OFFICIAL

IN THE WAITANGI TRIBUNAL

UNDER The Treaty of Waitangi Act 1975

IN THE MATTER OF The Rohe Potae Inquiry- **WAI 898**

CLAIMANTS GENERIC OPENING SUBMISSIONS
NORTH ISLAND MAIN TRUNK RAILWAY
DATED 8TH MAY 2013

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May it please the Tribunal

1 These are the Generic opening submissions on the theme of the North Island Main Trunk Railway for the Rohe Potae Inquiry.

Introduction

2 This theme concerns the construction of the North Island Main Trunk Railway ("NIMTR") through the Inquiry District between 1885 and 1902 when the line exited the district close to Taumaranui.

3 The theme also concerns the interaction between Te Rohe Potae Maori and the Crown prior to construction beginning, and the affects on Maori -short term and long-term -of the construction of the NIMTR.

4 By the 1870s steamships, railways and electric telegraph were facilitating the colonisation of 'vast areas of the world, carving corridors of access into regions where travel had been difficult... on land, railways were the pinnacle of this progress, and a vital component in imperial expansion.[1]

5 Historian James Belich states "They [railways] also had great symbolic significance: paths of civilization, bringing order and doom to natives and nature; huge, smoking, iron engines leading the charge of progress". [2]

6 The railways made the large scale transportation of goods and people overland quick and efficient. Railways were also seen as a means of securing and strengthening European authority over remaining areas of Maori independence -and could be used to transport troops easily over long distances. [3]

7 Construction of the line south from Auckland began in 1863, however due to financial and engineering difficulties construction stopped in 1868[4].

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[1] *Turongo: The NIMTR and the Rohe Potae 1870-2008 #A20-* p 18
[2] ditto-p19
[3] ditto-p 20
[4] #A20 –p28

8 During the 1870s progress southwards was slow. By 1877 the line was opened as far as Ngauruawahia. The Public Works Amendment Act 1878 enabled the Governor to simply take land for Government railways by proclamation, removing protections for owners.[5]

9 In the 1878 Public Works Statement PW Minister provided specific proposals regarding the NIMT Railway. The Minister anticipated that the purchases of the necessary land could be successfully negotiated. It was envisaged that considerable areas would be acquired for settlement.[6]

10 The NIMT was envisioned by settlers, and politicians as a means of opening up the Central North Island to European settlement. Businessmen in Auckland and Taranaki sought completion of the NIMT, with the route of the line expected to go down the west coast.[7]

11 From the mid 1870 substantial numbers of Maori living close to the aukati were willingly employed in waged labour on road construction in the district- becoming a part of the cash economy existing outside the aukati.[8]

12 The NLC began operating around the boundaries of the Rohe potae during 1870s; forcing participation by groups within the Rohe Potae who otherwise risked loss of their interests in these blocks.

13 Kingitanga leaders saw maintaining political authority a priority. Tawhiao saying in 1878 to Grey and Sheehan:

> Let the Europeans living on this Island go back to the opposite side of the River. Let them have management of the other side, and let me and the chiefs of the Natives manage this side. If any person is desirous that roads should be made, I say no, I will not agree. I say let them first come to me, because the decision rests with me.'[9]

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[5] ditto-p36
[6] ibid
[7] ditto-p41
[8] ibid
[9] ditto –p42

14 The 1870s had seen an increasingly centralized government, with strengthening powers to take land for public works, enabling the creation of an extensive road and rail network. The Rohe Potae district was not under government control, and the Crown felt unable to confiscate land for the railway. It was considered that approval would have to be gained from Maori, by negotiations.

15 During the 1870s Colonial Treasurer William Vogel had promoted an extensive Pubic Works program- involving construction of a road and rail network, which would 'propel the colony out of economic stagnation' and complete the colonisation of NZ after the wars of the 1860s.[10]

16 Railways were the foundation of Vogel's Public Works policy. He advocated a trunk rail system running the length of both islands, with branch lines to outlying regions, which would open up new land for immigrants, as well as provide employment for them in construction and operation. He asserted a large public estate should be purchased, the proceeds of which would be used for immigration and railway purposes.[11]

17 However the growth of rail envisaged by Vogel took place largely in the South Island, and by 1880 three quarters of the rail lines in the country were located there.[12]

18 In 1880 due to the failure of the Grey /Sheehan negotiations with the Kingitanga and the deteriorating economic situation in the country any immediate plans for construction of a main trunk rail line through Taranaki were shelved.[13]

19 At this time it was becoming evident that the Kingitanga isolation was coming to en end. In 1881 at Alexandra Tawhiao laid down his arms to Mair as a gesture of peace and in 1882 made an official visit to Auckland, which was perceived by the settler press to be a major turning point in relations between the government and the Kingitanga.

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[10] ditto-p22
[11] ditto-p24
[12] ditto-p25
[13] ditto-p44

20 However at a Hui at Whatiwhatihoe in May 1882 the Rohe Potae leadership supported Tawhiao's proposal for a halt to pressures from the NLC, surveys and road construction until there was some form of negotiated agreement.[14]

21 The government introduced the NIMT Loan Bill in July 1882. The construction of the NIMTR by this time was a major political issue, due to its general significance for settlement in the North Island.[15] The depressed economic outlook at that time increased pressure to open up new economic possibilities, which a railway would bring.

22 The NIMT Loan Act was passed in August 1882 authorizing a loan of 1 million pounds for rail construction. The Public Works Act passed at that time significantly increased government powers to acquire Maori land for Public works.

23 At the same time the government passed the Amnesty Act and the Native Reserves Act, which it hoped, would assist with negotiations with Kingitanga. Native Minister John Bryce traveled to King Country in October 1882 and presented Tawhiao with a gold medal, which permitted Tawhiao to travel on the railways for free for life.[16]

24 Proposals were made to Tawhiao and the tribal chiefs- return of some land, and personal inducements for Tawhiao- that were rejected as the agreement was conditional on acceptance of the sovereignty of the Queen.[17]

25 After this rejection the government focus shifted from Tawhiao to an alliance of chiefs, with Maniapoto's Wahanui as their representative. The following Iwi were in this alliance Ngati Maniapoto, Upper Whanganui, Ngati Tuwharetoa, Ngati Hikairo and Raukawa. [18]

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[14] ditto-p50
[15] ibid
[16] ditto-p51
[17] ibid
[18] ditto-p 51

26 The second stage of negotiations centered on an agreement for exploration of the possible rail routes through the district.[19] Between 1882 and 1885, in several key stages the government gained consent for the construction of the NIMTR.

27 An agreement was reached on March 16 1883 between Native Minister Bryce and Ngati Maniapoto chiefs including Wahanui. This agreement said that a survey could be completed to Mokau, but that other surveying would cease, and no further work would be undertaken on the railway without consultation.[20]

28 Following this agreement three potential routes were surveyed. In order to reassure Maori, Bryce and the surveyors emphasised that these explorative surveys were unrelated to the Native Land Court ("NLC"), and that the railway would bring great benefit to Maori.[21]

29 The leaders of four tribes put forward a petition to Parliament on June 26 1883. Wording of the petition expressed a wish to cooperate with settlement, but the petition underlined that the railway would not be permitted unless reform was guaranteed.[22]

30 In November/ December 1883 at an important Hui at Kihikihi a number of chiefs agreed to sign an application to the NLC to survey the external boundary of the Rohe Potae. After this the government took various steps- surveying of potential routes, and road construction in preparation for the construction of the NIMTR.[23]

31 in September 1884 a Parliamentary committee were appointed to investigate the best route for the NIMTR. Wahanui appeared before the committee, and stated that consent for the NIMTR would not be given until Maori concerns regarding the NLC and Maori land legislation were addressed.[24]

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[19] #a20(b)- para 10
[20] ibid
[21] ibid
[22] #A20(b)-para 11
[23] ditto-para 12
[24] ditto-para 13

32 The committee recommended the Central Route, surveyed by John Rochfort,[25] and the debate, which followed, showed there was an expectation the NIMTR would open new areas in the interior of the country for European settlement.[26]

33 Following the decision for the central route Native Minister Ballance introduced the Native Land Settlement Bill, which was eventually passed as the Native Land Alienation Restriction Act 1884. This Act reserved the right to purchase land to the Crown in a vast area (over 4 million acres) surrounding the proposed route of the NIMTR.

34 On the 7th November 1884, as the Native Land Settlement Bill was being discussed, the Railways Authorisation Act was passed, sanctioning the construction of the NIMTR along the central route.[27] This and other steps in preparation for construction prompted concern among Rohe Potae leaders causing Taonui to write to Ballance on 3 December 1884:

> Friend, we are at a loss to know what wrong we and our people should have done that you should have ignored us when you commenced Government works in our localities...[28]

35 Soon after this Ballance undertook a tour of the North Island, which included Hui with Whanganui Maori at Ranana on 7 January 1885 and with Te Rohe Potae Maori at Kihikihi on the 4th and 5th February. An issue for the Tribunal is how Ballance's statements to Maori at these Hui should be regarded.

36 Following the Kihikihi Hui leaders of the four/ five tribes held several meetings, and on the 27th February 1885 agreement was reached to allow the construction of the Railway- with conditions- the land used for the railway should be 1 chain wide, paid for, and fenced.[29]

37 The turning of the first sod ceremony occurred at Punic on the 15th April 1885- attended by the Premier and the senior Te Rohe Potae chiefs. The Premier

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[25] Map #A20 –p63
[26] ibid
[27] ditto para 16
[28] #A20- p66
[29] ditto-p73

agreed that the section of the line though the district should be known as Turongo.[30]

38 Ballance stated at the Kihikihi Hui that the government did not intend to conduct unwanted large scale purchasing the district.[31] However, following criticism in Parliament of government policy related to the NIMTR, Ballance asserted his government was actually taking steps to do just that. In July 1886 he said:

> Again and again the necessity of acquiring land for the purposes of settlement along the NIMTR has been pressed upon the Government, and it is only for this that the commission agents have been appointed, and only for the purpose of purchasing this land that we have increased the number of Land Purchase Officers[32].

The Land Purchase Officers appointed in the Central North Island included Wilkinson for the Rohe Potae, Butler at Wanganui and Grace at Taupo.

Statement of Issues:

A number of key issues for this theme were set down by the Tribunal:[33]

39 **Crown and Te Rohe Potae Maori Agreements.**

(i) What agreements were reached between Maori and the Crown concerning the construction of the NIMT; how did each side understand those agreements; and what benefits did each side seek from the constructions of the NIMTR.[34]

(ii) What obligations were there, if any, on the Crown to ensure that the interests of Rohe Potae Maori were protected in negotiations over the NIMTR?

(iii) Did Rohe Potae Maori have an ongoing interest in the NIMTR beyond its construction?

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[30] #A20(b)-para 23
[31] #A20-p75
[32] #A20- p90
[33] #1.4.3- Theme 5 pp 35- 39
[34] #1.4.3 p 36-37

(iv) If agreements were reached to what extent were those agreements and assurances breached by Rohe Potae Maori and the Crown.

40 **Acquisition of land for the NIMTR**

(i) How did the Crown acquire land for the construction/ operation of the NIMTR; how much land was acquired and by what method; and did the Crown provide fair payment or compensation to Maori for their land taken for the NIMTR.

(ii) How much surplus land did the Crown acquire in relation to the NIMTR, and was that land retained, disposed of, or returned to the previous owners.

41 **Timber, stone and other resources.**

Did the 1885 Agreement address the issue of other resources required in construction of the NIMTR; did the Crown consult with Maori over acquisition of these resources, and did the Crown pay a fair price for them?

42 **Environmental Issues**

Did the Crown adhere to the agreements and assurances concerning the affects on the environment of the NIMTR, and did the Crown adequately consult with Maori, and respond to their concerns

43 **Economic Consequences.**[35]

(i) What economic costs and benefits did Rohe Potae Maori and the Crown understand would result from the NIMTR?

(ii) What were the economic benefits (whether promised or not) or detriment to Rohe Potae Maori from the NIMTR?

(iii) Were Rohe Potae Maori effectively made to pay for or subsidise the NIMTR?

44 **Restructuring and Privatization**

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[35] ditto-p39

Did the Crown consult with Rohe Potae Maori prior to privatization- did the Crown act reasonably during privatization, and was there prejudice for Te Rohe Potae Maori?

45 **Crown concessions:**

The Crown has made the following concession:

The Crown concedes that a number of owners in the Rangitoto Tuhua block never received compensation for the land the Crown took from this block for the construction of the North Island Main Trunk Railway, and that, unless this land was gifted to the Crown, the failure to pay compensation was a breach of the Treaty of Waitangi and its principles.

46 While the concession says there were 'a number of owners' in Rangitoto Tuhua who did not receive compensation, there appears to be no record of any of the owners in Rangitoto Tuhua received compensation for their land taken for the NIMTR.

47 Following the December 1890 hearing, which considered compensation in the blocks north of Te kuiti, no further effort was made by the Public Works Department ("PWD") through the Native Land Court to compensate Maori landowners for the initial land takings for the NIMTR.[36]

48 Arrangements were later made between the Land Purchase Officer and the Maori owners for land swaps to compensate owners in the Pukenui and Te Kuiti blocks for the takings for the NIMTR through their land.

49 A representative of the owners of Rangitoto Tuhua 68 attended Court in December 1890 and indicated the owners would not be seeking compensation for the 1 chain width the Tribal Chefs had agreed to gift to the Crown. However, this arrangement was not finalised at the time -as it was unclear just how much land in the block would actually be required- and the Crown agent withdrew the matter from the Courts consideration.[37]

50 If the matter had been resumed at Court at a later stage the attitude of the owners may well have been different. There had been no Crown purchasing

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[36] #A20-p 156

[37] #A96-p17

in the District at the time of the compensation hearing in 1890. By the time the land was formally taken for the NIMTR in the Rangitoto Tuhua block in 1902 hundreds of thousands of acres in the District had been acquired the Crown. There had been major disagreements between Ngati Maniapoto and the Crown, as to the price being offered for the land, and continued Crown pre-emption in the District. These factors would have affected the attitude of the owners as to gifting the land, if the matter of compensation had ever been taken back to court.

51 By the time of the gazette takings in 1902 Maori along the Rangitoto Tuhua section had lost a large number of stock, because of the Crown failure to fence the line as it was being built[38]. This would have been another factor mitigating any desire to gift land in the Rangitoto Tuhua block.

52 The Tribunal has heard from a number of witnesses this week, who have said there was no compensation paid for their hapu land in the Rangitoto Tuhua blocks. The witnesses also confirm there was no gifting of their hapu lands to the Crown for the Railway.

53 Ultimately it not now discernable whether the owners would have gifted any of their land in the Rangitoto Tuhua blocks. It has been over one hundred years since the takings and all the owners of the land at the time of the takings are deceased, and unable to confirm their attitude to gifting.

54 The Crowns rather churlish attitude towards the gift would also have affected the attitude of the owners. Wahanui's gift was a political gesture of friendship towards the government, for which nothing was given in return. There was no proper recognition at that time, or since, of the gift.

55 The Crown must bear full responsibility for the matter of compensation not going to Court. The Public Works Act ("PWA") 1894 placed a legal obligation on the Minister of Public Works to take this step. We submit the proper position now is that the land was not gifted, and full compensation is due to the descendants of the Rangitoto Tuhua owners for this breach of the Treaty and its principles.

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[38] #a20-p121

Agreements between Maori and the Crown concerning the NIMT- what agreements were reached; how did each side understand those agreements

55 For their part Maori agreed to allow construction of the line at 1 chain width, expected to be paid, and wanted the line fenced. The Tribal leaders later agreed to gift the1 chain, but required payment for excess land taken.

56 The Crown takes the view that the statements of Ballance at Ranana and Kihikihi did not amount to legally binding agreements, but were general statements of intent or of expectation as to the benefits the railway would bring to communities.[39]

57 We suggest this is unrealistic. These Hui weren't election meetings and Ballance's statements weren't mere political puffery. Ballance was addressing Maori as a Minister of he Crown and a representative of the Government of the day, and Maori were entitled to take him at his word.

58 As a Minister he could be seen as having authority to form legally binding contracts on behalf of the Government. In contractual terms he was a fully authorised agent of the government, and as such authorized to make binding agreements.

59 Despite the view of Ballance's statements to Maori taken by the Crown they acknowledge that there were some core elements to the arrangement reached in February 1885. The Crown says that these were its commitment to pay compensation for the land it took for the railway, to limit takings to that which was reasonably required for a safe and efficient railway, to discuss with Rohe Pōtae Māori the local details of lands taken for the railway corridor, to minimize harm the railway might cause to Rohe Pōtae resources and that Rohe Pōtae Māori would derive some economic benefit from the railway through contracts associated with the railway's construction.[40]

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[39] #1.3.1 –para 864

[40] #1.3.1 -para 865

60 The Crown accepts that, in its negotiations with Rohe Pōtae Māori concerning the main trunk railway, the Treaty and its principles required it to treat with them honourably, fairly and in good faith[41]

61 The Crown's position is that it kept largely to the core elements of the arrangements agreed to with Te Rohe Pōtae Māori.

62 The Crown acknowledges that the amount of land taken for the railway corridor may have at times exceeded one chain in width.[42] However, with the exception of land that was definitely gifted and land subject to further inquiry with respect to the Rangitoto-Tuhua block lands, the Crown understands that it paid compensation for land that it took in excess of one chain in width.

63 Maori landowners could not initiate the compensation process- as owners of general land could do. They were dependant on the Govt. making application to the court. European landowners whose land was taken for a Public Works could apply to the Compensation Court. Although Ballance had said Maori would be treated the same as Europeans regarding compensation, it is apparent the legislation treated them differently.

64 As with the purchase of Maori land prior to 1905 there was no official valuation figure which the Crown would be expected to pay as compensation. At the compensation hearing in 1890 the Court was not required to set a figure- all compensation, where required was agreed between the parties.

65 The reason it is not known if land through the Rangitoto Tuhua block was gifted or not is because the Crown (PWD) chose not to take the matter to court.

66 The PWD sought legal opinion from the Solicitor General ("SG") as to obligation to pay compensation. The Solicitor General by a convoluted legal argument said the land along the NIMTR was validly transferred to the Crown by the proclamation of April 1885, and so no compensation payable.[43]

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[41] #1.3.1 - para 869
[42] ditto- para 872
[43] #A20- p195

67 The proclamation of 2nd April was gazetted on the 9th April 1885, and then again on the 28th May 1885 as section 25 of the PWA 1882 said that after such Orders were gazetted for two months the Crown could take and hold the land stated in the Order. Its notable the proclamation takes a 3-chain width strip of land; soon after Ballance has told Maori a 1-chain width strip would be required.

Order to take Land for the North Island Main Trunk Railway. Length about 210 miles.

WM. F. DRUMMOND JERVOIS,
Governor.
ORDER IN COUNCIL.
At the Government House, at Wellington, this second day of April 1885.
Present:
HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

IN pursuance and in exercise of the powers vested in me by "The Public Works Act, 1882," and of all other powers enabling me in that behalf, I, William Francis Drummond Jervois, the Governor of the Colony of New Zealand, do hereby, with the advice and consent of the Executive Council of the said colony, Order that a railway, having an average width of three hundred links, extending from a point on the right bank of the Puniu River, in the Provincial District of Auckland, to a point at the intersection of the railway-line from Foxton to New Plymouth Railway, situated in Section seven, Block three, Rangitoto Survey District, Provincial District of Wellington, shall be constructed on or through all lands held or occupied by Native owners; the total length being two hundred and ten miles or thereabouts: as delineated upon the plan marked P.W.D. 12069, deposited in the office of the Minister for Public Works, at Wellington, in the Provincial District of Wellington.

FORSTER GORING,
Clerk of the Executive Council.

68 This proclamation was the justification for not paying compensation for the 625 acres of Maori Land taken in Rangitoto Tuhua for the Main Track of the Railway. The Solicitor General said this proclamation in 1885 was a taking of land for the whole 210 mile course of the NIMT,

69 Even if the opinion put forward by the SG had some proper basis- the PWA 1882 and every Public Works Act since says that persons losing land or being

injuriously affected by a Public Works taking **shall** be entitled to full compensation.

'Every person having any estate or interest in any lands taken under this Act for any Public Works, or injuriously affected thereby, or suffering any damage from the exercise of any of the powers hereby given, shall be entitled to full compensation for the same from the Minister or local authority, as the case may be, by whose authority such works may be executed or power exercised'.[44]

70 There was no option for the Crown not to pay compensation under the PWA 1882. Section 26 (1) set down the compensation regime for land where Native Title had not been extinguished:
'The Minister may cause application to be made to the Native Land Court to ascertain what amount of compensation ought to be paid to the owners....and as to who are the persons entitled to such compensation... and what land is affected by the Order in council issued under the powers herein contained'

71 Section 26(2) set down the regime where title had been issued by the NLC: compensation was to be same as in Part III of the Act, where the owners could apply to the Compensation Court.[45]

72 This was changed in 1887 by an Amending Act. The obligation was now with the Minister to make application to the NLC- whatever the status of the Maori land. The 1894 PWA (section 90(1)) leaves responsibility for making application to the NLC to determine compensation with the Minister of Public Works.

73 The wording of the compensation clauses in all the Public Works Acts says The Minister may cause application to be made. Cleaver says this means the making of an application to court was at the Ministers discretion[46].

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[44] PWA 1882 – sec 27

[45] PWA 1882-sec 28

[46] #A20- p153-154.

74 Would suggest however the use of the word 'may' is directive and means the Minister should make application to the Court. Perhaps this was just the phraseology used drafting statutes at that time.

75 The inquiry into whether the PWD should apply to court for a compensation hearing in 1903 was initiated from the Rohe Potae district –by a letter from the District Engineer at Ongarue writing to District engineer at Auckland. It would appear the issue of compensation in1903 actually arose in the Rangitoto Tuhua block.[47]

Agreement to gift land.

76 The concession by the Crown concerning the NIMTR in the Whanganui District was broader than in this District, perhaps because Whanganui wasn't complicated by a compensation hearing or a gifting.

North Island main trunk railway

17. In principle, the Crown acknowledges that where Maori land was taken in the Whanganui district for the main trunk railway:

17.1 Under public works legislation that required compensation to be paid, and no compensation was paid, this did not meet the standards of good faith and fair dealing that found expression in the Treaty of Waitangi and was a breach of the Treaty of Waitangi and its principles; and

17.2 Where the Native Minister Ballance had pledged compensation when no compensation was required under public works legislation, and no compensation was later paid, this did not meet the standards of good faith and fair dealing that found expression in the Treaty of Waitangi and was a breach of the Treaty of Waitangi and its principles.

77 Ballance had made much the same statements at Kihikihi in February 1885 as he made at Ranana in January- that the Crown pay for every acre taken. There was no compensation hearing for land taken for the NIMTR in the

[47] #A20- p157

Whanganui district, and the Crown did not tie the concession to whether or not the land was gifted - although the southern point of Wahanui's gift- Te Rerenga o Te Kohuru is on the Whakapapa River on the eastern boundary of the Waimarino block[48]

78 Position different in Rohe Potae because of the 'gift' by Wahanui and tribal leaders. The Crown was willing to take full advantage of the gift, without any appreciation that something might have been expected in return. There has been little recognition of the gift- in contrast with the publicity to the gift of the mountain peaks of the Central North Island by Te Heuheu of Ngati Tuwharetoa.

79 The gifting would indicate Maori did far more than they had agreed to under the February 1885 agreement, while it remains questionable whether the Crown kept to their part, as they have claimed.

80 The revelations in evidence this week of the rail line uprooting groves of Rongoa trees; desecrating Maori urupa, polluting water, and with no consultation with the local Maori details suggests that the PWD paid little regard to terms of agreement made by politicians in 1885.

The other commitments made by the Crown:

To pay compensation for the land taken for the Railway.

81 The compensation Hearing in December 1890 which dealt with land between the northern boundary and Te Kuiti appears to have been the only instance of the Crown paying compensation though the land court along the whole length of the track from Te Awamutu to Marton.[49]

82 The Crown took full advantage of the gifting of land by Rohe Potae Maori, to reduce the amount of compensation it paid. Compensation for the roughly 23 miles of rail-line from the Pokuru block to Te Kumi block was the relatively low amount of £123/10/-.

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[48] #A20(c) -p 7.8

[49] Cleaver has written Public Works Reports in the Whanganui and Taihape District Inquiries, and states no compensation in either of those districts.

83 The compensation amounts were agreed between the Crown and representatives of owners. Most –although not all - agreed to gift a 1chain width. Opinion was fairly evenly divided on whether to gift the excess land- of the 13 blocks listed in Parkers table- the owners in 7 blocks refused to gift the excess while 6 agreed to gift this land.[50]

84 The compensation was paid mostly for the land, although some owners sought recompense for damage to the land or resources. A large proportion of the compensation ordered was paid to the Crown for survey liens. Of the £60 due at Pokuru £58/17/9d was paid to Surveyor General for survey costs, leaving £1/2 /3d for the 110 owners of the block.[51]

85 Despite a thorough search Mr. Parker can find no record that the amounts ordered by the Court were actually paid to any of the owners. Parker says of the £123/10/- ordered by the Court £84/17/9d (69%) was definitely paid to the Crown for survey liens, and 'it is quite possible' that the compensation ordered in the other blocks was also used to pay survey liens, but there is no actual record of even 1 penny of compensation being paid to the owners. [52]

86 Beyond the Te Kumi blocks the issue of compensation was not finalized at the Court. Discussions took place over compensation in the 'Rangitoto Tuhua' block- which seems to include the Te Kuiti and Pukenui blocks involving another 24+ miles of track. However, the Crown withdrew these blocks from the Courts consideration when it was apparent agreement would not be possible at that time.[53]

87 Mr. Parker's research indicates there were land exchanges later to compensate the owners of the Te Kuiti and Pukenui blocks for land taken for the NIMTR.[54]

88 Of the 71 ½ miles which the line takes through the district compensation would appear to have been agreed over a distance of 28+ miles (From Pokuru to Pukenui) or 40% of the length of the track. The remaining 60% of

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[50] #A96-p 19-20

[51] #A96(c)- paras 18. 20

[52] #A96 (c) –para 24.25

[53] #A96 –p 17

[54] #A96(c)-para 11.12

the track was not compensated. This land is within the Rangitoto Tuhua Block, which the line enters some distance before the Mokau station.[55]

To limit takings to what was required for a safe and efficient Railway:

89 About 1096 acres were taken for the line.[56] The length of the line through the Inquiry District is approximately 71 ½ miles[57]. Over this distance a strip of land 1 chain wide would mean 574 acres being required. The extra acreage - 522 acres included land for stations- 15 were established during initial construction.[58]

90 Ballance said at Kihikihi that about 5 acres would be required for stations, although 10 acres could be needed for larger settlements. Maori agreed to gift less than that, but even allowing the acreage stated by Balance for the 15 stations, there is still hundreds of acres taken by the Crown above that formula of 1 chain for the line and 5/10 acres for stations.

91 The amount of extra land was especially great in the Rangitoto Tuhua blocks. From Mokau station to southern boundary - The line travels around 30 ½ miles through this block- and 625 acres was taken here.[59] This is 381 acres in excess of a 1-chain strip, and cannot be explained as the amount of land required for the 8 stations in the Rangitoto Tuhua block.

92 The Crown clearly did not limit its takings to what Ballance indicated at Kihikihi, and which formed part of the agreement to allow the Rail. The figures suggest the over takings were greater in the second stage of construction through the Rangitoto Tuhua block.

To discuss with Rohe Potae Maori on the local details of lands taken for the railway corridor.

93 A major issue for Maori was consultation on the route of the line. It was clear during negotiations that the line would be constructed in the vicinity of marae,

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[55] Map #A96-p 21.
[56] #A20-p148
[57] #A20(e) -para 5
[58] ditto
[59] #A20 (e) -para 6

urupa and Rongoa areas. The Rohe Potae leadership had made it clear during negotiations their desire for consultation on the rail route on an ongoing basis.[60]

94 However once construction began the Government adopted new policies and departed from agreement to consult. Construction of the line caused some marae to be moved. There are instances where marae are moved closer to the line, and also where marae moved away.[61] There was evidence in briefs this week of this same thing occurring in this District.

95 As with compliance around most of the assurances made to Maori at the time of negotiations, consultation appears non existent once second stage of construction began.[62]

96 Evidence of witnesses this week is that the Crown did not attempt to consult with locals over the rail route through the district; consequently damaging urupa and other sites of significance.

To minimize harm the railway might cause to Rohe Pōtae resources

97 During negotiations this issue arose, and a letter was sent to the senior chiefs involved that they would be contacted immediately if human remains were found during construction- it's likely that Maori had requested this undertaking from Govt.[63]

98 As with other assurances made to Maori the PWD's awareness of this undertaking appears to have faded over the years[64]- although it was not a long time gap between the first and second stages of construction- 8 years[65].

99 Soon after construction began the line went through the ancient pa site at Haere-awatea at the northern end of the district, and later damage was caused to an urupa at Waiteti, south of Te Kuiti.[66]

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[60] dittop129
[61] ditto p129
[62] ditto p 130
[63] #A20- p114
[64] ditto-p 115
[65] #A20(b) -First stage 1885-1889; second stage 1897-1908.

100 There were many instances in the evidence this week about damage to urupa and sites of significance, and pollution of watercourses in the Rangitoto Tuhua.

Undertaking to Fence the line:

101 In the agreement of February 1895 Maori consent was conditional on the line being paid for, and being fenced at once on both sides of the line. Ballance was present at discussions where this was made clear, and there was no dispute to fencing by government representatives at that time.[67]

102 Early contracts for construction of the line included terms for fencing the line- even specifying type of fence to be built. Apparently the line was fully fenced during first stage of construction. However when construction resumed in 1897 at Mokau, fencing was not carried out, and as far as Taumaranui the line was unfenced after construction.[68]

103 Concern by Mari was for their stock, and no doubt the safety of children, as several marae were located close to the railway. Petition in the April 1900 asking that the line be fenced to the Poro-o-tarao tunnel- because of stock losses being suffered- was unsuccessful.

104 In October 2011 John Ormsby and a delegation to Wellington reminded the Government of the gifting of the land and the undertaking the line would be fenced.[69] The response of government was evasive- they could find no written agreement to fence the line, and informed Ormsby it was unlikely the gift of the land would have been accepted on the basis the line be fenced.

105 There was a distinct lack of good faith by the Crown in these dealings with Rohe Potae Maori at this time over the fencing issue, despite earlier correspondence showing that approval for the construction of the line itself was conditional on the fencing being carried out.

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[66] ditto

[67] ditto-p116

[68] ditto-p117

[69] ditto

106 Further requests for action were rejected, despite a call from the General manager of Railways for the fencing to be done. Cost appears to be the reason for the reluctance of the PWD to fence the line[70]

107 Losses to Te Rohe Potae Maori of their horses, cows and pigs were extensive. One hapu losing £260 worth in a few years. [71] The problem continued until cabinet approved funding of £902 to fence the line between Mokau/ Puketutu Station and Taumaranui in August 2007. The work was carried out by Railways Dept. Work apparently being completed in 1909- which was 10 years after second stage of construction began.[72]

Rohe Pōtae Māori would derive some economic benefit from the railway through contracts associated with the railway's construction

108 The position of the claimants is that there was minimal economic benefit to local Maori through the awarding of contracts associated with the initial construction of the line.

109 The commitment to award contracts to local Maori was honoured only in the first stage of construction- 1885-1889. Maori were awarded only small contract work on the Puniu and Te Kuiti sections. By 1888 these sections were completed and the policy of reserving work for Rohe Potae Iwi and hapu ceased.[73]

110 Even in the short time, and to the limited extent this policy was in place it received criticism in Parliament as being unfair to European workers.[74]

Acquisition of land for the NIMTR

111 **How did the Crown acquire land for the construction/ operation of the NIMTR; how much land was acquired and by what method; and did the Crown provide fair payment or compensation for their land taken for the NIMTR. [5.6- 5.8]**

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[70] #A20-p118
[71] ditto-p121
[72] ditto-p122
[73] #A20(b)- para 30
[74] ditto

112 The acreage of land taken and the method used to acquire the land are hardly in dispute. About 1096 acres was taken in the initial construction period; almost all in Mari ownership at the time. The land acquired primarily for the track and stations, with extra land being taken for quarries and ballast pits.[75]

113 A further 192 acres of Maori land was taken over period 1903-1990; mostly to acquire stone resources. The owners appear to have been compensated for these later takings; although the 5% rule may have been used to avoid compensation payments in some cases.[76]

114 All of the land acquired by the Crown in the initial construction stage was acquired by the compulsory acquisition provisions of the Public Works Acts of 1882 and 1894.[77][**5.6]** None of the land was acquired by gift or purchase. **[5.8]** The gifting by Tribal Chiefs of a 1-chain strip and a further amount for stations affected the compensation payable, but not the legal transfer of the land.[78]

115 The legal transfer of the land during the first stage of construction 1885-1889 occurred under provisions of sec 130 /1882 under which the Minister issues a proclamation defining the middle line of a section of the railway; deposits plans with the registrar of the Supreme Court depicting the land affected; and then may take the land by Proclamation.[79] Such Proclamations could not be challenged on any ground whatsoever.[80]

116 The takings in the second stage of construction 1897-1902 utilized similar provisions in the Public Works Act 1894. The proclamations listing the takings in both stages of construction are set down in table 3- Turongo report,[81] showing there were 9 such proclamations between April 1885 and November 1902.

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[75] #A20(b)- para 47
[76] ditto-para 48.53
[77] #a20(b) –para 47
[78] #A20 –p145.146
[79] Public Works Act 1882 section 130(1)-(4)
[80] ditto- section 130(7)
[81] #A20-p148

Why did the Crown impose a monopoly on land purchasing? What role did the railway exclusion zone have in the purchase of Rohe Potae Maori land. [5.7]

117 The Crown acquired a lot of land between 1892 and 1894 from Rohe Potae Maori utilising the funds made available under the NIMTR Loan Act 1886 Amendment Act 1889- 184,853 acres in the 'Waikato District'.[82] Regular purchasing using funds available under the Native Land Purchases Act 1892 was carried out in the district at the same time.[83]

118 These purchases were made in areas covered by Crown monopoly provisions. These provisions ensured the Crown faced no competition from private purchasers in acquiring the land, and could set the price for the land.

119 The area covered by the railway exclusion zone changed as the Government redefined the area covered to enable the focus on purchasing to be on the best quality land. These different areas are shown in the Boulton Report.[84]

120 Purchasing continued after the NIMTR Loan finance was exhausted in 1894 using funds provided for that purpose under other legislation.

121 The Crown has made a concession regarding Crown purchasing in this district:

The Crown accepts that it led the iwi and hapu of Te Rohe Potae to reasonably believe when they agreed to the passage of the NIMTR through their territory in 1885, that, if they wished to sell their land, the crow intended to establish a free market, regulated by a land board system, in which they could do so. In this context the Crown concedes:

The manner in which the Crown used pre-emptive powers in land purchase negotiations in Te Rohe Potae during the 1890s so that some Rohe Potae Maori were left with little option but to sell their land or shares in land even when they, and other observers considered that the price offered represented less than the market value of the land;

The aggressive tactics the crown used on occasion to pressure Te Rohe Potae Maori to sell to the Crown, meant that The Crown breached the Treaty

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[82] #A29-p94.95

[83] #A20-p93 - AJHR 1894 G-3 p 2-3

[84] #A67-p149-150

of Waitangi and its principles because its conduct of land purchase negotiations in these circumstances did not always meet the high standards of good faith and fair dealing required of the Crown as a privileged purchaser of Maori land.
The Crown anticipates it may be able to fully particularize this concession later in the Inquiry[85]

122 The concession is similar to that made for purchasing in the Waimarino block in the Whanganui Inquiry, where the Crown acknowledged it had a duty to act in good faith in the exercise of monopoly powers over Maori land;[86] and acknowledged that its duty to purchase fairly and reasonably extends to paying a fair price for Maori land.[87]

123 The purchases of Maori land in the Waikato District using NIMTR Loan Act finance totaled 184,853 acres at a cost £27,151/9[88]-. This equates to an average of 2/11d per acre.

124 The list is of blocks purchased is taken from the AJHR[89] The Waimarino block is also included in this list- 384,000 acres for £44,952,7/4d. This is cost of around 2/4d per acre, which the Crown has acknowledged was not a fair price.

125 The average price paid in the Rohe Potae for land purchased with NIMTR Loan finance is not much higher that Waimarino at 2/11d per acre, and we suggest that a fair price was not paid in this District either.

Tribunal findings- National Park Tribunal Report. *Te Kahui Maunga.*

126 The NIMTR travels for a short distance through the National Park District; and a substantial quantity of land was taken for scenic reserves associated with the NIMT- however specific findings were not made on this issue. The National Park District was within the Railway Exclusion zone, and the Tribunal made findings on purchasing under the Crown preemption regime.

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85 #1.3.1 –para 20.5
86 WAI 903 #3.3.130- para 69
87 WAI 903 #3.3.126 para 79
88 #A20-p94
89 AJHR 1894 G-3 p10.11

127 The National Park Report states there were several other blocks in that District where the price owners received fell well below the value specified by officials, and said that the Crown concession with respect to Waimarino could therefore apply to these other blocks- Okahukura 8, Rangipo North 1B to 7B and Rangipo Waiu 1A. 'Prices in these blocks were artificially low and unfair to the owners at the time'.[90]

128 The Report notes the Crown gave three reasons to explain why purchasing land as cheaply as possible could be justified at the time. The first was that, because of the economic depression of the 1880s the Crown had to be fiscally responsible. The Crowns land purchasing and railways construction programmes were funded by substantial loans. Therefore the less money spent on acquiring lands in this district, more would be available to cover the cost of capital works. The second reason was the perceived quality of land in the district- as regards pastoral use, and the third reason was that the Crown had a large area of land in its sights in the North Island, and had to be careful about setting price precedents that were too high.[91]

129 The report notes a number of instances where the Native Land Purchase Office had rejected official advice as to value of land being sought and instructed land purchase officers to offer a much lower maximum price.[92]

130 The Tribunal stated that they would have expected the prices paid for land in the 19C to reflect the real value of the land; that the Treaty required the crown to pay real value for land, and that monopoly purchase powers only heightened this responsibility.[93]

131 The Tribunal lists a number of factors the Crown could have used to ensure a fair price was paid. This list adopted from the CNI Report.

Using experts to set a fair price for land;
Setting a minimum price;

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[90] *Te Kahui Maunga* -p513
[91] *Te Kahui Maunga* – p 513
[92] ditto-p512-513
[93] ditto-p514

Having procedures requiring agents not to drive down individual prices as low as possible below the maximum price;
Using an independent means for setting prices; and
Setting prices by public auction;

132 The Tribunal says if these measures had been adopted then Maori might have received a fairer price for their land in the 19C.[94] Implicit in this statement is that Maori received something less than a fair price for their land in that district.

133 Comparing the system of land valuation and payments in the 19C to that which applied after 1905 the Report says: 'In the 19C however, this independent advice was not available to Maori, and as we have seen, the Crown did not abide by the advice from its own officials: In 53% of cases examined in our district, the Government paid less that the range of prices proposed by officials at the time. In short, the system of purchase under Crown pre-emption denied Maori access to Market value.'[95]

134 The Tribunal findings on Crown purchasing under monopoly powers were that:
'The Crown held pre-emption rights over our inquiry district for the majority of the last two decades of the nineteenth century. While the purchase monopoly was enacted in part to protect Maori from land speculation, it conferred on the Crown a serious obligation to protect Maori interests when conducting its operations. Based on the evidence available, the Crown paid owners in the lowest part of the range of values identified by officials at the time. In our view, that did not meet the standards of fairness expected under the Treaty[96]

135 We submit that the same finding as regards Crown purchasing under preemption powers could be made in this District.

Where land was not gifted to the Crown, did it provide fair compensation to Rohe Potae Maori for lands taken in the construction and operation of the Railway.[5.9]

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[94] ditto-p516
[95] ditto- p512
[96] ditto-p1515

136 Previous tribunal Findings:
Takings without consent or compensation were in breach of the Treaty, with prejudice to those who were not compensated or paid.[97] The way in which land has been assessed for compensation purposes is based solely on European principles and models, without any influence from Maori views or consideration how Maori interests might be valued. [98]

137 The claimant position -outlined above is that compensation was only affected over 40% of the length of the NIMTR through the District; and so land taken around 60% of the track (The Rangitoto Tuhua) has not been compensated at all.

138 There are issues for the claimants with the payment of compensation ordered at Court in December 1890 as most – if not all - was returned to Crown for payment of survey liens.[99]

139 In this regard it is relevant that the Crown has conceded that in a number of instances... the iwi and hapu of Te Rohe Potae had to give up unreasonably large amounts of land to pay for survey costs, and that the Crown's failure to protect the affected iwi and hapu of Te Rohe Potae from this burden breached the Treaty of Waitangi and its principles.[100]

140 The fairest compensation might have been in the Pukenui and Te Kuiti land blocks where the land taken, for which the Maori owners sought compensation – 106 acres in Pukenui and 5 ½ acres Te Kuiti - was apparently exchanged for an equivalent amount of Crown land.[101]

How much surplus lands did the crown acquire in relation to the NIMTR; and what happened to this land [5.11]

141 The claimants allege the Crown acquired excess lands to ensue there would be sufficient land for future increases in traffic.[102]

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[97] #1.4.3 - p 103 *He Maunga Rongo*- p841
[98] #1.4.3 - p 103 *Tauranga Moana 1886-2006 - 292*
[99] #A96(c) –para 24. 25
[100] #1.3.1 –para 20.7
[101] #A96(c) –para 11.12
[102] #1.5.7 –para 3.7

142 This was described by Cleaver as common practice when lands were taken for a new line.[103] There is clearly land taken in excess of that needed for the line and stations- especially in the southern part of the district. Between the Mokau station and the southern boundary – a distance of 30 ½ miles - 381 acres above the 1 chain width strip was taken. Evidence was given from John Wii at this week that it was normal practice for land to be taken between the line and the River where it ran along the Ongarue River.

143 The claimants state that the Crown held this land not immediately required, and later leased parts of it to European settlers depriving Maori of economic opportunity, and the right to develop their lands close to the Railway.[104]

144 At least 75 acres was leased during the twentieth Century. Prior to the major restructuring introduced from the early 1980s few of these surplus areas were sold- only 8 disposals prior to 1982. None of this land went back to previous Maori owners.[105]

145 The Public Works legislation enacted by the Crown did not require land taken for public Works to be returned to the former owners until the 1981 Public Works Act. This disadvantaged Maori as the Govt. sold at least 67 acres of excess land, some of which had been gifted. [106]

Previous Tribunal Findings

146 A number of previous Tribunal Reports have made findings on the lack of offer back provisions in the PWA prior to 1981.

147 Maori were prejudicially affected by the Crowns omission of stricter offer-back provisions in the Public Works Act 1928 and 1981. The Crown has a duty to make provision for surplus public works land to be returned at the earliest possible opportunity and with the least cost and inconvenience to the former Maori owners. A failure to do so is inconsistent with the Crowns Treaty

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[103] #A20(b)-para 50
[104] #1.5.7 -Para 3.7 (a)- (c)
[105] #A20(b)-paras 50.54
[106] #1.5.7 -para 3.12

obligation under Article 2 to actively protect Maori rangatiratanga over their ancestral land and caused prejudice to the owners in question.[107]

Economic Consequences.

What economic costs and benefits did Rohe Potae Maori and the Crown understand would result from the NIMTR [5.21]

148 Native Minister Ballance made a number of assurances in February 1885 regarding the benefits that would accrue to Maori through the NIMTR. Maori would have had full confidence that what they were told by the Minister would actually happen.

(a) Their land would increase greatly in value through the railway-
(b) Compensation for land used for the rail would be paid to the Maori owners in the same manner as Europeans;
(b) Labour contracts would be reserved for Maori;
(c) Timber used in construction would be paid for;
(d) The NIMTR would provide access to commercial timberlands, enabling Rohe Potae Maori to gain long-term benefits from their sale after construction.[108]

149 Presumably Ballance intended these benefits would devolve on Te Rohe Potae Maori; however the Crown failed in its duty to follow through with the commitments.

(a) Ongoing pre-emption rights over the land ensured Te Rohe Potae Maori did not benefit from any increase in the market value of their land until 1905;
(b) Few labour contacts were awarded to Maori, and only in the first stage of construction;
(c) Compensation for some of the timber and stone resources used in construction were paid to the Kawhia committee during stage 1, and there was compensation paid for timber, but not stone resources in stage 2. Maori did receive some small contracts to provide rail sleepers.[109]

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[107] T.S.O.I #1.4.3 -p104 *Tauranga Moana 1886-2006*- p 310, *Te Maunga Railways Land Report* p67 & *Turangi Township report* -p320

[108] #A20(b) –para 21. 22

[109] #A20(b)- para 33-35

(d) The benefits from commercial logging provided a short term economic boom for several communities along the line; but the collapse of these communities after the timber was cut out, was devastating to the people affected. A number of witnesses in this week of Hearings have spoke about the economic downturn as the logging ended.

Were Rohe Potae Maori effectively made to pay for, or subsidise, the NIMTR through the Crown policy of on-selling land at prices in excess of those paid for the land. [5.22(b)]

150 The profit from land sales of the land bought with NIMTR Loan Finance could only be used in the construction of the railway. This means that the cheaper the Crown could acquire the land the more profit there would be to fund construction.

151 These lands formed a Railway Reserve of some 1,266,525 acres[110]. After 5% was set aside as an endowment for the maintenance of primary education in the district in which the land was located; the remainder of the land was to 'constitute an endowment for the purposes of the North Island Main Trunk Railway and may from time to time be sold, leased or otherwise alienated or disposed of under and in accordance with the provisions of the "Land Act 1885", and its amendments and all the proceeds thereof (after payment of all expenses necessary for carrying out any such sale, lease, alienation or disposition) shall be paid into a separate account mentioned in the third section of the said Act, and shall be applied thereof as the General assembly shall direct from time to time in construction of the said Main Trunk Rail, and of branch railways, tramways, and roads thereto or in connection thereof.[111]

152 The separate account had been established under the NIMTR Loan Application Act1886, and proceeds of sales were being paid into the account, beginning with the sum of £1,165/19/8d in the 1887-1888 financial year.[112]

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[110] AJHR 1894 #-3 p 11

[111] NIMTR Loan Application Act 1886 Amendment Act 1889 –sec 4

[112] #a96(e)- p4

153 A report was prepared for Parliament in 1899 that showed that proceeds of sales deposited into the account at that stage was £53,388. This was amount after deductions of all necessary expenses accruing from the sale process, and of 'thirds" and "fourths" to local bodies and payment to Government Loans to local bodies account. [113]

154 By 1899, 219,510 acres of the land- within the whole railway exclusion zone had been sold. Some of this land was in the Rohe Potae District. The net profit- after all the deductions noted above (paras 151.153) was around 5/- an acre. These funds went primarily to the Lands and Survey Dept and the Public Works Fund for construction of the NIMTR line and infrastructure.[114]

155 A table in Boulton's report shows that £269,423/5/5d passed through the North Island Main Trunk Railway Loan Application Act 1886 Amendment Act 1889 account.[115] The last entries in the account being made in the 1912/1913 financial year.[116]

156 The proceeds from the sale of land purchased with NIMTR Loan funding had subsidised primary education and local bodies in the various districts along the rail line, and had provided over a quarter million pounds - equal to more than 10% of the official construction cost of the NIMTR – directly towards the construction of the line and associated infrastructure.

157 The estimated value of the 1,266,525 acres in 1899 was £832,878. The land had been purchased for £238,535/14/2d over period 1886-1894. The huge increase in value over just a few years would indicate the land was bought for somewhat less than market value.

158 The data in Mr Parkers Report on crown purchase price, value and sale shows that in many cases the Crown was attempting to dispose of land at 2 to 3 times the purchase price it acquired it from Maori within a few years of purchase.[117]

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[113] #A96 (e) –p 29 AJHR 1899 C-6
[114] #A96(e)- p 30 AJHR 1899 G- 3A
[115] #A67-p161
[116] #A96(e) p36-37 AJHR 1913 B1 Pt 1- p12.13
[117] #A95 –para 51

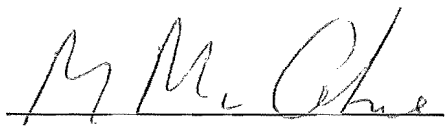
159 This would also indicate that as with the Waimarino block, and the purchasing under preemption in the National Park District the land in this district was not purchased at a fair price.

Restructuring and Privatisation of NZ Railways in the Rohe Potae.

160 The claimants' position is that the Crown failed to consult with Rohe Potae Maori prior to the announcement in December 1990 that NZ Rail would be privatised.

161 Te Rohe Potae Maori were to be severely prejudiced, through loss of employment because of the privatisation. NZ Rail employed at least 70 Maori at that time- 20% of the work force. With privatization over 80% of the work force in the Rohe Potae district lost their jobs.[118]

162 Witnesses this week have spoken of the prejudice caused by privatisation, being compounded by the closure of local stations. The detriment is the loss of easy access to the rest of the country, and loss of economic opportuntiy of freighting fruit and vegetables to city markets.



Mark McGhie

[118] #1.5.7-para 14