KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL **WAI 2200**

IN THE MATTER OF	**the Treaty of Waitangi Act 1975**
AND	
IN THE MATTER OF	**PORIRUA KI MANAWATŪ DISTRICT INQUIRY**

CLOSING SUBMISSIONS FOR THE CROWN:

NATIVE LAND COURT — ISSUE 3

31 July | Hōngongoi 2026

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MAY IT PLEASE THE TRIBUNAL:

INTRODUCTION

1. These submissions respond to the generic closing submissions filed on behalf of Ngāti Raukawa and affiliated groups on the Native Land Court.[1] They also respond to the claim-specific closing submissions to the extent that they raise issues relevant to the topic.

2. The central proposition advanced by Ngāti Raukawa and affiliated groups is that the Crown has failed to uphold its duties and obligations under te Tiriti o Waitangi in respect of the creation and operation of the Native Land Court within the inquiry district.

3. The Native Land Court has been the subject of extensive study in previous Tribunal inquiries. Previous reports have made several findings of breach in relation to the establishment and operation of the Court. As a result of these findings, the Crown made early concessions of breach in this phase of the inquiry. Further concessions have also been made as this phase has progressed, in light of the evidence that has been presented.

4. As the Tribunal will be aware, the Crown has not accepted all of the Tribunal's findings in previous inquiries with respect to the Native Land Court and native land law issues. To the extent that it is necessary to respond to the issues raised in the claimants' closing submissions, the Crown takes the opportunity to explain its position on the areas of difference.

5. The structure of these submissions is as follows:

    5.1 Part I responds to the claimants' generic submissions on the Native Land Court.

    5.2 Part II responds to those aspects of the claim-specific submissions relevant to the Native Land Court, focusing on the Crown's conduct in relation to the Rangitīkei-Manawatū and Horowhenua block investigations.

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1 Generic Closing Submissions relating to the Native Land Court for Ngāti Raukawa and Affiliated Groups (7 November 2025) Wai 2200, #3.3.97 [**Claimants' Submissions**].

PART I: RESPONSE TO GENERIC SUBMISSIONS

Treaty principles

6. The generic submissions of Ngāti Raukawa and affiliated groups identify eight principles of the Treaty which they say are relevant to the topic of the Native Land Court.[2] The Crown respectfully differs from Ngāti Raukawa and affiliated groups in certain matters of detail and emphasis.

7. Generally, the courts have identified three core principles that give rise to obligations for the Crown:

   7.1 Good faith and partnership;

   7.2 Active protection; and

   7.3 Redress.

8. While the Tribunal has identified a number of specific principles flowing out of these core obligations, the Crown considers the expression of the principles by the courts in the *Lands*[3] and *Broadcasting Assets*[4] cases ultimately remains the appropriate means of reconciling the different texts of te Tiriti/the Treaty, and the differing views about their meaning, in the reconciliatory manner contemplated by the Treaty of Waitangi Act 1975. In the Crown's view, it is the deployment of the core principles as the analytical tool for assessing Crown conduct which supplies the means for te Tiriti/the Treaty to operate in a practical way in contemporary New Zealand society.

Good faith / Partnership

9. Good faith and partnership require the Crown and Māori to act towards each other reasonably, honourably, and with utmost good faith.[5] The principle requires a context-specific balance to be struck between the Crown's exercise of kāwanatanga and the exercise of tino rangatiratanga by Māori.

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2 Claimants' Submissions at [14]–[45], identifying principles of partnership, active protection, options, consultation, mutual benefit, reciprocity, equal treatment/equity, and redress.

3 *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) [***Lands* case**].

4 *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC) [***Broadcasting Assets* case**].

5 *Lands* case at 667 per Cooke P.

10. In the context of this principle, the generic submissions seek to adopt the finding in the Te Paparahi o Te Raki Inquiry that Māori did not cede sovereignty by reason of the Treaty. The claimants submit that the chiefs of Ngāti Raukawa and affiliated groups who signed te Tiriti retained tino rangatiratanga over their land, people, places and resources, while the Crown was only to have a "limited kāwanatanga role". The claimants suggest that each party was to have distinct spheres of authority while also sharing power and authority over certain things.[6]

11. The generic submissions go on to argue that the findings in the Te Paparahi o Te Raki Inquiry are capable of direct application and adoption in the present inquiry because "there has been no evidence led in this inquiry" that the rangatira in the Porirua ki Manawatū district understood anything differently in 1840 from rangatira across the rest of the motu.[7] The claimants say that there is no evidence that Ngāti Raukawa and affiliated groups rangatira were differently informed, and therefore thought they were entering into a different agreement, from those elsewhere.[8]

12. The Crown addresses the constitutional questions relating to te Tiriti and the arguments regarding the cession of sovereignty in separate closing submissions directed towards the topic.[9] For present purposes, it suffices to say:

    12.1 The Crown acquired sovereignty over New Zealand through a series of jurisdictional steps in 1840 and, with it, acquired the right to govern and to make and enact laws affecting Pākehā and Māori. It is within this constitutional framework that the Crown-Māori relationship operates.

    12.2 The Crown does not accept the claimants' interpretation of the Māori text of te Tiriti. Kāwanatanga was a new power with a

6 Claimants' Submissions at [15], citing *He Whakaputanga me te Tiriti: The Declaration and the Treaty—The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wai 1040, 2014) vol 2 at 526–527.

7 Claimants' Submissions at [16].

8 At [16].

9 Closing Submissions for the Crown: Tino Rangatiratanga and Constitutional Claims—Issue 1 (24 July 2026) Wai 2200.

national focus. The Māori text of the Treaty clearly envisaged rangatira coming under the power and authority of the Queen.

12.3 The claimants' argument depends on elevating their preferred interpretation of the Māori text of te Tiriti over the English text in a manner that is contrary to the text, purpose and context of the Treaty of Waitangi Act.

12.4 The Te Paparahi o Te Raki Tribunal reached its findings about the understandings of Northland rangatira not only by examining the text of te Tiriti but also on the basis of oral assurances given to those particular rangatira. In contrast to Te Tai Tokerau, the historical record in this inquiry district is very limited. It does not follow from the lack of a contemporaneous European record and the absence of a Ngāti Raukawa oral tradition that rangatira in the Porirua ki Manawatū district had the same engagement with the Crown's representatives regarding te Tiriti and the same understandings as rangatira in the north.

13. The principle of good faith and partnership is the overarching or paramount principle arising from the compact of the Treaty, from which other obligations may flow.[10] In other words, the partnership envisaged by the Treaty is "at the heart of the principles".[11] It is this relational aspect of te Tiriti that provides the methodology within which questions of authority and autonomy, and of kāwanatanga and tino rangatiratanga, are to be worked out under the Treaty of Waitangi Act.

14. The generic submissions also argue that a duty to consult follows from the principle of partnership.[12] The Crown submits there is no general duty to consult. Rather, as part of its general obligation to act in good faith, the Crown has a duty to make informed decisions.[13] Whether this duty requires consultation, and to what extent, depends on the nature of the issues

10 *Lands* case at 673, 680–681 and 682 per Richardson J.
11 *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142 (CA) [***Forests* case**] at 152.
12 Claimants' Submissions at [17].
13 *Lands* case at 683 per Richardson J.

involved and surrounding circumstances.[14] Consultation may be required "on truly major issues".[15]

Active protection

15. The duty of active protection requires the Crown "not only to recognise the Māori interests specified in [the Treaty], but actively to protect them".[16] Those interests include tino rangatiratanga and taonga, as described in Article 2, and also extend to the equality rights protected by Article 3.

16. The duty of active protection is not, however, absolute or unqualified. In carrying out its obligations, the Crown is not required to go beyond taking such action as is reasonable in the prevailing circumstances.[17] Importantly, the Crown may decide from a number of possible policy options how to give effect to its Treaty obligations, provided it elects between the available options reasonably and in good faith.[18]

Redress

17. The principle of redress imposes on the Crown a duty to remedy past breaches.[19] In other words, it gives Māori a right to "fair and reasonable recognition of, and recompense for, the wrong that has occurred".[20]

Context

18. In assessing the institution of the Native Land Court and the Native Land Court system against the standard of consistency with Treaty principles, it is critical to understand events in their historical context. The Crown's Treaty obligations must have been reasonably capable of being met by the people and institutions responsible for their performance. In particular, the Crown's conduct needs to be judged in the context of ideologies of integration and amalgamation that were honestly held at the time.[21]

19. The Crown acknowledges, of course, that land was a central economic, social, cultural and spiritual resource for Māori. Whenua provided food,

14 At 682–683 per Richardson J.
15 *Forests* case at 152.
16 *Lands* case at 702 per Casey J.
17 *Broadcasting Assets* case at 517.
18 *Attorney-General v New Zealand Māori Council* [1991] 2 NZLR 129 (CA) at 135.
19 *Lands* case at 664 per Cooke P.
20 At 693 per Somers J.
21 At 664 per Cooke P.

housing, materials, and sites of social, spiritual and political life. Land underpinned the self-sufficiency and mana of hapū and iwi.

20. Equally, however, both the Crown and Māori supported the alienability of Māori land at the time of the Treaty and subsequently. It is important to recognise Māori agency in this period. The autonomy of Māori to choose to alienate their land in furtherance of their interests is a key premise of Article 2 and is also a fundamental right of ownership inherent in the rights conferred by Article 3. Generally, Crown policy throughout the nineteenth century viewed the ability of Māori to alienate land as key to the colony's economic development and as a benefit to Māori—indeed vital to their prosperity. Then, as now, land is one of many economic resources that commercial actors utilise to increase wealth and well-being—including by working the land themselves, or by sale, lease, or by its use as collateral.

21. By the early 1860s, the Crown's view was that the degree of security and certainty required for land to function within the new economy could not be provided by customary Māori tenure. The Crown favoured a national, unitary system of land laws for New Zealand. Against this background, the Native Land Court was born out of a demonstrable need for a forum to determine competing claims to land. The recognition and accommodation of customary ownership concepts and interests within the new tenurial system was a complex process, involving significant challenges.

22. When assessing the Treaty-consistency of the Native Land Court, it is important to keep in mind the following propositions:

    22.1 The Native Land Court was not part of the Crown. It was a New Zealand court of record operating independently of the Executive. Its decisions were not decisions of the Crown, just as decisions of the Māori Land Court today are made by an independent judiciary and are not decisions of the Crown.[22]

22 See the Tribunal's findings in this respect in, for example, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wai 64, 2001) [***Rekohu***] at 33; and *Te Urewera* (Wai 894, 2017) [***Te Urewera***] vol 3 at 1092.

22.2 The relationship between the Native Land Court's adjudication of title function and land alienation was not one of cause and effect. The fact that the Court determined title to a parcel of land did not lead inevitably to its alienation. Māori exercised considerable agency when participating in the Native Land Court's processes.

22.3 When Māori raised concerns about the Native Land Court's operation, there were good faith attempts by the Crown to respond and accommodate them.

Crown concessions

23. In the Crown's submission, the establishment of the Native Land Court was consistent with the Treaty and its principles. However, as with its approach in previous inquiries, the Crown has conceded that aspects of the native land laws and their effects on Ngāti Raukawa and affiliated groups were not Treaty-consistent.

24. The Crown has a well-established policy of conceding that the native land laws contributed to the undermining of tribal structures, and that its failure to actively protect those structures breached te Tiriti o Waitangi / the Treaty of Waitangi and its principles. In 2019, the Crown made two early concessions relevant to native land laws in respect of Ngāti Raukawa and affiliated groups.[23]

Impact

25. The Crown acknowledges that Ngāti Raukawa and affiliated groups have a strongly felt grievance about the impact of the native land laws, with the Native Land Court operating widely within the rohe of those iwi and hapū and with many land blocks being brought before the Native Land Court in the late nineteenth century for title determination. The Crown acknowledges that as a consequence of title determination, many of these blocks were rapidly partitioned and sold.

26. The Crown accordingly has made the following Treaty breach concession:

23 Crown Statement of Response and Concessions Ngāti Raukawa and Affiliated Groups Phase of Inquiry (21 October 2019) Wai 2200, #1.4.2.

> The Crown accepts that the individualisation of Māori land tenure provided for by the native land laws made the lands of Ngāti Raukawa and affiliated groups in the inquiry district more susceptible to fragmentation, alienation and partition and contributed to the undermining of the traditional tribal structures of these groups. The Crown concedes that its failure to protect these structures was a breach of te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

Landlessness

27. The Crown also acknowledges that Ngāti Raukawa and affiliated groups today have a strongly felt grievance about how little land they retain in their rohe.

28. The Crown has accepted that, on the basis of its current understanding of landlessness of Ngāti Raukawa and affiliated groups, it is appropriate to make the following Treaty breach concession:

> The Crown accepts that the cumulative effect of its acts and omissions left Ngāti Raukawa and affiliated groups in the inquiry district virtually landless, and had a devastating impact on their economic, social and cultural well-being and development. The Crown's failure to ensure that these groups retained sufficient land for their present and future needs was a breach of te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

29. The Crown records that its current understanding of Ngāti Raukawa's rohe and land loss within it is informed by the information contained in the report *Ngāti Raukawa: Rangatiratanga and Kawanatanga*,[24] as well as other sources of information.

30. For the avoidance of doubt, the Crown's present assessment of land loss and landlessness in respect of Ngāti Raukawa and affiliated groups in this inquiry district is predicated on the Crown's current understanding of the Ngāti

24 Eljon Fitzgerald, Areti Metuamate, Kiri Parata, Tiratahi Taipana, Piripi Walker and Grant Young *Rangatiratanga and Kawanatanga: Land Management and Land Loss from the 1890s to 2000* (Wai 2200, #A199, June 2017) at 28.

Raukawa rohe boundaries. The Crown's assessment may be affected if those boundaries were to change for the purposes of settlement negotiations.

Crown's failure to provide an effective form of collective title to land

31. In the earlier Muaūpoko phase of this inquiry, the Crown conceded a breach of the Treaty in relation to the Crown's failure to provide effective collective title over the Horowhenua block prior to 1894.

32. During the course of the current phase, the Crown concluded it was appropriate that the failure to provide effective forms of collective title also be conceded in respect of Ngāti Raukawa and affiliated groups. In a memorandum of counsel dated 29 August 2025, the Crown therefore made the following further concession:[25]

> The Crown acknowledges that it breached te Tiriti o Waitangi/the Treaty of Waitangi and its principles when it failed to provide a legal means for the collective administration of Ngāti Raukawa ki te Tonga and affiliated groups' land until 1894, by which time large parcels of their land had already been alienated.

33. Unlike the Muaūpoko phase, the Ngāti Raukawa and affiliated groups phase is not focused on a specific block. As such, the Crown's concession in respect of Ngāti Raukawa and affiliated groups is not articulated in terms of any specific block.

Adequacy of the Crown's concessions

34. A central theme in the generic submissions of Ngāti Raukawa and affiliated groups is a claim that the Crown's concessions are inadequate. Generally, there are two aspects to this contention.

    34.1 First, the claimants say that it is not sufficient to say that lands in the inquiry district were made "more susceptible" to fragmentation, alienation and partition as a result of the native land laws. Rather, the claimants say, had the Native Land Court not been established by the Crown, none of those things could have

25 Memorandum of Counsel for the Crown Filing Further Crown Concessions (29 Here-turi-kōkā 2025) Wai 2200, #1.3.4.

occurred.[26] In other words, as the Crown apprehends it, the submission is that the causal relationship is considerably stronger than the Crown has been prepared to concede.

34.2 Secondly, the claimants argue that the Crown's admission of certain omissions—namely a failure to protect traditional tribal structures, and a failure to provide a legal means for collective administration—ignores the reality of a sustained and deliberate policy to destroy tribal structures and tenure to make way for Pākehā settlement.[27]

35. As to the first objection, the Crown has acknowledged the significant role that the native land laws played in the alienation of land and, ultimately, in Māori landlessness. However, the Crown's position remains that the native land laws, and the Native Land Court that operated pursuant to them, were not wholly responsible for the alienation of Māori land in the second half of the nineteenth century and in the twentieth century. The wording of the concessions reflects the Crown's view that the awarding of land on the basis of individualised titles cannot and should not be seen as the sole cause of partitioning, fragmentation and alienation of Māori land. The role of Māori agency must also be considered, as must the wider processes of change with which Māori were engaging.

36. Proceedings in the Native Land Court were not only encounters between Māori and the Court, or between Māori and the Crown, but also between Māori and what Boast describes as "international capitalist modernity": dynamic processes of globalisation that operated "legally, socially, and culturally, including at the level of material culture" with which Māori actively and openly engaged.[28] Huge transformations in Māori society occurred in the nineteenth century—with new opportunities and options for trade, new property relationships, the introduction of a monetised market economy, a decline in chiefly authority, and changes in tribal structures.

26 Claimants' Submissions at [49]–[50].
27 At [50] and [52]–[54].
28 Richard Boast *The Native Land Court: A Historical Study, Cases, and Commentary 1862–1887* (Brookers, Wellington, 2013) [**Boast *Native Land Court***] at 16–18.

Boast states that the Native Land Court did not cause these changes on its own, although it was an agent of them. He says:[29]

> They [the transformations] were caused by the forces of globalisation themselves, to which Māori people were exposed as a result of British colonisation of New Zealand.

37. The Tribunal in the *Hauraki Report* recognised that changes in land tenure were inevitable during this period, and that there was no Treaty obligation on the Crown to maintain Māori tenure and social structures in an unmodified or frozen form.[30] While it found that the Native Land Court, as established, was unsatisfactory in many respects, the Tribunal recognised that there were good reasons in principle for the Crown to establish a forum, independent of the executive, to determine intersecting and disputed claims to Māori customary land and to administer legislative modifications to customary tenure to meet new needs.[31]

38. It cannot therefore be assumed that there would or could have been no alienation of land, or changes to customary tenure, in the absence of the native land laws that were enacted and the title investigation process they put in place. Rather, the appropriate counterfactual involves a new legal regime in some form. The Crown submits that the native land legislation was a necessary, albeit imperfect, response to deep-rooted structural changes in the New Zealand political economy that were already afoot.

39. Turning to the second objection, the Crown recognises that the Tribunal has previously made findings as to the dominant purpose of the native land laws. The Stage 2 Te Paparahi o Te Raki report states that the Crown's primary purpose in conceiving and introducing the Native Land Court was to "determine the ownership of customary land in order to expedite the transfer of land out of Māori ownership", and its related purpose to "[strengthen] the dominance of the Crown and its British-derived legal

29 At 16–17.
30 *The Hauraki Report* (Wai 686, 2006) [***The Hauraki Report***] vol 2 at 662.
31 At 777.

system" by displacing the right of Māori communities to control and manage their lands.[32]

40. The Crown respectfully does not agree with these findings. The Crown maintains the following views:

40.1 The Crown's principal purpose in promoting the establishment of the Native Land Court was to have an independent and competent tribunal investigate claims—including competing claims—to customary land, declare who were the owners of that land, and to issue certificates of title following that determination. As the *Hauraki Report* recognises, the Crown had good reasons for the establishment of such a tribunal.

40.2 It is critical that events are understood in the context of the time: Treaty obligations must have been reasonably capable of being performed at the time of the events in question. Native land laws should be judged in the light of ideologies of integration and amalgamation that were honestly held in the nineteenth century, even though they are no longer in favour.[33]

40.3 In this sense, the Crown accepts that the aims and assumptions underlying the native land laws were assimilationist: the Crown sought to encourage and facilitate assimilation by enabling Māori to deal as they saw fit with their lands and resources by giving them the same rights as Pākehā. However, the assimilationist assumption behind the Native Land Court needs to be seen in the context of the time, in which both Māori and settlers saw benefits of increased settlement and economic exchange.

40.4 While alienation of land was envisaged, and the alienation would facilitate the opening of Māori customary land to Pākehā settlement, there was no intention that the introduction of the Native Land Court should result in Māori landlessness. On the

32 *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry Part I* (Wai 1040, 2023) vol 3 at 1018.

33 *Lands* case at 664 per Cooke P.

contrary, over the years, the native land laws contained a range of mechanisms intended to protect the interests of Māori landowners, including restrictions on alienation[34] and the vetting of transactions.[35]

41. The Crown accepts that, initially, the native land laws administered by the Court did not easily accommodate the complexities of communal ownership, and the Crown has conceded breaches of the Treaty in that respect. However, the legislation was originally framed to allow the Court to take communal interests into account, and it was progressively reformed to better promote such recognition. In other words, although the Crown considered that individualised titles were in the best interests of Māori, the Crown did not deliberately set out to establish title on a one-person, one-estate basis.

Exclusion of the Rangitīkei-Manawatū block

42. Together with various specific submissions from the claimants on the matter, the generic submissions address the exclusion of the Rangitīkei-Manawatū block from the jurisdiction of the Native Land Court under the Native Lands Acts 1862 and 1865. The terms of the legislation meant that the Native Land Court was prevented from operating in a large part of the rohe of Ngāti Raukawa and affiliated groups, until restrictions were removed in 1867. In the meantime, the Crown moved to purchase the Rangitīkei-Manawatū block without any investigation into title. Ngāti Raukawa and affiliated groups have claimed that the Crown's actions in the course of these dealings breached the principles of the Treaty. In its updated

34 See, for example, Native Lands Act 1865, s 28; Native Lands Act 1867, ss 20–21; Native Land Act 1873, ss 47–48; and Native Land Court Act 1880, s 36.

35 See, for example, Native Lands Frauds Prevention Act 1870; Native Land Act 1873, ss 59 and 94; Native Land Court Act 1886 Amendment Act 1888, s 4; and Native Land Act 1909, s 220. The requirement that no Māori was to become landless as a result of an alienation was added in 1909.

statement of position and concessions dated 1 April 2022, the Crown made a concession to acknowledge these well-founded complaints.[36]

Failure to protect the interests of Ngāti Raukawa and affiliated groups when the Crown purchased the Rangitīkei-Manawatū block

43. In 1866, the Crown purchased the 240,000-acre Rangitīkei-Manawatū block from three iwi: Ngāti Apa, Rangitāne, and Ngāti Raukawa ki te Tonga (including affiliated groups such as Ngāti Kauwhata). Ngāti Raukawa were reluctant to sell the block, but some agreed in the end that selling would be the only way to resolve disputes about the balance of customary rights in the block.

44. The Crown acknowledges the evidence in the inquiry has shown that a number of Ngāti Raukawa felt pressured to sell land they wished to retain. The cumulative circumstances of Crown acts and omissions in relation to this purchase establish that the Crown failed to meet its duty actively to protect Māori interests in land they wished to retain.

45. The Crown has accordingly made the following concession:

> The Crown concedes that in relation to the Rangitīkei-Manawatū Block–
>
> a. it excluded the block from the Native Land Acts 1862 and 1865 in order to meet obligations to settlers who had claims against the New Zealand Company, despite the Crown's Old Land Claims Commission having concluded that the company had not purchased a large block in the area, and despite opposition from Ngāti Raukawa ki te Tonga and affiliated groups to selling land in this district; and
>
> b. it excluded the block from the jurisdiction of legislation which would have allowed Ngāti Raukawa ki te Tonga and affiliated groups a legal means to seek to define and protect land they wished to retain, and then to legally lease their land and draw rent from it; and

36 Updated Crown Statement of Position and Concessions (1 Paenga-whāwhā 2022) Wai 2200, #1.3.2.

c. having denied a legal avenue to collect rents, the Crown then instructed the lessees to suspend rent payments, an important source of income for Ngāti Raukawa ki te Tonga and affiliated groups, which had the effect of impoverishing them and compounding the prejudice caused by the exclusion of the Rangitīkei-Manawatū block from the land laws; and

d. it addressed the possibility of armed conflict in Manawatū in 1864 by threatening to treat Māori who took up arms against each other as being in arms against the Queen's government, and to punish them accordingly; and

e. it exploited these circumstances to purchase the block, characterising purchase as the only way to settle dispute over the land, despite the protests of members of Ngāti Raukawa ki te Tonga and affiliated groups who wished to retain the land and who felt the Crown was trying to intimidate them into selling; and

f. it failed to carry out an investigation of Māori claims within the block, and failed to secure the consent of a consequential proportion of Ngāti Raukawa ki te Tonga and affiliated groups to the sale, despite the Crown's judgment that these things were necessary for a just outcome to the transaction; and

g. the combined effect of these acts and omissions meant that the Crown failed to actively protect Ngāti Raukawa ki te Tonga and affiliated groups' interests in land that they wished to retain, and this was a breach of te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

46. The Crown's submissions on Crown and Private Purchasing (Issue 2) address the circumstances and context of the purchase of the Rangitīkei-Manawatū block in more detail.

Tino rangatiratanga, custom and related issues

47. A central contention advanced by Ngāti Raukawa and affiliated groups in their generic submissions is that native land laws, and the operation of the Native Land Court pursuant to those laws, impinged on their tino

rangatiratanga. The claimants submit that the native land laws were imposed on them without consultation or consent; their tikanga was overridden and supplanted by Pākehā legal processes, rules and categories; and their communalism was attacked.[37] These concerns are repeated in many claim-specific closing submissions. For example:

47.1 Ngāti Parewahawaha and Ngāti Manomano submit that the appointment of a court presided over by Europeans to determine Māori entitlements to land was contrary to tino rangatiratanga; Ngāti Raukawa were entitled to have their customary interests determined by their own processes and people.[38]

47.2 Ngāti Parewahawaha submit that the Crown, in breach of te Tiriti and its principles, imposed the Native Land Court system upon Ngāti Parewahawaha without proper consultation or the consent of the hapū.[39]

47.3 Ngā Hapū Ahi Kaa o Ōtaki submit that their subjection to the Native Land Court legislation and systems, and the carving up, separation and alienation of Māori land, undermined hapū rangatiratanga.[40]

47.4 Ngāti Kauwhata (Wai 784 and 972) submit that the Crown, by establishing the Native Land Court, usurped the right of Māori to make decisions about the allocation and ownership of their land and resources in accordance with tikanga.[41]

Consultation and consent

48. The Crown acknowledges that the consultation that occurred with Māori regarding the native land legislation and the establishment of the Native Land Court was limited by today's standards. However, there was certainly

37 Claimants' Submissions at, for example, [17], [23], [30]–[33] and [40].

38 Closing submissions for Ngāti Parewahawaha and Ngāti Manomano (13 January 2026) Wai 2200, #3.3.126 [**Ngāti Parewahawaha and Ngāti Manomano's Submissions**] at [41]–[42].

39 Specific Closing Submissions for Ngāti Parewahawaha (19 Hakihea 2025) Wai 2200, #3.3.117 at [70]–[73].

40 Ngā Hapū Ahi Kaa o Ōtaki: Ngāti Huia ki Katihiku, Ngāti Maiotaki and Ngāti Pare Closing Submissions (19 December 2025) Wai 2200, #3.3.107 at [102]–[106].

41 Joint Closing Submissions for the Wai 784 and Wai 972 Ngāti Kauwhata Claims (19 December 2025) Wai 2200, #3.3.120 [**Kauwhata Wai 784 and Wai 972 Submissions**] at [222].

consultation on the subject, and it is submitted that what occurred was reasonable in the prevailing circumstances at the time.

49. Before 1862, there had been extensive debate about the "native land question" and native affairs, which included difficulties associated with the lack of Māori representation, Crown pre-emption, and the lack of ability of Māori to deal directly with their lands. Māori views were expressed and considered during the debate.

50. In 1856, Governor Gore Browne appointed a Board of Inquiry to report upon the state of native affairs, its subjects including Māori land tenure and the purchasing of Māori land. The Board took evidence from 34 witnesses, nine of them Māori, and asked them expressly whether Crown grants should be given to individual Māori who could prove ownership. Most answered that they should, subject to competing claims first being resolved. The Board found that there was "no such thing as an individual claim, clear and independent of, the tribal right", and that no tribe had in all instances a well-defined boundary against adjoining tribes.[42] It is submitted that the Crown had accordingly identified, six years before the Native Lands Act 1862, both the communal character of customary tenure and the need for competing claims to be ascertained before title could be individualised.

51. Matters were also canvassed at the 1860 Kohimārama Conference, which the Governor convened following the outbreak of armed conflict in Taranaki over the disputed Waitara block. The Crown acknowledges that the

42 "Report of a Board Appointed by his Excellency the Governor to Enquire Into and Report upon the State of Native Affairs", transmitted to the House 9 July 1856, *Votes and Proceedings of the House of Representatives*, 1856, B-3. The findings quoted are at 4, [15], and at 3, [12]. Question No VIII and the witnesses' answers to it are at appendix 2. The Māori witnesses answering affirmatively were Hemi Taka, Wiremu Mahi ("After Government have settled the claims"), Paora ("If they had individual claims") and Kepa ("If the difficulties are removed and all the Natives consent"). The memorandum of witnesses records each witness's then location rather than his origin. Riwai Te Ahu, recorded as of St John's College, was of Te Āti Awa and had by then taught for 15 years at the Church Missionary Society school at Waikanae. He returned to the district in 1856, lived at Ōtaki in a house Ngāti Raukawa built for him at their own expense, and ministered in the villages from Waikanae to Manawatū: Octavius Hadfield *Maoris of By-gone Days* (Te Rau Press, Gisborne, 1902) at 10–13.

composition of the conference was a meeting of chiefs who were willing to consult with the Crown, rather than being fully representative.[43]

52. The Kohimārama conference included consultation about changing the existing system of land management and dealings. A number of Ngāti Raukawa chiefs based in the Manawatū were invited to attend the conference and some did so.[44] According to Anderson, Green and Chase, together with Tāmihana Te Rauparaha and Mātene Te Whiwhi of Ngāti Toa, they generally "spoke in support of the Treaty and the Pākehā system of settling land disputes in the changed environment of the colony, although not all thought that their lands should be sold".[45]

53. On 18 July 1860, the Governor sent the Conference a "Message" on the subject of land. The Message proposed that general principles regulating the boundaries of land belonging to different tribes be "generally received and adopted", because "until the rights of property are clearly defined, progress in civilisation must be both slow and uncertain". It contemplated that disputes between tribes "might be referred to a committee of disinterested and influential chiefs, selected at a conference similar to the one now held at Kohimarama". The Governor undertook that he "will gladly co-operate with them in carrying into effect any system that they can recommend, provided it will really attain the desired end".[46]

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43 Most or all of the principal Kīngitanga chiefs were not invited or did not come. The *Wellington Independent* records the objection, made at the time, that the Conference was "a partial one, the Governor's invitations having been confined to Mr. McLean's nominees, who consisted entirely of loyal chiefs", and the concession "[t]hat they are nominees we do not for a moment dispute". The answer given by McLean was that election by suffrage was "in the present circumstances of the country, practically impossible", and that the alternative was postponement until Māori "had been in some way enfranchised": *Wellington Independent* (4 September 1860) at 5.

44 Robyn Anderson, Terence Green and Louis Chase *Crown Action and Māori Response, Land and Politics 1840–1900* (Wai 2200, #A201, 1 June 2018) [**Anderson, Green and Chase**] at 210. The Ngāti Raukawa rangatira present, from Ōtaki and Manawatū, are recorded as Horomona Toremi, Parakaia Te Pouepa, Hūkiki [Te Ahukaramū], Wi Paiaka, Kuruhou Rangimaru, Te Moroati Kiharoa, Te Ao Marere, Ihakara Tokonui and Takerei Te Nawe: "The Great Meeting of Native Chiefs" *Wellington Independent* (4 September 1860) at 5. Nēpia Taratoa was invited but sent his apologies: Kohimārama Minutes at 21.

45 At 210–215.

46 Minutes of Proceedings of the Kohimarama Conference of Native Chiefs, July–August 1860, AJHR 1860, E-9 [**Kohimārama Minutes**] at 10. The Message is dated Government House, 18 July 1860.

54. Rangatira of Ngāti Raukawa responded at the 18 July 1860 sitting, as follows:[47]

54.1 Hūkiki Te Ahukaramū described what had been proposed as "the word which we have been in search of in years that are past", and complained of delay: "three years have we waited for it; but when will the lands be surveyed?" He said the land should be marked as his cattle were branded, "[b]ecause the Chiefs are grasping at great quantities of land, leaving none for the poorer people".[48]

54.2 Ihākara Tukumaru said of the Message that "[i]t is good: I wish our lands to be defined", and that this was "our desire, in order that each individual may have his portion clearly defined". He added that "no time should be lost".[49]

54.3 Parakaia Te Pouepa spoke in support of Te Ahukaramū but opposed proceeding quickly, saying "[r]ather wait till this perplexity is passed, then consider those lands".[50]

55. Two rangatira asked for the Message in writing before the Conference committed itself. Tāmihana Te Rauparaha said that the Message was "quite clear" to his understanding and that his "desire is that it should be printed in order that this Conference may consider it". Paora Tuhaere said he was "impatient that the Message of the Governor be printed, that we may carefully consider it, and then give our opinions upon the subject".[51]

56. That request was met, and the subject was kept before the Conference. On 23 July 1860 printed copies of the Message were distributed and the Native Secretary requested the Chiefs to give the subject their most careful consideration. On 24 July, he adverted to it again, pointed out the

47 Kohimārama Minutes at 10–11. The speeches are not reproduced in the minutes; they are recorded in *Nga Mahi a te Runanga ki Kohimarama / Proceedings of the Kohimarama Conference* (W C Wilson for the New Zealand Government, Auckland, 1860) [**Kohimārama Conference Proceedings**] No 14, the sitting of 18 July 1860 beginning at 29.

48 At 38.

49 At 39.

50 At 40. He supported the statements of Hūkiki Te Ahukaramū and Ropata while describing himself as their opponent, explaining that his opposition arose "from a desire to prevent quarrelling" and that his wish was "not to hold the land but to prevent evil arising".

51 Kohimārama Conference Proceedings No 14 at 33 (Tāmihana Te Rauparaha) and at 38 (Paora Tuhaere).

desirability of adopting some general plan for the definition of tribal boundaries, and requested them to give the subject their careful consideration on their return to their respective tribes.[52] The Conference then moved other matters.

57. On 6 August 1860, the Conference returned to the land discussion. The Native Secretary summarised matters. He recorded that the chiefs had received a Message "suggesting the definition of tribal boundaries to land and the individualization of title", and that the Governor "has requested you to bring the subject under the notice of your respective tribes when you return home, that you may devise some plan for the accomplishment of this object". Tāmihana Te Rauparaha proposed at that sitting "that the land be subdivided, in order that each man may have his own portion, and that our troubles may cease".[53] Horomona Toremi in fact declined the suggestion that the chiefs consult their rūnanga on returning home, saying "[i]t will not be right", and preferring authority conferred by the Governor to authority conferred by a rūnanga.[54]

58. It is apparent, then, that the definition of tribal boundaries and the individualisation of title was discussed at Kohimārama and rangatira of this inquiry district supported both. The Governor's Message had also suggested that disputes between tribes "might be referred to a committee of disinterested and influential chiefs". However, the Conference did not canvass the nature of any court, or any presiding officer, to determine these matters.

59. When enacted, s 5 of the Native Lands Act 1862 required every Court constituted under the Act to be under the presidency of a European Magistrate, and s 12 provided for the certificate of title to be signed by the President and Members of the Court. The composition of the Court was otherwise left to the Governor, and the rules he made on 29 December 1864 provided that any one Judge sitting with two Native Assessors should have

52 Kohimārama Minutes at 16.
53 At 21. Tāmihana Te Rauparaha's speech is at Kohimārama Conference Proceedings No 17 at 9; the minutes do not reproduce the speeches.
54 Kohimārama Minutes at 21.

the powers of the Court. No Native Assessor was to act in a case in which he had any personal interest.[55]

60. Although the Court's composition was not discussed at Kohimārama, the type of structure was not wholly new:

60.1 From 1846, a Resident Magistrate had sat with two Native Assessors to hear civil claims between Māori. Under ss 19 to 22 of the Resident Magistrates Courts Ordinance 1846 the two Assessors were chosen by the parties, one by each. Every case was to be "determined by the two Assessors" where they agreed. The Resident Magistrate decided only if they differed. No judgment could be carried into execution until both Assessors and the Resident Magistrate concurred in it.[56]

60.2 Section II of the Native Circuit Courts Act 1858 had required a Resident Magistrate in each Native District, assisted by at least one Native Assessor, to hold a Native Circuit Court, and ss XXXII and XXXIII provided in addition for an Assessors' Court composed of two or more Assessors alone, exercising the powers of that Court.[57] These sat on circuit in districts over which Māori customary title had not been extinguished. The Act's stated purpose was to make "more effectual provision … for the keeping of the Queen's Peace, and for the Administration of Justice" in those districts. Their jurisdiction was summary criminal and, where both parties were Māori, civil. Juries were available in both: the Assessors compiled a list of 36 men living within 25 miles of the court, from which the Resident Magistrate chose 12.[58]

61. The office of Native Assessor was the creation of the 1846 Ordinance. Section 20 empowered the Governor to appoint as Assessors "men of the

55 "A Warrant Making Rules for Regulating the Sittings of Courts under the 'Native Lands Act, 1862'", 29 December 1864, *New Zealand Gazette* 1864, No 51, at 467.

56 Resident Magistrates Courts Ordinance 1846, ss 19–22.

57 Native Circuit Courts Act 1858, ss II and XXXI–XXXIII.

58 Native Circuit Courts Act 1858, ss II, V, VI, XIII and XXIV. Neither Act conferred jurisdiction to determine title to land; ss III and IV of the 1858 Act use Māori customary title only to fix the boundaries of the district.

greatest authority and best repute in their respective tribes" who were willing to act. Section XXXI of the Native Circuit Courts Act 1858 continued the office in the same words, appointing Assessors of the Resident Magistrate "for the purposes of this Act, and of" the 1846 Ordinance. The office had been present in the inquiry district for many years when the Native Land Court was established. Māori of the Manawatū had sought such an appointment, and rangatira of Ngāti Raukawa and affiliated groups had held the office since the early 1850s:

61.1 In October 1852, the Native Secretary reported that the European and Māori residents at Manawatū had "expressed a wish that an assessor should be appointed for their district to aid the Magistrate in assisting native disputes", and that Ihākara of Ngāti Raukawa at Te Awahou was "a most eligible person to perform the duties of such an officer".[59]

61.2 Tāmihana Te Rauparaha was appointed at Ōtaki in 1853 and Mātene Te Whiwhi during the 1850s. Mātene Te Whiwhi was in due course a senior assessor at £100 a year, Ihākara Tukumaru an assessor at £50, and Noa Te Whata an assessor at Horowhenua at £30, with two karere.[60]

61.3 At Kohimārama, Ihākara Tukumaru recalled that "[t]he Governor called for Native Assessors to assist the European Magistrates", and said "I assented to this also".[61]

62. Ngāti Raukawa and affiliated groups had a further opportunity to express their views on land matters after Governor Grey took office again in 1861. Grey developed a plan for "native government" based on a system of district and local rūnanga.[62] In this context, Ngāti Raukawa and affiliated groups

59 Anderson, Green and Chase at 89, citing McLean to Governor, 21 October 1852, ACIH 16057 MA 24/8/16.

60 At 89. As to the salaries, Terence Hearn *One past, many histories: tribal land and politics in the nineteenth century* (Wai 2200, #A152, June 2015) [**Hearn**] at 275. As to Noa Te Whata, Jane Luiten and Kesaia Walker *Muaupoko Land Alienation and Political Engagement Report* (Wai 2200, #A163, August 2015) [**Luiten and Walker**] at 46.

61 Kohimārama Conference Proceedings No 14 at 38.

62 Donald Loveridge The Development *and Introduction of Institutions for the Governance of Maori, 1852–1865* (Wai 1040, #E38, September 2007, report for the Crown Law Office) [**Loveridge**] at 294.

were consulted by Walter Buller, then resident magistrate for the Native District between Paekākāriki and Whangaehu, in putting Grey's plan to them. Buller held sittings at the European settlements and visited the principal villages of that district, addressing 13 meetings in all.[63] The District Rūnanga in each district was to have power, among other things, of "providing for the adjustment of disputed land boundaries, of tribes, of hapus, or of individuals, and for deciding who may be the true owners of any Native lands".[64] Views on Grey's new institutions were obtained at Buller's meetings with iwi and a report dated 25 June 1862 was tabled in the House.[65]

63. Buller reported that only at Ōhau and Waikawa were Māori openly antagonistic to the Crown's plans; that other communities had given their immediate approval of the new institutions; and that the rest were prepared to observe and see whether they thought the scheme worthwhile adopting. He recorded Ōtaki itself as equally divided.[66]

64. By Orders in Council of 7 March 1862, effective 31 March 1862, the Governor appointed the Native District of Manawatu, bounded by the Whangaehu River, the Ruahine and Tararua ranges and Paekākāriki Hill, under both the Native Districts Regulation Act 1858 and the Native Circuit Courts Act 1858.[67] However, no district or village rūnanga was constituted for the Native District.[68] What endured in the district was the Resident Magistrate assisted by Māori assessors.[69] The Native Circuit Court sat in the Manawatū with a panel of assessors sitting on occasion under the Resident Magistrate.[70]

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63 Report from Walter L Buller Esq, RM, 25 June 1862, AJHR 1862, E-9, Sec IX, at 3–6.
64 AJHR 1862, E-2, at 11.
65 Report from Walter L Buller Esq, RM, 25 June 1862, AJHR 1862, E-9, Sec IX, at 3–6.
66 At 3–6.
67 Orders in Council issued under the Native Districts Regulation Act 1858 and the Native Circuit Courts Act 1858, AJHR 1862, E-6, Nos 27 and 28 (7 March 1862), at 14–15.
68 The mechanism was a separate Order in Council constituting a rūnanga within the district, to be termed "the District Runanga of —" or "the Village Runanga of —": at 12–13, No 24, cl 1. As to this district, see Anderson, Green and Chase at 234, recording that the new institutions came into full operation "only in Northland", the Native Circuit Court functioning in the Manawatū with a panel of assessors sitting on occasion under the Resident Magistrate.
69 Hearn at 219–220.
70 Native Circuit Court, Manawatu, 9 March 1863, *Wanganui Chronicle* (19 March 1863).

65. Rūnanga in the form of the original Māori institution operated in parallel to the institutions established by the Crown. Through the period from 1845, they operated at the village level, where rangatira publicly arbitrated local disputes. The scheme Grey promoted from 1861 drew on that model and sought to bring them within the Crown system. In various instances, rūnanga convened by Ngāti Raukawa and neighbouring iwi exercised authority over land questions. Rūnanga of Ngāti Raukawa met following the Rangitīkei-Turakina negotiations and fixed the boundary of the land that was not to be sold.[71] Local rūnanga continued to function into the 1870s and 1880s, many of them seeking state recognition of their authority.[72]

66. The Crown acknowledges that previous Tribunal inquiries have found that Māori involvement in the establishment of the Native Land Court was insufficient. In the Hauraki inquiry, the Tribunal referred to the fact that none of the draft Bills and schemes which passed between Governors, Ministers, officials and the Colonial Office between 1859 and 1862 appear to have been the subject of formal discussion with Māori.[73] In the Whanganui inquiry, the Tribunal found that the decision to establish the Court did not involve Māori to any significant degree.[74] The Crown recognises those findings, and acknowledges that the Bill which became the Native Lands Act 1862 was not itself put to Māori. It is submitted, however, that some of the principles to which that Act gave effect were put to rangatira of this district, and were sought by them. Moreover, while the Crown had created the Native Land Court, it only became active and its processes engaged where people made applications to it.

67. The Court's first sittings at Ōtaki in 1866 dealt with small blocks of land over which there had been some light contestation.[75] In these cases, applications were brought willingly by those seeking security and certainty in their land interests, which they had already asserted by marking off boundaries with stakes. The investigations undertaken by the Native Land Court revealed

71 Hearn at 116; and Luiten and Walker at 43.
72 Anderson, Green and Chase at 773.
73 *The Hauraki Report* at 674.
74 *He Whiritaunoka: The Whanganui Land Report* (Wai 903, 2015) [***He Whiritaunoka***] at 383.
75 Richard Boast *Ngāti Raukawa: Custom, Colonisation and the Crown, 1820–1900* (Wai 2200, #A215, 5 December 2018) [**Boast**] at 260–261.

that Ōtaki Māori had been transacting in township lands since its formation.[76] It is unsurprising such individuals sought clear and legally recognised titles, and for many the Native Land Court appeared a welcome development.

68. Moreover, a unique feature of the Native Land Court's introduction to the inquiry district was that it was not initially permitted to operate over a significant portion of it. As relayed above, provisions in the 1862 and 1865 Acts excluded the "Manawatu block" from its operation.[77] Faced with Featherston's negotiations to purchase the land, petitions from leaders of Ngāti Raukawa and affiliated groups actively sought the removal of this exclusion so that the Native Land Court could begin to operate.[78] A petition from Paranihi and Eruini Te Tau, witnessed by Mātene Te Whiwhi and Akapita Te Tewe and signed by members of Ngāti Pikiahu, Ngāti Waewae, Ngāti Maniapoto and Ngāti Hinewai, for instance, said:[79]

> Give heed: Only the land of us, the Ngatiraukawa, has been excluded from the Land Court. We have sent a petition to the General Assembly, praying that the Act might be disannulled, in order that our claims may be taken through the Court. We have also been to Governor Grey and shown him our troubles, requesting that our claims to the land be investigated. We have also been to the Colonial Ministers and requested to have our title investigated; but they paid no heed.

69. The Court was looked upon by these petitioners as protective of their interests, and its adjudication was specifically requested.

Displacement of custom and customary institutions

70. The submission advanced by Ngāti Raukawa and affiliated groups, as the Crown apprehends it, is that both the process established under the native land laws (that is, the investigation of title by the Native Land Court) and the effects of those laws (that is, the outcomes of title investigations and the

76 Anderson, Green and Chase at 497–500.
77 Native Lands Act 1862, s 31; and Native Lands Act 1865, s 82.
78 Anderson, Green and Chase at 329 and following.
79 At 330 citing Paranihi Te Tau and Eruini Te Tau to Queen, 20 June 1867, AJHR 1867, A-19, at 4.

forms of title awarded) were inconsistent with Treaty principles as undermining tino rangatiratanga and the role of custom and customary institutions. The Crown addresses the effects first, in light of its concessions, and then turns to the process.

71. The Crown has accepted that the individualisation of Māori land tenure provided for by the native land laws made the lands of Ngāti Raukawa and affiliated groups more susceptible to fragmentation, alienation and partition, and contributed to the undermining of the traditional tribal structures of those groups. It has conceded that its failure to protect those structures was a breach of te Tiriti o Waitangi / the Treaty of Waitangi and its principles. The Crown has also conceded that the cumulative effect of its acts and omissions left Ngāti Raukawa and affiliated groups in the inquiry district virtually landless. It acknowledges that these effects would, in turn, have impacted on the capacity of Ngāti Raukawa and affiliated groups to assert their tribal autonomy and to exercise tino rangatiratanga.

72. As to the Native Land Court process, however, the Crown says that it was not of itself a breach of Treaty principles to establish the Native Land Court to investigate title and to resolve disputes over land. For the reasons already canvassed, the Crown maintains that there was a demonstrable need by the early 1860s for a forum to determine competing claims to land. This is particularly evident within the rohe of Ngāti Raukawa and affiliated groups, where contestation over land rights long preceded the advent of the Native Land Court.[80] An independent, external adjudicator in the form of the Native Land Court was a legitimate and reasonable option for dealing with these circumstances.

73. The investigation of title by the Native Land Court was a process set out in the native land legislation and intended to provide a form of title that reflected customary rights and interests in land. While the Native Land Court was not a customary institution, custom remained essential to the process.[81]

80 Consider the contest over, for example, the Horowhenua and Kukutauaki blocks.
81 Native Lands Act 1865, preamble.

74. Section 23 of the Native Lands Act 1865 required the Native Land Court to ascertain interests in land "according to Native custom". Under s 7 of the Native Land Act 1873, the Native Land Court was a court for "the investigation of the titles of persons to Native land according to Native custom and usage".[82] Evidence relating to custom or usage was adduced by claimants and their witnesses. The Court could also use evidence given in former cases before it, provided the parties were substantially the same. The Court was required to sit with one or more Māori assessors, who were intended to be the Court's authority on matters of Māori custom. Up until the 1894 Act (and excepting a brief period following the 1873 Act), the concurrence of at least one assessor was required for any judicial act or decision of the Court to be valid.[83]

75. Importantly, the Crown says, the Court was also empowered to give effect to voluntary arrangements that Māori arrived at amongst themselves.[84] The Court's acceptance of such arrangements shows an acceptance of the authority of chiefs and deference to communal decision-making. A degree of tribal influence accordingly operated through this mechanism.

76. The mechanism can be seen at work in the Court's early sittings in this district. In many instances at Ōtaki, ownership had "already been decided by a runanga of leading chiefs", and the Court's role was "largely confined to rubber stamping those decisions".[85] Later, at an Ōtaki sitting in 1879, the Court adjourned so that the claimants could decide whether individual shares should be equal or, if not, the proportions in which they should be held. A rūnanga then "sat to determine the area for each member", and the

82 Section 24 of the Native Land Court Act 1880 similarly required the Native Land Court to ascertain title to land "according to Native custom or usage". That same formula continued in the Native Land Court Act 1886 but was changed "to Native custom" in the Native Land Court Act 1894, and to "the ancient custom and usage of the Māori people" in the Native Land Act 1909.

83 Native Lands Act 1865, s 12; Native Lands Act 1867, s 16; Native Land Act 1873, s 15 (but see Native Land Act Amendment Act 1874, s 5); Native Land Court Act 1880, s 11; and Native Land Court Act 1886, s 9. See Native Land Court Act 1894, s 18, putting an end to this practice.

84 Native Land Act 1873, s 46; and Native Land Court Act 1880, s 56.

85 Anderson, Green and Chase at 626.

Court gave judgment along the lines of the determinations reached out of court.[86]

77. It should also be observed that the Native Land Court did not entirely displace customary fora for resolving disputes over land: rather there are examples in the inquiry district where applications to the Court were only pursued after all other efforts to resolve protracted disputes had failed. Boast describes, for example, attempts made during the Horowhenua dispute to resolve matters by bringing in respected rangatira from outside the region to mediate or arbitrate—all of Ngatuere Tāwhirimatea Tāwhao, Te Peeti Te Aweawe, Wiremu Pōmare, Wi Parata and Heremaia feature. None of the attempts to mediate were successful, and the matter was eventually adjudicated upon by the Native Land Court.[87] Boast concludes that "[e]stablishing the Court meant that other pathways were closed off",[88] but the Crown submits that the continued use of these customary mechanisms (as late as 1871 in the case of Horowhenua) rather belies that.

Operating principles and issues

78. The generic submissions raise additional issues arising in connection with the operation of the system that was put into effect alongside the Native Land Court. The Crown says that, in considering these further "operational" issues, it is necessary to distinguish between those aspects of the regime for which the Crown is or may be responsible, on the one hand, and those aspects for which the Native Land Court is responsible, on the other.

79. The Tribunal has previously found that the Native Land Court was not "the Crown" nor an agent of the Crown.[89] As a formal court of record, the Native Land Court was part of the judicial arm of government and thus independent of the Crown.[90] The Crown considers that the Crown's responsibility in a Treaty context lies with the statutory framework within which the Native Land Court operated.

86 At 463, citing Ōtaki minute book 4, 5 December 1879, at 141–142.
87 Boast at 81 and 404–405.
88 At 82.
89 *Rekohu* at 33; and *Te Urewera* vol 3 at 1092.
90 Native Lands Act 1865, s 5.

Accessibility of the native land laws

80. Ngāti Raukawa and affiliated groups submit that Māori would have had problems accessing and understanding the native land laws as a result of frequent, almost annual, amendments. They refer to the generic findings of the 1980 Royal Commission that frequent amendments had "produced a body of legislation which is a morass for the legal profession and leads to very great difficulties for the Māori people in dealing with their land".[91]

81. The Crown acknowledges, at a general level, that the native land laws were complex and likely trying and difficult to navigate. However, the Crown says that the complexity of the legislation essentially reflected the complexity of the subject matter, and its ongoing refinement reflected an aspiration of continuous improvement. These matters do not translate to a breach of the Treaty. The Crown also says the evidence is insufficient to allow any conclusions to be drawn as to specific prejudice suffered by Ngāti Raukawa and affiliated groups as a consequence of problems with access and understanding.

Survey costs and other associated court costs

82. Ngāti Raukawa and affiliated groups submit that the imposition of a range of costs and fees, including those associated with surveying, had a heavy impact on Māori landowners when dealing with the Native Land Court. They submit that Māori landowners' inability to pay these costs often led to the alienation of land. Ngāti Raukawa and affiliated groups also identify other, indirect, costs incurred by Māori in connection with the Native Land Court process, such as the costs of attending lengthy hearings at venues far from their settlements, including social costs from disease, drunkenness and neglect of food production.[92]

83. As a matter of principle, the Crown says it was not unreasonable that Māori landowners should have contributed to the costs of title investigation, including the surveying of land. The Crown disagrees with the submission of Ngāti Raukawa and affiliated groups that the only parties to benefit from the

91 Claimants' Submissions at [79] citing *Report of the Royal Commission of Inquiry into the Maori Land Courts* (1980) AJHR H-3 at 7 and 14.

92 Claimants' Submissions at [83]–[97].

process were the Crown and settlers.[93] Rather, for those Māori looking to take up new economic opportunities by selling, leasing or otherwise dealing with their land, a secure legal title was clearly of benefit, and the cost would have been immediately recoverable through standard economic transactions. Even those who wanted to have their rights identified, but did not want to trade them, retained the benefit of holding secure and certain titles.

84. The Crown's view remains that it was reasonable for Māori to bear a level of cost to achieve the economic benefits of receiving a title. However, the Crown recognises that, in principle, there is a point beyond which these types of costs might be considered unreasonable. Determining whether that point was in fact passed in the inquiry district would need to be assessed on a case-by-case basis.

85. The Crown observes that it did, on some occasions, take steps to ease the burden of these costs. For example, the government bore the costs of surveys of the Horowhenua block.[94] However, the Crown acknowledges that survey costs could often be significant and that in some cases Māori had to alienate land to satisfy them. Court fees (which depended on the number of days of hearing, the number of witnesses called, and other such factors—not all of which were under the control of the Court or the Crown) could also quickly mount in heavily contested cases. The Crown acknowledges that more could have been done to ease the burden of these and other indirect costs.

86. The generic submissions also raise issues with the Court's scheduling practices, such as its practices of not issuing hearing schedules, and of holding hearings simultaneously in te Raki and te Tonga such that those with interests in both could not fully engage. The Crown submits that it was not responsible for these matters, being the operational responsibilities of the Court.

93 At [85].
94 Anderson, Green and Chase at 536 and 540.

87. Under this heading, the generic submissions also raise the social costs of the succession rules that were devised by the Court in the Papakura case and following.[95] The rules and practice that developed were, again, the product of the Native Land Court, which was independent of the Crown. Despite a legislative direction in 1873, and in subsequent legislation, that the Court should ascertain succession according to Māori custom, the Court continued to apply succession rules that reflected English law.

88. The Crown acknowledges that the succession rules that the Native Land Court developed and applied have been a principal cause of land fragmentation, with a range of prejudicial consequences for Ngāti Raukawa and affiliated groups. Over time, the Crown has sought to address those consequences in a number of ways, including provision for the incorporation of owners as a way to promote the better management and use of land, consolidation schemes, and, more recently, legislative measures such as whānau, pūtea and whenua tōpū trusts under Te Ture Whenua Maori Act 1993. However, there has never been a simple solution to the problem of an ever-increasing number of owners for finite areas of land.

89. The Crown respectfully submits that the opinion of the Tribunal in the Hauraki inquiry on the matter of succession is a balanced one, with much to commend it:[96]

> The court-developed rules on intestate succession (essentially a division of the estates of both parents equally amongst all children, without any residence requirement) were a significant departure from custom and, along with increasing mobility of population, contributed significantly to land interests being held by absentee owners. They also led to the increasing fractionation of shares and titles once the Māori population started to increase (although the extent of this was hardly foreseeable in the 1860s, when the Māori population was declining). However, by the 1880s Māori themselves had become accustomed to the

95 *Important Judgments Delivered in the Compensation Court and Native Land Court 1866–1879* (Brett (under the direction of the Chief Judge, Native Land Court), Auckland, 1879) [***Important Judgments***] at 19–20.

96 *The Hauraki Report* at 782.

> principles adopted; although the right of all children to succeed in equal shares to their parents' interests was not entirely customary, they tended to regard the right as a version of tikanga and resisted efforts by the Legislature to have succession conform more closely to English rules. Being possessed of an interest in the land of one's parents or grandparents become increasingly valuable as a mark of identity and belonging to a hapū, regardless of the economic worth of the interest. But with the increasing numbers on titles, the want of a legal mechanism for the named owners to act corporately was increasingly felt.

Ten-owner rule, individualisation and collective administration

90. In their generic submissions, Ngāti Raukawa and affiliated groups identify specific provisions of the native land legislation that they say led to the individualisation of title, the exclusion of individuals from land in which they held interests, and the destruction of the collective tribal estate. They highlight, in particular, the ten-owner rule applied under the Native Lands Act 1865 and canvass issues with the reformed title options available under later legislation. Returning to the theme of the inadequacy of the Crown's concessions, they submit that these features of the legislation show that the Crown's failure to protect Māori land from fragmentation was not merely an oversight, but deliberate, and that the Crown's concessions ignore "the direct problem of the creation of the system that was hostile to anything other than English-style individual ownership and actively sought to undermine both Māori society and the way in which it operated".[97]

91. The Crown's concessions on the native land laws go directly to these issues raised. The Crown has acknowledged that the native land laws were premised on the individualisation of title and that this contributed to the fragmentation of Māori land in the inquiry district and the undermining of tribal structures. It has conceded that its failure to protect those structures, and its failure to provide a legal means for the collective administration of their land until 1894, were breaches of te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

97 Claimants' Submissions at [98] and [115].

92. The Crown emphasises, however, that the imperfections of the system should not be taken as evidence of bad faith on its part, as appears to be the suggestion. It is important to recognise that the native land law system was a novel model designed specifically for New Zealand circumstances. The forms of title crafted in the nineteenth-century native land laws did not simply replicate English common law forms of title; the statutory scheme was also intended to (and at least attempted to) reflect custom in the titles. The experimentation involved in that endeavour resulted in forms of title that did not exist in Britain, and which attempted to strike a balance between protection and autonomy, collectivism and individualism, and reflect historical customary precepts whilst also enabling the titles to meet modern needs.

93. The Crown accepts that, initially, the native land laws did not easily accommodate the complexities of communal ownership, but they were progressively reformed to better promote such recognition. To summarise that history of reform:

    93.1 While it was not operative in the inquiry district, the initial 1862 legislation is important context. The 1862 Act provided for a certificate of title to be issued to a "tribe" or "community", as well as individuals.[98]

    93.2 The 1865 Act also made provision for tribal titles, but only if the area in question exceeded 5,000 acres.[99] The 1865 Act otherwise introduced the so-called "ten-owner rule", under which no more than 10 owners could be listed on the title. It appears that the intention behind the 1865 legislation was that any large areas of land less than 5,000 acres coming before the Court would be subdivided, in the course of a hearing, into areas of land that would have no more than 10 owners per block in an attempt to "individualise" titles at the whānau level. However, in the result the rule was applied to blocks of any size. The result was that some

98 Native Lands Act 1862, s 12.

99 This section was rarely used, although Boast suggests that the Manawatū-Kukutauaki title awarded in 1873 was in fact "tribal", until it was partitioned: Boast at 54.

right-holders were omitted from titles and dispossessed of interests. The Crown was alive to the injustice to which this rule gave rise and took steps to remedy it.

93.3 In an attempt to deal with the abuse of the ten-owner system, title options were reformed in 1867 by the introduction of s 17 titles. The essential features of the new title were that, while no more than 10 individuals could be listed on the title, the names of all individuals with an interest in the land were to be registered by the Court. Land covered by this form of title could not be sold before it was subdivided. All the interested persons, or a majority of them, had to agree before a partition was made, allowing sellers and non-sellers to go their separate ways. Thus, while the owners were all individually named, the legislative intention was that their ability, at least initially, to deal separately with their interest would be constrained by the will of the majority of the owners. As this Tribunal explained in the *Waikanae* report, s 17 provided for rangatira to act essentially as trustees.[100]

93.4 The 1873 Act provided a definitive solution to the problem posed by the ten-owner rule: all owners had to be identified on the titles issued. Further, memorials issued under this legislation provided that land could not be subdivided and sold unless a majority of the owners agreed.[101] Ngāti Raukawa and affiliated groups submit this legislation gave rise to a raft of new issues due to its formal individualisation of title into shares apportioned to members of the tribal group, making it difficult for owners to do anything with their land but sell it.[102] The Crown submits it was nevertheless a good faith attempt by the Crown to address the issues with the ten-owner rule, and more fully reflected the extensive, multiple interests in a given block of land. Individualisation and fragmentation were not immediate under the 1873 Act—there

100 *Waikanae: Report on Te Ātiawa/Ngāti Awa Claims* (Wai 2200, 2022) at 233.
101 Native Land Act 1873, ss 47–49.
102 Claimants' Submissions at [103].

would have to be a survey and partition before any interests could be separated out. Until that time, owners needed to make decisions collectively.

94. By 1886, there was provision for owners to elect a block committee to determine whether or not to sell or lease land.[103] By 1894, the Crown had devised an effective means for collective administration by providing for the incorporation of owners, with control vested in a committee.[104]

95. Under this heading, Ngāti Raukawa and affiliated groups also raise issues with the provisions in the native land laws which enabled individuals to apply to the Native Land Court, regardless of the wishes of the community.[105] They submit that this too subverted collective rights-holding. While the Crown acknowledges, as it has in the past, that the Native Land Court regime could compel those who otherwise did not want to participate in title determination to participate in order to protect their interests, the Crown maintains there was a demonstrable need for a forum to determine competing claims to land. It is also generally not the case that applications for title investigations were made by non-representative individuals; in this district, as in others, individual applicants tended to act for their whānau or hapū interests.

PART II: RESPONSE TO CLAIM-SPECIFIC SUBMISSIONS

The Crown's approach in this section

96. The claim-specific closing submissions provide detailed examples of the impacts of the systemic issues identified in the generic submissions—particularly of the fragmentation, alienation and partition following specific awards by the Native Land Court. Where that is the case, the Crown does

103 Native Land Administration Act 1886.

104 Native Land Court Act 1894, s 122.

105 Claimants' Submissions at [108]. Title investigations were initiated by application from any "Tribe Community or Individuals" under the 1862 legislation, by "any Native" under the 1865 legislation or by "any Natives" under the 1873 legislation: Native Lands Act 1862, s 7; Native Lands Act 1865, s 21; and Native Land Act 1873, s 34. Section 16 of the Native Land Court Act 1880 required applications for title investigation to be by "any three or more natives". A single individual could not, therefore, make applications to the Court for a title investigation under this Act. Section 17 of the Native Land Laws Amendment Act 1883 deleted the words "three or more" from the relevant section of the 1880 Act, with the result that "any natives" could make application to the Court. Section 17 of the Native Land Court Act 1886 also provided that "natives" could make application to the Court.

not respond to each of those submissions directly, on the basis that the Crown has already canvassed its position in response to the generic submissions above, as well as in its formal concessions.

97. Several claim-specific closing submissions have also criticised particular awards of the Native Land Court for failing to recognise accurately the customary pattern of rights and, in essence, making wrong decisions. Where that is the case, the Crown's position is that it is not responsible for those decisions of the Court, the Court being independent of the Crown. The Crown also observes that the Tribunal, in the *Hauraki Report*, considered it was not in a position to comment on the findings of the courts, including the Native Land Court, in particular cases.[106] The Crown respectfully concurs with that view.

98. The Crown acknowledges in principle, however, that it is responsible for Crown actions that may have influenced the Court, and for the Crown's response to issues with Court decisions (to the extent that issues with decisions were brought to the Crown's attention). The Crown's focus in the balance of these submissions is on cases that are potentially within these categories, namely:

    98.1 the Rangitīkei-Manawatū block; and

    98.2 the Horowhenua block.

Rangitīkei-Manawatū block

99. Several claim-specific closing submissions deal with the Native Land Court's determination of claims to areas within the Rangitīkei-Manawatū block. Issues are raised with the correctness of the Court's decisions, the sufficiency of the awards made, and other aspects of the Native Land Court process. For the reasons already stated, however, the Crown's focus is on those aspects of the proceedings where its own conduct or that of its agents (as opposed to that of the Native Land Court) is impugned. For example:

106 *The Hauraki Report* at 781.

99.1 Ngāti Kauwhata (Wai 784 and 972) submit that the Crown acted unfairly, and in breach of Treaty principles, by actively opposing the non-seller claimants in both hearings.[107]

99.2 In a similar vein, the generic submissions filed in relation to Crown purchasing submit that Ngāti Raukawa and affiliated groups were prejudiced by the Crown's intervention in the Native Land Court process and by the deliberately narrow framing of the Court's inquiry under s 40 of the 1867 Act. They submit further that the Native Land Court was not a "disinterested arbiter" but rather was influenced by political exigencies and the need to endorse the Crown's purchase of Rangitīkei-Manawatū. In these circumstances, they say, the Crown must bear responsibility for the Court's decisions.[108]

99.3 Ngāti Parewahawaha and Ngāti Manomano submit that the Crown did not take adequate steps to prevent Ngāti Apa from engaging in intimidatory and violent acts when they sought to influence the Native Land Court's hearing of the non-sellers' claims.[109]

Background

100. The history of the Native Land Court's involvement in the Rangitīkei-Manawatū block is closely intertwined with Crown purchasing in the region. As already discussed, provisions in the 1862 and 1865 Acts specifically excluded the "Manawatu block" from the Court's operations while Crown purchase negotiations were ongoing. The Crown's purchase of that block in 1866, despite the objections of many in Ngāti Raukawa and affiliated groups who asserted interests in the block, is understandably a source of grievance. The Crown has made specific concessions of Treaty breach in respect of its conduct in this regard.

107 Kauwhata Wai 784 and Wai 972 Submissions at [234]–[239].

108 Generic Claimant Closing Submissions on Crown and Private Purchasing for Ngāti Raukawa and Affiliated Groups (9 November 2025) Wai 2200, #3.3.100 [**Claimants' Submissions on Crown Purchasing**] at [326]–[349].

109 Ngāti Parewahawaha and Ngāti Manomano's Submissions at [185] and [195]–[198].

101. It was in response to these grievances that s 40 of the 1867 Act was enacted, conferring a special jurisdiction on the Native Land Court to investigate the claims of non-sellers to the block:

> The Governor may at his discretion refer to the said Court the claim of any person to or any question affecting the title to or interest of any such person within the boundaries as described in the second Schedule hereto being the boundaries in a certain deed of sale to the Crown bearing date the thirteenth day of December one thousand eight hundred and sixty-six and expressed to be a conveyance by Natives entitled to land within the district excepted from the operation of the said Act by section eighty-two thereof Provided that no claim by and no question relating to the title or interest of any Native who shall have signed the said deed of sale shall be so referred and the Native Lands Court shall in the manner prescribed by the said Act investigate and adjudicate upon such claim and the interests in and title to any land so claimed.

102. Section 40 is the subject of criticism by the claimants, who submit that it fell short of what was required to address the grievances of Ngāti Raukawa and affiliated groups. Rather than permitting non-sellers to challenge the purchase itself, s 40 had the effect of limiting the inquiry in the Crown's favour.[110] The validity of the purchase was assumed, and non-sellers could only hope for title to limited portions of the purchased land.

103. The Crown submits, however, that s 40 was a good faith attempt to respond to the concerns expressed by Ngāti Raukawa and affiliated groups, many of whom had long sought the adjudication of the Native Land Court over the block. Nor was the jurisdiction an empty formality. Decisions made in its exercise carried real consequences for the Crown: the Court's determinations bore directly on how much land the Crown could be said to have purchased, and in the event returned some 11,700 acres to non-sellers.[111]

110 Claimants' Submissions on Crown Purchasing at [325]–[326]; and Ngāti Parewahawaha and Ngāti Manomano's Submissions at [139.4].

111 Boast at 281.

104. The non-sellers lodged 11 claims, which the Governor referred to the Native Land Court between November 1867 and the end of March 1868. Together, the 11 claims covered the entire Rangitīkei-Manawatū purchase area.[112]

105. Two key decisions resulted. The first dealt with the claims of Parakaia Te Pouepa and others whose hapū rights were concentrated at Hīmatangi, an area of 11,500 acres on the western side of the Manawatū River. The Court found, in short, that Ngāti Raukawa had not acquired the whole of the Rangitīkei-Manawatū block on the basis of conquest as claimed; the original owners were never "absolutely dispossessed". Ngāti Raukawa and the original owners rather "possessed equal interests in, and rights over the land in question". Parakaia Te Pouepa and co-claimants (in whom the "tribal interest" solely vested) were awarded 5,500 acres (half the block, less 2/27 for two claimants who had signed the deed of cession).[113]

106. The second dealt with the claims of all other non-sellers to the Rangitīkei-Manawatū block. The Court again rejected Ngāti Raukawa's claim to the lands by conquest, adopting instead a narrative of amity between Te Rauparaha and Ngāti Apa. It found that Ngāti Parewahawaha, Ngāti Kahoro and Ngāti Kauwhata had occupied the lands, "on terms of perfect alliance and friendship" with Ngāti Apa, and had interests in the block. Ngāti Raukawa and affiliated groups were granted 6,200 acres.[114]

The Crown's intervention

107. It is said to be a particular feature of the Native Land Court proceedings in relation to the Rangitīkei-Manawatū block that the Crown was an active participant. In the Hīmatangi hearing, William Fox (politician and barrister, and at that time leader of the opposition) appeared in opposition to the non-sellers' claim. Boast explains that while in theory the counterclaimants were Ngāti Apa, Rangitāne, Muaūpoko, and other groups opposed to Ngāti Raukawa, the Court "simply worked on the assumption that it was the Crown that was opposing the Raukawa claim".[115] In the Rangitīkei-Manawatū

112 Paul Husbands *Māori Aspirations, Crown Response and Reserves 1840 to 2000* (Wai 2200, #A213, November 2018) [**Husbands**] at 80.
113 Anderson, Green and Chase at 358–359.
114 At 381–385.
115 Boast at 287.

hearing, James Prendergast (then Attorney-General) appeared. The generic submissions suggest there was no other instance where the Crown assumed such a role in the Native Land Court and, further, that its appearing in this way was a breach of its duty of good faith and the principles of active protection and equal treatment.[116]

108. The Crown submits that, though unusual, there was nothing improper in the appearance of counsel to represent the Crown's interests in these hearings. Section 40 conferred an unusual jurisdiction on the Court, enacted as it was to respond to non-sellers' concerns about a purported Crown purchase. The fact of this purchase took the Hīmatangi and Rangitīkei-Manawatū proceedings out of the ordinary run of Native Land Court cases—a fact that is reflected in Native Minister Richmond's characterisation of the proceedings as more in the nature of a "commission of general inquiry".[117]

109. The Crown's appearance was explained in the Rangitīkei-Manawatū decision as follows:[118]

> This claim by Akapita is opposed by the Crown, who have purchased from Ngatiapa, on the grounds that the original owners, the Ngatiapa, have never been conquered, and that the Ngatiraukawa as a tribe have not acquired any right or interest whatever in the land, and, moreover, that the land claimed by Akapita is now the property of the Crown, having been legally purchased from the right owners.

110. Given the purported sale of the block to the Crown, it was the natural respondent to the claim. Its interests as purchaser were directly engaged, while the expectation was that those of Ngāti Apa and other non-Ngāti Raukawa sellers would soon be extinguished. In the circumstances, the Crown submits that it cannot be criticised for appearing to defend its interests.

116 Claimants' Submissions on Crown Purchasing at [330]–[332].
117 Anderson, Green and Chase at 370–371.
118 *Important Judgments* at 101.

Allegations of Crown influence

111. Nor, the Crown submits, does the appearance of Crown counsel mean that the judges of the Native Land Court were improperly influenced by the Crown, such that their independence was eroded. The Crown is of course regularly represented in the courts. Our constitutional system rests upon the assumption that an independent judiciary will not be so influenced.

112. In the absence of direct evidence of Crown influence or collusion, the claimants rely on the reasoning and result of the Hīmatangi and Rangitīkei-Manawatū decisions, as well as the importance of the purchase to the provincial government, as grounds for inferring Crown influence. The generic submissions on Crown purchasing submit that the Rangitīkei-Manawatū decision, in particular, was so contrary to the historical record, uneven in its portrayal of Ngāti Apa and Ngāti Raukawa, and "crude and untenable", that it is said to be "hard to escape the conclusion that [the] decision of the Native Land Court's was tailored to suit the government's agenda".[119]

113. Belgrave's evidence presents a different view. His view is that the historical narratives for the non-sellers "revealed substantial weaknesses" in the conquest narrative on which their claim rested.[120] To take one example, Belgrave suggests that Mātene Te Whiwhi, in acknowledging the peace agreement between Te Rangihaeata and Ngāti Apa through the marriage of Te Rangihaeata and Te Pikinga, indicated a level of accommodation between Ngāti Toa and Ngāti Apa that undermined the non-sellers' argument that the conquest had been completed prior to their arrival. Meanwhile, "[t]heir own narratives of Ngāti Raukawa violence were limited and largely concentrated on the killing of individuals who were unlucky enough to be encountered on the heke down."[121] Belgrave concludes:[122]

> As a result of this evidence, the Court's 1869 decision was justified in rejecting the non-sellers' claims to rights through conquest and

119 Claimants' Submissions on Crown Purchasing at [345]–[347].
120 Michael Belgrave *Intertwined Histories Muaūpoko and Ngāti Raukawa* (Wai 2200, #A254, December 2025) vol 1 [**Belgrave**] at [25].
121 At [25].
122 At [26].

> gift from Ngāti Toa, which left the original iwi completely subordinate and bereft of mana. Arguments that the Court could not, for political reasons and the fact that the purchase was already completed, have acknowledged the non-sellers' conquest arguments are irrelevant.

114. In the Crown's submission, it is not the case that the decisions were so untenable that improper influence or political bias might be inferred. Rather, as Belgrave explains, the decisions reached were readily available on the evidence.

115. The Crown acknowledges that other technical evidence is far more critical of the decisions. Boast observes:[123]

> The judgment [on Rangitīkei-Manawatū] was undoubtedly what Featherston wanted. This does not prove that the decision was a result of manipulation behind the scenes, but I would not rule that out. Still more likely is the probability that Maning was sympathetic to the provincial government's aspirations in any case, and would not have needed any manipulation. I do not believe that as a rule judgments of the Native Land Court were ordinarily driven by political considerations, but this probably [is] one occasion when it probably was.

116. Similarly, Anderson, Green and Chase suggest:[124]

> Maning's judgment, in other words, was not only a muddle, but it also portrayed a history that was quite at odds with that which was generally understood. But it is one thing to note this, it is quite another to explain, conclusively, why this should have been so. Still, one obvious explanation—one which, in the absence of unequivocal evidence, can be an inference only, however obvious—is that the judgment of the Court was driven largely by political exigencies, rather than sound reasoning on the basis of the facts. It would be difficult to overstate the pressure being brought to bear on all those involved—at least, those involved on

123 Boast at 351.
124 Anderson, Green and Chase at 388.

> the side of the colonial government—to have the Manawatu purchase settled.

117. These observations are, however, expressed in tentative terms and acknowledge "the absence of unequivocal evidence" in this regard. Boast did not find "any evidence of direct manipulation of the Court behind the scenes".[125]

118. The notion that a judge might be "sympathetic" to the government's aspirations is not enough to identify them with the Crown: it is axiomatic that every person's ideas, values and sympathies are shaped by that person's particular experiences, including their upbringing, education and the cultural and social milieu in which they mix. It does not follow that such persons are unable to act judicially and make reasoned, independent and impartial decisions. The fact that the decisions were, from the Crown's perspective, politically expedient also does not mean they were not reached after careful, independent reasoning.

119. The Crown says there is likewise insufficient evidence that the Court was influenced by the intimidatory conduct of Kāwana Hūnia, as is suggested by certain claimants, or that the Crown somehow condoned that conduct. Ngāti Parewahawaha and Ngāti Manomano point, for example, to Hūnia's actions at Pakapakatea in December 1868, erecting fighting pā, setting fire to houses, and threatening to demolish a sawmill unless his title to the land was acknowledged.[126] The fact that the Native Land Court eventually reached a result favourable to Hūnia several months later, rejecting the non-sellers' claims to Pakapakatea, does not mean the Court was influenced by Hūnia's threats.

Horowhenua block decision

120. Several claim-specific submissions raise issues with the Native Land Court's investigation of the Horowhenua block. The submissions of Ngāti

125 Evidence summary of Richard Boast (Wai 2200, #A215(b), 10 February 2020) at [7.6].

126 Ngāti Parewahawaha and Ngāti Manomano's Submissions at [198]. See also Husbands at 70.

Pareraukawa[127] canvass these issues in some detail.[128] They submit that the Crown breached the Treaty by, among other things, conspiring or colluding with the Native Land Court to have the Horowhenua block vested in Te Keepa Te Rangihiwinui for Muaūpoko in order to facilitate the Crown's purchasing, denying a rehearing or otherwise failing to remedy the situation, and failing to stop the violence against Ngāti Pareraukawa or Te Keepa's intimidations at the hearing.[129]

121. As above, criticisms are also made of the correctness of the Native Land Court's reasoning and the award ultimately made. For reasons already given, however, the Crown's focus is on those aspects of the proceedings where its own conduct (as opposed to that of the Native Land Court) is impugned.

Background

122. The Native Land Court's investigation of the Horowhenua block occurred against a backdrop of long-running disputation between Ngāti Raukawa and Muaūpoko, going back for decades. The spark igniting the conflict at Horowhenua is commonly ascribed to Te Whatanui Tūtaki's death. It was around this time that Ngāti Apa, led by their chief Kāwana Hūnia, became involved in the entanglements over Horowhenua. Te Keepa (Major Kemp) would become another key figure. The claimants are critical of the Crown's failure to intervene in this disputation and, particularly, to take action to arrest the violence being inflicted by Ngāti Apa, who were armed with Crown weapons.

123. The Crown says that, from the late 1860s until the decision was made to resort to the Native Land Court, there were some significant efforts on the part of the Crown to enable parties to come to an agreement to resolve their dispute at Horowhenua through arbitration by a mixed rūnanga. Over the three years from 1869, Crown officials took steps to contain the dispute. A number of steps were taken by McLean attempting to arrange the rūnanga.

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127 Whose submissions are affirmed by five hapū of Ngāti Huia ki Horowhenua: Joint Closing Submissions in the Ngāti Raukawa and Affiliated Groups Phase on Behalf of Five Hapū of Ngāti Huia ki Horowhenua (12 January 2026) Wai 2200, #3.3.127 at [106].

128 Closing Submissions for Ngāti Pareraukawa (28 November 2025) Wai 2200, #3.3.104 [**Ngāti Pareraukawa's Submissions**].

129 At [11]–[12].

McLean obtained Hūnia and Te Keepa's agreement to the adjudication. He also received support from other tribal leaders to inquire into and settle the dispute. However, it appears it was difficult to get the different players to agree to leave the disputed land. McLean later stated that the attempt to appoint chiefs to settle the dispute had failed.

124. The Crown's efforts were a genuine, if not successful, attempt to assist in the resolution of the disputes. In the end, however, the parties turned to the Native Land Court.

125. The title investigation occurred in two phases, with Judges Rogan and Smith and an assessor from Auckland presiding. The Court's 1872–1873 Manawatū-Kukutauaki decision found largely in favour of Ngāti Raukawa, whose rights, the Court said, "were not acquired by conquest but by occupation with the acquiescence of the original owners".[130] The Court's 1873 Horowhenua decision was decidedly less favourable to Ngāti Raukawa: with the exception of a small reserve at Raumatangi, the Court awarded the 52,000-acre block to Muaūpoko, to be held by Te Keepa.[131]

Allegations of Crown influence

126. Ngāti Pareraukawa submit that the Court in the Horowhenua proceedings was neither impartial nor independent of the Government. In support of this submission, they rely on the "closeness of relationship between Ministers, officials and judges and their shared belief in the colonial project" and evidence of frequent correspondence between them.[132]

127. The evidence of Anderson and Green discusses these allegations of undue Crown influence in detail.[133] They canvass various factors pointing, in their view, to close integration between the Crown and the Court, including the Crown's capacity to control the Court's jurisdiction and purse, and the "shared mission" of the Court and the Crown. They describe Rogan and Smith as "McLean's men", noting Rogan's prior position as a Crown land

130 Boast at 431.
131 At 444–445.
132 Ngāti Pareraukawa's Submissions at [224].
133 Robyn Anderson and Terence Green Ngāti Raukawa Gap-Filling *of the 'Crown Action and Māori Response' Report* (Wai 2200, #A201(g), February 2020) [**Gap-Filling Report**].

purchase commissioner and Smith's as an official in the Native Department in various capacities.[134] After reviewing the correspondence between Rogan and various Ministers and officials, their conclusion is that:[135]

> … it is to not possible [sic] to demonstrate that relationships between certain individuals, or the objectives of the government of the day had a direct role in the court's thinking or any particular decision reached. We cannot know for certain what the judges made of the evidence they heard, or how they relied upon it given the narrative character of their judgments. There is no explicit evidence of direct collusion between government and court as to what its decision as to title ought to be. Judges were not ordered to come to a particular finding unless this happened behind closed doors. We think that the evidence suggests that this would hardly be necessary; that the Native Land Court judges shared the government's desire to confirm the purchase - and as they all told themselves, each other, and Māori - resolve their disputes peacefully.

128. Ultimately, they say "[i]t is unthinkable that Rogan and Smith, two former purchase officers would come to a decision that would embarrass the government and the court itself."[136] In Anderson and Green's view:[137]

> … the court could not allow the Ngāti Raukawa claim of conquest, even of lands south of the Manawatū River to stand: if allowed, the [earlier] Rangitīkei-Manawatū decision would be undermined, the risk of tribal warfare elevated and purchase plans for the Wellington Province thrown into disarray.

129. In response to questions, Dr Green accepted the limits of that evidence. First, he accepted that no document had been found in which the Crown told the Court what it should decide.[138] Secondly, he accepted that Judge Rogan's correspondence does not state that he would act otherwise than properly.

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134 At 44.
135 At 69.
136 At 69.
137 At 70.
138 *Transcript of Hearing Week 8* (11–13 October 2021) Wai 2200, #4.1.33 [**Hearing Week 8 Transcript**] at 65–66.

Thirdly, asked whether anything in the documentary record showed the Crown pursuing a policy founded on its relationship with Te Keepa, he answered that there was "no single document", and described the exercise as "looking at the entirety of what occurred and the context in which it occurred" and asking why the Horowhenua decision was reached when it "doesn't appear to make sense in light of other judgments".

130. The Crown maintains that the Native Land Court was independent of the Crown. Even if the judges were to have shared the Crown's assumptions about the rightness of tenure reform—the "shared mission" asserted by Anderson and Green—that would not be enough to identify them with the Crown. Further, caution must be exercised in drawing conclusions as to any pre-determination on the part of judges based primarily on their roles prior to their appointment to the Court. In the nineteenth century, the same people often performed a number of different tasks and performed the roles according to requirements of each one. At the time, such appointments were not considered inappropriate given the relatively small pool of skilled and qualified people from which the appointments could be made.

131. The Crown accepts that telegrams show the Crown followed the title investigation in the Horowhenua closely. Numerous telegrams were exchanged between the Native Land Court judges and Crown officials prior to and during the earlier Manawatū-Kukutauaki phase of the proceedings. In these, there is evidence of the Crown exerting pressure on the Native Land Court judges in relation to some procedural issues (eg, granting adjournments, updating the Crown on Court proceedings and encouraging time be provided for claimant groups to consider issues outside of the litigation context), but there is no evidence indicating that the Crown directed the judges on any substantive matter or to arrive at a particular decision.

132. The exchange of telegrams appears to have slowed during the Horowhenua phase itself. Judge Rogan gave McLean brief updates, reporting that matters were "orderly" and he was "well satisfied".[139] A later telegram to McLean

139 Gap-Filling Report at 67–68.

ahead of judgment—indicating Judge Rogan's view was that "Kemp has made out a clear case" and that he would "when the time comes give him the full benefit of it"—does not necessarily point to any influence from McLean.[140]

133. Further, the Crown submits it is not the case that the Native Land Court's decision was so inexplicable, or contrary to the evidence, that political influence can be inferred as a likely explanation. Anderson and Green's inference proceeds from this premise. Again, in this regard, the view of Belgrave is that "there were good reasons within the evidence of all of these inquiries for rejecting conquest as giving title to either Ngāti Toa or Ngāti Raukawa".[141] Belgrave explains that, having rejected Ngāti Raukawa's conquest narrative, the Horowhenua inquiry became entirely one of occupation and ancestry. He says:[142]

> Here Muaūpoko were able to dominate the arguments by demonstrating occupation of the whole block, while the Ngāti Raukawa witnesses still insisted that they had the authority, which could only be through conquest, to limit Muaūpoko's interests.

134. The evidence "strongly supported Muaūpoko, although", he admits, "some Ngāti Raukawa witnesses gave better evidence of occupation in specific places than the court was prepared to recognise".[143]

135. In the absence of more compelling evidence, the Crown submits the Tribunal should be slow to endorse the claimants' claims of collusion.

140 At 68.
141 Belgrave at [15].
142 At [456].
143 At [15].

Threats and intimidation

136. In addition to the connections between the judges and the Crown, it is said that the judges of the Native Land Court were influenced by the intimidatory conduct of Te Keepa during the Horowhenua hearing. Ngāti Pareraukawa submit that Te Keepa's conduct both inside and outside the Foxton courthouse compromised the Court's independence and, further, that the Crown failed to intervene.[144]

137. The critical evidence of Te Keepa's influence from inside the courthouse is that of Rod McDonald, a local settler whose father gave evidence in the 1873 case. He attested that "Kemp rose in the body of the Court and told the judges in unequivocal language, that if they gave the verdict against him he would bring his 400 Wanganui warriors down to the Horowhenua, and neither the Raukawa nor the Government would put him off the land". Upon hearing this, Judge Rogan adjourned the hearing and travelled to the Horowhenua lake area to inspect the land with Te Keepa. McDonald said Te Keepa drove sticks into the sand to indicate to Judge Rogan where he wanted the boundaries to be drawn.[145]

138. As Boast notes, this evidence is largely uncorroborated. There is no record of the exchange in the Minute Book record (which on other occasions did record outbursts of this kind) nor in newspaper reports.[146] In Boast's view, it is "unclear" whether Te Keepa ever openly threatened the Court in the way McDonald suggests. In the Crown's submission, the available evidence suggests that it is in fact quite unlikely.

139. Accounts given before the Native Affairs Committee 23 years later, in 1896, are more equivocal:[147]

    139.1 Te Rei Parewhanake, when asked about the Horowhenua case of 1873 at which he had been present, said "I do not know that he [Te Keepa] threatened anybody".

144 Ngāti Pareraukawa's Submissions at [17] and [236].
145 Boast at 440–441.
146 At 441.
147 At 441.

139.2 Kipa Te Whatanui said that Te Keepa and his people were "all armed, and were intimidating both the Court and the Ngatiraukawa people" and that "Kemp stated openly **outside** the Court that if the Court gave a decision against him he would spill blood on the block" (emphasis added).

139.3 Neville Nicholson described how Te Keepa "was to be seen in his regimental uniform, wearing his sword, and marching about Foxton" while the Horowhenua case was being heard. "It was at this time [during the Horowhenua hearing] that Kemp said if the decision were given against him somebody would suffer – that blood would flow". "Then we (the Ngatiraukawa) heard that Major Kemp brought 500 men and 500 guns, and declared that if the decision went against him we (the Ngatiraukawa) would be fired on".

140. From the foregoing, Boast concludes that, even if Te Keepa did not make threats inside the courtroom, then "it is clear in [his] view that he made his presence felt outside it".[148]

141. The Crown accepts the contemporary evidence establishes that Te Keepa was present in and around Foxton at the time of the Horowhenua hearing. However, there does not appear to be any contemporary corroboration that Te Keepa was armed or wearing a sword. Professor Boast said in evidence in chief that it was "certainly the case" that Te Keepa had armed supporters patrolling the streets outside the courtroom.[149] Under cross-examination he accepted there was no good evidence that Te Keepa had a force or armed supporters in Foxton.[150] Certainly, there is a distinct lack of contemporary evidence that Te Keepa was joined by 500 or so armed men, or that together they conducted military displays on the streets of Foxton.[151] An account of the proceedings given by the *Wellington Independent* does not mention any

148 At 442.
149 Hearing Week 8 Transcript at 268–269.
150 At 298.
151 Boast confirmed in answer to questions that he had found no contemporary reports of such displays, although his focus had been on evidence given inside the courtroom rather than newspaper reports: Hearing Week 8 Transcript at 298 and 311.

such displays, although it would surely have been a newsworthy item.[152] In the Crown's view, the notion that Te Keepa would have brought 500 troops to Horowhenua against the government is unlikely, particularly in how greatly it would have jeopardised his relationship with the Crown.

142. In any event, as Boast concludes, "[t]here is nothing to show that Ngāti Raukawa were intimidated in the sense that [they] were afraid to give evidence in the Court, or that Keepa's military display influenced what they said".[153] The same can be said, the Crown submits, for the judges of the Court.

143. As to the Crown's role in the foregoing, Ngāti Pareraukawa submit that the Crown ought to have intervened to preserve the Court's independence. If, however, events were as the claimants describe, the Crown would likely have been reluctant to intervene militarily and likely would have explored other options first. Escalation to armed confrontation over a title investigation would not have been at all desirable. A low-key response, in the form of quiet efforts to dissuade Te Keepa, would have been the more likely course. Professor Boast accepted that a military response would have been "extremely provocative" and was "not feasible", and that the course to be expected of McLean was to speak to Te Keepa directly.[154] Such efforts may well in fact have been made with Te Keepa in response to his presence in Foxton and any agitation that he might have actually caused. There is, however, no record of them.

144. In short, the Crown submits considerable caution should be exercised in assessing claims that the Court's decision on the Horowhenua block was influenced by Te Keepa or that the Crown was complicit in these events. Much of the evidence comes from the 1896 inquiry, more than 20 years after the fact, and the majority of witnesses claiming the Court was intimidated

152 Boast at 439, citing "Stray Notes on the West Coast", Wellington Independent, vol XXVIII, Issue 3770, 3 April 1873, at 3.
153 At 442.
154 Hearing Week 8 Transcript at 298–299.

came from hapū opposing Muaūpoko's claim. The reliability of the evidence is uncertain.

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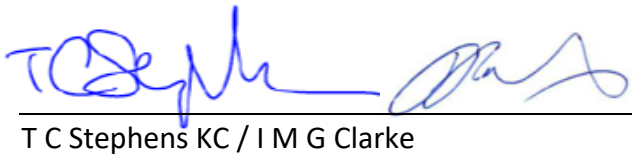

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TO: The Registrar, Waitangi Tribunal

AND TO: Claimant Counsel