to 397, and in there, you detail how the Mangatu Incorporation, over a period of time, bought up the shares of the various Whakapaupakihi blocks, through various means but largely the conversion process.

A. Yes.

Q. Yes? And at the bottom of page 391, you say, "The impact of leasing on conversion is particularly evident in the Whakapaupakihi titles where the Māori Trustee" – another Crown-established agency – "facilitated a tenant of several blocks…", namely the Mangatu Incorporation – and then you go on to note that the Whakatōhea Trust Board in the early 1950s had developed a development proposal so that Whakatōhea people could be managing the farms, have control over the – over the land and managing the farms?

A. Yes.

Q. Yes? The owners of the Whakapaupakihi block 4, which had been incorporated, had wanted to – made it quite clear that they wanted to farm the block themselves?

A. Yes.

Q. But ultimately, what happened with all of the Whakapaupakihi blocks, through the various legislative processes which ultimately included amalgamation where block 4 was turned into block 7, block 4 being the one that had been subject to incorporation, Mangatu ended up with the leases and became the largest single shareholder of those blocks?

A. Yes, yes. That's noted at page 397.

Q. That is what I have got noted as well, 397. And I just wanted to pick up on that quote that you have got there from Dr Ranginui Walker, who said that the board saw the Whakapaupakihi as "'too remote from Opotiki' for it and would have required 'heavy capital investment' to enable it to

generate a decent income", so Dr Walker's observation is essentially that the Mangatu Incorporation, who I presume were largely based in Tūranga, would have been geographically closer to the land.

A. Yes, well, I mean the – yes, Mangatu head office might have been in Tūranga, but the – the land was far inland, and actually not too far from Whakapaupakihi, so I guess in terms of what Ranginui Walker was saying, yes, Mangatu would have been a lot closer.

Q. Thank you.

A. But the Trust Board of course, had only recently been established and was, you know, gaining experience, and managing farms in this district, with the meagre settlement that it got from the raupatu. So yes, I guess they were looking to expand, but as he points out, perhaps it was, you know, a bridge too far to go all the way to Whakapaupakihi, but I – yes, I just say in response to that it's probably better that, as the owners themselves said, that they do the work, because they are there, but that – that wasn't really a possibility. By then, land development of the sort that had been done in the '30s and '40s just wasn't really on the cards anymore, so that was their loss.

Q. Thank you, Mr Stirling. That is all my questions.

(09:37) MR KENNELLY TO BRUCE STIRLING:

Q. Tēnā koe, Mr Stirling. My name is Mr Kennelly. I am from Te Mata Law. Our claimant – we represent two claimants in this inquiry, Wai 2066 and Wai 1789. The line of questioning I will be asking today will be on behalf of our 1789 claimant, Bella Savage. Firstly, I would like to thank you for including your appendix on Tunapahore land blocks. I know it was not originally part of your brief, but no, we are very grateful for having it included in your report. I agree with some of the phrases of how you word this piece of land. I think you called it "tortuous" –

A. Yes.

Q. – in your summary, and I definitely agree. The whole back-and-forth can get quite complicated.

First, I want to ask you a question. Taina Savage and Hairama Savage are obviously leading rangatira on behalf of Te Whānau-a-Harawaka, you would agree?

A. Yes. Yes. I'm sort of vaguely familiar with them from some of their connections with Ngāti Rangatihi at Matatā earlier.

Q. Yes. And they obviously played a big role in that period from 1885 onwards throughout the Native Land Court, the Appellate Court.

A. Yes.

Q. I think even at page 475, you mention he was even described by Judge Davy as a turbulent half-caste due to his ongoing petitions and involvement in the – let me find it.

JUDGE DOOGAN:

Mr Kennelly, the two names were – could you just repeat those two tupuna names?

MR KENNELLY:

Taina Savage, also known – Savage and Haweti are interchangeable. Sometimes he also goes as Valentine Savage. Also, the second name was Hairama Savage, or Hairama Haweti.

JUDGE DOOGAN:

Thank you.

MR KENNELLY TO BRUCE STIRLING: (CONTINUES)

Q. Just at that page, 475, you say, "If a 'designing Pakeha' could not be blamed for Maori activism, a 'turbulent half-caste' was the next best target for ad hominem attacks that avoided having to deal with the real issues." Can you explain what you mean by "the real issues" there?

A. Well, I mean the issues that are raised in his petition about the customary interest in the time not having really been addressed properly through the court.

Q. Yes, and just to go on that, on the Court, I think mainly the Native Land Court from 1885, you say it was quite common for the Court

to take an expedient approach when the evidence may be too complicated when dealing with – as part of these courts.

A. Yes, well, yes, it's not unusual for judgments to sort of say, "Well, the evidence is all very contradictory and I'm not really sure who I believe amongst these witnesses, and so I'll just – I'll give you half each", that kind of approach.

Q. Yes.

A. It's not unusual. It doesn't really get to grips with – with the evidence, which obviously is, you know, contradictory and some people may have been lying, but that's – that's – the court process is supposed to sift through that –

Q. Yes, yes.

A. – and uncover something approximating the truth, but often, they would give up, and I think you see some really bizarre contradictions between Tunapahore and the blocks next to it, where completely different decisions have come to, and evidence of occupation is sort of ignored or dismissed for some reason, and – and the land given to somebody else. So yes, it is, it's, like, as you said, a bit of a mess and a bit tortuous.

Q. Because then you also get the Appellate Court decision in 1998, which of course changes the decision from the 1885 and then the Royal Commission, and then it's just this constant thing of – of course they're relying on different things to make the decision, and then the outcomes are different, and we see this constant battle now in the courts, don't we?

A. Yes. Yes. Yes, it goes on for a long time.

Q. Yes.

A. Longer than, I think that's the longest I'm familiar with.

Q. I was about to ask you if you had seen anything like this.

A. No, nothing that took quite that long. There are – yes, there are petitions and rehearing's and things that drag on for decades, but not – not 60 years. That's quite bizarre.

Q. And there's also one thing, particularly in regard to Harawaka was that you say at 503 of your report – and this is continuing on from this kind of a mess of this – this land block, Tunapahore, you said that there failed to

be communications with Te Whānau-a-Harawaka about the 1913 Act, and of course they were not a part of the Appellate Court, were they?

A. No. No, they missed out, yes.

Q. And of course, without being present in this, being able to give evidence in this court could obviously impact the outcomes and – for Te Whānau-a-Harawaka?

A. Yes, although – yes, I think because the court on that occasion ended up awarding everything to Te Whānau-a-Apanui –

Q. Yes.

A. – Te Whānau-a-Harawaka were sort of included in that, but –

Q. Yes.

A. – not – yes, I mean, their interests weren't really openly acknowledged, but –

Q. Yes.

A. – I guess Te Whānau-a-Apanui were willing to include them, rather than them being really there as of right through a court decision.

Q. Yes.

A. Yes.

Q. I guess –

A. Yes, but that – that decision was really bizarre, as well, I think, as you can see in the quote on page 503, that the basis for the decision is quite – almost absurd.

Q. I guess that is kind of where I am going with things. From this whole mess, from these decisions from about 1885 until of course that 1940 final, the commission there, it appears that the Crown land systems were just incapable of understanding Māori land tenure and being able to, I guess, provide finality for Te Whānau-a-Harawaka, weren't they?

A. Yes. Yes, that's the end result. It was a bit of a fiasco, and decisions cutting across one another and then the courts actually, at one point, complaining that Parliament had made a mess of it by telling them what it should do, and they pushed back on that to some extent, which just led to another round of petitions and another – another hearing, although I guess by 1945, you know, less and less land was at stake, because other

titles were – were final, so what was finally decided in 1945 was only a small part of the block. Yes.

Q. And of course that crept in as well, the litigation fatigue. You also get the numerous petitions, the courts, the having to travel for these – for these hearings. It – it could be quite – it can be quite tough on some of these – on Te Whānau-a-Harawaka and all those involved, can't it?

A. Yes, well, they – they didn't say too much about that, they more focused on the expenses to which they'd been put, so that – that was something that could be quantified and was, I think, paid for out of the rents of the land, because the rent's sort of been detained until the title was finalised, so yes, it was considerable. The expenses were very large, and there was a lot of travel. I mean, it would be almost like if this Tribunal sat in Wellington and made everyone go down there. You can imagine what it would cost.

Q. Thank you, and I just want to next move to Tunapahore 3, which is from your report, page 543 onwards, and it's the amalgamation of South A and Tunapahore 1A2. This of course left – I think in 1968, Ms Dulcie Bigwood eventually obtained the majority shares in this land block and was able to eventually sell it. From what I understand, is this to be – she firstly didn't have – she was able to obtain these shares through wills and succession orders. A large portion of this land, from your evidence?

A. Yes, yes.

Q. Yes, and from what I understand, is it under the Māori Affairs Act? She would have to have called a meeting of owners before purchasing the rest of the block.

A. Yes. Yes, to get the last shares, if she hadn't already applied, yes, that was a meeting of owners.

Q. And by the time she held this meeting, she already held a majority share. Given that she held –

A. Yes, two thirds, yes.

Q. Essentially, could she have just forced this sale, as the majority owner?

A. That's an interesting question. Yes, I'm not sure of the legalities of that. There might be some finer points in the law, because normally, the purchaser would be an outsider –

Q. Yes.

A. – a Pākehā, and if – if they had those shares, I don't think – it would have to be a quorum based on the shareholding of the remaining owners, I would imagine –

Q. Yes.

A. – but you know, someone with a law background had better look at that more closely –

Q. Okay.

A. – yes. Yes, I don't think she could have rammed it through by just voting in favour of her own purchase. That seems slightly contrary to any kind of idea of justice.

Q. Yes.

A. But don't quote me on that, because the 1953 Act is ridiculously long and very complicated, so I don't want to try and find the right clause in there.

Q. Yes, I have had a look. It is quite complicated.

A. Yes.

Q. That will end my questions, Mr Stirling. I thank you again for your index on Tunapahore.

HOUSEKEEPING – TIMING (09:48:31)

HEARING ADJOURNS: 9.49 AM

HEARING RESUMES: 9.56 AM

(09:56) MS LAMONT-RUSSELL TO BRUCE STIRLING:

Q. Tēnā koe, Mr Stirling. My name is Ms Lamont-Russell. We represent Wai 78, a claim brought on behalf of Ngāi Tai. My questions will be based on issues specifically affecting Ngāi Tai brought up throughout the report, and my senior, Ms Rongo, and I will be sharing our allotted time, so Ms Rongo will follow up with some additional pātai after me. So, I would like to tautoko what my friends have said and mihi to your very extensive research. It has been really helpful to us and our clients. At this stage,

Ngāi Tai does not have their own report in this inquiry, so they are very grateful for all of the additional information that we acquire.

It is clear from reading your report, particularly in comparison to Jane Luiten's report, that Ngāi Tai were in a very different position leaving the 20th Century than they were when leaving the 19th Century. You mention in your report that Ngāi Tai enter the 20th Century in a better position in comparison to their larger neighbours. However, it is quite clear from your report that quickly into the 20th Century, this position was greatly diminished. Would you agree with that assessment?

A. Yes. Yes, they did lose a large area of land fairly quickly, largely through Crown purchasing and some private purchasing, yes, and some of the larger blocks that they had retained.

Q. Thank you. So, I'd like to begin with some pātai about the incorporation of Ngāi Tai land blocks. So, you say incorporation was promoted to Ngāi Tai in particular "for the purposes of streamlining land alienation". That is at the bottom of page 18, if you wanted to have a look. So, were Ngāi Tai singled out due to their prior cooperation with the Crown?

A. I don't think I've got the evidence one way or the other on that. Yes, I mean, I note they were approached even before Stout-Ngata sat and asked to engage in incorporation, so I suppose there was an awareness. Well, that was Carroll who invited them to think about incorporation. He would have been aware that they had – still retained some quite large land blocks intact that might have been suitable for incorporation, and then Stout-Ngata Commission built on that and also suggested it to them, so yes, they did – they sort of proactively engaged, if you like, reasonably early on. But yes, I don't know about the political motives behind that at all.

Q. Thank you. So, the incorporation of Kapuarangi 1 West was done at the investigation of the Crown in order to facilitate its purchasing of the block. The block was successfully incorporated and then sold to the Crown. However, at page 19, in the second paragraph, you state that the Crown later considered purchasing incorporated blocks was inappropriate. Would you agree that the Crown failed Ngāi Tai by specifically persuading

them to incorporate their land for sale to the Crown, only for the Crown to later decide this process was inappropriate?

A. No, I think that just reflects the – the changing legislative provision for incorporation. So initially, it was only intended to facilitate alienation. That's why it was brought into being in the 1894 Act, and I think it was only in the early years of the 20th Century, probably with the, you know, the pushing of the Young Māori Party, Ngata and his acolytes, that it be used more of a way not to sort of alienate permanently, but to alienate by way of lease or by mortgage as a way of raising finance to develop the land, so that was something that was pushed in Tairāwhiti and I think they wanted to replicate here. But its initial purpose was to actually make it easier to sell land, so that – that's reflected in Kapuarangi and the fate of that land, so it basically made it easy for the Crown to acquire, and it's later that they start to think about what's a good way to keep land in ownership and manage it, so they – they stop buying incorporated titles. That's just a change in policy and a reflection of, I guess, the rapidly diminishing remaining land.

Q. Thank you. That is really helpful. Moving on to Crown purchasing, I have a couple of pātai about the Crown's purchase of Kapuarangi 1 West, Takaputahi and a few of the Whitikau blocks.

Ngāi Tai requested for the proceeds for the Crown purchase of Kapuarangi 1 West to be paid to the block committee so that they could pay off survey debt and improve their lands. That is on the last paragraph of page 80. The Crown was well aware of Ngāi Tai's intention, with the Native Department stating that their request could be arranged. That is on page 81, in the second paragraph. So instead, the Crown paid the proceeds individually to each of the 375 owners. Do you know why the Crown did not follow through with this promise?

A. Yes, I think there's probably a clash between Carroll saying, "Yes, that's a good idea" as a Minister, as a politician, and the actual people in charge of completing land purchase deeds and distributing money, who probably see it as their role only to pay the money to the owners on the – on the title, regardless of the incorporation, so there is – there's a disconnection between what the incorporation's there for and how the law around Crown

purchasing operated, so I think they probably saw their position as having to pay the money to the owners; possibly worried about some legal liability from owners who didn't get their ten – ten cents, small shareholders, because the block committee had decided, you know, the money was needed for other things.

But, I mean, it does cut against the whole point of the incorporation of the block committee being, you know, to facilitate more effective collective management on behalf of the owners, rather than reverting back to this fragmentation and individualisation, but I think that's just policy governing Crown purchases at the time clashing with other aspects, and that, well, speaks to the whole history of Māori land legislation. There's just so many different amendments and enactments and contradictions cutting across each other, and changing priorities; brief periods where they want to help preserve land, and then they throw that aside and accelerate alienation. So, it's not surprising you get disconnections like this between, you know, rhetoric and reality.

Q. Yes. Following on from that, would you agree that Ngāi Tai were prevented from economically developing themselves due to the way that the money was paid out?

A. To a limited extent, but the money involved maybe wasn't really enough for the sort of development they intended. I think they were more looking at using the money to clear debt and have some left over for more collective purposes. I don't know that they identified land development that early on, or that there was enough money from the purchases to really make a difference, but they certainly had more collective purposes in mind for the proceeds on behalf of the owners, and – and that was definitely prevented.

Q. Thank you. Moving to the Takaputahi block, the Ngāi Tai owners of Takaputahi had a great deal of trouble receiving rent owed to them due to the failings of the Waiariki District Māori Land Board. This is said throughout page 86.

But I would like to take you instead to the last paragraph of page 88. Here, you say that the Board's failings cleared the way for the Crown's purchase of Takaputahi, despite the Ngāi Tai intention to keep the land

for lease. So, would you agree that the board's mismanagement led to the alienation of Takaputahi through Crown purchase?

A. It certainly contributed to it, yes. I mean, if the lease had been maintained, it would have made the purchase a lot more difficult and probably led to it not proceeding, but if the lessees aren't there anymore and the leases are defunct, well, then, the title is free and open for purchase.

Q. Thank you. Moving now to Whitikau 2B2, you traversed this a bit with Mr Sharp yesterday afternoon, but I have a few more pātai on this block specifically in relation to Ngāi Tai.

If I could take you to page 95 of your report, please, at the second paragraph, here, you detail how, after a mistake of the Stout-Ngata Commission, Whitikau 2B2 was "placed under Part I of the Native Land Settlement Act 1907, rendering it available for settlement" through purchase by the Crown. This was done despite the owners' clear indication of wishing to retain the land for lease. Were the Crown aware of Ngāi Tai's intention for this land?

A. Well, yes, the Commission reported to the Crown.

Q. So why didn't the Crown correct the Commission's mistake, if they knew this was not Ngāi Tai's –

A. Sorry, I say the Crown would have been relying on the Commission's report –

Q. Right.

A. – yes.

Q. So, the Crown were not aware of Ngāi Tai's intention?

A. Just checking that page – no, I don't think so.

Q. So Ngāi Tai were involved in the negotiations for the purchase of Whitikau 2B2, but due to the legislation, the board got the final say, rather than the owners. That is on page 96, at the last paragraph.

A. Yes. Yes.

Q. Would you agree that the Commission's mistake led to the unconsented sale of Whitikau 2B2?

A. Well, it was consented to the extent of the meetings-of-owners system, which is, you know – the inadequacies of which I **(inaudible 10:07:55)** go on about at some length, so it's a very limited form of consent by a very

small number of owners, when, as you've just pointed out, many of them had other – other intentions and other wishes for the land that weren't paid heed to.

Q. Moving to Whitikau 3A2, the Crown purposefully offered a grossly low offer for the purchase of Whitikau 3A2, which you reference at the bottom of page 97. You say this offer was far lower than the – than that of adjoining lands, despite Whitikau 3A2 being worth more. Would you agree that the Crown took advantage of the Ngāi Tai owners' lack of knowledge in these property matters to profit from Māori land?

A. Yes, I'm not sure it's that clear that they didn't know or that that information was somehow hidden. I guess it wouldn't – it's not exactly accessible, but it was in the public domain to some extent in terms of valuation information. But that sort of – it's all part of the Crown's preference to, you know, acquire at the minimum price, which was supposed to be the valuation. It's the valuations themselves that are the problem, being consistently low, lower than market value.

Q. You say that the Ngāi Tai owners, they weren't as good at negotiating as their neighbours. Do you think that would have had anything to do with it?

A. Possibly. There are, yes, examples in Oamaru where – where owners would point to land in Tahora or in – within the Te Urewera district and say, "Well, that was worth 16 shillings an acre and ours is better, so why are you only offering us 12?", but – so some people seemed to have some awareness of market dealings and what was going on with other land, but yes, you can't exactly blame Ngāi Tai for not knowing that sort of information. It's not part of their job to – to pick up all that sort of information, and they wouldn't have had many other blocks to go on by way of comparison at that stage in their area, so they're – yes, they're not in a terribly strong position in terms of negotiating.

Q. Thank you. I would like to move now on to some pātai concerning the Ngāi Tai consolidation scheme, so at page 248 – bit of a jump – so here, you say that the Native Department had to implement consolidation for Ngāi Tai to make further progress with development. Was this due to the amount of rates and survey debt which was imposed on Ngāi Tai land?

A. That – yes, they were significant factors, but, you know, in tandem with that was the drive to try and get the land better utilised. That was always the – the underlying motivation, was to get land producing butter, basically. So yes, but the – the debts on the land were a significant factor.

Q. So, for Te Whakatōhea, the purpose of consolidation was to serve land development, with land development happening before the consolidation process was complete. Why was this not the case for Ngāi Tai, and why was consolidation prioritised before land development?

A. Well, that was always the intention. Whakatōhea were sort of disadvantaged by not having consolidation, because the point of consolidation was to sort out these titles into something resembling a rational economic layout. Which didn't have much to do with custom, necessarily, but would group people together. Then those titles could be developed, so you had an agreed tenure at the start. Whereas Whakatōhea, they just had the same old mishmash of partitions, had development and then later on, they had to work out, well how are we going to allocate these farms and what sort of titles and tenure will there be. So, they got caught up in that great big mess, where I think Ngāi Tai were in a slightly better position because they had consolidation first, then development, and that was the order it was supposed to work.

Q. So, it was just due to policy shift over time, really?

A. Yes. Yes, it's a bit hard to see why. I think maybe Ngāi Tai was seen as more manageable than Ōpape, and yes, the resources were reasonably limited, so only a few consolidation schemes really made much progress, so Ngāi Tai was – was almost an exception, rather than the rule. Even though it was the preferred method of development, was to consolidate then develop, it just didn't happen in a lot of places, so I think it's, I don't know, a matter of almost luck, really.

So, can I take you now to the top of page 257? Here, you say the process of hearing objections to the Ngāi Tai consolidation scheme took a "utilitarian approach", in which Ngāi Tai were, quote, "shuffled about and sacrificed like pawns on a highly fragmented chessboard". So even though the Crown knew of Māori cultural connection to the whenua, the Crown continued to shuffle Ngāi Tai about in this way. Would you agree

that only the Crown stood to benefit from the Ngāi Tai consolidation scheme?

A. Well, you could argue it derived the most benefit, because it got some nice big blocks in exchange for survey costs and interest, but it was intended to benefit the owners in terms of – in economic terms, particularly; that was the focus, was to have titles that were economically viable and held by a small group of connected, usually whānau-based owners, rather than their interests being maybe scattered about in different blocks.

Of course, they were probably scattered about in different blocks for reasons related to tikanga and customary use and rights, but that was kind of set aside for utilitarian purposes and sacrificed. And so, they're put into one title and that's easier to develop and sort of maintain as an economic unit, because that's what's driving everything. So, in those utilitarian terms, it was supposed to be to the advantage of Ngāi Tai. Culturally, that's a whole different question, and, well, I think the damage is probably obvious on the face of it, but it really needs to be spoken to by – by Ngāi Tai themselves.

Q. Which, yes, they will do in their tangata whenua evidence to come. Would you agree, then, that Ngāi Tai got – all that Ngāi Tai got from consolidation – not, sorry – well, would you agree that the loss of a significant amount of land to pay off Crown-imposed debt was one of the major things that came out of the Ngāi Tai consolidation scheme?

A. Yes, well, that was a pretty big effect, yes, and it's quite a large proportion of the land, really. And the other thing they got were these – these new titles. But yes, as you say, the claimants will debate the value of those titles when they give evidence, but they're obviously not – not as valuable as the – the land that they'd lost. I mean, that's quite a significant loss of resource. I think I said it was about a quarter, 20 to 25% of the – the land in the scheme was lost to pay for it, basically.

Q. Yes. Thank you. So, following on from consolidation, I'd like to take you to page 328, where you speak of the Torere development scheme.

On page 328, there is a quote from a Torere farmer about the Native Department taking 40% of their cream cheques, leaving them with

just 60% to run their farm. You said in your conversation with Ms Clark yesterday that what was left from the cream cheque wasn't enough to support farmers.

Would you agree that the amount the Native Department was taking from Torere farmers was unnecessarily furthering their hardship, considering the Crown's knowledge that the Torere scheme was failing?

A. I think it's more a matter of individual circumstances. Some people seem to have got by on the 60% that was left. I think the example I gave was some people who couldn't, who struggled, but none of them were exactly thriving with that amount going to repay the development debt. And particularly given the sort of, the limited economic viability of a lot of the farms. So yes, people were struggling, and those who struggled the most walked off the land or agreed to surrender their farm, and then that would be amalgamated with an adjoining one, and they would be slightly better off. I mean, it was still a hard life, but they did have some assets and chattels out of it, and a regular, if very limited, income. So yes, it's – it's difficult to make a sweeping statement that everyone was struggling, and everyone was heavily disadvantaged, but I mean, no one was really thriving as a – a successful farm –

Q. Yes.

A. – for a very long time, not until – yes, I think uneconomic units were sort of amalgamated and a limited number of larger farms were left, and of course, over time, it's sort of outside the scope of the report, but over time, you know, they would become uneconomic, because the scale of farming keeps increasing. Herds have to be larger to make a, you know, viable return.

Q. Yes, I think you say on page 329 that the Crown official states the Torere scheme was one of the worst unit areas, so I think that's – yes, shows to the – the struggles that Ngāi Tai farmers were having.

A. Yes, well, I think worst in – in their estimation was in terms of economic performance, so they were the ones who were struggling the most in terms of not having income to meet interest payments, or not having a farm that was sufficiently large to – to remain viable, so I think that's their idea of badly performing. They're not really talking about the – the plight

of the owners – rather, the farmers themselves – so much as their economic position, which is, you know, the focus of the Crown.

Q. Thank you. So, moving now to my pātai on the Ngai Tai Iwi Authority, at the top of the last paragraph of page 458 is where I am looking, so you say that funding which was assigned to the Ngai Tai Iwi Authority was given to Te Whakatōhea to administer. Then, over the page, on 459, you state that Ngāi Tai were required to pay a $5,000 fee to Te Whakatōhea for administration to access their funding. Is it fair to say that the Crown's actions here disregarded and disrespected the mana of Ngāi Tai in preference for their larger neighbour?

A. That might be a little harsh on the officials involved. I think it's more that they – they wanted to rely on the well-established Whakatohea Trust Board to sort of look after those assets for Ngāi Tai until they were sort of up and running. Whether the $5,000 charge was fair is another matter that if there's anyone left from those days could perhaps speak to, but I think the intention was that was only ever temporary until they were up – or could get up on their own feet and manage themselves, so I don't think – yes, I wouldn't put quite such a Machiavellian sort of bent on it, but it obviously disadvantaged Ngāi Tai, and it would have seen it as demeaning their mana, but you can see why, in administrative management terms, it might have been sensible to give them time to get up and running.

Q. I have one final set of questions on Tunapahore before I hand the rākau to my friend Ms Rongo. You traversed this with my friend Mr Kennelly just earlier, but I would like to focus on Ngāi Tai in particular here. Your section on the Tunapahore block was quite clear, so I only have a couple of pātai.

From pages 505 to about 511, you detail the time period from 1914 to 1920, when there were a series of petitions from Ngāi Tai and failed promises from the Crown to legislate and amend the matter, but nothing came of Ngāi Tai's complaints until 1945, when their title was finally acknowledged. I think you said that was 60 – 60 years later. Why did the Crown continue to promise legislation to amend the title of Tunapahore

to include Ngāi Tai when it never fulfilled that promise until a much later period of time?

A. Well, hard to say, really. I think the stages of the process are set out there; the petitions, how they're responded to. I mean, politics and timing come into it. There's a war. There's an undertaking to put it into legislation but getting legislation through the House is a different thing back then, not necessarily as easy as clicking your fingers. There's the Native Affairs Committee. So yes, it actually goes on quite a lot longer. There's – there's some other sections of the report dealing with a post-1930 efforts, and then of course that got interrupted by the war, the next war, World War II, so yes, it dragged out.

I'm not – yes, it's a bit hard to just give a simple answer about why there was such a long delay, other than well, it wasn't a priority, and if it had been a priority, it would have been sorted out a lot quicker.

Q. Yes. So, you say on page 524 that Ngāi Tai provided "abundant evidence of their occupation of the western part of Tunapahore" and that every party acknowledged their occupation of that area, yet they were denied for over 60 years, as you have said. The Crown was well aware that Ngāi Tai should be included in the title, as on multiple occasions, it had the intention of legislation, so would you agree that Ngāi Tai likely suffered emotional and financial damage from the loss of title and sheer length of the legal battle?

A. Certainly, yes. It would be enormously frustrating and disheartening.

Q. Ngā mihi, Mr Stirling. I will now hand over to my friend Ms Rongo.

HOUSEKEEPING – TIMING (10:24:42)

(10:24) MS RONGO TO BRUCE STIRLING:

Q. Thank you, Sir. Tēnā koe, Mr Stirling.

A. Kia ora.

Q. Now, the Crown have not made any concessions on the claims that Ngāi Tai have brought before this Tribunal, so it may seem that a lot of our questions might be repetition on what Te Whakatōhea counsel ask, but it is really just that we are trying to get on record the answers,

particularly when it is specifically about Ngāi Tai, so, just to remind you about that.

Looking at consolidation scheme debt, so some Ngāi Tai debt was written off, but not as much as other iwi, and my question is: "What determined whether the Crown would write off debt and how much was written off?"

A. Yes, it's a fairly ad hoc kind of assessment, so, I mean, with Whakatōhea, Ngata sort of pushed quite hard for all of it to be written off, rather than just two thirds, but most other iwi would only get that two-thirds write-off. Most of which really was just interest on the survey charges, rather than the survey charges themselves, and the same with the rates. They were generally written – compromised down to 20 to 30%, sometimes less, and that again just depended on the total amount of debt relative to the value of land. That was the other driving factor, that was how much debt the land could bear, so they didn't want to leave too much debt on the consolidated titles, because that meant you started land development with a handicap, if you like. So, it was really about the value of the debt relative to the value of the land and its productive potential, so it did vary a bit, but despite that, the percentages tended to be fairly uniform.

Q. Could it be because the Crown considered Ngāi Tai had – that the Crown knew how much Ngāi Tai land they had remaining and Ngāi Tai could afford to pay the debt in land, according to them?

A. Yes, well, I guess that would have come out of the Stout-Ngata Commission, which kind of made a point of saying that they were much better off relative to Whakatōhea and were also engaging in incorporation and willing to lease and sell land. So, they were, if you like, the good guys, from the Crown's perspective, and yes, they would have used that information during consolidation to say, well, they can afford to lose a bit to cover these costs.

Q. Okay. Turning to your map handout that you have, plate 4 of your map.

WITNESS REFERRED TO MAP BOOK, PLATE 4

Now, that's the map talking about Crown purchasing, and it is so stark there, when you look at how much bright blue there is that shows how much was alienated away from Ngāi Tai hands by the Crown. And from your report, looking at Torere, the Torere section, so, Torere 1B2,

Torere 3 Lot 1 and Lot 2. We know that Ngāi Tai sold those sections to cover the costs of the survey liens for consolidation as well as the rates compromise, and I had some questions around those. So why did Ngāi Tai have to pay for survey again, when they had already paid for survey of the Torere block when it was originally partitioned in 1909?

A. Yes, with all the titles around here, there were a lot of additional survey costs for subsequent partitioning. Well, I think in the Whakatōhea case, it may have even been older – older survey charges, dating back into the late 19th Century, but I think with Ngāi Tai it was more subsequent partitioning had built up these survey charges and the interest, so that, yes, that was the difference, I think.

Q. Okay, and it just stood out to me how the county council and the court could have these discussions about rate arrears without Ngāi Tai being part of the discussion. Why were they left out?

A. It was more the Native Department, actually, that was involved, or even, you know, Ngata's senior officials would sit down and negotiate that with the councils, basically promising to give them something, as opposed to the nothing they were likely to get, because Māori couldn't pay. I mean, you could get rates charging orders, you could go to court, but at that point, it was quite difficult to get land for unpaid rates. That still needed the Native Minister's consent, and they kind of, they would have known that wasn't going to be forthcoming if they didn't cooperate. So, for them, it was more, you know, a bird in the hand is better than two in the bush that they can't catch. So that's more, yes, the government itself was negotiating that, not the court.

Q. Okay. So, the government and the Ōpōtiki County Council were doing that without any of Ngāi Tai's involvement?

A. Not that I'm aware of, no. It was pretty much a political negotiation over debt. The survey charges were similar, really, except that they did actually discuss with Ngāi Tai which lands they would give up. So, I guess they had a certain say in that, so they might have chosen lands that, relative to others, were not as significant to them in economic terms. Or I think in this case, because it adjoined an existing Crown purchase in the neighbouring block, it made more sense for the Crown to have those

lands. It gave them a larger block for settlement purposes. So, there's those kinds of factors in play. They had, yes, it's a pretty limited option, because the Crown was going to get 5,000 or so acres one way or another.

Q. Yes. So, talking about that, at page 252 of your report, in that last paragraph, that is when you talk about the valuation of Torere 3.

A. Yes. Yes, I should have brought that up yesterday when we were talking about valuation, because it's quite a stark difference.

Q. Yes. That stood out to me. So, Torere 3, now, this is talking about Lots 3 and 4. They were valued at 15 shillings per acre, whereas Torere 3 Lots 1 and 2, only five years earlier, were valued at two shillings six pence per acre. I've got huge questions around that. Why? How? Why was the value discounted. First of all, was the value of Lot 3 and 4 discounted down like Waiohoata B was?

A. Yes, it's hard to know, because all – the only information we've got, really, are the valuations themselves and the sharp differences between them. It's not really explained why. There might be information in valuation records, but they tend to be limited to the valuation rolls themselves, which really just have numbers in them, without much by way of information or explanation.

Q. So do you –

A. So yes, it's hard to know. Sorry.

Q. Yes, do you know why – okay, so you don't know about whether the improvements were discounted down, but do you know why there was such a difference in the valuations from Lot 1 and 2 to Lot 3 and 4?

A. No. No, I'm afraid I don't. It's just, I think, a more up-to-date valuation, perhaps; a more realistic one. Because I know that initially, more land was going to be taken to cover the costs of the Torere consolidation scheme, but when there were objections and some of the blocks were revalued, one of them basically doubled in value, so that meant less land had to be given up to satisfy the debt, so –

Q. I have a –

A. – there was scope, yes, there was scope for land to be more properly valued, but it didn't always happen.

Q. I have a hypothesis. Perhaps it is because the valuation of Lots 1 and 2 were because the Crown was purchasing the whenua, whereas Lots 3 and 4 were valuations done which would whether the farms were successful in their endeavours, and it would show the Crown was successful in its land development scheme, and so a higher valuation would reflect better on the Crown.

A. I think it's yes, a bit early for the development scheme to have had any impact at that stage. I think these lands are largely unimproved, or fairly, well, not Lots 3 and 4, obviously, but the inland portions didn't have too much done to them. I think it's just shifting valuations and people pushing back a bit on a low valuation and having it revisited to their benefit, which didn't always happen.

Q. Closer to where the market was sitting?

A. Yes, well, certainly in the case of the Torere land taken for the consolidation scheme.

Q. Now, I have gone through your report, and I have tried to draw out, based on what you are saying, some pros and cons of consolidation, some benefits and some of the detrimental effects. So, when we look at consolidation and its benefits, you would agree that consolidation was an acknowledgement, or like a formal recognition from the Crown of the difficulties posed by fragmented ownership on decision-making and utilisation of whenua? You would agree?

A. Yes, yes. Yes, it was seen as a solution to those problems.

Q. And you would also agree another benefit, was it grouped whānau members' interests together?

A. Well, yes, if you see that as a benefit. That was an outcome that was sought.

Q. Yes, and consolidation created individual holdings for economic use.

A. Yes, that was the ultimate goal.

Q. Which then gave Ngāi Tai access to loans, another benefit.

A. Yes, under the development schemes, yes.

Q. Yes. And it also provided certainty of tenure for the farmers, Ngāi Tai farmers.

A. Yes.

Q. Yes. Okay. That is about as far as I got with the benefits. Now, looking at the detrimental effects –

HOUSEKEEPING – TIMING (10:36:08)

HEARING ADJOURNS: 10.36 AM

HEARING RESUMES: 10.40 AM

MS RONGO TO BRUCE STIRLING: (CONTINUES)

Q. So, the detrimental effects of land consolidation, an obvious one is it was set up to facilitate the transfer of land through lease and sale.

A. No, I think it was set up to facilitate the retention of land in a more economically rational way. Yes, and if there was going to be a lease, it would be preferably to one of the owners, you know, as a development farm, yes. But obviously land was lost to pay for it, but the land that was left was supposed to be retained. That was – that was the point.

Q. I think that's the example I had, was the immediate alienation of Torere 3 Lots 1 and 2, you know, that –

A. Yes.

Q. That was alienation, yes. It also actually facilitated the collection of rates. Again, we see that from Torere 1B2, and then continuation. It did kind of put you on the radar for the county council to –

A. Yes. Yes. Well, yes, I guess, well, the intention was that you would be producing an income from the land so you could pay those rates, but that was dependent upon development finance, which was fairly limited.

Q. Yes. Consolidation severed connections with specific parcels of ancestral whenua. You would agree with that?

A. Yes.

Q. And follow-on from that, it sometimes required the relocation of some iwi members.

A. Yes.

Q. Consolidation required additional survey and additional costs. We have established, that, yes?

A. Yes. Yes.

Q. Which resulted in charging orders or even a loss of whenua?

A. Well, you might have to remind me of the specific losses, other than the initial –

Q. The initial, yes, charging orders.

A. – the initial 5,000 acres, yes.

Q. Yes, and those charging orders, or that would provide pressure, for example, Ngāi Tai, to sell land to cover those debts, as what happened.

A. Yes. Well, yes, that would come into play, yes, as a potential factor.

Q. And one thing I came across, too, is that there was a failure to create holdings of an economic size, so they all tended to be quite small.

A. Yes, well, I think if you look in the map book, yes, the large number of titles, and most of them are still pretty small. So, there's 47 sections in the pā and then 65 sections in the larger areas inland from the papakāinga along the coast. So yes, well, I think I've made the point that it was basically a stop-gap measure, consolidation, so it might be a suitable title at the time of consolidation. But within a generation, you're going to be back to square one, because there are more owners.

Q. Well, yes, exactly. That was my next point, is that it didn't actually address the root cause of fragmentation and succession.

A. No. Well, yes, that was never really addressed.

Q. Yes, okay.

A. I think it got to the point, by the 1960s, I think, that people just assumed that was some kind of Māori custom, when it had always been imposed by the court.

Q. Okay. Let's move on to the land development scheme in Torere, and I couldn't quite find in your report whether it was Ngāi Tai landowners that worked the unit farms, or whether there were some farms that were worked by locals that weren't necessarily of Ngāi Tai descent. We will address this in tangata whenua evidence, but do you know if there were any perhaps locals that were not Ngāi Tai that were working Ngāi Tai whenua?

A. I think I generally assumed if they were Māori, they would be Ngāi Tai, because generally, the farmers were selected from among the ownership

group. Well, that was the ideal. Sometimes an owner might put up a Pākehā husband for instance. But there was still that connection with the owners, and well, with the children, obviously, who would be Māori.

Q. Okay, we will keep an eye on that.

A. Yes.

Q. I did another exercise where I tried to pull out the benefits of the land development scheme and the detrimental effects on Ngāi Tai. Some of the benefits that I identified is that the land development scheme represented an important shift in Crown policy towards active Māori engagement.

A. Well, that's a positive spin to put on it, yes.

Q. Yes, yes, a benefit, yes. So, it had Māori working on their whenua.

A. Yes, certainly. Well, it wasn't like they hadn't been working on it, it was just they hadn't really been given any help to do so. So, the scale of the work they did was very limited and unable to really advance them economically.

Q. And that comes to my second point about how the lands were able to receive basic improvements, because individually, Ngāi Tai couldn't necessarily fund it themselves. Such as, like, fencing, putting down grass, clearing scrub, those sort of things that –

A. Yes.

Q. Yes, and it also provided employment opportunities?

A. Yes, certainly, in the initial stages in particular, and that was during the depression, so it was a way to soak up the unemployed.

Q. Yes.

A. Unemployment relief was a quite big subsidy to the initial few years of development.

Q. All right, and that was not actually covered in the costs on the land development scheme, was it, it was from a different fund? Yes.

A. Yes, it's a different pool, so that didn't form part of the debt.

Q. Yes. So –

A. But it was quite limited. I mean, there are some tables in the report. I mean, it was a few hundred pounds, but that was kind of, you know, more money than the locals had seen for a long time, but divided up amongst

the number of people involved, it seems quite a tiny sum, but it was welcome, certainly.

Q. It was a lot clearer for me some of the detrimental effects, actually, of the land development scheme. I did notice, actually, I couldn't find clearly defined objectives. It wasn't until 1950 that I noticed that the development – that the Department clarified its development philosophy, and you have got that at page 333 of your report, but other than that, I couldn't see really clear, defined objectives of the land development schemes. Would you agree?

A. Well, I think the difficulty is they changed over time, so at the outset, it was really about getting Māori on the land, and also developing the owners, so, through supervision and management. It wasn't so much training, which is what Stout-Ngata had recommended long ago, but it was some form of supervision to get them up to speed, to train them to be farmers. So that was the initial objective, and then once the debt built up, the focus kind of shifted to just getting the money back, and it didn't matter from who. So, that's when you start to get – doesn't necessarily have to be an owner who gets the farm, and that's, yes, the philosophy shifts quite markedly.

Q. Yes.

A. So, I think that's been discussed in secondary sources in some detail as long ago as Claudia Orange's thesis, I think, in the 1980s, that the focus shifted from, you know, helping Māori develop their land, helping get the land into production, getting money back. So, it kind of becomes more and more utilitarian as you go on, and that just reflects, I think, changing government priorities.

Q. Another effect I noticed was it took control away from Ngāi Tai and it placed it with the Māori Affairs Department.

A. Yes.

Q. That was another detrimental effect.

A. Yes. A quite significant degree of control.

HOUSEKEEPING – TIMING (10:48:52)

MS RONGO TO BRUCE STIRLING: (CONTINUES)

Q. So, the schemes frequently prioritised regional development, rather than the protection of iwi ownership. Would you agree with that?

A. No. No, I think the focus was a lot more localised within each scheme. There's a national output that's sought, increasing national production. But yes, I don't see that as clashing with the idea of localised support.

Q. Okay. I did see there was some poor decision-making by Māori Affairs, and I particularly want to note that Tanatiu Nahiri, in your report, how he was removed from his farm and declared a failure, and then he took up some abandoned property and was then quoted as having great success. So perhaps there was some poor decision-making by the Māori Affairs over the Torere development scheme.

A. Yes. Well, yes, there's a few examples of issues like that. I think that the ragwort issue was mentioned yesterday. There was, I think, Kirihaehae Mitai was farming some land, which she thought she had permission to do from the Department. But then they decided the bit she was farming was needed by some stock they were driving from the East Coast to Waiariki to help Te Arawa. So, they ran the stock onto her land and they stripped out all the grass and left her with nothing, and then said: "You didn't have any tenure anyway; I never told you that." So, you know, they've got those kind of issues come up that are at a personal level.

Q. Now, because Ngāi Tai were not involved in decision-making, I saw that as a real big, missed opportunity to develop their management skills and their skills in that regard. Would you agree?

A. Yes, certainly. Yes. I mean, the advisory committee had a very limited role.

Q. Yes.

A. Yes, and that's the problem, I guess, with the schemes that emerged here become a larger, sort of station-oriented big farms, they needed buy-in from a sort of owners' committee that had a slightly, yes, better role than anyone did here. Because it's a more individualistic focus, I think that's the problem.

Q. I also notice that it really only offered one way to benefit economically, and that was through dairy farming, and I know that they brought on sheep to clear the ragwort. But that was just to supplement the dairy, and I know today, for example, Ngāi Tai enjoys success with avocadoes, macadamia nuts, kiwifruit, but they weren't really offered. It was really just dairy farming during these schemes, wasn't it?

A. Yes, well, to be fair to the Crown, no one knew what an avocado was back then. But yes, it was a very narrow focus on small dairy farms. I think I mentioned that yesterday. Because that was seen as more fitting with the Crown's idea of what a Māori farmer should be. Like, some of the rougher land probably should have been in a larger parcel and run as a sheep station, for instance, or for cattle, not dairy.

Q. Or forestry.

A. But yes, it was kind of a philosophy built around dairying, because of the work ethic, I think, that's involved in it. They decided that's what Māori needed, and it's a lot more individualistic than a large station would have been that might have been run by a collective.

HOUSEKEEPING – TIMING (10:52:34)

MS RONGO TO BRUCE STIRLING: (CONTINUES)

Q. An obvious detriment is that it encouraged small farms with low-level productivity, so there was little growth opportunity.

A. Yes, that's reasonable.

Q. Okay. I will leave my other ones. They are obvious from your report. Turning to Europeanisation of Māori title, that is one of my pet peeves, I think, because it is so obvious what the goal was in this. But just as a bit of a refresher, the 1967 amendment to the Māori Affairs Act allowed registrars in the back office of the registry to identify sections that had four or fewer owners and then, in that office, transfer them from Māori land to general land. That's a good summary so far?

A. Yes.

Q. Yes? So, the registrar did not need consent to do this, and they did not need to notify the owners. That is right?

A. That's correct.

Q. Yes. So, it was very common that Māori land was transferred to general title without the owners' knowledge or consent, and even some –

A. Yes, certainly, yes.

Q. – and sometimes, it was even picked up by the county council and rates started to be charged on that property. That's right?

A. Well, that would be a pretty likely outcome, certainly.

Q. Yes. So, the protection –

A. I mean, although it was liable for rates as Māori land anyway, but obviously it was easier to extract payment from general land.

Q. So, the protections that were actually placed on Māori land that was not in production, that was removed, and the owners were often caught off-guard. You would agree with that?

A. Well, I don't know that I identified examples of that, but that would be an outcome, certainly.

Q. Yes, because they were not notified, and they did not need consent to do it. So, I know in other inquiries that some owners did not actually find out their land was general land until a notice was put in the newspaper via the county council seeking to sell the land due to rates and trying to find owners.

Now, that got me thinking, because there were two sections of Ngāi Tai that I want to bring up with you, and I think the easiest way is just to look at plate 13 of your handout, which is entitled: "Titles Europeanised", and it is the Ngāi Tai sections, Torere section 10B and Torere section 45, which is in the Waiohoata parent block. Now, I have gone through your report, and I have not managed to find what happened to these sections, beside a few Public Works takings that were taken from section 45 for a road. But they're not currently listed as Māori land or in Māori-owned general land, so do you know whether these sections were then transferred to general title and lost from Māori hands?

A. Well, I don't know that for sure, but that's a pretty likely outcome, and that was what most frequently happened. I think the problem is, yes, the research that is done for an inquiry like this tends to cut off at the point of Europeanisation. And so, unless it shows up as current Māori land

because people go back to court to have it declared Māori land again under Te Ture Whenua. Then it's not going to appear in the records that either Tribunal staff or I look at, so yes, it requires more detailed title documentation. You'd have to follow the title through the title system, and that costs quite a lot of money, as well as time.

Q. But this did not last long, though, did it, Europeanisation? No longer than a decade?

A. Well, seven years, yes.

Q. Yes. But it would have been easy to identify which sections had been the subject of this action, for them to go back and reverse it?

A. Yes, I'm not familiar with reversals before Te Ture Whenua came into effect, but yes, there may have been a process for that under the amendments to the original 1953 Act. I think, you know, land owned by Māori could be declared to be Māori land. But yes, I couldn't quote the section at you or anything, I'm afraid.

DR GRANT PHILLIPSON:

Can I just say there, perhaps, Ms Rongo, that when it was abolished, the Crown could have empowered registrars to do the opposite? Talk to the owners and put it back in Māori title if that was what they wanted. Is that what you were meaning?

MS RONGO:

Yes, that is what I was meaning.

MS RONGO TO BRUCE STIRLING: (CONTINUES)

Q. Do you want to comment on that?

A. Yes, well, that's a better point.

Q. Yes, okay, and turning back to the "Crown Purchasing" plate. This is my final question, really just a wrap-up of the Ngāi Tai position. Plate 4, again, of your map handout looks at Crown purchasing, with those big blue blocks that were lost from Ngāi Tai hands. Would you agree, in conclusion, that Crown purchasing, consolidation and development schemes substantially weakened Ngāi Tai's ability to retain their lands?

A. Well, certainly, yes.

Q. And those outcomes were foreseeable, and I would actually venture to say the goal of the Crown?

A. No, I think I said with respect to consolidation and development, the intent there was for land to be retained and for Māori to be able to make better use of it in terms of economic output, so yes, Crown purchasing and private purchasing, that's a different matter. Europeanisation, that's a different matter. But consolidation and development were ostensibly, you know, to assist Māori, despite the detriments that you have outlined.

Q. Thank you. Those were all my questions. Thank you for your answers.

HEARING ADJOURNS: 11.00 AM

HEARING RESUMES: 11.26 AM

(11:26) MR LINKHORN TO BRUCE STRILING:

Q. Tēnā koe, thank you very much. I'm not trying to eulogise you ahead of time, of course. But like the other counsel, I suppose I have reflected on just your facility with the materials to pull so much material together into a single report across the 20th century. That reflects your long experience in the area. So, I want to acknowledge that because we all benefit from it, in getting one witness who speaks to the topic. Whereas, you know, decades ago, in inquiries, this would have required a number of witnesses, probably, for this volume of material.

So, yes, I think that's testament to your facility with these topics, and some of my questions are you know, trying to drill down into, well, what about this particular thing. Please don't take that as nitpicking, it's more that when someone like you has been across so much material, we are just going to want to check for some of those things. But I'll start with the thanks for producing all of this.

So, could you go to page 9, and I'll give the page numbers and if it turns out we don't need to really dwell on the passages, then we will just move along faster.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032, PAGE 9

But at page 9, you are talking about, this is sort of, the last bit of the top paragraph: "If land under Part II was to be alienated by lease, the district Māori Land Board would act as agent… If the Commission recommended land be leased to Māori". Now, I just wanted to clear up, Part II land could only be leased to Māori, couldn't it?

A. Yes.

Q. I don't want to ignore the exception, as it were, but the exception is really quite limited, isn't it, and I'm thinking of section 57, which is that the exception form the requirement that Part II land only be leased to Māori was where the lessee wanted to assign it to someone else. And if that someone else was non-Māori, in other words, pass on the lease to someone else. If that someone else was non-Māori, you actually needed the minister's consent for that, or the other exception is if the lessee wanted to enter into a sublease and that sublessee was non-Māori, you also needed the minister's consent to that. But the basic proposition, Part II land only leased to Māori is a starting point, isn't it? Sorry, that's the starting point –

A. Yes.

Q. Part II land, only lease it to Māori.

A. Yes.

Q. Yes, correct, right. So, down the bottom of page 9 and going on to page 10, you make some observations about Ōamaru 1C and how this was a block that was shared with Ngāi Tūhoe. I'm thinking you must of made a bit of a guestimate here, but it would be worth just making that clear. You say there, "if half of Oamaru 1C is deducted as belonging to Tūhoe". Now I was under the impression that the majority of non-sellers in Ōamaru 1C were Tūhoe, rather than Whakatōhea. So, does that cause you to want to adjust your assumption that will just sort of half the block, or is halving the block still the best kind of guestimate to do for these purposes?

A. Well, I'm working from the commission's own figures, so, it's about half, you end up with the number they have used. But the number of owners isn't necessarily reflective of the shareholding either, so you can't just go by number of owners.

Q. Fair point.

A. Yes, so it stands as a bit of a guess.

Q. Thank you.

A. Sorry, the guess is on the part of the commission –

Q. Yes, and that's what you are reflecting?

A. Yes.

Q. All right, page 11. There is a paragraph beginning: "Another motive for the Commission making the poorer blocks in the hinterland available for Pakeha settlement was that this enabled stronger protection for the Opape blocks on which many Whakatōhea were forced to rely for occupation." I couldn't see that in the report, as motive. Is that you inferring that from a sort of stance taken by Stout-Ngata.?

A. Yes, that would be my inference.

Q. Thank you. Next then, page 13, bottom of the page, paragraph beginning: "This is not to say why that some of the confiscation district grants were not significant to their owners". Then you have listed some there, over the top of the next page, and I wonder if there's an omission here. You have said, in the Waiotahe blocks, you haven't identified Waiotahe 386. Now this just might be a matter of detail that it's not possible canvas orally with you right now. But I wondered if that had been left out and whether there was a reason for that?

A. That's Te Ahiaua, the pipi reserve, is that 386?

Q. I'm just trying to think –

A. Well, it was only 12 acres I think, from memory, if that's the section that came up yesterday.

Q. Probably a bit hard to recall right now. But can I, by asking the question of you, I suppose, in terms of what will be on the Tribunal's transcript, identify for us all that we should chase down whether Lot 386 Waiotahe should be in that list there?

A. Well, no, because I was listing the more significant ones, by which I mean, larger.

Q. I see.

A. I think 386 is relatively small, it doesn't really slot in there, so these are the biggest grants.

Q. Yes, and these weren't properly sorted out as grants until 1912, were they?

A. Yes, as I understand it, yes. Well, particularly for Te Waru and his peoples grants that took a long time.

Q. Okay, page 15, midway through the top paragraph there, you say: "Of the remaining Ngāi Tai lands it noted 18,431 were already under lease, while another 29,240 acres were under negotiation for lease." Now, you might have cleared this up in answer to other people's questions over the last day, because I ended up being more confused by the table, I'm sorry. But can I put it this way, am I right that much of the Ngāi Tai land already leased or under negotiation to lease had nothing to do with the Stout-Ngata recommendations, this was prior activity. Did I hear you say that in answer to earlier questions, or if not, is that the right thing to take?

A. I'm not sure if I said that, but yes, it was already there, or it was on the way to being there. So, that effectively got ahead of the commission, if you like.

Q. Yes, and did you say in answer to questions earlier today, as to what you suspected was going on there in terms of dialogue with Ngata, for instance, or others?

A. I think the areas under lease preceded Ngata's arrival, but yes, they would have been speaking to him and saying, other lands, that 29,000 acres, were under negotiation for lease, so he would have reflected that in his findings.

Q. Thank you for that answer. Just moving topics then, to incorporation on page 20, where you say: "Kapuarangi 1 West was the block to be incorporated in order to streamline a Crown purchase, the process being more to the Crown's benefit than that of the owners." I suppose I'm just wanting to get really clear what the reasoning is here for why a streamlined purchase that was negotiated following incorporation was more to the Crowns benefit.

Let me put it to you this way, because we think about what Stout-Ngata said about the outcome of this purchase. Can you make comment in light of that, and perhaps I will just read you a section from Stout-Ngata on this: "In the first place, Kapuarangi 1 West Block was incorporated for the

purpose of sale to the Crown. The sale was completed with little trouble, with the minimum of expense to the Crown and at a price satisfactory to the natives. The proceeds were carefully allotted by the committees, first towards the discharge of existing incumbrances on this and other tribal lands, and secondly, among the owners according to their relative interests. The area sold to the Crown in this manner was 11,474 acres. There were happily absent from the transaction, those incidents which usually mar the purchases of the Crown where Treaty, with individual owners is necessary. Once it was decided by the people in meeting, to sell to the Crown and a committee was lawfully appointed for the purpose of carrying out their desire. The rest was a matter of bargaining between the Crown and the land purchase officer."

So, there's nothing said here really about a lower price, or disenfranchised owners or anything of that kind. They are actually complimentary of it, in the report, aren't they?

A. Well, I discuss that later in relation to the purchase itself, which doesn't seem to reflect what Ngata is saying, that's the first problem. But what I meant by, to the advantaged of the Crown was that it only had to deal with the block committee. It didn't have to go around and hustle with a purchase agent to sign up every single owner. Which is a process that often took a year or more and involved agents going to different venues and harassing people at tangi and court sittings and that sort of thing. So, it was just a matter of signing a deed with a block committee, so that's very much to the Crown's advantage. It doesn't really advantage the owners because the block committee's rights didn't extend to controlling the purchase proceeds, which is something we discussed earlier.

Q. Does that mean you try to have it both ways, because you say, well, when the Crown went around picking off individuals, you know, that was to the disadvantage of Māori that couldn't retain their ability to act collectively. Here you say, when the Crown only had one group to deal with because they were acting collectively, that was to the Crowns advantage. I'm not, you know – yes there's something there about dealing with the whole community at once, but it's not a one sided thing, isn't it? We need to also consider the advantage to the community in the transparency that

resulted from that, compared to the criticisms of one by one, picking off dealings, don't we?

A. Yes, well, that's a factor in it. But I think the problem arises later, where, you know, the committee's rights sort of end at the point they sign the deed. That seemed to be the essential outcome, so the advantaged to the owner's kind of vanishes at that point. But yes, obviously, it avoided the more sorted sort of aspects of that individual purchasing. That was a feature, you know, more in the late 19th century.

Q. Thank you. Just moving to page 23, the second to last paragraph. The paragraph that begins: "The Court responded", down at the end of that paragraph, there's a sentence: "Despite this condemnation, when the Court opened the next morning, Akuhata said that Honetana be withdrawn in favour of Hiria Tauawhi. In the absence of any objections this was approved." I just wondered if you had any insight for the Tribunal on the meaning behind this change. Was Hiria Tauawhi related to Hoera Katipo in some way, or can you cast some more light on this as to how and what?

A. I don't think I can, no.

Q. Okay.

A. But I would note that Hoera, yes, did feature in quite a few of the incorporation applications as an objector. So, I think this is why he is getting quite strongly criticised by this point, he's kind of seen as an obstructive force. Then, well, there is obviously a meeting overnight and by the morning things are sorted out. That's not uncommon either, for things to be arranged out of court and that's why it's difficult for me to say because it's not done in court, it's not recorded.

Q. Okay, thank you. Pages 26, I think, going on to 27, there's a paragraph beginning at the bottom there: "The lessee John Kane was a Gisborne chemist (later a solicitor)", that's a pretty unusual career path, isn't it. Well, you are talking there, about a rental, 6 pence per acre more than the usual rental of 5 percent of valuation. Then the 1913 valuation was double that, of the 1909 valuation. But of course, at the time of the offer, what bearing would the 1913 valuation have on the timing of the offer, which came before that valuation existed.

A. None, obviously, because it's based on the 1909 valuation. But I think it's sort of the point that was made earlier in relation to valuations that they tended to be under market value. So, perhaps, rather than rely on a government valuation, if a special valuation or a specific valuation had been done. It might have been something closer to the 1913, but I mean, obviously that's speculation because we only have the two valuations to go on and the sharp rise between them.

Q. And to be clear, both of them are government role valuations, aren't they?

A. Yes, yes.

Q. Yes, and should be just deal with it right now, because the conundrum here, isn't it, that that valuation had to serve a number of purposes, had to serve, sort of rating taxation purposes and it was an underpinning of land dealing purposes as well. Wasn't it?

A. Yes.

Q. And are you aware of sources where senior valuation officials, later, sort of address that conundrum?

A. Well, I'm not sure what the conundrum is.

Q. Well, I think you have identified, and sorry if I'm putting words into your mouth, that there's a tension between people wanting these valuations to serve the purposes of rates and land taxes and so on. Also, alienation purposes, where on the one hand, people want the highest possible valuation for alienation purposes, as the seller, and they often talk about wanting lower valuations for rates and taxation purposes, don't they?

A. Yes, yes, that's not uncommon.

Q. So, there is a sort of, fitness for purpose question, I think, implicit in your critique of using the same valuation for these disparate purposes that are in tension with one another, aren't they?

A. Yes.

Q. Just back to the chemist/solicitor John Kane, and then of course, it goes on to be Frances Sharp, I think you say, later on in that passage. This is an illustration isn't it, by the time Mr Sharp's on the scene, there's a split rental being paid reflecting different valuation assumptions for different parts of the land, isn't there? Like six pence for one part and nine pence for the other?

A. Yes, yes, he paid both those prices for different areas within the lease. Well, one price for one area, and another price for the other area, which, presumably, one is seen as less valuable than the other.

Q. Does that cast any doubt on the total reliance on role evaluations? Does it suggest that there was in fact an element of a market mechanism here?

A. Yes, well, it's getting more precise in terms of the area that's effected by the valuation, so, you are getting a slightly more accurate figure, I guess, for some areas. It's higher for some and remains low for others.

Q. Over the page please, page 27, I think it actually goes on to 28. Towards the middle of the last paragraph on 27, you have a sentence beginning: "This comes to a total of £593." You then mention an earlier survey, "of which £312 had been paid for through land taken by the Crown". I couldn't quite trace from your reasoning here, where that £312 that had been paid through land taken by the Crown comes from. I say that because I think you write, later on, at page 80, that there was a survey charge of £78, 2 shillings **(inaudible 11:46:33)** and that the Crown sought an award of 312 acres. I'm wondering if there's a transposition there, of pounds per acres.

A. That's starting to look quite likely, I think, isn't it.

Q. So, when we are back up at pages 27 and 28, and you have said there, "of which £312 had been paid for through land". I'm wondering if, in light of what you say at page 80, you are meaning that 312 acres valued at about £78, had been the price for that. Do you want to just quickly check that across pages 80 and 27 to 28 to see if that's a fair interpretation of what's happened there?

A. Sorry, I think it's actually page 83.

Q. Sorry, new pages, page 83.

A. Yes, that's my error, so thank you for finding that.

DR GRANT PHILLIPSON ADDRESSES BRUCE STIRLING – REQUEST FOR REWRITTEN SENTENCE IN EVIDENCE (11:47:51)

MS LINKHORN TO BRUCE STIRLING: (CONTINUES)

Q. Look, I don't want to labour this unnecessarily, of course, but I also wonder if there is a sort of, conflation of different surveys, possibly, and because then there's Royal Commission in 1903 and transformation into two blocks. Purchase of Kapuarangi 1 West by the Crown in 1908, 1 East is retained by its owners. Then we get to that 312 acres point, and then you have Judge Brown in 1911 as president of the Waiariki Land Board. He requisitioned a peripheral block survey as a precursor to the leases that were signed the previous year.

I think you have actually talked about that case, so I think, and this is sort of diving into your document bank at page 5445. But how about I suggest we don't go there unless we really need to, but I've just given the reference for people who want to look at it later. What you have that page of your document bank is Judge Brown, I think, talking about how there was a requisition to Mr Ford, Matthew, surveyor and this was the periphery survey. Because the block was surrounded by Crown land and the Crown was to pay part of the survey charges. Then goes on to say, there's no actual authority that has been issued for the subdivisional survey.

Then they talk about the delay in their **(inaudible 11:49:47)** of the periphery survey and then they talk about how Mr Matthews, the surveyor, is actually going to get paid. So, the total amount certified for survey was £760, and this was paid by the Crown to the order of £312 and by the owners of the other land to the portion of £447. The payment of the native proportion was guaranteed to the survey department by the original lessees of the subdivisions, including the defendant, is what Judge Brown is saying in that case.

So, in summary, having given a little pottered summary of what's in the document bank of that page. Is it your understanding, Mr Stirling, that Judge Brown requisitioned this peripheral survey in 1911, and the total cost of that was £760 pounds, split, as I have just described. Then the subdivisional survey was organised by the lessees in 1915 and cost £145 pounds. There are, of course, various issues preventing the completion of that.

So, I just wonder, if in light of all of that, you would accept that it's a bit of a red herring to say that these costs came after several parts if Kapuarangi had been taken by the Crown to pay for survey costs. So, earlier costs representing different surveys and survey purposes, and these later ones are for different purposes also, so we can't really, safely conflate them all as the same thing, can we?

A. No, I think that's a pretty fair summary of the situation that you have delivered, so that's very helpful.

Q. Okay, all right then. Back to Mr Sharp, the lessee, page 28. In a Stirling turn of phrase, if I might say so, you start the paragraph: "Sharp did protest too much:" it's a sort of journalistic element there, I thought. And "he had wanted to get out of his lease as early as May 1911, when transferred his lease to Evans and Brocklebank for £750. This gives some indication of what a bargain the low rent was". Can I just sort of see if that really holds up, because if we think about adding £750 to the cost of the 50 year lease. It's an additional £15 a year that, in effect, in real economic terms, moves a £102 per year rental to 117, so it's an increase of roughly, 8 to 9 pence per acre. I just wouldn't read much into those numbers, as to whether they are telling us about the sort of, the real economic value of the land in a market situation. As opposed to the deal that Sharp had got when Sharp had come on the scene. Do you think that's fair to say let's be careful before we say that this is a great example of the sort of the undervaluation?

A. Well, I mean, it adds up to a significant sum that the owners certainly weren't getting by way of rent because they kept getting the original rent. So, it might only be a few pence per acre, but it's going to add up year by year, to a considerable sum, so you know, there's pretty small margins here and quite low rents. So, even that small increase would have been significant to them had they been able to benefit from, but obviously they weren't –

Q. But we need to keep in mind, it's a 50 year lease, don't we?

A. Yes, yes. But I mean, it wasn't going to be fixed for that 50 years, I think there's rent reviews built into it.

Q. Well, I'd argue that supports my point, Mr Stirling, doesn't it? That it's not such a significant change, as you have suggested in that sentence and paragraph. Do you have any comment on that?

A. Well, I might just say that that sum of money is a hell of a lot for the owners relative to the income they were getting, so it may have been spread out over time. But they weren't seeing any of it and that's the sort of income that they are missing out on, so it might not be a lot per year, but it does add up. I mean, the rents themselves are quite low anyway, but even that amount would have been significant to them.

Q. All right, well, moving to the top of page 29. There you say: "Meanwhile, the owners were getting no rent." Example here, "had not received any rent since 1915." But are you just jumping the gun slightly there, because in 1920, there was rent paid, wasn't there?

A. Yes, well, I'm assessing the situation in 1919, and the complaint is, yes, they haven't had any rent.

Q. So, the commissioner of taxes comes to the Waiariki Māori Land Board asking for land tax and the board said, can't pay it because all the rents being distributed to the owners. You are aware of that? That's your document bank page, 5485, just for reference. So, the board says: "The board was not aware that tax was outstanding for the period mentioned in your letter of the 17 May last, and consequently, any funds received were distributed to the beneficial owners. The lessees now are considerably in arrears with his rent payments and the board is instituting proceedings for its recovery."

A. Yes, well that seems to imply that there wasn't any rent paid. He's saying, any rent paid was distributed, but no rent had been paid so, it seems to me, a general statement –

Q. Okay so –

A. – if they had any rent, it would have gone to the owners –

Q. So, this is a rather clever letter by the board, for tax purposes is what I'm taking your answer to be. But there may in fact, have been no rent paid is what you are suggesting we examine –

A. Well, that's the complaint from the owners, yes.

Q. Yes, I mean, I take your point though, that I'm talking about 1920 correspondence. All right, so, let's then go to page 29, at the paragraph at the bottom of the page: "Despite barring itself from purchasing the block and despite the land being required for Māori occupation, the Crown had no compunction in letting someone else buy it, as one of the lessees proceeded to do." I'm just not clear why you are saying that the land was classified as required for occupation. Was it Part I land, or Part II land in terms of Stout-Ngata?

A. That's a challenge to my memory.

Q. Can I suggest it's Part I, rather than Part II and if you can't say, you know, right now, let's not spend a lot of time on that, because we now have it on the transcript and we can go and figure that out.

A. So, we are talking Kapuarangi 1 East? Yes, well, that was available for lease, not under Part I, but for lease to Māori or Pākehā rather than directly for settlement, well that was the classification in 1908. So, it's not Part II, but it's not actually Part I in terms of sell, it's land to be leased.

Q. Well, Part I also includes leasing, doesn't it?

A. Yes, but they have listed them separately. They list, settlement, they sort of meant, alienation lease is a different category.

Q. Yes, but it's still under Part I, isn't it?

A. It's still under Part I, yes, but it's not meant for sale, or that wasn't the intention at the time.

Q. Of course, the commission, Stout-Ngata, also noted, didn't they, that the bulk of Whānau-a-Apanui lands are still Papatupu, estimated it from 40 to 50,000 acres. Do you recall them saying that?

A. Yes, I don't think I paid too much heed to it because I wasn't really looking at Te Whānau-a-Apanui, but yes, I'll take that point.

Q. All right, pages – the very last word on page 29, over to 30: "For reasons that are not evident, he did not proceed with the purchase until 1919" and down in that paragraph, "improvements was nil, indicating how little Kane had done as lessee". I didn't follow and I'm wondering if Tribunal members also might have this question about what you meant by indicated by the low rent he was paying. Like, what's the measure of low

rent, he was paying 6 pence an acre, and that was five percent of the valuation in 1913 and then again in 1920.

A. I think we discussed earlier that the rental was based on the 1909 valuation and the valuation in 1913 was considerably higher.

Q. So, the six pence per acre was agreed in 1910, it was based on the £750 valuation in 1909?

A. Yes.

Q. Is that actually five percent? I won't hold us up here, I'm just wondered –

A. – **(inaudible 12:00:16)** those calculations earlier I think –

Q. Yes, when you are saying –

A. – we traversed that.

Q. Sorry, you go.

A. No, no, no, I think we went through the rent and the two different valuations already, 1909, 1913.

Q. Okay, I'll leave that. the next question is about 31 to 32, the paragraph beginning at the bottom: "Kane's success inspired another leaseholder to try to purchase." "This was the area previously leased to Sharp who had immediately on-sold it to Evans and Brocklebank, who later sold the lease to Peryer, a Gisborne farmer." You are suggesting that Peryer's interest in the lease seems speculative. I'm not sure I have the pronunciation of that man's surname correct. So, I wanted to take up this point about that and about the rental. Can I just start with the end point and see if we agree, so we don't need to spend time on it. But it's pretty clear, isn't it, that Peryer, or perhaps, Rob, had paid the rent up to 31 December 2020, minus the commissions. Do you accept that?

A. I thought the main issue was that the rent wasn't being paid.

Q. That's why I'm asking you the question.

A. Yes, so, as far as I'm aware it wasn't paid and then it wasn't paid, I think it's Peryer –

Q. Peryer, okay.

A. Either, yes, there was quite a well-known photographer called Peter Peryer, some decades ago in New Zealand, so I think that's how it's pronounced.

Q. So, if one wanted a different perspective on that, the Tribunal could look at pages 5415 to 5416 of your document bank. Because it looks like there's correspondence there, enclosing rent and asking for what else is required to complete the rent 31 December 2020. So, I'm wondering if your conclusion in the body of your report at 31 to 32 is either wrong or certainly overstated as to how much rent was missing?

A. No, I haven't gone into the figures of what rent was missing.

Q. Right, but we can go and consult those two pages of your document –

A. Yes.

Q. – **(inaudible 12:03:15)** material.

A. Yes.

Q. So, then, moving on with the story I suppose page 32 –

DR GRANT PHILLIPSON ADDRESSES MR LINKHORN – WITNESS TO GIVE ANSWERS IN WRITING (12:03:20)

MR LINKHORN TO BRUCE STIRLING: (CONTINUES)

Q. Then, now, page 32, there's a sentence: "Once then went into bankruptcy", you see that –

A. Yes, sorry, that should be –

Q. I'm presuming there's a name of a person missing after the word, once?

A. Yes, I believe it's Peryer.

Q. Right, but you know that there were judgments and subsequent payments, so, there were proceedings right, for the debt.

A. Yes, for two years rent. Yes, that is set out in page 32.

Q. And judgment was entered, wasn't it, for £224, 14s, 11p. Do you recall that?

A. Yes, well, I have a different figure there, but yes, that may have been –

Q. Perhaps –

A. – the complete total –

Q. Perhaps you have £208 and then of course, costs on top of that and so –

A. Yes.

Q. Page 5470 of your document bank will help people chase that down if they want to. Then there was a follow up, and there's a follow up piece

of correspondence, with a check to return some money as according to statements and there's a further payment to be paid by the defendant to settle the judgment. Six months is nearly up, so make payment, this is page 5473 of the document bank. Then, it's correspondence of 5480, we forward you a check for £109 1p, being the balance of judgment against the above name, to which we have managed to secure after considerable difficulty. We should be glad if you kindly acknowledge receipt of the check on the enclosed form, et cetera, et cetera, et cetera. So, in other words, it's the full judgment of two years rent was received by the Waiariki board, minus the legal fees, wasn't it?

A. Yes, yes.

Q. And then there was – I mean, I put to you that you are stating a criticism of the land board in a varying with negligence on their part, when in fact, they were diligent at getting the money in, weren't they? Even when there was a, you know, bankruptcy or similar in the wind.

A. Well, I think the criticism was more directed at the lessees, but the board is sort of controlling them and managing them, so ultimately, it's responsible to the owners –

Q. But you are saying

A. – for failure.

Q. You are saying the board later accepted an offer from Peryer to pay just half of the judgment against him, but his solicitors and agents took £33 of this in costs. I just, I don't – I'm suggesting that that's not what ultimately happened and that the infer criticism of the board for compromising like that isn't warranted here?

A. Yes, I take your point there. Well, they did initially accept that sum, but as you went on to point out, they did follow up and get the rest.

Q. Of course, then there was more rent, let's not labour the story too much. But the 1920 to 24 rent was paid as well, wasn't it? Eventually, even though it took until about 1929. I beg your pardon, I think I have that slightly wrong. In 1929, there was correspondence indicating that the 1920 to 24 rent had been paid, but the 1925 rent onwards was, by that stage, seriously in arrears.

A. Yes, yes, I think – well, I sort of picked that up at page 34.

Q. Yes, thank you. Sorry, I just wanted to close that off.

HOUSEKEEPING – TIMING (12:08:01)

HEARING ADJOURNS: 12.08 PM

HEARING RESUMES: 12.13 PM

MR LINKHORN TO BRUCE STIRLING: (CONTINUES)

Q. Thank you for bearing with us, everyone. We really are dealing with some points of detail but I'm sure the Tribunal will want to get these things accurate, and in the 20th century. Just the share volume of material really proliferates as well as the number of schemes and operation, provisions to deal with. So, can I take you to page 36, Mr Stirling, you have a section there, 2.4 that starts to discuss Whitikau and this really is a point of detail because in the last bit of that paragraph you say: "This is an error in several respects: Whitikau 3A1 (1,854 acres) had already been dealt with by the Commission, and it seems to have instead meant to refer to Whitikau 3A2".

So, we are talking about the commissions mistake here and you are thinking they meant to refer to 3A2. Can I suggest to you that they meant to refer to 3A4? Because we look at the profile of that, that's a 530 acre section at the northern end of Whitikau 3A that was cut off in 1904 on an application by Te Wetini Taku. I can't find the number of owners for that, but it would have been more than the 11 noted by Stout-Ngata and presumably, the ownership originally was in common with all of the original Whitikau 3A owners.

If Whitikau 3A1 had 43 owners at the time of partition, then 3A4 had at least that number, if not more. That 3A4 block was purchased in 1911 for 785 pounds, and so, just offer you the opportunity to comment on whether your guess, that meant 3A2 might be replaced by another guess that they meant 3A4?

A. Yes, it's some pretty good digging.

Q. Okay, then on to page 41, talking about an application for incorporation. That first complete paragraph on the page: "When it the application for incorporation was first called on 6 December", that paragraph, Paora Taia asks for an adjournment, explaining we are busy planting. Now you have this down as an incorporation hearing, and I just wonder if that contradicts Ms Luiten – I'm just trying to remember. Is it possible, following Ms Luiten, that this is a relative interests hearing? I'm saying that because I want to suggest to you that it's not until, when you say over the page, 42: "It was not until April 1909 that the Whakapaupakihi 2 incorporation application was resumed." I'm saying, well, was that the actual first hearing for incorporation in 1909, do you recall that?

A. Well, I'm just looking at that case in December, that people explicitly referred to not approving of incorporation and opposing it. So, presumably, that's because that's what the hearing related to.

Q. Or that incorporation was in the wind, but they were sorting out other stuff first? I mean I'm picking that there might be a discrepancy between your account here and Ms Luiten, and it will need to be chased down.

A. Yes, well, that's possibly something to follow up in writing, I can certainly clarify it, one way or another.

Q. Would you mind? Thank you.

A. No, that's fine.

Q. Okay, so, that's really pages 41 to 42, because on page 42 you say it was not until April 09 that the application –

A. Yes, well, I think I'm relying on the minute books there, but I think if I did a bit more digging, I could dig out the Kahiti and the application would be advertised there and that would clarify things.

Q. Yes, thank you, good thinking, I should have done that –

A. Well, no, I should have done that myself, but I can do it now.

Q. All right then, change of scene slightly, page 45, underneath that table about leases, you say: "There is a reference to a 42-year lease of Whakapaupakihi 4 to an owner, Wiremu Haeata, in 1910 but no details have been located before his short-lived tenure ended in 1911, when the lease was transferred to Quirk". When you say, "no details hace been

located", does that mean that you are not really sure what Mr Haeata's role was in the various hearings, or that you don't know who he was?

A. Well, I don't know about the details of his lease, because I'm going on a later summary of particulars of title that's referenced in the footnote. So, I don't have much information about his lease.

Q. Right, but you know who he was?

A. Not in great detail.

Q. Right. Can you help me here, is he the man that was one of the driving forces behind the effort to incorporate? Did he also go by aliases, Wiri Raiti and William Right?

A. I can't answer that.

Q. Do you know whether he was involved in efforts to reinvestigate title to the returned Whakapaupakihi blocks, saying that they should have been vested in his grandmother? Heneriata Haeata, rather than Whakatōhea generally, it should have been a Ngāi Tama interest. Do you recall any of that?

A. No.

Q. Page 47, this is a very minor point. You, in the first sentence, talk about disbursements to the owners of Whakapaupakihi 4 and another disbursement to the owners of Whakapaupakihi 4. But because I think you are talking about the same timeframe, I'm wondering if the second reference or one of those references is meant to be to Whakapaupakihi 2?

A. Is this the bottom paragraph?

Q. See, if you look at the next sentence – yes, bottom paragraph, you are starting off –

A. Sorry, yes.

Q. – in that first sentence talking about four and four and in the next sentence you talk about two and four, and I'm wondering if the first sentence is also meant to talk about two and four, isn't it?

A. Yes, yes. Thank you for that, that's a typo.

Q. So, page 48 then, top of the page: "The Board's figures as to how much rent it had disbursed were challenged by William Oakes." I'm wondering if you have a misattribution here, because the letter that you are using

there is not written by William Oakes, but by Henry Elliot who says he's spoken to Oakes. Is that what you were meaning in the way you wrote it? In other words, Elliot writes the letter – it's quite a bit of correspondence actually. And he's obviously had Oakes as an informant, does that sound right to you?

A. Yes, well, the source is obviously Elliot's correspondence.

Q. Right. So, then carrying on with this story here at page 48 to 49, this is the bottom paragraph: "He was told to contact the Waiariki Board for his money (rather than the Tairāwhiti Board). The only indication that either of the Boards improved the distribution of the rents is the absence of subsequent complaint". But there is more here, isn't there, because the registrar reported setting up a system for making payments through the Waiariki Board rather than the Tairāwhiti Board, didn't they?

A. I think, yes, they may have eventually, but I think they then wanted to charge them some sort of commission, which I think annoyed people as well, it's the same money around –

Q. For pushing the **(inaudible 12:23:02)** –

A. Yes –

Q. Yes –

A. That may have been another block that involved Waiariki and Tairāwhiti interaction.

Q. Well, am I right, that we are still talking about the same correspondence from Mr Elliot, Mr Elliot's letter referencing his informant, Mr Oakes because what the £500 referred to by Mr Elliot was, was rent up to a certain period and the board saying yes, more than half of that has been distributed through them, I think. I just wonder if that's really crucial information regarding the responses of the Tairāwhiti land Board to complaints about them being too far away or the wrong people for distribution and convenience. It should have been done through Waiariki, because it was here, wasn't it?

A. No, I think that was the problem. That some money was going through Tairāwhiti and that annoyed the people in Ōpōtiki that wanted them to come through Waiariki.

Q. Look, I just don't have my source for this, that I can see easily, so I might have to follow up in writing on that, if that's okay to the Tribunal, by producing a source for you to consider in fairness to you.

A. Yes, thank you.

Q. page 48, at the bottom – no, sorry, I think this is higher up: "The Board rejected the complaints, insisting that half of the £500 paid on Whakapaupakihi 2, besides which", this is in the middle of the first paragraph. So, they were insisting that half had already been distributed, weren't they?

A. Yes, yes.

Q. And just not quite clear what your argument is, are you arguing for a return to collective ownership here, because you say at the end of this passage, especially considering the large number of owners, small payments, low rentals, the tendency of the Act to lead to this level of fragmentation. Am I right to infer from that, that you are saying, well, if we look at the distribution of rental proceeds, we can just see the failure of fragmentation. And that it would be better to disenfranchise individual owners to enable the pooling of money collectively. Because otherwise, the distributions are small and meaningless, is that what you are jumping ahead to? Which I think is a sort of policy theme later in the 20th century, isn't it?

A. Well, no, it came up pretty early with incorporations and when land was incorporated for sale and the block committee would sort of, try to meet and discuss with the owners what to do with money. It turns out, well, it wasn't their decision to make, and the money would just be paid out to the individual owners and whatever tiny little shares. But no, I think you are kind of reading too much into that, I'm actually just directly quoting what Judge Carr said, or the President Carr, from the board.

Like, so basically, they paid half the rent, I mean I don't know if that deserves a pat on the back, because they haven't paid the other half. He just says, the rents small and there's a lot of owners, so it's not really that big a problem. You know, the payments are not as large as is considered, so there's not a lot at stake. So, I think that just speaks more to the boards, kind of indifference in administration.

Q. Right.

A. And I mean, it's useful inference you have made that maybe a block committee, if it was incorporated, might have done it differently and more in line with the owners wishes. But that's not a point I was trying to make.

Q. Okay, no.

A. But it's a useful one.

Q. Page 49, first complete paragraph there: "Two of the Whakapaupakihi leases contained a right of renewal." And were renewed for another 25 years, the rental was increased for the remaining 25 years to the term of the other one. In other words, 1 and 3 were renewed, 2 had an increase in rent for the remaining 25 years. So, I'm just trying to see whether we can really say that the incorporated owners feared worse than the unincorporated. In other words, what's the practical different between a 25 year lease, with a right of renewal compared to a 50 year lease with a rent review? It's economically the same, isn't it?

A. Yes, well, I mean yes, that does point to, what was the point of incorporation. I think the point was lost under the 1909 Act when the boards took over, so essentially, it did make no difference.

Q. But we can't really say that the incorporated owners feared worse than the unincorporated here.

A. No, well, I don't think I have said that.

Q. Then just further down, 49, the paragraph beginning: "The pending renewal of the lease of Whakapaupakihi 2 in 1937 may have been what prompted the Block Committee to update its membership." This goes to a point you just made. If the block committees are completely sidelined by the board by this stage, what's going on there with the renewal work of the committee?

A. Well, I guess they still had a desire to maintain –

Q. Can I suggest we read into this, that they are not as sidelined as you generalise –

A. Well, they have no rule of administering the lease, so they have been sidelined, all they can do is sign the new lease and that's their role ended. So, I mean, that's why they would have needed to have an up to date committee membership, but that was a limit of their role. So, it really was

just about alienation, not management or administration of the block or its income. So, yes, and I think you make a valid point that it doesn't make much difference whether they are incorporated or not, and that really, is the problem, it should have made a difference.

Q. Now, at page 54, you have started discussing the previous page, Awaawakino B and Waiohoata B. You say at the top of page 54, final sentence or two: "This indicates the issue was more than about establishing a papakainga (added to which Waiohoata A is very large for a papakainga block)." I just read that and thought, are you bringing to this, some sort of generalisation about what a papakāinga is, that's very narrow definition compared to what these people here meant, because of the way their community was organised.

In other words, if you look at on the ground here, it's plainly going beyond housing and into other aspects of communal or allotment allocated style living, gardens, orchards, small farms. The papakāinga wasn't just the housing is what I'm saying here, and you have said this indicates it was about more than establishing a papakāinga. But maybe it was about the papakāinga, because the papakāinga these people wanted and needed was bigger than what one might just assume. Is that fair?

A. No, I was factoring in all that stuff, cropping land and communal purposes, and individual, maybe, allotments. But it still seemed like a very large area for something called a papakāinga area, 1,700 acres of the better land, so that seems a lot. Relative to what's normally set aside, as owner reserves if you like.

Q. Well, it sounds like we are agreed that there is something distinctive to pay attention to here. Which is that this community, perhaps they were particularly organised about what they wanted and needed and insisted on. And said, no, no, no, that's going to be our papakāinga for, and of course, this also has classification purposes, doesn't it, as to what's going to be offered to outsiders for lease.

A. Yes, well, that's a valid point, I think it was picked up, maybe at the consolidation scheme stage as well, where the Torere pā sections, as they are called, seem to be essentially, the similar sort of papakāinga area. Are also quite large, relatively speaking and there's 47 separate

sections in the pā, so, I mean, that's a lot for a pā, or a papakāinga, they just called it the pā. So, yes, that's a valid point you have made.

Q. Just, you know, thinking about our, sort out geography here, we shouldn't perhaps, be surprised that this was how those people were living given the narrow coastal, flat land and the very steep land immediately behind it, right?

A. Yes.

Q. Okay, thank you. Moving then, to page 64. First complete paragraph there, sort of end part of it, the sentence beginning: "His response is not on file, but a purchase was extremely unlikely as the Crown was statute-barred from purchasing land in the protected Ōpape reserve, something it appears to have overlooked here." I wonder if there is a bit more to this, because the Native Land Amendment Act 1913, section 17(f), that barred the Crown from purchasing land that was defined, very specifically, for the purposes of that legislation, by sort of an incorporation by reference. By moving to a definition in the G1 paper, which I – what is **(inaudible 12:34:26)** G1, is that Stout-Ngata?

A. Yes.

Q. So, in other words, incorporating by reference, something that Stout-Ngata had said, it incorporated by reference, the lands that were reserved for occupation and the Crown couldn't buy those under the statute. But the lands that we are talking about here, if we are talking about Ōpape 8 and Ōpape 6, the balance, they are on page 8 of Stout-Ngata, and they were Part I lands recommended for general settlement. So, I'm wondering if you have read the prohibition on Crown purchase too broadly, without realising that it distinguished between Part I and Part II lands?

A. Yes, that's sounding quite possible.

Q. But that will be something that the lawyers can really chase down, in case the way I have put it is not quite right.

A. Yes, no, I think you have described how I've read it and set out in detail that that might not be the correct reading.

DR GRANT PHILLIPSON:

Mr Linkhorn, when I read that section of the Act, I thought it just said Ōpape. What is the exact wording in that section?

BRUCE STIRLING:

Yes, I think that's what I was going off as well.

MR LINKHORN:

So, this is the great thing about definitions, isn't it, and fair enough, Dr Phillipson putting me on the spot instead of me just trying to put Mr Stirling on the spot.

DR GRANT PHILLIPSON:

I'm just asking for clarification, actually.

MR LINKHORN:

Yes, so, paragraph (f) of section 17 of the 1913 Native Land Amendment Act describes this prohibition and it describes it as applying to the Ōpape Native Reserve. Then, crucially, subclause, it says: "As defined in the Parliamentary paper at pages 6 and 7." You see, so –

DR GRANT PHILLIPSON:

Okay, well I just totally ignored that and just thought it said Ōpape. Thank you for that.

MR LINKHORN:

And so, what Mr Stirling and I were just discussing was some other lands described on page 8, so it seems to me that it's an incorporation by reference of a definition that is only part of what we know of as the Ōpape lands. But it's those that were required for occupation rather than for others.

DR GRANT PHILLIPSON:

It begs the question of why that's necessary if it's already Part II land – but we won't –

MR LINKHORN TO BRUCE STIRLING: (CONTINUES)

Q. We won't go there with Mr Stirling just now, but something for us, I think, in terms of legal teams, to focus on. I think this, though, over the last days exchanges with Mr Stirling is probably a point that's come up a few times with you, Mr Stirling, having been under the impression that sort of, all of Ōpape was off the table as it were for the Crown.

A. Yes.

Q. But this appears to suggest that's not the case, doesn't it?

A. It does.

Q. So, pages 70 to 71.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032, PAGE 70

At the bottom of 70, the paragraph beginning: "It is evident in this inquiry district, as in so many others, that private purchasers were prepared to pay more". I have a question about Takaputahi. I couldn't find it proclaimed as excluded from private sale. So, I wondered if in fact, we might be able to locate indications of private offers, do you think it might never have been proclaimed?

A. Seems unlikely, I mean, it's a pretty standard step for the Crown to take when it wanted to protect its negotiating position.

Q. Right, so we can chase that down as to whether it was the subject of a proclamation, and can you remind me just what date range we should be checking there? I suppose you actually have to go quite early, don't you?

A. Yes.

Q. Because the proclamations could be renewed –

A. Sort of, 1908 to 1912 I think, by the time it was completed.

Q. Right, thank you, that's very useful, Mr Hunt. I mean, you are giving an indication there, that private offers existed, you see.

A. Yes.

Q. Yes, and let's just turn our minds to Ōamaru 2B, do you think there were any private offers competing with the Crown during the Crown purchase of Ōamaru 2B? You are saying there, see at the end of that passage, 70 to 71: "Similarly, in Oamaru 2B private purchasers were offering higher prices".

A. Yes.

Q. And are you saying that therefore, there was no proclamation effecting that, because if there was a proclamation, those higher prices were beside the point, weren't they?

A. Well, not beside the point that the Crown wasn't really paying what the land was worth, I mean, that's sort of what I'm getting at. Whether there's a proclamation or not, sort of by the buy, and if there had been any serious competition, a proclamation would be the result. But yes, I mean, I've referred to higher offers, so I presume they are detailed in the report, I can't find them right now.

Q. I couldn't either, all right. Seventy-eight, second to last paragraph, middle of the paragraph: "Despite Gill's interest in pursuing the officer" is probably offer?

A. Yes, probably is.

Q. And "the government's initial response was to reject it". I know you have answered us a question of clarification, but I can't find an indication that Gill was considering the offer as it was made to Akuhata Takatua. Can you help me there? I mean, he appears to ask for details of the survey liens, I just wonder if what's really going on here is someone is trying to make arrangements about survey liens or alternative arrangements about survey liens beyond the conventional ones.

A. Well, that would be a factor in the purchase, if they knew about survey liens, that was leverage they could use. It's also why he says they should incorporate because the corporation was designed to facilitate the Crowns purchase. So, I'm reading that as him being interested –

Q. Him?

A. Gill, I mean, there's no point in suggesting they incorporate unless the Crown wants to purchase.

Q. Well, is it possible, instead, that Gill's not considering purchase at all, but is just engaged in a discussion about survey liens?

A. No, I think the discussion about survey liens is sort of separate. That's after they have decided they are not interested in anymore purchasing, because they have temporarily discontinued it. If they want to clear the survey liens, they'll have to pay in land.

Q. So, the correspondence moves on to that second topic, is what you are saying?

A. Yes.

Q. Okay, thank you. Page 85, bottom of the first complete paragraph there: "Based on the rental being five percent of the land value the rents offered indicated the tenants thought the land was worth 10 shillings per acre in 1908 and would rise to a value of £2 per acre by 1928." I just wonder, can I get your comment on whether we need to take a bit of care with these, kind of reverse lease value calculations? It's a useful rule of thumb isn't it, for implying a capital value of the block. But the rentals didn't always follow this formula, they could be higher, couldn't they? It wasn't an invariable rule that they would just be five percent.

A. No, no, the five percents before the minimum.

Q. Yes, so, when we imply these capital values from noting the rental, we just have to keep that in mind, don't we?

A. Yes, yes. But it's more a rule of thumb than anything else. I mean, there's the odd exception, but they do seem like exceptions.

Q. Yes, so, or my point is, just that we just take care not to say that that's definitely the capital value where implying it. But I'll move along –

A. Yes.

Q. Page 85, also, you are talking about calculating royalty of 6p per 100 feet of rimu and thruppence per 100 feet of kahikatea. Then you say: "Despite this, the tenants apparently paid nothing for the timber." If the royalty was due for any timber harvested, but no royalty was paid, that implies the tenant didn't harvest timber, right?

A. Quite possibly, yes.

Q. Page 90, where you say, top of the page: "Despite the 1911 valuation of just £25,000, when a resolution to sell was put… the price proposed and accepted was… a total of £49,000 which was more than twice the supposed valuation." I have noted your response to our question for clarification as to what the source of the valuation was. I'm just wondering if that counter offer and acceptance was one that included timber in terms of people revising considerably upwards, their value of the block, or do we just not know?

A. Yes, well, I don't think we know, yes. I think the board is just saying, this is what private purchases are offering, so they sort of needed to match it, and the private purchasers may have been thinking about the timber. But it's hard to know, I think I made the point that the Crown didn't really factor in that timber value until many decades later.

Q. So, it sounds like here, they did, because of the market pressure from the existence of competing offers. Is that fair?

A. Well, we don't know the basis of the competing offers, whether they were factoring in timber, given the nature of the land, it does seem rather likely.

Q. I mean, it's just such an uplift, isn't it, that we have to look around for some kind of inference as to why it's suddenly jumped to £49,000.

A. Well, I mean, it's not unusual for those valuations to be out by that amount, those are all valuations. I mean, there was the land that was to be included in the Torere consolidation scheme. That doubled in value during the process. So, in the end, less land was taken to satisfy the survey lien because one of the blocks had leapt in value from £250 to 540 –

Q. Just wanting **(inaudible 12:47:27)** this one –

A. – Yes, **(inaudible 12:47:27)**. So, I mean, my point was that the valuations tend to be well below market value and I think this is just more evidence that reflects that.

Q. This was also a tricky time in terms of run up in values and then a considerable pull back a bit further after World War I, wasn't it?

A. Yes, well, that's getting on from nearly a decade later, it was a dramatic slump in the early 1920s, this is, yes, a decade before then.

Q. So, at page 91 then, you are dealing with this very unusual situation I think, where describing something that was higher than the recent valuation, much lower than the price private purchasers were prepared to pay. We don't have documentary records of these sort of purchasers putting stuff in writing like this, do we, so we don't quite know how much of a bargaining chip this was.

A. No, well, I think, yes, we have the information that is set out in the report. You might dig a bit more out of the documents, but yes, I think that's the essence of it.

Q. Yes, so when this other person refuses to tell the president who else was in this, “syndicate” or even to make a definite offer on its behalf, this is your page 91. Does this cast any dealt on the legitimacy of the £1 10s per acre price. Is it possible that this is just not a credible offer, that this person is putting up, but refusing to evidence? I ask it because otherwise, why did the owners accept the lower offer if there was in fact, more on the table?

A. Yes, well, I presume it fell through. But they passed on the information about what it was, so they seem to know a bit about it.

Q. Hence my suggestion, well, is this a bargaining chip, but wasn’t able to be substantiated in any sense. Fell through and then they take the other offer.

A. Yes, well, it's not really a bargaining chip for them –

Q. Well, they hoped it would be –

A. **(inaudible 12:50:06)** for Rogers – well they hoped it was, but I mean, the one driving it is Rogers, but he’s clearly in a slightly awkward position being on the board.

Q. Is it fair to conclude that just wasn’t a credible offer then?

A. Well, it didn’t go through, it's credibility can’t really be assessed, other than the fact that it did not succeed.

Q. I'm just meaning as an offer, not a transaction.

A. Yes.

Q. So, in other words, an offers credibility might cause it to be pursued further or rejected? That’s all I'm exploring with you –

A. Yes, well, you can’t really know anything about it until it's put in writing. I mean, they would have had to make an application to the board for confirmation. If they didn’t, well, there's not really any information to go on other than what the owners have passed on, which was the price –

Q. Okay and just to close off –

A. – and the fact that the offer existed is sort of acknowledged by Rogers, but he refuses to expand upon it. So, you know, obviously it was something they were thinking about, and they didn’t go through with it. You can’t take it much further than that.

Q. All right then, moving on to page 96, the second paragraph after the table: "The next step in this streamlined process", you say: "It called meetings of owners at Opotiki to consider the purchase of each for the legal minimum price, being the government valuation". I just wondered what your evidence was that it was an offer of government valuation for these blocks, because I couldn't find the offer documents in your document bank. I thought the wording of the resolutions suggested that they hadn't in fact, received, an offer. Just bear with me, the motion to sell Whitikau 3A4 to the Crown at government valuation, but not less than 30 – what are we talking at this point in time, sorry I have lost my train of – 30 shillings, pounds?

A. 30s.

Q. 30s per acre, was carried unanimously, that's 3A4 and 2B2, the motion to sell the block to the Crown at government valuation, but not less than 40s per acre was carried unanimously. In other words, if government valuation didn't come up to speck with those minima, it wouldn't happen as the tenure of those resolutions, isn't it?

A. Yes.

Q. So, I'm suggesting, well, I take from that that they didn't know what the next government valuation was going to be at that point in time, because obviously, it was obviously mid cycle, was it?

A. Yes, given the references, earlier to 1909 valuation, I guess, and 1913, I guess 1911 kind of falls in the middle. But yes, the current valuation, which maybe dates from 1909, seems to be the basis of the offer, and they are asking for more.

Q. In other words, they have set some minima there, and if the government valuation came to that, then fine. But if not, these are our minima is what they are saying by those resolutions, right?

A. Yes, yes, I mean, it's almost a demand for a revaluation or a special valuation, which was something that was often done for Crown purchasing. That would be more up to date, so –

Q. All right, moving along. I think my page reference for this next one is slightly wrong, it might be your old pages. I had a page reference of 116, but I think when I went to check it this morning, I decided it was wrong.

So, can I just read you your passage: "However, by 1942, the Oamaru 2B blocks had been re-valued and found wanting: their pending reserve status seems to have rendered them virtually valueless". It is page 119, Mr Hunt tells me. I wondered if what's really going on here is a big re-evaluation by the Crown of the purchase of land for settlement, versus a move towards seeing land for conservation purposes.

A. Yes, well, I think that's the same point I'm making there, the pending reserves status.

Q. So, the Crown was looking at land that it would never intend to sell and trying to appraise its value in light of that.

A. Yes.

Q. Thank you.

A. I think, a few pages further on in the end, that the price managed to be increased because they started factoring in the value of the timber. Even though, of course, the timber wasn't going to be harvested, but it did still have a value.

Q. Yes.

A. So, that sort of boosted the price, and that's not uncommon. I think we had examples of that in the Tararua Forest Park, in the southern North Island purchasers there in the 1960s.

Q. Moving along to page 130, in the middle of that page, you have a paragraph beginning: "Similar improper pricing practices by Burch in Te Urewera – which can scarcely be said to constitute a proper valuation – have been criticised by the Waitangi Tribunal". So, you are referring up higher, to some valuations there that occurred, just above. I wasn't sure whether these were special valuations or from the 1908 role. Do you know whether they were special valuations under the 1909 Act?

A. No, I'm not aware of that. I thought that was covered in the written questions of clarification –

Q. Sorry if I have missed that answer –

A. But I don't know if it was or not, but I think this did come up. But I think that the issue was, he didn't actually follow valuation practice by working out what the land was worth. He looked at what it might sell for if the Crown bought it, cut it up and put a road in, and surveyed it, and then

discounted a certain amount from that, and said, that's the price we should pay. That's not a valuation, that's the Crown working out what profit it can make and at what price. So, I think that was the issue that particularly, it was quite a significant feature in Te Urewera. The same man, Birch, was doing it there –

Q. So that's more of a sort of, a Crown offer method rather than a, get evaluation and then see whether your Crown offer might be in **(inaudible 12:57:32)** of that?

A. Yes, but the problem was, the legislation required a minimum price of valuation.

Q. Yes, no, I understand. Moving to page 136, where you say in the last sentence of the bottom paragraph there: "In any case, had they been considered it is all but certain that the Commission's conclusion that Māori in the district were already essentially landless". I just wonder if you have gone a bit wide there. The point I want to make is that that was the commissions conclusion in respect of Te Whakatōhea. But they didn't make any such conclusions about Ngāi Tai or Te Whānau-a-Apanui at that period, did they?

A. Yes, that's a useful clarification.

Q. Then, I might squeeze in one or two more before the break. Yes, we will try for this next one at page 173, because I think this is quite an important point that you have been making in criticising board confirmations. You say here: "By any definition, Hariata Parekaramu was landless, but the Board blithely confirmed the purchase. As on so many occasions, it failed to undertake even the most basic inquiry into such shonky schedules." Which I thought was quite colourful, but I just wonder if there is a factor that you may have missed here.

So, if we just think about our facts briefly, we are considering the situation of an elderly woman in the care of her whānau. Then when we come to section 91 of the 1913 Act, what the board is tasked with, among other things, is evaluating whether in all the circumstances, this particular land is likely to be a material means of support to that person. And what happened here was that Joseph Carroll, who was a man who was going

to receive the sale money in trust for Ms Parekaramu – that was before the board asked for it.

He submitted a statement in support, which is at page 6352 of your document bank, and it's an affirmative declaration. He solemnly and sincerely declares a number of things, that she's the vendor, she has a good knowledge of her affairs. That there was a lease, that he has no interest in the transaction, and then here we go, for the ones that I really want to dwell on.

At four of this declaration, he says that she is in failing health and is residing with her married daughter who is prepared to take full care of her mother and has done so for some time past. Fifthly, that she is in receipt of old age pension. Sixthly, that I, in other words, the person making the declaration, am of the opinion that the interest on the proceeds of sale to be effected by the said transfer, will be greatly in access of and will be of considerably more assistance in maintaining the said Hariata Parekaramu than any income she may receive from the said lands as owners.

So, it's obvious, isn't it, that the clause in section 19(1) of the 1913 Act was used in that case, by the board. That the proceeds were going to be held on trust and the interest of them was going to exceed the returns from the land. So, therefore, the board could conclude that the lands weren't going to be a material means of support.

A. Yes.

Q. So, this wasn't the blithe confirmation, shonky schedules and what have you. This was a proper confirmation on the legislation as it existed at the time, wasn't it?

A. Well, I mean, that legislation was to enable landlessness to occur with those criteria met, that you have gone through. But the landlessness still had to be defined before it could be set aside and they don't seem to have done that.

Q. The consequence of the legislation was that landlessness occurred, but it wasn't the purpose of the legislation, was it, as expressed in the legislation?

A. It was to provide for alienations to occur that would otherwise result in landlessness –

Q. Alienations under a set of safeguards and evaluations, wasn't it? Whatever we might think of them today, that's what they were.

A. Yes, well, the legislation wasn't as detailed as Carroll's affirmation. But it was merely that it had to not be a means of support or that the vendor had other means of support like trade or a profession, or a spouse who could support –

Q. And it didn't conflate at that time, the connection to whenua being important in tikanga and cultural terms. It had a focus on how a person, an individual, met their living costs, didn't it?

A. Essentially, yes.

Q. So, just finish perhaps, at this point, for the lunch break, by saying, I just put it to you that that's not blithe confirmation. That's the board receiving an affirmation from Mr Carroll that went beyond the pure required terms of the statute and set out in some detail, what was going to happen here, including holding the proceeds in trust.

A. Well, I mean, yes, that's another aspect of the board's operations, was holding that money in trust, which is a whole other story. But I think it's Carroll who is not acting blithely, rather than the board.

Q. Well, the board could rely on Carroll's work and this one doesn't fall into the shonky schedules, blithe confirmation slander, does it?

A. Well, it's not slander, it's a fact. Those schedules show landlessness, that's not acknowledged, and the transaction proceeds because of other reasons and they are normally done with much less information than Carroll provided. So, it might not be a great example, but it certainly is an example of the process, and I picked it out there because I don't deal with the township blocks in any detail in the rest of the chapter, so there's plenty of other examples moving through the subsequent pages. That's more by way of an entrée into that.

HOUSEKEEPING – TIMING (13:05:07)

HEARING ADJOURNS: 1.05 PM

HEARING RESUMES: 1.44 PM

MR LINKHORN TO BRUCE STIRLING: (CONTINUES)

Q. Mr Stirling let's press on. People told me over lunch that I was only up to page whatever and they were, I think, counting through – I see, I take that point then. Pages 179 to 180, you have a comment there in a paragraph beginning: "The solicitors replied that they thought the interests the pair held were sufficient". You say, "they had already ignored the Board's procedures, having paid all of the purchase money owing to Hikitia Puanga."

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032, PAGE 179

I'm right aren't I though, that alienation couldn't be confirmed until the board was satisfied, that in the case of sale, the purchase money had either been paid or secured. So, payment of the money in advance wasn't ignoring the boards procedures, was it?

A. I think their view was, it shouldn't be paid until the purchase was confirmed, then the money should be paid to it and then it would pass it on to the owners. The owners are only supposed to get a deposit or an advance as a rule, so I don't know if that's specified in the legislation. But that's how they operated.

Q. Right, but the legislation doesn't make it an invalid application for confirmation of the moneys already being paid, because the legislation anticipates that the money might have been paid. Did he take account of that?

A. No, no, I'm more just looking at their processes –

Q. Internal processes of the board –

A. Yes.

Q. Okay, thank you. Moving on then to page 186, top of the page: "This detailed excuse for the loss of Ōpape 5G stands in contrast to the Board's blithe acceptance of the sufficiency of the other lands". Again, this is a – alienation file has a letter supporting sale and that letter, which is at pages 5728 to 5729 of your document bank, sets out a number of reasons why the person wants to sell. It starts off by saying, it's isolated, quite

unsuitable for occupational cultivation as a means of livelihood because there's only three flat acres.

Then the owner says, I'm the owner of shares in these other blocks, and then thirdly, this block that I'm wanting to sell is three miles distance from the nearest above mentioned other piece and not suitable as a place of residence. Fourthly, the other lands above mentioned in the Ōpape native reserve are more than ample for my occupation and support, and I and my family have always been supported by my cultivation of some of these other lands. I have never resided on or cultivated the said Ōpape 5G. Then fifthly, would be greatly to my advantage to receive this particular price proposed and sixthly, this is what the government valuation is.

So, again, it's an example, not of blithe confirmation, but of the board being provided with detailed particulars as to why this meets the statutory test, isn't it?

A. Well, they're not really testing him, that's my problem with the approach. The blithe acceptance of what is put in front of him, you know, generally supplied by the purchaser or the purchaser's agent. That includes, you know, the list of other lands which are not really assessed.

Q. So, this is a statement by the seller and when you say it's not assessed –

A. Well, you know, they say it's a statement by seller, I think if you look at it, it's probably words put in their mouth by the purchaser or the purchasers agent.

Q. Where do you have evidence for that Mr Stirling –

A. Well, that's how these things work – yes, okay, there isn't evidence for that, but that seems a more likely scenario –

Q. And equally, there's no evidence to say that there was no consideration by the board just because the board minute outcome is recorded rather than the mental processes that the board went through to satisfy itself against the criteria.

A. No, I think – my comment was focussed on schedule of lands, not the other reasons given, which I have outlined and summarised and then you've gone into it, more detail. But the acceptance of the schedule is

the issue I'm pointing to in that first sentence. I've already noted those other factors.

Q. So, what, is your point that the board shouldn't believe that schedule?

A. Well, yes, they should have made their own assessment of the sufficiency of the other lands. The quality of the land, the state of the tenure, rather than just taking what's written by a purchaser or their agent.

Q. Or a seller here. So, moving into page 189, the second paragraph down: "In response to these dire figures, the purchaser did not have to do anything to defend the transaction because the Board didn't require him to. It instead sufficed for the Board to state the bald facts as if they spoke for themselves: 'Shortage of other lands, but area only 2 ¼ acres.'" Then I think this is you saying: "If the eight vendors were already landless, what difference did another couple of acres matter? The purchase was duly confirmed." But if we go to your document bank at 7183 and look over it, we see the section 91 criteria being referenced by saying that the board will confirm under section 91 if the usual conditions are complied with, and the consideration is increased in £95. So, there's nowhere in the boards rationale that suggests that another couple of acres wouldn't make a difference.

A. No, well, that's my conclusion based on the facts.

Q. Further down the same page: "Aware that this amounted to landlessness, the solicitor added a note that her husband was a tenant of the Knox Home Trust Board." I think you are meaning to suggest that that's irrelevant when you say: "How her husband's leasehold interest ameliorated her landlessness was not something he bothered to elaborate on". But we have the criteria on section 91 about otherwise being sufficiently provided with a means of livelihood, don't we?

A. Well, yes, that's the point.

Q. So, it is relevant?

A. No, it's the point of the legislation, is to facilitate landlessness by saying there are compensatory factors. So, I think, yes, we are basically saying the same thing, possibly coming at it from a different perspective.

Q. Right, 201, last paragraph about Dunlop's purchase. Midway through, you say: "When Dunlop sought to claim a £100 advance paid in 1954 as

part of the purchase proceeds, Judge Prichard refused. He responded that any payment from that time 'must be taken as rent,'" but then you say: "This shows how easily advances on rents could push a Māori owner into a debt trap". But that's the exact opposite of the reasoning, is that the Judge is refusing to allow the rents to be characterised as anything other than rent. They are certainly not allowed to be characterised as an advance on sale, are they, here?

A. The point was, he was becoming indebted through advances of rent, which is how it usually worked with lessees wanting to turn it into a purchase. So, clearly, he had made those advances and that influenced the vendor.

Q. But Judge Prichard's on to it and says no, right?

A. Yes, but that doesn't take away the fact that the owner had become indebted to the tenant and was in this position at the sale. It's just, the purchasers getting a bit clever trying to claim that money as part of the purchase.

Q. And it was rejected?

A. Yes, yes. But it's an illustration of that trap and how it affected purchasers –

Q. Or how ineffective it was here, because –

A. Well, no –

Q. – it **(inaudible 13:53:10)** –

A. – because it was clearly in debt to the purchaser through advances of rent, and once the rent gets too advanced, you end up with periods where you are not going to get any rent because you have already had it. And you are in more trouble, and then you need to sell because you need the money. You are no longer getting the rents because you already borrowed them in advance.

Q. But this is not an example of that?

A. Well, it is, he borrowed the money in advance, he or she, the owner, and then had to enter into the purchase to make up for that loss and that's the very point. That's the whole point of making those advances.

Q. Yes, but I suppose I'm coming at from looking at the point of view of the projective scheme that Judge Prichard was administering.

A. Or not administering. I mean, the Court later said that was contrary to equity and good faith, this sort of transaction, using advances, my tenants to force purchase –

Q. Right, I think –

A. – I think it's an example of that –

Q. Judge Prichard wouldn't allow it to be characterised as an advance on purchase, would he?

A. No, but it's an advance that resulted in purchase. It's a debt that created the need to sell.

Q. Right, moving on to page 236 to 237, at the bottom there you are talking about Apirana Ngata visiting Ōpape in 1910 while touring the Eastern Bay of Plenty with two surveyors. You are making a point that, you say, that, "he found the Court's subdividing of the reserve had 'spoilt the block,' and it was debateable whether surveying of those irrational title orders should even proceed." I didn't pick up him saying irrational or that quite like that, so, he says, at Ōpōtiki, I inspected the Ōpape reserve with the surveyors mentioned. The subdivisions made by the Court had, in the opinion of the department, spoilt the block, and the question for the Native Ministers decision was whether the survey of the subdivision should be proceeded with. It was found on inspection that the partition of one third of the block could well go on, this work is now in hand. So, there is a departmental view, isn't there, that the subdivisions had spoiled the block?

A. Yes.

Q. Okay, moving to page 251, top paragraph, end of the paragraph: "In this scenario, the one benefit of consolidation was the finality of the titles that issued at the end of the scheme, which sought to put an end to debate about who would farm where." Is there other benefits of consolidation, in fact, I think you spoke about them in answer to earlier questions today.

A. Yes, yes, there were quite a few that we worked our way through.

Q. Yes, well, I won't work through that in the interest of time. Two five seven, top of the page, end of that first paragraph there: "The somewhat perfunctory decisions reflect the utilitarian approach to consolidation, with holders of customary rights shuffled about and sacrificed like pawns on a

highly fragmented chessboard." You can see how we lawyers have landed on some of your phrasing here, Mr Stirling, for the questions.

A. You have an eye for it, yes.

Q. I'd say that maybe the author baits the, you know, has an eye for sort of casting the line for the lawyers to take the bait.

A. Well, resist the temptation.

Q. I see what you are saying, but the consolidation here, it's intratribal, as I think you have answered in other questions and you say, "the utilitarian approach to consolidation, with holders of customary rights." Well, we were already a long way away from customary rights, really, aren't we, we are already into land court outcomes that had themselves, become fragmented and unworkable in the eyes of those promoting consolidation. So, has custom already been left some way and sometime before this, I suppose, is what I'm asking you to comment on? The titles were already a distortion of custom.

A. Well, I think they reflected people's efforts to try and locate their interests in places where they perhaps had customary interests as best they could within the scheme of the land court, which was really not set up to recognise that degree of flexibility or subtlety. So, yes, I take your point, it's not really a strong feature, but this sort of completely wipes it really, to a large extent.

Q. Page 275, to 276, this is just a sort of, question of fact, quickly, to help me with my chronology. As I understand it, the Native Minister in 1937 was Michael Joseph Savage. You are referencing Frank Langstone there, not sure what role he was occupying in 1937, was he an under-secretary? But is your reference to Native Minister Frank Langstone actually from another time period later on?

A. I think it may have been earlier, if it was anything –

Q. And the paragraph above is talking about a 1937 report, you, see?

A. Yes.

Q. So, I, just thinking, right, minister Langstone is coming in here, or was this, he was an under-secretary, or was he an acting minister, or yes, maybe the detail doesn't matter if you can tell us that he was completely

in the mix of members of the executive dealing with Native Affairs at this time?

A. Yes, I mean, it was possible Savage was out of the country and they were going to England to try and raise loans. Yes, he could have been acting minister, but I think I would have taken it from the source, by referring to him as that. Well, I can follow up –

Q. I won't ask you to follow up on that, I think we can go and look for that as a matter of chronology and role. At page 286, in the paragraph before the heading at 6.1, you are saying in that final paragraph: "These submissions betray a profound ignorance of the facts. Whakatōhea were indeed without sufficient land and had been for some time. In many cases, their land had been leased on the basis of recommendations by the Stout-Ngata Commission, which was bound by its terms of reference, and by law, to find land for settlement regardless of how little Māori retained." I just wanted to address with you whether there was anything really in the law or the terms of reference for that commission that stopped Stout-Ngata from saying if there was no land available for settlement, because all of it required for occupation. That was an available answer to them, wasn't it?

A. Well, that's pretty much what they said about Whakatōhea right at the start of the report that is gone into in some detail.

Q. So, what am I missing here, because you are saying at page 286 that by law, they had to find land for settlement. And now I think you are agreeing with me that they didn't have to recommend land for settlement if their conclusion was that all of it was required for occupation.

A. No, well, they were still under pressure to find some land for settlement and so they did in the case of Whakatōhea, even though they had said there wasn't any surplus –

Q. And you –

A. They found some for lease –

Q. You find that pressure in their terms of reference, do you?

A. Well, the statute says, identify surplus lands and half will be sold, and half will be leased, so that's the requirement they are under.

Q. That's a requirement, of in fact, there are surplus lands, but it was open to the commission under those terms of reference to conclude there were none for a group, wasn't it?

A. Well, yes, which is sort of what they did, but they still seem to feel this obligation to find something to placate those seeking land for settlement. So, in the end, they did come up with some land that they thought could be settled, having said that there wasn't any surplus.

Q. All right, I can reflect on that answer further, thank you. Page 287, over the page, you are saying in the first complete paragraph: "As Native Minister Apirana Ngata reported to Parliament in 1931, such was the prejudice against Māori and Māori land that very few Māori obtained finance from the Advances to Settlers Office,". I looked at the quote, Ngata is saying, the mortgage was suspected as another device to rest his land from the Māori after the Advances to Settlers legislation came into operation. Its resources were theoretically available to Māori landowners, but in practice, so great was the prejudice against native title. Very few were able to secure assistance from that source.

So, I want to put to you that as bold as Apirana Ngata was, he didn't say, in the parliament, that there was prejudice against Māori. He was saying to the general assembly, there's prejudice against the native title for lending against is a source of securing finance. That's why he was embarking on the bold scheme separate from that. Does that sound sensible to you?

A. Well, it's getting into semantics saying, the prejudice is against native land. Well, the land isn't something you can have a prejudice against, it has to be the owners. That's the problem, I don't know how you can separate the land from its owners –

Q. Can I beg to differ –

A. – **(inaudible 14:04:11)**.

Q. Can I beg to differ Mr Stirling and suggest that it's the state of the native title that Ngata is saying, is the obstacle here. In other words, a finance mechanism, this other finance mechanism was theoretically available but wasn't being taken up because of prejudice against the state of the native land laws in the blocks under it. So, therefore, this is 1931 after all, he's

saying, and I have I got a scheme for you. He's setting out to solve this problem by the development scheme finance system, isn't he?

A. Yes.

Q. Page 320, I saw that you had said there was a mere £4 of subsidy, and I just think you really meant to say –

A. Forty.

Q. – it was 40.

A. Yes, I picked that up, thank you. Sorry for the error.

Q. But you know, you had spoken in answer to questions earlier today, about the unemployment subsidies not being charged against the land. So, here you have given an example of £120,000 being spent on unemployment grants. So that capital sum, or sorry, that total sum of 120,000, shows us the sort of sums in issue at this time, to address as unemployment relief. But with the collateral benefit of land development held by Māori. Correct?

A. Sorry, I lost the thread of that question.

Q. So, the question really is that here, you are giving us an illustration, aren't you, of the sort of sums being expended as unemployment relief that was used on development of land, but not charged to the land.

A. Well yes, that's the point, I think it was covered earlier today as well.

Q. Yes. Page 331, where in the bottom paragraph there you are saying: "Just three of the 44 farmers had a loan account that was in credit, and even these were very small amounts. The debit accounts of many other farmers were static or increasing", and you give a high example there and you say 10 others were over £1,000 each. It looked to me like 33 of the 44 farmers had decreased their loan amounts over this period and the loan amounts of the two high ones that you noted there. Mr Ngawai Fred Amoamo and Waka Kahika we high, but they were apparently performing fine according to the department.

So, is there just a sense in which, stepping back and thinking about the total development period. The fact that only three of them were in credit by this stage isn't really the point in terms of the development horizon in expectations of both the owners and the department as to what sort of time frame the debt for development would be paid down over.

A. Well, I think that was always the problem for the unit scheme farmers that were sort of the never, never. There was no real clear path forward to when they would get rid of all of that debt because they kept finding other ways to add to it, because there are always more things that need doing. I guess the point is, in the rest of the paragraph, where they point out that some of them really couldn't succeed on the land that they had been allocated, and that's more the problem.

Q. Well, I want to come to that, so let's go there right now, because you say the uneconomic holdings allocated some farmers with the underlying problem. I wonder if that's a sort of, retrospective lens, and I wanted to briefly explore with you whether the original intent and philosophy was almost what we might now describe as a hybrid economic model. In that these people would be brought into the market economy with some development finance for use of land. In this case, cows, milk, and butter fat, that would produce a market economy return for them. But that, in other respects, their lifestyle would be hybrid across into what we might call, the customary economy as well, and the transition from an earlier lifestyle that was more subsistence.

So, in other words, it might make sense in other parts of the country to have big hill country stations and what have you. But here, what was sought, was a number of small holdings that, in those days, with milk cooperatives and so on, of the size they were, weren't seen as crazy. Even if by 1950, it was realised that the direction that the direction of travel was just one way getting farms bigger and bigger. So, I just suspect that you know, your retrospective account of how these were never going to work because they were too small, isn't really the whole story there?

A. Well, I mean, that quotes from the period, it's not retrospective, I think is already becoming apparent that that's the problem. Similarly, at Torere, I think they ran into the same difficulties and I'm not really sure about this hybrid idea. Most of the initial unit scheme farmers were based upon men who were already running small farms themselves and struggling, and just needing some help, so they kind of built from that base. That applied to Whakatōhea and more especially, to Ngāi Tai. So, they weren't really in this transition phase, they were already moving towards the sort of

operation that the Crown wanted to see, they just need a bit more help to achieve it.

Q. So, in 332, where you say: "By 1950 some further changes had been made to the policies guiding the development schemes. It was already becoming apparent", that's 1950 is what I anchored that to, about the already becoming apparent of small scaled dairy farms.

A. Yes, but I think the quote back on page 331 was from 1943 and even that 1950 reference, actually dates to 1949 if you'd like, because that's when the number of farms starts to reduce because they need to be amalgamated.

Q. So, can I just check with you, at 333, talking about the double purpose behind both purposes after the quote, "was the need for those on the developed land to pay back the often enormous costs of development that had never been under their control but were instead imposed by the all-powerful Native Department." I just wonder if there is actually two – I mean, this is referring to land that has not yet been developed, as I understand, at this AJHR reference of yours. It's talking about going ahead with the development of those lands as speedily as possible and that there is a double purpose behind that development. So, I wonder if you have conflated that with the circumstances of land here that's already under development and people are you know, struggling to pay down their development finance?

A. No, I don't think that's terribly relevant. It's basically restating the purpose of development as a way to promote renewed development. But that purpose goes right back to the beginning.

Q. At the end of that paragraph on page 33, you are talking about the all-powerful Native Department and inferring the paternalism of the times. I think in answer to a question from Ms Clark yesterday, you know, we can reflect, can't we, that the states paternalism towards those who received farming development finance, whether they were Māori or Pākehā, was reflective of a different world back then, wasn't it?

A. Well, I think the point I was making was that Pākehā seem to have a bit more freedom than Māori and I recall, in other inquiries, Māori war battalion veterans being pleased that they were on a lands and survey

scheme. Because they looked at the whanaunga on a Māori development scheme and just pitied them because they were treated a lot better by lands and survey, despite being Māori. As compared to the Māori on a development scheme on Māori land. So, I think that would go right back to the government advances to settlers as well, that they would be under a less onerous kind of regime than Māori farmers. Paternalism I think is the kindest way to frame it.

Q. Yes, I'm bringing to mind, an example from the 1980s of a lands and survey official telling a farming family on a settlement block that they certainly weren't entitled to a dishwasher, because you know, their debt circumstances weren't worthy of such a flash appliance. All right, moving along, 338, Waiotahe 19E or 22 acres. I'm just confused as to why this wasn't to the benefit of the owner.

The owner asked for the land to be sold to pay the mortgage on the home they were living in, and they wrote to their solicitor, it's at page 7772 of your document bank. They give their reasons, and I can't see anything that indicates that rentals were allocated to the final purchase price. Instead, it looks like the entire purchase price was paid in discharge of the mortgage that the person had over their house, I think, for a Māori Affairs department housing mortgage.

So, I just wondered if this wasn't an example of whose interests was this is, in terms of advances on rent to ensure the purchase went through, which was dually confirmed in 1956, you are saying. So, yes, can you comment on that?

A. Yes, well, I think I covered the rehab loan connection to the house in the Gisborne District elsewhere in the report. I mean, it's just picking it up in relation to the development scheme. Well, it's not really to the owner's advantage because they are losing their land, just in order to have a house somewhere else. So, I can't see that that's to the owner's benefit when there should have been other means of raising finance, but did not require selling the only land he had.

Q. Do we know whether the owner was under particular pressure for the house mortgage, or whether the owner was rationalising that they wanted to pay down their house mortgage by selling this land?

A. Well, I think that was covered elsewhere in the report. When he linked the sale of the land to his housing mortgage, so that will be covered in those documents that are cited elsewhere in the report. I think in the alienation section, there's a little section on 19E.

Q. I can follow that up, if need be, but page 351, at the bottom paragraph there towards the end, where you say: "This is scarcely a ringing endorsement of almost 20 years of land development under Māori Affairs supervision." I'm taking it that you haven't factored in the Torere scheme there?

A. Yes, well, I think that particular section is discussing the Ōpape scheme in particular.

Q. Right, okay. All right, so then turning to your appendix for Tunapahore, which means that, if I jump to page 467, bottom of the page there, final sentence on that page: "It has been suggested that all three parties remained on the land until their dispute re-emerged in the battlefield of the Native Land Court. However, censuses undertaken by Resident Magistrate Brabant in 1874, 1878, and 1881 record Ngaitai as resident at Torere". Et cetera, et cetera, and I just wanted to check that your assessment of the reliability of that census information – are you seeing that as generally reliable?

A. No, I'd treat it as indicative. It's not normally enormously reliable.

Q. So, perhaps I hadn't read your sentence closely enough. You are saying, the censuses, those three, 74, 78, 1881, they record Ngāi Tai as resident at Torere. Are you saying anything about whether the census records Hawai as occupied by Te Whānau-a-Harawaka? Are you meaning that's coming from the census because I didn't see that in the census.

A. Well, I think that's what I meant, but –

Q. Right, okay.

A. – I better check those sources. Yes, that's a bit unusual –

Q. Well, maybe it's a misspell by the census taker in 1874, in referring to a group Te Whānau-a-Te Whaki and the 1881 census recording Te Whānau-a-Apanui. Then, Te Whānau-a-Harawaka not recorded as a resident at Hawai until the 1878 census, is the note I have here.

A. Yes, well, that might be a more precise way of summarising it.

Q. But we need to take care of the census in general, don't we?

A. Yes, normally, although it's unusual for the same magistrate to be sort of running it three censuses in a row. So, you would hope he would have a growing familiarity with who he was describing, but you couldn't really guarantee that. I mean, the inaccuracy generally relates to numbers more than anything else.

Q. More than names, you mean.

A. Yes, more than the description of the papakāinga or the hapū. But quite often because you are relying on the published version, they are completely mangled. Then, on the rare occasion you can find the manuscript version, you can see where the spelling went wrong.

Q. There are transcription errors.

A. Yes.

Q. The RM might have had it right, but the clerk in Auckland didn't –

A. Well, type setter –

Q. Yes.

A. – whoever, yes.

Q. Okay.

A. A lot of those mistakes, pre-pin. But it's pretty rare to find the manuscript originals, but when you can, you do see these sort of errors.

Q. So 469, first complete paragraph, bottom of that paragraph, you have a sentence without a source there and I just wondered if you had one, or is this just general knowledge where you say that: "Te Whānau-a-Apanui had defeated Ngariki and driven them from Tunapahore, but those of Ngariki who had close connections to the victors were allowed to remain." And it's that last proposition, I suppose, that I'm wondering what your source is for that?

A. I think I'm just drawing a distinction between what could have been the situation and so that both of the things mentioned above could have been true, rather than only, you know, having to be one thing or the other, so that's just a suggestion.

HOUSEKEEPING – TIMING (14:22:13)

MR LINKHORN TO BRUCE STIRLING: (CONTINUES)

Q. That paragraph there, equally, can you just give me a feel for your sources for that. You are referencing Jane Luiten, is that the extent of it?

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032, PAGE 476

A. Sorry, where are we, exactly?

Q. This is 476, the paragraph beginning: "Despite the government's rejection of the petition".

A. Yes, I think I'm relying on Jane Luiten there.

Q. And this is really, a sort of, general observation, is it, by you, talking towards the end there, about: "Yet so-called seasonal occupation was often so regular an undertaking". I suppose I was reading that and thinking, well, it's very difficult land, so it's not like people might have stayed there a lot, but didn't mean they didn't make use of it.

A. I think the point I was getting to was that sometimes, that sort of usage is dismissed as seasonal occupation. It's seasonal, but it's –

Q. It's meaningful –

A. – it's regular, so it's basically permanent, but not full time, if you like. So, people go back there every year, or every season for different purposes.

Q. Yes, okay.

A. So, that is a more permanent form of occupation, but it doesn't really meet the course criteria.

DR GRANT PHILLIPSON ADDRESSES MR LINKHORN – CLARIFICATION OF REFERENCES (14:23:52)

HOUSEKEEPING – TIMING (14:24:32)

MR LINKHORN TO BRUCE STIRLING: (CONTINUES)

Q. You say at 477, Mr Stirling, end of the first complete paragraph: "The clause remained unchanged in the final Native Land Claims Adjustment Act (s.5), which completed its passage through Parliament just two weeks later on 1 November 1895, without any debate." Did you look at the newspaper reports of how it was discussed at length in the committee?

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032, PAGE 477

A. No, just the sources I have cited from parliamentary debates.

Q. Okay.

HOUSEKEEPING – TIMING (14:25:18)

HEARING ADJOURNS: 2.25 PM

HEARING RESUMES: 2.29 PM

MR LINKHORN TO BRUCE STIRLING: (CONTINUES)

Mr Stirling, if you look at the bottom of page 504 and over into 505, where there's an additional request and you say: "Rather than allow them to be properly heard, the government preferred to bury the matter." Just wondered what the evidence was for burying the matter, given the commission agreed to in the 1940s. I don't know, it was shallow grave, wasn't it? If there was evidence of them burying.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A032, PAGE 504

A. That might be the appropriate phrase, yes, shallow grave. I mean, that's quite a long time later.

Q. Then, over on 507, where you have this paragraph: "No other speaker referred to the matter." This is about getting a clause in a bill, isn't it? And you say: "It is not known how Herries divined the views of the three tribal groups involved, given that the Native Affairs Committee had heard from them and just days earlier made the recommendation that led to the Tunapahore clause in the 1915 Bill. He was giving them a year to resolve the impasse or face the return".

You are saying that he had simply overruled the committee and would not allow the inclusion of the clause. I wondered about the would not allow phrasing because of the letter at page 5038 of your document bank from Bell Gully to the Native Minister. Where they say, in 1915, the Native Affairs Committee reported that the land should be divided into three equal parts. Then there's an explanation down there about, if the natives didn't come to an arrangement between themselves, it would be inserted in a washing up bill in the 1916 session.

You replied, this is what Bell Gully says, you replied on the 21st of June that the government had no intention during that session of introducing legislation disturbing the existing position with regard to this block. Now, I thought, the would not allow line is really about 1917 because I think the same letter goes on, in 1917, the matter was the subject of a further petition. The committee reported that it be referred to the government for inquiry at the request of Mr Ngata, where they prepared a clause for proposed insertion in the native washing up bill to secure finality by further investigation, Royal Commission of three persons.

The draft clause was brought under your notice, but in case you may not have had a copy of it readily available we forward a copy here with. You were not prepared to be allowed to be included in the 1917 bill. So, I'm just wondering if that's where you picked up the not included in 1917, but you are then inferring backwards, it seems to be, in 1915, a sort of decision by Herries in 1917, not to institute another commission of inquiry, at that point. You know, on proposal that had been drafted by Bell Gully. So, I just ask you to comment on whether there is a bit more to unpack there than your paragraph at 507.

A. Well, possibly, yes, I would have to review the Bell Gully letter source to clarify, but yes, what you are suggesting does seem quite possible.

Q. Just for everyone's reference, if they want to go read that correspondence, it is at 5038 of your document bank. Moving on to 519, where you say: "Langstone replied for the Native Minister that he 'will have the position looked into.' All that consisted of was the Native Department sending him an earlier report". I'm just wondering how know that was the only action taken.

A. Well, the only action recorded, might be –

Q. Or that remains extant to the archives.

A. Yes, and well, I think that statement about Langstone maybe indicates his role as Native Minister, earlier, it was brought up, I presume he was acting.

Q. Were you saying he's replying for the Native Minister, your words?

A. Yes, yes, yes, so, perhaps he was acting as Native Minister as well, in that earlier reference that we discussed.

Q. Yes, or maybe he was an under-secretary or something.

A. Yes, yes.

Q. Okay, should have consulted my dictionary of biography perhaps, before I asked you that, 538, can you hear the tone of relief in my voice, that we are getting there. Where you have this paragraph beginning: "A solicitor for those opposed to incorporation said he represented half the owners but" that was challenged by a person who said a majority were in favour. Yes, I'm a little bit confused because then you go on to talk about that person saying, a majority of more than a hundred owners were agreeable to lease again. Is there a word missing, or is the word owner's missing somewhere?

A. Sorry, yes, it should be, "a majority of owners" or simply, "a majority was in favour".

Q. Okay. Right, 541, this is about the paragraph beginning towards the end of the term of the lease, this is about setting apart a part of Tunapahore B2A as a Māori reservation. The strip of land between the highway and the foreshore area that contained three urupā. Now, I think these three, this is just me checking – these three urupā, what you have listed on page 467. Have I got that right?

A. That's a bit hard to say, I think.

Q. I can consider that and take it further with other people, I expect. So, just finally, I wanted to ask you a question about the right of survey charges and sometimes associated rates compromises that the state had negotiated as well. You answered most of my questions about this in response to earlier people's questions. Do you think it's fair to say that, at that time, that represented what everyone involved saw as a sincere effort to reset matters for owners ?

A. Yes, that's not an unfair interpretation of the situation. It was sort of needed to ensure that the consolidated titles that were being promised, and to the councils as well as these titles would produce income and pay rates, that was the trade-off. That they would provide for a better future than the current mess of titles that were there, burdened with survey debt.

Q. A sort of, reality check, that there's just no way that could be carried forward, and so, therefore, some compromise would have to be handed out.

A. Yes, well, the only solution would have eventually been that the land would have been lost through debt, or through debt induced transactions, or through councils lobbying for the power to take land for unpaid rates. Which eventually, you know, they did get, but that was not a simple process. So, yes, it was an effort, pushed very much, you know, by Ngata, while he had a sympathetic ear in Cabinet to reset things and try and start again, with what he hoped would be a future.

Q. Yes, and as I think you said, in answer to an earlier question, this was a point at which the state realised that it had quite some leverage over local authorities in relation to knocking down outstanding rates to as low as figures like 20 percent, didn't it?

A. Yes, yes, well, a lot of those rates, you know, you could ask a lot of questions about the ways in which they were levied where the land should have been exempt from rates. There were provisions for that that were rarely used. So, yes, they weren't in a very strong position, and the way they saw it, where they get something rather than possibly next to nothing. So, it wasn't a bad deal for them, and they were under great pressure themselves because yes, there was a depression kicking in.

Q. Thanks for your patience with my questions.

A. No, thank you –

Q. Kia ora.

A. – for pointing out and clarifying many things.

HOUSEKEEPING – TIMETABLING (14:40:13)

(14:41) DR GRANT PHILLIPSON TO BRUCE STIRLING:

Q. Tēnā koe, Mr Stirling. I must echo the sentiments that have already been expressed in terms of your enormous contribution to the work of the Waitangi Tribunal over decades in many different inquiries. Also, to thank you for this report, which is an excellent report. There may be some little,

factual matters that need to be addressed, but what report doesn't have those, I'd have to say, so thank you very much.

I guess, the first thing I wanted to raise with you, and I do have a lot of questions and most of them will be put in writing, so I won't spend too much time here. But I did want to go back to – so, based on your research in this district, but also, others and you and I, we have already addressed this in *Porirua ki Manawatu,* where you also did evidence on the Māori land boards. Your use of the word, shonky for the board's confirmation process of alienations in terms of the usual process of a purchaser providing a schedule of lands and no check of that by the board. Do you still stand by the word, shonky? It certainly seemed correct to me, but I just want a confirmation from you, that, you have used it, do you still stand by it?

A. Yes, yes, I think I do. I mean, other people have said, rubber stamp, so it's in that ballpark, and that's not to say there weren't the odd example where the board would say, schedule of lands is insufficient. So, someone would have to go off and run away and try and find some more land, or some up with a reason to satisfy section 91, that it didn't matter that there weren't sufficient other lands. But yes, they seen more exceptions than the rule, which was just to push these things through at an enormous pace, you know, very overworked, understaffed sort of office. So, I think that can breed nothing but, you know, shonkiness, but that might be an **(inaudible 14:43:29)**, but I think it captures it.

Q. Thank you. One of the developments, which sits behind this period, I think, is the later realisation by the Crown in the Hunn Report, but others. What their growing that the incredible importance of land to Māori, and what they use the word sentimental, but it's far deeper than that. But that was a block to the Crown's efforts to continue the process of individualisation and acquisition of land. Did you see that that realisation from Crown officials at all before that period in the 1950s and 60s?

A. Well, I'm not sure I'd agree that they even realised it then, I mean, Hunn said things like, you know, you would be better off with a mortgage in Auckland and your house will be your turangawaewae. That's how little understanding, or sympathy there is for the concept, something as basic

as turangawaewae. But yeah, and well, I saw the use of the word sentimental as dismissive, due to sentimental attachment, they don't want to sell. But you know, clearly this land is pointless and useless, and they should be rid of it. So, yes, I don't really see that that realisation has dawned until very recently. I mean, I didn't see much sign of it in the period I reviewed in this report.

Q. Yes, well, I think that's where it is an obstacle, but they did begin to understand it, but you didn't see any earlier indication of that?

A. No, no. I mean, well, I think obviously, somebody like Ngata would understand, but yes, he wasn't really calling the shots entirely and had to work within this wider system that was just focussed on utility.

Q. Okay, my very first question, actually, that I had written down for you, that I was going to ask was, how did Whakatōhea get this specific protection for the Ōpape reserve in the Native Land Amendment Act 1913. Was it a recommendation from Stout-Ngata and whether it was discussed in parliament. But I think we now know that it perhaps, wasn't for the whole reserve and that's still to be considered. But my third part of the question remains, do you know if that was discussed in parliament at all, during the debate on that legislation?

A. No, no, I haven't looked at the debates. There are some other lands in that list, as well, so yes, it's possible it came up in the house, or you know, that committee stage, which yes, it's even harder to find the records for. So, yes, I'm not aware of what was behind it, but I think you can look at the list of other lands and see there's a few things in common. I think some of the Poverty Bay, Wi Pere Trust Lands, or something, might have been set aside and a few others that are listed in that schedule, so it's not just Ōpape.

Q. Okay, I'm just trying to get a clearer understanding of what the Crowns intention was.

A. Well, yes, that could be something you can make me follow up in a written question.

Q. I'll consider that. I did wonder, because having read the report, are you aware of a list, or a table, you don't have one in your report, of exactly

which lands were in fact, proclaimed and Gazetted under Part I of the 1907 Act, and under Part II? Did you do that research?

A. No, no, I think I relied on the commission's report and its recommendations, rather than –

Q. And the assumption is that that was all reflected in later proclamations?

A. Yes, well, particularly with Part I, because that was in the government's interest to ensure that that was brought into effect. Whereas Part II is a bit more patchy, not all the lands recommended were ever Gazetted, but some of them were. So, you usually only pick it up when they are talking about removing that recommendation, so yes, I didn't really focus so much on the Part I stuff and there is very little of it anyway. But I'm not sure how easy that would be to follow up, but it's possible.

Q. Okay, thank you. This is another question about legislation, which you may not be able to answer. Now, I, like Mr Sinclair and others read the wrong version of your report, and in fact, when you did your presentation, I was thinking, how wonderful it would have been to have had those maps in the report. So, I have gone through last night and changed page numbers where I could. But you do talk about section 24 of the Native Land Amendment and Native Land Claims Adjustment Act 1927. Which empowered the Court to vest land that the Crown hadn't purchased in the Crown, for a price, as part of the consolidation scheme. What I don't understand is, why would it be part of the consolidation scheme that the Crown could buy land in that way?

A. I think that's the way to convert survey charges and later rates compromises. So, convert debt into a land award, and also, I think in consolidation schemes, not here, but in other districts. The Crown had sort of begun purchasing individual interests so it had all these scattered individual interest that weren't located anywhere and I presume that legislation would provide for those to be consolidated and awarded to the Crown.

Q. Because with survey and rate debt, that was just less land taken. This enables the Crown to pay a price for land during consolidation.

A. Well, I guess that depends on statutory interpretation, but that sounds like, to me, that the price is the debt, if you like.

Q. Well, I'll get you to check that then.

A. Okay, yes.

Q. An extra one in writing. Another interesting aspect of consolidation is that it did allow for hapū – it's on page 222 of your report. It did actually allow for hapū consolidations, and I was wondering, did you see any hapū consolidations in this district? Or in fact, ever, in any districts? Or is that more a mythical aspect to it?

A. Yes, I think that's theoretical, I don't think I've ever seen it done in that way. The focus was much more on whānau based groups, and I think they would have preferred individuals, but generally, no individual had enough interest, so, it would be whānau that would be put together.

Q. I thought it was probably mythical, but I thought I would check whether it ever happened, thank you. Why was interest charged on the development scheme loans? Because where we have this situation where the Advances Settlers Act had provided enormous amounts of money to settlers for 30 or so years before Māori got this in Ngata's development schemes. It is, as you have said in the report, much less, so why did the Crown feel that it needed to charge interests on the loans that it was making for development. Rather than just recovering the capital investment?

A. Well, I think the government advances to settlers, yes, the vast sums involved. But that was all **(inaudible 14:52:00)** as well, so settlers had to repay that and interest –

Q. Yes, but they had had that big advantage, and the sums involved were much less, and Māori units, as they were called, were struggling paying back even the principle. So, I am just wondering whether you saw any discussion of that issue, about where the interest should be charged, or was it simply assumed that it would need to be –

A. No, I think it was a pretty fundamental principle of finance interest would have to be paid. And I think we mentioned yesterday, if it became too big a burden, in relation to the economic potential of the farm, interest could be written off, you know, for a year, or you know, year by year, as it came up. But they were not so keen on doing that, but it did happen on occasion. Then, I think, we discussed yesterday, right at the end of the

schemes by the 1980s, the large debts or Crown shares that the Crown acquired through conversion or other means, were a form of debt on the title that was also wiped.

Sometimes those shares were just returned and that debt written off, but that's a lot later, that's a different issue. But yes, I think interest always had to be charged, I mean, the Crown was paying interest on that money, it had to borrow it from London or wherever they dig it up from. So, yes, they weren't going to hand out free money, other than unemployment relief, but that was you know, crisis situation.

Q. So, what was the rate of interest that they charged on that land, on that money?

A. I couldn't say off the top of my head, I think it varied. Never that high, I think it's sort of a three to five percent sort of range.

Q. Right, and can you confirm whether that was a lower rate of interest than private institutions were charging at the time?

A. I can't confirm it, but I think it's very likely that it would be, yes, because the private institution would be less inclined to take that sort of risk. I mean, it didn't have the authorities, the powers of Māori Affairs to sort of, control the debt, like a stop, trading company, you know. It could only exercise so much control over the advances it made to a Māori land owner, a farmer, and they are usually secured against the stock itself or the chattels on the farm.

Q. Yes, and you have shown some examples of how those debts were recovered. In your title improvements chapter, and you use that term very ironically. You didn't discuss section 438 trusts, which was a crucial title improvement measure. Why was that, was it simply not an important factor in this district, why didn't you cover that in that chapter?

A. Yes, well, I didn't see a lot of evidence about them. I think what there is, is probably set out in the existing sort of block research narratives that summarise, you know, the vesting of various blocks and trusts. I'm not so sure that they are a title improvement measure as a sort of, administration measure to sort of make management of land a bit more rational by vesting it in a group of trustees.

Q. Well, it steps over the fact that you can have a meeting of owners and three can turn up, and they can sell land. Instead, you have a committee elected by the owners, who are then able to make decisions about the land and manage it in the way that I think, incorporations, perhaps, could have been in that earlier period, and Māori loved it, with so many trusts established. So, it just seemed an omission, and I did wonder if you only concentrated on the things, you thought were bad?

A. Yes, that's a fair comment. But again, I think you have to remember the terms of those trusts are defined by the Court, always, and that tends to reflect what the owners are saying they want. But not always, they have to put caveats around it, so that the trusts, well, you know, you have a judge sitting there to tell you much more about it than me.

(14:56) JUDGE DOOGAN TO BRUCE STIRLING:

Q. On this point, could we just clarify the categorisation of this, because we are talking about the title improvement chapter, or the part of your report and it has been a while since I actually looked at the 438 trust. But in terms of what you understand from what you have seen in your research. My recollection assumption is that what happens there is, certain land blocks are put into the trust administration, but there is no change to the titles per say, at that point of the trust being established. The administration is simply established over the existing titles.

A. Yes.

Q. So, with that in mind then, it's not really a title improvement issue, it's an administration point, rather, which is just the categorisation of what we are talking about.

A. Yes, it's good news for distinction, and you know, I guess, the reason it looks so much at them was because the focus is more on alienation than administration and section 438 trusts, you know, are usually intended to preserve the land rather than sell it. Although, you know, sometimes land is vested in trustees, to facilitate a sale.

Q. Yes, but –

A. Less often.

Q. – most of those older trusts had the restrictions on alienation as part of the trust, you know, DNA. But anyway –

DR GRANT PHILLIPSON TO BRUCE STIRLING: (CONTINUES)

Q. Well, I may have used the term, total improvement, loosely, but there were a whole series of measures from the 1953 Act onwards. Which were intended to try and get around the disastrous situation created by the 19th century native land laws, and you have concentrated on two of those, mainly. Which is Europeanisation and conversion, and I'm just suggesting, well, there were other measures as well. Amalgamation, although, that's a dirty word here at Hiwarau, but yes, okay. So, you didn't look at the section 438 trusts?

A. No.

Q. Thank you. In terms of setting up the conversion system, I was trying to determine whether it was intended in the legislation that those, what were called, uneconomic interests, could be sold to Māori who were not owners. I know it says any Māori, but whether that was intended to be a widely used measure, and whether, in including incorporations in there, it was envisaged that it could be any incorporation, like the Mangatu Incorporation. Which was not an incorporation of the owners of that land. Do you know what was intended by that aspect of that section in the legislation?

A. Well, I guess the focus is just on better utilisation of the land, so it doesn't necessarily have to be by the owners. I mean, I think that was the first choice, was to sell the shares to another owner who had larger shares and could then slowly build up sufficient to, either become a single owner or partition out a useful title for their individual occupation. But if that wasn't a prospect, well then, some other Māori might be able to come in and do that, and that could also cover partners, spouses of owners. Then incorporations, I guess that would be to the benefit, presumably of the incorporation involved.

So, it's all focussed on making better use of the land – well, they are not given an order of preference, but it almost is like they are an order of preference. So, other owners, any Māori, an incorporation, a tenant, or

the Crown, it's almost like a hierarchy and most of them were, to other owners, as a rule. But there are the odd one to other Māori and even to non-Māori. Then there was a particularly bad example, I think, in Kaipara, where the farm development supervisor married one of the owners and he ended up holding all the shares acquired through conversion. So, I mean, well, I talk about shonky, that's a little beyond.

Q. In this district, are you aware of any that were sold to the Crown?

A. No, no, certainly not.

HOUSEKEEPING – TIMING (15:01:34)

DR GRANT PHILLIPSON TO BRUCE STIRLING: (CONTINUES)

Q. It may seem kind to not ask too many now, but it just means you have to do them in writing, but they will help with the report, and it will help the claimants and the Crown with a better understanding of things. Now, one of the things that I did know much about before I read your report was section 213 of the Māori Affairs Act, which is used in very surprising ways in this district, I thought. Which is the section that allowed Māori to buy the interests of other Māori without having a meeting of owners, again, it doesn't have to be owners. And it seemed to me that this provision allowed Māori who weren't necessarily owners to buy up all the individual interests without having to use any of the collective processes such as calling a meeting of owners. So, firstly, was that new in 1953 and secondly, why was that provision introduced into the Act?

A. Yes, well, I think it was new, because I guess, previously, the focus had been on you know, selling land to Pākehā, predominantly, or the Crown, so other Māori buying it is a bit of an innovation. But as to, how and why it got in there, yes, I didn't analyse the backgrounds of the 1953 Act. It's kind of a giant black hole I don't really want to get caught in the gravity of. But I could certainly try and find something about that section if there is any discussion of it, or background to it. I have tried that before with another clause in the Act in relation to some specific clause in a land court matter and there was just absolutely nothing written down, I looked all over the place.

Q. The reason its intention matters, I think, is because, when it becomes evident that these things are not being used to the benefit of Māori, the protective obligation of the Crown is to fix them. So, what it was intended to achieve, I think, is quite important. My other part of that question is, did that include an ability to just buy up individual interests from the Māori Trustee, under that section 213? Not directly from owners, but Māori interests held by the Māori Trustee.

A. Yes, I am trying to remember the section, it might even be section 151, but it could be section 213, but there was certainly provision for the Māori Trustee to sell those shares to someone.

Q. Yes, I'm just checking about this one, thank you. Just finally, I wanted to thank you for two things in particular, which I found very helpful. The first was that Māori Appellate Court decision, which exposed the terrible nature of the system. Which had allowed lessees to use advances in rent to buy land and expose that for what it was. Because that was a very common practice in many districts and there's very strong evidence about that in the *Porirua ki Manawatū* district. But I had never seen an official, sort of, criticism of that before, so that was very interesting.

The other was Judge Durie's statements in 1967 about how, with removal of the protective checks, I think Mr Linkhorn called them, in there legislation in 1953 and other earlier Acts. The Court, after 1967, had no choice but to confirm an alienation of the purchase money was paid, regardless of whether it was in the best interest of the owners, or equity and good faith. But that's the only example I've seen of the Māori Land Court actually calling it out in that way. So, that's also, I found, very helpful, so thank you for that, and just thank you again for your report, and I won't keep it going since you have to depart. But thank you in advance for the many helpful answers I'm sure you are going to provide. Kia ora.

A. Āe, kia ora.

(15:06) DR ROBYN ANDERSON TO BRUCE STIRLING:

Q. Tēnā koe, Mr Stirling. I don't have many questions, you'll be glad to hear. I just wondered and this is probably going to be a matter of perception

from you, rather than forensic analysis. But when people were explaining to the Māori Land Board why they needed to sell land, did you get a perception as to how often it was because they were deeply in debt, versus wanting money to develop their other assets, their other lands?

A. Yes, well, I think, I did do a section on the chapter in private purchasers dealing with debt transactions and they weren't, I didn't think they were as severe here as they were in other districts, or as bigger factor. There was some evidence that people were under pressure and needed to sell. But in other cases, yes, they were looking to sell one bit of land in order to get some money to work on another bit of land, and that even applied to Crown purchasing. They would look to sell some land because they needed that money, or they wanted that money to improve some other land that they hoped to retain.

So, yes, I think it's always a factor, but not as significant as another district I don't think, or not that I could see. But it's not often, the board didn't actually need a reason, they just needed somebody to confirm it and agree to the deed and the price. So often reasons aren't really gone into, it's only if this correspondence about it, that it might come up or if it's going to leave them with insufficient land. There would be a detailed explanation of why it doesn't matter and it's a good thing, because they're going to use this money for something else, so yes, it's not a big feature that I could see.

Q. All right, thank you. In terms of valuations and how the values given increased after the Crown was obliged to not pay less than government valuation, and I think you have relied on Dom Loverage's report on the –

A. Yes.

Q. – to say it was 50 cent increase, and I was, again, not asking you to do a forensic analysis. But I wondered whether your impression was that it was the same within this district.

A. I would think so, yes, it will be covered more in Jane Luiten's report, but I think the prices pre-1905 were significantly lower than after, you know, when that valuation requirement came in. So, it wouldn't be very hard to ascertain that if it was something I could follow up in writing and just

present in a tabular form, I don't think it would be too much work if you want to get me to do that.

Q. All right, thank you.

A. I mean, you know, I'd rather make Jane do it, but I guess, she's finished, so.

Q. In terms of the need to get the Native Minister to refuse permission, or he could refuse permission for purchase of land under part 16 of the 1909 Act. Did that come up very often, and did he refuse permission, did you come across instances of that?

A. No, no, I don't think I did.

Q. So, the question than to rise, or –

A. Well, it didn't arise here, I'm not saying it didn't arise anywhere, but yes, I didn't see it come up here. I think there are some examples of the minister consenting to mortgages and that relates to some of those pre-development scheme private loans that were taken out in the 1920s by small farmers. So, that was a different form of alienation, but a mortgage needed the minister's consent, so, there was consent for that, but I think that's different legislative provision.

Q. All right, thank you. You specifically mentioned Ōamaru 2B as supposedly being required for purchase for settlement and how in fact, it wasn't really. I just wondered whether you would say that about other blocks in this district.

A. Well, yes, most of those in land, hinterland blocks, yes, I think it's sort of the Crown having eyes bigger than their stomach or something, you know. Like, just wanting to grab up everything they could and being pressed by you know, settler associations to do that without properly thinking through what use that land was going to be. I mean, I guess, Te Urewera is a classic example of that, where they spent an awful lot of money buying up a huge area and then realised it wasn't really fit for anything except a reserve. Then this land is very similar, being, you know, just to the east of Te Urewera.

Q. All right, thank you. I am going to ask you to walk me through the £10 rule and how that worked. So, on succession of partition, it might be

deemed that it was an uneconomic interest, so nobody gets any money for that being, essentially, confiscated –

A. No, no, the money is paid, I think, by the Māori Trustee, because then when it's later sold to someone else who purchases it, they get reimbursed, basically, so they get paid for it. So, I think there's some ballpark figures from the conversion fund, about, you know, how much money the Māori Trustee was spending on buying these up and how much you earn from on selling them. So, there is obviously a bit of a gap because there's a time delay between buying and selling. But yes, they did pay for them, but obviously not much because they were worth less than £10. It's just mostly a few pounds here and there.

Q. But who does that money go to then?

A. Well, to the people who would have been owners had the succession proceeded, I think.

Q. Okay.

A. So, they were identified. So, often there would be a succession to somebody, usually it's more than one block, so there would be a list of blocks that the person had interests in. Those that are **(inaudible 15:13:57)** listed separately and their value is listed, and then I presume, at some point, that money is paid to the ones who succeeded to the other interests. So, they, sort of identified in the minutes as **(inaudible 15:14:12)** of owners, but their rights are taken.

Q. All right, thank you, that's clarified things for me. My final question is sort of a big question that has arisen for me in your answers to counsel, and you have said on a number of occasions that the government was well intentioned. I'm just wondering, when you say well-intentioned, well intentioned for who, and would you like to expand, and for what object – I mean, is there a hierarchy of you know, people of intention if you like?

A. Yes, well, I think the good intentions are sort of, fairly narrow and fairly isolated periods about specific things. So, like, there were some positive intentions behind consolidation and development. Stout-Ngata, that was a sort of a positive step, that was well intended in order to identify land that should be retained. But you know, of course there's never the follow through, so that land that should be retained is not retained. A

consolidation scheme ends up costing land, at least for Ngāi Tai and development ends up being a long tortuous sort of a bit of a damp squid along the way. It doesn't result in a huge amount for many people. So, there are good intentions in there, but it doesn't really excuse the actual outcomes, I don't think. Then later on, you have things that really aren't well intentioned at all, like conversion and Europeanisation. But they are driven by the same underlying drive, you know, for more effective utilisation of Māori land. Like, it was just seen as an economic asset and it had to pay its way.

Q. Yes, thank you for that, I wondered too, whether the good intentions were for individuals and not necessarily for looking at the hapū.

A. Yes, well, the drive was on individual success, so turning particular Māori into productive farmers, because there wasn't enough land for everyone to become that. So, it was a matter of concentrating the ownership in those that could do it. Then well, obviously, they had to come at the expense of others, but that was just seen as an inevitable result of too many owners, too little land, and the need to create a more economically viable land titles. So, there's a lot that's lost along the way, so that intention, yes, as you say, it is guided towards a very narrow group, it's not for all the owners, it's not for the hapū, or even the whānau really, as a collective.

Q. All right, well those were all my questions, and I just want to endorse what Dr Phillipson and others have said about the importance, not only of your work generally, but of this particular report to assist us in writing a report explaining what has happened in this district. So, thank you very much.

A. Thank you, very kind.

JUDGE DOOGAN:

Kia ora, anō, Mr Stirling. We will stop there, and I think some homework is coming your way. I will check with my other panel members as to whether we have other questions, which we will add to those that Dr Phillipson has indicated he has. But I just want to reiterate the mihi that has been given to you. Thank you for, not only the report, but also the way in which you have been able to answer questions from counsel, from the Tribunal over the last two days. That's

a pretty, a solid effort, and I am told that it's actually your birthday tomorrow, so, happy birthday, it's one you may not forget quickly.

BRUCE STIRLING:
Yes, I'm feeling a year older already.

HOUSEKEEPING – TIMETABLING (15:18:46)

MR SIAOSI ADDRESSES JUDGE DOOGAN – SEEK LEAVE (15:19:10)

HEARING ADJOURNS: 3.19 PM

HEARING RESUMES: 3.48 PM

HOUSEKEEPING – TIMETABLING (15:48:12)

(15:49) MR KENNELLY: (#3.3.036)
Tēnā koe, Sir. Counsel's name is Kennelly. I appear on behalf of Te Mata Law.

BEGINS SPEAKING TO OPENING SUBMISSIONS #3.3.036
These opening submissions are filed on behalf of Wai – presented on behalf of Wai 1789, appellation number #3.3.036. The claimant is Bella Savage, and she brings this claim on behalf of Hineato Savage, and her affiliate hapūs relevant to this claim are Te Whānau-a-Harawaka of Te Whānau-a-Apanui and also Ngāi Tamahaua of Te Whakatōhea.

I just wish to acknowledge, here, today, to her right is her sister Waipae, and then we have her cousin Aroha in the back. When I met Aroha last Thursday, she told me she was from Texas, and I didn't get the term at the time, but found out Texas was Te Teko, so they've travelled all the way from Texas to support Bella here today.

Bella Savage's brief of evidence is appellation number #E039, and it was filed on the 17th of October 2025. She first filed her statement of claim back in August

2008, and the most recent amended statement of claim was filed on the 23rd of January 2024, and that appellation number is #1.1.021.

Bella Savage has a Masters of Applied Indigenous Knowledge, He Waka Hiringa, from Te Wānanga o Aotearoa in Te Awamutu. She was also part of the members that established the Te Whānau-a-Harawaka hapū trust. That entity is also in support of her claim and her evidence here today. She also recently was elected a trustee of the Tunapahore 6 block, which I understand she will speak to more.

Her evidence today will speak to the impacts of Crown actions, omissions, the Court's omissions, agencies, and on the whenua, cultural identity and wellbeing. Her evidence will show how these led to the loss of whenua, disruption of customary title, and how they have continued to affect economic, cultural and social wellbeing, not only of Te Whānau-a-Harawaka, Ngāi Tamahaua, but also of the Savage whānau.

Just before I continue, there are two matters that I just wish to address. Of course, we have this boundary matter and the jurisdictional matter. The evidence that Ms Savage will be giving today will also include the Tunapahore land block, which of course was part of Mr Stirling's report. Tunapahore currently sits outside of the inquiry boundary line to the right of Torere. During the judicial conference on the 31st of October this year, raised by – my learned friend Ms Rongo asked your Honour to have this block included. At this stage, there is no directions. However, it appeared the Tribunal had an appetite to include this land block, and we remain hopeful, moving forward, that it will be.

In terms of this jurisdictional matter, we must acknowledge the Te Whānau-a-Apanui settlement which is currently sitting in – with Parliament at the moment. Although it has not been enacted, we understand the Tribunal, at this stage, retains jurisdiction to make findings and recommendations, but of course, acknowledge once this is passed, this jurisdiction will be removed. From what I understand, we will still be – we will still have the opportunity to seek leave to apply as interested parties.

In terms of Ms Savage's Te – Ngāi Tamahaua whakapapa, she – her whānau whakapapa saw a number of land blocks within this inquiry boundary line, Ōpape, Takaputahi, the Ōpōtiki township, Kapuarangi, Waioweka and Whakapaupakihi. She will briefly touch on her Ngāi Tamahaua whakapapa here today. However, she is mainly focused on the Tunapahore land block. She supports the principal Ngāi Tamahaua claim of Wai 1781.

In terms of her Tunapahore interests, through her tupuna Hairama and Hineato Savage, who are both descendants of Te Whānau-a-Harawaka, I – at paragraph 10 there, I said "ancestors". I apologise, there; it should be "descendants". She connects both to Te Whānau-a-Apanui and – this is how she connects to Te Whānau-a-Apanui.

Te Whānau-a-Harawaka have strong whakapapa connections to the entire Tunapahore block, with established pā, cultivations, urupā, that affirm the hapū's ahi kā and mana whenua. As we will see, as I had a discussion with Mr Stirling today, she will also speak to her tūpuna Taina Savage and Hairama Savage and their roles in a number of the Native Land Court appellate courts and royal commissions, where they contested for the interests on behalf of Te Whānau-a-Harawaka.

In terms of the Treaty principles and duties, as part of the statement of claim, we acknowledge – we point to the breaches of active protection, partnership, tino rangatiratanga, duty to ensure equity and development; and some of the prejudices we highlight are the alienation from ancestral lands, the loss of pā, kāinga, wāhi tapu, taonga, the degradation of mana motuhake, and the consequences of economic, cultural and political autonomy, to the continued erosion of rangatiratanga, destruction of traditional land tenures, loss of economic capability and opportunities to develop their lands, loss of culture, tikanga, mātauranga, and te reo, and forced displacement and subsequent movement into urban areas.

That will conclude my opening submissions. I will now pass it on to Ms Savage to present her evidence.

JUDGE DOOGAN:

Mr Kennelly, just before you sit down, a couple of things just on the jurisdiction issues discussed at the recent JC.

My understanding, and I think the Tribunal's understanding at the moment, is that the Te Whānau-a-Apanui settlement is on hold because of essentially the unresolved issue around one of the acknowledgements in the settlement that the Crown wishes to remove, and so from that perspective, there is obviously a period of time when the legislation is not imminent.

What we as a panel are not familiar with in any detail in terms of the content of that settlement is whether there are specific acknowledgements or redress directed towards the Tunapahore lands and the history associated with those lands. Do you know what the position is there?

MR KENNELLY:

Probably best that I come back to you, Sir.

JUDGE DOOGAN:

All right. In terms of – as you are aware, we have indicated that our boundary is essentially administrative, so we are not saying that we will not look at claims that are outside or adjacent to our inquiry boundary in respect of Ngāi Tai. We are in the process of timetabling hearings with respect to their claim, so we are certainly open to proceeding in the same way.

And Crown counsel, can I just briefly check, and can you remind me, please, where we got to at the judicial conference? Are there remaining jurisdictional issues that – apart from the obvious ones in relation to the Te Whānau-a-Apanui settlement and the impact of legislation, is there any current objection from the Crown to the Tribunal proceeding to hear these claims, and if the window is still open to us, to report in due course, assuming legislation does not intervene?

MR HUNT:

The short answer is no, your Honour, statutory jurisdiction will stand.

JUDGE DOOGAN:

Thank you. That was my understanding. I just wanted to check. So, I know directions are pending, but you can proceed on the assumption that that is the position, so haere tonu. Thank you.

MR KENNELLY:

Thank you, your Honour.

MR KENNELLY CALLS

(16:00) BELLA SAVAGE : (#A039)

Kia ora koutou. Kei te mihi nui ki a koe, Judge Doogan, me tō kaiwhakawā. He mihi nui ki a koe, Mr Linkhorn, me tō kaiwhakawā. Kei te mihi ki ngā rōia me ngā kerēme. Āe. Kei te mihi nui ki te hau kāinga, Te Upokorehe iwi. **Judge Doogan, I wish to acknowledge you, Crown law, Craig Linkhorn, counsel and claimant communities. Again, to our hosts, Upokorehe, the people.**

As our lawyer said, my name is Bella Savage, a descendant of Hineato Savage, and I whakapapa to Te Whānau-a-Apanui me Te Whakatōhea.

So today I stand here to represent my whānau and also my hapū. I am currently the secretary for our Te Whānau-a-Harawaka hapū and they felt quite excited that I can stand here and talk about our – the whenua within our rohe, so – I will just miss that part and go on to the Savage whānau.

So my father is Hamiora Haweti, Samuel Joseph Savage. His mother was Huhana Hakota **(spelling 16:01:16)** of Te Whānau-a-Apanui. Hinetekahu is our hapū. And his grandparents were Hairama Haweti, also known as Hiram Savage, and Waipae – no – yes, who married our kuia Waipae Hakota **(spelling 16:01:35)** of Hinetekahu.

Hairama was born in 1850 to our rangatira kuia Mereana Hineato Savage and her husband Benjamin Boscawen Savage. Hineato was a rangatira of the Harawaka hapū, and her people resided on the Tunapahore block about 30 kilometres east of Ōpōtiki. Upon her passing, her mana within the hapū was given to her eldest living child, that being Taina Valentine Savage.

Taina was born two years after the signing of the Treaty of Waitangi in 1842, so the mana of their mother was passed to him at eight years old, and that was part of the tikanga of Te Whānau-a-Harawaka, especially when you've lost a lot of your bloodlines due to land wars and things like that. Whakapapa was scarce, so hence why Taina held that position.

Taina became well known throughout the Bay of Plenty as a respected boatbuilder, trader, and established a post at Hāwai trading post at Hāwai. Taina reached the age of 100 and continued making boats into the early 20th century. He is buried at Waitangi urupā in Ōpōtiki.

Taina was known to challenge the Crown frequently in the rohe, not just Whānau-a-Apanui but he sat in the – the Hiwarau block hearings and a lot of other blocks around the rohe. Normally, the chiefs would call upon him to attend hearings that – that were quite important and significant within the rohe.

After the signing of – just speak about our Ngāi Tama whānau. After the signing of Te Tiriti o Waitangi, Ngāi Tamahaua and other hapū of Te Whakatōhea continued to live under their own mana motuhake and tino rangatiratanga. Our people were known to be hard workers who owned ships, traded goods, and had a thriving community. Basically, they were economically set up.

This changed after the Crown's 1865 invasion of Ōpōtiki following the death of Carl Völkner. So, the raupatu destroyed Ngāi Tamahaua's pā, papakāinga and displaced our people. The land that we were put on was the Ōpape reserve. It was an unproductive piece of land and yes, I think our whānau found it hard to live there. The Native Land Court further fragmented what remained and applied individual titles, and – that were easily sold on.

Because of all this – the invasion, the confiscation, and Crown policy – Ngāi Tamahaua became almost landless. So we were cut off from many of our ancestral places and lost much of our ability to exercise our rangatiratanga. Despite this, Ngāi Tamahaua have carried on. Our hapū identity remains strong within Te Whakatōhea, and we continue to seek recognition for what happened to us and the generations that followed.

The Savage whānau whakapapa to the following land blocks within the scope of this inquiry.

1. So, we whakapapa to Ōpape 3A1B (Balance) Sections 1B, 1N3, 2, 3, 3A, 3X, 4, 20, and Ōpape 28.
2. We also whakapapa to the Whakapaupakahi blocks;
3. Takaputahi blocks;
4. Ōpōtiki Township blocks;
5. Kapuarangi blocks; and
6. Waioeka block.

And you can see a lot of that was discussed today in Mr Stirling's report.

Given that the Wai 1788 [*sic*: 1781] claim is led by our Ngāi Tamahaua whānau, I do not go into detail over those matters.

So, just with the kōrero relating to our Te Whānau-a-Harawaka interests in the Tunapahore block, the Tunapahore block is situated next to both the Tōrere block, which falls entirely within the inquiry boundary, and the Kapuarangi block, which falls partly within the inquiry boundary.

Whilst the Tunapahore block is not specifically included within the Inquiry district, it sits right on the boundary line and is important to us as Te Whānau-a-Harawaka. As discussed below, Ngāi Tai's interest and involvement in Tunapahore continued through the 19th and into the 20th Century.

Ngāi Tai have not settled with the Crown and are participating in this inquiry as full parties. They have referred to Tunapahore in their statement of claim and may file evidence in relation to this block. Therefore, I believe it is important that our side of the story in relation to Tunapahore is also heard.

The Te Whānau-a-Apanui settlement was initialled as a deed of settlement on 26 September 2023, but it has not yet been passed through Parliament, as discussed by Mr Doogan. This may be the only opportunity for us to – on behalf of Te Whānau-a-Harawaka to tell our story properly; heard and recorded before that process closes.

While we may hold a different understanding to Ngāi Tai of the history and how things happened there, it is right that the Waitangi Tribunal can consider both perspectives together. Only then can the record reflect the full picture of what took place at Tunapahore and how this may impact on other interests.

So, I just – Te Whānau-a-Harawaka whakapapa.

Ko Ranginui te maunga tapu
Ko Hāwai me Motu ngā awa
Ko Hāwai te marae
Ko Tūrirangi te whare tupuna
Ko Te Whānau-a-Harawaka te hapū
Ko Te Whānau-a-Apanui te iwi
Ko Mātaatua te waka
…Hāwai and Motu are the rivers
Hāwai the marae
Tūrirangi the great meeting house
Te Whānau-a-Harawaka the hapū
Te Whānau-a-Apanui the people
Mātaatua the waka

So, a lot of our whakapapa was given by – during the Royal Commission hearings in 1902 and is highlighted by Dr Xavier Forde's evidence that we used

in the High Court Marine and Coastal Area (Takutai Moana) Act 2011 application.

So, our descent over there is from Motatau-mai-tawhiti of the Tauira waka, who was the first to settle at Tunapahore around the 14th Century. He lived at Te Whakatipua pā and was a sixth-generation descendant of Toi-kai-rakau, who was one of the earliest inhabitants of the region, which was populated by his descendants, Te Tini a Toi.

Tuariki's grandson, Tūrirangi, a descendant of Tamatekapua of Te Arawa, married Rongomaihuatahi after he assisted in avenging the death of her father, Apanui-Waipapa, who was a rangatira of Ngāti Porou. Rongomaihuatahi's mother, Hine Mahuru, was a descendant of Mātaatua; an uri of the prominent ancestor Muriwai.

Tūrirangi and Rongomaihuatahi had a son called Apanui-Ringamutu, who was born at Te Upoko-o-te-rangi pā on Tunapahore. This represented the convergence of several important bloodlines: the lineage of Toi, Tamatekapua of Te Arawa, Muriwai of Mātaatua, the union of Paikea and the daughter of Te Whironui of Nukutere.

The whakapapa of Apanui-Ringamutu is very significant. He was given Ngāti Porou lands from Potikirua by his uncle Te Aotakaia and inherited Ngā-āriki lands from the Motu River to Tunapahore from his father, Tūrirangi. Apanui-Ringamutu conquered the lands in between, and his descendants became known as Te Whānau-a-Apanui.

Apanui-Ringamutu's son Te Harawaka, from his second wife, Te Whāki of Ngāi Tai, further unites the bloodlines of Te Tairāwhiti and Te Moana-ā-Toi. Ngāi Tai descend from Hoturoa, kaihautū of the Tainui, through his daughter Tōrere-nui-a-rua, who came ashore at Tōrere, in the next bay to the west of Tunapahore and Hāwai around the 14th Century AD. Hence, Te Harawaka and the hapū that takes his name whakapapa to Toi, Paikea, and rangatira of the Tauira, Te Arawa, Nukutere, Tainui and Mātaatua.

Tunapahore land block.

Roughly around 5,449 acres is the tūrangawaewae of our hapū, which lies beside Hāwai Beach and the mouth of the Hāwai River, about 30 kilometres east of Ōpōtiki. The Savage whānau whakapapa to the entire block, yet today I hold only 0.075 acres in Tunapahore B2B.

Our hapū exercised mana over this area well before 1840. My tūpuna, including Hineato Merehana Savage, Mereana Makawa, Hoera Tere, and Pokere Taua and many others, exercised mana and ahi kā to these lands, alongside their wider whānau.

Several battles were fought for the possession of Tunapahore. During the days of Tutoro, the son of Tuariki, Ngāti Ira encroached on their hunting grounds inland. Ngāriki attacked and defeated them in a battle known as Te Hiakitaka.

Later, Apanui Waipapa's death in battle with the Ūawa chief Kahukuranui led to renewed conflict at Te Upoko-o-te-rangi pā, where Kahukuranui was killed. The rocks Rukupo and Hinerito near Hāwai are said to be named after those who fell in the battle.

Following these events, peace was restored through the marriage of Tūrirangi and Rongomaihuatahi, whose son Apanui-Ringamutu inherited mana over Tunapahore. His descendants became known as Te Whānau-a-Apanui, while those from his other marriage retained the name Ngā-Ariki-Tahaehae.

Apanui-Ringamutu's son, Te Harawaka, lived on Tunapahore with his Ngā-Ariki relations. Te Harawaka is said to be Apanui-Ringamutu's only child who remained there. He married three women of Ngā-Ariki descent, and this peaceful coexistence continued until the time of Te Harawaka's grandson Mitihau.

During the 18th Century, a cycle of revenge killings led to the battle of Tunapahore between Te Whakaihu of Ngā-āriki and Mitihau of Te Whānau-a-Harawaka, who lived at Hāwai.

Ngā-Ariki were defeated and exiled to Ōhiwa, but peace was sealed with Te Whānau-a-Apanui through their attendance at a tā moko ceremony at Maraenui. At this event, Ngā-āriki took offence to a statement made by one of their Ngāi Tai relations and later attacked them twice with the assistance of Te Whakatōhea.

After the fighting ended, those of Ngā-āriki who were not directly related by marriage to a member of Te Whānau-a-Apanui did not return to Tunapahore. Members of Te Whānau-a-Harawaka and their relations took back possession of the newly vacated pā and cultivated and claimed all Tunapahore from the time of Mitihau forwards.

In the early 19th century, Te Whānau-a-Harawaka were often allied with their relations, Ngāi Tai, who lived at Tōrere, in warfare. We fought together during the northern raids of the 1820s and later united with the wider Te Whānau a-Apanui iwi in the battle against Ngāti Porou at Te Kaha around 1834.

In 1835, the Te Whānau a-Apanui rangatira Rangipahiriri and Te Wāka Patutoro invited Ngāi Tai to live at Tunapahore for protection from a possible Whakatōhea attack. While there – while they were there – they gathered there, a great tsunami, Te Tai o Pāniwhaniwha – well – while they were gathered there, a great tsunami, Te Tai Pāniwhaniwha, struck, flooding the pā and forcing its abandonment. Ngāi Tai relocated to Moutaua pā but maintained connections with Tunapahore for many years.

Disputes arose between Ngāi Tai and Te Whānau-a-Apanui over the boundaries of a māra kai. A Ngāi Tai woman who had married a Te Whānau-a-Apanui man was detained by her own people and forced to

remarry within her iwi. The Te Whānau-a-Apanui owner of the māra asked Ngāi Tai to return to their own ancestral whenua.

In 1856, fighting broke out at Tunapahore between the two iwi, with several battles. Eventually, peace was sought, and Tohi te Ururangi of Ngāti Whakaue helped to arrange a truce.

With the help of the tohunga Hakaraia, peace was eventually restored, and Ngāi Tai returned to Tōrere while Te Whānau-a-Harawaka and our Te Whānau-a-Apanui kin remained at Tunapahore.

By the late 1800s, census records taken by Resident Magistrate Brabant confirmed Ngāi Tai were living at Tōrere, while Te Whānau-a-Harawaka and others from Te Whānau-a-Apanui occupied Hāwai and Tunapahore. Our urupā, marae, and wāhi tapu at Hāwai continue to stand as evidence of our ahi kā and enduring connection to this whenua. Several of these locations are detailed in my MACA evidence.

Contested Tunapahore block.

MR KENNELLY:
So, Bella, we just heard from Bruce Stirling yesterday. He obviously gives a bit of a full run-down of that whole land block.

BELLA SAVAGE:
Yes.

MR KENNELLY:
Do you want to give more of a personal – or the whānau impacts you have?

BELLA SAVAGE: (CONTINUES #A039)
Yes, I guess so. Well, from – for our whānau, our koroua, Taina Haweti, he was always in the courts fighting for the lands and challenging the Crown and government of the time, so there's a lot of evidence of him in the court – court

hearings and that. And it's clear to see that Tunapahore block is one of the most contested land blocks in Aotearoa, just in and out of court all the time, and when I look at the evidence of Taina Savage, you know, the judges are actually giving the land to Te Whānau-a-Harawaka and to Te Whānau-a-Apanui in the original court hearings in the native courts, and – and – at one situation, the land stayed like that for 30 years, and it's not until we get into the surveying of the lands where we start to lose the land.

Wiremu Kingi of Ngāi Tai, he came in with a surveyor and started to survey Tunapahore, you know. Our tūpuna were saying to him, "Well, what are you doing here? Who is this man surveying through our kāinga, through our urupā?", and those are the things we had to put up with, they had to put up with, over the Tunapahore block. It was neverending, the battles that our tupunas had to endure over, you know, just trying to keep their – their kāinga.

We have no other lands. Our tūpuna never went out there and made claims to lands at Te Kaha or Ōmaio or, you know, Whakatōhea. They just stayed within Tunapahore. However, as you can see in all the records of everyone else, they went everywhere, you know, and Mr Kingi's claiming land at Te Kaha, Whānau-a-Apanui, everywhere in Aotearoa, but my tupunas, they didn't do that. They just stuck within their own boundary, which was Tunapahore.

And our tupuna Harawaka was – he was up there, as far as owning the land, you know, even in Te Kaha, we see land blocks, 11,000 acres at Maungaroa being claimed under Harawaka's mana, you know, because of the whakapapa. We are the tuakana line to Te Whānau-a-Apanui, yet when it comes to the land, we don't have any. Basically, that's what happened to our hapū, Te Whānau-a-Harawaka. So –

MR KENNELLY:

And Bella, how have you seen that – those impacts of those decisions that were made over **(inaudible 16:20:47)** impact you?

BELLA SAVAGE: (CONTINUES #A039)

The impacts, yes, the impacts are huge. Since lodging our claim in 2008, it's been difficult for me to – to talk to someone from our hapū. Didn't exist. You know, we had people there running our marae, running our hapū without the hapū, you know, being there, so just one family running the whole show, so it's taken us over 20 years to – to gain back our mana motuhake for our hapū and to register a legal entity where we now have the say, and this extends into our Treaty claims, through everything, our MACA claims, you know. We're having to – to assert our mana to our iwi, Te Whānau-a-Apanui, you know, with the foreshore and the seabed, the whenua, the ngahere, everything. This is what we are doing today, now that we have formed a proper hapū committee.

The Tunapahore 6 land block, 80% of that land went to Ngāti Awa, and the farm block, that all went to Ngāi Tai. Basically, Te Whānau-a-Harawaka, due to the loss of our – our tupunas within the Tai Rāwhiti expedition, a lot of our lands were lost. Our chiefs weren't there to defend our lands. They weren't there to put the whakapapa right. Those sorts of things, so at time, we're having to fix up all that.

So, when we were doing our research in the Māori Land Court, we, you know, we've seen all the lands that have been allocated outside of the hapū. Tunapahore 2, 9 acres was awarded to Wi Kingi for an urupā. Tunapahore 3, 3,440 acres was awarded to Te Whānau – well, those ones came back. But yes, just looking at how much land went outside of the – to owners that hadn't even lived at Tunapahore, people that doesn't – don't even know where Tunapahore is.

An example of – going to a hui last week with Te Tumu Paeroa to get back the kiwifruit orchard sitting on Tunapahore 6. A lot of the people in the hui don't even know where Tunapahore is, where Hāwai is, and that's the block where 80% of the owners is Ngāti Awa. And then when you ask them where they're from, "Oh, I'm from Murupara", "Oh, I'm from So-and-So", and then when we ask if, you know, we put a vote to "Where shall we hold the hui?", well, Te Kaha was outvoted and Ōpōtiki was outvoted, so they only want to hui outside of our

rohe, and that – that goes to show that we don't have their **(unclear 16:24:15)** mana over our lands.

MR KENNELLY:

Bella, at 119 of your brief, you talked about culture and identity and those impacts. Can you speak to those?

BELLA SAVAGE:

What page is that? 19?

MR KENNELLY:

22.

BELLA SAVAGE: (CONTINUES #A039)

22. Yes, the impacts.

WITNESS REFERS TO BRIEF OF EVIDENCE #A039, PAGE 22)

So, there's been a lot of impacts for our whānau. So, land alienation and cultural dispossession is one of the impacts.

Colonisation and alienation have had profound and long-lasting impacts on the Savage whānau and the hapū, resulting in extensive land loss, cultural erosion, and intergenerational trauma. The dispossession of land through Native Land Court processes, Public Works takings, and unfair sales severed our connection to the whenua and disrupted the social and cultural fabric of our hapū.

Under Crown law, Te Whānau-a-Harawaka cannot hold legal title to land directly. Ownership is recorded in the names of individual descendants or through legal entities such as trusts and incorporations. In tikanga, however, the mana whenua and kaitiakitanga of these lands continues to rest with the hapū. Over time, the operation of the court system allowed people with little or no whakapapa to Te Whānau-a-Apanui to acquire shares and legal interests in the Tunapahore blocks, further weakening our hapū and control of the whenua.

The introduction of foreign land tenure systems and the marginalisation of our reo and mātauranga have created enduring disconnection from our identity and whakapapa — ko au ko te awa, ko te awa ko au **I am the river, and the river, I am**.

You know, I say that because we've got land blocks there that are consolidated, and then they are productive, like Tunapahore 6 block that Ngāti Awa had made the shareholding in, they were able to grow pines, so they were able to create finances, income, and now they are buying the neighbouring blocks, so the blocks that are significant that hold our wāhi tapu are also being bought by the same people who were able to get our land through the court systems, rendering us, you know – we – we haven't got the finances to – to do what they're doing.

And we speak about the Savage block. Dulcie Bigwood, Tunapahore 3, where we lost that block through one Savage owner. Our hapū has attempted to buy that land back, so we've – we're putting a deposit on it. However, if our Treaty settlement doesn't come in one year or two, we don't have the funds to pay it back, so – so those are the things we're stuck with. That's how we have to operate. Pōhara. No money. And yet we watched the other – the other tribes within our rohe having the finances to purchase those same lands. It's very devastating.

The introduction of foreign land tenure systems and the marginalisation of our reo and mātauranga have created enduring disconnection from our identity and whakapapa. That's a huge one there, where we have to start holding wānanga to educate our – our whānau and our rangatahi of who they are.

The loss of land disrupted our relationship with the taiao, the foundation of our wellbeing. Our urupā and wāhi tapu linked to Te Whānau-a-Harawaka now fall within private or Crown control, and access is restricted by it **(unclear 16:28:37)**. This has limited our ability to maintain ahi kā and uphold tikanga in these places.

So an example with protecting our urupā is when Dulcie sold the – turned the land into general title and it was sold on, within it was an urupā, Waipae urupā. So I had to assist – well, I assisted Roka Cameron in getting the urupā put under the Historic Society, because we had the history of the block, Savage whānau history. So it was a – I had to – I'd got in touch with Pita Sharples at the time, who was the MP for the Māori Party, and with the help of Pita Sharples and his historian, Mr Robinson, at the time, we were able to get the New Zealand Historic Society on board to help us to protect that urupā and ensure that it wasn't sold on. Those are the things I'm finding that I have to do to protect our wāhi tapu.

So what are we on now? Environmental degradation.

When it comes to the environment, we – the foreshore and the seabed is a major one for us, and I'm a trustee on the Tunapahore 6 block, which is part of the Tunapahore, the bigger Tunapahore 6 block, so the reserve is our traditional harvesting area, and that belongs to iwi from outside of our area, so how does a hapū protect their traditional harvesting grounds when we don't own it anymore, when other iwi own it? You know, iwi such as Ngāi Tai, Te Whānau-a-Apanui and Ngāti Awa, they all own this land, but Te Whānau-a-Harawaka have no rights, so these are the things we're having to do.

I can do all of this, but I've got to go out there and do the work, you know. I'm only presenting what – what our breaches are, but having to fix it up, we have to do the mahi, otherwise we're left – our future is not looking very good.

And when you talk to shareholders that – that are in the coastal area, you know, they think it's their God-given right to own it. They don't want to know that it was once your land, you know. They think, "Ooh, we own coastal land, goodie", you know, and when you explain, "Yes, but you got it wrongfully", they don't want to know that. They don't want to give the land back. It's a hard fight for us.

Cultural identity.

The erosion of our reo, our traditions, our knowledge – my tipuna Taina Haweti was immersed in te ao Māori. He had his personal tutor, the chief of Ngāti Hekekino, Rangi-i-paia, who taught him all the ways of the old people, and he walked in two worlds, te ao Māori and also his Pākehā side. His whole wellbeing was about the taiao. Everything he did was to protect the environment, to protect the people. He wasn't one of those who went out there to get land. He was a person who always helped people. So that – that's – that, for us, is what – what we believe in; nurturing and protecting our environment and our people.

So they talked about the census for Te Whānau-a-Harawaka and that Te Whānau-a-Harawaka had no records as far as census. That – that would probably because – be because our people did not want to be part of that system. I can guarantee you that.

They – Taina represented them in the courts, because none of them wanted to be part of it. They didn't want to have to go to the court. They didn't have the means to get to Rotorua when there was cases over there, or even to Ōpōtiki. They were busy in their gardens, you know. They were busy trying to live, let alone go to a court case, so those – those jobs were left to Taina to do, and Hairama. And they tried their best to stay as a sovereign hapū, not to get involved, not to be part of Hauhau kaupapa as well as the Crown.

Tino rangatiratanga.

The loss of our lands also meant the loss of our hapū tino rangatiratanga over time. Our authority to make decisions for ourselves and our taonga and whenua have been transferred to iwi structures that do not always reflect our hapū voice. This has weakened Te Whānau-a-Harawaka's ability to exercise mana motuhake in our rohe.

Ngāi Tamahaua impacts are similar in the fact that, you know, so here, Ngāi Tamahaua is here, Te Whānau-a-Harawaka is there, so we have Ngāi Tai in the middle of us, you know, so – so it's very – from both ends, we're having to challenge Ngāi Tai for our whenua. On the Whakatōhea side and the Whānau-a-Apanui side, it is us who are being challenged over our lands, and that's been discussed today widely, so –

(16:35) MR HUNT TO BELLA SAVAGE:

Q. Tēnā koe, Ms Savage. Mr Hunt for the Crown. I have, as I said, just a few questions in relation to some of the matters covered in your brief, the purpose of which is just to find out some more information about those matters. The first one is in relation to the tsunami that struck in 1835, and I was interested as to whether you might have some more information or kōrero for the Tribunal about the effects of that and what happened to the people in the period after it struck.

A. Our koroua, Taina, talks briefly about it. When it – when it occurred, he said, it took out all the – the pā sites, the low-lying pā sites. That's – that's all he mentions about it, so yes, more extensive research has to be done about that.

MR KENNELLY:

Sorry, is that in his book? You have –

BELLA SAVAGE:

Yes, he speaks briefly about it in his books.

MR KENNELLY:

Can you remember the title of his book?

BELLA SAVAGE:

I'm not sure if I've seen it in the Ngāti Awa Treaty evidence that they – they drafted, which was based on Taina's kōrero, or whether it's in the book of Taina, so there's two places where it could be.

MR KENNELLY:

We can have a look for that and provide that if you – if that would help, Mr Hunt.

MR HUNT:

I think the Tribunal might be interested in that, for sure.

BELLA SAVAGE:

Yes, there's the book of Taina and also the evidence of Ngāti Awa Treaty claim. They write a lot about Taina.

MR HUNT:

That would have been for the inquiry in the mid-1990s?

BELLA SAVAGE:

Yes, Wai 67?

MR HUNT:

46, maybe?

MR HUNT TO BELLA SAVAGE: (CONTINUES)

Q. Thank you, that – that's interesting. The next topic was about Ms Bigwood and Tunapahore 3. Quick question, I'm conscious that Ms Bigwood's whānau, they might have their own perspective on those events and the matters as well, but I was interested or wondered whether you were aware of any records or information from Miss Bigwood about her reasons for those events in relation to –

A. There's lots of evidence about that, and you can only say so much here, but we have lots of evidence, so, basically, I think she just wanted to sell the land, but in order to sell the land, she had to acquire the shares. Her father, Peter Savage, was farming it at the time, and I don't think they wanted to give the land up, so that land was quite – it was a huge block, I think about four or five hundred acres, but the – the sad thing about it is that land, it contained Ranginui maunga, Hāwai River, and a lot of our urupā sat on that historical land.

Now, Taina would have got that land for the purpose of, you know, giving it back to the hapū. That land was never meant to be sold, and yes, it – that's quite sad that it went the way it was, but however, you know, it's come back to Māori ownership. We're just trying to buy the Hāwai camping – that front camping ground – back now.

So yes, it's all come back to Māori ownership, but just not Te Whānau-a-Harawaka ownership, so because of the consolidation of land and other iwi coming in, we're having to share it with the world. We're having to get permission from trustees to walk the land to go and look at our pā site. I've – a lot of us have never seen it. So, we're looking forward to a day where we have a wānanga and we take our hapū on a hīkoi to look at our wāhi tapu. Those are the effects that we suffer today.

Q. And do you know if anybody sought or attempted to challenge the – the court's decision confirming the – the resolution of the owners **(inaudible 16:39:54)** –

A. Lots of challenges **(inaudible 16:39:55)**.

Q. – at the time? But at the time, do you know?

A. Well, my tupunas – my tupunas always challenged through the court, every time. The challenges stop when they're too old or they're dead. When we lose the land is when they're dead.

JUDGE DOOGAN:

So, just for the record, which resolution of owners are we talking about? Which block? The –

MR HUNT:

Tunapahore 3.

JUDGE DOOGAN:

3.

MR HUNT:

The resolution –

JUDGE DOOGAN:

Dulcie Bigwood's –

MR HUNT:

The court confirming resolution to sell the land to Ms Bigwood.

JUDGE DOOGAN:

Right. Thank you.

BELLA SAVAGE:

Oh, yes, my sister Waipae can answer that question, Waipae? Did anyone challenge the sale of the –

WAIPAE SAVAGE:

No, nobody could. Nobody could challenge that particular sale. That was because the way that the sale was done.

What I know from my uncle is when we asked him during this research – and this is oral information only, and they're all gone, and the question I posed to my uncles who were around at that time is, "Why did you sell the land?", and their answer to me was, there was two of them: "We didn't know we were selling the land. We thought we were leasing it." That's what they thought.

And in terms of my father, it's him and his brother, my dad didn't sign anything, but his brother did, so – and a cousin who was alive at that time remembered Dulcie visiting through a cake. It was a beautiful cake. And she said that when Dulcie came, it was to get my dad's brother to sign over the land, and it was to lease, not to sell or anything like that; it was just renew the lease. That was their understanding. And my uncle actually put it to me this way: "We didn't bloody sell it. We didn't sign it to sell. We thought we were renewing the lease."

That's about all I can give you.

JUDGE DOOGAN:

Kia ora, whaea. Could I just have your name, again, please?

WAIPAE SAVAGE:

Waipae.

JUDGE DOOGAN:

Waipae. Kia ora, and the names of the uncles you are referring to?

WAIPAE SAVAGE:

Yes. Uncle Haki Savage – Uncle Hoko Savage, sorry. He was one of them. Bronco Savage, that was my dad's brother. He did not know what he was signing.

JUDGE DOOGAN:

All right.

WAIPAE SAVAGE:

And the other one was my cousin. Her name was Georgina Savage.

JUDGE DOOGAN:

Kia ora. Thank you.

BELLA SAVAGE:

Yes, when we look at the evidence, the trail of evidence, a lot of it, it's not really the family giving her permission to own the land, it's them going in after the 1967 succession laws passed and going in there and succeeding the land. There's more successions done without the family knowing, so – so they – they sort of knew that the law was coming in, Dulcie and her father. They knew the law was going to be passed and – and before it even passed, they started preparing for successions.

Like, my father never gave them permission for his land, and neither did a lot of our other whānau. Because when I tell them what became of the Hāwai camping ground, they go: "Our nan didn't give that land to them", you know,

they're all in shock, and you know, these are some of my Pākehā relatives, the Gantlets. You know, they, "nana never did that." but it was secretly done, behind the backs of our ancestors.

When you've been alienated from your lands, you're not living there. You don't know what's going on. You're living in other towns, Thames, you know, Auckland. They're all living away from our homeland. And then it's easy for one person to succeed the lands.

Most of it was done through succession, and I've seen a Will of Taina's, and it – I've misplaced it somewhere and I can't find it again in the Māori Land Court, but it was never given to Dulcie Bigwood or her father. It was willed to Ware Haweti, who was his whāngai son from one of our **(inaudible 16:44:05)** family, and that's why I know that land wasn't destined to be sold. It was to stay within Te Whānau-a-Apanui, in Te Whānau-a-Harawaka.

MR HUNT TO BELLA SAVAGE: (CONTINUES)

Q. It occurs to me that there – and this might be something for you to look – that there will be records of the meeting or records of the court in relation to the –

A. Nothing.

Q. – decision, but something to leave with you.

A. No family hui, no record in newspapers, nothing. Before they knew it, they no longer owned the land. Yes. My father was orphaned at eight years old, and – him and his brother, so as orphans, by the time they – they go and look for their land, a lot of the aunties had taken it under 1967 successions Act. It was very devastating for our family. All over the motu, not just over there. Matatā.

Q. Thank you. Only one more topic, and this was in relation to, I think it is paragraph 103 of your brief, and you refer to a Wiremu Kingi of Tūranga. What I was wondering was if it might be that that is a different Wi Kingi from the Te Wiremu Kingi of Ngāi Tai that we have heard about in previous hearing weeks. The reason I say that is in the footnote to that paragraph in your brief, there is a report in the Appendix or

Appendices to the Journal of the House of Representatives cited, and I Googled that, or looked that up earlier, and I don't mean to put you on the spot. I think that the specific report cited might not be the right one, because the A-15 report mentioned in your brief, it appears to be about papers relating to the proposed reunification of Otago and Southland at the time. But there are other reports in that same year, in 1870, from Te Keepa Te Rangihiwinui in relation to the military actions against Te Kooti, and he reports on a Wi Kingi of Tūranga being captured in the Waioweka, but – that's a long way of asking if – for your view on if perhaps it might be a different Wi Kingi.

A. Yes, it could be that we're referring to a different Wi Kingi. So, the Wiremu Kingi that I'm referring to is the one who challenged Taina Savage in the Native Land Court in the 1800s. That would be the first court hearing for Tunapahore, actually. I'm not sure if it was 1881, but I do have the record at home. So that was the first ever challenge over the Tunapahore block, and that was Wiremu Kingi versus Taina Haweti and Te Whānau-a-Harawaka. So that's why I refer to Wiremu Kingi. I don't know why we've gone to Wi Kingi and because there was always back-and-forward skirmishes between Taina Haweti, Taina Savage, and Wiremu Kingi, and it's widely known he was there. We don't have to look for evidence out there to tell that history. We have it.

Q. Thank you. I will give your counsel the links to those reports online, and he can discuss that with you. But thank you for your answers, and those are my questions. Thank you.

MS LAMONT-RUSSELL ADDRESSES JUDGE DOOGAN – TIMETABLING (16:48:23)

(16:48) DR ROBYN ANDERSON TO BELLA SAVAGE:

Q. Tēnā koe, Ms Savage. You mention in your brief this fighting that broke out between your people and Ngāi Tai. Can you tell us, in 1856, I think, what was that about?

WITNESS REFERRED TO BRIEF OF EVIDENCE #A039

A. I'm not too sure myself.

Q. Right.

A. You know, we're all related. I don't **(inaudible 16:49:19)**.

Q. Well, that's an explanation.

A. Yes, no, there were some big land wars back then. I think it was just over the whenua, more than anything.

Q. Okay.

A. Boundaries. This side of the family might claim that, yes. I think it was more over the boundaries that they fought.

Q. Okay.

A. Land wars.

Q. Yes.

A. Yes.

Q. Well, maybe that is something that is discussed in these many cases that were heard over the block. Have you read those minutes?

A. I have that evidence, and –

Q. You have, sorry?

A. Yes. The fighting in 1851. That was talked about in the Royal Commission evidence.

Q. Okay.

A. The fighting over there. You would find them in there.

Q. Yes. I just wondered, when you have these changing decisions and the reason for the change decisions, whether the court and the Commission is hearing different evidence. Are people coming before them and saying more and more about their rights and the basis of their rights, or do you think they were bringing their own perspectives and attitudes to the decisions that were being made?

A. **(inaudible 16:50:47)** you've heard the saying that we're our own worst enemy. So, for over 30 years, Tunapahore sat under the ownership of Te Whānau-a-Apanui and Te Whānau-a-Harawaka. Thirty years later, we have what they called native assessors, and that's when we lose the land, is when it's under the Māori Affairs Act and they had native assessors sitting in the courts.

The native assessors, there's one was Hone Heke, one was Wi Kingi, and they ruled against Te Whānau-a-Harawaka and land ownership. We're talking about times where people like Wi Pere are our compositors of the court. There was a lot of Māori compositors at that time, when we lost the land. So, I put it down to that, because the Pākehā judges were actually giving us the land. It's not until we have native assessors and things like that that we lose the land.

Then a big blow again is, you know, it's like how many years did it go into the court? Over 10. Ten times over the years they've been into court, and the 1960 one is very devastating. The Royal Commission, that was supposed to be in our favour, but that one there was, again, the native assessors were making the rulings on who gets the land. So, the Royal Commission was the blow to us, where we lost a lot, 1906, 1920, all of those years. By then, my koroua were old, Taina was born in 1842. He's 80 in 1920, you know, he's living in Auckland. They don't got time to go to the court anymore.

But then, a lot of these courts were done so quick, the court hearings that they didn't have time to get to, like the Royal Commissions and stuff like that. But you can see it over the years if you follow all the evidence, how things turned out, and so, yes.

Q. All right. Well, those were all my questions. Thank you for coming and giving evidence to us today. Thank you.

(16:53) DR GRANT PHILLIPSON TO BELLA SAVAGE:

Q. Tēnā koe, Ms Savage. Thank you very much for this. Reading your very detailed evidence together with Bruce Stirling's report has been very helpful, so that was all very clear. But I had one question, which I didn't pick up on until I heard your summary today, which is, how did Ngāti Awa get ownership in the block? You referred to them as owners, if I understood correctly, and it's not clear to me how they got in there.

A. In my view, well, I know Ngāti Awa. My children are Ngāti Awa, and they're those owners of the block. So, on one hand, they say: "Mother, we're going to give our land back to you." Because they're those Ngāti Awa people that own our land. I want – my mother was adopted to

the Ngāti Awa people that own our land, and I know they're not from there, you know. I know the whakapapa, and that's how I know, so falsified whakapapa is one, and I know because I have the right whakapapa and I compare it to Ngāti Awa whakapapa and I can see where they've inserted their tūpuna in that, you know.

My sister went to Rarotonga to visit one of our relations. One of Taina Savage's sons, Stephen Savage, he wrote the first Rarotongan dictionary in the 1800s, you know, back in those days. So, he actually held the Savage whakapapa over there in Rarotonga, the true whakapapa, and it never came back until – when did you go to Rarotonga? Two thousand and – yes, but when you brought the whakapapa back, that's what, 15 years ago? 10 years? So, not long ago that we got the true whakapapa that came back from Rarotonga, and it was good that it was there. Because now we can see the skulduggery in the whakapapa, and we hold our whakapapa tight, because we deny the whakapapa of certain people when they're making claims.

Sadly, our tūpuna, you know, our koroua Benjamin Boscawen Savage, he married into the chiefly line, the Māori chiefly lines, and when that happens, then your children are highly educated in English and Māori. A lot of other chiefs, they tended to manipulate our whakapapa, because of the chiefly women that our koroua married. So, Benjamin married chiefly women with high-ranking whakapapa, and yes, when you see other chiefs from outside of the rohe manipulating the whakapapa, that's what's happened. Even Te Whānau-a-Apanui, they've got enough land on their side, but they've come to our side.

DR GRANT PHILLIPSON:

Did you have something to add?

WAIPAE SAVAGE:

I was just going to elaborate more on the whakapapa side of things.

So, yes, when I went to Rarotonga, so, not knowing that we had connections there, and then my dad, before he died, he always said to me, "If you get the

opportunity to go to Rarotonga, I want you to find my family", and I said, "Who was that?", and he said, "Savages", and I thought he was lying.

Years later, as I grew up and I didn't want to go to this – I don't like travelling unless there's a kaupapa, but I decided, "Okay, I do have a kaupapa, so I'm going to go to this particular wedding", and when – the first thing that came to mind was, "I'm going to look in the phone book to see if my dad was telling the truth", and when I looked in the phone book in Rarotonga, there was all these Savages. I went, "Oh, my goodness me." So, I found – I went to the government buildings, because that's where I found my cousin. He worked for the Rarotongan government.

And what we looked at each other and I thought I saw my uncle and he saw his daughter, and you know, it was quite emotional, but he always did this test. Whenever people went over and said that they were Savages, he would roll the scroll out, and it was long. It was probably the size – half the size of your table. And he said, "Now, show me where you are on this" – what was their word? Whakapapa, I think. Yes, I can't remember. And I said, "Yes, here's me, and here's you. Here's our two great-grandparents, they're brothers." And he said, "Lo and behold, the real one." I said, "Real what?", and he said, "The real Savages that we whakapapa to."

But I'm going to elaborate even more. What you've got to understand about these two brothers is that Taina was raised in – by tohunga, in te ao Māori, so he lived in that world, but at a point, the tohunga said, "You now have to go to your Pākehā world", so he was sent to boarding school, and what actually happened was through understanding both worlds, they wrote, wrote, wrote – whakapapa, everything, they wrote it down. Nobody else was writing things at that time but them, and so when you write things down and you start going into the courts, people are able to see everything, and it's all out there, and hence, Michael said **(unclear 16:58:41)**, that is why our whakapapa is here in Rarotonga, to be – it's for safety reasons, and it was, and the whakapapa we discovered here was totally different, so I don't know, you know, **(inaudible 16:58:56)** –

BELLA SAVAGE:

It was a good thing, because you compare the whakapapa that Ngāti Awa put in and other people, well, you can see where they've gone wrong.

DR GRANT PHILLIPSON:

Okay. Thank you very much, both of you, and I found this very helpful. Thank you.

BELLA SAVAGE:

Yes.

(16:59) PROFESSOR TOM ROA TO BELLA SAVAGE:

Q. Tēnā kōrua.

A. Kia ora.

Q. I just note the t-shirt, "Tahiti".

A. I got this one from Rarotonga **(inaudible 16:59:25)**.

Q. I just got back from Tahiti on Tuesday.

A. (inaudible 16:59:32)

Q. And you are right, some of the people there, they hold whakapapa from us, not just from you fellows, but a lot of whakapapa Māori. And then I am sort of laughing at "Texas". Going to call in to fish up there on the way home. And then Tunapahore. All these three Ts, big ticks. Thank you for your evidence. I don't have any questions, just e aroha ana, and I am caught, too, in your suggestion that sometimes we are our own worst enemies. Kia kaha.

(17:00) JUDGE DOOGAN TO BELLA SAVAGE:

Q. Kia ora. Kia ora anō, Ms Savage. Just briefly, you mentioned that you had recently, or you had become a trustee on Tunapahore 6. Is that an ahu whenua trust, or what sort of trust is that?

A. Yes, it's an ahu whenua with a reservation attached to it.

Q. Okay.

A. That's the foreshore and the seabed portion of it.

Q. All right. So, I am just trying to navigate my understanding on our map book, which is plate 26 in the book we have. It is just on the right in front of you, actually. Because, Mr Kennelly, those numbers are a bit different, but I think that is the map book. And plate 26 –

A. It's a large block. It even has Ngāi Te Rangi in there, you know, **(inaudible 17:01:30)**. Yes, that's the one.

Q. So, it is in two parts, the block, so, the long skinny part along the coast and then the more rectangular block coming inland.

A. Yes.

Q. And the current trust is over both parts of the block 6 block?

A. Tunapahore – the reserve block, they have – they both have separate trusts.

Q. Right.

A. One governs over the big block, and the other governs over the small block, but I'm on both blocks.

Q. All right, so there is the Māori reservation –

A. Yes.

Q. – and is that for the urupā, or is it –

A. There are urupā there on this side of **(inaudible 17:02:19)** before it turns, yes, definitely are there, and –

Q. All right. So, I understand there are two; essentially, a reservation and the ahu whenua trust over the balance of the land. All right. And this map represents the current boundaries of Tunapahore 6.

A. Yes, yes.

Q. That's correct? Yes. Thank you. So that trust has been established for some time, or recently, or those trusts?

A. It's been in place for years –

Q. Okay.

A. –that I know. I've only been there recently. I was nominated on by my Ngāti Awa relatives.

Q. Right.

A. That's how I ended up on there.

Q. And then –

A. I've got no shares.

Q. Okay, so –

A. But I can whakapapa to the **(inaudible 17:03:05)**

Q. And when you referred to efforts that are ongoing to buy back or get back some of the land, and like the Hāwea campground is one of the ones I think still to happen. But which – is it the trusts, these trusts, that are trying to do that, or is it your whānau, or –

A. No, it's our hapū.

Q. Hapū.

A. Because we have Treaty settlement pūtea coming we are going to use that to buy back the Hāwai camping ground which was the land that Dulcie Bigwood had lost. So, you get a portion of it back, but the remainder of it was bought by the shareholders of the Tunapahore 6 block.

Q. Okay.

A. They bought the majority of their block when it sold previously, so now, they are the owner of it. The block is all consolidated under **(inaudible 17:04:04)**, so they bought the other part of the Savage whānau block.

Q. All right. I follow. Thank you. Thank you very much for your evidence and for the documents that support it, yes, and I tautoko the mihi from Professor Roa, too.

JUDGE DOOGAN ADDRESSES COUNSEL – LEAVE GRANTED TO WITHDRAW (17:04:40)

JUDGE DOOGAN:

Thank you, everybody. That has been another very full day for us, but we are very grateful to our witnesses and once again to our hau kāinga who look after us so very well. I am pleased we were able to do the hearing today, notwithstanding the efforts of Tāwhirimātea. And on that note, ka tukuna atu te rākau ki a koe, matua Joe.

KARAKIA WHAKAMUTUNGA (JOSEPH PUKEPUKE)

HEARING ADJOURNS: 5.06 PM

HEARING RESUMES ON THURSDAY 20 NOVEMBER 2025 AT 8.59 AM

KARAKIA TĪMATANGA (DANIEL REWIRI)

WAIATA

JUDGE DOOGAN: (MIHI)

HOUSEKEEPING – TIMETABLING (09:06:38)

(09:06) MR TONY SINCLAIR: (#3.3.38)

Tēnā koe, e te Kaiwhakawā. He mihi tēnei hoki, ki tō rōpū e whakamana te Tiriti, tēnā koutou. Ki te Karauna, tēnā kōrua. Ka huri au ki te haukainga, nō konei, Ūpokorehe, me Tūranga Pikitoi, tēnā koutou. Whakatōhea hoki, tēnā tātou katoa. **I wish to thank your panel of the Waitangi Tribunal and of course, yourself, Sir. Crown counsel, greetings. I wish to acknowledge our hosts, Ūpokorehe and Tūranga Pikitoi, Whakatōhea, I wish to acknowledge everyone present.**

BEGINS REFERRING TO OPENING SUBMISSIONS #3.3.38

Sir, these opening submissions are filed on behalf of Tūranga Pikitoi hapū, Wai 1794. The appellation, Sir, is #3.3.38. For the record, Sir, these submissions are filed to the *North-Eastern Bay of Plenty District Inquiry* (Wai 1750) on behalf of Tūranga Pikitoi hapū, Wai 1794.

It was a claim originally filed by Muriwai Wehi, William Smith and Aden Webb, these persons are the original claimants. Muriwai Wehi is a recognised kuia of Whakatōhea and Tūhoe. Muriwai Wehi has indicated a wish to provide evidence at some stage of this hearings. Ms Wehi and other Tūranga Pikitoi Whakatōhea claimants have been sent the link to this hearings, Sir, so they'll be observing these.

The witness today is Ms Bell, her full name is Hariata Takirua Majorie Bell and will present evidence on behalf of her whānau of the Tūranga Pikitoi hapū

community. Paragraph 2 of the opening sub, Sir, Ms Bell's evidence begins with her whakapapa, a line of descent from Whakatōhea and Tūhoe tribes, down to the sub-tribes of Ūpokorehe hapū and Tūranga Pikitoi hapū.

Paragraph 3 of the opening subs, Tūranga Pikitoi ki Whakatōhea, their turangawaewae is the area known today as, Cheddar Valley. The Tribunal have visited Tūranga Pikitoi land blocks and the historical marae in Cheddar Valley on the 17th of April 2024.

Tūranga Pikitoi is an interesting community, and it lays at the cross roads of Whakatōhea, Tūhoe, and Ngāti Awa iwi, sitting on the banks of the Nukuhou River, which flows into the Ohiwa Harbour. The current kāinga of the witness and her whānau sit right in this cross roads area and Ms Bell will give that in evidence and describe her lived experience there, historical and contemporary.

Paragraph 13, Sir, the Tūranga Pikitoi claim. The appellation for that claim is Wai 1794, #1.1.1. At paragraph 6, it makes it very clear that Tūranga Pikitoi lays within the rohe of Whakatōhea and the claim also makes the statement that it supports the positions of Wai 87 and the Wai 339 claim. Asserting Whakatōhea's claims and interests to Ōhiwa Harbour.

Paragraph 15 of the opening submissions, the displacement of Tūranga Pikitoi lands and identity. Ms Bell provides a very useful narrative of her ancestor's journey from their original lands, from Waimana, then aligned with her Whakatōhea, Ūpokorehe ancestors.

Ms Bell addresses the effects of land alienation and collateral issues passed on to her generation as they struggle to take on and reoccupy the lands where they currently reside, given the social, economic, and cultural identity issues. And the other effects that they are turning from negatives to positives, Sir.

Paragraph 17, Ms Bells evidence is assisted in a gap filling sense, by a number of expert evidence reports. Those reports contain information Ms Bell found

clarifying, enlightening and illuminating to recorrect and understand some historical events. Ms Bell will talk to some of these issues and bring the most pertinent to the attention of the Tribunal.

For the record, the expert reports Ms Bell has referred to are:

- Paul Husbands, Te Ūpokorehe Overview Report (Wai 1750, #A037)
- Jane Luiten, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu Lands (Wai 1750, #A012)
- Peter McBurney, Ngāti Muriwai Authority Trust Oral and Traditional History Report (Wai 1750, #A033)

Ms Bell also refers to Best and Binney throughout her evidence.

The names and the activities of Ms Bell's tīpuna are recorded in some detail among some of these reports. The activities of their tīpuna having a direct acute impact on the lives of Ms Bell's whānau and the Tūranga Pikitoi community today. Ms Bell has been in attendance at these hearings and been able to read and hear material evidence put before the Tribunal.

My submission, Sir, is Ms Bell's evidence is a very good juxtaposition to the issues heard earlier from the claimants of Hiwarau C Reservation Block. Her evidence will become very self-explanatory.

Paragraph 22, Sir, that ends the opening submissions for Wai 1794. Unless there are any questions, I will introduce the witness, Sir.

(09:13) PROFESSOR TOM ROA TO MR SINCLAIR:

Q. Mōrena, Mr Sinclair.

A. Mōrena.

Q. Tātou mā, kia ora katoa. Paragraph 22, what is moruru? You have, "tuna (eels)" then moruru –

A. You will have to ask the witness that question, Sir.

Q. Okay, I'll do that, thank you.

(09:14) DR GRANT PHILLIPSON TO MR SINCLAIR:

Q. Tēnā koe, Mr Sinclair. This might also be a question that needs to be put to the witness. But when I read Ms Bell's evidence, I thought when she referred to Nukutere, that it was to Nukutere, the daughter of Tūranga Pikitoi. But I see that you have put in your submission, Nukutere waka. So, when you put that in there were you sure that that was what Ms Bell was referring to?

A. Sir, that was from the statement of claim and I'm quite positive it was Nukutere waka, in my context. However, Ms Bell may have a different interpretation, or different use from her evidence.

Q. Okay, I'll ask her about that then,

A. Thank you.

Q. Thank you. But you're saying that Tūranga Pikitoi do descend from the ancestors on the Nukutere waka, is that correct?

A. Taken from this statement of claim, yes.

Q. From the statement of claim, okay, thank you.

(09:15) JUDGE DOOGAN TO MR SINCLAIR:

Q. Thank you, Mr Sinclair. Just in relation to the indication at paragraph 1, that Muriwai Wehi was potentially going to give evidence. So, I just want to clarify, given, and you'll be aware of the issues for our forward hearing programme and the fact that we have been cut back in a number of hearing weeks. So, the expectation was that we would be hearing the Tūranga Pikitoi evidence in this hearing. Can you just clarify if you are saying we are definitely to be expecting further evidence, and if so, when?

A. Sir, we were looking at putting the evidence of Muriwai Wehi within the environmental themes and social and economic hearing week.

Q. All right –

A. Because the evidence will be relevant to social and economic deprivation.

Q. Environment, or social and economic?

A. Sir, I had a hybrid in the, if I can remember correctly, I had a hybrid environmental and social and economic issues.

Q. All right, and is there any other potential evidence, or are we just talking about Ms Wehi, in terms, for this claim, for the Tūranga Pikitoi?

A. Sir, as I understand, Ms Wehi, at this point in time.

Q. Thank you for clarifying that and if you could now hand over to your witness, thank you.

MR SINCLAIR ADDRESSES JUDGE DOOGAN – PROCEDURAL MATTERS (09:17:47)

MR SINCLAIR CALLS

(09:19) RONNIE GIBSON: (MIHI)

Mōrena koutou. Firstly, te reo Māori is not my first language, much to the shame, but I'll be giving our whakapapa today in te reo.

Koia tāku e mōhio ana mō tāku whakapapa e pā ana ki te kaupapa o tēnei rā, ahakoa kei te ako tonu ahau. **In regard to my whakapapa, in regard to the context of this hearing, even though I am still –** Which is to say, this is what I know that is pertinent to today's kaupapa, though I'm still learning.

E toru ngā waka, ko Mātaatua, ko Nukutere, ko Rangimatoru. Ko Muriwai, ko Tarawa, ko Tairongo, ko Toi ōku tīpuna. **Three waka, Mātaatua, Nukutere, and Rangimatoru. Muriwai, Tarawa, Tairongo, and Toi are my ancestors.**

Ko Hiwarau, ko Maungapōhatu, ko Makeo ōku maunga. **Hiwarau, Maungapohatu, Makeo are my mountains.**

He uri mātou o Te Whakatōhea me Ngāi Tūhoe. E rima ngā marae o Te Ūpokorehe, Rongopopoia, ko Maromahue, ko Kutarere, ko Roimata, ko Tūranga Pikitoi. **We are descendants of Te Whakatōhea and Ngāi Tūhoe. We have five marae we connect to in Te Ūpokorehe, Rongopopoia, Maromahue, Kutarere, Roimata, and Tūranga Pikitoi.**

E rere tāku manu ka kite i ōku waka a Mātaatua me Nukutere, me Rangimatoru, e wana ki uta. Tū ana rā ki te tihi o Hiwarau, matai iho ki te awa o Nukuhou.

Ka tau te rimu o te huia ki te marae o Tūranga Pikitoi, te ipu karea o Tūranga Pikitoi. Tūranga Pikitoi, e ara e. **My bird soars above and sees my waka, Mātaatua, Nukutere, and Rangimatoru coursing into the harbours. To the point of Hiwarau, close to the Nukuhou River. Of course, the huia bird rests on the head of Tūranga Pikitoi. Tūranga Pikitoi, may you rise.**

Kia ora.

(09:22) HARRIETTE TAKIRUA MARJORIE BELL: (#E029, #E029(a), #E029(b))

Tēnā koe, Judge Doogan. Tēnā koutou katoa, members of the Tribunal, the Crown, lawyers representing the claimants. A special mihi to our haukainga.

WITNESS REFERS TO BRIEF OF EVIDENCE #E029

My name Harriette Takirua Marjorie Bell and I am one of seven siblings, daughter of Hongiputiputi Sonia **(inaudible 09:22:48)** (nee) Te Wini. I am married to Hihirangi Wiremu Robson of Te Rarawa me Tūwharetoa descent. We have three sons who have blessed us with 11 mokopuna.

Myself, my husband, my son and three moko, my tuakana Sidney, currently live at Wainui, Cheddar Valley, on the land block Hiwarau B4C, known to my whānau as Tūranga Pikitoi. A place the Tribunal visited in April of 2024, for our ngā kōrero tuku iho, for our 1794 claim.

I provide this evidence for our whānau of Tūranga Pikitoi ki Ūpokorehe, Whakatōhea, Tūhoe. It contains our relationship and whakapapa to our lands and identity in the Ōhiwa Hiwarau rohe.

If it pleases your Honour, I would like to start my brief with a short waiata. It's a poi song that I learnt as a 12 year old, competing in the Delamere Cup for Ōpōtiki Primary School 1974, approximately. It is a song that was taught to our kapa haka group by the amazing Nehu Gage, tutor, teacher, inspiration, and someone who had a positive influence on my upbringing. Rest in love Mr Gage, this is a tribute to you.

WAIATA

HARRIETTE BELL: (CONTINUES #E029, #E029(a), #E029(b))

I truly believe that this waiata has stayed in my memory, renting space for the last 40 years, just so that I would be able to sing it today.

So, rather than go through my brief of evidence fully, as Tony has said, I would like to highlight specific areas from each page or paragraph and provide a summary, in an effort to give more context or consideration too. As Tony said, following that, we have a Power Point presentation.

WITNESS CONTINUES REFERRING TO BRIEF OF EVIDENCE #E029

In paragraphs one to five, in summary, prior to April of this year I had knowledge of who my tīpuna were, their names, where they lived, how long they had lived there. Although I had few memories of our whenua as a child, I didn't know anything more.

As part of my research for this brief, I read the question and answers segment in the pre-settlement claims trust. A question that leapt out to me was, who and where is Tūranga Pikitoi, that hurt. Partly because I didn't know the answer to that. When the claim for 1794 was put in by our aunty Muriwai, she did say, as my cousin Ronnie so rightly said, to put a stake in the ground and say we are Tūranga Pikitoi.

Ngā mihi nui aunty Muriwai, your foresight has ensured our generation and those after us have the knowledge to strengthen our connection to our whenua. Acknowledge our tīpuna through whakapapa and restore our mana.

Paragraph six through 16. In summary, my tīpuna, Hemi Kakitu ensured that it wasn't just our tīpuna who were included in a second list of owners submitted to the Native Minister in 1872. He extended his aroha to those who had long residence at Ōhiwa. Without this aroha, and I say this without any offence to anybody, I must ask, what would have happened to the small community of

people of Ūpokorehe? Mainly women and children. Would they have been exiled to the Ōpape Reserve or Waimana, as others had.

For decades following the raupatu, my tīpuna have been labelled as rebels, one minute, loyal, the next. All my tīpuna were doing were protecting themselves at a time when the whole of the Bay of Plenty was under siege, by the Crown, by Te Kooti, even by those whose relationships had been forged. They were also labelled as others, and not Ūpokorehe tūturu, and for decades following the raupatu, they had to defend their mana motuhake, the right to the land awarded to them, the land that they had for generations, cultivated. Where they had pā sites, kāinga and urupā.

Paragraph 17 through 51. In 1904, my koro Hataraki Mu is born, and the partitioning of the Hiwarau Reserve is completed. In this time, many whānau had already laid down their roots, cultivations and kāinga. There is more division, contention and disputes amongst the landowners, more appearances in court. My tīpuna were fenced into an area of land that provided a subsistence level of living. Minimal flat land for grazing, steep, hilling land.

Land surrounding our whenua is either leased or privately sold. Our tīpuna no longer had the freedom to roam through the ngāhere where our urupā and pā sites were located. Hiwarau B4C is our turangawaewae , now, 25 acres. In 1918, my tipuna koroua, Mu Te Hira passes away. Post war, economic depression hits our hapū hard. There is low to no employment opportunities. My mum and her siblings are at the age where they follow the drift to urbanisation, leaving the whenua and my koro, and nanny.

Our hapū continues to reside at Hiwarau until the 1960s. My nanny and koro are able to sustain a livelihood and the ever increasing demands to pay rates. The land is leased for 30 years and thereafter, on a year to year basis. Our marae, our whenua, is without kaitiakitanga and so, they fall into disrepair. I understand that we are really fortunate to have retained our land block on individual title.

But we, too, have felt the impact of amalgamation, as we struggle with the burden of maintaining the paper road, which is our only access on to the whenua, because we don't know who the other landowners are. Maintenance involves clearing slips, fallen trees, pine, and black waddle, maintaining berms and clearing waterways. We are surrounded by blocks of land that are vacant, have no one taking care of the overgrown trees and the degradation of land into swamps.

Paragraphs 52 through to 68. I returned home in 2024 with my two moko, my husband Hihi and tuakana, Sidney are preparing for our return. My son and another moko join us in 2025. Now, I remember in the 70s, hearing things like: "Māori don't even look after their land, look at it, running to ruin, what a waste."

The decades of leasing the whenua have taken its toll. The once usable land is now a flood zone and where cattle once grazed, the land is now pot marked and prone to flooding. Land suitable for occupation is marginal, terrain is rugged, it's overrun with gauze and blackberry. Our marae is in disrepair, and we have no kāinga. It's not easy. We have no electricity, and water is from an under ground spring. We rely on solar, LPG and a back up generator. The council provides us with no services, yet we are charged rates. We have a lot of work to do.

Going through this process of researching this brief, especially over the last few months, I have relieved the trauma of my tīpuna. I have cried for the loss of their freedoms, the indignity of losing their mana motuhake of their lands, their taonga, their waahi tapu. I have read narratives from history and felt their anger, disbelief and heartbreak. But I have also felt proud that despite being incorrectly labelled as others, or not of Te Ūpokorehe ancestry, they stayed where others had left.

They were ringfenced in, lost areas of significance, but they did what they had to do to eek out an existence, to retain their lands. It's up to our generation to bring our whānau home. When I look across the paddock at our marae, I hope that my tīpuna are proud.

What the aspirations are for our hapū – to reconnect with our whenua, revitalise the marae. To practice kaitiakitanga of our rohe, our ngāhere and our awa. More importantly, where we manaakitanga with our whanaunga of Hiwarau as our tīpuna did.

Finally, the Whakatōhea settlement has addressed the historical issues that have impacted out tīpuna. But in determining our Tūranga Pikitoi marae as inactive, we as Tūranga Pikitoi hapū are once again, being ignored. Tūranga Pikitoi Māori is alive and well.

HOUSEKEEPING – SETTING UP POWERPOINT PRESENTATION (09:34:47)

HARRIETTE BELL: (CONTINUES #E029, #E029(a), #E029(b))

WITNESS REFERS TO POWERPOINT PRESENTATION #E029(b)

This is our marae, Tūranga Pikitoi. I will go further into it because it does form part of the presentation PowerPoint, so that's just the title page.

MR SINCLAIR:

Can you explain the significance of this exhibit in front of us, please.

HARRIETTE BELL: (CONTINUES #E029, #E029(a), #E029(b))

That will be in the PowerPoint presentation.

So, from paragraph two to six of my brief of evidence, I wish to acknowledge our tīpuna through our whakapapa.

WITNESS REFERS TO BRIEF OF EVIDENCE #E029, PARA 3

Whānau kōrero for both Heperi and Te Topana say they were half-brothers who cultivated and traded kumara from Hokianga Island. Among our whānau, these names have been passed down over five generations to today.

In 1865 my tipuna kuia Ani Peka (Ūpokorehe), koroua Mu Te Hura aka Hemi Hamu (Ngāti Karetehe) and kuia Maria Mu nee Rawiri and their tamariki, Riripeti, Ngakai, Timoti and Kararaina were living at Ōhiwa Harbour as had their generation of descendants before them from a previous migration from Waimana.

They were cultivating the land in the Hiwarau rohe and on Hokianga Island growing vegetable crops kumara and a variety of fruit trees.

Hemi Kakitu was the brother to my tipuna kuia Ani Peka, and an older uncle to my koroua, Mu Te Hura. Hemi Kakitu's father was Heperi.

WITNESS REFERS TO POWERPOINT PRESENTATION #E029(b)

This is a picture of my nanny and koro, Hataraki Mu Te Wini and Te Hemanawa Takirua Te Wini (nee) Karauna.

In 1907 my koro Hataraki Mu Te Wini is born.

Whakapapa for Nanny Te Hemanawa Takirua Te Wini, is shown as Exhibit E.

In 1904 the Hiwarau reserve was partitioned to Hiwarau A and B, an area of 785 acres. Hiwarau A representing 78 shares and 475 acres in Hiwarau B, representing 46 shares.

My koroura, Mu Te Hura, secured Hiwarau B4C, which is partly highlighted. The 25 acre block boundary actually extends to the Nukuhou River.

MR SINCLAIR:

Ms Bell, is that where you currently reside?

HARRIETTE BELL: (CONTINUES #E029, #E029(a), #E029(b))

That's where I currently reside.

WITNESS CONTINUES REFERRING TO POWERPOINT PRESENTATION #E029(b)

As Tony mentioned in his opening submission, this slide identifies the Whakatōhea boundary, which shows our interests as Tūranga Pikitoi, Ūpokorehe sits within the Whakatōhea area of interest.

Exhibit C. What we can see in this slide is that a large portion of Te Ūpokorehe land was awarded to Te Arawa Garrison for services rented to the Crown. In June 1868, JC Richmond, Native Affairs Ministers engaged about 60 Te Arawa to occupy land at Ōhiwa, where land was to be made available for this purpose.

Each member was rewarded at the end of the two year term with a grant of land, not exceeding 25 acres per member. All this surplus confiscated land was to be made available. Approximately 1,700 acres of land allocated to Te Arawa Garrison was previously Te Ūpokorehe territory, 1,700 acres of land, more than Hiwarau A and B reserve combined. I won't say anything more than that.

This slide shows the changes made to Hiwarau from the initial partitioning of 1904 to the current day status following the amalgamation of blocks A and B into Hiwarau C. I note that in 1912, a further 50 acres was taken by the Crown to create a scenic reserve. A further nine acres was obtained by the Crown in 1938 to expand the reserve. Where our tīpuna once roamed freely, are now marginalised into blocks, constantly having changes made to the status of their land, depending on what was wanted at the time and by the various Crown officials and settlers.

This is my nanny Te Hemanawa Takirua Tangitawhiti Te Wini (nee) Karauna Waiherere whakapapa. The pictures are of our great, great, great grandmother Whareti Taratoa and our great grandmother, Mariana Mihimate Waiherere.

This painting is an artist rendition of our marae Turanga Pikitoi, painted by Mark Anstis, an artist well known regionally and internationally for his beautiful landscape and portraiture. This is the original painting here.

It actually came to my attention through a Facebook post, and immediately, I wanted it. I didn't want it sitting on anybody else's wall, outside of the whānau. So, I struck a deal with artist to time payments, because it was that expensive. I couldn't let this one a kind taonga hang on anyone else's wall, as I said. I put it out there to the whānau, my intention, and they were kei te pai. It took a year, but it's on our care, our marae to this day is iconic.

When I get asked where I live, I say, you know the marae on Wainui Road, I live there, 99 percent of the time, everyone knows the marae. Generations young and old have passed by and they have seen the settlement and commented on how it's great to see whānau back on the land. I feel privileged.

I was surprised when I came across this map, especially noting the pā o Ngāti Karatehe, only a stone throw away from our marae, Turanga Pikitoi. It's a bit busy, I can go up and show you. It made sense though, with the affiliation we have through our whakapapa to Tūhoe, I wondered whether that was the reason why our koro, Hataraki Mu, built the wharenui so close by to the pā site.

Also noted as the Hiwarau pā, another Ngāti Karatehe pā opposite Hokianga Island.

Exhibit I. In doing research I've come across numerous charging orders and documents for our whenua based on survey fees, unpaid rates, lawyer's fees. It's not surprising that my koro ended up leasing the land. He was deriving no income from the land, charged rates by the council who provided no services. Hear my nanny, we are now too old to sustain a self-sufficient lifestyle with only the basics of living conditions. Meanwhile, my mum and her siblings had moved to suburbia.

This is Exhibit J, the decades of leasing the whenua, as I said, has taken its toll. The once usable land is a flood zone. So, this here is the alienation notice, I think, as a result of the – yes, this is just some paperwork that I found through

the Māori Land Court. Just showing some of the charges that were laid against my koro for the non-payment of rates.

This is Tūranga Pikitoi as it sits today, looking out from my deck. With the marae way in the distance there, and I wanted to show you this picture, for those who haven't seen it or been there for a while. The paddock that runs in the front of the deck, that's the flood zone, and yes.

MR SINCLAIR ADDRESSES JUDGE DOOGAN – FURTHER FILED EXHIBITS (09:47:02)

JUDGE DOOGAN:
How much of the flood zone got hit yesterday?

HARRIETTE BELL:
No, it was quite good yesterday. we didn't have any water in the paddocks, well, not that I could see. The river was quite high though, as you would have seen, coming through.

WITNESS CONTINUES REFERRING TO POWERPOINT PRESENTATION #E029(b)
So, as I said before, I said goodbye to my government job at 40 years in Auckland to return home permanently to the whenua.

The conditions, it's not easy. It certainly isn't easy, especially in winter when it's really cold, and the wind that runs through that space, wow.

HOUSEKEEPING – TIMING (09:48:47)

HEARING ADJOURNS: 9.49 AM

HEARING RESUMES: 9.54 AM

HOUSEKEEPING – TIMING (09:54:48)

HARRIETTE BELL: (CONTINUES #E029, #E029(a), #E029(b))

WITNESS CONTINUES REFERRING TO POWERPOINT PRESENTATION #E029(b)

July of this year, our wharenui is hit bad by the flooding that hit everywhere around the Bay of Plenty really. I think the thing that really hit me at the time was that the emergency services were across, on the other side, on the road, helping others and I thought to myself, is anybody going to come over here and help us. But yes, that's sort of what hit me for that.

I did actually take a little short video of that and I'm just going to play it now.

VIDEO EVIDENCE PRESENTED (09:55:37)

WITNESS CONTINUES REFERRING TO POWERPOINT PRESENTATION #E029(b)

If you look, you'll see, it's like a river. It's like the river is running across the paddock where our paddock used to be. A previous flooding, my brother and my husband were actually kayaking in the paddock because we had a camping site down the bottom and all our gears were floating away. This is before we started building in the front there.

In my video, because there's no audio here, I remember saying – and homing in on the marae and saying: "Look at our poor marae." So, yes, you see the water going through, probably a few eels, mullet, kahawai as well, but that wasn't our concern.

We were safe, we were okay, because we are up on a little bit of higher ground, and I say little bit, little bit. But yes, that's our current day issues and that's it.

QUESTIONS FROM CROWN COUNSEL – NIL

(09:57) DR ROBYN ANDERSON TO HARRIETTE BELL:

Q. Tēnā koe. When was the marae built?

A. 1940.

Q. 1914 –

A. Four, 0, 1940 –

Q. 1940.

A. There are other narratives around, that the marae was actually brought over from Tūhoe, but I don't know, I don't know, I'm still researching that. But as far as our whānau are concerned, it was built in 1940.

Q. I mean, it's in very sad shape now, do you know when the decline started?

A. Yes, I mean I could say that probably, some of the definite impacts would have happened in the early 2020s. Yes, so, my koro wouldn't have built on a flood zone, but there has been some stuff that had been done further up the river that has impacted on our whānau land, our whenua. That person had been taken to court, as far as I know, had been prosecuted by the council. But I don't know what happened to the money's that were taken from him, I don't know where that money went to. Certainly, it didn't come to us, that I'm aware of. It was $115,000 fine that was imposed. But whatever remedial things he's done, it's too late, the damage is done.

Q. And in your plans for revitalisation, are you going to have to move the marae?

A. I'd say that would have to be a consideration, that's not something I can really say, because it would require a lot of whānau input.

Q. All right, well, thank you very much for your evidence today and thank you for the waiata, lovely.

(09:59) DR GRANT PHILLIPSON TO HARRIETTE BELL:

Q. Tēnā koe, Ms Bell, and tēnā koe Ms Gibson. Thank you very much for your evidence, I found this really helpful. So, the question I put to Mr Sinclair, so when you mention Nukutere in your brief and I couldn't find it again, you didn't actually say the waka and I had thought you were referring to Tūranga Pikitoi's daughter, Nukutere. Can you clarify that please?

A. Could you give me what –

Q. I can't find it now, sorry.

A. Well, because I actually, is it my brief of evidence or is it –

Q. Yes, it's mentioned, you mention Nukutere and I can't find it now, sorry.

A. What paragraph?

Q. I can't find it because I don't have my electronic version to search. I could put that question in writing if that would be easier.

MR SINCLAIR:

Thank you, Sir, that would be of assistance.

DR GRANT PHILLIPSON TO HARRIETTE BELL: (CONTINUES)

Q. It may even be that I read it in the statement of claim, but I thought it was in your brief.

A. It doesn't ring a bell for me as part of my brief of evidence, that's why I was like, pardon.

Q. Yes, maybe I read it – because I did read the original statement of claim that was filed by Maui Solomon as part of preparing for this hearing, so maybe it was there, but thank you. So, you have helped a lot in explaining some of the issues with Te Ūpokorehe and Hemi Kakitu and how that all came about. But Ngāti Karatehe –

A. They're a Tūhoe.

Q. They're a Tūhoe hapū too, okay, thank you. Just wanted to check that. So, Tūranga Pikitoi is a marae and the wharenui, when did it cease to operate as a marae?

A. I would say once my koro leased it in 1965 or nine –

Q. I see, and that was to pay rates.

A. Yes, and they couldn't live there anymore, it was – and they were getting aged, he passed away in 1969, my koro.

Q. Right, so, before that, was it mostly a whānau marae or was there a larger hapū community?

A. I would say that it was a hapū community, I have read some of the briefs from Wai 339 – how they relate to Tūranga Pikitoi as a place that they would go to, to play, to attend Sunday school. I've seen other evidence around where you know, they've gone to play tennis there, because apparently there was a tennis court there. And you know, lots of whānau have talked about, you know, in my koro's generation, that was the place

to go because my family was quite musical as well. My uncles played the saxophone and steel guitar, and they were in different bands and so, people would congregate there.

Q. Thank you, but the lease and having to move away was the key turning point?

A. Yes.

Q. Thank you. I did wonder, with the map you showed us, why – so, B4C stretches all the way to the river, as you said. Why is only that piece highlighted in green?

A. That was just an error, it should have gone all the way through, but yes.

Q. Okay, no, I was just checking what – yes, okay, there wasn't something particular there?

A. No.

Q. Thank you. So, it is now part of the Hiwarau C –

A. No.

Q. It's not? It's outside of it?

A. No, we have been able to retain our individual title.

Q. Okay, that's great, so you are able to go there. What is necessary to make it not landlocked anymore?

A. A bridge.

Q. It's a bridge, right, because I do remember we had to walk across that very risky –

A. Yes, very risky, I apologise for that.

Q. No, no, no, you live it, so we were happy to go there. So, it's a bridge?

A. Yes, well, yes –

Q. And you have approached the council about that?

A. No, no I haven't approached the council about that. I mean, it's certainly one of the things to do, and again, it's in discussion with whānau. But yes, definitely, a bridge would help with the access in and out of there. We rely on that bridge that you crossed. We used to be able to access from the other side, but that block beside us is now leased and they have electrified the whole block, so we can no longer go through that block.

Q. I see, right.

A. So, we are pretty stuck.

Q. Yes, thank you. I did have one more question, but it's just gone out of my mind. If I remember it, I'll put it in writing. But thank you very much, this has been very helpful.

(10:05) PROFESSOR TOM ROA TO HARRIETTE BELL:

Q. Tēnā kōrua, koutou. Thank you, love the painting, that's really –

A. Special.

Q. Special, and just the feeling of nostalgia to it. Tēnā kōrua. I just want to ask the same question as I asked Mr Sinclair, about this word, moruru, M-O-R-U-R-U.

A. Can you tell us what paragraph that's in?

Q. It's in the opening submissions from Mr Sinclair.

A. That's something I probably have to ask my aunty Muriwai about.

Q. Right.

A. Yes, sorry, it doesn't –

Q. It's just intriguing. Tēnā koutou, kia ora.

(10:06) JUDGE DOOGAN TO HARRIETTE BELL:

Q. Kia ora, just shows the dangers of lawyers putting words in they don't know the meaning of. So, just a couple of quick pātai, paragraph 32, koro Hataraki Mu built Tūranga Pikitoi, so was that the name of whare? Do you know what the name of the whare was?

WITNESS REFERRED TO BRIEF OF EVIDENCE #E029, PARA 32

A. Tūranga Pikitoi.

Q. So, that was the name of the tupuna whare?

A. Yes.

Q. All right, and you said there was another kōrero that it may have been brought over from Tūhoe?

A. Yes, that was just a recent kōrero from one of the residents at Hiwarau. But yes, I don't know really, anything more because I haven't looked into it.

Q. So, your understanding before you had heard that possibility was that –

A. Was that koro built it.

Q. Your koro built it.

A. Yes, and then I think that's an understanding of all of our whānau, is that koro built it.

Q. Right, thank you. At paragraph 27, you say Tūranga Pikitoi presence in Ōhiwa is part of the Whakatōhea landscape and that they have represented Ūpokorehe at the trust board level?

A. Yes.

Q. Could you just elaborate on that.

A. Sure, so my aunty Muriwai was one of the kaumātua who was, what's the question, was part of the Pre-settlement claims trust. So, I think, as a sounding board, but I don't know if she actually –

Q. So, what I am reading there is that Tūranga Pikitoi, at some point, represented Ūpokorehe on the trust board.

A. Okay, yes, that's –

Q. But the reference there is to your aunty Muriwai.

A. Yes, my aunty Muriwai was part of –

Q. And what role she performed.

A. Yes.

Q. All right, thank you. Just finally, if I could ask Mr Sinclair to show you plate 39 on our map book. You will see the B4C block shown there, to the left.

WITNESS REFERRED TO MAP BOOK #E041, PLATE 39, PAGE 44

A. Yes.

Q. I just wanted to clarify so that I understand clearly where the full extent of the B4C block. So, you will see there is B4C and then there are two other areas marked C, so those areas marked C are to the top and bottom of B4C. Are they part of the B4C block?

A. No.

Q. So, the 20 acre block is just what we see here as B4C, and it includes the portion going up into the hilly part?

A. Yes.

Q. Then, that's the paper road, or the road –

A. Yes.

Q. – at the back part.

A. Yes.

Q. Thank you, that is helpful. Thank you very much. Just to be clear again, this land, the B4C is outside of the Hiwarau trust –

A. Yes.

Q. – so, it's out of that?

A. Yes.

Q. Thank you. Thank you very much for your evidence, just wanted to tautoko the mihi from my colleagues, and to you Ms Gibson as well, tēnā kōrua. That has been very helpful, and it was also very helpful for us to have had the chance to go to the land last year. So, yes, your photos and the video certainly bring back some memories of that place, so tēnā kōrua. Thank you.

HEARING ADJOURNS: 10.11 AM

HEARING RESUMES: 10.14 AM

LEGAL DUSCUSSION – MS SORIANO TO FILE MEMORANDUM FOR JURISDICTIONAL ISSUES (10:14:31)

MS FELLOWES CALLS

May it please, your Honour, we now call our next witnesses on behalf of Wai 339, Ms Keita Hudson and Ms Kym Hudson. Ms Keita Hudson's evidence is on the record as #E030. Ms Kym Hudson's evidence is on the record as #E046.

So, before we begin, Sir, as foreshadowed earlier in the week, Ms Keita and Ms Kym Hudson will be speaking to their evidence by answering some questions. But we would just like to preface that, some of the questions that we refer to is evidence that was also presented on Monday by Mr Flavell.

JUDGE DOOGAN:

Some of the pātai were presented by Mr Flavell, is that what you said?

MS FELLOWES:

Some of the evidence, yes.

JUDGE DOOGAN:

Some of the answers to the pātai?

MS FELLOWES:

Yes.

JUDGE DOOGAN:

I follow, sorry. Thank you.

MS FELLOWES:

Tēnā kōrua, would you both like to present yourselves, or reintroduce yourselves to the Tribunal.

(10:17) KATE KEITA HUDSON: (#E030)

My name is Kate Hudson.

I'd like to start off with my pepeha, to just make it clear who I'm speaking for, where I am.

WITNESS REFERS TO BRIEF OF EVIDENCE #E030

Ko Hiwarau, ko Tirotiro whetu, me Pukenui o raho ngā maunga
Ko Ohiwa/Tairongo moana, Te Kakaho, me Waiotahe ngā awa
Ko Roimata, Ko Kutarere, me Maromahue ngā marae
Ko Te Ao Marama te whare, Ko Tamaterangi me Te Poho o Kahungunu nga whare Tipuna
Ko Te Umu tao noa a Tairongo, Ko Ani-i-waho, me Pouwharekura ngā whārekai
Ko Oturereao, Mataatua, me Takitimu ngā waka

Hiwarau, Tirotiro whetu and Pukenui o raho are the mountains.
Ōhiwa/Tairongo moana, Te Kakaho, and Waiotahe are the rivers.

Roimata, Kutarere and Maromahue are the marae.
Te Ao Marama, the whare, Tamaterangi, Te Poho o Kahungunu are the ancestral houses.
Te Umu tao noa a Tairongo, Ani-i-waho, and Pouwharekura are the respective wharekai.
Otureareao, Mātaatua, and Takitimu are my waka

E whai ake nei ko tōku kawai rangatira ki te taha o tōku mama, ki te Ūpokorehe tūturu, he hapū tēnei no Te Whakatōhea

If I can continue on, I get my bloodlines from my mother's matriarchal side, Ūpokorehe of Whakatōhea.

I Timata mai te ingoa nei, ia te Ūpokorehe, i te rehe rehe tanga o te Upoko o te tipuna nei a Taikurere

That name began from Whakatōhea, from the ancestor, Taikurere

Mai Taikurere
Ka puta ki waho ko Kura
Mai Kura ka puta ki waho ko Kohuki
Mai Kohuki ka puta mai Ko Ake

From Taikurere
Begat Kura
Kura had Kohuki
Kohuki had Ake

Ko Wi Ake Ake (ko ia te tahi o nga rangatira o Opotiki, i wai tohutia te Tiriti o Waitangi)
Ka moe a Wi Akeake ia Paroha Tomeha Toheriri
Ka puta ki waho ko Erana ko ia te mātāmua o wā rātou tamariki
Ka moe a Erana i a Hapeta Toi Kotu

Ka puta ki waho ko 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
Ka moe a Wi Takamua Te Ani i a Keita Koria
Ka puta ki waho ko Moke Te Urupiua Te Ani
Ka moe a Moke i a Wiremu Tipi McCormack
Ka puta ki waho ko au, ko Kate Keita Hudson

Wi Ake Ake (Wi was a chief of Ōpōtiki, who signed Te Tiriti o Waitangi)
Wi Ake Ake married Paroha Tomeha Toheriri
Who had Erana, she is the eldest of all their children
Erana married Hapeta Toi Kotu
Who had Te Taheke te Ani Kotu
Taheke te Ani Kotu married Pakawe Titia
Who had Wi Takamua Te Ani
Who married Keita Koria
Who had Moke Te Urupiua Te Ani
Moke married Wiremu Tipi McCormack
Who had myself, Kate Keita Hudson

Tēnā koutou.

(10:19) KYM KATERINA HUDSON: (#E046)

Kia ora koutou.

Ko Hiwarau, Tirotiro whetu me Pukenui o Raho ngā maunga
Ko Ohiwa/Tairongo moana, Te Kakaho, me Waiotahe ngā awa
Ko Te Ao Marama te whare, Ko Te Poho o Tamaterangi me
Te Poho o Kahungunu nga whare Tipuna
Ko Te Umu tao noa a Tairongo, Ko Ani-i-waho, me Pouwharekura ngā
wharekai
Ko Roimata, Ko Kutarere, me Maromahue ngā marae
Ko Te Whakatōhea, Ngāi Tūhoe, Ngāti Kahungunu, Rongomaiwahine,
Rakaipākā ōku iwi

Ko Otureareao, ko Mātaatua me Takitimu nag waka

Hiwarau, Tirotiro whetu and Pukenui o Raho are the mountains
Ōhiwa/Tairongo moana, Te Kakaho, and Waiotahe are the rivers.
Te Ao Marama, the whare, Tamaterangi, Te Poho o Kahungunu are the ancestral houses.
Te Umu tao noa a Tairongo, Ani-i-waho, and Pouwharekura are the respective wharekai.
Roimata, Kutarere and Maromahue are the marae.
Whakatōhea, Ngāi Tūhoe, Ngāti Kahungunu, Rongomaiwahine, Rakaipākā are my people.
Otureareao, Mātaatua, and Takitimu are my waka.

I am a direct descendant of Wi Ake Ake, who signed the Treaty of Waitangi in 1840. My direct line is from his eldest surviving child, Erana Ake Ake, down to her eldest child, Te Ani Kotu, who is our koroua over here. Down to his son, Wi Takamua Te Ani. Down to his daughter, Moke McCormack (nee) Te Ani. Down to her daughter, Keita Hudson, and to me, ko Kym Hudson tōku ingoa.

Kia ora.

MS FELLOWES: (BEGINS LEADING WITNESSES)
Could you both please explain to us, just which Hiwarau land block your whānau has had an interest in, prior to the amalgamation?

KATE HUDSON: (CONTINUES #E030)
A1.

MS FELLOWES: (CONTINUES LEADING WITNESSES)
Could you please just tell us how you both have an interest in Hiwarau A1? Who you got that connection from?

KATE HUDSON: (CONTINUES #E030)

The connection is through our tipuna kuia, Erana. We succeeded – the successions happened there, down to us, down to me.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

So, Kate, in your brief of evidence, you talk about how Hiwarau was reserved and how your kuia, Erana was granted land there. Could you please tell us more about Erana's time at Hiwarau?

KATE HUDSON: (CONTINUES #E030)

A lot of what I have knowledge of, really comes from the Hiwarau case of 1869. Through the Hiwarau minute book, she has spoken of, well, she's made mention of right through out that whole case, so, her and her children. So, my connection and what I know of Hiwarau is through the court minutes, a lot of it, because obviously, for reasons to us, to get down to me now, is that so many laws have changed and everything and just disconnected from the whenua. We had to go back to the courts to find out who we were.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Kym, you also talk about your experience of learning about Erana, would you like to tell us more about that, please.

KYM HUDSON: (CONTINUES #E046)

I learnt about our kuia Erana through the 1898 Hiwarau C case, and she was mentioned quite a lot in there. How she cultivated and she was living on Hiwarau and then she went to Kahikatea and was working for one of her whanaunga up there, Wi Lawrence. Yes, and then she went and stayed with Te Waru at Waiotahe before she came back to Ōhiwa again. So, she was doing mahi, she was cutting cabbage trees and clearing land, and stuff like that.

KATE HUDSON: (CONTINUES #E030)

If I can just add on to that. As Kym said, she had cultivated, her and her children had cultivations all over Hiwarau. There were no specific areas, but they all were cultivating. Those that were living there, were cultivating. But she had quite a few cultivations and what would happen is she would sometimes go and

visit her whānau over at the Waiotahe, the Kahikatea, up that way, up the valley. She would do some work there and that's the whānau Lawrence's that were living there, they were her whanaunga.

Then when that job was finished, she would down to the next lot of whānau, which we are all connected to, the Te Waru Tamatea whānau at Maromahue and she stayed there for a little while as well. So, I suppose what I'm saying here is the connections were quite entrenched, already, then, with all our different iwi. So, with her, it was very important for her to try and make an existence for her and her children. I actually think of her as being a solo mum, trying to bring up her children in this god forsaken place, as it was then.

JUDGE DOOGAN:

Sorry, just while we are on that. Just, "that place" –

KATE HUDSON:

Hiwarau, sorry.

JUDGE DOOGAN:

On the A1 part?

KATE HUDSON:

The whole area. It was the whole area, including A1.

JUDGE DOOGAN:

Thank you.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Kym, you, in your brief, from paragraphs 32 to 39, you talk about the allocation of Hiwarau. Would you like to tell us more about this, including what you learnt about Lot 190 please.

KYM HUDSON: (CONTINUES #E046)

I know that Lot 190, where Roimata marae is, that whole block and I have spoken about it with my first kōrero tuku iho. That that was part of Hiwarau and then when the lands got confiscated, that piece, that whole piece was partitioned out and sold before they gave the lands back to the people at Hiwarau. So, yes, it didn't get given back, we had to buy it back.

JUDGE DOOGAN:

I saw that section on 190. So, that's where Roimata marae currently –

KYM HUDSON:

Yes, that's right.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

When you say that your whānau had to buy it back, could you please just tell us a bit more about that in a little bit more detail please.

KYM HUDSON: (CONTINUES #E046)

Yes, okay. So, I know it was sold twice, to Europeans, and then I know, it would have been – what I have seen is that it was about 20 years later, after it first got sold, our whānau could buy back. Which was Hapeta Kotu, it was nanny Erana's husband, and their two children, Mihirangi Kotu and Te Ani Kotu.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

So, Keita, we might then talk about your childhood and living at Waiotahe, so this is from paragraphs 14 to 22 of your brief. Would you like to tell us about your memories of growing up there. You can talk about your mother's gardens, the community, attending Waiotahe Valley School.

KATE HUDSON: (CONTINUES #E030)

Yes, I was brought up in Waiotahe – well I was brought in Waiotahe, Kutarere and occasionally we would go to Roimata, because it was a bit far to walk, but occasionally we would go there. But as a child growing up, growing up with a mother that was like green finger, she just grew garden acres and acres of

gardens. She was known for that, for her green fingers and the food that she produced.

So, as children, we would be able to, we would be seen in the gardens. I still recall being in the gardens and seeing the mummies with their blankets and their babies on their backs, and just in the gardens digging kumara and doing all that kind of mahi.

So, my mum was very tuned in to te taiao. She lived and felt it. So, she did her gardens by the moon. She did all her gathering kai by the moon. She was a very special kind of a person, and she was very much in touch with her wairua and everything that had wairua around her. So, for us, we were pretty blessed as kids growing up, to have a mother that was totally focussed on survival and making sure, we as children, never went without. That was her sole job, as she saw it.

My dad, well, he was a different kettle of fish, although that was part of him as well. He also had an understanding that there was a new kind of world happening out here. We had the European coming in now, and they were coming with all their new tricks and whatever, and he had to step up to the plate to understand, and to live in a world that had a different understanding, a different perception on life.

So, he stepped out of that role, we were brought up very staunch Ringatū, so everything in its place. Everything had to be in its place. We made sure we didn't cross those divides of the kikokiko and the wairuatanga, we made sure they weren't crossed. They only had to say: "Kaua e haere ki reira, he tapu." **"Don't go over there, it's tapu."** And we understood what that meant, it just meant, don't go there, there are reasons, and we never questioned because we had that much respect and we had the understanding that our parents knew what they were talking about. They had been here for years.

Anyway, our growing up as children was a fun time, it was absolutely fun for us. we knew who all our cousins were, and aunties and uncles and nannies and

koros. We knew what kai was out there, we were taught what kai was out there and what we were allowed to eat and what we weren't allowed to eat. My mum always said to us, watch the cows, whatever they eat, you can eat it. That was really good, it was simple, just watch the cows, we can eat that and as children, we did try these things, except the grass.

But anyway, she would go to – my mum would go out and get pipi and cockles, and eels, she would go eeling and all that kind of stuff and we used to have to go out. We used to go out into, up at the river at Waiotahe and we used to have to, as little children, we used to have to stomp around in the water so that it would get really dirty so that the little eels would shoot their heads up. You stand up, make it all dirty so they'll choke, and they'll come up to the surface and you grab them and just knock them off.

So, that was just, you know, she taught us these things like, physically showed us how these things were done. Like I say, it was fun times, you know, we didn't think of it as getting food, we just thought of it as having a good time.

Another interesting thing about my mum, she grew, it's a huge apple, it goes very big and this apple, she took from the last apple that grew at Maromahue marae. From the tree that was rotting and had fallen over, but it managed to still shoot off some live parts of it and an apple grew, one apple and when they moved home, that apple was there. She took it home and she grew it from the seed and it's still growing at our house today, so, that's pretty fantastic.

Like, people would say, whatever she put her hand to, you know, it became abundant, so we were very fortunate. We are fortunate everywhere because our kai went all over the place, even into Tūhoe, because that's part of me as well.

We have freshwater springs out at Ōhiwa, although I was still kind of small at the time, that's where they would gather their kai, and they'd come back there and clean them. One is on our whenua out there at **(inaudible 10:34:07)**, so

those were freshwater springs that they use to come back and clean their pipi and whatever they did.

So, most of our food was growing on the land, everything was there, but we did have the old store here, **(inaudible 10:34:32)** was here and what we got from there was flour and butter. Sometimes butter, we usually have pork fat, the hinu, or otherwise, my mum would make our own butter.

Going to school was fun. We walked to school, a few Ks to school. We used to, you know, we didn't have such things as shoes, but the weather was quite different, it wasn't like it is today. The weather was either summer, winter, spring, or autumn, it wasn't like today when you have them all in one day. So, you know, my childhood was no different to anybody else around the area, because we all lived the same way, we lived in the communal way, whānau with whānau.

So, Hiwarau for us, it was, you know, you weren't able to get to the place for a start. Unless you lived in there, you hardly ever got out of that. But yes, you know, just looking back through my nanny Erana and how she survived in that is beyond me, or beyond, yes, how they actually did survive in there given it's like goat country and yes. But they did and here I am today.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Thank you for that. So, in your brief, you talk about the urban drift, could you please tell us about your whānau experience with the urban drift.

KATE HUDSON: (CONTINUES #E030)

The urban drift. I was just a young person then, I was born in 1951, so I was a child of a young family living at the marae, living in a communal way. We had our values, we had our tikanga that we practiced daily, we had many koroua, kuia living with us.

We practiced the hāhi all through my childhood, right through to now. We were brought up very strict in the hāhi, so my koroua, **(inaudible 10:37:32)** was a

tohunga and we dare do anything wrong and we didn't, I thought we were really good kids – don't ask my older sister. But we were really good children, and we abided in most cases, to the rules of our koroua and kuia.

So, the urban drift came even though we were living in a communal way, we understood that lifestyle, we understood everything about it, that we awhi each other. Each whānau awhi each other. The urban drift, where our marae were starting to become dilapidated. We had dirt floors in our kauta, at the marae, at Waiotahe, was probably one of the last ones that pulled down their kauta. Which are the little cooking houses and sometimes you would be able to sleep in them as well.

But we were fortunate, we had on our papakāinga at Waiotahe, we had a corrugated iron home. Part of it was dirt floor, and part of it was a step up into luxury, we had floorboards. Step up into luxury and I come from a family of 12 children, I am fifth in line, and you know, we didn't feel cramped, we were always busy doing things. So, with the urban drift, the case was that because our marae were becoming, I don't know what it was, but we could've lived in them for another 50 years I reckon. But we were told by the powers that be, we were to move out of there, we weren't allowed to be there, and they were condemned.

In saying that, our parents had to go and find work, otherwise we had nothing to live on, we had nowhere to stay. So, our parents at that time, all had to go and find work. For my father, we went to – he worked in the forestry on machines for many years in Kaingaroa, in the forestry. We moved there as well, as children. In saying that, we went there with our only knowledge of having been able to live together as a community.

So, going there was quite difficult in the beginning because we didn't know how to live any other way and without our other whānau with us, it was like we were kind of like, a bit lost. So, we had to quickly make friends with the neighbours, and we had other whānau, not only us but all of the whānau from the marae

had to end up going away from the papakāinga, form the marae, and going to find work out of the area.

Which left only our marae and our old people here. Our old people, I mean, they were fairly old by then, left there on their own and for us, that was a pretty sad thing to see. Quite often, we would come home, well, our parents would come home, with us of course but yes, they would make sure they come home to look after their old people. So, these were kind of, hard times, pretty hard times.

We had to you know, I think my dad had to put a car on tick because he could, you know, so he could travel home to his parents and his whānau back here. So, in saying that, we learnt individualistic living, you might say, while away. But in doing that, being away took us away from who we were and slowly, we started to lose our identity. Just started to lose connection with our whenua back home, because we had to be there to have an existence because we needed money to live.

For my mother, she stood her ground, and she always said to my dad that she was always homesick, she always wanted to come home. She wanted to feel the whenua. She wanted to do the mahi she wanted to do. Eventually, we came home, she came home, she made him come home and she won.

We lived on our papakāinga at Waiotahe and she had acres and acres of gardens. She would sit in her garden all day, early rise, in the morning when the sun rises, she was in her garden. Of course, as kids, we had to get in there too, but we would go in there just to kick the watermelons around. Anyway, we so appreciate her talents.

HOUSEKEEPING – TIMING (10:43:13)

HEARING ADJOURNS: 10.43 AM

HEARING RESUMES: 10.46 AM

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Keita, would you like to tell us about your experience of the amalgamation of Hiwarau C in 1969?

KATE HUDSON: (CONTINUES #E030)

All I recall of hearing about the amalgamation was my mum. She had such anxiety about not being able to attend. Somehow or rather, she heard there was a meeting about the pulling together of all the lands. We were living at Rotorua at the time, and I just recall her having such anxiety about not being able to attend. Mainly because she heard it through the grapevine, I don't know who, but yes, I don't know who told her about it, but anyway, it was far too late, it would have been, yes, we were already upon them.

She spoke with her nephew, **(inaudible 10:47:53)** and my dad, and she wanted to come, but they couldn't come because she didn't have a vehicle, living in Rotorua, so far away. Knowing the anxiety, I think she felt probably was because, she knew how hard her tīpuna fought for this place and how they can just pull everything in together and take it away from her. So, I think that's the anxiety she was feeling, although she totally didn't understand the process of the courts and everything like that. She had no idea of those things, they didn't have internet, or they didn't have any of that kind of stuff around, so it was very foreign to her. So, the anxiety, I believe, was that they were once again, losing their land.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

In both of your briefs of evidence, you both discuss the difficulties that Hiwarau C owners, such as yourselves, experience today. Could you please tell us a little bit more about those issues.

KYM HUDSON: (CONTINUES #E046)

First of all, you can't use your land and just so our kids know where their land is, we take them there sometimes, just to give them a walk around on the whenua, so they know exactly where there whenua is. When we go there though, we see all the stock on there, we see cows, we see horses. You know,

we don't know whose they are, but we can't do nothing about it because we don't have that power over it.

Yes, so that's some of it. It's pretty hard to know that you belong to a whenua, but you can't do anything with it, so we are just making sure that our next generation know exactly where those whenua are.

JUDGE DOOGAN:
Sorry Kym, just a pātai while we are on that. When you go back for that purpose, do you go to the A1 area?

KYM HUDSON:
To the A1 area, yes. I mean, we know our whenua up at Roimata, so, that one there was sort of, you know, we didn't really know about it, so now we do.

JUDGE DOOGAN:
Thank you.

MS FELLOWES: (CONTINUES LEADING WITNESSES)
Keita, on Monday, Mr Flavell talked about Josie Mortenson's handmade posters for the Hiwarau C hui. You were frequently listed as one of the contact people on those posters. Would you like to just tell us more about your experience of working with Josie, trying to organise the hui for de-amalgamating Hiwarau C?

KATE HUDSON: (CONTINUES #E030)
Kia ora, yes, and thinking of Josie Mortenson today.

Yes, at that time, there was in the air, people saying look we want to go back on our land, and they couldn't because it was under the Hiwarau C Trust. So, aunty Josie would say, okay, we have to do something about this, and we actually got together, the committee got together with her leading the charge to actually try and pull the whānau back in. Those who had shares prior to the amalgamation in the land and it was about trying to get a hold of all these people

and putting together a hui to see what their thoughts were about the amalgamation.

Straight away we had whānau that – they came from all over, I hadn't even met half of them, you know, a lot of them came away from out of the area. They all left with the urban drift as well, so they all came back. They knew they had land, but they didn't know – they knew they couldn't do anything with it but were still interested in it.

So, they all came in, got all their whakapapa to make sure we understood they did belong in here. So, they came with whakapapa, they were asked to bring their whakapapa because it was important for us to know that, well, how did you get to be on this whenua. I was in charge of the area of whakapapa and for a lot of them they were just so, I don't know if the word is, they were grieving. For me, the definition of grieving is love, so they had love for this whenua that they couldn't actually get to.

Every meeting we called, we had more and more people come. We had more interested in what they wanted to do with the land. They wanted to live on their land, and they wanted to do what it was that they wanted to do with it, which is, live on it and their families will be there mō ake tonu.

MS FELLOWES:

Sir, I just want to clarify, that would be Appendix E of Mr Flavell's brief of evidence, so from about page 18 onwards, you will see Keita's name frequently listed there.

KATE HUDSON:

Can I just add a little bit more to what Jo said.

In those evidence, she wasn't an art teacher, she did her artwork, as she sat in the meetings. She would sit and she would like, do little sketches about the hui and she would like – and they were really awesome, to just watch her sit there, listen and sketch those. She has some really lovely sketch work here.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Kym, I just wanted to ask you, so in your brief, you tell us about your husband Dwayne's nannies experience of rates on Hokianga Island. Could you please just tell us a little bit more about that issue, thank you.

KYM HUDSON: (CONTINUES #E046)

So, those nannies, they are all our nannies, that was nanny Mira, and nanny Te Onewhero. But there were other kuia too, that would have been paying those rates as well. They must have got behind in the rates and then there was a kōrero that Hokianga was going to be sold for a thousand dollars. So, they went to the Whakatōhea Māori Trust Board and asked for help. Then Whakatōhea Māori Trust board became the responsible trustees over Hokianga Island.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Could you tell us just a little bit more about your experience of being nominated recently as a trustee for Hokianga Island, please?

KYM HUDSON: (CONTINUES #E046)

Yes, so, now, me and my husband, Dwayne, we are trustees on Hokianga Island and our mahi was to put a charter together for Hokianga. We only have two more things to do on there and we'll be done.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

If you wanted to share just like, what would be your aspiration as a trustee.

KYM HUDSON: (CONTINUES #E046)

Well, when I was growing up here, our schools and that used to go over to Hokianga Island. We used to camp over there, we used to have stays over there and learn about everything over there. I kind of want to see that again, it's been dormant for a long time, and I want to see our kids going back to Hokianga Island, bring the rangatahi over and I don't know, do mau rākau or something. Something positive for our young people, but have our pakeke there too, to guide them. That's one of my aspirations for there.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Before we conclude this presentation, I would just like to ask both of you, what's your aspiration for the future of Hiwarau C, what would you like to see happen in the future?

KYM HUDSON: (CONTINUES #E046)

Our whānau living on their whenua.

KATE HUDSON: (CONTINUES #E030)

Basically, for me, it's the same. I'd love them to be able to come back to their whenua and to make the mauri come back to the place. If you look at it, it's alive with native bush, but it needs another life in there as well, which is people.

(10:57) MR HUNT TO KATE HUDSON AND KYM HUDSON:

Q. Tēnā kōrua, thank you very much for your evidence. I'd say Ms Hudson, but that won't work, so, Keita, in your brief, I see you mention that there's money set aside for, or you are aware there maybe money set aside for Ōpape and Hiwarau Reserve –

A. [Kate Hudson] Yes, I am aware.

Q. – for the purpose of infrastructure. I was wondering if you wanted to elaborate on that.

A. Well, yes, I am aware, I think we are all aware that there was money put away with the Whakatōhea settlement, but I don't know what they are going to do with it. But what I would like to see, even though that maybe the case, I do believe that money is still not enough for our two reserves, Ōpape and Hiwarau, to get the infrastructure in place. But I would, you know, that is something I would like to happen. I also believe that the Crown needs to be able to come forward in this case and bring forward some help. Financial help in the way of surveys, re-surveying the blocks to the original allocation shares to the whānau, because a lot of them didn't even know anything about it.

And so, if you made that mistake, I think, the law tell you, you fix it up, so we would love some help there, and some training for the people that are going to live on there. It is a place, I believe it should be a place of living

off the grid. We need to live off the grid up there, but we need to have solar power, we need to have all these kinds of things to make that work. There's other things, such as training for the taiao, it's really important because of where Hiwarau is. We do not want to pollute our moana. We do to want any of that stuff, we need training in that area to make sure that doesn't happen. We want to ensure the taiao is going to be safe as well. So, the Crown, hopefully, you will come to the party.

Q. Thank you.

A. Kia ora.

JUDGE DOOGAN ADDRESSES MR HUNT – CLARIFICATION OF SETTLEMENT (11:00:04)

(11:01) JUDGE DOOGAN TO KATE HUDSON AND KYM HUDSON:

Q. Ms Hudson, in your answer to Mr Hunt about some money set aside for Ōpape and Hiwarau Reserves, that money is set aside where, from the settlement?

A. [Kate Hudson] Yes.

Q. All right, thank you.

HEARING ADJOURNS: 11.01 AM

HEARING RESUMES: 11.24 AM

JUDGE DOOGAN:

Kia ora koutou. I see we are down a witness, it's all on you now, Kym.

Kia ora anō kōrua. Just coming to pātai from the panel, and I will just start with Professor Roa. Kia ora.

(11:25) PROFESSOR TOM ROA TO KATE HUDSON AND KYM HUDSON:

Q. Kia ora kōrua. E mihi ana ki ngā mokopuna. **I wish to acknowledge the mokopuna present.** Thank you for being with us, young people, and hearing this history in the making. Tēnā koutou.

I have got a few questions, and the first one follows up from Mr Hunt's question about the funds that might be available. Any conversations been had with the trust board, with a representative – or Ūpokorehe rep on the trust board?

A. [Kym Hudson] Not at this moment. All I understand, it hasn't come up at all in the – Te Tāwharau, so yes, no, haven't heard nothing.

Q. Kia kaha.

A. Āe.

Q. The other question that I have is from paragraph 51, but this is on page 13. So, this is the approach to the Whakatōhea Māori Trust Board and asking them for assistance: "there was a risk the island was going to be sold by the Ōpōtiki District Council".

A. Yes, I actually read that in some minutes. I can't remember the minutes, but it was there.

Q. How would the Ōpōtiki Māori Trust Board get the control?

A. Well, what I know is that the kuia all went to the trust board and asked for help, more or less, to save the island, to save Hokianga.

Q. Yes.

A. And so, they must have put it under their trust, how they became the responsible trustees.

Q. Okay.

A. That no longer is now, though. They've handed it back to the people and now we have a trust on there.

Q. Ka pai. Just another bit of history. Then on the same page, paragraph 53: "There are whānau who I thought would have been on the ownership list who are not included and some who are included. We now have to look forward from the ownership lists." Can you explain more about looking forward from the ownership lists; what that means?

A. I think if I understand that paragraph, it's that the – at the giving of relative interest, there was always this opposition of tūturu and not tūturu to the whenua, so at that time, of the Crown's doing, again, was the fact that they actually made everybody in the area Ūpokorehe, under the name Ūpokorehe.

Even though you were Tūhoe, even though you were Kahungunu, even though you were Ngāti Awa, whoever, whoever, Ngāti Porou, they all became Ūpokorehe under that ruling, and – but that doesn't take away from the fact that they still were Tūhoe, they were still Ngāti Porou, they were still Whānau-a-Apanui, and you get the – you hear that in today's kōrero, even, that we are Tūhoe, we are this, we are that. But through the Crown, they actually made us all Ūpokorehe, but we still maintain, as us people, we still maintain our Tūhoetanga, we still maintain our Ngāti Poroutanga.

We keep that, but the – on top of that, they've actually got this Ūpokorehe thing going on all the time, so if you have a look at the whenua out there, those Ūpokorehe, Whakatōhea that were out there, we're actually living on their land, so this is what I'm talking about. It gets very confusing to those that are hearing and those that don't understand. It gets very, very confusing.

Q. So – so this is the Ūpokorehe –

A. Whānui, I call it.

Q. – whānui **(inaudible 11:30:26)**.

A. I call it Ūpokorehe whānui, and then there you had the Ūpokorehe tūturu, who were the small whānau. So, today, that is still a confusion for the whānau. They say, "Well, I'm Ūpokorehe, but we come from Tūhoe." So that kind of stuff is very confusing to the whānau.

Q. Any suggestions on how to deal with that?

A. To move forward, I believe we cannot change that. We are so interconnected now, our whakapapa is so tied up now, we cannot change that. But we must acknowledge who all our sides are, for I'm Scottish as well, and I always acknowledge that, and – because without it, I'm not me. That's all I can say.

So, I say we move forward together and – and if I can just carry on with the Hokianga thing, I think as – the Hokianga Island, I believe that a tatau pounamu for the iwi, that that place becomes that, because they were all living there. We were all living there, and it needs to be a place where we can all come together and be one and get – move forward. Otherwise, we will be fighting till the ducks come home.

That's all I've got to say. Thank you. Does it answer your question?

Q. Beautiful.

A. Thank you.

Q. And again, thank you for your evidence.

A. Thank you.

Q. I talked about "nostalgic".

A. Yes.

Q. This is very nostalgic. Kia ora kōrua.

(11:32) JUDGE DOOGAN TO KATE HUDSON AND KYM HUDSON:

Q. Kia ora. If I could just follow up on a couple of points on that discussion, just while we are on the topic, when you started that answer to Ahorangi Roa's pātai about going forward from the ownership lists and you talked about that distinction you came to, Ūpokorehe whānui, Ūpokorehe tūturu, you said at the start there is that Crown ruling that called us all Ūpokorehe.

A. [Kym Hudson] Yes.

Q. So, I know there is quite a history of Crown intervention here, but are you locating the problem in one particular Crown or Native Land Court **(inaudible 11:32:58)**?

A. The judgment from the Hiwarau case, I think it was.

Q. Yes.

A. That's what – where that was said. This land doesn't belong to a tīpuna, we are the tīpuna. That's the Crown. We can do with it as we wish.

Q. Right. So that is the key –

A. Yes.

Q. – point at which –

A. That is the key.

Q. All right. Thank you. I will leave it there and then we will just go to the other panel members.

(11:33) DR ROBYN ANDERSON TO KATE HUDSON AND KYM HUDSON:

Q. Tēnā kōrua. Do you know what the rating bill was for Hokianga?

A. [Kym Hudson] No, I'm sorry, I'm not too sure.

Q. Okay. Maybe Ms Woodley has found that out, so we will see, and I actually do not have any more questions. I just wanted to thank you, and especially for telling us about your wonderful kuia Erana. You know, as you may have gathered, I love stories about strong rangatira who are women, and is that her portrait that is in the big picture?

A. [Kym Hudson] That's her aunty.

Q. Okay.

A. [Kym Hudson] **(inaudible 11:34:16)**
[Kate Hudson] No, Erana.
[Kym Hudson] Nanny Erana? Sorry, that's Nanny Erana's mokopuna.

Q. Okay.

A. [Kym Hudson] This is Nanny Erana's son.

Q. Okay. All right. Thank you very much for your evidence today. Thank you.

(11:34) JUDGE DOOGAN TO KATE HUDSON AND KYM HUDSON:

Q. Ko Onewhero?

A. [Kate Hudson] Āe.
[Kym Hudson] Āe, it's Te Onewhero.

Q. Āe.

A. [Kate Hudson] And she's got another sister up there.
[Kym Hudson] Yes.
[Kate Hudson] Te Atamira. Te Atamira, the little, small photo in there, that's her sister. She's at the bottom there, the little – with the black outline. That's her sister.

Q. All right, and am I recalling correctly that those are the two kuia who essentially established Kutarere?

A. [Kym Hudson] Yes, along with the koroua Hurae.
[Kate Hudson] Yes.

Q. All right. Kia ora. Thank you. Sorry, I keep intervening with my pātai.

(11:35) DR GRANT PHILLIPSON TO KATE HUDSON AND KYM HUDSON:

Q. Tēnā kōrua.

A. [Kate Hudson] Kia ora.

Q. Thank you very much. I found both of your briefs very helpful, and I have to say, Keita, that listening to your kōrero this morning was one of the most useful pieces of evidence I have heard in the Tribunal, so thank you very much for that. You just hit some real nails on the head, so thank you for that.

I also was going to ask about Te Ūpokorehe whānui, but I don't need to do that now. So, you referred to Erana as almost a solo mum, so I was wondering what happened to her husband. Was he killed in the –

A. I'm wondering that.

Q. You don't know?

A. I was wondering as well.

Q. I wondered if he was killed in the –

A. Yes.

Q. – fighting –

A. I actually don't really know, but it's just spoken of her and her children all the way through the case, really, and so he may have already perished by then, I'm not sure, I'm really not sure.

Q. Okay. Thank you, and, Kym – I am calling you Kym and Keita, because you are both Ms Hudson.

A. The same.

Q. Kym, you, in your brief of evidence in paragraph 28, you refer to the 1898 Waimana case, but I think I heard you say this morning that you were referring to the 1898 Hiwarau case.

WITNESS REFERRED TO BRIEF OF EVIDENCE #E042, PARA 28

A. [Kym Hudson] Yes, Hiwarau.

Q. Is that correct? So, the Waimana one is not, right?

A. Yes, but there is something that I did speak about of Nanny Erana where I had read, but I couldn't remember if it was the Waimana case that I'd seen it in.

Q. I see.

A. But a lot of my kōrero and knowledge of Erana was through the Hiwarau –

Q. Yes.

A. – Hiwarau case.

Q. It would be helpful, actually, if counsel could find the Waimana case and file a copy of that so that we can see what is in there, and also those Hiwarau minutes, if we don't already have them on our record. Thank you.

The charter for the island, I think I heard you say it wasn't quite complete yet. Is that –

Q. Not quite complete yet.

A. Right. Okay.

Q. Where was the hui held to appoint the trustees for the island?

A. It was held at the Ōpōtiki library.

Q. I see.

A. Yes.

Q. And did you get a good representation from all the Ūpokorehe marae?

A. There was a few, yes. There was quite a few people in there, eh. That whole room was full, yes, so those who showed up. But there was a lot of people there. There was a lot of whānau there, so yes.

Q. Good. Thank you. And are you able to perhaps just provide us with a list of the other trustees?

My husband, Dwayne Taitapanui, cousin, Jacqui Waihirere, Hurae Te Rupe, Chris Collier, Te Aroha Rutherford, Peter Collier, and Jocelyn Te Maipi, and Kingi William.

Q. Okay.

A. Yes.

Q. Thank you very much.

A. And myself.

Q. And yourself, yes. Yes. And I was wondering: So, the Trust Board, before it went out of existence, I think returned the island to that trust. What is happening now with the rates? Has the Council arranged a rates remission for the island?

A. So, when – I know when the Trust Board became the responsible trustees, it was put into a reserve.

Q. So, it's a Māori reservation.

A. It's a Māori reservation.

Q. Okay. Okay.

A. There's an urupā there.

Q. So, there's no rates on it now.

A. No.

Q. That's great. Thank you.

A. Can I just add, too, our Nanny Erana and her dad, Wi Akeake, are both buried off on the top, I think cousin Dean spoke about that too.

Q. Yes.

A. Just want to acknowledge that.

Q. Yes. Thank you. That's really important, and the one thing I'm puzzled about, I have to say, is the statement that all the iwi lived on that island. Can you clarify that a bit for me, please? Because I'm not aware of all of the iwi having lived on that particular island.

A. Well, Ūpokorehe were there as well, but they had – there were homes across there. We had Tūhoe's home and – what's the name of the whare? Rāwaho? Wareware ahau. Yes, so Tūhoe had a house on there. Whose was the other house? Te Kooti's whare.

Q. It's through the connection with Te Kooti that everybody was there, is it?

A. No, not necessarily.

Q. No?

A. Not necessarily. They were all living around here anyway. But they had, yes, the hāhi was something that, Te Kooti and his hāhi was something that everybody pretty much around here were patrons of, and I know that –

JUDGE DOOGAN TO KATE HUDSON AND KYM HUDSON: (CONTINUES)

Q. Can I just –

A. [Kym Hudson] Sorry.

Q. Sorry, I just want to clarify, just in Dr Phillipson's pātai, because what I heard you say was Hokianga could become a tatau pounamu for the iwi, meaning future-looking, you are hoping that it becomes a place where all the iwi can come together.

A. Yes, and know they belong.

Q. Yes, and know they belong and have a connection to that place, and by that, you are meaning Whakatōhea iwi?

A. As well.

Q. So, the – as well as who? As well as?

A. Tūhoe, all those iwi that were included as Ūpokorehe –

Q. All right.

A. – at the time of the judgment, and – which was Ngāti Porou, Whānau-a-Apanui, there were a whole lot of **(inaudible 11:41:15)**.

Q. Okay.

A. It would need some research.

Q. All right, and then just to clarify –

A. Yes.

Q. – I am asking that simply to get clear what you were saying. So, is it, you didn't say all iwi had lived on the island?

A. No.

Q. Right. All right.

A. No.

Q. Ka pai. Thank you.

DR GRANT PHILLIPSON TO KATE HUDSON AND KYM HUDSON: (CONTINUES)

Q. Thank you. I had misunderstood that, so –

A. [Kym Hudson] That's okay.

Q. – thank you very much for clarifying that, and that's all my questions. Thank you very much, both of you.

JUDGE DOOGAN TO KATE HUDSON AND KYM HUDSON: (CONTINUES)

Q. Kia ora anō. Surprisingly, I still have a question, after I have asked many on the way. I just wanted to go again to the future-looking parts of the evidence and the wish to establish papakāinga on Hiwarau, and so the first step is the desire to have the amalgamation undone and the titles to go back to the pre-amalgamation state. So let – assume that's done, and I know you have talked about the need for pūtea for infrastructure, and I have seen the evidence of the efforts from the 1990s onwards to try to advance this kaupapa. Has there been discussion, or how far has the discussion gone, between the various owners in those historic titles about

that future and what that might look like? Because the reason for my question is that when you look at the title pre-amalgamation, the title history, and then what we have seen of the land, clearly not all of it is going to support –

A. [Kate Hudson] No, that's right.

Q. – papakāinga. Parts of it will –

A. Yes.

Q. – with suitable infrastructure, so there is going to be an issue, potentially, amongst those who have interests in the land that would not support papakāinga, but anyway, have discussions gone very far into this sort of area?

A. No, not that I know of, but I do know different whānau are asking about, "Look, we want to get back on our whenua", and I hear what you're saying, there are, you know, goats, areas like this, good enough for goats or whatever, but in that instance, I've talked about too – sorry, I forgot your name, but about how it was important for us to have some training into what we can do with that whenua.

Q. So, support not only with the obvious legal and administrative mahi to de-amalgamate it, but –

A. Yes.

Q. – there is quite a bit going forward you are looking at, as well, where you would need support for –

A. Yes.

Q. All right, and just finally, again, on that question, at paragraph 42, where you have said there might be some money set aside, and in answer to a question from Professor Roa, you said there had not really been any discussions yet, so the indication is just at a high level that – from Te Tāwharau, there might be some pūtea put aside for this, but it has not got –

A. It hasn't come to us yet.

Q. Or there is no detail on it.

A. No, no discussions. No discussions.

Q. All right. It is just an idea for further development. Thank you, that is clear. Again, thank you both very much.

A. Thank you.

Q. Thank you, Kym. Thank you, Keita. Tēnā kōrua. Ka nui te mihi ki a kōrua.

WAIATA

KATE HUDSON:

Just a little clarification, or just a bit of a – that waiata is about Kahuki, and he refers to our three marae. He was the – the – a warrior for the area and for Whakatōhea, and Tūhoe.

JUDGE DOOGAN:

Kia ora. Kia ora, thank you, and tamariki mā, just tautoko the mihi Ahorangi Roa has giving to you. Thank you, and I think the tūpuna we have been hearing about would be very proud of you. Tēnā koutou. Āe.

DR ROBYN ANDERSON:

Can I just ask when that waiata was composed?

KATE HUDSON:

19 –

UNIDENTIFIED SPEAKER: (11:48:31)

86.

DR ROBYN ANDERSON:

Okay. Kia ora.

KATE HUDSON:

(inaudible 11:48:35) was written by **(inaudible 11:48:38)**, nineteen eighty-something.

DR ROBYN ANDERSON:

Yes, and written by whom, sorry?

KEITA HUDSON:
Harry McCormack.

DR ROBYN ANDERSON:
Thank you.

DR GRANT PHILLIPSON:
Sorry, you didn't have your microphone on, then, so can you – you didn't have your microphone on.

KATE HUDSON:
Sorry. Harry McCormack. That was the author. Yes, my dad's brother.

DR ROBYN ANDERSON:
All right. Thank you.

HEARING ADJOURNS: 11.49 AM

HEARING RESUMES: 11.54 AM

HOUSEKEEPING – TIMETABLING (11:54:47)

MS FELLOWES CALLS

(11:56) JEANETTE MITCHELL: (#E032)
Good afternoon. My name is Jeanette Mitchell (née De Loree), and I provide this brief of evidence in support of the Wai 339 claim in the North-Eastern Bay of Plenty District Inquiry.

On my right, I have my sister-cousin – I call her my sister-cousin. I first saw her when I was six and she was four, and we've been glued ever since. Next, we have Deirdre Maraki – how do you say it? Yes, I'm good, I'm right. She's my first cousin, and we went to what was called the Native School in Tokaanu, and spent a few years there, and then we came to the Bay of Plenty and she stayed at Turangi.

Next, we have my sister, Renee Boyd. Renee, my sister, I don't think she'd mind if I say that she's 85 years old. She taught school – she's a teacher. She's well known for her gifts in remedial reading, et cetera, and she still does voluntary now.

Then that's my daughter that's going to read for Neville's brief, and so, my daughter, she's been really interested in our history, and she's probably – can retain more than some of us older ones now, so we're leaving a lot in her hands. That's Marina.

Beside Marina is Stan. He's our cousin that we met latterly, from the East Coast, and so we had a family get-together to get to know each other and it's been a massive thing for us all.

And – so I can carry on? Yes.

So, I just want to explain that as a family, my grandfather's family, they were brought up in Ōpōtiki, and they were a family of nine, one deceased, and we're a kind of a private people, and have never spoken out, and so people haven't known a lot about us. But today, I'm going to set the record straight and say that we are the Walkers, and we got here through an old kuia, Hineraua, that came from Ngāti Porou round about the 1800s. We're not sure of the history, that if she was a slave trade in the wars or if she was a gift. But anyway, she came to Hiwarau and she settled at Hiwarau B with an old chap, and his name was Whakapiki. When the confiscated lands were reallocated, she was the only one living on that block, and so those shares were allocated to her, and they came through the court system down to my grandfather's family, and so that's who the Walkers are.

We've got a couple of pictures, have we? Have we? Have we got a couple of pictures to show some of the Walkers?

MS FELLOWES:

Āe. We do. I believe I have sent them to the Tribunal's staff. I think it will just take a moment for them to pull it up.

JEANETTE MITCHELL:

Yes.

WITNESS REFERS TO PHOTOGRAPHS #E032(b)

So, this is Isaac Walker. He's the son of Isaac Walker and Matire Taunaha, and they were brought up in Ōpōtiki. His history was that he married Clara Oliver, but she has a Māori name. She's the chieftainess of Whakatōhea. She has a plaque over the gateway at Ōmarumutu marae. Unfortunately, he died young, but he'd already had a farm, and I think – I don't think – and the land was passed on, because they had no children, and the marae land was given from that family, so that's the oldest boy.

JUDGE DOOGAN:

The Ōmarumutu marae land? Sorry, whaea, it's Judge Doogan speaking. Sorry, just, you said the marae land was given. Are we talking about the Ōmarumutu marae land?

JEANETTE MITCHELL:

Yes.

JUDGE DOOGAN:

All right. Thank you.

JEANETTE MITCHELL: (CONTINUES REFERRING TO PHOTOGRAPHS #E032(b))

So, we've got the next photo.

This is our grandfather. This is how we knew him. He was an old man at B2. He lived on his own. His wife had died. He went there after he retired, about age 60, and they lived in a dugout to start with, and then, over the years, he made paradise on Earth for us there.

He fished, he gave the neighbours the fish, he'd go across the road to all sorts of people, because there were no bridges and that then, and so he shared the spoils. He grew a big kūmara crop and everyone would come when it was time to dig, and they'd take kūmaras home, and then we still had the pits. We can remember as kids that we'd have to go in the pits to get the kūmara. He'd tidy the pits once a week or something and chuck the rotten ones out of – but he – that was our stable thing in life, our grandfather. We had kind of a bit of a gypsy time up to then, but our grandfather was our everything.

There's one more picture, so, it's a bit hard to see.

I paint, I did my apprenticeship at Wainui when I was seven, because we used to get bread delivered twice a week, and I could unwrap the bread and spread the paper and write, draw, and turn it over and draw, and so now I'm old, I'm trying to paint. I've done my apprenticeship long ago at Wainui, because we had no electric lights or anything like that. We had to make our own, you know, do what we could with our minds to keep us busy.

So, Johnny Walker, he served in the Boer War. That's actually, I'm trying to paint Johnny Walker, and that's my Pākehā grandfather. They fought in the same contingent. There's a monument at Tāneatua for Johnny Walker, put there by the locals. But unfortunately, he died as a young man. I think they went, in the Boer War, they got dust on their lungs, and that, and so he died as a young man. Isaac Walker died as a young man, also.

They had sisters, three of the sisters stayed at the Coast. They were of Ngāti Porou descent. So, there were three sisters that stayed at the Coast, and the men, they tread out into the world. My sister says to me often that it was hard for them at that time, because they were half-cast. I've never consciously thought about that, but now I do a bit, because, like, even in our own family, and I'm probably speaking for myself, I won't say it for the rest of our family. But it's not an easy place to live, you know, I feel odd, I've always felt odd. So, I don't know about my siblings, but that's our history. Yes. Okay.

Tell you about myself. Have to talk about myself.

I farm, me and my family, we farm on confiscated land at Tāneatua. Our farm, we're kaitiaki for the big Puketi pā site, and across the river also, we've got Ōtere pā site, and our way of looking after those sites is "little disturb". People come sometimes, but people come for different reasons. Some come for their history, some come to make it part of their journey to be famous. And so, our kaupapa is to just leave them undisturbed.

So, I married a farmer, I think there's a farmer amongst you. You might understand what I'm trying to say sometimes. So, I've been a dairy farmer for 62 years. We bought our first farm when we were 23 years old, and my husband died nearly 30 years ago, and so the whānau have kept the farms going. They've become intergenerational now.

When my husband was dying, I'd started doing a little bit of study, and so I was from the creative world, like quilts and all that. But then I went to learn, you know, I had to learn business, and so I did distance learning to get a Bachelor of Business and Management. I added other papers, like environmental and that, that I was interested in, because in 1992, it was the time of – when they brought the regional councils in, and I knew that it was going to be important to us, so I wanted to learn what was going on there.

So, I'm from the fifth of nine generations to the Walker family, and my connection to the block is through my grandfather, who was an owner. So yes, I don't know whether to – if I make mention of the amalgamation now, but our grandfather, he got dementia, and he couldn't stay on the farm. He was old, he was getting to 90, and my father used to visit there all the time, and he went to Donna.

Donna was living in Whakatāne, she had a young family, and my father went to her and said: "Your grandfather can't look after himself. He can't walk up the hill. He's broken, and he's getting dementia." And because my grandfather

had brought Donna up, the family put the onus on her to look after him, which probably wasn't that fair, but she did that, and she did it well, that was 1967. At the end of '67, he went to her, and then he died in March '63 – '69, sorry, yes; he died in March '69, and we never ever knew anything about an amalgamation.

When my brother died four years ago, about – that's the first we knew of the amalgamation. Yes.

Okay, I think I've said enough for now. Yes. Someone else was going to have a turn.

MS FELLOWES CALLS

(12:10) DONNA TUNUI: (#E031)

Hello, I'm Donna Tunui, née Walker, and I was born on the 30th of March 1945. My parents were George Walker, and my mother was Rangi-Asher Wallace. She was from Tūrangi. And I'm the granddaughter of Sam Walker and Maraea Florence Walker, née Faulkner. My grandfather, he was the youngest boy – well, of nine living children, and he was the son of Isaac and Matire, as Jeanette's already told you.

Now, I'm the wife of Julian Tunui, and I had three sons, Mark, Leonard and Tamarangi.

This is quite hard for me.

I was born in Taumarunui **(unclear 12:11:34)**, and at the age of four weeks, my grandmother came and picked me up from Tūrangi and brought me to Cheddar Valley, which is – Cheddar Valley factory, Hiwarau C, B2 is where we lived, and that's my connection to the land. It's through my grandfather. So I lived there from the age of four weeks 'til I was 16, and I went to school from there.

MS FELLOWES: (BEGINS LEADING WITNESS)

So, would you like to tell us just about some of your most favourite memories of when you lived with your grandpa on Hiwarau B2?

DONNA TUNUI: (CONTINUES #E031)

Well, he taught me everything. How to do housework, how to gather wood, how to gather seafood, even how to mend nets. And he used to build a boat, and he'd show me what you did. He actually used 44-gallon drums to shape, you know, the boat, and he used to caulk it, and then he'd paint it. Yes. He taught me how to whitebait, how to row a boat, everything. How to garden.

And when I was a child, he had this huge garden, as my cousin said, and we grew kūmaras, which he supplied to the fruiterer in town, who was Norman Lowe, so every Friday, he would come, Norman Lowe would come on his little old truck, and he'd pick up ten sugar bags of kūmaras, which we would have to transfer across the river by boat, and then he'd leave ten empty sacks.

RENEE BOYD:

Excuse me, Donna. The whānau ate hundreds of kūmara.

DONNA TUNUI:

I know.

CONTINUES REFERRING TO BRIEF OF EVIDENCE #E031

Yes. So – and then, on a – the Friday night, there used to be a bus service which we could go to town on, and we would do our shopping. We'd go to the pictures before the bus – because I think the bus used to go home after the pictures. And we used to go down to Mr Lowe's fruit shop, and he'd give us this big box of all the exotic fruits that we didn't have. My grandfather had a huge orchard, and he used to – what do you call it when you join one fruit tree to another?

VARIOUS SPEAKERS:

Graft.

DONNA TUNUI: (CONTINUES REFERRING TO BRIEF OF EVIDENCE #E031)

Graft. He'd graft all sorts of things to different trees, so probably the only things we didn't have were pineapples, bananas. We had everything that you grew in those days. Yes.

And then, in 1949, I was about four years old. That's when my grandmother – they were building a batch for the neighbours down the road, which were the Fishers, and next to the Fishers, where the swing bridge was, lived the Te Wini's. Now, they were the only three families on our side of the river, and my grandfather used to go down and help them a lot with things they want – wanted done, because Mrs Fisher, she was a widow, and she had all these children, and then my – when my grandfather was building their extra room, my grandmother was handing the iron up to him, and he didn't quite have hold of it. It was windy, so he – it slipped, and it cut her in the breast, and she developed cancer. Yes. And then she later passed away.

So, after the funeral, my grandfather and I went to live with his various daughters, and then – first of all we went to Aunty Clara in Tauranga, then we went to Aunty Lizzie in Auckland, and then Aunty Ethel down in Bulls, and then we finally ended up in Tūrangi with Aunty Ivy, who was Jeanette and Renee's mum. And by then, my grandfather, he had enough, and he wanted to come home, back to Hiwarau C.

So, we came back, and then Aunty Ivy and Uncle Rene, who I used to call Wiwi, because I couldn't pronounce his name – and they came to live with us for about two and a half years, and then they moved to Whakatāne, because the older children were needing to go to high school.

I can remember when my grandfather got older, he used to talk to my grandmother, as if she was right there, and he'd tell us that he was talking to her, and he always said to us not to be afraid of the dead; that it was the living that you had to be afraid of.

Now, when we were living on Hiwarau B2, the land was all clear. My grandfather, he'd dug drains. Now, he was an old man, but he was very fit, and he'd planted fruit trees. He planted two plantations of pines, and now, those pine trees – this is going a bit beyond, now – they were cut down after my cousins, like, Peter de Loree and Florence, when they were evicted from there. Those pine trees were cut down and milled, so we don't know what happened with the proceeds from that, but that's history, I guess.

Then, as I was growing up, my Uncle John and Aunty Tini came from the Coast to live with my grandfather, and they brought 20-odd milking cows, so we milked by hand. We didn't have any power. We had Tilley lamps. My grandfather would charge a battery, and he would listen to the news. I was allowed to listen to this child's programme on Sunday morning. That was the only time. And then he would always, if the All Blacks were on, that was the only other time the radio was used. So, yes.

When my uncle stayed with us, he brought his wife, and he had adopted her children from the previous marriage, which was Rawinia, Patsy, Norma and Donna.

So, we used to milk these cows, hand-separate the cream from the milk, and then when I went to school in the mornings, I would take the cream can on a wheelbarrow down to the river, cross over on the boat, and then take it to the cream stand. There was, yes, no other way of getting it there, and that's how we transferred everything. I think that's how, when my grandfather first built the house, he would have brought the timber across on a boat and then taken it up on the sledge to the site.

HOUSEKEEPING – TIMING (12:22:48)

JUDGE DOOGAN:

Just while we are paused, I just realise, e te whānau, as far as I recall, I think most of you were not here when we started our hearing this week. I neglected to introduce our Tribunal.

Just very briefly, I am Judge Doogan. Our dairy farmer is to my far right over here, this is Mr Basil Morrison. He will be delighted to hear some of this evidence. Next to Basil is Ms Prue Kapua, who you may know from her work in the Māori Women's Welfare League and in law. Professor Tom Roa is to my immediate left; Ngāti Maniapoto, Waikato University. Then, Dr Phillipson, along with Dr Robyn Anderson, are both historian members on the panel, with very extensive experience in Waitangi Tribunal inquiries, reports, research. So, I am privileged to sit with this distinguished panel.

HOUSEKEEPING – TIMING (12:24:23)

DONNA TUNUI: (CONTINUES REFERRING TO BRIEF OF EVIDENCE #E031)

Yes, when we used to harvest the kūmaras, all of the Te Winis and the Fishers, they used to come and help, and we'd fill up kits, and whatever was left, they could take home and do whatever they wanted with it.

Now, we only received rural delivery three times a week, so if you wanted to get anything from Mr Murrel's shop, which is the one just down here. You had to leave a note in the box, and it would come the next day, and my grandfather would go and pay for his groceries on pension day once a month, and that's, like, we lived off the land. We were poor, but we were never hungry or – we didn't go without.

There was a cemetery on the little hill opposite our house, and my grandfather would say we weren't to go there. But if we did, when we came home, we would wash our hands, and he used to tell us stories about – from the marae, where the Te Winis lived. They would bring the dead. I think this was the flu, and there were a lot of children, and they used to bring the dead up to that cemetery to bury, and – now, my grandfather, he used to go to Hokianga Island. Before I was there, he used to take the dead, but I didn't know that, to Hokianga Island on his boat. But when I was probably about seven, he would always go there and visit, but he wouldn't tell me why, and he'd leave me on the beach, and

he'd say: "Stay here; I'll be back soon." Then he'd go, and we went there quite often, but I didn't know why, but in later years, I did.

So, every summer and school holidays, all my cousins would come to stay, and my aunties and uncles, they'd take home fruit and all sorts of things to preserve, so they were there quite often, and we all used to play and swim together, go white baiting.

Now, I started school at Wainui. I didn't go to school until I was seven, because my grandfather thought I was too little to walk to school. Until my Aunty Ivy said he'd get into trouble if he didn't send me to school, so I attended school there. Then I went to school in Whakatāne High School, and then came the school holidays, and I applied for a job in a shoe shop, because they wanted a junior for the Christmas holidays, and then – that was in 1960. So, after the school holidays, I asked them if I could have a position, which I was given, surprisingly, and that's when I went to live with Aunty Ivy and Uncle Rene on the main highway to Tāneatua, between Tāneatua and Whakatāne. Otherwise, I couldn't get to work. It was sad to leave my grandfather.

HEARING ADJOURNS: 12.30 PM

HEARING RESUMES: 12.35 PM

MS FELLOWES CALLS

(12:36) RENEE BOYD: (#E045)

Yes, that will be good, thank you.

Kia ora koutou katoa. Ngā mihi mahana ki a koutou.

I'll be quite brief, because Donna's covered a lot of it in depth, and I just have to tell you I'm very pleased to meet Mr Roa, because I went to Teachers' College with his big brother, so that's quite good, and I'd just like to say that I'm relating my experience of life with my time at – staying with my grandfather.

The year before I stayed with my grandfather, I had been pulled out of my home with my sister just as well to go to Auckland and learn to speak beautifully, because we were brought up in Tokaanu, and they didn't speak very nicely. E hoa, nē? Kāo? So **(inaudible 12:37:08)**. So anyway, our other grandmother sent us to Auckland, and we lived with this old lady. She was bent over. I'd never seen a hump on anyone's back before, and all I could do was walk behind her the first day going home from school, wondering what might happen to that lump while I was looking at it. Anyway, I was out of my comfort zone, and it was really, really hard for me. I was glad that the year ended.

Then the next year, our grandma, Donna's granny, our granny, she passed away. I hadn't really met her much. She looked after us when our baby brother was born.

But when I think about the days at Wainui with my grandfather, in a sense, to me, that was my tūrangawaewae, because that's where I learned so much without learning it. It just happened to me, and I could do things. And we lived in the blended family, the tuakana-teina system was there, the older ones looked after the younger ones. We had a lot of freedom, though. I could row a boat up the river all afternoon on a Sundays, no one worried about me. I always came home for tea, and we were really independent.

So, Donna was talking about things that we learned without learning, like Grandpa would say, "Āe, when you plant the corn, you poke your finger and make a hole, count, 'One, two, three', and cover up." He trusted us to do it, and then the time would come when all the corn stalks would be coming up, and the kūmara we'd planted this way up so the leaves could come out, it all happened. I knew those lessons there for the rest of my life.

They were pioneering days in those days. No mower. The scythe was out all the time keeping the grass low around the orchards, and the gardening, yes, I didn't pull out too many weeds, though, but there was always the garden.

Grandpa was there. He'd be mending his net. We'd come home from school, run along: "Hello, Grandpa", and I don't think we had too much to talk about, but he would sit there, and he was our mate. He was our mate. He didn't growl ever. He was softly spoken, and he had the girls, Donna and Jeanette, they'd be riding horses all afternoon with him. Gee, it was a fun time. We had a lot of fun. We learned a lot of things.

Also, we went to Wainui Road School. It was a long walk along the big straight and roundabout, and we had this teacher, Jack Ennis, and he was a real cool teacher. I didn't realise how much influence he had on my – when I grew up, I went into teaching, and I don't think he was too good at teaching primers. Although, he rose to the top of his profession. So, lots of afternoons, I was in the classroom, reading stories, and I'd have the table set up, and we'd do the Three Billy goats Gruff, because there were not many junior children, and I loved that. I could talk out and make all the noises and rooster noise as well. I won't demonstrate it, but I got pretty good at it. I loved that, and I knew the year before when I was in Ms Waters class that I wanted to be a teacher like Ms Waters. But Mr Ennis, I always used to pull back about some things, but he left this in my memory: "I like a person who gives things a go."

So, when I left there, I was giving things a go, all sports, and I went to quite high levels in about four different sports, and I still do a bit of line dancing now, and you know, I give things a go, and I still enjoy life. So, I just want to say that all the fun stuff we had and the tuakana-teina relationships, Mr Ennis, he didn't do duty, he went up to his house for morning tea and for lunch, and the big kids, they used to look after us and organise games and make cocoa and coffee. But I learned to be independent from Grandpa and the school. I didn't – couldn't quite separate the two places. Living at Grandpa's went with going to school there, and so it had a great impact on my life, and I think that's why I can talk with a big voice now.

But that's – I just want you to know that – what an important thing it was for me, and I go past Wainui, I think of Wainui, I grieve for what Wainui. Because not only did I live there for two years, but I kept going back to see my grandfather,

even when I went teaching up north. I'd say: "Grandpa, what kind of cake do you like?" The man likes a soft cake, so I used to make him pikelets every time, and send them with my mother if I couldn't go to see him.

But then when I got married, well, we owned – we had a dairy and we had one day off a year, and we tried to come home for Christmas, so we didn't get to Wainui so much then, but anyway, that's how it was for me. It was a wonderful experience. I learned a lot of things without learning them. I mean, I got my – probably my thirst to be a teacher from there, and as my sister said, I still do voluntary teaching for children who are missing out when they're very capable of reading.

So that's my little story for now. Thank you very much for listening.

MS FELLOWES:

Thank you for that. So, I now might turn to you, Deirdre. In your brief of evidence, you talk about how you and your dad, you would go back and visit your Grandpa Sam quite often at Hiwarau B2. Would you like to tell us about that?

MS FELLOWES CALLS

(12:44) DEIRDRE MARAKI: (#E044)

Well, I've got very fond memories of my childhood, spending school holidays at Hiwarau B2 with my sibling and parents, going to see my grandpa.

My dad would set up his truck, farm truck; he was a farmer in Tokaanu. There was no such thing as Tūrangi. It was Tokaanu in those days, okay? Tūrangi became a township in the '60s, so we were a rural farming place. We were, you know, I was excited to spend two weeks at Grandpa's place, and Dad was the most excited of us all, because he always missed his dad very much.

We would arrive late in the afternoon or evening, park our vehicle up on the riverside of Nukuhou River, close to the Kutarere Cheese Factory. Our grandfather would always leave a rowboat on that side of the river, Nukuhou,

so that my dad could row across and have his own time with him. Because our truck was set up with a canopy and beds in it, and so we'd stay there the night in that. Then Dad and Grandpa would come and get us in the morning, after they'd had their dad-and-son time.

I'm getting together.

Now, my memories are like – I was like Alice in Wonderland there. That's how I saw it, through my eyes as a child. The fruit trees, everything. The gardens, the kūmara pit, you know, the animals, and it was just, everything was in bloom or fruiting, and it's so different, the climates. Over at Tokaanu, well, we're the volcanic plateau, and so it's cold, whereas here, tropical, and everything was flourishing, but that was us. We'd, you know, it was just so much wonderment around me all the time. And of course, I remember one time, me and my cousin here, Donna, we were pretty inseparable when we came for a holiday. We got naughty, and how – we stole some eggs to feed our pet –

DONNA TUNUI:
Hedgehog.

DEIRDRE MARAKI: (CONTINUES REFERRING TO BRIEF OF EVIDENCE #E044)
– hedgehog, and we were told: "They're not pets, they're pests." So, yes, and we got, yes, we got really told off, but that was worse than getting a smack.

DONNA TUNUI:
We never got a smack.

DEIRDRE MARAKI: (CONTINUES REFERRING TO BRIEF OF EVIDENCE #E044)
We never ever got a smack, but that was worse than getting one. But we soon learned.

But, you know, other days, we'd just go to the mud flats and Donna, and I would double up on her horse and Grandpa and them would motor down the channel on their boat, and then that was floundering, pipi, cockles, you name it, whatever, you know. I couldn't remember everything that was swimming around there and whatever. It was just fun to me, it was, you know, it was an adventure. Every day we were there, all day, every day.

Now, yes, there was a time when we had to hurry up and beat the tide coming back up, because I happened to look down from the horse and I just saw this large fish. This huge thing swimming alongside us, and I asked Donna what it was. She said it was a swordfish, while she kept urging our horse back home to move quite quicker. Anyway, she was calm as, and I was just too nosy, I suppose, I don't know. Aua. But anyway, Grandpa and Dad caught up with us and kept the boat alongside us, and Dad later explained why, to ensure that we got home very safely.

Grandpa would sometimes ask Dad to take him to visit some of his – some of my aunties and uncles. Dad never hesitated, and took him to see them, as he knew how much grandpa missed them and he wanted to catch up with them.

We spent an extended weekend in Ruatōria so Dad could take Grandpa to see his sister, Whangapirita, she's Janie, Hēni, Hēni Whangapirita. I remember when we got back, Grandpa said he was very happy. The only thing that he wasn't too happy about was stopping – my father could drink beer. I think all my uncles could, they loved their beer. Dad would stop along the way at the pubs, and our grandfather would go: "My…". He never swore. It was, "My…". "Oh, Digger." Digger that, that was my dad's nickname, Digger: "We have to hurry. No more beer." You know: "One more, Dad. One more, Dad." And, well, as soon as Grandpa walked into the door, because we couldn't go, we were too small. Yes. He walked into the door: "Digger", and Dad got up, straight away, he'd come. Yes. You know.

DONNA TUNUI:

Our grandfather didn't drink.

DEIRDRE MARAKI: (CONTINUES)

No. No.

I never knew my Nanny Maraea. I can't remember her, I must have been just a baby.

DONNA TUNUI:

You were too young.

DEIRDRE MARAKI: (CONTINUES REFERRING TO BRIEF OF EVIDENCE #E044)

Yes, you know. I just can't remember her, but I have heard many stories about her and how she used to be seen riding her horse, side-saddle on her horse, with a ramrod-straight back, portraying a very striking figure. I don't know, I've just seen the odd photo of her.

I remember my grandpa dearly as a quiet, gentle and loving man, who used to always be seen boating back up the channel with kaimoana. I remember how he would always be sharing the catch, fruit and vegetables with his neighbours and friends.

So, I won't go into this other part, I don't think I'm there yet. But those memories are just because it came to a time where we had to stay home at school – to go to school, because we got older, and Dad and my mum used to come and visit Grandpa on their own, and we stayed with our nanny and koro in Tokaanu, and that's – that's the last – those are the last trips that we ever made, like, I ever made as a child to see my grandfather.

So, there you go.

MS FELLOWES: (LEADING WITNESSES)

Thank you for sharing that. And so, before we move on to talk about the amalgamation of Hiwarau C, I just wanted to check if anyone else had any

additional comments you would like to make about their childhood at Hiwarau B2.

JEANETTE MITCHELL:

I'd just like just to give an example of something that happened with Donna and I **(inaudible 12:52:33)** have been ashamed of all of my life, but sometimes lately, I've been thinking maybe it's not all shame. When I was 19, Donna and I took her boyfriend's car and I couldn't drive and we were coming – first we were going to go and see Grandpa, and then we ended – we had two kids with us, and we ended up –

DONNA TUNUI:

Our sister and brother.

JEANETTE MITCHELL:

Yes. We ended up upside-down in the car in the Nukuhou Stream, and so I don't know what happened, I have to ask Donna after. But we were that confident and good in the water, it was – there was probably very little chance that we weren't going to get out of there with those kids, and so that's what happened. I don't remember, but afterwards, I asked Donna, and she told me, as the water rose, we had the sensible conversation and made the plan and stuck to it.

So, that's the kind of strength we learned with our grandfather. He'd give us the freedom. He gave us the freedom, but he taught us resolve, you know, and to swim. My own father, he was good at swimming, so we were really, really like fish in the water. That's just an example of, you know, how we were brought up. I'm still ashamed, a little bit.

RENEE BOYD:

I would just like to add that when we were at our grandfather's, we didn't know – I didn't know about Hiwarau anything, Hiwarau B, I didn't know anything about that. All I knew that when someone said: "We're at old Sam's." That was Grandpa's, or: "Sam Walker's place." That was Grandpa's, and it was

Grandpa's place to us, that was it. We didn't sort of see any sort of binding thing or controlling thing by anyone else. That – it was Grandpa's, to me, to some of my siblings, too, I would think.

UNIDENTIFIED SPEAKER: (12:54:51)

And us as well.

MS FELLOWES: (LEADING WITNESSES)

Just one thing I wanted to clarify was, could someone please explain to the Tribunal, so how you would get to your grandpa's house from the road, so how you would have to cross the river and walk? Would someone like to explain that, please?

JEANETTE MITCHELL:

Okay, so I was, I think, six or seven, I forget, when we had to go to school, and so there were five of us. **(inaudible 12:55:26)** our little brother? He – had he started school then?

RENEE BOYD:

Yes, he went to school.

JEANETTE MITCHELL:

So, there were five of us kids and then we lived on top of a hill, and we had to go across in a dinghy, and so the ones that were on to it, they'd get in the boat quick and then be yelling back to the other ones to hurry up. So, we'd go across the river to go to school, and then it was the same thing, the big kids could stride along, and the little ones would dawdle, and I got the strap for going to school late one day. That was a rude awakening, and so that's how we all used to use the boat, but Grandpa used to get some huge things up that hill. How did he do that?

RENEE BOYD:

On the sledge.

JEANETTE MITCHELL:
On the boat and then the sledge.

VARIOUS SPEAKERS:
Yes.

JEANETTE MITCHELL:
How we got them on the boat I don't know. We had three different boats, a little –

RENEE BOYD:
Dinghy.

JEANETTE MITCHELL:
I think it was eight foot, and then we had a 12 foot, and then we had a launch. Yes.

I'd just like to tell you a little bit about our grandfather. He went to school at Tuparoa, I don't know if you know where that is, that's Ruatoria. It was a thriving little community then. That's where his parents lived. Then he went to Te Aute College until he was 17. There was money put aside from his father for his education, and probably for his siblings' education, too. He just told us about his, and then this was something he was very proud of. He had a certificate in engineering. Not a degree, a certificate.

He used to take the launches with barges towing out of Tauranga, you know, harbour, to Matakana Island. He used to take shingle, maize, and his degree – so he could captain that boat. Otherwise, he wasn't allowed to, if he didn't have that.

So, he was quite a resourceful person, and he used to buy me these, they used to be called Golden – they were little books, you know, with Cinderella, Jack and the Beanstalk, and he used to read me a story every night. My favourite

was Jack and the Beanstalk, and I could tell you the story from the beginning to the end.

UNIDENTIFIED SPEAKER: (12:58:30)

Could I just add one more thing? Our grandfather, he was conscious of his pretty little granddaughter, but she had straight, straight, straight hair.

UNIDENTIFIED SPEAKER: (12:58:39)

I still have, yes.

UNIDENTIFIED SPEAKER: (12:58:40)

And he used to get those pipe-cleaners and curl her hair, and then he'd take them out and if the straight bits were sticking out, he'd cut them off.

RENEE BOYD:

Excuse me. When you were asking about the boats we used if people came, when visitors came, and it was quite a place of bonding at Grandpa's. Whoever was playing outside would often hear, beep, beep, beep. Someone would be blowing the horn down at the river. So, then we knew there was a visitor, so we'd tell Grandpa, and often it was a cousin or a son or a relative, and yes, he'd run down and attend to the visitors.

He didn't put the radio on much, as Donna said, so when King George VI died, I had gone out to the apple tree to get an apple to have for my play lunch or my lunch, and then the neighbour was there, calling out, "There's no school today. The King is dead." So, that's how messages worked **(unclear 13:00:01)**; the neighbours helping each other.

HEARING ADJOURNS: 1.00 PM

HEARING RESUMES: 1.55 PM

JUDGE DOOGAN:

Kia ora koutou. E te whānau, nau mai, hoki mai. I am confident that you will have enjoyed the manaaki we have been enjoying all week from Gloria and her team, and that you are suitably fortified to carry on, so over to you, Ms Fellowes.

MS FELLOWES: (LEADING WITNESSES)

Thank you, Sir. So, Jeanette, we will now start to discuss the amalgamation of Hiwarau B2, so, your grandpa's land, and amalgamation into Hiwarau C. Could you please tell us more about you and your whānau's experience with this amalgamation?

JEANETTE MITCHELL:

Yes. Okay. My brother – when my brother died, I got papers from his wife Flo, because he'd been in the courts for a long time fighting to get his – our land back. When I looked through the papers, that was 2020, was it, Flo, when he died? In 2020, that's the first I knew of the amalgamation. So yes, like that's so many years past the event.

But I also picked up a piece of his documents, and it's referenced, it's from probably the Hiwarau C minutes, and the reference is:

> Where little documentation has been filed in support of the application with reliance solely on the Erikson application, it is difficult to consider whether the two" that's Erikson and Walker, "are wholly applicable to each other, especially seeing Ms Agassiz, in the Erikson application, was the sole owner in the block.
>
> The date of birth for Haami Walker was 3 March 69, which was before the amalgamation took place. These facts make it difficult to ascertain who would have received the notice for the amalgamation, and in any case, on the Particulars of title as noted above at paragraph 23, it appears Hami Waaka or Sam Walker or whoever lived at the address may not have

received notice anyway. Rene de Loree, lessee of Hiwarau A11, is a family member, and was heavily involved, and received a specific notice.

So, it could follow then that he would have notified or talked to someone in the family about the amalgamation. Although it is a broad assumption without some support from the court record.

I can tell you, our father, he was a solo paddler. He didn't talk about anything like that to any of us. We just didn't know.

JUDGE DOOGAN:
Kia ora. Can I just – what you were just reading to us, is that appended to your brief, or is that a different document?

JEANETTE MITCHELL:
It might be a different document.

JUDGE DOOGAN:
I don't think it is in your appendices, but –

MS FELLOWES:
No, it won't be, but we can file that if you would like, Sir.

JUDGE DOOGAN:
Absolutely, and if it is an extract from a court minute, which it sounds like it is, can we have the complete minute, please, whatever the hearing was in relation to.

MS FELLOWES:
Yes, we can do that, Sir.

JUDGE DOOGAN:

Thank you. I am not sure if you have the whole document, but if we have a reference, we can track it down.

JEANETTE MITCHELL:

Yes. Yes, I haven't got the whole document.

JUDGE DOOGAN:

All right. Thank you.

JEANETTE MITCHELL:

Yes. So where are we? That's enough from me on the amalgamation.

MS FELLOWES: (LEADING WITNESSES)

We will come back to that. So, Donna, just to confirm, so you have talked earlier just about your Grandpa Sam living with you in Whakatāne. So, you never received any correspondence, you or your grandpa, about the –

DONNA TUNUI:

No.

MS FELLOWES:

– proposed amalgamation?

DONNA TUNUI:

He came and lived with me in 67 until he died in March 69, and we had nothing. Nobody contacted us or anything.

UNIDENTIFIED SPEAKER: (14:00:14)

No mail.

DONNA TUNUI:

No, there was no mail for him that came to me.

MS FELLOWES: (LEADING WITNESSES)

Yes, and so for the rest of you, when did you all find out about the amalgamation?

DEIRDRE MARAKI:

Are you talking to me?

MS FELLOWES: (LEADING WITNESSES)

You, Deirdre, and Renee. Just either or both of you. When did you learn about the amalgamation?

RENEE BOYD:

Just very recently. Was it this year?

DEIRDRE MARAKI

Well, we knew just after Pete died. 2020.

RENEE BOYD:

Okay. Okay.

DEIRDRE MARAKI:

Right, me, I learned of the amalgamation some time back, but I had no idea what an amalgamation was or how it came about, and to my knowledge, there was never any consultation about the amalgamation. Our whānau only became aware of the amalgamation when we, at about third generation, started asking questions with each other and saying, excuse my language, but "what the hell's this?"

You know, and we used to thing, get notices from Josie Mortenson at the time, that there were meetings for this Hiwarau C Trust, and my sisters used to attend them regularly when they were notified. If they were notified, and I was away in Western Australia, and so they carried on coming to the meetings, and you know, and this is when I started thinking, well, hang on. When I returned home, I attended meetings with my sisters and that, and unbeknown to us, what this meeting was you know, it was just a foregone conclusion. We just went along

willy-nilly because we knew none the wiser, we were none the wiser as to what this amalgamation was all about.

It was really hard, too, because we said: "Hey, how can we get back to our whenua?", and Josie said: "I'll take you, but I have to let the ones living there know", and we go: "What?" We're going: "Who put them there?" "Well, the trust did." "Why?" "To look after it." I said, "Well, none of our Walker whānau were asked to look after our own whenua." And you know, that was pretty rough.

We go there, and they're introducing us as a Walker whānau who owns this whenua and the whare. Then other times, this one here, I know she'd been there, and it was: "Get off our land, get away from our home." You know, so what the heck. But when we went there for a visit, it was disgusting. Big old rusty bus sitting there, a big hole full of rubbish. Rubbish everywhere, car bodies, everything.

RENEE BOYD:
Fern up to the door.

DEIRDRE MARAKI:
Yes, fern up to the door and everything. But the thing is that it was not the beautiful wonderland that I remembered. Far from it. It was unrecognisable, really.

JUDGE DOOGAN:
When was this visit you are referring to?

DEIRDRE MARACKI:
Taihoa. That was in – it could have been 2004… 2010. There were, you know, we had a couple of visits there. Yes.

JUDGE DOOGAN:

Thank you.

RENEE BOYD:

But, you know, been cleared up since then. Yes.

DEIRDRE MARAKI:

It was – hang on. Yes, it was, but – and I've got here, on – after, or during the AGM, even, on the 29th of June 2013, there was a Māori Land Court facilitator there to run this meeting, and it was with regards to the whare, which is actually Donna's, on Hiwarau B2.

But anyway, this amalgamation, it was just, didn't know what it meant, and it just went on. My father didn't even know what it was about, either. He just, you know, he just thought, "Well, it's still your land. You can go back. You can go back to your whenua any time you want to." Not even. Because it was under the trust, and – yes.

That's when we realised, hang on, there's been something going on, when we were going through all different minutes and stuff, and different, you know, scripts, about the Erikson whānau. How she, you know, says: "No way was there an amalgamation." But she was the only child, and whereas, we just hadn't even gotten to that.

The only time at the meetings, I must say, the trust, they were aware that we were there, like, to fight for our land. We wanted our whenua back, and thing, and they said: "Yes, you can partition it." We're going, "That's very costly. You got it for nothing. You took it, so give it back." You know that sort of stuff. "Well, you can lease it. Well, you can lease the house and just have an acre around it." No, we want the lot. But that's us. That's all I can say. I can't say too much more. I'll just be repeating myself. Unless you want to ask me some questions?

MS FELLOWES: (LEADING WITNESSES)

Thank you for sharing that. So, Jeanette, I might start now to talk to you about your memories of your brother, Peter de Loree, and if you could just tell us about his time, from what you witnessed of him living there at Hiwarau B2 and his eviction.

JEANETTE MITCHELL:

So, we were brought up as a family, you know, like, we all took different paths in life, and so, Pete was – him and Flo, they returned to the block and worked away on the house. My father was still alive, but my father, he was ambitious. We'll put it like that. My father, he used to build bridges and do culverts and stuff like that, but he had no formal qualification or anything like that. I think he was working for someone else in the – is the Ōtara River the closest one at Ōpōtiki, is it?

DONNA TUNUI:

Yes, the big bridges.

JEANETTE MITCHELL:

Yes, well, anyway, he helped build that big bridge, and then he took on those sorts of things. He went out as a contractor, and he was building bridges, smaller bridges, and all that. So, what happened was that he was ambitious, and so he got access to the block on both sides. My mother had saved up some of her pension and it was a lot of money, and he took that money and put a road up from Kutarere so we could drive up to that block. Then he got the idea about the bridge on the Wainui side, and he got the materials, and got the crane together. Then Flo and Pete did the work to build the bridge, and yes.

So, I think that was 1984, I think Flo will show us a picture later where it's obvious when I looked at the picture of my father overseeing the bridge he was dying. He was slumped in the grass, you know, and it must have been – going to be his last hurrah to get that bridge across there, and I'm not sure if Flo and Pete – I think they finished it. You'd finished it, Flo, when he died?

FLORENCE DE LOREE:

Yes.

JEANETTE MITCHELL:

Yes. So, the bridge was put in, and then that gave access, which to me, in my mind, it made it a lot more of an attractive proposition for whatever people might want.

JUDGE DOOGAN:

Jeanette, just while we are on this, when we have our next micro-break, I am just going to ask Ms Fellowes to get you to show on one of the maps in our map book where that accessway you have just referred to from Kutarere up to the top of the block, so just when you get a chance, if you could mark it on one of our maps, and then down to where the bridge is, just so we can see it. Thank you.

JEANETTE MITCHELL:

Yes.

So, it wasn't long after that that I recall that pressure to remove Pete came on. My father died in 1985, and he owed lease monies. But it's a whole long story that the lease went up from – I'll just briefly say that the lease went up from $432 a year to six thousand, two hundred and something a year. Which was an exorbitant increase, and my husband and I were farmers, and we were farming at Pekatahi, Tāneatua, if you know it. We were farming on some of the most alluvial floodplain, and we leased land at Pekatahi.

So, for the Kutarere land, they were asking the same price as the best quality land in New Zealand, and the land was poor, you know. It lacked in all sorts of things, and you know, we cleared it. We had weekends and that where we all cut scrub and stuff like that. My mother, she spent hundreds of hours grubbing thistles – yes and helping to do that.

So, I think I was at the Land Court at Rotorua, because we were dealing with a lady, her name was Carol Kingham. While I was talking to her, I asked her about Pete's case, because the talk had been around for quite a while that he was going to get booted out. So, I asked her, and then she said to me, she said: "As we're sitting here, he's being removed." But when I went home, he hadn't been removed, it was still on the boil.

So, what happened next was the bill for the lease that hadn't been paid by my father, because he died – I've got written stuff here that says that he was trying to let go of the lease. But his son and his wife were saying: "No, that's not the good thing to do." And who knows who was right, but yes, we just knew I think – no, the next thing that happened, the bill was presented to my mother.

My mother was 75 years old. She was a pensioner, and she had scant education, and we were protective of her, and she was a feisty little lady. But when she got the bill for the $53,000, she didn't sleep any more. She went toxic. She went toxic, and she was dead within a year, and my beautiful sister, we moved in and looked after our mother. Flo used to come from all the way from Ōpōtiki after her night shifts and help us, because we weren't nurses by a long shot, and I remember – I'll just give one small instance.

One night, my mother, she tripped out, and she was fighting us and telling us we were bad, horrible people, and all that. We couldn't handle. We rang the doctor, the doctor said: "Will my ambulance staff be safe?", and we said: "We can't say yes." In the morning, when he came, I don't know if she didn't know I was in the room or if she didn't care. I could hear her pleading with the doctor to kill her, it was just the most horrendous thing for us, and for me, it's the worst aspect of it.

Other things about when Pete and Flo got evicted, like, you know, I was into business after that, I had my degree and that. So, Pete, he wanted to deregister from GST, and so he had 8 months owing of GST, and he brought the stuff to

me. I was horrified when I saw that his income for 8 months was $5,000, and then they were booted out. He had no money, and they had to find a place to stay. Flo must have kept the show together, because she was nursing all through it. So, there were horrendous aspects for the family about the whole thing.

Thank you.

MS FELLOWES: (LEADING WITNESSES)

So just one of the things that I wanted to clarify, so in your brief of evidence, you state that you believe the Māori Trustee did not expect that rental increase to be paid. Would you just like to explain that a tiny bit more?

JEANETTE MITCHELL:

Yes. I was kind of thinking that there was an ulterior motive to what was going on, because early in the ’60s, a logging company had approached our grandfather with a view to logging the block, you know, like Donna had said, about him planting trees. But it wasn’t a lot of trees, but I think there were – I don’t know if they were interested in the wilding pines as well, but anyway, this excerpt has come to light, and I think it’s in the brief things, is it? And it – it says this, “On 1 November ’85, RW Panapa, Divisional Officer, Office of the Māori Trustee, informed the Advisory Trustees that the government valuation of de Loree’s larger lease had been received, and that on the basis of this valuation, ‘the rental would increase from the present $432… to $6,270…’… Panapa reported that he advised the meeting that” – and this is the interesting part – “‘hopefully the increase would be such as to put the lessee into difficulty and might well result in our being able to terminate the lease by peaceable re-entry on the grounds of non-payment of rent should we not otherwise have been able to effect forfeiture before then.’”

JUDGE DOOGAN:

Thank you. Ms Fellowes, that footnote reference, do you know, off the top of your head, what report or document bank that is?

MS FELLOWES:

So, I believe, Sir, for Wai 894 #A014, that will be Ewan Johnston's report.

JUDGE DOOGAN:

All right. Thank you.

MS FELLOWES:

The Wai 203, Wai 339 report.

JUDGE DOOGAN:

Thank you.

MS FELLOWES:

If you like, Sir, I can find a page reference for that, as well, during the break, for Ewan Johnston's report.

JUDGE DOOGAN:

That would be a bonus, but all good, thank you.

MS FELLOWES:

And so, Jeanette, one of the things I just wanted to talk to you quickly about was, so, you have included in your brief of evidence the 1983 report by Mr Kilgariff. You have also included a more recent inspection by Mr Kilgariff. Could you please just explain the two of those reports, please?

JEANETTE MITCHELL:

So, I'll just try and get to the important part about the – this is the first report, in 1983, and I think that my father had started doing pasture renewals, and you know, cutting the scrub and all that down. And so, I think my father had been at it for a few years, all of us, and so he says here:

Since I last saw the property some three years ago, you have done a tremendous amount of hard work. You have cleared a considerable amount of scrub, pine trees and rubbish, and have provided better access to the block. A

stop bank has been also built around the lower-lying country to prevent flooding during high tide. This work has all led to approximately 100 hectare of land being available for good grazing. However, this hard work must be built on in order to get an economic return from the effort already put in. The work which is now required is to make the pastures on the land cleared grow better and able to utilise that pasture to a much higher level than at present and obtain better stock performance and therefore values and high return.

And then he's got, you know, how he thinks that could be done – what do you call it? – you know, what you do with the land – fertiliser. Fertiliser, and yes, start with heavy fertiliser application, subdivision of the blocks; that's fence it up into paddocks so that you have better control of – better control of how to utilise the block to progress – so – and then, yes, build stock facilities, like, you know, yards and stuff like that, and the stocking rate on the farm is – is low, and ways in which to get the stocking rate up, and those sorts of things, so it's subdivision, fertiliser, and clover seed, yard facilities, cultivation of flax, water supply, drainage. "The cost of carrying out these improvements would be in the vicinity of $25-30,000." And so, as the farmers know, when you're bringing land in to farm, that – your first ten years are down the drain anyway, you know, it's all work and no return, and so they were at this – that stage. "I hope this gives some idea of the development work which you should now be proceeding with instead of clearing more land."

So that was that, and then we went back just, I don't know, a month ago, or something like that. I took him back. He's still alive, like me, and he's like me, too, his – he's not that good with a computer, because I'm having a bit of trouble here, but anyway, he's – his report on the land to date is this.

"The estuary flats and riverside flats near Cheddar Valley had reverted to rushes, sedge and kikuyu. Blackberry and mānuka species were also established. The hillside areas had reverted to scrub, pampas and regenerating bush plants. There were no visible signs of any fences, apart from around a few house sites. Attempting to re-establish any livestock farming

system would be very expensive. Other systems could be considered but would also be expensive and time-consuming to get planning and operations done."

Also, I notice, too, he didn't put it in there, but the wilding pines there have gone crazy, and so I don't know what that's going to mean to the future, you know, of what happens with the block, or the harbour sedimentation and all that if they're felled.

Those are the reports. Thank you.

MS FELLOWES: (LEADING WITNESSES)

So, one of my last questions that I have for you is: Going forward, what have you and your whānau done to try and gain access back to your grandpa's whenua and establishing the trust? Could you tell us more about that?

JEANETTE MITCHELL:

Yes. So, we took advice. We went to Miranda and asked, you know, what other things we could do, and she explained about making a whānau trust, which we have done. In the meantime, something else has come up as an opportunity to maybe get the place back.

Just while I'm talking about what we've done, we've had dealings with Miranda and Dean Flavell and they've been absolutely – they've treated us really, really well, and we really appreciate that. It gave us a starting point, and we knew that we had somewhere that we could go to communicate with the environment that we were going to be working in. Yes, and that's all about the report on the land.

MS FELLOWES: (LEADING WITNESSES)

And so lastly, for all of you who are sitting here with us, would you like to tell us what your aspiration is for Hiwarau B2? What would you like to see happen going forward?

JEANETTE MITCHELL:

We just want to be able to go back there, for us and our children, grandchildren. It's our, you know, our next generation's legacy, and you know, and for us to pass, and have our real gatherings there all the time, and preferably with the whare still on there, and hopefully being able to build, like, papakāinga. So, all the whānau can go back there and let's relive the stories and just let them know how blessed we were as children and even growing up to be with our grandfather there. But you know, most importantly, it's for them and their future, and for them to know that that is their whānau whenua. Hold on to it tight and look after it, treasure it.

RENEE BOYD:

I would like to think of Grandpa's the way it used to be. I'd like to see the mana of that place restored, and I'd like our whānau whānui, to be all welcome there and to be able to go and pitch their tents or whatever. I want them to know about the history, to know about their grandfather, to know about their whakapapa, and just share the memories and experience some of the feelings when they stand in the place and when they hear the stories about the place. I want to it to go back to being run by the whānau.

DEIRDRE MARAKI:

I did write down some notes about our aspirations, and so I'll be quick. We want to teach the kids, like, I'm going to get two little great-great-grandies soon, and I'm over the moon, and I want these things for them. Where the children can learn physical skills such as fishing, swimming and rowing. To learn work ethic through gardening and to learn family history to motivate them towards building lives of productivity and integrity.

We want to bring the elders back to cleanse the earth. Locals at the moment call the land, the Badlands, and we would like to change that. We want to replant orchards, gardens, et cetera. We want to share the kaitiaki role for the Ōhiwa Harbour, around the signs of fish stocks, mussel replenishment, bird habitats, sedimentation buildup, wilding pine, the effects of logging, and other environmental degradations and solutions.

Thank you.

HEARING ADJOURNS: 2.28 PM

HEARING RESUMES: 2.34 PM

JUDGE DOOGAN:

If I could just let counsel know that in the break, Ms Fellowes and Jeanette just clarified for me those questions about the location of the access created by your father. On plate 39 in our map book, for counsel's benefit, the bridge constructed and referred to is, as I understand it, the one we went across on our site visit last year. It is up to the topmost portion of that map, and it is marked in a light orangey colour across just towards the top portion of the yellow boundaries of the Hiwarau C land. And the access across the block from Kutarere is also shown in that light orange or brown colour and running right up the right-hand side of the yellow boundary, right towards the top portion where A9 is shown and then down through the bush and across to A11. So, that is just a brief description of what Jeanette had been discussing prior to the break. Thank you.

All right, Ms Fellowes, back to you. Thank you.

MS FELLOWES:

Sir, I believe we are ready now for pātai from the Crown and from the Tribunal. Thank you, Sir.

JUDGE DOOGAN:

All right, thank you. Crown counsel?

(14:35) MR HUNT TO JEANETTE MITCHELL, DONNA TUNUI, RENEE BOYD, AND DEIDRE MARAKI:

Q. Thank you, your Honour. Daniel Hunt for the Crown. Get the microphone… I only have a couple of questions for you. The first one is to continue with the theme of geography. You spoke about Wainui School

and attending the school. Are you able to help us understand exactly where the school was located?

A. [Jeanette Mitchell] So, the school is located about 3 kilometres, not miles. Did we walk a mile and a half to school, and it's from where the bridge is. Yes, it's about a mile and a half on towards Whakatāne, and I think the, yes, the Education Department had the building for a while and used it for, you know, trips and that for students and that. But then I think they sold it and it's a house now, is it – Yes, yes, so it's gone into private hands.

Q. Private house? Yes?

A. Yes.

Q. So, when we are heading north, we would be able to see…

A. Yes, you look down the side. You can't see much, it's beside a, you know, a –

[Donna Tunui] **(inaudible 14:37:19)** so hard to spot.

[Renee Boyd] You can see – but it's along the straight by the river, and just a wind or three and the school's down on the right.

[Jeanette Mitchell] Yes, it's low. As kids, we used to pick that stuff, what was it? Moss, and bag it up. Did our teacher sell it?

[Renee Boyd] Sphagnum moss.

[Jeanette Mitchell] Did our teacher sell it? Yes. Yes. So, it's down a –

[Donna Tunui] Swampy.

[Jeanette Mitchell] Yes, swampy.

[Renee Boyd] One of the boys emptied the toilet –

Q. Thank you. My second question: I think it was Ms Mitchell, in your brief of evidence, you mentioned having a research team for Māori Land Court proceedings. And am I right to understand from what you have said today that in terms of seeking access again to the Wainui land, to Hiwarau 2B, that you are working – you are happy – you are working together with Ms Horan and Dean Flavell, I think, as you put it?

A. [Jeanette Mitchell] Yes, actually, you know, like, and we got our advice from them, and I think we spoke about three times to Miranda, and I talked to Dean a couple of times. And yes, they were just, you know, absolutely helpful to us, and you know, I felt like they were on our team and looking for progress. But also, I'd had in my brief about – somewhere, it's about

the people calling the land now, they – I play tennis, and I said to a chap, "We've got some land up there". He said: "Where?". I said: "Where the bridge is." He said, "We call that the Badlands."

And so, for us as owners – we call ourselves owners, we don't want our trustees having to go to places where we think they might not be safe. You know, I think they've got a horrendous job.

[Renee Boyd] Because one day when we went there, we were threatened. We just went to have a look, and we were threatened.

[Jeanette Mitchell] Yes, and I'm with Miranda 100%, the whole place needs opening up. We don't need these places where people can hide in the trees and do whatever they do to make money, whatever.

Q. And are you able to tell us a bit more about the research team? It says in your brief that they are helping to produce evidence. Just the topics that –

A. The research team is us. Well, there were some of our girls, they were outside our trustees. But a couple of them, they had as much knowledge as anyone else, because with what we're doing, age is an asset. It's one of the few times that age is an asset. And so, Deirdre's one of the research team, and her sister was also, and me, and you, was it, Donna? Yes, so, it's our family.

Q. Thank you. Thank you very much and thank you all for your evidence. It is very, very interesting and a privilege to hear.

(14:41) PROFESSOR TOM ROA TO JEANETTE MITCHELL, DONNA TUNUI, RENEE BOYD, AND DEIDRE MARAKI:

Q. Kia ora koutou, and I will contact my brother.

A. [Renee Boyd] Don't forget the name.

Q. Renee. I don't have any particular question, but just to say I could listen to this until the cows come home. This is really interesting, moving, nostalgic, I think, is a word that I used before, and as I commented to Basil, this is kind of our upbringing, as well. So, the question probably is, that wonderland and your aspiration to provide a similar wonderland for your descendants, your grandchildren and on. I'm caught that you're talking with Miranda and with Dean and that they're being supportive, but

very aware of the need for resourcing. So that's not a question, that's I think that's what I'm hearing and thank you for sharing that with us. Kia ora.

A. [Renee Boyd] Thank you for listening to our story.

Q. I could do it until the cows come home. It's our – my privilege. Kia ora.

(14:43) DR GRANT PHILLIPSON TO JEANETTE MITCHELL, DONNA TUNUI, RENEE BOYD, AND DEIDRE MARAKI:

Q. Tēnā koutou. Thank you very much. I read all of this in conjunction with Ewan Johnston's report, so I found – I think that's all very clear as to what's happened in the past, but there is one question that comes for me from the evidence today. So Hineraua, you said today that she was Ngāti Porou.

A. [Jeanette Mitchell] Yes.

Q. Yes, that came as news to me, because that wasn't in the evidence, and I wondered, so the shares for the Walker whānau came down from her brother, Hakaraia, is that correct?

A. No.

Q. No?

A. She came to Hiwarau – it must – they discussed it – I think we printed only one side of the court thing. But she must have been born around, maybe a little later than 1800, and she came during the Māori wars. They discuss it in the court document and say they're not sure if she was a slave trade or something like that. Because our information from the Ngāti Porou side shows that there was a sister of – yes, there was a sister that kind of went missing, and her name was Maora. And with Hineraua, I think it was of the times where the court documents were written by hand. I've found in other things I've worked with that it can be the same person and the names change, you know, with the handwriting, so we know her as Kopiki, Kopiha, we call her Kotuku. And so, the land came through her, because she was the only – the old man had died, they had no children. And so, with the reallocation of the confiscated shares in the 1860s, she was the only one on the block, and so she got the shares.

Q. Yes, so in your brief, you said that her shares were succeeded to by the grandchildren of Hineraua's brother, Hakaraia Kotuku. Is that correct?

A. Yes, that's right.

Q. Yes. So, what I am asking is was her brother, Hakaraia, also, did he also come from Ngāti Porou?

A. Yes.

Q. Right, and was there any evidence of, did they come over together, or was there any evidence about that?

A. No, that's the thing that we don't understand, and it's been discussed as the shares came through that she's come through as a very young person, whether she was – I don't know. I don't know how things worked in those days. She might have, like Clara Oliver, Clara Oliver came about by her father, the chief, giving his daughter to the Pākehā man for a night, and then Clara Oliver was resultant of that. Just using an example. We don't know if it was something like that, but the indications are that Hineraua was very young when she came.

Q. So, her brother might not have even been here?

A. No, he wasn't, no.

Q. He wasn't here. I see, so he wasn't here –

A. No.

Q. – but he had grandchildren, and Hineraua's shares went to those grandchildren.

A. Yes, and it says –

Q. Okay.

A. Yes, it says in the Will that my grandfather's mother, Matire Taunaha, used to visit that old lady.

Q. And she was married to Isaac Walker?

A. Yes.

Q. Okay, I understand it now, I was confused. I thought they had both come here.

A. No.

Q. And I was trying to work out what the circumstances of that would have been.

A. Yes.

Q. Okay. So, he was back in Ngāti Porou –

A. Yes, sorry, I, yes.

Q. Yes. No, I understand that. And so, the person that she, Hineraua, lived with, you have called him an old chap named Whakapiki –

A. No, Whakapipi.

Q. I see.

A. Like a pipi, like –

Q. That's wrong. Right. So, Whakapipi?

A. Seafood.

Q. Whakapipi. So, do you know anything about him? Was he Te Ūpokorehe?

A. No, I don't know anything about him.

Q. You don't know anything about him?

A. We think Tūhoe. Yes, I don't know, Rina. Sorry, I'll just say that Marina, she's probably got the best recall of all the history of us, and she's interested in the history, so we're hoping that we leave that in a tidy bundle for her.

Q. So, Whakapipi, and yes, no, okay, I have a clearer understanding of it now. Thank you.

A. Yes.

Q. And hence, I suspect, Keita earlier talking about Ngāti Porou, among the many who have ended up here as Te Ūpokorehe. Okay, thank you very much.

A. Thank you.

Q. The rest of it is clear to me and I don't have any more questions. Thank you very much, all of you.

A. Thank you.

(14:49) JUDGE DOOGAN TO JEANETTE MITCHELL, DONNA TUNUI, RENEE BOYD, AND DEIDRE MARAKI:

Q. Kia ora. I have tended to ask my questions along the way, but just one final one, which I think is clear from the evidence, but I just wanted to confirm it. So, the whānau trust that has been established, and the name

is – I have just forgotten the name of the whānau trust, but the objective there in part is to try to get the B2 land back to its former title?

A. [Jeanette Mitchell] Yes.

Q. Then that title to be put into the whānau trust?

A. Yes.

Q. Yes, right.

A. Because we want to – we did a get-together. We got our family back together in 2015, we went to the coast and met, for the first time, our cousins.

Q. Right.

A. And so, in the land shares, all of the family was involved, and so we want to make a tidy thing amongst us all and regardless, you know, we hope some people will be able to live there and make a livelihood. But we want access for our whānau at large who want to visit the place.

Q. All right. Thank you, and thank you, I just reiterate the mihi from my colleagues to thank you all for the evidence and for the way you have brought to life your very rich whānau experience on this place, so tēnā koutou. Thank you very much for this evidence, and wish you well for this mahi going forward, too.

A. Yes. Thank you so much.

HOUSEKEEPING – TIMING (14:50:34)

HEARING ADJOURNS: 2.51 PM

HEARING RESUMES: 3.21 PM

DR GRANT PHILLIPSON ADDRESSES MS SORIANO – TITLE CHECK FOR HIWARAU B2 (15:22:07)

JUDGE DOOGAN ADDRESSES MS SORIANO – TITLE CHECK TO BEGIN FROM IMMEDIATELY PRE-AMALGAMATION (15:23:12)

MS FELLOWES CALLS

Your Honour, we now call our next witnesses on behalf of Wai 339. This will be Ms Florence De Loree and Mr Winston De Loree. Ms Florence's evidence is on the record of inquiry as #E043. Mr Winston De Loree's evidence is on the record as #E033.

I believe we may Ms De Loree's son and Mr De Loree's brother, Gavin, online as well. Gavin De Loree, so that's Florence's son, and Winston's brother, so he's just there in support as well.

Tēnā kōrua, would you both like to introduce yourselves to the Tribunal.

(15:24) FLORENCE DE LOREE: (#E043)
Tāku ingoa, ko Florence De Loree. I'm Peter De Loree's widow and I now live in Taneatua. That's all I can say at the moment and the rest can come.

(15:25) WINSTON DE LOREE: (#E033)
Kia ora, ko Winston tāku ingoa. Ko Florence De Loree tāku māmā, ko Peter De Loree tāku pāpā.

Whakapapa, Whakatōhea, Tūhoe, Ngāti Porou. **I whakapapa to Whakatōhea, Tūhoe, Ngāti Porou.**

Kia ora.

MS FELLOWES: (BEGINS LEADING WITNESSES)
Both of your briefs of evidence talk about your experience of living at Sam Walker Snr's whenua at the land title formally known as Hiwarau B2. So, before we talk about that, would you like to tell us just about where you were living prior to moving to Hiwarau B2.

FLORENCE DE LOREE: (REFERS TO BRIEF OF EVIDENCE #E043)
I was born in the Bay of Islands Hospital in Kawakawa, that was in 1950. I grew up on my parents 600 acre dairy farm, where I was a milker as well, up until the time I left to go and do my nursing training in Whangārei. After I did my training

there, I did an endorsement in paediatrics, and then applied for a position in the paediatric ward in Ōpōtiki Hospital in March 1971.

So, I nursed there for a few years, until I think it was 1994, something like that, when the hospital was no longer going to be a hospital on hospital hill, that was in Whakatāne and Ōpōtiki. So, I went on to do Plunket after, became a Plunket nurse, part time, at Ōpōtiki.

Is there anything else I need to say?

MS FELLOWES: (CONTINUES LEADING WITNESSES)
So, whereabouts were you living prior to Hiwarau B2?

FLORENCE DE LOREE: (CONTINUES #E043)
Prior to us going to Hiwarau, we were living at 110 Pohutukawa Avenue at Ōhope and we had our two boys then, Winston is 14 months older than Gavin. I think it was when Gavin was nine months, it suggested by Peter's father, and also, his cousin, that perhaps we should go to Wainui to live there. So, that's what we did, I was very reluctant to go there, because I knew there was no running water or anything like that.

Peter used to take me out to the mudflats, and we had this little kid here from Ōhope, as a 10 month old, floundering around on the mudflats, you know, and sucking up the salty water as we are going. I can still hear my husband say: "Get that kid out of the net, he's tangling up the flounder nets." So, yes, so I was looking after my end of the net plus this little thing here, so that was my first introduction to Hiwarau itself.

We ended up living at Wainui, so we left there, we got a caravan, and we lived in that. The old homestead that belonged to Peter's grandfather, Donna's grandad, and the rest of the whānau was quite dilapidated, was falling to bits. We couldn't salvage any part of it because it was borer ridden. So, after we got the bridge –

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Would you like to tell us, so, after you had first moved to Hiwarau B2, or Wainui, what was the first thing that you did to try and start living there, and giving yourself access to the property?

FLORENCE DE LOREE: (CONTINUES #E043)

Rowing across on the boat, is that what you mean – yes, having to leave the car on one side of the river and the actually learning to row myself across on the boat because I had to work. I worked afternoon shifts at Ōpōtiki Hospital, so, it meant that I came back late at night, like sometimes, half past 11, sometimes 11 if I was lucky.

But then I had to park the car, get into the boat and row across, but one night I actually lost the oar, I lost the oar, but I managed to get on the other side, and it was dark. I think the tide was filling in at the time, so Peter solved that solution by giving me a spade, a shovel, to row across the river next time. It was good actually, the shovel was good, it got me across fast, the oar was very, very awkward, that was the problem. So, yes, so, we used the shovel long after he started going to school, I remember that, but it was a great tool to have, actually.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Winston, would you like to share your memories of rowing across Nukuhou river.

WINSTON DE LOREE: (REFERS TO BRIEF OF EVIDENCE #E033)

Yes, I was born in Ōpōtiki, 1973. Before my parents moved to Hiwarau, I was about, well, under five years old, we moved to my great grandfather's place, Hiwarau B2 block. On the land and in his house, growing up I remember, it was well looked after, the place, well maintained with no scrub. I remember heaps of green grass and trees.

Me and my brother used to ride our horses and motorbikes. We would fish and gather kaimoana in the harbour, we would catch herring and kahawai, just where the bridge was. We would chuck cheese on our lines and just throw it

over and catch kahawai and herrings, just that bridge you can see when you're going through Cheddar Valley from that Nukuhou river.

But when I was growing up, there was no bridge over the Nukuhou river, therefore, we had to row a boat across the river to attend school. I attended school at Ōhope, that's a really flash school now. I remember one day, I went to school, I didn't want to go to school so I pretended to fall off the boat.

I remember, dad would row across every morning to go to school and when it was in flood, he would like, row the boat upstream a bit and he would just drift down with his shovel. That was the main oar, back then, and yes. We used to go up to catch the bus at Harrison Road.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

In your brief, Florence, you talk about how, before you could build the bridge over Nukuhou river, a road had to be put into Hiwarau. Could you tell us more about how that was done.

FLORENCE DE LOREE: (CONTINUES #E043)

The road that we accessed from the Kutarere side, which is going passed the wharf and up to the back of the farm. That road was created by Peter's father, I think they bulldozed it or something, I can't remember exactly. But they did it right up to the top of the hill, and we were able to take the caravan up over that way, plus the tractor, another thing, I think it was because you know, we had no bridge at the time. But when we got the bridge built, we were able to get across from, you know, the Nukuhou side.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Would you like to tell us, just more, about how you and Peter and Rene De Loree built the bridge over Nukuhou river, and what efforts you had to go to, to do that.

FLORENCE DE LOREE: (CONTINUES #E043)

We had to wait for – well, Peter did these drums, you know, he did the drums, he welded them together and put them over the poles that were already put in by Mahi Crane Hire. So, I think there were about six poles that were hardwood poles that were put in there. Then he welded these drums and stuck them over all the poles, and then we had to wait for the tide to come in.

So, he had built this ramp and wait for the tide to come in, and my father in-law gave me the instructions of how much water to put in the concrete mixer, and how much concrete, or you know, whatever needed to put in there, and just rotate it until it was ready. He said: "Right, ready." Then Peter would pour it into the wheel barrow, and we would wheel it across this ramp and pour it into these drums. So, we had some, chemical, I think it was, that he put in there so that the concrete would set hard, you know, so it didn't disperse into the water. The drums are still there to this very day, I am surprised at that, 33 years later those drums are still there.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

You then go on to say, in your brief of evidence, that living there was completely off the grid. Would you like to tell us more, just about what that was like and what else you had to do when you were living there?

FLORENCE DE LOREE: (CONTINUES #E043)

Yes, at first, I didn't like it. I have to admit that I didn't like going our there at the beginning because I knew that I had to row across the river to get to work and there was no running water. There was no power, it was just uncomfortable, I thought, and I remember going out there during the winter month and there was frosting and Peter lighting this fire in his grandfather's old house. You know what I was thinking, my gosh, what if it burns down completely, that's what I was thinking because it was so bad, but it didn't, it warmed us up that's for sure.

But I learnt to live with that though, I really learned to live with the fact that there was no power and there was no running water. We had to get water from a stream down the bottom of the hill and yes, it was hard really, it wasn't comfortable. But because I wanted to be with my husband, I stayed, and I think

I was pretty happy after a while, I got kind of, used to it, especially when we started, you know, moving along with building and all that. Like the bridge and everything, so it got a little bit more comfortable.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Then you also just mention in your brief of evidence that there were power pylons that was placed on the land. Could you just tell us a bit more about what Peter had to do with the power pylons, paragraph 12.

FLORENCE DE LOREE: (CONTINUES #E043, PARA 12)

Yes, so, I think, after we built the bridge, we got the power to go up there, and Peter actually, was working with Horizon Energy at the time. I think it was Horizon energy and we ran cables underground from the main powerline that was just outside the house, it would have been a few metres from the house. Peter did this ditch, you know, to put the cables in, and it was so neat, I was so impressed with my husband because he was just straight from the power pole to the house. They just laid the cables in, and Peter buried it, and we just waited for the power to be connected, that's what I remember anyway.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

You then go on to say in brief of evidence that you and Peter then built the house where Sam Walker's house was, so you mentioned that there was borer and that things needed to be repaired. Would you like to tell us more about that.

FLORENCE DE LOREE: (CONTINUES #E043)

Yes, well, because it was – we couldn't resurrect any part of that house because it was full of borer and Peter didn't want our furniture getting, you know, damaged by the termites or borer, whatever you call them. So, we had this caravan, because we were living in this caravan, and we pulled away the first part of the house and then built the first phase. Which was a lounge, come dining room area, kitchen, bathroom, and toilet, so that was the first phase of the house after pulling the first part of the old house away.

Then it took some before we actually afforded the next phase of the house, which was on hold, so yes, it took a while anyway. I think it was 1994 when we completed it, something like that, I can't remember, but we took our time. So, yes, probably about 1994, something like that, so we could only start after the bridge was done. There was only a track up to the house then, so Peter made a road going towards, you know, from the bridge up to the house and metalled it.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Would you like to just say more about, like, what do you think the significance was for Peter to be able to love on Sam Walker Snr's, so his grandpa's land –

FLORENCE DE LOREE: (CONTINEUS #E043)

Yes, it was because of his grandfather, he was just so passionate about the whenua that belong to his grandfather, you know, and his whānau, that he wanted to do the same thing that Sam did. Like fishing, you know, growing kumara and stuff like that. So, we made gardens there, corn, kumara, potatoes, and watermelon. I remember growing all this watermelon and we couldn't even give them away because it was a really good year, and everybody was growing watermelon, so we couldn't give it away really.

But I think, yes, Peter used to go to the pub with some of it. You know, used to take – he would say, I'm going to take this to so and so and he's at the Tainui Pub and I'll be back soon. Of course, I think that was just an excuse to go and have a few beers and not come back until late at night, kind of thing, so that was that, yes.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Winston was there anything else you would like to share about your memories of living on Hiwarau B2 and Wainui.

WINTSON DE LOREE: (CONTINUES #E033)

Just when we were off grid and we had a bath on the fire, dad used to kill the pigs and scold them in there and get them ready to eat, and then we used to

use the same bath to have a bath in. But we were too scared to jump in there because we thought we were going to get strung up like the pigs.

FLORENCE DE LOREE: (CONTINUES #E043)

So, yes, I had to get in the bath and say, it's okay, mum is in the bath, you come in now. You know, I was going, you're not going to be cooked in there.

WINSTON DE LOREE: (CONTINUES #E033)

Just a real awesome place to grow up, like, we sort of had the same upbringing as all the aunties and we sort of just carried on with the same sort of thing, how they were brought up at the same place. So, what they done, yes, we done exactly the same thing.

FLORENCE DE LOREE: (CONTINUES #E043)

We had a dog called Girl, she was a border collie, and the kids would disappear over the bank, you know. They're not going to school yet, but they are just little toddlers, and I could hear the dog barking, so I always knew where they were, and they were safe you know.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Would you like to say more, just about, like, so, were there any cattle grazing while you were living there?

FLORENCE DE LOREE: (CONTINUES #E043)

Yes, there was cattle grazing there and you know, there were calves and there were sheep as well. I can't ever remember eating those cows because I sort of – I think, because I used to see them and I thought, I don't want to eat any of those cows, so they used to send it to the works. I used to try and save all the cows and Peter would say: "There's no sentiment in business." That's what I remember him saying to me.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

So, in your brief of evidence, you say that by the time you and Peter were living at Sam's place, the amalgamation of Hiwarau C had already taken place.

Would you like to just say more about yours and Peter's experience with the amalgamation, and how this impacted on you and your whānau?

FLORENCE DE LOREE: (CONTINUES #E043)

Well, with the amalgamation thing, we weren't aware of it until, in the 1990s. I just remember the bullying at work, you know, where people, unbeknown to me, they were trustees you know. They would approach me and say: "We're going to get you off that place.' I used to go back and say to Peter: "What the heck is going on?" Because I said, I have, you know, and I mentioned the name, I won't mention his name, he's telling me that he's going to get us off the place. He said: "No, they can't, because this is our place.

But unbeknownst to me at the time, I don't think my husband actually knew that the place had been amalgamated then, you know. It was made quite clear a little bit later when a work colleague of mine and her partner at the time, I invited them to come to the house and it was divulged then. I don't think he had actually believed it, but I think he found out later that it had been amalgamated, unbeknownst to him.

He said: "How is it possible that my grandfather could sign over an amalgamation when he wasn't right in the head at that time?" You know, in 1969, he said: "It wasn't right, so he couldn't have done it." So, that's all we know, he said, don't worry about it, you know, because he said the place had already been partitioned. So, I lived on that say so, you know, after spending all my money on the place.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

So, you then talk about, in your brief of evidence, just your experience of being evicted from Sam Walker Snr's whenua. Would you like to tell us about your experience from the morning of the eviction.

FLORENCE DE LOREE: (CONTINUES #E043)

On the morning of the eviction, I can remember seeing a whole lot of vehicles on the roadside and we were just wondering what the heck was going on. Next

thing, there was a flurry of police cars. There was about six cars that arrived at our place, they didn't serve us any kind of papers, and my husband was there at the table. He said, you can't do this because you know, he said, it's none of your business, you know, it was the police's, it's a civil thing or something like that. It was none of the police's business, but the police said that –

WITNESS REFERS TO BRIEF OF EVIDENCE #E043, PARA 23

They never served us with any sort of papers. Instead, the Police informed us that they got word from the Wi Rutene, counsel for the Māori Trustee, that we were to be evicted. Nothing was ever presented to us by him either. I believe Wi Rutene got the Police involved as he knew that Peter had guns. The Police arrested Peter and took him to Whakatāne jail.

I even said to the police that this is Māori land so they should not be involved. I remember the Police responded by sayings "we are carrying out the orders of the Māori Trustee."

Before Peter was taken away to Whakatāne jail, he was inside the house protesting against the eviction, waving around some papers saying, "these papers say you cannot enter my property." I believe these documents were the partition order for Hiwarau B2. I feel some of the Police must have taken notice of these documents, because one of the officers, Barry McVeagh – Peter went into get the guns because he had taken the guns and had heard that something was amiss, so he took them to the police, you know, so that they were safe there. So, Barry McVeagh, he was a policeman at Whakatāne, at a later date said they would not have done what they did if they had known the full situation.

That's exactly what Barry said.

After Peter was taken away, Wi Rutene came up to me and my son and said to me that I had to get my boys and get off the property. We were given only a matter of a few hours to collect all our belongings. Can you imagine trying to get everything at once, we couldn't, you know, a lifetime, we've been there about, 18 years and to suddenly be evicted. It was just a terrible, terrible time.

It was devastating because we had created a life there. It is where our boys grew up and where we had created a home as a family, in what was formerly Sam's home. Wi Rutene also started asking me accusatory questions like, "how do you afford the house, or the car or the boat?". I said, we afforded everything, or mostly everything ourselves by saving up what we earned from my work as a nurse. We also inherited things from our families. The car was from my father, on his passing, and the boat, bought by Peter's financial inheritance, via his mother, Ivy. It felt as though he was insinuating that we afforded these things by illegal means like growing dope on the property.

I was a nurse for goodness' sake, that's the last thing you start thinking about, growing stuff like that.

As we were not given enough time to pack, we had to leave behind not just things but also our animals. We had dogs, we had chickens and that. We left some dogs on the property, so we were having to sneak back at night to try and feed them. Eventually, the SPCA got involved because people thought they had been abandoned. Some of our other dogs were also put down because we could no longer care for them.

The only things we could take were the clothes on our backs, that was on the day of the eviction, it was just like, go now, you can't stay another day. And the possessions that we could shove into bags from the wardrobes. It was extremely stressful trying to pack everything, on top of the police and onlookers watching us.

So, we had the police there making sure that we were going to leave.

I want it clear on the record that there was never a gun standoff during the eviction. As I explained it, Peter had taken the guns in, prior, would have been several weeks prior, because I think he might have heard, or got wind that you know, that there was going to be an eviction taking place. So, he took his hunting rifles, which was a 22 and 3.0 and handed them to the police.

So, on that day, we had to find a place, and that was very difficult, so we contacted Kelvin Murphy, who was the caretaker at the old Wainui School, and he said he could set us up at the conference centre at Wainui. That was the old school that the guys went to school at, so yes, we went there. Got the shock of our lives when he said, it's $200 a week, that was a lot of money for us to have to pay that time, but we did it.

We only managed to stay there a couple of weeks, I think it was, and then we got a caravan, and we went to Jules, so we stayed at Jules for a little while. Peter and I in the caravan and Jule took the boys into the home. So, it was like that until we could find a place and we found a place in Ōpōtiki, some weeks later. So, because the travelling to Ōpōtiki Hospital at that time was too far, I thought, you know, was tiring actually, because I did mostly afternoon shifts, so I was going there in the afternoon and coming back late at night to Whakatāne, so we got this place to rent in Ōpōtiki. That was on St John's Street in Ōpōtiki – opposite the cemetery, we had good neighbours, they were all asleep.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Would you like to tell us just a little bit more, about when you eventually returned to the property to collect some of the remaining belongings?

FLORENCE DE LOREE: (CONTINUES #E043)

We were allowed, with permission, to go back to the property to collect our remaining things. We had to talk with Te Puni Kōkiri to enable us to do that because they put locks on the doors, and we couldn't just go up there and take our things. When we did manage to go up there, all our stuff, a lot of it was stolen like towels, cutlery, bedding, that kind of thing, and then there were the cows, the cattle.

Then one day, we went up there to gather up all the stick, I think there was about, I can remember, 28 or 29 head of stock that Peter and I managed to get into the yards because he was going to get Hickles Transport to take them to the works, the next day. So, we yarded them up and we went back to, I think it was to Jules's at that time. We went back to Jules in Whakatāne, and then we

had to come back the next morning to help load them on to the truck, but the damn things were gone. They had opened the gates and let the cattle out, so that was it. Weeks later we saw cow heads and all sorts of things, so yes.

WINSTON DE LOREE: (CONTINUES #E033)

Also had three horses, two of them – one was one of the **(inaudible 15:57:22)** we used to ride and had another one, that white horse, Dennis, I think it was, he went missing. Henrietta ended up in Ōpōtiki, so someone has taken them off the road. My **(inaudible 15:57:37)** horse from Hiwarau all the way to Ōpōtiki and when I was Ōpōtiki, I seen it, so I got her and took her back out to Jeanette's, Henrietta.

That was actually when we first got her, grandad had a ride on her and he was nearly dying, but he had a ride on her. We didn't get one horse back, but we got the other two and we had a prize short horn bull, someone shot that.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

So, after you and your whānau were evicted, could you please explain to us what has happened with the house since and have you seen the state of the land in more recent years?

FLORENCE DE LOREE: (CONTINUES #E043)

Yes, I have. I actually remember the person who actually moved into that place while we were trying to salvage some of what we had there, and Peter saying to him, you know, you are complicating matters by moving in here, you know. But he just totally ignored us, so he's still there to this very day, so yes.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Have you seen the land in more recent years and what the state of it is?

FLORENCE DE LOREE: (CONTINUES #E043)

I can't believe what it looks like now, it really is so terrible. I mean, paddocks that Peter had fenced off and I remember that he did the stop banks years ago, but it's all covered in black berries. I've never seen it like that before, it was just

such a mess and the wattles, they just spread everything, there's wildling pines. I can't believe what I saw actually, and I was up there a couple of weeks ago, I think it was a couple of weeks ago, we drove past, you know, just to have a look.

There still in a state of repair, the house is not looking good actually, yes, it's not being looked after, neither has the bridge. Peter used to tar the bridge every year, you know, the girders, because of the salty water, so he used to tar it from both sides so that the saltwater wouldn't rust them. But yes, it's a state of disrepair, I can't get over that, I was shocked about that actually.

So, you can't see green paddocks, that's for sure. You can see black berries, as high as the house.

WINSTON DE LOREE: (CONTINUES #E033)

It's almost like they've let everything grow, so I don't know, they can't see what's going on up there or something.

MS FELLOWES: (CONTINUES LEADING WITNESSES)

Would you like to just see, so at paragraph 36, you talk about a interaction you had with Alamein Kopu.

FLORENCE DE LOREE: (CONTINUES #E043)

Right, okay. Yes, that was really good that, I thought that it was a good experience for, you know, for once we thought that someone was actually on our side. Alamein was actually on our side, Alamein Kopu, she was one of the trustees of the time and she must have got to know the fact that Peter was somehow related to her, you know. I think she just done a bit of research and realised, my gosh, you know, this is one of my whānau.

So, when she arrived, I can still see her standing under that butternut tree, she, apparently, at the beginning, was not aware that he had any interest in Hiwarau. You know, she just thought that he was a squatter, and she was horrified when she realised that Peter was a relation, and I think Alamein's great grandmother,

or grandmother, I think they were sisters. I remember her coming to our home one day, balling her eyes out saying, what we have done to you as trustees is awful. I just can still hear that in my head.

Outside of our whānau, it felt like it was only Alamein and Peter's friend Harold Ruff were who aware of this and tried to support him through it. It was Alamein who eventually divulged to me that our cows, that were let loose from the stock yard, was purposely rustled. So, they let them go so that they could be rustled.

The eviction and suddenly being made homeless was extremely hard on the mental health of both Peter and myself. We felt totally victimised and helpless. When the eviction happened, we made a pact to support each other through all of this. We never argued about our circumstances; we only supported one another.

I know that Peter could be difficult, but he spent all his life fighting for his right to be on the whenua. It is very sad that he is not here to tell the story himself today. I would love to be back on Hiwarau B2 again, if only to be there with my grandchildren and also with the whānau children, grandchildren, greats, whatever, that would be lovely actually. Yes, and I hope Peter and all the Walker whānau watch over us when we finally are able to step back on to Hiwarau B2 and make it our own again. Would be nice.

HOUSEKEEPING (16:04:24)

HEARING ADJOURNS: 4.04 PM

HEARING RESUMES: 4.10 PM

FLORENCE DE LOREE: (REFERS TO POWERPOINT PRESENTATION #E049)

Right, this is where we have the girders already up at the time and the drums were all ready and we had already put the concrete into those drums. So, the next phase after that was to actually put the planks on the bridge.

That's my father in law, Rene De Loree there, he was there to support us and give instructions and whatever else we needed to do, which is really good, because he knew what he was about. So, I think there's still one girder there, I'm not sure if that's the other one lying there, is the girder, but I took the photos myself.

As you can seem the background up there, where the hill is, where the pines are, that's no longer, you can't see the banks now. It's all in scrub, so it's not like that anymore. But yes, that's the first stage of the bridge, anyway.

I think that's when the crane first arrived to put in the piles, so we are going backwards a little bit.

Those were poles that we were doing for the house, to put the second phase of the house. Those were pine trees that were treated and that was for the house.

So, in this picture here, we have all the piles being put in, so I think there was about six, I can't remember, but I think there were six there, with Mahi Crane Hire and we hadn't quite done the road then, because that's the track that we used to get across when we rode across on the boat. So, that's the start of things to happen with us driving over the river instead of rowing across.

That's just timber being processed for the build, I think it was. We were building our house. That was Mr Tyson who came and did the timber. We had to treat the timber before we actually used it in the house, so it took some time, yes.

I think that's the girder just going in there and I think that might be my husband there, guiding it, so that it would sit properly on the next thing. I think that's my husband there, but I took photos of that.

There's my boys, ready to go to school, ready to be rowed across, not with an oar, but with a shovel. So, that was the weekdays, so that's it.

That was me with our very, very first – no, with our second boat actually, because the other one was so heavy, it used to get waterlogged. That boat got pinched. One day my husband went done there and someone was putting the boat on the back of their truck. So, he knew exactly where he was going to end up, so we can end up at the Ōhiwa wharf and so he drove right around and ended up and met the guy and he was waiting for the guy to arrive on that boat there, so we got our boat back.

Now, that was the first phase of the building after we removed Sam's old derelict building, and then we had already started on the second story there. Those are my two boys and his cousin. Yes, my two boys and Peter's cousin, Andrew McFarlane.

That's my mother when we were, I think we had the ranch sliders in there, but we were about to put up a decking there, and then we got unceremoniously evicted, so that was the end of the story, so we didn't finish that.

My sons used to do a lot of possuming, they used to stretch the skins themselves and sell them and so, they got a bit of pocket money while they were there on the whenua. Keeping all the possums was eating our garden, eating fruit off our trees and yes, so he's pretty proud of what he's going to be taking in to sell.

QUESTIONS FROM CROWN COUNSEL – NIL

DR ROBYN ANDERSON:

Tēnā kōrua. I don't have any questions, but like I said earlier this afternoon, I enjoy hearing stories about strong women, and I believe I have just heard one over the last hour. So, thank you for coming and talking to us today.

(16:17) DR GRANT PHILLIPSON TO FLORENCE DE LOREE AND WINSTON DE LOREE:

Q. Tēnā kōrua. I have read all the evidence and also, you and Johnston's reports, so I feel I have a good grasp on events. But I wondered if you could tell us a bit more about Ivy, who married Rene, your grandmother. No one really talks about her, and so I wondered if you were able to tell us anything about her and her role in the community at that time, the wider marae communities, et cetera, because she must have made, I would have thought, a significant impact on events?

A. [Winston De Loree] She was a real beautiful, awesome grandmother. She like, had a lot of time for the grandkids, and I think my dad was one of her favourites, but no, she didn't really have any favourite ones, but she loved them all. She got the road put in, she helped the family out with what money she had. Yes, if she had a problem with you, she would let you know about it, but other than that, she was awesome. We used to go into town from Hiwarau and take her shopping, was it? Every Thursday?

[Florence De Loree] We took her to town every time we went shopping. We used to pick her up if she was available, we would pick her up at Ōhope, every time, well most times, so I don't think we missed a time picking her up and we took her shopping. But we had some great experiences with my kids and her when they were just little, because Winston had a real thing about underdecks, you know, underpants. She had coloured ones and I remember him, because I think he had a pair of red ones and he was very proud of these red underpants, or underdecks, as he called them.

We went up the main street of Whakatāne one day, and he just suddenly lifted up her skirts and say, what colour are your underdecks nanny, and she there her skirt down and she said, naughty boy, naughty boy. Because she was quite the prim and proper sort of a lady, yes, so that

was not appropriate for a little three year old lifting her dress up like that to see what colour her undies were.

Q. You can always rely on your parents to tell embarrassing stories. Are you able to tell me what year that Ivy died?

A. [Winston De Loree] Ninety-two of pancreatic cancer.

Q. Right, so it seems to me that, given her status and her, you know, that she was the daughter of Sam Walker, I'm puzzled as to why other whānau didn't know that Peter was an owner and that your family were owners?

A. [Florence De Loree] I don't think anyone sort of realised that Peter was related to the Walkers. I don't think they actually acknowledged it, I don't know what it was, but they just saw him as this person called Peter De Loree, a Pākehā, and that was it. You know, there was no acknowledgement of the fact that he had Māori in him and that his grandfather was Samuel Walker. That was my feelings during those times, you know. Not once was it mentioned that he was a Walker.

Q. I see, thank you very much, and you know, the story, it's very clear and tragic events, but thank you for coming along and telling us about them, and also, to Gavin. Thank you very much.

(16:22) PROFESSOR TOM ROA TO FLORENCE DE LOREE AND WINSTON DE LOREE:

Q. Kia ora kōrua, koutou. Dr Phillipson anticipated my question about Ivy. She's the granddaughter, how come the rest of the family sort of, didn't treat Peter very well?

A. [Florence De Loree] The rest of the family didn't treat Peter very well.

Q. Well, it sounded as if they didn't recognise him.

A. It was the trustees.

Q. The trustees?

A. It was the trustees, yes, and as I mentioned earlier, about Alamein, she hadn't realised that she was related to Peter. That's what I was saying, you know, she didn't realise for a long time.

[Winston De Loree] And the trustees for Hiwarau back then, I think one was Wi Rutene, Judge Hingston, and who was the other one –

[Florence De Loree] I remember Shane Gibbons. I hope you don't mind if I just mention this, just on the sideline. I remember Shane Gibbons in the Māori Land Court, that Peter and I attended. He stood up and he was speaking on behalf of the trustees of the day, and he said: "Here is this man with dirty hands." I remember that so clearly, I thought, my gosh, and in hindsight, I thought yes that was pretty appropriate I think, because he had dirty hands because he toiled the earth, the whenua, you know. So, he did have dirty hands, and I tried to ignore the derogatory statement that you know, he alluded to that Peter had dirty hands, because he was doing funny things I suppose, I don't know. Crooked things, I suppose, but yes, that's what I put it down as, positive, not a negative, that he had dirty hands because he toiled the whenua.

Q. Ka pai. I have to say, I'm certainly impressed with all that you and he accomplished in that space. Very sad but can still see the resilience in you and in your boys. Kia ora.

(16:24) JUDGE DOOGAN TO FLORENCE DE LOREE AND WINSTON DE LOREE:

Q. Kia ora anō, and just tautoko the mihi from my colleagues. That's quite an extraordinary whānau history and particularly what you are describing in those early days. Getting across to the land, back across the river to go to work and then everything from there to build a place that is a remarkable achievement. As Ahorangi Tom Roa is saying, there's a great deal of resilience right throughout this evidence. That court hearing you were referring to when Mr Shane Gibbons made those comments, when was that, do you know, about when?

A. [Florence De Loree] I can't remember exactly when it was, but it was state din court that Peter had dirty hands and I can't remember the year, because he attended those court hearings and time after time, they kept adjourning them to –

Q. So, this was before the eviction happened, but it was in the lead up –

A. Well before the eviction, yes.

Q. Quite a long term before?

A. Long before, yes. Well before.

Q. Thank you, I have no further pātai, I just, again, thank you for your evidence and thank you to Gavin also, for being present to tautoko. Ka nui te mihi e te whānau, thank you.

HOUSEKEEPING – TIMING (16:26:44)

JUDGE DOOGAN:

Just before we hand it back over to the haukainga, I just have a little admin note of the record numbers for some of the documents that have been filed in the last day or so, so just bear with me, I will just read them out for the record.

- Presentation summary for Mr Dean Flavell is #E042(b)
- Presentation summary for Ms Horan is #E035(b)
- Memorandum of counsel, Ms Soriano, Ms Fellowes, filing the PowerPoint presentation for hearing six is document #3.2.247
- PowerPoint presentation for Miranda Horan is #E035(c)
- PowerPoint used during Harriette Bell's presentation is #E029(b)
- Images or paintings, images of the paintings used during Jeanette Mitchell's presentation is #E032(b)

There are some further documents, we are just awaiting counsel to file on the distribution list, and then we will give those an appellation.

HOUSEKEEPING – TIMING (16:28:09)

TECHNICAL DIFFICULTIES – MICROPHONE TOO FAR FROM SPEAKER (16:28:49 – 16:30:23)

KARAKIA WHAKAMUTUNGA (JOSEPH PUKEPUKE)

HEARING ADJOURNS: 4.30 PM

HEARING RESUMES ON FRIDAY 21 NOVEMBER 2025 AT 9.01 AM

KARAKIA TĪMATANGA (JOSEPH PUKEPUKE)

JUDGE DOOGAN:

Tēnā koe, Jo, mō tō mihi, tēnā koe, nāu i toko atu ngā whakamoemiti ki tō tātou kaihanga mai i te tīmata o te wiki nei, a tae mai, mō tēnei rā whakamutunga. Ko koe e whakatakoto te ara tika i a mātou, i a rā, i a rā, nō reira, ka nui te mihi ki a koe. Ka mihi hoki ki a koutou, tēnei rā whakamutunga mō te wiki, nau mai. **Thank you matua Jo for leading us in prayer, we do thank you for leading that throughout the week. Every day you ensure the integrity of our proceedings continues smoothly. Of course, here we are in the last day of our hearing week.**

HOUSEKEEPING (09:06:11)

MS FELLOWES CALLS

Your Honour, Mr Harold Ruffs brief of evidence is on the record of inquiry as #E047. So, Harold, would you like to just tell the Tribunal which land block your whānau had an interest in prior to the amalgamation.

(09:08) HAROLD HENRY RUFF: (#E047, #E047(a), #E047(b))

I'd just like to sort of start off by **(inaudible 09:08:57)**, Wi Ake signed the Treaty of Waitangi, that's Te Tiriti o Waitangi, the Māori version and in that version they only ceded kāwanatanga. Because the Pākehā who were here was outlaw and Māori tino rangatiratanga continued. I see in Waikato, well, you know, I see a difference, it's like, you know, the trust system versus the **(inaudible 09:09:46)** here.

But I would like to just go on with that thing, **(inaudible 09:09:58)** and just say that Wi Ake Ake, he wasn't even on our **(inaudible 09:10:13)** history and my father kept telling me about Wi Ake Ake. So – am I supposed to stand? No? Ka pai. Anyway, he had seven signings from Ōpōtiki and this one Atua, it's got Atua, God and anyway, so, I inquired with **(inaudible 09:10:48)** about this and

this is he's first version, because he did Whakatōhea, the book. Then he wrote back to me and so I inquired about it, so I might as well read this, and it might put us on the right track a little bit.

WITNESS REFERS TO LETTER #E047(b)

I hope I'm on the right track this time, after the false start in Kahuki. Your ancestor, Kohuki, I think it's the same person who appears in the Tūhoe whakapapa as Kohuki, note the slightly different spelling. I have compiled a list of genealogy from a number of Tūhoe genealogies with the object of showing both lines of descent relationship.

1450 is about Muriwai's era – well, that's the Mātaatua, I guess. I am concerned and if his son signed the Treaty, you could take Kohuki as being born in the latter part of the 18th century, 1750 to 1775.

Kohuki was of Ngā Pōtiki, who have been described as original people of Urewera. Te Hapū-oneone are said to have been the original people of Ruatoki, Waimana, and Ōhiwa. We are talking now about the real tangata whenua, not the 1989 Titewhai Harawira variety – I don't even know what that is about. Of course, when you get back into those ancient lines, say from Hapū-oneone to Hape, you are getting into the realms of myth and legend. It's about the time when the Normans invaded England, but that is a subject of written record. Māori history, unfortunately, is not.

I have no further information on Kohuki, unfortunately. The news that Wi Ake Ake signed the Treaty interested me. I have three books on the Treaty, one had his name completely wrong. But I found it in a copy of Treaty documents as Ake. He signed with the Ōpōtiki chiefs but is not identified as being Tūhoe. I was not aware until this, that Tūhoe signed the Treaty of Waitangi. A number of important tribes never did.

MS SORIANO: (BEGINS LEADING WITNESS)

Kia ora, matua. Apologies for interrupting. You just kind of mentioned Wi Ake Ake and I think in your brief of evidence you say you are descended

from him. Can you just tell us more about Wi Ake Ake and your descent line and how it got to you.

HAROLD RUFF: (CONTINUES #E047)

The line is Wi Ake Ake, Erana Ake Ake, Mihirangi Kotu. Now, Mihirangi Kotu, this one here, most of the whānau here, Mihirangi Kotu is the sister of Hapata Kotu – no, Hapata is the father. Te Ani Kotu, Mihirangi, Josie Mortenson's one, Hinehou Kotu, Wi Kotu, I think that's about them, I hope I didn't leave any out. But we are all that one relation, one relationship. From Mihirangi Kotu to Annie Mihirangi Ruff, and Harry Alfred Ruff, and to me.

MS SORIANO: (CONTINUES LEADING WITNESS)

Can you just tell us a little bit more about Annie Ruff, or Purukamu, as it says there. Yes, tell us a bit more about that, she was your grandmother, yes?

HAROLD RUFF: (CONTINUES #E047)

Yes.

MS SORIANO: (CONTINUES LEADING WITNESS)

Yes, well, tell us a bit more about your whānau and how you worked on the land and all of that stuff.

HAROLD RUFF: (CONTINUES #E047)

Annie Ruff actually married Alf Ruff and Alf Ruff created, actually, he come in the 1900s or something. He came in and married her and they started a trucking – this is in Nukuhou, I think it was on her whenua, I'm not sure about that. It became the largest trucking firm in, probably in the Bay of Plenty. The Ruff Brothers, it was A.W. Ruff then and I think it was a blessing because during the confiscation all our people were driven off the whenua back to Rakuraku pā, which is at Tanatana.

I think it was a blessing because all of the whānau worked for Ruff Brothers and it kept them in the region. **(inaudible 09:16:35)**, kaumātua, he's gone, i haere ia, but he's the one that's responsible for this building of this new complex. He

worked for them, several, **(inaudible 09:16:53)** that's Josie Mortenson's parent. There was heaps of them. All of this one whānau and it held them together, to me, and then all this area still became important. Like, right up to Waimana, we were still all just like, because they were stationed at Nukuhou and it just all become one through them.

In actual fact, when John came back from the war, he was welcomed in to Kutarere marae. John is the oldest brother. From the war, and he was welcomed home.

Anything else?

MS SORIANO: (CONTINUES LEADING WITNESS)

Kia ora, matua. No, that's fine, kei te pai. I take it from your evidence then, you are really saying that the Ruff Brothers were a significant part of the community here and around Hiwarau. So, where were the Ruff Brothers based in within the Hiwarau area?

HAROLD RUFF: (CONTINUES #E047)

Well, what happened was, Harry lived with Mihirangi down **(inaudible 09:18:15)** and he started farming 19 cows there. About 19 cows, he reckon and because her land was confiscated, her and Hapata and Gianni, they sold land at Papamoa, in Tauranga and purchased back that Roimata area. **(inaudible 09:18:50)** just **(inaudible 09:18:51)** there and then she told him she had land on Hiwarau and that he should go and farm there.

So, he started a farm there and this is right during the war and mum was a school teacher at Kutarere and Swedish, they owned the shop. They came down to buy the shop because she was a school teacher, you know, to be here. Then the war came, and they all signed up, the Ruff Brothers, and I think the documentation – Ian became **(inaudible 09:19:47)** pirate and he was killed on his first forced mission, bombing Germany and he was shut down and he's buried in **(inaudible 09:20:04)** land.

Fred was off to the coast of Italy, he was, funny enough, he was in the Navy, Fred and his captain, on the **(inaudible 09:20:19)**, I think it was, and his captain was killed by shrapnel. Lucky Fred, I don't know what he was, some little assistant, I don't know what he was. But anyway, the blast, the bridge saved him, but he ended up with shell shock and **(inaudible 09:20:40)** didn't know anything about him for a long time.

During the time, Harry, John was in **(inaudible 09:20:49)**, I saw action there, I think he was a truck driver mostly. But Harry went to Fiji and on leave from Fiji, he came back, and he saw Ruff was in serious financial trouble, the accountant was crook or whatever, I don't know, he booted the accountant out anyway and he overstayed his leave. They arrested him and took him back and then nanny, this lady here, got hold of Major Vercoe of the Māori Battalion because he was understood in the Pākehā, because he was in the Pākehā thing. Major Vercoe got him released and he came back and run Ruff Brothers during the war time.

MS SORIANO: (CONTINUES LEADING WITNESS)

Matua, when you were saying nanny, that lady here, you are referring to the picture that's on the first page of your brief. I just want to go back to nanny actually, because you talk about her in your brief a bit and there is another photo of her – apologies, that's another person. But you talk about how your parents were gifted a house that was on Hiwarau A1 –

HAROLD RUFF: (CONTINUES #E047)

Yes, that's right. That's from her mother, Mihirangi.

MS SORIANO: (CONTINUES LEADING WITNESS)

So, the person on page 4 is her mother?

HAROLD RUFF: (CONTINUES #E047)

Yes.

MS SORIANO: (CONTINUES LEADING WITNESS)

So, can you just tell us a bit more about Hiwarau A1 then, the house, and your parents, and what that was like, because you lived there, didn't you?

HAROLD RUFF: (CONTINUES #E047)

I can't remember in my infancy, but yes, they told me that I was three and my brother is older than me, he remembers it, and then, what Harry did, he wanted to build a new house on there, but he couldn't get a loan because the Māori – own land. So, he purchased a bit of land off Jack O'Reilly, the neighbour, right on that corner there where they're doing that roundabout now, and right on the inside corner there. From where we were living, Tom Paririmu, whose incidentally, one of the whānau, he married into the whānau Tom Paririmu and him, and Len Penny was the actual builder. But Tom was our crate builder for the trucks at Waimana, but he assisted in building the old man's house.

MS SORIANO: (CONTINUES LEADING WITNESS)

So, that was the house, did you farm Hiwarau A1?

HAROLD RUFF: (CONTINUES #E047)

Yes, the old man had about 50 cows, by the end of the season it would probably be 45 cows and yes, he farmed it. During the war, mum and this old fellow, Swedish, used to milk the cows for him. Then, anyway, we carried on farming there until, probably till I was, probably 18, 20, probably 1966, somewhere there, 1965, 64, somewhere there.

Anyway, what happened was, Ōpōtiki, it was all cream. It's a shame, the cream was a magnificent thing really, and the old man ended up having a cream truck, and because, once he left Ruff Brother's – he worked for Ruff Brothers for nothing. But he knew there was a license there, and general cartage license, so he got a creamer and then while mum milked the cows and you know, he did the cream runs, sort of thing, with us kids working for him. Except for Himiona, Simmy lived in the old house, I think I have a thing there somewhere and yes, that was it there, the old style house.

But Simmy worked for him, Simmy was Ruff Brother's too, but Harry got him down there. His wife's whānau was right up and down the valley too, they were McLean's maybe, Stewart's, I don't know. But George King, there was quite a few of them that were – might have been Johnny Black, all sisters.

MS SORIANO: (CONTINUES LEADING WITNESS)

Thank you, matua, that's all right. So, what you are describing there really is that Hiwarau A1 and the old house, that's on one of the photos on page 6. You are just describing that there were lots of different whānau who came and went and lived with your parents and your nanny, or at least, were around the area –

HAROLD RUFF: (CONTINUES #E047)

Yes.

MS SORIANO: (CONTINUES LEADING WITNESS)

When did you end up being on the land and can you tell us more about having to restore the old house.

HAROLD RUFF: (CONTINUES #E047)

What happened was, I went up – anyway, I went up and got arrested for trespass, this is about 1992 when all these problems began. I think we had started this, and anyway, started building this and got arrested and luckily, I won the case. So, that gave me a three year stint where I resurrected the old house.

I remember going up on the hill and I saw the, what's the name of that marae around there, at Wainui – Tūranga Pikitoi. So, a storm had blown a third of it off, the roof and stuff, it was in a dilapidated state, so I thought I couldn't start this until I fixed that up. So, I went and made it waterproof and actually, that **(inaudible 09:28:59)**, I can't think of the girl's name now, they went back and lived there.

I don't know whether I've mentioned this, but anyway, they held a hui and because it was waterproof, and they asked me to the hui and they were going,

get the fellow, he's done all the court work. He was saying, you need a bridge across, and you have to get consents and all that, and I thought, I think I'm out of here. So, I got up to walk out and they said, we want you to say something, and I said, well there's two bridges to this place. One about a quarter mile up the road that way and Peter De Loree's bridge that way, they could gain access.

So, it wasn't such an urgency to get this massive undertaking, you know what I mean. I don't know the cost of a bridge, but anyway, and I said, well the whare is drying now, **(inaudible 09:30:21)**, he cleaned all the cows shit out of it and replaced the floor boards and stuff. You could stay in there and build your houses, you know. Then, when you have built your houses, you can look back and see your marae and fix it. You know, that was my dream, you know what I mean and that's all I said.

MS SORIANO: (CONTINUES LEADING WITNESS)

Kia ora, matua. Is that house still existence today?

HAROLD RUFF: (CONTINUES #E047)

Yes, it's still, I think because of that, otherwise you never ever be there, but it's survived. I went up yesterday to have a look at this one, because that was 1992 to 95 somewhere, and it's still surviving, it still looks good, inside, you know, it's a mess, but the structures still strong. I was so wrapped when I went up yesterday, just to have a little look at it, hope you don't mind me going **(inaudible 09:31:31)**.

MS SORIANO: (CONTINUES LEADING WITNESS)

Thank you, matua. No, that's great and that's good information to have. I just want to move on, I know this is a bit of a touchy subject so say what you feel you need to say, there is enough in your brief. But I just wanted to touch on your friend, Peter De Loree and your efforts against the amalgamation. Can you just describe for us, some of those key things that you and Mr De Loree had done to try and keep the land within the whānau.

HAROLD RUFF: (CONTINES #E047)

Anyway, I think what happened was, we had a hui regarding Hiwarau, this is around about 1992 I think, and 90 percent of the owners wanted to, at least 90 percent, this is at Roimata, they wanted to de-amalgamate. So, that was all a go, we went to the court, and I think the Māori Trustee was the responsible trustee at the time. Anyway, so, it went before Judge Hingston, to put in an application to de-amalgamate, I guess, and it was about four of them that were wanting to continue to run the – four of these prospective trustees, there's about 12 of us prospective trustees.

We were supposed to go before the Court in Rotorua and what happened was, I forget his name, John Paki, I think, said you know, these guys want to de-amalgamate and then like, the trust would be no more. I got to say, he sort of sided with him and then Hingston says, right, it will be a limited trust with limited functions, only grazing, and looking at the rights against the Māori Trustee and no lease or license for a year. Something like that.

Then, low and behold, we had a hui in Roimata and this massive development where they are going to do some logging, so I opposed it, because it just seemed far out. So, I wrote up a thing, I don't even know where this is, I wrote an injunction to try and stop it and we, me, **(inaudible 09:34:59)**, Alamein Kopu, couple more of us, we went to try to file this injunction. So, when we come back and we had the injunction meeting at Whakatōhea and then the upshot of it was that Hingston says, **(inaudible 09:35:33)** land, they can do what they like. When in actual fact, he specified only grazing.

When was that, 1992, 90 something and you know, that went wrong for about 10 years, they kept blocking us, sort of. Then finally, in the Māori Appellate Court, in front of three Judges. Judge Williams says, well, to the trustee, what about, they are saying he logged it for one year. That's when their lawyer, first time said, the reason we never had any accounts for the logging was, there was no provision in the trust order, something of that nature. That, I think I could find that.

I'd like to, after I've finished this talk, I'd like to sort of gather this stuff up, you know, and give correct dates for you, if you don't mind.

MS SORIANO:

Absolutely, with his Honour's leave, we can file some of those documents that you are referring to and make sure that you have all of the dates and stuff correct if we need to correct anything.

JUDGE DOOGAN:

Mr Ruff, tēnā koe, so, you have some papers, and you would like to organise them to give to your lawyer so they can come to the Tribunal?

HAROLD RUFF:

Yes.

JUDGE DOOGAN:

That would be helpful thank you. At the start of your talk, I think you were reading out a letter, was that from Mr Lyle, the man who wrote the book?

HAROLD RUFF:

Yes, that's the guy who wrote the book. Funny enough, he did all our **(inaudible 09:37:46)**, we didn't know at the time that he wrote this book and then he sorted all that – Whakatōhea, out on our sitting room floor, because he owned the house. Then 1980 or so, we bought it and –

JUDGE DOOGAN:

So, you bought his old house?

HAROLD RUFF:

Yes, it's sort of good to know the knowledge and then I've had papers stewing over it, but I was never that good at – I was looking for the papers – I never ever forget them and it's one order.

HOUSEKEEPING – TIMING (09:38:34)

HEARING ADJOURNS: 9.38 AM

HEARING RESUMES: 9.45 AM

JUDGE DOOGAN ADDRESSES MS SORIANO – CLARIFICATION OF FURTHER EVIDENCE TO BE SUBMITTED (09:45:40)

HAROLD RUFF: (CONTINUES #E047)

The files, there's about 1,600 I've got, you know, back and forth with the thing, Pete's the same, and another fellow, Peter Elroy, he's the same. I wanted, in the end, to put forward something that – I hate to say this, but sort of removes government agents out of our area a bit more and just leaving only, the council and us.

Actually, I did a thing to the council, regarding this and I think around about that area, 1990s, there was a resource management that could have catered for that. But like regional council, they just got bigger and bigger and other councils, like that and it sort of, although they end up with Māori names, there don't seem to be much local input in it. I don't know how to explain that, but I could explain it if I – I handed in a thing about A B C D E F G H I J K, it went into the Governor-General, it went into the Chief Judge regarding these matters, 200 page file approximately.

JUDGE DOOGAN:

So, Mr Ruff, is you have some solutions to the issues that you are talking to us about, and then you have written about those things, and you have ideas. We would be happy to receive your papers that say what is you are looking – what change you would like to see. So, if you have papers that you have sent to the Governor-General or to the Chief Judge, or to the local council, that speak to those matters, then by all means, give them to your lawyers and we will receive them. If there are questions that we have about any of those papers, we will let your lawyers know.

HAROLD RUFF: (CONTINUES #E047)

I'm not here to pull down Pākehā or anything, you know what I mean, but at the same time, it can be an overkill I think, with these government agents. Truly, so many of them, you know, they must have been receiving Māori moneys or something, because you know, ones who save the petrol, we all save the petrol. There must be big funding for that. Hello, next thing, they are just putting a bloody, a new structured wall straight through the petrol, you know what I mean, forget the petrol, the petrol haven't been mentioned again. I was only a small man, but I mean, my brains full of that kind of stuff and it just seems that administration of it is just a little bit, is it bad saying that?

JUDGE DOOGAN:

No, I hear you, too much, I think in Wellington they say, well, they call it too much bureaucracy.

HAROLD RUFF: (CONTINUES #E047)

Yes, and I noticed the regional council started off as the Poverty Bay Catchment Board and I knew **(inaudible 09:50:36)**, he used to run around with little dogs catching possums and stuff, and vermin. Which, we all need to do that sort of thing, I'm not saying – but indeed, it morphed, somehow, into the regional council.

What made me laugh about that is, this trust accountant, he accused De Loree of not getting a permit to build a bridge, because there was no evidence in the regional council, say, this is just an example. Then when De Loree turned up with a Poverty Bay Catchment Board permit, you know what I mean, prior to the regional council, and sort of saying, hey, come on you fellows, get your act together, sort of, I don't know. It seems, a lot of legislation, a lot of talk and not enough research a lot of times.

The update of this, I would like to, because Pete was a clever guy and actually, I might read this out – I'll finish with that because I'd just like to read about Pete. Is that all right, is that enough for today?

JUDGE DOOGAN:

Ka pai.

HAROLD RUFF: (CONTINUES #E047)

Lastly, we started to have raru, we were on the roof here, Jo and I and I see these – I hate to say that, but I saw them walking and this thing was going up like a mushroom man. It was just massive. I saw them walk in and all of a sudden, there were rumours, we were eating to many cows and although they were gifted by Harold **(inaudible 09:52:44),** and it was just rumours like that. Then finally, it just ground out, and then, I think **(inaudible 09:52:54)** and Simon Manuel might have continued on building, finally got it done after about four or five years.

Anyway, lastly, I'd like to share this story, what happened here, why I got on about that, because I turned up, I had this plan how to – I was doing the slats maybe in, yes, in the old buildings back. I devised a thing, it took me a day to devise this thing where I could put the sand in and over it and flick it and I was happy. I come back and I was a bit late getting to about 10 o'clock, and hello, these women were doing this job, and I don't know about thing, but at the time, women weren't allowed to do that, you know. Māori protocol demanded that they weren't to do that.

They were allowed special days where they could come in and their job was really to adorn the place after it was constructed, and they were allowed special days to – then they had to go, and the men carried on working. Well, anyway, I turn up and these girls are doing this, so I went to see Kimiora Pukepuke, about it, Jo's old man. Anyway, yes, I went to see a kaumātua, so at the time of building the Kutarere marae, **(inaudible 09:55:06)**, now this is the first one 1943. Sir Apirana Ngata used to visit Te Onewhero in the building over there and at Kutarere, for a cup of tea on his way to parliament, or wherever he was going.

During the opening of the first Kutarere marae in 1943, Sir Apirana spoke a prophecy,

Not at the building of this marae, but at the building of the next Kutarere marae, two blue-eyed men would hold hands around Hiwarau.

Coincidentally, when we were building the new Kutarere marae wharenui in 1993, this is where all these problems began for Pete De Loree and me. In a humble way, it is an honour to have fought so hard for our rights and for those who have passed on.

Pete De Loree was my great friend and partner in our efforts to recover our land. He passed away on 23 July 2020 – may he never be forgotten.

I have tried not to name people – water goes under the bridge, and I'll tell you what, a lot of those whānau that were fighting, some of their children are really lovely. I'm not saying that they may have got misguided, but my father had dealings with like, Jumbo Wilson, take old Jumbo. He fought hard to Jumbo, to farm up there, up the valley and he was the trustee, and like **(inaudible 09:57:11)** I think, made him responsible to try and get Jumbo on to that land. Jumbo is Harry Wilson, I'm sorry about that.

He fought hard and got him there, and then he helped him be a success, he lent his tractor to him, whatever he could, to ensure that Jumbo did well, and Jumbo did well. Jumbo was married to one of the whānau, she was a Fisher – a Wikotu, actually, one of the whānau. Probably why the old man worked hard.

Anyway, kua mutu tērā.

Was there anything else to say?

MS SORIANO: (CONTINUES LEADING WITNESS)
Unless you want to read out that last little part, matua, but you don’t have to.

HAROLD RUFF: (CONTINUES #E047)
My family are going to hate me but – this is my last thing because, well, I'll be back, might let these fellows do it.

WAIATA

(10:00) MR HUNT TO HAROLD RUFF:

Q. Kia ora, Mr Ruff. I'm Daniel Hunt, one of the lawyers for the Crown in this inquiry. I wanted to start with a matter that you discussed with the Judge and that was in relation to the permit, or the trust accountant, you said, challenging Mr De Loree, about having consent for the bridge?

A. Yes.

Q. Can I take it, your evidence was that Mr De Loree had had consent from the catchment board and that was prior to the regional council having been set up?

A. Okay, well –

Q. Am I right in that understanding, you tell me.

A. I don't know, but it just seems – I think, I have to say it was quite vindictive, I don't even like to mention his name because he's got a big whānau in town, the accountant. But I noticed they kept using the bridge anyway, even today, so why they were trying to belittle him like that, I do not know.

Q. It sounds like, sorry, I should ask, it's your evidence that Mr De Loree already had permission to build the bridge.

A. Yes, well, I'm saying he got it from the Poverty Bay Catchment Board. But then, hey, I might be misguided, I don't know, I hearsay that, but you will have to check that out.

Q. Could I check one – are you meaning, I'm wondering if Poverty Bay Catchment Board is –

A. Yes.

Q. Are you meaning, the local catchment board?

A. Well, I suppose they had come under some administration. Are you saying there was a regional council there? Gisborne? Poverty Bay? Yes, Poverty Bay Catchment Board.

Q. Okay, I'll leave that one there.

A. You know, I have to say this too, there's a bit of confusion. When I think about that, my old mans Will went missing, the Will form nanny to Harry, regarding A1. Harry did all his business through **(inaudible 10:03:49)** and then when he went to get his Will, they had traded it all, a fire had

taken place. So, he wanted to prove that Hiwarau was Willed to him, A1 was Willed to him, not Hiwarau C. But then, he was getting a bit crook too and like, well, he never had – so he explained this to me. But what was on about that –

Q. I think you mentioned –

A. – he found it in the Gisborne land court. So, was the Gisborne land court before the Rotorua trust board, land court –

Q. I see, thank you –

A. – you have to look up the –

Q. – you have mentioned the Will in your brief.

A. See what the – you get me? Were half the papers left back there, why did he, 1980, until he found it and yet the Will was a 1961 Will and nanny died 1976, that's when the Will would have come into fruition. You know, there's a lot of strange things happening –

MS SORIANO ADDRESSES HAROLD RUFF – TO CONTINUE QUESTIONING (10:05:09)

MR HUNT TO HAROLD RUFF: (CONTINUES)

Q. I wanted to ask you about the trespass orders you received in 93 and 96. Are you able to tell us who served the trespass orders on you?

A. One of the whānau, is that enough?

Q. Sorry, who was it on behalf of?

A. The trust, I presume the trust, yes, Whakatōhea, Hiwarau Trust. But not really, no –

Q. No, that's helpful, thank you to clarify that point.

A. I sort of don't want to mention his name.

Q. It was on behalf of, that was my question –

A. Yes.

Q. Thank you, that's helpful.

A. He's whānau to us this fellow.

Q. You said, also, in your brief that you were able to win the first –

A. Yes.

Q. – but then you lost the second?

A. Well, yes.

Q. Are you able to explain your understanding of why you won the first but lost the second?

JUDGE DOOGAN ADDRESSES MR HUNT – CLARIFICATION OF QUESTIONING (10:06:56)

MR HUNT TO HAROLD RUFF: (CONTINUES)

A. All I can say is, I do really lose it, there's a six month stand down, I wasn't to go back on there.

Q. That's okay, and what happened after the six month stand down?

A. I never went back there.

Q. I see.

A. No, no, I had already built the house in the three years that was allotted, you know, so I never went back there. But I assisted Pete in what he was doing. A lot of times I wasn't privy to Pete, or what his things were, but I made sure that he and I, he could use my files if he wanted to, I think I gave them to the Court, explaining that.

Q. Thank you for that. You also, you mentioned in response to a question from Ms Soriano, Māori Appellate Court hearing –

A. Māori Appellate Court hearing yes.

Q. The Māori Appellate Court hearing.

A. Yes.

Q. Am I right to understand that that would have been the proceedings involving you and Mr De Loree and the trust, taking the trust to court?

A. Yes, I guess so, yes. But the funny thing about that is, I thought I had appealed, but I hadn't appealed, and so, I was booted out, more or less and I went to stuff my papers, and I was angry and then, there were three judges. Judge Isaac, I can't remember the middle one and Judge Williams. He said, you know, you can assist De Loree if you just settle down and you know, he gave me a growling, so anyway, that's all right.

So, I assisted Pete in that way, when it came to the logging and finally, after, what is that, 10 years? 10 years, they finally – because what they

kept trying to do was disallow any knowledge from 1992, to 96, 95, like that. That two year period that the logging took place, and they tried to always, tried to disallow that one and start from 1996, that's my understanding. You can call me a liar or whatever, I don't care, but –

Q. No, no, no, certainly not at all, Mr Ruff. But it occurs to me that that sort of information will be included in the judgments, which you might have records of –

A. All I want to say, that was the first –

Q. And you'll be able to give to Ms Soriano and Ms Fellowes and they can provide to the Tribunal, which I think, just will help with everybody's understanding of the background of events since the 90s?

A. I'll say about the appellate court, and I got the letter here, I'll give it to the girls. Judge Isaac, stops it and they had to go – they gathered together and adjourned the meeting for a while because Judge Isaac said: "I read your letter Mr Ruff, it's quite clear what you want." It was page 881 or something, 881 of the Māori Land Court papers, I think. Yes, there was about a thousand papers there and –

Q. Thank you, that's very helpful –

A. Anyway, it's specifically required all these things to be looked at and he took it onboard, and so, they came back, and he said, well your thing will be taken into account, your letter.

JUDGE DOOGAN ADDRESSES HAROLD RUFF – FILE FURHTER EVIDENCE AND MĀORI APPELLATE COURT DECISION (10:11:52)

(10:13) BASIL MORRISON TO HAROLD RUFF:

Q. Thank you, Mr Ruff, for your evidence and comments. Two parts for me, one is a comment and then a question. The comment is, you talked about the local government scene, just in a confession, from 1983 to 1989 I was a county chairmen.

A. Okay.

Q. So, in Ōhinemuri, which is around Paeroa and Waihī on the Hauraki plains. Then in 1989 and that's what you are referring to, was the reform of local government, in which the Hauraki plains county, Paeroa and

Waihī burrows and Ōhinemuri were forced to amalgamate and created the Hauraki District Council and I became the mayor. At that same time, on the 1st of November 1989, the Bay of Plenty Catchment Commission disappeared and became the regional council.

A catchment commission had government appointees on it like the Lands and Survey Department Ministry works, et cetera, et cetera. Same thing for, you talked about the Poverty Bay and of course that folded into the Gisborne District Council. Which was then the only council that had regional council functions and district council and that was called a unitary, so, those were the structures.

Now during that time, a lot of stuff got moved around, personnel changed, and there were lots of, shall we say, discussion on the new role of a regional council, and the new role of a district council. So, I just leave that on the table as someone that was deeply involved in that.

The next thing is really a question of interest. Having grown up on a dairy farm, on the Hauraki Plains in which my grandparents and my parents' home-separated on the farm for cream, and the cream went to the local dairy factory, where they made butter. Now, the important thing for me is – I find of interest – is we've heard a lot of comment about the cream cheque and – and the production of cream, which of course made butter.

A. Yes.

Q. I haven't heard much – haven't heard any comment about the skim milk or skim dick, as it was called.

A. Yes, yes.

Q. Because my parents actually – and grandparents actually made more money out of half a dozen sows –

A. Yes.

Q. – and rearing pork –

A. That's how it was.

Q. – as they made out of the cream cheque –

A. Yes.

Q. – but I've heard no evidence, or no one has mentioned in the income of the cream cheque against the pork production, which must have been considerable –

A. Massive.

Q. – here.

A. Yes.

Q. Questions you – it must have been a major farming income product?

A. Yes. Yes. It was massive. Morbeth **(spelling 10:16:14)**, up the road – I think, and Wilson may have purchased Morbeth's farm – he had something like 400 sows.

Q. Yes.

A. It was a massive operation. And I think **(inaudible 10:16:28)** Wilson, because during that time, the old man used to get – had a big tanker, and they would just come and get the skim milk, you know, because he wasn't – we never had time to farm pigs, so they used to just come down and – on their tractor and pick up the – a big tankful of the stuff when it filled up, and feed their pigs at no price, no cost.

Q. Okay.

A. Probably give them a pig when it come Christmas time.

Q. Okay. The poaka was quite a major source of income –

A. Yes, major.

Q. – is really what I'm getting to, until they went to – with better access with roading, they went to whole milk collection, and then the dairy factory could make cheese as well as butter.

A. Yes. Yes. That's what it was.

Q. And initially it was only the butter. Okay. You've answered my question, so it's the first time I've had clarified that the pork industry was a major income earner –

A. Yes, major, yes.

Q. – and over the week, we haven't heard that, so –

A. And –

Q. Because they obviously wouldn't have tipped it down the drain. Even those days, it would have not been proper. But thank you for that.

A. That was a massive change, the cream. That's why the community was full of people.

Q. Yes.

A. Because they were all self-supporting –

Q. Yes.

A. – you know? You've got the cream, cream cheque –

Q. Yes.

A. – but then you've got the skim milk and a pig and a garden.

Q. Yes.

A. Everybody had about a half an acre garden, you know what I mean? Or more.

Q. Yes.

A. And just lived more naturally, I think. Everybody did it.

Q. Well –

A. It wasn't just a – the whole valley done it.

Q. We lived on cream, and as you can see, my build attests that, and I'm the smallest of three boys, but anyhow, look, thank you for your evidence.

A. Yes. Just the once – I've got to say, once the changeover came with the milk –

Q. Yes.

A. – a lot – many couldn't afford it.

Q. Correct.

A. Yes.

Q. That's right.

A. You'd need a flash roadway –

Q. Yes.

A. – big stainless steel tanks, and most couldn't afford it.

Q. A major but thank you for that. It was the first time we've actually heard someone raise the issue that pork production was a major earner –

A. Massive, yes.

Q. – and industry. We haven't heard that over the week, so thank you. I hope that explanation of local government – I can assure you I have the scars on my back. Thank you.

A. Okay. Thank you anyway.

JUDGE DOOGAN:

Kia ora anō, Mr Ruff. It is Judge Doogan here. I do not have any questions for you. I just wanted to thank you and support the mihi my colleagues have given

you. One thing that this week of hearing has brought home to us is that those of you like yourself privileged to grow up around Hiwarau, around Ōhiwa, have had very interesting lives. So, my mihi to you as well. Thank you for your evidence. Thank you also for agreeing to provide us with some of those additional papers. That would be helpful.

HAROLD RUFF:
Thank you.

JUDGE DOOGAN:
So, ka nui te mihi ki a koe. Thank you.

HAROLD RUFF:
Thank you.

MS SORIANO:
Thank you, your Honour. Thank you also, Mr Ruff, for being here. I know it was not an easy decision to come here. That concludes the evidence for Mr Ruff, your Honour.

HOUSEKEEPING – TIMING (10:20:06)

HEARING ADJOURNS: 10.20 AM

HEARING RESUMES: 10.24 AM

MS FELLOWES CALLS
Your Honour, we have our last witness for Wai 1865, Ms Tui Pukepuke, and so Ms Pukepuke's evidence is on the record as #E038.

Tēnā koe, Tui. Would you like to introduce yourself to the Tribunal?

(10:24) TUI PUKEPUKE: (#E038)
Well, yes, nei rā ngā mihi ki a koutou katoa e huihui mai nei i tēnei rā.

Ki a koe, Parps, mō tō karakia i whakatuwhera i tēnei hui i te ata nei, i te wiki nei. Nei rā ngā mihi. Ki a koutou katoa, ngā whānau o te rohe nei. I mōhio au i tēnei wā he wā taumaha ki ētahi, heoi anō, he wā, you know – ko tēnei te wā ki te whakatuwhera i ēnei pūrākau o mātou, you know, ki te whakamōhio ki a te kāwana me te Taraipiunara i tēnei wiki nei. So nei rā ngā mihi ki a koutou katoa. **Dad, I do like to thank you for leading us in prayer this morning and throughout the week. The families within the district inquiry. I do know this is a very weighted conversation for a lot of people, but at the same time, we do want to give our evidence, and of course, we want to acknowledge Crown counsel and the Waitangi Tribunal before me.**

Ko – so, introduce myself now? Yes, sorry. Yes. Ko wai au? Ko Tui Pukepuke ahau. **Who I am? I'm Tui Pukepuke.** I'm the favourite daughter of Rawaho.

Yes, so yes, i whānau au i Murihiku. Heoi anō, e noho ana au ināianei i Whakatāne **I grew up in Murihiku, but currently I live in Whakatāne**, so yes, I feel sorry for you. I know it's a graveyard shift, right? Friday, last person, everybody's tired, so I appreciate your – your time and your, you know, taringa, listening. Kia ora.

MS FELLOWES: (BEGINS LEADING WITNESS)

So, in your brief of evidence, you talk about how you were born in Invercargill and how you then grew up there but went back to Hiwarau during the school holidays. Would you like to tell us more about your experience of going back home to Hiwarau?

TUI PUKEPUKE: (CONTINUES)

Yes. I don't think I have to describe in great detail what it might have looked like for us in Invercargill growing up. I think in our kura at that time, we were quite fortunate. I think there were about five Māori whānau at that time, which was quite unheard of, I guess, in Invercargill. So, very different to then coming back here to Kutarere and to Hiwarau during the school holidays.

So, if you can picture it, we attended, like, a private Catholic school with nuns and priests as our kaiako, and then we would come here and be running free along the shores of our harbour. So, really, really different, but also really thankful that our father gave us that opportunity to come home. You know, it was a long drive; three days, I think it would take us, to get back to Rotorua and then come over here to Kutarere. But I appreciate now – at the time, I didn't, because I fought with my brother the entire way.

But now I really appreciate that connection that it fostered in us from such a young age to be able to understand who we are. To be able to plant our feet on our whenua that our tūpuna had roamed on. To hear the stories of our grandparents and our aunties and our uncles while we were growing up. At the time, it was kind of like, hōhā, but now when I reflect back, I think, yes, how very fortunate we were.

MS FELLOWES: (CONTINUES LEADING WITNESS)

You then talk about how at the age of 12 you were whāngai'd to your uncle, Moa Pukepuke and your aunty, Lorraine Pukepuke. You also mention how you stayed with your koro, Kimoro Pukepuke, many weekends and during the school holidays. Could you tell us what it was like to stay with your koro?

TUI PUKEPUKE: (CONTINUES #E038)

I guess, just to take it back a little bit, at that time, I was, yes, 12, you know. We're all very precious darlings when we're aged 12. I think it's the parents' fault, not ours. No, but I think, so I was quite challenging, I think, when I was 12 years old. My recollection of it is different, but apparently, my sister tells me I was quite a challenge.

At the time, I was playing up, and I remember it was my grandfather Kimoro stepping in and saying: "That's enough now, you need to stop that, you're going to come here. So, during the week, you will stay in Rotorua with your aunty and uncle and go to school, and weekends and holidays, you will come back to me at Kutarere and help me at the batch." We call it the batch.

It sounded like prison lockdown to me, you know, like, I'd been roaming free and making all sorts of really great life decisions for myself at that time, and to me, it meant that I had to come back here every weekend. Like, my aunty and uncle would drive me back or koro would come over and pick me up and bring me back. If you can imagine a 12 year old, and there's no power, there's no television, you know, you have to go to bed when the sun goes to bed, you get up when the sun gets up.

Koro had a long list of chores to do, you know, starting at, like, he'd get up at around 5:30 and he would be out on the land by 6. Come back in for a break when it got hot, which was when I finally got some freedom to run around and do what I wanted to do. But again, like, as I said before, it really instilled in me the values of caring for our land and the reciprocal relationship that we have with our whenua. Not just as a tūpuna, but in terms of mēnā ka tiaki i te whenua, ko te whenua kei te tiaki i a koe. So even though, you know, I'd be quite angry that I'd have to sit there and dig kūmaras when all of my cousins, I knew, were off having fun in town or my mates, you know, during – you'd go home during the week to school and your mates had been at a party. They've been hanging out together, going to sports tournaments, and here I am cutting blackberry or digging kūmara, or feeding pigs, which is not fun. And those were hard tasks, and my grandfather worked really, really hard to maintain the whenua at that time.

For me, like, if I'm reflecting back now, when I look at how hard Koro worked, I feel sad that that was the life of my grandfather, that even, into his seventies, that was the life that he was living. There was no opportunity there for him to just, you know, have a retirement home somewhere where he can take things a bit easier. Where he could access better medical treatment, that he could have money to go and do these fun, cool things, because he was eking out a living on our whenua in that way.

But at the same time, yes, I am thankful, because I learned the value of hard work. I learned the value of connection to whenua, I learned the value of you know, well actually I don't know if I learned it that well, because I'm an educator,

right? So I'm not a farmer. I don't know how to fix fences. We're not very good at growing things, I mean, I grew my children; that's about the only thing that I've managed to keep alive so far. To the horror of my parents, who are both, you know, love gardening, and my grandparents, who were, you know, big gardeners and that sort of thing.

So, yes, coming back in that time, as a teenager, really did help settle me and has laid the foundation for me to be able to do the things that I now do in my adult life. And to have the values that I have, you know, going into education and you know, I do waka ama as well, so all of that, I think, has come from that opportunity to be able to be connected to my whenua when I was being a mischief guy.

MS FELLOWES: (CONTINUES LEADING WITNESS)

Take you to paragraph 11 of your brief of evidence. I wonder if you could just explain that paragraph in a little bit more detail for us.

TUI PUKEPUKE: (CONTINUES #E038)

Paragraph 11… yes, I was getting very philosophical there, wasn't I?

WITNESS REFERS TO BRIEF OF EVIDENCE #E038, PARA 11

Yes. When things happen, in your – as you grow up and be adulty-type people, or try to, you know, life, life's at you. And what am I now, 48, and every single time there's been something big or major that's happened for me in my life that's been difficult to deal with, the place I go to is there, and it's enough for me to take my shoes off, to stand on the whenua. You know, I don't have to do much, because I am not a farmer, I can't do much, but the fact that I get to go there and just ground myself has really helped me through quite a number of struggles and challenges that I've had in my life.

I studied, so, I went to university at Otago, which, you know, you couldn't find a further-away university from her. And you know, growing up as I did, surrounded by whānau, and then going all the way down to Otago because I wanted to be a PE teacher, it was really, really hard. I was isolated, I was back

in that place where I was different. I didn't look like everybody else, I didn't think like everybody else. I'd say: "Come on, let's go have a kai", and people would be like: "What? What's a kai? What are you talking about?" So, it was really, really hard, so I cried pretty much every day for about six weeks.

I'd ring my grandfather up and just, you know: "This is what's happening. They made us walk into this room with cadavers and then made us touch them, Koro, and there was no karakia, there was no nothing. I don't know what to do." And he was like: "As soon as you get back, you know, in the next holidays, as soon as you get back, come here. Come here, and we'll do a karakia. You'll be fine. I'll do some karakia here for you."

So, I guess, like, that's just a little bit, like, when I say, āhuru mōwai, I really do mean that. Like, it is the place I go, it is the place that I want my children to be able to go, for my moko to be able to go, to have that same sense of self, of grounding, of, you know. Like the challenges that I've faced in my life are nothing compared to the challenges that my tūpuna have faced before me, and they got through it. So, who am I to not, you know, learn from them to try and emulate them as much as I can and look after that whenua for our future generations?

MS FELLOWES: (CONTINUES LEADING WITNESS)

So, by the time you were born, your whānau land, Hiwarau B1B1 and B1B2, were already amalgamated into Hiwarau C. So, in your evidence, you talk about when you were a teenager, you were often on tea duty at your whānau hui, and you would hear people talking about the amalgamation. Would you like to just share with us what your whānau used to say about the amalgamation and what you would hear?

TUI PUKEPUKE: (CONTINUES)

Yes, of course. Yes, you know, it's always on the fringes that you pick up the good gossip, and I think at the time, quite a bit of it would wash over me, but what I got the sense of was upset. Like, I remember my grandfather being upset. He didn't speak a huge amount of English, and at that time, I didn't

speak a huge amount of te reo Māori, but what you could sense from him was sadness and grief, and, like, an unfinished task that needed to be done.

I do remember at one stage Koro saying that he wanted it sorted before he goes, you know, and I was like, what does he want sorted? What are we – what's this job Koro's giving everybody and asking more and more questions around the edges, as you do. And then it was finding out that the land that we were on is not actually ours. That's how it was communicated to me, that it's not actually ours, and I'm like, wait, what, but we've always been here. We've always had family here.

And the sense at that time was – and I'm speaking from, like, what would I have been, like, 15, 16 years old? – was that kawana was this big beast of a machine, had come and taken. Therefore, we need to try and get it back, but no one in our family at that time had the skills to be able to do that. If you think about our family, you know, my father – like, Koro – like, Kimoro Pukepuke, I think we – we worked out he was probably at school for around – formal education, sorry – for around two years, up at Maungapōhatu.

Dad was at school for around six or seven years. I think he went to formal education for seven years, and that's indicative across our family, you know. We haven't necessarily had access to tertiary education as a whānau to be able to learn these skills to engage with the beast that is the kawana. To understand the systems of bureaucracy, to understand the mechanisms of policy and legislation, to be able to advocate for ourselves as a whānau. We have, you know, don't get me wrong, my whānau is super clever. I think if they had tohu, or degrees, for karakia or for mātauranga Māori, they would have absolutely been – what do you call it? – associate professors or whatever they're called; of those heights. But our knowledge at that time wasn't recognised and wasn't useful in this space for us to advocate to get our whenua back.

So, I know it was a cry from our grandfather at that time to Dad's older brother to try and do something about getting our land back. We also had another cousin who – Mahuta, I remember, at the time, and she was, she was like a

little pit bull, kind of thing. So, Koro was kind of like, you know: "You and your uncle, you can go pit bull your way through and find out and do this for us." We had a lot of hope that that was going to happen, and yet here we are, what, nearly 30 years later, still going, and my sister, you know, has been putting in, what, 18 years' worth of work now to try and do this. It – it's –

But at the same time, I kind of go, like, we're not going anywhere. We're still going to be here. We're still going to be fighting for what should rightfully have always been our whānau whenua.

MS FELLOWES: (CONTINUES LEADING WITNESS)

And so, if I could now take you a little bit further. So, you talk about your experience of discovering the issue around your whānau paying double rates. Could you just tell us about how you discovered that issue with the Ōpōtiki District Council? Explain that in a bit more detail for us?

TUI PUKEPUKE: (CONTINUES #E038)

So at the time, I know in my brief of evidence, it talks about I moved back to Kutarere. I was living with Dad at the time.

So, I'm a – yes, I'm a trustee on another block of whānau whenua, so I went in to try and sort out a rates issue there, and while I was there, I was kind of going, actually, our rates are due: "Can you give us our Kutarere rates information?" and she printed it off and gave it to me. I was like: "How come it says it's this much land? We're only on this – I'm pretty sure we've only got this much land." They were like, "No, no, that's been the rates. That's what it's always been since about the 50s or 60s, so that's just what it is." When we talked more about it, so I'm not sure – do I need to show them?

MS FELLOWES:

Would you like – yes.

TUI PUKEPUKE: (CONTINUES #E032)

Yes, so we're B1B1 and B1B2, which I can show on the map. It's a kind of skinny little block, whereas this one looked like it was going all the way along until – yes. Yes. Yes. That one, probably, too. Do I need to take it over and show them?

MS FELLOWES: (CONTINUES LEADING WITNESS)
So, we are just referring to plate 39 of the map book, Sir. Ms Pukepuke was going to just show whereabouts is the area of land that the whānau's paying rates for.

TUI PUKEPUKE: (CONTINUES #E032)
Yes, so, where are we?

MS FELLOWES: (CONTINUES LEADING WITNESS)
Would it be best if Ms Pukepuke came over and showed you?

TUI PUKEPUKE: (CONTINUES #E032)
Yes. So, I'm not a surveyor, but it looks like we're paying a lot more than what we should. So, taking it back to that conversation, when I spoke to the person at the council, I was saying that that's not our land, this is our land here: "Why are we paying that much rates?" "That's how it was set up." "Well, that needs to change. How do we change that?" "You need to go back to the trust, and you need to sort that out with them."

It also came to my mind, actually – I'm just being reminded of it as I'm talking about it – I then asked: "Well, why do I have to go to Hiwarau C if we're paying our rates? Isn't this to you guys?" and they said: "Well, no, you shouldn't even really be paying rates. You're part of Hiwarau C, so you're double-paying rates anyway, because you should be paying into Hiwarau C." And I was like, "Well, how did that happen?" "I don't know. That's just how it has always been." "How do I change that?" "Go back to Hiwarau C."

I did ask the question, okay, so, if we've been paying two and a half thousand dollars, I don't know, for sixty-something years, I don't – it would have gone up

over time, so surely, we're due some money back. They were like: "Yes, from Hiwarau C", and I'm like: "Right, that's not going to happen, because no one has any money". It was very much like all I kept getting told was: "Go back to Hiwarau C. Go back to Hiwarau C", and I was like: "But isn't this a council issue as well? How did this get set up?", and they were like: "We don't know." I was like: "Awesome." So that's where we sort of left it.

I mean, yes, at the time, too, my sister's a trustee, as you know, on Hiwarau C, so it was kind of like there's a conflict of interest there. So, we had to wait for meetings, they said I had to put in submissions to Hiwarau C and all of these things, and we've kind of just haven't been able to do that.

That's right – when I went back to the uncles and spoke about that, I think Uncle Bruce said something about Koro Kimoro, our grandfather, at the time, saying something – and I don't know how accurate this is. Was Koro was happy to pay extra to support other people, other whānau that were on the block at that time. That was the understanding that my uncle had given to me. But obviously, nobody's got records of anything, and I don't know anything more than that.

DR GRANT PHILLIPSON:

Just suggest that because your koro was the lessee, he leased the land, the job of the lessee was to pay the rates. When he stopped being the lessee, the name remains in the rating roll, evaluation roll, council continues to send the rates notice, and it's actually a council job to get tthe names taken off the roll. Got nothing to do –

TUI PUKEPUKE:

With the Hiwarau C?

DR GRANT PHILLIPSON:

No, nothing to do with Hiwarau C. That's my understanding as a historian, so –

TUI PUKEPUKE:

Thank you.

JUDGE DOOGAN:

Can I just – while we are on this topic, on this rates issue, do you know whether you have had an opportunity to speak to the researcher commissioned either by us, the Tribunal, or Crown Forestry, who are doing research for this inquiry on local government and rates issues?

TUI PUKEPUKE:

No.

JUDGE DOOGAN:

Okay. Thank you. Yes, that's right, that would have been Suzanne Woodley. Yes, no.

TUI PUKEPUKE:

To her, sorry? No.

JUDGE DOOGAN:

You haven't. Okay. All right. Thank you.

MS FELLOWES: (CONTINUES LEADING WITNESS)

So, in your brief, you then describe how you moved back to Hiwarau in 2020 and lived there. Could you please just step us through all that you had to do to live on your whenua?

TUI PUKEPUKE: (CONTINUES #E032)

Yes. Firstly, my apologies, it was actually 2018 that I moved back, not 2020.

All that we had to do when we moved there - so, you go from town, like – and be clear, I'm not a farmer, I've said that a number of times. So, I'm not a fix-it kind of guy. I look at something and I'm like, I don't know how to fix that, we

need to ring somebody." Because in town, you just ring somebody, and they come and fix it, and its magic. That's not the case here, absolutely not the case.

So, I had assumed that when I moved in with Dad, it would kind of be – I'd save some money, too, because, you know, you don't have to pay a mortgage. But actually, you do end up paying more, just because of the inability to access services. Because our house or our – the house that Dad built, you know, it's not permitted, so you can't necessarily get technicians to come and install things like gas, hot-water showers.

I think I spoke in my brief of evidence about, you know, you're having to do shopping every two to three days because you don't have a fridge, or you know, to buy an – at that time, to buy an electric fridge was like fifteen hundred to two thousand dollars. If I wanted to buy a gas fridge, that was around four and a half to five thousand dollars. I didn't have that cash just sitting in my pocket to be able to pay up front for that.

They didn't have, what do you call it, HP services at the gas places to buy a gas fridge, and then even the biggest gas fridge you can get is equivalent to one of the smallest electric fridges that you can get for that price. So you have to make do with what you've got, which is going into town to buy salt ice every two to three days and living out of, you know, any cold food, living out of a chilly bin. Which is hōhā, right? Like, who – yes. Then you've got to dig through the ice and then the packaging gets wet. Any leftover kai, well, you – it kind of has to go to the pig, because you can't necessarily keep it in a chilly bin with wet ice that's melting over long periods of time.

The challenges around rubbish. Like, I'd never ever thought about rubbish or water or sewage or any of those things prior to moving out with Dad. You know, you flush the toilet, things are gone. If there's an issue, you ring the plumber. Well, not the case here.

In terms of, you know, rubbish, you can't put a rubbish bin out for the council to pick up, because they don't come and pick up rubbish. So, you have to recycle

yourself, then you have to load it onto the trailer, and you have to go into town to the recycling centre to recycle everything, as well as with all your rubbish. And you can't leave it out there for too long, you know, like, in terms of you can't leave it for two weeks, because it's going to stink up the place. There's going to be flies everywhere. All of those kind of issues.

It was really challenging, to be honest, especially for this little townie that was expecting this beautiful, idyllic life of off-grid living. It wasn't that.

Even things like water, I never realised how valuable water was. At the time when I moved in, we had a 4,000-litre tank of water; four 1,000-litre tanks. That was our water, but when you've got a family of – how many of us were there, Dad? Like, five of us, six of us living in the middle of summer on 4,000 litres of water, all of a sudden, you're really conscious of everything.

We would – drinking water – so we were living off rainwater – drinking water, we would get – you know. So, we had separate containers that would have to come down every probably two to three days and fill up our containers with drinking water from the spring down between Whakatāne and Kutarere. Then you had to have that set up, then you had sometimes if there wasn't enough water, then what do you do? What do you do? You don't do anything, you have to wait for the next lot of rain, or you have to pay $500 for somebody to come out and fill up your water tank.

So, it was hard, and our family would you know, our wider family would be like: "We love coming down to the batch, because you're disconnected from the power and the kids aren't on their phones. It's so great." And I'm like: "It's great when you come for the weekend." And I was also really conscious, too, like when my whānau would come down, and we might have a whānau event, I was like: "Take all your rubbish with you. Please take all your rubbish with you. Because otherwise, it's us that has to load up the trailer while you guys are gone and it's only me and the kids, you know. Dad's not that good at getting things up on the trailer anymore." And it's just another job.

There was just constant – and at the time, too, so I was a DP at the high school in town, so I'd have to be in town for, you know, 7:30, our first meeting would be on. I wouldn't finish, you know, last meeting would probably be like finish about six, sometimes a bit later, then I had kids' school sports, and then on top of that, we had to manage all of these things as well. You know, the food, the water.

But we haven't even talked about the generator. So, when I talk about not being very mechanically minded or Farmery type, you know, those generator things break down all the time. That's what I can tell you, and I have no idea how to fix them, so that's another task. You've got to get that on the back of Dad's truck and take that into Ōpōtiki to the, what are they, the fixer people, the man, to fix. Then you're without power for a couple of days. When you're without power, you're also without showers, because we need the power to pump the water through the califont to heat the water to have a hot shower.

So, you know, there's – sorry, team, there's a lot. It's a lot. And so, you have to be quite determined to want to live there, and yes, there were definite benefits, in terms of being grounded on our own whānau whenua, but it was hard, and you had to have cash. It's not like we could leverage off our mortgage or anything like that. You had to have cash. It was, you know, cash to pay for that person to come out, cash to pay your friend the tradie to come and fix the califont because it's broken again, cash to pay everything, so yes, it wasn't as cheap as what I thought it would be.

MS FELLOWES: (CONTINUES LEADING WITNESS)

So, could you please just say, like, a little bit more about how you feel about the fact that you have to go through all this effort when there are minimal services provided to your whānau block from the council?

TUI PUKEPUKE: (CONTINUES #E038)

And pay the –

MS FELLOWES: (CONTINUES LEADING WITNESS)

Paying rates, and the lack of services.

TUI PUKEPUKE: (CONTINUES #E038)

Yes, hōhā kē. Like, honest. We're like, "What am I getting from the Council?" Yes, for my double lots of rates that I'm paying, or we're paying, what were we actually getting from the Council?

Like, nothing. No roads. Even at times, the road, the – what do you call it? Grassy stuff, the weeds and everything on the side of the road sort of grows over. You can't even – you know, you have to constant – they come maybe once a year, if that, and you have to kind of ring them up and constantly remind them, "Hey, don't forget we're here. We kind of have to drive sideways up on the grass over around here because the trees are falling over."

That was the other thing, too. When there's a storm, the roads would be, you know, trees would fall down. You can't get to work. Got to wait for the Council, or Dad just goes, "Put the chainsaw in the back of your truck and do it yourself." I mean, if you want a report written, I can do that. I'm not very good at that stuff, as you know.

JUDGE DOOGAN:

We might contract you on the…

HOUSEKEEPING – TIMING (10:53:59)

MS FELLOWES: (CONTINUES LEADING WITNESS)

I was just going to ask one more question, just about what Ms Pukepuke's aspirations are, just for going forward in the future.

TUI PUKEPUKE: (CONTINUES)

Yes. Yes. I guess, and I sort of touched on it earlier, is for me, it's about the lasting impact that this amalgamation has had on our whānau, per se. Like, as I said earlier, not a lot of our family have been able to access higher education, and I don't think that's because they're not clever at all. I think it's because

there's been so many challenges and barriers put in place for our family as a whole that it's made it really difficult for us to live easy lives.

I look at my father and his, you know, one of what, 11 siblings. All of his sisters were gone by the time they were 65. Not one of them lived past 65, and I don't, you know, I put that down to the difficult challenges that they've had. The lack of access to education, the lack of access to really good healthcare, which comes from not having the ability to create generational wealth from our whenua.

Like, I fully, whole-heartedly believe that. You know, that's what, 60 years of this amalgamation? I don't know, when did it happen? In the '60s? Yes. And so that's 60 years that our whānau has not had the ability to support itself to leverage off our whenua to be able to be economically sustainable. And it's also caused disconnection to whenua. Like, I think of some of our cousins who have had to move away for work and for easier living. Disconnection to whenua. Disconnection from each other. Disconnection from our cultural practices. Loss of our reo. Like, our father and his siblings are all, you know, first-language speakers of te reo Māori, not one of our cousins is. And it's because of this impact of: "You're not going to survive here. You need to learn the tools of the Pākehā. Go forth and do this this way." And I think the amalgamation of our whenua, like, further compounds that.

And I think, you know, how do we fix that? Yes, land back, of course, but there's – what price can you put on that? What price can you put on the challenges and the disconnection of our whānau? So, you know, at some point, people might say compensation, but what does compensation look like? You know, for me, it would look like supporting our next generation to be able to have reo back, to be able to have land back, to be able to have cultural practices, to be able to have access to education.

You know, in our whole family, I think I'm the only one that's spent so long at high school, at university, but that's because I want better for our family. I want

to be able to learn these systems to advocate for our family that are – in a way that our grandparents weren't able to.

Sorry, my other notes.

Yes, so I don't know that I can say, like, you know, our aspirations as a whānau are all of those things, and I don't know what the role is that you guys might be able to play in supporting us with that. But I would also ask that you think about not so much, you know, you can't put prices on these things, but what you can do is support us in other ways. Potentially, like I said, through access to education, through access – equity, equitable access to healthcare, to these kinds of systems that our family hasn't had for these – this many years, so yes, that's probably it. Kia ora.

QUESTIONS FROM CROWN COUNSEL – NIL

(10:57) DR ROBYN ANDERSON TO TUI PUKEPUKE:

Q. Tēnā koe. I was interested that the whānau in Rotorua helps pay the rates. How does that work, and what is the principle behind that? Is there –

A. So, it's just Dad's brother, Dad's other brother. So there's the three brothers – you would have met my Aunty Jane earlier in the week, and then Dad. His older brother and younger brother, so the younger brother has always, you know, like, the youngest ones, and they just put in the money when and as they're told to by the older brothers. So, that's just basically when the rates bill would come in, it would be divvied up amongst the whānau. Some of those that were living there, and also Uncle Moa from Rotorua would always contribute as well.

Q. All right. Thank you. Well, it is nice to hear from yet another wahine toa, so thank you very much for coming in and talking to us today.

A. Ngā mihi. Mihi nui.

Q. Thank you.

DR GRANT PHILLIPSON:

Tēnā koe. I don't have any questions – actually, I did have one. So, when the – and I probably should have asked Miranda, actually, but when you got the land back from the Court – but actually haven't managed to partition yet – was the house on that bit?

MIRANDA HORAN:
They didn't – because we were trying to get both blocks out, it would have been covered, but when they gave us the 12 –

DR GRANT PHILLIPSON:
Hectares?

MIRANDA HORAN:
– hectares back, we needed to provide survey records, so if we were going to do that, we would make sure it would cover that, but it's – it would cover the bit where the houses are, yes. But it would mean leaving the other bit behind and just taking the bit where we're living instead of where our water supply is.

DR GRANT PHILLIPSON:
Yes. Okay. Thank you, and that's my only question. Thank you very much. I found your evidence really helpful.

PROFESSOR TOM ROA:
Not a question, a mihi, especially to Jo. He's produced some amazing fruits. Tēnā kōrua. Tēnā koutou.

JUDGE DOOGAN:
Tautoko.

BASIL MORRISON:
Thank you most sincerely for your wit and humour in presenting, and the seriousness of the issues that you face. I said earlier on in the week, having come from a background of being an elected representative for 37 years, that I

wouldn't mind ten cents for every time I've heard: "What do I get for my rates?", so we're consistent. But now, in all seriousness, thank you most sincerely.

Lots of the issues that have been raised over the week relate very much back to, whilst I cannot whakapapa back to any Māori ancestry, grew up in a similar situation, as Joe talked about. I was just at the end of hand-stripping cows as a six-year-old in the shed in the morning in the frost, through to automatic milkers. So, thank you for your submission, and I do understand. I truly do understand some of the issues that you find difficult and that you face as a whānau, so thank you most sincerely. Appreciate it.

JUDGE DOOGAN:

Kia ora anō, Tui. I don't have any pātai either, I just want to tautoko the mihi my colleagues have given and to just observe that I think, just your brief but your kōrero this morning makes quite real and quite understandable in a very practical way the systemic issues that you are highlighting with regard to local government and the wider ture, or the law, the impacts of law. So, thank you for putting it into a very understandable framework which does sort of reinforce my – we can't, but it would be great to contract you to write some of our report. But thank you for your evidence, and a mihi also to Jo, not only for the support for our hearing but for what Ahorangi Roa has described as, I am trying to find a better word than "fruit".

TUI PUKEPUKE:

Don't say "ngā hua".

JUDGE DOOGAN:

All right. But thank you.

JUDGE DOOGAN ADDRESSES MS SORIANO – FURTHER EVIDENCE TO BE FILED (11:03:02)

JUDGE DOOGAN:

I just wanted to do a very brief mihi to thank, first, counsel for their assistance this week. We seem to have scared off most of the counsel by the end of the week, so a big mihi; ka nui te mihi ki a koutou who remain, and of course, to Crown counsel and to Mr Moeahu, who has supported Crown counsel. Thank you for the work you collectively do to assist our inquiry process. It is of considerable value to us, not only in the hearing but also in the filing of claims and submissions in support, so ka nui te mihi ki a koutou.

I just wanted to acknowledge briefly our Tribunal staff, who sit behind us and do an amazing job to keep the administration and the documents somehow organised and flowing. Of course, to Alan Royal – I have got your surname clear in my head now, Alan – who, over many, many years, has provided a very high level of service for those who join us online, who watch online, and within the hearing as well, and the simultaneous translation service. Conrad, tēnā koe, thank you. I think it has been a relatively quiet week for Conrad in that little box back there, but thank you for coming in at short notice, too.

So lastly, to my fellow panel members, thank you. It is always a pleasure to work with this esteemed panel.

Finally, we will mihi to our haukainga shortly, but I just wanted to, particularly, thanks to the witnesses for this week. Once again, we depart with a great deal of vivid kōrero and images in our minds, particularly, from this hearing, about Ōhiwa, Hiwarau and this area. So, thank you all for the clarity and depth of the evidence we have been privileged to receive, so he mihi maioha ki a koutou. Thank you.

Jo, it seems fitting I hand back to you and just ask if you could close this part of our mahi.

JOSEPH PUKEPUKE:

Just before we close our hui up, I'd just like to make a mention about some comments during Harold Ruff's presentations talking about milking cows, and skim milk, and cream, and all the rest of it.

Well, after I left home, left my grandmother and went back home to the old people in Kukumoa, **(inaudible 11:08:39)** the old man had a farm out there, around about 400-odd cows there, and like you said, Sir, he made use of the skim milk by bringing up pigs up the top.

I think the old man had about 30, 40 pigs up there. We had a big sty, probably about the size of this room, with all these little pens. The ones that – and he had them all in different sections, how old they were, et cetera, et cetera, and all the breeding pigs at one end. My job when I went back up there was to feed the pigs while they were milking the cows, and the reason for that was to make room in the 44-gallon drums where the skim milk was dropping in. And every time, me and my friend Jackie McCormack, we just used to go up there and feed the pigs. But we used to go home and grab some bread, and that's the milk used to come out into the barrels, we'd go and dip our bread into the pigs' – and eat it, and you know, the, you know, that thick crust used to be up there, well, Matt and I used to eat that. It would taste nice. Yes, it was just bringing back memories.

But my father didn't make use of the cream. We were on a cream run. I think we would send two cans of cream a day to the local factory. Harold Ruff, Dad used to do the cream run from Nukuhou North. That's way up country, just before Waimana, and he used to collect all the cream, all the cream cans from there, all the way through Kutarere. Up at my uncle – had a couple of uncles up there. They're John Manuel and Joe Manuel, and they milked cows, and they used to bring their cream cans down and put them by the shop, and Harold's dad used to pick them up and take them in. Plus, there was other cream stands all along the road between here and Ōpōtiki, and I think once a week, the factory would put six pounds of butter inside the cream can, you know. Plus, the little docket that'd say how much cream, et cetera, et cetera, but anyway, yes, it was a nice, but, however.

MIHI (JOSEPH PUKEPUKE)

KARAKIA WHAKAMUTUNGA (JOSEPH PUKEPUKE)

HEARING CONCLUDES: 11.12 AM

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.